04-1046

The fact that ..... let me ask you this. The cell phone records could have shown that he was on the scene? --- M'Lord I never suggested that the cell phone records show that he was on the scene. I merely pointed out that the cell phone records show that he was on the scene before the murder took place and the cell phone records later show that he was on the scene. But I never said to him that the cell phone records show that he was on the scene at the time of the murder.

Turning to now your interrogation and your interrogation techniques. Do you put hypothesis or possible propositions to a person that you are interviewing? --- M'Lord for the record we don't use the word interrogation, because it is not. It is an interview process. We don't interrogate the people; there is no bright lights and there is no punishment going on. It is purely an interview. But yes during the course of it I did put hypothesis to him. I put hypothesis to him that he in fact had murdered his wife and that was towards the end of the interview.

Now Mr O'Sullivan which one of the things I wanted to ask you. Did you yourself have any interaction with for instance Old Mutual about the application and the policy? --- No interaction at all M'Lord. The only person M'Lord that I spoke to in respect of the insurances was that lady Asanya and she sent the emails to us.

Do you know whether Melissa Naidoo might have had any interaction with the insurance companies? --- To my knowledge the only interaction M'Lord was to obtain the information pertaining to the policies and their emails. And the knowledge of the emails only came

04-1046

04-1084

phone records of the accused. Now you have ..... We have gone through the ethics and professional standards and you would not ..... You would not dare interpret cell phone records if you are not properly qualified to do so. --- That is probably correct M'Lord, but I have often interpreted cell phone records.

Okay. So you did in this instance? Not so? --- No M'Lord.

Why do you say you didn't? --- I put a proposition. When you interview a person you put propositions to them sometimes.

So did you put a thumb suck to him? --- No M'Lord. I put ..... Well the analysis of the cell phone records at that time had not been completed. It was still underway M'Lord. So you were looking at early stages of the analysis.

Are you sure about what you are telling the court now? --- Well I had been informed by the investigating officer that they had not yet carried out the full analysis. Based on the information it had been carried out. Melissa Naidoo ...[indistinct] office and prepared a map.

Yes. And that map was prepared before the interview. --- Correct M'Lord. It was prepared for the purpose of the interview M'Lord.

So that you can question him on his whereabouts? --- Correct M'Lord.

Why was that now necessary? --- Because M'Lord the accused had placed a statement in the docket which said he was at the Flora Market on that day, and the cell phone records did not show that he was at the Flora Market on that day. And that was the main reason that I wanted to put. He said he had been driving on the M2 freeway

04-1084

and the cell phone records did not show that he was driving on the M2 freeway.

By your very evidence you are telling the court that you interpreted the cell phone records. --- Partially interpreted M'Lord. We hadn't ..... There hadn't been a full analysis at that stage.

Very well. I just want to ..... If the court will bear with me? All right can I refer you to page 94 please of the record, EXHIBIT DD3.

COURT: EXHIBIT DD3?

MS KOLBE: EXHIBIT DD3 M'Lord, the record.

COURT: Yes?

MS KOLBE: You see there line 13.

COURT: Sorry line? --- Line?

MS KOLBE: 13. 1 3. Page 94, line 1 3 M'Lord.

COURT: Line 1 3?

MS KOLBE: Line 10 M'Lord. You can start at line 10, and the important one is line 13. It starts with Paul; Paul is you. --- Yes M'Lord.

Do you have that? --- Yes M'Lord.

Now what is recorded here? You Mr O'Sullivan say to the accused:

'We place you at the crime scene with your phone at the time of the murder.'

Right. --- Mmm.

'Just before the time of the murder and just after the time of the murder which is approximately the time

04-1086

when the car was dumped up the street, we place you there.'

--- Correct M'Lord.

In other words you say to him before the murder I place you in Erongo Street. At the murder, at the scene. Then at Erongo Street. --- Yes M'Lord.

Based on your analysis of the cell phone records. --- Mmm.

Show me your analysis? Show me that on the cell phone records. --- No we hadn't carried out a full analysis at that time M'Lord.

No. --- But when you are interviewing a person ..... By this stage of the interview I wanted to start putting propositions to him. I also put a proposition to him later that he had murdered Odette Barkhuizen. So at this stage of the game the interview is becoming, what I would suggest is, antagonistic. In other words we are trying to put certain things to the person that is being interviewed, in the hope that he may either say this or say that, or whatever.

You put a false proposition to him in the hope that he would now come up with some explanation.

COURT: No, no. Let me answer. Please don't anticipate what his answer is going to be, or his hope. --- M'Lord we put propositions. Quite often one does it when you are interviewing people.

Yes? --- Quite often in the police you will have two suspects and you arrest them together and you put them in different cells. Then you will come into cell A and you will tell by the way the person in cell B

04-1086

says you fired the gun. That is considered fair game M'Lord.

The question that is put to you is that the proposition that you put to him that he was on the ...[indistinct]. --- Partly false M'Lord.

MS KOLBE: Partly false? --- Yes.

What was correct and what was false? --- The cell phone records didn't place him at the scene at the time of the murder. It placed him at the scene before the murder and after the murder.

He was refused bail on this very point.

COURT: We have dealt with that. Let us not be aggressive to the witness.

MS KOLBE: As the court pleases M'Lord.

COURT: Let us be very gentle. Can we?

MS KOLBE: Today I only have to be gentle to Mr Du Toit M'Lord.

MR DU TOIT: And I am grateful for that M'Lord.

COURT: No but you know ...[intervene]

MS KOLBE: As the court pleases M'Lord. You know that bail ...[intervene]

COURT: How long do you still want to be?

MS KOLBE: I am still going to be quite a while with this witness M'Lord.

COURT: Is it not perhaps an appropriate time to take an early lunch adjournment?

MS KOLBE: As the court pleases M'Lord. I didn't see what the time was.

COURT: Mr O'Sullivan you know that you are now under cross-

examination. --- Yes M'Lord.

You must. --- I must have my lunch alone M'Lord.

No you can have it with everybody, except you don't talk about the towers and everything else like that. Court adjourns until 14:00.

COURT ADJOURNS [12:52] ~ ~ ~ [13:56] **COURT RESUMES**

COURT: Mr O'Sullivan I am warning you still under the oath.

PAUL O'SULLIVAN: (s.u.o.)

Please process Ms Kolbe.

CROSS-EXAMINATION BY MS KOLBE [CONTINUES]: As Your Lordship pleases. Mr Solomon before the adjournment we were at your evidence that your proposition put to the accused regarding where the cell phone records place him was partly true and partly false? --- Correct Your Lordship.

What was false? --- I think I said that the cell phone records put at the scene at the time of the murder Your Lordship.

Was that false? --- Yes Your Lordship.

What about the proposition that his cell phone places him where the deceased's vehicle was found before the murder and after the murder? --- From my memory Your Lordship I seem to recall that was correct.

Is that so? --- From my memory.

Well if I put it to you that it is incorrect? --- Okay it is possible M'Lord.

So if that is incorrect, your entire proposition put to him was false? --- Not so M'Lord, this is 2 and a half years ago and I am my best

04-1089

to remember what we said. But certainly there were discrepancies between where he said he was and where the cell phone records show him to be. Mr O'Sullivan let us just get clarity on this. If the cell phone records show that he was not at the scene of the crime at the time, that he was not in Erongo Road before or after the incident, your entire proposition put to him must be false, must have been false. --- No I do not agree M'Lord.

Oh, why? --- Because from my memory the cell phone records did place him in the vicinity.

Well we had an expert testifying here Mr Hallat who said that, at the time of the shooting the deceased's cell phone placed him approximately 2 kilometres from the scene. --- I was not there.

MR DU TOIT: M'Lord that is not totally correct. I know that proposition to put to Mr Mdlalose.

COURT: Yes.

MR DU TOIT: When my learned colleague here led the evidence. Now the cell phone records said that he was in the vicinity yes. But also it was the evidence they placed on record is that the cell phone records can only show where he was if there is a transaction. Now if there is a transaction you do not shoot a person while you are texting or phoning. It was within 1.8 kilometres in the vicinity and there was a time lapse of an hour. So any person – and that was the proposition that was put could have been there. So that is not in the vicinity. That is not – it was never evidence led that he was there at the scene when it happened, it was in the vicinity and that was always the case exactly.

04-1089

COURT: The operative word here, if I understand correctly is the "vicinity"?

MR DU TOIT: In the vicinity and the evidence is that cell phone records will only show where the phone is when there is a transaction. We went through that, either a text or this. So there was a text an hour before in the vicinity and then an hour later and he was always there. So it was never said that he was not there at the scene. In the vicinity as the witness now answered, that was the evidence of Mr Hallat. It was never the state proposition that he was there at the scene on the cell phone records. I can also say that – I will later argue and I will argue, yes and we will argue. But that was not the evidence, it was never the evidence.

COURT: Okay we heard you.

MS KOLBE: Well there you have it now Mr O'Sullivan, my learned friend has actually assisted me here. There was at the time of the incident no activity on the phone, so there is no ways on earth that you could have placed him on the scene at the time of the murder. It is as simple as that.

COURT: No in the vicinity?

MS KOLBE: No, no M'Lord the issue is this, if we leave aside the vicinity for a moment.

COURT: No you are understanding him to say at the scene.

MS KOLBE: Yes.

COURT: You are referring that to ...[intervenes].

MS KOLBE: If I may refer the court to ...[intervenes].

COURT: No wait a minute let me just check that thing. That is page 94 line?

MS KOLBE: Yes line 13.

COURT: Yes.

MS KOLBE: We placed you at the crime scene with your phone at the time of the murder. Now you have heard the state's case. --- Sorry what page M'Lord?

Page 94.

MR DU TOIT: I can just say M'Lord, I agree with that the witness did answer to that.

COURT: Yes.

MS KOLBE: Page 93 line 13. --- Yes correct M'Lord and my answer to your question as to what part of that was incorrect, was the section where I said, we place you at the crime scene at the time of the murder.

That was blatantly false because the cell phone records show no activity at that time? --- That is correct.

So it was a blatantly false proposition.

COURT: Well do you know Mr O'Sullivan that the cell phone was not in operation, or there were no activities on the phone? --- I have no knowledge of that M'Lord. What I have said was, if I look at the words:

> "We place you at the crime scene with your phone at the time of the murder, just before the time of the murder and just after the time of the murder. Which is approximately the same time when Nichole was dumped up the street, we place you there."

Yes, ja, ja placed you there where the car was found? --- Yes

M'Lord.

Before and after? --- No I said placed you there. You know when you are using your phone M'Lord in a distance of a 100 metres you are going to place that person in that vicinity.

Mr O'Sullivan, you saw the cell phone records before the interview? --- That is correct M'Lord.

You would have seen that at the time of the incident, as my learned friend has placed on record, there was no activity on the phone, correct? --- At the time of the murder, yes M'Lord.

So to put to him that your phone places you at the crime scene was blatantly false because you knew that was ...[intervenes].

COURT: I think incorrect. When you say it was false you know, does it not carry the element of intention?

MS KOLBE: Yes M'Lord it does because he sees the cell phone record, he cannot make that proposition.

COURT: When you say is somebody having an intention, it means he has an intention to lie, as opposed to the "incorrect".

MS KOLBE: I think Your Lordship ...[intervenes].

COURT: Ja you can make those arguments in your submissions. It was already corrected that it was incorrect.

MS KOLBE: That is correct M'Lord, but it was the witness's evidence that it is a fair game, you may put a false proposition. So there is the intention.

COURT: Sorry when he says?

MS KOLBE: His evidence was that it is permissible to put a false

proposition to a witness that you interview to knowingly put a false proposition to a witness. That was his evidence. Did I understand you correctly? --- That is not correct M'Lord.

Yes what is your evidence? --- What I said was we put suppositions to the witness that is being interviewed. In this case I placed three suppositions in front of him, one of which was incorrect. Now I was not looking at the cellular phone records at the time I interviewed him. M'Lord if you have a look it is a hundred and something, almost 200 pages of interview, it is 135 pages of interview and the interview lasted 3 hours. Over that period of time, what I said at the interview is not the evidence I am giving today. In other words, I am not giving evidence today that he was, or that his cell phone placed him at the crime scene. I merely stated during the course of the interview that we placed him at the crime scene with his phone, to see what he would say M'Lord.

Knowingly that the cell phone records did not place him there? --- Well M'Lord the problem with cell phone records, as the prosecutor rightly pointed out, if you are not transacting on the phone at the time, you get nothing. So I just put that supposition to him and I have made it clear that I had meant that there is no cell phone record that placed him at the scene, or placed his phone at the scene. But that does not mean that he was not at the scene.

Mr Paul O'Sullivan yes, now let us proceed with this interview now following on the supposition you had just put to the accused. Then let us continue on line 16 on page 94. The accused says, "okay" after you have put this false proposition – this supposition to him. Then you continue

crime scene before and after. Now this witness says he does. How I am supposed to deal with that without asking him to ...[intervene]

MR DU TOIT: M'Lord that is now a bit dangerous. The cell phone records .....even it was admitted ..... before the crime was committed or ..... ja the accused was indeed on the scene and afterwards he was called; and the evidence is he came back. So before and after it now becomes are we talking about ..... immediately, 1 minute, 2 minutes? Because the evidence thus far is he was there before this thing ...[intervene]

COURT: And he went to see clients ...[intervene]

MR DU TOIT: Even Robert Kenga ...[intervene]

COURT: And he apparently picked up some pizzas for the ...[intervene]

MR DU TOIT: And then afterwards he came back. So before and after he was at the scene.

MS KOLBE: As the court pleases M'Lord. Let me put it to you differently. You put to him that his cell phone records put him on the scene at the time of the crime. --- M'Lord I may have done that. If you can refer me to the correct page number.

Well. And you told the court that you know it is wrong. It is not true. --- That ...[intervene]

That is your evidence that you gave last week. --- Correct M'Lord. But at the time and the cell phone analysis had not been completed at that stage. But at the time of the interview I thought that the cell phone ..... I genuinely believed that the cell phone records did place him at the scene.

Well. --- So there was no deliberate misleading attempt whilst interviewing the witness M'Lord.

Very well. Let us just then go to your questions regarding his cell phone. May I refer you to page 55. 55. Then if you go right to the middle of that page you will see a heading continuation the day in question. Right. So the day of the murder. Right. Then you talking:

'All right, can we now come to'

And the accused says:

'Yes sure'.

You say:

'To the day of the murder'.

Can you just turn that over so that you are not reading from it. He clearly has his statement with him or what? Or did you give it to him?

COURT: Sorry where is that? --- I can't remember.

MS KOLBE: M'Lord line 20 on page 55. Right you can't remember what it was? It is possible it was a statement M'Lord.

Then go to line 25 on the same page:

'What time did you get up?'

And the accused then says:

'So ja it was between 18:00 and 18:30.'

Are you still with me? --- Yes M'Lord.

Then please turn to page 58, line ...[intervene]

COURT: Just 1 minute. Yes?

MS KOLBE: Line 17. There he tells you that he went to the office that

04-1046

The fact that ..... let me ask you this. The cell phone records could have shown that he was on the scene? --- M'Lord I never suggested that the cell phone records show that he was on the scene. I merely pointed out that the cell phone records show that he was on the scene before the murder took place and the cell phone records later show that he was on the scene. But I never said to him that the cell phone records show that he was on the scene at the time of the murder.

Turning to now your interrogation and your interrogation techniques. Do you put hypothesis or possible propositions to a person that you are interviewing? --- M'Lord for the record we don't use the word interrogation, because it is not. It is an interview process. We don't interrogate the people; there is no bright lights and there is no punishment going on. It is purely an interview. But yes during the course of it I did put hypothesis to him. I put hypothesis to him that he in fact had murdered his wife and that was towards the end of the interview.

Now Mr O'Sullivan which one of the things I wanted to ask you. Did you yourself have any interaction with for instance Old Mutual about the application and the policy? --- No interaction at all M'Lord. The only person M'Lord that I spoke to in respect of the insurances was that lady Asanya and she sent the emails to us.

Do you know whether Melissa Naidoo might have had any interaction with the insurance companies? --- To my knowledge the only interaction M'Lord was to obtain the information pertaining to the policies and their emails. And the knowledge of the emails only came

04-1046

04-1084

phone records of the accused. Now you have ..... We have gone through the ethics and professional standards and you would not ..... You would not dare interpret cell phone records if you are not properly qualified to do so. --- That is probably correct M'Lord, but I have often interpreted cell phone records.

Okay. So you did in this instance? Not so? --- No M'Lord.

Why do you say you didn't? --- I put a proposition. When you interview a person you put propositions to them sometimes.

So did you put a thumb suck to him? --- No M'Lord. I put ..... Well the analysis of the cell phone records at that time had not been completed. It was still underway M'Lord. So you were looking at early stages of the analysis.

Are you sure about what you are telling the court now? --- Well I had been informed by the investigating officer that they had not yet carried out the full analysis. Based on the information it had been carried out. Melissa Naidoo ...[indistinct] office and prepared a map.

Yes. And that map was prepared before the interview. --- Correct M'Lord. It was prepared for the purpose of the interview M'Lord.

So that you can question him on his whereabouts? --- Correct M'Lord.

Why was that now necessary? --- Because M'Lord the accused had placed a statement in the docket which said he was at the Flora Market on that day, and the cell phone records did not show that he was at the Flora Market on that day. And that was the main reason that I wanted to put. He said he had been driving on the M2 freeway

04-1084

04-1085

and the cell phone records did not show that he was driving on the M2 freeway.

By your very evidence you are telling the court that you interpreted the cell phone records. --- Partially interpreted M'Lord. We hadn't ..... There hadn't been a full analysis at that stage.

Very well. I just want to ..... If the court will bear with me? All right can I refer you to page 94 please of the record, EXHIBIT DD3.

COURT: EXHIBIT DD3?

MS KOLBE: EXHIBIT DD3 M'Lord, the record.

COURT: Yes?

MS KOLBE: You see there line 13.

COURT: Sorry line? --- Line?

MS KOLBE: 13. 1 3. Page 94, line 1 3 M'Lord.

COURT: Line 1 3?

MS KOLBE: Line 10 M'Lord. You can start at line 10, and the important one is line 13. It starts with Paul; Paul is you. --- Yes M'Lord.

Do you have that? --- Yes M'Lord.

Now what is recorded here? You Mr O'Sullivan say to the accused:

'We place you at the crime scene with your phone at the time of the murder.'

Right. --- Mmm.

'Just before the time of the murder and just after the time of the murder which is approximately the time

04-1085

04-1086

when the car was dumped up the street, we place you there.'

--- Correct M'Lord.

In other words you say to him before the murder I place you in Erongo Street. At the murder, at the scene. Then at Erongo Street. --- Yes M'Lord.

Based on your analysis of the cell phone records. --- Mmm.

Show me your analysis? Show me that on the cell phone records. --- No we hadn't carried out a full analysis at that time M'Lord.

No. --- But when you are interviewing a person ..... By this stage of the interview I wanted to start putting propositions to him. I also put a proposition to him later that he had murdered Odette Barkhuizen. So at this stage of the game the interview is becoming, what I would suggest is, antagonistic. In other words we are trying to put certain things to the person that is being interviewed, in the hope that he may either say this or say that, or whatever.

You put a false proposition to him in the hope that he would now come up with some explanation.

COURT: No, no. Let me answer. Please don't anticipate what his answer is going to be, or his hope. --- M'Lord we put propositions. Quite often one does it when you are interviewing people.

Yes? --- Quite often in the police you will have two suspects and you arrest them together and you put them in different cells. Then you will come into cell A and you will tell by the way the person in cell B

04-1086

04-1087

says you fired the gun. That is considered fair game M'Lord.

The question that is put to you is that the proposition that you put to him that he was on the ...[indistinct]. --- Partly false M'Lord.

MS KOLBE: Partly false? --- Yes.

What was correct and what was false? --- The cell phone records didn't place him at the scene at the time of the murder. It placed him at the scene before the murder and after the murder.

He was refused bail on this very point.

COURT: We have dealt with that. Let us not be aggressive to the witness.

MS KOLBE: As the court pleases M'Lord.

COURT: Let us be very gentle. Can we?

MS KOLBE: Today I only have to be gentle to Mr Du Toit M'Lord.

MR DU TOIT: And I am grateful for that M'Lord.

COURT: No but you know ...[intervene]

MS KOLBE: As the court pleases M'Lord. You know that bail ...[intervene]

COURT: How long do you still want to be?

MS KOLBE: I am still going to be quite a while with this witness M'Lord.

COURT: Is it not perhaps an appropriate time to take an early lunch adjournment?

MS KOLBE: As the court pleases M'Lord. I didn't see what the time was.

COURT: Mr O'Sullivan you know that you are now under cross-

04-1087

examination. --- Yes M'Lord.

You must. --- I must have my lunch alone M'Lord.

No you can have it with everybody, except you don't talk about the towers and everything else like that. Court adjourns until 14:00.

COURT ADJOURNS [12:52] ~ ~ ~ [13:56] **COURT RESUMES**

COURT: Mr O'Sullivan I am warning you still under the oath.

PAUL O'SULLIVAN: (s.u.o.)

Please process Ms Kolbe.

CROSS-EXAMINATION BY MS KOLBE [CONTINUES]: As Your Lordship pleases. Mr Solomon before the adjournment we were at your evidence that your proposition put to the accused regarding where the cell phone records place him was partly true and partly false? --- Correct Your Lordship.

What was false? --- I think I said that the cell phone records put at the scene at the time of the murder Your Lordship.

Was that false? --- Yes Your Lordship.

What about the proposition that his cell phone places him where the deceased's vehicle was found before the murder and after the murder? --- From my memory Your Lordship I seem to recall that was correct.

Is that so? --- From my memory.

Well if I put it to you that it is incorrect? --- Okay it is possible M'Lord.

So if that is incorrect, your entire proposition put to him was false? --- Not so M'Lord, this is 2 and a half years ago and I am my best

04-1089

to remember what we said. But certainly there were discrepancies between where he said he was and where the cell phone records show him to be. Mr O'Sullivan let us just get clarity on this. If the cell phone records show that he was not at the scene of the crime at the time, that he was not in Erongo Road before or after the incident, your entire proposition put to him must be false, must have been false. --- No I do not agree M'Lord.

Oh, why? --- Because from my memory the cell phone records did place him in the vicinity.

Well we had an expert testifying here Mr Hallat who said that, at the time of the shooting the deceased's cell phone placed him approximately 2 kilometres from the scene. --- I was not there.

MR DU TOIT: M'Lord that is not totally correct. I know that proposition to put to Mr Mdlalose.

COURT: Yes.

MR DU TOIT: When my learned colleague here led the evidence. Now the cell phone records said that he was in the vicinity yes. But also it was the evidence they placed on record is that the cell phone records can only show where he was if there is a transaction. Now if there is a transaction you do not shoot a person while you are texting or phoning. It was within 1.8 kilometres in the vicinity and there was a time lapse of an hour. So any person – and that was the proposition that was put could have been there. So that is not in the vicinity. That is not – it was never evidence led that he was there at the scene when it happened, it was in the vicinity and that was always the case exactly.

04-1089

COURT: The operative word here, if I understand correctly is the "vicinity"?

MR DU TOIT: In the vicinity and the evidence is that cell phone records will only show where the phone is when there is a transaction. We went through that, either a text or this. So there was a text an hour before in the vicinity and then an hour later and he was always there. So it was never said that he was not there at the scene. In the vicinity as the witness now answered, that was the evidence of Mr Hallat. It was never the state proposition that he was there at the scene on the cell phone records. I can also say that – I will later argue and I will argue, yes and we will argue. But that was not the evidence, it was never the evidence.

COURT: Okay we heard you.

MS KOLBE: Well there you have it now Mr O'Sullivan, my learned friend has actually assisted me here. There was at the time of the incident no activity on the phone, so there is no ways on earth that you could have placed him on the scene at the time of the murder. It is as simple as that.

COURT: No in the vicinity?

MS KOLBE: No, no M'Lord the issue is this, if we leave aside the vicinity for a moment.

COURT: No you are understanding him to say at the scene.

MS KOLBE: Yes.

COURT: You are referring that to ...[intervenes].

MS KOLBE: If I may refer the court to ...[intervenes].

COURT: No wait a minute let me just check that thing. That is page 94 line?

04-1091

MS KOLBE: Yes line 13.

COURT: Yes.

MS KOLBE: We placed you at the crime scene with your phone at the time of the murder. Now you have heard the state's case. --- Sorry what page M'Lord?

Page 94.

MR DU TOIT: I can just say M'Lord, I agree with that the witness did answer to that.

COURT: Yes.

MS KOLBE: Page 93 line 13. --- Yes correct M'Lord and my answer to your question as to what part of that was incorrect, was the section where I said, we place you at the crime scene at the time of the murder.

That was blatantly false because the cell phone records show no activity at that time? --- That is correct.

So it was a blatantly false proposition.

COURT: Well do you know Mr O'Sullivan that the cell phone was not in operation, or there were no activities on the phone? --- I have no knowledge of that M'Lord. What I have said was, if I look at the words:

> "We place you at the crime scene with your phone at the time of the murder, just before the time of the murder and just after the time of the murder. Which is approximately the same time when Nichole was dumped up the street, we place you there."

Yes, ja, ja placed you there where the car was found? --- Yes

04-1091

M'Lord.

Before and after? --- No I said placed you there. You know when you are using your phone M'Lord in a distance of a 100 metres you are going to place that person in that vicinity.

Mr O'Sullivan, you saw the cell phone records before the interview? --- That is correct M'Lord.

You would have seen that at the time of the incident, as my learned friend has placed on record, there was no activity on the phone, correct? --- At the time of the murder, yes M'Lord.

So to put to him that your phone places you at the crime scene was blatantly false because you knew that was ...[intervenes].

COURT: I think incorrect. When you say it was false you know, does it not carry the element of intention?

MS KOLBE: Yes M'Lord it does because he sees the cell phone record, he cannot make that proposition.

COURT: When you say is somebody having an intention, it means he has an intention to lie, as opposed to the "incorrect".

MS KOLBE: I think Your Lordship ...[intervenes].

COURT: Ja you can make those arguments in your submissions. It was already corrected that it was incorrect.

MS KOLBE: That is correct M'Lord, but it was the witness's evidence that it is a fair game, you may put a false proposition. So there is the intention.

COURT: Sorry when he says?

MS KOLBE: His evidence was that it is permissible to put a false

proposition to a witness that you interview to knowingly put a false proposition to a witness. That was his evidence. Did I understand you correctly? --- That is not correct M'Lord.

Yes what is your evidence? --- What I said was we put suppositions to the witness that is being interviewed. In this case I placed three suppositions in front of him, one of which was incorrect. Now I was not looking at the cellular phone records at the time I interviewed him. M'Lord if you have a look it is a hundred and something, almost 200 pages of interview, it is 135 pages of interview and the interview lasted 3 hours. Over that period of time, what I said at the interview is not the evidence I am giving today. In other words, I am not giving evidence today that he was, or that his cell phone placed him at the crime scene. I merely stated during the course of the interview that we placed him at the crime scene with his phone, to see what he would say M'Lord.

Knowingly that the cell phone records did not place him there? --- Well M'Lord the problem with cell phone records, as the prosecutor rightly pointed out, if you are not transacting on the phone at the time, you get nothing. So I just put that supposition to him and I have made it clear that I had meant that there is no cell phone record that placed him at the scene, or placed his phone at the scene. But that does not mean that he was not at the scene.

Mr Paul O'Sullivan yes, now let us proceed with this interview now following on the supposition you had just put to the accused. Then let us continue on line 16 on page 94. The accused says, "okay" after you have put this false proposition – this supposition to him. Then you continue

04-1084

phone records of the accused. Now you have ..... We have gone through the ethics and professional standards and you would not ..... You would not dare interpret cell phone records if you are not properly qualified to do so. --- That is probably correct M'Lord, but I have often interpreted cell phone records.

Okay. So you did in this instance? Not so? --- No M'Lord.

Why do you say you didn't? --- I put a proposition. When you interview a person you put propositions to them sometimes.

So did you put a thumb suck to him? --- No M'Lord. I put ..... Well the analysis of the cell phone records at that time had not been completed. It was still underway M'Lord. So you were looking at early stages of the analysis.

Are you sure about what you are telling the court now? --- Well I had been informed by the investigating officer that they had not yet carried out the full analysis. Based on the information it had been carried out. Melissa Naidoo ...[indistinct] office and prepared a map.

Yes. And that map was prepared before the interview. --- Correct M'Lord. It was prepared for the purpose of the interview M'Lord.

So that you can question him on his whereabouts? --- Correct M'Lord.

Why was that now necessary? --- Because M'Lord the accused had placed a statement in the docket which said he was at the Flora Market on that day, and the cell phone records did not show that he was at the Flora Market on that day. And that was the main reason that I wanted to put. He said he had been driving on the M2 freeway

04-1084

04-1085

and the cell phone records did not show that he was driving on the M2 freeway.

By your very evidence you are telling the court that you interpreted the cell phone records. --- Partially interpreted M'Lord. We hadn't ..... There hadn't been a full analysis at that stage.

Very well. I just want to ..... If the court will bear with me? All right can I refer you to page 94 please of the record, EXHIBIT DD3.

COURT: EXHIBIT DD3?

MS KOLBE: EXHIBIT DD3 M'Lord, the record.

COURT: Yes?

MS KOLBE: You see there line 13.

COURT: Sorry line? --- Line?

MS KOLBE: 13. 1 3. Page 94, line 1 3 M'Lord.

COURT: Line 1 3?

MS KOLBE: Line 10 M'Lord. You can start at line 10, and the important one is line 13. It starts with Paul; Paul is you. --- Yes M'Lord.

Do you have that? --- Yes M'Lord.

Now what is recorded here? You Mr O'Sullivan say to the accused:

'We place you at the crime scene with your phone at the time of the murder.'

Right. --- Mmm.

'Just before the time of the murder and just after the time of the murder which is approximately the time

04-1085

04-1086

when the car was dumped up the street, we place you there.'

--- Correct M'Lord.

In other words you say to him before the murder I place you in Erongo Street. At the murder, at the scene. Then at Erongo Street. --- Yes M'Lord.

Based on your analysis of the cell phone records. --- Mmm.

Show me your analysis? Show me that on the cell phone records. --- No we hadn't carried out a full analysis at that time M'Lord.

No. --- But when you are interviewing a person ..... By this stage of the interview I wanted to start putting propositions to him. I also put a proposition to him later that he had murdered Odette Barkhuizen. So at this stage of the game the interview is becoming, what I would suggest is, antagonistic. In other words we are trying to put certain things to the person that is being interviewed, in the hope that he may either say this or say that, or whatever.

You put a false proposition to him in the hope that he would now come up with some explanation.

COURT: No, no. Let me answer. Please don't anticipate what his answer is going to be, or his hope. --- M'Lord we put propositions. Quite often one does it when you are interviewing people.

Yes? --- Quite often in the police you will have two suspects and you arrest them together and you put them in different cells. Then you will come into cell A and you will tell by the way the person in cell B

04-1086

04-1087

says you fired the gun. That is considered fair game M'Lord.

The question that is put to you is that the proposition that you put to him that he was on the ...[indistinct]. --- Partly false M'Lord.

MS KOLBE: Partly false? --- Yes.

What was correct and what was false? --- The cell phone records didn't place him at the scene at the time of the murder. It placed him at the scene before the murder and after the murder.

He was refused bail on this very point.

COURT: We have dealt with that. Let us not be aggressive to the witness.

MS KOLBE: As the court pleases M'Lord.

COURT: Let us be very gentle. Can we?

MS KOLBE: Today I only have to be gentle to Mr Du Toit M'Lord.

MR DU TOIT: And I am grateful for that M'Lord.

COURT: No but you know ...[intervene]

MS KOLBE: As the court pleases M'Lord. You know that bail ...[intervene]

COURT: How long do you still want to be?

MS KOLBE: I am still going to be quite a while with this witness M'Lord.

COURT: Is it not perhaps an appropriate time to take an early lunch adjournment?

MS KOLBE: As the court pleases M'Lord. I didn't see what the time was.

COURT: Mr O'Sullivan you know that you are now under cross-

04-1087

examination. --- Yes M'Lord.

You must. --- I must have my lunch alone M'Lord.

No you can have it with everybody, except you don't talk about the towers and everything else like that. Court adjourns until 14:00.

COURT ADJOURNS [12:52] ~ ~ ~ [13:56] **COURT RESUMES**

COURT: Mr O'Sullivan I am warning you still under the oath.

PAUL O'SULLIVAN: (s.u.o.)

Please process Ms Kolbe.

CROSS-EXAMINATION BY MS KOLBE [CONTINUES]: As Your Lordship pleases. Mr Solomon before the adjournment we were at your evidence that your proposition put to the accused regarding where the cell phone records place him was partly true and partly false? --- Correct Your Lordship.

What was false? --- I think I said that the cell phone records put at the scene at the time of the murder Your Lordship.

Was that false? --- Yes Your Lordship.

What about the proposition that his cell phone places him where the deceased's vehicle was found before the murder and after the murder? --- From my memory Your Lordship I seem to recall that was correct.

Is that so? --- From my memory.

Well if I put it to you that it is incorrect? --- Okay it is possible M'Lord.

So if that is incorrect, your entire proposition put to him was false? --- Not so M'Lord, this is 2 and a half years ago and I am my best

04-1089

to remember what we said. But certainly there were discrepancies between where he said he was and where the cell phone records show him to be. Mr O'Sullivan let us just get clarity on this. If the cell phone records show that he was not at the scene of the crime at the time, that he was not in Erongo Road before or after the incident, your entire proposition put to him must be false, must have been false. --- No I do not agree M'Lord.

Oh, why? --- Because from my memory the cell phone records did place him in the vicinity.

Well we had an expert testifying here Mr Hallat who said that, at the time of the shooting the deceased's cell phone placed him approximately 2 kilometres from the scene. --- I was not there.

MR DU TOIT: M'Lord that is not totally correct. I know that proposition to put to Mr Mdlalose.

COURT: Yes.

MR DU TOIT: When my learned colleague here led the evidence. Now the cell phone records said that he was in the vicinity yes. But also it was the evidence they placed on record is that the cell phone records can only show where he was if there is a transaction. Now if there is a transaction you do not shoot a person while you are texting or phoning. It was within 1.8 kilometres in the vicinity and there was a time lapse of an hour. So any person – and that was the proposition that was put could have been there. So that is not in the vicinity. That is not – it was never evidence led that he was there at the scene when it happened, it was in the vicinity and that was always the case exactly.

04-1089

COURT: The operative word here, if I understand correctly is the "vicinity"?

MR DU TOIT: In the vicinity and the evidence is that cell phone records will only show where the phone is when there is a transaction. We went through that, either a text or this. So there was a text an hour before in the vicinity and then an hour later and he was always there. So it was never said that he was not there at the scene. In the vicinity as the witness now answered, that was the evidence of Mr Hallat. It was never the state proposition that he was there at the scene on the cell phone records. I can also say that – I will later argue and I will argue, yes and we will argue. But that was not the evidence, it was never the evidence.

COURT: Okay we heard you.

MS KOLBE: Well there you have it now Mr O'Sullivan, my learned friend has actually assisted me here. There was at the time of the incident no activity on the phone, so there is no ways on earth that you could have placed him on the scene at the time of the murder. It is as simple as that.

COURT: No in the vicinity?

MS KOLBE: No, no M'Lord the issue is this, if we leave aside the vicinity for a moment.

COURT: No you are understanding him to say at the scene.

MS KOLBE: Yes.

COURT: You are referring that to ...[intervenes].

MS KOLBE: If I may refer the court to ...[intervenes].

COURT: No wait a minute let me just check that thing. That is page 94 line?

04-1091

MS KOLBE: Yes line 13.

COURT: Yes.

MS KOLBE: We placed you at the crime scene with your phone at the time of the murder. Now you have heard the state's case. --- Sorry what page M'Lord?

Page 94.

MR DU TOIT: I can just say M'Lord, I agree with that the witness did answer to that.

COURT: Yes.

MS KOLBE: Page 93 line 13. --- Yes correct M'Lord and my answer to your question as to what part of that was incorrect, was the section where I said, we place you at the crime scene at the time of the murder.

That was blatantly false because the cell phone records show no activity at that time? --- That is correct.

So it was a blatantly false proposition.

COURT: Well do you know Mr O'Sullivan that the cell phone was not in operation, or there were no activities on the phone? --- I have no knowledge of that M'Lord. What I have said was, if I look at the words:

> "We place you at the crime scene with your phone at the time of the murder, just before the time of the murder and just after the time of the murder. Which is approximately the same time when Nichole was dumped up the street, we place you there."

Yes, ja, ja placed you there where the car was found? --- Yes

04-1091

M'Lord.

Before and after? --- No I said placed you there. You know when you are using your phone M'Lord in a distance of a 100 metres you are going to place that person in that vicinity.

Mr O'Sullivan, you saw the cell phone records before the interview? --- That is correct M'Lord.

You would have seen that at the time of the incident, as my learned friend has placed on record, there was no activity on the phone, correct? --- At the time of the murder, yes M'Lord.

So to put to him that your phone places you at the crime scene was blatantly false because you knew that was ...[intervenes].

COURT: I think incorrect. When you say it was false you know, does it not carry the element of intention?

MS KOLBE: Yes M'Lord it does because he sees the cell phone record, he cannot make that proposition.

COURT: When you say is somebody having an intention, it means he has an intention to lie, as opposed to the "incorrect".

MS KOLBE: I think Your Lordship ...[intervenes].

COURT: Ja you can make those arguments in your submissions. It was already corrected that it was incorrect.

MS KOLBE: That is correct M'Lord, but it was the witness's evidence that it is a fair game, you may put a false proposition. So there is the intention.

COURT: Sorry when he says?

MS KOLBE: His evidence was that it is permissible to put a false

proposition to a witness that you interview to knowingly put a false proposition to a witness. That was his evidence. Did I understand you correctly? --- That is not correct M'Lord.

Yes what is your evidence? --- What I said was we put suppositions to the witness that is being interviewed. In this case I placed three suppositions in front of him, one of which was incorrect. Now I was not looking at the cellular phone records at the time I interviewed him. M'Lord if you have a look it is a hundred and something, almost 200 pages of interview, it is 135 pages of interview and the interview lasted 3 hours. Over that period of time, what I said at the interview is not the evidence I am giving today. In other words, I am not giving evidence today that he was, or that his cell phone placed him at the crime scene. I merely stated during the course of the interview that we placed him at the crime scene with his phone, to see what he would say M'Lord.

Knowingly that the cell phone records did not place him there? --- Well M'Lord the problem with cell phone records, as the prosecutor rightly pointed out, if you are not transacting on the phone at the time, you get nothing. So I just put that supposition to him and I have made it clear that I had meant that there is no cell phone record that placed him at the scene, or placed his phone at the scene. But that does not mean that he was not at the scene.

Mr Paul O'Sullivan yes, now let us proceed with this interview now following on the supposition you had just put to the accused. Then let us continue on line 16 on page 94. The accused says, "okay" after you have put this false proposition – this supposition to him. Then you continue

04-1084

phone records of the accused. Now you have ..... We have gone through the ethics and professional standards and you would not ..... You would not dare interpret cell phone records if you are not properly qualified to do so. --- That is probably correct M'Lord, but I have often interpreted cell phone records.

Okay. So you did in this instance? Not so? --- No M'Lord.

Why do you say you didn't? --- I put a proposition. When you interview a person you put propositions to them sometimes.

So did you put a thumb suck to him? --- No M'Lord. I put ..... Well the analysis of the cell phone records at that time had not been completed. It was still underway M'Lord. So you were looking at early stages of the analysis.

Are you sure about what you are telling the court now? --- Well I had been informed by the investigating officer that they had not yet carried out the full analysis. Based on the information it had been carried out. Melissa Naidoo ...[indistinct] office and prepared a map.

Yes. And that map was prepared before the interview. --- Correct M'Lord. It was prepared for the purpose of the interview M'Lord.

So that you can question him on his whereabouts? --- Correct M'Lord.

Why was that now necessary? --- Because M'Lord the accused had placed a statement in the docket which said he was at the Flora Market on that day, and the cell phone records did not show that he was at the Flora Market on that day. And that was the main reason that I wanted to put. He said he had been driving on the M2 freeway

04-1084

04-1085

and the cell phone records did not show that he was driving on the M2 freeway.

By your very evidence you are telling the court that you interpreted the cell phone records. --- Partially interpreted M'Lord. We hadn't ..... There hadn't been a full analysis at that stage.

Very well. I just want to ..... If the court will bear with me? All right can I refer you to page 94 please of the record, EXHIBIT DD3.

COURT: EXHIBIT DD3?

MS KOLBE: EXHIBIT DD3 M'Lord, the record.

COURT: Yes?

MS KOLBE: You see there line 13.

COURT: Sorry line? --- Line?

MS KOLBE: 13. 1 3. Page 94, line 1 3 M'Lord.

COURT: Line 1 3?

MS KOLBE: Line 10 M'Lord. You can start at line 10, and the important one is line 13. It starts with Paul; Paul is you. --- Yes M'Lord.

Do you have that? --- Yes M'Lord.

Now what is recorded here? You Mr O'Sullivan say to the accused:

'We place you at the crime scene with your phone at the time of the murder.'

Right. --- Mmm.

'Just before the time of the murder and just after the time of the murder which is approximately the time

04-1085

04-1086

when the car was dumped up the street, we place you there.'

--- Correct M'Lord.

In other words you say to him before the murder I place you in Erongo Street. At the murder, at the scene. Then at Erongo Street. --- Yes M'Lord.

Based on your analysis of the cell phone records. --- Mmm.

Show me your analysis? Show me that on the cell phone records. --- No we hadn't carried out a full analysis at that time M'Lord.

No. --- But when you are interviewing a person ..... By this stage of the interview I wanted to start putting propositions to him. I also put a proposition to him later that he had murdered Odette Barkhuizen. So at this stage of the game the interview is becoming, what I would suggest is, antagonistic. In other words we are trying to put certain things to the person that is being interviewed, in the hope that he may either say this or say that, or whatever.

You put a false proposition to him in the hope that he would now come up with some explanation.

COURT: No, no. Let me answer. Please don't anticipate what his answer is going to be, or his hope. --- M'Lord we put propositions. Quite often one does it when you are interviewing people.

Yes? --- Quite often in the police you will have two suspects and you arrest them together and you put them in different cells. Then you will come into cell A and you will tell by the way the person in cell B

04-1086

04-1087

says you fired the gun. That is considered fair game M'Lord.

The question that is put to you is that the proposition that you put to him that he was on the ...[indistinct]. --- Partly false M'Lord.

MS KOLBE: Partly false? --- Yes.

What was correct and what was false? --- The cell phone records didn't place him at the scene at the time of the murder. It placed him at the scene before the murder and after the murder.

He was refused bail on this very point.

COURT: We have dealt with that. Let us not be aggressive to the witness.

MS KOLBE: As the court pleases M'Lord.

COURT: Let us be very gentle. Can we?

MS KOLBE: Today I only have to be gentle to Mr Du Toit M'Lord.

MR DU TOIT: And I am grateful for that M'Lord.

COURT: No but you know ...[intervene]

MS KOLBE: As the court pleases M'Lord. You know that bail ...[intervene]

COURT: How long do you still want to be?

MS KOLBE: I am still going to be quite a while with this witness M'Lord.

COURT: Is it not perhaps an appropriate time to take an early lunch adjournment?

MS KOLBE: As the court pleases M'Lord. I didn't see what the time was.

COURT: Mr O'Sullivan you know that you are now under cross-

04-1087

examination. --- Yes M'Lord.

You must. --- I must have my lunch alone M'Lord.

No you can have it with everybody, except you don't talk about the towers and everything else like that. Court adjourns until 14:00.

COURT ADJOURNS [12:52] ~ ~ ~ [13:56] **COURT RESUMES**

COURT: Mr O'Sullivan I am warning you still under the oath.

PAUL O'SULLIVAN: (s.u.o.)

Please process Ms Kolbe.

CROSS-EXAMINATION BY MS KOLBE [CONTINUES]: As Your Lordship pleases. Mr Solomon before the adjournment we were at your evidence that your proposition put to the accused regarding where the cell phone records place him was partly true and partly false? --- Correct Your Lordship.

What was false? --- I think I said that the cell phone records put at the scene at the time of the murder Your Lordship.

Was that false? --- Yes Your Lordship.

What about the proposition that his cell phone places him where the deceased's vehicle was found before the murder and after the murder? --- From my memory Your Lordship I seem to recall that was correct.

Is that so? --- From my memory.

Well if I put it to you that it is incorrect? --- Okay it is possible M'Lord.

So if that is incorrect, your entire proposition put to him was false? --- Not so M'Lord, this is 2 and a half years ago and I am my best

04-1089

to remember what we said. But certainly there were discrepancies between where he said he was and where the cell phone records show him to be. Mr O'Sullivan let us just get clarity on this. If the cell phone records show that he was not at the scene of the crime at the time, that he was not in Erongo Road before or after the incident, your entire proposition put to him must be false, must have been false. --- No I do not agree M'Lord.

Oh, why? --- Because from my memory the cell phone records did place him in the vicinity.

Well we had an expert testifying here Mr Hallat who said that, at the time of the shooting the deceased's cell phone placed him approximately 2 kilometres from the scene. --- I was not there.

MR DU TOIT: M'Lord that is not totally correct. I know that proposition to put to Mr Mdlalose.

COURT: Yes.

MR DU TOIT: When my learned colleague here led the evidence. Now the cell phone records said that he was in the vicinity yes. But also it was the evidence they placed on record is that the cell phone records can only show where he was if there is a transaction. Now if there is a transaction you do not shoot a person while you are texting or phoning. It was within 1.8 kilometres in the vicinity and there was a time lapse of an hour. So any person – and that was the proposition that was put could have been there. So that is not in the vicinity. That is not – it was never evidence led that he was there at the scene when it happened, it was in the vicinity and that was always the case exactly.

04-1089

COURT: The operative word here, if I understand correctly is the "vicinity"?

MR DU TOIT: In the vicinity and the evidence is that cell phone records will only show where the phone is when there is a transaction. We went through that, either a text or this. So there was a text an hour before in the vicinity and then an hour later and he was always there. So it was never said that he was not there at the scene. In the vicinity as the witness now answered, that was the evidence of Mr Hallat. It was never the state proposition that he was there at the scene on the cell phone records. I can also say that – I will later argue and I will argue, yes and we will argue. But that was not the evidence, it was never the evidence.

COURT: Okay we heard you.

MS KOLBE: Well there you have it now Mr O'Sullivan, my learned friend has actually assisted me here. There was at the time of the incident no activity on the phone, so there is no ways on earth that you could have placed him on the scene at the time of the murder. It is as simple as that.

COURT: No in the vicinity?

MS KOLBE: No, no M'Lord the issue is this, if we leave aside the vicinity for a moment.

COURT: No you are understanding him to say at the scene.

MS KOLBE: Yes.

COURT: You are referring that to ...[intervenes].

MS KOLBE: If I may refer the court to ...[intervenes].

COURT: No wait a minute let me just check that thing. That is page 94 line?

04-1091

MS KOLBE: Yes line 13.

COURT: Yes.

MS KOLBE: We placed you at the crime scene with your phone at the time of the murder. Now you have heard the state's case. --- Sorry what page M'Lord?

Page 94.

MR DU TOIT: I can just say M'Lord, I agree with that the witness did answer to that.

COURT: Yes.

MS KOLBE: Page 93 line 13. --- Yes correct M'Lord and my answer to your question as to what part of that was incorrect, was the section where I said, we place you at the crime scene at the time of the murder.

That was blatantly false because the cell phone records show no activity at that time? --- That is correct.

So it was a blatantly false proposition.

COURT: Well do you know Mr O'Sullivan that the cell phone was not in operation, or there were no activities on the phone? --- I have no knowledge of that M'Lord. What I have said was, if I look at the words:

> "We place you at the crime scene with your phone at the time of the murder, just before the time of the murder and just after the time of the murder. Which is approximately the same time when Nichole was dumped up the street, we place you there."

Yes, ja, ja placed you there where the car was found? --- Yes

04-1091

M'Lord.

Before and after? --- No I said placed you there. You know when you are using your phone M'Lord in a distance of a 100 metres you are going to place that person in that vicinity.

Mr O'Sullivan, you saw the cell phone records before the interview? --- That is correct M'Lord.

You would have seen that at the time of the incident, as my learned friend has placed on record, there was no activity on the phone, correct? --- At the time of the murder, yes M'Lord.

So to put to him that your phone places you at the crime scene was blatantly false because you knew that was ...[intervenes].

COURT: I think incorrect. When you say it was false you know, does it not carry the element of intention?

MS KOLBE: Yes M'Lord it does because he sees the cell phone record, he cannot make that proposition.

COURT: When you say is somebody having an intention, it means he has an intention to lie, as opposed to the "incorrect".

MS KOLBE: I think Your Lordship ...[intervenes].

COURT: Ja you can make those arguments in your submissions. It was already corrected that it was incorrect.

MS KOLBE: That is correct M'Lord, but it was the witness's evidence that it is a fair game, you may put a false proposition. So there is the intention.

COURT: Sorry when he says?

MS KOLBE: His evidence was that it is permissible to put a false

proposition to a witness that you interview to knowingly put a false proposition to a witness. That was his evidence. Did I understand you correctly? --- That is not correct M'Lord.

Yes what is your evidence? --- What I said was we put suppositions to the witness that is being interviewed. In this case I placed three suppositions in front of him, one of which was incorrect. Now I was not looking at the cellular phone records at the time I interviewed him. M'Lord if you have a look it is a hundred and something, almost 200 pages of interview, it is 135 pages of interview and the interview lasted 3 hours. Over that period of time, what I said at the interview is not the evidence I am giving today. In other words, I am not giving evidence today that he was, or that his cell phone placed him at the crime scene. I merely stated during the course of the interview that we placed him at the crime scene with his phone, to see what he would say M'Lord.

Knowingly that the cell phone records did not place him there? --- Well M'Lord the problem with cell phone records, as the prosecutor rightly pointed out, if you are not transacting on the phone at the time, you get nothing. So I just put that supposition to him and I have made it clear that I had meant that there is no cell phone record that placed him at the scene, or placed his phone at the scene. But that does not mean that he was not at the scene.

Mr Paul O'Sullivan yes, now let us proceed with this interview now following on the supposition you had just put to the accused. Then let us continue on line 16 on page 94. The accused says, "okay" after you have put this false proposition – this supposition to him. Then you continue

crime scene before and after. Now this witness says he does. How I am supposed to deal with that without asking him to ...[intervene]

MR DU TOIT: M'Lord that is now a bit dangerous. The cell phone records .....even it was admitted ..... before the crime was committed or ..... ja the accused was indeed on the scene and afterwards he was called; and the evidence is he came back. So before and after it now becomes are we talking about ..... immediately, 1 minute, 2 minutes? Because the evidence thus far is he was there before this thing ...[intervene]

COURT: And he went to see clients ...[intervene]

MR DU TOIT: Even Robert Kenga ...[intervene]

COURT: And he apparently picked up some pizzas for the ...[intervene]

MR DU TOIT: And then afterwards he came back. So before and after he was at the scene.

MS KOLBE: As the court pleases M'Lord. Let me put it to you differently. You put to him that his cell phone records put him on the scene at the time of the crime. --- M'Lord I may have done that. If you can refer me to the correct page number.

Well. And you told the court that you know it is wrong. It is not true. --- That ...[intervene]

That is your evidence that you gave last week. --- Correct M'Lord. But at the time and the cell phone analysis had not been completed at that stage. But at the time of the interview I thought that the cell phone ..... I genuinely believed that the cell phone records did place him at the scene.

Well. --- So there was no deliberate misleading attempt whilst interviewing the witness M'Lord.

Very well. Let us just then go to your questions regarding his cell phone. May I refer you to page 55. 55. Then if you go right to the middle of that page you will see a heading continuation the day in question. Right. So the day of the murder. Right. Then you talking:

'All right, can we now come to'

And the accused says:

'Yes sure'.

You say:

'To the day of the murder'.

Can you just turn that over so that you are not reading from it. He clearly has his statement with him or what? Or did you give it to him?

COURT: Sorry where is that? --- I can't remember.

MS KOLBE: M'Lord line 20 on page 55. Right you can't remember what it was? It is possible it was a statement M'Lord.

Then go to line 25 on the same page:

'What time did you get up?'

And the accused then says:

'So ja it was between 18:00 and 18:30.'

Are you still with me? --- Yes M'Lord.

Then please turn to page 58, line ...[intervene]

COURT: Just 1 minute. Yes?

MS KOLBE: Line 17. There he tells you that he went to the office that

COPY

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF GAUTENG

HELD AT JOHANNESBURG

In the matter between:

KLERK VAN DIE HOF
PRIVAATSAK/PRIVATE BAG X1
2016 -03- 29
JOHANNESBURG 2000
CLERK OF THE COURT

Case No: **48/27/2015**

THE STATE

and

GEORGE FREDERICK BARKHUIZEN *Applicant/Accused*

SUBPOENA *DUCES TECUM* IN TERMS OF SECTION 179(1)(a) OF THE CRIMINAL PROCEDURE ACT, 1977 (ACT 51 OF 1977)

TO: The investigating officer in the abovementioned matter, Constable Naomi Weidemann, or any other designated police official by her.

INFORM: Mr Paul O'Sullivan

OF: A physical address unknown to the accused, but known to the investigating officer, Constable N Weidemann, alternatively at PO

JN

05-763