

"A thing done or performed, something that has really occurred, or is the case; circumstances, an incidence of the case, as distinguished from their legal bearing."

There can be no doubt that the acquisition of the aforesaid skills, if proved, will constitute fact.

The Court's finding is therefore:

That it is a fact, as envisaged by Section 218(1) of Act 51 of 1977. This fact was discovered as a result of an interrogation; accused drew the plans, which led to the disclosure of the fact.

The Court allows the sketches and plans to be proved; of course the State will have to prove that they give rise to the inference that the accused possesses those skills.

In addition to the aforementioned approach, the sketches etcetera, are also admissible on other grounds. The objection against the sketches was taken whilst Const. Yekwa in evidence - whilst he was giving evidence, and before the circumstances in which they were solicited, were canvassed.

The legal position is that there is no doubt that those sketches have relevant - have relevance to the issue. They can afford proof of the aforesaid skills, and then they will be relevant to the charge.

The question is whether those sketches are admissible. Generally documents can be admissible, are in terms of the common law, or under statutory provisions.

The general rule governing admissibility of documents under the common Law, has been clearly stated by Innes C.J. in R. vs Barland 1929 A.D. 459 at page 462, as follows:

"The Common Law allows no statement made by an accused person to be given in evidence against himself, and - unless it is shown by the Prosecution to have been freely and /..

voluntarily made, in the sense that it has not been induced by any threat or promise producing - proceeding from a person in authority."

Similar authorities to be found in Wickmore Paragraph A21, 2, page 240 - volume 3, Third Edition.

Under the common law documents in possession or under the control of an accused are documents written, compiled or produced by an accused, are admissible in evidence against him to prove knowledge of facts or participation.

In this case, the Court has referred to the decision The State vs. Twala and Others, 1979(3)SA 864 T at par. - at Page 875G, where Van Dyk J., summarised the position as to the law relating to document re evidence.

The question to be considered is whether the introduction of compulsion inherent in Section 66 precludes the prosecution from tendering the sketch in evidence or entitles an accused to ask the Court not to admit the document, because it was not voluntarily made by him. Voluntary conduct is by itself limited by the sanctions of the law. The law provides and voluntariness is not therefore to be regarded as an absolute concept but relative, because it is subject to restrictions on conduct imposed by the law.

In my view therefore, the law imposes an obligation on a person to do something, and such person does that thing, he cannot subsequently be heard to say that his conduct was not voluntary, and therefore what he did, should be ruled inadmissible. The ratio lies in the fact that only unlawful influence or compulsion can in law remove voluntariness; whereas lawful compulsion, such as provided for in Section 66 or as is the case or as was referred to in the case of R vs. Moilua 1956(4) S.A. 824A; The State vs. Dhlamini 1952(2) S.A. 693D, or/...

the case of The State vs. Mombaris, already referred to, at page 117A. It can never be used as an argument to establish the absence of voluntariness. It is only where voluntariness is unlawfully influenced, that a valid defence on admissibility can succeed.

and bearing in mind the ratio for the existence of Section 66 is correctly reflected in the case of the State vs. Mombaris, at page 117A, it was reflected as follows:

"There is nothing in Section 66 which either expressly or impliedly precludes the police or the State from using such information obtained from a detainee, in the prosecution of offences under the terrorism Act. Or any other offences for that matter. And in fact, it would have been remarkable if it did, since the machinery of Section 6 was introduced, for the very purpose of getting evidence and information for prosecution under the Act."

It appears accordingly to me that lawful influence, such as Section 66 cannot be raised as a defence to negate voluntariness.

The sketches are on this basis also admissible provided the relevancy and admissibility under the common law is proved by the State.

PROSECUTOR: As the Court pleases.

BY THE COURT: The case, in view of Mr. Mailer's unavailability will then be remanded until Tuesday, which is?

PROSECUTOR: 20th.

BY THE COURT: The case is then remanded until the 20th of May. Court 17, both accused in custody.

REMANDED TO 20/5/80:

THE STATE VERSUS: 1. ARCHIBALD MONTY MZINYATHI
2. BINGO BENTLEY

ON RESUMING ON 20/5/80:

BY THE COURT: Yes, Mr. Hattingh?

AANKLAER: Edelagbare, ek roep Konst. Yekwa.

SANDILE WITNESS YEKWA: Beëdig verklaar - (Getolk)

ONDERVRA DEUR AANKLAER: U het reeds vir die Hof vertel dat u 'n konstabel is, in die Veiligheidspolisie, S.A. Polisie, gestasioneer te JohnVorster-plein? --- Ja.

Dat jy met beskuldigde nr. 1, Monty Mzinyathi, 'n onderhoud gevoer het, terwyl hy onder Artikel 6 van die Wet op Terrorisme, aangehou was? --- Ja. Dit is so.

Was die onderhoud op slegs een dag, of oor 'n tydperk? --- Oor aparte dae.

Kan jy onthou watter maand? --- Tussen Junie en Julie.

1979? --- Dit is so.

Ek gaan nou aan jou tien sketse toon - ek gaan dit identifiseer eers vir rekord, Edelagbare.

DEUR DIE HOF: Goed.

HOOFGETUIENIS:(Verv.) As BEWYSSTUK G1, 'n skets met die hofie "Lesotho Refugee Camp." --- Ja, dit is so.

En BEWYSSTUK G2, 'n skets op die kant van die hofie Warsha Camp. BEWYSSTUK G3, 'n skets, met die hofie, "Sketch 1 for planting carbine bomb." En dan as BEWYSSTUK G4, 'n skets met die hofie "Sketch 2, for throwing carbine bomb." BEWYSSTUK G5, 'n skets met die hofie "Throwing carbine bomb." G6, 'n skets van die hofie "Carbine bomb, booby-trapping a house." G7, "Building sabotage." BEWYSSTUK G8, "Carbine bomb (Car booby-trap.)" BEWYSSTUK G9, skets "Sabotage (Bridge supported by pillars - carbine bomb.)" En, BEWYSSTUK G10, skets, "Sabotage rail - carbine bomb." Sal u daarna kyk? --- Goed.

Herken jy die sketse? -- Ek herken hulle. Ek herken die sketse.

Deur wie is dit gemaak? --- Deur beskuldigde nr. 1 in die saak.

Tydens? -- Tussen Junie en Juliemaand. Van 1979.

Tydens jou onderhoud met hom? --- Tydens die onderhoud tussen ons.

Nou sien ek ook daar is 'n handtekening onderaan elke skets, weet jy iets daarvan? --- Dit is die handtekening van beskuldigde nr. 1.

10

Gemaak in jou teenwoordigheid? --- Gemaak in my teenwoordigheid.

Nou, het jy beskuldigde nr. 1 op enige onbehoorlike wyse beïnvloed of gedwing of aangerand ten einde hom te kry om die sketse te maak? --- Nee.

Dit - het hy dit vrywillig gedoen? --- Hy het die sketse vrywilliglik gedoen.

GEEN VERDERE VRAE.

CROSS-EXAMINED BY ADV. MAILER: For how long have you been in the Security Police? --- Three years.

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In the three years you have been a Constable as well? -- That is correct.

And you had been at John Vorster Square for how long? --- It is three years now that I am at John Vorster Square.

You had been working with the team at John Vorster Square for three years? --- That is correct.

And your office is attached to the tenth floor of John Vorster Square? --- It is on the tenth floor.

And you had been working under the supervision and control inter alia for people such as Maj. Conroy? --- Yes.

21

People such as Lt. Bouwer? -- Yes.

BY THE COURT: I don't think you are replying to the question - the question is - you have been working under them, under their supervision, because his reply was he is. --- Your Worship, the position is that we are all the people mentioned on the tenth floor, but I am not working under supervision of any of the named two.

CROSS-EXAMINATION:(Cont.) Under whose supervision did you work?
--- Under Lt. van Wyngaardt.

And do you not take any directions from Maj. Conroy ever?
--- Your Worship, in there, Maj. Cronwright is the person in charge of everybody on the tenth floor. I do receive direction from him.

So your answer is that you do work under the supervision and control of Maj. Cronwright, on the tenth floor? --- That is correct.

No need to shy away from that simple question. --- No, I am not shying away.

And the same applies for Lt. Bouwer? --- Yes, it is.

The same applies to Lieutenant - the Court officer too?

BY THE COURT: I did not hear? 20

CROSS-EXAMINATION:(Cont.) The same applies to the Lieutenant sitting opposite him in Court? --- Yes, it is so.

What is his name? --- This is Lt. Heystek.

And you are familiar with the pattern of interrogation and investigation in respect of Section 6, detainees, not so?
--- Yes, I do.

And you have been part of the investigation team on the tenth floor in numerous cases under the 1967 Act? --- That is so.

You were part of the team which arrested accused No. 1 and 2? --- Yes. 30

You have been in Court since the inception of their/...

trial? --- Yes.

You were in Court at Krugersdorp before the matter was transferred to Johannesburg? --- Yes, I was.

And you have been in Johannesburg available to give evidence at all times, relevant to this particular trial? --- Yes, it is so.

How tall are you? --- 6,5 Feet.

BY THE COURT: Six feet six inches? Comma 5, what is that?
--- Six and half feet.

That is 6 feet 6 inches.

CROSS-EXAMINATION:(Cont.)

As tall as the erstwhile State President was at the time, Blackie Swart. --- That is correct.

Constable, have you ever been to university? --- I have been to university also.

Were you at the University of Fort Hare? --- Yes, I was.

What degree did you begin to do? --- B.A.

What subjects? --- Private Law I, Private Law II, Political Science I. Political Science II. Introduction to Law, Roman Law, English, Political Science III and Private Law III.

Did you take degree, Constable? --- No.

And who paid for your degree? --- My father.

And when did you become a member of the police? --- The 1st of April, of 1976.

When did you leave university? --- 1975.

Constable, I take it that you can draw? --- Your Worship yes, I can draw, but my drawings wouldn't be very clear.

But I am going to see. I am going to ask you to draw me on the lefthand side of the page, I am going to be giving you a cup? --- A what?

A cup? --- A cup yes.

On the righthand side of the page, I want you to draw/..

a cup placed on the corner of a wall. --- Yes.

A cup on the lefthand side of the page, and the righthand side of the page that same cup against the corner - or in the corner of the room, all right? That would be EXHIBIT H. I hand you - EXHIBIT H. I hand you a piece of clean paper. Do you want something to write with? You don't have a pen? --- Something to write with Sir.

Here is a pen.

BY THE COURT: Do you want a cup on the lefthand side?

CROSS-EXAMINATION:(Cont.) Yes. 10

BY THE COURT: With or without the saucer.

CROSS-EXAMINATION:(Cont.) Without the saucer. --- (Witness makes a drawing as requested.)

Your artistic..(not into microphone).. are not very different to mine. I hand it to you Sir, I will come back to it later.

BY THE COURT: Do you want it now?

MR. MAILER: Yes, I can take it now, Sir. I will give it to Mr. Basslion.

CROSS-EXAMINATION:(Cont.) Now, Constable, I asked you to draw me a cup, not so? --- Yes.

And I asked you to draw a cup in the corner of a room? --- Yes, Sir.

And I take it that you asked the accused No. 1 to draw an explosive? --- No.

You didn't? Did you say to him, "Draw a tree?" --- No, I did not say so.

Did you ask him to draw a ship? --- No, I did not.

Did you say, "Go ahead and draw what you want to." --- No, I did not.

Then, can you kindly tell the Court how it came about/...

that the accused having not been asked to do anything - to draw anything, draw sketches of what you have before you, EXHIBIT G?
 --- I asked the accused, Your Worship, if he could draw sketches of that place - the places that he had been to.

So you did ask him to draw certain things? Not so? ---
 That is correct, Sir.

Right, go on, you asked him to draw sketches of the places he had been to. Yes? --- Secondly, I asked him to draw, sketches of the things that he had been trained in, the bombs.

The bombs? --- Yes. He had spoken of bombs. 10

So you asked him specifically to do those things? --- I did.

So why was your answer so non-committal, when I said did you ask him to draw explosives, did you ask him to draw bombs, did you ask him to draw this or that, and you said no?

PROSECUTOR: Your Worship, I object to this, it was never asked of this witness whether he asked the accused to draw bombs. It was asked - the question was, "I take it you asked accused No. 1 to draw an explosive," and he said no. Or draw a tree, and he said no. 20

BY THE COURT: Yes, Mr. Mailer, your reply to that?

ADV. MAILER: What is the difference between an explosive and a bomb? Is a bomb not an explosive?

CROSS-EXAMINATION: (Cont.) Is a bomb not an explosive, Constable
 --- They are explosives.

And when I said - did you ask him - I just take it that you asked him to draw you an explosive, you knew that I also included bombs not so? --- Yes, I knew.

Why didn't you admit straightaway that you in fact asked him? --- This is because, I did not just straightaway ask the
 the accused to draw me a bomb. 3

I agree with you. You did not straightaway. --- Yes, it is so.

Would you tell the Court how it came about that you eventually got him to draw these - to do these so-called drawings? --- Your Worship, during the discussion between me and No. 1 accused, we came to a point where I asked him if he would be able to sketch the places where he had been, where he underwent his training. And whether he would be able to draw the things in which he had received training, to enable a person like me who has not there, and who does not know these things, to see them in writing.

You had never seen drawings or sketches of these so-called places? Be careful before you answer that too quickly? --- I have never seen them.

You have never seen any pamphlet? --- I have no pamphlets on these writings.

You have never seen any pamphlets on the sketches of bombs? --- No.

Have you a good memory? --- I have a good memory.

Have you never seen sketches of that Russian camp - so-called? --- No.

Have you never been told about that Russian camp so-called? --- No.

This was new to you, this Russian camp? --- Yes.

Otherwise known about the existence of such a camp? --- That is so.

You had not heard of the camp at Luanda? --- I have heard of that one.

You have heard of that one. --- Yes.

You have heard of that one and seen sketches of that one? --- I haven't seen sketches of that one.

You have never heard it mentioned? --- Never.

Is this the first case in which the Russian part of the ANC plans, ever cropped up? --- As far as I am concerned, yes, it was. I would not know, because I had not come across it.

No other accused has ever made mention of the training in Russia, at a Russian camp? As far as you are concerned? --- No, Sir.

So this was the nova terra for you? New area - new ground? --- Yes, it was.

Now, the information concerning the bombs, you got from the accused's statement at the Magistrate, not so? The Russian camp, etc. etc.? --- Your Worship, I did not see the statements he made before the Magistrate. 10

Never? --- Never.

So you were going to this accused calmly? You did not know what he was going to tell you? --- That is correct.

Although you would like us to believe that, I must inform you that that is not what the accused will say at all. Now, the accused, as far as you are concerned, co-operated beautifully? --- Yes. 20

And that there was co-operation, it was almost unbelievable, with accused? --- Yes, it is.

Now, Constable, having regard to your good memory, can you inform the Court when you had occasion to see the accused in respect of these sketches? --- It was between June and May, I am not certain of the date.

Between May and June? --- Yes.

And how many days did all this take? --- If I am not making a mistake, Your Worship, about a week.

Consecutive days, in one week? --- No, I did not go to him every day. I had some other work to do.

Well, did it stand a period of more than one week, or did it not stand a period of more than one week? --- About a week.

So between a Monday of one week, and a Monday of the following week, you saw the accused, and all the sketches in EXHIBIT G were completed? --- Your Worship, some of the sketches before Court, were drawn by the accused in my presence. And when I went off duty, I would leave some paper, pencil, a rubber and a ruler with the accused. He would then draw some other sketches in his cell alone, and hand them over to me the following time, when I see him.

I see. He drew them in his cell? --- Yes.

I suppose with fluorescent light by courtesy of John Vorster Square? --- In the cells, yes.

Hmm. Constable, why then did it take so long to draw a few little sketches? --- Your Worship, this was not the only work I had to do.

Constable, why did it take so long for the accused to draw these minor sketches? --- There were days when I did not see the accused, Your Worship.

Constable, it took you 15 to 20 seconds to draw your cup and your wall with the cup? --- Yes, it is so.

Why did it take the accused a period of over a week to fulfill your expectations of him in relation to these sketches? --- I do not know.

Tell me, Constable, the regulation governing the detention on the second floor of John Vorster Square, are you aware of that regulation? --- I would say some regulations yes, Your Worship.

Well, kindly inform his Worship what the regulations are in respect of a detainee taking writing material into his cell?

Specially a dangerous pencil? A pencil which has a sharp point? Tell the Court? -- Your Worship, I do not know the law - I mean the regulation there governing the possession of a sharp pencil. Constable, may I ..(not into microphone)... may I suggest to you....

BY THE COURT: He is making up a story, that is what is put to him.

CROSS-EXAMINATION:(Cont.) Yes, but a lot of what you are saying is being made up as you go on? --- No, I am not.

I want to put it to you that detainees at John Vorster 10 Square are not allowed to go into their cells with any writing material whatsoever? --- I do not know that regulation, Sir.

I am putting that to you? -- Well, that is how counsel knows it.

And if necessary, I am going to call a person in supervision on the second floor? To confirm this. -- You may call him, Sir.

Thank you for your generous approval. Now Constable, if that is the position, then how is it that No. 1 was allowed to take in the various writing materials? Did you ask permission for him? --- No. Your Worship, Lt. Van Wyngaardt told me to leave these things with him. This was when I left the accused to go and do some work. Other work.

Ja. That is part of the story, you see. You weren't acting there on your own initiative, were you? --- It is so, Your Worship.

You were under instructions from your superiors on the tenth floor? -- It is so.

Yes. Now, the question is, did you or did you not get permission from the people in charge of the cells, that accused No. 1 be allowed to take in writing material, to his/...

cell? --- No, I did not.

Which floor was accused No. 2 detained? --- On the second floor.

What is the procedure for the - for removing an accused from a cell? --- Your Worship, I am not working in the cells.

What is the procedure for removing a detainee from the cells? --- One goes up to the cell, particular cell, one would inspect the cell to see what is inside the cell. The tenant is taken out, to go and wash, for instance, to have his meals. And then from there he is taken up to the floor. 10

For other treatment? --- Other treatment - any treatment. I don't know, Sir.

Why the smile Constable? --- I am not smiling. It is just my appearance, Your Worship.

Probably. You are smiling now, Constable. --- (No reply to question)

Right. Constable, I want to know where the accused had the privilege of being interviewed by you? --- Second floor, - there are two offices, Your Worship, situated on the second floor and the interview took place there. 20

Is that office, the office where the Magistrate comes to visit a detainee from time to time? --- Your Worship, I have seen a Magistrate there, yes.

Yes. That is a proper office? --- I don't know how a proper office ..(Interrupted)

It is not a cell, is it, Constable? --- No, it is not a cell.

It has a desk and it has chairs and a table, not so? --- Yes. There is a table, and a chair.

Now, Constable, when did you see the accused approximately? --- Well, it would be soon after reporting on duty./...

on the tenth floor.

What month? --- This was between May and June.

Yes? --- I am not certain of the date. Of the time.

The reason why I ask again, at the understandable annoyance of my learned friend, is because in your evidence - in-chief you gave different dates. Do you know that? --- But I mentioned after that, that I am not certain of the date.

You only mentioned that you are not certain now, for the first time? --- (No reply)

Do you know what dates you gave in your evidence in-chief? --- Your Worship, it was - I was led by the Prosecutor, that it was between June and July. I confirmed it. But I said I wasn't sure of the date.

Oh, so the Prosecutor said, "Mr. Yekwa, you saw the accused in June or July," and you said "Yes, but I am not sure about that?" --- That is what I said.

May I inform you that that is not what the - what took place? --- Well, what was it?

But you are the man with the memory, Constable? --- Well, here it is, Your Worship. What I say is being disputed by the counsel.

You gave the dates to - you gave the dates, June/July, unsolicitly? In the sense that not in response to a leading question. --- I mentioned to the Prosecutor that I was not certain, Your Worship.

You gave the months, not the exact dates, I agree. You gave the months? --- I did so, Your Worship.

Constable, in the beginning of your cross-examination, I asked you whether you were familiar with other trials of this nature? --- I know other trials, Your Worship, but I have nothing to do with them.

Nothing to do with them? --- Nothing to do with them no.

You hadn't been involved in any investigation at all? ---

No, I did not investigate the case.

And you haven't been in Court in other cases? --- I have given evidence in criminal matters.

In this - in matters of this nature? --- No.

Nothing. Now is this the first time that you are coming to Court in a case such as this? --- It is so.

Either giving evidence or in any other capacity? At the Court? In a matter such as this? --- No, I am saying it is the first time that I am giving evidence in a case of this nature.

But you have been involved in investigation of similar cases in the past? You have already said so, Constable? No use to deny it? --- No, I did not say so, I said I did not investigate such things.

Not. You were not part of a team? --- But I have been in the team of investigation, but not myself doing the investigating.

Yes, Lieutenant,

BY THE COURT: Constable. You have promoted him just now. A big promotion!

ADV. MAILER: Sorry, Sir, obviously I have erred, it is Lt. Heystek. I apologise.

CROSS-EXAMINATION: (Cont.) Constable, let us stop beating about the bush, I know you, you know me? --- Your Worship, I know you by sight, it is not that I know you.

Yes, we have had the privilege of meeting each other at Kemptonpark? --- I had seen counsel at Kemptonpark, Your Worship on the outside, just walking around.

Nevermind the outside just walking around, inside Court? --- No, Your Worship, not me.

Not you? --- You might have seen me in Kemptonpark, because I have also seen you.

Constable, I have seen you inside the Supreme Court in Kemptonpark. --- I would not know that.

Do you deny it? --- No, I am not denying it.

That's better. Now, part of your duties, Constable, were to bring witnesses to Court? At Kemptonpark? --- Only in the cases of the S.S.R.C.

So, you have been to Court after I have had the privilege of seeing you in Court at Kemptonpark, as well? You have 10 been twice to Kemptonpark at least, in other words? --- I don't remember, Your Worship. It is possible that I have been.

Constable, it is - let us not play with your memory, these were two important cases in our jurisprudence, they were not trivial, minor cases? So let us not beat about the bush, Constable. --- Your Worship, I remember taking witnesses to Court, only in the S.S.R.C.'s case.

Do you remember being at Court, in any other cases at Kemptonpark, apart from the SSRC cases? --- Yes, I remember being there, but I had not taken witnesses and I did not go into - inside the Court.

You did not go inside the Court? --- No.

So what were you doing there? --- I was doing my work.

You were doing your work. Constable, do you know which case I am referring to apart from the S.S.R.C. case? --- No.

You don't. All right. --- No.

Do you know Tyrol Khumalo? --- No, I don't.

You have never heard of him? --- Never heard of him, nor seen him.

So actually have got the cheek to stand there and say 30 you have never even seen him? You have got the audacity to/...

say that? --- Your Worship, I cannot speak of a thing I do not know.

Do you have the audacity to stand there and say that you have never heard of, nor seen Tyrol Khumalo? Under oath, constable? --- I have never heard of him, Your Worship, nor heard of him.

Constable, in the Mahlangu trial, you were present throughout, at Kemptonpark. --- Your Worship, at the time of the Mahlangu trial, I wasn't even employed at John Vorster Square.

You commenced your employment at John Vorster Square? 10
--- Your Worship, I started at a police constable, working at Jeppe in the uniform branch.

You commenced your services at John Vorster Square, you were stationed there three years ago? --- Your Worship, the position is I was hired, I was engaged, on the 1st of April, 1976, at John Vorster Square. I was sent sent to Jeppe, as a student Constable.

And when did you come back to John Vorster Square? ---
On the 3rd of July, 1978, I then returned to John Vorster Square

So you have only been at John Vorster Square for not 20
even two years? --- I haven't counted how long I have been there.

You have only been at John Vorster Square according to your latest evidence, for two years, not even? --- Yes, it is so I am not denying it.

Why then did you say in your evidence when I asked you that you have been at John Vorster Square for the past three years, attached to John Vorster Square for the past three years? --- That - That is where I was engaged as a policeman. The other police stations do not engage Constables, it is only John Vorster who does.

So you were attached to John Vorster Square for the past three years? --- I was engaged at John Vorster, Your Worship, and sent to Jeppe, still serving as an employee of John Vorster.

Constable, do you know the trial of Solomon Mahlangu? --- Not that I know of it, I have heard of it, I have read of it.

Do you say that you were never on one single day at Court at Kemptonpark during the Mahlangu trial? --- Never.

But Constable, I was there, and I saw you? --- Your Worship Counsel probably saw somebody similar to myself.

No, no, no. --- But not me. 10

You are quite unmistakeable Const. Yekwa.

PROSECUTOR: Your Worship, I think the question has been answered, there is no purpose in repeating the question. Unless Mr. Mailer wants to give evidence to that effect.

BY THE COURT: He is laying a foundation for that, Mr. Prosecutor.

ADV. MAILER: Does my learned friend suggest I can give evidence Or that .. (interrupted)

BY THE COURT: Carry on, Mr. Mailer.

ADV. MAILER: ... can give evidence, I am delighted to hear 20 that. I accept that invitation with alacrity.

BY THE COURT: Carry on.

CROSS-EXAMINATION:(Cont.) Constable, you were at Kemptonpark during the Mahlangu trial, you were there? --- I was not there.

Not only were you there, Constable, but you know that Tyrole Khumalo gave evidence during the Mahlangu trial. --- This is something new to me.

Do you say that you have not ever heard of Tyrole Khumalo --- Never ever heard of him.

Do you say that Tyrole Khumalo has not ever been to 30 John Vorster Square? --- I don't know him, I had not seen him.

Tyrole Khumalo, for your information, was a man who also claimed that he went to Russia and received training under the auspices of the ANC? --- I am happy to hear that from Counsel, I did not know about it.

Tyrole Khumalo gave evidence about the aims and objects of the ANC during Mahlangu's trial? --- Again I am happy to hear that, Your Worship, I did not know about it.

Can you account for where you were between the months February, 1978 till April 1978? --- In February of 1978, I was still stationed at Jeppe, up until April of that year, I was 10 still stationed at Jeppe.

Where is your pocketbook for that particular year, please --- It would be at the Jeppe Police Station.

Would you kindly get it, how long will it take you to get it? --- I don't know, it would further depend on the Station Commander, I think if he would be approached about it?

I would like this witness for the benefit, Sir, to get that book, before I put my next question...

BY THE COURT: Mr. Prosecutor is it possible?

PROSECUTOR: I cannot see what the relevancy of this is, Your 20 Worship. That is the problem, I ...

ADV. MAILER: My learned friend cannot see the relevance of this..

PROSECUTOR: Yes, that is what I said ..

ADV. MAILER: I do not understand the objection.

BY THE COURT: Mr. Prosecutor the thing is, I just want to know whether the State is prepared, if the book is available, to make it available to the Defence? That is the Defence's request.

PROSECUTOR: I will consider that after the Station Commander has indicated his attitude towards this. 3'

BY THE COURT: Thank you Mr. Prosecutor. Can you continue/...

with something else in the meantime?

ADV. MAILER: It is very difficult, Sir. There is a scheme of cross-examination, Sir.

BY THE COURT: Shall we then adjourn, to find out whether the book is available for production, Mr. Prosecutor.

ADV. MAILER: I noticed that the witness was completing something, Your Worship, while the fracas was going on.

BY THE COURT: Yes? --- INTERPRETER: Just before the Prosecutor raised the objection, Your Worship, the witness had said, "I am positive of the date on which I commenced duties at John Vorster Square, which is the 3rd of July. 1978." 10

ADV. MAILER: At the threat of getting the book, Sir, let us jump from April to July, I think the book is very relevant, Sir.

- COURT ADJOURNS -

ON RESUMING:

BY THE COURT: Will you proceed, Mr. Prosecutor, have you got the book available?

PROSECUTOR: Yes, Sir, I am just waiting for the accused.

BY THE COURT: I'm sorry. Yes, Mr. Prosecutor?

PROSECUTOR: I have no objection that the books may be referred² to under cross-examination.

BY THE COURT: Thank you. Mr. Mailer, you may have the books concerned. Let us just get the record straight, - you have now fetched the books relating to the period? --- I have.

CROSS-EXAMINATION:(Cont.) May I see them, please? Constable you said that you had seen the - that you had seen me in Court in another trial. Do you remember saying that? At Kemptonpark? --- Yes, Your Worship, I said I did not see counsel inside the Courtroom but outside, in Kemptonpark.

On more than one day? --- I don't remember on how many occasions. 30

yearly Could have been on more than one day? --- It is possible.

Could have been consecutive days? --- Yes.

You do not remember what trial it was? --- It was during the trial of Ali Lumkwana.

No, no, no.

BY THE COURT: Ali? --- Lumkwana. (Name spelt.)

CROSS-EXAMINATION:(Cont.) That is this year, I am not talking about this year. And you know I am not talking about this year. I am talking before that. --- No, before that, I had not seen Counsel. 10

On no occasion?--- No.

You see my instructing attorney sitting next to me? --- I have not seen in Kemptonpark, I ..

Do you see my instructing attorney sitting next to me? -- Yes, I see him.

Do you say that you have not seen him ever at Kemptonpark? --- No.

Now, Constable, I have before me your pocketbook? --- Yes

Which relates to the month of December 1977. --- Your Worship, I am not sure up to which month it goes, but I am 20 certain that April was in the book.

I was going to tell you, the month December 1977 until the 2nd of March, 1978, this is the first book I have before me. --- Yes.

Is this an accurate reflection of what you did from day to day? --- Yes, it is.

And you are obliged to keep such books? --- Yes, I am.

Yes. When did you go on leave in 1977? --- I am not sure of the date, but it was the beginning of October.

1977? --- Yes.

And that is your yearly leave? --- Yes, it was my/... 31

yearly leave, I took fourteen days of my leave.

Fourteen working days? --- Yes.

That is about three weeks actually calendar - three calendar weeks approximately? --- Your Worship, it is fourteen days of the month, not working days.

BY THE COURT: Fourteen continuous days? --- This is weekends included.

CROSS-EXAMINATION:(Cont.) And that was the leave which was owing to you? For 1977? --- Part of it, Your Worship, yes, I did not take my whole leave. 10

How much leave are you entitled to per year? --- 30 days.

Even though you had been in the Force only for about a year then? --- Yes, one has 30 days in a year.

And when did you take leave this year, 1980, have you taken leave yet? --- No, I was last on leave during last year, not this year.

So you took leave last year, when, December? --- Yes, in December.

And how many - did you take your full leave then? --- No, I took only 43 days. 20

What do you mean "only 43 days?" --- 43, that is the number.

Yes, that was your ordinary leave, plus accumulated leave? --- That is correct.

And that was 1979? --- This was in 1979.

1978? When did you take your leave? --- I did not take leave in 1978.

Good. Now, I told you that Mahlangu's trial started in the middle of February, 1978? --- Yes, I heard you say so.

1978, Middle of February. O.K? Do you accept that? 3
--- I agree with you, that is what you are telling me.

And this book, which I have before me, is an accurate reflection of what happened from day to day? Not so? --- Yes.

You had completed all your courses, your training courses by the time you joined the Police? --- No.

You hadn't? --- No.

What other training were you required to undergo? After you had already commenced your employment? --- I had to undergo police training.

You became a member of the police, officially, in 1976, April? --- That is so.

10

When did you go on police training? After you joined the police in April 1976? --- The 8th of January, 1977.

For how long? --- For 6 months.

And that was that for 1977? --- Yes.

No further police training after that six months? --- No, there was none.

And apart from this book that I have before me, you will have no recollection of your own as to what you did on any particular day, or any particular period during the period December 1977, till the 2nd of March, 1978? --- That is correct.

2

And I take it Constable, that your health has been always good? --- Yes.

You haven't been laid up in hospital for example, for periods of time? --- No.

And you haven't taken off work on account of being sick for periods in time? --- I did for a few days when I was still at Jeppe, though I do not remember which days.

But that wasn't longer than about two or three days? --- That is so.

And you cannot remember exactly what year? --- I don't remember which year.

Right. Constable, having told you that the trial of Mahlangu began on - in the middle of February, 1978, I turn now to the book for February, 1978, and I see an entry here relating to the end of January, - 31st of January, 1978 - 30th of January, sorry. Right? --- There is an entry.

And that is given as Monday the 30th of January, 1978? --- If it is so written yes.

Then there is Tuesday, Wednesday and Thursday of February 1978 - 1st, 2nd, 3rd, - 1978? And then it goes on till the 6th, 8th, - 6th, 7th, 8th, 9th, 10th, of February, 1978. You will agree with me that the book itself is consecutively numbered from page 1 to page 76? --- Yes, Your Worship, the dates are consecutive, if only accepting the days when one is not there. Off duty. Such days do not appear in the book.

And one is never off duty for two weeks for example, just as an example. One is for example never off duty for two weeks I see here there is a Sunday which is left out, or a Tuesday which is left out, - that could be off duty? --- No, one does not take two weeks off.

That is what I thought. But the point I was making was that the book itself is consecutively numbered from page 1 till 76. Take a look what I mean. In the beginning you see the book is called - it is page 1. --- Yes.

And its numbers follow through from No. 1 to 76? --- That is so.

Right. So - and I can tell you that there are no pages missing, because on page 67 of the book, there is an entry, the 10th of February, 1978. On page 67, there is an entry relating to the 10th of February, 1978. Right? --- I don't remember what is written.

Nevermind what is written there. I was just reading/...

what is written there. --- It is fine I am being told.

Do you want to have a look at it yourself. --- No.

Are you sure? --- (No reply)

The next page is page 68 of the book. The very next page. --- 68.

The next date entry, refers to your reporting on duty to George Goch election books something or other. At 12.45? --- Yes.

Do you know what the date is? The next date after the 10th of February? The next date, Constable, is the 22nd 10 of February, 1978. Take a look at it? Curious, isn't it? --- I remember this incident.

Do you? --- Yes.

You were at Kemptonpark during that period? --- No.

Why is there no entry in the book relating to that period --- During these days, I was doing - I remember doing a course in rioting at the Diepkloof Police.

But I asked you had you attended any other courses - I had asked you that and you said no, only for that 6 months? I specifically closed that gap? I focussed your attention on 20 it? --- Your Worship, I did not regard it as an important course in that what I was taught there are things that I had already known.

Is that your answer? --- That is my answer.

Where were you between Monday the 24th of April, 1978, till Thursday, the 27th of April, 1978? On another unimportant course?

BY THE COURT: 24th of April, 1978?

CROSS-EXAMINATION:(Cont.) To 28th of April, 1978? --- I do not remember where I was.

Possibly on another course of unimportance? --- I do not,

think there could have been a course for four days.

Possibly there was? --- Possibly..(both talking)

Will your book tell you where you were? Does your book tell you where you were between that period, have a good look? Does it tell you Constable, yes or no? --- No, because nothing is written in the book, then it would not - it would not tell me anything.

Quite. Now, Constable, all this digression...(Interrupted)

BY THE COURT: May I see that? 10

CROSS-EXAMINATION:(Cont.) This digression has been merely to try and assist the Court in seeing whether you knew or ever heard of a man called Tyrole Khumalo. --- I don't know Tyrole Khumalo.

Yes, again your little smile. --- Possibly that I am just a bit ugly.

A big what? --- Ugly.

BY THE COURT: I don't see a very pronounced smile in any case.

ADV. MAILER: Not now, Sir, not now. And you are looking at me all the time, aren't you? --- Yes, I am looking at you. 20

CROSS-EXAMINATION:(Cont.) Now Constable, in his statement to the Magistrate, the accused made no mention of a bomb? The word "bomb" doesn't appear at all? --- I did not see his statement, Your Worship, I don't know what he says in his statement.

Yes. Now, you have been given an instruction Constable to go down to the second floor, hadn't you? To interrogate the accused? --- Yes, it is.

And you in fact interrogated the accused? --- Yes, I did

And this wasn't the first time at John Vorster Square, either between May to July, 1977, that you had interrogated 30 the accused? 1979? --- Before the first accused, I had not/..

interrogated any other person, it was the first time that I did.

Oh. You cut your teeth on him? --- Yes.

You have been present at his arrest? Not so? --- I was present.

You were at John Vorster the whole day on the day of his arrest? --- Yes, I was.

Do you remember that? --- Yes, I do remember.

A day you are not likely to ever forget, I want to put to you? --- Well, I am not forgetting the day because I was there.

Indeed. And were you present when he was taken to the "waarkamer." --- I don't know of a "waarkamer."

Again that little smile and giggle.

BY THE COURT: I'm afraid Mr. Mailer, I have been observing the witness this time, I don't describe that as a smile.

ADV. MAILER: A nervous little giggle, Sir.

BY THE COURT: I did not notice that either.

ADV. MAILER: Well..

BY THE COURT: Well, let us play the machine back and find if there is a giggle on it.

ADV. MAILER: I want to give you my undertaking that I would never ever attempt to mislead the Court.

BY THE COURT: According to what I have observed, it was not a smile.

CROSS-EXAMINATION: (Cont.) Did you not make a nervous little giggle when the word "waarkamer" was used? --- No, I did not.

You are indeed a stranger to the truth. --- Well, that is what is being put to me, but it is not so.

You had never known any other accused besides this one, had ever alleged that he had received training in Russia? --- 30
No, I did not.

It also came as a bit of a surprise to you didn't it? ---
It did yes, because I did not know anything about it.

Constable, this morning, I asked you to do a sketch for me, not so? --- Yes, I remember.

You did it? --- I did.

EXHIBIT H. And I asked you to do something on the left-hand side of the page and something on the righthand side of the page, do you remember that? --- I remember it.

Right. Take a look at it. --- I confirm this, I did the sketch.

Why didn't you put next to the lefthand sketch, (A) and next to the righthand sketch, (B) in brackets? --- I did not think of doing so.

It is totally meaningless to have done it, isn't it? It would have been totally meaningless? It would have meant nothing, do you agree? --- I don't know the importance of such markings, but it would have meant nothing to me.

Yes, I absolutely agree with you for once. If you put capital A on the lefthand side and capital B on the righthand side, it is totally meaningless, put it there, and explain to me what it means? Put it there now, in a different colour pen. In a red pen. --- I had done so.

Right. What does capital A there mean, and what does capital B on the righthand side mean? --- I would explain that "A" stands for the cup that is drawn on the lefthand side of the page. And "B" stands for the cup that is drawn on the righthand side of the page. Next to the corner of a room.

And where would one get this explanation if you weren't there to give this explanation orally? --- No, I don't know, and another person could have possibly given a different explanation.

Indeed. The accused in this Court, No. 1, copies sketches from a book, available at John Vorster Square, a yellow book belonging to Tyrole Khumalo? --- I did not see that book.

You know that yellow book Constable? --- I don't know it.

Then how on earth do you possibly explain No. 5 in series G. How on earth, or what possible meaning is there for capital A and capital B - what is the purpose of putting that in? G7 yes - I am just taking it at random. It is called "Buildings Sabotage," or something. What on earth does capital (A) mean, and what on earth does capital (B) there mean? --- 10
Your Worship, I am unable to explain (A) and (B), as I am not the person who drew the sketches.

I will tell you why. Because you did not have the sense enough to tell him to complete the sketches in toto, by which I mean (A) is obviously explained in terms of a legend, or in terms of a description on another page in that book. That is in typing, I must put to you. --- Your Worship, I did not at any stage help the accused in drawing any of the sketches, he did this on his own.

Also Constable, what we find very curious, is that on 20 G3 and G4, the words "Sketch 1" and "Sketch 2" appear. This wasn't the first sketch that was done? You have said the first sketch that was done, related to the Lesotho Refugee House.

PROSECUTOR: I object, the witness never said that.

ADV. MAILER: He did say that, Sir.

BY THE COURT: What was the question, please repeat the question so that I can hear it?

CROSS-EXAMINATION: (Cont.) The first sketch that he did, and that you said he did, related to the Lesotho Refugee House, not so?

BY THE COURT: Yes, I don't want him to answer, I just wanted

the question, what was your objection Mr. Prosecutor?

PROSECUTOR: My objection was simply that the witness did not say this. I handed the sketches over by numbering them from G1 to G10. I asked the witness to identify them as I have handed them and numbered them, only.

BY THE COURT: I think it is a technical difference.

CROSS-EXAMINATION:(Cont.) After that mechanical exercise, he said that he asked the accused then to - first he asked the accused to draw a sketch of the ...

BY THE COURT: That's right, continue? 1

CROSS-EXAMINATION:(Cont.) Constable, if there was any misunderstanding, let us clear it up now. The first sketch that the accused was required to do, was the Lesotho camp, not so? --- Your Worship, I came to the accused, and said to him, if he could draw some of the places that he had been to, and some of the training - some of the things that he had been taught. He made the drawings on his own, starting by drawing the Lesotho Refugee camp.

Right. And that is the first drawing that he ever did for you? --- That is correct. 2.

Why then did he call "Sketch 1 and Sketch 2" G3 and G4 respectively? --- Your Worship, I am unable to explain why he numbered the sketches, sketch 1 and sketch 2, because I did not ask him to do so, he did this on his own.

You know why this comes from the same book, it is a series of sketches, relating to the same bomb. Carbine bomb. You showed him a series of sketches, which you required him to do. --- Then where is the book from which he...?

BY THE COURT: No, did you show him a series of sketches? --- I did not.

CROSS-EXAMINATION:(Cont.) Once again, take a look at G5. /..

"For throwing carbine bomb." That is the one. (A) and (B). Why is A and B there, where is the legend which explains what that must mean? --- I don't know, Your Worship, because I am not the person who drew the sketches.

Didn't you ask him about this? --- I did not.

Another thing. I asked you what courses you had done at University. Do you remember? --- Yes, I remember.

And you indicated that none of the courses which you did were scientific in nature, or chemistry orientated? --- Yes, I did not mention that.

I would like you to take a look at G5 - do you see where it is - where it said "carbon powder." --- Yes.

And underneath there is the word "petrol?" --- Yes.

The accused told me that he deliberately switched those two words, because carbon powder, should indicate - or should be in the place where "petrol" is indicated in that little sachet, and that "petrol" should actually be in the "jar" or whatever it is, outside the sachet? As per the diagram. --- Your Worship, I have no knowledge of these things, I did not undergo any course in explosives.

As per the diagrams from which he was to sketch the word "petrol," would be at the place where "carbon powder" is supposed to be and the arrow would point in that direction, and not in another direction? --- I had no idea, because I don't know a book from which to copy these things.

Yes. Also, Constable, G6, the accused switched words. The word "motor for timing device." You have got no knowledge of chemistry at all? --- I have none.

Going back to G5, something there called "target," I do not know if I have just got a bad copy Your Worship, or whether the original would assist me.

BY THE COURT: Mr. Prosecutor, the original please?

PROSECUTOR: The originals are with the witness, Your Worship.

CROSS-EXAMINATION:(Cont.) Once again, there is a word "target, with an arrow there, can you see? --- Yes, I do see.

And it has got capital A and capital B. --- Yes.

There is something obviously missing from these sketches?

--- I don't know what it is that is missing.

I want to put it to you that the legend or whatever there is, which describes what all this is supposed to mean, would tell you for example what the target is there for, and B - what B must mean, and what A must mean? --- Your Worship, I only saw the drawings, but the meaning of everything on these pieces of paper, I do not know.

Once again G10, Sabotage Rail carbine bomb, - you have got an A, B and C this time? --- Yes, I see.

What is that supposed to infer, what is the relevance of A, B and C? --- Your Worship, I think this would be an explanation that A, stands for a drawing where two lines meet and showing a joint of the rail line.

Well, then, Constable, if you take away the A, put your finger over it, tell me what it will mean? What will it mean if you take away the A? Would it mean anything different? --- Your Worship, if I was to put my finger over the A, removing the A, then it would mean he started by drawing any of the other drawings which appears below. I take it that A stands for the one which he drew first. B for the one that followed, and C.

Oh, I see. But what does it mean - as apart to the manner the sequence in which he drew this? You were beginning to give an explanation about rails joining, what was it? --- What I am explaining, Your Worship, is what appears on the drawing/..

here, what everybody can see. It is a joint of the railwayline and there is an arrow indicating a location.

What location? It doesn't tell me that, please explain to me? --- I don't know what location.

No, no, no, everybody can see, what can you see? What is this joint, whatever that means. What joint? --- This is where the two rails meet.

Which two rails? --- Your Worship, I don't know how this object would look to another person, but to me it looks as though this is a joint between two rails. 10

Yes, and then when they meet what happens? --- There is a piece joining the two, Your Worship.

Yes, and then? --- That is all.

And what happens, how does - how is that associated with an explosive? --- I do not know.

Then what is the meaning of C? --- I don't know.

Something must explain it, not so? --- Well, excepting the writing, it is written "steel joint, steel rails,"...

Also A, B and C? --- Yes.

Now, take a look at G6? Do you have that before you? 20
--- Yes.

Your theory was that A must have been in - that was the first sketch done, not so? B was the second sketch done? --- That is how it looked to me.

Now, how does it look to you, what the sequence was on G6? --- Might have started with the one on top.

Why, where is the A? --- There is none.

So how do you know? --- Just thinking.

Also G8. No A, no B? No C? --- Yes, there is none.

Constable, I want to put it to you that you told the 30
accused that you had been sent down to the second floor by/...

your bosses on the tenth floor? You had received an order to come and see him from the tenth floor, I put that to you? --- I did not say this to the accused, though I knew that was the position.

How did he know? --- I did not tell him so.

How is it that my instructions read, "He said that I was going to draw sketches from a book, orders from the tenth floor." How does my instructions read that? I got these instructions last week, not this morning. You are giving the accused pathetic capacities? He is also - he is confirming already last 1 week, what you yourself had admitted before I put this allegation to you? --- I do not know how he knew about this.

He said that he would show you certain sketches from a book, and that you should copy them. He said if you did not draw these sketches, you would be dealt with on the tenth floor in the same way as before. --- I did not say these things.

As a result of that, he copied, but deliberately not accurately in certain respects, from that book called Tyrol Khumalo, whoever he may be. --- No, he did not draw these from a book, Your Worship, these came from his own brain. 2'

NO FURTHER QUESTIONS.

NO QUESTIONS BY ADV. BASSLION.

RE-EXAMINED BY PROSECUTOR: There has been the suggestion that you were at Kemptonpark, throughout the Mahlangu trial, and you did bring to the Court the pocketbooks for that relevant period. Is it correct to say that..

BY THE COURT: Mr. Prosecutor, he said - not right throughout the trial..

ADV. MAILER: Sir, he can put it like that.

RE-EXAMINATION:(Cont.) In the Mahlangu trial you were present throughout at Kemptonpark..(Interrupted)

ADV. MAILER: If that is what I said, I did not mean that - I meant from - I said you were there from time to time. That is exactly what I did mean. And I do not want to be unfair to this witness, Sir.

BY THE COURT: So we accept that the allegation is not that he was there throughout?

PROSECUTOR: It does not really matter, Your Worship.

RE-EXAMINATION:(Cont.) Is it correct to say that in both these books, the pocketbooks, the one starts on the 28th of December, 1977, and it runs through to the 2nd of March, 1978? --- Yes, I agree.

It is followed by the next one, from the 3rd of March, 1978? ---- Yes.

To the 2nd of May, 1978? --- Yes.

And in both these books, on the first page where provision is made for it, your name and number and the police station Jeppe, is written in? --- Yes, Sir.

Apart from remarks made by the officers in this - in these books, the other entries are made by you? --- That is so.

In what branch of Jeppe were you? --- The uniform branch.

Did you have anything to do with security police, or cas from security police? At the time that you were at Jeppe? --- No, Your Worship.

NO FURTHER QUESTIONS.

- CASE STANDS DOWN -

ON RESUMING:

LOURENS STEPHANUS SWART:

ONDERVRA DEUR AANKLAER:

ADV. MAILER: Sorry, Sir, my learned friend and I have had the benefit of discussing any admissions and I have indicated to him that I am prepared to make admissions, and I have told him /...

what admissions I am prepared to make, Sir. Before he leads this witness.

BY THE COURT: Yes, can we get this on record, Mr. Prosecutor.

PROSECUTOR: Yes, Your Worship, firstly that it would be admitted by accused No. 1 that he was never issued with a passport or travel document or any other document, entitling him to leave the Republic of South Africa. To for instance Lesotho.

2. That the aims of the African National Congress are inter-alia as stated in paragraph 2 of the introduction to the charge sheet. 10

That is all, Your Worship.

(ADV. MAILER CONFIRMS THIS)

(ACCUSED NO. 1 CONFIRMS THIS AS WELL)

BY THE COURT: I take it the admissions are only in respect of accused No. 1?

PROSECUTOR: Yes.

ADV. MAILER: Also, my learned friend has handed me a set of pictures, which - photographs, I'm sorry, K1 to K10 - to K11, together with a legend explaining what the pictures are, Sir, and the Defence also admits the correctness hereof. 20

ACCUSED NO. 1: (Confirms)

BY THE COURT: It is all in respect of accused No. 1. Mr. Prosecutor, the reading will change. The reading I gave you for Mr. Swart, will be the reading for the admissions. The reading for Mr. Swart will now be 22/2691.

LOURENS STEPHANUS SWART: Beëdig verklaar -

ONDERVRA DEUR AANKLAER: U is 'n Adjudant Offisier, S.A. Polisi en verbonde aan die Veiligheidstak te John Vorster-Plein? --- Dit is korrek.

Op die 16de Mei, 1979, terwyl beskuldigde 1 onder 3
Artikel 6 van die Wet op Terrorisme aangehou was, het u met/...

hom 'n onderhoud gevoer? --- Dit is korrek.

En op die 18de Mei, 1979, het u hiervandaan saam met beskuldigde nr. 1, in 'n voertuig vertrek? --- Dit is korrek.

Na watter plek eerste? --- Ons het gereis met 'n roete na Foureesburg wat aan my uitgewys was deur die beskuldigde.

ADV. MAILER: Sir, I admit that this was all done freely and voluntarily. I admit also obviously that this was done freely and voluntarily. If that is what my learned friend wants, obviously I make the admission, Sir.

BY THE COURT: I did not get that, did you say that it was..

ADV. MAILER: Yes, I think that that is the purpose of this evidence, Sir.

BY THE COURT: Mr. Prosecutor, then maybe you can shorten the proceedings. (Interrupted)

ADV. MAILER: I am admitting..(both talking)

PROSECUTOR: Yes, Your Worship, I appreciate that, I will then shorten the proceedings.

HOOFGETUIENIS:(Verv.) En die doel van u rit, was dat beskuldigde nr. 1, aan u 'n roete asook plekke op die roete, sou uitwys waarlangs hy die Republiek van Suid-Afrika verlaat het, endie 2^e grens oorgesteek het, na Lesotho? --- Dit is presies so, Edelagbare.

Tydens uitwysing wat plaasgevind het, is fotos deur 'n konstabel van die Veiligheidspolisie in die teenwoordigheid geneem, en die fotos wat nou sal dien as BEWYSSTUKKE, is ware weergawes van die tonele soos gefotografeer in u teenwoordigheid? --- Dit is korrek, Edelagbare.

(BEWYSSTUK K.) 'n Indeks vir die fotos is voorberei, en ek wil hê u moet daarna verwys. Dit sal wees BEWYSSTUK J. Ter verduideliking, die indeks is opgetrek in die volgorde van - 3. hulle is almal gemerk B. --- Korrek.

En die indeks is opgetrek B1 tot B11? --- Ja.

Vir Bewysstukdoeleindes, is die fotos almal in dieselfde volgorde gemerk maar gemerk met die nommer K1 tot K11. Ek wil hê u moet net na die fotos kyk, en dit vergelyk met die indeks om net seker te maak of dit korrek is. --- Ja, dis korrek, Edelagbare. Foto nr. 1, K1, wys Monty aan my uit die oorkant van die grens in Lesotho.

Foto 2? --- Foto, K2, wys Monty die Lesotho-grens uit, waar hy dit drie keer gekruis het.

Foto 3, u kan maar lees, die Hof het 'n indeks. --- 10
Foto 3, is klippe waaroor Monty die grens oorgesteek het.
Foto 4, is die ..

Lees maar net die indeks? --- Monty wys plek uit waar hy huurmotor geneem het na Foureesburg, met terugkeer vanaf Lesotho. En punt waar huurmotor hom afgelaai het voor kruising na Lesotho. Foto 5, hy wys afstand van grens in agtergrond uit. Foto 6, wys Foureesburg-stasie waar hy die trein verlaat en gehaal het, uit. Foto 7, wys Bethlehem-stasie uit, waar hy die trein verlaat het met uitgang na Lesotho, via Witzieshoek. Foto 8, wys die plek uit te Bethlehem, waar hy die bus gehaal het na Witzieshoek. 9, wys die plek uit waar hy vanaf die bus vanaf Bethlehem geklim het, en waar hy weer 'n bus gehaal het, wat na die grenspos gaan. Foto 10, wys plek uit waar hy die bus verlaat het en verder te voet na die grens geloop het. Foto 11, wys uit waar hy die grens oorgesteek, en na Lesotho - staan by a stroom waar grens vorm in Lesotho en RSA.

U bevestig dat beskuldigde nr. 1 die man is wat op al hierdie fotos verskyn? --- Dit is korrek, Edelagbare.

En dat die uitwysings inderdaad soos deur Verdediging aangetoon, vrywilliglik gemaak was? --- Dit is korrek. 3.

Wat betref die grens wat uitgewys is deur beskuldigde/...

nr. 1 aan u, het u dit ook gekontroleer/met kaart van die betrokke area wat gedruk is deur die Staatsdrukkers? --- Dit is korrek, Edelagbare.

Wat aandui dat die Caledonrivier die grens daar vorm? --- Dit is korrek.

So stem dit ooreen dan met wat beskuldigde aan u getoon het? --- Dit stem alles ooreen, Edelagbare.

Ek is jammer, het ek nie vir die Hof fotos gegee nie?
DEUR DIE HOF: Nee, ek het dit teruggegee, ek wil nie dit hê nie. 1

AANKLAER: O, hier is die oorspronklikes.

DEUR DIE HOF: U kan dit maar hou. U sal dit bewaar, dit is te lomp.

GEEN VERDERE VRAE DEUR AANKLAER.

GEEN VRAE DEUR ADV. MAILER.

GEEN VRAE DEUR ADV. BASSLION.

AANKLAER: Edelagbare, ek is ietwat in 'n verleentheid. Die volgende getuie wat ek wil roep is ongelukkig in 'n Hooggeregshof betrokke, en ons probeer deurkom na die betrokke Hooggeregshof toe, om kontak met die man te maak om uit te vind. As ek 'n verdaging kan kry, kan ons weer probeer kontak maak. 2

DEUR DIE HOF: Watter Hooggeregshof?

AANKLAER: Pretoria, Edelagbare.

DEUR DIE HOF: As hy nou van die Hooggeregshof Pretoria af kom. mnr. die Aanklaer?

AANKLAER: Edelagbare nee, ek wil nie sê hy is nog daar nie, ek probeer net uitvind wat die man se posisie is. Miskien is h al ... (masjien af.)

- SAAK STAAN AF =

3.

BY HERVATTING:

AANKLAER: Edelagbare, ek was in kontak gewees met die Hooggeregshof, Pretoria, en ongelukkig kan die getuie definitief nie vanmiddag hier wees nie. Ek het ook nie in hierdie stadium van die dag - dit is alreeds drie-uur, nie tyd vir alternatiewe reëlins nie, en wat ookal die posisie is, sal ek definitief more-oggend in staat wees om getuienis aan te bied oor die aspekte waaroor ek getuienis beoog het. En ek vra dus uitstel na more toe, Edelagbare. Dis 'n datum wat in ieder geval gereël is. Dis die 21ste.

BY THE COURT: The case against the accused is remanded till 10 the 21st of May, 1980, Court 17, both in custody.

REMANDED TO 21/5/80:

BY HERVATTING OP 21/5/80:

(ALLE VERSKYNINGS SOOS VOORHEEN)

ANDRIES JOHANNES VAN SITTEERT: Beëdig verklaar -

ONDERVRA DEUR AANKLAER: Edelagbare, ek gaan vra dat die getuie 'n verslag wat hy opgetrek het, gaan uitlees en inhandig, maar die Hof sal sien dat die verslag is gedateer vanoggend, 21 Mei. Die rede daarvoor, is dat die getuie wat moes getuig in hierdie saak, betrokke is in 'n Hooggeregshof verhoor in Pretoria, en dat hy nie daar afgestaan kon word om hierdie Hof by te woon nie.

U is 'n Sersant in die S.A. Polisie, en verbonde aan die Veiligheidstak, John Vorster-Plein? --- Dis korrek.

En u ressorteer onder die afdeling, Ontploffbare Stowwe? --- Dis korrek.

U het gister ..

DEUR DIE HOF: Opleiding endiesmeer?

HOOFGETUIENIS: (Verv.) Die opleiding sal ek nou identifiseer, Edelagbare. U het gister BEWYSSTUKKE G3 tot G10, ontvang/...

vanaf Luit. Heystek, BEWYSSTUKKE G3 tot G10, met die versoek
 dst u dit moet besigtig en 'n verslag daaroor opstel? --- Dis
 korrek.

U het 'n verslag opgestel, wat sal dien as BEWYSSTUK L.
 Ek wil hê u moet die verslag begin lees vanaf paragraaf 2 wat
 u kwalifikasies aandui, asseblief? --- (GETUIE LEES BEWYSSTUK L
 VOOR AAN DIE HOF)

Goed, dan begin u om die sketse wat u gesien het, te be-
 skryf? --- Dis korrek. Die skets met die opskrif, "Sketch 1 -
 For planting Carbine Bomb." 1

Ek is jammer, ek gaan u elke slag nou onderbreek, dit
 verwys na BEWYSSTUK G3, voor u nou? --- Dit is korrek.

Goed? --- Dit toon 'n bom wat deur middel van 'n kragbron
 en tydskakelaar gebruik sal word. Om geplaas te word op 'n punt
 waar dit na 'n sekere tydperk moet ontplof. Ek sal so 'n bom
 beskryf as 'n tydbom. En B, is 'n skets met die opskrif,
 "Throwing Carbine bomb."

Dit verwys na BEWYSSTUKKE G4 en G5? --- Dit is korrek.
 Dit toon 'n bom wat moet ontplof wanneer dit 'n vaste voorwerp
 tref, nadat dit gegooi is. Die bom kan gesien word as 'n self-
 vervaardigde handgranaat. Die skets met die opskrif "Carbine
 bomb - booby-trapping a house."

Dit is G6? --- G6. Dit toon 'n bom wat geaktiveer word,
 wanneer iemand die deur van die teenoorgestelde kant vanwaar die
 bom geplaas is, sou probeer oopmaak. Hier is die bom blykbaar
 voorsien van 'n tydmeganisme, om te dien as 'n bewapeningskakel-
 aar. Hierdie tydmeganismemetode is 'n basiese eenvoudige maar
 praktiese metode wat deur terroriste gebruik word. Die skets
 met die opskrif, "Building Sabotage." Dit is G7, toon die
 korrekte metode vir die plasing van 'n bom in 'n gebou. Deur 3
 die bom in die hoek van 'n vertrek te plaas, en dit met 'n

swaar voorwerp in te perk, sal die maksimum effek verkry word. Die skets met die opskrif "Carbine bomb - car boobytrap."

G8. --- G8. Toon aan my een van die verskillende metodes om 'n voertuig te saboteer. Hierdie bom sal egter deur die bestuurder van die voertuig self geaktiveer word. Die plasing van die bom dui daarop dat die saboteur se oogmerk is om die bestuurder te dood, en nie soseer om die voertuig te beskadig, nie. Die skets met die opskrif, "Sabotage Bridge supported by Pillars - Carbine bomb."

G9. --- G9. Dit toon die korrekte plasing van 'n 10 bom, om 'n brug se pilare te breek. Die bom word weereens vasgepak om die maksimum effek te verkry. En die skets met die opskrif, "Sabotage Rail Carbine Bomb." Dit is G10. Dit toon die korrekte plasing van 'n bom by die spoorlyn. Die bom word geplaas onder die gedeelte van die spoor waar dit gelas word, en die spoorstaaf derhalwe verswak is. Die maksimum skade aan die spoor sal by so'n las in die spoor verkry word.

En die gevolgtrekking? --- Ontploffbare stof, "Carbine Powder," wat in die "carbine bomb" gebruik word, is nie 'n bekende chemiese stof nie, en derhalwe vermoed ek dat dit 'n 2 samestelling is van twee of meer chemiese stowwe. Die samestelling moet egter 'n kragtige ontploffbare stof vorm, om effektief gebruik te word, om demolisiewerk, soos die opblaas van geboue, spoorlyne en brûe te verrig. Dit is duidelik dat die persoon wat die skets gemaak het, opleiding gehad het, in die demolisie en sabotasiewerk. Ek wil egter die vermoede uitspreek dat die opleiding nie intensief was nie, òf dat die persoon net 'n basiese weergawe gegee het, wat sy opleiding in geheel betref.

Wat daardie laaste opmerking aanbetref, dink ek, u verwys na BEWYSSTUK G3 - dit is die bom wat geaktiveer word /...

met krag? --- Dit is korrek, Edelagbare.

Kan u net vir die Hof verduidelik wat die probleem daar blyk te wees? --- Die skets is glad nie duidelik nie. Dit toon die elektriese drade van die battery direk na die motor, en daar van die motor af na die "timing device." Nou, dit sou verkeerd wees. Die drade moes eers - tensy die bedoeling was dat die drade agter die motor verbygaan, en dan van die "timing device" af na die motor toe terug. Dan sou dit korrek gewees het.

Goed. En dan BEWYSSTUK G5. U het reeds gesê u ken 10 nie die spesifieke chemiese stof, "carbon powder" nie, maar as 'n mens nou aanvaar dat die bedoeling met die bou van so 'n bom is dat die carbon powder en die petrol kontak moet maak, en dan 'n ontploffing moet veroorsaak, wil ek graag by u weet: op die oomblik is die carbine powder geteken aan die buitekantste omhulsel, en die petrol aan die binnekantste omhulsel. Vir die doel van 'n ontploffing sou dit veel saak gemaak het indien die carbine powder in die binneste was, en die petrol in die buitenste was?

ADV. MAILER: Somewhat of a leading question, Sir. I just 20 note the objection that I ..

BY THE COURT: Thank you.

HOOFGETUIENIS: (Verv.) --- Dit sou nie veel saak gemaak het aan die reaksie as sodanig nie. Dit sou miskien wel saak maak aan die eindresultaat.

Wat betref die effektiwiteit van die ontploffing? --- Wat betref die krag van die ontploffing.

GEEN VERDERE VRAE.

KRUISONDERVRA DEUR ADV. MAILER: Sersant, en dit beteken dat u sou verwag het dat die petrol in die "sachet" - ek weet nie 30 wat die Afrikaanse woord behoort gevind te wees? --- Dit is/...

korrek ja.

Nou wat betref G3; u praat van die sogenaamde "electric wires" wat daar verskyn, is dit reg? --- Dis korrek.

Dis elektriese drade, natuurlik. En u sê daar is iets verkeerd hier? --- Dit is korrek, dit skyn verkeerd te wees, dit blyk verkeerd te wees.

Nou, veronderstel dat die woord, "motor" daar, behoort te wees waar die woorde "timing device" staan, wat sou u gevolgtrekking dan wees? --- Dan sou dit totaal geen sin uitmaak het nie. Dit sou geen sin uitmaak het nie. 1

Nou hoe kan u sê dat dit 'n motor is waar die motor daar gevind is byvoorbeeld. As u na hierdie skets kyk, hoekom is dit nie 'n "timing device" nie? --- Ek sou sê die motor in dié sin is bedoel om die bom aan die gang te sit. Om die reaksie te begin. "Timing device" spreek vanself, dat dit bloot 'n tydmeganisme is.

Ja, maar die kwessie van waar die motor moet wees op hierdie sogenaamde "carbine bomb." --- Dit is essensieel dat die motor moet wees waar hy op die tekening aangedui is, sodat die motor die naald op een of ander metode kan vorentoe druk 20 om die sakkie te beskadig.

Maar as die motor by die "timing device" plek is, sou dit nie onmoontlik gewees het nie? Dit kon wel daar gewees het? --- Dit sou dan geen invloed op die naald kon gehad het nie

Nou wat is hierdie "carbine powder" wat hier van gepraat is, of wat hier skyn te wees? Wat is dit eintlik? --- Dit is heeltemaal onbekend aan my, ek dra nie kennis van so'n stof nie.

Maar u het nieteenstaande daardie feit sekere gevolgtrekkings gemaak? -- Dis korrek.

Nou kyk asseblief na G7. Sien u dit? --- Ek het die 30 skets voor my, U Edele.

Sien u die "A" daar, die A en die B? --- Dis korrek.

Nou, u het sekere planne in u lewe opgestel? Sekere sketse gedoen, is ek reg? --- Dis korrek.

U het ook A en B op een of twee in dieselfde plek gesit in u skets, is dit reg? --- Dit is moontlik.

En wat sou die doel daarvan wees as u so'n skets opstel? Om A en B daar te plaas? --- Om miskien 'n bietjie meer duideliker beeld te hê.

Ja. -- 'n Vergrote beeld.

Ja, en u sou verwag dat daar 'n indeks of wat ookal 10 sal wees, 'n verduideliking, soos u verduideliking in u verslag? Dat "A" beteken dit, en dat, en "B" beteken iets anders? -- Dis korrek.

GEEN VERDERE VRAE.

GEEN VRAE DEUR ADV. BASSLION.

GEEN HERVERHOOR.

= SAAK VIR DIE STAAT GESLUIT =

ADV. MAILER: Edelaagbare, 'n datum is gereël, met u verlof sal die saak nou uitgestel word na 7 Julie. 20

DEUR DIE HOF: Uitgestel na die 7de van die 7de maand 1980, Hof nr. 18, beide beskuldigdes in hegtenis.

UITGESTEL NA 7/7/80:

BY HERVATTING OP 7/7/80:

(ALLE VERSKYNINGS SOOS VOORHEEN)

ADV. MAILER: With your permission, Sir, I call accused No. 1.

ARCHIBALD MONTY MZINYATHI: Sworn, states - (Interpreted)

EXAMINED BY ADV. MAILER: Mr. Mzinyathi, you are accused No.

1? --- I am accused No. 1. 3

You are charged with contravening Section 2(1)(b) of/..

the Terrorism Act, in that during March 1977 to July 1977, you received military training in Russia? --- That is so.

Now, Mr. Mzinyathi, it is common cause that you left the Republic of South Africa, in 1977? --- That is so.

When did you leave the Country? --- I left South Africa the end of March.

And where did you go to? --- I went to Maseru, in Lesotho.

When you arrived there, what was your purpose? --- I intended reporting my presence at the Refugee Camps and stay there.

Now, what in fact did you do, on your arrival? --- Your Worship, I reported to the police and also reported my presence at the Council of Churches. I was given a place to stay, and I did stay there.

Mr. Mzinyathi, do you know one Vivian Sello? --- Yes, I do.

Did you see her when you went to Lesotho? --- Yes, I did.

Do you remember when? --- Yes, I do remember.

Approximately when? --- It was during April, at the beginning of April.

Did you have an interview with her? --- Yes, she did interview me.

Did you receive financial assistance at all from her particular organisation? --- I did.

How much? --- I received R20 per month for some time and then received R30 per month.

Now, for what months after March 1977, did you receive this payment? --- I received payment during April, May, June and July.

Where did you receive payment? --- I received this money from the Ministry of the Interior.

And where in Lesotho is that? --- In Maseru.

Did you personally receive this money? Was it sent to you at a certain place in Lesotho, or what was the position? --- I went personally to fetch this money.

Did you have to sign for it? --- Yes.

Are the relevant documents available in Lesotho? --- Yes.

Now, during that period, i.e. from March to July, 1977, where were you? --- I was staying in Maseru, in Lesotho.

Did you ever go to the Soviet Union? --- No.

Did you at all depart from Lesotho during that period? --- No, I did not.

Did you ever come back to the Republic of South Africa after July 1977? --- I did.

And then for what purpose did you come back? --- I had come to fetch Spongile, my wife.

Did you fetch her? --- I did.

For what purpose? --- Your Worship, I had decided to go and stay permanently in Lesotho.

Did you fetch her? --- I did.

Did you take her to Lesotho? --- I did, Sir. 20

Did you officially marry her in Lesotho? --- I did so.

When? --- This was in March, 1978.

Where were you married in Lesotho? --- The office of the Marriage Registry, in Maseru.

Is that also recorded? --- It was also recorded.

Now, between March, 1977 and July 1977, what did you do in Lesotho? --- Your Worship, I was studying, I was doing Arts, and at times used to work for a taxi owner.

Who is that? --- It is a taxi that was driven by one Dick Baloy. 30

How did you help this Dick Baloy? --- I helped in this/..

respect, the taxi he was driving is a Combi. And I used to collect the money, from the passengers.

Were you a kind of a conductor? --- That is correct.

Now, did you know one Anna Kusisi during that particular period? --- Yes.

How did you know her? --- Your Worship, I came to know her because she was a friend of Dick Baloy.

Yes. Now, did you ever come to know her other than on a social level? --- Yes, Your Worship, I was a - at the time I was admitted into a hospital, and as I was a patient there, she is a nurse who was in charge of me. 10

Now, would you tell the Court when you were admitted to hospital approximately? --- If I am not making a mistake, Your Worship, it was on the 10th of June. 1977.

And - 1977, how is it that you came to be admitted to hospital? --- I was involved in a motor-car accident. In the taxi I had just mentioned.

Who drove it? --- It was being driven by Dick Baloy.

And where did the accident occur? --- It was at the corner of Kingsway and Pioneer Avenue, in Maseru. 20

And how is it that you came eventually yourself to be in hospital? --- Your Worship, one^{of} the people who was involved in the accident was immediately taken to hospital.

Who? -- This was Buti Baloy. Me and others went to make statements.

The same day? --- Yes, the same day. And subsequent to the making of the statement, we proceeded to the hospital to see the one who was admitted. And it was on arrival at the hospital that I also collapsed. And then I was admitted into the hospital.

Approximately how long were you kept at hospital after/..

admission? --- I was there for some days, between 3 and 7 days I am not very sure.

Now, you say you married your wife in approximately March 1978? --- Yes.

From the time that you brought her from the Republic into Lesotho, until the time that you got married, in Lesotho in March 1978, what were you doing? --- Your Worship, I was, as I had said working for this taxi for some time, and thereafter I went to work for a place called Midex. Midex Decorators. I was assisting in interior decorating. And during my sparetime, I was involved as an actor in a drama together with the person I have named, Anna Kusisi. And also Dick Baloy.

Right. Did you leave Lesotho at all during that particular period? -- No, I never left Lesotho.

Now, when did you come back to the Republic after you went back to Lesotho? --- I came back in about October.

Year? --- It was October of 1978.

Now, between March, 1978 till October 1978, what were you doing? --- I was staying in Lesotho, I was as I have said working for the interior decorator, and some days I used to be busy with the arts which I was learning.

Right. Now, did you ever, between the period March 1977 up until the time that you returned to the Republic in October 1978, receive military training in the Soviet Union? --- I did not.

Did you receive military training in any other country? --- No.

Did you receive military training at all? --- I did not.

Have you ever received military training in any other period, other than the period which the charge sheet alleges? --- I never did.

Now, on your arrest, Mr. Mzinyathi, it is common cause that you were subsequently detained under Section 6 of Act 83/1967? --- That is correct. I was detained, although I do not know under which law I was.

It has been disclosed by Mr. Yekwa, that is why it is common cause. --- Yes.

Now, during the period of your detention under Section 6, it is also common cause that this Mr. Yekwa attended you whilst you were in your cells, at John Vorster Square? --- It is correct.

Will you describe the context of these meetings to His Worship? --- Your Worship, he used to come at times to fetch me from the cells when I was needed on the tenth floor. At a certain time, he fetched me to accompany him so that we draw certain sketches which he said, I was supposed to draw. He gave me a book.

What book was this? -- This was the book from which I drew the sketches.

Now, what book was this, would you describe the book to His Worship? --- It was a yellow cover, the outside cover is yellow.

Yes? -- And then it is written, drawings, and then something again, by Tyrone Khumalo.

Did you know this person Tyrone Khumalo before this? --- I did not know him.

Who was this Tyrone Khumalo, according to what you were told? --- Your Worship, I was told it is the person who was in detention at John Vorster Square. And the police "Broke" him.

INTERPRETER: The accused uses the word, "break."

IN-CHIEF:(Cont.) --- They broke him to a point where he worked with the police.

30

Yes. Now, what about that book? --- Your Worship, this/..

book has certain drawings, and I had to make my sketches from those drawings. Along these drawings, is written certain things

Now, Mr. Mzinyathi, why did you decide to, as it were, co-operate with the police, Mr. Yekwa? --- Your Worship, I had been assaulted by the police and I was scared if I did not co-operate with the police, this time, that I would be subjected to another assault.

Was it ever explained to you that this would be the position? -- It was explained to me.

By whom? --- This was explained to me by Yekwa. 10

Right, you then copied certain sketches? --- I did.

Which comprise EXHIBIT G? --- These are the sketches,

EXHIBIT G.

Did you faithfully adhere to what was in those drawings in the book? -- Your Worship, yes, excepting that there are certain of the sketches which I did not draw faithfully.

In what manner did you not draw them faithfully? --- Your Worship, I just did this purposely, like when a certain thing contained petrol, and is to be contained inside, then I would draw the petrol to be on the outside, and that other substance to be on the inside.

Yes. Now, what did you think when you changed over those words and directions? --- Your Worship, I was under the impression that if these things were put as I have explained that it would not be the same, it would not work accordingly.

Yes. Mr. Mzinyathi, would you take a look at random, at EXHIBIT G5, please? I don't know if you can get a copy?

BY THE COURT: The Prosecutor has a copy.

IN-CHIEF:(Cont.) Do you have G5 before you? --- Yes.

It says "Throwing carbine bomb," is that your heading? 3

-- Yes, it is the one.

Now, you will see on the lefthand side of the page, as you look at it, the letter B is there, and on the righthand side, towards the middle, the word capital A is there? --- Yes, I do see it.

Why are those two letters there in capitals? --- Your Worship, this is how it appeared on the sketch, and this A and B which appear on EXHIBIT G5, was explained on the side of the page.

Now, was this book - did it contain what I have called in my cross-examination, a "legend?" --- Yes.

NO FURTHER QUESTIONS.

CROSS-EXAMINED BY ADV. BASSLION: Mr. Mzinyathi, accused No. 2, it is common cause, is your stepfather? --- It is correct.

It is common cause that you stayed at his flat for a period of time before you were arrested? --- Yes, this is also correct.

During that period while you were staying with him, did you at any stage tell him that you had undergone any training whatsoever that could be of use to someone wishing to undermine the matters of law and order in the Republic of South Africa? --- I never did.

Did you do anything that might have aroused the suspicion that you had undergone such training? --- No.

Just lastly, Mr. Mzinyathi, did you and accused No. 2, ever discuss politics or political affairs? --- No, we never did.

Thank you.

NO FURTHER QUESTIONS.

CROSS-EXAMINED BY PROSECUTOR: For what reason did you go to Lesotho, initially? --- Your Worship, this was because I was wanted by the police.

Wanted for what? --- Your Worship, I am not very certain/

why the police wanted me, but I thought this was because of a friend of mine, with whom I attended the same school, had been detained at the time at John Vorster Square.

So the sole purpose of you going to Lesotho, initially, was because you ran away from the police? --- That is right.

In what standard were you before you left the Republic? --- When I left the Republic, I wasn't attending school any more

Were you working? --- Yes.

Had you finished your schooling? --- No, I left school whilst I was still in Form II.

Why? --- My parents did not have the funds to keep me in school. I had also decided to leave school.

Can you still remember what you told Abel Baloy? While detained here in John Vorster Square in the cells about the purpose of going to Lesotho? --- Your Worship, I don't remember what he told the Court I told him, but if I did tell him anything then it was that I was running away from the police.

According to him, you told him that you want him to inform the Court at the time when the case was heard, that you only went there for medical treatment? 2

MR. MAILER: I make the objection Sir, because I don't think that that is an accurate rendition of what the witness said. I might just have a moment to just check it?

- (MACHINE OFF) -

BY THE COURT: I didn't put the machine on, could you start from where Mr. Mailer said that the question was - that your question was in order. Just repeat it please?

CROSS-EXAMINATION BY PROSECUTOR: Yes, Sir.

BY THE COURT: The Court can record the following: The Court will record that the witness told the Court that he remembers Baloy's evidence now, that while detained, at times they did/...

Speak to each other, he greeted him, when they were taken from the cells to the toilets, or whatever; he spoke to him when going to the tenth floor, and on his return tell him where he was, and that he said that although he did speak to him the time for speaking was very limited. Yes, Mr. Prosecutor.

CROSS-EXAMINATION: (Cont.) Did you ask each other about the wellfare of the family, etc, etc? --- Your Worship, no, we did not enquire about the wellfare of the family, because we were in detention, and we did not know what was happening to them.

Are you Xhosa? --- Your Worship, the position is I am born Shangaan, though I grew up as a Xhosa.

And accused No. 2, what race is he? --- I know him as a Coloured, Your Worship.

Tell me, accused, were you circumcised before you got married? --- No.

Did you plan to be circumcised before you got married. --- Yes, that was I was supposed to be.

When did you decide on that? When did you plan that? --- Your Worship, there was no meeting, we did not sit to discuss this thing, though I knew I had to undergo this circumcision.

But you never went to Lesotho for that purpose? --- No, I did not.

When did you start receiving payments from the Ministry of Interior in Lesotho, in what month - first payment? --- I think that that was in April.

The same month that you applied? --- Yes.

And what amount did you receive? --- R20.

In what form? --- This was in cash.

Hard cash? --- Yes, it was cash.

Like every other month? --- There was a time when I received a cheque, Your Worship.

How many times did you receive the cheque? A cheque? --
--- It was once.

How many months did you receive this allowance? --- Your
Worship, for all the months that I was in Lesotho, I received
this allowance, and I did not receive the allowance during the
time I was in Johannesburg, but when I went back to Lesotho, I
received money even for the months that I was in Johannesburg.

From whom did you receive these payments, who are the
persons that handed you the payment? --- The people employed by
this office, of the Ministry of Interior. 1

Who are they? --- I don't know their names.

Different people? --- Yes, I received the money from
different people.

Under what name did you apply for refugee status in Le-
sotho? --- Under the name of Archibald Monty Hlongisize Mzinyan-
thi.

And what did you tell Mrs. Vivian Cello what was the
reason for you going to Lesotho? --- The main reason that I
gave her, was that I was running away from the S.A. Police. I
also mentioned that I just did not want to stay in the Republic
of South Africa anymore.

And on that basis they accepted you as a refugee? --- Yes.

Did many people apply during that time for refugee status
--- When I applied Your Worship, I was alone, throughout all the
offices that I applied, I was alone.

Upon your arrival in Lesotho for the first time, where
did you go to stay? -- I went to stay with Dick in Maseru.
It is in a village inside Maseru.

Who is the owner of the house? --- The house in which I
stayed belonged to a person whose name is Basie Mafasi. It
was originally owned by this person. And then I left it/...

left this place, and stayed at some other place, where I paid rent.

Did you ever meet Isaac Radebe in Lesotho? --- I did.

Did you ever same in the same house as he stayed? --- Yes, during the Easter, I went to stay in the refugee house, that is where I met him.

Is that the house of which there is a sketch before the Court? --- Yes.

Who told you that the Ministry of Interior is paying the allowances to people? --- Your Worship, I went to the Council of Churches; those are the people who told me that I would receive money, with which to make a living, from the Ministry's office of the Interior.

Is that Mrs. Vivian Cello who told you that? --- Your Worship, I would not say specifically she who did, but these people employed in that office, who told me so.

But you received the money from the beginning from the Department of Interior? --- Yes.

And the money was handed over to you by the people employed in the Interior Department? --- Yes, this is correct.

What sketches were you forced to make? --- All the sketches that I drew.

All the sketches which are before the Court? --- Yes.

And that includes the sketch of the refugee camp in Lesotho? --- Yes.

Why did they force you to draw such a sketch? --- Your Worship, at the time I was made to draw the sketches, I did not know why they wanted them, but it has become clear to me now, that they wanted me to be sentenced for the sketches.

You did not know why you must make the sketches? They never told you? --- No, they never told me, they only /...

told me to draw the sketches and did not explain why I was to draw the sketches.

Just to keep you busy? As far as you are concerned? ---
Yes.

And this yellow book you are referring to... (Interrupted)
--- I am not saying this was just to keep me busy, they knew what they wanted to do in this case with the sketches.

This yellow book which you are referring to, did that contain a sketch of the refugee camp? --- It did not have the refugee camp. 10

So how did it come about that you drew the sketch of the refugee camp? --- They told me to draw a sketch of the refugee camp in which I was. I did not want to draw it, but he made me draw it.

Why didn't you want to draw it? --- Your Worship, I became suspicious immediately he said I must draw the refugee camp because people who are staying in that camp, are people who have run away for the police, and Yekwa is a policeman, I did not know why he wanted a sketch of this refugee camp.

So in fact, what the true position is, is that not all these sketches you made out of the yellow book? --- I am not certain Your Worship, but I think excepting the one of the Lesotho camp.

The only one? --- The only one, EXHIBIT G1.

Were you frightened of Yekwa? --- Very much.

And you just wanted to satisfy him? --- Not necessarily, but to see to it that I am not subjected to an assault again.

You were all too prepared to make these sketches to save your own skin? --- That is correct.

And was Yekwa satisfied with the sketches you made? --- I think so, though I did not know whether I satisfied him, but/.

I did not know - sorry - but he did not ask me to draw them again, or to get me assaulted.

He just checked it and he did not say anything further?
-- Your Worship, what I remember happening is, after the sketches had been drawn, he, Yekwa, took the sketches away from me, left with them, and after some time he came back with a ballpen and asked me to sign the sketches.

Accused, why did you not draw all the sketches faithfully as you say? --- Your Worship, when one draws such sketches, one realises that these are dangerous things. I thought, I may be putting myself into trouble by drawing the sketches.

What did you think, what are you going to gain by changing certain of the elements of the sketches? --- Your Worship, I wanted to be in a position where I could explain that this is not my idea, because I drew these in this way, and that in that way.

To whom did you want to explain? --- Anybody who could have accused me of drawing off - who could have accused me of these, the drawings being my own idea, excepting ..(last few words uttered so softly that it is not recorded)

And you being so terrified of Yekwa, just made the wrong sketches? You are the one who wanted to save your own skin?
--- Yes, Your Worship, I did, because it wasn't the 1st time that I had done something like this, in an endeavour to save my own skin, but not to - not doing the right thing.

Will you tell the Court about the first time? --- Your Worship, when the police assaulted me and saying I was in possession of certain firearms, I took them to a place in Eldorado-park, and made them dig the whole veld there, where there was no guns.

Now, do you remember accused that you took Sgt. Swart/...

out and you showed him the route you followed to and from Lesotho? --- I did show the route to the police, I don't know whether it was Sgt. Swart.

Do you remember he gave evidence of that? And I suppose it was also done then to save your own skin? --- Yes.

Otherwise he would have killed you or assaulted you? --- Correct.

So you were forced into pointing out this route also? --- Yes, I would say so, because I would not just have suggested to them out of my own that I wanted to go and show them this. 1

Sgt. Swart's evidence is a lie when he says that you voluntarily took him on this route and showed - or pointed out the areas, the various points..

ADV. MAILER: That is not quite a fair question, Your Worship, it should not be framed like that. The witness has already said what he meant by it, Sir, and to say now that this witness was a liar, Sir, is to posture unnecessarily, Sir.

BY THE COURT: Mr. Prosecutor, your reply to the objection?

PROSECUTOR: Sir, I think I am entitled to put my question to the accused in various ways. I want to establish very clearly whether he is in fact saying that he showed this route under force. 2

BY THE COURT: He can tell us, did he show the route under force? --- Your Worship, I would explain it this way, that there was no threats that if I don't show them this would happen to me, but they came and said I must go and show them the route I took to Lesotho.

CROSS-EXAMINATION: (Cont.) And you did that to save your own skin, you already said? --- Yes, I was trying to co-operate with them.

And it wasn't a voluntary act of yours at all? --- No, /.

Your Worship, I would not out of my own have volunteered to go and show them.

How did it happen that you went to show these places, tell the Court about it? --- Firstly, the police questioned me, as to the route I took when I went to Lesotho. I explained then, and after some time, Your Worship, the police came to me and said I had to go and show them the place which I mentioned earlier to them, when they questioned me.

Yes, and then? --- And then I went along with them.

Did he tell you what is going to happen when you don't show the route? --- No, Your Worship, but I knew what would happen.

What? --- He would have beaten me into showing them.

But this was a totally new policeman, to you? It wasn't Yekwa anymore? --- Your Worship, but the policemen to me, - is the same, Your Worship, they all work for the same place.

For what? --- Your Worship, if a policeman wants to know something from me, he told me that he wants to know that thing; whether it be this policeman or that one, does not make a difference.

Is your wife yet back? --- I think so, I haven't seen her.

And when did you leave Lesotho to fetch her? -- If I am not making a mistake Your Worship, this was in July, July or the beginning of August. This was in 1977.

Was that the first time that you saw her since you left the Republic to Lesotho initially? --- It is so.

And did she cross the border with a passport? --- No.

How did she cross the border? --- We went through a river

You and your wife, and who else? --- My child, Willy. 3

Dick was together with us, though he used his passport to cross.

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Dick Baloy? --- Yes.

The taxi owner? --- The taxi-driver.

Did he supply transport to and from? --- No.

Well why did he go? --- We were staying together then in Lesotho before I came to the Republic. I left him in Lesotho, he came to the Republic after I had come here. And then when we went back to Lesotho and went together.

Why did he come here? --- He visited Johannesburg. He has relatives in Johannesburg. He is always coming to the Republic and then go back to Lesotho and so on.

And you are sure that you fetched your wife at the last during the first part of August, 1977? --- This was in 1977, but it can be a bit in July, August or September. Because I came to Johannesburg and stayed here for some time.

And while you left her - did you leave her in Lesotho when you were in Johannesburg? --- I was in Johannesburg coming to fetch her.

So you stayed, with her in Lesotho, all along? --- Yes.

And you both came back together? --- No.

How did you come back? How did she come back? --- She came first, Your Worship.

When? --- This was in June or July, of 1978.

And you came back? --- I came back in about October, 1978.

Did you return to the Republic to fetch your wife, was it the sole purpose? --- No.

What other reason was there? --- Your Worship, I had grown tired of staying in Lesotho, and this time I decided to come back home.

And what made you go back with your wife to Lesotho?

--- Your Worship, I thought the question was about my last/...

coming back in October.

I am referring to the time that you fetched your wife. Did you come here just to fetch your wife? --- In 1977, yes, the purpose was to come and fetch my wife.

Where did you stay? --- I stayed at different houses in Soweto.

Where did you stay in Soweto? --- I stayed with an aunt of Dick for some time; I stayed with friends of mine in Diepkloof.

I didn't ask with whom did you stay, I asked where did you stay, accused? --- In Orlando East.

Address? --- Diepkloof. I don't know the address.

Where did your wife stay during that time? --- Staying with her parents in Orlando East.

You did not go to stay with her? --- No.

Why not? --- Well, I ^{just} did not want to stay there with her.

Sorry? --- I just did not want to stay with her, there.

Why didn't you want to stay with her? --- Because there was no reason why I should stay there.

But she is your wife, she is going to become your wife, she already had a child of yours? --- Yes, but we are not married.

She had a child of yours? --- Yes, that is true, that still does not make her my wife.

Thank you.

- COURT ADJOURNS -

ON RESUMING:

ARCHIBALD MONTY MZINYATHI: Still under oath - (Interpreted)

CROSS-EXAMINED BY PROSECUTOR: (Cont.) How long did you stay in Soweto before you took your wife back to Lesotho? --- It/...

was a month or two. I don't remember when.

And you did not meet with the police during that stage?

---- No.

And you only stayed at Orlando East and in Soweto, during that period?

BY THE COURT: Orlando East?

CROSS-EXAMINATION:(Cont.) And Soweto? --- Yes, Orlando East is in Soweto.

Yes, but those are the addresses you gave, you said one in Orlando East, and the other house in Soweto? --- No, I said 1 the other one in Diepkloof.

Sorry, Diepkloof and Orlando East? --- Yes.

Are you related to the old man with whom you stayed at Leslie? --- I would say yes.

Why did you go and stay with him after your final return from Lesotho? --- Your Worship, I had heard that the police were looking for me again.

They weren't looking for you during your stay when you fetched your wife? --- I do not know whether they were looking for me then, but I did not stay in one place.

For what reason on earth could the police have been looking for you? You kept on running away from the police all the time? --- Your Worship, I did not know why they were looking for me, but I thought it was because of my friend who was in detention.

Who was he? --- Zwelinzima Zizani.

For what was he detained? --- I don't know, Your Worship, but what I knew of him, was that he was the Secretary of Souther[?]

Do you know a person by the name of Oscar, in Lesotho? --- Yes, I do.

What is his surname? --- Oscar De Wreker.

Oscar? --- De Wreker. (Spells surname)

Did you ever work for him? --- Yes, I did.

When? --- Your Worship, I don't remember clearly, but it could have been in October November 1977.

What work did you do for him? --- He was an interior decorator, and I was helping him with that kind of work.

Did you know a person by the name of Tabo and a person by the name of Giant in Lesotho? --- Yes, I knew them.

Tell the Court more about them? --- Tabo Mahutse, is his surname, he is a Lesotho citizen and he is involved in arts, and sculpture. Giant is a Pretoria man, he is a refugee in Lesotho, and he also does sculpturing.

Do you know whether your wife knew them? --- Yes, she knew them.

How? --- Your Worship, firstly they were not staying far away from where I was, and we used to meet them during this sculpturing. And other handwork.

Do you know where Dick Baloy is today? --- Yes, I think he is in Court.

Where is he? --- He is not inside the courtroom.

Is he at court? --- He is at court today.

And where did he come from, from Lesotho? --- I don't know where he comes from.

Is he still staying in Lesotho? --- Yes. No, he is not staying in Lesotho.

Where is he staying now? --- Dick stays at Orlando East.

Was he a Lesotho citizen, or a RSA citizen? --- I am not sure of the citizenship, but I think he is of Lesotho.

Since when is he staying in the Republic? --- Your Worship the position is before I left the Republic, I knew him to have been a South African person. But he is one who left/..

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