

Lieutenant Colonel Roux who heads the Unit of the members who are implicated in this matter, conducted the initial investigation.

CASE EIGHT

Death of Vusi Nkwanyana
Isipingo DR7/92
12 March 1992

Circumstances

On 21 February 1992, a white man Sean Tilling was shot and killed during a robbery near Umlazi, Durban. Detectives from the Durban Murder and Robbery Unit were charged with the investigation.

Captain Johan Booyesen received information that Vuzi Nkwanyana and Sandile Khuzwayo were implicated in this murder. He was unable to follow this information up, so he passed his information on to Captain Engelbrecht, also of the Durban Murder and Robbery Unit. That night Captain Engelbrecht arrested both Nkwanyana and Khuzwayo. It is alleged that he recovered a hand machine gun and a .38 revolver from them.

Both suspects admitted their involvement in the killing of Mr Tilling, and made confessions to this effect. They also pointed out the scene of the crime to a police officer. They were detained at South African Police Station, Umbilo.

On 11 March 1992, Captain Booyesen received information that Vuzi Nkwanyana had been seen walking around Isipingo, and that he was no longer in custody. Upon making enquiries, he determined that Nkwanyana had escaped from custody the previous day, and that detectives from the Murder and Robbery Unit had not been informed about this.

Later that night at about 21h45, Captain Booyesen received information that the suspect was presently at a particular place at Malagazi.

When he received this information he was at home. The easiest and quickest arrangement he could make was to arrange for local policemen to accompany him. He arranged for Lieutenant Olivier, who lived near him, and who is attached to the Housebreaking Unit, as well as Constables de Bruyn and Smith, who were both on duty at the Amanzimtoti police station, to accompany him. They went to Isipingo where they met Captain Booyesen's informer.

The informer took them to a squatter camp known as Malagazi. They parked their car and walked to a house which was about sixty paces away. A number of men were sitting in a kombi-type of vehicle which was parked outside the house. He recognised one of these men as Nkwanyana. The four policemen ran up to the kombi. Booyesen and Olivier approached on the left side (the side with the sliding door) of the vehicle while the two constables ran to the other side.

The sliding door of the vehicle was open, and Booyesen immediately grabbed Nkwanyana. He immediately resisted arrest by wriggling, kicking and struggling fiercely. In the process of the struggle Nkwanyana's shirt came off.

Booyesen and Olivier managed to get him out of the kombi. Booyesen had his arm around **Nkwanyana's** neck, and Olivier held him by his **waistbelt**. Captain Booyesen decided to take the suspect to the police car where he had a pair of handcuffs. He told Constable Smith and De Bruyn to remain at the kombi to guard the other occupants. Captain Booyesen and Lieutenant Olivier who were still holding Nkwanyana, moved towards their police car.

It is alleged by Booyesen and Olivier that when they were approaching their car the suspect, who had continued to struggle **fiercely**, suddenly punched Captain Booyesen in the face. The blow apparently stunned him and he lost his grip of Nkwanyana. At the same time he **heard** Lieutenant Olivier shouting, "**fok Johan, hy is los!**". Booyesen instinctively fired a shot at Nkwanyana who was still close to them. Nkwanyana continued to run away. Captain Booyesen fired another shot over his head as a warning shot and a further three shots in his direction. Olivier fired a warning shot into the ground and three shots in Nkwanyana's direction. Nkwanyana fell to the ground. He was seriously injured and died before an ambulance, which had been subsequently summoned, could arrive.

The docket and police investigation

Captain Booyesen and Lieutenant Olivier corroborate one another. Captain Booyesen also established that over and above being wanted for the murder of Sean Tilling,

Vusi Nkwanyana was also wanted for the attempted murder of two policemen, as well as the rape of a woman and an armed robbery.

Constables de Bruyn and **Smit** corroborated the version given by Booyesen and Olivier, except that they both said that they did not see the shooting but only heard sounds of the struggle followed by shots being fired. De **Bruyn's** and Smit's statements were taken by Lieutenant Olivier on 20 March 1992.

Captain Haupt was the duty officer and attended the incident at 22h45 on 12 March 1992. He completed a shooting report in respect of this incident on 12 March 1992 at 23h10. He stated,

"Die oorledene is gearrester in 'n kombi **voertuig** waar dit geparkeer was, en weg geneem na 'n polisie voertuig ongeveer 60 meters ver 'n **worsteling** het **plaas** gevind toe die oorledene prober ontvlug het tussen huise en bosse in. Daar is toe geskreeu en waarskuwings skote geskiet toe is daar na die **voortvluggende** oorlede gevuur en is noodlotig **gewond**."

In response to a question on this Shooting Incident form "Did he attempt to hit the target with minimum **force**?" Captain Haupt recorded "**Ja**, na die interleaf geskiet."

Captain Haupt made an affidavit concerning this incident on 17 March 1993 (a year later). In the affidavit he said:

" On my arrival at the scene Captain Booyesen and Lieutenant Olivier identified themselves and stated that they had fired at the deceased who had assaulted Captain Booyesen and attempted to escape from custody.....I also observed a swelling on the right side of Captain

Booyesen's face where he alleged that the deceased had struck **him**.
Lieutenant Olivier administered the Oath on Captain Haupt's affidavit.

Captain Engelbrecht described the original arrest of Nkwanyana. Apparently Nkwanyana had attempted to escape during this arrest. On 1 March 1992 at flat number 57, **Arythna** Road, Lotus Park, Engelbrecht recovered a HMC 9mm machine gun and a 38 revolver from a warming drawer of an oven which Nkwanyana had pointed out to him. Engelbrecht regarded Nkwanyana as an extremely dangerous criminal who would have been extremely difficult, if not impossible, to trace should he have succeeded in escaping.

On 10 May 1992, the statements about this matter were forwarded to Captain Singh who is the Branch Commander at Isipingo, the police station **which** has jurisdiction over the area in which the incident occurred. On 18 May 1992 Captain Singh reported the incident to his District Commissioner. In this letter he said:-

"**The** delay in reporting this matter is due to the following reason. An Inquest Register Number was reflected in the Inquest Register and no docket was opened by the above-named officer (Captain Booyesen) at the time. Statements were only received last week from the officers and members in order to obtain information in order to report this matter".

The first entry in the Investigation Diary is 12 May 1992 and relates to the receipt of the following documents:-

Statement of Captain Booyesen
Statement of Lieutenant Olivier
Statement of Captain Engelbrecht
Statement of Constable de Bruin
Statement of Constable **Smit**
Newspaper cuttings

Apart from the investigation done by Captain Haupt in regard to the shooting incident, no other investigation took place until 18 May 1992 - over two months after the incident.

On 2 July 1992 the Post Mortem report was received and filed in the docket.

The post mortem was conducted by Dr Perumal and his main findings were:-

The deceased was 1.66 m tall and weighed 62 kg. He had an average physique.

Wound 1: (A) is a 5mm central defect with a 1mm rim of abrasion over the right upperback close to the midline. This wound has a 22mm radius of tattooing but no blackening. A wound tract passes through the lung, trachea, superior vena cava and aorta and connect with wound 1(b) **which** is a 15mm x 10mm laceration of the upper anterior chest wall just left of the midline.

Direction: back to front and slightly to the left.

Wound 2: (A) is a 5mm central defect over left lower chest wall **antero-laterally**. This wound has a 2mm rim of abrasion which is **14mm** wide on the left lower edge. There was no associated tattooing or blackening. A wound track passed **subcutaneously** and connected with wound 2(B) which is a **12mm x 10** laceration of the lower anterior chest wall, just left of the midline.

Wound 3: (A) is a 5mm central defect of the right side of hip laterally. This would have a 1 mm rim of abrasion which was 3mm wide posteriorly. No associated tattooing or blackening. A wound tract passed through the muscles and connects with wound 3(B) which is a **12mm x 15mm** laceration of the right side of the anterior abdominal wall laterally.

Wound 4: (A) is a 5mm central defect with a 1 mm rim of abrasion over right mid thigh posteriorly. A tract passed **through** the muscles and connected to wound 4(B) which is a **m x m** laceration of the right mid thigh anteriorly.

Wound 5: (A) is a 8mm x 8mm laceration of the left hand in the front and a track connects with wound 5(B) which is a **m x 10mm** laceration.

Wound 1: was the only wound which was life-threatening and caused death.

On 10 September **1992** the photo album was received and filed. On 19 October **1992** the blood alcohol report in respect of the deceased was received and filed.

On 5 March **1993** the affidavit of Col Roux was received and filed. In this statement Colonel Roux stated that both Captain Booyesen and Lieutenant Olivier were on duty at the time of the incident.

On 23 March **1993** the docket was forwarded to the Attorney General.

On 16 April **1993** the Attorney General instructed the police to do the following investigation:

1. **Statements** must be obtained from the persons **who were** in the vehicle with the deceased at the time that the police arrived.
2. Photographs must be taken of the scene.
3. A plan must also be drawn indicating the position of the vehicle the deceased was in. The position of the police vehicle and the position of the deceased body as well as the positions of Booyesen and Olivier at the time that they were shooting at the deceased.
4. A copy of the post mortem report, photograph album, map and relevant firearms must be sent to ballistics for report on the **range** and angle of which the shots were fired.
5. Dr Perumal and ballistics should indicate, if they **are able**, whether any of the injuries would have caused instant incapacitation and if not,

what distance one could expect the deceased to move after sustaining the injuries.

6. The J88 must be obtained in respect of the injuries sustained by Captain Booyesen.

As a result of the Attorney-General's instruction the following investigation was conducted:

Dr Perumal indicated that the deceased could have run approximately 50m before falling.

The necessary plans were drawn by draughtsman L/Sgt Milsen.

A form J88 was obtained from Dr. van Rensburg which states that he examined Captain Booyesen during the morning of 13 March 1992 and that he found bruising and swelling on the left side of his face, and lacerations on two of his fingers.

Sergeant RM Jackson is a South African Police ballistic expert. He visited the scene where pertinent points were shown to him. He studied the post mortem report, and in regard to the wound on the deceased's back (wound 1 j he said "After conducting tests, I am of the opinion that this shot was fired at a distance of approximately 50m to a 100m. The distance mentioned is that between the deceased and the muzzle of the firearm. As the scene was reconstructed I am of the opinion that all the shots fired at the deceased, were fired whilst he was running away from Captain Booyesen and Captain Olivier".

As a result of the instructions from the Attorney-General, the investigating officer, Warrant Officer Pillay, requested Captain Booyesen to trace and make available the witnesses who were in the vehicle with the deceased at the time that the police arrived.

On 27 April 1993 Captain Booyesen made two witnesses available to the Warrant Officer Pillay. They are Judgment Cele and German Cele. Both these witnesses claim that during March 1992, they were sitting in the vehicle talking to Vusi Nkwanyana, when two white policemen approached them and arrested Vusi Nkwanyana. They say that Vusi Nkwanyana resisted arrest and struggled. Eventually they both heard a gunshot. After that they were taken to Isipingo police station. They were released and returned home to Malagazi. (Source: Isipingo DR 7/92)

Comments by the Goldstone Commission Investigation Unit

Absolutely no effective investigation was done in this case for three months. An independent Investigation Officer was not appointed immediately. Except for the rudimentary investigation done at the scene of crime by Captain Haupt, a uniformed officer who was only conducting an administrative enquiry into the use of firearms, nothing else was done.

No effective crime scene investigation was done.

The investigation was effectively left in the hands of Captain Booyesen and Olivier until **12** May 1992.

There is not even an independent and reliable record of independent witnesses who were at the scene of crime - for example the other occupants of the **kombi**.

The statements of Constables de **Bruyn** and **Smit** were recorded by Lieutenant Olivier - a possible suspect in this case. This is outrageous. In addition to this Olivier administered the Oath on Captain **Haupt's** affidavit.

The wound in the deceased's back was fired at very close range.

Captain **Haupt's** report of what was told to him by the two officers conflicts with their version of events.

The investigating officer should not have relied on a possible suspect, Captain Booyesen to make important witnesses available to him i.e. the other occupants of the **combi**. He should have traced these witnesses himself.

Absolutely no effort has been made to trace other independent witnesses, particularly others who were present in the kombi and who live in the vicinity.

CASE NINE

Death of Daniel Ndimande Ubombo Inquest 10/92 8 April 1992

Members of the Murder and Robbery Unit at Empangeni were investigating the murder of a Mr and Mrs Diedricks.

On 8 April 1992 at midnight **Captain** Erasmus, Detective Warrant Officers **Labuschagne** and **Coertzen**, Detective Constable Mafuleka, all from Empangeni Murder and Robbery Unit, acted on information which they **had** received, and went to the **Ophanzi** Area. Later they arrested **Philangenkosi** Ndimande. He agreed to point out the hut of Daniel Ndimande, his **brother**, who was also wanted for the murder of the **Diedricks**.

The policemen accompanied Philangenkosi to a hut. In the hut they found Daniel Ndimande. While searching his room, he allegedly produced a knife and attempted to stab Captain Erasmus. Coertzen shouted a warning and shot him using an R-5 rifle. He did so as Ndimande was about to stab Erasmus. Ndimande was killed.

A rifle which was connected ballistically to the murder of Mr and Mrs Diedricks was found in Ndimande's room. Ndimande's fingerprints were subsequently connected to the crime.

Captain Erasmus and Detective Warrant Officer Coertzen corroborate one **another**.