

TRUTH AND RECONCILIATION COMMISSION

SECTION 29 INQUIRY

DATE: 29 SEPTEMBER 1997
NAME: ARNOLDUS JOHANNES VAN SCHALKWYK
HELD AT: JOHANNESBURG
DAY 1

CHAIRPERSON: Mr Muller, is your next client ready for this.

MR MULLER: Chairperson, can I take five minutes ...

CHAIRPERSON: Yes, sure.

MR MULLER: ... just to discuss with Mr Schalkwyk.

CHAIRPERSON: Thank you.

MR MULLER: And is it possible that we can get some more water?

Thank you.

CHAIRPERSON: Mr Van Schalkwyk.

MR VAN SCHALKWYK: Ja.

CHAIRPERSON: Could you state your full names for the record please. Are you able to hear me? When you respond will you please press the red button. Could you state your full names for the record please.

MR VAN SCHALKWYK: My full names are Arnoldus Johannes van Schalkwyk.

CHAIRPERSON: Thank you. Mr Muller, will you place yourself on record please?

SECTION 29 HEARING

TRC/GAUTENG

MR MULLER: Chair, my surname is Muller of the firm Wagner, Muller and du Plessis. I am acting on behalf of Mr Van Schalkwyk in this matter. May I, at this stage, I would like to place it on record that we have consulted as a consequence of the information made available to us by the Committee. There are two incidents with regard to supposed human rights abuses on which Mr van Schalkwyk will be able to make statements apart from the George Tshabangu matter and we will take part in the process as far as is possible with the limited information and the limited time available to us. Chair, I have drafted a statement for him which we will consider a consultation statement which he will use as a guideline. We will not, however, hand this in or read it into the testimony in view of the difficulties we experienced this morning.

CHAIRPERSON: Thank you. Mr van Schalkwyk, before we begin I am going to ask you to take the oath please.

ARNOLDUS JOHANNES SCHALKWYK: (Duly sworn, states).

CHAIRPERSON: Thank you. This is for the record an inquiry in terms of Section 29. It is held in camera. I should warn you that in terms of Section 31 of the Act, any person who appears before the Commission, who is, who can be compelled to answer a question which might incriminate him or herself. As this is not a court of law and not a trial intended to find you guilty, the consequences of such a finding do not actually make you liable for prosecution. In any event, that is up to the Attorney-General. However, should you

refuse to answer any question on the basis that it may incriminate you, please note that the due consultation with the Attorney-General has taken place in this specific instance.

I would remind you that in terms of this Act, if you should perjure yourself or withhold any information from the Commission, that is open to a charge of contempt for which a fine or a prison sentence may, in fact, be liable. Having said all of that I hope you will assist the Commission in so far as its enquiries are concerned.

Are you going to hand us that statement? Not. All right.

Mr Muller, I am not quite clear. Are you going to, is your client going to begin by making reference to that opening statement?

MR MULLER: Can I just take it up with him, Chairperson? Chairperson, I have discussed it with Mr Van Schalkwyk and he will prepare to give evidence. So, he will not use the statement as a guideline or as anything, but he will give his evidence as far as possible.

CHAIRPERSON: All right, I am going to ask Dr Ally to begin then.

DR ALLY: Thank you very much, Chairperson. Mr Van Schalkwyk, I am going to try and get to the point as quickly as possible. There may be other issues, though, related to the issue that we are looking at which you will be asked about at a later stage, but you are aware that the main purpose of our meeting today

is to discuss the so-called disappearance of George Tshabangu, that we have statements from family and we have statements from other people who were involved in this case and we are trying to establish what happened to George Tshabangu. I am going to ask if you will, very briefly, give us your account and your understanding of this matter that relates to George Tshabangu. Everything that you can recall.

MR VAN SCHALKWYK: Thank you, Chair. I can recall that it occurred during February of 1987. There had been an armed robbery in KwaNdebele. At a certain stage I had been the acting branch commanding officer of the Murder and Robbery Unit at Siyabuswa and during that time while acting, I noted that one of the investigating officers experienced difficulty with a particular investigation. We used a very particular method of investigation. We divided the staff into teams who would assist one another with such an investigation. So, a single investigating officer would never do the work on his or her own.

On a particular occasion I then gave instructions, although I cannot recall the exact circumstances which led to my giving the instruction, that the docket had to be taken away from a particular person, nor can I recall what the circumstances were that led to the investigation being done by a different team. However, because of information obtained from an informer we did go to the Bundu Inn Hotel where we questioned a woman called Happy Tshabangu, who

informed us that she, that the suspect, George Tshabangu, was, indeed, her brother. I cannot recall whether she informed us whether she knew where he was, but she did inform us that he was not at that moment at the Bundu Inn Hotel.

DR ALLY: My apologies for interrupting you, but you say that you had information?

MR VAN SCHALKWYK: That is correct.

DR ALLY: What would the source of this information have been?

MR VAN SCHALKWYK: To the best of my knowledge, this was a human source. It was an informer who brought this information to one of the members of the Murder and Robbery Squad.

DR ALLY: You do not know who the source was?

MR VAN SCHALKWYK: No, Sir, I do not know who the informant had been.

DR ALLY: Do you know who this information was given to? From your side, from the police side? Who was the information given to? One of your officers?

MR VAN SCHALKWYK: No, I do not know who exactly received the information. I cannot recall whether one of the investigating officers at the Murder and Robbery Unit reported to me that this information had come to us, which had linked George Tshabangu to this armed robbery. I do, however, know that such information came to us which we could follow-up with regard to this matter. I

cannot, however, recall whom personally made this information available to us and whom the investigating officer was.

DR ALLY: Was it Mr Kritzinger?

MR VAN SCHALKWYK: It might well have been Mr Kritzinger, but I cannot remember myself whom exactly this would have been.

MR NOLSEN: Before we move away from this point, Mr Van Schalkwyk, what was the nature of the information? Was the nature of the information that George Tshabangu had been involved as one of the perpetrators in this incident or what was the nature of the allegations made against him by this human source, this informer?

MR VAN SCHALKWYK: I do not know exactly what the information contained. I do, however, only know that the information did indicate that Tshabangu took part in the armed robbery. According to the information available to us, that he took part in the armed robbery and that it was suspected that he had a firearm in his possession.

CAPT MOHEMA: I am sorry. Before we continue, Mr Van Schalkwyk, can you recall who the investigating officer of this case had been?

MR VAN SCHALKWYK: At that time, Chair, I just want to mention that this morning after arriving here I, for the first time, remembered again, after seeing the documents in your possession and going through these documents, I recalled, for the first time

again, that it was, in fact, Const Mabitse. I did not recall this prior to today's events.

CAPT MOHEMA: Thank you.

MR VAN SCHALKWYK: We arrived at the Bundu Inn. If I were to respond to the documents which we have received from you on a previous occasion, I must, perhaps, mention that we did arrive at the Bundu Inn with three vehicles and that we were six persons. However, there had, there is, however, a difference with regard to the model of vehicle that we drove. We did not go with a little bus, with a, I suppose a Kombi, on that particular morning. Since this particular little bus had been or belonged to a different group of investigating officers.

Upon our arrival at the Bundu Inn we determined that Tshabangu was, in fact, not present. We questioned or asked his sister, Happy, where he might be and I cannot recall whether she pertinently mentioned where he was to be found at that moment. However, we did subsequently, with her accompanying us, go to his room. Jacob Mtombeni and myself, a sergeant at that time, Sgt Mtombeni went specifically to that room and in her presence we searched the room. We searched the room and I can recall that Const Mtombeni did find a firearm in this room and I must mention, again, that while looking through your documents I can, in fact, confirm that it might have been on the wall, but I did not remember this previously before today, Chair.

MR NOLSEN: Mr Van Schalkwyk, if at that this time I could ask, you said previously that you had information that George Tshabangu might be in possession of a firearm that could be linked to the armed robbery. Is that correct? That you had received information that he may possibly have a firearm in his possession, which motivated your visit that day.

MR VAN SCHALKWYK: I said that I do not know what exactly the content of the information had been, but that it was possible to link him to the armed robbery and that, in addition, it might have been possible for him to have been in the possession of an illegal firearm.

MR NOLSEN: Did you go that day to the Bundu Inn prepared with a search warrant in order to look for any evidence incriminating Mr Tshabangu?

MR VAN SCHALKWYK: No, Chair. We did not have this document in our possession. It was in the course of the investigation that we, we were acting in the course of an investigation and not with the particular purpose of going there to arrest him at the Bundu Inn.

DR ALLY: Why did you search his room then?

MR VAN SCHALKWYK: We had information available that he might have been involved in the armed robbery. I was convinced that the information available to us was of such a nature that we would have been able to obtain a search warrant if necessary.

DR ALLY: So, why did you not get a search warrant?

INTERPRETER: Could the question be repeated, it went too quickly. We were still interpreting, we could not get Russell's question. Could he just repeat it.

DR ALLY: You said that you were convinced that the information you had could tie Mr Tshabangu to this robbery and that you would be able to get a search warrant, the information was of such a nature. Why did you not get a search warrant if you were so convinced?

MR VAN SCHALKWYK: Chair, normally under these circumstances one would work against time. The lapse of time required to obtain a search warrant if, in fact, he had been involved in the crime and should he have heard that we were looking for him, then he might well have escaped.

DR ALLY: I appreciate that, but was the search legal or illegal? The search of his room, was it a legal search or an illegal search? You said you did not have a search warrant. Was it a legal or an illegal search?

MR VAN SCHALKWYK: It was a legal investigation, Chair.

DR ALLY: Is it legal to search somebody's room, premises without a search warrant?

MR VAN SCHALKWYK: To the best of my knowledge, Chair, it is legal if one does not, if one is not able to obtain a search warrant at

that moment, you may search a specific location if you are convinced that you may be able to obtain a search warrant.

DR ALLY: So, what is the purpose of a search warrant then?

Why do we need search warrants if police can just go into somebody's property and they are convinced need search warrants if it is such a discretionary process?

MR MULLER OBJECTS: Chair, if I can enter the discussion here.

This is a legal question that has been debated in our law many times. There has been many cases reported with regard to searches with or without search warrants. I do not know whether Mr Van Schalkwyk, who is a legal lay person, would be able to answer such a legal technical question, except with regard to what the law, in fact, says.

DR ALLY: He is conducting an investigation into a very serious matter and we would just like to understand why he did not see the necessity for a search warrant.

CHAIRPERSON: Answer the question, Mr Van Schalkwyk.

MR VAN SCHALKWYK: Chair, it is not a matter of my not understanding the need for a search warrant. However, the matter at that particular moment was such that the lapse of time needed to obtain a search warrant in view of the possibility of the suspect being warned and possibly escaping, should he have been involved in the crime was such that the intention of the search warrant would have not been met.

DR ALLY: What about if you were to have presented this evidence in court and it was established that the search was actually an illegal search and, therefore, the evidence was not permissible? What - how, this is a serious case, you are worried about time, but you do not seem to worry about the legality of the search that you are conducting.

CHAIRPERSON: Or, perhaps, it was customary at your unit for you to actually engage in such kind of behaviour, acting unlawfully, making searches without the necessary documentation and orders. Is that, perhaps, the way the unit conducted its affairs?

MR VAN SCHALKWYK: I would not suppose so, Chair. It would certainly not be my custom through the course of my police career to act illegally. However, in this particular incident, I have difficulty recalling the incident very clearly. However, I believe that the reason why we did not obtain a search warrant at that time was because of the lapse of time as I have explained. The lapse of time under these particular circumstances might have led to the investigation failing if we first had to give time to obtaining a search warrant.

DR ALLY: This was an armed robbery, was it not, Mr Van Schalkwyk, which you were investigating?

CHAIRPERSON: Sorry, Theo, what is the problem?

INTERPRETER: Could, we are still interpreting the English and then, unfortunately, the Commissioner puts another question. So, if he could just repeat the previous question.

DR ALLY: Was this an armed robbery which you were investigating?

MR VAN SCHALKWYK: That is correct, Chair.

DR ALLY: Was anybody killed during this armed robbery?

MR VAN SCHALKWYK: Not to the best of my knowledge or as far as I can recall.

DR ALLY: Was anybody injured during this armed robbery?

MR VAN SCHALKWYK: I do not know, Chair.

DR ALLY: But you do know that, as far as you can remember, nobody was killed?

MR VAN SCHALKWYK: That is correct, yes, Chair.

DR ALLY: So, why does this issue then enjoy such urgency and such priority that you do not bother to get a search warrant? What was it about this case that was so urgent, can you explain to us, that you had to go and conduct a search without a proper search warrant, you could not waste any time.

MR VAN SCHALKWYK: Chair, I consider any case, which I investigated at that time, as urgent enough.

DR ALLY: So, you would not get search warrants for other cases as well then and this is what my colleague tried to establish. Did you get search warrants when you were conducting your investigations

or not? Was this the pattern not to have search warrants? That is what we are trying to understand.

MR VAN SCHALKWYK: Chair, I obtained search warrants as far as it was possible.

DR ALLY: All right. So, every case was important for you and in those instances you got search warrants. In this particular case, which is also important, you do not bother to get a search warrant. Now, what we are trying to understand is what is so special about this case that you do not bother to get a search warrant?

MR VAN SCHALKWYK: Chair, I have already said that all cases are important to me. However, in this particular instance, the search warrant was not obtained for the reasons I have already mentioned. However, in cases where search warrants, when it was possible to obtain search warrants, certainly there were instances where we did not obtain search warrants, but as a rule, as a norm, it was our habit to obtain search warrants.

DR ALLY: Now, tell us in the cases where you did not get search warrants, did any of those cases go to court? Can you recall, to your recollection?

MR VAN SCHALKWYK: I cannot recall particular incidents, Chair.

DR ALLY: You cannot remember any case going to court where you found something without a search warrant?

MR VAN SCHALKWYK: Chair, if you were to ask me about specific incidents I would be willing to give you answers about them.

CHAIRPERSON: I think we are trying to establish what your **modus operandi** was. Certainly, it seems incorrect and, certainly, policemen were not above the law even though, perhaps, at that time that kind of actions warranted the perceptions that they were above the law, but it seems fairly clear that you did not think it necessary to obtain the search warrant. So, one must, therefore, assume that, perhaps, it was the practice of your unit not to do so in particular matters. Is that correct? I see you are shaking your head. Yes or no?

MR VAN SCHALKWYK: Chair, I am confused by the English and the Afrikaans. Could the question be repeated by the interpreter. I must apologise for this.

INTERPRETER: Could the Commissioner, I think the interpreters cannot repeat the question, if the Commissioner could repeat the question we will again interpret into Afrikaans.

CHAIRPERSON: I am trying to establish, Mr Van Schalkwyk, whether there was, perhaps, a **modus operandi** in your unit not to obtain search warrants in particular matters. Yes or no.

MR VAN SCHALKWYK: Definitely no. I want to give a definitive no to this question, Chair.

CHAIRPERSON: So, then, why in this particular instance, did you not obtain one?

MR VAN SCHALKWYK: As I have already explained to you earlier, Chair, in certain instances we did not have the time available to us or there were maybe other circumstances which did not allow us to obtain a search warrant at that moment. In this particular instance the only thing I can recall is that the lapse of time that it would have required to obtain a search warrant, until the search warrant could be exercised, might well have ruined this entire investigation.

DR ALLY: Could I ask whether ... (intervention).

MR NOLSEN: Mr ... (intervention).

DR ALLY: ... the fact that you did not get a search warrant had anything to do with the fact that maybe you were acting under the emergency regulations at the time? Remember that there were emergency regulations in KwaNdebele in 1986 because of the political conflict. Did your actions have anything to do with that fact, perhaps?

MR VAN SCHALKWYK: Certainly not, Chair. This was an armed robbery. At that time I served in the Murder and Robbery Unit. Under no circumstances did I take part in any action where the emergency regulations might have applied. This particular incident was most certainly not a matter in terms of the emergency regulations.

DR ALLY: And how do you respond to certain allegations, which we have, certain sworn statements, actually, more than allegations, that the Murder and Robbery Unit in KwaNdebele at times did actually get involved in enforcing the emergency regulations and in detaining activists under the emergency regulations?

MR VAN SCHALKWYK: Chair, I did not serve in the Murder and Robbery Unit in KwaNdebele at Siyabuswa for a very long time. Personally, today, here, I can emphasise and I want to emphasise this very much, I can testify that on no single occasion did I take part in such actions. It is entirely possible that this might have occurred subsequently, but personally I can give no testimony in this regard. I can, neither, deny nor confirm this. However, personally I, myself, did not take part in any such arrests where people were detained in KwaNdebele in terms of the state of emergency. Certainly not while serving in the Murder and Robbery Unit.

CAPT MOHEMA: Mr, Captain Van Schalkwyk, before we go further, you mentioned to us that as a branch commander during that time, you realised that one of your members, the guy who was investigating this case was having some problems. That is why you decided to arrange your members, sort of, manpower to assist him in this case of George Tshabangu. Did you discuss this case with that member before going to George Tshabangu's place?

MR VAN SCHALKWYK: Chair, I cannot recall that I had said that I experienced a difficulty with him. I know from documentation that had been in your possession and which I received a couple of hours ago, I could see that I gave instructions or wrote instructions to the investigative officer in a particular matter in which I encouraged him, should he experience difficulties, discuss the matter with me. At that time, I could see clearly from this documentation, that this investigating officer experienced difficulties. He was having some obstacles in his investigation. My statement to you, Chair, had been that at that time our usage at that branch had been that we would divide into groups who would assist one another with an investigation. This might be within such a group, whether they were members or whether they were investigative officer as such or not, they would assist each other with particular cases. It is entirely possible that cases might have been investigated by people who were not, strictly speaking, the investigating officer of that particular matter.

CAPT MOHEMA: Okay, was that member present during the searching? Did you invite him to Tshabangu's place?

MR VAN SCHALKWYK: Chair, no, not to the best of my recollection.

CAPT MOHEMA: Why, Mr Van Schalkwyk, because he was the investigator of the case.

MR VAN SCHALKWYK: Chair, it is possible that due to the fact that he had difficulties with the investigation or, perhaps, for some other reason. It might have been that we obtained information from an informant who worked with some other person and that I might have avoided him, particularly, because he was not doing a good job as an investigating officer at that time.

CAPT MOHEMA: So, you never had chance to apply for a warrant of arrest, you even never had a chance to notify your investigator about the case he is investigating?

MR VAN SCHALKWYK: Chair, I did not say that I did not have time to inform him. I said that for one or another reason, which I cannot recall. I cannot recall the exact circumstances, but for some or other reason I did not inform him. I cannot recall the particular circumstances of this particular investigation, why I did not inform him. In most of these cases if this happened, where we did this kind of investigation, it might entirely be possible that I myself, as acting branch commanding officer, might not have known whose case it was that we were working on.

MS SEROKE: Mr Van Schalkwyk, would you remember what problems this investigating officer had, to such an extent that you decided to distribute the work within this team?

MR VAN SCHALKWYK: Chair, I cannot recall exactly what problems. I do, however, recall that the investigating officer, at that time, was not a proven investigating officer, he did not have

sufficient experience. I cannot recall the Afrikaans word, but he, he was not a skilled or expert investigating officer, at that time. This might well have been the reason why we gave him some assistance.

CAPT MOHEMA: Then after getting the firearm there, then what happened?

MR VAN SCHALKWYK: I recall that Sgt Mtombeni took his pocket book, made a note of the firearm that had been found and he requested Happy Tshabangu to sign next to the note made with regard to the finding of the firearm and he, also, in that note, described the firearm.

CAPT MOHEMA: Then was George around there?

MR VAN SCHALKWYK: No, George was not present at that moment. I can recall that someone would have said that George was not present and in the course of the events, at that point, some of our own people, the policemen there, told us that it appeared that he was somewhere else. He was visiting his girlfriend or something like that.

DR ALLY: What happened next, then? Did you then, did you accompany the police officers who went to look for him at his girlfriend's house?

CHAIRPERSON: Chair, as far as I can recollect, myself and Eric Magagula, one of the police officers who worked with us at that time, in the company of two young men of the area, drove to our offices in Siyabuswa. Mr Mtombeni and another police or some

other police officers then went to the house where Tshabangu's girlfriend was staying at that time.

DR ALLY: And what happened next, what is your next recollection on this matter?

MR VAN SCHALKWYK: Chair, later in the course of the afternoon, Const Kritzinger made a report to me that he had spoken with Tshabangu and that Tshabangu, with regard to the possession of the firearm and possible other firearms, made a statement.

DR ALLY: Just, let us just get this clear now. George Tshabangu is picked up at his girlfriend's house, okay. You said you were not present during this, the time that George was picked up, you went back to the Siyabuswa Murder and Robbery Unit, to the office. The other officers with Mr Mtombeni pick up George Tshabangu and they bring him to Siyabuswa, to your offices, to the offices of the Murder and Robbery Unit. Is that correct?

MR VAN SCHALKWYK: That the other section or people from the other section brought him to the Murder and Robbery Offices?

DR ALLY: Of Siyabuswa.

MR VAN SCHALKWYK: Are you speaking of my own people who accompanied me?

DR ALLY: I am asking where was George taken to after he was picked up by Mr Mtombeni?

MR VAN SCHALKWYK: That is correct, he was taken to the Murder and Robbery offices in Siyabuswa.

DR ALLY: For interrogation?

MR VAN SCHALKWYK: That is correct, Chair.

DR ALLY: Who interrogated him?

MR VAN SCHALKWYK: Chair, I cannot recall specifically who did the interrogation. To the best of my recollection or my knowledge, Kritzinger came back to me and told me that the suspect had admitted, had made an admission that he had the firearm and that he was willing to point out some other firearms.

DR ALLY: Were you ever involved, at any stage, in the interrogation of George Tshabangu?

MR VAN SCHALKWYK: Chair, not as far as I can remember. It is possible that I might have walked into the office where he was being interrogated or something like that, but I did not put any questions to him, any particular questions.

DR ALLY: How would you respond to an allegation made against you in an affidavit by Stephen Tshabangu, the brother of George Tshabangu, who was also picked up, that he actually overheard you saying that, and these are his words,

"Dat George gaan kak sien vandag ...",

MR VAN SCHALKWYK: Chair, I think this is a terrible lie. I would never have done this. In any case, I would not treat a person in such a way. He had absolutely no relation to anything of me personally.

CHAIRPERSON: Mr van Schalkwyk, do not be coy, because, quite frankly, from some of the allegations we have heard about the conduct of policemen, particularly towards those they detained and arrested, has not exactly been that where a certain degree of respect has been held. So, I think we would appreciate your not being very coy about this matter, please.

MR VAN SCHALKWYK: Chair, it is not my intention to avoid the question or to be coy. Were I able to answer you I would have, believe me, but, in all honesty, I can say to this Commission that I am not guilty of such a thing.

DR ALLY: Do you know a Supt Ratlabiane?

MR VAN SCHALKWYK: Chair, are you referring to Ratlabiane?

DR ALLY: Ratlabiane.

MR VAN SCHALKWYK: Ratlabiane. That is correct, I do know him.

DR ALLY: In what capacity do you know him?

MR VAN SCHALKWYK: Chair, he was a colleague of mine at the Murder and Robbery Unit.

DR ALLY: And how do you respond to his sworn statement that it was common practice during that time for the Siyabuswa Murder and Robbery Unit to actually torture suspects and to subject them to electric torture?

MR VAN SCHALKWYK: Is he making this claim against me personally, Chair?

DR ALLY: He is making this as a general statement, about the conduct of the Murder and Robbery Unit, that in many cases they did actually torture suspects and that they did use electric shock treatment.

MR VAN SCHALKWYK: Chair, if this is made against me as a person, I would categorically deny it. Not on any single occasion did I take part in such actions. If he makes such a claim he might have been involved in something or know about such practices. As I have said to you, I did not serve in the Murder and Robbery Unit for very long, but in my presence this was never committed.

DR ALLY: Do you know of the existence of a so-called brown case in which, apparently, this shock machine was stored?

MR VAN SCHALKWYK: No, Chair, I bear no knowledge of the existence of such a case or bag.

DR ALLY: Were you ever given such a case during the course of the questioning of George Tshabangu by either Dumisane Mahlangu or Eric Magagula?

MR VAN SCHALKWYK: No, Chair. As I have said, I deny any knowledge of the existence of such a case at any time in the course of my career in the police.

DR ALLY: So, George was questioned, you said you were not directly involved, you may have gone to the office, but the person who did the questioning was Kritzinger, is that correct, who was there most of the time during George's interrogation?

MR VAN SCHALKWYK: Chair, I cannot recall whom exactly conducted this interrogation. This case and this particular incident I cannot recall in detail. However, as far as I can recall, I imagine that Kritzinger might have been the person who did the interrogation. I cannot, however, say today that he was the only person who did the interrogation and that he was the only involved in the interrogation.

DR ALLY: But it was Kritzinger who, you say, came to tell you that George is being co-operative, that George admitted that this gun which was found was his and that he knew where other arms were hidden? Kritzinger told you that?

MR VAN SCHALKWYK: To the best of my memory, yes, Chair.

DR ALLY: Now, at that point after George, apparently became co-operative and said,

"Yes, it is my gun. I will take you to a place where there are more arms ...".

What was your involvement after that in this case?

MR VAN SCHALKWYK: Chair, on the request of the members under my command I arranged that we would obtain a mini-bus with which we would then, that night or that evening, we would go for the pointing out of the arms cache close to Denilton.

DR ALLY: Why did you decide to do this at night? Why, if this was such an important case, you, as you told us, you did not even have time to get a search warrant, because this was so important?

Now you have the information, you do not go to the spot straightaway, you decided we will do this at night.

MR VAN SCHALKWYK: Chair, as far as I can recall, Tshabangu, in fact, requested that if we were going to go and point out the arms cache, he, in fact, offered to take us to point out this cache, but he did request that he did not want to be visible to people and, of course, for his possible co-suspects or co-accused in this matter.

DR ALLY: Did he name any of his accomplices?

MR VAN SCHALKWYK: I did not speak to him personally.

DR ALLY: Did Kritzinger tell you whether he named any of his accomplices?

MR VAN SCHALKWYK: I cannot recall, Chair, that he had, in fact, mentioned any particular individual person. If he had mentioned this I am convinced that we would have made every possible effort to arrest such a person.

DR ALLY: I need to try to understand. Now, you tell, you are trying to convince us that this is such an important case, a very important case. So important that you cannot waste a second, you cannot even bother to get a search warrant, you manage to get the co-operation of George Tshabangu. He tells you, yes, it is my gun and I am going to tell you where there are more arms. He does not tell you who his accomplices are, you do not bother to find out? What kind of investigation is this, Mr van Schalkwyk?

MR VAN SCHALKWYK: Chair, the urgency of the finding of the firearm and the arrest of Tshabangu did, in fact, exist, but that was the extent of the urgency, as far as I am concerned. The urgency would therefore have lapsed upon the arrest and the finding of the firearm. Personally, I was not present during his interrogation. I do not know whether there was then any further urgency with regard to the finding of the arms cache. If he had mentioned or if I had been aware of any other suspects or the names of other suspects, then I would, without doubt, have given instructions that they were to be arrested as quickly as possible.

DR ALLY: Was that not the objective of the investigation? Was George Tshabangu the only person involved in this armed robbery?

MR VAN SCHALKWYK: I cannot recall who all would have been involved in the armed robbery, Chair, but if other names had been known made to me, I would certainly have given instructions to have them arrested first.

DR ALLY: But you do not seem to have bothered to establish this.

This is what I find puzzling. It is, clearly, in an armed robbery it is very, very rare that there is only one person involved in an armed robbery. There must be more than one person involved and, yet, you do not seem to be that concerned about establishing the identity of the other accomplices. You establish that there are more weapons, but you don't seem to be bothered to establish about the accomplices. I mean, is Siyabuswa a small place or a big place?

MR VAN SCHALKWYK: Chair, which of these questions do you want me to answer first? Siyabuswa is a large town. If I can return to your previous question, certainly there was a continuing urgency on my part with regard to the finding of other co-suspects in this case. However, I acted only on request of the investigating officers and the persons who did the interrogation.

DR ALLY: With respect, Mr van Schalkwyk, you take away a case from one of your police officers, because he is not experienced. In your own words,

"... hy het nie die bekwaamheid gehad, hy was nie bekwame nie ..."

Okay. So, one would assume, therefore, that the, that you are going to give this case to people who have the competence, but the way you are investigating this case does not show competence. You have a suspect, the suspect is co-operative, he tells you that it is my gun, he tells you that I will take you where there are more guns and he says to you I will take you at night, because I don't want to be identified by people. You do not seem to bother to try and establish who his accomplices are. Is that not an important aspect of any investigation into an armed robbery, to try and round up all the people involved as quickly as possible, especially since the fact that you have one person, and if the word had probably had gone out in the community already that he was picked up and yet you do not

seem to show the same urgency to try and round up the rest of the people involved in this armed robbery?

MS SEROKE: Sgt van Schalkwyk, were you at any time ever questioned regarding your involvement in George's detention?

MR MULLER: Chair, if I can come in at this point. Dr Ally made a long statement. I do not know, I did not watch Mr van Schalkwyk, he might want to respond to that. I think he should have an opportunity to respond to it. Mrs Seroke quickly jumped in with a follow-up question.

CHAIRPERSON: Let the witness answer.

MR VAN SCHALKWYK: Chair, I did not personally handle the interrogation of Mr Tshabangu. I only acted on the request of the person who was handling the interrogation. I made no personal enquiries with regard to other suspects, to the best of my recollection, and that is really all that I can explain to you with regard to that matter.

CAPT MOHEMA: Capt Van Schalkwyk, from the Murder and Robbery Siyabuswa offices to the place where George alleged that he stored the weapons, how did you structure your unit from Siyabuswa offices, Murder and Robbery offices, to that place?

MR VAN SCHALKWYK: Chair, is it possible to repeat the question?

CAPT MOHEMA: Yes, I wanted to know from Siyabuswa Murder and Robbery offices, after the questioning of George Tshabangu, it

was a Saturday, at the end of the day for you, George Tshabangu informed you that he is ready to go and indicate to you some, a place where he stored the weapons. Then I wanted to know from you, Captain, as the commander by then, how did you restructure your people from the office to that place?

MR VAN SCHALKWYK: Chair, as far as I can recollect or where I found myself with my testimony last, I arranged for a mini-bus in which I, Mtombeni, Magagula and Tshabangu drove to Denilton.

CAPT MOHEMA: So, you were among Mtombeni's group as well as the suspect in the same Kombi, you used the same Kombi?

MR VAN SCHALKWYK: That is correct.

DR ALLY: Before that, let us just go back a little bit to this robbery, Derek.

MR NOLSEN: If I can just clear up one matter before we proceed to the further investigation scene. I realise that quite some time has passed and it is difficult to remember all the details so please allow me to provide you with some of those further details so that you can respond to them now. From the investigation diary from the robbery case, the armed robbery case in which George was a suspect, there is an entry, signed by yourself, with further instructions to Mbitse, the Investigating Officer, one dated on the 5th of February 1987 and a second one dated on the 6th of February 1987. Now, I would just like to point out that the 6th was, indeed, the same day on which George Tshabangu was detained. Now, in

the case docket by that time there was a statement from Fanie du Plessis who made the original claim about the armed robbery, reported the charge to the charge office and in that eyewitness account of the robbery he identifies, very clearly, three suspects.

Now, it seems to me, Mr Van Schalkwyk, although time will have made this hazy in your mind, it seems clear now that at the time when you inspected the docket you would have been aware that there were three suspects in this case and that when George was questioned and, apparently, proved co-operative, that he should have been required to hand over these, the names of these accomplices. So, in actual fact, it seems to me that apprehending those other two suspects, whose names George could have provided, would have also been a matter of some urgency. Particularly, after George escaped and you would need someone else to point out the arms cache. With the benefit of these further details, can you remember what effort was made to follow-up George's accomplices?

MR VAN SCHALKWYK: Chair, not as far as I can recall. I do not think that I knew who the co-suspects might have been, I did not pay that much attention to this particular matter that I would be able to recall that I specifically gave attention to this case except after the request to me to bring assistance.

DR ALLY: But, Mr Van Schalkwyk, you took this case away from somebody, because you believed that he was not doing a good job,

you gave it to somebody else. That is what you said to us, this investigation into this robbery.

MR VAN SCHALKWYK: That is correct, Chair. I do not know whether I gave it to someone else, but, certainly, we, on an *ad hoc* way, would have given attention to a part of the investigation where, at that particular moment, we might have had information. That is what is possible.

DR ALLY: Well, let me read to you from the person whose, who was the investigating officer. This is a sworn statement by Mr Justice Mbitse. He says that

"On the 4th of the 2nd 1987, I was the investigating officer of an armed robbery case, registered at Denilton as CR06/02/87.

I did the necessary investigations, receiving instructions from my superiors at Murder and Robbery Unit at that time. On the 5th and 6th of February 1987 the abovementioned case docket was taken to Sgt Van Schalkwyk for inspection. In his entry, as well as verbally, he never indicated to me that he had any information in relation to the case that I was investigating. No members attached to my unit, at that time, ever mentioned the

name of George Tshabangu as a suspect in my case while I was investigating it.

I investigated the case until the 27th of July 1987 when the case was taken over by Sergeant J B Mtombeni. The name of George Tshabangu was never mentioned to me by any of my informers during the time that I was investigating that case."

What is your reaction to this affidavit by Justice Mbitse?

MR VAN SCHALKWYK: Chair, it is possible that I did not mention the name of Tshabangu to him, because, on the one hand, I did not feel that this was my personal duty to tell him what was happening in his own docket. Possibly, I might have expected that the persons who obtained over this information which we are discussing this afternoon, might have taken this up with him. Personally, I might well not have obtained this information concerning Tshabangu to pass it on to him.

DR ALLY: And further, then, when you actually do have a sworn statement from one of the security officers, who was on duty the time when this robbery took place, which was on the 2nd of the 2nd 1987, and he mentions three people involved and give descriptions of the three, how is it that this is not followed up with George Tshabangu? You have the man in custody, the man says, yes, I did it, yes, I have got the guns, yes, I can take you to, I can show you

more guns and you have a sworn statement in which a witness to the robbery says to you that there were three men and he describes them. He describes the one as a 20 year old, the other as a 35 to 40 year old, the other as 40 to 45 year old. You have all of this in your possession with a suspect, who is co-operating with you, and you do not bother to follow this up. There is no indication in your statement, there is no indication in what you told us that you proceeded with haste to try and apprehend the other suspects in this armed robbery.

CHAIRPERSON: I wonder, perhaps, if it is not because the reason for apprehending George Tshabangu was different to that which you have suggested in your initial statement. Perhaps, it had nothing to do with the robbery. What, I would like to hear you, please.

MR MULLER OBJECTS: Chair, you have made a whole set of statements and I personally do not have any clue where to start and I am saying this to all, in all respect. While we are busy listening to the interpreter, we also hear you beginning to talk and this also creates some confusion. In fairness to Mr Van Schalkwyk can we not treat one matter, and complete it.

DR ALLY: Well, let us go through this very slowly then, okay. You arrest George Tshabangu on the 6th of February. Is that correct?

MR VAN SCHALKWYK: That is correct, Chair.

DR ALLY: There is a sworn statement by a Fanie du Plessis on the 2nd of the 2nd, the 2nd of February 1987 in which he gives a description of the robbery, of what happened and he also gives a description of the robbers, the people involved in the robbery. He describes them in a lot of detail. If you look on, you have a copy of Mr du Plessis's statement, Mr Fanie du Plessis's statement?

CHAIRPERSON: In fact, it is sworn before Kritzinger so you should have known about it.

MR MULLER OBJECTS: Chair, I want to place it on record that we did not have access to any of these documents. This morning we were able to look at these statements of Kritzinger and the investigating diary, but we have not received any of this information. I am not denying that Mr Van Schalkwyk had previous knowledge.

DR ALLY: Let us ask him then. Let us ask Mr Van Schalkwyk, are you aware of this sworn statement by Fanie du Plessis, a 23 year old man, who worked at the Corralin Security Firm?

MR VAN SCHALKWYK: Chair, I am not particularly aware of this, of the existence of this statement. However, if I look at the documentation which you have availed previously to my legal representatives, then I can entirely accept that he was, in fact, the complainant in this particular matter.

DR ALLY: Ja, and this is a sworn statement made in the presence of Kritzinger. Kritzinger is the officer who informed you that George was being co-operative, not so?

CHAIRPERSON: It is also noted in the investigation diary.

DR ALLY: He also noted it in the investigation diary, that Kritzinger is the person who told you that George Tshabangu was being co-operative. Is that correct?

MR VAN SCHALKWYK: That is correct, Chair.

DR ALLY: So, Kritzinger would have been on top of this case, not so? He would have know the details? Kritzinger would have been aware of the statement made by Mr Fanie du Plessis.

MR VAN SCHALKWYK: That I would not be able to say, Chair. I do not know to what extent Kritzinger knew the circumstances and the particular case and the witnesses in a particular case. All that I can say to you is that I know that, as you have now presented it to us, this document was, in fact, taken down by Kritzinger and that Kritzinger, in fact, took part in the interrogation of Tshabangu.

DR ALLY: Did Kritzinger ever indicate to you that there was more than one person involved in the armed robbery? Was that the assumption that you also made, that there was more than one person involved?

MR VAN SCHALKWYK: Chair, I cannot, at this moment, recall the detail of this particular case.

DR ALLY: Well, let me ask you it more directly then. On the day that George Tshabangu is being questioned in connection with this armed robbery, on the sixth, were you satisfied that he was the only person involved in this armed robbery?

MR VAN SCHALKWYK: I do not know to what extent I was supposed to satisfy myself. I paid no particular interest in the number of people due to be interrogated. I trusted that if other persons were implicated in this armed robbery that would, through the course of the investigation, have come out of the woodwork and that we would have been able to handle it. I did not have to deal with only this single case at that time. I simply provided assistance on the request of the investigative officers themselves. If an investigating officer or maybe someone who interrogated Tshabangu mentioned pertinently to me that there were other suspects who had to be arrested or questioned, then I would have offered my assistance.

DR ALLY: Was this not pertinent? You have a sworn statement from the security guard and he describes three people. Your officer who is involved in questioning George Tshabangu does not even suggest to you that there are other people involved who we should question, who we should try and find. There is no mention of this at any point. Here is a sworn statement. Kritzinger would have known about the sworn statement, because it was made in his presence. Three people are described as the suspects. You have

one of the alleged suspects, who is prepared to co-operate with you, he is telling you everything.

MR VAN SCHALKWYK: Chair, I do not know what exactly the question was. My response, which I can give to you, is that had I known or had something particular been mentioned to me with regard to other suspects, I am convinced we would have followed it up. I was not personally involved in the interrogation of Tshabangu and, therefore, it is not possible for me to tell you whether he mentioned any other names of suspects.

CHAIRPERSON: Are you absolutely sure, are you placing it on record before us that you were not involved in the interrogation of George Tshabangu? Do you want to refresh yourself from the notes of the investigation diary, because I want to refer you to a note taken under A5, that Sgt Mapele, 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 his supply dump where other weapons were buried?

MR VAN SCHALKWYK: A5, Chair?

MR NOLSEN: For the record, that is point two of A5, that handwritten notes.

MR MULLER OBJECTS: Chair, I want to place it on record again that this is a summary of an, by an unknown person of a statement of which the original statement had not been availed to us and that

we do not know the real contents of the original statement. I do not know what value can be attached to this document.

MR VAN SCHALKWYK: Chair, I can put it on record that I, personally, did not handle the interrogation of George Tshabangu. As I have said to you, it is entirely possible, through the course of the afternoon of his interrogation, that I might have walked into the office to hear if things were going along well, but whether I was personally involved in the investigation or the interrogation, whether I personally sat there and questioned him, that I would deny.

DR ALLY: Let us continue, because it is hard for us to understand and I am sure you will appreciate why it is difficult for us to understand that Kritzinger, one of your officers, who is involved, who furnishes you with some information, who is fully aware of a statement taken only four days before George is, this is not a long period between which the statement is made and George is detained.

Okay, it is on the 2nd of February 1987. A few days later Kritzinger is face to face with George Tshabangu and you are saying that you do not recall Kritzinger saying to you that there are three other people involved, we have a sworn statement and that we should follow-up and try and apprehend these three other people who are involved in the robbery. You do not recall that, Kritzinger ever speaking to you about other suspects?

MR VAN SCHALKWYK: I apologise, Chair, but I cannot recall this.

DR ALLY: So, instead, what you decide is that you will get a Kombi and that you and Mtombeni and Magagula are going to go with George, later that evening, where George is going to point out further weapons, an arms cache. Is that the sequence of events?

MR VAN SCHALKWYK: Chair, I did not make the arrangements in particular. All that I did was that I said, okay, I will accompany you to assist in the pointing out of these things. It is often valuable for some outside person, apart from the people doing the investigation, to accompany such people on such a case. As acting branch commander I would have made the arrangements in this regard.

DR ALLY: And would this have been an important case, the fact that you are now going to go and find more arms? Would you, as the branch commander, have thought this is really important, because we are going to find more weapons?

MR VAN SCHALKWYK: Chair, not particularly important because of additional arms that were to be found, but rather I considered it my duty or would have considered it my duty as acting branch commander to provide leadership during such pointing outs.

DR ALLY: Okay, so you were going to give leadership during this investigation, this pointing out of further weapons, you were going to give leadership. The decision is taken in the afternoon, I assume,

that you are going to go in the evening, because George Tshabangu does not want to be seen driving around with policemen. Is that correct?

MR VAN SCHALKWYK: To the best of my recollection, that is the case.

DR ALLY: You -, he could not have hidden underneath the seat or something or you could not have covered him with a blanket?

CHAIRPERSON: Before you answer that, I must tell you that I really am struck, this afternoon, by, it is almost as if you are not willing to be candid with us and I am beginning to get very worried about the fact that the story you are giving me sounds very implausible. Firstly, you tell me that the matter is so urgent and there is such a need for haste that you go to visit this man's property without the benefit of a search warrant. However, having done that, there is no longer any case for urgent, you pick the man up at half-past-one, you wait until the dark of the night, no torches, no shovels, but at his convenience, which I find very hard to believe given what I know about the police, you agree to take him at night to a particular place.

However, during the afternoon, whilst he is being questioned, you take no trouble to establish who his accomplices are, despite the fact that there are statements from the security guard indicating that there are, in fact, three suspects. Now, what do you want us to believe, because I think I am beginning to get very worried about

the fact that you are stumbling about facts, which were clearly on record at the Parson's Commission. I want to give you the benefit of the doubt, but at the same time, every time I hear you answer I begin to wonder what the benefit of this actually is. Now, which is it to be? Can you begin to be candid with us, please?

MR MULLER: Chair, to which statement are you referring, with regard to facts in the Parson's Commission where he is stumbling over? Can we have some access to this?

CHAIRPERSON: Mr Muller, the very statement that you tell me you do not know the evidentially value of, is, in fact, a transcript of the docket which was lodged at the Parson's Commission by one of the investigators and which, in fact, was obtained from the national archives. Now, certainly, the person who did, it did not suck these facts out of his thumb. I want to know from your client, he is in charge, he is not in charge, he is providing leadership, but he does not know. What are we expected to believe here?

MR MULLER: Can I have a discussion with him after his reply to the allegations that you made?

CHAIRPERSON: Certainly?

MR MULLER: Thank you.

DR ALLY: Let us continue. So, you are going to provide leadership now.

MR MULLER: Okay, can I just discuss something with him?
Thank you.

COMMITTEE ADJOURNS

ON RESUMPTION:

CAPT MOHEMA: Mr, Captain van Schalkwyk, you were the acting commander by that time and, actually, who was your branch commander, because you were acting during that time?

MR VAN SCHALKWYK: Chair, Warrant Officer Boshoff was the branch commanding officer.

DR ALLY: Well, let us continue. So, you plan now to go and do this pointing out in the evening. Correct?

MR VAN SCHALKWYK: Correct, Chairperson.

DR ALLY: And you are going to give leadership, that is what you said to us? "Ek gaan leiding gee", that is why it was important for you to go.

MR VAN SCHALKWYK: That I was going to offer leadership, that is correct.

DR ALLY: So, what preparations did you make between the afternoon, when George Tshabangu agrees to point out where weapons are kept, and the evening that you are going to go and find these weapons? What preparations did you make in those few hours?

MR VAN SCHALKWYK: Chair, if I recall correctly, the statement had been made by Kritzinger or the person who came and told me about this, with regard to the co-operation of Tshabangu. This was done close to the end of the day. I only gave the instruction that

they must prepare so that at about eight o' clock that evening we could go out for the pointing out. I can recall that at that time we arranged a little bus, a mini-bus, with which we were then going to go out for this.

DR ALLY: So, what preparations did you make? Did you decide what you are going to need in order to be able to conduct a proper investigation of the site which was going to be pointed out to you?

MR VAN SCHALKWYK: Chair, I would have left those arrangements to the people who had done the interrogation or rather to every particular individual to decide for themselves what they were going to need and so forth.

DR ALLY: You just told us now that you were going to provide leadership. Does leadership not actually mean taking responsibility? You are in charge here. How can you be in charge and then you leave it to each individual to decide what he wants to do? What kind of investigation is this?

MR VAN SCHALKWYK: Chair, could you tell me or clarify for me what exactly you are referring to at this point?

DR ALLY: You decided that you were going to use a mini-bus, you are going to use a Kombi, okay. You decided that it is going to be the three of you in the Kombi. It is going to be yourself, it is going to be Magagula, it is going to be Mtombeni. Another car would also accompany you, a Skyline with other policemen, okay, that you are going to leave at eight o' clock. That is what we hear

so far. So, these are arrangements, these are plans. Was it anybody's responsibility to ensure that you would have torches, because you are going out at night?

MR VAN SCHALKWYK: Chair, I cannot recall that I had pertinently given anyone instructions to provide for flashlights or torches. Under normal circumstances, if I were to evaluate the matter, then I would believe that it would be general, common knowledge, common practice that torches were to be taken along for such a pointing out.

DR ALLY: Okay, so there were torches? It is common practice, were there torches at that investigation, this pointing out?

MR VAN SCHALKWYK: Not as far as I can recall, Chair.

DR ALLY: You cannot remember? Were there torches or were there not torches? This is a very simple matter. I do not think that one can forget something like that. There were either torches or there were not torches.

MR VAN SCHALKWYK: Chair, there were no torches, to the best of my recollection.

DR ALLY: There were not torches? Is that what you are saying?

MR VAN SCHALKWYK: That is correct.

DR ALLY: So, why were there no torches? As you said, this, common sense would say we are going out at night, we are going to find arms, it is very important, therefore, we should make an arrangement to ensure that we have a light. Not even a torch, I

would imagine that you would have wanted to take gas-lamps to ensure that you are properly prepared to find where these arms are hidden. These are guns, after all, it is not just anything that you are going to look for.

MR VAN SCHALKWYK: Chair, that is correct. I can recall that when we came to the scene and we looked around, then we saw that there were no torches and we found, this is the first time that we realised that, my goodness, we did not bring any torches.

DR ALLY: So, what did you do then when you discovered that not one of you had brought a torch?

MR VAN SCHALKWYK: We left the vehicles, we got out of the vehicles, we went and we tried to do the pointing out.

DR ALLY: According to Mtombeni, it was very dark that evening. In his statement he says,

"... dit was pikdonker ...",

pitch black, which meant that it would have been very difficult to see anything. You get out of the Kombi, you discuss amongst yourselves, you say, who brought the torches? Someone says, no, we have no torches. Does it not then cross your mind that maybe you should go back to find torches or you should ask somebody do you have a lighter, do you have matches.

MR VAN SCHALKWYK: Chair, as best as I can recall, we continued with the investigation, to attempt to point out where these, this cache might be, despite the absence of torches.

DR ALLY: Okay, well, let us leave that for a moment. Let us just double back. George Tshabangu is with you in the Kombi as you are driving to the place to point out, he is going to point out where the arms are kept. Correct?

MR VAN SCHALKWYK: Correct, Chairperson. That is the case, Chair.

CAPT MOHEMA: I am sorry ... (intervention).

DR ALLY: Was he handcuffed or was he not handcuffed?

MR VAN SCHALKWYK: Yes, he was, in fact, handcuffed.

DR ALLY: How was he handcuffed?

MR VAN SCHALKWYK: With his hands in front of him, Chair.

DR ALLY: Are you absolutely sure about that?

MR VAN SCHALKWYK: I cannot link any hundred per cent certainty to this, but I do believe that he was handcuffed.

DR ALLY: Who handcuffed him?

MR VAN SCHALKWYK: I can't recall that exactly. Maybe myself.

DR ALLY: Who had the keys for the handcuffs?

MR VAN SCHALKWYK: Chair, I cannot recall who held the keys, but I can recall that at a later point, during the course of that evening, I had the key, because I had to unlock the handcuffs.

DR ALLY: Was there only one set of keys for the hand-cuffs?

MR VAN SCHALKWYK: Not necessarily, Chair. Many of these handcuffs in the police, you can lock or unlock with any sort of a key that any police officer would have.

DR ALLY: So, he was handcuffed and you are driving to the place where he is going to point out the arms. You arrive at the spot, tell us what happens next.

MR VAN SCHALKWYK: We got out of the vehicle and on his indication we walked in the direction of a wire, a fence, and when we arrived there we found that this was a very tautly wound wire and so it was very difficult for me and Tshabangu to climb through this fence.

DR ALLY: Who was at that wire at that point in time?

MR VAN SCHALKWYK: Myself, Tshabangu, we were in front, as far as I can recall, and Mtombeni and Magagula followed us, a little distance behind us. I cannot recall the exact distance, but they followed us.

DR ALLY: Close enough, did you hear them? Close enough that you could hear their footsteps?

MR VAN SCHALKWYK: Chair, that kind of detail I cannot recall, not at this moment.

DR ALLY: But you can remember unlocking the handcuffs?

CHAIRPERSON: Perhaps you remember, because that is what Sgt Mtombeni told you this morning.

MR VAN SCHALKWYK: Chair, I do not know how to react to this statement. The testimony which I am giving here, as far as is possible for me, I am giving you the truth. I will not tell you lies.

CAPT MOHEMA: Was Dumisane with you?

MR VAN SCHALKWYK: Where?

CAPT MOHEMA: Was he among you during, when you arrived at the scene?

MR VAN SCHALKWYK: He was in a different vehicle. As far as I can recall, he was not specifically present next to me or with the three of us. He was not in our vehicle, he was in a different vehicle and at the moment when Tshabangu and I climbed through the fence, then Dumisane was not pertinently next to us at that moment.

CAPT MOHEMA: But, he was in the team?

MR VAN SCHALKWYK: He was indeed in the team, in our team.

CHAIRPERSON: May I ask you, just to get this correct in my mind. The person who was first in line was who?

MR VAN SCHALKWYK: Could you perhaps (indistinct).

CHAIRPERSON: Who was in front when you were walking, George Tshabangu or yourself?

MR VAN SCHALKWYK: Chair, I cannot recall exactly whether it was me or Tshabangu who was walking right in front. Normal practice would have been for him to have been walking slightly in front of me.

DR ALLY: And your, you were armed, were you not? You had your gun with you?

MR VAN SCHALKWYK: I would have had my firearm with me.

DR ALLY: And George Tshabangu would have known that you had a gun?

MR VAN SCHALKWYK: I would bet that he had it, knew that I had it with me.

DR ALLY: At what point were the handcuffs unlocked?

MR VAN SCHALKWYK: Chair, when we found that the fence gave us such difficulty, it was impossible for him to climb through the fence, then I unlocked the one arm from the handcuff.

DR ALLY: Yes, and then what happened?

MR VAN SCHALKWYK: He climbed through or rather I climbed through the fence first, he followed me. I took the one ring of the handcuff in my hand. He then climbed through and we were turning around to walk in the direction of the place where he was going to point out the arms cache.

DR ALLY: And then, continue?

MR VAN SCHALKWYK: At a particular stage, we were walking close to a large bush or in the direction or around a bush. The next moment he took the, or he started running away and I lost the handcuff.

DR ALLY: Was it dark that, could you, as you were walking could you actually see where you were going?

MR VAN SCHALKWYK: Chair, I cannot recall exactly what it looked like during the course of that night. I recall it being very dark. I also remember that there was a lot of rocks, it was also very thick with bush. So, we had great difficulty moving on this ... (intervention).

DR ALLY: Terrain.

MR VAN SCHALKWYK: ... terrain.

DR ALLY: So, George Tshabangu suddenly pulls loose from you and runs. Is that what happened?

MR VAN SCHALKWYK: That is correct, Chair.

DR ALLY: There was not a struggle between you and George?

MR VAN SCHALKWYK: Not at all, Chair.

DR ALLY: Did you shout, did you scream?

MR VAN SCHALKWYK: Chair, you know, under circumstances such as these one cannot remember your exact, immediate reaction. Subsequently, however, after having received documents from you, we could reconstruct the event and I believe that, yes, I would have shouted something like, hey, or some other exclamation.

DR ALLY: Did you draw your gun?

MR VAN SCHALKWYK: I cannot recall, but I do not think so.

DR ALLY: Did you shoot any warning shots into the air?

MR VAN SCHALKWYK: Most certainly not.

CAPT MOHEMA: Did you ... (intervention).

DR ALLY: Is that not unusual? Here you have a suspect fleeing, you are armed. Is it not natural, instinctive thing to do to draw one's firearm and shoot ... (intervention).

CHAIRPERSON: Sorry, Russell, I am sorry, you were cut off slightly, because your mike was not on.

DR ALLY: Sorry.

CHAIRPERSON: Could you begin to repeat that?

MR VAN SCHALKWYK: Chair, you may go on. I did understand the question.

DR ALLY: Is it not normal in an escape situation, that the first thing a police officer does, is he draws his weapon and he shoots a warning shot into the air?

MR VAN SCHALKWYK: Chair, again, I think this is a case where one uses your discretion to determine when it is safe to give a warning shot. If I recall correctly, then this particular place or area, although it was in the veld, there were houses right around this area or at least very close by in the area of this particular place.

My colleagues, at that moment, might well have been very close to me. So, I would not have attempted to fire a shot, because I would have been scared of the possible consequences of such a shot.

DR ALLY: Do you remember drawing your gun?

MR VAN SCHALKWYK: I do not believe I drew my gun, no.

DR ALLY: So, you did not even draw your gun?

MR VAN SCHALKWYK: No, I did not draw my gun.

DR ALLY: Is that not unusual? Even if one accepts that you did not want to shoot a warning shot in the air, because you were afraid that you may injure somebody, but the fact that you do not even draw your gun, I mean, here is somebody who is a suspect in an armed robbery, who is going to point out arms to, where guns are hidden, suddenly escapes, you do not draw your gun.

MR VAN SCHALKWYK: Chair, I see nothing extraordinary in the circumstances. There were literally hundreds of events in my life where one would habitually have done certain things, but then at that moment you act differently. There were instances I can recall where my life was in danger, but where I did not draw my gun.

DR ALLY: What are you trained to do in a situation like that?

MR VAN SCHALKWYK: My training was that I had to attempt to arrest the escapee as soon as possible.

DR ALLY: And how do you do that? How do you arrest somebody who suddenly escapes? What does the training manual say or suggest? Are there any guidelines?

MR VAN SCHALKWYK: I must take every possible measure in order to recapture this person.

DR ALLY: So, what did you do to try and get him back then after he had allegedly escaped? Tell us what steps you took.

MR VAN SCHALKWYK: Chair, I stumbled a couple of steps forward. I could no longer hear him. I heard the approach of my colleagues, but I could not see where they were nor could I see

where the suspect was, in fact. We looked around in the area, but we did not see anything.

DR ALLY: Still without taking out your guns, your firearms?

MR VAN SCHALKWYK: Chair, I cannot say whether the other members drew their firearms, but personally I never drew my firearm.

DR ALLY: So, you were running around or, in the dark, you do not know what you are looking for, you can hear nothing and you are trying to apprehend a dangerous suspect, who was a, who was, who you arrested in connection with an armed robbery and you do not seem to be taking any precautions to protect yourself?

MR VAN SCHALKWYK: Chair, at that time it was clear to me that we could do, that there was very little or rather no particular threat to my life. It is my habit only to draw my firearm when my life is threatened.

DR ALLY: So, what do you, what happened next?

MR VAN SCHALKWYK: Chair, we drove around in the area or rather we ran around on this terrain where the man had escaped. After a few minutes of totally futile running around we went to our vehicles, returned to our vehicles. I can recall that one of us ... (intervention).

DR ALLY: The other vehicle was then close by. Say vehicles, say another vehicle had arrived?

MR VAN SCHALKWYK: That is correct, Chair.

DR ALLY: So, the Skyline was present?

MR VAN SCHALKWYK: That is correct, Chair. One of us, one of our members then went on to the radio. No, no, that would have been myself, and I requested, Chair, I cannot recall whether I called one of our other vehicles or whether I called the Denilton Police Station on the radio to inform them that there had been an escape and that we needed assistance.

DR ALLY: Did you ask for torches at that point?

MR VAN SCHALKWYK: Not as far as I can recall, Chair.

DR ALLY: So, what happened next then? You say you radioed for reinforcements, for help. Did you stay there at the scene of the escape?

MR VAN SCHALKWYK: Chair, I cannot recall what the extent of the assistance had been which I requested. Maybe I requested that people must just keep their eyes open for this man or what the circumstances might have been, I do not know. What I do know is that from there we returned to the Bundu Inn ... (intervention).

CAPT MOHEMA: Now, how many ... (intervention).

MR VAN SCHALKWYK: ... where Tshabangu's parents lived.

CAPT MOHEMA: How many police officers reinforced you from the Denilton Police Station at that time?

MR VAN SCHALKWYK: As I have said, Chair, I cannot recall exactly what the extent or nature of my request had been or whether people actually arrived and accompanied me to assist me. I cannot

remember. Maybe I just asked, in general, for assistance with regard to an escape.

DR ALLY: Did you all leave the scene of this alleged escape and all go to the Bundu Inn? Was nobody left behind to, just in the event that Mr Tshabangu was, perhaps, hiding under a bush or behind a stone? Remember, it is pitch black, you said, you have got no torches, you can see nothing. Do you all just suddenly disappear from the scene of this escape and go to the Bundu Inn?

MR VAN SCHALKWYK: As far as I can recall, a few of us continued to move around with the vehicles, around the particular area to see whether he was emerging from the bush.

DR ALLY: I understand that, but I am asking did you all leave the scene of the escape that evening or did you leave, did you post some guards there until it got light or until it was possible to see something or did you all just leave the scene of this escape?

MR VAN SCHALKWYK: Through the course of the evening, Chair, yes, we all left the scene. We left no guards there.

DR ALLY: This is a ... (intervention).

MR VAN SCHALKWYK: That I can remember very clearly.

DR ALLY: This is a scene where there are allegedly arms which are hidden. This is a place where a fugitive from the law, a dangerous person, suspect in an armed robbery, who you had to apprehend, you did not even bother to get a search warrant, because time was so important, he escapes in the dead of the night, where

you cannot see anything. You do not know whether he is hiding under the rock, under the bush, you all just disappear that very same night without even bothering to place guards, to cordon off the area, to ensure that when it gets light somebody is going to be present to see if the person is still hiding there. You just, all disappear, you leave the scene with nobody there?

MR VAN SCHALKWYK: Chair, as I have described it, that was to the best of my memory what, in fact, occurred.

CAPT MOHEMA: Then, as a commander, Capt Van Schalkwyk, what was your last instruction to your members that night?

MR VAN SCHALKWYK: I cannot recall my exact last, final instruction. I do recall that subsequent to the escape of Tshabangu, I suggested that we should redivide and make everything, every effort to track down the suspect.

DR ALLY: You mentioned that one of the reasons you gave for not wanting to fire your firearm was the fact that you feared that there were people in the area, there were houses there. Did you ever go and enquire at any of those houses, did you search any of those houses to see if, perhaps, George Tshabangu had run into one of the houses?

MR VAN SCHALKWYK: Chair, personally I never made such an effort.

DR ALLY: Did any of your officers, any of the men present there that evening, did any of them conduct a search into the houses in which George Tshabangu could, possibly, have been hiding?

MR VAN SCHALKWYK: Not to the best of my knowledge, Chair, and also not on my instructions.

DR ALLY: And why not? You said, you say to us that your training manual, instructions, whatever you call it, when there is an escape tells you that you must use every possible means to try and find the person who has escaped. You do not draw your guns, you do not fire a warning shot, you do not leave any guards posted in the area and you do not look into a single house in the area where George Tshabangu could have run into.

MR VAN SCHALKWYK: Chair, it is exactly as you describe it and that is how my memory serves me. That is a fact, that is how it occurred.

DR ALLY: And this, you - are you telling us that this is a normal way for a policeman to conduct such an investigation? Is this, if I were one of your subordinate and I were to come and report to you that this is how I conducted an investigation, would you pat me on the back and say well done, very good job, very competent?

MR VAN SCHALKWYK: I do not suppose so, Chair. I cannot say that this was a normal case, not the way you describe it, but I cannot say this was a normal action or a normal investigation in the course of this escape. This particular incident had unique

circumstances which, on the one hand, made it particularly difficult or even impossible to take certain actions.

DR ALLY: Well, tell us these unique features. I would like to hear what was unique about this. Give us one example of an unique feature of this escape. That was your word, "unique". Give us one example.

MR VAN SCHALKWYK: Chair, I did not say that this was a particularly unique incident. What I did say is that I suppose that this was an incident which might have had some unique merits.

DR ALLY: Okay, give us an example of one of the unique merits and circumstances of this case. Only one.

MR VAN SCHALKWYK: Chair, for example, the reason why I did not draw my firearm was that I was concerned that I might damage or wound one of my colleagues, someone in the veld, someone in the houses around.

DR ALLY: We accept that, but why then did you not search the houses then? If, you knew there were houses, I do not know how you knew, because you said this was pitch black. Is it because you knew the area? How did you know that there were houses around this place where the pointing out was going to take place?

MR VAN SCHALKWYK: Chair, I only became of this subsequently.

DR ALLY: No, no, no, please, Mr Van Schalkwyk, okay, we are not children here. You said that at the point of the escape, I asked

you why did you not fire a warning shot. You said that there were houses, there were possibly people and you did not want to injure somebody. That was your answer. Now you are saying that only afterwards you heard that there were houses. Now, how does one make sense of those two statements?

MR VAN SCHALKWYK: Chair, my response to you on that occasion was that there were people or there might well have been people in this piece of veld and that there might have been houses around there.

DR ALLY: That is correct, that is what you said, that there were possibly houses. Now, how did you know that? That is what I am asking you. Did you know the area? Could you see anything?

CHAIRPERSON: He could not see, there were no torches.

MR VAN SCHALKWYK: Chair, I did not make the statement that I knew the area and that in view of my knowledge of the area I would, therefore, claim that there have, would have been houses there. What I did say is that I might have wounded people who might have lived in that area or be walking around there. People might have lived there or might have been walking in that piece of veld and I might have wounded them.

DR ALLY: Well, let us establish then. Did you go back ... (intervention).

CHAIRPERSON: Just ... (intervention).

DR ALLY: ... to the scene ...

MS SEROKE: Did you ... (intervention).

CHAIRPERSON: Just before that, when you - sorry Joyce, when you completed, when, after he had escaped, did you make an effort to search any of those houses, did you go back there the next day? After all, George could have fled into one of those houses.

MR VAN SCHALKWYK: Chair, I did not personally ever return to this particular scene.

DR ALLY: Did you give any of your officers instructions to go back?

MR VAN SCHALKWYK: I cannot remember.

DR ALLY: Did you give them instructions, yes or no? I do not see how you cannot remember that. Did you ask somebody to go back to the scene and to go and establish if there were houses, if there were witnesses, if anybody heard anything, if anybody saw anything? I mean, after all, this is an escape of somebody who is going to be pointing out arms.

MR VAN SCHALKWYK: I cannot recall that I gave such an instruction.

DR ALLY: Did you ever go and look for the arms in, where, the area?

MR VAN SCHALKWYK: Not personally.

DR ALLY: Did anybody of the investigating team go and look for these arms?

MR VAN SCHALKWYK: I cannot say.

DR ALLY: Do you have metal detectors as part of your police equipment?

MR VAN SCHALKWYK: No, Chair. The KwaNdebele Police, at that time, did not have any metal detectors.

DR ALLY: Did any other police station nearby or any of your colleagues have metal detectors? Are you aware of the fact that the police do have metal detectors?

MR VAN SCHALKWYK: Chair, as I have already just told you, the KwaNdebele Police, at that time, did not obtain, have any metal detectors.

DR ALLY: I understand, but I am asking do other sections of the police force have metal detectors? At that point, were you aware of metal detectors elsewhere in the police force, wherever it could be?

MR VAN SCHALKWYK: Chair, I served in the KwaNdebele Police, I was seconded to the KwaNdebele Police. I had no links outside. Sure, I was aware of the fact that the South African Police had metal detectors at that time. To the best of my knowledge, at that time, it was something used more commonly at the Task Force Units and units like that.

DR ALLY: So, let us get this clear now. You apprehend somebody who claims that he knows where arms are buried, you never go back to the scene where he took you to, to establish if there are arms. Is that correct?

MR VAN SCHALKWYK: Chair, I had been approached personally to assist with this pointing out. I went along with the intention of possibly finding these firearms in the veld that evening.

DR ALLY: Did you follow-up, in any way, the fact that that area George had indicated that there are weapons buried, did you follow that up after this so-called escape of George Tshabangu?

MR VAN SCHALKWYK: Chair, are you referring to that particular area where he escaped?

DR ALLY: Correct, correct. Did you ever go and follow-up to see if there were arms buried in that area?

MR VAN SCHALKWYK: Personally, no.

DR ALLY: Okay, so, you did not. Fine, that is the first point. Secondly, did you ever follow-up in your investigation to establish whether anybody in that area had seen anything, heard anything the night of George Tshabangu's alleged escape?

MR VAN SCHALKWYK: Not personally.

DR ALLY: No, you did not. Did you ever question anybody in that area? Did you go into any of the houses to find out if anybody had given him sanctuary, if he was hiding somewhere?

MR VAN SCHALKWYK: Not as far as I can recall.

DR ALLY: No, you did not. Did you ever place a guard around the area to ensure that if he was - possibly - hiding there he would be found during the day when the sun came out, when there was light?

MR VAN SCHALKWYK: As I have said earlier, Chair, it is as you claim, no, I did not.

DR ALLY: So, what do you then do to make sure that when somebody escapes, you make it your duty to try every possible means to find the person. You seem to have had total disregard. The man disappears, end of story.

CHAIRPERSON: May I follow that up with a question?

MS SEROKE: And was there a departmental inquiry about this disappearance?

MR VAN SCHALKWYK: I bear no knowledge of such a departmental investigation, Chair.

CHAIRPERSON: Did you make an effort to trace the accomplices? After all, the report talks about three people being involved in the robbery. What did you do to try and trace them?

MR VAN SCHALKWYK: Chair, as I said or given testimony earlier today, I did not personally make any effort to track down any of the suspects.

CAPT MOHEMA: Captain, because you were an acting commander, somewhere during the same month, on the 24th, you are commander now, Warrant-Officer Boshoff then reported on duty. Did you report this incident to him?

MR VAN SCHALKWYK: Not as far as I can recall, Chair. I did not particularly mention this matter to him.

CAPT MOHEMA: But did you regard this, Captain, as a serious case, escaping of a human being?

MR VAN SCHALKWYK: Chair, I was used to armed robbery and murder cases. I do not believe that the escape of this particular person would very pertinently have left a mark in my memory or have had an impact on my actions.

DR ALLY: With respect, Sir, this was a murder and robbery investigation. The escape was in the, was in the, in your, part of your investigation of murder and robbery. Escape was incidental. This was a murder and robbery investigation right in your province, in your area. You were busy with this case, you were trying to find out who the people were who committed this crime, who robbed this filling station with guns, it was murder and robbery. Were you not interested in trying to solve this case? Your prime suspect disappears, you then lose interest in the case. Is that what you are saying to us?

MR VAN SCHALKWYK: I want to state it clearly to you, you might be under the impression that I investigated this case at any point. No, I never did, never did I personally investigate this case nor did I make this my own or consider this my own personal duty to track down this man and capture him again. At no point did I consider this a priority in my own life.

CHAIRPERSON: But, with respect, you took this case away from someone else and you have informed us that you took a leadership

role. Perhaps, for me, the question is whether you did not investigate, because you had him shot at that place. That is the usual pattern of how these incidents went. Maybe that is the real reason why you never took this matter any further.

MR VAN SCHALKWYK: Chair, could you just repeat that statement? Maybe I did not hear you correctly.

CHAIRPERSON: I am putting it to you, Mr Van Schalkwyk, that the reason you never investigated this matter any further, once the prime suspect disappeared, is because you did not expect to find anything, you never conducted, you never let a man remain at this place where this man escaped, you did not go back there the next day, you never made any efforts to ensure that a watch was kept on that place, you never looked around for the other accomplices and, perhaps, the reason for that is because you took him there and you shot him.

MR VAN SCHALKWYK: Chair, if I were to react to this statement, that is not true. That is entirely not true.

DR ALLY: So where is George Tshabangu? It is 10 years since the disappearance. Where is George Tshabangu? Somebody just disappears into thin air, does not contact his family. Is that a normal way of people to behave?

MR VAN SCHALKWYK: Chair, you are expecting from me to respond to a statement that you are making which I just do not have any grounds or any way in which I can respond to tell you where the

escapee went. I do not have any or I paid no pertinent attention to this case, Chair. I did not pertinently have any vendetta against this person. I did not have anything to do with this person pertinently, other than that I accompanied him to go and point out an arms cache. I would have had no reason, Chair, to do anything with this person other than on request of the investigating officer or rather on request of the interrogator to take him to point out the arms cache.

DR ALLY: How would you describe this investigation that you said you decided you would give leadership? Would you describe it as competent, incompetent, professional, unprofessional? Objectively, looking from this as a police officer. What would your verdict be?

MR VAN SCHALKWYK: Chair, to which part of the investigations are you referring?

DR ALLY: I am speaking about the whole process, from the time that George Tshabangu, apparently, says I am going to point out arms to you. You start making preparations to go there the evening, you indicate to us there is no shovel or spade and you are going to be digging up arms, because these arms were buried, obviously, they were not just lying somewhere where they could easily be seen, they were buried. You do not take any torches, any flashlights, you undo his hand-cuffs, you do not fire any warning shots, you leave the scene of the escape, you do not post any guards, you do not question anybody, you do not follow-up on any of the accomplices

when you have a sworn statement from the security guard. I am asking you, all those things that I listed, how would you describe the conduct of yourself and your police officers? Was this a professional investigation, was this an unprofessional, was this competent, was this incompetent?

MR VAN SCHALKWYK: Chair, I think the context is circumstances of that particular evening, did not reduce the quality of investigation. Certainly, errors were made, but I cannot judge an investigation because of a few aspects listed by someone. I cannot describe it as competent or incompetent just because of that particular list. What I can say is, yes, errors were made, people made flagrant mistakes. That errors were made I can certainly say, but I am not able to make any statement with regard to the competency of this investigation.

DR ALLY: Well, tell us what you did after all of this?

INTERPRETER: Could the speaker's mike come on?

DR ALLY: At the end of all of this, that there is the escape, he is gone, you cannot find him. What is your further involvement in this case?

MR VAN SCHALKWYK: Chair, as far as I can recall, Magagula and myself went to the Bundu Inn Hotel, we returned there, where Tshabangu's parents were resident. We began some questioning around to find out whether he had returned there and we left that particular scene, we left the hotel and later that evening we went to

Denilton Police Station. We laid a charge there or registered a charge there and then from a distance we looked at the Bundu Inn, we kept the Bundu Inn under surveillance. We also watched the road passing the Bundu Inn so we could see whether he was not going to be there.

CAPT MOHEMA: You opened a case, then you said, you never informed your branch commander about this incident, which means the Commissioner of the Police, KwaNdebele Police back then, was never aware of this incident, it was sort of hidden.

MR VAN SCHALKWYK: I do not quite follow the intent of the question.

CAPT MOHEMA: I firstly asked you, did you report this incident to Boshoff, your Commander Boshoff when he comes back on the 24th. You said, no. Then, now I am putting it to you, departmental actions were never taken against you, because this case was, was sort of hidden, you, it was never reported to the KwaNdebele Police and it was never reported to Boshoff. Am I right?

MR VAN SCHALKWYK: Chair, in the first place, my response to this, is that I do not know whether you can recall what my exact answer had been. My answer had not been that I did not report it to Boshoff. My answer had been that I cannot recall whether I reported this to Boshoff. But to follow on to your statement, I do not know whether what you are suggesting is that I somehow conspired with Lerm to smother this entire matter.

CAPT MOHEMA: No, Captain, I meant you were now at the stage, you are responsible for the loss of George Tshabangu. I mean, he escaped in your hands and, according to police procedure, when a prisoner or a person under your custody escape, you were supposed to be charged, trialed. So, I am putting it to you, you were not trialed, because your commander and the Commissioner were not aware of this incident.

MR VAN SCHALKWYK: Chair, a docket was registered. If departmental steps was supposed to follow that would have been because of the docket. From 1986 or 1987 when this event occurred, I remained in service in the police service for another 10 years and at any time during the course of those 10 years action could have been taken against me, departmentally, with regard to this. I cannot comment on the circumstances leading to the lack of such departmental charge.

CAPT MOHEMA: And I think the reason why I am saying that George, I mean, your branch commander was not aware of this incident, somewhere on the 24th, on the investigation diary on this armed robbery in case, he gave the, he inspected the case and then he queried Sgt Mbitse. In his query he said,

"Hoekom geen verdere ondersoek vanaf
87/02/06? ..."

And from on that day, 87/02/06, that was the day when you interrogated or you investigated this case fully.

MR VAN SCHALKWYK: Chair, could you, perhaps, clarify for me what exactly the question might be.

CAPT MOHEMA: I am telling you, Captain, that you said you do not remember whether you informed, you reported this case to your Commander Boshoff, you do not remember. Now, I am putting it to you, you did not report it to him, because on the 24th, when he comes back from leave, he inspected the case, he queried the investigator. He says to him,

"Why no further investigation from
87/02/06? ...",

whereas on that day, Captain, you were investigating this case thoroughly. So, if he had information about this case, he would have not queried this man.

MR VAN SCHALKWYK: Chair, ... (intervention).

CHAIRPERSON: Is there a problem with the ... (intervention).

INTERPRETER: We lost the last part of that question. We are very sorry about that. You see, we do not have the references with us and so we got a bit confused. Maybe, if we may kindly request just the last section of that question to be rephrased.

MR VAN SCHALKWYK: Chair, I heard the question and I am willing to respond to it.

CHAIRPERSON: Go ahead.

MR VAN SCHALKWYK: The statement which you are making, namely that the investigation was done well by me, that is mistaken.

I did not at any time indicate that I did a very good investigation. All that I tried to do was that information which came to the fore in this particular case, I attempted to cause this information to be followed-up and I attempted to give some leadership in this particular investigation. Then, to expand on your statement, namely that Boshoff, I cannot remember exactly what you stated.

CAPT MOHEMA: Boshoff queried this man, Mabitse.

MR VAN SCHALKWYK: A further statement to explain to you, Boshoff requested here why this case was not being investigated any further. During the inspection of case dockets, the branch officer would look through these dockets and he would see them once a month. This particular docket might well have been handed over to this person who now has this information and that person then becomes involved for noting the information into the investigation diary, the information availed to him and the follow-up information.

I would not necessarily have seen this docket again or rather it is clear to me that I did not see the docket again, in order to check whether the additional information was noted down since that particular date.

CAPT MOHEMA: So do you agree with me, Captain, that you were, you are, you were actually guilty of losing your man, making this George Tshabangu to disappear.

MR VAN SCHALKWYK: Chair, you are making the statement that I am guilty of something or other. What I would admit is that the person was under my care when he escaped.

CAPT MOHEMA: Captain, according to the police procedure, police administration, you know it, if you, if a prisoner or a person under your custody escape, you are guilty, you have to be trialed, charged for that. So, that is why I am saying you were actually guilty for that incident.

MR VAN SCHALKWYK: Chair, I can, unfortunately, not respond to the possibility that someone should charge me. It is my impression that Mr Mohema might expect that I might have done or that I should do the preparatory work to have myself charged departmentally for this escape.

CHAIRPERSON: It just seems very strange, though, Mr Van Schalkwyk, that you were, in fact, the last person to have custody of George Tshabangu. Whilst he was in your care, he disappeared and, quite frankly, nothing has been heard about him since. It is 10 years, people from exile have returned to the country. He is not one of those people who registered whilst he was in exile. So, clearly, one of the questions needs to be asked to you, what actually happened to George Tshabangu. I cannot believe that if he had escaped that one would not have heard about him or that he would not have sent a message to a loved one. So, one has to assume that the classic case of abduction, a person last seen in the care of a

security officer disappears without trace, nothing is heard of him since. This fits all that classic elements and one has to ask the question, what happened to George Tshabangu whilst he was in your hands.

MR VAN SCHALKWYK: Chair, it is correct that he was in my hands, I was the last person who had him in my, in care.

DR ALLY: Can we just be absolutely clear on that, because there is an inconsistency here. Again, I concede that we are going on a summary of a transcript, that we do not have the original documents, but the summary, let me just try and get this. These are notes, and you I think have, have been given this, of a handwritten transcript of the investigation diary from the docket on George Tshabangu's disappearance. According to that handwritten transcript, that George informed Sergeant or Capt Mtombeni that there were other weapons and that he and two other friends buried these at Ellisdoren(?) B, that he offered to point out where those weapons were. That he was accompanied by yourself, Sgt Van Schalkwyk, Sergeant Mapele, Sgt Mahlangu, Sgt or Capt Mtombeni, Const Kritzinger. That it was very dark that evening. That George ran away from him, Magagula, until he came to a place where there were many stones so that it was impossible for people to move. There George began, quickly began to move. He attempted to find him without success. No one attempted to shoot George, because it was very dark. George escaped from them at the place where the

weapons were buried, therefore, the weapons could not be unburied.

That is from Magagula.

Magagula now says that George ran away from him. This is from a handwritten transcript of an investigation diary where Warrant-Officer Magagula declares and this is soon after the events.

This is actually on the 7th, this is signed by Warrant-Officer Magagula on the 7th of February 1987, one day after, where one's memory, one would imagine, would be a lot clearer. This is 10 years after the event. You are now claiming that it is you, Sgt Van Schalkwyk, you undid his handcuffs, he was last with you.

Warrant-Officer Magagula says, no, no, he was not last with you, he was with me, signed 7th of February 1987. Now, what are we supposed to believe?

MR VAN SCHALKWYK: Chair, it is possible that Magagula spoke within the context of us acting as a unit and that he escaped out of the care of this unit of persons.

DR ALLY: George says, he ran away, George ran away from him, Magagula, until he came to a place where there were many stones, that it was impossible for people to move. He does not mention you at all. He says he ran away from me, from Magagula.

MR VAN SCHALKWYK: That is correct, Chair. As I have said, it is entirely possible that Magagula might be speaking within the context of the persons present for showing of the arms and he is speaking of them as a unit and that is why he might say that he was

running away from him, but that might not specifically mean that he escaped from his individual care.

DR ALLY: With respect, Sir, George is handcuffed, not so? You unlock his handcuffs, you have one of the handcuffs in your hand. That is what you are, that is what you explained to us. The handcuff is in your hand. How can Magagula claim that George ran away from him, Magagula, without saying clearly that you were the officer, you held the handcuffs and George Tshabangu escapes, a day after the event.

MR VAN SCHALKWYK: Chair, I cannot respond on behalf of Magagula. What I can say is that I consider this in the context that Magagula might be considering us as a unit, the three of us, and that he would then be speaking not as if the person escaped out of his personal care, but that he considered this in the context of him running away from him and, therefore, away from us as a group and ran out from under us as a group.

DR ALLY: But you and Magagula ... (intervention).

MS SEROKE: But if it were that case, if you, he was talking in terms of a unit, would he not rather have said George ran away from us, not from me, Magagula?

MR VAN SCHALKWYK: Chair, I cannot respond to you. I am just making all sorts of guesses, with you, on what might be the context within which he is saying this, but I cannot tell you exactly what the circumstance were.

DR ALLY: But according to your statement, Magagula and Mtombeni were not even, you could not hear them, it was dark, you could not see them, they were behind you. It was yourself and George, you helped George climb over the fence. In fact, you said that you climbed over first, George followed. Correct? George's handcuffs had been unlocked, you held one of the parts of the handcuffs in your hand, Magagula and Mtombeni, according to your statement, were not even there at that particular point in time.

Their recollection of what or their understanding of what happened comes from you. It was dark, they did not see anything. Yet, Magagula says that George ran away from him, Magagula, until he came to a place where there many stones, so that it was impossible for people to move.

This version you give is that they were not there yet, they were still approaching, you got over the fence, George ran away, you started screaming or shouted and then Magagula and Mtombeni joined you.

MR VAN SCHALKWYK: Chair, maybe I must point out to you, maybe you did not hear clearly when I said that I cannot remember how far away they were. They were close by, but I cannot recall how close by. I cannot remember the exact number of steps that they were behind me. You asked me on a previous occasion could I hear them and I said that I cannot remember whether I could hear or see them behind me. I did not pertinently pay attention to them

behind me and that is what I exactly told you. That was my precise version on your question.

DR ALLY: Did you know the name Solly Mahlangu? Has that name ever come to your notice, attention?

MR VAN SCHALKWYK: Solly Mahlangu?

DR ALLY: Yes.

MR VAN SCHALKWYK: Chair, I do not know this name at all.

DR ALLY: During the investigation or questioning of George Mahlangu he apparently mentioned the name of Solly Mahlangu, that Solly Mahlangu and it was Solly Mahlangu's gun, which was found in his possession. That has never come to your attention? That is according to Capt Mtombeni. Capt Mtombeni says that and let me read for you what he says. This is also from the transcript, the docket. We do not have the original, so we concede that point. The original seems to have been destroyed, but Capt Mtombeni declares that he, Sgt Mabele, Warrant-Officer Magagula and Sgt Van Schalkwyk questioned George. This is very soon after these events, this is in the week of the alleged escape. That you, the three of you, you questioned George, 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. That George was held at your office until eight o' clock, you mentioned that time as well, at which time they took him out to point out the weapons cache. So, there is a consistency in what

○ Capt Mtombeni is saying. You stayed there, you went out at eight o' clock in the evening, but before that George told you, Sgt Mapele and Warrant-Officer Magagula that the weapon belonged to one Solly Mahlangu.

MR VAN SCHALKWYK: Chair, the name, Solly Mahlangu, does not have any particular meaning to me within this particular context. I cannot recall ever hearing the name in this particular context.

○ DR ALLY: Well, let us continue, ... (intervention).

CAPT MOHEMA: Captain ... (intervention).

DR ALLY: ... Sgt Mapele declares that on the 6th of February, again, the very same day ...

INTERPRETER: The speaker's mike is off.

○ DR ALLY: ... that very same day together with Warrant- Officer Magagula, again Sgt Van Schalkwyk, Warrant-Officer Mtombeni, Const Kritzinger, when Warrant-Officer Mtombeni arrested George for illegal possession of a weapon and ammunition, that George admitted the weapon and informed them that it belonged to one Solly Malhangu and that he would point out other weapons to the police. Two people, who you will you acknowledge, were part of the team that arrested George, that were involved in questioning George, two of them corroborate each other's statements and they all mention you as present and they mention Solly Mahlangu as the person to whom this weapon belonged.

MR VAN SCHALKWYK: Chair, I can respond to this by saying that I continue, as I have already said, I am repeating my statement, I cannot recall the name of Solly Mahlangu pertinently. This name has not been pertinently mentioned to me at any point and I would deny that I was personally involved as a part of the interrogation of Tshabangu.

DR ALLY: So, these two people are lying?

MR VAN SCHALKWYK: Chair, as I have explained to you previously, it is possible that they might mean this in a different context from that which you are interpreting. However, in response, I want to say to you that I do not know the name Solly Mahlangu.

DR ALLY: But you said that you did walk in and out of the office where George Tshabangu was being questioned. Is that correct?

MR VAN SCHALKWYK: What I did say, Chair, is that I might have walked in and out.

DR ALLY: That is not good enough. I want to know did you or did you not walk in and out of the office where George Tshabangu was being questioned. Yes or no?

MR VAN SCHALKWYK: Chair, unfortunately, I cannot give you a yes or no answer, because I cannot, simply cannot, remember. I must apologise if this is not good enough for you.

CAPT MOHEMA: Captain, at Denilton Police Station you opened the docket yourself with regard to this escape.

MR VAN SCHALKWYK: To the best of my recollection, no, Chair. As far as I can remember, either Magagula, oh, I think Magagula opened the docket.

CAPT MOHEMA: And after they opened this docket did you, Captain, make a statement with regard to this escape?

MR VAN SCHALKWYK: Chair, this is very long ago. This is not the only case in which I was involved at that time. I can honestly not recall whether I made a statement or not for that docket.

DR ALLY: Just one last question. You say that you, after this alleged escape of George Tshabangu, you went back to the Bundu Inn. Is that correct?

MR MULLER: After the escape he went back to?

DR ALLY: To the Bundu Inn, or to the place of the parents there, of George Tshabangu.

MR VAN SCHALKWYK: Correct, Chairperson, during the same evening we went back to Bundu Inn.

DR ALLY: Did you search the Bundu Inn, did you go into any of the rooms, did you go into George's room?

MR VAN SCHALKWYK: No, Chair. I can remember that we entered the hallway and there I saw Happy Tshabangu.

DR ALLY: Did you search the Bundu Inn, yes or no?

MR VAN SCHALKWYK: Chair, as I have said to you, just now, I cannot remember. I certainly went into the hallway, I do not want to deny that.

DR ALLY: So, you did not search the hotel, but the day that you went to, went looking for George, when George was not even there, you searched his room, you searched his room quite thoroughly without even a search warrant, because it is so important, time is of the essence. Yet, a few hours after the man allegedly escapes, you do not bother to search the premises, you do not go and look in his room, look under the bed, see if the parents are, perhaps, hiding him. You just go to the Bundu Inn, you stand in the main area and that is the end of your search for George Tshabangu.

MR VAN SCHALKWYK: Chair, I cannot recall the exact events, but that is what I can remember.

DR ALLY: But why do you remember certain things? With respect Mr van Schalkwyk, you remember going to find George Tshabangu the first time, you remember the fact that Happy Tshabangu was present, you remember, you can even remember that the gun was on the wall. You are saying that now that Mtombeni is and you have seen his statement you can recall, yes, the gun was there. You and Mr Mtombeni enters in his pocket book, you search the place, yet you cannot remember a few hours later whether or not you searched to see whether George Tshabangu was hiding at the Bundu Inn. You cannot remember that detail and here you are searching for a man who has just escaped now. A man who was involved in an armed robbery, a man who has told you that he knows where there are more arms hidden and you have this, what

seems to be, a totally cavalier, casual attitude. You stand in the main hall and that is all you do. Did you question the family?

MR VAN SCHALKWYK: Chair, maybe I should state this clearly to you. I am not trying to evade any questions. I am telling you what I can remember. What I cannot remember I tell you just as honestly, I cannot remember this. In so far as the family is concerned, I do not know or I cannot recall particularly with whom we spoke there. I recall Happy Tshabangu with whom we had a conversation in the hallway of the hotel. I think that their father or maybe some other person was around there somewhere whom, with whom we might well have also spoken, but I cannot specifically remember.

DR ALLY: So, you cannot remember whether you searched the Inn or not? You cannot remember going into George Tshabangu's room? After all, you knew where his room was, you found a gun there earlier.

CHAIRPERSON: But perhaps the real reason is because you knew there was nothing to search for. You see, one cannot help feeling that you made no effort to find George, because you knew you are not going to find anything. After all, what other perception is there about the whole way in which this thing has been managed? A man last seen in your company disappears, no trace of him, but no effort is made to do any of the proper things which usually follow on such an investigation. What do you expect us to believe?

DR ALLY: Did you go back to his girlfriend's house?

CHAIRPERSON: Ja.

DR ALLY: Do you remember that, because that is where you found him the first time? Sergeant Mtombeni who was with you went there, knew the place, did you send anybody to the girlfriend's house? Do you remember?

MR VAN SCHALKWYK: Chair, there is a whole set of questions and statements. I will answer them as I can remember. I did not say, Chair, that I did not search the house nor did I say that I might not have done it. I said I cannot recall to what extent we searched the place upon our return. As far as I can recall we did not search it. That would have been an additional error in the course of this investigation. With regard to the other questions, Chair, the second time, this is the second time you make the statement that the person might well have been murdered. I want to categorically deny this. I would not under my command - or nothing like this ever occurred under my command or could have occurred under my command. Whether we went to the girlfriend's house, I can recall that personally I did not go there.

DR ALLY: Did you ask anybody to go around? Can you remember asking one of your police officers to go and check to see whether he, perhaps, would not run back to his girlfriend's house.

CHAIRPERSON: The family, in fact, say that no search was carried out. In fact, no investigation work took place after,

allegedly, the time when George is said to have escaped. It is almost as if there was no need to do anything more.

MS SEROKE: Do you recollect ordering a drink, after your return, at the bar?

MR VAN SCHALKWYK: Chair, the gentleman asked the first question, namely, it is correct, I did not search the place. In regards to your question, Chair, I can say that I cannot respond to this statement that there was no investigation. On that particular evening I personally went to the Bundu Inn and that was certainly part of an investigation. What happened thereafter, I cannot remember. I was transferred soon thereafter from the Murder and Robbery Squad. So, I would not be able to give testimony of what occurred after my transfer. However, that there had been an investigation that evening I can confirm. With regard to the drink, Chair, I did not take or order any drink in the Bundu Inn that evening or at any other time. According to the statement of the witness, I believe that was Happy or her brother who said that I had ordered whisky. I am not a whisky drinker.

DR ALLY: It is important for us to, for your own purpose, to inform you that the amnesty process is still an option, that the closing date for amnesty applications is midnight on the 30th of September 1997, that we have a responsibility, in terms of the Act, to inform the Attorney-General whether, in our investigations, we come across cases where we believe there is a possibility of further

investigation and also a probability of a conviction. I must let you know that on the basis of the response to the questions and on the way in which this investigation into this so-called escape was conducted doesn't convince us, at all - there are too many improbabilities. As you yourself acknowledge, you say "ons het baie flaters", meaning many mistakes. It just seems to us that there were too many mistakes in one night, in one investigation so important. But I think it would be remiss of us not to tell you that there is still the amnesty route and that if, in your conscience or your knowledge is, perhaps, anything that may assist in establishing what actually happened to George Tshabangu and whereabouts of George Tshabangu, you should seriously consider looking into whether there is, you can be of more help to the Commission in trying to solve this matter.

CHAIRPERSON: Mr Van Schalkwyk, thank you for coming today.

As you will note this is an investigation which is still in progress, there are other people whom we are interviewing as well in terms of the Section 29 inquiry. At the end of this process we will, however, write up our report and, as Dr Ally has indicated, the Commission will certainly motivate, in terms of what line it thinks this matter should take. He has pointed out to you that the amnesty process is open until I think midnight tomorrow night. I would suggest that you seriously think about it, because there are too many inconsistencies in this matter. However, that is your choice. It is

still under investigation. We thank you for coming and should we require any further answers from you, we will contact your attorney accordingly. Thank you very much. This matter is now over.

MR VAN SCHALKWYK: Thank you, Mr Chair.

WITNESS EXCUSED

COMMITTEE ADJOURNS