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 211 3 APRIL 2014 PAGES 25999 TO 26140



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#### Marikana Commission of Inquiry

	Page 25999		Page 26001
1	[PROCEEDINGS ON 3 APRIL 2014]	1	it.
2	[09:30] CHAIRPERSON: The Commission resumes.	2	MS LE ROUX: And then we've reviewed your
3	Sorry that we're starting later than scheduled, but we had	3	answers on Tuesday and it seems fair to say that you agree
4	some housekeeping to attend to in chambers before we came	4	with Mr White's criticisms insofar as they relate to the
5	in, which is a partial reason for the late start.	5	failure of intelligence gathering, the failures with
6	Luitenant-kolonel, ek moet u daaraan herinner dat u nog	6	respect to planning of the operation at Marikana, failure
7	steeds gebonde is deur u plegtige bevestiging wat u gemaak	7	with respect to briefing for the operation, as well as in
8	het.	8	recordkeeping, and in respect of those four issues
9	SALMON JOHANNES VERMAAK: Dis korrek.	9	particularly, intelligence, planning, briefing and
10	CHAIRPERSON: Ms le Roux.	10	recordkeeping, is there anything in Mr White's statement
11	MS LE ROUX: Thank you, Chair.	11	that you disagree with, that you take issue with?
12	CHAIRPERSON: I believe you've got some	12	COLONEL VERMAAK: No, on that four points
13	more questions for the witness.	13	I agree.
14	CROSS-EXAMINATION BY MS LE ROUX (CONTD.):	14	MS LE ROUX: And then the one point that
15	Just a few, thank you, Chair. Chair, first of all on	15	you disagreed with on Tuesday related to the conclusion set
16	housekeeping we have now provided the Commission as well as	16	out in paragraph 10.1.1(e), if we could put that up on
17	the evidence leaders with hardcopies of what we marked as	17	screen. It's at page 126 of Mr White's statement and this
18	OOO22, the interrogatories that we dealt with on Tuesday,	18	was where you disagreed that the police response to the
19	and then Lieutenant-Colonel, I'd like to start with CC21,	19	incidents demonstrate a lack of accountability and an
20	the Johannesburg water cannon video that we had some	20	unwillingness to take responsibility for the events, and in
21	trouble with on Tuesday. We've managed to sort that out	21	relation to that your testimony was that you couldn't
22	and would like to show you a clip. I've asked that we play	22	totally agree because there were circumstances where some
23	it first at normal speed and then that we slow it down a	23	of the officers, the seniors who were there did take some
24	little bit so that you can see the two gentlemen we'd like	24	responsibility for specific things, so you couldn't say
25	your help identifying. You'll see them walk from right to	25	that at all they don't take any responsibility.
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	Page 26000		Page 26002
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1 2	<u> </u>	1 2	6
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		1	
1	Page 26003 course are points that you had referred to and had drawn to	1	Page 26005
1		2	that it occurred primarily because of the incorrect
2	the attention of the National Commissioner when you had	2	equipment that the police had on the day? COLONEL VERMAAK: No, I agree with him
3	your interview with her. That's correct, isn't it?		
4	COLONEL VERMAAK: That's correct, Sir.	4	that there was poor planning and information during this
5	CHAIRPERSON: Do you know, as a matter of	5	plannings.
6	interest, whether R5s are still used by POP people? I	6	MS LE ROUX: So you would agree that it's
7	think you told us that normally there are, I think each	7	poor planning, poor briefing, and poor decision-making, not
8	group of POP police have, there are about eight of them and	8	incorrect equipment?
9	most of them use rubber bullets and shotguns with rubber	9	COLONEL VERMAAK: No, I think the
10	bullets, and so on, but there's one person with an R5. I	10	equipment was available and it is only for the right people
11	think that's what you said. Do I understand correctly?	11	to use the right equipment.
12	COLONEL VERMAAK: That's correct.	12	MS LE ROUX: Mr White then goes on to
13	CHAIRPERSON: Is that still the case as	13	deal with the specific problems relating to ineffective
14	far as you're aware?	14	command and control and he notes that, you know, that
15	COLONEL VERMAAK: Chairperson, it was	15	Brigadier Mkhwanazi identified these as being clearly a
16	still the case until I've been called up for the	16	significant contributor to the events at scene 2 and notes
17	Commission. So there might be afterwards new –	17	though that "Aside from a passing reference to the issue in
18	CHAIRPERSON: When were you called up for	18	the oral evidence of Brigadier Mkhwanazi and a concession
19	the Commission?	19	in the cross-examination of Major-General Mpembe, I'm not
20	COLONEL VERMAAK: I started in the	20	aware that the SAPS have addressed in any significant way
21	beginning of March.	21	in either oral or written evidence the ineffective command
22	CHAIRPERSON: This year?	22	and control problem."
23	COLONEL VERMAAK: This year.	23	Other than Brigadier Mkhwanazi and Major-General
24	CHAIRPERSON: Ja, so right up to March	24	Mpembe in his evidence are you aware of any other SAPS
25	this year, as far as you know the police have not	25	member that has acknowledge ineffective command and control
	Page 26004		Page 26006
1	Page 26004 implemented its own –	1	Page 26006 of the operation?
1 2	Page 26004 implemented its own – COLONEL VERMAAK: No, there was no –	1 2	
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	Page 26007		Page 26009
1	made in May 2013 that they would provide a statement of	1	MS LE ROUX: So it's a conclusory wrap-up
2	lessons learnt and we were informed subsequent to Mr	2	section –
3	White's statement being finalised that it wouldn't in fact	3	CHAIRPERSON: You're now misbehaving, Ms
4	be a statement of lessons learnt but that it was a document	4	le Roux. I asked the witness a question. I'm sure you're
5	that would be produced by Mr de Rover, the SAPS expert.	5	not doing it deliberately, but please, good advocates don't
6	Have you been consulted by Mr de Rover about lessons learnt	6	do that. Luitenant-kolonel, wat – sorry, you're giving
7	by the police from Marikana?	7	evidence in English from now.
8	COLONEL VERMAAK: No at all.	8	COLONEL VERMAAK: Well, I try to –
9	MS LE ROUX: Have you consulted with Mr	9	CHAIRPERSON: What do you say about the
10	de Rover at all in his preparation –	10	point that I put to you?
11	COLONEL VERMAAK: No.	11	COLONEL VERMAAK: Chair yes, to – I think
12	MS LE ROUX: - of his reports to the	12	my command, my comment on the unwillingness to take
13	Commission?	13	responsibility for all the events, there are some
14	COLONEL VERMAAK: No.	14	commanders who was deployed on the 16th who is willing to
15	CHAIRPERSON: This is a point I should	15	take the responsibility and they state it in their
16	have asked you about a couple of minutes ago before Ms le	16	statements, as I understand. So I can't say there is no
17	Roux moved on. There's one aspect I don't understand about	17	willingness for in total of the events that take place, but
18	something you've agreed with that Mr White says and that's	18	if you look at the whole incident then there is nobody at
19	the second sentence of paragraph (e). Let's read the whole	19	this stage who want to say on a planning, people on the
20	paragraph. "The police response to the incidents	20	planning phase or overall command, if any other senior
21	demonstrate a lack of accountability and an unwillingness	21	officer that will say listen, we take responsibility for
22	to take responsibility for the events. The case presented	22	all this shortcomings that has been highlighted in this
23	to the Commission of Inquiry continues to contain	23	documents and from our experience what happened there on
24	significant evidential gaps which either indicate seriously	24	the 16th, but so just to clarify that specific question.
25	inadequate recordkeeping, or a police service that's not	25	Thank you, Sir.
	Page 26008		Page 26010
1	acting in the spirit of full and frank disclosure." Now	1	MS LE ROUX: Lieutenant-Colonel, if I can
2	acting in the spirit of full and frank disclosure." Now never mind the second part. I understand the second part.	2	MS LE ROUX: Lieutenant-Colonel, if I can return to the fact that Mr de Rover hasn't consulted with
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1	Page 26011 COMMISSIONER HEMRAJ: And how would you	1	Page 26013 COLONEL VERMAAK: That is possible.
2	have ensured that?	2	CHAIRPERSON: And you didn't require
3	COLONEL VERMAAK: We have actually the,	3	complicated equipment, you didn't require expensive
	every section that is being deployed have a record-keeper	4	equipment, it was equipment that had been available in 2005
4 5	on a formal document where he have to keep all the record	4 5	when you left the POP, is that right?
			COLONEL VERMAAK: That's correct.
6	of everything that his section is in and all those	6 7	CHAIRPERSON: And of course we don't
7	information he always convey to the JOC, who's also keeping	8	know, perhaps someone will try to explain to us why that
8 9	then record of all the sitreps that they get from the different sections and after the duties they will hand it	0 9	didn't happen on this occasion. We wouldn't have to guess
	-	9 10	
10 11	in, that document, and it will be put together in one document, then, what is then available for the information	11	what happened for eight minutes when we don't know what was on the radio and only have the benefit of Captain Ryland's
12	manager of the unit and also then for the commander of the	12	cell phone to tell us what happened the other time.
12	unit.	13	COLONEL VERMAAK: Yes, that's correct.
14	Maybe if I can just comment also on that; all	14	CHAIRPERSON: That surely is not in
15	those sitreps then afterwards is put on computer on the	15	accordance with sound POP policing, is it?
16	IRIS system. Now the IRIS system have everything, detail	16	COLONEL VERMAAK: No –
17	of the incidents, the members involved, firearms involved,	17	CHAIRPERSON: Not to have a recording –
18	equipment being involved. If there's other police from	18	COLONEL VERMAAK: They are supposed to
19	other units also their particulars will be captured on the	19	record everything.
20	IRIS system. So when people at national head office, they	20	CHAIRPERSON: Ja.
21	can immediately go into IRIS system and they will can see	21	COLONEL VERMAAK: As I said, with video
22	how this operation is going on.	22	cameras at all times at the –
23	COMMISSIONER HEMRAJ: But how do you	23	CHAIRPERSON: Where would those
24	ensure adequate recordkeeping in the JOC when the incidents	24	recordings have been done, in the JOC or -
25	are taking place at such a fast pace?	25	COLONEL VERMAAK: We have a separate
	Page 26012		Page 26014
1	COLONEL VERMAAK: When there's big events	1	office where only me and the two people who was working
2	COLONEL VERMAAK: When there's big events you will always see that you have your OPS commander and at	2	office where only me and the two people who was working with the videos of the recording system have keys for it.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Page 26015 my mind on anything until the end but it does seem prima facie as if that failure is difficult to explain or to excuse. Would you agree with that? COLONEL VERMAAK: Yes, I do agree with that. MS LE ROUX: Chair and Commissioner Hemraj, just for record, for the record in due course, if I can just link back. I misspoke earlier. Mr White's statement deals with inadequate record-keeping at page 39 to 45, which is section 4.3. That's where he deals with both the operational record-keeping as well as minutes before, decision taking leading up to the operation, all of that record of – the audit trail of all of the decisions up to operation and then through the operation. Lieutenant- Colonel, if I could ask you to now turn to page 19 of Mr White's statement, I'd now like to start going through some specific points in Mr White's statement that relate, in part, to your role in the operation. Page 19 paragraph 2.3.6 and then 2.3.7. This is where Mr White sets out his concerns around the SAPS rubber rounds that are currently in use and he refers to a PowerPoint document that he's seen. This is the document that has now been marked as OO021. So Mr White sets out in paragraph 2.3.6 that he's	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Page 26017to get that information for us without the necessarily fororal evidence on the point.MS LE ROUX:Yes.CHAIRPERSON:He's been very co-operativeup to now and I'm sure he'll continue to be so. So ofcourse to be fair, I suppose if the presentation was madeto them in 2011 their systems are such that they can't buyit and write out a cheque the next day, it does take sometime to pass through the budgeting process and so on butthat's something that can be investigated, if necessary,later.MS LE ROUX:Yes.CHAIRPERSON:Your point, I take it, isIf the yrd had these grenate launchers in August 2012 thenthe story might be very different.MS LE ROUX:Well –CHAIRPERSON:Is that the point you'reworking up to?MS LE ROUX:Well –CHAIRPERSON:Is that the point you'reworking up to?MS LE ROUX:Chair, the point is, if wereturn to Mr White's statement 2.3.7 where he sets out that"It appears SAPS haven't yet acquired the weaponry capableof firing these safe impact rounds or at least that thatwas not available at Marikana" and he sets out his ownexperience concerning that "They are a more effective, less </th
24 25	recommending that the SAPS acquire Brügge and Thomet	24 25	lethal option which delivers an impact which is unlikely to
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 26016 grenade launchers with the ability to fire safe impact rounds, SIRs. These appear to be similar to the attenuating energy projectiles used in Northern Ireland because the existing 12-bore rubber rounds were problematic. That presentation, if we could pull it up, is OOO21 and slide 2 of that presentation to the SAPS sets out the reasons why SAPS need a large calibre grenade launcher and it states, "Recent experience during service delivery protests revealed the need for a weapon other than the muzzler shotgun. 12-gauge rubber is not effective at long range, it's notoriously inaccurate and can be easily blocked with makeshift shields or thick clothing. Ketties and slingshots shoot further than rubber. And then if we continue to the next slide, if we can continue to the next slide - CHAIRPERSON: While we're looking at these things, is this a presentation you say which was made to the police at the head of the police, I take it, in 2011? MS LE ROUX: Chair, that's our understanding. It's on the SAPS hard drive. We don't have too much more detail about context, we know the date – CHAIRPERSON: Well, I'm sure – MS LE ROUX: Chair, that you = MS LE ROUX: Chair, the presentation. CHAIRPERSON: Well, I'm sure – MS LE ROUX: Chair, the presentation. CHAIRPERSON: Well, I'm sure – MS LE ROUX: Chair, the presentation. CHAIRPERSON: Well, I'm sure – MS LE ROUX: Chair, the presentation. CHAIRPERSON: Well, I'm sure – MS LE ROUX: Chair, the presentation. CHAIRPERSON: Well, I'm sure – MS LE ROUX: Chair, the presentation. CHAIRPERSON: Mell, I'm sure – MS LE ROUX: Chair, the presentation. CHAIRPERSON: Mell, I'm sure – MS LE ROUX: Chair, the presentation. CHAIRPERSON: Mell, I'm sure – MS LE ROUX: Chair, the presentation. CHAIRPERSON: Mell Chair sure – MS LE ROUX: Chair sure – MS	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 26018 cause serious or life-threatening injury but is of sufficient force to dissuade or prevent a violent or potentially violent person from their intended course of action and thereby neutralise the threat." That's paragraph 2.3.7 of Mr White – CHAIRPERSON: So let's just make sure we understand this. Is it suggested that if, at scene 1, there'd been some of these grenade launchers and they had been used, we would not have had the deaths that we had at scene 1? Is that the attack, if it was an attack – I know there's an argument it wasn't an attack – if it was an attack, it appeared to be perceived by the police to have been an attack, if it was an attack or simply a perceived attack, it could have been repelled without loss of life. Is that your case? MS LE ROUX: Chair, potentially. Obviously Mr White would need more information in order to make that connection. At the moment I just am identifying Mr White has been able to see that the presentation was made suggesting there were safer options available before August 2012 and the only question I had was, to the Lieutenant-Colonel, was whether he was aware whether the safe impact rounds had been acquired and were in use by the POP or what had happened to this presentation. As to what could have happened at scene 1 we would obviously need

1	Page 26019 further information from Mr White to	1	Page 26021
2	CHAIRPERSON: No, but I'm not sure	2	necessary for us to have oral evidence on the point.
2	whether being in the air wing he'd be able to help us but	2	Obviously I can't dictate to the police what they want to do but the information should be fairly uncontroversial
4	maybe he can, but it might be interesting to hear, and	4	that we're interested in and which I'm sure they can
5	valuable I think to hear from the police. Again they don't	5	provide to us in affidavits or some other way.
6	have to lead oral evidence on it, they can give us a	6	MS LE ROUX: And we will follow up.
7	document on it, what the result was of this demonstration	7	Lieutenant-Colonel, so page 118 of Mr White's statement and
	which they received, whether they made any decisions and	8	I'd like to deal with the issues canvassed in paragraph
8 9		0 9	7.6.8 through to 7.6.10. This is a sixth criticism that Mr
9 10	how long it took to implement it because obviously one has got to realise in a body like the police, as I say, they	9 10	White sets out here and I relates to the lack of co-
10	can't just order the things immediately and write out a	10	ordination of the vari8ous units in the operation,
12	cheque the next day and have them delivered the day after.	12	particularly at scene 2 and with respect to the use of the
13	There are processes which take time so one has got to be	12	radios. And we'll go through some of these in detail but
14	reasonable but if it was something which was required as a		if you could just familiarise yourself now, we won't read
14	matter of high priority I would have thought it would have	14	
	been possible to have got it by August 2012, but that's	15	it into the record but if you could just – I know you've
16		16	read this whole statement but just to orientate yourself,
17 18	something which may not be correct and the police will presumably deal with that in due course.	17 18	paragraph 7.6.8 through to 10, if you could just reorientate yourself that these are the points we're
19	MS LE ROUX: And Chair, we will follow	19	dealing with. Now –
20	up. In response to a discovery request we were told that	20	CHAIRPERSON: Sorry, Ms Le Roux, I'm
20	this type of ammunition was available to the SAPS but not	20	sorry I was being discourteous to you. We were discussing
22	used at Marikana but the detail of that has still not been	22	the implication of your cross-examination at the moment and
23	forthcoming. We'll follow up again but simply, Lieutenant-	23	where it's going to lead us, particularly in the light of
24	Colonel Vermaak, do you have any knowledge of whether safe	24	the information I hope the police will be able to give us.
25	impact rounds have been made available to POP at any stage	25	Please forgive me and carry on, I promise to listen now.
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	Page 26020		Page 26022
1	Page 26020 since May 2011?	1	MS LE ROUX: Lieutenant-Colonel Vermaak,
2	since May 2011? COLONEL VERMAAK: No, I'm not aware of	1 2	MS LE ROUX: Lieutenant-Colonel Vermaak, of course we know your evidence that you were not the
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1	Page 26023 don't necessarily know that they are the target of the	1	Page 26025 understand your explanation for that but you very rarely
		1	
2	communication, secondly that those who are spoken to do not	2	were able to use call signs?
3	necessarily know who's speaking to them but, most	3	COLONEL VERMAAK: Ja, where I mainly
4	importantly, that none of the other participants listening	4	spoke to Brigadier Calitz in Pappa7 and the JOC, and also
5	to that radio communication would have any idea of what's	5	there is stipulated on the water cannons, at that stage we
6	going on and he says that if call signs are used, everyone	6	couldn't identify the call sign on the top of the water
7	listening to the radio will know that for instance Pappa7	7	cannons so that is why we tried to get their attention that
8	is moving alongside W2 and entering the koppie. So in	8	they know that we are talking to them specifically, but it
9	light of the comments in 7.6.9A do you agree that the use	9	makes it very, very difficult from the air to control
10	of call signs helps all involved in the operation with	10	vehicles on the ground if you cannot identify them
11	situational awareness?	11	properly.
12	COLONEL VERMAAK: What we have	12	MS LE ROUX: And I understand your answer
13	experienced, and that is for a very long time and it was	13	with respect to the difficulty of identify the vehicle
14	also brought under the attention of the cluster commanders,	14	necessarily, but you just said that you had to try to get
15	is that when there is an operation where the air wing is	15	the vehicle's driver aware that you were speaking to them.
16	assisted, the identifying of the vehicles on the ground is	16	On the radio communication we have, we don't often hear the
17	very difficult. Normally when we are called to a station	17	driver responding immediately, you know, sort of chopper 1
18	to assist we will take shoeshine or black shoeshine and	18	received or something like that. How would you know that,
19	write a letter on the top of the vehicle so that we can	19	other than repeating it over and over again, the Nyala at
20	identify them from above. That was also being done in this	20	the back, water cannon on the left, how do you know that
21	operation but you must remember at 300 feet it is not	21	they have managed to hear you?
22	always very much visible and I think where the other	22	COLONEL VERMAAK: Normally what you, what
23	problem occurred is those people are coming from other	23	gives some indication to you is, when you spoke to a
24	provinces, other units, and now all of a sudden he's using	24	specific vehicle and you can see that you have indicated to
25	his call sign at other places. It's been printed out on	25	him he must turn right and that vehicle is responding and
1	Page 26024 the side of his vehicle, that is his call sign and now he's	1	Page 26026 it's turning right, then you are sure that he heard the
1	coming to this side and he must use a new call sign and as	1	message from you.
2 3	we mark the Nyalas from Pappa1 to Pappa18, so it happens	2 3	MS LE ROUX: So the actions of the
	that they don't think you are talking to them. They are	4	vehicles that you could observe confirmed that you'd
4 5	used to their own call sign and now all of a sudden		venicies that you could observe confirmed that you'd
			managed to communicate
0	-	5	managed to communicate.
6	somebody is calling Pappa7. And what also happened is that	6	COLONEL VERMAAK: That is correct.
7	somebody is calling Pappa7. And what also happened is that it seems to us from the air wing side that the drivers	6 7	COLONEL VERMAAK: That is correct. [10:10] MS LE ROUX: If I could ask you to then
7 8	somebody is calling Pappa7. And what also happened is that it seems to us from the air wing side that the drivers didn't, when they got the Nyalas they are not driving every	6 7 8	COLONEL VERMAAK: That is correct. [10:10] MS LE ROUX: If I could ask you to then turn over to page 120, to the first paragraph on that page,
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1	Page 26027 I explained, that in the afternoon briefing we were not	1	Page 26029 COLONEL VERMAAK: That's correct.
2	there. We are mostly concentrating on the Nyalas that is	2	CHAIRPERSON: The second problem was that
3	visible and some of the sitreps is that we have said that	3	the plan itself which was explained to us by Lieutenant-
4	there are people or members close to the bush, we also at	4	Colonel Scott, formed part of the briefing which you
4 5		5	weren't invited to either at 2:30, that plan was rather
	one stage conveyed the message to Brigadier Calitz that the people are, or the koppie is encircled. Yes, the way that		incomplete I would say, although I don't think Colonel
6 7		6 7	Scott would agree with it but it took the situation up to
	he is putting it here, that is the ideal situation but on		-
8	the 16th it was very, very difficult in that situation to give feedback in this way. In a normal operation where the	8 9	the dry riverbed in the vicinity of koppie 2 and then said, well, you know, the operational commander must then do what
9			
10 11	people are approaching places you know who is coming from which side and what they must be doing, then you can do it	10	he considers appropriate. So there was no plan as to what
12	which side and what they must be doing, then you can do it. MS LE ROUX: Lieutenant-Colonel Vermaak,	11 12	would happen after that. If the people moved to koppie 3, for example, who was to go there, how it was to be dealt
12	I understand your evidence that being able to use the	12	with. So you were, you laboured under that disability as
	specific call sign may have been difficult on the 16th so we		
14		14	well, I mean you didn't even know what the plan was but the
15	may not end up with first prize as Mr White sets it out but	15	truth was, there wasn't a plan after the dry riverbed – COLONEL VERMAAK: That's correct.
16	even when we see, we saw developments in the operation, your radio communication as the eye in the sky still didn't	16 17	
17 18	reflect that in a way that could've informed other units on	18	CHAIRPERSON: - as far as koppie 3. So if you'd known what people were supposed to be there and
19	the ground. So to take an example, when the K9 unit starts	19	what people were supposed to be doing, it would have been
20	moving up from the south you would have seen those vehicles	20	much easier for you to do what Mr White expected you to do.
20	approaching, that movement doesn't get reflected on the	20	Is that fair?
22	radio that, you know, there's a unit moving up from the	22	COLONEL VERMAAK: That is correct, Chair.
22	south or you know, people are coming from the forward	22	The shortcoming on the plan was, when you draw up a plan,
23	holding areas towards the koppie. So there isn't	23	an operational plan, you will also always have a plan B.
24	situational awareness on the radio, even without call	25	You will always have to, foreseen circumstances that might
20		20	For win diversion to rescent circumstances that might
	Page 26028		Page 26030
1	signs, as to the movements that you would have been able to	1	flow out of your main planning and to address those things
~			
2	observe. Do you have a comment on that?	2	that you're not prepared in your main planning for. So
2	observe. Do you have a comment on that? COLONEL VERMAAK: Yes, the movements that	2 3	
	-		that you're not prepared in your main planning for. So
3	COLONEL VERMAAK: Yes, the movements that	3	that you're not prepared in your main planning for. So that is definitely a shortcoming on this plan. As you
3 4	COLONEL VERMAAK: Yes, the movements that we observed we did give through. For example when the	3 4	that you're not prepared in your main planning for. So that is definitely a shortcoming on this plan. As you said, it was going up to the riverbed and from there on
3 4 5	COLONEL VERMAAK: Yes, the movements that we observed we did give through. For example when the people gathered again after, at the back of koppie 2, we	3 4 5	that you're not prepared in your main planning for. So that is definitely a shortcoming on this plan. As you said, it was going up to the riverbed and from there on there was no plan B if $-$
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	COLONEL VERMAAK: Yes, the movements that we observed we did give through. For example when the people gathered again after, at the back of koppie 2, we did give that feedback to the operational members on the ground. We also indicated to them that they're moving to koppie 3 at the back. Then thereafter Brigadier Calitz lined up the Nyalas and he continued with his dispersion actions but you must also remember we had a situation at that stage where the Oryx helicopter didn't stick to the altitude that he was supposed to stick to. So we had to move further away for safety reasons and we also had to give feedback on the informal settlement for groupings. So there is a possibility, yes, that we missed it and we acknowledge that we did not give anything through to this reasons that I mentioned to you. CHAIRPERSON: Lieutenant-Colonel, I don't know if what I'm going to put to you is correct but if it's wrong, don't hesitate to tell me, but the impression I get is that you were labouring under two disabilities here which, in fairness, should be fed into this criticism. The first is that no-one bothered to invite you to the JOCCOM	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	that you're not prepared in your main planning for. So that is definitely a shortcoming on this plan. As you said, it was going up to the riverbed and from there on there was no plan B if – CHAIRPERSON: You didn't even know that. COLONEL VERMAAK: Yes. CHAIRPERSON: And of course the further problem you had was, as far as I can make out, Major- General Naidoo wasn't expected to be anywhere near koppie 3, is that right? In fact you didn't even see him, as I understand it. COLONEL VERMAAK: No. CHAIRPERSON: And the people with him, until fairly later in the proceedings, is that correct? COLONEL VERMAAK: That's correct. CHAIRPERSON: And he didn't bother to tell you or anybody else that he was there. COLONEL VERMAAK: No. CHAIRPERSON: Ja. Thank you. MS LE ROUX: Lieutenant-Colonel Vermaak, just two follow-ups coming, arising out of your evidence. With respect to the movement of the K9 forces from the

1	Page 26031		Page 26033
	them on the move?	1	MS LE ROUX: Right and that's of course,
2	COLONEL VERMAAK: Are you referring to	2	in those photos it's before they get to the koppie but the
3	the K9, was with General Naidoo?	3	point of my question was, you never reflected in the radio
4	MS LE ROUX: Yes.	4	communications that these groups were moving up to the
5	COLONEL VERMAAK: I really first observed	5	koppie.
6	them when I started to take photos and I saw the vehicles	6	COLONEL VERMAAK: No, no.
7	standing on that side of the koppie and at one stage I also	7	MS LE ROUX: And then you also said that
8	see a group of people on the other side. I later was	8	one of the things that was handicapping you was the fact
9	informed it was the reaction group of Captain Kidd.	9	that the Oryx was flying at the incorrect altitude, meaning
10	MS LE ROUX: So did you see the K9 forces	10	you had to increase yours?
11	approaching?	11	COLONEL VERMAAK: That's correct.
12	COLONEL VERMAAK: No, I did not.	12	MS LE ROUX: And that made it more
13	CHAIRPERSON: Remember there are two sets	13	difficult for you to see the call signs.
14	of K9 forces, Ms Le Roux. There's Captain Kidd's K9 forces	14	COLONEL VERMAAK: That's correct, because
15	_	15	I have to move further way and that has an influence on
16	MS LE ROUX: Yes.	16	your sight on what is going on, on the ground.
17	CHAIRPERSON: - and there are General	17	MS LE ROUX: Right. Were you not able to
18	Naidoo's K9 forces.	18	communicate with the Oryx helicopter and tell it to move?
19	MS LE ROUX: General Naidoo, let's start	19	COLONEL VERMAAK: They didn't have a
20	with General Naidoo's group. You only saw them when they	20	police radio on that stage that we have communicated with
21	got to the koppie?	21	them. It was only the aviation radio. You must also
22	COLONEL VERMAAK: I saw them when they	22	remember that is not, they were not on a channel that is
23	are next to the koppie with the vehicles.	23	just only for the helicopters that were operating there.
24	MS LE ROUX: Okay and then you see	24	It is an o
25	Captain Kidd's group arriving?	25	9pen channel, people from Springs, everywhere,
	Page 26032		Page 26034
1	COLONEL VERMAAK: Yes, at the stage where	1	you can hear talking then on that radio. So there wasn't
2	COLONEL VERMAAK: Yes, at the stage where we saw that two people was lying –	1 2	you can hear talking then on that radio. So there wasn't really time, things happened too quick to get to them and
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2 3 4	COLONEL VERMAAK: Yes, at the stage where we saw that two people was lying – COMMISSIONER HEMRAJ: Colonel, does that mean you did not see the convoy?	2 3 4	you can hear talking then on that radio. So there wasn't really time, things happened too quick to get to them and to get their attention. So we mainly rather move out, go to a different altitude.
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1	Page 26035 White's suggestion that being able to have that kind of	1	Page 26037 and pause at that point, so if we could play through to
2	communication would have avoided the creation of the	2	11:14 just after the Lieutenant-Colonel says, "Alright
3	situation where there was the potential for dangerous	3	guys, you've got them in the middle."
4	cross-fire at the koppie. So if –	4	[VIDEO IS SHOWN]
5	COLONEL VERMAAK: Yes, I think if there	5	MS LE ROUX: - that's why everybody
6	was better communication it could have been avoided.	6	sounds a little strange. CHAIRPERSON: Sorry, I didn't hear that.
7	MS LE ROUX: Mr White, I'd now like – not Mr White, Lieutenant-Colonel Vermaak, I'd now like to move	7	CHAIRPERSON: Sorry, I didn't hear that. The sound of what you said was a bit unclear to me. What
8 9	on to the next point made by Mr White also on page 119.	8 9	did you say?
9 10	This is paragraph 7.6.9D(1) and if we could - this deals	9 10	MS LE ROUX: It wasn't being played at
11	with the way the water cannons were used at koppie 3 and	10	normal speed, that's why the audio sounded different to
12	how they were affecting the movement of the strikers, if we	12	what we're used to hearing.
13	could actually start by putting up JJJ10 and photograph	13	CHAIRPERSON: Okay, alright.
14	4547. Chair, if I could also ask for any assistance from	14	MS LE ROUX: If we could –
15	my learned friends the evidence leaders, if anyone has got	15	CHAIRPERSON: - what was wrong, thank you
16	a laser pointer available it may assist in some of this.	16	for explaining it to me.
17	So Lieutenant-Colonel –	17	MS LE ROUX: If we could actually just
18	CHAIRPERSON: I always like, when we see	18	pause at 11:10, so if we could play from 10 through to
19	these slides, to be told where north and south are and then	19	11:10 which would be just before Lieutenant-Colonel Vermaak
20	I get my bearings. Can someone please tell us where north	20	says, "Alright guys, you've got them in the middle." So if
21	and south are?	21	we –
22	MS LE ROUX: Chair, south is the top left	22	[VIDEO IS SHOWN]
23	corner.	23	MS LE ROUX: And if we could actually
24	CHAIRPERSON: And the bottom right is –	24	zoom in on the koppie it'll assist actually. Mr Chair, we
25	north. Is that right?, is that right?	25	can see the two, the two water cannons shooting into -
1	Page 26036 MS LE ROUX: Now, this photograph is	1	Page 26038 Chair, if you could turn your attention to the screen
1 2	MS LE ROUX: Now, this photograph is	1	Chair, if you could turn your attention to the screen
2	MS LE ROUX: Now, this photograph is taken of koppie at approximately 16:07:24 and we can see	2	Chair, if you could turn your attention to the screen behind you.
	MS LE ROUX: Now, this photograph is taken of koppie at approximately 16:07:24 and we can see the two water cannons on either side of the koppie,		<ul><li>Chair, if you could turn your attention to the screen</li><li>behind you.</li><li>[10:29] We can mark the two, so that's one water cannon</li></ul>
2	MS LE ROUX: Now, this photograph is taken of koppie at approximately 16:07:24 and we can see	2 3	Chair, if you could turn your attention to the screen behind you.
2 3 4	MS LE ROUX: Now, this photograph is taken of koppie at approximately 16:07:24 and we can see the two water cannons on either side of the koppie, spraying into the koppie. If we could then zoom into the	2 3 4	<ul><li>Chair, if you could turn your attention to the screen behind you.</li><li>[10:29] We can mark the two, so that's one water cannon spraying in, and the other, and driving –</li></ul>
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	Page 26039		Page 26041
1	through now to 11:24.	1	koppie. It's come past the western portion. So your view
2	[VIDEO SHOWN]	2	at this point was reasonably clear of the movement of the
3	Again marking the dry dam where we are referring	3	strikers. So –
4	to.	4	COLONEL VERMAAK: And I think that one
5	COLONEL VERMAAK: That is correct, that	5	that you pointed out is the Oryx, the white Oryx.
6	is more or less the area. You will see all over around	6	CHAIRPERSON: Now for the benefit of
7	here is policemen and police vehicles. At this corner here	7	those who are going to read the record later, which will
8	was no policemen visible for us.	8	include all of us, I take it, all the Commissioners and
9	CHAIRPERSON: What you call "this corner	9	lawyers, the helicopter to which you are referring, would
10	here" is the dry dam –	10	you please describe where it is, where the witness says is
11	COLONEL VERMAAK: Excuse me, Chair, at	11	the Oryx?
12	the dry dam there was no vehicles or policemen visible for	12	MS LE ROUX: Lieutenant-Colonel Vermaak,
13	us from the air and that is where we noticed that the	13	perhaps if you could help us if you think it's the Oryx.
14	people is breaking through, still under the impression for	14	Maybe we should just watch this little clip again so it's,
15	the way that the vehicles was moving in, directed by myself	15	if we go back to 11:14 to 25.
16	and also repeated the instructions by Brigadier Calitz,	16	[VIDEO SHOWN]
17	that the plan was that they must be encircled. So that is	17	COLONEL VERMAAK: There is the Oryx.
18	why we said they're going to break through at the dry dam.	18	CHAIRPERSON: [Microphone off, inaudible]
19	MS LE ROUX: Now Lieutenant-Colonel	19	zoom picture. If one looks at the picture one sees the
20	Vermaak, you've just testified that there were no police	20	koppie, one sees what I think is the dry dam. Is that
21	vehicles visible there, but of course Captain Kidd's team,	21	correct? And more or less in the middle of the dry dam, or
22	that's where they are. They're in that area of the koppie.	22	above the middle of the dry dam is a white shape which the
23	They're at the dry dam –	23	witness tells us is the Oryx. Do you see your helicopter
24	COLONEL VERMAAK: Yes, after –	24	anywhere on this picture?
25	MS LE ROUX: - at this point in time.	25	COLONEL VERMAAK: No, Chair. That is so
	Page 26040		Page 26042
1	COLONEL VERMAAK: Afterwards we have	1	small a helicopter, it's difficult to see from this height.
2	heard that they approach that area from where they were and	2	MS LE ROUX: If we could just play it
3	they were actually close to the dry dam when we give that	3	again through to 11:25.
4	information through that they're going to break through.	4	[VIDEO SHOWN]
5	COMMISSIONER HEMRAJ: You say at the time	5	Pause there. Now Lieutenant-Colonel Vermaak,
6	the strikers were leading to that area unhindered. Captain	6	when you did that circuit of the koppie you didn't see any
7	Kidd's people were not there at that stage?	7	bodies on the west of the koppie at the edge of the dry dam
8	COLONEL VERMAAK: We couldn't see them,	8	at that point, did you?
9	Chair. Afterwards we saw that there was policemen on that	9	COLONEL VERMAAK: No, I didn't see any
10	side, but at the moment that I give that report that the	10	body there.
11	people is going to break through at that area there I	11	MS LE ROUX: Okay, and what was it that
12	didn't see Captain Kidd's members on the ground. That is	12	you saw that made you say they're going to break through?
13	why I reported they're going to break through on that side	13	COLONEL VERMAAK: The people were coming
14	for on all the other sides there are policemen.	14	out of the bushes and they were moving in the direction of
15	COMMISSIONER HEMRAJ: Did you in fact	15	the dry dam. So that's why I said they are breaking
16	observe them breaking through that area?	16	through, under the impression it is supposed to be a cordon
17	COLONEL VERMAAK: That's correct. They	17	movement that the police had.
18 19	were moving to that specific area, Chair.	18 10	MS LE ROUX: And they're moving in that
19	COMMISSIONER HEMRAJ: Did they break	19	direction because it's away from where the water cannons are?
20	through and loave the area through there?		
20	through and leave the area through there?	20 21	
21	COLONEL VERMAAK: They came through and	21	COLONEL VERMAAK: It's away from the
21 22	COLONEL VERMAAK: They came through and then all of a sudden they ran back into the bushes.	21 22	COLONEL VERMAAK: It's away from the water cannons and where the other vehicles were standing.
21 22 23	COLONEL VERMAAK: They came through and then all of a sudden they ran back into the bushes. MS LE ROUX: Lieutenant-Colonel Vermaak,	21 22 23	COLONEL VERMAAK: It's away from the water cannons and where the other vehicles were standing. MS LE ROUX: Lieutenant-Colonel Vermaak,
21 22 23 24	COLONEL VERMAAK: They came through and then all of a sudden they ran back into the bushes.	21 22	COLONEL VERMAAK: It's away from the water cannons and where the other vehicles were standing.

	Page 26043		Page 26045
1	COLONEL VERMAAK: Ja, that's positive.	1	CHAIRPERSON: Thank you.
2	MS LE ROUX: Then if we play through now,	2	MS LE ROUX: And then if we could zoom in
3	we can actually play it through till about 12:12. 20	3	to the dry dam where we will observe two bodies. Chair,
4	seconds after this, so at about 11:47, which is 16:09:17	4	I'm not sure if we need a warning. It's not close-up –
5	eTV time, you'll hear yourself, you start to say "JOC	5	CHAIRPERSON: No well, let's play it
6	chopper," you're interrupted. Brigadier Calitz announces	6	safe. I'm informed that when we zoom in to this picture
7	arrest, counting them off, and then when you come back on	7	we'll see two bodies. It may well be that those who are
8	the radio you complete your sentence and it's to record	8	the relatives and loved ones of the people whose bodies
9	that you now see two bodies at the back of the koppie. So	9	will be seen may find that something that causes emotional
10	if we could just play through until approximately 12:12 and	10	distress to them. So do we know – could you mention the
11	just listen out for that communication, "JOC chopper,"	11	names of the people, please Ms le Roux? Ms le Roux, can
12	interrupted by Brigadier Calitz and then you report the two	12	you mention the names of the people whose bodies will be
13	bodies at the back of the second koppie.	13	shown so that those who think that they will be caused
14	[VIDEO SHOWN]	14	unhappiness and emotional stress by looking at them will
15	Stop there. Lieutenant-Colonel Vermaak, I just	15	have an opportunity to leave? - they are, we'll take the
16	want to understand one other –	16	comfort break now.
17	CHAIRPERSON: I'm sorry to interrupt.	17	MS LE ROUX: Chair, it's body N, and then
18	Can I just get something clear? Am I remembering correctly	18	somebody who did not die but was injured.
19	that you said "by the second koppie there," you didn't mean	19	CHAIRPERSON: May I suggest, let's take
20	the koppie by the dry riverbed, you meant the second, what	20	the comfort break now. Let's find out the name. It's
21	I can call sub-koppie which is part of koppie 3? Is that	21	never satisfactory to talk about body M and body N. We're
22	correct?	22	talking about human beings who died and they're entitled to
23	COLONEL VERMAAK: That's correct.	23	respect in death as they were entitled to respect in life.
24	MS LE ROUX: If we could now go to	24	So we'll take the short adjournment, the comfort break now.
25	ККК16.5136 –	25	[COMMISSION ADJOURNS COMMISSION RESUMES]
		1	
	Page 26044		Page 26046
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		1	
1	Page 26047 after 30 seconds have expired from now. Alright, the 30	1	Page 26049 MS LE ROUX: But would you accept that
2	seconds is up; no-one has left. So we can proceed.		it's possible they were part of the group that we see
3	MS LE ROUX: So if we could zoom in to	2 3	running away from the water cannons?
4	the dry dam. So if we'll mark that first, if we mark the	4	COLONEL VERMAAK: That is possible, but I
4 5	man in the orange-red shirt, that's the unidentified man	4 5	cannot confirm that they were part of that group.
	who we believe survived his injuries. Body N, Mr Mkhonjwa,		
6 7	is the body at the, towards the top of the zoomed portion,	6	
8	and then, Chair, critically these are members of Captain	7 8	running away from the water cannon, did they run to that
8 9	Kidd's group behind the rock.	0 9	position where we see Mr Mkhonjwa and his colleague? COLONEL VERMAAK: If we –
9 10	CHAIRPERSON: Is this near the bottom of	10	MS LE ROUX: They run in that direction,
11	the page, there's a rock and there are some people lying	11	to that point.
12	down behind it?	12	COLONEL VERMAAK: If we can get that
13	MS LE ROUX: Yes, Chair.	13	still photo back I can –
14	CHAIRPERSON: I see, and that's Captain	14	MS LE ROUX: If we could go back to
15	Kidd's people. That's K9 people, is it? I don't see any	15	KKK16.5136, please, and if we could zoom in again to the
16	dogs in –	16	dry dam area, and we note of course they're at the edge of
17	MS LE ROUX: Chair, they're TRT.	17	the dry dam. Is that the direction –
18	CHAIRPERSON: Oh, they're TRT. I see.	18	COLONEL VERMAAK: If you can just go to
19	And you talk about the zoomed portion. If one looks	19	that side, on to the right side, please, and then to the
20	carefully at the photograph one sees, it's easy to see the	20	top. They were coming through this area through the bush
21	body with, it looks like an orange T-shirt of some kind,	21	here, or on the bottom from that rocks, that is where we
22	and above that slightly to the left is the other body.	22	saw them.
23	That's the one you referred to.	23	CHAIRPERSON: What is pointed out is if
24	MS LE ROUX: Yes, Chair, the body of Mr	24	one looks at the photograph the centre of the photograph
25	Mkhonjwa. Lieutenant-Colonel Vermaak, can you confirm that	25	there's a helicopter and if one goes to the left of the
	Page 26048		Page 26050
1	the two bodies at the back of the second koppie that we	1	helicopter, well there's more or less a straight line, one
2	the two bodies at the back of the second koppie that we hear you announcing in the Protea Coin chopper video are	2	helicopter, well there's more or less a straight line, one sees the rocks and that's the point that you indicated.
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1	Page 26051 evidence as to when he's reporting that, the first time he	1	Page 26053 inaudible]. Sorry, I was interrupting you. You say the
2	says that –	2	explanation from Ms le Roux, what were you saying about
3	CHAIRPERSON: No, no, no, I understand –	3	that?
4	MS LE ROUX: Because he just confirmed	4	COLONEL VERMAAK: That's a possibility.
5	this in the 20 seconds –	5	CHAIRPERSON: It's a possibility, but
6	CHAIRPERSON: No, I understand –	6	other things are possible too, I mean aren't they? Anyway,
7	MS LE ROUX: - on the Protea Coin	7	but presumably some extra work can be done on that. You
8	chopper.	8	can't necessarily help us on it, but what you can say is
9	CHAIRPERSON: No, I understand when he	9	you didn't see them earlier but they may have been there,
10	first saw them, but I'm interested in the question when	10	but what you possibly do say is you didn't see them.
11	they were first there, whether it's possible for us with	11	COLONEL VERMAAK: No.
12	the wealth – if that's the right word – of photographs and	12	CHAIRPERSON: And that's a factor which
13	videos and so on to identify with some degree of precision	13	will be used –
14	a point, an earlier point when they weren't yet there,	14	COLONEL VERMAAK: That's correct.
15	which will then help us to draw the inference that you're	15	CHAIRPERSON: - in argument later, I'm
16	seeking us to draw, which the witness says he can't. I	16	sure.
17	mean it's possible, anything is possible but that doesn't	17	MS LE ROUX: Lieutenant-Colonel, let me
18	help us, but to whether we can get more precision than	18	see if we can clarify this even further. When you said,
19	that, and it may well be capable of being done but I don't	19	and we hear it on the radio communication, "They're in the
20	know that the witness can necessarily help us. But maybe	20	middle, they're going to break through," could you mark on
21	that's something that Mr Fischer and those other people who	21	the photograph where the group was that you were reporting
22	are good at this sort of thing can help us on by going back	22	on?
23	to the video screen and the drawing board.	23	COLONEL VERMAAK: At that stage there
24	MS LE ROUX: But Chair, without the need	24	were a lot of people -
25	for a photograph Lieutenant-Colonel Vermaak has assisted us	25	MS LE ROUX: If we could zoom in it
	<b>2</b>		
1	Page 26052	1	Page 26054
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2	because, Lieutenant-Colonel, if you could just confirm the evidence you've just given. As I understand it you	2	probably would be a little easier. COLONEL VERMAAK: At that stage we saw
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	Page 26055		Page 26057
1	we saw them.	1	open area, there where we could see them, the people who
2	CHAIRPERSON: Alright, okay.	2	were not in the bushes, and then there were people in this
3	MS LE ROUX: Lieutenant-Colonel Vermaak,	3	area as well. That where they are lying now is where after
4	I don't have the precise page reference - I can get that,	4	the people have moved in and arrested them.
5	but in your evidence-in-chief you said that the strikers	5	MS LE ROUX: And if we could zoom out a
6	were corralled at the eastern edge of the dry dam, which we	6	little bit –
7	understood was a reference to the area which on this	7	CHAIRPERSON: I was facing the wrong way
, 8	photograph would be where we see the two vehicles parked	8	at the time. Would you be kind enough to put on record
9	below the water cannon. So more towards the bottom of the	9	
			what the witness just showed us?
10	photograph over the bushes that you have now referred to,	10	MS LE ROUX: Certainly, Chair. In the
11	being marked now. We'd understood your evidence-in-chief	11	centre of the photograph, slightly to the left is a large
12	when you said the eastern edge of the dry dam to mean that	12	bold rocks without the bushes. We zoomed in to that
13	location.	13	portion from there and then below to a ring of five
14	COLONEL VERMAAK: That's correct. That	14	vehicles that we see, and in this photograph we see people
15	is, that where I'm indicating now –	15	lying on the ground and being arrested. Lieutenant-Colonel
16	MS LE ROUX: But on which side of the	16	Vermaak indicated that he saw people in that rocky outcrop
17	bushes that we see in the middle of the area that you've	17	before the bushes which appear to the top of the
18	marked?	18	photograph, as well as in that flat area where in this
19	COLONEL VERMAAK: About in that circle we	19	photograph we see people being arrested. Lieutenant-
20	saw the people.	20	Colonel, is that accurate?
21	MS LE ROUX: So you saw some people	21	COLONEL VERMAAK: That is accurate.
22	towards the bottom of the photograph with the bushes behind	22	MS LE ROUX: Now in your evidence-in-
23	them towards the top of the photograph?	23	chief –
24	COLONEL VERMAAK: That's correct –	24	CHAIRPERSON: I'm sorry, can I interrupt
25	CHAIRPERSON: The circle which the	25	you? What we also see on this photograph to the right,
	Page 26056		Page 26058
1	Page 26056 witness is indicating is around the bushes which are immediately below the third Nyala to which I referred, the	1	Page 26058 more or less in the middle towards the right we see – am I correct? – the person with the orange T-shirt and –
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2 3	witness is indicating is around the bushes which are immediately below the third Nyala to which I referred, the one which is more or less dead centre on the photograph,	2 3	more or less in the middle towards the right we see – am I correct? – the person with the orange T-shirt and – [11:30] Or orange upper garment of some kind, is that
2 3 4	witness is indicating is around the bushes which are immediately below the third Nyala to which I referred, the one which is more or less dead centre on the photograph, which is also, which is to the left, diagonally forward of	2 3 4	more or less in the middle towards the right we see – am I correct? – the person with the orange T-shirt and – [11:30] Or orange upper garment of some kind, is that correct?
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1			
1	Page 26059	1	Page 26061
1	where the question comes from my learned friend Ms Pillay.	1	MS KEETSE: Matageni, M-A-T-A-G-E-N-I.
2	CHAIRPERSON: Oh, I see. There's 25418.	2 3	CHAIRPERSON: Thank you very much. MS LE ROUX: Lieutenant-Colonel Vermaak,
3	The question was?		
4	MS LE ROUX: If we go down to 22?	4 5	just to make sure that I'm understanding what may be an
5	CHAIRPERSON: No, it's near the foot of		inconsistency between your answers in chief and today, the
6	that page, yes. It's Ms Pillay at line 22 saying, "And	6	people you saw in that dark area where, in photograph 4552
7	when you say on the next page of that transcript, 'They're	7	we see vehicles parked, they were heading in the direction
8	going to break through, they're going to break through,'	8	of the dry dam where we eventually see Mr Mkhonjwa and Mr
9	can you just describe to us what you were seeing in	9	Matageni lying?
10	relation to this?" And then the answer is 25419, the	10	COLONEL VERMAAK: Ma'am, not exactly
11	witness, "Dit was waar 'n	11	those people. I said there were people coming out of the
12	groepie, u sal sien dit lyk soos, amper soos 'n	12	bushes in the direction of the dry dam. So I'm not saying
13	droë dam wat daar is aan die linkerkant – of nee, meer in	13	those people were moving to that side. I said there were
14	die middel van die foto, so dit lyk soos 'n droë pan of 'n	14	people breaking through and they were moving, as I
15	dam wat daar is. In daardie rigting het mense toe begin	15	testified, in the direction of the dry dam and if you can
16	beweeg en ons het toe vir hulle in kennis gestel." So	16	see it's a quite big area and I didn't say the middle or
17	translating that is, that was where a small group, you will	17	the side or so on.
18	see it looks as if, almost like a dry dam which is there on	18	MS LE ROUX: Right and can you just
19	the left side – or no, more in the middle of the photo, it	19	indicate –
20	looks like a dry pan or a dam which is there. In that	20	CHAIRPERSON: Sorry, can you help me?
21	direction the people began to move and we then informed	21	What is the time lapse between the photograph we saw with
22	them – and then that's the answer. Is that the passage to	22	just these two people lying there and the photograph we now
23	which you're referring?	23	see?
24	MS LE ROUX: Yes, Chair. If we return to	24	COLONEL VERMAAK: It's a very –
25	the photograph 4552, Chair, the confusion seems to be	25	MS LE ROUX: Chair, I think it's
	Page 26060		Page 26062
1	arising because from your clarification to Lieutenant-	1	approximately 40 minutes.
2	Colonel Vermaak, the dry dam is not the dark area with the	2	CHAIRPERSON: 40, 4-0?
3	paths on it where the vehicles are parked –	3	MS LE ROUX: 4-0.
4	CHAIRPERSON: No, the dry dam is where	4	CHAIRPERSON: So that explains where all
5	the red, where the gentleman with the red garment, where	5	the vehicles came from.
6	the two bodies are.	6	MS LE ROUX: Correct.
7	MS LE ROUX: Correct. So the –	7	CHAIRPERSON: I see. And perhaps the
8	CHAIRPERSON: And there's a Canter,	8	witness can help us. Lieutenant-Colonel Vermaak, can you,
9	there's a Canter close to the person, I think you said we	9	can we see on this photograph where the rock behind which,
10	don't know who he is. He appears to be an anonymous	10	it appeared to be a number of TRT people were lying? You
11	survivor. He was obviously injured, it must be one of Mr	11	remember on the earlier photograph?
		12	COLONEL VERMAAK: That's correct.
12	Mpofu's injured clients lying there with the red, an orange	12	
12 13	Mpofu's injured clients lying there with the red, an orange garment. That appears to be the dry dam, is that correct?	13	CHAIRPERSON: Is that rock visible on
13	garment. That appears to be the dry dam, is that correct?	13	CHAIRPERSON: Is that rock visible on
13 14	garment. That appears to be the dry dam, is that correct? Have I got that right?	13 14	CHAIRPERSON: Is that rock visible on this photograph?
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13 14 15 16 17	garment. That appears to be the dry dam, is that correct? Have I got that right? MS LE ROUX: Yes, Chair. CHAIRPERSON: Alright. Now Ms Keetse, can she tell us who the gentleman is with the orange upper	13 14 15 16 17	CHAIRPERSON: Is that rock visible on this photograph? COLONEL VERMAAK: I just want to look quickly. It's difficult to identify it from the air here, Chair.
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<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	garment. That appears to be the dry dam, is that correct? Have I got that right? MS LE ROUX: Yes, Chair. CHAIRPERSON: Alright. Now Ms Keetse, can she tell us who the gentleman is with the orange upper garment? Or perhaps she can find out from her clients. Ms Keetse, can you help us? MS KEETSE: I think I know the person. It should be Happy Matageni. We did some investigation with Mr Wesley sometime ago and I checked with the client, it is indeed Happy Matageni, a survivor. Thank you.	<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	CHAIRPERSON:Is that rock visible onthis photograph?COLONEL VERMAAK:I just want to lookquickly.It's difficult to identify it from the air here,Chair.CHAIRPERSON:Alright, okay.CHAIRPERSON:Alright, okay.If youcan't, you can't.I just was hopeful you could help us but- Ms Hemraj, who of course wasn't there either in ahelicopter or on the ground, she thinks it's the rock onthe right-hand side right near the edge above that shadowbut if you can't tell us then she can't tell us either, but

Pretoria

1         MS LE ROUX:         Chair, I think we can. We         1         and at one point, the back way to describe II to how who           2         believe - were marking the rock now. Chair, II may be         3         are soging to look the due black is, It was the vehicle           4         this and if we zoon in on the rock where the TRT members         4         the helicoptor flow at one stage. That's           5         and they, and the RT are lying behnd the second from the         6         and they, and the RT are lying behnd the second from the           6         and they, and the RT are lying behnd the second from the         6         and they cores examination. The still on quile           7         top of the pholograph.         7         Top of the pholograph.         The still the vehicle subtract referring to. Anyway.           1         dots.         Add then if the refurn to         8         such stage and the RT would be the refurn to           10         dots.         COLONEL VERMAAK. That may -         11         Ms SE E ROUX:         Learners were sorging them and you baser dot the worker and at the would be the social to           11         of the paol the refurn to the of refurn the refurn to refurn to the social to         13         Rescense the social the worker and the orgin the refurn to the social to           13         be one, two, three, four, so we see them pointing atmosthand the social to         14         <		Page 26063		Page 26065
2         believe – were marking the rock now. Chair, it may be asselved for you to go tack to 5136 and them come tack to the vector were the rock where the TR members and they, and the TRT are lying behind the second from the top of the photograph.         2         are going to took at the belicopter flew at one states and they, and the TRT are lying behind the second from the top of the photograph.         3         does to a point it modiately above the whick optic referring to. Anyway.           7         For the photograph.         10         452.7         and they stowed work the whick optic and they stowed optic to making but take it that it will be come clear to min it due course.           10         MS LE ROUX: And then if we return to an 11 of cket direction in the vectors.         10         MS LE ROUX: And xoom, those appears to an 11 of the sing of the second the an 11 of the targ of the second the and turning back, does that occur in the 20 seconds between the photograph there are, proceeding down trom the cents.           11         The the photograph. There are, proceeding down trom the cents.         10         MS LE ROUX: Make the that you target the photograph.           2         was, Ithink the third, more or loss the one in the motograph.         10         10         10           3         optic target	1	5	1	•
3         caster for you to go back to 5136 and then come back to this and if we zoom in on the rock where the TRT members are. So there seem to to sort of four groupings of rocks and they, and the TRT are jving behind the second from the cOLONEL VERMAAK: Ja.         3         cbs to which the helicopter flaw at one stage. There's and they, and the TRT are jving behind the second from the cOLONEL VERMAAK: Ja.         5         came very dose to a point limicalistly above the vehicle and they, and the TRT are jving behind the second from the cOLONEL VERMAAK: In an any -         5         came very dose to a point limicalistly above the vehicle and they and the TRT are jving behind the second for MS LE ROUX. And then if we return to a first cane very dose to a point limicalistly above the vehicle are method, thread and the rook and an an transport of the are point above the vehicle are method, thread and the rook and and the rook from the top of that series.         11         14         14         14         14         14         14         14         14         14         15         16         16         cannow very dose to a point limicalistical that juo and traing back dose that occurs.         16			2	
4         this and if we zoom in on the rock where the TRT members         4         the helicopter moving across the scene and a ne point II           5         are. So there seem to be sort of four groupings of rocks         5         and the St we helicopter moving across the scene and a ne point II           7         top of the photograph.         5         and the St we helicopter moving across the scene and a ne point II           10         4552 -         MS LE ROUX: And then if we return to         5         and the St we helicopter moving across the scene and a net we helice and the st we helicopter moving across the scene and a net point III and the two moves at           11         652 -         MS LE ROUX: And zoon, those appears to         10         MS LE ROUX: And zoon, those appears to           12         on to tock direction at the vehicle that we now seat         11         for working each on the scene and a net moving in the and you saw them moving in the test of thit sares.           13         be one, two, three, four, so we see them pointing almost in         13         for working each on the trop of thit sares.           14         the photograph there are, proceeding down form the contert         14         and the scene and the or you are point them being in the middle and when you           15         of the age down to the right hand bottom correr there are point of the advers. It was the moving at the scene and the or you are point them being in the middle and when you           14				
5       are. So there seem to be sort of four groupings of rocks       6       and they, and the TR are lying behind the second from the         6       and they, and the TR are lying behind the second from the       6       and that's the vehicle synare referring to. Anyway,         7       COLONEL VERMAAK:       in.       9       become team to me in due course.         10       4552 -       COLONEL VERMAAK:       That may -         11       discourd and behavior to me in due course.       10         12       MS LE ROUX:       And them any course examination. The still not quile         13       be one, two, three, four, so we see them pointing almost in       1         14       and individe been behavior       11       if we could pick up one other aspect of your veldence about         14       and Individe been behavior       13       poople running away from the direction in which the water         15       ords from the top of that series.       14       and uning back, does that accours.         15       ords from the top of that series.       16       and uning back, does that accours.         16       the pholograph.       fund in run back.       That stopping         17       of that series.       fund in run back.       That stopping         18       when you report them baling in the middle and when yo				
6       and they, and the TRT are lying behind the second from the       6       and that's the vehicle your's reterrings to. Anyway,         7       top of the photograph.				
7         top of the photograph.         7         proceed with your cross-examination. I'm still not quite           8         COLONEL VERMAAK:         Ja.         8         strew shat point your making but 1 kake it that it will           10         4552 -          MS LE ROUX:         Inductional that may -           11         COLONEL VERMAAK:         That may -             12         MS LE ROUX:         Inductional the weaker             13         be one, two, three, four, so we see them pointing almost in              14         ant 10 ockk direction at the weaker               15         Mrikhonjwa and the TRT would've been behind the second               16         rock from the top of that series.                17         of that series, is that right?                 18         the point other arc. proceeding down from the care. <td></td> <td></td> <td></td> <td></td>				
8       COLONEL VERMAAK:       Ja.       8       sure what point you're making but I take it that it will         9       MS LE ROUX:       And then if we return to       9       become clear to me in due course.         11       COLONEL VERMAAK:       That may –       11       if we could pick up one other aspect of your evidence about         12       MS LE ROUX:       And zoom, those appears to       12       this, you testified this moming that you observed the         13       be one, two, three, four, so we see them pointing almost in       13       poope numps away from the direction in which the water         14       and then fit or of that series.       14       in poope numps away from the direction in which the water         15       forck from the top of that series.       And then ing you were point to       5       direction of the dry dam and then 'um back. That stopping         16       the photograph three are, two rocks, and the one you were point to       14       wan you export them being in the middle and when you         23       suppose there are five rocks, and the one you were point to       14       movement?         24       MS LE ROUX:       Ves, Chair.       25       COLONEL VERMAAK:       No Learon you         3       parkaps comment on that now, Licutenant-Colone?       7       3       benich, the whick is that you?       1			6	
9       MS LE ROUX:       And then if we return to       9       become clear to me in due course.         10       452 -       MS LE ROUX:       Lieutenant-Colonel Vermaak,         11       COLONEL VERMAAK:       That may -       MS LE ROUX:       Lieutenant-Colonel Vermaak,         12       an 11 octock direction at the vehicle that we now see at       1       if we could pick up on either aspect of your evidence about         13       be one, two, three, four, so we see them pointing almost in       13       peopler running maxy from the direction in which the water         14       an 11 octock direction at the vehicle that we now see at       1       cannos were spraying them and you saw them moving in the         16       rock from the top of that sories.       Aright. If one looks at       1       and turning back, does that occur in the 20 seconds between         16       of the page down to the right-hand bottom comer there are       10       occurept the babolis; that shooling, that shooling, that shooling took         12       was, I think the third, more or less the one in the middle       2       drive that sportikers the shooling, that shooling, the sport port in the spage 20060 trevek through, is that sporting to more. <td>7</td> <td></td> <td>7</td> <td>proceed with your cross-examination. I'm still not quite</td>	7		7	proceed with your cross-examination. I'm still not quite
10       4552 -       10       MS LE ROUX:       Lisutenant-Colonel Vermaak,         11       COLONEL VERMARK:       That may -       11       I' we could pick up one other aspect of your evidence about         13       be one, two, three, four, so we see them pointing almost in       11       I' we could pick up one other aspect of your evidence about         14       an 11 oclock direction at the vehicle that we now see at       11       I' we could pick up one other aspect of your evidence about         15       for Khrom the top of that series:       assu them mowing that you base them and then you saw them mowing in the         16       for Khrom the top of that series:       aspect of the page down to the right-hand bottom corner there are       and turning back, does that occur in the 20 seconds between         19       of the asgee down to the right-hand bottom corner there are       12       and turning back, does that occur in the 20 seconds between         19       of that series, is that right?       20       COLONEL VERMAK:       That's correct.         21       suppose there are five rocks, al       21       MS LE ROUX:       Did you also observe Papa9         22       was, I think the tright?       21       MS LE ROUX:       No Le ROUX:       Did you observe Papa9         23       place in that poried of time? Did you observe Papa9       22       drive to that specific point<	8	COLONEL VERMAAK: Ja.	8	sure what point you're making but I take it that it will
11       If we could pick up one other aspect of your evidence about         12       MS LE ROUX: And zoom, those appears to         13       be one, to three, our, so we see them pointing almost it         14       an 11 o'clock direction at the vehicle that we now see at         15       Mr Mknojwa and the TRT would've been behind the second         16       for kork from the top of that series.         17       CHAIRPERSON: Alright. If one looks at         18       the photograph there are, proceeding down from the centre         19       optimum way fight-hand bottom corner there are         20       actually essentially, 1 suppose, four or five rocks, 1         21       suppose there are five rocks and the one you were point to         22       was, 1 think tho third, more or less the one in the middle         23       of that series, is that right?         24       m & bE ROUX: Yes, Chair.         25       COLONEL VERMAAK: Yes, Chair.         26       routsment on that nony, Lieutenant-Colonel?         27       right?         28       pathaps comment on that nony. Lieutenant-Colonel?         29       routsment shar secord fire way of the statements         3       perhaps comment on that nony. Lieutenant Colonel?         4       COLONEL VERMAAK: If 1 hook at the two <td>9</td> <td>MS LE ROUX: And then if we return to</td> <td>9</td> <td>become clear to me in due course.</td>	9	MS LE ROUX: And then if we return to	9	become clear to me in due course.
12       MS LE ROUX:       And zoom, those appears to       12       this, you testified this morning that you observed the         13       be one, two, three, four, so we see them pointing almost in       13       people running away from the direction in which the water         14       an 11 of cock direction at the vehicle that we now see at       14       cance two, three, four, so we see spray lime and you saw them mowing in the         16       rock from the top of that series.       15       direction of the dry dam and then you testified that you         16       rock from the top of that series.       16       saw them mowe through and then turb back. That stopping         17       of that period to the right-hand bottom corner there are       17       report them being in the middle and when you         20       actually sestifially. Suppose there are five rocks and the one you were point to       21       MS LE ROUX:       Nat soot where the shooling, that shooting took         21       wiss, I think the third, more or less the one in the middle       21       MS LE ROUX:       No. I was not         22       wiss, I think the third, more or cars you       3       place in that period of time? Did you observe Papapa?         23       belicopter, he can't help us but that's – or can you       3       place in that period of time? Did you observe?         24       hollcopter, Macan't Help weand the the work in a the	10	4552 –	10	MS LE ROUX: Lieutenant-Colonel Vermaak,
13       be one, two, three, four, so we see them pointing almost in       13       people running away from the direction in which the water         14       an 11 o'clock direction at the vehicle that we now see at       14       cnanors were spraying them and you saw them moving in the         16       for kindly and the TR would've been behind the second       16       cnanors were spraying them and you saw them moving in the         17       CHAIRPERSON:       Aright. If one looks at       16       saw them move through and the Turn back. That stopping         18       the photograph thers are, proceeding down from the certain       17       collable.       18       when wore through and then turn back. That stopping         18       suppose there are five rocks and the one you were point       17       roport the two bodies?       18       when you report them being in the middle         20       of that series, is that right?       21       COLONEL VERMAAK:       That's correct.       22         21       was the point of that series, is that right?       23       drive that spot where the shooting, that shooting took         23       of that series, is that right?       32       fold that series, is that right?       24         24       fold that series, is that right?       34       concentrating on them. Where I said to the vehicles that         3       people turning away	11	COLONEL VERMAAK: That may –	11	if we could pick up one other aspect of your evidence about
14       an 11 o'clock direction at the vehicle that we now see at       14       canons were spraying them and you saw them moving in the         15       Mr Mkhonjwa and the TRT would've been behind the second       16       saw them move through and them turn back. That stopping         17       CHAIRPERSON:       Airight. If one looks at       18       when you report them being in the middle and when you         19       of the page down to the right-hand bottom corner there are       18       when you report them being in the middle and when you         20       actually essentially. I suppose, four or five rocks, I       10       movement?       20       COLONEL VERMAAK:       That's correct.         21       whas LE ROUX:       Yes, Chair.       20       clock of time? Did you abso observe Pappa?       21       movement?         24       MS LE ROUX:       Yes, Chair.       25       COLONEL VERMAAK:       No I was not         3       belicopter, he carn't help us but that's – or can you       3       behind the Pappa? vehicle that has been pointed out now.         4       COLONEL VERMAAK:       If I look at the two       5       behind the Pappa? vehicle that has been pointed out now.         5       protaps comment on that now, Licutenant-Colonel?       4       MS LE ROUX:       Lie Row, would you like to carry on?         6       chair firk firk	12	MS LE ROUX: And zoom, those appears to	12	this, you testified this morning that you observed the
15       Mr Mkhonjwa and the TRT would've been behind the second       15       direction of the dry dam and then you testified that you         16       rock from the top of that series.       16       saw them move through and then turn back. That is topping         17       CHAIRPERSON:       Aright. If one looks at       17       and turning back, does that occur in the 20 seconds between         18       the photograph there are, proceeding down from the centre       18       when you report them being in the middle and when you         19       of the page down to the right-hand bottom corner three are       19       report the two bodies?         20       actually essentially. I suppose, four or five rocks, I       18       when you report them being in the middle and when you         21       suppose there are five rocks and the one you were point to       18       When you report them bodies?         22       was, I think the trid, more or less the one in the middle       20       COLONEL VERMAAK: That's correct.         23       of that series, is that right?       24       forocentrating on them. Where I said to the vehicles that         2       helicopter, he can't help us but that's – or can you       3       behind the Papa9 vehicle that has been pointed out now.         3       protex, I think that is –       COLONEL VERMAAK: I think she's right.       5       have you had an opportunity to review any	13	be one, two, three, four, so we see them pointing almost in	13	people running away from the direction in which the water
15       Mr Mkhonjwa and the TRT would've been behind the second       15       direction of the dry dam and then you testified that you         16       rock from the top of that series.       16       saw them move through and then turn back. That stopping         17       of HARRERSON:       Aringht. If one looks at       17       and turning back, does that occur in the 20 seconds between         18       the photograph there are, proceeding down from the centre       18       when you report the two bodies?         20       actually essentially. I suppose, four of five rocks, I       18       when you report the two bodies?         21       suppose there are five rocks and the one you were point to       18       when you report the two bodies?         22       was, I think the tird, more or less the one in the middle       20       cloud there, where the shotoling, that shooting took         23       of that series, is that right?       24       drive to that spot where the shotoling, that shooting took         24       novement?       COLONEL VERMAK:       No. I was not         25       colonell type phylic that any of us because he was in a       helicopter, he can't help us but that's – or can you       3         36       photos, Chair, I think that is –       colonell type phylic the targe phylic that series; first       10         36       photos, Chair, I think that is –	14	an 11 o'clock direction at the vehicle that we now see at	14	cannons were spraying them and you saw them moving in the
16       rock from the top of that series.       16       saw them move through and then turn back. That stopping         17       CHAIRPERSON:       Airight. If one looks at         18       the photograph there are, proceeding down from the centre         19       of the page down to the right-hand bottom corner there are         20       actually essentially. I suppose, four or five rocks, I         21       suppose there are five rocks and the one you were point to         22       was, I think the third, more or less the one in the middle         23       of that series, is that right?         24       MS LE ROUX:       Yes, Chair.         25       COLONEL VERMAAK:       No, I was not         26       colonel Vermaak.       No, I was not         27       protos, Chair, I think that is -       can you         28       right?       MS LE ROUX:       Lee Noux:         30       protos, Chair, I think that is -       CLONEL VERMAAK:       If I look at the two         31       something that she will derive some satisfaction from.       S         32       right?       Submit the spage 20064       concentrating on them. Where I said to the vehicles that         34       helicopter, he can't help us but that's - or can you       S       bohind the Papage Vehicle that has been pointed	15	Mr Mkhonjwa and the TRT would've been behind the second	15	direction of the dry dam and then you testified that you
17       CHAIRPERSON:       Alright. If one looks at         18       the photograph there are, proceeding down from the centre         19       of the page down to the right-hand bottom corner there are         20       actually essentially, I suppose, four or five rocks, I         21       suppose there are five rocks and the one you were point to         22       was, I think the third, more or less the one in the middle         23       of that series, is that right?         24       MS LE ROUX:       Yes, Chair.         25       CHAIRPERSON:       Anyway the witness who was         2       ha better position than any of us bocause he was in a       helicopter, he can't help us but that's - or can you         3       protos, Chair, I think that is -       COLONEL VERMAAK:       If look at the two         4       COLONEL VERMAAK:       If look at the two       Shate gout had an opportunity to review any of the statements         5       right?       You think Ms Le Roux is       Shave you had an opportunity to review any of the statements         6       COLONEL VERMAAK:       I think she's right.       Yes the rear individual to two:         7       statements?       booting and then a movement forwards and then a         8       COLONEL VERMAAK:       I think she's right.         9       COLONE	16	-	16	
18       the photograph there are, proceeding down from the centre       18       when you report them being in the middle and when you         19       of the page down to the right-hand bottom corner there are       20       actually essentially, I suppose, four or five rocks, I       20         20       actually essentially, I suppose, four or five rocks, I       20       COLONEL VERMAK: That's correct.         21       suppose there are five rocks and the one you were point to       MS LE ROUX: Did you also observe Pappa9         22       was, I think the third, more or less the one in the middle       of that series, is that right?         25       CHAIRPERSON: Anyway the witness who was       25       COLONEL VERMAK: No, I was not         7       in a better position than any of us because he was in a       helicopter, he can't help us but that's – or can you       page 26066         1       in a better position than any of us because he was in a       helicopter, he can't help us but that's – or can you       page 26066         2       protos, Chair, I think that is –       COLONEL VERMAK: If hink & Le Rou's       1       concentrating on them. Where I said to the vehicles that         8       photos, Chair, I think was is right.       6       by the TR members that record that shooting, because those         4       COLONEL VERMAK: If hink she's right.       9       because they report this movement forwards and then a				
19       of the page down to the right-hand bottom corner there are tally essentially. I suppose, four of five rocks, I       19       report the two bodies?         20       actually essentially. I suppose, four of five rocks, I       20       COLONEL VERMAAK: That's correct.         21       suppose there are five rocks and the one you were point to       21       MS LE ROUX: Tess, is that right?         24       MS LE ROUX: Yes, Chair.       22       drive to that spot where the shooting, that shooting took provement?         25       CHAIRPERSON: Anyway the witness who was and hele one you were point to the page 20064       1       in a better position than any of us because he was in a helicopter, he can't help us but that's – or can you gentage comment on that now, Lieutenant-Colonel?       Page 22064       1       Page 22064         3       perhaps comment on that now, Lieutenant-Colonel?       4       MS LE ROUX: Lieutenant-Colonel?       4       MS LE ROUX: Lieutenant-Colonel Vermaak, 5       5       have you had an opportunity to review any of the statements       5       have you had an opportunity to review any of the statements         3       cOLONEL VERMAAK: If I hook at the two because they report this movement forwards and then a file on the angroup of the statements?       5       because they report this movement forwards and then a file on the specifies of that shooting, because they report this movement forwards and then a file welpif from the middle, they're going to for that they are going to them they are lister ore sacet 1. Now I hope not		5		-
20       actually essentially, I suppose, four or five rocks, I       20       COLONEL VERMAAK: That's correct.         21       suppose there are five rocks and the one you were point to       21       MS LE ROUX: Did you also observe Pappa9         22       was, I think the third, more or less the one in the middle       22       drive to that spot where the shooting, that shooting took         23       of that series, is that right?       23       drive to that spot where the shooting. That scorrect.         24       MS LE ROUX: Yes, Chair.       25       COLONEL VERMAAK: No, I was not         25       CHAIRPERSON: Anyway the witness who was       26       1       concentrating on them. Where I said to the vehicles that         2       helicopter, he can't help us but that's – or can you       3       behind the Pappa9 vehicle that has been pointed out now.         4       COLONEL VERMAAK: If I look at the two       4       S have you had an opportunity to review any of the statements       5         6       CHAIRPERSON: Airight, well, that's       5       have you had an opportunity to review any of the statements         10       Something that she will derive some satisfaction from. Ms       1       to the Connexiston. I wasn't going to do that today,         9       CHAIRPERSON: Airight, well, that's       1       Statements?       1       Statements?         10				
21       suppose there are five rocks and the one you were point to       21       MS LE ROUX:       Did you also observe Pappa9         22       was, I think the third, more or less the one in the middle       22       drive to that spot where the shooting, that shooting took         23       of that series, is that right?       22       drive to that spot where the shooting, that shooting took         24       MS LE ROUX:       Yes, Chair.       23         25       CHAIRPERSON:       Anyway the witness who was       25         26       COLONEL VERMAAK:       No. I was not         27       perhaps comment on that now, Lieutenant-Colonel?       24       MS LE ROUX:       Lieutenant-Colonel?         26       CHAIRPERSON:       You think Ms Le Roux is       5       have you had an opportunity to review any of the statements         3       perhaps comment on that now, Lieutenant-Colonel?       4       MS LE ROUX:       Lieutenant-Colonel Vermaak,         4       COLONEL VERMAAK:       If hiok she's right.       5       have you had an opportunity to review any of the statements         5       pottog       Something that she will derive some satisfaction from. Ms       10       shooting and then a movement forwards and then a         10       something that she will derive some satisfaction from. Ms       11       Le Roux, would you like to				-
22       was, I think the third, more or less the one in the middle       22       drive to that spot where the shooting, that shooting took         23       of that series, is that right?       24       MS LE ROUX: Yes, Chair.       25       COLONEL VERMAAK: No, I was not         24       movement?       25       COLONEL VERMAAK: No, I was not       Page 2006         1       in a better position than any of us because he was in a belicopter, he can't help us but that's – or can you       3       concentrating on them. Where I said to the vehicles that         4       COLONEL VERMAAK: If I look at the two       5       have you had an opportunity to review any of the statements         5       printos, Chair, I think that is –       6       COLONEL VERMAAK: I think she's right.       5       have you had an opportunity to review any of the statements         8       COLONEL VERMAAK: I think she's right.       9       COLONEL VERMAAK: I think she's right.       9       beause they report this movement forwards and then a         10       something that she will derive some satisfaction from. Ms       1       tatements?       12       COLONEL VERMAAK: No, I haven't got –         13       and if we play it from 11 to 11.47, Chair, that clip on       13       shooting and then a movement back. Have you seen tos shooting you cross-examination and       14       14       14       14       14       14				
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1	Page 26067	1	Page 26069
1	evidence on the movement of the strikers at scene 1 that	1	depiction on OOO17 is that the strikers do not go nearly as
2	I'd like to deal with today. As I understand it and you	2	far to the north as you suggest when they leave the koppie.
3	set this out in the exhibit that's been marked as 00017,	3	So if we can start in this GW6A and go to page 25, here we
4	there are three aspects of what you testified about and how	4	see – again it's not able to definitively attach a time to
5	you marked it in exhibit 00017 that we'd like to deal with	5	this, it seems to be around 15:51 when we correlate it to
6	because it doesn't accord with our analysis of the	6	the Rowland headgear footage.
7	objective evidence, of the video and photograph evidence	7	[11:49] But here the point is we see the lead striker
8	that we have. And we will submit to the Commission that	8	group walking immediately adjacent to Nyala 5 and then if
9	what is set out in GW6A, the annexure to Gary White's	9	we go to the next slide, page 26, this plots that on the
10	statement, depicts the route taken, save for the one	10	plan. So we have the group shown in the grey oval in
11	amendment that we must make in light of video footage that	11	relation to Nyala 4 and Nyala 5. So it's closer to Nyala
12	came before the Commission after that document was	12	5.
13	prepared, with respect to the suggested attempt by some	13	If we then go to the video clip JJJ194.13 we will
14	protesters to pass between the kraal and Pappa5, that	14	submit that this confirms that the whole of the lead group
15	attempt being blocked by Nyala 4 dragging its barbed wire	15	passes very closely to the north of Nyala 5, not nearly as
16	across. So we need to amend in that respect but even if we	16	far to the north as Lieutenant-Colonel Vermaak indicates on
17	compare, with that amendment in mind, on the GW6A document	17	OOO17, if we could just watch that clip, 194.13. So Chair,
18	- for the record it would be page 60 - there are some	18	that's Nyala 5 that we see and this is the strikers very
19	significant differences that we now want to deal with and	19	close to it.
20	we'll do the comparison. So it relates to the movement of	20	If we then go back into GW6A and to slide 29 and
21	the strikers in two respects as well as the use of teargas,	21	then 30 we see there the objective evidence showing the
22	stun grenades and water cannon.	22	lead strikers continuing to be very close to Nyala 5 even
23	Chair, perhaps just for the record to clarify	23	when it's driven past them. That's Nyala 4. Nyala 5 is
24	what we're comparing, it's exhibit OOO17 where Lieutenant-	24	the vehicle we see to the left out of frame, and if we go
25	Colonel Vermaak has marked the route of protesters and then	25	to the next slide again that is plotted and the grey oval
	Page 26068		Page 26070
1	if we put up page 60 of GW6A, that's part of JJJ178, Gary	1	indicates the protester group in relation to Nyalas 4 and
1 2	5	1 2	
	if we put up page 60 of GW6A, that's part of JJJ178, Gary White's statement. It's an annexure to the statement, not in the statement.		indicates the protester group in relation to Nyalas 4 and
2	if we put up page 60 of GW6A, that's part of JJJ178, Gary White's statement. It's an annexure to the statement, not	2	indicates the protester group in relation to Nyalas 4 and 5.
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		1	
1	Page 26071 from where the word "front" appears towards the second TSW.	1	Page 26073 concentrating on the point that's under discussion. We
2	There are two TSWs to the photograph, that stands for	2	were puzzling about where it's taking us, but that's
3	teargas, stun grenades, and water cannon. As one moves	3	something that will become clear to us in due course, I
4	into the photograph from the left-hand side there's one TSW	4	trust.
5	and then there's another one slightly above the kraal. Now	5	MS LE ROUX: Lieutenant-Colonel, if I can
6	between that TSW, the second, what I call the second TSW	6	start with the water cannon, how sure are you that the
7	and the front there's a path and you say that you didn't	7	water cannon was used to deter strikers from the attempt to
8	see protesters, or strikers as I prefer to call them, in	8	pass between the kraal and Papa5 and Nyala 4?
9	that area. You then refer to the position close to the	9	COLONEL VERMAAK: We saw the water cannon
10	word "second," which is further on, on the photograph and I	10	spraying in that area. I can't exactly point out the
11	understood you to say that it's more or less in that	11	direction that they was concentrating on, but I can assure
12	vicinity that you saw the strikers.	12	you that we were able to see that the water cannon was
13	COLONEL VERMAAK: That's correct.	13	activated.
14	CHAIRPERSON: Am I summarising correctly?	14	MS LE ROUX: And Lieutenant-Colonel
15	COLONEL VERMAAK: That's correct.	15	Vermaak, let me be clear; we don't dispute that the water
16	MS LE ROUX: Now Lieutenant-Colonel,	16	cannon was used. The dispute is as to when it was used.
17	obviously the objective evidence speaks for itself, but	17	You can't pinpoint –
18	there do seem to be two groups. There's the lead group and	18	COLONEL VERMAAK: No, I can't-
19	obviously in this photograph that you've plotted on they'd	19	MS LE ROUX: - timing-wise when you saw
20	already moved past that position with Nyala 5. So the lead	20	the water cannon spraying?
21	group that we see in the objective evidence going very	21	COLONEL VERMAAK: I cannot give that
22	close to Nyala 5 and not nearly as far north as the group	22	information.
23	that you're describing on this document, you accept that	23	MS LE ROUX: Because on OOO17, your
24	the distinction between the two groups may explain this?	24	BlackBerry photograph, that's JJJ11.1515, that's taken at
25	COLONEL VERMAAK: No, I cannot say that	25	15:51:47 eTV time and we can see Nyala 4 in this image
		1	
	D 0/070		
1	Page 26072 because why what we saw there was one group. The rest of	1	Page 26074 halfway between its starting position and the kraal and so
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2	because why what we saw there was one group. The rest of the people join the group in the front. So I'm not a	1 2 3	halfway between its starting position and the kraal and so presumably the use of the teargas, stun grenade, and water
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	D 0/075		5 0/073
1	Page 26075 would have to be, as the Chair has put to you, prior to	1	Page 26077 photograph.
2	that.	2	CHAIRPERSON: Yes, one sees a path in
3	COLONEL VERMAAK: No, what the Chair put	3	fact first and they're to the left of the path.
4	to me, it is more possibility that – as I said to you, I	4	MS LE ROUX: Yes. These are the two
5	can't give you exact time when they activate the water	5	water cannons still only driving towards the kraal, but
6	cannon.	6	they're obviously about 30 to 40 metres away. We also
7	MS LE ROUX: Right.	7	observe in the photograph they're not shooting any water.
8	COLONEL VERMAAK: You must still	8	So Lieutenant-Colonel Vermaak, to give you the timings
9	remember, as I said in the beginning, we are in a chopper	9	again; Nyala 4 reaches the kraal at 15:52:03. We see in
10	which is flying against about 120 kilometres an hour.	10	GW6D, page 35, one second after that is when the water
11	There are some instances that you don't have everything	11	cannons only start moving. 30 seconds before the TRT
12	visual that you have, wish to have.	12	shooting we see them in this photograph 30 to 40 metres
13	MS LE ROUX: Lieutenant-Colonel, we know	13	away still and not shooting any water. In light of this
14	that Nyala 4 reaches the kraal at 15:52:03. We know that	14	objective evidence do you accept that it would be
15	from the Rowland Headgear and GW6A slide 47 records that	15	impossible for the water cannon to have been used at the
16	development, JJJ178.1, slide 47. So there we see Nyala 4	16	time that you claimed when you were explaining your OO017?
17	just reaching the kraal and being stationary. That's	17	COLONEL VERMAAK: No, I will not say it's
18	15:52:03.	18	impossible. The water cannon can spray a long distance and
19	If I could then ask that we show GW6D, which is	19	what I saw is what I've testified, but unfortunately
20	the analysis of water cannons more closely. If we go to	20	there's no aerial footage of that. I think there is, I did
21	GW6D, which I assume is JJJ178.4. Perhaps Ms - is that	21	see somewhere photos on that two scenes where the water
22	correct?	22	cannons was activated, but I'll have to go through all the
23	MS PILLAY: That's correct, Chair.	23	photos to give you that specific one.
24	MS LE ROUX: 178.4. I'm indebted to my	24	MS LE ROUX: But Lieutenant-Colonel
25	learned friend for her assistance. Thank you, and if we go	25	Vermaak, the water cannons can't shoot 180 metres, can
	Page 26076		Page 26078
1	to slide 33 of this, this is where we see from 15:43:56	1	they?
2	North West and Jo'burg water cannons posted approximately	2	COLONEL VERMAAK: I'm not sure of what is
3	180 metres from the kraal. They're marked in this slide,	3	the total distance that they can shoot at.
4	and then if we go through to slide 35 we see that they	4	MS LE ROUX: Let me move on then. We
5	don't even start to move until 15:52:04. Slide 35	5	won't do the same exercise with respect to teargas and stun
6	indicates it's from the North West water cannon camera, it	6	grenade, but you've seen GW6E which, with respect to
7	shows them both still stationary and the North West water	7	teargas and stun grenade GW6E –
8	cannon about to set off towards the kraal. The Jo'burg	8	CHAIRPERSON: I'm sorry, are you moving
9	water cannon is visible still stationary beside it in this	9	on to a slightly new point?
10	screenshot. So the two water cannons don't even start to	10	MS LE ROUX: Yes.
11	move from their position about 180 metres away from the	11	CHAIRPERSON: Because I was requested to
12	kraal until 15:52:04, which is one second after Nyala 4 has	12	take the tea adjournment now.
13	arrived at the kraal. You'll recall that's at 15:52:03.	13	MS LE ROUX: That's fine, Chair.
14	If I could then ask that we look at JJJ11.1516.	14	CHAIRPERSON: So we have to bear in mind
15	JJJ11, photograph 1516, this photograph is taken at	15	the strain on people attending here, particularly those who
16	15:53:21. So that is less than 30 seconds before the TRT	16	are involved in the proceedings. So we'll take the tea
17	shooting starts and we can see both water cannons in the	17	adjournment now.
18	top right-hand corner of the photograph still driving	18	[COMMISSION ADJOURNS COMMISSION RESUMES]
19	towards the kraal. Chair and Commissioners, if you turn,	19 20	[12:32] CHAIRPERSON: The Commission resumes.
20	we're marking them with the laser pointer, and to describe	20 21	Lieutenant-Colonel, you're still bound by your affirmation.
21	them for the record, they're in the top right-hand corner	21 22	Ms Le Roux?
22 23	of the photograph. From the immediate right there's a small collection of vehicles, then moving to the left one	22 23	SALMON JOHANNES VERMAAK: (affirms further)
23	vehicle in isolation, and then moving again to the left we	23 24	CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
24	see two larger vehicles heading towards the left of the	24 25	Thank you, Chair. Lieutenant-Colonel, just to round out
		20	manie jour onanie Eloutonanie obionon just to round out
	RCHIVE FOR JUSTICE		

#### Marikana Commission of Inquiry

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	Page 26079		Page 26081
1	the objective evidence on the water cannon, the objective	1	could play it?
2	evidence shows it shooting nine seconds before the TRT	2	[VIDEO IS SHOWN]
3	shooting starts, that's when we see a recording of, or any	3	MS LE ROUX: If we go a little bit
4	footage of the water cannon firing. So we, that's what the	4	further forward.
5	objective evidence shows. Do you accept that it's possible	5	CHAIRPERSON: 07.
6	that that's what you observed, the water cannon deploying	6	MS LE ROUX: We've paused it at seven
7	water nine seconds before the TRT shooting?	7	seconds into the clip0.
8	COLONEL VERMAAK: I will not say that is	8	CHAIRPERSON: Yes.
9	what I observed but I cannot dispute it as I was not on the	9	MS LE ROUX: And you can see the strikers
10	ground at that stage.	10	in this clip beyond the vehicles. That's Nyala 4 that we
11	MS LE ROUX: Then with respect to the use	11	see and we see the – so Nyala 4 at this point has already
12	of teargas and stun grenades, you've seen GW6E and there	12	touched the kraal and we see the strikers moving from left
13	it's set out how the objective evidence demonstrates that	13	to right.
14	there's no teargas or stun grenades being used more than 20	14	COLONEL VERMAAK: That's correct.
15	seconds before the TRT fire. Do you accept that	15	MS LE ROUX: If we could now move to
16	possibility, that there's no teargas or stun grenades until	16	JJJ194.16 and on this clip if we could just, if we could
17	20 seconds before the TRT volley starts?	17	pause this clip at 16 seconds, that's eTV time 15:52:29.
18	COLONEL VERMAAK: If there's evidence to	18	Chair, we're looking in this clip and we'll see a large
19	that, I can also not say it's not true.	19	group of the strikers in the background some distance away.
20	MS LE ROUX: Lieutenant-Colonel, if we	20	This is, as we understand it, not the lead group that we
21	now move on to the third and final discrepancy that we have	21	see in this. We see the large group through the mouth of
22	between our analysis of the objective evidence and your	22	the kraal.
23	account set out in OOO17 and that's the large loop – if we	23	[VIDEO IS SHOWN]
24	can go back to OOO17? It's the large loop that we see	24	MS LE ROUX: Pause. If we go back a
25	between the first and second TSW marks, teargas, stun	25	little bit, there. Chair, this is paused at 15 seconds,
20	between the first and second row marks, teargas, stan	20	
	Page 26080		Page 26082
1	grenade, water cannon use on your document. And if we	1	that's the group of strikers that we see – Chair, if you
2	could start in JJJ197, these are the Channel 4 clips that	2	look at the screen behind you we're marking it with the
3	show the movement of the lead group.	3	laser pointer. Between the two vehicles you see the group
4	[VIDEO IS SHOWN]	4	of strikers through the kraal, through the mouth of the
5	MS LE ROUX: Chair, the –	5	kraal. You see them moving left to right.
6	CHAIRPERSON: It doesn't look as if this	6	CHAIRPERSON: What we see really in the
7	is the clip you want. This is –	7	bottom left-hand corner of the photograph is the mouth of
8	MS LE ROUX: No, no, it is the clip, it	8	the kraal and then we see into the kraal and it looks as if
9	is the clip we want because –	9	the strikers are on the other side of the kraal. We see
10	CHAIRPERSON: - Lieutenant-General	10	them through the twigs and the branches and whatever it was
11	Mbombo, isn't it?	11	that the kraal was made up of, is that right?
12	MS LE ROUX: No, Chair, the clip follows	12	MS LE ROUX: Yes, Chair, and of course
13	- this is the press report and then they cut to the footage	13	what we're noting is that group is some distance back. If
14	we're referring to. We don't have an exact time on it but	14	we could then play the video, if we could play it slowly
15	it seems to be 15:52:08, the clip that we – we look at it,	15	and then pause in two seconds' time at 18. There we see a
16	it comes about four seconds into this clip, if we can play	16	group much closer to the kraal, they seem to be passing
17	the clip?	17	much closer to the kraal, so if we could play it at slow
18	[VIDEO IS SHOWN]	18	motion and pause –
19	MS LE ROUX: Go – if we could go in slow	19	CHAIRPERSON: Passing it on the other
20	motion?	20	side, on the far side?
21	CHAIRPERSON: Where you've paused, you've	20	MS LE ROUX: Yes, Chair.
22	paused it at 06. Well, anyway, when you pause please put	22	CHAIRPERSON: Mm, okay.
23	on record where you've paused, for the benefit of those who	23	[VIDEO IS SHOWN]
24	are following our footsteps later.	23	MS LE ROUX: Pause there. We can see the
25	MS LE ROUX: I will do, Chair. So if we	24	group – again we're marking it on the big screen behind
			group again were marking it on the big screen behind
-		-	

		I	
1	Page 26083	1	Page 26085 see there's no indication that people is – where I'm
1	you, Chair. Between the Nyala and its barbed wire trailer		pointing now, any people. It is clear that they come with
3	we see a group of people much closer. And we've zoomed in	2 3	that loop back. They came back, they came back here and
	on that portion and you can actually see in darker silhouette the group closer to the kraal and behind them in	4	then they followed this route. You can see the point of
4 5	a lighter grey silhouette is the group that we saw earlier	4 5	5
	which was further away, passing, all walking left to right		the people, the sharp end there at the corner of the kraal.
6		6	So according to me, what I saw from the air is what I more
7	at the kraal. If we then go forward in this to one minute	7	or less indicate on the previous picture.
8	one second, this is where we see the group, they've now	8	CHAIRPERSON: What you didn't show – I'm
9	come around the kraal. This is 15:53:14 on eTV time and	9	not criticising you because I take it you didn't see, but
10	here we see the group walking very slowly forward. And if	10	what you didn't show was those people we appear to have
11	we start at one minute and if we play it in slow motion,	11	seen on that, on the photograph who were walking behind the
12	between one minute one second and one minute eight seconds	12	kraal. They appeared to be quite close to the fence, as it
13	which correlates to 15:53:21. If you watch, if we zoom in	13	were, of the kraal. Now I take it what's been put to you
14	on, between the vehicles – Chair, again we're marking the	14	is that – if I'm wrong I'll be corrected – what they call
15	far left-hand side of the screen. The camera will then	15	the front group or the core group, they didn't take that
16	focus on that group. In this period between one minute one	16	wide arc, they walked along close to the outside wall of
17	second and one minute eight seconds, if we do it in slow	17 10	the kraal. That's why one can see them in that photograph
18	motion you'll be able to see they take seven steps in that	18	going quite close. The others appear, as we can see from
19 20	period as they come around the kraal.	19	your photographs, the rest of them, to have taken a wider
20	[VIDEO IS SHOWN] MS LE ROUX: And if we could zoom in to	20	arc or to have been quite far away from the kraal when they
21		21	went past it. But the thrust of the cross-examination, as
22	the group we see on the left of the screen? [VIDEO IS SHOWN]	22	I understand it – if I'm wrong I hope I'll be corrected –
23 24	MS LE ROUX: And if we pause there, if we	23	is that the front group, what she calls the core group,
24 25	go to JJJ11.1516 it correlates with this one minute 08 here	24 25	they appear if that photograph is correct that we saw and we're correctly interpreting it, they appear to have walked
23	go to 333 11.13 to it correlates with this one minute of here	25	were correctly interpreting it, they appear to have walked
	Page 26084		Page 26086
1	Page 26084 where the group is now around the kraal, proceeding slowly	1	Page 26086 past the other side of the kraal, fairly close to the
1 2	•	1 2	
	where the group is now around the kraal, proceeding slowly forward, if we go to JJJ11.1516. That correlates time-wise with the movement of the group. So Lieutenant-Colonel		past the other side of the kraal, fairly close to the kraal. Would you agree with that from the photograph that we've looked at?
2	where the group is now around the kraal, proceeding slowly forward, if we go to JJJ11.1516. That correlates time-wise	2	past the other side of the kraal, fairly close to the kraal. Would you agree with that from the photograph that
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1	Page 26087 when the photograph was taken. Some people came close to	1	Page 26089 little more so we can see the text at the bottom of the
2	the kraal on the other side but they were people whom you	2	slides it'll assist the witness. So here we have 14:27:35,
3	didn't see, that's really the possibility that is being put	3	we see the first teargas canisters hit the ground and two
4	to you and I take it you agree with that.	4	plumes of smoke, of gas that we've circled in red on the
5	COLONEL VERMAAK: That's correct.	5	right of this still from the video. We then, on the next
6	CHAIRPERSON: Ja.	6	slide which is at 14:27:50, this is 15 seconds later, the
7	MS LE ROUX: Lieutenant-Colonel Vermaak,	7	two plumes from the teargas canisters have spread, their
8	when you say the police acted, do you mean for example when	8	source is still circled in red. At this time we see a new
9	Pappa5 starts shooting rubber bullets which would cause the	9	visible explosion, it's the one circled in yellow to the
10	people to scatter away from that area? That's what, when	10	right. Now we can't determine from this alone whether this
11	you're saying the police acted –	11	was teargas or stun grenades but as we'll see in the
12	COLONEL VERMAAK: I cannot say they shoot	12	following imagery, it appears more consistent with the
13	rubber. What we did observe was teargas and stun grenades	13	double bang of the stun grenade. This is the explosion
14	that went off. We can't see from the air which rifles that	14	that has not been accounted for in the SAPS case.
15	they were using.	15	[12:52] We turn to the next slide which is within the
16	MS LE ROUX: Lieutenant-Colonel Vermaak,	16	same second, 14:27:50. Within a second of the first
17	I'm moving on to my final topic of cross-examination which	17	explosion we see a second, that's circled in yellow. This
18	is a very narrow point relating to the use of stun grenades	18	is not only consistent with the double bang of the stun
19	on the 13th of August. You've been given a copy of what has	19	grenade but it also has a reddy-orange colour suggesting
20	been marked as exhibit triple zero, OOO20 which is the CALS	20	it's not teargas and this likely stun grenade explosion is
21	analysis, exhibit Z2 and Z3, the use of stun grenades and	21	the one that has not yet been accounted for. Lieutenant-
22	teargas on 13 August 2013. You've had an opportunity to go	22	Colonel, do you agree with our analysis that that red-
23	through this presentation.	23	orange colouring is more consistent with a stun grenade
24	COLONEL VERMAAK: That is correct.	24	than teargas?
25	MS LE ROUX: Chair, what I'd like to do	25	COLONEL VERMAAK: That is correct.
	Page 26088		Page 26090
1	Page 26088 is go through this presentation, we can do it fairly	1	Page 26090 MS LE ROUX: If we then go to the next
1 2		1 2	
	is go through this presentation, we can do it fairly		MS LE ROUX: If we then go to the next
2	is go through this presentation, we can do it fairly swiftly. What we see here if we start on slide 2, this	2	MS LE ROUX: If we then go to the next slide 7, this is 14:27:56, so six seconds later but 21
2 3	is go through this presentation, we can do it fairly swiftly. What we see here if we start on slide 2, this records on day 124 where the Chair summarised the SAPS case	2 3	MS LE ROUX: If we then go to the next slide 7, this is 14:27:56, so six seconds later but 21 seconds after the teargas is released, we still see the
2 3 4	is go through this presentation, we can do it fairly swiftly. What we see here if we start on slide 2, this records on day 124 where the Chair summarised the SAPS case with respect to the throwing of teargas and stun grenades	2 3 4	MS LE ROUX: If we then go to the next slide 7, this is 14:27:56, so six seconds later but 21 seconds after the teargas is released, we still see the plume of teargas rising from the source, still circled in
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		1	
1	Page 26091	1	Page 26093 the two pieces of footage taken together, is that it seems
1	this image and then those that follow in the presentation,	1 2	highly likely that this second stun grenade exploded at
2	you'll see that the distance between the explosion and the heads of the lead striker is minimal. In this image we see	2	head height directly in front of the lead members of the
3	C C		<b>G</b>
4	the smoke from that explosion at head height in relation to	4	striker group.
5	the leading members of the striker group that are marked	5	If we then go to the final slide, slide 14, that
6	with the arrow and here we see the head of that lead striker visible between the camera and the smoke from the	6	sets out the Human Rights Commission's conclusions based on
7		7	this analysis, the first being with respect to the
8	explosion, meaning his head is silhouetted against the	8	unexplained stun grenade, that again to recap, the SAPS
9	smoke.	9	case is that before the attack on police by the strikers on
10	The next image which we'll get to is less than a	10	the 13th there was a single teargas canister thrown by
11	quarter of a second later where we see the same man's head,	11	Warrant Officer Kuhn and a single stun grenade thrown by
12	the head of the same striker obscured by the expanding	12	Lieutenant Baloyi and thereafter, Lieutenant-Colonel
13	smoke, indicating that this explosion has taken place very	13	Vermaak, you threw stun grenades from the helicopter after
14	close to his head.	14	the attack had commenced by protesters, but this analysis
15	If we can move to slide 10 in the presentation,	15	demonstrates that there were very likely two stun grenades thrown at the strikers at 14:27:50 and 14:27:57 and the
16	here we see the head of the lead striker obscured by the	16	
17	smoke although we can see his right leg and torso protruding from the front of and beneath the cloud of smoke	17	SAPS obviously must account for both of these bit are yet
18		18	to account for one of them. And on this evidence that we
19	but his head is obscured by the smoke from the stun grenade	19	currently have we must therefore assume that at least one
20	explosion. Behind him we see a second striker, this man is	20 21	of the two is either thrown by you, Lieutenant-Colonel
21	again silhouetted between the stun grenade smoke and the		Vermaak, from the helicopter before the attack commences,
22	camera so his head and body are silhouetted against the	22	alternatively that another stun grenade was thrown from a
23	smoke we see.	23	SAPS member on the ground that we haven't yet heard from.
24 25	The next two images on slides 11 and 12 are taken	24 25	The second conclusion sets out that the stun grenade
25	within one second of this explosion and here we see the	25	explosion was within a metre of the strikers' faces.
	Page 26092		Page 26094
1	Page 26092 group split on either side of the stun grenade smoke. We	1	Page 26094 So Lieutenant-Colonel Vermaak, having seen this
1 2		1 2	
	group split on either side of the stun grenade smoke. We	_	So Lieutenant-Colonel Vermaak, having seen this
2	group split on either side of the stun grenade smoke. We see some silhouetted against the smoke, some obscured by	2	So Lieutenant-Colonel Vermaak, having seen this analysis and the presentation, we know from HHH23, which is
2 3	group split on either side of the stun grenade smoke. We see some silhouetted against the smoke, some obscured by the smoke. So if we can turn to slide 11, this is	2 3	So Lieutenant-Colonel Vermaak, having seen this analysis and the presentation, we know from HHH23, which is the discharge list of 13 August, that you're the only
2 3 4	group split on either side of the stun grenade smoke. We see some silhouetted against the smoke, some obscured by the smoke. So if we can turn to slide 11, this is 15:27:57, within the same second. We see the striker group	2 3 4	So Lieutenant-Colonel Vermaak, having seen this analysis and the presentation, we know from HHH23, which is the discharge list of 13 August, that you're the only person recorded on that document as having thrown any stun
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1	Page 26095 discharge list from 13 August.	1	Page 26097 CHAIRPERSON: Sorry, before you move on,
2	COMMISSIONER HEMRAJ: Before you go there	2	Ms Le Roux, my attention has been drawn to the fact that
3	can I just ask you, Colonel, on page 4 of OOO20 if you look	3	it's five past one.
4	at that slide, the two trails of gas on the extreme right-	4	MS LE ROUX: Chair, I –
5	hand side, does that suggest two gas canisters?	5	CHAIRPERSON: You know when one is
6	COLONEL VERMAAK: Chair, no. That is the	6	having, when one is enjoying oneself time passes, one
7	teargas that's been shot with the shotgun so it'll have two	7	doesn't notice but do you –
8	small teargas – how did you call it – but they discharge at	8	MS LE ROUX: Chair, I have three
9	the same time and they are burning together but they are	9	questions –
10	not every effective for a big distance. That is why in my	10	CHAIRPERSON: If you can finish in a very
11	letters I criticised this specific thing that we cannot –	11	short time we'll do it, otherwise we'll take the lunch
12	you remember the letter in May, that the equipment that has	12	adjournment but I'm in your hands.
13	been used, there's a lack on that to use it for a distance	13	MS LE ROUX: Chair, I have three
14	against protesters. So that specific one was shot by a	14	questions so I'd rather complete before we take the lunch
15	shotgun.	15	adjournment, if I could.
16	COMMISSIONER HEMRAJ: But it's one	16	CHAIRPERSON: Alright, okay. Let's try
17	canister?	17	anyway.
18	COLONEL VERMAAK: One canister, yes.	18	MS LE ROUX: Lieutenant-Colonel Vermaak,
19	MS LE ROUX: Lieutenant-Colonel, just so	19	with respect to the second conclusion about the second stun
20	that we're clear, when we talk about canisters I think	20	grenade exploding very closely to the lead striker's head,
21	we're congruent with you that it's one shot but there are	21	was that your perception from the helicopter?
22	two canisters that then start deploying?	22	COLONEL VERMAAK: The second stun
23	COLONEL VERMAAK: Ja, it's not - actually	23	grenade?
24	it's one canister that has been shot but it's got inside	24	MS LE ROUX: The stun grenade that we see
25	two small pellets. It's like –	25	in the presentation exploding very close to the head –
	Page 26096		Page 26098
1	MS LE ROUX: Sort of cartridges –	1	COLONEL VERMAAK: If we can go back to
2	COLONEL VERMAAK: - two cartridges of	2	that photo?
3	teargas that ignite at the same time.	3	MS LE ROUX: The series commences at
4	MS LE ROUX: Right, but we're in	4	slide 9 and then proceeds through. If we stop there we'll
5	agreement there's only one shot of teargas.	5	see the lead striker silhouetted against the smoke.
6	COLONEL VERMAAK: That's correct.	6	COLONEL VERMAAK: Are you –
7	MS LE ROUX: Right. So if we can go to	7	MS LE ROUX: From your vantage point in
8	HHH23, the discharge list for 13 August, here only you are	8	the helicopter could you see the proximity of that, this
9	recorded in the top line as having used stun grenades. Do	9 10	second explosion relative to the strikers – COLONEL VERMAAK: I didn't observe it
10	you know Lieutenant Baloyi is not on this list?		
11 12	COLONEL VERMAAK: No, I cannot say why he isn't on this list.	11 12	from the helicopter but I can give an opinion, what I saw on the picture. If you look at the smoke, the direction
12	CHAIRPERSON: You didn't compile the	12	that the smoke is going on the big area on the left of the
13		13	photo, it is moving to the left side. If you look at the
1 1 4	list	1 1 4	photo, it is moving to the fort side. If you look at the
	list.	15	green circle you will see at the most right-hand side of
15	COLONEL VERMAAK: I didn't compile this	15 16	green circle you will see at the most right-hand side of the circle is a little bit of smoke and then the biggest is
15 16	COLONEL VERMAAK: I didn't compile this list.	16	the circle is a little bit of smoke and then the biggest is
15 16 17	COLONEL VERMAAK: I didn't compile this list. MS LE ROUX: Is it possible that there		the circle is a little bit of smoke and then the biggest is moving to the left-hand side. So I will not say it was in
15 16 17 18	COLONEL VERMAAK: I didn't compile this list. MS LE ROUX: Is it possible that there are other members missing other than Lieutenant Baloyi?	16 17 18	the circle is a little bit of smoke and then the biggest is moving to the left-hand side. So I will not say it was in front of his face. The next one is more or less the same.
15 16 17 18 19	COLONEL VERMAAK: I didn't compile this list. MS LE ROUX: Is it possible that there are other members missing other than Lieutenant Baloyi? CHAIRPERSON: I imagine the answer to	16 17	the circle is a little bit of smoke and then the biggest is moving to the left-hand side. So I will not say it was in front of his face. The next one is more or less the same. If you can see the head on the top of the purple circle,
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1			
1	Page 26099 from exhibit Z3, I'm not sure if it will assist but if we	1	Page 26101 documents –
2	can zoom in on the turquoise circle?	2	COLONEL VERMAAK: I've got a bundle of
3	COLONEL VERMAAK: Chair, you will also	3	documents here, Chair.
4	see on the bottom or the middle of the person's body, it is	4	MR NTSEBEZA SC: And I take it that
5	on the ground where the smoke is starting to rise from the	5	bundle would include a PowerPoint presentation which has
6	ground, yes.	6	got 14 items. I don't know whether you've got the same
7	MS LE ROUX: But Lieutenant-Colonel, this	7	bundle where you have the PowerPoint presentation and then
8	is – this is the moment of explosion, so the light imagery	8	it ends with the statement of Constable Mguye.
9	you see is not the smoke coming from the ground. That's	9	COLONEL VERMAAK: I haven't got the –
10	the moment of explosion of this grenade mid-air.	10	CHAIRPERSON: Are you referring to the
11	COLONEL VERMAAK: You must remember the	11	document headed "The death of Mr Sokanyile?
12	moment that it explodes it is not making a big ball of	12	MR NTSEBEZA SC: That's just the
13	smoke. It takes a few seconds to ignite the CS gas inside	13	PowerPoint presentation.
14	that grenade. So it will land on the ground, take a second	14	CHAIRPERSON: You have the PowerPoint,
15	or two to explode and then the teargas will be set free.	15	right. Now do you want to go through the exhibits in the
16	MS LE ROUX: But this is a stun grenade,	16	order in which you're going to present them so that we can
17	not a CS gas.	17	mark them as exhibits so that we don't have to mark them as
18	COLONEL VERMAAK: No, that is not a stun	18	we go along, or do you want to mark them as you go along?
19	grenade. The stun grenade is not making so much smoke.	19	I'm in your hands. It's your cross-examination.
20	MS LE ROUX: Chair, we'll make	20	MR NTSEBEZA SC: Well, perhaps let's mark
21	submissions on this second explosion but Lieutenant-Colonel	21	them as we go along, Mr Chairman.
22	Vermaak, you didn't see this one from the helicopter?	22	CHAIRPERSON: Alright, what's the first
23	COLONEL VERMAAK: No, it was not observed	23	one going to be?
24	from the air, it's only what I saw now on the pictures	24	MR NTSEBEZA SC: Well, I wanted us to
25	here.	25	paginate the PowerPoint presentation entitled "The death of
	Page 26100		
	Page 20100		Page 26102
1	MS LE ROUX: Chair, that concludes my	1	Page 26102 Mr Sokanyile" –
1 2		1 2	-
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	Page 26103		Page 26105
1	the way through to 13.	1	Anyway, it's Mr Ntsebeza's cross-examination. He must
2	MR NTSEBEZA SC: It should actually be	2	elect how he wants to do it.
3	going up to 25 and 25 would have a heading, "Who shot Mr	3	MR NTSEBEZA SC: As long as we'll be
4	Sokanyile?"	4	together every time I –
5	CHAIRPERSON: "Who shot Mr Sokanyile?" is	5	CHAIRPERSON: Either we can start with
6	the one that's got 13 in the bottom right-hand corner. Ah,	6	that, or we can start with something else in the meanwhile
7	Adv Hemraj suggests the answer is there are two slides per	7	and that could be sorted out at teatime. I'm in your
8	page and you've got one slide per page, we've got two	8	hands, Mr Ntsebeza.
9	slides per page. That's probably the answer.	9	MR NTSEBEZA SC: No, Mr Chairman, we'll
10	MR NTSEBEZA SC: Okay. Then it's going	10	do the presentation. I just wanted also to make sure that
11	to be – I don't know, I don't know what the witness has.	11	the Colonel has got statements which I will refer to
12	CHAIRPERSON: Let's ask him. Have you	12	towards the end of the cross-examination, statements which
13	got one slide per page or two slides per page on the	13	he made, and I believe they are all exhibits from what I've
14	PowerPoint presentation called "The death of Mr Sokanyile"?	14	been told. Yes. Now Colonel -
15	COLONEL VERMAAK: I've got it. I've got	15	CHAIRPERSON: Some of them as far as I
16	it –	16	could see when I read them last night will be new exhibits.
17	CHAIRPERSON: No, you've got it. Now	17	Some of them are old exhibits, some are new.
18	what we want to know from you is have you got one slide per	18	MR NTSEBEZA SC: Some will be new
19	page or two?	19	exhibits, Mr Chairman. I'm with you there. Now if we
20	COLONEL VERMAAK: One, one slide.	20	could just put up just for us to identify what we are
21	CHAIRPERSON: No, hang on.	21	talking about, if we could just put up exhibit GGG7,
22	COLONEL VERMAAK: Ja –	22	exhibit GGG7. Oh, it's 17, I'm told. Oh, GGG17.
23	CHAIRPERSON: Let's take it slowly. "The	23	CHAIRPERSON: Mr Ntsebeza, I've got news
24	death of Mr Sokanyile" is page 1. It's got that in a	24	for you. We've now been handed fresh copies of the
25	quadrilateral, as it were, and then below that there's a	25	documents that we were given yesterday. Now it's one slide
	Page 26104		Page 26106
1	slide, it's a photograph –	1	per page and as you correctly said, these pages aren't
2	slide, it's a photograph – COLONEL VERMAAK: Yes.	2	per page and as you correctly said, these pages aren't numbered.
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1	Page 26107	1	Page 26109
1	two-page statement in Afrikaans. On the second page one	1	the screen; it's not the screen anymore, the events of the
2	can see that you purported to be signing the statement at	2	13th of August.
3	the bottom, "Ek sertifiseer dat die bostaande verklaring	3	Then the next statement, which is number 16 in Ms
4	deur my afgeneem is." That was deposed to before Mr Botha	4	Pillay's bundle, is another statement made on the same day,
5	and at Potchefstroom at 11:40 on the 30th of August 2012.	5	which starts, "Op Donderdag 16 Augustus was ek aan diens
6	You see that?	6	gewees." "On Thursday the 16th of August 2012 I was on
7	COLONEL VERMAAK: I see that.	7	duty," and that is the statement which is currently before
8	MR NTSEBEZA SC: Now from my reading of	8	us on the screen, and that's HHH4.
9	that statement it seems to be exclusively dealing with	9	The next one is number 17 in Ms Pillay's bundle.
10	events that took place on the 16th of August 2012. It	10	That's the short statement which is HHH5. That was a
11	starts by saying, "Op Donderdag 16de Augustus 2012." You	11	statement made on the, or certainly attested on the 5th of
12	see that?	12	November 2012 and that deals with the helicopters and the,
13	COLONEL VERMAAK: I think then there's	13	some were operational and some weren't and dealing with the
14	the wrong one on the board. That one is from the 13th.	14	complaints about the fact that the B105 helicopter wasn't
15	MR NTSEBEZA SC: No, that one on the	15	working, and so on. That's HHH5.
16	board is clearly not GGG, 1-7. GGG, 1-7 is what I've	16	Then the next one is number 18, which is a
17	referred you to.	17	handwritten statement, which is exhibit HHH6, and that
18	MS PILLAY: Chair, the one being shown is	18	appears to have been attested, or made actually and
19	GGG, 1-7.	19	attested on the 4th of February 2013. It's intended to be
20	MR NTSEBEZA SC: Yes. Is that right? Is	20	an amplification of the statement he made on the 30th of
21	that GGG, 1-7?	21	August, amplifies paragraph 5. It's a short manuscript
22	CHAIRPERSON: Exhibit GGG17 starts off,	22	statement.
23	"Op 2012-8-13," in other words the 13th of August 2012, "was	23	Then the next one is the final statement I think
24	ek aan diens en ontplooi na Lonmin Myn, Marikana, waar daar	24	which she put in, which is number 19 in Ms Pillay's bundle.
25	sedert Vrydag 10 Augustus 2012 onluste was." "On the 13th	25	That's LLL8 and that's the statement effectively I think
	Page 26108		Page 26110
	of Assessed 2012 I used on during and deviced to the Lemman	1	5
1	of August 2012 I was on duty and deployed to the Lonmin	1	from which he was led by Ms Pillay, and that statement was
2	Mine, Marikana, where there had been unrest since Friday	2	from which he was led by Ms Pillay, and that statement was affirmed on the 21st of January this year.
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		I	
1	Page 26111 Am I right, that statement is GGG, 1-7?	1	Page 26113 MR NTSEBEZA SC: So are you saying since
2	CHAIRPERSON: That's the typewritten	2	Tuesday you have not really had an opportunity to acquaint
3	statement of the 30th of August –	3	yourself with the contents of the bundle?
4	MR NTSEBEZA SC: Yes.	4	COLONEL VERMAAK: I did go through the
5	CHAIRPERSON: - 2012.	5	statements. I explained that that one I missed.
6	MR NTSEBEZA SC: And I will just mention,	6	MR NTSEBEZA SC: Oh, it's only your
7	which is what I was indicating to the General, that now	7	statement which you made at the beginning of the year?
8	that we have ascertained that the statement that deals with	8	COLONEL VERMAAK: Only one, yes. Only
9	the events on the 16th of August in the main is HHH4, I just	9	one.
10	want to confirm with the Colonel that HHH4 is the statement	10	MR NTSEBEZA SC: Ja, that's the only one
11	which we now have shown up, and that is a statement which	11	that –
12	you purported to sign on the 30th of August 2012 in	12	COLONEL VERMAAK: That's the only – the
		12	-
13	Potchefstroom at 11:40. Do you confirm that, Colonel? COLONEL VERMAAK: That's correct, Chair.		other I did go through.
14		14	MR NTSEBEZA SC: And when you said you
15	[14:27] MR NTSEBEZA SC: And then again, once	15	missed it, when did you get your sight on it? Right now?
16	again five minutes later on the same day at 11:45 you	16	COLONEL VERMAAK: When I sort out the
17	appended your signature to what we now know as GGG17, same	17	documents now I saw that statement was with the documents
18	day, same place, at 11:45, and that's the statement that	18	that I received on Tuesday.
19	deals largely with the events on the 13th of August 2012.	19	MR NTSEBEZA SC: Oh, I see.
20	Do you agree with that, Colonel?	20	COLONEL VERMAAK: It wasn't in a file and
21	COLONEL VERMAAK: I agree, Chair.	21	I put it in the –
22	MR NTSEBEZA SC: And then the last	22	MR NTSEBEZA SC: Okay, I think now that
23	statement in relation to which we will be looking at how	23	we have identified the statements, I think we may just as
24	you recall the events, particularly the 13th, will be the	24	well concentrate, and we will come back to the topic; we'll
25	statement that the Chairman has referred to already,	25	just concentrate on the statement which covers the events
	Page 26112		Page 26114
1	exhibit LLL8, which as the Chairman indicated you signed on	1	of the 13th, which we now know to be what? GGG, 1-7, and
2	the 21st of January this year and the English translation of	2	the statement which you made this year, the beginning of
3	that statement is what you were led on. The English	3	this year in January, which is LLL8. Are we together?
4	translation, as I understand it, was done by Mr Mahlangu	4	COLONEL VERMAAK: Yes.
5	and – you see that, Colonel? You haven't seen the	5	MR NTSEBEZA SC: Now you will know from
6	statement?	6	your bundle, I'm sure you have seen that in the bundle, in
7	COLONEL VERMAAK: I haven't seen it	7	the presentation in the main, which I will ask you to go to
8	before in the translation format, but in the Afrikaans one,	8	in a while, the presentation deals with several topics.
9	yes.	9	The first one is about the death of Mr Sokanyile, a person
10	MR NTSEBEZA SC: So you haven't – I	10	who – and you'll correct me if I'm wrong – you have
11	believe it is in your bundle, however.	11	identified in your evidence as the protester in the white
12	COLONEL VERMAAK: I've got it now, yes,	12	overalls whose body was found across the stream.
13	Sir.	13	COLONEL VERMAAK: That is correct.
14	MR NTSEBEZA SC: Yes, when did you get	14	MR NTSEBEZA SC: That's correct. Now
15	the bundle?	15	let's give him a name now, the protester across – and we
16	COLONEL VERMAAK: I think it was on	16	know now who we are talking about; we're talking about Mr
17	Tuesday.	17	Sokanyile. Now I suppose let's go straight to the Power
18	MR NTSEBEZA SC: On Tuesday.	18	presentation, because we would like to take you through the
19	COLONEL VERMAAK: Afternoon.	19	evidence which you gave in chief relevant to the death of
20	MR NTSEBEZA SC: And did you have the –	20	Mr Sokanyile. Now if we could go to page 2, slide 2 of
21	are you saying you didn't have this statement in that	20	exhibit, what's the exhibit number of this?
22	bundle? When did you get this English version –	22	MR NTSEBEZA SC: Exhibit triple –
22	COLONEL VERMAAK: Well, it seems to me	22	CHAIRPERSON: 00023.
23	that I missed this statement, Chair. All the documents was	23	MR NTSEBEZA SC: 00023.
27	that i missoa this statement, onan. All the aucuments was		
25	only give me in a parcel	25	CHAIRPERSON: And I've paginated my pages
25	only give me in a parcel.	25	CHAIRPERSON: And I've paginated my pages

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	Page 26115		Page 26117
1	and I take it everybody else has had opportunity to do so.	1	Chair –
2	MR NTSEBEZA SC: Thank you, Mr Chairman.	2	MR NTSEBEZA SC: I say you would have
3	CHAIRPERSON: Page 2 was [Microphone off,	3	been aware if there was another group.
4	inaudible] on the screen.	4	COLONEL VERMAAK: Ja, if there was –
5	MR NTSEBEZA SC: Yes.	5	MR NTSEBEZA SC: Yes.
6	CHAIRPERSON: Which would be a photograph	6	COLONEL VERMAAK: Not necessarily because
7	of – page 2 is what, I paginated my copy of this document.	7	why we land there, I spent some time with Warrant-Officer
8	Page 2 is the one we now see on the screen, which is an	8	Monene. The police were spread over a area, I can say 50
9	aerial photograph of the area where the main events of the	9	to a hundred metres. There might be a possibility that
10	13th of August took place and at the top of it we see the	10	people were also following some of the protesters, but I
11	words "Mr Sokanyile's body was found across the stream,"	11	wasn't aware of them.
12	and at the bottom we see the words, "The place of the	12	MR NTSEBEZA SC: But since you
13	initial attack relative to where Mr Sokanyile's body was	13	participated - which is where you made these statements
14	ultimately found." So that's the document you're busy	14	from - at Roots, that would have come to your attention and
15	with. That's page 2 of this exhibit.	15	it also would have been mentioned in exhibit L if there was
16	MR NTSEBEZA SC: Yes, so you see that as	16	another group that pursued those people in the manner in
17	the Chairman has said, the big red circle represents where	17	which your group did.
18	the main incident occurred on this day. Do you agree with	18	COLONEL VERMAAK: Chair, not necessarily.
19	that, Colonel?	19	I don't think all the information was got at Roots.
20	COLONEL VERMAAK: That's correct.	20	MR NTSEBEZA SC: You're not seriously
21	MR NTSEBEZA SC: And the other red circle	21	suggesting that there is another group other than your
22	which is furthest away on the screen, and you will see that	22	group that pursued the protesters on the 13th, about which
23	there is a CAS-number, C-A-S, 115/08/2012. That is the	23	nobody has said anything? Are you?
24	circle where, which is in the approximate area where Mr	24	COLONEL VERMAAK: There's a possibility,
25	Sokanyile's body was found across the stream. Is that	25	yes.
	Page 26116		Page 26118
1	Page 26116 correct?	1	Page 26118 MR NTSEBEZA SC: Yes, everything is
1 2	•	1 2	
	correct?		MR NTSEBEZA SC: Yes, everything is
2	correct? COLONEL VERMAAK: That is correct.	2	MR NTSEBEZA SC: Yes, everything is possible under the sun. I'm simply putting to you that you
2	correct? COLONEL VERMAAK: That is correct. MR NTSEBEZA SC: Now your version of	2 3	MR NTSEBEZA SC: Yes, everything is possible under the sun. I'm simply putting to you that you are not seriously suggesting to the Commission that if
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2 3 4 5	correct? COLONEL VERMAAK: That is correct. MR NTSEBEZA SC: Now your version of events regarding what happened after your members went in pursuit of the persons whom you say you saw carrying an R5 rifle and the protester whom you saw in white overalls, now I just want to clarify one thing before we go to examine	2 3 4 5	MR NTSEBEZA SC: Yes, everything is possible under the sun. I'm simply putting to you that you are not seriously suggesting to the Commission that if there was another group that was pursuing these people in the manner in which you had taken command of the group that
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	Page 26119		Page 26121
1	compilation of exhibit L, and nowhere else is there any	1	MR NTSEBEZA SC: And your further
2	account of anybody who pursued the group of protesters on	2	evidence was that after the SAPS members shot they went
3	that day other than your group. Can we settle on that	3	through the stream and saw the body with the white overalls
4	basis?	4	where it is marked on exhibit 0006.
5	COLONEL VERMAAK: Yes, Chair, as the same	5	COLONEL VERMAAK: That is correct.
6	as nobody else reported the second stun grenade that was	6	[14:47] MR NTSEBEZA SC: Now I would like to
7	thrown, that I was also not aware of until today. So I'm,	7	engage you in some analysis of the evidence, what has now
8	if there was another group it is possible that I wasn't	8	come to be known as objective evidence where we deal with
9	aware of them.	9	the body of Mr Sokanyile, where it was found. Now if you
10	MR NTSEBEZA SC: Yes. Now we have put	10	went to slide 6, now the small screen is clearer but I'm
11	what we wanted to put and we'll argue in the end that all	11	sure you have become aware that the middle screen sometimes
12	things taken to account, your group was the only group that	12	blurs. Now you see the source of those photographs?
13	pursued this group of protesters. Now if you went to slide	13	COLONEL VERMAAK: That's correct, Chair.
14	3, now slide 3 is a photograph that my colleague, my	14	MR NTSEBEZA SC: It has got nothing to do
15	learned friend Adv Pillay admitted as exhibit OOO6 during	15	with Mr Bizos, it's LCRC.
16	your evidence-in-chief. You recall that?	16	COLONEL VERMAAK: That's correct.
17	COLONEL VERMAAK: That's correct, Chair.	17	MR NTSEBEZA SC: Yes. Mr Bizos's
18	MR NTSEBEZA SC: Yes, and if we see those	18	organisation is the LRC. Now you will see that that
19	arrows, but if you went to, if we all go to page 4, let's	19	photograph depicts what was found by the LCRC photographer.
20	just clear what you testified about relevant to OOO6. Now	20	COLONEL VERMAAK: I did see.
21	this was your testimony. On day 25 – if you could put that	21	MR NTSEBEZA SC: Ja, relative to where
22	up – T25248, starting from line 21 I think, I want the	22	the photographer was standing, him or herself, and was
23	section, line 9 where you say, "The striker was shooting,"	23	taking the photos, you see that?
24	in the range from line T25248 to line 21, 25249, what comes	24	COLONEL VERMAAK: That is correct.
25	out in that evidence is that the striker who was shooting	25	MR NTSEBEZA SC: That's where they say
			D 0/100
1	Page 26120 at the SAPS members who were under your command was where	1	Page 26122
1	at the SAPS members who were under your command was where	1	point C, position of photographer. Now there are certain
2	at the SAPS members who were under your command was where the end point of the arrow is, that is now in exhibit, on	2	point C, position of photographer. Now there are certain landmarks which, on our argument, landmarks in relation to
	at the SAPS members who were under your command was where the end point of the arrow is, that is now in exhibit, on page 3, slide 3.	2 3	point C, position of photographer. Now there are certain landmarks which, on our argument, landmarks in relation to which the position of Mr Sokanyile's body must be
2 3 4	at the SAPS members who were under your command was where the end point of the arrow is, that is now in exhibit, on page 3, slide 3. If we went to slide 3, you talked about arrows	2 3 4	point C, position of photographer. Now there are certain landmarks which, on our argument, landmarks in relation to which the position of Mr Sokanyile's body must be determined and I'll come to where you had put his body but
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1	Page 26123 stumps and a ridge, would you agree? I don't know if this	1	Page 26125 any GPS readings of everything where we found the body. As
2	thing can be blown up such that we –	2	I remembered, I pointed it out on the photo. So yes, if
3	COLONEL VERMAAK: On the photo, yes.	3	this is the photo of LCRC where they take the photos of, I
4	MR NTSEBEZA SC: Well, you are more	4	take it as the correct ones.
5	acquainted with photos of time scenes than I am, Colonel,	5	MR NTSEBEZA SC: So you were mistaken?
6	so but if you agree with me that's okay. That at A we have	6	I'm not saying you were deliberate, I just want you to say
7	got tree stumps and the ridge. Now if you looked in front	7	this so that I can persuade the Chairman –
8	of his body and towards the centre of the photograph you	8	COLONEL VERMAAK: Chairperson, to the
9	will see the pathway that crosses the stream.	9	best of my knowledge after the 18 months, that is where I
10	COLONEL VERMAAK: I agree.	10	have marked the body and I make it clear, it might differ
11	MR NTSEBEZA SC: And it curves to the	11	but that is how I can remember it. As you show now on the
12	right, can you see that?	12	pictures of LCRC, I take it as the correct one.
13	COLONEL VERMAAK: That's correct.	13	MR NTSEBEZA SC: That's fair enough for
14	MR NTSEBEZA SC: Now slide 7, it becomes,	14	me, except that you confirmed what you may have had a view
15	in our submission – we say slide 7 now gives you another	15	to be the position 18 months ago, you confirmed it last
16	view, firstly of the stumps and the ridge, do you see that?	16	week when you were being led by my learned friend. Now I
17	COLONEL VERMAAK: Yes.	17	would like us to look at the weapons that were found on Mr
18	MR NTSEBEZA SC: On the left-hand side	18	Sokanyile's body. You remember you testified about the
19	where it says point A.	19	panga and whatever else. Now we deal with this on slide
20	COLONEL VERMAAK: That's correct.	20	10. Now it's common cause and I would hope you would agree
21	MR NTSEBEZA SC: And slide 7 also says at	21	with that, that from that photo it does appear that when it
22	point B – you see that tree that I indicated in the	22	was taken, Mr Sokanyile was face down when he was found.
23	previous slide, the tree to the right, point B. Do you	23	COLONEL VERMAAK: That is correct.
24	confirm that?	24	MR NTSEBEZA SC: If you could turn to
25	COLONEL VERMAAK: Yes.	25	slide 11, please? Mr Chairman, I understand that my
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	Page 26124		Page 26126
1	MR NTSEBEZA SC: And you can see the	1	clients were alerted that we would be doing this
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	MR NTSEBEZA SC: And you can see the pathway that crosses the stream and curves to the right, the same pathway that we referred to with regard to slide 6, you see that? COLONEL VERMAAK: I see that. MR NTSEBEZA SC: And as we indicated to you with regard to slide 6, the body where – in other words where Mr Sokanyile was found as we indicated relevant to slide 6 is between the tree which is point B and the stumps and the ridge which is point B, point A. Do you see where we point the position of Mr Sokanyile's body? COLONEL VERMAAK: That is correct. MR NTSEBEZA SC: Now on – we see also where you, in evidence on being led by my learned colleague, my learned friend, had put the body. Do you see where your body is? COLONEL VERMAAK: That is correct. MR NTSEBEZA SC: Yes. Now we hope to be able to get your confirmation when we make the submission that you were mistaken in your evidence-in-chief when you said the body was found where you said it was found. Would you concede that? COLONEL VERMAAK: Chair, I was asked	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	clients were alerted that we would be doing this presentation. CHAIRPERSON: I've been asked to adjourn strictly at 3 o'clock for the tea adjournment, so I think we'll take the adjournment now but before we take it let me say that we're seeing photographs of Mr Sokanyile, those members of his family and those loved ones of his who feel that they will be occasioned emotional distress by seeing his picture, his dead body here on the screen, I would advise them not to come back after the adjournment. Perhaps when these pictures are not being shown, someone can go out and tell them that we've finished but we're going to adjourn now but I suggest when we come back, if anyone thinks that he or she will be emotionally upset by these pictures, don't come back until someone comes out and tells you that it's safe to do so. We'll now take the tea adjournment. [COMMISSION ADJOURNS COMMISSION RESUMES] [15:24] CHAIRPERSON: The Commission resumes. Lieutenant-Colonel, you're still bound by your affirmation. SALMON JOHANNES VERMAAK: Affirms. CHAIRPERSON: Mr Ntsebeza. CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):

	Page 26127		Page 26129
1	that from this photograph it seems clear that Mr Sokanyile	1	MS PILLAY: Chair, just an objection;
2	was face-down when he was found and the photo was taken.	2	that was never the witness's testimony that the weapons
3	COLONEL VERMAAK: That is correct.	3	were planted in Mr Sokanyile's hand.
4	MR NTSEBEZA SC: Now I don't know whether	4	MR NTSEBEZA SC: My recollection, it's
5	it's possible to zoom in to the picture but you will see	5	just that I don't have the reference –
6	that there is a stick and a panga underneath Mr Sokanyile's	6	CHAIRPERSON: Perhaps you can give us the
7	body. You know you can see –	7	reference to the transcript where that is said by the
8	COLONEL VERMAAK: I'm familiar with –	8	witness? I don't remember him saying it, I must confess,
9	MR NTSEBEZA SC: Ja, the handle of this	9	but neither do Adv Tokota or Adv Hemraj, but if you are
10	thing. Okay, that's the stick and then somewhere there,	10	correct you'll be borne out by the transcript, so if you
11	there is, on the smaller one it's very clear that there is	11	can give us the reference we can then –
12	a handle of a panga, that there.	12	MR NTSEBEZA SC: Chair, yes indeed, can
13	COLONEL VERMAAK: That is correct.	13	we flag this for now? I would like us to return to it
14	MR NTSEBEZA SC: Yes. Now it appears	14	because I –
15	also that his left hand is holding the handle of the panga.	15	Now the next issue I would like to deal with is,
16	It needs to be blown up. Maybe let's go to slide 12.	16	are his wounds. Now Mr Sokanyile was shot once. Are you
17	There you are. The left hand, you know he's lying face-	17	aware of that? He was shot in the head in his left cheek.
18	down, ja left. Left, ja. In fact in this blown-up you can	18	COLONEL VERMAAK: That's correct.
19	see in the handle that there are two fingers here, four	19	MR NTSEBEZA SC: And the exit wound was
20	fingers. On the main screen, do you see, Colonel, there	20	at the right side of the nape of his neck and his spinal
21	are –	21	cord was injured. You're aware of that?
22	COLONEL VERMAAK: Yes, no I know. It is	22	COLONEL VERMAAK: I'm aware.
23	clear.	23	MR NTSEBEZA SC: In fact Dr Perumal, the
24	MR NTSEBEZA SC: Yes.	24	expert pathologist from the Legal Resources Centre, who is
25	CHAIRPERSON: [Microphone off, inaudible]	25	prepared to make available a written report - in fact we
	Page 26128		Page 26130
1	Page 26128 clear on the main screen [inaudible].	1	Page 26130 wanted him to make that available today and it turned out
1 2	clear on the main screen [inaudible]. MR NTSEBEZA SC: Yes, and the blade of	1 2	0
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ARCHIVE FOR JUSTICE

		l I	
1	Page 26131 everything that we have been told Mr Sokanyile was possibly	1	Page 26133
1	looking over his left shoulder as he was running away from	1	showed you slide 7, if we could go back to slide 7 again, we went through several places - and we indicated where it
2	the pursuing police members when he was shot, if we look at	3	can be found - in your evidence where you testified that
4	just the evidence of the trajectory of the wounds. It	4	you members were at the base of the arrow, at the base of
5	seems to me he was looking backward and he was shot from,	5	the arrow when they shot in the direction of the arrow.
	people who were shooting at him from behind. Entrance	6	-
6		7	Remember that was your evidence? COLONEL VERMAAK: That is correct.
	wound is on the cheek and the exit wound to the right and		
8	the nape of his neck. COLONEL VERMAAK: I cannot really comment	8	5
9 10		9 10	Now we want to explore with reference to slide 20 where we believe – can we get slide 20?
11	on that precisely. MR NTSEBEZA SC: You wouldn't deny it.	11	[15:44] Now this is a sketch plan by Captain Moshwana.
12	You wouldn't deny it if it was put to you as evidence by an	12	You know Captain Moshwana?
13	expert. Now what I want to suggest is that having looked	13	COLONEL VERMAAK: Yes, I know him.
14	at these photos and the evidence being that, from your	14	MR NTSEBEZA SC: Captain Moshwana
14	evidence that when you saw – and we'll come to your	14	processed the scene. Now you will see that these roundish
16	statements and your evidence relevant to this – you saw	16	things are cartridges. Now I never know whether you should
	somebody being carried by protesters while fleeing from the		say cartridge or cartridge cases, but I'm sure you
17 18	police. This is what we want to suggest in connection	17 18	understand the language that I'm indicating.
19	therewith; that it's highly improbable that these	19	COLONEL VERMAAK: I do.
20	protesters would have carried someone who on the available	20	CHAIRPERSON: These must be cartridge
21	objective evidence might have been a dead person, for about	21	cases, as far as I understand. Very few of the cartridges
22	600 metres whilst fleeing from the police. What would your	22	were found. Those that hit people were disintegrated in
23	comment be thereto?	23	the body of the person hit.
24	COLONEL VERMAAK: I agree, if you look at	24	MR NTSEBEZA SC: Yes.
25	all the circumstances, the way that the body was lying and	25	CHAIRPERSON: I think we can accept that
	Page 26132		Page 26134
1	what was underneath him. I agree that that person could	1	these are cartridge cases.
2	what was underneath him. I agree that that person could not be the one that we saw that was carrying away what we	2	these are cartridge cases. MR NTSEBEZA SC: Cartridge cases, yes.
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	Page 26135	4	Page 26137
1	Chair.	1	what day it was. That's the simple answer, isn't it?
2	MR NTSEBEZA SC: The body seems to be	2	MR NTSEBEZA SC: Lines 9 to 11.
3	there still. Now what I was putting to you, that it seems	3	CHAIRPERSON: [Microphone off, inaudible]
4	to us that the majority of the cartridges are found before	4	looking for page 645. Am I right, Mr Ntsebeza, you're
5	the stream, if we hold that to be the stream. You see	5	looking for page 645?
6	where I indicate the stream to be?	6	MR NTSEBEZA SC: Yes. Yes, yes.
7	COLONEL VERMAAK: I accept that is	7	CHAIRPERSON: Not 745, 645.
8	pointed out on the photo.	8	MR NTSEBEZA SC: I'm looking for the
9	MR NTSEBEZA SC: Yes. If you went to the	9	evidence where Captain Moshwana testifies that the
10	next slide it seems clearer – no, no. Ja, it seems clearer	10	cartridges were about 74,4 metres away from Mr Sokanyile's
11	because that's a photograph that plots where some of the	11	body.
12	cartridges were found and what we are saying is you will	12	CHAIRPERSON: What day –
13	see that they were before the stream directly in line with	13	MR NTSEBEZA SC: Here we are.
14	Mr Sokanyile's body. You see that?	14	CHAIRPERSON: Now the next question; what
15	COLONEL VERMAAK: I see.	15	day is that?
16	MR NTSEBEZA SC: In other words Mr	16	MR NTSEBEZA SC: I believe it's day 6.
17	Sokanyile is that other side of – in fact if we went to the	17	CHAIRPERSON: Do we have to spend time on
18	previous photo, or slide, the body is on that other side,	18	what day it was? Can't we discover it subsequently? As
19	there's the stream, here are cartridges. C, D, N, F, E, B.	19	long as it's page 645, lines 9 to 12, then everyone should
20	COLONEL VERMAAK: I saw that.	20	be happy, and whether it's day 6 or day 7 is a matter of no
21	MR NTSEBEZA SC: Yes. Now the slide with	21	importance to anybody and I don't propose dealing with it
22	the red circles, you see Mr Sokanyile's body in the red	22	in the report, not covered by the terms of reference.
23	circle, that's the –	23	MR NTSEBEZA SC: I'm in your hands, Mr
24	COLONEL VERMAAK: Yes.	24	Chairman. As long as we have located – do you see where
25	MR NTSEBEZA SC: Now behind his body in a	25	Captain Moshwana testifies that the cartridges were 74, -
1	Page 26136		Page 26138
	line you'll see the bidder circle, daal een.	1	there it is. First of all he says, he doesn't say Mr
1	line you'll see the bigger circle, daai een. KOLONEL VERMAAK: Dis korrek.	1 2	there it is. First of all he says, he doesn't say Mr Sokanvile but we know from several indications, he says
2	KOLONEL VERMAAK: Dis korrek.	2	Sokanyile but we know from several indications, he says
2 3	KOLONEL VERMAAK:Dis korrek.MR NTSEBEZA SC:Now that is in an	2 3	Sokanyile but we know from several indications, he says "the body across the stream, CAS115/8/2012." Now we have
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	Page 26139
1	according to his affidavit.
2	MS PILLAY: That's correct, Commissioner
3	Hemraj.
4	COMMISSIONER HEMRAJ: It's in that second
5	area that one rifle cartridge case was found.
6	MS PILLAY: That's correct.
7	COMMISSIONER HEMRAJ: These as I
8	understand are all 9mm cartridges.
9	MS PILLAY: They're 9mm cartridges,
	that's correct.
10	
11	MR NTSEBEZA SC: I don't know if –
12	CHAIRPERSON: Sorry, Mr Ntsebeza. It
13	doesn't appear clear from the post mortem report whether
14	the gunshot injury that was described as having caused the
15	death was one that could have been caused by a 9mm
16	projectile or by a projectile fired from a rifle.
17	MR NTSEBEZA SC: Mr Chair, I would hope
18	that my learned friend can trust me. I'm very much aware
19	of the evidence that she believes is being excluded. We
20	know that Mr Moshwana came for a second time and he found
21	three cartridge cases. He doesn't say where it was found.
22	We are going to try and indicate that those cartridge cases
23	would have been found in the area where the remainder of
24	the cartridge cases - and we'll show by reference to the
25	kind of evidence that she is indicating that these
	Page 26140
1	cartridge cases came from the same firearms, or more or
1 2	
	cartridge cases came from the same firearms, or more or
2	cartridge cases came from the same firearms, or more or less the same firearms as were involved.
2 3	cartridge cases came from the same firearms, or more or less the same firearms as were involved. CHAIRPERSON: Mr Ntsebeza, the forensic
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