

**ENQUIRY INTO THE SOUTH GAUTENG DIRECTOR OF  
PUBLIC PROSECUTIONS' FITNESS TO HOLD OFFICE**

**HELD AT**

**SALU BUILDING, 316 THABO SEHUME STREET,  
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT**

**17 FEBRUARY 2026**

**DAY 27**



**ENQUIRY INTO THE  
SOUTH GAUTENG  
DIRECTOR OF PUBLIC  
PROSECUTIONS'  
FITNESS TO HOLD OFFICE**

**PROCEEDINGS ON 17 FEBRUARY 2026**

**CHAIRPERSON:** Good morning, everyone. Good morning, *Nthati* Chauke. Good morning, Advocate Maema.

**ADV MAEMA:** Good morning, Chairperson.

**CHAIRPERSON:** It looks a bit dark from my right side. Is it done deliberately? To avoid a glare on the computer? All right. Advocate Maema, you are still under oath.

**ADV MAEMA:** That is correct, Chairperson. Thank you.

**CHAIRPERSON:** Yes, thank you. Advocate Ngcukaitobi?

10 **GLADSTONE SELLO MAEMA:** (still under oath)

**EXAMINATION BY ADV NGCUKAITOBI SC (CONTINUES):**

Thank you, Madam Chair. Good morning, Advocate Maema.

**ADV MAEMA:** Good morning, sir.

**ADV NGCUKAITOBI SC:** Could I ask you to go back to the bundle on annexure bundle, page 1A-172. That is where we stopped yesterday.

**CHAIRPERSON:** Which bundle is that?

**ADV NGCUKAITOBI SC:** It is the annexures to the witness statement. Yes, so if you are with the annexures to your  
20 witness statement, 1A-172.

**CHAIRPERSON:** 1A-172?

**ADV NGCUKAITOBI SC:** Yes, Madam Chair.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Now, just to recall, this is the answering affidavit of Major General Booyesen in the

application brought by Mr Mkhize for an interdict, *inter alia*, that he may not be killed by the police. Correct?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Now, in this section he deals with another instance, which is the killing of Kopolota Ntuli and Nkosinathi Mthembu.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. Was that one of the cases you looked into?

10 **ADV MAEMA**: Indeed, Chairperson, it was one of the cases.

**ADV NGCUKAITOBI SC**: Now, at paragraph 34, what does he say?

**ADV MAEMA**: Okay. Paragraph 34, it refers to ad paragraph 32:

“Information was received that implicated Ntuli and Mthembu in taxi violence-related incidents. On 18 September 2008, as a result of that information, members of the South African Police Service attempted to arrest Ntuli and Mthembu. The police were fired upon and had to return fire. As a result of both, Ntuli and Mthembu were killed.”

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**ADV NGCUKAITOBI SC**: If you could just stop there for now? Just to recap, the description that he gives, which is it

is in the course of arresting them that they are fired upon.

Do you see that?

**ADV MAEMA:** That is so, Chairperson.

**ADV NGCUKAITOBI SC:** And then they return fire because that is how they got killed, is that correct?

**ADV MAEMA:** That is what the paragraph says.

**ADV NGCUKAITOBI SC:** Yes, all right. Can you continue there?

**ADV MAEMA:**

10                   “Their firearms, AZ-88 and CZ-75, were recovered from the scene. I accordingly deny the allegations contained in paragraph 32 to the extent that it differs from what I say herein.”

**ADV NGCUKAITOBI SC:** Yes. Now, if you look at the actual paragraph that he is responding to, which is contained at paragraph 32, at File 1, the black file, on your right, File 1.

**CHAIRPERSON:** What page?

20                   **ADV NGCUKAITOBI SC:** Page 60. Can you see paragraph 32 at the bottom?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Okay, so how is the incident described there by the applicant?

**ADV MAEMA:** Paragraph 32, Kopolota Ntuli and Nkosinathi Mthembu:

“Kopolota Ntuli and Nkosinathi Mthembu, whose names were also on the list, were killed by members of the South African Police Service at Mandini, whilst at Kopolota's fiancé's home state, also under questionable circumstances. Prior to the killing of Kopolota and Mthembu, the attorney representing the association had offered to surrender any member of the association suspected of murder of Superintendent Choncho, should they be sought. I annex hereto marked E a letter dated 5 September 2008 and refer this Honourable Court specifically to paragraph 18 and 19 thereof. Despite this offer, the South African Police Service proceeded to shoot and kill two individuals, once again, in circumstances that led me to believe the correctness of the information referred to above. Once again, the police version is that they acted in self-defence.”

**ADV NGCUKAITOBI SC:** Yes. So, according to the allegation, they were killed at the house of the fiancé of Kopolota Ntuli, Mr Kopolota Ntuli?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** And it is one of the names that were given in the letter of 5 September 2008?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Now, if you then go back to General Booyesen, who says, actually we were trying to effect an arrest, and in the course of that, we were shot at and shot back, is that accurate?

**ADV MAEMA:** That is very, very inaccurate.

10 **ADV NGCUKAITOBI SC:** Yes. Now, I want to take you then to the contents of the docket to do an analysis of this. So, in your statement, this is the case of Mandini. If you can go back to your statement at paragraph 113? It is page 1-34.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Paragraph 113. Is that the same case, the case of Mandini, case 76/09/2009, Nzameni Ntuli (Kopolota) and Nkosinathi Mthembu?

**ADV MAEMA:** That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** Yes. Now, based on what you say in those paragraphs, 113 to 119, what actually happened at the scene?

**ADV MAEMA:** Chairperson, I ...[indistinct] from paragraph 115.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** I skipped 113 that talks about the charges

and 114 that talks about who the accused persons were.

**ADV NGCUKAITOBI SC**: Correct.

**ADV MAEMA**: Now, 115:

10 “On 18 September 2008, the deceased  
were found lying in a house at Mandini  
after being shot at by the accused. It is  
alleged that Stoltz, accused 3, and  
Mostert, accused 4, discharged their  
firearms in self-defence against the  
purported attack with firearms launched  
by the deceased. The ballistic  
reconstruction indicates that they were  
shot whilst lying down. The firearms that  
were found placed close to their bodies  
could not match the cartridges on the  
scene.”

118:

“The ballistic crime...” ...[intervenes].

20 **ADV NGCUKAITOBI SC**: So if you could just stop there when  
you say the firearms recovered at the scene could not match  
the cartridges.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: So when General Booyesen says we  
were trying to arrest them and they shot at us, how does that  
reconcile with that fact you have just mentioned?

**ADV MAEMA:** Well, firearms were placed at that scene to create that threat impression that the deceased would have been posing a threat to their lives.

**ADV NGCUKAITOBI SC:** All right, carry on.

**ADV MAEMA:**

10 “The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforesaid firearms were planted. The two deceased members were members of the KwaMaphumulo Taxi Association. I attach the forensic statements of Jacobus Steyl marked as GSM17.”

**ADV NGCUKAITOBI SC:** Yes, now, thank you. If you just stop there, I want to take you through to GSM17, which you will find at 1A-270. So you will find that at 1A-265.

**ADV MAEMA:** I am there, Chairperson.

20 **ADV NGCUKAITOBI SC:** Yes, and the first few pages are just a CV up until 1A-271.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** And the actual analysis of the scene is at 1A-271 under statement. Correct?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Should you not place on record what GSM-17 is?

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Can you please explain what document are we looking at?

**ADV MAEMA:** The document that I am looking at is a forensic analysis report compiled by Jacobus Steyl, who is a ballistic expert in the employ of the South African Police Service.

**ADV NGCUKAITOBI SC:** Yes, was it a piece of evidence  
10 you had enlisted in the course of the prosecution?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes, and this specific report, had you considered it before?

**ADV MAEMA:** Yes, we did. We did consider it in the analysis of the evidence.

**ADV NGCUKAITOBI SC:** Yes, and Mr Steyl, last week you testified, was also scheduled to be one of your witnesses.

**ADV MAEMA:** That is one of the witnesses to be called in the trial if it had proceeded.

**ADV NGCUKAITOBI SC:** Yes, the trial was going to proceed.  
20 There was no if about it. Was that not so?

**ADV MAEMA:** Well, the if, it was derailed because the National Director had more powers than we had.

**ADV NGCUKAITOBI SC:** Yes, I understand. No, I am saying when you say if it had proceeded, you are making it sound

like you had doubts that it would proceed.

**ADV MAEMA**: Not at all, no.

**ADV NGCUKAITOBI SC**: Thank you. If you then go to 18271, under statement...

**ADV MAEMA**: I am there, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. Now, under paragraph 6, he does a scene investigation and explains the layout of the house.

**ADV MAEMA**: That is correct.

10 **ADV NGCUKAITOBI SC**: Yes, and attaches certain colour pictures from paragraph 1A-272.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes, and under paragraph 3, shows a bedroom. Well, you can tell us what we see there.

**CHAIRPERSON**: [Indistinct]... paragraph 6.

**ADV MAEMA**: 6 of the – Madam Chair, no.

**CHAIRPERSON**: Scene investigation.

**ADV NGCUKAITOBI SC**: Yes, it is under paragraph 6, and then there are sub-paragraphs. Yes, yes, yes, Madam Chair.

20 Yes, sorry. These others are sub-paragraphs, so they could be 6(1), 6(2), 6(3), 6(4), 6(5). Yes, I see.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: And then paragraph 5, sub-paragraph 5, 1A-273, can you just read out that?

**ADV MAEMA**: The one that starts with Ms Gabby [??]

**ADV NGCUKAITOBI SC:** Ms Gabby, yes.

**ADV MAEMA:**

“Ms Gabby handed me a fragment bullet that she retrieved from the carpet during the cleaning process.”

**ADV NGCUKAITOBI SC:** And then, can you continue?

**ADV MAEMA:**

10 “The bullet fragment is a 5.56 calibre bullet which was damaged on the base section and could have created some shrapnel leaving the site of impact. See sketch impact marked B in the photographs below.”

**ADV NGCUKAITOBI SC:** Yes, just to spend a second on that 5.56 calibre bullet. We looked at them last week, and what did we discover? Which firearms are they associated with?

**ADV MAEMA:** 5.56 are associated with high-velocity rifles, such as an R5.

20 **ADV NGCUKAITOBI SC:** And who is the official user of an R5?

**ADV MAEMA:** It is the South African Police Service members.

**ADV NGCUKAITOBI SC:** Yes. Now, then the same you see in a different spot in that same page, sub-paragraph 7.

**CHAIRPERSON:** Before we go to paragraph 7, should we

not go back to the answering affidavit where Major General Booyesen refers to what appears to be the firearms that were used? If my recollection is correct, I cannot remember which paragraph now.

**ADV NGCUKAITOBI SC:** Let me look. It is paragraph 34.

**CHAIRPERSON:** Yes, paragraph 34.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** May we go back there?

**ADV NGCUKAITOBI SC:** That is 1A-172.

10 **CHAIRPERSON:** 172, indeed. Reference is made there, paragraph 34, to the firearms. If you look at the fourth line of that paragraph, the firearms AZ88 and AZCZ75. Do you know what kind of firearms those were?

**ADV MAEMA:** The firearm ZA88 is a pistol that is usually used by the South African Police Service, as well as the CZ75.

**ADV NGCUKAITOBI SC:** Yes. Are they linked to the 5.66 bullet, what is called a calibre bullet?

20 **ADV MAEMA:** No, they are not. In my view, that bullet is used in a rifle, not in a pistol.

**ADV NGCUKAITOBI SC:** We call it a high-velocity.

**ADV MAEMA:** A high-velocity rifle.

**ADV NGCUKAITOBI SC:** Yes. Thank you. We see two more of these 5.56 calibre fired bullets at 1A-273, subparagraph 7, at the bottom of that page. Can you read that out?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Just read that out.

**ADV MAEMA:** Paragraph 6.7:

10 “There were two 5mm diameter holes in the curtain behind the bed at 1.9 and two metres from the ground, which is consistent with the 5.56 calibre fired bullet. These two gunshots broke the window and exited the room. See sketch plan trajectories 3 and 4.”

**ADV NGCUKAITOBI SC:** Yes. Thank you. Now, if you skip those up and skip the following page to 1A-275, now to look at the bodies themselves, we know the bullets that are recovered on the scene are the 5.56 high-velocity bullets.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Then, when the description of the wounds that are found on the deceased is at paragraph 8, under the heading post-mortem reports, starting with Johannes Ntuli Mzamani [?], what does it say there?

20 **ADV MAEMA:** Starting with the body of Kopolota.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** The post-mortem was conducted by Doctor NZ Khumalo in Eshowe. The deceased sustained multiple gunshot wounds and is the same individual as shown in the LCRC photo album as the deceased with the striped, orange

shirt.

**ADV NGCUKAITOBI SC:** Yes. Then the next paragraph.

**CHAIRPERSON:** Where are you reading from now?

**ADV NGCUKAITOBI SC:** Under paragraph 8, page 1A-275, Madam Chair.

**CHAIRPERSON:** 1A-275?

**ADV NGCUKAITOBI SC:** Yes. Paragraph 8.

**CHAIRPERSON:** Yes, thank you.

**ADV MAEMA:** At the beginning, Chairperson, I said the:

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“Deceased, Mzamani Johannes Ntuli, death register 347/2008. Post-mortem was conducted by Doctor NZ Khumalo in Eshowe. The deceased sustained multiple gunshot wounds and is the same individual as shown in the LCRC photo album as the deceased with the striped, orange shirt.”

**ADV NGCUKAITOBI SC:** Yes, continue reading. The next paragraph is the most important.

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**ADV MAEMA:**

“The deceased sustained an entrance wound on the right back of the head with an associated exit wound above the left ear.”

**ADV NGCUKAITOBI SC:** So if you just stop there, you

remember that Major General Booysen said these people were being arrested when they were shot. It was in the course of effecting an arrest.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Now we see the description say he was actually shot in the back. How does that reconcile?

**ADV MAEMA**: It is incompatible with somebody being arrested because you expect when you arrest somebody to be facing you, not with your back towards you.

10 **ADV NGCUKAITOBI SC**: Yes. All right, carry on.

**ADV MAEMA**: This wound is upward right.

**ADV NGCUKAITOBI SC**: This wound track. This wound track. There is a word you have skipped.

**ADV MAEMA**: I am sorry:

“This wound track is upward and right to left. There is a further entrance wound on the left upper back. This wound track appears to be forward towards the right.”

20 **ADV NGCUKAITOBI SC**: So just stop there. Now this is the second bullet wound. The first one is in the head at the back. The second is on the back. Correct?

**ADV MAEMA**: On the left upper back.

**ADV NGCUKAITOBI SC**: Yes. All right, carry on.

**ADV MAEMA**:

“This wound track appears to be forward

and to the right. There appears to be multiple exit wounds on the left front upper chest. There also appears to be an entrance wound in the left front upper chest. It seems the deceased sustained at least three gunshot wounds. There is no description of the appearance of the wounds. There is tremendous lack of information concerning the wound tracks and individual connections between entrance and exit wounds.”

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**ADV NGCUKAITOBI SC:** Yes, and then Mr Mthembu is the next person that was killed in that scene in Mandini.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** On that fateful night. What happened to him according to the description here?

**ADV MAEMA:** With regards to the body of Mr Mthembu, the post-mortem was conducted by Doctor NZ Khumalo in Eshowe:

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“The deceased sustained multiple gunshot wounds and is the same individual as shown in LCRC photo album and the deceased with a white vest and a beige flannel jacket.”

**ADV NGCUKAITOBI SC:** On the following page.

**ADV MAEMA:**

“The deceased sustained two entrance wounds on the right upper chest. It appears that one had an upward trajectory and exited on the left back behind the neck. The second one exited on the right flank.”

**ADV NGCUKAITOBI SC:** The third one?

**ADV MAEMA:**

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“There are further three entrance wounds underneath the right arm whereby one exited on the left flank area. Two deformed metal copper jacket bullets were retrieved from the armpit and the left upper arm whereby the general trajectory is horizontal from right to left.”

**ADV NGCUKAITOBI SC:** Yes, now this is the thing with this one is that there are three wounds under the right arm that seems that he was shot on the side.

20 **ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And how are you shot on the side when you are trying to shoot at the police?

**ADV MAEMA:** It just shows that it is incompatible with somebody who will be firing at the police who then be facing the police straight on.

**ADV NGCUKAITOBI SC:** Yes, so on this one is shot at the back three times. The other is shot on the side three times with both of them with high-velocity bullets.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Now we also have the pictures. Yes, thank you.

**CHAIRPERSON:** With regard to the shooting or the injury sustained on the right arm, you suggest that one cannot be shot on the right underarm if you are facing the police.

10 Correct?

**ADV MAEMA:** That is correct.

**CHAIRPERSON:** What if there were several police officers, some in the front, some on the left, some on the right, is that not possible?

**ADV MAEMA:** It is possible, Chair, if there is more than one police officer that you are facing or that you are dealing with.

**CHAIRPERSON:** What is the position here?

**ADV MAEMA:** Well, it is possible if the police are approaching from different directions that one might be slightly on your right.

**CHAIRPERSON:** What is the position here? Were there not many police officers that approached this suspect?

**ADV MAEMA:** Chairperson, it was in the house. So it would have been a confined space and they would be coming from more or less a restricted same vicinity. I would not have

expected it to be people approaching from a distance apart from one another.

**CHAIRPERSON:** Yes, thank you.

**ADV MAEMA:** Thank you, Chairperson.

**ADV NGCUKAITOBI SC:** Thank you. There is also a photo there at 1A=276 in the report of Mr Steyl of two deceased bodies. Well, let me not say deceased, lying down, at the bottom of that page. Can you see it?

**ADV MAEMA:** I can see it, Chairperson.

10 **ADV NGCUKAITOBI SC:** Yes. Now, they are described by reference to the clothes that they are wearing. So, Mr Mthembu is described as wearing a white vest and a beige flannel jacket. So, we can see in the photo 1A-276 that there is in fact a body there of someone with a beige jacket and a white shirt under the letter U. Correct?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** And then Mr Kopolota Ntuli is described as wearing a striped, orange shirt. Now, we can see there is someone, I would have called it red, but I  
20 understand those who call it orange, but it is an orange shirt with stripes.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** With the letter C on them.

**ADV MAEMA:** There are two letters C and R. R towards the orange t-shirt, on top of the orange t-shirt.

**ADV NGCUKAITOBI SC:** Yes, you are correct, yes. I did not notice the R, yes. Now, I mean, I am just looking at the position in which they were found when they were photographed and asking myself how on earth were these people posing a threat to the police if this is the position they were found at.

**ADV MAEMA:** Well, the evidence at our disposal was their position dispelled the myth that they posed any danger to us, the police.

10 **ADV NGCUKAITOBI SC:** Yes, and I am also looking at the space itself. You said it was a confined space, that it was impossible that this police could have been coming from different angles because it was inside a house.

**ADV MAEMA:** You can see it is inside the ...[intervenes].

**ADV NGCUKAITOBI SC:** It is actually inside a bedroom.

**ADV MAEMA:** The bedroom because there is a bed nearby, yes.

**ADV NGCUKAITOBI SC:** Yes. So the statement concludes at 1A-279. That is the statement of your expert. And then I  
20 just wanted to go back then to Mr Booyesen. I mean, did he lie under oath here?

**ADV MAEMA:** He definitely did.

**ADV NGCUKAITOBI SC:** Yes. Then I want to move on to the next incident that he describes. If you go back to Mr Booyesen's answering affidavit, which is in File 1, page 80.

**CHAIRPERSON:** Counsel, when you say, did he lie under oath here, you are referring to his statement with regard to paragraph 34?

**ADV NGCUKAITOBI SC:** Yes, in the statement made at paragraph 34, page 80 of File 1, did he lie under oath there?

**ADV MAEMA:** That is correct, yes.

**ADV NGCUKAITOBI SC:** Yes. And then the next statement that he makes is at paragraph 35, which is the same page 80, but he is now describing the Mkhize incident. Again, all of it  
10 from personal knowledge. Because does he attach any affidavit from any of the shooters?

**ADV MAEMA:** You said paragraph 35?

**ADV NGCUKAITOBI SC:** Yes, both in 34 and 35. Does he attach any confirmatory affidavits from any of the shooters?

**ADV MAEMA:** No, no, there are no such.

**ADV NGCUKAITOBI SC:** This is all from personal knowledge?

**ADV MAEMA:** Yes.

**ADV BALOYI-MERE SC:** [Indistinct].

20 **ADV NGCUKAITOBI SC:** Is there not another operative word which is killers? Thank you. Thank you, Advocate Baloyi-Mere. Does he attach any confirmatory affidavits from the shooters?

**ADV MAEMA:** No, Chairperson.

**ADV NGCUKAITOBI SC:** All right, thank you.

**ADV MAEMA**: He does not.

**ADV NGCUKAITOBI SC**: So we can take it this is from personal knowledge?

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: He can come here and explain how he gained the personal knowledge?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. Now, in paragraph 35, he deals with the Mkhize. Now, this is the last of the five  
10 instances that he has personal knowledge of. What does he say there?

**ADV MAEMA**: Paragraph 35?

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: Of the people whose names are mentioned on the list? No, no, no, Mr Booyesen. I am reading ...[intervenes].

**ADV NGCUKAITOBI SC**: Paragraph 35, ad paragraph 33.

**CHAIRPERSON**: The answering affidavit of Major General Booyesen.

20 **ADV NGCUKAITOBI SC**: Yes, at page 18.

**ADV MAEMA**: I am there, Chairperson.

**ADV NGCUKAITOBI SC**: Just read what he says.

**ADV MAEMA**:

“Ad paragraph 33, Mkhize was arrested on 18 October 2008 in Pietermaritzburg. He

was attending a funeral at the time. He was transported to Scottburgh for questioning. After questioning, during which he agreed to effect a pointing out, he was again transported for that purpose. Whilst in the vehicle, he attempted to overcome the driver and was shot in the process. This was in self-defence. I accordingly deny the allegations contained in paragraph 33, where they are at odds with what I say herein.”

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**ADV NGCUKAITOBI SC:** Yes, now, that is a response to the allegations in that same document that you have, page 61.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Paragraph 33. Can you just read out what he is responding to? What they say Mr Mkhize says happened, Mr Bongani Mkhize says it happened to Mr Mduduzi Mkhize.

**ADV MAEMA:** He deals with it on paragraph 33:

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“On Saturday, 18 October 2008, Mduduzi Mkhize, who was a member of my association, was arrested at the funeral service at KwaMaphumulo by members of the South African Police Service. He was handcuffed and led away. We later heard

that he was killed. I annex hereto marked F a copy of the Daily Sun newspaper article, wherein his death is being mentioned. Whilst Mduzuzi Mkhize's name was not on the list mentioned by Moses Dlamini, I have been privy to information that he was also being sought for elimination by the police.”

**ADV NGCUKAITOBI SC:** Yes, if you just stop there. One  
10 thing about this is that this is a man that is handcuffed, the last time the eyewitnesses see him.

**ADV BALOYI-MERE SC:** You left us behind...[indistinct].

**ADV NGCUKAITOBI SC:** He was reading at File 1, page 61, paragraph 33. The cross-examination bundle.

**ADV BALOYI-MERE SC:** [Indistinct].

**ADV NGCUKAITOBI SC:** Sorry, I apologise. Perhaps let us just take one step back. It is in the same bundle, at page 61, paragraph 33 under Mduzuzi Mkhize. Thank you. Perhaps you should just read again the entire paragraph.

20 **ADV MAEMA:** Yes, Mduzuzi Mkhize:

“On Saturday, 18 October 2008, Mduzuzi Mkhize, who was a member of my association, was arrested at the funeral service at KwaMaphumulo by members of the South African Police Service. He was

handcuffed and led away, and we later heard that he was killed. I annex hereto marked F a copy of the Daily Sun newspaper article wherein his death is being mentioned. Whilst Mduzuzi Mkhize's name was not on the list mentioned by Moses Dlamini, I have been privy to information that he was also being sought for elimination by police.”

10 **ADV NGCUKAITOBI SC**: Yes. Now, this is a man, according to the eyewitnesses, who was last seen in handcuffs. Correct?

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Now, how is a man in handcuffs a danger to the police?

**ADV MAEMA**: Cannot be, because he has already been brought under control by being handcuffed.

**ADV NGCUKAITOBI SC**: Yes. Now, if you then go back to that page 80 of that same bundle and look again at the  
20 version of Major General Booyesen.

**ADV MAEMA**: Now, he deals with this paragraph 33 and his paragraph 35?

**ADV NGCUKAITOBI SC**: Yes, but the way he describes it, he agrees that the man was arrested, which would be the same as the eyewitnesses who saw him being handcuffed,

but he does not deny that he was handcuffed. Do you see that?

**ADV MAEMA**: No, he does not seem to dispute that he was handcuffed.

**ADV NGCUKAITOBI SC**: Yes, but then what he says happened is that after questioning, during which he agreed to effect a pointing out, he was again transported for that purpose. Whilst in the vehicle, he attempted to overcome the driver and was shot in the process. Now, even on his own  
10 version, this man never threatened to shoot the police.

**ADV MAEMA**: That is so, Chairperson.

**ADV NGCUKAITOBI SC**: Did not pull out a firearm, nothing.

**ADV MAEMA**: He just talks about attempting to overcome the driver.

**ADV NGCUKAITOBI SC**: Yes, and it is because he was attempting to overcome the vehicle in front of him, according to his own version, and then they say he was shot in the process.

**ADV MAEMA**: In self-defence, yes.

20 **ADV NGCUKAITOBI SC**: Yes. Now, how does this fit in with the self-defence?

**ADV MAEMA**: It does not at all fit in with self-defence.

**ADV NGCUKAITOBI SC**: Yes. Because the next sentence, it says this was in self-defence.

**ADV MAEMA**: Yes. It does not fit with self-defence at all.

**ADV NGCUKAITOBI SC:** Yes. Now, your statement takes us to – your own statement, which is, when it deals with this particular incident, at 1-36, which is Umkomaas CAS 235/10/2008.

**ADV MAEMA:** Is it 1-36?

**ADV NGCUKAITOBI SC:** Yes. Paragraph 120, if it makes it easier that way.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes, and there you deal  
10 extensively with this incident. Can you just set it out in your own words?

**ADV MAEMA:** On paragraph 120 deals with the charges, 121 with the accused. I deal with it on paragraph 122.

**ADV NGCUKAITOBI SC:** Yes, go ahead.

**ADV MAEMA:**

“On 18 October 2008, the deceased was  
found slumped with his body halfway out  
of the vehicle in the backseat of a Mazda  
Etude on the N2 freeway in the direction  
20 of KwaMakhutha, and the deceased was  
handcuffed. The deceased was arrested  
in Pietermaritzburg on the day of the  
shooting on suspicion of involvement in  
the killing of Sup Choncho. The deceased  
was being transported by Ngubane,

accused 17, and Nico Crause, accused 18, to Scottburgh, where the deceased indicated his willingness to point out another suspect in the name of Nathi Khumalo. Before the vehicle left Pietermaritzburg, the deceased, who had his hands cuffed behind his back, requested that his hands be cuffed in front, as it would be uncomfortable to sit in the vehicle with his hands cuffed behind his back. Crause acquiesced to his request. When the vehicle left, Crause was driving. Ngubane was seated in the front passenger seat and the deceased was seated in the back. The police alleged that whilst en route, the deceased attempted to strangle Crause with handcuffs by putting the handcuffs over Crause's head from the back and pulling him against the seat with his cuffs on his throat and that the deceased tried to disarm Crause.”

**ADV NGCUKAITOBI SC:** Yes, now, if you can just stop here. We have just looked at the version of Major General Booysen, correct, who says that what happened is that he tried to

overtake the car in front of him and that is why he was shot.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Now, would the police give a different version about why he was shot, which is what you have just read?

**ADV MAEMA**: Say again, Counsel.

**ADV NGCUKAITOBI SC**: I am saying the police who shot him give a different version ...[intervenes].

**ADV MAEMA**: Give a different version, yes.

10 **ADV NGCUKAITOBI SC**: Of why he was shot.

**ADV MAEMA**: Yes, yes.

**ADV NGCUKAITOBI SC**: Now, what do you make of that?

**ADV MAEMA**: Their version, when you compare it with how it is described, their version is highly unlikely.

**ADV NGCUKAITOBI SC**: Yes, but, I mean, it is either Major General Booyesen is lying or the police are lying.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes.

20 **CHAIRPERSON**: Major General Booyesen said that the deceased was trying to overcome the driver. Is that not consistent with that version?

**ADV MAEMA**: Chairperson, in my view, it is just overcome the driver.

**CHAIRPERSON**: Perhaps by doing exactly what is being described in paragraph 126?

**ADV MAEMA**: It could be, although he does not specifically say how the driver ...[intervenes].

**CHAIRPERSON**: Yes, indeed.

**ADV MAEMA**: Yes, yes.

**CHAIRPERSON**: But you are explaining it there.

**ADV MAEMA**: Yes, yes.

**CHAIRPERSON**: This is what the police said.

**ADV MAEMA**: Yes, yes.

**ADV NGCUKAITOBI SC**: Yes.

10 **CHAIRPERSON**: You get what I am saying?

**ADV MAEMA**: Yes, because when you are sitting in the back and you are cuffed and you try to get your cuffed hands over the seat to the driver and pull the driver towards, it could be a way of overcoming the driver from the back.

**CHAIRPERSON**: Yes, that is what I am saying.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Yes, thank you, Madam Chair.  
Yes.

20 **ADV BALOYI-MERE SC**: As a follow-up, I get what my sister is saying and it makes sense, but what does not make sense to me is taking it further, because this person is cuffed, and the description here is of someone trying to – what do you call it? To overcome him by strangling him with the cuffs, which are both on his wrist.

Now, what I do not understand is that the latter part

of line 4 at paragraph 126 that starts with throat and that the deceased tried to disarm Crause. Maybe my mind is not clear enough to imagine how he could possibly want to disarm him with his wrist handcuffed and maybe, let us say, he succeeded to put them over Crause's head. So how would he disarm him? One would understand if the main aim was to have the car overturn or push it out of the road, because this is the driver that we are talking about.

**ADV MAEMA**: That is correct, yes.

10 **ADV BALOYI-MERE SC**: But disarming him, it is a bit confusing for me.

**ADV MAEMA**: Whilst at the same time strangling him, pulling him towards the car, the two actions are not compatible at the same time. Because you cannot get your arms over the head and strangle the person towards the seat of the car, and at the same time, which hand are you going to use then to disarm, because now you are handcuffed?

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Before that, Counsel, I am sorry.

20 **ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: On the point made by my sister that the deceased tried to disarm Crause, this is your statement.

**ADV MAEMA**: That is correct.

**CHAIRPERSON**: From which statement did you deduct these averments?

**ADV MAEMA:** Chairperson, from what was explained to us in relation to the photographs that we saw, what was explained as how the scene unfolded as the vehicle was moving?

**ADV NGCUKAITOBI SC:** No, I suppose the question is, are these the statements in the docket?

**ADV MAEMA:** These are the statements in the docket, yes.

**ADV NGCUKAITOBI SC:** That is really the question.

**ADV MAEMA:** Statements of witnesses in the docket.

10 **CHAIRPERSON:** Do you remember whose statement?

**ADV MAEMA:** Chairperson, it is a statement of – because there was a driver and a passenger in the car, as well as the person who was with the deceased at the back. I cannot remember their names.

**ADV NGCUKAITOBI SC:** Okay.

**CHAIRPERSON:** Did Ngubane make any statement?

**ADV MAEMA:** Ngubane also made a statement, yes.

**CHAIRPERSON:** Could it be from his statement?

**ADV MAEMA:** It could be from him as well.

20 **CHAIRPERSON:** Counsel, if you can maybe ask one of your juniors to look for those statements from which Advocate Maema summarised these affirmations? He was not there, so he must have taken this from someone.

**ADV NGCUKAITOBI SC:** Yes, that is correct, Madam Chair. There is one at UK0039. I will not repeat what he said. I will

not repeat what he said.

**CHAIRPERSON**: What is he saying? Counsel can repeat it.

I see he is looking at me.

**ADV NGCUKAITOBI SC**: No, he says the panel should have his copies. That is why I did not want to repeat it. But if you insist, I will repeat it.

**CHAIRPERSON**: Junior Counsel, you are here to assist us. We are not here to make a case for you.

**ADV NGCUKAITOBI SC**: Madam Chair, there is UK0040.

10 UK. Sorry, that is not what it says. Yes, 0039.

**CHAIRPERSON**: UK0039.

**ADV NGCUKAITOBI SC**: Apparently what had happened, an arrangement was made with one of the researchers.

**CHAIRPERSON**: We are crowded with so many. You can see behind us there is no space. Those dockets, copies of the dockets, are kept elsewhere in the venue, so they have gone to collect them for us. But we know that those statements may be in UK0039.

20 **ADV NGCUKAITOBI SC**: Actually, it has been put on the screen.

**CHAIRPERSON**: It will be great.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Yes. Thank you very much.

**ADV NGCUKAITOBI SC**: I think I saw the allegations. If you go to page 0041. Well, firstly, whose statement is that?

Let us just get that clear. Can you look at the beginning of the statement? Yes.

**ADV MAEMA**: It is a statement of Nico Crause.

**ADV NGCUKAITOBI SC**: And who is he in relation to this incident?

**ADV MAEMA**: He is one of the Cato Manor.

**ADV NGCUKAITOBI SC**: No, but in relation to this incident.

**ADV MAEMA**: He is the official who was...

**CHAIRPERSON**: Was he not the driver?

10 **ADV MAEMA**: Yes, he was the driver. I am saying he was the official who was transporting the detainee.

**ADV NGCUKAITOBI SC**: Yes. Thank you very much. And then the way he describes the incident is – yes, it starts with, as we. On page 0041. Yes. That paragraph that starts with, as we approached.

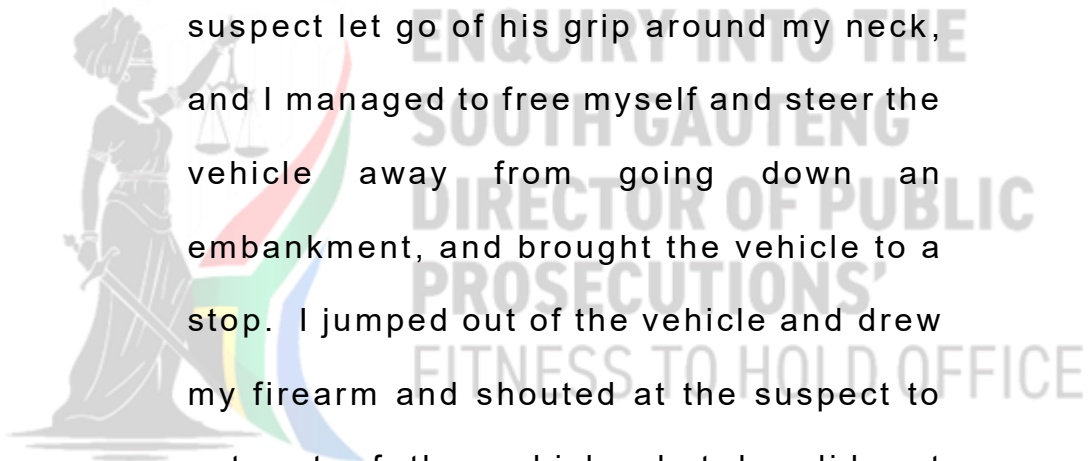
**ADV MAEMA**:

20 “As we approached ...[indistinct] Ultra City, not bound, the suspect suddenly grabbed me from behind and pulled me across to Inspector Ngubane's position. Whilst doing this, he was trying to remove my pistol from my chest ...[indistinct] holster. I held onto my firearm whilst trying to steer the vehicle. The vehicle started swerving all over the road, and I

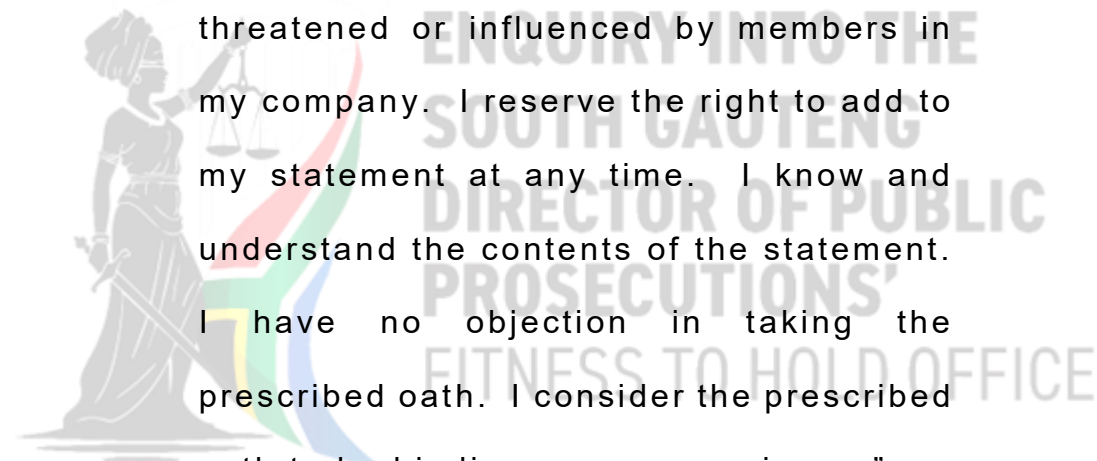
momentarily lost control of the vehicle. I was trying to hold my firearm and trying to pull free, whilst trying to steer the vehicle to prevent us from leaving the road. During our struggle, Inspector Ngubane was trying to assist me and he and the suspect were shouting at each other in Isuzu. Inspector Ngubane was also trying to free the suspect's grip on me.

10 Suddenly, there was a gunshot and the suspect let go of his grip around my neck, and I managed to free myself and steer the vehicle away from going down an embankment, and brought the vehicle to a stop. I jumped out of the vehicle and drew my firearm and shouted at the suspect to get out of the vehicle, but he did not respond. I opened the door and realised the suspect had been shot and was

20 bleeding. [Indistinct]... who was following us, had also stopped and summoned an ambulance service and took control of the scene. The suspect died on the scene and was still handcuffed. I sustained injuries on my throat and neck. If Inspector



Ngubane did not fire and shoot the suspect, he would have overturned the official vehicle and either be seriously injured or killed. If the suspect had managed to remove my firearm from my chest, chest webbing, he would have shot and killed Inspector Ngubane and myself and possibly the other members in the convoy. While the suspect was in my custody, he was not assaulted or threatened or influenced by members in my company. I reserve the right to add to my statement at any time. I know and understand the contents of the statement. I have no objection in taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.”



**ADV NGCUKAITOBI SC:** Yes. Thank you. Is that the summary you attempted to give in your statement?

20 **ADV MAEMA:** That is correct, yes.

**ADV NGCUKAITOBI SC:** Now, do you know the picture tells a thousand tales? In your statement you refer to GSM18, which is 1A-280.

**ADV MAEMA:** 1A-280?

**ADV NGCUKAITOBI SC:** 1A-280, yes, correct. The red

marking should be GSM18.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Now, what are we looking at there?

**ADV MAEMA**: We are looking at the depiction of the vehicle in which they were travelling.

**ADV NGCUKAITOBI SC**: In which who was travelling?

**ADV MAEMA**: In which the deceased as well as Nico Crause was travelling.

**ADV NGCUKAITOBI SC**: Now, it says on the right, the  
10 Umkomaas CAS 235/10.2008. Is this the same case?

**ADV MAEMA**: This is the same case, Chair.

**ADV NGCUKAITOBI SC**: Yes. Now, that vehicle, I think it was described somewhere as the Mazda.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: In the statement by Nico Crause, the statement you have just read.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Now, when you look at that vehicle, you see a deceased body coming out of the left side of the  
20 back. Correct?

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Whose body is that?

**ADV MAEMA**: That is the body of the deceased.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Is that Mr Mkhize?

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Mr Mduzuzi Mkhize. Then it is much clearer in the following page, 1A-281. Correct?

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And then in 1A-282, he has now been taken out of the car and we can see the cuffs.

**ADV MAEMA:** On the arms, yes, Chair.

**ADV NGCUKAITOBI SC:** Now, what I could not follow with this and the explanation of the police is that the man appears  
10 to have been sitting on the left side of the car, if you look at 1A-281.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** As well as 1A-280.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, I could not make any sense of a man sitting on the left side of the car grabbing a driver on the right side of the car.

**ADV MAEMA:** The right car of the car would actually be further than the front, which is just in front of it. So, it would  
20 be more difficult and much more further to reach and get to the position of the driver when you are in a seated position on the left passenger side.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** The handcuffed man?

**ADV MAEMA:** The handcuffed hands would find it more

difficult to reach out at the driver.

**ADV NGCUKAITOBI SC:** Yes. And at the same time, I mean, he is sitting on the left, the driver is on the right. He is not only trying to strangulate, according to them, not only trying to strangulate the driver, he is also trying to take out a firearm from the driver.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** But he is doing all of that from the left.

10 **ADV MAEMA:** That sounds very impossible.

**ADV NGCUKAITOBI SC:** Yes, but what is also apparent at 1A-281 is that he himself has already been handcuffed. I mean, what is the reason why a suspect is handcuffed?

**ADV MAEMA:** To bring him under control and to restrict his movements.

**ADV NGCUKAITOBI SC:** Yes. So, he is already under control.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** But they still shoot him.

20 **ADV MAEMA:** That is just cruelty. They could have used other methods to restrain if there was any conduct of this nature, other than shooting.

**ADV NGCUKAITOBI SC:** Yes.

**ADV RAMAGAGA:** Maybe before you finish off on the question of the position at which the deceased seems to have

been sitting, maybe at the time of shooting or so. Looking at the picture and seeing that the – maybe let me ask the first question first. The first one is, do you agree that that person's head seems to be the only part of the body that is hanging?

**ADV MAEMA**: Outside?

**ADV RAMAGAGA**: Outside, yes.

**ADV MAEMA**: Yes, yes.

**ADV RAMAGAGA**: Now, taking that into consideration and  
10 looking at the picture, can you conclusively say that this person was sitting on the left-hand side of the vehicle?

**ADV MAEMA**: It appears not to be completely on the left-hand side. Because when you look at the torso and just the head protruding, you can see that it is not completely on the left. It could be perhaps closer towards the centre, but more towards the left.

**ADV RAMAGAGA**: Your conclusion is that this person could have been sitting on the centre and more to the left?

**ADV MAEMA**: That is correct.

20 **ADV RAMAGAGA**: And that would say, in your opinion, this person could not have been sitting on the right-hand side?

**ADV MAEMA**: No, not on the right-hand side.

**ADV RAMAGAGA**: Thank you.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Thank you.

**ADV BALOYI-MERE SC:** Sorry, before you proceed, but maybe in all fairness to the deponent to the statement, Nico Crause, in the third page, the second paragraph, he states clearly that the suspect, he gives you a picture of how they were sitting in the car. He said, I was the driver of the official motor vehicle. Then he gives the description. And Inspector Ngubane was seated in the left front passenger seat with the suspect seated behind me. If you can ...[indistinct] the picture again, I think to a large extent it explains, if you look

10 next to his right shoulder, you will see the back of the other seat. Meaning his torso, his buttocks are more on the other seat and he has fallen onto the other seat. So it is possible that he was sitting behind the driver. And when he fell, he fell towards the left. Am I correct? Is my direction correct?

**ADV NGCUKAITOBI SC:** Yes. We hear.

**ADV BALOYI-MERE SC:** Yes. So I am saying in all fairness to the deponent of this affidavit, we should maybe assume in his favour, given that he says this person was sitting behind me. Thank you.

20 **ADV NGCUKAITOBI SC:** I think, Mr Maema, is that not the point you are making, that statement itself could be a falsehood?

**ADV MAEMA:** That is correct. Because if the person was completely behind the driver on the right-hand side, I would not have expected the head to protrude out of the car.

Perhaps what quickly attracted our attention as prosecutors was that the head is outside of the left side of the car. So we just immediately thought he was sitting on the left-hand side, which is definitely not so. One can see the picture displays it much more. If one looks at the seat, the seat which is just in front of his torso, one can see that that part is not behind the seat, but is more towards the seat of the driver.

**ADV NGCUKAITOBI SC:** Yes.

10 **ADV MAEMA:** What we did was, when we see the torso protruding from the body, we just simply thought, well, he was sitting on the left-hand side. But now that I see where the bum part of the torso is, I can see that he was not completely on the left-hand side of the seat.

**ADV NGCUKAITOBI SC:** You addressed this when you were dealing with the question from Madam Ramagaga, that it could at best for them be somewhere towards the middle.

**ADV MAEMA:** That is correct, yes.

**ADV NGCUKAITOBI SC:** But to say that he was sitting  
20 behind the driver seems to be ...[intervenes].

**ADV MAEMA:** A bit farfetched.

**ADV NGCUKAITOBI SC:** Yes.

**ADV RAMAGAGA:** May I just come in here to say that that question that I asked, or the series of questions that I asked were informed by the position that appears to have been the

position in which the deceased was lying prior to shooting. But I think it is a matter of evidence and it cannot be settled now in this questioning. It will get settled later when the evidence is being evaluated. Otherwise, we will be stuck on the question, you know, my understanding, your understanding, their understanding. Thank you.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** But let us test the correctness of this averment further. Because even assuming the statement of  
10 Mr Crause is correct, the point made by Major General Booyesen is that these people acted in self-defence. Now we have two police officers in the vehicle.

**ADV MAEMA:** That is correct.

**CHAIRPERSON:** Both are armed.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** They are transporting a handcuffed man who is sitting at the back of the motor vehicle.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** The allegation is that this passenger was  
20 trying to overcome the driver in the presence of a police officer sitting in the same car, armed. Correct?

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** How possible is it that this handcuffed passenger sitting at the back could have attacked two police officers who were armed in the vehicle and they acted in self-

defence? Because remember, there is no allegation that this passenger was armed. Am I correct?

**ADV MAEMA**: The handcuffed man?

**CHAIRPERSON**: Yes.

**ADV MAEMA**: No.

**CHAIRPERSON**: So the question of the police officers having acted in self-defence, as Major General Booysen seems to suggest, is devoid of credence. Am I correct?

**ADV MAEMA**: Indeed, Chairperson. It is devoid of any truth,  
10 yes.

**CHAIRPERSON**: That is apart from what Mr Crause says, but if you just look at the entirety of these averments.

**ADV MAEMA**: And the probabilities, Chairperson.

**CHAIRPERSON**: Yes.

**ADV MAEMA**: A man who is restrained, who is at the back, in the presence of two police officers, what are the chances that he would take his chances? Let us say the driver's focus would be on the driving, but here is a passenger of the driver armed. What are the probabilities that he would take a  
20 chance like that? My view is it is highly unlikely that he would take the chance, considering that it is Cato Manor police who are armed that are transporting him.

**ADV NGCUKAITOBI SC**: Well...

**CHAIRPERSON**: You earlier on said that in terms of the Criminal Procedure Act, section 49, you said.

**ADV MAEMA**: Yes, yes, Chairperson.

**CHAIRPERSON**: The police officers can, in circumstances where they have to act in self-defence, they are protected by the law in that regard.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: And according to you, that provision would not cover the police here, as you have described.

**ADV MAEMA**: No, it would not cover the police.

**CHAIRPERSON**: And that takes us back to the answering  
10 affidavit of Major General Booyesen, where he referred to the provision, to the Constitution and the Criminal Procedure Act.

**ADV MAEMA**: That is so, Chairperson.

**CHAIRPERSON**: Seeking to suggest, as he did, that the law does empower them to act in the manner they did. Do you remember when you spoke about that paragraph of his statement?

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: What do you say about that, again?

**ADV MAEMA**: Chairperson, it is generalisation on the part  
20 of Major General Booyesen, because when one looks specifically at the facts, it is clear that the police were not under any attack that had to be thwarted. Is that the right word? Yes. That had to be averted. The man was already restricted because he was handcuffed. So even if you would take whatever steps to bring the car to a standstill, it is two

of them and they would have had ample opportunity to restrain the man.

**CHAIRPERSON:** Yes, for the record, is that paragraph 5 of the answering affidavit at 1A-162, where he seems to rely on the Constitution and the Criminal Procedure Act. Just for the record. You may proceed, Counsel.

**ADV RAMAGAGA:** May I just make a follow-up to clarify some issues? Advocate Maema?

**ADV MAEMA:** My attention was just back to paragraph 5.  
10 My apologies, I was distracted.

**ADV RAMAGAGA:** That is fine. That is okay. Thank you. You are back. Now, I just need to clarify the purpose of the series of questions that I have asked about the probable sitting position of the deceased. Now, that question is not meant to quarrel with the question whether the deceased could have attacked the police officers or not. Do you understand?

**ADV MAEMA:** I follow, Chairperson.

**ADV RAMAGAGA:** The sole purpose is just to establish as  
20 to whether, can we conclude that the deceased was sitting on the left-hand side or more to the left-hand side or the centre of the back seat or not. So, that question is not meant to propagate for a suggestion that it was possible for the deceased to attack the police.

**ADV MAEMA:** I follow, Chairperson. It is merely just to look

at the sitting position.

**ADV RAMAGAGA**: That is correct. That is the sole purpose.

**ADV MAEMA**: Without taking one to the front. Just focussing on the rear seat.

**ADV RAMAGAGA**: Yes, thank you.

**ADV MAEMA**: I follow, Chairperson.

**ADV RAMAGAGA**: Thank you. Thank you, Chair.

**CHAIRPERSON**: You may proceed, Counsel.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. So, I  
10 was still at ...[intervenes].

**CHAIRPERSON**: [Indistinct].

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. So, we were still at 1A-282, and it is relevant now in the light of the questions that were raised by the Chair around the parameters of section 49 of the Criminal Procedure Act, subsection 2. This question about the execution of a captured suspect who is handcuffed and is unarmed. And look at that body of Mr Mhkize, where it is plain that he is handcuffed. It is common cause he was unarmed.

20 **ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: And it is common cause that there were two armed policemen inside the vehicle, regardless of his sitting position.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: How do you contextualise that in

the light of the provisions of section 49(2) of the Criminal Procedure Act?

**ADV MAEMA**: Consider that he was handcuffed, movement restrained. Section 49, in my view, does not even come into picture because it is highly unlikely that a man, restrained in the manner that he appears to be, would attack or would initiate an attack against two armed Cato Manor police.

**ADV NGCUKAITOBI SC**: Would section 49 provide justification for this killing?

10 **ADV MAEMA**: No, not at all.

**ADV NGCUKAITOBI SC**: And if it does not provide justification for this killing, what does that make of the killing?

**ADV MAEMA**: It makes it unlawful, unjustifiable.

**ADV NGCUKAITOBI SC**: And, therefore?

**ADV MAEMA**: Therefore, it is a criminal offence to kill somebody in a position of the deceased.

**ADV NGCUKAITOBI SC**: And the police could be charged with murder.

**ADV MAEMA**: Perfectly.

20 **ADV NGCUKAITOBI SC**: Yes, thank you. So that takes care of all of General Booyesen's purported defences of the five executed members of the KwaMaphumulo Taxi Association.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: I want to move on then ...[intervenes].

**CHAIRPERSON:** Before you, just to take that point to its logical conclusion, Counsel, does it then not follow that, as you say, they ought to have been charged. Were they not charged?

**ADV MAEMA:** They ought to have been charged. We charged them, but those charges were...

**CHAIRPERSON:** They were charged?

**ADV MAEMA:** Yes.

**CHAIRPERSON:** That is the point that counsel is saying that  
10 it constitutes murder, then they ought to have been charged.  
I am saying to you, were they not charged? They were charged?

**ADV MAEMA:** They were charged, but the National Director held the view that there was insufficient evidence to charge anyone.

**ADV NGCUKAITOBI SC:** No, no, no, Mr Maema. That point about insufficient evidence has been dealt with thoroughly in this proceedings. The charge against Mr Chauke is that there was no evidence.

20 **ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Now, could I then move to the next, Madam Chair, we ...[intervenes].

**CHAIRPERSON:** Before you do that, I will take a question. What has happened to those charges? Have they been withdrawn or was there a *nolle prosequi* by the NPA, if you

know?

**ADV MAEMA:** The NPA has decided not to charge anyone from any of these incidents.

**CHAIRPERSON:** You have just told us that they were charged. Now, the question is, were the charges either withdrawn, or was there a *nolle prosequi* certificate in relation to those murders?

**ADV MAEMA:** The charges were preferred by the prosecution team. The National Director then in 2019 said,  
10 withdraw all of these charges. So the charges were withdrawn on the instructions of Advocate Shamila Batohi.

**CHAIRPERSON:** Now that the charges were withdrawn, and this evidence seems to suggest that there was evidence to proceed with the charges.

**ADV MAEMA:** Yes.

**CHAIRPERSON:** In a situation like that, can the charges be reinstated?

**ADV MAEMA:** The charges can be reinstated. It makes the decision to direct that the charges be withdrawn unjustifiable  
20 and unlawful.

**CHAIRPERSON:** Look, there are families who have lost their loved ones.

**ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** And up to now, they are still waiting.

**ADV MAEMA:** Still waiting for justice.

**CHAIRPERSON**: For justice to be dispensed. If the charges are to be reinstated because they are still lingering.

**ADV MAEMA**: Yes, Chairperson.

**CHAIRPERSON**: They were merely withdrawn.

**ADV MAEMA**: That is correct.

**CHAIRPERSON**: Who should be reinstating those charges? At least in the light of this evidence, or who should consider reinstating the charges?

**ADV MAEMA**: Chairperson, the ball is in the hands of the  
10 Director of Prosecutions, who is in charge of prosecution in KZN. She is the one that should consider the evidence and reinstate these charges.

**CHAIRPERSON**: Remember, these are racketeering charges, if my recollection is correct ...[intervenes].

**ADV MAEMA**: Chairperson, I do not want to state ...[intervenes].

**CHAIRPERSON**: Wait a minute.

**ADV MAEMA**: My apologies.

**CHAIRPERSON**: Yes, please. Remember the charges  
20 against Major General Booysen and others?

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: They are the POCA charges.

**ADV MAEMA**: 2(1)(e) and 2(1)(f).

**CHAIRPERSON**: Am I right?

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON:** Now, given the fact that those charges were withdrawn, and it appears that there is evidence for the charges to be reinstated, you say that the DPP KZN should then consider reinstating those charges. Did you say that?

**ADV MAEMA:** It is for the ...[intervenes].

**CHAIRPERSON:** No, did you say that?

**ADV MAEMA:** No, I was focussing on the predicate, the murder of Mdu Mkhize. Because the murder of Mdu Mkhize is a predicate offence, not a racketeering offence.

10 **CHAIRPERSON:** How do you separate that from the racketeering charges?

**ADV MAEMA:** Chairperson, if the decision of Advocate Batohi would be correct to withdraw the racketeering charges, which I submit is not, then it would be – remember, when she withdrew the racketeering charges, she then referred the predicate offences to the local DPP in KZN to consider the predicate offences. If her decision to withdraw the racketeering charges was correct, which I doubt, they are incorrect in my view, then the decision of the ...[intervenes].

20 **CHAIRPERSON:** Repeat yourself, please.

**ADV MAEMA:** If the decision of the National Director to withdraw the racketeering charges, 2(1)(e) and 2(1)(f), is correct, which I do not agree with, then the referral of the predicate offences, the killing of Mdu Mkhize, to the DPP would then have to be reinstated by the DPP.

But if one would consider the incorrectness of even the racketeering charges, then the NDPP would be *functus officio*. It would be for this Commission then to direct that the charges be – to direct the National Director that the charges be, that reinstatement of the charges be considered in the light of the assessment of the Commission that there is evidence linking the accused persons.

**CHAIRPERSON:** Let us not go to whether the NDPP's decision is correct or not correct.

10 **ADV MAEMA:** Yes, Chair.

**CHAIRPERSON:** These charges were framed under the facts flowing from the racketeering charges.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** Hence my question, how do you then separate the predicate charges from the racketeering charges in these circumstances? Let us forget about whether the NDPP was correct or not correct. My question was, in those circumstances, this predicate offence of murdering or killing Mr Mkhize, if this charge was to be reinstated, who is  
20 supposed to reinstate those charges in the light of what I have said?

**ADV MAEMA:** The National Director, Chairperson.

**CHAIRPERSON:** The National Director?

**ADV MAEMA:** That is correct.

**CHAIRPERSON:** And as we speak now, the National Director

is Advocate Mothibi.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: Yes, thank you.

**ADV BALOYI-MERE SC**: Chair, I hear - can I proceed given that we are five minutes into the tea break?

**CHAIRPERSON**: My sisters will ask you further questions. Maybe we should take a tea break now. Advocate Ngcukaitobi, we should all take a break.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair.

10 **CHAIRPERSON**: Let us stretch our legs. Let us take a tea break. Do we take a break for 30 minutes or 15 minutes? Would it be quick? Counsel, you are standing up already. Are you rushing for tea? We have not stood up.

**ADV NGCUKAITOBI SC**: Madam Chair, I find from experience that when it says 15, it is usually about 25. So we might as well take 30.

**CHAIRPERSON**: Yes, thank you. Advocate Maema, you are still under oath and will take a tea break, Advocate Maema, for 30 minutes. Thank you. We adjourn.

20 **ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON**: Good day everyone. Good day, *Nthati* Maema.

**ADV MAEMA**: Good day, Chairperson.

**CHAIRPERSON**: Good day, *Nthati* Chauke. Good day,

*Nthati Mkhabela.*

**ADV MKHABELA SC:** Good day, Chairperson.

**CHAIRPERSON:** We missed you this morning.

**ADV MKHABELA SC:** I know. [Laughter] Like shadow flights.

**CHAIRPERSON:** You only come when we eat. [Laughter]

**ADV MKHABELA SC:** I have got to be paid for my service.

**CHAIRPERSON:** Yes. Advocate Maema, you are still under oath.

10 **ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** You may proceed, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** When we paused, my sisters were going to ask you some questions.

**ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** Advocate Baloyi?

**ADV BALOYI-MERE SC:** Thank you, Chair. Advocate Maema, given your answer that Section 49(2) of the CPA does not cushion the police officers, specifically the two that dealt  
20 with Mr Mkhize, in your preparation for trial as a prosecutor, can you tell us whether the ICD or the IPID got involved and what did they do? And if they did something, is there a report? And if there is a report, what does it say? About the death of Mr Mkhize.

**ADV MAEMA:** I am trying to think. Was there a report in

relation to this incident from the ICD? Chairperson, I do not remember seeing a report of the ICD in respect of this incident. Kopolota Ntuli and Mkhize, I do not remember it. There are a number of incidents and it is a while ago, more than 10 years ago. But from memory, I cannot remember if I saw that report.

**ADV BALOYI-MERE SC:** But we can accept that because the death of Mr Mkhize was caused by the...

**ADV MAEMA:** By the police.

10 **ADV BALOYI-MERE SC:** By the police, then ICD or IPID should have been involved.

**ADV MAEMA:** Should have been involved, yes.

**ADV BALOYI-MERE SC:** Thank you.

**MS RAMAGAGA:** right, thank you. Advocate Maema?

**ADV MAEMA:** I am all yours, Chairperson.

**MS RAMAGAGA:** Ja, that is fine.

**ADV MAEMA:** My attention is all yours.

**MS RAMAGAGA:** The questions that I would like to ask you for now relate to the reviewing powers of the NDPP. If you  
20 know, you will give me an answer. And if you do not know, you will still give us an answer that I do not know.

**ADV MAEMA:** I follow, Chairperson.

**MS RAMAGAGA:** Right, thank you. And maybe let me just give you a background. This question I am asking because we are told that Advocate Abrahams had issued the

certificates, the racketeering certificates.

**ADV MAEMA**: Afresh?

**MS RAMAGAGA**: Yes, arising from the information that was at his disposal.

**ADV MAEMA**: That is correct.

**MS RAMAGAGA**: More so that the Judge of review had actually indicated that should new information come to light, they could institute it.

**ADV MAEMA**: Emerge, yes.

10 **MS RAMAGAGA**: Now, and we also know it is on record that subsequent thereto Advocate Batohi was appointed and she then reviewed the decision of Advocate Abrahams, right?

**ADV MAEMA**: That is correct, Chair.

**MS RAMAGAGA**: Now, do you know, because Advocate Batohi and Advocate Abrahams were equals.

**ADV MAEMA**: On the same level.

**MS RAMAGAGA**: On the same level. Do you know whether Advocate Batohi had the power to review of her own accord without even the involvement of the Court?

20 **ADV MAEMA**: Review?

**MS RAMAGAGA**: Ja, that is right. Do you know whether she had the power and actually the right to review the decision of her predecessor?

**ADV MAEMA**: Chairperson, in my respectful submission, I would say she does not have automatic review powers without

having received a representation either from an accused person, either from the family. There must be a representation from someone for her to exercise her review powers. But *mere moto* to review the decision of your own predecessor, it is contrary to the law.

**MS RAMAGAGA**: That actually amounts to reviewing your own decision.

**ADV MAEMA**: Your own decision is an overreach in my view.

**MS RAMAGAGA**: Okay.

10 **ADV MAEMA**: In my view.

**MS RAMAGAGA**: And according to your knowledge, between the time when Advocate Abrahams issued the certificate and the time when Advocate Batohi reviewed his decision, had there been any new information that came to the fore?

**ADV MAEMA**: No, there was no new information that came to the fore.

**MS RAMAGAGA**: I know I may be asking for too much, but at the same time I am asking you this question because you are a lawyer. Now, in your view, is that review that was  
20 undertaken by Advocate Batohi, is it valid or is it void *ab initio*?

**ADV MAEMA**: The latter, Chairperson, it is invalid, it is void *ab initio*.

**MS RAMAGAGA**: Thank you.

**CHAIRPERSON**: You may proceed, Counsel.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. So would Advocate Mothibi be bound by a decision which is a nullity?

**ADV MAEMA:** Not at all.

**ADV NGCUKAITOBI SC:** So it is open for him to just consider this entire matter afresh?

**ADV MAEMA:** In the light of what is happening now, he is entitled afresh to revisit the decision.

**ADV NGCUKAITOBI SC:** Yes, but I mean, he does not need  
10 the recommendation of this Panel. He has got enough evidence.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, yesterday you identified in the Melmoth case. I just want to flag that picture again because Mr Danikas has approached the attorneys to say that picture, that man there who is wearing sunglasses is not himself. He, in fact, had left the country by that stage. So you could have made an error there. So I am just giving you a chance to correct yourself.

20 **ADV MAEMA:** No, I did make an error. Just on a quick look, the similarities just look to be yes. So I concede I made a mistake.

**ADV NGCUKAITOBI SC:** All right, thank you. We can close that and let us move on to the next...

**CHAIRPERSON:** Let me follow up on the question that my

sister asked you regarding the validity of the decision by the former NDPP, that that decision was null and void.

**ADV MAEMA**: Yes, Chairperson.

**CHAIRPERSON**: This is your saying so, but that decision was never reviewed and set aside as we normally – as we understand review powers and the legal principles. If that decision was not reviewed and set aside by a Court of law on the basis of probably *ultra vires*, that decision still stands, does it not?

10 **ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: That being the case, the situation in relation to this matters that the charges were withdrawn by, among others, Advocate Batohi.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: Apparently also by Advocate Mlotshwa. I read somewhere in the record that he also played a role there in relation to some of the charges.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: The withdrawal does not end the matter.

20 In other words, as you said earlier, reinstatement can still take place.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: I just want us to clear our mind there regarding the voidness of the decision of Advocate Batohi.

**ADV MAEMA**: Yes.

**CHAIRPERSON:** As you say, it is void *ab initio* when the Court has not pronounced on that matter.

**ADV MAEMA:** Chairperson, I would say the most appropriate, just to remove any ambiguity, any uncertainty, if I were in the shoes of Advocate Mthibi, which I am not, and I do not envy those shoes, I would approach Court. Because the decision was made by somebody on the same level as myself, if he were to have the views that I share that the decision is invalid, I would then approach Court and say, this

10 is the circumstances under which I believe the decisions are void. Can we have a declaratory order declaring one way or another, just to remove any ambiguity?

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Well, why? I mean, Advocate Batohi came along. She had a valid decision from Advocate Sean Abrahams. She just summarily overturned it. So why should her predecessor now be taken through a litigation process on a withdrawal of charges? Because I understood the evidence to have been so far, if the charges are

20 withdrawn, it remains within the discretion of the NPA to reinstate them.

**ADV MAEMA:** Chairperson, when you are dealing with the NPA, you are dealing with the Constitution. I would tread carefully, you know, you do not want a situation where a national director comes and does not like the decision of the

predecessor and just does as I please.

**ADV NGCUKAITOBI SC:** But that is what Advocate Batohi did.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** That is what I am asking. The evidence so far given in this Panel is that if you have withdrawn charges, you remain entitled to reinstate them. That was the evidence given by Advocate Batohi herself.

**ADV MAEMA:** Yes.

10 **ADV NGCUKAITOBI SC:** So that is why I am asking. The charges were withdrawn. Why can they just not be reinstated?

**ADV MAEMA:** Chairperson, I would tread carefully in the light of the Constitution, in the light of what has happened. That one national director does this, the next does this. I would then tread carefully, knowing that I have the firmness of a Court having made a...

**ADV NGCUKAITOBI SC:** Would that not just make very difficult the life of the NPA? You know, the withdrawal of  
20 charges is almost everyday business.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Imagine if every time you withdraw it, you must go to Court.

**ADV MAEMA:** No, not necessarily in every instance. But in an instance of this nature, in my respectful view, just to

remove any uncertainty, I would do so. Although it is not, strictly speaking, a requirement.

**ADV NGCUKAITOBI SC:** Yes. Thank you. Could I move on to your statement?

**CHAIRPERSON:** Before you proceed, counsel, I am sorry, I do not want to leave the point. The nature of the withdrawal in criminal proceedings does not mean an end to the criminal proceedings themselves.

**ADV MAEMA:** That is correct.

10 **CHAIRPERSON:** Or the end to the charges themselves.

**ADV MAEMA:** Yes.

**CHAIRPERSON:** As opposed to a decision to stop prosecution or not to proceed with the prosecution.

**ADV MAEMA:** That is correct. That is Section 6(a) and (b) of the Criminal Procedure Act.

**CHAIRPERSON:** And I think that is the matter that we dealt with in regard to this second part of the Mdluli matter.

**ADV MAEMA:** Yes, that is correct.

**CHAIRPERSON:** And Advocate Batohi spoke to that aspect.

20 But here, now that we know that a decision was made to withdraw those charges, and as I said to you earlier, put aside whether the decision was rational or was *ultra vires* or not, we do know as a fact that these charges are still lingering.

**ADV MAEMA:** Yes.

**CHAIRPERSON:** And families have not...

**ADV MAEMA:** Found closure.

**CHAIRPERSON:** Found closure. And I go back to the question, should the head of the NPP not, the NDPP, given the fact that these predicate charges revolve around racketeering charges, should the head of NPA not reconsider this matter and reinstate the charges so that the matters can be brought to finality?

**ADV MAEMA:** I would agree with that summation, Chairperson. The families of the deceased and the  
10 community of KZN would want to find finality in respect of these matters. They would like to know what really had happened.

**CHAIRPERSON:** And as Advocate Ngcukaitobi is saying, can you imagine in the criminal prosecution, how many times are charges withdrawn? And how many times do people have to go back to Court again and again and say, we are challenging the validity of the decision to withdraw the charges? It may happen in certain instances. But in a matter like this, I assume, Advocate Maema, it will just create more  
20 difficulties in relation to those matters. Because when you go back to Court, people must oppose. It is money. It is time. And these cases will take forever.

**ADV MAEMA:** The interest of justice would dictate that there should, at some stage, be finality in respect of this.

**CHAIRPERSON:** Yes, the interest of justice would be

imperilled.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: Yes, thank you.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. Could we then go back to your statement? Madam Chair, I am going to skip some of these instances. There seems to be an emerging agreement, but it has not yet been finalised. So I will be focussing on four. Could I take you, Advocate Maema, to ...[intervenes]

10 **CHAIRPERSON**: Just give a heading to that point, and that you are going to concentrate on four of what?

**ADV NGCUKAITOBI SC**: Four of the instances that are mentioned in the statement. There are 28. Yes, there are 23 of the dockets. So I will be focussing on four of those dockets. We have already done three of the dockets. I will focus on four. The reason for that is that it seems, and I am not going to bind my learned friends to it, it seems that their position will be that they will not dispute the contents of the dockets.

20 **CHAIRPERSON**: May I verify from Advocate? Counsel, you are alone here.

**ADV MTSWENI**: I am alone, but I am not sitting alone.

**CHAIRPERSON**: He is merely adopted. So, Advocate Mtsweni, you remember the point we discussed at Chambers regarding this matter. You were to discuss, and this was just

to obviate dealing with almost everything. So, have you agreed about condensing these issues, as Advocate Ngcukaitobi is mentioning to us now?

**ADV MTSWENI:** Madam Chair, we have only been approached this morning with a proposal to condense, as to how the condensation should happen. And I expressed to Mr Ngcukaitobi that, as evidence leaders, we are not in a position, and I doubt, I will still finalise the issue with the rest of my team, as you can see, I am in the cockpit alone, that  
10 we will not dispute the contents of each and every document, of the dockets, because we are not in a position to do so.

If the agreement is that, if the proposal is that, or the evidence is that, all these dockets were as they were, went throughout, and there is not been any material change or new evidence coming up, then we are not in a, we can then accept that that is how, that that was the state of the dockets, and that was the information contained in the docket. And we are not even in a position to dispute whether Mr Maema and his team did consider them or not, because we are not part of  
20 that team.

**CHAIRPERSON:** And you do not have witnesses who can refute the allegations in the dockets?

**ADV MTSWENI:** Madam Chair, even if we did, it is not for the tribunal to determine whether the allegations are true or not.

**CHAIRPERSON:** The enquiry?

**ADV MTSWENI:** The enquiry. It would have been for the trial Court to do so. All that the enquiry must start to determine is whether, based on the information that is in the docket, was there sufficient evidence for, as the allegations against Advocate Chauke are set out, that he supported the prosecution without, where there was insufficient evidence.

**CHAIRPERSON:** It does not seem to me that you understand. It is not about the Panel making a determination.

10 Surely this is not an adversarial situation. Mr Maema has relied on certain statements in the dockets, if you look at his affidavit. But if you do not have any witness who can come and say the reliance on those statements by Mr Maema was incorrect, that ends the matter, does it not?

**ADV MTSWENI:** There will be evidence of Advocate Riley from the De Kock panel, who was part of the Panel that reviewed these dockets and advised Advocate Batohi. And it

appears that that is where the disagreement between the prosecution team and the De Kock panel seems to be,  
20 whether or not what was contained in the dockets was sufficient to establish racketeering. We will only focus on the racketeering part, not the murder charges, Madam Chair.

**CHAIRPERSON:** I do not know, but we are not talking about that. We are talking about the contents of the dockets.

**ADV MTSWENI:** Insofar as the contents of the dockets, we

are not disputing those.

**CHAIRPERSON:** Yes. My sister is sharing a note with me that maybe you should be given an opportunity to consult with your co-evidence leader, but you have not sought that request. Would you like to do that?

**ADV MTSWENI:** We will do that during lunch. Hence, Mr Ngcukaitobi said the agreement is in the pipeline. It has not been reached as yet. So I had intended to do that during the lunch break, and then only then would we then converse,  
10 would we then be in a position to take the final position.

**CHAIRPERSON:** Yes. In that event, Advocate Ngcukaitobi, I think you can proceed with the four dockets.

**ADV NGCUKAITOBI SC:** Yes. Thank you, Madam Chair. I want to start at paragraph 129 of your statement, Advocate Maema, which is the case of Mr Bongani Mkhize. Do you have it?

**ADV MAEMA:** That is correct, Chairperson. Durban Central 185/2/2009.

**ADV NGCUKAITOBI SC:** Now, we know who he is. He is  
20 the person who applied to Court for an interdict against his own murder.

**ADV MAEMA:** That extraordinary nature interdict, yes.

**ADV NGCUKAITOBI SC:** And that application was opposed by Major General Booysen.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, he was subsequently killed on the 3rd of February 2008.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Now, can you take us through the allegations there, what you say happened in that case?

**ADV MAEMA:** They are contained...

**ADV NGCUKAITOBI SC:** It should actually be 3 February 2009 because his interdict was brought in 2008. So, that is an error.

10 **ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, sorry to butt in. I think for clarity in the record, maybe we need to explain because for a second I was confused.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Before we broke for tea, we were talking about Mr Mkhize, but that is Mduduzi. And now you are talking about Bongani. Make sure that there is that difference. It comes out clear in the record.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. We are dealing with Mr Bongani Mkhize. The case is Durban Central,  
20 which is to be distinguished from Mr Mduduzi Mkhize. I think that case was Umkomaas.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. And Mr Bongani Mkhize has featured before in this Panel because he is the person who brought the application that was opposed by Major General

Booyesen.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. And although your statement refers to 2008, that must be an error because even if you look at the case number, it is 185/02/2009.

**ADV MAEMA**: That is correct, Chairperson. It is an error.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: Okay.

**ADV NGCUKAITOBI SC**: So, could you just set out the scene  
10 there?

**ADV MAEMA**: Chairperson, as I do so from paragraph 131  
on page 1-38:

“On 3 February 2009, the deceased was  
found lying in the driver's seat of his black  
Lexus car.”

And then references there made to 5 photos from the photo  
album of the scene of the shooting, which depict the  
following. The photos are at ...[intervenes]

**ADV NGCUKAITOBI SC**: So, you will find those at 1A/283.

20 **ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes. You were describing what  
they show. You can do it by reference to your statement, if  
it is easier that way.

**ADV MAEMA**: They show, firstly, the position of the  
deceased with his hands folded, glass shards or you call them

shards or shattered, which indicate that the windows of the car were closed at the time he was shot at or at the time the shots were fired. And that the shots came from the right-hand side of the car, from outside to the inside. Photo 2 shows, among others ...[intervenes]

**ADV NGCUKAITOBI SC:** So, just take us the page because photo 2 is in a different page.

**ADV MAEMA:** Photo 2 is on page 1A/284. Chairperson, on photo 2, we see depicted there, among others, a firearm on  
10 the front left-hand side, just in front of the front car seat.

**ADV NGCUKAITOBI SC:** Of the passenger?

**ADV MAEMA:** Of the passenger seat, yes.

**ADV NGCUKAITOBI SC:** On the left, yes.

**ADV MAEMA:** It is circled.

**ADV NGCUKAITOBI SC:** Okay, there are two circles there, so just make sure you clearly identify it for us. There is a big circle and a small circle.

**ADV MAEMA:** Oh, yes, the big circle is the one that has a firearm inside. And the smaller circle is the one that has  
20 spent cartridges. And then we see glass shatters on the seat and on the floor. Chairperson, according to the Ballistic Crime Scene Reconstruction Report, the spent cartridges were not fired from the firearm found in the vehicle. The Ballistic Crime Scene Reconstruction Report dispels the notion or version that the prosecution team was wrong to

conclude that the aforementioned firearm and the cartridges were planted.

photo 3 and 5 show that some of the shots were fired from the back of the vehicle through the back window into the neck of the deceased. Photo 4 and 5, which are on page 1A/286 as well as 1A/287, show that both right-hand side windows of the vehicle were closed at the time it was struck. Because just one sees the shatters of the glasses on the rim of the windows, on the rim of the door panel.

10 Chairperson, I also refer to GSM9 ...[intervenes]

**CHAIRPERSON**: Are you looking at photo 5?

**ADV MAEMA**: Photo 5, Chairperson, if you...

**CHAIRPERSON**: No, I wanted to know, when you say that you see something at the rear of the vehicle, where are you deducing that from?

**ADV MAEMA**: Chairperson, I say at the rim.

**CHAIRPERSON**: At the rim?

**ADV MAEMA**: The rim of the door.

**CHAIRPERSON**: Which photograph?

20 **ADV MAEMA**: Chairperson, if you look at photo 5, the door opened.

**ADV BALOYI-MERE SC**: Oh, yes.

**CHAIRPERSON**: Yes?

**ADV MAEMA**: You can see that the window was closed up, and when it shattered, the centre shattered, but there is a top

part which is remaining there.

**ADV NGCUKAITOBI SC**: Okay.

**CHAIRPERSON**: And the bullet that went through the neck, as you earlier testified, if you look at photo 2, where was it fired from?

**ADV MAEMA**: It was fired from behind, slightly on the right-hand side of the car.

**CHAIRPERSON**: Inside? Outside?

**ADV MAEMA**: It was fired from outside, definitely.

10 **CHAIRPERSON**: Now, when you look at photo 5, on that rear windscreen?

**ADV MAEMA**: I am there, Chairperson.

**CHAIRPERSON**: There seem to be a hole there.

**ADV MAEMA**: On the rear window?

**CHAIRPERSON**: Yes.

**ADV MAEMA**: Yes. Some of the bullets went through this rear window.

**CHAIRPERSON**: Thank you.

20 **ADV NGCUKAITOBI SC**: Yes. I think before you proceed on that, there is something unique about the case that I need you to comment on. Most of the cases we have been dealing with, we found Mr Steyl and Mr Mangena, who come after the event to reconstruct the scene. This is one of the few scenes where a sergeant from the police did the crime reconstruction almost immediately. And that is Mr Padmini Tillakare [?].

**ADV MAEMA:** Tillakare, yes.

**ADV NGCUKAITOBI SC:** Yes, and that is at GSM21, A288.

**ADV MAEMA:** The next page?

**ADV NGCUKAITOBI SC:** Yes. What is that document? Can you identify it for us?

**ADV MAEMA:** Yes, this is the analyst report that was given to us by Sergeant Tillakare.

**ADV NGCUKAITOBI SC:** Tillakare, it looks like, if you swallow the K. And who is he?

10 **ADV MAEMA:** He is a member of South African Police Service. He is a forensic analyst attached to the ballistic unit of the Forensic Science Laboratory.

**ADV NGCUKAITOBI SC:** Yes, so he is employed by the police themselves.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. If you look at how he came to deal with this, if you go to 1A/289, under paragraph 3.

**ADV MAEMA:** Chairperson, he states there that:

20 “On the 6th and 9th of February 2009, during the performance of my official duties, I was requested by Inspector S Williams of the ICD to ballistically examine the body of Mr Bongani Mkhize, and also to ballistically examine the vehicle the deceased was lying in, to determine the direction from which the

deceased was shot from.”

**ADV NGCUKAITOBI SC:** Yes, so that is the reason he was there, is to check from where was the deceased shot.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Now, he then does that job in the following page, 1A/290, under paragraph 4, starting at paragraph 4.2.

**ADV MAEMA:** He says:

10 “The direction of the nine possible entry wounds are as follows:

4.2.1 Six were fired from the right side of the deceased.

Two were fired from the rear of the deceased.

One was fired from middle to left of the deceased.

Three possible shrapnel lacerations on the right side of the deceased with no corresponding exit wound.

20 One possible shrapnel laceration on the right arm with a corresponding exit wound on the right elbow.

One superficial wound on the left upper back and left side of the neck.”

**ADV NGCUKAITOBI SC:** If you can just stop there for now,

just to get your comment. What is clear from this is that the deceased is shot from the side and from the back.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Is that consistent at all with the notion that he was the attacker?

**ADV MAEMA**: No, it is not consistent. Chairperson, I wanted to say, when you say from the side, the right side.

**ADV NGCUKAITOBI SC**: The right side, yes.

**ADV MAEMA**: Yes.

10 **ADV NGCUKAITOBI SC**: And then paragraph 5, he also describes what he found when he got to the scene.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Just read that.

**ADV MAEMA**: He says:

“Upon arrival at the Isipingo Police Pound, the following were observed and noted by me:

- One black Lexus vehicle with an ND registration (and there is a number).
- 20 • The driver's side window and passenger's side window were shattered.
- The rear windscreen was shattered.
- Three bullet impact marks on the front windscreen.
- The driver's side tyres, rear passenger's

side tyres were punctured.

- The presence of lead vaporising was also present on various places of the vehicle.
- There are two possible bullet holes on the vehicle, which I marked as follows:
  - D1 to D9 shots towards the driver's side of the vehicle.
  - D10 to D27 shots from the rear towards the driver's side of the vehicle.
  - P1 and P2 shots from the rear towards the passenger's side of the vehicle.
  - W1 to W3 are shots from the rear towards the vehicle.”

10

**ADV NGCUKAITOBI SC:** And then in paragraph 6, he deals with his conclusions. And in paragraph 7, could you read those to the record, please?

**ADV MAEMA:**

“Taking the above points, observation and documentation into consideration, the following can be concluded:

20

- The shots were fired from two different directions or angles whilst the vehicle was moving.
- The wounds of the deceased as well as

the damage to the vehicle is typically of a high-velocity bullet (the 5.56 millimetre that we spoke about earlier) as well as a low-velocity bullet, a 9 millimetre.

- It can also be stated that all possible shots were fired from the outside towards the vehicle.

The above conclusions were arrived at by means of an examination and process which required knowledge and skill in ballistics.”

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**ADV NGCUKAITOBI SC:** Yes. Now, as I said earlier, this is the experts of the police themselves making it clear that these were shots from outside to inside.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Now, you mentioned you were still dealing with the pictures. I mean, there was photo 4. I am not sure if you addressed photo 4 because I moved you from photo 5. Photo 4 is at 1A/286.

**ADV MAEMA:** 286.

20 **ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** Photo 4 has an arrow a little bit up there, closer to the roof of the vehicle. This arrow, insofar as my memory is, shows ...[intervenes]

**CHAIRPERSON:** Where is the arrow? May your adopted son there look at the screen, please? Please show us the arrow.

**ADV MAEMA:** Yes.

**CHAIRPERSON:** Can you use your mouse and show us the arrow?

**ADV NGCUKAITOBI SC:** It is that white mark.

**CHAIRPERSON:** Yes. Yes, thank you.

**ADV NGCUKAITOBI SC:** So, what evidence are you giving about the arrow, Advocate Maema?

**ADV MAEMA:** I am just saying they say bullet damage.

**ADV NGCUKAITOBI SC:** Okay, so the arrow is pointing  
10 towards a bullet lodged there.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Okay. Yes, thank you. Now, your statement continues. I want to skip the next two paragraphs because we have dealt with up to paragraph 140, which is the summary of the ballistics report by Sergeant Tillakare.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Paragraph 141, can you deal with that?

**ADV MAEMA:**

20 “Rakesh Maharaj and Stoltz state that the deceased fired shots ...[intervenes]”

**ADV NGCUKAITOBI SC:** Who are they?

**ADV MAEMA:** It is members of Cato Manor Unit.

**ADV NGCUKAITOBI SC:** Are they part of the accused?

**ADV MAEMA:** Part of the accused person, yes.

**ADV NGCUKAITOBI SC:** Carry on.

**ADV MAEMA:** They state that:

“...the deceased fired shots in their direction and they returned fire wounding the deceased. Sergeant Tillakare's ballistics findings were that all cartridges cases collected from the scene, including the two found inside the vehicle of the deceased, were not linked to the firearm found in the vehicle of the deceased. It is thus clear that this firearm depicted on photo 14 and 15 of Captain Wangena's statement was placed in the vehicle after the shooting to create an impression that Mkhize used it and tried to place the police life in danger. Copies of statements of Sergeant Tillakare and that of Captain Wangena are attached as annexes GSM20 and GSM21.”

**ADV NGCUKAITOBI SC:** Yes. So when the police say, in the light of what we have seen from the ballistics expert of the police themselves, they say that there were shots from inside the vehicle. Is that true?

**ADV MAEMA:** That is incorrect. It is an incorrect depiction of what happened there.

**ADV NGCUKAITOBI SC:** Yes. Now this goes further beyond

the scene itself because we have seen the probabilities on the scene.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Into a larger plot that you deal with from paragraph 142. Can you just deal with that?

**ADV MAEMA:**

10 “This deceased, Mr Mkhize, obtained an interdict against the police for murdering him. Furthermore, the deceased was the target on whose head the Stanger Taxi Association was to pay R1 million as per Mr Ndlondlo's statement. The application and consent order are attached here to annexes GSM22.”

**ADV NGCUKAITOBI SC:** Yes, we have looked at that extensively.

**ADV MAEMA:** Yes.

20 **ADV NGCUKAITOBI SC:** There is no reason to go back to them. But what I do want to deal with is this statement in the following paragraph. You refer to the statement of Mr Mathonsi, correct?

**ADV MAEMA:** That is correct, Chairperson.

**ADV MAEMA:** In what context are you referring to that statement?

**ADV MAEMA:** It explains how the plan to eliminate members

of the KwaMaphumulo Taxi Association was hatched and orchestrated, including the killing of Bongani Mkhize, which we just referred to in the paragraphs that we just read.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** That statement is attached as annexed as GSM23.

**ADV NGCUKAITOBI SC:** It is 1A/305.

**CHAIRPERSON:** I am getting confused. If you can help me, Advocate Ngcukaitobi. Paragraph 142, this deceased  
10 referring to Mr Bongani Mkhize.

**ADV NGCUKAITOBI SC:** Yes, Madam Chair.

**CHAIRPERSON:** And is he the one who obtained an interdict?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And Mdu Mkhize is which one?

**ADV NGCUKAITOBI SC:** Mdu Mkhize is the one who was killed at Umkomaas.

**CHAIRPERSON:** Umkomaas.

**ADV NGCUKAITOBI SC:** Yes. The one we dealt with earlier.

20 **CHAIRPERSON:** Oh, yes.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you. So if you could just take us back to the statement of Mr Mathonsi. Madam Chair, the statement at GSM23, page 1A/305, is the typed version.

There is a signed statement in the dockets, which is handwritten. But we thought to make it easier for everyone, we should just attach the typed statement.

**ADV MAEMA**: I confirm that, Chairperson.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: That the ones that we obtained originally was the handwritten version.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: 305 would be, sorry.

10 **ADV NGCUKAITOBI SC**: What?

**CHAIRPERSON**: 305 would be GSM23.

**ADV NGCUKAITOBI SC**: Yes, correct. Now, yes, so my learned friend points out just for completion, that the handwritten statement is in cross-examination file 2. Yes, actually file 1, the one you were looking at, at page 235.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: So it starts at 235 up to 243, is that correct?

**ADV MAEMA**: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC**: And then the typed statement, which is replicated at GSM23, is at 244 to 246, is that correct?

**ADV MAEMA**: I had it now, now, now, I have closed it down. 1A/244.

**ADV NGCUKAITOBI SC**: Yes, yes. You can just go to

1A/305, GSM23.

**ADV MAEMA**: Oh, yes, yes, yes.

**ADV NGCUKAITOBI SC**: You have got it. All right. So it was just to confirm that it is the same statement, but it is typed and handwritten.

**ADV MAEMA**: Simphiwe Mathonsi, Simphiwe Mathonsi, it is the same statement.

**ADV NGCUKAITOBI SC**: Yes. Can you take the Panel through that statement?

10 **ADV MAEMA**: I will read the typed version, which is 1A/305, GSM23.

**ADV NGCUKAITOBI SC**: Yes, carry on.

**ADV MAEMA**: Should I start from the beginning, Chairperson?

**ADV NGCUKAITOBI SC**: How long is the statement?

**ADV MAEMA**: Can I start at paragraph 4?

**ADV NGCUKAITOBI SC**: No, I need him to first situate himself, who is he. So just deal with the introductory paragraphs first, especially 1 and 2.

20 **ADV MAEMA**: That is correct. Mr Mathonsi states that he:

“...is an adult male, 33 years old at the time, residing at Kwadukuza municipality district in KZN, with contacts that are known to the investigators. In the year 2004, I was employed by Excalibur VIP Protection,

guarding the taxi rank of Stanger Taxi Association, which is Kwadukuza Taxi Association. My mandate was to guard the rank. The owner of the company was Mr Andre van der Bijl. The contract expired in the year 2005. The contract was given to Pentagon VIP Protection, and the owner was Mr Anwar Khan. My mandate was to give protection to Mr Ngcobo Mapholoba, who was the vice chairperson of the Stanger Taxi Association. The chairman of the association was Mr Kanyile, to whom I gave protection in the year 2005.”

10

Paragraph 3:

“Sometimes I was given the task to guard Mr BB Gwala. I was close to all executive members of the association. I was a trustee to all executive members of the association. Even when they planned to do something wrong, like hire a hitman to kill someone, they would discuss in my presence. Some of the members of the association were close to the unit called Cato Manor Unit. These members were Zanele Zondi and Bongeleni Zondi, who was a member of Cato

20

Manor Unit. Bongeleni Zondi had a taxi within Stanger Taxi Association at Kwadukuza. The taxi was registered under his younger brother, Sanele. Somewhere in 2007, I accompanied Sanele Zondi and Bongezo Mhlongo to meet Mr Mostert, and now General Booyesen. The meeting place was near Gateway Shopping Mall by the Shell Garage behind the private hospital.

10

After the meeting, I heard their conversation about what the meeting was all about.

Sanele and Bongezo wanted Mostert and Booyesen to cover up if police wanted to arrest members of the Stanger Taxi Association. Sanele and Bongezo were untouchables because they had a senior officer on their side. The day of the meeting,

20

Sanele said the executive had to pay money to Cato Manor's senior officer, referring to Mostert and Booyesen that they met. After a week, I was called to accompany Sanele and Bongezo. We went to the Gateway Shopping Mall of McDonald Parking. Bongezo had an envelope containing money. It was notes inside. Upon arrival, we met now General

Booyesen and Mostert. Two senior officers were travelling in a grey BMW Series.”

**ADV NGCUKAITOBI SC:** Five. BMW 5 Series. You skipped five.

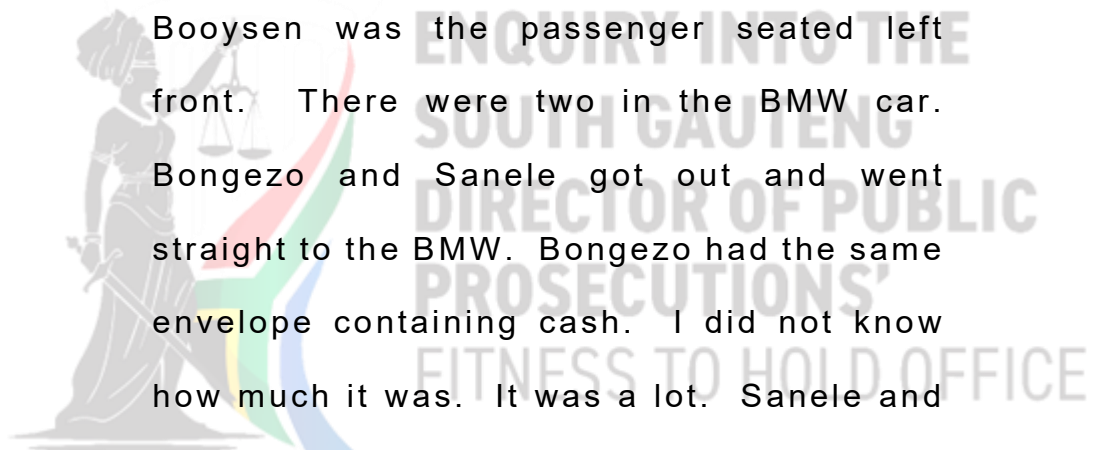
**ADV MAEMA:** Oh, did I? My apologies.

**ADV NGCUKAITOBI SC:** No, I know, do not worry..

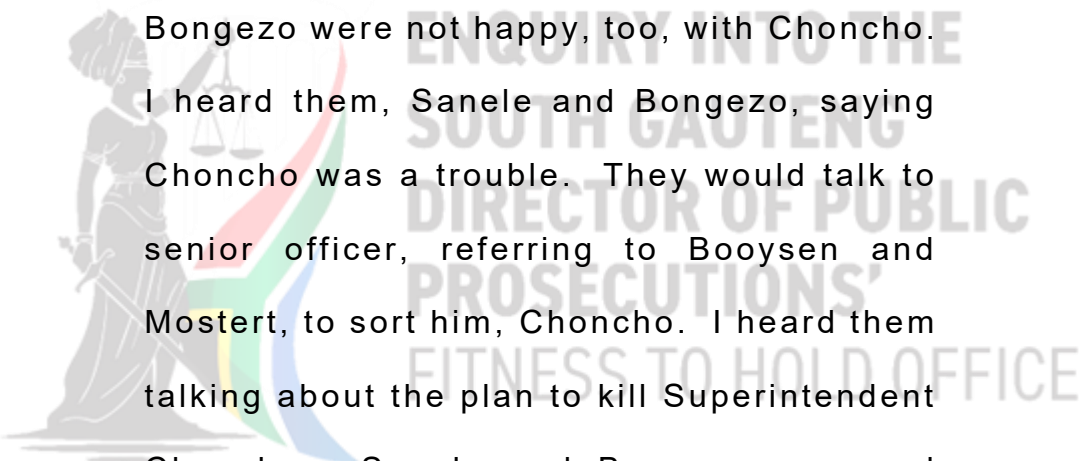
**ADV MAEMA:** Let me read it again.

10 “We met now General Booyesen and Mostert. Two senior officers were travelling in a grey BMW 5 Series. The driver was Mostert.

Booyesen was the passenger seated left front. There were two in the BMW car. Bongezo and Sanele got out and went straight to the BMW. Bongezo had the same envelope containing cash. I did not know how much it was. It was a lot. Sanele and Bongezo remained in the car, BMW, for about 45 minutes to an hour. In the process, there was a conflict between Stanger Kwadukuza Taxi Association and KwaMaphumulo Taxi Association. According to my knowledge, during those years I was there, nobody from Stanger was either arrested or killed by Cato Manor Unit. The only police officer who was a threat to



Stanger Taxi Association was Superintendent Choncho. According to the association, Choncho was a straight police officer. Choncho did not take any bribery from either Stanger or KwaMaphumulo Taxi Association. If somebody committed murder relating to taxi, he would go out and arrest the suspect without involving Cato Manor Unit, the Cato Manor Unit was not happy with Superintendent Choncho. Sanele and Bongezo were not happy, too, with Choncho. I heard them, Sanele and Bongezo, saying Choncho was a trouble. They would talk to senior officer, referring to Booysen and Mostert, to sort him, Choncho. I heard them talking about the plan to kill Superintendent Choncho. Sanele and Bongezo arranged with someone who was a member of KwaMaphumulo Taxi Association to organise a hitman for Choncho. Sanele and Bongezo did not want to arrange or hire a hitman themselves. They, Sanele and Bongezo, wanted it to be seen as KwaMaphumulo are the one who planned the killing of Superintendent Choncho. A hitman for



Choncho were Kopolota, Lee, Ntembu, Swayo, and others. Cato Manor Unit was also part of the plan. Choncho was gunned down. After the killing of Choncho, Cato Manor started to kill all hitmen behind the killing of Choncho. I heard Sanele saying he had a list of all people that need to be killed by Cato Manor. Bongani Mkhize was the chairman of KwaMaphumulo Taxi Association. He was also on the hit list, and he was the last person to be killed. It was difficult for Cato Manor to get hold, to get Mkhize, because of reporting he, Mkhize, did to high authorities. During my time, I was told at Msinga Homestead of Sanele, his brother Nkosi, Chief Bongeleni Zondi, there was a hotel, Home Affairs, and game reserve. Office Park around their homestead was named after Bongeleni Zondi. I think even today, the office is named after Bongeleni Zondi. Bongeleni was an acting chief. Bongeleni was about to be given the position of the full-time chief. Sanele was not happy with that. Sanele used to complain to me. He was not happy

because Bongeleni was about to be given the position to be the chief. The chief, Bongeleni Zondi, was gunned down. Swayo was arrested and granted bail. Within a short period, Swayo was gunned down too, I heard saying [indigenous language], meaning they hit the hitman and cried inside the shack, referring to Swayo who was killed inside the shack.”

10 **CHAIRPERSON:** Meaning hit the hitman.

**ADV MAEMA:** Meaning hit the hitman and cried inside the shack, referring to Swayo who was killed inside the shack.

“Money was collected at the Stanger taxi rank to pay Cato Manor unit. Sanele orchestrated the killing of Bongani Mkhize. Somebody was given the task to phone Brigadier Madonzela that Bongani Mkhize was planning to kill Mandla and Ngaba and Bheki Cele. Sanele wanted the police to think that Bongani Mkhize was a troublemaker who killed Choncho, now was planning to kill Mandla, Ngaba and Bheki Cele. Within a short period, Bongani Mkhize was killed by Cato Manor unit. Money was collected and Cato Manor was paid for a job

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well done. I was not there when the money was paid to Cato Manor. I heard that Cato Manor paid. Bongani Mkhize should have been killed a long time back. Most of the time he escaped. Cato Manor will phone Sanele and give a report that they missed him. That is all that I can say for now. I know and understand the contents of the statement. I have no objection in taking the prescribed oath. I consider the oath to be binding on my conscience.”

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It is dated the 9th of May 2013.

**ADV NGCUKAITOBI SC:** Yes. So here, from what you have read, you have a witness who saw, who is testifying, let me not say saw, about two instances where the Cato Manor policemen were paid money. In the first instance, he witnessed it himself, where Mr Mostert and Mr Booysen received cash.

**ADV MAEMA:** That is correct.

20 **ADV NGCUKAITOBI SC:** And then in the second instance, he remembers the money being collected but never saw it being paid.

**ADV MAEMA:** Yes, yes.

**ADV NGCUKAITOBI SC:** So what were you going to use this witness for, if at all?

**ADV MAEMA:** Chairperson, the payment of the money was intrinsic to the plan to eliminate members of the KwaMaphumulo Taxi Association. So it was crucial to bring that evidence before the Court.

**ADV NGCUKAITOBI SC:** Why? What role was it playing that you have an eyewitness to a bribery involving two policemen from Cato Manor, including Major General Booysen?

**ADV MAEMA:** Well, Chairperson, that information is crucial to shed light on the planning of the killing of members of  
10 KwaMaphumulo.

**ADV NGCUKAITOBI SC:** Yes. I understand you have said this is important, but I am saying what legal weight, in other words, what point was being proven by establishing that the Stanger people were bribing Cato Manor to eliminate KwaMaphumulo?

**ADV MAEMA:** It shows that this feud starts from the fight. This thing starts from the feud between KwaMaphumulo Taxi Association and Stanger Taxi Association and the side that Cato Manor was taking, it also shows why they were taking  
20 that side because they are then paid to eliminate the opposing view when they are supposed to be neutral and to do their work, which is police work.

**ADV NGCUKAITOBI SC:** Was Mr Mathonsi still alive at the time that you drew the indictment and you were meant to run the trial?

**ADV MAEMA:** No, he died in...

**ADV NGCUKAITOBI SC:** We know Mr Ndlondlo died, had died.

**ADV MAEMA:** I have, because when my colleagues consulted them, I was not present. I have this thing of confusing both Mathonsi, the dying of Mathonsi and Ndlondlo.

**ADV NGCUKAITOBI SC:** Yes, I am not asking you to confuse them. But I am asking whether, to your knowledge, Mr Mathonsi was an available witness to be called.

10 **ADV MAEMA:** Yes, yes.

**CHAIRPERSON:** And please let me know and correct me if I am misreading the statement. Does this statement also not signify that the police knew who killed Superintendent Choncho?

**ADV MAEMA:** Yes, it does, it does, it does, Chairperson.

**ADV NGCUKAITOBI SC:** Yes, just expand on that. I mean, meaning what? I mean, the statement has a portion that deals with this, but just give the evidence fuller.

20 **ADV MAEMA:** Chairperson, Cato Manor was, from the beginning, aware of exactly what was happening and the fuelling of the feud between KwaMaphumulo and Stanger Taxi Association was, which led to the death of so many people, was to us surprising. I mean, Cato Manor is a law enforcement who are supposed to be protecting the citizens, but they themselves are party to the elimination of innocent

citizens.

**ADV NGCUKAITOBI SC:** No, I think what I am trying to get to is, you remember yesterday and last week, we debated this question around the use of the death of Superintendent Choncho as a fig leaf for the subsequent execution of a number of people.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Because they were accused of having been party to the killing of Superintendent Choncho.

10 **ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Not that that would have been lawful.

**ADV MAEMA:** Of course, of course.

**ADV NGCUKAITOBI SC:** But effectively, that is the excuse that was given.

**ADV MAEMA:** Yes, that is the narrative that was being run.

**ADV NGCUKAITOBI SC:** Now you have got a witness who says, I personally saw the money being paid.

**ADV MAEMA:** Yes.

20 **ADV NGCUKAITOBI SC:** I personally witnessed the conversation about why the money was being paid.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** It is in that context that I think the chair is asking you to address this issue around whether the statement, does not give you an explanation around the

murder of Superintendent Choncho.

**ADV MAEMA**: Well, it does. It does give you an explanation.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Meaning?

**ADV MAEMA**: Chairperson, it shows that Stanger Taxi Association was working together with the Cato Manor police to have members of KwaMaphumulo Taxi Association eliminated.

10 **ADV NGCUKAITOBI SC**: Yes. Now, we have addressed the statement of Mr Mathonsi, who you say, from your knowledge, was available to be called as a witness.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes. Now, Mr Ndlondlo also gave a statement. Do you recall that?

**ADV MAEMA**: Yes, I remember that.

**ADV NGCUKAITOBI SC**: Now, it is not attached to your affidavit, but it should be... Yes, my learned friend points me to file 1, page 157. File 1 of the cross bundle, cross-  
20 examination band. And that is the hand-written version, correct?

**ADV MAEMA**: Page 1?

**ADV NGCUKAITOBI SC**: 157.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: And the last page with the

signature of the Commissioner of Oaths is Page 163.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: And although he is referred to as Ndlondlo, his actual name is Bhekinkosi Mthiyane.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes, which explains the name, the signature you see at Page 163 at the top of the page, Mthiyane.

**ADV MAEMA**: That is correct, Chair.

10 **ADV NGCUKAITOBI SC**: Yes, thank you. The typed-up version of that statement appears at Page 164 to 168.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Is that correct? Could you also read that into the record? Because it is the second source in addition to Mr Mathonsi's statement of the same hue.

**ADV MAEMA**: Chairperson, can I read the typed version? And only to indicate that the name was deleted when copies were made for the defence at the time. Because this was one of the witnesses whose identity we were protecting in terms  
20 of section 144 of the Criminal Procedure Act. Section 144(3) says, if the prosecution is of the view that a witness's name or a witness's life might be in danger, it authorises us to, what do you call it, to...

**MS RAMAGAGA**: Redact.

**ADV MAEMA**: Yes, certain names from the statement. So

we did that with this statement. But we can see on the original the name is Bhekinkosi Mthiyane. Or maybe I should just read the handwritten one.

**ADV NGCUKAITOBI SC:** Well, it depends on which one will be easier for you. If you can read his handwriting, fine. But if not, just look at the typed version.

**ADV MAEMA:** All right.

**CHAIRPERSON:** Are you reading from the typed version now?

10 **ADV MAEMA:** Chairperson, I will read from the handwritten one. Because I did not go through the typed just to cross-check.

**ADV NGCUKAITOBI SC:** All right. So you are reading at Page 157?

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Okay, thank you.

**ADV MAEMA:**

20 “Bhekinkosi Mthiyane Ndlondlo states under oath in English: I am an adult male with ID number (this), 32 years old at the time when it was made, residing at (this address) in Melville in Stanger with (this cell phone number). I am a taxi owner at Stanger Taxi Association. Sometimes year 2007, Vela Mkhize was killed at KwaMakhutha

Cemetery. Vela Mkhize was killed by Sanele Zondi and Nkosi Zondi and Nkosi Zondi was also present during the killing of Vela Mkhize. The plan of killing Vela happened in this way. Nkosi Zondi went to Vela Mkhize pretending to buy a Venture from Vela Mkhize. On his arrival, he told Vela that he had only R20,000 and Vela was asking for R25,000. Nkosi Zondi promised to bring  
10 R5,000. Vela was promised to meet them at a certain spot to be paid the whole amount of R25,000. At the spot they agreed, Vela was kidnapped by people who introduced themselves as police officers. Vela was taken on handcuffs to KwaMakhutha Cemetery and Sanele Zondi and Nkosi Zondi were met there. Sanele first hit Vela with open hands. Sanele then took out a gun and fired a shot at Vela who was on handcuffs.  
20 Vela was found in Durban Ethekwini and taken to the cemetery. I would also like to state that after the death of Vela ...[intervenes]”

**ADV NGCUKAITOBI SC:** If you could also just announce the paragraphs when you are shifting.

**ADV MAEMA:** I am now at paragraph 4.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:**

10 “I would also like to state that after the death of Vela, non-provincial commander of Taxi Violence Crime, Mr Choncho, I was one of the trustees of Stanger Taxi Association. I was a chairman of a disciplinary department within the association. I knew every secret that the members do not have to know.”

Paragraph 5:

“I always have a secret meeting with the following members in the association. Mr Kanyile, who was the chairman, Mr Ngcobo, who was the vice chairman, and also the treasurer, Bongize Mhlongo, who was a PRO, and Sanele Zondi, who was an additional member.”

Paragraph 6:

20 “Our meeting was so sensitive even to discuss the people who must be killed. Bongize was a close friend of Mr Choncho. Mr Choncho would always make favour to the hitmen of Stanger in order to arrest KwaMaphumulo Taxi Association. If there

was something against Stanger Taxi Association, Bongize would organise payment to Mr Choncho. The cause of Mr Choncho's death, he was investigating and arrested KwaMaphumulo Taxi Association members. Mr Choncho was killed by KwaMaphumulo Taxi Association. Nkosi Zondi was a policeman working for Cato Manor Unit. Information was taken to Nkosi Zondi, and Nkosi Zondi arranged with his unit, Cato Manor, and also Booysen, his commander. The first member of KwaMaphumulo Taxi Association to be assaulted was Lindelani Buthelezi.”

**ADV NGCUKAITOBI SC:** Is that assaulted or assassinated?

**ADV MAEMA:** The first member of KwaMaphumulo Taxi Association to be... assassinated. I think it is assassinated.

If we check the typed one, paragraph 9?

**ADV NGCUKAITOBI SC:** Paragraph 8.

20 **ADV MAEMA:** Oh, 8 yes.

“The first member of KwaMaphumulo Taxi Association to be assassinated was Lindelani Buthelezi, who was killed by Cato Manor Unit. As one of the trustees, I was there when money was arranged to pay Cato

Manor for a well job done. It was a lot of money. Sanele and Bongize were sent to see Nkosi Zondi and paid him the money. We were told feedback that Nkosi Zondi was paid the money. I cannot recall how much it was. The second people to be killed by Cato Manor Unit was Kopolota Ntuli and Nathi Mthembu, nicknamed Mangobondoa. The two were killed at Mandeni. Both were killed inside the same house. Five of us, being Mr Kanyile, Mr Ngcobo, Sanele, Bongize, and I took out, I cannot remember how much it was, but it was a lot of cash. Sanele and Bongize were tasked to go and pay Cato Manor. I heard that Cato Manor Unit was met at Tongaat Toll Plaza and paid money, also for the job well done.”

Paragraph 10:

“The third person was Mdu Mkhize. Mdu Mkhize was killed by the police and money paid to those police officers.”

Paragraph 11:

“The fourth incident was the killing of Mr Ndimande. Mr Ndimande was killed in Howick area. Mr Ndimande was killed by

Cato Manor Unit. All five of us sat down and had a secret meeting to arrange payment to Cato Manor Unit. An amount of R750,000 was raised. Money was given to Sanele Zondi and Bongize to go and pay Cato Manor. Always when Sanele and Bongize left with money, they would tell us that that money was going to be given to the boss, referring to Mr Booyesen. And they would say, we have connection, and we pay Booyesen as head.”

10

Paragraph 12:

“The last person to be killed on KwaMaphumulo Taxi Association was Bongani Mkhize. Bongani Mkhize was a chairperson. Bongani Mkhize was killed by Cato Manor Unit. Money, about 1 million, was raised and given to Sanele and Bongize to pay Cato Manor. Sanele told us that 1 million would be paid to Booyesen, the big boss of Cato Manor Unit. Always when payment was done, Sanele would say he was going to pay Cato Manor big boss, Mr Booyesen. Sanele was a registered informer of Booyesen. I was a registered informer of

20

Mr Mostert. Mostert used to task me, and in return I would give him information.”

Paragraph 13:

“That is all for now what I would recall, and I would call the police.”

Paragraph 14:

“I know and understand the contents of this statement. I have no objection in taking the prescribed oath. I consider the prescribed  
10 oath to be binding on my conscience.”

The statement is signed by Mr B Mthiyane and commissioned at Richards Bay Airport on the 31 of July 2012 at 21.54 by Lieutenant-Colonel Ramokosi.

**ADV NGCUKAITOBI SC:** Yes. Now, this is something extraordinary. If you read the two statements alongside each other, the one person says, I was there when the money was collected.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And every time the Cato Manor  
20 Unit killed a person, we collected money.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** I was not there when the money was paid, but I understood that it would be paid to Mr Booyesen as the boss.

**ADV MAEMA:** The big boss, yes.

**ADV NGCUKAITOBI SC:** The second witness says, I was there when the money was paid. That is Mr Mathonsi. I saw personally General Booysen getting the money.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And I saw Mr Mostert getting the money.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Now, as a prosecutor, what does that tell you in relation to the strength of your case?

10 **ADV MAEMA:** Well, it strengthens that Cato Manor police were part of this plan to eliminate members of KwaMaphumulo Taxi Association.

**ADV NGCUKAITOBI SC:** But in relation to the quality of the evidence that you have, remember what this case boils down to is some people saying, oh, you do not have good enough evidence.

**ADV MAEMA:** Yes. It adds credence. It adds value. Yes, it is a different kind of evidence, but it adds impetus on how the accused are linked to their offences.

20 **ADV NGCUKAITOBI SC:** Does it strengthen the case?

**ADV MAEMA:** It strengthens the case, yes.

**ADV NGCUKAITOBI SC:** Now, we know that at the time this matter was being considered, I do not know exactly the date when Mr Mthiyane Ndlondlo died. But there is a reference in the De Kock report that he was dead, I think, at the time that

you were planning to start the trial. But at some point, he passed away.

**ADV MAEMA**: Yes. At some stage, he passed away.

**ADV NGCUKAITOBI SC**: Yes. Now, his death in the context of a statement he has given that money was collected.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: What impact would that have had on the trial?

10 **ADV MAEMA**: Well, remember, his death would not take away the evidence that he has given in the form of a statement under oath.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: Because that evidence can be presented in terms of the Hearsay Evidence Act, 1 of 1945.

**ADV NGCUKAITOBI SC**: And you would explain why it is given by a person other than the person on whose probative value resides?

20 **ADV MAEMA**: That is correct. Yes. Section 3(1)(c) sets out the factors that are taken into account by the Court to consider the admissibility of that statement.

**ADV NGCUKAITOBI SC**: So his death would not mean that the statement is inadmissible?

**ADV MAEMA**: Hundred percent.

**ADV NGCUKAITOBI SC**: Yes. Now, there is the whole thing about hearsay. I mean, a witness who says, I was there when

the money was collected and it was said that it was being collected for General Booyesen. Is that hearsay evidence or is it direct evidence?

**ADV MAEMA**: It is credible direct evidence. He was there.

**ADV NGCUKAITOBI SC**: Yes. And a witness who says, I saw the money being paid to Mr Mostert and to Major General Booyesen. Is that hearsay or direct evidence?

**ADV MAEMA**: That is direct evidence, at least at the time of the decision. That is direct evidence that has not been  
10 watered down by cross-examination or anything.

**ADV NGCUKAITOBI SC**: Yes, yes. So was there any reason for you to doubt that these two witnesses, these two statements would not be accepted by a Judge or anything that would have been wrong with them?

**ADV MAEMA**: There was no reason to think. In fact, the law gives us a mechanism as to how that evidence has to be brought before Court and considered together with the rest of the evidence that we are going to present before Court.

**ADV NGCUKAITOBI SC**: Yes. Madam Chair, it is twenty  
20 three past one. I am happy to just press ahead, but I am in your hands.

**CHAIRPERSON**: I think it is an appropriate moment to take a lunch break for 45 minutes. My sisters agree that 45 minutes for lunch will be appropriate. We will reconvene at about quarter past.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair.

**CHAIRPERSON:** Quarter past two.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair.

**CHAIRPERSON:** Advocate Maema, you are still under oath.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** We are adjourned.

### **ENQUIRY ADJOURNS**

### **ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, everyone. Good  
10 afternoon, Advocate Maema.

**ADV MAEMA:** Good afternoon, Chair.

**CHAIRPERSON:** *Nthati* Chauke, good afternoon. You are  
still under oath, Counsel?

**ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** Thank you. You may proceed, Advocate  
Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Mr  
Maema, there are two more statements to cover on the killing  
of Mr Mkhize, Bongani. The one is at GSM24, 1A/308. No,  
20 not in that one, ja, yes, correct.

**CHAIRPERSON:** What page is that?

**ADV NGCUKAITOBI SC:** 1A/308, Madam Chair.

**CHAIRPERSON:** 1A?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Do you have it, Mr Maema?

**ADV MAEMA:** That is correct, Chair. GSM24.

**ADV NGCUKAITOBI SC:** Whose statement is that?

**ADV MAEMA:** It is the statement of Tengamandla Walter Ngcobo.

**ADV NGCUKAITOBI SC:** And what is his status?

**ADV MAEMA:** He is an adult male, at the time residing at Maphumulo. A chairperson of Maphumulo Taxi Association.

**ADV NGCUKAITOBI SC:** And at the time of the killing of Mr  
10 Bongani Mkhize, what was his status?

**ADV MAEMA:** He was the chairperson of KwaMaphumulo Taxi Association.

**ADV NGCUKAITOBI SC:** No, paragraph 3 does not say he was the chairperson.

**ADV MAEMA:** Oh, yes. I was a deputy chairperson during the reign of the late Bongani Mkhize.

**ADV NGCUKAITOBI SC:** Then he says he was involved in meetings where the killing of their members were discussed. And specifically at paragraph 5, he attended the meeting with  
20 Mr Bheki Cele.

**ADV MAEMA:** That is correct.

“I was also part of a meeting that had been arranged by our lawyers with Mr Bheki Cele.”

**ADV NGCUKAITOBI SC:** Next paragraph.

**ADV MAEMA:** Paragraph 6.

“The reason we decided to instruct Mr Shozi was mainly the frustration and the difficulty we encountered from police authorities in the province. We were frustrated...”

Paragraph 7, sorry:

“We were frustrated that our members were being killed by the police and it appeared that the same story would be peddled that it was they who were attempting to kill the police.”

10

Paragraph 8:

“We tried to get hold of Commissioner Hamilton Ngiri involved so that we could understand what was going on, but to no avail.”

Paragraph 9:

“We attempted to contact Mr Bheki Cele on our own, but our efforts did not yield any positive results.”

20

Paragraph 10:

“Our lawyer eventually arranged a meeting with Mr Bheki Cele, and the meeting took place, although I cannot remember the date.”

11:

“At the meeting, we informed Mr Bheki Cele about our concern that our members were being murdered from left, right, and centre and the same excuse was being used, that they had been trying to grab a firearm or that they were shooting at the police.”

Paragraph 12:

10 “We also requested Mr Bheki Cele to intervene and stop the killing of our members. If any of them were being sought, our attorneys should be contacted and they would be processed in terms of the law. We also informed him that we requested a list of the members who were sought by the police.”

Paragraph 13:

20 “Mr Bheki Cele made it clear to us that he just did not care about the death of our members. He boasted that, to use his words, [indigenous language], this means that he was happy that his members were killing our members. The reason for the killing was that our association had elements or something of the sort.”

Paragraph 14 ...[intervenes]

**ADV NGCUKAITOBI SC:** I am not sure if you understand Zulu, what that phrase means. Do you know?

**ADV MAEMA:** What was mostly informed to us, [indigenous language], the water is muddied, you know, if you want to swim with the crocodiles in the muddied water, you will be dealt with.

**ADV NGCUKAITOBI SC:** Yes, you have muddied the waters. I accept that, you will be attacked by crocodiles.

10 **ADV MAEMA:** You will be dealt with by the crocodiles.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** You are proficient in Zulu?

**ADV MAEMA:** Chairperson, this was explained to us when we were there. I wanted to know what this [indigenous language] and we were told.

**CHAIRPERSON:** And they translated that to you.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** I ask because I know you are a Motswana like me. [Laughter]

20 **ADV MAEMA:** [Indigenous language] But having worked in that area for some time, you tend to pick up here and there. But this one specifically, we were told about [indigenous language].

**CHAIRPERSON:** I do understand a little bit of that. Thank you.

**ADV NGCUKAITOBI SC:** Just carry on after [indigenous language].

**ADV MAEMA:**

“This meant that he was happy that his members were killing our members. The reason for the killing was that our association had elements or something of the sort.”

Paragraph 14:

10 “Mr Mkhize then enquired from Mr Cele if he was also on the list of the so-called wanted, so he could hand himself in with his attorney.”

Paragraph 15:

“Mr Cele told Mr Mkhize to contact Commissioner Ngiri if he wanted that information. He further told Mr Mkhize that his attorney would not be informed, if he has to be arrested, he will just be arrested. He confirmed that there was a list of the wanted, Commissioner Ngiri could be contacted about the list. We left the meeting very disappointed, our hopes of preventing further deaths were then and there dashed.”

20

Paragraph 16:

“We thereafter instructed our lawyers to bring an application for an interdict to prevent the police from killing Mr Mkhize, because it became clear to us that indeed the police wanted to kill Mr Mkhize.”

Paragraph 17:

“A few months later, our worst fears were confirmed, because depicts the interdict, the police shot and killed Mr Mkhize. This is still a sore point in our association.”

10

**ADV NGCUKAITOBI SC:** Yes. I think last week we dealt with the fact that Cato Manor had a licence to kill because they reported to their provincial bosses but there was no intervention. But now they seem to be reporting it even at a higher level. And even there, the response is you have muddied the waters. Now accept that the crocodiles will come for you.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Now, is this one of the statements you heard in the docket?

20

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Now then, the last ...[intervenes]

**ADV BALOYI-MERE SC:** Maybe just for clarity. At that time, at the time this statement or these meetings were held, what was the position of Mr Bheki Cele there?

**ADV MAEMA:** Chairperson, at the time he was the Provincial Commissioner of Police.

**ADV NGCUKAITOBI SC:** Was Bheki Cele ever the Provincial Commissioner? I thought he was, I saw somewhere that he was the MEC for police.

**ADV MAEMA:** Oh yes, MEC, not. My apologies, Chair. Thank you.

**ADV NGCUKAITOBI SC:** The last statement is a statement taken from the docket at DC000252. And this comes from Mr  
10 Sibusiso William Zungu. Who is Mr Sibusiso William Zungu?

**ADV MAEMA:** He is a detective inspector in the employment of the South African police stationed at Durban Organised Crime. At the time he was attached to the Political Violence Task Team.

**ADV NGCUKAITOBI SC:** Yes and did you have to deal with him in the context of this investigation?

**ADV MAEMA:** Yes, yes, yes we had to deal with him.

**ADV NGCUKAITOBI SC:** Yes. Did you speak to him?

**ADV MAEMA:** Yes, that is correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** Yes, so what was his role?

**ADV MAEMA:** He was the investigating officer of Bheki Themba CAS 113/1/2009, the murder of Wellington Mbongeleni Zondi, who was the chief, was an Nkosi, who was shot and killed at Z section Umlazi Township in Durban.

**ADV NGCUKAITOBI SC:** Yes. Maybe you should read out

what his statement says.

**ADV MAEMA**: He states, Chairperson, from paragraph 3:

“During the course of my investigation, information became available through an informer network indicating various names of suspects that were involved in the planning regarding the killing of Nkosi Zondi. The chairman of Maphumulo Taxi Association, Mr Mbongani Mkhize, was among those who conspired to kill Nkosi Zondi.”

10

Paragraph 4:

“The information further indicated that one of the suspects among those who carried out the killing was at Stanger taxi rank. I proceeded to Stanger taxi rank with the assistance of members from the National Intervention Unit, and the suspect was arrested.”

20 Paragraph 5:

“On the following day, the information was provided to me regarding the second suspect who allegedly partook in the killing of Nkosi Zondi, and it was indicated that he was at Stanger taxi rank. This operation

was also conducted with the assistance of the National Intervention Unit, and the suspect was arrested at Stanger taxi rank.”

Paragraph 6:

“Both operations were conducted by myself with the assistance of members from the National Intervention Unit as they were deployed at Stanger and surrounding areas.”

**ADV NGCUKAITOBI SC:** If you could just stop there for a  
10 second. Now, you remember we went through this evidence last week that the killing of both Mr Superintendent Choncho and Nkosi Zondi was ascribed to members of KwaMaphumulo Taxi Association and became used to justify the shootings.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Now, but the IO has come with a different account of where the killing took place from.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And what does he say the sources of this killing were?

20 **ADV MAEMA:** The information indicated that among those who carried the killing was members of...

**ADV NGCUKAITOBI SC:** In paragraph 4 and in paragraph 5, he has told us exactly where these people were collected.

**ADV MAEMA:** Yes, at Stanger taxi rank.

**ADV NGCUKAITOBI SC:** Yes. And paragraph 7, can you

read out there?

**ADV MAEMA**: Paragraph 7 reads:

“It was my intention to, at some stage in the future, to question Mr Bongani Mkhize with regards to the information on hand, including certain information provided to me by various sources of information. In the interim, my focus was the extensive search for other suspects that were identified to me as the ones who carried out the killing.”

**ADV NGCUKAITOBI SC**: If you can stop there. I mean, the IO is clear here that, look, at some point I might interview Mr Mkhize, but for now I want to speak to the people that have been said to me are the killers.

**ADV MAEMA**: Yes.

**ADV MAEMA**: Yes. All right. And then the following page.

**ADV MAEMA**: Paragraph 8, it follows on the next page:

“Whilst I was busy conducting the second operation at Stanger, I heard on the radio that Mr Bongani Mkhize was shot and killed at Umgeni by the police. On my arrival back from Stanger, I was informed by somebody of the killing of Mr Bongani Mkhize, but I cannot recall who that was.”

Paragraph 9:

“I did not attend the scene where Bongani Mkhize was fatally wounded. I was not aware of any operation regarding the tracing of Bongani Mkhize, nor did I request anybody to trace Bongani Mkhize. I did not request any of the shooters to trace Bongani Mkhize.”

**ADV NGCUKAITOBI SC:** Yes. Thank you. Now, I mean, a statement like this coming from the person actually  
10 responsible for the investigation of the murder, saying this is not a person I am looking for right now, and these people that were not looking for him are not even authorised as part of the investigation, bearing in mind that the version given is that Mr Mkhize is sought by the police and Cato Manor are doing the investigation. What is your evidence on that score?

**ADV MAEMA:** It is heartening that people who are not involved in that investigation would do this kind of work and it would end up with the killing of Mr Mkhize, of Bongani Mkhize.

20 **ADV NGCUKAITOBI SC:** Yes. Could we move on to the next docket?

**ADV BALOYI-MERE SC:** Sorry, before you move, I have a few questions for clarity.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** We are here talking about Chief

Bungeleni Zondi. Can the witness, if he can, give us the connection between Chief Bungeleni Zondi and one of the main characters at GSM23? I will get his name. Is it the same Bungeleni Zondi who had taxis at GSM23? There is a reference to Bungeleni Zondi who had taxis within Stanger Taxi Association, who was always with Sanele Zondi, who collected money and took it to the Cato Manor members or...

**ADV NGCUKAITOBI SC:** The page...

**ADV BALOYI-MERE SC:** I am reading this with 1A/306,  
10 GSM23.

**ADV NGCUKAITOBI SC:** There is 305, Chair, paragraph 4, I thought.

**ADV BALOYI-MERE SC:** Because there is a story that at some stage, someone heard that the other one is going to be made a permanent chief and organised for their death. Is there a connection there? Or I am reading too much?

**ADV NGCUKAITOBI SC:** Yes, paragraph 12 is what you are referring to.

**ADV BALOYI-MERE SC:** Paragraph 12, yes.

20 **ADV NGCUKAITOBI SC:** The identity starts at paragraph 4, Bungeleni Zondi had a taxi within Stanger Taxi Association.

**ADV BALOYI-MERE SC:** So my question is, is this Bungeleni Zondi referred to at paragraph 4, the same Chief Bungeleni Zondi?

**ADV NGCUKAITOBI SC:** Can you answer?

**ADV MAEMA**: That is correct, Chairperson. The same, we refer to him as Nkosi Zondi.

**ADV BALOYI-MERE SC**: Nkosi. So, Bungeleni Zondi was a member of Cato Manor unit, according to the last sentence at paragraph 3 of the same GSM23?

**ADV MAEMA**: Yes, he was a former, he used to be part of Cato Manor.

**ADV BALOYI-MERE SC**: He used to be a police officer and a part of Cato Manor.

10 **ADV MAEMA**: That is correct, and at that time, then he was now a chief.

**ADV BALOYI-MERE SC**: Pardon me for that, because the names just were confusing.

**ADV NGCUKAITOBI SC**: Yes, thank you, Madam Baloyi-Mere. Yes, in fact, the two go together, that statement and the statement of Mr Zungu.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Mr Zungu says, I was not looking for this man.

20 **ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: But he is then killed on the pretext that he is a suspect that is being sought.

**ADV MAEMA**: That is sought in a case that I am investigating.

**ADV NGCUKAITOBI SC**: Yes. Thank you. Could I move on

to Mr Ndimande?

**ADV BALOYI-MERE SC:** But before you move, sorry. The chairperson of Maphumulo Taxi Association, Mr Bungeleni Mkhize, was amongst those who conspired to kill Nkosi Zondi, according to Zungu's statement.

**ADV MAEMA:** That is correct, Chair.

**ADV BALOYI-MERE SC:** And then the people who were eventually arrested, and emphasis being on arrest because they were not killed, they were actually arrested, are  
10 members of the Stanger Taxi Association.

**ADV MAEMA:** That is correct, Chair, yes.

**ADV BALOYI-MERE SC:** Okay.

**ADV NGCUKAITOBI SC:** Yes, correct.

**ADV BALOYI-MERE SC:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you. And paragraph 4 says, actually, Mr Zondi has a taxi at Stanger.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** So he is allegedly killed by one of his own.

20 **ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Thank you. May we proceed to ...[intervenes]

**CHAIRPERSON:** Before you proceed, Counsel, the statement that you have just dealt with now of Mr Zungu, where in the list of your index, your annexures, does it

appear?

**ADV NGCUKAITOBI SC:** No, it does not appear, Madam Chair.

**CHAIRPERSON:** It does not appear.

**ADV NGCUKAITOBI SC:** No, we have extracted this from the docket itself.

**CHAIRPERSON:** Please remind your juniors to prepare the list of exhibits because you have been handing in loose documents that are not appropriately marked as exhibits.

10 **ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And they must please remember to provide that list.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And then name these documents appropriately as per our instructions to the evidence leaders for consistency.

**ADV NGCUKAITOBI SC:** Yes, thank you. We shall.

**CHAIRPERSON:** Thank you.

20 **ADV NGCUKAITOBI SC:** Thank you. May we move to the next docket, which is that one of Mr Sibongeseni Ndimande, the murder of Mr Sibongeseni Ndimande, at paragraph 146 to 156 of your statement?

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, can you give us a narrative of this murder?

**ADV MAEMA:** Chairperson, these incidents are covered in counts 25 to 30 of the indictments, and the accused that are mentioned, that are related thereto are mentioned in paragraph 147. But specifically, your question is dealt with on paragraph 148 on page 1-42.

10 “On 23rd of May 2009, the deceased was found in his house in the bedroom, slammed against the bed, on the right-hand side of the bed with gunshot wounds to his face and body.”

Paragraph 149:

“The police were searching for suspects who were allegedly involved in the killing of Nkosi Zondi. The police came to the deceased's house in New Germany. The deceased, while sleeping in the bedroom with his wife, was woken up by noises caused by the police attempts to open the main door of the house.”

20 Paragraph 150:

“According to the deceased's wife, Nokuphiwa Zanele Madaba, she handed their baby, who was in the bed with her and the deceased, to the deceased and proceeded to the main door of the house.

She opened the door, the police burst into the house. At the time, the deceased approached the door from the direction of the bedroom, holding the baby against his bare chest.”

Paragraph 151:

10 “The police instructed the deceased to hand the baby to Nokuphiwa and accused number 9, Olivier shoved Nokuphiwa and the baby through the main door outside, while the other police officers took the deceased into the bedroom. As Nokuphiwa was in the doorway, she heard gunshots from the bedroom. The police alleged that the deceased was reaching for a firearm and they opened fire on the deceased. Parayaki, accused number 2, fired two shots with an R5 rifle, Stoltz, accused number 3, fired shots with a Z88 pistol and Van Tonder, 20 accused 16, fired shots with a 9mm Beretta pistol. The gunshot wounds on the deceased's arm indicate the deceased defensively raising his arms in an attempt to block the bullets.”

Paragraph 154:

“A firearm was placed on the foot of the bed. The Ballistic Crime Scene Reconstruction Report dispels the notion or version that the prosecution team was wrong to conclude that the aforesaid firearm was planted. The deceased was a family member of Magojele Ndimande, the deceased in count 8 to 12. I attach here two photos of the scene marked GSM25.”

10 **ADV NGCUKAITOBI SC:** Yes, now I want to look at GSM26 because you have been recapitulating the version of Ms Nokuphiwa Madaba, which is 1A/325.

**ADV MAEMA:** 325.

**ADV NGCUKAITOBI SC:** Yes, 1A/325. And GSM26.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Whose statement is that?

**ADV MAEMA:** It is a statement of Nokuphiwa Zanele Madaba, whose name I just read.

**ADV NGCUKAITOBI SC:** Yes, what is their connection with  
20 the case we have just looked at?

**ADV MAEMA:** She is the deceased's wife.

**ADV NGCUKAITOBI SC:** Yes. Now, she explains what happened that night.

**CHAIRPERSON:** The wife to Nkosi Zondi.

**ADV MAEMA:** That is correct, the deceased that we are

referring to. The deceased in this case is Ndimande.  
Paragraph 146 to 156 of your statement.

**ADV MAEMA:** Paragraph 146?

**ADV NGCUKAITOBI SC:** 146 to 156 of your statement. 146.

**CHAIRPERSON:** Counsel, the paragraph 151 of the statement refers to Nokuphiwa.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And at 50, according to the deceased's wife, Nokuphiwa Zanele Madaba?

10 **ADV NGCUKAITOBI SC:** Yes, that is the statement at 1A/325.

**CHAIRPERSON:** Yes. I beg your pardon, GSM26?

**ADV NGCUKAITOBI SC:** 26, yes, that is correct.

**CHAIRPERSON:** Is she the wife to Nkosi Zondi?

**ADV NGCUKAITOBI SC:** Madam Chair, she is the wife to Sibongiseni Batumile Ndimande. The deceased in Pinetown CAS 1000/05/2009.

**CHAIRPERSON:** Let us have a look at paragraph 149 and 150. It is confusing me because after referring to the  
20 deceased, the killing of Nkosi Zondi in paragraph 149 at page 42 of the affidavit, and the statement continues at 150. According to the deceased's wife, which deceased in paragraph 150?

**ADV NGCUKAITOBI SC:** That is Mr Ndimande.

**CHAIRPERSON:** Mr Ndimande?

**ADV NGCUKAITOBI SC:** Yes, yes.

**CHAIRPERSON:** Not Nkosi Zondi?

**ADV NGCUKAITOBI SC:** No, Nkosi Zondi is used because they claim to have been looking for his killers when they murdered the deceased.

**CHAIRPERSON:** Yes, thank you.

**ADV MAEMA:** Chairperson, the heading on count 25 to 30 is the killing of Sibongiseni Batumile Ndimande. So we are dealing with that killing on page 1-41. So yes, because of 25  
10 to 30, just underneath paragraph 145, the heading is the killing of Sibongiseni Batumile Ndimande in Pinetown case.

**CHAIRPERSON:** Thank you very much, I understand.

**ADV MAEMA:** Yes. Thank you, Chairperson.

**ADV NGCUKAITOBI SC:** You were at GSM26. I needed you to just explain to the Panel the version of the eyewitness who was present there at the scene.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Who is the lady that is carrying a baby when the Cato Manor officers barge in.

20 **ADV MAEMA:** Barge into the house.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** Nokuphiwa Zanele Madaba states as follows, paragraph 3:

“I am an adult female (with this ID numbers).

At the time residing at (that address) in New

Germany and employed...”

I will leave the employment.

“On the 23rd of May 2009, at about 02h00 in the morning, I was asleep in my bedroom at the above address, where I reside with my fiancé and my two children. Whilst I was asleep in the main bedroom with my baby that sleeps in the cot...”

The handwriting is...

10 **ADV NGCUKAITOBI SC:** My younger child that sleeps with me.

**ADV MAEMA:** Oh.

“...my younger child that sleeps with me in my bed, I heard a sound of someone breaking the front gate to the premises. I then got out of bed and I went to the other room to...”

**ADV NGCUKAITOBI SC:** To wake my husband up.

**ADV MAEMA:** Oh, yes.

20 “...to wake my husband up.”

Counsel, you see better.

**ADV NGCUKAITOBI SC:** Just continue reading, we do not have the whole afternoon.

**ADV MAEMA:**

“...and I told him that someone was trying to

break the gate. My husband then got up and went through to the main bedroom. I then followed him to the main bedroom. I noticed that he was not wearing any clothes, so I went to my room to get my pair of pants for him ...[intervenes]”

**ADV NGCUKAITOBI SC:** A pair of pants.

**ADV MAEMA:** Say again?

**ADV NGCUKAITOBI SC:** Get a pair of pants.

10 **ADV MAEMA:** To get a pair of pants for him, thank you.

**ADV MAEMA:**

“When I got back to my room with the pants, I noticed that my husband was...”

**ADV NGCUKAITOBI SC:** Walking.

**ADV MAEMA:**

“...was walking back to the bedroom door from the window. My husband did not say anything and...”

**ADV NGCUKAITOBI SC:** And took.

20 **ADV MAEMA:**

“...and took the pants from me and put it on. I then closed my bedroom door. My husband and myself then stood behind the bedroom door. My baby was still asleep on the cot and my younger child was still asleep in my

bed. An unknown white male...”

**ADV NGCUKAITOBI SC:** Shouted.

**ADV MAEMA:**

“...shouted, open, open the door, it was actually a...”

I cannot see that word.

“...lot of people shouting, open the door. My husband then told me to wake up my baby and to give the baby to him. I then woke my baby and handed the baby to him. I then opened the bedroom door. My husband was standing behind the door with my baby. Before I opened the door, my husband and myself shouted at the people...”

10

**ADV NGCUKAITOBI SC:** Outside.

**ADV MAEMA:**

“...people outside the bedroom door...”

Thank you, Counsel.

“...that they must leave us alone as we had children. The people shouted at me to open the door. I then opened the door. The door was not locked. When I opened the door, I noticed three bright lights and guns being pointed at me. I then got a fright and stepped back into...”

20

**ADV NGCUKAITOBI SC:** The room.

**ADV MAEMA:**

“...the room. My husband...”

Thank you.

“My husband then came out from behind the door with my baby in his arms. He then said, please guys, do not kill me, I have a small baby. At that time I was standing next to him.”

10 Paragraph 7.

“All the people then said that my husband must give the baby to me. My husband then refused to give the baby to me.”

I cannot see that word.

“An Indian male then took the baby from my husband and threw the baby to me.”

**CHAIRPERSON:** An unknown.

**ADV MAEMA:** Unknown, thank you. Thank you, Chair.

20 “I then caught the baby. The Indian male then told me to get out of the bedroom and I told him that I have...”

**ADV NGCUKAITOBI SC:** Another child.

**ADV MAEMA:**

“...another child in the bedroom. An unknown white male then told me to get the

other child and to get out of the room. I then took my baby...”

**ADV NGCUKAITOBI SC:** And my other child.

**ADV MAEMA:** Thank you.

“...and my other child and went out of the bedroom. I then...”

Is it started to walk?

**ADV NGCUKAITOBI SC:** Yes, down the passage.

**ADV MAEMA:**

10 “...down the passage, as I would to get out of the house. As I got out of the house next to the ...[intervenes]”

**ADV NGCUKAITOBI SC:** Got out of the lounge.

**ADV MAEMA:**

“As I go out of the lounge (sorry) next to the...”

There is a word there bench;

“...to the kitchen, I heard gunshots behind me.”

20 **ADV NGCUKAITOBI SC:** No, there is a number there.

**ADV MAEMA:**

“I heard six gunshots behind me. I then ran out of the house holding my two children screaming, please help, please help me. I then ran to number 17, my neighbour, and I

banged on the door shouting, please help me, please help me. Nobody came and answered my plea of help. I would then to state that whilst I was running to number 17, my neighbours, I heard more gunshots. I then ran up the stairs to the sitting area. I then stood in the...”

**ADV NGCUKAITOBI SC:** Parking area.

**ADV MAEMA:**

10 “...parking area. I then noticed...”

**ADV NGCUKAITOBI SC:** Another unknown white male.

**ADV MAEMA:** Yes.

“...another unknown white male in the parking area and I asked him what was wrong. He then said that they were police from Pinetown. He told me that they received a call that there was a...”

**ADV NGCUKAITOBI SC:** Criminal.

**ADV MAEMA:**

20 “...criminal living at number 18 and they were looking for two males that was inside my flat. They came up to the parking lot. One of them asked me what was the name of ...[intervenes]”

**ADV NGCUKAITOBI SC:** The surname.

**ADV MAEMA:**

“...what was the surname of my husband. I then said it was...”

**ADV NGCUKAITOBI SC:** Ska.

**ADV MAEMA:**

10 “...Ska Ndimande. The one then said, is it not Mkhize? I then said, no. The same two then went back to my flat. The Indian male who took my baby from my husband then came to the parking lot and asked me what I need from my flat. I then said, I need the shoes...”

**ADV NGCUKAITOBI SC:** And a jacket.

**ADV MAEMA:**

“...and a jacket...”

**ADV NGCUKAITOBI SC:** For my son.

**ADV MAEMA:** Oh.

“...for my son.”

Thank you.

20 “I also needed my gown. I then asked him for my cell phone. He asked me where my cell phone was and I said under the pillow. He then went to the flat and brought all the items to me except my cell phone. I noticed the other white male holding my cell phone

and I asked him for my phone. He refused to give me my phone. He asked me who I wanted to call. I then said that I wanted to phone my husband...”

**ADV NGCUKAITOBI SC:** My husband’s brother.

**ADV MAEMA:**

“...my husband’s brother.”

Thank you.

10 “He said he was not allowed to give me the cell phone and he then told me to show him the numbers on my phone. I then showed him the numbers and I walked away.”

Paragraph 8:

“I then asked the supervisor of the flat to contact my sister. She came back to me and told me that the police does not want us to phone again. Another white male came to me and told ...[intervenes]”

**CHAIRPERSON:** Hang on, is it not phone anyone?

20 **ADV MAEMA:** Oh, not to phone anyone, yes, yes.

**ADV NGCUKAITOBI SC:** Yes, another?

**ADV MAEMA:**

“Another white male came to me and told me to climb into the car as it was cold. I then placed my...”

**ADV NGCUKAITOBI SC:** Elder child.

**ADV MAEMA:**

“elder child and put him on the backseat.

The white male said that the baby will get...”

**ADV NGCUKAITOBI SC:** Get flu.

**ADV MAEMA:**

“...get flu from the cold and I must get into the car. I refused. I asked for a chair. They brought me a chair and I sat on the chair...”

10 **ADV NGCUKAITOBI SC:** Outside the car.

**ADV MAEMA:**

“...I sat on the chair outside the car with my brother-in...”

**ADV NGCUKAITOBI SC:** Until.

**ADV MAEMA:**

“...until my brother-in-law came. That is all that I can say.”

**ADV NGCUKAITOBI SC:** Thank you. Now...

**ADV MAEMA:** It was a difficult reading, jôh.

20 **ADV NGCUKAITOBI SC:** If I can ask you to go to the pictures that appear immediately before that statement, starting with the... starting with photograph 18?

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes, page 1A/322.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Do you have a recollection of this picture?

**ADV MAEMA:** Yes, I do.

**ADV NGCUKAITOBI SC:** What are we seeing here?

**ADV MAEMA:** We are seeing the bed and the deceased with the head slammed against the bed.

**ADV NGCUKAITOBI SC:** That is Mr Ndimande?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. And if you look at the position  
10 of the firearm, do we see it?

**ADV MAEMA:** At the corner, just on top of the bed, we can see the firearm. A closer picture thereof is the below photograph 19.

**ADV NGCUKAITOBI SC:** Yes. And the deceased appears to be covered from the waist to the knees with what appears to be a duvet. Can you see that?

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Why is that so? Was he not wearing any shorts?

20 **ADV MAEMA:** No, he was not wearing anything.

**ADV NGCUKAITOBI SC:** Yes. So was he naked?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. And then at photograph 19, there is a closer picture of the so-called firearm.

**ADV MAEMA:** That we see on the photo 18 at the corner,

yes.

**ADV NGCUKAITOBI SC:** And what did you establish as the prosecution team in relation to this firearm?

**ADV MAEMA:** We established that this firearm was placed there, it was not there during the shooting, to create an impression that the deceased would be carrying a firearm and posing a threat to the life of the police.

**ADV NGCUKAITOBI SC:** Yes. Now, I just want to ask you something about this. This is the fourth time we are seeing  
10 a black man naked and having been executed, apparently. And sometimes with a family, sometimes alone. Do you have any comment on this, on why a lot of these people are actually naked?

**ADV MAEMA:** Chairperson, what we were told at the time was the majority of them knew that the police, the Cato Manor police were looking for them. And then they would sleep naked so that when they get out of bed with their hands like this, no one would say there is anything hidden anywhere. We were told that they were sleeping naked just so that it  
20 should be clear from the beginning when they wake up that they do not have any firearm or any weapon to threaten anyone.

**MS RAMAGAGA:** Just one thing. You spoke about the hands like this. And please just explain how they look like so that it goes onto the record.

**ADV MAEMA**: When I said hands like this, I said with their hands away from their bodies so that they are not, even with their armpits hiding anything. So, with their hands just hanging to show that they do not have anything in their possession.

**MS RAMAGAGA**: Ja, you show their both arms stretched out?

**ADV MAEMA**: Yes.

**MS RAMAGAGA**: And open, no fists?

10 **ADV MAEMA**: Yes.

**MS RAMAGAGA**: Am I correct?

**ADV MAEMA**: Yes, that is correct.

**MS RAMAGAGA**: Thank you.

**ADV NGCUKAITOBI SC**: And you say that if you got wind that Cato Manor is looking for you, you intentionally slept naked?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: And the purpose is to demonstrate that you pose no danger?

20 **ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: And when they come, you get out of bed and you open your arms and open your hands?

**ADV MAEMA**: Consistent with that intention just to show that I am not posing any threat to you.

**ADV NGCUKAITOBI SC**: Yes. Madam Chair, there are

further pictures of the scene which are not included in the statement, but they are in the docket. You will see behind you, Mr Maema, starting at PT0051 and particularly at photograph 29.

**ADV MAEMA**: Yes, Chair.

**ADV NGCUKAITOBI SC**: You will see there is a yellow wall there that has blood stains in it.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes. And there is a ...[intervenes]

10 **CHAIRPERSON**: You going ahead of us?

**ADV NGCUKAITOBI SC**: Oh, sorry.

**CHAIRPERSON**: PT?

**ADV NGCUKAITOBI SC**: PT0051.

**CHAIRPERSON**: 0051.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Is that photo 28?

**ADV NGCUKAITOBI SC**: 29, Madam Chair.

**CHAIRPERSON**: 29.

**ADV NGCUKAITOBI SC**: Yes.

20 **CHAIRPERSON**: Thank you, Counsel.

**ADV NGCUKAITOBI SC**: May we proceed?

**CHAIRPERSON**: Yes.

**ADV NGCUKAITOBI SC**: Thank you. So we are still at picture 29, and I was identifying one feature of it, which is the blood stains on the yellow wall.

**ADV MAEMA:** That is what Captain Mangena would refer to as blood splatters on the wall.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** Just above the head on the yellow wall.

**ADV NGCUKAITOBI SC:** Yes. And his head is actually lodged between the wall and the bed.

**ADV MAEMA:** It is actually slammed against the wall and the bed.

**ADV NGCUKAITOBI SC:** Yes. And there is a toy there. He  
10 had a small child.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And another one was sleeping in the cot.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** And then there is a close-up one at photograph 31.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** That is a closer head picture. Yes. And then from a different angle, the next one at photograph  
20 32, demonstrating his head injuries and...

**ADV MAEMA:** And the blood that had now flown from the head and the one that was imprinted on the wall when the head was against the wall in the corner of the bed.

**ADV NGCUKAITOBI SC:** Yes. This picture, I mean, requires a little bit of comment because the image that is given to us

by the police is that they are under attack. But it is unclear why you would sort of lay to that level if you are attacking them. Would not you have to stand up if you are trying to shoot at the police?

**ADV MAEMA**: You would have to stand up and stand for yourself. Here you can see that there was not any attack from Mr Ndimande.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: From Batumile Ndimande.

10 **ADV NGCUKAITOBI SC**: Yes. If you look at just the positioning of the head.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Okay. I thought there is one at 33. Yes, this is the one. I think 33 comes before 32.

**ADV MAEMA**: This is the one where the head is slumped against the bed and the yellow wall.

**ADV NGCUKAITOBI SC**: Yes. And you referred to what I call the blood stains as the blood splatters.

**ADV MAEMA**: Yes.

20 **ADV NGCUKAITOBI SC**: What is the significance of that change in language from a stain to a splatter?

**ADV MAEMA**: When a blood splatter means as the body would knock against the back of the wall and then the blood would splatter towards there.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA:** As opposed to blood flow.

**ADV NGCUKAITOBI SC:** Yes. In other words, a splatter is more active.

**ADV MAEMA:** It is more active.

**ADV NGCUKAITOBI SC:** Yes. Well, they go on 34, 35. But it is just horror after horror. There is probably no point in it. But the one – there is one... The one that I would like your comment on is paragraph 30 – sorry, photograph 39. I would recall that in your statement you say that he was trying to  
10 block the bullets from hitting him.

**ADV MAEMA:** Yes. Ordinarily when there is an attack, you try and ward it off with your hands. So that is some of the injuries. That is how some of the injuries on the hands were sustained as you are trying to ward off the bullets coming your way.

**ADV NGCUKAITOBI SC:** Coming to your face.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Well, given that this is a 5.56-millimetre high-calibre bullet, it sounds pretty desperate to  
20 use your hands.

**ADV MAEMA:** It is, but ordinarily what happens when you attack, that is what happens. You are hoping your hands will assist. And they cannot stand the brutal force of an R5 bullet.

**ADV NGCUKAITOBI SC:** Thank you.

**ADV BALOYI-MERE SC:** Before you move away from the

photographs, you referred to photograph 19 at A1/322. That is on the bed, that one. And I want to take us back to – is it Nokuphiwa? The affidavit, Nokuphiwa's affidavit. That is the wife to the deceased.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** The picture that she painted is she had two little children. So she was sleeping in a separate bedroom. The husband was sleeping in another bedroom. That was the picture. She said one child was in the cot, the  
10 other child was on the bed with her. And when she heard the noise, she went to the husband's bedroom. What I am not sure of is this bed where we see the gun, is it in the wife's bedroom or in the husband's bedroom? And I will tell you why I ask that question. If it is in the wife's bedroom, it would be bizarre for the husband to keep the gun in the wife's bedroom.

But also it would still be bizarre for Mr Ndimande to be shot at the opposite end from the gun that he is supposedly trying to shoot the police with. Because if it was  
20 on the bed and not in his hands, the first police officer who would have gone in, would have maybe kicked it away, not leave it just lying there. But if he was using it, he would have been using it at a very strange manner or angle because it is too far away from him. If we can get clarity, one, is it in his bedroom, two, the position of the gun?

**ADV NGCUKAITOBI SC:** It is actually photograph 19, sorry, the one just before. Yes, that is the one.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** So you can see the distance between Mr Ndimande and the alleged weapon.

**ADV MAEMA:** Chairperson, the bedroom that you are talking about is the bedroom where Mr Batumile Ndimande was sleeping, separate from where the wife and the children were. And the next question is, the firearm was placed there. It is  
10 coincidental that it was placed there. We would have expected them to place it next to, closer to his hands to denote that he was handling it. But that is what it was, it was just placed there. But the firearm was never there in the first place. It was placed there to create an impression that he would be firing at them.

**CHAIRPERSON:** To understand which bedroom it was, should we not reflect on the statement made by the  
20 deceased's wife? If I am not mixing it up with the other statement, it appears that when the husband walked out naked, she then picked up something, a trouser, and then he saw him coming back through the window. And he came and then he handed the pants to him and he dressed up and then at one stage he handed the baby to him and then they stood behind the door.

**ADV NGCUKAITOBI SC:** That is correct, Chairperson.

**CHAIRPERSON:** It may well be that it is at that time when he took the baby and they hid behind the door in the wife's bedroom because you can see the toy there.

**ADV MAEMA:** Oh, that toy, yes.

**CHAIRPERSON:** But you remember, he walked out naked, went out, she got some pants to give to him.

**ADV MAEMA:** Oh, yes, yes.

**CHAIRPERSON:** She saw him through the window coming back and he handed the pants to him. He dressed up and  
10 whilst there, he took the baby. They then hid behind the door. So it could be that when he came back, he went to the bedroom of the wife.

**ADV MAEMA:** It is possible, Chair.

**CHAIRPERSON:** Now you see the toy there.

**ADV MAEMA:** Yes, yes.

**CHAIRPERSON:** So they must have been behind the door at the wife's bedroom.

**ADV MAEMA:** Yes, that is correct, Chairperson.

**CHAIRPERSON:** Is it possible?

20 **ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** When you look at the sequence of events.

**ADV MAEMA:** Yes, yes. When one looks at the sequence of events. But in particular, Chairperson, I think the toy that is there, and it is only not one toy. It looks like there is something in green and yellow next to the yellow car there. I

think I am mistaken when I say it is the other bedroom. It is the bedroom where the wife and the children are.

**CHAIRPERSON:** But that yellow thing looks like the toy of a child.

**ADV MAEMA:** That is so. That is so.

**CHAIRPERSON:** So that, if you look at that sequence, it could be that this is the bedroom of the wife where she was sleeping with the children.

**ADV MAEMA:** That is so, Chairperson.

10 **CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Actually, Mr Ramogale points out there are actually more toys at photograph 30. Yes. So it is not just the, I think that is the bus, the yellow bus.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** And then there are other toys.

**ADV MAEMA:** There are other toys that signifies that it is the bedroom of where the children would ordinarily play.

**ADV BALOYI-MERE SC:** Which then might bring one to the conclusion that it is highly improbable that Mr Ndimande  
20 would leave his gun in the wife's bedroom, especially where there are children. And also, if he were to protect his homestead or his house, he would have to first go to the wife's room to pick up a gun. It really does not make sense.

**ADV MAEMA:** Yes, yes.

**CHAIRPERSON:** Unless if he was hiding the gun.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** He is not doing a good job of hiding it if he is putting it on top of the bed.

**ADV MAEMA:** But then it shows the person that put it there did not do thinking. Just placed it there without a calculated place.

**ADV NGCUKAITOBI SC:** What kind of people are these that kill parents in the presence of their children?

**ADV MAEMA:** Sick people. That are just, you know, over-  
10 concerned with just killing. And Chairperson, I was cautioned about, when I did most of the presentation, I would talk about killing of black people and I would feel sad because I am a black person. When police kill black people in the manner that black people were killed in this manner, I feel very sad.

**ADV NGCUKAITOBI SC:** Of all of the deceased, there are 28 of them. They are all African men.

**ADV MAEMA:** Chairperson, the indictment has 28. You should remember that we only focus on those where there are some evidence. There are lots of others which did not have  
20 evidence, which we did not...

**ADV NGCUKAITOBI SC:** There is a letter, I will show it to you if you want, if the evidence leaders raise an issue from Mary de Haas to Advocate Shamila Batohi, where she says, would you have responded in the same nonchalant way if the victims were not black? You know, she never responded to

that letter.

**ADV MAEMA**: Ja, but the fact that such a lot of black people were killed there, it really, till today, saddens me.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Advocate Ngcukaitobi, I think these matters are just difficult for all of us. I think we must take an adjournment to pause. Just 15 minutes until quarter to four.

**ADV NGCUKAITOBI SC**: Thank you.

### **ENQUIRY ADJOURNS**

#### 10 **ENQUIRY RESUMES**

**CHAIRPERSON**: Good afternoon, everyone. Good afternoon, *Nthati* Maema.

**ADV MAEMA**: Good afternoon, Chairperson.

**CHAIRPERSON**: Good afternoon, *Nthati* Chauke. Advocate Maema, we understand.

**ADV NGCUKAITOBI SC**: Thank you, Chairperson.

**CHAIRPERSON**: You have lived very close to these matters over the years. And here you are now, rewinding this history. And we understand your distress.

20 **ADV MAEMA**: Thank you, Chairperson.

**CHAIRPERSON**: And obviously, these things are taking most of us down the memory lane of the many years ago.

**ADV MAEMA**: Yes.

**CHAIRPERSON**: No life is cheap.

**ADV MAEMA**: That is so true.

**CHAIRPERSON:** You may proceed, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Thank you, Chair. Mr Maema, I want to skip many of these instances and that I dealt with in your statement. I am going to go to the case of Mr Thabede. Because just like the ones I have chosen, it is something unique. We will deal with it when we get to it.

**ADV MAEMA:** The case of mister?

**ADV NGCUKAITOBI SC:** Thabede. No, I will tell you where it is. Once I get clarity from the position of the evidence  
10 leaders around their position on the docket, I will decide whether to go through everything or to stick to the four I have chosen for today. Understand what I am saying?

**ADV MAEMA:** I understand, yes.

**ADV NGCUKAITOBI SC:** So Mr Thabede's case is in your statement at paragraph 212, page 1/55.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, this is the case of KwaMashu, CAS 698/11/2009.

**ADV MAEMA:** That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** Prince Sakile Thabede, otherwise known as Ntagu, was killed.

**ADV MAEMA:** That is so.

**ADV NGCUKAITOBI SC:** Yes. Now, can you just give us a context to this in your own words?

**ADV MAEMA:** Chairperson, the context is placed from

paragraph 214 on page 1-56.

**ADV NGCUKAITOBI SC**: Yes, no, I thought initially you used to tell us that the accused are so-and-so, before you go into that one.

**ADV MAEMA**: Yes, the accused is the accused I mentioned in paragraph 213.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: Accused 2, Mr Parayaki, accused 3, Mr Stoltz, and accused 4, Mr Mostert.

10 **ADV NGCUKAITOBI SC**: All right, thank you.

**ADV MAEMA**: On paragraph 4:

“On 26 November 2009, the deceased was found lying on the bed in his house in the company of his girlfriend.”

Paragraph 215:

“The police first secured two suspects who directed them to the deceased's house. The police were driving a kombi. On the identification of the house, the police alighted and went into the house and this suspect heard gunshots.”

20

Paragraph 216:

“On police officer, Mr Mostert, accused 4, came back to the kombi to fetch his bombai.”

That is a, he refers to it as his toy firearm. He reached under,

it is not a toy firearm, it is a firearm, but he refers to it as bombai.

“He reached under the driver's seat and took out one firearm from the bag of firearms and ran back into the house.”

217:

“Adriaan Stoltz, accused 3, said in his warning statement that the suspect drew a firearm and fired shots. Parayaki, accused 10 2, says the suspect produced a firearm and pointed it at them and that is when he decided to fire at the suspect.”

**ADV NGCUKAITOBI SC:** Let us just stop there for now. Here, what are you witnessing between the different accounts, these are the same people in the same incident.

**ADV MAEMA:** That is so.

**ADV NGCUKAITOBI SC:** So how are they explaining the incident?

20 **ADV MAEMA:** The one says the suspect drew a firearm and fired shots. The one says produced a firearm and pointed it at them. So the difference there is the one says the one shot and the one says just pointed at them.

**ADV NGCUKAITOBI SC:** Yes. Thank you very much. Carry on.

**ADV MAEMA:**

“Sergeant Behari of the Ballistic Unit of the Forensic Science Laboratory found that the revolver was defective. Jacobus Steyl, a ballistic reconstruction expert, stated that the deceased was in a lying position with his head on the pillow when he was shot at. Copies of the statement of Sergeant Behari and the ballistic report of Mr Steyl are attached as annexes GSM36 and GSM37 respectively.”

10

**ADV NGCUKAITOBI SC:** Can we just go to those GSM36 at 1A/443?

**ADV MAEMA:** 1A?

**ADV NGCUKAITOBI SC:** 443. That is the first one. Now, in GSM36, this is now the forensic expert of the police themselves.

**ADV MAEMA:** That is correct, Chairperson. That is Sergeant Behari, who is attached to the Forensic Ballistic Unit of the South African Police Service as a forensic analyst.

20 **ADV NGCUKAITOBI SC:** Yes. Now, there is a specific paragraph I want you to read to the record, which you will find at 1A/ stroke 445.

**ADV MAEMA:** That is correct, I am there.

**ADV NGCUKAITOBI SC:** Yes. So that first paragraph, what does it say?

**ADV MAEMA:**

“On the 10th of March, 2010, during the performance of my duties, I received the sealed evidence back with (a serial number) from the case administration. It contained the following exhibits...”

And he listed them, here are four.

**ADV NGCUKAITOBI SC:** And then what is that first exhibit?

**ADV MAEMA:** The first is the .38 SPL calibre Taurus  
10 revolver with a serial number obliterated.

**ADV NGCUKAITOBI SC:** And marked it?

**ADV MAEMA:** And he then continued to mark it with a number and an E, in a letter E.

**ADV NGCUKAITOBI SC:** Yes. Now, we will come back to this obliteration and the significance when we go to the statement of the eyewitness who was there.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** But what did she make out of that in paragraph 5, that same page?

20 **ADV MAEMA:**

“I examined the revolver mentioned in 3.1 and found that the transfer bar of the revolver mentioned in 3.1 is broken, and because of this, it is not able to discharge ammunition.”

**ADV NGCUKAITOBI SC:** Yes. Thank you. That is the, if you go to 1A/447, that is the statement of Ms or Mr Aventa Behari, or Sergeant Behari.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Who says, I have examined this revolver, which was put in the evidence bag, and it is defective.

**ADV MAEMA:** That is so.

**ADV NGCUKAITOBI SC:** Yes. Then you have the statement  
10 of the next expert at GSM37, the following page at 1A/443, which is Mr Jacobus Steyl.

**ADV MAEMA:** Yes.

**ADV BALOYI-MERE SC:** Sorry, but before you move on, you are dealing with 3.1, the .38, I do not know what SPL is, it is a special calibre Taurus revolver, which was found to be broken and it could not discharge ammunition.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** But then 3.4, or maybe let us start with 3.3, because 3.3 then talks to one calibre fired from the  
20 very same, is it from the very same .38, or am I reading it wrongly? 3.3 and 3.4 talks to whatever calibre cartridge is fired from the very same piece that we are told that it is broken. Am I reading them correctly?

**ADV MAEMA:** Chairperson, you are reading them correctly.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. So what, yes, I wanted to take you to Mr Jacobus Steyl, 1A/448.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Most of it is his CV, we have now seen the way he writes. He starts with his CV for the first 10 pages, and the statement usually starts much later. So we will find that at 1A/454.

**ADV MAEMA:** Yes.

10 **ADV NGCUKAITOBI SC:** Yes. And paragraph 6 deals with the post-mortem.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, and whose post-mortem is that?

**ADV MAEMA:** It is a post-mortem of the deceased, Mr Sakile Prince Thabede.

**ADV NGCUKAITOBI SC:** Yes. And in the second paragraph there, what does it say? It says there were three, so in his examination of the body, what was found?

20 **ADV MAEMA:**

“There were three entrance wounds on the right hand and arm, which created further multiple re-entry wounds on the chest, neck, and face. There was one tangible wound of ...[intervenes]”

**ADV NGCUKAITOBI SC:** Tangential.

**ADV MAEMA:** Say it again, Counsel?

**ADV NGCUKAITOBI SC:** Tangential.

**ADV MAEMA:** There was one...

**ADV NGCUKAITOBI SC:** Sideways.

**ADV MAEMA:**

10 “...tangential wound of 57 times 6 millimetre  
on the upper right side of the face between  
the eye and ear. The X-ray revealed  
multiple small fragments which created a  
lead snowstorm effect in the chest, which is  
consistent with a 5.56 high-velocity calibre  
fragmented bullets.”

**ADV NGCUKAITOBI SC:** Yes. Now, again, that 5.56  
millimetre high-velocity calibre, that is not a revolver, is it?

**ADV MAEMA:** No, no, it is not a revolver.

**ADV NGCUKAITOBI SC:** This is an R5.

**ADV MAEMA:** It is a rifle and R5.

20 **ADV NGCUKAITOBI SC:** Yes, thank you. And that takes us  
back to the question that was raised earlier, that there is a  
non-functional revolver with bullets on the scene, but actually  
what killed the deceased is a bullet from an R5.

**ADV MAEMA:** Yes, you can see from the kind of wound that  
it causes.

**ADV NGCUKAITOBI SC:** Yes. Now, what does that tell you

about the scene in relation to whether it is contaminated or not?

**ADV MAEMA:** Well, the scene is contaminated. The firearm was introduced into the scene later. It was not there in the first place.

**ADV NGCUKAITOBI SC:** Yes, thank you.

**ADV MAEMA:** That revolver that we spoke about.

**ADV NGCUKAITOBI SC:** Yes, thank you very much. Now, then, if you skip a page, you go to 1A/456, you have what is  
10 called scene photographs taken by the LCRC.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** If you skip that first paragraph, because it is consistent with what you read earlier, but just look at the second paragraph, which starts with medium and high velocity.

**ADV MAEMA:**

“Medium and high velocity blood splatter visible on the headboard is consistent with the wounding of the deceased in a lying  
20 position on the bed.”

**ADV NGCUKAITOBI SC:** Yes. Now, just stop there. I mean, look at the pictures where it says, see photographs below. If you look at those pictures.

**ADV MAEMA:** Yes. Those pictures are horrible.

**ADV NGCUKAITOBI SC:** Yes, well, no, yes, I understand.

But I just want to talk about what the expert is saying, that this is consistent with someone shot in a lying position on a bed.

**ADV MAEMA:** Yes, medium and high velocity blood splatter visible on the headboard is consistent with the wounding of the deceased in a lying position on the bed.

**ADV NGCUKAITOBI SC:** Yes, are those pictures, what do they depict?

**ADV MAEMA:** Which is not, depicts somebody who is  
10 helpless, not somebody who is attacking, who is in an attacking mode.

**ADV NGCUKAITOBI SC:** Now, there are three pictures there. There is the main one that shows a person who is lying on bed in a literally pool of blood.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** And then there is a smaller picture on the left side where there is this, what kind of a firearm is that?

**ADV MAEMA:** That is a revolver.

20 **ADV NGCUKAITOBI SC:** Yes. And then there is the smaller picture again on the right side.

**ADV MAEMA:** It shows, it is a closer picture of the head and neck area.

**ADV NGCUKAITOBI SC:** Yes, yes, yes. Now, we have seen the police own expert commenting about a revolver, that this

is a non-functional revolver.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: And then you go back, sorry, you go forward to paragraph eight, the following page, 1A/457.

**CHAIRPERSON**: Counsel, I am sorry, before you proceed, if we were to go back to Sergeant Behari's, is that a report? It said GSM36.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: This is a sergeant attached to the police  
10 force, attached to the ballistic section of the SAPS.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: Now, look at paragraph 3 there, the opening line says:

“On 2010, October the 3rd, during the performance of my official duties, I received a sealed evidence bag.”

**ADV MAEMA**: That is correct, Chairperson. It is the 10th of March, not the 3rd of October.

**CHAIRPERSON**: Oh, the 10th of March.

20 **ADV MAEMA**: Yes, yes, yes.

**CHAIRPERSON**: I beg your pardon. Yes, thank you. He says that you received a sealed evidence bag.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: With that number that appears there, FSC-1191739, from the case administration of the ballistic section

containing the following exhibits.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: Now, the ballistic section he is referring to, which one will that be? Will that include Mr Steyl's ballistic report?

**ADV MAEMA**: Yes, that is the same section, but the section has various, the ballistic section has case administration and also has case analysis. So the cases would be received at case administration and then we will proceed to case analysis  
10 where then the analyst would then do the analysis.

**CHAIRPERSON**: And who would have collated the evidence bag material?

**ADV MAEMA**: The evidence bag would have been put together by an official, a police officer on the scene. They would have collected it and sealed it into this sealed bag.

**CHAIRPERSON**: And Sergeant Behari would have prepared this report based entirely on the evidence bag, only.

**ADV MAEMA**: On the sealed evidence bag that he received.

**CHAIRPERSON**: Only.

20 **ADV MAEMA**: Only. Not on anything else.

**CHAIRPERSON**: She would not have had regard to Mr Steyl's report?

**ADV MAEMA**: Not at all.

**CHAIRPERSON**: What probative value, therefore, should be attached to her report, Sergeant Behari's report?

**ADV MAEMA:** Chairperson, the value attached to the report is that the...

**CHAIRPERSON:** The probative value.

**ADV MAEMA:** Yes, the evidential value thereof is that this firearm is not capable of firing.

**CHAIRPERSON:** Not just the firearm. The entire report.

**ADV MAEMA:** Yes.

**CHAIRPERSON:** If you base your report on a single piece of evidence, let me put it that way, and you disregard the  
10 expert's report, the expert who would have visited the scene, and you disregard or you do not even make mention of it, what should we make of that report of hers? Should we attach any weight to it, in simple terms?

**ADV MAEMA:** Chairperson, the weight that you attach to it is, is this a firearm? Can it fire or can it not fire? Without – because if you are going to have regard as to what the people  
at the scene are saying, it might influence your finding. Instead of doing your job and checking whether this thing is a firearm or not, you would be influenced. So rather, use  
20 your skill that you have been equipped with to determine whether it is a firearm or not, without regard to whether this thing, this object that you are looking at, actually fired rounds or did not fire rounds. So you just look at the mechanics of the item to determine whether it is capable of firing or not.

**CHAIRPERSON:** But look at her experience there, because

you seem to be just focussing on the broken firearm. And to me, she was given a bag. And as an expert who has received in-service training in the following aspect of forensic ballistic science, when you look at those features of her in-service training, identification of ammunition, use of microphone, you go on and on and on. Next page. Crime scene examination and recording techniques. You see that? Next page.

**ADV MAEMA:** I can see that.

**CHAIRPERSON:** 2.1.15. Crime scene examination and  
10 recording techniques. And documentation of examination results. Internal forensic ballistics. Intermediate forensic ballistics. External forensic ballistics. Terminal forensic ballistics. Et cetera, et cetera. So as somebody who has not visited the crime scene and is experienced in relation to these matters, should she not have had regard to the ballistic export report of Mr Steyl?

**ADV MAEMA:** Considering what the experience that he has from just the training that he has, the internal forensic, he also explained what it is, intermediate as well as external.  
20 He was able and capable and well-qualified to do more. But all he did was just to check the mechanisms of the firearm without applying his extensive forensic knowledge that he appears to be having in paragraph 2.

**CHAIRPERSON:** Then my question again, what weight should we attach to Sergeant Behari's report, if any?

**ADV MAEMA:** Chairperson, it depends on what the investigators on the covering letter have asked him to do. If they had specifically ...[intervenes]

**CHAIRPERSON:** No, no, no. I am talking about the weight.

**ADV MAEMA:** Oh, the weight.

**CHAIRPERSON:** Yes, we have to make an assessment of this evidence. I am asking you about the evidential value, the probative value of this evidence. Because it has been referred to us, and what should we make of it if you juxtapose  
10 this to the ballistic report of Mr Steyl?

**ADV MAEMA:** Chairperson, the official could have done more, but only did a limited. So it is of a limited evidential value. And the official could have done more. It would have been more useful.

**CHAIRPERSON:** Yes, thank you.

**ADV BALOYI-MERE SC:** I have a follow-up. And I hope it clarifies the mist that might be in my mind, in my brain. Behari says, or Sergeant Behari, says he received, is it a he or she?

20 **ADV MAEMA:** It is a he.

**ADV BALOYI-MERE SC:** It is a he. Received a bag, a sealed evidence bag.

**ADV MAEMA:** Yes.

**ADV BALOYI-MERE SC:** Obviously from the scene of crime.

**ADV MAEMA:** That is correct, Chairperson.

**ADV BALOYI-MERE SC:** Where someone was murdered.

**ADV MAEMA:** Yes.

**ADV BALOYI-MERE SC:** Did, or in the items listed at 3.1 to 3.5, 3.4, is there any cartridge and guns that were discharged by the police officers? Guns and cartridges that were discharged by the police officers. And while you are there, tell us the procedure that needs to be followed where there is a crime scene and ballistics are involved. What do we seal in the evidence bag? What do we take for ballistic evaluation and for the purposes of a ballistic report?

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**ADV MAEMA:** Chairperson, what ordinarily happens is if you find cartridges and a firearm on the scene, you send all of them to the ballistic unit of the forensic lab for analysis and comparison. And ordinarily what they do is when they receive the firearm, then they take the firearm and they fire shots for test purposes. So those rounds that they have fired for test purposes, they keep separate from the rounds that they received from the scene. And then when they look at the, when a bullet is emitted from the barrel of the gun, the barrel, the front part, because of the shape of the barrel, it will have some marks. So then what happens is those bullets that are collected on the scene are compared with the test bullets that were fired at the ballistic lab, to see whether the marks that are caused on the test bullets are the same as the marks that are caused on the bullets that were collected from the scene.

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So then if the marks are identical, what they do is they look for eight features.

**ADV NGCUKAITOBI SC:** Mr Maema, just remember the question. I know when you know a subject, you may want to educate us about it. There will be another time to educate us about the marks discharged. But for now, is there any evidence that Ms Behari considered the firearm that was used at the scene by the police?

10 **ADV MAEMA:** No Chairperson, remember, this revolver was placed there.

**ADV NGCUKAITOBI SC:** I understand. But the question is, is there any evidence that she considered the firearm that was used? We know the firearm is described by Mr Steyl, 5.56 millimetre high-velocity weapon.

**ADV MAEMA:** Yes. No, there is no evidence that that firearm was analysed.

**CHAIRPERSON:** Thank you for putting it simply for us. Took a long time to get there. Thank you.

20 **MS RAMAGAGA:** Thank you. Can you clarify the Panel on who determines the scope of the forensic examiner? In this case, who would have determined the scope within which he would have to operate when he does or when he did the examination?

**ADV MAEMA:** The investigating officer in the covering sheet when the exhibits are sent, would determine the scope of the

examination.

**MS RAMAGAGA**: And he would be confined to work within the prescribed scope?

**ADV MAEMA**: That is correct, Chairperson.

**MS RAMAGAGA**: Thank you.

**ADV NGCUKAITOBI SC**: I think just to complete this part, if we are at 1A/457...

**CHAIRPERSON**: 1A?

**ADV NGCUKAITOBI SC**: 457.

10 **ADV MAEMA**: 457.

**ADV NGCUKAITOBI SC**: Under the heading ballistic statement, are you there? Can you see the heading ballistic statement?

**ADV MAEMA**: Just underneath paragraph 8.

**ADV NGCUKAITOBI SC**: Yes. And then just read the last sentence there.

**ADV MAEMA**: The last sentence reads:

“The firearm used by the shootest was not tested and compared to the 5.56 cartridges cases found on the scene.”

20

**ADV NGCUKAITOBI SC**: This is the whole point that is being raised, is that you now have a police expert where the main instrument used to kill is not tested in this so-called sealed evidence bag.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC:** Question then is, what weight should be given to that evidence which excludes the only instrument that would be most useful?

**ADV MAEMA:** Then we give it, less to no weight.

**ADV NGCUKAITOBI SC:** Yes. Thank you. Can you explain, I mean, why would the police not test the firearm used? Just does not make any sense to me.

**ADV MAEMA:** Just does not make sense. It is bizarre.

**ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, before you  
10 go on, let me take you two pages back to paragraph 5, where it is headed Statement.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And Sergeant Behari says, he received instructions from Mr Kuba of the ICD.

**ADV NGCUKAITOBI SC:** No, sorry, this is Jacobus Steyl.

**CHAIRPERSON:** Is it Jacobus Steyl?

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Okay.

**ADV NGCUKAITOBI SC:** Ms Behari gave the previous  
20 report.

**ADV BALOYI-MERE SC:** Oh, okay. Then maybe the question that, no, no, no. It would still apply if I go back to 8, where you have just said the shootest firearm was not tested. Because this is now the ICD, the present day IPID, who are supposed to investigate any case where a civilian

got shot by the police. But they gave instructions to this forensic ballistic person without giving, without making available the shootest firearm. What would that mean or imply? Mr Maema, I am reading paragraph 5 together with the last sentence at paragraph 8.

**ADV MAEMA**: Oh, yes, that the firearm used by the shootest was not tested and compared with the 5.56 cartridges found on the scene.

**ADV BALOYI-MERE SC**: And more so because the  
10 instruction comes from the Independent Complaints Directorate.

**ADV MAEMA**: Yes.

**ADV BALOYI-MERE SC**: The present day IPID.

**ADV MAEMA**: That is correct.

**ADV BALOYI-MERE SC**: Which, in law, is obliged to investigate any case where a civilian dies at the hands of the police?

**ADV MAEMA**: Who would be expected to go at least more in-depth to uncover the mistake? Chairperson, it is.

20 **ADV BALOYI-MERE SC**: What explanation would you give, or what is the implication of this situation?

**ADV MAEMA**: No, it is worrying. It is not satisfactory. You would have expected the IPID to have done better.

**ADV NGCUKAITOBI SC**: Is not that the point being made, that it is not do better or do less? The law requires you...

**ADV MAEMA:** To do the right thing.

**ADV NGCUKAITOBI SC:** ...to do the right thing. The question here is whether they met the standards required of them by law.

**ADV MAEMA:** No, they did not.

**ADV BALOYI-MERE SC:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you. Then, I wanted to take you to a fuller set of these pictures, and also the version of the eyewitness, because there was an eyewitness to this particular scene, the wife of the deceased.

**ADV MAEMA:** That is correct, the wife of the deceased.

**ADV NGCUKAITOBI SC:** And that you will find at GSM39.1 at 1A/466.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** 1A/ 466.

**ADV MAEMA:** GSM39.1.

**ADV NGCUKAITOBI SC:** Yes, statement of client.

**ADV MAEMA:** Statement of Denise Haley.

**ADV NGCUKAITOBI SC:** Yes. Maybe just go take us through the statement.

**ADV MAEMA:** Denise Haley mentions her ID number.

“I am a second year student at Addington Hospital, living out. On Wednesday, the 25th of November, 2009, I was at the deceased mother's house, which is at (this

number) in KwaMashu. I have been in a relationship with him for approximately a year and I have been living with him ...[intervenes]”

**ADV NGCUKAITOBI SC:** Mr Maema, I am sorry to cut you, but I have just realised that there is a problem. The statement you are reading is cut off from page 1, so you have to look at file 2 of the black files. Yes, one of those, file 2.

**ADV MAEMA:** I have file 2, Chairperson.

10 **ADV NGCUKAITOBI SC:** Page 395.

**ADV MAEMA:** 395.

**ADV NGCUKAITOBI SC:** 395. Right up to 405, just to see that the entire statement is there.

**ADV MAEMA:** Oh, yes.

**ADV NGCUKAITOBI SC:** Yes, all right. So let us use this version, rather.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** You can start at the beginning.

**ADV MAEMA:** This is a statement of Denise Haley with her  
20 ID number.

“I am a second-year student nurse at Addington Hospital, living out. On Wednesday, the 25th of November, 2009, I was at the deceased mother's house, which is at (this number) at KwaMashu. I have

been in a relationship with him for approximately a year and I had been living with him, Sakele Prince Thabete, at his address at G187 KwaMashu, for the past six months. On this day, the deceased came to fetch me from his mother's home at 9.30 and 10h00. On that day, because I was well, they gave me off at work at about half past two in the afternoon, 14h30.

10 I then contacted the deceased, and he

arranged via his mother, Constance Thabete, and another friend of his to fetch me from work at about 14.30. From that time, 14.30, I was at his mother's home. It takes about five to 10 minutes to travel from his mother's house to our house. The house

at C187 is a freestanding. It has a fence. It comprises four rooms and an extension of a bathroom. There is a diagram attached hereto. At this stage, there was nobody in the house. It is just the two of us that lived there.

20 We entered the house, put the lights on, had a bath, had something to eat, then we got into bed. We got into the bed at around

22h45. We were having a general discussion, more so about how I felt, because he knew that they had let me out early that day. We fell off to sleep. At about 01h15 in the morning of the 26th, that is Thursday, we were awakened by somebody kicking down the front lounge door. When the door was kicked in, the damage to the door related to where the lock was.

10 No photograph was taken, but the lock was repaired and replaced. The repair to the door would have been done by the deceased's elder brother by the name of Sihle and his friend. The distance from the lounge to the main bedroom is approximately three to four metres. By the time we really got up and acclimatised to what was happening, they were already at the main bedroom door. There were two

20 male figures. There was one Indian male who was shorter than the white male. The main bedroom had been left open, and they were at the door.

Each room has one window. The outside light comes in via the lounge window, which

has a lace curtain lighting up a part of the main bedroom. At that point, the white man then shouted, Ndagó! That is the nickname of the deceased. The deceased responded by saying, yes! The white male had a torch, which he flashed on the two of us. The white person then instructed the Indian male, Parayaki, who was carrying his large firearm, to shoot.

10 The deceased was trying to protect me, because I was naked, by raising the duvet.

At that stage, I was in the process of getting up in a position where I was seated with my feet on the ground. And at that stage, the first shot was fired, and it struck him on his right arm. The distance between the

shootest and the deceased would be approximately one to two metres. The deceased then shouted, do not shoot! At this

20 stage, I was still in the bedroom, but now out of the bed standing. I was on the right-hand side of the bed next to the dressing table. The white male came to me, pulled me by my hair, and took me out of the bedroom.

I was now standing in the lounge at the

entrance of the main bedroom while the other two remained in the room. After the first shot, I do not know how many shots, in fact, were fired, because I just heard repeated sounds. After I was pulled at the back, the white male gave further instructions to the Indian male to fire shots. Other shots were then fired. As this was being done, the white male made a remark directed at the deceased, saying, die! As he was being shot at, the deceased shouted out in Zulu, asking what he had done.

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At this stage, the deceased was still on the bed. The deceased, at all stages, never moved from the bed. Everything went silent.

No further shots were fired. At this stage, I said nothing. I could not scream or shout,

because I was in a state of shock. When they saw that I was completely naked, they

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then asked me to get dressed. I then told them that I am a nurse, may I go and check the deceased, because maybe I could help him. At this stage, the white male that was there then threw a pistol on the right side of the bed on the pillow. Before I entered the

main bedroom, that is when the two other males, the one black male and the other white male, had come into the lounge.

The white male, Mostert, then asked, what happened here? The first white male then responded to the second white male by saying that the deceased had fired shots at them and in retaliation, thereof, they fired shots at him. I went to the left-hand side of the bed and held the deceased's left hand

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and I determined that he was dead. The white male called me out of the room and asked me where the deceased had got the gun from. I responded by telling him that the deceased had no gun and that I had seen the other white male throw the gun in the vicinity of the deceased.

He threatened to say that he would arrest me if I am telling lies. I told him I swear he did not have a gun. We were fast asleep. The black male then said to me that I must not say things that I am not sure of. I was then escorted out of the house. I was seated outside on the side of the house using one of the chairs from inside the house. The

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white male and the second white male and the Indian male were still in the house. The black male accompanied me outside. The second white male then had them phone KwaMashu Police Station asking for backup, indicating that there was a shootout at the deceased's home at G187 KwaMashu.

10 He then reported that one was deceased and several were injured, and then asked for paramedics and then hung up. The second

white male then left their yard and returned with one accused. The second white male was then telling Ngaba, come look at your friend and see your friend. That is when they entered the house. I was still on the outside. Then came back out of the house with the accused. I learned that they had

20 arrested three persons who were in a BMW, and the police brought one into the house. Shortly thereafter, three SAPS vehicles arrived. They were standing by the gate, which is a distance from where I was seated. The African male then came to me and said, I must go and sit in one of the police vehicles. This was at about 02h00 to 02h15.

We had gone to bed at 22h45. The incident happened at 24h45. Police and SAPS KwaMashu had come at around quarter past 2 in the morning, 02h15. The Indian male, together with another person that I had not seen, had exited the house before I could go to sit in the vehicle which they asked me to do. There were two vehicles. One was a navy BMW, and the other was a Quantum kombi.

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I then noticed that there were two other persons that were detained in the BMW. The second white male, Mostert, came to the Quantum where I was seated, and at the entrance, then said to me, girl, I am going to arrest you if you tell lies. White male number two then referred to another white male who had come there by the name of Charles. They then said that they need to go to Ntuzuma to write a statement. On the road next to the Quantum, they took photographs of three guns on the road. These guns being an AK-47, another small gun, looks like the one that was thrown next to the deceased, and another gun.

20

The Indian male and the black male and somebody else now then left to Ntuzuma. The black male was using a blue overall and was also holding a big gun. The African male had asked me again while I am in the Quantum as to where the deceased got the gun from, and I had repeated that he had no gun. He said, how sure am I that he did not have a gun? I told him that I make the bed every day and that there was no gun there.

10

We had just come home. We had a bath. I had gone into bed and he returned on the bed with me.

I explained to him what happened, and it would have been impossible to get a gun because there was no time to do that. He left me and went back. While this was all

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happening, the first group of policemen from Organised Crime were all together near the Quantum where I was, where the SAPS from Ntuzuma and KwaMashu were running up and down. The second white policeman, Mostert, then came and started questioning me in the Quantum, asking me inter alia my occupation, where I lived, my age, where the

deceased got the money from, whether I had seen the deceased with loads of money, if I have seen any suspicious in the house, our sex relationship.

He was then making remarks to the effect that I was no more than a prostitute to the deceased. He advised me the deceased had other girlfriend and referred to a Gloria Mthetwa, and she had directed them to the house. He then said she lived in a P section

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in KwaMashu, but I believed that that was a lie. The second white male, I did not know his name, but I was describing this incident to other people. They then told me that he must be Mostert, the inspector. I described him as being tall, big in size, huge tummy, thick legs, wearing shorts, boots, and soft

denim shirt, light blue, and had two black cell phones. It appears that the Indian male who did the shooting was Parayaki, and the first white male, I could not get his name.

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I will be able to identify them. The first white male is medium build in a hat and a black t-shirt and cargo pants. I managed to get the name of Parayaki. Whilst on the phone, they

were repeating some serial numbers of firearms that were used in this incident. The Indian guy said he used four rounds. At this time, the mother of the deceased had arrived. The police had then already taken my cell phone with them. The person who had my cell phone with him was Charles.

They saw a lot of people coming to the scene. I was then allowed to join their people. Before I could leave, there was a

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black female superintendent from KwaMashu police station who took my name and my details. To the best of my recollection, the first black male who came into the house with the second white male, he was wearing a black beanie, a black jacket, a long pants, and a gun that was hanging on him, a clipboard and a pen, he was writing.

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The black male, number two, was wearing an overall. He also had a gun, holding it in a ready position. Black man number three was wearing a camouflage jacket. He was standing on the left-hand side of the BMW that had other accused in it. The Indian

male, Parayaki, wearing a black t-shirt, grey overall pants. White male number one, Stoltz, was wearing a cargo pants, black t-shirt, cap. White male number two was a big guy, Mostert, soft denim shorts, short denim shirts, short, and boots. White man number three was Charles, black t-shirt with the white print cargo pants.

10 Then the members of the first unit, that is the Organised Crime left, that is when the mother of the deceased was allowed into the house. When I returned into the house, I then noticed the change. When I had first seen the white male put the gun on the right side of the deceased on the pillow, I noticed that there was a blood stain of a gun on the left-hand side towards the midsection of the deceased. There was no stain on the pillow. The deceased mother spoke to an Inspector  
20 Ncayo. They waited until 06h30 to 07h00, that is when the body was then removed. I have also now learned that Inspector Stoltz has opened a charge of attempted murder against the deceased.”

The statement is signed by Denise Utobeko Haley on the 3rd

of December 2009 at Phoenix at 11.50.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** It is commissioned by Shamila Williams.

**ADV NGCUKAITOBI SC:** Yes. Now, even in this case, there is an eyewitness not just to the shooting. Because unlike the other lady, they did not cover the face of this one. They just shot in her presence, and she could see the entire shooting.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** But in addition to that, she  
10 witnessed them planting a firearm.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** And the Advocate Batohi and Advocate Harrison say there is no case here.

**ADV MAEMA:** That is just beyond comprehension that when you have an eyewitness and this amount of evidence, you still say there is no evidence.

**ADV NGCUKAITOBI SC:** Now, I have not done all of the pictures, but perhaps you can use the bundle you have in front of you. Just go to 390. Yes, that same one. Just go to  
20 390.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes, and specifically 392, photograph 11.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** What can you see there?

**ADV MAEMA:** You can see the body of the deceased lying on the bed.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** Full of blood.

**ADV NGCUKAITOBI SC:** Photograph 12.

**ADV MAEMA:** Photograph 12 is a closer picture depicting some of the injuries as well as the blood on the bed.

**ACCUSED:** Yes. And then photograph 13 at 393.

**ADV MAEMA:** Photo 13 also depicts a closer picture of the torso of the deceased together with the blood and the firearm placed on the left.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** How do you call this? Ja, elbow.

**ADV NGCUKAITOBI SC:** Yes, I do not want to make jokes, but in Zulu, [indigenous language]. You know what happens with [indigenous language]?

**ADV MAEMA:** No, I do not.

**ADV NGCUKAITOBI SC:** Okay, I will tell you separately.

[Laughter]

20 **CHAIRPERSON:** Advocate Ngcukaitobi, not all of us know what [indigenous language] is.

**ADV NGCUKAITOBI SC:** No, it is just the elbow. It is basically, yes, anyway, let me not say anything. It is enough to say in Zulu it is called [indigenous language]. And also...

[Laughter]

**CHAIRPERSON**: You can tell, Counsel, what it is.

**ADV NGCUKAITOBI SC**: Absolutely not.

**CHAIRPERSON**: In Setswana, Advocate Maema, tell him, it is [indigenous language], not so?

**ADV MAEMA**: Yes, [indigenous language].

**CHAIRPERSON**: Yes, I see Madam Journalist over there, she is in stitches.

**ADV NGCUKAITOBI SC**: Yes, no, she knows what I am about to say and she knows I must not say it. [Laughter]

10 **ADV MAEMA**: I saw junior counsel also saying, do not say it. So maybe you should not say it, Counsel.

**ADV NGCUKAITOBI SC**: Absolutely not. And then photograph 14.

**ADV MAEMA**: It is also a closer picture showing the blood that was already dried on the neck area of the deceased. Together with an open wound on the cheek just below the right ear. There is also another wound there on the chest.

**ADV NGCUKAITOBI SC**: Yes. And also similar pictures at 394, photograph 15 and 16.

20 **ADV MAEMA**: That is correct, Chairperson.

**ACCUSED**: There is something about that photograph 15. You know, we spoke earlier about the impact of these high-velocity bullets that they actually cause maximum damage because they spin and explode.

**ADV MAEMA**: That is correct, Chairperson. They spin and

explode on contact.

**ADV NGCUKAITOBI SC:** On contact, yes. They spin and explode. And this is why they create these massive wounds.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** They create wounds as if it is a dagger, when it is actually just a bullet.

**ADV NGCUKAITOBI SC:** Yes. And what does that show in relation to someone who is trying to arrest?

10 **ADV MAEMA:** It shows the lack of restraint and the use of maximum force when it is really not necessary.

**ADV NGCUKAITOBI SC:** Yes. Now, this revolver that is found here, what do we know about it given from the evidence with its imperfections?

**ADV MAEMA:** We know that it cannot fire any shots. It is actually defective.

**ADV NGCUKAITOBI SC:** Yes. Thank you. Thank you, Mr Maema. Madam Chair, that closes the chapter on this particular scene. We have one more to go, which is from  
20 paragraph 234.

**ADV MAEMA:** Of the statement?

**ADV NGCUKAITOBI SC:** Of your statement, yes. And that is Bheki Themba, CAS 44/05/2010.

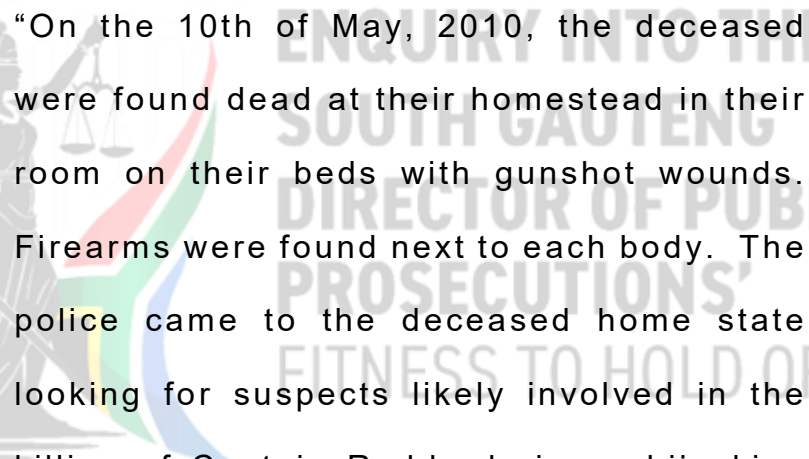
**ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** Is that the correct paragraph?

**ADV NGCUKAITOBI SC:** 234, Madam Chair. Page 1-60.

Could you give us your narrative on this one?

**ADV MAEMA:** Chairperson, it is contained in count 70 to 79 of the indictment. It concerns the killing of Musawenkosi Aubrey Ngcobo, Xolisani Ellen Ngcobo, and Simphiwe Sydney Shozi. The accused who were involved in this matter are listed on paragraph 235 on page 1-61, where accused 6, Neville Eva, accused 7, Ajit Singh Ganesh, and accused 18, Rubenren Naidoo. Chairperson, the narration starts on  
10 paragraph 236.



“On the 10th of May, 2010, the deceased were found dead at their homestead in their room on their beds with gunshot wounds. Firearms were found next to each body. The police came to the deceased home state looking for suspects likely involved in the killing of Captain Reddy during a hijacking incident. An enquiry by the police as to the whereabouts of the deceased, one of the  
20 family members pointed out the deceased's room.”

Paragraph 238:

“According to the witness, Sibongiseni Ngcobo, the police broke down the door of the deceased's room and immediately

started firing on the deceased who were asleep on their beds.”

Paragraph 239:

“The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforementioned firearms were planted.”

Paragraph 240:

10 “I attach here two photos of the scene marked GSM45.”

**ADV NGCUKAITOBI SC:** Those are at 1A/507.

**ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, we are referred to page 1-60. And that is count 70 to 79. Am I correct?

**ADV NGCUKAITOBI SC:** Correct, Chairperson.

**ADV BALOYI-MERE SC:** But count 70 to 79 refers to one, two, three people.

**ADV NGCUKAITOBI SC:** Yes, I think there are three.

20 **ADV BALOYI-MERE SC:** Three people. And the counts there, you have got two murders, count 71 and 72. And then the narration, does it mean that 236, paragraph 236, on 10th May 2010, the deceased were found, relates to the three?

**ADV NGCUKAITOBI SC:** Yes, the people that were killed.

**ADV BALOYI-MERE SC:** So they were found at the same

homestead in one room?

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Okay, thank you.

**ADV NGCUKAITOBI SC:** Madam Chair, it is not one room. We will see now in the photographs. I think two are in one room, and the third one is in a different room.

**ADV BALOYI-MERE SC:** But it is in the same homestead.

**ADV NGCUKAITOBI SC:** It is in the same house, yes.

**ADV BALOYI-MERE SC:** Okay.

10 **ADV MAEMA:** Chairperson, can I just indicate, I know Chairperson said I must wait for questions to be asked. 234.1, count 70, is housebreaking with intent to commit murder, and murder. So it is three counts of murder.

**CHAIRPERSON:** [Indistinct]...

**ADV MAEMA:** So the mistake is it is not and murder.

**CHAIRPERSON:** Ja, because there is only two murders on the counts.

**ADV MAEMA:** Yes, yes. So the third murder would be the one with the housebreaking.

20 **ADV NGCUKAITOBI SC:** Yes. So you are at 1A/507, correct?

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. So if we start with the photographs at 1A/508, photograph five 5 and 6. Let us start with photograph 5.

**CHAIRPERSON:** Page?

**ADV NGCUKAITOBI SC:** Page 1A/508. Yes, what can we see there, Advocate Maema?

**ADV MAEMA:** We can see, maybe I should just say, the bed and blankets.

**ADV NGCUKAITOBI SC:** And there is a protruding weapon that appears.

**ADV MAEMA:** There is a protruding weapon there, protruding from underneath the bed, underneath the blanket.

10 **ADV NGCUKAITOBI SC:** Underneath the blanket, yes. Then we go to photograph six.

**ADV MAEMA:** Yes, Chair, I am there.

**ADV NGCUKAITOBI SC:** Yes, what can you see there?

**ADV MAEMA:** There, we can see bodies of two individuals, the one in yellow and the one in a white and grey striped with a blue that looks like an overall pant. And we also see on the bed what is depicted at C, a firearm.

**ADV NGCUKAITOBI SC:** Yes. And what is the position of those bodies there?

20 **ADV MAEMA:** The bodies appear to be bodies of dead persons, people that are no more.

**ADV NGCUKAITOBI SC:** Yes. And then there is photograph seven at 1A/509.

**ADV MAEMA:** It shows a closer picture of the body in an orange t-shirt, as well as the firearm.

**ADV NGCUKAITOBI SC:** Yes. If you look at where the blood is coming from in his head, where is it coming from?

**ADV MAEMA:** The blood is coming from the left ear.

**ADV NGCUKAITOBI SC:** Yes. And then photograph 8. Now we see a third body there.

**ADV MAEMA:** We see a third body in front of the sofa there in a sort of unusual slumped position.

**ADV NGCUKAITOBI SC:** Yes. And that body is under B.

**ADV MAEMA:** That body is under B. And you can see blood,  
10 blood from the area next to the head, as well as the right arm.

**ADV NGCUKAITOBI SC:** Yes. Now, then we get closer to that body at photograph nine, 1A/510.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. I mean, I am not an expert in examining the age of people, but these look like just young boys.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Photograph 10 is also of the same, I would say, young man.

20 **ADV MAEMA:** The same young man who is on photo 9.

**ADV NGCUKAITOBI SC:** And he is also just covered in blood.

**ADV MAEMA:** He is covered in blood, yes.

**ADV NGCUKAITOBI SC:** Yes. And they seem to have moved him slightly at 1A/511, photograph 11.

**ADV MAEMA:** That is correct, with a view to show the injuries that are on the...

**ADV NGCUKAITOBI SC:** On the right shoulder.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** And then the same body again at photograph 12.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And then there is also this body at photograph 13, 512. I initially thought it is in a  
10 separate bedroom, but it looks like they were all in the same bedroom.

**ADV MAEMA:** All in the same bedroom.

**ADV NGCUKAITOBI SC:** Yes. But he is also facing down and is shot on the ear.

**ADV MAEMA:** That is correct, Chairperson. With his front body facing the bed that he is found on.

**ADV NGCUKAITOBI SC:** But he also appears to be a young boy.

**ADV MAEMA:** Also reasonably young.

20 **ADV NGCUKAITOBI SC:** Yes. And he appears again at photograph 14.

**ADV BALOYI-MERE SC:** Sorry, Advocate Ngcukaitobi, if I may bother you a bit.

**ADV NGCUKAITOBI SC:** No, that is fine.

**ADV BALOYI-MERE SC:** Please go back to photo 12.

**ADV NGCUKAITOBI SC:** Photo 12, yes.

**ADV BALOYI-MERE SC:** Photo 12. It is the same young man at photo 9, 10, 11.

**ADV MAEMA:** That is correct, Chair.

**ADV BALOYI-MERE SC:** Thanks.

**ADV NGCUKAITOBI SC:** Thank you very much. We were at...

**CHAIRPERSON:** We had photo 13, 14.

**ADV NGCUKAITOBI SC:** Photo 13 and 14, yes. Those are  
10 the photos. I mean, the first was just to get your comment on the position of the body in relation to this alleged attack against the police.

**ADV MAEMA:** Chairperson, one can see that he is in a supine position on the bed, just lying on the bed.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** The arms are actually underneath the body itself, which is not close to an attacking position at all.

**ADV NGCUKAITOBI SC:** And the same we see at 14 is now,  
20 you can see also the extent of the blood having flown from his ears to his nose.

**ADV MAEMA:** That is correct, Chairperson. When it flows like this, we call it oozing from the ear. Because you can see it flowing in volumes.

**ADV NGCUKAITOBI SC:** And then photograph 15. That appears to be the same young man, but they have now turned

him around and put him on his back.

**ADV MAEMA**: On his back, that is correct, Chairperson.

**ADV NGCUKAITOBI SC**: That is 15. And 16 also shows that they shot him in the stomach as well.

**ADV MAEMA**: Yes, that hand with the pointing finger, they are showing an injury on his stomach.

**ADV NGCUKAITOBI SC**: But his intestines are actually coming out.

**ADV MAEMA**: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC**: And that is the same as 1A/514, photograph 17.

**ADV MAEMA**: Photograph 17, that is where you see closer that the intestines are protruding from the body.

**ADV NGCUKAITOBI SC**: Yes. And we then go to a different body at 1A/515, photograph 19. This is now the young man with the striped shirt.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: And showing his injury. The one is also on the left side of the elbow.

20 **ADV MAEMA**: On the left side of the elbow, that is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. And then at A1/516, photograph 21, that also seems to have shot him also on either the same bullet entered from the front and exited on the back, or entered from the back and exited on the front.

Or they shot him twice.

**ADV MAEMA**: I think the more likely is the first one. The bullet would have entered the front and back. Front and exited on the other side.

**ADV NGCUKAITOBI SC**: Yes. And then there is a further bullet wound they are showing at photograph 22.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes. Which is closer in photograph 22 and 23, that is now closer to the right shoulder.

10 **ADV MAEMA**: Correct, Chairperson. Instead of the shoulder like the doctors do, I will say right chest. When you talk about shoulder, it is like you are talking about the back.

**ADV NGCUKAITOBI SC**: Oh, I see. You would say this is more like the chest.

**ADV MAEMA**: The chest area, yes.

**ADV NGCUKAITOBI SC**: You know, I do not like ...[intervenes]

20 **CHAIRPERSON**: But when you look at 22, I see that the right arm, you see the oozing blood on the upper arm of that hand.

**ADV MAEMA**: That is correct, sir.

**ADV NGCUKAITOBI SC**: Oh, yes, yes.

**CHAIRPERSON**: So is counsel not correct?

**ADV NGCUKAITOBI SC**: Yes. It is more the shoulder rather than the chest.

**ADV MAEMA:** Oh, yes. Because when you look at 23, one sees that lot of blood, yes. I agree. I agree, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. If you then go back to the one picture that shows all of these boys in the same place, which is photograph 8, that seems to be a scene of a massacre.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And how do they justify getting into a house and just killing?

10 **ADV MAEMA:** And just maiming youngsters in this manner. It is horrific.

**ADV NGCUKAITOBI SC:** Chair, thank you for the session. I think we have taken enough that the human spirit can take in a day.

**ADV BALOYI-MERE SC:** Before you close, do we perhaps know the ages of this young man? Where would we find the information about them?

**ADV NGCUKAITOBI SC:** It looks like Mr Ramogale says that that information might be on BT0029. I do not think we have  
20 seen the actual IDs. So it would be, they call them reputed ages.

**ADV BALOYI-MERE SC:** BT0029.

**ADV NGCUKAITOBI SC:** BT0029. Then there is one identification of body, which is B20027. So one of the boys was born in 1987. So I do not know at the time he was killed,

how old he was. He was killed in 2009. Then the next was born in 1985, which is at BT0038. So that one was 25. And then the BT0049 seems to be the third one, born in 1975. So he would have been 35 at the time. So that is the best we can find. They call them reputed ages, but we do not have the actual IDs or birth certificates. So I think the police just estimate your age when they find you dead.

**MS RAMAGAGA:** I suspect the post-mortems will assist. Thanks.

10 **ADV MAEMA:** I agree, Chairperson. The post-mortem would shed much, much more light, because the district's surgeons are very particular when it comes to the age of the deceased.

**ADV BALOYI-MERE SC:** But we can take note that two of the deceased were fairly young.

**ADV NGCUKAITOBI SC:** Yes, yes. We can collect a number of these ages. There are others that were 15, 16, 17, 18. We can collect all of the ages of the people they killed.

**ADV BALOYI-MERE SC:** I am asking these questions because the police would obviously have a reason to hand  
20 them down. And if they are young boys, then it raises questions, why were they not apprehended and taken before a Court? Instead of being slaughtered like this, because they were still young. Chances are that whatever they were hunted for, it might be that they did not commit that crime.

**ADV NGCUKAITOBI SC:** Yes, Madam Baloyi-Mere, although

I think Mr Maema will say that even if they did commit the crime, they must be sentenced properly through the criminal justice system.

**ADV MAEMA:** I agree, Chairperson. It must be processed through the courts of this country.

**CHAIRPERSON:** As you correctly say, Advocate Ngcukaitobi, a human spirit can take only so much. I think that takes us to the end of our day, Advocate Maema.

**ADV MAEMA:** I agree, Chairperson. It has been a long day.

10 **CHAIRPERSON:** It is time to adjourn and to reconvene tomorrow at 9 o'clock. Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair.

**CHAIRPERSON:** Advocate Maema, you are still on the oath, and you will take the stand again tomorrow at 9 o'clock. We adjourn.

**ADV MAEMA:** That is correct, Chair.

**ENQUIRY ADJOURNS UNTIL 18 FEBRUARY 2027**

**ENQUIRY ADJOURNS**

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