

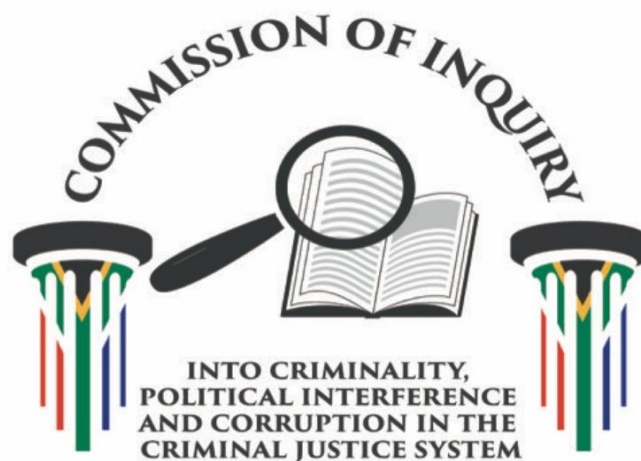
**JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,**  
**POLITICAL INTERFERENCE AND CORRUPTION IN THE**  
**CRIMINAL JUSTICE SYSTEM**

**HELD AT**

**BRIGITTE MABANDLA JUSTICE COLLEGE**

**13 MAY 2026**

**DAY 107**



**PROCEEDINGS HELD ON 13 MAY 2026**

**CHAIRPERSON:** Good afternoon, Mr Mosikili.

**ADV MOSIKILI:** Good afternoon, Chair. Good afternoon, Commissioners.

**CHAIRPERSON:** Thank you.

**ADV MOSIKILI:** Chair, this morning we have Warrant Officer Boy Steve Phakula to testify.

**CHAIRPERSON:** Thank you. Good morning, Warrant Officer.

10 **WARRANT OFFICER PHAKULA:** Good morning, Commissioner.

**CHAIRPERSON:** Will you be swearing or affirming?

**WARRANT OFFICER PHAKULA:** I will be swearing.

**COURT:** Please state your full names for the record.

**WARRANT OFFICER PHAKULA:** Boy Steve Phakula.

**CHAIRPERSON:** Do you swear that the evidence you are going to give is the truth, the whole truth, nothing but the truth? If so, please raise your right hand and say so help me God.

20 **WARRANT OFFICER PHAKULA:** So help me God.

**CHAIRPERSON:** Thank you, Warrant Officer.

**BOY STEVEN PHAKULA:** (duly sworn states)

**EXAMINATION BY ADV MOSIKILI:** Thank you, Chair. Just for context, Warrant Phakula, so today's proceedings are a sequel of what transpired from yesterday's evidence by

Warrant Officer Magane dealing with the events at Aeroton. Warrant Phakula, before you, you should have a file, and when you look at the slide, it should say a statement and annexure file.

**WARRANT OFFICER PHAKULA:** Correct.

**ADV MOSIKILI:** And that will be the file of Warrant Officer Phakula.

**WARRANT OFFICER PHAKULA:** Correct.

10 **ADV MOSIKILI:** And then you should have three other files next to you.

**WARRANT OFFICER PHAKULA:** Okay.

**ADV MOSIKILI:** How many do you have?

**WARRANT OFFICER PHAKULA:** There is only one, the docket and the witness bundle.

**ADV MOSIKILI:** That should be fine. The others will come then when we need to make reference to them.

**WARRANT OFFICER PHAKULA:** Okay.

20 **ADV MOSIKILI:** And then please go to file – so that will be the main file, the statement file. Go to file, so it should be File 1.

**WARRANT OFFICER PHAKULA:** Okay.

**ADV MOSIKILI:** And then open on page 1 of that, and you see it makes reference to your statement. And then if you page over, you will see that there is your statement there, and I want you to go to page 29 of that document, which

should contain your signature. In fact, your signature will be at the bottom of 28.

**WARRANT OFFICER PHAKULA:** Correct.

**ADV MOSIKILI:** Can you confirm that to be your signature?

**WARRANT OFFICER PHAKULA:** I can confirm.

**ADV MOSIKILI:** And then can you also stand by the contents of your statement?

**WARRANT OFFICER PHAKULA:** Yes, Commissioner.

10 **ADV MOSIKILI:** All right, thank you. Warrant Officer, I want you to read the contents of your statement into the record, but before we do that, Chair, flowing from yesterday, if the Chair may allow me, flowing from yesterday there was a lot of going to and froing between Warrant Officer Magane about the evidence relating to Warrant Officer Phakula as to what agreement they reached in terms of where to meet and what was expected to happen after that.

And I consider it to be fair to the witness to say let us deal with that right now so that at least that is put aside  
20 as to his version, because he was accused at least of saying he was incorrect or short of saying he is lying to say that the agreement was to meet at Alberton.

**CHAIRPERSON:** Who was lying? Warrant Officer Magane ...[intervenes].

**ADV MOSIKILI:** Warrant Officer Magane accused this

particular witness of lying. Hence, I think it is fair for him to clear that outright before we get to the meat of his evidence.

**CHAIRPERSON**: Whether expressly or impliedly, I think Warrant Officer Phakula's statement does deal with it because he says he waited at Alberton and it was only after I think making a call to establish what was happening that he discovered that Warrant Officer Magane and the others were still at Aeroton.

10 **ADV MOSIKILI**: It is Aeroton, essentially.

**CHAIRPERSON**: Yes, yes, yes. So I think it does touch on that.

**ADV MOSIKILI**: Yes.

**CHAIRPERSON**: Why do you not just take him through his statement?

**ADV MOSIKILI**: He just wanted to clear that so that at least he is not, because it left him anxious.

**CHAIRPERSON**: I think you can deal with it perhaps more in detail when you get to that part. That is when Warrant  
20 Officer Phakula is at Alberton and you can ask whatever questions you want to, to clarify the position.

**ADV MOSIKILI**: Thank you, Chair.

**CHAIRPERSON**: Does that work for you?

**ADV MOSIKILI**: It works for me, just that he asked to clear it outright, he was a bit anxious about it ...[intervenes].

**CHAIRPERSON:** I mean, I am ...[intervenes].

**ADV MOSIKILI:** But if the Chair says let us wait for ...[intervenes].

**CHAIRPERSON:** Ja, let us just do it chronologically.

**ADV MOSIKILI:** He will get a chance to clear his name.

**CHAIRPERSON:** Yes, let us just do it chronologically.

**ADV MOSIKILI:** Thank you, Chair. And then, Warrant Officer Phakula, can you then go to – you will see that on the numbering we are going to use, it is on the top right. It

10 is in red.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** So you then start with, it will be page 2, because page 1 is a table of contents. Can you then start reading that into the record, Warrant Officer?

**WARRANT OFFICER PHAKULA:** Okay:

20 “I am an adult male Warrant Officer in the South African Police Service, attached to National Investigation Unit 231 Francis Baart Street, Pretoria. My background and service history. My history in the SAPS began in 2002. Below is a summary of my progress within the ranks of the police and includes various appointments and posts I have served in over the years.

I joined the South African Police Service as a student constable working in the Client Service Centre at Alberton SAPS. In 2006, I was transferred to the Alberton Detective Branch, where I performed my duties as a Detective investigating serious and violent crimes.

10 In 2008, I joined Germiston Trio Task Team, responsible for all the investigations relating to house robberies, business robbery, and hijacking cases within the Germiston cluster. I was transferred to the Gauteng Provincial Investigation Unit in 2011. This is the very same year I was promoted to the rank of a Sergeant. My duties were to investigate crimes such as truck hijacking, house robberies, business robberies, car hijackings, and  
20 other serious and violent crimes within the Gauteng Province.

In 2013, I was transferred to the National Investigation Unit at Head Office in Pretoria. My duties included investigation at national level of blue

light robberies, airport following robberies, head office enquiry files, and high-profile cases as determined by the Minister of Police, the Deputy Minister of Police, the National Commissioner, the Deputy National Commissioner, and the Divisional Commissioner, and the political leaders.

10 In 2015, I was promoted to a rank of a Warrant Officer at Cross-Border Operations. My duties included the execution of joint cross-border operations, bilateral and internal disruptive operations within the SARPCCO, Southern African Regional Police Chiefs Cooperation Organisation region, investigate enquiries or documents regarding stolen and/or illegal firearms, theft of motor vehicles, drugs, 20 cybercrimes, and other cross-border related crimes.

In 2019, I was transferred back to the National Investigation Unit, Detective Service Head Office in Pretoria, where I am still stationed till today.

At tertiary studies, I obtained a higher certificate in forensic investigation from the University of Western Cape in 2014. I completed a national diploma in Law from the University of South Africa in 2020.”

**ADV MOSIKILI:** Warrant Officer, before you move on to the events of Aeroton on the 9<sup>th</sup> of July, can you maybe share your particular experience with the Commission, if any, when dealing specifically with drug-related busts?

**WARRANT OFFICER PHAKULA:** If I may ask, what experience in...

**ADV MOSIKILI:** So it will be in two-fold. Have you experienced or attended drug busts? And also, have you at least assisted with crime scene management in those specific circumstances?

**WARRANT OFFICER PHAKULA:** Yes, I can say I investigated drugs cases, but however, I was not involved in the drug busts as big as the one that I was involved in.

**ADV MOSIKILI:** So, are you saying there were drug busts, but not of this magnitude?

**WARRANT OFFICER PHAKULA:** Correctly, Commissioners.

**ADV MOSIKILI:** And you were also involved there as part of the crime scene management personnel in those

operations, or not?

**WARRANT OFFICER PHAKULA:** No, no. I obviously was involved as an Investigating Officer at a later stage, and like I said, some of the drug busts was not as big as that, so like giving information about drugs in a certain – maybe five packets or so, five kilograms or so. That was the investigation that I was involved in.

**ADV MOSIKILI:** Okay. Thank you, Warrant. Warrant, can we then move to paragraph 4? And the heading is Aeroton  
10 Drug Busts on the 9<sup>th</sup> of July 2021.

**WARRANT OFFICER PHAKULA:**

“On Friday, 9 July, 2021, around 07:37  
in the morning, I was at home working  
remotely when I received a call on my  
state cell phone from Warrant Officer  
Magane. I know Warrant Officer  
Magane since 2002. We both worked at  
Alberton SAPS, but at different units.  
We eventually started interacting more  
often when Warrant Officer Magane left  
and joined Crime Intelligence at  
20 Zonkizizwe SAPS. At that time, I was  
working at Serious and Violent Crimes  
Unit still in Alberton, tracing suspects,  
and Warrant Officer Magane would task

his informers in Katlehong, Thokoza, and Vosloorus to assist in identifying and arresting perpetrators.

10 So, when I left Alberton SAPS for different units such as Germiston Trio Task Team Gauteng Provincial Unit, Cross-Border Operations, I continued working with him and tasking Warrant Officer Magane for information that could lead to arrest of those perpetrators or suspects.

20 On that particular day, the 9 July 2021, Warrant Officer Magane informed me that he was following up on information about the drugs and that he needed backup. Warrant Officer Magane further informed me he tried to contact other police officers who were either not in Gauteng or their cell phones were off. He asked whether I am home or at work already and I said I am still at home.

I then informed Warrant Officer Magane that I will come assist once I am done preparing myself. He informed me that they were in Alberton area and there is a

possibility they will be going to the receiver of the cargo in Aeroton. I asked Warrant Officer Magane to keep me updated. While still at home, I received a call again from Warrant Officer Magane informing me that he suspects the information might be positive as they were now in Aeroton and had opened the container already. He said there were  
10 black bags falling out of the container.

I immediately contacted Colonel Sephungu and informed him that there is a member from Crime Intelligence who needs assistance on information about drugs which were found in a container and I asked for permission to go assist, and it was granted.”

Commissioners, if I may, I do not know if it is the opportune time to address the issue because I heard it was related  
20 that Colonel Sephungu was on leave and I phoned him while he was on leave.

The Monday, I was also on leave and I only reported to work on the Monday before the arrest on Friday. So, I did not know who was working at that time and everything. And because I was working remotely at home, I

did not know whether Colonel Sephungu was on leave or not. So, my call to him was just spontaneous as my Commander. So, I just wanted to place that on record:

10                    “So, Colonel Sephungu informed me that  
I should get another member to assist  
me. I contacted Captain Medupi who was  
on the same rotation group as mine. I  
then briefed him and asked if he is  
available to come and assist. Captain  
10                    Medupi agreed to come and assist. I told  
him to meet in Alberton, as initially  
agreed with Warrant Officer Magane that  
they will be bringing the truck and driver  
to Alberton for detention as the place  
where the crime scene started.  
At about 08:20, I left my house to go  
assist Warrant Officer Magane. I was  
driving a state motor vehicle with  
registration number CJ01SPGP, the Kia  
20                    Cerato.”

**ADV MOSIKILI:** Before you move on, Warrant Officer, maybe just emphasis on the previous paragraph on what you said on the last sentence there, just to clarify the issue that I raised with the Chair in regard to your agreement with Warrant Officer Magane. So, to state the record clear, the

agreement was that you will meet him at Alberton. Is that correct?

**WARRANT OFFICER PHAKULA:** That is correct, Commissioner.

**ADV MOSIKILI:** And the further understanding was that he will bring the consignment and the driver to Alberton.

**WARRANT OFFICER PHAKULA:** That is correct, Commissioner.

10 **ADV MOSIKILI:** Thank you. Let us proceed then to paragraph 9.

**WARRANT OFFICER PHAKULA:** Paragraph 10.

**ADV MOSIKILI:** Yes, let us jump to 10.

**WARRANT OFFICER PHAKULA:**

20 “While on my way to Alberton SAPS, I phoned Lieutenant Colonel Mangena, who works at Silverton Ballistics Section and requested a standby cell phone number of forensic members for the drug section. Lieutenant Colonel Mangena told me he does not have the number. However, he will get back to me. Within three minutes, Lieutenant Colonel Mangena phoned me and told me that he spoke to Colonel Moripe at the Drug Section, and he, Colonel Moripe, said

they are no longer sending members to the crime scenes. Members must package the drugs and send them to the laboratory for analysis.”

**ADV MOSIKILI:** Warrant, is that correct to understand that that is the, when you called, is it the – what unit is that, that Mangena said? Is it FSL or?

**WARRANT OFFICER PHAKULA:** I beg yours?

**ADV MOSIKILI:** The unit where it falls under FSL.

10 **WARRANT OFFICER PHAKULA:** Yes, it is under forensic, yes, Forensic Science Laboratory.

**ADV MOSIKILI:** Thank you. All right, then proceed to paragraph 11.

**WARRANT OFFICER PHAKULA:**

20 “After spending about 15 minutes at Alberton SAPS waiting, I phoned Warrant Officer Magane to enquire how far are they, and he said I should rather drive through to assist in Aeroton. I requested him to share his location, and he sent a WhatsApp message with the name of the premises they were at, Omni Park Business Park. I called Captain Medupi to inform him I was leaving Alberton and he should drive to Aeroton, as Warrant

Officer Magane was no longer coming to Alberton SAPS, I also contacted Sergeant Phakula and Sergeant Sape, who were on duty at the Dog Unit posted provincially.”

Another address I would like to make to the Commission is indeed Sergeant Phakula is my brother, and he works at K9 in Silverton:

10 “So, I informed them about the scene and that I was still on my way, and that I will send them the location once I am at the scene. All these phone calls were made before I even got to the crime scene in Aeroton. Sergeant Phakula informed me that this information is similar to that of Lieutenant Colonel Maluleke of National Head Office South African Narcotics Enforcement Bureau, SANEB, who informed them that they should be on a  
20 standby as he, Lieutenant Colonel Maluleke, was expecting a drug from Durban with drugs in a container. With that new information, I informed Sergeant Phakula to call Lieutenant Colonel Maluleke to the scene as well. I

did not know Lieutenant Colonel Maluleke prior to the incident of the 9<sup>th</sup> of July 2021. Upon my arrival at the scene, I found a marked Booyens SAPS patrol van parked in front of Warrant Officer Magane's State black Nissan NP300 facing each other. I then parked on the left side of the Booyens van. As I approached..." ...[intervenes].

10 **ADV MOSIKILI:** Warrant Officer, can we flight the Exhibit File, so the bigger file? Go to page 19 of that one.

**WARRANT OFFICER PHAKULA:** I am there.

**ADV MOSIKILI:** Can you confirm that what you see at the bottom, can you just try and zoom it, at the bottom picture, so it will be photo number 2. There is a red vehicle there. Can you confirm that is your vehicle and that is where you parked as explained in paragraph 14?

**WARRANT OFFICER PHAKULA:** That is correct, Commissioners.

20 **ADV MOSIKILI:** All right, thank you. Let us proceed to 15.

**WARRANT OFFICER PHAKULA:**

"As I approached Warrant Officer Magane, I saw him standing with Chief Mashaba of Gauteng Provincial Traffic. When I first met Chief Mashaba..."

...[intervenes].

**ADV MOSIKILI**: I think you should read, I first met, maybe you can ignore the word when.

**WARRANT OFFICER PHAKULA**: Ja, ja, thanks:

10 “I first met Chief Mashaba at the funeral of Mama Winnie Mandela in Orlando West in 2018. I was introduced to him by a former colleague, Warrant Officer Setona. Since Chief Mashaba was on duty at that time, we only exchanged greetings and me and former Warrant Officer Setona proceeded with our business. That was only the first and last time I met Chief Mashaba prior to the events of the 9<sup>th</sup> of July 2021.

20 When I saw Chief Mashaba at the scene, I then concluded he was together with Warrant Officer Magane. I immediately saw the State black Nissan NP300 loaded with black bags wrapped with plastic. Both Warrant Officer Magane and Chief Mashaba briefed me of the scene...”

...[intervenes].

**ADV MOSIKILI**: Warrant, can you then maybe give us more details on what exactly information they shared with

you when they briefed you, as you described there?

**WARRANT OFFICER PHAKULA:** I think I stated it in paragraph 17. What Warrant Officer Magane was saying is that he received a call from Chief Mashaba about a container with drugs and Chief Mashaba received the information from Chief Mashaba's informer. So, they first went to Roodekop at Yellow Jersey Logistics and found the container there and then they escorted it to Aeroton. So, basically that is what they told me and then when they got  
10 to Aeroton, when they opened the bag of the container, the bag of the trailer, the bags fell on the ground.

**ADV MOSIKILI:** All right, continue.

**WARRANT OFFICER PHAKULA:** Okay:

“I was informed by Warrant Officer Magane that the informer followed the truck from Durban the previous night where it was parked at Yellow Jersey Logistics overnight. Warrant Officer Magane confirmed that he was phoned by  
20 Chief Mashaba and that they first met at Roodekop and then it was agreed that the container be escorted to Aeroton where the client was expecting the order. Warrant Officer Magane pointed a Yellow Jersey truck, yellow in colour, hooked to

10 a 12-metre container trailer and told me that the drugs on the back of the bakkie fell from the container and they were assisted by Scania employees who loaded those bags onto the back of the bakkie to preserve them. Also, allowing space for the truck to further reverse to the loading bay in order to allow a forklift to easily remove the truck caps inside the container. Warrant Officer Magane also told me that the four Scania truck caps that were inside the container were subsequently removed by use of a forklift.

20 I then went to identify myself to the Booyens SAPS members and informed them that I am from National Investigation Unit in Pretoria. The two members also introduced themselves as Sergeant Ndou and Constable Makumbila from Booyens SAPS. I was then pointed the driver of the truck by Chief Mashaba who told me the driver is already under arrest and he was told to stand next to the truck. Chief Mashaba also told me

he placed two other people who were receivers of the cargo under arrest. I then requested to see the responsible persons who were receiving the cargo.

I interviewed the lady by the name Jolene Koekemoer Wentzel by first introducing myself to her. Jolene also introduced herself and her position as a team leader at Freitan. She was shaken and also confirmed to me that she was placed under arrest. I asked Jolene to explain her role in placing orders in Brazil and the arrangements of transport logistics including how the container sale numbers are allocated. I then started obtaining Jolene's statement.

10

In the meantime, I requested Warrant Officer Magane to summon photographers if he has not done that already. At this stage, the scene was under control. The exhibits were still secured in bags in their original forms not tampered with. The crime scene was still under investigation as witnesses were interviewed and suspects under

20

arrest. The Dog Unit was summoned, as well as the photographer.

It is also worth noting that the primary responsibility of the first responding police member is to safeguard the crime scene until the arrival of crime scene examiners from Local Criminal Records Centre and the Investigating Officer. I can also confirm that the scene was handled in line with the SAPS National Instruction 1 of 2015 which states that crime scene management involves the process of planning and implementation of measures to take control and secure the crime scene, ensure the integrity and originality of evidence and exhibits, investigate and process the crime scene thoroughly and undisturbed, coordinate and maximise the collection of exhibits, utilise the investigation support resources optimally, record facts and events properly and ensure that the crime scene remains under police protection for the period determined by the crime scene manager.

10

20

It was at this stage, while busy obtaining Jolene's statement, that a lot of police vehicles started driving in. There were also security personnel from Business Park and Scania who came and they were walking in and asking questions where we came from. Due to the number of police vehicles that were coming in, I kept on being distracted by people passing by towards the police van. At this stage, I was busy writing down the statement on the bonnet of the red Kia. I further phoned Dog Unit and Captain Medupi to hear how far they were and they said they were getting nearer to the scene.

I also requested Warrant Officer Magane and members of Booyens SAPS to cordon off the scene as there were lots of members walking through. Members from Booyens brought the scene tape from their patrol van and I saw them together with Warrant Officer Magane pulling the tape behind the Booyens police van."

**ADV MOSIKILI:** Warrant, I want you to go to the Exhibit

File, the bigger one, on page 37.

**WARRANT OFFICER PHAKULA:** I am there.

**ADV MOSIKILI:** You are there?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** I want you to focus on, there is photo 33. You will see there is a yellow truck there and there is a cordon off. Is that what you are referring to at paragraph 26?

**WARRANT OFFICER PHAKULA:** Yes, that is what I am  
10 referring to and further to the left of the police bakkie, there was a trailer that side. So the tape went further to the trailer.

**ADV MOSIKILI:** Maybe go to the next page and see if that is on page 38. Would that also be the stretch of your...

**WARRANT OFFICER PHAKULA:** No, it is not that visible here.

**ADV MOSIKILI:** But the cordon off, that is part of your instructions?

**WARRANT OFFICER PHAKULA:** Yes, that is correct.

20 **ADV MOSIKILI:** Okay. Then let us proceed to paragraph 37.

**WARRANT OFFICER PHAKULA:**

“I do not recall whether I finished writing Jolene’s statements, as there were a lot of police officers in uniform coming in.

Instead of coming to us and enquire what was happening, those members went and stood with employees of Scania. I requested Jolene to make copies of the waybill. She went to the office to get those documents. At some stage, while still on the scene, Jolene returned and handed the documents I requested to me. At around 10:15, Captain Medupi arrived closely followed by Dog Unit members, Sergeant Phakula and Sergeant Sape. I went and briefed them about what was happening on the scene and I also introduced them to Warrant Officer Magane and Chief Mashaba. While waiting for the photographers, a certain gentleman came and instructed the two Booyens police members to write their statements as he was now taking over the scene. I asked the gentleman who he was and that he should introduce himself as he already knew who I was. That member did not want to give his name and I told him that that is not procedural to walk in a crime scene and start giving

instructions. He said he is not going to listen to me and that General Khan was on his way. I said to that gentleman, that is fine, he, General Khan, may come.

I was later informed that the name of the gentleman was Warrant Officer Rikhotso from DPCI. Warrant Officer Rikhotso further asked if I had an enquiry registered for that operation and I told him there was no time to first drive to Pretoria to register an enquiry and then drive back to the scene as the delay would have defeated the purpose. The information was received that same morning and I had to act on information first.

At that stage, I was approached by Sergeant Phakula who introduced me to Lieutenant Colonel Maluleke of SANEB National Head Office. They had just arrived together with Sergeant Masoma. I went and introduced Lieutenant Colonel Maluleke and Sergeant Masoma to Warrant Officer Magane and Chief Mashaba.

Sergeant Masoma was in possession of an enquiry file and he also showed me a message on his phone between him and his informer talking about the container from Durban. I remember the message on Sergeant Masoma's cell phone was received on a Thursday, the 8<sup>th</sup> of July 2021 and it read that the container with the consignment of trucks will be leaving the Durban Harbour to Gauteng and that Sergeant Masoma must be on standby. After seeing the message, I was convinced this could be the same information and continued briefing them with the intention of handing the scene over to them. I also pointed to them a suspect who was already placed under arrest.

Major General Khan's arrival on the scene. Within minutes Major General Khan indeed arrived. I approached him and introduced myself to him. He asked me if my Commander was aware of my whereabouts and I said yes. He requested my Commander's number and I

gave him contact numbers of Colonel Sephungu. After a few minutes, he came back and said he got hold of my Commander and he confirmed my version, but something does not add up. I then went and stood with Lieutenant Colonel Maluleke while still waiting for the photographer.

10 Major General Khan wanted to know who the driver of the black Nissan NP300 was and he instructed Warrant Officer Magane to go and sit in the third vehicle. I was waiting for the photographer to arrive. I fetched the driver of the truck, who was already standing on the side of the truck. I then brought him back and handed him to Captain Medupi to place him under arrest as I was busy trying to manage the scene. Captain Medupi  
20 cuffed him with cable ties.

The reason the truck driver was not cuffed earlier was that he was going to drive the truck to the SAP13 pound. After the arrival of Captain Medupi, he told us that there is no need for the truck

driver to drive the truck to the pound as he, Captain Medupi, will drive the truck. He has a Code 14 driver's licence.

10 Once the photographer arrived, I introduced myself to her and she also gave her name, which I forgot. I went to Major General Khan together with the lady photographer and found him standing with other two gentlemen, whom I did not know, standing on the loading bay at the back of the trailer. I introduced the photographer to Major General Khan and told him that the photographer has arrived and she wants to start with her duties.

20 Major General Khan told me to stand back, and I did. I left the photographer with Major General Khan and went back to where the bakkie was. I then removed the two seals that were placed on the passenger side of the black bakkie with the intention to get the photographer to take pictures of, but I was stopped by Lieutenant Colonel Ludick and Captain Sebola and I was told that they were now

taking over the scene.

Colonel Maluleke of Johannesburg DPCI approached me, Warrant Officer Magane and Chief Mashaba and asked that we explain to him what happened and how did we get to the scene. We explained to him what transpired and he understood our version. Colonel Maluleke then left us, and after a while he returned to where I was standing and told me to prepare my statement, otherwise I will be placed under arrest. Other members were also ordered to submit their statements, including Lieutenant Colonel Maluleke, Captain Medupi, Sergeant Phakula, Sergeant Sape and Sergeant Masoma.

I obliged and started writing my statement. I handed over my statement together with the statement of Jolene. I took earlier as well as the waybill copies to Captain Sebola. Colonel Mabasa also approached me and requested my cell phones. I asked why, he told me I am being arrested. I told Colonel Mabasa I

want to make a phone call to my Commander and he granted me permission to do so. Captain Medupi and I made a call to Brigadier Mbele, the Section Commander at National Investigation Unit, and informed her what was happening. She further said she will not be able to come and that she will phone Colonel Sephungu to come to the scene.

10

While waiting, I was approached by Captain Sebola and another gentleman who demanded my phones, and this time I handed them over to Captain Sebola. I was still standing and confused when Colonel Steyn came and aggressively told me he wanted my car keys, my appointment certificate and firearm. I handed him the car keys and the SAPS appointment card, and however, the firearm was at home, locked in a safe. Captain Dale Nortje came and searched the car, accompanied by the photographer who was taking pictures of the car I was driving.

20

I was then placed under arrest by Captain Sebola at about 13:45. Captain Sebola was one of the last officers to arrive at the scene, however he arrested us without a proper explanation of what we were arrested for. After a few minutes, we were instructed to get out of the Booyens bakkie. At that stage, there were several members of the media with cameras. I then saw Colonel Sephungu and he came and asked what was happening and I explained to him that I was under arrest.

Colonel Sephungu went and I saw him talking to Colonel Steyn and General Kadwa. We were then ordered to stand next to a black Nissan bakkie while Brigadier Sekgobela and her DPCI members were busy offloading black bags from the back. At no stage were we handcuffed. I counted 35 bricks in each of the first 10 black bags that were opened in front of us. We were told to get in the back of the Booyens SAPS police bakkie while they were still busy

unpacking the exhibits from the black bags to the forensic exhibit bags. It was at around 19:30 when I was taken to Booyens SAPS, where I was detained together with Warrant Officer Magane, Chief Mashaba and a gentleman I only knew when I was in the back of the police bakkie as Tumelo Nku.

10 The suspects whom we placed under arrest, including the truck driver, were released. The truck and trailer with registration number HP01HGPP that we were going to book in at SAP13 was handed back without being booked in. There was interference from members of the public and SAPS members. This amounted to defeating the ends of justice, as well as obstructing a police officer from performing his lawful duties.

20 The Dog Unit was stopped from performing their duties. Lieutenant Colonel Maluleke, who had an enquiry file, was made to leave the scene. On the 11<sup>th</sup>...” ...[intervenes].

**ADV MOSIKILI:** Maybe perhaps to follow through with your

evidence properly, Warrant Officer, maybe let us clarify your specific role when you arrived at the scene. I think you have explained in your paragraphs what transpired, but what we need to understand is that from the briefing with Warrant Officer Magane, Chief Mashaba, whom at least we accept that when he testified yesterday he accepted that he was the first responder. Then what happened? Did he hand over the scene to you? Who was in charge after that? Can you explain the process after that? When you found the  
10 scene and after the briefing, who was in charge, and what was the plan having found the scene the way it was set out?

**WARRANT OFFICER PHAKULA:** Sure. So, Warrant Officer Magane was the scene manager before. I take it he was the scene manager before my arrival and he handed over the scene to me. So, I was in charge of the scene, and hence I started giving instructions for the cordoning off and the photographers to be called. And up until when I was about to give it to Lieutenant Colonel Maluleke, where I was arrested. So, I could not even hand it over to  
20 Lieutenant Colonel Maluleke.

**WARRANT OFFICER PHAKULA:** Okay. Can you explain why was the scene handed over to you and why did you also ultimately intend on handing it over to Sergeant Maluleke?

**WARRANT OFFICER PHAKULA:** Okay. It was handed over to me as a better person equipped to investigate

perhaps at that stage because I was the first person to arrive, investigator, and I was the one who was called to the scene. So, when I handed it over to Lieutenant Colonel Maluleke, he is working at SANEB. So, it is his mandate. So, I was handing it over to a relevant person.

**ADV MOSIKILI:** And then what did you make of the fact that the drugs were removed, as you informed, and placed in a black bakkie in terms of scene management? You do explain that you are aware of the National Instructions  
10 dealing or relating to managing the scene. What did you make of that situation when you arrived?

**WARRANT OFFICER PHAKULA:** Yes. Unfortunately, the drugs were already removed and in the back of the bakkie. So, I was not going to instruct them to place it back as to where, otherwise we were going to further contaminate the scene. But as he, Magane, conceded, the scene was already contaminated. But upon my arrival, I had to now make use of what is there and continue with the investigation of the scene from where I found it.

20 **ADV MOSIKILI:** Basically manage the scene as it were.

**WARRANT OFFICER PHAKULA:** As it were, yes.

**ADV MOSIKILI:** Yes. My concern, Warrant Officer, is when you then attempted to remove what they call the duplicate seal and then that is when you are stopped by, I Sergeant Ludick. Can you explain that a bit more? What was

happening there?

**WARRANT OFFICER PHAKULA:** No, I was innocently taking those seals to – remember, I left the photographer with Major General Khan. So, I was taking those seals to her to take photos of those seals, and obviously she was supposed to take them further to Forensic.

**ADV MOSIKILI:** I think the obvious concern, as you will appreciate, would be you handling the ...[intervenes].

**WARRANT OFFICER PHAKULA:** The seal.

10 **ADV MOSIKILI:** The exhibit as it were, and moving that exhibit as it were.

**WARRANT OFFICER PHAKULA:** No, it was already moved. From the explanation I got, it was found in the back of the trailer. So, it was removed and placed there. So mine was to take it and hand it over to the photographer.

**ADV MOSIKILI:** Yes, what I am saying is that removing it further was not assisting the situation because nothing stopped you from calling the photographer to take the picture of that exhibit. Would that not have been a  
20 possibility at least without you touching the exhibit again?

**WARRANT OFFICER PHAKULA:** It could have been a possibility, but bearing in mind that it has been touched already previously, I might have decided to take it back, to take it to where the photographer was.

**ADV MOSIKILI:** And at that time, were you wearing gloves

if I may ask?

**WARRANT OFFICER PHAKULA:** No, I was not.

**ADV MOSIKILI:** And you see, that is my concern to say look, the fact that the scene is already contaminated, should you accept that it is not a licence for anyone to contaminate it or to compromise the scene further, would you accept that?

**WARRANT OFFICER PHAKULA:** May you please come again?

10 **ADV MOSIKILI:** I am saying you accept that the fact that a scene is already contaminated is by no means a licence for anyone to contaminate ...[intervenes].

**WARRANT OFFICER PHAKULA:** Yes, you are correct.

**ADV MOSIKILI:** Do you accept that?

**WARRANT OFFICER PHAKULA:** Yes, I accept that.

**ADV MOSIKILI:** Yes. And then when you testified, you say that when General Khan arrived, the scene and the situation was under control. Can you just give an explanation? What do you mean by that?

20 **WARRANT OFFICER PHAKULA:** The exhibits were in the back of the bakkie. They were safe, where I could see them and still continue with the statement, with my duties. And there was no move, but what you are saying is that when did I say that? Because what happened was in my statement...

**ADV MOSIKILI:** Continue.

**WARRANT OFFICER PHAKULA:** In my statement, I mentioned that while I was busy writing the statement, a lot of people started coming in.

**ADV MOSIKILI:** Yes. I think you testified that, I think it is Captain Rikhotso.

**ADV MOSIKILI:** Warrant Officer Rikhotso.

**ADV MOSIKILI:** Who approached you.

**WARRANT OFFICER PHAKULA:** Yes.

10 **ADV MOSIKILI:** What was happening there? Because it seems as if he also was trying to take charge of the scene. Can you just explain that interaction between yourselves?

**WARRANT OFFICER PHAKULA:** Yes. Usually if you go to a scene, you do not just start giving instructions without talking to the crime scene manager. And at that time, I was still the crime scene manager. It was before Lieutenant Colonel Maluleke arrived. So, what he did was come in and start giving instructions to the two Booyens police officers to give him statements. He was wearing civilian clothes. I  
20 did not know who he was, and it was an awkward moment where somebody just comes and starts giving instructions and you have never seen him before, you do not know him.

**ADV MOSIKILI:** And then when later on General Khan arrived, you say that he said to you that you must – when you went to introduce the photographer, what did you say

he said to you?

**WARRANT OFFICER PHAKULA:** I must stand back.

**ADV MOSIKILI:** What did you understand that instruction to mean? Did it mean that you must stop being active on the scene? What was your understanding of that?

**WARRANT OFFICER PHAKULA:** Yes, I understood that I must stop now being active on the scene. And hence now because I was now standing back, that is when I realised I need to hand over whatever the exhibits I have to the  
10 photographer. The reason why I went to first the seal with the intention to give it to the photographer, because now I was no more participating on the crime scene.

**ADV MOSIKILI:** And also, there was me there was Rikhotso as well there, somehow.

**WARRANT OFFICER PHAKULA:** Yes, Rikhotso was also there.

**ADV MOSIKILI:** And you said you were in fact planning to hand over the scene to ...[intervenes].

**WARRANT OFFICER PHAKULA:** Lieutenant Colonel  
20 Maluleke.

**ADV MOSIKILI:** Instead?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** And all of this, is it fair to say, contributed to what you call, I think the word being used was chaotic or chaos caused?

**WARRANT OFFICER PHAKULA:** Of course. Because I would have appreciated it if whoever wanted to take the scene came to us and told us, listen, we want to take the scene, how do we? Not to start now giving instructions without knowing who he was. I asked him to at least introduce himself and let us work together. I think that, although I did not mention it here, there was a time when I told him we can still work together, but now you cannot just come and start giving instructions here on the scene.

10 **ADV MOSIKILI:** In your understanding, what was really happening? Because we are trying to get to the bottom of this.

**WARRANT OFFICER PHAKULA:** To be honest, Commissioners, I think we were being managed. We were being – like people wanted to take over the crime scene and the only way for them to take control of that crime scene was to get us arrested or intimidate us in that way. Because there are a lot of things that I can point out that are questionable. If they wanted to, honestly, if they were  
20 intending on investigating this case, I believe they could have done it better with the experience and resources that they have. I refer to the DPCI.

**ADV BALOYI SC:** Maybe just so that we do not forget, you say there are a lot of questionable things that happened. Maybe just list them.

**WARRANT OFFICER PHAKULA**: Okay. One, Commissioners, it was easier for them to go fetch the CCTV footage in order to assist them with the investigations. The Dog Unit that was supposed to be used, they could have used it to assist them with the investigation if they were intending on searching. And also the release of the driver, most importantly the driver. Those are the three that I can at the moment point at.

**ADV MOSIKILI**: Warrant Officer, I think what we are trying  
10 to establish at the end of the day, remember when the initial call was made at least to 10111 was that there are bogus police who are trying to hijack a truck. And later on obviously there were drugs discovered, and then you were called. And you did testify that you are not particularly experienced in huge drug busts.

**WARRANT OFFICER PHAKULA**: Correct.

**ADV MOSIKILI**: Then the real police, when I say real  
20 police, I mean the police officials with SAPS bakkie, they arrive. And we now know that at least it seems as if their arrival stopped the original intention by Mr Magane to have the truck or at least the consignment moved to Alberton, as he had to engage with those officers, and then ultimately you are called to come in.

And obviously what then is clear is that there is a confusion as to who is there, who is supposed to be there,

who is not supposed to be there, and to some extent, I think Warrant Officer Magane says that some of you guys were labelled dirty cops, or at least, dirty police. At least he says he was called a dirty police by General Khan.

So, you have to appreciate the difficulty we have at least to try and understand, and also we have issues where it is quite apparent that the scene was poorly managed, as you heard from Warrant Magane's evidence yesterday, that he conceded that they have, on various levels,  
10 contaminated the scene and compromised, to some extent, the quality of the evidence.

And you are called in to come in here to also assist in that situation, and we are trying to understand what was your involvement and to what extent would they call you in particular to be the guy who comes to, to at least to be associated with what we call a chaos that was already happening. Because when you arrived, the truck was, the bakkie was already loaded with the drugs.

**WARRANT OFFICER PHAKULA:** Ja. So, I cannot say,  
20 Commissioners, that I knew the situation would turn out the way it did at the end of the day, but I was called in to come and assist in managing the crime scene. And unfortunately, upon my arrival the crime scene, I found it the way it was, already the exhibits loaded onto the bakkie, and I had to continue managing from where the exhibits were now.

So, it was an honest opportunity for me to prevent the drugs from being taken, from being stolen and continue to investigate the crime scene, arrest the suspects, continue the witness statements and all that. That was my participation at the crime scene.

**ADV MOSIKILI:** And then you tried to do that as much as you could.

**WARRANT OFFICER PHAKULA:** Correct, I tried to do that at the best of my ability. It is unfortunate that at the end of  
10 the day we were disturbed. A lot of people started coming into the scene and we could not do anything.

**ADV MOSIKILI:** And can you remember roughly between when the scene was handed to you, how long in terms of the time, how long did you have before you were obviously disrupted to deal with the scene the way you have, at least, dealt with it to the best of your ability at least?

**WARRANT OFFICER PHAKULA:** Sorry, I do not get you. Is it after?

**ADV MOSIKILI:** After ...[intervenes].

20 **WARRANT OFFICER PHAKULA:** After my arrival?

**ADV MOSIKILI:** Yes. So, between your arrival and the handing over of the scene to you and to the point where there was an interference. So, how long were you roughly in charge of the...

**WARRANT OFFICER PHAKULA:** I can say less than 30

minutes. Because I was still busy on the bonnet, then that is when a lot of police officers started coming in and going to the bakkie where the bakkie was. It was not even 30 minutes that I can say.

**ADV MOSIKILI:** Okay. All right, let us go then. You wanted to deal with your first appearance at Booyens Magistrate Court. That will be on page 14 on your statement.

**WARRANT OFFICER PHAKULA:** Okay:

10                    “On the 11 July 2021, Sunday, we were charged and our warning statements were taken by the DPCI Investigation Team led by Captain Sebola. We expressed our dissatisfaction with our arrest and requested that our warning statements be written down. I also advised Captain Sebola, in the presence of his other team members, to obtain a video of the crime scene, as well as to do  
20                    section 205 application in order to verify our version. In our statements, we mentioned the reasons why we were at the scene. On the 12 July 2021, Monday, while we were waiting for our case to be called on the court's roll at the Booyens'

Magistrate Court, our attorney at the time, Mr Venter, came and informed me that I was going to be released as the Senior Public Prosecutor requested the statement from Captain Sephungu and he gave it to them, confirming my version.”

If I may also add here, it was said by another witness here, Colonel Steyn, Commissioner, that that he instructed Colonel Sebola to take a statement of Colonel Sephungu at  
10 the crime scene, when Colonel Sephungu was at the crime scene. So, the statement of Colonel Sephungu was only taken at court on Monday and after the instruction by the SPP, to say after reading my warning statements to say that the Colonel Sephungu’s statement must also be. I just wanted to clear that.

**ADV MOSIKILI:** Chair, just for the record, the statement the witness is referring to is – we do not have to go there, but it is CJC227.3 as part of the record. We do not need to go there, Chair, but the statement is part of the record.  
20 Perhaps before you proceed, Warrant Officer, as far as you are aware, has video footage of this scene ever been obtained?

**WARRANT OFFICER PHAKULA:** No.

**ADV MOSIKILI:** And section 205, does that deal with cell phone records?

**WARRANT OFFICER PHAKULA:** That is correct.

**ADV MOSIKILI:** Sorry?

**WARRANT OFFICER PHAKULA:** Yes, that is correct, Commissioners.

**ADV MOSIKILI:** And what were you requesting here then when you say the 205 application?

**WARRANT OFFICER PHAKULA:** No, the 205 application should have assisted them in mapping out the communications between the arrested people and also  
10 placing us on the crime scene, so that they can know whether we planned this thing before or where was I, for example, before I was called to the scene. Those things can assist.

And the reason why you need to get this thing, this section 205 and video footage as soon as possible, is that some get – I am looking for a better word, but they disappear, like they expire, especially video footage. Maybe you find out it takes seven days. Then after seven days, you cannot get that footage again. And it could have  
20 assisted a lot in proving what is it that actually happened on the crime scene.

**ADV MOSIKILI:** And at paragraph 49 you are saying that your attorney, Mr Venter, informed you, so out of the four accused, was he referring to you alone or is it the four of you who were going to be released?

**WARRANT OFFICER PHAKULA:** I understood it was me because it was after Colonel Sephungu's statement was submitted.

**ADV MOSIKILI:** What would the statement have said that you believe would have at least justified the release?

**WARRANT OFFICER PHAKULA:** He confirmed that I gave him a call and he gave me permission to attend the crime scene. Because otherwise, if he had said to me you do not have to attend, I would not have gone there. So, he is the  
10 one who authorised my attendance there.

**ADV MOSIKILI:** All right. Let us go to paragraph 50 then.

**WARRANT OFFICER PHAKULA:**

“Our case was called at around 15:00 and to my surprise, the attorney requested to address the Court and placed it on record that while on lunch, the Head of Gauteng DPCI, Major General Kadwa, together with Deputy Director of Public Prosecutions, Advocate  
20 Mlotshwa, held a meeting with a Senior Public Prosecutor, Mr Tusi [?], and the decision to release me was overturned. The case was placed on the roll and remanded to the following day, the 13<sup>th</sup> of July 2021, for a statement. We were

imprisoned at Johannesburg Prison with no bail. On the 13<sup>th</sup> of July 2021...”  
...[intervenes].

**ADV MOSIKILI:** Maybe read into the record the heading.

**WARRANT OFFICER PHAKULA:**

10 “Released on bail. On the 13<sup>th</sup> of July 2021, we appeared at Booyens' Magistrate Court and the case was remanded to the 21<sup>st</sup> of July 2021 for bail application at the Johannesburg Magistrate Court. While at Sun City prison, I was called by the Prison Warden to inform me that I have a visitor and that I must come to the visiting area. To my surprise, the visitors were the DPCI Investigation Team of about six members led by Captain Sebola. They then told me they were instructed to come see me as they were told I had something to tell

20 them. I told them there is nothing I can tell them as I have appeared before Court already and if I had anything to say, my attorney would have been part of that meeting, and that I never requested to see them. I was then taken back to

my holding cell. While still in prison, I was visited by Brigadier Mbele, who came to serve me with SAPS section-43 notice of suspension. This deals with a suspension without pay of SAPS members while in detention or in prison.

10 On the 21<sup>st</sup> of July 2021, Captain Sebola came to oppose bail and we submitted our witness statements of Colonel Sephungu, Lieutenant Colonel Mangena, Captain Medupi, Warrant Officer Magane, Warrant Officer Phokungwana, Warrant Officer Chidi, Sergeant Phakula, Sergeant Sape and Sergeant Maja as exhibits to prove our innocence. We were granted bail on the same day.”

I must mention, Commissioners, Warrant Officer Magane was not supposed to be part of the witnesses that I am mentioning here. If you can scratch it?

20 **CHAIRPERSON**: Must we delete the name?

**WARRANT OFFICER PHAKULA**: Yes, Warrant Officer Magane, he was not a witness.

**CHAIRPERSON**: Thank you.

**WARRANT OFFICER PHAKULA**: Yes:

“I called the Human Resource

Management Office Detective Service to enquire if I should report for duty after being granted bail. A PPO Mulder said I should not as I was already on suspension. The section 43 was supposed to have been uplifted once I was released on bail, as was the case with Magane's process.

10 A meeting with Major General Khan. While on bail, I received a call from former Warrant Officer Heyns, who told me Major General Khan wants to see me. I refused to meet with Major General Khan. A week or two weeks later, Warrant Officer Heyns called again and said Major General Khan wants to meet with me, and this time I agreed and asked him to send me Major General Khan's contact.”

20 Contact numbers I wanted to say:

“On the 15<sup>th</sup> of September 2021, I called Major General Khan and he did not answer the phone. I then texted him and said Good day, Gen, it is Phakula. He replied and asked where can we meet

and he will set up a meeting to my convenience and asked if he can bring Major General Kadwa, and I refused and stated I will not be comfortable with both of them. At this stage, I was still not clear why Major General Khan wanted to meet with me, hence my discomfort with bringing Major General Kadwa to the meeting.

10 On the 16 September 2021, Major General Khan called me and asked about my whereabouts, and I told him I was in Kibler Park area, and then he requested my location and I shared it with him. He responded and said he will be there in 15 minutes. I waited for him, and then I saw him, Major General Khan, driving in his greyish VW Golf 7. I then went to him and got in his passenger side of the car.

20 Major General Khan sympathised with me and explained he still did not understand why I was arrested because he left the scene as he had to rush to Cape Town. He further wanted to know how did the informer that was arrested with us get the

information, and I said I did not know, but I can bring the informer to have a meeting with him so he can ask him himself. He further said they were not interested in me, they wanted Colonel Sephungu, and I said to him Colonel Sephungu knew nothing about the operation. I am the one who called and informed him about it.

10 Major General Khan confirmed that he spoke with Colonel Sephungu on that day and he, Colonel Sephungu, confirmed that I called and informed him about the drugs and he gave me a permission to attend to the matter. Major General Khan asked me who the drugs belonged to, and I told him that people say they belong to him, and he laughed. He told me that he could see that I was doing an honest job,

20 and I requested if he could submit a statement as there was a disciplinary hearing against me for the same case. He promised he would draft it and give it to me before my hearing, which was on Friday the 18<sup>th</sup> of September 2021. We

parted and I promised I will avail the informer to him for an interview. He never submitted his statement as per his promise.”

**ADV MOSIKILI**: Warrant, can we then go on the same file, the same file that you have, go to page 20.

**ADV BALOYI SC**: Same file?

**ADV MOSIKILI**: Statement file that he has, yes.

**ADV KHUMALO SC**: Item 5?

10 **ADV MOSIKILI**: Item 5, the table will be item 5, thank you.

**WARRANT OFFICER PHAKULA**: I am there.

**ADV MOSIKILI**: Yes, go to page 20. Can you describe to the Commission what is depicted on that page?

**WARRANT OFFICER PHAKULA**: Commissioners, this is the screenshot of my conversations with General Khan.

**CHAIRPERSON**: Are you projecting it?

**ADV MOSIKILI**: Chair, there seems to be a bit of an issue with the lighting. We will flight it at a later stage, Chair, when that is located there, the picture.

20 **CHAIRPERSON**: Mr Mosikili, why not in the meantime perhaps continue with the disciplinary hearing and we come to this later?

**ADV MOSIKILI**: That seems appropriate, Chair.

**CHAIRPERSON**: Yes.

**ADV MOSIKILI**: Warrant Officer, we will come back to this

conversation between you and General Khan. Then let us move to the next topic, which is the notice to appear at the disciplinary hearing. And then you pick it up at paragraph 63 of your statement. So, that will be page 18.

**WARRANT OFFICER PHAKULA:** Okay:

10                   “Notice to appear at the disciplinary hearing. Around August 2021, I received a phone call from Lieutenant Colonel Mashego, who is employed at International Vehicle Crime Investigations at the Head Office, informing me he wants to meet with me in order to serve me with the notice to appear at an expeditious disciplinary hearing. I told Lieutenant Colonel Mashego I have tested positive for COVID-19 and that I needed to isolate. About two weeks later, Lieutenant Colonel Mashego called and requested that we meet. We met and

20                   he gave me the notice to appear for my disciplinary hearing, which was dated the 18 September 2021 at Stock Theft Boardroom. I was never served with a notice of investigation as per the Regulations. No other documents shared

except the factual report and the notice to appear at a hearing.

Again, this was different from Magane's disciplinary process. I was charged with defeating the ends of justice and possession of drugs. The Chairperson of the hearing was Brigadier Kgopodithata.

10 I presented my case and gave all the statements I have prepared from my witnesses, which included statements from Colonel Sephungu, Lieutenant Colonel Mangena, Captain Medupi, Warrant Officer Magane, Warrant Officer Phokungwana, Warrant Officer Chidi, Sergeant Phakula, Sergeant Sape and Sergeant Maja. The employer only presented a factual report which was prepared by DPCI Investigation Team and relied on it to prove the employer's case.

20 The hearing was remanded for Monday, the 20<sup>th</sup> of September 2021. On Monday, the 20<sup>th</sup> of September 2021, I was dismissed from the SAPS. I immediately appealed the decision through the SSSBC, Safety and Security Sectoral

Bargaining Council. Booyens CAS  
252/10/2021...” ...[intervenes].

**ADV BALOYI SC:** Warrant Officer, you have as in the list  
of witnesses, you have Warrant Officer Magane.

**WARRANT OFFICER PHAKULA:** This time, yes.

**ADV BALOYI SC:** This time?

**WARRANT OFFICER PHAKULA:** Yes. Thanks,  
Commissioner:

10 “Booyens CAS 252/10/2021. Since our  
arrest, it has always been our intention,  
me, Warrant Officer Magane, Chief  
Mashaba and the informant, that we  
should open a case against the members  
who arrested us. After consultation with  
our attorney, we opened a case against  
Major General Khan and the members of  
the DPCI, General Kadwa, Brigadier  
Sekgobela, Colonel Steyn, Captain  
Sebola. We opened a case of defeating  
20 the ends of justice and theft of drugs.

The case was investigated by IPID.  
According to Crime Scene Management  
Guidelines, the first member at the crime  
scene, regardless of rank or position, is  
tasked with assuming control and

ensuring that no unauthorised individuals, including higher ranking police officers unrelated to the incident, gain access to the crime scene. These individuals played a huge role in arresting us, releasing the suspects that we had placed under arrest and further tampered with exhibits which we believe were stolen. We relied on the investigation from IPID to further identify other perpetrators who might have also played a role in defeating the ends of justice and theft of drugs.

10

When Major General Khan first arrived at the scene, the scene was under control. There were officers who came from Crime Intelligence, such as Lieutenant Colonel Moloi, who interacted with Warrant Officer Magane, who congratulated us on the good work we did. There were also other members who came to us, like Lieutenant Colonel Ndlela. He heard our story and left.

20

Upon the disposal of the Booyens CAS 98/7/2021, I realised that the exhibits

were booked at Booyens SAPS on Friday, 9 July 2021. On Monday, 12 July 2021, those exhibits were booked out and transported to Tshwane SAPS College. Exhibits were only booked in at Forensic on Monday, 19 July 2021. I then noticed that the forensic bag numbers of exhibits that were received at Forensic were different from those that were initially booked at the Booyens SAPS.

10

Furthermore, Warrant Officer Morris from DPCI, who transported the exhibits to Forensic, his statement stated that a few forensic bags were damaged during transportation and that new forensic banks were used.”

**ADV MOSIKILI:** Warrant, here in this paragraph, when you say you realised that the exhibits were booked at Booyens, and then you later on say you noticed that the forensic bag numbers of exhibits that were received by Forensic were different, what do you mean by that? How did you realise this? When did you notice this? Where did you get this information?

20

**WARRANT OFFICER PHAKULA:** Okay. When we went for trial at High Court, they disposed the copy of the docket to

us. The copy of the docket included the copy of the SAP13 at Booyens SAPS. So from that copy of the SAP13, compared to the 212 statement from FSL, there were bags that were not reflecting, that were there at Booyens, but they are not reflecting at Forensic.

**ADV MOSIKILI:** All right. Can you then move on to your paragraph 70, upon further investigations?

**WARRANT OFFICER PHAKULA:**

10                   “Upon further investigations, it was found  
that one brick with a new forensic bag  
number was only received at Forensic on  
the 10<sup>th</sup> of August 2021. This information  
was not part of the docket that was  
disclosed. The circumstances of this  
single brick are unknown. Who booked  
it? Where was the brick all this time?  
That information was deliberately  
concealed from us. It is evident that the  
intentions of these officers at the scene  
20                   were not to investigate the crime. The  
only way for them to take control of the  
crime scene was to arrest us. In that  
way, they could divert their attention to  
the arrested police officers and let the  
real perpetrators free.

In March 2022, we appeared at Booyens Court and we were served with indictment to appear at the High Court on the 22<sup>nd</sup> of April 2022. We were being charged with possession of drugs and drug trafficking, fraud and defeating the ends of justice. The indictment was signed by Deputy Director of Public Prosecutions, Gauteng Local Division, Advocate J Drotsky.

10

After our appearance on the 22<sup>nd</sup> of April 2022, we received the disclosure of the docket Booyens CAS 98/7/2021 and we then requested our attorney, Mr Johan Eksteen, to prepare representations. Our representations were submitted and we received feedback through our attorney on the 24<sup>th</sup> of June 2022 from the Deputy Director of Public Prosecutions, Advocate Serepo. In his report, the Advocate stated that the evidence in this matter have been carefully considered by this office. We are of the view that there is *prima facie* evidence with reasonable prospect of a successful prosecution

20

against the accused. Therefore, our representations were unsuccessful and declined. We then instructed Mr Eksteen to appeal that decision.

Our trial date at the High Court was set for October 2022. Around July 2022, Mr Johan Eksteen submitted our appeal to Advocate Rodney De Kock, the Deputy National Director of Public Prosecutions.

10 While still waiting for the outcome, I was informed by Colonel Sephungu, Captain Medupi and Sergeant Phakula that they were called in for consultation. I was informed by both Sergeant Sape and Sergeant Phakula that during consultation with Advocate Ryan from Gauteng Local DPP, they advised her to demand the CCTV footage of the crime scene from the Investigating Team. This

20 would have assisted the prosecution in getting the proof of what actually happened at the crime scene. Advocate Ryan also informed both Sergeant Sape and Sergeant Phakula that both their statements were not commissioned. Both

the statements were not disclosed with the contents of the docket. They were not filed in the docket. Our case was provisionally withdrawn on the 12<sup>th</sup> of October 2022, pending the outcome of the appeal at NDPR.

On the 29<sup>th</sup> of January 2024, Advocate Rodney De Kock wrote to Mr Eksteen in response to our representations, stating that he agrees with the recommendations of the  
10 Director of Public Prosecutions, Gauteng Local Division, Johannesburg, not to pursue the prosecution. General Kadwa enquired with Advocate De Kock the reasons for his decision and Advocate De Kock responded with an email dated 21<sup>st</sup> of June 2024, stating his reasons.

The Booyens CAS 252/10/2021 was submitted to Gauteng Local DPP for decision. The decision was taken by Advocate Drotsky, declining to prosecute General Khan and the members of DPCI.  
20 We then decided to appeal the decision and wrote to the Director of Public Prosecutions, Advocate Chauke, who also agreed with the decision by Advocate Drotsky.

My reinstatement into SAPS. In

November 2023, I successfully won my appeal to be reinstated in the SAPS. The award stated that I should be reinstated with the same terms and conditions as before my dismissal. I, however, reported for duty on 16<sup>th</sup> April 2024. Around September...” ...[intervenes].

**ADV MOSIKILI:** Warrant Officer, is there a reason why, if you were reinstated in November 2023 and only went back  
10 in April? Can you explain that time period? Why is that so?

**WARRANT OFFICER PHAKULA:** Yes, Commissioner. I was also concerned with the amount of time that it took for the SAPS to finally implement the aware that I should be reinstated. And it became clear at a later stage that some of the senior members were still trying to appeal the decision for my reinstatement in the SAPS. So, this might have been the delay.

**CHAIRPERSON:** You were not the cause of the delay?

**WARRANT OFFICER PHAKULA:** No, no. No  
20 Commissioners.

**CHAIRPERSON:** You were ready to ...[intervenes].

**WARRANT OFFICER PHAKULA:** I was ready, yes.

**CHAIRPERSON:** To go back as soon as the award had been made in your favour?

**WARRANT OFFICER PHAKULA:** Correct, Commissioner.

**ADV MOSIKILI:** Thank you. You may proceed.

**WARRANT OFFICER PHAKULA:**

10 “Around September 2024, I was shortlisted for a post-promotion at NINU, which is National Investigation Unit. Post reference 3557/2024/2025, I went for an interview and the Chairperson of the interview panel was Major General Motsepe. When other post-successful candidates were announced, my post was not announced. No reasons were given. Major General Khan's disciplinary hearing. Around February 2025, I was one of the witnesses who testified at the disciplinary hearing of General Khan. The hearing was Chaired by Lieutenant General Mkhwanazi. Other witnesses who were called to testify were Brigadier Ntuli, Lieutenant Colonel Maluleka, 20 Captain Medupi, Chief Mashaba, Warrant Officer Magane, Sergeant Phakula, Sergeant Sape. It was during this proceedings that I was informed by the employer representative, Major General Khumalo, that there is a report submitted

by General Khan that states DPCI has decided not to charge their members. And also that there is a letter from DPP Gauteng Local that states that the case against us will be enrolled soon. The report that Gauteng Local has decided on the case that was already at the Office of the NDPP came as a shock to me. I then requested Major General Khumalo if he

10 does have copies of the reports submitted by General Khan and he said those reports form part of the exhibit of the hearing and that he does not have. General Khan was eventually cleared of all charges by the Chairperson. It came as no surprise to me as days leading to this hearing, the Chairperson of the disciplinary hearing, Lieutenant General Mkhwanazi, as well as the witnesses

20 came under negative media attack. The decision not to charge the DPCI members as well as the document that was signed by Deputy Director of Public Prosecutions, Advocate Serepo, which stated that Alberton CAS 98/7/2021 will

be enrolled were coincidentally presented at this hearing.

10 I also listened to the hearing recording where Major General Khan said that I insisted on meeting him and that Colonel Sephungu said to him when he enquired whether Colonel Sephungu knew where I was on 9 July 2021 and Colonel Sephungu responded by saying he did not know my whereabouts. These were all misleading statements that might have influenced the decision of the Chairperson.

20 The fact of the matter is that Major General Khan gave instructions for the arrest of Tumelo Nku. He gave instructions to Warrant Officer Magane to sit in the car and not to get out. He prevented Dog Unit from performing their duties at the scene. He disarmed Chief Mashaba. Lieutenant Colonel Maluleke saw him walking with the driver away from the crime scene, the driver who was placed under arrest.

My frustration post the arrest and drug

bust. I applied for the detective service post promotion for post 3557 at National Investigation Unit on 30 August 2024. Major General Motsepe was the Chairperson of the interview panel. I was recommended for promotion to post 3557. The post was presented to the National Moderation Committee where Major General Motsepe was part of the Moderation Committee. Additional information regarding the alleged outstanding criminal case was requested and Brigadier Cronje communicated with Brigadier Sekgobela who sent an email to confirm that Booyens case will soon be enrolled. Despite this information, my promotion was subsequently approved with effect from 1 March 2025 as per the letter signed by Lieutenant General Nkhuoa. Major General Motsepe wrote an email to Legal Services, the Divisional Commissioner, Human Resource Management, as well as the Support Head Detective and Forensic Services. In her email, she attached the letter that

was produced by Major General Khan at his disciplinary hearing. The letter from DPP Gauteng Local Johannesburg that stated the case against us will be enrolled soon.

10 On 12 May 2025, I was told by Brigadier Ramangwa that the Deputy National Commissioner, Lieutenant General Sibiya, wants to see me. I met with General Sibiya. He told me that he is in possession of the email that was written by Major General Motsepe seeking legal opinion regarding my post promotion. Lieutenant General Sibiya further showed me a letter from DPP Gauteng Local, which was attached to the email and asked what is happening with that case. I told General Sibiya that the case was withdrawn in court on 8 October 2022  
20 and that there is no pending case against me and I have no case to answer.

Lieutenant General Sibiya then made a copy of that letter from Gauteng Local DPP and handed it to me. Lieutenant General Sibiya further sympathised with

me as he stated that he also went through the same treatment upon his return to the SAPS and that he understands exactly how I feel. After leaving Lieutenant General Sibiya's office, I took the letter and sent it to my attorney, Mr Johan Eksteen, who sent an email to DPP Gauteng Local to enquire about the legitimacy of the letter. Mr Eksteen never received any feedback from DPP Gauteng Local.

I was advised by my South African Police Union representative, PM Hlongwane, that I should register a grievance, which I did. It was later referred to the Safety and Security Sectoral Bargaining Council as per case reference PSS304/25/26. On 20 June 2025, I received a call from Colonel Nkosi, the Staff Officer of Lieutenant General Senthumule, informing me I should go to HRM and see Captain Ntuli sign my post-acceptance certificate.

On 25 October 2025, I was informed by Colonel Nkosi that the Divisional

Commissioner, Lieutenant General Senthumule, said any member from the rank of a Colonel can sign my post-acceptance certificate. On 27 June 2025, I approached Colonel Jansen Van Vuuren, who told me he will not sign my post-acceptance certificate unless the Divisional Commissioner instructs him to do so. It was at this point I approached Bessinger Attorneys and instructed them to take this matter to CCMA. Our case was set down for 8 September 2025 for conciliation and arbitration with reference number JTW1W209/25. The matter was remanded to 12 September 2025.

Upon the said day, I was surprised to see Major General Khan in the witness area. He came to testify against my promotion. I was advised by my attorney, Mr Bessinger, to withdraw the case in order to allow the employer to decide on my suitability to be promoted.

On 3 October 2025, I was called by Brigadier Cronje to sign another post-acceptance certificate. I signed and

Brigadier Cronje also signed and recommended that I was not the suitable candidate again, referring to the Booyens CAS 98/7/2021 as the reason why I should not be promoted. I explained to Brigadier Cronje that the case is finalised and that I have no pending case against me.

10 On 11 November 2024, the Acting Divisional Commissioner ...[intervenes].

**ADV MOSIKILI:** Warrant Officer, should we not say 2025 there? Is that correct?

**WARRANT OFFICER PHAKULA:** Yes, it is 2025.

**ADV MOSIKILI:** 2025, yes:

20 “On 11 November 2025, the Acting Divisional Commissioner, Major General Mogale, confirmed my post-promotion by signing the post-acceptance certificate. It has been more than four months. I am not yet promoted. No reasons, no explanation is given. I believe I am unfairly treated due to my arrest in Booyens CAS 98/7/2021. I was unfairly dismissed from the SAPS for the same case. After winning my case at SSSBC,

when I first reported for duty, Lieutenant Colonel Chauke informed me that management has decided I should report to the Organised Crime Unit under Major General Shibiri. When I asked who he refers to as management, he said the Component Heads, meaning Major General Motsepe and Major General Shibiri.

10 I went and reported at the Organised Crime Unit and I was told by Major General Shibiri that Major General Motsepe said to him that she does not want me to report back at her component. That is when he agreed that I can come back with him at the Organised Crime Unit. There was no consultation and the decision went against the award which stated I should be reinstated with the same terms and conditions as before my dismissal.

20 My Union representative approached the office of Lieutenant General Senthumule and requested that the award be fully implemented and that I should be placed

where I should be. It was only after Colonel Nkosi, the Staff Officer of Lieutenant General Senthumule, sent an email to Brigadier Kwayiba and Lieutenant Colonel Chauke on the 10<sup>th</sup> of June 2024 that I was told to report at National Investigation Unit Serious and Violent Crimes Component.”

**ADV MOSIKILI:** Should we change that again to 2025, not  
10 2024?

**WARRANT OFFICER PHAKULA:** Yes, yes, yes. Thanks:

“In 2025, I was shortlisted, recommended for post-promotion 3557/2024/2025. I have exhausted all avenues within the SAPS with regards to that post. My promotion is still not yet confirmed. The matter was settled at SSSBC with the ruling confirming my promotion. Then, when I last spoke to my union representative, he informed me Major General Govender is in possession of my promotion document but nothing has been done. I know and understand the contents of the statement. I have no objection taking prescribed oath. I  
20

consider the oath to be binding in my  
conscience.”

Signed on the 8<sup>th</sup> of May 2026.

**CHAIRPERSON**: Thank you, Warrant Officer. Do we now  
go to those WhatsApp chats?

**ADV MOSIKILI**: Yes.

**CHAIRPERSON**: Are you able to flight them?

**ADV MOSIKILI**: Yes, Chair. We will do that. Perhaps  
because it is 11 o'clock, let us use the time to locate those  
10 chats. Thank you.

**COURT**: All right. Let us resume at 11:30. Let us adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: Mr Mosikili.

**ADV MOSIKILI**: Thank you, Chair. Warrant Officer, before  
we went for tea break, you will recall that if you go to page  
16 of your statement, under paragraph - from paragraph 56,  
the topic there is the meeting with Major General Khan. I  
want us to deal with that. We could not flight there was  
20 WhatsApp chats earlier on. They have been located. The  
file that you should have, they are on the file, the same file  
that you have with you.

**WARRANT OFFICER PHAKULA**: Yes.

**ADV MOSIKILI**: So, remember that was page – so rather  
let us start on page 20.

**WARRANT OFFICER PHAKULA:** 20?

**ADV MOSIKILI:** Yes.

**WARRANT OFFICER PHAKULA:** Okay, I am there.

**ADV MOSIKILI:** Thank you. Can you take us through what is happening? I think you started earlier on to identify that there is a screenshot of your phone. Maybe take it from there between, a conversation between whom?

**WARRANT OFFICER PHAKULA:** Okay, Commissioner, this is a screenshot from my phone of the communication  
10 between myself and Major General Khan. It starts, okay, I started, I first started by making a call to him and he did not answer, but the call does not appear. So, when he did not answer, I sent him a message to say:

“Good day, General, it is Phakula.”

**CHAIRPERSON:** And you did this just for context or background. You did this because word had come to you that he wanted to meet you.

**WARRANT OFFICER PHAKULA:** Correct, Commissioners.

**CHAIRPERSON:** Thank you.

20 **WARRANT OFFICER PHAKULA:** And then he said:

“Good day, how are you?”

Then I replied:

“Not bad, thanks, General.”

And he said:

“When can we meet?”

And I said:

“I can hear from you, I am in Alberton.”

So, he said:

“Do you mind if I bring General Kadwa?”

I said:

“I will not be comfortable. I think let us first meet and we will take it from there, General.”

Then he responded:

10 “Okay, when is it convenient for you to meet?”

I said:

“I am available, we will hear from you.”

Then he said:

“Let me call you later.”

**ADV MOSIKILI:** Perhaps let us look at the time stamp before we move on. What time is that the last text?

**WARRANT OFFICER PHAKULA:** It is 14:30, half past 2 in the afternoon.

20 **ADV MOSIKILI:** Yes. And then if you go to page, go to page, so you have to go backwards, go to page 18, one eight.

**WARRANT OFFICER PHAKULA:** Okay.

**ADV MOSIKILI:** Remember you said the text started on the 15<sup>th</sup>. Now there is a text on the 16<sup>th</sup> of September 2021.

You will see your last message at 14:31, where you say, okay, General, is that where we should then call, continue from?

**WARRANT OFFICER PHAKULA:** Yes. And then on the 16<sup>th</sup>, I received a call from General Khan, and he requested me to send him my PIN location. And that is when I sent him this PIN location, and he said:

“15 minutes away.”

Then I said:

10 “Okay, General.”

And then there was a message deleted there, and then underneath I wrote:

“Hi, General, with all due respect, there is something I was thinking regarding your statement.”

**ADV MOSIKILI:** Before we get there, I think that is a different conversation, because if you look at the time stamp, he says to you at 12:48, he is 15 minutes away.

**WARRANT OFFICER PHAKULA:** Yes.

20 **ADV MOSIKILI:** And then you say, okay, General, at 12:48, and then what follows is at 16:49. So there is a gap there. So, can we deal with that before we deal with what happens a few hours later? So, if you are meeting with him then.

**WARRANT OFFICER PHAKULA:** Yes, we met.

**ADV MOSIKILI:** Yes.

**WARRANT OFFICER PHAKULA:** After this, he came to, we met at Kibler Park, at the garage. So that is when we met, and as I ...[intervenes]

**CHAIRPERSON:** And what you then describe in your statement happened.

**WARRANT OFFICER PHAKULA:** That is correct, Commissioner.

**CHAIRPERSON:** You went and entered his car, passenger  
10 side.

**WARRANT OFFICER PHAKULA:** That is correct, Commissioner.

**ADV MOSIKILI:** Yes, perhaps we should ask you, I should ask you first, prior to this case of Aero-ton and this engagement ...[intervenes]

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** Have you had any exchange or meetings with General Khan?

**WARRANT OFFICER PHAKULA:** Yes, prior to this, there  
20 is a case that we did, and he was close to the, he knew the complainant, and I was investigating a case of, it was theft of diamonds or something like that. So that is when I first met him there.

**ADV MOSIKILI:** Yes, I suppose the question to be more pointed, have you - did you before this, did you then

exchange, have you ever exchanged private conversations as this one?

**WARRANT OFFICER PHAKULA:** No, no, no, no, we did not.

**ADV MOSIKILI:** And have you arranged private meetings with him?

**WARRANT OFFICER PHAKULA:** No.

**ADV MOSIKILI:** Prior to this one?

**WARRANT OFFICER PHAKULA:** No.

10 **ADV MOSIKILI:** Okay, and then, as the Chair correctly said, that you went to the car, you sat in his car, and what I need to find out from you is that one of the issues that he raised, it is when it comes to the drugs. You said to him, as far as you know, they belong to him, or at least as far as you are aware. What informed that conversation for you to say that to him?

**WARRANT OFFICER PHAKULA:** Yes, after our arrest, it was no - people were saying that those drugs belonged to him, General Khan. So, when I related it to him, it was out  
20 of what I have heard from what people were telling me.

**CHAIRPERSON:** And who are the people?

**WARRANT OFFICER PHAKULA:** Commissioners, general people of the Republic.

**CHAIRPERSON:** Police officers, other police officers.

**WARRANT OFFICER PHAKULA:** Yes, yes, I can say so.

**CHAIRPERSON:** All right.

**ADV MOSIKILI:** And the question is, were you saying it just, were you serious, or it was just a joke?

**WARRANT OFFICER PHAKULA:** No, it was serious.

**ADV MOSIKILI:** It was quite serious what you said.

**WARRANT OFFICER PHAKULA:** Yes, yes. But he laughed, obviously, he laughed it off, yes.

**ADV MOSIKILI:** And that that ended there?

**WARRANT OFFICER PHAKULA:** Pardon?

10 **ADV MOSIKILI:** That that conversation ended there, with him laughing it off?

**WARRANT OFFICER PHAKULA:** No, obviously, he said he was not interested in – he wanted - they actually wanted Colonel Sephungu. And I responded by saying, but Colonel Sephungu, he was not even aware of this. I am the one who phoned him to inform him about this, the drug bust. So, there is no way that he can be involved, because it was as if Colonel Sephungu might have been the one who arranged everything. Then I was distancing Colonel  
20 Sephungu from that.

**ADV MOSIKILI:** I mean, before we continue on Sephungu, what I was asking is that you are sitting with a high-ranking police official in your car, and it is just the two of you, and you literally accuse him, or at least say to him the drugs belong to him.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** I am just trying to understand that atmosphere, or is it called the bravery to confront him with that information?

**WARRANT OFFICER PHAKULA:** To be honest, Commissioners, I was still upset with the way I was treated on the scene, and maybe that explains the bravery that you are saying, because I was still, I felt I was arrested for something that I did not know. So maybe that explains the  
10 bravery.

**ADV MOSIKILI:** And when he said to you, it is not you that he is after, I think he used the word, it is not me that they wanted.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** What did you understand by ‘they’, and also what they meant, like they wanted Colonel Sephungu?

**WARRANT OFFICER PHAKULA:** I think it was the DPCI. I believe it was him and the DPCI, because initially he requested to come to a meeting with General Kadwa, and I  
20 said I will not be comfortable with that. And I still do not understand, I still do not know the reason why he wanted to invite General Kadwa to that meeting. So that is why I believe perhaps it was the DPCI also when he said ‘they’, because he did not say I am interested, he said we are looking for Colonel Sephungu.

**ADV MOSIKILI:** And then what did you understand by wanting him, wanting Colonel Sephungu, because I think you quickly said no, it was not him, it was me. What did you mean by - what did you understand when he said they wanted him instead?

**WARRANT OFFICER PHAKULA:** No, I understood that they, like Commissioners, if I can put it like this, I first received a visit from these members from DPCI in prison. So, I only found out at Major General Khan's hearing that he  
10 might have been the one who sent them to me in prison with a disguise that I want to give them information. So, when he said they want General Sephungu, to me it appeared as if people who were looking for a scapegoat for what they did, or they arrested us but now they do not have anything, so they are trying to get evidence to place on us. Because I still believe he was recording me on that day. I believe he was recording me.

**ADV MOSIKILI:** Is that why you were then direct?

**WARRANT OFFICER PHAKULA:** Yes, yes.

20 **ADV MOSIKILI:** On those, at least accusations?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** And then two other issues arise from that conversation. He promised to give you a statement to use in your upcoming disciplinary hearing. What is that all about?

**WARRANT OFFICER PHAKULA:** Right. So, he said to me, he could see that I was doing an honest job at the scene. So, I requested him that, okay, if you saw that I was doing an honest job at the scene, can you please depose to a statement so that I can submit at my disciplinary hearing? Because I was now charged with the same matter where you are saying you could see that I was doing an honest job. So, basically, I was looking for his statement so that I can submit to my - as my witness.

10 **ADV KHUMALO SC:** Warrant Officer, if you look at that text on the 16<sup>th</sup>, at 16:49, it suggests that he did give you a statement. You looked at it and you were not happy with the statement. Is that a fair reading of that text? Because you say here, hi, General, with all due respect, there is something I was thinking regarding your statement. As if he has already given you a statement, you looked at it, but you were not happy with the content.

**WARRANT OFFICER PHAKULA:** No, it was, indeed - he never gave. I think I wanted him, perhaps, to advise him  
20 how to - how to - how to put that statement. I believe maybe I wanted to, but he did not respond then. It ended there.

**ADV KHUMALO SC:** Yes, but it does not gel with what follows because it looks like your hearing was the following day. So, when you say at 16:49, there is something I was

thinking regarding your statement. It looks like the statement was going to be presented the following day. You already had it, but you had misgivings about that statement.

**WARRANT OFFICER PHAKULA:** No.

**ADV KHUMALO SC:** Because if you were only asking for a statement at 10 to 5, the hearing being the following day, then it just does not make sense. When were you going to get that statement and when was he going to prepare it?

10 **WARRANT OFFICER PHAKULA:** Commissioner Khumalo, I never received that statement. Maybe I was sending him a text to remind him, in a way, that I am still waiting for that statement.

**ADV KHUMALO SC:** Yes, but that is not what the text says.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** The text creates the impression, because you say, Hi, General, with all due respect, there is something I was thinking regarding your statement.

20 **WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** And that suggests you have already seen his statement, but you want it to be changed.

**WARRANT OFFICER PHAKULA:** No, that is not what happened.

**ADV KHUMALO SC:** Because here, you are not asking him

for a statement. At least we can agree on that, that the text does not say, here is a reminder that I am still waiting for a statement, or something like that.

**WARRANT OFFICER PHAKULA:** I must say, I might have been trying to be as polite as possible, because I was on his mercy for him to submit that statement.

**ADV KHUMALO SC:** No, Warrant Officer, it does not read that way to me.

**WARRANT OFFICER PHAKULA:** I understand what  
10 Commissioner Khumalo is saying.

**ADV KHUMALO SC:** And it raises concerns, I must say to you.

**WARRANT OFFICER PHAKULA:** But, if I may respond to that, I did not receive that statement. It is a fact. Thank you.

**ADV BALOYI SC:** Warrant Officer, why did you not want General Kadwa to be part of your meeting? Is there any specific reason?

**WARRANT OFFICER PHAKULA:** There is no specific  
20 reason, Commissioner Baloyi. And I would say, I was not going to feel comfortable when both of them were there. Because I did not know what it is that he is looking for. He just wanted to meet me, and then he wanted to invite somebody else. And I was still confused as to what is it that he is looking for. And also, with General Kadwa, I was

still not okay with what he did at Booyens Court. Because he came to influence the SPP to enrol our case, where I was promised I was going to be released. So, I was not feeling okay with that. Thanks, Commissioner.

**ADV BALOYI SC:** Thank you.

**ADV MOSIKILI:** Warrant Officer, then on that text, so that exchange is on the 16<sup>th</sup> of September.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** Then the very next day, on the 17<sup>th</sup>, then  
10 General Khan says to you:

“Good morning, good luck with your matter today.”

**WARRANT OFFICER PHAKULA:** Correct.

**ADV MOSIKILI:** Is that correct?

**WARRANT OFFICER PHAKULA:** That is correct, yes.

**ADV MOSIKILI:** And keep in mind the concern that Commissioner Khumalo raised. That it seems to be that you have received a statement, and his greetings to you, it does not appear as if it is someone who still owes you something.  
20 Because he is very aware that you are going for the hearing, you have agreed, and he starts the conversation at 08:28 to say to you:

“Good luck with your matter.”

In fact, your response makes it worse. Because you say:

“Thanks, General.”

And that, I would put it to you, that does not accord with someone who does not have a statement. Because your answer would have been, I am still waiting for your statement. What is your comment, Warrant Officer?

**WARRANT OFFICER PHAKULA:** No, my response would be on page 19, underneath that, thanks, General. It was postponed - can I read it?

**ADV MOSIKILI:** Yes, yes.

**WARRANT OFFICER PHAKULA:** Thanks:

10                    “It was postponed to Monday. I mentioned your statement, and I was told I should bring it on Monday, if it is ready. So, I am asking if it is possible to get it before Monday, General.”

**ADV MOSIKILI:** Yes, okay.

**WARRANT OFFICER PHAKULA:** Yes, so, I did not have that statement.

**ADV MOSIKILI:** Okay. And then continue on the 22<sup>nd</sup>.

**WARRANT OFFICER PHAKULA:** Pardon?

20                    **ADV MOSIKILI:** On the 22<sup>nd</sup>, there is a chat.

**WARRANT OFFICER PHAKULA:** Okay, thank you.

Thanks. On the 22<sup>nd</sup> of September 2021, I texted:

“Good evening, General, I was dismissed from the SAPS.”

Then, it was 20:39, and then he responded:

“Hi, Steve, I just got home now.”

It was 22:48. It is 22:48:

“Sorry to hear about your dismissal.”

It was 22:48. Then I saw the message the next morning, and then I responded:

“Yes, it is difficult to take this, General, especially when I know I did nothing wrong, and perhaps your statement should have made a difference.”

10 **ADV MOSIKILI**: And that is a statement you never received.

**WARRANT OFFICER PHAKULA**: I never received, no.

**ADV MOSIKILI**: And then you also then, I think you promised to assist him to arrange a meeting with the informer.

**WARRANT OFFICER PHAKULA**: Yes, yes.

**ADV MOSIKILI**: From your, at least from one of the two issues that you guys agreed upon. One is that he gives you a statement, and then what became of the second  
20 agreement to say that you will make the informer available to him?

**WARRANT OFFICER PHAKULA**: No, we never took it further, and he never called me back again after this, and I never communicated with him. So, he never saw the informer after this.

**ADV MOSIKILI:** And to date, you have never had further interaction with him?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** In terms of this matter, or at least the texts and calls?

**WARRANT OFFICER PHAKULA:** No, nothing.

**ADV MOSIKILI:** Nothing.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** Can I ask a question? Was this  
10 person also your informer? How would you have made him available to General Khan? I think it is Mr Nku.

**WARRANT OFFICER PHAKULA:** Yes, obviously I would have made arrangements with Mashaba to avail him.

**ADV KHUMALO SC:** No, no, my question is, was he your informer?

**WARRANT OFFICER PHAKULA:** No, no, no, Commissioner Khumalo.

**ADV KHUMALO SC:** So, how could you make an undertaking to General Khan that you will make him  
20 available if he is not your informer, and you do not know if Mashaba will agree to make him available?

**WARRANT OFFICER PHAKULA:** Obviously, I was going to talk to Mashaba, and then I would have taken it from there.

**ADV KHUMALO SC:** Yes, my point is, at the time you had not spoken to Mashaba, so you did not know that Mashaba

would have been willing to make his informer available.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** In those circumstances, how could you promise General Khan that you will make an informer available to him? And how did you even know that this person was an informer? So, I have got a couple of questions there. Having not spoken to Mashaba, how could you make a promise to General Khan that you will make the informer available to him?

10 **WARRANT OFFICER PHAKULA:** No, I believe if I speak to Mashaba, he will not have a problem to avail the informer.

**ADV KHUMALO SC:** Did you know Mashaba before?

**WARRANT OFFICER PHAKULA:** No, but Commissioners ...[intervenes]

**ADV KHUMALO SC:** No, no, just stop there. If you did not know Mashaba before, and you did not know this informer before, how could you confidently say to General Khan, I will make this informant available to you?

**WARRANT OFFICER PHAKULA:** Commissioner, if I may  
20 explain. We went together to prison, and obviously we spoke, and we ended up understanding each other better and all that. And so, when I said I will make him available, I had an understanding that knowing Mashaba from prison, if I can talk to him, he would not have a problem with him availing the informer.

**ADV KHUMALO SC:** And you assumed that the informant would agree to speak to General Khan?

**WARRANT OFFICER PHAKULA:** Yes, that is what I assumed.

**ADV KHUMALO SC:** But you did not know that.

**WARRANT OFFICER PHAKULA:** Correct, Commissioner. Thanks.

**ADV BALOYI SC:** Why would you want to make the informer available to General Khan, if in that same  
10 conversation you say to him, there is talk that these drugs are yours? How do you explain that you are aware there is that kind of talk?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** About the General, that these are in fact his drugs. And you are not saying anything in your statement that suggests you did not believe it. You mention it to him because it is what you have heard, and you say this is what people are saying about you.

**WARRANT OFFICER PHAKULA:** Yes, yes.

20 **ADV BALOYI SC:** And yet, in that same conversation, you say I will make the informer available to you. Can you just explain that behaviour, that on the face of it does not make sense?

**WARRANT OFFICER PHAKULA:** Okay, I did not take it, it does not make sense at the time, because I was also

desperate for that statement. And also, I believed with General Khan at Crime Intelligence and the informer, then it could have somehow, I could have introduced, they could have maybe exchanged information, both of them and so. So, it was based on that, the exchange of information, because what he was interested in was how did the informer know about that.

**ADV BALOYI SC:** Yes, well, that is what you tell us, that he was interested in how the informer knew, but you have  
10 told him in that conversation as well, or you at least have background information, that is what you conveyed to him, that actually they say you are involved in the dealing with drugs, or the trafficking of drugs, in whatever form. That is what is being said about you. And then you say, well, I will expose you to an informer who tells, who informs on drugs being available and being brought into the country. At the very least, it seems to me that you in fact would have been putting the informer's life at risk if you expose him to somebody that you have had, they deal in drugs.

20 **WARRANT OFFICER PHAKULA:** I accept that.

**ADV BALOYI SC:** You accept that.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** It seems like a very poor choice to have made in this case.

**WARRANT OFFICER PHAKULA:** Correct, Commissioner, I

accept that.

**ADV BALOYI SC:** Thank you. And maybe a related question I might as well ask. There was talk that these drugs belonged to General Khan, and you said to the Chairperson, this is within the police. At which level? Was it just corridor gossip? Was it among the juniors? Was it something that you say, well, even I have heard that some of our senior people were aware of that or were part of that kind of talk. At which level was this information being  
10 shared or these discussions happening in the SAPS?

**WARRANT OFFICER PHAKULA:** It was corridor gossip, Commissioner. Casual chats, casual talks among colleagues, yes.

**ADV BALOYI SC:** Yes. And when you, I think as I understand the evidence, there is a complaint that was laid arising from this incident or this drug bust.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** With IPID. IPID ended up being asked, and that included General Khan.

20 **WARRANT OFFICER PHAKULA:** Yes, yes, yes.

**ADV BALOYI SC:** And you would have, when I say you, I mean your group of arrested people, would have been the ones that laid a complaint.

**WARRANT OFFICER PHAKULA:** Correct, Commissioner.

**ADV BALOYI SC:** That is where it flows from.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** And specifically, against General Khan, what was the complaint that was laid that you were asking him to be charged with or to be investigated?

**WARRANT OFFICER PHAKULA:** It would have been defeating the ends of justice and the theft of drugs.

**ADV BALOYI SC:** And it did not include that IPID should investigate the allegation that in fact he is involved with those drugs.

10 **WARRANT OFFICER PHAKULA:** I understood it. When I say theft of drugs, it would include those allegations, yes.

**ADV BALOYI SC:** That he is involved.

**WARRANT OFFICER PHAKULA:** Yes, yes.

**ADV BALOYI SC:** This thing that you say was corridor talk.

**WARRANT OFFICER PHAKULA:** Yes, correct.

**ADV BALOYI SC:** But did you specifically say to IPID - I imagine IPID would have taken statements or interviewed people.

20 **WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** Did you specifically say to IPID that there are in fact allegations that these drugs were General Khan's drugs?

**WARRANT OFFICER PHAKULA:** No, I did not. And simply because I did not have a statement to support my

accusations.

**ADV BALOYI SC:** Yes.

**WARRANT OFFICER PHAKULA:** I did not have those powers. If I had the statement, then the person who was telling me, then I would have perhaps pursued it further.

**ADV BALOYI SC:** You did not think to mention it and leave it to IPID to investigate because you say it was corridor talk. I mean, it must have been serious enough, that talk of such a quality that you later on do mention it to General  
10 Khan, to say this is what they say about you. So, it was not passing comment in the sense. It must have been serious enough for you to mention it to him.

And did you not consider that you should mention it to IPID and leave it to IPID to do the investigation? I mean, you obviously have not investigated it, so accept that. Did you not consider that in the light of, because it is quite a serious allegation to be made about someone so senior, it shows the seriousness of it and how you seriously took it, that you mention it to him. And so, if you get to a point  
20 where you lay a complaint with IPID against him to do with drugs, then I would have thought you would say he did all of this because you were complaining this is their drugs, they are defeating the ends of justice.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** I would have thought that statement

would have and should have included you saying that, in fact, the talk is that these were his drugs. And perhaps that is what explains his behaviour on the day. I do not understand that you did not think that was important to mention.

**WARRANT OFFICER PHAKULA**: Yes, I accept that, but as I mentioned, I thought if the person who was telling me that is not willing or will not be submitting a statement, it will not be material.

10 **ADV BALOYI SC**: Thank you.

**WARRANT OFFICER PHAKULA**: Thanks, Commissioners.

**ADV MOSIKILI**: Warrant Officer, I want us to move back to the crime scene at Aeroton. In your statement, it is page 8. I want you to look at paragraph 23 of that statement because that is what I want to test with you.

**WARRANT OFFICER PHAKULA**: Paragraph?

**ADV MOSIKILI**: 23. Now, at paragraph 23, are you there?

**WARRANT OFFICER PHAKULA**: Yes.

20 **ADV MOSIKILI**: Yes, now this is where you say that your observation is that after the scene was handed over to you, this is what you say:

“At this stage, the scene was under control. The exhibits were still secured in bags in their original forms, not tampered with. The crime scene was still

under investigation as witnesses were interviewed and suspects under arrest. The dog unit was summoned as well as the photographer.”

Now, I want to test that statement of yours and that conclusion of yours with the National Instruction. But before we get there, can you accept for a moment that you cannot seriously confirm that the drugs were in their original forms and not tampered with because you would not  
10 know that. Do you accept that? It is not correct to say that.

**WARRANT OFFICER PHAKULA:** Yes, I accept that.

**ADV MOSIKILI:** There is a file. It should say Steyn file. It is file 2.

**CHAIRPERSON:** CJC what?

**ADV MOSIKILI:** It should be CJC209.

**CHAIRPERSON:** 209.

**ADV MOSIKILI:** 219.

**CHAIRPERSON:** 219, sorry. Starting at page 130.

20 **ADV MOSIKILI:** Yes, but I would like the Chair to start at page 150 of that same document.

**CHAIRPERSON:** One five zero?

**ADV MOSIKILI:** One five zero.

**CHAIRPERSON:** Perhaps before you start with this, may I just ask one or two questions? Warrant Officer, may I take

you to paragraph 24 of your statement at page 8?

**WARRANT OFFICER PHAKULA:** I am there, Commissioner.

**CHAIRPERSON:** Yes, there you say that is at the end of the third line. You say, I can also confirm that the scene was, and I lay emphasis in what follows, handled in line with the SAPS National Instruction 1 of 2015. We have the testimony of Warrant Officer Magane who said the opposite. That is, everything that they could have done wrong, they  
10 did wrong. It was a mess, a complete mess in terms of handling a crime scene.

There was even a report given by - what was the word used? There was an adjective used. It was a stuff-up, something like that. And when we put questions to him, if he accepted that that was indeed so, he accepted all of those. And when I engaged him in the morning yesterday, he even accepted that both he and Chief were, 'clueless'. How can you say what you are saying here?

**WARRANT OFFICER PHAKULA:** Commissioner, I have to  
20 concede that it is wrong. The scene was not in line with the National Instruction 1 of 2015. And I perhaps was mentioning the scene after my arrival.

**CHAIRPERSON:** No, that cannot be. That is about the scene as it should have been.

**WARRANT OFFICER PHAKULA:** Yes.

**CHAIRPERSON**: You cannot focus on what you found. But anyway, there are problems even with regard to what you say, that is, which is what you found. So, your statement is totally untrue, correct?

**WARRANT OFFICER PHAKULA**: Correct.

**CHAIRPERSON**: Why did you make that untruthful statement?

**WARRANT OFFICER PHAKULA**: As I mentioned ...[intervenes]

10 **CHAIRPERSON**: Were you protecting your colleague, Warrant Officer Magane?

**WARRANT OFFICER PHAKULA**: No, no, no, Commissioner.

**CHAIRPERSON**: Why did you make the untruthful statement?

**WARRANT OFFICER PHAKULA**: Hence, I am saying, to me it was understood that after my arrival, finding those things there, but I take the Commissioner's point that the scene should have started first.

20 **CHAIRPERSON**: Yes, but maybe let me test you on what you say, that is, you were speaking to what you found. What do you mean by that exactly?

**WARRANT OFFICER PHAKULA**: Speaking to the exhibits themselves.

**CHAIRPERSON**: And when you say the scene was in

accordance with National Instruction 1 of 2015, with regard to what you found there, what do you mean by that?

**WARRANT OFFICER PHAKULA:** I am referring to the exhibits, Commissioner.

**CHAIRPERSON:** What do you mean by that?

**WARRANT OFFICER PHAKULA:** Like that is what the evidence leader was asking about when I said the evidence, the exhibits were still secured in bags.

**CHAIRPERSON:** So, what you found, what you found, go  
10 to page 109 of same file. Go to page 109.

**WARRANT OFFICER PHAKULA:** Page 109.

**CHAIRPERSON:** 109, yes, yes, yes. Do you see the black bakkie here? That is the file written – it is the very same file you have. Page 109. Please project, please project 109.

**ADV KHUMALO SC:** Is it not in the same file? Because otherwise we are going to have a problem when we get to 150.

**ADV MOSIKILI:** No, it is in the Steyn file.

20 **CHAIRPERSON:** No, no, no, I understand I have taken you to your statement, Warrant Officer, so I understand, I understand. But at 109 there seems to be problems with the flight in that exhibit. Anyway, at 109 what you see there is the black bakkie, an official vehicle used by Warrant Officer Magane, correct?

**WARRANT OFFICER PHAKULA**: Correct, yes.

**CHAIRPERSON**: Yes. And we have those black bags that are lumped at the back of that bakkie, and we do see the red car somewhere in front on the right-hand side. That is your car, correct?

**WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**CHAIRPERSON**: So, you have arrived, you are at the scene. So, this is how you found these exhibits, whatever the content was, correct?

10 **WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**CHAIRPERSON**: And based on what we see there, why is it that you say that the scene, 'was handled in line with the SAPS National Instruction 1 of 2015'? Why do you say that, based on what we see here?

**WARRANT OFFICER PHAKULA**: Commissioner, as I explained, I might have been wrong in referring it to the National Instruction, and my concentration was on the exhibits, the security, like they were not stolen.

20 **CHAIRPERSON**: How do you know that? How did you know that? How do you know that? How did you then and how do you now know that they had not been stolen? You just find them lumped there, and there is nothing beyond that that you know personally.

**WARRANT OFFICER PHAKULA**: No, except for the statements of people of Scania as well as ...[incomplete].

**CHAIRPERSON**: Do you not agree that it is fair when I say to you, you were trying to protect your colleague, Warrant Officer Magane, by saying everything was in order insofar as how crime scenes should be handled. That is fair. That seems fair to me, under the circumstances. Because one, you tell an untruth, and two, you then attempt to get out of that by saying, no, no, no, I was concentrating on what I found, but even that does not make sense. So, what seems to make sense to me is that you were trying to protect your  
10 colleague.

**WARRANT OFFICER PHAKULA**: No, I would not do that, Commissioner.

**CHAIRPERSON**: What were you doing then? Telling a lie, what were you doing?

**WARRANT OFFICER PHAKULA**: I do not have any explanation, but not that I was covering for him.

**CHAIRPERSON**: You just told a lie, for the sake of it ...[speaking in vernacular].

**WARRANT OFFICER PHAKULA**: No, not really,  
20 Commissioner.

**CHAIRPERSON**: All right, I will leave it at that.

**ADV KHUMALO SC**: And can you, just on the topic of covering up for your colleague, why did you say to your superior that Officer Magane is somebody from Crime Intelligence when we know that he is from Crime

Information Analysis Centre? Because your superior has deposed two affidavits where he says, when you called him, you said to him, Crime Intelligence requires assistance from you to go to Aeroton and help with a drug bust. So why would you mislead your superior? I mean, you must have known that Magane is not from Crime Intelligence.

**WARRANT OFFICER PHAKULA:** No, honestly, I did not know, and what I understand even now, sitting here, is that CIMAC is another link of Crime Intelligence. I might be  
10 wrong. So, he always introduced himself, and like I said in my statement, most of the informants in that area, I got assistance from him when we were working. So that goes together with Crime Intelligence.

**ADV KHUMALO SC:** No, but you know he works at a police station. Is it Zonkizizwe or what?

**WARRANT OFFICER PHAKULA:** Correct, yes.

**ADV KHUMALO SC:** But how can that be Crime Intelligence? Even I know that somebody who works at Zonkizizwe Police Station is not Crime Intelligence. You,  
20 an experienced and seasoned police officer who has worked with this person in the past, who was previously stationed in Alberton, why would you not know that? And I am raising this because you have created an impression in this Commission that you had permission from your superior.

He knew that you were supposed to be there. That

is why you were there. But the truth is you misled your superior, because what you told your superior is that Crime Intelligence has requested your assistance. And on the basis of what you told him, he said, yes, go ahead. But what you told him was not true.

**WARRANT OFFICER PHAKULA:** No, Commissioner Khumalo. From what I understand, Marumo, I mean Warrant Officer Magane he works in – okay, CIMAC is another department in Crime Intelligence. So that is why I said he  
10 is from Crime Intelligence. And like I am explaining, he has been giving information for, and people who are working with informants are from Crime Intelligence.

**ADV KHUMALO SC:** Everybody works with informants. I mean, even somebody from a local police station has informants. If you had said to your superior, a police officer from Zonkizizwe Police Station is chasing drugs from Ekurhuleni to Johannesburg, and it is just him and a traffic official, the two of them only have called me to join them, I doubt that your superior would have said, yes, go, go and  
20 join them.

Because you are at the level of a warrant officer. The only reason your superior allowed you to go there is because you told him that Crime Intelligence, I mean, he is specific in both his affidavits. He says you told him that Crime Intelligence asked for your assistance. And it was on

that basis that he gave you the go-ahead. Hence, I say you misled your superior. And it was on the basis of the information you gave him, which was misleading, that he allowed you to participate in this bust.

**WARRANT OFFICER PHAKULA:** No, I would disagree with Commissioner.

**ADV KHUMALO SC:** Is your superior lying when he says you told him that Crime Intelligence asked for your assistance?

10 **WARRANT OFFICER PHAKULA:** No, I told him that.

**ADV KHUMALO SC:** You told him that?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** And that is not true. Crime Intelligence did not ask for your assistance.

**WARRANT OFFICER PHAKULA:** But Warrant Officer Magane, although he is at CIMAC, CIMAC is under Crime Intelligence.

**ADV KHUMALO SC:** So why did you not say to him, somebody in CIMAC at Zonkizizwe Police Station is  
20 following a truck from Durban and only him and a traffic officer are chasing it all the way to Aeroton and I am joining only the two of them?

**WARRANT OFFICER PHAKULA:** Honestly, I did not know about CIMAC up until our arrest. To me, you accept Crime Intelligence. I am not familiar with what is happening in

Zonkizizwe. He is working at Crime Intelligence. Whether CIMAC or what, he is at Crime Intelligence.

**ADV KHUMALO SC:** All right, let me leave it there. Thank you.

**ADV BALOYI SC:** Can I just go back to your discussion with the Chairperson about paragraph 24 of your statement, where your explanation of that paragraph, of what you say there, is that you were explaining, you are speaking to after you arrived there, what happened after you arrived. You  
10 have your statement there, paragraph 24.

**WARRANT OFFICER PHAKULA:** I am still checking it.  
Page 24.

**ADV BALOYI SC:** Page 8. That is in your statement.

**WARRANT OFFICER PHAKULA:** Oh, okay.

**ADV BALOYI SC:** Page 8.

**WARRANT OFFICER PHAKULA:** I am the Commissioner.

**ADV BALOYI SC:** Yes, so, the answer that you give to the Chairperson cannot be correct because you open that paragraph by saying, primary responsibility of the first  
20 responding officer. So, you are not the first responding officer. Magane is the first responding officer. And then you say all of that was done. Because that opening paragraph is about the responsibilities of the responding officer. That is what they must do. They must take control and secure the crime scene to ensure integrity and

originality. That whole list is what the first responder must do.

**WARRANT OFFICER PHAKULA:** Correct.

**ADV BALOYI SC:** Now, you say, without your explanation, reading this paragraph, you are saying that is what Magane did. That is what that paragraph conveys. And so your answer to the Chairperson that you are speaking only to the period after you arrived cannot be correct, cannot be the truth, in fact. The truth is you are conveying what Magane  
10 did on that scene, and that is false because he did not do any of that. And you had no way of knowing what he did when he got onto the scene.

**WARRANT OFFICER PHAKULA:** Correct, correct, Commissioner.

**ADV BALOYI SC:** Yes, so it is false, firstly, what you represent in that whole paragraph.

**WARRANT OFFICER PHAKULA:** Correct.

**ADV BALOYI SC:** Two, even if one way to entertain your explanation, which is this is you speaking about after you  
20 arrived, you did not do any of that. You did not ensure the integrity and originality of evidence and exhibits. You found them on the van, and you did nothing about them.

**WARRANT OFFICER PHAKULA:** Correct, Commissioner.

**ADV BALOYI SC:** Right, you did not ask why, at least in your statement, you do not say, I asked, why are they on

the van? Where were they? You do not say that in the statement. But importantly, you did not do B, right?

**WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**ADV BALOYI SC**: Investigate and process the crime scene thoroughly and undisturbed. The scene was already disturbed, so you are misleading when you say that is what happened. The first responder investigated and processed the crime scene thoroughly and undisturbed, and the rest of it. Record facts and events properly. You did not do any of  
10 that. You tell us you took a statement from Joleen. You asked questions and started taking a statement. You are not even sure whether you completed that statement. You do say that.

**WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**ADV BALOYI SC**: So, none of that which is listed in paragraph 24 A to G did you do personally.

**WARRANT OFFICER PHAKULA**: Correct.

**ADV BALOYI SC**: So, your answer, that is another reason why your explanation that 24 is about accounting for what  
20 happened or what you did once you got there, it is not correct.

**WARRANT OFFICER PHAKULA**: I agree.

**ADV BALOYI SC**: It is a false representation of what happened.

**WARRANT OFFICER PHAKULA**: I agree.

**ADV BALOYI SC:** And it still raises the question, why would you mislead about something like this? And leads to, until you give a proper explanation, it leads reasonably to the conclusion that, well, you were trying to cover up. For Magane, whatever you knew about what he did, you were covering up for him. Do you want to comment?

**WARRANT OFFICER PHAKULA:** I agree with Commissioner Baloyi with all the points, but I am honestly saying cover up, it was not in my mind when I wrote this.

10 **ADV BALOYI SC:** Thank you.

**WARRANT OFFICER PHAKULA:** Thanks, Commissioner.

**ADV BALOYI SC:** Maybe now that we are dealing with that first responder, Warrant Officer Magane, you say in your statement that Warrant Officer Magane handed over the scene to you. That is another misrepresentation. It did not happen at all. And the question again is, why would you say that when it did not happen? And it did not happen because Warrant Officer Magane told us what happened.

20 He said Mashaba was in charge of the scene, and we had a lengthy discussion with him about that, and he considered, he accepted that. He said Mashaba was the person responsible, and Magane was asked the question, you were the first responder, you are SAPS, and you have National Instruction that tells you what you do as SAPS when you arrive there.

And he said, I accept. I did not do what I should have done. Mashaba was in charge of the scene. He could not have handed the scene to you for that reason. Again, that is a false misrepresentation. By you, or most unlikely, by Magane when he says Mashaba was in charge of the scene. So, one of you is not telling the truth. But we have the version of the first responder who says Mashaba was in charge of the scene. So, it is false that he handed over the scene to you, because he could not hand it over to you if he  
10 was not in charge of it.

**WARRANT OFFICER PHAKULA:** Commissioner, I agree with what you are saying. That is what he said. But the scene was handed to me by Magane as the one who phoned me to come to the scene. As to why he denied being in charge of the scene, I do not know.

**ADV BALOYI SC:** He called you to the scene. There is no question about that. He called you and you tell us in the statement that he said, I want backup. Nowhere in your statement do you say to us, he called me and said, I want  
20 you to come and take control of the scene. So, he called and he said, he wants backup. Now you are at the scene, and you say he handed the scene over to you. And all I am putting to you is, if on his own version he was not in charge of that scene, then he had no scene to hand over to you. He could not hand it over to you. And either you or him are

lying to the Commission.

**ADV KHUMALO SC:** Can you please indulge me on the same topic? You said somewhere in your statement that in terms of the regulations, and you say this in the context of you lodging a complaint against the IPID officers and General Khan, those who came after you. And you say, regardless of the rank, if you arrive at a scene and you find a police officer there, you do not just give them instructions. You do not just take over from them. Is that  
10 correct?

**WARRANT OFFICER PHAKULA:** Correct.

**ADV KHUMALO SC:** I am not misrepresenting what you said. And you say because they did that while you were already there, they acted improperly and they defeated the ends of justice.

**WARRANT OFFICER PHAKULA:** Correct, Commissioner.

**ADV KHUMALO SC:** But my difficulty with that is that when you arrived at the scene, the SAPS vehicle that we see on page 109 of the Steyn exhibits was already there  
20 and there were already two uniformed police officers in a police vehicle who were there. And yet you did exactly the same thing. You bypassed them and purported to take over the scene. Is that not unprocedural because you found them there? You should have let them tell you what is going on, what they found when they got there, and they are

the ones who would have then handed over to you if they saw fit to do so. Is that not correct?

**WARRANT OFFICER PHAKULA:** No, Commissioner. What happens is the first member on the scene, we agree it was Magane, SAPS member, it was Magane. So, if it was supposed to be the Booyens members to hand over the scene to me, it would have been Magane handed over the scene to them and then to me. So hence I am saying ...[intervenes]

10 **ADV KHUMALO SC:** Were you not listening to Commissioner Baloyi when she says, Magane has already said it was not his scene, it was Mashaba's scene. So, if anybody needed to hand over, then it would be Mashaba. But because Mashaba, the prescripts of SAPS do not apply to him. The officers who were there, who were in uniform, who were responding to a complaint that both Mashaba and Magane are criminals who are impersonating police officers and they are trying to hijack a Scania truck. SAPS officers went there to prevent that. When you arrive there, you find  
20 a police van with SAPS officers presumably in uniform. They do not hand over to you what they are investigating because they are there investigating a hijacking attempt of a truck.

**WARRANT OFFICER PHAKULA:** Correct.

**ADV KHUMALO SC:** Right?

**WARRANT OFFICER PHAKULA:** Correct, yes.

**ADV KHUMALO SC:** Now, as far as they are concerned, that is the scene, the hijacking of a truck. And the suspects are Magane and Mashaba. But when you get there, you bypass those police officers, and you start doing whatever it is that you were doing. It is not clear because you did nothing to the exhibits that were in the back of the bakkie. You did not touch them, you did not secure them, you did nothing to them. So, it is not clear exactly what you did  
10 when you got there other than these seals that you handled improperly, as it appears. So even on your version, it seems that you did not comply with the prescripts as you have explained them.

**WARRANT OFFICER PHAKULA:** If I may answer, Commissioner, yes, the two Booyens police attended the scene on the basis of a truck hijacking. But it ended up, it is not a truck hijacking. It is the scene of Mashaba and Magane of possession of drugs. It is no more their mandate that they came for. It is the other way around.

20 **ADV KHUMALO SC:** And according to you, the scene was not the bakkie. The scene was the entire area.

**WARRANT OFFICER PHAKULA:** Yes, yes, I take that.

**ADV KHUMALO SC:** Did you cordon off the 7 Series BMW that was parked nearby? Did you search it to look for exhibits, including this R60 000 that was found?

**WARRANT OFFICER PHAKULA:** No, to be honest, Commissioner Khumalo, that car, I was not even, because it was standing there, I did not even know, as I said in my statement, the first time I saw the driver was when we were in the back of the bakkie because I was concentrating on what I was doing.

**ADV KHUMALO SC:** So which scene did you secure then, according to you?

**WARRANT OFFICER PHAKULA:** Where the drugs were,  
10 as I mentioned on that tape, because that is where my scene was, where I was concentrating.

**ADV KHUMALO SC:** And how did you know it was drugs? Because you did not open the bags and look inside. How did you know it was drugs?

**WARRANT OFFICER PHAKULA:** The smell.

**ADV KHUMALO SC:** What?

**WARRANT OFFICER PHAKULA:** The smell.

**ADV KHUMALO SC:** The smell of what?

**WARRANT OFFICER PHAKULA:** Cocaine.

20 **ADV KHUMALO SC:** You could smell Cocaine?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** And you could tell that it was Cocaine?

**WARRANT OFFICER PHAKULA:** It was suspected Cocaine, yes.

**ADV KHUMALO SC:** Is that why you arrested the three people?

**WARRANT OFFICER PHAKULA:** Correct, but they were not arrested by me physically.

**ADV KHUMALO SC:** You said you gave somebody the tape to handcuff them.

**WARRANT OFFICER PHAKULA:** Yes, it was Captain Modupi. Actually, he is the one on page 109 of Steyn's bundle.

10 **ADV KHUMALO SC:** What did you call it, the tape that you said?

**WARRANT OFFICER PHAKULA:** The cable ties.

**ADV KHUMALO SC:** Cable ties.

**WARRANT OFFICER PHAKULA:** Yes, yes, Commissioners.

**ADV KHUMALO SC:** You gave the instruction that they should be arrested?

**WARRANT OFFICER PHAKULA:** Yes, yes.

20 **ADV KHUMALO SC:** And why? Why did you give instructions that these three people should be arrested?

**WARRANT OFFICER PHAKULA:** For possession of drugs.

**ADV KHUMALO SC:** But how do you know they possess drugs? Because you arrived there and you found drugs in the back of the bakkie. How do you know that these three people possess drugs?

**WARRANT OFFICER PHAKULA:** Because the statements, Commissioner was that those drugs are from the truck that he was driving.

**ADV KHUMALO SC:** Yes, but you are not arresting the driver. You are arresting three people. So why were you arresting the other two people?

**WARRANT OFFICER PHAKULA:** No, no, no. As I explained in my statement, the person that I requested Captain Modupi to cuff, it was the driver. And I was busy  
10 taking a statement on the second person. So, the decision whether to arrest or release was going to be finalised when Lieutenant Colonel Maluleke arrives.

**ADV KHUMALO SC:** So, you arrested the driver on the basis that you could smell the Cocaine and because you were told that he was driving the truck, you concluded that he was in possession of the drugs.

**WARRANT OFFICER PHAKULA:** Correct.

**ADV KHUMALO SC:** And you gave an instruction that he should be arrested.

20 **WARRANT OFFICER PHAKULA:** Not *per se*, Commissioner Khumalo. When I arrived at the scene, he was arrested, right and ...[intervenes]

**ADV KHUMALO SC:** No, you said you gave instructions that he should be cuffed with the ...[intervenes]

**WARRANT OFFICER PHAKULA:** Yes, yes, I am coming

there. So, while the scene was chaos, he was now standing on the other side. Then I went to fetch him and handed over to him for Captain Modupi to cuff with the cable ties.

**CHAIRPERSON**: Early today, you mentioned what your experience with narcotics or drugs is. Do you remember you were being questioned by Mr Mosikili?

**WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**CHAIRPERSON**: And my sense was that you do not have much experience, am I correct?

10 **WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**CHAIRPERSON**: And I think you said the largest consignment you would have been involved in was something like 5 kg?

**WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**CHAIRPERSON**: And 5 kg of what?

**WARRANT OFFICER PHAKULA**: I think it was Cat.

**CHAIRPERSON**: Cat?

**WARRANT OFFICER PHAKULA**: Cat, yes.

**CHAIRPERSON**: Oh, all right.

20 **WARRANT OFFICER PHAKULA**: Yes.

**CHAIRPERSON**: And not Cocaine, obviously.

**WARRANT OFFICER PHAKULA**: Correct.

**CHAIRPERSON**: Now, I am interested to know how you would have smelled the Cocaine.

**WARRANT OFFICER PHAKULA**: No, with the smell that

was coming from the back, obviously one could smell that it would be - although I did not know if it is Cocaine or it was ...[incomplete].

**CHAIRPERSON:** Do you know how Cocaine smells?

**WARRANT OFFICER PHAKULA:** Now I know how it smells.

**CHAIRPERSON:** At the time, did you know how Cocaine smelled?

**WARRANT OFFICER PHAKULA:** Hence, I was saying,  
10 Commissioner, I did not know.

**CHAIRPERSON:** You did not know?

**WARRANT OFFICER PHAKULA:** Yes, what kind of a drug it was.

**CHAIRPERSON:** But in response to Commissioner Khumalo, is that not the impression you gave that you could smell the Cocaine?

**WARRANT OFFICER PHAKULA:** Yes, I should have said I could smell suspected drugs or suspected Cocaine, if I remember well.

20 **CHAIRPERSON:** Meaning you smelled Cocaine, that is what you meant in response to Commissioner Khumalo.

**WARRANT OFFICER PHAKULA:** Yes.

**CHAIRPERSON:** So that was untrue.

**WARRANT OFFICER PHAKULA:** No, it did not ...[intervenes]

**CHAIRPERSON**: You have just said now, at the time you did not know how Cocaine smells. So, it was untrue to respond to Commissioner Khumalo that you could smell the Cocaine, because at the time you did not know how it smells.

**WARRANT OFFICER PHAKULA**: But there was a smell coming out of the bags, Commissioners.

**CHAIRPERSON**: We are talking about Cocaine.

**WARRANT OFFICER PHAKULA**: Okay.

10 **CHAIRPERSON**: You say you did not know at the time how Cocaine smells.

**WARRANT OFFICER PHAKULA**: Yes, I agree, Commissioners.

**CHAIRPERSON**: But in response to his question, you said you could smell the Cocaine. So, I am saying if you did not know how Cocaine smelled, you could not or it would be untrue to have responded to Commissioner Khumalo by saying you smelt the Cocaine. That was untrue, correct?

**WARRANT OFFICER PHAKULA**: Correct, Commissioner.

20 **CHAIRPERSON**: You have told quite a number of untruths when all three of us are engaging you on a number of issues. Do you want to explain why you have told that many untruths, Warrant Officer?

**WARRANT OFFICER PHAKULA**: It is not *per se* that it is untruth, Commissioner. Maybe it is how I explain or

express, because I wanted to say I could smell it was drug but not Cocaine. But I understand I already considered it was Cocaine, and that statement was false. So, I do not have any ...[intervenes]

**CHAIRPERSON**: It is untrue, it is untrue, so you cannot change that, and you have basically accepted that it was untrue, so you cannot make it true. You have already accepted it was untrue. I do not understand what purpose the explanation serves. Do you think it serves any  
10 explanation?

**WARRANT OFFICER PHAKULA**: I suppose so, Commissioner.

**CHAIRPERSON**: Thank you.

**ADV BALOYI SC**: Warrant Officer, you are at the National Investigation Unit.

**WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**ADV BALOYI SC**: That is what you say.

**WARRANT OFFICER PHAKULA**: Yes.

**ADV BALOYI SC**: Is that the same thing that is commonly  
20 referred to as NIU? There is something called NIU, and I think when you first explained, the acronym you give, though, is N-I-N-U.

**WARRANT OFFICER PHAKULA**: Yes, that is the correct one, N-I-N-U.

**ADV BALOYI SC**: It is the same unit that is normally

referred to as just NIU, or there is another unit?

**WARRANT OFFICER PHAKULA:** No, there is another unit of investigation, N-I-N-U.

**ADV BALOYI SC:** Okay, which is where you are.

**WARRANT OFFICER PHAKULA:** That is correct, Commissioners.

**ADV BALOYI SC:** And then NIU?

**WARRANT OFFICER PHAKULA:** NIU is another unit, the intervention unit.

10 **ADV BALOYI SC:** Yes.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** Okay, so it is a different unit.

**WARRANT OFFICER PHAKULA:** It is a different unit, Commissioner.

**ADV BALOYI SC:** Okay, now in paragraph 2.5, you set out of your statement, you set out your duties in the NINU.

**WARRANT OFFICER PHAKULA:** Correct, Commissioner.

**ADV BALOYI SC:** That is still, correct? That is what that unit does?

20 **WARRANT OFFICER PHAKULA:** Yes, that is correct, Commissioner.

**ADV BALOYI SC:** Okay, it is blue light, robberies, airport-following robberies, head office enquiry files and high-profile cases as determined by the Minister of Police, Deputy Minister of Police, National Commissioner, Deputy

National Commissioner, Divisional Commissioner, and Political Leaders. So, you have told us what that unit does.

**WARRANT OFFICER PHAKULA:** Correct. Correct, Commissioner.

**ADV BALOYI SC:** The request from Mr Magane is not one of those?

**WARRANT OFFICER PHAKULA:** Correct, Commissioner.

**ADV BALOYI SC:** Okay, how do you get involved with it? You are in Pretoria, I think. You are based in Pretoria, as  
10 you say.

**WARRANT OFFICER PHAKULA:** Yes, I am based there.

**ADV BALOYI SC:** You get called out to the East Rand by a station-based person who is, in fact, an office-bound person. He is not a detective. He is accepted. He has told us that. He is accepted that. You get called out to come to this operation on something that is not any one of what you say is the functions of your unit. Can you explain why you get involved with it? It is far from you, jurisdictionally even. It is far from you, and you go and get involved with it. From  
20 someone who is not a detective, for that matter.

**WARRANT OFFICER PHAKULA:** Okay, I will start with the jurisdiction part. I am working nationally. Hence, in May of that same year, I was in Richards Bay, I forgot the High Court, where we were dealing with another matter there. So, we work nationally. And then the issue of involving

myself, I first requested permission from Colonel Sephungu, and he said, no, do not go I would not have ...[intervenes]

**ADV BALOYI SC:** Yes, well, it is another question why he said you can go. Do not concern yourself with his reasons for giving you permission to go. I am having the discussion with you that you get a call from someone whose job is he is office bound. You say he is crime intelligence. Well, we know he does not do this job. He told us that his job is administrative, is in the office.

10           Even his superior said that about him. You get a call from that person, and then it does not fall in any one of these. It is not blue-light robberies. It is not airport-following robberies. It is not a head office enquiry file or high-profile case, as you have described. And so, I am asking you to explain your decision to become involved with something like that, which is so out of your functions or the functions of your unit, as you described them.

**WARRANT OFFICER PHAKULA:** Commissioner, we - I got permission. I got involved by requesting first permission to  
20 attend.

**ADV BALOYI SC:** Yes.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** I could ask you, and maybe your answer is as good as it will ever be, that why did you ask for permission about something that has nothing to do with

you? That is really my question. Why did you decide to become involved with it? You could have said to Magane, Look, I cannot help you. Go find somebody else or refer him to people that you know in your unit deal with those kinds of things. Or the right DPCI, SANEP, the ones that I think you said you referred him to - you called SANEP eventually. You do not do that.

**WARRANT OFFICER PHAKULA:** Yes, the reason is the information was supposed to be attended to. So maybe the  
10 delay in attending to that would have - the drugs would have disappeared.

**ADV BALOYI SC:** No, he did not say to you the drugs are going to disappear. He said, we have information. Come meet me in Alberton. We have information. And then you say, yes, once you have identified positively, come back to me. So do not do the maybe the drugs would have disappeared. He never said that to you.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** And you never said to us there was  
20 urgency.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** In fact, I want to suggest to you that forget any explanation that seeks to suggest there was urgency to this. There was not. Magane and Mashaba had it under control. They followed the truck. They went to the

depot. They followed the truck. They got to Scania. They reported themselves. The bakkie went in. So, there was no urgency that required your involvement.

So do not let that enter my conversation with you. My question still is this has nothing to do with your functions. All there is, is a connection. You and Magane are friends. You have worked together before. You have told us that, and he continues to give you information. That is the only connection. He calls you about something that  
10 has absolutely nothing to do with your unit and with your duties in particular.

Why do you not say to him, find somebody else? You choose a get involved, especially something that you know nothing about. You have never done drug busts. You have told us about 5-kilogram. You think it was Cat. You have never done. A truck is coming. It has drugs. We have information. Why do you choose to be involved with this? And the question is asked because the circumstances of this operation, including the involvement of Mr Magane,  
20 of Warrant Officer Magane, is deeply suspicious. That is why the question to you.

**WARRANT OFFICER PHAKULA:** No.

**ADV BALOYI SC:** Yes.

**WARRANT OFFICER PHAKULA:** I understand. And Commissioner, I honestly assisted because I was available,

and there was no, like, and I received permission and it was granted. That is the only reason why I could say I attended.

**ADV BALOYI SC:** Okay, and you say, you tell us in your statement that Warrant Officer Magane asked for backup. You say that at paragraph 6 of your statement.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** You say that he needed backup. What does it mean when you get a call to say, I need backup?

**WARRANT OFFICER PHAKULA:** Backup would include the  
10 role players of whatever the crime that you are busy investigating.

**ADV BALOYI SC:** So, you are not saying that in your statement. You are not saying he told you, get me the role players. He calls you, he says, I want backup.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** So, you understood that he needs you to come and assist him at the scene.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** Because if he had said to you, I want  
20 you to find me role players, you would have said it in your statement.

**WARRANT OFFICER PHAKULA:** Yes, by virtue of telling me to backup, then I know that that kind of crime will need a photographer, will need a dog unit, and so on. That is why I started by calling them to the scene.

**ADV BALOYI SC:** Okay, and you do that without knowing whether he has called those people. Because you do not tell us in your statement that he said to you, I want backup, which means I need you to call people. You are not the only one, remember, that he calls for backup.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** And not everybody did what you did.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** You have become very busy from the  
10 outset to start calling people to come to the scene when all he has said to you is I want backup, which brings me to the question of what, in fact, did he say to you that makes you so active to now start calling people and gathering people to go to the scene?

**WARRANT OFFICER PHAKULA:** There is a paragraph where I mentioned that he told me that he has been trying to get other people who are out of the province or others whose phones are off. Although I did not write it in the statement that he said, he phoned, because he probably  
20 told me about dog unit as well, he phoned Maja[?] and he could not come and assist. So, I included it in that statement that I made, that he wanted me to call, he told me that he was calling other people, but who are not available and all that.

**ADV BALOYI SC:** Have you ever had to organise, I

understood your evidence earlier, that you have never had to organise or manage a scene? You have never had to do that?

**WARRANT OFFICER PHAKULA:** The drug scene of this multitude, yes.

**ADV BALOYI SC:** Did a drug scene, have I understood you correctly?

**WARRANT OFFICER PHAKULA:** Yes, correct.

**ADV BALOYI SC:** And I may have, you can correct me, I  
10 understood it to be, so you do not have experience in crime scene management.

**WARRANT OFFICER PHAKULA:** I would say I have experience in crime scene management.

**ADV BALOYI SC:** Because you have managed a scene before?

**WARRANT OFFICER PHAKULA:** Correct.

**ADV BALOYI SC:** Just not drugs?

**WARRANT OFFICER PHAKULA:** Yes, yes, Commissioner.

**ADV BALOYI SC:** Just not drugs?

20 **WARRANT OFFICER PHAKULA:** Yes, Commissioner.

**ADV BALOYI SC:** So, when you, without experience, when you get that kind of call and you understand back up to mean he needs the different role players, why do you not call the people that have experience in that? Instead of calling everyone else that you have called, why do you not

the first call make? Why do you not call SANEP, which you do much later?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** Why do you not call LCRC, which you do, you tell us once you are at the scene, you do that.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** Why are you calling all these other people? I have a long list of the people that you have called along the way. And the question is, why are you not  
10 calling SANEP? You know there are people who have experience in matters like this.

**WARRANT OFFICER PHAKULA:** No, Commissioner, as I said, the first call I made was to Captain Modupi. Captain Modupi is my immediate commander, and he also came to the scene. And then ...[intervenes]

**ADV BALOYI SC:** You were calling him to say what to him? I thought you called him to get permission to go.

**WARRANT OFFICER PHAKULA:** No, no, Captain Modupi came to assist at the crime scene.

20 **ADV BALOYI SC:** Okay.

**WARRANT OFFICER PHAKULA:** Yes, Colonel Sephungu is the one that gave permission.

**ADV BALOYI SC:** Oh, yes, yes.

**WARRANT OFFICER PHAKULA:** So, after Captain Modupi, I phoned the dog unit, and then they are the ones

that told me that Lieutenant Colonel of SANEP has a similar enquiry. So, I did not need to call other people because I believe that when he comes, he will take over the scene.

**ADV BALOYI SC:** Okay.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** All right, and just to be sure, did Warrant Officer Magane ask you specifically to organise role players for him? Did he tell you, I have not done this, I needed to call the Forensic Laboratory, for example,  
10 because you called the forensic laboratory.

**WARRANT OFFICER PHAKULA:** Yes, yes, that is another one. Because initially when I phoned the Forensic Lab, I was of the opinion that they still come to the crime scene and package everything. So that is when I was told they normally do that. So, when he phoned me to say he want backup, so I understood he wants to arrange every role player for that scene.

**ADV BALOYI SC:** Okay, thank you.

**WARRANT OFFICER PHAKULA:** Thanks, Commissioner.

20 **ADV MOSIKILI:** Thank you, Chair. Warrant Officer, I think I referred you to the National Instruction 1 of 2015. Can we start at page 150?

**ADV BALOYI SC:** Sorry, what bundle?

**ADV MOSIKILI:** So that is the Steyn bundle, CJC219. So you will see there, Warrant Officer, that on that page there

is a summary of the crime scene process, and it says that crime scenes can broadly be divided into the following phases, and it lists about, let us go through them, in fact, because it actually tells you where to find them. So, the first phase will be the reporting, and then the activation, the responding, controlling, the handover, the planning, the investigating and processing, debriefing, restoring, releasing, and the last one will be evaluation.

And in this case, because you had at least testified  
10 that you were involved at the handover, I want us to go and look at the handover phase as to what that entails, as you at least allege in your statement. That will appear on page 140, so you have to go about 10 pages back, and you will see there at 12 it deals with the handover. The first phase would have been dealt with by Warrant Officer Magane yesterday, and then this is under continuity of control. It says:

20 “The first responder must remain in control of the crime scene until he or she hands the cordoned area over to the Crime Scene Commander and hands the activities beyond the outer cordon off to the CCC or the CJOC.”

You accept that at least on your version, then you would have at least tried to fit yourself as the crime scene

commander if we accept for a moment that Warrant Officer Magane handed this to you. You accept that?

**WARRANT OFFICER PHAKULA:** Yes, Commissioner.

**ADV MOSIKILI:** Now, the following page, at 3, it deals with the designation of the crime scene commander. It says that:

10                   “The dispatcher must, depending on the information obtained, identify the appropriate investigating unit in accordance with the contingency plan and report this incident to the relevant duty officer of the unit.”

**WARRANT OFFICER PHAKULA:** We are on 3 pages.

**ADV MOSIKILI:** Yes, and I put it to you that you did not do that. You did not identify the investigating unit in accordance with the contingency plan.

**WARRANT OFFICER PHAKULA:** Where are you reading this from, sorry, Commissioner?

**ADV MOSIKILI:** If you go to, are you on page 141?

20 **WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** If you go to 3?

**WARRANT OFFICER PHAKULA:** Three, yes.

**ADV MOSIKILI:** Three A, it says that the designation of the crime scene commander, we have established that on your version, that should be you. Then it says that:

“The dispatcher, depending on the information obtained, identify the appropriate investigating unit in accordance with the contingency plan and report the incident to the relevant duty officer of that unit.”

None of that happened. Do you accept that, at least?  
Because there was no report, there was no plan.

**WARRANT OFFICER PHAKULA:** No, I am ...[intervenes]

10 **ADV MOSIKILI:** In action.

**WARRANT OFFICER PHAKULA:** Okay, sorry about that. I am still trying to digest this because the dispatcher must, these are the roles of the dispatcher.

**ADV MOSIKILI:** You see that it says designation of the Crime Scene Commander.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV MOSIKILI:** Yes.

**WARRANT OFFICER PHAKULA:** No.

20 **ADV MOSIKILI:** Perhaps let me help you. We will come back to that. Go to number 5.

**WARRANT OFFICER PHAKULA:** Okay.

**ADV MOSIKILI:** And it talks about the responsibility of the Crime Scene Commander following the first handover:

“Once the first handover has taken place, the Crime Scene Commander must take

control of the scene and ensure the signing of the first responder report, ANNEXURE D2.”

And we accept in your case there was no report given to you by Magane.

**WARRANT OFFICER PHAKULA**: No, there was no report.

**ADV MOSIKILI**: Yes, and then say obtain a comprehensive CTRAP from the first responder. Did you receive any of that?

10 **WARRANT OFFICER PHAKULA**: A comprehensive? Like in what? No, I did not receive anything of that.

**ADV MOSIKILI**: Yes. And then I will take you, if you go to the following page, on 13, it deals with the planning phase. And this is the important one. It says that:

20 “The planning activity is the key to successful crime scene processing. This includes, *inter alia*, a walk through the crime scene by the Crime Scene Commander and meetings with the role players such as the Crime Scene Examiner, Forensic Pathology Official, other experts, and Emergency Personnel.”

And it says at 13.2(a):

“The Crime Scene Commander must

evaluate the situation and, if appropriate, do the first walk through the crime scene, taking into consideration that the route used might need to be processed prior to the walk through. Appropriate PPE must be worn.”

And you accept that none of that happened. You did not walk to assess the situation. You did not, at the very least, have meetings with other people except the three that you mentioned, or the two that you mentioned. And you did not wear any PPEs. You accept that.

**WARRANT OFFICER PHAKULA:** Yes, but I made a walk through. When I first went to introduce myself to Magane and Mashaba and then went to the Booysens Police Officers, and I also approached the witness who I was busy with, and I considered that within 30 minutes of my arrival, the scene was now starting to be chaos, uncontrollable.

**ADV MOSIKILI:** In your statement, you say nothing about doing the walk through the scene. It is quite clear you say that you met Warrant Officer Magane, and he introduced you to Mashaba and briefed you on what happened. And then what you did was to then instruct them, together with the assistance of the Booysens police, to cordon off the area. And you started conducting the interviews, and later on you told Captain Modupi to arrest, or at least to effect

the arrest of the driver. Nothing of the sorts to say you – and it says you must first walk through. You did not do that. You accept that.

**WARRANT OFFICER PHAKULA:** I accept that.

**ADV MOSIKILI:** And even if you walk through, you never wore the PPEs.

**WARRANT OFFICER PHAKULA:** Yes, I did not wear the PPEs.

**ADV MOSIKILI:** Yes, and for the purpose of this  
10 conversation, I think the rest of the requirements are quite obvious and apparent that they were not met. What I want to read to you, at least on E, it says:

“You must keep the crime scene, well, when I say you, I say you as the Crime Scene Commander. You must keep the crime scene report updated.”

And you never said that. You never attempted to keep a report. All you did was to rush to start taking statements. What is your comment?

20 **WARRANT OFFICER PHAKULA:** Commissioners, if I may say, yes, that is true what happened. But when you get to the crime scene, this administration is difficult to go through it, to complete it. When you are at the scene, you are concentrating on statements, exhibits, and whatever it is. So, I accept, I did not complete that thing. But it was

because I was ...[intervenes]

**CHAIRPERSON**: Are you suggesting, Warrant Officer, that compliance with this instruction is optional?

**WARRANT OFFICER PHAKULA**: No, no, I am not saying it is optional, Commissioner. However, in a normal day-to-day working, it is difficult. I am not saying it is optional.

**CHAIRPERSON**: So, when you find it difficult, you may choose not to comply with it.

**WARRANT OFFICER PHAKULA**: No, you do not  
10 ...[intervenes]

**CHAIRPERSON**: Please make me understand.

**WARRANT OFFICER PHAKULA**: No, you have to still do it with difficulty, yes.

**CHAIRPERSON**: Thank you. Please continue, Mr Mosikili.

**ADV KHUMALO SC**: Just out of interest, how many bags were in the back of the van, the black bakkie?

**WARRANT OFFICER PHAKULA**: 23, Commissioner.

**ADV KHUMALO SC**: 23 and what was inside? Did you count? Did you check what was inside? Inside the bags  
20 themselves?

**WARRANT OFFICER PHAKULA**: When I arrived or as we were arrested?

**ADV KHUMALO SC**: At any stage before you were arrested. Because you say your responsibility was to look after the exhibits. You did not have time to do the

walkthrough. So, I am just testing with you whether you actually looked after the exhibits, and you checked that they were secure.

**WARRANT OFFICER PHAKULA:** Yes, I checked on the exhibits and ...[intervenes]

**ADV KHUMALO SC:** What did you check?

**WARRANT OFFICER PHAKULA:** That they were still the way they were when I arrived on the scene.

**ADV KHUMALO SC:** So, you found the bags in the back of  
10 the bakkie, and you were satisfied that they were still in the  
back of the bakkie?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** That is all you did?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** The primary scene, did you know  
where it was? The primary crime scene?

**WARRANT OFFICER PHAKULA:** Yes, at the back of the  
trailer, yes.

**ADV KHUMALO SC:** Did you check that?

20 **WARRANT OFFICER PHAKULA:** It was now impossible  
because the truck was now reversed to the loading bay,  
Commissioner.

**ADV KHUMALO SC:** Okay, thank you.

**ADV MOSIKILI:** Warrant Officer, I think the point I was  
trying to at least canvas with you is simply that you were

not the appropriate person to deal with the situation and you were not equipped in terms of your experience and knowledge of what you were required to do. Even if you were to accept that you attempted to act as a Crime Scene Commander. Do you accept that?

**WARRANT OFFICER PHAKULA:** I accept, basically because I wanted to - I believed I was securing the scene up until the relevant people arrived. So, I was doing that to the best of my ability.

10 **ADV MOSIKILI:** Yes, we have established that, but that does not accord with what is required of a Crime Scene Commander.

**WARRANT OFFICER PHAKULA:** Yes, yes, yes. Correct.

**ADV MOSIKILI:** Yes, Chair, it is 1 o'clock. I do not have any further propositions to put to the witness in terms of this crime scene unless the Chair has further questions or the Commissioners.

**CHAIRPERSON:** Let us adjourn and resume at 2 p.m.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**CHAIRPERSON:** I will not look to you, Mr Mosikili, but to my colleagues.

**ADV MOSIKILI:** Chair, perhaps I can benefit from the lunch hour that we had, maybe just get some clarity from the Warrant Officer, and then I will hand it to your

Commissioners.

**CHAIRPERSON**: Oh, please go ahead.

**ADV MOSIKILI**: Thank you. Thank you, Chair. Warrant Officer Phakula, I spent the lunch time trying to figure out what you were trying to say to the Chair, and in particular, and to give context to it, is that you specifically testified, and it is in your statement as well, at paragraph 12, that one of the people that you called to the scene is your brother, Sergeant Phakula, who works in the Dog Unit. Is  
10 that, do you remember that?

**WARRANT OFFICER PHAKULA**: Yes, I remember that, Commissioner.

**ADV MOSIKILI**: Yes, the K9 unit.

**WARRANT OFFICER PHAKULA**: Yes.

**ADV MOSIKILI**: And you accept that the reason why you need dogs to be there is to sniff out possible drugs at the premises, among other things?

**WARRANT OFFICER PHAKULA**: Yes, correct, Commissioner.

20 **ADV MOSIKILI**: Yes. And I spent the whole lunch time trying to figure out, looking at different sources, following from what, the exchange you were having with the Chair, that you could smell, or you can smell Cocaine. And I think your version was then to say, no, no, it is not Cocaine, I could smell drugs on the scene. Remember that?

Remember that exchange between you and the Chair?

**WARRANT OFFICER PHAKULA:** Yes, yes, yes.

**ADV MOSIKILI:** Yes. And in this particular instance, I want to demonstrate to you that that is complete untruthfulness, to say that you could smell Cocaine. In other words, first of all, you would not need to have sniffer dogs if you yourself could smell any drugs, as you put it, whatever format that they are, because when you say you can smell drugs, that means you can sniff out any of those  
10 drugs. But in particular in this matter, I want you to have a look at this picture of how these drugs were wrapped. Chair, can we go to CJC204.

**WARRANT OFFICER PHAKULA:** CJC?

**ADV MOSIKILI:** 204.

**CHAIRPERSON:** 204.

**ADV MOSIKILI:** Yes. That is a picture of the bags containing the alleged drugs at that stage. And if you go further down, if you go further you will see that those bricks in there, they are tightly wrapped. In fact, a witness came  
20 to testify here on Monday, specifically on how tightly wrapped these drugs are, especially because they have to travel across the ocean to avoid moisture and anything else, so they are tightly wrapped with plastic and also with labelling materials and put inside ...[intervenes].

**CHAIRPERSON:** Actually, sorry to interrupt.

**ADV MOSIKILI:** Yes.

**CHAIRPERSON:** Actually, from what we see at page 4, two pages back, yes, there is the, what looks like plastic, just ordinary black plastic. And then my understanding is that inside those, let us go to page 5, inside those there is a canvas bag.

**WARRANT OFFICER PHAKULA:** Yes.

**CHAIRPERSON:** And then inside the canvas bag is what you see on top of this canvas bag and also where you took  
10 us to, Mr Mosikili. You see this, Warrant Officer ...[intervenes].

**WARRANT OFFICER PHAKULA:** Yes, I can see that, Commissioner.

**CHAIRPERSON:** At page.

**WARRANT OFFICER PHAKULA:** Yes.

**CHAIRPERSON:** It is, so it is the outer plastic bag, it is the canvas bag, and then it is the plastic wrapping inside the canvas bag.

**WARRANT OFFICER PHAKULA:** Yes, Commissioner.

20 **CHAIRPERSON:** You may continue with your point, Mr Mosikili.

**ADV MOSIKILI:** Yes, thank you, Chair. And the point I am putting to you is that not only were you untruthful to the Chair when you say you could smell Cocaine, but I am putting to you, given how they are wrapped, given the

research that I have conducted over the lunchtime, you cannot smell, you could not have possibly smelled any drugs under those circumstances. So your version that you could smell the drugs, it is completely false. What do you say?

**WARRANT OFFICER PHAKULA:** I disagree with you, Commissioner. That is how, there was one bag, I look at the pictures that was opened. In one of the pictures it shows the bag that was opened. So from then that is when  
10 you can see that.

**ADV MOSIKILI:** Maybe let us then explore this. Did you go there with your nose smelling each and every bag? Or how did the smelling happen?

**WARRANT OFFICER PHAKULA:** No, I cannot go ...[intervenes].

**ADV MOSIKILI:** Sorry?

**WARRANT OFFICER PHAKULA:** No, I did not go through each and every bag. But from what I could see with the packaging and all that, I could suspect it is drugs there, and  
20 from the smell that came from touching these things.

**ADV MOSIKILI:** But you did not touch anything on your own testimony. But that is besides the point. You could not have smelled the drugs wrapped in that way, and secondly, the drugs do not smell. And your suggestion that you could smell the drugs, it is completely false.

**WARRANT OFFICER PHAKULA:** No, I disagree. That is how ...[intervenes].

**ADV MOSIKILI:** Unless you are a special cop that can smell drugs.

**CHAIRPERSON:** Can you please explain this thing you are saying about a bag that was, you say, that was opened.

**WARRANT OFFICER PHAKULA:** Yes, at a later stage there was a bag that was, I think one of the bags was opened.

10 **CHAIRPERSON:** You say at a later stage. At what stage was that?

**WARRANT OFFICER PHAKULA:** During that chaos. I cannot remember exactly when it was, but it was during that chaos, that when ...[intervenes].

**CHAIRPERSON:** I also took you to page 5 and the bag at page, the canvas bag at page 5 is open. Is that what you mean by an open bag?

**WARRANT OFFICER PHAKULA:** No, no, no, not this one, Commissioner.

20 **CHAIRPERSON:** What do you mean?

**ADV BALOYI SC:** [Indistinct]... [microphone off].

**CHAIRPERSON:** 7. There is another one at 7. Is that what you mean?

**WARRANT OFFICER PHAKULA:** No, from the pictures that are on top of the, when they were still on top of the

bakkie.

**CHAIRPERSON**: On the bakkie?

**WARRANT OFFICER PHAKULA**: Yes, yes, Commissioner.

**CHAIRPERSON**: So you want that picture where your car is in front ...[intervenes].

**WARRANT OFFICER PHAKULA**: Yes ...[indistinct] [cross-talking].

**CHAIRPERSON**: ... right. You want that picture?

**WARRANT OFFICER PHAKULA**: I think it is that one,  
10 Commissioner.

**CHAIRPERSON**: Can you please take us to that picture?

**ADV KHUMALO SC**: 109, same file.

**CHAIRPERSON**: Yes, please show us the open bag. Are you there?

**WARRANT OFFICER PHAKULA**: Yes.

**CHAIRPERSON**: Show us the open bag.

**ADV KHUMALO SC**: Please look at the screen behind you.

**WARRANT OFFICER PHAKULA**: Oh, yes. I think it was one of these. Can I point?

20 **CHAIRPERSON**: Yes, yes, yes, please.

**WARRANT OFFICER PHAKULA**: [Indistinct]... [microphone off].

**CHAIRPERSON**: And so?

**WARRANT OFFICER PHAKULA**: So from touching them you could smell, I smelled something.

**CHAIRPERSON:** No, no, so I do not see any difference between this and what I showed you at, was it 5 and 7? There is no difference. There is not just, it is not just tears on the plastic, on the plastic bag, but these have actually been taken out of the bags. And yet you see that what is inside is still sealed, is still sealed in plastic. So it is not as if once you have tears like you show us there, you see drugs that are bare, uncovered.

**WARRANT OFFICER PHAKULA:** No, no, they were not  
10 bare.

**CHAIRPERSON:** Yes, yes.

**WARRANT OFFICER PHAKULA:** They were bricks  
...[indistinct].

**CHAIRPERSON:** So I do not understand then just because you saw tears on the bags that that should mean that you could then smell the drugs.

**WARRANT OFFICER PHAKULA:** It is my submission,  
Commissioner.

**CHAIRPERSON:** No, you are just relying on that just  
20 because you saw the tears on the plastic bags, that is all.

**WARRANT OFFICER PHAKULA:** No, no, Commissioner.

**CHAIRPERSON:** But anyway, anyway, all of that is irrelevant, because when I engaged you earlier, you accepted that you have no idea whatsoever how Cocaine smells and yet you had said to Commissioner Khumalo, you

smelled the Cocaine and on that basis I said you lied, because later when I am engaging you, you accept that you do not know how Cocaine smells and yet you had said you smelled the Cocaine. So I am saying none of this is irrelevant to the extent that now you are digging in your heels as it were. All of that is irrelevant because the bottom line is that you lied. You do not know how Cocaine smells and you lied when you said to Commissioner Khumalo you smelt the Cocaine. So I do not think

10 ...[intervenes].

**ADV MOSIKILI**: Thank you, Chair.

**CHAIRPERSON**: Yes, yes.

**ADV MOSIKILI**: We cannot take it further, but perhaps to say to him the proposition I want to put to him is that in essence then, if he could not smell, then he must have known for a fact that there are drugs there and the question is how did he know that it is in fact Cocaine in there because he could not have smelled.

**WARRANT OFFICER PHAKULA**: No, I ...[intervenes].

20 **ADV MOSIKILI**: What is your comment?

**WARRANT OFFICER PHAKULA**: I did not know for a fact what kind of drug is that one. I did not know that for a fact.

**CHAIRPERSON**: And just to close it, you are now relying on the obvious test that you see to try to bolster your version that you did smell, I will not say Cocaine, because

you accepted you do not know how it smells, to bolster your vision that you smelled drugs. Your comment?

**WARRANT OFFICER PHAKULA:** No, I am not taking advantage of the fact, Commissioner.

**CHAIRPERSON:** And what drugs, what smell of drugs was this that you are referring to? We know that you do not know how Cocaine smells, but you say that you smelled drugs. What drugs, and what smell of drugs?

**WARRANT OFFICER PHAKULA:** No, it should have been  
10 any scent that was coming from ...[incomplete].

**CHAIRPERSON:** And what makes that drugs?

**WARRANT OFFICER PHAKULA:** Because the information was that it suspected drugs, I concluded ...[intervenes].

**CHAIRPERSON:** So it becomes drugs just because you have been told that the suspicion was that there were drugs in the truck?

**WARRANT OFFICER PHAKULA:** Yes, yes, Commissioner. That is how I came to that conclusion.

**CHAIRPERSON:** Thank you.

20 **ADV BALOYI SC:** Maybe let me start off by adding, you have heard what the Evidence Leader says, he is proposing in fact what was happening. Let me add to why the explanation that you are giving to why you say you smelled Cocaine and later drugs is not correct. It cannot be. It is untruthful, actually, because you said to us in your

testimony earlier, you did not touch those bags that you found, that you saw in the bakkie because you did not want to contaminate the exhibits any further. That was your evidence. When you were asked why did you not, now that you are in charge of the scene, why did you not order that those bags should be taken off the bakkie, because they should not be on the bakkie, and you said, I did not want to touch anything further because they had already contaminated that. So it is a lie that you touched those  
10 bags on the basis of that kind of evidence. Or you did touch the bag and so you lied earlier when you said, I did not want to touch the bags. I did not touch them. I did not want to touch them because they had already been contaminated. The two cannot both be true. Do you accept that?

**WARRANT OFFICER PHAKULA:** I accept that, Commissioner.

**ADV BALOYI SC:** Okay. The second reason I say your explanation is false is that you would not have written in  
20 your statement, there is that paragraph where you describe the scene, you say the crime scene was handled and there was nothing out of place.

**WARRANT OFFICER PHAKULA:** Ja.

**ADV BALOYI SC:** If you had seen that one of the bags was torn or was open, you would have said that, otherwise,

you saw it and you lied and said the scene was intact. Everything was in place when in fact you had seen that there was a bag that was open. So again, the two versions cannot stand. You cannot say there was a bag on the scene that was open when in fact your statement says there was full compliance with the instruction on handling a crime scene. All the exhibits were in their original place and they were, they were, I think the word, I do not remember the word, but they were, basically they were not tempered with,  
10 basically. That is what you are saying.

**WARRANT OFFICER PHAKULA:** Yes. Commissioner, if you can look at this picture, the scene was now out of my control.

**ADV BALOYI SC:** Ja, so you did not touch at this point. This is a picture you see after the fact, when now things, we have a trial. You did not see it on the day, this picture. So do not use this picture to support what you are saying. You are either on the scene when you touched the exhibits, yes, actually, at paragraph 23 of your statement, you say:

20 “At this stage, the scene ...”

This is, you were speaking to Jolene, she was shaken. And then at 23, you are trying to take a statement. And at 23, you say:

“At this stage, the scene was under control. The exhibits were still secured

in bags in their original form, not tempered with. The crime scene was still under investigation as witnesses were interviewed and suspects under arrest. Dog Unit was summoned as well as the photographer.”

So you tell us and whoever you were reporting to at the time that the bags were in their original form. They were not tempered with. So when you say now to us that  
10 one of the bags was torn, what I am saying to you, what I am putting to you is then paragraph 23 is untruthful where you communicate that the exhibits were in their original form, because according to you, a bag was torn, was open, and your statement should have said that if that was the case. Do you want to comment?

**WARRANT OFFICER PHAKULA:** Yes, please, Commissioner Baloyi. At that time, while I was taking down the statement, after my arrival, it was intact, yes. So this photo shows at the later stage, as you can see, that is when  
20 Magane is already in the, is placed in the car and the scene was no more in our control. That is where I observed that scene ...[intervenes].

**ADV BALOYI SC:** No, you touched, you touched. Remember the issue now is the scene being, you say you touched, a bag was open. That is the only way you could

have touched.

**WARRANT OFFICER PHAKULA:** Yes, yes.

**ADV BALOYI SC:** So the bag had to have been open for you to touch it.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** And smell it.

**WARRANT OFFICER PHAKULA:** Correct, correct.

**ADV BALOYI SC:** Yes.

**WARRANT OFFICER PHAKULA:** And I also admit that I  
10 did not put that in my statement.

**ADV BALOYI SC:** So you are saying ...[intervenes].

**WARRANT OFFICER PHAKULA:** [Indistinct]... [cross-  
talking].

**ADV BALOYI SC:** You are saying to us now that you in fact did touch the exhibits while you were on the scene.

**WARRANT OFFICER PHAKULA:** Correct, yes, that is what I am saying.

**ADV BALOYI SC:** So when you told us earlier that you did not touch, when you were asked specifically the question,  
20 why did you, when you got there and you saw these things on the back of the bakkie, why did you not instruct that they be removed, why did you not remove them, and you said, I saw that they had already been touched and I did not want to add further to, what is the word? Tampering, yes.

**CHAIRPERSON:** Contamination.

**ADV BALOYI SC:** Contamination is the word I was looking for. Thank you, Chair. You did not want to contaminate further. So earlier on you told us you did not touch these bags.

**WARRANT OFFICER PHAKULA:** Ja.

**ADV BALOYI SC:** Now you say you touched it.

**WARRANT OFFICER PHAKULA:** Correct.

**ADV BALOYI SC:** But they cannot both be true. There is where one of them is false. You can choose, you can tell  
10 us which one is false, because you said two different things that cannot both be true. One of them is false. The question is, and maybe let us simplify it so that we finish very quickly this question, which of the two versions that cannot stand together is false?

**WARRANT OFFICER PHAKULA:** I think let us take it this way, Commissioner. I did not submit it in the statement that I touched. So the paragraph 20, the one that the Commissioner was reading, it is what it is when I arrived at that time.

20 **ADV BALOYI SC:** Okay, I want to be clear. Are you now telling us you did touch these exhibits while they were on the scene? Is that, the last word on this?

**WARRANT OFFICER PHAKULA:** Yes, yes, Commissioner.

**ADV BALOYI SC:** Okay, so your earlier evidence that you did not touch these because you did not want to

contaminate them any further is false. It must follow. That statement is false.

**WARRANT OFFICER PHAKULA**: I concede, Commissioner.

**ADV BALOYI SC**: Thank you. The other question, the question that I wanted to ask is, you are told by General Khan to stand down, you tell us.

**WARRANT OFFICER PHAKULA**: Yes.

**ADV BALOYI SC**: And you understood, you were asked the question, what does that mean, and it is, do not be involved  
10 any further. In the light of that kind of instruction, you go to the bakkie to retrieve the two ...[intervenes].

**WARRANT OFFICER PHAKULA**: Seals.

**ADV BALOYI SC**: What do they call it? Sorry, seals. I think it is too long the day. You go to retrieve the two seals. Did you put those seals there?

**WARRANT OFFICER PHAKULA**: No, no, no.

**ADV BALOYI SC**: How did you know they were there?

**WARRANT OFFICER PHAKULA**: I knew because I was with Magane and Mashaba on the scene.

20 **ADV BALOYI SC**: So you did go to the front of the van because you tell us those seals were on the seat.

**WARRANT OFFICER PHAKULA**: Yes, on the left passenger side, on the, where the foot ...[intervenes].

**ADV BALOYI SC**: So you went and you saw them there, the seals?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** Did you ask why are these seals here, because you know that is not the original side of those seals. That is not where they were originally, those exhibits. Did you ask Magane, where do these come from, as in, where did you remove them and why are they here?

**WARRANT OFFICER PHAKULA:** Yes, he explained he found the, like the seals, one of the seals was broken and the other one he found in the back of the trailer.

10 **ADV BALOYI SC:** Did you ask him why did he remove them where they were? You know about crime scene management, you have told us, that you know.

**WARRANT OFFICER PHAKULA:** Yes, yes.

**ADV BALOYI SC:** So you know that things must be left *in situ*, right, until the photographer and LCRC arrives and take note of everything that is there. You know all of those things. Did you ask Warrant Officer Magane, why did you remove them from where you found them?

20 **WARRANT OFFICER PHAKULA:** Yes, and his explanation was simply because he wanted to put them safe where when the photographer comes they can be easily accessed.

**ADV BALOYI SC:** Did you tell him that is not what we do?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** That is against, you have contaminated the scene.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** So when you now want to take them to the photographer after you were told, stop being involved, you continue to be involved.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** When you want to take them to the photographer, you want the photographer to do what with them?

**WARRANT OFFICER PHAKULA:** No, she take photos and  
10 ...[intervenes].

**ADV BALOYI SC:** In your hands? Would you, they are not where they are supposed to be. One, they have been removed from their original position in the container. Two, you have removed them from where Magane put them, Magane and Mashaba. You have removed them. So you removed them from two locations. They have been removed from two locations. The photographer comes. You do not take the photographer to where you say you found them so that the photographer can take them in that position and  
20 say, well, this is where I found them, we need to get an explanation. You take them. Your intention is what? Is to hold them in your hand and say, here are the seals, take pictures of them?

**WARRANT OFFICER PHAKULA:** Commissioner, remember when I am told to stand down, I have to hand over the

scene, obviously. So the exhibits that was in my possession, I had to give it over to the photographer.

**ADV BALOYI SC:** So that which was put by Magane in your car, in his car, is in your possession. That is how you are telling us now.

**WARRANT OFFICER PHAKULA:** No, as ...[intervenes].

**ADV BALOYI SC:** Well, actually, the seals were in your possession.

**WARRANT OFFICER PHAKULA:** As a crime scene  
10 manager ...[intervenes].

**ADV BALOYI SC:** Yes.

**ADV BALOYI SC:** Well, actually the seals were in your possession.

**WARRANT OFFICER PHAKULA:** As a crime scene manager the scene was as well I was accounting for it, so that is why I handed it over to the photographer.

**ADV BALOYI SC:** Sebola was there at that point. He had arrived at the scene.

**WARRANT OFFICER PHAKULA:** No, no.

20 **ADV BALOYI SC:** He had not yet arrived.

**WARRANT OFFICER PHAKULA:** No, I have not seen him, yes.

**ADV BALOYI SC:** Okay, but do you know, if you did not know then, do you know that what you did is contrary to proper crime scene management, that you remove those

seals from where you found them and you want to take them to the photographer? Do you know now that that is not proper crime scene management?

**WARRANT OFFICER PHAKULA:** I would like to put it like this, Commissioner. When we deal with such scenes where exhibits are, might get lost or whatever the reason might be, you have to take steps that will preserve whatever it is, the exhibit that you are, you are, and at that time, I thought I am doing the right thing by taking them to the  
10 photographer.

**ADV BALOYI SC:** No, you could not have thought you were doing the right thing. There was no way of it getting lost when all that is happening is the photographer taking a picture. If you went to the photographer, they had been sitting there, according to you. General Khan tells you that stop whatever you are doing. You defy it, in fact, and go and do something else, to go and point out to the photographer, here are the seals that I found. So if you had taken the photographer to go and take a picture, as the  
20 instruction requires you to do, they would not have gotten lost. There was no risk of them getting lost just because the photographer is taking a picture of them, unless you are saying you were concerned the photographer will take them and put them in their pocket.

**WARRANT OFFICER PHAKULA:** No, no, no, no, no. It

could have been either way, whether I went to fetch the photographer, and again, if I approach the photographer, it was going to be as if I am still interfering. So the best way was to take this thing to her. That is an honest explanation regarding that thing.

**ADV BALOYI SC:** Do you accept that is contrary, what you are doing? And if your answer is yes, I am going to leave this topic. Do you accept, as I suggest you must, that your removing these seals from the bakkie where they were, to  
10 want to take them to the photographer, is in breach of the protocol about proper handling of exhibits on a crime scene?

**WARRANT OFFICER PHAKULA:** I agree.

**ADV BALOYI SC:** Thank you. And then lastly, you say that you waited in Alberton, or the driver was not handcuffed, or was, the driver was arrested, was not handcuffed, because he was supposed to drive the truck, the Yellow Jersey truck to ...[intervenes].

**WARRANT OFFICER PHAKULA:** Correct, Commissioner.

20 **ADV BALOYI SC:** I think to the police station, to Alberton Police Station.

**WARRANT OFFICER PHAKULA:** No, no, no, the, there is a vehicle pound about a kilometre or two from ...[intervenes].

**ADV BALOYI SC:** So he would have driven it to the

pound?

**WARRANT OFFICER PHAKULA:** Yes, yes, Commissioner.

**ADV BALOYI SC:** Why did you consider that now that the drugs have been found, that is what Magane called you for, come help me with drugs, they have been retrieved, now you say you know it is Cocaine, why would you take the truck to the pound?

**WARRANT OFFICER PHAKULA:** As a vehicle that was used in transporting the drugs.

10 **ADV BALOYI SC:** And that is in terms of what? You do that in terms of what, because the target is the drugs. You have been informed by Jolene, whom you said, I think you said she should not be arrested, because you were satisfied with her explanation, that she did not know what was going on. Why would you impound the truck?

**WARRANT OFFICER PHAKULA:** Simply for the chain of custody of that, like the chain of custody of that, of those drugs, because, let us say for example, I come to court and say the drugs were recovered, but the vehicle that was, that  
20 brought the drugs to this place is not impounded, it will not make sense. But then, and that is what happens in most cases ...[intervenes].

**ADV BALOYI SC:** Why would it not make sense? If you, as you had here, you have the registration details of the vehicle, you know who it belongs to, you have the driver,

you have told us that there are cameras in that place, so you have all the information about the truck, and you have got statements that say these drugs came in this vehicle, the full details of which you have. Why would it not make sense to go to court? You are not going to present the truck at court as in someone is going to drive it to the court building for an inspection by the magistrate. That is not going to happen. We know it does not happen that way. Why would it not make sense to leave the truck where it is, and you have all this information and statements that tell the court this is the vehicle that transported the drugs?

**WARRANT OFFICER PHAKULA:** No, what we do usually in such cases, like, I will give, let us say, for example, you arrest someone in driving the car with firearms also, you cannot just confiscate the firearms and leave the car, as an instrument that was used to transport the firearms. So that is, like, it is an exhibit, a truck itself, because it was used to transport drugs.

**ADV BALOYI SC:** So are you saying it is police practice to ...[intervenes].

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** In all cases, to confiscate the truck?

**WARRANT OFFICER PHAKULA:** Yes, it is, Commissioner.

**ADV BALOYI SC:** Okay. We know in Port Shepstone they did not confiscate the container. They found drugs in a

container. They did not confiscate the container, which carried the drugs in it. This is where they found them. And these are people who are experienced, unlike you, who are experienced in drug busts. At no point was it even the discussion there to take in the container. And I put this to you to suggest that you are making up an explanation for a decision that is not justifiable by the facts of what you guys were dealing with here. It is just not justifiable, and you are making up an explanation.

10 **WARRANT OFFICER PHAKULA:** No, Commissioner Baloyi, I am not making up an explanation. In most cases, the vehicles that are transporting those, whatever the exhibits, that vehicle has to be impounded.

**ADV BALOYI SC:** Ja. Well, lastly, you have not been involved with drug busts like this, you have said, so you do not know. I think you could have said that to me when I said the container was not confiscated. You could say, well, I am not involved with that kind of work ordinarily, so I would not know that that is not necessary to do.

20 **WARRANT OFFICER PHAKULA:** Okay, Commissioner.

**ADV BALOYI SC:** Thank you.

**ADV KHUMALO SC:** Warrant Officer, let us just follow up on paragraph 35 of your statement on page 11.

**WARRANT OFFICER PHAKULA:** Okay.

**ADV KHUMALO SC:** So according to you, the initial plan

was that the truck driver was going to drive the truck to the SAP13 pound.

**WARRANT OFFICER PHAKULA**: Correct, Commissioner.

**ADV KHUMALO SC**: And that is the one in Ekurhuleni?

**WARRANT OFFICER PHAKULA**: No, no, no, there is one about two kilometres away from the crime scene, not even two kilometres from where the crime scene happened.

**ADV KHUMALO SC**: So it was going to be the one in Johannesburg?

10 **WARRANT OFFICER PHAKULA**: At Aeroton, yes.

**ADV KHUMALO SC**: At Aeroton. And who was going to go there with the truck driver?

**WARRANT OFFICER PHAKULA**: We had a lot of members on the scene. It could have been any of us, Captain ...[indistinct] myself or ...[incomplete].

**ADV KHUMALO SC**: So the crime scene was going to be moved to the SAP13 pound because it is the container that is behind the truck or on top of the truck. So the truck was going to go with the container to the pound?

20 **WARRANT OFFICER PHAKULA**: Yes, yes, that would be after ...[intervenes].

**ADV KHUMALO SC**: Yes.

**WARRANT OFFICER PHAKULA**: After the whole crime scene is done.

**ADV KHUMALO SC**: And then what was the plan with the

van? What was going to happen with the black bakkie?  
According to you and Mashaba and Magane, what was going to happen with the bakkie?

**WARRANT OFFICER PHAKULA:** No, no, that discussion with the bakkie it was, we never entertained it. We were not going to entertain it anyway.

**ADV KHUMALO SC:** So you were not going to go to Alberton to book the exhibits at SAPS13?

**WARRANT OFFICER PHAKULA:** No, no Commissioner.

10 **ADV KHUMALO SC:** You never had that discussion?

**WARRANT OFFICER PHAKULA:** No, no.

**ADV KHUMALO SC:** So why did you initially wait for them in Alberton if that discussion never took place, because remember you said you were supposed to meet them at the police station.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** When things took a turn, they called you to come to Aeroton.

**WARRANT OFFICER PHAKULA:** Remember, Commissioner,  
20 I was guided by Magane as I was coming to assist him.

**ADV KHUMALO SC:** Yes.

**WARRANT OFFICER PHAKULA:** If he says he is on his way to Alberton or he is coming to Alberton, I would go and wait for him where he says he is going to.

**ADV KHUMALO SC:** So the initial plan was that these

exhibits were going to be driven to Alberton, to be booked at a police station in Alberton?

**WARRANT OFFICER PHAKULA:** Yes, but I was not aware of the magnitude of the exhibits.

**ADV KHUMALO SC:** Why else would you have waited for them in Alberton, because these trucks were never in Alberton. Remember the truck moved from Roodekop.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** And then it went to Aeroton. And  
10 Roodekop is not in Alberton. We have established that it is near Spruitview.

**WARRANT OFFICER PHAKULA:** No, it is in Alberton, Commissioner.

**ADV KHUMALO SC:** No, no, I know where Alberton is. Roodekop is in Roodekop. For it to get to the police station in Alberton, it just was not going there. It went to Aeroton.

**WARRANT OFFICER PHAKULA:** No, Commissioner, if I may assist, Roodekop, the policing precinct of Roodekop is Alberton.

20 **ADV KHUMALO SC:** But the truck moved from there to Aeroton.

**WARRANT OFFICER PHAKULA:** With that I cannot answer, yes, Commissioner.

**ADV KHUMALO SC:** And as it was moving to Aeroton, that is when you were called and you were told to wait in

Alberton at the police station.

**WARRANT OFFICER PHAKULA:** No, it was after he opened.

**ADV KHUMALO SC:** Yes.

**WARRANT OFFICER PHAKULA:** Yes, after he opened in Aeroton that he said he is coming to Alberton.

**ADV KHUMALO SC:** That is exactly what I am saying. So their plan was to take the exhibits to Alberton.

**WARRANT OFFICER PHAKULA:** Yes.

10 **ADV KHUMALO SC:** That is why you had to wait in Alberton.

**WARRANT OFFICER PHAKULA:** Yes. Yes, Commissioner.

**ADV KHUMALO SC:** And when there was interference, they then called you to come to the scene.

**WARRANT OFFICER PHAKULA:** I do not know, because I am the one who phoned them to find out how far is it, and that is when he said I should come to Aeroton.

**ADV KHUMALO SC:** And while you were at Aeroton, did you discuss what is to happen with the exhibits that were in  
20 the back of the bakkie?

**WARRANT OFFICER PHAKULA:** No, no, we did not, because remember, Commissioner, we were still waiting for Lieutenant Colonel Maluleka to come.

**ADV KHUMALO SC:** So you never had that discussion at all?

**WARRANT OFFICER PHAKULA:** No, no, no. As to where we are going to book it, no, no, we never discussed that.

**ADV KHUMALO SC:** But what did you think was going to happen to the exhibits once you got there?

**WARRANT OFFICER PHAKULA:** They were definitely going to be booked in Booyens SAPS.

**ADV KHUMALO SC:** In Booyens?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV KHUMALO SC:** Did you call the Booyens Police  
10 Station to prepare them for that?

**WARRANT OFFICER PHAKULA:** No, I could not, because the bakkie was already on the crime scene, Commissioner. I did not.

**ADV KHUMALO SC:** All right, thank you.

**ADV BALOYI SC:** Sorry, it is an unrelated question. You, what are the rules? I imagine there are rules or instructions about carrying a firearm on duty. What is the rule? Maybe let me ask differently.

**WARRANT OFFICER PHAKULA:** Yes.

20 **ADV BALOYI SC:** Are you required to have your firearm when you are on duty, because you are issued with a firearm for duty.

**WARRANT OFFICER PHAKULA:** No, it is not compulsory, Commissioner.

**ADV BALOYI SC:** It is not compulsory?

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** So they leave it to you to decide?

**WARRANT OFFICER PHAKULA:** You can, yes, I can put it like that. Unless if maybe there is an operation and where we are going to work, and then you have to have your full equipment with you.

**ADV BALOYI SC:** So you are going to an operation when Magane called you.

**WARRANT OFFICER PHAKULA:** Yes.

10 **ADV BALOYI SC:** You are going to an operation.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** Explain how you do not have your firearm if you did not know what you were going to find there, what kind of scene or operation you are going to walk into? How do you, you are at home when you get the call. You leave home to go to an operation. Explain why you do not have your firearm with you if you, if it is not that you knew exactly what was going to be happening there.

20 **WARRANT OFFICER PHAKULA:** No, Commissioner, it is two way. Perhaps had I had my firearm with me, it would have been we were going to rob or so.

**ADV BALOYI SC:** No, answer my question. Do not make up your own question and then give me an answer.

**WARRANT OFFICER PHAKULA:** Okay.

**ADV BALOYI SC:** I have asked you a very direct question.

Explain why you get a call to come and help at an operation and you are at home where your firearm is and you are now on duty. You have been told it is about drugs.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** It is an operation about a drug bust.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** You go and you leave. You make the decision to leave your firearm behind. Explain how that makes sense.

10 **WARRANT OFFICER PHAKULA:** No, we were ...[intervenes].

**ADV BALOYI SC:** And, yes, and I want to suggest that unless you knew exactly what is happening and what is intended to happen at the scene, if you knew what the scene was about, I would understand why you left your firearm behind. If you did not know and all you knew was it is you, Magane, and Mashaba at that point, you are going to be joining these two people and you have been told it is a drug bust, why does it make sense that you leave your  
20 firearm behind?

**WARRANT OFFICER PHAKULA:** No, Commissioner, remember before I left or, I phoned Captain ...[indistinct] my immediate Commander and the initial, like when I left my house, I was going to meet Magane at Alberton Police Station, of which is also a safe place. That was my thinking

about it. So I never thought it is going to be dragging to other areas. My intention was to go to meet with him at Alberton.

**ADV BALOYI SC:** In fact, with that answer, if you are going to meet him at Alberton Police Station, why are you even going? He is going to the police station. He has the exhibits. He has the haul. He does not need you at the police station. You actually do not need to be calling everybody. You do not need to call LCRC, the trouble that  
10 we have put you through. You do not need to call K9. You do not need to do anything, to call anybody, because on this version, you are just going to a police station. So the operation, they have done what they need to do, and now they are meeting you at the police station. Explain that, unless I do not understand something. Just clarify it, perhaps.

**WARRANT OFFICER PHAKULA:** Yes. Remember, Commissioner, Mashaba and Magane are not, as he conceded here yesterday, are not well-clued with, I might  
20 not be as well-clued as they are, but the reason would have been to assist them in statement-taking, booking of exhibits in the SAP13 and all that.

**ADV BALOYI SC:** But they are taking the stuff to a police station.

**WARRANT OFFICER PHAKULA:** Yes.

**ADV BALOYI SC:** So why are you calling K9, for example? Why are you calling the many people that you called here to come and assist? If you are going to, if the drugs, on your understanding, are being taken to Alberton, where there are resources, there are people there, why are you mobilising all these resources?

**WARRANT OFFICER PHAKULA:** Obviously, the Dog Unit to confirm the exhibit and who else? To assist with taking down of statements and booking the exhibits in the SAP13, I  
10 would say.

**ADV BALOYI SC:** Thank you.

**ADV MOSIKILI:** Chair, no further questions from our side.

**CHAIRPERSON:** Thank you, Mr Mosikili. Warrant Officer, thank you very, very much.

**WARRANT OFFICER PHAKULA:** Thank you, Commissioner.

**CHAIRPERSON:** You are excused. Let us adjourn and resume at 9:30 tomorrow.

**INQUIRY POSTPONED TO 14 MAY 2026**

**INQUIRY ADJOURNS**

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