

**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**

25 FEBRUARY 2026

DAY 32



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

PROCEEDINGS ON 25 FEBRUARY 2026

CHAIRPERSON: Good morning, everyone. Good morning, Lieutenant-Colonel. Good morning, Advocate Chauke. We apologise for starting a bit late. Something beyond our control just happened this morning. An unexpected bereavement. We will proceed, however. Advocate Ngcukaitobi, a letter from Harris Nupen Molebatsi has been brought to our attention. It is filed off record. Have you seen this letter?

10 **ADV NGCUKAITOBI SC:** I have not seen it, but my attorney was talking about it this morning.

CHAIRPERSON: It is concerning your opposition to Advocate Batohi's application. They seek to suggest that the application is not opposed. Probably because you did not file a notice of intention to oppose the attorney. Although you brought it to our attention. Did you file a notice of intention to oppose?

ADV NGCUKAITOBI SC: Madam Chair, the position that is taken by our counterparts is rather surprising because we
20 have conveyed to them by letter that we oppose the request and that would naturally apply to the application.

CHAIRPERSON: We are taken by surprise by this attitude by Harris Nupen Molebatsi. I would like to place it on record because they have never come to appear before us. They have never come here. The State Attorney is also not here.

We see it as a disrespect to this Panel because everybody here knows that we do not write letters to parties. A Panel does not communicate by way of letters. There is a process to be followed and these attorneys should know that. We will leave it there, but let us know when are you filing your answering affidavit.

ADV NGCUKAITOBI SC: Madam Chair, we are working on it. What we were hoping to do is to file it during that period of the break, which will be, as I understand, it is around the
10 12th of March.

CHAIRPERSON: Will it not be late?

ADV NGCUKAITOBI SC: Well, not according to the ...[intervenes].

CHAIRPERSON: You have seen the time frames in the notice of motion?

ADV NGCUKAITOBI SC: Yes. We could expedite it, Madam Chair, and try and file it sometime next week.

CHAIRPERSON: Might I suggest that you file the notice of intention to oppose? They would like us to deal with the
20 matter as if it is unopposed. Just place it on record. Although we are aware that you are opposing the application because we communicate with one another in the mornings, and we know what your intentions are, but it appears that they live under an impression that you are not opposing. So file the notice and make a suggestion as to when you will be in a

position to file your answering affidavit.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I should just record that they cannot honestly labour under that impression because the State Attorney was told pertinently at chambers when yourself, Madam Chair, asked whether we were opposing it, that we are indeed opposing it. So it is clear that there is a miscommunication between the State Attorney and Mr Harris Nupen.

CHAIRPERSON: Yes, Counsel. I had hoped that either Mr
10 Matubatuba or Mr Sebelemetja [?] from the State Attorney would be here. None of them is here.

ADV MTSWENI SC: Madam Chair, Mr Sebelemetja asked me to pass his apologies.

CHAIRPERSON: We do not hear you.

ADV MTSWENI SC: Mr Sebelemetja asked me to pass his apologies. He said he will be running late. He has to start off at the High Court in the morning, but he will be joining us during the course of the day.

CHAIRPERSON: Yes, but Mr Sebelemetja does not
20 represent Advocate Batohi. I am just saying that on the basis that the Chairperson asked that you were hoping he would be here, so that you are not surprised why he is not here.

CHAIRPERSON: Yes, but I am saying he is not representing Advocate Batohi.

ADV MTSWENI SC: Yes.

CHAIRPERSON: Yes. We have made an arrangement with the Secretariat to communicate with the State Attorney to be here at tea time. Lieutenant-Colonel, you are still under oath. Thank you. You may proceed, Advocate Ngcukaitobi.

CHRIS MANGENA: (still under oath)

EXAMINATION BY ADV NGCUKAITOBI SC (CONTINUES):

Thank you, Madam Chair. Good morning, Lieutenant-Colonel. We send our condolences to Advocate Baloyi-Mere SC for the bereavement we heard about this morning.

10 **CHAIRPERSON:** Thank you, thank you, Counsel.

ADV NGCUKAITOBI SC: Thank you. Lieutenant-Colonel, you were just about to start Phoenix, and it is at page 242 of your statement.

LT-COL MANGENA: 2A?

ADV NGCUKAITOBI SC: 2/42 of your statement. Paragraph 147. Thank you very much.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Now, this is the case of Phoenix, CAS 377/08/2009. This is the murder of Mr Phillip Lindokuhle
20 Nzuzza. Correct?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Can you, I think you had got into a sort of a rhythm yesterday, but just start by telling us what was happening in this case.

LT-COL MANGENA: Let me just get to it.

ADV NGCUKAITOBI SC: Your report, if you are looking for it, is at 2A-210.

LT-COL MANGENA: Chair, in this matter, the Cato Manor alleges that they were looking for this guy, and they were around the Phoenix area because they got information that he was driving this vehicle. So, they noticed the vehicle, they saw the vehicle. They tried to stop him where Captain Lockem was the driver, Warrant Officer Mostert was the passenger, and the Warrant Officer Naidoo was at the back
10 seat.

ADV NGCUKAITOBI SC: So, who are these people? Lockem, Mostert and Naidoo. Are they Captain, what are their designations?

LT-COL MANGENA: Captain Lockem, Warrant Officer Mostert and Warrant Officer Naidoo.

ADV NGCUKAITOBI SC: So, who are they?

LT-COL MANGENA: They are members of Cato Manor.

ADV NGCUKAITOBI SC: Thank you. So, the allegation is that they were looking for Mr Nzuza.

20 **LT-COL MANGENA:** That is correct, Chair. They saw him, because they got information that he was driving a white Honda Balade. They spotted the vehicle, and then tried to stop the vehicle, activated the sirens and the blue light, but he refused to stop. In the process, he pulled out a gun, pointing a gun at them, and then Warrant Officer Mostert shot

at him.

ADV NGCUKAITOBI SC: Now, this idea of looking for someone, because the police do not just look for someone. There is a process under the Criminal Procedure Act. What do they mean? Did you find any warrant of arrest?

LT-COL MANGENA: Chair, I cannot recall if there was a warrant of arrest.

ADV NGCUKAITOBI SC: Yes, well, you would have recorded it in your report.

10 **LT-COL MANGENA:** Normally, I only record what is ballistic-related. If there was a warrant, I would not go in there.

ADV NGCUKAITOBI SC: Yes, well, the statements are there.

LT-COL MANGENA: The statements were there.

ADV NGCUKAITOBI SC: Because the statement ...[intervenes].

LT-COL MANGENA: On the statement, they only said they were looking for him.

ADV NGCUKAITOBI SC: Yes.

20 **LT-COL MANGENA:** They got information that he is in that area, but they do not mention any warrant.

ADV NGCUKAITOBI SC: Thank you. All right, carry on then from paragraph 147.

LT-COL MANGENA: According to them, they saw the vehicle, activated the blue light and siren, tried to stop him.

He refused to stop. He took out a gun, pointing a firearm at them, and then they shot back. He was wounded and they stopped the vehicle there.

But if you look at the scenario on how they explained it, they said they activated the siren, he pointed a gun, and they shot at him while they were still in motion. And then the vehicle came to a stationary position where the Warrant Officer Mostert said he grabbed the keys and switched it off to stop.

10 **ADV NGCUKAITOBI SC:** Thank you. All right, your report starts at paragraph 147 and 148.

LT-COL MANGENA: On paragraph 147:

“On the 19th of April 2012, during the performance of my official duties, I received a police case docket, Phoenix CAS 377/8/2009, from the investigating officer, Mr Mosiapo [?] of the Independent Police Investigation, IPID. 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 materials examined by me included, amongst the others, the post-mortem report S-Phoenix PM 980/2009, compiled

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by Doctor T Naidoo, a statement of Detective Inspector Mostert, and a statement of Constable Naidoo. I examined these materials in conjunction with the trajectory analysis, wound morphology and crime scene reconstruction methodology. The medical analysis...” ...[intervenes].

ADV NGCUKAITOBI SC: Now, before you do that, let us
10 compare this with your report. So, your report, we have already identified it. You have not confirmed that this is your report. Can I take you to page 2A-210? And then it ends at 2A-226.

LT-COL MANGENA: I have it, Chair.

ADV NGCUKAITOBI SC: Yes. Is this your report?

LT-COL MANGENA: That is my report, yes.

ADV NGCUKAITOBI SC: All right. Thank you. Now, when you talk about photographs 11 to 15 in the report, that is what you are talking about. Correct?

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

ADV NGCUKAITOBI SC: All right. Well, you can take us there then, as part of your narrative of the medical analysis.

LT-COL MANGENA: The medical analysis from photographs 11 to 15 in the report:

“The deceased sustained multiple gunshot

wounds from at least two different
calibres, which can be summarised as
follows.”

ADV NGCUKAITOBI SC: Let us just see, make sure that we
are looking at the images. So, there is a head wound 1A, 1B,
1C. Can you tell us where those are?

LT-COL MANGENA: The head wound 1A, 1B, 1C. 1A and
1B are visible on photo number 12.

ADV NGCUKAITOBI SC: Photo number 12. And where are
10 they located?

LT-COL MANGENA: They are located on the right side. 1A
is on the top of the ear, and then 1B is behind the ear on the
scalp, penetrating gunshot wounds. This will be on the right-
hand side.

ADV NGCUKAITOBI SC: Okay, that is 1A and 1B and 1C.

LT-COL MANGENA: 1C is at the top of the head.

ADV NGCUKAITOBI SC: No, I am saying which picture?

LT-COL MANGENA: It is on picture number 15.

ADV NGCUKAITOBI SC: Picture number 15.

20 **LT-COL MANGENA:** Page 2A-222.

ADV NGCUKAITOBI SC: Okay, yes, I see. That is the one
with the black circle.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, all right. Thank you. So, we
have covered 150.1, 150.2, and 150.3 by locating where the

wounds are 1A, 1B, 1C.

LT-COL MANGENA: That is correct, Chair. Because 1C will be the exit wound at the top, and then 1A is on the ear, 1B is the entrance again on the scar, and then 1C is the exit of the same bullet at the top.

ADV NGCUKAITOBI SC: So, meaning what? The bullet travelled from the back to the front?

LT-COL MANGENA: It travelled from the right to the top of the head.

10 **ADV NGCUKAITOBI SC:** The top, I see. Is that what you are talking about in 150.4 of your statement, what do you call the trajectory?

LT-COL MANGENA: 150?

ADV NGCUKAITOBI SC: Paragraph 150.4. I assume the word trajectory simply means direction.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Okay. And we can move on to 150.5 to 150.7.

LT-COL MANGENA: 150.5:

20 “The deceased sustained a gunshot entry wound on the lower right side of the back of the head.”

This wound is visible on photo number 15 again, which is marked 2.

ADV NGCUKAITOBI SC: Okay, back of the head. Is that

the second wound?

LT-COL MANGENA: That is the second wound.

ADV NGCUKAITOBI SC: Thank you. And then 150.6.

LT-COL MANGENA: 150.6:

“The bullet was recovered within his scalp
and thus there was no exit wound.”

So, basically, the wound stuck in the head of the deceased.

ADV NGCUKAITOBI SC: So, it was lodged in the scalp?

LT-COL MANGENA: That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Okay. Then the direction of the
bullet that caused that wound is at 150.7.

LT-COL MANGENA: The trajectory of the bullet was slightly
towards forward and upward.

ADV NGCUKAITOBI SC: Just explain what that means,
forward and upward.

LT-COL MANGENA: Chair, I will explain this wound.
Because if I explain it now, it is at the back. It was going
forward, but it is locked at the top of the head.

ADV NGCUKAITOBI SC: Okay.

20 **LT-COL MANGENA:** Now, if you look at the position. Let
me go through the wounds first.

ADV NGCUKAITOBI SC: That is fine. You do it your way.
Thank you. Let us deal with the next paragraph, 150.8 to
150.10.

LT-COL MANGENA: At 150.8, there is an entrance wound

on the medial right cheek, which is visible on photo number 11.

ADV NGCUKAITOBI SC: Photo number 11, that is at page 2A-220.

LT-COL MANGENA: On 2A-220, yes. The corresponding exit wound on the left posterior neck, which is marked 3B.

ADV NGCUKAITOBI SC: Where is 3B?

LT-COL MANGENA: 3B is on photo 15.

ADV NGCUKAITOBI SC: So, that would be the exit?

10 **LT-COL MANGENA:** That would be the exit of 3A.

ADV NGCUKAITOBI SC: Okay.

ADV BALOYI-MERE SC: [Indistinct]... the entry ...[indistinct] ...[intervenes].

LT-COL MANGENA: The entry would be this one on the cheek.

ADV BALOYI-MERE SC: And then the exit?

LT-COL MANGENA: And then the exit is the one on the neck here, at the back. The trajectory of the bullet was backwards and in a downward from right to left.

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

CHAIRPERSON: Before that, I see a lot of circles on photo 15. Which is the exit wound of that entry wound at 3A?

LT-COL MANGENA: The exit wound would be this one.

CHAIRPERSON: Is it written 3B?

LT-COL MANGENA: That is written 3B. I will mark the

wounds. The A's will be the entrance and then the B's will be the exit. So, this will be the entrance on A. It passes the skin there and then exits at C. This one, the entrance is at 3A and then the exit is at 3B, and then there is the two. It penetrated here. The bullet was lodged into the head of the deceased.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Okay. And then there are further wounds on chest and back from paragraph ...[intervenes].

10 **LT-COL MANGENA:** Chest and back. Entry wound to the anterior lateral right upper chest. This wound is marked A5 and is visible on photo number 18. The corresponding exit wound to the right upper back, which is marked 5B. This wound is visible on photo number 15 again. So, the exit wound on photo 15 would be this one.

ADV NGCUKAITOBI SC: I see, yes.

LT-COL MANGENA: The trajectory of the bullet went backward and slightly upward from right to left. Right. If you look at the wound A on 150.14, I said the wound A displays
20 the characteristics of an unstable bullet, suggesting prior impact with an intermediate object.

ADV NGCUKAITOBI SC: Which means what?

LT-COL MANGENA: Which means that this bullet has hit an object, an intermediate object, before it hits the head of the deceased. So, basically what I was saying is, when he was

shot at, most likely the window was closed. It hit the window, broke the window, and then penetrated part of the window. I would say the window was not completely closed. It was half closed. So, it hit the window towards the top of it, when it was half closed. And then it perforated the body, entered the body, and exited at the back of the neck.

ADV NGCUKAITOBI SC: Yes. There is also a further wound.

LT-COL MANGENA: 151. Entry and exit wounds on the right forearm.

10 **ADV NGCUKAITOBI SC:** 7A and 7B.

LT-COL MANGENA: Which are marked 7A and 7B on photo 14.

ADV NGCUKAITOBI SC: Yes, yes, yes.

LT-COL MANGENA: There was also the presence of powder tattooing around the entry wound. This indicates a near or a close range shot. Now, when you look at this wound, when you look at wound 7A, there is a presence of tattooing here, or there is a presence of unburned and partially burned propellant powder that penetrated the skin here. So, this
20 indicates a close range. The firearm was not far from the hand of the deceased there.

ADV NGCUKAITOBI SC: Thank you. Thank you.

ADV BALOYI-MERE SC: Sorry, can you, just so that we remember when we are sitting alone and writing a report. Yesterday, you spoke about whatever tattoo that would be

made by a bullet shot through a window that shatters. And today, you are talking about another tattoo that would be made by a bullet that was shot at very close range. Can you educate us a little bit more, contrasting the two, so that one does not confuse them?

LT-COL MANGENA: Chair, when you explain the tattooing, the one that I am explaining now, the one that we see here is when a shot is fired at a close range, as I said, when the firing pin of the firearm strikes the primer, that primer
10 produces flames that ignite the propellant powder. So, that propellant powder starts burning and creates gas. In the process, it will push the bullet through the barrel of the firearm.

Your bullet is a little bit bigger in diameter than the barrel of the firearm. So, it will seal the barrel of the firearm. So, there will not be any gas that escapes before the bullet. So, all the gas that comes from the propellant, the burning propellant, will push the bullet through the barrel. When your bullet exits the barrel of the firearm, the sound that we hear
20 is the gas that is escaping. But behind the bullet, there is unburned and partially burned propellant powder that is still travelling with the bullet, but that can only travel for a distance of about a metre.

Now, in the process where we say there is a tattooing, it means that there is unburned and partially

burned propellant powder that penetrates the skin. So, in that instance, this is what we see in this case where we explain that there was a tattooing around the area of the hand.

And in the case where a bullet hits glass, it creates what we call the secondary missile where the glass particles will be our secondary missiles. And if those glass particles hit a person or hit the skin of a person, they will create what we call the pseudo-tattooing. So, the pseudo-tattooing is
10 created by secondary missiles while the tattoo is created by the unburned and partially burned propellant powder particles.

ADV BALOYI-MERE SC: And in that instance, if that arm were to be tested for assisting with the ...[intervenes].

LT-COL MANGENA: For the primer residue.

ADV BALOYI-MERE SC: Primer residue, that arm would test positive.

LT-COL MANGENA: The disease would test positive in this instance. Because if you look at the firearm, it is a close
20 range too. It is less than even a metre because there is a tattoo in there. So, the whole vehicle or the whole hands or both hands of the disease would test positive for primer residue.

ADV BALOYI-MERE SC: Thank you.

ADV NGCUKAITOBI SC: Just explain this idea of this primer

residue. So, if I shoot with an R5, okay, does it emit the powder that is called primer residue or not?

LT-COL MANGENA: Each and every firearm that you discharge, as long as there is a primer involved, yes.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: When the firing pin of the firearm strikes the primer, that flame that causes the propellant powder to start burning was caused by the primer. So, the primer produced sort of dust particles.

10 **ADV NGCUKAITOBI SC:** Yes.

LT-COL MANGENA: And those dust particles will be all over the area.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: So, if it is a rifle or a pistol, as long as the primer is not affected, it will produce the primer residue.

ADV NGCUKAITOBI SC: Yes. And can I draw a distinction between a primer of an R5 and a primer of a nine millimetre?

LT-COL MANGENA: It is not possible to distinguish them or to separate them or to differentiate them.

20 **ADV NGCUKAITOBI SC:** And that is why it is really misleading to look at primer and say, therefore, the deceased was carrying a firearm.

LT-COL MANGENA: That is correct.

ADV NGCUKAITOBI SC: Yes. All right. Sorry, Madam Baloyi-Mere, I took over your questions. I am not sure if you

had finished. Okay, thank you.

ADV BALOYI-MERE SC: You took it further to the point where I wanted to take it. Thank you.

ADV NGCUKAITOBI SC: Thank you. Thank you very much. So, we asked, where were you at 7A and 7B? You finished 7A and 7B. Correct?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: All right. So, you are on 10A and 10B.

10 **LT-COL MANGENA:** There was also the presence of powder tattooing around the entrance wound, which indicates a near-range discharge. And then 10A and 10B, the perforating wound through the left hand, due to atypical feature and the direction of the range of the bullet could not be conclusively determined.

ADV NGCUKAITOBI SC: Sorry, I am trying to locate 10A and 10B and I cannot see them.

LT-COL MANGENA: I do not have a picture of 10A and 10B on this one, but I do not know what transpired. I think it might
20 be on the post-mortem report. I took it from the post-mortem report.

ADV NGCUKAITOBI SC: I see. But what is the point is that they had also shot him on the left hand as well.

LT-COL MANGENA: Yes, Chair. Now, if I summarise the whole incident, how it transpired, if you look at the two

vehicles, the suspect's vehicle and the police vehicle, as depicted on photo number 7, here would be the glass particles from the window of the vehicle and here would be the fired cartridge cases recovered, and this is a police vehicle, and that is a police vehicle. And this, those three are, and this part, those are Cato Manor vehicles.

Now, the vehicle that Mostert was shooting from is the BMW on the side. So it is very close to the Honda Balade. If you look at the wounds sustained by the deceased, I will
10 say the first one, that is on the side ...[intervenes].

ADV NGCUKAITOBI SC: Can you just say something? These three police vehicles, can you just point them again?

LT-COL MANGENA: The police vehicles here would be these two BMWs, the 5-Series BMWs.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: These two. And it would be this Corolla and it would be this Isuzu.

ADV NGCUKAITOBI SC: That bakkie.

LT-COL MANGENA: That is correct.

20 **ADV NGCUKAITOBI SC:** So those four, I mean, they do not appear to be marked police vehicles.

LT-COL MANGENA: Chair, they are unmarked vehicles used by Cato Manor.

ADV NGCUKAITOBI SC: No, because I am saying, if you are trying to arrest a person, why do not you drive a marked

vehicle so that they know that it is the police?

LT-COL MANGENA: Chair, I will say because they are from the organised unit. They do not drive marked vehicles.

ADV NGCUKAITOBI SC: Yes. But it could be, yes, it could be anyone.

LT-COL MANGENA: Right, Chair. From what I could see and what is different from what they are saying, they are alleging that they tried to stop the vehicle with the siren on. He pointed the gun and they started shooting. Now, if you
10 look at the position of the cartridge cases, the cartridge cases are in front of the white Honda that is there. If they were shooting at the vehicle while it was in motion, the cartridge cases would be somewhere back, not closer to the vehicle, because the vehicle would be moving.

Now, I am of the opinion that immediately after he stopped, that is when he was shot at. Because if you look at the wound sustained, I would say the first shot could have been most likely this one when he turned around to look at them. And you look at the wound that he sustained
20 ...[intervenes].

ADV NGCUKAITOBI SC: Photo 11, we should say, is the first shot.

LT-COL MANGENA: That is correct. Because when you look at the position of this wound, it is from right to left. The entrance is here and then the exit is here. So when he is

driving, he looks at them, they shot at him, and then he comes out here. And the second shot would be the one that comes on the ear and then into the skull, exit at the top of the head.

ADV NGCUKAITOBI SC: That is photo 12.

LT-COL MANGENA: That is photo 12, yes. Because if he is in the vehicle, seated in the vehicle, he looks at them. There is no way that they will shoot him. It comes in here and then it comes out at the top of the head. It is impossible. The bullet cannot just turn, goes up. Now, in this instance,
10 it is when he was slanting to the side, this would be the first one. And when he slanted to the side, that is when this one was inflicted. So it changes the position of the head to be to the side.

ADV NGCUKAITOBI SC: I see.

LT-COL MANGENA: So it enters the back of the ear, exit at the top. Now, if you look at his position as depicted on photo number 10 ...[intervenes].

ADV BALOYI-MERE SC: Sorry, before you go to photo number 10, would that gunshot at photo 11, would it have
20 been the fatal shot?

LT-COL MANGENA: I would say it is most likely the first shot.

ADV BALOYI-MERE SC: The first and fatal?

LT-COL MANGENA: The first fatal shot, yes. Because with this one, it is immediately incapacitated and it will change the

position of the head. It will slant to the side. Now, if you look at the position of the deceased, as depicted in photo number 10, while in this position, we look at the chest wound that is here. It enters here. It exits at the back of the head here.

Because his head is slanted back, it enters again at wound number 2, which is at photo number 15. If you go to photo number 15, your entrance will be on the right chest. It exits here at 5B. It re-enters the head on wound number 2,
10 and then the bullet is stuck in the head. Because it went through, it hit the window, became unstable, penetrated here, and then exit here, it has lost a lot of energy when it hit the window. It has lost a lot of energy when it perforated the body. And then it entered the back of the head, and it is stuck inside the head.

So basically, your first wound would be the one that is here. It comes out here. The second one would be the one that hit the ear, enters here, and exits there. And then the third shot would be the one that enters on the chest, exits
20 on the shoulder, and penetrated. Then I would say when these wounds were inflicted, the other wounds, the following wounds were inflicted, I would say most likely the driver is already dead or has already lost consciousness in the condition that he was no more threat to the members.

ADV BALOYI-MERE SC: You are referring to the wounds,

the shot at his arms?

LT-COL MANGENA: Those could be the shots that followed, or this could be another shot at a close range. Of course, in here, at a close range, it comes out.

ADV BALOYI-MERE SC: No, I am asking this question because you say the shots that followed were – he was incapacitated, totally incapacitated, maybe even dead, but they continued shooting at him when there was no danger at all at that time.

10 **LT-COL MANGENA**: The one that is in the right cheek is most likely the first one because if you look at it, it goes straight. So that is when, with this one, he was immediately incapacitated and then he fell back. The ones that cover, the one that went through the ear and the one that went through the chest, by then he was already incapacitated. There was no movement from the deceased.

ADV NGCUKAITOBI SC: In other words, any shot after that first shot, he posed, well, if he ever posed any danger, but he at that point clearly posed no danger after that first shot.

20 **LT-COL MANGENA**: That is correct, Chair. And when you go to photo number 16, right on photo number 16, this is where they alleged that he dropped the revolver and it was found here inside the vehicle.

ADV NGCUKAITOBI SC: And what is your opinion?

CHAIRPERSON: I beg your pardon, Counsel. Which part of

the motor vehicle is this at photo 16?

LT-COL MANGENA: Chair, it would be between the door and the seat, the driver's seat of the vehicle. The right door and the driver's seat.

CHAIRPERSON: It is not very clear to me. If you can show me, where is this bullet located between the seats? Perhaps you can go to the picture.

LT-COL MANGENA: Chair, here is the driver's seat. The deceased's body is here and then this is the driver's seat.

10 And then here is the frame of the vehicle where the door closes. So it is between the seat and the door. The door is open now. When they take the picture, the door was open. So the door will be open to this side. So it will be just on the smaller passage between the seat and the door.

ADV NGCUKAITOBI SC: Is that the firearm, that shiny object?

LT-COL MANGENA: That is correct. That is the revolver that alleged that he was pointing, using it to point them.

20 **ADV NGCUKAITOBI SC:** And what is your opinion about that?

LT-COL MANGENA: Chair, by looking at the position of the cartridge case in front of the vehicle, I would say he stopped and he was shot while the vehicle was stationary and while they were right on the side of his vehicle. And look at the wound that he sustained on the arm. It is not that he was

pointing a gun at them. It is most likely that because it is on the right arm, it is in here and out here, it is a close range again.

So it would be that the firearm, the right arm was stretched to hold the firearm. So it is in here, out here. And it could be the same bullet that also hit the left arm of the deceased. I do not have a photo of that, but according to the doctor, he said it is what they call atypical gunshot wounds, where he cannot differentiate whether it is an entrance or an
10 exit wound.

Now, in that instance, it would be where the bullet is unstable when it hits the left arm. So probably it could be the bullet that went through the right arm as he was holding the steering wheel and then on the left arm and exited on the other side.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: The first bullet would have come from the BMW, the one that is in the front.

LT-COL MANGENA: That is correct, Chair. All the shots
20 are from the BMW that is on the right-hand side.

CHAIRPERSON: All the shots?

LT-COL MANGENA: All the shots are from the BMW.

ADV NGCUKAITOBI SC: And who is that person that killed Mr Nzuza?

LT-COL MANGENA: According to their statement, it is

Warrant Officer Mostert who was seated in the front seat and then Naidoo was seated in the back seat. Warrant Officer Mostert fired with a pistol and then Naidoo fired with a rifle.

ADV NGCUKAITOBI SC: So the fatal shot is this one?

LT-COL MANGENA: The fatal shot on head would be with the nine millimetre, with the handgun.

ADV NGCUKAITOBI SC: That would have been ...[intervenes].

10 **LT-COL MANGENA:** That would have been Inspector Mostert.

ADV NGCUKAITOBI SC: Now, what they say here ...[intervenes].

ADV RAMAGAGA: Thank you. Lieutenant-Colonel, you have spoken about the firearms. One a rifle, one – ja. And you have said that the fatal shot was shot from the firearm of ...[intervenes].

LT-COL MANGENA: Warrant Officer Mostert.

ADV RAMAGAGA: Warrant Officer Mostert. Now, you say there was also an R5.

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

ADV RAMAGAGA: That was with the other ...[intervenes].

LT-COL MANGENA: It was used by Naidoo.

ADV RAMAGAGA: Naidoo. Now, did it strike the deceased or strike the vehicle? Are you able to talk about that?

LT-COL MANGENA: Most likely, when you look at the

second wound that went through the ear and the wound sustained at the top of the head, this is most likely from a rifle.

ADV RAMAGAGA: What makes you make the determination? Is it because of the size of the wound? Maybe for now. I am a layperson.

LT-COL MANGENA: When I look at the size and the appearance of this wound, it appears to be from a rifle, not from a pistol.

10 **ADV RAMAGAGA:** All right, thank you. Thank you, Chair.

CHAIRPERSON: You said that all the wounds were, or rather the shooting happened from the right.

LT-COL MANGENA: That is correct, Chair.

CHAIRPERSON: From Mr Mostert's vehicle.

LT-COL MANGENA: That is correct, from Mostert and Naidoo.

CHAIRPERSON: Now, that wound, the left-hand wound, 10-A and 10B, where was it coming from?

20 **LT-COL MANGENA:** The left-side wound would be, if it is holding the steering wheel, the shot is coming from there, it perforates the arm, it exits on the side, and then it hits the left hand. So it would also be from the right-hand side.

CHAIRPERSON: And on the left, it would have entered 10A and then exit 10B on the left?

LT-COL MANGENA: On the left. That is correct, Chair.

ADV BALOYI-MERE SC: Sorry. Going back to photo 16, where we are shown the alleged firearm that Mr Nzuza had, and you say it is a revolver.

LT-COL MANGENA: That is correct, it is a revolver.

ADV BALOYI-MERE SC: Can you educate us a bit about a revolver? How many rounds does it shoot? I am asking this because I want to determine whether it is feasible for someone to be surrounded by four or five cars of police and then decide to start shooting at them with a revolver. And
10 this comes with my disclaimer about guns.

LT-COL MANGENA: Chair, if we are speaking of a revolver, a revolver, it is a handgun, but it does not have a magazine, it only has a cylinder. Now the cylinders, it depends on the model of the revolver and the manufacturer. Some revolvers carry only five rounds, and the other revolvers carry only six rounds. And what you do is, you put your cartridges inside the revolver. When you pull the trigger, the revolver circulates and one round will be in line with your barrel, and fire a shot.

20 When you pull the trigger again, it moves again to the side, and another one is just – so basically, if you shoot it five times, it will revolve five times, so all the shots will be fired and it does not eject the cartridge cases. So you have to open the cylinder to remove those cartridges, and load the other five. It is unlike a pistol, where a pistol, when you fire

a shot, in the same process when the bullet is pushed through, the slide moves backward. When the slide moves backward, the extractor hooks the cartridge case that has just been fired to eject it outside. And when the slide moves backward, it loads another round from the magazine into the chamber. So with a revolver, it is only five rounds that you are going to use, and then all the cartridges will remain inside the cylinder of the revolver.

ADV BALOYI-MERE SC: So at most, you would have six
10 rounds to shoot?

LT-COL MANGENA: At most, you would have only six rounds in a revolver.

ADV BALOYI-MERE SC: It is like going to a gunfight with a baseball bat.

LT-COL MANGENA: Or a knife, Chair.

ADV NGCUKAITOBI SC: Yes. That takes us to paragraph
8 of your report, at 2A-223, because that is really where this
summary comes in. Because, I mean, what these policemen
would like the world to believe is that with four vehicles that
20 have encircled Mr Nzuzu, with policemen that are carrying
R5s and pistols and all of that, he then pulled out this little
revolver and then waited for a minute for this chamber to
come back. Because here they say, according to the
statements by Detective Inspector Paul Mostert and
Constable Ruben Naidoo, the deceased fired shots to their

direction and Inspector Mostert returned shots by firing four shots while seated in the vehicle to the direction of the deceased with a pistol, and Constable Naidoo alighted from the vehicle first and then returned shots by firing three shots with an R5 to the direction of the deceased.

So it is unclear here because both of them are returning shots, but they cannot both be returning shots because one of them must be returning shots, thereafter the deceased is incapacitated. So it would appear as if both Mr
10 Mostert and Mr Naidoo were shot at by the deceased.

LT-COL MANGENA: Chair, according to them, he fired shots at them while he was still inside the vehicle.

ADV NGCUKAITOBI SC: And the vehicle was in motion.

LT-COL MANGENA: According to them, their vehicle was in motion, but there was no bullet damage on their vehicle itself. So if he was shooting at them, at least, I do not expect him, if the vehicles were that close, I would not expect him to miss the whole vehicle with a bullet.

ADV NGCUKAITOBI SC: Yes, if you just look at them from
20 the position of their ...[intervenes].

LT-COL MANGENA: At least one bullet ...[intervenes].

ADV NGCUKAITOBI SC: Because both of them are in the BMW.

LT-COL MANGENA: Both of them were in the BMW. Captain Lockem was the driver, Mostert was the passenger in the

front, and then Naidoo was the passenger in the back seat.

ADV NGCUKAITOBI SC: So I am trying to see that picture of the of Mr Nzuzu's vehicle surrounded.

LT-COL MANGENA: I think it is photo number 1.

ADV NGCUKAITOBI SC: Photo number 1.

LT-COL MANGENA: Ja, and photo number 3 also. Photo 1 and 3 shows.

ADV NGCUKAITOBI SC: Yes, photo 3 is better because it shows the BMW in full.

10 **LT-COL MANGENA:** And where I would have marked A and B, that is where the cartridge cases were covered.

ADV NGCUKAITOBI SC: So how would that happen if he is sitting there and he is shooting, where would the cartridges be? His own cartridges, Mr Nzuzu's cartridges.

LT-COL MANGENA: According to them, he was shooting with a revolver. So the revolver does not eject the cartridge cases. So the cartridge cases will remain in the cylinder of that revolver. But if you look at both of them, Mostert and Naidoo, if they are shooting at him, their cartridge cases will
20 fall to the front of the vehicles. It is either on the front of the Honda or the front of their vehicle. In fact, not the front of their vehicle, to the front of the Honda.

ADV NGCUKAITOBI SC: Yes, which is where they are found.

LT-COL MANGENA: Which is where they are found.

ADV NGCUKAITOBI SC: And then this revolver that they

say, just back to your statement at paragraph 8, that he shot at them with this revolver. What happened to it? Because we do not – you know, surely it will be sent for testing and a lot of things will happen to it.

LT-COL MANGENA: Chair, it was sent for, I think it was sent for testing, but I cannot recall. It was examined by somebody at KZN, Ballistics KZN, but I cannot recall what the report was saying.

ADV NGCUKAITOBI SC: Yes.

10 **LT-COL MANGENA:** But I do not see any damages, or there was no damages reported on their vehicle to show that he was definitely shooting at them.

ADV NGCUKAITOBI SC: Yes, this is the point. If he was shooting, he would not have missed such a big object.

LT-COL MANGENA: And it is very close to him also.

ADV NGCUKAITOBI SC: Yes. I mean, this idea of shooting while the vehicle is in motion, how is that reconcilable with the bullet wounds that were sustained by the deceased?

20 **LT-COL MANGENA:** Chair, it is difficult to explain that for me.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Because if it is moving, it will continue to move. And in that instance, once he is incapacitated, I do not think he will be able to stop the vehicle. It will still continue to roll. And you will not find the cartridge cases in

front of the vehicle. The cartridge cases will be somewhere backward where they have already passed.

ADV NGCUKAITOBI SC: Yes. I am trying to imagine what they are saying. He is shooting us, but he is driving at the same time, but they shoot him here on the side of the arm.

LT-COL MANGENA: That is correct, yes.

ADV NGCUKAITOBI SC: How does that actually work logically?

LT-COL MANGENA: To me, it does not make sense.

10 **ADV NGCUKAITOBI SC:** Yes. Are you convinced that they lied?

LT-COL MANGENA: In this instance, yes, I am convinced that their statements are not true.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: Advocate Ngcukaitobi, as a follow-up, what is the most likely result of shooting a driver while the vehicle is in motion? Looking at how these vehicles are stationed, it seems like it is parked. I want to know what is the most likely result. I am driving and somebody, or I am in
20 a shootout, but I get shot while I am driving. What is the most likely result?

LT-COL MANGENA: Chair, I would say if you have been shot while the vehicle is in motion and you are shot in that condition, you will be immediately incapacitated. You will not have any control of the vehicle. The possibility of the vehicle

not stopping there is very high because it will be rolling, it will be moving.

ADV BALOYI-MERE SC: Or the vehicle might roll or collide with other objects?

LT-COL MANGENA: It is a possible, Chair.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Is it likely that Mr Nzuza's vehicle would have been damaged then, as the shooting was happening, at least on the right side?

10 **LT-COL MANGENA:** Chair, the only damage that we see on the vehicle is the window that has been smashed, but no other possible bullet damage was noted on the vehicle.

CHAIRPERSON: The window was half open, you said?

LT-COL MANGENA: That is correct.

CHAIRPERSON: And the glass must have been shattered then?

LT-COL MANGENA: The glass is shattered, yes.

CHAIRPERSON: Other than that, no damage?

20 **LT-COL MANGENA:** Other than that, there is no other damage that was noted on the vehicle.

CHAIRPERSON: You may proceed, Counsel.

ADV NGCUKAITOBI SC: Thank you.

ADV BALOYI-MERE SC: Should we assume that the people in the BMW who were shooting at Mr Nzuza are such perfect marksmen that they managed to shoot at a vehicle that is

moving but they were so accurate that their shots went only through the window and not touch any other part of the vehicle body while it is moving? And if the Honda is moving, one would assume that the BMW is also moving.

LT-COL MANGENA: That is correct, Chair, both vehicles. If they are alleging that both vehicles are moving, I would not expect the shooting to be in that position. Because if you look at the wounds he sustained, it would not be possible to shoot accurately as they shot here if the vehicle was moving.

10 **ADV BALOYI-MERE SC:** And in this instance, both vehicles are moving?

LT-COL MANGENA: Both ...[intervenes].

ADV BALOYI-MERE SC: According to their version.

LT-COL MANGENA: Yes, that is correct.

ADV BALOYI-MERE SC: Thank you.

ADV NGCUKAITOBI SC: Thank you. You have dealt with this topic of the movement of these vehicles at paragraph 163 of your statement, and then you have also dealt with the expected damage to the police vehicle at paragraph 164, and
20 you have also dealt with the cartridge case distribution. Is that correct? At paragraph 165.

LT-COL MANGENA: That is correct.

ADV NGCUKAITOBI SC: Yes. And is it your conclusion based on expert opinion that this deceased was executed in cold blood?

LT-COL MANGENA: It is most likely so that he was executed, Chair.

ADV NGCUKAITOBI SC: Yes. And that the statements by Mr Mostert and Naidoo are false fabrications?

LT-COL MANGENA: Chair, I would say I do not agree with their statement as they mentioned or they narrated their incidents or their version.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: But I do not agree with their version as
10 stated in their statements.

ADV NGCUKAITOBI SC: Now, you have dealt with this in your conclusions from paragraph 169 to 175. Now, unless there is something else you want to add, I am inclined to move to the next incident.

LT-COL MANGENA: That is correct, Chair. We can move to the next incident.

ADV NGCUKAITOBI SC: Yes. That is Berea at paragraph 176.

ADV BALOYI-MERE SC: Sorry. Before you move to another
20 topic, Lieutenant-Colonel, would you say, given that we have dealt with a number of ballistic reports that you have given, you have dealt with a number of cases involving Cato Manor, would you say you have now observed what has been referred to as modus operandi or a pattern through all these killings?

LT-COL MANGENA: Chair, that is correct. If you look at all

the cases that I have done, when you look at the modus operandi, it is more or less the same modus operandi in most of the incidents where they are involved. It is either the alleged suspect was pointing a gun at them or the alleged suspect was about to grab a firearm or the alleged suspect was about to disarm one of the members and then he was shot by another member.

ADV BALOYI-MERE SC: Thank you.

ADV NGCUKAITOBI SC: Thank you. And just on this modus operandi, is it your finding after what you have done that it is the same group of people that are doing these things? They do not change. It is either it is Mostert, it is either it is Lockem, it is either it is Nel, it is either it is Naidoo, but it is the same group of people.

LT-COL MANGENA: Chair, I would say it is the same group of people. In most incidents, it is Warrant Officer Mostert involved, it is Warrant Officer Nel involved, it is Warrant Officer Mostert, it is Nel, it is Constable Naidoo, and it is Captain Van Tonder.

ADV NGCUKAITOBI SC: Lockem.

LT-COL MANGENA: Lockem would be the driver or Lockem would be with them, but these are the ones who normally shoot, the ones that have counted.

ADV NGCUKAITOBI SC: No, I understand, but in the murder scene, these players, they are the same. Someone else is

driving ...[intervenes].

LT-COL MANGENA: That is correct, Chair. Or they go to a house, Captain Lockem or others will be outside. Mostert, Nel, Van Tonder, Naidoo will be the ones, and Padayachee will be the ones who go in and then shots were fired.

ADV NGCUKAITOBI SC: Yes, but it is the same group of people.

LT-COL MANGENA: It is the same group of people, Chair.

ADV NGCUKAITOBI SC: Yes. And it is an organised group
10 of people with access to high-level machine guns and access to high-level resources because they have got vehicles, they have got trackers, they have got machine guns.

LT-COL MANGENA: That is correct, Chair. They will be in possession of rifles, pistols, and then they have got vehicles.

ADV NGCUKAITOBI SC: Yes. They also have high-level protection. They never get arrested. They never get arrested. They never get taken through a disciplinary process.

LT-COL MANGENA: Chair, I would say in most of their
20 cases, I have never had any case where probably they were arrested for how they behave or they were under investigation for one of the incidents where they took place. I have never heard of any one of those.

ADV NGCUKAITOBI SC: Would they qualify? If you do not want to comment, that is okay because you are a ballistic

expert. But would they qualify to be an organised criminal group?

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

ADV NGCUKAITOBI SC: All right.

CHAIRPERSON: Colonel, that is a very fair answer.

ADV RAMAGAGA: I will come in here. I will just come in here.

ADV NGCUKAITOBI SC: Yes, okay.

ADV RAMAGAGA: Colonel, looking at the information that
10 you have to form a view that these people were acting as a
group, can you, and emphasis is looking at the material that
you have, can you even take it further to see, from my
observation as a layperson who is an expert elsewhere but
not in the investigation, but I would say from information
available that these people were supporting each other on
the roles played by others in the commission of the offence,
or rather in the incident. Let us call it an incident for now.

LT-COL MANGENA: Chair, I would agree with that because
if you look at the statement of the ones outside who are not
20 participating in the shooting, they will write the statement that
corroborates what these who are involved in the shooting are
saying.

ADV RAMAGAGA: Yes, so they appear to have been
supporting one another in the role played.

LT-COL MANGENA: That is correct, Chair.

ADV RAMAGAGA: Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Ramagaga. My learned friend says I should ask you about paragraph 166 and 173 of your statement to complete the circle in the killing of Mr Nzuzu. The significance of the fact that although a nine millimetre was used and its cartridges were found, but also a rifle, an R5 was used, but no cartridges were found.

LT-COL MANGENA: No cartridge cases were recovered on the scene.

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

LT-COL MANGENA: Chair, in this instance, I would not exclude the possibility of tampering with the crime scene, removing some of the exhibits from the crime scene.

ADV NGCUKAITOBI SC: Yes, thank you. Can we then go to Berea? It is 2A-1 of your reports. It is the first one of your bundle. Can you narrate what happened here?

LT-COL MANGENA: Chair, in this incident, the Berea 288/5/2008, according to the members, they were looking for this suspect and he was staying in this flat. So they got
20 information that he was in the flat. They went to the flat. It is the fourth floor on the flat.

When they got there, they started knocking and then opened it. According to Warrant Officer Mostert's statement, the suspect saw them and he started shooting at them. Warrant Officer Mostert returned the shot with his pistol and

then the so-called suspect ran towards the balcony and to the window and he jumped from the fourth floor. He landed outside on the tar road or in the parking area. While he was there, he pointed the gun at them and then Warrant Officer Mostert shot at him again while he was there. Warrant Officer Naidoo was outside and they also saw him shooting at Warrant Officer Mostert. They also shot at him.

ADV NGCUKAITOBI SC: That is their version.

LT-COL MANGENA: That is their version.

10 **ADV NGCUKAITOBI SC:** Now, and we know the deceased was Mr Thabo Sunshine Msimango.

LT-COL MANGENA: I do not know the names of ...[intervenes].

ADV NGCUKAITOBI SC: Yes, you have told us that. You look at the physical evidence.

LT-COL MANGENA: That is correct.

ADV NGCUKAITOBI SC: We found his name in the docket. We have tried to give everyone a name, but that is not your job. That is our job.

20 **ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, just out of curiosity, the background stories seem to be the same if not similar. The Cato Manor looking for someone, the minute that someone sees them, they start shooting. And one would ask themselves why would everyone seem to hate the Cato Manor so much that whenever they see them, they start shooting at

them? Whether they are guilty or innocent, young or old, but whenever Cato Manor appears, people start shooting at them and they end up dead. Is this not a bit – I am looking for a word that is very user-friendly. Maybe I should just say peculiar. Is this not funny? Is this not out of the ordinary?

LT-COL MANGENA: Chair, that is what I was saying. Their modus operandi, if you look at their modus operandi, it is almost the same in most of the cases. Where the suspect would start shooting at them or where the suspect will start
10 grabbing a firearm or where the suspect will attack one of them and then they will shoot back.

ADV BALOYI-MERE SC: Without provocation?

LT-COL MANGENA: That is how they put their statements.

ADV NGCUKAITOBI SC: Yes, thank you. So, in Mr Msimango's case, you have dealt with the background, which is at 176, 177, which you just gave now, that summary. Correct?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, we start then with the
20 medical analysis at 179. And then you can take us to the photos we need to look into to support your analysis there.

ADV BALOYI-MERE SC: Sorry, also before you go, at paragraph 177 at 249, 249.

LT-COL MANGENA: Yes.

ADV BALOYI-MERE SC: The third line:

“We are told that Inspector Mostert was immediately confronted by the deceased who allegedly pointed a firearm at him. He discharged three rounds from his service.”

Okay, it is Inspector Mostert. I read it the other way around and I thought it is the deceased who discharged but Inspector Mostert miraculously was not hit. Sorry, thank you.

ADV NGCUKAITOBI SC: Yes. And on their version, the deceased actually runs away from them and escapes through
10 the windows and then they still go and execute him. All right, so we are in the medical analysis section from paragraph 179. And I was asking you if you want to take us through the analysis by the pictures. You can do that. Well, actually perhaps before you do that, I noticed that I made a note to start at photo 1, which is because this was a peculiar case of somebody jumping from the fourth floor.

LT-COL MANGENA: Photo 1 will show the flat where he jumped and then the window that is circled is the window that he jumped from.

20 **ADV NGCUKAITOBI SC:** So, because there is now Mr Mostert inside his apartment. According to Mr Mostert, this man is attacking him, but the same man is jumping over the window. I mean, a jump over the window, is that not consistent with someone who is fleeing?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. How is it reconcilable with someone who is attacking the police?

LT-COL MANGENA: But jumping from the fourth floor like that, for him to survive when landing on the floor and then pointing a gun again at them through the window, at the top floor again, I mean, it is unexplainable.

ADV NGCUKAITOBI SC: Yes, I mean, the story is difficult to understand. Let me put it no higher than that. According to them, he tries to attack them inside the apartment and then
10 he jumps out of the apartment. When he gets down, he again tries to shoot. What is the point of jumping and then trying to shoot?

LT-COL MANGENA: Yes.

ADV NGCUKAITOBI SC: Just to be fair then to Mr Mostert, his statement is at BR0073. I think there is an arrangement made that they will be made immediately available to the Panel. Yes, it is actually put behind you on the screen. So
if you can look, one, two, three, the fourth paragraph, which starts with at 22 hours. This is what they say they did:

20 “At 22H40, Captain Eva, Inspector Nel, Constable Naidoo, and I, this is Mr Mostert, entered the building. The other members safeguarded the ground area. We proceeded to the third floor to flat number 32. On our arrival, I noticed a

security gate in front of the door. Due to the fact that the suspects could be armed, the security gate was forced open by means of a crowbar.”

I mean, what does that mean? They forcibly opened somebody's apartment.

LT-COL MANGENA: That is correct. They broke open the security gate.

ADV NGCUKAITOBI SC: But this person is also trying to kill
10 them. And then once this was done ...[intervenes].

LT-COL MANGENA: The door was kicked.

ADV NGCUKAITOBI SC: Yes, the door was kicked by
Inspector Nel:

“I immediately entered the flat armed with my pistol, a nine millimetre Parabellum with serial number 2014304. As I entered,
I was confronted by the suspect, Thabo. He was armed with a pistol, pointing it in my direction. I fired three shots in his
20 direction. At this point, he ran towards the enclosed balcony with a window slightly open. He dived through the window and fell to the ground.”

So, remember the point that I was making, that this suspect, according to him, is running away from him. And then he

says:

“...he dived through the window and fell to the ground. I noticed movement and fired a further shot in his direction when I noticed the members on the floor move in, and I heard more shots being fired. I went down the stairs to where the suspect lay. Inspector Nel and Constable Naidoo remained in the flat. On my arrival, I found Captain Eva and the other members by the suspect. At this point, Captain Eva took charge of the scene. I noticed my firearm lying in close proximity to the suspect. It appeared that the suspect was dead.”

So, this is their version of what they claim to have happened. And you then had to reconstruct this and to see whether this was a pack of lies or not.

LT-COL MANGENA: Chair, because I am not sure of the lighting around that area, but if you look at the time of the incident, if you jumped from the fourth floor down, when there was a movement, what type of movement do you see? Are you seeing somebody who is trying to flee or somebody who is pointing a gun at you? Then when you have to shoot again, when the person is lying on the floor?

ADV NGCUKAITOBI SC: Well, according to them, he has already run away from him.

LT-COL MANGENA: And the other members downstairs were waiting.

ADV NGCUKAITOBI SC: Yes. Now, all right. Sorry, I interrupted you because I was struck by photo 1 because it does illustrate the distance that he would have had to jump to run away from Mr Mostert. Now, which photographs were you going to take us through?

10 **ADV BALOYI-MERE SC:** Sorry, Advocate Ngcukaitobi, before you move there, please let us go to the next sentence from after that paragraph that you read, which is very weird.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: And maybe Lieutenant-Colonel will assist here if that is the next step to be taken. Because the last sentence on the paragraph that Advocate Ngcukaitobi was reading says:

“It appeared that the suspect was dead.”

Now, the next one, that is very weird:

20 “The necessary arrangements were made by Captain Eva to have an ambulance summoned to the scene.”

Is an ambulance summoned to a scene where a suspect is dead?

LT-COL MANGENA: Chair, in all incidents, if a person has

been injured or wounded or a person has been killed, the paramedics or the ambulance will come to declare him dead so that they can issue a certificate that he was declared dead on the scene.

ADV BALOYI-MERE SC: Those that deal with, those that are no longer in this world?

LT-COL MANGENA: No, the paramedics will come or the ambulance will come just to declare the person.

ADV NGCUKAITOBI SC: This is to perform the medical job
10 of saying indeed he is dead.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Thank you. Sorry, I wanted to take, to ask you to take us through the photographs and to do your analysis.

CHAIRPERSON: Perhaps you can hold it there, Lieutenant-Colonel. You will start with the analysis when we come back from the tea adjournment. We will adjourn for tea until 11:45, and you will take it from there.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

20 **CHAIRPERSON:** You are still under oath?

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

CHAIRPERSON: Yes, thank you.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good day, good day everyone. Good day,

Colonel.

LT-COL MANGENA: Good day, Chair.

CHAIRPERSON: Good day, *Nthati* Chauke. Through you, Advocate Ngcukaitobi, *Nthati* Mkhabela, we have just had a meeting with Mr Mutubatuba. You remember we sent a message this morning that he should come here, regarding this application by Advocate Batohi? We asked him to approach you to discuss when you intend to file papers, and he responded, he came back to say you have discussed, is
10 that correct?

ADV MKHABELA SC: Chair, yes indeed, I may confirm we have received an approach and we have spoken and we have undertaken to deliver an answer by Wednesday next week. I cannot remember the date, but yes, we have.

CHAIRPERSON: He is saying that you have not given him a definite date, but we do not want to get involved in this exchange between attorneys. We suggest that you communicate to your counterparts, Molebatsi Attorneys, and agree about the timeframes, when you are going to file your
20 answering affidavit, and when they will file the reply.

ADV MKHABELA SC: We will do so, Chair.

CHAIRPERSON: We are told that Mr Newpin, Mr Harris, Mr Harris will come tomorrow. So do have a meeting, discuss the matter and you can agree and put your agreement in writing.

ADV MKHABELA SC: Thank you, Chair, we will do so.

CHAIRPERSON: So that we do not get involved in what you could be discussing as attorneys and agreeing on the way forward.

ADV MKHABELA SC: We will do so, Chair. Thank you.

CHAIRPERSON: Yes, thank you. Colonel, you are still under oath. Thank you, Advocate Ngcukaitobi, you may proceed.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

10 Lieutenant Colonel, I did not put to you the version of the gentlemen that were on the ground when Mr Msimango landed after being chased off the apartment by Inspector Mostert. Do you remember that?

LT-COL MANGENA: I remember that, Chair.

ADV NGCUKAITOBI SC: Yes, now I have got those two. There is one by Mr Makhanya at BR0075. It will be reflected on the screen there behind you. This is how he describes the incident at the paragraph 2. He says:

20 “On the same evening, myself, Captain Eva, Colonel Naidoo and RC Maharaj proceeded to Avondale Road where we met other members. Further briefing was done. I was guarding the ground floor with Inspector RC Maharaj. Whilst on the ground floor car parking. I heard gunshot. Then I saw a black

male fallen on the ground. Then with shock state, I fired two shots towards the suspect.

I used my pistol.”

And he then gives the number of the pistol. According to him, there is no mention that the suspect was armed. Can you see that?

LT-COL MANGENA: I can see that, Chair.

ADV NGCUKAITOBI SC: Yes. It is only in paragraph 3 where he talks about a firearm.

10 “The person fallen down was Thabo Msimango. I noticed firearm lying next to suspect. The scene was taken over in charge by Captain Eva.”

You see? At the time of the shooting, he does not mention that he noticed anything about the deceased being armed. That is at the time he falls from the fourth floor. Now then there is the version of Mr Maharaj who also was in the scene at BR 0077. Now, he deals with this incident at paragraph 3 and 4 of his statement. He says:

20 “On the same day, at about 22.25, we met outside Avondale Spar, where we were briefed once again by Captain Eva concerning the wanted suspect known as Thabo Msimango, who was in possession of a firearm. At 22.40, we proceeded to

Colesburg Flats, 6th Avenue, Morningside. Inspector Makhanya and I took positions directly below flat number 32 on foot, whilst the rest of the members proceeded upstairs to the respective flat. After a few minutes, I heard a noise followed by gunshots, and the next moment noticed a male falling to the ground with a firearm in his hand. I immediately and instinctively fired two shots
10 in his direction.”

So according to Mr Maharaj, he notices a male falling on the ground with a firearm, and then he shoots, no indication that he was actually in danger.

“I thereafter cautiously approached the suspect and kicked the firearm away from the ground next to his hands for safety reasons. Captain Eva then took over the entire scene.”

So this is the version given by the three policemen. It is that
20 version then that we put to you for your crime reconstruction to see whether they were lying or not. We were at the medical analysis section from paragraph 179. You remember that?

LT-COL MANGENA: Yes, I remember that, Chair.

ADV NGCUKAITOBI SC: Can you take us through that?

LT-COL MANGENA: Right, Chair. According to the medical

analysis, I say:

“According to the chief post-mortem findings, the deceased sustained multiple gunshots, multiple wounds to the head, torso, right shoulder, and right arm, involving the skull, brain, craniofacial bones, left maxilla, diaphragm, right kidney, liver, heart, and the right lungs.”

ADV NGCUKAITOBI SC: Yes.

10 **LT-COL MANGENA:**

“Shrapnel injuries were also noted in the right flank and the right shoulder, consistent with bullet fragments.”

ADV NGCUKAITOBI SC: Yes, but if you just stick to 179 for now, what would those injuries be consistent with?

LT-COL MANGENA: Chair, some of the wounds would be consistent with falling from the flat, and some would be consistent with gunshot wounds. But if you look at how the wounds were described, where the doctor is talking about the skull, the brain, and craniofacial bones, I would say if a person sustained injuries to the skull and the brain, this person would not be able to move.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: So if he fell, falling with a gun, and then the next minute he is shot for being in possession of a

gun, I do not think there will be any movement from him after falling from there. So when he – after falling there, I do not believe there was movement. It is stated by Warrant Officer Mostert when he said he fell down and he saw him moving, that is when he started shooting again. I would say it is not possible.

ADV NGCUKAITOBI SC: Yes, but you see, remember, he did not fall according to Inspector Mostert. He jumped.

LT-COL MANGENA: Jumped.

10 **ADV NGCUKAITOBI SC:** So which means he would actively be seeking to land on the ground safely. I mean, unless you can jump and then fall with your head.

LT-COL MANGENA: If you look at the injuries sustained, I think on photo – let me go to that photo.

ADV NGCUKAITOBI SC: We were at 5 and 6 in line with paragraph 181 of your statement.

LT-COL MANGENA: I think it will be photo 5 where you can see the head. There is injuries to the head, and according to the post-mortem, there is also injuries involving the skull, the
20 brain, and craniofacial bones. If he jumped to land on his legs, there would not be these injuries.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: So basically he fell with his head to the ground.

ADV NGCUKAITOBI SC: Yes, no, I do want to ask you about

that in terms of falling and jumping. What is consistent with what? A person who jumps on the fourth floor, according to Mostert, versus a person who falls, what are the probabilities of how that person left the fourth floor?

LT-COL MANGENA: I would say a person who is jumping would most likely land on his legs, and a person who is falling would fall on any part of the body. It depends on how he fell from the building.

ADV NGCUKAITOBI SC: Yes. But sustaining those head
10 injuries from the impact on the – I think it was the tarmac there.

LT-COL MANGENA: That is correct, Chair, yes. And, Chair, I was looking into the crime scene photos. Because according to Warrant Officer Mostert, he fired three shots whilst inside the apartment.

ADV NGCUKAITOBI SC: The apartment, yes.

LT-COL MANGENA: Now we have bullet holes or bullet defects inside the room as depicted on photos...

ADV NGCUKAITOBI SC: Photo?

20 **LT-COL MANGENA:** Yes, photo 11. Photo 12. And when you look at photo 13, it is glass. On that one, on photo 13, I cannot confirm whether it is a bullet damage because when I look at how it broke, it shows low velocity, low speed and unstable bullet. If it is a direct shot, the bullet hole will not be in that way. There is a huge difference between a direct

shot of a bullet to glass and what you see there. If it is a bullet, then it was an unstable bullet that went through an object first and then it hit the wall.

Now if you look at the photo below that, photo 14. On photo 14, here you can see the shape of a 9mm bullet where it hit the wall on its side. So it was not stable, it was not spinning, but it hit the wall on the side. So why I am showing the Commission that is, if our bullet has already lost energy to hit the wall on its side and to hit the glass creating that type of a hole, it shows that it has hit an object first. It has lost energy and speed on that object.

Now we look at photo number 16 and photo number 17. On photo 16 and 17, we see blood there. So I am of the opinion that he could have been shot, he was bleeding already and most likely pushed through the window. Because by then he was already bleeding. If you look at the bullet that we are talking about, it could have struck him, hit him and then here he was bleeding. And this is towards the window.

ADV NGCUKAITOBI SC: This is the window?

20 **LT-COL MANGENA:** It is towards the window where he fell or jumped.

ADV NGCUKAITOBI SC: No, I am saying photo 16, is that the window itself?

LT-COL MANGENA: This is the window before the one that he, I think, no, I think it is the same window where he alleged

that he jumped from.

ADV NGCUKAITOBI SC: Photo 16 and 17.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: So if I take you back to photo 1, at 2A/4. So when you are looking at these windows from outside.

LT-COL MANGENA: That is on the balcony next to the window that he allegedly jumped from. That window that we see on photo 1, that is circled.

10 **ADV NGCUKAITOBI SC:** Yes. I am saying that in this apartment it appears that there is only one window to the outside. That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, so if they are saying that he jumped from the window, it could have only been this window.

LT-COL MANGENA: Could have been this window.

ADV NGCUKAITOBI SC: And so when we go back then to the window you are telling us about, which is at photo, did you say 16 and 17?

LT-COL MANGENA: That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** Now why does that appear to be wooden?

LT-COL MANGENA: I cannot recall, but towards the window inside there was a wooden frame, a wooden panel below the window.

ADV NGCUKAITOBI SC: I see, okay. So what were you

showing us as the significance of photo 16 and 17?

LT-COL MANGENA: So it is most likely that while he was still in the apartment he was already wounded, he was shot. So I am not sure whether he jumped after or he was pushed.

ADV NGCUKAITOBI SC: Yes, I mean the problem, Mr Mostert's statement is very cryptic on the facts, whether the window was closed or open. If it was closed, who opened the window to enable the deceased to jump? If the deceased still had time to open the window, after having been shot three
10 times, why did he not shoot him some more? It raises so many questions.

LT-COL MANGENA: And, Chair, when you look at the photos that follow.

ADV NGCUKAITOBI SC: Follow from?

LT-COL MANGENA: Photos 19 20, 21, 22, there we have bullet marks on the tarmac outside the building where the deceased was lying. So the first one on photo 19 is marked
1, the second one is marked 2, the third one is marked 3, the fourth one is marked 4, the fifth one on photo 23 is marked
20 5. Now if you look at the fifth one, there is traces of the blue T-shirt that the deceased was wearing, which is on photo 25. That is pointed with a pen on photo 24. Now what is important here is we look at these marks. If you look at mark 1 and mark 3.

ADV BALOYI-MERE SC: Advocate Ngcukaitobi, I have a

question and I am scared that we are going far and I am going to have to take you back a long way. I have a question about the apartment. Lieutenant Colonel, did you physically go and see the apartment? And maybe if the answer is yes, can you give us an indication of how big is the room where, is it Inspector Mostert, and the deceased had a confrontation or met?

LT-COL MANGENA: Chair, I did, I went to the apartment. It is just that I cannot recall the setup of the apartment. But
10 when I went there to examine it, it was already painted, repainted, and then the windows were replaced. So there was no other evidence, available evidence that I could find on the scene. So I did not check a lot of things on the apartment. But it was not that big an apartment.

ADV BALOYI-MERE SC: My question is, is it big enough that Inspector Mostert or is it big enough for the possibility that Inspector Mostert may fire three shots towards the deceased and miss with either the three shots or with one or something like that. Give us an idea if you can.

20 **LT-COL MANGENA:** Chair, I cannot give a clear idea or indication of how far was Warrant Officer Mostert and where was the deceased by the time he fired the shot. So I cannot elaborate more on that one.

ADV NGCUKAITOBI SC: Just to take you to the contents of the docket, because we have got a sketch of this apartment.

So maybe that can also enable you to answer the question from Madam Baloyi-Mere. So the sketch itself is at BR0069. It will be flighted behind you. So given that you have been to the apartment, you can, yes, there it is.

LT-COL MANGENA: Right, Chair, when you look at the apartment, I think the windows were on this side. And then you enter from the kitchen, you come here. This is where you found those, because this is the bedroom. So the bullet marks that I was showing were around this area, inside the
10 living room. Because the window is around this area, where he jumped from. So entering, they entered from that side and came to this side. So I do not know where was Mostert when he was shooting and where was the deceased when the shots were fired. I cannot tell exactly where were they.

ADV NGCUKAITOBI SC: Yes, well, it will certainly be after the kitchen.

LT-COL MANGENA: Most likely after the kitchen.

ADV NGCUKAITOBI SC: Yes. And that is a sofa that looks like a sitting room. So it will be anywhere between the
20 kitchen and the sitting room.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: But the question is really what is that distance? Is that 20 square metres? Is that 10 square metres? Is it less than 5 square metres?

LT-COL MANGENA: I do not know. I cannot remember how

big was the apartment.

ADV NGCUKAITOBI SC: Yes. Then there are further pictures. Just keep there on that same document. I want to show you a couple of pictures inside the apartment. Starting at photo 4. So that is now showing you clearer.

LT-COL MANGENA: Right, Chair, this will be the bedroom and then the door coming from the bedroom and here is where you get to the balcony and then the window is behind this curtain on the balcony. So that other bullet was here
10 underneath the window outside and then the other bullet, I cannot recall exactly where was it. But the one that has blood, it is when you go outside to the balcony and around next to that window outside.

ADV NGCUKAITOBI SC: Well, we know the bullet because if you look at photo 5.

CHAIRPERSON: Before you go to photo 5, counsel, photo 4 in our bundle, the docket document, does not correspond with that photo 4 on the screen. Am I right?

ADV NGCUKAITOBI SC: It is BR0059, Madam Chair, if that
20 is the one. The one we have is BR0059.

ADV BALOYI-MERE SC: 0059.

ADV NGCUKAITOBI SC: Yes, that is what the witness is looking at.

CHAIRPERSON: Because I have this one. I was looking at the pictures in the report.

ADV NGCUKAITOBI SC: Oh, yes, yes. What I tried to do is I realised that there are more pictures in the actual docket than the expert used in his report. So it is just to take him back to the actual docket.

CHAIRPERSON: Yes, thank you very much, I have got it.

ADV NGCUKAITOBI SC: Thank you. All right, perhaps you can help us with photo 4 again so that I think you went ahead a little bit on that one. So this is the place of the shooting. You can look at it and tell us if you can estimate the distance
10 from the kitchen, but perhaps not. But you were pointing out to where the bullet fragments were discovered.

LT-COL MANGENA: That is correct, Chair. This will be the living room, and then this will be the bedroom, the door into the bedroom. Now, this door here is the door into the balcony, and then the window of the balcony is that side outside. So the bullet mark that I was pointing, it is outside this into the balcony on that side. So if he was shot, it could have been from this point because here. I think there was a curtain or there was glass to go out to the balcony. So that
20 other bullet hole was outside into that balcony just below the window. Then the setup here, I do not know where the first shot was fired at and where was it because I cannot recall that.

ADV NGCUKAITOBI SC: Yes, that is where I started referring you to photo 5 because we know the one fragment

of the bullet, because it is pointed out. If you compare photo 4 and photo 5, so if you go back to photo 4.

LT-COL MANGENA: If you go to photo 4, here is your bullet fragment.

ADV NGCUKAITOBI SC: Yes, exactly and then if you look at photo 5.

LT-COL MANGENA: Photo 5 is a close-up photo of that bullet fragment.

ADV NGCUKAITOBI SC: That tells you where the second
10 bullet that you said you could not recall where it was.

LT-COL MANGENA: But the impact point of it, I cannot recall. It could have hit the wall and then landed up somewhere, but I cannot recall where it hit.

ADV NGCUKAITOBI SC: Yes, I see what you mean and then there is photo 6 and that is where we have a clearer picture of that window with the bloodstain.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Just point us to the bloodstain.

LT-COL MANGENA: So this will be the bloodstain on the
20 photo.

ADV NGCUKAITOBI SC: Yes. And then photo 7 seems to be a different fragment. Remember, we are looking for this. How many was it? Two shots? Three shots?

LT-COL MANGENA: Three shots. This would be the cartridge case.

ADV NGCUKAITOBI SC: Of another bullet.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now if you compare that 6 and 7 because we see where the cone is standing on 6 versus where the cone is standing on 7.

LT-COL MANGENA: And there is another bloodstain except for that one. There is another bloodstain.

ADV NGCUKAITOBI SC: Yes, now that is fine, but can you just compare the cones and confirm that first before we move
10 on 6 and 7?

LT-COL MANGENA: Can I compare it?

ADV NGCUKAITOBI SC: That yellow thing.

LT-COL MANGENA: This one?

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: This is where? Photo 7?

LT-COL MANGENA: Yes.

LT-COL MANGENA: Ja, this is cartridge case which is marked B.

ADV NGCUKAITOBI SC: Yes.

20 **LT-COL MANGENA:** It was found there.

ADV NGCUKAITOBI SC: Thank you. So you wanted to talk about the bloodstain?

LT-COL MANGENA: I wanted to talk about the bullet marks outside on the tarmac.

ADV NGCUKAITOBI SC: All right. Well, can we just

complete then this exercise if you look at photo 8?

LT-COL MANGENA: Move to another photo.

ADV NGCUKAITOBI SC: To photo 9.

LT-COL MANGENA: That is the bullet that was recovered. This is the bullet, most likely the bullet that I showed that it ended up, it has hit on the side and it ended up there.

ADV NGCUKAITOBI SC: This would be the third bullet.

LT-COL MANGENA: It is possible it could be the third bullet, yes.

10 **ADV NGCUKAITOBI SC:** Yes. Thank you. Then we move to photo 10 which is the outside now.

LT-COL MANGENA: Yes.

ADV NGCUKAITOBI SC: I am not sure which one you wanted to go to when you said you wanted to.

LT-COL MANGENA: Now here they have marked the position of the cartridge cases which were found outside.

ADV NGCUKAITOBI SC: So that is how many?

LT-COL MANGENA: It is five that we see here.

ADV NGCUKAITOBI SC: And then photo 11.

20 **LT-COL MANGENA:** It is a cartridge case, a 9 mil.

ADV NGCUKAITOBI SC: 12.

LT-COL MANGENA: Another cartridge case marked E.

ADV NGCUKAITOBI SC: 13.

LT-COL MANGENA: Another cartridge case marked F.

ADV NGCUKAITOBI SC: Yes. And then 14.

LT-COL MANGENA: 14, the body of the deceased with the cartridge case next to the body marked G.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Like if you look at this photo, the position of the deceased there, and we look at the T-shirt that he was wearing, which is on photo 25 of the report, because this is positioned just around the shoulder blade. If you look at how the body was lying on the crime scene and you look at this photo, it is two different positions.

10 **ADV NGCUKAITOBI SC:** Could you just repeat that? I am not sure I understand.

LT-COL MANGENA: If we look at the position of the deceased here, how he is lying, and if we look at the wounds he sustained and the T-shirt, it is two different positions. Here he is lying on his front, and according to the T-shirt that he is wearing and the wounds he sustained, the wounds are sustained at the back. So it shows that after falling he was lying on his back but not in this position.

20 **ADV NGCUKAITOBI SC:** Yes. All right, perhaps you should continue.

LT-COL MANGENA: Right, if we go to the post-mortem photos.

ADV NGCUKAITOBI SC: Yes, sorry. I think to clarify that point when you said he was actually shot at the back, if you go to photo 21, I think that might assist. Yes.

LT-COL MANGENA: Here the position of those wounds, and it is not entrance wounds, it is exit wounds. If we look at photo 34 ...[intervenes]

CHAIRPERSON: I beg your pardon, if you say they are exit wounds, it means the entry wounds would have been in the front.

LT-COL MANGENA: That is correct, Chair. If we go to photo 34 ...[intervenes]

CHAIRPERSON: I beg your pardon, on that picture, meaning
10 that he might have been shot whilst lying there on the surface, in the tarmac?

LT-COL MANGENA: That is correct, Chair. That is what I want to explain now.

CHAIRPERSON: Oh, yes. Thank you.

ADV NGCUKAITOBI SC: Carry on.

LT-COL MANGENA: If we go to photo 34 of my report.

ADV NGCUKAITOBI SC: 34, that is at 2A/21.

LT-COL MANGENA: Yes, if we look at these wounds, if you look at these wounds, these are the type of exit wounds which
20 are said to be the short exit wounds. It shows that the body was lying on the hard surface when he was shot at. So basically, the body, the arm, was lying resting on the hard surface, on the tarmac, and he was shot. So what happened here is the bullet penetrated the front and then bounced on the tarmac and then back into the wound. They create these

type of wounds. That is what you call the short exit wounds. And if you look at how these wounds were, if we look at photo 36, we have the wound here and then we have a bullet that is lodged here. And this bullet was removed.

This bullet is on photo 9. There is your bullet. It shows the impact. It impacted on the stomach and then got back into the wound. The wound which was inflicted on this guy, when he was already lying on the ground and was shot, the bullets were bouncing on the tarmac and then back into
10 the wound, so I would say the wound which were inflicted in this guy, it went when he was already lying on the ground and he was shot, the bullets were bouncing on the tarmac and back into the body, creating these type of wounds which we call the short exit wounds.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: When you go to photo 26 to 33, here we are looking at the shape of those bullet marks on the tarmac. If you look at them, they are round. And if they are round, what does it tell you? It is a shot that was fired at an
20 angle of around 90 degrees. So your bullet hits down, creating a round-shaped mark. So in an angle of around 90 degrees, you will get this shape of wound. If you go to the other ones, you look at these ones, they have got an oval shape. They show you the angle. It is a shot which landed on an angle.

Those ones are most likely the ones that are coming from Mostert from up there at the window and this could be from Maharaj and the other guy who were shooting from the side into the body while he was still lying on the floor or on the ground. Because if you look at their shape, it shows the direction. The shot is from this side, it goes that direction. The shot is from this side, it goes that direction. And then those round ones, it is direct from up into the ground, creating a round.

10 It is the same as when you take a drop of water, dropping it at 90 degrees, or even blood at 90 degrees. When you see a blood pattern at 90 degrees, a round-shaped bloodstain, it shows that it dropped at an angle of around 90 degrees. And if it is in an oval shape, let us say it is in this shape, it shows you the angle. When you determine the angle of this, you multiply the width with the depth. It will give you more or less the angle that it came from. At an angle of 45 degrees, it will drop. The longer your stain is or your mark is, the lower angle it goes. The more angle increases, the
20 shorter your mark will be until it is around 90 degrees.

So in this instance, those other shots were fired by RC Maharaj when they were down there. The other two were shot by Mostert when they were up there. All those wounds were inflicted while he was already down.

ADV NGCUKAITOBI SC: Yes. And you say the impact of

him falling would have been debilitating according to the injuries described.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. After that, they went to execute him.

LT-COL MANGENA: Continued shooting at him while he was already down.

ADV NGCUKAITOBI SC: Yes. Now there are also some bullet wounds on the head. I just wanted you to clarify that.

10 If you go back to the docket at photo 19 and 21, yes, so I am not sure what is going on there. Maybe you can help us.

LT-COL MANGENA: Photo...

ADV NGCUKAITOBI SC: Yes, if you can just stick there. What is going on there?

LT-COL MANGENA: Which one? From the head?

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Chair, on the head, I am not sure. It could be, because if you look at the size of it, it could be when he fell down to the tarmac.

20 **ADV NGCUKAITOBI SC**: Okay.

LT-COL MANGENA: Because this could be the cause of the cracking or the damages on the skull and the brains when he fell, when he landed on the tarmac.

ADV NGCUKAITOBI SC: Yes. All right, thank you. And the bullets seem to have shot him on the shoulder, so that would

not have been fatal.

LT-COL MANGENA: No, Chair, the ones on the shoulder would not have been fatal shots.

ADV NGCUKAITOBI SC: What killed him? Let me put it that way.

LT-COL MANGENA: Chair, I am not sure where he was shot or if he was shot previously while still inside the flat. It could be other wounds which could have been maybe fatal later, or it could have been when he fell down to the ground. Because
10 when you look at the injuries sustained, once the brain is injured or the skull is cracked, those are the fatal wounds that can also cause the death of a person.

ADV NGCUKAITOBI SC: So it could be that he was killed by Mostert.

LT-COL MANGENA: It is possible. He could have been shot out there and then pushed or... I cannot rule out that possibility.

ADV NGCUKAITOBI SC: That is what I need you to explain to this Panel, because I know you wanted to mention it
20 earlier, but then I stopped you because I was still doing the physical location of items in the room. When you said there were bloodstains on the window.

LT-COL MANGENA: There were bloodstains inside there.

ADV NGCUKAITOBI SC: And what is this thing telling you and that when he actually impacted on the ground, he fell. It

is not like he was jumping. So what does that show you about the body, the state of the body at the time it impacted the ground?

LT-COL MANGENA: Chair, I would say due to the presence of blood inside the room, there is a possibility that he was injured somewhere already. There was an injury sustained because he cannot bleed if there is no wound. So he was injured somewhere inside the room and the possibility of him being pushed cannot be ruled out.

10 **ADV NGCUKAITOBI SC:** Yes. And the only person in the room who could have pushed him, who shot him first, and then later claimed that he jumped, but you are saying there is a possibility he could have been pushed, is Inspector Mostert.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: And then outside, there are five cartridges. They still shoot him outside.

LT-COL MANGENA: That is correct, ja.

ADV NGCUKAITOBI SC: And that is Mr Maharaj and Mr
20 Makhanya.

LT-COL MANGENA: It could be Mr Maharaj, Makhanya, and even Mostert's cartridge case, because he was shooting from the balcony. Now, if you are shooting from the balcony, normally your pistol ejects the cartridge cases around 45 degrees to your right. So if you are shooting from there, the

cartridge cases will also fall down to the scene where the body, closer, not exactly close to the body, but around that area where the body was found.

ADV NGCUKAITOBI SC: And then there is also the story of the weapon being found next to the place where his body is recovered, next to the garages there. What do you say about that?

LT-COL MANGENA: Chair, with the firearm, I do not know. I do not know how did it get there.

10 **ADV NGCUKAITOBI SC:** I know you do not know, but is it consistent with your reconstruction in relation to their version versus what you have reconstructed?

LT-COL MANGENA: Chair, if they are saying he had a firearm and he fell there, it is possible, but I do not see him falling with a firearm in his hand until it landed where he was.

ADV NGCUKAITOBI SC: Yes, but what is the most likely scenario of your reconstruction about how the firearm got there?

20 **LT-COL MANGENA:** We look at the modus operandi of the team.

ADV NGCUKAITOBI SC: And what does that tell us?

LT-COL MANGENA: In most of the incidents where they shot their victims, there is a firearm next to the body. In most of the incidents, the position of the firearm or the presence of the firearms on the crime scene is questionable.

ADV NGCUKAITOBI SC: Yes, I mean, what I do not understand, according to them, by the time he jumps, he has already been shot three times because Mr Mostert does not say, I missed him.

LT-COL MANGENA: He said, I shot him.

ADV NGCUKAITOBI SC: Yes, so he shot him. He hit him three times. But however, on the tarmac, he still poses a threat to three other policemen that are armed. So what is your opinion around this version? I mean, is this a clear
10 instance where the police have lied again?

LT-COL MANGENA: Chair, that also, I cannot rule it out, completely out because... and the reason why I say I cannot rule it out is I have looked at the instances or incidents where they are involved. You get the same scenario, that the person always point a gun at them, and then they shoot, they kill the person and then the next minute, there is a firearm next to the body. So saying that they are lying, they are telling the truth or they are lying, no, I think I am looking at the modus operandi of how they operate, and it raises questions on why
20 always there is a firearm next to the body, why always the suspect will point the gun at them, but they are the one who will shoot first and kill the suspect.

ADV NGCUKAITOBI SC: Yes, thank you. Now, we have gone through paragraph 179 to 182. You have also taken us through 183 to 187, 188 to 194. Those are the sections where

you deal with the injuries on the body, the analysis of the flat, the analysis of the shots themselves. And from paragraph 195, you deal with your conclusions. Is there anything on your conclusions that you have not dealt with? And by the way, before you move on, we have got, remember when I asked you about the cause of death, the medico legal report, which is at BR0022, it actually tells us the cause of death. It is gunshot wound to the head and abdomen involving the chest and blunt force head and chest injury. What does that
10 tell you?

LT-COL MANGENA: Chair, it is gunshot wounds to the head and the blunt force when he fell to the – those are the cause of death. So he was shot – or he sustained head gunshot wounds.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: So I cannot say whether he sustained them when he was at the flat or when he landed on the tarmac.

ADV NGCUKAITOBI SC: Yes. I mean, we know the only
20 people who killed him – who shot him were these four gentlemen.

LT-COL MANGENA: That is correct, Chair, and they are from Cato Manor also.

ADV NGCUKAITOBI SC: Yes, thank you very much. I was asking you to say whether there is anything you wish to add

on your conclusions from paragraph 195 or whether we can move to the next scene.

LT-COL MANGENA: We can move to the next scene, Chair.

CHAIRPERSON: Before you go there, Counsel, on that medical legal report at BR0022. So the cause of death would have been both the gunshot wounds and the blunt force head injury caused by the blunt force head...

LT-COL MANGENA: The blunt force would be when he fell from the flat.

10 **CHAIRPERSON**: When he fell from the flat.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: And on that point, your assessment is that he could well have been pushed.

LT-COL MANGENA: Most likely, Chair.

ADV NGCUKAITOBI SC: Well, most likely, yes. So whether one is looking at gunshot or the blunt force, the source of that death is still Cato Manor.

LT-COL MANGENA: That is correct, Chair.

20 **ADV NGCUKAITOBI SC**: Yes. You know the story of Ahmed Timol. The policeman under apartheid pushed him off John Foster Square.

LT-COL MANGENA: John Foster Square.

ADV NGCUKAITOBI SC: And then they said he jumped.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: So can we move on to Kwadukuza?

LT-COL MANGENA: Yes, Chair. We can move to Kwadukuza and Stanger.

ADV NGCUKAITOBI SC: Yes. Could you just give us an analysis of what happened here? So the Stanger report is at 2A/154, if you want to use that to refresh your memory. So CAS 39/09/08 is Lindelane Buthelezi.

LT-COL MANGENA: So on the Kwadukuza CAS 39/09/2008, information was that they were looking for Lindelane. They got information of the address where he was. They went
10 there. When they started knocking, they saw him inside the house and then when Mostert saw him, he tried to run, too. I think he tried to run and then they... I am not sure if I am confusing it with the other one, where he grabbed the firearm, and then in the process, he was shot by Mostert again.

ADV NGCUKAITOBI SC: Yes. Thank you. We will deal with their version shortly. Can we do the ballistics assessment? So that you have dealt with from paragraph 197, 198 and then in 198, you deal with the material that you considered.

LT-COL MANGENA: Right. On 198:

20 "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 by me, including amongst others:

- The post-mortem report compiled by Dr Aghdoep [?] with reference number 322/2008, compiled by Dr Marthinus Albertus Deysel on the 9th of September 2008, at Kwadukuza.
- The crime scene photo album with reference Durban LCRC 167/09/2008, compiled by Sergeant van Patelt [?].
- The crime scene photos on the disc and the statement of Inspector Paul Mostert and the statement by Detective Constable Naidoo.”

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ADV NGCUKAITOBI SC: Yes. Now, it is 199 that you were dealing with when I said we will come back to it. Can you look into that and tell us if you were – and you were afraid that you do not want to confuse it with another scene?

LT-COL MANGENA: 199.

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“According to the statement of the police, on the 3rd of September, they arrived at a residence in Stanger. Upon breaching the door, they saw a shirtless male suspect in blue jeans flee from an adjacent room. Inspector Mostert and Constable Naidoo pursued him. They saw the suspect retrieving a pistol from a black suitcase and

attempted to aim it at them. In response to the immediate threat, Inspector Mostert discharged his firearm, wounding the suspect and causing him to drop the weapon.”

ADV NGCUKAITOBI SC: Yes. Do you now remember it?

LT-COL MANGENA: Yes. It is the one that I was referring to, ja.

ADV NGCUKAITOBI SC: Yes, all right, thank you. And then
10 you start with the gunshot wounds from paragraph 200.

LT-COL MANGENA: Yes, now in terms of the report:

“There was a gunshot wound entering the left cheek at wound mark 1 and exiting on the right side of the head at wound mark 2.”

ADV NGCUKAITOBI SC: All right. Well, just make sure you go with us. You have referred to photograph 4 and 5 of the report.

LT-COL MANGENA: Photograph?

ADV NGCUKAITOBI SC: 4 and 5.

20 **LT-COL MANGENA:** 4 and 5. That is correct, Chair.

ADV NGCUKAITOBI SC: What are we looking at there?

LT-COL MANGENA: On photograph 4, we have a gunshot wound entering the left cheek, which is marked as wound 1, and exiting on the right side of the head, which is on photo 5, which is marked 2 there on photo 5. We have a grazing

wound at the back of the head, which is marked 3, as depicted on photo number 6.

ADV BALOYI-MERE SC: Sorry, before you continue with these pictures, with these photos, let us go back to paragraph 199 of your statement. Unless the summary is not correct or is not adequate, because you say in response, okay, they saw him take, retrieve a pistol from a black suitcase and attempt to aim it at them. In response to the immediate threat, Inspector Mostert discharged his firearm, wounding, and I am
10 emphasising wounding, the suspect and causing him to drop the weapon.

Now, common sense would say the person is wounded and he has dropped the weapon. Then the threat is no longer there. Although this paragraph does not tell us where he was shot and wounded to cause him to drop the weapon. But now the first photo that you show us is not a picture of someone who was wounded to drop the weapon. You show us a picture of someone who was murdered or who was killed. Help me to understand and reconcile the two, the
20 wounding and what you are showing us at photo 4.

LT-COL MANGENA: Chair, what we are showing on photo 4 is the position of the wounds. Because here I am starting with the wounds that the deceased has sustained, and I will go according to step 1, which wounds were inflicted. Because I cannot tell the exact sequence, but as we go on, I will

explain what I see on this, and probably it will make sense once we know how he was wounded.

ADV NGCUKAITOBI SC: Yes, all right. Lieutenant Colonel, I do not want to disrupt your flow, but we will find the statement of Inspector Mostert at page KD0012. Yes, there it is. Now, according to him, so they had an informer who shows them the house of Mr Lindelane Buthelezi, and then they go into this house, and then at paragraph 3 he describes what happens inside this house. It says:

10 “On 2008/09/03 at...”

This should be 12 midnight;

 “...00.00, the members and I arrived at the house. The door was kicked in. I entered the room, followed by the above members. I noticed a black male dressed in a jean run to a adjacent room. I immediately followed, and entering the room, I noticed the black male had removed a pistol from a black carry canvas bag. He was in the process to point it towards me. I, without hesitation, fired several shots in his direction, hitting him in the upper body. He fell to the floor and appeared to be dead. Captain Eva entered the room and took charge of the scene, securing the firearm, a pistol. He summoned

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the necessary role players, the ambulances, SAP members, duty officers, ICD, as well as members of the LCRC.”

Just out of interest, why is Captain Eva always coming in to secure the scene?

LT-COL MANGENA: And, Chair, if we go back to Captain Eva's statement, let us read Captain Eva's, where he is speaking of Captain Eva.

ADV NGCUKAITOBI SC: You mean Inspector Mostert?

10 **LT-COL MANGENA:** Yes, he said Captain Eva entered the room and took charge of the scene, and he secured the firearm. He secured the pistol, the firearm, the pistol.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: When he said he secured the firearm, the pistol, I do not know what does he mean. Because if you look at the photo number... if we look at, I think it is from my report, it is photo number 5. I am not sure if we have the photos of the scene, but in my report, it is photo number 5. He said he secured the firearm and removed the firearm. But
20 you look at the body of the deceased, where he is lying. Here is the firearm. So if he said he secured the firearm, but the firearm is still underneath the body, it is contradicting what he is saying there.

ADV NGCUKAITOBI SC: Yes. And then the second statement from *Rubendren Naidoo*, who is the other

policeman that was on the scene, is KD0018. Yes, that one.

This is how he describes the incident. Paragraph 3:

“On the same day, I departed with other members from my office to Stanger. The suspect's dwelling was pointed out to us by the informer. On Wednesday, 3 September 2008, at 00.01, I approached the dwelling. Captain Ubach, Inspector Mostert, and Inspector Makhanya accompanied me. The door was kicked in, and Inspector Mostert and I entered. The other two members followed. As I entered the dwelling, I saw a black male run out of the room and went into an adjacent room. The black male had no shirt on and was wearing a blue jean. Inspector Mostert and I followed the male to the room. As we entered the room, I noticed the black male reach into a black suitcase and remove the pistol from it, and was in the process of pointing towards us. Inspector Mostert fired several shots in the direction of the male. The suspect was wounded and fell to the floor. The pistol fell to the floor. Captain Evaluate entered the dwelling and took control of the scene.”

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So that is how they describe the incident. One does not say he had no clothes on the upper body, the other says he did, but basically it comes down to the same thing. He came in, and then he ran back, and then he found a suitcase. He took a gun. He was about to point it, and then Inspector Mostert shot him.

LT-COL MANGENA: Shot him, yes.

ADV BALOYI-MERE SC: Thank you, Advocate Ngcukaitobi, because it answers the questions that I had on paragraph
10 199, because now it is clear that Inspector Mostert fired a number of shots, and according to his observation, the victim fell, and it looked like he was dead. So he literally killed him on the scene, not wound and make him drop the weapon, because that would, in one's mind, it would say maybe they shot him in the arm and he dropped the weapon, but he was literally killed because Mostert fired several shots. Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Baloyi-Mere. So where were you, Lieutenant Colonel? At paragraph 200?

20 **LT-COL MANGENA:** Yes. Paragraph 200:

“We have a grazing wound at the back of the head, which is marked 3, as depicted in photo 6, and a separate wound also at the back of the head where a damaged bullet was recovered, which is marked wound 4, as

depicted in photo 6 also. The deceased sustained the following gunshot wounds to the body. Three separate entry wounds, wounds 1 and 2 and 3 on the body, as depicted in photo number 3.”

ADV NGCUKAITOBI SC: Yes, I mean, perhaps you will deal with this when you do your summary, but one thing to note between photo 3 and photo 4 is that on Inspector Mostert's version, several shots were fired in the upper body of the
10 deceased, and he appeared dead, but he is then shot in the head at photo 4.

LT-COL MANGENA: Paragraph 201.2:

“Three corresponding exit wounds, wounds marked 4, 5, and 6, as depicted on photo 7.”

Yes, 4, 5, and 6.

“On observation, the deceased was shot while in two different positions. Wounds 2 and 3, depicted in paragraph 3, were sustained while the deceased was in a
20 standing position.”

Now if you look at wound 2 and 3, wound 2 and 3 is visible on photo 3, and it is most likely the wound 2 presented in the entry wounds of the first shot. The wound depicted on 6, no, the first shot and the wound 6, as depicted on photo 7, is corresponding exit wound. Right, wound 2 and wound 6

would be the first shot. Wound 2, as depicted, yes.

ADV NGCUKAITOBI SC: So 2 is the entry and 6 is the exit?

LT-COL MANGENA: 6 is the exit.

ADV NGCUKAITOBI SC: Okay.

LT-COL MANGENA:

“Wound 2, as depicted on photo 3, is further visible on photo 11, demonstrating the trace of partially burnt and unburnt propellant powder particles.”

10 Now if you look at wound 2, I think it is clearer on this photo.

ADV NGCUKAITOBI SC: What part of the body is that?

LT-COL MANGENA: It is the wound on the chest.

ADV NGCUKAITOBI SC: The chest, okay.

LT-COL MANGENA: If we look at this wound, here you can see the powder particles. Here you can see it is not that dark, but there is blackening that indicates it is a close-range shot this one. So the firearm was not far from the deceased in this instance.

ADV NGCUKAITOBI SC: And what is that, a 9mm or a...?

20 **LT-COL MANGENA:** It is a 9mm pistol and with wound 1, it is two different wounds which were marked as 1.

ADV NGCUKAITOBI SC: Are those the one in photo 10?

LT-COL MANGENA: This one also. If we can look at wound 1, these particles that you see, this is unburnt propellant powder particles. So it is also a close-range shot.

ADV NGCUKAITOBI SC: So is that the left side?

LT-COL MANGENA: That is correct, here on the left side. So basically the three wounds that he sustained had close-range shots. And wound 3 ...[intervenes]

CHAIRPERSON: Sorry, Colonel. The wound at photo 11, is it an entry wound?

LT-COL MANGENA: That is correct, it is an entry wound.

CHAIRPERSON: It exits where? At photo 7?

LT-COL MANGENA: It exits at photo 7, it exits on wound
10 number 6.

CHAIRPERSON: Number 6 is the head. Is it not 7?

LT-COL MANGENA: No, number 6 is on the right-hand side, towards the hip. It is visible on photo number...

CHAIRPERSON: I am confusing the pictures here.

LT-COL MANGENA: Wound number 6 is this one.

CHAIRPERSON: Oh, from the other one.

LT-COL MANGENA: On photo 7.

CHAIRPERSON: Counsel, I have different documents here. When you refer to the report, refer us to the report. Because
20 I am looking at 2A...

ADV NGCUKAITOBI SC: I think it should be at 2A/160.

CHAIRPERSON: 6-0.

ADV NGCUKAITOBI SC: 160.

CHAIRPERSON: 2A/162.

ADV NGCUKAITOBI SC: You should be at 2A/160.

CHAIRPERSON: 6-0.

ADV NGCUKAITOBI SC: Yes. Or photo 7.

CHAIRPERSON: Yes, that is the exit.

ADV NGCUKAITOBI SC: Correct. Yes, you are right, Madam Chair. Photo 11 is the entry wound, which is at 2A/162.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Yes, that is correct, Chair and then 2A/160 is the exit at item 6.

10 **CHAIRPERSON:** Are we correct, Colonel?

ADV NGCUKAITOBI SC: That is correct, Chair.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Well, on that point, Colonel, can you just explain this concept? This bullet enters here, right in the chest. But it exits here.

LT-COL MANGENA: Yes.

ADV NGCUKAITOBI SC: Now, how does that happen? Because you would expect from a layperson that if you are standing, according to Mostert, you are standing in front of
20 him, and you shoot him, the bullet will go out here.

LT-COL MANGENA: Chair, it depends on how you hold the firearm. He did not shoot him straight, but it is a downward trajectory. It is in here. It exits here, towards the back. It exits at the back.

ADV NGCUKAITOBI SC: Yes. So he would have been

holding the firearm like this?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: What would be the point of holding a firearm like this if you are trying to shoot someone in the chest?

LT-COL MANGENA: Chair, I cannot tell what was he thinking when he was shooting in that position.

CHAIRPERSON: But does that not signify that this person was either lying down or towards the lower ground? Because
10 he is not pointing it directly to the chest?

LT-COL MANGENA: Chair, that is why I am saying I cannot tell what was he thinking when he inflicted these wounds. Because in some of the wounds, the deceased was already down when he was shot at.

ADV NGCUKAITOBI SC: That is the point. You are saying that the reason why the entry is here, but the exit is here, is because of the positioning of the firearm, which means the firearm was pointing down, or slightly down.

LT-COL MANGENA: Slightly down.

20 **ADV NGCUKAITOBI SC:** Yes.

LT-COL MANGENA: It is in here, and it comes out at the back.

ADV NGCUKAITOBI SC: Yes. I mean, it does raise the question as to what was the exact position of the shooter and the deceased.

LT-COL MANGENA: But when you look at the wound, there is traces of unburnt and partially burnt propellant part. It is a close range. So the firearm could have been probably around this range when the shot was fired, or less than a metre. Let me say less than a metre when the wound was inflicted.

ADV NGCUKAITOBI SC: No, that is true. That is the distance. But the position could be that he was on a higher level than the deceased.

10 **LT-COL MANGENA:** It could be the angle that the firearm was. It could have been on the same angle, but the angle, how the firearm was held, could have been facing a little bit downward.

ADV NGCUKAITOBI SC: Yes, all right.

CHAIRPERSON: But certainly, the deceased was not standing up. He must have been lying down.

LT-COL MANGENA: Chair, with this one, the wound at the back is not what you call the short exit wound. It is just a normal exit wound, so I cannot tell whether he was already
20 down. But if we look at wound number 4, this one, here it shows short exit wounds. So meaning when this wound was inflicted, by then he was already down. He was shot while lying on the floor.

CHAIRPERSON: Yes. Because the first wound would have been the one inflicted on the head.

LT-COL MANGENA: Chair, if the first wound would be the one inflicted on the head, he would drop immediately.

CHAIRPERSON: Yes.

LT-COL MANGENA: I do not think it would be the first one. This would be most likely the first one, and then these ones and when he was down, that is when the headshot could have been inflicted. And the one that came out, that wound number 4.

ADV NGCUKAITOBI SC: Wound number 4. So wound
10 number 4 at photo 7.

LT-COL MANGENA: Yes, that is wound number 4. This is what we call the short exit wound. So it shows that he was lying on the floor when this wound was inflicted.

ADV NGCUKAITOBI SC: Is that an entry wound?

LT-COL MANGENA: That is an exit wound.

ADV NGCUKAITOBI SC: Exit wound.

LT-COL MANGENA: Mmm.

ADV NGCUKAITOBI SC: Okay, so which means he would have been shot in his chest.

20 **LT-COL MANGENA:** While he was lying there.

ADV NGCUKAITOBI SC: While lying down, and then it would have exited.

CHAIRPERSON: And which wound would have caused him to drop down?

LT-COL MANGENA: Chair, the wound that would have

dropped him down is that he was shot, probably he went down because he was already wounded. But while he was down, they could have finished him with the wound number 1. That is when they left him, and it exited at the back.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Perhaps you can go to paragraph 9 of your report, which is at 2A/163.

LT-COL MANGENA: I will go to paragraph 8. I will go to paragraph 8 and 9.

10 **ADV NGCUKAITOBI SC:** Okay.

LT-COL MANGENA: 2A/163.

“The wounds sustained by the deceased as described by the doctor on the post mortem are consistent with the position of the wound visible on photos. The wound marked 2 on photo 11, wound on the chest of the deceased, appears to have the trace of partially burnt propellant particles. This gives the impression that the firearm was held at close range or was held close to the chest of the deceased during discharging. The wound on the left side of the body, wound 3, is visible on photos, but its position can be seen only on photo 3. The area around this wound is not visible on the

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other, it is not visible, and no comments can be made on this distance of this firearm.

On observation of the post mortem and crime scene photos, I could reach the following possible conclusions. The

deceased sustained gunshot wound while in two different positions. The first position,

the standing upright position. The two bullet entries wound marked 2 and 3 sustained by

10 the deceased were inflicted while the deceased was in an upright standing

position. I am of the opinion that the wound 2 is the entry wound and most probably the first shot and wound marked 6 at the right back is the exit wound of the same wound.

Wound marked 3 is the entry wound and the second shot and wound 5 on the right back

is the exit wound of this, is the exit wound and most probably the second shot. Both

20 bullet trajectories are from front to back and in a downward direction. Both bullets had

ricochet on the wall and are most probably the two bullets found on the scene, which is

marked B and G.”

So there we have the bullet marks on the wall from most likely

the two shots.

ADV NGCUKAITOBI SC: Is that photo 12?

LT-COL MANGENA: On photo 12.

“After the deceased was shot standing, he fell down and as he was lying on the floor, the other wounds were inflicted whilst lying on the floor. The two wounds marked 1 on the right chest had characteristics of a bullet entry wound. The wound at the back of the body had characteristics of exit wound. The exit wound close to the spine had characteristics of a short gunshot exit wound. Short gunshot wounds of exit is produced when the outstretched skin impaled or sandwiched and crushed between the outgoing bullet and the underlying objects over the exit site, thus leaving an abrasion collar on the wound margin. The degree of shoring of abrasion increases directly with the kinetic energy of the projectile and the rigidity of the shoring material.

The second exit wound towards the right hand also had characteristics of a short gunshot wound of exit. With this wound

there was no hard contact to the body on the floor and the area of the wound, but the bullet could exit and travel further. The wound sustained at the back of the head marked 3, described by the doctor as during the post-mortem as an irregular linear wound on the scalp, can also be described as a grazing wound. The grazing wound occurs when the bullet grabs or grazes over the skin without penetrating more deeply.

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This type of wound is usually elongated or in an oval appearance and may have marginal tears at the edges.

The wound at the back of the head where a highly deformed bullet was recovered and did not enter the scalp cavity gives the impression of a bullet that has lost most of

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its energy and speed before hitting the head of the deceased where it was removed. If I am of the opinion that the wound mentioned in 91.24, 91.25 and 91.26 were caused by the same bullet but penetrated the chest and exited at the back and the deceased was lying, it ricocheted on the floor and deviated towards the head where it created the

grazed wound, before it hit the deceased where it was removed. This bullet has lost most of its speed and energy and it perforated the body of the deceased and when it ricocheted on the floor, that is the reason why it could not penetrate the scalp cavity and when it was deformed. I am of the opinion that the tiles under the body would have bullet damages.

10 The wound on the left chin marked 1, being the entrance wound, and the wound marked 2 on the right side of the head, being the exit wound of the same bullet. The bullet trajectory is from left to right in upward direction. I am of the opinion that the deceased was in a lying position when this wound was inflicted. The position of the firearm under the head of the deceased is questionable. It is positioned almost on the area where the wound at the back of the head is positioned.”

ADV NGCUKAITOBI SC: That is photo 5, you said?

LT-COL MANGENA: That is where I showed the position of the firearm underneath the wound.

ADV NGCUKAITOBI SC: Is that the photo you are talking

about?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: So if you look at the other wound, there are two wounds where it was shot while lying on the floor or lying on the ground. One is in and it came out here at the back. When it came out, it deflected, it created the grazing wound and penetrated, it was recovered here at the back of the head. And then this one, it enters here, it exited on the
10 side. The three of these wounds were most likely, or let me say were inflicted while he was already on the ground. Because those wounds are what we call the short exit wounds.

ADV NGCUKAITOBI SC: Yes and how do you account for the weapon that they claim to have discovered, which is photo 5? Well, according to Mostert, Inspector Mostert, he saw the deceased pull a firearm. Even Warrant Officer Naidoo makes the same claim that the deceased went into the room, he took a bag and then he took a firearm and as he was about to
20 shoot, Inspector Mostert shot him three times.

LT-COL MANGENA: Chair, by then, if you look at the wound sustained on the chest, it is a close range shot. So he was less than a metre within when these wounds were inflicted. If he pulled out the gun, I do not think it would be able for him to pull out the gun while the person is standing in front

of him. Because here we are looking at the muzzle of the firearm. We are not looking at the distance between the two, the suspect or Warrant Officer Mostert and the so-called suspect. We are looking at the distance between the muzzle of the firearm. So possibility of a range of less than a metre between the two of them, it is there when the shot was fired. So he could have grabbed the firearm, he could have grabbed the hand that was holding the firearm.

ADV NGCUKAITOBI SC: But according to them, this is the whole point. There is no possibility of grabbing because on their version, the suspect is in the house. He then goes into the bedroom. There he takes a bag...

LT-COL MANGENA: And he took out the firearm.

ADV NGCUKAITOBI SC: ...and then he takes the firearm. So that is when they shoot in retaliation. So the possibility, which is what you have reconstructed, is that actually these people are close to each other.

LT-COL MANGENA: That is correct, Chair. They were close to each other.

ADV NGCUKAITOBI SC: Yes. And you can see at photo 2 and photo 3, photo 2 is much better.

LT-COL MANGENA: There is not enough space in that room.

ADV NGCUKAITOBI SC: Now the substance of their version, I have put that to you twice, which is the man goes and grabs. Is it a false account in your expert opinion?

LT-COL MANGENA: Chair, it goes back to the modus operandi.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: That is how they operate.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: And I disagree with their version of the incident here also.

ADV NGCUKAITOBI SC: Yes, yes. Is there anything to be made of the items that are next to the deceased? Because
10 is that presumably the suitcase that they said the firearm was in? I do not understand. There are two empty bottles of Coke and Sprite. Then there is an open suitcase with some clothes next to it.

LT-COL MANGENA: Chair, I cannot comment much on those things. But what I can see is the position of the cartridge cases. Those other items, I do not know how they came there and what was inside. And I do not even have the description of the suitcase that you are talking about. So I cannot say it is definitely the one that they allege that they took out the
20 firearm.

ADV NGCUKAITOBI SC: Yes. But when you look at the cartridges, which is really where your expertise lies, what do you say?

LT-COL MANGENA: Their positions?

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Chair, with the position of the cartridge cases mostly on the crime scene, you have to be cautious when describing the scene with the position. Because the position of the cartridge cases could be that somebody when was moving, they kicked them or moved them to a different position. So to give much more information on those can be misleading sometimes.

ADV NGCUKAITOBI SC: Yes. Thank you. But your point is that this idea that he ran into the bedroom, took a firearm,
10 and then it is unlikely because of the proximity.

LT-COL MANGENA: It is unlikely because of the proximity, Chair.

ADV NGCUKAITOBI SC: Yes. Thank you. And then we have covered in your statement quite a lot of ground. We have done the analysis of the wounds. We have also done the different body positions. The first position, which was standing upright. Second position, lying on the floor. We have now also looked at the probability of this version by the police being true and you have said in your expert opinion it
20 is not and then we have also looked at the firearm and the head wound, which takes us to paragraph 213. And what is remaining is your conclusions, which are set out here. You can tell us if you have anything to add.

LT-COL MANGENA: Chair, I think that is all that I can say on this matter.

ADV NGCUKAITOBI SC: Did you ever find out why Inspector Mostert is the regular executioner? He is always the one carrying a shotgun, a pistol, and shooting.

LT-COL MANGENA: Chair, it is difficult to can say that, but at one stage when we were that side, when we were consulting with a number of people, interviewing people about this, at one stage we once had information that between the three, Eric, Warrant Officer Mostert, Captain van Tonder, and Eric Nel, there was a competition of how many
10 people can we shoot.

ADV NGCUKAITOBI SC: Thank you. Madam Chair, I am ready to move to the next scene, but I say it is 13.39. I do not want to test the patience of the Panel.

CHAIRPERSON: Yes, I think it is an appropriate moment to take a break. It is twenty to two, we will reconvene at twenty to three. Colonel, you are under oath.

LT-COL MANGENA: That is correct, Chair. I am still under oath.

CHAIRPERSON: Yes. We will adjourn until twenty to three.

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

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, everyone. Good afternoon, Colonel. Good afternoon, Advocate Chauke. Ntate Ngcukaitobi, good afternoon. Before you proceed, it

has come to our attention that the images have not been deflighted due to the sensitivity involved. A request has been made that at least certain images should be flighted. We have also observed on our own that there has been limited flighting of what has been described by the witnesses here, therefore limiting information to the public.

Having discussed the matter with the parties, the panel is of the view that the images must be shown and the media may flight the images. However, before any such
10 images are flighted, and in the interest of those who may be affected thereby, the legal representatives leading evidence concerning the images should caution the viewers that sensitive information is about to be flighted. We agree now that images may therefore be shown.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: You continue to be under oath.

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

CHRIS MANGENA (still under oath)

CHAIRPERSON: You may proceed, Advocate Ngcukaitobi.

20 **ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Lieutenant Colonel, we had finished Berea. We were moving on to KwaMashu CAS 314/11/2008, is that correct?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, you deal with KwaMashu at page 2/59 of your report, of your statement,

sorry. In your report, it is 2A167.

LT-COL MANGENA: 2A167, yes, I have got it, yes.

ADV NGCUKAITOBI SC: Now, this is the killing of Mr Nonhlanhla Kutu Masondo.

LT-COL MANGENA: Chair, the case is more or less the same as the previous one.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Where they had information of the suspect that they were looking for.

10 **ADV NGCUKAITOBI SC:** Yes. Just explain, when you say they, it is usually useful for the record to tell us who are you talking about.

LT-COL MANGENA: The Berea case ...[intervenes].

ADV NGCUKAITOBI SC: No, we are talking about KwaMashu now.

LT-COL MANGENA: Now, yes. I say the *modus operandi* on KwaMashu 314/11/2008 it is more or less the same as the Berea 288 case where they were looking for a specific suspect.

20 **ADV NGCUKAITOBI SC:** And who is they?

LT-COL MANGENA: The Cato Manor members.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: And they got the address, they went to the address. When they got to the address, they found the suspect. In the process of questioning the suspect, he tried

to grab a firearm, and that is when he was shot also.

ADV NGCUKAITOBI SC: Yes, thank you. We will look at the statements now of the police from the docket. But we should start with paragraph 217 of your statement, what you did.

LT-COL MANGENA: In paragraph 217:

10 “I examined the contents of the dockets and associated forensic material for the purpose of conducting a forensic ballistic reconstruction of a shooting incident. The material examined by me included, amongst others, the post-mortem report compiled by Dr Naidoo, a crime scene photo album, and additional photos and witness statements by Detective Inspector Eric Nel and Bruce
20 McInnes. The purpose of the examination was to reconstruct the crime scene, determine the trajectory of the bullets, and provide an expert opinion based on physical evidence.”

ADV NGCUKAITOBI SC: Yes, now that statement referenced at 217.3 from, I think it was Inspector ...[intervenes].

LT-COL MANGENA: Inspector Eric Nel.

ADV NGCUKAITOBI SC: Eric Nel and Bruce McInnes. We can start with Inspector Bruce, I think he was Detective Inspector Bruce McInnes at KM0016. Let us see how they describe the shooting. Yes, so it is just behind you there. So this is an allegation that this gentleman, Mr Masondo, was involved in ATM bombings. He is in that category of ATM bombings. Now from paragraph 4, this is how the person who was involved in the killing explains it.

10 “Acting on information received from a reliable source, that black male Nkuntu Masondo, residing at E1141 Ntuzuma, KwaMashu area, was suspected to be involved in the Hammarsdale case 46/07/2008, use of explosives, armed robbery, theft, malicious injury to property.”

ADV BALOYI-MERE SC: Sorry to disturb. Which page are you on? We are lost.

ADV NGCUKAITOBI SC: It is KM0016.

20 **ADV BALOYI-MERE SC:** 16.

ADV NGCUKAITOBI SC: 16, yes. Thank you. So acting on information, paragraph 4:

“Acting on information received from a reliable source, that black male Nkuntu Masondo, residing at E1141 Ntuzuma,

10 KwaMashu area, was suspected to be involved in Hammarsdale case 46/07/2008, use of explosives, armed robbery, theft, malicious injury to property, several counts of attempted murder of on duty police officers and armed robbery, hijacking of an SAPS police vehicle, Mapumulo CAS 30/11/2008, murder of two on-duty police officers, attempted murder of two on-duty police officers and armed robbery of cash to the value of R600,000.00 and 12 firearms and Cato Manor CAS 205/04/2003, armed robbery.”

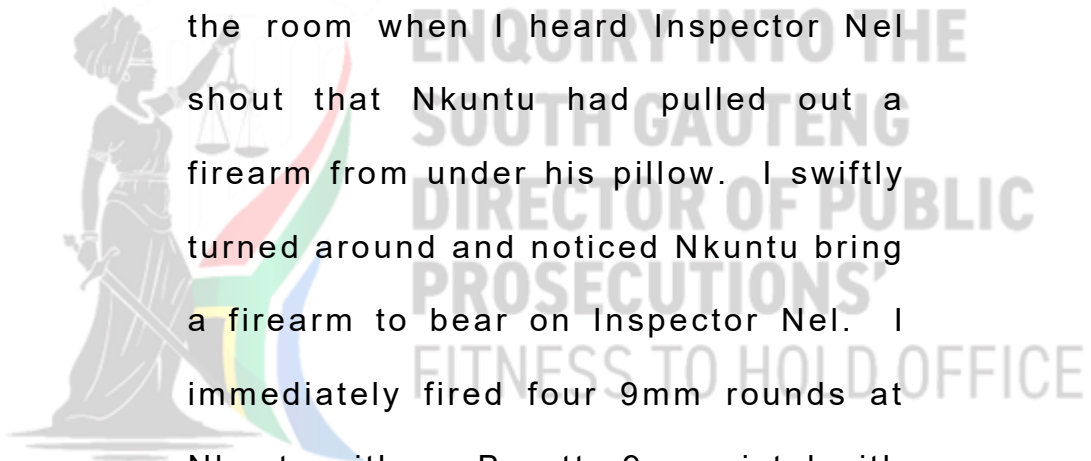
So it is a list of offenses they allege that he was involved in. Now but how he describes what happened at the scene is this.

20 “On my arrival at E1141 Ntuzuma, myself and Detective Inspector Nel proceeded to the house door and knocked on the side door. On hearing someone call out, I announced that I was a police officer from the South African Police Service. The door was

unlocked and open. I noticed a black female and a male who identified himself as Nkuntu. I entered the house and requested Nkuntu to take me to his room. Myself and Inspector Nel followed Nkuntu to his room, which is a room attached to the main house. Myself and Inspector Nel entered the room and Inspector Nel proceeded to

10 interview Nkuntu. I was looking around the room when I heard Inspector Nel shout that Nkuntu had pulled out a firearm from under his pillow. I swiftly turned around and noticed Nkuntu bring a firearm to bear on Inspector Nel. I immediately fired four 9mm rounds at Nkuntu with my Beretta 9mm pistol with serial number H745057. On further inspection, I noticed a .8 special

20 revolver lying on the bed next to Nkuntu. I shouted from Captain Eva to assist. Captain Eva entered the room and as Nkuntu was still breathing, removed the firearm from the bed and placed same on a nearby chair for safety reasons.



Captain Eva then proceeded to contact the paramedics who later attended the scene.”

So that is the explanation from the killers. As you said, it is similar to Berea. They go into somebody's house. That person somehow escapes their clutches. They reach out for a firearm. They shoot him. In this case, it is not clear that he was dead on impact, but they shoot him. And thereafter, Captain Eva comes in and secures the scene. Is
10 that correct?

LT-COL MANGENA: That is correct. It is the same as the previous one, the same *modus operandi* as the previous one.

ADV NGCUKAITOBI SC: Yes, all right. Now, you do your medical analysis from paragraph 219. Now, at this point in time, for the sensitive viewers, there will be images that will be played which might affect those who are sensitive. So, paragraph 219, you deal with your post-mortem report, with the post-mortem report, and what do you say there?

LT-COL MANGENA: Right, on paragraph 219:
20 “The post-mortem report describes the multiple gunshot wounds affecting the left arm, the chest and back, the abdomen, the lower body, and the genital region. Each wound was examined in relation to its entry point,

exit point, where present, and the direction on travel through the body. The wounds visible on the crime scene photos correspond with those described in the post-mortem report. Some wounds recorded by the doctor were not clearly visible on the crime scene photos, but their presence is medically confirmed in the report. The wounds are analysed with reference made to photographs 6, 7, 8, and 9 in the report.”

10

ADV NGCUKAITOBI SC: All right. So, if we go to your report, you start at 2A176.

LT-COL MANGENA: 2A17?

ADV NGCUKAITOBI SC: Yes, that is where photos 6 and 7 appear.

LT-COL MANGENA: If you look at the wounds sustained, as depicted on photos 6, we have wound marked 1, which is on the left upper arm. We have wound marked 3A, which is on the left side of the torso. And we have wound marked 4A on the stomach, just above the belly button. And we have wound marked 5A, just below the belly button. Now, all these wounds are the entrance wounds that the deceased sustained.

ADV NGCUKAITOBI SC: So, you are looking at photo 7?

LT-COL MANGENA: On photo 7, 6 and 7, yes.

ADV NGCUKAITOBI SC: Yes, all right. Thank you.

LT-COL MANGENA: Right, if you look at the back, on photo 8, we have wound marked 3B, which is the corresponding exit wound of wound marked 3A. And then wound 4B is in relation with wound 4A, which is on photo 7.

CHAIRPERSON: It is also exit?

LT-COL MANGENA: It is the exit. And wound marked 1B, it is not visible on the photos, but if you look at photo number
10 10, that is where I illustrated the possible bullet trajectories through the body.

ADV NGCUKAITOBI SC: I see. So, the arrows are showing the direction of the bullets?

LT-COL MANGENA: That is correct, Chair. The arrows are showing the direction of the bullets. Now, if we look at our bullets, your entrance will be this one. It exited here at the back. This one, the entrance in 3A, it goes back, it exits here on 3B. And then 1A, it exits on the arm, comes in, it exits again on the chest, and then exits around that area.

20 **CHAIRPERSON:** You said 1A is exit. I thought you said it is entry.

LT-COL MANGENA: 1A here is the entrance.

CHAIRPERSON: Entry, yes.

LT-COL MANGENA: And then the exit of it, it is here at 1B.

CHAIRPERSON: Yes, thank you.

LT-COL MANGENA: Right, when you look at paragraph 9, where I have mentioned that:

“After my observation of the crime scene photos and post-mortem report ...”

ADV NGCUKAITOBI SC: Paragraph 9 of your report?

LT-COL MANGENA: Of my report, yes, on page 2A 178. It says:

10 “After my observation of the crime scene photos and post-mortem report, I came to the following conclusions. Based on the information obtained from my observation, I am of the opinion that the deceased was shot while in two different positions. There are bullet trajectories that are perforating the body of the deceased in a downward, as stated in post-mortem report, as well as those perforating in upward through the body of the deceased.”

20 I said:

“It is not possible to confirm the possible position of the deceased when some of the wounds were inflicted since there was no possible bullet hole or bullet marks visible on photos that

emanate from the bullet on photos emanating from bullet perforating from the body of the deceased. The possibility of holes in the bed and not being visible cannot be excluded. Entry wound marked A4 could have possibly been inflicted while the deceased was in a standing position or seated position on the bed, with his upper body in an upright position. The trajectory of wounds marked A1, A2, A3 and A5 are upward from left to right and are consistent with the position of the deceased as he appears on the photos.”

ADV NGCUKAITOBI SC: Yes, can you just stop there because that portion did interest me. What point are you making here, was he shot while lying down or not?

LT-COL MANGENA: Right, the first one I said, if we look at this, where you have entrance wound marked A1 and exit wound marked, ag, 4A and exit marked 4B, if in a standing position, your trajectory is upward, it enters here and it goes up, it exit at a higher position, because when you look at these ones, these ones are going down, so the entrance are lower than your exit and that one is that direction. So this one is from just below the belly button, but it exits. So in a

standing up position, it is not possible he was shot in this position.

But the minute he sits down, it would make sense. If in a seated position, your entrance is here and then your exit will be here, whereby he was shot by somebody who was standing in front of him. If he is standing and it is shot at him like that, in this direction, it would make sense. Your trajectory would be the same as that one.

ADV NGCUKAITOBI SC: I see. Can you look at photo 11
10 and then perhaps just repeat what you said in reference to photo 11? Yes, that one.

LT-COL MANGENA: Yes, here is photo 11. I will say the shooter most likely would be standing here when he shot at him while in a seated position. So your entrance will be here and then your exit will be here, so it will be a trajectory that makes sense too. And then the other wounds which were inflicted, when standing here, shooting at him, your entrance is here, your exit, and then this one goes to that direction. So it was most likely that the first wound could have been
20 where he was shot standing and then he fell, sit on the bed. The second one was inflicted and when he slumped to the backward, the third wound was inflicted.

ADV NGCUKAITOBI SC: Yes, so two of those wounds were inflicted while he was in a seated position.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: I see.

MS RAMAGAGA: Can we say it was a seated position or it was either seated or lying position?

LT-COL MANGENA: The wound 4A and B would be in a seated position.

MS RAMAGAGA: Okay.

LT-COL MANGENA: And that could be in a position where he was lying down towards his back on the bed.

MS RAMAGAGA: Which one?

10 **LT-COL MANGENA:** That would be, if you go back to the other photo.

ADV NGCUKAITOBI SC: Photo 10.

LT-COL MANGENA: That would be this one where it enters here and exit at the back. But this one is when he was in a seated position.

MS RAMAGAGA: Okay.

LT-COL MANGENA: Because if he is in a standing position, it is not possible that it will be - this one most likely could be, it is either in a seated position or in a standing up position.

20 That one would fit.

MS RAMAGAGA: Okay, thank you.

ADV NGCUKAITOBI SC: That one seems to be straight, 1A to 1B.

LT-COL MANGENA: 1A to 1B is a straight one. It could be while he was seated or while he was in a standing position.

ADV NGCUKAITOBI SC: Yes, but 3A to 3B, he was either lying down or seated. 4A and 4B, he was either lying down or seated.

LT-COL MANGENA: 4A, 4B, he was in a seated position. And 3A, 3B, he was in a lying position.

ADV NGCUKAITOBI SC: Yes. So if I take the one, so if you go to photo 2 and 3, because both of them show him in a lying position, so just go to 3 for now. Can you use that one to illustrate your point?

10 **LT-COL MANGENA:** To illustrate the point on this?

ADV NGCUKAITOBI SC: Yes, of ...[intervenes].

LT-COL MANGENA: Of this bullet ...[intervenes].

ADV NGCUKAITOBI SC: Which of those three would have been shot while he was in that position?

LT-COL MANGENA: I will say 3 which enters around this area and then the exit is at the back. Now if you are looking at it with this one, one will be here. It goes through the body, but if you are standing here, it is not possible. So your body has to be back in this position, in a straight position, where
20 you can get the correct trajectory. And if you look at the 4A and 4B, 4A will be here, 4B will be at the back. Now if he is lying in this position and you are standing here, it is not going to be possible. But if he is in a seated position, straight, facing the shooter, it will be positioned.

ADV NGCUKAITOBI SC: Yes, all right.

CHAIRPERSON: And the body being in an upright position, if you are seated.

LT-COL MANGENA: That is correct, Chair, the body being in an upright position.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Yes, so the explanation for this is what, is that at some point he is standing and they shoot him, but he is incapacitated and sits down, they shoot him again, and then he lies on the side, then they shoot him again.

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

ADV NGCUKAITOBI SC: So you were still at paragraph 9.2 when I stopped you, of your report.

LT-COL MANGENA: I say:

“The trajectory of wounds marked A1, A2, A3 and 5A are upwards from left to right and are consistent with the position of the deceased as he appears to be on photo, lying on the photo, where he is lying on his right side. I am of the opinion that these wounds were inflicted when the deceased was lying on the bed, as he appears on the photos 3 and 4. The shooter was positioned in front of him and next to the chair with a firearm. The area is marked in red as it

20

appears on photo 11.”

ADV NGCUKAITOBI SC: Yes, we can see the chair on photo 11.

LT-COL MANGENA: So around this area, that is where the shooter could have been positioned when inflicting these wounds.

ADV NGCUKAITOBI SC: Yes. Thank you. So that covers from paragraph of your statement 219 right up to 232. Now that is an analysis of the wounds sustained by the deceased.

10 Now, I want to look at the physical evidence around that, which is what you deal with at 233. I mean, there is something here which is, this appears to be a bedroom and he is seated on a bed.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, which means that the policeman went inside his bedroom.

LT-COL MANGENA: That is correct, they were in the bedroom.

ADV NGCUKAITOBI SC: And they shot him inside his
20 bedroom. Now, is there anything to be said about the distance between where the shooter is and where the body is?

LT-COL MANGENA: Chair, I cannot comment much about the distance because there is no mention of any visible propellant particles or tattooing on the body. But on the body,

you would not be able to get a tattooing because he is wearing clothes. So if a person is wearing clothes, the propellant particles will not penetrate the skin but will land on the clothing material that the person is wearing. So if there was mention of that, then I would be able to determine more or less how far was the firearm when the wounds were inflicted.

ADV NGCUKAITOBI SC: No, I am talking, if we just stick to photo 11, the version of the police you must remember is that
10 this man was grabbing a firearm and shooting us.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, when you just look at the physical space within which the shooting was taking place, what the probabilities are?

LT-COL MANGENA: Chair, it is a small area, it is a small distance, so I would not expect them to be far from him when the wounds were inflicted.

ADV NGCUKAITOBI SC: Yes, because according to them, they were with him and then he escaped them and then he
20 took a firearm.

LT-COL MANGENA: And he grabbed a firearm.

ADV NGCUKAITOBI SC: Yes. But when you actually look at the physical space, does it really look possible that they were with him and then he left them to take a firearm and then, yes, actually photo, yes, well, actually, in the docket,

my learned friend says we should look at KM0055, at photo 10 there in KM0055. Yes, that is the picture. It is showing the other side, which is where they were standing.

CHAIRPERSON: Where in relation to that pinkish stuff next to the door would they have been standing?

LT-COL MANGENA: Chair, I will, if you look at the chairs and if you look at the previous photo, so the area where they could have been standing would be around this area, not far from here.

10 **ADV NGCUKAITOBI SC:** And what is your estimate of the square meters between that and the deceased? Well, and the bed, really, because he was sitting on the bed when he was initially shot. Firstly, he was standing up, so it seems that it would have been a very, very short distance.

LT-COL MANGENA: It could have been a very, very short space between the two. I think at least a meter or a meter and a half away from the deceased.

ADV NGCUKAITOBI SC: Yes, because I am trying to reconcile this idea that he left, he went to take a firearm and
20 came back. It does not appear to be supported by just the physical evidence.

LT-COL MANGENA: Chair, that is how they explain their situations and when you look at this photos, the crime scene photos and the scenario, we compare what they are saying and what you see in the photos, it does not, it is not

consistent with, what you see on the photos is not consistent to what they are saying in their statement.

ADV NGCUKAITOBI SC: Yes. All right, thank you. So you have done paragraph 233, 234, 235. Can you deal with that?

LT-COL MANGENA: 23?

ADV NGCUKAITOBI SC: 3, 234 and 235.

LT-COL MANGENA: All right. 23?

ADV NGCUKAITOBI SC: 233.

LT-COL MANGENA: 233?

10 **ADV NGCUKAITOBI SC:** Yes.

LT-COL MANGENA: Right, in 233, I said:

“Some bullets travelled upwards through the body from left to right. Some travelled backward and upwards. At least one travelled backward and downward from right to left. One bullet

was recovered from beneath the skin in the back area and was described as a 9mm full metal bullet. The variation of bullet direction is significant. When a bullet travel upward through the body, it usually means that the shooter was positioned lower than the body. When a bullet travels downward through the body, the opposite is usually the truth.”

20

Now, in this instances where the bullet is travelling from downward, it is in instances where the victim or the deceased was in a seated position, as it appears on wound number 4, where it is 4A and 4B.

ADV NGCUKAITOBI SC: Yes, thank you. So that is, you deal with that at 236. 237 you have explained and 238. And 239 and 240 you have dealt with that. And 241 right up to 246, you have covered those in your explanation.

LT-COL MANGENA: That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Correct, yes. Now, under your conclusions, you said that a 9mm was used and we know the killer because he has confessed that he was the killer, Eric Nel.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Is he one of those who once competed with Mostert about how many people can be killed?

LT-COL MANGENA: That is correct, Chair. It is Mostert, Eric Nel and Van Tonder.

ADV NGCUKAITOBI SC: Yes. Is there anything in your
20 conclusions that you wish to highlight that you have not had a chance to say?

LT-COL MANGENA: No, Chair, I think I have covered that.

ADV NGCUKAITOBI SC: Thank you. Can we move to the next scene, which is Rustenburg at page 2/66. Now, this is the first time we get a case outside of KwaZulu Natal, which

is the geographic scope of operation of Cato Manor and we have come across this name before. The person they killed here is Mr Sifiso Ndimande. All right, sorry, before you go there, I am told to draw your attention to paragraph 247.5 of your conclusions. So that idea of pulling a firearm from the pillow comes from the statement by Mr Eric Nel.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, what do you say at 247.5?

LT-COL MANGENA: 247.5, I said:

10 “The reconstruction does not support
the suggestion that he was shot while
actively reaching under a pillow for a
firearm.”

ADV NGCUKAITOBI SC: Yes, thank you. So we are in Rustenburg. This is the killing of Mr Sifiso Ndimande. If I recall, he is one of those that were killed in retaliation of the killing of Superintendent Choncho. Could you tell us briefly what was happening here?

LT-COL MANGENA: Chair, I am trying to recall this incident,
20 but it slipped out of my mind.

ADV NGCUKAITOBI SC: Yes ...[intervenes].

LT-COL MANGENA: What I know is that they left
...[intervenes].

ADV NGCUKAITOBI SC: Your report is at 2A276.

LT-COL MANGENA: 2A276. Yes, I have the report with me

here.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: But given the background of the incident, I cannot recall it clearly.

ADV NGCUKAITOBI SC: Yes. Well, we have a number of statements from the police officers from the docket itself. So, if you go to RB0013, yes, that statement is given by Inspector Mostert.

LT-COL MANGENA: This is Mostert's handwriting.

10 **ADV NGCUKAITOBI SC:** Oh, I see. Now, in paragraph 1, it says:



“On Sunday 2009-09-20, I received information regarding the suspect, wanted on Bhekithemba CAS 113/01/2009, murder. Information was that the suspect was hiding in Rustenburg. The same day, at 10h00, Captain Niva, Inspector Makanya, Inspector Padayachee, Inspector
20 Gaines, Sergeant Mkhwanazi and myself proceeded to Rustenburg. The same day, at 17:20, we arrived. At 22h00, the informer accompanied us to number 58 Scheiding Road, Rustenburg where he pointed the house out to me.

At 23:10, the members and I entered the property. Inspector Padayachee and myself remained at the front door. At 23:15, Inspector Padayachee kicked the door. As he entered, I noticed the suspect to jump from the couch. He fired two shots towards Inspector Padayachee and I. We returned fire and as the suspect fell to the ground, the
10 pistol was still in his hand and as he tried to get up and I fired a further two rounds towards his upper body area with my 9.77 Z88 pistol with serial number ...”

And then he gave the serial number. So that is his version that this alleged suspect actually shot at them and then he shot back. So, can you start at paragraph 249 of your statement.

LT-COL MANGENA: Paragraph?

20 **ADV NGCUKAITOBI SC:** 249.

LT-COL MANGENA: 249.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Paragraph 249, background:

“On the 9th of October 2012, during the course of my official duties as a forensic

ballistic examiner, I attended the crime scene at House No 58 Scheiding Street, Rustenburg North at the request of investigator Mosiapoa of the IPID. Upon arrival at the scene, I conducted an examination, a forensic examination of the premises for the purpose of reconstructing the shooting incident.

10 On observation of the scene, I only noticed three possible bullet holes in the wall inside the room. The furniture

was removed since there were new occupants. On the same day, I received the following documents from investigator Mosiapoa, which were to be utilized in crime scene reconstruction.

20 The post-mortem report compiled with reference booking DR710/2009 compiled by Dr Menyato Rgeinald Makati, dated 21 September 2009. A

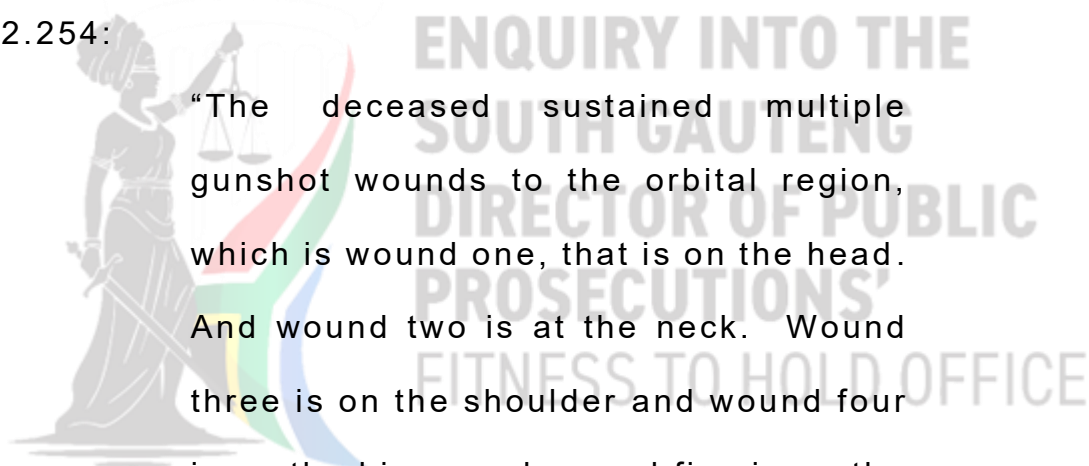
statement by Inspector Paul Mostert. A statement by Constable Padayachee. The intention and scope of the forensic examination comprised of the following. Crime scene reconstruction, bullet

trajectories determination, and expert opinion concerning the matter or the case.”

ADV NGCUKAITOBI SC: So you are about to start medical analysis and there will be sensitive pictures shown. Paragraph 254, you can do that with reference to the images.

LT-COL MANGENA: Right, Chair, on the photos that I have there is no, most of the bullet wounds ...[indistinct] on the photos. It is only the position of the deceased and the
10 gunshot wound through the head, that is there. Right, on
2.254:

“The deceased sustained multiple gunshot wounds to the orbital region, which is wound one, that is on the head. And wound two is at the neck. Wound three is on the shoulder and wound four is on the bicep and wound five is on the back, wound six, wound seven, and wound eight. In terms of the post-
20 mortem report, the wound patterns show that one bullet passed through the head and the neck, and the same bullet re-entered the body at the shoulder and exited through the arm. Another bullet caused the angled entry wound and



travelled downwards.

The crime scene analysis and reconstruction. The downward trajectory through the orbital region of the head made it impossible that the deceased was standing up straight or lying flat when these wounds were inflicted, when the shots were fired. The most probable cause ...”
[intervenes]

10 **ADV NGCUKAITOBI SC:** All right, can we just stop there because I need you to help us to understand some of these conclusions. So let us start with photo 3 at page 2A/281.

CHAIRPERSON: Which photos?

ADV NGCUKAITOBI SC: Photo 3, Madam Chair.

CHAIRPERSON: Page 2?

ADV NGCUKAITOBI SC: Page 2A-281. Yes, now what are we looking at there?

LT-COL MANGENA: In photo 3, that is where we see the position of the body of the deceased.

20 **ADV NGCUKAITOBI SC:** Yes, but what are the, I mean, there is obviously a lot of blood there.

LT-COL MANGENA: Yes ...[intervenes].

ADV NGCUKAITOBI SC: What is that indicative ...[intervenes].

LT-COL MANGENA: There is a pool of blood ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: On the side, right-hand side and just above the head.

ADV NGCUKAITOBI SC: Yes, indicative of what?

LT-COL MANGENA: The bleeding from the wounds that the deceased sustained and this shows that the position of the body was moved or was changed. If we look at the bleeding that is here, from there you see that it moved to that side, if we look at the saturation of the bleeding on the T-shirt of the
10 deceased along the left shoulder. So basically this part was most likely here. And when they moved the body to that side, it only created this trail and then the position is changed.

ADV NGCUKAITOBI SC: Yes, thank you. And then in photo 4, now in photo 4, what I want to draw your attention to are those green cones. What do they show?

LT-COL MANGENA: The green cones could show that it is either the bullet or the cartridge cases or both bullets and the cartridge cases from the crime scene.

ADV NGCUKAITOBI SC: Yes. So that means that there
20 were seven cartridges or bullets that were recovered from the crime scene.

LT-COL MANGENA: It would be bullets and cartridge cases, seven bullets and cartridge cases.

ADV NGCUKAITOBI SC: Discovered from ...[intervenes].

LT-COL MANGENA: Recovered from the crime scene, yes.

ADV NGCUKAITOBI SC: From the crime scene, yes. All right, because they claim that he also discharged his own firearm.

LT-COL MANGENA: That is what they are alleging, Chair.

ADV NGCUKAITOBI SC: Yes. Now, then where you were looking ...[intervenes].

ADV BALOYI-MERE SC: Sorry, Advocate, before you proceed.

ADV NGCUKAITOBI SC: Yes.

10 **ADV BALOYI-MERE SC:** What could have been the reason to move the body from its original position? Would it have been to take pictures or what other reason could it have been?

LT-COL MANGENA: Chair, sometimes it would depend. It would be when they are taking pictures of the body or it would be when the paramedics are there to certify him dead. In some instances, they will turn the body so that they can check.

ADV NGCUKAITOBI SC: Ja.

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

ADV NGCUKAITOBI SC: Thank you, madam. And then I want to go to photo 5 and 6, which is at 2A-282.

LT-COL MANGENA: On photo 5 and photo 6 would be, it shows the position of the cartridge case, which is J. And here you will see the bullet marks or the bullet defects on the wall

and on this room divider.

ADV NGCUKAITOBI SC: And when you look at them, at photo 6, what are they consistent with, with what type of a firearm?

LT-COL MANGENA: It is most likely a handgun, a pistol.

ADV NGCUKAITOBI SC: A pistol. And that is the handgun that Mr Mostert used.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, just on that point, I
10 mean, I never see in these pictures and cases and dockets Mr Mostert using a machine gun. He is always carrying a 9mm.

LT-COL MANGENA: Chair, in most cases where Warrant Officer Mostert is involved, he is using a pistol, not a rifle.

ADV NGCUKAITOBI SC: Yes. But in terms of the deadly impact, which one is deadlier between a pistol and a rifle?

LT-COL MANGENA: Chair, I would say both of them are deadly, but the rifle is more because it has a lot of pressure. It has a lot of energy that it is transferring to your body. So
20 the rifle would be more effective than a pistol if you compare it when shooting at a person directly.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: But in shooting at a person, maybe inside the vehicle or behind any other object, I would say a pistol would be, in most cases, compared to a 5.56, your

pistol would be more effective than the rifle.

ADV NGCUKAITOBI SC: A pistol is effective?

LT-COL MANGENA: When shooting behind an object.

ADV NGCUKAITOBI SC: Oh, I see.

LT-COL MANGENA: Like, say a person, you are shooting at a person who is inside the vehicle, as I said, with the 5.56, when it hits the door panel or the panels of the vehicle, those bullets, the 5.56, fragment easier. But with a 9mm, it will not fragment, it will just go through.

10 **ADV NGCUKAITOBI SC:** Yes. All right, so when you look at the position holes in LK, photo 6, those will be consistent with a 9mm?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, and we know here that Mr Mostert actually used a 9mm.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. And then photo 7 and photo 8, they are the same holes but in closer proximity.

LT-COL MANGENA: That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** Yes. Photo 7 and 8?

LT-COL MANGENA: Photo ...[incomplete].

ADV NGCUKAITOBI SC: Yes, 7 and 8, you agree those would be consistent with a 9mm?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. And then there are further

holes again at photo 9 and 10 on the wall.

LT-COL MANGENA: Yes, that is correct. The bullet hole was marked B on the wall.

ADV NGCUKAITOBI SC: Yes, is that also consistent with the 9mm?

LT-COL MANGENA: That is also consistent with the 9mm.

ADV NGCUKAITOBI SC: Yes. and then there is photo 11 and photo 12.

LT-COL MANGENA: Photo 11, photo 12, it is two different
10 holes. The one at photo 11 is marked B. It is the same one that we see on photo 10, photo 9, 10. And then there is photo, bullet hole marked A which is in the sofa and in the wall.

ADV NGCUKAITOBI SC: Yes. Yes, now, then I want to take you to 13 and 14, because that is where you were giving the explanation of the, at paragraph 254 and 255 of your statement, so starting with 13.

LT-COL MANGENA: Starting with photo 13, it is showing the position of the deceased, and as I have explained where the body was turned over. Originally it was lying on the
20 stomach or on the front part, and then here on photo, it is moved. It is lying on its back now.

ADV NGCUKAITOBI SC: Yes. Now when you look at photo 14, which is a wound next to the right eye.

LT-COL MANGENA: That is correct, Chair. When you look at that wound, it is on the right temple, and that is the

entrance wound.

ADV NGCUKAITOBI SC: And when it says only one wound ...[indistinct].

LT-COL MANGENA: Chair, what is important in this instance is, if we look at the wounds, let us go back to paragraph 254.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: The deceased sustained multiple gunshot wounds on the optical region, which is wound one. That is the wound that you are looking at now. That is the
10 head wound. And then the wound two would be on the neck. And then wound three would be on the shoulder. And wound four would be on the bicep and backward. Now if you look at these wounds that I have just mentioned, it gives the impression that these wounds were from the same bullet, so it is only one shot fired.

So what I am looking at now, and I want to explain from this photo, if we look at this photo, if we look at this wound, we have a line here. The wound is here, and then we have a line around here. That is what we call the muzzle
20 imprint. With the muzzle imprint, it shows that when the shot was fired, the firearm was pressed against the head.

ADV NGCUKAITOBI SC: I see.

LT-COL MANGENA: So this is a contact shot where the firearm is pressed against the head. So when the gas that comes from the muzzle of the firearm penetrates the wound,

the skin would expand a little bit, and the contact would go back to its original position. When it expands, it picks up the muzzle of the firearm. This is the muzzle of the firearm. So when you look at this wound, how he was shot, the head of the deceased slanted to the left. The firearm is pressed here. A shot is fired. It enters here. It exits on the neck. It enters on the shoulder. It exits on the bicep.

ADV NGCUKAITOBI SC: And ...[intervenes].

MS RAMAGAGA: No, just a minute. Are you saying it must
10 have been against the skull?

LT-COL MANGENA: It is pressed against the head. It is pressed against the - so the firearm basically was pressed against the head of the deceased.

ADV NGCUKAITOBI SC: Yes, and you deal with that at paragraph 257. Can you just deal with that paragraph, just read it out.

LT-COL MANGENA: -:

20 “The most probable position was that the deceased was in a kneeling position in front of a standing shooter. The skull fracture adjacent to wound two could have resulted in an impact on the floor upon collapsing.”

ADV NGCUKAITOBI SC: So as I understand then, you are saying two things. The one is that the firearm was pressed

against his head, but also he must have been in a kneeling position.

LT-COL MANGENA: He must have been in a lower position, most likely in a kneeling position. It could have been a sitting position where the shooter, the shooter did not shoot at him while he was in a standing position, because if he had been in this position, it will be in and out. But if he is kneeling down and shot in this direction, your bullet enters here, it exit where he is in this position, because if he is in a standing
10 position, in this position, the neck is slanted to the left, it would be very difficult for him to shoot in this position. But if he is either in a kneeling position, he will be shot in this position where the head will be slanted to the left, it enters here, it exit on the neck, it enters on the shoulder, and exit on the bicep.

ADV NGCUKAITOBI SC: And then paragraph 258.

LT-COL MANGENA: On paragraph 258:

“The blood saturation pattern indicated
that the deceased initially was lying
20 down and was subsequently moved.”

So that is what I was explaining, that he was initially lying on his stomach and then he was changed, the position was changed to be on his back.

ADV NGCUKAITOBI SC: You have dealt with 259, which is what you call the muzzle imprint.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Can you just give us your expert opinion on this version that has been given by Inspector Mostert that basically this was an exchange of fire because the deceased shot at him, he shot back.

LT-COL MANGENA: Chair, I ...[intervenes].

ADV NGCUKAITOBI SC: And he claims, according to his statement, that it is actually a number of shots that he shot, but the fatal one is one.

10 **LT-COL MANGENA:** Chair, I would say the shot that was inflicted is this one, where he was shot, but I do not see any other shots fired towards him where he was away from him, because in this one, it is at close range and the firearm is in contact, so meaning the deceased was very close to Mostert, but the firearm was in contact with the head of the deceased when the wound was inflicted. It is not that he was there and then he was shooting at Mostert, Mostert was shooting back at him. It is not possible. I do not agree with that version.

ADV NGCUKAITOBI SC: But you also say it is just
20 impossible.

LT-COL MANGENA: It is impossible for that.

ADV NGCUKAITOBI SC: And if your opinion is that it is impossible, then I will be arguing to the panel that he is lying.

LT-COL MANGENA: I would say so, Chair.

ADV NGCUKAITOBI SC: Yes, thank you. Your conclusions

are at 261 to 265, if there is anything there that you wish to add that you have not said so far. Sorry, I misled you. At paragraph 259, the photographs 15 and 16, you had not actually dealt with them. They are at 21-288. I need to give you a chance to comment on them.

LT-COL MANGENA: 2?

ADV NGCUKAITOBI SC: 2A-288.

CHAIRPERSON: The photograph at photo 15 looks similar to photograph 14, which you described earlier. Am I right?

10 **LT-COL MANGENA:** That is correct, Chair, that is the one that I have explained, because I said this is the position of the wound. And if you go to the next photo, photo 16, that is where the muzzle imprint is clear.

ADV NGCUKAITOBI SC: Oh, I see.

LT-COL MANGENA: It is a close-up photo of the muzzle imprint of the firearm.

ADV NGCUKAITOBI SC: And then you also dealt with what you call the saturation of the blood, which is in photo 17.

20 **LT-COL MANGENA:** Yes. On photo 17, that is why I said, if you look at this part, the saturation of blood, it was originally here. So when they moved the bodies to the side, and then that side came to this side, you see this. Because if the original position would be this, bleeding would be downward, but would not go upwards. If he is bleeding on the shoulder and he is resting on the back, the bleeding from

this wound would not come to the direction, would go to the lower area because of gravity. If you look at this, your bleeding goes down there from the nose. It does not go to that direction. It will go down because of the gravity.

ADV NGCUKAITOBI SC: Yes, no, thank you. All right, so you have covered everything in your report. And did you say you wanted to comment on your conclusions, or are you satisfied that you have ...[intervenes].

LT-COL MANGENA: Chair, I am satisfied with it.

10 **ADV NGCUKAITOBI SC:** All right, thank you. Then ...[intervenes].

ADV BALOYI-MERE SC: Can I ask a question.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: According to the witness explanation, it seems that it was just one bullet, and correct me if I am wrong, one bullet that went through the head, out and into the shoulder, out through the bicep.

LT-COL MANGENA: That is correct, Chair.

20 **ADV BALOYI-MERE SC:** And then, but not unless you are referring to only those that you could see from the photos, but at 260, at paragraph 260, you refer to the shots to chest were most likely subsequent shots to the head wound one and two. Does it mean that there were further shots?

LT-COL MANGENA: There were further shots fired, but the wounds are not visible on the photos, that is why I could not

elaborate more on them, because I do not have any photos of those wounds.

ADV BALOYI-MERE SC: Thank you.

ADV NGCUKAITOBI SC: Yes, I mean, that one shot, I suppose we have used the word fatal.

LT-COL MANGENA: This will be the fatal shot that went through the head.

ADV NGCUKAITOBI SC: Yes. So is that the point you are making, that the single fatal shot was that one?

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

ADV NGCUKAITOBI SC: Yes. But I suppose if the point made is, you know, is to be considered, according to your explanation, he would have been shot first from the head and rendered incapacitated, and then shot again on the chest.

LT-COL MANGENA: Chair, that is why I said I cannot comment more on the chest wounds, because I have not seen them. I do not know how they appear. But it could be that he was shot maybe first on the head, or was shot first, that is why he was down, and then the head shot was just to finish

20 him. It is possible also in the scenario.

ADV NGCUKAITOBI SC: Yes, because you say the head was definitely either him sitting down or kneeling.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. But I suppose ...[intervenes].

LT-COL MANGENA: But I will think it will be in a, most likely

in a kneeling position, because if in a seated position he would fall easier, but if in a kneeling position, because the skull has cracked, so it would be the impact when they hit the floor, creating the cracking, because the bullet has already caused damage to the skull. On impact, it will cause more damages to crack the skull.

ADV NGCUKAITOBI SC: Yes. Yes, I mean, yes, it would also be difficult for the actual gun to touch the skin, which is what you found.

10 **LT-COL MANGENA:** On?

ADV NGCUKAITOBI SC: Yes, I am saying that unless he is in a fixed position, it would be difficult for the gun to touch the skin.

LT-COL MANGENA: That is correct, yes.

ADV NGCUKAITOBI SC: Thank you. Can we go to Estcourt at 269.

CHAIRPERSON: Before you go to Estcourt, we will take a comfort break for 15 minutes. Before we do that, did I hear you correctly that Mr Mostert was using a 9mm?

20 **LT-COL MANGENA:** That is correct, Chair. He was using a pistol, 9mm pistol.

CHAIRPERSON: And all these wounds, the injuries, were sustained as a result of the use of the 9mm, all of them?

LT-COL MANGENA: That is correct. The wounds that I have just explained here were from a 9mm pistol.

CHAIRPERSON: But what do you make of the statement of Inspector Padayachee at RB0011, paragraph, at RB0012. Maybe you can read from the previous paragraph, but he says, he described where this suspect was sitting. He fired two shots, that is the suspects, at us with a handgun. I fired three shots at the suspect with my R5 rifle, serial number 324847. Is that consistent with the injuries sustained?

LT-COL MANGENA: Chair, the injuries sustained by the deceased, the wounds that I have just mentioned here, were
10 not inflicted by a rifle. It is a pistol. So if he said he fired, maybe it could be the wounds sustained in the body that we do not know of. According to the post-mortem, there were some wounds on the body, but I do not know those wounds, I could not see. There is no pictures of the wounds that were provided. So I would say the wounds sustained here, it is from a contact shot with a pistol, but not a rifle, and that would be the fatal shot.

CHAIRPERSON: Supposing Mr Padayachee is correct, he
20 shots at deceased three times with a R5, what would have then happened to this body?

LT-COL MANGENA: Chair, the wounds would be, I think they would be visible. Even the clothing, we would be able to see the bleeding from the clothing from those wounds. That is why I am saying if, the only wounds that I could see was those ones. But the others, I do not see. If we look at

photo number 17, right, on photo number 17, if you look at the whole body here, there is no other wounds. The only wounds are this one and the ones that come from, that exited here. So these are the only wounds that are visible on the photos. So if he shot with an R5, then there is no wound that would be from an R5 that is visible on the body here.

CHAIRPERSON: But if that were so, having explained to us the effect of using a rifle, an R5, what could have happened to this body?

10 **LT-COL MANGENA:** Chair, it would depend on where the bullets hit the body. If it would hit the body somewhere around the body, then the wounds would be huge, will not be the same size or the same diameter as the wounds from a pistol.

CHAIRPERSON: The likelihood is that Detective Padayachee is not telling the truth, because the pictures are not consistent with what he describes in his statement.

LT-COL MANGENA: Chair, the likelihood would be, I would say it would be that he missed and the bullet either hit the
20 floor, hit something, fragmented, created all the bullet holes that we see inside the house or inside that room.

CHAIRPERSON: And when a statement such as this is made, where an officer says, I used an R5, you know that R5's are not used by the police, am I correct?

LT-COL MANGENA: The R5 are used by the police.

CHAIRPERSON: Are used by the police.

LT-COL MANGENA: That is correct, Chair.

CHAIRPERSON: Should this firearm not have been taken for testing?

LT-COL MANGENA: It would have been taken for testing also.

LT-COL MANGENA: As well as the pistol that was used by Mr Mostert?

LT-COL MANGENA: Mostert, that is correct, Chair.

10 **CHAIRPERSON:** Were they?

LT-COL MANGENA: I am not sure. I am not sure.

CHAIRPERSON: You mean that ...[intervenes].

LT-COL MANGENA: Because, Chair, I went to the scene in 2012 and the incident occurred in 2008. So I would not know, in 2009, I would, I am not sure if it was taken to the lab.

CHAIRPERSON: In most of these cases, including this very one, IPID was involved.

LT-COL MANGENA: That is correct, Chair, it was investigated by IPID.

20 **CHAIRPERSON:** Mr Mosiapo.

LT-COL MANGENA: Mosiapo. And Mosiapo in 2012 was part of the IPID team that was investigating Cato Manor in KZN.

CHAIRPERSON: Yes. And he was also involved in the Rustenburg case.

LT-COL MANGENA: Yes, Chair.

CHAIRPERSON: Would he have been obliged, as an investigator, to take these firearms for testing?

LT-COL MANGENA: Chair, it depends on the investigating officers. In some instances, they will take the firearms there and test them, and send them for testing. But in some instances, the investigating officer would make arrangements that the firearms must be brought for ballistic testing.

CHAIRPERSON: Yes, I am saying these are matters
10 involving police. That is why IPID is involved.

LT-COL MANGENA: That is correct, Chair.

CHAIRPERSON: And Mr Musiapo, who then referred these matters to you, should have been in a position to cause these firearms to be taken for testing for the completeness of the investigation.

LT-COL MANGENA: That is correct, Chair. I think if we can go back, maybe, because I do not have all the documents, it probably was taken in 2009 to the lab for examination. I cannot recall if it was taken or not, but it might be that it was
20 taken in 2009. And when we were doing the cases in 2012, the firearms were already there. It is possible.

CHAIRPERSON: But if that were so still, the testing may have been done in 2009, you would expect their results to be included in the docket?

LT-COL MANGENA: That is correct, Chair, I would expect

the results to be in the docket.

CHAIRPERSON: But there are no such results in the dockets before us?

LT-COL MANGENA: I am not sure if they were in the dockets, but here I do not have those results.

CHAIRPERSON: Thank you, Counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

ADV BALOYI-MERE SC: Chair, I have a question, but I can reserve it for after the short break.

10 **CHAIRPERSON:** May my sister just park the question, and we will continue after a tea break, after 15 minutes. That will take us to 20 to 5, and we will adjourn at quarter past 5. Thank you.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon everyone. Good afternoon Colonel Mangena.

LT-COL MANGENA: Afternoon, Chair.

20 **CHAIRPERSON:** Ntate Chauke, good afternoon. You are still under oath, sir.

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

CHRIS MANGENA (still under oath)

CHAIRPERSON: You may proceed, Counsel.

ADV NGCUKAITOBI SC: I thought there was a question from the panel.

ADV BALOYI-MERE SC: Yes, I have a question.

CHAIRPERSON: Oh, by the way.

ADV BALOYI-MERE SC: Lieutenant Colonel Mangena, the, I assume, and correct me if I am wrong, that the person or official that is more qualified to tell us about the wounds on a deceased body is the doctor who, the pathologist. Am I correct?

LT-COL MANGENA: Chair, you are correct.

ADV BALOYI-MERE SC: Okay. I would like to refer you to
10 RB0059. Are you there? Okay, yes. If you can assist us to reconcile, and this comes as a follow-up to the question that was asked by my sister about the rifle allegation, so, if you can assist us, because the pathologist obviously handled the body and checked and recorded all wounds.

Can you go through that C, external appearances of body and conditions of limbs, and assist us whether there is any indication of a wound that was inflicted by a rifle or whether this summation accords with the conclusion that you came to in your own report.

20 Advocate Ngcukaitobi, I am not sure, maybe this, maybe this should be read into the record because it might be that I am asking a question in a vacuum.

ADV NGCUKAITOBI SC: Yes, that is correct. Thank you. Yes, in your report, Lieutenant Colonel, at 279, you, well, I am not sure whether you just replicated it or summarized the

post-mortem report at paragraph 7.

LT-COL MANGENA: A279?

ADV NGCUKAITOBI SC: 2A-279.

LT-COL MANGENA: 279?

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Chair, there on paragraph 7 on 2A-279, it is where I replicated the post-mortem report as it appears on the screen, how the doctor mentioned or described the wounds.

10 **ADV NGCUKAITOBI SC:** Yes, could you read out then the contents of paragraph 7 into the record?

LT-COL MANGENA: -:

“According to the doctor, the wound 1 on the right orbital region, lateral entrance wound with abrasion ring bevelled into the inside and it is 1x1cm in size.

20 Wound 2, the right frontal region entrance wound and 1x1 in size. Wound 3, the left neck region just posterior to the left ear, exit wound of wound 2. So wound 3 communicate with wound 2. Wound 4, the left shoulder region on the upper tip of the shoulder as entrance wound with abrasion ring bevelling to the inside and abrasion ring. This is

1.5x1.5cm with the wound itself 1x1cm in size. Wound 5, left bicep region, anteromedial as exit wound of wound 4. Wound 5 communicate with wound 4.”

So these are the wounds that I have mentioned on the left-hand side from this side. And then ...[intervenes].

ADV NGCUKAITOBI SC: Okay, so just stop there. The question was whether that report is consistent with your findings. So you say wound 1 up to wound 5 is consistent?

10 **LT-COL MANGENA:** It is consistent, Chair.

ADV NGCUKAITOBI SC: Thank you.

ADV BALOYI-MERE SC: So, and can we say wound 6 and 7 are from a rifle?

LT-COL MANGENA: Chair, I would say from the rifle because I, on 7.6 he said wound 7 is a grazing wound with bullet coming from the left side of the patient and the wound is 2cm to the left of the spine and just grazed the epidermis, so meaning it did not penetrate.

This one did not penetrate. It only grazed the side, back side of, on the left-hand side. And then wound 7 on the right spinal region caused by the same bullet. As for wound 6, bullet penetrated beneath the skin then moved through the skin to exit 7cm from wound 7 and wound 8. All three wounds, that is wound 6, 7, and 8 are 8cm above the chondral region.

ADV BALOYI-MERE SC: From what you have testified on,

you indicated that the rifle bullet, when it comes into contact with an object, it fragments. So what is being described at wound 6 and wound 7 would not be a rifle bullet.

LT-COL MANGENA: Chair, it might not be a rifle bullet because it did not penetrate. It only grazed the skin, creating a graze and then along the back of the wound. But it is not, it would not be, if it was a rifle, I would expect a bigger wound than what the doctor is explaining here.

ADV BALOYI-MERE SC: So this then confirms your
10 conclusion that, I do not want to, well, I do not know, Padayachee ...[intervenes].

ADV NGCUKAITOBI SC: I think he is a Warrant Officer.

ADV BALOYI-MERE SC: Sorry?

ADV NGCUKAITOBI SC: I think he is a Warrant Officer.

ADV BALOYI-MERE SC: Warrant Officer Padayachee misrepresented the facts when he said he fired a rifle, he used his rifle to fire.

LT-COL MANGENA: Chair, I would not say or I would not confirm that he misrepresented. It might be that he has fired
20 but he has missed the target, he has missed the deceased. It is also possible.

ADV BALOYI-MERE SC: But we can accept that from both your report and the pathologist report, there were no wounds on the deceased created by a rifle.

LT-COL MANGENA: That is correct, Chair, there are no

wounds described by the doctor that the, that would fit the wounds sustained from a rifle.

ADV BALOYI-MERE SC: Thank you.

ADV NGCUKAITOBI SC: Thank you. In fact, on that, back to that report of the pathologist, of Dr Makate, there is just something there to be completed, which is at page RB0059.

CHAIRPERSON: Yes, Counsel?

ADV NGCUKAITOBI SC: I just want the witness to have it in front of him. It does not look like he does have it right now. Yes, now, under E, under E is a cause of death. What is the cause of death?

LT-COL MANGENA: The cause of death is gunshot wound to the head.

ADV NGCUKAITOBI SC: Yes, and is that consistent with your report?

LT-COL MANGENA: That is consistent with my findings, Chair.

ADV NGCUKAITOBI SC: Yes, thank you. Can we please move on to Estcourt, which is at page 269 of your report and 2A-92 of the bundle. So, look at page 92. No, sorry, 2A91. Do you have it?

LT-COL MANGENA: I have it, Chair.

ADV NGCUKAITOBI SC: You confirm that that is your report that goes from 91 to 100?

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Thank you. So, this is the case of Estcourt. I think it is Mr Gladwell Thokozani Njapa.

ADV BALOYI-MERE SC: Sorry ...[indistinct] [microphone off] Estcourt.

ADV NGCUKAITOBI SC: Yes, Estcourt CAS 34/08/2008.

ADV BALOYI-MERE SC: Page 69?

ADV NGCUKAITOBI SC: No, Madam Chair.

ADV BALOYI-MERE SC: Yes, 2-69.

ADV NGCUKAITOBI SC: Oh, yes, yes, yes, 2-69. I thought
10 you were talking about the case reference.

ADV BALOYI-MERE SC: No.

ADV NGCUKAITOBI SC: Sorry, I apologize. The name of the deceased is Musi Sanele Majola. Do you have it?

LT-COL MANGENA: I have the report with me.

ADV NGCUKAITOBI SC: Yes. Could you give us a summation of what happened here?

LT-COL MANGENA: Chair, in this case, the deceased was arrested by Cato Manor members, and they were traveling with him towards KZN. And when they got to Estcourt at the
20 Ultra City Garage, they alleged that he requested to go to the bathroom. They stopped there. They took him to the bathroom.

After taking him to the bathroom, they released the handcuffs. In the process of releasing the handcuffs, he attacked Naidoo, I think Sergeant Naidoo. And in the

process, I think it is Eric Nel, he attacked Naidoo and then start to disarm Naidoo, and then Eric Nel shot him.

ADV NGCUKAITOBI SC: Yes. The participants here were the usual crowd. Nel, Mostert, Naidoo, Panday. Are those familiar names?

LT-COL MANGENA: That is correct, Chair, those are Cato Manor members.

ADV NGCUKAITOBI SC: Thank you. Can you, so you examined the docket at paragraph 267, and what are its
10 contents.

LT-COL MANGENA: 267?

ADV NGCUKAITOBI SC: Paragraph 267 of your statement.

LT-COL MANGENA: In paragraph 267:

“In the docket contained, among other documents, the post-mortem report with Pietermaritzburg PM 183/822/2008 compiled by Dr Gastev.”

I do not know how to pronounce that.

20 “And was signed on the 13th of August, 2008. And the following statements by Detective Inspector Eric Nel, by Detective Inspector Mukesh Panday, Detective Inspector Paul Mostert, and Constable Ruben Naidoo.”

ADV NGCUKAITOBI SC: Yes. Now, I mean, we can go

through the statements, but your recollection is accurate about what they say happened. But you can give it now, or we can go through the statements.

LT-COL MANGENA: Okay, I can go to my statement.

ADV NGCUKAITOBI SC: I am saying the statements of the police officers about what they say happened that resulted in them shooting the deceased.

LT-COL MANGENA: I do not have their statement.

ADV NGCUKAITOBI SC: I know we have it, but you recalled
10 it earlier, and it was pretty accurate.

LT-COL MANGENA: Okay.

ADV NGCUKAITOBI SC: But I am saying, if you want to go through the statement to confirm it, we can do that, or if you can tell me, I am confident with my recollection.

LT-COL MANGENA: Chair, I will go through my statement, but what is important is the post-mortem report. If you can have the post-mortem.

ADV NGCUKAITOBI SC: Yes, all right. That is fine.

CHAIRPERSON: The summary you gave earlier accords with
20 what you have stated at 268.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. You want, before you do the medical analysis, you want to do the post-mortem report.

LT-COL MANGENA: Yes, let me look at the post-mortem report.

ADV NGCUKAITOBI SC: Okay, it is at ES0038 – 0032, yes. So that is the document on the screen behind you. Is this what you are looking for, the document by Dr Gansho ...[indistinct].

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Okay, what do you want to see here?

LT-COL MANGENA: Right, if you look at the description of the wounds by Dr, he said, let us start it there.

10 “The chief post-mortem findings made
by me on the body.”

He said:

“Multiple gunshot wounds to the body, as the fatal ones are the wounds on the right face and left posterior armpit. The wound to the left anterior chest perforating left upper lobe of the lung end was produced while the body was lying down on its back.”

20 **ADV NGCUKAITOBI SC:** I think it continues, two additional paragraphs.

LT-COL MANGENA: -:

“The wound on the right anterior face appears to be a close range gunshot wound and was linked to left lumbar

back exit according to the bullet canal. Appears to have been produced while the victim was lying down on his back. The wound on the posterior armpit was linked to the bullet on the right side of the neck according to the bullet canal. This is the gunshot wound which fractured sixth and fifth spine bones and causing the body to fall immediately due to the bullet effect on the spinal cord.”

10

Right Chair, the reason why I wanted to start with the post-mortem, we do not have enough pictures of the body from the crime scene. We only have the position of the body as shown on the photos.

ADV NGCUKAITOBI SC: We have how many? We have got ten from your report starting at page 2A-94, photo 1.

LT-COL MANGENA: Yes, on photo 1 it shows the position of the body at the crime scene, how it is lying. And position 1 and 2 is showing the position. Photo 3 and photo 4 showing the position of the body after it was moved or it was turned. And photo 5 and photo 6 showing the position of the wound on the chest and on the right side of the face. And photo 7 and photo 8 showing the exit wounds at the back.

20

Right Chair, if we look at the wound sustained as described by the doctor, the wound on the right face, he

mentioned that it has the blackening and tattooing.

ADV NGCUKAITOBI SC: Sorry, just take us to the, so the wounds on the face we see at photo 5 and photo 6.

LT-COL MANGENA: So according to the post-mortem, the doctor said it is surrounded by blackening and multiple tattooing measuring 70 by 60 millimetres, commencing at 15,1555mm up the heel, meaning from the heel measuring upwards on the face of the deceased. It would be 1.55m or, if we make, because he measured it in millimetres. Normally
10 we measure it in metres or centimetres. So in this, it will be 1.555mm up the heel and 70 metres from the midline. This is consistent with the close range ...[intervenes].

ADV NGCUKAITOBI SC: Why is this important for your analysis? Why is that significant for your analysis?

LT-COL MANGENA: Chair, there are other doctors when they examine the body, when they conduct the post-mortem, they will measure the position of the wound from the heel to where the wound is and that is so that they can show if the, you say entrance wound is a bit lower than the exit wound or
20 the exit wound is a bit lower. So they will give you the measurements from the heel to that wound, then you can be able to tell whether the entrance is above the exit or the exit is below the entrance.

ADV NGCUKAITOBI SC: All right, no, that is fine. I was asking you a slightly different question. I mean if you look at

photo 5 and photo 6 and you were saying that the wounds are surrounded by tattooing, I am asking why is that important?

LT-COL MANGENA: That is important because if the wound is surrounded by tattooing, it shows how close the firearm was to the target or to the face of the deceased when the shot was fired.

ADV NGCUKAITOBI SC: Ja, in this case, what can you see?

LT-COL MANGENA: In this case, it is mentioned that the wound was surrounded by blackening and multiple tattooing
10 measuring 70x60mm. So I would say the firearm was, I would say less than 30cm from the face ...[intervenes].

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

LT-COL MANGENA: Less than 30cm from the face of the deceased.

ADV NGCUKAITOBI SC: 30cm is the size of a ruler.

LT-COL MANGENA: The size of a ruler.

ADV NGCUKAITOBI SC: Yes. Now you remember the version given by the killers is that firstly this man was in handcuffs. Then for reasons that they cannot, they say well,
20 he requested to be, for the handcuffs to be removed. They go with him into the toilet. It is when they claim then that he tried to attack them.

LT-COL MANGENA: He tried to attack Naidoo ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: And then Eric Nel shot him.

ADV NGCUKAITOBI SC: Yes. But he was actually 30cm closer to him.

LT-COL MANGENA: He was centimetres from, and if we go through the post-mortem where the doctor mentioned that some of the wounds were inflicted while he was already down, the wound that he is talking about that fractured the spine, the fifth and the sixth spine, that will immediately make him collapse, because once the spine is affected, it is damaged, 10 it immediately incapacitates him also. So with that wound, I think he would immediately fall down. And then the other wounds when you read the post-mortem, is that they were inflicted while he was already down, while he was lying down, the part that we read on the post-mortem.

ADV NGCUKAITOBI SC: Well, yes, look at photo 7 and photo 8 and comment on those.

LT-COL MANGENA: On photo 7 and photo 8, he is already down. He is lying on his stomach. And on my findings, I said:

20 “After my observation of the post-mortem report and the crime scene photos, I could not determine the possible position of the deceased nor the shooter. There was no photos of possible bullet holes anywhere in the room that could have perforated the

deceased body and assist in determining the possible position of the deceased nor the shooter. The doctor mentioned the presence of blackening and multiple tattooing around the wound on the right face as wound one. These are the characteristics of a very close range to the face of the deceased. The bloodstain pattern on the floor identified as a drip trail. This pattern is determined as splatter resulting from the bleeding or blood dripping from the individual or otherwise a blooded object. The deceased could possibly have been moving while bleeding, hence the drip. Due to the lack of sufficient information, I could not determine or give an opinion on how the incident occurred or reconstruct the incident.”

20 **ADV NGCUKAITOBI SC:** Yes. I was asking you about photo 7 and 8 because you say the medical report shows that he was shot while lying down. I am asking whether or not these photographs help us on that or not.

LT-COL MANGENA: Chair, I think this is the position that he was. I cannot say whether he was in this position, but

according to the doctor's report, the post-mortem report, he said the wounds were inflicted while he was lying. It is most likely that he was in this position when the wounds were inflicted, because the doctor is talking about the entrance wound where he mentioned that it appears that it was inflicted while he was lying.

ADV NGCUKAITOBI SC: Yes. And the wounds in photo 8, are those exit wounds or entry wounds?

LT-COL MANGENA: Chair ...[intervenes].

10 **ADV NGCUKAITOBI SC:** Photo, I mean wound 4 and 5.

LT-COL MANGENA: I will have to check on the ...[incomplete].

CHAIRPERSON: Perhaps you can look at paragraph 273 of your statement.

LT-COL MANGENA: Right, on wound number, on photograph 8 ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Wound five, is on the left shoulder region and is consistent with the exit wound.

20 **CHAIRPERSON:** In that the entry wound would have been somewhere in the front.

LT-COL MANGENA: The entrance wound would be in the front. The entrance wound would be mostly likely wound two and in the post-mortem report that we read, the doctor spoke about the blackening and tattooing around this wound

also. So this wound could have been inflicted while he was down. So if you look at the two positions, the position on photo 5 ...[incomplete].

ADV NGCUKAITOBI SC: Photo 5.

LT-COL MANGENA: Photo 5, yes. Photo 5 and photo 6.

CHAIRPERSON: I think wound two is clear on photo 6.

LT-COL MANGENA: Yes, wound two is clear on photo 6.

ADV NGCUKAITOBI SC: So I am trying to reconcile 6 and 8. So 4 and 5 according to paragraph 272 and 273 of your
10 statement, are exit wounds, correct?

LT-COL MANGENA: 4 and 5, yes, at the back.

ADV NGCUKAITOBI SC: Yes. Now I am trying to reconcile their entrance wounds, so we know one of them is wound number two.

LT-COL MANGENA: That is correct, yes.

ADV NGCUKAITOBI SC: Because we know wound number one is in the head.

LT-COL MANGENA: It is the one on the right side of the face.

20 **ADV NGCUKAITOBI SC:** Yes. So if there are two exit wounds, I suppose it does not follow that just because it entered the face it will exit in the face from what you have said. I have also learned now it can enter the face and exit somewhere else.

LT-COL MANGENA: Right, if you look at the wounds

sustained, this wound, according to the doctor, these two wounds, wound number one and two, were inflicted while he was already down.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: And the other wound that the doctor is talking about it is the one that penetrate and hit the spine.

ADV NGCUKAITOBI SC: I see.

LT-COL MANGENA: So it could be that it is the one that has hit the spine to immobilize him so that he can fall down.

10 **ADV NGCUKAITOBI SC:** Or it could be that it is four.

LT-COL MANGENA: It could be that. It could four.

ADV NGCUKAITOBI SC: Or five. All right, I see. Okay, and where would that have entered, in the back of the neck?

LT-COL MANGENA: It would be the one in the back of the neck because it is going down. It is in the back of the neck and it is going downwards. So it hit the spine at the back and then it could have exited somewhere.

ADV NGCUKAITOBI SC: I see, okay. Now, after paragraph 273, you deal with close range indicators in your statement.

20 Just deal with that.

LT-COL MANGENA: On 274?

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: -:

“The post-mortem report records that the presence of blackening and multiple

tattooing around the wound on the right side of the face, that is wound one. Tattooing and blackening occurs when the firearm is discharged at a close range. In such instances, unburned and partially burned propellant particles and gases expelled from the muzzle strikes the skin and create a dark, stippled mark. The closer the muzzle of the firearm to the target, the more concentrated and defined this pattern becomes.”

ADV NGCUKAITOBI SC: Yes, and then 276.

LT-COL MANGENA: On 276:

“I am of the opinion that the size and the density of the tattoo described by the doctor are consistent with a very close discharge to the face of the deceased.”

ADV NGCUKAITOBI SC: I mean, just on that point, this is puzzling to me. You have got four policemen on their own description. They have surrounded this accused. But they shoot him within a range, according to you, of 30cm, but he is attacking them at the same time. Is this reconcilable?

LT-COL MANGENA: Chair, it is not and what we are looking at now is they shot him and then he fell down. These two

other wounds were inflicted while he was already down and at a close range.

ADV NGCUKAITOBI SC: Thank you. And then you have ...[intervenes].

ADV BALOYI-MERE SC: Sorry, would it be correct to say this is an execution?

ADV NGCUKAITOBI SC: Yes, thank you, Madam Baloyi-Mere.

LT-COL MANGENA: Chair, I would say it is possible that
10 could have been an execution because he is down and then the firearm is close to him and the shot is fired.

ADV NGCUKAITOBI SC: Yes, I mean, there are other external facts. The man was handcuffed. Then they took him to a toilet. They removed the handcuff and then they shoot him. I mean, is that not a typical execution?

LT-COL MANGENA: Chair, I would say it possibly could be an execution. As I said, the way he was shot at, he was already down. He was lying down on the floor.

ADV NGCUKAITOBI SC: In fact, as my learned friend points
20 out to me, if you look at photo 4, yes and photo 3, actually that is clearer in both 3 and 4, if you look at his left hand on both of those photos, he still has the handcuffs on the one hand.

LT-COL MANGENA: That is correct, the handcuff was still on the left hand.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: So it is again visible on photo 2 where you can see it right in front of the face.

ADV NGCUKAITOBI SC: And photo 2?

LT-COL MANGENA: On photo 2.

ADV NGCUKAITOBI SC: Yes. Of course, yes, there it is yes. Well, this is one of the things that are unclear here because if you look at photo 2, just the position of the firearm in relation to the body of the deceased and you look at photo
10 3 and the position of the firearm in relation to the position of the deceased, it is really unclear what they were trying to achieve here because plainly they have moved the body around.

LT-COL MANGENA: That is correct, Chair. That is why I am saying the body, the two different, in two photos. Photo 1 and 2 and photo 3 and 4 are in two different positions. On the first photo, it is facing down, he is lying on his stomach. And on the other two, it is now lying on his back.

ADV NGCUKAITOBI SC: Yes. Because on photo 2, his
20 hand, and this is his right hand, is closer to the firearm. And then on photo 3, it is his left hand that is now positioned closer to the firearm.

LT-COL MANGENA: Chair, this could be, I think on photo, at some stage the body was turned, but I cannot explain when and how and why.

ADV NGCUKAITOBI SC: Yes, that is the point I am making is that there is just total inexplicables here, particularly the way it was turned in relation to the firearm. Yes, photo 4, if you look at the blood pattern on photo 4 next to the left hand, is there anything to be made of that?

LT-COL MANGENA: On photo 4?

ADV NGCUKAITOBI SC: Yes, photo 4.

LT-COL MANGENA: Yes, on photo four you can see that they have turned the body, moved it from where it was lying
10 on its front to where it is lying now on its back.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: But what is, one thing that I was looking at was that according to the doctor, the wounds in the front, the one that is here, it is an entrance and an exit at the back, at a close range where the doctor alleged that he was lying on his back when this wound was inflicted. But if you look at the first two photos, he is lying on his stomach.

ADV NGCUKAITOBI SC: Yes, photo 7 and 8.

LT-COL MANGENA: So when was the body position
20 changed.

ADV NGCUKAITOBI SC: Yes. Well, I mean, I can ask you this question. You have done all of this exercise. You know the way, you called it the *modus operandi*, but after a person has been killed, what usually happens with Cato Manor?

LT-COL MANGENA: I would say in most cases, they will

tamper with the scene.

ADV NGCUKAITOBI SC: Yes. Now what I also could not really wrap my head around it in this particular scene, this is a public toilet, it is a Shell Garage. I mean, the level of brazenness, do you have any comments on this? You have to be so brazen and so confident that you can put someone in a garage toilet and kill them.

LT-COL MANGENA: Chair, it is a difficult one to answer. I do not know what were these guys thinking. I do not know
10 their intention, why did they do it.

ADV NGCUKAITOBI SC: Yes. But it would be consistent with someone who is confident. This is the point about being organized, being armed, and knowing that you are protected by the law.

LT-COL MANGENA: That is correct, Chair, I would agree with that.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: I beg your pardon, being protected by the law or protected by Major General Booysen.

20 **ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. Being protected by individuals in control of the legal system in that particular area. Let me qualify my statement. Would you withdraw your agreement and confirm?

LT-COL MANGENA: I will not comment further, Chair.

ADV NGCUKAITOBI SC: All right, I withdraw my question

as well.

ADV BALOYI-MERE SC: Just for clarity, this deceased was arrested and he was being transported. Now, I know you specialize in ballistics and other things, but you have had police training.

LT-COL MANGENA: That is correct, Chair.

ADV BALOYI-MERE SC: I am curious to know whether, because I see here there is a gun somewhere. Someone who is under arrest, would they still have a gun on them if they
10 are under arrest, or how does it work?

LT-COL MANGENA: Chair, the gun that we see here, it belongs to Constable Naidoo. According to them, they released him when he was handcuffed and he attacked Constable Naidoo and grabbed Constable Naidoo's gun. Now, in the process, that is when Warrant Officer Nel shot him.

ADV BALOYI-MERE SC: So Constable Naidoo was overpowered by the deceased?

LT-COL MANGENA: That is the allegations, Chair.

20 **ADV NGCUKAITOBI SC:** Yes. But I suppose the question still remains, this person is under the full control of the state because he is handcuffed.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Why are they stopping at a garage? Do not you take a person to the police station when they have

been handcuffed?

LT-COL MANGENA: Chair, I would say, because they said he requested to go to the bathroom, that is when they stopped. But normally, what I have seen, if you are transporting a person who is under arrest, he requests the bathroom, not one person will take him to the bathroom, it is either two or three people will go with him to the bathroom.

ADV NGCUKAITOBI SC: Ja, but I mean, there is a bathroom at the police station. That is the point I am making. The
10 person is already in handcuffs. So if you send them to the police station, they will get a bathroom there.

LT-COL MANGENA: But, Chair, I think in transit, I think if they were on the highway, there is no police station. They will stop at the garage if the person wants the toilet.

ADV NGCUKAITOBI SC: Yes, it depends on where. We can, have you checked if this particular garage, there was no police station nearby?

LT-COL MANGENA: It was on the N3.

ADV NGCUKAITOBI SC: Yes. There are so many police
20 stations there.

LT-COL MANGENA: I cannot speak for them, Chair. I tried ...[intervenes].

ADV NGCUKAITOBI SC: Ja, because it is very puzzling what they did, because it is only consistent with people that had an intention to just execute him. Thank you. Is there

anything - your conclusions are at paragraph 282.

LT-COL MANGENA: Yes, Chair, as I said, I do not have enough pictures to can draw complete conclusions on this one.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: It is only the post-mortem report and those few photos of the wounds that I could see.

ADV NGCUKAITOBI SC: Yes. here are certain things you can discount that you have already alluded to.

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

ADV NGCUKAITOBI SC: That probably did not happen.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Thank you. Madam Chair, I am finished with this reconstruction. Perhaps we can commence tomorrow with Thokozani.

LT-COL MANGENA: The Thokozani case?

ADV NGCUKAITOBI SC: Yes, at 272.

20 **LT-COL MANGENA:** Yes, the Thokozani case, I can elaborate more on that one because I attended the crime scene. Immediately after it occurred, I was at the crime scene.

ADV NGCUKAITOBI SC: Well, let us wait for the direction by the Chair. I know you want to elaborate.

LT-COL MANGENA: No, no, I will read tomorrow.

CHAIRPERSON: Thank you, Lieutenant Colonel. You will

proceed tomorrow. We adjourn now until tomorrow morning at 9 o'clock. And remember, you are still under oath.

LT-COL MANGENA: Yes, Chair, I am still under oath.

CHAIRPERSON: Thank you, sir. Housekeeping matter again. Counsels, we are informed that someone from Harris Molebatsi Attorneys is attending tomorrow. I would assume, we assume actually, the three of us, that you will have an opportunity to have a discussion about the timeframes when they are here and hopefully reach an agreement.

10 Obviously, he will come with you to chambers, as you normally do. But we will appreciate if the attorneys can talk with each other and see if you can reach an agreement.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: I am indebted to my researcher. He reminds me that feedback need to be made regarding the decoupling application. Remember that Advocate Lekgetho had indicated that they will file tomorrow, and yourself, Advocate Chauke, tomorrow. And we will make a determination after you filed your heads of arguments, but we
20 are of the view that oral submissions, oral arguments should be made. We will afford you time once you have filed your written submissions.

Yes, thank you. We adjourn until tomorrow morning at 9 o'clock.

ENQUIRY ADJOURNS UNTIL 26 FEBRUARY 2026



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