RealTime Transcriptions

TRANSCRIPTION OF THE

# **COMMISSION OF INQUIRY**

# MARIKANA

# **BEFORE TRIBUNAL**

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON MR TOKOTA SC MS HEMRAJ SC

# HELD ON

DAY 191 25 FEBRUARY 2014

PAGES 23165 TO 23338



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# Marikana Commission of Inquiry

| 1   | Page 23165  | 1  | Page 23167  |
|---|---|--|---|
| 1   | [PROCEEDINGS ON 25 FEBRUARY 2014]   | 1  | MR CHASKALSON SC: Yes, the detectives   |
| 2   | [09:22] CHAIRPERSON: The Commission resumes. Mr   | 2  | had been, if I recall correctly, had been left at forward   |
| 3   | Semenya, I understand you want to make an application but I   | 3  | holding area 1. It's not material for the point I'm   |
| 4   | don't know if you want to make it now or at teatime because   | 4  | interested in. "We moved forward in line with K9 members  |
| 5   | I understand that the practical implications of what you  | 5  | on foot as well as motor vehicles. Due to the fact that   |
| 6   | want to deal with can only be dealt with after tea, but if  | 6  | gunfire was still erupting in the koppie 3 area which we  |
| 7   | you want to make an application now you may, alternatively  | 7  | had to pass to go to koppie 1, I diverted four vehicles of  |
| 8   | you can make it at the time that you consider more  | 8  | the K9 unit in that direction. My purpose for going to  |
| 9   | appropriate. I'm in your hands.   | 9  | koppie 3 was to ascertain what was happening there and to   |
| 10  | MR SEMENYA SC: May we make that   | 10   | support police who appeared to be under some form of attack   |
| 11  | application just shortly before tea, Chair? May we make   | 11   | there. I was concerned that we will not be able to bring  |
| 12  | that application just shortly before tea?   | 12   | in the emergency services personnel as long as shooting was   |
| 13  | CHAIRPERSON: Yes, that seems to be the  | 13   | taking place and the area had to be secured urgently. I   |
| 14  | sensible way to proceed. Major-General, you're still under  | 14   | was also concerned for the safety of police personnel who   |
| 15  | oath.   | 15   | might be under attack in that area." Now, Major-General,  |
| 16  | GENERAL NAIDOO: Still under oath, Chair.  | 16   | this passage in your statement suggests that there were two   |
| 17  | CHAIRPERSON: Mr Chaskalson?   | 17   | purposes, two different purposes of your decision to take   |
| 18  | GENERAL NAIDOO: s.u.o.  | 18   | personnel into the koppie, the first was to get information   |
| 19  | CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):   | 19   | or one was to get information, the other was to support the   |
| 20  | Thank you, Chairperson. Major-General, when we closed   | 20   | police operation. Would you accept that?  |
| 21  | yesterday we were talking about your purpose of taking your   | 21   | GENERAL NAIDOO: Chair, I accept that.   |
| 22  | personnel into koppie 3 and I would like to take you to a   | 22   | That's what I testified yesterday before we closed.   |
| 23  | passage in your statement at the foot of page 9, paragraph  | 23   | MR CHASKALSON SC: Were there any other  |
| 24  | 65, where you describe your purpose in your statement and   | 24   | purposes?   |
| 25  | if we could just call the statement up at page 9, right at  | 25   | GENERAL NAIDOO: Chair, no, there was no   |
|   | Dogo 221//  |  | Dogo 22140  |
| 1   | Page 23166<br>the foot of page 9 you say – no, sorry, if we can go down   | 1  | Page 23168<br>other purpose.  |
| 2   | to, sorry, it must be page 10, the foot of page 10, yes.  | 2  | MR CHASKALSON SC: Now, when you   |
| 3   | "Heavy gunfire erupted from what was now known as koppie 3  | 3  | discussed your role in the events of the 16th at Roots with   |
| 4   | to my left a few hundred metres away. I ordered the fire  | 4  | a view to preparing the SAPS presentation, did you make   |
| 5   | and medical personnel and detectives to hold back behind  |  |   |
|   |   | 5  | clear to Colonel Visser and Colonel Scott what your   |
| 6   |   |  | clear to Colonel Visser and Colonel Scott what your purposes were in bringing the K9 unit into koppie 3?  |
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Tel: 011 021 6457 Fax: 011 440 9119

| 1  | Page 23169<br>MR CHASKALSON SC: Did you not think that   | 1  | Page 23171<br>the K9 is also a tactical unit. In terms of their training  |
|--|--|--|---|
| 2  | it was important that your purpose for entering koppie 3   | 2  | they can track and arrest suspects in bushes, that is part  |
| 3  | was correctly reflected in exhibit L?  | 3  | of their capacity.  |
| 4  | GENERAL NAIDOO: Chair, I saw the   | 4  | MR CHASKALSON SC: So you were thinking  |
| 5  | presentation as a high level overview. I did not   | 5  | of releasing dogs to go after people in the koppie at   |
| 6  | necessarily see this as an omission as I had already   | 6  | koppie 3?   |
| 7  | indicated this in my statement.  | 7  | GENERAL NAIDOO: Chair, I have already   |
| 8  | MR CHASKALSON SC: Well, let's see what   | 8  | indicated I had no idea what was happening at koppie 3 and  |
| 9  | exhibit L says about your decision to come into koppie 3.  | 9  | we were still trying to ascertain what's happening. The   |
| 10   | If we go to slide 230, slide 230 of exhibit L and there  | 10   | only capacity I had with me at that stage was the K9 dog  |
| 11   | just under the numeral 230 or the numbers 230 it says,   | 11   | handlers who I used to go forward in a sweeping line.   |
| 12   | "Blue depicts the FHA1 members, K9 dog handlers moving   | 12   | MR CHASKALSON SC: Was one of the  |
| 13   | forward to assist at koppie 3. Their role was to use the   | 13   | functions that you thought the dogs might perform, a  |
| 14   | dogs to search for firearms hidden in the rocks/brush and  | 14   | function of going after protesters at koppie 3?   |
| 15   | to assist the NIU sweep line, if required, with their  | 15   | GENERAL NAIDOO: Chair, in terms of the  |
| 16   | dogs." Was that not your purpose in bringing the K9 unit   | 16   | briefing that we had been given there was an indication   |
| 17   | to koppie 3?   | 17   | that once the koppies had been swept, the K9 would also   |
| 18   | GENERAL NAIDOO: Chair, as I indicated,   | 18   | sweep to locate firearms, suspects and/or injured people  |
| 19   | there was a twofold purpose. One was to ascertain what was   | 19   | which may lay in bushes and among rocks. That is part of  |
| 20   | occurring there because there was shooting and it obviously  | 20   | the evidence I have led here and that is part of the  |
| 21   | impeded the safe passage of the emergency services   | 21   | utilisation I envisaged.  |
| 22   | personnel and the second one was responding to the   | 22   | MR CHASKALSON SC: But that was once the   |
| 23   | shooting, concern for the welfare of the members and to see  | 23   | koppies had been swept.   |
| 24   | if they needed assistance. So I would say that slide 230   | 24   | GENERAL NAIDOO: That is correct.  |
| 25   | only depicts one of the reasons.   | 25   | MR CHASKALSON SC: So the function that  |
|  |  |  |   |
|  |  |  |   |
| 1  | Page 23170<br>MR CHASKALSON SC: Well, Major-General, I   | 1  | Page 23172<br>the K9 would perform in that context would be a function  |
| 1<br>2   |  | 1<br>2   | Page 23172<br>the K9 would perform in that context would be a function<br>that would be performed after the situation was secure, it  |
|  | MR CHASKALSON SC: Well, Major-General, I   |  | the K9 would perform in that context would be a function  |
| 2  | MR CHASKALSON SC: Well, Major-General, I have difficulty with that answer because are you suggesting   | 2  | the K9 would perform in that context would be a function<br>that would be performed after the situation was secure, it  |
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|  | Dago 22172  |  | Dago 22175  |
|--|---|--|---|
| 1  | Page 23173<br>Chair, it was a large overview of what happened –   | 1  | Page 23175<br>was a new assertion. I did indicate it was a concern for  |
| 2  | CHAIRPERSON: I mean if there was  | 2  | the safety of the members that were at that particular  |
| 3  | something inaccurate in it that you knew was inaccurate you   | 3  | place. So yes, the first one was to assess the situation  |
| 4  | would have drawn that to the attention of –   | 4  | with regard to the route and the second one was to support.   |
| 5  | GENERAL NAIDOO: If it was inaccurate,   | 5  | I think the term I used, if I'm not wrong, was concern for  |
| 6  | yes, Chair.   | 6  | the safety of the members that were at that shooting  |
| 7  | CHAIRPERSON: Alright. Now I see that  | 7  | incident.   |
| 8  | you appear to have made your first statement only in  | 8  | MR CHASKALSON SC: Well, let's look at   |
| 9  | November, some months after the Roots conference and in   | 9  | the support function. Is this a function that would have  |
| 10   | fact after this Commission started, is that right?  | 10   | been wholly independent of the need to get medics to scene  |
| 11   | GENERAL NAIDOO: That is not correct,  | 11   | 1.  |
| 12   | Chair. I drafted and completed my statement at Roots. I   | 12   | GENERAL NAIDOO: I don't understand the  |
| 13   | also asked for assistance in terms of indicating whether  | 13   | question, Chair.  |
| 14   | there's any area that I have not covered that should be   | 14   | MR CHASKALSON SC: Well, assume that it  |
| 15   | covered. I only deposed my statement at the date that's   | 15   | was, there was no threat to the medics in getting to scene  |
| 16   | indicated there but my statement was made, unsigned, handed   | 16   | 1 but there was a need for support of the police operation  |
| 17   | in at the Roots conference, Chair.  | 17   | at scene 2, were you planning to stay with your K9 members  |
| 18   | CHAIRPERSON: Yes, I'm referring to  | 18   | at the koppie for as long as was necessary to support the   |
| 19   | exhibit DD.   | 19   | police operation and wait until then to get the medics to   |
| 20   | GENERAL NAIDOO: That is correct, Chair,   | 20   | scene 1?  |
| 21   | the first statement.  | 21   | GENERAL NAIDOO: Chair, if we're talking   |
| 22   | CHAIRPERSON: And did you, on the day, on  | 22   | hypothetically then obviously based on an assessment which  |
| 23   | the 16th did you make entries in your diary?  | 23   | would tell me that there was no threat to the convoy  |
| 24   | GENERAL NAIDOO: Not on the day but when   | 24   | escorting the medics, then based on the numbers that are  |
| 25   | I did get back to the office, I was at that stage not in a  | 25   | available and the fact that there were two commanders in  |
|  |   |  |   |
|  |   |  |   |
|  | Page 23174  |  | Page 23176  |
| 1  | Page 23174 position but yes, I went and made sure because I had used  | 1  | Page 23176<br>that particular operation, one of the groups would have   |
| 1<br>2   | 5   | 1<br>2   | 5   |
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| 2  | position but yes, I went and made sure because I had used my firearm and it was necessary for me to make that entry.  | 2  | that particular operation, one of the groups would have ensured the route, the safe escort of the medical through   |
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|  | Page 23177   |  | Page 23179   |
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| 1  | to be in charge of support is Colonel Mopedi, the  | 1  | paramedics as well?  |
| 2  | appropriate commander to be in charge of assessment is   | 2  | GENERAL NAIDOO: Well, I suppose medic –  |
| 3  | yourself.  | 3  | CHAIRPERSON: There were three doctors,   |
| 4  | GENERAL NAIDOO: When you say assessment  | 4  | as I understand.   |
| 5  | do you mean assessment whether it was safe for the medics  | 5  | GENERAL NAIDOO: Not doctors, I think   |
| 6  | to go through?   | 6  | they were paramedics.  |
| 7  | MR CHASKALSON SC: That's correct.  | 7  | CHAIRPERSON: So there were three   |
| 8  | GENERAL NAIDOO: That would be correct,   | 8  | paramedics?  |
| 9  | it would be my responsibility and the tactical deployment  | 9  | GENERAL NAIDOO: That's correct.  |
| 10   | of the K9 to support the NIU in penetrating that particular  | 10   | CHAIRPERSON: I see.  |
| 11   | bush would have been Colonel Mopedi.   | 11   | GENERAL NAIDOO: So yes, obviously then a   |
| 12   | MR CHASKALSON SC: Was there any need for   | 12   | decision could have been taken to use one - as I said, I   |
| 13   | your to get involved in tactical activity at scene 3 in  | 13   | don't have that knowledge to determine which one - to  |
| 14   | terms of the appropriate division of responsibilities?   | 14   | attend to what's before us and we could have sent on the   |
| 15   | GENERAL NAIDOO: Chair, until I got to  | 15   | other two. That would have been a practical arrangement  |
| 16   | the scene where the NIU were, not necessarily, there were  | 16   | had this scene been stabilised and secured.  |
| 17   | experienced commanders. However, once we got there and the   | 17   | MR CHASKALSON SC: Major-General, are you   |
| 18   | assessment was made, that changed because as I indicated in  | 18   | suggesting that the paramedics who had been under your   |
| 19   | my statement, it was clear that people had been shot there   | 19   | control at forward holding area 1 and then at the power  |
| 20   | and which changed the picture considerably.  | 20   | station first came into koppie 2?  |
| 21   | MR CHASKALSON SC: Why did that change  | 21   | GENERAL NAIDOO: Chair –  |
| 22   | the picture considerably?  | 22   | MR CHASKALSON SC: Sorry, koppie 3 scene  |
| 23   | GENERAL NAIDOO: Chair, well, one of the  | 23   | 2.   |
| 24   | primary focus areas of mine was to ensure that the medics  | 24   | GENERAL NAIDOO: Yes, Chair. They   |
| 25   | get to who needs them and it was clearly, clear before me,   | 25   | attended to that first.  |
|  |  |  |  |
|  | Page 23178   |  | Page 23180   |
| 1  | there were people that were shot and we needed to get  | 1  | MR CHASKALSON SC: And were they the  |
| 2  | there were people that were shot and we needed to get<br>medics to them. I could not leave something that I see  | 2  | MR CHASKALSON SC: And were they the first paramedics to go to koppie 3?  |
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| 1  | Page 23181 from the rear of koppie 3, escorted by the K9 dog handlers.   | 1  | Page 23183<br>MR CHASKALSON SC: We'd be grateful if  |
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| 2  | Those are the people that I saw first. I did not see the   | 2  | you would.   |
| 3  | medics, the helicopter landing first.  | 3  | GENERAL NAIDOO: Okay, Chair.   |
| 4  | MR CHASKALSON SC: Can you indicate to us   | 4  | MR CHASKALSON SC: I'm going to tackle  |
| 5  | where these medics came in on – maybe if we can have MMM1  | 5  | your, the logic of your two stated purposes in due course  |
|  | -  |  |  |
| 6  | up?<br>GENERAL NAIDOO: Chair, I think MMM2   | 6  | but beforehand I just want to return to an issue raised by   |
| 7  |  | 7  | the Chairperson with you yesterday which is when you were  |
| 8  | would be a more appropriate –  | 8  | at the power station and you say you heard this heavy  |
| 9  | MR CHASKALSON SC: If they – MMM2 doesn't   | 9  | gunfire erupting, at that stage your overriding concern was  |
| 10   | show the south-west side of the koppie and I'm not sure if   | 10   | still getting the medics to scene 1 as soon as possible,   |
| 11   | they came in from that side or this side.  | 11   | was it not?  |
| 12   | GENERAL NAIDOO: Chair, if I may  | 12   | GENERAL NAIDOO: That was one of my   |
| 13   | indicate, the medics came in and parked behind the vehicles  | 13   | concerns, yes.   |
| 14   | that are indicated in H5 and G5. The ambulances were   | 14   | MR CHASKALSON SC: Well, was it not your  |
| 15   | staggered and parked there and the K9 members escorted them  | 15   | primary concern?   |
| 16   | in directly, the area where the Casspir is parked  | 16   | GENERAL NAIDOO: Well, it was affecting   |
| 17   | currently. They entered through there.   | 17   | my primary objective, yes.   |
| 18   | MR CHASKALSON SC: I see. The medics who  | 18   | MR CHASKALSON SC: So the decision making   |
| 19   | were dropped by helicopter entered from the other side, so   | 19   | process should have been geared towards that objective.  |
| 20   | you may not have seen them.  | 20   | GENERAL NAIDOO: That is correct.   |
| 21   | GENERAL NAIDOO: That is correct.   | 21   | MR CHASKALSON SC: Now you thought that   |
| 22   | COMMISSIONER HEMRAJ: Were you aware that   | 22   | the heavy gunfire may have interfered with the route that  |
| 23   | there were medical personnel that had been brought to the  | 23   | the driver had chosen.   |
| 24   | scene by helicopter?   | 24   | GENERAL NAIDOO: In terms of the  |
| 25   | GENERAL NAIDOO: Chair, I saw the   | 25   | proximity, yes.  |
|  |  |  |  |
|  |  |  |  |
|  | Page 23182   |  | Page 23184   |
| 1  | Page 23182<br>helicopter landing at some stage but that's why I contend  | 1  | Page 23184<br>MR CHASKALSON SC: Can we have MMM1   |
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| 1   | Page 23185<br>MR CHASKALSON SC: No, I mean between   | 1  | Page 23187<br>were two issues which I indicated. First I indicated yes,  |
|---|--|--|--|
| 2   | koppie 1 and koppie 2. Did you understand me correctly,  | 2  | we could have attempted to protect the convoy by having  |
| 3   | Major-General? Did you think that the driver was going to  | 3  | police vehicles lined up to the left of the convoy with the  |
| 4   | take you to the north, on a road that would take you to the  | 4  | ambulances in the centre. I doubted whether we'd be able   |
| 5   | north of koppie 1 between koppie 1 and koppie 2?   | 5  | to put vehicles on either side, based on the road. I   |
| 6   | GENERAL NAIDOO: I would say no, well, I  | 6  | specifically indicated I had not gone down that road so  |
| 7   | thought we would be traversing an area somewhere between   | 7  | when it was put to me that it went behind the koppie, et   |
| 8   | the two koppies and koppie 3. So not specifically koppie 1   | 8  | cetera, I clearly indicated I had not been down that road  |
| 9   | but those, both koppies.   | 9  | at that stage so I could not assess whether it was going   |
| 10  | MR CHASKALSON SC: So you thought that to   | 10   | behind the koppie or my understanding was that we will be  |
| 11  | the west of koppies 1 and 2, between koppies 1 and 2 on the  | 11   | going, if we were going to scene 1, in a direction between   |
| 12  | one hand and koppie 3 on the other?  | 12   | there which was a close proximity to where the shooting had  |
| 13  | GENERAL NAIDOO: That is correct, Chair.  | 13   | occurred.  |
| 14  | MR CHASKALSON SC: You see yesterday when   | 14   | MR SEMENYA SC: Chair, for the record,  |
| 15  | I spoke to you about the route that you anticipated taking,  | 15   | that is also our understanding of the evidence. This line  |
| 16  | your evidence was that you were going to follow the road   | 16   | of questioning moved from an accepted fact of evidence that  |
| 17  | which I marked out for you on the map which actually goes  | 17   | the witness's car did not move from koppie 3 at all  |
| 18  | to the south of koppie 1.  | 18   | throughout the duration of the operation. It was only then   |
| 19  | GENERAL NAIDOO: Chair, I think at that   | 19   | said what route would you have used to go to where the   |
| 20  | stage we were looking at hypothesis, what would I have   | 20   | scene was, that all of these answers came. They came from  |
| 21  | done. I think I quite clearly indicated I did not  | 21   | a hypothetical premise.  |
| 22  | anticipate coming against the barbed wire. My  | 22   | CHAIRPERSON: The record will speak for   |
| 23  | understanding, I indicated yesterday, was that we will be  | 23   | itself.  |
| 24  | travelling past the area where the shooting would take   | 24   | MR CHASKALSON SC: Well, let's move on  |
| 25  | place.   | 25   | from this point. You still wanted to get the medical   |
|   |  |  |  |
| 1   | Page 23186   | 1  | Page 23188   |
| 1   | MR CHASKALSON SC: Major-General, we had a very lengthy exchange about this, the record will speak  | 1<br>2   | personnel to scene 1 as quickly as possible.<br>GENERAL NAIDOO: That was the primary   |
| 2<br>3  | for itself but the route that you first identified as the  | 2  | 1 5  |
| 4   | -  |  | objective ves  |
| 4   |  | _  | objective, yes.  |
|   | route that you had intended to take was quite clearly the  | 4  | MR CHASKALSON SC: And when you moved   |
| 5   | route to the south of koppie 1, which would have taken you   | 4<br>5   | MR CHASKALSON SC: And when you moved forward you instructed the medical vehicles to move back to   |
| 5<br>6  | route to the south of koppie 1, which would have taken you into the barbed wire fence. That's why we had the whole   | 4<br>5<br>6  | MR CHASKALSON SC: And when you moved forward you instructed the medical vehicles to move back to behind the substation.  |
| 5<br>6<br>7   | route to the south of koppie 1, which would have taken you<br>into the barbed wire fence. That's why we had the whole<br>debate about the barbed wire fence.   | 4<br>5<br>6<br>7   | MR CHASKALSON SC: And when you moved<br>forward you instructed the medical vehicles to move back to<br>behind the substation.<br>GENERAL NAIDOO: To hold back, that is   |
| 5<br>6<br>7<br>8  | route to the south of koppie 1, which would have taken you<br>into the barbed wire fence. That's why we had the whole<br>debate about the barbed wire fence.<br>CHAIRPERSON: I asked you about that  | 4<br>5<br>6<br>7<br>8  | MR CHASKALSON SC: And when you moved<br>forward you instructed the medical vehicles to move back to<br>behind the substation.<br>GENERAL NAIDOO: To hold back, that is<br>correct, Chair.  |
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|  | Page 23189  |  | Page 23191   |
|--|---|--|--|
| 1  | get to scene 1, when we were just a few hundred metres away   | 1  | GENERAL NAIDOO: Chair, as I already  |
| 2  | from where I foresaw scene 1 would be. So no, I don't   | 2  | testified, I went there firstly to assess what the reason  |
| 3  | agree with that because of the proximity, the distance that   | 3  | for the shooting was and also to ensure that those members   |
| 4  | I – I could see where koppie 1 was, I was there.  | 4  | that were possibly engaged in the shooting receive the   |
| 5  | MR CHASKALSON SC: We've measured the  | 5  | necessary support, if they require it.   |
| 6  | distance from the – let me get this exactly. We've  | 6  | CHAIRPERSON: But also I take it you went   |
| 7  | measured the distance from where that little curved road  | 7  | to see to it that the shooting would come to an end, in  |
| 8  | hits the base of the substation. That's A7, at A7. You  | 8  | other words to assist in bringing the shooting to an end.  |
| 9  | understand what I'm describing? Unfortunately I don't have  | 9  | GENERAL NAIDOO: Well, that's –   |
| 10   | a pointer today. Is there anyone in the auditorium who has  | 10   | CHAIRPERSON: So that you could take the  |
| 11   | a pointer so that we can make this clearer? We're on MMM5.  | 11   | paramedics through, isn't that so?   |
| 12   | The point at which the road, the road that leaves the main  | 12   | GENERAL NAIDOO: That is correct, Chair.  |
| 13   | gravel road at A7 goes up to the substation at – sorry, at  | 13   | CHAIRPERSON: Right. And you couldn't   |
| 14   | A8, goes up to the substation at A7, that point. You know   | 14   | take the paramedics through, on what you've told us, until   |
| 15   | the point I'm now describing where that curved road hits  | 15   | the shooting stopped, right? Is that right?  |
| 16   | the substation?   | 16   | GENERAL NAIDOO: Chair, that's correct.   |
| 17   | GENERAL NAIDOO: I see that, Chair.  | 17   | CHAIRPERSON: Right. Now you say you had  |
| 18   | MR CHASKALSON SC: We've measured the  | 18   | to guess how long it would take before the shooting  |
| 19   | distance from there to scene 1 along the blue route. It is  | 19   | stopped, isn't that so?  |
| 20   | approximately three kilometres, give or take 10 metres  | 20   | GENERAL NAIDOO: Chair, after covering  |
| 21   | either way. For a convoy travelling at 30 kilometres an   | 21   | the – ja, the distance of 350 metres as given here, I would  |
| 22   | hour that's six minutes. Are you seriously suggesting that  | 22   | be able to assess, yes, whether that shooting could be   |
| 23   | you thought that your approach of taking the K9 into koppie   | 23   | stopped or suppressed.   |
| 24   | 3, assisting to secure the situation there and then coming  | 24   | CHAIRPERSON: Yes, but no, it's a   |
| 25   | back, would have got the medics to scene 1 in a shorter   | 25   | question of how long it would take for the shooting to   |
|  |   |  |  |
|  |   |  |  |
|  | Page 23190  |  | Page 23192   |
| 1  | Page 23190 period of time, less than six minutes?   | 1  | stop. You had to guess that, surely. There was no  |
| 1<br>2   | period of time, less than six minutes?<br>GENERAL NAIDOO: Chair, I made my  | 1  |  |
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|  | Page 23193  |  | Page 23195  |
|--|---|--|---|
| 1  | GENERAL NAIDOO: That is correct, Chair.   | 1  | CHAIRPERSON: So it's a statement, I'll  |
| 2  | MR CHASKALSON SC: Can I raise another   | 2  | call it 000508 to indicate which it is, Statement 000508  |
| 3  | issue in this regard and for this purpose I'd like to refer   | 3  | by, I think he's a sergeant isn't he?   |
| 4  | to a document which will be a new exhibit, it's the   | 4  | MR CHASKALSON SC: Sergeant  |
| 5  | statement of Sergeant Molangoanyane.  | 5  | Molangoanyane.  |
| 6  | CHAIRPERSON: Is this the statement we   | 6  | CHAIRPERSON: It's M-O-L-A-N-G-O-A-N-Y-A-  |
| 7  | were given yesterday which is - it looks like 000508, I   | 7  | N-E. It's exhibit MMM6.   |
| 8  | think, it's headed Additional Statement. Is that the  | 8  | MR CHASKALSON SC: And while we are at –   |
| 9  | statement you're referring to?  | 9  | before I ask the question if we can also look at an extract   |
| 10   | MR CHASKALSON SC: It is the statement,  | 10   | from Constable Mutsi's statement which will be MMM7,  |
| 11   | Chairperson.  | 11   | Chairperson, paragraph 6.   |
| 12   | CHAIRPERSON: In fact there appear to be   | 12   | CHAIRPERSON: [Inaudible, microphone   |
| 13   | two. The other one is, it looks like 000510.  | 13   | off].   |
| 14   | MR CHASKALSON SC: It could be, it is, I   | 14   | MR CHASKALSON SC: Indeed, Chairperson,  |
| 15   | think the additional statement that I am -  | 15   | we're just waiting for it to –  |
| 16   | CHAIRPERSON: We were given two  | 16   | CHAIRPERSON: I'm just reading the   |
| 17   | additional statements by Sergeant T D Molangoanyane,  | 17   | paragraph to make sure we've got the right document. The  |
| 18   | neither is dated. Are these the documents I'm referring   | 18   | MMM7 Statement by, it looks like Constable.   |
| 19   | to? Manuscript statements, I think we were given them   | 19   | MR CHASKALSON SC: He is Constable Mutsi   |
| 20   | yesterday.  | 20   | CHAIRPERSON: Constable, is it Muti or   |
| 21   | MR CHASKALSON SC: That would be correct,  | 21   | Mutsi?  |
| 22   | Chairperson. There's apparently a difficulty with the   | 22   | MR CHASKALSON SC: Mutsi. M-U-T-S-I.   |
| 23   | video, the video people don't have a copy of this   | 23   | CHAIRPERSON: M-U-T-S-I. Thank you.  |
| 24   | statement. We're just going to attend that.   | 24   | MR CHASKALSON SC: If we can go down to  |
| 25   | CHAIRPERSON: Sorry, the first one must  | 25   | paragraph 6 or maybe start at paragraph 5 for context.  |
|  |   |  |   |
|  |   |  |   |
|  | Page 23194  |  | Page 23196  |
| 1  | be 000508 because it's actually two pages 508 and 509 and   | 1  | Sorry if we can just go up to paragraph 5. "We were   |
| 2  | be 000508 because it's actually two pages 508 and 509 and then the other one, the second one is 000510, that's a  | 2  | Sorry if we can just go up to paragraph 5. "We were briefed that our purposes K9 is to sweep, to search for   |
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| 1  | Page 23197  | 1  | Page 23199   |
| 1  | vehicles it included the personnel with those vehicles. As  | 1<br>2   | reached the scene if they had turned around and driven along the road.   |
| 2<br>3   | we were entering an area that was grassy, I indicated in my<br>evidence, between ankle and knee height is the reason why I  | 2  | GENERAL NAIDOO: Chair, based on my   |
| 4  | asked them to alight and walk alongside their vehicles.   | 4  | experience in driving to where we were now, I did not  |
| 5  | MR CHASKALSON SC: Can you just explain  | 5  | think, as indicated by the evidence leader that it would be  |
| 6  | that? It's not clear to me. Why would you want them out   | 6  | -  |
| 7  | of the vehicles if it's grassy terrain?   | 7  | more appropriate to turn around and drive back around the whole route. As I indicated, I was sight of koppie 1 and   |
| 8  |   |  | <b>o 11</b>  |
|  |   | 8  | for all intense and purposes almost at my destination.   |
| 9  | the visibility where they were driving was poor and just as   | 9  | CHAIRPERSON: Ja, but you also indicated  |
| 10   | you would have it, we had found three strikers lying in   | 10   | that you had assessed the situation, you had to assist in  |
| 11<br>12   | that grass who we subsequently arrested. It was because of  | 11<br>12   | securing it so that the shooting should stop, you conceded   |
|  | the way we were deployed. The basic line that was going   |  | that you didn't know how long that would take. You had to  |
| 13   | through the koppie, had we been driving possibly we would   | 13   | make an assessment, but that was only a guess because it   |
| 14   | have missed them. Even possibly drove over them because   | 14   | could have taken 20 minutes or even longer. You've   |
| 15   | they were lying in the grass.   | 15   | conceded all those already. It's not just the five minutes   |
| 16<br>17   | MR CHASKALSON SC: So you wanted members   | 16<br>17   | it took you to get to the vicinity of koppie 3, you've got   |
| 17   | on foot, in a basic line to see that you didn't miss  | 17   | to add all the other time or possible time in as well. All that time was going by, injured people were lying at scene  |
| 18   | anything in the grass as you were driving up.   | 18   |  |
| 19<br>20   | GENERAL NAIDOO: Basically yes. They were performing a sweep as we got to where we were going,   | 19<br>20   | without any medical treatment. Isn't that right?<br>GENERAL NAIDOO: That is true, Chair, but   |
|  |   | 20<br>21   |  |
| 21<br>22   | yes.<br>MR CHASKALSON SC: So the speed at which   | 21   | as I indicated that was a decision made on the assessment  |
| 22   | your group would have advanced on koppie 3 over the 350   | 22   | that was before me. In hindsight several things come up which could have been better considered, but I'm indicating  |
| 23<br>24   | metres would have been the speed of a walking manner.   | 23<br>24   | in terms of how I assessed the situation before me.  |
| 24<br>25   | GENRAL NAIDOO: Plus, minus yes.   | 24<br>25   | CHAIRPERSON: You see I don't know that   |
| 25   | GENIAE NAIDOO. Pius, minus yes.   | 25   |  |
|  |   |  |  |
|  | Page 23198  |  | Page 23200   |
| 1  | Page 23198<br>MR CHASKALSON SC: How long did you think  | 1  | Page 23200<br>counsel is suggesting to you that that wasn't your   |
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|  | Page 23201  |  | Page 23203  |
|--|---|--|---|
| 1  | introduced at this stage in proceedings, so I need clarity  | 1  | CHAIRPERSON: To be fair to you, I think   |
| 2  | on this, Major-General. Did you think that a striker was  | 2  | he probably means, well he was talking about the  |
| 3  | shooting at the police with an automatic weapon? Yes or   | 3  | possibilities. But the possibility was, I take it, that   |
| 4  | no.   | 4  | some of the automatic fire you heard, because you knew  |
| 5  | GENERAL NAIDOO: Chair, I've already   | 5  | there were police in the area, is that right?   |
| 6  | testified that I heard automatic fire, I did not  | 6  | GENERAL NAIDOO: That is correct, Chair.   |
| 7  | specifically identify which side could have been using the  | 7  | CHAIRPERSON: And did you know or suspect  |
| 8  | automatic weapon, but it had been part of our information   | 8  | that some of them were using their automatic weapons?   |
| 9  | that an automatic firearm was stolen and in possession of   | 9  | GENERAL NAIDOO: Chair, based on the   |
| 10   | strikers. So the reason for the assessment was to   | 10   | number of shots an the volume of gunfire which I refer to   |
| 11   | establish, you know –   | 11   | as heavy, yes the assumption was that the police was  |
| 12   | CHAIRPERSON: I think counsel is trying  | 12   | returning fire for whatever reason. I did not rule out  |
| 13   | to find from you what the assessment was. It was either   | 13   | that possibility.   |
| 14   | that there was a striker who was firing, this is what you   | 14   | MR CHASKALSON SC: Now did it not occur  |
| 15   | thought at the time, who was firing with an automatic   | 15   | to you, Major-General that you were recklessly endangering  |
| 16   | weapon because you knew that the strikers or one of the   | 16   | the lives of your men by ordering them to come in, on foot,   |
| 17   | strikers was in possession of an automatic weapon taken on  | 17   | in a wide line, across a wide open plain with no cover and  |
| 18<br>19   | the 13th. So your assessment was, one possible assessment   | 18<br>19   | no armoured vehicles, when there was a striker, a   |
| 20   | was that there was someone firing with an automatic weapon<br>from the strikers side. The other one, the other  | 20   | possibility of a striker firing at police with automatic  |
| 20   | possibility is because you heard automatic fire your  | 20   | weapons.<br>[10:21] GENERAL NAIDOO: Chair, I would not  |
| 22   | assessment was it may be that that automatic fire is coming   | 22   | consider this reckless, as I indicated previously the K9  |
| 23   | from a striker using the weapon taken on the 13th or it may   | 23   | unit is also a unit that's been trained to tactically   |
| 24   | be police fire. So the assessment was either it was, at   | 24   | approach such situations and extract suspects, hence I  |
| 25   | the time in your mind, it was a striker firing an automatic   | 25   | indicated we did not drive up to this particular scene and  |
|  |   |  |   |
|  |   |  |   |
|  | Page 23202  |  | Page 23204  |
| 1  | weapon or it may be a striker firing with an automatic  | 1  | then get off the vehicle, etcetera. So they proceeded with  |
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#### Marikana Commission of Inquiry

Pretoria

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|  | Page 23205   |  | Page 23207   |
| 1  | there is a any training that the K9 unit could be given  | 1  | the vehicle as effective cover, such as the wheel base,  |
| 2  | that would allow them to avoid an R5 bullet shot from say a  | 2  | make use to our advantage the fact of the engine block   |
| 3  | distance of 200 metres at a line of – I don't know, how  | 3  | which can stop. As I indicated, these are vehicles we use  |
| 4  | many people were there walking? You tell me.   | 4  | in our daily deployment of the K9 unit and various other   |
| 5  | GENERAL NAIDOO: Five vehicles,   | 5  | policing. They are not armoured vehicles and we are  |
| 6  | approximately five or six people, yes.   | 6  | encountering exactly the same circumstances where suspects   |
| 7  | MR CHASKALSON: No, but how many people,  | 7  | armed with R5s and even heavier calibre weapons face off   |
| 8  | I am asking.   | 8  | with the K9 unit during the performance of serious crime.  |
| 9  | CHAIRPERSON: Five or six people per  | 9  | So we have to rely on the resources available and our  |
| 10   | vehicle? Five vehicles, how many persons per vehicle?  | 10   | training in order to address whatever situation's  |
| 11   | GENERAL NAIDOO: There's normally two   | 11   | confronting us. We don't in an ongoing tactical situation  |
| 12   | people per vehicle.  | 12   | pull back and say, let us wait until the possibility of an   |
| 13   | CHAIRPERSON: Roughly, so -   | 13   | armoured vehicle arrives. That's a reality.  |
| 14   | GENERAL NAIDOO: So the crew was walking  | 14   | MR CHASKALSON: You see Major General, if   |
| 15   | alongside the vehicle.   | 15   | that was your, if this had been your function in terms of  |
| 16   | MR CHASKALSON: Ja, so how many people  | 16   | the plan I could understand that answer. It would be a   |
| 17   | then were in this line that you've described to us?  | 17   | strange answer, because it would be a strange plan that  |
| 18   | GENERAL NAIDOO: Including –  | 18   | would expose members of the K9 unit to the risk of   |
| 19   | MR CHASKALSON: - towards the koppie, in  | 19   | automatic gunfire without any scope of protection but if   |
| 20   | the line of fire of a potential striker on the koppie that   | 20   | that was your function in terms of the plan, I – however   |
| 21   | had an automatic rifle, how many people in this line that  | 21   | strange the plan I can understand how you would follow it  |
| 22   | were advancing on the koppie?  | 22   | but this wasn't your function in terms of the plan.  |
| 23   | GENERAL NAIDOO: Ten people, thank you.   | 23   | GENERAL NAIDOO: Chair, I don't think in  |
| 24   | MR CHASKALSON: Ten people, okay. You   | 24   | any way I indicated that this was my function. I indicated   |
| 25   | have a line of people coming forward in the line at right  | 25   | the purpose for approaching the koppie and the purpose for   |
|  |  |  |  |
|  | Page 23206   |  | Page 23208   |
| 1  | Page 23206 angles to the potential shooter with an automatic weapon,   | 1  | Page 23208 approaching the koppie is to assess from the National   |
| 1  | Page 23206<br>angles to the potential shooter with an automatic weapon,<br>if that shooter chose to shoot at the line is there   | 1<br>2   | Page 23208<br>approaching the koppie is to assess from the National<br>Intervention Unit what is the situation in terms of the   |
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| 1  | Page 23209   | 1  | Page 23211  |
| 1  | about 20 past 11 but at a point when it's appropriate for<br>Mr Chaskalson's cross-examination to be interrupted. Was  | 1  | Major-General, that you're the first person to have come up with this proposition and everybody else has talked about   |
| 3  | that recorded, what I said?  | 2  | an ordinary digital relay, analogue relay transmission  |
| 4  | CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):  | 4  | system which means that when one person is speaking, nobody   |
| 5  | Thank you, Chairperson. Major-General, you were talking  | 5  | else can speak, irrespective of how strong their radio is.  |
| 6  | about your need to get information to assess the situation   | 6  | GENERAL NAIDOO: Chair, I'm not a  |
| 7  | when we broke and yesterday you said that you had  | 7  | technology expert to give that kind of evidence but what I  |
| 8  | difficulty, that why you had to go in personally and   | ,<br>8   | can say from my experience with radios, for example a base  |
| 9  | couldn't simply ask on the radio was that you had radio  | 9  | set radio has the ability to jam the transmission of a  |
| 7<br>10  | difficulties through the operation and because of your   | 10   | lesser strength such as the handset radio. We have  |
| 11   | position relative to power lines your radio communications   | 11   | experienced that during normal communications during  |
| 12   | were compromised. Do you recall that?  | 12   | operations at the time when I was deployed in the   |
| 13   | GENERAL NAIDOO: I recall that, Chair.  | 12   | operational environment permanently, we utilised analogue   |
| 14   | MR CHASKALSON SC: This isn't something   | 14   | radios such as the ones that are still in use in the north-   |
| 15   | that you'd mentioned in your statement. Is there a reason  | 14   | west and it is a fact that the base set ability to transmit   |
| 16   | for that?  | 16   | is stronger than a handset, that we experienced   |
| 17   | GENERAL NAIDOO: No Chair, there's no   | 17   | practically.  |
| 18   | specific reason.   | 18   | MR SEMENYA SC: That, Chair, was the   |
| 19   | MR CHASKALSON SC: You see, far from  | 19   | evidence of Brigadier Calitz as well.   |
| 20   | saying that your radio communications were compromised in  | 20   | MR CHASKALSON SC: No, but the evidence  |
| 21   | your statement, you say that you were able to follow the   | 21   | that we had from everyone in the JOC where one might  |
| 22   | entire conversation between Brigadier Calitz and   | 22   | imagine that the strongest radio of all was because that's  |
| 23   | Lieutenant-Colonel Vermaak and those exchanges from your   | 23   | where the relay transmitter was, was that they had  |
| 24   | position right next to the power station.  | 24   | difficulties getting onto the network because there was   |
| 25   | GENERAL NAIDOO: Chair, that is correct,  | 25   | constant communication between Lieutenant-Colonel Vermaak   |
|  |  |  |   |
|  |  |  |   |
|  | Page 23210   |  | Page 23212  |
| 1  | Page 23210 we could follow the conversation. Transmitting was a  | 1  | and Brigadier Calitz. Implicit in that evidence is the  |
| 1<br>2   | 5  | 1<br>2   |   |
|  | we could follow the conversation. Transmitting was a   |  | and Brigadier Calitz. Implicit in that evidence is the  |
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| 1  | Page 23213<br>MR CHASKALSON SC: Are you then saying  | 1  | Page 23215<br>Vermaak indicated that people were down, one would have   |
| 2  | that if anyone on the JOC at any stage wanted to get into  | 2  | preferred to have more information but the traffic was  |
| 3  | the conversation with their base set, they could have done   | 2  | continuous or constant and there was no way for us from   |
| 4  | so, they could have broken in on their base set?   | 4  | where we were to break into that conversation. I think  |
| 5  | GENERAL NAIDOO: Chair, that is not at  | 5  | I've already indicated in my evidence-in-chief that there   |
|  | all what I'm suggesting. What I'm indicating, as I   |  | was a continuous stream of conversation between Brigadier   |
| 6<br>7   | indicated, I don't have the technical know-how or the  | 6<br>7   | Calitz as well as Lieutenant-Colonel Vermaak. They  |
|  |  | 8  |   |
| 8  | capability of it. What I'm saying is that a base station   |  | dominated the airwaves at that stage for a large part of  |
| 9  | radio could cut off handset radios especially in the   | 9  | the operation.  |
| 10   | transmission and I think a technical expert can give the   | 10   | COMMISSIONER HEMRAJ: Is it that you did   |
| 11   | specs in terms of that.  | 11   | not want to interrupt their communication?  |
| 12   | MR CHASKALSON SC: Well, we may need a  | 12   | GENERAL NAIDOO: Could not as well   |
| 13   | technical person to come and testify here because I've   | 13   | because, as I indicated, we would have wanted to have more  |
| 14   | always understood the SAPS version to mean that there was  | 14   | specific information but we were not in a position. Nobody  |
| 15   | an analogue relay transmission system in play which meant  | 15   | - when I say nobody, I'd say people with handsets could not   |
| 16   | that when any one person was transmitting, the channel was   | 16   | get into that conversation to indicate look, what about   |
| 17<br>18   | occupied and nobody else could transmit at the same time.<br>You're saying that's not the case?  | 17<br>18   | this and what about that. That was not possible.<br>MR CHASKALSON SC: Are you saying there  |
|  |  | 10   |   |
| 19<br>20   | GENERAL NAIDOO: Chair, I am not contradicting that evidence. We were now talking about the   | 20   | were no breaks in that conversation for someone to get in   |
| 20   |  | 20   | around the time that you reached the substation?<br>GENERAL NAIDOO: Chair, as I'm   |
| 21   | use of the different type of radios for communication and<br>how we experience it at an operational level and what I   | 21   | GENERAL NAIDOO: Chair, as I'm indicating, during that process of the movement, had there  |
| 22   | indicated, that the base station radio had the ability of  | 22   | been a break in the conversation I would have reported my   |
| 23<br>24   | overriding or blocking out a handset radio. That is  | 23<br>24   | movement by radio. That would've been an important thing  |
| 24<br>25   | something that we have experienced.  | 24   | to do but there had been no break and I could not.  |
| 25   | something that we have experienced.  | 25   |   |
|  |  |  |   |
|  | Page 23214   |  | Page 23216  |
| 1  | Page 23214<br>MR CHASKALSON SC: So are you saying that   | 1  | Page 23216<br>MR CHASKALSON SC: Well, we'll come back   |
| 1<br>2   | •  | 1<br>2   | •   |
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|          | Page 23217   |          | Page 23219   |
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| 1        | GENERAL NAIDOO: Immediate response.  | 1        | time –   |
| 2        | CHAIRPERSON: Immediate response.   | 2        | CHAIRPERSON: Sorry?  |
| 3        | GENERAL NAIDOO: Yes, Chair.  | 3        | GENERAL NAIDOO: At that point in time,   |
| 4        | CHAIRPERSON: You didn't use your cell  | 4        | no, I did not endeavour to call the JOC.   |
| 5        | phone after that?  | 5        | CHAIRPERSON: You say at that point in  |
| 6        | GENERAL NAIDOO: Not that I could recall,   | 6        | time, no. At what point in time did you do it?   |
| 7        | no.  | 7        | GENERAL NAIDOO: It was at some stage   |
| 8        | CHAIRPERSON: The people in the JOC were  | 8        | when I got to koppie 3 after the sweep of the koppie that I  |
| 9        | supposed to be co-ordinating things to some extent, were   | 9        | actually phoned the JOC to notify them where I was.  |
| 10       | they not?  | 10       | CHAIRPERSON: But we can get the time of  |
| 11       | GENERAL NAIDOO: Chair, yes, but as also  | 11       | that from the exhibit that's already before us. Wasn't it  |
| 12       | indicated in my statement and the stream of communication  | 12       | important for Brigadier Calitz to be informed somehow, he  |
| 13       | and conversation about what was happening, what's happening  | 13       | was co-ordinating matters, that you'd arrived, that you'd  |
| 14       | at the operational area, even the JOC could not – and  | 14       | arrived on the scene with some – I hesitate to use the word  |
| 15       | normally the situation would have been the JOC would have  | 15       | "troops" because that implies something that I don't mean.   |
| 16       | broken into the conversation and try to say okay, now what   | 16       | GENERAL NAIDOO: Yes.   |
| 17       | is happening, can you tell me what's happening there, so   | 17       | CHAIRPERSON: But with –  |
| 18<br>19 | that the whole operation could get a picture and it was clear even the JOC could not break into that conversation. | 18<br>19 | GENERAL NAIDOO: Resources.<br>CHAIRPERSON: Sorry?  |
|          |  |          | 5  |
| 20<br>21 | What I'm indicating now, Chair, is how in a normal situation during day-to-day policing, if an incident occurs     | 20<br>21 | GENERAL NAIDOO: Resources.<br>CHAIRPERSON: Resources, human resources.   |
| 22       | the control site would not be the operational commander on   | 21       | Wasn't it important for him to know that you were there  |
| 22       | the scene, it would be the radio control or what we now  | 22       | with human resources, that you were taking part in the   |
| 24       | refer to as the JOC. They take charge of the scene so that   | 23       | hostilities, if one can call it that? You'd come under   |
| 25       | everybody gets the information and people then deploy  | 25       | fire and you were firing back and you were doing various   |
|          |  |          |  |
|          | Page 23218   |          | Page 23220   |
| 1        | accordingly. In the current situation it was clear that  | 1        | things. Wasn't it important for him to know that?  |
| 2        | the JOC themselves could not get into the conversation to  | 2        | GENERAL NAIDOO: Chair, yes. As I   |
| 3<br>4   | take charge. We have seen that in the radio conversation as well. I think had they had an opportunity they would   | 3<br>4   | indicated, that when we commenced our movement or when we started up I endeavoured to do that. His phone went to |
| 4<br>5   | have broken in and said kindly indicate what's happening   | 5        | voicemail. My assumption then obviously, the problem which   |
| 6        | there, where are the medics, are you still – are you on  | 6        | we had frequently during operations, the cell phone  |
| 7        | your way? Those kinds of things did not occur.   | 7        | batteries go flat because of continuous use, et cetera. So   |
| 8        | CHAIRPERSON: Are you saying that based   | 8        | what you say is true. It was important for him to know and   |
| 9        | on what you heard on the radio?  | 9        | I did.   |
| 10       | GENERAL NAIDOO: I'm saying that based on   | 10       | CHAIRPERSON: If you'd got hold of the  |
| 11       | what – that's the only information that I had coming in.   | 11       | JOC with your cell phone, they might have been able to   |
| 12       | CHAIRPERSON: You don't know, you said  | 12       | communicate, not necessarily to Brigadier Calitz if his  |
| 13       | there were telephone numbers you didn't have, you don't  | 13       | phone's batteries were dead or whatever, but other people  |
| 14       | know to what extent those in the JOC were able to  | 14       | who were with him like Lieutenant-Colonel McIntosh or  |
| 15       | communicate by cell phone with some of the people in the   | 15       | somebody of that sort. I think Colonel Pitsi arrived later   |
| 16       | field, is that right?  | 16       | on the scene and he spoke to him but it might have been  |
| 17       | GENERAL NAIDOO: At that stage, no,   | 17       | possible if you'd made the effort, if you'd contacted JOC  |
| 18       | Chair.   | 18       | to say can you somehow get a message to Brigadier Calitz to  |
| 19       | CHAIRPERSON: You don't know that?  | 19       | tell him I'm here, I'm on the - you were on the east side,   |
| 20       | GENERAL NAIDOO: I have no idea.  | 20       | were you, south-east side, approaching from the south-east   |
| 21       | CHAIRPERSON: Did you endeavour to  | 21       | side, yes, south and then east of the koppie and I'm taking  |
| 22       | telephone the JOC in the hope that some of the JOC would be  | 22       | part in the operation and I've got other people with me and  |
| 23       | able to get through and communicate with some of the   | 23       | I'm using my firearm and they're using their firearms and  |
| 24       | commanders in the field?   | 24       | so that he could then somehow, if possible, have got   |
| 25       | GENERAL NAIDOO: Chair, at that point in  | 25       | through to you and co-ordinated the thing because he tells   |
| A        | RCHIVE FOR JUSTICE   |          |  |

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|--|---|--|---|
| 1  | us he didn't know you were there. He didn't know what you   | 1  | 16:44.  |
| 2  | and the people with you were doing, so he was totally   | 2  | GENERAL NAIDOO: That –  |
| 3  | unable to co-ordinate what – that's his evidence. You   | 3  | CHAIRPERSON: That's the next call.  |
| 4  | agree with me that that's an unsatisfactory state of  | 4  | GENERAL NAIDOO: That's correct.   |
| 5  | affairs?  | 5  | CHAIRPERSON: Which is an outgoing call  |
| 6  | GENERAL NAIDOO: Chair, as I indicated,  | 6  | as opposed to an incoming call, to Brigadier Pretorius  |
| 7  | yes, it was desirable that he be informed. At that stage I  | 7  | who's in the JOC.   |
| 8  | did try to contact him directly to inform him of our  | 8  | GENERAL NAIDOO: That's correct.   |
| 9  | movements based on the information that people had been   | 9  | CHAIRPERSON: That was only at 16:44.  |
| 10   | injured. Other than that, moving forward I tried to use   | 10   | GENERAL NAIDOO: That's correct.   |
| 11   | the radio communication and yes, it would have been   | 11   | CHAIRPERSON: A lot of things had  |
| 12   | preferable that we made some other attempts, yes.   | 12   | happened by then.   |
| 13   | CHAIRPERSON: I'd be grateful if you'd   | 13   | GENERAL NAIDOO: Yes.  |
| 14   | just answer my question directly. I asked you, do you   | 14   | CHAIRPERSON: The shooting was over by   |
| 15   | agree with me that it is an unsatisfactory state of affairs   | 15   | then, wasn't it?  |
| 16   | that Brigadier Calitz who was supposed to be in charge, co-   | 16   | GENERAL NAIDOO: That's right, Chair.  |
| 17   | ordinating what was happening at koppie 3, was unaware of   | 17   | CHAIRPERSON: How long – when did the  |
| 18   | the fact that you were there at the south-eastern corner  | 18   | shooting finish in the vicinity of koppie 3?  |
| 19   | and eventually the eastern side of koppie 3? That's   | 19   | GENERAL NAIDOO: I think shortly before  |
| 20   | unsatisfactory.   | 20   | this telephone call, as soon as the shooting had finished I   |
| 21   | GENERAL NAIDOO: Definitely, Chair.  | 21   | contacted – I issued the instruction for the medics to be   |
| 22   | CHAIRPERSON: Right, and you also agree  | 22   | brought in and then also called the JOC immediately so that   |
| 23   | that it would've been possible for you to have communicated   | 23   | I could give them an indication.  |
| 24   | by your cell phone with the JOC, that's correct?  | 24   | CHAIRPERSON: What happened in the call  |
| 25   | GENERAL NAIDOO: It could have been  | 25   | then at 16:17, the incoming call from Brigadier Pretorius   |
|  | Page 23222  |  | D   |
|  |   |  | Page 23224  |
| 1  | possible.   | 1  | to you?   |
| 2  | possible.<br>CHAIRPERSON: And if you had done that,   | 2  | to you?<br>GENERAL NAIDOO: Chair, I did not speak   |
| 2<br>3   | possible.<br>CHAIRPERSON: And if you had done that,<br>they might have been able to find a way to speak, not  | 2<br>3   | to you?<br>GENERAL NAIDOO: Chair, I did not speak<br>to Brigadier Pretorius before the time that I called her.  |
| 2<br>3<br>4  | possible.CHAIRPERSON:And if you had done that,they might have been able to find a way to speak, notnecessarily to Brigadier Calitz if he's telephone wasn't   | 2<br>3<br>4  | to you?<br>GENERAL NAIDOO: Chair, I did not speak<br>to Brigadier Pretorius before the time that I called her.<br>So no, I won't be able to – because had I spoken to her at  |
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| 1  | Page 23225 calling me and that is what I've testified, Chair.   | 1                                | Page 23227<br>GENERAL NAIDOO: Yes.  |
|--|---|----------------------------------|---|
| 2  | CHAIRPERSON: You see then we've got the   | 2                                | CHAIRPERSON: It wouldn't have been a  |
| 3  | interesting situation that if Mr Chaskalson is correct,   | 3                                | difficult thing for you, surely, to have contacted the JOC  |
| 4  | that the last shot was fired in the vicinity of scene 2 at  | 4                                | at that stage and said look, I just want to tell you I'm  |
| 5  | 16:19, you waited from 16:19, on your own evidence, till  | 5                                | supposed to be taking the medics to scene 1, I can't  |
| 6  | 16:44 before you contacted the JOC. That seems to follow  | 6                                | because there's this problem but I'm advancing with the K9  |
| 7  | from what we've been told. Now, I take it you may not   | 7                                | people to koppie 3 at the moment – you wouldn't know it was   |
| 8  | agree with Mr Chaskalson's assertion that the last shot was   | 8                                | called that but anyway – and I'm assessing the situation  |
| 9  | fired at 16:19, that would introduce a whole separate issue   | 9                                | but I want you to know I'm here, I want you to know I can't   |
| 10   | which I don't propose going into but if Mr Chaskalson is  | 10                               | take the medics immediately to what we now know as scene 1  |
| 11   | right, then how do you explain waiting till 16:44 before  | 11                               | for this reason, but it's important for you to know I'm   |
| 12   | you contacted the JOC? What were you doing in the   | 12                               | here and what I'm going to do. Surely it's important in an  |
| 13   | meantime?   | 13                               | operation of this kind that the JOC should be kept abreast  |
| 14   | GENERAL NAIDOO: Chair, as I indicated,  | 14                               | of what's happening and people of your seniority  |
| 15   | immediately when the shooting stopped I asked the K9 to   | 15                               | particularly should be doing that.  |
| 16   | come in to assist with the sweeping, securing of the scene.   | 16                               | GENERAL NAIDOO: Chair, you are right in   |
| 17   | The NIU were already in the koppie and then also the medics   | 17                               | terms of the flow of communication that should be to the  |
| 18   | came with the K9, so I ensured that they got in and the   | 18                               | JOC. As I indicated the factors, one of the factors I   |
| 19   | moment they were in and started with their work, I called   | 19                               | clearly indicated was the issue of the radio which I was  |
| 20   | the JOC.  | 20                               | unable to transmit. Yes, you indicated the issue of the   |
| 21   | CHAIRPERSON: You see the other problem  | 21                               | cell phone, you must remember at that particular point in   |
| 22   | is, surely it was important for the people in the JOC to  | 22                               | time we were also being shot at. I had in one hand my   |
| 23   | know what was happening. Now we've heard evidence from  | 23                               | radio, the other hand –   |
| 24   | people in the JOC, General Annandale and others, who claim  | 24                               | CHAIRPERSON: Were you being shot at –   |
| 25   | that they only knew what was happening at scene 2 a   | 25                               | I'm sorry to interrupt you – were you being shot at when  |
|  | Page 23226  |                                  | Page 23228  |
| 1  | substantial period of time after things had stopped   | 1                                | you walked away from the power station where you left the   |
| 2  | happening there. I think that's correct. Now, wouldn't it   | 2                                | medics behind? When did you start being shot at?  |
| 3  | have been important for you, as a Major-General with people   | 3                                | GENERAL NAIDOO: Chair, as we approached   |
| 4  | under your command, to have contacted the JOC from time to  | 4                                | koppie 3.   |
| 5  | time to give them a report on what was happening because  | 5                                | CHAIRPERSON: Exactly. When you were at  |
| 6  | how were they to know what was happening if you didn't tell   | 6                                | the power station walking towards koppie 3 you weren't  |
| 7  | them?   | 7                                | being shot at.  |
| 8  | GENERAL NAIDOO: Chair, what you say is  | 8                                | GENERAL NAIDOO: Chair, that –   |
| 9  | true in terms of communication with the JOC but at that   | 9                                | CHAIRPERSON: You've got no excuse for   |
| 10   | particular time, the time from when I arrived at the area   | 10                               | not having phoned the JOC at that stage, have you?  |
| 11   | where the NIU were till they secured the area, I can't  | 11                               | GENERAL NAIDOO: Chair, I have admitted  |
| 12   | really tell you I took so many minutes. At that stage, you  | 12                               | that I did not phone the JOC –  |
| 13   | know, time was not – I think that I was mindful of more in  | 13                               | CHAIRPERSON: The question was, you've   |
| 14   | terms of our movement and the moment we came across the   | 14                               | got no excuse for not having the phoned the JOC at that   |
| 15   | other side, I'm now relating it in terms of the activity  | 15                               | stage, have you?  |
| 16   | and not in terms of time, the moment we came across and I   | 16<br>17                         | MR SEMENYA SC: Chair, with respect, the   |
| 17   | got the K9 in, declared the area secure, I immediately  | 17                               | Chair's questions are all correct but the witness must be   |
| 10   |   |                                  |   |
| 18   | phoned the JOC. I admit I did not phone them before we  | 18                               | feeling pressured by not getting an opportunity and the   |
| 19   | phoned the JOC. I admit I did not phone them before we started the sweep and we did not phone them during the   | 19                               | Chair interrupting his answer.  |
| 19<br>20   | phoned the JOC. I admit I did not phone them before we started the sweep and we did not phone them during the course of the sweep, which was difficult in terms of the  | 19<br>20                         | Chair interrupting his answer.<br>CHAIRPERSON: I'm sorry for having   |
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| 19<br>20<br>21<br>22   | phoned the JOC. I admit I did not phone them before we<br>started the sweep and we did not phone them during the<br>course of the sweep, which was difficult in terms of the<br>position that I was in.<br>CHAIRPERSON: When you left the medics at   | 19<br>20<br>21<br>22             | Chair interrupting his answer.<br>CHAIRPERSON: I'm sorry for having<br>interrupted you but you know what my question is, would you<br>please answer it?   |
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| <ol> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol> | phoned the JOC. I admit I did not phone them before we<br>started the sweep and we did not phone them during the<br>course of the sweep, which was difficult in terms of the<br>position that I was in.<br>CHAIRPERSON: When you left the medics at<br>the power station and went with the K9 people –                              | 19<br>20<br>21<br>22<br>23       | Chair interrupting his answer.<br>CHAIRPERSON: I'm sorry for having<br>interrupted you but you know what my question is, would you<br>please answer it?<br>GENERAL NAIDOO: Chair, you're asking   |

| 1  | Page 23229 call at that stage.  | 1  | Page 23231<br>MR SEMENYA SC: Time permitting –  |
|--|---|--|---|
| 2  | CHAIRPERSON: Thank you. Mr Chaskalson,  | 2  | CHAIRPERSON: Time permitting.   |
| 3  | I did indicate to Mr Semenya that I propose that he should  | 3  | MR SEMENYA SC: Time permitting, ja.   |
| 4  | make the application he wants to make round about now. Is   | 4  | CHAIRPERSON: I presume that whatever new  |
| 5  | it convenient for you if he does?   | 5  | evidence you lead would presumably not be very long and I   |
| 6  | MR CHASKALSON SC: I think yes, I can  | 6  | take it, it should be possible to have that in writing in a   |
| 7  | pick up whenever we pick up after his application.  | 7  | relatively short period of time.  |
| 8  | CHAIRPERSON: Alright. Mr Semenya?   | 8  | MR SEMENYA SC: Chair -  |
| 9  | MR SEMENYA SC: Yes Chair, thank you   | 9  | CHAIRPERSON: Not necessarily typed. I   |
| 10   | Chair. Chair, arising out of the cross-examination  | 10   | don't know how these things work, if someone can give it in   |
| 11   | yesterday I think the witness then alluded to a possibility   | 11   | typed form or whether it has to be done in manuscript but   |
| 12   | of going to look at the AvL which is a technology that can  | 12   | I'm sure the versatile Mr Pretorius can even produce  |
| 13   | indicate the movement of the car in which he was yesterday.   | 13   | something in legible manuscript form if he had to.  |
| 14   | We are seeking an opportunity, with the permission of the   | 14   | MR SEMENYA SC: There is another   |
| 15   | Chair, that we go and look at that material and possibly  | 15   | possibility that I intend to propose to Mr Chaskalson and   |
| 16   | have an opportunity to consult with the witness in lieu of  | 16   | that if we both witness this we may have an agreed note   |
| 17   | leading, only in that limited section, the evidence of the  | 17   | about what that evidence reveals.   |
| 18   | witness about the movement of the car.  | 18   | CHAIRPERSON: How do you react to that   |
| 19   | CHAIRPERSON: Is there anything else you   | 19   | proposal?   |
| 20   | wish to say at this stage?  | 20   | MR CHASKALSON SC: Mr Chairperson, I'm   |
| 21   | MR SEMENYA SC: That is the application.   | 21   | not sure we're going to be in a position to agree to that   |
| 22   | CHAIRPERSON: What is your attitude to   | 22   | today because we would want to investigate this evidence,   |
| 23   | the application, Mr Chaskalson?   | 23   | whatever it is.   |
| 24   | MR CHASKALSON SC: Mr Chairperson, if the  | 24   | CHAIRPERSON: It sounds as if that offer   |
| 25   | AvL records are going to throw light on this matter, we   | 25   | you make has been turned down, Mr Semenya, but anyway so  |
|  |   |  |   |
|  | Page 23230  |  | Page 23232  |
| 1  | Page 23230<br>must have them in and I would rather, in fairness to the  | 1  | Page 23232<br>we'll proceed the other way proposed. We will now take the  |
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|  | Page 23233   |  | Page 23235   |
|--|--|--|--|
| 1  | MR CHASKALSON: But Major General Naidoo,   | 1  | Gaffley.   |
| 2  | the attempt that you made to contact Brigadier Calitz  | 2  | MR CHASKALSON: Did it not occur to you   |
| 3  | wasn't an attempt to tell him that you were joining in, in   | 3  | to call Lieutenant-Colonel Gaffley who was right at the  |
| 4  | the operation and that the medical personnel were no longer  | 4  | scene in your sight, to get a report from him rather than  |
| 5  | proceeding to scene 1, it was an attempt to call him before  | 5  | walking up in a line and potentially exposing your dog   |
| 6  | you'd taken those decisions.   | 6  | squad members to the risk of fire from the koppie?   |
| 7  | CHAIRPERSON: I think that was his  | 7  | GENERAL NAIDOO: Chair, as I testified  |
| 8  | evidence, because his point was that he tried before, he   | 8  | already, the shooting was not coming at that stage, the  |
| 9  | couldn't get through. So if I am understanding him   | 9  | gunfire where I perceived which got me there, was not  |
| 10   | correctly, he thought it was pointless trying again,   | 10   | coming from any location where Colonel Gaffley was, the  |
| 11   | because –  | 11   | gunfire was at that stage, I quite clearly indicated coming  |
| 12   | GENERAL NAIDOO: Actually –   | 12   | from the direction where the NIU was deployed. So that is  |
| 13   | CHAIRPERSON: Sorry?  | 13   | the reason I went there.   |
| 14   | GENERAL NAIDOO: I indicated –  | 14   | MR CHASKALSON: You don't think   |
| 15   | CHAIRPERSON: He thought there may be a   | 15   | Lieutenant-Colonel Gaffley who was at the scene of koppie  |
| 16   | problem with the battery of his phone or something of that   | 16   | 3, would have had a better sense than you of where the   |
| 17   | sort. So his evidence was, as I understood him, he   | 17   | gunfire was coming and whether it was necessary for you to   |
| 18   | conceded that the attempt was earlier, but because it was  | 18   | come in?   |
| 19   | an unsuccessful attempt, as I understood him, he thought   | 19   | GENERAL NAIDOO: Chair, I don't know as   |
| 20   | any subsequent attempt would also be unsuccessful. Is that   | 20   | to what Lieutenant-Colonel Gaffley saw, or had a sense of,   |
| 21   | a fair summary of what you were saying?  | 21   | I based my decision on what I saw and experienced and my   |
| 22   | GENERAL NAIDOO: Chair, that is correct.  | 22   | actions were directed by that.   |
| 23   | MR CHASKALSON: You dealt at length with  | 23   | MR CHASKALSON: Had you spoken to   |
| 24   | the Chairperson on why you, on the question why you hadn't   | 24   | Lieutenant-Colonel Gaffley on the cell phone earlier in the  |
| 25   | called the JOC. What about the overall commander, Major  | 25   | day? Did you have access to his cell number?   |
|  |  |  |  |
|  |  |  |  |
| 1  | Page 23234   | 1  | Page 23236   |
| 1  | Mpembe, why didn't you call him?   | 1  | GENERAL NAIDOO: Chair, I did have access   |
| 2  | Mpembe, why didn't you call him?<br>GENERAL NAIDOO: Chair, as I indicated,   | 2  | GENERAL NAIDOO: Chair, I did have access<br>to his cell number, I did obtain it and I did call him at  |
| 2<br>3   | Mpembe, why didn't you call him?<br>GENERAL NAIDOO: Chair, as I indicated,<br>there was a number of activities taking place that time.   | 2<br>3   | GENERAL NAIDOO: Chair, I did have access<br>to his cell number, I did obtain it and I did call him at<br>some stage during the day, yes.   |
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|--|--|--|---|
| 1  | yes.   | 1  | MR CHASKALSON: Well, in terms of the  |
| 2  | MR CHASKALSON: And you knew that both  | 2  | tactical plan, what you did, was not something that was   |
| 3  | the NIU and the Special Task Force were there?   | 3  | provided for in the tactical plan.  |
| 4  | GENERAL NAIDOO: I had testified to that  | 4  | GENERAL NAIDOO: Chair, I disagree   |
| 5  | effect, yes.   | 5  | because in the tactical plan, there was provision that the  |
| 6  | MR CHASKALSON: Now the tactical plan   | 6  | K9 will support the interventions of the other tactical   |
| 7  | that had been developed didn't give you the function of  | 7  | units, but the scenario that we encountered was not one   |
| 8  | offering unsolicited tactical assistance to the STF, did   | 8  | that we envisaged in our planning. There was no mention of  |
| 9  | it?  | 9  | koppie 3 or such a scenario what we did encounter. So it  |
| 10   | GENERAL NAIDOO: The tactical plan that   | 10   | did not make provision for such a thing.  |
| 11   | we had made provision for the K9 units to support the other  | 11   | MR CHASKALSON: The plan didn't give to  |
| 12   | tactical units in clearing of rocks in dense area.   | 12   | the K9 unit, still less to you, the function of intervening   |
| 13   | MR CHASKALSON: On an unsolicited basis?  | 13   | on an unsolicited basis, did it?  |
| 14   | GENERAL NAIDOO: I, at this stage, I did  | 14   | GENERAL NAIDOO: Chair, as I indicated,  |
| 15   | not indicate that it was solicited. I indicated that we  | 15   | my intervening there was on a basis of the original mission   |
| 16   | were responding to a particular incident and to make an  | 16   | that I had to accomplish, is to get the medics through, and   |
| 17   | assessment of the situation.   | 17   | yes the other issue, the concern which we have in terms of  |
| 18   | MR CHASKALSON: My question was, did the  | 18   | the safety, wellbeing of the members that could be engaged.   |
| 19   | plan give the K9 unit the function of providing assistance   | 19   | It's something that is a standard policing factor that  |
| 20   | on an unsolicited basis?   | 20   | affects any unit in incidents such as the one we  |
| 21   | GENERAL NAIDOO: The plan indicated that  | 21   | experienced.  |
| 22   | they will provide assistance on command.   | 22   | MR CHASKALSON: Well, can I take you to  |
| 23   | MR CHASKALSON: And who did you think the   | 23   | Colonel Scott's evidence, on page 14666, in fact let's go   |
| 24   | command would come from?   | 24   | back up to 14665. There I asked Colonel Scott, "Major   |
| 25   | GENERAL NAIDOO: From the, either the   | 25   | General Naidoo's tasking, can you describe what Major   |
|  |  |  |   |
|  |  |  |   |
| 1  | Page 23238<br>operational commander, or the person needing the   | 1  | Page 23240<br>General Naidoo's tasking was in relation to page 3?" The  |
| 1  | operational commander, or the person needing the   | 1  | General Naidoo's tasking was in relation to page 3?" The  |
| 2  | operational commander, or the person needing the assistance.   | 1<br>2<br>3  | General Naidoo's tasking was in relation to page 3?" The answer by the man who designed the plan, at least the  |
|  | operational commander, or the person needing the assistance.<br>MR CHASKALSON: Or the person needing the   | 2  | General Naidoo's tasking was in relation to page 3?" The  |
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|---|--|---|--|
| 23  | the STF Casspir between you and the NIU which is where you   | 23  | They are a highly trained unit, we hold them in very high  |
| 24  | thought the shooting was coming from.  | 24  | regard in the South African Police Service. That is the  |
| 25  | GENERAL NAIDOO: Chair, they were not   | 25  | one point that I would want to indicate, that they are   |
| 1   | between, they were to my left at a position I already  | 1   | highly trained. With regard to the statistics that the   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9  | indicated but yes, I did go to the right of the STF<br>Casspir.<br>MR CHASKALSON: Now the STF are the most<br>elite tactical force in the SAPS. Do you accept that?<br>GENERAL NAIDOO: Chair, we would not want<br>to create a situation of elite and more elite, they have<br>more advanced training than most members of the SAPS, but<br>they are part of an SAPS structure. So I would I would   |   | evidence leader is introducing, there are other units with<br>similar and same statistics – similar if not same<br>statistics, where people wanting to enter into and which is<br>why I would not want to create a climate where we say, this<br>unit is better than that unit. I said quite clearly, each<br>unit has their specific purpose in the South African Police<br>Service and that is how we utilise them, and we hold the  |
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| 1  | Page 23245   | 1  | Page 23247   |
|--|--|--|--|
| 1  | MR CHASKALSON: As that unit deployed at  | 1  | firstly what they were to do, secondly what their dogs were  |
| 2  | Marikana?  | 2  | to do, so then we can understand what it is that you had in  |
| 3  | GENERAL NAIDOO: No, Chair.   | 3  | mind in bringing them with you when you took them to koppie  |
| 4  | MR CHASKALSON: Now, you thought that   | 4  | 3.   |
| 5  | there was a tactical situation unfolding at koppie 3, you  | 5  | GENERAL NAIDOO: Chair, as I indicated, I   |
| 6  | thought there was a possibility of strikers shooting at the  | 6  | had at that stage not made an assessment of what was the   |
| 7  | police. Correct?   | 7  | reason for the shooting. The reason I took the four canine   |
| 8  | GENERAL NAIDOO: That is correct, Chair.  | 8  | units and I moved forward, with me, is primarily we were   |
| 9  | MR CHASKALSON: Now, in that sort of  | 9  | going as a sweeping line, obviously clearing the area up to  |
| 10   | tactical situation the STF would be far better equipped to   | 10   | where I would go and link up with the NIU. So they were  |
| 11   | deal with the situation than the dog squad. Will you   | 11   | still performing their duties as a protection force. When  |
| 12   | accept that?   | 12   | they came to a particular distance I asked them to hold  |
| 13   | GENERAL NAIDOO: Chair, I would like to   | 13   | that line whilst I approached the NIU and that's what they   |
| 14   | place on record, in terms of our plan, they did not  | 14   | did. They held that line, the vehicles were there when we  |
| 15   | distinguish but say the STF only would deal with this, and   | 15   | stopped and it only moved after the entire incident at   |
| 16   | the NIU only would deal with that, and the TRT only will   | 16   | scene 2 finalised. So they were at that stage when we were   |
| 17   | deal with that. The plan quite clearly indicated that the  | 17   | going forward, whilst I indicated that we would establish  |
| 18   | tactical unit being the STF, the NIU and the TRT would be  | 18   | and see if they required assistance, I had at that stage no  |
| 19   | deployed to deal with pockets of resistance where miners   | 19   | idea what the nature of that assistance would be and quite   |
| 20   | would probably entrench themselves in a particular place.  | 20   | rightly as you indicate, they have the capability of   |
| 21   | [12:14] At this stage it was not an intention to utilise   | 21   | sniffing weapons, they have the capability of sniffing   |
| 22   | the canine directly. I indicated quite clearly I used the  | 22   | human beings who may be concealed in particular areas.   |
| 23   | canine vehicles as a method to get to where the NIU was, to  | 23   | They also are trained as patrol dogs, which means that they  |
| 24   | assess the situation. So in assessing the situation  | 24   | have the capacity of going into a bush and tackling a  |
| 24   | obviously a decision would be made as to how the particular  | 24   | suspect, an armed or otherwise suspect. That is part of  |
| 25   | obviously a decision would be made as to now the particular  | 20   | suspect, an arried of otherwise suspect. That is part of   |
|  | Page 23246   |  | Page 23248   |
| 1  | thing would be handled, which will allow me to carry on  | 1  | their training and part of their utilisation possibilities.  |
| 2  | with my primary function and the other tactical units to   | 2  | MR CHASKALSON SC: Had Colonel Scott  |
| 3  | carry on with their job.   | 3  | allocated them -   |
| 4  | CHAIRPERSON: Am I correct in thinking  | 4  | CHAIRPERSON: Sorry, sorry. The canine  |
| 5  | the canine people took their dogs with them? I remember  | 5  | unit members, they of course carried firearms?   |
| 6  | Warrant Officer Breedt says in his statement he had a dog  | 6  | GENERAL NAIDOO: That's correct, Chair.   |
| 7  | in one hand, when he was moving the weapons out of the way   | 7  | CHAIRPERSON: And they seem to have used  |
| 8  | for the medics –   | 8  | them quite a lot at koppie 3.  |
| 9  | GENERAL NAIDOO: That is correct, Chair.  | 9  | GENERAL NAIDOO: That's correct, Chair.   |
| 10   | CHAIRPERSON: He was hampered, amongst  | 10   | CHAIRPERSON: More so than some of the  |
| 11   | other things, because he had his dog lead in one hand.   | 11   | other units.   |
| 12   |  | 12   | GENERAL NAIDOO: That's correct.  |
| 12   | GENERAL NAIDOO: That's correct.  |  |  |
|  |  | 13   | CHAIRPERSON: Substantially more than STF   |
| 13<br>14   | CHAIRPERSON: So the canine people went,  | 13<br>14   | CHAIRPERSON: Substantially more than STF who I don't think fired a shot.   |
| 13<br>14   | CHAIRPERSON: So the canine people went, canine members went with their dogs.   | 14   | who I don't think fired a shot.  |
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|--|--|--|---|
| 1  | CHAIRPERSON: Yes.  | 1  | MR CHASKALSON SC: Why did you not   |
| 2  | MR CHASKALSON SC: Well, did it not cross   | 2  | contemplate withdrawal?   |
| 3  | your mind that if you and the dog squad came in on foot in   | 3  | GENERAL NAIDOO: Chair, as I indicated,  |
| 4  | a line without cover, you would prevent an obvious target  | 4  | there were two factors. I needed to establish the reason  |
| 5  | for any striker who was shooting at the police? Did that   | 5  | for the shooting, the convoy that I was trying to get   |
| 6  | not cross your mind?   | 6  | through was being held up. And the second one I indicated   |
| 7  | GENERAL NAIDOO: Chair, I think before  | 7  | that this is a standard operational issue with police   |
| 8  | the break we had dealt with this and I had already   | 8  | officials in terms of an incident like this when  |
| 9  | indicated to that, yes, the possibility did exist and that   | 9  | responding. I want to say possibly even internationally,  |
| 10   | is why we utilised the tactical training that we had in how  | 10   | that when police officials are engaged in this, that all  |
| 11   | we approached the particular scene and we came to a  | 11   | police officials converge to see if they could render   |
| 12   | particular distance and we took up a particular position so  | 12   | assistance, et cetera. I have indicated that as well.   |
| 13   | that members were under cover, using their vehicles as they  | 13   | MR CHASKALSON SC: Major-General, are you  |
| 14   | do on a daily basis when they are deployed in various crime  | 14   | suggesting that it's an international standard that when  |
| 15   | scenes.  | 15   | there's a tactical plan governing an operation of several   |
| 16   | MR CHASKALSON SC: Well, Major-General,   | 16   | hundred police officers, that a unit that has certain   |
| 17   | it seems to me that if you were going to come up in a line   | 17   | responsibilities that don't involve getting involved, that  |
| 18   | like that where there was no hard cover offered by the   | 18   | don't involve taking part in the direct tactical action,  |
| 19   | terrain - you accept that there was no hard cover offered  | 19   | will generally converge on that tactical action when it   |
| 20   | by the terrain where you were coming up, you couldn't  | 20   | happens?  |
| 21   | shelter behind - your line that came up didn't have sort of  | 21   | GENERAL NAIDOO: Chair, what I'm saying  |
| 22   | large numbers of rocks behind which it could shelter.  | 22   | is that in an incident such as this where police officers   |
| 23   | GENERAL NAIDOO: There were no rocks,   | 23   | are involved in shooting, where in terms of the planning  |
| 24   | Chair.   | 24   | there was going to be no shooting, the tactical training  |
| 25   | MR CHASKALSON SC: So the terrain offered   | 25   | and the conditioning of police officers is to respond to  |
|  |  |  |   |
|  |  |  |   |
|  | Page 23250   |  | Page 23252  |
| 1  | you no protection.   | 1  | such things, yes.   |
| 2  | you no protection.<br>GENERAL NAIDOO: That is correct, Chair.  | 2  | such things, yes.<br>MR CHASKALSON SC: Major-General, are you   |
| 2<br>3   | you no protection.<br>GENERAL NAIDOO: That is correct, Chair.<br>MR CHASKALSON SC: If a striker started  | 2<br>3   | such things, yes.<br>MR CHASKALSON SC: Major-General, are you<br>suggesting the plan didn't contemplate that there might be   |
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| 1   | Page 23253  | 1  | Page 23255<br>Major-General, but if we look at what Colonel Gaffley   |
|---|---|--|---|
| 1   | So in my thinking I do not disregard the canine unit as a   | 1  |   |
| 2<br>3  | tactical unit. They have their specific application and they have their levels of training.   | 2  | describes, we see what the result of your unsolicited arrival with the dog squad was. It was that the real  |
| 3<br>4  | MR CHASKALSON SC: Well, this particular   | 4  |   |
| 4<br>5  |   |  | professionals who had got out of their vehicles and lined   |
|   | plan didn't allocate to them any function in dealing with   | 5  | up in front, found themselves in a situation where they   |
| 6   | shooters at the police, do you accept that?   | 6  | were at risk of being shot or caught in a cross-fire and  |
| 7   | GENERAL NAIDOO: I would not agree with  | 7  | possibly shot by their own colleagues and had to take cover   |
| 8   | that because the expectation was they will sweep dense bush   | 8  | in an armoured vehicle to protect themselves, inter alia,   |
| 9   | in between rocks and the possibility of them encountering   | 9  | from your dog squad. What do you say to that?   |
| 10  | strikers entrenched in that kind of scenario would require  | 10   | GENERAL NAIDOO: Chair, two things. It   |
| 11  | them to take tactical action, together with the dogs, to  | 11   | is clear that the canine members did shoot. I have already  |
| 12  | removing such suspects.   | 12   | indicated that the special task force members were in an  |
| 13  | MR CHASKALSON SC: We've been there  | 13   | armoured vehicle when we arrived there and the third thing  |
| 14  | before, Major-General. I think the plan probably speaks   | 14   | was as to why the special task force did not shoot, I'm not   |
| 15  | for itself in this regard but let's look at what actually   | 15   | in a position to indicate because they were, I mean they  |
| 16  | happened to the tactical unit that was supposed to deal   | 16   | were in an armoured vehicle and maybe their assessment was  |
| 17  | with the shooting when you arrived unsolicited. Can we  | 17   | different from the people who were shot at.   |
| 18  | look at FFF10 which is Colonel Gaffley's statement and if   | 18   | MR CHASKALSON SC: Let's just look at  |
| 19  | we can go down to paragraph 11 or maybe 10, for context.  | 19   | paragraph 13 again. "At this stage the Scorpion has joined  |
| 20  | "The Casspir and the water cannon arrived at koppie 3 at  | 20   | us" - so the whole tactical contingent of the STF is  |
| 21  | the same time and at this stage the water cannon was still  | 21   | present – "members had formed a line in front of the  |
| 22  | spraying at the crowd. At this stage I ordered the members  | 22   | Casspir". The tactical, the most expert tactical unit is  |
| 23  | of the Casspir to stay inside the vehicle as I could see  | 23   | in a position ready to approach the koppie, ready to deal   |
| 24  | that the forces on the ground were still far behind us and  | 24   | with the tactical situation that is confronting the SAPS,   |
| 25  | that it would be looking for trouble to send nine members   | 25   | but the commander Colonel Gaffley "ordered the members to   |
|   |   |  |   |
|   | Page 22254  |  | Dago 22254  |
|   | Page 23254  | 1  | Page 23256<br>fall back and take position behind the armoured vehicles as   |
| 1   | into the koppie after the protesters." That's nine STF  | 1  | fall back and take position behind the armoured vehicles as   |
|   | into the koppie after the protesters." That's nine STF members. "We waited inside the Casspir for a little while,   | 2  | fall back and take position behind the armoured vehicles as it was clear that the police are firing from different  |
| 1<br>2  | into the koppie after the protesters." That's nine STF<br>members. "We waited inside the Casspir for a little while,<br>then I saw the canine unit approaching from behind us. I  |  | fall back and take position behind the armoured vehicles as<br>it was clear that the police are firing from different<br>directions and members could be caught in the cross-fire."   |
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| 1  | Page 23257<br>the western side of the koppie which was in the direction  | 1  | Page 23259<br>on the left hand side of the photograph, I just want to   |
|--|--|--|---|
| 2  | of the bushes in front of him. Do you accept that?   | 2  | zoom in myself, on my own picture with greater resolution   |
| 3  | GENERAL NAIDOO: Chair, I don't think   | 3  | to see if I can identify other positions. For descriptive   |
| 4  | I'll be able to accept that without looking at the location  | 4  | purposes the area I've been describing is the area between  |
| 5  | of where the special task force vehicles were located.   | 5  |   |
|  |  |  | the water canon on the far left-hand side of the picture<br>and the Nyala up to its right. There are also members   |
| 6  | They were in the middle of the area on the southern side.  | 6  |   |
| 7  | The TRT at that stage, which joined the canine, were on the  | 7  | taking cover behind the rocks, behind the two in front of   |
| 8  | left, they came in from the west which was far, in terms of  | 8  | the Nyala that's diagonally ahead of the water canon. Now   |
| 9  | distance-wise, from the position where, the direction – if   | 9  | if we take a line from the TRT vehicles through the bushes  |
| 10   | the bushes that are being referred to is the direction or  | 10   | in front we take the line that essentially cuts the area  |
| 11   | the bushes in front of Colonel Gaffley, then it's far  | 11   | covered by those SAPS members. And if those SAPS members  |
| 12   | removed from the position of the TRT, Chair.   | 12   | were shooting into the koppie it is quite possible that the   |
| 13   | MR CHASKALSON SC: Maybe we should show   | 13   | shooting that the members on the other side of the koppie   |
| 14   | you an aerial photograph, if we can go to KKK16.5139. I'm  | 14   | in the STF vehicles were witnessing was cross-fire coming   |
| 15   | going to mark the position of the STF Casspir and Scorpion   | 15   | from their colleagues directly on the other side of the   |
| 16   | next to each other. This is the – it's very difficult to   | 16   | koppie. Would you accept that?  |
| 17   | describe this on this diagram but there are camouflaged  | 17   | GENERAL NAIDOO: Chair, I was not  |
| 18   | armoured vehicles roughly 40% of the way up on the   | 18   | deployed with the TRT and on their actions I cannot   |
| 19   | photograph and possibly 20% of the way from the right-hand   | 19   | indicate, but I want to propose maybe a better picture  |
| 20   | edge of the photograph. They are diagonally ahead of the   | 20   | which depicts the deployment and on L, slide 249 which  |
| 21   | three white vehicles that we see on the right-hand side of   | 21   | clearly depicts these things.   |
| 22   | the photograph. I now ask that we zoom the area that I'm   | 22   | MR CHASKALSON SC: Thank you, Major-   |
| 23   | marking with the marker now, which is the area on the  | 23   | General -   |
| 24   | middle of the photograph on the left hand side and if we   | 24   | CHAIRPERSON: This is the same picture   |
| 25   | can zoom again, maybe zoom out a little bit so that we can   | 25   | virtually, isn't it?  |
|  | 5 . 5  |  | <b>3</b> .  |
|  |  |  |   |
|  | Page 23258   |  | Page 23260  |
| 1  | Page 23258 get a bit of perspective. I'm marking the position of some  | 1  | Page 23260<br>MR CHASKALSON SC: I think it may well be  |
| 1<br>2   |  | 1  | 5   |
|  | get a bit of perspective. I'm marking the position of some   |  | MR CHASKALSON SC: I think it may well be  |
| 2  | get a bit of perspective. I'm marking the position of some<br>of the TRT members, TRT members that are shooting or taking  | 2  | MR CHASKALSON SC: I think it may well be the same, Chairperson.   |
| 2<br>3   | get a bit of perspective. I'm marking the position of some<br>of the TRT members, TRT members that are shooting or taking<br>cover from this position, TRT members taking cover there,   | 2<br>3   | MR CHASKALSON SC: I think it may well be<br>the same, Chairperson.<br>CHAIRPERSON: Yes it is the same picture,  |
| 2<br>3<br>4  | get a bit of perspective. I'm marking the position of some<br>of the TRT members, TRT members that are shooting or taking<br>cover from this position, TRT members taking cover there,<br>TRT members behind the Nyala. If we –  | 2<br>3<br>4  | MR CHASKALSON SC: I think it may well be<br>the same, Chairperson.<br>CHAIRPERSON: Yes it is the same picture,<br>but some kind, thoughtful person has marked the various<br>units for us. So yes, I think if I may say so I think the  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25 | get a bit of perspective. I'm marking the position of some<br>of the TRT members, TRT members that are shooting or taking<br>cover from this position, TRT members taking cover there,<br>TRT members behind the Nyala. If we –<br>CHAIRPERSON: We'll have to put that on<br>record in words, I'm afraid.<br>MR CHASKALSON SC: Yes.<br>CHAIRPERSON: But it's easier for you<br>than for me –<br>MR CHASKALSON SC: If we zoom back out.<br>I hear from behind me from Mr Pretorius that it may be POP<br>members behind the Nyala, I'm happy to concede that it may<br>be POP members. Sorry Chair, Chair if you bear with me for<br>–<br>CHAIRPERSON: You described something,<br>you said here and there and this and that and so on, but<br>that's got to be transmitted or translated into words which<br>people who read this record in years to come will be able<br>to follow.<br>MR CHASKALSON SC: The members that I am<br>describing, the area in which I'm describing TRT members<br>taking cover is the area behind the rocks on the edge of<br>the dry dam that one sees on the left-hand side of the                | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23       | MR CHASKALSON SC: I think it may well be<br>the same, Chairperson.<br>CHAIRPERSON: Yes it is the same picture,<br>but some kind, thoughtful person has marked the various<br>units for us. So yes, I think if I may say so I think the<br>Major-General is right. It would be sensible for us to use<br>this slide for the purposes of indicating the positions of<br>various people as you are doing in your questioning. And<br>that would make it easier for those people in years to come<br>and read the record to follow what's going on.<br>MR CHASKALSON SC: Well if we then use<br>this slide, Major-General and we look at the SAPS personnel<br>marked by the box on the left-hand side or the arrows<br>coming out of the box on the left-hand side of the screen<br>saying forward holding area 2 TRT, POP, K9 and the box<br>saying forward holding area 2 TRT, POP, K9 towards the<br>bottom left-hand corner of the screen. And we look at the<br>STF vehicle, or the two STF vehicles with the green arrow<br>and we draw a line through the koppie or through the bushes<br>in front of that STF vehicle, we get a line to the other<br>side of the koppie and the forwarding holding area 2 TRT,<br>POP and K9. Do you accept that?<br>GENERAL NAIDOO: Chair, no. What you do  |

| <ol> <li>unit wasn't able to dislodge people that were there using</li> <li>the water canons, etcetera. So you know graphically it may</li> <li>seem yes it's easy to say if you shoot from there it will</li> <li>come out this side. So I think that's a factor we need to</li> <li>take into account. It was almost a sheer wall of rock. In</li> <li>that particular area, which I'm not sure how I'm going to</li> <li>blocks that you referred to. We hopefully can see it a bi</li> <li>more clearly.</li> <li>GENERAL NAIDOO: Chair, yes I do see that</li> <li>there.</li> <li>CHAIRPERSON: That's what you're talking</li> <li>about.</li> </ol>   |      |
|--|------|
| 3seem yes it's easy to say if you shoot from there it will3GENERAL NAIDOO:Chair, yes I do see that4come out this side. So I think that's a factor we need to4there.5take into account. It was almost a sheer wall of rock. In5CHAIRPERSON:That's what you're talking   | t    |
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| 5 take into account. It was almost a sheer wall of rock. In 5 CHAIRPERSON: That's what you're talking  |      |
|  |      |
|  |      |
| 7 indicate it to you, is the area where we found the bulk of 7 GENERAL NAIDOO: That is correct, Chair.   |      |
| 8 the 200 and some odd people which is incredible given when 8 CHAIRPERSON: Thank you.   |      |
| 9 you look at it from here. It looks like a very small area 9 MR CHASKALSON SC: Major-General, I'm   |      |
| 10 and they were entrenched between large rocks. So the 10 afraid I can't agree with you. Maybe if we can look at  |      |
| 11 assumption that the fire from forward holding area TRT, 11 JJJ6 1234. It's possible a better picture for this   |      |
| 12 POP, K9 would have been causing the STF to believe they 12 purpose. JJJ6 1234. I'm not sure that you have that  |      |
| 13 were under fire. It could have been affected by that and 13 because I'm not sure I asked you to look at JJJ6s. I just   |      |
| 14 that has to be factored in because – and the second one is 14 looked at it now in response to your answer, but you'll   |      |
| 15 the statement of Colonel Gaffley says that the fire was 15 have ample time to see it on the screen if you want. JJJ   | 6    |
| 16 coming from the bushes in front of him. If we look at the 16 1234. Now I'm marking the position of the armoured   |      |
| 17 vehicle and the bush in front of him, you know, in terms of 17 vehicle, the STF armoured vehicle which is the camoufla  | ged  |
| 18 the solid wall of rock that I spoke about I think I would 18 vehicle below the second and third white vehicles on the   | _    |
| 19 not agree with that possibility of it coming from that 19 or directly below the second white vehicle coming from t  | he   |
| 20 location that was indicated now. 20 left-hand side, the second white bakkie. Now if one take  | ;S   |
| 21 CHAIRPERSON: Can you tell us, indicate 21 a line from the SAPS vehicles that we see taking cover  |      |
| 22 to us on the photograph where the solid wall of rock is? 22 under the dry dam on the bottom right-hand corner of the dry dam on the bottom right-hand corner of the dry dam on the bottom right-hand corner of the dry dam on the bottom right-hand corner of the dry dam on the bottom right-hand corner of the dry dam on the bottom right corner of the dry dam on the dry dam on the bottom right corner of the dry dam on th | ne   |
| 23 GENERAL NAIDOO: Chair, if I could first 23 screen or the SAPS members taking shelter behind the re-   | ocks |
| 24 try and find an example of the rock I think it may be more 24 that we see there, obviously at this stage they are also  |      |
| 25helpful. Chair on the slide I don't see pictures of the25behind the armoured vehicles. If one draws a line from  | the  |
| Page 23262 Page 23   |      |
| 1 rocks to give an indication to you just on what I've 1 SAPS vehicles, sorry SAPS members behind the dry date   | n    |
| 2 indicated. But for purposes of the picture the bush 2 through to the STF vehicle one doesn't get hit by any  |      |
| 3 beginning where the three POP vehicles are indicated there,<br>4 where the amount indicates two POPs effectives  | •    |
| 4 where the arrow – the arrow indicates two POPs, allocation 4 Do you accept that?   |      |
| 5 1 and far away from scene 2 and then one there. Just in 5 GENERAL NAIDOO: Chair, not necessarily   | •    |
| <ul> <li>6 front of that those vehicles stopped there for a particular</li> <li>7 purpose. It was the dense bush and the rock, they could</li> <li>6 As the picture clearly indicates, the position of the</li> <li>7 members quite clearly shows us the direction that they</li> </ul>  |      |
| 8 not go further than that. And that area there was where 8 perceive the threat and that's coming from the rocks in  |      |
| 9 more than 200 people had concealed themselves and were not 9 front of the Nyalas, not to the left. So the position of  |      |
| 10 visible to us on the ground until we got to that particular 10 the members, the members would not position themse   | lves |
| 11 place. 11 where they're flank on the left would be exposed. The   |      |
| 12 CHAIRPERSON: Major-General, if you look 12 normally position themselves facing a threat. And that   |      |
| 13 at MMM2, it looks to me and perhaps we could have some 13 why I would not agree with that proposition that is bei   |      |
| 14 zooming in done, as if the area to which you are referring 14 put.  | 0    |
| 15 is B3 and a little bit of B4 I suppose and perhaps the 15 COMMISSIONER HEMRAJ: I expect that t  | ne   |
| 16 right-hand side of A3. That's the impression from what 16 direction of the shots would be towards where the strik   | cers |
| 17 you're telling us. Am I understanding you correctly? 17 would be at that particular time.   |      |
| 18GENERAL NAIDOO:Chair, yes A3, B3 and a18GENERAL NAIDOO:That's the indication   |      |
| 19little bit of C as well. I don't know if the Chair would19they would face the threat and they would shoot in the   | ;    |
| 20 remember when we did the inspection in loco there were 20 direction of the threat. And as I've indicated and it's   |      |
| 21 indications of where several people were lying in between 21 clearly indicated here in the picture, they were entrence  |      |
| 22 the rocks. So when I refer to that wall of rocks that need 22 among those rocks and the water canon wasn't able to  |      |
| 23 to factored in with regard to what was put to me, I'm    23 dislodge them.  |      |
| 24     referring to that particular area.       24     MR CHASKALSON SC:       25     Can Lask for the   |      |
| 25 CHAIRPERSON: Let me zoom in on the 25 photo to be zoomed in at the point that I am marking i  | IOW  |

| 1  | Page 23265<br>which is the point just above the top of the water canon   | 1  | Page 23267 person is in fact we believe one of the people who was   |
|--|--|--|---|
| 2  | spray? Do you see the strikers underneath the line that I  | 2  | killed by the police on that day.   |
| 3  | am marking?  | 3  | CHAIRPERSON: Do you see him on the  |
| 4  | GENERAL NAIDOO: Chair, I see a striker.  | 4  | screen?   |
| 5  | MR CHASKALSON SC: There are several  | 5  | MR CHASKALSON SC: The orange – if one   |
| 6  | strikers there.  | 6  | goes to -   |
| 7  | GENERAL NAIDOO: Chair, I don't know.   | 7  | CHAIRPERSON: Sorry to interrupt you.  |
| 8  | Maybe it's my vision, but I can clearly see one person.  | 8  | There's a man with a blue, right, I take it they were men.  |
| 9  | CHAIRPERSON: Well there's one in a blue  | 9  | Then behind him is a man in a green jacket, it looks like a   |
| 10   | and one in a green shirt, I think. We don't seem to have   | 10   | jacket of some sort. And then behind him there is a shape   |
| 11   | any people with red shirts –   | 11   | of some kind, sort of orangey, light brown shape, I think.  |
| 12   | GENERAL NAIDOO: I don't see the second   | 12   | Is that the person you're referring to?   |
| 13   | one, but I can see the one person, yes.  | 13   | MR CHASKALSONS SC: That is correct, Mr  |
| 14   | CHAIRPERSON: The man in the blue shirt,  | 14   | Chairperson. That is Mr Mnyande we believe, who is one of   |
| 15   | do you see him?  | 15   | the people who was killed that day. And if we go forward  |
| 16   | GENERAL NAIDOO: I see the man in the   | 16   | to 1236 you'll see that it is definitely an additional  |
| 17   | blue shirt.  | 17   | person. A bit further to the left.  |
| 18   | CHAIRPERSON: And unless I'm seeing   | 18   | CHAIRPERSON: If you look at the screen  |
| 19   | things, behind his left shoulder appears to be someone in a  | 19   | that I'm looking at, the one immediately in front of us,  |
| 20   | green shirt or a green blanket or green jacket or  | 20   | you've got the person in the blue shirt or jacket, then   |
| 21   | something. Can you see that, it does look like –   | 21   | you've got to the left of him a person in a green jacket or   |
| 22   | GENERAL NAIDOO: There is some  | 22   | a green blanket or something and then to the left of him  |
| 23   | irregularity in the - but I can't say it's a person.   | 23   | there's whose upper part of his body seems to be covered by   |
| 24   | MR CHASKALSON SC: Sorry, Major-General,  | 24   | a blue garment of some kind. The lower part is yellow. Is   |
| 25   | if you look to the screen to your left it's a better   | 25   | that the person you're referring to?  |
|  |  |  |   |
|  |  |  |   |
| 1  | Page 23266   | 1  | Page 23268  |
| 1  | screen. If you just look to your left.   | 1  | MR CHASKALSON SC: No, Chairperson, it's   |
| 2  | screen. If you just look to your left.<br>CHAIRPERSON: I'm just looking at the   | 2  | MR CHASKALSON SC: No, Chairperson, it's the person in the cream and brown, with the cream and brown   |
|  | screen. If you just look to your left.<br>CHAIRPERSON: I'm just looking at the<br>screen in front of us which is clearer than the one behind   |  | MR CHASKALSON SC: No, Chairperson, it's the person in the cream and brown, with the cream and brown blanket wrapped around his upper body.  |
| 2<br>3<br>4  | screen. If you just look to your left.<br>CHAIRPERSON: I'm just looking at the<br>screen in front of us which is clearer than the one behind<br>us. So if you look at the one now on your left.  | 2<br>3   | MR CHASKALSON SC: No, Chairperson, it's<br>the person in the cream and brown, with the cream and brown<br>blanket wrapped around his upper body.<br>CHAIRPERSON: He appears to be lying on  |
| 2<br>3   | screen. If you just look to your left.<br>CHAIRPERSON: I'm just looking at the<br>screen in front of us which is clearer than the one behind<br>us. So if you look at the one now on your left.<br>GENERAL NAIDOO: Okay, yes.  | 2<br>3<br>4  | MR CHASKALSON SC: No, Chairperson, it's<br>the person in the cream and brown, with the cream and brown<br>blanket wrapped around his upper body.<br>CHAIRPERSON: He appears to be lying on<br>the ground.   |
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|  | Page 23269   |  | Page 23271  |
|--|--|--|---|
| 1  | GENERAL NAIDOO: Chair, two things. One,  | 1  | slide – oh, it's not red. It's red in exhibit K. It's a   |
| 2  | when we had this discussion it was around the deployment of  | 2  | sort of –   |
| 3  | forward holding area 2 and the pictures and the graphics   | 3  | GENERAL NAIDOO: Pink.   |
| 4  | where related to the location of forward holding area 2.   | 4  | CHAIRPERSON: Pinky colour, ja, on the   |
| 5  | They were not deployed by me. Secondly, in terms of which  | 5  | slide which is on the screen, it extends from near the  |
| 6  | led to the issue of cross-fire which also indicates as   | 6  | bottom left hand corner of the slide right across to near,  |
| 7  | Colonel Gaffley in his statement said, shots were coming   | 7  | to a vehicle near the right hand corner which is a vehicle  |
| 8  | from the bushes in front of him. We have seen photographs  | 8  | that was one of your vehicles, as far as one can see, and   |
| 9  | that there were people indeed in the bushes just in front  | 9  | there are blue arrows extending from a blue block in the  |
| 10   | of the Casspir. Secondly, yes I think it's a matter of   | 10   | right hand corner, bottom right hand corner, so it would  |
| 11   | record that members of the K9 unit did respond to shooting   | 11   | appear as if some of the K9 people from Captain Kidd joined   |
| 12   | which was made in their direction. I think there were  | 12   | up with some of your K9 people if these arrows are correct.   |
| 13   | statements to the effect where members saw who was shooting  | 13   | GENERAL NAIDOO: Chair –   |
| 14   | at them as well and they shot at specific individuals. And   | 14   | CHAIRPERSON: Do I understand correctly?   |
| 15   | yes that shooting could have got the Task Force to get back  | 15   | GENERAL NAIDOO: That is correct, because  |
| 16   | into the armoured vehicles for fear of getting caught in   | 16   | there was a presumption that the members from forward   |
| 17   | the cross-fire due to the location of the K9 unit behind   | 17   | holding area 2 did not know that the members from forward   |
| 18   | the Special Task Force.  | 18   | holding area 1 were there and I think this slide clearly  |
| 19   | MR CHASKASLSON SC: Major-General, the  | 19   | indicates that some of them even shared cover in terms of   |
| 20   | deployment of the K9 personnel to the koppie, was your   | 20   | when they arrived at the scene.   |
| 21   | deployment. It wasn't a deployment in terms of the plan,   | 21   | CHAIRPERSON: That's if slide is correct,  |
| 22   | it was a decision that you took.   | 22   | but so the difficulty I've got is when Colonel Gaffley  |
| 23   | GENERAL NAIDOO: I've already testified   | 23   | talks about K9 people – it's an inelegant expression but  |
| 24   | to that effect, Chair.   | 24   | you know what I mean – is he talking about your K9 people   |
| 25   | CHAIRPERSON: I'm sorry, Mr Chaskalson,   | 25   | or Kidd's K9 people or both?  |
|  |  |  |   |
| 1  | Page 23270   |  | Dage 22272  |
| 1  | Page 23270<br>the point that I don't understand from the answer he gave  | 1  | Page 23272<br>GENERAL NAIDOO: Chair, I'm not sure but   |
| 1<br>2   | the point that I don't understand from the answer he gave  | 1<br>2   | GENERAL NAIDOO: Chair, I'm not sure but   |
|  | the point that I don't understand from the answer he gave earlier.   |  | GENERAL NAIDOO: Chair, I'm not sure but<br>I suppose we all went with the assumption with the four  |
| 2  | the point that I don't understand from the answer he gave  | 2  | GENERAL NAIDOO: Chair, I'm not sure but<br>I suppose we all went with the assumption with the four<br>vehicles that were directly behind him and not necessarily  |
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| 1  | Page 23273  | 1   | Page 23275  |
|--|---|---|---|
| 1  | GENERAL NAIDOO: Forward holding –   | 1   | the bushes?   |
| 2  | CHAIRPERSON: Then he goes on, "I also   | 2   | GENERAL NAIDOO: Chair, not  |
| 3  | heard shots from my left and right" and if this slide 249   | 3   | unconditionally as there's no indication in the statement   |
| 4  | is correct then those shots that he heard coming from his   | 4   | of Colonel Gaffley in terms of the volume, giving an  |
| 5  | left may well have come from Captain Kidd's K9 members.   | 5   | indication to distance. He just indicates he heard  |
| 6  | Would that be correct? Am I right or have I got it wrong?   | 6   | gunshots coming from the bushes in front of him.  |
| 7  | GENERAL NAIDOO: Chair, yes, firing  | 7   | CHAIRPERSON: No, he says from the   |
| 8  | coming from the left here would have been possibly the  | 8   | direction of the bushes. So isn't the point that there are  |
| 9  | people that you indicated from forward holding area 2. The  | 9   | two possibilities, the one possibility, it was actually a   |
| 10   | K9 were definitely, from forward holding area 1 were  | 10  | striker in the bushes or perhaps behind the bushes.   |
| 11   | definitely behind the special task force –  | 11  | GENERAL NAIDOO: That's correct.   |
| 12   | CHAIRPERSON: That sounds like your  | 12  | CHAIRPERSON: The other possibility is,  |
| 13   | members.  | 13  | it was a member of the police service who was in line with  |
| 14   | GENERAL NAIDOO: The personnel that I  | 14  | the bushes but behind, on the other side of the koppie. So  |
| 15   | deployed.   | 15  | either way the Colonel would hear gunshots, they would be   |
| 16   | CHAIRPERSON: Right. Yes, I'm sorry to   | 16  | from the direction of the bushes but he wouldn't know   |
| 17   | interrupt, Mr Chaskalson, that was the point I wanted to  | 17  | whether it was a striker who was firing or a member of the  |
| 18   | clarify. Can we take the adjournment now or is there some   | 18  | police service. He does say, as we see, "I could not see  |
| 19   | point that you want to make first before we do that?  | 19  | any person shooting," so it's just the noise – because he   |
| 20   | MR CHASKALSON SC: No, Chairperson, now  | 20  | talks about, or he heard – it's the noise of gunshots   |
| 21   | is a convenient time.   | 21  | coming from a particular direction. It could be either a  |
| 22   | CHAIRPERSON: We'll take the lunch   | 22  | striker or a policeman, is that fair?   |
| 23   | adjournment. We must try to be back at quarter to two.  | 23  | GENERAL NAIDOO: Chair, fair. Obviously  |
| 24<br>25   | Somehow I never seem to succeed in achieving that but let's   | 24<br>25  | to concede whether it could have been coming from the K9  |
| 25   | all make an effort so for once we do get back after only a  | 25  | would be dependent, it would have been -  |
|  | Page 23274  |   | Page 23276  |
| 1  | 45 minute lunch adjournment.  | 1   | CHAIRPERSON: No – no, sorry, as I read  |
| 2  | [COMMISSION ADJOURNS COMMISSION RESUMES]  | 2   | it he's not talking, in the first sentence in 12, coming  |
| 3  | [13:53] CHAIRPERSON: The Commission resumes.  | 3   | from K9, he talks about the K9 people in the second   |
| 4  | Major-General, you're still under oath.   | 4   | sentence. He's just talking, as I understand it, about  |
| _  |   | 4   | sentence. He's just taking, as i understand it, about   |
| 5  | GENERAL NAIDOO: Still under oath.   | 4<br>5  | gunshots which could've been police gunshots or striker   |
| 5<br>6   | CHAIRPERSON: Mr Chaskalson.   |   |   |
|  | CHAIRPERSON: Mr Chaskalson.<br>CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):  | 5   | gunshots which could've been police gunshots or striker<br>gunshots, isn't that correct as far as the first sentence<br>is concerned?   |
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|--|--|---|---|
| 1  | sentence I would take it that it's coming from the bushes  | 1   | from that firearm.  |
| 2  | directly in front of him.  | 2   | GENERAL NAIDOO: Chair, I will indicate  |
| 3  | MR CHASKALSON SC: Well, we'll take that  | 3   | that the magazine was still full. I don't think that's an   |
| 4  | up further with Lieutenant-Colonel Gaffley but paragraph   | 4   | indication whether the firearm was shot or not.   |
| 5  | 13, "At this stage the Scorpion has joined us and members  | 5   | MR CHASKALSON SC: Well, let's probe   |
| 6  | have formed a line in front of the Casspir ready to  | 6   | that. Are you suggesting that there may have been another   |
| 7  | approach the koppie on foot. I ordered the members to fall   | 7   | secret magazine somewhere?  |
| 8  | back and take position behind the vehicles as it was clear   | 8   | GENERAL NAIDOO: Chair, it's not a secret  |
| 9  | that the police are firing from different direction and  | 9   | magazine, it is accepted fact that firearms generally - I'm   |
| 10   | members could be caught in cross-fire." Now, are you in a  | 10  | talking about now the firearms under question – generally   |
| 11   | position to deny that as a result of the police, not the   | 11  | come with two magazines, number 1. Number 2, a firearm  |
| 12   | strikers, just the police firing from different directions,  | 12  | could be reloaded manually as well without the benefit of   |
| 13   | there was a cross-fire which posed a risk to Colonel   | 13  | an additional magazine. So I think I would not be able to   |
| 14   | Gaffley and his men?   | 14  | concede that the firearm was not used in the shooting. I  |
| 15   | GENERAL NAIDOO: Chair, since I was not   | 15  | would be able to indicate that it still had all the rounds  |
| 16   | in that position to make that assessment, we are depending   | 16  | available as indicated now in exhibit L.  |
| 17   | on the assessment that – or the, ja, the assessment that   | 17  | COMMISSIONER HEMRAJ: Even with the full   |
| 18   | Colonel Gaffley had. I mean I would have to assume that  | 18  | magazine it could have had one round in the chamber. It   |
| 19   | his assessment was correct. I was not in a position to   | 19  | could have been carried with one live round in the chamber.   |
| 20   | make that kind of assessment.  | 20  | GENERAL NAIDOO: It could, yes. If it's  |
| 21   | CHAIRPERSON: It does appear from the   | 21  | a 15 round magazine it can carry 16 rounds.   |
| 22   | second sentence of para 13 that the reason for his order to  | 22  | CHAIRPERSON: If that's correct it means   |
| 23   | the members to fall back was because of police firing from   | 23  | that the one in the middle, the Norinco pistol in the   |
| 24   | different directions because that's what he says in so many  | 24  | middle could only have been used, absent some kind of other   |
| 25   | words. He doesn't say I ordered them to fire back because  | 25  | magazine that we don't know anything about, could only be   |
|  |  |   |   |
| 1  | Page 23278   |   | Page 23280  |
| 1  | the strikers were firing or the strikers and others were   | 1   | used to fire one shot.  |
| 2  | firing. He directly says, specially says that his order<br>was given because it was clear that the police were firing  | 2   | GENERAL NAIDOO: If we're working on the   |
| 3  | from different directions. That's what he says, isn't it,  | 3   | presumption it had one round in the magazine.<br>CHAIRPERSON: Well, how many rounds could   |
| 4<br>5   | so we can't escape from that. As you say, it's his   | 4   | 5   |
|  | assessment, not yours.   |   | it have had in the magazine?  |
| 6  |  | 6   | CENERAL NAIDOO: Sorry in the breech   |
| 7  | -  | 6   | GENERAL NAIDOO: Sorry, in the breech  |
| 7  | GENERAL NAIDOO: Yes.   | 7   | block and 15 rounds in the magazine, yes.   |
| 8  | GENERAL NAIDOO: Yes.<br>CHAIRPERSON: But insofar as we're trying   | 7<br>8  | block and 15 rounds in the magazine, yes.<br>CHAIRPERSON: Ja, well, we know the 15  |
| 8<br>9   | GENERAL NAIDOO: Yes.<br>CHAIRPERSON: But insofar as we're trying<br>to determine what he's saying, that must be so.  | 7<br>8<br>9   | block and 15 rounds in the magazine, yes.<br>CHAIRPERSON: Ja, well, we know the 15<br>rounds in the magazine were still there.  |
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|  | Page 23281  |  | Page 23283   |
|--|---|--|--|
| 1  | GENERAL NAIDOO: That is correct, Chair.   | 1  | MR CHASKALSON SC: Well, I may be able to   |
| 2  | MR CHASKALSON SC: Now presumably  | 2  | assist you because we've been provided with all of the   |
| 3  | everybody who was arrested inside the koppie was searched?  | 3  | ballistics reports that have been done by SAPS in the  |
| 4  | GENERAL NAIDOO: That is correct, Chair.   | 4  | context of this case. None of them link cartridges to any  |
| 5  | MR CHASKALSON SC: So if it was on the   | 5  | of these three guns.   |
| 6  | person of any one of the people who remained inside the   | 6  | GENERAL NAIDOO: Chair, I think that's  |
| 7  | koppie, it would have been found in that search.  | 7  | not necessarily an indication that the firearms were not   |
| 8  | GENERAL NAIDOO: Possibly, Chair.  | ,<br>8   | used because it was also accepted that not all empty cases   |
| 9  | MR CHASKALSON SC: Did your dog squad  | 9  | were recovered from the scene. I think that is something   |
|  |   |  | -  |
| 10   | ever do the job that they were originally designed to do or   | 10   | that we are familiar with and we are aware of.   |
| 11   | intended to do, namely sniff out the rocks and crannies to  | 11   | MR CHASKALSON SC: It is quite a  |
| 12   | find out if there were any hidden firearms?   | 12   | coincidence, though, that if there were empty, hidden empty  |
| 13   | GENERAL NAIDOO: They did, Chair.  | 13   | cases, those hidden cases would have been the only cases   |
| 14   | MR CHASKALSON SC: And they didn't find  | 14   | linked to these guns, would you not say?   |
| 15   | another magazine?   | 15   | GENERAL NAIDOO: Chair, I am not sure. I  |
| 16   | GENERAL NAIDOO: Chair, a magazine is not  | 16   | don't think I'm in a position to say whether these were the  |
| 17   | a firearm. A magazine is a receptacle. A firearm is – or  | 17   | only firearms not linked to empty cases. I mean that we'd  |
| 18   | the K9, I'm not a K9 expert either, I would like to place   | 18   | have to see who else used their firearms and where the   |
| 19   | on record, but it's normally an explosives dog which  | 19   | cases were linked to their firearms.   |
| 20   | identifies where an explosion which occurs when a firearm   | 20   | MR CHASKALSON SC: You say that the   |
| 21   | is fired, is located. So I am not sure but I think it's   | 21   | firearms that we're looking at on slide 264 were found in  |
| 22   | unlikely an empty magazine would be detected by a K9.   | 22   | or near the possession of three strikers, three different  |
| 23   | CHAIRPERSON: That's not a matter on   | 23   | strikers.  |
| 24   | which either you or I are in a position to express an   | 24   | GENERAL NAIDOO: That is correct, there   |
| 25   | opinion on, is that so?   | 25   | were specific members who found them with or located them  |
|  |   |  |  |
|  |   |  |  |
|  | Page 23282  |  | Page 23284   |
| 1  | Page 23282<br>GENERAL NAIDOO: That is correct, Chair.   | 1  | Page 23284 with the firearms and performed the arrests.  |
| 1<br>2   | -   | 1<br>2   | with the firearms and performed the arrests.<br>MR CHASKALSON SC: Do you know whether  |
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| 1  | Page 23285 firing on the police as they advanced.  | 1  | Page 23287<br>CAS135/08/2012 possession of unlicensed firearm.  |
|--|--|--|---|
| 2  | GENERAL NAIDOO: That is correct, Chair.  | 2  | GENERAL NAIDOO: That's correct.   |
| 3  | CHAIRPERSON: So if that admission is   | 2  | CHAIRPERSON: One arrest. Then the next  |
| 4  | correct, then it shouldn't be difficult to ascertain – in  | 4  | one, Marikana CAS136/08/2012.   |
| 5  | fact I don't know if you can tell us but presumably it can   | 5  | GENERAL NAIDOO: That's correct, Chair.  |
| 6  | be found out – who the person was who admitted firing. The   | 6  | CHAIRPERSON: Possession of an unlicensed  |
| 7  | other one who is referred to in the sentence was in  | 7  | firearm. That sounds like the two people who are referred   |
| 8  | possession of the firearm. So this paragraph reads – "two  | 8  | to in the last sentence of paragraph 75.  |
| 9  | individuals were arrested in that area by other members  | 9  | GENERAL NAIDOO: Chair -   |
| 10   | with firearms in their possession." Now we've been given   | 10   | [14:12] CHAIRPERSON: Then of course there's   |
| 11   | the statement of Sgt Molangoanyane which is MMM6, and he   | 11   | another firearm but that according to the sergeant to whom  |
| 12   | describes in the last sentence of the statement, finding a   | 12   | I referred, Molangoanyane, that's person's dead and the   |
| 13   | dead man on the ground nearby him lying a pistol, that's   | 13   | firearm was found near him on the ground.   |
| 14   | the way it is put in the statement. Now I'm not sure if  | 14   | GENERAL NAIDOO: Chair, can I correct  |
| 15   | the evidence has been led or it's something that I've read   | 15   | that aspect of it? Firstly, the third firearm on slide 265  |
| 16   | in the papers we've got but one of these firearms was found  | 16   | it dealt with the Marikana CAS 139 of 8-2012 which  |
| 17   | on the ground covered by leaves. Adv Hemraj reminds me the   | 17   | indicates there was one arrest and a second suspect   |
| 18   | way it works is, these three firearms, one was found on the  | 18   | deceased.   |
| 19   | ground covered by leaves near someone who was dead. That's   | 19   | CHAIRPERSON: I see okay. So, that's the   |
| 20   | obviously the one that Sgt Molangoanyane is referring to in  | 20   | third firearm.  |
| 21   | MMM6. The other two firearms were the ones that you refer  | 21   | GENERAL NAIDOO: That's the third  |
| 22   | to in paragraph 75 of your statement. Now, can you tell us   | 22   | firearm.  |
| 23   | who the other members to whom you refer in the last  | 23   | CHAIRPERSON: So that accounts for the   |
| 24   | sentence of paragraph 75 were and is it possible either for  | 24   | three firearms we're talking about. Is that right?  |
| 25   | you to tell us or somebody else to tell us who the two   | 25   | GENERAL NAIDOO: Yes and then, Chair,  |
|  |  |  |   |
|  |  |  |   |
| 1  | Page 23286   | 1  | Page 23288  |
| 1  | individuals were to whom you refer in that sentence who  | 1  | just to clarify the issue of the person deceased if you can   |
| 2  | individuals were to whom you refer in that sentence who<br>were in possession of firearms, because they must be the  | 2  | just to clarify the issue of the person deceased if you can go to slide 254 of exhibit L.   |
| 2<br>3   | individuals were to whom you refer in that sentence who<br>were in possession of firearms, because they must be the<br>people who were in possession of the other two of the   | 2<br>3   | just to clarify the issue of the person deceased if you can<br>go to slide 254 of exhibit L.<br>CHAIRPERSON: Yes.   |
| 2<br>3<br>4  | individuals were to whom you refer in that sentence who<br>were in possession of firearms, because they must be the<br>people who were in possession of the other two of the<br>firearms referred to in slide 264. Is that, do you follow  | 2<br>3<br>4  | just to clarify the issue of the person deceased if you can<br>go to slide 254 of exhibit L.<br>CHAIRPERSON: Yes.<br>GENERAL NAIDOO: You'd find that there's  |
| 2<br>3<br>4<br>5   | individuals were to whom you refer in that sentence who<br>were in possession of firearms, because they must be the<br>people who were in possession of the other two of the<br>firearms referred to in slide 264. Is that, do you follow<br>me? Am I right?   | 2<br>3<br>4<br>5   | just to clarify the issue of the person deceased if you can<br>go to slide 254 of exhibit L.<br>CHAIRPERSON: Yes.<br>GENERAL NAIDOO: You'd find that there's<br>two people lying there. One of them cuffed and the other  |
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| 1  | Page 23289<br>GENERAL NAIDOO: I'm unable to –   | 1   | Page 23291<br>firearm. So it's not inconceivable that it was, you know,  |
|--|---|---|--|
| 2  | probably, but I –   | 2   | pushed into the leaves, etcetera in an attempt to conceal  |
| 3  | CHAIRPERSON: But you wouldn't have had a  | 3   | it from discovery by the police.   |
| 4  | docket for people possessing a firearm without a license  | 4   | MR CHASKALSON SC: I'll come back to this   |
| 5  | because in fact they were licensed and they were the  | 5   | issue if we can establish whether it is the firearm in   |
| 6  | licensees would you?  | 6   | question. We'll compare it to the photographs of the   |
| 7  | GENERAL NAIDOO: Yes, they were legal –  | 7   | pointing out of the firearm and -  |
| 8  | CHAIRPERSON: I mean you could   | ,<br>8  | CHAIRPERSON: Can you remember who the  |
| 9  | theoretically have a docket, but it would be stupid and   | 9   | member was who gave the explanation to you? If you can't   |
| 10   | wouldn't last very long would it?   | 10  | remember perhaps you can find out.   |
| 11   | GENERAL NAIDOO: Chair, as far as my   | 11  | GENERAL NAIDOO: Chair, yes I think it  |
| 12   | recollection at that stage goes, they were legal firearms,  | 12  | would be fairly easy to find out. He would have been   |
| 13   | but yes they were charged with unlawful possession. So the  | 13  | acting officer as well and if my memory serves me right it   |
| 14   | assumption is the wrong person had them.  | 14  | could have been a warrant officer. But I think we can  |
| 15   | CHAIRPERSON: All right, Mr Chaskalson,  | 15  | establish that.  |
| 16   | Mr Gotz, have you got a problem, do you want to say   | 16  | CHAIRPERSON: I'm not sure if he's on the   |
| 17   | something? You're gesticulating wildly down there on your   | 17  | list of witnesses, but we can a statement from him or  |
| 18   | bench. Have you got a problem?  | 18  | perhaps he's made a statement already. It may not  |
| 19   | MR GOTZ: Chair, no we'll take this up at  | 19  | necessary for him to give oral evidence.   |
| 20   | the appropriate time. I'm just indicating certain things  | 20  | GENERAL NAIDOO: I'm sure he would have   |
| 21   | to my junior.   | 21  | made a statement already because of the arrest as well,  |
| 22   | CHAIRPERSON: All right, we'll wait with   | 22  | Chair.   |
| 23   | bated breath. Mr Chaskalson, please proceed with your   | 23  | CHAIRPERSON: It could actually be in the   |
| 24   | cross-examination.  | 24  | docket.  |
| 25   | MR CHASKALSON SC: While we're staying at  | 25  | GENERAL NAIDOO: Yes, all right, Chair.   |
|  | Page 23290  |   | Page 23292   |
| 1  | slide 254 and the gun under leaves, can I ask us to look at   | 1   | MR CHASKALSON SC: Just before we leave   |
| 2  | JJJ27 point 9424? I think we've got the thumbnails here,  |   |  |
|  |   | 2   | this point, can we go to the very next photograph, 9425  |
| 3  | we need the original photograph 9424.   | 2<br>3  | because my note says that the gun is there as well. No,  |
| 3<br>4   | we need the original photograph 9424.<br>CHAIRPERSON: The thumbnail with 9424 on  |   | because my note says that the gun is there as well. No,<br>it's going to be too laborious, I'm going to have to copy   |
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| 1  | Page 23293   | 1  | Page 23295   |
| 1  | be or what I thought to be a long barrelled firearm. I know one of the members identified it and said it was an  | 1<br>2   | searched. Do you accept that?<br>GENERAL NAIDOO: Chair, two things, yes.   |
| 3  | R5. I could not specifically say it was an R5. I did look  | 2  | In terms of when I saw the miner as I was moving from my   |
| 4  | it as a long barrelled firearm and I indicated such in my  | 4  | vehicle which is the K9 vehicle that's indicated on the  |
| 4<br>5   | statement. That was a sighting, but we did not recover at  | 5  | photograph on the extreme right, I was moving towards what   |
| 6  | the scene, that is correct, Chair.   | 6  | - the NIU position, not as indicated on the map. They were   |
| 7  |  | 7  | still not yet at the rocks, not into the koppie and the  |
| 8  | MR CHASKALSON SC: Major-General, that brings me to the purpose for which I was calling up slide  | 8  | location or the place that I could place the person that I   |
| 9  | 249. You testified, in your statement you mentioned at a   | 9  | observed was if you follow the NIU arrow from the bottom,  |
| <sup>7</sup><br>10   | certain point that when the forward holding area 2 line,   | 10   | the second red arrow, he was from that direction running   |
| 11   | filtering line was coming up unarmed strikers were allowed   | 11   | with what now is the POP still obviously going down the  |
| 12   | to pass through that line.   | 12   | rock the other side. I had a brief view of him before he   |
| 13   | GENERAL NAIDOO: Chair, I think I would   | 13   | went out of my sight. That's with regard to when I saw   |
| 14   | rather say the dispersing strikers were allowed to pass  | 14   | him. Sorry can we have the other part of the question?   |
| 14   | through the line, yes.   | 15   | MR CHASKALSON SC: That mine worker   |
| 16   | MR CHASKALSON SC: Dispersing strikers.   | 16   | himself, unless the commanders on the western side were  |
| 17   | Presumably if they were carrying weapons on them visibly   | 17   | letting people out of the koppie that miner would have been  |
| 18   | they would have been stopped and arrested.   | 18   | searched. So he wouldn't have got away with the R5 on him.   |
| 19   | GENERAL NAIDOO: Or asked to drop the   | 19   | Do you accept that?  |
| 20   | weapons and disperse, yes.   | 20   | GENERAL NAIDOO: Chair, I think we need   |
| 21   | MR CHASKALSON SC: But there came a point   | 21   | to keep in mind and I indicated in my statement, I think,  |
| 22   | at which SAPS had effectively laid siege to the koppie, the  | 22   | that this person had a blanket over him and an R5 rifle is   |
| 23   | point that we see in slide 249.  | 23   | not a large, so large one that it cannot be concealed. As  |
| 24   | GENERAL NAIDOO: That is correct, Chair.  | 24   | to whether everybody that was dispersing was being searched  |
| 25   | MR CHASKALSON SC: Now from this point on   | 25   | when it looked obviously that they did not have anything in  |
|  |  |  |  |
|  |  |  |  |
| 1  | Page 23294   |  | Page 23296   |
| 1  | Page 23294 did any occupants of the koppie, were any occupants of the  | 1  | Page 23296<br>their arms, I'm not sure, but one would have expected that   |
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|  | Page 23297   |  | Page 23299  |
|--|--|--|---|
| 1  | vision, but on the side of the K9 yes then nobody came   | 1  | MR CHASKALSON: So what is your theory as  |
| 2  | through.   | 2  | to what happened to this R5?  |
| 3  | MR CHASKALSON SC: So you're suggesting   | 3  | GENERAL NAIDOO: Chair, that's a question  |
| 4  | that the TRT line came up after, sorry the forward holding   | 4  | that we would have wanted to answer and we desperately want   |
| 5  | area 2 line came up after your K9 line?  | 5  | to answer because it would have been a positive link to a   |
| 6  | GENERAL NAIDOO: Chair, yes. I think my   | 6  | crime which we were there. But it's not implausible that  |
| 7  | assumption based on where I'd seen them when we started the  | 7  | it was concealed somewhere or some way, somewhere which we  |
| 8  | movement, they would have arrived at their position that is  | 8  | did not locate and we have had scenarios previously   |
| 9  | indicated there after the K9 from forward holding area 1   | 9  | similarly where you know, we've conducted searches and we   |
| 10   | arrived.   | 10   | could not find a particularly firearm and much later when   |
| 11   | MR CHASKALSON SC: Major-General, I have  | 11   | we recover it we find you know it was in a place where  |
| 12   | to put – well I have to you that you're just wrong in that   | 12   | never really thought. So, I am just theorising, as I said   |
| 13   | respect. If we can go to JJJ10 4546 and if we can zoom in.   | 13   | we would want the answer as the police leading the  |
| 14   | Well first of all do you accept that at this stage your K9   | 14   | investigation to the test as much as this Commission.   |
| 15   | group has not reached the koppie:  | 15   | MR CHASKALSON: How long was the scene   |
| 16   | GENERAL NAIDOO: They're not visible in   | 16   | sealed off for as a crime scene?  |
|  |  |  |   |
| 17   | the picture, yes.  | 17   | GENERAL NAIDOO: Chair, approximately a  |
| 18   | MR CHASKALSON SC: If we can then zoom in   | 18   | week.   |
| 19   | on the area that I'm marking now which is in the dry dam on  | 19   | MR CHASKALSON: And during that period,  |
| 20   | the top left-hand corner. Well towards the top left-hand   | 20   | detectives and SAPS personnel were scouring that scene for  |
| 21   | corner of the photograph.  | 21   | all evidence that they could find.  |
| 22   | [14:32] What we see there, is Captain Kidd's forward   | 22   | GENERAL NAIDOO: That is correct, Chair.   |
| 23   | holding area 2 group approaching the dry dam. If we go to  | 23   | MR CHASKALSON: But they didn't find a   |
| 24   | the next photograph, we will see that they've moved into   | 24   | R5?   |
| 25   | the dam. 4547, JJJ10 4547, and if we can then zoom in on   | 25   | GENERAL NAIDOO: No, Chair.  |
|  | Page 23298   |  | D 00000   |
|  |  |  |   |
| 1  | 5  | 1  | Page 23300<br>MR CHASKALSON: Now, Major General, when   |
| 1  | the dam, which is in the top centre of the photograph and  | 1  | MR CHASKALSON: Now, Major General, when   |
| 2  | the dam, which is in the top centre of the photograph and you'll see that the SAPS members have fanned out along the   | 2  | MR CHASKALSON: Now, Major General, when you brought the dog squad into the koppie, or towards the   |
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|  | Page 23301  |  | Page 23303  |
|--|---|--|---|
| 1  | operating procedure in terms of how to sweep [inaudible].   | 1  | GENERAL NAIDOO: Chair, as I indicated,  |
| 2  | MR CHASKALSON: Well, you say you  | 2  | it was four vehicles from the dog squad, and it's two   |
| 3  | indicated in terms of your intention, did you communicate   | 3  | people per vehicle including myself and my driver, it was   |
| 4  | to them that you know, your primary objective was getting   | 4  | ten of us that moved forward.   |
| 5  | the medics to scene 1, and they were coming in with you to  | 5  | MR CHASKALSON: Sorry Major General, we  |
| 6  | try and stabilise the situation at the koppie so that you   | 6  | are at cross purposes, oh, you've answered my second  |
| 7  | could open a route for the medics.  | 7  | question which you had already - with what was going to be  |
| 8  | GENERAL NAIDOO: Chair, no, when I   | 8  | my second question, which I realise would have been   |
| 9  | indicate briefing, I indicate our intention, I indicated  | 9  | gratuitous because you've answered it already. Ten of you   |
| 10   | that we are going to go towards the sound of the shooting   | 10   | moved forward -   |
| 11   | in a basic line, that was the vehicles that went with me.   | 11   | GENERAL NAIDOO: That is correct.  |
| 12   | I don't think I gave them that detailed briefing that's   | 12   | MR CHASKALSON: - how many members of the  |
| 13   | been referred to now.   | 13   | dog squad were left behind?   |
| 14   | MR CHASKALSON: Would you have expected  | 14   | GENERAL NAIDOO: Chair, if I can do the  |
| 15   | the dog squad to know that this was going to be as quick an   | 15   | maths quickly, Chair, according to my notes there would   |
| 16   | operation as possible because the primary objective   | 16   | have been more than 15 members. I am just trying to do  |
| 17   | remained getting the medics to scene 1?   | 17   | rough maps, but there would have been more than 15, 20  |
| 18   | GENERAL NAIDOO: Chair, actually their   | 18   | members, Chair.   |
| 19   | deployment, as I indicated was on instruction and the SOPs  | 19   | MR CHASKALSON: Of the dog squad?  |
| 20   | in terms of executing other tasks, would kick in, so when I   | 20   | GENERAL NAIDOO: That is correct, Chair.   |
| 21   | indicated we are going forward in a basic line, sweeping,   | 21   | The bulk of the K9 unit.  |
| 22   | that was the task that they were executing at that stage.   | 22   | MR CHASKALSON: And were those members   |
| 23   | I indicated that we need to get to where the shooting was.  | 23   | sufficient to do the escort of the medics without you?  |
| 24   | So we moved forward in that basic line to execute that  | 24   | GENERAL NAIDOO: Had it been necessary,  |
| 25   | specific task.  | 25   | yes.  |
|  |   |  |   |
|  | Dago 22202  |  | Page 22204  |
| 1  | Page 23302<br>MR CHASKALSON: But Major General, the   | 1  | Page 23304<br>MR CHASKALSON: So then there wouldn't   |
| 1<br>2   | -   | 1<br>2   | <b>.</b>  |
|  | MR CHASKALSON: But Major General, the   |  | MR CHASKALSON: So then there wouldn't   |
| 2  | MR CHASKALSON: But Major General, the dog squad was going to be used in the first instance to   | 2  | MR CHASKALSON: So then there wouldn't have been a need to withdraw the ones who had come in?  |
| 2<br>3   | MR CHASKALSON: But Major General, the dog squad was going to be used in the first instance to escort medics to scene 1, is that not correct?  | 2<br>3   | MR CHASKALSON: So then there wouldn't<br>have been a need to withdraw the ones who had come in?<br>GENERAL NAIDOO: No, Chair.   |
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|  | Dama 22205  |   | Dama 22207   |
|--|---|---|--|
| 1  | Page 23305<br>MR CHASKALSON: And that vehicle to the  | 1   | Page 23307<br>Chaskalson?  |
| 2  | left of Sergeant Brazier and Sergeant Harmse?   | 2   | MR CHASKALSON: It should have been.  |
| 3  | GENERAL NAIDOO: Chair, I can't at this  | 3   | There is also a typed version but the handwritten will be  |
| 4  | stage recall specifically. One of the vehicles was Myburgh  | 4   | good enough.   |
| 5  | as well.  | 5   | CHAIRPERSON: I don't seem to have it, we   |
| 6  | MR CHASKALSON: I think you will find  | 6   | were given some statements yesterday that I've gone  |
| 7  | that Sergeant Myburgh's vehicle is this one that I am   | 7   | through. I don't see that one, there are others we have.   |
| 8  | pointing at, at E6. He was to the far left according to   | 8   | MR CHASKALSON: Chairperson, I must   |
| 9  | the instructions that we've been given.   | 9   | apologise for that, we will arrange for copies to be -   |
| 10   | GENERAL NAIDOO: Chair, I would not  | 10  | CHAIRPERSON: If this is going to be  |
| 11   | dispute that but as I indicated, the vehicle immediately  | 11  | handed in, I've got to make it an exhibit even if I can't  |
| 12   | next to me was Sergeant Brazier and Sergeant Harmse.  | 12  | mark my own copy.  |
| 13   | MR CHASKALSON: And in your vehicle was  | 13  | MR CHASKALSON: It will be MMM8   |
| 14   | yourself, and is it Lieutenant-Colonel Tongwane?  | 14  | Chairperson.   |
| 15   | GENERAL NAIDOO: That is correct, Chair.   | 15  | CHAIRPERSON: Yes, thank you. MMM8 will   |
| 16   | MR CHASKALSON: The driver.  | 16  | be the statement of Constable Motseme.   |
| 17   | GENERAL NAIDOO: That is correct.  | 17  | MR CHASKALSON: If we start at paragraph  |
| 18   | MR CHASKALSON: Was Constable  | 18  | 2, "on Thursday 16 August at about three, I was deployed at  |
| 19   | Molangoanyane one of your team? Sorry, Sergeant   | 19  | Marikana and posted under Commander General Naidoo."   |
| 20   | Molangoanyane.  | 20  | CHAIRPERSON: Sorry, before you carry on,   |
| 21   | GENERAL NAIDOO: Chair, I am not familiar  | 21  | have you seen this statement, General Naidoo?  |
| 22   | with the names of all the personnel so I would not be able  | 22  | GENERAL NAIDOO: I have the statement in  |
| 23   | to say for sure if he was or he was not.  | 23<br>24  | front of me<br>CHAIRPERSON: You have? So you are ahead   |
| 24<br>25   | MR CHASKALSON: Servant Vana? Is that a name that rings a bell?  | 24<br>25  | CHAIRPERSON: You have? So you are ahead of me on that, good luck to you. Let's carry on.   |
| 25   |   | 23  | or the ori that, good luck to you. Let's carry on.   |
|  | Page 23306  |   | Page 23308   |
| 1  | GENERAL NAIDOO: Vana? No, not for the   | 1   | MR CHASKALSON: So paragraph 2 indicates  |
| 2  | North West.   | 2   | that he was under your command. Paragraph 3, "At about   |
| 3  | MR CHASKALSON: Can you just bear with me  | 3   | that time, we moved towards the hill and as we were close  |
| 4  | for one minute? I just want to look at Constable Vana's   | 4   | members of the NIU and Task Force were approaching from  |
| 5  | statement. Yes, it's not clear from Constable Vana's  | 5   | different direction and we moved together and as we were   |
| 6  | statement whether he was part of your group or not. So I  | 6   |  |
| 7  |   | _   | close to the hill some people was shooting at us from that   |
|  | won't take further. Constable Mutsi?  | 7   | hill. We took cover from the van that was coming behind us   |
| 8  | GENERAL NAIDOO: Chair, as I already   | 7<br>8  | hill. We took cover from the van that was coming behind us<br>and some were still behind the trees and they were still   |
| 8<br>9   | GENERAL NAIDOO: Chair, as I already indicated, with the exception of the commanders and members   | 7<br>8<br>9   | hill. We took cover from the van that was coming behind us<br>and some were still behind the trees and they were still<br>shooting at us and that was when the police started to   |
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| 1  | Page 23309 hill." Anyway I just wanted to clarify with this witness  | 1  | Page 23311<br>MR CHASKALSON SC: So he shot six shots –   |
|--|--|--|--|
| 2  | whether he gave any command. He said, no.  | 2  | GENERAL NAIDOO: Eight.   |
|  | [14:52] If we can then go to MMM6 which is Sergeant  | 2  | e e e e e e e e e e e e e e e e e e e  |
| 3  |  |  | MR CHASKALSON SC: Eight shots from 60 to   |
| 4  | Molangoanyane and if we can read this together with  | 4  | 70 metres or possibly a little less because he says he   |
| 5  | Constable Mutsi, which will be MMM7 and then I'll ask you  | 5  | crawled forward, with a pistol in the direction of a bush  |
| 6  | some questions. If we go down two paragraphs of this   | 6  | where he thought shots were coming at him, from which he   |
| 7  | additional statement of Sergeant Molangoanyane, "We drove  | 7  | thought shots were coming at him. Is that an acceptable  |
| 8  | from forward holding area to the southern side of the hill.  | 8  | use of a firearm by a SAPS member?   |
| 9  | General Naidoo gave instruction again to get off the   | 9  | GENERAL NAIDOO: Chair, as I indicated,   |
| 10   | vehicles with dogs on leash, K9 members with their   | 10   | it was problematic where he does not expect, does not  |
| 11   | explosive dogs, made extended line approaching the hill. I   | 11   | explain a specific target and he fired generally, so that  |
| 12   | move out with our K9 bakkie behind members with dogs for   | 12   | would be problematic.  |
| 13   | cover purpose if anything can happen. As we got close,   | 13   | MR CHASKALSON SC: Do you intend to do  |
| 14   | plus-minus 60 to 70 metres from a hill, I heard a shot.  | 14   | anything about it?   |
| 15   | Immediately I got out of the bakkie. I lie to the ground.  | 15   | GENERAL NAIDOO: Chair, as the SAPS?  |
| 16   | The second shot was fired. That's where I picked the   | 16   | MR CHASKALSON SC: As the SAPS or in your   |
| 17   | direction where the shots were from, it was from a green   | 17   | case, as Major-General Naidoo, deputy Provincial   |
| 18   | bush right in front of me between rocks or caves. It was   | 18   | Commissioner of the North-West.  |
| 19   | pistol, sounded low calibre. I crawled forward and alerted   | 19   | GENERAL NAIDOO: Chair, yes, if – at the  |
| 20   | my colleagues on my right that the green bush, that's where  | 20   | appropriate time, yes, I would do something about that.  |
| 21   | the shots were fired from. I took out my pistol shooting   | 21   | MR CHASKALSON SC: And what would be an   |
| 22   | in that bush eight shots. I realised I cannot reach the  | 22   | appropriate thing to do about it?  |
| 23   | suspect. I decided to crawl back to the bakkie where I   | 23   | GENERAL NAIDOO: Obviously, Chair, the  |
| 24   | found TRT and K9 members took cover with the bakkie.   | 24   | criminal aspect of it is under investigation and not by the  |
| 25   | showed TRT member that green bush. He fired two shots with   | 25   | SAPS, from IPID. We normally have a co-operative agreement   |
|  |  |  |  |
|  | Page 23310   |  | Page 23312   |
| 1  | his R5 rifle. I then saw a movement. I was not sure  | 1  | with them in terms of matters that they are investigating.   |
| 2  | whether the person was falling or running away because they  | 2  | The twofold approaches are as follows, one, in agreement   |
| 3  | were in the shade. I ran into that direction" – and then   | 3  | with $\ensuremath{IPID}$ we await their recommendations because $\ensuremath{IPID}$ makes  |
| 4  | he talks about other encounters, but if we can then go to  | 4  | specific recommendations to us with regard to matters that   |
| 5  | Constable Mutsi before I ask my questions. Let's start   | 5  | they are investigating criminally, also in terms of how we   |
| 6  | with Constable Molangoanyane. Did you witness Sergeant   | 6  | should deal with things departmentally. Or alternatively   |
| 7  | Molangoanyane's shooting and his instruction to the TRT?   | 7  | we could institute an internal departmental inquiry into   |
| 8  | GENERAL NAIDOO: Chair, no. If he was   | 8  | the matter and based on their report that will be tabled in  |
| 9  | linked with the TRT he would have been the extreme left  | 9  | respect of the particular incident, we can determine the   |
| 10   | hand side vehicle as the annexure L indicated, TRT members   | 10   | appropriate way forward.   |
| 11   | and the K9 came together at that point.  | 11   | MR CHASKALSON SC: Maybe we could move to   |
| 12   | MR CHASKALSON SC: So you didn't see  | 12   | Constable Mutsi, MMM7. Start paragraph 6, "General Naidoo  |
|  | 5  | 10   | gave us the instruction that we must follow his lead and on  |
| 13   | that?  | 13   |  |
| 13<br>14   | that?<br>GENERAL NAIDOO: No, Chair.  | 13<br>14   | -  |
| 14   | GENERAL NAIDOO: No, Chair.   |  | our arrival at the power station we moved out of the   |
|  | GENERAL NAIDOO: No, Chair.<br>MR CHASKALSON SC: Having read his  | 14   | our arrival at the power station we moved out of the vehicle and approached the mountain from the southern side  |
| 14<br>15<br>16   | GENERAL NAIDOO:No, Chair.MR CHASKALSON SC:Having read hisstatement do you think that's an acceptable approach to   | 14<br>15<br>16   | our arrival at the power station we moved out of the<br>vehicle and approached the mountain from the southern side<br>and I was on foot as I had left the vehicle that I was   |
| 14<br>15<br>16<br>17   | GENERAL NAIDOO: No, Chair.<br>MR CHASKALSON SC: Having read his<br>statement do you think that's an acceptable approach to<br>using a firearm in an operation?   | 14<br>15<br>16<br>17   | our arrival at the power station we moved out of the<br>vehicle and approached the mountain from the southern side<br>and I was on foot as I had left the vehicle that I was<br>driving near the station (power station). During the   |
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| <ol> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol> | GENERAL NAIDOO:No, Chair.MR CHASKALSON SC:Having read hisstatement do you think that's an acceptable approach to<br>using a firearm in an operation?GENERAL NAIDOO:Chair, specificallywhich part? Is it Mlangeni?MR CHASKALSON SC:Molangoanyane.GENERAL NAIDOO:Molangoanyane.GENERAL NAIDOO:Molangoanyane.Yes,Chair, I've got it. Chair, he doesn't specificallyindicate whether he has sighted an individual so I think   | 14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23   | our arrival at the power station we moved out of the<br>vehicle and approached the mountain from the southern side<br>and I was on foot as I had left the vehicle that I was<br>driving near the station (power station). During the<br>approach I saw the miners coming out of the mountain<br>towards our direction. They were ordered to stop and drop<br>their weapons. At that stage police officials were trying<br>to take cover and the miners turned and went, ran back to<br>the mountain and there were bushes so they'd hidden<br>themselves with the bushes. And at that stage they then  |

|  | Page 23313  |  | Page 23315   |
|--|---|--|--|
| 1  | was just an open space. Then I shot rounds to the   | 1  | firearms.  |
| 2  | direction where the shots were coming from with an R5 rifle   | 2  | MR CHASKALSON SC: But they didn't have a   |
| 3  | on kneeling position. I then saw TRT members on my left   | 3  | brief to assess the explanations that the statements   |
| 4  | hand side shooting to the bush, trying to retreat as they   | 4  | provide?   |
| 5  | indicated that there are people shooting at them from the   | 5  | GENERAL NAIDOO: Chair, I know some of  |
| 6  | busy. I then decide to shoot to give cover to TRT members   | 6  | the members of our team were from our legal services   |
| 7  | because it was difficult for them to shoot going backwards  | 7  | because we asked them to assess the statements so that we  |
| 8  | and I shot till they took cover with a police bakkie. I am  | 8  | were in a position to know what is the bulk or what is the   |
| 9  | not sure as to how many people did I shoot because at some  | 9  | gist of what is contained there. So I could not say  |
| 10   | stage I was joined by Sergeant Myburgh and Warrant Officer  | 10   | whether there – I cannot at this stage clearly indicate  |
| 11   | Baloyi and at total I shot 18 rounds with an R5 rifle."   | 11   | whether they did include that in their assessment but I'm  |
| 12   | Did that strike you as a responsible use of an R5 rifle in  | 12   | sure I can establish that as well.   |
| 13   | an operation?   | 13   | MR CHASKALSON SC: But when a SAPS member   |
| 14   | GENERAL NAIDOO: Chair, 18 rounds is a   | 14   | fires a firearm in an operation, is it not incumbent on his  |
| 15   | lot of rounds to shoot in any particular situation, whilst  | 15   | or her commander to make some sort of investigation into   |
| 16   | I can't really say what the assessment of the individual  | 16   | the circumstances in which that happened and to assess   |
| 17   | was who made the assessment to fire but once again ${\rm I}$ would  | 17   | whether that shooting was justified?   |
| 18   | indicate that one of the requirements is also have a  | 18   | GENERAL NAIDOO: Chair, yes, that is in   |
| 19   | specific target in terms of engaging. Yes, in terms of  | 19   | the instance of a single shooting incident or an incident  |
| 20   | tactical training members are given training in terms of  | 20   | other than the one that we have before us now. In the one  |
| 21   | providing covering fire to assist members who may be  | 21   | that we have before us now, obviously on the scale and the   |
| 22   | trapped but in this case, as I said, these circumstances  | 22   | processes there, there is a specific implication. As I   |
| 23   | and the situation that led to him determining that 18   | 23   | already indicated, there's an investigation that's being   |
| 24   | rounds would be sufficient, I am not in a position without  | 24   | conducted by IPID which has an impact in terms of what we  |
| 25   | knowing what his assessment was.  | 25   | are doing but that does not take away eventually the   |
|  |   |  |  |
|  | Page 23314  |  | Page 23316   |
| 1  | MR CHASKALSON SC: Do you know if there's  | 1  | responsibility from us, SAPS and the line management side  |
| 2  | MR CHASKALSON SC: Do you know if there's been any attempt by the SAPS to go through the statements  | 2  | responsibility from us, SAPS and the line management side to eventually investigate and ensure the appropriate is  |
| 2<br>3   | MR CHASKALSON SC: Do you know if there's been any attempt by the SAPS to go through the statements made by people who shot on the day, to assess whether the  | 2<br>3   | responsibility from us, SAPS and the line management side<br>to eventually investigate and ensure the appropriate is<br>taken in terms of any use of firearm which may contravene  |
| 2<br>3<br>4  | MR CHASKALSON SC: Do you know if there's<br>been any attempt by the SAPS to go through the statements<br>made by people who shot on the day, to assess whether the<br>statements on their own terms provide an explanation that   | 2<br>3<br>4  | responsibility from us, SAPS and the line management side<br>to eventually investigate and ensure the appropriate is<br>taken in terms of any use of firearm which may contravene<br>our policies as well.   |
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|  | Page 23317  |  | Page 23319   |
|--|---|--|--|
| 1  | Commission to finish to finalise their work and similarly I   | 1  | CHAIRPERSON: Yes. You see I take it, I   |
| 2  | think the SAPS would not want to influence or in any way  | 2  | mean if a member of the special task force fired one shot  |
| 3  | interfere with possible testimony that the individual   | 3  | he would be one round short.   |
| 4  | members would give to this Commission or to IPID in their   | 4  | GENERAL NAIDOO: That's correct, Chair.   |
| 5  | investigation. So it does not take the responsibility away  | 5  | CHAIRPERSON: So they couldn't get away   |
| 6  | from me or the SAPS, but I think in this particular   | 6  | with firing and not admitting that they'd fired.   |
| 7  | circumstance it's about the timing so that processes can  | 7  | GENERAL NAIDOO: That's correct, Chair.   |
| 8  | run.  | 8  | CHAIRPERSON: So obviously the  |
| 9  | CHAIRPERSON: Tell me, did you see   | 9  | information to which I've referred is in L, so the police  |
| 10   | Constable Mutsi's statement, exhibit MMM7, before you   | 10   | are satisfied or were satisfied at Roots that the denial by  |
| 11   | attention was drawn to it by the evidence leaders?  | 11   | the special task force that they fired any shots at scene  |
| 12   | GENERAL NAIDOO: Chair, no. As I   | 12   | 2, is correct and it might, it's capable of being checked  |
|  |   |  |  |
| 13   | indicated, that all statements were managed through our   | 13   | easily by saying well, where are your bullets? And if they   |
| 14   | nodal point and there was a team that processed, so   | 14   | had them all then clearly they didn't fire any, so – but   |
| 15   | specifically the statement of a member was, or any member,  | 15   | here you've got someone from, he's a K9 man, is he, Mutsi?   |
| 16   | was not brought to my attention but obviously one has seen  | 16   | GENERAL NAIDOO: That's correct, Chair.   |
| 17   | the shooting list and seen the amount of ammunition   | 17   | CHAIRPERSON: He was one of the people  |
| 18   | expended by individual members.   | 18   | under your command on that day.  |
| 19   | CHAIRPERSON: The thing that concerns me,  | 19   | GENERAL NAIDOO: That's correct, Chair.   |
| 20   | if one looks at the shooting list it appears, as far as I   | 20   | CHAIRPERSON: And he makes this   |
| 21   | understand, that members of the STF didn't fire shots at  | 21   | allegation which appears to be false.  |
| 22   | all but we find this Constable Mutsi in paragraph 11  | 22   | GENERAL NAIDOO: Chair –  |
| 23   | alleging that members of the special task force were  | 23   | CHAIRPERSON: Or certainly incorrect.   |
| 24   | shooting next to their vehicles. They were shooting from  | 24   | Let's not use a word that raises temperatures unduly. He   |
| 25   | the south-western side with rifles. Now as far as we've   | 25   | makes a statement which appears to be incorrect, is that   |
|  |   |  |  |
|  |   |  |  |
|  | Page 23318  |  | Page 23320   |
| 1  | been told - now either if that's true we've been  | 1  | correct? I'm right in saying that, am I?   |
| 2  | been told – now either if that's true we've been<br>misinformed because we've been told the STF didn't fire or  | 2  | correct? I'm right in saying that, am I?<br>GENERAL NAIDOO: Chair, as I indicated,   |
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| 1  |   | 1  | Page 23323   |
| 1  | CHAIRPERSON: Were you present at Roots  | 1  | CHAIRPERSON: No, I – the purpose of my   |
| 2  | when that happened?   | 2  | question was, well, my question was based on an assumption   |
| 3  | GENERAL NAIDOO: Chair, I was at Roots   | 3  | that the STF denial that they fired any shots was correct  |
| 4  | but I was not with that discussion. It was the K9   | 4  | because it seemed to me that if they had fired shots there   |
| 5  | commander and the special task force commander.   | 5  | would have been a shortage of rounds to account for and  |
| 6  | CHAIRPERSON: Do you know if notes were  | 6  | clearly there wasn't such a shortage. So it seems that the   |
| 7  | kept of that discussion and the accusations and counter-  | 7  | STF's denial that they fired shots prima facie, obviously  |
| 8  | accusations and denials and counter-denials?  | 8  | subject to evidence which may come, can be accepted but of   |
| 9  | GENERAL NAIDOO: Chair, I would say the  | 9  | course that means that the allegation against Moono is   |
| 10   | reason I became aware of it is because it was a discussion  | 10   | untrue but anyway, it may be that the explanation that Mr  |
| 11   | between them. I can't really say, you know, if somebody   | 11   | Chaskalson has given is the correct one. And fortunately   |
| 12   | was taking - I know one or two people that were in that   | 12   | one can identify dog handlers from the photographs because   |
| 13   | discussion was Colonel Scott and other than that, you know,   | 13   | they had the dogs, including as you've heard, this famous  |
| 14   | in terms of whether they kept notes, no, I can't testify to   | 14   | white dog that succeeded in biting an STF man who, despite   |
| 15   | that.   | 15   | all the specialised training he got, wasn't able to avoid  |
| 16   | CHAIRPERSON: Thank you. Mr Chaskalson,  | 16   | that. Can we take tea now?   |
| 17   | it looks as if it's about time to take tea but if you want  | 17   | GENERAL NAIDOO: Thank you, Chair.  |
| 18   | to deal with something before that, I'm in your hands.  | 18   | [COMMISSION ADJOURNS COMMISSION RESUMES]   |
| 19   | MR CHASKALSON SC: Maybe just to finish  | 19   | [15:43] CHAIRPERSON: The Commission resumes.   |
| 20   | off this particular topic flowing from what you have  | 20   | Major-General, you're still under oath. Mr Chaskalson?   |
| 21   | raised, Chairperson. A possible explanation for this  | 21   | GENERAL NAIDOO: Still under oath, Chair.   |
| 22   | discrepancy between Constable Mutsi and the TRT is that   | 22   | CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):  |
| 23   | there people –  | 23   | Can we look at FFF8 and if we go down to the bottom of this  |
| 24   | CHAIRPERSON: Not the TRT, STF.  | 24   | document, up to the next yellow line that becomes visible.   |
| 25   | [15:12] MR CHASKALSON SC: STF, is that there  | 25   | Sorry, up, not down. Down a little bit so that we can see  |
|  |   |  |  |
|  | Dago 22222  |  | Page 22224   |
| 1  | Page 23322<br>were non-STF members taking cover immediately behind the  | 1  | Page 23324<br>the bottom now, that's great. Major-General, this is a   |
| 1<br>2   | Page 23322<br>were non-STF members taking cover immediately behind the<br>STF vehicle and possibly shooting from there, including dog   | 1<br>2   | Page 23324<br>the bottom now, that's great. Major-General, this is a<br>list of members who shot at scene 2 and if we see the name   |
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|  | Page 23325   |  | Page 23327  |
|--|--|--|---|
| 1  | members indicated under K9.  | 1  | equipped and at that stage I thought it was appropriate   |
| 2  | MR CHASKALSON SC: You see with   | 2  | that I had these available should – I was not sure where we   |
| 3  | hindsight, in the wake of your question, Major-General, it   | 3  | were going, as I said I had to still make an assessment   |
| 4  | does strike me that you may not be the appropriate person  | 4  | whether they had such equipment to -  |
| 5  | to conduct this exercise and maybe I should stop this line   | 5  | CHAIRPERSON: Sorry to interrupt. When   |
| 6  | of cross-examination because it does seem to me that you're  | 6  | did you actually take possession of them and where were you   |
| 7  | not possibly in a position to exercise a dispassionate   | 7  | when you took possession of them?   |
| 8  | judgment in that regard because of the fact that you shot  | 8  | GENERAL NAIDOO: Chair, no, it was not   |
| 9  | too, so let me stop it there. If we can move to JJJ29 253,   | 9  | even at the – Chair, it was when I was at forward holding   |
| 10   | Major-General, that's Brigadier Calitz in the centre of the  | 10   | area 1. So it was before the deployment. It was in my   |
| 11   | shot. Is that you on the Brigadier's right hand side?  | 11   | vehicle, lying there, you know, during the time that I was  |
| 12   | GENERAL NAIDOO: With what's visible,   | 12   | at forward holding area 1.  |
| 13   | yes, that is.  | 13   | MR CHASKALSON SC: To whom were these  |
| 14   | MR CHASKALSON SC: I would imagine it's   | 14   | stun grenades formally issued on the day? Who had to  |
| 15   | easy to identify yourself by the rank.   | 15   | account for them?   |
| 16   | GENERAL NAIDOO: And the South African  | 16   | GENERAL NAIDOO: Chair, I can check. At  |
| 17   | flag on the sleeve.  | 17   | this stage I can't remember offhand.  |
| 18   | MR CHASKALSON SC: What is that on your   | 18   | MR CHASKALSON SC: You say they were in  |
| 19   | tunic just above your pistol, those two things above your  | 19   | your vehicle?   |
| 20   | pistol?  | 20   | GENERAL NAIDOO: I said I placed them in   |
| 21   | GENERAL NAIDOO: Chair, that's not my   | 21   | my vehicle, Chair.  |
| 22   | pistol, those are the – that's the pouch which contains the  | 22   | MR CHASKALSON SC: And did you   |
| 23   | spare magazine for my pistol but the two items you refer to  | 23   | essentially requisition them from someone who was left  |
| 24   | there were two stun grenades.  | 24   | behind at forward holding area 1? Not forward holding area  |
| 25   | MR CHASKALSON SC: That's what I thought.   | 25   | 1, at the power station?  |
|  |  |  |   |
|  |  |  | D 00000   |
| 1  | Page 23326<br>Is it customary for a general to carry around stun   | 1  | Page 23328<br>GENERAL NAIDOO: Chair, I can confirm  |
| 1  | Is it customary for a general to carry around stun   | 1<br>2   | GENERAL NAIDOO: Chair, I can confirm  |
| 1<br>2<br>3  | Is it customary for a general to carry around stun grenades?   |  | GENERAL NAIDOO: Chair, I can confirm where I had obtained them. As I said, my recollection  |
| 2  | Is it customary for a general to carry around stun<br>grenades?<br>GENERAL NAIDOO: No, Chair.  | 2  | GENERAL NAIDOO: Chair, I can confirm<br>where I had obtained them. As I said, my recollection<br>specifically, I won't be able to say at the time but yes, I  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | Is it customary for a general to carry around stun<br>grenades?<br>GENERAL NAIDOO: No, Chair.<br>MR CHASKALSON SC: Were you issued with<br>them on that day?<br>GENERAL NAIDOO: Chair, no. You will<br>find that it was indicated on the K9 list that they had<br>four stun grenades. These were two of them.<br>MR CHASKALSON SC: Are they used or spent<br>stun grenades?<br>GENERAL NAIDOO: They were unused, Chair.<br>MR CHASKALSON SC: Where did you get<br>them?<br>GENERAL NAIDOO: Chair, when we moved<br>forward I did obtain those two stun grenades from – at this<br>stage I can ascertain exactly who, but as I indicated I was<br>with the K9 so –<br>MR CHASKALSON SC: Now why would you want<br>to take two stun grenades with you if your primary purpose<br>of going into the koppie was just to assess what the<br>situation was so that you could then withdraw and get the<br>medics to scene 1?                                     | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | GENERAL NAIDOO: Chair, I can confirm<br>where I had obtained them. As I said, my recollection<br>specifically, I won't be able to say at the time but yes, I<br>can ascertain because these are expensive items. They are<br>accountable issues.<br>MR CHASKALSON SC: How many of the other<br>– well, not of the other, how many of the 10 K9 members<br>under your command that went in the four vehicles had stun<br>grenades?<br>GENERAL NAIDOO: As far as I can recall,<br>one.<br>MR CHASKALSON SC: Now why would it have<br>been appropriate for you as the general and commander to<br>take two stun grenades when only one of the troops, as it<br>were, had stun grenades?<br>GENERAL NAIDOO: Chair, in terms of why,<br>obviously if out of 32 members we had one member with stun<br>grenades, proportionately it was not really an issue, not<br>really sufficient but in terms of taking these stun<br>grenades I think at some stage whilst we were at forward<br>holding area 1 we had a protest action which took place in<br>our midst and one of the main reasons for keeping the stun   |

|  |  | I  |  |
|--|--|--|--|
| 1  | Page 23329 bare minimum number of personnel. Should that protest   | 1  | Page 23331<br>how they came onto your person as you went in to koppie 3.   |
| 2  | action occur again, we had to deal with that protest action  | 2  | Can you try to explain that?   |
| 3  | with what we had. Hence the K9 members and obviously when  | 2  | GENERAL NAIDOO: Yes, Chair. As I got   |
| 4  | I say protest action, there was a group of mainly ladies   | 4  | out of the vehicle I clipped them onto my bulletproof vest.  |
| 5  | who came in and protested a couple of times at the forward   | 5  | Obviously, as I said I was going to assess a situation   |
| 6  | holding area. So I thought it appropriate that these, this   | 6  | which I had no idea, so the fact tactical they were lying  |
| 7  | particular equipment be available there, especially with   | 7  | on the seat there by me, they were available and I didn't  |
| 8  | the fact that most or nearly all of the units that would   | 8  | leave it in the vehicle.   |
| 9  | probably deal with that had already left and were deployed   | 9  | CHAIRPERSON: Again I'm not entirely  |
| 10   | into the relevant postings. I did have, in addition to the   | 9<br>10  | clear. Where was your vehicle at that stage? We're now   |
| 11   | K9 one section, seven members of the public order police as  | 10   | talking about the 16th, the Thursday?  |
| 12   | well.  | 12   | GENERAL NAIDOO: In terms of the  |
| 13   | CHAIRPERSON: Major-General, what time  | 12   |  |
| 14   | was this? What time did you take possession of these stun  | 13   | photograph?<br>CHAIRPERSON: Yes.   |
| 14   | grenades at forward holding area 1?  | 14   | GENERAL NAIDOO: Yes, the 16th.   |
| 16   | <u> </u>   |  |  |
| _  |  | 16   | 5  |
| 17<br>18   | that particular day.<br>CHAIRPERSON: What day was it?  | 17<br>18   | had been in your vehicle?<br>GENERAL NAIDOO: Yes.  |
| 19   | GENERAL NAIDOO: I can check and I can  | 19   | CHAIRPERSON: And as you were getting out   |
| 20   | confirm exactly when I got it. As I said, it could've been   | 20   | the vehicle you took them and $-$  |
| 20   | Tuesday or Wednesday. The protest action took place on   | 20   | GENERAL NAIDOO: I clipped them on, yes.  |
| 22   | Wednesday, I think.  | 21   | CHAIRPERSON: Ja. Where was the vehicle   |
| 22   | MR CHASKALSON SC: Major-General –  | 22   | at that stage?   |
| 23   | CHAIRPERSON: Was it Wednesday the 15th   | 23   | GENERAL NAIDOO: It was halted in that  |
| 25   | then?  | 24   | picture where it was after I arrived at koppie 3 for the   |
|  |  | 20   |  |
|  | Page 23330   |  | Page 23332   |
| 1  | GENERAL NAIDOO: As far as I could  | 1  | duration of the incident in scene –  |
| 2  | recall, I can confirm that, Chair.   | 2  | CHAIRPERSON: So it was near koppie 3?  |
| 3  | MR CHASKALSON SC: Major-General, are you   | 3  | GENERAL NAIDOO: Yes, Chair.  |
| 4  | talking about a protest of women?  | 4  | CHAIRPERSON: So before you sallied   |
| 5  | GENERAL NAIDOO: Chair?   | 5  | forth, as it were, to make the assessment, investigate and   |
| 6  | MR CHASKALSON SC: And are you suggesting   | 6  | lend support and so on insofar as was necessary, you   |
| 7  | that, did this happen on one day or did it happen on   | 7  | decided to take the stun grenades with you?  |
| 8  | consecutive days?  | 8  | GENERAL NAIDOO: Which was lying on the   |
| 9  | GENERAL NAIDOO: Chair, we had two issues   | 9  | seat between myself and the driver.  |
| 10   | and that was over the period from Tuesday until our  | 10   | CHAIRPERSON: And you obviously took them   |
| 11   | deployment on Thursday. One was the volume of people that  | 11   | with you because you thought you might have to use them?   |
| 12   | congregated through our area or congregated at and passed  | 12   | GENERAL NAIDOO: Or the members might   |
| 13   | Alexander and a substate to the state of the |  |  |
|  | through our area, which led us to putting a roadblock at   | 13   | require them, yes.   |
| 14   | the crossroads leading to the point where members were on  | 14   | CHAIRPERSON: Yes – yes.  |
| 14<br>15   | the crossroads leading to the point where members were on standby. And secondly, there were – the protest, as I  | 14<br>15   | CHAIRPERSON: Yes – yes.<br>MR CHASKALSON SC: But if they were for  |
| 14<br>15<br>16   | the crossroads leading to the point where members were on<br>standby. And secondly, there were – the protest, as I<br>indicated, that where – that occurred and they came into   | 14<br>15<br>16   | CHAIRPERSON: Yes – yes.<br>MR CHASKALSON SC: But if they were for<br>the use of the members, would it not have made sense to   |
| 14<br>15<br>16<br>17   | the crossroads leading to the point where members were on<br>standby. And secondly, there were – the protest, as I<br>indicated, that where – that occurred and they came into<br>the area where, which we regard as forward holding area 1.   | 14<br>15<br>16<br>17   | CHAIRPERSON: Yes – yes.<br>MR CHASKALSON SC: But if they were for<br>the use of the members, would it not have made sense to<br>give it to a member?   |
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| 14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23   | the crossroads leading to the point where members were on<br>standby. And secondly, there were – the protest, as I<br>indicated, that where – that occurred and they came into<br>the area where, which we regard as forward holding area 1.<br>So there were two issues and the thought that occurred to<br>me is that, I think it was on Tuesday or Wednesday after<br>we'd deployed all the public order police, that the people<br>that are there would have to deal with that particular<br>issue. Hence I ensured that these things were available in<br>the vehicle that I was deployed in.   | <ol> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>             | CHAIRPERSON: Yes – yes.<br>MR CHASKALSON SC: But if they were for<br>the use of the members, would it not have made sense to<br>give it to a member?<br>GENERAL NAIDOO: Chair –<br>MR CHASKALSON SC: To give them to a<br>member.<br>GENERAL NAIDOO: Chair, at that stage<br>when I went forward, two things. Firstly, it wows in my<br>vehicle. My driver and crew, or my driver was a  |
| 14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24   | the crossroads leading to the point where members were on<br>standby. And secondly, there were – the protest, as I<br>indicated, that where – that occurred and they came into<br>the area where, which we regard as forward holding area 1.<br>So there were two issues and the thought that occurred to<br>me is that, I think it was on Tuesday or Wednesday after<br>we'd deployed all the public order police, that the people<br>that are there would have to deal with that particular<br>issue. Hence I ensured that these things were available in<br>the vehicle that I was deployed in.<br>MR CHASKALSON SC: That may explain how   | <ol> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol> | CHAIRPERSON:       Yes – yes.         MR CHASKALSON SC:       But if they were for         the use of the members, would it not have made sense to         give it to a member?         GENERAL NAIDOO:       Chair –         MR CHASKALSON SC:       To give them to a         member.         GENERAL NAIDOO:       Chair, at that stage         when I went forward, two things.       Firstly, it wows in my         vehicle.       My driver and crew, or my driver was a         Lieutenant-Colonel who is an experienced crowd management |
| <ol> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol> | the crossroads leading to the point where members were on<br>standby. And secondly, there were – the protest, as I<br>indicated, that where – that occurred and they came into<br>the area where, which we regard as forward holding area 1.<br>So there were two issues and the thought that occurred to<br>me is that, I think it was on Tuesday or Wednesday after<br>we'd deployed all the public order police, that the people<br>that are there would have to deal with that particular<br>issue. Hence I ensured that these things were available in<br>the vehicle that I was deployed in.   | <ol> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>             | CHAIRPERSON: Yes – yes.<br>MR CHASKALSON SC: But if they were for<br>the use of the members, would it not have made sense to<br>give it to a member?<br>GENERAL NAIDOO: Chair –<br>MR CHASKALSON SC: To give them to a<br>member.<br>GENERAL NAIDOO: Chair, at that stage<br>when I went forward, two things. Firstly, it wows in my<br>vehicle. My driver and crew, or my driver was a  |

| 1   | Page 23333   | 1  | Page 23335  |
|---|--|--|---|
| 1   | secondly, the person, the one person that accompanied me   | 1  | require either of those options, no.  |
| 2   | from my vehicle to where the NIU was, Sergeant Harmse, yes,  | 2<br>3   | CHAIRPERSON: We had a situation where a   |
| 3   | I could have handed it to him if he required it. As I said, I saw it necessary or I thought it necessary, these  |  | number of people were killed, where at least one person<br>fired 18 rounds but you say there was no situation that  |
| 4   |  | 4  |   |
| 5   | things [inaudible] take it with because the NIU who were in<br>a particular position, may require it. So yes, that's how   | 5<br>6   | called for the use of a stun grenade which would have been<br>less than lethal force and might have resulted in an  |
| 6<br>7  | I had it clipped onto my bulletproof vest.   | 7  | outcome which had less fatalities.  |
| 8   | MR CHASKALSON SC: So you thought that  | 8  | GENERAL NAIDOO: Chair, I concur with you  |
|   | you might provision the NIU with additional stun grenades  | 9  | on that. In that particular site, firstly where that  |
| 9<br>10   |  | 9<br>10  | particular shooting occurred I had already moved to the NIU   |
| 10  | this way.<br>GENERAL NAIDOO: Chair, as I said, I had   | 11   | so I was not with the members, firstly. Secondly, as far  |
| 12  | no idea what the situation was but I had to ensure – well,   | 12   | as I could recall it was reported to me that two of the   |
| 13  | I considered it necessary to take it. Should they require  | 13   | stun grenades were utilised on the other side by a Warrant  |
| 14  | it, yes, I could give it to them.  | 14   | Officer Moorcroft, I think it was – I can confirm that name   |
| 15  | MR CHASKALSON SC: Sorry, I just realised   | 15   | - and fortunately when, on the side that I came with the  |
| 16  | I've got a little confused here. You thought maybe you'd   | 16   | NIU when we began the sweep, we never had an incident until   |
| 17  | give them to the NIU to use. Were you thinking of using  | 17   | the person that shot at us. We executed arrests of the  |
| 18  | them yourself?   | 18   | people that were armed without unnecessary force. So yes,   |
| 19  | GENERAL NAIDOO: Chair, I did not at that   | 19   | had we got to a situation where we would have needed this,  |
| 20  | time foresee who would possibly use it but working on the  | 20   | I would have ensured that they utilised that, the principle   |
| 21  | premise that there was shooting and the premise that we  | 21   | being as you said, minimum force, not necessarily   |
| 22  | work for is try to use minimum force possible to address a   | 22   | exercising maximum force.   |
| 23  | particular situation, I thought it appropriate to take it  | 23   | CHAIRPERSON: You did fire your pistol.  |
| 24  | with. I did not at that stage say that I would use it,   | 24   | GENERAL NAIDOO: Chair, yes.   |
| 25  | whether the person that was with me, a dog handler, would  | 25   | CHAIRPERSON: So you considered it   |
|   |  |  |   |
|   | Page 23334   |  | Page 23336  |
| 1   | use it or the NIU. I had not made that assessment of the   | 1  | preferable to fire your pistol, possibly with fatal   |
| 2   | situation that I was going to.   | 2  | consequences, rather than using one of the stun grenades,   |
| 3   | MR CHASKALSON SC: So you thought you   |  |   |
|   |  | 3  | is that what you're saying?   |
| 4   | might sort of turn yourself into a full sort of mobile   | 4  | GENERAL NAIDOO: Chair, I think it would   |
| 5   | quartermaster at scene 2.  | 4<br>5   | GENERAL NAIDOO: Chair, I think it would have to be situation appropriate. When you're faced with a  |
| 5<br>6  | quartermaster at scene 2.<br>GENERAL NAIDOO: If that's the illusion  | 4<br>5<br>6  | GENERAL NAIDOO: Chair, I think it would<br>have to be situation appropriate. When you're faced with a<br>situation where somebody is in the process of firing a   |
| 5<br>6<br>7   | quartermaster at scene 2.<br>GENERAL NAIDOO: If that's the illusion<br>but yes, it was available and I ensured that it was going   | 4<br>5<br>6<br>7   | GENERAL NAIDOO: Chair, I think it would<br>have to be situation appropriate. When you're faced with a<br>situation where somebody is in the process of firing a<br>pistol or any other firearm at you, the time that it would   |
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|                       | Page 23337   |
|-----------------------|--|
| 1                     | to take this particular issue further.   |
| 2                     | CHAIRPERSON: And then tomorrow morning   |
| 3                     | presumably we'll start with the material that Mr Semenya   |
| 4                     | spoke about earlier and you'll then resume your cross-   |
| 5                     | examination after that, is that so?  |
| 6                     | MR CHASKALSON SC: Yes, Chairperson. In   |
| 7                     | fact we've reached a happy compromise or a happy agreement.  |
| 8                     | We will prepare a - or not we, SAPS will prepare a map, a  |
| 9                     | Google Earth printout which documents the agreed AvL   |
| 10                    | positions of Major-General Naidoo's vehicle at specific  |
| 11                    | times on the 16th. That document will go in as an agreed   |
| 12                    | document and then the cross-examination can continue.  |
| 13                    | CHAIRPERSON: There won't be any further  |
| 14                    | re – sorry, there won't be any further evidence-in-chief,  |
| 15                    | is that correct, Mr Semenya?   |
| 16                    | MR SEMENYA SC: That is correct, Chair.   |
| 17                    | If we're unable to print the document we'll ask the  |
| 18                    | evidence leaders to help us. There's a technology  |
| 19                    | challenge but we're going to go in the direction Mr  |
| 20                    | Chaskalson is saying.  |
| 21                    | [16:03] CHAIRPERSON: Alright, thank you.   |
| 22                    | COMMISSIONER HEMRAJ: And that will show  |
| 23                    | us the route taken by his vehicle clearly?   |
| 24                    | MR CHASKALSON SC: Yes, and the time  |
| 25                    | together with the route.   |
|                       |  |
| 1                     | Page 23338   |
| 1                     | CHAIRPERSON: Can you, I know it's always difficult when I ask these questions for the person whom I  |
| 2                     | ask it, to give an accurate answer. Are you able to give   |
|                       | an indication as to how long your cross-examination is   |
| 4<br>5                |  |
| 5                     | likely to take? What's left of it? The reason I ask that is I have received a number of applications from parties  |
| 0<br>7                | who wish to cross-examine and if you are going to be cross-  |
| 8                     | examining all day tomorrow then I don't have to give a   |
| 9                     | decision until after that. But if it is likely to be that  |
| 10                    | I will have to give a decision by tomorrow morning, then I   |
| 11                    | would like to know that in advance.  |
| 12                    | MR CHASKALSON SC: Chairperson, I will  |
| 13                    | definitely take the whole of tomorrow. I would hope not to   |
| 14                    | take much more than the whole of tomorrow but I don't think  |
| 15                    | there is any prospect of my finishing before.  |
| 16                    | CHAIRPERSON: Because obviously the   |
| 17                    | matters that you cover will be important in regard to the  |
| 18                    | decisions I am called upon to make because I am not anxious  |
|                       | to allow repetition and parts of the field that have   |
| 19                    |  |
| 19<br>20              |  |
| 20                    | already been ploughed to be re-ploughed. Experience shows  |
|                       | already been ploughed to be re-ploughed. Experience shows that re-examining the same point from a different angle  |
| <b>20</b><br>21<br>22 | already been ploughed to be re-ploughed. Experience shows<br>that re-examining the same point from a different angle<br>very seldom produces any dividends. But anyway that's a  |
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**RealTime Transcriptions** 

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**RealTime Transcriptions** 

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**RealTime Transcriptions** 

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