IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: I01-2017

DATE: 2017-07-26 (PM 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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COURT RESUMES AFTER LUNCH [13:34]

COURT: Just before we start with the next witness in regard to tomorrow I want to issue the following directives:

1. That all Council must look at the recent Constitutional Court decision on reconstructions. It is Schoonbee and Another v The State 2016 ZACC 50. It is a Judgment that was delivered on the 15th of December 2016. It is on reconstruction of record because I expect this to feature in the arguments.

Advocate Pretorius.

MR PRETORIUS: M'Lord?

COURT: I am going to ask your assistance just in case I accede to the request for the reconstruction. Can you enquire in the meantime from Advocate Fig whether he will be able to assist in that process? I know it is an impossible task almost but I need to make sure that I have covered that basis.

MR PRETORIUS: Is it Fanie Cillier that you are referring to M'Lord?

COURT: Is it Cillier?

MR PRETORIUS: Cillier I think it is Advocate Fanie Cillier.

COURT: Okay Fanie Cillier if you could approach him and find out whether it is only in respect of Mr or Sergeant Rodriguez.

MR PRETORIUS: Yes I will contact M'Lord.

COURT: Yes similarly Mr Varney I know Advocate Vizo is in Court but would you on my behalf approach and find out whether he will be in a position to assist with that reconstruction. If need be I do not know if

they still have the notes that we are talking about a 45 year old situation here. Also I want to know Mr Thompson on your instructions first you need to fashion your relief in such a way that you all understand what is it that you want. In other words you may want to write down the emotion so that we are clear about the relief that you are seeking you should not just go on a speculation.

MR VARNEY: Yes M'Lord.

COURT: And secondly consult your client, get instructions as to how the reconstruction is supposed to take place when the Magistrate has already passed on. I want you to address me on that tomorrow.

MR VARNEY: As it pleases the court.

COURT: Thank you. Yes fine with that out of the way then I think we can proceed.

MR VARNEY: Your Lordship before we start I raised a question in terms of availability of time and witnesses that are coming up tomorrow.

COURT: Yes.

MR VARNEY: I have consulted with some of my Colleagues although not with all of them but the consensus so far is that we should commence with tomorrow's witnesses and attempt to finish them, and we think we can finish at least during the course of the afternoon, and then commence the application by my Learned Friend Mr Thompson. If we do not finish on Thursday afternoon we then complete it on Friday morning.

COURT: Friday morning witness more or less how long is he going

to take?

MR VARNEY: We do not think that Mr Moodley will take that long we are hoping to submit his report perhaps even before we adjourn today. He is just going to testify on the aspects relating to trajectory, so it is quite a discreet topic. I think we could be done with him in about an hour.

COURT: Yes?

MR VARNEY: We are attempting to get the two witnesses who are on the road outside who heard the thud. We are not sure whether we can get them for tomorrow morning. The one is under subpoena and we assume that he will not be available tomorrow. If Mr Tokkenhaley is available we think he could be done in perhaps in about half an hour.

COURT: Yes I am trying to manage the programme here as some of the witnesses could come in next week. So far we have an indication that only two police officers may have to testify next week, and beyond that I do not know whether we have other witnesses to come. In other words I am trying not to load the next two days because we have to make way for argument on this issue that has been raised. Depending on what is being said here I am not sure if I will be able to give an immediate Ruling on it. So I am trying to look at that situation that we should all try to work with the short period that we have.

MR VARNEY: Yes we certainly must dispose of the application to be brought home on behalf of Mr Rodriguez because as you are saying that he is meant to testify on Monday.

COURT: Next week yes that is why I am trying to avoid us loading witnesses tomorrow and Friday.

MR VARNEY: We will have those witnesses on standby and we have to push them into next week then, then so be it.

COURT: That will be the preferred option to make way for this. In other words how many witnesses do we have tomorrow? Two?

MR VARNEY: Tomorrow we have Mr Dutten, we have Mr Vorster and I think that is it. So there are just two witnesses without the application it will be easily finished tomorrow maybe quite early.

COURT: Then let us keep it that way only those two for tomorrow so that we can deal with the application as well.

MR VARNEY: All right.

COURT: It may well be that I will need some time to reflect on it before I make a Ruling.

MR VARNEY: Right.

COURT: So let us keep it that way only those two and then if there are any other witnesses then you can shift them to next week.

MR VARNEY: And Your Lordship would you like to hear that application first thing tomorrow?

COURT: No, no, no the time is not so important I can hear it at the end if we can deal with the witnesses first so that we can excuse them, and then I do not know how long the debate is going to be, so we can deal with it last as you have discussed with your Colleagues. I am amenable to that it is just that I want it to be dealt with tomorrow.

MR VARNEY: Yes.

COURT: That is why I am giving you the heads up in terms of these directives.

MR VARNEY: As the Court pleases.

COURT: Okay then let us proceed.

MR VARNEY: Your Lordship the next witness is Doctor Steve Naidoo he may approach the stand.

COURT ANNOTATOR: Your full names and surname?

WITNESS: My name is Segaran Ramalu Naidoo I will spell it out.

COURT ANNOTATOR: Any objection in taking the oath?

WITNESS: No.

COURT ANNOTATOR: Can you swear that the evidence that you are about to give is the truth the whole truth and nothing but the truth if so please raise your right hand and say so help me God?

WITNESS: So help me God.

SEGARAN RAMALU NAIDOO: duly sworn statement

COURT: Thank you. Thank you Doctor you may sit down. If you prefer to stand it is okay. --- I would prefer to stand thank you.

Okay anytime if you are tired you may sit down. --- Thank you.

EXAMINATION BY MR VARNEY: Doctor firstly thanks again for taking time out of your hectic schedule to be with us, and also thank you for travelling up from Durban to be with us we are very grateful. --- Thank you.

Doctor you have supplied us with a curriculum vitae which is updated until 2016. Your Lordship this has been handed up as Exhibit "C6'.

COURT: "C6" yes.

MR VARNEY: Doctor Naidoo we do not want you to take us through your entire curriculum vitae, and in fact you have provided us with a helpful summary, and that is actually an addendum to your report at page 15. --- Yes.

Your Lordship the report is Exhibit "C3".

COURT: "C3".

MR VARNEY: Could you advise the Court what your qualifications are? --- Yes, I am a Specialist Forensic Pathologist and have been this year mid-year for 34 years. I am registered as such with the Counsel the Hope Professions Counsel as a Specialist. Of the 34 years of practice I have been academic ahead throughout my career, and for eight years as Professor Forensic Medicine at the University of KwaZulu Natal. But for the last five years I have been in independent or private practice.

And I picked up from your cv that you were on an Honorary Research of the School of Law at UKZN up until January 2016? --- That is correct.

For us Lawyers what did you do as an Honorary Research Fellow? --- Yes I had written a few articles in different journals on gunshot wounds, trauma. Trauma in just about any kind or characteristic, or context and I have also and up to now still I am the Coordinator of the LLN Post Project Module for Law Students, largely Law Students where we teach the forensic medicine as we steer that through the UKZN at the moment. I am continuing writing and

publishing and I have just been notified today that the latest edition is an editing of a book for East Africa Forensic Medicine Manual. It has just been notified or I have just been notified today that it is being published and ready. Yes and I do a lot of consulting.

Thank you Doctor. Doctor you were you asked by representatives of the Timol family to prepare a report for this inquest titled independent medical legal opinion? --- Yes.

Case death of Ahmed Timol the 27th of October 1971. The report is dated the 24th of July 2017. --- That is correct.

Do you confirm that this is your report? --- This is my report.

And do you have a copy with you? --- Yes I do.

Your Lordship the report is marked "C3". --- That is correct.

And Doctor Naidoo in preparing this report did you consult certain sources of information, certain documents and if so can you tell us which documents were you consulted? --- Yes there are a number of sources that I looked at, but those that I referenced for this opinion in footnoting are two textbooks, one by Bernard Knight, which is a classic textbook for undergraduates and postgraduates in the English speaking world. There is another book on Forensic Histopathology particularly because the transcripts of the original inquest concerned to a great deal this Histopathology that is microsporidia of tissues, and a few other electronic sources, journal articles that I used.

And did you have the access to the original inquest record as well as any statements, and photographs? --- Yes I had and used the

original record from of course page 653 onwards. In particular in that the testimonies of the Pathologists that were concerned at the original inquest.

That would be Doctor Scheepers, Gluckman, and Kogh? --- Kogh that is correct.

Yes? --- I also in the Bundle received Doctor Scheepers report in Afrikaans so it had to be translated. I particularly used reference to statements they are by policemen, one by the surname of Deyzel, and the other Rodriguez. Of course I got a set of seven photographs. Those M'Lord were the sources of information the material primary sources from the original inquest record that I received.

And did you visit John Vorster Square and if so where in John Vorster Square did you go? --- Yes yesterday morning at around 08:45 in the morning I was taken to the ground floor the bottom portion, or the front of the building at the bottom where the pavement area, and a little garden elevated raised garden shrubbery area, and then subsequently went up to the 10th floor, and of course the roof structure.

So the garden area where you advanced that was approximately the impact side for Mr Timol? --- That is correct.

And on the 10th floor did you visit Room 1026? --- Particularly Room 1026 we saw the general environment but went into and did an examination at 1026 yes.

Thank you. You mentioned that you arranged for the translation of the post-mortem report of Doctor Scheepers? --- That is correct.

Now can you tell us who did that translation? --- It was done at my request by my Forensic Pathologist Colleague and not a Specialist by Doctor Karisha Kwarrie. She is a younger but well trained Forensic Pathologist. Her version her transcript or translation I checked through against the original and I was satisfied that it was probably the best I could receive. Then I edited just the 35 listed injuries enumerated them just for reference purposes that is the only amendment that I made.

I see and Your Lordship that translation has been handed up and marked "C4" and it is also attached to Doctor Naidoo's report.

COURT: Thank you.

MR VARNEY: Doctor Naidoo a few more housekeeping matters if I can refer to them as such. In your report there is at least one drawing of the garden area with a body located in this picture, and you have also attached Annexures "B" to "G" certain diagrams. Can you just explain why it is we have this picture and those diagrams in your report? --- Yes, because diagrams represent a reconstruction and the visual effect is very helpful. The wounds themselves were individually depicted onto diagrams. The Annexures at the end "B" to "G" individually enumerated, and also scaled down to size and distribution, and that was important. That is still I believe the best that could be done by myself.

And you did so on the basis of the post-mortem report? --- Purely on the basis of the post-mortem report, numbers, wounds numbered 1 to 35. There are 35 different descriptions were depicted

on the diagram. That I think is a good representation of the pictorial, of the view of those injuries particularly since the photographs are somewhat incomplete. Now that deals with Annexures "B" to "G", but the image drawn is computed on picture was less valuable because it is only based on the testimony of Deyzel and I think it is certainly imprecise it is probably not completely correct.

COURT: Before we go to that evidence. --- Yes.

The numbering on your sketches does it accord with any particular numbering by Doctor Scheepers, or is it just your own numbering? --- The numbering of the wounding?

Of the wounds yes as indicated on the sketch? --- Yes they were exactly according to Doctor Scheepers. He bulleted though in his post-mortem report he bulleted them under Annexure, he called it Annexure "1", and there are 35 bullets I simply changed that to 35 numbers.

Okay. --- Yes.

MR VARNEY: And just for the sake of completeness you also were able to inspect certain photographs? --- Yes.

You described them as seven sepia toned photographs? --- Correct.

Doctor we can now move to…[intervene]. --- May I?

Yes of course. --- May I just draw to your attention to the photographs as well?

Yes? --- There are three of these photographs the original sepia toned ones that are inverted, in other words they are

mirror imaged.

Yes? --- And those would be photographs 1, 6 and 7 are inverted so 2, 3, 4 and 5 are correct. So in those mirror image 1, 6 and 7 when you look at something on the right side it is the left side we are looking at it is a mirror image.

Yes thank you for pointing it out to us Doctor. Doctor we can now turn to a discussion of your findings. Although before we do so you do point out that you laboured under certain limitations. --- Yes.

And I think it is appropriate that you point out what those limitations were? --- Yes thank you. Just to my analysis the limitations were that the biggest limitation is the absence of great proportion of the original record, but particularly the original reports of Doctor Gluckman the independent Pathologist and Professor Kogh the other Pathologist from Pretoria. Those that I believe it is significant because I believe that could have cleared up a lot of the uncertainties those are the two. The first one the…[intervene].

COURT: Just a minute before you pass this point. --- Yes.

You say which particular reports you did not have? --- Well of the first 652 pages M'Lord that are missing in those would be relevant to my needs in doing this analysis would be Doctor Gluckman and Professor Kogh's original reports.

Oh Professor Kogh? --- Yes.

Okay, but you did get the medical, or the post-mortem report by Doctor Scheepers? --- Yes that is correct.

MR VARNEY: Yes. --- And of course to complete that M'Lord just

the fact that a fair amount of the transcript that we have after page 653 onwards that relates to some of the Pathologists testimony was in Afrikaans and I could not get that in time translated. Of course I felt of course that the original autopsy report of Doctor Scheepers was in fact less than adequate, and less than comprehensive, and I thought that was a limitation as well.

Doctor can you take us through the main inadequacies in your view of Doctor Scheepers report? --- Thank you. M'Lord the report at first glance at first view will appear comprehensive, will appear detailed but it does definitely fall short of the comprehensiveness that I believe, and even in 1971 I believe should have accompanied a death of this context, this nature and this history. In that particularly well it is a death in custody. Particularly the quality of the documentation was inadequate, the descriptions of wounds were inadequate. Lack of measurements with the exception of one of those 35 pointed numbered wounds, only one had a measurement the rest do not. We have no idea of the depth, the extent deeply, and also the description the quality of description for example finding new answers like colour changes and variances, patterns etcetera, these were not there. The same applies to the internal injuries in the Pathology. I was to be honest disappointed that I was not able to gain the information that I needed to make the inferences that we need to make in an objective manner. Then there were no x-rays taken and certainly although I started my training, forensic training in 1982, and 1983 I believe that in 1971 there were x-rays available, and this case

should have had x-rays and I will explain why it should have had x-ray. Mainly to characterise the nature, for detection first of all to detect those injuries that are missing. We do not know about the pelvis it might have been a very cursory examination of the pelvis that can mix such fractures. Pelvic fractures are important, the nature of the fracture important to decide whether it was a pre-existing injury not from the fall, or from the fall, or the nature of the fall. Of course then you need an x-ray M'Lord to characterise the nature of the fracture differentiate for example what they all a dislocation if of the left ankle whether it was an inversion that inwardly diverted displacement fracture or eversion, or a telescoping compression that would give us an idea whether he fell on the foot, or on the feet, or whether it was ant mortem injury. Then of course I believe that critically important where the lack of photography it ties up with the others, lack of adequate photography sorry. In other words I would have wanted to see the exact depiction of that skull fracture to decide whether it is a fracture of such an impact at 10 floors, or whether it is a facture caused by another kind of infliction of force, blunt force, directed force. I wanted to know whether for example fracture patterns they betray a lot. Fracture patterns could portray the nature of injury, direction of injury, and help quantify the amount of force. Then of course there were no toxicological analysis. It is almost like a minimum standard now that we have that in a death like this where minimal or no survival that you must do routine toxicological analysis. Even though they might have had challenges in early 1970's they

should have at least done basic screening, toxicological screen and at an alcohol level which we would consider the very minimum. Finally the other shortcoming forgive me it is a bit dry, shortcoming is that there was I felt a lack of anticipation of what I believe would be the lines of medical legal enquiry an experienced Pathologist should be aware. This is a custody death, this is the context, and this is the history, and these are the questions that will be asked. That the investigation route should have been guided by the anticipation of those lines of enquiry. For example a toxicological analysis great detailed descriptions and reconstruction of the injury patterns in that case would have told us a lot, quite a lot.

Doctor the one aspect I think you omitted was that the skull fractures were not drawn onto diagrams? --- Correct.

Is that also a shortcoming? --- That is correct yes and diagrams of sketches anatomically correct sketches.

Thank you Doctor. All right Doctor let us now turn to your discussion and I see you commence with a discussion about the value the examination of wounds to determine their age? --- Yes.

You seem to be saying that they are of limited value. Could you explain? --- Yes in context I will summarise that very quickly. Because mainly the greater portion of the available transcript of the oral proceedings involving three Pathologists and involved the histological appearance of the wounds, such as what you see on microscope and try to determine the age. I think 95 percent or more of the transcript dealt with that. I do not know obviously what was in

the original portion of transcript maybe there was a lot there that could help the balance. But I felt that the emphasis on the histology was misplaced and it was a bit misdirected, and the reason for this is that in the 70's or much before the value of the histology that is looking at the tissues under the microscope was well understood, and well recognised. There was a lot known already about the appearances of wounds of different ages, and the Science advanced tremendously it is still very good science or shall we say excellent science advanced tremendously now that we can besides the general histology we can do what we call immunological investigations into histology. They tell you a tremendous amount I will not want to go into detail. But what we must understand it applied then, and it also applies now is that for a Court for concrete objective solid evidence in Court that the histological features are very good at showing the difference between anta mortem, and post-mortem, or per mortem, that we can accept. But if you are going to look at the histology and the special investigations in trying to distinguish between this is three, or four, or five days, or is it six, or seven, or eight days then that is displaced because even today we recognise the biological variations that occur in tissue are so wide that you cannot use this to make that distinction. Oh it is three days and not four days, or four and a half and not seven days. I do not want to go into detail but the accumulation of error would be so hazardous that it would be inadvisable for the Court to place reliance on this. So to summarise the histology bringing a case because it did help there just to decide and to determine that all those

surface or the greater number of the surface bruises, and abrasions were healing wounds, and had been there at least for several days. That is the limit to which we can the Scientist Forensic Specialists can say with confidence.

COURT: Let us just follow up what you have said now. --- Yes.

With modern Science having advanced where we are now 2017 is there a way in which let us put aside the question of Mr Timol. Assuming a death were to occur now how accurate would it be for any Pathologist to determine the exact time of a particular wound. --- Yes.

Are there any factors that would be taken into account to do that? --- Yes M'Lord what it does it gives you good evidence but we only express it to be safe in terms of a range that is, there are two wounds and if there are two wounds the one is likely to be between three and seven days, while the other is between one and a half and two weeks, or 10 to 14 days. So that sort of comparative evidence statement is valid in the order of weeks.

Is it any different to what they did in 1970? --- My concern is that what they were trying to do was to differentiate in the order of days. That is, is this a wound that is between four and seven days? Or is this a wound between four and 12 days, or four and five days, and four and 12 days. I cannot remember the exact detail but that is what they were trying to do. That level of hazard now we would consider is probably unacceptable.

In regard to the range? --- That is correct.

Okay. --- To conclude for the Court to make a finding

that because Mr Timol had been in custody for four and a half days, or just almost five days that the particular wound we can conclude is six days old therefore the wounds that we see antedated the arrest, and that is dangerous.

So no reliance can be placed even on that estimate? --- Well it is a qualified reliance. Let's assume we have a child where the two lesions one on this shoulder, and one on the other shoulder left and right it is important because repetitive injuries of different ages are important to diagnose repetitive child abuse. If we use this, and I use this as an analogy to say that this is a wound of three to five days old, and this is a wound eight to nine days old, is we can say that confidentially then that is good evidence for a Court to make a finding of repetitive child abuse. A good possibility of repetitive child abuse, but you are saying the same or similar set of differences in wound age to make a finding as to whether injuries occurred pre-custody, or in custody is or would be hazardous. If you are looking at the differences in the order of days.

Thank you.

MR VARNEY: Doctor now just so that we are clear what you understand between anti-mortem and peri-mortem? --- Yes thank you. I may have used the word post-mortem too frequently it is just a common habit. Anti-mortem is definitely anti-mortem that which had occurred before death. Post-mortem definitely after death. There is just about that time of death just before and just after we are talking about a few hours where we cannot say and we call that stage

per-mortem.

Thank you for that clarification. --- Yes.

All right so we can now turn to your report where you commence with setting out the full related injuries that is at paragraph 11 on page 6 of your report. --- Thank you.

Can you commence now by taking us through the four related injuries? --- Thank you and I read from paragraph 11 of my report. I believe the four related injuries would most likely have been those that occurred as a result of that major, heavy, broad gravitational impact of 60 kilograms. That would include the bruise seen on the left side of the forehead associated with the fracture line of the forehead that ran backwards and downwards through the base of skull. So through this sphere through the entire vault or cranial compartment it was an encircling fracture that ran.

Sorry to interrupt you Doctor but if you wish to refer to your diagrams feel free to do so. --- Oh thank you. It is an extra if at the end if which shows us six skull diagrams. You can see the fracture running or depicted, or I depicted it in the best way possible exactly from the reports, so but I do accept that there may be slight differences in the way the fracture would originally have been.

So Doctor that is on page 31 of your report. --- On page 31 of the report thank you. The fracture then which ran I want maybe just to describe the fracture, ran again across to the mid-line, and there was another fracture running down on the right side. It ran down both of them ran down to the base, they crossed over the base. Almost to the

fact that you could imagine the entire right side front of the skull could have been mobile and lose, because the fracture ran and circled the skull, or almost encircled the skull. In addition the fracture at the base also could be seen in my opinion could be seen running down the nasal portions, so in other words leaving this portion of the nose as a lose mobile area of the nose, and of course ran down the right side of the upper jaw that will be I think the basal fracture. In addition while we are here though the fracture of the left angle of the mandible corner of the mandible which was described as fragmented broken into pieces. I find that hard to reconcile because when I look at this fracture I am seeing the pattern fracture of a massive impact, and probably over the front of the head that fractured skull in that manner. It is what we call struck hoop phenomenon. If you look at a ball your worship, a ball that is struck on impact it deforms like a struck hoop in a split second, and because at the deformity it fractures right through. So the fracture at the left side of the jaw, left angle of the jaw cannot reconcile easily. The one thing is when the body strikes the ground it does not go bouncing like a football it may have a second impact of another part but then it does not go bouncing. So I find it hard to reconcile this fracture because it is a separate impact. Then of course the skull what is described on the left on the left parietal area of the skull, and I am pointing, pointing to the left parietal the left side of the crown there is another depressed fracture, which I also cannot reconcile. Because it is almost unheard of to have the body bouncing on the ground remember it is a 10 metre fall it is not a fall from

a parachute jump where there is lots of time to re-orientate the body.

You mean 10 floors, 10 stories? --- Sorry 10 floors I am sorry it is probably about 30 or more metres. To get a separate impact on the side opposite the side of impact is also incongruous it is inconsistent findings.

Yes? --- I will go back to the what I believe are fall related injuries. The brain injury and I refer to diagram G on the single of those six diagrams I have got the injury described on the brain. That is the chair of the underside of the left frontal lobe, as well as haemorrhage in that area Basel left front and temporal lobe. So in other words on this side it is a base on this side of the brain, and that would be fall related because that is where the fracture ran.

Yes? --- Then the fractured cervical spine. The fractured cervical spine needs considerable high intensity, and high magnitude force that it either then knocks the neck backwards, it knocks the neck forwards or compresses telescopes of the neck spine. In this way I cannot determine whether the neck was knocked backwards or forward to cause the fracture of the low seventh cervical vertebra. I would think though with the frontal impact it would have to be in hyper extension rather than hyper flexion kind of impact that fractured the seventh vertebra. Here x-rays of course would have helped. Most of the fractured ribs we know that high fall, and where we talk about very high falls are over 30 meters, so I think this fall will be in the category of a very high fall. Between seven and 30 it is what we call normal high falls, under seven metres is what we call low falls. So in high

falls you get fractures of the rib usually in multiple positions and involving most of the ribs, and then the fractures of these ribs which is largely at the right sides, so the impact would be generally from the front and the side, and it transmits to the other side in that impact. What I am saying is impact on one side is transmitted to the other side fracturing the ribs because they deform. The other fracture or the other injury fall related will be the fracture of the right elbow.

Just one questions for clarification. Could you say most of the fractured ribs you do not exclude the possibility that one or other rib might have been a pre-fall injury? --- Might not have been a pre-fall injury?

Yes. --- Yes that is right I cannot exclude that. I think most of the fractured ribs…[intervene].

Or rather to be clear it might have been a pre-fall? --- Oh pre-fall yes, pre-fall yes sorry I heard freefall. Yes some of those ribs I cannot exclude being pre-fall injuries yes.

Thank you. --- Then also the lacerations the lungs typical the lungs lacerate mainly because of pressure changes, mainly because of rib fractures themselves that puncture the lungs but also the pressure changes that to the lung lobes to an extent. Then laceration of the liver characteristic and typical of falls. The laceration that was described of the right side deep fishering lacerations but strangely hardly any blood around the abdomen which I would expect. That is typically fall related. Then there is contusion within the heart valve ring, I cannot remember valve we have got a deep seated contusion it

would not be superficial low impact it would be a deep resounding reverberating impact in the chest that causes that sort of contusion. Similarly to the torn renal artery. What happens at the heavy impact the kidney which is sort of a weighty relatively weighty organ attached by a little ligament or pedicle of an artery or a vein it pulls away and it tears that is also typical fall related. Fractured right elbow I mentioned because the fractured elbow also suggested that it was a right sided impact, or right front sided impact rather than left side. The one thing is I cannot characterise the fractured femur. The fractured femur can occur as a result of many things. It could occur as a result of the fall if as I believe M'Lord that the body fell the first impact or the primary impact was the head, shoulder, right side, right elbow, and right chest. But the second part the lower part of the body might have also struck as the [indistinct] of the impact to fracture the femur.

Thank you Doctor. If we can now move to what is of great interest to us and that are the injuries that in your view are not fall related. --- Yes.

And this is also on page six of your report. You have made passing reference to some of those injuries but if you could please take us through the none fall related injuries in your considered view. --- Thank you your worship, M'Lord. The 35 injuries listed by Doctor Scheepers in his bulleted form are in Annexure 1 on page 19 of my report in the translated report. Wounds 1 to 7 we can agree are all fall related. The fractured left elbow, mid shaft right femur, contusions of the forehead. I cannot say that the contusions on the forehead are

definitely fall related but they are in the region where the fracture was. So 1 to 10 M'Lord is fall related but 8 to 35 which are multiple discreet or what we call multifocal injuries. They were individual small, discreet separate from each other not confluent, and depicted on the diagram they have some characteristic positions of being in recesses and not buttresses. In other words those portions of the body surface that are hard to get in a fall. Such as in the region the protected region under the armpit, and the recessed sunken area of the neck under the jaw, areas where a fall will not cause injuries. These eight to 35 wounds eight to 35 are what were largely used to do the histological examination of all the abrasions and bruises, and which were agreed by all the Pathologists. Even they differed on the age somewhat they did agree that all of them were healing wounds, and those were not fall related. May I continue?

Yes please. --- Still on those wounds the none fall related ones. I believe that they are not like was suggested in the original inquest brushing against the wall, or falling against the corner. I believe they were fall caused by multiple applications of force. Whether they were during carrying of a body, or whether they were direct application force it is unclear. Although it would be very hard for a Pathologist to accept that a young male a generally young male has not got lots of subcutaneous tissue will bruise easily on carrying, or grabbing we do not usually bruise that easily a young male.

In your report you referred to various and multiple blunt force impacts? --- That is correct.

At paragraph 14? --- That is correct yes.

It is not clear from the autopsy how deep these injuries were like these bruises. Except for what Doctor Scheepers described and for example he described, but I would ask you to rather look at the diagrams number 19 on Diagram C. I depicted the contusion, the bruise over the calf. It is about the only position where Doctor Scheepers describes contusion of the muscle. So he must have seen if he did not make an incision and we do not know if he did, and we do not know whether it was put to him and whether he conceded that he had seen this bruising of the muscle only through the surface, or he made an incision we have no idea, but it is considerable bruising. So we do not know how deep these other surface injuries were. All we can go is at judgment on the photographs, and the judgment made by someone with care and experience. All I could suggest that this says that they are forensically relevant in that you make deductions from them. Such as I mentioned wounds that are on recesses. The multifocal circumscribed all over the body on the front, rear and sides of the body. So that just will not occur as a result of single impact, and neither would wounds in recesses and hidden spots be occasioned just by a person rolling over example in pain with an abdominal complaint, or being hurt.

Doctor the calf injury which you have pointed out in Annexure "C" and it is at the bottom of the right leg where you have the number 19. You have concluded that in terms of the description of the post-mortem report these particular injuries are far too extensively bruised

to have been secondary to the impact of falling to the ground. If that is the case then what could have caused such an injury? --- Yes, I make specific mention because here I talk about that in convertie of the detail the inconsistency. I am coming further to deciding or giving a suggestion as to how long this patient should have survived. I believe that from the secondary features of the fall related injuries I believe he was alive, but alive for a very short period. There is minimal blood around the lungs and these lungs have quite a few tears especially on the right side. There is no blood described around the liver, and I would be very, very surprised because that is the greatest source of bleeding a ruptured liver like that. So at this minimal degree if we go by Doctor Scheepers description there is minimal bruising, and minimal reactionary haemorrhage although there is, because for example around the torn renal artery there is a little bit of haemorrhage. All that tells you that there is a suggestion that he was alive but for a very short period of time. Therefore M'Lord when we look at the left ankle fracture, or dislocation which I believe and I will explain why I believe that there almost certainly was a fracture as well. Now let us look at the right calf contusion it is so inconsistent in terms of time that my only reasonable conclusion is that they had occurred not from the fall but before the fall, that it was there before the fall. The fall caused him to survive not more in my opinion than 10 minutes in fact I think it is even less maybe five minutes.

And Doctor to come back to my question what could

have caused the observed injury to the lower right calf which has been described as, or as you have described as extensive bruising? --- Yes, the lower right calf let us first deal with that. The only thing that I can think of it is not an orthopaedic injury it is a muscular injury M'Lord it is going to have to be from blunt impact. Blunt impact that did not cause a limb to go into deformity and fracture, but blunt impact directed at the calf. It is my only first conclusion.

Could an instrument have been used to deliver that injury? --- Most likely by an instrument.

And what kind of an instrument? --- It has got to be a heavy instrument it is either an instrument it is a heavy instrument used to inflict the injury or it could be by of course blows, such as kicking and blows to the calf.

Is it conceivable or possible that an iron rod could have been used to deliver such an injury? --- Very likely.

All right if we could perhaps move to your paragraph 17 where you provide a discussion of the depressed fracture of the left bone. --- Yes.

I know we looked at the diagrams at the scars you indicated to the Court that because of the fracture pattern this is more likely to be an isolated impact that is distinct from the fall. --- That is correct. Putting it another way unless there is something that we do not know in history this does not fit with the fall.

Right. So I have a few questions arising and the first one is again how could this injury have come about if it was not from the fall?

--- Well that is a good question M'Lord because here is the importance of distinguishing between the high velocity impact with the sharing deformity type injury, and local application of force. If you have the local application of force where an object like this it would simply cause a local depressed fracture on the skull. That is what we call a local injury, but if you take the same scar and like a football and throw it against the wall the skull deforms you cannot see it deform, so in a split second and causes that extensive eggshell like fracture. Now that is the difference between the high velocity mobile force injury, and then a fixed, or somewhat fixed skull sustained in an impact.

And Doctor Naidoo would I be correct in saying that you endeavoured to graphically display the location of this particular injure in your Annexure "F" on the diagram at the bottom left hand of the page? --- Yes, on Annexure "F" the bottom left diagram I have depicted it because there is nothing to base the appearance on I have depicted it very neatly as a fracture it is a little depression. It could be slightly varied, and the bottom line is that it is a depressed fracture. A depressed fracture as I mentioned localised application of force.

Now somebody receiving such an injury what would be the impact on such a person? --- Well very severe if he does not generally localise depressed fracture they will not die immediately but there is a high risk of internal bruising of the brain which is called contusion, and haemorrhage and then rapidly development of that haemorrhage as it continues to bleed and the bruised brain swelling, and then of course this is a classic head injury. This is a kind of

patient that is rushed to surgery to elevate the fracture and drain out the blood to relieve the pressure because of caused pressure is the most serious complication in a head injury, and that is what damaged the brain. So this patient then receiving such an impact will not be or will not die immediately, but in all probability would be unconscious, or in semi-coma or coma.

I see, I want to turn to the level of consciousness but I would just like to confirm that in your view if such an injury is not treated there is a hard probability of death? --- Yes.

Are you able to say at proximately in what period of time? --- No it is difficult but if a patient with a depressed fracture is not treated he is definitely or that brain is going to swell, the accumulation of blood, and within a few days he will take a few days to die.

Thank you so you have testified that in all likelihood following this blow Mr Timol was rendered unconscious? --- If that blow was sustained before the fall yes it would have rendered him unconscious definitely.

And it is your view that this particular injury is a pre-fall injury? --- Well my conclusion is that it does not fit the fall or pattern, so because of that it is more than likely pre-fall yes.

In terms of the consciousness of Mr Timol is it possible that he might have fallen unconscious for a considerable period of time, or could he perhaps have been slipping in out of consciousness? --- Well they do slip in and out of consciousness. It will be a clinical opinion but I know that it is not definite that he would be unconscious

but he would certainly have a depressed level of consciousness and quite possibly in none expert opinion be slipping in and out of consciousness.

So what would the general impact of such an injury be on Mr Timol in particular his communitive ability and his ability to be mobile? --- It would have prevented him because of his state of unconsciousness it would have rendered him immediate in capacity in terms of maybe in a state of delirium and delirious speech and not able to engage with in conversation or respond. He might just be able to respond by groans if he had this serious head injury, but certainly not be able to walk or sit up etcetera.

In paragraph 18 you make reference to an injury that you have drawn our attention to, and that is the fracturing of the lower jaw, and you say that at its corner it appears fragmented and then in brackets you have got [broken into pieces]. So you said it looked like a serious injury. Again how would such an injury be caused if it was not fall related? --- If it had been caused by a direct application of force to the left angle of jaw, and that side of the neck.

Would it be a blunt force? --- A blunt force yes.

And the impact of such an jury would such a person be able to carry on talking, or would such a person perhaps drink coffee? --- I certainly do not think so if that was an injury alone without any other injuries that would be a terrible debilitating injury. To fragment the jaw he might have been bleeding from the mouth because there could be lacerations and open wounds inside the mouth with maybe broken

teeth. He certainly would not have been able to carry on a normal conversation let alone drink a cup of coffee. May I draw your attention to 19?

Yes of course. --- 19 is something that I did not depict on the diagram or anything. 19 on page eight a deep scar bruising on the left excipiable area. The left excipiable area is at the left back of the head and I am pointing in the Court to the lower back of the head. Now that too that is discreet and separate from the fracture, depressed fracture the left right area and this too cannot be explained by the fall.

But again it can be explained by a severe blunt blow to that area? --- That is correct.

Doctor Naidoo I am going to move to your view on how the body landed, but before I do are there any other particular injuries that you wish to draw our attention to in relation to none fall injuries? --- No I think that covered most of it.

Can you indicate to the Court how you believe Mr Timol landed in that garden? --- Yes just as I mentioned earlier the impact sights were the frontal region of the face possibly, no not the face sorry the head, not the face okay. Head and right elbow and chest region largely that is the primary impact sight. The right femoral fracture can be caused as secondary impact because once the body lands on this region firstly then the rest of the body goes bounces also the ground and it can fracture the femur but that is a possibility, and I cannot exclude that.

COURT: And the Doctors who examined the body are not in

a position to say which was the primary impact area? --- I think if I do recall reading that portion of the transcript which is in English they did concede that it was a fracture of the right side. They mentioned a fracture at the right side or impact at the right side of the chest M'Lord.

Oh. You got this from the transcripts? --- From the transcript yes.

Okay. --- If my recall is correct and I am confident of that.

MR VARNEY: You can carry on Doctor. --- Yes that dealt with the impact of the body. I think I need to add that my impression is that he did not fall on his feet either on one foot or two because the pattern of injuries I think would be quite different, quite different. Despite the injury of the left ankle that is a fracture dislocation and the bruising on the right side I believe that is not the point of impact that had occurred not related to the fall.

Thank you Doctor and your report seems to indicate that you were satisfied that Mr Timol was alive at the time of the fall? --- Yes I believe in consideration of all the little findings it points to Mr Timol being alive at the time of the fall. Whether he was conscious or not there is no way I think anyone can say.

But there is a possibility at least that he was unconscious but alive at the time of the fall? --- Yes very much so.

You have already indicated how long you believed he would have been alive for we do not have to traverse that again. --- Yes but I just need to bring an error in my typed report. Number 27 I mention

in discussion how long I think he survived I mention that Mr X enters the room at 15:50, and Doctor Kemp sees the body taken up to the ninth floor I need to correct that. It is when Doctor Kemp sees the body when it lay in the passage on the ninth floor. This is just an error and I apologise for that.

Thank you for that clarification. You have also testified on the neck injuries so that we will not have to traverse but you also seem to be excluding the possibility of strangulation? --- Yes simply just to describe strangulation usually there is a pattern despite it being so hard to believe, but you must see a pattern of application of force. For example multiple, multifocal digital application of the fingers, or constriction. There are patterns that you see and that is not the pattern. What I am seeing here is evidence of superficial strap muscle haemorrhage and tear at the right clavicle. That typically occurs as a result of sudden hyper extension backwards. So there is sudden stretching of the muscle fibres in the most superficial layer of the neck what we call the strap muscles. That in fact supports the contention of that impact or the front of the head knocking the head backwards.

Thank you. Doctor your report devotes considerable attention to the injury on the left which is described as a left ankle dislocation. --- Yes.

And the heading is before or after the fall. --- Yes.

Can you take the Court through that? --- Yes thank you very much. Here and here again I bring up the difference in intensity of description. This is the only place where there are four references to

the bruising around the left ankle. That is in wound number 31 described bruising at the left lateral aspect of the foot, the left side of the foot. Number 32 which it describes large contusions bruises, all over the interior part of the lower leg near the ankle. Then wound 35 contusion of the posterior part of the left lower leg near the ankle. Now I believe that is significant as there are three descriptions of bruising, and that is unusual. That tells you that, that is a serious injury to the ankle. All of us know M'Lord is that when you sprain your ankle you either twist it inside, or twist it outside you get swelling, and you normally see the swelling within a few hours it will be seen. By the next morning the ankle is nicely swollen, and if there is a bit of a reddish bruising there we always get an x-ray because swelling will mask a fracture. Invariably there is a little bit of a crack fracture usually of thin fibular on the outside of the compartment is a thinner fibular that fractures. But it will not be deformed because the thicker tibia keeps the stabilisation stability of that ankle. But there are other bones that can also fracture. In summary M'Lord I believe the fracture was missed simply because they did an x-ray, or well I do not know if they dissected to the ankle. So that is a serious injury especially if there is visible bruising on a body that has been testified it means that in the inquest it might have been skipped. Visible bruising then I am saying there is a high likelihood there is a fracture in that ankle. Now number 33 I go on to say so this then I believe is too greater vital reaction for someone that survived only for a few minutes. Vital reaction means the reaction of a body to injury. It starts off with

immediate haemorrhage and then swelling, and then the earliest features exudation of fluid into any injury be it small or large that reaction is the same. Then it goes on as a person starts to repair and heal, the healing reactions, and what we look for under a microscope. But the earliest vital reaction is probably the occurrence of bleeding and that is what we are seeing on this. That is not consistent with having occurred in that fall. Therefore I believe that the left ankle fracture dislocation occurred before the fall, and I draw attention then in reconciling statements to the observations of Silem Hissop was arrested together with Timol. When he saw the person on the Monday the 25th of October 1971 hooded, those are his words. Then of course stated we dragged along in inverted commas not able to walk normally, and also held up by Security Officers on either side of him who were holding onto the sides of the trunk. He thought that person was Timol. I believe and that probably points to pre-existing injuries especially of the left ankle, but also probably of the right calf he was not able to even ambulate on his own.

Thank you Doctor. Doctor wearing your medical practitioner hat are you able to express a view on whether the deceased was able to throw himself out of the window, either by way of jumping or diving? --- Yes I believe I can but obviously I speak a lot as an ordinary medical practitioner as an ordinary person, but also as a Forensic Pathologist because it is reconciling what the [indistinct] call the capacity to act after injury. How much can you do, how far can you walk etcetera. I believe that first of all would he have been able by his

own doing to get to that window and throw himself out? I just want to deal with the aperture which I measured the size, and I approximated Timol's size it is one point six metres and 61 kilograms approximated onto a police officer lady that will remain unknown. She happened to be on the scene yesterday. I took the measurements the shoulder to shoulder measurement the aperture measurement and my impression is yes he could have fitted through the aperture. When the window opens it hinges there is a bit aperture and a small aperture he certainly he could have fitted at a squeeze. I did it myself I am taller and a little bigger even though I am scrawny, I could have fitted and so could he have fitted through the bit aperture. Through the small aperture I am not certain…[intervene].

When you say Salem you mean Mr Timol? --- Oh sorry the deceased Mr Timol. The small aperture he certainly could not have fitted in the same manner facing upright as he would have had to slide his body turn is face upwards, and slide his body and probably squeeze through, and that I do not think is easy. But having said that he could have his body could have fitted. Let us look at the other aspects Ahmed Timol being one point six metres the windowsill at 96 centimetres above the ground is above, is just above is umbilicus. Now a normal centre of gravity is between the hipbone so that is just at the level of the pubis or if a man just to say at around just above his scrotum is his centre of gravity. If he were to be approaching at one point six metres he would not be able to fall forward and that is why when you build banisters and railings you want the railing to be above

the centre of gravity. So you can lean forward but your body does not fall over. So he could not have fallen over how then could he have got there? The heater, the radiator the old radiator is 85 centimetres above the ground the top of it. The valve I think it is the pressure release valve or whatever valve is there is 33 centimetres. He would have had to climb around to either that valve or the top of that heater, or on top of the ledge himself at 96 centimetres. Okay 33 centimetres, 85 and 96 centimetres all onto a chair which is approximately 50 centimetres to clamber up. Now to clamber up a normal person doing that will take before you find yourself in position fix one leg and then lift the other that will take about five seconds. If you look at five seconds it is a considerable long time even if you just time it five seconds is a lot. He would have had to clamber up to the ledge to get his feet I worked this out to an extent. He could have lifted himself with the arms okay if his arms were well, but he still would have had to more likely have levered himself by grabbing the sides of the window aperture. It is very difficult to do that just with the arms you have to have the assistance of the lower limbs. Now would this have been possible and in my opinion not because I believe at the best scenario that the deceased was desperately ill. He would have hardly been in a position if he was conscious that is to be able to ambulate and walk to the window or get out of the chair, walk to the window, and even place an attempt to achieve that effort of heaving himself out that is the best case scenario. He would not have been able to walk unaided with the ankle and calf injuries that I believe are anti mortem. At the

worst case scenario I believe that he would be in extreme maybe prostrate or unconscious. So and of course would you ask a man rather than heaving himself out the window would he have been able to dive through? I think the Court will accept that my opinion would be that if he could not achieve getting a little bit of am ambulation with that injury unless assisted he would not have been able to dive through the window.

And if he had dived through you seem to indicate that he might have sustained further injuries? --- Yes what I did I looked at the aperture and the latch mechanism. It sticks out with a little twirling knob to tighten the hole on the latch. If someone had dived through the aperture I would have expected his clothes or his body to have snagged onto the edges of the aperture and the upturned little opening latch to the effect that it would have caused deep abrasions, maybe even a laceration as his body passed through the aperture if he dived through.

Thank you. In your report you consider whether the person in these circumstances could have reached him and stopped him, and what was your conclusion? --- Yes I did look at that particularly because I was considering heights and weights and centres of gravity etcetera and I looked repeatedly at the faint image that we have of the administrative clerk person Rodriguez yes standing at the window. It seemed to me when I visited that witness Rodriguez is probably very tall probably about maybe one point eight five, or maybe even one point nine metres tall. Placing someone in that position in the office I

believe it is hard to, well I think it is hard to believe that a simple reaching out of that witness would not have been an adequate to stop anyone from clambering through that window.

And we intend to lead architectural evidence to demonstrate that the width of that room was only two point eight meters? --- Yes it was two point six I think in my rough estimate rough measurement but it could be two point eight yes.

COURT: Now the version that you have just described now in relation to whether the question whether he would have been able to reach the person just before he went out on what is it based did you look at the evidence of Rodriguez? --- Just looking at the position, the space positioning of the chair in the two point six metre wide space the positioning of the chair I think it was marked chair A in the diagram, and the aperture window that is just on its right side if anyone is sitting on it. So am just looking at the space and positioning, as well as the distance and stature of the person that was sitting on that chair with the deceased.

Okay.

MR VARNEY: Now Doctor just for the record you have expressed a view on his actual cause of death and what was that? --- Oh yes I believe that the cause of death is not as expressed by in the transcript blood loss it was massive head and chest injury, and the possible immediate cause of death was the brain shearing impact. I do not want to go into the detail of why I say that I find partial haemorrhages in the brain. There are indication of a high velocity heavy impact

shearing force, and that can cause brain stem damage and I believe that was probably a greater contribution, or great contributor and of course the severe chest injury.

COURT: Is it what the two Doctors also found or do you have a different finding? --- Just a slightly different they talk about multiple injuries and I think they talk about multiple injuries and blood loss, and shock if I am not mistaken, but it is more the impact the immediate brain impact, and brain and chest impact. There is minimal blood loss, brain and chest impact that caused the death.

MR VARNEY: You have also expressed a view on whether it was possible for the anti-mortem injuries not to have been detected by those interrogating him or those guarding him? --- Yes I just was under the impression that it is so clear on photography on even the old photographs they are somewhat vague or fuzzy. That unless he was fully clothed at all times excluding his hands and his face it would be hard to understand how these injuries were not evidence if they say in some statements that he slept without his shirt, bare upper chest, bare upper body, because it was hot. I will find it hard to reconcile these findings.

And in fact in diagram E you do point to some injuries on the hands? --- Yes.

Could you explain what those are and indicate whether that would have been visible? --- Yes first of all in diagram E you have got an injury a bruise on the inside that is a ventral side of the left wrist, and two on the dorsum of the hand. One on the finger, the

index finger and the other at the base of the index finger. For one thing is the hands are what are you notice a person by the face and the hands mostly okay. You were highly likely to see injuries and therefore I find that also hard to reconcile.

And these injuries would have been anti-mortem as opposed to [indistinct]? --- I am qualifying that answer because there is no measurements and there is no idea of depth so I do not know how severe those are, and I am unable to say with confidence. Although I would like to think that they are more likely anti-mortem because they had depicted in about the same frame of mind as Doctor Scheepers depicted the worst I would like to think that they are anti-mortem but I cannot be absolutely sure.

Thank you. Then finally Doctor you have got a heading called other incidental observations which you make two observations the one dealing with the fact that the bladder contained a large amount of urine. --- Yes.

And then you spoke about contusions on the top of three of the left toes. Could you describe to the Court why you regard these injuries as significant or interesting for the Court? --- Well just to deal with the contusion of the left, or on the top of the toes that is the left foot and on top of the middle three toes the contusions also hard to reconcile with the fall. Whilst I am similarly like I was not able to say with the greatest amount of confidence about the wounds on the hand and wrist I am unable to say clearly that this is anti-mortem. I just wish to raise that because I think on the balance of my opinion it is

anti-mortem its position is troubling, because I have done cases inside this country and outside this country of torture, and I have seen wounds in subtle positions like the tops of the toes in such cases.

And if those injuries are not fall related how could they have been caused? --- I believe strongly we must look at the compression at the tops of the toes, or the foot whether the foot you must look at the compression of that, blunt force maybe by tramping and maybe by an instrument.

And the significance of large amounts of urine being in the bladder? --- Well the importance of that is that well firstly he either was not taken, or he was refused or he was not given a chance he was interrogation a chance to relieve his bladder that is one thing, for several hours. We do not also know that is a shortcoming of the autopsy report we do not know the volume of the urine. How fast do you produce urine? A healthy person about 100 ml an hour. This is not a person who is probably healthy I do not know how hydrated he was. We are looking at many hours then or at least several hours in which he had not emptied his bladder. But what happens is we know and this is why I raise this point it is a possibility that he was unconscious or in a state of coma, because we see that in comatose people. That there is no conscious effort or unconscious overriding of voluntary control of the controlled bladder, and the bladder stays full and continues to fill up and continues to destemmed, and that is why we categorise the bladder to empty it out. So what I am saying is consider that either from the restraining context that he was not

allowed to void his bladder, or that he might have been in a state of coma, or unconsciousness.

So even in a state of coma there would not be a certain release of that bladder? --- No not automatic release from the bladder definitely. We see it all the time even after death that it can stay full.

Thank you Doctor. No further questions Your Lordship.

COURT: Yes Mr Pretorius?

CROSS-EXAMINATION BY MR PRETORIUS: Thank you M'Lord. There is just another theory that I would like to discuss with you Doctor, and that is the significant findings that you find this swelling of the ankle and the lower limbs. Three times you have said that it has been referent to the serious injury to the ankle and the swelling? --- Yes.

The theory that I just want to discuss with you, if there was wrestling at the window itself some people trying to hold onto the leg of Ahmed Timol, and fighting on the ledge of that window, could that have caused such injuries that we are seeing here, and is it consistent that it anti-mortem? --- It is a fair question, and that is why I make criticism of the report is that it does not give you an amount, and it does not give you some sort of quantification of that bleeding. But the description is so extensive and so strikingly obvious as compared to the others that I believe that it was there for hours, several hours before death not just before the fall.

Not just before the fall? --- Yes.

Also when you gave evidence you said it is the little things

he was alive once the impact and it is the little things, the little findings that you made you make the deduction that he was alive? --- Yes.

What is the little things you said it is the blood? --- Yes I have listed it in number 25, and it is haemorrhages around the skull and brain especially at the base that follow the fraction pattern. I mentioned that the fracture pattern is definitely that of a fall. The haemorrhage that follows the fracture pattern and the tear that tells you that he was alive. Then very importantly in the frontal white matter multiple fine pinpoint haemorrhages that is primary impact injury, or what we call primary impact injury, there is shearing of fine vessels. Like this shearing also of neurons but fine vessels in high velocity impact where there is brain lag and things are distorted like a pack of cards that you slide over that is how the brain would shear as well with the high velocity impact. Then there is also internal haemorrhages in the cellulous basal ganglia etcetera that is also high velocity shearing injury is what we call [indistinct] injury where we can see it not always. There was haemorrhages around the lacerations of the lungs. Small not much haemorrhage around the torn left renal right renal artery as I mentioned where it is a dumbbell effect the weighty kidneys that in shock pull apart. Haemorrhage at the posterior [indistinct] that is behind the oesophagus that is very significant. This is critically noted in high falls where the aorta tears away from the attachment because of that shearing. The force of the gravitational pull. I believe in fact the tear of the aorta might have been missed here to give you that haemorrhage. So all those multiple

little positions of haemorrhage are telling me it is enough to suggest that he was alive.

If he was slipping in and out of consciousness in a moment where he was clear, or in a delirium could he not just try to just get away from everything is it possible in a state like that? --- Not in that state. I am not a phycologist or neuro surgeon but I certainly do not think that he would have been able to form the intent of doing such a desperate act.

Thank you M'Lord.

COURT: Yes Mr Thompson?

CROSS-EXAMINATION BY MR THOMPSON: Thank you M'Lord. Just one question briefly I believe the description of the person in the room. You had indicated that you were furnished with the statement by Sergeant Rodriguez, am I right? --- Yes.

And the statement that you were furnished with did it consist of three pages typed in Afrikaans? --- Yes I have not got it with me but it is three pages faded typed old notes in Afrikaans.

Yes, and from the statement that I have and in the possession which I believe all of us have it starts at paragraph 1 and gets to paragraph 10, and then the next paragraph you see is paragraph 16, am I right? --- That maybe right yes.

But there were a few paragraphs missing? --- I think that is correct yes.

Thank you. No further questions M'Lord.

COURT: Thank you. Yes?

CROSS-EXAMINATION BY MR KOTZE: Thank you M'Lord. Doctor I see in your report on page 16 of your report in fact it is the cause of death as indicated by Doctor Scheepers as being multiple injuries? --- Yes.

So would that be the cause of death? --- Yes but I think that in the transcript it clarified and elaborated further to say it was I cannot remember what it was but there was something about blood loss.

Yes, Doctor it is correct and it is also how you recall the transcripts is that Doctor Gluckman was present with Doctor Scheepers in performing the post-mortem? --- Yes.

And Doctor Gluckman was there on the instructions of the family? --- That is right.

Now in your or let me rather rephrase, you do not have Doctor Gluckman's report, or you did not see Doctor Gluckman's report? --- I have not seen that report.

I do not think it is before the Court. --- Yes.

But in his evidence when he testified and he testified quite intensively was there any indication that you could pick up in his evidence where he identified these aspects which are not reconcilable with injuries from a fall? --- No that is a good point and I looked as far as I could within the Afrikaans and English looked extensively and I could not pick up anything that was not related to the histology microscopic examination that they were doing. So as far as I am aware there is nothing in the transcript that deals with the reconcilability of wounds between falls and any other cause.

Yes and would you agree with me that both Doctor Scheepers and Doctor Gluckman would have been in a better position to identify the wounds and the injuries as well as the possible causes and make a better inference from their observations than you are currently in a position to do? --- That is always the situation an external Expert the prevailing situation always.

Yes I understand that it is not criticism Doctor I am just putting it to you? --- Yes.

You would have been in a much better position if you were actually there and even if the photographs were better, and even if there were x-rays? --- Yes.

So all these issues that you have listed as what you would have liked to see in the report would all have put you in a better position to have made a more objective and a more clear finding, or an opinion with regard to the injuries? --- Well what it would have done it would have thrown further light on it, and those I am just clarifying the answer. It would have thrown further light on further aspects but those things that I have expressed with confidence remain expressed with confidence even on the basis of the shortcomings of the original report.

COURT: It is objective? Is your opinion objective? --- Yes certainly so yes.

MR KOTZE: One of the issues that I picked up in the report of Doctor Scheepers who he listed the obvious or the clear injuries is that and those are 35 injuries that you have also tabulated. --- Yes.

I do not see that he there refers to the depressed skull injury. --- Unless in Doctor Gluckman's testimony which was in English I do not see that he referred to unless it was referred to in Doctor Kogh's or Doctor Scheepers Afrikaans testimony I have no idea.

Yes and I am referring actually to his report. --- Yes.

Where you also tabulated his findings that 35 injuries which he noted, and he does note the depressed skull injury in Annexure "2" where he deals with that in the last sentence, and that is why I ask because certainly you rely on certain to the enhances of the report. But it is almost but correct me if I am wrong in paragraph 5 on page 22 of your report in the last sentence of that paragraph. It is almost mentioned in passing there that there is a depressed fracture of the left perineal bone a small lose fragment of the left perineal bone is present. --- Yes.

Now that one itself it does not give at all a measurement or a depth of this depressed skull injury? --- Correct.

Nor of the seriousness of this depressed skull injury? --- Correct yes.

How are we to know what how serious it was because the way you depict it and I appreciate your depiction on page 31 on the schematic of the depressed skull injury. There is no really a way from the report and the evidence itself to know how big it was, how thick, the depth, how deep it was, or how serious this depressed skull injury was? --- I think I can understand your question can you rephrase your question before I answer it. Is that if it was for example mentioned in

passing in paragraph 5 at the last sentence, and not picked up in one of the number 1 to 35 is it that?

Yes what I am saying is that not an indication that it was for him almost an insignificant injury? --- Oh not necessarily because remember the encircling's major skull fracture with what I thought were lose fragments was also not seen externally.

Yes. --- And we know that depressed fractures unless you see the bruise, and remember with the hair you may not see it externally it is usually on seen when lifting the skull.

Yes. --- And opening the scalp and dissecting of the scalp and then looking at the skull.

Further if I look at just on that second page on page 32 when you indicate the injuries to the brain itself it does not appear, and please correct me if I am wrong whether that depressed skull fracture whether it will be transferred to the brain? --- Correct it is a very good observation and I also made that so I could not understand and that is a very good observation from a pathological point of view, that if there was a depressed fracture of the skull that he did not translate also underline the visible bruise of the brain. I have no explanation for that.

Just then to come back to what I have earlier said. Is that not an indication that the depressed skull fracture that was referred to by Doctor Scheepers is in fact was not of significance for him. I do not say that it is not of significance to the Court but was it not for him an incidental issue? --- Well it could maybe for Doctor Scheepers have

been incidental or of lesser significance, because he is seeing such major other findings to record. But clinically a depressed fracture is a depressed fracture it is an indication of a very severe impact, so the effects on the brain as I was doing if you call it evidence in chief I do not know the first part?

Yes. --- I was explaining the effects of the brain and function would be just as significant. It may have been not of great consequence to the documenting Pathologist at the time but clinically it is.

Yes certainly so and I do not belittle the injuries but I am just trying to understand the severity thereof. --- Okay.

And then Doctor if I look at the and we have been surprised with the record of the inquest and the annexures thereto in which also obviously these photographs, or the depictions of the photographs were are of the office, and the person standing to which you also referred to. If I look at page 68 of that Bundle, M'Lord I am not sure what the Bundle's number is I was not here when it was handed in. Volume "B" M'Lord and that is Volume "B" and I am referring here to page 68 of Volume "B".

COURT: Make reference to the alphabet.

MR KOTZE: Yes it is "BB".

COURT: Yes you said page?

MR KOTZE: I see that it is on page 68 in Exhibit "BB".

COURT: 68?

MR KOTZE: Yes. This is a statement by Johannes Frederik Conrad Fick. Now the statement is in Afrikaans and it indicates and it is a statement which was taken from on the 24th of November 1971. I will translate it to you if you do not mind in the second paragraph. --- Yes.

He said that he was assisting with the investigation of the matter on the 28th of October 1971 with then Warrant Officer Deyzel showed him the scene, and he found a shrub of seven foot high which on the once side was stripped of bark, and on the same side it was burst open. I also saw various lose branches that was torn off from the tree or from the shrub which he picked up. Now it seems to me that as I understand the record and the documents that I have read as if it was indicated that he fell on the shrub when he fell in the garden. --- Yes.

And a seven foot shrub is quite a significant shrub it is not a minor small something and there is a bark that is referred to, and there are branches that were torn off. Now when he fell onto such an item, or such a tree would that have caused some of the injuries? Can that explain some of the injuries? I am not referring to the injuries where there was already scab forming which are clearly older injuries? --- Yes.

But some of these injuries for example under the arm to the leg, to the ankle can some of those injuries not be explained by the hitting of this shrub? --- It is a very good question and I must just qualify that by saying what I would have expected if in the last few metres, the two metres, or three metres of his fall if he brushed against the shrub what

I am expecting to find are linear scarification abrasions, or impalements. Now if he was not impaled by a branch to cause a puncture wound I would expect the skin to have linear fictional abrasions types of injuries. We are not saying that and I am not too sure whether it is the foliage or the lose palm type foliage that I was thinking about or that is present at the moment there. There is a long palm type tree that would not cause too significant abrasions. We also do not know what sort of clothing he was wearing because there is some protective effect that clothing would lend to milder impacts like that.

Doctor there is a photograph or attempted photograph at "AA5" on the Bundle but I do not think one can make any reference thereto as to what the structure of the shrub was.

COURT: "AA5"?

MR KOTZE: It is "AA5" M'Lord it seems to be on page 65. I also do not know whether this photograph is necessarily of the tree that is referred to I just see the photograph with the tree here but I cannot use that as significance in my line of questioning. Doctor then the final issue is, is if a person falls as you have described on his right side of the head onwards, and the body comes afterwards. Is there not a type of a whiplash effect with regards to the legs which might come down a very whipped like fashion? --- Yes we call it a second impact.

Yes. --- Primary and then the rest of the body falls behind it the second impact that is possible, and that is what I also alluded earlier.

Yes but that whipped like or that coming down of the limbs following on that secondary would that not have explained the right calf the injury to that calf? --- No not with the bruising not to the extent and the degree of the bruising.

Yes and obviously without the proper testing and we do not know with regard to x-rays or the depth of that because it was not measured so one does not know apart from the fact that it has been described of extensive bruising? --- Yes.

One does not know the full extent of that bruising as to how deep it is? --- Well one can gage from the description, and then he describes contused muscle. If you looked at I think it is wound if you look at the diagram my diagram C at the back of the right knee and calf he talks about contused muscle. Now if he dissected he would have seen the muscle then it would have significant. But if he did not dissect what was he seeing? He was obviously seeing this bluish red purplish area of bruising to call it contused muscle. He has got to be seeing something to describe it as such.

It is just difficult not know what he saw. --- Yes I am just talking about the relative intensity of the description.

And the photographs is not that much of a help. If one looks at "C7" because of the fact for example that it does not show you the crisp lines, it does not show the colour of the wounds and the injuries? --- Sure.

That does have its limitations I am not saying that it is of no help but it does have a limitation in assessing the wounds, or

the injuries? --- Yes.

That specific injuries that one refers to? --- Yes the photographs are valuable but certainly not as specific. It does miss out the lower limbs you cannot see the lower limbs.

Yes I saw that as well. --- Yes.

Doctor the issue that Mr Timol was unconscious when he left the window there is no clear evidence of that? --- We cannot say.

We cannot say that? --- We cannot prove that from the pathology except that we can suggest that.

Yes. --- We cannot explain injuries from the fall we can suggest that there is a high possibility but we cannot confirm it.

Yes you cannot confirm it. --- Yes.

And similarly as to the cause of injuries the blunt force injuries as to the instrument or the way in which it was applied to the body it is also or impossible to give a clear indication of that? --- That is correct.

And likewise also the injuries on the top of the toes whether or not that was for example injuries caused by torture or by some other form of mechanism it is a possibility, but it is not an exclusive possibility as to the cause of those injuries? --- Yes I think the most important point is that it is not confinable with the fall.

Yes. --- With the fall alone.

And then one final question M'Lord thank you. You have been to as recently as yesterday and you looked at the building and you looked at the area from the office there. If you look at a

trajectory from a person falling from a window are there ledges that stands out from the building on which one can also perhaps bump your head or bump perhaps the back of your head or anything like that as he might have tumbled? --- I must admit that I did look through the aperture down.

Yes? --- Apart from this imposing structure or I am not too sure if it is sunshield I did not see anything but I did not look specifically. I did not see any projecting ledges when I looked down but I did not specifically look for it.

If there are ledges and to be honest with you I also do not know I have also only seen the photographs, and if he had tumbled when he fell through the window would and he has bumped his head on those ledges or any part of his body, would that explain any of the injuries? --- If he fell head first?

Yes? --- Then he would have gone into a spiral but in other words into a spin so we have to we do not want to open up something that is relevant, but if he bumps something as an intermediary projecting object it would have totally altered his orientation. Generally when we fall if you look at a high diver from an Olympic into an Olympic pool he will realise that he can spin. We either spin if we execute a spin to start with, and we can spin at different rates, or if you just fall down feet first you can fall without spinning, so it is very dynamic.

Doctor why I am asking this is could such a spin feature if he did hit his head on anything or any part of his body, could that not have

caused a tumble which could have caused different injuries on impact, secondary and primary on the ground? --- Well I must say the presence of an intermediary objective which will partially arrest his fall would certainly have changed quite a bit.

But you have no considered that? --- I have not considered that nor seen something or presented with any evidence of that, so I have not considered that.

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

COURT: Thank you. Yes Mr Varney?

RE-EXAMINATION BY MR VARNEY: M'Lord just one question. Doctor my Learned Friend has pointed out that you were not present at the post-mortem unlike Doctor Scheepers and Doctor Gluckman. I think it stands as to reason that they had the advantage of identifying the injuries and making their findings. But Doctor Naidoo once the findings have been made and set out in a post-mortem report an experienced and qualified Forensic Pathologist would such a person be in a position to draw competent conclusions, and to interpret that report? --- Yes it should be. It certainly should have been what a competent or other Doctor should have been able to do. In fact it is in fact the ultimate test of the quality of that report where somebody else can come to the same conclusions. The quality of the documentation, so certainly the report should be at least at the level of seniority of the States Doctor should have been one in which another Doctor should have been able to arrive at good conclusions on that. I am not sure

if I have answered that question appropriately.

Well the question really is would a competent or an experienced a qualified and experienced Forensic Pathologist looking at the findings on a post-mortem report would such a person be able to offer a competent interpretation of those findings? --- Of this report?

Yes. --- Yes it should be. Forgive me it maybe the lateness of the day. But certainly there are shortcomings lots of shortcomings in this report.

Yes we are just talking about interpretation of the existing findings. --- Oh yes you can a competent Doctor is able to use a lot of these findings and make good deductions and inferences from.

Thank you no further questions.

COURT: Thank you. Doctor you mentioned the question of torture that you have examined? --- Yes.

When you described the injuries on the toes. --- Yes.

Are there other forms of torture that you examined say for example sleep deprivation? --- Not on the deceased M'Lord.

Yes. --- I am referring specifically to the deceased and what we see.

Yes so it will not show on the deceased that this person was subjected to hours of…[intervene]. --- Not from an autopsy but it is only something that a deduction must be made on the basis of all the evidence put together. That if there is for example something to account for behaviour if you exclude intoxication, and if you would exclude head injury, and if you exclude drug effects then you have to

seriously then consider sleep deprivation. That is how you arrive at a deduction or an inference from the entire set of findings. So sleep deprivation is not something we can make a finding at post-mortem or any way it is a deduction made in consideration of everything exclusion of other all the other causes of similar pathology by the post-mortem and other evidence, and then you come to the diagnosis or finding of sleep deprivation as highly likely is a possibility.

Yes thank you. Thank you very much Doctor it has been a long day but thank you for you evidence, and I think you have covered this one.

NO FURTHER QUESTIONS

COURT: Mr Varney so it is tomorrow 10:00?

MR VARNEY: Yes Your Lordship we will commence with the witnesses, and if the Court pleases we will hear the application.

COURT: Yes thank you.

MR VARNEY: As the court pleases.

COURT: Then we are adjourned until tomorrow at 10:00.

COURT ADJOURNS TO 27 JULY 2017 [15:41]