

COURT RESUMES AFTER LUNCH.

BUTANA ALMOND NOFEMELA still confirms:

FURTHER CROSS-EXAMINATION BY MR MARITZ: Now, you have related what transpired after the murder was committed and that you went to the C.R. Swart police station where apparently Dirk Coetzee was got out of a pub or a bar where he was sitting at the police station, is that right? -- That is correct.

And you related what happened after that, that you went and cleansed yourself, the number-plates on the car were changed and then you and Dirk Coetzee drove off to Piet (10)

Retief. -- That is right.

You drove Dirk Coetzee's car and Dirk Coetzee drove the deceased's car. -- That is correct.

What kind of a car did Dirk Coetzee have did you say? -- I cannot remember whether it was a Ford bakkie or Datsun Laurel. (Indistinct)

Now, in regard to what transpired after the murder was supposed to have been committed by you I want to read to you from the verbatim record of what Dirk Coetzee said to the reporter.

It is B3, Mr Chairman, at page 95. He says (20) here seven lines from the bottom, he says the following:

"Ons het 'n ontmoetingspunt gehad waar ons gesê
het 'okay' ons sal julle tienuur of elfuur draai,
daar draai. Toe ek die aand - ek kan nie onthou hoe
laat ek daar gekom het nie, toe staan Joe met Mxenge
se baadjie aan, sy horlosie aan sy arm, Mxenge se
horlosie aan sy arm, die sleutels van die Audi is in sy
sak en 'n 'wallet'"

en daar is toe vir hom gevra "Hy staan toe daar met Mxenge se baadjie" and the reply was: "Daar in Durban-kroeg of iets.(30)

Sy baadjie/..

Sy baadjie, sy 'wallet', sy horlosie en sy kar se sleutels".
Now, what Coetzee is saying here is that there was a pre-arranged meeting place somewhere in Durban and he seems to think it was a bar in Durban. -- That is correct.

And he arranged with you that he would go there every hour on the hour until you arrived and then you would meet there, is that right? -- I cannot remember whether he talked about hour, each and every hour, but I remember that - we made actually an appointment that we will meet.

That was somewhere in Durban. Was it a bar? -- No, (10)
he said he will be in a canteen. That is what he said to me.

That is not what he says. He does not say it was a can-teen at the C.R. Swart police station. He says you were supposed to meet at a prearranged place. Not the police station, somewhere in Durban. -- No. I dispute that.

And he says further that when he arrived there there he saw Joe Mamasela standing there at this prearranged place with the deceased's jacket on, he had his jacket on, he had his watch on his arm, on his wrist, he had the Audi's key in his pocket and he had the deceased's wallet. Joe. -- No, I (20) did not see him.

Now, what do you say about this story that Coetzee is telling?

Is it the truth or not? -- I do not recall that in-cident.

CHAIRMAN: But it does not fit in with your recollection at all?
-- No.

MR MARITZ: So it cannot be the truth? -- As far as I am concerned it cannot be the truth.

So it could possibly be the truth but that you have not remembered the sequence of events properly. -- That is (30)
correct/..

correct.

So it can be either way? Either you or Coetzee are wrong, we do not know which. -- I am right.

You are right? -- That is correct.

Now, on questions by the honourable commissioner you have already explained that you and Coetzee drove these cars through the night, you arrived in Piet Retief in the early hours of the morning of the next day and in the course of that morning you proceeded to go and burn this car after you have stripped it. -- That is correct. (10)

So, the murder was committed on the night of Thursday, 19 November 1981, and on the morning of 20 November 1981, somewhere near Piet Retief this car was destroyed by fire. -- That is correct.

Are you sure of that? -- That is correct.

I want to read to you again from what Coetzee had to say, I am referring to the same transcript, B3. I am going to read passages from pages 97, 99, 100 and 101. At the top of the page the question was posed to him:

"So, die kar staan toe by C.R. Swart". (20)

Now, that is true? You did park the car near C.R. Swart, the police station. -- That is correct.

And his reply was: "Langs C.R. Swart-polisiestasie op 'n parkeerterrein", that is correct? -- That is right.

"Toe stuur ek Paul van Dyk en 'n konstabel, hy is ou brigadier Jan du Preez se seun. Hy was toe nog 'n konstabel, sommer nog 'n jong mannetjie, met die kar vooruit tot op Golela en ek sê wag vir my in Golela-omgewing." Do you see what he is saying? -- I understand.

He says that he sent Paul van Dyk and Jan du Preez's (30)

son/..

son, Braam du Preez, there is such a person, Braam du Preez, he was a constable, he sent those two with the deceased's car on that same night of 19 November to Golela. What do you say about that?

-- That is incorrect.

And then at page 99 he resumes his story. Now, after he had sent these people up to Golela he says: "En toe het hy gesê .." he is speaking about Brigadier Van der Hoven here, "En toe het hy gesê Schoon het opdrag gegee dat die hele 'squad' terugkom Pretoria toe. Jy weet hy het gesê ons moet almal terugkom Pretoria toe. Nie gesê dit hou spesifieke (10) verband met die voorval nie. Hy het net gesê die hele klomp van julle moet terugkom Pretoria toe. Ek is toe met my Datsun en Spyker op Golela-grenspos toe met die Noordkuspad langs en het Spyker op Empangeni afgelaai by 'n njatsi wat hy daar gehad het, 'n meisie, en het toe vir Paul en Braam du Preez, die konstabel, net buite Golela se afdraaipad gekry. Van daar het ek die kar eers .." and then he stopped. Then he says further down on the page "Nee, Paul van Dyk en die konstabel as passasier. Ek het hulle toe die volgende dag daar gekry" that is on Golela. "Jy sien, dit is hier waar Almond lyk (20) my 'n 'link' probeer vind met die karstorie wat hy eintlik nie by was nie." Do you see what he is saying? -- I understand.

He says you fhad nothing to do with the car. What do you say about that? -- I was present when the car was burned.

And then on pages 100 and 101 he says that he and Paul van Dyk and Braam du Preez was supposed to have then hidden the car there at Golela, then they returned to Pretoria and that same night they drove down or the next morning, they drove down again back and then he and Koos Vermeulen and Schutte went and they destroyed the car. He said that (30)

you had/..

Now you maintain it was you and Dirk Coetzee who destroyed this car. -- That is correct.

On Friday morning, 20 November 1981. -- That is correct.

Now once again what you are telling us here does not accord with the objective proven facts of what really occurred and first of all I want to read to you from an affidavit which is contained in B9 volume 1 and I want to read to you from the affidavit of Mr G.C. Potgieter which is EXHIBIT CC in this volume. I have got page 62, Mr Chairman. My learned (10) friend has 55.

CHAIRMAN: Yes, carry on.

MR MARITZ: And Mr Potgieter also testified under oath at the inquest and he reiterated everything that he said in this affidavit. He is since deceased. But listen to what he says.

"Ek is 'n volwasse blanke man woonagtig Hatjalia, distrik Piet Retief en in diens van HLH Mining Production, Piet Retief. Op Maandag, 23 November 1981, dit was ongeveer 11h00, was ek besig in die plantasie. Ek het 'n dik wolk swart rook naby die grens opge- (20) merk. Dit was ongeveer 'n kilometer van waar ek was. Ek het gaan ondersoek instel. Ongeveer 500 meter vanaf Swaziland-grensdraad het ek 'n motor aangetref. Die motor was aan die brand. Die hele voertuig was in vlamme gehul. Die brand was hewig gewees dat ek nie naby die voertuig kon kom nie."

VOORSITTER: Ja, ek is bly om te sien u kan dit ook nie lees nie.

MNR. MARITZ: Ja, die afskrif is 'n bietjie swak.

VOORSITTER: U moet miskien by die getikte deel lees. (30)

MNR. MARITZ/..

C16.11

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NOFEMELA

MNR. MARITZ: As ek net gaan na die .. I will rather read - I have read the gist of what he has said already, but in volume 3

of B9 at page 395, let us rather read his evidence. He says here:

"Ek het 'n verklaring gemaak in verband met 'n sekere motor op 18 Junie 1983, BEWYSSTUK CC."

So, he is referring to the affidavit that I have just tried to read to you partially.

"Ek was op Patalia, Bothashoop in diens van Hunt, Leaches en Hepburn, die houtmense. Ek bly op 'n (10) plaas daar. Op 23 November 1981 om ongeveer 11 vm. was ek in die plantasie om te werk. Ek stap toe uit waar ek gewerk het en sien toe rook en is toe direk soontoe, want ek het gedink dit is 'n bosbrand, want daar was 'n donker rokie en ek het direk sontoe gery en gesien dit is 'n voertuig wat brand. Ek kon nie sien hoe lyk die voertuig nie. Toe ek daar kom was die kar in vlamme. Dit het toe nog gebrand. Daar is vier paaie wat na die voertuig toe gaan. Die wrak is nog daar. Dit was van die pad af. Ek wonder of dit (20) 15 treë is. Die gras was kort en baie groen en het nie gebrand nie. Ek het niemand in die omgewing gesien nie. Daar het niemand aangekom nie. Toe ek weg-gaan toe kom 'n voormalige werknemer van my, Witvoet Dhlamini daar aan"

and the rest is not of importance. What is of importance is that that vehicle that Mr Potgieter found burning on the morning of 23 November, that is Monday, 23 November, has been positively identified as the vehicle of the late Griffiths Mxenge, the one that he was driving on the night that he (30)

was murdered/..

C16.13

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was murdered. Now this evidence proves conclusively that you had nothing to do with the burning of the vehicle. -- I travelled from Durban to Piet Retief and we travelled to a plantation after

having fetched the car from one of the people's houses in Piet Retief then we burned the car in the plantation. That is what I can recall and I am certain about that.

CHAIRMAN: Yes, but the problem is this, Mr Nofemela, not only Potgieter but the whole matter was threshed out fully at the inquest. The fact is that everything there shows that the car was burned Monday, near noon, 23 November and Mr Mxenge (10) murdered on Thursday night, 19 November, and that simply means that a direct trip through the night to Piet Retief and a burning on the morning of the 20th does not fit in with the evidence led at the inquest. -- I understand that, but now I am actually sure of what I did on that day.

But you see, even Dirk Coetzee says you did not do it. Why would he brag about it and exclude you out of the deed? What motive does he have to lie about it? -- There is some discrepancies between me and Coetzee in many aspects in this regard. It is not only this one that he has talked about. (20)

Yes, why would he lie about it? -- I think he is to explain that.

No, but what reason could you suggest? -- I cannot actually have any suggestion about that. He might try not to involve me too much in this.

You did involve yourself already and when you burn the car does not make a big difference, does it? -- That is correct.

MR MARITZ: You see, the further evidence, I think, which the honourable commissioner is referring to is that of a man (30)

by the/..

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by the name of Ahmed Abdullah Mansoor. He confirms what Potgieter says and this is EXHIBIT N in volume 1 of the inquest proceedings and I will read to you what he says.

"I am an adult Asiatic male residing as per above.

During the night of 22 November 1981 and at about 20h15 (that is quarter past eight) I was on my way proceeding to my shop and I went past this spot along the road or near the road. There was no vehicle parked there."

This spot is where the vehicle in question was now found. (10)
That is the burned vehicle. Do you follow that? -- I understand.

Mansoor saw the vehicle on the Monday. The previous night he went past that very spot where the vehicle was found burned out. It was not there. He confirms Potgieter to the hilt. What do you say now? -- As I have said I have nothing to say more than that.

But don't you ...

CHAIRMAN: Another aspect flowing from that, Potgieter says the grass did not burn because it was very green. That (20) does not fit in with your evidence. -- No, it does not.

Or did it burn? -- The time when the car was burning I could not realise that the grass was burning as well, but what I can remember is that Dirk Coetzee made a trail of petrol.

As I say it may only be that the petrol burned and not the grass itself. -- I did not realise that.

MR MARITZ: Well, there is another difficulty too, is that you say that it was burned inside a plantation. That is not the truth.

It was not burned inside a plantation. -- There was a space inside the plantation. (30)

You have/..

C16.18

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NOFEMELA

You have never said that before. That is the first time you have ever said that. -- Is it for the first time that I say it was in the plantation?

Yes. -- There was a space in the plantation where there was grass where the car was being parked.

Don't you understand? You could not have burned this car, that is impossible. I have proved it to you now. How can you sit there and say that you burned the car when it was impossible? -- How impossible was it?

Because the car was not burned on the 20th. It was (10) burned on the 23rd when you had long been back in Pretoria.

CHAIRMAN: No, I do not think that is quite right. He returned to Pretoria on the 23rd.

MR MARITZ: The 21st.

CHAIRMAN: I am sorry, 21st.

MR MARITZ: You returned on the 21st.

CHAIRMAN: According to the "werkkaart". -- I do not dispute that.

So you came to Pretoria on the 21st together with Dirk Coetzee I think also on the 21st. (20)

MR MARITZ: No, Dirk Coetzee came later. He came back on the 23rd.

CHAIRMAN: But you were on the 21st in Pretoria, is that right? -- I do not dispute that. I cannot recall.

That would be the Saturday. -- I do not exactly recall the day when I was back from Durban.

Well, it is the day .. -- But what I can remember is that I slept - from being in Piet Retief I slept in Durban. From Durban I came to Pretoria.

MR MARITZ: Yes well, that was your evidence, you see. (30)

When you/...

C16.19

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NOFEMELA

When you were questioned by the honourable commissioner you said "We burned the car, we drove back that same day", that is the Friday, the 20th. -- That is correct.

When you arrived there you slept. -- That is correct.

And the next day, the 21st, you returned to Pretoria. -- That is correct.

It was quite correct. -- Correct.

On the 21st you were back in Pretoria. -- That is correct.

And this car was not burned until two days later, on (10) Monday, the 23rd. -- It was burned on the 20th in the morning.

Well, what about Potgieter and Mansoor then? Why on earth would they have lied about this? -- I do not know why.

I will tell you why, because you had nothing to do with it and you know it as you are sitting there. -- I know that I was present.

As a matter of fact you know that you had nothing to do with this murder whatsoever. -- I had something to do with the murder because I was told to do that.

Now I will tell you what happened. You sat in jail, (20) death row and you were going to be executed. -- That is correct.

And you thought of a story to try and extricate yourself from that. -- I thought of the truth, not a story.

No, you thought up a story and you took the Mxenge murder and you decided this happened nine years ago, the trail is so dead and cold now that nobody can catch me up, I latch on to this one and tell this story and save my neck. -- I dispute that statement.

This has been done hundreds of times before. The (30) police/..

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NOFEMELA

police are here, they can testify about a number of cases where people in your position have done exactly the same thing. -- Who then killed him if I did not?

It certainly was not you. -- How can I escape to be hanged in order to talk lies and yet not knowing that in future I can be hanged still for that murder.

CHAIRMAN: Does it affect your position or did it affect your position, the confession, as at the day before the planned execution? -- I do not follow.

The point is this, assuming at that date you did (10)
not - your sentence was not commuted, is that right? -- That is
correct.

You were to be hanged the next day. That is obvious. --
That is correct.

Now you confess, this is what counsel puts to you, the Mxenge
murder. -- That is correct.

If you are convicted of that murder you can only re- ceive
the same sentence as you have already received which was not
commuted. -- That is correct.

So, it does not place you in a disadvantage, it can (20)
only create an advantage. -- I do not think of any advantage on
that.

There are obvious advantages. -- I could be in the very same
position as I am today, even in this murder as I think about it.

I see no reason that I should lie in order to save me for that
period and yet in future I will be in the very same situation.

MR MARITZ: Well, the obvious advantage is that you are sitting
here, otherwise you would have been dead by now. -- I am sitting
here because of the truth that I have (30)

confessed/..

C16.20

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confessed.

CHAIRMAN: No, but remember that you also said that you did not
tell the full truth in your affidavit because you were concerned
that you would be executed. -- That is correct.

So your affidavit was not the full truth, to prevent an
execution. -- But it does not make what I have confessed to be
not truthful.

MR MARITZ: I want to put it to you lastly that in an extremely,
and I will stress extremely, irresponsible manner you sat here
and on other occasions and implicated other (10) members of the

police force completely falsely, but totally falsely. -- I dispute that.

I cannot speak for David Tshikalange, but I am speaking for Brian Ngqulunga, I am speaking for Joe Mamasela and all the others which have been named as having been implicated in this murder in any way whatsoever and I am telling you now - I am putting it to you that your evidence in that regard is totally false, completely false. -- I do not agree with you on that.

Well, the commission will have the opportunity of (20) hearing them and assessing them. Incidentally, the jacket worn by the late Mr Mxenge, can you describe it? -- I cannot recall how it ...

You cannot recall that either. I want to read to you a description. The description is the following:

"Die beskrywing van die blanke man .."

we know it is a white man -

"hy is lank en goed gebou, maar effens skraal."

Do you follow that? -- That is correct.

"Hy het bruin hare. Sy hare hang op sy skouers. (30)

Hy het/..

C16.21

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NOFEMELA

Hy het wangbaard en 'n klein snor. Hy het 'n bruin hemp aangehad"

and some kind of a "baadjie - ek weet nie watse baadjie nie", I cannot read it, but forget about the baadjie. Do you recognise the description of this man or do you recognise the man described here? -- No. I do not know the man.

CHAIRMAN: Well, what Mr Maritz is doing, he is reading to you the description of a man, a white man, and he wants to know whether you can tell us who the white man is.

Mnr. Maritz lees asseblief weer stadig voor. Ek ver-(10) staan die getuie se probleem, dit is myne ook.

Listen carefully to the description and say whether it fits with the description of anyone you know. -- That is correct.

MR MARITZ: Remember it is a white man, are the following:

"Hy is lank en goed gebou"

In other words he is quite tall, he is well-built, have you got that? -- That is correct.

"Maar effens skraal". You know, he is not a thick-set man. -- I understand. (20)

Do you understand that? "Hy het bruin hare", brown hair on his head. -- That is correct.

"Sy hare hang op sy skouers". Do you follow that? -- That is correct.

His hair is right down to his shoulders, long hair. -- That is correct.

"Hy het wangbaard", sideburns. -- That is correct.

Long sideburns "en 'n klein snor", a small little moustache. -- That is correct.

Do you follow that? Well, the clothes do not matter. (30)

Do you/..

C16.23

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NOFEMELA

Do you recognise such a man? Do you know who such a man is? Any idea who this is? -- It fits with Dirk Coetzee's description somehow.

Did Dirk Coetzee wear his hair on to his shoulders? -- At times when he leaves his hair to be big, it comes as far as the neck and he has beards at the side.

Sideburns, yes. Did he have a moustache? -- Yes.

Was he slightly built as well? Well, not slightly built, is he a tall man? -- Except that I do not know who can it be.

You do not know who can it be? -- No. (10)

When was it that Dirk Coetzee had this long hair? -- At times he leaves his hair while we are working.

Yes, like mine. I have got long hair. I like wearing long hair, like mine? -- That is correct.

Now I am talking about a man who has got his - you know like a woman. He has got his hair growing right down to his shoulders. You see a lot of them. -- No, I do not know that man.

In the old days we used to call them Hippies. -- I understand. (20)

Do you know them? -- Yes, I understand.

That is what I am talking about. You do not know such a man?

CHAIRMAN: You cannot recall him. -- No. I cannot recall it.

MR MARITZ: Now, I want to read to you another description. Now, this is a black man. This man's length is 5'6" about. He is a shortish man. You have seen me walking. I am shorter than that. I am a short guy and apparently this fellow is shorter than I am, a black man. "Hy is fris gebou", well-built. -- That is correct.

(30)

"Hy het/..

C16.26

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NOFEMELA

"Hy het 'n kenbaard", you know, a goatee, "'n kenbaard en hy is kaalkop", no hair on his head. Do you know such a man? -- No.

There were not such people on Vlakplaas? The white man and the black man that I have described, there were not such people on Vlakplaas. -- Not of what I can remember at this stage.

You do not seem to have a very good memory. -- At times I do not have.

At no time do you have a good memory anyhow. (10)

CHAIRMAN: Leave the comments, Mr Maritz.

MR MARITZ: I beg your pardon, Mr Chairman. I want to turn to your evidence about the Krugersdorp incident where you said you backed off, you did not want to become involved in that.

(?): (Speaking in the background, indistinct) .. my

learned friend knows who these people were?

MR MARITZ: We will, we will. You will be told in due course.

CHAIRMAN: Is that the PAC members in Krugersdorp you are now going to?

MR MARITZ: Yes. Mr Chairman, you will find the reference(20) thereto in paragraph 21 ..

CHAIRMAN: That is B88?

MR MARITZ: That is B88, and on the record pages 163 and 164. Do you recall what you told this commission about that inci- dent, the Krugersdorp incident? -- Could it be placed ...

CHAIRMAN: That is the attack on the PAC at Krugersdorp. -- PAC in Krugersdorp? I never talked about that.

Just a moment, let us just check.

MR MARITZ: Paragraph 21.

CHAIRMAN: Sorry, it is the UDF. -- That is correct. (30)

MR MARITZ/..

C16.29

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NOFEMELA

MR MARITZ: Do you recall what you said about that incident? -- That is correct.

Well, tell us what do you recall ..

CHAIRMAN: Mr Maritz wants you to give another description of the incident. -- I was told by Captain Jan Coetzee together with Joseph Mamasela and Ephraim Npalapitso, we were in the outside skirt of Soweto in a certain plantation when he told us that I and Npalapitso, Joe was excluded by then, that I and Npalapitso have to go to Kagiso where we should infiltrate the youths who are said to be members of UDF and after that we(10) should take them to - we should tell them that we are going to teach them on how to use arms, we are members of ANC, and we should take them to a certain old mine in Westonaria, somewhere there, then when we arrive in the mine we have to shoot at them, then I excluded myself because I once worked in Krugersdorp, I said I might be recognised

and then Joe substituted me and he went together with Npalapitso.

After the mission, they commented - they remarked that the mission was successful but they said one of the youths was not actually killed, he was sent to Leratong Hospital. That is all

(20) what I heard about that.

MR MARITZ: And I suppose what you read in the papers about the incident. -- Pardon?

What you read in the newspapers about it. -- It is what was being discussed.

Do you read the newspaper? -- I do.

Did you read in the newspaper about this occurrence, this incident? -- No.

Nothing? -- Nothing.

Do you recall more or less when this was? -- I was (30) working/..

C16.30

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NOFEMELA

working in Soweto by then. I do not recall actually in which year was it.

Page 163 you guessed that it was - well, you did not guess. You were asked "And when was this" and then you said "That was 1984" and you were quite positive about it. Are you frightened to give dates now? -- I am not frightened. I am not certain.

Now, between last Wednesday and now you have forgotten this here, 1984. -- It could be 1984, somewhere there. I am not sure.

(10)

It could be any other year too. -- I am not sure which actual date was it.

Could it have been 1982? -- It could be.

Could it have been 1986? -- No.

Why not? -- Captain Jan Coetzee was not along with us in 1986.

Well, who gave you these instructions? -- That was Captain

Jan Coetzee.

Jan Coetzee? -- That is correct.

Now, did you learn who was supposed to have executed (20) this mission then? -- I was supposed to be one.

No, no, the question is - you backed off. The question is did you ever find out who executed the mission. -- Yes.

Who? -- That was Joseph Mamasela and Ephraim Npalapitso.

Just the two of them? -- Just the two of them.

No white man? -- No. As they told me there was no white man.

Are you sure? -- Sure.

And the description I have given you of a black man, that is not either Joseph Mamasela or the other man you are (30) talking/..

C16.31

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NOFEMELA

talking about? -- No, I do not know. No.

Are you sure? -- Sure.

You see what we have uncovered, and that is the only in-cident we know of that is on record - Mr Chairman, I am re- ferring to the bundle which is B92(a).

CHAIRMAN: Do I have it?

MR MARITZ: It is one of the new ones.

CHAIRMAN: No, it was not handed in so far.

MR MARITZ: I do not think we have got to it yet, but my learned friend has the bundles I think. (10)

CHAIRMAN: Thank you. Yes?

MR MARITZ: I am referring to the affidavit of Captain Kruger which is A10 in the bundle. In my bundle it is about the fourth document, Mr Chairman. As a matter of fact it is the second affidavit in the bundle. There is a short affidavit by Captain Kruger and then there is a longer one just after that.

CHAIRMAN: Yes.

MR MARITZ: Captain Kruger says that on 16 February 1982 on the

premises of an old mine near West Gate there was an explosion in a small little building in which three youths were (20) killed and one survivor and that survivor, I think, was taken to the hospital that you mentioned. Is this the incident you are referring to? -- I think that is the incident I am referring to.

Well, once again I am going to read to you what the survivor said. Zandesile Musi, that was the survivor. Mr Chairman, it is in manuscript form, very badly written. I will try and battle through it. It is A9 in the bundle and I am reading from page 3 of the affidavit. It is Afrikaans but you have proved that you can follow this so far. (30)

"Ek en/..

C16.35

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NOFEMELA

"Ek en Fanyana, Bimbo en Ningwa het by die Seratong Hospitaal gewag. Bimbo het gesê 'n man wat 'n 'girl friend' het by die hospitaal en wie met 'n Constantia-motorkar ry sal ons kom oplaai. Die 'girl friend' is by die Seratong Hospitaal. Bimbo ken die man van die Constantia. Die man van die Constantia sou volgens Bimbo ons na die Coloseum neem op 16 February 1982 om 19h00. Die man van die Constantia het nie opgedaag nie. Ons wou na Mili Jackson gaan luister. Ons het daar gewag tot (10) 19h50, dit is tien voor agt. Die man van die Constantia het nie gekom nie. Daar het toe 'n kombi stilgehou by ons. Dit was net ons vier wat vir die Constantia gewag het. Die kombi wat toe stilgehou het, was 'n swartman die bestuurder. 'n Blanke man was die passasier. Die drywer het ons gevra waar ons heen gaan. Ons het gelyktydig gesê ons gaan Coloseum toe. Die drywer het gevra hoeveel ons bereid is om te

betaal. Die drywer het my meegedeel dat ons R2 elk moet betaal. Ek het toe ingestem en ons het toe inge-(20) klim. Nadat ons ingeklim het, het die drywer ons meegedeel dat hy nog ander mense gaan optel te Robinsonmyn. Ek het gemerk dat die drywer by die myn verbyry. Ningwa het die drywer toe gevra waarom hy dan by die myn verbyry. Die bestuurder het geantwoord dit is net hier voor. Skielik het die bestuurder gestop. Die bestuurder het uitgeklim en ons meegedeel dat ons hom moet volg. Fanyana het die deur oopgemaak waarop ons uitgeklim het. Nadat ons afgeklim het, het die bestuurder voor ons uitgestap. Ons het hom gevolg. (30)

Hy het/..

C16.390

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NOFEMELA

Hy het 'n flitslig in sy hand gehad. Ek was glad nie bang nie. Dit was donker. Ons het ongeveer 20 meter geloop. Die drywer het toe die deur oopgesluit. Hy het die sleutel by 'n sleutelgat ingedruk en dit oopgesluit. Ons het agter sy rug gestaan. Die drywer het eerste ingestap. Ningwa en Bimbo het die drywer gevolg. Ek en Fanyana is toe daarna in. Die bestuurder het toe die flits afgeskakel en in sy baadjiesak gesit. Op daardie stadium was dit donker en hy (ek dink daar moet 'n het inkom) toe die kers opgesteek - aangesteek. Die (10) kers was reeds daar. Dit was teen die muur op die vloer geplak. Vandat hy die flits afgeskakel het totdat hy die kers opgesteek het, het ongeveer een minuut verloop. Niemand het gevra wat nou aangaan nie. Dit was doodstil. Die deur was nog oop. Nadat die drywer die kers aan die brand gesteek het, het hy die deur toegemaak. Die drywer is 'n kort persoon gewees. Ons het agter hom gestaan terwyl hy die kers opgesteek het. Die drywer het ons toe ge-

vra wat het ons in ons besit. Ek het geantwoord en gesê dat ons net die R2 het. Die ander het dieselfde ant- (20) gegee. Die drywer het toe vir Ningwa deursoek en R15 gevat. Hy het net vir Ningwa deursoek. Hy het toe sy hand in sy baadjiesak, regterbaadjiesak, gesteek en 'n ding uitgehaal wat soos 'n pynappel lyk. Hy het die ding toe aan Ningwa gegee. Ek het dikwels in die verlede bioskoop toe gegaan waar ek handgranaat sien ontplof het. Hierdie was 'n handgranaat net kleiner as dié wat ek in die bioskoop sien ontplof het. Ek het ook die granaat in my hand geneem en dit van nader besigtig. Ons het almal na die handgranaat gekyk. Nadat ons dit almal (30) hanteer/..

C16.40

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NOFEMELA

hanteer het, is dit aan Ningwa teruggegee. Ek weet nie wie van ons die granaat die laaste hanteer het nie. Terwyl ons besig is om die granaat te hanteer het die drywer uitgestap en gesê hy kom nou terug, hy gaan die baas roep. Hy het die deur toegedruk. Ek het deur die sleutelgat gekyk, want ek het 'n gedagte gehad om met die granaat weg te hardloop. Ek het deur die sleutelgat geloer. Die kombi was nog daar waar ons uit dit geklim het. Die drywer was ongeveer tien treë weg toe ek van die sleutelgat af omdraai na (10) die ander toe. Daar was 'n ontploffing. Ek weet wat die verskil tussen 'n ontploffing en 'n geweer-skoot is. Hierdie was nie 'n geweer-skoot nie. Ek het 'n hou teen die kop gekry. Ek het bewusteloos geraak en eers die volgende môre wakker geword."

So far I want to read that. Did you follow the whole history of what happened? -- I did.

Now, in a later affidavit, and that is the one I read to you

from earlier on, the police were searching for these people who were involved, who picked up these boys, these (20) youths, and took them to this place and they tried to get a description from the survivor, Zandesile Zondo Musi, and the descriptions that I gave you were the descriptions coming from Zandesile. That is where I read it from. Now, you do not know these people at all? -- I do not know them.

They are not Vlakplaas people? -- No, I do not know them.

They certainly do not fit the description of Joe Mamasela.

-- No.

Or anybody else for that matter on Vlakplaas. -- No.

And the same goes for the white man. -- That is (30)
correct/..

C16.41

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NOFEMELA

correct.

I want to say to you further that Captain Kruger also made a later statement, on 31 March 1982, in regard to the same matter.

He was experiencing difficulty investigating this occurrence and he says way in the affidavit. Mr Chair- man, I have got it as A17 in the bundle.

"Ek is die ondersoekbeampte in die saak. Ek het ook die aangehoudene, Zandesile Zondo Musi, wat tans in aanhouding is, geondervra. Tydens die ondervraging het dit geblyk dat 'n swartman, witman en 'n kombi (10) betrokke was by (it appears) kort voor die ontploffing. Alle pogings is met die beskikbare inligting aange- wend en geen sukses kon behaal word om die persone en of die voertuig betrokke op te spoor nie."

And then the important matter which I want one to underline:

"Die aangehoudene het ook verskeie beskrywings van die twee persone gegee wat daarop dui dat hy nie met die waarheid betreffende die twee persone te

voorskyn kom nie. Ek het ook beskikbare foto's van
die oorledene en die oorlewende aan die gerehabi- (20)
liteerde ANC-terroriste getoon, maar dit is duidelik
dat hulle onbekend is."

Now, this appears as if it gives us a line on this thing. Is it
so that Captain Kruger in his search for those responsible in this
incident, called in the help of the Vlakplaas people to help him?
-- I cannot dispute that. Maybe people of Vlak- plaas helped him
in that, but what I know is that we dis- cussed this together with
Jan Coetzee, Captein Jan Coetzee, that we are to go to Kagiso.

What have happened there at the
scene of crime, how it happened, I do not know, but after (30)
everything/...

C16.46

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NOFOMELA

everything had happened Joseph came to me and remarked that there
was a mistake, that one has survived.

You see, I want to put it to you that what you have been doing
all along and quite cleverly too, that you have been taking actual
occurrences, that you had a little bit of in- formation about or
some information about it, so very near to the truth and then twist
it, the incident to your advantage and exactly the same has happened
in this incident. That is what you have been doing. -- That is
not what I am doing.

This incident is what I have been told about. It is not (10)
something that I have just overheard or somebody has told me about
it.

Yes, but don't you understand, the survivor would not have
given fictitious identifications of those involved. If your story
is the truth there is no earthly reason why the survivor would
have lied about the description of the people involved. -- I
understand it.

And their lives are up. -- I do not dispute anything about

what the survivor has said or what the other Captain Kruger has discovered, but I just tell this commission (20)

what I have been involved in, that is all.

CHAIRMAN: I do not know, maybe someone can assist me, was the UDF in existence in February '82. My recollection it did not ...

(?): Mr Chairman, I have a recollection from another case that there was a big launch in Cape Town round about April 1983.

CHAIRMAN: You see, if this is the point I am trying to make is assume my feeling is correct, it seems everyone agrees that it is correct, this happened in February '82, this (30) incident/..

C16.48 - 403 - NOFEMELA

incident of these youths. Now, at that stage UDF did not yet exist. -- I would say on that I am not actually in a position to tell this commission that this incident happened exactly in '82.

No, but the point is what Mr Maritz says the only incident they can find where youths were blown up in Krugersdorp vicinity at a mine was this incident which took place in February '82. -- That is correct.

You said you had infiltrated the UDF, UDF did not exist in February '82. So he says it is a figment of your (10) imagination.

MR MARITZ: I think you must answer that question. I mean, the honourable chairman has put it admirably. -- Yes, I have said I cannot actually precisely say when was it, but the fact is it is what I have said about it that Dirk Coetzee has told us about this matter.

Well, once again what you are telling us here does not fit the real facts at all, that must be clear to you too. Isn't that so? -- I understand that what I am speaking here does not actually

go hand in hand with what you are put- (20)

ting to me.

You understand it but you are still flying in the face of the facts. Very well. I merely want to refer you to B92(b).

CHAIRMAN: It is not in ...

MR MARITZ: I think it would be in that. I think it would be the second portion of that. It relates to a prosecution of the selfsame Zandesile Musi. I think it is the last dossier in that volume.

CHAIRMAN: Now, what was the charge? Possession of a hand-grenade? (30)

MR MARITZ/..

C16.50

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NOFEMELA

MR MARITZ: No, he was .. Well, in the end he was found guilty - "skuldig aan oortreding artikel 25 Wet 26 van 1956 of 20 van 1956, besit van ontplofbare stof, petrol en seep, ses jaar gevangenisstraf." No, it is a small little bundle, Mr Chairman, it must be the last one.

(Mr Roberts explains to the chairman where to find document.)

CHAIRMAN: Yes, what is the point you want to make from this file?

MR MARITZ: The only point I wish to make is that a few (10) years later, on 9 October 1985, this selfsame youth was found at a school in Krugersdorp. -- I do not understand what is the question.

But now listen and you will understand. This youth, Zandesile, who was the survivor in the explosion in '82, in 1985 he was found at a school still up to his tricks. He was found with a pale with Sunlight soap in it and petrol poured over it which is used as a bomb. Have you experienced that before? -- No, I just heard about that.

The expert says about that the following: ... (20)

CHAIRMAN: But you see, I have just got a problem, you said earlier

he was found guilty of the possession. He was not found guilty of the possession of a hand-grenade.

MR MARITZ: No, no. This is a later occurrence that happened. He was found at a school.

CHAIRMAN: Yes no, I appreciate that.

MR MARITZ: In these circumstances where he was carrying the pale and that was on 9 October 1985, some years afterwards.

In regard to the Krugersdorp matter Zandesile was charged but he was found not guilty and discharged by the court. (30)

I am just/..

C16.51

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NOFEMELA

I am just drawing a line here with the activities of this young man. The expert, a certain Lieutenant Mostert, explains the significance of this pale as follows. He says:

"Dit is gebruik om met seep petrol te verdik sodat dit 'n jellie vorm en aan voorwerpe vas- kleef en langer brand en nie afvloei of wegvloei van 'n voorwerp af nie."

Do you understand this now? -- I do not understand.

It is no use throwing petrol onto something. You mix it with Sunlight soap and then you have got a burning, gooey (10) thing that you could put onto something that you want to burn and that was what this young man was doing three years there- after at a school. So, the evidence is that he was up to bad tricks all along. He was not blown up by the police. It looks as if he was hanky-panking in 1982 already and that the story that you thought out to give the police was exactly a story and nothing else.

CHAIRMAN: I am not quite sure that I get the point, Mr Maritz. Didn't the witness say one survived from the first attack?

MR MARITZ: That is so. (20)

CHAIRMAN: This is the survivor.

MR MARITZ: It was the survivor who was later convicted.

CHAIRMAN: Yes, but what is the point.

MR MARITZ: For the same thing. The point is that all the evidence points to the fact that there was no hanky-panking with the explosion in Krugersdorp in '82. That these lads were in actual fact busy with underhanded activities.

CHAIRMAN: Yes, but I think that is exactly what the witness says. I think the witness says here were people involved with underhand dealings and they were infiltrated and (30) eliminated/..

C16.56

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NOFEMELA

eliminated. I do not think your point goes any further.

MR MARITZ: Let me make this point clear, I am not suggesting that you are right in any way whatsoever, that this group was infiltrated by the police or by members of Vlakplaas. What I am suggesting is that they were hoisted by their own petard.

The police had nothing to do with their destruction in 1982. That I want to make plain. Do you agree to that? -- I do not dispute what you say, but now I wish to say that I am still maintaining what I have said.

CHAIRMAN: I think you have covered the point, Mr Maritz. (10)

MR MARITZ: Thank you, Mr Chairman. In any case once again I want to put it to you that Joseph Mamasela and Colonel Jan Coetzee had absolutely nothing to do with this. They are available, they will testify before this commission if they are required to do so. -- That is a false statement.

Now, I want to get to your evidence about the terrorist that was shot on the Swazi border which you dealt with in paragraph 23 of B88 and the evidence is at page 164 to 169 of the record.

CHAIRMAN: Just give the witness a short description of (20) the incident.

MR MARITZ: I will just read to you what you said in your affidavit in paragraph 23:

"In approximately 1985 or 1986 I was involved in a mission in which five alleged members of the ANC were shot near the Swazi border gate near Amsterdam. Approximately seven members of the Vlakplaas squad participated, including myself, Major De Kock who headed the team, Lieutenant Van Dyk and Aubrey Mgadi. De Kock instructed us that he had received (30) information/..

C16.59

NOFEMELA

information that ANC terrorists who were armed would be entering South Africa from Swaziland. We waited in a plantation for the terrorists to arrive and after some time we saw about six men passing us with bags on their backs, some of whom were carrying weapons.

When some of the terrorists came closer on their return to the border we started shooting and two people were killed while one ran away throwing down his fire-arm. We chased after him in the plantation (10) but could not find him. A few days later this man was arrested and was found to have been injured.

Altogether five people were killed that night.

Major De Kock said that the targets had come to fight against us and we therefore had to eliminate them before they accomplished their plan. He also said that he had no time for all the questioning which would arise if the matter had come to court and that was why he had to kill the enemy." -- That is correct.

Do you adhere to all that? -- That is correct. (20)

Did you in fact receive those instructions from De Kock?

-- That is correct.

Now what about the terrorist that was wounded? -- Pardon?

What happened to him? The one that was wounded. -- He was later arrested and he was interrogated in Piet Retief security branch.

He was not shot forthwith. -- He was shot from the back.

No, he was not killed, he was not shot dead when he was arrested. -- No, he was not.

But surely that is defeating the end of the object. (30)

-- He was/..

C16.60

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NOFEMELA

-- He was not arrested by members of Vlakplaas.

If you do not kill him there then you have got to take him to court. -- I do not follow the question.

Well, you say that De Kock said let us kill all these people, it will save us a lot of trouble. -- That is correct.

So then you arrest a man and you do not kill him. -- He was not arrested by the members of Vlakplaas.

But he was given to the members of Vlakplaas, wasn't he?
-- But he had been seen by other people now who are not working with members of Vlakplaas. (10)

I see. So while you are working in secret you can kill people as you like. -- Secretly, yes.

Are you suggesting that the rest of the police force did not know about this operation? -- Pardon?

Do you suggest that the rest of the police force did not know about this operation? -- I would not say that they did not know about that.

Well, how could you have done this in secret then. -- Without their presence. Once they are not present when we are doing this, I call it secret, because it is among us. (20)

I want to put it to you here that - I want to give you the opportunity now of coming up with the true facts because once again I am going to show to you that you have not been telling the truth.

It will take a long time and I am giving you this opportunity right now. I am telling you that you were involved in a real actual occurrence, that you have twisted the facts just somewhat, slightly, to your own ends.

You have added a little tail to make it look conspicuous.

CHAIRMAN: Not conspicuous.

MR MARITZ: Sinister. -- I will appreciate it to hear (30)
those facts/..

C16.61

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NOFEMELA

those facts.

CHAIRMAN: In other words what counsel says is that - he is actually inviting you to change your evidence before he is going to try and make you change your evidence. -- I am trying - in fact I am not going to change anything of what I have said.

Mr Nofemela, if you are tired you must say so, because it is hot in here. If you want an adjournment you must say otherwise we carry on until .. -- That is correct, I am still all right.

Thank you. (10)

MR MARITZ: Where did you receive this instruction from Major De Kock to kill people and not arrest them? -- We were based in Moolman when he said that we should go and ambush the people who are going to come from Swaziland.

Who all were present? -- Paul van Dyk was present and De Kock himself, Mgadi. We were actually a group. Kole was present, the others I cannot remember, but for the mission Mgadi was present, Warrant Officer Pienaar and two sergeants. I cannot recall their names. We were about seven.

Now, where were you when De Kock was brave enough to (20) let us kill them all and not take any witnesses or hostages. -- After he had told us what he was going to do he remarked that we should kill these people. He has no time for trial because in court there are a lot of questioning.

But where was this? Was it in a building or outside? -- I do not remember whether it was in Moolman or in Piet Retief because we actually stopped again in Piet Retief in town.

I gather that the police had information that these insurgents were going to come across the border in the near future, not so? -- That is correct. (30)

And the/..

C16.64

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NOFEMELA

And the idea was to put out patrols to try and intercept them when they come over the border. -- That is right.

And the idea was to arrest them. -- No, to ambush them.

You must please explain this. I mean hundreds of these people - I would not say hundreds .. -- The idea was to lay down ..

Hang on, hang on, just listen to my question. A very large number of insurgents have been arrested. They have been tried in the courts, they lived on you, with you on Vlak- (10) plaas for years and now all of a sudden you want to come and convince us that there was now a change of heart, that they all had to be killed.

Where do you get this idea from?

MR : That is not what the witness said. He did not say that all had to be killed. The instruction was in relation to the particular mission, the particular occasion. My learned friend should not extend that to a generalisation.

CHAIRMAN: Well, let us try this, the idea to kill insurgents, was it limited to this one set of insurgents? -- That is correct otherwise we would not be having a lot of Askaris (20) in Vlakplaas. They would have been killed, all of them, if that was the case.

Yes, yes, that is the point counsel made to you, but I think the next question is why had these people - why was it necessary to kill all these people? Why were they the chosen, chosen for being killed? -- I cannot answer on that question.

I do not know what was the motive behind that, but the in- struction

was that those people, they are to be ambushed at that time. That is all that I can say.

MR MARITZ: But once again you can see for yourself that (30)
it was/..

C16.68

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NOFEMELA

it was a totally absurd instruction. There is no rhyme or reason to it. It is irrational. -- The commander has the reason.

CHAIRMAN: Yes, but as far as you were concerned, did you regard it as irrational or did you think .. -- As far as I am concerned I was given to understand that those are my enemies and that when any time the instructions come that I should minate them I have no option but to do that, so by then I got the instruction that I had to ambush them, then I found that there is no alternative, I have to comply with that. (10)

MR MARITZ: Every policeman that I have seen walking around in the streets in Pretoria carries a side-arm, have you seen that? Black or white, it does not matter, they all carry side-arms, revolvers. -- That is correct.

Why? -- They had been given those, what do you call ...

Is it an ornament? -- They work according to instruction that they have to carry the weapons.

But why does a policeman have to carry a fire-arm? -- To effect the arrest or to defend himself.

Or when his life is threatened. -- That is correct. (20)

CHAIRMAN: He said to defend himself.

MR MARITZ: That is right.

CHAIRMAN: Is that right, Mr Kuny?

MR KUNY: Yes.

MR MARITZ: The same thing, when there are armed insurgents, heavily armed insurgents expected to come through the border you are going to go there armed and ready to defend yourself if they want to

put up a fight, not so? -- That is correct.

As a matter of fact that is a very dangerous occupation.

-- That is correct.

(30)

To go and/..

C16.70

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NOFEMELA

To go and catch insurgents. -- That is correct.

Extremely dangerous. -- That is correct.

You could be shot at any time. -- Possibly, yes.

Isn't that all that Major De Kock said to you, if he said anything? -- I do not follow the question.

Didn't Major De Kock say to you that fellows, these are dangerous men coming across the border, be very, very careful and if we have to shoot them then we shoot them? -- No. We went there with the intention to shoot them. It was not a question of self-defence because we ambushed the people. (10)

We lay down in the grass until they passed then we fired, that is all.

So you are suggesting that if these armed insurgents that come across the border and they were challenged by Major De Kock or Captain De Kock and he said fellows, before you proceed stand, I am the police, and they would say Oh, sorry, sir, we have got our hands in the air, we are going to give ourselves over now, are you suggesting that he would have shot them down in cold blood there? -- I do not think such thing will happen and have ever happened. (20)

No, but say for instance they gave themselves over ..

CHAIRMAN: No, what could never happen? -- That the people should just come with arms and say we give over.

In other words they would fight? -- They will fight.

MR MARITZ: But now, if they did not fight, if they were challenged by the police and they see we are surrounded, we cannot fight now, now we surrender, arms in the air, we are surrendering, please

do not shoot us, you are not suggesting that they would have been shot down then? -- No, I do not suggest that.

(30)

Then, please/..

C16.72

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NOFEMELA

Then, please, what are you suggesting? -- In fact I am talking about what happened in Amsterdam. Now, the question whether people would surrender or what, I do not understand what is all about that.

CHAIRMAN: No, what counsel wants to know is this, was the instruction also to shoot whoever surrendered? -- At that particular mission, Mr Commissioner, that I am referring to ...

Yes, I am talking about that mission. -- There is nothing about arrest, was being said or whether they surrender you should arrest them. (10)

No, no, but obviously if they surrender isn't that the - that is what counsel puts to you, that if people surrender then obviously the necessity for shooting disappears. -- That is correct, but specifically those people that we were ambushing in that place by then, had they surrendered or not they were to be shot, that is all, according to instruction.

Was that spelt out? Even if they surrender shoot them? -- It was not actually suggested that if ever they surrendered, but I said that if ever they surrendered I would have shot them.

(20)

Yes, why? Why would you have shot them if they had surrendered? -- The instruction was that we should shoot them. That is an ambush. In fact in the first place, Mr Commissioner, they could not realise that there are people here because they did not see us, it was a surprise attack.

Yes, but you did not know exactly what would happen. That was what happened in the end. The question was did

De Kock know whether the ambush would be successful. -- The instruction was that - he did not anticipate success of the ambush, but he only said to us we should place ourselves (30) in a/..

C16.75

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NOFEMELA

in a position, a suitable position and when the people are passing we should leave them. When they come back it is then that we have to fire and that is what exactly happened.

MR MARITZ: But if you are going to set out to catch an insurgent, then obviously you are going to lay your plans to that end and you are going to put down people in strategic positions to be able to catch those people and to ensure that they do not escape in the process, not so? -- I understand that.

That would be termed an ambush. An ambush does not (10) just mean that you have got to kill people. -- I am saying that one specifically it was said we should shoot at them.

Why that one? -- I think Major De Kock can answer that question.

You were asked to do it, to once again go and commit cold-blooded murder. -- I knew that I am dealing - I was given to understand that I am dealing with my dangerous enemies. If I am ordered to go and shoot them I have no option than to do that.

But surely you would only have shot in self-defence? (20) -- It would be self-defence in the sense that if the enemy is attacking me then I can defend me in that case, but if I lay down there, waiting for him to pass without having seen me and shooting, I won't call it self-defence.

I would not call that self-defence either. -- No, I am not defending myself. The man does not do anything to me. He is just passing and he does not even see me.

Now, what I want to know from you, why was this particular operation picked out out of hundreds of others, where this specific

method was followed? What made this (30)

one/..

C16.79

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NOFEMELA

one special? What was peculiar about it? -- I think it was because the information came to De Kock that there would be people who are coming inside from Swaziland using this side of Amsterdam border gate, then out of his decision he thought that we should go and ambush them.

Okay. I do not think we will get any further with this. Let me ask you this, who were you with? -- I was with two sergeants. The other one is based in Piet Retief and the other one was in Vlakplaas.

Name them. -- I cannot recall their names. (10)

You do not know who they were? -- No.

The three of you, were you together alone? -- We were three in one spot, 500 metres from the border gate of Amsterdam, in a T junction sign.

And there must have been other members spread out somewhere else? -- That is correct.

Was Major De Kock there? -- Major De Kock was with Pienaar. I do not know with whom. I cannot recall. Van Dyk was with Mgadi less than 500 metres near the border gate.

Could you see any of the other squads at all? I mean (20) the other groups or units that were involved in this operation. Could you see any of them? -- No.

You were too far away? -- We were far away. We were not very far away from Van Dyk and Mgadi, but we were far away from De Kock and Pienaar and others.

How far about were Van Dyk and Mgadi away from you? -- I was 500 metres from the border. They can be about 250 metres from the border gate. They were not very far from us.

You were 500 feet and they 250 .. -- Metres.

500 metres and they 250 metres. -- Approximately. I (30)

cannot actually/..

C17.2

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NOFEMELA

cannot actually say on the distance.

So at night you would not be able to see them? -- No, it was dark. I do not know if it was the early hours of the morning or it was in the evening.

And you were with two people that you do not recall their names? -- White, two white sergeants.

And you did not do any shooting? -- I did.

And your sergeants did not do any shooting. -- We all shot.

All three of you? -- All three of us, we shot. (10)

And who did you shoot? -- I shot at the target, but I do not know which one did I kill because two died.

Does the name Badenhorst ring a bell? -- I do not follow the question.

CHAIRMAN: Was there a Badenhorst with you or don't you remember?

--I do not remember.

MR MARITZ: And Sergeant Willemse. -- It could be Willemse.

It sounds familiar.

And Van Dyk. -- Van Dyk was together with us.

But you were not with Van Dyk, were you? -- I did (20)
not.

You were not with Van Dyk, you were not with him? -- No.

Mgadi was with him? -- Mgadi was with Van Dyk.

Mr Chairman, there is a bundle on this occurrence, it is B95.

I do not know whether you received it.

CHAIRMAN: Yes.

MR MARITZ: I want to read to you of an affidavit of Lieutenant Van Dyk which is in this bundle. It is about the third affidavit, which was filed in an informal inquest dated 16 August 1986. He tells the following story: (30)

"Op Donderdag, 14 Augustus 1986, was ek in bevel van vyf lede van die veiligheidstak tydens observasie-dienste op die Lothair/Nerston-pad ongeveer twee kilometer vanaf Nerston-grenspos. Ek, sersant P.J. Badenhorst en sersant Willemse het stelling langs die teerpad tussen die bome ingeneem terwyl sersant B.A. Nofemela en sersant Mgadi stelling ingeneem het in 'n paadjie ongeveer 20 meter vanaf die teerpad wat as 'n kortpad dien vanaf die Amsterdam-teerpad na die Nerston-teerpad." (10)

Do you follow all that? -- I do not follow very clearly.

He says that he and Willemse and Badenhorst were together and you and Mgadi were together away from them. -- No, that is not correct.

Not correct? -- Not correct.

Were you with them? -- I was with with two sergeants, white sergeants and Mgadi was with Van Dyk.

Van Dyk and Mgadi were not near you two? Near the three of you? -- That is correct.

You do not remember the sergeant's names? -- Willemse, (20)
I can remember that.

Willemse you remember. -- Willemse I can remember.

"Omstreeks 21h00 het ek vier persone met 'n paadjie langs die teerpad langs sien aankom vanuit die rigting van Nerston-grenspos. Aangesien daar genoeg maanlig was en ek met 'n nagsig-apparaat toegerus was, kon ek uitmaak dat die vier persone swartmans was."

I want to stop there. Is it correct that Lieutenant Van Dyk had this night sight? -- He does have.

He had one? -- He had one. (30)

Oh, he is not lying here. -- But I did not see that he had it on that day.

It would have been very useful if he had had it. -- Yes.

Because you can see in the night with it. -- I knew of one that he had.

And if you are looking for insurgents, then it is a very nice thing to have, a night sight. Not so? Is that true? -- I would not say it is made for insurgents.

CHAIRMAN: No. Carry on, Mr Maritz.

MR MARITZ: "Elkeen van hulle .." he is referring to the (10) four black people:

"Elkeen van hulle het 'n rugsak op sy rug gehad.

Die voorste swartman het ook 'n lang voorwerp in sy hande gehad, maar ek kon nie presies uitmaak wat dit was nie aangesien dit toegedraai was."

What he is saying, is that correct? Did you see four people with rucksacks on? On their backs. -- I have seen people, more than four and I did see other people having rifles. I do not know whether there were two or three of them. I could see one AK47 being in the possession of one of them. (20)

I will carry on reading. I just want to get my eye in order then.

"Die vier swartmans het met die Amsterdam-pad langs beweeg in die rigting van Amsterdam."

Is that right? -- From Amsterdam?

They walked in the direction of Amsterdam.

CHAIRMAN: With the road, with the Amsterdam .. -- They were from Amsterdam border gate in the direction of Lothair, not Amsterdam town. It is a difference.

MR MARITZ: Well, he turns it around. (30)

"Die pad na Amsterdam sluit met 'n T-aansluiting aan by die Lothair/Nerston-pad."

Is that true? -- It is correct.

"Na 'n rukkie het ek gemerk dat daar 'n voertuig vanuit Lothair se rigting aankom en ook met die Amsterdam-pad wegdraai." -- That is correct.

Now, you spoke about this vehicle. -- That is correct.

You saw it too. -- That is correct.

"Ek kon sien dat dit 'n Datsun-bakkie met 'n kappie op was". Could you see that too? -- I cannot say what (10)
kind of car, but you could not have seen that because hw as very far from the junction where the car turned.

But he had the night sight you see.

"Aangesien die voertuig skuins weg beweeg het van my kon ek nie die registrasienommer waarneem nie. Ek het my observasiepunt verlaat wat ongeveer vyf meter vanaf die teerpad was en na die T-aansluiting gegaan sodat ek beter sig kon kry oor waar die voertuig heen gaan. Die T-aansluiting was ongeveer tien meter vanaf my observasiepunt." (20)

Now, what he is saying is he left that position to go nearer to go and see what was going on with the vehicle. Do you recall that? -- No.

You never saw that? -- Absolutely incorrect.

It could have happened that you did not see it? -- No, it could not have happened.

But you were not with him? -- He would not have come along because those people have already passed now. He did not know when would they come back. He would have been shot also if ever he started coming nearer to where we were. (30)

CHAIRMAN: Why would he have been shot? -- Because he would not know. He might coincidentally come the time when those people are coming back. There were people who were actually escorting the others and that is why were lying down there.

The question is why would they shoot him? -- Will not be in a position to know whether it is him or not, will think that are the very same people who are attacking.

No, I thought you said the insurgents would shoot him.

-- No, no.

You would have shot him? -- That is correct. (10)

MR MARITZ: By the way how did you know that these insurgents must come back? -- We were informed by Major De Kock. He said to us there is an informer that informed them that there will be people coming in and there will be a car that will transport these people, I do not know to Jo'burg or to where, but we must not shoot them when they passed us in the direction of Amsterdam. We must only shoot at the people who are coming back to Swaziland. That was the instruction.

Which people would be coming back to Swaziland? -- The people that escorted the others since I have said the (20) people were six, then there will be a number of people that will come back and obviously I only saw three that came back and then we shot two, one ran away.

So, De Kock either had a good informer or he had his crystal ball with him. -- He had one who is good of course.

I will continue reading.

"Ek het langs die Amsterdam-pad gaan stelling in-
neem en gemerk dat die Datsun bakkie ongeveer 100
meter verderaan langs die pad stilgehou het. Die
hoofligte van die voertuig was afgeskakel, maar (30)

die parkeerligte was aan."

You do not know about that? -- I do not understand those.

You cannot dispute that what Van Dyk says he saw through his night sight or with his eyes is the truth? -- I cannot dispute that.

"Ek het gemerk dat die vier swartmans agterin die voertuig weskaf en dat hulle hul rugsakke agterin die voertuig laai. Na 'n rukkie het die voertuig weggetrek in die rigting van Amsterdam.

In die skynsel van die agterligte het ek opgemerk (10) dat twee persone agtergebly het en nou weer terugbeweeg in die rigting waar ek was."

Do you follow that? -- I followed that, but it is incorrect.

How would you know? -- I know because the people - the car, when the car passed, I was the first person with these two sergeants near the T-junction where the car turned. The car drove for a while down in the direction of Amsterdam. Van Dyk could not have seen what had happened there, that is why he held that post where he was, because De Kock was always over that side.

(20)

Well tell us then what did you see. -- I only saw a car passing, drive into the direction of Amsterdam.

Did these four insurgents ever meet up with this car? -- There were more than four people that I have seen.

Well, however many there were, did they ever meet up with this car? -- They met the car, not in our presence. The people were being shot too in the car somewhere there. It was said that the informer pretended to pass out a word or something like that, then the car stopped.

You did not see that? -- I did not see that. (30)

You are guessing now or you are telling a story that possibly you heard from somebody. I will continue .. -- But I have seen the deceased.

Yes, I will get to that. He says:

"Ek het dadelik terugbeweeg na waar sersant Badenhorst en sersant Willemse gewag het. Ons het toe stelling ingeneem direk langs die paadjie waarin die swartmans vroeër geloop het. Daar is egter 'n doringdraad gespan tussen die plek waar ons gewag het en die paadjie. Na 'n rukkie se gewag het (10) die twee swartmans met die paadjie langs aangekom. Toe hulle ongeveer drie tot vier meter vanaf ons was, het ons opgestaan en ons flitse op die twee mans, swartmans, geskyn. Ek het die twee mans ook in Engels beveel om stil te staan en dat ons polisie is. Ek het dadelik gemerk dat die een man 'n vuurwapen in sy hande gehad het wat hy opgelig het. Ek het dadelik met my pistool op die man gevuur. Hy het ook skote gevuur."

Do you understand that? -- I understand that. A false (20) statement.

Here is a man who is acting in self-defence. Here is an insurgent who is being confronted by the police and when he is confronted he lifts his fire-arm to defend himself to fire or to kill the policeman and who shoots him back. Would you term that self-defence? -- Will you please repeat that again?

CHAIRMAN: Yes well, let us assume that - it does not turn on whether it is self-defence or not, Mr Maritz. It turns upon the question which version is the correct one. -- Well, the action as far as the statement is concerned, in my (30)

personal point of view it constitutes to self-defence.

MR MARITZ: Yes, but did that happen? -- It is a false statement unfortunately.

Were you in a position to see what happened? -- I was in a position. In the first place in this statement, if I understood it correctly, there is no mention of Captain De Kock, there is no mention of Warrant Officer Pienaar ..

That will come, do not worry about it. It will come. I won't give you half a story. I am going to tell you the whole story because I told you I am going to demonstrate to you (10) that you are taking a real occurrence and twisting it and I am showing you this. I will tell you the whole story and it will take a long time, but we will do it. -- But until so far it is a false statement.

Although you never saw Van Dyk? You were not in a position to observe him, not so? -- Pardon?

You have already said you were not in a position to observe Van Dyk. -- I did not go to observe Van Dyk. Maybe I do not understand what you are putting.

CHAIRMAN: The point is the following, did Van Dyk shoot (20) someone that night? -- No, Van Dyk did not.

So, he did not kill anybody? -- No, he did not kill anybody.

So he lied when he said that he shot a man? -- He lied.

Now, why would he lie in an inquest, that he shot a man? -- The defence is that it was a self-defence.

No, but why admit firstly that I shoot and then coming with a defence if my simple defence is I have not shot him? Why implicate yourself and then rely on a defence? That sounds very stupid. -- But he actually have seen, have (30)

realised that it was evident that the people have been shot.

But then those who shot could claim self-defence, why would he place on himself the onus of having shot someone simply to rely on self-defence? -- I think the reason is that since he claimed to be the commander on that particular murder, all the responsibility would be on him, that is why he decided to take everything on himself.

But he was not the commander. The commander was De Kock. De Kock was the commander, isn't that so? -- That is correct.

So that answer does not work. Try again. -- But he (10) did not shoot. I definitely shot.

MR KUNY: Mr Chairman, may I point out that in Van Dyk's own affidavit he says "Op daardie dag was ek in bevel van vyf lede van die veiligheidstak terwyl ons observasiediens doen."

CHAIRMAN: Yes, but could I come back to the point, what conceivable reason is there for Van Dyk to take the blame for the shooting? -- On my own thinking I think Van Dyk took the blame because he knows he will explain it satisfactorily before the court than any other member.

MR MARITZ: Let me carry on reading. (20)

CHAIRMAN: Mr Maritz, I am going to adjourn now. I have had for quite a while grave doubts about the relevance of that matter to this commission. I fail to see the political motive but in any event if every instance of police brutality or excess does not fall within the terms of the commission, but in any event the parties may consider that. That is point number one. Point number two, is there someone for the Mxenge family here?

MR SHEZI: Yes.

CHAIRMAN: The arrangement with Adv. Skweyiya was that he (30) would/..

would cross-examine on Friday and he said if his turn is before Friday someone else on his behalf will cross-examine.

MR SHEZI: Mr Commissioner, I can confirm that ... (not in microphone). That was the arrangement. It was supposed to be on Friday. Now, whether he will be in a position to cross-examine this witness, I am not sure in view of the fact that a number of documents have been handed in. I am not in the possession of those documents and, secondly, also I was not in a position to take detailed notes of cross-examination, I could not. Now, I am not sure whether he will be in a position (10) to cross-examine.

CHAIRMAN: What you actually mean, you are sure he won't be in a position?

MR SHEZI: Yes, this is what I have discussed with Mr McNally, that I am not sure that he is going to be in a position to cross-examine on Friday.

CHAIRMAN: Because that affects especially Mr Kuny who has to do the re-examination. Mr Kuny, are you available next week?

MR KUNY: Yes. I take it it won't be on Monday because you are hearing other evidence on Monday. (20)

CHAIRMAN: Yes, you know, it may even not be on Tuesday, that is the only reason I mention it because I do not think it is fair to have you re-examine before that examination is taking place.

MR KUNY: Yes, I will be available.

CHAIRMAN: The other thing I want counsel to consider and let me know in due course who are the essential witnesses who have to testify orally in this matter because I have no intention to call each and every deponent, and, lastly - just tell Mr Skweyiya he has not got an unlimited right of (30) cross-examination/..

examiner with the witness in his favour.

MR NUGENT: May I just understand the remark you made about evidence, that we should advise you what evidence should be called.

CHAIRMAN: Yes.

MR NUGENT: Do you mean the evidence of the people who have given affidavits for example and referred to by my learned friend, Mr Maritz?

CHAIRMAN: Yes, if there are those whose evidence is essential, but I do not want a parade of witnesses.

THE COMMISSION ADJOURNS UNTIL 15 MARCH 1990.

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