

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Judge Antoine Kesia-Mbe Mindua, Presiding, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Thursday, 15 April 2021
10 (The hearing starts in open session at 14:32 p.m.)
11 THE COURT USHER: [14:32:17] All rise. The International Criminal Court is
12 now in session. Please be seated.
13 PRESIDING JUDGE MINDUA: [14:32:38](Interpretation) The hearing is now
14 in session.
15 Good afternoon to everybody.
16 Court officer, will you please call the case.
17 THE COURT OFFICER: [14:32:56] Thank you, Mr President. The situation
18 in Mali, in the case of The Prosecutor versus Al Hassan Ag Abdoul Aziz Ag
19 Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
20 For the record, we are in open session.
21 PRESIDING JUDGE MINDUA: [14:33:14](Interpretation) Thank you very
22 much, court officer.
23 As usual, we will start with the introductions.
24 Prosecution, please.
25 MS HUCK: [14:33:27] (Interpretation) Good afternoon, your Honours, the

1 Prosecution is represented by Marie Claude Umurungi, Gilles Dutertre and
2 myself, Florie Huck.

3 PRESIDING JUDGE MINDUA: [14:33:39](Interpretation) Thank you very
4 much, Madam Prosecutor.
5 Defence.

6 MS TAYLOR: [14:33:43] Good afternoon, Mr President, your Honours. The
7 Defence for Mr Al Hassan is represented today by myself, Melinda Taylor,
8 Michael Rowse and Sophia Westen. Thank you.

9 PRESIDING JUDGE MINDUA: [14:34:02](Interpretation) Thank you very
10 much, Ms Taylor.

11 I stopped because there seems to be some sort of background noise in the -- in
12 my headset.

13 Court officer?

14 Ms Taylor?

15 MS TAYLOR: [14:34:16] Mr President, I just wonder if it might be an open
16 mic at the detention unit because it sounds like the detention unit to me.

17 PRESIDING JUDGE MINDUA: [14:34:32](Interpretation) Thank you,
18 Ms Taylor. The court officer is checking.

19 Now, that's now been resolved, I now turn to the Legal Representatives of
20 Victims.

21 MR KASSONGO: [14:34:46](Interpretation) Thank you, your Honours.
22 Good afternoon everybody. The team representing the LRVs is changed
23 today, I am here by myself today, Maître Kassongo.

24 PRESIDING JUDGE MINDUA: [14:35:02](Interpretation) Thank you very
25 much, Maître Kassongo.

1 This afternoon, we will continue hearing the Prosecution's 28th witness,
2 P-653 -- 0635.

3 I now turn to the witness.

4 Good afternoon, Madam Witness. Can you hear me?

5 WITNESS: MLI-OTP-P-0635 (On former oath)

6 THE WITNESS: [14:35:36] Yes, I can. I had to unmute myself.

7 Good afternoon, your Honour.

8 PRESIDING JUDGE MINDUA: [14:35:44](Interpretation) Thank you very
9 much, Madam Witness.

10 Welcome again on behalf of the Chamber.

11 I would also like to remind you that you are still under oath and that you must
12 tell us the truth, the whole truth and nothing but the truth. I would also like
13 to remind you of my practical advice when it comes to speaking.

14 This afternoon, we will continue with the cross-examination by the Defence. I
15 would therefore give the floor to Ms Taylor.

16 Ms Taylor, you have the floor.

17 QUESTIONED BY MS TAYLOR: (Continuing)

18 Q. [14:36:34] Good afternoon, Madam Witness.

19 A. [14:36:38] Good afternoon, Ms Taylor.

20 Q. [14:36:45] Madam Witness, is it possible to make a forensically sound
21 positive identification by only comparing questioned images?

22 A. [14:36:56] I'm often asked to compare questioned to questioned, but that
23 is only to link them; so I'm not sure what you mean by "forensically sound". If
24 that means a positive ID, we're only linking them, the questioned to questioned
25 if there is no known.

1 Q. [14:37:21] Now yesterday, we discussed cognitive bias. Can you explain
2 what a blind verification is?

3 A. [14:37:31] Yes, a blind verification in terms of like for an examination - it's
4 easier to describe in this context - is when I, as an analyst, would make
5 a positive identification with my materials and then I would pass on more than
6 just the identification that I made, there would be controlled samples in there
7 as well. So if I was to give it to another analyst that has equal qualifications
8 that I do, I would give them the materials that I used as well as controlled
9 samples so that there are several different latent prints or several different
10 identification cards to choose from.

11 Q. [14:38:27] And did another analyst with the same qualifications as you
12 conduct a blind verification of your results?

13 A. [14:38:35] No, that was not done in this case.

14 Q. [14:38:42] Is contemporaneous documentation a measure that's
15 recommended to address issues of cognitive bias?

16 A. [14:38:52] Yes, it is, and that is my Excel spreadsheet that I used. That is
17 where I made my notes.

18 Q. [14:39:01] Was that Excel spreadsheet attached to your report?

19 A. [14:39:07] Yes, it is.

20 Q. [14:39:12] Do you know at the end, as an annex?

21 A. [14:39:18] Yes, indeed, annex 1.

22 Q. [14:39:24] Now yesterday, at page 17, you testified that if you looked at
23 known images first, your mind can subconsciously or consciously put a bias in
24 there. Does that mean that your mind would try to make things fit?

25 A. [14:39:46] Yes, that is how I understand the cognitive bias is, if you were

1 to look at known, then you have a better quality -- generally speaking, a better
2 quality image and you can see more detail. So that is why we look at the
3 questioned first and do a full technical and analytical examination there first,
4 before ever looking at knowns.

5 Q. [14:40:13] Would the same problem arise if you were to see someone's
6 else geolocation analysis before you perform your own?

7 A. [14:40:25] Yes. That would be another -- another report that someone
8 were to look at, yes.

9 Q. [14:40:37] Did you use a logical linear methodology to confirm
10 similarities?

11 A. [14:40:48] Can you rephrase, I'm not entirely sure I understand your
12 question.

13 Q. [14:40:54] If I can rephrase it. Did you use the following approach, that
14 if questioned image A is similar to questioned image B, and questioned image
15 A is similar to known image C, then all images are similar?

16 A. [14:41:17] Yes, that is how I conduct my analysis or comparisons.

17 Q. [14:41:23] Now Madam Witness, it's correct, isn't it, that a tree is similar
18 to a frog because they are both green? That's correct?

19 A. [14:41:35] That would be a class characteristic I suppose, but they're
20 awfully different.

21 Q. [14:41:40] And a tree is similar to a flower because they're both plants,
22 that's correct?

23 A. [14:41:46] That's also a very broad class characteristic.

24 Q. [14:41:50] But a frog is not necessarily similar to a flower -- that's also
25 correct, isn't it?

1 A. [14:41:57] Correct.

2 Q. [14:42:00] Now, before you prepared your report, did you meet with the
3 head of the trial team on 26 August 2019?

4 A. [14:42:14] I'm not with the Prosecution team -- oh, yes, a few times, I'm
5 not sure of the date.

6 Q. [14:42:21] Do you recall if it was after the confirmation hearing in this
7 case?

8 A. [14:42:27] I do not know.

9 Q. [14:42:31] Did anyone explain to you why they considered it necessary to
10 prepare the report they were asking you to do?

11 A. [14:42:41] No, I was told that (indiscernible) to look at locations.

12 Q. [14:42:47] Did anyone explain to you why it hadn't been done earlier?

13 A. [14:42:53] No.

14 PRESIDING JUDGE MINDUA: [14:42:57](Interpretation) Prosecution?

15 MR DUTERTRE: [14:43:00](Interpretation) Your Honour, these are
16 speculative questions. She was given a mission and the whys and wherefores
17 are not within her remit.

18 PRESIDING JUDGE MINDUA: [14:43:17] Maître Taylor?

19 MS TAYLOR: [14:43:18] Mr President, my questions were directed to what
20 was told to her or explained to her during meetings with the Prosecution. I
21 was not asking her to speculate.

22 In any case, she's answered and given the time, I would suggest we move on.

23 PRESIDING JUDGE MINDUA: [14:43:39](Interpretation) Please continue,
24 Ms Taylor.

25 MS TAYLOR: [14:43:42]

1 Q. [14:43:42] Madam Witness, I'm going to read to you a quote from the
2 instruction letter. It's OTP tab 9, MLI-OTP-0072-0024, and it says:
3 Basing yourself on the reference material and other means necessary, such as
4 for example *Google Earth*, the analysis should allow the geolocation of all the
5 questioned material listed in the annex.

6 Madam Witness, this phrase, "other means necessary", did you understand this
7 to mean that the Prosecution expected you to find materials that would lead to
8 a positive identification of the location of every questioned image in the annex?

9 A. [14:44:47] I understood this passage to mean that, if possible, if there were,
10 for instance, GPS location information in the image metadata, that I could use
11 that with Google Earth to make a comparison or to provide more analysis.

12 Q. [14:45:10] Now Madam Witness, is it correct that the Prosecution
13 provided you an annex in the instruction letter, that linked questioned
14 materials to reference materials and grouped them in specific locations?

15 A. [14:45:32] Yes.

16 Q. [14:45:37] So from the outset, it's correct that you knew the Prosecution's
17 case as concerns the location of the questioned videos?

18 A. [14:45:49] I was provided with questioned videos and still images,
19 multimedia, that was in one folder, "Questioned", and then I was provided
20 with another folder that said, "For reference material, use these reference
21 materials", and there was many inside there -- inside the folders, many
22 different still images, videos, multimedia, reference materials.

23 Q. [14:46:18] Madam Witness, if we can turn to Prosecution tab 1, that's
24 MLI-OTP-0069-9281 at 9364. This is the annex that was attached to the
25 Prosecution's instruction letter.

1 MS TAYLOR: [14:46:30] And if that can be shown on your screen.

2 Q. [14:46:58] Now, Madam Witness, it's correct, isn't it, that in this annex, the
3 Prosecution is linking the questioned materials to the reference materials and
4 the specific location?

5 A. [14:47:16] Yes, I have questioned materials, and then for reference
6 materials, I have photographs, panoramas, drone imagery. And then I do
7 have a name of the folder, which I didn't recognise at the time, but maybe
8 linked to a location, I am not sure of that.

9 Q. [14:47:36] Madam Witness, at page 9364, does this not say, "Name and
10 Site Number", and underneath it, "Gouvernorat" and then "BMS"?

11 A. [14:47:51] Yes, it does.

12 Q. [14:47:53] Now Madam Witness, if we could turn to Prosecution tab
13 10 -- oh, sorry, no.

14 Now according to your report, is it correct that you requested a copy of the
15 files listed in the annex to your mission letter? I'll reformulate.

16 Is it correct that in preparing your report, you requested a copy of the files
17 listed in the annex to your mission letter?

18 A. [14:48:33] Yes, I requested a copy of the original files listed in the annex
19 for my materials.

20 Q. [14:48:41] Now if we could turn to Prosecution tab 10, that's
21 MLI-OTP-0072-0027 at 0028, second page of that annex.

22 Do you have that in front of you, Madam Witness?

23 A. [14:49:06] Yes, I do.

24 Q. [14:49:09] Now, is it correct, Madam Witness, that this annex lists for
25 reference material: Drone imagery, panoramas, no photographs, and

1 questioned material?

2 A. [14:49:29] Yes.

3 Q. [14:49:31] And if we could turn to page 0029, is it correct that for this site
4 as well, the annex lists: Drone sites, panoramas, no photographs,
5 and questioned material?

6 A. [14:50:04] Are you referring to "Drone_Site 17" and "Drone_Site 14"?

7 Q. [14:50:14] Yes, this is the location referred to as "Hôtel Bouctou"?

8 A. [14:50:20] Yes. So there's drone video, there's panoramas, and there are
9 no photographs.

10 Q. [14:50:30] So Madam Witness, would it be correct that if you asked for
11 and received the items listed in the annex, that you didn't receive photographs
12 for this site?

13 A. [14:50:43] Yes, if they're not there.

14 Q. [14:50:49] So if the -- if there's no listing of photographs in this annex, you
15 didn't receive photographs?

16 A. [14:50:57] There may be times when I would receive photographs in
17 a different way, if someone else had photographs.

18 Q. [14:51:10] So it's possible --

19 A. [14:51:12] I'm not sure what you're (indiscernible)

20 Q. [14:51:14] So it's possible, Madam Witness, that you might have asked to
21 receive photographs at a later date?

22 A. [14:51:21] I don't recall doing that, but that's possible.

23 Q. [14:51:26] Now, in the annex that's in front of you, the Prosecution had
24 grouped the questioned images together by location. Did you rely upon the
25 Prosecution's grouping or did you conduct your own analysis as to where the

1 questioned items should be grouped?

2 A. [14:51:51] I performed an analysis on the questioned images first and then
3 I -- as I said before, I do a full technical analysis on the questioned images and
4 list my class and individualising characteristics, and, then, once all of that is
5 complete, then I -- I'm able to look at the known images reference materials.

6 Q. [14:52:22] If we can turn to your report, this is Prosecution tab 1,
7 MLI-OTP-0069-9281, and if we can look at page 9293, this concerns images that
8 were analysed -- questioned images analysed by reference to the BMS. And
9 on this page, it includes two items, MLI-OTP-0001-7604, and on the next page it
10 includes MLI-OTP-0001-7612, and I'm going to bring up the first image first,
11 that's MLI-OTP-0001-7604.

12 A. [14:53:30] I'm not sure where you're -- I got lost in there, I apologise.

13 Q. [14:53:35] Madam Witness, do you have page 9293 of your report in front
14 of you?

15 A. [14:53:43] Yes, now I do.

16 Q. [14:53:49] And can you see at the bottom, it's referring to a "Questioned
17 Image: MLI-OTP-0001-7604"?

18 A. [14:54:04] Yes.

19 Q. [14:54:06] And this is a questioned image that you have classed within the
20 BMS in your analysis?

21 A. [14:54:17] I'm sorry, I'm having a hard time hearing you.

22 Q. [14:54:20] This is a section concerning the BMS.

23 A. [14:54:28] Yes.

24 Q. [14:54:29] Now, if we can show it. If we can pull it up on evidence 1.
25 So Madam Witness, can you confirm that you analysed this photograph and

1 decided to include it within the questioned images for the BMS?

2 A. [14:55:10] It was not my decision to include it. It's in the questioned
3 folder for that location.

4 Q. [14:55:18] So it's correct then, Madam Witness, that you relied upon the
5 Prosecution's grouping of questioned items?

6 A. [14:55:28] The Prosecution gave me folders with questioned images, yes.

7 Q. [14:55:34] Now, is it correct that you made no conclusions regarding this
8 questioned item? And if we can turn to page 50, if that would assist, that's
9 page 9330 of your report, the full reference being OTP tab 1,
10 MLI-OTP-0069-9281 at 9330.

11 A. [14:56:19] As this was a very narrow field of view, it was difficult to make
12 any kind of comparison to a location.

13 Q. [14:56:30] So is it correct that your report did not mention all the
14 questioned items for which you were unable to make a positive identification?

15 A. [14:56:41] I didn't make any positive identifications except for the image
16 that was interlaced.

17 Q. [14:56:49] So if, during your analysis, it was apparent to you that an
18 image did not -- could not be located in a particular site, did you always
19 include that in your report?

20 A. [14:57:07] I discuss it in the technical information area as well as the
21 analysis, but as I said, because of the field of view is so narrow, there's not a lot
22 that I can say about the location.

23 Q. [14:57:25] Before you signed and finalised your report, were you asked to
24 take anything out of it?

25 A. [14:57:32] No.

1 Q. [14:57:36] Were you contacted by Mr Duterte just before you were
2 supposed to finish your report in about March 2020?

3 A. [14:57:50] Perhaps, I don't recall.

4 Q. [14:57:55] Do you recall if, after you finished your report, you were asked
5 again to geolocate three videos?

6 A. [14:58:04] I was asked to provide an addendum, another report, yes.

7 Q. [14:58:13] And were these three videos linked to the Hotel La Maison?

8 A. [14:58:22] I do not recall, I don't know the names, I don't ... It maybe -- if
9 we can -- if I could look at it, the report?

10 Q. [14:58:31] I can refer you to Defence tab 10, there's a contact note.

11 THE COURT OFFICER: [14:58:51] Ms Taylor, can we have the ERN number
12 because I believe that Madam Witness doesn't have the Defence --

13 MS TAYLOR: [14:58:59] I'm about to read it, sorry. It's MLI-OTP-0077-4203.

14 THE WITNESS: [14:59:13] Am I meant to have that?

15 MS TAYLOR: [14:59:16]

16 Q. [14:59:16] Is it up on your screen?

17 Now, according to this note on 30 March 2020 ...

18 "On the same day, 30 March 2020, Gilles Duterte asked P-[0]635" - and, I'm not
19 sure if I can give this name, so I will leave it out - "whether 3 videos could be
20 added to P-[0]635's geolocation mission and provided a link to part of a
21 platform within which the said videos could potentially be geolocated for them
22 to assess the amount of work required."

23 Do you recall this interaction?

24 A. [15:00:06] Yes.

25 Q. [15:00:13] And if we could go to the instruction letter, that's OTP, tab 13,

- 1 and I'll read out the MLI --
- 2 A. [15:00:24] Is there a way to increase the volume? I ... I have my volume
3 at high.
- 4 Q. [15:00:32] oh, I think I have to speak more to the -- the problem is I'm
5 turning that way rather than directly into the mic, I apologise for that. I
6 probably should have spoken --
- 7 A. [15:00:45] Oh, that's better.
- 8 Q. [15:00:46] I think that's going to be better. Is that better, Madam
9 Witness?
- 10 A. [15:00:54] Yes, much better. Thank you so much.
- 11 Q. [15:00:59] Now, if we could pull up, it's MLI-OTP-0078-0933 at 0946.
- 12 A. [15:01:29] Is this the mission letter?
- 13 Q. [15:01:35] Yes. No, I apologise, that's not the mission letter. Madam
14 Witness, do you recall if, in your original report, you'd been asked to locate
15 images in Hotel La Maison?
- 16 A. [15:02:00] May I go back to the -- my first report?
- 17 Q. [15:02:03] Yes, of course.
- 18 A. [15:02:04] I -- I didn't refer to these locations by their names and so I -- I
19 mean, I did in the report, but I don't -- I don't recognise the names. Yes, that's
20 location 7.
- 21 Q. [15:02:20] And is it correct that in your original report, the three videos
22 that you'd been asked to geolocate, you hadn't geolocated them?
- 23 A. [15:02:35] I didn't hear your question, apologies.
- 24 Q. [15:02:41] Is it correct that these three videos were included in the
25 questioned items that were in the instruction letter given to you in

1 August 2019?

2 A. [15:02:56] Yes, they were, the questioned materials -- the questioned
3 multimedia was.

4 Q. [15:03:00] And is it correct that in your original report, you did not make
5 any conclusions concerning these three videos?

6 A. [15:03:10] I believe that's correct, I'm just going to confirm with my
7 conclusions. My conclusions -- the first conclusion is that MLI-OTP-0018-0102,
8 0249 and 00 -- no, 0289, are those the media that you're referring to?

9 Q. [15:04:04] They're three videos starting with MLI-OTP-0018. If you can
10 just give me just a minute, Madam Witness, I apologise.

11 If I can assist you, I have a reference to your addendum mission letter, that is
12 annex 13, MLI-OTP-0078-0933, at 0956, and it says in the second paragraph:

13 "The questioned materials have already been dealt with in your report
14 registered under MLI-OTP-0069-9281. They now need to be analysed against
15 a new reference material which consist in a panorama of the inside of the
16 building Hôtel La Maison."

17 And then on page 0955, if that could be brought up, it lists the videos in
18 question, starting with MLI-OTP-0018.

19 A. [15:05:54] Yes, it may be easier to look at my charts, then I'll be able to see
20 the actual video --

21 Q. [15:06:01] Madam Witness, could you perhaps turn to your --

22 A. [15:06:03] (Overlapping speakers) video --

23 Q. [15:06:03] -- your original report, and it's page 50 of your original report.
24 Do you make any conclusions regarding these three videos in your original
25 report?

1 I believe the reference would be MLI-OTP-0069-9281 at 9336.

2 A. [15:07:28] I have MLI-OTP-0069-9336 up, and under "Location 7", I say
3 that there is evidence to support that they depict the same location, but there
4 was no reference material for the interior location.

5 Q. [15:07:48] Now after this, is it correct that the Prosecution sent you a link
6 to a 3D platform?

7 A. [15:07:57] Yes, I do recall that 3D platform, yes.

8 Q. [15:08:04] And is it correct that you viewed the 3D platform, this link?

9 A. [15:08:10] I opened the link, but since I don't use that as known reference
10 material, I did not use it for analysis.

11 Q. [15:08:20] (Overlapping speakers)

12 A. [15:08:20] I used the images.

13 Q. [15:08:22] Madam Witness, my question was, did you view it?

14 A. [15:08:26] Yes, I viewed it.

15 Q. [15:08:27] And if we could play it, it's MLI- (Overlapping speakers)

16 A. [15:08:30] I opened the file and I looked at it and then closed it because I
17 realised it was not a known reference.

18 MS TAYLOR: [15:08:37] If we could play the video, it's MLI-OTP-0080-2046.

19 If we could --

20 THE COURT OFFICER: [15:09:13] Ms Taylor, is the video confidential?

21 MS TAYLOR: [15:09:19] I believe it will be better to play it confidentially,
22 we'll be playing it from evidence 2.

23 THE COURT OFFICER: [15:09:26] Yes, indeed, but we then need to go into
24 private session.

25 MS TAYLOR: [15:09:31] Can we go into private session? I don't think we

1 need to then in that case, if the Prosecution has no objection.

2 PRESIDING JUDGE MINDUA: [15:09:41](Interpretation) Prosecutor?

3 MR DUTERTRE: [15:09:46](Interpretation) From my memory, it's confidential,
4 taking into account the video aspects therein which have been classified as
5 confidential.

6 PRESIDING JUDGE MINDUA: [15:10:00](Interpretation) Court officer, can
7 we go into private session?

8 Private session, please.

9 (Private session at 3.10 p.m.)

10 (Redacted}

11 THE COURT OFFICER: [15:10:24] We are in private session, Mr President.

12 (Redacted}

13 (Redacted}

14 (Redacted}

15 (Redacted}

16 (Redacted}

17 (Redacted}

18 (Redacted}

19 (Redacted}

20 (Redacted}

21 (Redacted}

22 (Redacted}

23 (Redacted}

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25 (Redacted}

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Open session at 3.15 p.m.)

6 THE COURT OFFICER: [15:15:25] We are back in open session, Mr President.

7 PRESIDING JUDGE MINDUA: [15:15:37](Interpretation) Thank you very
8 much.

9 Ms Taylor.

10 MS TAYLOR: [15:15:42]

11 Q. [15:15:43] Madam Witness, is it correct that this link to the video shows
12 a mixture of the panoramic images and the questioned images -- the videos
13 you'd been asked to analyse?

14 A. [15:15:58] Yes, it appears to.

15 Q. [15:16:02] And do you recall writing to the Prosecution after you received
16 this link telling them that it was a mixture of known reference points and
17 questioned images?

18 A. [15:16:18] Yes, I remember opening the video link and seeing that it was
19 not images, and that it was a -- some sort of model. I did not play through it.
20 I closed it and said that this -- I need the known images for my work. I think I
21 explained to them that a 3D model is -- is a great reference for demonstrative
22 and it demonstrates nicely things that are viewed. However, for my work, I
23 need a known reference and that is not a known reference.

24 Q. [15:16:55] Madam Witness, my question was, did you tell the Prosecution

1 that this link included images taken from the questioned videos?

2 A. [15:17:08] I don't recall that, but if you say that's in my notes, yes.

3 PRESIDING JUDGE MINDUA: [15:17:20](Interpretation) Prosecutor?

4 MR DUTERTRE: [15:17:23](Interpretation) If it is somewhere, it would be
5 useful if Ms Taylor could show that to the witness -- so it would be good to
6 show it to the witness by fairness.

7 MS TAYLOR: [15:17:41] Mr President, I'm happy to do so, but I was following
8 the decision on the conduct of proceedings, which requires us to ask the
9 witness openly before referring them to documents.

10 PRESIDING JUDGE MINDUA: [15:17:59](Interpretation) Indeed, Ms Taylor.

11 MS TAYLOR: [15:18:15]

12 Q. [15:18:15] Now this is a reference -- it's a continuation of an exchange.

13 We have two contact notes between you and the Prosecution. These aren't the
14 original correspondents, but according to paragraph -- the second paragraph of
15 this note, it says that after you received this link, you sent a question where
16 you gave a comment, and I'm reading out the paragraph:

17 "After P-[0]635's first question (whether the Mali team was asking for an image
18 comparison analysis of the questioned *Hotel la Maison* to the questioned 3D
19 model), P-[0]635 made the following comment: *The link sent to her took her to*
20 *a video of someone (whom she assumes as the person that created the 3D model?)*
21 *"flying" through a 3D model.*

22 After asking the second question (whether the Mali team was trying to
23 authenticate the 3D model), P-[0]635 made the following comments:

24 *The forensic scientist that created the 3D model would have to speak to how the model*
25 *was created and to verify its accuracy. Forensic video analysis is the examination of the*

1 *technical elements of the multimedia files (video and still images, mainly) and then the*
2 *forensic image comparison is conducted between questioned and known multimedia.*
3 *Forensic Image comparison to a 3D model as the "known" is not forensically sound*
4 *because it is a model created by a person, likely from the questioned material."*

5 A. [15:19:54] Yes, I agree with all of that.

6 Q. [15:19:56] So it's correct, Madam Witness, that you had sufficiently
7 viewed the link to ascertain that it was likely created by someone from
8 questioned material?

9 A. [15:20:11] Yes, I would have seen that the -- I recognised images, because
10 I had already analysed -- technically analysed all of those questioned images in
11 my previous report.

12 Q. [15:20:31] (Microphone not activated)

13 A. [15:20:33] You're muted.

14 Q. [15:20:36] I apologise. Is it correct that this video, this model, would
15 have been built on certain assumptions as to where certain images should be
16 placed in the model?

17 A. [15:20:49] Yes, that's my assumption. Although I don't -- I don't create
18 3D models, so I'm not entirely sure how they do it. What I know is that it's
19 generally used for demonstrative purposes.

20 Q. [15:21:12] So it's correct that you had access to someone's else's
21 assessment as to location of these videos before you prepared your report?

22 A. [15:21:23] As I said, I -- I had already examined -- technically I had
23 already done my full analysis on the questioned material, and then after that
24 was when I got this new mission letter and the link was sent to me. I saw
25 images that I recognised and I realised that it was a 3D model and shut it

1 down, and then talked to -- and you read what I wrote to the Prosecutor.

2 Q. [15:21:55] Now is it correct that for this addendum, you were asked to
3 compare these three videos to a panorama photo, the one that was in the 3D
4 video?

5 A. [15:22:10] I was asked to compare it to new reference material, the
6 panoramas, that's correct.

7 Q. [15:22:17] And did you then ask the Prosecution about how this
8 panorama was created?

9 A. [15:22:28] I didn't ask how it was created. I know how panorama is
10 created, it's from several images. So I would have asked for the original
11 images, if they were available to me.

12 Q. [15:22:43] And is it correct that the Prosecution asked you to liaise with
13 a Prosecution staff member, I'm not sure if you know the pseudonym, P-631.

14 MS TAYLOR: Can I use the name? I'm asking the Prosecution if I can use
15 the name?

16 So if I can ask to go into private session then.

17 PRESIDING JUDGE MINDUA: [15:23:07](Interpretation) Court officer, please
18 could you take us into private session.

19 (Private session at 3.23 p.m.)

20 THE COURT OFFICER: [15:23:16] We are in private session, Mr President.

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18 (Open session at 3.33 p.m.)

19 THE COURT OFFICER: [15:33:19] We are back in open session, Mr President,
20 and the witness has been informed that she can now turn on her audio.

21 PRESIDING JUDGE MINDUA: [15:33:43](Interpretation) Thank you very
22 much, court officer.

23 Ms Taylor.

24 MS TAYLOR: [15:33:49] For the sake of completeness, given that my colleague
25 has raised this, can we turn to tab 12, that's Defence tab 12, MLI-OTP-0080-2038

1 and I can read out the last paragraph, which gives a very clear date,
2 specifically:
3 (Interpretation) On 3 April 2020, (In English) P-635 -- sorry, I'm doing English --
4 (Interpretation) P-635 asked the IEU to send the originals of the images
5 MLI-OTP-0006-2074 to MLI-OTP-0006-2109 in the dossier Sharefile.

6 Q. [15:34:43] (In English) So it's correct, Madam Witness, that that occurred
7 on 3 April?

8 A. [15:34:55] I don't recall the specific date, but it says that in the letter, yes.

9 Q. [15:35:04] Is your main report dated 31 March 2020? There's no date on
10 it, if you recall?

11 A. [15:35:20] On my report?

12 Q. [15:35:25] Your original report, do you recall what date you submitted it?

13 A. [15:35:30] I don't recall the date that I -- no, that I submitted it. My -- the
14 date of my report is April 9th 2020.

15 Q. [15:35:43] Madam Witness, are you referring to the addendum report or
16 the original report?

17 A. [15:35:49] The addendum report.

18 Q. [15:35:52] Do you recall the date of the original?

19 A. [15:35:56] I will just look at it for reference.

20 March 31st, 2020.

21 Q. [15:36:15] Now, Madam Witness, is it correct that you reviewed the
22 questioned videos to identify visual signs of editing?

23 A. [15:36:26] Yes.

24 Q. [15:36:29] Would you agree that if there's visual skips, then this could be
25 an indication that the video has not been shot in one continuous shot?

1 A. [15:36:41] Yes. I call them "clips", and it's clearly visible when there's a
2 clip, a change in the clip.

3 Q. [15:36:54] Would you agree that if the person who shot the videos testifies
4 that he edited the videos, then this is a relevant indication that they were
5 edited?

6 A. [15:37:10] There are many different ways to edit a video and putting clips
7 together is one of them. So what it appears to be is that there's a video that's
8 shot and then that's a clip, and then perhaps moved on, and then that's another
9 clip and then they are put together. That's one of the ways you can edit.

10 Q. [15:37:32] Madam Witness, perhaps you didn't hear me. If the person
11 who created or shot the videos, testifies that he edited the videos, is that
12 a relevant indication that the videos had been edited?

13 A. [15:37:50] Yes, if he says that it's -- the videos are edited, then they're
14 edited, yes. Do I understand correctly?

15 Q. [15:38:02] Yes. Now, it's correct that --

16 A. [15:38:02] (Indiscernible)

17 Q. [15:38:04] -- in OTP, tab 2, that's MLI-OTP-0069-9369, you identified
18 certain videos as being edited and others as not being edited. Did you review
19 all the questioned videos for editing?

20 A. [15:38:24] Yes, I did. I looked for clips being put together that is a visual
21 indication of an edit, yes.

22 Q. [15:38:38] Do you believe that you had sufficient time to perform this
23 thoroughly?

24 A. [15:38:44] I had already examined the questioned videos and materials for
25 location 7, so, yes, I had enough time.

1 Q. [15:38:58] Madam Witness, I'm not speaking about location 7. I'm
2 discussing all the videos that you identified as either being edited or not edited.
3 Is it possible, Madam Witness, that you might have missed certain videos or
4 skips in time in certain videos?

5 A. [15:39:17] Yes, I -- in my original report, I said that several of the
6 videos -- questioned videos had edits that were clear indications of clips.

7 Q. [15:39:30] Madam Witness, is it possible that there are other videos that
8 you did not identify as being edited that were edited?

9 A. [15:39:39] I'm not understanding what you're referring to. Yes, there
10 were videos -- questioned videos that had clips and I intended to mention
11 those if I saw it, yes. It didn't appear to have a relevance to my comparison
12 analysis, that type of edit, so I may have missed one, yes.

13 MS TAYLOR: [15:40:07] I believe we'll have to go into private session to play
14 this video.

15 PRESIDING JUDGE MINDUA: [15:40:22](Interpretation) Do we really need
16 to go into private session for that?

17 Prosecution? Do we need to go into private session for the video?

18 MR DUTERTRE: [15:40:39](Interpretation) It all depends on the video,
19 your Honour. If I had the ERN, I would know exactly what we were referring
20 to.

21 MS TAYLOR: [15:40:50] MLI-OTP-0018-0245. I do believe it's confidential.

22 MR DUTERTRE: [15:40:59](Interpretation) From memory, "0018" videos are
23 indeed confidential.

24 PRESIDING JUDGE MINDUA: [15:41:08](Interpretation) Private session,
25 please, court officer.

- 1 (Private session at 3.41 p.m.)
- 2 (Redacted)
- 3 THE COURT OFFICER: [15:41:20] We are now in private session.
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14 (Open session at 3.44 p.m.)

15 THE COURT OFFICER: [15:44:14] We are open session, Mr President.

16 PRESIDING JUDGE MINDUA: [15:44:25](Interpretation) Thank you very
17 much.

18 Ms Taylor.

19 MS TAYLOR: [15:44:32]

20 Q. [15:44:32] Madam Witness, is it correct that before joining the Prosecution,
21 your background was with the police?

22 A. [15:44:41] Yes, I worked for the police in the Minneapolis Police
23 Department. I also worked for the Calgary Police Service, and I currently
24 have my own business where I work for many different entities -- the police,
25 prosecutors, private citizens as well as defence.

- 1 Q. [15:45:03] Now, did you obtain your training as a forensic video analyst
2 through LEVA?
- 3 A. [15:45:11] Yes, I did.
- 4 Q. [15:45:14] And is one of the instructors at LEVA, Jonathan Hak?
- 5 A. [15:45:26] Yes, he is.
- 6 Q. [15:45:30] And for the record, is that your husband?
- 7 A. [15:45:39] Yes, it is. He is my husband.
- 8 Q. [15:45:41] And is his background in working for the Crown Prosecution
9 Service in Canada?
- 10 A. [15:45:45] Yes, he used to be a Crown prosecutor.
- 11 Q. [15:45:50] Have you ever testified as an expert for the defence?
- 12 A. No, I haven't had the opportunity to actually testify for the defence.
- 13 Q. [15:46:07] Did you testify for the Crown in the case of the Crown v.
14 Smith-Wilson?
- 15 A. [15:46:18] Yes, I did.
- 16 MS TAYLOR: [15:46:21] If we could bring up Defence tab 7, that's
17 MLI-D28-0004-7601.
- 18 Q. [15:47:16] Madam Witness, is this the case in question?
- 19 A. [15:47:20] Yes.
- 20 Q. [15:47:24] Is it correct that the request for you to appear as an expert in
21 forensic video analysis was rejected?
- 22 A. [15:47:34] No.
- 23 Q. [15:47:39] Did the court accept your testimony?
- 24 A. [15:47:45] I was qualified as an expert witness in that case.
- 25 Q. [15:47:51] Madam Witness, did the Court accept your testimony?

1 A. [15:47:55] I do not know. I testified in that case, yes.

2 Q. [15:48:03] Were you aware that the court rejected your testimony on the
3 grounds it lacked independence and impartiality?

4 A. [15:48:15] I had not heard that -- those terms, no. But I am aware of that
5 case and I did testify and was qualified as an expert witness.

6 Q. [15:48:28] Is it correct that one of the issues in that case that you were
7 cross-examined on, was the fact that you had approached the Crown before
8 you started your analysis and you asked for information about the suspect and
9 what the suspect was wearing?

10 A. [15:48:47] I asked -- just like in this case, I asked for reference material as
11 well as questioned material in that case.

12 Q. [15:49:00] Madam Witness, I'm going to read out a paragraph to see if
13 you're aware of it.

14 One is on page MLI-D28-0004-7639, it's paragraph 147, and it says:

15 "In further cross-examination, Ms. Hak acknowledged that" she -- "in
16 fact" -- "that in fact she approached Crown counsel prior to undertaking any
17 work on this file and asked the Crown to tell her the description of the suspect
18 on the video, including asking what the suspect was wearing. She asked for
19 this information before she began any enhancement or analysis of the videos.
20 She acknowledged that Mr. Breker asked her if she wanted to know who the
21 accused was on clip 1. She testified Mr. Breker identified to her a detailed
22 description of the suspect, including that the suspect was a black gentleman
23 with long dreadlocks, with a dark hat on backwards, wearing jeans and a
24 t-shirt with grey sleeves as seen on clip 1. She agreed she wanted the Crown
25 to tell her which person on the video the Crown was identifying as

1 the perpetrator of the crime. She acknowledged the Crown gave her
2 a detailed description of the person they identified as the perpetrator on clip 1."
3 Madam Witness, do you recall giving this information in cross-examination?
4 A. [15:50:31] This is quite a different way of approaching this. What I
5 asked for was, since there was so many people on the video, I needed a frame
6 of reference -- I explained all of this in that trial as well. So when I get
7 a volume of multimedia, just like in this case, I need to know what to look at
8 and so I do regret having said the name or the title "suspect". But at the time
9 of that trial, that was how we referred to people on the videos was - Who are
10 we looking at? Who do I need to analyse? - because there are so many people
11 on this video. And so I asked the person asking me for assistance with the
12 multimedia was -- who do you need me to look at? Who is the suspect in this
13 case?
14 So there was multiple people. There were women, there were males, I -- you
15 can't possibly look at everyone in the video. Just like in these videos, I can't
16 possibly look at every tree. I need to have a frame of reference. Are we
17 looking at a location? Are we looking at people? Are we looking at trucks?
18 Are we looking at vehicles?
19 So I asked for a frame of reference; that was all I asked for. I need
20 a questioned video. I need a frame of reference. What do you need? What
21 are you looking at in this video? What kind of questions are you asking of the
22 material?
23 That is what I asked.
24 Q. [15:52:07] Madam Witness, would agree that it would be difficult to
25 thoroughly analyse 1,073 images?

1 PRESIDING JUDGE MINDUA: [15:52:20](Interpretation) Mr Prosecutor.

2 MR DUTERTRE: [15:52:22](Interpretation) Thank you, your Honour. I don't
3 really understand the relevance of these questions in relation to the current
4 testimony of this witness, and, I let them go, but we're really not here to replay
5 the case in which the witness testified earlier. So I don't really understand the
6 relevance of these questions at the moment in relation to the locations,
7 buildings and so on identified in the panoramic images.

8 PRESIDING JUDGE MINDUA: [15:52:58](Interpretation) Yes, Ms Taylor, I
9 share the views of the Prosecutor. May you -- you would like to use that in
10 your pleadings later, but I don't really understand the relevance at this
11 particular juncture.

12 MS TAYLOR: [15:53:13] Mr President, the Prosecution objected in relation to
13 a question that was directed to this case, 1,073 images.

14 PRESIDING JUDGE MINDUA: [15:53:35](Interpretation) So with relation to
15 our case, I don't know. Well, what is the relevance because thus far I'm not
16 able to see what that relevance is.

17 MS TAYLOR: [15:53:48] May I simply put the question to the witness?

18 PRESIDING JUDGE MINDUA: [15:53:52](Interpretation) Yes, I think that
19 would be best.

20 MS TAYLOR: [15:53:55]

21 Q. [15:53:57] Madam Witness, would you agree that it's difficult to conduct
22 a thorough analysis within the time you had of 1,073 images?

23 A. [15:54:11] I had a fair amount of time. I am able to look -- as long as I
24 have a frame of reference to -- to go off of, then, yes, I can analyse that many
25 images. Now, if you're asking if it's a wide open -- it all depends on what the

1 content is in the image. If it's a wide-open area with thousands of trees and
2 I'm being asked to look at every branch, then, yes, that would be difficult to do
3 in a year's time.

4 Q. [15:54:43] Thank you, Madam Witness, I don't have any further
5 questions.

6 PRESIDING JUDGE MINDUA: [15:54:55](Interpretation) Thank you,
7 Ms Taylor.

8 I turn to the OTP. I don't know whether you have any further questions?

9 MS HUCK: [15:55:15](Interpretation) Thank you, your Honour.

10 PRESIDING JUDGE MINDUA: [15:55:18] (Interpretation) Madam Prosecutor.

11 MS HUCK: [15:55:19](Interpretation) One question, if I may.

12 QUESTIONED BY MS HUCK: (Interpretation)

13 Q. [15:55:19] Good afternoon, Madam Witness.

14 PRESIDING JUDGE MINDUA: [15:55:20] Maître Taylor?

15 MS TAYLOR: [15:55:21] Mr President, I do believe that before starting
16 re-examination, the Prosecution has to justify why they are asking for
17 re-examination as per the decision on the conduct of the proceedings. There's
18 no absolute right for re-examination, according to the decision.

19 PRESIDING JUDGE MINDUA: [15:55:56](Interpretation) Madam Prosecutor,
20 is there a specific subject to which you would like to return and why?

21 MS HUCK: [15:56:07](Interpretation) Yes, it's something raised by the
22 Defence yesterday, which we had not raised and that's why I would like to ask
23 for clarification on that particular issue.

24 PRESIDING JUDGE MINDUA: [15:56:20](Interpretation) In that case, please
25 go ahead.

1 MS HUCK: [15:56:25] (In English)

2 Q. [15:56:25] Madam Witness, I have a small question in relation to
3 a question that was put to you yesterday.

4 Can you confirm that the OTP did not ask you to do any comparison analysis
5 with a 3D model in a letter of mission?

6 A. [15:56:48] That is correct. I was not asked to compare to the 3D model
7 once we had the discussion about the model.

8 Q. [15:57:00] Thank you very much. That was all for my additional
9 question.

10 PRESIDING JUDGE MINDUA: [15:57:06](Interpretation) There, Ms Taylor,
11 that went quite swiftly.

12 Madam Witness, this brings us to the end of your testimony. On behalf of the
13 Chamber, I would like to thank you once again most sincerely for your clear
14 replies and precise replies to all the questions that you have been asked.
15 I would like to wish you all the very best in your future career.

16 (The witness is excused)

17 PRESIDING JUDGE MINDUA: [15:58:15](Interpretation) We will now close
18 the hearing for today, and I would like to thank all the parties and participants,
19 I would also like to thank the court reporters and the interpreters, and, of
20 course, let's not forget our security officers and our public.

21 Tomorrow, we will start hearing the 29th Prosecution witness and I believe
22 that because of the Ramadan, we have to start -- we're due to start earlier, half
23 an hour earlier.

24 THE COURT OFFICER: [15:58:32](Interpretation) Yes, indeed, your Honour.
25 We will start at 1400 hours tomorrow afternoon.

- 1 PRESIDING JUDGE MINDUA: [15:58:42](Interpretation) In that case, we will
- 2 start at 1400 hours tomorrow afternoon with the next witness.
- 3 The Court is adjourned.
- 4 THE COURT USHER: [15:58:48] All rise.
- 5 (The hearing ends in open session at 3.58 p.m.)