

Additional redactions applied pursuant to F793.

1 Monday, 27 November 2023

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 9.31 a.m.

5 PRESIDING JUDGE VELDT-FOGLIA: Good morning. [Microphone not
6 activated].

7 THE COURT OFFICER: Good morning, Your Honours. This is
8 KSC-BC-2020-04, the Specialist Prosecutor versus Pjeter Shala.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.
10 First of all, I kindly indicate to us who is present.

11 MS. PERGOLO: Good morning, Your Honours. For the SPO,
12 Line Pedersen, Federica Genovesi, Filippo De Minicis, and
13 Gaia Pergolo.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.
15 Victims' Counsel, you have the floor.

16 MR. LAWS: Good morning, Your Honours. I'm Simon Laws, counsel
17 for the victims in this case, together with my co-counsel,
18 Maria Radziejowska.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.
20 Defence Counsel, you have the floor.

21 MR. GILISSEN: Good morning, Your Honours. So we are here with
22 Mr. Shala as usual, and it's always a good news to have Mr. Shala
23 with us. I'm Mr. Gilissen. We are here with Mr. Hedi Aouini,
24 Ms. Leto Cariolou, Ms. Melissa McKay, Juliette Healy and Judit Kolbe.
25 And Ms. Petravica is arriving because we had to face a problem just

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1 before the hearing. But it is not a problem. She is arriving.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

3 Good morning, Mr. Shala.

4 THE ACCUSED: [via videolink] [Interpretation] Good morning.

5 PRESIDING JUDGE VELDT-FOGLIA: You hear me fine, I see?

6 THE ACCUSED: [via videolink] [Interpretation] Yes, I hear you
7 very well. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Good. Today we will hear the
9 testimony of Expert Witness DW4-03, which is Mr. Andre De Villiers
10 Horne. He will testify without in-court protective measures. We
11 will have our regular one-and-a-half-hour sessions with the breaks.
12 And at the end of this week, we will issue a number of oral rulings
13 also with a view to the procedural steps we have to take in the near
14 future -- we foresee we have to take in the near future.

15 Before we begin with the witness expert testimony, I note that
16 last Friday we received an e-mail from the Defence submitting that
17 two items that the SPO intends to use with Witness DW4-03 and which
18 were disclosed the same day should have been disclosed much earlier
19 in the proceedings as they were relevant. The Defence requests the
20 Panel to direct the SPO to continue reviewing the items in its
21 possession which are relevant to the case in order to ensure that the
22 fair trial rights of the accused are respected.

23 Madam Prosecutor, would you like to respond to the submissions
24 of the SPO [sic]. And if it is better to go into private, then we
25 can.

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1 MS. PERGOLO: Thank you, Your Honours. No, there's no need to
2 go to private session.

3 Just briefly. Indeed, this item was just recently identified
4 within the vast database and evidence collection of the SPO. It was
5 not the intention to withhold the item or not to disclose it. Of
6 course, we submit that it shouldn't cause prejudice in the sense that
7 the material in question has been the subject matter of other items
8 disclosed in the past. But, of course, we will do our best to keep
9 reviewing our evidence collection for other items, and we hope that
10 this will not occur again in the future.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 MS. PERGOLO: Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 Anything Victims' Counsel would like to say in this respect?

15 MR. LAWS: No, thank you, Your Honour.

16 PRESIDING JUDGE VELDT-FOGLIA: Okay.

17 Defence Counsel, you have the floor.

18 MR. AOUINI: Thank you, Your Honour. Good morning to
19 Your Honours, to everyone in and around the courtroom.

20 Your Honour, we maintain our request and we urge Your Honours to
21 direct the SPO to do their best because --

22 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, but I don't want
23 a repetition. We know your point of view. So is there something new
24 you would like to say, then okay, but I don't want a pleading for
25 your point of view because I've read it and it's very clear what you

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1 meant.

2 MR. AOUINI: Thank you, Your Honour.

3 I was just saying this because we received also another item
4 afterwards that is an exonerating item for another witness, that is,
5 following witness. And by looking at the date, from December of
6 2022, and looking at the circumstances surrounding this witness, this
7 document is evidently and clearly an exonerating material after
8 requests from the Defence and we only received it a few days ago.
9 And this is an exonerating material that should have been disclosed
10 immediately, so we are worried about the assessment of our colleagues
11 from the SPO as to what is disclosable and what needs to be disclosed
12 immediately. This is a witness that was summoned, and it is very
13 regrettable that we receive an important information related to the
14 accused about a witness a few days before this witness is summoned
15 while we made requests about this witness to the SPO close to a year
16 ago, and they made contacts and the information is clearly and
17 evidently something that they should have alerted us of immediately.
18 And this is exonerating material that they should have disclosed.

19 So this is only to reiterate that this really needs to be
20 reviewed and worked on.

21 PRESIDING JUDGE VELDT-FOGLIA: Could you give for the record the
22 ERN number.

23 MR. AOUINI: It is ERN 109097. We have included it as number 14
24 in our Defence list of materials for Witness W04280 and --

25 PRESIDING JUDGE VELDT-FOGLIA: Your presentation queue.

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1 MR. AOUINI: Our presentation queue, Your Honour, yes.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. We will come back to this
3 later. Your point has been made. And later on I will get back to
4 this -- this point. Yes, Defence Counsel?

5 MR. AOUINI: I seize the opportunity, and apologies,
6 Your Honours, with a point that we need to address before the start
7 of this witness. We just finished a courtesy meeting with this
8 expert a few minutes ago, and that's the reason our case manager,
9 Ms. Petravica, is not here yet. The expert -- we didn't even have
10 the time to alert the colleagues upon coming to the courtroom. This
11 expert made a test on a video of a shooting range and provided this
12 to us basically a few minutes ago, and we were able to scan from him
13 the target results of the shooting test that he operated. And so
14 Ms. Petravica, our case manager, is processing these documents
15 upstairs as we speak for us to be able to disclose it as soon as
16 possible. We have instructed her to send it by e-mail to allow
17 access to everyone as soon as possible, but there is a problem with
18 the Outlook size of attachments. So possibly the only way to get
19 this through the system is through disclosure. This what we will do
20 as soon as practicable to be able to use it with the expert.

21 PRESIDING JUDGE VELDT-FOGLIA: And if not -- I will also give
22 the floor to the SPO. But if there is a necessity to have a look at
23 it with a little bit more time at our disposal, we will try to
24 arrange for that. And you will further clarify why the test was only
25 done now or yesterday, or the results were only processed now. That

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1 is not completely clear for me yet.

2 MR. AOUNI: Your Honour, we were not aware of this test being
3 done by the expert. Obviously he has a shooting range under his
4 workshop where he operates some tests based on circumstances that he
5 needs to testify about, and we only knew about this material a few
6 minutes ago when we were making the courtesy meeting with him. So we
7 had no knowledge that he produced this video before --

8 PRESIDING JUDGE VELDT-FOGLIA: No, no, I understand that you did
9 not have any knowledge, but he had the knowledge that he would
10 testify today in court and that the courtesy meeting maybe is not the
11 moment -- and I speak now without giving the floor to the other party
12 and to Victims' Counsel. That that is not the moment to inform the
13 calling party with regard to this information, I would say. But
14 maybe there is a good explanation.

15 MS. CARILOU: Your Honours, if I may. He -- after our meeting
16 on Friday, he thought that to illustrate what he was trying to
17 explain, that the easiest way would be to show us in practice in a
18 video shooting with a Kalashnikov on auto mode. And this is why --
19 this is what the video is about and it's just to illustrate something
20 we will talk about in his evidence.

21 PRESIDING JUDGE VELDT-FOGLIA: Yes, but the video, we will look
22 at in the break, and then there can be questions. And we will see
23 how the SPO and Victims' Counsel want to proceed in this respect and
24 we take that on board before taking our decision.

25 Madam Prosecutor, with regard to the item that -- with regard to

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1 the next witness, would you like to react it already now or would you
2 like to have a look at it and then proceed?

3 MR. DE MINICIS: Your Honours, good morning. The item is an
4 Official Note which records a conversation with the next witness. I
5 mean, this witness never said anything in his statements which is
6 contradicted by this Official Note. So while the content, we have
7 disclosed it, recognising in disclosure it's exculpatory upon review
8 of the documents that we wanted to use for the cross-examination of
9 this witness, we don't think that there is any prejudice for the
10 Defence in this regard. And once Your Honours have a chance to look
11 at the document, Your Honours hopefully will realise that that's the
12 case.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 Victims' Counsel, anything you would like to submit to the
15 Panel?

16 MR. LAWS: No, thank you, Your Honour.

17 PRESIDING JUDGE VELDT-FOGLIA: Okay.

18 Defence Counsel, is there something would like to add in this
19 respect with regard to the point I have given the SPO the floor to?

20 MR. AOUNI: No, Your Honour. To avoid repetition, this is
21 exonerating. There was a moment in time where we wanted to contact
22 this witness and that's when the phone call occurred. This is
23 exonerating, so the rule is immediately disclose it. That's all we
24 need to say.

25 PRESIDING JUDGE VELDT-FOGLIA: Yes, very well. We then now

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1 proceed with the hearing of the Witness 03.

2 Madam Court Officer, could you usher the witness into the
3 courtroom.

4 Madam Prosecutor.

5 MS. PERGOLO: Your Honours, just on the item the Defence
6 mentioned in relation -- the video that was produced by the expert, I
7 don't know if Your Honours want me to just briefly comment on this
8 point now or whether we want to do it at a later stage.

9 PRESIDING JUDGE VELDT-FOGLIA: I think that it is better --
10 because the witness is coming in now and then I would have to
11 interrupt you halfway, because I would prefer to discuss this at a
12 moment that we are not expecting anyone.

13 MS. PERGOLO: We were happy to do it at a later stage. I just
14 wanted to make sure that we have maybe something to comment on.

15 Thank you very much.

16 [The witness entered court]

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Usher.

18 Mr. Witness, good morning and welcome to the
19 Specialist Chambers.

20 THE WITNESS: Good morning. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, can you hear the
22 witness, or at least the translation? Mr. Shala, did you hear the
23 witness?

24 We lost the connection with Mr. Shala.

25 [Trial Panel and Court Officer confer]

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1 PRESIDING JUDGE VELDT-FOGLIA: They are trying to reconnect, so
2 if we wait a few more minutes, it should be resolved.

3 And for the record, I note that Ms. Petravica has come to the
4 courtroom.

5 [Trial Panel and Court Officer confer]

6 PRESIDING JUDGE VELDT-FOGLIA: We have a short -- we have a
7 technical issue which should be resolved quickly. However, it's
8 better that we adjourn for a moment. So I will ask Madam Court Usher
9 to usher you out again, Mr. Witness - sorry for this - and I hope to
10 see you back in a short while.

11 [The witness stands down]

12 PRESIDING JUDGE VELDT-FOGLIA: You have the floor.

13 MS. CARILOU: Your Honours, I was wondering if this is an
14 appropriate moment to discuss the comments by the SPO on the video.
15 That would assist -- yes.

16 PRESIDING JUDGE VELDT-FOGLIA: No, no, I -- while you were
17 talking, I was having the same idea, so, yes, I think it is an
18 appropriate moment that, even without Mr. Shala present, and with the
19 consent of the Defence team, we will proceed in that way.

20 Madam Prosecutor, you have the floor.

21 MS. PERGOLO: Thank you, Your Honours.

22 Yeah. This was just to place on the record an observation
23 concerning the delay in which these materials have been disclosed
24 from what my learned friend has told us this morning. There was a
25 meeting on Friday with the expert or at least the Defence was aware

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1 of potentially having to add some materials to the presentation
2 queue, and so, of course, we would have preferred ideally to receive
3 these materials at least a day in advance of the start of the
4 examination of the expert. That is all we have to say on this point.
5 Thank you, Your Honours.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.
7 You have the floor.

8 MS. CARILOU: Thank you, Your Honours.

9 Just to clarify that we were actually not aware that this
10 material would be forthcoming. It was just really an idea of the
11 expert to assist us and the Panel and everyone to understand what he
12 will be explaining. Yeah.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.
14 Anything from the side from the SPO?

15 MS. PERGOLO: No, Your Honours. And to the extent that this is
16 just an explanatory material, we don't really object to that. Of
17 course, to the extent that it is something new, of course that would
18 be more problematic, obviously. But we understand the circumstances
19 and that is what we -- all we have to say. Thank you.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.
21 Victims' Counsel.

22 MR. LAWS: We understand it's not our colleagues' fault at all
23 the gentleman has come today with something that he thinks might be
24 helpful and they are going to turn it over to us as soon as they can.
25 So we're not going to complain about that. It's just a question of

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1 what it shows and whether it's something that we would need time to
2 consider or whether we can just get on with it today. That's our
3 position. So we'll wait and see if we may. Thank you.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well. Okay. Then till this
5 issue of the connection with Mr. Shala is resolved, we adjourn the
6 hearing.

7 --- Break taken at 9.52 a.m.

8 --- On resuming at 9.59 a.m.

9 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

10 Mr. Shala, welcome back. I see that the connection is
11 re-established. Can you hear me fine?

12 THE ACCUSED: [via videolink] [Interpretation] Yes, I hear you
13 very well. Thank you.

14 PRESIDING JUDGE VELDT-FOGLIA: Good. Okay. Then we proceed
15 with where we were.

16 So I will ask Madam Court Usher to bring the witness in again.
17 Thank you.

18 Yes. Page 10, line -- please come in, line 22, there's a 6
19 halfway the line which should be out. Just for the record. A
20 correction of the transcript.

21 [The witness takes the stand]

22 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, good morning again.
23 And again welcome to the Specialist Chambers. We are going to try to
24 proceed now again.

25 Can you hear me fine?

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1 THE WITNESS: Yes, thank you, Your Honour.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well.

3 Mr. Shala, can you hear the witness?

4 THE ACCUSED: [via videolink] [Interpretation] Yes, I do.

5 PRESIDING JUDGE VELDT-FOGLIA: Okay.

6 Mr. Witness, how are you today?

7 THE WITNESS: Fine, thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Good. Today we will start with
9 your expert testimony. Before we begin with your testimony, I have
10 several remarks for you.

11 You are called to testify before the Specialist Chambers in the
12 case of The Specialist Prosecutor against Mr. Pjeter Shala to assist
13 this Panel to reach a verdict. You will first be asked questions by
14 the Defence Counsels, with the -- the people with the red robes. You
15 will be asked questions by the Specialist Prosecutor's Office,
16 Victims' Counsel, and, at the end, there may be also questions from
17 the Panel or sometimes it might happen that we ask questions to you
18 throughout your testimony. Yeah?

19 Before you take your solemn declaration to tell the truth --
20 sorry. Before you take your solemn declaration, I will provide you
21 with some guidance and some practical remarks.

22 So as to the guidance, listen carefully to each question. If
23 you do not understand, feel free to have the question repeated for
24 you. We want you to give your expertise to the best of your
25 knowledge and to state what your findings and opinions are. Yes?

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1 Please answer the questions being put to you, and if we need
2 some more clarification, you will be asked to further elaborate on
3 the issue.

4 THE WITNESS: I understand. Thank you, Your Honour.

5 PRESIDING JUDGE VELDT-FOGLIA: Very well. There's also some
6 practical advice for you.

7 Everything that we say here is translated and recorded, and it
8 is therefore very important that you speak in your microphone, that
9 you speak at a slow pace, and that you speak clearly. And that will
10 allow the stenographer and the interpreters to put everything on
11 record what you are saying.

12 When you are asked a question, it is helpful that you wait a
13 while - five seconds, for example - before you start talking. That
14 allows the interpreters to finalise the interpretation that was going
15 on and to start with what you are saying. Yeah?

16 THE WITNESS: Thank you, Your Honour. I'll -- I'll --

17 PRESIDING JUDGE VELDT-FOGLIA: I repeat it very clearly -- or I
18 tell you very clearly because overlapping speakers makes it -- in the
19 end we have nothing on record.

20 If you have a question -- yes, if you a question, please raise
21 your hand and then I will give you the floor. On the other hand, if
22 I raise my hand, please stop talking. I raise my hand instead of
23 talking to you in order to avoid that we have overlapping speakers.

24 You may also be asked to use the pencil next to the computer in
25 order to make signals or indications on the screen in front of you.

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1 And it can also be that I will ask Madam Court Usher to usher you out
2 of the courtroom if there is a need for parties and Victims' Counsel
3 and the Panel to discuss a question that is to be posed to you. Yes?

4 It is also very important that you don't mention any names that
5 are confidential.

6 THE WITNESS: Yes, Your Honour.

7 PRESIDING JUDGE VELDT-FOGLIA: Very well.

8 Mr. Witness, I will now ask you to give your solemn declaration,
9 and I remind you that it is an offence within the jurisdiction of the
10 Specialist Chambers to give a false testimony. Do you understand
11 this?

12 THE WITNESS: Yes, I understand.

13 PRESIDING JUDGE VELDT-FOGLIA: Very well. Please, Mr. Witness,
14 read the text that has been provided to you.

15 THE WITNESS: Conscious of the significance of my testimony and
16 my legal responsibility, I solemnly declare that I will perform my
17 expert witness analysis conscientiously and to the best of my
18 knowledge, and that I will state my findings and opinion accurately
19 and completely.

20 WITNESS: ANDRE DE VILLIERS HORNE

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness. You are
22 now under oath. We can begin with your expert testimony, and I will
23 give the floor now to the Defence Counsel to start with it.

24 Defence Counsel, you have the floor.

25 MS. CARILOU: Thank you, Your Honours.

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1 Examination by Ms. Cariolou:

2 Q. Good morning, Mr. Witness. My name is Leto Cariolou, and I will
3 be asking you some questions on behalf of Mr. Shala who is the
4 accused in this case.

5 First, could you please confirm your full name and surname,
6 please.

7 A. My name is Andre De Villiers Horne.

8 Q. And what is your date and place of birth?

9 A. I was born on 1 August 1961, in Springs, South Africa.

10 PRESIDING JUDGE VELDT-FOGLIA: Madam Defence Counsel, because we
11 are talking in English now, it is very helpful that we all take a
12 slower pace, just for the reasons I explained. Yes?

13 MS. CARILOU: Thank you, Your Honour.

14 Q. Mr. Horne, could you please tell us about your education. Where
15 did you study and which specific subject did you study?

16 A. I have a bachelor of medical sciences degree. I was awarded a
17 certificate in forensic firearms and toolmark examinations for
18 specialist having completed a three-year training course. I
19 subsequently completed an advanced programme in forensic
20 criminalistics, majoring in forensic ballistics.

21 My training and experience includes the identification and
22 classification of firearms and ammunition; examination of firearm
23 mechanisms; internal, external and terminal ballistics; and advanced
24 examinations such as microscopic comparisons, distance determination,
25 damage interpretation, accidental discharge, shooting incident

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1 reconstruction, toolmark examinations, and physical fit examinations.

2 I have attended several additional courses and workshops in
3 shooting incident reconstruction, and I have examined and
4 reconstructed and reported numerous shooting incidents.

5 I have studied wound ballistics. I have attended numerous
6 autopsies to provide consultation to forensic pathologists. And for
7 the purpose of my own studies, I have conducted numerous empirical
8 tests to examine and study the terminal effects of projectiles.

9 I am a member of the Association of Firearm and Tool Mark
10 Examiners. I am a qualified firearms instructor and I was a Range
11 Conducting Officer of the National Rifle Association. I also have
12 Taser Instructor and Taser Technician certification.

13 I have been a forensic firearms and toolmark examiner for more
14 than 36 years, and for more than 27 years, this was my primary
15 occupation. During this period, I examined more than 3.500 forensic
16 firearms and toolmark-related cases. I have given evidence before
17 the Crown Court and the Coroner's Court in the UK numerous times. I
18 have also given evidence internationally before courts in South
19 Africa, Cyprus, the Cayman Islands, and I have produced several
20 statements for the Dutch High Court.

21 Q. Thank you, Mr. Witness.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you. I realise you have
23 made a selection, Mr. Witness, from your CV. I also noted that
24 you're reading from something that I was not aware that -- at least I
25 was not informed that you brought it with you. You have a notebook

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1 with you?

2 THE WITNESS: Yes, Your Honour, I have my laboratory notes, my
3 case file with my notes with me.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay, good. Thank you for that.
5 Please proceed, Defence Counsel.

6 MS. CARILOU: Thank you, Your Honour.

7 Q. Mr. Witness, could you please tell the Panel what material you
8 were given by the Defence in order for you to prepare your report.

9 A. I was given numerous documents which are purported to be
10 transcriptions of evidence given by witnesses in this case. This
11 included evidence by victims and by other people involved in the
12 examination, like the forensic pathologist, and I was asked to study
13 these in order to give my opinion on matters.

14 Q. Thank you, Mr. Witness.

15 MS. CARILOU: Your Honours, in order to pay attention to
16 protective measures that are currently in force, I would -- with your
17 leave, I would propose that we go into private session.

18 PRESIDING JUDGE VELDT-FOGLIA: Very well.

19 Madam Court Officer, can you bring us, please, into private
20 session.

21 [Private session]

22 [Private session text removed]

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1 [Private session text removed]

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1 [Private session text removed]

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14 Q. Mr. Horne, could you please explain to us the different modes of
15 operation of a Kalashnikov.

16 A. I assume you are talking about a Kalashnikov automatic assault
17 rifle and I will proceed by explaining the different modes of
18 operation for that.

19 PRESIDING JUDGE VELDT-FOGLIA: Is that indeed what you meant?

20 MS. CARILOU: Yes, Your Honours.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay, good.

22 THE WITNESS: The Kalashnikov rifle is known as an assault rifle
23 and that means it has a selector switch which you can set to either
24 fire in semi-automatic mode or automatic mode. When the selector
25 switch is set to semi-automatic mode, that means that you have to

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1 pull the trigger once to discharge each shot. When the selector is
2 set to automatic mode, it means that when you depress the trigger the
3 rifle will keep on firing until you release the trigger.

4 The selector switch also has a safe mode so you can set it to
5 safe, in which case pulling the trigger will not have any effect of
6 discharging ammunition.

7 Q. Thank you, Mr. Witness. In terms of sounds, how easy is it to
8 distinguish on which mode the Kalashnikov is being used?

9 A. When the Kalashnikov is fired in single shots, there is a
10 significant time period between different shots. Of course, as
11 quickly as you can pull and release the trigger, that is how fast you
12 can fire or how slow you can fire and that is at the discretion of
13 the shooter.

14 When the rifle is set in automatic mode, it discharges
15 ammunition roughly at a rate of about 10 discharges per second, which
16 is very fast. That is faster than one would be able to pull the
17 trigger if it were set in semi-automatic mode.

18 Q. Thank you, Mr. Witness. This morning you helpfully provided us
19 with a video illustrating this point.

20 MS. CARILOU: With your leave, perhaps this is the appropriate
21 moment to watch this video.

22 PRESIDING JUDGE VELDT-FOGLIA: To be honest, I would have had a
23 preference that we first see the video ourselves and then proceed
24 because -- but I understand that this is the sequence of your -- of
25 the questions you want to put to the witness. But if it could be

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1 done differently, I would have a serious preference that we first
2 have a look at it before you show it to the witness.

3 MS. CARILOU: Yes, Your Honours, we can proceed and then we can
4 show it perhaps after a break.

5 PRESIDING JUDGE VELDT-FOGLIA: Yes. In the break we look at the
6 video, and then you can put the questions to the witness you deem
7 necessary.

[Private session]

8 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

Page 3649

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3650

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3651

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3652

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3653

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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[Open session] *Reclassified pursuant to F793.*

10 Q. Thank you. How easy is it to aim a target [REDACTED]

11 [REDACTED] with a Kalashnikov on a full auto

12 mode, full automatic mode?

13 A. Rifles like the AK-47 are fitted with sights. The sights are
14 fitted to the rear and to the front of the rifle. And in order to
15 hit your target, you have to align your sights with your target. The
16 sights are graduated at the rear, and you can set the rifle to fire
17 accurately to the point of aim for 100 metres, 200 metres, 300
18 metres, so there is a range of graduations that you can apply
19 according to the distance of your target.

20 When you aim at a target, the skill of hitting to the point of
21 aim is by pulling the trigger without altering your sight alignment.
22 It is easy to align your sights, but in order to keep those sights
23 aligned with your target and pull the trigger is where the skill
24 comes in. Because any movement on the part of the shooter will make
25 the bullet go off course and it won't hit to the point of aim.

Witness: Andre de Villiers Horne (Private Session)

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Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 That is easily accomplished if you have a lot of time to fire
2 and if you fire single shots.

3 However, if the rifle is set in automatic mode, then you have to
4 deal with something called the recoil of the rifle. It is a physical
5 law that for every action there is an opposite and equal reaction.
6 So if the bullet goes out of the front of the rifle with a certain
7 velocity, the rifle then reacts by moving to the rear also with a
8 certain velocity. And if you have the rifle set on full automatic
9 mode, it fires very quickly, like I said, 10 rounds per second, and
10 before you can actually re-adjust your rifle to the point of aim, the
11 next shot is already fired. The result of this is that you cannot
12 accurately fire to the point of aim with your rifle set in full
13 automatic mode. The AK-47 has a tendency to start drifting upwards
14 and to the right if you fire it in full automatic mode.

[Private session]

15 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

Page 3655

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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20 *[Open session]Reclassified pursuant to F793* And what I like to ask is for
someone

21 relatively familiar of military context, is it easy to distinguish
22 between a Kalashnikov, an Uzi and a Skorpion?

23 A. For somebody who knows nothing about guns, they may be
24 completely oblivious as to what the differences are. But my
25 expectation is that somebody who is in a military environment, that

Witness: Andre de Villiers Horne (Private Session)

Page 3656

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 they would be quite capable of distinguishing between the different
2 types of firearms.

3 The AK-47 is the largest. It fires a rifle round. Your Uzi is
4 mid-sized. It is called a submachine-gun. It fires a pistol calibre
5 round, a 9-millimetre. And then your Skorpion is even much smaller
6 than the Uzi. It has the capability of discharging .32 or 7.65
7 calibre cartridges, although it was at some point designed to fire
8 different calibres as well.

9 But I'm a firearms expert. It is easy for me to distinguish
10 between them. But I would certainly expect some -- any person
11 involved in a situation where they are familiar with military
12 equipment to be able to distinguish between them.

[Private session]

13 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

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Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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[Open session] *Reclassified pursuant to F793.*

12 PRESIDING JUDGE VELDT-FOGLIA: Madam Defence Counsel, before we
13 go there, can we go back, what is it, line 20 -- no, page 28, line 4,
14 a submachine-gun. Could you clarify some more for the Panel what
15 that is?

16 THE WITNESS: Certainly, Your Honour. When we talk about an
17 assault rifle, it is a type of firearm that discharges rifle calibre
18 cartridges. Submachine-guns are firearms that can be fired in both
19 semi-automatic and full automatic mode. They normally have folding
20 stocks so they are capable of being used in confined spaces. They
21 are often issued to people working in armoured vehicles and in
22 close-protection circumstances, and they fire handgun calibre
23 ammunition. So that is the difference between a submachine-gun and a
24 machine-gun. The "sub" refers to the fact that it is used with
25 handgun ammunition as opposed to rifle ammunition.

Witness: Andre de Villiers Horne (Private Session)

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Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3660

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3661

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

Page 3662

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

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Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 [Private session text removed]

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10 [Open session]

11 THE COURT OFFICER: Your Honours, we're in public session.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

13 Mr. Witness, what we will do we have a break of 45 minutes, and
14 after that, we will come back. We take a decision on the video that
15 is presented by the Defence Counsel to be shown to you and to have
16 you comment on it after we have heard the views of the Specialist
17 Prosecutor's Office and Victims' Counsel. And then we take it from
18 there. So thank you for now.

19 THE WITNESS: Thank you, Your Honour.

20 [The witness stands down]

21 PRESIDING JUDGE VELDT-FOGLIA: So we will come back at a quarter
22 to 12.00.

23 The hearing is adjourned.

24 --- Recess taken at 10.57 a.m.

25 --- On resuming at 11.47 a.m.

Additional redactions applied pursuant to F793.

1 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. And I see SPO is
2 in the same composition. That goes for Victims' Counsel. And on my
3 left-hand side, we are complete there, too, in comparison to before
4 the break.

5 Very well. Before I usher the witness in and before we take a
6 decision or I give our decision regarding the video, there's
7 something else I would like to discuss.

8 And, therefore, I will ask Madam Court Officer to bring us into
9 private session, please.

10 [Private session]

11 [Private session text removed]

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Additional redactions applied pursuant to F793.

1 [Private session text removed]

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[Open session]

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THE COURT OFFICER: Your Honours, we're in public session.

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PRESIDING JUDGE VELDT-FOGLIA: Thank you.

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Before ushering the witness in, Madam Prosecutor, do you have

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any objections to the Defence using the newly disclosed video made by

22

the expert witness?

23

MS. PERGOLO: We have no objections, Your Honour. Thank you.

24

PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel.

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MR. LAWS: No. We don't object either.

Additional redactions applied pursuant to F793.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you. My request to you
2 would be, Defence Counsel, if you could ask the expert witness to
3 confirm, because that's how I understood, that the target rows is
4 indeed the result of the shooting on the video. Because I assume
5 that is what he meant but it would have been nice to have an extra
6 shot a little bit more to the right to also have seen the target
7 rows.

8 That would be the request from the side of the Panel.

9 MS. CARILOU: I understand, Your Honours, but we can get it
10 clarified with him.

11 PRESIDING JUDGE VELDT-FOGLIA: No, I'm sure. So -- very well.
12 We will now, then, usher the witness in.

13 Court Clerk, could you please usher the witness back into the
14 courtroom.

15 So for the record, we granted the request to use the video.

16 Defence Counsel, would you like to be in public or in private?

17 MS. CARILOU: Your Honours, I believe that we could conclude
18 this in public session, unless there are any objections from the
19 Prosecution and Victims' Counsel.

20 MS. PERGOLO: No objections, Your Honours.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay.

22 MR. LAWS: No objection, Your Honour.

23 PRESIDING JUDGE VELDT-FOGLIA: Depends so much on the questions.
24 But then after -- okay, very well, yes. Yes. We are now in public
25 session. Very well.

Witness: Andre de Villiers Horne (Open Session)

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Procedural Matters

Additional redactions applied pursuant to F793.

1 [Trial Panel and Court Officer confer]

2 [The witness takes the stand]

3 PRESIDING JUDGE VELDT-FOGLIA: Welcome back, Mr. Witness. Very
4 well.

5 THE WITNESS: Thank you, Your Honour.

6 PRESIDING JUDGE VELDT-FOGLIA: You confirmed with your thumbs-up
7 that you can hear me well.

8 We will now ask Mr. Shala if he can confirm that he hears the
9 witness.

10 Mr. Shala, can you hear the witness? Welcome back.

11 THE ACCUSED: [via videolink] [Interpretation] Yes, I can hear
12 him clearly. Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 Mr. Witness, we will now proceed with the last part of the
15 examination-in-chief by the Defence Counsel. The video you have made
16 has been admitted, so there will be some questions about that.

17 I have still a remark for Defence Counsel. There is -- you can
18 hear something on the video. That sound will go out, so just to be
19 sure that that is not problematic if we are in public session.

20 MS. CARIOLOU: I believe that's fine, Your Honours, for us.

21 PRESIDING JUDGE VELDT-FOGLIA: Very well.

22 And, Mr. Witness, just to emphasise we are now in public session
23 so that you know that be careful what you mention.

24 THE WITNESS: Of course, Your Honour.

25 PRESIDING JUDGE VELDT-FOGLIA: Very well. Good.

Witness: Andre de Villiers Horne (Open Session)

Page 3668

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 Defence Counsel, you have the floor.

2 MS. CARILOU: Thank you, Your Honours. And if we could now
3 pull the video, with your leave. That is ERN number DPS01727. And
4 if we could play.

5 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, please
6 proceed.

7 Can you see the image, Mr. Witness?

8 THE WITNESS: Yes, I can, Your Honour.

9 [Video-clip played]

10 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

11 MS. CARILOU:

12 Q. Mr. Horne, could you please describe what we just saw?

13 A. What you saw was myself firing a Kalashnikov rifle. It was set
14 to automatic mode, and I had only loaded three cartridges in the
15 magazine. So when I discharged it, the purpose of the demonstration
16 was to show that although the shots are fired in very quick
17 succession, you could still distinguish individual shots by listening
18 to the sound of the gunfire.

19 Q. Thank you, Mr. Witness.

20 MS. CARILOU: And if we could now move on to the second
21 document we disclosed today, which has ERN number DPS01728, with your
22 leave.

23 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, please
24 proceed.

25 MS. CARILOU:

Witness: Andre de Villiers Horne (Open Session)

Page 3669

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 Q. Mr. Witness, can you see the image --

2 A. Yes.

3 Q. -- on your screen? Could you tell us what this is?

4 A. The image that we see is the target that I had been aiming at.
5 My distance from the target was 3 metres. And my intention was to
6 discharge the shot onto that target. Like I explained to the Court
7 earlier, it can be difficult to control an AK-47 Kalashnikov rifle
8 during full automatic fire, and this is an illustration of that.

9 The first shot is the one at the bottom below the red dot. The
10 second shot is the one above the red dot. And the third shot is the
11 one close to the margin of the target. I can confirm that the size
12 of that target is A4 size.

13 And although I was standing 3 metres from the target, it would
14 also assist the Court to know that the further you go away from the
15 target, the bigger the distance between these shots will become. And
16 there is a direct relation. So if I would be standing 6 metres from
17 the target, then the distance between these shots would also double.
18 In other words, the distance between shot 1 and 2 would be double
19 what you see on the image, and the distance between shots 2 and 3
20 would also be double.

21 So the further you are away from the target, the bigger the risk
22 is that you will not be capable of delivering all your shots in
23 automatic fire onto such a small area.

24 Q. Thank you, Mr. Witness. And if you could tell us, what would
25 the effect be if you were firing it at close range, a closer range?

Witness: Andre de Villiers Horne (Open Session)

Page 3670

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 PRESIDING JUDGE VELDT-FOGLIA: Closer within that? Closer than
2 the 3 metres?

3 MS. CARIOLOU:

4 Q. Closer than the 3 metres that was actually used for the
5 illustration.

6 A. Yes. So if you would be closer than 3 metres, the shots would
7 be closer to one another. If you would, for example, half that
8 distance and fire from a distance of 1 and a half metres, then you
9 could half the distance between these shots as well.

10 So the closer you are to the target, the better your chances are
11 of containing shots in automatic fire onto a small area.

12 Q. Thank you. And just to clarify something you've said this
13 morning.

14 You stated that -- and this is at provisional transcript page
15 32, lines 10 to 11. You've mentioned:

16 *[REDACTED] pursuant to In-Court Redaction Order F722RED.*

17 *[REDACTED] pursuant to In-Court Redaction Order F722RED.*

18 *[REDACTED] pursuant to In-Court Redaction Order F722RED.*

19 *[REDACTED] pursuant to In-Court Redaction Order F722RED.*

20 PRESIDING JUDGE VELDT-FOGLIA: Madam --

21 MR. GILISSEN: So, yeah, we have a problem.

22 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, the transcript
23 is not proceeding, so that's the reason that I interrupted you. Does
24 that also go for the other -- you have? It stopped?

25 MR. GILISSEN: [Microphone not activated]

Witness: Andre de Villiers Horne (Private Session)

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Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 PRESIDING JUDGE VELDT-FOGLIA: Okay. I will inquire with
2 Madam Court Officer.

3 [Trial Panel and Court Officer confer]

4 PRESIDING JUDGE VELDT-FOGLIA: That's it. I think that the
5 transcript is running again. Very well.

6 Defence Counsel, you have the floor again. And just to check
7 with Mr. Witness if the question needs to be repeated or not.

8 MS. CARIOLOU: I think I may very well repeat it because I
9 was --

10 THE WITNESS: Yes, please.

11 MS. CARIOLOU: It was cut in half.

12 Q. So earlier this morning you stated -- and this is at provisional
13 transcript page 32, lines 10 to 11. You mentioned:

14 *[REDACTED] pursuant to In-Court Redaction Order F722RED.*

15 *[REDACTED] pursuant to In-Court Redaction Order F722RED. If it is" --*

16 PRESIDING JUDGE VELDT-FOGLIA: I prefer to go into private
17 session.

18 MS. CARIOLOU: Yes.

19 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you
20 bring us into private session.

21 [Private session]

22 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

Page 3672

Examination by Ms. Cariolou

Additional redactions applied pursuant to F793.

1 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

Page 3673

Procedural Matters

Additional redactions applied pursuant to F793.

1 [Private session text removed]

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9 [Open session]

10 THE COURT OFFICER: Your Honours, we're back in public session.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

12 Madam Prosecutor, would you able to proceed with your
13 cross-examination right now?

14 MS. PERGOLO: Yes, Your Honours.

15 PRESIDING JUDGE VELDT-FOGLIA: Very well.

16 Then that is what we will do. And before I give you the floor,
17 we have to -- the Panel will have to give an oral ruling on the SPO
18 request to use four newly disclosed items with the witness, and this
19 request was made via e-mail last Friday. We note that the Defence
20 does not object to the use of these items as such, but submits that
21 two of them should have been disclosed at a much earlier stage of
22 these proceedings, and this is item ERN 072508-01 and its transcript.

23 The Defence has also pointed out to another item which it
24 submits should also have been disclosed sooner under Rule 103 of the
25 rules, and this is 109097.

Witness: Andre de Villiers Horne (Private Session)

Page 3675

Cross-examination by Ms. Pergolo

Additional redactions applied pursuant to F793.

1 MS. PERGOLO: And, Your Honours, may we move into private
2 session, again for reasons stated before by the Defence, to avoid any
3 potential identification of specific incidents.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well.

5 Madam Court Officer, can you bring us into private session,
6 please.

7 [Private session]

8 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

Page 3676

Cross-examination by Ms. Pergolo

Additional redactions applied pursuant to F793.

1 [Private session text removed]

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[Open Session] *Reclassified pursuant to F793.*

13 Q. Thank you for that. I have now a few questions concerning some
14 of the weapons that we discussed earlier this morning. And, first of
15 all, I'd like you to clarify something for us that may be very
16 obvious to you but less so to people who are not as accustomed to
17 weapons. I'd like to know what is the difference between a
18 Kalashnikov and an AK-47?

19 A. It is the same thing just called by different names. The
20 Kalashnikov rifle was developed by a person in Russia, Mikhail
21 Kalashnikov. It was a very successful design, and it was also copied
22 by a number of other countries in the world, East Bloc countries. So
23 there are a number of what we call Kalashnikov variants which are in
24 principle the same design but may have cosmetic differences or small
25 improvements on them. But, in general, those are all referred to as

Witness: Andre de Villiers Horne (~~Private Session~~) (Open Session) Reclassified pursuant to F793.

Cross-examination by Ms. Pergolo

Page 3677

Additional redactions applied pursuant to F793.

1 Kalashnikovs or AK-47.

2 Q. Thank you very much. Would you be able, in, again, very simple
3 terms, without entering too much into technicalities, to give us
4 maybe an idea of the basic characteristics of an AK-47, the calibre,
5 for example?

6 A. The calibre is what we call a nominal 7.62-millimetres calibre,
7 and that means that the diameter of the bullet is 7.62-millimetres.
8 And just for the benefit of the Court, when I refer to a bullet, that
9 is reference to the projectile. I know in some instances people get
10 confused and they call the cartridge a bullet, which is the whole
11 object that you fit into the magazine. But a bullet is, in fact, the
12 projectile.

13 Q. Thank you very much for that. And, again, in very general,
14 simple terms, can you perhaps give us an idea about the speed or
15 velocity with which a bullet fired from a AK-47 is shot, for example?

16 A. In general terms, about 2.200 to 2.300 feet per second for
17 standard AK-47 ammunition. And, of course, as I've mentioned before,
18 there are different countries involved. Different countries make
19 ammunition according to their own standards, so there might be small
20 variances in the velocity. But, in general, they will all be in that
21 region, 2.200 to 2.300 feet per second.

22 Q. Thank you. Earlier you were asked by my colleagues from the
23 Defence about firing modes of an AK-47. And you explained at page
24 19, lines 9 to 11, that when the selector of an AK-47 is set in
25 automatic mode, when you press the trigger -- and actually I think --

Witness: Andre de Villiers Horne (~~Private Session~~) (Open Session) Reclassified pursuant to F793.

Cross-examination by Ms. Pergolo

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Additional redactions applied pursuant to F793.

1 I believe there should be a correction to the transcript because I
2 read earlier that the transcript read "depress the trigger," but
3 perhaps I'll ask the witness to confirm that is actually -- indeed
4 that was a mistake in the transcript.

5 So when you press the trigger, the rifle keeps firing until you
6 release the trigger. Is that correct?

7 A. That is correct, yes.

8 Q. Thank you. So, again, just as a matter of, like, clarification,
9 to be on the same page, does this mean then when in automatic mode
10 the shooter can release a certain number of shots, let's say, 2, 3,
11 5, 15, as decided by the shooter, him or herself?

12 A. Yes, but I will have to clarify that.

13 Q. Please do so.

14 A. Because these shots are fired at a rate of ten shots per second,
15 it is rather difficult to pre-select and to be able to exactly fire a
16 certain number of shots because your reactions to depress and release
17 the trigger are not that fast. So the shooter could decide to fire a
18 burst, but it is very improbable that the shooter can -- would be
19 able to make a conscious decision between firing three shots and,
20 say, four shots or five shots.

21 Q. Thank you. Earlier this morning, you also discussed about two
22 specific types of submachine-guns, the Uzi and the Skorpion. Do you
23 remember that?

24 A. Just for clarification to the Court, the Uzi is called a
25 submachine-gun, and the Skorpion is called a machine pistol, for the

Witness: Andre de Villiers Horne (~~Private Session~~) (Open Session) Reclassified pursuant to F793.

Cross-examination by Ms. Pergolo

Page 3679

Additional redactions applied pursuant to F793.

1 reason that the Skorpion can be discharged with one hand as opposed
2 to the Uzi that also still needs two hands. So it is small technical
3 distinction, but I just want the records to be reflected correctly.

4 Q. Thank you very much. In terms of physical appearance, would you
5 be able to describe these weapons in general terms?

6 A. Well, the Uzi is a much larger gun than the Skorpion. It's got
7 a folding stock which is much bigger. So you can fire it like you
8 would fire a rifle with the stock in your shoulder. It's got a
9 rather large box-style magazine. It is -- I think the magazines take
10 30 rounds. It is -- it fires a 9-millimetre Luger calibre ammunition
11 which is much larger than the ammunition that the Skorpion fires.

12 The Skorpion is a much smaller pistol. It is something that you
13 can shoot with one hand. It has a small folding stock which you can
14 deploy and put in your shoulder, but it is much smaller in size. If
15 I have to make a quick judgment, there is probably -- the Scorpion is
16 probably half the size in terms of its bulk as the Uzi.

17 Q. Thank you for that. In terms of length, how does an Uzi compare
18 with an AK-47? Again, just talking about physical appearances.

19 A. The Uzi is shorter than the AK-47. Of course, you have AK-47s
20 with folding stocks as well. If I can maybe demonstrate to the
21 Court, if an AK-47 is that long, an Uzi might be that long. There is
22 a clear difference in terms of size and appearance.

23 The other feature that makes it easy to distinguish between an
24 Uzi and an AK-47 is the shape of the magazine. The Uzi has a
25 straight magazine which extends from the pistol grip, whilst your

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1 AK-47 has a much larger banana-shaped magazine. And that is often a
2 feature used by people who are not very familiar with guns to
3 distinguish and to -- or to recognise an AK-47 is the large
4 banana-shaped magazine, and it takes about 30 rounds, the general
5 issue.

6 Q. Thank you. Just a follow-up question on this. You mentioned
7 that the Uzi is shorter than the AK-47. Would that be -- could we
8 say the same even when the foldable stock is fully extended?

9 A. I think so, yes. I'm trying to recall now if I have ever seen
10 them side by side, and I would imagine that, yes, it is still shorter
11 than the AK-47. So if you compare extended stock with extended stock
12 or folding stock with folding stock, I think your Uzi is still
13 shorter than the AK-47.

14 Of course, I must inform the Court that they are -- as before,
15 there are some variants of the AK-47 which could also be shorter.
16 For example, they were made in shorter versions. The Hungarians, for
17 example, made a short paratroop version of the AK-47, and even the
18 Yugoslavs made a short version of the AK-47 called a carbine which
19 was much shorter than the standard AK-47.

20 Q. Thank you. Thank you very much for that.

21 Talking about the Skorpion when you also mentioned, how does a
22 Skorpion compare? And you made already some remarks in this regard,
23 but just maybe to have a full picture, how does it compare in terms
24 of potency and velocity with an AK-47?

25 A. The Skorpion is a handgun calibre. The cartridge is much

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1 smaller. And your muzzle velocity for a Skorpion is much lower. I
2 think it's in the region of about 1.000 feet per second. It is a
3 much smaller bullet.

4 The rate of fire of a Skorpion is larger than the AK-47. A
5 Skorpion can fire up to 15 rounds per second. But it is essentially
6 handgun calibre [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q. Thank you very much for that.

24 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, just a question
25 for us.

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1 The calibre of bullets for the Skorpion, what is that?

2 THE WITNESS: Your Honour, it is called 7.65 in metric terms, or
3 .32 of an inch in imperial terms. And the length of the cartridge
4 case is 17 millimetres. If you compare that, for example, to a
5 9-millimetre Luger, the cartridge case is 19 millimetres. And
6 because it is 9 millimetres, it is much larger in diameter. And if
7 we then go one step further to rifle calibre ammunition, your
8 Kalashnikov, as I said earlier, that is a 7.62-millimetres but the
9 cartridge case is 39 millimetres. So the bigger your cartridge case
10 is, the more propellant you can put into it and the faster the bullet
11 can go.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness. I
13 thought that I might have missed it, but now we are even more
14 complete. Thank you.

15 MS. PERGOLO: Thank you.

16 Q. I would now like to ask you about a TT handgun. Is that the
17 appropriate way to refer to a specific weapon, Mr. Witness?

18 A. Are you referring to the TT-33?

19 Q. Yes.

20 A. Yes.

21 Q. Can this type of weapon be kept in a pocket or a belt?

22 A. Yes. It is a handgun and it is designed to be carried in a
23 holster but you can also carry it in a pocket, if you wish.

24 Q. Thank you very much.

25 MS. PERGOLO: Your Honours, I would like to show a short part of

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1 a video to the witness for identification purpose. I'll ask him if
2 he can identify any of the weapons that we have discussed today in
3 this particular part of the video. It is a still image in
4 particular.

5 PRESIDING JUDGE VELDT-FOGLIA: Yes, you may, Madam Prosecutor.
6 If you kindly give the ERN number to Madam Court Officer, we can
7 proceed.

8 MS. PERGOLO: Absolutely. So it is item 5 on our list of
9 materials, and the ERN is 072508-01.

10 And perhaps we can go to minute 05:50 and play until 06:15, and
11 then I will kindly later ask to maybe stop at a certain minute. But
12 maybe we can play these few seconds just for the witness to see.

13 PRESIDING JUDGE VELDT-FOGLIA: Just to be sure, Mr. Witness, you
14 have the video in front of you?

15 THE WITNESS: Yes, I have, Your Honour.

16 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. Please
17 proceed.

18 [Video-clip played]

19 MS. PERGOLO: Thank you. And if we could perhaps go back to
20 minute 06:00 and just have a still image at that part.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

22 MS. PERGOLO: Apologies. Perhaps it's just a few seconds after
23 this.

24 [Video-clip played]

25 MS. PERGOLO: Yes. If it can be stopped.

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1 Q. Mr. Witness, do you recognise among these -- the weapons we can
2 see in this image, any of the weapons that we have discussed today?

3 A. Yes.

4 Q. Which ones?

5 A. I will start from the left. The weapon on the left is a
6 Hungarian AMD-65. That is the one I referred to earlier with --
7 which has a shorter barrel that the Hungarians developed for
8 paratroopers.

9 Then we have two sets of magazines for the AK-47 taped together
10 so that they can be inverted, so that gives you more capacity.

11 Then we have an AK-47. That is the one with the brown
12 furniture. I'm not entirely sure but that looks like a German --
13 East German AK-47, perhaps an MPK-IMS [sic].

14 Then beside that we have two pistols. I'm not entirely sure
15 about the pistol at the top. It looks like a military type of
16 pistol. But the one below that could be a -- the TT-33, also known
17 as the Tokarev, or it could be the Yugoslav version of the TT which
18 is the M57, I believe.

19 Q. Thank you very much for that.

20 MS. PERGOLO: And the video can be taken down. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

22 MS. PERGOLO:

23 Q. Mr. Horne, I would like to discuss now what we have referred to
24 as [REDACTED], and discuss in particular your findings at
25 pages 6 and 7 of your report, DPS00864 to DPS00875, and this is just

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1 for your references at the moment.

2 So today we discussed about Kalashnikovs. You told us that
3 these are assault rifles. And you also discussed today about what
4 you called the recoil, the weapon recoil, right, and this is the page
5 26, line 4.

6 May I ask you just again to go back to it briefly, and can you
7 explain to us what kind of movement does the recoil create on the
8 weapon normally?

9 A. So for every action there is opposite and equal reaction. And
10 if you take the mass times the velocity of the bullet, that would be
11 equal to the mass times the velocity of the gun. So if the bullet
12 moves forward, that -- the product of multiplying the mass times
13 velocity would give you the same product as multiplying the mass
14 times the velocity of the gun. Because the bullet is light and it
15 goes very fast, that equates to something on the rifle side which is
16 the opposite. So your rifle is heavy and it will be going back
17 slowly. But that movement of the rifle moving backwards in the
18 opposite direction of the bullet, that is called recoil.

19 Q. Thank you. That's very clear.

20 Does the weapon recoil affect the shooter as well in any way?

21 A. The shooter can feel the recoil. It is a push or a bump in his
22 shoulder because the weapon moves to the rear, and for a brief moment
23 it will alter the shooter's point of aim. So if you fire a single
24 shot, after you fired one shot, because of the recoil, your target --
25 your sights will move off the target and you will have to bring the

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1 gun back onto target to fire the second shot.

2 However, if you fire in automatic mode, than that happens too
3 fast and it is not possible for you to correct the gun back onto your
4 target because of the quick succession of the shot.

5 Q. Thank you. Now, does a shot or a burst of fire discharged from
6 an AK-47 at close range cause any reaction or movement in the person
7 who is hit by the shots?

8 A. No. There may be a reaction from the person because of what he
9 feels, but there is no reaction caused by the bullet.

10 For example, I know there is a misconception which is propagated by
11 filmmakers and people are generally under the impression that if you
12 should somebody with a gun, he will fly through the air when he is
13 hit by a bullet. That is completely untrue. There is no movement --

14 PRESIDING JUDGE VELDT-FOGLIA: I see Defence Counsel standing.

15 Is it necessary to usher the witness out.

16 MS. CARILOU: Not at all. And apologies for interrupting. I
17 was just wondering if we are generally discussing generally operation
18 of these weapons, perhaps we could do it or consider to do it in
19 public session.

20 PRESIDING JUDGE VELDT-FOGLIA: Yes, we could consider that. At
21 the same time, we have a very large public and I don't know what kind
22 of questions will be coming up. So if we have to redact something,
23 then the utility of redacting it with such a large public is
24 complicated.

25 So only if Madam Prosecutor is really sure about that nothing

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1 will be linked to something specific. Because before, for example,
2 we needed to have two redactions because we were referring -- you
3 have seen the redactions so I don't have to spell out. So it is very
4 difficult. And happily there was nobody in the public galley.

5 So I see your point, Defence Counsel, but taking on board the
6 delicacy of the matter and the protective measures in place, I'm more
7 than hesitant. So I can give you the floor on this, but I'm not
8 easily convinced at this moment.

9 MS. PERGOLO: Thank you, Your Honours. Indeed, actually the
10 part where I'm going right after this question is potentially
11 discussing more in detail also the pathologist report, so I would
12 stay probably in private session.

13 PRESIDING JUDGE VELDT-FOGLIA: But, rest assured, because your
14 concern is mine, and it is very well possible that a part of this
15 will be reclassified because this was indeed the point. The point
16 you have made is a fair one.

17 So, yes, please proceed, Madam Prosecutor.

18 MS. PERGOLO: Thank you very much.

19 Q. So, Mr. Witness, you were talking -- you explained and clarified
20 that per se there is no reaction from, let's say, the impact of the
21 bullet and you said that doesn't create movement. But there might be
22 reaction, as you said at page 57, lines 9 and 10, because of what the
23 person feels.

24 Is that correct? Is that a possibility, let's say?

25 A. Yes. If it would assist the Court, I can say that I've seen it

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1 demonstrated where a person [REDACTED]
2 [REDACTED] and he was shot with a rifle more powerful than an
3 AK-47 and, to demonstrate, he was standing on one leg. And from the
4 shot, he did not lose his balance. And that has got to do again with
5 the mass of the body which is 70 or 80 or even more kilograms as
6 opposed to the bullet which may just be 10 grams.

7 Q. Would that be different if the person shot at a close range with
8 an AK-47 [REDACTED] of any sort?

9 A. No, it won't make any difference.

10 Q. And in terms of the reaction that the bullets may cause on the
11 person, how would that -- how would that affect the person?

12 A. A person might pull away. He might suffer pain, and he might
13 move his body to the side or in a different direction. But that
14 would be a movement that is caused by the person and not by the
15 bullet.

[Private session]

16 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

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Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

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Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

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Additional redactions applied pursuant to F793.

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15 [Open session]

16 THE COURT OFFICER: We're in public session, Your Honours.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much, Madam Court
18 Officer.

19 Madam Prosecutor, how long do you think that you will be still
20 needing for your cross-examination?

21 MS. PERGOLO: Your Honours, if at all, just few minutes.

22 PRESIDING JUDGE VELDT-FOGLIA: Okay, thank you.

23 Victims' Counsel, would you be asking questions to the witness?

24 MR. LAWS: Yes, I will be asking him some questions,
25 Your Honour.

Additional redactions applied pursuant to F793.

1 PRESIDING JUDGE VELDT-FOGLIA: Can you indicate how much time
2 you think you will be needing?

3 MR. LAWS: Can I say 20 minutes, approximately.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well, thank you. Thank you.
5 Defence Counsel, it's still early because we have not finalised
6 yet, but can you indicate if you would like to go for re-direct?

7 MS. CARIOLOU: It's too early for us, Your Honour. We will wait
8 for the cross-examination to be completed and then we will let you
9 know.

10 PRESIDING JUDGE VELDT-FOGLIA: Very well. Good.

11 We will have a break, Mr. Witness, of one and a half hour
12 till -- as I indicated, till half past 2.00, and then we will see you
13 back after that. Thank you.

14 THE WITNESS: Yes, Your Honour.

15 PRESIDING JUDGE VELDT-FOGLIA: Yes, I see Mr. Shala having the
16 floor, but I will first usher the witness out. Thank you.

17 [The witness stands down]

18 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, we are in public
19 session. What do you want to say?

20 THE ACCUSED: [via videolink] [Interpretation] I just wanted to
21 consult with my lawyer, if that's possible.

22 PRESIDING JUDGE VELDT-FOGLIA: Always.

23 THE ACCUSED: [via videolink] [Interpretation] So during the
24 break, if that's possible, I just want to speak to my Defence
25 Counsel.

Additional redactions applied pursuant to F793.

1 PRESIDING JUDGE VELDT-FOGLIA: In the breaks, you're always
2 allowed to discuss with your lawyer. They have taken note of it, and
3 I trust that they will act -- I trust that they will act accordingly.

4 We will adjourn till half past 2.00.

5 THE ACCUSED: [via videolink] [Interpretation] Thank you very
6 much.

7 --- Luncheon recess taken at 12.58 p.m.

8 --- On resuming at 2.30 p.m.

9 PRESIDING JUDGE VELDT-FOGLIA: I don't see any changes in the
10 composition of the teams, so that is noted.

11 Welcome back to everybody.

12 Mr. Shala, can you hear me fine? Good afternoon.

13 THE ACCUSED: [via videolink] [Interpretation] I hear you very
14 well. Thank you.

15 PRESIDING JUDGE VELDT-FOGLIA: Good. Yes, we will proceed with
16 the testimony of the expert witness.

17 Madam Court Usher, could you please bring the witness back into
18 the courtroom.

19 Madam Prosecutor, you will be proceeding for a few minutes
20 still, is my understanding, with your cross-examination, isn't it?

21 MS. PERGOLO: That is correct, Your Honour. I just have a
22 couple of follow-up questions. Thank you.

23 PRESIDING JUDGE VELDT-FOGLIA: And would you like to us revert
24 into private session?

25 MS. PERGOLO: Yes, please.

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Additional redactions applied pursuant to F793.

1 [The witness takes the stand]

2 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, welcome back. Can
3 you hear me fine?

4 THE WITNESS: Yes, I can hear, Your Honour. Thank you.

5 PRESIDING JUDGE VELDT-FOGLIA: Good.

6 Mr. Shala, did you hear the translation of what the witness
7 said?

8 THE ACCUSED: [via videolink] [Interpretation] Yes, everything is
9 fine. Thank you.

10 PRESIDING JUDGE VELDT-FOGLIA: Very well.

11 Before I give the floor to Madam Prosecutor to continue with the
12 cross-examination, I will ask Madam Court Officer to bring us into
13 private session.

14 Madam Court Officer, can you bring us into private session,
15 please.

16 [Private session]

17 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

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Cross-examination by Ms. Pergolo

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

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Cross-examination by Ms. Pergolo

Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

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Questioned by Victims' Counsel

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

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Additional redactions applied pursuant to F793.

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Questioned by Victims' Counsel

Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Questioned by Victims' Counsel

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3715

Questioned by Victims' Counsel

Additional redactions applied pursuant to F793.

1 [Private session text removed]

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Witness: Andre de Villiers Horne (Private Session)

Page 3716

Questioned by Victims' Counsel

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3717

Questioned by Victims' Counsel

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3718

Procedural Matters

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3719

Procedural Matters

Additional redactions applied pursuant to F793.

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Witness: Andre de Villiers Horne (Private Session)

Page 3720

Procedural Matters

Additional redactions applied pursuant to F793.

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14 [Open session]

15 THE COURT OFFICER: Your Honours, we're in public session.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

17 We have reached the end of your testimony, Mr. Witness, and we
18 would like to thank you for the efforts you have put into giving your
19 testimony before this Panel. So thank you very much.

20 I remind you that you should not discuss your testimony with
21 anybody, the testimony you have given today.

22 And Madam Court Usher will assist you out of the courtroom.

23 THE WITNESS: Thank you, Your Honour.

24 [The witness withdrew]

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Clerk.

Additional redactions applied pursuant to F793.

1 Very well. We will continue tomorrow, so that is Tuesday, 28
2 November, with the testimony of the Defence, which is Witness W04280.
3 Yes. And with regard to this witness, I would like to go into
4 private session for a moment.

5 [Private session]

6 [Private session text removed]

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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Additional redactions applied pursuant to F793.

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21 [Open session]

22 THE COURT OFFICER: Your Honours, we're in public session.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

24 Specialist Prosecutor's Office, is there anything you would like
25 that raise with the Panel?

Additional redactions applied pursuant to F793.

1 MS. PERGOLO: No, nothing, Your Honours. Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well.

3 Victims' Counsel?

4 MR. LAWS: No, thank you, Your Honour.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 And for the Defence?

7 MR. GILISSEN: Nothing. Thank you very much.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Then the hearing is adjourned till tomorrow, 9.30.

10 --- Whereupon the hearing adjourned at 3.32 p.m.

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