

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: I01-2017

DATE: 2017-08-10

INQUEST INTO THE DEATH OF:

AHMED ESSOP TIMOL

BEFORE THE HONOURABLE MR JUSTICE MOTHLE

ON BEHALF OF THE NATIONAL PROSECUTION

AUTHORITY:

ADV PRETORIUS

ADV MALOTWA

ADV SINGH

ON BEHALF OF THE FAMILY:

ADV VARNEY

ADV MUSANDIWE

ADV FAKIR

ON BEHALF OF THE SAPS:

ADV LETHOLE

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PROCEEDINGS ON 2017-08-10

COURT: Yes, Dr Pretorius?

MR PRETORIUS: Thank you, M'Lord. M'Lord, just a few things that I think I need to clear up to the court. Some new witnesses came to the forth and we really worked very hard trying to sort out until late last night we worked, but there is really a lot of work that needs to be done and there is even further new witnesses that we have got to sort out. I know it is not an open ended matter, but still we have got to listen to these witnesses and ensure that it is not Trojan horses that has been
10 dumped on us, M'Lord so it is very important that we take it carefully and that we consult with these witnesses, M'Lord.

We have got other witnesses for the day, we did consult with Mr Adam, my learned junior will lead her... his evidence, M'Lord but there are two other witnesses that the state is really looking and checking the records and consulting with the witnesses and we must just take it carefully, M'Lord.

COURT: Well, initially we had plans to stop all evidence tomorrow, but then as I said I will only be prepared to listen to witnesses that would be or would have been in the vicinity of John Vorster square on
20 that day, on the 27th of October 1971. Any other further witnesses we cannot leave this thing open ended. If those witnesses are members of the security branch who were in John Vorster square or members of the uniformed police who were there or a civilian who was there, I will be prepared to listen to such witnesses.

Beyond that I think we need to reach a stage where we must

begin to look into this thing.

MR PRETORIUS: As the court pleases, M'Lord. I am working with general Eleanor Groenewald in this regard and we are really checking to see that it is relevant witnesses for this court, but some of them is also scared, M'Lord so it is also important that we check properly, M'Lord.

COURT: Ja, please go and do.. you have assistance of captain Nel, not so?

MR PRETORIUS: Yes, I have got the assistance... [intervene]

10 COURT: And let us ... how much time are you going to need?

MR PRETORIUS: M'Lord, I will work and we will work through the weekend till next week, obviously over the weekend we will see some of the witnesses, conclude, see if they are relevant, take their statements, so we will not be able to conclude before the weekend. I am thinking that we will go into next week at least till Tuesday, M'Lord.

COURT: Tuesday or Wednesday? Because if you are going to be consulting them, taking down statements, I would like to have statements received on Monday. Some of them can testify on Monday and Tuesday but then if there may be a need for rebuttal...

20 MR PRETORIUS: Yes, that is the point... [intervene]

COURT: ...witnesses by the other members of the security police then we will hear them on Wednesday.

MR PRETORIUS: Wednesday, exactly.

COURT: But let us try and keep it that way.

MR PRETORIUS: As the court pleases, M'Lord.

COURT: And because it will not help us to keep it open ended, we need to reach a stage where we conclude this.

MR PRETORIUS: As the court pleases, M'Lord but still it is very important because they came forward exactly because the court extended the invitation... [intervene]

COURT: Yes, yes I know, yes.

MR PRETORIUS: Exactly.

COURT: Yes, I know, some of them phoned my registrar's office, I must put it on record. These are security branch members and for
10 that reason then I think we will then have to extend until next week
Wednesday so let us hear the evidence that is available today.

MR PRETORIUS: As the court pleases. My learned junior will lead the first witness, thank you M'Lord.

COURT: Is there anything else you wanted to say, Mr Varney in regard to this?

MR VARNEY: M'Lord, nothing further from my side, we agree with the time estimations of the court and ... [intervene]

COURT: So in effect we will not sit tomorrow but we will sit on Monday, Tuesday, Wednesday next week to allow counsel time to go
20 and consult with the witnesses and get the information and send us the affidavits.

MR VARNEY: As the court pleases.

COURT: Mr Coetzee, are we agreed with that process?

MR COETZEE: Yes, yes M'Lord I am in full agreement, M'Lord as I have already also mentioned, M'Lord we ... there is a possibility of a

new member that might be implicated and I first will need the affidavits and the full allegations from these new witnesses to enable me to consult with them and also to see in what extent it impacts on the two witnesses that I am already representing to see what rebuttal evidence we need to put forward to Your Lordship and I am in agreement with the timeframe, that tomorrow be used very productively to try and resolve those issues so that over the weekend I can consult and then by Wednesday we can wrap up this evidence.

COURT: Yes.

10 MR COETZEE: Thank you.

COURT: You will advise Mr Varney, you will advise Mr Kadjee to hold on?

MR VARNEY: Indeed, we have already advised those witnesses, M'Lord.

COURT: Until we hear this. It may well be that this members of the security police were at John Vorster square might have ... might give evidence that might assist us in determining exactly what happened then. I am prepared to hear them, in fact I need to hear them and so Mr Kadjee will have to wait a bit.

20 MR VARNEY: Mr Kadjee will be on standby.

COURT: Yes, and so is Mr Rodrigues. We will not hear him tomorrow, we will have to hear first this police witnesses so that then if he needs to respond to what they have to say, he will then come in at the end and say that. So tomorrow he need not come.

MR COETZEE: Thank you, M'Lord I will inform him.

COURT: He must just prepare himself to be here sometime Wednesday next week.

MR COETZEE: Thank you, M'Lord.

COURT: Yes. We will proceed then.

MR PRETORIUS: Thank you, M'Lord my learned junior will take over.

MS SINGH: As the court pleases, M'Lord. M'Lord the state calls Mr Adam.

CLERK: Your full names and surname?

WITNESS: Abdullah Mohammed Adam.

10 CLERK: Do you have an objection in taking the oath?

WITNESS: No.

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

ABDULLAH MOHAMMED ADAM: (duly sworn statement)

COURT: Mr Adam, you may be seated. Just make sure you speak in that microphone. That one, the one in the middle. Yes, that is the official one. --- Thank you.

[laughing]

20 Yes, you may proceed, madam.

EXAMINATION BY MS SINGH: As the court pleases, M'Lord. Mr Adam, is it correct that you are in possession of your statement that is before you? --- That is right.

You confirm that is your statement? --- True.

You confirm that is your signature? --- That is right.

You confirm the contents thereof? --- Yes.

M'Lord, I beg leave to hand in the original to His Lordship.

COURT: Yes.

MS SINGH: May it be marked H20, M'Lord.

COURT: X?

MS SINGH: H, H20, M'Lord.

COURT: Yes?

MS SINGH: Thank you. Mr Adam, how old are you? --- Now 70.

Mr Adam I just want you to raise your voice a bit so that the
10 people in the back can hear as well. --- Can I stand?

You can stand or you can be seated. --- Is it better?

COURT: Are you having difficulty with that? --- No, it is... [intervene]

The interpreter will help you there. You can speak up Mr
Adam, all those mics will pick you up. --- Okay, thanks.

MS SINGH: Thank you. Mr Adam, Dollars Garage do you know it? --
- Yes.

How? --- I worked there.

Can you inform the court as from when you were working at
Dollars Garage? --- Since 1970. I am still [indistinct] 47 years. I am
20 on a part time basis with them still but the name have now changed.
The ownership has now changed.

What I am going to do, you must just watch His Lordship's
pen and just wait for him to write and then we will come back to you,
alright? --- Okay.

You say you had been working there for 47 years? --- That

is right.

Alright, you are working there at the moment on a part time basis? --- Yes, that is right.

What are you doing there, Mr Adam? --- I am an assistant accountant.

In 1970 am I correct to say that this place of employment was known as Dollars Garage? --- That is correct.

Presently, what is it known as? --- Now is called Kudeko.

Can you spell it for the court? --- K U D E K O Auto Body, it
10 is a panel body shop.

This Kudeko Auto Body, in relation to John Vorster square as it was known and now is Johannesburg Central, how far is it from each other? --- Right opposite.

Now there was an incident that occurred in 1971 as a result of why you are here today. Do you confirm that? --- That is right.

Alright, tell us what happened? --- It was about mid morning around our tea time when the boss called me in.

Stop there. Where you in at Dollars garage on that day? ---
That is right.

20 We will come back to the time. --- Okay.

Yes, your boss called you in and then? --- And then he said there is a commotion taking place across the street.

Yes? --- I walked across.

Yes? --- And there laid a body in the bush, in the scrubs.

Where was this body laying, in the scrubs where? --- In the

scrubs... shall I say the street is Main Reef Road...

Okay. --- Right, and the body was laying near the building.

Which building is this? --- to John Vorster square that time,
now Johannesburg Central police station.

Were you the only person there, Mr Adam? --- No, there
were quite a few gathered there already.

Before we go on to what you saw, how long did it take you
from the time that you received the report up until the time that you
went across? --- Well, to cross a busy street will take you 4, 5
10 minutes.

Did you wait there long? --- As we got there, we were
pushed away, chased away.

Who chased you? --- Well, I assumed that the security
cops... police sorry.

It was who? --- Security.

Why do you say that? --- Because they were of strong
authority.

Were they in uniform, can you remember? --- I cannot
recall that.

20 Can you remember the race? --- Mostly white.

Was it only you that was chased away? --- All of us.

Can you estimate in time wise how long you stood there? ---
Two, three minutes.

Now this body that you saw, you said it was laying was it in
and around the scrub area? --- On the scrub, yes right.

In relation to the wall, can you tell us how far it was, if you can? If you can. --- Tow metres at the most, not even.

Could you tell the race of the person that was laying there?

--- No.

Could you see if anybody was around the body? --- No, I cannot recall that.

Sorry, I did not hear you? --- No, I do not recall that.

Can you recall how the body was laying? --- Well, it was laying... I was about 10 metres away and what I could see.

10 What did you see? --- A body laying there.

Just a body laying there? --- That is right.

Position you cannot remember? --- I could say it was facing up because the shoe was pointed up.

So the body was laying on the back, shoe facing up? --- That is right, the body was laying on its back.

For the few... for the time period that you were there, did you see the body being moved? --- No, madam.

20 Can you remember whether it was one shoe pointing up, two shoes pointing up? --- No, it is too far... I think it... I cannot recall that.

Mr Adam, at the time that you crossed over the street to go to the area where the body was laying, was there any obstructions, any gates, burglar guards,... [intervene] --- No, at that time they had no burglar guards.

So it was just an open... [intervene] --- Open area, the

garden... the bush where the body laid.

After you went back across, did you go back into the building where you were working, did you stand around and look? --- No, for long though. We stood across the street and went back to my duties.

Did you ever see an ambulance coming by? --- No, madam.

Now, let us go back to the time. You said it was about mid morning around tea time? --- True.

10 Why do you remember this, Mr Adam? --- Because we look forward to our tea time, [indistinct].

I want you to take this slowly, we looked forward to our tea time, why? --- Because we did not have breakfast. We got up early... Slowly.

COURT: You say you started work early? --- No, we got up early.

You got up early? --- That is right, with no breakfast at home.

And what time did you start work? --- 8 o'clock.

20 8 o'clock, and what time was your tea time? --- About 10, quarter past 10.

You are sure about this? --- Hundred percent.

Now, at the time when you your boss called you, as you call him, had you had your tea? --- Not yet, the tea was served, that is why I was upset, I said why is he calling me now when I can have my tea.

Oh, they had just served tea? --- That is it, *ja*.

And he called you to say there is a commotion outside? ---

That is it.

MS SINGH: Thank you, M'Lord. Why would you not have breakfast before you left home, Mr Adam? --- Because we had to get up early.

Why? --- No transport.

When you say no transport can you elaborate for us? ---

We normally take the J M P busses those days, the red busses.

Yes? --- And it was mostly for whites. They only allowed
10 10 non-whites to a bus, but when the bus came around it was full. So
we had to wait for the next bus and the next bus and the next bus, so
that is why we had to get up early hoping that we will get some space
on one of the J M P busses in those years.

Did you later learn the identity of the person that had fallen?

--- Yes we heard about it.

Tell us how? --- It was a Moslem gentleman, firstly.
Secondly it was a school teacher from Roodepoort.

Did you know the name of the school teacher from
Roodepoort? --- No, we read it from the press only.

20 What did you hear, what did you read? Press? --- The
gentleman's name was Ahmed Timol and he was a school teacher of
Roodepoort.

How long after you had seen the body, observed the body,
did you find out that this gentleman was identified as Ahmed Timol? --

- Well in the press thereafter, was it?

During the entire time that you were employed at Dollars, did you ever see another body fall? --- No, madam.

Mr Adam, there was an inquest, a formal inquest that was held early in 1972, were you aware of that inquest? --- No.

Now, Mr Adam, I see that your statement that is before is dated today. --- *Ja*.

Can you tell the court when you were approached for a statement? --- You and some gentleman... ladies came along sometime in June.

10 Was it June of this year. --- This year.

Yes? --- Requesting anybody who had seen.

Where were you when you were approached by ... --- I was at work.

Whereabout? --- That is it.

At where you are working at the moment? --- That is it.

And your statement was obtained when? --- This morning actually.

May the court just bear with me. I have nothing further for this witness, M'Lord.

20 COURT: Thank you. Mr Varney?

CROSS-EXAMINATION BY MR VARNEY: As the court pleases, M'Lord a few questions. Mr Adam if we can return briefly to where you were when your boss called you in, you said you were having tea, is there a special tea place in the building that you had tea? --- No, no they served the tea in the office.

You said [intervene] --- At the table.

Okay, and can you describe where in the building your office is located? --- Behind, we got a street, right? Behind... in front of the street of John Vorster there is... where the boss used to sit in the office, right? Behind him were the offices that we occupied as clerical staff.

Will I be correct in saying in the front there was a filling station? --- That is right.

And that your offices were behind the filling station? --- His
10 office was the front of the filling station.

His office was at the... [intervene] --- In the drive... on the driveway let us put it that way to you, right? Our offices were behind.

Your offices were behind the filling station? --- That is it.

But the bosses office was ... [intervene] --- In the front, right in the front... [intervene]

.... filling station? --- That is it.

And do you think that because of the location of your boss's office in the front that is why he got immediate knowledge of the commotion? --- For sure, he had a full view of it.

20 I assume that your boss is deceased? --- Yes, sir.

So did the boss call you or did he... [intervene] --- He picked up his phone, we had that internal phone and he called me on the phone.

He said, come through? --- Come down.

And you went immediately? --- *Ja*, about 2 seconds later.

2 seconds later? --- *Ja*, about 2 seconds later.

So when you arrived in your boss's office in your evidence in chief he said there is a commotion and please investigate? --- Not investigate, he said what is happening there, have a look at it.

He asked you to go take a look? --- That is right, have a look, the commotion was there, people were there and...

So at that point did you then immediately attempt to take a look? --- Across, that is right.

And how long would it have taken you to cross the street? --

10 - It is a busy street, the cars are on both sides, 3 to 4 seconds.

3 to 4 seconds [intervene] --- Not 3 to 4 seconds, 3 to 4 minutes, sorry.

3 to 4 minutes to cross the road? --- *Ja*, to cross the road.

That long? --- Because it takes... it is a busy traffic, a busy street.

Okay, now you said that on arrival you noticed the body but at that particular point was there anybody else present near or around the body? --- *Ja*, there were people there already. That is why he saw the commotion.

20 Right, and how many people around or near the body? Approximately? --- I will not guess now.

But more than one? --- *Ja*, definitely, that is why he saw a commotion, people there.

A commotion. --- Gathering there, it was a commotion.

So we are talking at least a handful, maybe more? --- *Ja*.

And in your evidence in chief you made the assumption that these were all security branch... [intervene] --- Not all, because there were spectators as well... [intervene]

[indistinct] --- Because, we were chased away.

You were chased away. --- So of course they went away [indistinct] as well.

Do you think any spectators got very close to the body? Maybe next to the body? --- I do not know, I cannot recall.

Okay, in terms of spectators, can I ask you to try and recall
10 how many spectators you think were with you? --- There were quite a few... [intervene]

But more than one? --- *Ja*, definitely more than one.

Okay. Now in your evidence in chief you said that the body was about 2 metres from the wall, just to be clear you are not talking about the edge of the building, you are talking about the... [intervene] --- The edge of the building.

You are talking about the edge of the building, okay. Did you notice a small wall that separated the garden from the pavement?

COURT: What is your answer? Just speak out loud. --- Sorry, there
20 is a wall, like a step... like a barrier from this pavement.

MR VARNEY: Yes, but a very low barrier... [intervene] --- *Ja*, you can step over it, definitely.

And Mr Adam, just to assist the court, you cannot just nod your head because we need your answer on record. --- Oh, sorry.

So you have to say yes or no... --- Yes, it is a small wall.

Thank you. You mentioned that you stop... correct me if I am wrong, about 10 metres away from the body. --- That is right.

Were you standing on the pavement overlooking the wall? - -- That is it, looking towards the wall... not that wall, that wall was there.

That wall was there? --- That is right.

But you did not step over the wall? --- No.

So you were not in the garden? --- That is it.

Were you on the pavement or... [intervene] --- On the
10 pavement, that is right.

On the pavement... [intervene] --- Not on the road.

Now you were able to get a glimpse of the body before you were chased away? --- That is it.

Can you just remind us how long were you able to stare at the body? --- Not even 5 minutes, thereafter to disperse.

Not even 5 minutes? --- *Ja*.

Was it as long as 5 minutes? --- Less than 5 minutes I should say. Just got it and they say, move it up.

Yes. Now just to return to the orientation of the body. You
20 have testified that the body was on its back and... [intervene] --- The shoe was pointed up.

The shoe was pointing up and I notice you have only said one shoe. --- You could not see very much, as I said the scrub was there, the body was there, I could not even see his clothes, what clothes he had one.

Right, did you per chance see another shoe, maybe laying in the garden? --- No.

And may I ask you, in which direction was the head pointing? --- East.

Where would east be? Would it be away from the building [intervene] --- The guys stand forward looking at the building, it will be on my right, the head was in the east, the feet was on the west.

So, just assist the court, would the feet had been facing the double decker highway? --- Yes, that is right.

10 Did you see any people coming out of the building, out of one or more entrances to John Vorster square, while you were standing on the pavement, did you see people coming and going from the building? --- No, my focus was on the body.

Okay, and your testimony is that there were people there already? --- That is it.

Did you see the body being removed from... [intervene] --- No, I did specify that on my ...

Yes, we just ... [intervene] --- No, I did not see an ambulance or the police van or anything, taking away the body.

20 So by the time you were chased away, the body was still there? --- That is right.

And at no time did you see individuals pick up the body? --- No.

And while you were there and there were police officers around the body, did you see what they might have been doing to that

body? --- No.

M'Lord, no further questions.

COURT: Thank you. Mr Coetzee?

CROSS-EXAMINATION BY MR COETZEE: Thank you, M'Lord. Sir, at your filling station there where you worked, were there customers filling up their vehicles at that stage? --- Oh, it can it is quite a busy garage, quite a busy petrol station.

And from what you could observe did any of the customers also cross the road? --- [Indistinct]

10 Did you see anybody? --- I did not take notice.

Can you remember what day of the week this was? --- No, 47 years ago, no.

It is not possible... [intervene]

COURT: You cannot remember that? --- No, the day no.

Yes, just say that, I see you are shaking your head. --- Oh sorry.

The microphone will not pick that up. *[laughing]*: --- No, there was [indistinct] of the day.

MR COETZEE: Did you wear a watch at that stage? Did you wear a
20 watch? --- Yes.

Did you specifically take note of the time when you received the call from your boss to go? --- It was tea time, as I said, it was tea time.

Yes, I am asking you, did you look at your watch to see at that stage what time it was? --- No, tea was only served between 10

and quarter past 10.

Do you only have one serving of tea per day? --- Two.

And when is the other tea? --- 1 o'clock

At 1 o'clock? --- 1 to quarter past 1.

You do not have an afternoon tea [intervene] --- No, no we do not.

Sir, when you saw the body can you remember whether anybody was touching the body as it laid on the floor, on the ground there? --- No, no I cannot recall that.

10 And after you were chased away, what did you do? ---
Went back to my duties.

To do what? --- To my duties.

To have your tea? --- My tea was cold by then.

Sir, just to get that clear, so you returned and you continued immediately with your duties? --- That is it, no not immediately, it is quite a while to walk back to your desk.

Yes. --- Right and I asked for a new cup of tea, a warmer cup of tea.

20 And you had your cup of tea and then you did your duties? -
-- That is it.

So, then did you not go and report back to your boss to say to him this is what the commotion was about, there is a dead person laying on the floor in front of John Vorster square? --- I just said there is a body laying there, that is what I told him.

Yes. So this must have been quite a important event, well a

shocking event that [intervene] --- Horrific is the word, more like horrific. I was scared.

Did you tell people about it, the fact that you saw it, did you make it known to people that you actually saw the body laying there on the ground in front of John Vorster square? --- Of course, I [indistinct] said to my friends.

And I suppose that you read also the newspaper reportings quite diligently to find out what it was all about? --- No, not at that time, no. No, I did follow the inquest thereafter.

10 Did you not? --- No, but among the community we were speaking, if you lost a gentleman, he was a school teacher and he was from Roodepoort.

Yes, and in the newspaper clippings and what you have read, was there any time or did they say that he fell at what time did he fell? --- I never read that ... I never saw the report.

So, when you returned did you continue to watch what was happening and could you see how this event unfolded with [intervene] --- No, sir.

... what was happening whether the ambulances come, what
20 [intervene] --- No, because his office was in the front, our offices behind. It does not interlink or you cannot see, it is concealed completely.

So were you not curious, sir? Was this not something that jogged your curiosity? --- Of course, I was curious.

But you did not [intervene] --- I did not [indistinct] it was

disturbing, let us put it that way to you.

Yes, and did you at any stage make any notes with regard to what you saw there? --- No.

So, 46 years later you are asked about people... about this event and you vividly remembered it? --- That is right.

As well as the time? --- That is it, the time was very clear.

Is there any specifically reason, I mean was there anything that made you specifically remember that, and why I am putting this to you, sir is that 46 years is a long time and if this incident was not of
10 such a nature that it jogged your curiosity for you to be involved to want to see what is happening to want to read what is happening, why would you remember the time of this incident, 46 years later? --- Because I repeat myself, I was [indistinct] my tea and my sandwich at that time.

Sir, the shoe that you saw that pointed upwards, did you only see a shoe pointing upwards, or did you see the whole body pointing upwards? --- The body was in the scrub, right the feet was sticking out, so the scrub blocked the vision, that is why I could not see the nationality nor the person.

20 So you basically just saw a shoe pointing up? --- That is it.

Yes. Sir instructions from the police there is that this matter happened in the afternoon in the vicinity of 4 o'clock. At what time do you finish working? --- 5.

Did anything else happened that day that draw your attention towards John Vorster square? --- No.

There were no sirens going there? --- No, that I would recall, no.

The street in front of John Vorster square at that stage, you have already indicated that it is quite busy with vehicles travelling there, and what was the situation with pedestrians walking on the pavement, either on your side of the street or on the side of the police station? --- What was their reaction?

Yes. --- I do not know, they may have gone across, I cannot recall.

10 But, the time you have worked there and obviously you have been there frequently in that time, were there a lot of pedestrians walking up and down on the street area there in the mornings? Is it a busy section of Johannesburg city? --- It is. There must be people walking up and down.

Thank you, M'Lord I have got no further questions.

COURT: Thank you. Any question?

MS SINGH: None, M'Lord.

COURT: Thank you. Thank you Mr Adams.

20 MR VARNEY: M'Lord, with your leave, I wonder if I can just clarify two very quick points.

COURT: Yes?

MR VARNEY: Mr Adam from your vantage point, could you see whether the individual laying in the scrub whether he was alive or dead? --- No.

You could not see breathing or anything of that nature? ---

No.

Lastly, if the body was blocked by scrubs obscuring your vision, how was it that you could still see that the head was pointing towards the east? --- Because his feet was at the left.

No further question, M'Lord.

COURT: Yes. Any questions arising out of that?

MS SINGH: None, M'Lord.

COURT: Yes. Thank you Mr Adam, thank you very much.

MS SINGH: M'Lord [indistinct] an appropriate time to take a tea
10 break.

COURT: The day is almost over. You would like to take a tea break?
Would you, I would like to hear counsel because we started with a
meeting this morning. I am ready to proceed.

MS SINGH: As the court pleases, M'Lord.

COURT: Yes.

MR VARNEY: M'Lord, we are entirely flexible, if the court wishes to
proceed, then we will be ready.

COURT: Let us proceed. How many more witnesses do we have?

MR PRETORIUS: Just one, M'Lord.

20 COURT: Yes, then let us proceed, we will adjourn afterwards.

MR PRETORIUS: M'Lord, our next witness is the forensic pathologist,
Dr Steve Naidoo, with your leave I would like to call him to the stand?

COURT: Yes.

CLERK: Your full names and surname?

WITNESS: My name is Sedwyn Ramloo Naidoo.

CLERK: Do you have any objection in taking the oath?

WITNESS: No.

CLERK: Do you swear that the evidence that you are about to give is the truth, the whole truth and nothing but the truth, please so raise your right hand and say: 'So help me God.'

SEDWYN RAMLOO NAIDOO: (duly sworn statement)

COURT: Mr Naidoo, Dr Naidoo you may sit down if you wish to. ---
Thanks, I

You prefer to stand? --- I prefer to stand, thank you.

10 Yes?

EXAMINATION BY MR VARNEY: Dr Naidoo, firstly thank you for returning to the stand and thank you for travelling up from Durban to be with us today. Dr Naidoo as you are aware you have already provided evidence before this court, expert evidence, and you have already submitted a report to this court. You are further aware that the court has requested you to return in order to answer a discreet question in relation to the time of death. In particular whether it could have been possible for Mr Timol to have fallen and died in the early hours of that day as in the morning as opposed to later that afternoon.

20 Dr Naidoo have you provided a further report dated 9th of August titled 'Supplementary medico legal report II'? --- Yes.

Your Lordship my junior has just advised me that we have not as yet handed up this particular report.

COURT: Yes.

MR VARNEY: I would like to do so now, and the parties have a copy

and we would like to mark it Exhibit C17.

COURT: C17?

MR VARNEY: Yes. Dr Naidoo your report deals with the question of timing but it also deals with other issues such as a certain head injury. We are only going to deal with the question of timing this morning. Your submissions in relation to the head injury are in writing and will be before the court, but just to advise you that this morning's testimony is confined to the question of timing. Now, Dr Naidoo in your report you have set out the extents and limits of medical science
10 in determining the time of death. --- Yes.

Can you set out for the court what those are? --- In my own words, not quoting the author that I have cited, one of the... because the very important focus of the medico-legal scene examination not the autopsy, the scene examination is to determine the cause... the precise time of death. It is also important to recognise that it can only be expressed in a range and time between to knowns and that is the last time... the two knowns are the last time the deceased was in fact confirmed to have been alive and the second known is the last time.. or the time he was found dead or known to have died.

20 We know that the time of death exist between those two points and to establish that is an estimate, an estimate that can be narrowed with scientific examination and testing to the best we can do, but it is still expressed as a range and it is still an estimate. I would like to just specify that when you express a range it is accurate in that the time of death is within that range, but it is not very precise

because you cannot narrow that range adequately to the way we would like to have it.

COURT: That will be the doctor's examination in terms of time? ---

Yes.

And that would be independent from other factual evidence that may be around? --- That is right, purely on the scientific medical evidence, M'Lord.

Yes, if we are to assume that there were no witnesses and a body has been found, and there is no information indicating when the
10 person passed on, so the doctors examining the body would be able to work within a range? --- That is correct.

Taking into account what? --- The early changes after death, in the category that we call early post-mortem changes and there are three or four principle ones and we use that ... those because we know the ranges to establish that range and pronounce on that range for when the death occurred.

The reason why you were recalled, doctor is that we are having evidence here where in terms of Mr Rodrigues, according to him Mr Timol died late in the afternoon, around 4 o'clock. --- That is
20 correct.

Just after he fell. Then we have evidence, part of it you heard it this morning that the fall occurred mid morning. --- Yes.

That is the second witness who says that, and there is another witness again who placed it in the morning. --- Yes.

Now, when I looked at the report, medico legal post-mortem

examination, it states here on the first page that the deceased was found dead as informed on 27 October 1971. This is now Dr Scheepers writing. --- That is correct.

Then he says at in brackets (the time of death was not recorded.) --- That is correct.

Now, I take it there is a difference between the time of death and the time when the doctor confirms or declares that a person is dead? --- Yes, M'Lord.

Now, here you point out in your report about what Dr Kemp,
10 who was first on the scene, said concerning the ... his declaration of death. I thought I saw it here, it must have been on the... I think it is on the.. .where you are quoting the Afrikaans version, as well as you give an English translation. That is on paragraph 7. --- Yes.

Of this report that I have just received now. --- Yes.

And what do you make of this? Assuming he was right, he was called in at 15:55 and he arrived at 16:05 according to what you have written here, but you took this information from his affidavit? --- That is correct.

Yes, and he examined the body and he concluded in
20 Afrikaans as follows: *'Waar die liggaam van 'n Indier man aan my uitgewys was. Met ondersoek het ek vasgestel dat hy reeds dood was. Hy was pas dood.'* He made it recent, 'pas' 'recent'. Now in light of this and the evidence that I have, that is the difficulty I have, that is why I asked you and Dr Holland to come through and help me clear this. What was the time of death? --- Yes, allow me to just

state then to rephrase what I think the court... to see if I am correct, the court wants to understand the use of the word 'pas dood'. The use of the word 'recently dead person' I think that is the call need today for this court and I would like to state that the way we see it as forensic pathologist, as a doctor, recently dead would mean a death that is fresh but not exhibiting any signs of any obvious post-mortem change.

To the ... the short answer is that I would believe that recently dead would... because you are not seeing any changes of
10 decay, it can range in my estimate between half an hour after death to about 24 hours.

Recent would mean that? In your view? --- Yes, because M'Lord there is hardly any way to differentiate in that range of time between a body that has one hour.. or dead for an hour or dead for several hours, unless a proper examination was conducted.

Well, I am unable to find in the report whether, for example it is known that the rigor mortis sets in after a person passes on, and the determination of the post-mortem lividity would give an indication as to more or less when death could have occurred. --- Yes.

20 That is what most of the specialists point out that you look at the rigor of the body, the rigor mortis of the body and the post-mortem lividity. --- Yes.

Now, I could not find that on the report as to an indication. I guess Dr Scheepers was not ceased with the problem, because he was not on the scene. He did a ... he did the post-mortem on the 29th

and Mr Timol passed on, on the 27th. That was about 2 days thereafter. So the time of death was not really his pre-occupation but then it has become an issue here before us and that is why you have been called to come and assist us, whether from your reading of the post-mortem and other evidence around it, and whether it would be possible for Dr Kemp to express this view even though he came later in the day. I just want to have you assist us in that one. --- Very much so. My opinion is that within a space of a few hours there is hardly any, well there is no record of that, of what he observed but
10 there would hardly be any differences in the observations of a person who died within an hour or within a few hours.

The reason for this, M'Lord is that most medico legal death attendants at the scene, would they be clinical forensic practitioners or district surgeons as they used to be called, or a forensic pathologist, would look at specific changes, normally would look at specific changes and that is rigor mortis, live mortis, lividity and alga mortis that is the progressive change in temperature, the drop in temperature, to make an assessment like that.

It is not my expression is that in my report is that it is not as
20 if the forensic death scene attendant, unlike the paramedic who would look for signs of live that is immediate signs of live of death in order to decide whether to start resuscitation or not. A forensic death scene attendant would be looking at post-mortem changes, the very early ones and those post-mortem changes will begin and I am going to give the widest range in time and they would begin at about half an

hour, the early post-mortem change of lividity but whether it be perceptible at half an hour, it just depends on things like skin colour etcetera.

Right up in the South African context of the weather and climate, say I would put it at 24 hours. So, the early post-mortem changes that a forensic death scene attendant would be looking at, they would hardly ... there would be changing, dynamically changing but would be hardly perceptible to the ordinary eye, unless you do a careful examination in that time. I do not know what sort of
10 examination that Dr Kemp had done at that stage, so it is impossible to determine, to determine that.

We just go on its record. In a recent death does not necessarily mean a death that is just a few minutes past. It could be several hours passed.

Yes. --- From the prospective of the forensic examiner at the scene.

Thank you, very much.

MR VARNEY: Thank you, M'Lord. Dr Naidoo, if I can just draw your attention back to the post-mortem report, paragraph 3 of the schedule
20 of observations. --- Yes?

And I think this should be brought to the attention of the court. It says: 'Secondary post-mortem changes: None.' --- That is correct.

And do you make of that entry? --- That the body had not started to alter and decompose, that the body was reasonably intact

and not exhibiting any changes of decomposition.

Alternatively as you have testified a few minutes ago, perhaps Dr Scheepers saw no need to make any comments on that aspect. --- Yes, of course yes, that is a very common possibility that the autopsy practitioner may neglect to describe that adequately.

You also mentioned in response to a question from the court that paramedics who are typically on the scene first carry out some kind of standard death declaration. --- Yes.

Can you describe to the court what that typically is? ---

10 Well, what paramedics would do, they would look at ... the emergency practitioner would do is look at signs of life and one of the first things he would do is feel for a pulse and the pulse would be... not so much at the wrist, they tend to go for the larger [indistinct] vessels, the stronger pulses such as in the neck. They will osculate, listen to the heart beat, for a heart beat at the same time and also observe for breathing, looking at expansion or the movement of the chest and then of course look at signs of neural activity such as in particularly looking at the eye, looking at the papillary response and maybe a gag reflex, etc.

20 So what you are looking at for signs of life and then making a decision as to if the signs of life is there, I would immediately institute artificial respiration, or resuscitation if I was a paramedic.

And your report also makes reference to something called PMI, post-mortem interval. --- Correct.

And that observations should typically be made of the early

post-mortem changes. If there are any observations in addition to the ones you have just mentioned, could you advise the court what kinds of observations would normally have been made? --- Additional to the...

Well in other words, what would be the objectives of an examination at the scene of death? --- Oh yes, the objectives of any forensic examiner at the scene would be to capture as much information so as to be able to reconcile the history that accompanies that event, with the findings, collection of paraphernalia that might help determine the nature of the death, observe the injuries or the lack of them, and of course determine the time of death. So those are probably the main cruxes or the main objectives of that examination.

I am actually just looking, I do not know ... a footnote that you have, footnotes, three it is on page 3, because it includes those observations but also determination of body core temperature. --- Yes.

So that is typically done at the scene as well? --- At the scene yes.

And you have also mentioned that typically one would make an observation around the condition and soiling of the clothing, blood stain patterns, typically there would be scene photography and as you said, collection of paraphernalia and other evidence? --- Yes.

But as we know, that is not available in this particular instance. --- That is correct.

Dr Naidoo, you have testified that the early post-mortem

changes observed from between half an hour to around 24 hours onwards. --- Yes.

When you say half an hour, is it possible that it could be less than half an hour? --- Oh yes, the range is never precise. It is quite an exact. It is a good working range but certainly, in fact what is believed is that post-mortem lividity the dependant sagging of the blood in vessels begins immediately after death within a few seconds, but it is only perceptible to the examiner from about half an hour onwards.

10 Just returning briefly to Dr Kemp's statement was filed in the inquest court. M'Lord, that is volume B page 44. You referred to this as a minimalist report. Would you describe that as satisfactory? --- If that was the total crime scene, or sorry not necessarily crime scene, we call it a death scene because it incorporates all deaths, if that was the total death scene examination report, then it is wholly inadequate and insufficient for any purpose whatsoever.

20 So, your report has several conclusions and one of them is that on the basis of what Dr Kemp had to say in his statement, on the basis from what you could gleam from the autopsy report, do you maintain that it is impossible to state what specific post-mortem stage the body was at? --- It is impossible to state a stage within the early post-mortem interval. Certainly we can state that the body was not decomposed, that rate of decay, because we know the body was reasonably fresh, or it would... according to Dr Scheepers who mentioned no post-mortem changes, but other than that it is not

possible to state at which state of post-mortem change the body was.

Yes, and perhaps to cut to the chase, the bottom line in answer to the question posed by the court, in your opinion on the available medical evidence, is it possible to say that this particular individual died in the earlier part of the day or died in the later part of the day? --- No, the medical evidence is not able to make that distinction and I do not believe and I stand here and I do not believe ... I stand here, I believe I can have the support of any reasonable forensic medical expert on the basis of the available medical
10 evidence, there is no way to make that distinction as to whether the body would have been... had died in the early part of the day or the latter part of the day, there is no way of saying it. I believe it can equally, it is equally possible that the body ... the person could have died in the earlier part of the day as it is possible in the later part of the day when discovered.

And the person of course is Mr Timol that you are referring to? --- Yes, I am referring to in this context, this particular case.

No further question, M'Lord.

COURT: Yes, just before I allow Mr Pretorius, I am again calling you
20 back to *hy was pas dood*. --- Yes.

Are you saying that the recent that is referring to, may be in relation to decomposition, when he said *pas dood* he may have come to that conclusion realising that decomposition has not set in? --- Yes, M'Lord may I state this – first of all we do not have, first of all I agree... [intervene]

Yes, I know there is no information here.... but I am trying to interpret this that Dr Kemp wrote which is really a paragraph. --- Yes, I do agree and let me just summarise by saying it is quite possible that Dr Kemp's ... because in his visible examination of the body, we do not know how long it took, because he did not see any changes of decomposition he says... he would have concluded in written form 'just dead' because there is no signs of decomposition, yes.

Okay. Yes, Dr Pretorius?

CROSS-EXAMINATION BY MR PRETORIUS: Thank you, M'Lord.

10 Yes, your conclusion actually we find it in paragraph 35, the second sentence there, subsequently it is set out there: 'It is my opinion on the available evidence that the deceased could equally have fallen in the earlier part of the day as much as it would be possible in the later part of the day when the body was first medically examined.' Is that your conclusion? --- That is correct.

Thank you, M'Lord.

COURT: Thank you. Mr Coetzee.

MR COETZEE: I have got no questions to the witness.

COURT: Thank you. Thank you, thank you very much Dr Naidoo. ---

20 Thank you, M'Lord.

We take note of the additional opinion you express in that report, but you need not testify about it. --- Thank you, M'Lord.

Thank you, thank you very much you are excused. Yes, Mr Varney?

MR VARNEY: M'Lord, we have no further witnesses for today. I am

of the view that Dr Holland can merely submit her report to you.

COURT: Yes.

MR VARNEY: At this stage we do not intend to call you subject to your directions, if you do wish to have her called we will make her available.

COURT: But for the record she expresses a similar opinion. She cannot say exactly what the time of death was?

MR VARNEY: That is correct, Your Lordship.

COURT: Is that what you say?

10 MR VARNEY: Yes.

COURT: Yes, let us have her report. There is no need for her to come and testify if we can just get her report. But I want to go through it first and then I [intervene]

MR VARNEY: And Your Lordship we would like to hand up her report as well as a few other documents. Perhaps we can hand the bundle to your clerk. M'Lord the first two documents are not Exhibits. The first document is an updated list of Exhibits as our internal list. The second document is an updated list of witnesses.

20 COURT: Updated list of witnesses, which one is that now? Volume M?

MR VARNEY: No, M'Lord I am now at C16 which is the supplementary report of Dr Shakira Holland.

COURT: Yes.

MR VARNEY: It has a letterhead saying Gauteng Province University of the Witwatersrand.

COURT: Yes.

MR VARNEY: We have marked her report C16.

COURT: Yes.

MR VARNEY: M'Lord, the next Exhibit is an affidavit from Mathondi Malautzi. She is an attorney at the legal resources centre, one of our instructing attorneys and her affidavit sets out her efforts in approaching the South African weather service in order to establish the time of sunset on the 27th of October 1971. Your Lordship we believe this may be of relevance in relation to the allegation of the
10 police that following the fall it was too dark to take photographs.

As you will note from paragraph 7 onwards through a method that was set out in this affidavit, the time of the sunset, well the estimate for the sunset on that day is 18:20:57, so essentially 21 minutes past 6. We then estimated that there would have been around 2 hours and 25 minutes between the alleged time of the fall by the police and the time of sunset.

COURT: Mm?

MR VARNEY: M'Lord the next Exhibit is an affidavit by Monica Dubey, we have marked this affidavit H18, M'Lord we do not intend to
20 call this witness. The import of this particular affidavit is that the deponent was detained in the early 1980's at John Vorster square and she was interrogated and one of her interrogators said that they will do to her what they did to Timol, which was to push her out the window.

M'Lord, the next Exhibit is a page from the Truth &

Reconciliation report. We have marked it H19. It discloses a finding at paragraph 125 that one of the interrogators alleged to have been interrogating Mr Timol, Captain Hans Gloy attended an interrogation course in France with other individuals, including Royris Swanepoel who is also features in the evidence. We will make reference to that in argument.

COURT: You say it is H19? I do not have H19 here.

MR VARNEY: It should be a single page, Your Lordship, it has got small writing. If you do not have ... [intervene]

10 COURT: No, it is not attached here. Yes?

MR VARNEY: And finally, Your Lordship we have Exhibit volume M, this has already been handed up in its original format.

COURT: Yes?

MR VARNEY: And they were called... there were the building plans which were rather large and cumbersome. At the court's request we have reduced these plans to A3 size which can now be easily filed.

COURT: Yes.

MR VARNEY: M'Lord, that conclude the Exhibits for today.

20 COURT: Thank you very much. And, so Dr Pretorius we are standing down until when?

MR PRETORIUS: I would suggest, M'Lord that we stand down till Monday. I will keep all the parties informed as the consultations and if any of the statement is gone finalised, I will give copies of the statements to the relevant parties, M'Lord. So .. .but I suggest that we stand down till Monday for the conclusion of all the witnesses that

should be seen, M'Lord.

COURT: Yes, I need to emphasise this again – it should be witnesses who were in the building in John Vorster square or around that building as at the time when Mr Timol passed on. It should be on the 27th of October, those are the witnesses that I would like to hear from, unless something out of the ordinary, but that is what I am interested in.

MR PRETORIUS: As the court pleases.

COURT: So that then we should come to an end on this thing. We
10 will then adjourn until Monday, 10 o'clock.

MR PRETORIUS: As the court pleases, M'Lord.

COURT: In this court room.

MATTER POSTPONED TO 14 AUGUST 2017

COURT ADJOURNS