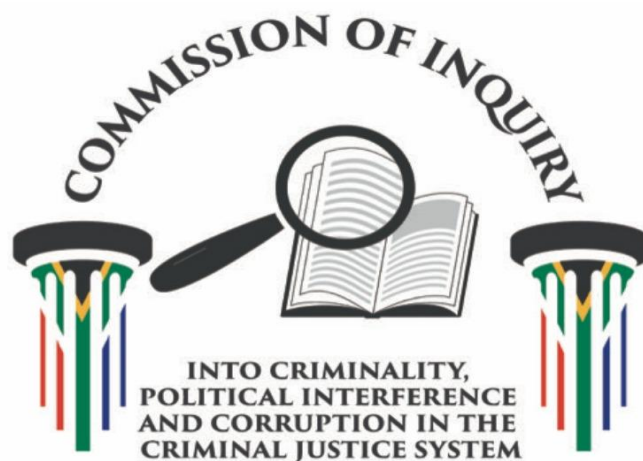


JUDICIAL COMMISSION OF ENQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

5 JUNE 2026

DAY 114



PROCEEDINGS ON 5 JUNE 2026

CHAIRPERSON: Good morning. You confuse us. Good morning, Sikhakhane.

ADV SIKHAKHANE: Good morning, Chair.

CHAIRPERSON: Good morning, good morning.

ADV SELLO SC: Good morning, Commissioners.

CHAIRPERSON: Good morning, Warrant Officer. Good morning, Colonel. I am so sorry. Good morning, Colonel.

10 **LT-COL SIBIYA:** Good morning, Commissioners. Thank you.

CHAIRPERSON: Thank you.

ADV SELLO SC: Morning, Chair and Commissioners. Chair, I do not mean to confuse, but I am led sometimes, so I have to follow my leader in terms of where I place myself in the auditorium. Chair, we continue with the Port Shepstone evidence, and our next witness is available. He will be led by Advocate Sikhakhane. Thank you.

CHAIRPERSON: Thank you very much, Ms Sello. Thank you. Mr Sikhakhane.

20 **ADV SIKHAKHANE:** Thank you, Chair and the Commissioners. Please, I may apologize for my voice. It is one of those things. Thank you.

CHAIRPERSON: Oh, oh, thank you.

ADV SIKHAKHANE: Good morning, Colonel.

LT-COL SIBIYA: Good morning, morning, morning.

ADV SIKHAKHANE: Thank you. Okay, the witness today is Lieutenant Colonel Goodenough Sibiya. If you would have a file with his statement, file 1.

CHAIRPERSON: Colonel, will you be swearing or affirming?

LT-COL SIBIYA: I will be swearing.

CHAIRPERSON: And your full names are as they were stated just now by Advocate Sikhakhane?

LT-COL SIBIYA: I am Kwazikwakhe Goodenough Sibiya.

10 **CHAIRPERSON:** 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".

LT-COL SIBIYA: So help me God.

CHAIRPERSON: Thank you, Colonel. May you please speak up a little bit.

LT-COL SIBIYA: So help me God.

KWAZIKWAKHE GOODENOUGH SIBIYA (duly sworn states)

20 **CHAIRPERSON:** Thank you.

EXAMINATION BY ADV SIKHAKHANE: Thank you, Chair. As I stated, Colonel Sibiya was one of the members who was involved within, as my latest senior has said, at the Port Shepstone seizure and he was ...[intervenes].

CHAIRPERSON: It is CHC ...[intervenes].

ADV SIKHAKHANE: Depot.

CHAIRPERSON: Depot seizure.

ADV SIKHAKHANE: Yes.

CHAIRPERSON: Yes.

ADV SIKHAKHANE: In Isipingo. Yes, he was there at the scene and we deemed it necessary to call for his testimony. And he has provided a statement, as I had earlier pointed out, that is in the file 1 and I would like to start with that file.

10 **CHAIRPERSON:** Thank you.

ADV SIKHAKHANE: Colonel.

LT-COL SIBIYA: Yes, yes.

ADV SIKHAKHANE: You have that file open?

LT-COL SIBIYA: Yes, I do.

ADV SIKHAKHANE: All right. I think what we will go through is your statement with less interruptions and then thereafter we will then have probing questions or engagement between myself and the Commissioners, and please answer those questions.

20 **LT-COL SIBIYA:** Noted, Chair.

ADV SIKHAKHANE: Thank you. Can you then go to that file, page, page 10, which is your signature.

LT-COL SIBIYA: Yes, it is my signature, Chair.

ADV SIKHAKHANE: Okay, so you are on the statement that you prepared on your own.

LT-COL SIBIYA: Yes, Chair.

ADV SIKHAKHANE: Thank you. May you please then start from paragraph 1 of your statement and ...[intervenes].

ADV BALOYI SC: Mr Sikhakhane, the statement is not dated. What do we do with that?

ADV SIKHAKHANE: Ja, that might be the challenge. Do you recall the date of when you did the statement?

LT-COL SIBIYA: I submitted my statement, it was on Monday.

10 **ADV SIKHAKHANE:** Monday the 1st?

LT-COL SIBIYA: Monday the 1st.

ADV SIKHAKHANE: Thank you.

CHAIRPERSON: Will one copy be signed, or rather dated, please?

ADV SIKHAKHANE: We will do that.

CHAIRPERSON: And then the ones we have may be replaced, ja.

ADV SIKHAKHANE: Thank you.

CHAIRPERSON: Thank you.

20 **ADV SIKHAKHANE:** We will attend to that with yourself.

LT-COL SIBIYA: Yes, Chair.

ADV SIKHAKHANE: All right, can we then go to your paragraph 1.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And please read it out loud. Please

raise your voice.

LT-COL SIBIYA: Okay, Chair.

“I am a Lieutenant Colonel in the South
African Police Service with PERSAL
number 70533318 ...” [intervenes]

ADV KHUMALO SC: Please do not read your PERSAL
number.

LT-COL SIBIYA: Oh. Thank you, Chair.

10 “I am attached to the Directorate for
Priority Crime Investigation, Serious
Organized Crime, Unit SANEB in
Durban.”

CHAIRPERSON: Is there, are they, ja, let them be as
close as possible.

ADV SIKHAKHANE: We move them now, Chair.

LT-COL SIBIYA: Oh, the mics are on?

CHAIRPERSON: I was saying ...[intervenes].

LT-COL SIBIYA: Okay.

CHAIRPERSON: They should be as close as possible.

20 **LT-COL SIBIYA**: Okay, Chair.

CHAIRPERSON: And let us try, let us continue.

LT-COL SIBIYA: Okay.

“I hold a Diploma in Criminal Justice
and Forensic Investigation from the
University of Johannesburg along with

a Certificate in Policing and a National Diploma in Policing from HJN College. Additionally, I have earned both the National Certificate in Security Management and completed the program in Security Management through UNISA.”

ADV BALOYI SC: Colonel, what is HJN College?

LT-COL SIBIYA: It is a college. It is a college.

10 **ADV BALOYI SC:** Is it a police college?

LT-COL SIBIYA: It is a college, not a police college. It is a college.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: Ja.

ADV BALOYI SC: Where is it?

LT-COL SIBIYA: They have got, here in Centurion.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: Ja. They have got offices here in Centurion.

20 **ADV BALOYI SC:** Okay.

LT-COL SIBIYA: Ja.

CHAIRPERSON: And security management, what kind of security is that? Security management, is that, for instance, you will find security personnel, guiding premises, what kind of security, security management, that

qualification.

LT-COL SIBIYA: A security management program, it is ...[intervenes].

CHAIRPERSON: Ja, I am asking what that entails. What is it about?

LT-COL SIBIYA: It contains various modules. Security risk management is one of the modules. Security management is also another module that is there. I have done it in 2015, so it is quite a long time, Commissioner.

10 **CHAIRPERSON:** Okay.

LT-COL SIBIYA: Ja. But from UNISA. I did that one in UNISA. It is a NQF7 qualification.

CHAIRPERSON: All right, thank you, thank you.

LT-COL SIBIYA: All right.

“In 2005, I began my career with the police as a Student Constable. I was appointed as a Constable in 2007.

20 On October 1, 2016, I advanced to the rank of a Sergeant and subsequently, on November, I was promoted to Warrant Officer at the DPCI Financial Investigation Unit.

In September 2021, I attained the rank of a Captain within the DPCI Serious Organized Crime Investigation, SOCI,

in Durban.

Most recently, December 1, 2024, I was promoted to a Lieutenant Colonel at DPCI, SOCI.

Then, in 2005, I began my career at Maphmulo SAPS in KwaZulu-Natal. Subsequently, in 2008, I was transferred to SAPS OR Tambo International Airport.

10 In 2009, I joined the Tactical Response Team and in 2011, the entire team was relocated to Gauteng Provincial TRT. That same year, I became part of the DPCI Tactical Operations Management System, known as TOMS.

In 2012, I joined Johannesburg Organized Crime, followed by a relocation in 2015 to Durban Organized Crime.

20 In 2016, I was promoted to DPCI Financial Investigation.

In 2020, both myself and Lieutenant Colonel and I temporarily transferred from Financial Investigation to Organized Crime as part of a duty

arrangement done by Provincial
Management.”

ADV SIKHAKHANE: Sorry, can I just disturb you at this point. My apologies. When you said the duty arrangement was done by Provincial Management, can you just elaborate who at Provincial Management was involved in that?

LT-COL SIBIYA: Provincial Management, it was General Senona, Brigadier Nyuswa, and Colonel Singh.

ADV SIKHAKHANE: And was there any formalities in
10 respect of that transfer?

LT-COL SIBIYA: It is not a transfer as *per se*, it is duty arrangements. Duty arrangements are done regularly in the police.

ADV SIKHAKHANE: Okay, thank you.

CHAIRPERSON: Just the very last line, where you say in 2020, you skipped that name. Did you do so deliberately or inadvertently?

LT-COL SIBIYA: Lieutenant Colonel Moodley.

CHAIRPERSON: Just read that entire sentence then,
20 please.

LT-COL SIBIYA: All right, all right, Commissioner.

“In 2020, both Lieutenant Colonel
Moodley and I temporarily transferred
from Financial Investigation Organized
Crime as part of a duty arrangement

done by Provincial Management.”

CHAIRPERSON: Investigation to Organized Crime. You again skipped that “to”. Thank you, thank you.

LT-COL SIBIYA: Okay.

CHAIRPERSON: Please continue. I think you started, oh, sorry, sorry.

ADV BALOYI SC: Before that, you say you were temporarily transferred from Financial Investigation to Organized Crime. And then what happens? You are there
10 for how long and after that, where do you go?

LT-COL SIBIYA: I was transferred from Financial Investigation to Organized Crime. While I was at Organized Crime, I applied for a post and I was promoted.

ADV BALOYI SC: Okay. And this is the promotion to where now, where do you go?

LT-COL SIBIYA: To Organized Crime now.

ADV BALOYI SC: I see. Okay.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Thank you.

20 **LT-COL SIBIYA:** -:

“This affidavit is made in response to the notice issued by the Commission in accordance with Rule 3.5 of its rules dated 15 May 2026, the notice. The notice arises from the testimony and

statement of General Hendrik Flynn concerning a drug seizure that occurred on the 22nd June 2021 at CHC Depot in Isipingo. I have read the notice and the accompanying extract from Major General Flynn's statement and testimony. I deny the allegation levelled against me. The affidavit will demonstrate that my involvement in the event of 2022, January 2021 ..."

10 [intervenes].

CHAIRPERSON: June.

LT-COL SIBIYA: Oh, I am sorry about that, Commissioner.
Can I start afresh?

"I deny the allegation level against me. This affidavit demonstrate that my involvement in the event of 22 June 2021 was limited and restricted to what I was requested and instructed to do.

20 Any allegation contained in this notice, its attachments that is not specifically addressed and admitted herein must be taken as denied. On the 22nd June 2021, Warrant Officer Mpangase requested me to assist him and

Lieutenant-Colonel Jacob to follow up on information concerning a possible drug bust. At the time, I was attached to DPCI unit focused on economic protected resources. Large-scale drug investigation were not my area of specialization or primary function. We proceeded to Phoenix to ...”
[intervenes].

10 **ADV BALOYI SC:** Sorry, Colonel, can I just, I just want to make sure that I have my timeline correct. So, in June, in June 2021, you are economic, is that in organized crime as well?

LT-COL SIBIYA: Yes, Chair. Organized crime has got three components. It is SANEB, EPR and NPVC.

ADV BALOYI SC: Okay. So, by that, so, on 22 June 2020, you already have been promoted into Organized Crime?

LT-COL SIBIYA: No, no, not yet. I was not promoted at that point in time. I was only promoted on the 1st of
20 September 2021.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: So, June, I was not yet promoted.

ADV BALOYI SC: So, in June, you are still under that temporary transfer?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: That is, is that what is happening?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: In June. Okay, thank you.

ADV SIKHAKHANE: Sorry, sorry, Colonel, maybe let me at this point just, so that we are here. When, just to follow up on what Commissioner Baloyi is saying, in terms of your normal duties, what did those include?

LT-COL SIBIYA: My duties, I was an Investigator at Economic Protected Resources, which deals with human
10 trafficking, kidnappings, non-ferrous metal, theft of copper, theft of fuel. So, those were the things that I was investigating at the time.

ADV SIKHAKHANE: And in terms of Narcotics, would that have been outside your duties?

LT-COL SIBIYA: Yes. Yes.

ADV SIKHAKHANE: And prior to that, had you been involved in things relating to narcotics or operations relating to narcotics?

LT-COL SIBIYA: Yes, I was involved in some operations
20 involved in narcotics.

ADV SIKHAKHANE: Okay, thank you. You may proceed.

LT-COL SIBIYA: -:

“We proceeded to Phoenix to fetch
Lieutenant Colonel Jacob using a state
motor vehicle, VW Golf 7 TDI with

registration number. We then proceeded to Durban, Isipingo, near the harbour. We met an African male who was introduced by Lieutenant Colonel Jacob as Captain Duma from Crime Intelligence Unit. Captain Duma addressed us. Lieutenant Colonel Jacob and Warrant Officer Mpangase and indicated that he has information from an informer about 27 bricks of pure Cocaine stored inside the container at CHC Depot at 14th Avenue East in Prospecton.

We followed Captain Duma to the depot. He was driving a charcoal Toyota Corolla. On arrival at the depot, we introduced ourselves and entered at the main gate. We continued following Captain Duma straight down the road.

Lieutenant Colonel Jacob went to the management office. After some time, they came back with an Indian lady who was introduced as Mrs Pillay, the Manager of the depot. Lieutenant

Colonel Jacobs stated the reason of our visit. The container with serial number BEAU5955535 was placed down for inspection and the shipping document were handed over to Lieutenant Colonel Jacobs. The doors of the container were inspected by Lieutenant Colonel Jacobs. The seal was intact with seal number, that. The seal was broken by an employee of the depot in the presence of the management of the depot, DPCI members, Captain Duma of CIORS members and depot security members. When the doors were opened, we noticed inside the container black canvas bags with tape placed next to the door and some on top of the white sacks.

When these bags were inspected inside them, we were all shocked and surprised by the quantity of drugs found. They contained bricks of suspected Cocaine wrapped in black and yellow tape, some written Jaguar

and TikTok packages with approximately 1 kilogram per brick. The space was limited for us to work as the machinery was moving up and down. It was also risky for the members and ...[indistinct] [reads very fast] due to the number of bystanders who were observing the activities. Lieutenant Colonel Jacob informed us that we should proceed to Isipingo SAPS.

He requested members from ORS Durban Harbour to assist. All the 27 black bags were loaded into the ORS marked vehicle, a Hyundai H1 driven by Sergeant Govender and his crew, Sergeant Mkhize. I drove behind the H1 and never lost sight of them to the police station. On arrival at the police station we parked the vehicles on the parking lot. Warrant Officer Perumal of SAP13 was called to the parking and he started to offload the bags.

All the bags placed them on the floor. We started placing the exhibits on the

ground and started counting. The total number of the bricks from the 27 bags was 541 bricks suspected Cocaine. All the exhibits were entered in the Isipingo SAP13 373/2021 by Warrant Officer Mpangase and booked them out. While at the Isipingo SAPS as we were busy unpacking and counting, I heard the SAP13 clerk, Warrant Officer Perumal, talking to Lieutenant Colonel Jacob, stating that they do not have place to store these drugs. Warrant Officer Mpangase requested for the exhibit bag from Warrant Officer Perumal. However, Perumal indicated that he did not have any forensic bags. Warrant Officer Mpangase requested that I must go and request for the bags at the charge office. I went to request for the bags at the charge office. Members indicated that they do not have forensic bags.

Lieutenant Colonel Jacobs indicated that he has informed Brigadier Nyuswa about the issue of unavailability of

storage at Isipingo SAPS. After some time, Lieutenant Jacob informed us that the exhibit will be kept at Port Shepstone Organized Crime Unit walk-in safe. Members from our office and tracing team were on their way to give backup on the escort. Lieutenant Jacob handed over to Warrant Officer Mpangase and left Isipingo SAPS to proceed with his vocational leave. The members arrived shortly and Warrant Officer Mpangase briefed them and the exhibits were loaded in the Hyundai H1 and Nissan X-Trail NPVC vehicles.

We departed from Isipingo SAPS and proceeded straight to Port Shepstone Organized Crime Unit. On arrival at Port Shepstone Organized Crime we met General Senona, Brigadier Nyuswa, the acting Unit Commander of Port Shepstone and other members. We offloaded the exhibit from the two vehicles and placed them inside the walk-in safe. The acting Unit Commander locked the safe, handed

over the keys to Warrant Officer Mpangase who checked the safe door and took the keys. He handed the keys to General Senona at the main entrance. We drove back to Durban with the rest of the team.”

ADV SIKHAKHANE: Sorry, sorry, sorry, Colonel, can I just ask one thing. When you say you met General Senona and Brigadier Nyuswa, just before I forget, were they already at
10 the Port Shepstone offices or you arrived at the same time or they arrived thereafter?

LT-COL SIBIYA: We arrived at the same time.

ADV SIKHAKHANE: At the same time.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: Thank you.

LT-COL SIBIYA: -:

20 “On the 23rd June 2021 in the morning, I was informed by Warrant Officer Mpangase that we needed to go to Port Shepstone to place the exhibit inside the forensic bags. We then went to provincial office to collect the keys. We remained in the vehicle since there was no parking and Warrant Officer Mpangase picked up the keys. We

then proceeded straight to Port Shepstone with other members from Durban office, SANEB and Tracking team. Upon arrival at Organised Crime offices, we met with the acting Unit Commander, Lieutenant Colonel Prinsloo and Warrant Officer Van der Berg from Port Shepstone SOCI. Members from Durban SOCI, SANEB were also present, Captain BT Ntanzi, Captain CM Freeze, Sergeant Gumede and members from Tracking team. I do not know their names. The exhibit were recounted and sealed in the exhibit bags. We departed to Durban, travelling on the state motor vehicle BSG 056B. It was myself, Detective Warrant Officer Mpangase and Sergeant Gumede.

On the 24th June 2021 in the morning, Warrant Officer Mpangase came to my office and he indicated that we needed to go back to Port Shepstone to obtain the sample and book the exhibit in the SAP13. We then left the Durban office

to provincial office. We parked on the road with Sergeant Gumede while Warrant Officer Mpangase went up to collect the keys. He came back. We proceeded to Port Shepstone DPCI. On arrival, members from the Port Shepstone DPCI SOCI, Detective Warrant Officer Van der Berg and another member, I do not know his name, were waiting for us at the entrance towards the walk-in safe. The safe was opened by Warrant Officer Mpangase in their presence and he took the sample from the exhibits and we went to Port Shepstone SAPS with Warrant Officer Mkhomo from Port Shepstone Organized Crime SOCI and the exhibit were entered in the Port Shepstone SAPS13, 8H9/2021 by Warrant Officer Mpangase and he also booked them out.

We then left and proceeded to Port Shepstone DPCI to drop off Warrant Officer Mkhomo and proceed straight to Durban provincial office. Warrant

Officer Mpangase left us in the vehicle and by the road to hand back the safe keys as there was no parking around the area. I do not remember the date but Warrant Officer handed over to me five samples and an enquiry file to hand it over to Lieutenant Colonel Jacob on the following day.

10 On the following day I handed over the sample and enquiry to Lieutenant Colonel Jacob as requested. On the 1st July 2021 I was requested by Lieutenant Colonel Jacob to go with him and Warrant Officer Mpangase to CHC Depot do an unpack on the container. We proceeded there. We conducted a count of a total of 5395 bags of 50 kg bags of the animal feed. This corresponded with the packing
20 list. The container was released to the Clearing Agent by Lieutenant Colonel Jacob.

Response to the allegations in the notice. I will now respond directly to the specific allegations as set out in

the notice.

Ad paragraph 1.1.1. Failure to cordon off the crime scene. I deny that I failed to cordon off the crime scene. Paragraph 11(3)(a) of National Instruction 1/2015, this is a duty to secure and protect the crime scene by establishing an inner and outer cordon fall squarely on the first responder.

10

20.1.3. As stated above, I was not the first responder. Warrant Officer Mpangase received the initial information and Lieutenant Colonel Jacob as the senior officer assumed command. The responsibility to make the initial scene safe and to establish a cordoning thereof, rested with them and subsequently with Lieutenant Colonel Jacob as the crime scene commander. I was acting under their command and was never instructed to perform this function, nor would it have been within my mandate to do so without such instruction.

20

Paragraph 1.2. Failure to ensure

exhibits were properly sealed and labelled. I dare that I failed to ensure that the exhibits were sealed and labelled. Paragraph 14(3)(c)(iv) of the National Instruction 1/2015 stipulates that the crime scene supervisor from the Local Criminal Record Centre, LCRC, is responsible for ensuring that all the evidence collected is locked and handled correctly included being sealed at the crime scene where practically possible. Furthermore, SAPS National Instruction 8/2017: Property and Exhibit Management National Instruction, 8/2017, at paragraph 14(8)(vii) and (ix) requires that drugs be sealed in forensic evidence collection bags and that this must be done in the presence of the suspect. The decision not to process the scene at the CHC Depot and consequently not to call the LCC was taken by the crime scene Commander, Lieutenant General Jacob due to the circumstances defined above on the

unusual scene at the depot and the risk thereof.

Paragraph 1.3. Failure to call the Local Criminal Records Centre. I deny that I failed to call the LCRC. Paragraph 13(2)(f) of National Instruction 1/2015 is unequivocal. The crime scene Commander must take immediate responsibility in requesting that the Crime Scene Examiner from the LCRC attend the crime scene for processing. I was a subordinate officer acting under his command and had no authority to make such a call.

Paragraph 1.4. Failure to transfer the exhibit to the forensic laboratory ...”

CHAIRPERSON: Sorry, 1.1.4, not 1.4.

LT-COL SIBIYA: Thank you, Chair.

“Paragraph 1.1.4. Failure to transfer the exhibit to the Forensics Laboratory, FSL. I deny this allegation. My involvement with the exhibit non-existent beyond being present at their discovery. The responsibility for the submission of the exhibit to the FSL is

clearly delineated in the National Instruction. Paragraph 20.4.2. 15(3)(f) of the National Instruction 8/2017 places the duty on the investigating officer who must ensure submission within 7 working days. Paragraph 20.4.3. Similarly, paragraph 8.3 of the National Instruction 8/2017 places the responsibility on the Station Commander, SAP13 official and the Detective Commander. I held none of the designated roles. My mandate did not extend to the handling, storage, registration in the SAP13 register or subsequently transfer of exhibits. Once the exhibit were removed from the scene under the direction of Lieutenant Colonel Jacob, my involvement ceased as I was the additional member in the scene. The chain of custody and responsibility to transfer to the FSL passed to the investigating officer and the Commander of the unit where the exhibit were stored.

Paragraph 1.2. Participation in a scheme to store exhibit in an unsafe storage to make them vulnerable to theft. I deny this serious allegation in the strongest possible term. I was not part of any scheme, nor did I engage in any process designed to make the exhibit vulnerable to theft. My conduct was at all times *bona fide* authentic. I was following the lawful instruction of a senior. The decision which Major General Flynn retrospectively identified as created vulnerability were not my decision. These include the decision not to process the crime at the depot, the decision not to call the LCRC, the decision not to store the exhibit at the police station of jurisdiction, namely Isipingo, and the decision to transport the exhibit to the DPCI premises in Port Shepstone was the senior management decision. The above-mentioned operational decision made solely by the command structure of the scene, namely Lieutenant Colonel

Jacob and Warrant Officer Mpangase.

I can confirm that I was present on this scene and give the overwhelming and significant scope of the seizure and the complexity in circumstances at the CHC Depot. I will have processed the crime scene in a comparable manner. My actions were limited, transparent, consistent with the duties of the subordinate officer, mainly providing support and manpower. There is no factual basis to suggest I was a party to the design or coincided that Major General Flynn alleges.

10

I wish to inform the Commission of my strong commitment to policy. Having served diligently in the force for the past two decades with pride, I categorically state that I was not involved in the theft of this exhibit.

20

Additionally, at the time of the incident, I was attending training at SAPS Paarl Academy in Western Cape. The course commenced on the 17th October 2021 to the 3rd of December. During this

duration of training, I only travelled once to Durban, KZN on the 29th October 2021 till the 2nd November 2021. See attached Annexures KG1, KG2, the flight ticket to and from Western Cape and KG3, the certificate of successful completion of the said training.

10 It is my sincere hope that those responsible for these serious offences are apprehended and brought before a court of law.”

CHAIRPERSON: May I just seek clarity on paragraph 4, please, Colonel. Yes, where you say that you and Colonel Moodley were temporarily transferred from the Financial Investigation to Organized Crime. Why was that done?

LT-COL SIBIYA: Commissioner, even before 2020, I think in 2019, when Colonel Moodley was in charge of Financial Investigation, I was experiencing difficulties. When I spent
20 long hours in the computer, I would have severe headache. I made a request to Colonel Moodley, who was still the Commander there. He also advised that I should try and get spectacles, maybe they might assist me, of which I did, but still I could not get assisted because every evening when I spent considerable amount of time in the computer,

because financial investigation deals a lot with bank statement analysis. Then the post at Financial Investigation was upgraded, then Colonel Singh came. She came in as a full Colonel now. I requested Colonel Singh, she then said to me she would speak to management and try to place me at Assets Forfeiture Investigation.

In 2020, we were called by Colonel Singh. Myself, Colonel Moodley, we proceeded, all the three of us went to provincial office. On arrival at provincial office, we met
10 Brigadier Nyuswa, General Senona. Then we were informed that myself and Colonel Moodley, we are transferred to Organized Crime at number 136, but Colonel Moodley will go to SANEB section, then I will go to EPR.

CHAIRPERSON: And you say this was temporary. What was the duration?

LT-COL SIBIYA: We were not given a specific time as to how long is the duration that we will be there. A duty arrangement, normally they do not give you a duration. They will call you when they want you back. So they just
20 explained to you if you are interested in, they want you to go and work in that section, then if you do not have a problem, then you will go and work there.

CHAIRPERSON: I am not asking about being told.

LT-COL SIBIYA: All right.

CHAIRPERSON: In the end what was the duration?

LT-COL SIBIYA: For me, I think it was when I was told up until I was promoted. When I was promoted, then I had to take up my post at Organized Crime, but only at a different section, not EPR, at SANEB section.

CHAIRPERSON: And how long had all of this taken from the time you were told? Up to the time of your promotion, how long had it taken from the time you were told?

LT-COL SIBIYA: I am not too sure, Commissioner, but I was informed in 2020. I cannot recall exactly as to which
10 month.

CHAIRPERSON: Okay.

LT-COL SIBIYA: Yes.

CHAIRPERSON: All right.

LT-COL SIBIYA: Up until September 1st when I was promoted.

CHAIRPERSON: All right.

ADV BALOYI SC: Sorry, can I just clarify something that you said. You said something about before EPR you were at SANEB. Can you just explain when do you become part
20 of SANEB?

LT-COL SIBIYA: I did not say before EPR I was at SANEB, Commissioner.

ADV BALOYI SC: I might have misheard you.

LT-COL SIBIYA: Ja.

ADV BALOYI SC: My question is when did you become a

member of SANEB?

LT-COL SIBIYA: A SANEB member?

ADV BALOYI SC: Yes.

LT-COL SIBIYA: I was promoted to SANEB in September, 1st of September I was promoted to SANEB, 2021.

ADV BALOYI SC: Okay. Before you were promoted to SANEB ...[intervenes].

LT-COL SIBIYA: Yes.

ADV BALOYI SC: You were acting, you were in that
10 temporary transfer ...[intervenes].

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Before you were promoted to SANEB.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And where were you in that period when you were in temporary placement?

LT-COL SIBIYA: Economic Protected Resources.

ADV BALOYI SC: That is where you were?

LT-COL SIBIYA: Ja, in the same office at Organized Crime.

20 **ADV BALOYI SC:** Okay, thank you.

ADV KHUMALO SC: Colonel, let us go back to, my focus is paragraph 19 of your statement, but I want to start at paragraph 18 just to clarify the sequence.

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: Maybe let us start at 17. You see at

paragraph 17 is the 24th of June.

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: In the morning, Mpangase comes to your office, says you have to go to Port Shepstone to get the samples. And then paragraph 18, you deal with you arriving at Port Shepstone to get the samples. The samples were obtained. And then when we get to paragraph 19, which is really the focus of my question, you can leave out the first sentence, but it is about handing over the five
10 samples or the five exhibits to Colonel Jacob and that has to be done the following day. I am assuming the following day is now the 25th of June?

LT-COL SIBIYA: No, these are totally different instances. It cannot be the 25th of June. It was after we went to Port Shepstone.

ADV KHUMALO SC: Yes.

LT-COL SIBIYA: And then I think it was maybe before the 1st.

ADV KHUMALO SC: Before the 1st?

20 **LT-COL SIBIYA:** Before the 1st. It is between the 1st and the 24th.

ADV KHUMALO SC: So between the 24th and the date before the 1st, where were this samples, the five samples or the five exhibits?

LT-COL SIBIYA: The five samples were with the

investigating officer, Warrant Officer Mpangase.

ADV KHUMALO SC: In Durban?

LT-COL SIBIYA: Yes, in Durban.

ADV KHUMALO SC: And then on the 1st you say you then gave the samples to Colonel Jacob?

LT-COL SIBIYA: Not on the 1st, Commissioner. I am not too sure of the date, but it should be, I am saying between the 1st and the 26th, because it was not on the 25th and 26th. It was a weekend.

10 **ADV KHUMALO SC:** Ja.

LT-COL SIBIYA: Between the 26th and the 1st.

ADV KHUMALO SC: So when you gave the samples to Colonel Jacobs, was it already in July? Jacob, sorry. Was it already in July, or was it still in June?

LT-COL SIBIYA: It was still in June.

ADV KHUMALO SC: And ...[intervenes].

LT-COL SIBIYA: It was before we went for inspection of the container.

20 **ADV KHUMALO SC:** Before you went, because the inspection we know it was in July.

LT-COL SIBIYA: Ja, ja.

ADV KHUMALO SC: I just wanted to understand where was Colonel Jacob, was he back from leave or did you go to his house to give him this samples?

LT-COL SIBIYA: No. Warrant Officer Mpangase came to

my office.

ADV KHUMALO SC: Yes.

LT-COL SIBIYA: It was late in the afternoon. He says to me tomorrow he will not be in the office in the morning, so he wants me to hand over these five samples and enquiry to Colonel Jacob. Then I took possession of the sample and the enquiry, put them in my steel cabinet. The following day when we reported for duty, Colonel Jacob was present.

ADV KHUMALO SC: Oh, so this all happens in the office?

10 **LT-COL SIBIYA:** Yes, in the office.

ADV KHUMALO SC: Okay.

LT-COL SIBIYA: Then the following day I handed over the enquiry and the samples.

ADV KHUMALO SC: Okay, I just wanted to clarify the timeline because you moved from the 24th, then you said the following day. So I got confused there.

LT-COL SIBIYA: I said that I do not remember the date.

ADV KHUMALO SC: Ja, no that now I understand.

LT-COL SIBIYA: Okay.

20 **ADV KHUMALO SC:** It is clear. Thank you.

ADV SIKHAKHANE: Thank you. I just want to start maybe at the end so that we, it is paragraph 20.4 of your statement.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: At page 8.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: You say that your involvement with the exhibit was non-existent beyond being present at their discovery.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And that would have been the 22nd.

CHAIRPERSON: 20.4 you said?

ADV SIKHAKHANE: 20.4.

LT-COL SIBIYA: Yes.

10 **CHAIRPERSON:** Yes.

ADV SIKHAKHANE: So can you just speak louder? That is what ...[indistinct] can you raise your voice into the mic?

LT-COL SIBIYA: Okay.

ADV SIKHAKHANE: I do not know if you can pull them closer.

LT-COL SIBIYA: Okay.

ADV SIKHAKHANE: Yes.

LT-COL SIBIYA: Please repeat your question, Chair.

20 **ADV SIKHAKHANE:** So at 20.4 of your statement, you say you, basically the second sentence:

“My involvement with the exhibits was non-existent beyond being present at their discovery.”

And that would have been the 22nd of June.

LT-COL SIBIYA: No, I think maybe I made an error there,

Chair, because I also handled the exhibit on the 23rd and the 24th I handled the exhibit. So I think maybe we need to amend that to say the exhibit, I handled them on the 22nd, the 23rd and the 24th.

ADV SIKHAKHANE: Thank you. Ja, that was confusing me.

CHAIRPERSON: Or the sentence could simply be deleted altogether. Do you lose anything if that sentence is deleted?

10 **LT-COL SIBIYA:** No, let us delete it there Chair. We can delete it.

ADV SIKHAKHANE: So I just ...[intervenes].

ADV BALOYI SC: Sorry, Mr Sikhakhane. We are still trying to understand what that deletion means. Thank you, Mr Sikhakhane.

CHAIRPERSON: Please continue.

ADV SIKHAKHANE: Okay. I just wanted to check with the confusion that might be, when would you say was the last time you interacted with the exhibits or you handled the
20 exhibits?

LT-COL SIBIYA: Chair, it will be on the 24th when Warrant Officer Mpangase was taking samples from the exhibit. I was inside the safe.

ADV SIKHAKHANE: Thank you. Perhaps that could assist with the clarity. The next thing before we go back is your

20.7.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: That is page 9. You say your conduct was at all times *bona fide* and authentic and you say I was following the lawful instructions of senior. Now, and then you go on to say the decision not to process the scene and the decision not to call LCRC, and it goes on further.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: Now, would you say that those
10 decisions were lawful? Would you maintain that the conduct of Warrant Officer Mpangase and Jacob in relation to the scene were in accordance with the National Instruction?

LT-COL SIBIYA: They were not according to the National Instruction.

ADV SIKHAKHANE: And would it be that their instructions to you perhaps, would it then still be lawful?

LT-COL SIBIYA: They never instructed me not to call LCRC or they just made a, he just made a decision not to
20 call the LCRC.

ADV SIKHAKHANE: No, I am saying, you are saying you were following the lawful instructions of a senior in relation to the scene. Is it unrelated to the subparagraph 20.7.1 up to 20.7.4?

CHAIRPERSON: Do you want to stick to lawful? Do you

want to stick to lawful?

LT-COL SIBIYA: I am talking about the decision or the instruction that were given to me. Everything I did was as per instruction. Firstly, it was to take photos, to load the exhibit in the car, to drive to Isipingo SAPS, to count the exhibits and the exhibit were not entered by me in the SAP13, they were entered by the investigating officer.

CHAIRPERSON: I think as I understand it, the operative word in Mr Sikhakhane's question is lawful, I was following
10 the lawful instructions of my senior. So I think he wants to know whether you insist that all the instructions that you followed were lawful. Do you want to stick to lawful? I think that is the essence of the question, Mr Sikhakhane.

ADV SIKHAKHANE: Yes, that is all.

LT-COL SIBIYA: At that point in time, Chair, they were lawful to me, at that point in time.

CHAIRPERSON: All right, all right. Mr Sikhakhane.

ADV SIKHAKHANE: And would you maintain that in hindsight, would you still be of the same view?

20 **LT-COL SIBIYA:** With the experience that I have now being the team leader of SANEB, I would say maybe some of the decisions I would have done differently.

ADV SIKHAKHANE: No, I am saying the instructions and what happened was, would you say now with benefit of hindsight and I mean you have quoted the National

Instruction, and I do not want us to go there and have a debate about that, would you say that those decisions that were taken and the instructions were lawful, that were done by Colonel Jacob and Warrant Officer Mpangase?

LT-COL SIBIYA: No.

ADV SIKHAKHANE: Thank you. Can we just go to the beginning of your statement? And I do not want to belabour the point with you that much, but what your statement, the picture that it seems to give is that your involvement, or at
10 least according to you, was minimal.

LT-COL SIBIYA: It was very minimal, because I had two seasoned SANEB investigators who were handling everything. So for me it was just to follow orders and assist in terms of whatever request they are making for me to assist them.

ADV SIKHAKHANE: And when you say is it minimal in comparison to the two of them or in relation just generally, objectively?

LT-COL SIBIYA: Generally.

20 **ADV SIKHAKHANE:** But earlier on you accepted that you were tasked at various instances. You went with Warrant Officer Mpangase for sampling and you were handling the exhibits.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: You were involved in the counting of

the exhibits ...[intervenes].

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Which is a very important point or important exercise. Would you still maintain that that is the position? And also on the 1st you went with Colonel Jacob to the depot.

LT-COL SIBIYA: If you are requested to assist and you are available to assist, I normally assist everyone in the office who request assistance. So I do not see anything
10 wrong by assisting. But the person who is responsible is the investigating officer who is responsible for everything. You just give assistance to your colleague that he requires.

ADV SIKHAKHANE: Would you then disagree with me to say of all the individuals that were involved in the scene and subsequently up to the 1st of July, in terms of the tasks, you were the third in line. So it was Captain Duma. He provides the information but then it was Jacob who was in charge of the scene. You accept that. And Warrant Office Mpangase.

20 **LT-COL SIBIYA:** The investigating officer.

ADV SIKHAKHANE: Correct.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And then the next person is yourself.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: You came with them to the depot.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: You then were at the scene with them. You followed whatever instructions that were there, and with hindsight now we accept their character or their nature. Then on the 23rd, you then also, sorry, you also go to Isipingo, I mean to Port Shepstone.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And you store the exhibits. And then on this following day you are the one that goes with Warrant
10 Officer Mpangase. The same on the 24th. And then you also have in your possession of the samples, you give them to Colonel Jacob. You also went to the CHC Depot with Colonel Jacob. So would we agree that out of the people that were involved, after Mpangase you were the next one that bore most of the responsibilities? Or task. Let me not call them responsibilities.

LT-COL SIBIYA: Not really responsibility, because the responsibility lies with the investigating officer.

ADV BALOYI SC: Sorry, lies with?

20 **LT-COL SIBIYA:** The investigating officer.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: Ja, he can request assistance from other colleagues, but the investigation, he is the one who is directing the investigation.

ADV SIKHAKHANE: Now, I suppose the point that I was

saying is that you are not responsible in that sense, but when we accept, just also please do say yes or no, if you agree or disagree, out of the incidents or the points that I have pointed out to you ...[intervenes].

LT-COL SIBIYA: Yes, you can say I was the third one.

ADV SIKHAKHANE: You were the third ...[intervenes].

LT-COL SIBIYA: Person.

ADV SIKHAKHANE: Sort of person responsible. Not responsible ...[intervenes].

10 **LT-COL SIBIYA:** Ja.

ADV SIKHAKHANE: That was active. Let me call ...[intervenes].

LT-COL SIBIYA: Yes, ja.

ADV SIKHAKHANE: Let me call it active.

LT-COL SIBIYA: Active, ja.

ADV SIKHAKHANE: Correct. All right. Now, let us go to your capacity at the time. In terms of your relationship, what was the nature of your relationship with, if there was, Colonel Jacob?

20 **LT-COL SIBIYA:** Subordinate relationship.

ADV SIKHAKHANE: So there was no social relationship with him?

LT-COL SIBIYA: No, no social relationship.

ADV SIKHAKHANE: Ja. And Warrant Officer Mpangase?

LT-COL SIBIYA: Just a colleague.

ADV SIKHAKHANE: And had you made operations with him, conducted operations with both of them or either?

LT-COL SIBIYA: With Colonel Jacob I had conducted operations with.

ADV SIKHAKHANE: How many just in average?

LT-COL SIBIYA: Quite several, because he was my team leader, so now and then we will conduct operations. I would not be able to give you the number of operations, but I have worked with Colonel Jacob.

10 **ADV SIKHAKHANE:** And in terms of narcotics, how many operations had you worked with him on?

LT-COL SIBIYA: I would not be sure, but I know that we have executed some search warrants at the premises in Phoenix.

ADV SIKHAKHANE: Where you dealt with seizures, drug seizures?

LT-COL SIBIYA: Not seizure, not drug seizure. We executed a search warrant where we went to the ...[intervenes].

20 **ADV SIKHAKHANE:** No, I am just focusing on drug seizures, just that.

LT-COL SIBIYA: No.

ADV SIKHAKHANE: You have never?

LT-COL SIBIYA: This was my first drug seizure.

ADV SIKHAKHANE: Okay.

ADV KHUMALO SC: Can you just clarify the, when you talk about warrants, was it at a house or at a warehouse?

LT-COL SIBIYA: At a house.

ADV KHUMALO SC: At a residence?

LT-COL SIBIYA: At the residence house, at the premises, ja.

ADV SIKHAKHANE: And to be fair to you, so you would say that you had not been, or maybe rephrasing your answer, you had not been involved in any of drug seizures.

10 This was your first.

LT-COL SIBIYA: It was my first time even entering the depot.

ADV SIKHAKHANE: All right. And then at paragraph 6 of your statement, which is ...[intervenes].

ADV BALOYI SC: You say it was your first time entering a depot. The question you were asked is, was this your first drug seizure?

LT-COL SIBIYA: Yes, it was my first drug seizure, Chair.

ADV BALOYI SC: Thank you.

20 **CHAIRPERSON:** And what is the, what most significant or largest crime scene you had ever been involved in? Crime scene, what is the most significant or largest that you had ever been involved in before the CHC Depot seizure?

LT-COL SIBIYA: I used to work at Serious and Violent Crime, so I have been exposed to minor crime scenes, cash

in transit. I have been to cash in transit before.

CHAIRPERSON: Okay. All right.

LT-COL SIBIYA: Yes.

CHAIRPERSON: Yes, Mr Sikhakhane.

ADV SIKHAKHANE: Thank you. Earlier on, you went, I think there was some issue with Commissioner Baloyi about at the time, that is then June 2021, I would like us to focus on June 2021. One is you say you had not been involved in drugs or anything like that in the past.

10 **LT-COL SIBIYA**: Okay.

ADV SIKHAKHANE: So at the time, equally, you, were you aware of what was applicable in terms of the law, the National Instructions in relation to drug seizures? I would take that that would not be the case.

LT-COL SIBIYA: No.

ADV SIKHAKHANE: And ...[intervenes].

LT-COL SIBIYA: Specifically to the harbour, no.

ADV SIKHAKHANE: So, but generally you were aware of the National Instruction at the time?

20 **LT-COL SIBIYA**: Yes, I was aware.

ADV SIKHAKHANE: Okay.

CHAIRPERSON: I actually also wanted to, to touch on that. That is the prescripts which you deal with extensively at paragraph 20, including all the several sub-paragraphs and sub-sub-paragraphs. So you have just answered now in

response to the last question by Mr Sikhakhane that as at 22 June 2021, you were already aware of those prescripts, correct?

LT-COL SIBIYA: Yes ...[indistinct].

CHAIRPERSON: Yes. Now, being aware of those prescripts, would you say what was done on that day in terms of the handling of the scene and in fact the handling of the suspected Cocaine itself, would you say that that complied with the prescripts that you were aware of at the
10 time?

LT-COL SIBIYA: I will say no.

CHAIRPERSON: No. But you participated in what was being done despite your awareness that the prescripts were being flouted.

LT-COL SIBIYA: I believe, Commissioner, that if the crime scene manager is there and an investigating officer, the responsibility lies with them.

CHAIRPERSON: So you just allow yourself to be used as a pawn whilst prescripts that you are aware of are being
20 flouted. Is that what you are telling us?

LT-COL SIBIYA: Chair, if you say I am allowing myself to be used as a pawn ...[incomplete].

CHAIRPERSON: Fine, they may have been giving the instructions, but you two actually participated in what was being done. Did you not handle the bags, for example? I

am just giving one example.

LT-COL SIBIYA: Yes, I did.

CHAIRPERSON: You handled the bags.

LT-COL SIBIYA: Yes.

CHAIRPERSON: And even after the, and you loaded, you loaded them onto the ORS vehicle, did you not?

LT-COL SIBIYA: I did.

CHAIRPERSON: And you drove following the ORS vehicle, not so?

10 **LT-COL SIBIYA:** Yes, I did.

CHAIRPERSON: And on arrival at the Isipingo Police Station, you also assisted, I assume, with the offloading of the bags?

LT-COL SIBIYA: Yes, I did, Chair.

ADV SIKHAKHANE: You also assisted with the counting of the bags?

LT-COL SIBIYA: Hm.

ADV SIKHAKHANE: You also assisted with the counting of the contents of the bags?

20 **ADV SIKHAKHANE:** Yes.

CHAIRPERSON: Correct?

LT-COL SIBIYA: Correct, Chair.

CHAIRPERSON: And all of this being done at variance with, or not in accordance with, the prescripts of which you were aware, correct?

LT-COL SIBIYA: Yes, correct.

CHAIRPERSON: Yes. So what I am saying is, what I am saying is you allow yourself to be so instructed and to then participate in this manner whilst you were aware that applicable prescripts were being flouted. That is the essence of my question.

LT-COL SIBIYA: My response to you, Chair, in the police we work with the instructions and command.

CHAIRPERSON: I know. Even though I am not a police
10 officer, I know for a fact and I have heard many police officers say that the only obligation on you is to follow lawful instructions, underline lawful. Am I wrong?

LT-COL SIBIYA: You are right.

ADV SIKHAKHANE: I am right. Now you say prescripts were being flouted. You cannot tell me that you were following instructions when you know that those instructions were flouting prescripts.

LT-COL SIBIYA: At the point in time, Chair, when this thing was happening, I did not see that the prescripts are
20 being, they are not being followed.

CHAIRPERSON: I doubt that that is open to you because Mr Sikhakhane started by asking you if you were aware of the prescripts. I also followed up with a similar question and your responses were in the affirmative. You cannot now suddenly want to suggest that you were not aware that

the prescripts were being flouted. If you knew the prescripts, surely you would also have known that we are now flouting them.

LT-COL SIBIYA: But remember, Chair, that this was my first container inspection.

CHAIRPERSON: Crime scene, a crime scene is a crime scene. If the prescripts, for example, require of the senior or rather the crime scene what?

ADV BALOYI SC: [Indistinct]... [microphone off].

10 **CHAIRPERSON:** No, no, the crime scene, the person who conducts it. This is the crime scene what? The person in charge of the crime scene, whatever the title is. Yes, the crime scene Commander. You know that the crime scene Commander must call the LCRC. Do you not know?

LT-COL SIBIYA: I know.

CHAIRPERSON: You know.

LT-COL SIBIYA: Yes.

CHAIRPERSON: And do you know the importance of that? I will tell you. The importance of that is for the LCRC to be
20 able to take DNA, if there is any, or uplift DNA. The LCRC also to uplift fingerprints, if there are any. The LCRC to also take photographs. They do all of these in accordance with the expertise they have, which is not necessarily expertise that is available throughout SAPS. Am I correct?

LT-COL SIBIYA: You are correct, Chair.

CHAIRPERSON: That was not done.

ADV SIKHAKHANE: I was instructed to take photos, Chair.

CHAIRPERSON: But where I am, no, no, no, but where I am is were you not aware that that was necessary, that is to call the LC, you have already said you were aware that they had to be called, correct? And once they are not called, you immediately put at risk the function of the uplifting of DNA, fingerprints. Will you still say that you were not aware that the prescripts were being flouted? One, you
10 knew that the LCRC had to be called. It had not been called. And you started handling those bags without the necessary function by the LCRC having been performed. Will you still say that the prescripts were not being flouted, or that you were not aware that they were being flouted? Will you still say that?

LT-COL SIBIYA: Chair, I was given instructions to take the photos.

CHAIRPERSON: No, no, no, no, I am not asking you about photos. I am asking you about the flouting of prescripts.
20 You said you were not aware. And you say that having said that, you knew that the LCRC had to be called. So surely, at the very least, with regard to the calling of the LCRC, you knew that that one prescript was being flouted. Do you agree?

LT-COL SIBIYA: I do not agree, Chair.

CHAIRPERSON: Why not?

LT-COL SIBIYA: Because operationally, the Commander can make an operational decision and flout the prescript.

CHAIRPERSON: I like your use of flout.

LT-COL SIBIYA: Yes. Ja, he can make an operational decision based, or under the circumstances that he can explain why did he, he had to make such a decision.

CHAIRPERSON: And there was any explanation made to you or given to you?

10 **LT-COL SIBIYA:** No, I was not given any instruction as to.

CHAIRPERSON: So if you were not, if that was not given to you, you cannot, as you sit there, say that he did not flout. You do not know. At best for you, you do not know. Do you agree?

LT-COL SIBIYA: I think, Chair, the crime scene manager will be able to give a reason as to why he did not call it.

CHAIRPERSON: No, no, no ...[intervenes].

LT-COL SIBIYA: It was not my duty.

CHAIRPERSON: I am asking you, because you state
20 categorically, you state categorically that they were not flouted. So I am saying, and you say the reason is because the Commander may, I will just loosely say, in the exercise of their discretion, decide not to follow the prescripts strictly. But you have categorically said that they were not flouted. So what I am saying is, as you sit there, and

because you say you were not, or rather no explanation was given to you, so as you sit there, can you say that they were not flouted, because you do not know what informed the decision or decisions that were taken. So as you sit there, can you say they were not flouted, because you do not know what informed the decision.

LT-COL SIBIYA: Now, with the experience that I have now, I can say, yes, they were flouted. But then when this thing was happening on the 22nd, I did not see anything
10 wrong with the decision that was made by Colonel Jacobs.

CHAIRPERSON: All right, thank you.

ADV BALOYI SC: When you say you saw nothing wrong with handling those bags and moving them from the container into the motor vehicles, and doing the same from the container, from the depot, and doing the same thing at Isipingo, are you saying you saw nothing wrong in the handling that you individuals are holding these exhibits or these bags and therefore corrupting whatever DNA and fingerprint material would have been in the bags? You say
20 you saw nothing wrong with that?

LT-COL SIBIYA: I think, Chair, what is most important is firstly the safety of the exhibit.

ADV BALOYI SC: No, I am not asking you about the safety of the exhibits. I am asking you on the back of an answer you have given to the Chairperson, I am asking you that am

I understanding you correct, and do you want to repeat that answer as your position, that you saw nothing wrong being done in you carrying, taking those bags in your hands, you and the others, putting them onto the ORS vehicle, transporting them to Isipingo, handling them again in the way that you did when you got to Isipingo, the bags and the bricks of suspected Cocaine, you say that handling, and when I say handling, I mean putting your hands and fingerprints and whatever is on your bodies onto exhibits
10 where the LCRC has not attempted to uplift fingerprints to get DNA, you say there was nothing wrong in that handling, that way of handling things?

LT-COL SIBIYA: We were using protective clothing, gloves, Chair.

ADV BALOYI SC: Okay, so you are saying you did not corrupt DNA, you did not corrupt fingerprints in your handling of these. It seems to me you would have, necessarily, you would have.

LT-COL SIBIYA: Yes.

20 **ADV BALOYI SC:** You accept that you would have done that?

LT-COL SIBIYA: Yes, yes, Chair.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: Mr Sikhakhane, we have moved to the containers and my questions were on the initial request to

him to join the operation. If you are going to come back to that, I will hold my questions until then so that you can continue with the line of questioning where you are now. So I just wanted to get an indication from you.

ADV SIKHAKHANE: Commissioner, let us be flexible and allow you to ask the questions.

ADV KHUMALO SC: No, I want to be in your hands this time.

ADV SIKHAKHANE: I am still going to come, I, no, I was
10 not going to come back on that issue.

ADV KHUMALO SC: Let me do that then. Warrant Officer, you said to the Chair and to Commissioner Baloyi that this was your first container inspection, correct?

LT-COL SIBIYA: Yes, yes, Chair.

ADV KHUMALO SC: And that just looking at paragraph 6 of your statement, that at the time you were dealing with economic protected resources, so large-scale drug investigations were not your area of specialisation or primary function. So on the morning of the 22nd of June
20 2021, when you were suddenly asked by Mpangase to come and assist to follow up in a possible drug bust, as you say in paragraph 6 of your statement, did you not find that curious and ask yourself, why are you asking me and not other members of the DPCI who often deal with drug busts and drug operations? Why me? I do not know anything

about this.

LT-COL SIBIYA: I did not, Chair.

ADV KHUMALO SC: You did it, you asked them?

LT-COL SIBIYA: I am still responding.

ADV KHUMALO SC: Yes.

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: But I wanted to make sure I heard you correctly.

LT-COL SIBIYA: I am saying, Chair, even if you can look
10 at my statement, on the very same day when we were
transporting exhibit from Isipingo to Port Shepstone, we
used members from NPVC. The following day when we
were going to bag exhibit, members from SANEB were
utilised. So in the office, we assist each other across
board. There is not this thing that you are from this
section, which means you cannot assist on the other
section.

Obviously, the people who are coming from that
section, they take the lead. That is why I am saying
20 Colonel Jacob and Warrant Officer Mpangase, they were
from SANEB, so they had to take the lead. For me, I did
not even make notes, because I knew that the investigating
officer and the crime scene manager, they are there. So
they know what they are doing, because that is their field of
expertise.

ADV KHUMALO SC: But did you not ask why they chose you and not other members of the team who have expertise, because you said to the Chair now, while you were there, you were asked to take photos.

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: Now, most of the affidavits from LCRC people that I have seen, they are qualified in crime scene management, and they even have qualifications as far as taking photos at the crime scene are concerned, 10 because the location of containers, yesterday, we were talking to Colonel Jacob, and he was explaining the scene, but there were no photos in front of us explaining the distance between where the container was and the cars that were moving around, and they hindered the ability to count the bags there next to the container.

Now, if you say you are the person who was tasked with taking the photos at a drug bust, and you have no experience clearly in doing that, was that not curious to you, that you may not do things correctly because you are 20 simply not experienced when it comes to going to depots and taking photos or handling exhibits at a drug bust?

LT-COL SIBIYA: I was taking photos. Colonel Jacob was also taking photos, so.

ADV KHUMALO SC: It was also his first time at a depot, by the way.

LT-COL SIBIYA: I did not know that, Chair.

ADV KHUMALO SC: That is why we do not have clear photos as we are sitting here. But my question is this, you knew yourself that you had never handled drug busts. You had never been to a depot. So when you get asked for assistance, was it not curious? I mean, why do you ask me, why not other members who have more experience in this field?

LT-COL SIBIYA: No. No, Chair. No, Chair, in our office,
10 when the information comes in and there is a person from that section you assist. When you are at the crime scene, they will provide guidance regardless of rank. If a person, the information is based on drugs and there are drug members there, then they will take the lead, but the other member will provide backup and assistance. They will be getting directives from those that are responsible, that section that is responsible.

ADV KHUMALO SC: Colonel Sibiya, I am not faulting you for this just so that you are clear, but the impression I get,
20 based on what your two senior colleagues had done, is that they deliberately chose somebody who is clueless about these types of matters so that you would not question them even when they are doing something improper. What is your comment, if you have any?

LT-COL SIBIYA: I would not know. I mean, I trusted that

they are there as experienced people, they will know what to do. I availed myself. If they, people say there is a drug bust, then everybody needs to get this drug off the street. I was there.

ADV KHUMALO SC: But is it fair to say if they were doing something wrong, you would not be able to question them, because you also did not know how a drug bust gets handled?

LT-COL SIBIYA: Yes.

10 **ADV KHUMALO SC:** That is fair?

LT-COL SIBIYA: It is fair, Chair.

ADV KHUMALO SC: Thank you.

ADV BALOYI SC: Can I just check something that you said in your answer to Commissioner Khumalo. You say you did not take any notes because you were there to assist. Do you not carry a diary, a pocketbook? My understanding of evidence so far is that every police officer has a pocketbook or somewhere where they record what they do.

LT-COL SIBIYA: Yes.

20 **ADV BALOYI SC:** Where they are, where they went and what they did. So when you say you did not take notes, is it because you do not carry a book?

LT-COL SIBIYA: I do carry a pocketbook, but the notes that I was referring to are the ones that are normally taken by the investigating officer where he gets, even when he is

at the crime scene, he sees who is there, he take the contact numbers and identifies people that will submit statements. Those are the kind of notes that I am talking about.

ADV BALOYI SC: That you are talking about, okay.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: But you, so you have a pocketbook?

LT-COL SIBIYA: Yes, I do.

ADV BALOYI SC: Your pocketbook would record what?

10 What goes into your pocketbook for the 22nd of June?

LT-COL SIBIYA: The activities that you have done.

ADV BALOYI SC: Okay. So your pocketbook will say you attended at, you picked up ...[intervenes].

LT-COL SIBIYA: At CHC Depot.

ADV BALOYI SC: You picked up Colonel Jacob.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And you were with Duma and you went to the depot and this is what happened at the depot.

LT-COL SIBIYA: Yes. Then we moved to Port Shepstone
20 to store exhibits. Then I report off duty.

ADV BALOYI SC: Okay, and that is contained in your pocketbook as you sit there and speak?

LT-COL SIBIYA: Yes, yes.

ADV BALOYI SC: And we can get a copy of those pages for the day?

LT-COL SIBIYA: You can get a copy, ja.

ADV BALOYI SC: All right, thank you.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: Thank you. I think Commissioner Khumalo took the point I was trying to raise and I will not, but I just want to emphasize one thing maybe or question in light of our earlier discussion or in light of the discussion we also had with Chair. What seems to be the case or what seems, or the picture that comes out is that you did not
10 know the prescripts at the time, how things are functioning, so you would not know a lot of things that would have to be complied with at the drug bust seizures.

LT-COL SIBIYA: No.

ADV SIKHAKHANE: You would not know anything about sampling equally.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And you would not know anything about valuing, destructions and the types of, or the grades of the exhibits. So that would not be, and with that in mind
20 and with hindsight, and it is following what Commissioner Khumalo was pointing out, with hindsight, do you not think that you were being put into a situation deliberately so that you are unable to question, as he says, Colonel Jacobs. That is not only on the 22nd, but that is also the 23rd, the 24th, and they also let you handle the samples and then on

the 1st. Just with hindsight.

LT-COL SIBIYA: It might be, but I would not know what was they thinking, what was their thinking when they requested assistance from me. Initially, Warrant Officer Mpangase acted as if, because I was in possession of the state car, so he requires my assistance. So I would not know.

ADV SIKHAKHANE: No, I am saying, would you, analysing what is the picture that we have, would you not find that
10 probable that that is what happened?

LT-COL SIBIYA: It is possible.

ADV SIKHAKHANE: They put you in a situation you could not ...[intervenes].

LT-COL SIBIYA: It is possible.

ADV SIKHAKHANE: Thank you. Then can we go to the events of the 22nd themselves. You sit, do you sit in the same building or office with Warrant Officer Mpangase?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay. And then he then requests you
20 to assist. What does he say is the nature of the assistance?

LT-COL SIBIYA: He said he had received information about a drug bust and he has spoken to Colonel Jacob. Colonel Jacob said he must come and request assistance from me.

ADV SIKHAKHANE: That is what I want to understand. Is it a matter of manpower or what is it, because we have to distinguish between an official assistance and just, I think at some point, Commissioner Baloyi would have said as a citizen, just general citizen, civil assistance.

LT-COL SIBIYA: He requested assistance for?

ADV SIKHAKHANE: No, it was at some point, not today.

ADV BALOYI SC: I said what?

ADV SIKHAKHANE: It is a civilian's duties, yes.

10 **ADV BALOYI SC:** Oh.

ADV SIKHAKHANE: If you did not, then I apologize, but I seem to recall ...[intervenes].

ADV BALOYI SC: I am happy to take credit for what you attribute to me.

ADV SIKHAKHANE: Thank you.

LT-COL SIBIYA: Please repeat your question then.

ADV SIKHAKHANE: No, I am saying your assistance would have been as an officer, so they would not take any citizens.

20 **LT-COL SIBIYA:** Yes. And when we were exiting the office, most of the officers had already left the office, so the doors were closed. So in the passages, most of the doors were closed.

ADV SIKHAKHANE: And this was around what time?

LT-COL SIBIYA: Just before 8.

ADV SIKHAKHANE: Just before 8.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay. And then you travel in one car to where?

LT-COL SIBIYA: Even in the parking lot, the only car that was there, it was that car that we were traveling in, the Golf that I was using.

ADV SIKHAKHANE: Yes, but I am saying you then went to where from there?

10 **LT-COL SIBIYA:** We then went to Phoenix to pick up Colonel Jacob at his place of residence.

ADV SIKHAKHANE: And at this time you know that Colonel Jacob is off duty?

LT-COL SIBIYA: Yes, I knew that he was on leave, and Mpangase told me that now he is going to report on duty as we are going to pick him. Yes, Mpangase told me that no, Colonel Jacob will report on duty, that is why we are going to pick him up.

ADV SIKHAKHANE: Okay. And then you pick up Colonel
20 Jacob and you then went to the CHC Depot?

LT-COL SIBIYA: No, we went to Isipingo where we met Captain Duma.

ADV SIKHAKHANE: Okay. And in that way, does Colonel Jacob brief you or set out what you each would have to do?

LT-COL SIBIYA: No, he only told us that we are going to

meet Duma, he is got very good information that we need to act upon, but we will hear from Duma when he briefs us.

ADV SIKHAKHANE: Okay, then you went to Duma, you met him, and then what was the briefing, were you present in the briefing itself, and what did he say?

LT-COL SIBIYA: I first sat in the car, and then Colonel Jacob called me and said I must come out. He then introduced me to Captain Duma.

ADV SIKHAKHANE: Let me just get clarity there. You
10 ...[intervenes].

LT-COL SIBIYA: I was driving.

ADV SIKHAKHANE: You were driving.

LT-COL SIBIYA: I am driving.

ADV SIKHAKHANE: So was there a discussion between Captain Duma and Colonel Jacob in your absence?

LT-COL SIBIYA: No.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: No, but Colonel Jacob jumped out of the car before, because I needed to go around and park. Then
20 after parking and then Colonel Jacob called me. Then I went to them. Then he introduced me to Duma. He said this is Captain Duma from Crime Intelligence, he is the one with information. Then Captain Duma started briefing us.

ADV BALOYI SC: I think what you are saying is slightly different from what you said first. You said, I first sat in the

car, and then Colonel Jacob then called me to come out.

LT-COL SIBIYA: Maybe it is a use of English, Chair.

ADV BALOYI SC: Sorry, what about it? It is too ...[intervenes].

LT-COL SIBIYA: I am ...[intervenes].

ADV BALOYI SC: It is too, before you say, before you say, no, let me tell you my problem with what just happened now is describing your use of the English. You have described two different things, completely different things. The one
10 is, you got there, you sat in the car, Jacob got out of the car, went to Duma, and then called you. That is one, what you said first.

The second time, you say, he got out, I went and looked for parking, and then he called me to come. It is different facts that are playing out here. The one, you were not with him when he went to speak to Duma, and then he called you. The other is, you went to look for parking while he waited for you, and then he waved for you to come. Can you just explain why they are different?

20 **LT-COL SIBIYA:** We came around the parking, I stopped, he said stop, he jumped out of the car, I came in the other side of the parking, I parked, then he called me.

ADV BALOYI SC: He got out of the car, on this now, in your explanation. When you stopped, he got out of the car, what did he do?

LT-COL SIBIYA: He went towards Duma's car.

ADV BALOYI SC: He went to Duma.

LT-COL SIBIYA: He went towards Duma's car.

ADV BALOYI SC: Yes, thank you, I think that is what you had said initially, thank you.

LT-COL SIBIYA: All right.

ADV SIKHAKHANE: To follow up my point earlier, what I want to establish is whether there was, even if it is a small discussion, a short discussion rather, between Duma and
10 Jacob, or there was not.

LT-COL SIBIYA: No, I do not think there was a discussion.

ADV SIKHAKHANE: Okay.

ADV BALOYI SC: [Indistinct]... the question. What is the answer?

ADV SIKHAKHANE: No, no, I was saying, is he confident enough to say, between Captain Duma, then Captain Duma, and Colonel Jacobs, could he say there was any discussion, no matter how brief, in his absence? Oh, that was the question.

20 **ADV BALOYI SC:** And the answer is no, there was not?

LT-COL SIBIYA: There was no discussion then.

ADV BALOYI SC: But you cannot know that. You went and parked. You went to Duma and you went and parked, so you do not know what happened in that time.

LT-COL SIBIYA: Okay.

ADV BALOYI SC: Is that not the correct answer?

LT-COL SIBIYA: That is the correct answer.

ADV BALOYI SC: Thank you.

ADV SIKHAKHANE: Thank you. It is 11, Chair, may we break for tea?

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

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Sikhakhane.

10 **ADV SIKHAKHANE:** Thank you, Chair and the Commissioners. Just on the logistics, may I request that perhaps, Chair, if we run over, we will try, we do not have much time as such, with the time constraints for the witness. May I request, if needs be, if we go past 1, in terms of lunch.

CHAIRPERSON: We have a meeting over the lunch hour.

ADV SIKHAKHANE: Sorry.

CHAIRPERSON: We have a meeting over the lunch hour.

ADV SIKHAKHANE: Okay, no, then I understand.

20 **CHAIRPERSON:** We will just have to adjourn and continue after lunch.

ADV SIKHAKHANE: Thank you. Thank you, Mr Chair. Yes, we were at the discussion that you had with Captain Duma and Colonel Jacob. You recall? At the depot. In fact, just before the depot.

LT-COL SIBIYA: Paragraph?

ADV SIKHAKHANE: Paragraph, where was it? Let us see.

LT-COL SIBIYA: Paragraph 9.

ADV SIKHAKHANE: No, no, it should be before that.
Where you met Captain Duma.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And you were looking for the parking,
and they spoke and then you – that was just before the
depot. Or was it at the depot?

10 **LT-COL SIBIYA:** It was before.

ADV SIKHAKHANE: Just before. Where was this?

LT-COL SIBIYA: It was behind a garage. I do not
remember the name of the garage, but it was just behind
the fuelling station.

ADV SIKHAKHANE: And what is the distance between that
and the depot?

LT-COL SIBIYA: I think maybe three or 4 kilometres.

ADV SIKHAKHANE: Then, in that discussion with Captain
Duma, at that point, do you then discuss how this operation
20 is going to be conducted? Now that you received this
information. Do you guys agree who is playing which role,
who does what?

LT-COL SIBIYA: No, Captain Duma just told us that he
has been to the depot, so we will follow him to the depot for
inspection of the container. Then we proceeded to the

depot. We entered at the main gate of the depot. We proceeded straight down the road and then we parked somewhere there. There was some area where we parked. Then Colonel Jacob jumped out of the car with Captain Duma.

ADV SIKHAKHANE: Just before that. So, you are saying the three of you, that is Mpangase and Jacob.

LT-COL SIBIYA: We were in one vehicle.

ADV SIKHAKHANE: Sorry?

10 **LT-COL SIBIYA:** We were in one vehicle.

ADV SIKHAKHANE: The three of you.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Then Captain Duma.

LT-COL SIBIYA: He was driving alone.

ADV SIKHAKHANE: He was driving alone.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: This is now around what time? Still around 8.

20 **LT-COL SIBIYA:** No, past 8. Remember that Mpangase requested me for assistance around 8. From Durban Central to Phoenix, picking up Colonel Jacob, drive to Isipingo. I think maybe around something like 9, half past 9.

ADV SIKHAKHANE: No, that is fine. You do not discuss what your role is?

LT-COL SIBIYA: No, we did not discuss the roles there.

ADV SIKHAKHANE: In terms of who is in charge, was it assumed that because Colonel Jacob is senior?

LT-COL SIBIYA: Protocol dictates that the senior member always takes control.

ADV SIKHAKHANE: Okay, then that is what you assumed. Then you went to the depot, CHC depot, and you said you have never been there yourself.

LT-COL SIBIYA: Yes, it was the first time being there.

10 **ADV SIKHAKHANE:** Now, I want to understand the setup of the depot according to you. Right?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: When you get to the depot, who gets in first? Is it yourselves or Captain Duma? I would imagine he goes.

LT-COL SIBIYA: We were driving behind Captain Duma's car all the time.

ADV SIKHAKHANE: In terms of the security of the depot itself, I think there was a statement that it was controlled,
20 but just on your own version.

LT-COL SIBIYA: Yes, there was one security guy at the boom gate next to the main road. Just one security guy at the boom gate.

ADV SIKHAKHANE: Okay, and do you sign in?

LT-COL SIBIYA: He had a conversation with Duma. Then

we phoned Duma after that.

ADV SIKHAKHANE: So, Jacob and Mpangase and yourselves never had any discussion with him?

LT-COL SIBIYA: No, no, Duma opened his window, he explained to the security guy, then we followed.

ADV SIKHAKHANE: And then you parked?

LT-COL SIBIYA: Yes, we drove down the passage, then we stopped. And then they jumped out of the cars, then they proceeded to the offices of the management.

10 **ADV SIKHAKHANE:** Just speak up a bit.

LT-COL SIBIYA: When the vehicles were parked, Captain Duma and Colonel Jacob went to the offices of the depot managers.

ADV SIKHAKHANE: Okay, and you and Warrant Officer Mpangase stayed behind?

LT-COL SIBIYA: We remained next to the cars there.

ADV SIKHAKHANE: Just before we get to that, in terms of the layout of the depot, and in terms of security, is it other than the security at the gate, would there be any other
20 security personnel at the depot, according to your knowledge?

LT-COL SIBIYA: Yes, it can happen that there were other security officers, because when we started inspecting the container, I saw some of the security there.

ADV SIKHAKHANE: Okay, and were they armed?

LT-COL SIBIYA: No, I did not see firearms.

ADV SIKHAKHANE: Okay, and the security at the gate, was he armed?

LT-COL SIBIYA: I do not remember. I do not remember.

ADV SIKHAKHANE: All right and then let us go back to the discussion. So, Colonel Jacob and Captain Duma went to the management.

LT-COL SIBIYA: Yes, to the offices, yes.

ADV SIKHAKHANE: Obviously, you were not part of those
10 discussions.

LT-COL SIBIYA: No.

ADV SIKHAKHANE: You and Warrant Officer Mpangase were there.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: They came back did they brief you?

LT-COL SIBIYA: They came back with a lady, I think. She introduced herself as Mrs Pillay, and other people that were accompanying them. And then she pointed at the container that we were interested in, but the container was stacked
20 with other containers on top.

ADV SIKHAKHANE: Okay, so at the layout, right, the container was on top?

LT-COL SIBIYA: It was on top, yes.

ADV SIKHAKHANE: All right, and was it specially marked or anything like that?

LT-COL SIBIYA: They have got the container numbers, so that they used to distinguish which container is this.

ADV SIKHAKHANE: Okay, and so when you have a briefing, then the agreement, you are part of this agreement, right? Is that the container will be moved to a particular point?

LT-COL SIBIYA: Obviously, Chair, for the container to be inspected, we have to bring it down from the stack and then open it, inspect it.

10 **ADV SIKHAKHANE:** Okay, and in terms of the mobility of the space, I would presume that you could move the container anywhere, or you would disagree with that?

LT-COL SIBIYA: After the other containers were moved, for them to be able to reach that container that we were looking for, then the space was not there.

ADV SIKHAKHANE: So, within the depot, you would not be able to move it anywhere, the container.

LT-COL SIBIYA: I would not know, because the containers are stacked to maybe even more than 6 metres high, but
20 where we were, there was no space.

CHAIRPERSON: Maybe let me ask the question differently. Colonel Jacob said that, and I think this was on the first day he gave his testimony, he said that the container you wanted to search could have been moved from where it was, where you believed or he believed there

were impediments to a proper search, and even proper conduct of what needs to be done at a crime scene. And that he said the container could be moved to another spot within the depot, another spot at which the search and seizure could then be conducted properly without any hindrance. I am sure you would not dispute that.

LT-COL SIBIYA: I want to respond, Chair.

CHAIRPERSON: All right.

LT-COL SIBIYA: Remember, Chair, myself and Mpangase,
10 we remained in the parking, and then they went around.

CHAIRPERSON: So, they would have seen ...[intervenes]

LT-COL SIBIYA: Maybe they might have seen the space where ...[intervenes]

CHAIRPERSON: You are not in a position to dispute what he said.

LT-COL SIBIYA: No, no, I am not in a position to dispute it.

CHAIRPERSON: Thank you, thank you.

ADV SIKHAKHANE: Yes, so it is those things, I think.
20 Thank you, Chair. It was that I think in his testimony he later did say that it could have been moved. But what that forces me to ask then is when you say it could not, would you still maintain that?

LT-COL SIBIYA: Now, according to my observation ...[intervenes]

ADV SIKHAKHANE: No, I am saying now.

LT-COL SIBIYA: If he said so, then it could be. Maybe it could have been moved if maybe there is a space that he saw that I did not see.

ADV SIKHAKHANE: Yes.

LT-COL SIBIYA: But we drove down from the gate. There is a long fence along our left-hand side of the – and then these containers here. Then we parked at the bottom there. So, from that area, there was no area for a container to be
10 searched. But because they went around to the management offices, maybe they were able to identify other places that they could have placed a container.

ADV SIKHAKHANE: Okay, so, perhaps just to be fair to you, I just want to ask it in a different way. It is the same answer as that from where you were sitting at the time.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And your answer must be understood in the context that at the time, you did not necessarily understand the layout and whether there could have been
20 elsewhere.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay.

ADV BALOYI SC: Can I just check on this? You just said that there was no - from where the container was parked and what you saw in terms of space, there was no area to

work where you could have conducted the search.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: In your statement, you say the space was limited for us to work as the machinery was moving up and down. That is your explanation. If the machinery was not moving up and down, at least that is what the statement suggests, that if there was no machinery moving up and down, you could have worked there. That is what this is conveying.

10 **LT-COL SIBIYA:** No, Chair, even in between the containers, the space was very minimal for us to be able to lay all the bags. It was going to be very difficult for us to move within the containers there.

ADV BALOYI SC: Sorry, explain. The containers would have been lined up, right? I think that is how I understood the evidence, that you had containers lined up.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And then yours is one of them, and the door is open. Maybe just explain in your words.

20 **LT-COL SIBIYA:** Okay, I am saying, Chair, when they were moving the containers, they moved the top container, placed it on the side, take the next container, place it on the other side, take the container that we were interested in, place it on the side. Then the space there was not enough for us to be able to do the counting.

CHAIRPERSON: Explain that space. Which space are you referring to?

LT-COL SIBIYA: I am meaning the space in front of the container that we were about to inspect.

CHAIRPERSON: And the front is the door side of the container?

LT-COL SIBIYA: Yes, where the container is open.

CHAIRPERSON: What constricted the space?

LT-COL SIBIYA: It was the containers that were placed
10 around the container.

CHAIRPERSON: No, let us just forget about those. We accept, okay, that they are alongside each other. Let us forget about that space. Tell us about the rest of the space. Tell us about the rest of the space.

LT-COL SIBIYA: I am not getting you, Chair, if you are saying I must forget about the containers and tell you ...[intervenes]

CHAIRPERSON: We have heard. I do not mean that becomes irrelevant. No, I am saying we are fine. Thanks,
20 Colonel. We have heard about that. The fact of the containers, let me use, parked alongside each other. We have heard about that. Now tell us about the rest of the space.

LT-COL SIBIYA: The machinery also was moving.

CHAIRPERSON: Where exactly was the machinery

moving?

LT-COL SIBIYA: Picking up containers from the other side of the depot and also other people conducting inspections.

CHAIRPERSON: But in relation to the space that you would otherwise have used, where was the machinery moving?

LT-COL SIBIYA: Next to the containers.

CHAIRPERSON: Where is next?

LT-COL SIBIYA: I do not understand if you say where is
10 next.

CHAIRPERSON: There is behind, there are sides, there is everything else. You were there. You know it better than I do.

LT-COL SIBIYA: Behind and in front of the containers.

ADV BALOYI SC: I think Commissioner Khumalo is going to try and get clarity for us.

CHAIRPERSON: Why do you not please put up that picture we saw yesterday where we have a few containers alongside each other.

20 **ADV KHUMALO SC:** Just while they are checking that, where are the photos of the scene that you took?

LT-COL SIBIYA: I forwarded all the photos to Colonel Jacob. He printed the photos and then put them in the enquiry file.

CHAIRPERSON: Now, do you see the pictures?

LT-COL SIBIYA: Yes, I can see the pictures.

CHAIRPERSON: Colonel, you see the pictures?

LT-COL SIBIYA: I can see the picture, Chair.

CHAIRPERSON: Would the one that was or was the one you were to search was it somewhere in the middle or was it to the side?

LT-COL SIBIYA: I do not recall, Chair.

CHAIRPERSON: Okay, now if you are able to, looking at this picture, where was the machinery moving?

10 **LT-COL SIBIYA:** You know, Chair, when you are looking at the picture, the machinery would be moving in front to the other side of the container.

CHAIRPERSON: That side? That is opposite where the doors are?

LT-COL SIBIYA: In front of the door, then it would be moving to the other side.

CHAIRPERSON: Right across where the doors are?

LT-COL SIBIYA: Yes.

CHAIRPERSON: And how far would that be from the
20 container itself or how far was that from the container itself? I keep using wood as if this was hypothetical. How far were these or how far was the machinery from the containers or the doors of the containers?

LT-COL SIBIYA: If the machinery is supposed to ...[intervenes]

CHAIRPERSON: Please estimate in metres. I am sure as a police officer you are able to do that.

LT-COL SIBIYA: I cannot respond, Chair.

CHAIRPERSON: I am sorry if I sounded impatient. Sorry.

LT-COL SIBIYA: So, I am saying, Chair, if the machinery is about to pick up the container, it will come very close to the container. But if it is moving in front of the container to leave the other containers on the side, maybe it can have a distance.

10 **CHAIRPERSON:** So, you are saying the containers that were with the one you wanted to search, some of them were being moved as you were there. Some of those that were already lined up together with the one you wanted to search. You are saying some of those were being moved as you were there wanting to conduct the search.

LT-COL SIBIYA: Not necessarily the ones that were next to the one that we were about to search. But the movement of the machinery was happening there, Chair.

CHAIRPERSON: In that case, I do not understand the
20 relevance then of - rather, I do not understand why you would refer to these, the machinery, in relation to these containers. I do not understand. If they were moving other containers, not the ones alongside the one you wanted to search.

LT-COL SIBIYA: They were moving other containers

passing the ones that we were interested in searching.

CHAIRPERSON: Coming to pick up the one that was to be moved or the ones that were to be moved. Or coming from and already carrying the container. We are trying to get a picture of the impediments or hindrances. And right now, you have not explained this in a manner that we understand. Let me tell you what we were told by Colonel Jacob. We did not want up front to tell you because I thought maybe your explanation would tie in with what he
10 told us.

The only hindrance in terms of movement that he told us about was that there was movement behind you. Two metres behind you. He never said anything that suggests that there was movement of machinery right next to the containers. With containers being picked up. Well, maybe he did not necessarily mean that containers were not being picked up. But he said this was behind you. Two metres from the containers. Would you confirm that that was so? Or would you rather say he is mistaken?

20 **LT-COL SIBIYA:** Chair, for me, I saw some of the machinery moving in front of the containers.

CHAIRPERSON: I want you to just confirm or dispute what I have just put to you, which is what he said. That is, there was movement behind you as you are facing the containers. And that this was 2 metres from the doors of the containers.

So, you are between the movement and the doors of the containers.

LT-COL SIBIYA: Thank you for clarifying that now. When you are facing the containers.

CHAIRPERSON: Yes.

LT-COL SIBIYA: I was thinking of the back of the containers.

CHAIRPERSON: No, no, no. So, would you confirm that that was the case?

10 **LT-COL SIBIYA**: That was the case.

CHAIRPERSON: All right, thank you.

ADV KHUMALO SC: I think for the record it is very important, Advocate Sikhakhane, to be fair to this witness. And I know Advocate Sello is sitting next to you. She can confirm if I am correct or not. The photo we are looking at is not – it is the one of the 1 000 kg bust a month later. So, this scene is not the scene where the CDH depot incident in June happened.

20 **ADV SELLO SC**: Commissioner Khumalo, I confirm it was pulled up yesterday for demonstration purposes. To deal with the point Colonel Jacob was making about what he meant by the size of the container. That definitely I confirm does not relate to this particular seizure.

ADV KHUMALO SC: I was looking at his facial expression. And his facial expression was, they are tricking me. This

cannot be the containers ...[cross talking].

ADV SELLO SC: Just for demonstration purposes.

CHAIRPERSON: Apologies, apologies.

LT-COL SIBIYA: Thank you very much Chair. Because even those containers they are not stacked. That is why I am wondering where did you get this picture.

CHAIRPERSON: Apologies, apologies Colonel, because I am the one who asked for this to be put up. I should have said it is purely for illustrative purposes. I apologise.

10 **ADV KHUMALO SC:** Advocate Sello, while we are on this point. I think it is important that Colonel Jacob provides those photos that the Colonel says were taken and given to him. And they were filed somewhere. Because some of the explanations he has given will require that we look at those photos.

ADV SELLO SC: We have two options. There are photos of the scene regarding this particular seizure in the files. But I do not seem to recall a photograph that depicts precisely what the Colonel is saying. The best we can do
20 for now is to go into the investigation files and the enquiry files. Those are our formal source documents. To see if we can extract all the pictures available there. If not, then we will have to turn to Colonel Jacob and request him to provide such photographs as have not been submitted through the enquiry file or the investigation docket.

ADV KHUMALO SC: Thank you. The transcription does not capture the facial expression. But you should have seen it. And that bothered me.

ADV SELLO SC: It could always draw the expression in the transcript. Thank you, Commissioner.

CHAIRPERSON: In addition to apologising to the Colonel for the confusion, I should thank my co-Commissioner, Commissioner Khumalo.

ADV BALOYI SC: Can I then go back to my question?

10 Now that the confusion has been cleared, that the doors of the container are open, you are facing the container. The space, you are not inside the container. You are outside the container. My question was, if the machinery, there was no machinery there that was operating. And maybe let me amend it so it is clearer maybe what I am asking. That if you had cordoned off an area that prevented machinery from moving in front of there, is there a reason why you would not have been able to inspect the drugs there? At the scene, in the depot.

20 **LT-COL SIBIYA:** I think, Commissioner, considering the magnitude of the bags and the space required for the bags, still we were not going to be able.

ADV BALOYI SC: So, the reference to machinery as a factor is completely irrelevant then. It has to be irrelevant for the purpose of my discussion with you and the answer

that you are giving. In fact, movement of machinery is irrelevant of no consequence because geographically there was no space to deal with that number of bags.

LT-COL SIBIYA: It is not, sorry Chair, it is not irrelevant because it is one of the factors that caused us to move the - that caused Colonel Jacob to move the crime scene.

ADV BALOYI SC: The reason I am saying it is irrelevant is if I accept your answer, your explanation of that space, I am saying it would not matter that there was machinery or not.

10 Because on your version, the space anyway was not there for you to do this search there and then, were you in front of the container. It sounds to me like it has to be like that if the space is indeed what you are saying.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: So geographically that space was impossible in front of the container, anywhere in front of the container. The space was so limited that even without machinery moving up and down, which somehow was able to move up and down, but even without that machinery you
20 could not have conducted the search in front of the container.

LT-COL SIBIYA: Yes, Commissioner.

ADV BALOYI SC: Thank you.

ADV SIKHAKHANE: Thank you, Commissioners. Just to follow up on, we will get to the discussion. So, the

container is moved, right? So, you are saying at the time when the container, you opened the container and you removed the exhibits or the bags. And I think the point of your version is that you could not process the scene because of the - we will get to the details. Now, I am trying to understand whether you as the police, was it not a possibility that you could cordon off the scene, stop these machines that were being driven around, so that you make sure that you do the job? Because in some instances that
 10 is what happens in crime scenes. Was it not a possibility?

LT-COL SIBIYA: It was a possibility, Chair.

ADV SIKHAKHANE: And do you know - and your version was, do you still maintain the version that you could not?

LT-COL SIBIYA: It was a possibility to cordon off the whole area and close it down. It was a possibility to close, to close the area so that we were able to operate. But it would have meant that even though those containers that were close to this container that we were intending to search, they would have been also to have to be removed
 20 so that we can have enough space to work.

ADV SIKHAKHANE: Yes, I am just saying that it is a possibility that could have happened in a scene.

LT-COL SIBIYA: Yes, it could have happened.

ADV SIKHAKHANE: And I just want to understand because what we are dealing with is 27 bags, and what I

find difficult - sorry. Can I just ask, when you went to Isipingo, these bags were laid at the parking lot.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Now, would you say that parking lot, this is now where, I want you to compare the two scenes. It is not a crime scene, but just the areas. Obviously, in a parking lot, again, there is movement. Correct?

LT-COL SIBIYA: There is movement, but very minimal.

ADV SIKHAKHANE: Sure.

10 **LT-COL SIBIYA**: And it is at the police station.

ADV SIKHAKHANE: It is at the police station.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: We will get back to that, but there is movement. It is a busy police station, I would imagine. It is a police station.

LT-COL SIBIYA: Yes, a police station.

ADV SIKHAKHANE: Correct. But you were able to sort of isolate where you were working.

LT-COL SIBIYA: Yes.

20 **ADV SIKHAKHANE**: Okay, can I just request us to flight one of the pictures at page 516 of the exhibit bundle?

ADV BALOYI SC: In our files, it will be what file?

ADV SIKHAKHANE: It should be File 2.

LT-COL SIBIYA: CJC?

ADV SIKHAKHANE: CJC242. But I am interested in pages

516 onwards. Are you there, Commissioner Baloyi? So, I want us to, unless there are other bags, in your understanding, were those the bags that were found in the container?

LT-COL SIBIYA: Yes, Chair, these were the bags that were found.

ADV SIKHAKHANE: My difficulty is that they seem to have fitted there in a single parking bay.

LT-COL SIBIYA: It is not a single parking bay.

10 **ADV SIKHAKHANE:** Okay.

LT-COL SIBIYA: It looks like 2.

CHAIRPERSON: Please speak up. Please speak up.

LT-COL SIBIYA: It is 2 parking bays.

CHAIRPERSON: Is it 2?

ADV SIKHAKHANE: Okay, anyway, let us give it 2. It is fine. But would that space not - you would not have found that space in the depot?

LT-COL SIBIYA: I would have found it.

20 **CHAIRPERSON:** It is not the whole of the second parking bay, though. They are straddling the line separating the two parking bays, or not?

LT-COL SIBIYA: Yes, remember, Chair, we were still going to take out exhibits from inside the bag and place them on the site counting. Do the counting on the site. So, we needed a little bit more space to do that. And the

security also. Because while we were there at the depot, once people got to know what it is, their drugs found, they started coming close.

ADV SIKHAKHANE: Yes, we will go to that. My point is, when to offload, the impression is that you could not place these, let us say, the bags. Unless I am wrong, you could place these bags within the depot. What was, according to you, a difficulty is when you open these bags.

LT-COL SIBIYA: Start with the counting.

10 **ADV SIKHAKHANE**: And starting the counting.

LT-COL SIBIYA: Yes, indeed, Chair.

ADV SIKHAKHANE: And obviously what you would say, your version would be that at the parking lot, you then isolated and counted, right?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And how long does that take at the police station, the counting?

LT-COL SIBIYA: I do not remember exactly how long it took us. But it took us some time because we needed to
20 make sure. We know when you are dealing with such, you need to ensure that your counting is correct. Because on the seizure of that 999, their initial report, they said they have recovered 1 000 bricks. When they recounted now, it was 999. So, when you are dealing with such, you need to be sure. Because there will be a whole lot of allegations to

say if you give the initial number, and then now when you recount, it is another number. You must be very careful when you are dealing with such.

ADV SIKHAKHANE: Okay, can I then take you to page 518 of the same exhibit? Now, it seems that ...[incomplete].

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Sorry, I am just waiting for them to flag it. Yes, so it seems that still, when they opened the bags, right, you were still within those two cars at the very
10 least.

LT-COL SIBIYA: But we were also advancing front towards the road.

ADV SIKHAKHANE: Also, towards the road.

LT-COL SIBIYA: That is why you see the bags now are placed on the side. And even here, on the bottom, you can see some.

ADV KHUMALO SC: Some of them are under the police van.

LT-COL SIBIYA: Yes.

20 **ADV SIKHAKHANE:** And with those empty under the police van. So ...[intervenes]

LT-COL SIBIYA: When you open these ones here at the bottom, you can see what there were bags there.

ADV SIKHAKHANE: Okay, now I want to understand something. Those bags, were they still full? Or the

exhibits were offloaded from the bags totally?

LT-COL SIBIYA: All the exhibits were offloaded now.

ADV SIKHAKHANE: Okay, so, what my issue is, is that that was still within those two cars.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Right?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And it does not seem to at least be beyond those cars, the front bumpers or anything.

10 **LT-COL SIBIYA:** Remember, we moved the bags to the front of the parking. Then we started opening a bag, placing the exhibit there. Then going like that until we finished offloading all the bags.

ADV SIKHAKHANE: Okay, maybe my point - let me put my point and then we will go back to the security at the depot. Would you still feel that this exercise that is there at this page could not have been done at the depot at the time?

LT-COL SIBIYA: I had already said that if we were going to close shop, it was going to be done. It was going to be
20 done if we were to close shop now. Meaning that cordoning off the whole area next to the container. We were going to do it.

ADV SIKHAKHANE: Right. Then let us go back to the depot.

LT-COL SIBIYA: Right.

ADV SIKHAKHANE: Right, one of the - so earlier in your statement you say the decision not to cordon off was not made by yourself.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: It was made by Jacob, am I correct?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And you did not question, we have established that, that you did not question why he does not cordon off the scene. Did you engage him about that?

10 **LT-COL SIBIYA:** You comply and complain later.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: And it remains like that. It does not change in the police. If a Commander says this is a decision I am taking, you cannot challenge your Commander.

ADV SIKHAKHANE: So, no matter how unlawful that decision is or no matter how difficult it is for you, you cannot say I do not want to participate in this?

20 **LT-COL SIBIYA:** No, Chair, obviously you cannot take an unlawful instruction. But if the Commander says my decision is for us to move and process this exhibit at Isipingo SAPS, I cannot come and say no, no. Why are we going there? Why are we not doing it here? It is his decision. He is responsible for it. Then he will need to explain why did he take that decision.

ADV SIKHAKHANE: Okay, I think we had that debate. I think we had with the Chair, for example, about the instruction note and what needs to happen. And I think we had agreed. I thought we had agreed that, you know, you should not follow an unlawful instruction. It was from that context that I was asking. But I will move on. I will have my view.

Then on the presence, on the security. Now, one of the factors that you highlight in your statement in agreeing
10 with Colonel Jacob is the security. You just mentioned that there were a lot of people. Right. Could you just elaborate on that for me? And that is one of the things I want to understand is you say that in paragraph 9. Sorry, just to locate you. You say there was management of the depot, right.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: How many people were from that, from management?

LT-COL SIBIYA: I do not recall. But when they came,
20 when Colonel Jacob came with the lady, they were not only travelling, the three of them. They had other people also who were there.

ADV SIKHAKHANE: Okay, so you do not recall the number.

LT-COL SIBIYA: I do not recall the number.

ADV SIKHAKHANE: Okay, the DPCI members?

LT-COL SIBIYA: It was the three of us.

ADV SIKHAKHANE: Oh, it is just the three of you.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And then there is Captain Duma.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And then you also mentioned ORS members.

LT-COL SIBIYA: Yes.

10 **ADV SIKHAKHANE:** How many were those?

LT-COL SIBIYA: You know, I had said I had not made notes. But while we were processing the crime scene, I saw ORS members. I do not know whether maybe it was during or after. Sorry, Chair.

ADV SIKHAKHANE: Please proceed.

LT-COL SIBIYA: I am saying I do not know whether it was during or after the seal has been broken but I saw ORS members. I also saw people wearing reflectors from customs.

20 **ADV KHUMALO SC:** Can I just ask a question related to what Colonel has just said? Colonel, if you were not taking notes on the day for the purposes of preparing your affidavit in the Commission and in the investigation relating to the disappearance of the Cocaine, where did you get those facts that you put in your affidavit if you did not have notes

or you did not take notes on the day? Because your affidavit seems to be detailed in terms of the sequence of events. So where did you get that information that made its way to your affidavit if you did not take notes on the day?

LT-COL SIBIYA: Remember, Chair, that I had already submitted two affidavits in 2022.

ADV KHUMALO SC: Yes, those are the affidavits I am asking about. Where did you get that information that you put in the 2022 affidavit?

10 **LT-COL SIBIYA:** I still remember some of the things.

CHAIRPERSON: Please, Colonel, do not speak while someone else is still speaking. We will have problems with the transcription.

LT-COL SIBIYA: I am so sorry about that, Chair. I am so sorry.

CHAIRPERSON: Yes.

ADV KHUMALO SC: I am asking about the 2022 affidavit.

LT-COL SIBIYA: Yes.

20 **ADV KHUMALO SC:** Because you did not have or you did not take notes in June 2021 when you were at the scene. So, for the purposes of preparing your very first affidavit, where did you get that information that you set out in that affidavit?

LT-COL SIBIYA: Chair, remember that I was taking photos. I had photos of the container numbers, photos that

I had taken of the people that were there. Some of them, you could see them in those photos.

ADV KHUMALO SC: I thought you had given the photos to Colonel Jacob.

LT-COL SIBIYA: I sent the photos via WhatsApp. I had some of the photos still in my phone.

ADV KHUMALO SC: All right, thank you.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Thank you. You said you relied on
10 the photos.

LT-COL SIBIYA: I relied on the photos, yes.

ADV SIKHAKHANE: Okay, now just to locate, in terms of the detail that you had, that was memory and the photos?

LT-COL SIBIYA: Yes, the affidavit that I deposed was in January 5, if I am not mistaken, 2022.

ADV SIKHAKHANE: Maybe let me assist you. If you go to CJC244, it should be File 2 of the exhibit bundle.

LT-COL SIBIYA: 244?

ADV SIKHAKHANE: Yes, 244.

20 **LT-COL SIBIYA:** The 244 page?

ADV SIKHAKHANE: Your affidavit there in the enquiry is at page 633.

LT-COL SIBIYA: 633. Yes, I am there, Chair.

ADV SIKHAKHANE: Okay, so, in terms of these details that are contained, you would have relied on what your

memory is?

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: Let me give you an example. Look at 635, paragraph 14.

LT-COL SIBIYA: Paragraph 14.

ADV KHUMALO SC: Yes. Those SAP numbers, SAP13 details, the enquiry file numbers, all of those things, where would you have got that detail from?

LT-COL SIBIYA: From the enquiry, before it was taken.

10 **ADV KHUMALO SC:** So, you would have gone back to the enquiry?

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: And also, what is the document that gets signed by Warrant Officer Mpangase, or that he completes?

LT-COL SIBIYA: The SAP 13 copies also.

ADV KHUMALO SC: But the diary also, is it called the diary or what?

LT-COL SIBIYA: Which one?

20 **ADV KHUMALO SC:** The investigation diary.

LT-COL SIBIYA: No, I got this. I think I – you are asking me, Chair, that where did I get the 13 numbers?

ADV KHUMALO SC: Yes, so, because this is the 24th, I remember you went with him at some point, you went to Port Shepstone.

LT-COL SIBIYA: I think in my pocketbook.

ADV KHUMALO SC: In your pocketbook, so this is where you got the information.

LT-COL SIBIYA: Yes, I got it.

ADV KHUMALO SC: Now I got you, thank you.

LT-COL SIBIYA: All right.

ADV SIKHAKHANE: And I think, Commissioner Baloyi, maybe let me not implicate you any further. In terms of the ...[intervenes]

10 **ADV BALOYI SC:** But, Mr Sikhakhane, you are not a witness.

ADV SIKHAKHANE: In terms of, you said it is in your pocketbook, pocket diary?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay, and I just wanted to confirm whether we could be able to get that if we needed to.

LT-COL SIBIYA: Yes, I think so.

ADV SIKHAKHANE: And in terms of the information that is contained in your statement to the Commission, did you rely
20 on, well, let us not say obviously, on this statement?

LT-COL SIBIYA: Most of it comes from these two affidavits that I proposed. This one and the further statement.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay.

ADV BALOYI SC: Can I just test something before we forget about it? In your statement, and I think in your testimony now, you said earlier, when I say now, I mean as you are sitting there, you said earlier that when you got to the depot, Colonel Jacob went to the office.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And then came back with the manager.

LT-COL SIBIYA: Yes.

10 **ADV BALOYI SC:** That is what you are saying. But the manager in her affidavit says that you, Colonel Jacob, Duma, Mpangase approached her together.

LT-COL SIBIYA: No, that is incorrect.

ADV BALOYI SC: Is she incorrect in saying that?

LT-COL SIBIYA: It is incorrect. I never went to the office. We were standing in the parking. It is only the two that went to the offices.

ADV BALOYI SC: Okay. Duma and Jacob.

LT-COL SIBIYA: Yes.

20 **ADV BALOYI SC:** And they brought her to you, to where you were?

LT-COL SIBIYA: Yes, yes. They came to us.

ADV BALOYI SC: All right. Can I also, sorry, and I do apologise if you were going to go there already, but it is about this discussion that you have just had with

Commissioner Khumalo about how you collect, how you remembered the stuff that you are saying in the affidavit. One of the things you say here is at the depot, you describe who was there, right?

LT-COL SIBIYA: Right.

ADV BALOYI SC: In your paragraph 9, when the seal was broken, you say it was depot management, DPCI members, Captain Duma, ORS members, and depot security members. You say that. And please correct me if I am wrong. I think
10 when you were now speaking, you said you do not remember whether the ORS people were there before or after the seal was broken. Is that what you are saying?

LT-COL SIBIYA: That is what I am saying.

ADV BALOYI SC: You now do not remember?

LT-COL SIBIYA: Come again, Chair?

ADV BALOYI SC: When you testified now, you said you do not remember whether the ORS people arrived before or after the seal was broken.

LT-COL SIBIYA: Yes.

20 **ADV BALOYI SC:** Is that what you are saying?

LT-COL SIBIYA: ORS people, they came after the seal was broken.

ADV BALOYI SC: And then why do you, in your statement at paragraph 9, say they were there when the seal was broken? And I ask you this because Colonel Jacob said

exactly the same thing until he was asked questions and his position altered. But you signed this statement. You have told us it is a recent statement. You say they were there. I am just trying to remember what date we said. You said it was signed on the 1st of June 26. And then on the 5th of June you are testifying, you say something different. In fact, you are now uncertain when on the 1st of June you were very certain that the ORS people were there when the seal was broken.

10 **LT-COL SIBIYA**: You know, Chair, what makes me remember that it was after the seal was broken was the fact that they were requested by Colonel Jacob to assist. After we inspected the container and we saw that there were drugs. That is why, I am sure. I am saying here I made a mistake by saying they were there before the seal was broken.

ADV BALOYI SC: So, until the 1st of June, which is on Monday, this past Monday, your recollection was that they were there when the seal was broken. What has happened
20 between the 1st of June and today when you testify on the 5th that now triggered your memory that, oh, they were not there when the seal was broken? Is it the evidence of Jacob?

LT-COL SIBIYA: No, no, no, Chair. It is the interactions that we are having now. And also, my recollection is

coming back now. Hence, I am saying what makes me to remember is the fact that they were requested after for assistance.

ADV BALOYI SC: Okay, all right. Thank you.

ADV SIKHAKHANE: Thank you. While we are still there, just two questions, I think, you know, just to check. In terms of you, did you know of the – so we know the management, the names of the people within ORS. Do you know them, their names? Can you get them and their depot
10 security members?

LT-COL SIBIYA: You mean do I know the names of the members of SAPS ORS?

ADV SIKHAKHANE: Yes, their identities. Or if, for example, their names would be given to you, they would trigger your memory. Or you did not?

LT-COL SIBIYA: I did not know them before this day. I knew them after.

ADV BALOYI SC: Before we move off, I am sorry. Before we move off from my topic. In your first statement, in
20 addition to ORS people, you said there were customs officials. Why did you say that? And this was your first statement, so this would still have been kind of fresh. It is January 2022. Why did you say there was customs officials?

LT-COL SIBIYA: It is because, Chair, when we are at the

crime scene, I saw people wearing customs uniforms.

ADV BALOYI SC: Then why is it not in your statement before the Commission that you filed on Monday?

LT-COL SIBIYA: It is not there.

ADV BALOYI SC: Well, the paragraph that I have read.

LT-COL SIBIYA: Paragraph 9?

ADV BALOYI SC: Yes.

LT-COL SIBIYA: I think, Chair, that maybe it might be a typo error, but I know that I saw people from customs.

10 **ADV BALOYI SC:** Well, there were no customs officials. There was a company, a custom liaison person, according to Colonel Jacob, when he is in the witness box. In his statement, like you, in his statement, he said there was customs officials. And then when we were engaging him about why would customs officials be there, he then said, oh, actually, it was customs liaison.

LT-COL SIBIYA: Chair, I saw people who were wearing reflector jackets with customs.

ADV BALOYI SC: You see, the concern, and maybe let me
20 put to you what my concern is. My concern is that you and Colonel Jacob, your statements are the same on this issue. We are still talking on just this issue. They are exactly the same, even the mistakes. You know, they are typically, you know, you have heard stories about students copying from each other.

And then when they get caught out, they find even the misspellings are exactly that. You have done exactly that. You have looked at each other's statements, that is what it looks like, and you repeat what the one has said in their statements. Either you were looking at his statement, that is the impression it gives, right? Either you were looking at his statement, or you sat down and discussed with him what goes into his statement.

That is the problem that I have with what you are
10 now seeking to explain away as recent recollections about matters that, when this was fresh in your mind in already January 2022, you say exactly what he said, which is wrong. And then when you come here, in your statement, you have repeated some of it. You say it is a typo I did not include customs.

And then when I say to you, no, there was customs, you give exactly the answer he gave, which is, I saw people wearing uniform and I thought they were customs. That is one. Two, oh, I am mistaken about ORS, actually, yes.
20 And that he admits when we say, well, ORS Govender has filed a statement that says they only came in there to give you a lift with your luggage.

And he said, yes, then I am mistaken. But that is exactly what you are doing. So, I sit here with the impression that you either copied his statement, or you sat

down and agreed what you were going to put in your statements on this issue. Please disabuse me of that impression, if you can.

LT-COL SIBIYA: Chair, I never copied his statement. He never copied my statement. Obviously, I report to Colonel Jacob as a Unit Commander. Now and then we will have discussions. Not to say we are telling each other what to write in your affidavit, no. We might have had discussions about the very same issue, but it was not for the purposes
10 of deposing an affidavit.

ADV BALOYI SC: So, one possible explanation from what you are saying is this common mistake of the two of you, that you both now correct in the witness stand, may be a result of the discussion that you normally have. And you might have discussed this, and that is where it came from.

LT-COL SIBIYA: Yes, yes, Chair.

ADV BALOYI SC: All right, thank you.

ADV SIKHAKHANE: I just want you to correct me if I am too blunt. I just want to follow up on what you are saying,
20 and you will warn me if I am offline. I just wanted to ask whether between June or July of 2021 up to the 1st of June 2026, did Colonel Jacob sought to influence you in any fashion about the statement?

LT-COL SIBIYA: No.

ADV SIKHAKHANE: Thank you. Then let us go back to

your statement.

LT-COL SIBIYA: Paragraph?

ADV SIKHAKHANE: Paragraph 9, we are still at paragraph 9. So, on your version, you do not have the identities of the people that were there, but you have an idea that it was these people in terms of, you know, ORS members, deputy security - I mean, depot security members, when the seal was being broken.

LT-COL SIBIYA: Please repeat your question again.

10 **ADV SIKHAKHANE:** I am saying you do not have details of these people, like the names and all of this. For example, ORS members and the security members and the management of the depot.

LT-COL SIBIYA: I did not have details as I was not an investigating officer. Normally, an investigating officer will acquire all the details of the people who are at the crime scene so that in future, if he requires statements from them, he can be able to contact them to obtain those statements. So, I saw what I am, these people that I am mentioning here
20 are people that I saw, but these were not the only people who were there when the container was open - when the container was open and when the exhibit were loaded into the vehicle.

ADV SIKHAKHANE: Okay, so that would be what Colonel Jacob says in terms of details.

LT-COL SIBIYA: I am not getting it.

ADV SIKHAKHANE: No, I am saying, you are saying that would be in the position of the investigating person.

LT-COL SIBIYA: Normally, at the crime scene?

ADV SIKHAKHANE: Yes.

LT-COL SIBIYA: The investigating officer identifies the possible witnesses and acquire their contact details and everybody who is there so that if he requires statements, he is able to contact those people to deposit the affidavit.

10 **ADV SIKHAKHANE:** Okay, now that is fine. Let us move to your paragraph 10. I think part of it we have covered about the area of work, right? And where you say the space was limited and all of this. Earlier on, you also indicated that the space was becoming crowded. When you say crowded, were there any other - who came other than the members that you now have - other than the persons that we have dealt with, right? Were there any other members, either those ones driving the forklifts around or the equipment that were now coming to the area?

20 **LT-COL SIBIYA:** There were a lot of people. Some of them, they were wearing overalls and that is why we are saying that the place becomes crowded because there is just a lot of people gathered wanting to see what was seized.

ADV SIKHAKHANE: And is it the version that there was no

control around that? There was not even an attempt to cordon off or limit the interaction.

LT-COL SIBIYA: There was no attempt to cordon off.

ADV SIKHAKHANE: Okay, and then you said, then Jacob gave you the instruction that you must take pictures.

LT-COL SIBIYA: The instruction to take pictures was given to me before the seal was broken because I got the photos of the seal before broken. It was broken, so.

ADV SIKHAKHANE: And this, you were supposed to use
10 your phone.

LT-COL SIBIYA: I was using my phone, yes.

ADV SIKHAKHANE: Okay, and he was also using his phone.

LT-COL SIBIYA: Not my phone, a state phone.

ADV SIKHAKHANE: A state phone?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay, and obviously, I think we had some debate about calling LCRC and those that are supposed to be the ones that take photographs, right? And
20 those photographs, I think you said they were submitted.

LT-COL SIBIYA: I forwarded all the photographs to Colonel Jacob, who was then the investigator. After the enquiry was moved from Mpangase to Colonel Jacob, he printed the photos that he needed to put in the enquiry.

ADV SIKHAKHANE: Then, from a security perspective,

just before we move to the other point, is that, one of the issues is that the worry, I think, yesterday with Colonel Jacob was that there could be some invasion or some sort of attack and all of this when you remained at the scene. Did you share his view?

LT-COL SIBIYA: I never thought of that.

ADV SIKHAKHANE: You never thought of that security point?

LT-COL SIBIYA: No, I only noticed there are a whole lot of
10 people very close to the container. And I also felt very uncomfortable with such exhibit with quite a number of people. The invasion, I ...[intervenes]

CHAIRPERSON: You are speaking too softly, Colonel.

LT-COL SIBIYA: I am so sorry, Chair.

ADV KHUMALO SC: Colonel, just make sure that the people seated at the back, they can hear you because I have just received a complaint now that they cannot hear you. So, do not just address Advocacy Sikhakhane, address all of us.

20 **LT-COL SIBIYA:** I am sorry about that, Chair.

ADV KHUMALO SC: No, that is fine.

LT-COL SIBIYA: I will try and speak louder.

ADV SIKHAKHANE: Thank you. So, your issue was not necessarily that there could be an attack or anything like that as you process the scene. Your main consideration is

that there is now a lot of people that are coming on. So, you do not find any issue with moving the exhibit elsewhere?

LT-COL SIBIYA: I think I am going to respond that now I am a part of SANEB and I have - when you go to the hub to seize these drugs, you do not know who was supposed to take out this consignment firstly. So, when you are there, you need to ensure that your safety comes first. And secondly, the safety of the exhibit. You always - that is
10 always at the back of your mind. So, when you make decisions, you are always thinking and looking at of looking at your safety. Considering the fact that we were only four members, if I am counting Duma.

ADV SIKHAKHANE: But – okay, so, are you now saying you also considered safety or security at the time?

LT-COL SIBIYA: I did. In my mind, but ...[intervenes]

ADV SIKHAKHANE: No, no, I am saying then.

LT-COL SIBIYA: Then, in my mind, it came across my mind. But it was not important because I was not in charge.
20 So, I am just talking on how I was looking at things and thinking to myself because I made no contribution to the decision.

ADV SIKHAKHANE: And obviously, to Colonel Jacob, who was in charge, if that was his consideration, would you agree with the proposition that you could have called for

backup as it later turned out that you then got help when you were transporting the exhibit?

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: Okay, Colonel, just to check that the three of you were not going to the depot to fetch drugs. You were actually going to conduct a drug bust. Were you armed? Did you take protective measures, the three of you, before going to the depot? Did you have weapons with you?

10 **LT-COL SIBIYA:** I think, Chair, the statement that you are saying that we were not going to fetch drugs, it is a very unfortunate statement, Chair.

ADV KHUMALO SC: That is why I am giving alternatives, just to check that that is not what you were doing. My question is, were you armed? Did you have weapons with you?

LT-COL SIBIYA: Yes, but such statement, because we are mandated to do these things as the DPCI.

ADV KHUMALO SC: Yes.

20 **LT-COL SIBIYA:** Yes, so, I am always armed when I am at work.

ADV KHUMALO SC: So, my question is, on the day, the three of you, were you armed?

LT-COL SIBIYA: Yes, I was armed. I cannot comment on behalf of others, Chair, but I was armed.

ADV KHUMALO SC: But you were with them. Do you know if they were armed?

LT-COL SIBIYA: Yes, they were armed.

ADV KHUMALO SC: Okay, so you had taken protective measures on your way to the depot?

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: And the reason I am asking you this is because of what you raised, that your first priority is safety, because you do not know who is also going there to
10 collect the same drugs. So, you would take protective measures just in case you are ambushed by people who are also there for different reasons than the reasons you are there for. So, I am establishing those facts. I am not making findings at this stage, so please do not assume that when I test or I make propositions, is to find out what the facts were. It is not as if the Commission has decided that you were there to fetch the drugs. I hope you understand that.

LT-COL SIBIYA: We fetched the drugs. We took them to
20 the SAP13, the DCP. We booked them at Port Shepstone. We were instructed to take them to Port Shepstone. We did that, Chair.

ADV KHUMALO SC: There is a difference between going to conduct a drug bust, because you are suspecting that drugs have been brought into the country illegally, and

another scenario is you know that there is Cocaine there. You are just going there to pick it up. That is why I was clarifying that there are different scenarios, and I wanted you to tell us which scenario applied.

LT-COL SIBIYA: To me, I had never even met Captain Duma.

ADV KHUMALO SC: Yes.

LT-COL SIBIYA: I was just informed by Mpangase, requesting assistance. Then I gladly said, no, let us go.
10 Then I went. When I got to CSC depot, there are drugs. That is, it. So, we were going there to work. Hence, even our superiors were contacted, and they were informed that we were going there.

ADV KHUMALO SC: In the book at the police station where you work, I am assuming that when you were told that you must go to this drug bust, there is a document that you complete to say where you are going, what is the operation, for what purpose. Is there such a document?

LT-COL SIBIYA: Only now I know of such a document, an
20 operational plan, but then I do not recall it was existing at that time.

ADV KHUMALO SC: Was there a drill that morning? What happened around 07:20 that morning when you were at your station, where you worked in Durban, and you were called to say you must go and assist in a drug bust? Is there not a

document that you complete?

LT-COL SIBIYA: No, no, I do not know of such a document. You report to your Immediate Commander of all the activities that you are about to partake. So, you just inform him.

ADV KHUMALO SC: And you do that before you go, or when you come back?

LT-COL SIBIYA: Before you go. Or after, you can do it also after you come back. But in this instance, I went to
10 Captain Majola's[?] office who was acting, because Colonel Jacob was on leave.

ADV KHUMALO SC: Was on leave, yes.

LT-COL SIBIYA: And then Captain Majola's office was locked but I contacted him. Hence, he allowed me to assist again on the 23rd and on the 24th.

ADV KHUMALO SC: And I am glad you mentioned that, because we were looking for that name at some point. We did not have it. So, I am glad that you have now clarified that point.

20 **LT-COL SIBIYA:** He is retired now.

ADV KHUMALO SC: No, we can still find him, do not worry.

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: Thank you.

LT-COL SIBIYA: I can even find him for you, Chair.

ADV KHUMALO SC: Thank you, Mr Sikhakhane.

ADV SIKHAKHANE: Thank you. Okay, so, to follow up on what Commissioner Khumalo is saying is that you sought permission on just on the ground of this point, because also I did not see it in your affidavit, unless I am mistaken, of that you sought permission from your Immediate Commander.

LT-COL SIBIYA: I informed him to say I have been requested by Warrant Officer Mpangase to assist him. He
10 said, no problem.

ADV SIKHAKHANE: Okay, and on both on, I would imagine, on the 22nd, 23rd and 24th.

LT-COL SIBIYA: Yes, because he was the person placing me on duty. Then in the morning on the 23rd, I briefed him of what has transpired on the 22nd. Then he was all right. Then again, when Mpangase came to my office, now after my meeting, I went back to Captain Majola and told him, I told him that Mpangase again is saying, we need to go and bag the exhibit. He then said to me, no, just carry on there.
20 You can assist him, because we are not busy with anything at the present moment.

ADV SIKHAKHANE: And is there any particular reason that, you know, that detail for seeking permission is not in your statement?

LT-COL SIBIYA: There is no reason. There is literally no

reason.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: Yes, but I report to Majola. Every morning he signs my pocketbook, placing me on duty. So, I need to account for the day as to what I did.

ADV SIKHAKHANE: Okay, now just to move quickly on this item. Earlier on, we had a discussion about the assistant, and I think Commissioner Khumalo was also on this point, is throughout this thing and this operation, your
10 role, what exactly would you say your role was? What does assistance, how do you look at assistance?

LT-COL SIBIYA: It depends on what type of assistance is required by the people that you are assisting.

ADV SIKHAKHANE: So, your role was just to be available to any instruction they give you, and that is what you did?

LT-COL SIBIYA: Yes, to assist them, yes.

ADV SIKHAKHANE: All right, so, you then go to, there is a decision that is taken, I do not need to go into too much detail. It is taken to go to Isipingo, right? And you align
20 with that decision, and then you go to Isipingo, right?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And I think the statement is also that there were other members that were called to assist.

LT-COL SIBIYA: Yes, from ORS who were also conducting inspection. Then Colonel Jacob requested, after seeing a

vehicle, requested them to assist us in taking the exhibit to the police station.

ADV SIKHAKHANE: Okay, then you go to the police station and ...[intervenes]

ADV BALOYI SC: Before you arrive at the police station. In your paragraph 10, where you talk about the space limited, the risk to members and exhibits, and the number of bystanders that were there, you then follow that with saying, Lieutenant Jacob - Colonel Jacob, informed us we
10 should proceed to Isipingo.

Now, what happened, in fact? I am trying to understand whether you stood around and, or whatever position, postures you took, did you have a discussion where you say, yes, the space is limited, there is a risk, now there are people, let us all go? Or does, that does not happen, but Colonel Jacob says, let us go. I am trying to understand whether this is your own, your own observation that you are recording here, or you are recording what was given as a reason at the time to move?

20 **LT-COL SIBIYA:** He had a brief conversation with Mpangase.

ADV BALOYI SC: He?

LT-COL SIBIYA: Colonel Jacob had a brief conversation with Mpangase, and then Colonel Jacob went on and requested members from ORS to assist. Then he then

informed us that they are going to come, they will be assisting us, then we need to load the bags and go to Isipingo.

ADV BALOYI SC: Okay, my question is earlier, is about what happens before he approaches the members, and I am trying to understand what you have written here. Whether, where you say the space was limited, you see where I am reading in that paragraph 10, and then you also say there was also a risk to members and exhibits, and then a number
10 of bystanders were observing the activities, so that is you making your observation. Is that - I am trying to understand that, that is that you recording your observation to us, or this is what was discussed with you by Jacob and Mpangase, and maybe Duma? You all spoke about the space is limited. You understand the question I am asking you?

LT-COL SIBIYA: I understand, Chair.

ADV BALOYI SC: Yes, I am trying to understand what happened in fact.

20 **LT-COL SIBIYA:** Those were my observations of the situation, and I have not discussed them with anyone, so yes.

ADV BALOYI SC: So, it is not what was said on the scene?

LT-COL SIBIYA: No.

ADV BALOYI SC: Okay, all right. So, when Jacob says, let us go, he does not say because of reason A, B, C, D, he just says, let us go to Isipingo. He does not list those things as reasons?

LT-COL SIBIYA: I do not recall, Chair. I do not want to comment on something, Chair, that I do not remember. But I remember him saying that I have requested for assistance, let us go to Isipingo. Let us load the bags and go to Isipingo, SAPS.

10 **ADV BALOYI SC:** Okay.

CHAIRPERSON: In response to a question by me, or a couple of questions, you said he did not. You remember in the context of the exercise of discretion by him, whether those initial prescripts must be followed, you actually, the responses you gave made me understand that he had not said anything, which is why you went so far as to say you were not in a position to assess his decision that you should go. Do you remember that discussion or that debate between you and I? Between you and me, rather?

20 **LT-COL SIBIYA:** Chair, I do not remember that.

CHAIRPERSON: It is only a few hours ago. Oh, no, no, no, let us leave it there. Let us leave it there.

ADV BALOYI SC: Well, Colonel, the reason, the issue for me about this, if this was your observation and not what you discussed on the spot is, but it is exactly what Jacob says,

and yet it is another, for me, another area of concern that you seem to have conferred about what goes into your statements. The two of you who are coming to testify before us, you say exactly the same thing, and yet there was no discussion of this, but you all give the same reason for moving as if you were talking about it, but I want to add something to it, that what makes it a matter of concern is it is not in Warrant Officer Mpangase's diary entry for the day.

He does not give that explanation, and it is an
10 important thing, you would agree, right? Because it is a breach of your instruction, National Instruction. Breach as in the instruction is clear. It says you must bag, you must count, you must bag on the scene, you must call LCRC. So, it is an important requirement. There is a departure from that requirement.

It is not complied with, and yet it is not in the investigation diary, the explanation why that happened. It is not recorded anywhere, and Mpangase is not here, so he cannot explain why it is not in the diary, but the two of you
20 who are here give this explanation, and you say, curiously, you say, no, we did not discuss it on the spot. It is my own observation. Well, it is exactly in the same terms as Jacob, and it is a matter of curiosity at the very least, but of concern.

LT-COL SIBIYA: It could also be, Chair, that maybe he

also observed what I observed. Not only us conspiring, maybe in trying to plot something. It could also be that what I was observing is the very same thing that he was observing.

ADV BALOYI SC: Yes, okay, that is your answer. Thank you.

ADV SIKHAKHANE: Colonel, I just want to understand. I think earlier we had some issue about the details that you - that about ORS members that were present.

10 **LT-COL SIBIYA:** I am sorry about that, Chair.

ADV SIKHAKHANE: No, that is fine. Down your statement at paragraph 20 - at paragraph 11, you then identify the members. You identify Sergeant Govender and Sergeant Mkhize. Where were these members? Is it - where are they attached?

LT-COL SIBIYA: They are working at the harbour. That is why they are ORS members.

ADV SIKHAKHANE: Oh, so these are the ORS members that were present.

20 **LT-COL SIBIYA:** Yes.

ADV SIKHAKHANE: And where these ...[intervenes]

LT-COL SIBIYA: Sorry, to interject.

ADV SIKHAKHANE: No, no, apologies.

LT-COL SIBIYA: These members, they report at the harbour, ORS.

ADV SIKHAKHANE: Yes, so earlier on when we had this discussion, it was about the names of the peoples that were there. These ones came after Sergeant Govender and Sergeant Mkhize.

LT-COL SIBIYA: They came after, what, Chair?

ADV SIKHAKHANE: When you were leaving, not at, they were not present at the breaking of the seal.

LT-COL SIBIYA: These two were not the only two members that were there from the harbour. There were a
10 group of members from the harbour. Colonel Jacob went and requested assistance in terms of them providing us with transport. So, these are the two that came from those that were there, at the harbour, at the depot, I am sorry.

ADV SIKHAKHANE: So, I just want to know, when these members, there is earlier where you said, paragraph 9, when you said there were these people that were present when the seal was broken. I just want to verify whether Sergeant Govender and Sergeant Mkhize were present then or not.

20 **LT-COL SIBIYA:** I retracted my statement to say all the ORS members, they came after the seal.

ADV SIKHAKHANE: Oh, I see, okay. And just for clarity, when you say harbour and ORS, you mean the same thing?

LT-COL SIBIYA: It is the same thing, yes.

ADV SIKHAKHANE: Okay. Can I move to the Isipingo

Commissioners? You are fine I have covered.

CHAIRPERSON: No, feel free to.

ADV SIKHAKHANE: Okay.

CHAIRPERSON: No, feel free to. It is not 1 o'clock yet.

ADV SIKHAKHANE: Okay, that is fine. You then, there was a backup that was called and then you travelled to Isipingo.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And you loaded the exhibit bags.

10 Were you using gloves or not gloves at the time?

LT-COL SIBIYA: We were using disposable gloves.

ADV SIKHAKHANE: Disposable gloves, okay. Then you were travelling. How many vehicles were there?

LT-COL SIBIYA: Commissioners, Chair, it was three vehicles. It was the Hyundai H1 that was carrying all the exhibit with the members from ORS. And the Golf that I was driving with myself, Colonel Jacob and Warrant Officer Mpangase and Captain Duma's Corolla behind us.

ADV SIKHAKHANE: Okay, so, Dumas driving alone and
20 then the three of you were driving together to Isipingo.

LT-COL SIBIYA: To Isipingo, yes.

ADV SIKHAKHANE: Right. You had an earlier interaction with Commissioner Baloyi about whether Colonel Jacob briefs you about what now needs to happen and who must play which role. And that discussion at least did not include

you. Correct, am I?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Now on the car, or in the car rather, as you are travelling, does Colonel Jacob brief you and Mpangase as to what will then happen when you arrive? What is his plan?

LT-COL SIBIYA: He indicated that due to the fact that we did not have enough bags and we must proceed to Isipingo so that we can gather more bags and bag the exhibits. That
10 is what we are going to do there.

ADV SIKHAKHANE: So, when you were, it was common cause that obviously there were no bags at the depot, right?

LT-COL SIBIYA: And we had bags, but they were not enough. Remember the information that we had received it was 27 bricks. So, we had bags that could accommodate 27 bricks.

ADV SIKHAKHANE: So, you did not use any of those bags. You just ...[intervenes]

LT-COL SIBIYA: No, we did not use it.

20 **ADV SIKHAKHANE:** You did not use it. And who was with those bags? Did Colonel Jacob come with them?

LT-COL SIBIYA: No, no, they were in the car that I was driving.

ADV SIKHAKHANE: Oh, they were just in the car. Okay.

LT-COL SIBIYA: Normally we have exhibit bags in our car.

ADV SIKHAKHANE: Okay, and then in terms of - so Jacob and Mpangase say, was there discussion about exhibit bags rather than put that way earlier or you discovered when you were there that this is not enough what I have or what you have?

LT-COL SIBIYA: I do not recall, but I knew that I have got bags that can manage 27.

ADV SIKHAKHANE: And when do you make this discovery?

10 **LT-COL SIBIYA:** It was not a discovery. I knew that I am carrying forensic bags, the reflector jacket in the car.

ADV SIKHAKHANE: So is it as, I am trying to distinguish whether it is as you leave your office.

LT-COL SIBIYA: No, when we were informed by Duma that we needed to go and seize about 27 bricks, then I knew that I had bags that can accommodate 27 bricks.

ADV SIKHAKHANE: Okay, so, you were just inadvertently, it is just that you had bags in your car.

LT-COL SIBIYA: Yes.

20 **ADV SIKHAKHANE:** Otherwise, no one else had arranged for bags.

LT-COL SIBIYA: No, no one talked about bags.

ADV SIKHAKHANE: Okay. And then throughout the process, there was a discussion about these bags that you had and that they were not enough.

LT-COL SIBIYA: I am not getting your question.

ADV SIKHAKHANE: So, I am saying, when you determine whether these bags are not enough, I just, I was, when you were counting, I did not get a sense that you factored that no, these bags that we have are not enough.

LT-COL SIBIYA: I knew that the bags are not enough.

ADV SIKHAKHANE: Okay, and did you discuss that with anyone?

LT-COL SIBIYA: I do not recall discussing it with them.

10 **ADV SIKHAKHANE:** So, you then go, you are travelling to Isipingo and then you arrive there, right?

LT-COL SIBIYA: Right.

ADV SIKHAKHANE: When you get off the car, right, who go - where does Colonel Jacob go? Does he go anywhere? Or who goes to the inside the police station rather?

LT-COL SIBIYA: Firstly, it was Colonel Jacob who went and got SAP13. And then he came back with Warrant Officer Perumal.

ADV SIKHAKHANE: So, Warrant Officer Perumal was the
20 SAP13 clerk.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay. Chair, it is 2 minutes. I just, I think it is going to get too involved.

CHAIRPERSON: All right, let us adjourn and resume at 2 o'clock. Thank you.

ADV SIKHAKHANE: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Sikhakhane.

ADV SIKHAKHANE: Thank you, Chair. Apologies, my voice is also getting into the afternoon. I will try and speak up, though. Just on administrative points, there was some debate about which photos were obtained or were in the file that were available in relation to this matter. And we have
10 been able to get the photos and we have handed them up. We request you hand them up, but they are already in your files, updated in the third file as EXHIBIT CJC271 at the end of File 3 and CJC272. That is File 3.

CHAIRPERSON: File 3, yes.

ADV SIKHAKHANE: And the index was updated.

ADV KHUMALO SC: The Jacob EXHIBIT File 3?

ADV SIKHAKHANE: Yes, yes. I just wanted to make sure. It is the Jacob.

ADV BALOYI SC: CJC number?

20 **ADV SIKHAKHANE:** 271 and 2. So there was some discussion around the photos that were taken. And just to deal with those questions, I think, Commissioners, you may have wanted to ask about the layout of the depot and all of this. So these are all the photos that we have, and the witness bundle is updated. Do you have it?

LT-COL SIBIYA: Yes, I do.

ADV SIKHAKHANE: Okay. Chair, these are not all the photos that I took on the day.

CHAIRPERSON: They are not all?

LT-COL SIBIYA: They are not all of them, ja.

CHAIRPERSON: Okay.

LT-COL SIBIYA: So they are short. I took a bit more than what is here. I took quite a bit. Are you able to get those photos? Do you still have them in copy? I will have to try.

10 I cannot commit because I have changed the handset. I will have to see maybe and try. If I get something, then I can also forward it to the Commission. Okay.

ADV KHUMALO SC: Colonel, these ones were taken by you, the ones that we see here.

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: Can I just make a comment or an observation? Even the quality is not great, as you can see. Which more reason why qualified people should be taking crime scene photos because the quality of these photos is
20 not great.

CHAIRPERSON: Look at 976, Colonel, and 977.

LT-COL SIBIYA: I think also the printer that maybe that was used also because on the phone they were appearing nicer.

CHAIRPERSON: I do know also when you blow up the

pictures, you lose the quality. I would be surprised that you would not have been able to capture the serial number on the one at 977, because I am sure that is what you wanted to do.

LT-COL SIBIYA: I captured that one. I had to make sure.

CHAIRPERSON: But I am saying it is not showing, but I would be surprised that you would not have tried to do your best to capture it.

ADV SIKHAKHANE: Can we perhaps, maybe just to be
10 clear, out of the pictures we will go through, it is just to let us know which ones do you think that you took? Or are you not able to do that?

LT-COL SIBIYA: Chair, I will be lying if I say I can still identify the photos that were taken by me.

CHAIRPERSON: Yes.

LT-COL SIBIYA: But like that one specifically, I remember that one, it was taken by me.

CHAIRPERSON: Which one?

LT-COL SIBIYA: The one that was shown there, the last
20 one.

CHAIRPERSON: All right, all right.

LT-COL SIBIYA: That one.

CHAIRPERSON: That one?

LT-COL SIBIYA: That one.

CHAIRPERSON: I hope you are not claiming it because it

looks so beautiful. Yes, Mr Sikhakhane.

ADV SIKHAKHANE: Can we just go to page 970?

LT-COL SIBIYA: 970.

CHAIRPERSON: Same file, 900?

ADV SIKHAKHANE: Yes, same thing.

CHAIRPERSON: Okay.

ADV SIKHAKHANE: Are you there, Colonel? 970.

LT-COL SIBIYA: I do not see 970. 980. Thank you so much. I am there, Chair.

10 **ADV SIKHAKHANE:** So you see there that is the container. Is that the container? Do you confirm that is the container that was the subject of this investigation, so to speak?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And you said earlier that there were containers, that it was stacked up and all of this. It is not very clear. Do you recall there is another picture of this container that you took?

20 **LT-COL SIBIYA:** No, Chair, it is clear. When you look at my left, right corner there on top, you see that is another container there on top. The red one there on top.

ADV SIKHAKHANE: But I suppose the question is, is it on top of this one, I think?

LT-COL SIBIYA: Obviously.

ADV SIKHAKHANE: So on this one, this was placed

separately?

LT-COL SIBIYA: Yes, it was placed on the ground.

ADV SIKHAKHANE: On the ground?

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: Okay. But you are saying, so the point you are saying is that at least around the other containers were stacked up?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay, all right. So this one was the
10 only one sort of taken up that was one level?

LT-COL SIBIYA: I do not, I am not getting you, Chair.

ADV SIKHAKHANE: So I am saying this container, right, was it the only one that was on the ground or without anything on top, any other container on top?

LT-COL SIBIYA: I do not recall, Chair.

ADV SIKHAKHANE: Okay, no, that is fine. Apologies, I just wanted to find my bearings on the affidavit. Okay, so we were at a point when we broke for lunch where we were dealing with the transportation of the exhibits to Isipingo
20 Police Station. And you were at a point where you said Colonel Jacob went inside and came back with Warrant Officer Perumal.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: All right. In your statement that is dealt with at paragraph 12 of the first file of the statement,

can you go there?

LT-COL SIBIYA: Yes, I am there, Chair.

ADV BALOYI SC: Sorry, can we just clarify? You, at the end of paragraph 10, the very last sentence, and I just want to get a clarification from you. Paragraph 10, the very last sentence, you say:

“Lieutenant Colonel Jacob informed us
that we should proceed to Isipingo SAPS.
He requested members from ORS
10 Harbour to assist us.”

And then in paragraph 11, you then say:

“All the 27 bags were loaded onto the
ORS marked vehicle.”

And then you say:

“On arrival at the police station, we
parked the vehicles. Perumal was called.
We started to offload the bags.”

And then you say:

“We started placing exhibits on the
20 ground and started counting.”

Who is doing the counting? Because it is not clear to me where you say ORS was called to assist at the depot. And then you went with them and then you then say we started counting. Who is doing the counting?

LT-COL SIBIYA: We offloaded the bags. We, DPCI

members, we were doing the counting.

ADV BALOYI SC: So ORS was not counting?

LT-COL SIBIYA: No, they were not counting.

ADV BALOYI SC: They were not part of your counting?

LT-COL SIBIYA: They were observing while we offloaded the bags. And also when we started counting, they were there.

ADV BALOYI SC: Okay, but they left before you finished?

LT-COL SIBIYA: I would not say they left before we
10 finished, but they were there when we were counting. I
think they were also waiting for a 13 number.

ADV BALOYI SC: Well, that is not what they say. You see, again, you and Colonel Jacob, in your statements, you say that. You say they were there and they were part of the counting. At some point in his evidence, he says, well, they observed. They were standing around. So there is that commonality in your statements. You both say that. But the ORS and Colonel Jacob did amend his position when we engaged him.

20 The ORS people, in their statements, they say they got there. Your bags were offloaded and they left to go and carry on with their job. So waiting for the SAP13 does not come into it because they say it was not their operation. They were just a lift to you. They were not helping with your operation.

LT-COL SIBIYA: They assisted us in offloading their bags.

ADV BALOYI SC: Yes.

LT-COL SIBIYA: When we started counting, they were still there.

ADV BALOYI SC: Ja?

LT-COL SIBIYA: Yes, Chairperson.

ADV BALOYI SC: And then now you say they waited for an SAP13, you are making them part of the counting then. That is what it must mean, that they become part of that
10 operation. And what I am putting to you is what Officer Govender and Mkhize say, offloaded the bags and went on back to their job.

And the issue I am taking with you is you and Colonel Jacob say they were there in your statement. They were helping you with the counting. Because that is what you are saying to us in the statement. We started counting. You said they were brought in to help and then you then started counting. So you make them part of the counting. They clearly, in their statements, say the bags were
20 offloaded and we left.

LT-COL SIBIYA: I do not agree with that, Chairperson. They were there when we were counting, but Officer Perumal was also there.

ADV BALOYI SC: No, I am not talking about Perumal. I am talking about ORS.

LT-COL SIBIYA: Yes, they were there when we were counting.

ADV BALOYI SC: You insist they were there.

LT-COL SIBIYA: I insist that they were there.

ADV BALOYI SC: Even though Jacob did amend his position in his oral evidence that he thinks they were there when he started. But yes, he agrees they did leave. They did not stay on for the complete counting ...[intervenes].

LT-COL SIBIYA: According to my ...[intervenes].

10 **ADV BALOYI SC:** You insist.

LT-COL SIBIYA: I am sorry to interject, Chair. According to my recollection, they were there up until we finished counting. Then they left.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: I might be mistaken, but according to my recollection, because it has been five years now, but I think they were there up until we finished.

ADV BALOYI SC: Is not the explanation maybe also possibly that what you said earlier, that you discussed, you
20 of course would discuss with Jacob as your superior, about this operation and maybe that is where this comes from, this commonality.

LT-COL SIBIYA: I would not say that, Chair. But I will be lying if I can say to you we never had a conversation with this discussion. We work on the same floor. Our offices

are next to each other.

ADV BALOYI SC: Yes.

LT-COL SIBIYA: But we did not discuss the statements.

ADV BALOYI SC: You see, the other thing about it is Mpangase does not say that ORS assisted in the counting. So Mpangase, the two ORS people, they do not speak of them. In fact, the ORS people tell us what they did and then Mpangase does not include them in the counting. It is you and Colonel Jacob who involved them in the counting.

10 And in fact, in oral evidence, Colonel Jacob amended his position, which was initially like yours.

And he said, ja, maybe they were there, actually, I think, something to that effect. They were there when we started counting and they, of course, left off to do their work. What concerns me is you go so far as to say that they waited for an SAP13 as if now they were part of the operation when in fact they were not.

LT-COL SIBIYA: Chair, they were there.

ADV BALOYI SC: So were they part of the operation,
20 according to you?

LT-COL SIBIYA: If you contribute, you are part of the operation. You might not stay there the full time or the full duration of the operation. For the mere fact that they loaded the bags from CSC Depot to SAPS Isipingo, they became part and parcel of the operation.

ADV BALOYI SC: According to you. So they ...[intervenes].

LT-COL SIBIYA: They play their role.

ADV BALOYI SC: Sorry, I do apologise. So they must have a record. If they have done things properly, there has to be a full accounting of their role in the operation because they are part of an operation.

LT-COL SIBIYA: They must be able to explain their involvement.

10 **ADV BALOYI SC:** No, I am not asking about them being able to explain their involvement. I am asking you about the records. We know you have got a pocketbook.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: We know entries, I think earlier you said to Commissioner Khumalo that in the office now there is a book where you write down the operation book or diary or something.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: So I am asking that kind of question. If
20 they were part of an operation, they must have a record of their own, of their participation, what they saw, what they got involved with, what they did.

LT-COL SIBIYA: Yes. Yes, Chair.

ADV BALOYI SC: Okay. Maybe let me mention to you that Colonel Jacob, who was in charge of the scene, accepted

that they were not part of the operation. He accepted that all that they did was to give you a lift, to give the drugs a lift. So they provided you with transport, and that is what they were called for.

That is what they say in their statements. That is what he says, they were called for that. They helped transport this consignment to Isipingo. He accepts that, that that was their limited role. You put them as part of an operation to a point where you say they waited for the
10 SAP13. Yes.

So there is that big difference, apart from the fact that Mpangase does not mention them as part of his operation. He mentions you and Jacobs and Duma, and Jacob, rather, and Duma. He does not mention them as part of an operation, including in the counting. You are the only one that is mentioning them as part of the operation to the point of waiting for an SAP13.

LT-COL SIBIYA: Okay, Chair. And maybe let me remove the word say part of the operation, but they participated in
20 the operation.

ADV BALOYI SC: By giving the drugs a lift?

LT-COL SIBIYA: By conveying the drugs from the depot to the police station.

ADV BALOYI SC: Okay, thank you.

ADV SIKHAKHANE: Sorry, I just want to find out. So you

are saying your version is that they did not participate in the counting, or they did?

LT-COL SIBIYA: I am still standing firm when we are counting drugs.

ADV SIKHAKHANE: Okay. Just on that issue, can we go to EXHIBIT 244?

LT-COL SIBIYA: 244.

ADV SIKHAKHANE: Page 627.

LT-COL SIBIYA: Page 67?

10 **ADV SIKHAKHANE**: 627.

LT-COL SIBIYA: 627, yes.

ADV SIKHAKHANE: It should be the second file. File 2.

ADV KHUMALO SC: 247?

ADV SIKHAKHANE: 627.

ADV KHUMALO SC: 627.

LT-COL SIBIYA: Ja, it is CJC244.

LT-COL SIBIYA: Yes, I am there, Chair.

ADV SIKHAKHANE: That is the statement of Sergeant Govender. In paragraph 5, he contradicts, or disagrees,
20 unless maybe I read this differently. He says:

“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.”

And then he says:

“I counted 27 such bags.”

This is now where? It is in the depot:

“Then 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 bags.”

The yellow and black bags, bricks, sorry, of suspected Cocaine when we left the scene. Would you say he is
10 wrong in this statement?

LT-COL SIBIYA: This is according to his version. If I remember well, when we finished counting, they were there. That is why I put it in my affidavit. So I am unable to say that his affidavit is wrong or right.

LT-COL SIBIYA: Okay.

ADV SIKHAKHANE: So your version is that when we finished counting, they were still there.

LT-COL SIBIYA: Okay.

ADV SIKHAKHANE: Then just to go on to, you can put
20 that file away, but not too far for now.

CHAIRPERSON: Perhaps for completeness and to see the extent of their observations, he says, second last sentence:

“From my observations, each bag contained approximately 20 such bricks.”

I do not know whether that is from observing, counting, or

from looking and estimating. I am saying the last bit that I just said now because of the use of approximately. Because if he had actually seen the counting, he would say each bag contained. Anyway, please continue, Mr Sikhakhane.

ADV SIKHAKHANE: Yes, so that is the, I think that makes the point. But the witness obviously is saying that is his version. When you were at the, on your paragraph 12 of your statement, you indicate that, or you state that Warrant
10 Officer Perumal and Colonel Jacob had a discussion about the space. Right?

And in particular, you said Warrant Officer Perumal talking to Lieutenant Colonel Jacob stating that they do not have space to store these drugs. I am just interested in that, at that point. Now, were you able to hear clearly the discussion between the two of them such that you can be positive about this discussion?

LT-COL SIBIYA: Yes, Chair. Initially, when he came and saw the number of bags, he said, so much? I do not have
20 space.

ADV SIKHAKHANE: And that was in the presence of Jacob, yourself, and Perumal and everyone else, or?

LT-COL SIBIYA: I remember that he was walking with Colonel Jacob coming from, and we offloaded the bags now. When the drugs were taken out of the bags, he said, joh,

joh, joh, so much? I do not have space.

CHAIRPERSON: That exclamation of yours sounds so African. But who is to say that he does not know joh or even IsiZulu for that matter?

LT-COL SIBIYA: It comes from the kingdom of the Zulus, Chair.

CHAIRPERSON: Sorry?

LT-COL SIBIYA: It comes from the kingdom of the Zulus.

CHAIRPERSON: I know. That is why I said the last bit,
10 Colonel.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: So, you could hear him clearly saying that he did not have space.

LT-COL SIBIYA: Did not have space, I heard him clearly.

ADV SIKHAKHANE: But what would be your version, what would be your position if Warrant Officer Perumal says such a discussion on engagement never took place?

LT-COL SIBIYA: I would say the man is a liar. Why would we call Colonel Jacob to contact our Commanders informing
20 them that we do not have space whereas we are at the police station?

ADV SIKHAKHANE: Okay. Can we go to that file we are busy with, CJC243? Still File 2?

LT-COL SIBIYA: File 2?

ADV SIKHAKHANE: Yes.

LT-COL SIBIYA: CJC?

ADV SIKHAKHANE: 243.

LT-COL SIBIYA: Yes, I am there.

ADV SIKHAKHANE: Page 593.

LT-COL SIBIYA: Yes, I am there.

ADV SIKHAKHANE: Page 593?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: At the bottom towards the bottom,
paragraph 4.

10 **LT-COL SIBIYA:** Yes.

ADV SIKHAKHANE: This is the statement from Perumal.

He says:

“Colonel Jacob did not tell me that he
wanted to store the exhibit in the station
SAPS13 storeroom. Rather, he said they
have a safe place where they will store
them.”

And then he says:

20 “There was enough space at the station
to accommodate the said exhibit. I did
not implicitly indicate to Colonel Jacob
that there was no space to store large
amounts of drugs. If he was not satisfied
by what he alleged I said to him, he could
have approached the Station Commander

and inform him his problems about the exhibits. He did not do that because his intention was not to store them at the station.”

What would be your comment on that version from Warrant Officer Perumal?

LT-COL SIBIYA: I think this paragraph is not speaking the truth. And I can tie this paragraph also with the issue of the bags. As a very experienced SAP13 clerk, if he had bags, 10 why did he allow the exhibit to be booked in without bags? Because once you are a custodian of the SAP13, regardless of rank or what, you are in charge of the SAP13, then you accept exhibits that are not put in the forensics bags.

ADV BALOYI SC: But we know they were not in bags and they were booked in. What is the point you are making? We know they were not, and you took them from there without them being in bags and yet you had booked them into SAP. So I am really asking a question to understand what is the point of your rhetorical question. If there were 20 no SAP, if they were not bagged, why did he accept them? What is the point you are making?

LT-COL SIBIYA: I am saying, as a person responsible for the SAP13, why is he allowing the drugs to be entered in the 13 without forensic bags?

ADV BALOYI SC: Are you saying he should have refused?

Because maybe you do not understand what I am saying or what I am trying to understand from you. We know these exhibits were not in bags on that day. You and Jacob or whoever was in charge did not bring bags. You did not phone around stations to say, can we get bags, which Jacob accepts he did not do. But you booked them in anyway without bags.

So I am trying to understand, are you criticising him for allowing the booking in without bags or are you saying –
 10 you cannot be saying the bags were there. That is why he accepted the exhibits to be booked in. I do not understand what is the meaning of your rhetorical question of why did you accept them if there were no bags.

LT-COL SIBIYA: Chair, I think Warrant Officer Perumal is not speaking the truth that there was space at the station.

ADV BALOYI SC: Do you know that there was no space? Did you know at the time? Let me ask you differently. On the 22nd of June, did you know that there was space in the police station?

20 **LT-COL SIBIYA:** I did not know. I only heard Perlman saying that there is no space.

ADV BALOYI SC: So why do you say he is not telling the truth when he says there was space if you did not know as a fact on the 22nd that there was space?

LT-COL SIBIYA: Chair, he cannot say to us there is no

space and then he comes and writes an affidavit that there was space. That is why I am saying I do not agree with this paragraph.

ADV BALOYI SC: But you see, he says he was never asked by Jacob about space. He says there was never such a discussion about space. So read that paragraph in that context that he says no such discussion. I was never asked for space.

And maybe before you answer further, let me
10 mention to you that Colonel Jacob, like you, in his statement, says there was a discussion about space. But when he testified, he said, ja, you know, it is quite possible that I am mistaken. Actually, I was thinking about previous conversations, other busts, when there was an issue about space. Maybe I inferred, that is the language he also uses, that maybe something in that discussion with Perumal, I inferred that it means he does not have space, but ja, actually, I do not remember expressly, or explicitly is the language he uses, asking him for space.

20 **LT-COL SIBIYA:** Chair, I also did not say that Colonel Jacob asked Perumal about the space. I said Warrant Officer Perumal said he did not have space.

ADV BALOYI SC: Why would you say I do not have space if he was not asked ...[intervenes].

LT-COL SIBIYA: After seeing the quantity of the drugs,

Chairperson, he then says, oh, I do not have space. That is why I put this on my affidavit, because that is what I heard.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: You see, for me, the other curiosity is Mpangase does not say anything about that on such an important issue. You will agree it is an important issue because the National Instruction does require you to do all of this at the police station where the crime occurred. Now,
10 the diary of Mpangase does not record such an important fact that would explain the anomaly and irregularity of taking these exhibits to Port Shepstone. How do they land in Port Shepstone?

There is no record of that. It is you and, it is only you and Jacob in the written statements who say this, but now it is only you because Jacob in his testimony ended up retracting his firm position in saying, actually, I do not remember explicitly asking him or having a discussion with him about space. So, now it is just you who is insisting that
20 there was a discussion about space.

LT-COL SIBIYA: Even on my previous statements, Chair, I have indicated the same. I am still standing by it. I heard Warrant Officer Perumal saying he has got no space.

ADV KHUMALO SC: Can I show you, just follow up on Commissioner Baloyi, at page 648, that is where you find

Colonel Jacob's statement where he expressly says that he did not engage Perumal as regards the issue of storage space. Page 648, at paragraph 6, do you see that?

LT-COL SIBIYA: Yes, I see it.

ADV KHUMALO SC: So you see he says he did not engage with Perumal as regards the issue of space.

LT-COL SIBIYA: Yes, Chair, I see.

ADV KHUMALO SC: Ja, so it is not a question of asking. He says there was no engagement. And then before I hand
10 over to Advocate Sikhakhane, because he was engaging you on Perumal's statement. Perumal's very first statement is on 647, so one page before where we are now. And at paragraph 2, Perumal says:

“On the 22nd of June 2021, I was approached by Colonel Jacob from DPCI who informed me that they recovered a huge quantity of drugs from CHC containers in Prospecton, and they want to book it into our SAP13 register and
20 sign for it and take it away.”

LT-COL SIBIYA: Yes, I can see that.

ADV KHUMALO SC: So the intention all along was just to book it and sign and take it away. There was never an intention to store it at Isipingo.

LT-COL SIBIYA: I would not know what was the intention,

but initially when Warrant Officer Perumal saw the drugs, he said those words that I am saying, you, I have never, so much, I do not have space. I cannot retract from that. I heard it, and I place it there.

ADV KHUMALO SC: It is quite curious that Jacob's first statement, he does not mention that Perumal said, joh, I do not have space. It is quite curious.

LT-COL SIBIYA: I think for a change, it is good that myself and Jacob were saying different things, because all along
10 we have been saying one and the same thing. Now I think this is good that he is saying something, I am saying something.

ADV BALOYI SC: You see, the other thing about this is, on the point that Commissioner Khumalo is discussing, pointing out to you now about Perumal saying they were going to sign in and out, is in fact, on other evidence that we have seen of the SAP13, the exhibits are signed out for analysis, not because of space.

Whoever completed that SAP13 does not say,
20 because we have no space, we are taking it to storage. He says we are signing it out for analysis. That is not consistent with what you have in your statement and what you are insisting on here, that there was an intention to keep them there. There was never an intention to keep them there. Further confirmation, is the SAP13 that signs it

out, it is for analysis?

LT-COL SIBIYA: Chair, I did not view the SAP13 while we were at Isipingo. I assume that Warrant Officer Mpangase is a very seasoned SANEB investigator. SAP13 entry, that is correct.

ADV BALOYI SC: No, the point that you may be missing, made to you, is it is not true that there was an intention ever to keep these exhibits at Isipingo. And what we are doing is showing you other evidence that points to that, and
10 therefore that contradicts you.

And the last one that I am referring, Commissioner Khumalo has referred to Perumal and to Jacob, right? I have also done the same, referred you to Jacob and told you what Perumal said. The Evidence Leader has done the same. And the last thing, in that stream of facts that have been established from the documents, is the SAP13, where a reason for taking out these exhibits is given as for analysis.

So it was never the intention to keep them there.
20 That is all we are pointing to you, that you are the lone voice in all of this. It was not your operation, someone was in charge, you were there to help. As matter stands now, in this minute, you are the only one that is saying that there was an intention to keep these specimens there, I mean these exhibits, and they were not kept because Perumal

said I do not have space.

LT-COL SIBIYA: Maybe I can agree with you, Chair, on that one that maybe I was not aware of maybe a plan that you are saying of not keeping the exhibit there. But according to me, when we were at the station, the intention was to store the exhibit.

ADV BALOYI SC: That is what you thought? You thought.

LT-COL SIBIYA: Yes, I thought the intention was to store the exhibit at the police station.

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

ADV KHUMALO SC: All right. Just lastly, and again to be fair to you, Colonel Jacob's statement before the Commission, he refers to his previous statement, and then he says:

20 “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.”

Now, you are the only member who seems to be aware of this discussion with Perumal. I take it from this statement, then that it is you who reminded Colonel Jacob of the conversation with Perumal.

LT-COL SIBIYA: He asked me about it. Then I told him, you can go back to my statements that were submitted in 2022. I heard Perumal saying he has got no storage.

ADV KHUMALO SC: So he asked you this before he came to the Commission?

LT-COL SIBIYA: We were not even, I am sure it was before we were even summoned to appear to the Commission.

ADV KHUMALO SC: But when was it, more or less? You
10 do not have to be specific in terms of date and month. You can say early this year or late last year?

LT-COL SIBIYA: It must be early this year.

ADV KHUMALO SC: Early this year?

LT-COL SIBIYA: Ja.

ADV KHUMALO SC: =So he asked you, and then you said to him, yes, you had that discussion with Perumal. Perumal said they do not ...[intervenes].

LT-COL SIBIYA: I heard Perumal saying he has got no space.

20 **ADV KHUMALO SC:** Ja. So it is you who told Jacob this early this year?

LT-COL SIBIYA: Yes.

ADV KHUMALO SC: Thank you. Sorry, I keep saying Jacobs. It is Jacob.

LT-COL SIBIYA: Jacob, ja.

ADV KHUMALO SC: I apologise.

LT-COL SIBIYA: Okay.

ADV KHUMALO SC: Okay. So just, Jacob does not necessarily remember what he was discussing with Perumal, but you reminded him.

LT-COL SIBIYA: I am not saying that he does not remember what he was discussing. I am saying I heard Perumal saying he has got no space.

ADV SIKHAKHANE: Okay. Now, in your statement, if you
10 go to the same file, page 634, that should be CJC244.

LT-COL SIBIYA: CJC244.

LT-COL SIBIYA: 630?

ADV SIKHAKHANE: 633. But I am more interested in page, the following page. Right? And will you accept that at paragraph 9 in particular, this is now where you talk about, that you start talking about what happened in Isipingo. The third sentence there says:

20 “On arrival at the police station, we parked the vehicles on the parking lot and started to offload the bags, all the bags, to offload the bags, all the bags, place them on the floor. Warrant Officer Perumal of SAP13 was called to the parking. We started counting the amount of bricks, from 27 bags, 500, and fourth

one bricks suspected Cocaine, and all
exhibits were entered into.”

So, at this point, there is no discussion about storage space
or exhibit bags. You accept that? So, this is your
statement.

LT-COL SIBIYA: It was when the exhibit were taken out of
the bags, that is where one of the Perumal said, so much
drugs, I do not have space.

ADV SIKHAKHANE: Ja, so my point is different. I am
10 saying, but that is not contained in this statement.

LT-COL SIBIYA: Yes, I see that.

ADV SIKHAKHANE: And why is that the case?

LT-COL SIBIYA: I think, Chair, maybe, can I also view my
further statement?

ADV SIKHAKHANE: Yes, that is where we will go. That is
at page 645. So we agree here, there is no reference to
that. At page 645, this is your further statement.

LT-COL SIBIYA: 645?

ADV SIKHAKHANE: Correct.

20 **CHAIRPERSON**: Sorry, sorry, Mr Sikhakhane. What is the
date of the one starting at ...[intervenes].

LT-COL SIBIYA: It is January. 633. It is 27 January 2022.

CHAIRPERSON: I see. Okay. Okay, then you say the
next one is at 645?

ADV SIKHAKHANE: Yes.

CHAIRPERSON: 645.

ADV SIKHAKHANE: It is a shorter statement.

LT-COL SIBIYA: No, but on the further statement now, I am clarifying it, as I was requested by the IO ...[intervenes].

ADV SIKHAKHANE: Just, just wait, let us just get there.

CHAIRPERSON: You are clarifying where?

LT-COL SIBIYA: Chairperson, I am clarifying it on paragraph 4, 645.

CHAIRPERSON: Of the one at 645?

10 **LT-COL SIBIYA:** 645, yes.

ADV SIKHAKHANE: Just, just let us, let us just get there so that for the record we are clear. The second statement is at 645. Now there, that is when you start talking about, at paragraph 4.

LT-COL SIBIYA: Remember, Chair, when I submitted the initial statement, Captain Mashau [?] came in the morning and told me by two I needed to submit a statement.

ADV SIKHAKHANE: Sorry, this is when?

20 **LT-COL SIBIYA:** I think on the day I submitted the statement.

ADV SIKHAKHANE: So this is, so ...[intervenes].

LT-COL SIBIYA: The first, the initial statement.

ADV SIKHAKHANE: 27 January?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: He came and said I needed to submit a statement. I draft a statement and I submitted a statement.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: He then came back some other time, I cannot recall when it was. He said to me ...[intervenes].

ADV SIKHAKHANE: This statement is now 10 May, it would seem, but May 2022, some four months or so later.

LT-COL SIBIYA: Then he came back requesting me to clarify these aspects. I did that. You can even go through
10 my paragraph 3 there.

ADV SIKHAKHANE: Okay, ja. Please just read your paragraph 4 into the record, ja.

LT-COL SIBIYA:

“On 2021-06-22, the day of the seizure, while at the SAPS Isipingo, I overheard the SAP13 Clerk Warrant Officer Perumal talking to Colonel Jacob, stating that they do not have space to store the drugs. Thereafter, I overheard speaking over the
20 phone, indicating that we require a place to store drugs. After deliberation, Colonel Jacob informed us that the Brigadier had indicated that a team would arrive to escort the drugs.”

So now I overheard Colonel Jacob talking on the phone.

ADV SIKHAKHANE: No. I think, where did you stop? You stopped at would arrive.

LT-COL SIBIYA:

“Would arrive to escort the drugs for safekeeping in Port Shepstone.”

ADV SIKHAKHANE: All right. But now this is adding effect altogether of this discussion between Warrant Officer Perumal and Colonel Jacob. So when you say it is a clarification, what do you mean? Is it clarifying something
10 before? Because I see it as an addition of the facts.

LT-COL SIBIYA: But, Chair, if you go to my paragraph 3, I was requested by Captain Mojela to submit a further statement to the one I submitted to them before, as per inquiry file H ...[indistinct]. They needed, they indicated that I need to clarify some aspect of my affidavit. They must have been, point out the aspect that I needed to clarify. Hence, I am only clarifying these two.

ADV SIKHAKHANE: Okay. So, what may have probably happened, just giving you the benefit of the doubt, is that
20 they gave you this date and they can clarify or add more detail to it.

LT-COL SIBIYA: Yes. I do not recall exactly, but the way I am writing it here, it is obviously saying that they pointed out the issues that they want me to clarify.

ADV SIKHAKHANE: Okay. Now, the version here

...[intervenes].

CHAIRPERSON: Sorry, before. Colonel, did you know that ordinarily those exhibits ought to have been kept in Isipingo?

LT-COL SIBIYA: Yes. According to my knowledge, all the exhibits are kept in the police station of jurisdiction.

CHAIRPERSON: Yes.

LT-COL SIBIYA: Yes.

CHAIRPERSON: Now, the difficulty I have with your earlier
10 statement, the one of 27 January 2022, is that you referred to Warrant Officer Perumal, the SAP13 clerk, being called to the parking lot. And then you say you started counting all the way down to finalising that process. And then, sort of randomly as it were, and with no explanation, you say:

“Lieutenant Colonel Jacob indicated that
he has spoken to Brigadier Nyuswa about
a safe place to keep the exhibits.”

LT-COL SIBIYA: Yes.

CHAIRPERSON: What I find difficult to follow is why did
20 you not include this important detail that you say you were aware of, which is that these exhibits ought to have been kept in Isipingo? When you jump in that statement to Lieutenant Colonel saying these, according to Brigadier Nyuswa, these must be taken to some safe place, how do you not explain the prescript that you say you were aware

of? Why do you not explain that in this statement and say they were not kept at Isipingo because the SAP13 clerk did not have space?

And then as an alternative, which you say in paragraph 11, as an alternative, Brigadier Nyuswa then came up with some safe place elsewhere. It was so obvious for you to explain what ought to have been done in accordance with the prescripts. You do not say it. You only say it in a later statement, which is prompted by whoever it
10 is that required of you to give some quote-unquote clarification. Why would you not have stated something so obvious?

LT-COL SIBIYA: I think, Chair, it is an omission. That is why we tender oral evidence to clarify all other evidence or explain or elaborate more.

CHAIRPERSON: Who do you say? Maybe you do explain. I did not see just now. Who do you say required you to give clarification?

LT-COL SIBIYA: Who required me to give clarification?

20 **CHAIRPERSON:** Clarification.

LT-COL SIBIYA: It is ...[intervenes].

CHAIRPERSON: Pursuant to which you then made your May 2022 statement. Am I correct?

LT-COL SIBIYA: It is the Investigating Officer, Captain Mashau.

CHAIRPERSON: Did he specifically tell you in what respects your statement did not state everything it ought to have stated?

LT-COL SIBIYA: He just told me I needed to clarify the issues. I remember it was the issue of the ...[intervenes].

CHAIRPERSON: No, no. I want a clear and direct answer. Did he specify the issues on which he required clarity?

LT-COL SIBIYA: Yes, he did.

CHAIRPERSON: Can you tell us what those were?

10 **LT-COL SIBIYA**: Those issues that I needed to clarify his paragraph ...[intervenes].

CHAIRPERSON: No, issues, not paragraphs. No issues.

LT-COL SIBIYA: I want to refer you to a statement now, to my further statement.

CHAIRPERSON: Okay.

LT-COL SIBIYA: Please give me the page number of the further statement.

ADV SIKHAKHANE: 645.

20 **LT-COL SIBIYA**: 645. He needed me to clarify, Chairperson, the issue of what happened on the day of the seizure when we went to Isipingo. He also needed me to clarify ...[intervenes].

CHAIRPERSON: That is too broad and generalised. It does not really identify an issue. Did you hear me?

LT-COL SIBIYA: I am trying to respond, Chairperson.

CHAIRPERSON: No, no. I am saying what you have just read now, or what you have just said now, is too broad and generalised and does not identify an issue. And what I have asked for is for you to please specify the issues on which clarity was required.

LT-COL SIBIYA: He indicated to me that Warrant Officer Perumal is not agreeing with what we are saying, that there was no space at the police station. So we needed to clarify more.

10 **CHAIRPERSON**: And at that stage, the investigating officer is now Lieutenant Colonel Jacob. It is no longer ...[intervenes].

LT-COL SIBIYA: No, no. It was Mashau by this time.

CHAIRPERSON: Okay, okay. And what did he know about that? For him to have required clarity on that issue, what did he know about that? I assume that Lieutenant Colonel Jacob would not have told him anything about that, or not?

LT-COL SIBIYA: I never had a discussion with him.

CHAIRPERSON: So, okay. And you have not stated it in
20 your earlier statement.

LT-COL SIBIYA: In my initial statement.

CHAIRPERSON: Yes. Now, what would have caused him to say, please give clarity around what Perumal said about the availability or non-availability of space at Isipingo? What would have prompted that?

LT-COL SIBIYA: I ...[intervenes].

CHAIRPERSON: Otherwise, it does not make sense. What would have prompted it?

LT-COL SIBIYA: I think, Chair, it was because maybe Perumal was denying the issue that the storage was requested. That is why he wanted me to clarify more.

CHAIRPERSON: Okay. All right, all right.

ADV KHUMALO SC: Up to that point, Perumal, Jacob, and yourselves were not disagreeing because all your three
10 statements up to that point where we book these things in, we took them out. So, why would he say Perumal is disagreeing with you?

Clarify, because there was no disagreement up to that point. The disagreement only comes in when you make the second statement. I have taken you to Jacob's first statement. You saw that he says there was no discussion. There was no engagement. I have taken you to Perumal's statement. He says there was no engagement.

You did not mention the engagement in your first
20 statement that you are being asked to clarify. So, why would the new investigating officer who is investigating the theft in Port Shepstone say to you, clarify a non-existent dispute?

LT-COL SIBIYA: I would not know, but I am stating it also on my third paragraph here. I am stating it on my third

paragraph here:

“On Friday, approximately 12:20, I was requested by Colonel Mojela and Captain Mochejane.”

But I do not know why did not I add Captain Mashau because I was communicating with him on the phone. To submit a further statement to the one I submitted before, I am trying to explain now what transpired on the day in issue.

10 **CHAIRPERSON**: That is not answering the question by Commissioner Khumalo.

LT-COL SIBIYA: Yes.

CHAIRPERSON: Commissioner Khumalo is saying the SAP13 clerk, Warrant Officer Perumal, says he was never asked about this by Jacob. And then Jacob himself does not say that this was ever an issue between him and Warrant Officer Perumal. And then you too, in your earlier statement, do not say that this was ever an issue.

20 There was counting. Warrant Officer Perumal is there. Once the counting is done, Colonel Jacob says Brigadier Nyuswa has said that there is a safe place where these exhibits are going to be stored. All of you, all three of you, are consistent on this.

So all of a sudden, there is inconsistency. And now, Warrant Officer Perumal is standing all by himself and

saying this was never an issue. You and Colonel Jacob have suddenly flipped or changed. All of a sudden, all of a sudden, when with the two of you as well there was never an issue around this.

And there is this strange statement that says you were required to clarify. What issue was there to clarify when everything was consistent amongst the three of you? That is the question. What was there to clarify?

LT-COL SIBIYA: If they did not need this statement, they
10 were not going to take it. So, it shows ...[intervenes].

CHAIRPERSON: No, the question is not about what they required. The question is about why would it have been necessary at all. This has nothing to do with the people who asked you to clarify. Or rather, this has nothing to do with whether or not they would have accepted the statement, which is what you are addressing now. The question is why would there have been a need to clarify something on which all the role players are agreed? Do you get that?

20 You are one of the role players. Colonel Jacob is one of the role players. Warrant Officer Perumal is. Although, of course, he appears to have been more an observer than anything else. All three role players are agreed on this issue. So why would there have been a need to clarify an issue on which there is no inconsistency, there

is no disagreement? It does not make sense.

LT-COL SIBIYA: I understand, Chair, it does not make sense. But for the fact that I put it in my statement and I am mentioning the people and the times, the investigation team also took the statement. They were not going to accept any statement that they did not request, which means the request was made.

CHAIRPERSON: Absent an explanation that makes sense, this later version by you and by Colonel Jacob appears to
10 be concocted. The explanation you give does not make sense. And what Colonel Jacob says is, I was now reminded by my juniors that there was this interaction with Perumal. All of a sudden he needs to be reminded on something so important.

Surely he should know what the reason for going to Port Shepstone was. It could only be because Warrant Officer Perumal said to him there is no space. There is no way he could forget something that important. So it is on that basis that I suggest to you that subject to an
20 explanation that is more reasonable than what you have told us, what you are telling us appears to be concocted. What is your comment?

LT-COL SIBIYA: No comment here, Chair.

CHAIRPERSON: Thank you.

ADV BALOYI SC: Can I perhaps suggest a possible

explanation for that paragraph? The possible explanation, and I think most likely probable, is you were asked the question to clarify why the exhibits were not kept at Isipingo. What was the reason? You were likely asked that question. And you had to give what you considered a credible explanation.

You then say I heard Perumal and Jacob talking that there is no space. That is why. And the next thing, Jacob had called someone on the phone and then he said
10 we have now to take them to Port Shepstone because you were asked to explain.

And I want to point out to you that in fact in that clarification you say you overheard Jacob talking to Perumal about this, that they do not have space. It is different, even if slightly. It is different from what you have actually said now as you are sitting there.

You ended up saying, when he came out and he saw the bags, he said, joh, I do not have space. That is what you said when you were being probed on there was no
20 asking, there was no refusal when that engagement was happening with the Commissioners.

You said, ja, he came out. When they called him, he came out and he said, joh, I do not have space, which is different from saying he was asked for space and he said, I do not have it. You remember Chair said, joh, it sounds like

he is Zulu. It was more shock at seeing these, which is completely different from what you say in this clarification statement, which is you overheard them talking to each other that he does not have space.

So I want to suggest to you that you made up, in this clarification statement, you made up a reason why these exhibits end up not being left at Port Shepstone. And what you make up is to say they had a conversation, Jacob and Perumal, and Perumal said, I do not have space. That
10 is what I want to suggest to you.

LT-COL SIBIYA: I hear you, Chairperson, but I do not recall exactly what was the reason for clarification. The bottom line, Chairperson, I was not in position to make a decision as to where the exhibit must be kept.

CHAIRPERSON: My colleague, Commissioner Baloyi, is being benevolent. The benevolence still does not answer the question why there would have been consistency among all of you and then suddenly two of you changed tech. So that answer to which in the end you said you had, or rather
20 that issue to which in the end you said you had no answer remains. Thank you.

ADV KHUMALO SC: And the last point on this, I find it strange that Jacob, who was a party to the conversation, does not remember the conversation, and it is somebody who happened to overhear the conversation who must now

remind him of a conversation to which he was a party. I just find that very strange.

LT-COL SIBIYA: Thank you, Chair.

ADV KHUMALO SC: Do you agree that it is strange that he would not remember and he would need you to remind him?

LT-COL SIBIYA: You find it strange?

ADV KHUMALO SC: Yes.

LT-COL SIBIYA: Okay.

10 **ADV KHUMALO SC:** Because he is the one having the conversation with Perumal. You are assisting with the, and you are removing the bags from the vehicle so that they can be counted. You happen to overhear his conversation with Perumal, but neither of them remember the conversation, and it is you who must remind them that the conversation took place. I mean, that is strange. Right?

LT-COL SIBIYA: Yes, Chair.

ADV KHUMALO SC: Ja.

ADV BALOYI SC: It is just strange. Ja, it is just strange.

20 It is problematic, given what we have referred you to. Your later statement about, yes, there was a conversation, is difficult to accept as true, in fact, because of everything that we have put to you, right?

As the Chairperson says, there are three statements which do not speak to this conversation about

storage. In fact, there is a statement where Jacob, that you say, had a conversation with Perumal, says I never engaged him about this. Mpangase says nothing about it. He signs out, Mpangase signs out for analysis.

So all of those things, they indicate that your account about this issue, it cannot be correct. It just cannot be correct, your account, given everything else. That is the problem that there is.

LT-COL SIBIYA: I hear you, Chairperson.

10 **ADV BALOYI SC:** All right, thank you. Thank you.

ADV SIKHAKHANE: Thank you. Could you then, on the same file, go to, just to round up the issue, at page 591. Ja.

LT-COL SIBIYA: Yes, I am there, Chair.

ADV BALOYI SC: You said page?

ADV SIKHAKHANE: Sorry, let us start at page 589, which is the exhibit number CJC243.6. That is the affidavit by Colonel Jacob, and it is dated 9 November 2021. But what I am more interested in is from page 590 at the bottom, the
20 very last sentence of paragraph 10. Are you there?

LT-COL SIBIYA: Yes, I am there, Chair.

ADV SIKHAKHANE: The last sentence says, I wanted to contrast with what your second statement and your current statement says. Colonel Jacob says:

“Warrant Officer Perumal implicitly

indicated that they did not have space
and it is the norm for large amounts of
drugs to be booked out of the station
SAP13 for safe storage.”

Now, do you see the difference between that, the implicit
and someone saying, joh, there is no space, or on the
phone, or having a discussion? Do you see the difference
between those three versions?

LT-COL SIBIYA: It might also be caused by the fact that
10 this happened five years ago.

ADV SIKHAKHANE: Ja, so this one is 9 November 2021,
and yours, the following one, is January and then May.

LT-COL SIBIYA: I hear you, Chairperson.

ADV SIKHAKHANE: So, which one, and then which the
Chair was saying, Warrant Officer Perumal also has a
different version to you, but what then suddenly changes is
that from May, you then introduce this thing, and then Jacob
himself then suddenly changes. Where the difficulty lies is,
then either they seem all to be saying no, but you are the
20 one that seems to be certain. So the people you say were
part of the discussion actually rule it out.

LT-COL SIBIYA: Okay.

ADV SIKHAKHANE: But you say, do you still maintain that
position?

LT-COL SIBIYA: I maintain what I heard, Chair.

ADV SIKHAKHANE: Okay, thank you. Then the next point I want to go through, still on the same thing, is the exhibit bags. Sorry, let me just put the paper that side.

CHAIRPERSON: Sorry, sorry. In a way, I am taking you back. I do not know if we actually placed this on record, but of course we did refer to it, even if we did not specifically refer to it. I hope I am not repeating. This is Colonel Jacob's. My gosh, it is unsigned. He probably did not ...[indistinct]. The very first. I do not know if I need to
10 say this. Did he disown it though?

ADV KHUMALO SC: No. He accepted it. He accepted it. I raised that issue when Advocate Sello took him through it.

CHAIRPERSON: Ja.

ADV KHUMALO SC: And he accepted that this is his first statement.

CHAIRPERSON: Just for your benefit on what I was engaging you on, and on which both my colleagues joined. What is this now? Yes. Paragraph 8 of that statement, it says ...[intervenes].

20 **ADV SIKHAKHANE:** Can I just?

CHAIRPERSON: It is page 575. Page 575. The flag there is CJC243.

LT-COL SIBIYA: Yes, I am there, Chair.

CHAIRPERSON: Yes. I will just read from the second sentence:

“Warrant Officer Mpangase entered the exhibits into the SAP13. The member in charge of the SAP13 was Warrant Officer Perumal. The exhibits were acknowledged by him and immediately booked out by Warrant Officer Mpangase.”

SAP13, that refers. It says the exhibits. No, no, no. It does not make the point. It says:

10 “The exhibits could not be accommodated at the station and arrangements were made for it to be stored at a secure location in Port Shepstone.”

It does not say that Warrant Officer Perumal said that he could not accommodate them. It does not suggest that that came from Warrant Officer Perumal. And indeed, he says he then heard later, he then had to be reminded by you about his engagement with Warrant Officer Perumal on this aspect specifically.

20 **LT-COL SIBIYA**: I hear you, Chairperson.

CHAIRPERSON: Yes.

ADV BALOYI SC: In fact, just perhaps to complete, in that way Mr Sikhakhane was referring you to, where Jacob says Perumal implicitly indicated, you remember that statement you were looking at, it concludes that paragraph by saying:

“I did not force the issue of storing the exhibits as I had reservations about the safety of the exhibits at the station.”

So it was never a thing that they were not stored there because Perumal refused.

CHAIRPERSON: The use of implicitly there suggests that there was no discussion because if Warrant Officer Perumal had said so, he would not say he said so implicitly. He would say he said. Do you get that as well?

10 **LT-COL SIBIYA**: Yes.

CHAIRPERSON: Thank you. Yes, yes, Mr Sikhakhane.

ADV SIKHAKHANE: Thank you. So the point I was, I think that flows naturally from that that I wanted for us to go through is then the issue of the exhibit bags. Earlier on you had indicated that you had exhibit bags in the car, albeit they were not sufficient.

LT-COL SIBIYA: Yes.

CHAIRPERSON: And then now you are at Isipingo. Then in your statement, your current statement that is, you say in
20 paragraph 12 of your statement, you say:

“Warrant Officer Mpangase requested for the exhibit bags from Warrant Officer Perumal.”

Then you continue and say:

“However, he, that is Warrant Officer

Perumal, indicated that he did not have any forensic bags.”

Right? Now, in light of this discussion, right, would you still maintain that there was such a discussion about exhibit bags between Warrant Officer Perumal and Mpangase?

LT-COL SIBIYA: There was a discussion, hence I had to go to the Charge Office to request because I was the only one who knew, I think, less than five bags that I had in the car.

10 **ADV SIKHAKHANE:** Okay. So you then went to the Charge Office and requested by Warrant Officer Mpangase to request the office, and then you were told, according to you, that there was not any forensic bags.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Who told you that?

LT-COL SIBIYA: I found two Sergeants there. One of them was a Charge Office Commander.

ADV SIKHAKHANE: Sorry, who?

LT-COL SIBIYA: Sergeants. I found Sergeants. There
20 were two Sergeants in the Charge Office.

ADV SIKHAKHANE: Sergeants who?

LT-COL SIBIYA: I did not take their name, but I remember I went to the Charge Office. I requested for the bags, and then I was told they do not have bags. Then I returned back to the bakkie.

ADV SIKHAKHANE: Right. Let me accept, for example, so your side, you had exhibit bags, right? Now ...[intervenes].

LT-COL SIBIYA: Less than five bags I had.

ADV SIKHAKHANE: Less than five?

LT-COL SIBIYA: Ja, they could accommodate the 27 bricks.

ADV SIKHAKHANE: And just correct me. You said generally, or maybe that is a stronger word, that members would have in the ordinary course exhibit bags.

10 **LT-COL SIBIYA:** Yes. We normally place exhibit bags at the boot of the state vehicles.

ADV SIKHAKHANE: Okay. And where do you get those from?

LT-COL SIBIYA: We request at the station, sometimes at the office. Exhibit bags are an issue, and they are not easy to get, especially the bigger sizes.

ADV SIKHAKHANE: Yes. Okay. I would like to maybe request for your comment whether it is a possibility that a police station would not have an exhibit bag at all.

20 **LT-COL SIBIYA:** Depending on the size.

ADV SIKHAKHANE: Okay. So in this case, your answer is that you said I went to request for the bags at the Charge Office. Members indicated that they do not have forensic bags.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: So you still maintain that?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: It is a possibility that the entire police station or any official or office member would not have any exhibit bag. But in all of this, you are the only one with exhibit bags.

LT-COL SIBIYA: Not necessarily I am the only one. I was the only one who was in position of the state car at that time. So the bags normally sit at the boot of the car. So I
10 know more or less what type of bags I have got in the boot of the car.

ADV SIKHAKHANE: No, I am saying with the entire police station, you would not know for a fact. So you only relied on what they said.

LT-COL SIBIYA: I only relied on what they said at the Charge Office.

ADV SIKHAKHANE: Okay. And you say in your encounter, well, in your experience in the police force, is that possible? Can it happen?

20 **LT-COL SIBIYA:** Yes, it can happen.

ADV SIKHAKHANE: It does happen?

LT-COL SIBIYA: It does happen. Some police stations, they do not.

ADV SIKHAKHANE: Entirely?

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: And obviously, at Isipingo, I think we can agree. We do not need to test that. We can agree that they did store exhibits before.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And with that as well, you would still maintain that that is what they did not have.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay. Can we then turn to ...[intervenes].

10 **ADV BALOYI SC:** Let me ask a question about this. Can you just explain to me, and it may well be it is a function of process, of your processes. You say in your statement that Perumal said he does not have evidence bags.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: But you still go to the Charge Office to ask. If Perumal says to you I do not have evidence bags, surely he speaks for the station. Why would you need still to go to the Charge Office to ask? Because you have got the evidence. What do you call it? Exhibit Clerk says we
20 do not have the size.

And I am prepared to accept from my engagement with you that it was a size issue. We are dealing with size. If Perumal did say I do not have, it would have been talking about size. I am prepared to accept that, but you have been told by the Exhibit Clerk that there are no bags

according to you.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Why are you still going to the Charge Office?

LT-COL SIBIYA: It happens, Chair, that when you engage the SAP13 officer, he might not have bags, but when you go to the Charge Office, like in Durban Central, you will get bags. It might also happen when you engage the CSC members to say give us bags, they do not have, but when
10 you get to the SAP13, you will find bags. So I was just doing as requested to try and go and check at the Charge Office.

ADV BALOYI SC: So the Exhibit Clerk retains evidence bags?

LT-COL SIBIYA: Not necessarily.

ADV BALOYI SC: No, what do you mean not necessarily?

LT-COL SIBIYA: I mean ...[intervenes].

ADV BALOYI SC: Sorry, I ask from not fully, not even fully, not knowing what, in fact, apart from making sure the
20 exhibits are there, they are properly registered, and making sure they are safe. I do not know that the Exhibit Clerk keeps empty exhibit bags. That is why I am asking you this question.

LT-COL SIBIYA: That is why, Chair, I am saying it differs. At some police stations, you will get forensic bags from the

Exhibit Clerks. At some police stations, you will get bags from the members, operational members and Detectives. Everybody who uses bags in his daily duties might keep the bags.

ADV BALOYI SC: So when Perumal says I do not have bags, you did not think he speaks for the station? You thought he was speaking for himself?

LT-COL SIBIYA: I thought he was speaking for himself and I was also requested by Mpangase to go and check the bags
10 at the CSC. That is why I went.

ADV BALOYI SC: Okay. And when you do not get them at CSC, because you have now been tasked with finding exhibit bags, when you do not get them, why do you not suggest, let us phone other police stations to bring them here, to try and source them so that they can bring them here?

Because as you said previously, when you were talking about Perumal, you said as an experienced SAP13 clerk, he would know that to accept the exhibits into his
20 SAP13, they must be in evidence bags. Why did you not, as the person now tasked to find bags, why did you not say I am phoning other stations? I do not have them from Charge Office. I am phoning other stations to try and find them.

LT-COL SIBIYA: I could see that Warrant Officer Mpangase has started completing the register, the SAP13

now. So there was no need for me to even think of trying to source for the exhibit bag because he already started entering the exhibit in the SAP13.

ADV BALOYI SC: And that is why you did not make the suggestion.

LT-COL SIBIYA: That is why I did not make the suggestion.

ADV BALOYI SC: But you knew and understood that what was going on was wrong at that point. Please do not say
10 no. I will not accept it as a truthful answer. Do not say no.

LT-COL SIBIYA: But, Chairperson, if the custodian of the register is accepting that the drugs must be booked in without forensic bags, who am I to dispute that?

ADV BALOYI SC: I am not asking about the register. I am asking you, as a police officer who knows about crime since you told Chairperson previously, who has criticised Perumal in your discussion that he is a seasoned SAP clerk, why would he accept without evidence bags, right? I am asking you on that basis that you, today Colonel Sibiya, then
20 Warrant Officer, you were a Warrant Officer then.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: You knew as you stood there without evidence bags. You have been to the Charge Office. There are no evidence bags. You see Warrant Officer Mpangase completing the SAP13 without these exhibits being put in

evidence bags. I am asking you, you knew as you looked at this that this is wrong. That is not how we are supposed to do it.

LT-COL SIBIYA: Chair, my senior was completing the SAP13 ...[intervenes].

ADV BALOYI SC: You thought there was nothing wrong with what your senior was doing ...[intervenes].

LT-COL SIBIYA: No, I am still ...[intervenes].

ADV BALOYI SC: No, I do not know. We do not have all
10 the time for you to go around in circles instead of answering a direct question. You started off earlier saying my senior. So I have heard you on that, and I have said no. I am not asking you about what your senior was doing. I am asking you about what you thought of that. You have told us what your senior was doing, according to you.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: So accept that I accept that it was happening, what you are saying was happening at the time.

LT-COL SIBIYA: Yes.

20 **ADV BALOYI SC**: Work on the basis that I accept the truthfulness of you saying that, that your senior went ahead and completed these things without evidence bags. I am asking you a different question. As he was doing that, you knew that is contrary to National Instructions. It is wrong what he is doing at that time.

It is a yes or no answer. He may have an explanation why he was doing it. You may have an explanation why you did not say anything to him. You have an explanation why you did not call other stations to get those bags. I am not interested in that. I am interested in as you look at it, as it is happening, you knew what he is doing is wrong. Not what you are doing, but what your superior is doing is wrong.

LT-COL SIBIYA: Yes.

10 **ADV BALOYI SC:** It is against what the books say we should do. You knew that.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Okay, thank you.

LT-COL SIBIYA: But if I may add also to that?

ADV BALOYI SC: Yes, you may.

LT-COL SIBIYA: Sometimes operationally we have to make decisions that are contrary to the National Instruction. If the attempt failed to try and secure the forensics bags, then the next best thing is to book them in as they are.

20 **ADV BALOYI SC:** You accept, as I think you must, that you cannot say there was a failure to obtain because you did not call other stations. And I am not blaming you. I am not putting it to blame you. I am saying you are at Isipingo. You know what the rules say. None of you said let us call the other stations and then say, oh, we have tried. Nobody

has it, then we have to do it the Mpangase way. Right?
You accept that?

LT-COL SIBIYA: I accept.

ADV BALOYI SC: Okay, thank you.

ADV KHUMALO SC: Can I ask a yes or no answer? Is it fair to say that this whole problem that arose at Isipingo was because LCRC was not called to the scene to begin with?

LT-COL SIBIYA: Yes, it is fair.

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

CHAIRPERSON: How much longer do you think you are going to be, Mr Sikhakhane? I am asking because we have other important commission-related engagements, but I am not unduly pressuring you. I just want to find out. And, of course, if there is stuff that you think you can skip, then maybe you could consider that. But as I say, I am not unduly pressuring you, pressurising you.

ADV SIKHAKHANE: Would four be a terrible time?

CHAIRPERSON: Yes, yes, it is only 30 minutes, yes.

20 **ADV SIKHAKHANE:** That is my time.

CHAIRPERSON: Thank you, thank you.

LT-COL SIBIYA: Yes. I will try to go through some of the issues. If you go, I think I wanted to take you to page 653, that is EXHIBIT CJC244.

LT-COL SIBIYA: 653?

ADV SIKHAKHANE: I just want to tap the issue of the exhibit bags. And at least in 653, yes, that is the – if you go maybe just to start at 652, it will tell you it is an affidavit or statement by Warrant Officer Perumal, handwritten, right?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: At 653 he indicates that Lieutenant Colonel Jacob did not ask for forensic bags, right? I am trying to make up the handwriting:

10 "...did not ask for forensic bags to
package these exhibits. He only told me
that they are waiting for his Commander
to arrive. I went back to my office and
continued with my duties."

And then what is important for your purposes is that he says:

 "We had the forensic bags at the station
that could have been used to package
those exhibits if Lieutenant Colonel
20 Jacob requested them from me."

Now, what would be your comment to that version?

LT-COL SIBIYA: I think that Perumal, knowing the National Instruction, and as a custodian of the SAP13, allowing exhibits to be booked in without forensic bags, then there is something that is not right there. It is a proof that the

exhibit bags were not there. That is why he is accepting drugs without forensic bags.

ADV SIKHAKHANE: Okay. Then there is two questions that I have, then we can move over from this issue.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: One is the assumption is that he refuses, or he says there is no space, right? Now, was that taken up with someone higher at the station?

LT-COL SIBIYA: No, I did not take it up with anybody high.

10 **ADV SIKHAKHANE**: Okay.

CHAIRPERSON: Please speak up.

LT-COL SIBIYA: I did not take it higher with anybody. But I do not know, maybe Colonel Jacob engaged somebody, I do not know. I would not know.

ADV SIKHAKHANE: Sorry, you said Colonel Jacob?

LT-COL SIBIYA: I am saying I would not know if he engaged anybody higher than Perumal, but I did not engage anybody.

ADV SIKHAKHANE: Okay, but would you accept that if
20 Warrant Officer Perumal either refused to keep the exhibits or otherwise not complied, that would have been in breach of the National Instruction?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay. What is the likelihood, I think, if there was this, I think we can conclude that all of these

were anomalies, in a sense, because they are non-compliant, so they would be significant, point one. The very police station where these exhibits must be stored, for one reason or the other, cannot store them. Then the second point is they do not have exhibit bags, meaning a very important thing, according to the National Instructions, two things cannot happen, right? So would it not be prudent for that to be at least recorded somewhere?

LT-COL SIBIYA: It should have been recorded on the
10 inquiry.

ADV SIKHAKHANE: Okay. And just to confirm this, if you go to CJC268.

LT-COL SIBIYA: File number?

ADV SIKHAKHANE: File 3, apologies. Starting at page 800.

LT-COL SIBIYA: 628. I am there, Chair.

ADV SIKHAKHANE: Okay. So this is, as you see at page 800, is the investigation diary, right?

LT-COL SIBIYA: Yes.

20 **ADV SIKHAKHANE:** Now, the investigator started investigating people was Jacob, Mpangase and Jacob, also Mpangase and Jacob.

LT-COL SIBIYA: But for me, I think, Chair, it is unfair to be given this inquiry because I was not the investigating officer. The two people that should explain the issue of the

entries made here in the inquiry are Jacob and Mpangase. For me, I played no role. There is not even a thought that I put in this inquiry. So I think, Chair.

ADV SIKHAKHANE: So I think ...[intervenes].

ADV BALOYI SC: Maybe wait for the question first. Let us hear first what he is asking. I agree with you, you will be surprised, that it would be unfair to ask you to explain anything in the diary. So maybe let us wait for the question and see what you are being asked.

10 **LT-COL SIBIYA:** Thank you, Chair.

ADV BALOYI SC: Thank you. And I do not mean to say he completed anything of the sort or to explain. And if he cannot comment, that is fair enough. But the point I was making earlier on was that given these two serious breaches or anomalies that would have justified, in the ordinary sense, deviation from the National Instruction processes, what you do not have in the investigation diary is anything that talks to that, right? And obviously, you did not complete it.

20 **LT-COL SIBIYA:** It should not be. It should have been there.

ADV SIKHAKHANE: Yes, that is the point I was just trying to draw.

LT-COL SIBIYA: It should have been there.

ADV SIKHAKHANE: It should have been completed in the

normal sense.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay. That is the point I was making.

Thank you.

LT-COL SIBIYA: Okay.

ADV BALOYI SC: It was not directed at you so much. It was to give assurance to the witness.

ADV SIKHAKHANE: No, no, no. Sure. Thank you. Then I will move over with speed as well on the issue of – so you
10 count the exhibits, right? And obviously, I am not going to set you with weighing and averaging the Cocaine and all of this. It is not your area. But I want us to then just briefly talk about the decision to move to Port Shepstone, right?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Now, if I understood you right, you were not involved in that decision.

LT-COL SIBIYA: I was not involved at all.

ADV SIKHAKHANE: All right. And were you familiar with the offices and storage space in Port Shepstone?

20 **LT-COL SIBIYA:** I did not even know that there is a storage place in Port Shepstone. It was the first time hearing that there is a walk-in safe in Port Shepstone.

ADV SIKHAKHANE: Okay. So what did you assume? Did you assume it was offices? Your understanding was that the exhibits were being taken to the offices.

LT-COL SIBIYA: Colonel Jacob indicated that Brigadier Nyuswa said the exhibit would be taken to Port Shepstone in a walk-in safe.

ADV SIKHAKHANE: And obviously, they are not in sealed bags at this point.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: They are still in those ...[intervenes].

LT-COL SIBIYA: Canvas bags.

LT-COL SIBIYA: Canvas bags, right. So you took no issue
10 with that. I am saying you took no issue with that. It is
your boss or your Commander that says these must be
transported to Port Shepstone.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: All right. And an issue about whether
there are any other police stations and all of these things,
did you have that in your mind that maybe Port Shepstone
is far? Maybe we can consider other spaces. Were you
part of that discussion?

LT-COL SIBIYA: No, I was not part of that discussion. It
20 never crossed my mind.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: So then, you then go to – I will take
you to your paragraph 14. I will skip this.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: What I am interested in is you say when you – and I think it is common cause that then Warrant Officer Mpangase took charge as Colonel Jacob left.

LT-COL SIBIYA: Yes. He is my senior. He was an investigating officer, and Colonel Jacob handed over to him.

ADV SIKHAKHANE: Okay. So he is now in charge, but he is still your senior.

LT-COL SIBIYA: Yes.

10 **ADV SIKHAKHANE:** And then you travel with him in the car.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: It is the two of you.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay. From Isipingo?

LT-COL SIBIYA: From Isipingo, yes.

ADV SIKHAKHANE: Yes. And ...[intervenes].

LT-COL SIBIYA: Not the two of us. One of the guys from the Tracking Team also jumped in with us.

20 **ADV SIKHAKHANE:** And who is that?

LT-COL SIBIYA: I am forgetting the surname, but I can try and get it for you.

ADV SIKHAKHANE: Okay, sure. Then in this discussion, now he is in charge. It is the whole thing I wanted to establish. Does he then brief you about the discussions,

about why the exhibits are being stored there, and all of this? What is the discussion around that?

LT-COL SIBIYA: Remember ...[intervenes].

ADV SIKHAKHANE: I mean, Mpangase.

LT-COL SIBIYA: Remember that before Colonel Jacob departed, he told us that Brigadier Nyuswa said the exhibit will be taken to Port Shepstone for storage in a walk-in safe. Then I knew what is going to happen. Then when Mpangase now was in charge, we waited for the escort. As
10 soon as the escort arrived, Mpangase briefed the escort to say that we have got drugs here, we need to load them in the vehicles, and we are escorting them to Port Shepstone.

ADV SIKHAKHANE: Okay. And the time between Isipingo and the departing, how long was that?

LT-COL SIBIYA: The time between Isipingo?

ADV SIKHAKHANE: Ja. Now you are finishing, and now you are leaving. And, sorry, now you are going, you are departing to – okay, maybe let me ask it differently. I know when you arrived there. What time did you leave to Port
20 Shepstone?

LT-COL SIBIYA: I am not sure, Chair. I will be lying if I say I ...[intervenes].

ADV SIKHAKHANE: Before lunch, after lunch?

LT-COL SIBIYA: It was after lunch.

ADV SIKHAKHANE: After two?

LT-COL SIBIYA: Yes, after two.

ADV SIKHAKHANE: It was after two?

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: Okay. All right. And the decision itself was taken before, around what time?

LT-COL SIBIYA: I do not remember.

ADV SIKHAKHANE: You do not remember?

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: Okay, that is fine. Then you arrive at
10 Port Shepstone DPCI offices, right?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: My interest is, when you arrive there, you met General Senona and Brigadier Nyuswa, the Acting Unit Commander of Port Shepstone and other members.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Right. And the way I read this is that you arrived at the same time.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And was General Senona travelling
20 with Brigadier Nyuswa, or they came in separate cars?

LT-COL SIBIYA: They were travelling together.

ADV SIKHAKHANE: Okay. And where did they park?

LT-COL SIBIYA: They parked on the parking lots at Port Shepstone Organised Crime parking there. Outside the office, there are parking there.

ADV SIKHAKHANE: Okay. I will just ask. I do need to be pedantic on this point. Just one question around it. Okay. So when you were offloading the exhibits, right, where you participated in the offloading, right?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And the exhibits are still unsealed.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And you handled them, right? How many were you at the time?

10 **LT-COL SIBIYA:** At that point in time, there were a lot of police officers there. Members from Port Shepstone and members from the Tracking Team. It was quite a big team.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And then myself and Mpangase, the Brigadier and the General were also there.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: So I would not be able to give a specific number.

ADV SIKHAKHANE: Okay. And then when you loaded
20 them in the walk-in safe, right, where was General Senona and Brigadier Nyuswa?

LT-COL SIBIYA: They were ...[intervenes].

ADV SIKHAKHANE: They were part of the offloading or they sat outside?

LT-COL SIBIYA: No, they were standing next to the

entrance door.

ADV SIKHAKHANE: Next to the entrance door?

LT-COL SIBIYA: If my memory serves me well, yes.

ADV SIKHAKHANE: Okay, right. Then you go on, you say the Acting Unit Commander.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Who would that be?

LT-COL SIBIYA: It is Colonel Prinsloo.

ADV SIKHAKHANE: Handed over the keys to Warrant
10 Officer Mpangase.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Right? And then it is Mpangase who checks the door.

LT-COL SIBIYA: Colonel Prinsloo locks the door on Mpangase and then checks the door.

ADV SIKHAKHANE: Yes.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: Okay. And again, the exhibits are as they are, right?

20 **LT-COL SIBIYA:** Yes.

ADV SIKHAKHANE: Now in terms of the keys, according to your knowledge, was there any documentation that was filled about handing over the key? Were there any formalities or it was just here are the keys?

LT-COL SIBIYA: I did not see any document being

completed.

ADV SIKHAKHANE: Okay. And do you think would that have been a requirement?

LT-COL SIBIYA: I think maybe the OB entry should have been made at the police station.

ADV SIKHAKHANE: Yes.

LT-COL SIBIYA: At the offices there in Port Shepstone.

ADV SIKHAKHANE: Yes.

LT-COL SIBIYA: To say the key is handed over to so-and-
10 so and whoever was receiving the key should have signed in occurrence book.

ADV SIKHAKHANE: Yes. I will take you to that if there is any contestation, then there is a requirement that if someone is taking possession of a safe key, storage key, they must complete a document that must be signed. But can you confirm that was not done? So we do not need to belabour the point.

LT-COL SIBIYA: I cannot confirm that it was not done.

ADV SIKHAKHANE: Okay.

20 **LT-COL SIBIYA:** Maybe it was done in their diaries, maybe an entry was made. A person can sign also in the diary. Not necessarily that the person can only sign on the occurrence book.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: That is fine. Then if I take you to the second file of the EXHIBIT CJC243.

LT-COL SIBIYA: Second file, CJC?

ADV SIKHAKHANE: 243, page 584.

LT-COL SIBIYA: I am at CJC243, Chair.

ADV SIKHAKHANE: Yes, but page 584.

LT-COL SIBIYA: Yes, I am there, Chair.

ADV SIKHAKHANE: Yes. So this is the statement dated 25 November 2021 from Brigadier Nyuswa.

10 **LT-COL SIBIYA:** I need to see that.

ADV SIKHAKHANE: Then I want to go to the following page at the bottom. These paragraphs are not numbered. 585, the very last paragraph.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Now, somewhat Brigadier Nyuswa seems to suggest that when he arrived at the DPCI offices, the members, he says, let me just read it for the record:

20 “When we arrived at the Port Shepstone
DPCI SOCI, the investigators had
finished offloading the exhibits and the
exhibits were placed in the safe in the
presence of Lieutenant Colonel Prinsloo.
We were then shown the exhibits. The
safe was then locked and the safe key
and the spare key was given to Major

General Senona for safekeeping.”

Right? Now, what would be your comment with his version? He does not seem to say you arrived at the same time. He seems to say it was after.

LT-COL SIBIYA: When we got there, they were there.

ADV SIKHAKHANE: Sorry, just pick up, ja.

LT-COL SIBIYA: I am saying when we arrived in Port Shepstone, they were there.

ADV SIKHAKHANE: Okay.

10 **LT-COL SIBIYA:** We arrived at the same time.

ADV SIKHAKHANE: Okay. So he would be wrong in this version.

LT-COL SIBIYA: I cannot respond on his affidavit, but I am saying when ...[intervenes].

ADV SIKHAKHANE: They are contradicting each other.

LT-COL SIBIYA: Ja, because I have got also my own version that I am saying, and that is his version, and I cannot dispute it.

ADV SIKHAKHANE: Okay. And then in terms of the key,
20 your version is the key was handed over to Warrant Mpangase, right?

LT-COL SIBIYA: Colonel Prinsloo handed over the keys to Mpangase.

ADV SIKHAKHANE: So Brigadier Nyuswa says they were shown the exhibits, right? The safe was locked. He does

not say by who, though, at this point. And the safe key were handed to Major General Senona for safekeeping.

LT-COL SIBIYA: Yes, the key, Mpangase handed them over to General Senona.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: So it is just that he is missing Mpangase in this point.

LT-COL SIBIYA: In this point, ja.

10 **ADV SIKHAKHANE**: Okay. No, that is fine. So ultimately, the key ended up with General Senona.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay.

ADV BALOYI SC: Can I ask the question? Why were these on the day itself? You are now in Port Shepstone. Why were they not put in evidence bags on the day when you got to Port Shepstone?

LT-COL SIBIYA: Chair, if I can tell you, I will assume that maybe no one thought of it because I was contacted the
20 following morning by, I was requested by Mpangase the following morning to say that no, no, we needed to go back to Port Shepstone to bag the exhibits. I think maybe it was also that it was late in the afternoon.

ADV BALOYI SC: Ja, but the place remains open as long as you need to work.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And I think, I note that you say maybe. So no discussion came up about these must be put in evidence bags before we leave this place?

LT-COL SIBIYA: No, no.

ADV BALOYI SC: No such discussion happened?

LT-COL SIBIYA: I do not remember such discussion taking place, Chair.

ADV BALOYI SC: Okay. And the same about entering
10 them in the SAP13, sorting that process out, that never came up between – because now it is you and Warrant Officer Mpangase, right? The others were there to escort you from Isipingo. So it is now the two of you.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Between the two of you there was no thought or discussion that we have to put these, record them in the SAP13. We have booked them out somewhere. They must be accounted for as booked in. It did not come up?

20 **LT-COL SIBIYA:** It did not on the day on the 22nd. It is only in the morning when he came and requested that we should go there.

ADV SIKHAKHANE: So you had a situation where these drugs were unaccounted for officially on the system because there is no record of it. You booked them out. For

all we care, they could easily have been in Umlazi or wherever. I am just making the point. The point I am making is there is no record. Once you have booked them out, once Mpangase has signed them out for analysis, because that is what he says, takes them out for analysis, they landed Port Shepstone on the 22nd.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: By the time everyone goes to sleep on the 22nd, these are not accounted for, where in the records
10 of the SAPS because they are not booked in. They just were delivered. So far that has been the evidence. It is not just you who says that. They got there. They were just put in the vault or in the safe. The safe locked and the key given to General Senona.

I am really making the observation to you that for all intents and purposes, from that point, in fact, starting earlier when you were transporting them for analysis, and we know they do not go to the lab, they landed at a place which is not recorded anywhere in the system until you are
20 back the following day. They are not in bags, in evidence bags, and they are not recorded in any SAPS system at that point. Do you accept that?

LT-COL SIBIYA: I think for me, Chair, I took comfort in the fact that the chain of custody was intact of the exhibit.

ADV BALOYI SC: What does that mean when you say

that?

LT-COL SIBIYA: It means that when the exhibit left Isipingo to Port Shepstone, 541 was accounted for in Port Shepstone, and the vault was locked. The following day when we were going to repack the exhibits, we recounted the exhibit and we bagged them, and still the same number of ...[intervenes].

ADV BALOYI SC: But I am correct to say they were unaccounted for. You say you took comfort.

10 **LT-COL SIBIYA**: Yes.

ADV BALOYI SC: So I was not asking whether you were not concerned or not. I am not asking that. I am asking an objective fact. I am putting to you an objective fact, which is they were checked out, signed out, under the pretext that they are going for analysis. They did not go to a lab. We know that.

So if anyone looked at the Isipingo SAP13 of the 22nd, wanting to know where are these exhibits, right, there was no knowing where they landed from that SAP13. There
20 was no knowing until you came back on the 23rd and then you started recording.

LT-COL SIBIYA: Ja.

ADV BALOYI SC: In fact, you then put them in bags.

LT-COL SIBIYA: That would be the 24th, Chair.

ADV BALOYI SC: Okay. You returned on the 23rd.

LT-COL SIBIYA: We returned on the 23rd.

ADV BALOYI SC: Yes.

LT-COL SIBIYA: We put all the exhibits in the forensic bags.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: Then we left.

ADV BALOYI SC: So they were still not recorded in the system.

LT-COL SIBIYA: Yes. Then on the 24th, Mpangase
10 informed me that he was advised by Colonel Jacob to go to Port Shepstone, take samples, and then book the exhibit at the SAP13 in Port Shepstone. So he took samples even before he booked them. Is that what it means?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: So they were tempered with, yes, on the instruction of Jacob to say to Mpangase, take samples. So they were tempered with to take samples so that the samples can be taken to the lab. And when I say tempered with, I am not saying it in a negative way.

20 **LT-COL SIBIYA:** Yes.

ADV BALOYI SC: I am not. I see you are smiling and you are preparing to correct me. I am not saying it in a negative way. I am saying you have got these bricks that are sitting in a room in the vault.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And all that has happened is they have been now on the 23rd put in evidence bags. Right?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Now we know you did that on the 23rd.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: But there is no recordal of what is in that vault that relates to these exhibits, right? Until the 24th, when you go back. You say to us Mpangase came to you and said I have an instruction to go and take samples
10 and then enter this in the SAP13. So samples are being taken from bricks, from exhibits that are not yet entered on the system of the SAPS. It is that which I am trying to clarify in my head. That is correct. Am I correct in that description?

LT-COL SIBIYA: We normally take samples, Chair. We take samples. We use presumptive tests to test samples. So Mpangase was briefed as to how we must take the samples. That is why when we got to Port Shepstone, he was the one taking samples.

20 **ADV BALOYI SC:** Yes. The issue, I am not taking issue, at least from my conversation with you, I am not taking issue with the fact that samples were taken. That is not the emphasis. The emphasis is there is an instruction to take samples from exhibits that are not yet booked in the SAP13. You understand what I am saying?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Right.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Am I correct in my understanding of that is what happened?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Thank you.

LT-COL SIBIYA: Thank you.

ADV SIKHAKHANE: I see the time is 16:00, Chair, but it
10 seems history has hit me once more. Can I request just to do a couple of questions?

CHAIRPERSON: Please go ahead.

ADV SIKHAKHANE: I think Commissioner Baloyi has taken you through what the 23rd and the 24th were. You are saying at this point you are following the instruction from Mpangase as well. Correct?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And I think earlier we had established that in terms of knowledge of the processes regarding
20 sampling, weighing, and all of this for drugs, you were none the wiser in a sense. Right? But here they are. They are involving you actively in that exercise, such that you even end up with samples in your possession.

LT-COL SIBIYA: It was not on the same day.

ADV SIKHAKHANE: No, I accept, but I am just saying.

LT-COL SIBIYA: But it sounds as if you are saying now it is on the same day.

ADV SIKHAKHANE: No, no, no, no, no.

LT-COL SIBIYA: Ja.

ADV SIKHAKHANE: So I am saying from the 22nd, 23rd, 24th. Right? And thereafter to the 1st. We are going to come to the 1st.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: At that time, in terms of what was
10 supposed to be happening process-wise in dealing with narcotics or drugs, you were none the wiser. It was not your field. You were not – you had no – that is why either maybe that is why you did not object to many of the things that went wrong.

LT-COL SIBIYA: I am listening, Chair.

ADV SIKHAKHANE: Sorry?

LT-COL SIBIYA: I am following you, Chair.

ADV SIKHAKHANE: Yes. Would I be correct or you knew what was going on, but you just looked the other way?

20 **LT-COL SIBIYA:** No, I did not know.

ADV SIKHAKHANE: You did not. And did you not worry that you are handling exhibits? Samples, rather, for me, that you then are in your custody in a sense and then they are given to you and then you have to give them to Jacob the following day?

LT-COL SIBIYA: I did not take samples. I was present in the vault when the samples were taken. Then the issue of handling samples is not a problem. You know, in our daily duties, if people are going to FSL to hand in exhibits, they can just give you the packet to hand in the exhibit on their behalf. So for me, handling the samples is not wrong. To pass it on to another person, it is not wrong.

ADV SIKHAKHANE: Okay. So would you say that that was in line with the law?

10 **LT-COL SIBIYA:** What? Handling?

ADV SIKHAKHANE: Ja, I am saying, let us go to paragraph 19 of your statement.

LT-COL SIBIYA: I am at paragraph 19.

ADV SIKHAKHANE: Ja, you say:

“I do not remember the date, but Warrant Officer Mpangase handed over to me five samples and then qualified to hand it to Lieutenant General Jacob on the following day.”

20 So your version is that there is nothing wrong with that?

LT-COL SIBIYA: No, there is nothing wrong with that.

ADV SIKHAKHANE: Okay, that is fine. All right. And I think when you went on the 23rd and 24th, when you went to Senona's office to get the key, you did not go up to his office.

LT-COL SIBIYA: I did not go up. I was driving. I was parked on the road with Warrant Officer Gumede. There is only Mpangase who went up to fetch the key and came back to us.

ADV SIKHAKHANE: Sure. Okay. Then the other issue is then when Jacob comes back, right?

ADV BALOYI SC: Before you go to Colonel Jacob coming back, so on the 23rd, all you do is you go to put the exhibits in evidence bags and nothing more?

10 **LT-COL SIBIYA:** Nothing more.

ADV BALOYI SC: No recordal?

LT-COL SIBIYA: No recordal, no.

ADV BALOYI SC: And then you go back on the 24th?

LT-COL SIBIYA: Yes. Now Mpangase is saying he got instruction to go and book the exhibit at the SAP13 in Port Shepstone and further take samples.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: Yes.

20 **ADV BALOYI SC:** So can you just explain what in fact happens with booking the exhibits in the SAP13? Explain that process that day, what happened on the 24th.

LT-COL SIBIYA: On the 24th?

ADV BALOYI SC: Yes.

LT-COL SIBIYA: We left Port Shepstone Organised Crime to Port Shepstone SAPS. On arrival at the CSC, myself,

Warrant Officer Gumede, and Warrant Officer Mkhomo, we stood on this side of the counter. Warrant Officer Mpangase went and spoke to the SAP13 Clerk, and then they completed the register. And then he came back to us, he told us that it is done.

ADV BALOYI SC: So the SAP Clerk did not see the exhibits. So the SAP13 was completed with the SAP13 Clerk without seeing the exhibits.

LT-COL SIBIYA: Yes. He did not see the exhibits because
10 we cannot even say maybe he went back because we left Port Shepstone with the key to Durban. So he did not see it, but he signed for them.

ADV BALOYI SC: Yes. And maybe just so that I understand, so from the one SAP13, the Isipingo one, right, we have seen that what is recorded is each bag and the details of each bag and what is in the bag, right? That is what happened with the Isipingo one.

So with the Port Shepstone one, the SAP13, on what basis was it completed with the SAP13 clerk if he does
20 not have the exhibits and therefore he does not have the evidence bags and the evidence bag numbers? He does not have those details. How does he complete?

LT-COL SIBIYA: Warrant Officer Mpangase went with the list of all the exhibit bag numbers and then he completed the SAP13. I did not have sight of the SAP13, but I know

that he said he booked them in and out.

ADV BALOYI SC: Okay. So you did not see what he did?

LT-COL SIBIYA: I did not see. I did not see.

ADV BALOYI SC: But you confirm that the clerk did not see the exhibits.

LT-COL SIBIYA: I can confirm that the clerk did not see because from Port Shepstone SAPS, we went back to Port Shepstone Organised Crime where we dropped off Mkhomo. Then we went straight to the Provincial Office in Durban
10 where Mpangase went and handed over the key.

ADV BALOYI SC: And that is not how it is normally properly done. If it is done properly, that is not how to do it.

LT-COL SIBIYA: The SAP13 Clerk should have demanded to see the exhibit.

ADV BALOYI SC: Yes.

LT-COL SIBIYA: But she did not.

ADV BALOYI SC: Thank you.

ADV SIKHAKHANE: Colonel Jacob comes back, right?
20 And do you and Warrant Officer Mpangase brief him when he comes back?

LT-COL SIBIYA: He was supposed to be briefed by the investigating officer. I did not brief him.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: And then you say then at your paragraph 19:

“On 1 July 2021 I was requested by Colonel Jacob to go with him and Warrant Officer Mpangase to the depot to unpack the container.”

And then you went there, right, did the count. Can you just explain to me what was your role at the CHC depot on the 1st of July?

10 **LT-COL SIBIYA:** The 1st of July we got there and there was a person, I do not know whether he is a clearing agent or he came with a packing list and there were also labourers there. So the container was opened. The labourers, they moved the bags. We inspected the container. We confirmed that the packing list corresponds with the number of bags. And then Colonel Jacob handed over to that person that was with us there.

ADV SIKHAKHANE: So what would have been your role? What is significant for you about that and yourself? What
20 role did you play there?

LT-COL SIBIYA: I was just accompanying them to go there.

LT-COL SIBIYA: And ...[intervenes].

ADV BALOYI SC: What was the purpose of you going there to count the bags?

LT-COL SIBIYA: Not necessarily counting, Chair.

ADV BALOYI SC: Sorry, say that.

LT-COL SIBIYA: We were not going there for only counting the bags. We were still conducting a further inspection to see did we not miss anything one day.

ADV BALOYI SC: Yes. Well, you see, the thing is you say in your statement, which is exactly what Colonel Jacob wrote in his own statement, you say:

10 “We conducted a count. We went to do
 an unpack on the container. We
 proceeded there. We conducted a count
 of that number of bags of animal feed.
 This corresponded with the packing list,
 and then we released the container.”

So on your most recent statement where you speak about this, you account for counting the bags, nothing more. You do not say we went there to investigate in case, for further investigation, in fact. Let me use your language. You do not, and him as well. He does not say in his statement, we
20 went back for further investigation, and this is what we did when we got there.

He says we went back to do a count to verify that the number of bags corresponds with the packing list. Now, I do not understand why that is your problem, that the number of bags correspond with the packing list. What

does that have to do with you, SAPS? When I say you, SAPS.

In fact, I want to suggest to you it has nothing to do with the SAPS, that the bags correspond, the number of bags corresponds with the list. But that is what you have said, and it is word for word what Colonel Jacob says in his own statement. It does not speak about investigating. And what I suggest, in fact, let me put this to you what I suggested to him.

10 I suggested to him that this was a charade, this. It wanted to give appearances that we continued to investigate the docket. There was nothing amiss. This was a serious matter. We were investigating the docket. That is why we went back on that day, and I do not accept that explanation.

And I want to put it to you as well, that you may have been unwittingly or unknowingly participating in, I think there is stronger language for my saying this does not make sense, and I am going to use that stronger language,
20 that you may in fact unknowingly have been participating in appearances of an investigation because it just does not make sense that the SAPS will take three people, a senior Colonel, two Warrant Officers, one of whom this is not his everyday job, to go to a container, open, count the bags, and we must go with what you say in your statement.

You went there, you counted the bags, and you said bye-bye. We must go with your explanation. So it does not make sense. There is another reason why this happened. Otherwise you are wasteful of SAP time and resources in circumstances where there is serious crime to be investigated in the country. Then you are completely irresponsible, all of you, to use time to go and count bags to make sure it complies with the packing list.

And in your favour, out of generosity for you, I want
 10 to say that was not the reason you went there. You went there for a more serious reason. The question is what is that reason, and my suggestion is it is to create appearances of an investigation because nothing else about this visit makes sense.

LT-COL SIBIYA: I do not agree with that, Chairperson.

ADV BALOYI SC: You do not agree?

LT-COL SIBIYA: Hence the labourers were requested to come and assist unpack the container. We went there to inspect the container of further narcotics, and we saw that
 20 there was nothing. Then the container was then handed over to the relevant person.

ADV BALOYI SC: And you say all you did, you got the container emptied?

LT-COL SIBIYA: Yes, the labourers ...[intervenes].

ADV BALOYI SC: No, that is not what happened.

LT-COL SIBIYA: What happened?

ADV BALOYI SC: You did not empty the container. Your Commander, who was in charge of the scene on the day, said you did not empty the container. You took out the first few bags, and from the first few bags you knew that, no, there is nothing, all is good. So you are contradicting Colonel Jacob yet again when you say the labourers emptied the container. That is not his evidence.

LT-COL SIBIYA: The bags were taken out of the container,
10 Chair.

ADV BALOYI SC: So, Colonel Jacob lied to us when he said the container was not emptied, only the front bags, and then you checked around and you were satisfied from the smell and the number of bags that correspond with the list that all is good? He was untruthful when he told us that is what happened?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Okay, thank you.

ADV KHUMALO SC: Are you saying he told you that the
20 reason for going there is to look for more drugs?

LT-COL SIBIYA: He said we needed to go and conduct a further inspection on the container to establish if maybe there was something that we did not pick up on that day.

ADV BALOYI SC: May I raise something else as well about this account of this visit? It is not in your earlier

statements. You have gone with the Chair through the statements. Your first statement is at ...[intervenes].

ADV SIKHAKHANE: Page 633.

ADV BALOYI SC: 633?

ADV SIKHAKHANE: Yes.

ADV BALOYI SC: Yes. So your first statement is at page 633. And then this is your statement that is dated the 27th of January 2022. So things are, they are fresh in your mind. You do not say anything about this visit of the 1st of
10 July. You end at paragraph 15 where you say:

“During the time I cannot recall the date,
Mpangase handed over to me a file and
five samples to hand over.”

That is paragraph 15 at page 635. And then you have a second statement, shorter statement, at page 646, which is in May, the 12th I think, 12 May 2022. It is a one-paragraph statement, and you are talking about what happened on the 24th.

You do not, in both statements, mention a visit on
20 the 1st of July. You mention it for the first time in this statement that you filed on the 1st of July. And it mentions that visit in exactly the same terms as Colonel Jacob's paragraph on this. It seems to me that given that in the immediate aftermath of this incident, you say nothing about it. It is a recent invention that there was a visit, and we

have gone through that with Colonel Jacob, that even the depot manager mentions it much later. They do not mention it in the first visit, in their first statement.

So it seems it gives appearances that this is a creation, a new creation of something that is supposed to have happened on the 1st of July when, in fact, nothing like that happened, and you would have it here because you and Colonel Jacob had a discussion and agreed to add this, especially because this trip does not make sense in the way
10 you explain it.

It looks like this is something that you agreed to manufacture and add here, because otherwise you would have mentioned it in your earlier statements where you account for your involvement.

LT-COL SIBIYA: Yes, Chair.

ADV BALOYI SC: Yes, you want to say something?

LT-COL SIBIYA: I want to say something, Chair. I do not dispute the fact that it is not included in my first two statements, but that does not necessarily mean that it never
20 happened. Police vehicles have got a tracker. The tracker can be requested, and then you will see that indeed on the day of the 1st we went there. That is all that I am prepared to say.

ADV BALOYI SC: Well, you are supposed to explain why it is not in your statement, because if it is not in your earlier

statements, which are made immediately after, not immediately, but shortly, after the incident of these drugs getting lost, right? This is in January, I think in January and in May, but it is early in 2022, the first half of 2022. You purport to give an account of what happened, your involvement with this, what you know from your involvement. That is what you are doing, giving an account.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And then you do not account for the very
10 last visit to the container. You have to explain why, and the explanation has to be satisfactory so that we do not make anything amiss about why it is only appearing for the first time on the 1st of June.

LT-COL SIBIYA: I would say, Chair, it is an omission from my part, but the person at the depot can also confirm that, indeed, members came to inspect the container.

ADV BALOYI SC: Well, the problem with the person at the depot is her first statement, like yours, says nothing about this visit, and it is only in a clarification statement that she
20 says there were Hawks members here, and it is problematic as well for that reason. In fact, I think the suggestion that has been made is that, if I am not mistaken, Ms Sello will correct me, I think that statement was taken by, not by Colonel Jacob?

LT-COL SIBIYA: Mashau.

ADV BALOYI SC: It was Mashau. It was Mashau, okay, yes.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: So the suggestion that has been made regarding that statement is, well, she seems also to have been reached out, someone spoke to her and said put in something in your new statement that we were there on the 1st of July, because there is no explanation why it is not in the first statement. That is the problem that this creates.

10 **LT-COL SIBIYA:** I can see that.

ADV BALOYI SC: You understand?

LT-COL SIBIYA: I understand that, Chair.

ADV BALOYI SC: Okay, thank you.

LT-COL SIBIYA: But for confirmation, Chair, we can get the records of the vehicle.

ADV BALOYI SC: Okay, thank you.

ADV SIKHAKHANE: Thank you, Chair. Just three questions. Can we then accept in light of your engagement that when you left on the 22nd of June and until your visit on
20 the 1^s of July, it would seem that you are not sure – well, you cannot be certain that the 541 were the actual number of drugs that were in that container? Or would I be wrong in that? Is it possible maybe that there could have been more drugs than what you counted?

LT-COL SIBIYA: Normally when seizures are done,

inspections are done even after on the following day, because you cannot unpack now without the preparation of getting the labourers to unpack. You can just observe that there is nothing that is there. Then when labourers are required, you need to make arrangements because there is nowhere where you can just get labourers.

ADV SIKHAKHANE: So I am saying when you left for Isipingo, right?

LT-COL SIBIYA: When we left Isipingo to?

10 **ADV SIKHAKHANE:** No, no, I am saying when you left the depot to Isipingo, would you accept on what you are saying that there could be a possibility that there could have been more drugs or more bags than what you had?

LT-COL SIBIYA: I do not accept that, Chair, because we checked.

ADV SIKHAKHANE: So then on the 1st, you said you went back to check if there were more drugs.

LT-COL SIBIYA: No, no, we went back to conduct an inspection to see now that everything corresponds with the
20 packing list.

ADV SIKHAKHANE: So when you went back on the 1st, it was unrelated to drugs now?

LT-COL SIBIYA: We wanted to go and do a final inspection on the container so that the container can be handed over.

ADV SIKHAKHANE: Yes. Can you repeat that? Sorry, I

lost that.

LT-COL SIBIYA: So that the container can be handed over to the responsible person.

ADV SIKHAKHANE: Okay. Now, then I may have misheard you. Then the record will then state. Just for your benefit, you said you got promoted on the 8th, in September, right?

LT-COL SIBIYA: On the 1st, yes.

ADV SIKHAKHANE: Correct. And then that is 2021, right?

10 **LT-COL SIBIYA**: Yes.

ADV SIKHAKHANE: And I am interested in your last paragraph, 21 of your statement. And I think you were trying to make a point. And maybe it is not deliberate, but you are saying that at the time that the exhibits were stolen, you were not in the province of KwaZulu-Natal.

LT-COL SIBIYA: I was sent by SAPS to attend a course in Paarl.

ADV SIKHAKHANE: Okay. I am interested who sent you there.

20 **LT-COL SIBIYA**: I got a call from Brigadier Nyuswa.

ADV SIKHAKHANE: Brigadier Nyuswa?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: On the 13th of October, if I am not mistaken.

ADV SIKHAKHANE: Sorry, when?

LT-COL SIBIYA: On the 13th of October 2021, to say I must come to his office.

ADV SIKHAKHANE: Yes.

LT-COL SIBIYA: I went there. He then requested me to assist because Captain Van Niekerk, who was supposed to go and attend the course, was on the call-up instruction. He had an unfortunate situation. His mom was ill. Then he said, can I kindly replace Captain Van Niekerk to attend the
10 course? Then I agreed.

ADV SIKHAKHANE: Okay.

LT-COL SIBIYA: Then I left Durban on the 17th. My course was resuming on the 18th of October. I came back to visit my family on the 29th of October and went back to Paarl on the 2nd of November, up until I came back on the 3rd of December.

ADV SIKHAKHANE: Okay, thanks. Just before I go to my very last question, other than our engagement, is there anything that you would like to add in relation to your
20 statement? Or just about these events?

LT-COL SIBIYA: No, there is nothing.

ADV SIKHAKHANE: There is nothing. Okay. Then just on a different point that at least, to be fair to you, has come up is in your bundle, it should be CJC251. It is a completely different point.

LT-COL SIBIYA: CJC?

ADV SIKHAKHANE: 251. 251, page 673. Are you there?

LT-COL SIBIYA: Yes, I am there.

ADV SIKHAKHANE: Or let me wait for the Commissioners and Chairperson. You do not have?

ADV BALOYI SC: Which file is it?

ADV SIKHAKHANE: It should be, let me check. It should still form part of the second file.

ADV BALOYI SC: No, we do not have it.

10 **ADV KHUMALO SC:** What document is it?

LT-COL SIBIYA: It is an email from Warrant Officer Sanders, or Sander, to Sibiya K. Would that be you?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Dated 14 November 2023. You do not have it? Perhaps.

CHAIRPERSON: Is it? Please, may it be flighted? Ms Sello, is it not? Ms Sello, is it not one of the additional annexures?

20 **ADV SELLO SC:** Yes, it is additional annexures, but your files were updated. This is File 2.

CHAIRPERSON: We should be seeing it. Do our attorneys assure us that they did do the update?

ADV KHUMALO SC: Ms Sello, let me tell you what happened. When Advocate Ncube was leading evidence of one of the witnesses, the documents were handed up, but

they were not updated. So mine, I found it in the statement file, and it is that email of 14 November 2023.

ADV SELLO SC: That is correct, yes.

ADV KHUMALO SC: Yes. So it is lying somewhere, but it is not ...[intervenes].

ADV SELLO SC: I get the point. So when it was introduced, and like is often the case, there was no attendance to your file to make sure that they are formally updated. Apologies for that. I do not know what it means
10 now if one of the Commissioners has found it.

CHAIRPERSON: But even he, maybe ours are exactly where his is.

ADV SELLO SC: Indeed.

CHAIRPERSON: There is no flag, there is no nothing. It is just lying in the bottom of a pile. But that can be sorted out.

ADV SELLO SC: Yes, we shall.

CHAIRPERSON: There is no need ...[intervenes].

ADV SELLO SC: I apologise for that.

20 **ADV KHUMALO SC:** Do you want to put it on the screen? It will make it easier. Then we will follow from our screens.

ADV SELLO SC: Indeed. In the meantime, we will try and see if at least the witness's file is updated.

CHAIRPERSON: Yes.

ADV SELLO SC: Because the witness's file has got this

document, so it appears that it fell through the cracks when it came to updating your files. I do apologise.

CHAIRPERSON: Thank you. No problem.

ADV SIKHAKHANE: I think, Chair, we are also having some difficulty locating it. Perhaps can I request that for your purposes, I hand it to you again as a copy?

CHAIRPERSON: Just one is fine for Commissioner Baloyi. I will share with Commissioner Khumalo. Yes, Mr Sikhakhane.

10 **ADV SIKHAKHANE**: Thank you. You said that was your email?

LT-COL SIBIYA: Yes.

ADV SIKHAKHANE: Okay. And you confirmed receiving that complaint?

LT-COL SIBIYA: Yes, I did receive it.

ADV SIKHAKHANE: From Warrant Officer Sander?

LT-COL SIBIYA: Yes, I confirm.

ADV SIKHAKHANE: And what have you done about that? Have you taken any steps to resolve that complaint?

20 **LT-COL SIBIYA**: Yes, when I received this email, I think I was acting on behalf of my Commander, Lieutenant Colonel Gopalsamy, who, when he came back, I did hand him over and showed him the email. He indicated that he already drafted a report regarding this matter, this member that is being mentioned here, and then the report was sent to the

Provincial Office. What I know is that this member was convicted.

ADV SIKHAKHANE: I see.

LT-COL SIBIYA: Yes, he was convicted, and he resigned from the service. Warrant Officer Jooste.

ADV SIKHAKHANE: Okay. And on your side, in terms of the report, did you receive the report and engage with the report?

LT-COL SIBIYA: Please repeat your question.

10 **ADV SIKHAKHANE:** I am saying did you receive the report yourself? Remember the complaint is to you.

LT-COL SIBIYA: Normally in the mornings we have our morning meetings where we discuss a whole lot of things, and this issue was one of them because it did not concern only one member. It was concerning almost all the members in the team. We had a discussion about it, and Colonel Gopalsamy forwarded the report to the Provincial Office. I did not receive the report. He informed me verbally that the report was sent, and I know that the
20 member was convicted and he resigned from the service. And Warrant Officer Sander used to work very close with this member. He knows also that the member was also convicted.

ADV SIKHAKHANE: Thank you. And the conviction or discipline was in relation to this complaint?

LT-COL SIBIYA: Yes, it was in relation to the theft of exhibits.

ADV SIKHAKHANE: Okay, all right. Thanks. Do you have any further questions on our side here?

ADV BALOYI SC: Okay. Colonel, I am just trying to understand what is contained here and your response so that I understand what you are explaining. So this is sent to you by Warrant Officer Sander?

LT-COL SIBIYA: Yes, it was.

10 **ADV BALOYI SC:** It is a list of allegations that he is making.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And he makes the allegations against Detective Warrant Officer Jooste, that member. And these allegations, so if you look at the number of cases here and different things, I am trying to understand what it means in relation to Sander. So, for example, if you look at, let us start at the bottom. Look at the bottom on page 1, the bottom of the page.

20 **LT-COL SIBIYA:** I just need to...

ADV BALOYI SC: I just want to make sure that I understand what this represents.

LT-COL SIBIYA: Yes, I am on page 1, Chair.

ADV BALOYI SC: Okay, let us start with what looks like the bottom case here. So if you go a few lines up, you will

see where it starts:

“On 2021-02-23, the arresting officer,
Lieutenant Colonel GY Jacob, signs for
the following exhibits.”

You see where I am reading?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Okay. And then he gives a number of
exhibits, and then he says:

10 “There is no further evidence of these
exhibits in the docket.”

Right?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And then he lists the case number, and
then it is about possession of Cocaine and Mandrax with an
SAP13 number, and then he says:

“The chain statement for this matter
refers to different exhibit bags taken to
FSL. These exhibits match that CAS
number.”

20 I am trying to understand why this is something that Jooste
would be charged and not, let us say, Jacob, because he is
mentioned here. I mean, my reading of it seems to be the
allegation is being made against Jacob that he took exhibits
out and they never came back. Can you just explain it?

LT-COL SIBIYA: Although I am not too sure, but I can just,

according to my recollection, I think Colonel Jacob had handed over the exhibits to Warrant Officer Jooste, and then Warrant Officer Jooste was supposed to take the exhibits to Forensics, and he did not take them.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: I think that is why it is falling on Warrant Officer Jooste's shoulder. He also submitted a chain statement to say that, indeed, they received the exhibits from Colonel Jacob and forwarded them to FSL.

10 **ADV BALOYI SC:** Okay.

LT-COL SIBIYA: Meanwhile, the exhibits were not received, and the acknowledgement receipt could not be found.

ADV BALOYI SC: So, somewhere there has to be a record of responses to these allegations.

LT-COL SIBIYA: Indeed. When Colonel Gopalsamy said he submitted the report, I think if he is engaged on the report, he might provide us, although he is retired, or Provincial Office Brigadier Nyuswa can indicate whether he
20 did receive such a report or not.

ADV BALOYI SC: Okay. So, when you receive this, it is signed as superior.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Does Jooste report to you at the time? I know, I think you have said he has been dismissed or

something. Was he part of the people that report to you?

LT-COL SIBIYA: No.

ADV BALOYI SC: Okay. So, when you receive this kind of list, and it is quite a lengthy list, what do you do? What did you do with it?

LT-COL SIBIYA: I informed Warrant Officer Sander that I received your complaint. It will be addressed. It is quite a number of issues that we are addressing. I think it will be prudent that we wait for the team leader, Colonel
10 Gopalsamy, so that I can give him this complaint.

ADV BALOYI SC: Okay.

LT-COL SIBIYA: Yes.

ADV BALOYI SC: And then the team leader returned? What happened?

LT-COL SIBIYA: The team leader said he will draft the report and forward it to the Provincial Office.

ADV BALOYI SC: Okay. So, after that, it was now out of your hands?

LT-COL SIBIYA: Now, because the team leader is back
20 now.

ADV BALOYI SC: So, you had no further involvement in this?

LT-COL SIBIYA: I had no further involvement.

ADV BALOYI SC: Have you seen the report that the team leader sent to Provincial Office?

LT-COL SIBIYA: I have never seen that. I have not seen the report.

ADV BALOYI SC: You have never seen that?

LT-COL SIBIYA: I did not see the report. But he told us, when Warrant Officer Sander was present in our morning meeting, he told us that your issue or your email has been attended to. I have submitted a report to Provincial Office. Hence, the investigation was instituted against a member.

ADV BALOYI SC: Ja, I am told the report – that is what
10 happens when one has to go through documents very quickly – I am told the report is, in fact, here. You say you have not seen it?

LT-COL SIBIYA: I have not seen the report. It was not sent by me.

ADV BALOYI SC: Okay. And do you know what would have happened, if anything, in respect of the many other people that are mentioned here? So, for example, there is one that says the exhibits are signed for by Jooste and we know action was taken against Jooste, you tell us. There is
20 another one that says the exhibits were signed for by, it gives a different name. If you look at the second page, 674.

LT-COL SIBIYA: Second page, okay. Number?

ADV BALOYI SC: The very last one, number 4?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: It starts off with CAS numbers, right, and what the case is about. And then, in the next line, it say the exhibits in this matter were signed for by that investigating officer. An item so-and-so was signed for by that officer, and he deposed to the statement. And then that officer states that Jooste delivers the exhibits to FSL. There is no delivery receipt, nor a packing letter to this effect.

There are no records at Forensic Science
10 Laboratory. So the names, basically, I think what I am trying to find out is, do you know if anything in this investigation looked at the roles of the different people that are mentioned? There is that officer whose name I am not mentioning.

LT-COL SIBIYA: Duarica [?].

ADV BALOYI SC: Ja, Duarica. There is Msomi. There is Jacob mentioned more than once. Do you know if this investigation looked at their role?

LT-COL SIBIYA: Chair, I think all these case numbers that
20 were cited here, the report covered all the case numbers. That is what I was told.

ADV BALOYI SC: Okay. This is the report from the team leader.

LT-COL SIBIYA: From Colonel Gopalsamy.

ADV BALOYI SC: To Provincial Office?

LT-COL SIBIYA: Yes.

ADV BALOYI SC: Okay. So my question is, do you know if Provincial Office looked at the conduct, whether there is anything wrong with the conduct of the individuals that are mentioned here? You do not know?

LT-COL SIBIYA: If my memory serves me well, I think all the members that are mentioned here, some of them, they were just investigating this docket, but the person who was mischievous here, if I may say that, was that Warrant
10 Officer.

ADV BALOYI SC: The others you know for a fact that they were found to be innocent? Say it only if you know as a fact. If you do not know, you do not know. You can say you do not know.

LT-COL SIBIYA: I do not know.

ADV BALOYI SC: Okay. Thank you. Thank you, Chair. Thank you, Mr Sikhakhane.

ADV KHUMALO SC: Maybe just to be fair to you, go to 676 there, still documents that follow, because you were
20 being asked about a report just to confirm that this is the report, the factual report dealing with the loss of exhibits. It should be two pages after the page where you were.

LT-COL SIBIYA: Yes, I am there now.

ADV KHUMALO SC: Is it that one?

LT-COL SIBIYA: Remember, Chair, I said I have never

seen the report.

ADV KHUMALO SC: No, then that is fine.

LT-COL SIBIYA: But it seems as if this is indeed the report that ...[intervenes].

ADV KHUMALO SC: It looks like the one to me. That is why I thought to be fair to you, just point it out to you. All right. Thank you.

CHAIRPERSON: Yes, Mr Sikhakhane.

ADV SIKHAKHANE: Chair, I think I have exhausted your
10 indulgence, and I think I have covered the key points I needed to cover.

CHAIRPERSON: Thank you. Thank you, Mr Sikhakhane. Thank you very much, Colonel. You are excused.

LT-COL SIBIYA: Thank you so much, Chair. I am tired.

CHAIRPERSON: Thank you. I can see from the smile that you are relieved.

LT-COL SIBIYA: Yes.

NO FURTHER QUESTIONS

CHAIRPERSON: Thank you. Let us adjourn and resume –
20 I thought you wanted to raise something.

ADV SELLO SC: No, Chair.

COURT: Thank you. Let us adjourn and resume at 09:30 on Monday.

INQUIRY POSTPONED UNTIL 8 JUNE 2026

INQUIRY ADJOURNS
