IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: I01-2017

DATE: 2017-07-26 (AM SESSION)

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 SIGN
ON BEHALF OF THE FAMILY:	ADV VARNEY
	ADV MUSANDIWE
	ADV FAKIR
ON BEHALF OF THE SAPS:	MR LITHOLE

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PROCEEDINGS ON 2017-07-26

COURT: Yes Mr Pretorius?

MR PRETORIUS: Thank you M'Lord. M'Lord when we looked at the website when we did the record, we were concerned about the quality of the photos of the post-mortem that you can find, at the archives in this regard. We tried to enhance those photographs. I used Madeleine Fuller of the Missing Person Task Team and she helped me to enhance those photographs and we compiled an album just to help us.

COURT: Yes.

MR PRETORIUS: With those. And I ask that it be accepted as C7 M'Lord?

COURT: C7.

MR PRETORIUS: I have given copies to all the parties, and you have got the best copies of those photographs that we have M'Lord. C7. I have also asked her to help us with the TRC request M'Lord. She worked at the TRC, so she is presently busy with the request of the TRC M'Lord.

COURT: Yes thank you.

MR PRETORIUS: Thank you M'Lord.

COURT: I just want to find out from Advocate Coetzee.

MR COETZEE: M'Lord?

COURT: You have probably seen the Heads of Argument that were submitted by Mr Thompson yesterday?

MR COETZEE: I did indeed M'Lord.

COURT: Yes. Have you instructions to join in that application?

MR COETZEE: M'Lord the situation between my client and his client is different, in the sense that Mr Els did not testify in the original inquest. And that I can see from the summary in the judgment where the Magistrate summarises the evidence.

COURT: Yes?

MR COETZEE: He does not appear that he has testified. That makes it different from his situation, whereby his witness has previously fully testified and his record is not available. As such my client if called upon will have to testify as he is a witness. If the Court calls him he must come to Court.

COURT: Yes.

MR COETZEE: And he does not have that concerns as to having previous testified.

COURT: Thank you. I just wanted to know that so that ..... because it may impact on the programme as we go forward.

MR COETZEE: Thank you M'Lord.

COURT: Yes Mr Varner?

MR VARNEY: Thank you M'Lord. M'Lord before we call our first witness today Dr Shakira Holland we would also like to take care of some paper work and hand up certain affidavits and documents.

COURT: Yes.

MR VARNEY: M'Lord we have quite a few documents to hand up. I wonder whether I shouldn't hand up the Bundle now, so that as we go through them you will have them in front of you?

COURT: Yes? Have you marked these documents?

MR VARNEY: M'Lord the first two documents are just administrative operational documents. The first one is a revised list of exhibits.

COURT: Yes?

MR VARNEY: Obviously in draft dynamic form which will change over time.

COURT: Yes?

MR VARNEY: The second document is a revised list of witnesses which may also change over time.

COURT: Yes?

MR VARNEY: In terms of the exhibits, the first document is the curriculum vitae for Dr Shakira Holland. M'Lord we have marked that as C5.

COURT: Yes?

MR VARNEY: The second document is the curriculum vitae of Dr Steve R Naidoo.

COURT: Yes?

MR VARNEY: That includes a summary and the full CV for Dr Naidoo. We have marked that document as C6.

COURT: Yes?

MR VARNEY: The next document is an affidavit. It is the affidavit of Farouk Dimda and we have decided to add that affidavit to volume H, and we have marked it as H5.

COURT: Yes?

MR VARNEY: The next affidavit is that of Gadja Tottia. We have provisionally marked that affidavit as H6.

COURT: Yes?

MR VARNEY: Then the final affidavit is that of Frank Kenyon Dutton, and that affidavit is marked H7.

COURT: Yes?

MR VARNEY: M'Lord I can confirm that all the parties have been furnished copies of these documents.

COURT: Yes. Thank you.

MR VARNEY: M'Lord with your leave I would like to call Dr Shakira Holland to the stand.

COURT: Yes? Your full names please?

MS HOLLAND: Shakira Holland.

COURT: Do you have any objections to taking the prescribed oath?

MS HOLLAND: I have no objection.

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

MS HOLLAND: So help me God.

SHAKIRA HOLLAND (d.s.s.)

COURT: Thank you. You may be seated. --- Thank you M'Lord.

Yes proceed.

EXAMINATION BY MR VARNEY: Dr Holland firstly we greatly appreciate you taking time out of your exceedingly busy schedule to be with us this morning. Dr Holland I understand that you have prepared a report on the instructions of the legal representatives of the Timol family. Is that report titled Review of post mortem report on body 3911/71? ---

That is correct.

Do you have a copy of that report with you? --- I do.

M'Lord for the record that report is contained in volume C at page 135.

COURT: Yes? Have you placed before her the curriculum vitae?

MR VARNEY: Yes.

COURT: For her to confirm? You need not go through all of it but just to confirm her qualification?

MR VARNEY: Yes indeed. I am coming to that right now.

COURT: Yes?

MR VARNEY: Dr Holland you have provided us with a copy of your curriculum vitae. It is titled Curriculum Vitae Shakira Holland. Do you confirm that this is your CV? --- That is correct.

I would just like you to highlight a few relevant matters from your CV. Can you describe your current position and what you do? --- I am currently .....I am a senior specialist. I am based at the Forensic Pathology Services Gauteng, and a lecturer at the University of the Witwatersrand in Forensic Pathology.

Have you been doing that particular since 1st January 2008? --- That is correct.

And in terms of..... we have to come up with a job description for you ..... You conduct medico legal investigations of unnatural deaths. Could you set out a few of the activities that you would typically do? --- So the investigation of medico legal unnatural deaths involves firstly attendance at scenes of deaths and relevant history. Conducting

of the post-mortem examination which includes the autopsy and the relevant special investigations. Compiling of the post-mortem report and analysis of the special investigations as part of the report and attending Court.

You have also had a history of reviewing and providing medico legal opinions in inquest dockets? --- That is correct. That is part of our service delivery obligations.

You also juggle an academic career at the same time? --- That is correct. Because we are a joint appointment with the University at the Witwatersrand, we are involved with undergraduate training for the medical students and law students, and post graduate training for all our doctors that work in our service, including our Registrars. And those are doctors that are studying to become specialists in the field.

It is of some interest to us particular as lawyers here that I see from your CV that from 2006 to the present day you have been teaching forensic medicine for lawyers? --- That is correct.

You have also been giving practical autopsy demonstrations to law students, medical students and police personnel? --- That is correct.

Dr approximately how many post mortems have you conducted? --- Approximately 4 000 to 5 000.

Before 4 – 5 0000? --- That is correct.

Doctor can you explain to the Court how you prepared yourself in order to prepare your report, and what documents you might have examined? --- M'Lord I was asked to give an opinion on the post-

mortem report that was conducted on the deceased, on the original date of death which was in 1971. I received the original post-mortem report that was done by Dr Scheepers and I also got the post-mortem photographs that were taken as part of the report. In addition I went to the Wits archive library and I obtained the reports from Dr Gluckman who was an independent forensic pathologist that was asked to give an opinion on the case. So I obtained the histology from Dr Gluckman that was done on the slides that were taken at the time of the post-mortem examination. So once I had all those documents I then reviewed all the findings in those documents to be able to compile this report and make an opinion on the findings.

Thank you doctor. Doctor before we ask you to take us through your report you use certain medical terminology. Perhaps you can unpack those words for us in lay person's terms? In particular three terms. Abrasions, bruises and contusions. If you could just describe to the Court what you mean by those three words? --- Okay. So abrasions, contusions and lacerations and bruises ..... They are the four types of wounds that we see as a result of blunt force trauma. A bruise is where a blunt force has impacted the body resulting in the rupture of the blood vessels just under the skin. When we see what is the equivalent of a bruise on the internal organs we call it a contusion. Laceration is another wound that results when a blunt force has impacted the body, and this is essentially a tear in the skin. An abrasion is another form of wound that is caused from blunt force impact and this is where the superficial surface of the skin has been scraped away as a

result of contact with the blunt force.

Thank you doctor. Doctor is it so that certain injuries that are described in the post-mortem report are not visible on the photographs? --- That is correct.

So for example contusions on the inside of a lip wouldn't be visible on the photographs. And as you take us through your report perhaps you can indicate the significant injuries that are visible and those that are not. Doctor before we ...[intervene]

COURT: Just before you proceed. Doctor when counsel puts something to you to confirm. --- Yes.

Just say so verbally. --- Yes I was ...[intervene]

Don't just nod your head. --- Sure. I was just waiting for him to finish his whole statement.

Yes. Just say so verbally so that the transcript should reflect. --- Yes.

That you are nodding in approval. --- Yes.

Proceed.

MR VARNEY: As the court pleases M'Lord. So Dr Holland before we get to the specific conclusions that you have drawn on the basis of your study, in your report you have set out quite a large number of findings as a result of your review. I don't necessarily want you to take us through every single finding, but could you take us through what you would regard as your most significant findings? --- I will do so.

Thank you. --- So M'Lord if I can just explain? I think it is quite important to be able to explain the external findings as was documented

in the original post-mortem report to give you a picture of exactly what was found on the body, before I go into the discussion, because it will help to understand the discussion once we get there. I would like to start on the first page. Paragraph 1.1 that documents the external findings. There is a note written that where possible the wounds are labelled on the photographs that were taken at the time of the post-mortem examination. As was stated previously some of the wounds we cannot see them on the photographs. It could be that they were not photographed. They weren't actually photographed or the photographs are not of a good quality to show the wounds. In point (1) there is a fracture of the right elbow; (2) There is a fracture of the mid-shaft of the right femur. So the right femur is the thigh ..... the thigh bone. There is a subcutaneous haemorrhage over the lateral aspect of the left food. A subcutaneous haemorrhage just means a haemorrhage under the skin and it was on the left foot. The next point documents all the bruising that was found on the body. Point (1) that is labelled on the post-mortem photograph it indicated that there were two big bruises of the right side of the forehead, just under the right eye brow and five centimetres above the right eye brow. The next few bruises we are not able to see on the photographs document facial bruising and bruising to the right side of the neck and the right side of the shoulder as well as in both inflecular areas. So these are the areas above the collar bone. In point (2) which is illustrated on the photographs there is a comment that there are few bruises of the anterior right upper arm, and there is a large bruise of the lateral aspect of the right elbow and the right forearm

close to the elbow which cannot be seen on the photographs. There are further bruises on the back of the right forearm which again cannot be identified on the photograph. On the photograph on page 2 item 3 documents a few bruises on the right side of the chest. The next indicates a bruise of the right illetcrest, which is not documented on the photographs. So the right illetcrest would be the groin area. The next point is two big bruises of the lateral aspect of the right thigh which are not identifiable and then a big bruise of the medial and posterior aspects of the right knee which is also not identifiable. The next point indicates that there was a big bruise at the back of the right lower leg and the underlying muscles of the calf are contused, which is also not in the photographs. There was fresh bruising of the mucosa of the left upper lip. So the mucosa is the inner surface of the upper lip, a bruise of the left supra clavicular area situated three centimetres above the middle of the clavicle. So the clavicle is the collar bone, so this is above the clavicle. A bruise of the left shoulder tip. So at the back area on the top there was a bruise of the left shoulder tip, and multiple bruises of the ante lateral aspect of the left upper arm and the left side of the chest, and this is indicated in the photographs. There was a big bruise of the anterior left wrist which is not indicated on the photographs. There was bruising over the dorsal surface of the left hand and of the first finger of the left hand. So the dorsal surface basically means the back of the hand. A bruise of the left groin, which is identifiable, number 5. A big bruise of the left lower leg and ankle which is not identifiable. A bruise of the dorsal aspect of the left foot and dorsal aspects of the 2nd, 3rd and

4th toes. So again the dorsal aspect is the part of the foot that is not touching the ground. So the opposite to that. A five centimetre diameter bruise of the left posterior chest near the inferior board of the scapular. That is identifiable in point 6 on the photographs. Bruises of the left posterior chest which is not identifiable. Bruises of the left buttock which is not identifiable. Then bruises of the left posterior thigh which is shown in point 7 on the photographs. Further there are bruises of the left lower leg near the parietal fosse which is the area behind the knee, which are not identifiable. So that M'Lord is all the bruises that were described in the post-mortem examination. The next category of injuries are the abrasions that were identified.

Doctor can I just suggest that as you turn pages, you indicate that you are doing so? --- I will do so.

We are currently on page? --- Page 5.

Page 5 of your report and that is 139 of the record. --- Okay. So the next group of injuries will document the abrasions that were found on the post-mortem examination. The first point indicates two scratches approximately one millimetre wide and five millimetre long scratches of the middle of the forehead and just to the right of the centre of the forehead. So a scratch is a similar wound to an abrasion where the superficial surface of the epidermis has been scratched away, but it is linear in nature and is not on the photographs. The next point is a few scratches of the right side of the neck which are identifiable in the photographs as point (8). The next point is a few abrasions of the front and top of the right shoulder which is identifiable as point (9). A small

abrasion with scab formation over the middle third of the right clavicular area which is identified as point (10). A linear abrasion of the lateral aspect of the right elbow and the right forearm close to the elbow which is not identifiable. A few abrasions of the back of the right forearm which is not identifiable, and multiple small round abrasions over the lateral aspect of the right ileac bone which is not identifiable. Again this would be in the groin area. I am not on page 6. The next point indicates that there is an abrasion with scab formation of the right scapular which is shown on the photographs. A few irregular abrasions of the right lower back also shown on the photographs as point (12). There is a few abrasion of the left upper lip which is not identifiable. A small abrasion with scab formation of the left lateral neck situated three centimetres below the ear lobe, which is identifiable as point 13 on the photographs. A two point five centimetre by four millimetre abrasion with scab formation of the left forearm which is not identifiable. I am going on now to page 7. So M'Lord those were the external findings. So that documented significant bruising and abrasions and contusions on the body as well as fractures of the limbs. On page 7 we are now starting with the documentation of the internal organ findings. In the first point (1.2) the skull and scalp says that there are extensive scalp hematomas of the frontal areas bilaterally extending to the lower forehead. These are essentially bruises that can be seen on the inside of the scalp. So when we do a post-mortem examination we reflect the scalp forward and we are able to identify the bruising that may not be seen necessarily from the outside. So the frontal areas, if I may indicate

on this, is really just the front of the forehead. The similar with the scalp haematoma of the left occipital area which is the back of the head. The back of the head there was another scalp hematoma there. The next few points talks about base of skull fractures and they .....Base of skull if I may demonstrate? So M'Lord this is a model of a skull. During our post-mortem examination we remove the top of the skull so that we may examine the skull on the inside and the outside. We then remove the brain, so we can examine the brain and we can examine the inside or the base of skull. So the fractures that are documented talking about base of skull fractures, they refer to these areas. So in the front of the base of skull and the middle of the base of skull, and extending to the right parietal lobe which is the bone on the side of the skull. Okay. That ..... So those are the linear base of skull fractures. Then I would like to go to the last point which describes a depressed skull fracture of the left parietal bone with lose bone fragments. So this particular fracture is in this area. So this is the area of the parietal. This is the parietal bone of the skull and in this particular point they describe a depressed skull fracture which means that the outer surface of the bone was pressed into the inner surface of the bone, so that it impacted on the brain in that area. Why I want to illustrate this point quite carefully is that the base of skull fractures were not related to the depressed skull fracture. So there was no extension from the depressed skull fracture to the base of skull fractures or vice versa.

Doctor just a point of clarification. --- Yes.

Could you show the Court the positioning ..... or perhaps

attached to the bottom of the skull so we get a better sense of its location. --- Okay. So this would be the ...[indistinct] attached and the parietal bone is in this region M'Lord.

COURT: Is it the left side? --- The left side.

Okay. --- So towards the top of the head.

MR VARNEY: Thank you doctor. --- Then M'Lord going on to intracranial contents which is point (1.3). To summarise, I mean I don't need to go through every single point, but there was extensive damage to the brain which included haemorrhages and lacerations on the outer surface of the brain and within the brain substance itself. In point (1.4) eyes, nose and ears. Again I would like to illustrate that area on the skull model. So the first point indicates that there was a fracture of the nasal bone. So this is the bone which underlies the cartilage of the nose. Then there was a fracture of the left inferior orbital ramus in the par nasal sinus. So the left inferior orbital ramus indicates this part of the upper jaw or the maxilla, just under the eye. Then a fracture of the right inferior orbital ramus in the par nasal area, which is again in that area on the opposite side. So we had fractures of the nose as well as of the top upper jaws. Again in paragraph 1.5 mouth, tongue and thorax. I would like to illustrate where those fractures are. So there was a fracture of the right upper jaw between the upper lateral in-sizer and the canine. So this would be in this area just above the mouth, in that jaw, there was a fracture there and a fracture of the left upper jaw posterior to the upper left wisdom tooth. So that would be again in this area just above the wisdom teeth. And a fracture of the left lower jaw at the angle

of the jaw. So that would be at this angle just over there. In paragraph (1.6) .....Sorry I have moved on to page 8. In paragraph 1.6 in the chapter on neck structures, this indicates a number of injuries to the neck area. There is haemorrhage of the soft tissues in the area of the left horn of the highway bone. So just to explain M'Lord. What is referred to as your trachea is sitting in your neck. Right on top you have got a number of bones that you can actually feel. One projection and what we call the Adam's apple is the area in which the highway bone resides. It is just above that area. Now the highway bone is relatively protected because it is situated in a posterior location in your neck and it is surrounded by quite thick muscles. So just so that you can understand where we are looking at. So in the first point that there is haemorrhage in the soft tissues around the area of the left highway bone. Then there is a tear of the lateral ligament and capsule between the left horn of the highway bone and the body of the highway bone. So the highway bone literally looks like a wishbone, it has sort of like got a c shape. This indicates that the capsule around the left horn of the highway bone was torn. So it is an isolated tear in that area. The other positive findings indicate that there was subcutaneous haemorrhage. So subcutaneous just means under the skin of the right side of the neck, extending from the angle of the right mandibule to the clerical. So this is this area of the neck showed haemorrhage and there was a tear of the right stern tidal mass muscle at the attachment to the medial aspect of the right clavicle. So the stern tidal mass muscle you can see it just under your skin. So there was a tear of that muscle at its attachment to

the clavicle. Okay.

COURT: So where these wounds that you are now describing. --- Yes M'Lord.

Visible on the surface? Or were they internal wounds? --- These were all internal wounds on the internal neck structures. Then onto paragraph (1.7) the chest and the diaphragm. So in this paragraph it indicates that there were a number of fractures of the ribs and injuries to the diaphragm. The first point indicates that there was a fracture of the lateral aspect of the first rib on the left. Now the first rib is a very short rib and it is a very protected structure. So it is tucked under the clavicle and it is very difficult to get to that rib specifically without damaging the surrounding structures. The next point indicates there are fractures of ribs 3 – 6 para vertebrally on the left. Parra vertebrally just means next to the vertebra. So it is the posterior aspect of the thoracic cage next to the vertebrae. Then there are fractures of ribs 1 – 7 laterally and posteriolly on the right. There are fractures of ribs 8 – 11 para vertebrally on the right and there are contusions of the dome of the left hemi diaphragm and of the left hemi diaphragm at the areas of the attachment to the ribs. So the diaphragm is sitting at the bottom of your thoracic cavity and those areas showed contusions or in other words bruising of the internal organs. The other points .....I would like to skip to paragraph (1.10) indicates pleura and lungs. This just shows that there was extensive laceration or tears in the lung tissue as well as collections of blood in there. I am now going on to page 9. In page 9 I just want to illustrate in point (1.11) the large blood vessels. There is a

avulsion of the left renal vessels. So essentially what this means is that the blood vessels that leads to the kidney were completely sheen off as a result of a blunt force. So it was completely torn off so that the kidney was left free floating without any vascular attachments. In paragraph (1.14) the liver. There are sub capsular lacerations of the inferior and anterior aspects of the right lobe. So a laceration is a tear in the liver. There is an intracranial rupture of the right lobe of the liver. This means that there was ..... Literally the whole lobe of the right liver was ruptured or broken up into pieces. Then I am moving on now to page 10 in the paragraph (1.16) the spine. There was a fracture of the body of the 7th cervical vertebrae and the spinal cord was not examined. So the 7th cervical vertebrae is sitting literally at the base of the neck where the neck and the chest meet. That is where you would find the 7th cervical vertebrae. I would like to go through paragraph (1.17) which is the histological analysis that was done. In the first point it shows that there were multiple sections of skin wounds were taken for histological analysis by Dr Scheepers during the post-mortem examination. However the post-mortem report does not clearly indicate which wounds were sampled. In at least five of the sections sampled from the various skin wounds, the findings were consistent with wounds of 4 – 6 days old. The histological analysis done by Dr Scheepers further indicates that certain bruises were samples and were assessed as being recent. The histology of the internal organs confirm that the tear in the soft tissues around the high way bone was recent. Dr Gluckman an independent pathologist also reviewed the histological sections that

were taken. Dr Gluckman concurred with the finding that the sample skin wounds were 4 – 6 days old. Dr Gluckman's assessment indicated that some of the bruises that were sample appeared older than 12 hours. In other words they were not recent. So in that one point he differs with the opinion given by Dr Scheepers. So M'Lord I now go on to the discussion based on my interpretations of the findings, and that is under the paragraph discussion and comment.

Before you do that. --- Yes M'Lord.

This on the histology. --- Yes.

The 4 – 6 days old. --- Yes.

Is determined from the date of death? --- That is correct. So from the date of death M'Lord. That is correct.

And they were able to determine that some of these wounds were inflicted 4 – 6 days before? --- Prior to the death.

Oh I see. Now this one of Dr Gluckman's assessment about the 12 hours. --- Yes.

Can we just park there a bit. I just want to understand what is he saying here. --- Okay. So the ..... You will see that as part of what they sampled ..... So they sampled a number of wounds and some of the wounds that were sampled were actually bruises. Now in the histological assessment of the bruises that was done by Dr Scheepers he found the bruises to be recent. In other words recent means that they are fresh bruises, whereas Dr Gluckman's assessment indicated that the bruises were older than 12 hours. So they had been there at least 12 hours before the death.

Yes. But Dr Scheepers did not qualify what he meant by recent. --- He did not.

Okay. Proceed. --- So in discussion and comment. So the cause of death as stated in the post-mortem report was multiple injuries. It was alleged that the injuries were sustained in a fall from a height. As paragraph (2.1) what I have done is, I have just discussed the features that one would expect to see in a fall from a height. In cases of falls from a height, injuries are sustained from the impact of the body on the surface on which it lands, the impact on the body on any intervening surfaces that collide with the body as it falls. So by this M'Lord if a body is falling from a height, and if there is anything sort of a projection from a building or anything else in the trajectory of the fall, that whatever it is can leave wounds or impact on the body as it falls. Transmitted forces extending from the areas of impact. So in other words if you land for example on your feet, because of the impact of that force on your foot, you can get what we call transmitted forces that actually travel right up your body and you can see the end stage of that force for example in the spinal column or the neck and the head. Okay. So most of the time in falls from a height where somebody lands on their feet, the reason why you get base of skull fractures when there is no direct impact onto the head is because of transmission of forces. Okay. Then the acceleration, deceleration and rotational forces that act on the body during the fall as a result of gravitational force. So M'Lord when a body falls from a height it doesn't mean that that body is stationary. It may move and it may turn, so it may have what we call acceleration,

deceleration or forces that go fast and slow that impact on the body, as well as rotational, that can turn things in the body. So even to the extent that when a head ..... when you are falling your head may look stationary as it falls. But because the brain is sitting in that cavity and it has got its own space, it may actually move independently by itself and then the acceleration or deceleration or rotational forces may act even within the body and impact on the internal organs. I am now moving on to page 11. In the injuries that occur as a direct result of a fall from a height, the severity of the injuries generally depends on the height from which the fall occurs. Hence more severe injuries would be seen as falls from greater heights. Generally falls from heights greater than fifteen metres are associated with injuries in two to three regions of the body. The injuries sustained as a result from the fall from a height would be anti mortem recent injuries. In other words anti mortem from the way that forensic pathologists use the word, it means that these injuries were incurred before the person died. Okay. So clinical death is when the heart stops beating and you stop breathing. So anti mortem injury would be any injuries that are sustained before the heart stops beating and before you stop breathing. Then recent injuries would indicate that the injuries should be fresh and not old. Injuries would occur at the sight or sights of impact and would be most severe at the points of impact. So when a body falls from a height, as we have said the body could impact on many different things as it falls. But the primary impact, so where the body lands ..... the first place that the body hits whatever it is landing on, that is where you are going to see

the most severe injuries. Okay. The body can have a number of impact. So even when it hits the ground it may not be that there will only be one impact with the ground. It may in fact have more than one impact. But you could actually see almost a degradation of injuries. So the primary impact would be the most severe injuries and then the other impacts would be severe injuries as well but maybe not as severe as the first impact.

MR VARNEY: Doctor just to clarify. --- Yes.

In your report you have sight of impact and points of impact. Am I right in saying that those two mean the same? --- That is correct.

The primary point of impact would be the initial first. --- That is correct. The first impact, yes. In the next point the types of external injuries most often seen would be as a result of blunt force which could occur from impact with blunt objects, and from perforation of the skin by bone fractures that protrude externally. These injuries would be seen ..... sorry these injuries would be seen at the sight or sights of impact and include abrasions, bruises and lacerations. So we would expect to see blunt force injuries in a fall from height. In point (2.2) I have discussed the correlation of the injuries with the history that was given of a fall from a height. So the post-mortem findings indicate that all the wounds on the body were anti mortem. In other words they were all sustained before death. There are a number of wounds that could not be attributed to a fall from a height. So there are the following multiple external wounds which showed scab formation indicating that the wounds were present before the fatal fall and were not caused by the

fall. So once you have scab formation M'Lord it shows that the wound is in the process of healing and therefore it cannot be that those wounds were incurred during a fall from height. The wounds are a small abrasion with scab formation over the middle third of the right clavicle which is the collar bone area, an abrasion with scab formation of the right scapular or shoulder blade. I am now going on to page 12. A small abrasion with scab formation of the left lateral neck situated three centimetres below the ear lobe, and a two point five centimetre by four millimetre abrasion with scab formation across the left forearm. In addition the histological analysis showed that the wounds sampled were between 4 – 6 days old. According to the analysis done by Dr Scheepers in at least five of the sections sampled from the various skin wounds, the findings were consistent with wounds of 4 – 6 days old. Dr Gluckman concurred with the finding that the skin wounds were 4 – 6 days old. The post-mortem report further indicates that there were multiple bruises all over the body. As discussed above injuries caused by a fall from height would be found at the sight or the sights of impact, and this would account for some but not all of the bruises that were documented at the post-mortem examination because the bruises on the deceased's body were diffusely distributed. Based on our years of training and experience as a forensic pathologist bruises in falls from height tend to be more irregular and poorly defined, whereas most of the bruises that can be seen in the photographs are well defined, patterned bruises and therefore not consistent with the fall from a height. So when we are talking about well defined versus irregular, we

are talking about the margin of the bruises. So the bruises that were seen on the body of the deceased, most of them were very well circumscribed. In other words they were very regular and they looked patterned. In other words they looked as if you could see clearly the outline of the bruises. Therefore as can be seen in the post-mortem photographs the multiple round well defined patterned bruises that can be seen in multiple different areas on the body are not consistent with the types of bruises that we would expect to see in a fall from a height. So I have just outlined all those areas of the bruising that are not consistent with the fall from a height, that can be seen in the photographs. It is outlined in red. You will see the images in page 12, page 13 and page 14 and page 15. I am now on page 15. Most of the bruises that occur in a fall from a height are not isolated. So in other words they are not there on their own. The bruises are generally associated with other blunt force injuries like abrasions and lacerations, because of the different mechanisms that occur while the body is falling from a height. You would not expect to find just a bruise. You would expect to find other blunt force injuries in the same area. The photographs show that there are multiple isolated patterned bruises which would not be consistent with the bruises commonly found in falls from height. Unfortunately the post-mortem report does not detail the colour of the bruises, which would prove an additional indication as to whether the bruises were old or recent. So M'Lord bruises change colour. So a bruise that is more recent is usually a purple or red colour. And as the bruise ages it goes then from purple or red to blue to green

to yellow. So if you document a bruise, we always talk about the colour of the bruise because it would indicate a fresh bruise and differentiate it from an older bruise. In addition Dr Gluckman's assessment indicated that some of the bruises that were sampled appeared older than 12 hours. In other words they were not recent. In the next paragraph the internal injuries that are consistent with a fall from a height could include the limb fractures, the extensive scalp hematoma of the frontal areas bilaterally extending to the lower forehead. The scalp hematoma of the left Occipital area. The base of skull fracture which extends through the left orbital plate of the frontal bone of the ante cranial fosse through the ...[indistinct] bone and the ...[indistinct] and extend to the right anterior middle cranial fosse, just ante to the ...[indistinct] bone. Those were the ones that I illustrated to you as you were going through the injuries. And the crack fracture of the right ante cranial fosse extending to the lesser wing of the sphenoid bone and the right parietal bone and extending to the midline. Again that was illustrated in the discussion of the injuries. The extensive injuries to the brain. The tears and haemorrhages of the strut muscles of the neck. The fractures of the ribs, 3 – 6 para veritably on the left. 1 – 7 laterally and posteriolly on the right. 8 – 1 para veritably on the right. Sorry I am going now to page 16. The contusions of the diaphragm. The extensive lung injuries. The avulsion of the renal vessels. The injuries to the liver. The fracture of the 7th cervical vertebra. In other words the fracture of the vertebra in the neck. So those were the findings that you could say are attributable to the fall from height. Based on my years of training and experience as

a forensic pathologist and on the current research available, the following injuries are not in keeping with the pattern of injuries that would likely be seen in a fall from a height and must be explained. These are the depressed skull fracture of the left parietal bone with lose bone fragments. This fracture seems unrelated to the sight of impact and is not associated with the linear base of skull fractures. Isolated depressed skull fractures are not commonly seen in falls from heights and must be explained in the context of the fall. The following documented facial fractures appear to be isolated and not directly associated with the base of skull fracture. The fracture of the nasal bone. The fracture of the left inferior orbital ramus in the para nasal area. The fracture of the right inferior orbital ramus in the para nasal area. The fracture of the right upper jaw between the upper lateral insizer and the canine. The fracture of the left upper jaw posteriolly to the upper left wisdom tooth and the fracture of the left lower jaw at the angle of the jaw. So those were the facial fractures that I identified for you M'Lord in the first part of the presentation. If the face ..... Sorry I am moving on now to page 17. If the face was one of the points of impact in the fall from a height a greater severity of injuries would be expected and the injuries would commonly be associated with other blunt force injuries like lacerations and abrasions. Thus these isolated facial fractures are not consistent with a fall from a height. The post-mortem photograph of the face demonstrated that the face did not sustain damage as would be expected in an impact from a fall from a height. The next point. A tear of the lateral ligament and capsule

between the left horn of the highway bone and the body of the highway bone. The highway bone is a relatively protected structure at the back of the throat, and an isolated injury in this area would not be consistent with injuries caused from a fall from a height. It is very unlikely that force would have to be applied directly to this area to cause injuries. So in other words M'Lord somebody ..... We would expect that there would be a direct force to that area at the back of the neck that would cause that injury. Fractures of the lateral aspect of the first rib on the left. The first rib is a relatively protected structure and an isolated injury in this area would not be consistent with injuries caused from a fall from a height. In general a force would have to be applied specifically to this area to cause injuries. I am now moving on to page 18. In paragraph 3 the conclusion. I concur with the cause of death as multiple injuries. The post-mortem findings indicate multiple fatal injuries consistent with a fall from a height. However there are a number of injuries that are not consistent with a fall from a height. The implication is that these injuries must have been present to the fatal fall and that the injuries were sustained during the time that the deceased was in police custody, which include the following as previously discussed. The multiple external wounds with scab formation. Histological analysis on the wounds indicate that there were many wounds that were sampled which were estimated to be 4 – 6 days old which confirm that these wounds were present before the fall from a height. The multiple diffuse well defined patterned bruises. The multiple facial fractures that do not appear to be related to the base of skull fractures sustained in the fall.

The isolated depressed skull fracture which is rare in a fall from a height. A tear of the soft tissues around the highway bone. A fracture of the first rib. The multiple injuries that were present on the body of the deceased which could not be ascribed to the fall from a height indicate that the deceased sustained physical assault while in police custody prior to his death. This finding calls into question the conclusion of the original inquest process that the manner of death was suicide, and therefore this finding must be challenged.

COURT: We will adjourn until 11:30.

COURT ADJOURNS [10:42] ~ ~ ~ [11:11] **COURT RESUMES**

SHAKIRA HOLLAND (s.u.o.)

COURT: Yes Mr Varner?

EXAMINATION BY MR VARNEY (Continued): Thank you M'Lord. Doctor Holland I have a few questions ..... follow up questions on the evidence you have given which is based on your report. If I can direct you to page 16 of your report. M'Lord that is on page 150. --- I am there.

That bullet point almost halfway down the page. I will just read the first sentence to you.

> 'Based on my years of training and experience as a forensic pathologist and on the current research available, the following injuries are not in keeping with a pattern of injuries that would likely be seen in a fall from height and must be explained.'

So firstly Dr Holland when you say 'must be explained' would I

be correct and saying it must be explained by those who were holding him in their custody? --- I would more ..... I would put it more that it must be explained in the situation in which the deceased was before he fell from a height.

Thank you. You then list a series of injuries. Let us start with the first one. That is a depressed skull fracture of the left parietal bone with lose bone fragments. And then you then go on to say that this injury is unrelated to the other injuries on the skull. You furthermore say that isolated depressed skull fractures are not commonly seen in falls from heights and must be explained in the context of the fall. So again you are suggesting that the depressed skull fracture of the left parietal bone with those lose bone fragments is out of keeping with typical injuries seen from a fall from a height? So if it can't be explained from the fall what would cause such an injury? --- So again a depressed skull fracture would be caused by direct force to that aspect of the skull. So in this case it would mean direct blunt force to the top of the head.

Can you elaborate on this blunt force? Could it be with a fist, boot, an instrument? --- Okay I will do so. So the nature of the skull is that it is a very thick bone. So to be able to cause a depressed skull fracture you would need blunt force with a large amount of force. So a fist would not do it. You would need some sort of blunt object.

Could that be a boot? --- If for example ...[intervene]

From a kick? --- If the boot was a steel cap boot it would be possible.

So if the deceased happened to be on the ground and being

kicked with a hard boot or a steel cap boot could that do it?

MR PRETORIUS: M'Lord, may I ..... I do not wish to oppose or object unnecessarily. But that is speculation to the highest degree M'Lord where we are going with this evidence. The ..... To try and recreate a scenario of what is possible ..... anything might be possible M'Lord. But there must be a basis for such a submission or such a speculation as to the cause of this blunt force trauma to the head and the skull. To identify or to try and identify the object that caused the blunt force merely by looking at the injury, I don't think that is correctly speculated M'Lord.

COURT: Well it happens in criminal trials where you would want to know which category of blunt object would yield this kind or cause this kind of injury. That is not outside the realm of questioning. I would like to know. It is a sharp instrument? Is it a blunt instrument? What kind of instrument would be there. Just a whole range of them, not a specific one, then the Court will then be able to link that with other possible evidence, if it is so.

MR PRETORIUS: He can indicate the type of force, the type of instrument that can cause it.

COURT: Absolutely.

MR PRETORIUS: But not that the man was lying on the floor and being kicked in the head M'Lord.

COURT: Yes well he is painting out a scenery. But I take your point you are saying.

MR PRETORIUS: Thank you M'Lord.

COURT: Doctor that particular injury what kind of instruments can cause that injury? --- So M'Lord as I was saying because the skull is such a thick bone, you would actually need some sort of object to cause that kind of injury to the skull. So the commonly .....what we see is where somebody is struck on the head with something like a hammer. You know with a heavy blunt object. That is commonly what we see in our practise. Those are the types of weapons that could cause that type of injury.

Mr Varner?

MR VARNEY: Thank you M'Lord. Aside from a hammer, what other instruments could potentially cause such an injury? For example an iron rod? --- That would be consistent with that type of injury as well.

If we can move to the other injuries you have listed ...[intervene]

COURT: Before you do that, Doctor is this the injury that you describe as having caused or being transmitted to the brain? --- No M'Lord. So the base of skull fractures are the injuries that we consider to be transmitted force injuries.

Yes. --- So those are the ones that where the force is transmitted from elsewhere in the body. So in the case of a fall from a height, the force would be transmitted from the point of impact and it would reach the base of the skull via transmitted force.

Yes. --- So this particular section, including the depressed skull fracture is not consistent with the pattern of injuries that we should see in a fall from a height.

Yes. But then in respect of the brain. --- Yes.

Did it have any effect on the brain? --- M'Lord that is a difficult question to answer because of the extent of the brain injuries. So they were extensive brain injuries. It was very difficult to tease out which of the fractures were related to the specific brain injury.

Okay. Proceed.

MR VARNEY: Thank you M'Lord. Dr Holland we have similar questions in relation to the other injuries that you have listed and there are several under the category of facial fractures. Again you say these appear to be isolated, not directly associated with the base of skull fracture. These include fractures of the nasal bone, the left interior orbital ramus. The right interior orbital ramus. The right upper jaw. Left upper jaw and left lower jaw. Again the question is what potentially could have caused such injuries? --- M'Lord those again ..... Those types of injuries are an indication that blunt force was used to create the injuries. Because of the nature of the bone of the face, the bones of the face in the area where the fractures were, it is possible that you could get those types of injuries just from somebody punching you in the face or something like a kick in the face would be sufficient force to cause those injuries. Having said that they could also be caused by blunt objects. So something like perhaps a baton for example. So a long ..... something like a rod shaped blunt instrument to the face could also do that kind of damage. But in those cases where the ..... if it was a heavier object with a great amount of force, you would expect more diffuse injuries.

Thank you doctor. Doctor I am going to return to the question of

the impact that these injuries had on Mr Timol. But so that I don't forget, the injuries to the ..... The fractures of the right upper jaw, left upper law and left lower jaw ..... would that have allowed Mr Timol to talk? Would it have allowed him to drink a cup of coffee? --- I would say that it would be very difficult to drink a cup of coffee or talk sufficiently, especially with a fracture of the lower jaw. So M'Lord this particular area ..... If this is fractured it means that there is extensive injury to the lower jaw. So it would be very difficult to talk properly or coherently with this kind of fracture, or to drink properly. I mean most of the time you would have to use a straw or some other object when you have that type of fracture.

Thank you doctor. You also spoke about contusions on the .....cuts if I can call it in lay person's terms on the inside of the mouth. What would cause such an injury? --- So M'Lord in fact a contusion is a bruise. So it is a bruise on the inside of the mouth. Often you see those kinds of contusions because of the fact that the teeth impact the inner surface of the lip, when the face sustains a blunt force. So in this case because there were no lacerations or no tears it is possible that something like for example a force ..... like an open slap or maybe a punch could have caused those injuries to the inside of the lip.

Doctor you have also made reference to bruising on the leg. I mean you have identified that in photograph 4. Your Lordship I believe that ..... actually photograph 4 seems to be the back. If you could just talk about bruising on the leg.

COURT: It is photograph 6? 6 or 7?

MR VARNEY: Doctor can you identify the photograph that identifies bruising? --- On the lower limbs?

On the lower leg. --- Yes. So it is in page ..... photograph 6 would indicate the bruising to the posterior thigh. Then unfortunately I think ..... and also in photograph 7, you can clearly the see bruising of the groin area and of the lateral thigh.

So doctor you have testified that because of the pattern of bruising, these bruises are not consistent with the fall. We have heard evidence from a witness who was detained with Mr Timol that he sustained repeated mule kicks to the legs. Are any of these injuries consistent with or potentially consistent with mule kicks? --- In fact it was one of the statements that you asked me to assess after our meeting. May I refer to the statement?

Please do. --- M'Lord these are exerts from the statement that was made by Dr Essop.

Yes. --- And ...[intervene]

That is Salim Essop Your Lordship.

COURT: Yes. --- So in this particular scenario that was put to me .....I just want to find the page M'Lord. So on page 40 of the statement it is one of the areas that is detailed that there was punching and kicking all over the body. Rapid succession of very heavy full force kicks to the thighs and lower legs. Then falling against the floor as well. So in this particular statement the punching and the kicking to the lower legs, you would find bruises that could be similar to what was found on the deceased's body.

MR VARNEY: Doctor what would the impact of such kicking, sometimes referred as mule kicking, have on a particular victim? --- So it is difficult for me to comment on that because it is not really in my area of expertise. But from a physiological perspective just as a medical doctor, if you sustain multiple blows to your lower limbs that were severe enough to cause these multi focal bruising all over your lower limbs it would be very difficult to stand, because the underlying muscles of the legs would also be bruised. So it would be very painful and it would be very difficult to stand because of the pain.

And would it in your view have an impact on the ability to move around? --- It would M'Lord. It would impact on mobility.

Doctor you mentioned that bruises change colour. Would I be correct in saying that a bruise that has just been sustained would be purple or red in colour, and that as the hours and days unfolded it would turn to blue, then green and then yellow? --- That is correct.

So doctor unfortunately we are hamstrung a little by the quality of the black and white photographs. Because the bruises on these photographs appear to be darker in colour, that they are therefore more likely to have been recent bruises as opposed to older bruises? --- That is difficult for me to say conclusively. Because bruises do become darker, but essentially the older bruises are sometimes darker than more recent bruises.

Okay. --- So it becomes difficult.

Doctor if we can just talk a little bit about electric shocks. We have heard evidence that Mr Essop who was in detention at the same

time and the same floor as Mr Timol sustained repeated electric shocks. Am I right in saying that it is very difficult to detect electric shocks, say in a post-mortem examination? --- So M'Lord the wounds that occur from electrocution are caused by the burning of the skin at the point when the electric current makes contact with the body, and at the point where the electric current exists the body. But due to the nature of the fact that you know you may not ..... the current of the size of the amount of electricity is different, the effect on the skin is different, you may in fact not see anything on the body in somebody that has undergone electrocution or has received some form of electrocution. So in cases that we do we may have a history ..... a very reliable history that somebody had died from electrocution, but the post-mortem examination does not show any wounds. Because of the nature of the variables that can be involved with the process. So it is possible M'Lord that if somebody had some for electrocution or some sort of electric shock, you wouldn't see any marks or wounds on the body.

Thank you doctor. Doctor on the basis of your examination of the post-mortem report you have concluded in your review of that report that Mr Timol was alive when he fell and alive for some time after the fall? --- M'Lord so as I have explained what we call ante mortem, in other words injuries that occurred before death, all you would need is somebody to have a beating heart and to still be breathing. So all the injuries that were documented in the post-mortem report I interpret as being ante mortem. So it includes the injuries that occurred as a fall from a height and the injuries that occurred that were not seemingly

related to the fall from the height. When it comes to the question of how long somebody can survive fatal injuries, it becomes very difficult. We are not able to give accurate time intervals in terms of like 10 seconds or 5 minutes. What we can say is seconds, minutes and hours. With the nature of the fatal injuries .....so in other words the injuries that had been sustained as a result of the fall from a height, I don't think that the deceased would have survived longer than seconds, to maybe a few minutes.

Thank you doctor. So is there a possibility that at the time of the fall Mr Timol was alive but not conscious? --- It is possible.

And following up from that if one considers the non fall injuries that you have described, would any of them have rendered him unconscious? --- So M'Lord I think it is possible. I mean if you look at particularly the depressed skull fracture that we were discussing earlier ..... Like I said to actually cause a depressed skull fracture in that part of the skull you would need a large amount of force and with that amount of force it is possible that the subsequent or the injuries that occurred as a result on the brain were sufficient enough to cause a loss of consciousness.

Could you perhaps paint a worse case and a best case scenario arising from the non fall injuries, and in particular the depressed skull fracture? --- Yes. So M'Lord I must state again that my expertise is really in post-mortem wounds. In other words wounds that are on people that have already been deceased. So I can give you a correlation that in fact these injuries ..... The best case scenario would

be somebody that had what is commonly caused a concussion. So in other words maybe they lose consciousness for a short amount of time and they may have some form of confusion. And sometimes some physical side effects. Like mobility effects. But generally they are revivable. Then the worse can scenario would be somebody that is completely unconscious because of the extent of the damage to the brain.

Doctor if we can just stay a bit with the worse case scenario. Somebody would potentially be unconscious but could paralysis, partial paralysis or full paralysis sit in? --- It is possible M'Lord that ..... As we have said the skull fracture that is in that area, we would need a direct force to that area. Because of the fact that the bone would then go impact onto the brain, if there was significant haemorrhage and injury to the brain in that area, you could have an effect as if somebody had a stroke. So in other words there would be related mobility. Either lack of mobility or temporary paralysis in that area. So similar to if somebody had a stroke.

So that could involve brain bleeding and swelling? --- That is correct.

As a bit of interest doctor if that were not treated, if it were left untreated and let us just take the fall out of the picture for the moment, what would happen to such a person? --- If it is left untreated it is possible that that injury in itself could be fatal.

So a person in the worse case scenario in your view what would his or her mobility be like? And more specifically could this person get

up and jump and dive? --- I think that would be unlikely M'Lord. May I say I have also been given pictures of the scene as to ..... it was the room in which the deceased was held as well as the statement from the police officer that was with the deceased at the time of his death. May I comment on it now, because I think it is relevant?

Go ahead. --- So M'Lord it is the photograph .....I am not sure but it is of the room.

COURT: Yes? --- According to the statement from the police officer that was with the deceased, the deceased was apparently in a chair on the opposite side of a large table and then had moved around the table, and then allegedly got to the window ...[intervene]

MR PRETORIUS: M'Lord I also don't want to object at this stage, but my problem in this is where does the fact that the witness that was last seen with the deceased ..... where does this witness get that information from?

COURT: She can answer that question. It is in the public records of the inquest that was held before. That version is in the inquest that was held before.

MR PRETORIUS: As the court pleases M'Lord.

MR VARNEY: M'Lord just for the record I am advised by my learned junior that that particular photograph is in volume B. In other words the original inquest record at EXHIBIT AA1. Is that page 8? It is EXHIBIT AA1 – 8.

COURT: AA1?

MR VARNEY: M'Lord that particular copy ..... I assume because it has

been photocopied a few times it is not particularly clear. We will provide our learned friends as well as the Court a better copy of that photograph. You may proceed doctor.

COURT: What I have are kind of drawings and not photographs. These. You are referring to these?

MR VARNEY: Yes M'Lord.

COURT: Is she having these drawings? In fact she has a photograph.

MR VARNEY: She has a better version of that photocopy.

COURT: Where do I find that on record?

MR VARNEY: M'Lord currently I don't think it is part of the record, and as I mentioned we will undertake to provide the Court and my learned colleagues with a better quality of photograph.

COURT: Is it the only copy available?

MR VARNEY: M'Lord what we did is that we copied this picture from the book that was published by Mr Imtiaz Hajee. Perhaps when he gives evidence he can indicate where he got it from. But it is the same photograph from what we can tell.

COURT: Yes. I may have to have that. I mean if you are going to question her about a photograph that I don't have here. I don't have a photograph. I just have a drawing. Advocate Pretorius do you have anything like that photograph?

MR PRETORIUS: Yes M'Lord. I ..... From a picture in one of the newspapers that particular one that you refer to as a sketch is actually a photograph. But it has been photographed so much that it looks like just the outlines of the sketch.

COURT: Oh.

MR PRETORIUS: In one of the newspapers specifically we found one that was much clearer and that was blown up. I can try to go and obtain that copies. There you can see much better. There is photograph 1 of the newspapers that we have enhanced and that can be used better M'Lord.

COURT: I think it will be better to have that.

MR PRETORIUS: If we can stand down I can go and look and see if I can't get copies of that M'Lord.

COURT: Yes. Because it is going to be difficult for me to follow the question. What I know is that I have this drawing that appears to be similar to that photograph. But it looks like it is not a drawing from Advocate Pretorius is saying. It is a copy of that photograph. It has just faded.

MR VARNEY: As the court pleases M'Lord. We can hold back that particular evidence until Mr Pretorius is able to locate that photograph and make copies.

COURT: Yes it might be advisable to do so. I am not sure whether you can get this witness to reconstruct what actually transpired in that room.

MR VARNEY: Yes. M'Lord I am of the view that this particular evidence from this witness is not that critical, and I am happy to ...[intervene]

COURT: Yes because she wasn't there. She will only be testifying on the version of the police as we have it, even though it was found by the Magistrate to be so.

R PRETORIUS: Yes. M'Lord we do have a copy of the book, but I don't think we have copies for all the parties. So we will just stick to our original decision of not pursuing this evidence with this particular witness. Doctor we are not going to pursue the evidence on what specifically took place in that room 1046. If I can return to the non fall injuries and you have testified already that the depressed skull fracture could potentially have rendered Mr Timol unconscious. In your expert view would you be able to say potentially how long could he have been unconscious? --- It would be very difficult to say.

Is it possible that he might have slipped in and out of consciousness? --- It is possible M'Lord.

There is evidence Dr Holland that one of the police officers who rushed to the scene picked up a pulse and at that stage it would have been what I understand is called a peripheral pulse on the wrist. But after they had moved Mr Timol to the foyer of John Vorster Square, that peripheral pulse had gone. Is it possible for a victim who has fallen ten storeys to still have a pulse but not necessarily a peripheral pulse? --- So M'Lord as I have said to you the injuries that were sustained as a result of the fall from a height were severe, and you would not expect somebody to survive longer than seconds to a few minutes with those types of injuries. Having said that because of the nature of what happens to a body when it undergoes such severe injuries, it would be very difficult to feel a pulse, a peripheral pulse or a pulse at the wrist. Because essentially what happens is that you have peripheral shutdown. So your body shuts down and it tries to redirect your vital

energy and your blood to the central aspect of your body. So it would be very unlikely to be able to feel a peripheral pulse even if the deceased had survived for a short time after the fatal fall.

COURT: Are you specifically referring to the pulse on the wrist? --- That is correct.

What about the neck? --- I would say M'Lord that if you are a healthcare professional, so somebody who knows how to do first aid or to have some experience in taking pulses, you may be able to feel a central pulse which is on the neck.

MR VARNEY: Thank you M'Lord. Doctor given the circumstances of this particular case where the police were aware that Mr Timol had fallen ten storeys, after they had raced to the scene, was it advisable for them to have quickly moved Mr Timol? --- Again I am not speaking in my expertise as a forensic pathologist but as a medical doctor. The first rule is that you don't ever move a patient before you have ascertained the extent of the injuries. So it would not have been advisable.

In your view should they in fact have made sure that the head or neck was prevented from moving to prevent further damage? --- M'Lord if you have basic first aid training, not even in high level training like a paramedic ..... You also know that one of the first rules is that you always secure the head and neck before you even attempt a move.

There is also evidence put up by the police that Mr Timol fell threw some shrubs. In the post-mortem report did you see any record of shrubs being found on the body or the clothing, or embedded in the skin? --- M'Lord the post-mortem does not detail any vegetative

matter on the body at all, and there is no detail about the clothes that the deceased was wearing.

Would you be able to assist the Court by considering where you think or how rather the body landed? How Mr Timol hit the ground? --- Unfortunately I won't be able to do that M'Lord because there are no adequate reconstructions of the event. So it will be very difficult for me to comment on it. One thing I can say is that the lymph fractures that are documented seem to be on the right side of the body. So the right elbow and the right midshaft of the right femur ..... the right thigh, which means that he would have somehow sustained impact onto the right side during the fall.

COURT: But is there any observation by the two previous pathologists as to what you describe as the primary? --- So essentially the post-mortem report just documents the post-mortem findings. There is no interpretation of those findings. So for pathologists to then interpret the findings and say this is the most likely, the primary impact of injury because this is the greater severity of the injury, you would need the pathologist to comment on that and to interpret that based on the findings. So based .....and they ..... I don't know ..... I don't know if they ever testified to it, but it is not generally part of the report. It is usually an opinion that is given during the inquest or during the trial that follows.

Okay, thank you.

MR VARNEY: Doctor I have been reminded that there were some non fall injuries that you listed that I have yet to ask you what caused them.

The left first rib. --- So the fracture of the first rib on the left. As I have stated the first rib is a very short rib and it is very protected in its situation in the thoracic cavity. So one would need a directed blunt force to impact that rib for it to fracture. And something like a blunt object as described earlier would be needed to be able to fracture that rib.

Then lastly the hyoid bone ..... I beg your pardon the hyoid bone and this you mentioned under the photograph on page 17 of your report. --- So M'Lord as discussed the hyoid bone is a very protected structure at the back of the throat. So for you to have an injury ..... So in other words there is a thin capsule that surrounds the highway bone and according to post-mortem report that capsule was torn. And for you to have injury in that area, so it is a very relatively protected structure in that part of the neck and it appears to be isolated from the other injuries to the rest of the neck, you would actually need blunt force directed to that area. It may not be a direct force. In other words it may not be a direct force. It could even be a transmitted force or an acceleration deceleration injury, and in my opinion the most likely action that would cause it, is some sort of hyper extension of the neck. So in other words if somebody had or the deceased had his heck hyper extended to this kind of position, it could cause a tear in the capsule of the neck.

Thank you. Doctor I have no further questions.

COURT: Thank you. Advocate Pretorius?

CROSS-EXAMINATION BY MR PRETORIUS: Thank you M'Lord. Doctor I want to ask you, you identified certain injuries that you would

not ascribe to the fall from height, and you enumerated that in your report specifically. Could those injuries that you enumerate there even on the last page, even before that where you said it is not related to the fall from height, could that in itself have caused the person to die? Could that have been fatal in itself? --- Of the injuries that were described that were not consistent with the fall from a height, the injury that would have in itself been fatal would be the depressed skull fracture.

From all the information that you could ascertain and from the reports, the post-mortem, would you be able to say if this person was still alive on the point of impact from the fall from height? --- M'Lord based on the analysis of the post-mortem report it appears that the deceased was alive at the time of the impact of the fall.

From what? How do you determine that doctor? --- So M'Lord there is a difference between the appearance of wounds that occur ante mortem versus post mortem. So the wounds appear differently and you don't often get the extent of the haemorrhage or contusion around each wound. So based on the post-mortem report and the analysis of it, the description of the wounds was such that indicated that the wounds were all ante mortem.

I want to move a little bit just back to the mule kicks that you were also asked about. Page 144 of the record, page 10 of your report. Picture is actually at page 13, page 147, there we see the bruise on the left side. Not so? --- That is correct.

But you also found a bruise on the right thigh. Is that also not

so? Just on page 145 I think. You also found bruises on the right thigh, not so? --- So M'Lord I didn't find the bruises ..... just to clarify that. The interpretation was that these are the wounds that were identified on the original post-mortem examination and documented in the original post-mortem reports. So there is a number of bruises to the lower limbs that are documented in the reports but are not seen on the photographs.

Thank you M'Lord. That is all the questions I have.

COURT: Thank you. Thank you Advocate Coetzee? Thompson?

MR THOMPSON: M'Lord no questions.

COURT: No questions.

CROSS-EXAMINATION BY MR KOTZE: Thank you M'Lord. I do have some questions. Thank you doctor. Doctor you have obviously studied the photographs, the post-mortem reports and other statements by possible witnesses. Is that correct? --- M'Lord that is correct. The only ..... I must say the only statements from other witnesses that I have, are the statement that was made by Dr Essop during this particular inquest. And then from the original inquest I have got the statements from Deysel and Rodriguez.

Did you in compiling your report and considering the injuries, did you also take note of the evidence that was presented in the inquest by the various experts? --- M'Lord I didn't have access to any of the information or anything from the previous inquest before the report was compiled. So when I recompiled the report the only information that I had access to was the original post-mortem report done by Dr Scheepers and the post-mortem photographs.

I then .....I just see from the report or from the evidence rather in the post-mortem that Dr Gluckman appeared in the post-mortem on instructions of the family and obviously the lawyers acting on behalf of Mr Timol and he attended to the actual post-mortem with Dr Scheepers. Is that correct? --- I don't have access to those records M'Lord.

Yes. All right.

COURT: Just refer us to the volume.

MR KOTZE: M'Lord this is the record of the inquest. I believe that is annexure A, and to what I am referring to is paginated on the record, page 784. I don't have a separate pagination as the ..... other than the record ..... the original records pagination.

COURT: Yes.

MR KOTZE: On page 784 it is indicated that ..... and that was the evidence of Dr Gluckman. He says here and that is the second paragraph that on 29th October 1971 on the instructions received from the attorney acting for Mr and Mrs Timol I attended the post-mortem examination carried out by Dr N J Scheepers on the body of the person which I understand to be that of Mr Ahmed Timol. Right. Now what I wish to put to you is that both Dr Scheepers and Dr Gluckman were in fact in the best possible position to consider the injuries of the deceased Mr Timol. --- That is correct M'Lord.

Now the photographs which you considered are of a rather poor quality. It is like a faded black and white, if I can describe it as that, and that is in EXHIBIT C7. --- That is correct M'Lord.

Now both Dr Scheepers and Dr Gluckman testified as well as

Professor Koch testified during the inquest extensively in relation to the injuries and their interpretation of the injuries. And all of them were also cross-examined by both the lawyer acting on behalf of Mr Mezzos and Mr Gizmos acting on behalf of the family. I put that to you. I know that you have not read the finding. Now do you ..... Is it your opinion that they were wrong in their finding? That Dr Scheepers for example ..... Let us deal with Dr Scheepers in his report, in his post-mortem report, where he did not identify any serious injuries. There were cuts and bruises that he said that had scab formation, but there is no injuries that he or serious injuries that he identified which was inconsistent with the fall of that height. --- M'Lord as it has been stated I don't have access to the testimony that was given by any of the pathologists at the time of the inquest. Essentially what happens is that the post-mortem report is a detailed documentation by the pathologist of the wounds that were received or the wounds that were identified at the post-mortem examination, and the post-mortem report won't contain opinions of the forensic pathologist about the causation or any of the effects of the wounds. So it is simply a document stating the post-mortem findings at the time of the post-mortem examination. So it does not in general include an opinion and in this particular case it did not include any opinions.

Yes. But their evidence did. And their evidence is captured in the record from page 664 up to page .....If I can see if I can exclude the argument, it is up to page 1069. In other words for more than 400 pages of evidence by these experts that testified and were cross-

examined and were examined in relation to these injuries, and apart from the injuries with scabs and the injuries that were described as possible fresh injuries, apart from causing the death of the deceased that is in relation to the fall, there is no indication that I could find ..... And I am sure my learned colleagues will correct me if I am wrong. There is no indication in this evidence that there were any serious injuries that were inconsistent with a fall that was found on Mr Timol's body. --- So M'Lord essentially from my report, I have not changed or elaborated on anything. I have just taken the injuries that were documented and I have interpreted them according to my experience and years of training. As it is clearly stated is that from what we see there is a certain pattern of injuries that we see commonly that occurs as a fall from height. So based on the fact that there were some injuries that fit the pattern and there were some injuries that did not fit the pattern, that is how I came to my conclusion. So I can't speak to the training or expertise or the research that the original pathologists had done at the time of the inquest.

Yes. But do you agree that they were in a better position than yourself, specifically Dr Scheepers and Dr Gluckman, were specifically in a better position to assess the injuries and to make a finding in relation to the injuries in relation to the fall? --- So M'Lord I do agree that they were in a better position to identify the injuries that were found on the deceased. So as I stated those were the injuries that were documented in the post-mortem report. As to the fact that were they in a better position to interpret the injuries, that I don't agree with.

Just to further indicate to you that throughout this inquest the learned Magistrate was assessed by Dr Simmons if I am not mistaken ..... yes ..... who was also an expert who assisted him, and these issues with regard to the injuries were fully ventilated in this trial. And that ...[intervene]

MR PRETORIUS: M'Lord I must object. I am not sure that they were fully ventilated in the trial. My memory and I will go and check specifically is that it was more as to the timing.

COURT: Exactly.

MR PRETORIUS: It was more as to 4 – 6 days before or was it longer. The length of the cells. That was the big issue. But fully ventilated ..... I am not sure that that is a correct statement of fact put to this witness. I object to that statement.

MR KOTZE M'Lord I agree and it is difficult reading this cross-examination that took place here, as it seems to revolve in regard to the 4 – 6 or the 5 – 8 or the days of the scab forming. But the fact of the matter is that this evidence were presented in Court as experts present at the post-mortem that was conducted, and that they were not in disagreement with each other.

COURT: On what? On what when you say they were not in disagreement?

MR KOTZE: Because they were only taken to task with regard to the formation of scabs and the duration of the scabs. The further aspects of Dr Scheepers report was not attacked by Dr Gluckman. There was ...[intervene]

COURT: Are you saying that I must draw inference to the fact that since the inquest did not focus on the seriousness of the injuries, but on the period or the age if I may use that word of the wounds that were inflicted before the fall? That I must therefore draw an inference that anything else that was not placed in dispute was agreed to?

MR KOTZE: Well that is how experts work, with great respect. Once you get expert from both sides of the table ..... if I can say so and they formulate what is their discussion that is up for dispute. And certainly if the issues raised by Dr Scheepers in his post-mortem report was in dispute, the families advocates and their experts would have taken him to task on that. And the mere fact that both of them were present at the hearing and both of them presented oral evidence during the inquest, issues there were not disputed between them and was not disputed by the lawyers at that stage must have been common cause.

COURT: No, no. Did the inquest go into for example the extent of the wound on the skull? Is there anywhere in the proceedings where that was examined and agreed to, that it was not a serious injury?

MR KOTZE: M'Lord I could not find anything where any of the witnesses, apart from the injuries with scabs and that was indicated as older than 12 hours, those injuries ..... Apart from those injuries I did not see in their evidence that any one of them were taken to task as to what other causes might have been ..... What other factors might have caused the injuries. That I cannot see from their evidence.

COURT: But was it dealt with? The question is was it dealt with, or was the focus as Advocate Pretorius says on the question of the age of the

wounds? Because that was my understanding when I read these proceedings, that it looks like the focus to a very large extent was on how old the wounds were. The extent of the seriousness of those wounds, we don't know where it is covered, because we are having this other bulk part of the evidence that is missing. Whether that was canvassed with the police we don't know. But then the report of the doctor here it seems to have gone only on the question ..... or not only but mostly on the question of the 4 – 6 days or the 6 – 8 days and so on. It does not mean therefore that if the Court did not examine or go into whether the injury on the frontal, on the nose or on the head was serious enough to can cause death. I don't know whether that was canvassed. I didn't pick it up.

MR KOTZE: Yes I could not find any issue that was taken on that specific issue in the cross-examination.

COURT: Then that brings me to the question I raised earlier. Are you saying to me that I must draw an inference in the absence of that, that it was therefore agreed that they were not serious? Is that what you want me to find?

MR KOTZE: No M'Lord not that they are not serious.

COURT: Yes because that is the debate here.

MR KOTZE: But then it deals with the fact that their observation of the wounds were as described in Dr Scheeper's report.

COURT: Absolutely. They gave their opinions based on what was described and that is what she is doing. She is basing her opinion on the post-mortem report. Right? Now I am saying to you, if you point out

to me in the proceedings where it was stated categorically that the injuries were not of a serious nature, I would then say that you are within your right to can raise that debate with her. But in the absence of that you want me to assume things that are not in evidence?

MR KOTZE: M'Lord with respect it is not whether or not the injuries were serious or not. The issue which I raise is that what the evidence of the witness currently is, is that certain injuries that she identified is inconsistent with a fall. And that is the issue that I take M'Lord is that none of these two experts that testified and that were present at the actual post-mortem investigation, either in a report or in their evidence in Court, give any indication that from their observation these injuries ..... Let us deal with the depressed skull injury for example, was not caused by the fall.

COURT: No, no I don't think you understood it correctly. The mere fact that there was a debate about the age of the wounds.

MR KOTZE: Yes.

COURT: In itself tells you that there was a discussion whether there were wounds before the fall.

MR KOTZE: Yes.

COURT: Right?

MR KOTZE: Yes M'Lord.

COURT: That is what they both conceded.

MR KOTZE: Yes that is concession.

COURT: Yes. They conceded. Both of them, Scheepers and Gluckman that there were wounds. Even Koch.

MR KOTZE: Yes.

COURT: But then Koch put the time of the infliction of those wounds to be a couple of days before the arrest.

MR KOTZE: Yes.

COURT: Right?

MR KOTZE: Yes M'Lord.

COURT: And the other two were saying no, no it is 4 – 6. They were within that region. But that debate was based on the acceptance that there were wounds that are not consistent with the fall. Is that ..... That is my understanding.

MR KOTZE: Yes that is our ...[intervene]

COURT: Now the point you are making ..... I am not quite sure now.

MR KOTZE: I am specifically making this point with regard to the depressed skull fracture for example, which it seems to be a very serious point taken by the witness, because in fact it is a serious point.

COURT: Yes it is.

MR KOTZE: And her evidence is that that is not what one would have expected from a high fall injury.

COURT: Yes that is what she is saying.

MR KOTZE: And that is what I am saying to her. I have studied the report of Dr Scheepers, I have also read their evidence in Court, and nowhere there do I see that there is a differentiation made specifically then with the depressed skull injury to indicate that that was not considered to be caused by the fall.

COURT: Let us handle it this way counsel. She hasn't read the trial

proceedings. You and I have read the trial proceedings.

MR KOTZE: Yes.

COURT: You have put it to her, she told you she hasn't read the trial proceedings. So she has given evidence based on what she has studied on the post-mortem. You will argue that point at the end.

MR KOTZE: Yes M'Lord.

COURT: I think let us leave it on that basis.

MR KOTZE: Yes.

COURT: You will argue it with reference to the evidence here.

MR KOTZE: I will do so.

COURT: Yes. Pass on to the next question.

MR KOTZE: Thank you M'Lord. Then if I can take you to page 16 of your report, page 150 paginated. This is basically and from there onwards and later up to page 18 of your report where you specifically deal with why you say these injuries are not associated with a fall. If I can get to your combination of your opinion there on page 18. Specifically your third bullet point there, where you say the multiple facial fractures do not appear to be related. Do you exclude them as being related or do you say ..... What specifically do you mean by do not appear? Do you exclude that they are definitely not related to the fall? --- So M'Lord we are very careful in our terminology, and we say that something is consistent with or not consistent with. So in this particular case the injuries that I have documented that I saw are not consistent with a fall from a height, is exactly what I mean, is that they are not consistent with a fall from height.

The structure on which the deceased fell and we understand there was some shrubs. I don't think we know the nature of the shrubs. Whether it was hard shrubs or soft shrubs, would that have made a difference? --- M'Lord if I can just refer you back to page 17 of my report. It does go into the question I think related to the injuries of the face. It basically says that if the face was one of the points of impact from the fall from a height, a greater severity of injuries would be expected and injuries would commonly be associated with other blunt force injuries like lacerations or abrasions. So the isolated facial fractures are not consistent with a fall from a height. So that would actually be whether or not there was a shrub present or in the path of the fall or not. It would just mean that if the face was an impact or the face was an area of impact during the fall you would have expected a different nature of injuries in that area. Whether the impact was against the shrub or against the ground. You know you would have expected a different nature.

Okay. The depressed skull which you refer to in the next bullet point. In fact you say it is rare for a fall from that height. Does that mean that it is excluded or is it in the similar vain as you have explained the facial injuries? It is inconsistent but it might have occurred ..... if I understand your wording of rare? --- So M'Lord generally because I was discussing I showed you the area of the impact. So you would have to expect that during the mechanism .....So as the body or the body is falling from a height, there would be some sort of blunt force that would impact the body to such an extent where the top of the head

would receive a direct force from a blunt object. So is it completely impossible in a fall from a height? No it is not. But in this particular case it is rare to be seen and it is not consistent with the other types of injuries that were found on the body. If I can just come back to my original statement. It is about patterns of injuries. Injury patterns. So you would expect to see certain injury patterns in certain scenarios. So the thing that was very clear was that certain injuries did not fit the pattern, hence they were not consistent.

Thank you. Would it have made a difference if in the fall the deceased were hit by anything else? For example I don't know whether there are ledges. We have not heard the evidence of the trajectory. Whether if he should fall and he should fall for example on a balcony or an extended portion on a ledge or something like that, would that have changed the nature and what you would have expected? --- So M'Lord that is possible. So if the deceased had fallen ..... So with the head in this position, head down ..... because I mean it couldn't be up. So head down and a ledge or some sort of projection from the building that had sufficient amount of blood force impacted that particular area of the skull, it would be possible. But in my opinion it is unlikely.

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

COURT: Thank you. You have any further questions?

MR VARNEY: M'Lord just one question on re-examination if I may?

COURT: Yes?

MR VARNEY: M'Lord just for the record and an argument, we will pointing you to at least one reference and we will look for me in the

record of the original transcript on the first in question where Dr Gluckman does not exclude fractures arising from non fall injury. Doctor if you were to consider Dr Scheepers post-mortem report and of course when it was finalised back in the early 1970's, would you describe it as a model of perfection. --- M'Lord there is a number of things that I would have done differently. I did find that the measurement and the description of the wounds was not very good. I would have expected a few more descriptive identifiers in each of the wounds, based on the way I do my report. However it was an adequately all the post-mortem findings. Could it have been better? Yes it could have. I just think hat it was adequate for the case.

No further questions.

COURT: Thank you. Thank you doctor for your testimony. --- Thank you M'Lord.

It was a deep lecture. I am not sure whether you gave us a scope for the examination, but it was a deep lecture. In reality it helped me understand some of these medical terms that were used here. Thank you very much for your assistance. --- It is my pleasure M'Lord.

You are excused.

NO FURTHER QUESTIONS

COURT: Are we getting the next witness?

MR VARBER: M'Lord we do have one further witness for the day, and that Dr Steve Naidoo. But since we are approaching lunch time, perhaps it might be a good time to take the lunch adjournment.

COURT: How long is his evidence? Are we going to take the whole day?

MR VARNEY: I would think that it wouldn't take any longer than the evidence of Dr Holland. But it could take a better part of the argument.

COURT: Because tomorrow we have that other matter, so it might mean that we proceed, even tomorrow if we cannot get through today.

MR VARNEY: Yes. So Dr Moodley unless I am corrected was called on Friday evening. Tomorrow in the morning we have the author John Vorster.

COURT: Before then there is this issue of Mr Thompson which might take a while because I would like to hear all of you ..... I take it you are preparing to ...[intervene]

MR VARNEY: Yes M'Lord.

COURT: Even though I don't have a formal application for me, I just have Heads of Argument and I don't know what the application is. Really. But we will have to hear what Mr Thompson is going to say.

MR VARNEY: We will have written submissions ready for Your Lordship.

COURT: Yes. I would have thought that the application should precede the heads, but I don't have an application before me. And I don't know what to do with it anyway. But it is just the Heads of Argument. What is worth you will prepare with that?

MR VARNEY: Yes indeed M'Lord.

COURT: Yes. I don't know how long it is going to take us to argue that, so I want you to factor that in as well when you look at the question of

witnesses tomorrow.

MR VARNEY: We will do so.

COURT: Yes. Okay. We are adjourned until 14:00.

COURT ADJOURNS [12:20]