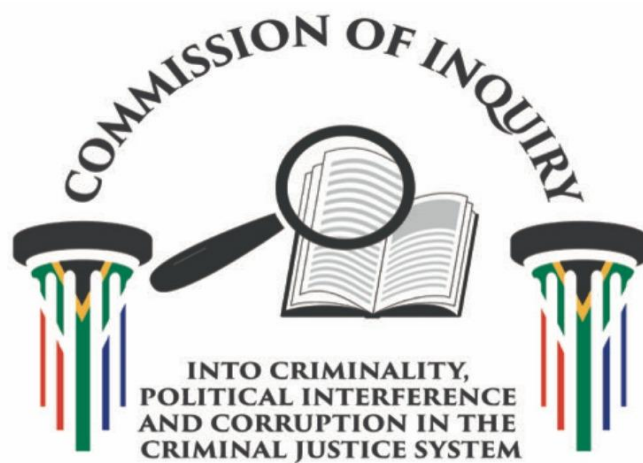


JUDICIAL COMMISSION OF ENQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

3 JUNE 2026

DAY 112



PROCEEDINGS ON 3 JUNE 2026

CHAIRPERSON: Good morning, Ms Sello.

ADV SELLO SC: Good morning, Chair.

CHAIRPERSON: Good morning, Colonel.

COLONEL JACOB: Good morning, Commissioners, Chair.

CHAIRPERSON: Thank you.

ADV SELLO SC: Morning, Chair, morning, Commissioners.

We continue with the Port Shepstone stream, drug bust
stream today, and we present today the testimony of
10 Colonel Gavin Jacob, if I could request that he be sworn in.
Chair?

CHAIRPERSON: May I ask your assistant to please
approach us, please, please. Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. I confirm for the
record that we are leading the testimony of Colonel Gavin
Jacob this morning, and I request that he may please be
sworn in.

CHAIRPERSON: Thank you. Please state your full names
for the record.

20 **COLONEL JACOB:** It is Gavin Houston Jacob, Chair.

CHAIRPERSON: Thank you. Will you be swearing or
affirming?

ADV SELLO SC: Swearing, Chair.

CHAIRPERSON: Swearing, thank you, thank you. Do you
swear that the evidence you are going to give is the truth,

the whole truth, nothing but the truth. If so, please raise your right hand and say, "So help me God".

COLONEL JACOB: So help me God.

GAVIN HOUSTON JACOB (duly sworn states)

CHAIRPERSON: Thank you.

EXAMINATION BY ADV SELLO SC: Thank you, Chair.

And good morning, Colonel.

COLONEL JACOB: Good morning, Commissioner.

ADV SELLO SC: Colonel, you should have around you a
10 number of files. I will try and guide you to each file as and
when we need to get to that file. For the moment, we need
to locate your statement, and that will be, Commissioners,
in the consolidated statement bundle at tab 3.

CHAIRPERSON: Are you there, Colonel?

COLONEL JACOB: Yes, I am ready, Commissioner.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Colonel, do you
confirm that you have deposed to a statement for the
purpose of the Commission?

20 **COLONEL JACOB**: I do confirm.

ADV SELLO SC: I have referred you to a specific
document in the statement bundle. Do you confirm that that
is the statement that you deposed to?

COLONEL JACOB: I confirm, Commissioner.

ADV SELLO SC: Please turn to page 14 of that statement.

There is an annexure there. There is a signature there next to your name. Do you confirm that is your signature?

COLONEL JACOB: I do confirm, Commissioner.

ADV SELLO SC: One thing I note about this statement, Colonel, it is undated. Would you be happy that we give it today's date for record purposes?

COLONEL JACOB: I am okay with that, Commissioner.

ADV SELLO SC: Thank you. Do you swear that the contents of this statement are true and correct?

10 **COLONEL JACOB**: I do.

ADV SELLO SC: And do you, as you sit there, do you stand by the contents of the statement?

COLONEL JACOB: I do.

ADV SELLO SC: As I discussed with you earlier about the process and approach we adopt, the Commissioners would give you an opportunity to speak to your statement and highlight those aspects that you think are important, or particularly important, I think the whole of it is important, with as little interruption from my side, mainly, and from
20 their side as well while you work your way through the statement. There will, however, be times when some clarification is required and that those issues will be posed to you. However, at this juncture, there will not be any interrogation of your statement as it stands. That will take place after you have had your opportunity to state your full

case. Do you understand?

COLONEL JACOB: I understand.

ADV SELLO SC: So on that basis, then, can I invite us to go to the statement and we deal with it in the terms that I have explained. If you could turn to page 1 of your statement. Are you there?

COLONEL JACOB: I am here.

ADV SELLO SC: Okay.

CHAIRPERSON: Please do not read your PERSAL number.

10 Thank you.

ADV SELLO SC: And any other personal details that may be in the statement. From paragraph 1 to paragraph 8, you give a brief background, your professional background. If you could just quickly work through that.

COLONEL JACOB: Okay.

ADV SELLO SC: You may, where you deem it necessary, choose to read from the statement or where you are able to, you may speak in general to what is in particular paragraphs of the statement. Is that acceptable to you?

20 **COLONEL JACOB**: It is, Commissioner.

ADV SELLO SC: Thank you. Please go ahead.

COLONEL JACOB: Okay, I will read from paragraph 1.

“I am a Colonel in the South African
Police with PERSAL. I am attached to
the Directorate for Priority Crime

Investigation and the Unit Commander of the Durban Serious Organized Crime Investigation Unit. I completed a Bachelor of Science degree majoring in chemistry and biochemistry from the University of Durban-Westville in 1998. I joined the South African Police in January 2001. I was appointed at the rank of Sergeant as a Forensic Analyst at the Ballistic Unit of the Forensic Science Laboratory.

10

In April 2002, I joined the Directorate of Special Operations, commonly known as the Scorpions. I was based in Silverton as a Special Investigator at the Crime Information Collection Unit.

In November 2004, I was transferred to the DSO Durban where I was placed within the Narcotics section. I worked on drug-related projects.

20

In July 2009, the DSO was dissolved and we were merged with the SAPS. I joined the DPCI Durban Organized Crime Unit, which later became known as the Serious Organized Crime

Investigation Unit. I was attached to the South African Narcotics Enforcement Bureau. I was appointed at the rank of Lieutenant Colonel.

From 2018 to 2019, I was placed at the DPCI Durban Serious Commercial Crime Unit, attached to the Counterfeit Goods Section.

10 In 2020, I was placed back at the DPCI Serious Organized Crime Investigation Unit and I acted as both SANEB and Economic Protected Resources Section Commander.”

ADV SELLO SC: Please read paragraph 9 as well.

COLONEL JACOB: -:

20 “In February 2022, I was promoted to the rank of Colonel and appointed as the Unit Commander of the Durban Serious Organized Crime Investigation Unit. The unit comprises a National Priority Violent Crime Section (NPVC, SANEB and EPR groups).”

CHAIRPERSON: Ja, let me just say the date, or rather the period was February 2022. I am saying that because you and Ms Sello spoke at the same time, so that may have

been missed.

ADV SELLO SC: Thank you, Chair. Thank you, Colonel. Before then we move on, can I just seek clarity, and it is because this seems to be the unit where you spend the most time, SANEB, the South African Narcotics Enforcement Bureau. Can you briefly inform us what the primary duties are and what your functions over the period have been within that unit? Thank you.

COLONEL JACOB: Okay. I was initially a second-in-
10 command to a full Colonel, Colonel AK Hoosen, and when he went out of the police, I took over the Narcotics group, but basically our investigations revolved around drug projects, identifying drug syndicates, drafting a project on how to address them, dismantling of clandestine laboratories, harbour interdictions, seizures, undercover operations. All major or high-level drug-related investigations were conducted by the SANEB group.

ADV SELLO SC: And you personally were involved in those functions?

20 **COLONEL JACOB:** That is correct.

ADV SELLO SC: Thank you. You may then take your statement from paragraph 10 at page 2.

COLONEL JACOB: -:

“I have coordinated drug operations,
managed drug projects, dismantled

clandestine laboratories, and been involved in several drug seizures at the port and container depots. Prior to the drug seizure on 22 June 2021, I had not conducted a larger seizure.”

ADV SELLO SC: You may continue.

COLONEL JACOB: Okay.

10 “On 22 June 2021, I received information from Captain Duma of Crime Intelligence regarding Cocaine in a certain container. He called me just after 7 a.m. on the said morning regarding the information. Captain Duma also called Warrant Officer Mpangase regarding the same information. I called Mpangase after the call from Captain Duma. He indicated that he would brief the Brigadier accordingly.”

20 I think I missed a sentence, Commissioner. I am just going to say that here I informed Warrant Officer Mpangase that although I was on vacation leave, I was going to book on duty to conduct this operation or attend to this information. So I see I missed it out.

ADV SELLO SC: Sorry, can you say that, which sentence

do you say you missed?

COLONEL JACOB: Okay, I say I called Mpangase after the call from Captain Duma.

ADV SELLO SC: Yes.

COLONEL JACOB: He indicated that he would brief the Brigadier accordingly. I think there is a bit of a miss in between.

ADV SELLO SC: Okay.

COLONEL JACOB: It does not really make sense. So I
10 am saying when I spoke to Mpangase, I informed him that I would be attending to this operation, meaning we would operationalize it.

ADV SELLO SC: Okay, understood. Thank you.

CHAIRPERSON: And what exactly was he to brief the Brigadier on? Was it the fact that even though you were on leave, you were going to be part of the operation or what exactly was the briefing?

COLONEL JACOB: It was twofold, Chair. It was with regards to me booking on duty, as well as to brief the
20 Brigadier on the nature of the information.

ADV BALOYI SC: Morning. And the Brigadier referred to here is who?

COLONEL JACOB: My apologies. It is Brigadier CM Nyuswa.

ADV SELLO SC: Thank you. Yes ...[intervenes].

ADV BALOYI SC: And is he your immediate superior?

COLONEL JACOB: He is the Provincial Commander. He was not my immediate Commander at that stage. He was one above the immediate Commander. He was an acting Unit Commander. At that stage, when I look at my diary, it was a Colonel Dhlomo that was the acting Unit Commander.

ADV BALOYI SC: Thank you.

ADV SELLO SC: And on that score, you say it is Brigadier, what is his, Dhlomo, his rank?

10 **COLONEL JACOB:** Colonel, a Colonel ...[intervenes].

ADV SELLO SC: Colonel Dhlomo. Was that your immediate supervisor?

COLONEL JACOB: Yes.

ADV SELLO SC: Thank you.

COLONEL JACOB: Yes.

ADV SELLO SC: Commissioner Khumalo.

ADV KHUMALO SC: Just to get the wording correct, in Exhibit file 2 on page 589, the sentence you want us to be included to your statement.

20 **COLONEL JACOB:** You say Exhibit file 2?

ADV KHUMALO SC: Exhibit file 2.

COLONEL JACOB: Yes.

ADV KHUMALO SC: On page 589.

COLONEL JACOB: Okay.

ADV BALOYI SC: Page 5?

ADV KHUMALO SC: Page 589. You will see in paragraph 3, the highlighted portion, is that the part that you want us to include in your statement to the Commission?

COLONEL JACOB: Yes, that is correct, Commissioner.

ADV KHUMALO SC: Thank you.

ADV SELLO SC: Thank you, Commissioner. And just to point out that the paragraph you just dealt with, paragraph 11, right through for the next five pages, you are now dealing with the actual, the incident of the 22nd of June
10 2021.

COLONEL JACOB: That is correct.

ADV SELLO SC: And your paragraph 11 reflects how you were informed and then you became involved.

COLONEL JACOB: That is correct, Commissioners.

ADV SELLO SC: And you will take that over to quite a number of paragraphs. Do you prefer to read into the record what you set out therein, at least up to paragraph 32, or are you happy to just speak to that detail?

COLONEL JACOB: I would not want to miss something
20 out, so I am quite a proficient reader. I am going to try and read this as quick as I can.

ADV SELLO SC: Okay.

COLONEL JACOB: If you ...[intervenes].

ADV SELLO SC: Let us try that.

COLONEL JACOB: Thank you, Commissioner.

ADV SELLO SC: Thanks.

ADV BALOYI SC: Maybe before you do that, Colonel, you, in, at the end of paragraph 10, you say before 22 June 2021 operation, I had not conducted a larger seizure.

COLONEL JACOB: Yes.

ADV BALOYI SC: You say that. And then in the, when you were discussing paragraph 8, explaining SANEB, you said it is responsible or involved in all major drug operations.

COLONEL JACOB: That is correct.

10 **ADV BALOYI SC:** What is defined as major drug operations?

COLONEL JACOB: Okay, to clarify, Commissioner, when I say I had not conducted a larger, let me see, that was ...[intervenes].

ADV BALOYI SC: That is at paragraph 10.

COLONEL JACOB: Paragraph 10.

ADV BALOYI SC: Ja.

COLONEL JACOB: When I say I had not conducted a larger seizure, I am talking about a container interdiction
20 where drugs were seized from a container or from the port or from a depot, yes.

ADV BALOYI SC: So it is not so much the quantity.

COLONEL JACOB: No, not the quantity. It is the seizure, the type of seizure that we had done. I have done clan labs and the like, but this was the largest seizure of Cocaine,

per se, that I had done.

ADV BALOYI SC: Okay. And then back to my question about paragraph 8, where you were explaining SANEB as being responsible ...[intervenes].

COLONEL JACOB: Yes.

ADV BALOYI SC: I do not remember the exact word you used, but for major drug operations.

COLONEL JACOB: Yes.

ADV BALOYI SC: And my question about it is, what is
10 considered to be major drug operations?

COLONEL JACOB: Okay. When it comes to our mandate, we try to focus on what we call a criminal value chain and levels 3, 4, and 5, that meaning we are looking at your wholesalers, your financiers, your distributors, your international drug traffickers. So we try to focus on those involved in the drug industry that are quite prominent and those that would make an impact if we had to address them successfully.

ADV SELLO SC: Thank you, Commissioner Baloyi.
20 Colonel, we will proceed. Then we are at your paragraph 12 at page 2.

COLONEL JACOB: 12.

“On the said morning, I was fetched
from my residence by Warrant Officers
Mpangase and Sibiya, also of the

Durban Serious Organized Crime Investigation Unit. The information was that there was a container in Isipingo with suspected Cocaine inside. We met with Captain Duma in the Isipingo area. He informed us that there were alleged to be 27 pieces or units of Cocaine in a container number BEAU5955535, which was stored at the CHC container depot in Isipingo.

10

We proceeded to the depot and spoke to the Warehouse Manager. Captain Duma had prearranged with the warehouse that the said container was to be inspected. The container in question was stacked high up and between other containers. After moving containers around to accommodate the container in question, it was placed for inspection. We had acquired the shipping documentation (SAD500, packing list, et cetera) from the Warehouse Manager.

20

When the container was placed, I

noticed the original seal in place, as per the documentation furnished. I immediately suspected this to be a rip-on-rip-off load. This is a *modus operandi* whereby the drugs are loaded at the port of origin in a legitimate container. In essence, these drugs piggyback on this legitimate cargo and are usually found in canvas bags placed at the entrance of the container. The purpose of this is to ensure easy retrieval once the container is opened. This usually occurs at the port with the assistance of port staff and possibly customs or police officials. The seal is cut, bags removed, and the container is resealed. Sometimes a duplicate seal is used when resealing the container, or a new seal is used. The consignee is none the wiser, as their commodity or goods are not affected. Investigations of this nature is difficult to link to a suspect. I am not aware of any arrests pertaining to a rip-on-rip-off case in KZN or within South Africa.

In the absence of credible intelligence, arrests are non-existent. I can also state that from all the rip-on-rip-off matters that we have dealt with, we have not received any DNA or fingerprints results back from the LCRC.”

CHAIRPERSON: Sorry, what is the difference between a duplicate seal and a new seal?

10 **COLONEL JACOB**: Okay.

CHAIRPERSON: Because if what they use is no longer the seal that they broke ...[intervenes].

COLONEL JACOB: Yes.

CHAIRPERSON: I would have considered whatever they now use to be a duplicate seal.

COLONEL JACOB: Okay, just for clarification, Chair. You can get a duplicate seal that has the exact serial number of the original seal, or they could just put another seal that does not even have the same serial number, and the
20 consignee is not that bothered because their commodity is still intact. When they get it, if they ordered, I am just using an example, 50 bags of rice, and they have got 50 bags of rice there, it is not going to be that much of a red flag that they are going to complain, why is the seal not the same as our shipping documentation.

CHAIRPERSON: Well, thank you.

ADV SELLO SC: Thank you, Chair. Thank you, Colonel.
You may proceed.

COLONEL JACOB: Okay.

10 “Warrant Officer Sibiya and I took
photos as the container was placed for
inspection, the original seal of the
container highlighting the seal number,
as well as the cutting open of the seal.
Upon opening the container, it was
noted that there were numerous black
canvas bags placed on top of 50-
kilogram bags of animal feed
(legitimate cargo as per the packing
list).

20 We kept the civilians at the warehouse
at bay so as they could not interfere
with the offloading or the container
itself. Upon inspection of one of those
bags, we noticed it to contain
suspected one-kilogram bricks of
Cocaine. They were wrapped in yellow
wrapping with Jaguar written on it and
black and white wrapping with TikTok
written on it. There were other border

police, cargo operations team unit ...”

I think I have made a mis, or a typo, right. It is:

“Cargo operations inspection team, uniformed members at the depot that were inspecting other containers. I enlisted their assistance to offload these bags along with my members. We counted 27 such bags with warehouse staff. The container was locked with a new seal.

10

We did not have adequate exhibit bags for this quantity of drugs. Upon offloading these bags, I noticed that the area that we were working in was congested. I looked at the area around the container and I realized that unpacking the bricks of cocaine would cover a surface area greater than the area available. I also noted that the depot was busy with machinery traversing our immediate vicinity. Umlazi is 11 kilometres away from the depot, which I saw as a risk, and we were working in an uncovered area of the depot.”

20

ADV SELLO SC: Before you proceed to 20, you note that Umlazi is 11 kilometres from the depot, and you saw that as a risk. Why?

COLONEL JACOB: Umlazi is a volatile area. We know that you have got serious criminals, cash-in-transit robbers. We know, we have got also major players in the drug industry that reside there. It is known for not being that much of a safe place, a high-risk area.

ADV SELLO SC: So, and it is the proximity of the depot to
10 Umlazi that creates a risk.

COLONEL JACOB: That is correct, it was 11 kilometres away.

ADV SELLO SC: Please continue. Thank you.

COLONEL JACOB: -:

20 “These canvas bags were then loaded into a marked vehicle utilized by the border police members. My main priority was to safeguard these exhibits, valued at approximately 200 million. I knew that Isipingo SAP would have exhibit bags, and would also provide a more secure environment to work with these exhibits.

The container was locked and available for us to further inspect at a later

stage. I took the decision not to
cordon off and close the depot. I did
not want to prejudice the company by
closing them down for the rest of the
day, as they were not suspects in this
matter. We had acquired photos of the
chain of events leading up to the
discovery of the drugs. I knew that the
chain of custody of exhibits would be
10 accounted up until these exhibits
reached Isipingo SAP.”

ADV SELLO SC: If I may just get clarity there, you say
you took the decision not to cordon off and close the depot.
Would I be correct to conclude that you took that decision
as what the crime scene Commander, as the most senior
person, are you responsible for the scene? On what basis
did you take that decision?

COLONEL JACOB: As the senior officer on the scene,
Commissioner, any of these executive decisions that are
20 made with regards to a crime scene and the handling
thereof would have fell squarely on my shoulders.

ADV SELLO SC: Okay. Thank you. You may continue.

COLONEL JACOB: Okay. Was I at paragraph 22? Okay.

“In a CIT scene, evidence uplifted from
the crime scene, irrespective of where

the crime scene is, is crucial. DNA, fingerprints, positioning of cartridge cases, trajectory of bullets, crime scene photos, et cetera, are all critical in proving your case. Here, crime scene management is paramount. Had the CHC depot been a crime scene that warranted cordoning off or retrieving evidence from it, I would have done so immediately. I, along with two DPCI members (the two DPCI members) followed the marked police vehicle whose occupants were Sergeant Mkhize and Govender from Border Police. We did not lose sight of them the entire way until reaching Isipingo SAP.”

I must add that Isipingo SAP is 4 kilometres away from the CHC depot.

“Upon arrival at the station, I called Brigadier Nyuswa to inform him of the seizure. The members started to offload the bags and I went to call the SAP13 clerk, Warrant Officer Perumal. He came to the parking area and

viewed proceedings. When asked for exhibit bags, he indicated that they did not have any of the required size. I then realized that it was futile to call out LCRC when we did not have the required exhibit bags. My members had a few of the bags of the required specifications, but not enough for this magnitude.

10 We proceeded with the count of bricks of Cocaine with the Border Police members. Mpangase was noting down the count as we progressed and assisting with counting also. Sibiya and I took photos of this process. The number of 1 kilogram bricks amounted to 541.

20 The Border Police members then left to attend to other duties. Mpangase entered the exhibits into the Isipingo SAP13 and booked them out. Isipingo SAP13 373/2021 refers. Warrant Officer Perumal signed to confirm the same. I did not view the SAP13 entry at the time. I can admit that column

3.1 was poorly completed, more especially since there were no exhibit bags. A more detailed description of the different colours, the branding and number of said bricks should have been noted in column 3.1.”

ADV KHUMALO SC: Colonel, how did you determine that it was 1 kilogram bricks? Did you weigh them or is that based on your experience?

10 **COLONEL JACOB:** Commissioner, we did not weigh them. Based on my experience.

ADV KHUMALO SC: For all we know, it could have been 800 grams.

COLONEL JACOB: You are correct, Commissioner.

ADV KHUMALO SC: It could have been 900 grams. But based on your experience and the look of it, you assumed that it is 1 kilogram bricks.

COLONEL JACOB: That is correct, Commissioner.

ADV KHUMALO SC: Thank you.

20 **ADV SELLO SC:** Colonel, before you go any further, just to perhaps point out to you that what is being made publicly available is a redacted version of your statement, so we do not call out case numbers and such details. So when you come across them in your original statement, please try and skip that number.

COLONEL JACOB: Noted, Commissioner.

ADV SELLO SC: Thank you.

COLONEL JACOB: Yes. May I proceed?

ADV SELLO SC: Absolutely, you may. Thank you.

COLONEL JACOB: -:

“What I can say with certainty ...”

Okay, sorry. Paragraph 27:

“I stated in a previous statement in this matter that I knew Isipingo did not store exhibits and that we had
10 problems with them previously. My members on the scene have since reminded me that Warrant Officer Perumal explicitly refused to keep the exhibits on the day and that I should have been aware of the same. I hope to explain the reason for this discrepancy/confusion in due course. What I can say with certainty is that Isipingo SAP would not store these exhibits. I called the FSL whilst at the station, not only to attend the scene, but to ask if they had storage space for the drugs. This would have alleviated the burden on us to find a place to store them as they could attend to
20 the analysis and eventual destruction of the same. They indicated that they did not have space. I knew that the two police stations that normally assisted with storage, namely Durban Central SAP and Brighton Beach SAP, still had exhibits from our drug seizures conducted in February 2020 and September 2020, respectively. I was inundated with

calls from these stations requesting us to dispose of these exhibits. The exhibits stored at Brighton Beach SAP were amongst those seized in a drug operation in Umhlali Policing Precinct in September 2020. The FSL attended that scene and took samples of a precursor chemical called anthranilic acid. The rest of these 50 kilogram bags were stored at Brighton Beach SAP.”

Paragraph 30:

10 “I then called Brigadier Nyuswa and told him that I had exhausted all avenues and that he should secure a storage location for the drugs. After a while, he called me back saying that he had discussed with General Senona and that the exhibits should be stored at Port Shepstone's Serious Organized Crime Unit. I did not know that Port Shepstone's Serious Organized Crime Investigation Unit had kept exhibits.

20 He further arranged a team to conduct the armed escort to the exhibits to Port Shepstone.

I briefed Mpangase on the instructions from the Brigadier. After a while, we were met by members of our National

Priority Violent Crime Section as well as the tracking team comprising Public Order Policing members. I handed the scene over to Warrant Officer Mpangase who was the investigating officer of the matter. I did not go to Port Shepstone and I was dropped off at my residence to resume my vacation leave. I did not give any further instructions to Mpangase as he was a seasoned detective in this environment.

10

The following day, when I contacted Mpangase and learned that exhibits were only being sealed in bags then, I reminded him that they should be entered into the SAP13 immediately to ensure there were no queries raised. Another reason for sealing them in exhibit bags is due to the fact that the FSL requires exhibits for analysis to be sealed in bags. It would have been prudent to photograph the process of sealing the bricks in exhibit bags.”

20

ADV SELLO SC: Before you move to the next paragraph,

am I correct in my understanding of your paragraph 32 that after they were dropped off at Port Shepstone offices, they spent the night not being in exhibit bags? Is that a correct understanding?

COLONEL JACOB: That is correct, Commissioner.

ADV SELLO SC: Okay, thank you.

ADV BALOYI SC: Can I also just follow up on that, that in that period, that overnight period, there was therefore no record of what exactly, and I am speaking specifically about
10 quantities and the content thereof, there was no record of what is there, what has been left at Port Shepstone?

COLONEL JACOB: That is correct, Commissioner.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Please proceed, Colonel.

COLONEL JACOB: -:

20 “Since the FSL had no space for us to forward all of the exhibits, the next logical step to take was to forward samples to confirm indeed if what we had was Cocaine. I called Colonel Khuzwayo, who is the Head of Chemistry at the FSL in Amanzimtoti, and sought guidance in this regard. I cannot recall exactly what her instructions were, but it involved taking

samples from a few bricks and placing a minute amount of powder into a small exhibit bag meant to accommodate these samples. This would then be conveyed to the FSL for analysis. There is no training or specialized skill involved in doing this. The samples are merely forwarded to the FSL by the member for chemical analysis by an Analyst at the Chemistry section. This is accepted at the FSL in order to conduct chemical analysis.

10

Mpangase took these samples for forwarding to the FSL on my instruction on the 23rd of June 2021. He, however, only entered these exhibits into the Port Shepstone SAP13 the following day, on the 24th of June 2021. I am not sure why this was done or this was not done the same day. Port Shepstone SAP13 ...”

20

And I am going to leave that out, something ...

“... 2021 refers.”

Paragraph 35:

“On my return to work, I took over the

investigation on the 29th of June 2021.

Mpangase had made it known that he was leaving the SAPS, hence all his dockets and enquiries were reallocated to others. On the 1st of July 2021, I proceeded to the CHC depot with Mpangase and Sibiya. I had arranged that the clearing agent (Megafreight) send a representative to unpack the container and we conducted a count of the 50 kilogram bags of animal feed. They amounted to 5,395 bags, which corresponded with the packing list. This further corroborated the rip-on-rip-off methodology. The container was then officially released to the clearing agent. On the same day, I emailed ...”

10 [intervenes].

ADV SELLO SC: My apologies, before you leave that paragraph, you state at 35 that when you returned on the 29th of June, you took over the investigation and that, is it Warrant Officer Mpangase, what is that rank of? I do not want to ...[intervenes].

20

COLONEL JACOB: Warrant Officer.

ADV SELLO SC: You just called him by name

...[intervenes].

COLONEL JACOB: Yes, yes.

ADV SELLO SC: Warrant Officer Mpangase had made it known that he was leaving SAPS.

COLONEL JACOB: Yes.

ADV SELLO SC: Are you able to recall when he had made that known and how?

COLONEL JACOB: Commissioners, I cannot recall exactly when, but what I can say for certain is that the member had
10 made it known, everybody in the office was aware that he was looking to leave, go on early retirement or exit the police, months before or months prior to this incident.

ADV SELLO SC: So when you appointed him or you determined that he was an investigating officer on the 22nd of June in this matter, you were aware that he was leaving the force?

COLONEL JACOB: Yes, I was.

ADV SELLO SC: And you appointed him nonetheless?

COLONEL JACOB: Yes, I did, Commissioner, yes.

20 **ADV SELLO SC:** If I may ask why?

COLONEL JACOB: Okay, when you leave the police, it is not an overnight thing, normally. There is an exit interview, it is a few months' notice, that type of thing, unless in exigent circumstances you do early resignation, you put in your documents and the turnaround time is much faster. So

I did not see it as an issue because I would have thought he would have had a few months at least left before he exited the police and I did not see it being an issue with him carrying this investigation or investigating this matter. I was of the opinion that he would have finalized or this investigation would have been concluded by the time he had left the police.

ADV SELLO SC: And then just to read your paragraph 35, you took over the investigation on the 29th of June 2021.

10 **COLONEL JACOB:** Yes.

ADV SELLO SC: So he was an investigating officer for one week technically.

COLONEL JACOB: Him, yes. Yes, Commissioner, that is correct.

ADV SELLO SC: Okay, thank you.

ADV BALOYI SC: [Indistinct]... [microphone off] just understand, when you go back to the depot, on 1 July 2021, what was the point of that? What was the real purpose of it?

20 **COLONEL JACOB:** Okay, on the day that, on the 22nd of June 2021, when we did remove these bags of suspected Cocaine from this container, I merely did a physical inspection by looking through the container. I could see no anomalies. I could see those white bags of what seemed to be 50 kilogram bags of animal feed. Upon taking out these

exhibits, we sealed this container. That is the closest thing to a crime scene that we do have. So it was sealed to keep the integrity intact. And obviously when we, we did not do a thorough search of it on the said day, due to the volume of bags, it was 5,395 50 kilogram bags, hence it was decided to come back at a later day, where we arranged with Megafreight, the clearing agent, to bring through labourers to assist in this regard.

ADV BALOYI SC: So, but when you sealed it and left it
10 there on the day ...[intervenes].

COLONEL JACOB: Yes.

ADV BALOYI SC: Did you leave instructions with the Depot Manager that the container is to be left alone?

COLONEL JACOB: That is correct, Commissioner, I did.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: And before you proceed, based on the response you gave to Commissioner Baloyi, at your paragraph 20, if you could flip back, the last sentence at your paragraph 20, you say the container was locked and
20 available for us to further inspect at a later stage.

COLONEL JACOB: Yes, that is correct.

ADV SELLO SC: When you say it was locked here, should we read that to be it was locked and sealed?

COLONEL JACOB: Sealed, that is it, Commissioner.

ADV SELLO SC: Okay, thank you.

COLONEL JACOB: Okay.

ADV SELLO SC: You are now, I think, at your paragraph 33.

COLONEL JACOB: Is it not 36?

ADV SELLO SC: Oh, 36. My apologies.

COLONEL JACOB: Okay.

ADV SELLO SC: “On the same day, I emailed”, quite right.

COLONEL JACOB: Thank you.

10 “On the same day, I emailed all the
 relevant shipping documentation to the
 DPCI, South African Narcotics Bureau.”

 It is supposed to be South African Narcotics
Enforcement Bureau.

 “Head, Brigadier Devon Naicker. I am
 unsure of when, but CBI had handed
 me the sample that Mpangase had
 obtained. Mpangase was not at the
 office. I am unsure why Mpangase had
 not taken these samples to the FSL
20 sooner.”

ADV KHUMALO SC: Colonel, I need you to clarify this so
that we do not need to come back to it later.

COLONEL JACOB: Yes.

ADV KHUMALO SC: You have deposed to about five
affidavits in relation to this matter.

COLONEL JACOB: Yes.

ADV KHUMALO SC: And you use the term sample and exhibits interchangeably.

COLONEL JACOB: Yes.

ADV KHUMALO SC: And we had a debate yesterday with the lawyers and Warrant Officer Setshedi. Let me see if I understand this, and if I am getting it wrong, please clarify it for me. You take a sample, and FSL wants the samples to be put in an exhibit bag. Am I correct so far?

10 **COLONEL JACOB:** Yes, Commissioner.

ADV KHUMALO SC: When they go to FSL for analysis, they must be in an exhibit bag, correct?

COLONEL JACOB: Correct, Commissioner.

ADV KHUMALO SC: And because they are in an exhibit bag, whether or not they are samples, you still regard them as exhibits?

COLONEL JACOB: A smaller reflection, a smaller quantity, but a true reflection of what the exhibits in totality represent.

20 **ADV KHUMALO SC:** But it is still labelled an exhibit.

COLONEL JACOB: Yes, I did label it an exhibit, yes.

ADV KHUMALO SC: And that explains why some affidavits say sample, others say exhibit, but essentially ...[intervenes].

COLONEL JACOB: That is what I am speaking of, the

samples.

ADV KHUMALO SC: And do you know what the quantity was of that sample that was taken to FSL?

COLONEL JACOB: I cannot state because it was sealed in a bag, but maybe if I can elaborate, Commissioner.

ADV KHUMALO SC: Thank you.

COLONEL JACOB: Should I get into the why did I instruct, or should I just tell you how does it look?

ADV KHUMALO SC: No, no, we are not there yet.

10 **COLONEL JACOB:** Okay, Commissioner.

ADV KHUMALO SC: I just needed to know was it a kilogram, was it 500 grams?

COLONEL JACOB: No, no, it was minute quantities. Basically, it was minute quantities of powder that were taken from five bricks, five different bricks of Cocaine, suspected Cocaine. They were placed in five little sample bags, and those five smaller sample bags were then sealed in a larger exhibit bag that encompassed these five or enclosed these five smaller exhibit bags that contained
20 samples from five different bricks.

ADV KHUMALO SC: So, in total, it was five exhibit bags.

COLONEL JACOB: Five exhibit bags contained ...[intervenes].

ADV KHUMALO SC: Small ones.

COLONEL JACOB: Within one larger exhibit bag.

ADV KHUMALO SC: And then there was a large bag.

COLONEL JACOB: That is my understanding, sir, yes, Commissioner.

ADV SELLO SC: Perhaps also for my own edification. So, when you speak of samples here, you are talking about the minute quantity that you say is scraped off from a few bricks in the bag.

COLONEL JACOB: Yes.

ADV SELLO SC: So, it is not the brick itself.

10 **COLONEL JACOB:** So, it is not a brick itself, Commissioner, yes.

ADV SELLO SC: Okay, thank you. Please continue.

COLONEL JACOB: Okay, paragraph 37:

20 “On 4th July 2021, I took these samples to the FSL Amanzimtoti for analysis. It is only when an analysis report is received from the FSL can exhibits be destroyed, more especially for matters under investigation. In matters where investigations are finalized, exhibits may be destroyed or disposed of by the FSL without being analysed. On the same day, I sent a request to our Priority Crime Management Centre (PCMC) for profiling of the consignee,

the transporter, and the clearing and forwarding agent.

On 19 July 2021, I sent an email to Advocate Govender of the DPP's office with regards to assistance in this matter. Advocate Ramkalawan was assigned to the matter. I discussed the matter with her, and she indicated that statements should not be obtained at this stage from any of the entities mentioned above. I was in contact with SARS Customs, and they indicated that the container in question was one of 10 that they had a detention notice on 23rd of June 2021. They did not share any specific information on why they had flagged this container.”

ADV SELLO SC: And before you move to the next paragraph, you say at paragraph 39 that Advocate Ramkalawan advised that statements should not be obtained from any of the entities mentioned above. Which entities are these for precision?

COLONEL JACOB: Okay, you are seeking clarity there, Commissioner?

ADV SELLO SC: Yes, I will say from the entities

mentioned above.

COLONEL JACOB: Okay. Yes ...[intervenes].

ADV SELLO SC: I just want to ...[indistinct] [cross-talking]
[intervenes].

COLONEL JACOB: At that stage, according to her or the DPP's office, we should view them as suspects until we can with certainty say that they are not. So at that stage, she thought it was premature to obtain statements from these entities.

10 **ADV SELLO SC**: And when you say from any of the entities mentioned above, are you talking about the transporter and clearing company and the forwarding agent? Are those the entities, or are there any others?

COLONEL JACOB: That is correct, Commissioner.

ADV SELLO SC: Okay.

COLONEL JACOB: Yes.

ADV SELLO SC: Thanks, you may proceed.

COLONEL JACOB: Okay, paragraph 40.

20 **ADV BALOYI SC**: Before you go to 40, at 39, you say I was in contact with Customs, and they indicated the container in question was one of 10 that they had a detention notice on for 23 June 2021. You do not say when did you make this contact. You just say I was in contact with SARS.

COLONEL JACOB: Yes.

ADV BALOYI SC: When did you make this contact?

COLONEL JACOB: May I look at one of my files?

ADV BALOYI SC: Yes.

COLONEL JACOB: Thank you, Commissioner.

ADV SELLO SC: Is it something that we have in the exhibit files? I might help to guide you.

COLONEL JACOB: Yes, it would be in my investigation diary.

ADV SELLO SC: Yes.

10 **COLONEL JACOB:** [Indistinct]... 28.

ADV SELLO SC: Okay, then we will have to go to the exhibit file.

ADV BALOYI SC: You do not have to do that now. We can come back to it once they have assisted you to locate it.

COLONEL JACOB: Yes.

ADV BALOYI SC: But a related question is, why are you in contact with SARS?

COLONEL JACOB: Why am I contacting them, Commissioner?

20 **ADV BALOYI SC:** Yes.

COLONEL JACOB: Once I had learned, when I did look at the actual enquiry file, I noted that Warrant Officer Mpangase had filed a detention notice from SARS, from Customs and I noted that the container of interest, the one that we had searched, was listed amongst the 10 that were

cited on this detention notice.

ADV BALOYI SC: So from the five that there was a detention notice.

COLONEL JACOB: That is correct.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Please proceed.

COLONEL JACOB: Okay, paragraph 40.

10 “Between late July 2021 and August
 2021, I had prepared a PowerPoint
 presentation on the seizure of
 Cocaine.”

 I am just going to elaborate. I have not written it
here. On the seizure of Cocaine on the 22nd of July 2021,
or June 2021, as per General Senona's instruction, I cannot
recall when I had sent it to him. During the course of this
investigation, I had obtained and filed seven statements,
together with all relevant shipping documents, email
correspondence with the DPP's office, photos of the
container and exhibits, as well as numerous other Customs
20 and Transnet documents.

ADV SELLO SC: Before you leave that paragraph, you say
you did this PowerPoint presentation at the instruction of
General Senona. Are you able to recall what specifically
the instruction was and what the presentation had to cover?

COLONEL JACOB: My memory was gogged,

Commissioners, when I looked through my, the actual enquiry file.

ADV SELLO SC: Yes.

COLONEL JACOB: I cannot recall since it was a long while back, but I did make a diary entry that the Provincial Head have requested a presentation on the said seizure, a PowerPoint presentation. And I noted that even on a weekend, I made an entry in my diary that I was working on this PowerPoint presentation. And in my investigation diary
10 pertaining to the said investigation, I do not cite a specific date, but it is between, I would say, July and August 2021 that I have prepared and sent this presentation to General Senona.

ADV SELLO SC: Okay. Now, you have not availed that actual PowerPoint presentation. Do you still have it? Are you able to make it available to us?

COLONEL JACOB: I can check, Commissioners. Offhand. I cannot say that I have knowledge of where it may be, but I can search or try and find it somewhere.

20 **ADV SELLO SC:** We will appreciate that. Thank you. You may then move on to your paragraph 41.

COLONEL JACOB: -:

“Since investigations were amounting to nothing, my only option was to expedite the analysis of the samples

forwarded to the FSL. It is only when an analysis report is furnished can the enquiry be finalized and filed as undetected or negative. In some cases, drugs are destroyed or disposed of without an analysis report. During the next few months, I kept in touch with the FSL Amanzimtoti and made calls to the FSL Pretoria in respect of these exhibits. I also made enquiries into the exhibits booked out of Isipingo on the 6th of February 2020. Both laboratories were unable to accommodate these exhibits for either analysis or disposal. Most of our communication with the FSL is telephonic. Sometime in October ...”

10

ADV SELLO SC: Apologies, Colonel. In the body of your statement, you do indicate who at FSL Amanzimtoti you engaged with.

20

COLONEL JACOB: Yes.

ADV SELLO SC: And the Commissioners heard testimony of three of these persons yesterday.

COLONEL JACOB: Yes.

ADV SELLO SC: At your 42, you said you also made calls

to FSL Pretoria in respect of these exhibits, but nowhere in your statement do you indicate who you spoke to.

COLONEL JACOB: Yes.

ADV SELLO SC: Are you able to ...[intervenes].

COLONEL JACOB: Yes.

ADV SELLO SC: Inform us who those were?

COLONEL JACOB: Yes, Commissioner. It would have been a Colonel Schorle from FSL Pretoria.

ADV SELLO SC: And what position does he hold and why
10 ...[intervenes].

COLONEL JACOB: I am not sure of his exact title, but in essence, whenever we have liaisons with the Pretoria FSL, he is our go-to man. He is always assisting and the one trying to accommodate us.

ADV SELLO SC: Okay.

COLONEL JACOB: So it is Colonel Shole. I am not sure of his exact designation there.

ADV SELLO SC: Is that just the one, just Colonel Shole?

COLONEL JACOB: Yes, it is only Colonel Shole.

20 **ADV SELLO SC:** And just in very brief summary, what was the content of your conversation about these exhibits? Why were you calling him?

COLONEL JACOB: Yes. You know, I cannot recall every, Commissioners, I cannot recall every conversation verbatim, but what I can say is that when I did engage with

him, I enquired about these exhibits kept in Port Shepstone, as well as the exhibits that were initially kept at Isipingo and now stored at Durban Central, because both of them were, more especially the ones at Durban Central, were causing me a lot of botheration. I have been getting calls, inundated with calls about them, hence my calls to FSL Pretoria.

ADV SELLO SC: Okay, now we know that you indicate that as at the 22nd of June, the day of the seizure, FSL
10 Amanzimtoti did not have capacity to accommodate them, right?

COLONEL JACOB: That is correct.

ADV SELLO SC: So you say during the next few months you kept in touch with FSL Pretoria. Do you recall when it is you started your engagement with FSL Pretoria, working of the, from the date of the 22nd of June, when you knew that Amanzimtoti cannot accommodate you.

COLONEL JACOB: Yes, I cannot recall, Commissioners, but what I can say, it would have been at least maybe a
20 month or three weeks to a month from the date of seizure.

ADV SELLO SC: And if I may ask, why did you wait that long?

COLONEL JACOB: Because I was already aware of, we were trying for those exhibits that were laying at Durban Central for already a long time, those that were seized in

Isipingo on the 5th of February 2020. So I was aware that even Warrant Officer Sanders was making enquiries in that regard, with Colonel Shole at Pretoria. So, hence it took me a longer while, because in my mind I knew, obviously they would try to accommodate those exhibits laying at Durban Central first, before they could accommodate these that were now seized in June 2021.

ADV SELLO SC: Okay, thank you. Please proceed then from your paragraph 43.

10 **COLONEL JACOB:** -:

“Sometime in October 2021, I was contacted by Brigadier Nyuswa, informing me that there was an attempted break-in at the Port Shepstone office, and that I should look into expediting investigations and the analysis of exhibits, so that exhibits could be disposed of. I had already been trying to get these and
20 other exhibits accommodated at both labs unsuccessfully. I was only able to escalate my challenges to individuals within the FSL that were up to the rank of Colonel. On 27 October 2021, I was at the FSL and spoke to Warrant

Officer Setshedi. He is an Analyst that normally attends our scenes and has the FSL standby cellular phone. I asked him about expediting the samples we had sent for analysis, so that we could receive our analysis report. This would, in essence, mean that at least they could be destroyed, since the formality of the analysis report would have been addressed.

10 He explained that they required seven to ten bricks of Cocaine to weigh, so that the analysis report could reference the average weight for the total exhibits. If Colonel Khuzwayo had explained this to me when I had asked her about sending through samples, I would have asked the members to do it then (either the 22nd or the 23rd of

20 June). I am unsure when that call was made.”

ADV KHUMALO SC: Is this now, Colonel, the difference between the qualitative analysis and the quantitative analysis?

COLONEL JACOB: That is correct.

ADV KHUMALO SC: So the quantitative would relate to the average weight of the exhibits ...[intervenes].

COLONEL JACOB: And qualitative ...[intervenes].

ADV KHUMALO SC: And the qualitative would be the ...[intervenes].

COLONEL JACOB: [Indistinct]... [cross-talking] analysis.

ADV KHUMALO SC: The quality of the substance and the grade.

COLONEL JACOB: That is correct, Commissioner.

10 **ADV KHUMALO SC:** Thank you.

ADV SELLO SC: Thank you, Commissioner. You may proceed.

COLONEL JACOB: -:

20 “On the 4th of November 2021, I called Advocate Ramkalawan, enquiring about the status of the matter. She indicated that her supervisor, Advocate Govender, was to sign off on further investigations/queries and get back to me. I undertook this exercise to expedite investigations and dispose of exhibits as soon as possible.”

ADV SELLO SC: And before you move on to paragraph 47, you say you called Advocate Ramkalawan to enquire about the status of this matter.

COLONEL JACOB: Yes.

ADV SELLO SC: What matter is it at this stage?

COLONEL JACOB: The investigation, the enquiry that we were looking at, the actual seizure of this Cocaine.

ADV SELLO SC: And who was responsible for that enquiry at this stage?

COLONEL JACOB: At?

ADV SELLO SC: At this stage, who was responsible for the enquiry?

10 **COLONEL JACOB:** I was the investigating officer. Advocate Ramkalawan was a prosecutor assigned to the DPP's office.

ADV SELLO SC: And I am trying to understand from your ...[indistinct] you are enquiring from the prosecutor about the status of this matter.

COLONEL JACOB: Yes.

ADV SELLO SC: Is it the prosecution?

COLONEL JACOB: When I say status, Commissioners, I am speaking of when you send any investigation, be it a
20 docket or an enquiry to the DPP's office, they normally send you back queries, taskings, further statements to take. They basically guide your investigation in terms of if it were to be prepared for court, for a prosecution. So that is what I mean by that.

ADV SELLO SC: So I should not understand you to mean

when you say you enquired from the advocate, the prosecutor ...[intervenes].

COLONEL JACOB: Yes.

ADV SELLO SC: About the status of this matter, that you were enquiring about the status of the investigation of this?

COLONEL JACOB: Yes, yes.

ADV SELLO SC: I should not understand that, but that you were seeking guidance to assist, to proceed the matter, or to move the matter forward.

10 **COLONEL JACOB**: Basically, I was looking to see what else do you want me to do?

ADV SELLO SC: Okay.

COLONEL JACOB: Yes, basically, that is it in a nutshell, Commissioner.

ADV SELLO SC: Thank you. You may then move to ...[intervenes].

ADV BALOYI SC: Can I just, maybe just to clarify. My understanding from the evidence of a previous witness is that, was that there would have been an enquiry in a case
20 like this ...[intervenes].

COLONEL JACOB: Yes.

ADV BALOYI SC: Because you do not have a suspect. The impression I got from that evidence was that is a wholly SAPS function, in this case, your function. So where does Advocate Ramkalawan or DPP, whatever official at the DPP,

where do they come in if this is a SAPS enquiry?

COLONEL JACOB: Okay. There is a directive issued at our office that every Cocaine seizure needs to go to the DPP's office for guidance. It is now our standard operating procedure.

ADV BALOYI SC: Was it applicable at the time?

COLONEL JACOB: Yes, it was.

ADV BALOYI SC: Of this operation?

COLONEL JACOB: Yes, it was.

10 **ADV BALOYI SC**: Okay.

ADV SELLO SC: And then if I may just follow up on that, would you have the name of that SOP off the top of your head and are you able to provide ...[intervenes].

COLONEL JACOB: No.

ADV SELLO SC: If I may finish. Are you able to provide the Commission with a copy thereof?

COLONEL JACOB: Okay, sorry, maybe I used the wrong, when I say SOP, it was an informal SOP. It is a directive issued from provincial management. And if I am not
20 mistaken, every unit within KZN, Hawks unit, would comply with that directive. So I cannot tell you that I have seen it in writing, but it is an instruction coming from our provincial office and ...[intervenes].

ADV SELLO SC: Oh, so ...[intervenes].

COLONEL JACOB: Okay, may ...[intervenes].

ADV SELLO SC: Apologies.

COLONEL JACOB: Okay. And also from, like I will give you an example, Commissioners. The latest, we had 32 kilos or 33 kilos that were seized at our harbour and once again, my unit was investigating the matter. I think on day two of this, we got a call from the DPP's office to ask where is this enquiry, we need copies, we need to give guidance. So it was understood by both parties, not just the DPCI. The DPP's office were also informed that any of these
10 matters that are generated needs to come to them for guidance.

ADV SELLO SC: And would I be wrong to assume that this directive is in writing, it is not in writing?

COLONEL JACOB: I am unsure. I received an instruction from Brigadier Nyuswa regarding the same.

ADV SELLO SC: Thank you. You may proceed.

COLONEL JACOB: Okay, which paragraph was I?

ADV SELLO SC: You had just done 46.

ADV BALOYI SC: Sorry, can I ...[intervenes].

20 **ADV SELLO SC:** Yes.

ADV BALOYI SC: ... just to try and clarify again. So what do you refer to the DPP? And because my understanding, and you know better than I do how things work, my understanding is the docket ordinarily, a docket is what the DPP would make notes in with instructions what to do. So

in a case such as this where it is an enquiry, what would you have, what do you submit in this particular case to the DPP where the DPP gives you, then gives you instructions?

COLONEL JACOB: Okay. It is either you can submit the physical inquiry. The physical inquiry, Commissioners, it works on the same principle as a docket. It is only that this enquiry is not yet at a stage where you can charge a suspect. An enquiry is just for purposes of you using resources, sending exhibits to the lab, but in essence it has
10 the same, you compile it in a similar fashion as you would a docket.

There is an A clip with your evidence, your statements, anything of evidential value. There is your B clip where all of your correspondence is filed. And there is a C clip, which is your investigation diary, where everything you do on that investigation, you note down in this investigation diary, which is contemporaneous notes.

So copies of that or either the original enquiry would be handed to them, they would peruse it. Normally,
20 prosecutors make entries in the investigation diary of their taskings to you. The DPP's office, for whatever reason, our DPP's office, did not do that that regularly. However, they used to, in some occasions, send us an action log or some sort of communication as to what is the way forward in terms of this investigation.

ADV BALOYI SC: Okay. So, if there is an investigation file or an enquiry file ...[intervenes].

COLONEL JACOB: Yes.

ADV BALOYI SC: We, for this operation, we would expect to see notes that indicate this exchange or interaction with the DPP and the instructions that you say the DPP gave.

COLONEL JACOB: That is correct, Commissioner.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: Thank you, Commissioner. You may
10 proceed, Colonel.

COLONEL JACOB: Okay. Am I by 47?

ADV SELLO SC: Yes.

COLONEL JACOB: -:

“On the same day, I called the acting
Unit Commander at Port Shepstone,
Lieutenant-Colonel Prinsloo, and
indicated that I wished to come through
with Warrant Officer Setshedi of the
FSL who would take seven to ten bricks
20 to the FSL for weighing. He indicated
that he was going on a wildlife
workshop from the 8th to the 12th of
November 2021. I told him I would
come through when he returned. I
received no feedback from Pretoria

FSL and was aware that Warrant Officer Sander of my office was also making enquiries to the FSL with regards to the exhibits seized at CHC Depot on the 5th of February 2020.

10 On 8 November 2021, I was called by Brigadier Nyuswa, who informed me of the theft of drugs incident at Port Shepstone. I was unaware of any of the security issues at the building prior to this. I proceeded with Captain Majola to the scene. General Senona and Brigadier Nyuswa arrived a short while later. LCRC was in attendance, and Captain Majola and I canvassed the area for CCTV footage.

20 I must add that I bore no knowledge, neither am I involved in the theft of drugs. I was questioned and polygraphed with regards to this incident. I passed the polygraph test.”

But I understand now it does not carry much weight, Commissioners, but in response to the allegations ...[intervenes].

CHAIRPERSON: I am sorry. It may be of interest to you to

know that there were all sorts of problems with the polygraph test.

COLONEL JACOB: I have been following, Chair.

CHAIRPERSON: Some people who supposedly failed the test in fact did not, basically because a lot of things went wrong.

COLONEL JACOB: Yes.

CHAIRPERSON: So what would your comment be if I say passing the test may not necessarily be proof that you
10 actually passed it? What is your comment?

COLONEL JACOB: Yes, no, I am aware, Chair, that this is not admissible in court. But generally it is ...[intervenes].

CHAIRPERSON: That is not my question.

COLONEL JACOB: Okay, yes the question ...[intervenes].

CHAIRPERSON: My question is about you stating the fact that you passed the test.

COLONEL JACOB: Yes.

CHAIRPERSON: So I want you to comment ...[intervenes].

COLONEL JACOB: Okay.

20 **CHAIRPERSON**: Regard being had to the fact that yesterday we got to know that a lot went wrong with the polygraph test.

COLONEL JACOB: Okay. You know, be that as it may, when I did pass I felt vindicated, I felt a good sense of relief, you know.

CHAIRPERSON: Yes, yes.

COLONEL JACOB: So I took ...[intervenes].

CHAIRPERSON: No, we cannot take that away from you that is how you felt when you got the result.

COLONEL JACOB: Yes.

CHAIRPERSON: We cannot take, but what we make of that is something else altogether.

COLONEL JACOB: Yes, Chair.

CHAIRPERSON: Yes, yes.

10 **COLONEL JACOB**: All right.

ADV SELLO SC: Thank you, Chair. Please proceed.

COLONEL JACOB: Paragraph 50:

20 “In response to the allegation that
 Warrant Officer Perumal did not object
 to storing the exhibits seized on 22
 June 2021, I wish to add that I have
 submitted further statements to
 General Flynn's team over the years. I
 had expressly stated that we had an
 issue with storage at Isipingo SAP,
 more especially Warrant Officer
 Perumal. A statement was obtained by
 General Flynn's team from Warrant
 Officer Perumal in respect of
 availability of storage space and

exhibit bags (on 22 June 2021).”

I am speaking of that incident.

10 “A statement was obtained by General Flynn's team from Warrant Officer Perumal in respect of availability of storage space and exhibit bags subsequent to the theft of drugs on 8 November 2021. At no stage was he canvassed regarding the previous problems I had cited with Isipingo SAP. One would have expected this issue to have been canvassed with him. The previous seizure at the CHC depot on 5 February 2020 involved approximately ...”

I have got it wrong. It is 547, but I put 570. My apologies, right.

20 “... involved approximately 570 kilograms of Mandrax tablets and powder.”

I cite the inquiry number.

“According to evidence tendered, Isipingo has never had a problem with storing exhibits before.”

So, I allude to ...[intervenes].

CHAIRPERSON: Do you consider that, I hope it will not sound like I am probing at this stage, Advocate Sello.

ADV SELLO SC: [Indistinct]... Chair.

CHAIRPERSON: Do you consider that to be a useful comparator if you are talking about Mandrax as opposed to Cocaine?

COLONEL JACOB: I know where you are headed, Chair, and I understand that, yes, in terms of ...[intervenes].

CHAIRPERSON: I will, at this stage, I will not go to where
10 I am headed.

COLONEL JACOB: Okay, yes, but I do appreciate it. But I am referring to storage space at this stage, storage space for a physical bulk of exhibits, not the hazardous nature of ...[intervenes].

CHAIRPERSON: Thank you. We will deal with them going later.

COLONEL JACOB: Yes, Chair.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Please continue.

20 **COLONEL JACOB:** Okay. Okay, was I at paragraph 52?

ADV SELLO SC: Yes, you were.

COLONEL JACOB: Okay.

ADV SELLO SC: And you were just about the third line, you had just stated Isipingo had never had a problem with storing exhibits.

COLONEL JACOB: Okay.

“Isipingo had never had a problem with
storing exhibits. See attached affidavit
of the IO of Durban Central CAS ...”

I cite the CAS.

“Annexure GYJ1.”

And it is my colleague, Warrant Officer Sander's
affidavit. And I state:

10 “This may have been the reason for my
confusion regarding my interaction with
Warrant Officer Perumal on the 22nd of
June, 2021.”

ADV SELLO SC: And based on the Chair's reminder, I am
quite mindful that I do not start interrogation, you know. I
need a clarification, however. You state:

“According to the evidence tender,
Isipingo has never had a problem with
storing exhibits.”

That is your main point there, right?

20 **COLONEL JACOB**: That is correct.

ADV SELLO SC: At the conclusion of that paragraph, you
state:

“This may have been the reason for my
confusion regarding my interaction.”

Is there something missing there? I do not

understand the interrelation between the two points.

COLONEL JACOB: Okay. Yes, I see where the confusion comes from, Commissioners. On the 22nd of June 2021 ...[intervenes].

ADV SELLO SC: Yes.

COLONEL JACOB: When I was later interviewed, or even when I made my statement, all I knew in my mind, and bear with me, I know it may sound, you know, as though I am maybe lying, that is why I am confused. But this is it. On
10 the 22nd of June 2021, when engaging with Warrant Officer Perumal, all I know that I can state 100% for that day with certainty was that he was not accepting those exhibits, neither did he have exhibit bags.

And I see in my statements, numerous statements that I had furnished the investigation team, General Flynn's team, I am not quite clear on that, and then I say that, you know, I did not explicitly ask him, but I know they have had a problem. Then I go on in a further statement, elaborating on even while we were processing or counting these drugs,
20 and busy in the parking area at Isipingo, Warrant Officer Perumal even remarked of hey, you know, the last time what happened with our guys here, we got sick.

So all of that was in my mind, and I knew for a fact that Isipingo would not keep these exhibits. Whether it was explicitly told to me, or whether I had drawn that inference

from my previous experience with the station, I cannot say, but what I can say for certain is that my colleagues on the scene have since sternly reprimanded me by saying, Colonel, Warrant Officer Perumal did not want to keep those exhibits. So why I wrote that I did not explicitly ask him for permission to store it, I am unsure why, but this may be the reason, and that is my truth.

ADV SELLO SC: Please, Chair.

CHAIRPERSON: Yes. Sitting here, I am confused as to
10 what you did say or did not say. As you sit there now
...[intervenes].

COLONEL JACOB: Yes.

CHAIRPERSON: Did you or did you not engage Officer Perumal on the availability of storage?

COLONEL JACOB: Yes. You know ...[intervenes].

CHAIRPERSON: Did you or did you not?

COLONEL JACOB: Yes, I cannot recall offhand that I did ask him and like I am saying, that is my only answer is that I knew they were not storing it. My colleagues reminded me
20 that I was wrong. Thank you, Chair.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. And then, just in fairness to you, what do you say was the confusion, or what do you say is the confusion, because you say the reason for my confusion, so just for you to be clear on that.

COLONEL JACOB: Yes, I am saying that I think I mixed up our previous incident in February 2020, on the 4th, between the 4th and 6th of February 2020, and the whole debacle there, because although my colleague, Warrant Officer Sander, I do not think he mentioned it in his evidence, I am the one that secured Durban Central SAP with regards to storing those exhibits that Isipingo had turned away. So, you know, that could be a reason for my confusion. I cannot elaborate further, but that is it.

10 **ADV SELLO SC:** Okay, we might get back to this, because I do not quite understand. If you say Isipingo has never had a problem with storing exhibits ...[intervenes].

COLONEL JACOB: No, I am not saying that, Commissioner.

ADV SELLO SC: That is what you, you say according to the evidence tendered. Do you accept that ...[intervenes].

COLONEL JACOB: According to the evidence tendered by General Flynn. My apologies, Commissioner.

ADV SELLO SC: Oh. So, you do not agree with the
20 evidence tendered ...[intervenes].

COLONEL JACOB: I do not. I strongly disagree.

ADV SELLO SC: Now I understand what you mean. Thank you.

COLONEL JACOB: Thank you.

CHAIRPERSON: There is a difference, though, between

the availability of storage space and an unwillingness to store. There is a difference between the two.

COLONEL JACOB: Yes.

CHAIRPERSON: On your understanding, even though you are not sure whether you specifically asked Officer Perumal anything, but on your understanding, because you do say that you had some understanding, so on your understanding, what was the position?

COLONEL JACOB: Okay.

10 **CHAIRPERSON**: Was it an unwillingness to store, or was it a question of the unavailability of storage space?

COLONEL JACOB: Okay. Chair, this is my opinion. They have a storage place that could have accommodated ...[intervenes].

CHAIRPERSON: Okay.

COLONEL JACOB: Over half a ton.

CHAIRPERSON: Okay.

COLONEL JACOB: But if I can just elaborate a little more, if you allow me, Chair.

20 **CHAIRPERSON**: Yes, yes.

COLONEL JACOB: Even if you look at Warrant Officer Sander's affidavit that I attached as an annexure, he states that Warrant Officer Perumal had made a comment that they do not have members to guard these drugs, you know. So to me, it is not only a problem of storage space, it is also

logistical in terms of manpower and the risk associated with those drugs. Thank you, Chair.

CHAIRPERSON: So you are basically saying the storage space was available.

COLONEL JACOB: I would have thought so. I am not sure at that point in time what the exhibit safe looked like, but I would think in a normal course of duty they would have had that space.

CHAIRPERSON: Thank you. Thank you.

10 **ADV SELLO SC:** And if I then, just to close off this point, in response to the Chair's question, you referenced what Warrant Officer Sander said about concerns, is it Warrant Officer Perumal had, which is not having manpower to guard.

COLONEL JACOB: Yes.

ADV SELLO SC: That was in 2020.

COLONEL JACOB: Yes, correct.

ADV SELLO SC: What was the issue in regard to this particular seizure by Warrant Officer Perumal? What did he
20 express to you? We are now in June 2021. You say you understand there was space.

COLONEL JACOB: Yes.

ADV SELLO SC: So from your recollection, what was the reason for the rejection?

COLONEL JACOB: I cannot give you a specific reason,

Commissioner.

ADV SELLO SC: So it is not the fact that he does not have manpower to guard it?

COLONEL JACOB: No, this, he did not cite it on this occasion, yes.

ADV SELLO SC: Okay, thank you. Then I think that will take us to paragraph ...[intervenes].

ADV BALOYI SC: Before you do that. And it is not a factor, the lack of manpower, it is not a factor that you
10 would have taken into account.

COLONEL JACOB: No, I did not at that stage, Commissioner.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioner Baloyi. You may proceed.

COLONEL JACOB: Okay, paragraph 54. Okay, 53, am I at 53?

ADV SELLO SC: Yes, we are now at 53.

COLONEL JACOB: Okay, thank you, Chair.

20 "These exhibits had to be stored ..."

And I am speaking about the Isipingo 2020 February Mandrax exhibits.

"These exhibits had to be stored at
Durban Central SAP from the 6th of
February 2020 until the 12th of

November 2021 when they were taken to the FSL Pretoria for destruction. If there was indeed no problems with storing exhibits at Isipingo SAP, then the IO would have taken them back to Isipingo upon being turned away from the FSL Amanzimtoti on the 6th of February 2020. See copy of Isipingo SAP13 as per Annexure GYJ2.”

10 So, that is the ...[incomplete].

“To further substantiate my claims, I attach a copy of Isipingo SAP occurrence book 386 to 387 ...”

And I will not read the rest out.

20 “... as per Annexure GYJ3. See headings, consultation, and injury on duty, respectively. Entry 387 is made by the very same Warrant Officer Perumal, and it pertains to a member getting sick due to the drugs stored there. Surely this speaks to the credibility of Warrant Officer Perumal.”

ADV SELLO SC: And before you move off this, am I reading your statement correctly that the drugs you referenced at 53 are the Mandrax tablets there, 547

kilogram of Mandrax tablets?

COLONEL JACOB: That is correct, Commissioner.

ADV SELLO SC: Okay, thank you.

COLONEL JACOB: -:

“The evidence led states that I should
have enquired with Durban Central
SAP ...”

And when I say the evidence led, I mean by
General Flynn.

10 “The evidence led states that I should
have enquired with Durban Central
SAP, and Brighton Beach SAP, Maydon
Wharf, and some other station to store
the 22 June 2021 exhibits. At that
stage, Durban Central still had the
exhibits booked out of Isipingo SAP on
the 6th February 2020. See copy of
itinerary to travel from Durban to
Pretoria for disposal of said exhibits as
20 per GYJ4.”

ADV SELLO SC: Before you move to the next paragraph,
just to understand your 54, you say Durban Central still had
their exhibits booked out of Isipingo in February 2020.

COLONEL JACOB: That is correct, Commissioner.

ADV SELLO SC: What does that mean? Does it mean

therefore Durban Central did not have capacity? Is that your conclusion?

COLONEL JACOB: That is my conclusion.

ADV SELLO SC: And you know that for a fact?

COLONEL JACOB: I am basing ...[intervenes].

ADV SELLO SC: Or you knew it for a fact at the time?

COLONEL JACOB: I knew that the drugs were stored there, I knew that they were ...[intervenes].

ADV SELLO SC: No, I am talking about capacity, I just
10 want to be clear ...[intervenes].

COLONEL JACOB: No, I was not sure of their total capacity.

ADV SELLO SC: Okay, thank you. You may proceed.

COLONEL JACOB: -:

“Brighton Beach SAP still has exhibits from a September 2020 drug seizure in the Umhlali area. They allowed us to store exhibits via Durban Central Organized Crime.”

20 I will not mention the entire numbers.

“Being a smaller station, Umhlali SAP stored some of the exhibits in this matter. We tried all other stations to assist and were ultimately assisted by a rural station, Glendale SAP, where

we stored less valuable exhibits. Brighton Beach SAP was the only other station to assist storing some of these exhibits after we had exhausted police stations closer to the Umhlali area. Brighton Beach SAP is 70 kilometres away from Umhlali SAP. To date, these exhibits are stored at Brighton Beach SAP in an unused cell. There is
10 a prospect of an arrest, hence these exhibits have not been destroyed. See attached Annexure GYJ5, photos of exhibits at Brighton Beach SAP. I recall that Setshedi was the same analyst that had acquired samples of this precursor chemical stored at Brighton Beach. He had conducted this exercise with an I.O. from my office.”

ADV SELLO SC: And before you move on, similarly with
20 Brighton Beach ...[intervenes].

COLONEL JACOB: Yes.

ADV SELLO SC: You are not, are you suggesting at paragraphs 55 and 56 that the conclusion you drew at the time is therefore Brighton Beach SAP does not have capacity?

COLONEL JACOB: That is my conclusion.

ADV SELLO SC: At the time.

COLONEL JACOB: Yes.

ADV SELLO SC: Okay. If I may just ask a follow up, do you know what their capacity was at the time?

COLONEL JACOB: No, I do not, Commissioner.

ADV SELLO SC: Okay, thank you.

COLONEL JACOB: -:

10 “These abovementioned police stations
would continuously call, enquiring
about removing these exhibits. I did
not exhaust every police station in the
vicinity as I knew how difficult it is to
get assistance in this regard. I
certainly knew that I could not request
Brighton Beach SAP or Durban Central
SAP for further assistance. I knew the
difficulty in securing a police station to
store exhibits, especially in light of the
20 challenges at the FSL. It was
suggested that taking samples is
unheard of.

I did call the Head of Chemistry,
Colonel Khuzwayo and enquire in this
regard. I have since spoken to

Lieutenant Colonel Songca and Warrant Officer Setshedi of the FSL. It became apparent that the investigation team had obtained statements in respect of my interactions with them. Warrant Officer Setshedi admitted to being intimidated by those members that acquired his statement. He indicated that he was first accused of stealing the drugs before the interview began. In no uncertain terms he made it known that his statement was made under duress. I enquired from him regarding our discussion on 27 October 2021 when he agreed to assist with the obtaining of 7 to 10 bricks of Cocaine for weighing purposes. He was reluctant to even confirm this conversation with me.

During this meeting, he fetched his statement that he had furnished to General Flynn's team in order to refresh his memory. When reading it out I noticed that he had stated that on 27 October 2021 that I had told him

that people were planning to break into Port Shepstone's office to steal the drugs when in fact I had told him that Brigadier Nyuswa had informed me that there was an attempted break-in at the Port Shepstone's office.

The interpretation of witnesses shows clear biasness from the investigation team investigating the theft of drugs. I believe that in the absence of any evidence pertaining to the actual theft of drugs, a false narrative of what transpired was created.

The investigation seems to have been directed towards this false narrative. The exhibits seized at the CHC depot on February 2020 lay in storage at Durban Central SAP for over a year without the I.O. being accused of never intending to submit it to the FSL.”

ADV SELLO SC: Before you move to paragraph 61 you may probably have omitted certain issues. At paragraph 58 you see at page 11 you state that it was suggested that taking samples is unheard of.

COLONEL JACOB: Yes.

ADV SELLO SC: The taking of samples.

COLONEL JACOB: Yes.

ADV SELLO SC: I did call the Head of Chemistry, Colonel Khuzwayo, and enquire in this regard.

COLONEL JACOB: Yes.

ADV SELLO SC: Thereafter you then at paragraphs 59 and 60 you speak about the events of the 27th of October 2021 regarding the 7 to 10 breaks that were required.

COLONEL JACOB: Yes.

10 **ADV SELLO SC:** But you no longer address yourself to the issue of samples.

COLONEL JACOB: Yes.

ADV SELLO SC: Did you discuss the matter of samples with Colonel Khuzwayo? You said you inquired from her in this regard.

COLONEL JACOB: Yes.

ADV SELLO SC: And if so, maybe this is an opportunity to say, to state what advice you were given at the time by Colonel Khuzwayo.

20 **COLONEL JACOB:** Yes, thank you Commissioners. It would have been from my recollection on the morning, most probably of the 23rd of June, whilst I was still on leave, right? I know I called Colonel Khuzwayo to ask advice seeing as how I knew that the lab was not accepting this, I just tried to get the ball rolling with regards to an analysis

report. I did call her. She advised me how to take samples and from my recollection, it was a long time ago, but the way I recall it, I called Warrant Officer Mpangase directly afterward and advised him on exactly what Colonel Khuzwayo had said. And on my instruction, that is how he took, went about to obtain those samples in the manner in which Khuzwayo, Colonel Khuzwayo had guided me to do so. So ...[intervenes].

ADV SELLO SC: Yes.

10 **COLONEL JACOB:** Maybe if I elaborate or will that be typed later? Must I just, I just want to add a little bit regarding that.

ADV SELLO SC: With the Chair's leave, I guess you may, lest we forget to come back to the point here.

COLONEL JACOB: Okay. Okay, thank you. Thank you, Chair. I did try to obtain my cellphone records from 2021 for the period of interest for the Commission. I have it on official record. Vodacom does not have these records since they are older than 3 years. But I would like to say that the
20 onus should not be on me. I am stating it, from the very beginning I have stated that I had called Colonel Khuzwayo. And even if you look at the duration of the call, it would give you an indication as to the nature of our conversation. So, I was hoping that General Flynn's team would have provided my itemized billing. It would have been either on

the 22nd of June or on the morning of the 23rd of June that I would have called Colonel Khuzwayo and shortly thereafter called Warrant Officer Mpangase, guiding him as per the guidance of Colonel Khuzwayo. Thank you, Chair.

ADV SELLO SC: Thank you.

ADV SELLO SC: Ms Sello, I assume we should be able to lay our hands on this or not?

ADV SELLO SC: We will have to make a request and call for the records.

10 **CHAIRPERSON:** Yes. Thank you.

ADV SELLO SC: We shall, thank you. So then, to conclude my clarification on this, when you say at 58 I did call the Head of Chemistry to enquire about in this regard, you are talking about the events of the 23rd of June or thereabouts, just immediately after the seizure.

COLONEL JACOB: Yes, yes.

ADV SELLO SC: Okay.

COLONEL JACOB: Yes.

20 **ADV SELLO SC:** And that does not have anything in particular to do with the subsequent events of the 27th which you deal with at paragraph 59 and 60. I should not confuse the two.

COLONEL JACOB: No.

ADV SELLO SC: Okay, I am happy, thank you.

COLONEL JACOB: Okay. On the 27th, it was just a

follow-up. It was a follow-up because in my mind, Colonel Khuzwayo had guided me on how to take samples which I guided Warrant Officer Mpangase to do. I submitted those samples because when I came back from work, I had seen that Mpangase had not submitted them, hence, I submitted them on the 5th of July. And my conversation on the 27th of October with Warrant Officer Setshedi was with regards to either finalizing analysis report, either disposing, but getting rid of those drugs in Port Shepstone.

10 It is then that he made me aware. I would not know this scientific procedure. I worked at Ballistics, not at Chemistry. I would not know this procedure, but Warrant Officer Setshedi is the one who guided me on how this could be done. And maybe at a later stage, we look at my contemporaneous notes in my investigation diary that were written at that point in time.

 So I maintain that my conversation on the 27th with Warrant Officer Setshedi, he did advise me on what we needed further in order to get a quantitative analysis
20 because we had only submitted samples that would look at the qualitative aspect of it. Thank you.

CHAIRPERSON: Do I understand you to say that as a matter of fact you did make diary entries on the docket ...[intervenes].

COLONEL JACOB: [Indistinct]... [cross-talking].

CHAIRPERSON: About your conversation with Warrant Officer Setshedi?

COLONEL JACOB: Yes.

CHAIRPERSON: Are you saying so?

COLONEL JACOB: Contemporaneous.

CHAIRPERSON: Contemporaneous ...[intervenes].

COLONEL JACOB: [Indistinct]... [cross-talking].

CHAIRPERSON: Which is contemporaneous.

COLONEL JACOB: Yes. And Chair, may I just add
10 something? The Evidence Leader was not aware of this. When engaging with the Evidence Leader prior to coming here, when I mentioned all that I have done on this investigation, I see the Evidence Leader was taken by surprise. And to me, I do not think it is fair that General Flynn's team had supplied half an enquiry to the Evidence Leader. Obviously, one would be interested in my investigation diary as to exactly what steps did I take, what did I do. Those are contemporaneous. So I just thought I ...[intervenes].

20 **CHAIRPERSON:** And was there a similar entry with regard to your communication with Colonel Khuzwayo?

COLONEL JACOB: No, there was not, Chair. May I clarify maybe why?

CHAIRPERSON: Yes, yes, please.

COLONEL JACOB: Okay, because at that stage,

remember I left Isipingo SAP and went home to resume my leave. At that stage, Warrant Officer Mpangase was physically in possession of that enquiry. I neglected to do so even when I came back.

CHAIRPERSON: But did you not make the note about your communication with Warrant Officer Setshedi after you had come back?

COLONEL JACOB: With Setshedi on the 27th, yes, I had done ...[intervenes].

10 **CHAIRPERSON:** So that is after you had come back.

COLONEL JACOB: Yes, that was ...[intervenes].

CHAIRPERSON: From leave. From leave that is.

COLONEL JACOB: Correct, Chair.

CHAIRPERSON: So I am not sure that your explanation fully gives us the picture. Why would you not have done something similar about or concerning Colonel Khuzwayo?

COLONEL JACOB: Yes.

CHAIRPERSON: You are back at work and you are making all these enquiries at a time when you are back at work, so
20 why not a similar entry? I hope I am not sounding like I am probing at this stage.

COLONEL JACOB: No, no ...[indistinct] [cross-talking] accept it.

CHAIRPERSON: At this stage, I just want clarity.

COLONEL JACOB: This investigation diary works

chronologically ...[intervenes].

CHAIRPERSON: Yes, yes.

COLONEL JACOB: Meaning it goes day by day. You write the time, the date. So I had done it I would think on the 23rd of June. When I got back on the 29th of June, Warrant Officer Mpangase had already diarized and written what he had done. So yes, it is partially neglect on my part, but I ...[intervenes].

CHAIRPERSON: Do I misunderstand the facts? I thought
10 you communicated with Warrant Officer Setshedi after you had spoken to Colonel Khuzwayo ...[intervenes].

COLONEL JACOB: No.

CHAIRPERSON: To, or to enquire about what needed to be done, or not?

COLONEL JACOB: No, no.

CHAIRPERSON: All right.

COLONEL JACOB: I just enquired from Colonel Khuzwayo during that period, Chair.

CHAIRPERSON: Which happened first?

20 **COLONEL JACOB:** Colonel Khuzwayo, the samples, the guidance on how to obtain samples came from Colonel Khuzwayo.

CHAIRPERSON: And then you spoke to Warrant Officer Setshedi afterwards?

COLONEL JACOB: Afterwards, yes, that is correct, much,

much afterwards, on the 27th of October.

CHAIRPERSON: I still do not understand then why you would not have made an entry that related to Colonel Khuzwayo.

COLONEL JACOB: Okay, like I said, Chair, if I was in possession of that enquiry and still at the office like I went on leave, if I was still at the office and I called Colonel Khuzwayo, I would have had that enquiry in front of me, I would have diarized to date, time, the nature of my
10 conversation with her as well.

CHAIRPERSON: One, ja, one last question. Were you not back from leave when you contacted Colonel Khuzwayo?

COLONEL JACOB: No, I contacted her during the 23rd, on the 23rd of June, if my memory serves me correctly.

CHAIRPERSON: Okay, okay.

COLONEL JACOB: I was back at work on the 29th of June.

CHAIRPERSON: Alright, alright.

ADV SELLO SC: Thank you, Chair.

ADV KHUMALO SC: Before we break for tea, I just wanted
20 to clarify 58, because that is where you were at the first sentence, because this has caused a lot of confusion even with Warrant Officer Setshedi yesterday. Ja, okay, I think we will, Chair will indicate.

CHAIRPERSON: Let us adjourn and resume at 25 past 11.

COLONEL JACOB: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: My colleague, Commissioner Khumalo, had a question.

ADV SELLO SC: Indeed, Chair. Thank you.

ADV KHUMALO SC: Colonel, good morning again. We were in paragraph 58 of your statement, the first sentence. You say it was suggested that taking samples is unheard of. And it is not clear who you are referring to because in
10 various other sections of your statement, Advocate Sello asked you to clarify and you mentioned that you were referring to General Flynn's evidence.

COLONEL JACOB: Yes.

ADV KHUMALO SC: So here, who are you referring to when you say it was suggested that taking samples is unheard of?

COLONEL JACOB: Yes, a point of correction, it is General Flynn's testimony.

ADV KHUMALO SC: Yes, because I did not want you to
20 confuse what General Flynn said with what Warrant Officer Setshedi said.

COLONEL JACOB: Yes.

ADV KHUMALO SC: Because Warrant Officer Setshedi was engaged by chair yesterday and in 6.3 of his statement, he refers now to the 27 October discussion he had with you

and he says:

“I told him that since the case [the limited exhibits or sample] was brought to the FSL as opposed to the crime scene analyst bringing it, the case could be analysed by anyone.”

COLONEL JACOB: Yes.

ADV KHUMALO SC: So, he did not take issue with the fact that a sample could be analysed. And two paragraphs
10 earlier, or paragraph earlier, 6.2, where you were now dealing with the total mass of exhibits and what needed to be weighed for the purposes of destruction.

COLONEL JACOB: Yes.

ADV KHUMALO SC: So, as you and I discussed, those are separate processes because one is qualitative, the other one is quantitative. And as far as Khuzwayo is concerned, she says she understood the discussion to be about analysts going to the crime scene to do the sampling. So it was in that context that she understood it. And there may
20 have been miscommunication because you say you were talking about samples being taken from Port Shepstone and being sent to FSL.

COLONEL JACOB: That is so.

ADV KHUMALO SC: So that is really where the confusion is. And all three witnesses, I tried to engage them on the

issue just to try to understand what exactly they are saying.

COLONEL JACOB: Yes.

ADV KHUMALO SC: Yes.

COLONEL JACOB: Thank you, Commissioner.

ADV KHUMALO SC: Thank you, Advocate Sello.

ADV SELLO SC: Thank you for that clarification. You are clarified, Colonel. We actually had gone back to your paragraph 58 after you dealt with 59 and 60 already. I just wanted to clarify what exactly we are talking about in 58
10 compared to 59 and 60.

COLONEL JACOB: Yes, Commissioner.

ADV SELLO SC: So that would then lead us to your paragraph 61.

COLONEL JACOB: 61.

ADV SELLO SC: Yes.

COLONEL JACOB:

20 "I must add that none of my actions at the crime scene or at Isipingo SAP amounted to criminal conduct. The non-availability of exhibit bags was the reason these exhibits were not sealed in bags as per National Instruction 8 of 2017. The non-acceptance of exhibits by the FSL was the reason that they were not forwarded to the FSL within 7 days.

None of my actions were a deliberate attempt to ensure that the drugs were stored at Port Shepstone. During my interaction with the DPP's office, at no stage was contamination of the crime scene or the integrity of these exhibits ever cited as an issue."

ADV SELLO SC: Before you move on to paragraph 62, just clarify what is the purpose of referencing your interactions
10 with the DPP insofar as the question of contamination of the crime scene is concerned? Because you do not speak about that beyond this point.

COLONEL JACOB: Yes, okay, thank you, Commissioners. I think the reason I added this bit in there was just to highlight that at the time that this seizure was done, yes, in hindsight I realise now there were a lot of things that could have been done better, but at that stage, faced with my challenges, I am going to try and get into that a little later, I did what I did. However, when this docket reached the
20 DPP's office or this enquiry reached their office, generally they are the first ones when they peruse statements, look at the content of your docket or enquiry.

If they are not satisfied with the level or the standard of work in terms of handling exhibits or chain of custody, integrity of the exhibits, all of the above, they

would cite the same and basically indicate to management that this case, we are not taking it on, we are not satisfied with A, B, and C. So, I put in this paragraph to show that at that stage, in terms of prosecuting this matter, if it had to go to court, the DPP's office had no issue with regards to the investigation thus far. Thank you, Commissioners.

ADV SELLO SC: Then just as a last one, the point you make is that the DPP did not raise any concerns about the integrity and the contamination of the crime scene. That is
10 the point.

COLONEL JACOB: Yes, that is it, Commissioners.

ADV SELLO SC: You do not go so far as to say that the DPP confirmed the integrity of the crime scene. You are not taking it that far.

COLONEL JACOB: No, I am not.

ADV SELLO SC: Okay, thank you.

ADV BALOYI SC: Advocate Sello, before you move on, in that paragraph where you refer, in the second sentence, the non-availability of exhibit bags was the reason these
20 exhibits were not sold in bags as per National Instruction. What does the National Instruction that you are referring to say?

COLONEL JACOB: Okay, with regards to the exhibit management Commissioner, it says that drugs need to be sealed in an exhibit bag upon entering into the SAP13. It

needs to be sealed at the scene in exhibit bags.

ADV BALOYI SC: And you say they were not sealed at the scene being at the depot.

COLONEL JACOB: That is correct.

ADV BALOYI SC: Because there were no exhibit bags.

COLONEL JACOB: Yes.

ADV BALOYI SC: But the same at Isipingo, you give the same explanation.

COLONEL JACOB: That is correct, Commissioner.

10 **CHAIRPERSON:** What do you normally do when you are running short of exhibit bags? Where do you normally source them from? Because surely you have to source them from somewhere.

COLONEL JACOB: Yes. There is no go-to place, I would say, Chair, with regards to getting exhibit bags. You try whichever station is closer to you. You try a few stations. Some have some do not have. And just to elaborate on that, Chair, when I go through the enquiry, I see that even on the day, I did not know this until I perused it, even on
20 the day of the seizure when they proceeded to Port Shepstone there were no exhibit bags because I see they made an entry the next day that they had to go to Port Shepstone Police Station to acquire those exhibit bags. So, I am just letting the Commission know that although my colleague may have alluded that we have got tonnes of

exhibit bags, it is not always the case. Thank you.

CHAIRPERSON: When I asked the question as to where you source the bags from when you are short, I was exactly thinking of what you said, which is you call around other police stations to source them. I was thinking of that as well.

COLONEL JACOB: Yes.

CHAIRPERSON: We have seen from the evidence that I think one of the police stations that have been mentioned is
10 only about 20 kilometres away, and I think another one is about 24 kilometres away, give or take. I am not sure about the third one, which is Maydon Wharf. Or rather, let me just say, one is 20, another is 24, and then there is another one. Do you know how many kilometres the third one is?

COLONEL JACOB: I would think it is a shorter distance.

CHAIRPERSON: Even shorter than 20 and 24?

COLONEL JACOB: Yes.

CHAIRPERSON: No enquiries were made from those police stations?

20 **COLONEL JACOB**: No.

CHAIRPERSON: But you agree that that is a very short distance?

COLONEL JACOB: It is a short distance.

CHAIRPERSON: Were enquiries made? If not, why not?

COLONEL JACOB: Firstly, Chair, the time delay to send

members. Sometimes they come back with five or ten bags.

CHAIRPERSON: What is worse? What is worse? Saving time and not complying with prescripts which require that exhibits should be placed in exhibit bags. What is more important? Saving time?

COLONEL JACOB: No, I agree, Chair.

ADV SELLO SC: Thank you, Chair.

ADV BALOYI SC: Am I understanding your evidence correctly to be that you and your team did not have
10 evidence bags with you, or enough evidence bags with you, but as you were at the scene, you did not make any enquiries with any police stations?

COLONEL JACOB: You are correct, Commissioner.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thanks, Commissioner Baloyi. In response to a question from the Chair, you indicated, do I understand you correctly, that you learned later that they were transported to Port Shepstone, not contained in evidence bags. Is that your statement?

20 **COLONEL JACOB**: Can you repeat that question?

ADV SELLO SC: I understood your answer to a question posed by the Chair, that you subsequently learned that they were transported from Isipingo to Port Shepstone, not in evidence bags.

COLONEL JACOB: I knew that from the onset,

Commissioner.

ADV SELLO SC: Okay, that is what I needed to clarify. So, by the time you left the scene at Isipingo, you knew that they were being transported to Port Shepstone, not in evidence bags?

COLONEL JACOB: I did know that, Commissioner.

ADV SELLO SC: Thank you.

CHAIRPERSON: So, basically, you knew even before you handed over to, is it Warrant Officer Mpangase?

10 **COLONEL JACOB:** Yes.

CHAIRPERSON: So, even before the handover, you already knew.

COLONEL JACOB: I did know that.

CHAIRPERSON: Thank you. Thank you.

ADV SELLO SC: Thank you, Chair.

ADV BALOYI SC: Sorry, lastly, in that paragraph 61, the very last statement where you say your interaction with DPP office at no stage was contamination of the crime scene or integrity of the exhibits ever cited as an issue. What are
20 you conveying in terms of, maybe my question is, well, what did the DPP office know about what happened at the scene, about how the exhibits were handled? Were they ever in a position to express a view?

COLONEL JACOB: Yes, okay, they would have had sight of the entire enquiry, Commissioner. That would have

outlined every statement that was there. In the investigation diary, Warrant Officer Mpangase puts a date and time as to when he sealed them in exhibit bags, where it was done, who was present. Then there is another addendum where he has described the exhibit bag and the colour of bricks in it. So, all of that would have been privy to the DPP's office.

ADV BALOYI SC: I guess what I am trying to understand is with this statement, you are not conveying that there was
10 nothing wrong with the way the crime scene was handled, with the way the exhibits were handled. The absence of a comment from the DPP office, you are not conveying the absence of a comment or adverse comment from the DPP office means all was done the way, all was done properly. You are not saying that?

COLONEL JACOB: No. Commissioner, you know, I will concede they did not express any concern. When I look at it, there were a lot of concerns to be raised. However, I still maintain that the chain of custody, the integrity of the
20 exhibits, all of the above that are needed to take a matter to court was still in place, albeit National Instructions were not fully complied with, which is, there is no excuse for that.

ADV BALOYI SC: Okay, but I was not engaging yet in the quality of what was done. I just wanted to understand what it is you are seeking for us to understand from that

statement. Thank you.

ADV SELLO SC: Thank you, Commissioner Baloyi. Thank you, Colonel. That will then bring us to your paragraph 62. But I see beyond this point, you deal in large part with the testimony of General Flynn. You see that?

COLONEL JACOB: Yes.

ADV SELLO SC: And perhaps before we do so, can I ask you to go back to your paragraph 26 just to clarify? At page 5, there at paragraph 26, you deal with the entry made into
10 the SAP13 by Warrant Officer Mpangase.

COLONEL JACOB: That is correct.

ADV SELLO SC: Now, you say, I confirm that I did not view the SAP entry at the time.

COLONEL JACOB: Yes, correct.

ADV SELLO SC: Then you make certain admissions, but those admissions are based on your reading of the SAP13 long after the fact.

COLONEL JACOB: That is correct.

ADV SELLO SC: Now, do you have an explanation at this
20 juncture why you did not view the SAP entry at the time? Were you still not the person responsible for the seizure? Were you not the investigating officer before you handed over to Warrant Officer Mpangase?

COLONEL JACOB: It was Mpangase who was the investigating officer Commissioner at that stage from the

inception up until the 29th of June 2021.

ADV SELLO SC: Oh, so, you had already appointed him the investigating officer?

COLONEL JACOB: That is correct.

ADV SELLO SC: And you left that function to him?

COLONEL JACOB: Yes, that is correct.

ADV SELLO SC: Then that will take us to paragraph 62 where you then deal with General Flynn's testimony. And I think the misgivings, some misgivings you have about that
10 testimony.

COLONEL JACOB: Yes, okay:

“General Flynn cited drug seizure cases from Durban Serious Organised Crime Investigation that he had analysed. Of those, he mentions two cases wherein the LCRC was not summoned to the scene. He does not take issue with this as there are reasons for the members deviating from National Instruction 1 of
20 2015. It is understood that an IO uses his discretion and uses investigative aids, namely LCRC, if he knows it will benefit his case. The seizure of these drugs on 22nd of June 2021, it says 2022, was never under suspicion until they

were stolen...”

ADV SELLO SC: Sorry, before you proceed, we need to make a formal correction.

COLONEL JACOB: Yes.

ADV SELLO SC: Which date is that?

COLONEL JACOB: It is 22nd of June 2021, Commissioner.

ADV SELLO SC: Duly done, thank you.

COLONEL JACOB:

10 “The seizure of these drugs on 22nd of
June 2021 was never under suspicion
until they were stolen. I did not have any
hand in the decision to store the drugs in
Port Shepstone Serious Organised Crime
Investigation. Neither did I know that the
location was not suitable at the time. I
followed an instruction that I deemed
lawful when allowing the drugs to be
stored there. On 22nd of April...”

20 **ADV SELLO SC:** Sorry, before you move to 63, you say I
followed an instruction, but you do not indicate from whom?

COLONEL JACOB: From Brigadier Nyuswa.

ADV SELLO SC: Brigadier Nyuswa.

COLONEL JACOB: Yes, that is correct.

ADV SELLO SC: Thank you. You may proceed.

COLONEL JACOB:

“On 22nd of April 2026, General Flynn was at my office conducting inspections on all our cases on hand. I also asked him if there were any questions he had regarding any of the 10 cases he had drawn from us previously. I explained my challenges on the 22nd of June 2021 seizure, as well as other cases of interest. He did not bother to ask any pertinent questions or seek clarity on any issue regarding this matter. Even during this meeting, I did not ever imagine that I was a suspect in the theft of drugs. I will now point out what I believe will show the Commission that the team investigating the theft of drugs was not acting in good faith. During late January 2026, my office conducted investigations into certain drug-related killings and feuds in the Durban and surrounding area. There is an enquiry number as a reference. These investigations were initiated by myself, Lieutenant Colonel KG Sibiya, Lieutenant Colonel Deena Govender, amongst two other members of the

Durban Serious Organised Crime Unit.

This led to an individual coming forward in early February 2026 who claimed to be involved in the planning and execution of the theft of drugs that occurred in Port Shepstone on 8 November 2021. This informer/whistleblower/suspect was directed to a senior police official outside of the DPCI on the same day. We had done this as we felt it would be appropriate for a neutral party to further investigate this. The head office investigation team was situated in Gauteng and would not have been in a position to immediately respond to this. During the same meeting with General Flynn on the 22nd of April 2026, I informed him of this new information regarding the theft of drugs in Port Shepstone.”

I missed a sentence there, can I - it is not going to make sense if I do not.

ADV SELLO SC: Yes, please. Just tell us where to insert it.

COLONEL JACOB: Okay, paragraph 68.

ADV SELLO SC: Yes.

COLONEL JACOB: After the first sentence, right? It ends with Port Shepstone, and I need to add this bit:

“General Flynn wished to meet or
interview this
whistleblower/informer/suspect. I
immediately called in the relevant
member who was in touch with the
whistleblower to engage with General
Flynn and I left the office. I later heard
that General Flynn had sent out a team
to interview this individual. From what I
understand, he did not go out with his
team to interview this individual who had
vital information on the theft. I can also
confirm the authenticity/credibility and
veracity of this new information. I was
left in total shock upon viewing General
Flynn's evidence before this Commission.
It is understandable that all of us that
were involved in the seizure would have
initially been viewed as suspects. In the
absence of any credible evidence before
his visit to my office, I can understand
how it is a plausible theory that the drugs

were placed in Port Shepstone so that corrupt members could steal it. The high risk associated with that storage place lends credence to this theory. However, the General ought to have reassessed his investigation regarding the theft of drugs after this new information given to him by some of the very same members he is implicating. He alluded to significant progress in the matter during his evidence before the Commission. He did not bother to mention that this is as a result of the Durban DPCI members mentioned above. This incident has caused a..."

ADV BALOYI SC: Sorry, Colonel, before you proceed, that first sentence in paragraph 69, when you say I can confirm the authenticity, credibility and veracity of this information, what do you mean by that?

20 **COLONEL JACOB:** Okay, I am going to try and word it such that I do not give up too much, Commissioner, so you will bear with me.

ADV BALOYI SC: Yes.

COLONEL JACOB: When I make this statement, I am referring to being a detective to hard evidence, to names, to

places, persons, vehicles and the like, not just something hanging in the air that is not tangible, that is not able to be further investigated.

ADV BALOYI SC: I understand. Thank you.

ADV SELLO SC: And before you leave that, and please do not mention any names, at 68 you say I immediately called in the relevant member who was in touch with the whistleblower.

COLONEL JACOB: Yes.

10 **ADV SELLO SC:** You see where I am reading?

COLONEL JACOB: Yes.

ADV SELLO SC: By relevant member you mean of the DPCI.

COLONEL JACOB: That is correct, Commissioners.

ADV SELLO SC: Thank you. You may proceed.

COLONEL JACOB: Okay:

20 “This incident has caused embarrassment to the DPCI, the police as a whole, as well as the country, and should not go unpunished. I do believe that DPCI members have conspired with criminal elements to carry out this crime. In the same breath, I plead with the Commission to ensure that the proper facts are placed before them so as to

maintain the integrity of the Commission.

The damage that General Flynn's evidence has caused to us, innocent members, by creating this false narrative and orchestrating his investigation to suit the same, is irreproachable.”

ADV SELLO SC: And before you move on to the next paragraph, at 71 you say this incident has caused embarrassment to the DPCI. I want to understand what
10 incident.

COLONEL JACOB: The incident of the theft, Commissioner.

ADV SELLO SC: The theft itself.

COLONEL JACOB: The theft of the drugs.

ADV SELLO SC: All right. You may proceed.

ADV BALOYI SC: And then in that 72, where you refer to General Flynn's evidence, and you say he created this false narrative, what is that narrative? What did he say that you qualify as a false narrative?

20 **COLONEL JACOB:** The fact that he says by design and not due to, as the Commission referred to, a comedy of errors, I think that is also a stretch. But I would say the fact that his theory was based on loosely, or can I say there was no evidence to support his theory, I think that is the statement I am looking for. And in terms of, may I just

delve a little more into it, Commissioner, would you indulge it?

Okay, like where I cite that Warrant Officer Perumal, a statement was obtained from him, the SAP13 clerk at Isipingo. As a detective, when you go to obtain Warrant Officer Perumal's affidavit, and this is subsequent to the theft in November 2021, the drugs have now been stolen. Isipingo knows that they did not want to keep those drugs.

10 Now you get a team that is investigating the said theft of drugs. They go to Isipingo SAP. I have not seen Warrant Officer Perumal's statement, but I believe it goes along the lines where he denies that he said to us there is no storage place. He denies that there were no exhibit bags. So, I am saying, I have submitted so many further statements to General Flynn's investigation team, and in most of them I allude to the fact that we had a problem with Warrant Officer Perumal.

20 Now when the investigation team goes to him, they should not merely pose questions regarding the 22nd of June. Yes, the 22nd of June. So, to me, they basically ask him, did you have storage place? He says yes. Did you have exhibit bags? He says yes. Because he knows if it comes back to him that he refused us, he is also in the hot seat.

So, I am saying, why was it not canvassed with him? The fact that Colonel Jacob alludes to certain incidents where they had issues with you regarding Mandrax or whatever, but I did allude to it. So, I am saying the fact that the investigation team remained silent on that issue, and did not even engage Warrant Officer Perumal to ask him, what is your comment on this?

What do you have to say about this? To me it was, the statement was taken with an objective in mind, and it
10 was not done fairly. As a detective, you need to keep an open mind, you need to ask the relevant questions, and even the fact that I found those OB entries where Warrant Officer Perumal had booked members of sick, and made entries in the OB reflecting that a member went to the doctor for consultation because of drugs being stored there.

I would have thought that that would have been uncovered by the investigation team. But the fact that they had not gone to that level, yet we are going to a level where we are analysing enquiries and all of that. That is basic
20 investigative work that should have been done properly.

ADV KHUMALO SC: Colonel, I thought what you were alluding to in 72, when you talk about a false narrative, is the theory in 69 that the drugs were placed in Port Shepstone so that corrupt members could steal it.

COLONEL JACOB: Yes.

ADV KHUMALO SC: And then you just got lost because you started talking about OB books and other things.

COLONEL JACOB: Sorry, I jumped the gun, Commissioner.

ADV KHUMALO SC: Yes, can you just answer that question?

COLONEL JACOB: All right.

ADV BALOYI SC: That is my question.

COLONEL JACOB: Okay, and the reason - okay, if you
10 want to proceed, it is fine, but may I just have a little chance? Okay, now I just lost my train of thought. It is fine, you can proceed.

ADV SELLO SC: No, no, no.

ADV BALOYI SC: Actually, he started there in answering me.

COLONEL JACOB: Yes.

ADV BALOYI SC: That is where he started. You said the narrative that this was all deliberate so that the drugs can be stored.

20 **COLONEL JACOB:** I think I got my point now. May I just? All right, my point being was that it is clear that I was not involved in the decision to store at Port Shepstone, but it is being insinuated that I initiated or was part of this planning by closing off this gap of storing it anywhere else. The fact that I said to the Brigadier, I have exhausted all avenues, I

have got no storage place.

So, I am saying that General Flynn ought to have investigated properly, because the fact that he cites, I should have used Brighton Beach, I should have used Durban Central. Did he not find out from those stations, did you have capacity? He had clearly not known even about the fact that these exhibits were stored there. In his evidence to the Commission, at no stage did General Flynn allude to the fact that Isipingo had turned these exhibits
10 away and that they were lying at Durban Central for 1 year and 9 months untouched.

And I will go on further to say there is no official record of those exhibits being stored at Durban Central. I followed up, I could not find an OB entry or a SAP13 entry for when Durban Central accepted these exhibits on the 6th of February 2020. And I am not doing this, Commissioners, to point fingers at others, to show that others are doing wrong, so I should be left alone because I am doing wrong as well.

20 I am doing this, I am highlighting it to point out that firstly the challenges that we face, and secondly, the fact that General Flynn, I would think, misled this Commission by not highlighting a pertinent point, by saying to the Commission that I find it strange Isipingo has never had a problem with exhibits. That was his statement to the

Commission.

How can you say that in light of all of this? So hence, I am saying what I say. And before I forget, Commissioners, there is one other thing. I have perused an affidavit of General Flynn's where he cites this Mandrax case and like I highlighted, he did not point out the fact that it was stored at Durban Central for 1 year and 9 months. He goes on further to state that the exhibits were confirmed to be Mandrax.

10 In his statement he says the exhibits were confirmed to be Mandrax. Now I find this strange seeing as how the date of destruction by the FSL was the 12th of November 2021, that this was destroyed. Those exhibits from Isipingo had moved to Durban Central. It was now taken out the vault. On the very same day the members took it up to Pretoria and the exhibits were disposed of.

 They were taken to an incinerator at some undisclosed location. So, I fail to see where there is confirmation that this indeed was Mandrax. Because no
20 analysis was done. It was merely destruction or disposal. So once again, it is a concern to me that General Flynn covers those bases when it comes to another member. Yet when it came to this case of ours, the investigation, like I say, was to me not done objectively. Thank you.

ADV SELLO SC: Colonel, I would not want you to be

misunderstood on what your testimony is. If I can try again to take you back to Commissioner Baloyi's question. And I will do that with reference to your own statement, okay? If you look at your paragraph 72, the question by Commissioner Baloyi is, what is the false narrative that you say General Flynn created? Do you understand that? And I want you to consider a response to that question in the context of what you state at paragraph 69 and at paragraph 71. At 69 you say, and I read midway:

10 “In the absence of any credible evidence before his visit to my office, his being General Flynn, I can understand how it is a plausible theory that the drugs were placed in Port Shepstone so that corrupt members could steal it. The high risk associated with that storage place lends credence to that theory.”

Do you see that?

COLONEL JACOB: Yes.

20 **ADV SELLO SC**: Now if you go to 71, where you talk about the theft, the incident, you conclude 71 with the following words:

“I do believe that the DPCI members have conspired with criminal elements to carry out this crime.”

COLONEL JACOB: Yes.

ADV SELLO SC: So, this is what you testify to.

COLONEL JACOB: Yes.

ADV SELLO SC: Now in the context of what you say, what is the false narrative that you say General Flynn presented to the Commission?

COLONEL JACOB: Okay, thank you Commissioner. I would say the fact that on the 22nd of April 2026, this information that I can put my neck on the block to say is
10 credible, was furnished to General Flynn. He had ample time, or I would not say ample, to finalise the entire case. But obviously one would have expected him to now compare this newer information, compare it with his initial theory, and look at the two, whether they gel.

Investigation is all about a process of elimination. Initially we all are suspects. As you further investigate, you start narrowing down your suspects to a few individuals, I would think. But none of that happened, despite us furnishing such credible information. And I must add, we
20 had no clue that General Flynn was to come before the Commission to give evidence.

So, it was not done with any purpose in mind. It was done in good faith to inform him, because they were investigating this theft. So, I am saying that the fact that we furnished this info, yes, it still does not exclude us as

suspects, those of us who furnished this newer information. However, if you have had a few weeks to try and further investigate this, one would have expected you to have had something a little more credible than this theory of it being by design, which there is no factual evidence to corroborate it.

ADV SELLO SC: Just to clarify, your testimony is that the false narrative is that those of you who were involved in the seizure had any hand in the disappearance of the theft.

10 **ADV SELLO SC:** That is what you say is a false narrative to the extent that it is created.

COLONEL JACOB: No, I think that is a too blanket statement, Commissioner. I would not want to mention names, but obviously I did go on to say that I believe that DPCI members were involved.

ADV SELLO SC: And it is precisely because of your confirmation of that belief you hold at 71, I am trying to understand what your challenge is.

COLONEL JACOB: Yes.

20 **ADV SELLO SC:** And maybe we might just not get there.

COLONEL JACOB: Yes, due to the sensitivity of it, which General Flynn has been fully made aware of, he would be able to understand what the statement means as well. Thank you, Commissioner.

ADV SELLO SC: Okay.

ADV KHUMALO SC: Can I go back to paragraph 20? I assume he has finished his statement. You are going to do your probing. I just want to clarify 20 on page 4, Colonel.

ADV SELLO SC: Yes, yes.

ADV KHUMALO SC: Colonel, sitting here, we have taken it as a given that what was stolen in November 8, 2021, is Cocaine, and the value of that Cocaine is approximately R200 million. We have taken it as a given. But because we are fact-finding enquiry, facts are important. Now, in the
10 absence of a qualitative analysis and a quantitative analysis, are we sure, sitting here today, that:

[a] It was Cocaine?

[b] The value of that Cocaine was R200 million?

I will tell you why I am asking these questions. I have had to do some reading, the UN report on drugs and Cocaine and other things. Depending on the grade, even if the kilograms are 1-kilogram bricks, depending on the grade, the value could range, and it could even be R400 million. So, if an analysis had been done, and the quality, the grade
20 of the Cocaine had been tested, its market value or its trade value could easily have been 400, or it could have been 200, or it could have been 300.

COLONEL JACOB: You are correct, Commissioners.

ADV KHUMALO SC: Now, it is in that context that I seek clarification of paragraph 20.

COLONEL JACOB: Yes.

ADV KHUMALO SC: So, because you say in your statement, your priority was to safeguard the exhibits, and then you say approximate value R200 million. How did you arrive at that R200 million?

COLONEL JACOB: At that stage, Cocaine was selling for about, between 180 and 400, maybe R300 000 to R400 000 per kilo. So, I think that is how we arrived.

ADV KHUMALO SC: But that was the average price.

10 **COLONEL JACOB:** Average price.

ADV KHUMALO SC: And it also depended on the grade.

COLONEL JACOB: Yes, just to expand on that, Commissioner, with the grade, yes, the FSL can tell you percentage and purity. We do not normally get that, but I hear that they have that capacity now. But with regards to grade of Cocaine, generally the price will depend on what the criminal networks call, whether it is a one-way or two-way Cocaine, meaning one-way is Cocaine that you only sniff, which will fetch a lower price as compared to Cocaine
20 that you can sniff and cook into Crack Cocaine or Rock. Just to give you an example, a kilo of Cocaine that is now two-way, the one that you can cook, can produce 1 kilo of Cocaine, can produce approximately R1 million worth of Crack Cocaine. So, you know, it talks to what you just alluded to, the price will definitely change.

ADV KHUMALO SC: And in my engagement with FSL people yesterday, I was deliberate because I am assuming, I do not know, because I do not have the facts, I am assuming that even the people who stole what we believe to be this Cocaine and they were going to sell it in the black market, it would have mattered to them what the quality of the Cocaine is because when they sell it in the black market, they need to determine the price. The buyer and seller need to say, this is this type of quality, therefore I am
10 selling it to you at this price.

COLONEL JACOB: Yes, you are correct.

ADV KHUMALO SC: That is why yesterday I was so deliberate about what happened to the analysis at FSL, why did it disappear and why. So, I want you to understand that context and that is why all of this was important.

COLONEL JACOB: Okay, thank you.

ADV KHUMALO SC: Thank you, Advocate Sello.

ADV SELLO SC: Thank you, Commissioner Khumalo. Colonel, that effectively would bring us to the end of your
20 written statement. Now, I am aware there is a document you would like to briefly touch on, which we will do in the next couple of minutes, but just to enquire from you, is there anything that you think you may have overlooked or omitted to bring to the attention of the Commissioners that you deem absolutely critical?

COLONEL JACOB: Okay, can I just take a minute?

ADV SELLO SC: Now, if nothing comes to mind, as and when then we engage during the course of the day, you may refer to that.

COLONEL JACOB: Okay, that is fine.

ADV SELLO SC: For the moment, you are fine.

COLONEL JACOB: Thank you, Commissioner.

ADV SELLO SC: And I refer to this document because I think over the course of the morning you have consistently
10 referred to it, and you indicated earlier that it would appear that it was not made available to us as part of the docket, and you made it available to the evidence leaders preparing your testimony. Is that correct?

COLONEL JACOB: That is correct.

ADV SELLO SC: And I do confirm that you did give us such a document, and that is the investigation diary that you assured the chair that it reflects activity regarding this seizure and subsequent events, and that the notes were made contemporaneously, right? Correct?

20 **COLONEL JACOB**: That is correct.

ADV SELLO SC: Now, for your comfort, that document is part of the exhibit bundle, SCJC268. Would you like to go there?

COLONEL JACOB: Yes.

ADV SELLO SC: And confirm that is the document you say

you availed us?

COLONEL JACOB: Yes.

ADV SELLO SC: Now, it starts at page 800 to 812. I am not going to ask you to read this, but you want to highlight some issues from it as part of your testimony.

COLONEL JACOB: Yes.

ADV SELLO SC: Okay.

COLONEL JACOB: Your Worship.

ADV SELLO SC: Before you do so, I am going to give you
10 an opportunity. Perhaps you might start, when you do, engage with it by advising us how to read the document and how to engage with it. Not so much the content per entry, right?

COLONEL JACOB: Yes.

ADV KHUMALO SC: Sorry, number?

ADV SELLO SC: CJC262. 268, 268. My apologies.

ADV KHUMALO SC: So, it is a new file?

ADV SELLO SC: Your file is updated?

ADV KHUMALO SC: Yes.

20 **ADV SELLO SC:** Yes, CJC268. I think it would be the penultimate document that is in the exhibit file. Thank you.

COLONEL JACOB: Okay, thank you, Commissioner.

ADV SELLO SC: Just one second, Colonel. Okay, as I suggested, perhaps there are different entries made, right, in the investigation diary. At the conclusion of every entry,

there is a signature. Perhaps your explanations to us should be on that basis. A signed-off minute tells us what issues are addressed there, by who, and then if there is anything in particular from the notes made that you want to highlight, you may have the opportunity to do that.

COLONEL JACOB: Thank you, Commissioner.

ADV SELLO SC: Very briefly, thank you.

COLONEL JACOB: Okay, just to give the Commission an overview of what this really is about, in any police
10 investigation, this is your C-clip. It is your investigation diary. It is where the investigating officer will diarise every little incident, tasking, every duty he has conducted, every investigation he is conducted in respect of this investigation.

So, it is labelled with pages. The first page is 1C1, C2, and so forth. The member puts a date, puts a type, makes an entry, and signs off with a full-force signature that is unique to every member. So initially on the 22nd of June, on C1, that is page 800, you can see it is entries from
20 Warrant Officer Mpangase, highlighting that information came through, where did we proceed to, what transpired.

It continues on C2 as well, continues on C3, continues - okay, C4 is an entry from myself, and I think I will read that out just to show the preliminary or initially what taskings was given to Warrant Officer Mpangase in

respect of this investigation by myself. The entry on C4, page 803, it is dated 23rd of June, 2021, and this is a 24-hour inspection. It is something that the police put in place in order for within 24 hours to guide their investigating officer on what needs to be done. So, I am going to read out. I say:

10 “Obtain witness statement from all relevant role players. Request PCMC, that is our Priority Crime Management Centre, to profile all suspects and business entities. I say, liaise with the DPP's office. Enquire that SARS Customs is brought on board, or ensure, sorry, ensure that SARS/Customs is brought on board the investigation. And I made an entry here, forward samples taken to the FSR.”

Okay, that is something of note. Then I think at the bottom of the same page ...[intervenes]

20 **ADV BALOYI SC:** Sorry, before you do that, can I just understand or clarify? So, these are your entries?

COLONEL JACOB: Yes.

ADV BALOYI SC: On the 23rd?

COLONEL JACOB: Yes, but - okay, it is not made on the 23rd, because on the 23rd I resumed my leave. So, if I look

at this, and I will be honest, I either made it on the 22nd just to, you know, as a formality to Warrant Officer Mpangase, or I may have done it on my return to work, because I see nobody at the Inspectorate.

ADV BALOYI SC: After the 23rd?

COLONEL JACOB: Yes, on the 29th. So, I do not want to mislead the Commission. I am not sure when I made this, but it is my entry dated the 23rd.

ADV BALOYI SC: Okay, and on that date, why would you
10 have made a reference to SARS Customs involvement?

COLONEL JACOB: Because Customs, we generally, all of our drug cases, especially seizures that come through the harbour, if it is not a joint operation, we still require assistance from Customs. Remember, they are the custodians of lots of the documentation, and they are privy to systems that the police do not necessarily have access to. So, it is a given whenever you do these investigations that Customs is part and parcel of it, if not part of the investigation, they give their input, give us documentation
20 that they are willing to furnish, and so forth.

ADV BALOYI SC: Yes, I think, again, I am still clarifying. It is really not probing. I just want to understand the role of SARS that you anticipate in this particular operation. You have taken the drugs. You have, on your evidence, you have sealed, or the container is sealed, but you have taken

the drugs that you had received a tip-off about.

COLONEL JACOB: Yes.

ADV BALOYI SC: And I think earlier in your statement, that is where you say on the day of the operation itself, you got documents, whatever documents that go with consignments that is coming in. I think you do say somewhere in your statement. So, I am trying to understand that what is, when you say to Warrant Officer Mpangase, to ensure that Customs is on board, what, in
10 fact, would be the role of Customs?

COLONEL JACOB: Okay.

ADV BALOYI SC: Given what has already happened.

COLONEL JACOB: Yes, in hindsight, I am speculating. I am not 100 percent sure, but it is a good question. If I look at it, it is possibly because the A-clip in this investigation has a detention notice from SARS dated the 23rd of June, right? So, I am not sure whether I had sight of that, but clearly, if I look at the investigation diary, that document was filed by Mpangase.

20 It has got his handwriting on top of it. So, I am unsure as to who furnished him with it, but it is filed in the enquiry. So it could be, like I say, I stand under correction. It was a long time ago, so I am just speculating that when I got back to work, and if I did make this 24-hour inspection, then it is possible that I was paging through the enquiry and

I noticed that SARS had a detention notice on this. So obviously, we would want to know what led to them putting a detention notice. What red flags were there?

ADV BALOYI SC: Thank you. Right, thank you.

ADV SELLO SC: I mean, just to follow up, it is a question I was going to ask, I might as well ask at this juncture. Your left column in this diary is headed time date.

COLONEL JACOB: Yes.

ADV SELLO SC: And then there are entries at different
10 points of what would appear to be the date.

COLONEL JACOB: Yes.

ADV SELLO SC: In response to the question by Commissioner Baloyi, are you suggesting that the date appearing in that column is not necessarily the date on which the entry was made?

COLONEL JACOB: Yes.

ADV SELLO SC: Is that how we should understand it?

COLONEL JACOB: It is possible, Commissioner.

ADV SELLO SC: No, no, I am asking you, how do you
20 want us to read your documents?

COLONEL JACOB: All right, you know, now that I look at the fact that I alluded to ensure that SARS Customs brought on board on the first entry, you know, normally it would come maybe at a later stage. The fact that I put it here during a 24-hour inspection, I would think that I made this

on the 29th, yet it is dated the 23rd.

ADV SELLO SC: Yes.

COLONEL JACOB: So, I did not make it on the day because I was on leave. So, it looks like I made it retrospectively.

ADV SELLO SC: And this is a clarification question, not exactly engaging. Is that not misleading, though, to the next reader of the document? And I am thinking, if you made it on the 29th, why would not you write the date of the
10 29th? And in the body of the report, you indicate that this happened on the 23rd, although I am only recording it on the 29th. Is that not the more ideal way of going about it?

COLONEL JACOB: Yes, and my honest answer, Commissioner, is that it is a formality in the police. A 24-hour inspection must be done. So, the fact that Mpangase did not take it to any other officer for a 24-hour inspection by the time I got back to the office, that for me is administrative. It is something that is frowned upon. It is one of the boxes that you need to tick, a 24-hour
20 inspection, guiding the member on what to do. So, it is possible that that is the reason I had done it retrospectively.

ADV SELLO SC: And it reads 24-hour inspection. There seems to be a stamp there.

COLONEL JACOB: No, no, there is a police sign that is

just smudged.

ADV SELLO SC: There is something that is not legible there.

COLONEL JACOB: Okay, it says 24-hour inspection. There is a little comma there, and it says Warrant Officer Mpangase. So I am addressing it to him.

ADV SELLO SC: Thank you. Then you may proceed. You are helping us work through this diary.

COLONEL JACOB: Sure, okay, thank you. On the bottom
10 of the same page, Commissioner, page 803, there is an entry 2021-07-01. And I state there:

“To CHC Depot with Warrant Officer Mpangase and Sibiya, Tim Floweday of Megafreight present, unpack of container in order to verify the contents of the container.”

We turn over now to 804:

“If the contents of the container correspond with the packing list, unpack
20 and count completed approximately 5 395 bags...”

I should not have said approximately there:

“5 395 bags of, and I named the animal feed, container resealed, contents of container as per the packing list all in

order, indicated to Tim Floweday, that is the representative of the clearing agent, that our investigation pertaining to the actual container is complete and the container could be released.”

And then I stated, I sent an email to Brigadier Devon Naicker with regards to documentation furnished by Megafreight. He is the head of SANEB in head office. So, okay, that is another entry. That is showing that I did go
10 back at a certain date to re-inspect, if you want to call it that, or to confirm that there was nothing else further in that container of interest.

ADV BALOYI SC: Yes, can I just understand where you say container could be released?

COLONEL JACOB: Yes.

ADV BALOYI SC: This is on the 1st of July.

COLONEL JACOB: Yes.

ADV BALOYI SC: Where is the SARS Customs detention situation here?

20 **COLONEL JACOB:** Their detention notice was dated the 23rd of June.

ADV BALOYI SC: Yes.

COLONEL JACOB: So, I am not sure whether they, oh, sorry, they did inspect those other 9 containers. So, if they had engaged with us to come through and further inspect

this container that we had already inspected, I do not think that would have been a problem, but we did it without them.

ADV BALOYI SC: Yes, I guess my question is, if you are aware, and I really am just trying to understand the facts at this stage, if you are aware, as you are at this point, that the container is under a detention notice by Customs, as you have told us previously, when you, without the involvement of Customs, at least according to your entry, there does not seem to be a recognition of Customs
10 involvement. When you, without the involvement or reference to Customs, you instruct the clearing agent, or you inform the clearing agent that the container can be released.

COLONEL JACOB: Yes.

ADV BALOYI SC: I am trying to understand how that works in practise.

COLONEL JACOB: Customs Commissioner was aware of our find at that container. I cannot say with certainty, but I would think that their interest in it had waned since we had
20 already discovered the narcotics in it. So, I am not 100 percent sure of the sequence of events.

ADV BALOYI SC: But as we understand, their interest is the bone meal.

COLONEL JACOB: No, no, no. In fact, sorry Commissioner, I just hope that was not rude. No, I am

saying they put a detention on these containers. I cannot say with certainty, but I would think for the drugs itself, not for this bone meal, because there was nothing wrong or there was nothing amiss with this commodity. There was nothing that was a red flag about the commodity itself.

I think what was of interest was the port of origin, which was the port of Santos, which comes up frequently as one of the ports of origin of drugs, large consignments of Cocaine. So, it is possible it is based on that, but my
 10 suspicion is that they put a detention notice on it for the very same reason that we searched it.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioner. We have just gone past page 803. Perhaps pick up the pace. You do not have to read every entry. Just guide us on how to read this document.

COLONEL JACOB: Yes, okay. Maybe, I do not know if it is of interest, but I have diarised it on the 5th of July 2021, on page 805 at the bottom. You will see, to FSL
 20 Amanzimtoti to drop off samples for analysis. So, I say I call it samples, Commissioner.

ADV KHUMALO SC: The entry on the other side, we know the entry on your side, you say it is samples for analysis.

COLONEL JACOB: Yes.

ADV KHUMALO SC: You even mentioned that exhibit bags

and you mentioned their seal numbers, and you specifically say they are handed over for analysis and an acknowledgement of receipt. I was hoping it would be here, but it is not. But on the other side, does the entry also say it is analysis of samples? Because you have to make the request. They must know what this thing is here for. So, what is the entry on the other side?

COLONEL JACOB: Thank you, Commissioner. When I did hear this come up at the Commission, I went through my
10 notes. Unfortunately, or maybe not unfortunately, I neglected to. When I sent it for analysis, I just sent it, I said it is suspected Cocaine, and I am sending it through for analysis. It does not make provision, but still I think maybe I should have stated that it is a sample of a larger consignment of 541. Just to go a little deeper, it is maybe because I had already touched base with Colonel Khuzwayo on this issue that I neglected to state that on my covering letter to the FSL. But it was not stated there, Commissioner.

20 **ADV KHUMALO SC**: It is fair that there could have been confusion between you and FSL.

COLONEL JACOB: I would not say there would have been confusion. You know, Commissioner, during every stage of my interaction with them, it was known that we were sitting with 541 kilos. The FSL cannot house it. I am trying to get

rid of this, whether it be via an expedited analysis report, or if you tell me I can take it straight for destruction, whichever way. So, they were fully aware. They were fully aware, Commissioner.

ADV SELLO SC: Thank you, Commissioner Khumalo. We have made note of the entry at 805. Then if we continue.

COLONEL JACOB: Okay, all right.

ADV SELLO SC: We are now at 806.

COLONEL JACOB: Yes.

10 **ADV SELLO SC:** Yes.

COLONEL JACOB: Okay, I see on the 2021-07-19, I said:

“Email request to DPP, Advocate KD
Govender for assistance, and I found my
correspondence in my B-clip as per B3.”

So that was a covering letter giving them a synopsis of what had transpired and basically preparing the DPP's office to now guide us on this matter.

ADV SELLO SC: Okay, then we see there are other entries there. And I think if my reading of the document was
20 correct, beyond this point, 806, all the entries are by you.

COLONEL JACOB: No, there is ...[intervenes]

ADV SELLO SC: Well, except there is somebody called
...[intervenes]

COLONEL JACOB: Yes, the one ...[intervenes]

ADV SELLO SC: But in this context, there are no further

entries by Warrant Officer Mpangase?

COLONEL JACOB: No, there are not, Commissioner.

ADV SELLO SC: Yes, so, you are now the investigating officer fully in charge.

COLONEL JACOB: Yes.

ADV SELLO SC: Okay.

COLONEL JACOB: However, Commissioner, I must point out that wherever you see red writing in this investigation diary would be an inspecting officer that would have been
10 looking at this enquiry and giving advice or comments or guidance in that regard.

ADV SELLO SC: And duly noted that the same as your entry at page 803 is in red.

COLONEL JACOB: Yes, at that stage, it was Mpangase who was the IO, so me being a commander at the unit, the entry needs to be in red so that he acknowledges ...[intervenes]

ADV SELLO SC: And that is the point I am making.

COLONEL JACOB: Yes, yes, Commissioner.

20 **ADV SELLO SC:** That the inspection in respect of your entries is in red by - please give me the correct rank of the officer here, Nundlal.

COLONEL JACOB: Nundlal, yes.

ADV SELLO SC: Huh?

COLONEL JACOB: Nundlal, it is Lieutenant Colonel

Nundlal.

ADV SELLO SC: And that was the inspecting
...[intervenes]

COLONEL JACOB: Yes.

ADV SELLO SC: Officer where you are the investigating
officer. And the entry in red by you at 803 is where you are
the inspecting officer and Warrant Officer Mpangase is the
investigating officer.

COLONEL JACOB: You are correct, Commissioner.

10 **ADV SELLO SC:** Okay, all right, I think ...[intervenes]

COLONEL JACOB: One more aspect, please,
Commissioner, before we tie up this. I would like to draw
the Commission's attention to my entry 2021. 1104 or even
before that the one on page 809 which is C10. Okay, if you
look at the entry 2021-10-27. I have made an entry at FSL
Amanzimtoti:

20 "Spoke to Warrant Officer Setshedi
[analyst] regarding their section 212
analysis report status. He indicated that
he needed 7-to-10-kilogram exhibits for
weighing in order to complete the section
212 affidavit. Informed him that I would
make arrangements with the Port
Shepstone office to retrieve said samples
with him present."

So that is contemporaneous that is made on the day. And then the entry after that it follows in on page 809 the entry at the bottom dated 2021-11-04:

10 “Called Lieutenant Colonel Prinsloo unit commander Port Shepstone serious organised crime investigations to make arrangements that I come through with the FSL member to obtain exhibits for weighing. He indicated that he was on a wildlife workshop from the 8th to 12th of November 2021. Spoke to H Naicker of custom SARS arranged to meet the following week.”

So that is a command that Customs that I was engaging with as well. So, I think that is what I wanted to point out.

ADV SELLO SC: Can I just get the following clarifications? If you go to 803 that is now your entry in red.

COLONEL JACOB: Yes.

20 **ADV SELLO SC:** You call that a 24 hour - 803 saying page 803.

COLONEL JACOB: Yes.

ADV SELLO SC: CJC268 that is your entry and you had added 24 hours inspection of Warrant Officer Mpangase.

COLONEL JACOB: Yes.

ADV SELLO SC: Then when we go further in the

document.

COLONEL JACOB: Yes.

ADV SELLO SC: And we deal with is it Lieutenant Colonel Nundlal at page 807 once again in red.

COLONEL JACOB: Yes.

ADV SELLO SC: What is that? You called yours a 24-hour inspection.

COLONEL JACOB: Yes.

ADV SELLO SC: What inspection is this?

10 **COLONEL JACOB**: This is a normal monthly inspection or sometimes it can be a quarterly inspection. This I am trying to see. It could have been a month end inspection. I see it is towards the end of July 2021.

ADV SELLO SC: So, this is a month end inspection.

COLONEL JACOB: Yes.

ADV SELLO SC: And how often must this be done? Logic would tell me every month.

COLONEL JACOB: Yes.

ADV SELLO SC: Would that be correct?

20 **COLONEL JACOB**: Yes, a monthly inspection of by virtue of its name. Yes. It is monthly but you get a quarterly. It depends sometimes on the type of investigation or if you are it is not gaining momentum at a certain point in time and then it starts to but generally in the police it then needs to be a monthly inspection.

ADV SELLO SC: Okay, so, preferably a monthly otherwise quarterly.

COLONEL JACOB: Yes.

ADV SELLO SC: Okay, this one we see is dated 31st August. Overleaf at 808 there is another one.

COLONEL JACOB: Yes.

ADV SELLO SC: It is dated October.

COLONEL JACOB: That is the one in September as well. I see.

10 **ADV SELLO SC:** Where do you see September?

COLONEL JACOB: The one in September is page 808. It is C9. There is a writing in red.

ADV SELLO SC: That is 2021-10-20.

COLONEL JACOB: The date stamp on it says 16th of the 9th 2021.

ADV SELLO SC: Oh, you go by the ...[intervenes]

COLONEL JACOB: Yes.

ADV SELLO SC: So, what were they true?

20 **COLONEL JACOB:** Yes, this was another one. This was done by a provincial inspection team meaning this was a team comprising of officers from throughout KZN who would now come to my office and inspect all of our dockets, enquiries, registers and so forth.

ADV SELLO SC: Then working through that document now that I understand the theory behind the colourful entries. It

goes up to C11 right at H12.

COLONEL JACOB: Yes, you are correct.

ADV SELLO SC: Am I correct?

COLONEL JACOB: Yes.

ADV SELLO SC: And I see from C10 at 809 it is all your entries.

COLONEL JACOB: Yes.

ADV SELLO SC: We are now in October into November. So there was never any further inspection of this file?

10 **COLONEL JACOB**: No.

ADV SELLO SC: From September if you look at 808, from September till November there were no inspections?

COLONEL JACOB: That is correct.

ADV SELLO SC: Even the monthly inspection?

COLONEL JACOB: Yes, there was none done.

ADV SELLO SC: And no quarterly inspection?

20 **COLONEL JACOB**: The quarterly inspection would have now been conducted during the 12th month. Okay, there would have been an inspection in the 12th month but however this enquiry was now taken away by head office on the 28th of November 2021 subsequent to the death of the drugs.

ADV SELLO SC: So, and there was quite a bit of activity between that. Why then was it not necessary from September to have monthly inspections? And my question

really is premised on the engagement we had earlier about your entry, your inspection of 23rd June 2021 when you said actually it was not, the entry was not made on the day, and you accepted that that might be misleading. My question is how do the Commissioners know that in the absence of a monthly quarterly 24-hour inspection that these entries were not subsequent to the fact and not as contemporaneous as you put it forward?

COLONEL JACOB: Yes, remember if you look at it then I
10 will give you an example. If you go to page 809 which is C10.

ADV SELLO SC: Yes.

COLONEL JACOB: Right, and then it states their statement of Sergeant Govender of border police filed as per A20.

ADV SELLO SC: Yes.

COLONEL JACOB: Then you can see the date that I obtained that affidavit is in line, it corroborates with or corresponds with my entry there. So, there is no other
20 assurance I can give you aside from that the fact that my C-clip now corresponds with my A-clip. Like if I say I obtained the statement on the 1st of June. And then if you look at my A-clip you will see there is a statement obtained by myself on the 1st of June. So, I cannot, there is no other safeguard.

ADV SELLO SC: I appreciate that. So, you are saying the fact that there is no monthly or quarterly inspection.

COLONEL JACOB: Yes.

ADV SELLO SC: The Commissioners may draw comfort from the dates of the statements you obtain as you list in the investigation diary itself.

COLONEL JACOB: Yes. Yes.

ADV SELLO SC: Okay.

COLONEL JACOB: Thank you.

10 **ADV SELLO SC:** No, I am happy with that approach. Thank you.

ADV BALOYI SC: Can I just check that 807 CO8 the very first entry on the 30th of July.

COLONEL JACOB: Yes.

ADV BALOYI SC: And you have got item three which is SARS is assisting with investigations. This is a month, 5 weeks later after the operation. What are SARSs continued involvement in your investigation? What exactly are they doing?

20 **COLONEL JACOB:** You know Commissioner I cannot see. I did not make notes here, but I would have called the same commander that I alluded to at a later stage because at some point, let me try and find it, I allude to a meeting that he failed to honour. Let me just try and find this. So, I am not sure the timeline of it. Okay, yes, I think he may have

been otherwise engaged Commissioner. If I look at 809 page 809 the entry right at the bottom that is 2021-11-04. I say:

“I spoke to H Naicker of Custom SARS arranged to meet the following week.”

So, I am not sure whether he was not available, but we did engage, we did touch base. I would assume there was nothing forthcoming from them for me to really diarise and file something that SARS had furnished us. So, you know I
10 cannot say what the involvement was, but I was touching base with regards to this.

ADV BALOYI SC: My question is trying to understand the role of SARS in what is now a police enquiry. The container is not with them anymore because you did say that it can be released. So, Customs has done its part. So, I am trying to understand exactly what would have been the role with your investigation.

COLONEL JACOB: Okay, Commissioner sometimes SARS can, they have got their own profiling team similar to border
20 police to SAPS. So, it would not hurt to make doubly sure that you are getting whatever information is at the disposal of either Customs or the police. So hence we bring them on board. But if I have to be honest, they are not very forthcoming in sharing intricacies of where the information came from, what led them to profile a certain container you

know.

So, we bring them on board as a formality, but I think their mandate is first and foremost Customs and excise. So, with regards to law enforcement further investigation in terms of drug investigations, we do not have that much cooperation. Or maybe they are not in a position to assist with further investigation. It is not their mandate. But I am saying the reason we bring them on board is basically to ensure that we are covering all our bases in
10 terms of whatever container had come in, we are not missing out on paperwork, Customs declarations and all of that.

ADV BALOYI SC: I think my difficulty with understanding the explanation is I come from and call it an ignorant position for lack of a better word, that I do not know and it is not obvious to me what in this particular operation after all the facts that we now know which is you go to a point where you said the container should be released. It is not clear to me, it is not obvious to me what would be the
20 continued involvement of the SARS in your investigation and if you speak about it, if your answer to me is the way you are handling it which is in general terms you are saying usually this is what we do, it still does not answer my - it does not give me any better clarity about what role in fact did you have the continued role of the SARS in this

particular operation, not generally but in this operation because for me it is not obvious.

COLONEL JACOB: Yes, you know I think the objective was to try and find out why did SARS put a detention on this. Obviously there must have been something that was a red flag, maybe something other than the port of origin, maybe something that could assist us. So, it is done, I am covering my bases, they have put a detention notice on the said container, it would not hurt our courts to engage with
10 them, let us put it that way Commissioner. So, we had them on board if they come through with something good because even part of the DPP's tasking from the prosecution side is to say get SARS on board, liaise with SARS. So that is what we did although there was not much forthcoming from them.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: Is it not the case that even the SARS people you are liaising with are law enforcement people who are seconded to SARS? I am just looking here at 808
20 where you say arrangements made with Commander N of SARS. I will not mention the name for obvious reasons. I am assuming that is a law enforcement person who conducts investigations also and whatever they uncover in that investigation may be useful when you take the full exhibits to the prosecutors or other people.

COLONEL JACOB: Exactly.

ADV KHUMALO SC: Because there may be photos for example that you do not have but they have of the scene and other things.

COLONEL JACOB: Yes, Commissioners. Thank you.

ADV BALOYI SC: I can see that Commissioner Khumalo is being of assistance, but I am still not clarified to my question. I am not clear what in this operation and I accept your answer is what it is, but I have to say to you that it is
10 still not clear to me in this particular operation what the SARS continued involvement was about. You made reference to a detention notice I think on the C-clip or something and I would expect that it provides a reason why they have put this under detention and I think we saw this. It is supposed to be seen by a vet, so I am trying to understand what role you were seeing for them in this operation, but I do not want to belabour it. I asked the question to try and understand their continued involvement. It is still not clear to me.

20 **COLONEL JACOB:** Commissioner maybe just to clarify there. SARS did not put a stop on this because it needed to be inspected by the state vet. That was not the reason for a detention notice. The state vet does it irrespective. That is part of the whole process of this food stuff for certain commodities coming through.

ADV BALOYI SC: All right, I guess it will be part of our discussion. We have heard evidence yesterday about this.

COLONEL JACOB: Okay, thank you.

ADV SELLO SC: Thank you Commissioner Baloyi. Thank you Colonel. I think your - should I call, the opportunity to put your version across now has officially come to an end and the moment of engagement resumes.

COLONEL JACOB: Yes, thank you.

ADV SELLO SC: I would like us to start with your
10 paragraph 10 at page 2 of your statement. And as I understand if you have regards to paragraph from paragraph 8, from paragraph 6, you have been involved with SANEB which is the South African Narcotics Enforcement Bureau from technically 2009 to 2018. You had a break for about a year and from 2020 you, at paragraph 8, you went back to SANEB and this time in a senior position and by February 2022 you were then promoted to the rank of Colonel and appointed as the unit commander and your unit included SANEB, correct?

20 **COLONEL JACOB:** That is correct.

ADV SELLO SC: So that is quite a long career in, I nearly said in narcotics but that should be wrong, in the area of investigation of narcotics. Is that fair?

COLONEL JACOB: Yes.

ADV SELLO SC: Okay, now at paragraph 10 you say:

“I have coordinated drug operations, managed drug projects, dismantled clandestine laboratories and been involved in several drug seizures at the port and container ports.”

Okay, then you deal with a specific seizure of the 22nd of June. My interest here is, would I be correct to understand you to mean that you have done a number of seizures, drug seizures, at ports and container ports including the Durban
10 container port? Is that correct or am I wrong?

COLONEL JACOB: That is why I put there I have been involved. Personally, this was my first, the one on 22nd June, seizure that I have investigated personally. It was the first seizure at a depot. Usually, my investigating officers would do that. This was the first one that I took on personally.

ADV SELLO SC: Now let me understand, I understood the last sentence of paragraph 10 that reads:

“Prior to the drug seizures, seizure on
20 22nd June 2021, I had not conducted a larger seizure.”

I thought the point you sought to make there was the size of the seizure, not involvement in seizures.

COLONEL JACOB: Just to clarify Commissioner, when I say I have been involved in several drug seizures at the

port, meaning I was involved, I played a role either as a commanding officer just overseeing operations or physically there assisting with whatever needed to be done, but this was the first one that I took hands-on to investigate where I was the investigating officer.

ADV SELLO SC: So, it is not a question of size of seizure, is that after more than 15 years of being involved in SANEB, this is the first time you set foot at the Durban Harbour to conduct a seizure, a drug seizure.

10 **COLONEL JACOB:** No, no.

ADV SELLO SC: Where am I missing you? Please try again.

COLONEL JACOB: Yes, okay. I have been present at seizures. I was not the investigating officer. I have been there since the inception. We went and opened up containers or reefer containers and discovered drugs in hidden compartments. I was there from the inception from A to Z, but I had not been the investigating officer thereof.

ADV SELLO SC: Yes, no, I appreciate that.

20 **CHAIRPERSON:** Why do you seek to draw that distinction, being an investigator or being involved?

COLONEL JACOB: Just for the sake of being clear to the Commission, because I think the evidence leader was asking about that.

CHAIRPERSON: Does that distinction matter for purposes

of what you would know or what you would consider necessary in terms of process?

COLONEL JACOB: I hear you, Chair.

CHAIRPERSON: Because surely you were not there purely out of interest. You were there as a police officer and surely you would have had an interest in what was going on.

COLONEL JACOB: That is correct.

CHAIRPERSON: So, it is not just a visit, a curiosity visit.

COLONEL JACOB: Yes.

10 **CHAIRPERSON**: So, the distinction should not really make a difference.

COLONEL JACOB: Chair, just for clarity, when drafting the statement, I was part of the email that was sent to me by the investigators.

CHAIRPERSON: Can you just answer the question? Can you answer the question?

COLONEL JACOB: Yes, it was to include this. I was asked to include this, but whether I have done a larger seizure of drugs at a point ...[intervenes]

20 **CHAIRPERSON**: No, no, no, no. I am interested in the value of drawing the distinction between involvement, not being an investigator, and being an investigator. I am interested to know. Yes, that is all I am asking you.

COLONEL JACOB: You know, Chair, I think maybe I may ...[intervenes]

CHAIRPERSON: Because, and bear in mind, I have made the point that surely as a police officer you were not there as a curious visitor. So now tell me why you draw the distinction or what is the practical value for drawing the distinction?

COLONEL JACOB: Maybe I am trying to show the Commission that this was the first one I had handled hands-on from A to Z.

CHAIRPERSON: But in terms of what needs to be done,
10 the distinction does not take us anywhere.

COLONEL JACOB: No, I will not shy away from that, Chair.

CHAIRPERSON: Thank you. Thank you. That is all I want to establish.

ADV SELLO SC: Thank you, Chair. Before I pose a question to Colonel Jacob, Commissioners, I would like to refer us to CJC250 in the exhibit file. It would be the same file?

ADV KHUMALO SC: You say 250.

20 **ADV SELLO SC:** No, there is a correction. It is 256. It is changed to 256.

ADV KHUMALO SC: Mine starts at 255. That is what I was ...[intervenes]

ADV SELLO SC: Yes, no. It starts at 255. The Commissioner is correct. I am referring specifically to 256

at page 705. Now, I reference this particular document. That is the SAPS Operational Response Services Durban Harbour Standard Operating Procedure, Cargo Operations Sector 2021-2022. The Commissioners will recall, and it starts at page 705, the Commissioners will recall that we came across this document yesterday during the testimony of Captain Duma, and it was part of the confidential exhibit file provided to us by Crime Intelligence.

And there were sensitivities on the part of the
10 Commissioners whether or not it has been declassified. So, I put this document before you as a document sought and obtained from the Durban Harbour. The printer is running at the PEC to update your files, but in the interim, I would like to distribute an email I received from - we received from Brigadier MG Newton Section Head Visible Policing and Operations Durban Harbour Border Policing KwaZulu-Natal. And technically, for your files, I think it is necessary maybe to read it into the record as addressed to our attorneys:

20 “In the capacity of the Section Head Durban Harbourt, Brigadier Newton is authorising the Commission of Enquiry into Criminality, Political Interference and Corruption in the justice system to utilise the content of the standard operational

procedure for cargo control Durban
Harbour in an open session.”

So, I just want to specifically address that because I need
to turn now to the standard operating procedures. Colonel
Jacob, you followed ...[intervenes]

ADV BALOYI SC: And it becomes page 813, right at the
back of your ...[intervenes]

ADV SELLO SC: Yes, it becomes page 813, that is the
start of CJC269, and it will be followed by the documents
10 that Brigadier Newton has made available, including this
SOP, and they shall follow sequentially thereafter. But it
will be the last exhibit in your file currently. Thank you.

COLONEL JACOB: 269.

ADV SELLO SC: CJC269, Colonel, is an exhibit yet to
come.

COLONEL JACOB: Yes.

ADV SELLO SC: I was explaining the status of the
document. Sorry, I was explaining the status of the
document. All right and giving the Commissioners an
20 assurance that we have been given permission to utilise
these documents in open session. You understand that?

COLONEL JACOB: Yes.

ADV SELLO SC: That is all I need. I would like you to
turn to CJC255 at page 686. If you keep your finger there.
If you keep your finger at 686 and go forward - my

apologies. If you keep your finger at page 686 and go forward in the file, you get to CJC256, and that will start at 705.

COLONEL JACOB: 705, Commissioner. Starts at 705, CJC256.

ADV SELLO SC: Yes, starts at 705. Is that what you have?

COLONEL JACOB: Yes.

ADV SELLO SC: So, both of these are standard operating
10 procedures for the Durban Harbour. You understand?

COLONEL JACOB: Yes.

ADV SELLO SC: Now the difference really is the first, CJC255, is for the period 2020 to 2021, as it is reflected as page 686. You see that?

COLONEL JACOB: Yes.

ADV SELLO SC: And the second one starting at page 705 is for the period 2021 to 2022. Have you ever seen any of these documents? In your line of work, and I say in your heavy involvement in drug seizures at the container port,
20 have you ever come across these documents or even had opportunity to familiarise yourself with their contents?

COLONEL JACOB: I have not, Commissioner.

ADV SELLO SC: You have not. Now if we stay at 686, at CJC255, I would like you to go to page - I am looking at paragraph 7. That would be at page 690. And paragraph 7

is headed Duties of Inner Perimeter Cargo Operations. It has got sub-paragraph 7.1. You see that?

COLONEL JACOB: Yes, I do.

ADV SELLO SC: Let us skip to paragraph 7.2, Depot Inspection Team. And over leaf, first bullet point, it notes the following:

10 “The inspection report is dispatched from
the admin profilers once the container
has been booked for inspection at the
licenced depots.”

Do you see what I am reading?

COLONEL JACOB: Yes.

ADV SELLO SC: Do you know what a licenced depot is?

COLONEL JACOB: Yes, I am aware.

ADV SELLO SC: Please explain to the Commissioners.

20 **COLONEL JACOB**: It is one of those depots that border
police has - these depots have an agreement with shipping
lines and after the containers arrive at our harbours, at our
ports, they take them to these licenced depots that border
police have jurisdiction over as well.

ADV SELLO SC: Okay, would CHC depot be one of those?

COLONEL JACOB: I heard via the Commission that they
were.

ADV SELLO SC: They were a licenced depot.

COLONEL JACOB: Yes.

ADV SELLO SC: And in fact, you are quite correct.

COLONEL JACOB: Yes.

ADV SELLO SC: Because if you go to paragraph 4 under Mission, at paragraph 5, and that will be at page 659. No, 687, I think. 688 to be more precise. Page 688. My apologies, I just want to check, yes.

CHAIRPERSON: It is the fifth bullet from the bottom just above paragraph 6?

ADV SELLO SC: Yes, it is area of responsibility, that is
10 paragraph 5. You see that? And yes, Chair, it is the fifth bullet point from the bottom of the listed areas there. And that reads CHC depot Isipingo Prospecton.

COLONEL JACOB: Yes, I see it, Commissioner.

ADV SELLO SC: So then you have always known that CHC depot Isipingo Prospecton is part of the licenced depot. It falls under the responsibility of the ORS services at the Durban Harbour. Is that area of responsibility? Or is that an understanding you did not have?

COLONEL JACOB: I did not have that understanding.

20 **ADV SELLO SC:** So, in the times that you were executing these drug busted ports and at the Durban port, you did not know the layout of the Durban port and the areas over which ORS has got responsibility?

COLONEL JACOB: Not specifically as indicated in this point 5, Commissioner.

ADV SELLO SC: What did you know about licenced depots?

COLONEL JACOB: Yes, I was aware that they are licenced depots. I could not name them, but I knew they were contracted to shipping lines and border police have jurisdiction over them.

ADV SELLO SC: So, you understood that border police had jurisdiction over licenced depots?

COLONEL JACOB: I do.

10 **ADV SELLO SC:** You are saying what you did not know specifically at the time is that the CHC depot is one of the licenced depots?

COLONEL JACOB: Yes.

ADV SELLO SC: When did you make this discovery?

COLONEL JACOB: I think when Captain or Lieutenant Colonel Duma was giving his evidence.

ADV SELLO SC: When you enter the harbour, are these areas not behind some level of security so that I cannot just wander in? This is double - this is harbour operational
20 areas. They are controlled and I think Colonel Sanders and Captain Duma testified that you go through security gates. Is that not how it works?

COLONEL JACOB: There is a boom gate manned by a security guard, Commissioner.

ADV SELLO SC: So, it is a controlled environment?

COLONEL JACOB: Somewhat, Commissioner.

ADV SELLO SC: What do you mean by somewhat?

COLONEL JACOB: It is not the most highly secure, yes, but it is controlled. It is controlled.

ADV SELLO SC: Now, did you know or do you know that at these depots, that is where sometimes, depending, that these inspections are undertaken?

COLONEL JACOB: Yes, I do.

ADV SELLO SC: And that sometimes significant seizures
10 are made from these containers?

COLONEL JACOB: Yes, I am aware, Commissioner.

ADV SELLO SC: So, your testimony to this Commission is that all that activity takes place in less-than-ideal security environments. Is that your testimony?

COLONEL JACOB: In some cases, yes, Commissioner.

ADV SELLO SC: Okay, now please explain in which cases?

COLONEL JACOB: If I speak specifically about CHC container depot, the depot in itself is not a fortified
20 premises. It is not heavily secured, except for a boom gate and a security officer manning that boom gate. There is no additional security that I was aware of.

ADV SELLO SC: Okay, maybe before I ask my question, what do you mean by fortified?

COLONEL JACOB: I use that word, Commissioner, based

on your question of the security at these premises. So, I mean, there is nothing that is ...[intervenes]

CHAIRPERSON: Sorry, Ms Sello, said nothing about security. What Ms Sello said was, so are you suggesting that these operations take place at less-than-ideal situations?

COLONEL JACOB: Okay, yes, I can say that, Commissioner.

ADV SELLO SC: And now testing from your experience,
10 because I take it you are a very experienced Colonel and police officer, that would not be an ideal environment to conduct the seizure as you did on the 22nd of June?

COLONEL JACOB: I think that is a stretch of it, Commissioner. I would say, with the right manpower, with the correct members, the tactical team, you have got enough support in terms of tactical members, then it would not be a risk. But on its own, to me it is a vulnerable location.

ADV SELLO SC: And on the day, why then did you, once
20 you discovered the drugs, did you not stop everything? You did indicate that you were responsible. You took the decision not to cordon off the area, as you tell us, at your paragraph 21. Why did you not hold all operations until you had sufficient manpower on the day?

COLONEL JACOB: Okay, Commissioners, I think on the

day, if I had to explain, there is so many things that is going through your mind. Firstly, if I had to put it this way, to let the Commission know of what thoughts were going through my mind, what thought process I followed. It is my first visit to CHC Container Depot. The container was removed from a stack of a lot of, like, it was high up on a stack.

They brought it down. It took quite a while to even get that container placed. So, when it was placed, I think even the photos in the enquiry will show that there were
10 other containers close by. The working space was not that conducive. So, when it was placed, and after the photos were taken, the lock was broken. And upon opening the doors, now I am faced with this magnitude of drugs that we were not expecting.

And I look around and I see, okay, there is a container to the right, there is a container to the left. I have got a narrow kind of thoroughfare that I can offload the drugs or unpack bags and lay them out there. However, the area itself was not, it was going to give us a limited
20 space. Even if I did an outer cordon, an inner cordon, that area was not conducive.

So, my next thought process was, okay, do I now, logistically, do I move these 27 bags to another part of the of the depot? There would have obviously been another part that would have not been as congested. Do I move it

there? But then I look at the logistically, it means us carrying these bags, or how do we move it? Do all our police officers' line up and carry it to another place?

Do I seal up that container and take the whole container to another workspace? But in my mind, I know the actual crime scene itself is only the container, not the depot itself. So, for me, at that stage, I made a decision. Firstly, bearing in mind we did not have enough bags, the area is small. This is not an offence that required us
10 uplifting physical evidence from the depot.

This is not an offence, or the depot itself was not, I would not even say complicit, but they are just an innocent party, happened to be in possession of this suspect container at that point in time. If I can give the Commission, just in order to paint a better picture, if this container was at the rear of a truck that was travelling on the N3, and we had information that it had drugs in it, and we pulled over this truck at the side of the N3, do I now say that the side of the N3 is my crime scene, and I do an inner
20 and outer cordon there?

My point being, I know that is an extreme example, my point being, my actual concern is the crime scene, which is the container. The depot plays no real role in anything, whether I start counting at the depot, or whether I do it at a police station, which in my mind is only 4 kilometres away.

It is under a 5-minute drive to get there. So, I took that decision at that stage, based on no bags, based on our situation that we were working in, based on the fact that, like I say, I did not want to unnecessarily prejudice that company.

I know these scenes can take hours to process, and where we were at, yes, I could have moved it, but I took that decision based on the distance that Isipingo SAP was away from the CHC depot. Four kilometres is not a heavy
10 distance. More, I would say I was more informed to make that decision based on the fact that now we have got uniformed border police guys that are also there.

There is three, me and two other members from DPCI. At the back of my mind, I know it is never wise to move exhibits from a scene, but I am consoling myself by saying to myself that there can never be any question marks or insinuations about the integrity of these exhibits, because I am now using members that I have never seen before, uniformed members in full uniform.

20 We have got a marked police vehicle that can cut the stuff from, cut the exhibits from the depot to the police station. All of those factors, you know, at once, and I knew, in my mind, I knew that Isipingo SAP is going to have exhibit bags. So, when we get there, it is going to make putting them in bags, sealing them, all of that much easier,

and we enter them into the SAP13.

So that was my thought process, Commissioners, when I made that decision. It is a decision that I will now rue, I think, for the rest of my life. It is something that I will regret. I made that decision on the day based on the factors that I have just explained.

CHAIRPERSON: I am sorry, I hope I will not interrupt your thought process. I have serious difficulties with that response. The reason is, you have given a number of
10 reasons why you considered it not to conduce to a proper operation for you to work where the container was. You have given a number of reasons, and those reasons have nothing to do with the one reason that you do give in your statement at paragraph 21. You give the reason at paragraph 21 towards the end of your substantiation, and it is the only reason you give. But now, in response to Advocate Sello, you give a number of reasons.

COLONEL JACOB: Yes.

CHAIRPERSON: I have difficulties with that. Is this not
20 trying to rationalise the situation after the event?

COLONEL JACOB: Chair, I take what you are saying.

CHAIRPERSON: Because, I mean, if you have so many reasons, so many reasons, surely this is something that you thought about at the time, and something that should also have been uppermost in your mind when you drafted this

statement. But all of that is simply absent, and you give just one example, and which seems not to be that important to you because you mention it right at the tail end, but it is that one reason that you give in your statement. I do not understand that.

COLONEL JACOB: That was my thought process, Chair. I have got minutes to make a decision that is going to either mean going in one direction and calling the necessary guys out, and maybe there is going to be time constraints for
10 those guys to mobilise. I had a lot of things running through my mind.

CHAIRPERSON: That is true. That is true. If at all that was indeed the motivation. But it is not in your statement. All of those are the important reasons, but they are not in your statement. There is the one reason which, when you substantiate now, seems to be something not that important, but it is the only reason that you mention here. That is the difficulty I have.

COLONEL JACOB: Yes, I have got no comment to that,
20 Chair.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. I am aware it is about lunchtime. Can I just close with one question, and then we will leave this topic and start a new one after lunch. So now we have established that CHC depot is a licenced

depot. We have established that ORS Durban Harbour has full responsibility over that area. Do you accept that?

COLONEL JACOB: I do.

ADV SELLO SC: And you knew at the time? You knew at the time?

COLONEL JACOB: I did not know specifically CHC was listed as this, but I knew Border Police worked there.

ADV SELLO SC: Okay, but when you were at this particular depot carrying out the operation, you knew now
10 you are under the auspices or the jurisdiction of ORS Durban Harbour.

COLONEL JACOB: May I give ...[intervenes]

ADV SELLO SC: No, I just wanted to know if you knew at the time, or did you think that you were next to a public area?

COLONEL JACOB: No, Commissioner, I think my answer to that is I did not think there was any obligation for DPCI now to - I did not know of this document.

ADV SELLO SC: You are not being fair, Colonel. I asked
20 you a simple question. Did you know at the time of the execution of the operation whether you were in the area over which the ORS Durban Harbour had jurisdiction? Did you know that fact?

COLONEL JACOB: I knew they worked there. I did not know they had sole jurisdiction that they were there.

ADV SELLO SC: So, if there were any security concerns you may have had, you could have called on them. They are available. They are your members. They are part of SAPS.

COLONEL JACOB: Yes, but – okay, yes.

ADV SELLO SC: Did you call them to come assist?

COLONEL JACOB: I called the members that were there, Commissioner. There were two that eventually drove the vehicle, but from my recollection there were about 4 or 5,
10 maybe even 6, 4 to 6 of them that were at the depot.

ADV SELLO SC: Colonel, at this stage you are a very senior member within SOCIU. If you say that there is a jurisdiction for ORS Durban Harbour, there is a command structure within SAPS that I am sure you are familiar with.

COLONEL JACOB: Yes.

ADV SELLO SC: If you need assistance, you know who to turn to?

COLONEL JACOB: Yes.

ADV SELLO SC: And even that day you knew who to turn
20 to. I will take it you talked to the Harbour commander or somebody. You just do not talk to random police members that you see walking past. Surely you do not.

COLONEL JACOB: No, in fact, Commissioner, they radioed their commander to inform him that they were going to assist with regards to conveying exhibits to Isipingo SAP.

ADV SELLO SC: Okay. We will get there after lunch, but my question is your conduct and your decision. You never called ORS commander.

COLONEL JACOB: No, I did not.

ADV SELLO SC: So, would I be correct then to say that moving to Isipingo had nothing to do with security and had nothing to do with the fact that Umlazi was 11 kilometres from your work area? That was not relevant to your decision at the time?

10 **COLONEL JACOB:** No, I disagree with that.

ADV SELLO SC: Okay, Chair, it is 10 past 1. I have eaten a bit at that hour.

CHAIRPERSON: Thank you. For the record, let me just indicate what the one reason you give is. You say, paragraph 21, I did not want to prejudice the company by closing them down for the rest of the day as they were not suspects in the matter. Yes, I just mentioned that you had one reason. For the record, I just want to state that reason. I am not asking for a comment. Thank you. Let us adjourn

20 and come back at 10 past.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV SELLO SC: Thank you. Thank you, Chair. Afternoon, Colonel. If you could just have your mics ready?

COLONEL JACOB: Good afternoon, Commissioners.

ADV SELLO SC: Colonel, I would like now to turn to the day of the seizure. That is the 22nd of June 2021. You start with that at paragraph 11, on page 2 of your statement. You see that?

COLONEL JACOB: Yes, I do.

ADV SELLO SC: And you indicate that you had received information from Captain Duma of Crime Intelligence, and you describe the nature of the information. You then indicate:

10 “I called Mpangase after the call from
 Captain Duma. He indicated that he
 would brief Brigadier, now you have
 clarified Nyuswa, accordingly. I asked
 him to inform the Brigadier that I was
 booking on duty to attend to the same.”

You were officially on leave from the 10th of June till the 30th of June. Is that correct?

COLONEL JACOB: It may have been the 10th, but not till the 30th. It was the 28th, probably, because I was back at
20 work on the 29th of June.

ADV SELLO SC: Okay, we will cross-check that.

COLONEL JACOB: Ja.

ADV SELLO SC: But it is an official leave, and it is loaded onto the SAPS system.

COLONEL JACOB: That is correct, Commissioner.

ADV SELLO SC: So as far as the system is aware, you are not working as a policeman during that time?

COLONEL JACOB: Yes, yes, Commissioner. That is correct.

ADV SELLO SC: Now, you say here, I asked him to inform him that I was booking on duty. Can you explain to the Commissioners how that happens? The system books you off. You are not there. How do you get to attend operations during that time? Do you require approval by your senior?

10 And is it possible that your senior may refuse to grant approval, and what would the effect of that be?

COLONEL JACOB: Okay ...[intervenes].

ADV SELLO SC: Or, if I can just conclude? Or is it entirely up to you to decide when, during your leave, you are back on duty and you are off from duty again?

COLONEL JACOB: Okay. My understanding, Commissioners, is when you are on leave, you are on leave. However, a policeman, if there is an accident or some circumstance, like a robbery is committed in front of you or
20 some offence, you are obligated to act. So in those circumstances, yes, you may book yourself on duty.

However, in this instance, this is not something that is urgent or life-threatening. I would have needed my Commander to grant approval for me to resume duty or to book on duty and to conduct this operation.

ADV SELLO SC: Would your Commander require an explanation as to why you must be booked back on duty if it is not an urgent matter?

COLONEL JACOB: Yes, he would.

ADV SELLO SC: So now, when you say you asked, Warrant Officer Mpangase had to inform him that you are booking on duty, you are not seeking his permission. You are saying, inform him that I am back on duty.

COLONEL JACOB: Okay, it is a play on words, but yes, I
10 hear you, Commissioner. In fact, I am supposed to request authority to book on duty.

ADV SELLO SC: So is your correct testimony that you asked a Warrant Officer on Banga to request on your behalf from Brigadier Nyuswa that you be back on duty for the 22nd to attend to this operation?

COLONEL JACOB: That would be correct.

ADV SELLO SC: Is that what you meant?

COLONEL JACOB: That is what I meant.

ADV SELLO SC: Now, and it is acceptable in SAPS and
20 DPCI that you do that verbally? You do not have to make a formal request?

COLONEL JACOB: Yes, it is.

ADV SELLO SC: Is it recorded anywhere that it has happened?

COLONEL JACOB: There is record of it. Probably your

Commander will make a pocketbook diary entry to that effect. You as the subordinate would also make an entry to that effect, booked on duty, maybe who did you inform, that type of thing. So it does happen in exceptional circumstances.

ADV SELLO SC: You remember that before we broke for lunch we looked at your investigation diary CJC268, your handwritten diary that you helped us work through to understand?

10 **COLONEL JACOB:** Yes.

ADV SELLO SC: Would this not be a matter that is supposed to be reflected in the investigation diary?

COLONEL JACOB: Not necessarily in the investigation diary, Commissioner.

ADV SELLO SC: So it is reflected only in your Commander's personal diary?

COLONEL JACOB: I would say in his diary as well as informing our HRM, our persons that are in charge of leave and that sort of thing. So I think that would also be
20 pertinent. And the reason I am saying that is because sometimes members ask for their time due back at some point in time, so there must be official record thereof.

ADV SELLO SC: So are you suggesting perhaps Brigadier Nyuswa is the only one who can shed light on this to advise whether or not he informed HR and there was a formal

record of you being back on duty?

COLONEL JACOB: It would not be up to him to inform HR, Commissioner, because he sits at a different office. My HR person is at my building. So I would inform my HR person and make a photocopy of my diary as to what did I book on duty for and what were my duties for that day and that would be stored in a time due register or a file that if you needed that time at some point in time you can request it.

ADV SELLO SC: Did you do so on this day?

10 **COLONEL JACOB**: I did not request that time back.

ADV SELLO SC: Now, did you file the documentation that you just referenced?

COLONEL JACOB: No, I did not file it. I just made a diary entry.

ADV SELLO SC: Why did you not file it with HR for record purposes?

COLONEL JACOB: I did not want to take that time back, Commissioner. It was not something that was a necessity for me.

20 **ADV SELLO SC**: It is time you are entitled to pay for. Why do you not want it back?

COLONEL JACOB: I was on leave for that period and I worked for I think from, I left home just after 7 maybe or 8 around there. I am not sure I got back in the afternoon sometime, I would think even before 4. So I was not really

concerned about that time. In fact, if I may go further to add, I love my job. I look forward to working. It gives me a thrill to do a drug bust or any operation.

And maybe if I may go further, Commissioners, with your indulgence? When I looked at my diary, even I see on the 22nd of March this year, as recent as that, I had come back from a vacation in Margate and still on vacation leave. And one of my SANEB guys called me to assist to execute a search warrant where the occupant was only at home for
10 certain periods, for an hour at a time.

So every time my members went out they were missing him. So at this point in time it was a Sunday, I had just arrived from Margate, and he is a Captain now, I will not mention his name, gave me a call to say he is trying for his SANEB members and they are going to take a while to mobilise because none of them were in the area. And he asked me, and my name is always on every search warrant they do, because I am very operational.

So he asked me to come through and assist. So I
20 went there, we intercepted the guy before he could leave, and the members joined maybe about 45 minutes later. So my point in relaying the story is that it is not out of the ordinary in our line of work to book on duty, whether you are on leave or it is a weekend or whatever. Thank you.

ADV SELLO SC: Civic duty.

COLONEL JACOB: Yes. Yes, Commissioner.

ADV SELLO SC: Now ...[intervenes].

CHAIRPERSON: Sorry, you make the time you participated in this operation to be minimal. Based on what you say, it was actually a whole day.

COLONEL JACOB: Yes, I ...[intervenes].

CHAIRPERSON: It was a whole day.

COLONEL JACOB: Yes, it was.

CHAIRPERSON: No, I just want to clear that because you
10 sounded as if you were making it very minimal.

COLONEL JACOB: Sorry, Chair. Yes, and I still proceeded to be on vacation leave thereafter. So, yes ...[intervenes].

CHAIRPERSON: I get that. I am just talking about this one day.

COLONEL JACOB: No, you are correct, sir.

ADV KHUMALO SC: Can I ask one question on this topic? Because you were on leave, the decision you make to book yourself for the purposes of doing this, why did you not
20 assign it to somebody in your team who was equally capable of assisting? Why did it have to be you?

COLONEL JACOB: Commissioner, it is not every day that you get an opportunity to participate in an operation where you are inspecting a container that is suspected to contain drugs. It is something that, for me, it was something that

was worth going to work for to obviously check this information out.

ADV KHUMALO SC: My difficulty with that is that if you look at your entry, at this point all you knew that it was 27 kilograms, just one bag.

COLONEL JACOB: Yes.

ADV KHUMALO SC: So it was not something that was so significant that you needed to break away from your leave and be the one who attends. Even a junior officer or
10 somebody in your team who is capable of attending a bust of 27 kilograms could have done that. We subsequently learned that it was more.

COLONEL JACOB: Yes.

ADV KHUMALO SC: But at the time when you took the decision, you were told that it is 27 kilograms.

COLONEL JACOB: Okay.

ADV KHUMALO SC: So I do not understand why it was so important for you to say, I am on leave, but I will participate.

20 **COLONEL JACOB:** I have got a response, Commissioner. We only became aware of the number that Captain Duma, at that stage Captain Duma, the number of kilos that he suspected was only relayed to us when we reached Isipingo and did a briefing prior to proceeding towards CHC. When we proceeded to Isipingo area where my two members,

together with myself, met with Captain Duma, it is only then that he told us it was 27 kilograms, Commissioner.

ADV KHUMALO SC: You keep changing that to fit with the timeline. I had understood that when they called you, you were at home. They gave you this information. They came to pick you up. Now you are saying you only found out when you arrived at the depot that it was 27 kilograms.

COLONEL JACOB: Not the depot, Commissioner. Prior to the depot, maybe it is here in my statement somewhere. I
10 will look at it. I will tell you which paragraph, Commissioner.

ADV BALOYI SC: Paragraph 13.

COLONEL JACOB: Paragraph 13:

“We met with Captain Duma in the
Isipingo area. He informed us that there
were alleged to be 27 pieces of Cocaine
in a container number...”

And I go on to name the container.

ADV KHUMALO SC: Now, you say 27 pieces and 27
20 kilograms because I am reading from your investigation diary on page 800. 27 pieces, I thought it is something different. Because here you say information received from CI was that a container containing plus minus 27 kilos.

COLONEL JACOB: Okay. Where are we reading that from, Commissioner?

ADV SELLO SC: CJC268 at page 800. That is your investigation diary.

COLONEL JACOB: Okay.

ADV SELLO SC: The first entry.

COLONEL JACOB: Yes. Okay. Commissioner, this entry is made by Warrant Officer Mpangase. He lists information received from CI was that a container containing plus minus 27 kilos of the drug Cocaine was kept at Isipingo. So I am not sure what time he made it, but he made it on the 22nd of
10 the 6th. And 22nd of the 6th is when I became aware it was 27 kilos or units, pieces or units.

Only when I proceeded with them to Isipingo and we did a deep or a briefing initially with Captain Duma, that is when the quantity that was alleged to be within the container was indicated to us.

ADV KHUMALO SC: So as far as you are concerned, when you decided to get away from your leave, it could even have been five kilograms because that is why I still do not understand your decision that I am leave, but I will
20 participate. Other team members will not participate. I will do it.

ADV SELLO SC: If I can just pick it up from there, that is my challenge. Because according to your investigation diary, that was the first entry you read. The first entry gives you the weight. It gives you a container number.

COLONEL JACOB: Yes.

ADV SELLO SC: It is the second entry read thus:

“Myself, Lieutenant Colonel Jacob,
Warrant Officer Sibiya from Durban DPCI,
together with CI member proceeded to
Isipingo Prospection Warehouse.”

You see that?

COLONEL JACOB: Yes, I see that.

ADV SELLO SC: So from this document it appears the
10 information was there before you even got to the harbour.

COLONEL JACOB: Yes, Commissioner. I think maybe
Warrant Officer Mpangase just got it mixed up because,
Commissioner, with all due respect, if you look at every
statement, every document in this inquiry, nothing reflects
otherwise.

ADV SELLO SC: Okay, let me ask this question. At the
time you received the call, before you were picked up from
home at seven, please summarise the information you had
received.

20 **COLONEL JACOB:** Yes. Okay, at that stage when Captain
Duma had called, he reminded me that, you remember I told
you there is something coming on a container? It is at
Isipingo, I think he did tell me. But he did not give me
quantity. And I told him I am on vacation leave. He did not
have to insist that much. I was wanting to go, honestly. So

when he told me there is this information that we should meet, he has spoken to Mpangase, and that we should meet at Isipingo.

Then I told him, okay, I will talk to him, Mpangase, and I will ask him to, I need to book on duty, but I will come through. So it was only when we proceeded to Isipingo, even in the vehicle, Mpangase never knew the amount, according to me, because we did not discuss any of that, even Colonel Sibiya. None of us knew the quantity until, or
10 me personally, I am talking for myself, none of that was discussed.

It was only when Captain Duma met us in Prospecton, prior to going to CHC Depot, we met at some garage, and he briefed us on the container number, together with the alleged quantity of narcotics within that container.

ADV SELLO SC: So technically, when you decided to book yourself on duty, you cannot say it was because it was at the prospect of a large drug seizure because you had absolutely no idea as to size.

20 **COLONEL JACOB:** No, I did not have any idea.

ADV SELLO SC: You just booked yourself on because it was a drug bust, a potential drug bust.

COLONEL JACOB: Yes, and more especially a container was involved, Commissioner.

ADV SELLO SC: And what was the relevance of the

container?

COLONEL JACOB: You do not get a container inspection or information pertaining to a container every day. It is something that rarely happens. I know 2020, between 2020 and 2022, we had a lot of those, but prior to that, and even subsequent after that, these are very few and far between. It is not every day that you get one of these busts.

ADV SELLO SC: I do not understand, because in paragraph 14, you are the one who introduced the notion of
10 rip-on-rip-off load. And that view you formed immediately upon seeing the container, and then over leaf, you then describe this modus operandi. And I read all you have set out there as deriving from your experience, that with these containers, you know the rip-on-rip-off modus operandi. So now you are saying you were excited because it is a container.

COLONEL JACOB: Yes.

ADV SELLO SC: But at 14, 15, it sounds like you have had experience in rip-on-rip-off operations involving containers.
20 So, unless I am misunderstanding you.

COLONEL JACOB: Yes, once again, Commissioner, I did, I have been to a few. But I am saying it is not every day like catching a street dealer or somebody, a drug dealer that we have been targeting. This is something that is coming from another country. It is a commodity that is originated from

there. There is some, a little more – it is more satisfying when you see I am being involved in an operation of this nature.

ADV SELLO SC: Okay.

ADV BALOYI SC: So, can I please ask a slightly different question? I understood you to say earlier that your Commander was, I think, Colonel Duma.

COLONEL JACOB: Duma, yes.

ADV BALOYI SC: So, why do you speak to Nyuswa
10 instead of your immediate Commander that you are booking on to duty?

COLONEL JACOB: Okay. Commissioner, I am going to try and say this with no disrespect to the Colonel Duma. Colonel Duma had come back on a contract to work within the SAPS. It is those members that went off at 60 and then there was an opportunity to come back on a contract. And the Colonel was not very much *au fait* with operational matters or anything of that nature. It is by virtue of her rank and seniority that she was Acting Unit Commander.
20 And at that stage, they were rotating maybe on a two-week basis, I cannot recall.

But there was not somebody placed there permanently or for a longer duration that now you could engage with and keep them posted on your developments. So, it was wrong. I should have contacted her, but she was

not one of those Colonels that was hands-on with operations or anything of that nature. It was understood that anything of an operational nature would be discussed with our Brigadier or he would be the one to give you guidance or whatever you needed. Thank you.

ADV BALOYI SC: Except here, according to you, you did not speak to Colonel Nyuswa. You sent Mpangase, Warrant Officer Mpangase, to do that. So, you are not discussing anything operational with Nyuswa.

10 **COLONEL JACOB:** Yes.

ADV BALOYI SC: You actually just sent somebody to say, just brief him or whatever, that I am coming on to duty. So, that cannot be, what you have just said now, cannot explain why you skip your immediate Commander. And remember that in your earlier evidence, you said you must inform your immediate Commander. So, Nyuswa is not your immediate Commander. Still, the question is, why do you not comply with the requirement that if you are signing on back to duty in these circumstances, you speak to your Commander, you
20 inform your Commander? If you would answer that first, actually.

COLONEL JACOB: Yes. Commissioner, I have got no valid reason for not doing so. It was an error on my part.

ADV SELLO SC: Okay. And even with Nyuswa, you do not speak to him. You get a Warrant Officer, someone much

junior to you, that you get him to be the one that tells that senior person, Nyuswa, that you are coming back on duty, instead of you reporting yourself to be back on duty. Can you just explain, because it is an anomaly?

COLONEL JACOB: Yes.

ADV BALOYI SC: Why do you behave that way?

COLONEL JACOB: Commissioner, initially when Mpangase told me he was going to brief the Brigadier, I assumed he was going personally to him to brief him. And I
10 know in the mornings is the time that our Brigadier normally is engaged with whatever duties he does. But that being said, I thought Mpangase was going to have a one-on-one and inform him what is happening.

But even though it is not stated in my statement, the Brigadier did remind me that I did call him. You know, even prior to when I first alluded to in my statement, where I say that was at Isipingo parking area, that I called him and ...[intervenes].

ADV BALOYI SC: That is not my question. My question is,
20 when you send Mpangase to brief Nyuswa that you are coming back on duty, why do you send Mpangase? You have his number, you have Nyuswa's number, I must assume.

COLONEL JACOB: Yes.

ADV BALOYI SC: The requirement, as you explain it, is

you tell your Commander, right?

COLONEL JACOB: Yes.

ADV BALOYI SC: We have established you do not tell your Commander. You speak to somebody else who is above your Commander.

COLONEL JACOB: Yes.

ADV BALOYI SC: But the second question that I am asking you now is, well, why do you not speak to Nyuswa yourself to report yourself back on duty? Because you are
10 reporting back on duty, right? Why do you not do that?

COLONEL JACOB: I cannot give you an answer, Commissioner. But if Mpangase, he did give me feedback that the Brigadier said it is okay, but if ...[intervenes].

ADV BALOYI SC: Maybe he lied. My concern is not what Mpangase said to you. My concern is to get a satisfactory explanation for this obvious irregularity. It is an obvious irregularity. You are on leave, one. So the context matters. You are on leave. You get a call to be told there are these drugs.

20 You do not speak to your Commander to say I am signing on to duty. You do not speak to your Commander. You skip your Commander. You speak to Nyuswa that eventually there are problems, his involvement with this eventually. But you do not speak to your Commander. You send a Warrant Officer, someone junior to you, to speak to

Nyuswa. You knew he was not going to talk to your Commander. You send him to speak. When he says I will speak to the Brigadier, you say you knew he was going to speak to Nyuswa because your Commander was on and off and it was known that you speak to Nyuswa about matters operational.

So we know you never were under any impression that Mpangase was going to speak to your Commander. You knew he was going to speak to Nyuswa. And all I am
10 asking you is why do you not call Nyuswa yourself now that you have decided the person to speak to is Nyuswa, not Captain Duma, why do you not call him yourself?

COLONEL JACOB: I have got no response to that, Commissioner. I should have.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: Thank you, Commissioner Baloyi ...[intervenes].

CHAIRPERSON: On that...

ADV SELLO SC: Yes, Chair.

20 **CHAIRPERSON**: Thank you. On the reason that you give about your immediate Commander, which is that she was not involved in operational matters, I will not accept that at face value. You are on leave, and all that you needed to do was to report that I am coming back. I am no longer going to be on leave just for this limited period. I see nothing

operational in that. That is admin. I see you nodding your head so you agree with me.

COLONEL JACOB: Yes.

CHAIRPERSON: That is pure, pure admin.

COLONEL JACOB: Yes.

CHAIRPERSON: So basically you have not responded to Commissioner Baloyi's question.

COLONEL JACOB: Yes, Chair. I should have. It was an error on my part. I should have.

10 **CHAIRPERSON**: So you accept that you did not do what you had to do, and you basically had no reason for not doing it. This thing about operational simply does not apply.

COLONEL JACOB: I concede, Chair.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. So now we know that you and Warrant Officer Mpangase are now aware of this potential operation, and you decide to attend to the scene. Correct?

20 **COLONEL JACOB**: Yes, correct.

ADV SELLO SC: Would I be correct to say technically the DPCI operation has started, or not yet?

COLONEL JACOB: At which point, Commissioner?

ADV SELLO SC: Once you decide you are going to CHC Depot to follow up on the information given by Captain

Duma of Crime Intelligence.

COLONEL JACOB: For me, I would say once I was fetched by my members, it would have commenced for me. That is when my duty would have commenced.

ADV SELLO SC: No, not duty. I want to know when does the operation.

COLONEL JACOB: Operation?

ADV SELLO SC: Ja, in your understanding.

COLONEL JACOB: Yes, in my understanding, the
10 operation is actually at the scene where you are operationalising this intelligence. So for me, the operation would have commenced upon our arrival at CHC Depot.

ADV SELLO SC: May I suggest that it has to be before, because firstly, as to who turns up to follow up on the information is a decision that must be taken, and that decision must be based on a purpose, right?

COLONEL JACOB: Yes.

ADV SELLO SC: And that is the start of the operation. It cannot be when you all arrive and then you say the
20 operation commences. That is not how you run operations. I would like to believe that even in DPCI, when you decide to move from your offices to a particular place in pursuit of something or intelligence received, you are already in an operation. Do you have a difficulty with that proposition?

COLONEL JACOB: No, I agree with you.

ADV SELLO SC: Okay. Now, accepting then that this is what happened here, you are the most senior. Am I correct? At the time?

COLONEL JACOB: That is correct, Commissioner.

ADV SELLO SC: You are in charge of this, and I will put it in inverts, if you are more comfortable, quote-unquote operation.

COLONEL JACOB: Yes.

ADV SELLO SC: Who decides the team to carry out this
10 operation?

COLONEL JACOB: In this instance, it was myself.

ADV SELLO SC: It was you?

COLONEL JACOB: Yes.

ADV SELLO SC: Now, so you decided to involve Warrant Officer Mpangase. Do you say that decision was already made for you?

COLONEL JACOB: That decision was made already by Captain Duma.

ADV SELLO SC: Did you have any power to override it?

20 **COLONEL JACOB:** If I wanted to, yes, there would have been.

ADV SELLO SC: Okay. And then who is the next member of your team?

COLONEL JACOB: It was at that stage Warrant Officer Sibiya.

ADV SELLO SC: And that was your choice? He was your choice?

COLONEL JACOB: Yes, he was.

ADV SELLO SC: Was he also chosen by, and I say chosen in inverts, by Captain Duma, or was that your personal choice?

COLONEL JACOB: That was my choice, Commissioner.

ADV SELLO SC: And on what basis was that? Why did you decide on him that he is the best person suited for this
10 operation?

COLONEL JACOB: Okay. If my memory serves me correctly, when Mpangase called me, when I called Mpangase and he had informed me that Duma had already spoken to him, at that stage we knew we were going to operationalise this. And Mpangase was at that stage going around the office, checking who was around.

So I am not sure what he had said to me. I am not sure, I cannot really recall, but I asked him to check if KG is there, KG Sibiya, just for the purpose of, you know,
20 manpower, and we have our colleagues that somehow we tend to choose.

Obviously if there is 10 members and you only require three, I am just saying, you will choose those that you have worked with before, that you have got a good understanding with. So there was not that much thought

behind it, but just put somebody that you normally work with and you have got a good understanding with.

ADV SELLO SC: And also it was not made on the basis that you appreciated this is a potential drug bust, that, did you say it is Warrant Officer Sibiya?

COLONEL JACOB: Yes.

ADV SELLO SC: Warrant officer Sibiya potentially brings some expertise in that regard. That is not the basis of your decision?

10 **COLONEL JACOB:** No, no.

ADV SELLO SC: You just thought of a name and you decided he will join?

COLONEL JACOB: Yes. He is competent enough, although he was not a fundi in drug cases, he is a Detective.

ADV SELLO SC: Okay.

COLONEL JACOB: Yes.

ADV SELLO SC: Now you know you are going to the depot, which is around the harbour area. Earlier, in
20 response I think to a question posed by the Chair, you made reference to joint operations and you spoke of the involvement of SARS.

COLONEL JACOB: Yes.

ADV SELLO SC: Did you at that time consider this to be potentially a joint operation or not?

COLONEL JACOB: No, not at all at that stage, Commissioner. No.

ADV SELLO SC: At that stage you did not?

COLONEL JACOB: No.

ADV SELLO SC: Okay. So if it was not a joint operation, then it was a pure DPCI operation?

COLONEL JACOB: Yes. And DPCI and Crime Intelligence.

ADV SELLO SC: And Crime Intelligence, yes, your source. Did it at any juncture become a joint operation, in your
10 understanding? And if so, under what circumstances?

COLONEL JACOB: Okay. I am using the term loosely joint operation, but whilst on the scene we requested assistance from Border Police. So I do not know whether technically we can define it. I do not think it is a joint operation because they were not briefed, they were not expecting to be of assistance to us. So I would not call it a joint operation.

ADV SELLO SC: So it really was never a joint operation?

COLONEL JACOB: No, it was not.

20 **ADV SELLO SC:** I would like you to jump to your paragraph 18. And there is a statement you make in paragraph 18 that I want to make sure I do not misunderstand. You see the paragraph that starts upon inspection of one of the bags. Okay?

COLONEL JACOB: Yes.

ADV SELLO SC: The third sentence in that paragraph reads:

“There were other Border Police/Cargo Operations Team units, Inspection units, uniformed members at the depot that were inspecting other containers.”

Do you see that?

COLONEL JACOB: Yes, that is correct.

ADV SELLO SC: I am trying to understand why you make
10 the statement here. Were they part of your operation, or you are just mentioning police teams that were at the depot doing their own jobs inspecting other containers? I am not sure I understand that statement.

COLONEL JACOB: Okay. I just wanted to describe how did the Border Police come about to assist or to convey exhibits of these drugs to the police station. And it was upon my request.

ADV SELLO SC: So they were part of your operation?

COLONEL JACOB: Eventually they were part of it, after
20 me requesting assistance, more especially in terms of transporting exhibits from point A to point B.

ADV SELLO SC: Now, if we go to CJC268, perhaps maybe I am slow in understanding, at page 801 of that exhibit, perhaps let us start at 800, at point 4 at the bottom. So I start the point at the beginning:

“The container was properly closed and locked, the seal intact. The seal was broken and the container was opened in the presence of supervisor of the warehouse.”

I take it that is Ms Pillay?

COLONEL JACOB: Yes.

ADV SELLO SC:

“Customs official Ntuthuko Khuzwayo.”

10 You see that?

COLONEL JACOB: Yes, I see that.

ADV SELLO SC:

“ORS members, Sergeant Mkhize and Sergeant Govender and 27 black canvas bags were observed placed right at the end of the commodity, just behind the container doors.”

COLONEL JACOB: Cargo.

ADV SELLO SC: Cargo commodity, thank you,
20 cargo/commodity. You see that?

COLONEL JACOB: Yes, I see that, Commissioner.

ADV SELLO SC: The people listed here, did they just happen to be around, or were they part of this particular operation? Because when I read the investigation diary, it sounds like they were part of your operation and officially

there to witness the breaking of the seal. And here, in your statement, you say that they were inspecting other containers. So I am trying, are they here by chance? Are they here as part of an operation? Where do they land?

COLONEL JACOB: You know, Commissioners, if memory serves me correctly, they were not present when the actual container was placed, when the photos were taken of it, the lock being cut open, according to my memory of that day, they were not present for that. They were not present for
10 that. It is only after us discovering these 27 bags that it piqued interest around the warehouse, and I think even they walked towards the area, and that is how it came about that I asked for assistance.

ADV SELLO SC: So what Officer Mpangase is wholly wrong in what he has recorded in this investigation diary?

COLONEL JACOB: I stand to be corrected, but my memory tells me that the Border Police guys just came a short while after discovering the narcotics, the black canvas bags.

20 **ADV SELLO SC**: Now, you recall earlier we discussed the issue of monthly, quarterly inspection, and you referred me to the statements you had obtained during your investigation, and you said that those statements have got a date attached to them, and that will at least demonstrate to the Commissioners that these entries were not effected post

fact, okay?

COLONEL JACOB: Yes.

ADV SELLO SC: Now, I looked at this, and in fact, when I look at the inquiry, firstly, you do not state in your statement that there was a Customs official by the name of Ntuthuko Khuzwayo. And when I look at the investigation diary, there is no statement by this Customs official.

COLONEL JACOB: Okay. Bear with me, Commissioner, please? It is this one.

10 **ADV SELLO SC**: Can I help you? What are you looking for?

COLONEL JACOB: I am looking for my original statement, Commissioner, that I did file in the inquiry. I am not sure where it is in your bundle, but I know I found it somewhere.

ADV SELLO SC: Give me a date. Perhaps we will be able to help you. Please try page 574, CJC243.1. He said the first one.

ADV BALOYI SC: CJ?

ADV SELLO SC: I want you to look at CJC243.1 at 574.

20 **COLONEL JACOB**: Yes.

ADV SELLO SC: So that is the first statement is unsigned that we find in the inquiry file. Is that the statement you are looking for?

COLONEL JACOB: Yes, yes.

ADV SELLO SC: Okay.

COLONEL JACOB: Okay.

ADV SELLO SC: It should be the unsigned statement.
Okay. This is the document you were looking for, Colonel?

COLONEL JACOB: Yes, yes.

ADV SELLO SC: You can then deal with it.

COLONEL JACOB: Okay. Paragraph 5 of the said statement, Commissioner.

ADV SELLO SC: Yes.

COLONEL JACOB: Line 3. So I mentioned SAPS
10 members mentioned above as well as Ntuthuko Khuzwayo from Customs.

ADV SELLO SC: Yes. Continue.

COLONEL JACOB: Ja. I see that I did write here Sergeants Mkhize and P Govender from ORS. I did erroneously, I would think, Commissioner. Maybe if I am to elaborate on that? When I looked at the statements preparing for the Commission, I saw that the Border Police guys did not, in their statement, state that they saw the breaking of the seal.

20 So to them, so I think when I put it here, I just wrote from my memory thinking they were, but when I did go through the inquiry again, I noted that none of them mentioned, none of those two members mentioned that they witnessed the breaking of the seal. So this is not correct, Commissioner.

ADV SELLO SC: This is your first statement.

COLONEL JACOB: Yes, it was.

ADV SELLO SC: And you say this statement, the very first you did, is not correct. So when would you have made it? It is not dated.

COLONEL JACOB: Yes.

ADV SELLO SC: What day, it does not have a date, a month. When do you think you prepared this one?

COLONEL JACOB: I cannot say, Commissioner.

10 **ADV SELLO SC:** Okay, I can tell you that your next statement, which is CJC243.6, is dated the 9th of November, just to give you perspective.

COLONEL JACOB: Okay.

ADV SELLO SC: So when do you think this one would have come into being?

COLONEL JACOB: Definitely before that.

ADV SELLO SC: Before?

COLONEL JACOB: Yes.

20 **ADV SELLO SC:** And then if you go back to your investigation diary, why is it you, the Investigating Officer, never sought or obtained a statement from this Customs official, Ntuthuko Khuzwayo?

ADV SELLO SC: If you know, let me look through the investigation. Bear with me, Commissioner. I am not sure where it was taken. Tell me, Commissioner, does this

bundle have all of the statements that were deposed to in the inquiry?

ADV SELLO SC: I am going by your investigation diary.

COLONEL JACOB: My investigation diary?

ADV SELLO SC: Ja, they are listed here.

COLONEL JACOB: Okay, let me look at that.

ADV SELLO SC: And this particular statement is not one of them.

CHAIRPERSON: That notwithstanding, Colonel, do you
10 remember yourself ever contacting this Customs official, Ntuthuko Khuzwayo, or rather getting a statement from him?

COLONEL JACOB: I am just going to quickly check here, Chair, please, if you bear with me. I am going to check it.

CHAIRPERSON: So you basically said the possibility is there that you might have taken the statement but you have forgotten.

COLONEL JACOB: Yes, yes.

CHAIRPERSON: All right.

COLONEL JACOB: I cannot recall. I would have thought
20 it would have been prudent to do so.

CHAIRPERSON: Okay, okay. You may look then.

ADV SELLO SC: I can confirm that based on the inquiry file we have, we have not come across such a statement, and I can accept that perhaps it may have become mislaid in the file. So I thought the investigation diary would clarify

for me whether or not it was ever obtained.

COLONEL JACOB: Yes.

ADV SELLO SC: And my challenge is I see your investigation diary makes no reference to that particular statement of the Customs official.

COLONEL JACOB: Yes, there is no statement I see.

ADV SELLO SC: It does not.

COLONEL JACOB: Yes.

ADV SELLO SC: So my concern is as you correctly stated
10 in your paragraph 18, these were just observers to what was happening. If that Khuzwayo was on the scene, it was not in his official capacity as a Customs officer. Do you accept that? To witness this particular operation.

COLONEL JACOB: Commissioner, now it is coming back to me.

ADV SELLO SC: Yes.

COLONEL JACOB: This Ntuthuko Khuzwayo was the Customs liaison guy for CHC. I had it wrong when I said he is from Customs because when they did identify him, all that
20 stuck in my head I think was Customs. So I thought of him as a Customs official, but I think subsequently it turns out that he was somebody attached to the depot whose job it was to engage with Customs, something of that nature. But, you know, for now that is what is coming to my mind, that when I said Customs, I think at a later stage we

realised, no, this guy is not really Customs.

When they said Customs, he is the one who deals with Customs issues. So it is maybe because of that, and I have taken statements from lots of other eyewitnesses at the depot, so maybe, I am just thinking in hindsight, maybe I had enough statements from witnesses, that is why I did not change his, but I stand to be corrected there. That is just my memory of it.

ADV SELLO SC: And in fact it is so that you personally, as
10 the leader of this team, did not seek to involve any Customs official or Customs, or invited them to the operation. You did not.

COLONEL JACOB: No, I did not, Commissioner.

ADV SELLO SC: So then once again the Commissioners must accept that Warrant Officer Mpangase's entry in the investigation diary that the seal was broken in the presence of, *inter alia*, Customs official Ntuthuko Khuzwayo is wholly misleading. There was no such Customs official.

COLONEL JACOB: Yes, you are correct, Commissioner.

20 **ADV SELLO SC:** Would it be fair to suggest to you that that is done deliberately by Warrant Officer Mpangase and done deliberately by you in your first unsigned statement at paragraph 5, to give the semblance of officialdom to this operation, would it be?

COLONEL JACOB: No, Commissioner.

ADV SELLO SC: Why would it not?

COLONEL JACOB: There would be no benefit to just include somebody, just say it is from Customs for the sake of it, because any Detective that knows what is what will know that you are going to get caught out with this. It was not something done maliciously or with any intent behind it.

I think it was just when we took down notes of, it would have been Mpangase, as to who was on the scene, warehouse manager, there is a security, I will not go over
10 the name, but from Himax Security, there was different officials around or different staff members from the warehouse.

So it is possible, you know, when this guy even used a reflector from what I could gather that looks somewhat like what Customs guys use on the scene as well. So maybe that was part of the reason, but I am sure even if we looked at who this person is, you know, maybe he has got some Customs on his title or so that could have thrown us off, but it was not intentional, Commissioner.

20 **ADV BALOYI SC:** Can I raise my difficulty with this? One, it is the, this is the second instance of the investigation diary not being an accurate reflection of what in fact happened. The first, remember, it is your entry that is dated the 23rd of June.

COLONEL JACOB: Yes.

ADV BALOYI SC: We had that discussion earlier and established that to the extent that that represents to a reader that that entry was made on the day by you on the 23rd, that is misleading.

COLONEL JACOB: Yes.

ADV BALOYI SC: This is a second thing. This time the entry is made by Warrant Officer Mpangase.

COLONEL JACOB: Yes.

ADV BALOYI SC: There was no Customs official present
10 when the seal was broken. You have explained that you have since found out that he is in fact a person who is a liaison for CHC, not a Customs official. So that is misrepresentation in your diary.

And then there is Sergeant Mkhize and Govender. They were not there when the seal was broken. That is a misrepresentation. In fact, you say that in your statement to the Commission you do not mention them as present because you have seen their statement that they do not speak to being present.

20 So that is another instance that this investigation diary, one, a reader has to be cautious when reading it, not accept without more that what it reflects is accurate. Do you accept that is a fair position to take?

COLONEL JACOB: I do, Commissioner.

ADV BALOYI SC: Okay. And lastly, my concern is you, in

your statement, seem to use, and this is a statement at 574, the one that you made in 2021 which is not dated, you basically copied what Mpangase said in the investigation diary or in your discussion with him at paragraph 5 where you say there is Ntuthuko Khuzwayo from Customs, Sergeant Mkhize, and P Govender. You list exactly the same people that he entered in the investigation diary. You basically copied from there.

COLONEL JACOB: Yes.

- 10 **ADV BALOYI SC**: This statement in 2021, immediately, fresh after the incident, whenever in 2021 that was, it would still have been very fresh, contains matter that is not correct, and you would have known that as you put it down is what you are saying and what you observed is in fact inaccurate and it is misleading.

COLONEL JACOB: I can concede that.

ADV BALOYI SC: Thank you.

- ADV SELLO SC**: Thank you, Commissioner. And if we move to CJC243.6, that is now your second statement,
20 CJC243.6. That is a signed statement dated the 9th of November.

CHAIRPERSON: Page?

ADV SELLO SC: It starts at page 589, Chair.

CHAIRPERSON: 589?

ADV SELLO SC: Yes.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you. Have you located it, Colonel?

COLONEL JACOB: One second, Commissioner. 589. Ja, got it. Yes.

ADV SELLO SC: Now, if you go to page 592, that is where your signature appears, and it is dated 9 November 2021. Correct?

COLONEL JACOB: Yes.

10 **ADV SELLO SC:** Now, let us go back a bit and we go to your paragraph 7 of that statement. You say:

“The seal was intact and corresponded with that on the document, seal number H19057543 refers. The seal was broken by an employee of the warehouse in the presence of the warehouse manager, security officer, ORS members, Captain Duma, and DPCI members.”

COLONEL JACOB: Yes.

20 **ADV SELLO SC:** The Customs official has disappeared here. Is it because you realised the error that it was never a Customs official? What is happening?

COLONEL JACOB: Yes, it could be the case, Commissioner.

ADV SELLO SC: Now, I want to know if it is the case or

not.

COLONEL JACOB: Yes, yes, because it came back to my memory, which means I discovered it at some point in time, so it would make sense that I ...[intervenes].

ADV SELLO SC: How did you discover?

COLONEL JACOB: Maybe while talking to the warehouse manager, I am not even sure, but we did obtain a statement from the warehouse manager. It is quite possible that while engaging with the, you know, it came out that this guy is not
10 really a Customs official. He is somebody who works for the warehouse.

ADV SELLO SC: You see, when you answer that way, then it is quite possible that that is not how you discovered it.

COLONEL JACOB: It is possible. I am just speculating.

ADV SELLO SC: So somehow, miraculously, you are able to correct this error. Let us continue.

ADV BALOYI SC: Sorry, but you also do not mention that Customs person liaison even after you say you have – look at the list of who you mentioned. So it is not just a function
20 of you have clarified, you have since clarified that the person you thought was a Customs official is in fact a Customs liaison person of CHC. In fact, he finds no mention whatsoever, so you are one person short now.

COLONEL JACOB: Yes.

ADV BALOYI SC: Okay.

COLONEL JACOB: Okay.

ADV SELLO SC: And if we continue with that now, we have to go back to your original statement, and I take it this is actually your best statement because your memory is at its very best. The unsigned statement at 574.

COLONEL JACOB: Yes.

ADV SELLO SC: Subsequent statements, your memory fades, so we get our facts slightly wrong.

COLONEL JACOB: Yes.

10 **ADV SELLO SC:** Now, on this statement at paragraph 5, we have now discounted any Customs member by the name of Ntuthuko Khuzwayo or otherwise. You say there was Sergeant W Mkhize and P Govender from ORS Durban Harbour.

COLONEL JACOB: Yes.

ADV SELLO SC: You see that?

COLONEL JACOB: Yes.

ADV SELLO SC: Who are those?

COLONEL JACOB: It is the same members that assisted
20 with regards to conveying those exhibits, those Border Police members.

ADV SELLO SC: How did they get to be on the scene?

COLONEL JACOB: They were there conducting their duties at CHC Depot.

ADV SELLO SC: Their own duties?

COLONEL JACOB: Yes, that is right.

ADV SELLO SC: So how do they become part of your operation?

COLONEL JACOB: Upon my request, Commissioner.

ADV SELLO SC: For?

COLONEL JACOB: For assistance with regards to conveying exhibits from the depot to the police station.

ADV SELLO SC: So these are the ORS members who were working at the Durban Harbour, and you personally
10 requested them to assist you with transportation?

COLONEL JACOB: That is correct.

ADV SELLO SC: They were not part of the breaking of the seal and all that?

COLONEL JACOB: No. As I said, Commissioner, it is upon reading their statements preparing for here that I realised they were not part of that.

ADV SELLO SC: But if you go to your statement of the 9th of November, you still maintain there were ORS members at the scene during this operation. Which ones are they? If it
20 is not these two who you happen to call as they pass to help you with transportation, which ORS members are they?

COLONEL JACOB: It is the same two, Commissioner.

ADV SELLO SC: So you had not realised this error by the time you deposed to your second statement?

COLONEL JACOB: Yes, that is correct.

ADV SELLO SC: So you maintain that error?

COLONEL JACOB: Yes, it is an error.

ADV SELLO SC: And you call the ORS members at the scene?

COLONEL JACOB: I did call them. Just to set the record straight, when preparing for the Commission, when I looked through the inquiry, I was the one that obtained both statements from Mkhize and Govender. And it is only when I obtained that that I did realise nowhere did they speak
10 about them observing us break the lock. And that is why today I can sit here and say it with confidence.

But somehow when we did this operation, it was in my mind that ORS was there and they witnessed it, hence I put it there. But it was not with any intention to mislead anybody, Commissioner.

ADV SELLO SC: Okay, let us go to their statements and see what they say. That will be CJC261 and CJC262, starting at page 777. That is the first statement. Are you there yet, Colonel?

20 **COLONEL JACOB:** Not yet, Commissioner. Please bear with me.

ADV SELLO SC: Ja, no, no, no. You will get assistance.

COLONEL JACOB: 261, 262. CJC261. Got it, got it, Commissioner.

ADV SELLO SC: Now, the first statement, CJC261, is by

Kubendren Govender.

COLONEL JACOB: Yes, that is correct.

ADV SELLO SC: And the next one is by Wanda Xolani, but the surname is at the bottom, and that is Mkhize. These are the two ORS members you say were present during the operation.

COLONEL JACOB: That is correct.

ADV SELLO SC: Okay. Let us look at Sergeant Govender at 207. He gives his details and the like. Now, let us go to
10 paragraph 3. At paragraph 3, and I will read this in the record. I quote:

“During the course of our duties, we
approached..”

No, no, if I may start at paragraph 2? The last two sentences. We, and by we he references himself and Sergeant Mkhize. You see that?

COLONEL JACOB: Yes.

ADV SELLO SC: At paragraph 2, he mentions that my crew was Sergeant Mkhize on this particular day of the 22nd day
20 of June.

COLONEL JACOB: Yes, correct.

ADV SELLO SC: Okay, then he continues still at paragraph 2:

“We were posted from our office to do
inspection on certain listed containers at

CHC Depot and Prospecton.”

Do you see that?

COLONEL JACOB: Yes, I see that.

ADV SELLO SC:

“This is our daily routine at the same depot and other depot places.”

The next paragraph he states:

10 “During the course of our duties, we were approached by the male person identified himself as Colonel Jacob from DPCI Durban. He informed us that they recovered drugs from one of the containers at the same container depot we were busy at. He further requested us to assist them transporting the exhibits with our state vehicle and we agreed to assist them.”

20 So, according to Sergeant Govender, they were not even present because they were informed that you had discovered the drugs.

COLONEL JACOB: Yes.

ADV SELLO SC: So, both your statements are wrong to say that they are the two ORS members you say were present during the breaking of the seal.

COLONEL JACOB: Yes, I concede that.

ADV SELLO SC: Okay. And they say that you actually approached them while they were executing their normal duties to ask them simply to request, to assist you in transporting the exhibits. That is all they, that is the only role they played.

COLONEL JACOB: Yes, that is the role they played in terms of conveying exhibits, Commissioner.

ADV SELLO SC: Now, at the last paragraph of that same statement, Sergeant Govender states:

10 “The container they recovered the drugs
from was not part of the containers we
were to inspect and we were not part of
their operation.”

COLONEL JACOB: Yes, yes, Commissioner. I mean, I have alluded to their role. If he deems that not to be part of the operation, I cannot disagree with him.

ADV SELLO SC: You made them part of the operation as
ORS members consistently in your statement and that is
wrong. And you knew that is not correct because this is
20 what you requested of them to do. They were busy with
their own business on the day. Literally, you saw them pass
and you said, hey, can you bring your, I need transport.
That is all you ever did. He specifically says we were not
part of their operation. How could you make a mistake and
say that they were part of the operation?

COLONEL JACOB: Yes, Commissioner, if I may go to the statement that we did obtain and file in the inquiry, would that help shed some light?

ADV SELLO SC: The?

COLONEL JACOB: It is a different statement to this one that you have got on CJC261.

ADV SELLO SC: Okay, we will try and locate it. But you see, if CJC261 at the top is written Durban's SOCI inquiry, CAS number 28/06/2021. That is your inquiry file.

10 **COLONEL JACOB**: Yes, that is correct.

ADV SELLO SC: So which other statement are you ...[intervenes].

COLONEL JACOB: I am going to look for it now, Commissioner.

ADV SELLO SC: Try and describe it and we will see if we can help locate.

ADV KHUMALO SC: While he is busy with that, I see that on the same page, 777, paragraph 2.

ADV SELLO SC: Yes.

20 **ADV KHUMALO SC**: [Indistinct – mic switched off]. Advocate Sello, the statement referred to in paragraph 2 on page 770.

ADV SELLO SC: Yes. When he says I would like to further my statement, I submit it. There is a first statement. We would have to go into the inquiry file for that, right?

COLONEL JACOB: Yes.

ADV KHUMALO SC: Is it the same statement he is referring to?

ADV SELLO SC: It has got to be the same statement, but it is in the same inquiry file.

ADV KHUMALO SC: Okay, thank you.

ADV SELLO SC: So there seemingly was a statement by this Sergeant Govender, this is his second statement, but both in the inquiry. Are you suggesting that the first
10 statement would be inconsistent with what is set out in this second statement? This is a more extensive statement.

COLONEL JACOB: I just want to look at the content quickly. I have got both here. Please bear with me.

ADV SELLO SC: No, no, no. Have you managed to locate the first one?

COLONEL JACOB: Ja, I have.

ADV SELLO SC: Okay.

COLONEL JACOB: Yes. I have got this first statement. It is filed as A20 in the original ...[intervenes].

20 **ADV SELLO SC:** The A20?

COLONEL JACOB: Yes.

ADV SELLO SC: That is right. We will locate it.

COLONEL JACOB: Should I read it, Commissioner?

ADV SELLO SC: Please.

COLONEL JACOB: Okay. It is the statement of Sergeant

Govender. He goes with his PERSAL and his rank and all of that. Then paragraph 2:

“On the 22nd of June 2021, I reported for duty in full regulation uniform at 07:15 and was in the company of Sergeant Mkhize. I was posted as a driver of a marked state motor vehicle, Hyundai...”

And he goes on to give the vehicle details:

10 “...conducting container inspections at the CHC and ICS Depots. Whilst busy with container inspections at the CHC Depot at 14th Avenue, the East Prospecton, I was approached by two other police officials dressed in civilian attire. They identified themselves as Lieutenant Colonel Jacob from DPCI and another Captain Duma from Crime Intelligence. They had inspected container number...”

20 And we go on with the container number:

“...and had identified some black canvas bags that allegedly had Cocaine in them. Sergeant Mkhize and I were requested to assist with loading these bags into our vehicle and conveying them to the

Isipingo SAP. Sergeant Mkhize and I, together with other DPCI members, transferred these black bags from the container into the H1 marked state vehicle that I was driving. I counted 27 such bags. We were escorted by Lieutenant Colonel Jacob and his team to Isipingo SAP, where we assisted in offloading the black bags. The DPCI members were busy counting the yellow and black bricks of suspected Cocaine when we left the scene. From my observations, each bag contained approximately 20 such bricks. We then left the scene and proceeded with our normal duties.”

ADV SELLO SC: So is that statement you just read inconsistent with the one we have here? It is still about being approached by you ...[intervenes].

20 **COLONEL JACOB:** They have more or less the same content ...[intervenes].

ADV SELLO SC: To request with providing transport?

COLONEL JACOB: That is correct, Commissioner.

ADV SELLO SC: Okay. So ...[intervenes].

ADV KHUMALO SC: Just for our record, it is on 627.

ADV SELLO SC: On 627?

ADV KHUMALO SC: Yes.

ADV SELLO SC: So we can accept these were not the ORS members part of the operation? Whether on the version of this first statement or this one, they were not?

COLONEL JACOB: Their role was limited, if I may put it that way, Commissioner.

ADV SELLO SC: They had no role until you requested them to provide transport?

10 **COLONEL JACOB:** Yes, they were not part of it, I can concede that, Commissioner.

ADV SELLO SC: And if you go at 262, page 779, that is then the statement in the same inquiry of Sergeant Wanda Xolani Mkhize. It is worded in more or less the same terms.

COLONEL JACOB: Yes.

ADV SELLO SC: Please cast your eye and satisfy yourself. He confirms, it is literally written the same way, except he states that he was a crew of a marked vehicle, given the details, driven by Sergeant Govender.

20 **COLONEL JACOB:** Yes.

ADV SELLO SC: Then he states – so then the Commissioners can accept we are at a point where we know in this operation there were no Customs officials. You never contacted any and there were none at the scene?

COLONEL JACOB: May I comment to that?

ADV SELLO SC: Say that again?

COLONEL JACOB: May I comment? May I make a comment?

ADV SELLO SC: Absolutely, please do.

COLONEL JACOB: Okay. There is no obligation on the police to include Customs on any operation, or more especially, not more especially, on a drug operation. There is no obligation on the police to call Customs out. Our mandate is to deal with transnational drug trafficking, drug
10 consignments coming through harbours, national key points. So there is no obligation on us to call Customs out.

ADV SELLO SC: And just for the record, I am not imposing any obligation. I am just clarifying as to who was at the scene.

COLONEL JACOB: Yes, yes. Customs was not there, Commissioner.

ADV SELLO SC: We will get to the obligation. As we understand it, when these containers are at the depot, they have not cleared Customs. Do you have a different
20 understanding?

COLONEL JACOB: No, I do not.

ADV SELLO SC: You know that ...[intervenes].

COLONEL JACOB: In fact, I am not 100% clear on that, to be honest, but you may proceed, Commissioner.

ADV SELLO SC: So if the evidence as we have it is

correct that they have not cleared Customs, they would still be within Customs jurisdiction, logically?

COLONEL JACOB: Yes, I would think so.

ADV SELLO SC: So do you want to maintain that there would be no obligation to inform them that you are on their territory and carrying out an operation?

COLONEL JACOB: I still maintain that we had no obligation. We were not looking at Customs offences ...[intervenes].

10 **ADV SELLO SC**: No, no, no. On the basis that you are within their area of responsibility and you are carrying out an operation, you say you have no obligation even to give them a courtesy call?

COLONEL JACOB: There is no obligation, Commissioner.

ADV SELLO SC: Is that how you treat every corner of South Africa?

COLONEL JACOB: Commissioner, you know, if I may comment on that as well? It is not the norm. The operations that, although I may not have been the
20 Investigating Officer, but on the numerous operations that I have attended, lots of them, I would say 60% or even 70% do not have Customs officials present.

ADV BALOYI SC: Can we just check with respect to these, not the other percentages, this particular operation?

COLONEL JACOB: Yes.

ADV BALOYI SC: We know from evidence, and you have also said that from the docket you did see a detention notice on the C-section or something. So we are dealing with a container which is under the control of Customs as in Customs has given a detention notice. And I want to understand how it is that they have stopped a container for inspection.

We know it was bone meal in there, and we know that it needed to be checked for that reason by a vet if
10 there are no other reasons at all. And you go there, you are saying you open a container that is being kept or detained on the instruction of SARS or Customs, and they have no interest in you open that container and what you do. Is that what you are saying?

COLONEL JACOB: Commissioner, I think I need to point out that we only became aware of Customs interest in this container after this operation. Remember the Customs here, the detention notice is dated the 23rd of June 2021. We conducted the operation on the 22nd of June 2021. Had
20 somebody informed me, whether it be the warehouse or anybody, informed me that Customs had a detention notice or intended to detain these containers, then we would have gladly invited them on board.

ADV BALOYI SC: Can I just amend my question?

COLONEL JACOB: Yes, Commissioner.

ADV BALOYI SC: It is not under detention, but it is still under control of Customs. It has not cleared Customs. I think that is a conversation you have had right now, and you accept that it had not cleared Customs. It is sitting in the depot. If it has not cleared Customs, which it must still do, are you saying Customs will let you walk in, open it, do whatever you want to do, remove what you want to remove, and you walk on, and then they will happily later on do whatever they normally do in clearing that container without
10 knowing or any sight at all of what you came on and did on that container? Is that how you say it works?

COLONEL JACOB: Commissioner, my understanding is, as much as we can say it is not a must that Customs need to check every container that has bone meal in it. It is not their duty to do that, to check every container that has bone meal in it.

The detention notice, in my understanding, had very little or nothing to do with the actual commodity. The person whose duty it is to view that commodity or make
20 sure it meets the required standards is the state vet, Department of Agriculture. So Customs, in my opinion, in my understanding, once it had left the harbour, it went to a depot. The next step in that whole process was, I think the state vet would have come through and inspected to make sure all is in order.

However, to me, it was going to be transported. The next step was it was going to reach its consignee. I am not aware of Customs checking every consignment of bone meal, just by virtue of it being...

ADV BALOYI SC: Well, the evidence that we have received, if I understood it correctly, it is that because it is bone meal, it necessarily falls in the category of things that must be checked. They cannot come into the country without checking.

10 **COLONEL JACOB:** Yes.

ADV BALOYI SC: So I am asking you the question, and our understanding was it is Customs that flags for it to be parked so that it can be checked for that purpose. And really, the essence of my question is, someone else, another agency has an interest in this, and you know it is bone meal, you do.

20 So another agency has an interest in it. Are you saying that the manner in which things operate is such that you can come in, open it up, do whatever you do in the absence of that other party, agency, that other state agency which has an interest in the container, and then you move on, and in their good time they will come and do their, whatever they do with it without any insight into what you did?

And then later on, as we know it happened here,

you are the one that comes back to release it, to say to the clearing agent, this can go. I am just trying to make sense of that way of operating.

COLONEL JACOB: Yes. Okay, I hear you, Commissioner, and I hope I am not labouring on the wrong points. But what I am trying to get at is that we were only aware of this Customs' detention notice after our search. The detention notice, when I look through the inquiry, is dated the 23rd of June. So at the time of us conducting this search or
10 inspection of the container, at that stage none of us knew that Customs had any interest in this container.

ADV BALOYI SC: I also understood that ORS would know, because the communication, as this consignment is coming, the communication would eventually land at ORS, and ORS will inform whoever it informs. That is how I have understood that. So, through ORS there would have been communication on the system that this consignment is coming, and this is flagged for reason A, B, C, D. Is that not your understanding of how it works?

20 **COLONEL JACOB**: That is difficult for me to answer, Commissioner, but I would say that in not all cases that we have encountered Customs and SAPS are on the same page. To give you an example practically, it sometimes happens that it clashes, like SAPS is interested in a certain container, and then you learn that Customs is also now

interested, and it is only at the 11th hour when both parties are now interested to go inspect it.

So I do not want to mislead the Commission, but I am saying I do not think there is any system in place, or if there was Border Police did not tell us, the warehouse manager did not tell us. So I am then saying to ...[intervenes].

ADV BALOYI SC: Well, Border Police could not tell you because you did not speak to them. You did not involve
10 them at all. So they could not have told you.

COLONEL JACOB: Border Police is Sergeant Mkhize.

ADV BALOYI SC: No, Sergeant Mkhize is your lift. He plays no other role than to give you transport, because suddenly you find you have 27 bags to transport. Let us not make his role any bigger than that. He tells us in his statement.

COLONEL JACOB: Yes.

ADV BALOYI SC: Yes. So he could not have said to you that, you know what, this container has been flagged for
20 inspection by ORS. He could not have told you that.

COLONEL JACOB: Yes.

ADV BALOYI SC: Yes.

COLONEL JACOB: Commissioner, if I may, if I look at the Govender's statement, it is page 777, right?

ADV BALOYI SC: It says only that you asked them to

assist with taking these things out of the container and then transporting them. Mkhize says exactly the same thing.

COLONEL JACOB: Okay. Commissioner, if I may draw your attention to the last sentence on page 777?

ADV BALOYI SC: Yes.

COLONEL JACOB: He says:

10 “The container they recovered the drugs
 from was not part of the containers we
 were to inspect and we were not part of
 the operation.”

ADV BALOYI SC: Yes.

COLONEL JACOB: So in the same breath, he says it is not the part of the containers he was to inspect.

ADV BALOYI SC: Yes.

COLONEL JACOB: So I am just drawing an inference. I may be misquoting him, but my thinking is that if he knew that either Border Police was interested in this container or whichever other law enforcement agency, he would have mentioned something to us ...[intervenes].

20 **ADV BALOYI SC**: No, that logic is faulty. I am engaging you on the basis of you saying ORS, Border Patrol, did not inform us. And I say, but you did not speak to Border Police. These are police on the ground. So when you say Border Police did not inform us that this container has been flagged, you are not talking about the patrol people who are

going to be inspecting specified containers.

You must be talking about someone in an office who is responsible to tell you this is what is happening on the ground. There is that container, that container that we have flagged for inspection.

COLONEL JACOB: None of that was brought to our attention, Commissioner.

ADV BALOYI SC: Because you did not speak to the right people in ORS. Simple. You did not call the Commander,
10 the Border Commander. I think, in fact, in this ORS process, we have learned that the Intelligence gets the information, Intelligence speaks to the ORS Commander, informs them, and then you guys go on to operationalise what is happening.

So with reference, when you say ORS did not inform us, I am picking a problem with you that you want to equate Mkhize and Govender as, well, we did speak to ORS, they did not tell us anything when, in fact, all they were was transport.

20 **COLONEL JACOB**: Yes.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioner. So, at the end, where we land is the only people who were present in this operation were the DPCI members, led by yourself, and Captain Duma from Crime Intelligence.

COLONEL JACOB: And warehouse staff.

ADV SELLO SC: And warehouse staff, absolutely.

COLONEL JACOB: Yes.

ADV SELLO SC: And that is Ms Pillay.

COLONEL JACOB: Not only Ms Pillay, some other warehouse staff as well.

ADV SELLO SC: But the manager was Ms Pillay.

COLONEL JACOB: Yes, that is correct.

ADV SELLO SC: Now, in your experience, you have done
10 drug busts before, particularly at the port, and I take it that the port is a point of entry of goods for commerce.

COLONEL JACOB: Yes.

ADV SELLO SC: You accept that?

COLONEL JACOB: Yes.

ADV SELLO SC: At which point, you know, must you
engage the owner of the container? Because the container
is carrying, I will take it, valuable commercial commodity.
In your experience, is it necessary to tell the owner that we
are about to break your seal? Or you break the seal and
20 you tell them afterwards?

COLONEL JACOB: No. By experience, you need to inform
either the clearing agent or the consignee. But basically,
the person who is responsible for that container needs to be
aware that it is going to be such.

ADV SELLO SC: And who was that person in this

instance? Do you recall the clearing agent or the consignee?

COLONEL JACOB: At that point in time, the clearing agent was the custodian of that said container. And I took Captain Duma's word that, yes, he had phoned the relevant parties, and now he had spoken to the warehouse manager. And when we did arrive there, she was familiar with what, you know, we expected of her. So in my mind, Commissioners, it was a consensual or voluntary search
10 that was agreed upon.

ADV SELLO SC: So you did not consider yourself, you are about to break a seal?

COLONEL JACOB: Yes.

ADV SELLO SC: Of private cargo. You did not consider yourself duty-bound to at least satisfy yourself that you had the requisite authority, authorisation from the owner of the container?

COLONEL JACOB: No, I did not go to that extent.

ADV SELLO SC: Why not?

20 **COLONEL JACOB**: I took it for granted that the warehouse manager was around assisting us, aware of what was happening. And Captain Duma further indicated that he had spoken to the transporter and the clearing agent. So to me, all parties that had an interest or were possible custodians of this container were aware and had given consent to

search.

ADV SELLO SC: And what if Captain Duma was misleading you deliberately because he knew that you will take responsibility for breaking that seal? Did you ever consider that as a possibility?

COLONEL JACOB: Yes.

ADV SELLO SC: His job is to provide the intelligence. He testified here yesterday to be present when that seal is broken and the container opened and to satisfy himself
10 whether his intelligence was correct. Beyond that, he has got absolutely no role.

COLONEL JACOB: Yes.

ADV SELLO SC: So you take full responsibility for that container?

COLONEL JACOB: Yes, I did not go to any further or make further enquiries to ensure that his version of events was correct. I did not.

ADV SELLO SC: You are aware that the clearing agent said they were never informed, engaged with, and they only
20 learned of the seal being broken. The container being broken after the fact on the 23rd of June.

COLONEL JACOB: Commissioner, it is only when watching the Commission that I became aware of that and I want to explain why. So, during the course of this investigation, I eventually obtained statements from the

transporter, the clearing agent, the consignee, all of them. None of them, even from Megafreight, the representative that came through on the 1st of July, none of them expressed any dissatisfaction with the container being opened at no stage that any one of them.

In fact, they were grateful that the police had intercepted this rather than it reaching one of their companies or their company name being tarnished because it was found on their premises. So none of them voiced any
10 displeasure at our search.

ADV SELLO SC: I am not interested in particular in whether or not they voiced a displeasure. I am interested in whether you knew who the authorised person for that container was and your investigation diary would seem to suggest you knew. You knew it was Mr Floweday of Megafreight.

COLONEL JACOB: Yes.

ADV SELLO SC: You reflect that on the 1st of July 2021. If we go to CHC268 at page 803, the entry there at the
20 bottom is dated 0107 and it is actually countersigned by you over leaflet page 804.

COLONEL JACOB: Yes, that is correct, Commissioner.

ADV SELLO SC: And your inquiry file shows that you obtained a statement from Mr Floweday of Megafreight.

COLONEL JACOB: That is correct.

ADV SELLO SC: And in that statement, he states that he was not informed. So you cannot have learned from this Commission.

COLONEL JACOB: No, sorry, Commissioner. Maybe I missed it. In the inquiry file, let me have a look at what it says.

ADV SELLO SC: I will give you a reference for Mr Floweday's statement. If you go to CJC244.25, that will be page 654.

10 **COLONEL JACOB:** Yes.

ADV SELLO SC: And it is a handwritten statement, 654, that at 656 is dated 27 October 2025. That is his second statement. Do you see that?

COLONEL JACOB: Yes, I have got it.

ADV SELLO SC: That is the 2025 statement. But if you go back to 595, you will find his first statement.

ADV KHUMALO SC: Advocate Sello, we sat until late yesterday. Bear with us when you move.

ADV SELLO SC: Commissioner, if it is any consolation to
20 you, I sat with you till late yesterday. I apologise. The point I am making is there are two statements.

COLONEL JACOB: Yes.

ADV SELLO SC: The one statement is the one at 654. That is a 2025 statement.

COLONEL JACOB: Yes.

ADV SELLO SC: But if you look at that statement, it says at paragraph 3:

“I would like to further my statement I submitted on previous occasion.”

That is at 654.

COLONEL JACOB: Yes.

ADV SELLO SC: So then we have to go find the first statement, and I am saying the first statement is at page 595.

10 **COLONEL JACOB:** Yes.

ADV SELLO SC: You have located that?

COLONEL JACOB: I have got it, Commissioner.

ADV SELLO SC: And this is undated, unfortunately. No, it is dated May 2022 at 14:45.

COLONEL JACOB: Okay.

ADV SELLO SC: You see that?

COLONEL JACOB: 595, Commissioner?

ADV SELLO SC: 595.

COLONEL JACOB: Yes.

20 **ADV SELLO SC:** Overleaf at 596, that is where you find the date.

COLONEL JACOB: Okay, yes, I see.

ADV SELLO SC: Now, you were aware of Mr Floweday of Megafreight by the existence of that human being by the 1st of July 2021.

COLONEL JACOB: Yes, that is correct, Commissioner.

ADV SELLO SC: What did he tell you about this? About this operation and the breaking of that seal?

COLONEL JACOB: He never voiced any dissatisfaction. He came through with labourers to unpack the rest of the containers. So at no stage was I aware of his displeasure at our inspection.

ADV SELLO SC: Why do you insist on displeasure?

COLONEL JACOB: Okay, I ...[intervenes].

10 **ADV SELLO SC**: I mean, you called them, I think earlier you called them role players. Is he not an important role player? You just said that is one of the entities you must obtain permission from. I would have assumed that when you conduct your inquiry, you at least would satisfy yourself that there has been compliance in that regard. Because you tell us that is why you have just simply relied on what Captain Duma told you.

COLONEL JACOB: Yes, I did rely on that, Commissioner.

ADV SELLO SC: Now, by the 1st of July, you know the
20 responsible person from Megafreight.

COLONEL JACOB: Yes.

ADV SELLO SC: Why did you not obtain a statement from him?

COLONEL JACOB: I am going to just check quickly, Commissioner, if I did eventually. I am sure I did obtain a

statement from Megafreight.

ADV SELLO SC: Okay, are you in the inquiry file?

COLONEL JACOB: I am looking at my inquiry file. Yes, Commissioner.

ADV SELLO SC: Ja, you can give us the statement number, I will try and check it out.

COLONEL JACOB: No, I see there is a whole lot of liaison between myself and Megafreight. I see there is a whole lot of liaison. I say here in one of my entries:

10 “She indicated that it would be finalised,
 meaning the statement, and couriered to
 our office by 21st of the 12th. Prior to
 that, I said, made numerous calls to her,
 the person from Megafreight, agreed that
 the affidavit would be finalised by 15:00.”

There is a whole lot of diary entries, but I do not seem to have got a final statement there. I did not get it.

ADV SELLO SC: Okay, we will try and see if there was a statement in before this one that we have. But what we
20 have at 595, at the last paragraph.

COLONEL JACOB: Yes.

ADV SELLO SC: That is Mr Floweday's statement.

COLONEL JACOB: Yes.

ADV SELLO SC: It reads:

“In this matter, I was not informed of the

container inspection on the 22nd of June 2021. The day the drugs was seized at CHC container depot. I only received the instruction to attend inspection on 23rd day of June 2021.”

That was not your instruction. You did not have an inspection on the 23rd, did you?

COLONEL JACOB: No, no. Not on the 23rd, Commissioner.

10 **ADV SELLO SC**: So the operation of the 22nd, he was not involved or informed of it?

COLONEL JACOB: Yes, I see that.

ADV SELLO SC: You see that?

COLONEL JACOB: Yes, I do.

ADV SELLO SC: Is that a concern?

COLONEL JACOB: Yes, it is a concern. I was of the impression that all the entities were informed accordingly.

ADV BALOYI SC: Can I just ask, why should the clearing, informing agent be informed that you are going to be
20 opening their container?

COLONEL JACOB: They are the custodians or the ones that basically take responsibility on behalf of the consignee from the time it had left the country of origin. So it is only proper that they are made aware and either give consent. We have had lots of cases because the clearing agent is not

based anywhere close to Durban, you would get them sometimes giving you an authority to just search or other times sending a representative. So in this case, I did not do my due diligence, Commissioner.

ADV BALOYI SC: You did not do what you should have done, which was you as the person in charge should have satisfied yourself.

COLONEL JACOB: Yes, I should.

ADV BALOYI SC: That the clearing agent has agreed to
10 this.

COLONEL JACOB: Yes, Commissioner.

ADV BALOYI SC: Okay.

ADV SELLO SC: And I think, Commissioner Baloyi, the answer to that question, actually, Mr Floweday gives us at page, still at page 595.

COLONEL JACOB: Yes.

ADV SELLO SC: And it is consistent with what you say. We are at paragraph 3, that big paragraph that starts with my duties will also, you see where I am reading?

20 **COLONEL JACOB:** Yes, I can see.

ADV SELLO SC: Okay. Now, if you go to the bottom, third line from the bottom of that paragraph, it says:

“Under no circumstances the officials will
break the container seal without me
being present, as I will be representing

the client who is the owner of the shipment in the container. The official will either call for unpacking of the container or grand tail board exam without unpacking.”

Whatever that may be. But the key thing is, under no circumstances must it be opened in his absence.

COLONEL JACOB: Yes, I see that.

ADV SELLO SC: If you go to the next paragraph, midway,
10 that would be the third sentence of that paragraph, it says:

“After then it is opened and inspected, the container will be resealed with a new seal. I, Floweday, will then prepare the inspection report and invoice the clearing agent.”

So it would seem that besides being the owner, there is an inspection report that must be completed. You see that?

COLONEL JACOB: Yes, I see that.

ADV SELLO SC: Do you have a challenge with that
20 suggestion, that there is a requirement for a clearing report, an inspection report rather?

COLONEL JACOB: Yes, I was not aware that that is something that was required, Commissioner.

ADV SELLO SC: Do you as the DPCI have a requirement that an inspection report be compiled?

COLONEL JACOB: No, that is not one of our criteria.
That is not something that is adhered to at all times.

ADV SELLO SC: At all times?

COLONEL JACOB: Yes.

ADV SELLO SC: So you adhere to it sometimes?

COLONEL JACOB: It is in cases where the clearing agent has a representative to send over. There are the times where they just grant you permission as long as the warehouse supervisor is present.

10 **ADV SELLO SC**: No, my question is slightly different. I think I am interested in the notion of an inspection report. You as the DPCI, when you go opening containers at the harbour, do you have a requirement to have an inspection report compiled?

COLONEL JACOB: I ...[intervenes].

ADV SELLO SC: I would like to believe that the purpose of that document is to at least explain your conduct.

COLONEL JACOB: Yes.

ADV SELLO SC: Is there no such requirement for DPCI
20 members?

COLONEL JACOB: I have not come across it, Commissioner. I have not.

ADV SELLO SC: You have not? Is there a requirement, is there not?

COLONEL JACOB: It looks like that when I read this, but I

have not come across it. I do not know what it even looks like, this inspection report.

ADV SELLO SC: Are you aware that the ORS at the harbour has that requirement? And in this regard, I would like to refer you to CJC246. And that is an earlier, it is the nearest one, but it is the earlier SOP. But you did say that you have some experience in searching containers at the harbour.

COLONEL JACOB: Yes.

10 **ADV SELLO SC:** So if you go to paragraph 7.2 of CJC, did I say 246? Ja. 249. In fact, I am going to correct that. I know what Commissioner Khumalo was talking about now, about a long day. It is the ORS SOP. That will be CJC255. At page 686, correct. And I am interested in particular in that ORS at paragraph 7.2 at 692. You see that?

COLONEL JACOB: Yes, I can.

ADV SELLO SC: And that ORS tells me of the formality associated with inspection of these containers, at least insofar as ORS Durban Harbour is concerned. If you look at
20 paragraph 7.2, and I will just extract a few points here. At bullet point 2, so the depot inspection team will receive the police stop inspections, right? And then overleaf, it says, first bullet point at the top:

“The inspection report is dispatched from
the admin profilers once the container

has been booked for inspection at the
licenced depot.”

You see that?

COLONEL JACOB: Sorry, Commissioner. I lost you there.

We are looking at page?

ADV SELLO SC: We started at page 690, and I have
turned over leaf at 691.

COLONEL JACOB: Yes.

ADV SELLO SC: The very first bullet point at the top.

10 **COLONEL JACOB**: Yes, I see it now.

ADV SELLO SC: All right. And then that is the one that
says an inspection report is dispatched. It then lists what
must be contained in the inspection report.

COLONEL JACOB: Yes.

ADV SELLO SC: The information. And you are saying to
me that DPCI does not have that formality.

COLONEL JACOB: I have not seen this before, but I see
there is a onus on us to complete something of this nature.

ADV SELLO SC: And I am reading from the ORS Durban
20 Harbour SOP. I want to know whether DPCI has got similar
formal processes, or do you just ride roughshod?

COLONEL JACOB: I have never seen this inspection
report. I would think it may be unique to Border Police, but
I am not 100% certain.

ADV SELLO SC: I am asking about DPCI.

COLONEL JACOB: No, I ...[intervenes].

ADV SELLO SC: I tell you this is Border Police. This is ORS Durban Harbour. And I am reading their SOP. All I am trying to determine is do you have anything similar? Are you this formalised?

COLONEL JACOB: No, we do not ...[intervenes].

ADV SELLO SC: Or do you just ride roughshod over these operations?

COLONEL JACOB: No, we do not have this type. But if I
10 may add, if I look at all of this that is required on this inspection report, we do have all of this on hand.

ADV SELLO SC: What do you have?

COLONEL JACOB: The inquiry. There is an inquiry number. There is a member in charge of the inquiry. There is a container number. There would be a size of the container. What was the container stopped for? Narcotics. The risk factor. The commodity declared. And the place of examination.

ADV SELLO SC: And where is that information captured?
20 All that information?

COLONEL JACOB: I am saying it was not captured at that stage ...[intervenes].

ADV SELLO SC: You say you have it. Where does DPCI capture all this information? At ORS Durban Harbour, they capture it in an inspection report. Where do you capture it?

COLONEL JACOB: Our inquiry would carry all of this information.

ADV SELLO SC: It does not answer my question, Colonel. Where do you capture it? In what document?

COLONEL JACOB: We do not have a ...[intervenes].

ADV SELLO SC: My apologies. If I were to talk to, say, Brigadier Newton at the Durban Harbour, if it is an ORS-led inspection, I would ask for the inspection report. But if it is a DPCI-led operation, and I speak to your final boss, what
10 do I ask for? To obtain that very information that you say you have already, what is the document I ask for? Is there one to ask for in the first place?

COLONEL JACOB: No, there is no document.

ADV SELLO SC: There is not.

COLONEL JACOB: Yes.

ADV SELLO SC: So it is information that is there, but it is scattered all over.

COLONEL JACOB: That is correct.

ADV SELLO SC: Okay.

20 **ADV BALOYI SC**: Can I just follow up on this? So, except for the investigation diary, and assuming for purposes of what I am putting to you now, that it contains an accurate contemporaneous notes or reflection of what happened on the dates that are claimed to have recorded this. Except for that, it seems to me, about this operation in particular, that

there is, in fact, no other record of what happened at the scene. And the scene being where you found these drugs.

COLONEL JACOB: Aside from the affidavits of various individuals.

ADV BALOYI SC: Ja, the affidavits are much later.

COLONEL JACOB: Yes.

ADV BALOYI SC: You see, we are having a discussion here. You are having a discussion with the Evidence Leader about an inspection report. And in 7.2, it is clear in
10 paragraph 7.2 that this is a document, or this information is completed during the inspection, right? It tells you inspection is to be conducted within these hours, and then you must then record all of these things. That is at least how I read it. And I am asking you that in this particular operation, all we have is that investigation diary. We have nothing that is the equivalent of this kind of inspection report.

COLONEL JACOB: You are correct, Commissioner.

ADV BALOYI SC: I am correct?

20 **COLONEL JACOB**: Yes.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: Advocate Sello, can I just follow up? Colonel, this document, the SOP, Standard Operating Procedures, you say you have never seen this before.

COLONEL JACOB: I have never.

ADV BALOYI SC: And this one, we can accept that it belongs to ORS, Operational Response Services. Does the DPCI have a similar document that sets out what you must do when you go to a drug bust at a port or a similar facility?

COLONEL JACOB: That is a good question, Commissioner. In fact, there is nothing in place in terms of a memorandum of understanding between ourselves, Border Police, Customs. So we did sit around the table, I would think, maybe one year ago. We have had some
10 deliberations with senior officials from Customs, the Brigadier that is in charge of the harbour as well. We are in the process of drafting something. So there was nothing formalised to basically dictate how do we work, how do we approach these sort of interdictions at the harbour or at depots.

ADV KHUMALO SC: So are you saying to us you do as you please? If you hear that there are drugs at a port or at a depot, rather, you just go there and you do as you please and you exercise your discretion?

20 **COLONEL JACOB:** You know, I think that maybe I do not want to put it too loosely, like there is no order in the way we work ...[intervenes].

ADV KHUMALO SC: Obviously within the confines of policing.

COLONEL JACOB: Yes, there is not really any

memorandum of understanding or any standard operating procedure or any document that would guide us exactly who goes there first, who do you call out next. For now, it is verbal agreements. We have got understandings with the Border Police, but there is not any formalised document that talks to how do we jointly approach these type of things.

ADV KHUMALO SC: But did you not consider yourself duty-bound, seeing that you had never led an operation of this nature? You said to Chair earlier that you had
 10 participated, but you had never yourself led an operation of this nature. Did you not consider yourself duty-bound to communicate with the relevant stakeholders so that you know what to do when you get there, who to contact and what not to do?

COLONEL JACOB: I should have done that, Commissioner. I did not. I took it for granted. I have been watching my members do it all along. I went there and I just did the same.

ADV KHUMALO SC: You see, it goes back to that
 20 perception you mentioned in your affidavit that the way things were done in this operation leads one to believe that this was all deliberate. This was all part of a plan to seize those drugs, not book them in a police station, book them in a place where they are susceptible to theft and break-ins and they have disappeared as we know.

COLONEL JACOB: Yes.

ADV KHUMALO SC: Because no proper procedures were followed. Are you even bound by the National Instruction applicable to drug seizures as DPCI?

COLONEL JACOB: Yes, definitely. The National Instructions apply to the police holistically.

ADV KHUMALO SC: Now, sitting here today, focussing only on what you have covered with Advocate Sello, up to the point where you take the drugs out of the containers,
10 sitting here today, can you say to us that you complied fully with that National Instruction?

COLONEL JACOB: Honestly, no, Commissioner, I have not complied fully.

ADV KHUMALO SC: Thank you.

ADV SELLO SC: Thank you, Commissioner Khumalo. If we could just then complete this little exercise, and it really is for my benefit to understand how things are done at the DPCI. And as Commissioner Khumalo points out, it starts at the harbour when you open that container, and it stretches
20 all the way to the weekend of the 6th to the 8th of November when there is a break-in at Port Shepstone offices to steal. And we are looking at what happened at which step, and that is the purpose of this exercise.

COLONEL JACOB: Yes, Commissioner.

ADV SELLO SC: And as Commissioner Khumalo points

out, to determine whether or not that eventual theft was purely coincidental or was it set up from the beginning, the answer to that particular question will depend on the information you provide to the Commissioners to make that call.

COLONEL JACOB: I understand.

ADV KHUMALO SC: So they would appreciate your assistance.

COLONEL JACOB: Yes, Commissioner.

10 **ADV SELLO SC:** So then staying at page 691, just then, we have dealt with the first bullet point in the listing, duties of the inspection team upon inspection of profiled containers at licenced depots, right? And I will say, to your fairness, there is a notion in the SOP as to what is a profiled container. It goes through a process, it is profiled, identified, and then it is selected for inspection. So that is the official process.

COLONEL JACOB: Yes.

ADV SELLO SC: But I am sure you will agree with me that
20 this particular container, through the intelligence of Captain Duma, was quote-unquote profiled. It was one of 10 containers being brought on that vessel, the Ludo.

COLONEL JACOB: Yes.

ADV SELLO SC: You are aware of that?

COLONEL JACOB: Yes, I am aware.

ADV SELLO SC: And it is the only container that you were directed to search.

COLONEL JACOB: Yes, that is correct.

ADV SELLO SC: Would you accept then, therefore, it was ...[indistinct]? And I put that in quotation marks. It was profiled.

COLONEL JACOB: I would think to some degree, yes, Commissioner.

ADV SELLO SC: So then here, in terms of ORS, what
10 would be proper procedure, appropriate procedure for dealing with a profiled container? If you go to the fifth bullet point, at ORS, they say:

“Amongst other things, the type of inspection conducted must be endorsed in the inspection report.”

You see what I am reading?

COLONEL JACOB: Yes, I can see, Commissioner.

ADV SELLO SC: And in parentheses:

20 “full unpack, tunnel, or tailboard inspection.”

Do you know what those are? Are you familiar with the terms?

COLONEL JACOB: Yes, I have a vague idea. Tunnel examination, full unpack of the tailboard. I have an idea.

ADV SELLO SC: Okay.

COLONEL JACOB: Yes.

ADV SELLO SC: The bullet points following actually do it for us. I ask because I am wholly unfamiliar:

“A full unpack is when all goods in the container is unpacked and placed within the depot facility for easy accessibility and proper inspection of the goods by the inspection teams.”

Then it adds in:

10 “To also allow the capacity of Canine Unit to search the container for possible detection of narcotics.”

Second sub-point:

 “A tunnel examination is when either the right, left side of the container is unpacked in order for easy accessibility and proper inspection of the goods by the inspection teams and to also allow the capacity of the Canine Unit to search the
20 container for possible detection of narcotics.”

The informers. Is it correct, would it be correct to conclude that you did, according to this definition, a tailboard inspection of that container?

COLONEL JACOB: Yes, it would seem like it was not a

tunnel inspection. So it was a tailboard.

ADV SELLO SC: Sorry, I missed that?

COLONEL JACOB: It was not a tunnel inspection or a tunnel examination.

ADV SELLO SC: Yes.

COLONEL JACOB: It was this tailboard inspection.

ADV SELLO SC: Tailboard?

COLONEL JACOB: Yes.

ADV SELLO SC: And ...[intervenes].

10 **CHAIRPERSON:** What is a tailboard inspection?

COLONEL JACOB: You say it is a ...[intervenes].

CHAIRPERSON: Colonel...

COLONEL JACOB: Yes, a full – okay, full unpack tunnel. It is one side of it where you open, that is my understanding, I could be mistaken, but where we just opened the doors and then we saw what was lying on top. We took it out and then we just merely inspected it at that stage. We did not do a full unpack. I could be wrong, but that is my layman's understanding of it.

20 **ADV SELLO SC:** I understood so as well. There is some document we read earlier and we read that word. I thought that was the understanding, when it is packed at the opening of the container. Upon opening the container, it is the first thing you see.

COLONEL JACOB: Yes.

ADV SELLO SC: But I will cross-check that overnight just to confirm. So, on that definition, you conducted a tailboard inspection?

COLONEL JACOB: Yes, yes, Commissioner, yes.

ADV SELLO SC: How did you know at the time that there was nothing beyond what you could see, those bags? Why did you decide that it does not require a full unpack or a tunnel as described here?

COLONEL JACOB: Okay. Just by virtue of my
10 observations, Commissioner.

ADV SELLO SC: So what exactly did you observe?

COLONEL JACOB: Okay. When we did unpack those 27 canvas bags, you could see these bags of 50 kilo bags of animal feed and it has got a peculiar smell. It has got a peculiar texture, colour, all of that. And you got a little bit of this residue coming out of the bags as well. So that is what I noticed.

These bags, you could clearly see there was some product. You know, it has got that food kind of smell to it,
20 like dog food, sort of. So it was merely by visual observation and looking through and seeing there is no anomalies in the rows that were packed. There is no height differences. It was not a thorough inspection, but we did come back to further inspect it on the 1st of July.

ADV SELLO SC: Why? Why did you go back on the 1st of

July?

COLONEL JACOB: For the purpose of being thorough, to make sure that nothing further was there. Also to release this container to the intended consignee.

ADV SELLO SC: What I do not understand is why did you not find the need on the 22nd of June to be that thorough? Why did you have this brainwave a week later?

COLONEL JACOB: Okay. Commissioner, if you look at it, it was 5 395 50-kilogram bags.

10 **ADV SELLO SC**: But that you discover only after you unpacked?

COLONEL JACOB: No, we had the packing list, Commissioner, so we were aware.

ADV SELLO SC: Sorry, if I may say, but you did not know that on the 22nd of June, did you?

COLONEL JACOB: We had the packing list, we did not know it. Yes, yes, Commissioner.

ADV SELLO SC: So you were already aware of the number of bags you just decided you are not doing that unpacking
20 today. You are going to take what you found when you opened the container, seal the container and you are off. You will come back on another day. Was that like the approach you adopted for the day?

COLONEL JACOB: Yes, but may I clarify?

ADV SELLO SC: Okay, absolutely.

COLONEL JACOB: Okay. The moving of such a volume of bags, despite what other witnesses may have said here, nowhere else is going to just let you utilise their staff for how many hours when it does not benefit them really. So the onus is up to – like I will give you an example. When it comes to counterfeit goods, you get the brand attorneys, the brand agents that come through with labourers that they employ for the specific purpose.

So it is not light work to move 5 000 somewhat 50-
10 kilogram bags. So if we had done it then, the majority of our labour and our time would have gone, would have been wasted, not wasted, but would have been offloading bags for hours and hours instead of focussing on the narcotics that we have just seized.

I was satisfied. My members also did look in there. We sealed the container. So in my mind, we had, and generally rip-on-rip-off works like that, Commissioner. In my experience, what you see in the front of the container,
10 out of 10 times it was what was in the container. So yes,
20 I did not do a proper thorough unpack or inspection of the rest of the container. I did not do it at that stage.

CHAIRPERSON: You have just said something that I find quite startling. You say that no warehouse is going to allow you to, what, I will paraphrase, search in the manner in which you want to if it is not to their benefit. That is...

COLONEL JACOB: Yes.

CHAIRPERSON: It is that last part that I want to focus on, and there I am not paraphrasing. Those are your words.

COLONEL JACOB: Yes.

CHAIRPERSON: If it is not to their benefit.

COLONEL JACOB: Okay. Maybe my choice of word, Chair, was not correct. My point was ...[intervenes].

CHAIRPERSON: And I say that is startling because I cannot see how crime detection could or is to depend on the
10 benefit of the warehouse.

COLONEL JACOB: My apologies, Chair. It is not benefit. The point I was trying to make is that the depots are not forthcoming with labourers if you want to do a full unpack, especially when it comes to voluminous commodities like we did have here. So you need to get your own labourers. You need to get your own manpower to unpack.

CHAIRPERSON: It may actually not be a mistake that you say this because somewhere, let me just look. I hope I will not mess up your probing, Ms Sello.

20 **ADV SELLO SC**: Not at all, Chair.

CHAIRPERSON: So what you just said now actually accords with what you say in your statement. Somewhere in your statement, I hope to find it just now. Somewhere in your statement you say that you did not want to prejudice the depot basically, the operations of the depot.

COLONEL JACOB: Yes.

CHAIRPERSON: So that actually ties in with what you said now about the benefit of the warehouse. This you say in paragraph 21 of your statement. Do you want to go there? There you say:

10 “I took the decision not to cordon off and
 close the depot. I did not want to
 prejudice the company by closing them
 down for the rest of the day as they were
 not suspects in the matter.”

So it actually ties in with your statement about the benefit of what you call now the warehouse. So you were actually not making a mistake when you spoke about the benefit of the warehouse.

COLONEL JACOB: It was just a wrong choice of ...[intervenes].

CHAIRPERSON: But have you had a look at the first two sentences of paragraph 21? Please do so now.

COLONEL JACOB: Yes.

20 **CHAIRPERSON:** Your statement prepared for the Commission.

COLONEL JACOB: Yes.

CHAIRPERSON: But do you see that the two are basically similar in substance?

COLONEL JACOB: Yes, I noticed that, Chair.

CHAIRPERSON: So you should accept when I say to you that when you spoke about the benefit of the warehouse, you are not making a mistake. This is something that is in your head, which is why you would have it in your statement in paragraph 21. It cannot be a mistake. You cannot repeat the same mistake.

COLONEL JACOB: That was not my intention when I said benefit ...[intervenes].

CHAIRPERSON: I mean, when you prepare a written
10 statement, you sit down, you think it is true, and then you put – it is no longer pen to paper now. It is clicking keys on your iPad, laptop, or whatever. So you cannot talk about a mistake in paragraph 21, can you?

COLONEL JACOB: Yes, no, this is not a mistake, Commissioner.

CHAIRPERSON: Now you have just accepted that this ties in with what you said about the benefit to the warehouse. You remember you just accepted that now.

COLONEL JACOB: Yes.

20 **CHAIRPERSON:** So if it is not a mistake in paragraph 21, it cannot be a mistake when you said it here. Can it be?

COLONEL JACOB: May I be allowed to ...[intervenes].

CHAIRPERSON: The two basically say the same thing.

COLONEL JACOB: Yes.

CHAIRPERSON: So you cannot say the one, which is what

you just said now, is a mistake, but this one in paragraph 21 is not a mistake.

COLONEL JACOB: May I comment to this?

CHAIRPERSON: Yes, yes.

COLONEL JACOB: Okay. I think the point I am trying to drive through, Chair, is that not every company has the manpower to spare or to do it efficiently enough, especially with the movement of over 5 000 50-kilogram bags. So that was just my point, you know, that they are not too keen on
10 doing it as well.

So that is what I was trying to drive, that that is why we did not do it at that point. We know that normally for this type of unpack, you need to be prepared with your own labourers. So I did not intend that way, but I was mindful. And then in the same breath, I would say I was mindful, especially at this stage, when it came to paragraph 21, about closing this company off for the rest of the day. Yes, I was mindful of that.

CHAIRPERSON: I will engage you further. It is just that I
20 do not want to disturb Ms Sello's ...[intervenes].

ADV SELLO SC: No, Chair, you may proceed, otherwise we will pick it up again tomorrow. But it is not disturbing my flow at all.

CHAIRPERSON: Thank you, thank you. Do you accept that the optimal way to perform the search and work the

crime scene was to do that at location? Do you accept that?

COLONEL JACOB: Yes.

CHAIRPERSON: That is where the container was.

COLONEL JACOB: I accept it, Chair.

CHAIRPERSON: Or at the most, to just remove it where it was, because you say there was a container this side and another container this side. Maybe to just move it even before opening it to where there would be enough space for
10 you to do a proper cordoning off. Correct?

COLONEL JACOB: You are correct, Chair.

CHAIRPERSON: And would you say there was not sufficient space for you to move the container in that manner?

COLONEL JACOB: Yes, Chair.

CHAIRPERSON: There was?

COLONEL JACOB: No, there was not.

CHAIRPERSON: There was not. So all the space that was available was the space where there were containers along
20 each other and not any other space anywhere else within that entire precinct at the depot. Is that what you are saying?

COLONEL JACOB: No, I am not saying that, Chair.

CHAIRPERSON: That is exactly what I am asking you.

COLONEL JACOB: So ...[INTERVENES].

CHAIRPERSON: Was there space for you to move the container from where there were containers on either side, within the precinct?

COLONEL JACOB: I did not fully inspect it, but I would ...[intervenes].

CHAIRPERSON: No, no, no, no, no. I am talking about space. Was there space for that?

COLONEL JACOB: I would think so.

CHAIRPERSON: So you could have moved the container.

10 **COLONEL JACOB**: Yes, yes.

CHAIRPERSON: And then you would have had enough space to cordon off that area where you had moved it to. Not so?

COLONEL JACOB: Yes.

CHAIRPERSON: Now you have accepted that the optimal thing for you to do was to do it at location. And now you have just admitted or accepted also that you could have moved it to have enough space to cordon off so that you are not obstructed by containers on either side. So you have
20 accepted that as well. And now you have said, or rather, and you inspect, search, conduct the operation on location, not for the sake of it. You do not do that for the sake of it. There are practical considerations for that. Correct?

COLONEL JACOB: Yes.

CHAIRPERSON: And for example, there should be no

tampering with fingerprints and DNA before the LCRC has checked for these. Is that correct?

COLONEL JACOB: Yes, that is correct, Chair.

CHAIRPERSON: Now, here you did not call LCRC, you have said that. Paragraph 7 of your statement of the 23rd of June 2022. Your statement of 22 June 2022, paragraph 7. Page 648 of Exhibit File 2. You say in so many ways that you did not call LCRC. Correct?

COLONEL JACOB: Yes, Chair.

10 **CHAIRPERSON**: Here is what you say:

“I did not request LCRC to attend the scene.”

The first sentence of paragraph 7, you see that? Page 648, Exhibit File 2.

COLONEL JACOB: Yes, I see it, Chair.

CHAIRPERSON: So now you accept that it is important for the LCRC to check for DNA and fingerprints on location. The reason for that, obviously, is that there should be no tampering. The LCRC, wherever possible, should be able to
20 uplift the fingerprints and the DNA, if there is any, if there are any. Correct?

COLONEL JACOB: Yes, Chair.

CHAIRPERSON: Now, when exhibits are handled before the LCRC has uplifted the fingerprints and DNA, there are chances, or rather, there may be chances of successfully

uplifting these. That is if the LCRC works on the exhibits before they have been handled or moved.

COLONEL JACOB: Yes, Chair.

CHAIRPERSON: You accept?

COLONEL JACOB: I do.

CHAIRPERSON: Now, but if it is the opposite that has happened, that is if they have been touched, handled, and moved, or moved, the chances of that happening may be brought to nought. Is that correct?

10 **COLONEL JACOB**: You are correct, Chair.

CHAIRPERSON: Now, at the time you did this, that is choosing not to call LCRC, handling and moving these exhibits, what were you thinking about the utility of allowing LCRC to first check for fingerprints and DNA? What were you thinking about the utility of that?

COLONEL JACOB: Okay. Chair, it is my answer, it may not be accepted well, but in my experience all of these cases, although like I indicated, I may not have investigated hands-on these cases, I have inspected them, you know, on
20 numerous occasions, when these cases are generated, I have sight of them.

Even if I give you 20 rip-on-rip-off loads that we had addressed or seized, made seizures at, in not one of these cases, not one, have we ever received any feedback by way of LCRC in terms of fingerprints uplifted or DNA.

And, Chair, I am going to go a little further to explain why as well.

I am not sure why they did not give us any feedback, but as a Detective, from my point of view, I am saying it is – you have got a very slim to none chance of objectively linking your suspect to those drugs that were found in a rip-on-rip-off load. There is no way to distinguish between fingerprints or DNA, more especially in the container, fingerprints or DNA that belong to your suspects
10 and those that belong to legitimate port officials who had loaded the legitimate commodity in the container.

So I am not sure whether that plays a role in it, but part of my decision not to call them was based on the fact that out of every single case of rip-on-rip-off that we had handled, we have received nothing by way of fingerprints or DNA.

CHAIRPERSON: So Colonel Jacob says, I am taking my own decision and I am not going to allow the ordinary and ordinarily applicable process of having the LCRC to come to
20 the scene and do their work before I handle these goods. I am taking it upon myself as Colonel Jacob to, or rather, not to heed that process that applies, that is an applicable prescript. I, as Colonel Jacob, am not going to follow that.

COLONEL JACOB: Yes. Chair, that is one of those decisions that I said to you I will rue for the rest of my life.

So ...[intervenes].

CHAIRPERSON: You see, the problem is it may be easy for you to say that that is a decision you will rue for the rest of your life. The problem is we want to get behind the why. There is a big why in all of this.

COLONEL JACOB: Yes.

CHAIRPERSON: One, I engaged you earlier on the available storage spaces. There as well – by the way, no, I am talking about my notes. I have not done it yet. I am
10 talking about my notes on something I want to engage you on, but I will not do it now. But it was quite plain when Ms Sello was engaging you that you did not enquire about the capacity of the other places.

Now I remember. What I engaged you on were the distances. And you accepted when I engaged you that the one police station within Durban was, the furthest was 24 kilometres. The other 20, another one lesser.

COLONEL JACOB: Yes.

CHAIRPERSON: And there as well, you did not really have
20 an explanation as to why you did not go there. Now again, you do not really have an explanation for not following prescripts. And all you say is it is a decision that you will rue for the rest of your life. Bear in mind that in the end, the Cocaine or suspected Cocaine gets lost. So the question why is very important in connection with all of

these steps where there are decisions that you will live to rue for the rest of your life.

COLONEL JACOB: Yes, Chair.

CHAIRPERSON: So the why is very important. And I am not saying you stole the Cocaine, but we are asking all these questions because there is that question of who stole this Cocaine. Do you get what I mean?

COLONEL JACOB: I understand, Chair.

CHAIRPERSON: Do you want to comment on that?

10 **COLONEL JACOB**: What can I say? I think I will leave it at that, Chair. But just to say that it may have been a sense of complacency that set in or familiarity with, I know this is how these cases go, and that is why I made that decision that I did. However, I see there is no benefit in taking any shortcuts. And I can see how it does not look good to the Commission.

CHAIRPERSON: Not the Commission, you.

COLONEL JACOB: Yes.

CHAIRPERSON: You.

20 **COLONEL JACOB**: Even for me, yes.

CHAIRPERSON: Yes.

COLONEL JACOB: I understand, Chair. Yes, I understand.

ADV BALOYI SC: Can I just ask something to clarify what your evidence, in fact, is about the LCRC not being called

to the scene? And I ask this question because depending on your answer, the answers have different consequences. Did you make the decision on the scene not to call the LCRC? That is one possibility, and I am trying to understand your evidence. Or it never crossed your mind at all that you should be calling them? You just went in and did what you and your people did on the scene. Which one of the two is it?

COLONEL JACOB: I will say, Commissioner, I saw them
 10 as an investigative aid that at that point in time was not priority based on the fact that we had recovered this amount of drugs, we did not have exhibit bags to seal it in. I did not want to send members out searching every station for exhibit bags. I saw that the police station was four kilometres away ...[intervenes].

ADV BALOYI SC: Ja. Sorry, my question is different. My question is, did you make a decision to not call the LCRC? It is yes or no. We know for a fact they were not there. And I am asking you a question of, were they not there
 20 because you considered it and you made the decision not to call them?

COLONEL JACOB: At the scene, yes, I made a decision not to call them, Commissioner.

ADV BALOYI SC: Okay.

COLONEL JACOB: Ja.

ADV BALOYI SC: So you acted in breach of the – you made the decision to act in breach of the instruction that says you should call the LCRC.

COLONEL JACOB: You are correct.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you. Chair ...[intervenes].

CHAIRPERSON: It may not be a – yes, yes, yes.

ADV SELLO SC: No, I ...[intervenes].

CHAIRPERSON: No, no, no, please.

10 **ADV SELLO SC:** No, I am quite aware of the time, and I was saying before the Chair orders us to rise for the day, I just wanted to finish off this particular topic with one question.

CHAIRPERSON: You are aware that we have a scheduled meeting for quarter past?

ADV SELLO SC: Judging by the Chair's questions, I thought that meeting was going to be a very brief one.

CHAIRPERSON: No, no.

20 **ADV SELLO SC:** Thank you. Colonel, if you go to paragraph 35, and we have spoken about this, it is your return to the depot on the 1st of July.

COLONEL JACOB: What page number, Commissioner?

ADV SELLO SC: Your statement now?

COLONEL JACOB: Yes.

ADV SELLO SC: Page 6, paragraph 35. It is the 1st of

July 2021. You are back at the depot with the container.

Are you there? Your statement to the Commission?

COLONEL JACOB: Yes, yes, it looks like it.

ADV SELLO SC: Page 6 of his statement, paragraph 35.

COLONEL JACOB: The statement is on what page, Commissioner?

ADV SELLO SC: Tab 3 of the consolidated statements.

Can you read the screen? There is one closer to you.

COLONEL JACOB: Okay, yes, I can.

10 **ADV SELLO SC**: Okay, and I will read out some of it to you. You say:

“On my return from work, I took over the investigation. Mpangase made it known that he was leaving.”

Then, third line:

20 “On 1 July 2021, I proceeded to the CHC Depot with Mpangase and Sibiya. I had arranged that the clearing agent, Megafreight, send a representative to unpack the container, and we conducted a count of 50kg bags of animal feed. They amounted to 5 395 bags, which corresponded with the packing list.”

Why did you go back to that container? You do not state here why you went.

COLONEL JACOB: Okay. Commissioner, if there was deception involved on the part of the consignee, the clearing agent, in terms of maybe a shortfall in the number of bags. I am just giving you an example. Instead of 5 395 bags, they have now had 5 200 bags, or even a lesser amount. Then it would indicate to me that maybe they had made allowance for the carting of this Cocaine to South Africa.

So, it would have shown that their packing list does
10 not correspond with what is on the, or the number of bags does not correspond with what is on the packing list, there is a possibility that they may have knowledge of what is in there, because, remember, eventually they are going to receive their commodity.

If there is a bag short, one would expect them to complain. No cartel wants your consignee knowing that you used his container to cart drugs in. So that would have given me the impression that it is possible that our clearing agent or our consignee had knowledge about what was in
20 the container. But the fact that their number of bags corresponded with the shipping documentation, the packing list, to me was an indicator that there was no deception on their part.

ADV SELLO SC: Now, but then the consignee is the recipient of the goods.

COLONEL JACOB: That is correct.

ADV SELLO SC: But they do not even know because they have not had sight of the content of that container, remember?

COLONEL JACOB: Yes.

ADV SELLO SC: You opened the container in their absence and you resealed it.

COLONEL JACOB: That is correct.

ADV SELLO SC: Now, you are doing what sounds like
10 Customs' work. Why are you busy counting animal feed bags? You mentioned to Commissioner Baloyi earlier about the SARS detention notice. You recall that?

COLONEL JACOB: Yes.

ADV SELLO SC: And it is a list of all those 10 containers.

COLONEL JACOB: Yes.

ADV SELLO SC: Why did you not forward that enquiry to SARS to verify for you whether every container, because *inter alia* that they would check, corresponds to their shipping documents? Why must you go and count 530,
20 whatever, 5 000 bags?

COLONEL JACOB: I think purely because, Commissioner, we were the ones who initially are responsible for that container by virtue of taking out the bag, canvas bags, resealing it. We were the one that, or I was the one that took that decision. So the actual releasing of the container

and ensuring that there is nothing further in that container and to ensure that this consignee was not doing it, or declared his goods accurately on the SAD500 and the packing list was my duty to ensure that there was no red flags with these entities.

ADV SELLO SC: Okay. You did not detain that container. Correct?

COLONEL JACOB: No, I did not.

ADV SELLO SC: It was never your responsibility to
10 release it because you never detained it.

COLONEL JACOB: If I am not mistaken, Commissioner, I could be wrong, but SARS were done with their detention and inspection ...[intervenes].

ADV SELLO SC: I am interested in your responsibility to that container. You never detained it, so I say you did not have the responsibility to release it. By then, SARS had detained it. It then became SARS' responsibility. Why are you meddling in those issues?

COLONEL JACOB: I was not, or SARS did not make us
20 aware that they were still interested in it. I did have engagements with them, Commissioner. I am sure if they still wanted to inspect it, I would have availed the container to them, but I think their interest had waned since we had found those drugs on it.

ADV SELLO SC: Okay. Did you issue a release notice for

this container as DPCI? I can tell you for free that it is not in the documents, in the docket or the inquiry file. Do you have a copy of that?

COLONEL JACOB: Yes, I can confirm. Since there was no formal detention notice on it from our side, it was a voluntary search, we did not do any formalised release document.

ADV SELLO SC: You know there is a release form for those containers, for this particular container, but not
10 issued by DPCI?

COLONEL JACOB: Yes, that release form is after a detention notice is placed on the container.

ADV SELLO SC: Yes.

COLONEL JACOB: Yes, I do.

ADV SELLO SC: Okay. I think, Chair, your meeting, perhaps. I am happy to stop here.

CHAIRPERSON: Let us adjourn and resume at 09:30 tomorrow.

INQUIRY POSTPONED TO 4 JUNE

20 **INQUIRY ADJOURNS**

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