

Trial Hearing
Procedural Matters

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou
7 and Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Tuesday, 17 January 2023
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:51] All rise. The International Criminal Court is now in
12 session. Please be seated.
13 PRESIDING JUDGE KORNER: [9:34:14] Yes, good morning, all.
14 Can we have the appearances for the Prosecution, please. Anybody want to tell me
15 who is here today?
16 MR NICHOLLS: [9:34:31] Sorry, your Honours. Good morning, your Honour. Good
17 morning, all of your Honours. Myself, Pubudu Sachithanandan, Laura Morris and
18 Claire Sabatini. Thank you.
19 PRESIDING JUDGE KORNER: [9:34:45] Yes.
20 Let's do the victims representatives next.
21 MS VON WISTINGHAUSEN: [9:34:48] Yes, good morning, Madam President. Good
22 morning, your Honours. The victims today are represented by associate counsel
23 Anand Shah; in the back, our case manager Idriss Anbari; and behind me, our interns
24 Nur Mahameed and Randa Bellahdid. Thank you.
25 PRESIDING JUDGE KORNER: [9:35:03] Right.

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1 And Defence.

2 MR LAUCCI: [9:35:08](Interpretation) Good morning, your Honours. Good morning,
3 everybody as well. Here with Ali Muhammad Ali Abd-Al-Rahman, here Mr Ahmad
4 Issa, my colleague Iain Edwards, and myself, Cyril Laucci.

5 PRESIDING JUDGE KORNER: [9:35:28] All right. Can I just ask -- I'm sorry, I got
6 slightly confused as to which witness is coming today.

7 But, Mr Edwards, is it you cross-examining or is it you, Mr Laucci? It's you,
8 Mr Edwards.

9 MR EDWARDS: [9:35:40] It's me.

10 PRESIDING JUDGE KORNER: [9:35:41] Is there any objection to the witness's
11 statement just going in?

12 MR EDWARDS: [9:35:44] No.

13 PRESIDING JUDGE KORNER: [9:35:44] That's what I thought.

14 Was that intention in any event? All right. Well, he's a 68 -- he's not a 68.

15 MR SACHITHANANDAN: [9:35:53] It's not strictly speaking a 68(3), your Honour,
16 but if I can just confirm the accuracy of the report in a question or two and then --

17 PRESIDING JUDGE KORNER: [9:36:00] Fine. Yes, thank you very much.

18 Yes, good morning, sir.

19 THE WITNESS: [9:36:03] Good morning.

20 PRESIDING JUDGE KORNER: [9:36:03] Would you be kind enough to take the solemn
21 declaration.

22 THE WITNESS: [9:36:08] Yes, I will. I solemnly declare that I will speak the truth, the
23 whole truth, and nothing but the truth.

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25 (The witness speaks English)

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- 1 PRESIDING JUDGE KORNER: [9:36:15] Thank you very much, indeed.
- 2 Yes, Mr Sachithanandan.
- 3 QUESTIONED BY MR SACHITHANANDAN:
- 4 Q. [9:36:18] Good morning, Mr Witness.
- 5 A. [9:36:27] Good morning.
- 6 Q. [9:36:28] Could you please tell us your full name and date of birth, please.
- 7 A. [9:36:30] My name is Juan Gonzalo Peverelli, born on 5 August 1992.
- 8 Q. [9:36:40] You're a forensic investigator with The Hague police; right?
- 9 A. [9:36:44] Yes, correct.
- 10 THE INTERPRETER: [9:36:48] Message from the interpreters: Can we ask for a pause,
- 11 please.
- 12 MR SACHITHANANDAN: [9:36:56] My apologies, I clearly haven't recovered from
- 13 my annual leave.
- 14 Could the court officer please pull up DAR-OTP-00000975. That should be tab 111.
- 15 THE COURT OFFICER: [9:37:30] Sorry, could you please put the ERN into the record.
- 16 MR SACHITHANANDAN: [9:37:35] Yes, so it's DAR-OTP-00000975.
- 17 Q. [9:38:00] Sir, do you see a document in front of you?
- 18 A. [9:38:03] Yeah.
- 19 Q. [9:38:03] That's your CV; correct?
- 20 A. [9:38:05] Yes.
- 21 Q. [9:38:05] Okay. Thank you. Thank you, we can take -- and this is accurate, isn't it?
- 22 A. [9:38:11] Well, I -- can you scroll down?
- 23 Q. [9:38:15] Yes, if the court officer could please scroll down.
- 24 A. [9:38:19] Yup, correct.
- 25 Q. [9:38:20] Thank you, sir.

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1 MR SACHITHANANDAN: [9:38:26] This can be taken down.

2 Can we please pull up tab 1. That would be DAR-OTP-0220-1529. And if the court
3 officer could please move to the second page, the next page, and zoom in just a little
4 bit.

5 Q. [9:39:05] Sir, it's correct, isn't it, that this is the English version of a report that you
6 drafted with a colleague?

7 A. [9:39:11] Yes, that's correct.

8 Q. [9:39:12] And they relate to photographs you took of the accused in this case at the
9 premises of the ICC?

10 A. [9:39:20] Yes.

11 Q. [9:39:20] When you were taking these photographs, you followed standard
12 procedure for forensic photography that you've been trained in?

13 A. [9:39:31] Yes.

14 Q. [9:39:31] And I'm right in thinking that you produced the first draft of this report,
15 which was then reviewed by your colleague, Mr Van Tol?

16 A. [9:39:43] Yes, correct.

17 Q. [9:39:44] And then reviewed by your supervisor, Ms Weerman?

18 A. [9:39:48] Yes.

19 THE INTERPRETER: [9:39:49] The interpreters are struggling to follow up. Can we
20 please observe pauses.

21 MR SACHITHANANDAN: [9:39:57]

22 Q. [9:39:58] Sir, you heard the interpreters. Let's both take a pause --

23 A. [9:40:03] Yes.

24 Q. [9:40:03] -- between --

25 A. [9:40:04] Yes, I heard. Yes.

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1 Q. [9:40:13] When you met with me and Ms Morris, you had an opportunity to read
2 through this report?

3 A. [9:40:18] Yes, correct.

4 Q. [9:40:19] And you also had an opportunity to read through the Dutch original of
5 this report?

6 A. [9:40:27] Yes.

7 MR SACHITHANANDAN: [9:40:32] For the record, the Dutch original is at tab 2 and
8 is DAR-OTP-0223-0241.

9 Q. [9:40:52] Sir, you confirmed, didn't you, that your Dutch original report and the
10 English report were accurate and correct?

11 A. [9:40:59] Yes, they were both correct.

12 Q. [9:41:02] Now, you took a great many photos on the day that you took photos, I
13 think 106, and a subset of these appear as an annex in your report, 28 photos; that's
14 correct?

15 A. [9:41:21] Yes.

16 Q. [9:41:22] And the way you chose these 28 was based on the quality of the photo
17 and the resolution; is that right?

18 A. [9:41:34] Yes.

19 Q. [9:41:40] When you met with me and Ms Morris, you had an opportunity to go
20 through all the photos you took; correct?

21 A. [9:41:46] Yes.

22 MR SACHITHANANDAN: [9:41:50] Can the court officer please pull up tab 110; that
23 is to say, DAR-OTP-00000840.

24 Q. [9:42:22] Now, it's right, isn't it, that having viewed all of the photos you took and
25 gave to the OTP, you signed this list as being a complete list of those photos?

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1 A. [9:42:30] Yes.

2 Q. [9:42:30] Thank you.

3 MR SACHITHANANDAN: [9:42:34] This can be taken down.

4 Q. [9:42:42] Sir, it's right, isn't it, that on the day you were taking photos, there was
5 also a Netherlands Forensic Institute team present at the ICC?

6 A. [9:42:52] Yes, there were two people present from the Forensic Institute.

7 Q. [9:42:55] But I'm right in thinking that you focused on your job, they focused on
8 their jobs --

9 A. [9:42:59] Yes.

10 Q. [9:42:59] -- and you did not exchange any data or photographs?

11 A. [9:43:02] No, it was a complete separate investigation.

12 MR SACHITHANANDAN: [9:43:13] Thank you, your Honours. I have no further
13 questions.

14 PRESIDING JUDGE KORNER: [9:43:16] Yes. Any questions, Ms Von Wistinghausen?

15 MS VON WISTINGHAUSEN: [9:43:23] No questions. Thank you.

16 PRESIDING JUDGE KORNER: [9:43:25] Yes, Mr Edwards.

17 QUESTIONED BY MR EDWARDS:

18 Q. [9:43:29] Good morning, officer.

19 A. [9:43:31] Good morning.

20 Q. [9:43:32] My name is Iain Edwards. I'm one of the lawyers for Mr Abd-Al-
21 Rahman. We haven't met before --

22 A. [9:43:36] No.

23 Q. [9:43:37] -- but I can tell you I won't detain you very long at all this morning.

24 A. [9:43:41] No problem.

25 Q. [9:43:42] As stated in the first page of your report, the primary objective of your

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1 mission was to photographically record distinctive marks on the body --

2 A. [9:43:58] Yes.

3 Q. [9:43:58] -- of Mr Abd-Al-Rahman; right?

4 A. [9:44:01] Yes.

5 Q. [9:44:02] Scars and skin discolouration?

6 A. [9:44:07] For example.

7 Q. [9:44:07] Were you asked by anyone from the OTP to specifically focus on any
8 parts of the body or any particular scars?

9 A. [9:44:16] No.

10 Q. [9:44:16] That was left to your own discretion?

11 A. [9:44:19] Yes.

12 Q. [9:44:19] The photographs were taken under different light conditions during the
13 course of the photographic session; is that right?

14 A. [9:44:33] Yeah.

15 Q. [9:44:34] And is that because some of the marks that you wanted to record were
16 more visible under conditions of a flash than --

17 A. [9:44:48] Yes.

18 Q. [9:44:50] -- natural lighting --

19 A. [9:44:52] Yes.

20 Q. [9:44:53] -- as well.

21 A. [9:44:55] That's correct. We have to adjust the camera to the lighting in the room
22 at that moment. Yes.

23 Q. [9:45:03] Yes, all right. We have here the CD or the DVD-ROM of the original raw
24 photos --

25 A. [9:45:16] Yeah.

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1 Q. [9:45:19] -- because they are in -- they have a higher resolution than the images
2 which have been copied into the Court's dossier.

3 MR EDWARDS: [9:45:29] So can I please ask the court officer to bring up from the CD-
4 ROM DAR-OTP-0221-1368.

5 This equates to the photograph at tab 11, your Honour.

6 Q. [9:46:04] So this is one of the side-on views showing Mr Abd-Al-Rahman --

7 A. [9:46:07] Yes.

8 Q. [9:46:07] -- standing up. Were you asked specifically to take photos showing his
9 posture?

10 A. [9:46:13] No, this is standard procedure for us that we take overview shots from
11 the entire body shots from different angles. This is standard procedure.

12 Q. [9:46:26] I see. So that's showing Mr Abd-Al-Rahman's right side. At 1369, tab 12
13 - can we just pull that up - that will show his posture from the left-hand side.

14 Now, you were in the same room as Mr Abd-Al-Rahman for about two hours; right?

15 A. [9:46:46] I believe so, yeah. Two hours, yeah.

16 Q. [9:46:52] And do these photos accurately represent his posture as observed by you
17 during that period?

18 A. [9:46:59] I can't really answer that question. That was not what we were looking
19 at, at his posture.

20 Q. [9:47:06] Now, you say you weren't asked to examine any particular scars or
21 distinctive marks. You weren't asked to focus on his ears in particular, were you?

22 A. [9:47:25] No.

23 Q. [9:47:26] But we do have photos that clearly show his ears.

24 MR EDWARDS: [9:47:31] Can we please have on the screen from the CD-ROM DAR-
25 OTP-0221-1379. And a poorer quality of this is found at your Honours' tab 22. But can

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1 we please zoom in on the ear.

2 Q. [9:47:59] I know that wasn't your focus but -- thank you. Do you recall noting a
3 sign or a scar of any piercing of Mr Abd-Al-Rahman's ear?

4 A. [9:48:15] No.

5 MR EDWARDS: [9:48:18] Now can we go to 1381, which equates to tab 24 in your
6 Honours' -- yes. And, again, can we focus in on the ear, please.

7 Q. [9:48:39] So this is his left ear. Did you notice any piercing or scar indicating the
8 presence of a piercing in his left ear?

9 A. [9:48:48] No.

10 Q. [9:48:49] Now, let's just stick with this photo for now. Does this photo accurately
11 represent the colour of Mr Abd-Al-Rahman's eyes?

12 A. [9:49:07] Whoa, I am not really sure if that's true, because you see the lighting
13 reflecting on his body and on his eyes as well. That may distort the real picture.

14 Q. [9:49:20] If he had brown eyes, would the photo show up? Would it show up as
15 brown in the photo?

16 A. [9:49:28] I think so, but I'm not sure.

17 MR EDWARDS: [9:49:34] Can we have a look then at the image in the CD-ROM that
18 ends with 1433. This would be at tab 76 of your Honours' bundle. Again, focus on the
19 eyes, please.

20 Q. [9:49:54] The same question: Does this photo accurately represent the colour of
21 Mr Abd-Al-Rahman's eyes?

22 A. [9:50:04] I'm not really sure, no.

23 MR EDWARDS: [9:50:05] I wonder if there's a way of keeping this image on the screen
24 whilst also having up on the screen the image with ERN ending 1466, which would be
25 found at your Honours' tab 109. If there's a way of having them side by side.

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1 Okay. That will do.

2 Q. [9:51:19] The second image, the one that contains the red rectangular box, clearly
3 that's been zoomed -- that's a zoomed-in version of the photograph on the right, yes?

4 A. [9:51:38] Yeah.

5 Q. [9:51:39] But if you look at the colour of the background, the wall behind Mr Abd-
6 Al-Rahman's head, which is kind of grey --

7 A. [9:51:48] Mm-hmm.

8 Q. [9:51:49] -- its a slightly different colour. It's more beige-y, isn't it?

9 A. [9:51:53] Yeah.

10 Q. [9:51:53] Does that mean that the photograph on the left, the second image I've
11 asked you to look at, 1466, was the digital image manipulated in terms of colour for
12 purposes of clarity?

13 A. [9:52:08] Yes, I believe so. But also when you zoom in, and it depends on the
14 settings of your camera, you get more these pixels and it changes the colour in the
15 background as well. That's why you see all these. You know, it's not really clear in the
16 background.

17 PRESIDING JUDGE KORNER: [9:52:30] Sorry, can you explain what you mean by --
18 you agreed with Mr Edwards that the photograph was manipulated. What do you
19 mean by that?

20 THE WITNESS: [9:52:41] I believe that my colleague compensated for the real white
21 reflections in the face just to get a more accurate picture.

22 PRESIDING JUDGE KORNER: [9:52:48] I see.

23 MR EDWARDS: [9:52:49] And can I make it clear, I am not suggesting anything
24 nefarious at all. I am just saying that -- yes, yes.

25 Q. [9:52:55] But the fact of the matter is that some of these photos have undergone

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1 this manipulation to make any marks or scars or whatever just clearer --

2 A. [9:53:08] Yeah.

3 Q. [9:53:09] -- on the image --

4 A. [9:53:09] Yeah.

5 Q. [9:53:10] -- in a way that wouldn't necessarily be so obvious were you to be
6 looking at Mr Abd-Al-Rahman in natural conditions?

7 A. [9:53:17] Can you ask me -- I'm not really sure. Can you ask me the question
8 again?

9 Q. [9:53:24] The purpose of this manipulation -- and again, no criticism --

10 A. [9:53:28] No, no, I understand.

11 Q. [9:53:30] -- is to make clearer on the digital image things that you want to point
12 out to the observer; right?

13 A. [9:53:42] Well, it is more to compensate for the, you know, what you get when you
14 take a picture -- pictures, as in the right picture, you see the glaring and the reflections
15 and we try to take it away, so you get a normal, more natural way that you look at him.
16 Because this is more what he looks like to us than on the right.

17 Q. [9:54:10] Yes, I see what you mean.

18 A. [9:54:12] I hope I explained it correctly, but I can elaborate that if you want.

19 Q. [9:54:16] No, I understand. But, of course, when taking digital photos, it's never
20 100 per cent reflective of how you --

21 A. [9:54:26] Yeah.

22 Q. [9:54:27] -- would see the person --

23 A. [9:54:29] Yeah.

24 Q. [9:54:29] -- in the flesh, as it were?

25 A. [9:54:31] Yeah.

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- 1 Q. [9:54:32] All right. Thank you very much. Yes, those are my questions.
- 2 PRESIDING JUDGE KORNER: [9:54:36] Any re-examination?
- 3 MR SACHITHANANDAN: [9:54:39] None, your Honour.
- 4 PRESIDING JUDGE KORNER: [9:54:39] All right.
- 5 Sir, I don't suppose you've got any expertise in how long it takes scars in the ears from
- 6 earrings or the like to heal? No.
- 7 THE WITNESS: [9:54:57] No, I'm not -- no.
- 8 PRESIDING JUDGE KORNER: [9:54:59] No, I didn't think you did.
- 9 Yes, yes, on the side of my colleagues? No.
- 10 Thank you very much for attending, sir.
- 11 THE WITNESS: [9:55:08] No problem.
- 12 PRESIDING JUDGE KORNER: [9:55:08] It didn't last very long.
- 13 THE WITNESS: [9:55:10] No.
- 14 PRESIDING JUDGE KORNER: [9:55:11] But we're very grateful. Thank you.
- 15 THE WITNESS: [9:55:15] Thank you.
- 16 PRESIDING JUDGE KORNER: [9:55:16] Yes, you can leave the court now. Thanks.
- 17 THE WITNESS: [9:55:20] All right.
- 18 (The witness is excused)
- 19 PRESIDING JUDGE KORNER: [9:55:35] (Microphone not activated)
- 20 THE INTERPRETER: [9:55:39] Microphone, please, your Honour.
- 21 PRESIDING JUDGE KORNER: [9:55:42] I am entirely unclear why we've got a witness
- 22 that lasted all of 25 minutes, if, when we've got another witness here. I mean, we
- 23 assemble the Court. The whole -- it takes money to assemble the Court, and this is not
- 24 a good use of it.
- 25 MR NICHOLLS: [9:56:05] Your Honour, I'm sorry. We do not have another witness

1 here.

2 PRESIDING JUDGE KORNER: [9:56:10] I thought there was another witness
3 tomorrow?

4 MR NICHOLLS: [9:56:13] No, that's not -- if you look at our list that we sent out at
5 1608 yesterday. Unfortunately, one of the witnesses who refused was going to be for
6 the rest of the week. The next witness is an AVL that has been moved up to Monday
7 but couldn't be moved up to this week. And 1062, sort of the companion witness to
8 this witness, the other side, could not move, and we inquired with him.
9 I'm very sorry but -- I think we have Friday off this week, but that is it.

10 PRESIDING JUDGE KORNER: [9:56:49] Well, that's the -- well, that's the -- well,
11 effectively, the -- on Friday is the grand opening of the judicial year or whatever it's
12 called.

13 Well, I mean, I appreciate you've had difficulties, but, really, this is not a terribly good
14 use of Court time or money.

15 MR NICHOLLS: [9:57:16] I understand that, your Honour. I won't repeat what I said
16 yesterday.

17 PRESIDING JUDGE KORNER: [9:57:20] No, I know.

18 MR NICHOLLS: [9:57:21] We did our best and this is where we are and we'll be done
19 soon.

20 PRESIDING JUDGE KORNER: [9:57:25] Yeah. I mean, really, I'm not even sure why
21 we had this witness, because all Mr Edwards wanted to do was underline what we can
22 see.

23 All right. Okay. Well, just give me one moment.

24 (Trial Chamber and court officer confer)

25 PRESIDING JUDGE KORNER: [9:58:03] All right. Well, we can at least use some of

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- 1 the time today to deal with the matter that I said could be dealt with by oral
- 2 submissions. But for that, we will need to go into private session.
- 3 (Private session at 9.58 a.m.)
- 4 THE COURT OFFICER: [9:58:40] We are in private session, Madam President.
- 5 PRESIDING JUDGE KORNER: [9:58:41] (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
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- 21 MR LAUCCI: [10:01:09](Interpretation) (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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Trial Hearing
Procedural Matters

(Private Session)

ICC-02/05-01/20

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23 (Recess taken at 10.32 a.m.)

24 (Upon resuming in private session at 11.21 a.m.)

25 THE COURT USHER: [11:21:56] (Redacted)

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Trial Hearing
Procedural Matters

(Private Session)

ICC-02/05-01/20

- 1 (Redacted)
- 2 (Redacted)
- 3 MR NICHOLLS: [12:19:07] (Redacted)
- 4 PRESIDING JUDGE KORNER: [12:19:09] (Redacted)
- 5 MR NICHOLLS: [12:19:10] (Redacted)
- 6 PRESIDING JUDGE KORNER: [12:19:16] (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 THE COURT USHER: [12:19:28] (Redacted)
- 10 (The hearing adjourned in private session at 12.19 p.m.)