

**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**

**24 FEBRUARY 2026**

**DAY 31**



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

**PROCEEDINGS ON 24 FEBRUARY 2026**

**CHAIRPERSON:** Good morning everyone. Good morning, Ntate Chauke. Good morning, sir. Good morning, madam. Who else is new here? We missed you last week. Good morning, Ntate Ngcukaitobi.

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

**CHAIRPERSON:** Have you paid your fine? It has doubled.

**ADV MTSWENI:** I think I owe something like four days.

**CHAIRPERSON:** No, it is four days plus seven days.

10 **ADV NGCUKAITOBI SC:** No, it cannot be.

**CHAIRPERSON:** Pay your fine, Counsel.

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

**CHAIRPERSON:** Just let me know the name of the witness, it is Captain Mangena?

**ADV NGCUKAITOBI SC:** No, it is Lieutenant Colonel Chris Mangena.

**CHAIRPERSON:** Lieutenant Colonel.

**ADV NGCUKAITOBI SC:** Colonel, yes.

**CHAIRPERSON:** Lieutenant Colonel, good morning.

20 **LT-COL MANGENA:** Good morning, Chair.

**CHAIRPERSON:** Please bear with us if we forget your rank. It is important that we recognize your rank, but if we make a mistake and sometimes we say Colonel or Lieutenant, bear with us.

**LT-COL MANGENA:** I have no problem with it, Chair.

**CHAIRPERSON:** Yes. Lieutenant Colonel Mangena, do you choose to take an affirmation or an oath?

**LT-COL MANGENA:** I will take an oath, Chair.

**CHAIRPERSON:** You will take an oath. Do you swear that the evidence you are about to give will be the truth, nothing else but the truth. If so, raise up your right hand and say, “So help me God.”

**LT-COL MANGENA:** So help me God.

**CHRIS MANGENA** (duly sworn states)

10 **CHAIRPERSON:** Thank you, sir. Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Colonel Mangena, you have a statement in front of you, marked 2-1, named witness statement C Mangena, is that correct?

**LT-COL MANGENA:** That is correct, Chair, I have the statement.

**ADV NGCUKAITOBI SC:** Yes. And then if you go to page 299, that statement is signed on the 23<sup>rd</sup> of February 2026, is that correct?

**LT-COL MANGENA:** That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** Yes, is that your signature?

**LT-COL MANGENA:** That is my signature, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now that statement is not commissioned, but I want you to confirm under oath that it is true and correct and is binding on your conscience.

**LT-COL MANGENA:** That is correct, Chair, it is binding on

my conscience.

**ADV NGCUKAITOBI SC:** Yes, thank you very much. Can we then go back to the beginning of the statement. Now, there you have confirmed paragraph, what is your rank?

**LT-COL MANGENA:** Chair, I am a Lieutenant Colonel in the South African Police Services.

**ADV NGCUKAITOBI SC:** Yes. And where exactly do you work in the SAPS?

**LT-COL MANGENA:** Chair, I am stationed at the Forensic Science Laboratory at the Ballistics section in Pretoria.

**ADV NGCUKAITOBI SC:** Yes. It says here Forensic Science Laboratory.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** What does that mean to people who are not familiar with the organisation?

**LT-COL MANGENA:** The Forensic Science is the lab that do analysis on the cases or exhibits that have been sent to the lab for analysis, maybe from different sections. So I am at the Ballistics section where I am involved in the analysis and examination of firearm and firearm-related cases.

**ADV NGCUKAITOBI SC:** Okay. So when it says ballistics, it is people that are involved in the scientific analysis of firearm-related cases.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Okay, thank you. We have dealt

with paragraph 2. You confirmed that the statement is intended to address your knowledge of the events of the Cato Manor Unit, the Serious and Violent Crime Unit.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Thank you. Now, I just want you to take us through your resume because you are coming in both as a factual and an expert, you see, because you are coming to bring your expertise. So we just need to qualify you as an expert. Can you just take us through your career highlights, when you started in the police, how many cases have you done, what are your duties and what are some of the high-profile cases, maybe not high-profile, but important cases that you have examined and given expert testimony on?

**LT-COL MANGENA:** [Indistinct]... [microphone off]

**ADV NGCUKAITOBI SC:** Sorry, apparently your microphone is off.

**LT-COL MANGENA:** Sorry, Chair.

20 “I have been continuously attached to the Ballistics section since 1995 for approximately three decades, 32 years. I have specialized exclusively in the forensics examination analysis and reconstruction of firearm-related incidents. Since joining the Ballistics

section in 1995, I have specialized exclusively in the forensics examination of firearms, ammunition, fired bullets, fired cartridge cases, gunshot wounds, and firearm-related crime scenes.

Today, I have personally examined in excess of 6,000 forensic ballistic cases.

My duties as included the forensics examination and identification of

10

firearm, ammunition, fired cartridge cases, and fired bullets and fired

cartridge cases, the reconstruction of shooting incidents through analysis of

wound characteristics, bullet trajectories, bloodstain pattern

analysis, and crime scene geometry, determining the range of fire and the

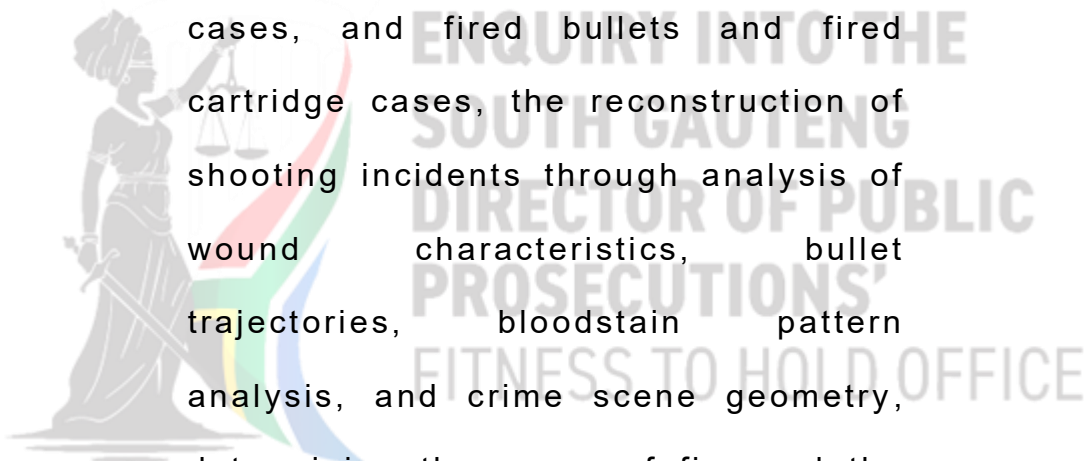
relative position of the shooter and the victim. 8.4 I have examined an

20

interpretation of gunshot residue and firearm discharge patterns. The

documentation and analysis of ballistics evidence using specialized microscopic

and macro photographic techniques. The preparation of forensic reports and



presentation of expert testimony in criminal courts throughout the Republic of South Africa. I regularly testify as an expert witness in courts and other formal proceedings. My testimony has been accepted as part of evidence in numerous high-profile matters involving the forensic ballistic reconstructions, including the Oscar Pistorius case or trial, or the Senzo Meyiwa trial, also the Luke Tibbet matter, or the Luke Tibbet trial.”

**ADV NGCUKAITOBI SC:** Yes, and then you have received formal training as set out in paragraph 10, 11, and 11. Is that correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, thank you. You can skip those. And, but you have also gained expertise as set out in paragraph 12, 13, 14, 15, 16, 17. Is that correct?

20 **LT-COL MANGENA:** That is correct.

**ADV NGCUKAITOBI SC:** And you have also qualified formally through the national diploma in policing from the University of South Africa, is that correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And you have also obtained

international training under the aegis of the Federal Bureau of Investigations, which is the FBI.

**LT-COL MANGENA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes. And you have also attended advanced training by Bevel Gardner and Associates, which is a firm based in the United States of America, as set out in paragraph 20.

**LT-COL MANGENA**: That is correct, Chair, it was in 2010 and 2012 where I did the bloodstain pattern analysis with  
10 Ross Gardner from the USA.

**ADV NGCUKAITOBI SC**: Yes, thank you. And over the years, you have visited and studied the manufacturing processes of firearms and ammunition manufacturers, as set out in paragraph 21, is that correct?

**LT-COL MANGENA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: And as a consequence of that cumulative knowledge, you have expertise not only in ballistics, but also in firearm manufacturing methods, ammunition, and mechanical and material characteristics that  
20 are relevant to the forensic identification and analysis. Is that correct?

**LT-COL MANGENA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes. You confirm that you are an expert in ballistics and analysis and crime reconstruction?

**LT-COL MANGENA**: That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Well, you are recognized as such even by judges, apparently. Thank you. You should not be shy of your achievements. There are very few black people of your expertise, so we are proud to have someone like you. Now ...[intervenes].

**CHAIRPERSON:** Counsel is taking our shy. Lieutenant Colonel, to commend you for this remarkable achievements. Thank you, Counsel.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. I saw  
10 Lieutenant Colonel was looking very, very shy when I called him an expert. All right, thank you. If we can just start then, perhaps you can now start giving narratives and explanations under the scope of forensic work. What does that actually entail, as set out between paragraph 23 and 25?

**LT-COL MANGENA:** The scope of forensic work, Chair:

“As my forensic duties regularly involve  
attending crime scenes, examining  
ballistics-related evidence, and  
reconstructions of shooting incidents.  
20 In performing my reconstruction, I  
examine and analyse the gunshot  
wounds or gunshot or bullet trajectories,  
the bullet impact mark and ricochet  
patterns, the cartridge case distribution,  
the blood stain pattern analysis, the

crime scene photograph and physical layout, and the spatial relationship between the shooter, the victim, and the surrounding structures.”

**ADV NGCUKAITOBI SC:** Yes. All right, thank you. And then, from paragraph 26, you deal with the methodology that is followed in crime scene reconstruction. Can you just explain that what you actually do there when you reconstruct a crime scene. Now, the reason this is important for your  
10 evidence is that in one of the rulings that was made by Advocate Nazeer Cassim, he made an adverse comment about you saying that you came to the scene after the incident and for some reason, that would tend to undermine the work that you have done to reconstruct the scene. So it is very important for us and the panel to understand this concept of a crime scene reconstruction. What is it? What happens and why is it valuable to indicate the pattern of an offense?

**LT-COL MANGENA:** Chair, I will say it is impossible for us to attend all the crimes, the shooting incidents or shooting  
20 crime scenes. Now, what we normally do is, if we cannot attend on time, the LCRC or the photographer, the official photographer, will document the crime scenes. By documenting, they will take pictures of the whole crime scenes and reserve the photos. And if somebody has been killed on the scene, the pathologist will conduct the post-

mortem. And when I do a reconstruction, I will look into the crime scene photos that have been provided and I will also look into the post-mortem reports that the doctor has compiled. Based on those two, I will look at what is important for me, how do I determine or how do I reconstruct the incidents. Those are the physical evidence that I am going to use so that to get to my conclusions or to my findings.

**ADV NGCUKAITOBI SC:** Ja, but what is the methodology of a reconstruction? What do you actually do to reconstruct a  
10 crime scene?

**LT-COL MANGENA:** When you do reconstruction of the crime scene, we are basically, how can I put it, we are basically reconstructing the incident based on the physical evidence that is there, so how did the incident happen and why did it happen and in which sequence did the incident occur.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** I suppose you cover this aspect from paragraph 27 of your affidavit. Do not shy away from  
20 refreshing your memory from your affidavit to give full details, if you wish, as you have stated, so that you do not give a summary of what is stated. If it is necessary, you may read. If you want to elaborate, you may elaborate. Am I correct that the answer to the question by Counsel regarding the methodology that you use seemed to be covered under

paragraph 27 from 26?

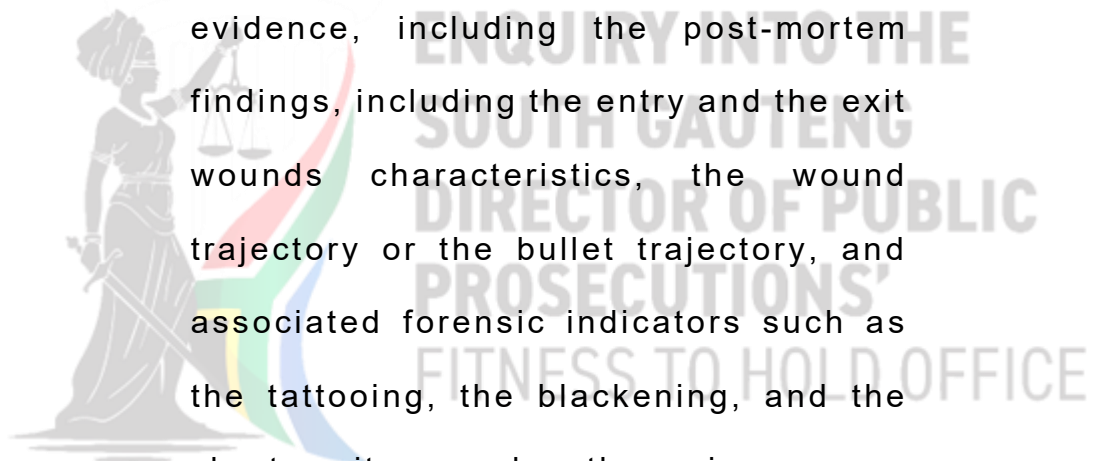
**LT-COL MANGENA:** From paragraph 26, Chair.

**CHAIRPERSON:** Yes.

**LT-COL MANGENA:** -:

10 “In reconstruction of the shooting incident, I apply the established forensic ballistic principles and reconstruction methodologies. These methodologies involve a systematic examination of all available forensic evidence, including the post-mortem findings, including the entry and the exit wounds characteristics, the wound trajectory or the bullet trajectory, and associated forensic indicators such as the tattooing, the blackening, and the short exit wounds, the crime scene photographs and physical layout, the bullet impact marks, the ricochet patterns, and the projectile damages, the cartridge case location and distribution pattern, the blood stain pattern, including drips pattern, impact spatter, swipe, wipe, pulling, and flow patterns and the relative position of the

20



deceased, the firearm, and the surrounding structures.”

**ADV NGCUKAITOBI SC:** Ja, I think you should continue with the remainder of, from paragraph 28, yes.

**LT-COL MANGENA:** -:

10 “I analysed wound trajectories in relation to anatomical position and scene geometry in order to determine the probable position and orientation of the deceased and the shooter at the time each shot was fired. I also examined whether the physical evidence is internally consistent or whether it corresponds with or contradicts the particular version of the event.”

**ADV NGCUKAITOBI SC:** Yes, if you can just stop at 29. Just explain that because it does become important later in your analysis.

20 **LT-COL MANGENA:** Right, Chair, when I look at the evidence, when you do crime scene reconstruction, normally it is to test the version of the witness or the accused in the case, by looking at the evidence, whether his statement is corroborating the evidence that we see in the crime scene or it differs from the evidence that we see on the crime scenes.

**ADV NGCUKAITOBI SC:** Yes. So a witness will say this is, let us make an example that arises in this case. A witness says, I shot because I was attacked. Does your methodology address that?

**LT-COL MANGENA:** It will address that, Chair. You will look at the type of gunshot wounds, the position of the wounds, and the position of, the most likely position of the deceased or the victim when shots were fired. That will direct to whether the witness is telling the truth or the witness  
10 version does not corroborate what we see on the crime scene or on the victim that has been shot.

**ADV NGCUKAITOBI SC:** Yes. Is this what you are referring to when you say you are saying you are tracking whether the physical evidence is consistent or contradict with a version of events?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Alright, thank you.  
Paragraph 30.

**LT-COL MANGENA:** On paragraph 30:  
20 “Where forensic indicators are inconsistent with reported account, I identify and document those inconsistencies based on objective forensic analysis.”

**ADV NGCUKAITOBI SC:** And then paragraph 31.

**LT-COL MANGENA:** -:

“My reconstructions concludes, my reconstruction conclusions are based on the totality of the physical and forensic evidence interpreted in accordance with accepted scientific and forensic principles.”

**ADV NGCUKAITOBI SC:** Yes, thank you very much. All right, can we then move on to Cato Manor and your  
10 involvement. You deal with this from paragraph 32. How did you get involved in Cato Manor?

**LT-COL MANGENA:** Chair:

“On the 12<sup>th</sup> of January 2012, the Divisional Commissioner, Forensic Science was formally requested to assist in an investigation conducted by the Directorate of Priority Crimes Investigation, DPCI, into allegations concerning the shooting incident  
20 involving members of the Cato Manor Serious and Violent Crime Unit. The request was for forensic assistance in analysing crime scene photographs and reconstructing shooting incident involving members of the Cato Manor

Unit.”

**ADV NGCUKAITOBI SC:** Yes, carry on, 33 and 34.

**LT-COL MANGENA:** -:

10 “The request arose after allegations were published in the Sunday Times newspaper on the 11<sup>th</sup> of January 2011 concerning alleged unlawful shooting by members of the unit. In response, Lieutenant General Anwa Dramat and the National Head of DPCI established

10 a specialised task team under the command of Major General Mabula to investigate these allegations. The purpose of the request was to obtain expert forensic analysis and reconstruction of the shooting incident reflected in crime scene photographs obtained from the Local Criminal Record Centre in order to determine the

20 forensic consistency of the incidents. A copy of this letter is attached as CM1.”

**ADV NGCUKAITOBI SC:** Yes, can you go to page 2-100.

**LT-COL MANGENA:** 2-100?

**ADV NGCUKAITOBI SC:** Yes, 2 at the bottom, 100. Well, it is also at the top, 100 as well. What is that document?

**LT-COL MANGENA:** This is the letter that was sent to the forensic science lab, where Brigadier Gouws received it and it was from the office of, I think, General Mabula.

**ADV NGCUKAITOBI SC:** Yes, if you look at 2-101 at the bottom, is that ...[intervenes].

**LT-COL MANGENA:** 2-101?

**ADV NGCUKAITOBI SC:** Ja, at the bottom.

**LT-COL MANGENA:** At the bottom is the signature of General Mabula.

10 **ADV NGCUKAITOBI SC:** And he was a Major General and the Deputy Provincial Commissioner of North West.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, in terms of this letter, he is asking the Divisional Commissioner of Forensic Services to be involved in Cato Manor.

**LT-COL MANGENA:** He was requesting the Divisional Commissioner of Forensic Services to assist, to assign a member to go and assist with the reconstruction of these crime scenes.

20 **ADV NGCUKAITOBI SC:** Now, if you look at paragraph 4 of that letter, he mentions six cases, Pietermaritzburg, Pietermaritzburg, Pinetown, Durban, Richards Bay, Esikhawini, Durban, Pietermaritzburg.

**LT-COL MANGENA:** Chair, the Pietermaritzburg has a LCRC reference number. It was the Camperdown case, 96/1/2009;

the Plessislaer case 254/7/2006; the Melvin case 32/4/2007; the Phoenix case 377/8/2009; the Esikhawini 50/9/2011; and the Westville case 108/9/2006. The last one will be the Howick case 106/2/2008.

**ADV NGCUKAITOBI SC:** Yes, and then there is also from page 2-102 up to 2-105, let us start with the one at 2-102 and 2-103, what is that? It is headed “list of cases from IPID” and it has got 52 cases.

**LT-COL MANGENA:** Chair, the first list that we received was  
10 the one from General Mabula with those six case numbers.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** And in the process we had meetings with IPID in KZN. During one of the meetings IPID brought this letter, this list of cases, where they alleged that Cato Manor members were involved in this. This is the list that contained 52 cases.

**ADV NGCUKAITOBI SC:** So you got this list of cases from IPID in KZN when you were in meetings there?

**LT-COL MANGENA:** That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** Thank you. Now we will come back to CM2. I just want to revert back to your statement. And then at paragraph 35 you then, you were assigned to assist the task team led by Major General Mabula in conducting forensic ballistic analysis and reconstruction of the identified shooting incidents. Is that correct?

**LT-COL MANGENA:** That is correct, Chair. With the persuasion of this request and with the approval of Brigadier Gouws, the Commander of the Ballistic section by then, with the Forensic Science Laboratory I was assigned to assist the task team led by Major General Mabula.

**ADV NGCUKAITOBI SC:** Yes. And then you travelled on the 17<sup>th</sup> of January 2012 to KwaZulu-Natal where you joined the task team.

**LT-COL MANGENA:** That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** And who was this task team?

**LT-COL MANGENA:** The task team was headed by General Mabula. Is it all the members of, can I mention all the members or only ...[intervenes].

**ADV NGCUKAITOBI SC:** Yes, you say it comprise of these people from this section or from this organization, etcetera.

**LT-COL MANGENA:** Okay. The team consisted of, when we arrived, it was firstly consisted of DPCI members under General Mabula and then I joined the team. At a later stage the IPID team also joined the team and we were one team  
20 working together.

**ADV NGCUKAITOBI SC:** Okay. So when you refer to the task team you refer to the team comprising IPID and DPCI?

**LT-COL MANGENA:** That is correct, Chair, they are comprised by DPCI and IPID members.

**ADV NGCUKAITOBI SC:** Yes, okay. Thank you. Then you

commenced your forensic examination from the 17<sup>th</sup> of January 2012, is that correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, and then you say at the inception you received a list of six LCRC case files. Are those the files that are in paragraph 4 of the letter of the 12<sup>th</sup> of January 2012?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, and then over the  
10 course of these meetings, that is January 2012, you received a further 52 cases, correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And those are attached at CM2?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, CM2 is 2-104 and 105.

**LT-COL MANGENA:** I think CM102, 103 and 10 - is the same as ...[intervenes].

**ADV NGCUKAITOBI SC:** Same document, I see.

**LT-COL MANGENA:** 104 and 105 is the same document.

20 **ADV NGCUKAITOBI SC:** All right, well, that is fine. Then we might as well stick to CM2 then if it is the same document.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. But I just need you to explain what is this document, what is the purpose of this list of cases from IPID? Why was this compiled?

**LT-COL MANGENA:** Chair, this list was compiled by IPID and it was the cases where there is allegations that Cato Manor members were involved in shooting. They are suspects or they are victims. So the list come from IPID. I cannot tell how did they determine this, but it was the cases where Cato Manor were involved.

**ADV NGCUKAITOBI SC:** Yes, this is 52 of Cato Manor shooting incidents.

**LT-COL MANGENA:** That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Thank you very much. And then you then say you received multiple case dockets, crime scene photographic albums, ballistics materials relating to shooting incidents involving members of the Cato Manor unit. Is that correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And then your role is set out in paragraph 40, what you actually did there.

**LT-COL MANGENA:** -:

20 “My role in the investigation was to conduct an independent forensic ballistic reconstruction of the shooting incident based on physical evidence including crime scene photographs, post-mortem reports, ballistic trajectory, blood stain pattern and

related forensic material.”

**ADV NGCUKAITOBI SC:** Yes. And then at paragraph 41, you compiled a comprehensive report. Is that correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, and what was that? That report is attached as CM3. Can you go to 2-106? Could you just explain what was the reason you wrote this document? If you look at the end, 2-109, it is signed by Captain Mangena. Is that yourself?

10 **LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** What was the purpose of this document?

**LT-COL MANGENA:** When compiling this, it was like an info note to the management of the Forensic Science Lab concerning these cases or the examinations that I conducted with the Cato Manor cases.

**ADV NGCUKAITOBI SC:** When you say info note, what does that mean?

20 **LT-COL MANGENA:** I was just informing the lab of the processes or the progress that we have done on the cases and what was my role and how many cases and what happened during all those investigations.

**ADV NGCUKAITOBI SC:** Yes, can you take us through that document in terms of what you investigated and what your findings are, were, and what problems you encountered

during the investigations and what you recommended.

**LT-COL MANGENA:** All right, Chair, I will go through the report.

10 “The investigation into alleged hit squad activities by members of the Cato Manor Organized Crime Unit. The purpose: To find out if alleged allegations of a hit squad are true. The background. On Sunday Times newspaper dated 11 January 2011 published the alleged hit squad activities by members of the Cato Manor Organized Crime Unit, it was alleged that members were killing the suspects and not arresting them. Lieutenant General Dramat of the DPCI established a task team under the command of Major General Mabula to probe these allegations of hit squad activities by the Cato Manor Organized Crime Unit. I, myself, Captain Mangena, was assigned by Brigadier Gouws to assist the team in and it was approved by Major General Ngokha on the 16<sup>th</sup> of January 2012.

The investigations.

3. On Tuesday the 17<sup>th</sup> of January 2012,  
I, Captain Mangena, together with  
Warrant Officer Z Ntaudi left FSL to  
Durban. We met the team established  
under the command of Major General  
Mabula and started with the  
investigation. On Thursday the 19<sup>th</sup>  
January 2012, I received six LCRC case  
files from the different stations from  
10 Brigadier Mxhoti[?], the Provincial  
Commander of CRC KZN at the  
Provincial Office. All six case files  
contained crime scene photos of  
shooting incidents where Cato Manor  
Organized Crime members were  
involved. The intention was to view and  
observe the crimes in photographs.  
[Indistinct]...”

**ADV NGCUKAITOBI SC:** Apparently your microphone keeps  
20 going off, so if you could just make sure it stays on.

**LT-COL MANGENA:** Yes.

**ADV NGCUKAITOBI SC:** Thank you. Paragraph  
...[intervenes].

**CHAIRPERSON:** Yes, indeed ...[intervenes].

**LT-COL MANGENA:** I think it is my files.

**LT-COL MANGENA:** Lieutenant Colonel, just leave it on so that you do not forget.

**LT-COL MANGENA:** I think it is my file that keep on pressing the mic.

**ADV NGCUKAITOBI SC:** No problem

**CHAIRPERSON:** Yes, we appreciate that your table is a bit small. You can just shift a little bit to the left side of ...[intervenes].

**LT-COL MANGENA:** I think it is better this way, Chair.

10 **CHAIRPERSON:** Yes. Thank you.

**LT-COL MANGENA:** Right.

“On Friday evening the 20<sup>th</sup> of January, the team received information from General Mabula that some members of the Cato Manor Organized Crime used the unit while tracking the team using the AVL system of the SAPS vehicles.

The instruction was given that all documents and dockets must be taken out to task force for safekeeping.”

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**ADV NGCUKAITOBI SC:** What is that AVL system?

**CHAIRPERSON:** Thank you.

**LT-COL MANGENA:** The AVL system is the tracking unit of the vehicle of SAPS. So all the, basically all the SAPS vehicles are being fitted with the AVL for tracking system. So

it can track the vehicle. It is like a tracker that is fitted on normal vehicles, but the AVL's are meant for SAPS vehicles.

**ADV NGCUKAITOBI SC:** Ja, but that is what I am trying to understand. What is the problem here that the members of the Cato Manor Unit are using the AVL system of the SAPS vehicles?

**LT-COL MANGENA:** Chair, what was happening there, we got information that with this AVL you can track a vehicle, its location, its movement using this system. So apparent  
10 information that we got was that they are using the system to track our movements and where we park the vehicles.

**ADV NGCUKAITOBI SC:** Oh, your own movements?

**LT-COL MANGENA:** Our own movements, yes.

**ADV NGCUKAITOBI SC:** I see. Okay, so Cato Manor were tracking you as Captain Mangena?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, why would they do that?

**LT-COL MANGENA:** Chair, I think on the day that we were there, we started collecting all the case files of their  
20 involvement, all the LCRC case files that contain their crimes and photos and some of the dockets so that we can start with the examinations.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** So information was that they are tracking us. Probably they want those dockets. That is when

we informed then. On that day, what we did is we removed all the documents from our vehicles and went with them to the rooms and then the next day we took them to task force offices for safekeeping.

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

**LT-COL MANGENA:** -:

10 “On Saturday morning, the 21<sup>st</sup> of January, when we checked out the hotel, we noticed that all the equipment that I had in the state vehicle were missing, meaning they were stolen. A case of theft out of a motor vehicle was opened in the Durban Central as per Durban Central case 1280/1/2012.”

**ADV NGCUKAITOBI SC:** And what were those things that were stolen, all equipment?

**LT-COL MANGENA:** The equipment that I was using for crime scene reconstructions. The cameras and my whole bag of equipment was stolen from our vehicle.

20 **ADV NGCUKAITOBI SC:** Yes. Paragraph 3.4?

**LT-COL MANGENA:** Right, on 3.4:

“On Wednesday the 25<sup>th</sup> of January, two vehicles were received from the Crime Intelligence to be utilized by the team during the investigation. The reason for

the vehicles was for the team to use vehicles without AVL systems and to prevent being traced or tracked during the investigation. I signed for the Toyota Fortuner and funds for the fuel and toll gates. Warrant Officer Ntaudi then refused to go back to Durban to continue with the investigation and informed me that he feared for his life since he had seen in some of the cases reviewed how those members of Cato Manor operates. He was replaced by a warrant officer Ntini.”

10

**ADV NGCUKAITOBI SC:** Sorry, just explain this, what does this mean that, you know, when I spoke to you about possibly calling you to come and give evidence, you yourself indicated that you were very worried about your own life. Can you just

explain why a police officer in this case would refuse to carry out an investigation because they were terrified of Cato

20 Manor?

**LT-COL MANGENA:** Chair, when I was contacted to testify, I said I can come and testify but my safety comes first because I need to be safe. Even after the testimony, I need to be safe.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Because when we were conducting the examinations in 2012, we were mostly escorted by Crime Intelligence. They were always with us, monitoring our movements and to protect us.

**ADV NGCUKAITOBI SC:** Yes, but what is the reason why a number of police officers are themselves terrified of testifying in a case involving Cato Manor?

**LT-COL MANGENA:** Chair, during the examinations of these cases or the investigations, we did a lot of interviews with  
10 some other police officers. When you start interviewing them about Cato Manor, some will move away from you, just walk away and say they do not want to do anything or say anything about Cato Manor, because they know those members are dangerous.

**ADV NGCUKAITOBI SC:** Yes. Now is that what is referred to in paragraph 3.5 by Warrant Officer Ntaudi?

**LT-COL MANGENA:** That is correct, Chair.

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

**LT-COL MANGENA:** -:

20 “A arrangement was made for all firearms belonging to Cato Manor members to be test fired for IBIS comparison. A total of 78 firearms were received from the Provincial Office of KZN which were alleged to be from

Organized Crime Unit in Cato Manor.”

**ADV NGCUKAITOBI SC:** And by the way, just to make sure the public remembers how that exchange between me and you ended, it ended by me telling you that if the cop is scared, how much more about a lawyer? Anyway, carry on.

**CHAIRPERSON:** If I may ask, Lieutenant Colonel, do you feel safe now?

**LT-COL MANGENA:** Chair, I would say for now, yes, I feel safe, but I do not know what is going to happen after the  
10 testimony and I do not know what is going to happen with the cases. I would be, I will say I will not feel safe if these cases will be reinstated and then I have to go and testify in Durban. That will be a problem to me.

**CHAIRPERSON:** Do you live in Pretoria?

**LT-COL MANGENA:** That is correct, Chair, I stay in Pretoria.

**CHAIRPERSON:** If you think at any stage, during the course of your testimony here, that your safety may be compromised, do alert the Senior Counsel, Advocate Ngcukaitobi, so that we may look into the matter.

20 **LT-COL MANGENA:** Thank you, Chair, I will do so.

**CHAIRPERSON:** Thank you, Counsel.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. You were at 3.6. I think you had finished 3.6. You were at 3.7.

**LT-COL MANGENA:** At 3.7:

“A total of 78 firearms received from the Provincial

Office of the KZN which were alleged to be from Organized Crime Unit Cato Manor, were test-fired and acquired by myself and Warrant Officer Ntini on the IB system in Amanzimtoti. On Monday, the 30<sup>th</sup> of January, I received 11 additional LCRC cases from Colonel Boltman of the LCRC Durban for review and observations. On the evening of the 31<sup>st</sup> January, I accompanied Major General Mabula, Brigadier Mokwena and other officers from the team to brief the Acting National Commissioner, Lieutenant General Mkhwanazi, on  
10 the progress of the investigations.”

**ADV NGCUKAITOBI SC:** Sorry, just to explain this, because now there are additional names here, I just want to know what are they doing. We know General Mabula is the person instructed by General Dramat to lead this investigation out of the Sunday Times report, correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now we get Brigadier Mokwena and Acting National Commissioner, Lieutenant General Mkhwanazi. So, can you just explain what role are these two  
20 now playing?

**LT-COL MANGENA:** Chair, Brigadier Mokwena was part of the team under General Mabula.

**ADV NGCUKAITOBI SC:** Okay.

**LT-COL MANGENA:** She was part of the team with us. And then on that evening, we went to brief the Acting National

Commissioner by then, it was Lieutenant General Mkhwanazi.

**ADV NGCUKAITOBI SC:** Yes, to brief him about what you were doing?

**LT-COL MANGENA:** About the Cato Manor cases there, what we were doing that time.

**ADV NGCUKAITOBI SC:** And what was the response of Brigadier Mokwena? Well, Brigadier Mokwena was part of the briefing team.

**LT-COL MANGENA:** Brigadier Mokwena was part of the  
10 briefing team, yes.

**ADV NGCUKAITOBI SC:** And then what was the response of the Acting National Commissioner?

**LT-COL MANGENA:** Chair, I cannot recall or remember what the ...[incomplete].

**ADV NGCUKAITOBI SC:** Well, I mean, you could have ...[intervenes].

**LT-COL MANGENA:** General ...[intervenes].

**ADV NGCUKAITOBI SC:** One of two. The one is, carry on with what you are doing. The other is, you must stop.

20 **LT-COL MANGENA:** No, General Mkhwanazi said we can carry on with what we were doing, because he is the one who also provided us with the venue for safekeeping of our case files, the dockets and case files at task force.

**ADV NGCUKAITOBI SC:** Just explain that a little bit.

**LT-COL MANGENA:** Previously, the information that we got

that the Cato Manor members were tracking us with the AVS of the vehicles.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Lieutenant General Mkhwanazi arranged a safe place at the task force offices for us to keep all those case files and dockets at task force offices.

**ADV NGCUKAITOBI SC:** Where are those task force offices?

**LT-COL MANGENA:** It was in KZN.

**ADV NGCUKAITOBI SC:** I see. Thank you.

10 **CHAIRPERSON:** I see, through your Counsel, you use a lot of acronyms there, LCRC, I do not know what it is. As you testify, do educate us about these concepts.

**LT-COL MANGENA:** Apologies, Chair.

**ADV NGCUKAITOBI SC:** IBIS, AVL, W/O, ICD, NIU. All right, well, you can start by LCRC.

**LT-COL MANGENA:** The LCRC is the Local Criminal Record Centre.

**ADV NGCUKAITOBI SC:** Yes, but it is a division in the police.

20 **LT-COL MANGENA:** That is a division ...[intervenes].

**ADV NGCUKAITOBI SC:** We do not know what ...[indistinct].

**LT-COL MANGENA:** Because normally, they are regarded as the photographers.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** That is helpful. That is helpful.

**ADV NGCUKAITOBI SC:** Yes. Where are you now? You are at 3.10.

**LT-COL MANGENA:** At 3.10:

10 “On Friday, the 2<sup>nd</sup> of March, we attended a meeting at General Dramat's office in Pretoria to brief him on the progress of the investigation. On the same day, a meeting was arranged with the Police Minister and the Acting National Commissioner at St George's Hotel in Pretoria to brief the Minister on the progress. Initially, the task team was mandated to investigate the allegations by the Sunday Times and IPID was mandated to conduct the criminal investigations. The Minister beefed up the team by instructing two teams from the DPCI and the IPID to join under the command of Major General Mabula and to conduct the criminal

20 investigations.”

**CHAIRPERSON:** Out of interest, who was the Minister in 2012, around January 2012, or around March 2012?

**LT-COL MANGENA:** It was the late Minister Nathi Mthethwa.

**CHAIRPERSON:** Thank you.

**LT-COL MANGENA:** On 3.11:

“A team of six advocates were sent from  
Gauteng to ...” [intervenes]

**ADV NGCUKAITOBI SC:** Just wait a little bit, because I want to understand what happened with the Minister when he was told this is what we are doing. Was it the first time he was briefed?

**LT-COL MANGENA:** It was the first time he was briefed in this matter.

10 **ADV NGCUKAITOBI SC:** And why was he being briefed?

**LT-COL MANGENA:** Chair, I cannot tell why was he briefed. It is just General Dramat was briefed and then he briefed the Minister and the Minister wanted the team to come and brief him. Since DPCI was investigating the allegations and IPID was investigating the criminal cases, so the Minister said both teams must join under the leadership of General Mabula to be one team that investigates the criminal case on both cases.

20 **ADV NGCUKAITOBI SC:** Yes, thank you. And what was his response, was it to say stop, continue, or neutral?

**LT-COL MANGENA:** The Minister said we must continue with the investigations in this case.

**ADV NGCUKAITOBI SC:** Similar to ...[intervenes].

**LT-COL MANGENA:** Similar to what Lieutenant General Mkhwanazi said.

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

**CHAIRPERSON:** According to this paragraph 3.10, the Minister actually beefed up the team.

**LT-COL MANGENA:** Yes.

**CHAIRPERSON:** If you look at the last sentence of 3.10.

**LT-COL MANGENA:** Yes, by then DPCI was on its own investigating the allegations and IPID had the case dockets with them. So DPCI by then was not investigating the criminal part of it. They were only investigating the allegations made  
10 by the newspaper. And IPID was investigating the criminal part of the, like the dockets where Cato Manor members were involved.

Now when the Minister was addressing the team, he said both teams must join and be one team that is now doing the criminal investigations and it must be done under the leadership of General Mabula.

**CHAIRPERSON:** Thank you, Colonel. Proceed, Counsel.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair.  
Paragraph 3.11.

20 **LT-COL MANGENA:** On paragraph 3.11:

“A team of six advocates were sent from Gauteng to evaluate the cases and inspect the case dockets which were investigated.”

**ADV NGCUKAITOBI SC:** Now these six advocates, what do

you mean by that?

**LT-COL MANGENA:** There was a team of advocates that was sent from Gauteng to come and inspect all the dockets that has been investigated already.

**ADV NGCUKAITOBI SC:** Employed by who, these advocates?

**LT-COL MANGENA:** They were from NPA.

**ADV NGCUKAITOBI SC:** Yes, thank you. Alright, and then 3.12.

10 **LT-COL MANGENA:** -:

“On Thursday the 15<sup>th</sup> of March 2012, I presented the cases I had to the prosecution team. The IPID or ICD had Mr Kobus Steyl, the private ballistic expert, to conduct the constructions of the crime scenes and he was requested to do the presentation to the advocates also. The prosecutors were impressed with my presentation on the cases and were not convinced with how Mr Steyl presented his cases. They made a request that I must ...” [intervenes].

20 **CHAIRPERSON:** I am sorry, Counsel, I am sorry to interrupt you. At 3.11, you speak of the team of six advocates and you say they are from the NPA.

**LT-COL MANGENA:** That is correct.

**CHAIRPERSON:** In 3.2, you refer to the prosecution team. Are these one and the same?

**LT-COL MANGENA:** It is one and the same team, that is correct.

**CHAIRPERSON:** The prosecution team will be the six advocates who were sent to evaluate the cases and to inspect the dockets.

**LT-COL MANGENA:** That is correct, Chair.

10 **CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you. So you were still at 3.12 where you were saying both – so, Mr Steyl was appointed by ICD.

**LT-COL MANGENA:** By IPID, yes.

**ADV NGCUKAITOBI SC:** IPID. You were appointed by DPCI.

**LT-COL MANGENA:** By DPCI.

**ADV NGCUKAITOBI SC:** Yes, all right. Both of you presented?

20 **LT-COL MANGENA:** We both presented the cases.

**ADV NGCUKAITOBI SC:** And then it seems that there were certain reconstructions that were not yet completed.

**LT-COL MANGENA:** There were certain reconstructions that were not completed and the prosecutors at some stage were not happy with how Mr Steyl conducted his examinations and

they requested some of the cases that were with Mr Steyl, I must take them over and I must do those cases also.

**ADV NGCUKAITOBI SC:** Which were not yet finished?

**LT-COL MANGENA:** Which were not yet finished then.

**ADV NGCUKAITOBI SC:** And then in relation to those that were finished?

**LT-COL MANGENA:** In relation to those that were finished, I did not reconstruct them.

**ADV NGCUKAITOBI SC:** Yes, so that is why when we look  
10 at the dockets, there are some where it is only Mr Steyl's report and then there are others where it is only your report.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** It just depends on how far he was with his reconstructions.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, okay. Thank you. Was he physically there, Mr Steyl, in those presentations?

**LT-COL MANGENA:** That is correct, Chair, he was physically there.

20 **ADV NGCUKAITOBI SC:** Okay, thank you. 3.13?

**LT-COL MANGENA:** On 3.13:

“On the 20<sup>th</sup> of June 2012 and on the 22<sup>nd</sup> of August, members of the Cato Manor Organized Crime Unit were arrested, including Major General

Booyesen and some members of the NIU, National Intervention Unit. When the investigation started, the IPID had a list of 52 cases in which Cato Manor members were implicated and have acted unlawfully. From that list, 22 were investigated and are in the indictment and were presented to court. I have currently reconstructed the crime scenes of 22 cases of which 12 of them are in the indictment. The other 10 cases reconstructed were in the list of the IPID and are to be added to the charges. Four of the cases are in Gauteng province and one was in the North West.”

**ADV NGCUKAITOBI SC:** Yes, if you could just expand on this part where it says four are in the Gauteng province, what does that mean?

20 **LT-COL MANGENA:** There are four other cases where the victims were killed by Cato Manor members in Gauteng where they travelled from KZN to Gauteng and they were shot and killed in Gauteng.

**ADV NGCUKAITOBI SC:** Yes, all right. And then there is one in the North West. We have come across that one before

in this case.

**LT-COL MANGENA:** That is correct ...[intervenes].

**ADV NGCUKAITOBI SC:** [Indistinct]... [cross-talking].

**LT-COL MANGENA:** I did all five of them, the four in Gauteng and the one in the North West.

**ADV NGCUKAITOBI SC:** Yes. I mean, do you know why the Cato Manor people would leave KZN and come and kill people in Gauteng?

**LT-COL MANGENA:** Chair, I cannot explain reasons why  
10 they came to this side.

**ADV NGCUKAITOBI SC:** And then do you know why they would kill a person in Rustenburg?

**LT-COL MANGENA:** I do not know why they kill a person in Rustenburg.

**ADV NGCUKAITOBI SC:** I mean, ordinarily you know, a suspect is in Gauteng and he is wanted by the police in KZN, what happens?

**LT-COL MANGENA:** Chair, I would say it depends on their investigation. In some instances they will come themselves  
20 to trace the suspect, or in some instances they will share the information with their colleagues in Gauteng to arrest the suspect and bring the suspect outside.

**ADV NGCUKAITOBI SC:** Yes. But here there is five people that are just murdered outside of the province of the Cato Manor.

**LT-COL MANGENA:** In this case it is different cases. It was Randburg, it is Dawn Park, it is Thokoza, it is Midrand and the Rustenburg one.

**ADV NGCUKAITOBI SC:** Thank you. We will come back to those.

**MS RAMAGAGA:** Just a minute.

**ADV NGCUKAITOBI SC:** Yes.

**MS RAMAGAGA:** Just a minute. Lieutenant Colonel, are you conversant with the processes of the police, generally speaking?  
10

**LT-COL MANGENA:** Not completely with the whole processes of the police, Chair.

**MS RAMAGAGA:** Okay. Right, what I would like to ask you about, it is about this issue of where police come from one province and they go and either arrest or shoot or do whatever in the other province. Do you know as to whether there is actually maybe a rule or a custom that before you come into that province you would have informed maybe the person in charge of the particular province?  
20

**LT-COL MANGENA:** Chair, I would say I am not sure about that. I cannot answer that one.

**MS RAMAGAGA:** Okay. Right, thank you.

**ADV NGCUKAITOBI SC:** Yes, thank you very much. You will still deal with the four cases Cato Manor came and killed people here in this province and the one they went to kill a

person in Rustenburg.

**LT-COL MANGENA:** That is correct, I will do that.

**ADV NGCUKAITOBI SC:** Yes. Can you deal with your findings at that stage which are in paragraph 4?

**LT-COL MANGENA:** My findings in paragraph 4 is that:

10 “During my observation of the 22 crime scene cases I noticed some inconsistencies in the statements submitted by Cato Manor members and what was on the crime scene photos. I

also noticed some similarities on different crime scenes which created suspicions. The following were noticed. The statements submitted by Cato Manor members were written in almost the same manner and were inconsistent

with what was noticed on the crime scene photos. The same *modus operandi* was noticed in many cases. In 20 22 cases or crime scenes reconstructed, 25 people were killed including one member of Cato Manor. In the 24 people killed, 21 had firearms next to their body. The allegations are that the deceased were shooting at them or

attempted to shoot at them and they shot back in self-defence. Three of the deceased who were found without the firearms next to them, it was alleged that they attempted to disarm the police officials or attack the police officials and were shot in the process of self-defence. The deceased were shot at close range or shot in the back or shot lying on the ground. Three cases were found to be inconclusive due to the lack of sufficient information or poor quality of the crime scene photos.”

10

**ADV NGCUKAITOBI SC:** If you could just stop there. I just need you to reflect to the panel, I mean these findings you have made where out of the 24 people that are killed, 21 have firearms next to them and in all of them the allegation is that they were trying to shoot at the police. Those that do not have firearms, the allegation is that they were trying to disarm the police.

20

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** The shooting is close range or at the back or while someone is lying down. What should the panel make of that?

**LT-COL MANGENA:** Chair, I cannot say what should the

panel make out of that but that is some of the findings that I made when I was doing these examinations.

**ADV NGCUKAITOBI SC:** Yes, but what do they tell you, those findings, yourself?

**LT-COL MANGENA:** There is a lot of, I would say unlawfulness that was happening on those crime scenes.

**ADV NGCUKAITOBI SC:** Why? Why do you use the term unlawfulness?

**LT-COL MANGENA:** The way some of the people were shot  
10 at, it is like the intention was to eliminate them, not to arrest them.

**ADV NGCUKAITOBI SC:** Yes. Thank you.

**CHAIRPERSON:** Sorry, Counsel, in paragraph 4.3 you refer to the 24 people killed. You say of the 24 people killed, 21 had firearms next to their bodies. Now, the 24 people killed, if you contrast that with what is stated in paragraph 3.14 and 3.15, I thought that you were involved with 22 cases. Now you refer to 24, 22 cases, now you refer to 24. Would you just explain to me?

20 **LT-COL MANGENA:** The cases that I am referring to in paragraph 4.3 are the cases that are in the indictment. The 52 cases was the list that was from the IPID and these 24 people who were killed, it is only those 23 cases that are in the indictment. It is not all the cases. And of the 23 cases, 24 people were killed and then 21 of them, there were

firearms next to the bodies.

**ADV NGCUKAITOBI SC:** So it is more than one person killed per case. That is how ...[intervenes].

**LT-COL MANGENA:** It is only the Melmoth where there is two people killed. The rest is one, one, one, one. The Melmoth is two people who were killed.

**CHAIRPERSON:** So that takes you to 24.

**LT-COL MANGENA:** That takes me to 24.

**CHAIRPERSON:** Yes, thank you.

10 **ADV NGCUKAITOBI SC:** Thank you. And then you also highlight that there were problems during the investigation, which, in paragraph 5.

**LT-COL MANGENA:** On paragraph 5:

“During the investigation, a lot of problems were encountered, but mostly were financial problems. Among the problems encountered the following were noted. When the investigation started, my daughter was only two months old and I kept contact with my wife using my personal cellphone.”

20

By then, we were not issued with a state cell phone, so I would be using my cellphone during the cases.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** -:

“Keeping in touch with the team, for safety reasons, I used my personal cellphones. For the first two months, January and February, my cellphone account amounted to around R2,000.00, which was unusual for me until I received an official cellphone. Money for accommodation was sometimes delayed where at some stage, we had to pay for accommodation from our own pockets on arrivals at the hotel. I was responsible for the funds for fuel and toll gates for one of the vehicles. At some stage, I had to go on official trips and leave the team members with the vehicle and money. I ended up losing about R3,319.00 from missing sleeps and when I was personally not responsible for.”

Now in this instance is that the vehicles that we were using was the vehicle from Crime Intelligence, so because we were sharing that vehicle, at one stage, I had to leave them at KZN, I went to, that is when I attended a seminar in the USA. So when I leave those guys, I had to leave them with the money for petrol and when I came back, some of the petrol

slips were missing, so I had to pay all those monies from my own pocket because the petrol slips were missing.

**ADV NGCUKAITOBI SC:** 5.4?

**LT-COL MANGENA:** Right, on 5.4:

10 “I had 14 days left on my 2011/2012 leave and I intended to take leave around March and April. During March and April, I was in Durban with the investigations and I could not stop the investigation to go on leave. I was informed that it was a case of national interest. I was advised that my leave can be captured on the system and I can take the rest once the investigation was completed. Later, I was informed that I had forfeited my leave days that I did not take, which I intended to take but could not be due to work.”

20 **ADV NGCUKAITOBI SC:** Have they now compensated you for your R3,000.00, or are they still owing you?

**LT-COL MANGENA:** And my leave days also. Right, in paragraph 6:

“The future problems. During the investigation, a team of Crime Intelligence was assigned to keep

surveillance on our movements and to ensure our safety. The surveillance team from the Crime Intelligence had been withdrawn and there is no more safety. From the information gathered from witnesses and other sources, I learned a lot on how the members of Cato Manor operated and how they were tracking their suspects and victims.

10 There is a belief that they were using resources like the AVL tracking system on the SAPS vehicles and an instrument known as a grabber to track the cellphones.”

**ADV NGCUKAITOBI SC:** Can you just explain this. I could not understand it when I read this letter, because I thought the AVL tracking system is used to track official SAPS vehicles, which is why you were worried that they were tracking you.

20 **LT-COL MANGENA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes, but why would they use that to track – so, let me put it differently. In what context would they be using the AVL when they were tracking the alleged criminal suspects?

**LT-COL MANGENA:** No, no, when tracking the police, they

will be using the, they sometimes use the AVL. But when tracking the suspect maybe, they will be using the grabber, yes.

**ADV NGCUKAITOBI SC:** Why would they track the police?

**LT-COL MANGENA:** It depends on what they want from those police officers, like if we are investigating them, they will track our movements, what are we doing, where are we and ...[incomplete].

**ADV NGCUKAITOBI SC:** So they are investigating you?

10 **LT-COL MANGENA:** I will say probably they were following us.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** What is it that we are doing and where are we now.

**ADV NGCUKAITOBI SC:** I see. All right, and then the grabber, what does that mean?

**LT-COL MANGENA:** The grabber system is used to track the cellphones. I do not know exactly how it works, but if we have a cellphone that you had grabbing, it will always give  
20 you the location of the cellphone and it will be easy for you to track the cellphone.

**ADV NGCUKAITOBI SC:** And under what circumstances is this used, because you know, in this country, if you want to get my cell number, because that is the first, the only way to know my cellphone is to get my cell number, you must get

permission from a judge. So to now just put a grabber seems to be a very rogue thing.

**LT-COL MANGENA**: Chair, I do not know the procedure of using the grabber, what is it that they want and how does it, how do you apply for the grabber to be used.

**ADV NGCUKAITOBI SC**: Yes, but factually what actually happens, it says there an instrument known as a grabber to track the cellphones. So whose cellphones are being tracked, your cellphones as the team from DPCI?

10 **LT-COL MANGENA**: Oh, even if they are following the suspect, they are tracing the, they will use a grabber to follow the suspect or whoever they want.

**ADV NGCUKAITOBI SC**: But if they have that cell number?

**LT-COL MANGENA**: If they have the cell number, yes.

**ADV NGCUKAITOBI SC**: Yes. So presumably then, we would have to have the application for surveillance under the Electronic Communications Act approved by a judge, because that is the only way you can track somebody's cellphone.

20 **LT-COL MANGENA**: I am not sure, because I know the grabbers are now with the Crime Intelligence only.

**ADV NGCUKAITOBI SC**: Yes, exactly.

**LT-COL MANGENA**: Previously the grabber was DPCI. DPCI had grabbers with them also.

**ADV NGCUKAITOBI SC**: Now did you see any applications, and that is where I am going with this, any applications in any

of the dockets with, there is a judge assigned by the President in this country to approve interceptions of cellphone communications.

**LT-COL MANGENA:** Chair, I have never seen an application for the use of the grabber.

**ADV NGCUKAITOBI SC:** Yes, thank you. Carry on.

**CHAIRPERSON:** But if there were such applications, they would have been prepared by Crime Intelligence. You will probably not know about it.

10 **LT-COL MANGENA:** That is correct, Chair. There will be, the application I think will be sent to Crime Intelligence, and the head of Crime Intelligence can approve it for the grabber to be used, depending on the cases that they are working on.

**CHAIRPERSON:** Crime intelligence will make an application to the judge to authorize the tracking, if necessary. So in that instance you will not know, as a ballistic expert sitting in your offices, whether such an application had been made, and if it were made, whether it was granted.

**LT-COL MANGENA:** I would not know that, Chair.

20 **CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you. We had evidence from Advocate Maema that there is a section in the docket where this information would be contained, but it is usually a, I think it is a hidden section, I do not know, I think they called it section C. Or B, apparently.

**LT-COL MANGENA:** Chair, I do not know about that.

**ADV NGCUKAITOBI SC:** Okay, that is fine. All right, then carry on with the next sentence. There was also information.

**CHAIRPERSON:** If I may, Counsel, sorry to interpose. The acquisition of a grabber by SAPS, who would have authorized the acquisition of a grabber, do you know?

**LT-COL MANGENA:** No, Chair, I do not know.

**ADV NGCUKAITOBI SC:** Yes, sorry, I think I made an error. It is the previous sentence I need you to deal with, because  
10 it is still dealing with a grabber. “There is a possibility”, so where it says “there is a possibility” in that same paragraph, the second last sentence.

**LT-COL MANGENA:** -:

“There is a possibility that they still have a grabber that they bought.”

**ADV NGCUKAITOBI SC:** Yes, now just as a point that the Chair has picked up on, which is what exactly is being referred to? Is it that the Cato Manor unit was using a grabber to track people's cellphones?

20 **LT-COL MANGENA:** Chair, I believe the information that we had when we were that side that they were using a grabber to track the cellphones. That is why all their suspects will be able to locate them easier.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** The Counsel was asking you about the

applications for authorization of tracking people's cellphones as investigations were underway. Now, are you aware of a system referred to as unlawful surveillance in the country?

**LT-COL MANGENA:** No, Chair.

**CHAIRPERSON:** In other words, where police will use unlawful methods to track devices of suspects without an application being lodged to the judge, to the interception judge, as you probably know, to authorize the interception. Are you aware that there could be instances of unlawful  
10 surveillance, in which case the police would have taken it upon themselves to surveil people without authorization in terms of the law?

**LT-COL MANGENA:** No, Chair, I am not aware of that.

**CHAIRPERSON:** You are not aware.

**LT-COL MANGENA:** I am not aware of that, Chair.

**ADV NGCUKAITOBI SC:** What are you not aware of?

**LT-COL MANGENA:** I am not aware of any, I would say any incident or any information of police being tracking the suspects without the proper authorization of using the  
20 grabber or any other equipment.

**ADV NGCUKAITOBI SC:** Yes, but you are aware that if you want to listen to someone's conversation, that is called an interception, and you must obtain authorization from a judge.

**LT-COL MANGENA:** That I heard about, but I am not aware of the procedure that must be followed in obtaining that.

**ADV NGCUKAITOBI SC:** I understand, but the fact that you can only listen to conversations if you have authorization from a judge, you would be aware of that?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now the question in this case is, you are referring here to the use of the grabber, and that is why I was asking whether in your investigation you came across any authorizations from a judge.

**LT-COL MANGENA:** No, Chair, and as I said, we were  
10 informed by other members and police officers somewhere at that side and other witnesses that those people could have been using the grabber, as we were earlier informed that they were using the AVL to track us, where they found the equipment from my vehicle was stolen. And there is a possibility that they have been using the AVL and the grabber on other instances.

**ADV NGCUKAITOBI SC:** Yes. And then it says, still have a grabber that they bought. I mean, this is where the judge was asking, you say grabbers are used, are permitted to be used,  
20 in Crime Intelligence. The Cato Manor Serious Violent Crime is not Crime Intelligence. How do they come to be in possession of such a sensitive equipment?

**LT-COL MANGENA:** Chair, as I understand it, previously the DPCI had the grabbers, and then they were transferred to Crime Intelligence.

**ADV NGCUKAITOBI SC:** So they would have still been keeping them from that period?

**LT-COL MANGENA:** It is possible. I am not sure. It is possible, Chair.

**ADV NGCUKAITOBI SC:** All right.

**MS RAMAGAGA:** Advocate Ngcukaitobi, if we are to look at that sentence in its entirety, he is not saying for certain that they had the grabber. He is saying there is a possibility that, okay, let me go one step back. There is a belief that they  
10 were using resources like AVL, tracking of SAPS, and an instrument known as a grabber to track their cellphones.

**ADV NGCUKAITOBI SC:** Yes.

**MS RAMAGAGA:** Now, he says there is a belief, and as you were asking him questions, he says he has heard that from some other persons. So he is not testifying that they were definitely using the grabber. Maybe information will surface in due course to that effect.

**ADV NGCUKAITOBI SC:** Yes, no, thank you, Madam Ramagaga. I think the only point I was trying to say is that  
20 the last part of that sentence seems to suggest that they had bought a grabber at some point. The only possibility is that they are still using it.

**MS RAMAGAGA:** Ja, no, no, I hear you on that. I am just saying for a better understanding, but that is fine. You can proceed.

**ADV NGCUKAITOBI SC:** Ja. No, thank you. All right, we will come back to this topic, but that is the information you got that a grabber could have been bought and could have still been used.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** All right, thank you very much. And then you say there was also information. What is that about? That is now referring to hitmen.

**LT-COL MANGENA:** Yes, there was also information that  
10 they even had the hitmen that they usually, or that they use to eliminate their targets.

**ADV NGCUKAITOBI SC:** What does that mean?

**LT-COL MANGENA:** I would say where they were using hitmen themselves to eliminate their targets.

**ADV NGCUKAITOBI SC:** So in other words, the police would hire a hitman to kill a person that the police want to kill.

**LT-COL MANGENA:** It is either the person that they want to kill or the person that maybe is on their way.

**ADV NGCUKAITOBI SC:** Yes, no, I understand, but I am  
20 saying your sentence means the Cato Manor police are themselves the ones hiring a hitman.

**LT-COL MANGENA:** That is correct, Chair.

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

**MS RAMAGAGA:** [Indistinct]... come in here. I want to understand. As you say there was also information that they

even had the hitmen, are you able to tell us the source of information, or is it something that was generally being said within the police or what? Can you just assist us with that.

**LT-COL MANGENA:** Chair, that is the only information that we got when we were interviewing people or when we were doing the investigations.

**MS RAMAGAGA:** Thank you.

**ADV NGCUKAITOBI SC:** Yes, now I think it is all qualified that this is information that came to you that there is a  
10 possibility of a grabber, possibility of an AVL, and possibility that hitmen are being used.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Thank you. Now, and then, the next one is about the trial. You are talking about future problems, that these are the problems that we may encounter, we need to be careful about. You are informing your bosses, we need to be careful about these problems.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. All right, carry on about the  
20 trial.

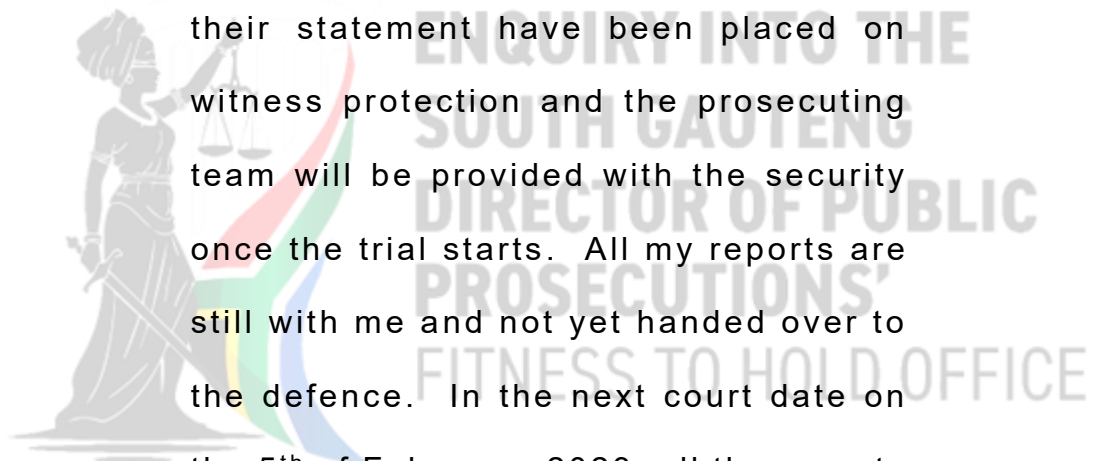
**LT-COL MANGENA:** -:

“The trial is about to begin in Durban High Court. According to the senior prosecutors who are prosecuting the team, that I am already a key witness in

most of the cases as my reports are from physical evidence and explain more of the crime scenes. Most of the cases do not have witnesses since the offences were committed with only Cato Manor members and without witnesses or with only one or two family members. I was informed that I will be placed as the last witness of all the cases, for all the cases. All the witnesses who submitted their statement have been placed on witness protection and the prosecuting team will be provided with the security once the trial starts. All my reports are still with me and not yet handed over to the defence. In the next court date on the 5<sup>th</sup> of February, 2023, all the reports will be handed to the defence. I am afraid that once the defence is in this possession of my reports and that they see the contents of the reports, which can possibly pose a serious threat to my life and my family. I believe the safety and security of my life and my family is a priority. I was informed by my

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10 Commander, Colonel Van Niekerk by then, that Major General Booyesen, who is one of the suspects arrested in the cases, had contacted him and attempted to discuss the cases with him. From their conversations, Colonel Van Niekerk informed me that he got the impression that Major General Booyesen was worried about the ballistics crime scene reports and that he even intended to get private experts from abroad to assist in disputing my reports.”

**ADV NGCUKAITOBI SC:** Then there is the next sentence there.

**LT-COL MANGENA:** And the last sentence is:

“I have a fear that if they fail to get someone to dispute my findings in my reports, my life will be at risk and I fear for my safety and my security.”

20 **ADV NGCUKAITOBI SC:** Yes, now just tell us about this conversation that you had with Colonel Van Niekerk. Firstly, who is Colonel Van Niekerk?

**LT-COL MANGENA:** Colonel Van Niekerk was my Commander by then. He is the one who took over from Brigadier Gouws as the Commander and he was later the Commander of Ballistics.

**ADV NGCUKAITOBI SC:** You reported directly to him?

**LT-COL MANGENA:** I reported also directly to him, yes.

**ADV NGCUKAITOBI SC:** Yes. Now what did he tell you?

**LT-COL MANGENA:** He informed me that he received a call from General Booyesen and then by then, I cannot recall everything that we spoke about, but it showed him that General Booyesen was worried about my reports, how I implicate some of the members on these cases and said they wanted a private expert who can challenge my reports, but  
10 my problem was that if they do not find someone to challenge my reports, the easy way was just to eliminate me so that I do not testify in their cases.

**ADV NGCUKAITOBI SC:** No, I understand that, but I am still trying to understand this conversation, what the purpose could have been of a suspect, a criminal suspect, contacting the boss of the expert to raise an issue about the reports of Captain Mangena, what exactly was going on there?

**LT-COL MANGENA:** Chair, I do not know how the communication started, but it is only that Brigadier Van  
20 Niekerk came to my office and just informed me, he said just to let you know that this is the situation.

**ADV NGCUKAITOBI SC:** Yes, thank you. Well, did you find out from these dockets, from anywhere, that there was ever anyone who disputed, another expert who disputed your findings?

**LT-COL MANGENA:** On these case dockets?

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** No, Chair.

**ADV NGCUKAITOBI SC:** Well, even today, there has been, we have not found anything that disputes your findings.

**LT-COL MANGENA:** Chair, ever since I have not heard anything about these dockets.

**ADV NGCUKAITOBI SC:** Yes. No, thank you. The attachments that are there, are the attachments we have just  
10 looked at earlier, is that correct, at 7.1, 7.2, 7.3?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, this is a report of the 31<sup>st</sup> of January, 2013. Does that mean by then you had completed the assignment of the reconstruction or you were still in the process?

**LT-COL MANGENA:** Chair, because of the number of cases that we had, by that date, I was not done with all the cases, but I did a lot of those cases, especially those which were in the indictment, I was done with them. And then I was busy  
20 with additional ones which were not in the indictment.

**ADV NGCUKAITOBI SC:** Yes. I mean, according to your report, you had done 22 reconstructions by then.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. All right, can we then go to the reconstructions themselves. If you go back to your

statement at page 2/12, you compiled 23 crime scene reconstructions in the following matters, in the course of the investigation. So is that the total number that you did as a whole, 23?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, all right. And then are those the ones listed in 42.1 up to 42.3?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And then out of that 23, according  
10 to paragraph 43, there were 10 that are part of the indictment. Now, your letter, as I remember, said that there were 12 that were part of the indictment. So can you just explain that apparent discrepancy? So if you go to 3.5, paragraph 3.5 of your letter, which is at 2-108, 3.15, so there you had 22 cases, 12 in the indictment. In your statement, you have 23 cases, 10 in the indictment.

**LT-COL MANGENA:** Yes, Chair, I have mentioned that I have done 22 ...[intervenes].

**ADV NGCUKAITOBI SC:** Yes, and ...[intervenes].

20 **LT-COL MANGENA:** Of which 12 was ...[intervenes].

**ADV NGCUKAITOBI SC:** [Indistinct]... yes.

**LT-COL MANGENA:** In the indictment.

**ADV NGCUKAITOBI SC:** Yes. I mean it could be that it was ...[intervenes].

**LT-COL MANGENA:** It could be that 2 of them were added

maybe to the indictment. I cannot recall.

**ADV NGCUKAITOBI SC:** Oh, it was a provisional indictment?

**LT-COL MANGENA:** I cannot recall exactly.

**ADV NGCUKAITOBI SC:** Yes, because indictment itself kept changing for a period of time.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, in 43, is it the 10 that is currently in the final indictment?

10 **LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, all right. And those are the dockets, I am sorry, those are the case references at 43.1 to 43.10?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And then out of those 23, there were 24 deceased persons, according to paragraph 44.

**LT-COL MANGENA:** That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** Yes. And in all of these cases, the cause of death was a gunshot wound to the head, according to paragraph 45.

**LT-COL MANGENA:** In the 23 cases, the cause of death was a gunshot wound to the head, as confirmed by the post-mortem examination and forensic ballistic analysis.

**ADV NGCUKAITOBI SC:** Is that correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And then in 46, you say in each of these cases, a firearm was recovered. Now, earlier, I think in your letter, you had said in 21 out of the 23, a firearm was recovered. Yes, can you just explain that? It is a relatively minor discrepancy, but I do not know if anyone would make an issue of it.

**LT-COL MANGENA:** I think this could be typing error on 45.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** I think it should be 21.

10 **ADV NGCUKAITOBI SC:** 21, similar to what was in your letter.

**LT-COL MANGENA:** Similar to what was in the letter.

**ADV NGCUKAITOBI SC:** All right, thank you very much. Okay, then, we have finished the overall pattern. We can go through the crime scenes that were reconstructed, starting with those that are in the indictment and we can deal later with those that are outside of the indictment. So, we are at

page 15 of your statement, with Durban Central. Can you take us through that case? I mean, firstly, just a summary of  
20 what happened in that case, then, you can go through your methods of what you discovered.

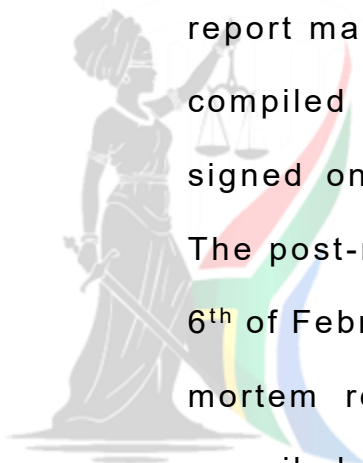
**LT-COL MANGENA:** On the Durban Central case, 185/2/2009, the background.

“On the 6<sup>th</sup> of March, 2012, during the course of my official duties as a forensic

ballistic examiner, I received a copy of the police case docket relating to the Durban Central case, 185/2/2009, from Lieutenant Colonel Mano of the task team. I examined the contents of the dockets for the purpose of conducting a forensic ballistic reconstruction of the shooting incident. The documents examined by me included the following, amongst others. The post-mortem report marked as Durban PM 233/2009, compiled by Dr Christa Hattingh, and signed on the 13<sup>th</sup> of February, 2009. The post-mortem was conducted on the 6<sup>th</sup> of February, 2009. The second post-mortem report, Durban PM 233/2009, compiled by Dr G Perumal was not signed. I had a ballistic report, affidavit in terms of the section 212 of the Criminal Procedure Act, 51 of 1977, compiled by Sergeant Padmini Taladari, marked the lab number 18592/09, the first, second, and the third entries. And then the statement by Inspector Folakwani Thomas Dlamuka, from the

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

NIU, National Intervention Unit. A statement by Constable Stanley Sandile Mfene. He was also from the NIU. 49.6 The statement by Detective Inspector Padayachee. A statement by Inspector Rakesh Chandravati Maharaj. 49.8 The statement by Inspector Stoltz, and the statement by Constable Raymond Lee.”

In paragraph 50:

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“I compiled the Forensic Ballistic Reconstruction Report, which is attached here, as Annexure CM4, together with the photographs that are referred to herewith in.

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The medical findings, based on the examination of the post-mortem reports and associated photographs contained in Annexure CM4, the doctors determined that the cause of death, a gunshot wound to the neck. 52 Furthermore, the wound characteristics indicated that the projectile travelled from the right to left, and was forward directed through the neck of the deceased.”

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

**LT-COL MANGENA:** On 53:

“The direction of travel of the projectile is depicted on photo 20 of the Annexure C, which shows the anatomical location and trajectory of the wound. This trajectory is forensically significant in determining the position of the deceased relative to their shooter.”

10 **ADV NGCUKAITOBI SC:** And then you say in 55, you examined the crime scene photographs contained in Annexure, that should be CM4.

**LT-COL MANGENA:** CM?

**ADV NGCUKAITOBI SC:** It says CM2, but we know CM2 is the letter. So it cannot be.

**LT-COL MANGENA:** It is supposed to be CM4.

**ADV NGCUKAITOBI SC:** Yes, CM4. Can you just go through that to CM4, to those, they are in volume 1, page 2A-68.

**LT-COL MANGENA:** Page?

20 **ADV NGCUKAITOBI SC:** 68, and photographs 5, 27, 31, 32 and 33. You could help us, firstly, by just identifying that document, which is at 2A-68 to 2A-90. Did they give you a small booklet?

**LT-COL MANGENA:** Yes, I have that.

**ADV NGCUKAITOBI SC:** Is that, I mean are you able to read

from it, or is the font too small?

**LT-COL MANGENA:** From page?

**ADV NGCUKAITOBI SC:** 2A-68 to 2A-90.

**LT-COL MANGENA:** Yes, I have it here with me.

**ADV NGCUKAITOBI SC:** What is that document?

**LT-COL MANGENA:** I have the document with me.

**ADV NGCUKAITOBI SC:** What is it?

**LT-COL MANGENA:** It is a 212 report that I have compiled in this case.

10 **ADV NGCUKAITOBI SC:** It is an affidavit that you prepared in terms of section 212 of the Criminal Procedure Act.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, and then at 2-190 is your signature and the statement of the Commissioner, 2A-90.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, 2A-90, yes. Now, just to go back then to your statement at paragraph 55. I just want to do this analysis, starting at photograph 5. The ones you have chosen here is photograph 5, which is 2A-74.

20 **LT-COL MANGENA:** 2A-74?

**ADV NGCUKAITOBI SC:** Yes. So I want you to take us through paragraph 55 and 56 up until 59 of your statement by reference to these pictures. What are you trying to show us here?

**LT-COL MANGENA:** From paragraph 55?

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** -:

“I examined the crime scene photographs contained in Annexure CM4, including the photographs 5, 27, 31, 32 and 33, observed the following. 55.1 bullet damage on the vehicle. 55.2 Fired cartridge case outside the vehicle. The position of the deceased inside the vehicle. The firearm and fired cartridge cases found inside the vehicle. The nature and position of the wounds sustained by the deceased.”

**ADV NGCUKAITOBI SC:** Yes ...[indistinct].

**LT-COL MANGENA:** -:

“Photograph 32 depicting the damage on the right rear window of the vehicle.”

**ADV NGCUKAITOBI SC:** Yes. Just before you proceed to that, Lieutenant Colonel, I just want to go with you to photo 5, which is what you are drawing our attention to and just explain what exactly is the point you are making about photo 5.

**LT-COL MANGENA:** On photo 5, I am showing the position of the bullet damages on the driver's door of the vehicle with the shattered side window of the vehicle, of the door.

**ADV NGCUKAITOBI SC:** Yes, but what can we see there? We see a black vehicle and a person who is ...[indistinct] deceased ...[intervenes].

**LT-COL MANGENA:** Ja, what is on the photo is the black Lexus with the driver's door open, the shattered window and the bullet holes and the driver on the driver seat. The deceased is the driver on the driver seat. Now, if you look at the same photo, at the top of the door, you still have glass particles embedded under the rubber, which indicates that  
10 when this window shattered, it was closed. It was not open, it was closed.

**ADV NGCUKAITOBI SC:** Okay. So, is there anything else of significance in photo 5?

**LT-COL MANGENA:** We may proceed to another photo.

**ADV NGCUKAITOBI SC:** So, you have identified photo 27 as the next photo to look into.

**LT-COL MANGENA:** Right, on photo 27, we looked at the ...[intervenes].

**ADV NGCUKAITOBI SC:** Which is at 2A-85.

20 **LT-COL MANGENA:** 2A?

**ADV NGCUKAITOBI SC:** 85.

**LT-COL MANGENA:** 85. Ja, on photo 2A-85, we see the bullet hole on the headrest of the driver's seat of the vehicle.

**ADV NGCUKAITOBI SC:** Yes, just tell us how do we see the bullet hole?

**LT-COL MANGENA:** I have circled the bullet hole on the headrest of the vehicle.

**ADV NGCUKAITOBI SC:** Okay, so the black circle there.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Is the bullet hole.

**LT-COL MANGENA:** That is a bullet hole, yes.

**ADV NGCUKAITOBI SC:** Okay, thank you. So, we see that and what else?

**LT-COL MANGENA:** We see the position of the deceased  
10 inside the vehicle also.

**ADV NGCUKAITOBI SC:** Yes. What does that show us, the two things you have asked us to look at?

**LT-COL MANGENA:** Right, if we look at the bullet holes on the door and we look at the bullet hole on this headrest of the, are not from the same direction. You can see the direction of the shots. These are not from the same direction.

**ADV NGCUKAITOBI SC:** So, if you compare 27 with photo 5, photo 27 with photo 5?

**LT-COL MANGENA:** That is correct.

20 **ADV NGCUKAITOBI SC:** So, which one is from which direction?

**LT-COL MANGENA:** The bullet damages on the door itself are from the side, the right side of the vehicle.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** And if you look at the bullet hole on the

headrest, it is from the right side but towards the back, not from the side, towards the right back of the vehicle.

**ADV NGCUKAITOBI SC:** Alright, showing what?

**LT-COL MANGENA:** Showing that it is different people who are shooting at the vehicle and also the different calibres of firearms that are used. The bullet holes on the door, as it appears, are from a high-velocity calibre. It is from a rifle. And then the bullet hole on the headrest is from a medium-velocity or low-velocity, a 9mm. It is from a handgun.

10 **ADV NGCUKAITOBI SC:** Okay, so, the one at photo 27, which is the, what you refer to as the headrest, is from a handgun.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And then the spray gun at photo 5 is from a, I suppose you have to look at 5 and 6 together because 6 is closer to the bullet holes.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** So, you say that is from ...[intervenes].

20 **LT-COL MANGENA:** Here the vehicle was shot with a rifle.

**CHAIRPERSON:** When you say here, are you referring to photo 6 or photo ...[intervenes].

**LT-COL MANGENA:** On photo 5 and photo 6. These shots are from a rifle.

**ADV NGCUKAITOBI SC:** 5 and 6?

**CHAIRPERSON:** 5 and 6.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, how do you know that they are from a rifle?

**LT-COL MANGENA:** I looked at the size of the bullet and looked at how they deformed or the damages on this vehicle. If shots are fired on the vehicle, especially the high-velocity bullets, the rifle, in some instances, you will find that where the holes are, it bends inside and outside. You can see it  
10 bent outside this.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Damages can be seen outside the vehicle. It is the high-velocity that creates that type of holes. And normally with this, because they hit the steel plate, they will normally break into fragments when they get into the vehicle.

**ADV NGCUKAITOBI SC:** I think, I do not know whether it is better to look at that one on the screen or you can see from your own.

20 **LT-COL MANGENA:** If you look at the two bottom ones there ...[intervenes].

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Towards the top, I would say, can I point it?

**ADV NGCUKAITOBI SC:** Ja, ja, of course.

**LT-COL MANGENA:** At this point, this shows high-velocity because it ...[indistinct] [moved away from microphone] It is like it shattered inside and comes out the way it is damaged. And if you look at the normal ones, if you look at this ones, the damages will be that side, because it is on a curve and it is high-velocity. So those bullet holes can be seen from a rifle, not the normal 9mm.

The difference between a rifle and a handgun or a medium-velocity is that with the rifle, especially 5.56 that has  
10 been used here, the speed of your bullets will be between 850 and 900 meters per second. So mostly on impact, they start to fragment, they start to break. And you look at 9mm, your speed of your 9mm is around 350 to 380 meters per second. They do not break easily. They will rather penetrate than breaking easy.

**ADV NGCUKAITOBI SC:** Yes. And then in this photo 6, how do we know that it is broken? You are talking about breaking easily.

**LT-COL MANGENA:** Where I say they break easily?

20 **ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** If we look at the injuries sustained by the deceased inside the vehicle, there is a lot of bullet holes on the side of the door, but it did not sustain wounds from this. So it shows that most of those bullets fragmented inside the panel of the door, they did not hit the deceased.

**ADV NGCUKAITOBI SC:** Oh, I see. So on impact, it would fragment.

**LT-COL MANGENA:** Mostly it will fragment. In some instances, if you look at the wounds sustained by the deceased, on some of the photos you see only fragments penetrating the skin, but not the whole bullet.

**ADV NGCUKAITOBI SC:** I see. We will come back to the actual wounds sustained by the deceased. So far you are drawing a distinction between the impact of a bullet from a  
10 high-velocity machine gun versus the impact from ...[intervenes].

**LT-COL MANGENA:** From a pistol.

**ADV NGCUKAITOBI SC:** A pistol.

**LT-COL MANGENA:** From a handgun.

**ADV NGCUKAITOBI SC:** From a 9mm.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, all right. And that is why photo 5 and 6 and photo 27 are compared, because – yes.

**LT-COL MANGENA:** That is correct, Chair.

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

**ADV BALOYI-MERE SC:** [Indistinct]... before you leave those photos.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Photo 5, Lieutenant Colonel Mangena informs us that the fact that part of the glass is still,

although shattered, it is still attached to the car frame, indicates that the window was not open.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** If memory serves me well, in this particular case, the police claimed that there was shooting from the occupants of the car.

**ADV NGCUKAITOBI SC:** Yes, that is correct, Madam Baloyi-Mere. I am trying to ...[intervenes].

**ADV BALOYI-MERE SC:** So, so, and I have already declared  
10 that I do not know anything about guns. All I know is that they kill. But can you, can maybe Lieutenant Colonel Mangena explain to us if it is possible for someone to shoot from inside a vehicle through a closed window?

**LT-COL MANGENA:** Chair, it is not possible to shoot from the vehicle from a closed window. That is why I said, if you look at the window, you can see that glass particles are still embedded in the rubber at the top there, which indicates that the window was closed when these shots were fired. When  
20 looking into this, I would say the shots that shattered the window are from outside, not from inside the vehicle.

**ADV BALOYI-MERE SC:** But why would one not fire from a closed window, because obviously a bullet can go through a window and shoot someone outside.

**LT-COL MANGENA:** Going through the window, it has to shatter the window. It cannot exit without shattering the

window.

**ADV NGCUKAITOBI SC:** No, I suppose the question is, what logic is there for shooting from inside the car whilst the window is closed. So you are inside, you are shooting ...[intervenes].

**LT-COL MANGENA:** Inside shooting other – if shooting at people outside the vehicle while inside the vehicle with the window closed is not going to be possible. You have to open the window to shoot, unless if you want to shatter your own  
10 window itself with the first shot or the second shot that you are going to fire. Let us say with the first shot, because the first shot can create a hole, and when you fire the second shot, it will shatter the whole window.

**ADV NGCUKAITOBI SC:** Yes, well ...[intervenes].

**LT-COL MANGENA:** So I will say it is not possible that he could have been shooting at the police officers from a closed window. It is not possible.

**ADV NGCUKAITOBI SC:** Yes. I mean, I suppose that just raises so many other questions, because to shoot, would you  
20 not have to stretch your arm?

**LT-COL MANGENA:** Chair, it depends on the position, on which direction are you shooting.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** If we look at the deceased in the vehicle, if he is driving and he wants to shoot, if he is

shooting to the left, if the window is closed, he have to shoot with the, I mean shooting to the right, he has to shoot with the left, unless he extends the hand out of the vehicle to shoot, and it must be an open window.

In this position, yes, it is possible with the open window, but if the window is closed, shooting from this position, it is possible but unlikely that the person will do that to damage his car first. He will have to open the window to shoot outside, if shooting with the left hand.

10 **ADV NGCUKAITOBI SC:** Yes, all right. Okay, thank you. So your point is a combination of photo 5 and photo 6 clearly illustrates that the bullets are from outside.

**LT-COL MANGENA:** That is correct, even those bullet holes that we see on the photos are from outside into the vehicle. There is no shot or bullet damage identified on that vehicle that was fired from inside the vehicle outside.

**ADV NGCUKAITOBI SC:** Yes. All right, and then ...[intervenes].

**CHAIRPERSON:** I think that becomes more apparent when  
20 you look at photo 11, photo 12, and photo 27 itself, when you look at that arrow in 27, for instance, on the frame. Maybe look at, first, look at photo 11, at 2A-77, and then photo 12 there. Remember, the deceased is inside the vehicle, so those bullets would be coming from the rear side of the vehicle. Now look at 27, 27, to me, shows that arrow, that

arrow there on the frame, should have been from outside.

**LT-COL MANGENA:** It is also from the back of the vehicle towards the driver's side, and that is why it is embedded in the frame of the vehicle.

**CHAIRPERSON:** From outside.

**ADV NGCUKAITOBI SC:** From outside, yes.

**ADV NGCUKAITOBI SC:** If you are finished, Madam Chair.

**CHAIRPERSON:** [Indistinct]...

**ADV NGCUKAITOBI SC:** Ja, thank you. Can I, I think the  
10 ...[intervenes].

**CHAIRPERSON:** [Indistinct]... [microphone off] before you proceed, unless ...[indistinct] before you proceed, unless I am interrupting your clarification. We are going to take a tea break. Maybe you can finalize that aspect, then we can pause for tea.

**ADV NGCUKAITOBI SC:** Yes. Yes, thank you, Madam Chair. It will just be one point. If you, I do not know if they have given you the copies of the dockets. They are referred to in your statement, in the footnotes. There is just one  
20 statement I want to look at, the statement of Mr Stoltz, Inspector Stoltz. Yes, so it is referred to in your statement at paragraph 49.8 as one of the sources you relied on. It is at DC000019. It is coming to you now. So DC000019, it is statement A7 from the docket. No, you do not have to look for it. The gentleman on your left will find it for you.

**CHAIRPERSON:** In which bundle of the two that you gave us, do we find the DC?

**ADV NGCUKAITOBI SC:** It is in the dockets. Apparently the researchers have isolated the dockets.

**CHAIRPERSON:** It is in the dockets.

**ADV NGCUKAITOBI SC:** Now, this is a statement given by one of the policemen that were involved in the shooting, Inspector Stoltz.

**LT-COL MANGENA:** Stoltz.

10 **ADV NGCUKAITOBI SC:** Yes. And the person that we see there, it has now become common cause, is Mr Bongani Mkhize.

**LT-COL MANGENA:** That is correct, yes, yes.

**ADV NGCUKAITOBI SC:** Look at paragraph 4 of how he describes the shooting. If you look at paragraph 4, he says:  
“The vehicle turned into High View Road towards Sparks Road, left into Sparks Road towards Brickfield Road. Constable Lee ...”

20 That is Raymond Lee, and you will see that there is a statement from him as well.

“Managed to pull up along the side of the Lexus. I produced my police appointment certificate and instructed the driver of the Lexus to stop. The driver of the Lexus ignored my

instructions and kept on driving. The suspect then produced a firearm through his open door.”

So their version is that, sort of open window, their version is that the window was open.

**LT-COL MANGENA:** No, I beg to differ with that. You can see that the window was closed there.

**ADV NGCUKAITOBI SC:** Yes. No, I am saying in response to the theoretical possibility that there could have been a shot  
10 from inside, that the actual version is that the shot was from an open window.

**LT-COL MANGENA:** No, the window was closed in there.

**ADV NGCUKAITOBI SC:** Yes. And then there was also, Padayachee was also there. So, yes, so this is why then the question as to whether that window was open or closed becomes important because the police claimed that it was open.

**LT-COL MANGENA:** No, the window was closed.

**ADV NGCUKAITOBI SC:** Yes. Thank you Madam Chair, that  
20 is the only point I wanted to clarify. I am happy to take the adjournment.

**CHAIRPERSON:** Thank you, Counsel. Lieutenant Colonel, we are going to take a tea break for 30 minutes. You are under oath and you understand what that means.

**LT-COL MANGENA:** That is correct, Chair, I understand.

**CHAIRPERSON:** We will adjourn until 10 to 12. Thank you, we adjourn.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good day, everyone. Good day, Lieutenant Colonel Mangena.

**LT-COL MANGENA:** Good day, Madam Chair.

**CHAIRPERSON:** Good day, *Nthati* Chauke. You are still under oath, Colonel.

10 **LT-COL MANGENA:** I am still under oath, Madam Chair.

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

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Lieutenant Colonel Mangena, we had finished paragraph 55 and we were left with photos 31, 32 and 33, which you will find at 2A/88. So if you have any further comments on those photos. 2A/88 and 89. Yes, do you want to comment on 31, 32 and 33?

**LT-COL MANGENA:** Photos 31, 32 and 33?

**ADV NGCUKAITOBI SC:** Yes.

20 **LT-COL MANGENA:** Chair, photos 31, 32 and 33, depicting the glass particles on the vehicle of the driver's door, the right rear door and the left front door. Where I have circled it, it indicates that all the windows of this vehicle were closed and were shattered by bullets coming from outside.

**ADV NGCUKAITOBI SC:** Yes. Thank you. We have looked

into the docket ...[intervenes]

**CHAIRPERSON:** What about, I am sorry, Counsel. What about picture... photograph 26. You see that bullet wound on the head. Is it coming from the rear side of the vehicle? 2A/84, photo 26.

**LT-COL MANGENA:** Chair, the bullet is coming from the back.

**CHAIRPERSON:** It is coming from the back?

**LT-COL MANGENA:** It is coming from the back, yes.

10 **CHAIRPERSON:** As to that, let us look at photograph 8. Photo 8 at 2A/75. That black thing on the windscreen at the back, what is it?

**LT-COL MANGENA:** Photo 8?

**CHAIRPERSON:** Photo 8 at 2A/75.

**LT-COL MANGENA:** It is a bullet hole, Chair.

**CHAIRPERSON:** It is a bullet hole.

**LT-COL MANGENA:** It is a bullet hole.

**CHAIRPERSON:** Is it likely that the injury sustained at that photo 26 that I drew your attention to earlier could have  
20 resulted from that bullet from the rear side?

**LT-COL MANGENA:** That is correct, Chair. It is possible that it could have been from that shot.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Lieutenant Colonel, we were looking at the physical damage

to the vehicle up to so far with all of those five photos. Now, I want to look at the injury to the person. Let us start at, according to your statement, paragraph 58. You start with photo 20, which is at 2A/81. Perhaps you can start at 19, if it makes it better for your analysis.

**LT-COL MANGENA:** As depicted on photo 20 of the 2A/81, the bottom photo, the wound that I have circled there, according to the post mortem, is an entrance wound and then the ones that are just below towards the left, close to the  
10 hand gloves there, those are the superficial ones called the grazing wound, where the bullet only grazed but did not penetrate. So the one that penetrated is the one that is towards the neck.

**ADV NGCUKAITOBI SC:** Now, if you compare that with photo 19, what does photo 19 show?

**LT-COL MANGENA:** Photo 19 is the same wound. It is just that on photo 19, the position of the deceased there and on the photo 20 are not the same. In photo 19, look there, neck is stretched forward so it is out. And photo 20 is when the  
20 neck is, so it is now between the skin of the neck, but it is the same wound.

**ADV NGCUKAITOBI SC:** What does that mean for us when you say it is a penetrating wound?

**LT-COL MANGENA:** In this instance, Chair, the bullet penetrated the back of the neck into the head. Now, if you

look at the position of the deceased in this case, what I can show the Commission is that when you look at wounds sustained by the deceased, you look at wound number, in photo number 23, on 2A/83, what we see on this photo, we have got the wound there on the elbow, and we have got the smaller wounds from the fragments. These wounds, if I look at them and I explain them or interpret what I see here, what I see is that when these wounds were inflicted, the driver's right arm was stretched forward holding the steering wheel.

10           So the small wounds that we see are the glass particles where the bullet hit the glass and created what we call a pseudo-tattooing of the secondary missiles, which are the small fragments of the glass having the impact of your bullet on the glass, created those other small wounds surrounding this main wound. Now, if he was in this position, the hand was down, you could not have sustained those wounds. But the minute he stretches the arm to hold the steering wheel, that is when these wounds were inflicted.

20           So it shows that during the impact of the shots fired from the right-hand side with the rifles, the driver's right arm was on the steering wheel, most likely on the steering wheel, was holding the steering wheel in this position. Just like on the photos, the left hand is not clearly visible, but I suspect there is also fragments of the pseudo-tattooing created by the fragments of this glass.

**CHAIRPERSON:** Is that the depiction on photo 22?

**LT-COL MANGENA:** On photo 23.

**CHAIRPERSON:** On 23. Yes, I see that. Thank you.

**ADV NGCUKAITOBI SC:** I still need to complete photo 19 by reference to photo 27. Photo 19 is 2A/81, and photo 27 is 2A/85.

**LT-COL MANGENA:** Yes, I have the two, Chair.

**ADV NGCUKAITOBI SC:** Yes, I just wanted to explain to the Panel what you see there. You have already explained that  
10 there was an entrance wound on the back of the neck.

**LT-COL MANGENA:** Right, Chair. If we look at photo 27, at photo 27, at the corner of the pillar where there is a bullet with an arrow, it is pointed with an arrow. Now, if you look at the window, the rear window, it is also shattered because there is also glass particles embedded on the rubber there. Now, it is possible that this could be the bullet that broke the glass, and the glass there window fragmented.

Now, when you look at the bullet hole on the headrest of the seat, it is still a stable bullet, whereby it is still in a  
20 spinning motion. It is not tumbling, because if a bullet hits an object before it hits the seat, what will happen is it will create what you call the pseudo, the secondary missiles, which will be embedded in the glass, in the headrest of the seat, and then your bullet will come in a spinning motion, in a twisting motion.

But this bullet here, it is still round. It shows the movement of the bullet, that your bullet was still in a spinning movement, which was caused by the grooves of the barrel. Because when a shot is fired, the grooves inside the barrel of the firearm forces your bullet to spin. So if it spins, it becomes more accurate. Now, in this instance, there was no disturbance of this bullet from the muzzle of the firearm until it hits the headrest of the vehicle. So it perforated the headrest, and then it perforated the neck of the deceased.

10 If the driver was in a seated position in the vehicle, it perforated the seat, and then it entered the back of the neck of the deceased and this is a handgun bullet that is coming from the left rear of the vehicle, not from the, I mean from the right rear of the vehicle, not from the right side of the vehicle. The wounds that I have explained, those wounds on the right arm of the fragments are most likely from the side, the right side, where NIU members were shooting from.

**ADV NGCUKAITOBI SC:** Yes. So the exercise is still to compare 27. You have explained 27, as you have done and  
20 then when you juxtapose that to 19 at 2A/81, what does that tell you?

**LT-COL MANGENA:** 2A/81?

**ADV NGCUKAITOBI SC:** Yes, at photo 19.

**LT-COL MANGENA:** Photo 19.

**ADV NGCUKAITOBI SC:** Yes, in the light of the explanation

you have given about 27.

**LT-COL MANGENA:** By the photo 19, the wound sustained is more likely that it will be the wound of the same bullet that perforated the headrest of the vehicle.

**ADV NGCUKAITOBI SC:** Yes. Now, if you then, so that is the wound that is lodged through the neck.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** With a 9mm.

**LT-COL MANGENA:** It is a 9mm.

10 **ADV NGCUKAITOBI SC:** Yes. Now, at the scene of the crime, some people were carrying the rifles, others were using 9mm, that is clear from your evidence.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, did you find out who of these officers was using the 9mm, which is the firearm that was lodged in the neck of Mr Mkhize?

**LT-COL MANGENA:** Right, Chair, if I can recall, the bullet was recovered from the neck or the neck or the head of the deceased during post-mortem, and that bullet was sent to the  
20 lab for analysis. One of the colleagues from KZN analysed that bullet, and according to his report, if I can serve my memory well, the bullet was positively linked to the firearm of Raymond Lee, who was a member of Cato Manor unit.

**ADV NGCUKAITOBI SC:** Raymond Lee?

**LT-COL MANGENA:** Raymond Lee, yes.

**ADV NGCUKAITOBI SC:** Is the person who shot with a 9mm?

**LT-COL MANGENA:** With a 9mm, that is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, you have mentioned that there were other bullets from the side, which were shot through the high velocity machine guns. Now, we have looked at the different types of machine guns here, the R4s and the R5s and the R1s, and AK-47s have been mentioned in this case. Could you just give us the categories? Like, which ones are the official firearms of the South African  
10 police?

**LT-COL MANGENA:** Chair, the official firearms of the SAPS are the R5s rifles.

**ADV NGCUKAITOBI SC:** R5s and R4s.

**LT-COL MANGENA:** R4s are for the military.

**ADV NGCUKAITOBI SC:** All right, yes and then R1?

**LT-COL MANGENA:** R1s, some of the members are now using, not all of them, but some of the members are using the R1 rifles also. But in this instance, R1 was not used. It is only R5 that was used.

20 **ADV NGCUKAITOBI SC:** But R1, R4, R5 are official machine guns. R4 for the army, R1 and R5 for the police.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And AK-47, illegal?

**LT-COL MANGENA:** Chair, currently we have the AK-47s that are legal, but the difference is only the police and the

defence can carry full automatic rifles. The security companies are not allowed to carry full automatic rifles. Even the Metro Police are not allowed to carry the full automatic rifles. What they are carrying are the LM5. LM5 is exactly the same as an R5. The only difference is that R5 can shoot full automatic, LM5 cannot shoot full automatic. But the calibre is the same, the same with the R4. Now in this instance, there are AK-47s that can shoot full automatic. Those are illegal firearms. Some of the companies now are resorting to use the AK-47, but which are not full automatic, are only semi-automatic.

**ADV NGCUKAITOBI SC:** But they are not official guns of the police?

**LT-COL MANGENA:** They are not official firearms of the police.

**ADV NGCUKAITOBI SC:** Now we come back then to Mr Mkhize's execution. Your description of that incident is that what you see on the door, on the right side of the door, is the impact of an R5 bullet.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, Mr Raymond Lee is the person who shot this shot at the back of Mr Mkhize. Now I want to then move to where you were, which is the wound at 23 and 24, 25 and 26. At 2A/83 and 2A/84. Could you just give an explanation of those for us, please?

**LT-COL MANGENA:** The wounds on photo 23, as depicted, are the wounds on the right arm of the deceased, and next to the elbow and we have those small wounds, which are created by the secondary missiles. So these wounds ...[intervenes]

**ADV NGCUKAITOBI SC:** If it is easier, you can point to the screen if you want, if you would rather stand up with your microphone. I am not sure, whichever. I just want to give you the permission. Sorry, Chair, I should have asked permission, sorry, come back, come back. [Laughter] I just

10 made a big mistake. Madam Chair, may the witness stand up to point?

**CHAIRPERSON:** You may, Colonel.

**ADV NGCUKAITOBI SC:** I apologise, it was a huge mistake on my part.

**LT-COL MANGENA:** I will do that, Chair.

**ADV NGCUKAITOBI SC:** Ja, sorry.

**LT-COL MANGENA:** Right, Chair, if you look at the wound sustained, this wound will be an irregular shape created by the bullet fragments, or part of the bullet that was fired.

20 **CHAIRPERSON:** I beg your pardon. There is a loud laughter at the back.

**ADV NGCUKAITOBI SC:** I am being recorded.

**CHAIRPERSON:** The reporters are going to film you laughing loudly.

**LT-COL MANGENA:** And Chair, if you look at these small

ones, these are from the secondary missiles, where the bullet shattered the glass, and the particles of the glass travelled to the same direction of the bullet, and then hit the arm of the deceased, creating these ones. Now, if he was in this position, where he is seated, the elbow is down close to the pants, it is not possible that these wounds would be here and if you extend the right arm to hold the steering wheel, the arm is now in line with the glass, or the window of the vehicle.

10 So the bullet that fragmented, or that fractured the glass, or the window of the vehicle, created what you call the secondary missiles, which created this, or what you can call the pseudo-tattooing, where the glass fragments penetrate in the skin and this was from the part of the bullet fragment, after it went through, or it hit the window of the vehicle. Now, in this instance, it shows that when these shots were fired, the driver's arm, right arm, was most likely on the steering wheel, and the window was closed. The window was shattered by those bullets.

**ADV NGCUKAITOBI SC:** And which of the two would that  
20 be? Of the machine gun versus the shotgun?

**LT-COL MANGENA:** Chair, all this is from a rifle. It is not from a pistol, it is from a rifle.

**ADV NGCUKAITOBI SC:** And now, you said that the rifles were carried by the NIU.

**LT-COL MANGENA:** That is correct, Chair. NIU members

were carrying rifles, or shooting with their rifles.

**ADV NGCUKAITOBI SC:** Yes. And then there is photo 24, which is immediately below. Yes, that one.

**LT-COL MANGENA:** Yes, photo 24. It is on the right thigh of the deceased. So it could be one of the bullets that has hit the panel on the door, and penetrated. But when you look at it, it has dismantled, or it has fractured. That is one of the fragments that has shot, that has hit him on the right thigh. It is not a complete bullet that has hit him on the thigh.

10 **ADV NGCUKAITOBI SC:** Okay, so what you call a fragment.

**LT-COL MANGENA:** A fragment, yes.

**ADV NGCUKAITOBI SC:** Can you just explain this concept of a fragmentation of a bullet?

**LT-COL MANGENA:** Fragmentation of a bullet, Chair. When you take, especially a rifle bullet, especially the 5,56, as I said, you look at the speed of the bullet. It is between 850 and 900 metres per second. So in its flight, if it can hit any object, it breaks into fragments. It will depend on sizes of the fragments. Some of the fragments can still penetrate or  
20 can still travel to cause injuries, but it will be minor injuries. In most cases, let us say if a person has been shot with a rifle inside the vehicle, with an R5, the possibility of the person sustaining only injuries are very high, where the bullet hits the panels first before it hits the person.

It is unlike when you are using a medium-velocity or

a low-velocity bullet. Like when you are using a pistol, when shooting with a pistol, the pistol most likely will penetrate the door, penetrate the panels, and it will continue to... so because of the speed, it is slow. It does not break. It does not break easily compared to with the 5,56.

**ADV NGCUKAITOBI SC:** So if it has got lower speed, then it has got...

**ADV NGCUKAITOBI SC:** It is more penetration.

**LT-COL MANGENA:** Ja.

10 **LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** If it has got a higher speed, it will fragment.

**LT-COL MANGENA:** Fragment easily.

**ADV NGCUKAITOBI SC:** Yes. Now, the reason I am asking is because of the wounds we see at 25 and 26. Now, 26 is the wound that the Chairperson asked you to comment about, because it does not appear to have penetrated, but appears to have fragmented. Let us start with 25 and that is the same as the wound on the thigh.

20 **LT-COL MANGENA:** If you look at photo 26...

**ADV NGCUKAITOBI SC:** 26?

**LT-COL MANGENA:** Yes, photo 26.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** It is likely that it could have been caused by two bullets.

**ADV NGCUKAITOBI SC:** I see.

**LT-COL MANGENA:** If you look at the one that I have circled... If you look at the wound that I have circled here, it is a round-shaped wound. This could be a penetrating... Sorry for that. This could be a penetrating wound of a bullet and if you look at this one, it is crossing to that direction. It is not penetrating, it is crossing to that direction. So, most likely, this could be from a fragment of an R5 or 5,56 and this could be penetrating into the head of the deceased.

10 **ADV NGCUKAITOBI SC:** Is there any significance to the fact that the one you say is likely a penetrating wound is smaller?

**LT-COL MANGENA:** Yes, it is this one and if you look at this one, it did not penetrate the skull. It only crossed, creating this... what do you call it? Sort of a gutter wound passing through the side and this one is penetrating into the skull.

**ADV NGCUKAITOBI SC:** It is going inside. All right, thank you. So, we have looked at the bullets into the body of the car and then the bullets into the body of the person. Now,  
20 which of these bullets have hit the body? You have seen the one on the arm. You have seen the other on the thigh. You have seen the one on the head that is going the other direction. Which one would have been a fatal wound?

**LT-COL MANGENA:** Chair, I went through both post-mortem reports and both doctors are agreeing on the same thing.

That the fatal wound is the bullet that went through the neck of the deceased into the head of the deceased.

**ADV NGCUKAITOBI SC:** Photo 19 to A/81. Are you at photo 19?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Is that the fatal wound on the back of the deceased?

**LT-COL MANGENA:** That is correct, Chair. This could be a fatal shot that killed the deceased. Because if you look at photo number 17 and 18, you have a wound. It is on the side of the face, but it does not penetrate, it only goes through, removing the eye, it came out here. This, according to the doctors, is not a fatal shot that could have killed him. With this wound only, he could have still survived. But with the one that penetrated the skull, it is the one that killed him.

**ADV NGCUKAITOBI SC:** So you are saying 17 and 18, they have damaged his face, but you are saying they are not fatal?

**LT-COL MANGENA:** They are not fatal shots, these ones.

**ADV NGCUKAITOBI SC:** Yes. But the one that did not damage his face but penetrated his head is the fatal one at 19.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, you have testified that that was actually shot by a Cato Manor member.

**LT-COL MANGENA:** That is correct, Chair.

**CHAIRPERSON:** The one that penetrated the skull, is it the one at 26? The one with the circle? The one that said it goes straight into the head at 26? The one with the circle? Yes, this one, if you look in the picture.

**LT-COL MANGENA:** At 26?

**CHAIRPERSON:** Yes, at photo 26. You remember you showed us that one with a circle and the wound that you said could be a shatter? That one at the bottom circled.

**LT-COL MANGENA:** That is correct, Chair.

10 **LT-COL MANGENA:** You said that one goes into the head?

**LT-COL MANGENA:** It goes into the head, but according to the post-mortem report, the fatal one is the one that is coming from the neck.

**CHAIRPERSON:** On the neck side.

**LT-COL MANGENA:** That is correct, Chair.

**CHAIRPERSON:** Yes, thank you.

**ADV BALOYI-MERE SC:** On the same photo, you said one did not go in and the one that is circled went through. Does it mean that it was two different guns that were used or...?

20 Because you said one fractures when it hits and this one seems to have left a perfectly round entrance wound.

**LT-COL MANGENA:** That is correct, Chair. It is two different firearms. It is two different calibres there.

**ADV BALOYI-MERE SC:** Would you care to explain the difference because you said it is two different calibres?

**LT-COL MANGENA:** The one that is open, the one at the top, the big one, is from the 5,56 rifle or the rifle itself and then the one that I have circled is from a handgun, a pistol.

**ADV NGCUKAITOBI SC:** Thank you. All right, thank you. So that will take us up to paragraph 59 of your statement, which is 218 and then there is 60, 61, which is 62, which are important because they talk about a firearm recovered from inside the vehicle alleged to be belonging to the deceased.

**LT-COL MANGENA:** On paragraph 60?

10 **ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** I said:

“I examined the ballistic report compiled by Sergeant Taljaard [?], which analysed the cartridge cases recovered ...[intervenes]”

**ADV NGCUKAITOBI SC:** Sorry, just before you continue on that, I have misled you because I need to first show you where this appears, this firearm appears. So starting at 2A/78, at photo 14. Can you see that?

**LT-COL MANGENA:** 2A/78?

20 **ADV NGCUKAITOBI SC:** Yes, at photo 14.

**LT-COL MANGENA:** Yes, I have that, Chair.

**ADV NGCUKAITOBI SC:** And can you point to where there is a firearm there?

**LT-COL MANGENA:** The firearm is pointed downwards on the side between the portion of the gear lever and the left

passenger seat.

**ADV NGCUKAITOBI SC:** Yes. Now this is the firearm that the police claimed was used by the deceased.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, which also appears at photo 15, at 2A/79. Is that correct?

**LT-COL MANGENA:** Sorry?

**ADV NGCUKAITOBI SC:** I am saying, is it the same firearm as the one that appears at photo 15, at 2A/79?

10 **LT-COL MANGENA:** On photo 15?

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** That is correct, the same firearm.

**ADV NGCUKAITOBI SC:** Now that is the firearm you comment about then, at 61, 62, 60, sorry, 60, 61, and 62 of your statement.

**LT-COL MANGENA:** On paragraph 60?

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Paragraph 60 reads:

20 “I examined the ballistic report compiled by Sergeant Taljaard, which analysed the cartridge cases recovered from the crime scene. These reports determined that the cartridge cases marked E1 to E3, F, G1 to G7, and H were fired from the serial pistol with the serial number...”

Now this, I think the pistol with the serial number H86407 was the pistol of Raymond Lee. It is not the pistol that was recovered in the firearm. I think if we can go through Raymond Lee's statement, somewhere he has mentioned the firearm that he used on this date.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** And then the next paragraph, paragraph 61, it says:

10 “According to the report compiled by the same person, all cartridge cases collected from the crime scene, including the two found inside the vehicle of the deceased, were not linked to the firearm found inside the vehicle of the deceased.”

**ADV NGCUKAITOBI SC:** Yes. What does that mean?

**LT-COL MANGENA:** It simply means that the cartridge cases that were found inside the vehicle were not linked to the firearm that was found inside the vehicle.

20 **ADV NGCUKAITOBI SC:** Yes, but given that Mr Lee claims that the deceased actually shot, yes, what does that mean in that context?

**LT-COL MANGENA:** Chair, I went through the statement. Almost all of the Cato Manor members allege that the deceased was shooting at them when they were shooting back at the deceased.

**ADV NGCUKAITOBI SC:** Yes. But given that the cartridges found could not be matched to the firearm that they claim was used to shoot at them, what is the significance of that?

**LT-COL MANGENA:** Chair, I think it could be misleading in the investigations.

**ADV NGCUKAITOBI SC:** Yes. Thank you and then you come to that conclusion at paragraph 62 as well.

**LT-COL MANGENA:**

10                   “According to the same report, all possible  
shots were fired from outside towards the  
vehicle of the deceased. This finding is  
forensically significant because it indicates  
that the firearm found inside the vehicle of  
the deceased was not used or fired at any of  
the cartridges recovered at the scene.”

**ADV NGCUKAITOBI SC:** Yes. And then we have dealt with  
63. You mentioned that in the course of your evidence that  
you have analysed the statements and they all say the same  
thing. We shot back after being shot at.

20                   **LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. You have also dealt with 64,  
showing that everything that was shot was from outside into  
the vehicle. There was nothing from inside to outside.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Then paragraph 65 is a new fact

altogether. It is the residue test results of the primer that was found on the deceased's right hand. Can you explain what is this talking about?

**LT-COL MANGENA:** Chair, if you look at paragraph 65, it is talking – it is about Superintendent Stoltz. It is not the same Stoltz. The Stoltz from Cato Manor is a warrant officer. This is the Superintendent Stoltz, from the Forensic Science Lab, from Chemistry, who analysed the primer residue test conducted from the hands of the deceased in the crime scene.

10 Now, in terms of – according to his, to her report, tests were conducted. The primer tests were conducted on the hands of the deceased and the findings were that it tested positive for primer residue tests.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Now, if you look at the primer residue, you need to understand what is primer residue, because there is a difference between propellant particles and primer residue.

**ADV NGCUKAITOBI SC:** Propellant particles?

20 **LT-COL MANGENA:** The propellant particles.

**ADV NGCUKAITOBI SC:** Yes?

**LT-COL MANGENA:** Now, in the instance of the primer residue, the primer is the back part of the cartridge. When a shot is fired, the firing pin of the firearm strikes the primer. That primer ignites or produces flame that ignites the

propellant. In that process, what happens is when that primer ignites, it creates what you call a sort of ash and that ash, when the firearm is circulating, it goes up and comes and lands on – it can land on the clothing, it can land on your hands if you are holding a firearm, or it can land – so those are the tests that are conducted.

Unlike when you do the residue test, I mean the propellant particles. With the propellant particles is when we do the distance determination with it. But if a shot is fired,  
10 the propellant particles start burning and when it starts burning, it creates gas. That gas exerts pressure in all directions. Now, the particles that are at the front will start burning later or might not be burning at all. That gas exerts pressure and pushes the bullet through the barrel of the firearm. So your bullet is a little bit bigger in diameter than the barrel of the firearm.

So your bullet is forced through the barrel. At the same time, it seals the barrel so that gas does not exit before the bullet. The sound that we hear when a shot is fired is  
20 when this gas is released from the muzzle of the firearm. It creates that sound. Now, behind that bullet, there will be unburnt propellant particles and partially burnt propellant particles that comes with it. Now, the unburnt and partially burnt propellant particles can only travel for a distance of about a metre and that is how we do the distance

determination.

Now, when you look at the unburnt and partially burnt propellant particles penetrating the skin, they create what we call a tattooing. Now, when you look at the tattooing that is created, that is how we can determine how far was the muzzle of the firearm from your target. Now, in this instance, we are not talking about ...[intervenes]

**ADV NGCUKAITOBI SC:** In the case we looked at, just to make that example more practical, photo 23, 2A/83.

10 **LT-COL MANGENA:** Photo 23?

**ADV NGCUKAITOBI SC:** Yes, 2A/83. So, what would that mean for this particular photograph?

**LT-COL MANGENA:** Now, on this one, it is glass particles. It is not the propellant particles.

**ADV NGCUKAITOBI SC:** Yes, okay.

**LT-COL MANGENA:** So, the one that is created by glass particles is called a pseudo-tattooing.

**ADV NGCUKAITOBI SC:** Sorry, what is caught here is pseudo-tattooing?

20 **LT-COL MANGENA:** It is pseudo-tattooing created by glass particles after the bullet has hit the glass. Now, the one that I am talking about is when – I will show you some of the cases that will be visible. I will explain them to the Commission.

**ADV NGCUKAITOBI SC:** So, the first one measures distance, and it can only live for no longer than a metre.

**LT-COL MANGENA:** It cannot travel more than a metre.

**ADV NGCUKAITOBI SC:** All right.

**LT-COL MANGENA:** And then this one...

**ADV NGCUKAITOBI SC:** The residue...

**LT-COL MANGENA:** ...the residue, it is like dust. It will go up and land anywhere around. Now, if a person tests positive for primer residue, there are people who mistaken this and saying that because he tested positive, it means he discharged the firearm. It does not necessarily mean the person has discharged the firearm. It can be one of the four possibilities. It is either a person ...[intervenes]

**ADV NGCUKAITOBI SC:** That is in paragraph 66 of your statement.

**LT-COL MANGENA:** Paragraph...

**ADV NGCUKAITOBI SC:** 66 of your statement, yes.

**LT-COL MANGENA:** Now, it is either that a person has discharged a firearm, or a person was within the vicinity of two square metres when the shots were fired, or the person ...[intervenes]

20 **ADV NGCUKAITOBI SC:** 2 square metres?

**LT-COL MANGENA:** Two square metres.

**ADV NGCUKAITOBI SC:** So, this residue is like a powder.

**LT-COL MANGENA:** It is like a powder or dust.

**ADV NGCUKAITOBI SC:** Okay.

**LT-COL MANGENA:** It will fly and then it will land.

**ADV NGCUKAITOBI SC:** So, if I discharge a firearm and you have a very good camera, it will show the actual dust?

**LT-COL MANGENA:** It will show – you will not see it, it is very small particles. You will not even see it with the naked eyes.

**ADV NGCUKAITOBI SC:** I am saying if you have got a good camera, it will show the dust.

**LT-COL MANGENA:** With a camera, you will not even see it.

10 **ADV NGCUKAITOBI SC:** I see. All right. But it will land somewhere.

**LT-COL MANGENA:** It will land somewhere.

**ADV NGCUKAITOBI SC:** Within a distance of two square metres.

**LT-COL MANGENA:** Within the vicinity of two square metres.

**ADV NGCUKAITOBI SC:** All right.

**LT-COL MANGENA:** So, if, let us say, I discharge a firearm, the person who is sitting here can test positive for primer  
20 residue.

**ADV NGCUKAITOBI SC:** I see.

**LT-COL MANGENA:** And it can be either contamination also. By contamination, it means that a person – the third one would be where a person has just touched a firearm that has just been discharged, can test positive for primer residue.

And with the contamination, it could be that I am involved in the shooting and then I go to a person who was not involved. I touch that person. That will be transfer of the particle. The person can test positive because I have contaminated that person. So, in this instance, he tested positive.

It could be that the guys who were shooting with the rifles were not that far from him and they were shooting with it. They have shot multiple shots with the rifles. The possibility of him testing positive are very high. I did not  
10 ignore the possibility, the fact that Stoltz said he tested positive. I understood that he tested positive. But that does not necessarily mean he has discharged the firearm or he has fired the shot with the firearm.

**ADV NGCUKAITOBI SC:** You examined it. There is the report of Advocate Nazeer Cassim who says, well, why does Mkhize's hand have primer residue? And then somehow tries to use that as justification for saying he could potentially have been shooting at the police.

**LT-COL MANGENA:** Chair, it is not only that he could have  
20 been shooting this firearm. It is not only that one. It could be any of the four that I have just mentioned or the three that I have just mentioned.

**ADV NGCUKAITOBI SC:** But on the physical evidence, you have excluded any possibility that he could have been shooting at the police.

**LT-COL MANGENA:** On the physical evidence on the scene, I have excluded the possibility of him firing a shot.

**ADV NGCUKAITOBI SC:** Now, what was your experience about ...[intervenes]

**CHAIRPERSON:** Wait a minute. I am getting confused there, Counsel. There is a possibility of him having fired a shot. Who?

**LT-COL MANGENA:** No, there is no possibility of him firing a shot.

10 **CHAIRPERSON:** Oh, yes.

**LT-COL MANGENA:** Based on the physical evidence that we have here.

**CHAIRPERSON:** Yes. Thank you.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Sorry, while we are still on that point, can we go back to photo 14? Lieutenant Colonel, if you can, please explain the possibility of that firearm being used vis-à-vis what you had explained at photo 23 in relation to the gunshot. If you can explain the possibility of that  
20 firearm being used by the deceased vis-à-vis the gunshot that you explained to us at photo 23.

**LT-COL MANGENA:** At photo 23?

**ADV BALOYI-MERE SC:** Photo 23, that would be the wound on the elbow and if I may refresh your mind, you said this type of wound can only be sustained if the deceased's arm

was stretched towards the steering wheel and now we see a firearm. Can you make us understand what could be the possibility or the probability of this firearm having been used by the deceased?

**LT-COL MANGENA:** Chair, I...

**ADV BALOYI-MERE SC:** Have I confused you?

**LT-COL MANGENA:** I do not really get the question.

**ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, do you care to...?

10 **LT-COL MANGENA:** Yes, yes, I could...

**ADV BALOYI-MERE SC:** Did you get...

**ADV NGCUKAITOBI SC:** No, I get the question, yes. If we can start at 2A/78, at photo 14.

**LT-COL MANGENA:** Yes, I have it.

**ADV NGCUKAITOBI SC:** You see the position of the firearm?

**LT-COL MANGENA:** Yes, I see the position of the firearm.

**ADV NGCUKAITOBI SC:** Is it on the right or on the left?

**LT-COL MANGENA:** It is on the left side.

20 **ADV NGCUKAITOBI SC:** Yes. Now, if you look at 2A/83.

**LT-COL MANGENA:** 2A/83?

**ADV NGCUKAITOBI SC:** At photo 23.

**LT-COL MANGENA:** Yes.

**ADV NGCUKAITOBI SC:** Now, is that the left or the right?

**LT-COL MANGENA:** That is the right elbow of the deceased.

**ADV NGCUKAITOBI SC:** Now, the statement by Inspector Lotz is that he was shot by the right hand of the deceased.

**LT-COL MANGENA:** Shot by the right hand?

**ADV NGCUKAITOBI SC:** The vehicle was – I mean, the gun was in the right hand.

**LT-COL MANGENA:** In the right hand, yes.

**ADV NGCUKAITOBI SC:** Can you reconcile that?

**LT-COL MANGENA:** If the gun was in the right hand, for him to shoot, he has to open the window. If the gun is on the right hand, he cannot shoot with the right hand with a closed window. It is not possible.

**ADV NGCUKAITOBI SC:** Well, what is the gun doing at photo 14 on the left side? If he is trying to shoot with the right hand?

**LT-COL MANGENA:** I do not know how the gun would come to the left hand side if it was shooting with the right hand side.

**ADV NGCUKAITOBI SC:** Yes. And then, what would be the impact of this bullet hitting him on the elbow?

**LT-COL MANGENA:** Which bullet there?

**ADV NGCUKAITOBI SC:** The one at photo 23.

**LT-COL MANGENA:** The one at photo 23, I would say the arm was not on the side of the body. It was stretched forward, probably holding the steering wheel.

**ADV NGCUKAITOBI SC:** Yes. And in those circumstances,

what is the probability that he was using his right hand to shoot at the police, which was the question?

**LT-COL MANGENA:** It is impossible that he could have been shooting at the people who were on the right hand side with his right arm with the window closed. It would be impossible.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** As a follow-up, at paragraph 65, Superintendent MD Stoltz says, primer residue test result, his right hand tested positive for primer residue. What do you  
10 make of that statement, or what would you say about the statement given the two photos that have been referred to?

**LT-COL MANGENA:** Chair, that is what I was explaining now. The tests conducted were positive for primer residue, but they were taken from the right hand. Now, if you look at how the deceased was, the side window is shot out, and then the shooters were close to him. So the possibility of the particles travelling to his direction, making the test positive, are very high. That is why I said, if a person tests positive for primer residue, it does not necessarily mean this person  
20 has discharged the firearm. It would be that the person has discharged the firearm, or the person has just touched the firearm that has just been discharged, or the person was within the vicinity of two square metres when the shots were fired, or it could be contamination.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Given that the deceased was shot on the elbow of the right hand, and correct me if I am wrong, on the elbow of the right hand, and an allegation is made that he was firing, obviously using his right hand, if we were to follow what Superintendent Stoltz says, that his right hand tested positive for primer residue, where, and I am asking for your opinion, where, in your opinion, would the firearm fall, if he was shot on the right elbow while trying to shoot, or whatever? Where would the firearm most likely fall, or be  
10 found?

**LT-COL MANGENA:** Chair, I would say it is very difficult to say the position where the firearm would have been found, because you will not know the reaction of the person when hit by the bullet. It might be, let us say, he is holding something, and he shot this firearm, he hit the hand, he might throw it to the direction, or he might drop it here. So I cannot exactly say where would the firearm fall, if the argument says he was having a firearm in his hand.

**ADV BALOYI-MERE SC:** Okay, thank you.

20 **ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Now, I wanted to just close this topic about the primer residue, because it has made a big issue in the disciplinary inquiry of Major General Booyesen to criticise your evidence. You have explained what it means. But did you actually conduct investigations into the practices of Cato Manor, around when

they have shot a person, what do they actually do thereafter?

**LT-COL MANGENA:** Chair, I cannot recall how many cases where we got information that, in some instances, what they would do is, after shooting, they would take a firearm, come close to a person's hands, discharge a shot close to the person's hands, and then when LCRC, the Criminal Record Centre members arrive at the scene, or the photographers, they will insist that the person must take the primer residue, knowing that they have discharged the firearm close to this person's hand, and then he can test positive. And that will be their defence, that he tested positive, it means he was shooting at us.

**ADV NGCUKAITOBI SC:** So this was part and parcel of their cover-up.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. I find it surprising now that when people come, they say the first thing, go and test for primer residue. Why should they say that?

**LT-COL MANGENA:** In most of the cases, we found that they were insisting on the PR test to be conducted.

**ADV NGCUKAITOBI SC:** Yes, but I am saying, why would you say that they must go and test the primer residue?

**LT-COL MANGENA:** So that they can use that as the defence, that the person was shooting at them.

**ADV NGCUKAITOBI SC:** Thank you. So you have addressed

68, 69, and 70, 71, 72, 73, thank you and can you deal with your conclusions at 74?

**LT-COL MANGENA:** Right, on paragraph 74:

10 “My conclusions after the observation of the post-mortem report, the crime scene photos, the ballistics report, and the statement of the police are that all shots were fired from outside towards the deceased, outside the vehicle towards the deceased. Two different calibres, a 5,56x45, which is a rifle, and a 9mm calibre were used. The fatal shot was fired from the right rear side of the vehicle. No ballistics or cartridge case evidence linked to the discharged cartridge cases from the firearm are found inside the deceased’s vehicle. My full forensic reconstruction report relating to the incident is attached here as Annexure CM4.”

20 **ADV NGCUKAITOBI SC:** Yes, that is what we have been to. This is the murder of Mr Bongani Mkhize?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And you are confident sitting there that he was executed, he posed no threat to the police?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And we know, according to

you, that the person who actually killed him is a member of Cato Manor?

**LT-COL MANGENA:** That is correct, Chair. According to the post-mortem report also, it is the bullet coming from Raymond Lee's firearm.

**ADV NGCUKAITOBI SC:** Yes. Thank you. I want to move on to the next case, which is Esikhawini at page 2/22, which is also one of the cases that are in the indictment. Can you tell us what was going on in this case?

10 **LT-COL MANGENA:** Chair, I have to give the background of this Esikhawini 3. On the information that we had when we started the case, was that the deceased was in the taxi industry and at one stage was arrested by Cato Manor members and according to ...[intervenes]

**ADV NGCUKAITOBI SC:** Which deceased? Because Esikhawini 03-04-2010 ...[intervenes]

**LT-COL MANGENA:** Young man.

**ADV NGCUKAITOBI SC:** ...is the 16-year-old boy.

20 **LT-COL MANGENA:** Oh, sorry. I was confusing it with the Melmoth one. Esikhawini 3.

**ADV NGCUKAITOBI SC:** I will never forget Esikhawini. Your report is at 2A/101.

**LT-COL MANGENA:** With the Esikhawini case, I think the boy was around 17 years old who was shot in the house.

**ADV NGCUKAITOBI SC:** He was 16.

**LT-COL MANGENA:** 16?

**ADV NGCUKAITOBI SC:**

**LT-COL MANGENA:** Right. What information we had was that there are two prisoners who escaped from the Westville prison and Cato Manor started looking for them. So they got information that they are in Esikhawini, in that house. They followed their alibis or whatever information that they had to this house. Unfortunately, this house was occupied by a family of four. The mother, the father, and two kids. Their  
10 house was in the same street, but their house was under renovation. So they rented this house temporarily while their house was under renovations.

Now, what happened on this day, the father with the son, were watching the soccer games prior to the World Cup in 2010. And later, the father went to sleep. The boy was left on the couch. Unfortunately, he fell asleep on the couch. And while he was sleeping, the Cato Manor got into this house. They kicked the door and started shooting with a rifle. Unfortunately, the boy was shot and killed.

20 **ADV NGCUKAITOBI SC:** Yes. Sorry, Madam Chair, I just need to... I wanted to refer to your presentation, which showed the location of the different houses, but I understand that it has not been scanned. Oh, no, sorry. We are getting conflicting messages. I apologise. All right. It is at photo 1 and 2. At page 2A/105. Yes, yes, yes, that is what I need.

Starting at 2A/104.

**LT-COL MANGENA:** It is photo 2?

**ADV NGCUKAITOBI SC:** 2A/105.

**LT-COL MANGENA:** 2A/105, yes.

**ADV NGCUKAITOBI SC:** Now, just explain what is here.

Because it is very important to understand what happened here, to start from outside. Yes, there it is.

**LT-COL MANGENA:** Right, Chair, the crime scene is this house here.

10 **ADV NGCUKAITOBI SC:** The one with the blue roof.

**LT-COL MANGENA:** The one with the blue roof that I marked crime scene.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** And the family's house was this one. It was under renovation when this incident occurred. So, basically, they rented that house while their house was under renovation.

**ADV NGCUKAITOBI SC:** So, they rented the house called Crime Scene?

20 **LT-COL MANGENA:** They rented the house called Crime Scene, yes, Chair.

**ADV NGCUKAITOBI SC:** Okay. Thank you and then... You will explain?

**ADV BALOYI-MERE SC:** Called Crime Scene or it became a crime scene after? [Laughter]

**ADV NGCUKAITOBI SC:** Afterwards.

**LT-COL MANGENA:** It became a crime scene afterwards.

**ADV NGCUKAITOBI SC:** You can explain whether it was a crime scene before. Maybe, actually. All right, so they rented that house which has a blue roof.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And they stayed there temporarily.

**LT-COL MANGENA:** They stayed there temporarily.

**ADV NGCUKAITOBI SC:** Yes, now that is where the  
10 narrative, I wanted to start from there.

**LT-COL MANGENA:** Yes.

**ADV NGCUKAITOBI SC:** Which is what happened then with Cato Manor. So, we know the starting point is they have got a house on the same street they are renting.

**LT-COL MANGENA:** And then Cato Manor alleges that there is two prisoners who escaped from the Wellsville prison and they got information that they were hiding in this house.

**ADV NGCUKAITOBI SC:** In the house that was rented.

**LT-COL MANGENA:** The house that was rented.

20 **ADV NGCUKAITOBI SC:** By the Ndlovus.

**LT-COL MANGENA:** By the Ndlovus, yes, yes.

**ADV NGCUKAITOBI SC:** Okay, and then?

**LT-COL MANGENA:** And on the day of the incident, or on the evening of the incident, the father alleged that he was with this boy, they were watching the soccer games prior to

the World Cup and then he went to sleep, he left the boy watching the soccer whilst on the couch. And unfortunately he fell asleep and while he was sleeping, Cato Manor members came, they kicked the door and started shooting with the rifles. Unfortunately, the boy was fatally wounded.

**ADV NGCUKAITOBI SC:** Even in this case, they say that there was a firearm.

**LT-COL MANGENA:** In the case, there was also a firearm found next to the boy.

10 **ADV NGCUKAITOBI SC:** And there was a subsequent criminal trial where the same defence was raised that the possibility that the firearm was there could not be excluded, and therefore the accused could not be convicted of murder. Where Mr Padayachee was charged with murder.

**LT-COL MANGENA:** I cannot recall, when we started with this ...[intervenes]

**ADV NGCUKAITOBI SC:** No, I want to ask you a different question about that. I am just telling you that as a background. Were you called to give evidence in that  
20 criminal trial?

**LT-COL MANGENA:** I did not testify in that case, Chair.

**ADV NGCUKAITOBI SC:** Yes. Your report is in the docket.

**LT-COL MANGENA:** My report is in the docket. I do not know when was the trial.

**ADV NGCUKAITOBI SC:** Yes. Were you available to give

evidence if called?

**LT-COL MANGENA:** Chair, I cannot recall the trial or the date of the trial. Because I did not testify in that case.

**ADV NGCUKAITOBI SC:** But I am saying, if the prosecutor from Durban, who was prosecuting Mr Padayachee, had called Lieutenant Colonel Mangena as an expert witness to reconstruct the scene, would you have been available?

**LT-COL MANGENA:** Chair, that is correct, Chair. I would be available to go and testify in that case.

10 **ADV NGCUKAITOBI SC:** Do you know why they did not call you?

**LT-COL MANGENA:** Chair, there is one case that I was called, but I cannot recall which case, was it this one or was it the other one and then I was cancelled not to come and testify. So I cannot recall whether it was this one or it was which other case.

**ADV NGCUKAITOBI SC:** Who cancelled you?

**LT-COL MANGENA:** I cannot recall, Chair.

20 **ADV NGCUKAITOBI SC:** But I am saying the prosecutor cancelled you.

**LT-COL MANGENA:** I am not sure. I think it was the prosecutor who cancelled me that my testimony is not needed anymore.

**ADV NGCUKAITOBI SC:** Yes, do you ...[intervenes]

**LT-COL MANGENA:** I am speaking under correction. It

might be this case, it might be another case, but I am not sure.

**ADV NGCUKAITOBI SC:** But the consequence of either event is that you were available, you had prepared a report, you could have testified, but you are told you are not needed.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And this is what I am asking. Can you think of any reason why the only expert who has constructed the reconstruction of the scene is not called in a criminal trial against an accused who has killed a 16-year-old child?

**LT-COL MANGENA:** Chair, I cannot tell the reason why I was not called.

**ADV NGCUKAITOBI SC:** Yes. Now, can we just go then to your reconstruction?

**CHAIRPERSON:** But I thought counsel is asking you, can you think of any case in which an expert such as yourself has not been called to testify in a criminal trial, in a matter where you have conducted an investigation and reported ballistically?

**LT-COL MANGENA:** Chair, unless in cases where I have submitted a 212 statement and it is accepted, then I might not be called. But in cases where I did the reconstruction and they want an explanation, they will call me and I will go and testify.

**CHAIRPERSON:** This is not a case of that section of the Criminal Procedure Act. This case, this Esikhawini matter.

**LT-COL MANGENA:** Esikhawini.

**ADV NGCUKAITOBI SC:** This is not a case where your report is admitted. It is contested.

**LT-COL MANGENA:** I am not sure if it was...

**ADV NGCUKAITOBI SC:** No, I am telling you that is the fact. It was not accepted, it was contested. That is why I am asking, can you think of any case where the only expert who  
10 has reconstructed the scene is not called to give evidence?

**LT-COL MANGENA:** Chair, if it is not accepted, then I will have to go and testify. But in this one, I was not called to testify. I did not go and testify.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you, Lieutenant Colonel. Can we then go to the reconstruction? Because this is now going to be the first time you are testifying about this case. When the prosecutors had you and decided not to call you.  
20 You started paragraph 76.

**LT-COL MANGENA:** Paragraph 76:

“On the 13th of March 2012, during the course of my official duties as a forensic ballistic examiner, I received the police case docket relating to Esikhawini CAS 3/04/2010

for the purpose of conducting a forensic ballistic reconstruction. In conducting my examination, I personally examined the following documentations and forensic materials:

- The post-mortem report, which is marked as DR156/10, compiled by Dr Nompumelelo Zanele Khumalo.
- The statements by Detective Warrant Officer Eric Alfred Nel.
- Statement by Detective Warrant Officer Gonasagren Padayachee and Detective Warrant Officer Ajit Singh Ganesh.

10

I examined these materials in conjunction with the crime scene photographs contained in Annexure CM5, in order to construct the sequence of the events and determine the position of the deceased at the time of the shooting.”

20 **ADV NGCUKAITOBI SC:** Yes, you have referred to CM5. I just want to make sure we get that right of where it is. It is at 2A/101 up to 2A/117. Do you confirm that?

**LT-COL MANGENA:** Yes, I confirm that, Chair.

**ADV NGCUKAITOBI SC:** That is the report you did for this case?

**LT-COL MANGENA:** That is correct, Chair. That is the report that I compiled for this case.

**ADV NGCUKAITOBI SC:** Yes, all right. Now, you analysed from 78.1 to 78.5 the different shots that were sustained by the, the different wounds that were sustained from the shots by the policemen. Now, you do so by reference to the pictures. Now, I just want to check that they start at photos 17, 21, 18, 19, and 20. So, if you can go to photo 17, which is 2A/113.

10 **LT-COL MANGENA:** Yes.

**ADV NGCUKAITOBI SC:** Yes, what are you showing us there?

**LT-COL MANGENA:** On photo 17, it indicates the bullet entry wound on the left side of the face of the deceased.

**ADV NGCUKAITOBI SC:** And the blood, would that be a blood splatter? Apparently, I get this wrong all the time. But what is the shape of that blood? What is it showing us?

**LT-COL MANGENA:** Blood on which photo?

**LT-COL MANGENA:** On photo 17.

20 **LT-COL MANGENA:** On photo 17, they are only pointing at the position of the wound sustained.

**ADV NGCUKAITOBI SC:** Okay, but does it show anything about the positioning of the head at the time of the shot? The way the shape of the blood?

**LT-COL MANGENA:** No, no, the shape of the blood could

be when the blood that you see is after the wound was inflicted because he was in that position and he started bleeding. So, the blood was flowing from the wound to the couch or the sofa.

**ADV NGCUKAITOBI SC:** I see and then, so that is called a distant gunshot entry wound. What is the reason you use the word distant gunshot?

**LT-COL MANGENA:** It would be a distance because there is no presence of tattooing or any propellant particles.

10 **ADV NGCUKAITOBI SC:** Okay, I see. Then, at photo, maybe let us just go through them in sequence. Photo 18, which is 2A/114.

**LT-COL MANGENA:** Photo 18 indicates the entrance wound on the right arm of the deceased.

**ADV NGCUKAITOBI SC:** Yes, but what...?

**LT-COL MANGENA:** If you look at photo 18, the wound is situated on the right arm here. That is the entrance wound of that bullet. And if you look on the other side, on photo 19, that is the exit site of that same bullet. So, basically, it enters  
20 the site and exits the site. Your exit wound is big because of the amount of energy, the amount of energy that the bullet has transferred to the arm of the deceased. So, basically, as I said, when you look at this type of wound, it shows that it is a rifle that has been used. It is not a pistol. So, it is a high velocity.

So, the amount of energy that was too much for the wound or the arm to handle that. Now, what happened is, to create the wound like this, if a shot is fired, a human body can take or absorb a certain amount of energy so that the wound can be, in most cases, where you get the entrance and the exit being more or less similar in size. But in case of a rifle, in some instances, you find that there is a lot of energy that has been transferred. The body cannot accept or absorb all the energy.

10 It creates a bigger exit wound like in what we see here on this photo. So, the exit wound on the arm, it is small. The entrance is small, the exit is big because that is where a bullet pushed all the energy outside the body.

**ADV NGCUKAITOBI SC:** So, what appears to be an explosion on exit is the pressure exerted by the speed of the bullet.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** So, you were at 18 and 19.

**LT-COL MANGENA:** Let us say on photo 19?

20 **ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** If we can look at the couch, Chair, I just want to point something on this. If we can look at this bloodstain here on the couch, it puts the exact position of the arm when the wound was inflicted. When this bullet exited, it pushed this blood to there. This is what we call the force

splatter, whereby the blood coming from the wound travels to the same direction of the bullet. So, this automatically shows that the arm of the deceased was in this position when this wound was inflicted.

**ADV NGCUKAITOBI SC:** Yes. And then I want to also look at photo 20 and 21, which is 2A/115.

**LT-COL MANGENA:** Photo 20, you have got the grazing wound on the left elbow of the deceased and on photo 21, it shows the position of the wound that was sustained from the  
10 left back where a bullet is travelling to the right side of the body. I just want to point this again, Chair. Now, if you look at the wound, on the arm is 4A is there, that is the graze wound on the arm and there is another wound here that perforates, and then the bullet ends up on this other side of the couch. So, basically, it is wound 1 ...[intervenes]

**ADV NGCUKAITOBI SC:** So, 2A is in the stomach, on the side of the stomach?

**LT-COL MANGENA:** It is on the side of the stomach, on the left-hand side, and comes out on the right-hand side. So, the  
20 one first wound there is this wound, and then it is this wound. So, basically, it is four shots which were fired. One bullet missed him, and then the other three hit him.

**ADV NGCUKAITOBI SC:** And you have said one of those bullets was a shot from an R5, which explains the explosion at the end of 3B.

**LT-COL MANGENA:** Chair, all the shots were fired from the 5,56, from the R5.

**ADV NGCUKAITOBI SC:** All of the three?

**LT-COL MANGENA:** Ja, all of the three shots.

**ADV NGCUKAITOBI SC:** Four?

**LT-COL MANGENA:** All four shots were fired from the rifle, from an R5 rifle.

**ADV NGCUKAITOBI SC:** Yes. Now, if we can go back then to these photos, we have looked at the physical evidence as well as what actually killed the deceased. Then there is this feature of this firearm again, which you see at photo 16, 2A/113, as well as photo 19 and photo 21. Just want your comment on that. So, on the positioning of that firearm at photo 16, 19, and 21. You can take us through that in that sequence.

**LT-COL MANGENA:** Chair, when I look at the position of the firearm on the scene, I cannot explain how did that firearm end up there. I do not have a better explanation of that and I do not see him holding a firearm with, any firearm, shots. Because if you look at the wounds he sustained, the fatal shot is the one that went on the left-hand side of the face and to the right. Now, in this instance, it is a headshot.

**ADV NGCUKAITOBI SC:** That is photo 17, that is the fatal shot.

**LT-COL MANGENA:** On photo 17, that is the fatal shot and

when I look at this, based on my experience, I would say, in my opinion, this is most likely the first shot where he was immediately incapacitated. There was no movement of him. When these other wounds were inflicted, he was already incapacitated, there was no movement.

**ADV NGCUKAITOBI SC:** I am not sure if it was your report or the report of Mr Steyl that says that he was shot in a supine position, in the lying position.

**LT-COL MANGENA:** That is correct, Chair. He was in a  
10 lying position on the couch and if you look at the lying position, the door was on the left-hand side. The Cato Manor members came from the left-hand side. If they kicked the door and he looked at them, I would expect the gunshot wound to be in the face, but not on the side. So, most likely, he did not even see them or he did not even hear them. Because when they kicked, he fired the shot, his face was directed or facing to the front or to the roof, but not to the side when this wound was inflicted.

**ADV NGCUKAITOBI SC:** Now, I still want to analyse the  
20 position of the firearm in the light. You know the defence of Mr Padayachee, which also made it to the criminal prosecution, was that they could not exclude the possibility that the deceased was holding a firearm and either shooting or threatening to shoot. They say they could not exclude the possibility that this boy was trying to shoot the police. So,

when you look at photo 16, can you just give us an analysis of that from an expert point of view?

**LT-COL MANGENA:** Chair, as I explained, if you look at the position of the wound, it shows that he was facing upward. His face was facing upward. So, he cannot point a gun facing upward, but pointing a gun at somebody who is coming inside the house or in that position where he was lying, in a supine position, pointing a gun. If your reflexes as a human being, if somebody kicks the door and you are holding a firearm, you will stand up and face that person or point the firearm. You cannot do it with your body in that position, it is not possible or it is not normal.

**ADV NGCUKAITOBI SC:** And then, you have the same firearm at photo 19. I could not understand, I mean, when you look at 16 and 19, they have clearly moved the body, you know, because the left arm at photo 16 is folded on his stomach. But at photo 19, it is somewhat relaxed on top of the firearm. So, I could not work that out. Maybe you have got an explanation, but I am focused now on the position of the firearm.

**LT-COL MANGENA:** Right, Chair, I will say, when you look at the position of the deceased, there is movement that has been changed. When you look at photo number 16...

**ADV NGCUKAITOBI SC:** 16?

**LT-COL MANGENA:** When you look at photo number 16,

where the head of the deceased is, and then the bleeding and when you look at photo number 19, where you see the bleeding, because some of the blood is already on the floor, on the tile. So, it shows that the head has been moved. So, there was most likely tampering of the scene, moving the body to the other position.

**ADV NGCUKAITOBI SC:** Yes. Certainly, both of his arms have been moved from 16 and 19.

**LT-COL MANGENA:** If you look at the position of the arms, especially the left arm, on photo 16, the left hand is on the chest and on photo 19, the arm is away from the chest.

**ADV NGCUKAITOBI SC:** Yes, I mean, so if you just look at the bloodstain, there is something also that is not clear here. So, in photo 19, there are two bloodstains that appear on the right side. The first is the first bloodstain on the sofa itself, and the second bloodstain on the floor, correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, if you try and compare that with photo 16, neither bloodstain actually appears. So, can you see that? You see there are two bloodstains, one on the sofa, the other on the floor. That is what I was explaining.

**LT-COL MANGENA:** On 19, you can see blood on the floor.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** And then on 16 ...[intervenes]

**ADV NGCUKAITOBI SC:** But also on the sofa.

**LT-COL MANGENA:** ...you cannot see the blood. Even the couch, the other couch is pushed to this on 14, close to this one that he is lying on and on photo 19, there is no other couch that is close to that one.

**ADV NGCUKAITOBI SC:** And that is indicative of what?

**LT-COL MANGENA:** So, I would say it is most likely tampering with the scene.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Or doctrinating the scene in a position  
10 that they want maybe.

**ADV NGCUKAITOBI SC:** Yes, because the odd thing is they have moved his hands, put them closer to the firearm. At photo 19. Whereas at photo 16, they are actually in a different position to the firearm. And then photo 21, that is also another photo where the firearm appears and that appears to be closer to photo 16, although not identical.

**LT-COL MANGENA:** Chair, as I said, if you look at the wounds, if I would say the sequence of the wounds, I would say this would be the first wound and he is immediately  
20 incapacitated. He will not move the body, will not move anything. But when you look at this photo, the elbow has been moved, the firearm has been placed to it and on that same position, that is where the wound is positioned. The wound marked 2...

**ADV NGCUKAITOBI SC:** 2A.

**LT-COL MANGENA:** 2A on the body. So, if this was the first wound, there would not be any movement. But if you look at the position now, the arm has been moved so that the firearm can be on that position. So, I would say this is not the correct position. I would not expect the firearm in that position.

**ADV NGCUKAITOBI SC:** Yes. Now, what is your conclusion on the position of the firearm? Is your expert opinion that it was most likely placed there after the shooting?

**LT-COL MANGENA:** It is most likely that it was placed there  
10 after the incident.

**ADV NGCUKAITOBI SC:** Yes. All right. So, you have covered then 79, 80, 84, 83, sorry, 86. Yes, sorry, there are certain concepts that I thought I would ask you to just deal with, particularly at 86 to 88 of your statement.

**CHAIRPERSON:** Counsel, I think we have seen these pictures before, and as you will agree, even the resilience of a human spirit can only take so much. May we take a break?

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. We have got to, yes, all right. Maybe we can, I do not know if we can  
20 find a better way of doing the forensic analysis.

**CHAIRPERSON:** There is no better way. Let us just take a break.

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

**CHAIRPERSON:** Let us pause.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** We will take a, Colonel, we will take a comfort break. We will use that for lunchtime and reconvene after an hour. Remember, you are under oath.

**LT-COL MANGENA:** That is correct, Chair.

**CHAIRPERSON:** We will adjourn.

**ENQUIRY ADJOURNS**

**CHAIRPERSON:** Good afternoon, everyone. Good afternoon Lieutenant Colonel Mangena. Good afternoon, *Nthati* Chauke. Colonel, you are still under oath. Good  
10 afternoon, Advocate Ngcukaitobi. You may proceed.

**CHRIS MANGENA:** (still under oath)

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Lieutenant-Colonel Mangena, I was trying to get you to explain some of these concepts at paragraph 86 to 88 of your statement.

**LT-COL MANGENA:** 86 to 88, yes?

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Right, where on 88 I said the forward blood splatter was observed on the back rest of the sofa and  
20 then this forward back splatter occurs when a bullet exits the body and blood is propelled in the direction of the same bullet. So that is what we see on the couch that the deceased is lying on.

**ADV NGCUKAITOBI SC:** Just take us to the picture, it is better that way.

**LT-COL MANGENA:** I will say photo 18 and photo 19.

**ADV NGCUKAITOBI SC:** Where, what do we see? Where exactly are we looking? On the sofa? Because there are two bloodstains or blood splatters on that sofa.

**LT-COL MANGENA:** The one on the back rest of the couch on the right-hand side.

**ADV NGCUKAITOBI SC:** I see.

**LT-COL MANGENA:** That is originating from the wound on the right arm of the deceased.

10 **ADV NGCUKAITOBI SC:** Yes. Now, that occurs when?

**LT-COL MANGENA:** That occurs when the bullet exits in a high velocity to the direction of where your blood splatter will be propelled to the direction that the bullet is travelling to. So basically, that places the arm of the deceased in front of the splatter where the splatter is found.

**ADV NGCUKAITOBI SC:** Now, if the position then was like resting on the sofa like this, that is your point?

20 **LT-COL MANGENA:** It was not completely rested, but it was close to the sofa. It could be in any position towards the sofa.

**ADV NGCUKAITOBI SC:** Okay, but the significance for your testimony is what? Is that he was most probably asleep? In other words, it was in the lying position. What is the importance of that testimony?

**LT-COL MANGENA:** That is correct. It is most likely that

he was sleeping and then he did not, or he was not holding any firearm or pointing a firearm in the direction.

**ADV NGCUKAITOBI SC:** Yes. You were explaining this idea of a forward splatter and then you also, there is another concept calibre, from 89 to 91, the size of the calibre.

**LT-COL MANGENA:** 89 is all the wounds sustained by the deceased and bullet damages are indicative of the fact that the high velocity ammunition was used, meaning that you are shot with a rifle and not with a pistol.

10 **ADV NGCUKAITOBI SC:** Yes, we have gone through that. it is the R5.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And then from 92 you deal with another concept, the position of the deceased.

**LT-COL MANGENA:** From 92 the wounds sustained by the deceased, the bullet or trajectories and the bloodstain pattern confirmed. The deceased was shot while in a lying position on the sofa. The shooting did not occur during any active moment of – any active movement by the movement by the  
20 deceased. So after the wound was inflicted, there was no movement by the deceased.

**ADV NGCUKAITOBI SC:** No, I am not sure if I understand that statement to say that because it says the shooting did not occur during any active movement. It is not after the shooting. It is before the shooting, whether there was

movement before the shooting.

**LT-COL MANGENA:** Then after they moved, the wound, the first wound was inflicted, there was no movement of the deceased.

**ADV NGCUKAITOBI SC:** No, I understand that is what you are saying now, but I am saying I understand paragraph 92.2 not to refer to after the shooting. You see what I mean?

**LT-COL MANGENA:** Not ...[intervenes].

**CHAIRPERSON:** Perhaps you can look at 92.2 to follow what  
10 Counsel is saying. Do you want to verify that as counsel is asking you?

**LT-COL MANGENA:** Yes, the shooting did not occur during any active movement by the deceased. So there was no movement of the deceased when these wounds were inflicted.

**ADV NGCUKAITOBI SC:** Yes, exactly. That is what I was trying to get at. Thank you. And you say even afterwards, the first bullet was incapacitating.

**LT-COL MANGENA:** There could have been no movement of the deceased after the first one was inflicted.

20 **ADV NGCUKAITOBI SC:** Yes. And then 92.3, we spoke about this, about the different positions of this body. So, it was still moved around after the shooting.

**LT-COL MANGENA:** The body of the deceased shows minimal post-shooting repositioning. This could be that the movement could have been after that, when they were

shooting, moving the couches or moving. But during the incident, there was no movement of, or immediately after the incident there was no movement of the deceased.

**ADV NGCUKAITOBI SC:** Yes, but I mean here this is about post shooting, repositioning post shooting. I mean, we can see the hands, on the one side they are folded. The arms on the other picture, you can see that they are relaxed. So it is clear that the certainly the arms were moved.

**LT-COL MANGENA:** That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** So is that what is repositioning talking about?

**LT-COL MANGENA:** That is correct. That is what we are talking about.

**ADV NGCUKAITOBI SC:** Yes. Then the last concept is the firearm positioning.

**LT-COL MANGENA:** The position of the firearm under the left arm is unexplainable. I cannot explain how did the firearm landed in that position or where it is found after the incident. The wound patterns will be the type of wound  
20 sustained, where you can identify the exit wound and the position itself of the wounds, where you have a grazing wound and then the bullet perforating the body coming out on the other side. Direction of the fire, it is...

**ADV NGCUKAITOBI SC:** Ja, I understand those one, two, three, to all be connected to the first paragraph 93, not to be

self-standing. You see what I mean?

**LT-COL MANGENA:** Can you rephrase the question?

**ADV NGCUKAITOBI SC:** I am saying the statements at paragraph 93.1, 93.2, 93.3 appear to be connected to the opening sentence in paragraph 93. They are not self-standing. They just say by reference to the three matrix in 91 to 93, we cannot explain the positioning of the firearm.

**LT-COL MANGENA:** Positioning of the firearm. That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Yes, thank you. And then 94.

**LT-COL MANGENA:** The upward position of the left arm and the placement of the firearm are not readily reconcilable with the ballistic reconstruction.

**ADV NGCUKAITOBI SC:** So, I think we are still looking at the one at 19, which is where the firearm is placed under the arm.

**LT-COL MANGENA:** Under the arm. Yes, that is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. So, what is the point you are  
20 making there in in layman's term?

**LT-COL MANGENA:** In layman's term, if you look at the wound sustained, you drop immediately and there is no way that the arm would raise and then come back and land on top of the firearm.

**ADV NGCUKAITOBI SC:** I see.

**LT-COL MANGENA:** As I said, the wounds inflicted on the face, it is immediately incapacitated. So the firearm is now underneath the arm. There is no way that he could have lifted the arm and the firearm landed on top of the arm. That is not possible.

**ADV NGCUKAITOBI SC:** I see. Very good. Thank you very much.

**CHAIRPERSON:** I suppose, Counsel, that paragraph 93, under the rubric firearm position, the witness says that the  
10 position of the firearm under the left arm is unexplained.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** I suppose that should be read in conjunction with 89, 90 and 91.

**LT-COL MANGENA:** That is correct.

**CHAIRPERSON:** Because that firearm is a pistol, is it not?

**LT-COL MANGENA:** It is a pistol. That is correct.

**CHAIRPERSON:** And at those paragraph 89 to 91, by dealing with the calibre that uses 5.56 ammunition, live ammunition.

20 **LT-COL MANGENA:** Yes. The 5.56 is used with a rifle. Not with a pistol.

**CHAIRPERSON:** I beg your pardon. With a rifle.

**LT-COL MANGENA:** That is correct.

**CHAIRPERSON:** Not with a pistol.

**LT-COL MANGENA:** Not with a pistol.

**CHAIRPERSON:** That is now found at the scene.

**LT-COL MANGENA:** That is correct.

**CHAIRPERSON:** Under the elbow there, the left elbow.

**LT-COL MANGENA:** That is correct, Chair.

**CHAIRPERSON:** So, am I correct that what you say at paragraph 93, that the position of the firearm under the left arm is unexplained.

**LT-COL MANGENA:** It cannot explain how did it land there underneath the arm.

10 **CHAIRPERSON:** Yes, because your 89 to 91 does explain to us that the wounds sustained are compatible with the use of a calibre. Am I correct?

**LT-COL MANGENA:** No, the wounds sustained were immediately incapacitated, whereby there is no way that you could have raised the firearm and then the – I mean, raised the left hand or left arm and then the firearm land underneath. It is not possible.

**CHAIRPERSON:** Yes, but what kind of a firearm was used then?

20 **LT-COL MANGENA:** The firearm that was used in committing this was the 5.56, the rifle.

**CHAIRPERSON:** And not the pistol.

**LT-COL MANGENA:** And not the pistol.

**CHAIRPERSON:** Yes.

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

that probably clarifies the unexplained part of the pistol.  
Correct?

**LT-COL MANGENA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes, all right. I was looking to see whether the – because it is Mr Padayachee who killed Kwazi.

**LT-COL MANGENA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Whether he says that Kwazi actually shot or whether he just pulled the gun, because the cartridges you refer to at paragraph 90 of your statement are  
10 the 5.56.

**LT-COL MANGENA**: Chair, the cartridge cases recovered at the scene was the 5.56 by 45. There was no pistol firearm, the cartridges recovered at the scene. And if I can recall, on the statement he said he pointed the gun at him and he, the deceased pointed a gun at him and then he fired the shots to kill, and of which I totally disagree with him.

**ADV NGCUKAITOBI SC**: Yes, you have explained why. All right, thank you very much. Your conclusions ...[intervenes].

**ADV BALOYI-MERE SC**: Okay, before we proceed, I have a  
20 question that is worrying me and I am not sure whether it is relevant at this time or not. Right at the beginning of your testimony you said that this whole operation was embarked upon because two inmates had escaped from prison.

**LT-COL MANGENA**: That is correct, Chair.

**ADV BALOYI-MERE SC**: This unit was looking for those for

those inmates.

**LT-COL MANGENA:** That is correct, Chair.

**ADV BALOYI-MERE SC:** And now help me here. If two inmates ran away from prison, one, would the police have their identity? Two, would the police know their particulars? For example, would the police know that they are looking for a middle-aged man or an old man or a young man, and all those sort of things?

**LT-COL MANGENA:** Chair, I think during this operation  
10 there were also members from the Correctional Services who were with Cato Manor members.

**ADV BALOYI-MERE SC:** Now that frustrates me more. Then we should admit that the Correctional Services officials would know the faces of the two inmates or the identity somehow of the two inmates.

**LT-COL MANGENA:** Chair, the identity of the two inmates was known to them, but it was not this ...[intervenes].

**ADV BALOYI-MERE SC:** And it was not this, the deceased?

**LT-COL MANGENA:** No.

20 **ADV BALOYI-MERE SC:** Which now begs the question, if it is not the deceased and the deceased is this young, why would the deceased when the police approach just start shooting at the police? And also, why would – maybe let me rephrase. Was there any statement to correct that this person, the deceased, was not one of those that were hunted

down by the police for having escaped from prison after everything else?

**LT-COL MANGENA:** Chair, I think it was mentioned. And even the principal of the school where this the deceased was attending, I think he has also submitted a statement that given the behaviour of this boy in school, and when they checked there was no any criminal activities that this boy was involved in.

**ADV BALOYI-MERE SC:** I mean, the correction by the  
10 police. I mean, obviously, it is obvious that the police made a mistake. They killed an innocent person. Never mind the tampering with the scene and the gun, but obviously they killed an innocent person. And not the people that they were looking for, although it is not justifiable that they should kill them, even if it is the two who have escaped from prison. But here they killed an innocent young man. Did they ever come out, as far as you know, to say we made a mistake? We went to the wrong house or we went to the house that we were told the two escapees were hiding in, but unfortunately we shot at  
20 a wrong person. Was there any such statement from SAPS as a whole, or Cato Manor, or the people that shot at this young man?

**LT-COL MANGENA:** Chair, I do not recall seeing any statement or coming to that direction. And all that I have noticed or that I have read on their statements is that when

they entered the house, the boy pointed at them with a gun and then they shot. That is all that is said. But being that they went at the wrong house or with the wrong family, I have never seen any statement alluding to that.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. You know. Lieutenant-Colonel, you know, on this exchange you have just had with the Advocate Baloyi-Mere SC, you know that right up until his trial, Mr Padayachee who is the killer of Kwazi, persisted that he shot in self-defence.

10 **LT-COL MANGENA:** That is correct, Chair. That is what he was always saying.

**ADV NGCUKAITOBI SC:** Yes, and the prosecutors involved in the case, including Advocate Batohi, wrote a statement that said the possibility that Kwazi could have been armed could not be excluded. Advocate Harrison, the DPP of KZN, wrote a memorandum to Advocate Batohi in which she also confirmed the same. The prosecutor assigned to run the case

also said the same thing when they were trying to justify why you were not called to give evidence in that case. If the  
20 system is rotten, it is rotten from the head. Do you have any comment on that?

**CHAIRPERSON:** Any comment?

**LT-COL MANGENA:** Chair, I did not testify and I have never had any outcomes on that case.

**ADV BALOYI-MERE SC:** Let me help you, because I think it

is necessary in the light of the fact that it has come from the Panel. In File 3 of the cross-examination bundle at page 159.

**LT-COL MANGENA**: Page 159?

**ADV NGCUKAITOBI SC**: Yes, File 3, page 159. What you will find there, Lieutenant-Colonel, is a letter from the National Director of Public Prosecution, Advocate Batohi, to Ms Mary de Haas, where she was asked to explain the prosecutorial misconduct in botching this case up. Now I want to refer you to the last paragraph in the front page. It

10 says:

“The Director of Public Prosecutions Pietermaritzburg...”

And that is Advocate Elaine Harrison:

“...provided a report and advised that a pre-trial conference was held and it was agreed that the only issue in dispute is whether the deceased, Mr Kwazi Ndlovu, was armed with a firearm when he was shot by Warrant Officer Padayachee. It is submitted by the DPP that the witnesses that you wanted, Advocate Sankar...”

20

Advocate Sankar was a prosecutor running the case to court:

“...were not going to assist the case in any way in successfully responding to this question. The late Mr Frank Dutton would

only have been able to give evidence as to why this matter should have been prosecuted in 2010. Had he been alive, he would not have been able to assist the State to prove beyond a reasonable doubt that the deceased was unarmed at the time of the shooting. Advocate Sankar consulted with Mr Steyl and Doctor Naidoo, and both considered during the thorough consultations that they were unable to answer the single question, whether the deceased was armed with a firearm when he was shot by Warrant Officer Padayachee, beyond a reasonable doubt.”

Now, if we can just stop here? Your name does not appear here as one of the people that Advocate Sankar consulted with. Is that correct?

**LT-COL MANGENA:** That is correct.

20 **ADV NGCUKAITOBI SC:** So, is it correct to assume that they never consulted you?

**LT-COL MANGENA:** No, Chair, they have never consulted me on this matter.

**ADV NGCUKAITOBI SC:** Yes. Now, would your evidence have been relevant to the issue that they were trying to

answer, which is whether it is likely beyond a reasonable doubt that the deceased was armed during his execution?

**LT-COL MANGENA:** Chair, I think I would explain it beyond a reasonable doubt that the deceased was not having any firearm with him when the shots were fired or when the wounds were inflicted.

**ADV NGCUKAITOBI SC:** Yes. Now this is coming back now to Advocate Baloyi-Mere's question. What you have here, you have got Advocate Sankar, Advocate Harrison, Advocate  
10 Batohi, all of them just repeating the same defence of Mr Padayachee. None of them actually consulting you as the preeminent crime scene reconstruction, but you are available and your report is in the docket. Do you have any comment on this?

**LT-COL MANGENA:** Chair, I would say if attempt were made for consultation, I would be willing to assist them if they try to consult, but I was never consulted. Probably that will maybe change, the findings that were the conclusion that they came to.

20 **ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, before you proceed, Lieutenant-Colonel Mangena, let us for a second accept that the deceased was armed and that the police shot in self-defence. Does the amount of violence used against this deceased justify the defence of self-defence?

**LT-COL MANGENA:** Chair, I do not think it would justify the amount of defence that has been used in this.

**ADV NGCUKAITOBI SC:** Thank you. Yes. Is there anything you wish to add to your conclusions at paragraph 95? Otherwise, we can move to the next report because most of these you have spoken to, but I may have missed one or two that you wish to add.

**CHAIRPERSON:** Advocate Ngcukaitobi, I see at paragraph, at page 160. Advocate Ngcukaitobi, page 160. You have  
10 page 160 that Counsel had just referred to. It is the letter by Advocate Batohi, the one that he referred to earlier, responding to Madam de Haas.

**LT-COL MANGENA:** I have it here with me, Chair.

**CHAIRPERSON:** Now, the third paragraph of that page shows that Advocate Sankar had consulted with Mr Steyl and Doctor Naidoo and they formed some views that the deceased could not have been armed. They formed that view. It was not possible. Now, a suggestion is made there that they cannot say so with any degree of certainty. What do you say  
20 about that?

**LT-COL MANGENA:** Chair, I do not know how they came to the conclusion or what is it that they had that I was having that made me come to that conclusion because I am looking at the position of the wounds. I am looking at the position of the body, how the wounds were inflicted. That, to me, shows

that there is no way that the deceased could have been having a firearm with him. I do not know how they came to that conclusion.

**CHAIRPERSON:** Yes. At that time, your report was available and it had been filed.

**LT-COL MANGENA:** Chair, my reports were compiled in 2012. When I look at this letter that was signed, it was signed on the 28<sup>th</sup> of January 2025.

**CHAIRPERSON:** Precisely. That is the point that I am  
10 making.

**LT-COL MANGENA:** My report was compiled in 2012.

**CHAIRPERSON:** A long time ago.

**LT-COL MANGENA:** A long time ago.

**CHAIRPERSON:** Nonetheless, if you look at the middle there, the sixth paragraph of this letter that reads their suspicion, referring to the views held by Mr Steyl and Doctor Naidoo, is based substantially on the positioning of the firearm seen in the photographs, but they are equally aware that the scene would have been fast moving and that anything  
20 was possible. This statement made in 2025 totally disregards your ballistic report. That would have been included in the docket. Am I correct?

**LT-COL MANGENA:** That is correct, Chair.

**CHAIRPERSON:** And the next paragraph reads:

“The decision not to call Mr Steyl and

Doctor Naidoo was because of the thorough consultations with the two witnesses, where it became apparent that they will not be able to assist the Steyl's case in providing beyond reasonable doubt that the deceased was unarmed at the time of the shooting.”

This is said despite the fact that there could have been an expert like yourself who provided a report, and that report  
10 was not considered at all.

**LT-COL MANGENA:** That is true, Chair. I was checking all the whole of this report. There is nowhere where it mentioned the report that I have compiled.

**CHAIRPERSON:** Would you agree with me that you would have been a key witness here because of your expertise about the things that you have drawn to our attention since this morning?

**LT-COL MANGENA:** That is correct, Chair. I believe so.

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

20 **ADV BALOYI-MERE SC:** Can I follow up? I am sorry. I promise it will be the last follow-up. On the sixth paragraph that my sister has just referred to where the term fast-moving is referred to:

“Their suspicion is based substantially on the positioning of the firearm seen in the

photographs, but they are equally aware that the scene would have been fast-moving and that anything was possible.”

Can you explain to us what is meant by a scene being fast-moving? Because it is a bit frustrating and confusing because here we are talking about someone who was shot, and your conclusion is that he was most probably sleeping or asleep and he was in a supine position showing that he is sleeping. So how does that relate to a fast-moving scene?

10 **LT-COL MANGENA:** Chair, I do not understand why are they referring to a fast-moving scene because if you look at the position that the deceased was shot in, it shows that there was no movement of the deceased when this incident occurs. He was most likely in a sleeping position, in a supine position, where the bullet entered the head and he was immediately incapacitated.

20 There was no movement. Now the fast-moving, if it was a fast-moving, I would expect positions to change where maybe one wound was inflicted and then he changed the position to another. Then there is fast-moving because you can see that he is alternating his movements. Probably the shot fired, he changed the position to another position, but here there is no change of position. The position is the same position that was before the shooting occurred and after the shooting occurred. It is only that they could have moved or

tampered with the crime scene when placing the firearm in that position.

**ADV BALOYI-MERE SC:** Would a fast-moving scene mean a situation where somebody's being chased and running?

**LT-COL MANGENA:** Fast-moving would be in a case where shots have been fired, the person is trying to run or he is trying to change the position and the wounds were inflicted in the process of changing his position. There is fast-moving because he is not stationary, the person who has been shot.

10 But in this one, you can see the person was stationary. He was not moving. So the fast-moving, I do not know where did they get that one.

**ADV BALOYI-MERE SC:** Would the fast-moving here mean that the shooters themselves were moving very fast to tamper with the scene?

**LT-COL MANGENA:** It could be when the incident occurs. The victim, while hit by the first bullet, could have been trying to ...[indistinct] a situation where he is trying to change the position or he is trying to duck or he is trying to move to  
20 another position. so that he is moving quickly because the shots were fired. But in this instance, as I said, there is no movement of this deceased here.

**ADV BALOYI-MERE SC:** My question here is, would the reference to fast-moving scene be referring to the shooters themselves moving fast to tamper with the scene?

**LT-COL MANGENA:** Not necessarily to tamper with the scene but ...[intervenes].

**ADV BALOYI-MERE SC:** To move the body.

**LT-COL MANGENA:** During the incident, when the shooting occurs, the deceased could have been moving from one place to another or from one position to another. That would be the fast-moving. When shots were fired, he is trying to move or he is trying to duck. But in this instance, there is no way that he was moving.

10 **ADV BALOYI-MERE SC:** I think we are talking past each other. I will leave it there.

**ADV NGCUKAITOBI SC:** Yes.

**ADV RAMAGAGA:** Just one. When you were approached to draw an expert report, you were finished with material, including the statement of witnesses that were at the scene. Is that the case?

**LT-COL MANGENA:** That is correct, Chair.

**ADV RAMAGAGA:** Now, looking at the material that was brought to your attention or finished to you to assist you with  
20 the investigation and the expert report, is there anything from the material that you were given that suggests that the scene was fast-moving?

**LT-COL MANGENA:** There was no evidence that suggests that the scene was fast-moving.

**ADV RAMAGAGA:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. I just wanted to round up this issue by saying to you, Lieutenant-Colonel, that in fairness, Mr Steyl and Doctor Naidoo have not confirmed any of the claims that are made about what they said. We also do not even have the record of the consultations to prove that Advocate Sankar was telling the truth about what they said to him. So all the people that are talking here is Advocate Sankar, Advocate Harrison, and Advocate Batohi. The actual experts have not said any of  
10 these things that are said here.

**LT-COL MANGENA:** That is correct. The report is only from the NPA, but not from the witnesses or Mr Steyl and Mr Naidoo.

**ADV NGCUKAITOBI SC:** For all we know, they could actually be agreeing with you.

**LT-COL MANGENA:** That is correct, Chair. It is possible.

**ADV NGCUKAITOBI SC:** Yes. So I had invited you to look at paragraph 95 about whether there is anything you wish to expand upon, or you are happy to move to the next scene.

20 **LT-COL MANGENA:** Chair, I think I have covered that part of it, and there is nothing more to add on this.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Thank you. I think just to go back to the question I asked earlier about what the actual view of the experts was. In File 3, the file you had, there is in fact a

report of Mr Steyl. So we can actually let him speak for himself, and that you will find as it starts at page 90.

**LT-COL MANGENA:** I am at page 90.

**ADV NGCUKAITOBI SC:** Yes. So if you can go to page 98 at the E6 summary of ballistics finding. Now, the first finding is:

10 “Trajectory B is consistent with the wound on the right forearm and re-entry to the backrest of the couch, which confirmed the large defect in the backrest. The right arm in a posture flexed at the elbow and the wound in the forearm correlate to the defect B in the couch.”

Would you disagree with that? It seems consistent with what you said.

**LT-COL MANGENA:** Chair, it is consistent with what I have just explained.

**ADV NGCUKAITOBI SC:** Yes. And then paragraph 2:

20 “The two trajectories entering the couch from the front to the back, left to right, and slightly downward, and are almost identical in trajectory angles.”

Do you want to comment on that?

**LT-COL MANGENA:** I think it is the fourth shot that missed him, and the one that went through the back.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** It is referring to those two trajectories entering the couch from the back left and right.

**ADV NGCUKAITOBI SC:** But you agree with him there?

**LT-COL MANGENA:** I agree with him.

**ADV NGCUKAITOBI SC:** The trajectory is A and B, in other words, bullet A and B:

10 “When premising the couch back on the original scene in relation to the defects on the wall, and with consideration of the trajectory angles, indicate that the shooter was most probably in the opening doorway leading to the lounge from the kitchen passage.”

I agree with him there.

**ADV NGCUKAITOBI SC:** Yes, because you also said the door was on the left and they shot him on the left.

**LT-COL MANGENA:** That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** Yes. Then here are the two important findings. It says:

“The four spent cartridges, cartridge cases found behind the seat on the eastern wall can be consistent with the distance eject direction of an R5 rifle located in the vicinity of the opening

between the kitchen and the lounge.”

You have testified to that as well.

**LT-COL MANGENA**: That is correct, yes, I agree with it.

**ADV NGCUKAITOBI SC**: Yes:

“No nine millimetre spent cartridges were found on the scene. The handgun pistol appears not to be cocked.”

**LT-COL MANGENA**: I did not examine it, but in terms of what he is saying, it means that it was not cocked, the  
10 hammer was not bagged, and probably there could have not been a ground inside the chamber of the firearm when he said it was not cocked.

**ADV NGCUKAITOBI SC**: Yes, but the first part is what you confirmed, that if they had been shot, as they allege, you would have expected a ...[intervenes].

**LT-COL MANGENA**: A nine millimetre cartridge case on the scene. There was no nine millimetre cartridge case recovered on the scene.

**ADV NGCUKAITOBI SC**: The cartridges, they were all 5.56.

20 **LT-COL MANGENA**: Only 5.56 cartridge cases recovered on the scene.

**ADV NGCUKAITOBI SC**: Yes. So those five conclusions are compatible with yours, and then there is one at page 101.

**ADV RAMAGAGA**: Maybe before we proceed. I do not like interfering unnecessarily, but here I think I should. I do not

want to disturb your train of thought, but I think it is just important that even for record purposes, you just take a moment to talk about a firearm that is cocked and how long it would take. Remember, in this case the allegation is that there was an attempt to shoot, and I think that could also talk to the readiness of the firearm to be discharged. Okay, can you talk about that, please, about the firearm that is not cocked?

**LT-COL MANGENA:** Chair, when you speak of the firearm  
10 that is not cocked, it will depend on how does he explain  
cocking a firearm. Because normally when you cock a  
firearm, it is when you load it round into the chamber of the  
firearm and the hammer is in a backward position. So what  
you have to do is just to pull the trigger to discharge the  
firearm. And in this instance, it might be that the hammer  
was forward and there was no cartridge inside the chamber,  
or the hammer was forward and there was a cartridge case in  
the chamber. Now, the cocking could be that the hammer  
was not backward and it was not ready to fire or discharge a  
20 cartridge.

**ADV RAMAGAGA:** So the firearm, the conclusion would be  
that the firearm was not ready to be fired?

**LT-COL MANGENA:** That is correct, Chair.

**ADV RAMAGAGA:** Thank you.

**ADV NGCUKAITOBI SC:** I mean, would there be a reason

to point a fire, well, I suppose people have pointed toy guns, but what would be the point of pointing a firearm to an attacker to attack them when it is not cocked?

**LT-COL MANGENA:** I do not know why would you point a firearm that is not cocked to a person who is approaching with a firearm.

**ADV NGCUKAITOBI SC:** Is there ...[intervenes].

**CHAIRPERSON:** Let us work on the assumption that it could have been cocked. Everything points to one thing. When you  
10 look at the cartridges that were found, even on the wording of the report by Doctor Steyl and Doctor Naidoo, what was found there were the cartridges of an R5.

**LT-COL MANGENA:** That is correct, Chair. It is only cartridge cases of an R5, not of a pistol.

**CHAIRPERSON:** Consistent with the kind of injuries that were sustained.

**LT-COL MANGENA:** That is correct, and they are consistent with the injuries sustained by the deceased.

**CHAIRPERSON:** That then dispels the notion suggested by  
20 the other, Advocate Batohi in her letter, supposedly with the statement by other witnesses that a pistol was used. I have got a little bit disturbed by the lady walking up to us here. Yes, what I am saying is, even on the assumption that the pistol was cocked, if you work on that assumption, everything else seemed to indicate that that could not have been the

position under any circumstances.

Because when you look at the evidence holistically, it is clear that the possibility was that the firearm, the pistol, was planted there. When you look at your expert knowledge and your assessment, the wounds and the kind of firearm that was used, when you put all that evidence together, that dispels this notion that a pistol was used.

**LT-COL MANGENA:** Chair, I would say when I look at the evidence that I have, I would say it is most, most, most likely  
10 that the firearm was planted there. There was no firearm when the incident occurred.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. So I wanted to just take you to 102, because I really do think it is very, very important to confront the claims by Advocate Batohi with the actual evidence. Mr Steyl, at page 102, paragraph 5, 6, and 7, just read what he says. Paragraph 5.

**LT-COL MANGENA:** Paragraph 5:

20 “The bloodstains appear to be emanating from the...” ...[intervenes].

**ADV NGCUKAITOBI SC:** No, page 102.

**LT-COL MANGENA:** 102?

**ADV NGCUKAITOBI SC:** Yes. So if you look at paragraph 5.

**LT-COL MANGENA:** Paragraph 5, 6, and 7?

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:**

“The general appearance of the posture of the deceased is that of a relaxation in a supine position. This is not reconcilable with the usual posture adopted in firing a weapon.”

**ADV NGCUKAITOBI SC:** Now, just if you just stop there, I mean, Advocate Batohi wrote a letter in which she says that we cannot exclude the – she says according to the evidence of Mr Steyl, he could not exclude the possibility that the accused was shooting. I mean, is that reconcilable with what Mr Steyl says in paragraph 5?

**LT-COL MANGENA:** But that is contradicting what Mr Steyl is saying in the report.

**ADV NGCUKAITOBI SC:** Yes. Then next, paragraph 6.

**LT-COL MANGENA:** Paragraph 6:

“The absence of any handgun cartridges at the scene suggests that the handgun was not fired.”

**ADV NGCUKAITOBI SC:** Yes, this is what the Chairperson was talking about. But again, can that be reconciled with what Advocate Batohi said in the letter?

**LT-COL MANGENA:** No, Chair.

**ADV NGCUKAITOBI SC:** And then the last paragraph.

**LT-COL MANGENA:** The last paragraph:

10 “The position of the handgun on the couch is also not easily reconcilable with the final rest of the weapon if it had been held in the right hand at the time of sustaining the high-velocity destructive shots through that right arm. If the weapon was held in the left hand, it would have landed on the body of the deceased and close to his upper thigh region. The possibility that this was not the actual position of the weapon is, as depicted in the LCRC ...[indistinct], that death must be considered.”

**ADV NGCUKAITOBI SC:** What is he saying here?

**LT-COL MANGENA:** The possibility of the firearm, as depicted on the pictures that we have been looking at, must be considered as...

20 **ADV NGCUKAITOBI SC:** Yes, the possibility that this was not the actual position.

**LT-COL MANGENA:** The actual position of the firearm.

**ADV NGCUKAITOBI SC:** What does that mean in plain language?

**LT-COL MANGENA:** That most likely the firearm could have been planted.

**ADV NGCUKAITOBI SC:** Yes, exactly. Now, this is the whole point. You see, Advocate Batohi writes a letter in 2025 to Mary de Haas saying the expert says the following. And if you have no access to the expert, you would believe her. But as soon as you read what the expert says, you find that the expert is not saying what she is saying.

**LT-COL MANGENA:** Chair, I am in agreement with what Mr Steyl said in the report.

**ADV NGCUKAITOBI SC:** All right, thank you very much. You  
10 said you had nothing to add at paragraph 95.

**LT-COL MANGENA:** No, Chair, I have nothing to add on the paragraph.

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

**ADV BALOYI-MERE SC:** Advocate, I would like to hear the witness comment on page 103, paragraph 6.

**ADV NGCUKAITOBI SC:** Yes, of course. You have got it, Lieutenant-Colonel?

**LT-COL MANGENA:** Yes, I have it.

**ADV NGCUKAITOBI SC:** Yes. Can you just read it out for  
20 the record?

**LT-COL MANGENA:** Paragraph 6?

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:**

“The evidence suggests that the deceased was in a reclining position at the time of

the injuries. The general position and the posture of the deceased suggest that he may not have had advanced warning of the shots. The appearance of the bloodstain indicates that the deceased was lying as depicted in photographs at the time of the shooting, that he was likely in the relaxed position upon the couch and when he sustained these injuries.”

10 **ADV NGCUKAITOBI SC:** Yes, what does he mean there?

**ADV BALOYI-MERE SC:** I would like to hear his comment on that paragraph.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Chair, this is what I have been saying all along, that he was in a reclining position. He was not in a position where he could have been reacted to or maybe to point a gun at, but he was only lying there, facing upward in

a relaxed position. Most likely, he was in a sleeping position, but not in a situation where he was handling a firearm, was  
20 pointing a firearm.

**ADV NGCUKAITOBI SC:** Yes, and you agree with that?

**LT-COL MANGENA:** That I agree with 100%, Chair.

**ADV NGCUKAITOBI SC:** It is reconcilable with what Advocate Sankar, Advocate Harrison and Advocate Batohi said, that they could not exclude the possibility that this

young man could have been armed.

**LT-COL MANGENA:** I beg to differ with them, Chair.

**ADV NGCUKAITOBI SC:** Thank you. Thank you, Lieutenant-Colonel. Might I ask you to go to Esikhawini at 228, Esikhawini 50/09/2011.

**CHAIRPERSON:** Counsel, just out of interest, did this matter, the Esikhawini matter of this deceased that we are dealing with, did it proceed to trial or what happened?

**ADV NGCUKAITOBI SC:** Kwazi Ndlovu's matter did proceed  
10 to trial.

**CHAIRPERSON:** It proceeded to trial?

**ADV NGCUKAITOBI SC:** It proceeded to trial, yes, and there was an acquittal of Warrant Officer Padayachee.

**CHAIRPERSON:** Full-blown trial?

**ADV NGCUKAITOBI SC:** Yes, it was a full-blown trial.

**CHAIRPERSON:** And this witness was not called to testify?

**ADV NGCUKAITOBI SC:** Yes. Well, it looks like none of the experts, Doctor Naidoo, Mr Steyl and Mr Mangena were not called.

20 **CHAIRPERSON:** Now, in the light of this evidence, with the acquittal, as you state, what could then happen? No attempt to appeal by the Prosecution Authority? In the light of this evidence, which was not placed before the Court, which ought to have been placed before the Court?

**ADV NGCUKAITOBI SC:** Yes, Madam Chair. What we have

thought is the case is that it is a case where most probably there was prosecutorial misconduct, where evidence was suppressed, which means that there should be consequences for the prosecutors who ran the case. As far as the family is concerned, we thought that a civil claim for damages would be their only remedy. What we have not thought about is whether the trial could be reopened through an appeal, in a clear instance where evidence available was suppressed. Because that letter from Ms de Haas says that Advocate  
10 Sankar tried to force the family not to go to a trial.

**CHAIRPERSON:** We are talking justice here, and this evidence which seemed not to be refuted by any other expert, which seemed not to have been placed before the Court despite the fact that it was available since 2012, and we see a letter in 2025 that continues with that narration that there was no evidence which could reasonably secure a conviction. What then? This is something that I am grappling with, and that is why I was thinking could, for the justice to seem to be dispensed, what avenues would be open to the family of  
20 Kwazi?

**ADV NGCUKAITOBI SC:** Yes. Madam Chair, we have only thought about a civil claim for damages against the NPA at this point in time because it appears on what we can see that this was a case of gross negligence or intentional sabotage of justice.

**CHAIRPERSON:** It is one thing to pursue a civil claim, but in these circumstances, the aspect of the criminal matter, what could happen to it?

**ADV NGCUKAITOBI SC:** Madam Chair, I do not know. I am not sure about whether or not it is possible to reopen the trial through an appeal process, but in principle, it should be possible, where it is clear that there has been a failure of justice.

**CHAIRPERSON:** Thank you.

10 **ADV BALOYI-MERE SC:** Thank you. Can we take comfort in the fact that you are representing one of the top DPPs who might be able to shed light on the way forward?

**ADV NGCUKAITOBI SC:** I will ask him, Madam Chair. They will say that he is acting outside of his jurisdiction, but I will ask him for advice on criminal law. Thank you, Madam Chair.

**CHAIRPERSON:** Thank you, Counsel. Proceed.

**ADV NGCUKAITOBI SC:** Yes, can you move on to 98 and 99, which is Esikhawini 50/09/2011? So according to your report, it would be 2A-118 up until 2A-135. Can you just tell  
20 us about that incident?

**LT-COL MANGENA:** Chair, in this incident, Esikhawini 50/09/2011, the deceased in the matter, according to the information that we had, the deceased in the matter was attending an ANC meeting or rally somewhere, and then he was collected from the meeting and brought to his residence.

Apparently, they were looking for the guy with the same surname as the deceased, but they found the wrong person. They took the person and brought him to his residence or to his home, and in his residence, when they were questioning him, there is allegations that he tried to grab a revolver, and in the process, he was shot and wounded and fatally shot and killed at the scene.

**ADV NGCUKAITOBI SC:** When you say they, who do you mean? They were looking for a different person?

10 **LT-COL MANGENA:** Cato Manor members were looking for a different person, but not this one.

**ADV NGCUKAITOBI SC:** Thank you. And then he, so they found him at a rally, they arrested him?

**LT-COL MANGENA:** They found him at the – it was an ANC meeting or rally, something like that, and then they took him there, they brought him home. At his residence, they alleged that he tried to grab a revolver, and then they shot him.

**ADV NGCUKAITOBI SC:** I mean, I think the point is just to understand whether at the time they took him home, he was  
20 under the full custody of the police.

**LT-COL MANGENA:** That is correct. He was with them at all the time.

**ADV NGCUKAITOBI SC:** And then they went to his house, where they executed him.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, thank you. You deal with this at paragraph 97, 98, up to 100. Just tell us the...

**LT-COL MANGENA:**

10 “On the 22<sup>nd</sup> of March 2012, during the performance of my official duties, I received a copy of a police case docket with reference to Esikhawini 50/09/2011 from Lieutenant-Colonel Kola [?] of the task team. I examined the contents of the docket and associated forensic material for the purpose of conducting a forensic ballistic reconstruction of the shooting incident. The material examined included 98.1, the crime scene photographs and sketch plan provided by the Local Criminal Record Centre, the statement of Detective Warrant Officer John Charles Smith, a statement of Detective Warrant Officer Paul Mostert, a statement by Detective Warrant Officer Jeremy Martin, a statement by Detective Warrant Officer Mpumelelo Makhaya, a statement by Sergeant Thembinkosi Mbekisini [?] Mkhwanazi, a statement by Warrant Officer ...[indistinct] Enock Mdlalose, and

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then the post-mortem report marked Durban PM1378/2011 compiled by Doctor Sibusiso Johannes Ntsele, and was signed on the 8<sup>th</sup> of September 2011. The post-mortem was conducted on the 6<sup>th</sup> of September 2011 and additional documentation containing a police docket.”

**ADV NGCUKAITOBI SC:** Yes, carry on. I mean, I am  
10 interested in paragraph 99 because you see in your methods of reconstruction, you say here you went to the crime scene. Just tell us about why it is important to go to the crime scene.

**LT-COL MANGENA:** That is correct, Chair. I also attended the crime scene and obtained aerial photographs in order to analyse the spatial relationship between the deceased, projectile impact points and the surrounding structures. These photographs form part of the Annexure CM6. Now, I attended the crime scene to re-examine the crime scene to see if I can identify the bullet marks which were still around  
20 in the crime scene, the same crime scene.

**ADV NGCUKAITOBI SC:** So in 101 and 102, I would like to take us there because they take us to the report itself. So often your reports are interesting because they do not have names. I suppose you just deal with the evidence and you call them the deceased.

**LT-COL MANGENA:** That is correct, Chair. When I do a reconstruction, I do not look at the names of the deceased or I will only concentrate on the deceased and if there is identification code or identification number that has been, I will be using that. I do not use names of the people.

**ADV NGCUKAITOBI SC:** All right, but what we know to the common cause here that the person that the Cato Manor people were looking for was called Bha, B-h-a.

**LT-COL MANGENA:** Yes, I can recall he was called Bha. I  
10 cannot remember the surname.

**ADV NGCUKAITOBI SC:** Yes, and the person they found and killed was Qinisani Gwala, Mr Qinisani Gwala.

**LT-COL MANGENA:** That is correct. They both share the same surname.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** It was Bha Gwala and Qinisani. Qinisani is the one who was killed.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** And then Bha Gwala, if I am not  
20 mistaken, was involved in the taxi business or something like that.

**ADV NGCUKAITOBI SC:** Yes. Yes. All right, thank you. So when we are talking about the deceased, we are talking about Mr Gwala.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, your report is at 2A-118, and I wanted to refer to paragraph 102.1, 102.2, 102.3 of your statement. So I want to start with photo 12 and 13 because they – which are at 2A-128. So photo 12, what is that photo?

**LT-COL MANGENA:** Chair, photo 12 on my report is the crimes in the house that where the incident occurred.

**ADV NGCUKAITOBI SC:** Yes. Yes, now I understand, but what I am trying to understand is whether the shooting was  
10 inside one of those properties, but which one would it be?

**LT-COL MANGENA:** It would be the house on the right-hand side of the photo.

**ADV NGCUKAITOBI SC:** Not the rondavel?

**LT-COL MANGENA:** Not the rondavel.

**ADV NGCUKAITOBI SC:** Okay. So he was killed inside that house?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Thank you. And then look at the next photo, 13.

20 **LT-COL MANGENA:** The next photo depicting the position of the deceased in the house.

**ADV NGCUKAITOBI SC:** So is that how he was found? He was shot there?

**LT-COL MANGENA:** That is correct. That is where the photographer, how the photographer found him and took

pictures of the body.

**ADV NGCUKAITOBI SC:** Yes. And there is the red substance under his head. Would that be his blood?

**LT-COL MANGENA:** That is correct. That is his blood.

**ADV NGCUKAITOBI SC:** Yes. Now, thank you. If you then look at photo 14, which is the following page, that shows it better, that pool of blood.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And by the way, the shooting  
10 happened midday during the day.

**LT-COL MANGENA:** It happened during the day, Chair. That is correct.

**ADV NGCUKAITOBI SC:** And then photo 15. Now, that is where your paragraph 1021 refers to as an entry wound. Just take us through that.

**LT-COL MANGENA:** Paragraph 1021?

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:**

20 “The head wound marked A1 was the entry wound at the front of the head as depicted in photograph 15 of the report.”

**ADV NGCUKAITOBI SC:** Just show us where A1 is so that we are clear.

**LT-COL MANGENA:** A1 is the wound inflicted on the head of the deceased towards the front of the head.

**ADV NGCUKAITOBI SC:** So is that where the circle is, the red circle?

**LT-COL MANGENA:** That is correct. That is the wound that I have circled on the photo.

**ADV NGCUKAITOBI SC:** Yes. Now, quite frankly, I am struggling to understand this in the context of someone who is under attack. How is he shot, like, literally here?

**LT-COL MANGENA:** Chair, if we look at not only that wound, if we go through the wound sustained, I think it will be most  
10 likely understandable after going through all the wound sustained. I will explain that.

**ADV NGCUKAITOBI SC:** So you want to move to the second one at 102.2, which is?

**LT-COL MANGENA:** 102.2 is the wound marked A2 at the back of the head, was the exit wound from the same bullet.

**ADV NGCUKAITOBI SC:** So I am trying to see which photo was that.

**LT-COL MANGENA:** I do not think we have the photo of the exit wound, but according to the post-mortem report, there is  
20 an exit wound at the back of the head.

**ADV NGCUKAITOBI SC:** I see. So in other words, just describe how the bullet came and then exited at the back of the head. I am trying to get myself a mental picture.

**LT-COL MANGENA:** Chair, what I want to explain before we go to that one, on 1.2.4.

**ADV NGCUKAITOBI SC:** 102.4 of your statement?

**LT-COL MANGENA:** Yes, 102.4.

**ADV NGCUKAITOBI SC:** Yes, okay.

**LT-COL MANGENA:** The wound on the left hand showed a clear entrance and exit, indicating that the bullet passed through the hand of the deceased. Now, if we look at these two wounds.

**ADV NGCUKAITOBI SC:** I see.

**CHAIRPERSON:** Where are you, Mr Colonel? 1.4, which  
10 one is it?

**LT-COL MANGENA:** 102.4 on page ...[intervenes].

**ADV NGCUKAITOBI SC:** Of your statement.

**CHAIRPERSON:** 102.4 at page 2-30?

**LT-COL MANGENA:** 2-30, that is correct.

**CHAIRPERSON:** Thank you.

**LT-COL MANGENA:** This is explaining the wound that is visible on photos 16 and 17.

**ADV NGCUKAITOBI SC:** I see what you mean. Okay, so  
20 you are saying the wounds on the left hand is page 2A-130,  
photo 16, the left hand?

**LT-COL MANGENA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** Now, Chair, if you look at these wounds, I will explain all three of them. If you look at ...[intervenes].

**ADV NGCUKAITOBI SC:** Just before we do that, so which wounds should we be looking at?

**LT-COL MANGENA:** The three wounds, the wounds on ...[intervenes].

**ADV NGCUKAITOBI SC:** No, just tell us by reference to the photographs.

**LT-COL MANGENA:** Yes, wound on photo 15.

**ADV NGCUKAITOBI SC:** 15.

**ADV NGCUKAITOBI SC:** The wound on photo 16 on the left  
10 hand.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** And the wound photo on photo 17.

**ADV NGCUKAITOBI SC:** 17.

**LT-COL MANGENA:** So if you look at wound 16 and 17, it is a perforating gunshot wound. It enters and it exits on this side, the other side. And if you look at wound 15 in the head.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** What I could explain is, if you look at the shape of it, it is what you call an irregular shape entrance  
20 wound. Now if it is an irregular, it simply means that the bullet was not in a spinning motion, but in a tumbling motion. So when I look at this, I would say most likely the shooter was up or at a higher level than the deceased. Now when he was pointed with a gun, he tried to block the fire, the bullet with the hand. So the bullet enters here, exits here, became

unstable. It hit the deceased in the middle of the head and then exited at the back.

**ADV NGCUKAITOBI SC:** I see.

**LT-COL MANGENA:** So these three wounds, or the fourth one, which is the exit, were inflicted by the same bullet, were caused by the same bullet.

**ADV NGCUKAITOBI SC:** So he would be having his hands here?

**LT-COL MANGENA:** Probably. Somebody is pointing, he is  
10 on his knees. Somebody is standing up in front of him, pointing a gun at him. He is trying to block the fire and he shot this fire.

**ADV NGCUKAITOBI SC:** I see, okay. So that is what you mean that you cannot explain 16 other than by, 15 other than by reference to 16 and 17?

**LT-COL MANGENA:** That is correct, because 15 that is here  
in the head, it is an irregular shape wound. It shows that the bullet was already unstable, so it means that there was an intermediate target between the muzzle of the firearm and the  
20 of the deceased. And the only intermediate target would be the arm or the hand of the deceased, where he is trying to block the fire, the bullet with the hand.

**ADV NGCUKAITOBI SC:** I see, but you say the position of the shooter is on a higher position to the deceased. So your conclusion is that the deceased must have probably been on

his knees?

**LT-COL MANGENA:** Most likely was on his knees, was kneeling down, was in a seated position in front of the shooter.

**ADV NGCUKAITOBI SC:** Yes, yes. Okay, thank you. All right. Can you then deal with what is under headshot, paragraph 102 to 107? And maybe that is what you have been explaining.

**LT-COL MANGENA:** 102?

10 **ADV NGCUKAITOBI SC:** To 107. Sorry, 104 to 107, you have dealt with 102.

**LT-COL MANGENA:** Yes, 107:

“Based on the trajectory of this bullet, I concluded that the deceased was likely in a seated or in a kneeling position when he was shot at. The shooter was probably standing in front of him. After being shot, the deceased fell backward into the position in which he was found, as depicted on photo 14.”

20

So as I said, the gunshot wounds to the head is immediately incapacitated. After the shot was fired, bullet perforated into the head and exit there. He dropped immediately backward, and that is how he ended up. The second shot could have been on the side. I cannot tell when was it inflicted, but I am

of the opinion that this was the first wound that he sustained, whereby he was trying to block the bullet with the hand.

**ADV NGCUKAITOBI SC:** Yes.

**ADV RAMAGAGA:** So, is it correct to say a bullet to the head immobilises immediately, irrespective of...

**LT-COL MANGENA:** That is correct, Chair.

**ADV RAMAGAGA:** Thank you.

**ADV NGCUKAITOBI SC:** Yes. Sorry, you are at 105. You have dealt with that.

10 **LT-COL MANGENA:** Yes, as I said at 105, the bullet likely continued after exiting the head, struck the wall, the floor, and then hit the wall at H1, H2, as depicted on photos 6 and 7 of my report.

**ADV NGCUKAITOBI SC:** 6 and 7. Let us just see. All right, so we are at 6 and 7, page 2A-124. We are looking at a wall and a floor.

**LT-COL MANGENA:** That is correct, Chair, because these are the pictures that I took when I visited the crime scene, and that is the exact position where the body of the deceased  
20 was found.

**ADV NGCUKAITOBI SC:** What is the significance of that wall?

**LT-COL MANGENA:** It shows that the trajectory, it enters here, it exits, hit the back of the head, the front of the head, and then the back of the exit. It hits the floor and then

deflects to hit the wall behind where the body of the deceased is.

**ADV NGCUKAITOBI SC:** The bullet itself?

**LT-COL MANGENA:** The same bullet, yes.

**ADV NGCUKAITOBI SC:** I see. So, which part of the wall would have been hit by the bullet? Is that the one at photo 7?

**LT-COL MANGENA:** That is correct, photo 7, H2. It started at H1, there on the floor, and then deflects to H2 on the wall.

10 **ADV NGCUKAITOBI SC:** Yes, and maybe you can point us to where H1 is and where H2 is.

**LT-COL MANGENA:** Chair, your H1 will be this one. This is on the floor, and after deflecting it, it hits the wall there at H2.

**ADV NGCUKAITOBI SC:** So it goes through the hands, through the head, and then hits the floor and then hits the wall.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** I see. Okay.

20 **ADV RAMAGAGA:** Let me just come in here. Looking at the impact of this bullet, it went through several surfaces. That is the hand, that is the head, that is the neck or the exit and ...[intervenes].

**LT-COL MANGENA:** At the back of the head, yes.

**ADV RAMAGAGA:** And then that is the floor, and then there

is the wall. And the impact is visible in respect of them all. What does it say about the proximity of the shooter to the one shot at?

**LT-COL MANGENA:** Chair, I would say, I cannot say exactly how far was he, but the proximity was very close. It could have been maybe towards a metre or just over a metre, but it would be within that vicinity. And if you look at the trajectory, it is almost downwards where the person who was shot at or the victim was in a, that is why I said in a kneeling position  
10 or in a seated position, where the firearm was pointed downward. It enters the exit and then hit the wall, I mean hit the floor and then hit the wall.

**ADV RAMAGAGA:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you. So then you also explain the type of a firearm at paragraph 106.

**LT-COL MANGENA:** I concluded that this was most likely caused by a nine millimetre handgun as the exit, or as the exhibit collected from the scene and the statement of warrant officer Smith indicating that only one nine millimetre shot was  
20 fired, or one shot was fired with a nine millimetre calibre.

**ADV NGCUKAITOBI SC:** Thank you. You have already testified about paragraph 107, so we can skip that. And there is also another wound, a chest wound at paragraph 108 and 109. Can you testify about that?

**LT-COL MANGENA:** Right. On 108, the second shot struck

the deceased in the chest. It is wound B2 and wound B1 and B2:

“This wound shows the characteristics of a high velocity firearm, most likely a 5.56 rifle. From my observation, the bullet struck the rib, fragmented and caused extensive damage to the heart.”

The injuries as explained here were mentioned in the post-mortem report.

10 **ADV NGCUKAITOBI SC**: Yes.

**LT-COL MANGENA**:

“The presence of bullet fragments in the chest and the absence of a corresponding exit wound confirmed that this was a separate shot from a different firearm or different calibre.”

**ADV NGCUKAITOBI SC**: All right. So that is a different wound. So it is shot in the head with a nine millimetre and then shot in the chest.

20 **LT-COL MANGENA**: Chest was with a rifle.

**ADV NGCUKAITOBI SC**: With a rifle.

**LT-COL MANGENA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes, but he is already lying down when he is shot with the rifle.

**LT-COL MANGENA**: Most probably he was already lying

down when this wound was inflicted.

**ADV NGCUKAITOBI SC:** Yes. And then the hand wound, is that a different wound to the wound that penetrated the hand to the head, to the floor, to the wall?

**LT-COL MANGENA:** The hand wound?

**ADV NGCUKAITOBI SC:** Yes, the one that is dealt with at paragraph 110 to 113.

**LT-COL MANGENA:** 110 to 113?

**ADV NGCUKAITOBI SC:** 110 to 113. I am trying to  
10 understand whether we are talking about the third  
...[intervenes].

**LT-COL MANGENA:** This is the same wound that was explained.

**ADV NGCUKAITOBI SC:** It is the same?

**LT-COL MANGENA:** It is the same on the left hand.

**ADV NGCUKAITOBI SC:** Yes, I see. Now, what we know  
from the docket, if our learned friends wish to object, they  
can, is that the police version is that they accept that this  
was not Bha that they were looking for because they had been  
20 looking for Bha and the person they found was not Bha. But  
they say that he had been handcuffed after they took him from  
the ANC meeting and then they removed the handcuff. And  
after they removed the handcuff, that is when he reached for  
a gun and tried to shoot them. What do you say to that?

**LT-COL MANGENA:** Chair, I will say in a number of incidents

where they are involved, that is the same motus operandi that we get. That they started questioning somebody or when they are questioning, during the questioning, the person tries to grab a firearm and he was shot dead. So in this one, it is the same motus operandi that comes in most of the cases that I have dealt with.

**ADV NGCUKAITOBI SC:** Well, I mean, what I do not follow with this is that the man is already handcuffed. So I do not understand why they do not take him to the police station  
10 then.

**LT-COL MANGENA:** They take him to his house.

**ADV NGCUKAITOBI SC:** Yes, and then they release the handcuffs according to them and then they shoot him after that. So this version, I am not asking you to go to it now because it is not particularly relevant to your testimony. But for the benefit of the Panel, it appears that ES0052 from  
Jeremy Martin, who is, have you heard of Jeremy Martin?

**LT-COL MANGENA:** Jeremy Martin is a member of the Cato Manor Unit.

20 **ADV NGCUKAITOBI SC:** Yes. And in particular at paragraph 3 of his statement and paragraph 4.

**CHAIRPERSON:** ES0052?

**ADV NGCUKAITOBI SC:** Yes, Madam Chair. Now, Mr Ramogale also tells me that he says the reason they removed the handcuffs is after they realised that they had the wrong

person, but they still shot him.

**LT-COL MANGENA:** Chair, it would be questionable if he was the wrong person, why would he grab a firearm to shoot at them if he knows that they were not looking for him and he is the wrong person? What would be the reason for him to grab a firearm to try and shoot at them?

**ADV NGCUKAITOBI SC:** Yes. But you have also said something about the modus operandi. You know, this case is a case of racketeering where the requirement is planned on going continuous, so which fits the description of a modus  
10 operandi, a way of doing things. Just explain that a little bit.

**LT-COL MANGENA:** Yes, Chair, it is not only this case. There is a number of cases where there was alleged that they were looking for this person, they found this person, they took him to his room. In his room, while they were searching, he tries to grab a firearm and then he was shot and killed.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** That is why in most of the cases where they have shot and killed them, there is a firearm next to the  
20 body. They will allege that this person, when they were busy, he tried to grab a firearm and then they shot and killed him.

**ADV NGCUKAITOBI SC:** Yes. I mean, insofar as the version that they give is that he was lounging forward, that is unclear to me because you are saying he was most likely shot in a position where he was kneeling down or sitting down and that

is explained by the trajectory of the bullet that moved from hand to head, to floor, to wall.

**LT-COL MANGENA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: And so is this consistent with someone being shot while attacking, lounging? That is what they say.

**LT-COL MANGENA**: No, it is not possible, Chair.

**ADV NGCUKAITOBI SC**: All right. Then, unless you want to add anything on your conclusions at paragraph 114?

10 **LT-COL MANGENA**: No, Chair, I do not want to add anything. I will leave it as it is.

**ADV NGCUKAITOBI SC**: Thank you. So that is Mr Gwala's killing. You then have to deal with the Melmoth case.

**ADV BALOYI-MERE SC**: Advocate Ngcukaitobi, before you move to the Melmoth case, did the police ever or did the Cato Manor Unit ever take responsibility and admitted that they shot at the wrong person, given that this was not the person that they were looking for? They were looking for Mr Qinisani Gwala and this is, no, they were looking for Ms Bha and they  
20 shot at Qinisani Gwala. If you know.

**LT-COL MANGENA**: I do not know what transpired with the case, Chair.

**ADV NGCUKAITOBI SC**: Whether they ever admitted that. Mr Martin admitted in his statement that this was the wrong person, and the statement was in the docket in front of the

NPA.

**LT-COL MANGENA:** Chair, I do not have all the information. I know that they admitted that they were looking for the wrong person. They found the wrong person or they killed the wrong person, but I do not know what happened or transpired after the findings that they shot the wrong person.

**ADV NGCUKAITOBI SC:** Thank you. Now, the Melmoth case, you will recall, these are the two brothers, the Biyela brothers that are killed in Melmoth in the early hours of the morning. Perhaps you can tell us about that case.

**LT-COL MANGENA:** Chair, this is the one that I explained previously when I was talking about the Esikhawini. Now, in the Melmoth, the brother, the Biyela brother, apparently was arrested by Cato Manor and they took him to court and they told him that if you can get bail, we are going to kill you. And he went to court, he got bail then. He moved from Durban to Melmoth at his homestead.

At his homestead, he told his brother that Cato Manor said if I can get bail, they will come and kill me. Now, in the process, what will happen is if they can come here, I will come out naked so that they can see that I do not have a firearm with me, and they did come and they shot and killed him while he was still naked.

**ADV NGCUKAITOBI SC:** Yes. Thank you for that summary. Now, let us look at the scientific process you followed from

paragraph 116. If you can take us through that?

**LT-COL MANGENA:**

“On the 23<sup>rd</sup> of March 2012, during the performance of my official duties, I received a copy of the police case docket with reference to the Melmoth case 142/11/2008 and a disc from Lieutenant-Colonel Mano of the task team. I examined the docket and associated forensic material for the purpose of conducting a forensic ballistic reconstruction of the shooting incident. The materials examined by me included, amongst others, the post-mortem report with reference DR death register number 685/08, compiled by Doctor Vigish Purun Kalabdeo [?] at Richards Bay. The second post-mortem report with reference number DR686, compiled by the same doctor, Doctor Vigish Purun Kalabdeo, also at Richards Bay.”

**ADV NGCUKAITOBI SC:** Yes. Under Deceased A, now, I just want to make sure that we know who we are talking about. Your report on the Melmoth case is at 2A-181 to 2A-209. Is that correct?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, the identification of the bodies as Deceased A and Deceased B is at 2A-185 and 2A-186. So, 2A-185 is Deceased A and then 2A-186 is Deceased B.

**LT-COL MANGENA:** That is correct, yes.

**ADV NGCUKAITOBI SC:** Yes. I just need to get their names so that – but we will get them shortly. Now, is this what you are talking about at paragraph 117 when you are referring to  
10 a post-mortem report referring to Deceased A?

**LT-COL MANGENA:** That is correct. That is what I am referring to, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, if we just focus for a moment on Deceased A, you say that we should start with photograph 5. Yes. So, I am not sure who was the older brother. Bongani Biyela, I think, is Deceased A and then Khayisani Biyela is Deceased B.

**LT-COL MANGENA:** The younger one, Khayisani.

**ADV NGCUKAITOBI SC:** Yes.

20 **LT-COL MANGENA:** Deceased 1 is the uncle to Deceased 2. So, deceased 2, the son of the brother of Deceased 1.

**ADV NGCUKAITOBI SC:** So, they are not brothers.

**LT-COL MANGENA:** And he is also around 17 years old.

**ADV NGCUKAITOBI SC:** Yes, Khayisani Biyela was 17 years old. The witness before you said they were brothers, but they

were uncle and nephew.

**LT-COL MANGENA:** It is uncle and nephew, yes, Chair.

**ADV NGCUKAITOBI SC:** Okay, thank you. All right. So, we start with Mr Bongani Biyela and the injuries you were analysing are at 2A-187, photo 5.

**LT-COL MANGENA:** Yes. On photo 5, according to the post-mortem report, as I have mentioned in 117.1, the entrance wound on the right side of the head, marked B1W1, as indicated in photo 5. B1W1 is where the finger is pointing on  
10 photo number 5.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** And then the exit wound is at the top of the head, marked B1W2 in photograph number 5 also.

**ADV NGCUKAITOBI SC:** Where there is a yellow circle?

**LT-COL MANGENA:** Where there is a yellow circle towards the edge on the left-hand side.

**ADV NGCUKAITOBI SC:** So, the smaller circle indicates an entry, the bigger circle an exit?

**LT-COL MANGENA:** That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** Okay. And what does that tell us?

**LT-COL MANGENA:** And then the third wound will be the entrance wound on the left side, just above the hip. That is depicted on photo number 6, where circled with a yellow mark.

**ADV NGCUKAITOBI SC:** I see.

**LT-COL MANGENA:** The wound appears as atypical, in that it lacks a clear abrasion ring and could be mistaken for an exit wound in incise injuries. This wound is marked B1W3, on photograph 6, not 5.

**ADV NGCUKAITOBI SC:** And that you are looking at 117.3?

**LT-COL MANGENA:** That is 117.3.

**ADV NGCUKAITOBI SC:** Yes, you want us to correct the 5 to 6?

**LT-COL MANGENA:** That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Thank you.

**LT-COL MANGENA:** It must be photo 6, not photo 5.

**ADV NGCUKAITOBI SC:** Yes, we have corrected it. That is B1W3. Okay, thank you.

**LT-COL MANGENA:** Yes, and then the exit wound of this wound will be on 117.4. The exit wound appears on the right upper arm next to the shoulder and is visible on photo number 5. That is marked B1W4.

**ADV NGCUKAITOBI SC:** Yes, I see that. And then you deal with the reconstruction from 118 to 122. Can you take us  
20 through that?

**LT-COL MANGENA:** Yes, all right. On 118:

“The body of the deceased was found naked outside, lying on a stone wall, as depicted on photos 1 and 2. In this position, this is how the body of the

deceased was recovered, lying on the stone wall.”

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:**

“Based on wounds B1 and B2, as depicted on photograph 5, the deceased sustained a gunshot wound to the head. The wound has characteristics indicating the bullet entered the right side of the head, of the face, and it exited at the top of the head.”

So basically, when you look at the bullet trajectory, it is on the right-hand side, it enters here, it exits at the top. Now, when you look at our crime scene, how the crime scene is positioned, for it to enter here and exit here, it is most likely that the deceased was at an elevated level than the shooter. The shooter was low, the deceased was high. So he shot at him in this position, where the bullet was in upward trajectory. Now, if we look at photo number 15, photo number 28 on page 2A-201.

**ADV NGCUKAITOBI SC:** Yes, we have got that.

**LT-COL MANGENA:** Right. Chair, if you look at the photo as depicted there, the shooter would be around this area, which is lower than around this area where the deceased was standing. Now, if he is shooting at the deceased, your entrance will be here because he is shooting in an upward

direction. That is when the first wound was inflicted. And he immediately was incapacitated and he fell down, falling in the same position that we see on photo 1 and 2, the position that is lying in photo 1 and 2.

**CHAIRPERSON:** You said that the deceased walked from the house naked?

**LT-COL MANGENA:** That is correct, Chair. He walked from the house naked, because he said, told his brother that if Cato Manor members will arrive, I will walk out naked so that  
10 they see that I do not have a firearm with me.

**CHAIRPERSON:** The three houses there, from which house would he have been moving from? The first house on the right?

**LT-COL MANGENA:** Chair, I cannot recall which one was it, but it was from...

**CHAIRPERSON:** Because on the pictures, if you look at photo 15, you see a heap of stones there. Something like a foundation.

**LT-COL MANGENA:** On photo 15?

20 **CHAIRPERSON:** 15.

**LT-COL MANGENA:** Yes, as we see on photo ...[intervenes].

**CHAIRPERSON:** 2A-192. Those stones are closer to the house that appears to be ...[indistinct].

**LT-COL MANGENA:** Chair, I cannot recall which one was it, but what I did, I took the aerial photos of the whole scene

where you could see where the deceased was lying and where the second deceased was. So basically on the aerial photos that I took, the deceased one was lying here between these two shacks, and then the nephew was in this shack.

**CHAIRPERSON:** And where would the heap of stones be in relation to the first house where the uncle was shot?

**LT-COL MANGENA:** The heap where his body was found was here.

**CHAIRPERSON:** Where?

10 **LT-COL MANGENA:** Here.

**CHAIRPERSON:** Between the two ...[intervenes].

**LT-COL MANGENA:** Between the two houses.

**ADV NGCUKAITOBI SC:** Yes, okay.

**CHAIRPERSON:** Would you please park it there? I am requested that we take a short break. We will continue from, say, about half past. We should take a comfort break and then we will proceed until 5 o'clock. Thank you, we will adjourn. You are still under oath, Lieutenant-Colonel.

**LT-COL MANGENA:** That is correct, Chair.

20 **ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, Colonel Mangena. Good afternoon, *Nthati* Chauke and everyone. The day has been long, but we can work the next 30 minutes.

**ADV NGCUKAITOBI SC:** Yes, Madam Chair. Let us try and

do that.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Thank you. Lieutenant Colonel, we were still at the construction of the first shot, 118 to 122. And you are dealing with Deceased number A, Mr Bongani Biyela. And you have dealt with up to 120. I suppose you have also dealt with 121 and 122, which is what you started with, you remember that?

**LT-COL MANGENA:** That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** [Indistinct – mic not switched on]. The deceased was at a higher position than the shooter. And when the shots were fired, there is an upward trajectory. It enters on the right-hand side and it exits in the middle of the head. And then he immediately dropped in the position that we see on photos 1 and photo 2. While in that position, that is when the second wound was inflicted.

**ADV NGCUKAITOBI SC:** Yes, now that is what I needed to move to the second shot, which you are at paragraph 123 to  
20 127, photographs 5 and 6. So you are saying those shots were shot while the deceased was lying down.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** So that is at paragraph 125. Can you just deal with that?

**LT-COL MANGENA:** If we look at the wounds B1W3 and

B1W4, the entrance wound is on the left side of the hip, just above the hip. And then the exit is at the top of the right arm. Now if you look at the position of the arm, if the arm is against the body, it is impossible that the bullet will exit at this point. But the minute you extend your arm, your bullet comes through just above the armpit and it exits here. So basically when this arm is here, it is not possible. But when you do this, that is where the bullet will exit here. If you look at the position of the deceased, as it is now, and as the trajectory  
10 that ...[intervenes].

**ADV NGCUKAITOBI SC:** Photo 31?

**LT-COL MANGENA:** Yes, photo 31. As ...[intervenes].

**ADV NGCUKAITOBI SC:** Page ...[indistinct].

**LT-COL MANGENA:** As depicted here, I would say the shooter was positioned around this area, the shot is fired, it enters here, it crosses, it exits here on the upper arm, right arm. Now if, as I said, if the arm was against the body, it would be impossible. Now the minute you stretch the arm away from the armpit or the body, that is how the trajectory  
20 of the bullet came, it exited on the side. The reason why I am saying this was the position of the deceased and by then, when this wound was inflicted, he was already down.

The first one went through the head, immediately incapacitated, he dropped, and then the second one followed. Now if we look at photograph number 30, that is where I

showed the possible trajectory of the bullet. And you look at photo number 31, that is the point of impact of the bullet that has just exited on the right upper arm.

And a close photo of the area is photograph number 32. If we look at photograph number 32, if you look at photograph number 32, your exit wound is this one and this is your impact point of the same bullet. It broke the soil here, splashing it towards the face of the deceased. So your point of impact is here, and then the soil that broke here splashes  
10 to this direction. You can even see it on the forehead of the deceased. That is when the second shot was inflicted, or the second wound was inflicted on the deceased.

**ADV NGCUKAITOBI SC:** And you have your conclusions at paragraph 127.1 to 127.6.

**ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, before the second shot and after the shot to the head, or maybe let me put it like this. The shot to the head, did it not kill the deceased? And further to that, I would then ask, was it really necessary to shoot the deceased further, giving the shot to  
20 the head?

**LT-COL MANGENA:** Chair, with the first shot that went through the head, he dropped immediately, he was incapacitated, he dropped immediately. As I am saying, it basically means he died instantly from the first shot. When this wound was inflicted, I think he was already dead.

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

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Can you tell us your conclusions on Mr Bongani Biyela?

**LT-COL MANGENA:** Right, on conclusions on Deceased A, which is Bongani Biyela, the deceased was shot twice. The first shot was fired while he was in a standing position. He collapsed immediately. The second shot was fired while he was in a lying position on the ground, on top of those stones, the stone wall.

10           The ballistic evidence supports the shooter being positioned lower than the deceased during both shots. The second shot is consistent with the rifle-calibre ammunition. Meaning the second shot was fired with a rifle, where the bullet perforated the body and exited on the side.

**ADV NGCUKAITOBI SC:** Yes. Now, I also just want your comment on the, I think it is photo 32, if I am not mistaken. No, photo 33. If you look at photo 33, 2A-204.

**LT-COL MANGENA:** I am on it.

**ADV NGCUKAITOBI SC:** Yes, you see there is a weapon  
20 there. Do you want to comment on that?

**LT-COL MANGENA:** That is correct, Chair. There is a firearm next to the deceased also, yes.

**ADV NGCUKAITOBI SC:** What is your comment on that firearm appearing there?

**LT-COL MANGENA:** Chair, I would say I cannot explain how

did that firearm end up there.

**ADV NGCUKAITOBI SC:** Yes, but you know the defence is that the police were being attacked and they shot back. In terms of your evidence, is that a probable defence?

**LT-COL MANGENA:** Chair, with the first shot, he dropped immediately, so there was no need for a second shot as he was already down, and acting on defence, how do you defend yourself shooting at a person who is already down, who does not move?

10 **ADV NGCUKAITOBI SC:** But insofar as, you know, this person is naked and goes out and puts his hands up, how is even the first shot justified?

**LT-COL MANGENA:** Chair, I cannot explain why was the first shot even fired at the deceased. In most of their cases, the firearm will be found next to the deceased and the allegations was that he was trying to shoot at us or he was pointing a firearm at us and then we shot.

**ADV NGCUKAITOBI SC:** I mean, the thing with this particular deceased is that he has been arrested. The  
20 judiciary in this country has decided that he should be free while he is facing a criminal trial. He should go home. It is not enough to keep him in prison, whatever the allegations are. And then you have Cato Manor police deciding that actually, no, he should just be killed. But the magistrates have decided that this man must be free until he comes back

to court to face a trial. He has got bail. And whilst he has bail, then they go and kill him.

**LT-COL MANGENA:** Chair, that is how we were informed about that. He was out on bail and then they followed him. And that is what he told his brother also, that Cato Manor said if he gets bail, they will come and they will kill him. And he said he will come out naked so that they see that he does not have any firearm.

**ADV NGCUKAITOBI SC:** Because the implications are very  
10 severe because it also shows that Cato Manor is operating even beyond the judiciary of this country. Can you take us to the nephew, that is Deceased B? So I just want to put this in a bit of context. You have shown us these various houses. We know that the uncle, Mr Bongani Biyela, was killed outside of rondavel. And then when you look at Mr Khayisani Biyela, that is the 17-year-old boy. Is that Khayisani or Dumisani?

**ADV NGCUKAITOBI SC:** I think it is Khayisani. So when you look at Khayisani Biyela at photo 3 and photo 4, page 2A-186, he is inside a house, whether it is a rondavel or a flat,  
20 it is unclear, but he is inside a house.

**LT-COL MANGENA:** He was inside the rondavel, Chair.

**ADV NGCUKAITOBI SC:** Yes. So I just want to place that in a bit of perspective. You have got the aerial photos there at photo 13 and 14. Do you know which one he was inside?

**LT-COL MANGENA:** Right, on photo 13, it would be there.

**ADV NGCUKAITOBI SC:** You can just point us to it.

**LT-COL MANGENA:** Right, the rondavel that he was shot in is this one. No, it is this one.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** It is this one.

**CHAIRPERSON:** You showed us first ...[intervenes].

**LT-COL MANGENA:** It is this one. This is where the uncle was shot and killed. He was lying here. And then this is the rondavel where the niece was killed.

10 **CHAIRPERSON:** Where the nephew was killed.

**LT-COL MANGENA:** Or the nephew was killed. It is this one.

**ADV NGCUKAITOBI SC:** That is where Mr Khayisani Biyela was killed.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** So when you are photo 3 and 4, which is page 2A-186. Yes, that photo. And 4, that is inside that rondavel next to where Deceased A was killed.

**LT-COL MANGENA:** That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** There was a question raised when the previous witness was testifying about the location of this, but you can help us to fill those gaps to tell us this was inside a rondavel. Now, what did you establish about this? We know that in relation to the uncle, he had been detained, released on bail, and then they went looking for him. Why

did they kill a 17-year-old boy?

**LT-COL MANGENA:** Chair, I cannot exactly say the reason why, but the information that we have is they suspect that he saw them and he started shouting when they were shooting at the uncle. And because they realised that he saw them, they also shot and killed him.

**ADV NGCUKAITOBI SC:** Yes. Because on the docket, there is just nothing that connects him to anything before. The only thing we see is a firearm and the same story that he tried to  
10 shoot them.

**LT-COL MANGENA:** They also alleged that he took out the firearm when he was shooting at them and they shot back.

**ADV NGCUKAITOBI SC:** Yes, but the only thing that makes sense really is that they were eliminating a witness.

**LT-COL MANGENA:** Possibly so, Chair.

**ADV NGCUKAITOBI SC:** Now, you deal with this initially at paragraph 128 of your statement. Can you help us there? That is where you analyse the wounds.

**LT-COL MANGENA:**  
20 “From paragraph 128, in the post-mortem report with reference DR686/08, Deceased B, the doctor described the wound sustained by the deceased as:  
128.1, entrance wound in the left side of the chest, wound marked B2W1.”

**ADV NGCUKAITOBI SC:** Yes, if we can go to 2A-188, photo number 7, that is what you referred to at 128.1.

**LT-COL MANGENA:** B2W1 is the wound that appears at the top towards the left on the photos.

**ADV NGCUKAITOBI SC:** Is that where the gloves are pointing, that finger?

**LT-COL MANGENA:** Where the top one.

**ADV NGCUKAITOBI SC:** B2W1, okay.

**LT-COL MANGENA:** B2W1.

10 **ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** That was the entrance wound of the first shot. And the exit wound is on the neck, which is B2W3.

**ADV NGCUKAITOBI SC:** I see, I see. So it got in at B2W1 and exited at B2W3?

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Okay, that is why B2W3 is a bigger wound.

**LT-COL MANGENA:** That is the exit wound of this wound. It is just around the collarbone.

20 **ADV NGCUKAITOBI SC:** Yes. I am saying according to your explanation, that is why it is a bigger wound because the pressure is on the exit.

**LT-COL MANGENA:** On the exit side, that is correct, Chair.

**ADV NGCUKAITOBI SC:** Okay, thank you.

**LT-COL MANGENA:** Now, Chair, what I have seen on this,

or what I can explain better on this is, if we look at the wounds sustained here, these are not the fatal shots that would kill him immediately. With this, he started bleeding. And if we look at photo number 9, Chair, I am going to go through these photos, changing from one photo to another to explain this so that it can be better explained.

**ADV NGCUKAITOBI SC:** Yes, yes, of course.

**LT-COL MANGENA:** Now, if we look at photo number 9, what I am looking at here is the wounds sustained, it is on the  
10 chest and on the neck. It is not a fatal shot where he would drop immediately. In this instance, he would be able to move, he would be able to walk, and he is not wearing anything from the top. It is only the short pants that he is wearing.

Now, this will allow the blood to drip from the wounds. So, if you look at this pattern here, you have got a drip trail. So, it shows that at one stage he was bleeding, but he was moving from the wound. As he moved, blood was dripping from the wound, creating this drip trail. If you look at the wall here, at one stage he moved to that wall, he was  
20 against the wall. That is where he smeared blood on the wall. And at some stage, he started rolling on top of blood.

You look at the pants, you look at the body, how blood is all over the body, smeared all over the body. So, I would say for some time he was alive, he was in pain, he was moving around, he was rolling on top of the blood. So, this

indicates that he did not die immediately, or did not die maybe two or three minutes after the wounds were inflicted. He was at some stage rolling on top of blood and he was in pain.

**ADV NGCUKAITOBI SC:** Yes, and then, how many wounds did he sustain? Two?

**LT-COL MANGENA:** Two gunshot wounds.

**ADV NGCUKAITOBI SC:** And just a comparison of photo 9 and 10, at 2A-189. So, that is photo 9, he is lying on the side, and then on photo 10, he is lying on the back. Can you  
10 explain that?

**LT-COL MANGENA:** Ja. With photo 10, I would say it is more likely that the original position when it was photo 9, how he is lying. If you look at the bleeding here, it has already started to dry up. So, it shows the position that he was in while he was lying. So, it is the same position as in photo number 8, number 9.

Now, here it is because they have turned the body, probably they were now checking the wounds. It could be that they turned the body when they were taking pictures of  
20 the wounds sustained at the front part of it because here you cannot see the wounds. Now, when they turned the body, that is where you see the other position that is on photo 10.

**ADV NGCUKAITOBI SC:** Yes. Now, you also have in photo 9, H1 and H2. What are those?

**LT-COL MANGENA:** Right. If you look at H1 and H2, these

are the bullet marks where a bullet has hit. Now, the difference with this one is, if you look at the whole area here, there is bleeding all over there. But here, it tends to be clean. There is only fresh cement that has just been broken by the bullet impact.

**ADV NGCUKAITOBI SC:** What is that telling us? I mean, were they shooting on the floor? Or one of the bullets missed him?

**LT-COL MANGENA:** Chair, if you look at the same photo,  
10 photo number 9, you look at this part.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:** It is clean cement on top of the arm that is already containing blood. Now, it shows at some stage this arm was towards the area where the bullet has impacted. And it could be this one. It could be. But what is important now, while we are looking at this, let us look at wound number 2, or the wound from the second shot. The second wound will be 128.3. The entrance wound on the left side of the chest, which is marked B2W2.

20 **ADV NGCUKAITOBI SC:** So that is photo 7.

**LT-COL MANGENA:** Photo 7.

**ADV NGCUKAITOBI SC:** Page 2A-188.

**LT-COL MANGENA:** And the exit wound of this is on the right shoulder, which is marked B2W4. Now, let us look at the appearance of wound number ...[intervenes].

**CHAIRPERSON:** Where is B2W4?

**LT-COL MANGENA:** It is this one.

**CHAIRPERSON:** 8? Photo 8?

**LT-COL MANGENA:** On photo 8, yes. If we look at the appearance of this wound, what does it tell us? It is not a normal bullet exit wound. This type of wound is what we call the short exit wound. With a short exit wound, because what I am looking also at is this part of it. There is cement again here, or the sand part which is still white, does not have  
10 blood.

**CHAIRPERSON:** Is that part an elbow?

**LT-COL MANGENA:** It is the back part of...

**CHAIRPERSON:** The B2W4.

**LT-COL MANGENA:** It is here. It is right here on the shoulder. The back part of the shoulder. Now, if you look at the wound sustained, the entrance is B2W2, which is here. The exit is there at the back. Now, what I can tell in this one is this wound was inflicted while he was lying on the ground. It is the short exit wound here at the back. It is the pattern  
20 that we see here. It is created by the bullet when it exits the wound.

And because he was lying on a hard surface, it pinched the skin against the surface. But if you compare the surface, the flooring here, it is not that strong. It is more sand than cement, so it breaks easily. It is a hard surface,

but it breaks easily. So when this bullet breaks the surface, it created this type of wound. So this is basically a short exit wound. So this wound was inflicted while he was lying on the floor.

And when the bullet breaks the floor, the flooring of it, the cement particles stuck here on the side of the wound. So if you look at this wound, he started bleeding. He rolled for some time on the floor, and then this wound was inflicted after some time. So I cannot say exactly after how long, but  
10 it took some time for the second shot to be inflicted.

It could be based on what we see on the clothing, the short pants that he is wearing, and the bleeding, walking from there where he created the drip trail, the blood on the wall, and when he was rolling on the surface, it took some time. I cannot say exactly how long that took, but it took some time. It is not something that happened within two, three, five minutes. It could be more than that. That is when the second wound was inflicted.

**ADV NGCUKAITOBI SC:** Yes. So the second wound was  
20 inflicted while he was lying on the back.

**LT-COL MANGENA:** On his back, that is correct.

**ADV NGCUKAITOBI SC:** It came from the chest to the blade. And so that is what you are dealing with in paragraph 128.4.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And if you skip a couple of

paragraphs, then into paragraph 130, 132, 133.

**LT-COL MANGENA:** On paragraph 130, as I said, the exit wound on the right shoulder displayed the characteristics consistent with a short exit wound. Now, as I explained, the short exit wound is when the bullet is supposed to exit, but the bullet is lying on a hard surface and then it pinches the skin between the hard surface, creating this type of wound. This type of wound will normally differ, but most of them will be the short exit wound will depend on the surface, the  
10 hardness of the surface. I think we are going to see the short exit wound again in the barrier case. But there, because it is on a different surface, a harder surface, it will show different reaction to this one.

**ADV NGCUKAITOBI SC:** Yes. And then I had asked you about photo 9, those H1 and H2, which you deal with at paragraph 133 and 134. Those were shots fired into the floor. I mean, why were they – were they trying to shoot him?

**LT-COL MANGENA:** Chair, I cannot say what were they shooting at, because if you look at this, this would be the shot  
20 most likely from a rifle. It could be from a rifle. It could be where the bullet – if you look at that photo, where we are seeing the bullet deflects here on this surface, and then it breaks the cement here. And some of the bullets, as I said, with the 5.56 rifle, it will fragment on impact. Now, if you go to photo number 23 on the report.

**ADV NGCUKAITOBI SC:** 2A-197.

**LT-COL MANGENA:** If you look at photo number 23 on the report, 2A-197, here we can see where the fragments of that bullet that has ricocheted has hit on the wall. These will be the fragments from that bullet when it hits the wall. It bounces or ricochets on the entire fragment, and then those fragments hit the wall on the opposite side of it.

**ADV NGCUKAITOBI SC:** Thank you. And you have also said you cannot work out those two bullets, whether they were  
10 shot from inside the house or through a window.

**LT-COL MANGENA:** Chair, I cannot tell whether they were fired from inside the house or were fired from through the window on the other side.

**ADV NGCUKAITOBI SC:** And then you deal with the bloodstain pattern analysis from paragraph 137.

**LT-COL MANGENA:** From paragraph 137, these are some of the bloodstain patterns that I was talking about. 137.1 is a drip trail, the one that I showed on photo number ...[intervenes].

20 **ADV NGCUKAITOBI SC:** I think where you are dealing with it in your report is photo 36 at 2A-207.

**LT-COL MANGENA:** Yes, that is the first pattern, the drip trail, where you can see the blood dripping from the wound as the person is walking or moving. When, in 37.2, we were talking about the swipe, it is the transfer of blood to a surface

during the lateral motion.

Now, that is where you see on the same photo 36, on the wall, there was marked pattern 2, where he was bleeding and at some stage he was leaning against the wall and smearing blood on the wall. This indicates the contact between the deceased and the wall while still bleeding. And then we have a pool of blood.

Now, for you to clear out, for a pool of blood to be created, what must happen? If a person starts bleeding, you start bleeding, you will probably start with a drip, and then because you are not moving, you are at a stationary position, your blood starts from a drip, and then the volume increases as bleeding continues and then it will create what you call a pool.

**ADV NGCUKAITOBI SC:** That is at 137.3?

**LT-COL MANGENA:** That is at 137.3.

**ADV NGCUKAITOBI SC:** Okay.

**LT-COL MANGENA:** And 137.4 is the wipe. This will be the movement through the pre-existing blood. This indicates the subsequent movement through the pooled blood that the deceased has sustained. Now, this will be where you see on the body of the deceased where he was rolling on top of blood, and even on these pants you can see that he has been rolling on top of blood that was already on the floor.

**ADV NGCUKAITOBI SC:** And the last one is flow.

**LT-COL MANGENA:** The last one will be the flow. The gravity-driven blood moved without interruption, where you have – this indicates that he was bleeding, and the blood is now flowing from the higher position to the lower position because there is no movement. It will flow and it will create – you see that the lower area, it will flow to that area where there is low area. If it is a flat area, it will flow and then it will start creating the pool again.

**ADV NGCUKAITOBI SC:** Thank you. We have dealt with  
10 paragraph 138, but what we have not addressed yet is the firearm at paragraph 139 and 140. The firearm, I think, is that ...[intervenes].

**LT-COL MANGENA:** With the firearm ...[intervenes].

**ADV NGCUKAITOBI SC:** Sorry, let us just locate it first.

**LT-COL MANGENA:** The firearm is depicted on photo number 36.

**ADV NGCUKAITOBI SC:** 36. 36.

**LT-COL MANGENA:** It is also on photo number 34, but if you look at photo number 34, photo number 36, that is where  
20 you see the firearm position. Now, on photo number 36, when you look at your firearm, it is clean. There is no blood on the firearm. But if you look at the hands of the deceased, they are all stained with blood. And look at the position of the firearm. It is on top of blood.

I would say for most of the time when he was moving,

walking, I do not think he was having the firearm in his hand. It is not possible. He even went there, against the wall, where he smeared blood on the wall. You look at the hands. The hands are full of blood. And you look at the position of the firearm now. The firearm is on top of blood.

Now, if the firearm was there and then he started bleeding from the wound sustained to create a pool, what would be important is if you have, let us say you have this book here and then you started bleeding. If blood would be  
10 flowing to this direction, we will create what we call a void. So blood will not go underneath this, but instead will come around the surface of this to create what we call a void.

Now, if you look at that firearm, underneath that firearm there is blood on it. So there is no void. It simply shows that when this firearm was placed there, the blood was already on the surface.

**ADV NGCUKAITOBI SC:** Yes. But it shows firstly that the firearm was placed.

**LT-COL MANGENA:** It shows the firearm was placed on top  
20 of blood.

**ADV NGCUKAITOBI SC:** Yes. Now ...[intervenes].

**ADV NGCUKAITOBI SC:** Because if you look at it here, it is here and on the trigger guard there, you can see blood underneath this trigger guard. You can see blood. So if the firearm fell, and then due to bleeding the blood started to flow

to this direction, then what we call a void will be created, where blood will be circling around the firearm. But in this instance, it is not what we see here. Here is blood on top of, I mean the firearm on top of blood.

**ADV NGCUKAITOBI SC:** Yes. Well, there is obviously another indicator here about this issue of the firearm, which is what cartridges were recovered from the scene and whether those cartridges are consistent with this firearm, where the police are claiming that they were shot at by the  
10 deceased in circumstances where the evidence shows that the only cartridges that were found on the scene came from the police.

**LT-COL MANGENA:** Chair, I cannot recall all those cartridges, but I do not think I do not recall of any cartridge cases recovered from the crime scene that could match the firearm that was found on the body.

**ADV NGCUKAITOBI SC:** Yes. Well, if they were, they would have been mentioned. But the fact of the matter is that the only cartridges recovered are from the ...[intervenes].

20 **LT-COL MANGENA:** Firearms of the police officers.

**ADV NGCUKAITOBI SC:** Belonging to Cato Manor.

**LT-COL MANGENA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Then you deal with overall conclusions from paragraph 144 to 146. Can you address that?

**LT-COL MANGENA:** Right. The overall conclusions on ...[intervenes].

**ADV NGCUKAITOBI SC:** Deceased A is Mr ...[intervenes].

**LT-COL MANGENA:** Deceased A ...[intervenes].

**ADV NGCUKAITOBI SC:** The senior.

**LT-COL MANGENA:** On 142.

**ADV NGCUKAITOBI SC:** Yes.

**LT-COL MANGENA:**

10 “The Deceased A was shot once while in standing position and collapsed, and was shot again while in a lying position on the ground. The second shot is consistent with a rifle-calibre ammunition. Deceased B sustained two initial hand gunshot wounds and remained alive for a period. As evidently by movement of the bleeding, the bloodstain patterns, he was subsequently shot again while lying on the floor. The positioning of the firearm is inconsistent with the expected handling pattern based on the bloodstain evidence. The findings indicate that multiple firing positions were in sequence of injuries and significant post-injuries mentioned in respect of Deceased B. My full forensic

20

reconstruction report relating to the incident is attached hereto as Annexure CM7.”

**ADV NGCUKAITOBI SC:** Yes. We have just looked at that report now. So, Madam Chair, we can move to Phoenix, or we can adjourn for the day. It is 17:11. I thought of just pressing ahead to finish at least the Biyela case.

**CHAIRPERSON:** I beg your pardon. You are done with the Biyela matters?

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

**CHAIRPERSON:** And tomorrow you plan to start with Phoenix?

**ADV NGCUKAITOBI SC:** Phoenix, yes, Madam Chair.

**CHAIRPERSON:** I think it is an appropriate time to take an adjournment. Thank you, Lieutenant Colonel. We will adjourn until tomorrow morning at 9 o'clock.

**LT-COL MANGENA:** Thank you, Chair.

**CHAIRPERSON:** You are still available?

**LT-COL MANGENA:** I am still available, Chair.

20 **CHAIRPERSON:** You still feel safe?

**LT-COL MANGENA:** For now, yes, Chair.

**CHAIRPERSON:** For now.

**ADV NGCUKAITOBI SC:** He is also available on Friday. I heard that the Panel was told that he is not available on Friday. But I was not told that, so he is available on Friday.

**LT-COL MANGENA:** But, Chair, for Friday, I want to because I have got a court case in Mafikeng on Monday, and on Wednesday it is in Polokwane.

**ADV NGCUKAITOBI SC:** Okay.

**LT-COL MANGENA:** So, if I finish on Friday so that I can start with the preparations for the court on Monday and Wednesday.

**CHAIRPERSON:** Meaning that if you were to finish Friday, probably by lunchtime, in the event we do not finish on  
10 Thursday, you will still be available?

**LT-COL MANGENA:** Friday morning, yes, I will still be available.

**CHAIRPERSON:** Thank you. Yes, thank you, Colonel. We will adjourn until tomorrow morning at 9 o'clock. You are still under oath.

**LT-COL MANGENA:** I am still under oath, Chair.

**CHAIRPERSON:** Yes, thank you. As we excuse you, we have a few matters to finalise with counsel. You are excused.

**LT-COL MANGENA:** Thank you, Chair.

20 **CHAIRPERSON:** The interlocutory application, I see Advocate Hulley is not here. We have seen the replying affidavit filed by the NPA in the decoupling application. I think that we should now find out from counsel when will heads of arguments be filed. Advocate Lekgetho and Advocate Ngcukaitobi, will you be in a position to file your

written submissions tomorrow afternoon? Let me find out from the applicant first. Advocate Lekgetho?

**ADV LEKGETHO:** Madam Chair, we can do our best to file tomorrow, but maybe not in the afternoon. Maybe later.

**CHAIRPERSON:** Are you saying for certain that tomorrow evening we will – thank you. You can repeat yourself.

**ADV LEKGETHO:** Thank you.

**CHAIRPERSON:** Please help with your moving mic.

**ADV LEKGETHO:** Thank you. Not for certain, Madam Chair.

10 I can confirm with my senior because he has to settle.

**CHAIRPERSON:** You have to make a direction now. This is your application and I am sure you want this application to be decided as soon as possible.

**ADV LEKGETHO:** Perhaps let me commit for Thursday morning rather than tomorrow.

**CHAIRPERSON:** We would like to hear oral argument in this application. Advocate Ngcukaitobi, will you be in a position to file on Thursday?

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

20 **CHAIRPERSON:** And we are of the view that if for argument's sake both of you file on Thursday, we can hear you on Thursday afternoon. We will give you one hour, one hour, and 15 minutes reply. Then we will consider the argument and decide when to make a ruling. Is that doable?

**ADV LEKGETHO:** That is in order, Madam Chair.

**CHAIRPERSON:** I am looking more at you because you are the applicant.

**ADV LEKGETHO:** That is correct.

**CHAIRPERSON:** NPA.

**ADV LEKGETHO:** That is correct.

**ADV NGCUKAITOBI SC:** Yes, it will be suitable. Thank you.

**CHAIRPERSON:** It will suit you. We so direct that you file your written submissions on Thursday morning. You will argue the application in the afternoon of Thursday, meaning  
10 from lunchtime, maybe at about 3 o'clock. You can then argue the application. We will afford you the one hour, one hour, and 15 minutes injury time. Then the witness will proceed on Friday morning if you would not have finished by morning of Thursday. Doable?

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

**CHAIRPERSON:** Yes, thank you. We so direct.

**ADV NGCUKAITOBI SC:** As it pleases.

**ADV LEKGETHO:** As it pleases.

**CHAIRPERSON:** We will take an adjournment until tomorrow  
20 morning at 9 o'clock. Thank you.

**ENQUIRY POSTPONED TO 25 FEBRUARY 2026**

**ENQUIRY ADJOURNS**

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