



In: KSC-BC-2020-05
Name: The Specialist Prosecutor v. Salih Mustafa
Before: Trial Panel I

Judge Mappie Veldt-Foglia, Presiding Judge
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve Judge

Registrar: Dr Fidelma Donlon

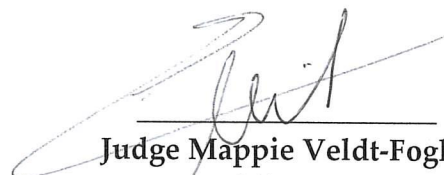
Date: 14 September 2022

Classification: PUBLIC REDACTED

[IN COURT- REDACTION ORDER]

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37:18	whatsoever that Mr. Mustafa had any means available to him that he	11:52:02
19	would use to order people to undertake the alleged crimes in his	11:52:04
20	absence.	11:52:10
21	The word BIA came in this context many times back in the	11:52:24
22	Confirmed Indictment. If we take a look at the Witness 1679, what	11:52:24
✓23	did he say about BIA? A question was asked of him on [REDACTED]	11:52:30 ✓
24	[REDACTED]	11:52:43
25	[REDACTED]	11:52:46
<hr/>		
38:1	"Have you ever heard of BIA?"	11:52:48
2	And his answer was:	11:52:51
3	"After the war, I would see these initials written on the wall	11:52:53
4	of the houses," and so on.	11:53:00
5	Your Honours, the Defence would like to speak about the general	11:53:04


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39:2	meadow. We couldn't sleep at all because the upper part was just	11:55:14
3	with wood, covered with wood. And while the people were being beaten	11:55:15
4	upstairs, we just couldn't sleep because we were scared."	11:55:18
5	20 September, transcript page 476.	11:55:20
6	[REDACTED]	11:55:28
7	[REDACTED]	11:55:33
8	[REDACTED]	11:55:39
9	2 September, page ^ and 09. Just to clarify that issue,	11:55:42
10	whether he was there earlier, the witness stated to the SPO on an	11:55:48
11	interview [REDACTED], and that is, I quote from his SPO statement, ERN	11:55:51
12	100957-TR-ET, Part 1, page 12, line 12, 13, the witness answered a	11:55:58
13	question for the SPO:	11:56:13
14	"What about Zllash, the village in general? Had you been there	11:56:15
15	other times?"	11:56:20
16	His answer:	11:56:23
17	"Yes, perhaps I was there ten years earlier. Perhaps I was	11:56:24
18	there, because the village is quite small."	11:56:29

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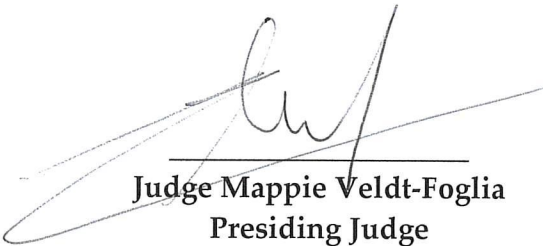
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49:17	Witness 4600, then. Witness 4600 who allegedly delivered the	12:15:13
18	alleged victim of the murder in this case at the compound stated that	12:15:22
19	he did not recall a fence. The witness stated that on 19 January	12:15:26
20	2022, page 2049 of the transcript.	12:15:31
21	The SPO noted that the witness deviated from a previous	12:15:37
22	statement [REDACTED]	12:15:40
23	Your Honour, I would like to go in private session.	12:15:51
24	PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you	12:15:54
25	bring us into private session, please.	12:16:05



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80:1	sure whether I have that document now right here, but I think I have.	14:48:29
2	Yes, I do, Your Honour. He drew a sketch of the situation, and he	14:48:36
3	did that, Your Honour, when he was interviewed on [REDACTED]	14:48:44
4	[REDACTED] And there on that sketch that he made [REDACTED]	14:48:57
5	[REDACTED] he clearly indicated two markings, marking 1 and	14:49:08
6	markings 2. And marking 1 would be the position from the gate as we	14:49:18
7	have discussed earlier, that is position 9 on the map with all the	14:49:32
8	numbers on it. Maybe we can take that back for a moment.	14:49:32
9	That is not the one. Yes, the one on the left.	14:49:32
10	And he then also spoke what he marked with a number 2. And	14:49:36
11	number 2 is a building that is to his right. I will give the number	14:49:49

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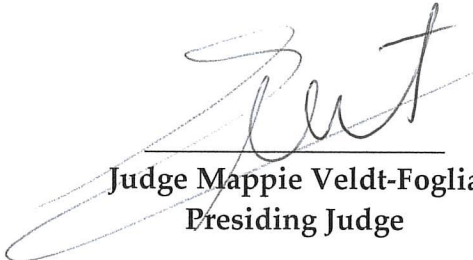
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86-1	buildings he marked with number 2. And that is in ERN 100803 and	14:59:37
2	100805 with a special note attached on [REDACTED]	14:59:41 ✓
3	Now, Your Honour, we have a conclusion about the Witness 1679.	14:59:53
4	The witness described only one time the outside of the building.	14:59:58
5	Because his head, that's point two, because his head was covered all	15:00:02
6	the time with a sack, even when transferred, he was unable to see	15:00:06
7	this since he was put a sack over his head upon his arrival.	15:00:10
8	Three. As we said earlier, W1679 spoke nearly most of the time	15:00:16



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<p>91:7 probably someone else has done that. He asked first on whether this 8 was the place, and probably they have encircled that place." 9 The transcript, page 1471, transcript 10 November 2021. 10 The witness was shown in his interview with the SPO at the time, 11 that is [REDACTED], and that is SPOE082023-TR-ET, Part 2, page 12 29 and 30, the entire photo album. The document bears the number ERN 13 SPOE00128386 until 128420. 14 At the time that he was shown the album in this interview, he 15 indicated the photo 00128407. So that is, in fact, a different 16 photo. Therefore, he was commenting on a different photo, SPO128427, 17 because there is no indication by the interview which photo he</p>	<p>15:10:07 15:10:12 15:10:15 15:10:21 15:10:27 15:10:41 15:10:49 15:10:57 15:11:01 15:11:11 15:11:20</p>
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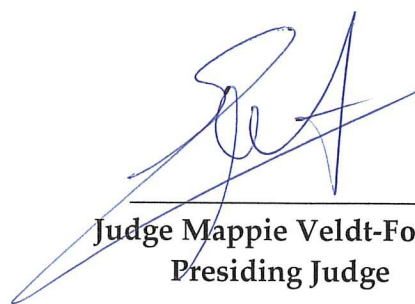
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<p>106:4 5 6 7 8 9 10 11 12</p>	<p>place of detention. Point 6. 1679 stated that after some days a person with the name of 4669 arrived. However, 4669 found only two people upon his arrival in the cow shed. One was from Mitrovica, ██ ██ 4669 is born -- Your Honour, may we go into private session. PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you please bring us into private session.</p>	<p>15:41:50 15:41:52 15:41:59 15:42:08 15:42:17 15:42:48 15:42:49 15:42:49 15:42:51 15:42:52</p>
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<p>114:6 7 8 9 10 11 12 13 14 15 16 17 18 19</p>	<p>people that beat him were younger than himself. They were about 17 or 18 years of age. At the time, 4669 was [REDACTED]. He did not see whether there was anybody in charge, and he did not notice anything like that. Salih Mustafa was, at the time, [REDACTED] [REDACTED] I'd like to have that redacted, Your Honour. 04669 did not know Mustafa at the time, so he did also not know the nickname. Your Honour, I would like to speak about the law. PRESIDING JUDGE VELDT-FOGLIA: Defence counsel. MR. VON BONE: Yes? PRESIDING JUDGE VELDT-FOGLIA: Shall we speak about that argument after the break? MR. VON BONE: That's fine. That's fine</p>	<p>15:57:05 15:57:09 15:57:19 15:57:21 15:57:24 15:57:27 15:57:33 15:57:38 15:57:43 15:57:49 15:57:51 15:57:52 15:57:54 15:57:55</p>
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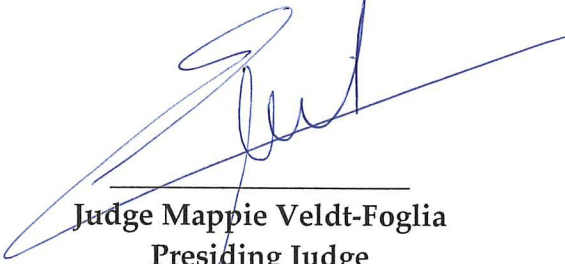
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129:6	about their cruel treatment. There is no information about Burmak	17:04:27
7	who to date is a still missing person. There is no information about	17:04:36
8	the alleged murder victim. The person with the name of [REDACTED]	17:04:40
9	^ never testified in court, and there was no information first-hand	17:04:51
10	from him.	17:04:55
11	None of the individuals were interrogated together, or at least	17:04:56
12	with some of the other detainees present. So the evidence that is to	17:05:04
13	be produced is either that what the individuals testified themselves	17:05:11
14	or what they have seen directly after an individual was returning to	17:05:18


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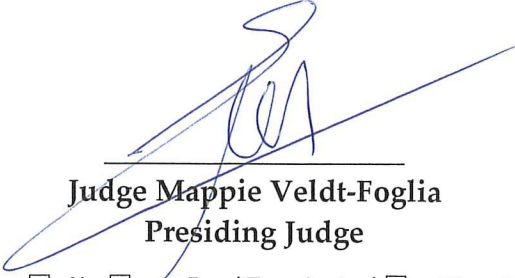
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132:3	people were beaten. 35594 stated that upon a leading question of the	17:10:36
4	SPO:	17:10:41
5	"Thank you, Mr. Witness. Do you think [REDACTED]"	17:10:41
6	[REDACTED]	17:10:45
7	[REDACTED]	17:10:49
8	[REDACTED] had anything to do with your arrest?"	17:10:54
9	The answer was:	17:10:59
10	"I think, I have some suspicion that probably that is one of the	17:11:00
11	reasons why I was imprisoned."	17:11:04
12	Then the question was:	17:11:08
13	"Why would [REDACTED] be a possible reason for	17:11:21
14	your arrest? If you could explain us and the Panel what led you to	17:11:25
15	believe that."	17:11:31
16	And the answer was:	17:11:32
17	"The reason for that is that [REDACTED]"	17:11:34
18	[REDACTED]	17:11:38
19	[REDACTED]	17:11:47
20	[REDACTED] So that was	17:11:51
21	not one of the reasons that was told to me while I was detained in	17:11:56
22	Zllash, but this may as well be one of the reasons why I was sent	17:11:59
23	there. Transcript 13 October, page 1169.	17:12:04
24	We can simply conclude that whatever the motive was to either	17:12:09
25	detain or beat the witness, it is just based on a thought by the	17:12:15
133:1	witness. There is no confirmation from any objective source what	17:12:20


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