

TRUTH AND RECONCILIATION COMMISSIONSECTION 29

DATE: 29 SEPTEMBER 1997

HELD AT: JOHANNESBURG

NAME: JAKOB MTOMBENI

DAY 1

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CHAIRPERSON: Please press the red button and it switches on and every time you talk you should actually speak through the microphone.

Could I ask you to place yourself formally on record?

MR MULLER: Chairperson, my name is Kobus Muller. I'm from the firm of attorneys of Wagner, Muller and Du Plessis and I'm representing Mr Jakob Muchimuni. Ag sorry, Mtombeni. We have conducted our consultations and our preparation in Afrikaans and most of the documentation, or all the documentation which we received was in Afrikaans. We would prefer to proceed in Afrikaans if - well, I don't - we don't have any other choice, unfortunately.

There are some issues that I would like to raise with you at this stage.

CHAIRPERSON: All right. Thank you very much. What we - let me first of all begin by introducing the members of my panel to you.

SECTION 29 HEARINGS

TRC/GAUTENG

On my right-hand side I have Dr Russel Ally, a member of the Human Rights Violations Committee. On his extreme right is Mrs Joyce Seroke, also a member of our Committee and on her extreme right is Mr Mpoh Johannes Mohema, a member of our investigation team.

On my left-hand side I have Mr Derek Nolsen, a member of our investigation team and Col Fanie Killian, a member of our investigation team.

We have provided for interpretation in both Ndebele and in Afrikaans. So if your client chooses to speak in Ndebele, the service is there provided for him. So perhaps your client should at some stage just indicate whether he's going to be comfortable in speaking in Ndebele or if he would want to proceed in Afrikaans.

MR MTOMBENI: Yes, I will speak Ndebele.

CHAIRPERSON: All right. Now I ask that you leave the microphone on where you actually are. This is a subpoena in terms of Section 29 of the Act. It is an investigative inquiry which is held *in camera*. The purpose of which is to obtain information relating to the matters mentioned in the subpoena.

Before we begin, I would like to ask your client to take the oath please. Sorry, I should have actually indicated. These are the headphones provided for the interpretation services. We're going to be speaking in English most of the time. You'll be relaying your answers in Ndebele or your attorney will be speaking in Afrikaans.

Do you want to pull that down so that it's more comfortable.

Could you just tell me the channels?

INTERPRETER: Channel one is Afrikaans.

CHAIRPERSON: One is Afrikaans.

INTERPRETER: Two, English.

CHAIRPERSON: Two, English.

INTERPRETER: Three, Ndebele.

CHAIRPERSON: Three, Ndebele.

JAKOB MTOMBENI: (indistinct)

INTERPRETER: We're waiting for the actual double interpreter.

So I've spoken to the applicant that he will -I will speak in Sesotho.

Then he will reply in Ndebele.

CHAIRPERSON: So can you ask him to take the oath, please. So could you ask your client to take the oath, please, Mr Muller.

JAKOB MTOMBENI: (Duly sworn in, states).

CHAIRPERSON: Thank you. Mr Muller, do you want to begin by - do you want to tell us what - I assume you would want to make an opening statement on behalf of your client or - this is the appropriate time at which it to place before us the matters you intend to raise.

MR MULLER ADDRESSES COMMITTEE: Chair, thank you very much. Skakel dit na kanaal een. Ja.

Chair, to start off with, I want to sketch some background for you with regard to the entire matter. At a very late stage we

received our instructions from Mr Mtombeni to represent him before this investigation and in terms of the notice that was served on him, he was requested to bring testimony with regard to the escape of George Tshabangu as well as other incidents of which he may bear knowledge.

In view of the fact that the second suggestion is very broad and vague, we did not have information on which we could prepare.

What Mr Mtombeni or as far as Mr Mtombeni is concerned, should there be statements made to him today with regard to incidents, as referred to in paragraph two of the notice, we would appreciate the opportunity to reconsider the matter before directly answering, since we've had no opportunity to discuss these matters with each other.

I have prepared an application to you or rather a statement to you in Afrikaans from Mr Mtombeni. He's seen the statement for the first time today. He is comfortable with the statement. It's not a complete statement and unfortunately we only have a single copy available. We had to do this in a very hurried manner.

I want to suggest that at some stage he reads this statement into the record. We can then consider that as a starting point if you will concur with this suggestion, except if you want to ask questions with regard to other incidents prior to us reading that into the record.

In addition we've received a document per telefax as a consequence of which we've addressed certain correspondence. This is a 17-page handwritten document and we are not entirely sure what it says as at the heading. It says:

"All three dossiers not traced. Statement  
George Tshabangu."

We would like to know what the status of this document is; whether the original documentation is available; whether an original statement or statements is available. It would seem that this is a summary of statements by someone and we don't know exactly how we're supposed to respond to this.

Since information is not available to us, we will attempt to respond as clearly and as completely as possible, but we do want to retain the right not to answer on certain questions, except if we know what the nature and the extend of the questions are as and in so far as they are based on this document.

In addition we would like to give you our full assistance and we would want to assist the Committee to complete this investigation as speedily as possible.

Thank you.

CHAIRPERSON: Thank you, Mr Muller. Mr Muller, may I suggest that we simply adjourn for two minutes while we make some copies of that statement. Clearly the paragraph two of the subpoena is fairly broad and normally allows us some flexibility.

May I just ask your client whether he has applied for amnesty or he intends applying for amnesty in respect of perhaps any of these matters mentioned or other matters pertaining to the matters concerned in terms of the Act.

MR MTOMBENI: In regard to what?

CHAIRPERSON: In regard to any other gross human rights violations. Does your client intend applying for amnesty?

MR MTOMBENI: I don't remember attempting any violation of human rights to anybody.

CHAIRPERSON: Thank you. Mr Muller, if there's any matter in terms of which you feel you have not adequately prepared, you will then indicate that by placing that on record and if we have the information relating to that, then perhaps we can work out some mechanism of ensuring that you are able to prepare your client conclusively for this hearing.

I'm going to ask Mr Nolsen just to tell us whether the original exists of the document that you are in fact asking about. Derek?

MR NOLSEN: Mr Muller, I believe that the document you're referring to; the one that we faxed you, is a copy from the national archives in Pretoria from the official records of the Parsons Commission of Enquiry into events in KwaNdebele during 1986 and 1987.

It was the Parsons Commission's handwritten transcript from the case docket concerning the alleged escape of George Tshabangu.

I can give you the correct CR number, which is Denelton CR 26/2/87.

To our knowledge the original of the docket cannot now be found, but this was the Parsons Commission's transcript of that docket which was taken in 1990.

MR MULLER: Thank you, Chair. I accept that such a document would exist, but of course we would not be able to respond on all of the claims, since these are summaries of statements by other persons and so forth.

You know that the hearsay rule is very clearly applicable here, in my opinion. We will attempt to assist you as far as it's possible for us under the circumstances and in terms of the arrangement that you had made with us. We are entirely willing to continue under these circumstances.

CHAIRPERSON: Yes, but now I just place it on rule that obviously you know that the Commission is not really bound by the very strict rules of evidence and that in certain instances hearsay information will be considered by the Commission.

I think we just need to place that on record. This is not a court of law. It's a Commission of Inquiry, the objective of which is not to find your client guilty, but certainly only to enquire into gross human rights violations, their commission, their purport.

So therefore, please, when you advise your client, advise him in terms of the allegations which are placed in all the documents which are supplied to you.

Thank you. We'll adjourn just to allow a copy to be made of the document that you've prepared.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Mr Muller, the procedure that I'm going to lay out today is that I think your client must read this statement into the record.

When he's finished, then the investigators will ask him questions. You will, of course, place on record any question that you're unsure about or if you feel you don't have sufficient information; please indicate that.

At all times the questions are to be answered by your client. You're simply there to keep an eye on the process.

Thank you. Mr Mtombeni, will you begin please.

JAKOB MTOMBENI: (Still under oath).

"I, the undersigned, Jakob Mtombeni, state herewith under oath as follows: I'm a superintendent in the South African Police Service, stationed at the Murder and Robbery Unit, Umhlanga. I received a notice in terms of ..."



... (intervention).

MR MULLER: Chair, could I interrupt at this point. The statement which indicates that he is stationed at the Murder and Robbery unit, is in fact, not correct. He has now read it and I want to ask that he corrects the statement.

MR MTOMBENI: Yes.

"I'm a superintendent in the South African Police Service stationed at the Umhlanga local detective branch. I received a notice in terms of Section 29 in terms of which I have been requested to attend an investigation with regard to the escape of George Tshabangu during February of 1987.

I have been requested to provide information with regard to any incident in which I had been involved or of which I bear knowledge which would entail a gross human rights violation.

Since the second aspect has been very vaguely worded, I am not able to meaningfully respond on this suggestion. I am however willing to be of assistance to the Commission as far as possible and I am

also willing to answer questions with regard to suggestions of which the Commission knows.

With regard to the escape of George Tshabangu, I want to indicate that this incident occurred more than 10 years ago and that I'm not able to remember all of the particulars.

I will however attempt to provide as complete as possible a version to the Commission.

On the 6th of February 1987 I accompanied Sgt Van Schalkwyk to the Bundu Inn. There we spoke to Happy Tshabangu and we requested her whether she knew of the whereabouts of George Tshabangu. She informed me that he was with his girlfriend, but that he had a room on the premises.

I requested her to unlock the room and searched the room with Sgt Van Schalkwyk. This investigation or search occurred in the presence of Happy Tshabangu.

Under a little mat, we searched under a little mat under the bed, under the mattress and in the cupboards in the room. I then searched on top of a wall in the room and found a firearm on this wall.

I determined that the number had been filed off this fire arm and I wrote the particulars of this firearm in my pocket book in the presence of Happy Tshabangu.

I did this to ensure that she would not be able to claim at a later stage that we planted this weapon or that she could make the claim that we removed any items from the room.

She signed next to this note in the pocket book. Since I know the Tshabangu family and the environs of the Bundu Inn very well, I knew that the girlfriend of George Tshabangu was a certain Connie Mokoena.

I also knew where she lived and we went there in order to ascertain whether we could obtain information from her with regard to the activities of George. Sgt Van Schalkwyk and Serg Magagula took Steven

and Lukas Tshabangu who lived and worked at the Bundu Inn to our offices. In the company of Sgt Kritzinger, Dumisani and Simon Makuna, we went to Connie's home. When we arrived there she told us that George was in the room and that he was asleep.

I entered the house and informed George that he was a suspect in a robbery - a case of robbery and that he had to accompany us to the police offices.

Initially he thought that I was joking with him, but at a later stage he accompanied me voluntarily. We searched that room in order to ascertain whether there were any clues there which could link George with this attempted robbery. We did not however find anything.

Subsequently we went to our offices where Sgt Kritzinger as well as Dumisani and Simon Mkuna questioned George Tshabangu. I went to my office and began with writing of a statement with regard to the firearm which I have found in George

Tshabangu's room at the Bundu Inn. Sgt Kritzinger later informed me that George admitted to his involvement in the robbery; that he was willing to co-operate and that he would make certain indications that evening or that he would go and point-out certain things.

Sgt Van Schalkwyk requested me to return George's two brothers; Lukas and Steven, who at that time had also been at the police offices, to the Bundu Inn. Since it appeared that they were not involved in the attempted robbery and that there was no further reason why we would need them.

He requested me to pick him up at his home at a later stage so that that evening we could go and have George point out the various things. I want to mention as an aside that I bear no knowledge of any assault on George Tshabangu. I would have heard him scream as is claimed by Steven in his statement.

There are approximately 50 people who work at those offices and someone would

have acted, should this screaming have continued as it is claimed.

I dropped the two boys at the Bundu Inn and somewhat later picked up Sgt Van Schalkwyk or collected Sgt Van Schalkwyk at his home. We then left with the grey Kombi of the unit as well as the white Skyline vehicle to a arms cache which we wanted to track.

George Tshabangu would have pointed out the location of this arms cache to us.

Myself, Sgt Van Schalkwyk and Sgt Magagula drove with George Tshabangu in the Kombi. Tshabangu took us to Marapong, close to Incedon location and Sgt Van Schalkwyk and George Tshabangu were walking in front of us. Tshabangu was in chains. We had difficulty climbing through the wired fence and while myself and Sgt Magagulu assisted each other to climb through the fence, Sgt Van Schalkwyk and George Tshabangu moved ahead. It was pitch black with darkness.

Suddenly I heard Sgt Van Schalkwyk scream. Myself and Sgt Magagulu ran towards him to attempt to find out what was occurring. We did not know whether he had been assaulted or whether Tshabangu had attempted to escape. However, it was so dark and so thick with bushes that we had difficulty getting to him. Upon arrival at Sgt Van Schalkwyk, we determined that Tshabangu had fled and we attempted to track him down, without any success.

In the meantime the people in the white Skyline vehicle had arrived there, but we soon realised that no search would give us any results. Someone called for reinforcements with the radio. We drove up and down on the road in order to determine whether George Tshabangu had not made some effort to come to the road to find a lift with someone. Sgt Van Schalkwyk gave me instructions to ride with the white Skyline to the home of

Connie Mokoena since I knew that area very well.

Sgt Kritzinger and Simon Makuna drove with me. The other three went to the Bundu Inn. We asked Connie whether she had any knowledge with regard to George's whereabouts and she informed us that since we took him away, we should know where he would be. We kept Connie's home under observation till approximately two o'clock in the next morning, without any success and then we returned.

I do not know what occurred subsequently in this investigation since Sgt Kritzinger had been the investigating officer. I did not take any further part in this case."

CHAIRPERSON: Thank you. Derek.

CROSS-EXAMINATION BY MR NOLSEN: Thank you very much, Mr Mtombeni. I think I'd like to begin by just asking some very basic background questions and again I apologise if we are going over some of this material for the second time. Perhaps you've included it in the statement we've only just received and as my Afrikaans is not so good, I may have a difficulty in finding the



relevant passages. So again I apologise if we repeat some information.

I'd like to just get some background information if I could, on your role in the branch and on the branch more particularly at that time.

On February 6th 1987, I believe you were attached to the Murder and Robbery Unit at Siyabuswa. Is that correct?

MR MTOMBENI: Yes.

MR NOLSEN: I wonder if you could tell me who the other members of your unit at that time, were?

MR MTOMBENI: I was working with Sgt Mpelo and Constable Kritzinger and Warrant Officer Magagula and Sgt Van Schalkwyk and Sgt Dumisani Maglango.

MR NOLSEN: Were there any other members in your unit that were perhaps not with you on that day?

MR MTOMBENI: Yes.

MR NOLSEN: Did you work in shifts at the Murder and Robbery Unit?

MR MTOMBENI: At times we were working in shifts, but on that day we were working normally.

MR NOLSEN: Can you perhaps tell us some of the other members who were at the Murder en Robbery Unit, but were not working with you that day? If you can recall.

MR MTOMBENI: May you repeat the question, Sir.

MR NOLSEN: I'm trying to find out the names of any other members of the Murder and Robbery Unit at Siyabuswa, who were not working with you that day. In other words, other members of the unit not mentioned in your statement that you've just submitted to us.

MR MTOMBENI: Okay. Those I remember is Const Radlaviani and Const Mosesa and others whom I'm not able to remember the names.

MR NOLSEN: How many administrative staff did you have at the Murder and Robbery Unit, approximately? Typists or secretaries?

MR MTOMBENI: I cannot remember this. I already said that this thing has happened 10 years back.

MR NOLSEN: Who was the commander of your unit at that time?

MR MTOMBENI: It was Warrant-Officer Boshoff, but at the time he was on leave and the person who was in charge in then, was Van Schalkwyk.

MR NOLSEN: I see. Warrant-Officer Boshoff; to whom did he report within the KwaNdebele police at that time?

MR MTOMBENI: I don't understand the question, Sir.

MR NOLSEN: Warrant-Officer Boshoff who was the head of your unit, to whom did he report? Did he report directly to the commissioner of the KwaNdebele police or to whom was his responsibility at that time?

MR MTOMBENI: I don't understand when you mean reporting.

MR NOLSEN: From whom would he receive orders and to whom would he make reports?

MR MTOMBENI: He was under the head office.

MR NOLSEN: More particularly, would he give reports to the Commissioner of Police?

MR MTOMBENI: That is true.

MR NOLSEN: Who was the Commissioner of Police at that time?

MR MTOMBENI: I don't remember. There were many commissioners whom we worked under with, but I don't remember who was in charge at that time.

MR NOLSEN: I believe, I may stand corrected, but I believe at this time there were only two commissioners of police at that time. The first was Chris van Niekerk and the second was Brig Lerm. Does that help?

MR MTOMBENI: I don't remember, because the commissioners were changed time and again. I don't - maybe that may be so; those two you have mentioned, but I don't remember.

MR NOLSEN: Where were your offices located?

MR MTOMBENI: In Siyabuswa.

MR NOLSEN: Were they at the Siyabuswa Police Station?

MR MTOMBENI: May you repeat the question.

MR NOLSEN: Were the Murder and Robbery Unit offices located at the police station, Siyabuswa Police Station?

MR MTOMBENI: Yes, that is true.

MR NOLSEN: In the same office block as the Siyabuswa Police Station?

MR MTOMBENI: No.

MR NOLSEN: How far away from the Siyabuswa Police Station? Let's say by car, are the Murder and Robbery Offices?

MR MTOMBENI: I'm not sure. Maybe it might be approximately 700 to 800 metres.

MR NOLSEN: So very nearby?

MR MTOMBENI: That is true.

MR NOLSEN: I wonder if you could describe for us the physical set-up, the physical location of the Murder and Robbery Offices? How were the offices arranged and what sort of arrangements there were made for interrogation or for detention or arrest of suspects?

MR MTOMBENI: I don't understand your question.

MR NOLSEN: Was the Murder and Robbery Unit in one building or was it in two buildings or four buildings arranged around a rectangle?

MR MTOMBENI: I don't remember well, but where we were working, it was a school building.

MR NOLSEN: Did you use a particular room at these offices for interrogation purposes?

MR MTOMBENI: No.

MR NOLSEN: Where did you interrogate suspects?

MR MTOMBENI: Everyone used to interrogate persons in his own office.

MR NOLSEN: Did you have your own office?

MR MTOMBENI: Yes, that is true.

MR NOLSEN: Where were suspects - was there a place where suspects could be locked up; say in-between interrogation sessions?

MR MTOMBENI: No.

MR NOLSEN: How many members were normally on duty at the offices at a particular time?

MR MTOMBENI: As I said when I wrote the statement, it would be approximately 15.

MR NOLSEN: One, five?

MR MTOMBENI: Fifteen.

MR NOLSEN: Fifteen?

MR MTOMBENI: Yes.

MR NOLSEN: Five, zero?

MR MTOMBENI: Five, zero, 50, as it is written on the statement.

MR NOLSEN: What area was covered by the Siyabuswa Murder and Robbery Unit? What was your area of jurisdiction?

MR MTOMBENI: The whole of KwaNdebele.

MR NOLSEN: The whole of KwaNdebele?

MR MTOMBENI: Yes.

MR NOLSEN: At this time, was Moutse considered part of KwaNdebele?

MR MTOMBENI: Yes, it was considered as part of KwaNdebele then.

MR NOLSEN: Were there any other stations which had Murder and Robbery Units?

MR MTOMBENI: May you repeat the question.

MR NOLSEN: Did any other police station in KwaNdebele or in Moutse have Murder and Robbery Units?

MR MTOMBENI: No, it was only one unit.

MR NOLSEN: What were the duties of the Murder and Robbery Unit?

MR MTOMBENI: Mainly we working on robbery and murder cases.

MR NOLSEN: You say, "mainly"; what else were you involved in?

MR MTOMBENI: I would say mostly we would work on armed robbery and murder cases.

MR NOLSEN: But Mr Mtombeni, when you mostly ... (intervention).

MR MTOMBENI: Mostly is not my language, so maybe I expressed it differently.

MR NOLSEN: Let me ask more directly then. Were you ever involved in detaining activists or were you ever instructed by anyone to detain activists under the emergency regulations?

MR MTOMBENI: May you repeat the question.

MR NOLSEN: Yes, I can.

CHAIRPERSON: Were you in fact involved in the - were the police in that area, you in particular, were you used to arrest people who were involved in the political conflict at the time?

MR MTOMBENI: Not at all. I was never involved in political activities or political arrests.

COL KILLIAN: Was the Murder and Robbery Unit involved in any political arrests?

MR MTOMBENI: No.

MR NOLSEN: Would you then be surprised that the person that you've told who was then your commander at that time, A J van Schalkwyk, has made a sworn statement to the Parsons Commission, detailing to a great extent the direct orders that he was given and which he carried on to your unit; to go and detain people, both in Moutse and in KwaNdebele under the emergency regulations.

MR MULLER OBJECTS: Chair, if I can enter at this point? We did not have the privilege of having this particular statement available to us. I have consulted with Mr Van Schalkwyk and this is also news to me.

What I can say to you is that Mr Van Schalkwyk served in a variety of units in the KwaNdebele police. I would like to be able to look at this particular statement, just to ascertain whether we are interpreting it correctly.

CHAIRPERSON: What we will do during the break is make that statement available. However, what I would like to place on record

is that a statement exists from Capt Van Schalkwyk, in which he says that the unit was used to arrest and detain people who were involved in political activity.

In the light of that statement, does your client still contend that the Murder and Robbery Unit was not used in those particular instances. Does he wish to change what he says, because remember, this will be on record?

Do you want to consult with him?

MR MULLER: Yes. Do I have the opportunity?

RECORDING SWITCHED OFF - ON RESUMPTION

MR MULLER: Chair, this statement, the long statement from Van Schalkwyk; it's difficult for me to work through it quickly. I don't know if you could maybe refer for me to a specific statement, a specific paragraph that is relevant so that we don't waste any time.

MR NOLSEN: I think we could best even speed up the process by looking at the second statement that I've photocopied and given to you from Sam Skosana, which directly implicates Mr Mtombeni in a political detention under the emergency regulations.

MR MULLER: Ms Chairman, if you refer to this second statement, then we can proceed.

MR NOLSEN: There - I believe that there are some larger contacts with these political detentions are set out in Van Schalkwyk's statement. I think that for the sake of speed, we could refer to Sam Skosana's more particularly, because also Mr Mtombeni is



mentioned directly in the statement. Therefore I think it's a much more clear example and would expedite the process.

COL KILLIAN: I think, just for the record, the importance of Van Schalkwyk's statement is that he indicates that there were certain expectations of the unit from the then Commissioner of Police, Brig Lerm, where the unit was actually criticised in certain points, for not acting speedily enough in terms of the political unrest and also playing its role and he indicates very directly that the Murder and Robbery unit did become embroiled in the political conflict in the emergency regulations in the unrest and that they acted in that capacity as well.

That's the broad context which Mr Nolsen was, I think, trying to establish, because when he asked your client a very direct question; whether the Murder and Robbery Unit was ever involved in any of the political issues, in enforcing any of the emergency regulations or in picking up detainees under emergency regulations, picking up activists rather and detaining them under emergency regulations, your client answered in the negative, but that is not the only example of the Murder and Robbery Unit in KwaNdebele, as indeed the Murder and robbery Units in other parts of the country. We know about the Murder and Robbery Unit in Brixton as well that got involved in political activities.

We have heard amnesty applications from people who were in the Murder and Robbery Unit. In the Piet Ntuli case also, there

people were involved in the Murder and Robbery unit. So it's not unusual for the Murder en Robbery Unit, during that period. In fact, is it unusual for the South African Police, as the Commissioner of Police himself has indicated, the then Commissioner of Police, Coetzee, that the police did get involved in political activities.

That you could not separate political issues from normal policing activities and this is one of the recommendations which has been made.

So in the light of all of that and in the light of this very direct implication of your client in the arrest of Sam Skosana, the question is asked again; was the Murder and Robbery Unit and your client in particular, did they get involved in the political conflict taking place in KwaNdebele at the time?

MR MTOMBENI: No.

MR NOLSEN: Mr Mtombeni, just before we proceed I would like to - have you had a chance to look at the statement there from Sam Skosana?

MR MTOMBENI: That is true.

MR NOLSEN: You know who Sam Skosana is, Mr Mtombeni?

MR MTOMBENI: Yes, I know him. I know him very well.

MR NOLSEN: Did you ever detain Mr Skosana?

MR MTOMBENI: No.

MR NOLSEN: Were you ever present during the detention of Mr Skosana?

MR MTOMBENI: I don't remember that.

MR NOLSEN: Were you aware of the detention of Mr Skosana?

MR MTOMBENI: No.

MR NOLSEN: Do you have any reason to believe that Mr Skosana would lie when he says that you detained him?

MR MTOMBENI: I don't know what would be the cause.

MR NOLSEN: Was Mr Skosana a known activist at that time?

MR MTOMBENI: I know him only as Sam Skosana, as a business person.

MR NOLSEN: Let us move on from there then. Mr Mtombeni, while we're still on this question of the activist, I wonder if I could just get a bit of background about what was happening in the area at this time.

We have heard testimony in public, at public hearings, one that was held at Philadelphia Hospital in Denilton about the political conflict at that time. I wonder if you could give to us your perception of what was happening at that time. Was there unrest in the area and what the nature of that unrest was?

MR MTOMBENI: I'm not able to comment on that as I said things which happened in 1987 has happened a long time ago. I don't want to tell a lie. I'm not able to remember.

CHAIRPERSON: Mr Mtombeni, I'm sorry, I really don't want to be very difficult, but I think that to sit here and to tell us that you can't comment, is really not proper and I'm going to say to you that the

events that happened in our country during the last 20 years are very much alive and well in people's minds and events, and in fact people are coming forward to talk about things they were involved in.

Now, a very simple question is being put to you. Were you aware of the conflict that was taking place in the KwaNdebele area at the time? Were you aware of the political activities? Where did you stand in all of that? Can you let us have your feedback, please?

MR MTOMBENI: I would request that when I say I don't remember, I don't remember. What I can say is that there was a conflict. As to whether what happened, I'm not able to remember. I'm requesting that I cannot remember.

MS SEROKE: We want to understand what was the cause of that conflict?

MR MTOMBENI: What I know is that there was a conflict and I was a police and I was not involved in - I didn't have the knowledge of politics then. What I remember faintly is that Denilton should be amalgamated to KwaNdebele and those people in Moutse didn't want to be incorporated into KwaNdebele. That's the thing I can remember. I was just a policeman. I was not involved in politics.

CAPT MOHEMA: At the time, in the Eighties, '86, '87, you said you cannot remember a lot of things which happened and which took place during that time. We, the TRC received a lot of submissions made by people who were victims during the time,

policemen as well as businessmen. Were you ever during that time maybe a victim of such a situation?

MR MTOMBENI: I was a policeman working. I don't remember as whether I was a victim.

CAPT MOHEMA: We received allegation from somebody, a resident of KwaNdebele, who alleged that you were actually attacked by the comrades during 1986. Is he lying?

MR MTOMBENI: No.

CAPT MOHEMA: So if he's not lying; can you brief us what happened during your attack?

MR MTOMBENI: My car was burned. As I said, because there was a conflict. The people of Moutse didn't want to be amalgamated to KwaNdebele and then during that conflict my car was burned.

CAPT MOHEMA: Was - who burned your car?

MR MTOMBENI: Those people who were participating in the conflict. They called themselves comrades.

CAPT MOHEMA: Because you were a policeman?

MR MTOMBENI: I don't know the reason behind the attack.

CAPT MOHEMA: I'm sorry Mr Mtombeni, I would like to draw you a bit back on paragraph four. We are aware that these things happened 10 years back. Is it possible maybe for you to estimate time. What time did you arrive at Mr Tshabangu's premises?

MR MTOMBENI: What I'd say is it was during the day. I'm not able to tell the exact time.

CAPT MOHEMA: You mentioned - you made mention that you were sort of investigating an armed robbery against George. Is that correct?

MR MTOMBENI: Yes, that's correct.

CAPT MOHEMA: So do you still maybe, can you still remember the case number if possible?

MR MTOMBENI: I don't remember the case number.

CAPT MOHEMA: Can you still remember where did this robbery took place?

MR MTOMBENI: It seems that it was at James Moteti.

CAPT MOHEMA: Of course you are the investigator of that case. Can you brief us a bit what has happened there?

MR MTOMBENI: I was not the investigator.

CAPT MOHEMA: Who was the investigator?

MR MTOMBENI: That's Const Kritzinger.

CAPT MOHEMA: Because you were assisting him in investigating this case, I believe the reason why you and your people suspected George Tshabangu, you had some information. Can you brief us a bit?

MR MTOMBENI: No, as I said, we were helping each other in Murder and Robbery Unit. You receive a case. Then I did not have the full details of the case.

CAPT MOHEMA: So you just went to assist him to arrest him.

MR MTOMBENI: Yes.

CAPT MOHEMA: Did you find any details?

MR MTOMBENI: Yes, I only know that there was an armed robbery. Then that is information that George was involved. Then that's all I knew.

CAPT MOHEMA: He was a suspect in that case?

MR MTOMBENI: Yes, according to the information.

CAPT MOHEMA: Right. You found a firearm in his room. Did you maybe have a warrant, a search warrant?

MR MTOMBENI: No.

CAPT MOHEMA: Was it not necessary for you to obtain - to get it?

MR MTOMBENI: Normally, if we made an application for the search-warrant we would find it. At times it would depend on the case.

CAPT MOHEMA: Right. After locating the firearm in George's room ... (intervention).

CHAIRPERSON: Sorry, before you - before that, what do you mean it depends on the case on whether or not you need a search warrant?

MR MTOMBENI: At times it would depend on whether how fast are you on the case.

CHAIRPERSON: It's a statutory requirement. Why did you not have a search warrant to enter that house?

MR MTOMBENI: It may happen that we made that mistake.

DR ALLY: So that evidence have been - could you have used that evidence in court? Let's imagine that you were to take George Tshabangu to court on a suspicion of being involved in an armed robbery. Would you have been able to use the fact that you found a firearm and you didn't have a search warrant? Would that have been permissible in court?

MR MTOMBENI: If they would ask me that kind of question I would reply the way I'm replying now.

DR ALLY: I'm asking from your experience as policeman involved in murder and robbery, you must have attended many court cases. Would it have been possible to use that as evidence in a court case, to convict George Tshabangu, when you did not have a search warrant?

MR MTOMBENI: I wouldn't how they would consider that.

CHAIRPERSON: Proceed, George.

MR NOLSEN: Mr Mtombeni, if I could just before Capt Mohema continues with his line of questioning, just take you back a bit before we go on too far.

This robbery, I know it's 10 years ago and it's difficult to remember. Was this the robbery that was perhaps at that corner at Top Spot Garage in Motete? Is this the robbery that you were helping to investigate?

MR MTOMBENI: Yes.



MR NOLSEN: Wasn't it that there was a security van which was robbed at that very spot?

MR MTOMBENI: I don't know that.

MR NOLSEN: You can't remember what the nature of the robbery was, that you were investigating?

MR MTOMBENI: As I said that I was not the investigator. It was Kritzinger.

CAPT MOHEMA: Mr Mtombeni, I'm putting it to you that since you are lying to us, Kritzinger never investigated that case.

MR MTOMBENI: I know it being that way.

CAPT MOHEMA: I'm putting it to you the investigator of that case was Maweze, Sgt Maweze, and then they tell me during the time when you raided Tshabangu's premises; was Maweze also available?

MR MULLER OBJECTS: Chair, I want to make a - to argue against the following line, the line of investigation. I want to object to the line of questioning. I don't know where Dr Ally, if I've got it correct ... (intervention).

MR NOLSEN: It's Mr Mohema, Capt Mohema.

MR MULLER: ... or Capt Mohema. I don't know where Capt Mohema obtains this information. Has this information been made available to us? I would like to check this information, if possible.

The information available to me, is that Maweze, if that is the name mentioned?

MR NOLSEN: Yes, that is the name mentioned.

MR MULLER: Maweze was the investigating officer at a stage ... (intervention).

INTERPRETER: The speaker's mike is not activated.

MR MULLER: At a stage during the escape case, Maweze was the investigating officer in a part of the escape case. However, chair, Mr Mtombeni is being confronted with a whole bunch of information which in my opinion should have been made available to him and it had not been made available to him.

I want to request you that you make this information available to us so that we can prepare on it so that we are able to assist you.

CHAIRPERSON: Let me just take some time just to confer with the investigators on this matter.

MR NOLSEN: Madam Chair, if I could just put this on record. I hardly think we're surprising Mr Mtombeni with the details from a case in which he helped with the investigation.

I mean, Mr Mtombeni says that he suspected George Tshabangu in an armed robbery case that he was investigating. All we're doing is questioning Mr Mtombeni on the case that he was allegedly investigating.

I would put it to Mr Mtombeni as it will become clear in our line of questioning, that in fact he was not involved in that case, that there is no record that he had information relevant to that case and that in fact his (indistinct) were other.

CHAIRPERSON: Mr Muller, you know that in terms of the judgement of the Appellate Division, your client is entitled to the information which allows him to be informed of the substance of the allegations being made against him or in fact to have sufficient detail to know what the case is about.

Now, your client is in fact involved in the arrest of George Tshabangu and subsequently of course George Tshabangu allegedly escaped.

Now the questions which are being put to your client, in fact, relate to his involvement in that particular matter and I would submit that beyond the information that has been given you, there is no need to furnish him with further information.

I think that the substance of what is being put to him is what was his role at the time in Mr Tshabangu's arrest? There are, and I think these need to be put to your client, certain contradictions in the statement that has now been read by your client and, in fact, the statements handed in to the Parsons Commission.

For instance, one of the allegations is that he, in fact, was not the investigating officer in this matter and that, in fact, a, I think it's a Sgt Maweze, was in fact the investigating officer.

Your client has admitted now in this hearing that they did not have a search warrant. I think that in the circumstances a question was put to your client about why they did not take the trouble to

obtain such a search warrant and what then was the basis for their belief that Mr Tshabangu was involved in this robbery.

There are further details dealt with by your client in his affidavit which relate to the gun that he allegedly found at the premises of Mr Tshabangu. Of course the fact - I mean there - your client is aware of the fact that the Parsons Commission also investigated this matter and that a number of statements were made by all the different role-players, including Capt Van Schalkwyk and a whole lot of other officers, to the Parsons Commission.

The Parsons Commission is a public document, there is, a record of it exists at the national archives and if your client in fact was going to appear at this hearing, I think he should have taken the trouble to refresh his mind about the matter at hand, because it's a very, very serious matter, this disappearance of Mr Tshabangu. Because the allegations are that in fact the robbery - the Murder and Robbery Unit were in fact involved; not just in the disappearance of Mr Tshabangu, but also in his death.

I would want to ask your client to consider very, very seriously some of the questions and answers that are going to be put to him and the answers that he intends placing on record, because if at the end of this period, we're able to obtain evidence which is contrary to what your client is going to put on record and our intention at the end of it is to recommend to the Attorney-General that prosecutions follow on this matter.

I am in fact going to suggest to Mr Nolsen that he gives your client perhaps a recess of 15 minutes to consider whether in fact he wants to discuss with you some of the things which I've placed on record and of course to make available to your client so that he can read some of these statements from the Parsons Commission.

So that when we return, we have no question of him saying that he cannot remember. I'm surprised in fact when other people remember incidents going back 20 years, that your client is not able to remember things which happened 10 years ago.

MR MULLER: Chair, am I allowed to respond? Chair, Mr Nolsen has indicated that the claims against Mr Mtombeni would indicate that he was not involved in the arrest and investigation against Mr Tshabangu. Chairperson, in that case the notice in terms of which our client has been requested to appear here, is entirely mistakenly worded.

DR ALLY: On a point of correction, Madam Chairperson, I think that you are completely misrepresenting what Mr Nolsen said. What Mr Nolsen said, is that the motives of your client were not related to the question of an investigation of a robbery, but that there were other issues involved.

Not that your client was not involved in the case to do with George Tshabangu, but that the motives were not necessarily related to a robbery and the investigation of a robbery, but that there were other motives which Mr Nolsen says he will hope to establish

during the course of the questioning. Not that there is no involvement of your client in the alleged disappearance of Mr Tshabangu.

So I think that needs to be placed on record.

MR NOLSEN: Further Madam Chair, if I could also just place on record; to be very specific, your client has come here today and said in his sworn affidavit which has now been read into the record, that he suspected Mr Tshabangu in a robbery case.

Now what I am attempting to do, is to ask him for further particulars about that robbery case. I'm surprised that Mr Mtombeni now cannot remember those details or that he is surprised by this line of questioning.

If indeed he went there to arrest Mr Tshabangu or to carry out what seems to me an illegal search and seizure on that day, then surely he would be refreshed and would come prepared to discuss the reasons why he went there that day?

MR MULLER: Chair, may I finish? If the motives had been something other, it is my opinion that this should have been informed to our client very clearly; that the information available to you should have been clearly noted.

To now come and confront him with other motives without due notice, with statements and documentation that had not been available to us - please give me opportunity to finish.

I want to place this all on record. I believe that this is a process intended to disadvantage our client. Had you availed us of the information on which we could prepared, it would have been an entirely different matter.

We prepared on the statement, the information available to us, the statement of Happy Tshabangu and Steven Tshabangu made available to us.

In addition I want to state it clearly to you that to the best of our knowledge, Maweze had been the investigative officer in the escape case. It would appear to me that the Commission intends to continue with the claim that he was the investigating officer in the robbery case at the Motete Supermarket, which information is not in front of us.

Information available to us, is a summery of a statement by Maweze indicating that he was the investigating officer in a case MR - certain numbers; that was in fact the escape case.

DR ALLY: Chairperson, through you, we actually also need to place on record that the subpoena states very clearly that the reason that your client is being asked to come and answer questions at this Section 29-hearing is to do with the disappearance of George Tshabangu on the 6th of February 1987 in the Moutse-KwaNdebele area.

It doesn't ask him to come and speak about the alleged involvement of a robbery. It's about the disappearance, any knowledge your client may have.

Secondly, as to the question of the motives, the statements which your client was given, the statements by Steven Tshabangu, Happy Tshabangu, indicate very clearly that the family do not believe that his arrest had anything to do with a robbery. The family actually alleged that the gun was planted. That's what Happy Tshabangu believes.

Steven Tshabangu actually make statements indicating that he believes that George Tshabangu was tortured, that he heard screams.

It is clear from these statements that as far as the family is concerned, the disappearance and they believe also the eventual killing of George Tshabangu has nothing to do with an alleged - with his involvement in a robbery, but that it was part of the political conflict taking place in KwaNdebele/Moutse at the time.

Did you - have you not been able to read the statements?

MR MULLER: Chairman, the statement of Happy Tshabangu was sworn to by a certain Connie Cynthia Mahlabane. We don't know what is happening there. It would appear as if the same problem exists with regard to the statement of Steven Tshabangu. We don't know whether these are in fact sworn statements by these person. That's our first problem.



Secondly, on the 4th of April 1987 the investigating officer of the matter, whose name I cannot recall - no, it was a Sgt Sebotema, to the best of my knowledge, discussed the matter with the father of the suspect who would to me appear to be George Tshabangu, where he informs him that he saw his son for the first time when he was arrested.

At that time the information available to us in the statements must have been in the knowledge of the father, who then should have used the opportunity to tell the investigative officer how his son was tortured according to the testimony of his other son.

Now this statement was never taken. This was never investigated. Now you are coming with ulterior motives for the first time after 10 years. In this regard I want to place it on record and I hope that you would have been aware of this; that Supt Mtombeni is currently on sick leave, because of stress and he's in the process of taking medical discharge from the South African Police Service.

It is not strange for a person who have come through such a stressful period not to be able to recall all detail to know.

We'd appreciate it if you could take this into account when you make claims that he is attempting to mislead you on purpose. I want to make the statement that the Committee has not made all the information available to us; that the Committee is availing ourselves information selectively; that we are confronted with

statements that have in fact not been made by the deponents that are claimed to have made these statements.

This create tremendous difficulties for us. We have requested you for the statement. The statement for instance of Skosana, which we only obtained this morning.

DR ALLY: Let us also just put on record that your client seems to have a very selective memory; that he can remember very minute details of the events. He can remember finding the exact location of a gun, for example, searching under the bed and exactly where he found the gun.

He can remember that there was no number on the gun; that it appeared to be sawn off. He can remember writing this in his day-book and he can remember getting Happy Tshabangu to actually sign this, but on other issues your client seems not to be able to remember.

Your client can remember very little about the political conflict and when he is probed a bit further, he then remembers oh, but his car was burned.

I mean I find that very peculiar; that such an important event, part of the political conflict, your client can't remember. So I think we need also to place on record here that there is a certain selective memory which your client seems to be employing.

MS SEROKE: He remembers lifting the carpet which is such a mundane situation and somebody who could remember lifting up a

carpet 10 years ago; we wonder why he can't remember other matters.

CHAIRPERSON: Mr Muller, I'm not going to entertain any more debate on this matter. I'm satisfied having heard whatever has been said around me and by having had a look at the affidavits that were provided to your client; that he has had sufficient information to allow him to know the substance of some of what the witnesses are saying against him.

I am surprised in fact that you believe that the Commission would in fact place before your client information which is not properly attested and I wonder what you think the motivation of the Commission is in trying to do such a thing.

I want to place it on record that all the information which has been in our possession, which we have deemed it necessary for your client to have sight of, has been made available to your client in good faith. Most of them to our knowledge has been properly taken and sworn and I place on record that I find it absolutely distasteful that you should suggest that in fact un-oathed or properly - statements which are not properly oathed should be given to your client.

In any event what the Commission is concerned with is the substance of the allegations being made. One - and I want to reiterate them again so that you can in fact take your client aside and give him that opportunity to consult with you.

One, that the Murder and Robbery Squad Unit in the police at that time in that area of which your client was a member, was in fact involved in the detention of political activists and that in fact the - amongst the many events or issues they were concerned with, was political matters other than crime.

Two, that the arrest of J B Tshabangu, George Tshabangu had in fact nothing to do with the robbery, but in fact had to do with the fact that he was a well known political activist; that his family and many others in that area believe that the gun in fact was not found in that room, but was in fact planted there by your client and that in fact George Tshabangu never disappeared, but was in fact killed by the police in that area.

There are a number of inconsistencies which are in fact raised also through your client's own affidavit, starting with the fact that he talks about the gun, but more particularly that he in fact - no record exist in the investigation notes available at that time that George Tshabangu was in fact considered to be a suspect in this matter, but that in fact it was a fabrication which allowed your client and his unit without any legal documentation which is necessary whatsoever to both secure Mr Tshabangu's arrest and in fact enter his premises without the appropriate documentation.

I think your client has been furnished sufficiently with documentation. I would suggest that you consult with him in the

next 10 minutes and return here and ask your client to truthfully consider what version he's putting here before us.

This is not a matter where we're involved in establishing his guilt. We are investigating the commission of a gross human rights violation, the disappearance of a man whom we had now been told, is dead, and we would suggest that your client seriously rethinks some of the answers that he's placing on record.

In terms of the illness which you say he's suffering from, no attempt has been made to place me in possession of a medical certificate attesting to the fact that he suffers from memory lapse, because certainly from the affidavit minutiae is in fact detailed here and I would want to seriously question whether in fact he's not using that selectively to in fact not answer any questions.

We're going to adjourn for five minutes.

COMMISSION ADJOURNS

ON RESUMPTION:

CHAIRPERSON: The oath, is that going to happen at some stage today?

MR MULLER: Chairman, I explained to you that I didn't have the opportunity to take him through the statement before today and I mean Mrs Seroke has indicated a few things which is not in the statement unfortunately and you know I'm not sure what my position is.

Number one, you initially said 15 minutes and then it was reduced to 10 and now to five. You also indicated that we will be put into possession of all the documentation which doesn't seem to happen.

I don't know what my situation is at this stage.

CHAIRPERSON: Well, what I have said to the investigators, is to give your client some of the statements which were made at the Parsons Commission and they've indicated that they've already passed over to you Capt Van Schalkwyk and Sam Skosana's affidavit.

I believe you are in possession of the handwritten transcript. In fact you referred to it earlier in your evidence. It's my omission, sorry. The five minutes was meant to be fifteen minutes. I'm going to ask them to check what other information we have available so as to allow your client the fullest possibility to examine what there is available.

Mpoh, will you attend to it?

COMMITTEE ADJOURNS

ON RESUMPTION :

JAKOB MTOMBENI: (Still under oath).

MR MTOMBENI: I have a request that somebody should be found who'd speak my language, because if questions are asked in a different language, I don't - I have a problem, because I don't understand other terms and then therefore it makes me maybe reply in a different way. I would request that somebody interpret the questions to my language.

CHAIRPERSON: You, in fact this morning chose to read your statement under oath in Afrikaans. Now, are you saying that you don't understand Afrikaans?

MR MTOMBENI: I don't say I don't understand it, but that's not my language. You may understand the language of which is not your own, but there are words which you would not understand.

CHAIRPERSON: We note that and we will continue as soon as the person arrives and I believe the person is on her way. Then the interpretation services in Ndebele will certainly be made available to you.

In the interim, if any question is unclear to you or if you think that you are not being interpreted properly, then please raise that and place that on the record, but we note that you have

indicated that you're not quite comfortable, you're not speaking in Ndebele.

MR MULLER: Chairman, if I may ask you? I didn't pick up his reply to the question on Afrikaans, because I didn't have my earphones on so I didn't understand what he said. Can you just tell me what he said?

CHAIRPERSON: He - I think he indicated that he was comfortable with that.

MR MULLER: With Afrikaans?

CHAIRPERSON: Yes.

MR MTOMBENI: No, I didn't say that.

CHAIRPERSON: No, he nodded his head and I thought that he was comfortable with that. Is he saying that he's not?

MR MTOMBENI: I repeat. Afrikaans and English I do understand them, but those are not my languages. There is a word used he used, which I would understand it differently. That's what I would say.

CHAIRPERSON: I just would like to be quite clear about what you will be comfortable with. The Ndebele interpreter is on her way. What we've been doing so far is, you've been speaking in Ndebele, the questions are being translated, the questions that we are putting to you are being translated into Sesotho into ... (intervention).

MR MTOMBENI: No, I receive them in English, direct from English.



CHAIRPERSON: So he understands them in English. He responds in Ndebele and you translate for the Afrikaans interpreters and the Afrikaans translation is relet.

Mr Mtombeni, which language would you be more comfortable with?

MR MTOMBENI: Ndebele or Zulu.

CHAIRPERSON: Ndebele or Zulu? Is that in order? So you're going to be speaking in Ndebele. The questions in fact will be relayed to you in Zulu.

MR MTOMBENI: Yes.

CHAIRPERSON: All right and ... (intervention).

INTERPRETER: But that would be a problem in the meantime, because I thought we'd continue with the English and then I would only interpret from Ndebele to English.

CHAIRPERSON: Could we just clear this? It gets more confusing by the day.

MR MULLER: I didn't realise that he understood Zulu as well, but I mean, Chairman, we're in your hands. I feel that it seems to me that there is a problem and I would like us to find a solution, but we would like to continue as well.

CHAIRPERSON: Well, let me see if I can find someone who can actually take his Zulu directly.

MR MULLER: But you did make a ruling that if he doesn't understand he has the right to ask repeat of the question and he did that previously. So couldn't we try and continue.

CHAIRPERSON: What we can do, Theo, is get someone in the office who actually speaks Zulu and can assist with it.

MR MULLER: Okay. Yes, that's fine. We apologise.

CHAIRPERSON: May I just say that we in fact have, you know, asked that the interpretation services be provided in Ndebele and apparently there's a problem with the Ndebele person whose travelling up from Moutse.

I'm surprised that that person isn't here, but we will try and assist you so that you are comfortable. I believe the person should be here by lunch time.

MR MULLER: Chair, while we wait, may I address with regard to the statements of Happy Tshabangu and Steven Tshabangu?

Could you maybe explain to us what the nature is of those statements. We've not received an explanation of what the situation is with regard to these statements?

CHAIRPERSON: In terms of what aspect, Mr Muller?

MR MULLER: It would appear as if these statements have in fact been signed by persons other than Happy Tshabangu and Steven Tshabangu.

You accused me of acting distastefully by bringing this to your attention, but I do think that this is a real problem. I thought

that you might have attempted to determine what the reason is for this situation.

MR NOLSEN: Mr Muller, I'm confused by, well I'm actually confused by what you are confused by. I mean, it seems to me after paragraph 34, let's take for instance, the affidavit of Steven Tshabangu. It says, deponent and there is a signature there.

On the second page there's a signature of the Commissioner of Oaths. Now these statements were taken and are in the possession of the Legal Resources Centre in Pretoria, the legal representatives for the family, the Tshabangu family and I'm not quite sure what your problem is with these statements as presented here.

MR MULLER: "Kan u na bladsy drie van die verklaring gaan ... (intervention)."

INTERPRETER: Speaker is not using his mike.

CHAIRPERSON: Mr Muller, will you use your mike when you speak.

MR MULLER: Sorry. Can you look at page three of the statement of Happy Tshabangu. The deponent there is indicated as Cynthia Mahlabane or something like that. That is, I mean, it is confusing and ... (intervention).

MR NOLSEN: I understand now what Mr Muller's point is and I can see how that is indeed very confusing. The - I think if I can just try to clarify so everyone's on the same page with us.

On the last page of Happy Tshabangu's statement, the heading is Happy Tshabangu, I the undersigned Happy Tshabangu and its signed as a deponent as Cynthia ... (intervention).

CHAIRPERSON: Mahlabane.

MR NOLSEN: Maglabane. Mahlabane is - since she originally witnessed and originally made a statement to it, Happy has remarried and her married name is Mahlabane. Her name Cynthia is I name that I know that she goes by at work.

So this is indeed very confusing. I mean, I can attest to you that they're one and the same person, but I think that we need to take a sworn statement and clarify that.

I'm sure we can have Legal Resource Centre do that for us.

CHAIRPERSON: Mr Muller, what is - what the explanation which is being profert, is that Happy Tshabangu is now known as Cynthia Mahlabane. What we will do in the interim, is certainly make sure that an affidavit, which alleges that Cynthia and Happy are one and the same person, are in fact relayed to you so that you can be quite sure that we're not attempting to place the statement before you of someone else.

MR MULLER: Can I just, I mean can we please ... (intervention).

CHAIRPERSON: Sorry?

MR MULLER: Sorry, now I've missed the last part. I don't want the interpreter to talk to Mr Mtombeni while you're talking about this, because this is a serious matter.

CHAIRPERSON: Yes. What my investigator has sought to do is to inform you that Happy Tshabangu has remarried and in fact Happy Tshabangu is now known as Cynthia Mahlabane.

In fact, what we should have done, is we should have had an affidavit which sets out that Cynthia and Happy are one and the same person.

However, what we will do in the interim to assure you that you are not being placed in possession of documents which are of different people, we will ask the Legal Resources Centre to send us a letter confirming that and then we will at some stage place you in possession of an affidavit from Happy herself, which confirms that she and Cynthia are one and the same person.

MR MULLER: Can I just take it up with my client?

CHAIRPERSON: Yes, certainly.

(Long pause - consultation between Mr Muller and client).

MR MULLER: Chair, I've attempted to explain the situation. As a police officer Capt Mtombeni says that he would have taken a statement indicating that the undersigned, Cynthia Mahlabane had been known in the past as Happy Tshabangu et cetera et cetera, just to be able to create context.

So he's not happy with the explanation, but I'm sure that we can continue, but we will appreciate it if you can give us a similar explanation for Steven Tshabangu's statement or obtain an

explanation for us, since I am not entirely certain whether this is in fact the correct signature either.

CHAIRPERSON: What precisely is the problem with Steven's? Is Mr Mtombeni saying that that's not Steven's signature where it says deponent?

MR MULLER: Chair, the problem is that his name, Steven Tshabangu, is signed as M S. It just doesn't appear correct, but we are willing to wait for some proper explanation. We can continue in the meantime. We don't have any problem with it.

CHAIRPERSON: Well, what we shall do; these statements were in fact taken by the Legal Resources Centre. We will in the interim obtain affidavits from them in respect of these statements.

We'll continue now. We have got a Zulu interpreter. If there's any unhappiness about the interpretation, if there's anything you're not clear with, please place that on the record immediately when the question is made. Russel?

DR ALLY: Thank you. Just to also place on record, Chairperson, that all these statements, both these statements, are actually signed by a Commissioner of Oaths, so I think that that should indicate that no Commissioner of Oath would attest his signature unless there's proof of the people, but we can furnish further proof if that is actually required.

I think we actually need to get to some of the crucial issues here and I'm sure that Mr Nolsen and other investigators may want to come back to some other issues.

We've established now, Mr Mtombeni, that you actually not only knew about the political conflict taking place in KwaNdebele/Moutse at the time, 1986 1987, but that you were also possibly a victim of this conflict and that your car was set alight by people who you called comrades.

Can you give us an approximate date, an approximate date when this attack took place, when your car was set alight by comrades?

MR MTOMBENI: What I know is that it happened in 1986 in July.

DR ALLY: As a result of this incident, did you feel that you were being brought directly now into this political conflict? How did it impact on you?

MR MTOMBENI: No, I took it that people who were fighting were many and people who were burning that car, were just small boys. So I just thought that it's because I was caught in a cross-road.

DR ALLY: Were you angry about it? You didn't feel that you're now being targeted just for doing what you considered to be your job as a police officer?

MR MTOMBENI: I would say I felt hurt that my car was burned, but it happened during that kind of a situation.

DR ALLY: What happened after this incident where your car was burned? Was this followed up? Did the police investigate it? Did you ever get to find out who did it?

MR MTOMBENI: After the car was burned, I opened a docket. Then they kept on briefing me that it was difficult to find them, because it was during the conflict and there were many of them.

DR ALLY: Was this your one and only time - the one and only time that you were this directly involved in the conflict where something actually happened to you, your car was burned? Or were there other occasions where your house may have been targeted or you may have been approached by comrades?

MR MTOMBENI: The only thing I remember is the burning of the car. Then thereafter I don't remember whether there was any kind of an incident or being point by a finger or something else.

DR ALLY: You mentioned that you knew the Tshabangus very well. In fact, in your own affidavit which you gave to us, your sworn statement, you were the one who actually went to the house of the girlfriend of George, because you knew the Tshabangus so well that you actually knew where this girlfriend lived. Is that true?

MR MTOMBENI: Yes, that is correct.

DR ALLY: Beside the fact that the Tshabangus were well-known as business people and that the father, George, owned the Bundu Inn, what else did you know about the Tshabangu family? Did



you know about their political views they may have held? Anything more about them?

MR MTOMBENI: Truly, I'd say the Tshabangu family, I was used to them very well in such that I was even visiting them. That is the father to George. I knew him as the priest. Then there was no other thing which was evil about them. Then again one of my relatives made it in the family. I would say the Tshabangu family were - I would take them as my family also.

DR ALLY: If you knew this family so well and you knew George and the family was very successful at business; would it have - were you surprised that George should in any way be implicated in an armed robbery?

MR MTOMBENI: Sorry?

MRS SEROKE: Was it not surprising to you that George was involved in the armed robbery?

MR MTOMBENI: Chair, just a minute.

MR MULLER OBJECTS: Chairman, apparently the interpretation differed from what Mrs Seroke told him and he's got a problem with that.

CHAIRPERSON: She, in fact attempted to correct the interpretation that was given and correctly reflected the sense of the question. So I would prefer him to answer her question.

MR MULLER: Chair, can I ask if Mrs Seroke will maybe just assist us throughout by checking that the interpretation is in fact correct.

CHAIRPERSON: Yes, she's more fluent in terms of the issues and perhaps could put over the correct sense of what she understands. You are to answer that question, Mr Mtombeni.

MR MTOMBENI: My request is that that question should be repeated.

DR ALLY: Let me repeat the question. You indicated that you knew the Tshabangu family very well, that you knew George's father very well. You refer to him as the preacher. Now, when there was this allegation that George may have been involved in a robbery; did you not find something like this surprising, given that you knew George, given that you knew the family? Was this something that you would have expected or not expected of somebody like George? I'm asking you for your opinion?

MR MTOMBENI: I was surprised, because I knew him as an honest person. Even if you do not know a person very well, but with my knowledge I knew him as a good person.

DR ALLY: Thank you for that answer. Because in your statement you also say that when you found George at his girlfriend's house and you explained to him the purpose of coming to see him, George thought that you were making a joke. He laughed, in your own language he thought it was a "grap", a joke. Is that correct?

MR MTOMBENI: Yes, that is true, because the way I felt is that I was used to visit the family. Then even one of my relatives made it in that family. I just took him as my younger brother. When he

○ saw me, and I said that you are now arrested, he joked, because he didn't believe that I - he didn't believe that I would arrest him, because we used to visit each other.

○ DR ALLY: So again I'm asking for your opinion. So George, when you confronted him about this robbery that he was allegedly involved in, he was surprised. He thought you were joking. In other words, are you suggesting that he didn't act as somebody who was in any way nervous about anything as if he had now been caught out or found out. He was genuinely surprised and really thought that you were teasing him.

MR MTOMBENI: When I found him in the house, he was not surprised, but when we went outside the room, he saw other police outside, he started to be scared.

DR ALLY: He started to be scared when he saw other policemen?

○ MR MTOMBENI: That's the way I felt that when I arrived and told him that he was arrested, he thought that I was playing, but when he saw that I was together with other police, he started to believe that he is now arrested.

DR ALLY: Now, there was an incident in which the Tshabangus were involved before this arrest of George. The incident which involved those activists who came from Mamelodi to KwaNdebele who stayed at J B Tshabangu's place.

MR MTOMBENI: May you just start again.

DR ALLY: Let me start again. I'm saying that there was before this arrest an incident involving the Tshabangu family where certain activists from Mamelodi, nine activists, came to KwaNdebele, were caught up in this conflict that we were speaking about during the time when KwaNdebele was wanting independence and also wanting to incorporate Moutse into KwaNdebele.

MS SEROKE: It's too long.

DR ALLY: Is it too long?

MS SEROKE: He does ... (intervention).

MR MTOMBENI: I would answer the question, because I heard the question.

DR ALLY: Okay. Can you tell us about this incident and what you remember of this incident?

MR MTOMBENI: I don't know what you are saying. What I know is that people were shot at Vlaklaagte No 2. Whether they were related to the Tshabangu family incident or something, I would tell a lie.

DR ALLY: What do you remember about this incident where people were shot at Vlaklaagte No 2?

MR MTOMBENI: What I know is that people were shot there. I don't know the whereabouts of that docket then and who was responsible for that docket, but I know that thing, because it was publicised in KwaNdebele. That incident was publicised in KwaNdebele.

DR ALLY: Did you hear or know that the Tshabangu family was involved in this incident in any way?

MR MTOMBENI: I don't know that.

DR ALLY: You don't know that George was accused of having provided shelter and food for these activists who came from Mamelodi before they were killed?

MR MTOMBENI: I don't know that.

DR ALLY: In any of the questioning of George at any time, was any mention made of this? Was this issue ever raised whether George knew who these activists were or whether he was involved with these activists?

MR MTOMBENI: May you repeat the question again, Sir.

DR ALLY: In the questioning of George, after George was picked up from his girlfriend's house, was he ever questioned about his involvement with these activists who came from Mamelodi?

MR MTOMBENI: I don't know that, Sir.

DR ALLY: You don't know that. Now, George was picked up and taken to the police station where he was questioned. Were you ever present during any of the questioning of George?

MR MTOMBENI: As I say that when we arrived at Siyabuswa, because I received a gun I had to go and make a statement about that gun. I would say the investigating officer who continued with the interrogation, I was not present.

DR ALLY: Were you never present during any of the questioning?

MR MTOMBENI: When he was in the office, I was not present.

DR ALLY: Were you ever informed by any of the people who were involved in interrogating him on anything that happened during George's interrogation?

MR MTOMBENI: Yes.

DR ALLY: What did they tell you?

MR MTOMBENI: Kritzinger said George is co-operating. They don't have a problem with him.

DR ALLY: Kritzinger said George is co-operating, we don't have a problem with him?

MR MTOMBENI: Yes.

DR ALLY: What did that mean? Can you tell us a bit more what it would mean if George is co-operating?

MR MTOMBENI: He said he's co-operating with them. Then he said there are other guns which they have made a cache and they have stored it there in Ellisduran next to Marabong. Then he would have a problem to go with us to that place during the day, because it may happen that his friends would see him and then they would kill him, because when they said to themselves when a person is detained, he should not co-operate with the police. So he agreed that he should go with us during the night.

DR ALLY: Now these other friends; were these supposed to be fellow criminals or were these supposed to be fellow activists? Did

Kritzinger or anybody give you any indication of who was being spoken about?

MR MTOMBENI: I would say we were talking in regard to a criminal activity as we have found a gun in his house. Then we believed that the guns which were found, which he said they are cached somewhere, they were used for criminal activity, not for political activity. That's the way Kritzinger told us.

DR ALLY: Now earlier, you indicated that you were surprised at the suggestion that George may have been involved in a robbery, because you knew him and you knew that he was an honest person. That was the word that you used, you said he was an honest person. Is that correct?

MR MTOMBENI: That is correct.

DR ALLY: Now Kritzinger comes and tells you that George knows where more guns are buried and that these guns are linked to criminal activities. Did you find this also surprising, given what you have said about George?

MR MTOMBENI: As I explained that I was replying to the question; that after telling just that he is under arrest, I explained to him that we received information that he was involved in armed robbery in Motete.

Then I told him that we are from his house and we searched his room. Then on top of the wall we found a gun. Then he said to us that gun was not his. Then we took him to the car. Then that is

where they did interrogation whilst I was busy making a statement about the gun. Kritzinger came back and said, that person is co-operating. He was talking about in regard of the gun.

DR ALLY: Who were involved in the interrogation?

MR MTOMBENI: If I remember well, it's Kritzinger and Sam Mebelo and Dumisani. If I remember well.

DR ALLY: Just to go back. You said to George, when you arrested him, that you have received information. Where did you receive this information? From whom did you receive this information?

MR MTOMBENI: I don't say I received information. I said there is an information that came from Kritzinger. It didn't come from me, because I was just helping Kritzinger. So that information didn't come to me directly.

DR ALLY: Did Kritzinger ever tell you the source of that information? Did you ask Kritzinger? You are speaking about somebody who is a friend, who you know, who you say is honest. Here Kritzinger comes to you and says this person is involved, I've got information. Did you not try and enquire from Kritzinger, the source of this information?

MR MTOMBENI: In our police every member would have an informer. If somebody says I have information about a certain issue, usually you don't enquire where the source of that information. You just follow that information and follow the instructions.



DR ALLY: So Kritzinger tells you they have information. You pick up George. George is then interrogated and Kritzinger says George is co-operating and he's going to point out more guns.

MR MTOMBENI: That is correct.

DR ALLY: Did you know George's friends?

MR MTOMBENI: No.

DR ALLY: Why were you asked to accompany George to go and find where these other guns were allegedly hidden?

MR MTOMBENI: He was not accompanied by me. All of us, we accompanied him.

DR ALLY: But you went with as well.

MR MTOMBENI: Yes, that's correct.

DR ALLY: Now why you?

MR MTOMBENI: It's because during we - during the day we went together to look for him. Then we arrested him together. Then Van Schalkwyk as the commander gave instructions that all of us should go and accompany him to that cache.

DR ALLY: Tell me just for the record now, exactly who went with you to go and find these guns that George allegedly said was in this area in Moropong?

MR MTOMBENI: In the Kombi we were together with George. It was George, Sgt Van Schalkwyk, Warrant-Officer Magagula Mike Mahlangu and Kritzinger and Sam Mopela were following us with the Skyline.

DR ALLY: So how many people are we speaking about?

MR MTOMBENI: Six people.

DR ALLY: Six people with one person going to find where these arms were supposedly hidden. Correct?

MR MTOMBENI: That's correct.

DR ALLY: In two cars?

MR MTOMBENI: That's correct.

DR ALLY: George was handcuffed?

MR MTOMBENI: In the Kombi, yes, when we went to that area.

DR ALLY: How was George handcuffed?

MR MTOMBENI: The usual way of handcuffing.

DR ALLY: Explain to us. Were his hands behind his back, in front? How was he handcuffed?

MR MTOMBENI: I don't remember well. What I know, is that he was handcuffed.

DR ALLY: You said the usual way of handcuffing. What is the usual way of handcuffing?

MR MTOMBENI: When I said the usual I say the way where you handcuff a person from both hands. That's why I said the usual way.

DR ALLY: I understand that, but sometimes the hands are behind the back of the person. Sometimes the hands can be in front. What is your recollection? Where were George's hands handcuffed? Behind his back, in this position or was it in front of him?

MR MTOMBENI: It depends how a policeman handcuff a certain suspect, but I don't remember well how he was handcuffed.

DR ALLY: So you don't remember. All you know is that he was handcuffed?

MR MTOMBENI: Yes.

CHAIRPERSON: What was the usual way in which you handcuffed somebody?

MR MTOMBENI: I would handcuff them with hands in front or hands at the back. It would depend what kind of a suspect do you have, because the handcuffing depends on the suspect. A dangerous person, a suspect, you handcuff them at the back and the soft ones, you handcuff them with hands in front. So a dangerous suspect, you'd handcuff them at the back, but the one whom I see that he is co-operating, he would never try to strangle me, I would handcuff with his hands in front so that I have a trust with him, but I don't remember how he was hand-cuffed, either at the back or the front.

CHAIRPERSON: Sorry. Perhaps you could tell me how you regarded George Tshabangu? Did you regard him as dangerous or as someone who was co-operating?

MR MTOMBENI: He was co-operating with us and even to me he was not a dangerous suspect.

CAPT MOHEMA: So which means he might have been handcuffed like this?

MR MTOMBENI: That may be possible.

MS SEROKE: (Indistinct).

MR MTOMBENI: He was handcuffed in the Kombi.

MS SEROKE: You said when he alighted from the Kombi, was he handcuffed?

MR MTOMBENI: Yes, he jumped from the fence and his hands were not handcuffed then.

DR ALLY: Sorry, just say - just repeat that.

MR MTOMBENI: I say he was - the handcuffs were released when he was just about to jump the fence. Yes, I was present.

DR ALLY: Sorry, just - this seems to be very peculiar. You are taking somebody to point out arms, not so?

MR MTOMBENI: That is correct.

DR ALLY: This is somebody who you suspect of being involved in an armed robbery?

MR MTOMBENI: That is correct.

DR ALLY: This is somebody where allegedly you found a gun in his room?

MR MTOMBENI: That is correct.

DR ALLY: This is somebody who tells you that he can point out more arms?

MR MTOMBENI: That is correct.

DR ALLY: You don't consider somebody like this dangerous?

MR MTOMBENI: I said that from the beginning he didn't show signs of being dangerous or being - fighting with us. We were three when we left the Kombi and he was just alone.

DR ALLY: That's an important point. As you say you were three and he was alone and there was another car, not so?

MR MTOMBENI: Yes, there was another car which was following us.

DR ALLY: So you were not three, you were six.

MR MTOMBENI: Yes.

DR ALLY: So you get to the spot where these guns are allegedly hidden, correct?

MR MTOMBENI: This I said that when we left at the fence so Van Schalkwyk released the hand-cuffs. Then he jumped together with Van Schalkwyk. Van Schalkwyk helped him to jump the fence. After jumping the fence, then he had to help Van Schalkwyk to jump the fence so that they jumped together with Van Schalkwyk. Then again I helped Magagula to jump the fence. Magagula helped me again to jump the fence.

DR ALLY: At that point was George still handcuffed?

MR MTOMBENI: I explained that he was rid from one hand, but the other hand was handcuffed.

DR ALLY: Why were his handcuffs untied or unlocked? In the Kombi where there are three of you, you handcuff him where there is very little chance of him escaping. Now you say that you get to

the spot, you alright, you get out of the combi and you unlock one of his handcuffs. What was the reason for this? Was this usual?

MR MTOMBENI: There was a mix, because it was a bushy area. So after the jump it was difficult to jump the fence with two hands handcuffed and then we were working in a bushy area, because we knew that he would not walk freely.

MS SEROKE: How would it be difficult for him to jump the fence, because you said Van Schalkwyk helped him to jump the fence. How could it be impossible, because Van Schalkwyk was helping him to jump the fence.

MR MTOMBENI: We saw it's impossible. That's the way - that was the instruction of Van Schalkwyk that he unlocked one handcuff so that he would help him to jump the fence.

DR ALLY: Did Van Schalkwyk - according to Van Schalkwyk unlocks the - but the handcuff is still on his hand?

MR MTOMBENI: That is correct.

DR ALLY: So you - he - Van Schalkwyk and George jumped over this fence? You, did you follow?

MR MTOMBENI: No, Magagula followed.

DR ALLY: And you? Where were you?

MR MTOMBENI: I explained that Van Schalkwyk helped George to jump the fence. Then I helped the - Mr Magagula to jump the fence. Then I was the last one to jump the fence.

DR ALLY: So the three of you are still together then with George after you've jumped the fence?

MR MTOMBENI: After they jumped the fence; that is Van Schalkwyk and George, they started proceeding with the road or to the direction of the cache.

DR ALLY: Only the two of them?

MR MTOMBENI: It happened quickly. After they jumped the fence, they started walking, proceeding. Then thereafter I helped Magagula and other and I jumped also. Then we followed them, but they continued to walk.

DR ALLY: Where was the car at that point, the Skyline which was also following you?

MR MTOMBENI: It has not yet arrived at that time.

DR ALLY: Now, the three of you had your guns with you, you were armed?

MR MTOMBENI: Yes.

DR ALLY: Did you have torches with you?

MR MTOMBENI: No.

DR ALLY: You didn't have torches with you. You're going at night. You're supposed to be going to find some arms that are hidden. Isn't standard equipment procedure that police actually have torches in their vehicles?

MR MTOMBENI: I don't remember what happened in details. When I started I said that this is not my case. So in terms of a

procedure, the commanding officer or the senior officer is the one who would give the direction. I don't know what happened. I thought maybe they thought that the torches were in the car, but we didn't have them.

MS SEROKE: Mr Mtombeni, it is surprising that you didn't have torches and walking at night, because earlier on you said Kritzinger said we are not supposed to take him during the day, because his friends would see him. So he did well that he should take him during the night.

MS SEROKE: So if he doesn't want to take him during the day and he would take me during the night. So why did you think that he didn't take torches? It didn't happen just instantly. It was planned.

MR MTOMBENI: Yes, I agree with you, because the question have been asked, is the one I remembered. I said, I don't remember why we didn't have the torches. Maybe we made a mistake by not having those torches.

It may happen again that usually they would give us the torches and in many instances they would remain in the cars. I would tell a lie that the reason why we didn't have torches is what.

MS SEROKE: I'm trying to show you that it was not a mistake that you should not have torches, because you said you didn't want to take him during the day, you want to take him during the night. So it was not a mistake.



MR MTOMBENI: I'm not saying it is a mistake. I repeat that it may happen that torches were in the car, but maybe some of us - I'm saying myself, I didn't have the idea of having a torch. Maybe the commander who is Van Schalkwyk thought that the torch was in the car. I'm just replying to that question.

CAPT MOHEMA: You were an investigator and a detective and you also could see it was very dark. In your statement you said it was dark.

DR ALLY: Pitch dark.

CAPT MOHEMA: But you just decided not to take your torch along and how - you were going to look for weapons, a lot of weapons I believe. Then how did you think you were going to have a look to see such weapons?

MR MTOMBENI: I repeat again that I don't know how that happened. So I don't know how can I reply again, differently.

DR ALLY: Mr Mtombeni, you are a sensible man and I hope that you also consider this panel to be made up of sensible people. In your statement you say not only that it was dark; that we can accept, but you say "dit was pikdonker". It was pitch black. In other words one could see nothing. That's what "pikdonker" means, my understanding of "pikdonker". It is pitch black. That is in your statement. If you want me to find it for you, I'll read it for you.

MR MTOMBENI: I remember well what I've written. I still remember that I wrote "pikswart". I don't apologise for that.

DR ALLY: How can police officers, going out on a very important and a serious investigation; this is armed robbery you did tell us and there are more arms. What did you hope to find with not a single torch? "Dit was pikdonker", you say. How were you going to find anything? Is this a serious investigation?

MR MTOMBENI: May I repeat again that I respect this panel and that I'm prepared to co-operate with this panel. I still repeat again that I have respect for this panel. Then I reply on the basis of that respect. I've replied to that question. I don't know how can I reply to it again.

MS SEROKE: You don't know why you didn't have torches, but you see that it is surprising why you didn't have them. So in other words we say, those torches were there. Or you didn't use them. You said you didn't know why you didn't use the torches, but that should surprise you that you'd say being dark like that and you'd be able to go on without torches?

MR MTOMBENI: I said I don't know how can I repeat, because I say in our usual practice we're given torches. Then they remain in the cars. Then I reply that I don't remember or I'm surprised how those torches were not there. Whether they were in the car or not, I don't know. I agree that we didn't have torches, but I don't know what happened that we didn't have torches, and I repeat that with respect.

CAPT MOHEMA: Maybe such an incident never occurred.

MR MTOMBENI: I'm not able to make a clue of what he's saying.

MS SEROKE: In other words you are saying you didn't go with that person to go and sit.

MR MTOMBENI: That would come from the person who asked that question, because I know that we went there.

MR MULLER: Can I just interfere? I'm sorry, I missed the question or I missed the gist of it. Can Mr Mohema just repeat that question of his?

DR ALLY: People, I'll think we'll leave that. Mr Mohema is just suggesting that maybe the incident didn't happen and that is why your client finds it so difficult to explain why there were no torches. We'll let that ... (intervention).

MR MULLER: Is that an allegation made by Mr Mohema that the incident didn't ... (intervention).

DR ALLY: It's not an allegation, it is a suggestion ... (intervention).

MR MULLER: The suggestion that it didn't take place?

DR ALLY: Given the difficulty in understanding how police officers involved in a serious investigation in an evening, where in the statement of your client it is pitch black, have no torches. How can they conduct their work?

MR MULLER: Sir, the only thing is I didn't get the gist of what he said and I just wanted to clear it up, but I'm happy, thank you.

CHAIRPERSON: I think that Mr Mtombeni, one of the things that this panel has to do, is to compile a report to the Commission on the evidence that in fact you're giving here. When one listens to and reads what you've put in your affidavit, which is that it was very dark at night and I mean that one of the first questions that is raised is, why do you go and look for arms caches at night? Why not during the day?

I think that's a reasonable question which we would want to have answered and then secondly, having chosen to go out this late at night, you don't have anything with you which allows you to see in the dark, because I assume that all of you suffer from the same problem that most human beings have; that you can't see in the night in the dark.

We find it questionable and we then need to ask ourselves; is this a rational story that's being put forward to us?

MR MTOMBENI: I would repeat again that for us to go at night, because of what Kritzinger said that he would - that this person won't go during the day, his friends would see him and then they would harass him or assault him.

DR ALLY: So you knew well in advance that you were going to go at night. You knew from the afternoon already that you were going to go at night and you make no preparations?

MR MTOMBENI: I would repeat again that this was not my case. It may happen that in - to speak for myself, for me to be careless in

that way not to have a torch, is because I was helping. Then I thought the person responsible for the case would make the necessary arrangements and then I was not in charge of this case.

DR ALLY: When you arrived at the scene and you knew that you were going to get out and you were going to have to look for weapons in the dark; did you ask anybody, have you got a torch? Did you look for a torch? Did you try and find a torch?

MR MTOMBENI: I don't remember as such if I did ask somebody as to whether he has a torch or not. I don't want to lie. Maybe I asked or maybe I didn't. I don't remember.

DR ALLY: So how were you going to do your work? It was pitch black. Isn't it a logical to see and to find where you were going to walk, to find your bearings?

MR MTOMBENI: I don't want to lie. I said I don't remember, because there are people who were smoking. I didn't ask as whether is there any smokers amongst us? Maybe they have the matches. Then I don't say that we did discuss about that or they did have that kind of an idea. Maybe it happened, but I don't remember as well I did ask that kind of a question.

DR ALLY: Is it that you remember so very very well that it was dark. You even remember that it was pitch black, it was "pikdonker". How is it that you remember that so vividly, but you can remember nothing else about whether you enquired about

torches, whether there was a light, whether there was matches?

How is it that you remember that one aspect?

I want to put it to you, is that not because you need a justification to explain why George Tshabangu mysteriously disappeared; that's why it had to be pitch black?

MR MTOMBENI: The time he stated that we went there at nine at night.

DR ALLY: You see you can even remember the time now.

MR MTOMBENI: It was at night, it was at nine during the night, because we left at eight o'clock in the offices. When we arrived at that time, it was approximately nine o'clock.

DR ALLY: So you're beginning to remember a little more details now. You remember that you arrived plus minus nine o'clock in the evening and you remember that it was pitch black. It was a dark night. Now tell us, explain to us, how were you going to find anything that night? As a police officer, a trained police officer, looking for arms; explain to us now in the dead of night, how were you going to find anything? What were you going to use to find these arms?

MR MTOMBENI: The person who said he was going to show us where the arms cache is, was with us.

DR ALLY: How was he going to find his way? It was pitch black for him as well.

MR MTOMBENI: I don't know how he would show us the place, but he said to us it is better if we go at night. So I'm not able to respond to that question. Maybe he will say that himself.

MS SEROKE: You would repeat it again that George said he was going to show you the arms cache. You said that if he pointed that area or that arms cache, you would only look at that spot and leave. You would not make attempts to dig so that is it true that this place is a real place where the arms were stored?

MR MTOMBENI: I don't remember well, but the way it was, we were going to dig.

DR ALLY: Did you have spades with you? Did you have shovels with you?

MR MTOMBENI: No.

DR ALLY: But you were going to dig?

MR MTOMBENI: We would see the arms and then we'd go back and then pick up the spades and come back and dig.

DR ALLY: So you've had spades in the car?

MR MTOMBENI: Not in the car.

DR ALLY: Spades in the Kombi?

MR MTOMBENI: I repeat they were not there in the Kombi.

DR ALLY: How were you going to find these arms caches. You have no light. It is pitch dark. You have no implements to dig with, a shovel or a pick-axe and yet you go in to find these arms.

How were you going to - how were you - what I want to ask is very simple. How did you intend to do your police work when you were this ill-prepared?

MR MTOMBENI: I would repeat that there are many ways to kill a cat. We would go there and find out about the place and then we'd cordon off the area and then go back again and get the instruments and dig up.

DR ALLY: That expression: kill a cat? Is that just an expression or is that a Freudian slip?

MR MULLER OBJECTS: Mr Chairman ... (intervention).

DR ALLY: That can pass. That can pass. So let's continue. So as you get out of the Kombi, you say that Van Schalkwyk unlocks the handcuffs?

MR MTOMBENI: That is correct.

DR ALLY: Once you are over the fence; does Van Schalkwyk put the handcuffs back on again?

MR MTOMBENI: I don't remember well. What I remember well is that he unlocked one hand. Then he jumped together with him on the fence. Then from there they proceeded to walk in front of us. At that time I was helping MagaGula to jump. Then after that Magagula helped me to jump. At then end, as to whether he handcuffed him again, I am not able to say, because they were in front of us.



DR ALLY: Do you remember well Van Schalkwyk unlocking the handcuffs?

MR MTOMBENI: Yes, that's correct.

DR ALLY: Do you remember it very well?

MR MTOMBENI: That's correct.

DR ALLY: Why is it not in your affidavit? This is such an important point. Why do you not mention it in your affidavit that Van Schalkwyk unlocks the handcuffs of George Tshabangu? Why is it not in your affidavit? If it is such an important point that you remember so well?

MR MTOMBENI: I don't know, but it happens that you're not able to put all things in a statement. I don't know why it happened that it's ... (intervention).

DR ALLY: Is this not an important point. I mean after all, you are trying to explain to us how George escaped. It would have been very difficult for George to escape being hand-cuffed, not so? If George was still hand-cuffed it would have been very difficult for him to run away. Is that not the case?

MR MTOMBENI: That is correct.

DR ALLY: Because that is why you use handcuffs; to prevent or make it difficult for somebody to escape, not so?

MR MTOMBENI: That is correct.

DR ALLY: In your statement you mention that he was hand-cuffed.

Paragraph 16 on page five:

"Tshabangu was handcuffed, and we battled to get through the fence. While I was helping Sgt Magagula to get through the fence, to climb through the fence, Sergeant Van Schalkwyk and George Tshabangu moved ahead of us."

Not a word about Sgt Van Schalkwyk unlocking the handcuffs of George Tshabangu. Nothing.

MR MULLER OBJECTS: Chair, I want to place it on record that I said at the beginning that I drafted these statements with very limited information available to me and we were able only this morning to discuss it with each other. In view of what is being said at the moment, I must take the blame. I wouldn't like to take the blame, but I would not want you to make negative deductions from this. Under very tremendous pressures we attempted to draft a statement and prepare it for you.

CHAIRPERSON: So just - all right.

DR ALLY: With respect, Sir, that - regardless of the pressure and the circumstances, that is a crucial point. I asked your client if he remembered that incident very well. If you recall, it is on record. He says yes, I remembered very well that Sgt Van Schalkwyk unlocked the handcuffs. He remembered it and he remembered it very well. He remembered it vividly in the same way that he remembers that it was a pitch black evening.

Yet, in his statement, in his affidavit, something which he says he remembers very well; there is no mention of it whatsoever.

MR MULLER: Chair, I can explain only by saying that I drafted the statements of a number of persons. This is a failure on my part.

This is mentioned in the statement of Van Schalkwyk. I realise the importance of it, but I do want to ask you to please understand the circumstances under which the statement was made.

I've got Van Schalkwyk's statement right here and there is clear mention of the taking off of the handcuffs and Mr Mtombeni was present when I discussed this with Van Schalkwyk. This is an oversight on my part, that we did not include in this statement the matter that the handcuffs were taken off. That's all I want to say to you, but you can take it from there. I just wanted to inform you of this.

CHAIRPERSON: Mr Muller, what then is the status of the statement that has been made by your client?

MR MULLER: Chair, the idea was to have some sort of a document prepared which we could use in consultations. Unfortunately we did not have the opportunity to consult. I thought this morning that this might be a document from which to start off.

In view of what is happening now, I don't want to advise my client to hand in the additional statements for the other clients, because it's now being used against him.

We intended this only to give the Committee an idea of the broad framework of their version and I stated that to you this morning.

This statement is not signed. I told you before the break that I don't exactly know what the status is. I don't know if it is going to be signed. Much is being made of this statement and more than should be made of it. More than what's intended.

CHAIRPERSON: Mr Muller, why I don't want to belabour this point. At the end of the day what is before me is a document which is handed in by you and which in fact has been read into the record by your client.

So it has also been placed under oath as a version put forward by your client to the Commission. Now we have your explanation where you in fact are saying that because of the limited time available to you, there are facts which have not been placed before us.

Unfortunately we cannot disregard the statement. The statement is in fact under oath before us. What I would suggest you do, is you simply indicate that this is one of the matters which was in fact not included, but which in fact obviously was quite an important issue, and add that into your - and at some stage, if you wish to amend your client's statement, then I would suggest that that's another way of actually doing that.

DR ALLY: Can we continue? So we've established now that this investigation, to say in the very least, was sloppy. It was a sloppy investigation. There are police officers accompanying a suspect in a serious matter at night. They have no torches and they don't have any shovels or spades in the vehicle, so it was said to us, and they are going to dig up an arms cache.

Now, furthermore, the suspect's hands are untied, the handcuffs are untied. They jump over the fence. You then say in your statement, I suddenly - let me read it in Afrikaans:

"I suddenly heard Sgt Van Schalkwyk shouting. Myself and Sgt Magagula ran towards him in an attempt to determine what was happening."

How were you going to do this when it was pitch black. Did you at that point shout for somebody to fetch a torch, to fetch a light, to fetch a match, to fetch a candle, to fetch a lighter?

MR MTOMBENI: If we had a torch we would have light with it in the beginning.

DR ALLY: I'm going to ask that I've asked if at that point in time one of you shouted; run to the car, fetch a torch, fetch a light, get some light, let us see what is going on and I'm asking at that point, did anybody indicate that? Run back to the motor vehicle, put the lights of the car on so we can see what is going on. Did that go through your mind at any point?

MS SEROKE: Mr Russel is emphasising that when you heard this White man shouting or screaming you ran to him to find out what was the problem. He wanted to know as whether how were you able to see when you ran to this person who was screaming?

MR MTOMBENI: I don't understand the question, because in a statement if you understand it well, Van Schalkwyk after he shouted, we ran to him where - to find out maybe the suspect was attacking him.

MS SEROKE: How did you see him, this Van Schalkwyk, because you said it was dark?

MR MTOMBENI: He was not quite a distance. It was about five metres or six metres in front of us so he was near to us. So we working. He was just in front of us.

DR ALLY: I ask again. Given what was happening; here is a police officer, a sergeant, okay, with a suspect who is taking you to point out where guns are kept.

In the process of this investigation your sergeant suddenly screams out. At that point in time, do you not try and find some light to see what is going on? Did you not light your matches? Did you not have matches in your pocket? Or your lighter? Or shouted to go and put the lights on of the car or to get a torch.

MR MTOMBENI: As I said we ran to him so that if he was fighting him we'd able to help. After we arrived there he said, here is a person running.

DR ALLY: But you said that you couldn't see him. You could see nothing, but you're running towards him. Doesn't it ever occur to you during this evening to try and get some light. At no point during this whole investigation do you bother to get any light. No torch is mentioned, no switching on the lights of the car.

I say to you again ... (intervention).

MR MTOMBENI: The first priority was his safety. As I said he was not quite a distance from us. We would see each other whilst we were jumping. That person was just in front of us, shouting. We started to go there to help him so that if he was at risk. How can we run to the car whilst the person was just in front of us who need help.

DR ALLY: Even if I accept that, what I am asking it how come throughout this entire evening, in your statement that you've read into the record and also in your explanation, this entire evening not at one single point do you mention the need for light, for a torch, for a match, how is that possible? That's what I am trying to understand. This entire evening that is so dark, there is never a mention anywhere of the need to try and get a torch. A simple thing which is standard equipment which a police officer has in his motor vehicle. It is standard, because police do some of their work at night. There is always a torch present. It is a simple routine matter.





MR MTOMBENI: I would not be able to reply that question, because I answered that question before.

DR ALLY: You haven't answered the question before. What you have indicated is that you don't know.

Let us continue then. So George Tshabangu escapes, according to your statement.

MR MTOMBENI: Yes.

DR ALLY: At that point, when you couldn't see him, did you then try and find a torch?

MR MTOMBENI: Yes, we went to the car and, then we drove around.

DR ALLY: Did you go and find a torch, I asked you?

MR MTOMBENI: We - it was supposed to be at Denilton and then it is far from our offices so we just - we were just searching in that area where he ran.

MS SEROKE: You were using the car lights. You said this area was rocky and it was grassy. How were you able to move around?

MR MTOMBENI: We were moving on the tarred road, because we thought that when he ran away, he would try to join the main road and then hiked.

CAPT MOHEMA: But I think because it was dark, I think George never escaped. Maybe he just stayed there, because it was dark. You could not see him. Maybe you even tried to rush him, taking a wrong direction because it was dark. Is it possible?

MR MTOMBENI: We looked for him around, we didn't find him.

CAPT MOHEMA: You looked for him just next to Van Schalkwyk?

MR MTOMBENI: We looked into the direction where he ran.

CAPT MOHEMA: The direction in which he, the direction he took?

MR MTOMBENI: After hearing the noise then he said, there's a person running. So we ran around and because it was dark and there were trees, we went back to the cars and then we drove around.

CAPT MOHEMA: So you didn't follow him, because it was dark and then he never indicated to you the direction in which - the direction which he took.

MR MTOMBENI: We followed him. We ran to him. Then we ran around. As I said that area had trees and then we're not able to proceed to a distance. Then it is difficult, that if a person has run, you're not able to see him. So again even your life can be in danger. Therefore we went back to the car.

DR ALLY: Just before you said your life could be in danger; why could your life be in danger?

MR MTOMBENI: Firstly, I explained that we were with a person who had a gun. Then he said he was going to point us to where other guns were stored. Even if I say that this person is a good person, is honest, but we received a - we found a gun in his house.

Now that he is running, so it brings another perception that this person is a dangerous suspect. Maybe the way I knew him, it was not the correct perception I had of him.

DR ALLY: So let's just follow that. Your lives could be in danger. Did you draw your firearm?

MR MTOMBENI: It was difficult to shoot in the dark. What would you shoot or where would you shoot?

DR ALLY: So why were your lives in danger then, if it was difficult to shoot. I mean I am sure George would have had the same problems that you had.

First of all, George didn't have a gun. He was going to point out where guns were hidden. Not so? He escaped allegedly, still with handcuffs on, no gun. He was going to point out guns.

MR MTOMBENI: You'd remember that when a person says I'm going to point an area and then accompany him and ensure co-operation, he would be free. When he start running that would bring a surprise that to a normal person and knowing what kind of a person you're working with, when he started to run away, that surprises you, that scares you. At that time many things are happening to your life. So when you say your life is in danger, I would say it's because that this person has said he's going to point us to an area, now he's running away. Maybe he's running nearer to the place where he has stored those guns. Then he would get a gun there and started shooting at us.

DR ALLY: So did you draw your gun then? That's why I'm asking you again; did you take out your gun? Did you un-holster your guns?

MR MTOMBENI: No, it was difficult, but we had those guns, but how can we shoot in the dark. We looked around. Then from there we ran to the car. You'd pull out a gun and who would you shoot?

MS SEROKE: You say it was difficult for you to shoot, but in your own words you were not sure whether, because as - whether George was going to point that arms cache.

Maybe he would find an opportunity to pick up another, then attack you again. How would he dig that gun and how would he find that gun?

MR MTOMBENI: I don't know how can I reply to that question, because I say if you stay in a certain area you're able to walk at night. Even if you don't walk freely like during the day, but in our idea or in a perception, we thought that that person has the knowledge about that area.

DR ALLY: Let us even accept - let us even accept for a moment that George does manage to escape, that he manages somehow or the other, in the dark, to find where these guns are. This is in a very short space of time as you're mentioning to us. It's happening very quickly. He's able to dig up these guns in that very short space of time. Find them, dig them up. So he's dangerous, but you say to

us, it's in the record, that at no point while this is happening do you draw your guns to be ready.

I can understand you saying there's nothing to shoot at, but at least to be prepared to have your gun un-holstered, to have your gun cocked in the event that someone does shoot at you. You don't seem to make those, take those precautions of taking your guns out and searching with your guns ready to fire in case you're attacked. You don't do that.

How are we to understand that now? The first thing, my understanding, that a police officer does if somebody escapes, is he takes out his gun. He shoots in the air a warning shot. Even if it's just to scare the suspect. Van Schalkwyk ... (intervention).

MR MTOMBENI: To reply that question, we were three, firstly and then it was dark. I would never say that why did Schalkwyk pull his gun. I would speak this only for myself that when he said this person is running, I never cocked my gun or pulled my gun, because I was surprised by that, because all the time I knew that person well, more than any other person who were with in this investigation. So I would - I don't remember - I didn't pull my gun.

DR ALLY: Were any shots fired?

MR MTOMBENI: No.

DR ALLY: Is that not unusual? Is it not the case that in an escape like this, the first thing that police officers will do, is they will fire

a warning shot in the air, so that the person who is running may be tempted to stop, because he can see that his life is in danger.

In other escape cases that we've heard about, the first thing the policemen do, is they take out their guns and they shoot. Even if it's in the air as a warning shot.

MR MTOMBENI: I would say that would depend on one's analysis of the situation, because Van Schalkwyk, he is the person who knew which direction he took. Maybe Van Schalkwyk would be able to reply to that question, because he just said to us this person is running away.

DR ALLY: We will put that question to Mr Van Schalkwyk. Mpho?

CAPT MOHEMA: Then, Mr Mtombeni, Tshabangu has now escaped. Then what have you done from there?

MR MTOMBENI: We looked for him with our cars, as I've already said. After that Van Schalkwyk gave us an instruction that myself and Kritzinger and Pila, we should run to the place where we arrested him, maybe he would go back to that area and take other clothes and run away. Then they said they would look for him at Bundu Inn as well he didn't ran to that place.

DR ALLY: Was no one left behind at the scene of the alleged escape. Did you not leave somebody behind just in the event that he was hiding there? Did you all leave the scene of the alleged escape?

MR MTOMBENI: No, it was dark as I've said.

DR ALLY: I know it was dark. I'm asking did anybody remain behind?

MR MTOMBENI: No, we didn't leave anybody behind.

DR ALLY: Do you have police dogs at your, where your police station is or police dogs in the vicinity, in the area?

CHAIRPERSON: Did you radio for help?

MR MTOMBENI: Repeat, please.

CHAIRPERSON: Did you radio for help?

MR MTOMBENI: Yes.

CHAIRPERSON: When you got back to your cars, did you radio back to the police station? Did other policemen come?

MR MTOMBENI: Yes.

DR ALLY: Is that on record?

MR MTOMBENI: We radioed other police that this person has run away. Yes, we contacted on the radios the other police stations.

CAPT MOHEMA: Because it was near Denilton police station, not far from Denilton police station. Did you require - ask for any assistance from them?

MR MTOMBENI: If I remember - I'm not sure, but when we made contact, we contacted Denilton Police Station. We asked for help there, but I'm not sure about that.

CHAIRPERSON: Which policemen came to your assistance there?

MR MTOMBENI: I don't - I remember, because only those are there that accompanied us initially, but I remember as well that other people came.

DR ALLY: Approximately how soon after all of this? After this alleged escape and you running around looking to see if Mr Tshabangu was anywhere? Approximately how many hours or minutes - just give as a rough estimate - did you all leave the scene?

MR MTOMBENI: I don't remember as whether there was any police or any policemen who came to help us thereafter.

DR ALLY: You know, the question I'm asking, is how soon after all of this happened, did you leave the scene where all of this supposedly took place. Was it one hour, two hours? How long did you spend looking and when did you leave?

MR MTOMBENI: I would tell a lie if I would tell the duration, because even during my policing work even today I don't remember if I ran after the suspect, did I look for him, or what. As to whether how long it happened, so I don't remember looking for what.

CAPT MOHEMA: Don't you make use of a diary?

MR MTOMBENI: To make use of it where?

CAPT MOHEMA: As a policeman. Surely, what do you record in your pocket book or in your diary, because you said that as a policeman from the time you became a policeman, when you arrested people you never check on time.



MR MTOMBENI: I don't know as whether you understood my response. I say when you look for a suspect, you don't have time to look for the time. I don't know how the pocket book is related to time?

CAPT MOHEMA: What do you record in your pocket book?

MR MTOMBENI: It depends when and what.

CAPT MOHEMA: When do you write in your record book?

MR MTOMBENI: Either at the end of your work day you respond.

You wouldn't just record whilst running and chasing a suspect.

CAPT MOHEMA: I said, what do you record usually in your pocket book as a policeman?

MR MTOMBENI: I write about what happens at work.

CAPT MOHEMA: So that you can refer in the near future?

MR MTOMBENI: That is correct.

CAPT MOHEMA: Is it not so important to be recorded in your pocket book or is there no space in your pocket book where you had to put dates and time?

MR MTOMBENI: I explained that you can write something on the record book when you knock off. In my knowledge of the police work ... (intervention).

DR ALLY: Let us be very - let us be more direct. Did you record this incident in your pocket book?

MR MTOMBENI: Yes, that's correct.

DR ALLY: What did you record in your pocket book and is your pocket book still available?

MR MTOMBENI: I wrote about what happened, because after six months those record books are destroyed.

DR ALLY: Now let's go back to this. You can't remember how long you searched. You can't remember when you left.

MR MTOMBENI: Yes.

DR ALLY: Given the importance of this case, did the police actually cordon off this area?

MR MTOMBENI: I would tell a lie. I will not tell a lie about something which I'm not sure of, but we contacted through the radio other police. After we ran to his girlfriend and other police went to his home, I don't know what happened thereafter. I would tell a lie. I don't know what happened.

DR ALLY: Did you go back to the scene the next day when it was light?

MR MTOMBENI: I didn't go there, because I was not in charge of this case.

DR ALLY: You were not in charge of the case, I understand that, but you were with during the evening when this person escaped. Did you not go back during the day to go and look at the scene, to go and look for clues, to see if there were any footprints, to see if you find those arms that were supposedly buried in that area? Did you never ever go back to that place after that night?

MR MTOMBENI: No, I didn't go there, I didn't to back.

DR ALLY: Did anybody else go back to that area to go and look?

MR MTOMBENI: I don't know.

DR ALLY: Did Van Schalkwyk go back?

MR MTOMBENI: I don't know.

DR ALLY: Did you ever discuss amongst yourselves as to whether anybody had gone back to go and look at the scene during the day to try and see what had happened?

MR MTOMBENI: I don't remember I was asking about that. What I would say is that in a usual procedure a docket was opened. That's a docket of escape and we're not in control of that docket. It was in control of the - of other unit. It may happened that we never requested to go back, because the person who was in charge of the docket of disappearance would be the one who would be in charge of the whole investigation.

DR ALLY: I understand that, but you indicated to us earlier on that you knew the family, that you knew George, that the father was a minister. Now I understand that you may not have been involved in the case directly and that you were not an investigating officer, but as somebody who was present at an - during the evening when this escape allegedly took place, as someone who knew the family; are you saying to us that after that night you never asked any questions about this case? You just forgot about it? That you showed absolutely no interest in it at all?

MR MTOMBENI: Firstly, as I said that George, I would repeat that again and again before this panel. I took him as my brother. After this incident it took time that I would believe that he was the person who was responsible for this armed robbery or took part and that we arrested him and then again he disappeared.

I would repeat again and say I don't remember well that the family came in the office to ask the questions as a person they were used to. Then again on the outside I regarded that they - maybe they know where the - the family knew where George was and they were playing tricks with us.

So we did meet the families, although I'm not sure of when, but they asked me as whether where is George. Then I told - I explained to them what happened, but I don't remember exactly how it happened, but I didn't went back to where he ran from.

DR ALLY: Do you know a military base, a military in KwaNdebele, called Witnek?

MR MTOMBENI: I don't know that place.

DR ALLY: The name doesn't mean anything to you?

MR MTOMBENI: Not at all.

DR ALLY: I would just like to conclude by telling you that we had a similar case to this one which involved somebody taken from Hillbrow. You may have seen about this in the newspapers or on television. Somebody who was also taken by policemen by the name of Stanza Bopapi, who also was going to point out where arms

were hidden; that during the course of pointing out these arms, Stanza Bopapi apparently also escaped. He was also handcuffed.

The policemen made up this story that he had gone and joined the ANC in Lesotho. All of these policemen have now come forward to apply for amnesty. They have admitted that they killed Stanza Bopapi while questioning him in relation to his political activities and that the story of the escape was a cover-up. Involving police, involving people from the murder and robbery unit in Brixton.

I want to appeal to you very seriously to consider the serious implications of a case like this here. How implausible the story is that somebody can escape in the dead of night, after being handcuffed. There's not a trace of him, nothing up to this date. Somebody whom you said you knew as a brother, whose family you knew.

You give us a story here which any sensible person will say a story like this just doesn't make sense. The Chairperson pointed out to you earlier that the amnesty deadline extends until the 30th of this month.

I would appeal to you that you consider very seriously this case and whether you still want to persist with this particular version of what happened to George Tshabangu.

Thank you.

MR MTOMBENI: May I respond to that or not?

CHAIRPERSON: Yes.

MR MTOMBENI: What I would say is that I would not say to - respond to what happened to a different police station. As I said that I'm in front of the respected members of the panel. I took an oath before God that what I'm going to say here, would be the truth. I told what was truthful and what happened.

MS SEROKE: Dr Russel doesn't say you know what happened to other police stations. He's giving you an example of a similar incident that you said George ran away whilst he was going to show you arms. Even the other case which he is giving you an example of, is that that was not truthful, because those people are now applying for amnesty and they're telling the truth. Then he's making aware that you - the deadline for amnesty is just next door.

MR MTOMBENI: I'm not against that. It would happen that people would be the same and they're not - they're from the same family, but they're not the same. I understand what he said.

CAPT MOHEMA: When the escape case was opened, who opened the case?

MR MTOMBENI: I don't remember well when was it opened, but the way I know it was opened by Warrant-Officer Magagula, if I'm not making a mistake. On the same - it seems that it was the same night. I remember that it is Warrant-Officer Magagula.

CAPT MOHEMA: When you went to look for George, were you together with Magagula?

MR MTOMBENI: No. I was together with Magagula, Van Schalkwyk and others went to Bundu.

CAPT MOHEMA: Then what happened to the gun you found at George's room?

MR MTOMBENI: I gave it to Kritzinger.

CAPT MOHEMA: Are you telling us the truth, Mr Mtombeni? Can the police records, especially the OB, can the policemen record lies?

MR MTOMBENI: I don't understand the direction of that question, because I handed over the gun to Kritzinger. If I'm not - if I'm going to be told something which I don't know, I would deny that.

CAPT MOHEMA: Mr Mtombeni, I am now telling you that in our investigation, we perused the Dennilton Denelton OB register and a CR register - and a CR register. It's recorded there that you handed in this firearm to the police station during the same night at about nine o'clock.

MR MTOMBENI: I don't remember that.

CAPT MOHEMA: You say you don't remember when was the case opened?

MR MTOMBENI: Yes.

CAPT MOHEMA: But Mr Mtombeni, do you regard this case as a serious case?

MR MTOMBENI: Yes, I do.

CAPT MOHEMA: Because you regard it as a serious case, did you ever manage to visit George's father, because he was a priest. You knew him, you knew the family members. Did you ever personally went to Tshabangu's family to discuss about this case? You were the person who arrested George.

MR MTOMBENI: I said previously that I remember that I did encounter with this family. I don't remember where and how. I never went on my own to go and visit the family, but what we should remember, is that because you're a policeman and you know after this thing has happened firstly, this person was running and then we were looking for him. Even in our part, we're saying the family is hiding him. His family is hiding him, because I take it that this person would not run away and he'll never contact the family. He would contact the family and tell them his whereabouts.

His family knows where he was or where he is and then they're hiding that information from us.

There might be other reasons what would make me go to that family, but I don't want to commit myself which I'm not sure of.

CAPT MOHEMA: You said you indicated to us that you as an investigator you had informers. Did you ever make enquiries about him?

MR MTOMBENI: I did explain that I was not in charge of the docket or the case. So I didn't follow this case directly, because it was supposed to be handled at Dennilton. In this case in armed



robbery was - Kritzinger was in charge of that case. That is why I didn't follow up this case.

CAPT MOHEMA: But Mr Mtombeni, this is a serious case. You knew the family when they informed you that this man escaped. I mean, he was never seen again after you arrested him, then you said you never - actually it seems you never cared about that case. Even if you were not the investigating officer of this case, but you were supposed to assist the investigator, because this man escaped in your hands, not so, Mr Mtombeni?

MR MTOMBENI: You should notice, Sir, that I had other dockets which I was responsible with. I would repeat I don't know as how he understood that point. I met with the Tshabangu family in many instances, although I don't remember how we met, but I asked them for me not to follow up that, I had a belief that they know his whereabouts, even today. I don't know how the member of the panel understood my reply.

CAPT MOHEMA: Did you ever supply a statement now about the escape to the investigating officer of the case?

MR MTOMBENI: I don't remember.

MS SEROKE: Because George was arrested for a robbery in Dennilton, why was he not taken to Dennilton Police Station? He was taken to Siyabuswa. Why did it happen that he was taken to Siyabuswa?

MR MTOMBENI: The reason is that our offices were in Siyabuswa.

MS SEROKE: In 1989 you said that George ran away. He's in Israel. Do you remember that? Did you say that he ran to Israel?

MR MTOMBENI: Yes, I did.

CAPT MOHEMA: Where did you find that information?

MR MTOMBENI: Those were the information which were there, because this relative of mine made an armed robbery in Silverton. Then he ran away to Zimbabwe. I don't remember well the source of this information that he ran to Israel, but that information was there and when I tried to enquire about his whereabouts.

MS SEROKE: After getting that information that he ran to Israel, was it still difficult that you should go back to the family and tell them that I heard that he ran away to Israel? But you didn't go there and informed them that you had the information that he ran to Israel.

MR MTOMBENI: As I said that if a person has run away from the police hands, firstly, their whole family would not believe you. You would start to believe that maybe the family took part in the escape. Even if the family were to co-operate with you, you'd have the belief that they participated in his escape.

MR NOLSEN: I'd like to put several issues to you, Mr Mtombeni and I will try to be as brief as possible, because I know we're dragging on.

I would like to take you all the way back to the very beginning where we stopped earlier this morning. You went to the

Bundu Inn on February 6th 1987, allegedly to investigate an armed robbery. Is that correct?

MR MTOMBENI: That is correct.

MR NOLSEN: And you had received information that George Tshabangu was involved in this armed robbery?

MR MTOMBENI: We should understand each other. The information was not given to me. I received that information from Kritzinger and others that that's how it is.

MR NOLSEN: I see. So members of your unit had informed you that information had been received that he was involved?

MR MTOMBENI: That is correct.

MR NOLSEN: Did this information suggest that George was one of the perpetrators in this crime?

MR MTOMBENI: That is correct.

MR NOLSEN: Can you describe for us please, on record, the physical appearance of this person who is member of your family, George Tshabangu. Approximately how old was he? How tall was he? What was his physical build? Did he have a beard? Was he dark complexioned or light complexioned?

MR MTOMBENI: It would be difficult to explain those attributes. As I said I was used to this person, because one of my relatives married to that family, but we were not so deeply used to each other or used to associate. We used to meet ordinarily on a casual basis.

He was approximately 33 years old, if I am not mistaken. I would not say anything about his complexion, but that's the only thing I could explain, but we didn't have that deep relationship with him, but the person I knew him deeply, even before my relative married into that family, is the father.

MR NOLSEN: Mr Mtombeni, with respect, I think that I could physically describe a member of my family if asked to, with some reasonable degree of accuracy, particularly if I were a trained policeman for whom that sort of skill would be important.

Furthermore, if I was prepared to testify about someone's character, as you have done here today on numerous occasions, I think that I would be doubly prepared to testify as to their physical appearance.

So I ask you again, please tell us what George Tshabangu, to the best of your recollection, looked like?

MR MTOMBENI: I would repeat again with respect, that I knew George casually. He was not my blood relative. He was a relative, because my relative married into that family and this thing has happened a long time. As the person who have last seen him 10 years back, it's very difficult. If I tried, that I would say he was approximately 32 years. I would not be able to commit myself to his complexion. I don't remember well.

COL KILLIAN: Do you know President Mandela?

MR MTOMBENI: That is correct.

criminal crime - a criminal activity, he would try by all means to employ some tricks.

If they say you have committed crime, I don't say you would not commit crime, I would go and follow the allegation against him.

Then from there I would find out as whether his innocent or guilty.

MR NOLSEN: I'm not asking you whether or not you think the criminals in this case were clever or not or whether or not they were disguised or not.

I'm asking you a very simple question about a relative of yours. Did your relative, George Tshabangu, look in appearance 20 years old and have long hair down his back?

Yes or no?

MR MTOMBENI: No, Sir.

MR NOLSEN: Did your relative, George Tshabangu, appear to be between 40 and 45 years, be tall, quite fat and be a Coloured person?

MR MTOMBENI: I explained that even now I am not able to explain what kind of a person he was.

MR NOLSEN: Are you capable of explaining whether or not your family member was a Coloured man? Yes or no?

MR MTOMBENI: I'm not able to explain the colour. What do you mean by a Coloured?

MR NOLSEN: I mean in terms ... (intervention).

MS SEROKE: A person who doesn't look like an African, we explain a Coloured like in, you know, in other terms a Boesman.

MR MTOMBENI: That question is quite open. What do you mean by not an African?

MS SEROKE: May you please listen carefully. If you say George, you took him from his girlfriend's house. Then he saw you, because you were used to each other. Then he laughed and say you were joking. If he is a person who can laugh with you, you would be able to say - are you not able to describe that kind of a person as whether how does he look like? As whether he's a Coloured, he's Black or he's a fatty or lean? Does he have dread hairs or not?

MR MTOMBENI: There is a person who would look like Black like me and become a Coloured and then speak Afrikaans. Do you mean by colour or do you mean the way he was speaking?

MR NOLSEN: I think that I'll end this line of questioning and move onto a more clear cut-matter, simply because I think I've satisfied myself that you're unwilling to answer these questions truthfully and honestly.

I put it to you that when you look in the case docket, the eye witness' accounts of the perpetrators, no reasonable person could have believed George Tshabangu was one of these perpetrators by description.

I further put it to you that when you examine Dennilton CR/6287 and look in the investigation diary, there is absolutely not

a single word in that diary which indicates that George Tshabangu was ever a suspect in that case.

Furthermore, the investigating officer for that case has made a statement to us, saying that he never received any information, verbal or written, from any of his colleagues, including his direct superior at the time, Sgt Van Schalkwyk, who inspected the docket on the same day that you allegedly went there and found a weapon implicating George in this crime.

There is absolutely no mention of George as a suspect. I put it to you that there's a very clear **prima facie** case here that you were not in fact investigating CR/6287, but I won't belabour the point by trying to get you to answer the questions directly.

What I would like to move on to, is the direct implication in the statements of Steven Tshabangu, who was there at the time that George was being interrogated, that he witnessed what seems clear from the statement, as an electrocution.

Now in his statement, he describes several of the members from your unit, leaving for approximately 15 minutes and returning with a brown leather case.

Are you aware of any brown leather case that was used by the Siyabuswa Murder and Robbery Unit at any time for any purpose?

MR MULLER OBJECTS: I don't know what the answer will be, et cetera, but I think if there's any implication in other criminal activities et cetera, or that he might incriminate himself, he should

be warned in terms of the act and there are a procedure which the Committee will have to follow by contacting the Attorney-General et cetera, et cetera.

On that, I mean, I don't want to be difficult, but I think it is in his right and I didn't take this matter up with him or any other matters in this regard.

CHAIRPERSON: Mr Muller, in fact the Committee, the procedure that is followed, is that prior to the Section 29 Inquiry taking place, arrangements are made with the Attorney-General concerned, informing him that this hearing is to take place.

The procedure that has been followed and I have a letter together with a fax receipt which confirms that Mr Jan D'Oliveira, the Attorney-General who has jurisdiction in this matter, has in fact been place on notice in terms of this Section 29 inquiry.

Furthermore, the procedure that is followed is that if your client is of the view that answering such a question might incriminate him, he is then at liberty to refuse to answer that and to do it on the basis that he has incriminated himself.

At the end of this hearing we will then take a list of those questions to the Attorney-General concerned and request in fact that he considers whether it is necessary for you client to answer that and the test is set out in terms of Section 31 of the Act and then at such stage the Commission will compel your client as the Attorney - once the consultation with the Attorney-General has taken place.



Now we have warned your client right up front at the beginning of this process, asking whether in fact he has considered applying for amnesty.

A question is being put to him about his knowledge of a particular - I think it's a brief, a brown case ... (intervention).

MR NOLSEN: It's a brown case.

CHAIRPERSON: Your client should then, and I think you should advise him if he's of the view that it would incriminate him, he needs to place that on record and say whether he refuses to answer that question or not.

But I would caution in dealing with this matter, remembering this is not a criminal proceedings. This is an inquiry to establish your client's knowledge of a particular matter. The end result of this, is if he considers that he still does not have to apply for amnesty, is one where he then in fact he should look at what the consequences of that are going to be.

MR MULLER: May I discuss this with him for a moment?

RECORDING SWITCHED OFF - ON RESUMPTION

CHAIRPERSON: Are you ready to proceed, Mr Muller?

MR MULLER: Yes, we are.

MR NOLSEN: I repeat. As it's been alleged in Steven Tshabangu's statement, who was there at the Siyabuswa Murder and Robbery Unit that day and was also ... (intervention).

DR ALLY: Maybe you should try and phrase the question, because he's not doing simultaneous interpreting. He cannot. So if you can try and put the crux of the question, then he will get it.

MR NOLSEN: Right. In that statement, Steven Tshabangu alleges that he saw members of the unit fetch a brown case.

MR MTOMBENI: I don't know that.

MR NOLSEN: Let me just finish by describing what Steven alleges and then I'll put the question directly to you.

MR MTOMBENI: I'm requesting that don't take too much or talk too much. Then at the end of the day I would not understand the whole thing which you want me to respond to.

MR NOLSEN: Let me phrase it very simply then. During your time at Murder and Robbery Unit, did you ever become aware of a brown case?

MR MTOMBENI: What do you mean by a brown case?

MR NOLSEN: A brown case that would have been used by the policemen during the process of interrogation?

MR MTOMBENI: I don't understand or what you'd say they would use it for and how.

MR NOLSEN: There is a brown case that it has been alleged that there is an old-style telephone in it which is connected to a battery.

MR MULLER OBJECTS: Mr Chairman, I mean, this is news for us. This was never given to us and it is not contained in the statement.

CHAIRPERSON: Perhaps I should phrase the question differently.

Mr Mtombeni, from numbers of policemen who've appeared before the Commission and the Commission has come to accept, that in fact that this was practice of the South African Police, that each one of them had a torture instrument.

You know the old telephone, the one that you wind-up?

You know, you've probably seen the old telephone machine, the one that you wind-up with the handle?

MR MTOMBENI: Where would I see that?

CHAIRPERSON: You know, Mr Mtombeni ... (intervention).

MR MTOMBENI: What I'm requesting is that I should not be asked a question in a way I don't understand. Do you mean that phone being used at home.

CHAIRPERSON: Mr Mtombeni, listen to me very, very carefully. I'm asking, do you remember before we had the telephone where we dial the numbers, that you used to have a telephone machine with a handle?

MR MTOMBENI: Yes, that's correct.

CHAIRPERSON: You used to ring the handle up.

MR MTOMBENI: Yes.

CHAIRPERSON: Now, many policemen who've come before the Commission have testified that they used the old telephone machine with the handle. You would lift the top of the machine off and you

would loosen the wires and you would take the wires and you would attach it to the body of somebody that you wanted to torture.

You would then wind the handle up and when you did that, the current would flow onto the body of the person who was being tortured.

Now, did the Murder and Robbery Unit to which you belonged, have such a machine?

MR MTOMBENI: I hear that for the first time from the Chairperson. Just to hear, I don't talk about seeing. I start to hear about it today.

CHAIRPERSON: I'm going to ask you another question and I want you to think very carefully. Please, don't lie to me or to any members of this panel and tell us that you don't know that the police tortured people in their custody.

I'm asking you again: did your Murder and Robbery Unit have such a machine?

MR MTOMBENI: Not at all. I haven't seen it.

CHAIRPERSON: Do you know whether they tortured people?

MR MTOMBENI: Where I was, nobody was tortured.

CHAIRPERSON: I'm not asking you that. Listen very carefully. In your time in the Murder and Robbery Unit, did you hear any allegations of people in custody being tortured?

MR MTOMBENI: Where?

CHAIRPERSON: Don't mess around with me Mr Mtombeni. Yes or no?

MR MTOMBENI: I'm requesting the way I am told I - when I asked where, because Murder and Robbery Unit is too big.

MS SEROKE: I'm talking about your unit.

MR MTOMBENI: No, there was nothing like that or I never heard something like that.

CHAIRPERSON: Do you know that in one of the most famous amnesty cases, where murders took place in your particular area, it has been established before this Commission that torture was the routine practice of policemen.

I'm going to ask you the question one more time. To your knowledge, do you know of any incidents of torture that took place whilst people were in the custody whilst you were working in the Murder and Robbery Unit in your area?

MR MTOMBENI: I don't remember.

CHAIRPERSON: Do you know of any incidents of torture?

MR MTOMBENI: I don't remember.

CHAIRPERSON: So where did you work?

MR MTOMBENI: In KwaNdebele.

CHAIRPERSON: Are you really trying to let us believe that you knew of no incidents of torture?

MR MTOMBENI: I would repeat and say I don't remember.

CHAIRPERSON: We have an allegation here by a witness about a brown bag which contains such an instrument. Are you denying that you have any knowledge of such a bag?

MR MTOMBENI: Yes.

CHAIRPERSON: You are?

MR MTOMBENI: Yes, I do.

CHAIRPERSON: The record will reflect that I made that very, very clear to you. Thank you.

MR MTOMBENI: That's correct, I don't know that.

CHAIRPERSON: I am going to read the statement into the record.

A policeman who is a fellow colleague of yours:

"I, Matope Peter Ratlabiane, an African male, aged 35."



Do you know him?

MR MTOMBENI: Yes, I do.

CHAIRPERSON: In what capacity do you know him?

MR MTOMBENI: He's a policeman.

CHAIRPERSON: Who worked with you?

MR MTOMBENI: At that time, yes.

CHAIRPERSON: Yes. He says:

"I am employed by the Safety and Security Department in Mpumalanga Province as a superintendent in the police and I state under oath: From 1986 to 1988 ..."

That's the time you were there -

"... I was stationed at the Siyabuswa Murder and Robbery Unit in KwaNdebele.

I was performing my duties as an investigator. In the course of my duties in the Murder and Robbery Unit ..."

That's the unit to which you belonged? Yes?

MR MTOMBENI: I said yes, you may proceed.

CHAIRPERSON: "..., I became aware of the existence of a

brown case which contained an old style portable telephone which contained a battery. This equipment was used to apply an electrical shock to hardened criminals during the interrogation process. This usually occurred in the interrogation room.

The Murder and Robbery Unit offices were situated as follows. There were two larger buildings on the north and south side of the complex. Two smaller offices were located on the west and east side of the complex to complete the rectangular shape of the unit. A garden occupied the space within the complex. The office on the eastern side of the complex was used as

the interrogation room, especially if the use of force was anticipated."

Do you know that office?

MR MTOMBENI: I have explained that I don't know any office which was used specially for interrogation. I know that if I've arrested a person, I would interrogate him in my own office. I don't know that office which was used for interrogation.

CHAIRPERSON:"Although our offices were large, they were not occupied by many staff members. Furthermore, there were not any other occupied buildings in the immediate vicinity. Therefore electrical equipment could be used in the process of interrogating suspects at almost any time. I know and understand the contents of this declaration. I have no objections to taking the prescribed oath and I consider the prescribed oath to be binding on my conscience.

It is dated the 26th of September 1997. It was taken at 15:15 at Kwamashlanga.

Now I'm going to put it to you this will be made available to you. For what reason would this man have to lie about something like this?



MR MULLER OBJECTS: Chair, with respect, there is no claim in that document against Mr Mtombeni. Furthermore, there is no reason why Mr Mtombeni would be able to explain why this person would make such a statement.

CHAIRPERSON: With respect, Mr Muller, we've put it to your client that the use of torture was widespread in the police. It's an allegation that has been confirmed by many, many policemen who've come and appeared before the Commission.

Now we put a question to your client about his knowledge about torture firstly, in the Murder and Robbery Unit and then secondly, about the existence of the instrument contained in this brown bag.

Your client, in fact, denied that he knew of any torture. He denied that he knew of the existence of such an instrument. Now I'm putting to him a statement made by a fellow colleague of his who worked in the unit at the same time, who talks about torture and who talks about the existence of this particular instrument.

I've read this into the record to reflect in fact that such an instrument existed. Now I have asked your client, why should Mr Ratlabiane lie about such a particular instrument and about torture in fact taking place?

MR MULLER: Chair, I must put it on record that Mr Mtombeni on three times repeated his statement with regard to the so-called

torture instrument. I do not know whether it's possible for you to take it any further than this.

CHAIRPERSON: I want your client to in fact to confirm whether Mr Ratlabiane would have any reason to lie about it.

I want to have his response on record.

MS SEROKE: And also, why would Ratlabiane know about the existence of an instrument like this, who was a colleague of your client and that your client should know about what his unit was using when he was part of that unit.

MR MTOMBENI: Firstly, I would not know why he made that statement. I would not say why he was lying or as whether he's lying. I'm just responding for myself that I don't know that briefcase.

CHAIRPERSON: Derek?

MR NOLSEN: One last issue, Mr Mtombeni. When you described the interrogation of George, you've told us on several times that George was co-operative in the process and that furthermore he was happy to confirm that these other weapons existed and to tell you further particulars about the weapons and his involvement.

Is that correct? Was he so co-operative?

MR MTOMBENI: I explained, you say too much, but at the end of the day, I would not know what he's saying, but he is speaking a lengthy statement. Maybe he may repeat the question.

MR NOLSEN: Did George Tshabangu agree to provide more information about other guns?

MR MTOMBENI: What I know is that Kritzinger said he is cooperative and that he's going to show us where other guns were.

MR NOLSEN: I would like to read to you from the document in Mr Muller's possession from the Parsons Commission which is the transcript from a statement you submitted, listed as A5 in that case docket.

"Sgt (Capt) Mtombeni declares point number two that he, Sgt Mpelo, Warrant-Officer Magagula and Sgt Van Schalkwyk questioned George and that George agreed that the weapon that he was in possession of, belonged to one Solly Mahlangu and that he agreed to point out a supply dump where other weapons were buried."

Do you recall making this statement?

MR MULLER OBJECTS: Can I just put on record that this is not a statement, but a summary by someone else of a statement which we haven't seen, but I will let him answer that.

MR NOLSEN: That is correct. So noted. Do you recall making such a statement? You do ... (intervention).

MR MTOMBENI: I don't remember. As I said, we did discuss with George from where he was arrested and then we went with him. I don't know as whether he said that.

MR NOLSEN: To your knowledge, was Solly Mahlangu implicated in this robbery case?

MR MTOMBENI: I don't know that Solly Mahlangu. I don't remember him.

MR NOLSEN: Is Solly Mahlangu known to you?

MR MTOMBENI: Which Solly Mahlangu?

CHAIRPERSON: How many Solly Mahlangus do you know?

MR MTOMBENI: I know the one who is my uncle. I don't remember about this one you're talking about. The one I'm talking about is the one who took part in the armed robbery in Silverton.

MR NOLSEN: Let me put it on record that when you have a chance to look through this document which is a transcription of a summary of notes found in the Parsons Commission, you will see that Solly Mahlangu is implicated by several people in several statements.

My question for you, if George was co-operating in providing you all the details of the robbery in which he allegedly participated and confessed to; did he not tell you the names of his accomplices?

MR MTOMBENI: No.

MR NOLSEN: If a suspect in an armed robbery case refused to divulge his accomplices, would you describe him as co-operative?

MR MTOMBENI: I said that, with respect, that I was not responsible for the interrogation. I was not in charge of that case. It's Kritzinger who came back and told me that. So I didn't interrogate that person.

CHAIRPERSON: You're not being asked that question. Answer the question. The question is: if somebody refuses in an armed robbery, where that person is a suspect, and he refuses to say who his fellow conspirators are; do you call him co-operative or not? Answer the question, please.

MR MTOMBENI: No.

CHAIRPERSON: Proceed.

MR NOLSEN: If George was co-operative as described by Kritzinger, wouldn't you have been able to investigate the accomplices?

MR MTOMBENI: To whom should I find that out?

MR NOLSEN: I presume that you were working on the investigation with Kritzinger and if Kritzinger told you that George was co-operative, Kritzinger should have had information about George's accomplices.

MR MTOMBENI: Maybe we were on the - on our way to that, because after he's been arrested, after he has shown us those guns and found them, then maybe later he would tell us about his accomplices and then we'd be able to arrest them.

So it would be like that if we were able to find out the guns. That would be the procedure, because we would not only face him alone for that case. Maybe it was on the way to be followed up.

MR NOLSEN: Were the guns in the alleged arms cache ever recovered?

MR MTOMBENI: He ran away before he was able to show us that cache.

MR NOLSEN: Did you ever track down his accomplices?

MR MTOMBENI: I didn't know his accomplices.

MR NOLSEN: To your knowledge, did any member of your unit attempt to track down his accomplices?

MR MTOMBENI: I don't know that. I reply that that after he has run away, I continued with my work. Then others continued with their work. I would not be able to tell us whether they did that or not.

MR NOLSEN: As a trained detective, currently occupying the rank of a superintendent, would you have deemed it wise to try to locate the arms cache through the accomplices?

MR MTOMBENI: When?

MR NOLSEN: After the suspect who was in your care, escaped from you, wouldn't you have tried to still locate the arms cache through his accomplices?

MR MTOMBENI: Firstly, I heard the member of the panel, that the superintendent for that case at that time, was just a constable.

MR NOLSEN: I won't pursue this any further, because I don't think there's any need to, but I'd like to ask one final question. How would you characterise the conduct of this investigation which you were a member of? Was this a well-conducted investigation?

MR MTOMBENI: That is correct.

MR NOLSEN: Is going out at night without torches for a night investigation, good conduct? Is going out for - to dig for an arms cache with ... (intervention).

MR MTOMBENI: Can we ... (intervention).

MR MULLER: We would just like for your previous question to be repeated again, please, if you don't mind?

MR NOLSEN: A night ... (intervention).

MR MULLER: I'm sorry, Mr Chairman. I'm sorry, Chairperson, he's complaining about that he's asking the - he's asked the same question over and over, but I've explained it to him and I think he can continue on that basis.

MR NOLSEN: I promise that I'm finishing now. Is conducting a night investigation without torches, good conduct?

MR MTOMBENI: I replied that that was not good conduct. If you work at night, you must have a torch. Then I went further by saying, the police give us the torches and then we'd store them in our cars and that I was not responsible for that case. I was just a constable at that time.

There were senior members at that time and then which means the negligence for not having a torch, came from them, because I thought the torches were in the cars. I agree that you'd not work at night, being a policeman, without a torch.

MR NOLSEN: Without belabouring the point in going through the further sloppy details in this case, would you agree, although you were only a constable, you were part of a very poorly run investigation that night with George Tshabangu?

MR MTOMBENI: I knew that we were working the correct way with good conduct.

MS SEROKE: How do you say that was good work whilst you didn't have torches?

MR MTOMBENI: That is why I said how many times should I reply to the same questions? I said to myself, I just said that it was not good conduct to work at night without a torch. You must agree that the way we conducted this investigation, was not professional.

MS SEROKE: That's all that the gentleman wants.

MR MTOMBENI: Perhaps I would say that, because I did explain that there are many ways to kill a cat.

MR NOLSEN: Was this investigation ever the subject of a departmental inquiry?

MR MTOMBENI: Which department?

MR NOLSEN: The police department.

MR MTOMBENI: To enquire about what?



CHAIRPERSON: Was there ever an enquiry about the bad way in which this matter had been handled? Was there a disciplinary inquiry or an inquiry as to what had gone wrong?

MR MTOMBENI: Enquire about whom?

CHAIRPERSON: About how badly your unit had handled this matter and why you'd let this man escape.

MR MTOMBENI: Who should be, in respect, I'm prepared to answer all questions, even if many questions should be asked, I'll be request - whom - should I be the subject of that enquiry?

CAPT MOHEMA: They wanted - I'm sorry, they wanted to know were you ever tried maybe about this - in connection with this case?

In the escape case of George Tshabangu, you and your members, were you ever tried about this case?

MR MTOMBENI: I would not remember well, but what I know there were many commissions, truth commissions and I say again, there were many commissions which came at that time and they asked questions, I give them all the details, (indistinct).

CAPT MOHEMA: But I mean personally, were you tried about this case, were you tried departmentally about the escape of George Tshabangu?

MR MTOMBENI: No.

CHAIRPERSON: Thank you, let's pass on. Fanie, finally?

COL KILLIAN: Just to finalise that particular point. What we are trying to determine, is whenever a prisoner escapes from the

custody of a policeman, then that matter is being investigated to determine whether that particular policeman was negligent, and therefore must be departmentally tried. Was any such an investigation instituted into this particular escape?

MR MTOMBENI: I don't remember, I wouldn't say he was there or was not there, because George ran away from Van Schalkwyk. I would not speak on his behalf, as what he was defaulted, but I don't remember anything in that regard.

COL KILLIAN: Were you the first time informed about the existence of this cache that George Tshabangu was going to point out to you people that night?

MR MTOMBENI: Yes, that is on that day.

COL KILLIAN: When were you first informed about the existence of such a cache, a weapons cache?

MR MTOMBENI: May you repeat the question again, Sir?

COL KILLIAN: Were you first informed about the existence of this arms cache that George Tshabangu was going to point out to you on that particular night he escaped?

MR MTOMBENI: That's after the interrogation whilst I making a statement in the office.

COL KILLIAN: By whom were you informed by of this existence of this co-operation by George?

MR MTOMBENI: Do you mean the co-operation that to allocate the cache?

MR MTOMBENI: That's Kritzinger, if I remember well.

COL KILLIAN: That's strange, that nowhere in your statement which you submitted this morning, is there any mention made of this cache.

CHAIRPERSON: I am thinking that Mr Muller has said that there are some discrepancies in that statement.

COL KILLIAN: I will accept it at that. Do you accept that Justice Mawize was the initial investigating officer into this armed robbery?

MR MTOMBENI: I don't remember that.

COL KILLIAN: When did you become the investigating officer?

MR MTOMBENI: Do you mean in this case?

COL KILLIAN: The robbery.

MR MTOMBENI: When I saw the documents and the docket was given to me in July.

MS SEROKE: (Indistinct).

MR MTOMBENI: That would be so, because the docket was given to me on that day, but in the beginning I was not given that docket, I was not responsible for that case.

COL KILLIAN: After the arrest of George, as a suspect in this particular robbery, did you make any effort to inform the investigating officer at the time of his arrest?

MR MTOMBENI: I explained that according to my knowledge, Kritzinger was in charge of that, of that investigation. We were

together with him when we arrested this person. He was the one who was talking to him. I don't know, maybe I don't understand your question.

CAPT MOHEMA: Who was in charge of the docket during that time?

MR MTOMBENI: I don't remember well, but I think it was the one who was handling that docket.

COL KILLIAN: I am not asking you what Kritzinger was supposed to do. I am asking you what you should have done. Did you in fact search for the investigating officer and inform him of the arrest of a suspect in his case?

MR MTOMBENI: I don't know why these things are put to me only, because we were together, we were many and I was just a constable at that time. It was in this way. Let me explain something here, in terms of my knowledge that the docket was in the hands of Kritzinger. Maybe I am making a mistake that during the weekend there would be a group which should be on standby. When this group was on duty we would receive dockets. Then on Monday, the branch commander who would either Monday or Tuesday, would book other members for these dockets. I don't remember well as whether Kritzinger during the weekend, I don't remember well, but what I remember well is that the docket - maybe I am making a mistake or not, but Kritzinger was handling the docket. We went together with him, there was no need to tell him that this is the

person, we have arrested a suspect, because when we arrested this person, Kritzinger was present.

COL KILLIAN: No, I have no more questions.

CHAIRPERSON: I have one more question. To my knowledge it is customary practice for a policeman to keep his diary for a period of at least 10 years. Why has your one been destroyed?

MR MTOMBENI: I didn't say mine is destroyed. I say by when your diary is full, they would take your diary to the administration.

It may happen that it is there or not. But I heard that after six months maybe it would be destroyed, maybe I was not that well.

CHAIRPERSON: Excuse me?

MR MTOMBENI: I would repeat, if it is full, you give it to your branch commander. So I give it to branch commander Boshoff. As well he took it to the administration. Then it would be there, but after six months it would be destroyed, if I am not mistaken. It may happen that it is still there.

COL KILLIAN: Maybe I can be of assistance here. He was a constable at the time of this incident, so he would have been carrying a pocket book and not a diary. Only officers carried diaries. Once the pocket book is completed, he has got to hand it back to his branch commander who signs for it and he reissues a new one to him for which he signs for that again.

CHAIRPERSON: So it should still be in existence?

COL KILLIAN: Quite possible.

CHAIRPERSON: Thank you, Mr Mtombeni, for answering the questions and I am going to reiterate by advice to you. The date for amnesty closes I think tomorrow at midnight. I am going to say quite frankly that some of your answers have been startling, to say the least, and I would ask that you discuss the matter with your attorney and seriously reconsider your position. But, thank you for having attended today. This hearing is now closed.

MR MTOMBENI: I thank this Committee. I believe that what I said here is the truth. Where I didn't reply truthfully, I would say, but I believe that I was answering correctly.

WITNESS EXCUSED

COMMITTEE ADJOURNS

