

**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**

27 FEBRUARY 2026

DAY 34



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

PROCEEDINGS ON 27 FEBRUARY 2026

CHAIRPERSON: Good morning, everyone. A very good morning to you, Colonel.

LT-COL MANGENA: Good morning, Chair.

CHAIRPERSON: A very good morning to you, Advocate Chauke. We are proceeding, Colonel, and remember you are still under oath.

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

CHAIRPERSON: Yes, sir. Advocate Ngcukaitobi?

10 **CHRIS MANGENA:** (still under oath)

EXAMINATION BY ADV NGCUKAITOBI SC (CONTINUES):

Thank you, Madam Chair. Good morning, Lieutenant-Colonel Mangena.

LT-COL MANGENA: Good morning.

ADV NGCUKAITOBI SC: Madam Chair, last night we received what appears to be Part B and Part C of the docket from Umlazi case number 585/01/2011. We have not been able to go through it, but we do want to register a very strong concern that it is clear that Part C and Part B have always
20 been in the possession of the NPA.

CHAIRPERSON: Excuse me, Counsel.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Just bear with us, we are just getting our house in order.

ADV NGCUKAITOBI SC: Yes, thank you.

CHAIRPERSON: We can proceed so long while they are tracing my document. Yes, I am sorry.

ADV NGCUKAITOBI SC: No, that is fine. Thank you, Madam. So I was saying, Madam Chair, that yesterday or the day before yesterday, you had asked me whether we have evidence that the NPA had full access. We were talking specifically about this docket 585/01/2011, whether the NPA itself had a full docket, and I said we did not know. What they did yesterday, the researchers found the first section,
10 Section A of the docket, but Section B and Section C were still missing.

And I raised the concern here in this Commission about being drip-fed information by the NPA. In the middle of the night yesterday, we received Section B and Section C of the docket. Now, what that shows, Madam Chair, is that the NPA has always had Section B and Section C of that Umlazi docket, but they withheld it from this Panel until there was a public complaint yesterday. And then, inexplicably, it appeared at night yesterday.

20 Now, the problem with this is not that unique docket. Across all of these dockets, there are glaring omissions. So someone inside the NPA is removing material inside the dockets before they are sent to this Panel. Now, it is a matter of grave concern, especially when it is seen in the context of the Choncho docket that they once had and they have not

disclosed. And in the Umlazi docket, they have been disclosing it in drips by drips. And even when you read that docket, it is clear that there are missing pages from that docket.

Now, we wish to raise this now. If Mr Hulley has an explanation why his client is giving us pieces of the information on the docket and why his client should not be seen as misleading this Commission, then you should give that explanation. Other than raising that concern, we are
10 ready to proceed. We just have one more document from that docket that we wish to raise with the witness. But we thought before we start, we have to register our strong concern about the conduct of the NPA that verges on misleading the Commission.

CHAIRPERSON: This document that you referred to yesterday, Section B and C, continues not to be before us. We were only told yesterday that they were filed off record. I assume that all of you have those documents online?

ADV NGCUKAITOBI SC: They were sent to us on email,
20 Madam Chair.

CHAIRPERSON: On email?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Let me just check with my sisters whether they saw them. Save that, it was brought to our attention this morning by our researcher. We have not seen that. We have

not opened our emails, the enquiry emails, to check if there is any filing. But we accept that the document has now been brought to our attention online by email or whichever way of communication from the NPA. Let me just clarify with Mr Hulley if you can be of assistance. Would you please move the mic? Advocate Hulley, thank you. Have you seen these documents?

ADV HULLEY SC: Thank you, Madam Chair. I see that the document was sent to me during the course of this evening
10 past.

CHAIRPERSON: If you can speak up, I can hardly hear you.

ADV HULLEY SC: The document was sent to me this evening past, Madam Chair. It was first sent to my junior and my junior then transmitted it to me. There is no indication in the email exchange as to the circumstances in which the document has been located. I do not know what the basis of the assertion is that it is clear that the NPA has been withholding documents.

What needs to happen is if there is a request for a
20 particular document, the attorneys for Mr Chauke can actually send a letter. They can raise it, obviously, verbally with us and they can send a letter requesting an indication as to why or where a particular document is or why the document is not available.

The notion that there is clear evidence that certain

documents have been withheld, I am not sure what the basis of that contention is. Whether there is clarity or opaqueness about the assertion, I do not know, but there has to be a basis for saying that and I have not heard what that basis is. But certainly from my side and to answer your question directly, Madam Chair, I cannot answer the question as to the circumstances in which the document has only now become available.

CHAIRPERSON: Yes, thank you.

10 **ADV HULLEY SC:** Thank you, Madam Chair.

CHAIRPERSON: Yes, thank you. Before you hand it back, do you have the document?

ADV HULLEY SC: It has come through via the email. So I imagine that the email has been copied through to the Secretariat. So I imagine that the document that you have received is the same as the document that I have.

CHAIRPERSON: Yes, we have not seen the document because it was only received apparently very late at night. And one of our researchers, as you can see, there is now one
20 researcher here. The other researcher is withheld, is engaged elsewhere and she is running around to get those documents prepared for us. At an appropriate moment, she will probably have obtained copies of the document. And Advocate Ngcukaitobi, you will tell us how you wish to proceed with the documents. The advocate tells me that in

the email communication from the junior, your junior, Advocate Hulley, it appears that they are still paginating those documents. So she has not been in a position to print them because she is told that the covering – you want to talk to her now? Let me finish first.

ADV HULLEY SC: Thank you, Madam Chair.

CHAIRPERSON: Because the covering email suggests that the documents are in the process of being paginated. That being the case, she has not been able to print them. That is
10 why we do not have the documents. You may ascertain from your junior whether that is correct.

ADV HULLEY SC: Thank you, Madam Chair. Apparently that is correct.

CHAIRPERSON: Is that the position?

ADV HULLEY SC: It is the position that they are paginating at the moment.

CHAIRPERSON: And when will the pagination be completed so that you can then make copies?

ADV HULLEY SC: I will have to take instructions, Madam
20 Chair.

CHAIRPERSON: From the NPA?

ADV HULLEY SC: From the NPA, not from the junior.

CHAIRPERSON: From the NPA?

ADV HULLEY SC: Yes, Madam Chair.

CHAIRPERSON: Please take full instructions and probably

even as to why these documents were only brought to our attention late last night. Whether the NPA had the documents in their possession, they were aware of them, and why was it only brought to our attention so late?

ADV HULLEY SC: Yes.

CHAIRPERSON: You will let us know later in the day.

ADV HULLEY SC: I will, as a general proposition, if I can say. Because something could be in the possession of the NPA, but the NPA occupies space throughout the country. So
10 it is often very difficult. We get instructions directly from head office.

CHAIRPERSON: Counsel, I am saying you will find out from the NPA, and then they will tell you.

ADV HULLEY SC: Yes.

CHAIRPERSON: Because at the moment we do not know. I am sure you also do not know.

ADV HULLEY SC: What I do know is as a general proposition, I am not answering the specific question. I am answering a general proposition, Madam Chair.

20 **CHAIRPERSON:** May we deal with the specific question?

ADV HULLEY SC: I will do so. I have undertaken to do so, and I will do so, Madam Chair.

CHAIRPERSON: Thank you. Advocate Ngcukaitobi, we will await the final pagination and then copies being made of this document later in the day.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I am happy to proceed, and then we will revisit it at an appropriate stage.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Thank you. Lieutenant-Colonel, we are in the final – well, it is not quite final if you look at what happens after, but it is the final available report, Cato Manor, correct?

LT-COL MANGENA: That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** And that appears at page 2-95 of your statement.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, that is Cato Manor. In your report, it is at 2A-23, is that correct? Up to 2A-32.

LT-COL MANGENA: Yes, that is correct, Chair.

ADV NGCUKAITOBI SC: Thank you. Maybe you can tell us – I am sorry, actually, I should not proceed before my junior reminds me that there is something I had undertaken to just finalise on the Umlazi docket, on what was available, but I
20 did not ask you yesterday. If I may ask you to turn to page UL0054, just behind you. That is a statement from Mr Amod Khalil Hoosen [?], who describes himself as a colonel in the South African Police Force at the DPCI Organised Crime section.

Now, it is in the – we found this in the docket that

came to our attention yesterday, which was filed at 586, but it actually belongs to 585. But this is what he says, and I want your comment on this. At paragraph 3, he says:

“I was the acting commander of the Organised Crime section during the early part of the year 2010.”

Now, firstly, to your knowledge, is Cato Manor unit part and parcel of Organised Crime?

LT-COL MANGENA: That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Yes, because they are a section called Serious and Violent Crime Under Organised Crime.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Now, I had made enquiries for the occurrence register, OB SAPS10, that was supposed to be at the unit. However, no one could give me any explanation, and none of the previous occurrence books could be found. Now, can you just comment on this? Why is this unit not

keeping, according to this colonel, occurrence book entries?

LT-COL MANGENA: Chair, I cannot explain that. I do not
20 know why they are not keeping those OBs.

ADV NGCUKAITOBI SC: But what is the importance of an occurrence book entry?

LT-COL MANGENA: Chair, with the OB, each and every incident that occurs, including involving members of the unit, should be recorded in the OB and the commander must be

informed by reading the OB. If nobody informs him, the next morning or the next day when he comes to the office, he must read the OB, so that he gets all the information of what transpired with these members the previous day.

ADV NGCUKAITOBI SC: Yes. Now, we had evidence here, which I do not know if you listened to it or you did not listen to it, but there is a statement of Colonel Aiyer, who was the commander of the same unit, who also complained that these particular members of Cato Manoro, Mr Olivier, Mr Lockem,
10 Van Tonder, Eva, were refusing to register the events or the incidents in the occurrence books, and he raised that concern.

LT-COL MANGENA: Chair, I would say the incidents must be recorded in the OB so that there is a trace of the incidents and the days of those incidents.

ADV NGCUKAITOBI SC: And then if you look at paragraph 4 of the same statement from this colonel, he says:

20 “I further detailed to the administration staff and the members at the unit to make enquiries and search the offices for the old and filed OBs. A few days had passed and no one could explain and find the OBs. I was informed by numerous members that Colonel Aiyer, the previous commander, had not placed OBs at the

unit, and since his departure from the unit,
no one could account for the OBs.”

And then he says:

“I immediately instructed that a new OB
must be introduced at the unit and
attached hereto the instructions as per
Annexure AKH. The missive dated 23
March 2010 from the Provincial
Commissioner's office is attached hereto
as AKH2. To date, the previous OBs
cannot be located and no one can account
for it at the unit. The current OB is used
from 2010-03-25 to date.”

Now, what I found striking about this is that he says the entire
occurrence books for the period before 2010 could not be
found. Do you have any comment on these missing
occurrence books?

LT-COL MANGENA: Chair, I cannot explain or comment on
how they operated, but normally with us, each and every
incident that occurs, we report it in the OB and then if it is
full, it is kept safe in the safe.

ADV NGCUKAITOBI SC: So the OB actually stays in the
safe?

LT-COL MANGENA: The OB stays in the safe.

ADV NGCUKAITOBI SC: And could you explain why at this

unit, this Organised Crime section called Serious and Violent Crime, which we call Cato Manor, why there are no occurrence books?

LT-COL MANGENA: Chair, unfortunately I cannot explain it or give the reasons why there were no OBs.

ADV NGCUKAITOBI SC: Yes. And the impact of not having an occurrence book on an investigation?

LT-COL MANGENA: Chair, I do not know the reasons why.

ADV NGCUKAITOBI SC: I am saying what is the effect of
10 not having an occurrence book on a police investigation about an incident?

LT-COL MANGENA: Chair, all the incidents must be reported, must be kept there for reference sake. If you need to refer to them, you will have the OBs to refer to them of all the incidents. But if you do not have an OB, it will be a problem to get references of incidents or track of the incidents that occurs.

ADV NGCUKAITOBI SC: And who would be responsible for making sure that occurrence books are maintained and are
20 completed?

LT-COL MANGENA: The commanders must be.

ADV NGCUKAITOBI SC: The commanders.

LT-COL MANGENA: They must ensure that the OBs are completed.

ADV NGCUKAITOBI SC: And we know in this unit that

certainly before 2009, the commander was Major General Booyesen.

LT-COL MANGENA: I am not sure if it was, when was General Booyesen the commander? I know he was the commander and he was later replaced by Colonel Aiyer.

ADV NGCUKAITOBI SC: Yes, thank you. That is good enough. Thank you very much. Could I then move you back to your statement?

LT-COL MANGENA: That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Cato Manor CAS 161/08/2011. Can you take us through that incident, what happened there?

LT-COL MANGENA: Chair, before I go to your statement, the information that we had on this case was that it is a Cato Manor CAS 161/08/2011. The deceased in the matter was arrested and was brought to the offices and Captain Van Tonder was taking the confession of the member. He was with Warrant Officer Makhanya.

Now during the taking of confession, he said that Warrant Officer Makhanya, I cannot remember was it the pen
20 or he went to the other office to fetch a pen or something. I cannot remember what it is that he went to fetch. But while he was in the next office, he heard gunshots. When he came back, Captain Van Tonder informed him that in the process of taking the confession, the suspect or the deceased, the victim managed to grab a granite stone from another table

and to attack Captain Van Tonder with the granite stone. And Captain Van Tonder shot him four times. The first bullet was between the eyes and then the other three shots were on the chest.

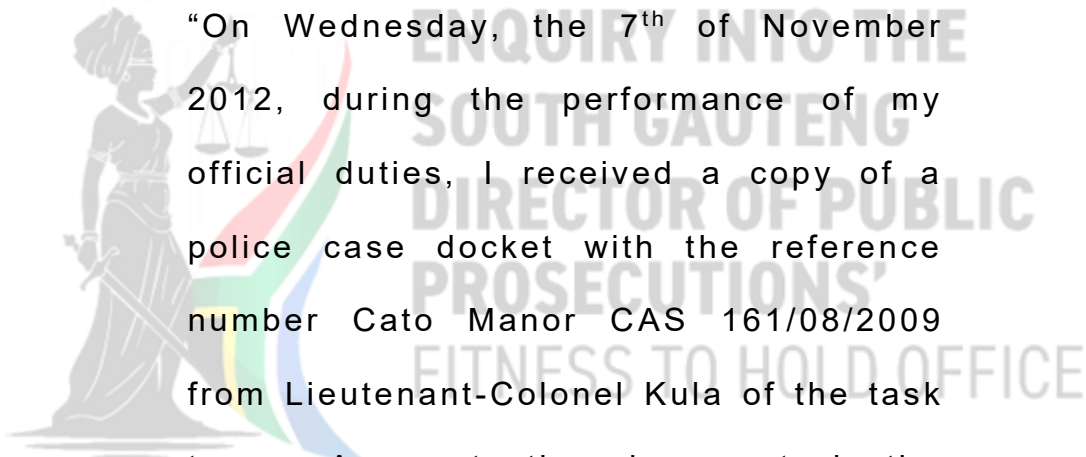
ADV NGCUKAITOBI SC: All right, thank you. Paragraph 377 of your statement. Are you finished with what you wanted to say before you go to the statement?

LT-COL MANGENA: Yes, I am finished.

ADV NGCUKAITOBI SC: Thank you very much.

10 **LT-COL MANGENA:** On Paragraph 377:

“On Wednesday, the 7th of November 2012, during the performance of my official duties, I received a copy of a police case docket with the reference number Cato Manor CAS 161/08/2009 from Lieutenant-Colonel Kula of the task team. Amongst other documents in the docket, I found the following documents which were to be utilised in crime scene reconstruction. The post-mortem report marked Durban PM1534/2009/2009 compiled by Doctor Clive James Moodley Sibusiso and signed on the 16th of September 2009. There was a statement of Inspector Phumelela Makhanya and a



statement of Captain Eugene Van Tonder.”

ADV NGCUKAITOBI SC: Just to confirm, those two officials?

LT-COL MANGENA: The two officials are Cato Manor members.

ADV NGCUKAITOBI SC: Thank you.

LT-COL MANGENA:

“The intention and scope of this forensic examination comprises of the following.

10 Crime scene examination and reconstruction, bullet trajectory

determination, expert opinion concerning the case. When I visited the crime scene, I found the office completely renovated and there was no examinations conducted.

Upon examination of the post-mortem report, I noticed the wound sustained by

the deceased in the anatomical position as described by the medical practitioner.

20 The entry wounds recorded in the report are consistent with wounds visible in the

crime scene photos. The deceased sustained two gunshot exit wounds at the

back and one projectile was retained within the body. The crime scene photos

are photos 1 to 9 in the report. After examination of both the crime scene photos...” ...[intervenes].

ADV NGCUKAITOBI SC: Are you going to take us now to those or you will take us later?

LT-COL MANGENA: I will take you to them later.

ADV NGCUKAITOBI SC: Okay, thank you.

LT-COL MANGENA:

10 “After examination of both the crime scene photos and the post-mortem report, I was unable to determine the probable position of the deceased or of the shooter at the time of the incident. There are no photographs depicting any exit wounds, no identifiable bullet impact points at the scene, and no detailed description of the characteristics of the exit wounds that would assist in trajectory analysis or reconstruction. Due to the absence of

20 sufficient forensic documentation and scene details, I am unable to determine or express a professional opinion on the manner in which the incident occurred.”

Now, Chair, f you go through the report.

ADV NGCUKAITOBI SC: So we are now at 2A-23.

LT-COL MANGENA: At 2A-26.

ADV NGCUKAITOBI SC: 2A-26.

LT-COL MANGENA: This is the offices of Cato Manor ...[indistinct].

ADV NGCUKAITOBI SC: What do you mean when you say Cato Manor? What are you talking about? I mean Cato Manor is just a geographic area.

LT-COL MANGENA: Cato Manor Organised Crime. Offices of Cato Manor Organised Crime.

10 **ADV NGCUKAITOBI SC:** Yes. So this is the police office?

LT-COL MANGENA: That is correct. This is the police offices, the offices where they were operating from.

ADV NGCUKAITOBI SC: This is where all of these people, Van Tonder, Lockem, Mostert, Eva, Makhanya, Naidoo, Padayachee?

LT-COL MANGENA: That is correct.

ADV NGCUKAITOBI SC: Thank you. Photo 2 showing the same offices. And on photo 3, this is the condition where how I found the offices. They were refurbished and then there
20 was nothing inside the offices. And if we go to photo number 4 on 2A-28.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: On photo 4, we can see the position of the deceased. On this photo, the allegations were that ...[intervenes].

ADV NGCUKAITOBI SC: The pictures that will be shown are graphic photos. Sensitive viewers are warned. Just to put us in perspective here. I mean, this is at the office of the police. And you did explain – what is the context in which someone is shot inside a police station?

LT-COL MANGENA: Chair, I am not sure of the procedure to be followed if someone is being shot, but the crime scene must be properly secured and the necessary members must be called. The IPID must be called and the photographer
10 must document the whole crime scene.

ADV NGCUKAITOBI SC: No, no. What I mean is what was the context in which a person came to die inside an office of the police? So what was this gentleman doing there?

LT-COL MANGENA: Chair, the gentleman was arrested and he was brought to the offices. There is allegations that they were taking the confession from him.

ADV NGCUKAITOBI SC: Thank you.

LT-COL MANGENA: Right, Chair. What transpired was Captain Van Tonder was seated in this chair and the warrant
20 officer Makhanya was in this chair and the deceased was sitting on this chair, but he was directly opposite Captain Van Tonder. And in the process, Makhanya went out of the office and Captain Van Tonder was only left with the deceased where there was no other witnesses.

And the allegations are that the deceased picked up

this granite stone, I do not know where he got the granite stone, and started to attack Captain Van Tonder who was sitting in this chair, and he fired four shots. One between the eyes and three in the chest.

ADV NGCUKAITOBI SC: Yes, but the attack against Mr Van Tonder is a stone being thrown at him according to his version.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Or a stone, because the thing I
10 could not understand with this picture is that if their version is that that stone was being thrown, why is the stone near the deceased? Because you would expect the stone to be near Mr Van Tonder.

LT-COL MANGENA: Chair, according to him, he grabbed the stone and he was attacking him with it. So I am not sure whether he threw it or he was just trying to attack him with that stone.

ADV NGCUKAITOBI SC: He was just holding it.

LT-COL MANGENA: He was just holding it.

20 **ADV BALOYI-MERE SC:** A follow-up question on the stone issue. If you know, if you can answer, why would we have a loose, big granite stone in an office that we use to take statements or an interrogation room?

LT-COL MANGENA: Chair, I do not know. I do not know even where the stone is coming from in the office.

ADV NGCUKAITOBI SC: Thank you, Colonel. You can carry on.

LT-COL MANGENA: Right, the next photo would be photo 5 showing the deceased at the crime scene. And we have photo 6 depicting the wounds sustained by the deceased. Right. He sustained three gunshot wounds to the chest. So it would be this one, this one, and this one. Seventh photo would be the head gunshot wounds between the eyes. The wounds are sustained like this. So all these four are entrance wounds.

10 Chair, because there was no clear explanation of the wounds or description of the wounds, so there was no mention of tattooing, there was no mention of possible unburned and partially burned propellant powder. We could not determine the distance, how far was he from the deceased.

ADV BALOYI-MERE SC: Can I ask a question? Are you saying because of lack of information that you have mentioned, you are unable to say whether the gunshot wound between the eyes would have been the first, and whether the
20 others were, whether he was shot on the chest while lying down or while still seated on the chair or in an upright position or standing up?

LT-COL MANGENA: Chair, I would be unable to tell because only the wounds are sustained and there is no more information that we have from this.

ADV NGCUKAITOBI SC: I suppose if we go back to photo 6, would those be fatal shots, those three?

LT-COL MANGENA: Chair, the wounds, the shots would be fatal shots, but would not be immediate incapacitating shots, but they would be fatal shots. The one in the head would be the immediate incapacitating.

ADV NGCUKAITOBI SC: Yes, I understand. So the shots at photo 6 would be fatal, even though they would not be immediately fatal?

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

ADV NGCUKAITOBI SC: So if you are taken to hospital, the doctors can attend to you and maybe you can survive?

LT-COL MANGENA: It will depend on the internal injury sustained. In some instances with these wounds, you might not even reach the hospital.

ADV NGCUKAITOBI SC: I see, but they are fatal. And then the wounds at photo 7, which is the one in between the eyes.

LT-COL MANGENA: The one that is immediately incapacitated. He will drop immediately.

20 **ADV NGCUKAITOBI SC:** Yes. So in other words, it does not really matter whether it is photo 6 or photo 7 because all of those shots are fatal.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Thank you. And what we know here is that the only danger that he posed, according to Mr

Van Tonder, is a stone.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: You can take us to 8 and 9.

LT-COL MANGENA: Right. Photo 9 shows the cartridge cases which were recovered from the scene, and I can see only two. It is this one and this one. So I am not sure of the third one. It is actually supposed to be four cartridge cases, but it is only two that is on this photo. And then photo 10 shows the granite stone that ...[intervenes].

10 **ADV NGCUKAITOBI SC:** Photo 9. Photo 10 or photo 9?

LT-COL MANGENA: Photo 9 shows the granite stone that allegedly the deceased grabbed to attack Captain Van Tonder with.

CHAIRPERSON: But there are several pieces of what appears to be a granite stone there. Am I right?

LT-COL MANGENA: That is correct, Chair. I think it broke into pieces, but I do not know in the process or when.

ADV NGCUKAITOBI SC: Yes. Now, regrettably, this is one of those that we do not have a docket on.

20 **LT-COL MANGENA:** That is correct, Chair. And when we were doing investigations, when we were interviewing other people, I think there is two people that we went to interview who were in prison. Who I am relating because I am saying this because it is the same modus operandi with this one as we are looking here. When we interviewed some of these

guys, what they were saying is that Cato Manor ...[intervenes].

ADV NGCUKAITOBI SC: Who are these guys? When you say when we interviewed some of these guys, what are you talking about?

LT-COL MANGENA: I cannot recall their names, but I think I will have their names somewhere.

ADV NGCUKAITOBI SC: What I mean, are you interviewing some of the suspects or interviewing the police themselves?

10 **LT-COL MANGENA:** No, no, the suspects who are in prison.

ADV NGCUKAITOBI SC: I see. Thank you.

LT-COL MANGENA: So they will say that Cato Manor will take you to their office, they will write a confession for you, and they will force you to sign. If you do not sign, they will deal with you.

ADV NGCUKAITOBI SC: Yes, do not worry about that. We do have a witness who was forced into a confession who is coming next week. But having regard to this, this is not even one of those where there is a gun or anything. I mean, what
20 is your opinion on the danger by a policeman being that stoned and in retaliation shooting a person four times?

LT-COL MANGENA: Chair, especially if you look at the position of the wounds, the wound in the face or between the eyes would be immediately incapacitated. It means you are killing this person. There was no intention to stop him from

attacking, but intention to kill.

ADV NGCUKAITOBI SC: Thank you very much. And you would not know about why this person, if ever there was a clear case, was just never prostituted.

LT-COL MANGENA: No, Chair. I cannot recall if he was arrested for any, or what case was he arrested for.

ADV NGCUKAITOBI SC: Yes, well, we also do not have the docket, so we cannot work out what happened.

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

10 **ADV NGCUKAITOBI SC:** All right. Do you have anything to add to your statement?

LT-COL MANGENA: No, Chair. I do not have anything to add to my statement.

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: The version of Colonel Van Tonder was that he was defending himself.

LT-COL MANGENA: That is correct, Chair. He said he was taking the statement and then after Warrant Officer Makhanya went out, the deceased grabbed a granite stone and started
20 to attack him. So he was defending himself by shooting him four times, one between the eyes and in the chest.

ADV NGCUKAITOBI SC: Yes, but this is all happening inside the police station.

LT-COL MANGENA: Inside the office, yes, Chair.

ADV NGCUKAITOBI SC: Thank you. And now you said you

have got nothing to add. The facts speak for themselves.

LT-COL MANGENA: I have nothing to add on this one, Chair.

ADV NGCUKAITOBI SC: Now, I want to take you further to paragraph 364 on a different topic now of the missing reports. Can you just deal with that? 384, sorry. I said 364. It is 384. At 2-97.

LT-COL MANGENA: Yes, I am on 384.

ADV NGCUKAITOBI SC: Yes. Just read that for the record.

10 **LT-COL MANGENA:** Right, on 384?

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA:

“Upon comparing my list of reconstructed scenes with the dockets disclosed by the NPA, I have been advised that in several instances the disclosed dockets do not contain my reconstruction reports, notwithstanding that I conducted the reconstruction and prepared reports in those matters. The matters concerned are the following. The KwaDukuza CAS 39/9/2008, the Berea CAS 288/5/2008, the Rustenburg CAS 1098/9/2009, the Umlazi CAS 585/1/2011.”

20

ADV NGCUKAITOBI SC: Yes. Now, this is the case we have

been dealing with since yesterday.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Even on what they have disclosed, your report is still not there, but you have shown us the report that you prepared.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Which was once in the docket.

LT-COL MANGENA: Yes, I have submitted that report.

ADV NGCUKAITOBI SC: Thank you.

10 **LT-COL MANGENA:** Then we have the Kwamashu CAS 314/11/2008 and the Pinetown CAS 668/5/2009.

ADV NGCUKAITOBI SC: Yes, thank you.

LT-COL MANGENA:

20 “In each of the matters listed above, I confirm that I conducted a crime scene reconstruction and compiled a report recording the reconstruction process and my findings. The absence of these reports from the docket disclosed by the NPA is therefore not due to the reconstructions having not been performed but rather reflects that the reports do not appear in the material made available.”

ADV NGCUKAITOBI SC: And then carry on, 387.1.

ADV RAMAGAGA: Colonel, how do you know that your

reports are placed in the case dockets? Is it you who do that when you do that after you have compiled your report? Or what is the position?

LT-COL MANGENA: Chair, after compiling my report, I will give them to the investigating officer to place them in the case docket. So all the reports were given to the investigating officers.

ADV RAMAGAGA: Thank you.

ADV NGCUKAITOBI SC: Thank you very much. 387.1.

10 **LT-COL MANGENA:** In 387.1:

“I am not in a position to state why the abovementioned reports do not appear in the disclosed dockets, nor whether they may exist elsewhere in SAPS or prosecutorial records. I can confirm, however, that where a reconstruction was conducted by me, a report was prepared contemporaneously and/or within a reasonable period thereafter in accordance with standard practice. Each reconstruction was conducted with the reference to the specific facts of the individual's scene, including scene layout, ballistics information where available, witness accounts, and other objective

20

indicators. As such, each report stands on its own factual foundation. By way of example, the dockets in respect of the Umlazi case 585/10/2011 is manifestly incomplete. The docket presently comprises only of four pages and contains a single witness statement.”

ADV NGCUKAITOBI SC: You can now correct that from yesterday, because yesterday further documents came to
10 light.

LT-COL MANGENA: Further documents were received yesterday, and some of them were presented this morning.

ADV NGCUKAITOBI SC: Yes, thank you.

LT-COL MANGENA:

“This is notwithstanding that I personally conducted the crime scene reconstruction in that matter and compiled the reconstruction report in respect of thereof. I am in possession of the said
20 reconstruction report. The absence of that report and any related reconstruction material from the docket as disclosed reflects that the docket in its current form does not contain the full evidential record pertaining to the matter.”

In 388:

“I accordingly record that there is a discrepancy between the list of crime scenes I have reconstructed and in respect of which I prepared the reports and the contents of the dockets disclosed by NPA in these proceedings. In conclusion, I make this statement voluntarily and in good faith.”

10 **ADV NGCUKAITOBI SC**: Thank you, Lieutenant-Colonel. Is there anything you wish to add? One of the points that was made by Advocate Maema, which was also made by Ms Mary De Haas when she wrote a letter to Advocate Batohi, was whether or not the response of the officials stretching from the SAPS to IPID to the NPA would have been the same if the people killed were not black. Do you have any comments on that?

LT-COL MANGENA: Chair, I cannot comment on that.

ADV NGCUKAITOBI SC: But I mean, each and every body
20 that you have shown us, lain to waste, young people in their teens, in their 20's, with families, are all black men.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I have nothing further for this witness.

CHAIRPERSON: Thank you, Counsel. Colonel, regarding

these missing documents, you mentioned that all the reports would have been handed to the investigating officers. Did I hear you saying that?

LT-COL MANGENA: That is correct, Chair. I did that.

CHAIRPERSON: Which would involve officers from IPID or DPCI?

LT-COL MANGENA: From both IPID and DPCI.

CHAIRPERSON: Given that situation, can we safely attribute the blame for the missing documents to NPA or to
10 the investigating officers themselves?

LT-COL MANGENA: Chair, I cannot say we can blame the investigators or the NPA, but what I know is all the reports were handed. And most of the time when I was with the investigating team, when they submit their documents to NPA, they will make sure that all the documents are present in those case files when they hand them over to NPA.

CHAIRPERSON: As we speak about these missing documents, the officers who should first account should be those who investigated from DPCI and IPID. Because before
20 the dockets or the documents reached the NPA, they would have been in the possession of these investigating officers. Correct?

LT-COL MANGENA: That is correct, Chair.

CHAIRPERSON: Now if you follow that sequence of possession, we will then have to find out, particularly in

relation to the Umlazi and other missing documents, who the investigating officers were. Correct?

LT-COL MANGENA: That is correct, Chair.

CHAIRPERSON: They will then shed light as to what would have happened to those documents, the dockets, the reports, et cetera.

LT-COL MANGENA: That is correct, Chair. And I think if we can even check on the investigation diary in the dockets, because the investigation diary will have all the documents
10 that are in the dockets. So they will be mentioned there and they will be given a reference number. So if we have the investigation docket, we can look at it. Then the documents that are mentioned in the investigation diary that are not in the docket means that when they were handed over, they were there. They were in the dockets. They could be within the transaction when the NPA taking the dockets or when the dockets were in their possession. That is when they lost those documents.

CHAIRPERSON: And the investigation diary is the document
20 that is kept by the investigating officer.

LT-COL MANGENA: It is kept in the docket.

CHAIRPERSON: In the docket.

LT-COL MANGENA: It is kept in the docket, Chair.

CHAIRPERSON: But I would imagine that an investigating officer, for instance, from IPID or DPCI, would have made

copies for themselves.

LT-COL MANGENA: It is most likely they would have made copies for themselves.

CHAIRPERSON: Yes, thank you. Are you hopping to the next witness?

ADV NGCUKAITOBI SC: Well, I would call the next witness if I could, but my learned friend, I am sure, has questions.

CHAIRPERSON: Sorry. I did not recognise you. I was focussing more on our witness. Colonel Mangena, you attract
10 our attention more. I am not insinuating anything. Junior Attorney Katlego? First, before that, Advocate Motsweni, did you want to say something?

ADV MTSWENI: I thought I would be given my opportunity to ...[intervenes].

CHAIRPERSON: You are smiling and I do not know whether you are going to bring something that is going to be pleasant to us. What are you suggesting?

ADV MTSWENI: I am waiting for my opportunity with Lieutenant-Colonel Mangena, that I would be afforded an
20 opportunity just to clarify a few aspects with him. I would not call it a cross-examination, Madam Chair.

CHAIRPERSON: Are we there already?

ADV MTSWENI: It looks like we are there.

CHAIRPERSON: I am not sure whether there is going to be another witness, I mean, another letter that Advocate

Ngcukaitobi wishes to raise. Maybe we should get that first, and before I turn to you.

ADV NGCUKAITOBI SC: Madam Chair, we will have to deal differently with the disclosure of dockets. At this point in time, we just do not have the answers, and I cannot keep the witness on the stand, so I have to close my questions-in-chief.

CHAIRPERSON: In other words, if I understand you correctly, the witness may be handed to the evidence leaders
10 for clarifications or questions, if they wish.

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

CHAIRPERSON: Yes, thank you. Advocate Mtsweni, let me hear Advocate Hulley, then he was going to say something.

ADV HULLEY SC: Thank you, Madam Chair. Just an update on the request that I delivered to the NPA regarding the missing pages or the missing parts of the dockets. What I am told is that the only request that was made was for the 23 dockets. There was no request for any other dockets. This Umlazi docket that was disclosed does not relate to those 23
20 dockets, but it was delivered at the same time.

To the extent that documents are missing in any one of the 23 dockets, in other words, the ones that form part of the indictment, or the Umlazi docket, that concern was never raised directly with the NPA. So those are the instructions that I have at this point in time. Unfortunately, the person

who is giving me instructions is on leave at the moment, so she does not have access to her laptop. But those are the instructions that have been given to me.

CHAIRPERSON: Let me understand you. The requested dockets were the 23 dockets.

ADV HULLEY SC: Correct.

CHAIRPERSON: And the Umlazi docket did not form part of those dockets.

ADV HULLEY SC: It was not part of the 23 dockets that form
10 part of the indictment. So the 23 dockets all form part of the indictment. Those are the instructions that I was given.

CHAIRPERSON: I am getting confused now. The Umlazi docket did not form part of the 23 dockets.

ADV HULLEY SC: That is correct, Madam Chair. But the indication, if I can move on to a second point related to ...[intervenes].

CHAIRPERSON: Before you do, before you do. And the requesting letter was from Advocate Chauke's team to the NPA.

20 **ADV HULLEY SC:** So I am not sure whether – there was a request that was made right at the beginning that was part of a directive, an agreement that was made between the evidence leaders and the Chauke team. That request related specifically to the 23 dockets and to the racketeering docket. There was also a request for Advocate Chauke to visit the

offices of the NPA, either at VGM and separately at the DPP's office in Johannesburg.

So to deal directly with the question of the Umlazi docket, that did not form part of the indictment. So the request that was made for the 23 dockets did not cover the Umlazi docket. Then, insofar as the second point, insofar as any other documents may be missing, the point that is made pursuant to my queries is that those documents that have been identified as being missing, there was no specific
10 request that was directed at the NPA for any missing documents.

CHAIRPERSON: And that, according to them, or you, will entail all those matters reflected under paragraph 385, according to the NPA.

ADV HULLEY SC: So to clarify, 385.1, 385.2, 385.3, 385.5, those are all documents that form part of the indictment. The ones that do not form part of the indictment is 385.4 and 385.6.

CHAIRPERSON: So Umlazi case 585/01/2011, we dealt with
20 yesterday, and Pinetown case 668/05/2009 would not be forming part of the 23 dockets that were requested?

ADV HULLEY SC: Correct. The request, or the letter requesting the dockets, may be within the possession of the NPA and Advocate Chauke. Do you have the copy of that letter that forms the subject matter of this discussion?

ADV NGCUKAITOBI SC: Madam Chair, that was right at the beginning of this proceedings. That was actually an agreement that became the directive of this Panel. And look, I just really do not want a back and forth on this. Pinetown is in the docket. Umlazi was disclosed by the NPA already in October. The complaint about Umlazi was that the docket they gave us was incomplete. It is even paginated. But as I say, I do not want to get into a factual fight with Mr Hulley. If he says it does not have complete instructions, let us take
10 him on his word.

CHAIRPERSON: This information, Advocate Hulley, is now in possession of the NPA, including Umlazi that is now brought to our attention last night ...[intervenes].

ADV HULLEY SC: Correct. That is ...[intervenes].

CHAIRPERSON: Let me finish first.

ADV HULLEY SC: Pardon me, Madam Chair.

CHAIRPERSON: And then can you talk about Pinetown? Do you have information in relation to Pinetown?

ADV HULLEY SC: I am following up on those. As I say, the
20 person who is giving me instructions is on leave at the moment. So I cannot speak fully to those matters. I can speak to the Umlazi matters. So those are the instructions insofar as the Umlazi matter is concerned. But because of the nature of the instruction that I was given, i.e., that the request was only for the 23 dockets, the instruction would

cover all the other dockets unless there was a specific request for it. We do not know that there was a specific request for it. I do not know that. But specifically based on the instructions that I have been given, it is that it was only for the 23 dockets.

CHAIRPERSON: Yes. We will look at the transcript and we will look at what the 23 dockets entail because this is the matter that arises now. We will look into that and then ascertain whether additional information will be required from
10 the NPA as regards Pinetown because now we seem to be given the information concerning Umlazi. We will verify that and then the NPA will then update you when they come back to the office.

ADV HULLEY SC: Thank you, Madam Chair. But if we can also just be given the letter of request in relation to these missing dockets where it is said that there was a request for the dockets? But speaking generally and going forward, if there is a request for documents, the request should be put in writing so that there cannot be any concern at a later stage.
20 Otherwise, it is a case of he said, she said.

CHAIRPERSON: Yes, you are correct. But remember when we started, and that is why I said we should go back to the transcript and check what is discussed there. This issue of the 23 dockets, I remember it was discussed right at the outset and they mentioned that when Advocate Batohi was

testifying that they required those 23 dockets because those are the dockets that she had said that she had not read. And we discussed that and I would like to look at the transcript as to whether we made a direction regarding their availability and as to what NPA was requested to do.

I cannot remember, but I remember that the issue of the 23 dockets arose right at the beginning of the hearing. But let us not debate that because we do not have information, we do not have the NPA officers here. We will
10 look at the transcript and see what was required to be provided and specifically whether those dockets would have covered all these cases that are referred to at paragraph 385, because it does not help to be arguing this matter in this fashion. Let us do our homework first and then ascertain whether such information is available. If it is, it should be made available.

ADV HULLEY SC: Thank you, Madam Chair.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Madam Chair, I am sorry to come
20 after you have spoken on this, but I do not want to be seen as having acquiesced to an unreasonable request from the NPA. The NPA cannot ask us to itemise missing parts of the dockets. The NPA is under a duty to disclose the docket in full. So we do not accept the condition that Mr Hulley is putting to us.

Once a directive is given by the Panel that a docket must be made available, then it must be made available. What the witness has demonstrated is that even out of the 23 dockets, things have been removed. What we do not know is whether they were removed by the police or by the NPA. But it is not our responsibility to be itemising missing parts of the dockets. It is the duty of the NPA to disclose a full docket.

CHAIRPERSON: Let us not go back and forth. Advocate Hulley, I know you are going to say something, but let me
10 place this on record. And I am sure all of you will agree that the NPA is the repository of these documents, at least these dockets that we were talking about, the 23 dockets. Am I correct?

ADV HULLEY SC: I cannot agree with that unconditionally. Some of them may well have been in the possession. So I want to explain. Some of them may well have been in the possession. Others may have been obtained from the police pursuant to the request. I cannot answer that. So to the extent that it was already in their possession, then the answer
20 to your question, Madam Chair, is yes. But to the extent, but I cannot answer that generally.

CHAIRPERSON: Yes. You remember earlier on both counsel, I said the investigating officers within IPID and DPCI would have had this information and the witness confirmed it. What we do not know at this point in time is whether these

documents were handed to NPA. And we need to verify that from the various investigating officers who would have included, among others, Mr Mosiapo and others, and then we will take it from there. But the back and forth is not going to help us at all. We just need to ascertain where this information was and whether it landed in the NPA eventually. If it did, then the NPA should be able to provide such information. Perhaps we should park it there to avoid the argument about these matters and proceed. Thank you,

10 Advocate Ngcukaitobi. Advocate Mtsweni?

CROSS-EXAMINATION BY ADV MTSWENI: Thank you, Madam Chair. Good morning, Lieutenant-Colonel.

LT-COL MANGENA: Good morning.

ADV MTSWENI: How are you doing?

LT-COL MANGENA: I am good.

ADV MTSWENI: Lieutenant-Colonel, I just want to, although this exercise is themed cross-examination, I call it the clarification process. I just want to clarify a few aspects with you. I am not going to go into the correctness or otherwise
20 of your reports because it is not for me or this Panel at this stage to determine whether your reports would have been sustainable in court or not. What I just want to clarify with you is just a few aspects relating amongst others to the terms of reference which this Panel has been asked to look at.

In particular is the question whether in supporting

the prosecution or the institution of the charges, Advocate Chauke did so in circumstances where there was sufficient information. Have those terms been explained to you?

ADV RAMAGAGA: Just before he answers that question, it is not the first time that I hear Advocate Mtsweni using the word sufficient evidence. The terms of reference, do they talk about sufficient evidence?

ADV MTSWENI: I am just paraphrasing, Madam Chair.

ADV RAMAGAGA: Ja. You say you are paraphrasing with
10 reference to the terms of reference. When you paraphrase, you do not impact on the substance of the question. You paraphrase, and fairly so. You still convey the very information that is in the terms of reference as you paraphrase. I want to believe that the evidence leaders do understand quite well the difference between sufficient evidence and existence or nonexistence of evidence. Thank you.

ADV MTSWENI: Let me just, to be fair to you, in fact, the
20 allegation is that he supported the prosecution where there was no evidence suggesting which justified the decision. Has that been explained to you? If you are not aware of the terms of reference, you can just state it.

LT-COL MANGENA: Chair, I am not aware of the terms of reference.

ADV MTSWENI: Yes. Okay, just to be fair to you, the

allegation against Advocate Chauke is that he supported the prosecution of the Cato Manor squad, that includes General Booysen, in circumstances where there was no evidence which justified the decision to prosecute those members.

LT-COL MANGENA: Based on my reports, I think there is enough evidence in prosecuting the members.

ADV MTSWENI: I was not saying whether there was or not. I was just trying to explain to you what the terms, what the allegation against Advocate Chauke was so that you
10 understand why the questions that I will ask you stem from.

LT-COL MANGENA: Yes, sir.

ADV MTSWENI: Yes. Now ...[intervenes].

CHAIRPERSON: Before you proceed, I think it is important to once again place on record, Advocate Mtsweni, your introductory words were that you just want to clarify. You are not asking questions or cross-examining, something to that effect. But I think we must understand why we are all here. This is an inquisitorial process. We seek to unravel the truth. So if you wish to question the witness with a view to
20 unravelling the truth, I think you are permitted to do that. It should not be that you are going to be constrained from asking pertinent questions to assist us to unravel the truth. I think this is the crux of the matter and we should not be putting labels and say question or seeking to clarify, which may be putting form over substance. Let us get to the crux

of the matter. If you wish to ask questions that may assist us in unravelling the truth, I think you should feel free to do that.

ADV MTSWENI: I will do so. Thank you, Madam Chair.

CHAIRPERSON: I think my sister will support this approach. Because if you suppress questions that might eventually assist us in getting to the bottom of the issues, then you would not have played your part as the evidence leader. Neutral as you may be, but we would like you to ask
10 questions, probing questions that might assist us to find the truth. I would like to place that on record again.

ADV MTSWENI: Thank you, Madam Chair. I will keep that in mind. Now, Lieutenant-Colonel, I have noted...

CHAIRPERSON: Yes, thank you.

ADV MTSWENI: Thank you, Madam Chair. When one reads the introductory paragraphs of your statement, you have been in the forensic space for over 30 years. Am I correct?

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes, and you have testified in court on a
20 number of times.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: So basically, in all instances when you are called, you are called there as an expert witness.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: And the primary purpose of an expert is to

assist the Court in ascertaining those complex issues which the Court does not have expertise on.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes, and as an expert, you are expected to remain neutral, notwithstanding the fact that you are employed by the SAPS.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes, and that the findings on your report should be predicated on your own investigations and findings.

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

ADV MTSWENI: And should not be influenced by anyone else.

LT-COL MANGENA: That is correct, yes.

ADV MTSWENI: Yes. Now, if we turn to your report to your Divisional Commissioner dated 31st January 2013, CM3, that would be on 2-106.

CHAIRPERSON: Take us to the file first.

ADV MTSWENI: I think it is in the Lieutenant-Colonel's bundle.

20 **CHAIRPERSON**: His bundle?

ADV MTSWENI: Yes.

CHAIRPERSON: Page?

ADV MTSWENI: It is 2-106.

CHAIRPERSON: 2A?

ADV MTSWENI: No, 2. It is just written 2.

CHAIRPERSON: 2.

ADV MTSWENI: It is part of his statement. It is the annexure to his statement. Towards the end of the statement, Madam Chair.

CHAIRPERSON: Yes, thank you. CM3?

ADV MTSWENI: Yes.

CHAIRPERSON: You can refer to it like that and then take us to the page.

ADV MTSWENI: Yes. Now, you wrote that in order to report
10 to your Divisional Commissioner as to what has transpired since you were deployed to the team. Would that be correct?

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes. And what I have noted from your report was that you were seconded to the team around the 17th of January 2012.

LT-COL MANGENA: That is correct, yes.

ADV MTSWENI: Yes. And you were then on the 19th, you were given six LCRC case files of different stations. Would that be correct?

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

ADV MTSWENI: Yes. And then you are telling us, I am going to jump to 3.11 and 12, where you say:

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

investigated.”

Do you see that?

LT-COL MANGENA: Yes, I see that.

ADV MTSWENI: And you tell us that on the ...[intervenes].

CHAIRPERSON: Where are you reading?

ADV MTSWENI: On CM3-2-107.

CHAIRPERSON: Paragraph?

ADV MTSWENI: Paragraph 3.12, 3.11 and 3.12.

CHAIRPERSON: Thank you.

10 **ADV MTSWENI**: And then you tell us that on the 15th of March 2012, you presented a case, these cases, to the prosecution team and together – do you see that?

LT-COL MANGENA: Yes, I see that.

ADV MTSWENI: Now, can you just explain what presentation were you making to the prosecution team?

LT-COL MANGENA: The presentation that I made to the investigation team was from the analysis that I made on the cases that I have received and the post-mortem that I have received and the crime scene photos that I have seen. So I
20 presented to them, this is what I see and this is what I am going to do on my investigations. Because by then, the reports were not yet ready, but that is what I could see on the crime scene photos and the post-mortem reports that I had.

ADV MTSWENI: Yes, and are you able to tell us in which dockets were those? Because you told us that you had, at

this stage, been given six LRC case files.

LT-COL MANGENA: Yes, the case dockets that I had by then was the Camperdown CAS 96/1, the Plessislaer 255/7/2006, the Melvin CAS 32/4/2007, the Phoenix case of 377, then Esikhawini CAS 50/9/2011, Westville CAS 106/9/2000, and the Howick 106/2/2008. Those are the ones that I have firstly received, the ones which are on the list that was presented by, which were presented to me by Major-General Mabula.

10 **CHAIRPERSON:** Sorry, you seem to be reading from somewhere.

LT-COL MANGENA: That would be from, sorry Chair, I am apologising for that, CM1, 2-100.

CHAIRPERSON: The six cases you had received are the ones that are reflected under paragraph 4 of CM1?

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: And did you tell the prosecution team what your views were or your preliminary findings were in relation to those cases?

20 **LT-COL MANGENA:** Chair, when I did the presentation, I think I informed them what I could see on those cases.

ADV MTSWENI: So you had not told them what your preliminary views were?

LT-COL MANGENA: During my presentation, I think I told them. I cannot recall, but I think I told them.

ADV MTSWENI: And would you be kind enough to share with the Panel as to what in Camperdown, and although we do not have the report, what were your views that you told the Panel, the prosecution team?

LT-COL MANGENA: Chair, I do not have the documents with me, but in Camperdown is where about, I think, six or seven suspects were shot and killed inside the minibus taxi. And I looked at how those guys were shot. Some of them were shot inside the vehicle, some were shot outside the vehicle, but I
10 cannot remember everything that I could see on those case files.

ADV MTSWENI: But did your presentation extend to the fact that these people could have been massacred or executed?

LT-COL MANGENA: Chair, it is possible I could have told them that the way those guys were shot, it is questionable.

ADV MTSWENI: Yes. And then you then tell us that the prosecutors were impressed with your presentation, but were not convinced with how Steyl presented his cases.

LT-COL MANGENA: That is correct, Chair.

20 **ADV MTSWENI:** Now, can you share with the Panel what is it that they were not happy with in relation to Steyl's presentation?

LT-COL MANGENA: Chair, I would say it is difficult to remember everything that transpired. It is 14 years back, so I cannot remember everything. But I know that there was a

presentation made by Steyl and Mr Steyl, some of the reports could not produce them, could not give explanation of those incidents.

ADV MTSWENI: Yes, and as a result, you were then asked to take over from where Steyl left off, where Steyl was. In fact, they made a request that I take over the cases that Mr Steyl had not yet completed.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: So in other words, did that give you an
10 indication that they had no intention of calling Steyl?

LT-COL MANGENA: Chair, remember Mr Steyl is a private expert, so he was working privately. It would depend on the payment. He has to be paid first. So I am working for the state. If a request comes from the SAPS, I will follow that and I will assist with that.

ADV MTSWENI: So was the intention that they were not going to use Steyl further?

LT-COL MANGENA: I cannot say there was intention not going to use him further, but if there are other things that he
20 attended, he would have to submit the reports.

ADV MTSWENI: Yes. Now, as I understand, when you were brought in on the basis of your expertise, the primary reason you were brought in is for you to analyse the version that is given by those police officers involved and to determine whether, in line with what you see on the photos, whether that

version is consistent with what transpired.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes. And when one reads the dockets on face value without your report, one gets to see that the narrative perpetuated there was that the police were under threat and they therefore killed these people in self-defence.

LT-COL MANGENA: That is correct. That is the narrative that was said when you read all those files.

ADV MTSWENI: Yes.

10 **LT-COL MANGENA:** But when you look at the crime scene photos, you look at the post-mortem report, it is completely something different from what they were saying.

ADV MTSWENI: No, we will come to that. So, basically, your reports and evidence is what would flip the narrative audience back, basically demonstrate that it is not correct.

LT-COL MANGENA: Chair, if it is not correct, I will mention it is not correct.

ADV MTSWENI: No, I am saying your findings would have gone to prove that the narrative was not correct.

20 **LT-COL MANGENA:** Not that the narrative was to check. And if the narrative is not correct, I will mention that.

ADV MTSWENI: Yes. And where you find that the narrative is not correct, then it means your report would flip the narrative on its back.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes. Now, I have gone through – other than the presentation that you made in March, we do not get the sense that you made any further presentations to the prosecution team. Otherwise, you would have told your Divisional Commissioner.

LT-COL MANGENA: Chair, I cannot – we met on a number of occasions where they wanted presentation, they wanted to see the progress, but I cannot recall the presentation that I have made to them. Sometimes it was just to give the
10 feedback on how far are we and in which cases do we have. But the presentation, I did not present a lot of cases to them, unless where I presented the reports that I have compiled already.

ADV MTSWENI: Yes. But, you see, from the reports that we have in the bundle, I think the earliest reports that you have given was in September 2012.

LT-COL MANGENA: In September 2012?

ADV MTSWENI: Yes. It is signed on the – okay, let me ask this. Would you give your report in an unsigned format?

20 **LT-COL MANGENA:** In an unsigned ...[intervenes].

ADV MTSWENI: Unsigned format.

LT-COL MANGENA: No, I will sign the reports and hand it to them.

ADV MTSWENI: Yes. So the date on which you sign your report, that would be the date on which the report was

issued?

LT-COL MANGENA: Chair, it will depend. Some reports will be completed, and if it is completed, I am – remember, we were not working from the office. And some of the reports, I will compile them, I will complete them and not print them to sign them. But once they request the copy of the report, I will print them and sign them and hand them over to them.

ADV MTSWENI: Hence, I am saying, issued.

LT-COL MANGENA: Yes, I will issue them after
10 ...[intervenes].

ADV MTSWENI: Signing them.

LT-COL MANGENA: Yes, after signing them.

ADV MTSWENI: Yes. Because if we look at, for example, just to go through what we have in your bundle, your Berea case that would be on your bundles, on the annexures, it starts from 2A1 to 22, but I am on page 22 now.

CHAIRPERSON: Berea is CAS 288/05/08.

ADV MTSWENI: Yes, of 2008. The date there is – are you there? Page 22.

20 **LT-COL MANGENA:** Page 22?

ADV MTSWENI: Yes.

LT-COL MANGENA: Which one?

ADV MTSWENI: 2A.

LT-COL MANGENA: 2A. Yes, I have the Berea case.

ADV MTSWENI: The date of the report is 28 September

2012.

LT-COL MANGENA: That is correct.

ADV MTSWENI: So that would be the date on which you issued that report.

LT-COL MANGENA: That is correct. The date that I signed the report and issued to them.

ADV MTSWENI: Yes. And you say you would give it to the investigators.

LT-COL MANGENA: That is correct.

10 **ADV MTSWENI:** So if anyone other than yourself would have seen the report, they would not have seen it prior to this date. No one would have seen the report prior to the date on which you signed it other than yourself.

LT-COL MANGENA: I would not say no one could have seen the docket prior to ...[intervenes].

ADV MTSWENI: I am not talking about the docket, the report.

LT-COL MANGENA: The report. I would not say no one could have seen the report. It could have been that I have
20 printed, but it was not signed. And then the one that I have signed is the one that I have printed on that day or within that period.

ADV MTSWENI: But you see, the question I asked you is that when you issue a report, do you sign them? You said yes. And then the question I am asking is when did you give

this report for the first time to the prosecutors or the investigators?

LT-COL MANGENA: I cannot recall, sir, but this one was signed on that date.

ADV MTSWENI: Now, in absence of any evidence to the control, can you accept that this would have been the date on which you would have given, you would have issued the report and given it, made it available to anyone?

LT-COL MANGENA: Not made available, but this is the one,
10 the date that I have signed it and handed it over to them. It could have been that it was printed before, but it was not signed and then I signed it when I gave it to them.

ADV MTSWENI: So would that be the case with all of them?

LT-COL MANGENA: All of them, meaning the dates?

ADV MTSWENI: Because if we can go through the dates, all of them are either, like for example, the Chatsworth one that is on 2A-53, it is unsigned. It is signed, but it is not commissioned.

CHAIRPERSON: Which page were you referring to, 2A-53?

20 **ADV MTSWENI:** 53. Do you see it, Mr Mangena?

LT-COL MANGENA: I see that, yes, sir.

ADV MTSWENI: It is unsigned, so we do not know when would you have issued it.

LT-COL MANGENA: That is correct, Chair. Remember, we were working from Durban, but if you look at the date on this

one, it was signed while I was back in the office. So some of them, I would have printed them while we were there, and signed them when we get home, or when we print them at the office to sign them.

ADV MTSWENI: Now, I just want to go into your report. The narrative that was perpetrated by the police ...[intervenes].

CHAIRPERSON: Before you do that, are you making any connection to this or making any point in relation to 2A-22, the signed and commissioned report and the unsigned or the
10 signed and uncommissioned one regarding Chatworth, 2A-53?

ADV MTSWENI: No, Madam Chair. The point that we are trying to establish from the Colonel is when did he first make these reports available either to the investigators or to the prosecution team? And he tells us he cannot tell us when. He may have printed it. What he tells us that he cannot say as a matter of fact, and that the date of the signature, the date on which he issued it, or he may have issued it much earlier.

20 **CHAIRPERSON:** Are you making a point of the date of issuance?

ADV MTSWENI: Because the ...[intervenes].

CHAIRPERSON: I am trying to understand the question and what you seek to clarify or to ascertain.

ADV MTSWENI: The question was, when did the prosecution

team first become aware of these reports?

CHAIRPERSON: Yes, thank you.

ADV MTSWENI: So he tells us. Now, Colonel, can you tell us as a matter of fact, in relation to all these reports that are in this bundle, when did you first make them available to the prosecution team?

LT-COL MANGENA: I cannot say when did I make them available. I cannot recall, Chair, but most of the reports were done while we were busy working on them. And some of
10 them, of course, we were working in Durban and we worked the whole week, and maybe a week we will come back this side to type a report. If there is a need of those reports, they will tell me we need these reports by this day. And by then, I will come and print them when we are at the office here and sign them. When we go back to Durban, I will hand them back to them.

ADV MTSWENI: Okay. Now, I just wanted to go through your reports with you and against the backdrop of the following. The narrative that is perpetuated by the police, we
20 have already gone through that, is that they were either trying to arrest the suspect or stop him or whatever, and then produced a firearm, started shooting at them, and then they fired back. Right? That is the narrative.

And the charges that have been preferred by or that were preferred against the Cato Manor was, amongst others,

that they killed these suspects, and after doing so they planted the firearms to basically make it look like they were being attacked. Do you know that?

LT-COL MANGENA: Yes, sir.

ADV MTSWENI: Yes. Now, I have looked through your report. Now, the question that I have for you is, at these meetings that you attended with the prosecution team, were you told that the police would, after killing the suspects, plant the firearms?

10 **LT-COL MANGENA:** No, Chair. I was not told that they would plant the firearms. That is why I was saying in my report that the position of the firearms is questionable, but I am not saying they have planted the firearms. I am saying the position of the firearms is questionable.

ADV MTSWENI: Now, let us start with your Berea report. I am on 2A-12, and your findings are on 2A-19. Remember, this is the balcony gentleman who jumped from the fourth floor.

LT-COL MANGENA: That is correct, yes.

20 **ADV MTSWENI:** Yes. And your findings are as follows:

“After observation of the crime scene photos, post-mortem photos, and post-mortem report...” ...[intervenes].

CHAIRPERSON: For the purpose of the record, you must go to the relevant pages.

ADV MTSWENI: It is 2A-19.

CHAIRPERSON: You may proceed.

ADV MTSWENI: You say there that:

“After observation of the crime scene photos, post-mortem photos, and post-mortem report, I could determine that at least two shots were fired in the house from two different positions. One shot was fired from the living room to the hole below the window, as shown in photos 11. The second shot was fired from the direction of the bedroom through the window and to the wall, as shown in photos 12.”

10

Then 12.2:

“There was presence of blood on the scene, and the pattern on the blood had characteristics of smear pattern. Smear pattern is created by transfer of blood from one object to another through some form of contact involving lateral motion. Should that blood on the scene be of the deceased, then what means that the deceased was already bleeding before he fell on the ground.”

20

12.3:

“Looking at the bullet marks on the ground, I could determine that the shots were fired from different angles. Bullet marks marked 1 and 3 had an angle of approximately 90 degrees. These could probably be shots fired from the flat window from the top. The other bullet marks marked 2 and 4 had an angle of approximately 45 degrees. These could probably be shots fired from the ground.”

And then we move on to 12.4:

“The exit wound sustained by the deceased on the right shoulder, region of the right flank and right cheek had characteristics of shotgun shot wound of an exit. Shotgun shot wound of an off exit is produced when outstretched skin impaled or sandwiched and crushed between the outgoing bullet and the unyielding object over the exit site, thus leaving an abrasion collar on the wound margin. The degree of shorting abrasion increased directly with kinetic energy of the projectile and the rigidity of the shorting material. This gives the

impression that the deceased was lying on the ground when these wounds were inflicted.”

Do you see that?

LT-COL MANGENA: Yes, I see that.

ADV MTSWENI: And then the next part is where you, the next page on 2A-22, that is where you signed.

LT-COL MANGENA: Yes, I see that.

ADV MTSWENI: And remember the narrative by the police
10 there is that the deceased was shooting at them.

LT-COL MANGENA: Yes.

ADV MTSWENI: And there was a gun found next to the deceased.

LT-COL MANGENA: That is correct, yes.

ADV MTSWENI: And yet your report is silent on the fact that the gun may have been planted. Why you have not mentioned, you are not saying anything about the gun, the deceased not having been in possession of a gun or not in your report?

20 **LT-COL MANGENA:** Of the deceased being in possession of a gun or not?

ADV MTSWENI: Yes, or having fired at the police.

LT-COL MANGENA: Chair, as I said, if we do reconstruction, we do a crime scene examination, we look at possible bullet damages, possible bullet marks. There were two possible

bullet damages in the room and that is where Warrant Officer Mostert agreed that he fired shots towards the suspect and there is no way where other possible bullet holes or damages were found inside the house. They are not referring to them.

ADV MTSWENI: But you are not saying in your report that the version by Mostert that he was fired at is incorrect.

LT-COL MANGENA: Where he was fired?

ADV MTSWENI: That he was shot at.

LT-COL MANGENA: He was shot at?

10 **ADV MTSWENI:** By the deceased.

LT-COL MANGENA: Chair, as I said, if there is other bullet damages, I would mention that there were other bullet damages to that direction if they are visible in the photos. But if he is saying that the deceased was shooting at him and then he shot back, he is agreeing that he shot at the direction of the deceased. So the bullet damages which are there are to the direction of the deceased where Warrant Officer Mostert is alleging that he was shooting to. But there is no other possible bullet damages that could be found on the

20 scene. And mentioning that the firearm was there and the shots were fired from it, I cannot mention it because there is no evidence that proves that that firearm was discharged in that room.

CHAIRPERSON: So you have referred us to 2A-19, and you read through the entire paragraph 12.

ADV MTSWENI: Yes.

CHAIRPERSON: Now when you look at the headings, those are his findings, and it is written:

“After observation of the crime scene photos, post-mortem photos and post-mortem report, I could determine that.”

So he is making an observation of these things that are included in the heading. Now your question seems to suggest that he should have mentioned that aspect relating to whether
10 the deceased was armed or not or whether his firearm was found. I do not understand.

ADV MTSWENI: Yes, Madam Chair, because he does not mention it in his report. But in his statement, he then deals with it.

CHAIRPERSON: Yes, but I am taking you to look at the heading that I have drawn your attention to. That addresses the contents of the entire paragraph 12. He is making observations in relation to both aspects, the crime scene photos, post-mortem photos and post-mortem report.

20 **ADV MTSWENI:** May I just check?

CHAIRPERSON: Correct?

ADV MTSWENI: Yes, Madam Chair, he does.

CHAIRPERSON: And your question is, if you can repeat your question to the witness?

ADV MTSWENI: The question is, Lieutenant-Colonel, in your

report, you do not address the question or the version that is preferred by Mostert that he was shot at, including the version of his colleagues that the deceased, whilst on the ground, fired shots towards Mostert.

LT-COL MANGENA: Fired shots while, after falling from the ...[intervenes].

ADV MTSWENI: Yes, you do not address that.

LT-COL MANGENA: There is no cartridge case that could be linked to that firearm and if it has discharged any shots, and that is something that I am not going to look at. When I look at the position of the deceased after landing on the ground, in which position would he be to fire those shots? Because he landed there and then he sustained gunshot wounds to it. And if you look at how he fell, the skull was damaged, the brain was damaged. It is impossible for him to discharge a firearm if he is in that condition. It will not be possible for him to fire a shot.

ADV MTSWENI: Okay. I accept it.

CHAIRPERSON: Would it make a difference if that heading would have included statements by the police? His observation in relation to all these things that he is mentioning, including the statements by the police, because that is not part of the things that he is making an observation on.

ADV MTSWENI: Indeed so, Madam Chair. But the question

that I wanted to ask him is, he felt he did not feel it ...[intervenes].

CHAIRPERSON: No, let us focus on the earlier question.

ADV MTSWENI: Yes.

CHAIRPERSON: Because I am drawing your attention to what the observation is based on and I drew your attention to the heading of that very paragraph 12 relating to his findings, and the headings include the crime scene photos, post-mortem photos, and post-mortem reports. There is nothing
10 about what he was told by the police or the police statements in relation to which he could have made observations in this paragraph.

ADV MTSWENI: No, Madam Chair. I think that if one looks at – I accept it, Madam Chair, because I thought it is one of those where he would have had the statements by the police. But in this case, he does not tell us that he had received the statements of the police.

CHAIRPERSON: Yes, because he is addressing the findings now at paragraph 12 that you read to us. The entire
20 paragraph 12 is in relation to his findings on those issues that are included in the heading. Nothing more, nothing less.

ADV MTSWENI: Yes. The main question, Madam Chair, I just wanted to find out, in his report, which would have been presented as evidence in court, he does not deal with those issues, such as the version of the police, et cetera, and also

the question of the gun being planted there. But in his statement before this Panel, he addresses that.

CHAIRPERSON: Yes.

ADV MTSWENI: So this is what I wanted to clarify from him, to say, why did he not deal with it in his report and ...[intervenes].

CHAIRPERSON: The question you must ask him, that is why I took you to paragraph 12, that you read to us the entire paragraph 12. So you have to pose the correct question to
10 the witness and not just confine it to paragraph 12, because paragraph 12 deals with only those specific aspects, the findings and his observations in relation to those issues. So if you would like to ask him that question, you can pose the question to him.

ADV MTSWENI: Can I do that after the tea break, Madam Chair?

CHAIRPERSON: Please do now, so that iii

ADV MTSWENI: No, I just want to clarify something with my team, with Mr Sebelemetja, who is my teammate here.
20 Hence, I am saying, can I do that after tea?

CHAIRPERSON: You may confer with your colleague so that you do not leave this aspect hanging.

ADV MTSWENI: I am going to deal with it in a number of instances, so it will not be hanging, Madam Chair.

CHAIRPERSON: All right. We are going to adjourn now and

reconvene at quarter to 12.

ADV NGCUKAITOBI SC: Madam Chair, we do have a concern also with this question because my learned friend says the statements from the police say that this deceased tried to shoot at Mostert. Now, if we remember the facts in this case, Mostert is in the apartment. There are three policemen on the ground, and none of those statements say that. So if our learned friends can show us which statement is he talking about.

10 **CHAIRPERSON:** I am sure you will do that, and then you will deal with that in re-examination, Counsel. Let us adjourn until quarter to 12. Then you will proceed, Advocate Mtsweni. You are still under oath, Colonel.

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

CHAIRPERSON: Thank you.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good day, everyone. Good day, Colonel. Good day, Advocate Chauke. You continue to be under oath,
20 Colonel.

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

CHAIRPERSON: Thank you. You may proceed, Advocate Mtsweni.

ADV MTSWENI: Lieutenant-Colonel, just to correct one thing, I had said to you that in Berea, the deceased had fired

shots at Inspector Mostert. I think that was incorrect. In fact, let me just, so that you have got a clearer picture. Madam Chair, that would be just the statement by Mostert at BR0073.

CHAIRPERSON: Which file?

ADV MTSWENI: This is the Berea case docket.

CHAIRPERSON: Berea. Thank you. What page?

ADV MTSWENI: 0073. Can you see, can you see the state, can you see the document, Lieutenant-Colonel?

LT-COL MANGENA: That is correct, yes.

10 **ADV MTSWENI:** In fact, what Inspector Mostert
...[intervenes]

CHAIRPERSON: Wait a minute, Counsel. We are looking for that...

ADV MTSWENI: I think it has been flown on the screens, Madam Chair.

CHAIRPERSON: No, we want to see it in the document. What page?

ADV MTSWENI: It is BR0073.

20 **CHAIRPERSON:** It will be helpful if you are going to use the dockets to alert us because some of our documents are not here, they are elsewhere.

ADV MTSWENI: Thank you, Madam Chair.

CHAIRPERSON: And page?

ADV MTSWENI: 0073.

CHAIRPERSON: 00...

ADV MTSWENI: Can I proceed, Madam Chair?

CHAIRPERSON: Yes, sir.

ADV MTSWENI: Lieutenant-Colonel Mangena, I will just go straight to paragraph four of the statement by Mostert, which starts with ‘at 22.40’. Do you see that?

LT-COL MANGENA: Yes, sir.

ADV MTSWENI: And he says:

“At 22.40, Captain Eva, Inspector Nel, Constable Naidoo and I entered the building.

10 The other members safeguarded the ground area. We proceeded to the third floor to the flat number 32. On our arrival, I noticed the security gate in front of the door. Due to the fact that the suspect or suspects could be armed, the security gate was forced open by means of a crowbar. Once this was done, the door was kicked by Inspector Nel. I immediately entered the flat armed with my pistol, a 9mm Parabellum with serial number...”

20

He gives it to us.

“As I entered, I was confronted by the suspect, Thabo. He was armed with a pistol, pointing it in my direction.”

And then he says:

“I fired three shots in his direction.”

Do you see that?

LT-COL MANGENA: Yes, I see it.

ADV MTSWENI: You do not, in your report, dispute the fact that the deceased may have or had pointed a firearm at Inspector Mostert?

LT-COL MANGENA: No, I cannot dispute that because I am only looking at evidence that is ballistically related and where there is physical evidence that I can see. In his statement
10 saying that the person was in possession of a firearm, I cannot dispute that. I cannot comment on that one.

ADV MTSWENI: Yes. Thank you. I just then wanted us to go to the Durban Central case. I think your report there... your report is on 2A-68.

LT-COL MANGENA: I have it, Chair.

ADV MTSWENI: You have your report.

LT-COL MANGENA: Yes, I have the report.

ADV MTSWENI: If you go to 2A-70, under paragraph 3, you are telling us that on 30 January 2012, you received a number
20 of LRC files from the commander of LCRC files from the Commander LRC Durban and in that, what was included was the files relating to Durban Central CAS number 185/02/2009. What was contained there were the crime scene photos on a disc, crime scene sketch plan, as well as the affidavit by Constable Simphiwe Charles Mkhize.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: In relation to this docket, the only things that you had at that day are those, there is only those three things, three items on the 12th, on the 30th of January.

LT-COL MANGENA: Chair, the items mentioned here are not the statements from a police docket. These are from a file from the LCRC.

ADV MTSWENI: No, no, I am saying so far as this case is concerned, those are the only documents, items that you
10 received relating to this docket on the 30th of January.

LT-COL MANGENA: In connection with this file?

ADV MTSWENI: Yes.

LT-COL MANGENA: Yes.

ADV MTSWENI: And then you received the rest of the documents on the 6th of March.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes. And this was the case that related to Mr Mkhize, Bonga Mkhize.

LT-COL MANGENA: That is correct, Chair.

20 **ADV MTSWENI:** Yes. Now, the reason I am asking you this, it is pertaining to two things, the following. The narrative, again, that is perpetuated by the police in this case is that they were on the lookout for Mr Mkhize, and then as they tried to flag him down, he then started firing at them, and then they retaliated. Do you recall that?

LT-COL MANGENA: That is correct.

ADV MTSWENI: Yes. Now, so that we know what kind of a scene it is, can I just ask that we go to... my help is not here... to the actual docket itself? That would, Madam Chair, that would be DC quadruple 024.

CHAIRPERSON: DC or BC?

ADV MTSWENI: DC.

CHAIRPERSON: DC. Quadruple 024?

ADV MTSWENI: Yes, that is the statement by Raymond Lee.

10 **CHAIRPERSON:** Constable Lee.

ADV MTSWENI: Yes, Constable Lee, yes.

CHAIRPERSON: Proceed, Counsel.

ADV MTSWENI: I am just waiting for it to be shown on the screen for the witness.

CHAIRPERSON: Does the witness have a copy of this case docket, Durban Central?

LT-COL MANGENA: No, I do not have a copy, Chair.

CHAIRPERSON: Does the witness have a copy of this docket at Durban Central? Do you perhaps have a copy
20 there, researchers? You can bring your computer, because he cannot keep on looking back and reading on the screen. He would rather read on the screen in front of him.

ADV MTSWENI: Can I proceed, Madam Chair?

CHAIRPERSON: Yes, proceed, Counsel.

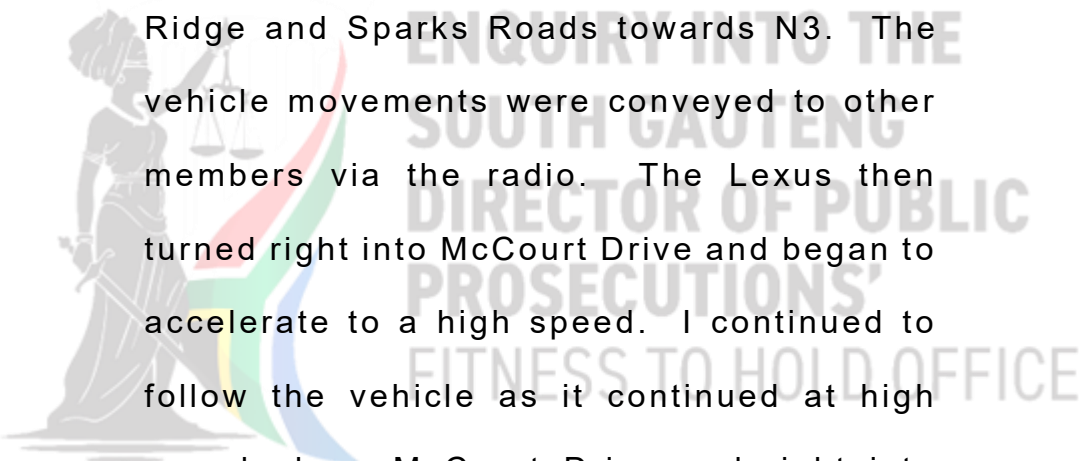
ADV MTSWENI: It is a statement by Constable Raymond

Lee, who we now know that he was part of the, on that day, he was part of the Kato Manor squad that had a hand in Mr Mkhize's demise. But what he says in paragraph 3 is that:

“At 13.10, a black Lexus with registration number...”

And then he gives the registration number;

10 “...was noticed driving towards Overport City along Ridge Road. Inspector Stoltz and I immediately began following the black Lexus along Ridge Road over the intersection of Ridge and Sparks Roads towards N3. The vehicle movements were conveyed to other members via the radio. The Lexus then turned right into McCourt Drive and began to accelerate to a high speed. I continued to follow the vehicle as it continued at high speed along McCourt Drive and right into Highview Road back towards Sparks Road. The Lexus continued to drive at high speed and went onto the right-hand side of the road at the intersection of Highview and Sparks to get around several cars waiting on the intersection. I followed the Lexus left into Sparks Road and down towards Brickfield Road. In Sparks Road, I managed to pull



along the right side of the Lexus whose driver's window was down.”

Mark the word important ‘down’.

“Inspector Stoltz produced his appointment certificate and shouted at him to pull over as we were police. The driver who was now identified as Bongani Mkhize proceeded to produce a pistol and pointing it at us. I immediately hit the brakes and pulled behind
10 the Lexus. The Lexus began to accelerate going onto the right-hand side of the road going contrary flow through the intersection of Sparks and Brickfield running to Brickfield Road. I was still following the Lexus again driving at high speed through the traffic. The car then turned right into Roslyn Road continuing along Roslyn Road before turning left into Pastoral Road.

The car then turned left into Clayton heading
20 past Clayton Road School and down towards Brickfield Road. During all suspects did not slow down. The chase then continued left into Brickfield Road where the driver ignored red robots, climbed pavements to try and get away from us. The suspect then turned right

into Umgeni Road to ignore the red robots, headed towards town weaving through traffic. Along Umgeni Road and under the cornered road bridge, the traffic cleared and it was decided to stop the Lexus by shooting out the tyres. Shots were then fired towards the vehicle. The vehicle then slowed in Umgeni Road close to BP and the vehicle contained Technical Intervention Unit members pulled alongside the Lexus and more shots were fired.”

10

Do you see that?

LT-COL MANGENA: Yes, I see that.

ADV MTSWENI: I am asking this in the context that in your report you mentioned that when one looks at the photographs in particular photo 5 at 2A-74.

CHAIRPERSON: Do you have the depiction in front of you? 2A-74, photo 5?

20

LT-COL MANGENA: That is correct, Chair, I have the photo 5.

CHAIRPERSON: You have photo 5?

LT-COL MANGENA: That is correct, I have it.

CHAIRPERSON: Thank you.

ADV MTSWENI: You would see there on the photograph that you see that when the shots were fired the window was open,

was closed.

LT-COL MANGENA: That is correct, the window was closed.

ADV NGCUKAITOBI SC: Yes, but you cannot as a matter of fact and certainty state that at no stage was the window open either before the shots were fired, in fact particularly before the shots were fired at the vehicle, that the vehicle was at some point the window was open.

LT-COL MANGENA: Chair, what I can mention ...[intervenes]

10 **CHAIRPERSON:** How could he say that, Counsel?

ADV MTSWENI: No, Madam Chair, remember the police are saying that he had fired at them, he had pointed at them through an open window. So I am saying that the Lieutenant-Colonel cannot say as a matter, cannot dispute the fact that at some point the window was open.

CHAIRPERSON: How would he know that at any given time the window was open? That is what I am trying to ascertain.

ADV MTSWENI: It is a question, Madam Chair. If he can deny that the window was never open he can tell us that the
20 window was never open in his opinion.

CHAIRPERSON: Remember this is a ballistic expert. He is not an investigating officer. He is testifying on his expertise ballistically. I am going to leave it there. You may proceed.

ADV MTSWENI: So but Colonel, did you notice in the statement the part where the Constable Lee says that the

witness had pointed at them through an open window?

LT-COL MANGENA: Chair, I have noticed that but if you go through my statement I would say when these shots to the door were fired, the window was closed ...[intervenes]

ADV MTSWENI: No...

LT-COL MANGENA: ...whether at the back there the window was open I cannot comment on because I cannot I do not have any evidence of that. But when these shots were fired the window was closed.

10 **ADV MTSWENI:** Yes. And what you do not say in your report was that you do not say that at no stage did the witness, did Mr Mkhize point the firearm at the police?

LT-COL MANGENA: Chair, I cannot say at that stage whether he was pointing at the firearm at the police or he opened the window. I cannot say that because I do not have any evidence on that.

ADV MTSWENI: Yes. But you then say in your statement you deal with the question of how the possibilities of Mr Mkhize having tested positive for a primer in your statement.
20 That would be at 2-19. And you gave an explanation that you said there are four circumstances under which one may test positive for a primer residue and you list them with paragraph 66.

ADV BALOYI-MERE SC: Sorry to interrupt you. But if we can try when we put a proposition to a witness to put it in its

proper context. Paragraph 65 does not say he says. He says he is aware of Superintendent Stoltz's primer residue test, if you can put it correctly.

ADV MTSWENI: Yes. Is that correct what has just been said? That at paragraph 65 you are saying that you are aware of the test results by Superintendent Stoltz wherein the deceased's right hand tested positive for primer.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: And you give four instances under which a
10 person may test positive for a primer residue.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: And you say one, it is either when the person had discharged a firearm. Two, if the person is within two square metres of a firearm when it was discharged. Three, the person was in close proximity to a discharged firearm. And then four, the person handled or came into contact with a recently discharged firearm. Do you see that?

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: And you then say that at paragraph 67 on
20 2-20:

“Primer residue alone does not establish that the deceased discharged a firearm as such that it may be transferred through proximity or contact.”

Do you see that?

LT-COL MANGENA: Yes, I see it.

ADV MTSWENI: Now, in this case, you would have noticed from Inspector Constable Lee's statement that, in fact, the scene when the shots were fired, it was a moving scene.

LT-COL MANGENA: When the shots were fired, according to his statement, when they were following the vehicle, that is what is alleged that the driver shot at their vehicle.

ADV MTSWENI: Yes, and although he goes on further to say even after the vehicle had stopped, the other occupants of
10 the technical team got out and fired more shots.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: But from your analysis of the photographs, could you tell the distance between looking at the cartridges – so that I am fair to you... If you go to 2A-73...

LT-COL MANGENA: I am on it, Chair.

ADV MTSWENI: The yellow cones, would I be correct to say, they represent the cartridges that were found at the scene?

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes. Now, looking at those cartridges,
20 would my assumption be correct that when the people who fired shots may have been standing exactly where the cartridges are?

LT-COL MANGENA: Were standing where exactly the cartridges are?

ADV MTSWENI: Where the cartridges are, around that area.

Looking at photo 3.

LT-COL MANGENA: No.

ADV MTSWENI: But can you...

LT-COL MANGENA: When discharging, especially an R5 rifle, it does not eject the cartridges to where you stand. It ejects them around 45 degrees to you, and the distance can depend on how you are holding your firearm. If you hold your firearm like shooting from the side, they will go up and then 45 degrees. If you are holding your firearm straight, they will go to 45 degrees. So it can be anywhere around there, but not exactly where the cartridges were recovered.

ADV MTSWENI: Yes. Now, would you say then that looking at the cartridges and where the vehicle is standing, would it have been possible for Mr Mkhize when the shots are fired from around that area, that Mr Mkhize could have been contaminated by the primer residue, resulting in him testing positive?

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

ADV MTSWENI: Okay. But what you are also not dealing with and cannot dispute, at least from your report, is the fact that Mr Mkhize may have been in possession of a firearm.

LT-COL MANGENA: Chair, there is a firearm recovered in Mr Mkhize's firearm. I cannot say he was in possession of that firearm or the firearm came after the incident. I cannot say that. But the firearm was recovered in his car.

ADV MTSWENI: Thank you. Now, I then want us to go and deal with Melmoth.

CHAIRPERSON: Before you go to Melmoth Counsel, you referred us to photo 5 earlier on at 2A-74. That was after you read the statement of Officer Lee.

ADV MTSWENI: Yes, Madam Chair.

CHAIRPERSON: In relation to which you asked the witness to highlight the words, whose driver's window was down. Do you remember?

10 **ADV MTSWENI:** Yes, Madam Chair.

CHAIRPERSON: Now, this is the version of Mr Lee saying the driver's window was down, and the witness makes observations in relation to the windows of the vehicle. Maybe you can look at the photo 5 that you referred us to. You see the driver's window is shattered.

ADV MTSWENI: Yes.

CHAIRPERSON: Go to 2A-88 and read the observations that the witness is saying. On top there, paragraph 12.

ADV MTSWENI: He says:

20 “On observation of the vehicle on the photos, I noticed that all the windows of the vehicle were shattered, and there were glass particles embedded in the rubbers on the doors. This indicates that the windows were closed during the incident and limit the

possibility of shots being fired from inside
the deceased's vehicle.”

CHAIRPERSON: I am not sure what point you really wanted to make in relation to the statement of Mr Lee where he said he must highlight that part of the statement. Now, I am taking you to this observation by the witness. Are you taking issues with this observation?

ADV MTSWENI: No, Madam Chair. The point that we wanted to make was that whether can he dispute Inspector Lee's
10 version that at some point that window was open. That was when, according to Inspector Lee, they were pointed with a firearm. We do not dispute that when the shots were fired, the windows were closed.

ADV BALOYI-MERE SC: I am trying to understand that line of questioning because obviously that would come from a factual witness, because if he were to dispute or not to dispute, that would be hearsay. He was not at the scene. He is a ballistic expert and from the preface of all his reports, it shows that he is called after the fact.

20 **ADV MTSWENI:** That is correct, Madam.

ADV BALOYI-MERE SC: Now, he cannot be a factual witness. He only deals with what he has been provided with and to analyse.

ADV MTSWENI: That is correct, Madam.

ADV BALOYI-MERE SC: Ja, so I am trying to understand

how can he dispute any of the statements, especially factually when he is not a factual witness.

ADV MTSWENI: We appreciate, but the point of the matter, we just wanted him to comment on the version by Lee that at some point that window was open and that was when, according to Lee, the deceased had pointed a firearm. You would recall in his, in Annexure CM3, he said that part of the investigation indicated having to look at the inconsistencies between the version that is provided by the police and as well
10 as the version that is provided by the photographs. So it is against that backdrop, because he had to look at these inconsistencies according to him and make a report.

CHAIRPERSON: I beg your pardon. Where does Mr Lee say at one point the window was open?

ADV MTSWENI: Mr Lee tells them that when they fled the vehicle, the window was open. That is when the deceased pointed them with a firearm.

CHAIRPERSON: Where does he say at one point the window was open?

20 **ADV MTSWENI**: Madam Chair, if we go to Inspector Lee's statement, he says:

“The driver, who was now identified as Bongani Mkhize, proceeded to produce a pistol and pointed at us.”

In fact, I just want to look for the relevant part. Thank you,

Madam Chair. He says:

“In the Sparks Road, I managed to pull along the right side of the vehicle, whose driver's window was down...”

So one can ...[intervenes]

CHAIRPERSON: Yes, he said at one point, you see, you must read the statement as it is. That is why I referred you to that part of the observation. And when you read the statement, you said highlight these words, yourself, ‘whose
10 driver's window was down’. Now you say, you are making a proposition that at one point the window was down, as if at one point it was opened and then at another stage it was put down. So just read the statement as it is and put the correct version to the witness.

ADV MTSWENI: Madam Chair, I think we can all accept that when the window is down, it means it is open.

CHAIRPERSON: I am not talking about that. I am talking about the proposition that you made saying, put it to the witness, that at one point the window was down. Where do
20 you get that in the statement? The statement simply says ‘the Lexus, whose driver's window was down’. You say at one point. At one point it might have been open. At one point it might have been down. So I drew your attention to the observation at that paragraph where the witness tells us that the windows were all closed.

ADV MTSWENI: Madam Chair, I was referring to prior to the incident, and that would be at the time where, according to Inspector Lee, they were pointed with a firearm.

CHAIRPERSON: Counsel, I am simply saying do not make your statement. Read the statement of the witness as it is. The very point that you said we must highlight, we highlighted it. Now you tell him something else. But you may proceed. If you can tell us how far we are going with this matter because we might have to adjourn at some stage and
10 determine how long you are going to take.

ADV MTSWENI: Madam Chair, I think I will be done very soon. Before one 1 o'clock I think I will have covered.

CHAIRPERSON: Before 1 o'clock?

ADV MTSWENI: I do not have much to cover with the witness. I just wanted to check one or two things with him. Now, with the ...[intervenes]

CHAIRPERSON: If you wish to proceed after one o'clock, give us an indication then we can ascertain with the witness about his arrangements. You remember we spoke in
20 chambers yesterday and today? So just give us an indication. We are not putting you under pressure. But just bear that in mind.

ADV MTSWENI: Thank you, Madam Chair. Now, in the Melmoth case, that was in relation to the Biyela brothers. Do you recall that one?

LT-COL MANGENA: Yes, I recall that.

ADV MTSWENI: Where one was shot on the rocks and then the other one was shot inside the house. The Rondeville.

CHAIRPERSON: Is that the Biyela brothers?

ADV MTSWENI: That would be in the case.

CHAIRPERSON: The uncle and the nephew.

ADV MTSWENI: Yes, I call them the Biyela brothers. That would be the uncle and the nephew. Now, but before I continue, there is just one thing that I just want to clarify with
10 you. You said the manner in which you are communicating with the investigators and the prosecution team. If you were to submit documents either to the prosecution team or to the investigators, to whom would you send them to?

LT-COL MANGENA: The report will be handed to the IO, the investigating officer.

ADV MTSWENI: And the request would come, I take it the request would come through the IO?

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes. And would it come through by way of
20 an email or would it be a telephonic?

LT-COL MANGENA: Chair, in most of the incidents, when I go to KZN, I would not go there alone. I would go with the IOs. Now, most of the time when we are at that side, I was with the IOs. So if I am with them, I will tell them the report is ready, you will let me know when you need the report. And

then I will print it and I will sign it and give it to them.

ADV MTSWENI: So, because the thing is, I just want to clarify this signature thing. It is very important to me. What does the signature signify? The date and the date of it?

LT-COL MANGENA: The date will be the date that I signed it and it will be handed to someone, to the...

ADV MTSWENI: To the IO?

LT-COL MANGENA: That is correct.

ADV MTSWENI: Would it be pursuant to a report, a request
10 from the IO that this report is being requested?

LT-COL MANGENA: The request will be for me to do the reconstruction. And when I am done with it, I will tell them it is ready, if you want it, then I will give it to you, because they have already submitted the request for me to reconstruct the incident. So I would not expect him to send me a letter for the report to be handed to him.

ADV MTSWENI: Yes. So when you give it to him, that would be the day that you would have signed it?

LT-COL MANGENA: It would be the day that I signed it or it
20 would be the days before I handed it to him.

ADV MTSWENI: Okay. Now, again, you told us in your statement, Madam Chair, I will go into the Melmoth case just now. I just want to make it, because I made a mental note. The other dockets, you said you had done 23 reconstructions. 22, I think. Am I correct?

LT-COL MANGENA: Chair, I think it was 22 or 23.

ADV MTSWENI: Yes, and only 10 made it into the indictment.

LT-COL MANGENA: Yes, I think only 10 or 12 of them were in the indictment.

ADV MTSWENI: Do you have any reason why, despite you having done your recommendations, did the prosecutors decide not to pursue those?

LT-COL MANGENA: Which ones?

10 **ADV MTSWENI:** The other ones where you made the reconstructions?

LT-COL MANGENA: And then are not in the indictment?

ADV MTSWENI: Yes.

LT-COL MANGENA: Probably the IOs were still busy with the investigations. So if they are not done with the investigation, they cannot put those dockets into the indictment.

ADV MTSWENI: Now, did you, after you had made your reports, sit down and discuss them with the prosecutors?

20 **LT-COL MANGENA:** Which ones? The ones that went ...[intervenes]

ADV MTSWENI: The ones that made it in the indictment.

LT-COL MANGENA: I cannot recall, but there are dockets or reports which were cases where they requested reconstruction. I did that, but the indictments were out before

they could complete with some of those cases.

ADV MTSWENI: No, no, I am talking about after you had given them, you had made your reports available. Did you at some point sit with the prosecutors to discuss your reports?

LT-COL MANGENA: Chair, I cannot recall if I have sat after that. But with the IOs, yes, I will sit with them. Probably the IOs at some stage will sit with the prosecutors in my absence because I am not always with them.

ADV MTSWENI: No, no, I was just talking about to you,
10 having consulted with the IOs about your report.

LT-COL MANGENA: With the IOs, yes, I will consult.

ADV MTSWENI: No, no, sorry, man, I meant the prosecutors.

LT-COL MANGENA: I cannot recall.

ADV MTSWENI: Okay. Now, in the Melmoth case, I just wanted to understand from you, because this for me was a bit of a concern, the firearm being on top of the blood, right?

LT-COL MANGENA: Yes, sir.

ADV MTSWENI: Is it always the case that every time that if a firearm is dropped before blood, there is a blood pool, then
20 the gun would not flow beneath it because you said it would make a pool around the gun. Do you recall that part?

LT-COL MANGENA: Yes, I remember.

ADV MTSWENI: Now, what if the surface is an uneven surface? Is it possible that the blood could seep underneath the gun?

LT-COL MANGENA: Chair, even if the blood would flow underneath the firearms, but it will not cover the whole surface underneath the firearm, there will be what you call a void that will show the sites where blood could not get underneath the firearm. But if you look at this one, it is right on top of blood. There is nowhere where the firearm is in contact with the surface and then blood gets underneath it. It is not possible. If the firearm is in contact with the surface, blood will go around the firearm but not underneath the
10 firearm.

ADV MTSWENI: But can we just examine photo 3? Madam Chair, can we just give a warning that we are about to sensitive content for those viewers who may be sensitive? And the relevant page would be 2A-186.

CHAIRPERSON: Yes. You have a cautioned?

ADV MTSWENI: Yes. Now, I am not sure whether my eyes are deceiving me, but if you look at the gun there, you...

CHAIRPERSON: Can you take us to ...[intervenes]

ADV MTSWENI: It is 2A-1...

20 **CHAIRPERSON:** ...that, for completeness of the record, please?

ADV MTSWENI: Yes, I have said 2A-186.

CHAIRPERSON: 2A?

ADV MTSWENI: 186.

CHAIRPERSON: 186. Photo 3?

ADV MTSWENI: Photo 3.

CHAIRPERSON: The depiction is that of the nephew to...

ADV MTSWENI: Mr Biyela.

CHAIRPERSON: Mr Biyela.

ADV MTSWENI: Yes. That would be deceased B.

CHAIRPERSON: Deceased B.

ADV MTSWENI: Oh, the name is... I am reminded that we should honour them, but through their names. It is Khanyesilani. Khanyisani, Khanyisani Biyela. Thank you.

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

ADV MTSWENI: You pointed us... When you were testifying on this aspect, you pointed us to the blood having been visible through the trigger hole. I call it that, I do not know what it is called.

LT-COL MANGENA: The trigger guard.

ADV MTSWENI: The trigger guard. Is that where you base your findings on, to say that then the gun was placed on top of the blood because you can see it through the trigger gun?

20 **LT-COL MANGENA:** Not only that, Chair. Here you are only looking at the one photo. There is only, again, there is another photo, 2A-205. Photo number 34.

CHAIRPERSON: It is photo number?

LT-COL MANGENA: 34.

CHAIRPERSON: 34. Chair, even on this one you can see the firearm is on top of blood. The blood does not come

around the firearm. It does not create what you call a void but it is on top of it.

ADV MTSWENI: Okay. Thank you, Mr Mangena, I just wanted to clarify that aspect. Madam Chair, can I just have five minutes so that I can just confer with Mr Hulley if the NPA has got other things they would like me to clarify with the witness? But insofar as I am concerned, I do not have much to take up with the witness.

CHAIRPERSON: Yes, you propose a short break?

10 **ADV MTSWENI:** Yes, so that I can just confer with the NPA if there are aspects that they would like me to clarify with the witness.

CHAIRPERSON: [Indistinct]... [Laughter] Advocate Ngcukaitobi, I am not adopting you.

ADV NGCUKAITOBI SC: Yes, I would be adopted by the Zulus or the Tswanas.

CHAIRPERSON: Counsel, Advocate Mtsweni requests for five minutes. We will afford you ten minutes to confer with Advocate Hulley. We will reconvene at ten to one. Would
20 that suffice?

ADV MTSWENI: That would suffice, Madam Chair.

CHAIRPERSON: Thank you.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, everyone. Good

afternoon ...[indistinct]. Ntate Chauke, good afternoon. You will continue to be under oath. Thank you, sir. Advocate Mtsweni.

ADV MTSWENI: Thank you, Madam Chair. Madam Chair, just two aspects. Ntate Mangena, you testified that at the time the indictment was drafted, the reports were not yet finalized. Did I hear you correctly?

LT-COL MANGENA: No, the reports were finalized, but not all of them as some of those reports, the dockets, are not in
10 the indictment.

ADV MTSWENI: But in relation to the, those that made it in the indictment, were the reports finalized at that point, when the indictment was finalized in August?

LT-COL MANGENA: Chair, I do not know when the indictment was finalized.

ADV MTSWENI: It was finalized in August 2012.

LT-COL MANGENA: So I do not know which ones were finalized, or all of them were finalized or not. I cannot recall.

ADV MTSWENI: So you cannot say as a matter of fact that
20 all your reports were finalized at that time, when the indictment was drafted?

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes. Now ...[intervenes].

CHAIRPERSON: What is the date, by the way, of the finalization of the indictment?

ADV MTSWENI: 17 August.

CHAIRPERSON: 17 August 20?

ADV MTSWENI: 12. Now, the first time that, insofar, just back at the Durban Central case, I have gone through your report, and in fact, when one goes through your report on the documents that you perused, and among 2A-70, you list the documents under paragraph 4, you list the documents that you had regard to, and you also make at 4.8, you say you had regard to the statement of J F Stoltz. Do you see that?

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

ADV MTSWENI: Would it be the same Stoltz that you referred to in paragraph 65 of your statement?

LT-COL MANGENA: No, the Stoltz that we are referring to, I think it will be Superintendent Stols from Scientific Analysis, and the Stoltz that is mentioned here will be Inspector Stoltz from Cato Manor.

ADV MTSWENI: Yes. So, I take it that when you did your report, you did not, because you mentioned all the documents that you had regard to, and you do not mention
20 Superintendent Stoltz's report on the primer residue, Superintendent Stoltz, I mean?

LT-COL MANGENA: Chair, it might be that when I received the dockets, Superintendent Stoltz's statement might not have been in the document. Maybe I received it later. I cannot recall. But if I received it on the same day, I would

have mentioned it also.

ADV MTSWENI: Now, let us just look at the date of Superintendent Stoltz's report. It is found on, under DC, that would be under Durban Central, on page 193.

CHAIRPERSON: Will that be the file in the dockets or what, 193 of what, Counsel?

ADV MTSWENI: It is DC, DC1.

CHAIRPERSON: Thank you, Counsel. Do you have it Colonel?

10 **ADV MTSWENI:** Can you see that report?

LT-COL MANGENA: That is correct, yes.

ADV MTSWENI: And you would see it is marked A25.

LT-COL MANGENA: That is correct, Chair.

ADV MTSWENI: Yes. And I think I saw somewhere that your report was marked A94 or 97 at some point in the docket, but I will check it, so, and it is dated, if you go to the next page, DC1-000194, it is dated 7th December 2009.

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

20 **ADV MTSWENI:** Yes, so in all probabilities, it must have been in the docket.

LT-COL MANGENA: It is possible, Chair.

ADV MTSWENI: Yes. And when you were given the docket, it was not given to you because you did not refer to it.

LT-COL MANGENA: Chair, it does not mean because I did not mention it, that it means I did not receive it or I did not

see it. I could have seen it maybe at a later stage after receiving those.

ADV MTSWENI: You see that the point of the matter is, what the reason is, nowhere in your report do you make mention of the, of Superintendent Stoltz report. Nowhere in your report do you ever even deal with the question of the primer, of Mr ...[indistinct] testing positive for primer. Now the question is, could it have been because you did not see the report?

10 **LT-COL MANGENA:** Chair, I think if, when I compiled the report, I could not have seen the report, but that would not change my findings.

ADV MTSWENI: No, I did not ask whether it changed your findings or not. I am saying, does the fact that you do not deal with it mean that you did not see it or it was not given to you?

LT-COL MANGENA: I cannot recall when I received it. It is possible, and I do not know, I cannot remember, I cannot recall. It is a long time ago when I received it, whether when
20 I compiled this I had it, but the possibility is that I could have had it or seen it before completely compiling my report.

ADV MTSWENI: But I have got a bit of a concern with your answers. In some instances when you are asked to commit yourself, you cannot recall. There are a number of instances you cannot recall. One, you cannot recall whether you

consulted with the prosecution team. You cannot recall when did you first make the reports available to the prosecution team. You cannot recall whether you were given the report or not.

LT-COL MANGENA: That is correct. It is 14 years back. I cannot recall all those things.

ADV MTSWENI: Yes. Now can we, then if, but yet you never when Mr Ngcukaitobi was asking you questions, you at no stage whatsoever told him that you cannot recall.

10 **LT-COL MANGENA:** I will ask him, I will answer that I recall what is in my statement. What is not in my statement, I will tell him I do not recall the dates.

ADV MTSWENI: We have got no further questions, Madam Chair.

ADV BALOYI-MERE SC: Before you leave the stage, I want to understand something. You say the witness did not deal with the issue of testing positive to primer residue as contained in the Stoltz report.

ADV MTSWENI: That is correct, in his report.

20 **ADV BALOYI-MERE SC:** In his report?

ADV MTSWENI: Yes. He only deals with it in his statement.

ADV BALOYI-MERE SC: He only deals with it in his statement?

ADV MTSWENI: In his statement, yes.

ADV BALOYI-MERE SC: And you are saying, I want to

understand your line of questioning. You are saying he did not mention the Stoltz report in the documents that he received.

ADV MTSWENI: Yes, because he mentions the documents that he had received and considered.

ADV BALOYI-MERE SC: He mentioned the documents that he received and considered. And I do not have any intention of giving an answer on behalf of the witness, but I want us to go to 2170 at paragraph 4. And – I did not ask for a picture.

10 2170, that is Colonel Mangena's report, volume 1. That is where, that is Durban Central, the same case that you are dealing with.

ADV MTSWENI: Yes.

ADV BALOYI-MERE SC: And I would like us to read paragraph 4 in its context. Here, Lieutenant Colonel Mangena tells us that he received a copy of the police case docket with the same reference number.

ADV MTSWENI: I see that.

ADV BALOYI-MERE SC: And then he says, amongst other
20 documents in the docket, I found the following.

ADV MTSWENI: We see that, Madam Chair.

ADV BALOYI-MERE SC: It might be a matter of semantics, I do not know, but I take your point that he does not remember other things. But I am saying this might be a matter of semantics because he says amongst.

CHAIRPERSON: You may proceed, Counsel.

ADV MTSWENI: No, I am finished, Madam Chair. Thank you.

CHAIRPERSON: Are you finished. Advocate Ngcukaitobi, it is quarter past one. We normally adjourn for lunch at half past one. Would you like to give us an indication on how far you are going to take, how long a time you are going to take?

ADV NGCUKAITOBI SC: Madam Chair, this is going to be very short. If I could be so bold as to suggest that we just
10 carry through.

CHAIRPERSON: Yes, may we then proceed. We will take an adjournment at the end of your re-examination.

RE-EXAMINATION BY ADV NGCUKAITOBI SC: Thank you, Madam Chair. I am indebted to the panel. There are just three lines of enquiry I wish to pursue, Lieutenant Colonel. The first line of enquiry pertains to this idea that there might have been something untoward in the way you dealt with the prosecutors. There was even a suggestion that the prosecutors fed you answers and suggestions and that
20 they did the indictment before and your reports were completed. So it is as if it is the prosecutors that were deciding what should happen and not the investigators and the forensic experts. I mean, can you just confront that proposition head on and explain to us. We got into the scene, I think it was on the 9th of January 2012 and the prosecutors,

we know it is common cause, came onto the scene on the 8th of March 2012. So can you just deal with that part pertinently?

ADV BALOYI-MERE SC: Advocate Ngcukaitobi, is that the proposition put or is that the insinuation put that the prosecutors fed or intended to feed?

ADV NGCUKAITOBI SC: No, I think it was specifically suggested that the prosecutors told him.

ADV BALOYI-MERE SC: Told him, gave him answers.

10 **ADV NGCUKAITOBI SC:** Yes.

ADV BALOYI-MERE SC: Oh, maybe I did not hear that.

ADV NGCUKAITOBI SC: [Indistinct]... conclusions.

ADV MTSWENI: No, I do not think that is correct.

ADV NGCUKAITOBI SC: I am happy not to pursue it if that is not the line.

ADV MTSWENI: No, that, I can assure you that is not the line.

ADV BALOYI-MERE SC: I did not get that but maybe the record will bear us out, but I did not get ...[indistinct]
20 [microphone off].

ADV NGCUKAITOBI SC: Thank you Madam Chair. I am happy not to pursue the line if that is not, but I understood certainly with my juniors that that was specifically suggested. But if it has not been suggested we are not going to worry about it. Then there is a secondary issue arising from that,

which is the idea that the prosecutors decided to issue the indictment before they had received your opinions, which might be an issue of criticism against the prosecutors as opposed to you as the forensic investigator. Can you just deal with that secondary proposition?

LT-COL MANGENA: Chair, in most cases I would meet with the investigating officer but not with the prosecutions. The only time I met with the prosecution when I was giving them the progress on the report that I have and the feedback on what is it that I see. And the reports were handed over to the
10 investigating officers. I think most of them was prior to the indictment was issued out.

ADV NGCUKAITOBI SC: Yes, I mean most of this is in fact addressed fully in your statement. If I can take you back to your statement, one of the annexures is a letter that you wrote at page 2/107. It is annexure CM3, paragraph 3.12.

LT-COL MANGENA: I see that, Chair.

ADV NGCUKAITOBI SC: Yes. Now that is where you met with the prosecutors and you presented. In fact both you and
20 Mr Steyl presented.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now was that before or after the indictment?

LT-COL MANGENA: It was before the indictment.

ADV NGCUKAITOBI SC: Yes. Now after this presentation

were there any other occasions in which you interacted with the prosecutors to give them your findings or even if they were preliminary findings?

LT-COL MANGENA: Chair, I cannot recall. After this it was maybe once or twice but it was a long time after that.

ADV NGCUKAITOBI SC: Yes, all right. So, but, I understand but what can you not recall? You cannot recall the number of times but you can recall for a fact that you met or you cannot even recall that you met?

10 **LT-COL MANGENA:** I can recall we met just to give them the feedback but not taking any instructions or anything from them. [Indistinct]... giving them and I will tell them my report will be ready this date and I will hand the reports to the investigating officers.

ADV NGCUKAITOBI SC: Yes, thank you very much. Now there is something that is sought to be made about the alleged discrepancy between the date of the indictment and the date of the signature of your reports. Can you just deal with that?

20 **LT-COL MANGENA:** Chair, with the date of the signature I would say when most of the investigation was conducted in KZN and when I will type the report or print the report I will be in Gauteng.

ADV NGCUKAITOBI SC: Yes.

LT-COL MANGENA: Sometimes I will print it and then I will

go to, maybe to check or do something but when I sign them I will sign them while I am in the office and then hand it over to them. And most of them were handed over before the indictment.

ADV NGCUKAITOBI SC: Thank you very much. I just want to look at the second line of enquiry then which is the issue around the killing of Mr Bongani Mkhize. Now we know him to have been the gentleman that brought the urgent application to the Durban High Court interdicting the police
10 from killing him. He is the gentleman killed in the Durban Central case who was driving the black Lexus.

LT-COL MANGENA: Black Lexus.

ADV NGCUKAITOBI SC: Yes. Now there is a statement of Inspector Lee that was read out but there are two statements of Warrant Officer Padayachee and Warrant Officer Maharaj that I want to put to you pertinently because they deal with this question as to when did the shooting actually take place. You remember there was an issue, was the window open and then closed and then the shooting.

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

ADV NGCUKAITOBI SC: I want to bring to your attention what Inspector Maharaj says at DC000020. I am told that the researchers have been advised. Yes, and particularly at paragraph 4 of the statement by Inspector Maharaj. Okay, so Inspector Maharaj says the following:

“The above vehicle ...”

He is talking about the black Lexus.

“eventually came to a halt ...”

So it stopped.

“opposite the BP garage on Umgeni Road and my driver simultaneously stopped the police vehicle. At this stage I noticed the driver firing shots in our direction. I immediately returned fire with my R5 rifle in the suspect's direction.”

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Now the only point I wish to make here is that it seems according to the narration of Inspector Maharaj there was an exchange of fire.

LT-COL MANGENA: That is correct, Chair. In terms of the statement where he said they immediately stopped the vehicle and the driver firing shots at their direction, so when firing shots at their direction does that mean the window was closed or the window was open? But here in this instance the window was closed by then.

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ADV NGCUKAITOBI SC: I understand but their allegation is that the window was open. That is what you had to deal with. But the point that has been made in cross-examination was that they could have opened the window first.

LT-COL MANGENA: Could have opened the window

...[intervenes].

ADV NGCUKAITOBI SC: And then closed it, and then got shot. But is that reconcilable with paragraph 4?

LT-COL MANGENA: No, Chair. He said there was exchange of shots.

ADV NGCUKAITOBI SC: Thank you. Then I want to look at another statement of another witness who was there. That is, I think it is Warrant Officer Padayachee which is at 000022, paragraph 4. Now he says:

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“We continued east on Umgeni Road until passing under ...[indistinct] bridge when shots were fired at the tyres of the Lexus by Inspector Stoltz.”

So they fired shots at the tyres of the Lexus. So this has nothing to do with the shots that killed him. He then says:

“The Lexus came to a stop.”

Now both of them corroborate each other that the Lexus stopped. This idea that this was, he is firing while the vehicle was in motion is not actually supported by the

20 statements. And then it says:

“On Umgeni Road opposite the BP garage.”

He says:

“I stopped my vehicle on the right side of the Lexus and I noticed the driver

firing shots at us. I returned fire with my 9mm Beretta pistol.”

Now again, the second witness presents this as an exchange. He shoot at us, I shoot him back. So this idea that there was a point when the window was open, then it was closed, well it was open and then he shot and then it was closed and then we shot. Is that reconcilable with paragraph 4?

LT-COL MANGENA: No, Chair.

10 **ADV NGCUKAITOBI SC:** Yes. Yes, and then the last one is on the Berea case. Now I think that is Mr Dlamini who is shot in Berea. What I wanted to ask you is to look at your original statement at 2A-21 paragraph 12.4 and the last sentence. Now you will recall this is the gentleman that is either thrown out of the window or according to Inspector Mostert jumps out of the window.

LT-COL MANGENA: That is correct.

ADV NGCUKAITOBI SC: But he sustains injuries on impact.

LT-COL MANGENA: That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** But the important thing about your statement is the last sentence there. What do you say there?

LT-COL MANGENA: Right, on the last sentence of the statement I said:

“This gives the impression that the deceased was lying down on the ground

when these wounds were inflicted.”

ADV NGCUKAITOBI SC: Now remember, that is the whole point is that he is on the ground, he is lying and then they shoot him there.

LT-COL MANGENA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. So how does the issue of possibly that he had a firearm inside the room, how does that become relevant to this conclusion?

LT-COL MANGENA: Chair, of having the firearm inside the
10 room or the apartment and it is irrelevant.

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

CHAIRPERSON: Lieutenant Colonel Mangena.

LT-COL MANGENA: Yes, Chair.

CHAIRPERSON: You have been with us for a couple of days and assisting us. We are deeply thankful that you made time to come to testify and I think we thank you on behalf of everybody. The nature of this investigation is to gather the truth and your coming assists in that regard. Thank you very much for having made time to come to testify.

20 **LT-COL MANGENA:** Thank you, Chair.

CHAIRPERSON: You are excused.

LT-COL MANGENA: Thank you, Chair. Can I take off my shoes now?

CHAIRPERSON: Any housekeeping matters that we need to deal with as we excuse the witness?

ADV NGCUKAITOBI SC: Yes, Madam Chair. The first relates to my own personal position. The next witness will be led by Mr Ramogale, that is Ms Shamila Williams, who will be testifying on Monday. I had planned to be at the Competition Tribunal on Monday. I am unfortunately presiding and I am chairing the panel, so I cannot absent myself. But I would like to be present here to argue the separation application. So I am going to try and make arrangements to start at 12 at the tribunal. Just to make that point, I am not putting any

10 gun on anyone's head, but I do have a constraint personally on Monday. The second relates to the statement.

CHAIRPERSON: You think as a chair you will be able to persuade all and sundry to start at 12 o'clock?

ADV NGCUKAITOBI SC: Yes, I think I can prevail on everyone.

CHAIRPERSON: Yes, thank you. We would welcome someone proceeding on Monday, Advocate Ramogale. As we mentioned in chambers to all of you, and Advocate Hulley, we propose that you argue the application in the morning

20 between 9 o'clock and quarter past 11. Thereafter, we will then proceed with the witness.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: That will give you a chance to proceed to Johannesburg. I am not sure whether 12 o'clock will ...[intervenes].

ADV NGCUKAITOBI SC: No, no, it is here. It is next to ...[intervenes].

CHAIRPERSON: Is it in Pretoria?

ADV NGCUKAITOBI SC: Yes, it is in Pretoria.

CHAIRPERSON: Yes, thank you. We hope to finish at quarter past 11, when you take a tea break, then we can proceed with the witness, Ms Shamila Williams.

ADV NGCUKAITOBI SC: Yes, Shamila Williams from IPID, ex IPID.

10 **CHAIRPERSON:** Advocate Hulley, that will be in order with you?

ADV HULLEY SC: That is perfectly in order with me, thank you.

CHAIRPERSON: Yes, thank you. We are going to stick to time. As you mentioned, we will afford you that one hour, one hour and 15 minutes of reply. And then we will adjourn and start with another witness. We will try to use the

weekend to read and look through your authorities. It is a lot, but we will try to use that time to familiarize ourselves
20 with your submissions and the authorities and then come to listen to you. And I think it is an appropriate time then to adjourn until Monday morning.

ADV NGCUKAITOBI SC: Sorry, Madam Chair, I said there were just two issues.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: The second is just to say it does not appear that the statement of, anyway, maybe Mr Ramogale must speak.

CHAIRPERSON: Before you speak, Counsel, I did not check with you, but I know that you are not involved in this interlocutory application.

ADV MTSWENI: No, Madam Chair, we are not.

CHAIRPERSON: Yes. Advocate Ramogale?

ADV RAMOGALE: Yes, Judge, we are still making speedy
10 progress with the statement. In fact, the consultation with Ms Williams is ongoing as we are sitting here to try and finalize that. I am not in a position to say whether we will be able to file it by 4 o'clock today. It might be very much very late this evening and possibly early tomorrow morning. But we are trying to do our best to ensure that it gets here before, certainly before midday tomorrow.

CHAIRPERSON: It will be helpful if we get that statement before Sunday.

ADV RAMOGALE: Thank you, Judge. I appreciate it.

20 **CHAIRPERSON:** I think all and sundry would need to look at the statement before we start, because we will start with an application and then get into the witness you are going to call.

ADV RAMOGALE: Yes, thank you, Judge.

CHAIRPERSON: If you do not have such statements, it takes

a long time because we would not have read and engaged the witness properly. But we take your word for it that if it is not tonight, it will be tomorrow.

ADV RAMOGALE: I thought it was Sunday, but thank you, Judge.

CHAIRPERSON: There is nothing that is going to be filed on Sunday. You will file tonight or tomorrow. Unfortunately, we cannot mouth you with costs. We do not have such powers. But let us try to do that and file papers on time so
10 that everybody can read before we start. Is that all, Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: That will be all from us, Chair, thank you very much.

CHAIRPERSON: Yes, thank you. Anything, Advocate Mtsweni?

ADV MTSWENI: Nothing from our side, Madam Chair.

CHAIRPERSON: Advocate Hulley?

ADV HULLEY SC: Nothing from our side.

CHAIRPERSON: You can all have a good weekend. I know
20 some of us will be reading over the weekend, so, but we will meet on Monday. We will adjourn until Monday, the, I forget the dates.

ADV NGCUKAITOBI SC: It is the 2nd, Judge.

CHAIRPERSON: Monday, the 2nd of March.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: I think you must put a calendar in front of me here. That is so. We adjourn.

ENQUIRY ADJOURNS UNTIL 2 MARCH 2026



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