

TRUTH AND RECONCILIATION COMMISSION

SECTION 29 INQUIRY

DATE: 30 SEPTEMBER 1997

NAME: ERIC MAGAGULA

HELD AT: JOHANNESBURG

DAY 2

CHAIRPERSON: Good morning. Will you place your full names on the record please.

CAPT MAGAGULA: Eric Magagula.

CHAIRPERSON: Thank you. Will your legal representative place his name on record, please.

MR MULLER: Chairperson, my name is Kobus Muller from the firm Wagner, Muller and Du Plessis and I appear on behalf of the witness. We are ready to proceed.

CHAIRPERSON: Thank you.

ERIC MAGAGULA: (Duly sworn, states).

CHAIRPERSON: Thank you. This is an investigation inquiry in terms of Section 29 of the Act. It is an *in camera* hearing, the purpose of which is to obtain further information about the matters mentioned in your subpoena.

I remind you that you are testifying under oath and that should you furnish the Commission with false information, then you will be liable to criminal charges in terms of the Act.

SECTION 29 HEARING

TRC/GAUTENG

Due notice to the Attorney-General has been given in terms of Section 31 of the Act and should you refuse to answer any questions on the basis that it may incriminate you, then the proceedings will take note of that and consultation will take place with the Attorney-General whereupon the Commission will make a ruling in terms of whether you should be compelled to furnish the Commission with any information.

I'm going to ask your legal representative whether you wish to place any statement before the Commission before the questioning begins.

MR MULLER: Chairperson, we have nothing to present to you. We're ready to proceed.

CHAIRPERSON: Thank you. Fanie?

COL KILLIAN: I would like to take you back to the 6th of February, 1987 when George Tshabangu was arrested and taken out to make certain - to point out certain points to you.

Can you relate to the Commission what happened immediately after George Tshabangu's arrest?

CAPT MAGAGULA: After the arrest, they brought him to the office, where I was at the time. When he arrived at the office, he was taken by Kritzinger and Mpilo and Dumisani Mahlangu.

They went to Kritzinger's office. I was still in my office, writing, writing my dockets, because I was making preparations for inspections. Whilst I was still in that office, Van Schalkwyk came

to me. Then he said to me George Tshabangu is prepared to cooperate with us ... (intervention).

COL KILLIAN: May I just interrupt at this point. Are you then suggesting that you never accompanied the people who made the actual arrest at the Bundu Inn or at the girlfriend's residence?

CAPT MAGAGULA: When they went to arrest George, I was not with them.

COL KILLIAN: Steven Tshabangu says in an affidavit in possession of this Commission that six people arrived at the Bundu Inn at 12:50 on the 6th of February 1987, which included you.

Would you deny that or accept it as true?

CAPT MAGAGULA: I started to meet Steven, although I didn't know him before. I met him at Bundu Inn when they went to look for Tshabangu in regard to armed robbery case.

CHAIRPERSON: Sorry, Mr Magagula, the question that you're actually being asked is, did you accompany the arresting party to the Bundu Inn, because in your first statement you said that you met them at the office.

Now, were you with the people who went to arrest George Tshabangu?

MR MULLER OBJECTS: Chairperson, with all due respect, the question was put to Mr Magagula, what did he do after the arrest of Tshabangu and he replied to that and then he was referred to the

statement of Steven Tshabangu which is prior to the arrest of Tshabangu.

CHAIRPERSON: Well, that's the question that I'd like to have him answer to ... (intervention).

MR MULLER: And that's the question that he's busy answering.

CHAIRPERSON: Yes. Could you answer the question, Mr Magagula. Where you with the party who went to arrest George Tshabangu?

CAPT MAGAGULA: Yes, I was with them.

COL KILLIAN: So what you previously said that you were busy ... (intervention).

INTERPRETER: Speaker's mike is not on.

COL KILLIAN: What you previously said that you were busy writing up dockets at the office when they arrived there with George Tshabangu, was not true?

CAPT MAGAGULA: I want to reply in this way, because I started at the beginning of this incident, after he has been arrested. Because I went to Bundu Inn, we didn't find Tshabangu there. From there I was accompanied by two people. Then I went straight to the office. Then other policemen ... (intervention).

COL KILLIAN: May I interrupt you again. The previous question was simply this; were you a party to the company of policemen who went to the Bundu Inn in search of George Tshabangu and who ultimately from there went to his girlfriend's place to arrest him?

CAPT MAGAGULA: I didn't go to the girlfriend's house.

COL KILLIAN: Were you ever present when George Tshabangu was arrested?

CAPT MAGAGULA: I was not present.

COL KILLIAN: When did you then learn about his arrest for the first time?

CAPT MAGAGULA: I knew on that day when they met with me in the office whilst I was together with George's family members.

COL KILLIAN: With George's family members? Were they already in custody at the time of his arrest - at the time of his arrival at the police offices then?

CAPT MAGAGULA: I brought them to the office.

COL KILLIAN: So were you the person then responsible for the arrest of the family members, but not for the arrest of George?

CAPT MAGAGULA: No.

COL KILLIAN: Who in fact then did the arrest of the family members?

CAPT MAGAGULA: George's family members were not arrested. They were just taken what whilst - maybe whilst we were gone looking for George, they would make means to make him hide or tell him the information that we were looking for him. That's why we brought him to the office.

COL KILLIAN: Is he saying that - he says "we" - when he says "we were going to look for George", does he imply that he was a party of this policemen in search of George?

CAPT MAGAGULA: I was at Bundu Inn looking for George.

COL KILLIAN: I don't understand the way in which he answers the questions, because he says that he was never a party to the search of George and the arrest of George.

CAPT MAGAGULA: I want to put it in this way; we went in the morning, going to Bloemfontein, looking for George. I was in that group of policemen.

MR MULLER: Chairperson, there's a reference made to Bloemfontein. Can we just clear that up?

CHAIRPERSON: Yes, I think all of us is surprised by the reference to Bloemfontein.

CAPT MAGAGULA: My apologies, I think Bundu Inn.

CHAIRPERSON: Bundu Inn? Thank you.

CAPT MAGAGULA: I was in that group which went to Bundu Inn Hotel where we thought George would be found. I was in that group of policemen.

MR MOHEMA: I'm sorry Capt Magagula, before you go further, you said, "ek sê" in the morning. Can you maybe specify at what time, round about what time?

CAPT MAGAGULA: I think I would not be able to remember the exact time, but I think it was around eleven.

When we arrived at Bundu Inn and the person who was speaking was Mtombeni and Van Schalkwyk. Those were the people who were looking or searching for George.

MR MOHEMA: Now Capt, you said "they". What we wanted to know is, were you also part of them.

CAPT MAGAGULA: Yes, I was present.

MR MOHEMA: Okay. So don't say "they". We wanted to hear where you - what you have done specifically with them.

CAPT MAGAGULA: Whilst I was with them at that time, I didn't do anything. I was just staying outside. That is where I found two people busy with the gardening. I spoke with those people.

MS SEROKE: Are these people members of the Tshabangu family?

CAPT MAGAGULA: Yes.

MS SEROKE: Are they - where they males?

CAPT MAGAGULA: Yes.

MS SEROKE: At that time, you didn't know their names?

CAPT MAGAGULA: Yes, I didn't know their names at that time.

MR NOLSEN: Mr Magagula, when you were standing outside, apart from the other group, did you see Mr Mtombeni call Lucas Tshabangu over to him?

CAPT MAGAGULA: Yes, I saw him calling him.

MR NOLSEN: Were you with Mr Mtombeni at this time?

CAPT MAGAGULA: No, I was not with him. I was just aside, apart from him.

MR NOLSEN: Was Lieut Mpilo with Mtombeni?

CAPT MAGAGULA: I don't remember well, because the person I was with was Dumisani.

MR NOLSEN: At any point in time, did you join Mtombeni or Mpilo and take Lucas in your Combi to any other location?

CAPT MAGAGULA: No, I don't remember.

MR NOLSEN: It is been alleged in a sworn statement before this Commission, in the possession of your lawyer that yourself, Capt Magagula, Mpilo and another unknown White policeman, from the record it is clear is Kritzinger, took Lucas to the Combi and drove away. That you returned 20 minutes later with Lucas. In another sworn statement Lucas went to his sister, Happy Tshabangu, and reported that you'd taken him away, questioned him and assaulted him. Do you recall these events?

CAPT MAGAGULA: No, it's not that way, because the time - the day we went to Bundu Inn, I was driving an Audi. The Combi was not present.

MR NOLSEN: So you're saying to us that there was no Combi present that day at the Bundu Inn?

CAPT MAGAGULA: No, it was not there.

MR NOLSEN: And the two eye-witnesses who have sworn to seeing this Combi or to travelling in this Combi, are lying or deceiving this Commission? Is that correct?

CAPT MAGAGULA: They didn't tell the truth.

MR NOLSEN: Did you transport anyone in your Audi that day?

CAPT MAGAGULA: Yes, I drove with Steven and the other one who is Lucas when we went to the office.

MR NOLSEN: Did you drive with them on only one occasion when you left the Bundu Inn, for good, that morning?

CAPT MAGAGULA: Yes, that's correct.

MR NOLSEN: Did you ever at any time assault any member of the Tshabangu family?

CAPT MAGAGULA: No, I wouldn't have a reason to do that.

MR NOLSEN: Did you see any member of the Tshabangu family, in particular, Lucas, crying that morning?

CAPT MAGAGULA: No, I didn't see him. Maybe when he was crying maybe we could have been in the car.

MR NOLSEN: Did Lucas and Steven Tshabangu volunteer to accompany you to the murder and robbery unit, or did you place them under arrest?

CAPT MAGAGULA: No, we didn't arrest them. They went on their own volition.

MR NOLSEN: Was it common in 1987 for residents of Kwandebele, particularly youthful residents to volunteer to visit police office of their own accord?

CAPT MAGAGULA: It was possible that if you would tell a person the reasons why you take him with, then he'll be able to do so.

MR NOLSEN: Why did you - what reasons did you give to Lucas and Steven so that they would accompany you? What persuaded them that was in their best interest to accompany you?

CAPT MAGAGULA: I explained to them that because they say they are not able to find George, there is suspicion that George may come back. Then when he come back, you would tell him -you would inform him that the police were looking for him.

So that is why we were able to persuade them to go with us.

MR NOLSEN: Was there any other family members present at the Bundu Inn when you persuaded Lucas and Steven to accompany you? Was any family member left behind that day?

CAPT MAGAGULA: I don't remember. I would not be able to say, because I didn't know all the family members. I - for me to know the two that were Tshabangu family members, is because I was taken to them.

MR NOLSEN: But Captain, I think you're not being completely truthful with this here. Did another family member, namely Happy Tshabangu, who possessed the keys to George's room, who accompanied the other members of your unit to search George's room; wasn't she in fact left behind?

Was she asked to accompany you to the Siyabuswa murder and robbery unit that day?

CAPT MAGAGULA: I don't know Happy, I didn't see her.

MR NOLSEN: Well, let me place it on record that there definitely was another Tshabangu family member there, namely Happy, who provided the keys which provided access to George's room.

I put it to you, Capt Magagula, that if your concern in taking Lucas and Steven, was truthfully so that no family member could inform George that the police were looking for him; then Happy would have been taken with Steven and Lucas. Isn't it in fact the point that you took Steven and Lucas to interrogate them?

CAPT MAGAGULA: No, I didn't take a person for interrogation, because in the first place I didn't know as whether those people were affected by the case or not. Again for, secondly in regard to Happy, is that even if Happy opened the door, I didn't know as whether she was a member of the Tshabangu family, because I don't know when they arrived at the hotel, what did they say. But I saw a female opening the door.

MR NOLSEN: If your purpose was simply to prevent the Tshabangu family of informing George that you were looking for him, why didn't you just not leave a policeman at the Bundu Inn to guard the place and to make sure that the family didn't go and inform George that you were looking for him? Why did you have to take two members of the family to the police station for questioning if your concern was simply to prevent them from getting a message to George?

How many policemen were you? Six policemen. Couldn't one just remain behind to ensure that nobody got a message to George?

CAPT MAGAGULA: I want to explain it in this way. Because for me to take these people, I didn't just do that on my own. I received an instruction from the investigating officer that those people should be taken.

That is why I requested to them and then I informed them about the reason. Then for me to respond as to whether why the other person remained behind; I would not be able to explain that.

MR MOHEMA: Who was the investigating officer who gave you that instruction to take George - I mean - Lucas and Steven?

CAPT MAGAGULA: I received that instructions from Kritzinger, because I knew that he's the one who was the investigating officer.

MR NOLSEN: So when in fact, Capt Magagula, what you're saying to us now is you received an instruction to bring these people. Not that these people volunteered to come, but that you received an instruction to make sure that they came. Is that correct?

CAPT MAGAGULA: I've already said that after I was instructed to take them, I went to them and explained to them the reasons why I should take them. Then they understood. Therefore they accompanied me.

MR NOLSEN: Before proceeding, I would just like to point out to you, Capt Magagula, that this goes directly in the face of the sworn testimony of the people involved.

But let us let that stand for now. You've answered under oath what you say happened. So we can proceed from there. Why did you go to the Bundu Inn that morning?

CAPT MAGAGULA: At the office in murder and robbery unit, there would be people if there is a serious case, they would call us so that we'd go and assist. That is why I went to Bundu Inn.

MR NOLSEN: You've been called to assist on which serious case? Can you give us a brief outline of the case that you were investigating.

CAPT MAGAGULA: I was informed that there is an armed robbery case which happened in Moteti. So I was going to help on that case.

MR NOLSEN: How were you informed that George Tshabangu was involved in this case?

CAPT MAGAGULA: I heard from those people who were responsible for the case, Kritzinger, that we have information that George Tshabangu was implicated to this case of armed robbery.

MR NOLSEN: Was the nature of the information that George was implicated or that George was part of a conspiracy or that George was a perpetrator? What was the nature of this information?

CAPT MAGAGULA: I was informed that let us go to Bundu Inn, George is a suspect in this case.

MR MOHEMA: Capt Magagula, it seems somebody is not telling us the truth among you and your colleagues and you are the branch commander, I believe. I believe as an investigator, having the docket, investigating the docket, you are supposed to make an entry in that docket, in the diary, not so?

CAPT MAGAGULA: That is correct. If you are responsible for that case.

MR MOHEMA: My problem is Captain, we have got a copy of that docket at Moteti armed robbery where you alleged - Const Kritzinger was the investigating officer, but in that docket, in the diary of the docket, there is no way, there is no place where Const Kritzinger has made an entry.

Among your members as well who visited Moteti, I mean, George Tshabangu's place, no-one made an entry in connection with that - with George, inside the docket. Was that done deliberately?

CAPT MAGAGULA: I want to explain that when I said the docket was in the hands of Kritzinger, I didn't book a docket. At that time I was not the branch commander. So I want to put it clearly. The docket which I saw, was in the hands of Kritzinger, but I have never made any entry or made a booking for the docket. Maybe somebody booked that for him, because I was just a member who was going to assist in that case.

MR MOHEMA: But procedurally, Kritzinger was supposed to make an entry in that docket, not so?

CAPT MAGAGULA: I would not say, I don't know.

MR MOHEMA: Captain, you are a branch commander. I mean, the way you know, if your member who is investigating the docket is the investigator, is he supposed to make an entry - is he not supposed to make an entry in that docket?

CAPT MAGAGULA: For now I'm a branch commander in the murder and robbery. I would book a docket for my member. Then he would go and work for that docket - with that docket. He must make an entry within 24 hours into that docket. Then he would return that docket. Then I would inspect the docket. Then I would give him other instructions if there were any. Then he would continue. Then after a month, then I would do an inspection and see as to whether my instructions were carried.

CHAIRPERSON: But with respect, that's not the question that's being asked of you. The question that's being asked of you is, what was Kritzinger as the investigating officer supposed to do? That's the question. Now answer that question.

CAPT MAGAGULA: He was supposed to make an entry into that docket.

MR MOHEMA: So therefore it seems - I'm putting it to you, he was not the investigator of that docket, because he never made any entry and then among you there was no investigator of that docket. I suspect you were investigating - you arrested Tshabangu in connection with another incident, not the armed robbery of Moteti.

CAPT MAGAGULA: That is not so. If a person comes to me and say let's go, I have an armed robbery docket, there would not be time to ask him as whether he's an investigating officer or not. I, the commander of that time would be able to reply to that question, particularly, because I didn't read the content of the docket. I just received the oral information from my co-worker.

MR MOHEMA: But you wrote in the very same docket. You gave Mtombeni instruction to further the investigation in the very same docket and you never made mention of George Tshabangu. You never made mention of the search at Tshabangu's place.

In the very same docket ... (intervention).

MR MULLER: Chairperson, can I just clear up this question. Is it alleged that Mr Magagula made an entry in the docket, in this docket?

MR MOHEMA: Yes, he made an entry. I believe you've got a copy there.

MR MULLER: I must tell you, we didn't thought that this has any reference to Mr Magagula. Can you just give us the page to where you refer?

MR MOHEMA: C25, the last paragraph there.

MR MULLER: C25?

CHAIRPERSON: At the bottom of that page there's a reference to E Magagula. It's his signature there.

MR MOHEMA: I'm sorry. You gave the instruction to Mawize, Serg Mawize.

CHAIRPERSON: Mr Muller?

MR MULLER: Chairperson, I've got it. Unfortunately I - can I ask the - Capt Mohema just to ask his questions again now that we know where we are and in what context it is.

MR MOHEMA: I said I was a bit worried, because Capt Magagula was among the members who visited Tshabangu's premises. He even transported Tshabangu's two sons from home, but when he gave the instruction to his subordinate, he never made mention of that incident.

CHAIRPERSON: Your response, Mr Magagula?

CAPT MAGAGULA: What is written here is 1988. In other words, the person who worked with this docket before - if is see - I think he was transferred. That is why I made those entries there.

MR MOHEMA: Captain, the first investigator of this docket, that's the very same Mawize, if I'm not wrong, and Mtombeni also took over somewhere and you gave the instruction again to Mawize to further the investigation, but you never gave him guidelines and he was never present during your search at George's premises.

I mean you would have directed to him what to do and you would have informed him that the suspect in this case escaped.

CAPT MAGAGULA: Thank you for that question, because the thing which I like most is that the person who asked me the

question knows very well that if I can go and take this docket - I see at the beginning there - the first entry was in 1987 and the person that did the case was Mawize. The other entry if you look at it carefully, Sgt Van Schalkwyk booked this docket to Mr Mawize.

That's what I didn't know before. When it continued, underneath there, you'd see Mtombeni there. Then I took this docket again and booked it for Mawize, because I knew very well that Mr Mawize would be able to dig the information from that diary, that is why I didn't write in details. That is why at the end ... (intervention).

COL KILLIAN: May I interrupt there. When you made that last entry, number three, when you booked this matter out to the new investigating officer, you specifically indicated that he must comply with the previous instructions.

That implies to me that you have familiarised yourself with the entire contents of the docket to issue such an instruction to him.

Is that correct?

CAPT MAGAGULA: Yes, if you from the reading of the diary, I was able to know the content and familiarise myself with the case in 1988.

COL KILLIAN: Fine, I agree with you there. Is there any way in that docket any indication about Tshabangu's involvement in this robbery?

CAPT MAGAGULA: I don't know. May I be given an opportunity to read through.

COL KILLIAN: I want to put it to you that I've perused that investigation diary and there's no indication whatsoever in that investigation diary indicating that Tshabangu was a suspect in this robbery.

MR NOLSEN: To add to that, I would further put it to you; there is no mention that the Bundu Inn was searched in connection with this armed robbery.

Further, there's no mention that Lucas and Steven were questioned about this.

Further, that George Tshabangu was never detained in relation to this robbery.

Further, that a weapon which as other members of your unit have testified before, it's yesterday, was directly involved, was linked to the armed robbery.

There is no mention that this weapon, a material piece of evidence in the armed robbery was found. There is no mention of that in the investigation diary.

I put it to you that there is not a single piece of information in the entire investigation diary, linking George Tshabangu directly or indirectly with the investigation of this armed robbery.

As an investigator, making yourself familiar with the contents of this docket when issuing instructions, I would be of the opinion

that you would have been surprised by these very clear omissions; that if you really were investigating this armed robbery when you went to the Tshabangu's that day, that that information would have clearly been put into the investigation diary.

Can you explain these oversights to us, Capt Magagula?

CAPT MAGAGULA: There is nothing which I would explain, because in this case I was just following this case, because it was said that George was a suspect in this case.

MR NOLSEN: If you were following this case, because George was a suspect in this case, why is George not listed as a suspect? Why is your apprehension of the prime suspect not mentioned in the diary? Why is the discovery of material evidence linking George, your suspect, to the crime, not mentioned in the diary?

Now, Captain, let's be very clear here. If you could come to us today and say I had no further contact with this matter, you might plausibly say it was none of your business, but you did have further contact with this case. In fact you issued instructions pursuant to this investigation.

So I want a very clear explanation why you overlooked this oversight in the investigation.

CAPT MAGAGULA: I would request that I was not investigating this case. That is why I don't have the full information. That's why I saw this docket in 1988 for the first time when I read the diary.

If, maybe, I saw the diary in 1987, or maybe I was the one who was the investigating officer to this case, I would mention those aspects and in the way as I was the investigating officer, I would put that I received information that George Tshabangu perhaps is a suspect in this case. I would record that in the docket or in the diary. I'm unfortunate, because I saw this case in 1988.

CHAIRPERSON: But surely, Mr Magagula, if you in 1988 you read this diary, there are some facts in there which are core to the investigation of this robbery which are missing from this diary. Why in your note did you not write the missing facts from the diary?

What explanation can you give for the fact that you didn't alert whoever was investigating the matter to the fact that one, George Tshabangu had been arrested in connection with this robbery; two, that you found a gun which in your version you allegedly connected him with the robbery, at his premises. Why is no mention of that made in the diary?

CAPT MAGAGULA: Thank you. I'm not able to write those, because Mawize would go and receive information from Kritzinger.

MR MOHEMA: Hang on just a moment. Mawize? When you visited the scene, when you visited Tshabangu's place looking for George, he was not there. Only you were there and you were not only, - You were investigating that day, Captain, not so? Were you not investigating as investigator?

CAPT MAGAGULA: Thank you. I didn't go there to investigate. My intention to go there was there to effect an arrest, not to investigate, to arrest the person whom it was said that he's a suspect.

MR MOHEMA: Why were you going to arrest him, Captain?

CAPT MAGAGULA: Thank you. I didn't have the full information. That is why the people who had information, was Kritzinger who was the one who was in charge of this case.

MR MOHEMA: You were investigating the case. By going to arrest, that's part of investigation, Captain. Like I myself know that we are investigating this case, you were also investigating the case.

You had the information from the 6th of the 2nd month 1987 and then when you took over as a branch commander, somewhere in 1988, you would have forgotten this guy, because you knew he was not present that day, Captain, and that he was under your command.

CAPT MAGAGULA: Yes, it is true. Mawize was informed, though it was not written, but he was informed that there are other cases where he would get more information. If he looked here he would be able to attach George Tshabangu.

MR MOHEMA: You are not telling us the truth, Captain. We obtained a statement from Serg Mawize. He said in his statement under oath he was never informed about George's arrest while being the investigator of the case.

So did you inform him, because you said he was informed?

CAPT MAGAGULA: I said Mawize knew this case. I referred him to the other case of escape.

COL KILLIAN: Mawize says that he was the investigating officer in this particular armed robbery from the 4th of February 1987. Would you go along with that or would you deny that?

CAPT MAGAGULA: In regard to these papers - yes, I agree to that on visiting the scene of crime.

COL KILLIAN: Fine. He says he investigated this particular robbery until the 21st of July of 1987, which is approximately five months later, when the matter was then transferred to Det-Sgt J B Mtombeni for further investigation. Would you go along with that?

CAPT MAGAGULA: I agree to that, Sir.

COL KILLIAN: He also says that during his five months of investigation into this particular robbery matter, nobody ever furnished him, not an informer, neither a member of the murder and robbery squad or any policeman, with any information suggesting that Tshabangu was a suspect and was ever detained pertaining this particular robbery.

Would you go along with that?

CAPT MAGAGULA: I would not agree to that, because I don't know the reasons behind writing that statement.

COL KILLIAN: Can you give us any indication from the investigation diary that he had any knowledge pertaining to the

detention and the seizure of a firearm, as far as Tshabangu is concerned?

CAPT MAGAGULA: Not in this docket, because I was not investigating this docket.

COL KILLIAN: You had personal knowledge pertaining to the detention of Tshabangu and the seizure of a firearm, but you never made any mention in that particular when you handed it over to him for further investigation?

CAPT MAGAGULA: I informed Mawize. Then I referred him to this case of escaping.

COL KILLIAN: How can you inform him verbally? Tomorrow he might be run over by a bus and there will be another investigating officer. How would he then pick up the information that you have in your head if you don't write it down in the investigation diary? That is the entire purpose. That's the sole purpose of an investigation diary.

CHAIRPERSON: May I also say that Mr Mawize in his affidavit in fact says that no members attached to my unit at the time, ever mentioned the name of George Tshabangu as a suspect in my case while I was investigating it. The name of George Tshabangu was never mentioned to me as well by any of my informers during the time I was investigating that case.

Now why would Mr Mawize lie if you informed him about George Tshabangu? What reason did he have to tell lies?

CAPT MAGAGULA: That's what surprises me today when I read Mawize's statement, but what I said even now is that I informed him. I don't know of other members or I don't know where the problem lies.

MR MOHEMA: You should remember when you informed him?

CAPT MAGAGULA: If I remember well, after I booked this case, I think he was in my office. Then I wrote at the same time in my office. Then I said there is another case except this one.

MR MOHEMA: Do you still have ... (intervention).

CHAIRPERSON: It doesn't appear there.

MS SEROKE: Did you tell him or did you write?

CAPT MAGAGULA: I didn't write that. I see that was a mistake.

MS SEROKE: Why didn't you make an entry of that point, because those kind of things should be made entries into the docket.

CAPT MAGAGULA: I informed him about this case and when I referred him to the other case, because the other case was in Denilton, the escape case was in Denilton, I referred to him that he should go and refer to that case again. Then he must compare that with the other case. That is why I didn't write down.

MR MOHEMA: Because like you Captain, you forgot when you informed him and then you would have - you would have written in the diary and Mawize was not investigating the escape case. Somebody in Denilton was investigating the escape case. Then you

would have informed in your diary, as the commander; why Captain?

CAPT MAGAGULA: I informed Mawize.

COL KILLIAN: Are you aware of the instruction that whenever an investigation officer goes on leave for more than three consecutive days, you must book out all his dockets to another investigating officer?

CAPT MAGAGULA: I know that, Sir.

COL KILLIAN: So then it is absolutely necessary that whenever you have any information pertaining to a particular investigation, that you make that - note that in the investigation diary for the new investigating officer?

CAPT MAGAGULA: Because Mawize worked on this case before, that is why I thought he had information. What surprises me is that he worked on this case before and then everything what happened in this case was informed. Even if it's not me, but other members of the unit informed him.

COL KILLIAN: Except that because he is the investigating officer that he has all the knowledge at his disposal pertaining to that particular investigation. He didn't form party and he wasn't party to your search and your arrest of Tshabangu. So, how was he to know about your activities if you didn't make a note in the investigation diary of that particular docket, so that he can become aware of your activities?

CAPT MAGAGULA: To explain that, it was written on the diary that what happened before, I see that it is written. Even the instructions were written about what happened. He had the knowledge. Even when I booked this case in 1988, Mawize had the knowledge.

COL KILLIAN: Now, I dare you to show and convince this panel from the entries in that investigation diary in your possession, wherever you can find any indication that Mawize was ever informed or ever aware of the detention of Tshabangu and the seizure of a firearm.

CAPT MAGAGULA: It doesn't appear anywhere.

DR ALLY: May I ask what do you normally do in cases like this? Is it common practice for you to tell people orally or do you normally write it down in the investigation diary?

What's your normal practice?

CAPT MAGAGULA: The usual practice before even now which we used is when a person is on leave or he's just about to go on leave, when I write on the docket, I make an entry that proceed with the investigation. Then if there are other instructions I would inform him that he should comply with those instructions.

I don't write everything what he should do, because at the beginning when the case started, they booked him for this case and they gave him instructions.

So it came to my mind that it was not necessary to write all things, because he was informed earlier in the beginning.

DR ALLY: Didn't you say earlier, if I heard you correctly, that not writing down this important information was a mistake? Did you not say that; the fact that this information was not recorded in writing, you indicated was a mistake? Are you saying now that it was not a mistake? How are we to understand your response, not furnishing Mawize with ... (intervention).

CAPT MAGAGULA: To me - thank you - to me this case, as I wrote, the way I referred to it was not a mistake, because I was used to write this way when I booked a docket for somebody, unless if there is a new docket which has never been investigated before. That is where I would write the instructions which I would take it from A1.

DR ALLY: Can I just ask then; when you wrote the new instructions for Mawize, were you familiar with what was in the diary, with everything in the diary?

CHAIRPERSON: You must have been, because you say, follow the instructions, which implies that you read the docket, the diary.

DR ALLY: He admitted that he perused the entire investigation diary prior to issuing the new instructions to the new investigating officer. Is that true? Were you familiar with the contents of the diary?

CAPT MAGAGULA: That is correct.

DR ALLY: So, can you then indicate to us where in this diary there is reference to the arrest or detention of George Tshabangu and the fact that a weapon was found?

MR MULLER OBJECTS: Chairperson, I don't want to stop the proceedings, but Dr Ally left the room while all these questions were asked. Is it necessary to go through everything again?

COL KILLIAN: I think he's already admitted to that point, Dr Ally.

CHAIRPERSON: Perhaps Mr Magagula, it was deliberate that no mention was made of George Tshabangu, because perhaps he really wasn't a suspect in this case. He was picked for something else. Isn't that the reason why no mention is made of him in the robbery docket? Isn't that the real reason?

CAPT MAGAGULA: No.

CHAIRPERSON: But you yourself say what did his practice do. You've got to write all these things in the diary, but there's no mention of George Tshabangu in this diary.

So the conclusion one comes to is that perhaps it was deliberate that you people didn't inform Sgt Mawize, the investigating officer, because you knew that he would not have gone along with what you people did. Yes or no?

CAPT MAGAGULA: No, I dispute that. I came here to tell the truth. I didn't come here to make my own plans. I - there was nothing which I was trying to hide from the beginning of the investigation of this case. I didn't know that.

That is why in this case when I made my entry is that Mawize should continue with the investigation. Then he should follow the instructions. Not that I was trying to hide something. There are - I didn't have any grudge or anything against George.

CHAIRPERSON: So we've now established, Mr Magagula, that you accompanied the party to arrest Mr Tshabangu. You in fact took two members of his family along for questioning at the instructions of your superior. You later on wrote in the diary that the instructions, the same instructions must be followed with regard to the investigation, but that you never informed Sgt Mawize that in fact Mr George Tshabangu had been arrested and that a weapon had been found.

Serg Mawize in fact denies it and there is nothing in the diary to confirm that. So can we move on to the next point please.

DR ALLY: At the time of the arrest of Tshabangu, Mawize was not a part and parcel to the investigation at that stage? At the time of the arrest, I'm saying.

CAPT MAGAGULA: At the beginning of this case I don't know who was responsible for the case. As whether it is Mawize or Kritzinger, but what I know is that Kritzinger was the investigating officer. That is why I started to explain from there.

DR ALLY: Was Mawize involved with the interrogation and the arrest of Tshabangu, to cut it short?

CAPT MAGAGULA: Mawize was not present.

DR ALLY: And Mplega or Mpilo?

CAPT MAGAGULA: Mpilo it seems, was there.

COL KILLIAN: What was your rank at the time of the arrest of Tshabangu?

CAPT MAGAGULA: I was a Warrant-Officer.

COL KILLIAN: Mpilo, subsequent to this incident, deceased?

CAPT MAGAGULA: Yes, it seems he - after some few months then he died.

COL KILLIAN: How long after the arrest of Tshabangu did he die?

CAPT MAGAGULA: I don't remember.

COL KILLIAN: Was he still alive in 1989?

CAPT MAGAGULA: I don't remember.

COL KILLIAN: Was he ever promoted after the arrest of Tshabangu?

CAPT MAGAGULA: I don't remember as whether he was promoted before or after. I don't remember.

COL KILLIAN: Did he die when he was still a serving member of the police or was he retired already?

CAPT MAGAGULA: I don't remember. I cannot respond.

COL KILLIAN: Okay. Fine.

MR NOLSEN: I wonder, Captain, if we can go back to the events of February 6th again.

Once you've convinced Lucas and Steven to go of their own accord with you to the murder and robbery unit, you got them

together in a vehicle. I believe you said it was your Audi vehicle?
Is that correct?

CAPT MAGAGULA: No, it was State property.

MR NOLSEN: But it was the Audi vehicle, owned by the KwaNdebele police which you were driving that day. Is that correct?

CAPT MAGAGULA: I don't understand the question, Sir.

MR NOLSEN: Did you place Lucas and Steven in an Audi vehicle, owned by the KwaNdebele police, driven by yourself?

CAPT MAGAGULA: Yes, it was the KwaNdebele police property.

MR NOLSEN: Were any other members of your unit with you in the Audi?

CAPT MAGAGULA: Yes, I was together with Mike and Dumisani.
Mike Dumisani.

MR NOLSEN: Dumisani and Mike are one and the same person. Is that correct?

CAPT MAGAGULA: Yes, that is correct.

MR NOLSEN: Where did you proceed to at that point in time?

CAPT MAGAGULA: I was informed that I should go the office.
Then I proceeded directly to the office.

MR NOLSEN: You made no turns by any other place?

CAPT MAGAGULA: No.

MR NOLSEN: Steven and Lucas were with you the entire time?
They never departed from the vehicle or travelled with anyone else?

CAPT MAGAGULA: No, they were with us all the time.

MR NOLSEN: Are you familiar with the name of Connie Mokoena?

CAPT MAGAGULA: No, I don't know that person.

MR NOLSEN: If I told you that Connie Mokoena was George's girlfriend, would that remind you who she is?

CAPT MAGAGULA: No, I didn't know George's girlfriend. So I don't know the name even.

MR NOLSEN: Are you aware that George was detained at Connie Mokoena's house, at his girlfriend's house that day by other members of your unit?

CAPT MAGAGULA: I was informed. I learned that when they arrived at the office.

MR NOLSEN: So you did know that George was detained at Connie Mokoena's home?

CAPT MAGAGULA: That is correct.

MR NOLSEN: Have you ever visited that place?

CAPT MAGAGULA: No.

MR NOLSEN: In Steven Tshabangu's sworn affidavit to this Commission, he describes in detail that you took Lucas and him in a Combi, not in an Audi, with the other policemen following in their vehicle, to Majaneng(?), where they stopped at George's girlfriend, Connie Mokoena's home.

Are you positive that you did not go with Steven and Lucas to Connie Mokoena's home that day?

CAPT MAGAGULA: Yes, it is true. I don't know where they went, because I went straight to the office.

MR NOLSEN: Do you have any idea how the policemen knew where George's girlfriend's house was if Steven or Lucas perhaps weren't also there?

CAPT MAGAGULA: I didn't have the knowledge.

MR NOLSEN: So in other words when Steven in a sworn statement to us describes the detention of his brother George in detail, saying which kind of vehicle he got into, that he was shown a weapon from the boot of that vehicle, that he was questioned about this gun, that Steven overheard his answers to these questions. When you hear this, your only reaction could be that Steven is lying. Is that correct?

CAPT MAGAGULA: He's not telling the truth, because if I was there, I would have seen that gun. Where he is lying is when he talks of a Combi. I was driving an Audi, not a Combi.

MR MOHEMA: But Captain, I think you or Mtombeni, one of you is also telling us lies like Steven, because in Mtombeni's statement, the statement he gave to us yesterday, paragraph eight, he said, line number two -

"Ek het tesame met Sers Kritzinger,

Dumisani ..."

Dumisani, is he not Mike Mahlangu?

CAPT MAGAGULA: That is him.

MR MOHEMA: And -

"... Mpelo went to Connie's home. When he arrived she said that George was in the room."

But now you are telling us that you drove with Dumisani, Steven and Lucas to your office. Is Mtombeni, Capt - I mean, Supt Mtombeni telling us lies?

CAPT MAGAGULA: I would say I was accompanied by Dumisani to the office. I would not be able to respond to what is written by Mtombeni.

MR MOHEMA: Thank you.

CHAIRPERSON: So who's lying? Are you lying, is Mtombeni lying or is Steven lying?

CAPT MAGAGULA: I would say Steven is lying, because there was no Combi. I accompanied him with Dumisani with an Audi.

CHAIRPERSON: But Sgt Mtombeni also said that Dumisani was with him. So how could Dumisani be in two places with you and with Mtombeni? So is he lying as well?

CAPT MAGAGULA: I'm not able to respond to what is written by Mtombeni, because it's not me who has written that statement.

MR NOLSEN: We're asking you to respond to his allegation that he was at Connie Mokoena's house and now you're telling us he couldn't have been at Connie Mokoena's house, because he was in fact with you. That's what we want you to respond to. Is he

lying or is he capable of being in two places at the same time? Or are you lying? Those are our three options.

CAPT MAGAGULA: I am not lying. I was with Dumisani.

MR NOLSEN: So then, by corollary, Mtombeni is the one who is lying.

CAPT MAGAGULA: I don't know.

MR NOLSEN: Fine. Let us proceed and assume that you're trying to tell us the truth. What time did you arrive at the Siyabuswa murder and robbery unit?

CAPT MAGAGULA: I don't remember.

MR NOLSEN: Can you try to approximate?

CAPT MAGAGULA: If I remember it seems we arrived before two. Even if I don't know the exact time, but I think it was before two.

MR NOLSEN: You did nothing, but go straight from the Bundu Inn to the Siyabuswa murder and robbery offices? You went straight, directly by the quickest route?

CAPT MAGAGULA: Although I was not going straight and not going fast, but I was - I went straight, directly to the office.

MR NOLSEN: I would just like to point out to you; that if you arrived before two; in Steven's statement they arrived by half past one and by that time they had already gone via Connie Mokoena's house in order to detain and question George briefly at the scene.

Meanwhile you, going by direct route, arrive approximately -
I know I asked you for
an approximation -
either say it the same time or half an hour later. Can you explain
why you were thus delayed in your direct route between the Bundu
Inn and the murder and robbery offices?

CAPT MAGAGULA: There was no reason to hurry.

MR NOLSEN: So you drove the direct route slow enough that your
colleagues could drive an indirect route, detain someone, question
them and arrive at approximately the same time?

I believe there's often minimum speed limits on roads as well
and surely you must have been below the minimum speed limit to
arrive at the same time?

CAPT MAGAGULA: As I say I was just driving normally.

MR NOLSEN: Then it sounds like you're a very safe driver indeed.

When you arrived at the office, where did you place Lucas and
Steven?

CAPT MAGAGULA: When I arrived at the office in Siyabuswa, I
put them at the verandah next to my door.

MR NOLSEN: I'm sorry, I ... (intervention).

CAPT MAGAGULA: At the verandah next to my door, next to my
office.

MR NOLSEN: Were they place together in a room together. Were
they in separate rooms ... (intervention).

MR MULLER: Chairperson, I believe that he said the "verandah".

MR NOLSEN: I understand now. I'm sorry. I missed the interpretation. You placed them on the verandah outside of the room? Were they ever placed into any rooms?

CAPT MAGAGULA: After I've opened the door then I informed them to enter. They didn't stay five minutes outside. So they did come inside. So they came inside my office.

MR NOLSEN: Were they always together inside your office?

CAPT MAGAGULA: That is correct.

MR NOLSEN: Capt Magagula, I wonder whether you could just help us visualise which office is your office. Some of us had been to the murder and robbery unit to do an *in loco* investigation.

If I can describe the office in this way that there is a long rectangular offices on the north and south side of the complex and shorter offices on the east and west side of the complex, with the west side of the complex bordering on a parking area, used by policemen and the east side nearest to the gate, the entry to the unit. Could you tell us on which side of the complex was your office?

CAPT MAGAGULA: My office on the west side where we parked our cars.

MR NOLSEN: How many offices were on the west side of the complex?

CAPT MAGAGULA: I don't remember as whether there were two or only one office.

MR NOLSEN: When George arrived, in which office was George placed?

CAPT MAGAGULA: He was put in Kritzinger's office.

MR NOLSEN: Where was Kritzinger's office located within the complex?

CAPT MAGAGULA: If I remember well, his office was on the eastern side facing the garden.

MR NOLSEN: Did you ask any questions of Lucas or Steven Tshabangu while they were at the murder and robbery unit?

CAPT MAGAGULA: Yes, I spoke to Steven.

MR NOLSEN: What did you ask Steven?

CAPT MAGAGULA: I asked about the gun which was found where it was alleged that it was George's room. He knew the gun that belonged to George and whether he knew that gun and how long did he have that knowledge that George used to carry that gun.

MR NOLSEN: What did Steven - how did Steven respond?

CAPT MAGAGULA: To me he said he saw it for the first time.

MR NOLSEN: So Capt Magagula, once they arrived at the unit, ostensibly to prevent them from informing George that you were looking for him, you did in fact interrogate Steven about this weapon. Isn't that correct.

CAPT MAGAGULA: Yes, that's correct. I interrogated him about the gun.

MR NOLSEN: So, let me just confirm that what you told us before was not strictly true; that they offered to accompany you so that they couldn't be there when George arrived. In fact you wanted to question them.

CAPT MAGAGULA: No, that was not my intention. They went with without being forced, to the office. Then I just started asking questions to have the knowledge as whether he know - he knows about the gun.

MR NOLSEN: Did you participate in the interrogation of George Tshabangu?

CAPT MAGAGULA: No.

MR NOLSEN: You never entered Kritzinger's office in which George Tshabangu was being held?

CAPT MAGAGULA: No, I didn't enter there - that office.

MR NOLSEN: A co-operative Steven Tshabangu, who voluntarily accompanied you, who was not forcibly interrogated; when he says that he saw you enter the room where George was being held, he's now lying to us again. Is that correct?

CAPT MAGAGULA: He's lying. I didn't leave my office. I was with Steven and Lucas.

DR ALLY: Can I just get to this point again? Did you make a statement into the investigation and to the disappearance of George Tshabangu? Do you recall making a statement relating to the

disappearance of George Tshabangu on Friday the 6th of February 1987?

CAPT MAGAGULA: I remember.

DR ALLY: In the statement ... (intervention).

CHAIRPERSON: Is that ... (intervention).

DR ALLY: In the statement, and this is - it is true that it is a handwritten transcript, you actually admit that you were involved in the questioning of George. That Capt Mtombeni arrested George Tshabangu, that George informed them, you and others, that there was still other weapons, that he and George were accompanied by Van Schalkwyk, Mpelo, Serg Mahlangu, Capt Mtombeni and Const Kritzinger.

That's the statement you make on the 7th of February 1987. You also - there's a further statement, which indicated that you were also involved in the questioning of George Tshabangu.

Now you're denying that you were ever involved in the questioning of George Tshabangu and that this statement made by you, is a false statement.

MR MULLER: Chairperson, can you just indicate where this interrogation is.

DR ALLY: This is point two. Warrant-Officer Magagula declares that on Friday, the 6th of February 1987, Sgt Mtombeni arrested George Tshabangu in Kliplaagdrif for possession of a fire arm and ammunition found in a room at the Bundu Inn.

The next says that George informed them that there was still other weapons, that he and two other friends buried in Ellensdoring B and that he offered to point them out that same day. That George informed them.

MR MULLER OBJECTS: Obviously, Chairperson, that is a translation of a document and that word "then" does not appear in this summary and I don't want to argue that point again.

This is a summary and it has no evidential value.

MR NOLSEN: But just to follow on Dr Ally's point - I mean we can argue about the grammar of Capt Magagula's own statement.

Where we don't need to argue about the grammar is if you look at Capt Mtombeni's statement, where Mtombeni - this is the same one that we've continued to refer to throughout the other proceedings.

Statement listed as A5, point number two:

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

Again that's the translation from the handwritten Afrikaans transcript, but I think we can agree on the grammar in that statement.

Now what I put to you, Capt Magagula, is that either your being less than honest with us now or that your colleague, Capt Mtombeni, filed a false statement in the investigation diary and that Steven Tshabangu as an eye witness has made a false statement to us.

Which would you prefer us to believe?

CAPT MAGAGULA: What I've written in my statement, is not the same as it appears on this paper. What Mtombeni has written here, is not a statement which he would say tomorrow he would agree and say he made a statement under oath.

I repeat that I never talked to George, never went to Kritzinger's office. I spoke to George in the evening when we drove with him in a Combi, because what is written here, it doesn't show what time it was written. When, what time and where.

It should have included that at this time. When Magagula, Mtombeni and Mpelo interrogated George and where. That is why I say I never entered the office. I stayed with Lucas and Steven in my office.

What I want to respond to is that that which they say it is written by Mtombeni, it doesn't show me to be a statement.

MR MOHEMA: We agree that that's a summary. There's no problem we'll get your statement, because you said you made a statement somewhere in the escape case. There's no problem. We will get it, but you have been told that that extract is from the Parsons Commission.

I don't believe that that person who made that summary, summarised lies there.

CAPT MAGAGULA: I didn't say that he was lying, but it may happen that he wrote a thing, because if a person summarises he doesn't include all the details. He makes a summary, but if you make a statement, you include all the details of the incident.

That is why I say what is written here, yes you may regard that, but to my mind, other things are not written the way I have written them in my statement.

MR NOLSEN: Let us leave this point for now, because I think it's going to be up to this panel to weigh up the value as evidence of that handwritten transcript.

Capt Magagula, you say that you didn't interrogate George Tshabangu.

CAPT MAGAGULA: Sorry. I never interrogated George Tshabangu in the office where he was together with Kritzinger and Mpelo and Mike. I never went into that office to interrogate him.

MR NOLSEN: During the time that George Tshabangu was being interrogated, did you remain in your office?

CAPT MAGAGULA: Yes, I remained in my office.

MR NOLSEN: Did you leave your office at any point in time?

CAPT MAGAGULA: Yes, I left my office after Mr Van Schalkwyk came to me and said George agrees that he's co-operating with us. Then I left and when I left again that they - the two brothers, that is Lucas and Steven, are not implicated or are suspects in this case.

Before I left, Dumisani came. After Van Schalkwyk left, before I left, Dumisani came. Then Dumisani said we should leave to the police station where we would go and pour petrol at Denilton.

MR MOHEMA: From Siyabuswa murder and robbery office, you went to Denilton police station to pour petrol?

CAPT MAGAGULA: That is correct.

MR NOLSEN: Would you be surprised to learn that yesterday under oath, the colleague you allegedly went with, informed us that you went to the Siyabuswa police station to pour petrol and not the Denilton police station.

Now, is your colleague lying to us yet again? Now, a different colleague providing us with false information?

CAPT MAGAGULA: My apologies. It seems that I'm making a mistake, because I'm mixing Denilton with Siyabuswa. If I remember well, we went to Siyabuswa.

MR NOLSEN: But I believe a minute ago when you remembered well, you went to Denilton police station. Are you telling me that it's possible for you, a serving member at the Siyabuswa police

station, to mix up which police station you went to? That you've somehow got the names mixed up of police stations located some distance apart from each other?

CAPT MAGAGULA: That is why I said I made a mix-up of these two names.

MR NOLSEN: So you forgot the name of the police station at which you were stationed and substituted the name of another police station?

CAPT MAGAGULA: No, I didn't remember. I said I mixed them up.

MR NOLSEN: How long were you absent?

CAPT MAGAGULA: I don't remember, but it seems it took a little while.

MR NOLSEN: How long is a little while, Capt Magagula?

CAPT MAGAGULA: I would not be able to tell exactly the duration.

MR NOLSEN: Can you approximate the duration for us? Was it five minutes, fifteen minutes, half an hour, an hour, two hours? We've already established that you drive quite slowly. How long a period elapsed for you to drive to Siyabuswa police station and return?

CAPT MAGAGULA: I am not able to respond.

MR NOLSEN: On your return, did you bring anything with you. Anything that you didn't have when you departed for the police station?

CAPT MAGAGULA: No, I don't remember.

MR NOLSEN: Why was it important to go and pour petrol during the middle of an interrogation of suspects, when you were only going to return a short time thereafter back to the office?

CAPT MAGAGULA: I thought that they have completed the interrogation of George. Van Schalkwyk, when he arrived to me he said George agreed that he's going to co-operate with us and that's why I left to pour in petrol at the police station.

COL KILLIAN: What car were you driving? What did you leave with to go and pour this petrol?

CAPT MAGAGULA: That is an Audi.

MR NOLSEN: Was the Audi used later that evening for the further investigations?

CAPT MAGAGULA: No, the Audi - I gave it to Jim who was driving the Combi. When I learned that we should use the Combi in the evening from Mr Van Schalkwyk, then they said I should exchange that Audi with the microbus and give it to Mawize.

MR NOLSEN: When Van Schalkwyk informed you about the interrogation in which you were not taking part, of George Tshabangu, what did he tell you? What information did he pass on to you that had been learned in the course of this interrogation?

CAPT MAGAGULA: He said to me George agrees that he's going to co-operate. He never added to that information. Then he just said to me I should go and change the car with the microbus.

MR NOLSEN: Did he indicate to you that George was willing to point out an arms cache?

CAPT MAGAGULA: I don't remember him saying that to me. What I remember is when he said that he agrees, that he's going to work with us.

MR MOHEMA: Then why were you supposed to swop cars?

CAPT MAGAGULA: They just said to me I should go and exchange my car with Mawize's car which is a Combi, so that we should leave in the evening. The reasons behind the exchanging of the cars, I didn't know at that time.

MR MOHEMA: You were told that you have to change it, because you have to use the Combi that evening. You never asked him why were you going to use - why were you going to travel by that Combi?

CAPT MAGAGULA: No, I never asked.

MR NOLSEN: I would like to point out to you, Capt Magagula, that on that handwritten summary to which we've already referred and your statement from the 7th of February 1987, you make it very clear the nature of the information that was passed on by George when he co-operated during the interrogation.

In your statement made the day after his detention, interrogation and alleged escape, you say that - and here we have to pay respect to the grammar - that the unit, let us say, was informed that there were still other weapons; that he and two other friends had buried them at Elandsdoring B and that he would point them out to you that same day.

Does this refresh your memory?

MR MULLER: I'm sorry, where do you read from?

CHAIRPERSON: It's the transcript, paragraph two, A1, page one.

MR NOLSEN: Does this refresh your memory as to the information which was handed over to your unit and the information on which you decided to carry out, "you" being the unit, decided to carry out a further investigation that evening?

CAPT MAGAGULA: I remember well, although all things which are said are not appearing on this statement.

MR MOHEMA: So what do you remember, Captain?

CAPT MAGAGULA: I remember when we were in the Combi, I asked George and they said to me about his two friends, although he never mentioned their names.

MR NOLSEN: Am I to understand, Capt Magagula, that a suspect in an armed robbery case in which people were injured, a suspect whose gun you had found, a suspect who is allegedly co-operating with your investigations, didn't provide you the names of two accomplices with whom he was working?

I remind you that there were three suspects in the armed robbery case; that he refused to provide these names and that you did no further interrogation to try to get these names and you still considered him a co-operative witness? Is that what you would have this panel believe?

CAPT MAGAGULA: I've said before that I never went to the room where this person was interrogated. I was not there. What I've written here of which I said before me that that is a statement I made, is that I asked George about this gun. Then he mentioned his two accomplices, but to me he never mentioned the names.

MR NOLSEN: Did he mention their names to any other members of your unit, to your knowledge?

CAPT MAGAGULA: I'll never say, but not in my presence.

MR NOLSEN: To your knowledge, were there any other accomplices who were investigated or arrested or questioned or traced in this regard, to your knowledge?

CAPT MAGAGULA: I cannot remember.

MR NOLSEN: Is it standing police practice to allow a suspect to not name his accomplices and to accept this as a complete statement of his involvement?

CAPT MAGAGULA: We are not the same, as I said that I was not present during the interrogation, but what I asked him is what he responded to.

MR NOLSEN: Capt Magagula, stop playing with this panel. I asked you a very specific question. Would it be considered normal police practice to allow a suspect to admit to involvement in an armed robbery, to admit that he had accomplices, to specify the number of accomplices and then refuse to name them.

Would that be considered acceptable, an acceptable statement of guilt?

CAPT MAGAGULA: Yes, it is normal practice that a person would say I went to this place, but he would be scared to name or mention his accomplices. That is normal or usual.

MR NOLSEN: It would be normal for you then to say, to the suspect, fine, we accept that. Don't worry, we don't require from you the names of your accomplices. We're satisfied that we should protect you first and not follow up your accomplices.

Is that your standard operating practice, Capt Magagula?

CAPT MAGAGULA: If he says that he was working with this kind of people, then again it will turn around, then say I don't want this person to know about me. I would not follow that, because I should respect his safety. So if he may expose them, what would happen to him.

MS SEROKE: In other words, Mr Magagula, if - after you found this George and say he has other accomplices, in terms of your case, you don't place any value that those people should be brought forward or arrested?

CAPT MAGAGULA: If he mentioned the identity of those two, those other accomplices, we'd follow those people and arrest them. Even if he never mentioned their names, because these things they've done it together. If you arrest one, you don't care about the two people, because you don't know their names, although they participated in that crimes. We would take care of them and we'll try to search for them and again he would help us to point out where they were staying.

MS SEROKE: If you wanted them, but at that time you didn't want them. You only wanted him only.

CAPT MAGAGULA: No, that is not the case, because to me he mentioned the accomplices, but denied to tell their identity.

So to me it will be difficult to look for a person whom I did not know, because he was only known to George. It would be difficult for me to search for somebody I don't know.

MS SEROKE: You have ways which makes a person to expose things which you wanted that he didn't want to expose. You have ways to do that, is it?

CAPT MAGAGULA: I don't have that way to force a person to expose the identity of other people.

DR ALLY: Your colleagues who were with you, didn't they tell you that George was supposedly taken to this spot to point out where guns were hidden, mention a name.

They say that George indicated that one of his accomplices was a certain Solly Mahlangu. Now what we'd like to know is, are you aware whether anybody during this investigation into this armed robbery, was followed up.

You're familiar with the case, with the diary as you say. Is there any indication anywhere that Solly Mahlangu is followed up, because there is a statement here, from Mpilo and from another of your fellow-officers, mentioning Solly Mahlangu.

CAPT MAGAGULA: I hear this name, Solly Mahlangu, for the first time here. That is why what happened at Kritzinger's office, it never, that content of the interrogation never reached me at any stage.

MR NOLSEN: If the content of that interrogation never reached you at any stage, Capt Magagula, why were you the first person to make a statement, listed as A1 in the case docket regarding George's disappearance?

Surely if you were the one who was excluded from all the information of what happened, someone, one of your colleagues who had more information, would have been the first.

But in fact, you were the first. The day after the escape, 7th of February 1987. If you look further, the next colleague of yours to make a statement, Dumisani, Mike Mahlangu, was only on the 11th of May.

So it seems to me that for two months the investigation was relying entirely upon your statement, and yet you sit here today and tell us that you were the one who most poorly placed to have any relevant information.

CAPT MAGAGULA: I didn't have the full contents of the knowledge of the case. For me to make that statement in A1, is that when George Tshabangu ran away or escaped, I was there.

CHAIRPERSON: In fact, Mr Magagula, Sgt Mtombeni declares, and if you look at page two of that document, that transcript, he says Sgt Mpelo, Warrant-Officer Magagula and Sgt Van Schalkwyk questioned George and George agreed that the weapon that he was in possession of, belonged to one Solly Mahlangu and that he agreed to point out a supply dump where other weapons were buried.

So why would all your colleagues have reason to portray your involvement in a different light?

CAPT MAGAGULA: I said to him I've never interrogated George Tshabangu together with Mtombeni and Mpilo. I never spoke to George Tshabangu in the presence of Van Schalkwyk. That is why I say, this paragraph which we looked at today which speaks of Solly Mahlangu, the statement which is alleged to be made by Mtombeni which I say some of those facts I don't know; that for example when they said I was present when George was interrogated, I said I

asked George some questions in the Combi on our way to Elandsdoring.

MR MOHEMA: Siyabuswa murder and robbery offices you said you did not participate in the questioning, but after the disappearance, the escape, you were the first person to report the matter at Denilton police station. Then what forced you then to take the lead in the escape?

CAPT MAGAGULA: I was - I didn't take the lead. I was stand-by. I was supposed to open a case about the escape. About that I was taking the lead ... (intervention).

MR MOHEMA: But Captain, you never participated in the interrogation of George. Your colleagues were busy interrogating, questioning him. At the end of the day he escaped. The person who, yourself, the person who you say yourself, was passive, then you went to the police station to open a case?

CAPT MAGAGULA: I opened the case about George's escape, not that I was interested. I said because I was on stand-by when I opened the case. Then when I opened the case as I said - that I say this summary which is before me, not all the details are there ... (intervention).

MR MOHEMA: I understand about that.

CAPT MAGAGULA: I'm requesting an opportunity to reply.

MR MOHEMA: Sorry, sorry.

MR MOHEMA: Okay. Repeat, please.

CAPT MAGAGULA: I was opening the case, because I was on stand-by. Some of the facts are not there. I wrote what George told me on that statement. When I opened the case of his escape, because I saw him running away.

MR MOHEMA: You saw him running away. That's why you were the complainant, Captain?

CAPT MAGAGULA: I was supposed to open the case ... (intervention).

MR MOHEMA: Captain, I'm repeating your words. You said you saw him running away. I said, then I repeat your words, you opened the case, because you saw him running away, not so?

CAPT MAGAGULA: I was present when he ran away.

MR MOHEMA: Then you saw him running away?

CAPT MAGAGULA: If I'm present and the person is running, it seems, it shows that I saw him.

MR MOHEMA: That's what I wanted to know. You saw him running away, Captain, simply.

CAPT MAGAGULA: To his direction when he ran away, because I said I saw him running away, because he was running away in our presence.

DR ALLY: Just to get some matters straight. When Van Schalkwyk indicated to you that George was willing to co-operate; was that the only information that Van Schalkwyk gave to you? All he said to you was George is willing to co-operate?

CAPT MAGAGULA: Yes, that's the only thing he told me in my office.

DR ALLY: Did he not ask you to get a Combi ready as well?

CAPT MAGAGULA: No, he didn't tell me at that time. For me to prepare the Combi is when we were just go to pour in petrol. Then he said we should go and exchange the Audi with a Combi to Mawize.

DR ALLY: And your reason as to why you would exchange the Audi for a Combi?

CAPT MAGAGULA: No.

DR ALLY: You didn't request an explanation?

CAPT MAGAGULA: No.

DR ALLY: Did he ask you to be available in the evening?

CAPT MAGAGULA: Yes, he said I should be present in the evening, because that is the meaning. My car which I used which was exchanged with a Combi.

DR ALLY: Did he tell you why you had to be present at the police station that evening? Why you had to be available?

CAPT MAGAGULA: No, he never informed me.

DR ALLY: You didn't bother to ask him why you had to be available?

CAPT MAGAGULA: I never asked him many things, because he said George agrees to work with us. That is the time when I went with Dumisani to pour petrol. Then when I came back, he informed

me that I should go and exchange the Audi with the Combi. It may happen that other people might be arrested.

DR ALLY: So the only time - when did you find out for the first time that the reason that you were going to go out with George that evening, was to go and look for weapons?

When was the first time that you found out that that's what you were going to be doing?

CAPT MAGAGULA: I heard for the first time when I returned from the police station.

DR ALLY: When, approximately what time?

CAPT MAGAGULA: If I remember well, it was at dusk.

DR ALLY: Who told you that?

CAPT MAGAGULA: I was informed by Van Schalkwyk.

DR ALLY: But earlier on you said that the only time that you knew about weapons was when George told you that they were going to point out weapons and that two other friends were involved. I repeatedly ask you did Van Schalkwyk tell you what George was going to co-operate about? You said, no, he didn't tell you.

CAPT MAGAGULA: That is correct. What I said is that George spoke about two people. It is when we were in the Combi. Van Schalkwyk during the day, he came to me. He said George agrees to work with us. Then I left, I went with Dumisani to pour in petrol. When I returned he said I should go and exchange my car and that I

should get a car from Jim Mawize, because we're going to leave. Then maybe we would do some arrest in the evening.

I talk about two things which never happened at the same time. What Van Schalkwyk told me during the day, what I said about was in the Combi in the evening.

DR ALLY: So when George was in the Combi, you already knew that you were going to go and look for weapons, because Van Schalkwyk had told you that at some point?

CAPT MAGAGULA: At that time I didn't know.

DR ALLY: You said that Van Schalkwyk told you at about dusk that you were going to look for weapons. What is the proper story here, because there's so many inconsistencies? Can you just give us one version that is consistent. At one moment you don't know anything until George speaks to you and when I - and at another point you say, no, Van Schalkwyk told you.

CAPT MAGAGULA: Van Schalkwyk did not inform me that George is going to point out arms. He never told me that. He told me that I should go and exchange my car with another car. About guns, I learned it from George in the Combi. Not in the office. All things I've said about Schalkwyk happened in the office. What I said about George and his two accomplices, we were in the Combi.

DR ALLY: So you mean that your colleagues had found out early in the afternoon already that George is willing to co-operate, because that's what Van Schalkwyk told us yesterday. That is what

Mtombeni told us. That's what Dumisani even told us yesterday, who wasn't even, claims he wasn't even directly involved. His role, he says, was to look after the cars.

That by the afternoon they knew that George was going to take them to point out weapons. All your colleagues know that and that is - they were going to do it in the evening, because George didn't want to be seen taking people to this place during the day, in case somebody saw him.

You're saying that nobody bothers to tell you that. You don't discuss it. Dumisani doesn't mention it to you when you're driving to go and fetch petrol. Van Schalkwyk doesn't mention it to you and the only time that you know why you are being asked to do this work at night, is when George gives you that information in the Combi at about eight, nine o'clock the evening? Is that what you're telling us now?

CAPT MAGAGULA: They did not tell me. I repeat again, they did not tell me. I found out by myself from George in the Combi. I never discussed with them, because they just said when I went to exchange the car, they said it is possible that other people may be arrested. So I learned from George about the guns.

MR MULLER: I'm sorry, Chairman, I just wanted Capt Mohema to let the interpreter finish the English, because he hears the answer and then he starts and sometimes the two overflows. Sorry, Captain.

MR MOHEMA: Okay. Thank you. Captain, when Col Killian asked you what was your rank during that time, you said you were a warrant-officer, which means you were a senior man among those members at that time.

It is amazing for a senior man, a warrant-officer to be given instruction by a Sgt Van Schalkwyk to go and swop the vehicles and then you never inform the senior man what was supposed to be done with that vehicle, Captain.

Was it not strange to you, Captain, or did you just take the instruction because Van Schalkwyk was a White man?

CAPT MAGAGULA: That is not the case as you say. Those other people were responsible for the case and Van Schalkwyk never gave me an instruction on that day. Schalkwyk said I ask you or request you to go and exchange the car. It is not an instruction, it's a request, because we worked together as colleagues or co-workers. I don't look on the -I don't play the race card.

That is why I didn't have many things to ask him; that I just said to myself I should be co-operative and do what I am requested to ... (intervention).

MR MOHEMA: Captain, you never cared. I mean, you were a (indistinct). You were a senior man during that day. You were meant to report the incident at the end of the day to the branch commander, but you never questioned them why am I going to take

the Combi. Where are we going to - where are we going to use the Combi and how, Captain.

CAPT MAGAGULA: I said I didn't ask him, because he said to me it may be possible that other people may be arrested.

MR MOHEMA: Thank you.

MR NOLSEN: Capt Magagula, has your - has your attorney made available to you or shown you a copy of the statement from Matupe Peter Ratlabiane?

CAPT MAGAGULA: Yes, he showed me.

MR NOLSEN: Can you tell us, are you familiar with Matupe Ratlabiane, and if so, in what capacity?

CAPT MAGAGULA: I know him.

MR NOLSEN: In what capacity do you know him? Wasn't it that Ratlabiane was a colleague of yours at the Siyabuswa murder and robbery unit?

CAPT MAGAGULA: Yes, he was together - he was with us in that unit.

MR NOLSEN: Was he with you in that unit in February of 1987 when George Tshabangu was detained and interrogated?

CAPT MAGAGULA: Yes, he was working there.

MR NOLSEN: Have you familiarised yourself with the contents of this statement?

CAPT MAGAGULA: Yes, I saw the statement.

MR NOLSEN: For the record I'd like to summarise that in Supt Ratlabiane's statement he says that during his time as an investigator at the murder and robbery unit, he was aware of the existence of a brown case which contained an old styled portable telephone which was - which contained a battery and that this device was applied to hardened criminals and supplied an electrical shock to them during the interrogation process.

Are you aware of the existence of this brown case with the contents as described here?

CAPT MAGAGULA: No, I don't know.

MR NOLSEN: You've never heard of such a brown case in use at the Siyabuswa murder and robbery unit?

CAPT MAGAGULA: I never heard about that. I see it for the first time here on this report.

MR NOLSEN: Can you perhaps think of a reason why Supt Ratlabiane would wish to deceive us, wish to lie under oath as a serving member of the police, about the existence of this brown case?

CAPT MAGAGULA: I'm not saying Ratlabiane is lying or he's telling the truth. That is the one who knows about that, but I have no grudge against Mr Ratlabiane.

MR NOLSEN: What I asked very specifically was, are you aware of any reason why Supt Ratlabiane would lie to us? Are you aware of any reason? Yes or no?

CAPT MAGAGULA: No, I don't know.

MR NOLSEN: I would like to point your attention to paragraph three of Supt Ratlabiane's statement in which he describes the layout of the murder and robbery unit. In particular I would like to point out the last sentence and read into the record that the office on the eastern side of the complex was used as the interrogation room, especially if the use of force was anticipated.

I would like to recall that earlier you identified that George was detained on the eastern side of the complex in Kritzinger's office. Do you recall that testimony from earlier, Capt Magagula?

CAPT MAGAGULA: Yes, I do.

MR NOLSEN: Were the offices on the eastern side of the complex used as an interrogation room, particularly when force was anticipated? Do you agree with this statement?

CAPT MAGAGULA: No, I don't agree with that statement.

MR NOLSEN: Again, can you think of a reason why Supt Ratlabiane would like to deceive us about which room was used as an interrogation room?

CAPT MAGAGULA: There were no rooms which were used that suspects would put there and be interrogated there or tortured there.

That it was Kritzinger's office and other offices. There are people who were occupying those offices.

MR NOLSEN: Was force ever used during the interrogation process, to your knowledge, by any member of the Siyabuswa murder and robbery unit?

CAPT MAGAGULA: No, I don't remember. I remember myself personally, I had a case of assault where I used to force to a suspect in those offices. So to me at that time, you would use only a hand. Not that we had any instruments or machines which were used.

MR NOLSEN: When you say you used only a hand in the interrogation process; what do you mean by that?

CAPT MAGAGULA: My suspects I would use a hand to assault them.

MR NOLSEN: Did you punch them with a closed fist?

CAPT MAGAGULA: Yes.

MR NOLSEN: Was this regular practice?

CAPT MAGAGULA: I say, to me, it was a normal practice up to the point I was found guilty about - in regard to assault case.

CHAIRPERSON: Would you say that torture was widespread in the police and especially amongst the murder and robbery unit in Siyabuswa?

CAPT MAGAGULA: No.

CHAIRPERSON: Are you denying that the murder and robbery unit was involved in torture?

CAPT MAGAGULA: I deny that. That's why I never saw that. That's why I deny that.

CHAIRPERSON: Do you deny that this torture instrument existed at the Siyabuswa police station?

CAPT MAGAGULA: I deny that. That was not present.

CHAIRPERSON: Was the murder and robbery unit ever involved in political activity in the KwaNdebele area?

CAPT MAGAGULA: No.

CHAIRPERSON: Were you aware of the political conflict in the area?

CAPT MAGAGULA: I don't remember well, but there was a conflict, but I don't know the source of that conflict.

CHAIRPERSON: When did you yourself receive promotion to the rank of Captain? After the incident of George Tshabangu or which year?

CAPT MAGAGULA: I would tell you that I - to be promoted as a Warrant-Officer, I studied for five years to be a Warrant-Officer in that rank.

In 1994, if I am not mistaken, I went to a course in Paarl. Then I was promoted as a lieutenant.

DR ALLY: You admitted here that you assaulted suspects regularly until you were found guilty. When was that? When were you found guilty? Before or after the incident to do with George Tshabangu?

CAPT MAGAGULA: It was before. I was convicted in 1986.

COL KILLIAN: You say you made use of physical force by assaulting this man physically with your clenched fist or your open

hand or whatever. As a result of the injuries he sustained you were eventually then convicted on a charge of either assault common or to do grievous bodily harm. Is that correct?

CAPT MAGAGULA: Yes, that's correct.

COL KILLIAN: In this investigation into this alleged assault against you, obviously this - the victim was referred to the district surgeon for physical examination. What is normally use in police term is a J88 was completed by the examining district surgeon.

CAPT MAGAGULA: Yes, that is correct.

COL KILLIAN: And on that J88 the injuries observed by the medical practitioner was listed - were listed?

CAPT MAGAGULA: That is correct.

COL KILLIAN: That contributed to your eventual conviction on a charge of assault?

CAPT MAGAGULA: That is correct.

COL KILLIAN: This occurred prior to the arrest of George Tshabangu?

CAPT MAGAGULA: That is correct.

COL KILLIAN: Then isn't it true that after this incident you people realised that you cannot afford to use physical force any more and that is when you reverted to this shock instrument, the telephone, which didn't leave any superficial injuries?

CAPT MAGAGULA: No. In court I was told that if you repeat any incident of assault, then you should know that ... (intervention).

COL KILLIAN: That is exactly what I'm suggesting to you.

CAPT MAGAGULA: ... you'll be dismissed from the police.

COL KILLIAN: Exactly what I'm suggesting to you, because you were not now allowed to use physical force which would leave visible injuries, detectable visible injuries; that is why you people then reverted to using this particular instrument which did not leave any visible injuries.

CAPT MAGAGULA: My apologies. I spoke about myself. I didn't speak about any other person. I was speaking about myself.

COL KILLIAN: No, no, no, let's stop you there. I'm not asking you to account for other people's atrocities. That's not what I'm asking you. I'm asking you; isn't that when you decided, you and your branch decided that the only alternative left for you would be to make use of this particular instrument; to avoid prosecution in future.

If you were not allowed to use physical force with clenched fists and things like that any more, how would you then extract the information and the admission from suspects in cases that you were investigating?

CAPT MAGAGULA: If I asked somebody and dispute that that I would give it the (indistinct) and I would not recommend any machine to be used to torture people. I never used a machine.

COL KILLIAN: So after your conviction; what method did you employ to extract the information from suspects?

CAPT MAGAGULA: I received information without using force.

COL KILLIAN: I'm asking during interrogation. I'm asking you during interrogation. I'm not asking you about information supplied by informers. I'm asking you about your personal interrogation of a suspect detained on a particular charge; what method did you then use to extract the required information from him during interrogation?

CAPT MAGAGULA: I didn't use anything.

COL KILLIAN: If you ask him; listen did you kill Koos Koekemoer and he said, no, you accepted it at that and you let him go?

CAPT MAGAGULA: Luckily I never met suspects who dispute their involvement. I usually met people who were co-operative.

COL KILLIAN: Only after your conviction did you come across these suspects who readily admitted to commission of offences?

CAPT MAGAGULA: I said I used my own voice or plans to extract information.

COL KILLIAN: Now you said, luckily you never came across such suspects who did not admit to the commission of the offences, but prior to your conviction you had to resort to violence to extract admissions from them.

CAPT MAGAGULA: I don't understand that question. May you please repeat your question?

COL KILLIAN: Prior to your conviction on the charge of assault, it was necessary for you to use physical violence during interrogation to extract admissions or knowledge about a particular crime, from suspects.

What you're now saying to us is that after your conviction you were so fortunate that you never came across any suspect in any of your cases allocated to you for investigation where you had to resort to violence.

They all readily admitted their guilt to those charges that were referred to you for further investigation?

CAPT MAGAGULA: Yes, I didn't have any problem.

COL KILLIAN: You're a very lucky policeman.

DR ALLY: Why did you have to use violence in the first place then? Why did you assault people you were questioning before your conviction? What was the reason for that?

CAPT MAGAGULA: These people, at times when I used force, if, to tell the truth, I didn't know the reasons why I was assaulting these people, because after I was convicted then I said to myself it is better to change. Then I became a Christian. Then I went back to them and apologised.

That is why I said I never continued thereafter.

COL KILLIAN: Are you still a Christian?

CAPT MAGAGULA: Yes, that's correct.

MS SEROKE: Because you're still a Christian, you didn't want to go back to George's family and tell them what happened?

CAPT MAGAGULA: I went to George's father and his father is a priest. I told him that I - it's a pity that his son escaped from our hands. Then, we are trying to search and we are even trying to get some information.

CHAIRPERSON: But as a Christian, how could you lie about the fact that George had escaped? You know that you guys were lying.

CAPT MAGAGULA: I'm not telling the lie. I'm telling the full truth.

CHAIRPERSON: Isn't it true that the whole reason none of this is written into the docket on the robbery, is because none of it's true, because you people picked him up because you knew that he was involved in the political conflict at the time and when you alleged that he escaped, in fact you people shot him. You killed him there. That is why nobody's ever heard of George since.

If you're a Christian, why don't you tell the truth?

CAPT MAGAGULA: I'm telling the truth even now that George escaped. I didn't know George so deep that I would say that he was a political activist or what kind of a person he was. I don't know, I didn't know his background.

CHAIRPERSON: Why was there no proper investigations, Sgt Magagula, of the robbery incident. There's an eye-witness statement which mentions three suspects, three accomplices and

none of them match George's description. Why was there no follow-up investigation into that matter?

CAPT MAGAGULA: George's case was followed, but what I don't know - they think we stopped the investigation, but we did follow this case.

CHAIRPERSON: Isn't it true that there was no investigation, because you knew that he was dead already. Isn't that the real truth?

CAPT MAGAGULA: I said George never died. I still say that he has not died. He's escaped. If something happened to George, I wouldn't waste time. I would just go and make my amnesty application like many. I speak a painful thing that if it may happen to my child in future, I would act the same as George's family is acting.

CHAIRPERSON: Tell us, Sgt Magagula, what happened that night when George took you people to show you the arms. Tell us exactly what happened.

MR MAGAGULA: We left until we arrived at Elandsdoring. He was directing us where we should go. When we arrived at that place using - driving a Combi, we alighted from the Combi. Mr Schalkwyk took George, because George was at the back. Then he unlocked the handcuff. We ... (intervention).

DR ALLY: And he unlocked the handcuff. Is that what you're saying? You took out of the Combi from the back and

he unlocked the handcuffs?

MR MAGAGULA: Yes, he unlocked his handcuffs, if I remember well.

DR ALLY: Well, that's not according to Van Schalkwyk. That's not according to the testimony of Van Schalkwyk. According to the testimony of Van Schalkwyk, George was taken out of the car and the only reason that the handcuffs were unlocked, was when George was at the wire fence and because it was difficult for George to get over this wire fence with the handcuffs that Van Schalkwyk then unlocked the handcuffs and kept one part of the handcuff in his hand.

You are saying now that he unlocked the handcuffs as soon as he took him out of the Combi?

MR MAGAGULA: I think you didn't hear me correctly or the interpreter didn't hear me correctly. I said he unlocked the handcuffs only on the one hand.

CHAIRPERSON: Yes, but it's the question of when did he unlock the handcuffs? According to the version which we have been given by you, he was at the back of the vehicle. He was taken out of the vehicle and then the handcuffs were unlocked. Now which is it? Tell us the truth. Or maybe you don't know. What is it?

MR MAGAGULA: I said he was at the back in the Combi. Van Schalkwyk came to the door. Then he called him. Then he unlocked the handcuffs on one hand.

MR MOHEMA: Captain, how far was your car parked from the fence?

MR MAGAGULA: There is a tarred road. Then my car was on the other side.

DR ALLY: Could you see the fence?

MR MAGAGULA: We were not able to see the fence.

DR ALLY: Why could you not see the fence?

MR MAGAGULA: It was dark.

DR ALLY: Did you know that there was a fence there?

MR MAGAGULA: No.

DR ALLY: So why would Van Schalkwyk want to unlock the cuffs of George? He is a suspect. You are investigating a very serious offence here where there are arms hidden. Why would Van Schalkwyk unlock the handcuffs of a suspect? For what reason?

MR MAGAGULA: I would not know that.

DR ALLY: Because he didn't unlock the handcuffs. He told us yesterday that he did not unlock the handcuffs of George Tshabangu at that point in time. That George was taken out, that George led them to the place where these arms were supposed to be; that they had to get over the fence.

At that point he unlocked the handcuffs in order to allow for George to climb over the fence, because George would not be able to climb over the fence with his hands tied.

He didn't unlock the handcuffs when he took George out of the Combi. There was no reason to do that. So where do you come on this story - this that he unlocks George's handcuffs while George is taken out of the Combi? Where does that come from?

MR MAGAGULA: I remember that the way I saw it, I thought maybe the time when he called him and then George from the back he went outside the car, I thought that at that time he unlocked the handcuffs.

MR MOHEMA: Immediately you alighted from the vehicle you all moved together with George and Van Schalkwyk and how many were you?

MR MAGAGULA: In the Combi it was myself, Mtombeni and George and Schalkwyk. The four of was ... (intervention).

MR MOHEMA: Where are the other members?

MR MAGAGULA: I don't remember as whether they arrived when we approached the fence or what. They came with a Skyline. That is Dumisani and Kritzinger.

CHAIRPERSON: So tell us what happened from then.

MR MAGAGULA: They were together with Mpelo.

CHAIRPERSON: Carry on. Tell us what happened.

MR MAGAGULA: I don't remember who went, who jumped the fence first, because the fence was a little bit high. I don't know. What I remember is that myself, I jumped the fence and Mtombeni

was helping me. As to whether Van Schalkwyk and George jumped the fence; in which way I don't know.

After I jumped the fence I helped Mtombeni to jump the fence.

CHAIRPERSON: Proceed.

MR MAGAGULA: Then I heard Van Schalkwyk say - screaming, saying "hey". Whilst I was trying to listen I could hear the sound of the bushes.

DR ALLY: Did you have any light with you during this?

MR MAGAGULA: No.

DR ALLY: No light? Nothing?

MR MAGAGULA: I don't remember seeing any light.

DR ALLY: Did you not have a torch with you?

MR MAGAGULA: I don't remember seeing a torch.

DR ALLY: Did you light a match?

MR MAGAGULA: There was no light at all.

DR ALLY: So how were you going to find anything? What were you going to find? Is it you couldn't see anything, it's dark, you're getting over a fence at a strange terrain; what were you going to find and how were you going to find anything?

How were you going to find anything? Can you explain to us and you are all policemen, trained one would assume, going to look for something? Even children take torches in the dark when they want to find something.

So how were you going to find anything that night?

CHAIRPERSON: Maybe they could see in the night.

MR MAGAGULA: If I remember well, I don't know as whether the torches were arranged, but I don't know. I don't know why they were left. So I will ... (intervention).

DR ALLY: I'll repeat the question. I asked you, could you please answer me the question, explain to us how were you going to find anything that night in the dark? You said it was very dark. You said you couldn't - when you got out of the Combi you said you couldn't see the fence.

You said you couldn't even see - you don't know who got over the fence first; whether Van Schalkwyk got over first, whether George got over first. You don't know, because it was dark. You couldn't see. You weren't that far behind them. They got over the fence. You and Mtombeni then got over the fence. You got over first and Mtombeni helped you over the fence.

You could see nothing. It was dark. Now how were you going to find anything? Can you explain that to us?

MR MAGAGULA: For me to say I don't how it came that we - there should not be light. I thought Kritzinger - I thought maybe one of them had a torch. So it was a problem to me when I learned that the person is escaping we were going to have a problem to search.

DR ALLY: Did you ask anybody if they had a torch? Did you ask your colleague who was with you, Mtombeni? Did you ask Van Schalkwyk if they had a torch?

MR MAGAGULA: I started to ask about the torch when I learned there - when I saw George escaping. Then I asked Mtombeni.

MR NOLSEN: Who was carrying the shovel to dig up the weapons?

MR MAGAGULA: There were no shovels.

CHAIRPERSON: So you went about ... (intervention).

MR NOLSEN: You were going out to uncover an arms cache at night with no shovel and with no torch? Is that your testimony under oath to us today?

MR MAGAGULA: I said I saw no shovel. I did not know as whether the shovels need to be taken with.

MS SEROKE: Were you going to use your fingers to dig that cache?

MR MAGAGULA: If we found those things, somebody was supposed to be left there and then the shovels or something spades would be looked for to dig.

MR MOHEMA: You were a senior man during that time. Here is your colleagues. They informed you inside the Combi on your way to the scene. Actually the suspect himself informed you that we are - I'm going to point to you some weapons - where I buried some weapons. Why didn't you stop the Combi and tell them, let's go and get some torches and spades?

MR MAGAGULA: As I said, I learned from the Combi when George told me about his two accomplices. From the office to that place I didn't have an idea that where we're going there we should dig or what we're going to do. That is why I thought those people had torches, because they had full information about our mission.

MR MOHEMA: But Captain, you were with them inside the Combi when they - when George Tshabangu informed you that we are going to indicate to you where we buried weapons. Were you not worried about how are you going to get those weapons? Those buried weapons? As a senior man, Captain?

MR MAGAGULA: I thought I replied to your question when I said I thought that in the Combi one of them had a torch, but I never thought of a spade or a shovel.

CHAIRPERSON: Tell me what happened after you heard, I think was it Van Schalkwyk screaming "hey". Proceed. Tell us what happened.

MR MAGAGULA: I only heard him saying "hey", because that area was bushy and it was rocky.

MR MOHEMA: How could you see those stones?

MR MAGAGULA: We were treading on those rocks. So that is why I felt that the place is rocky.

MR MOHEMA: Proceed.

MR MAGAGULA: Because it was dark, I thought Mr Schalkwyk - it was between me and Mr Van Schalkwyk, it was around five to six

metres and then it is dark. The only thing you could see was the falling of the dry leaves from the trees.

DR ALLY: Just to take you back to what Mr Van Schalkwyk said. We just want to get this absolutely clear. Van Schalkwyk said "hey". Is that all he said?

MR MAGAGULA: That's what I heard. That's the only thing I heard.

DR ALLY: You only heard that?

MR MAGAGULA: Then I think he said again that he's running away.

DR ALLY: Oh.

CHAIRPERSON: It gets more interesting.

DR ALLY: So after the "hey", there was a sentence? What is this? What is going on here now? For five minutes you kept on telling us that the only thing that you heard Van Schalkwyk say, was "hey".

You continue with your story. I then take you back and I ask, is that all that Van Schalkwyk said, "hey". You now say, not, he also said, "Hy hardloop weg."

MR MULLER OBJECTS: Mr Chairman, I don't think that that statement is fair. It was not for five minutes that he was talking about the "hey". He was responding to questions after the testimony that he gave about the "hey".

DR ALLY: I thought I would also ... (intervention).

CHAIRPERSON: He especially was asked, with respect he was asked what else did Van Schalkwyk say and then almost as an afterthought he came with the fact that he said, "Hy hardloop weg." It was not mentioned previously.

Can we ask your client again what happened.

DR ALLY: What did Van Schalkwyk say?

MR MAGAGULA: Should I proceed?

CHAIRPERSON: Yes.

DR ALLY: What did Van Schalkwyk say?

MR MAGAGULA: Schalkwyk said "hey".

DR ALLY: That's all?

MR MAGAGULA: That's what I heard.

DR ALLY: Nothing else?

MR MAGAGULA: I never heard anything - that when we started running then he said he's running away. When we started to run.

CHAIRPERSON: I'm sorry. I am now totally confused. You're walking and Van Schalkwyk says "hey", but he doesn't say "Hy hardloop weg." You then say he says, as you start running, he says, "Hy hardloop weg." Now why would he run and then Van Schalkwyk would say, why do you all run. And then Van Schalkwyk says, "Hy hardloop weg."

Isn't it more logical that he would say, "Hy hardloop weg" and then you all start running? Which is it? Tell us the truth, man.

What is going on? What is the proper version you want to put before us?

MR MAGAGULA: This thing happened in a very short time. That is why I would not be able to remember the sequence and the details of the event. It happened very quickly. There is time when we stand still to listen as whether somebody was running away. We followed just the noise where the noise is leading to.

DR ALLY: You have a very selective memory, Capt Magagula, because you - sometimes you can remember details, very minute details and other times you can't even remember important issues. You can remember that the handcuffs were undone in the car or unlocked in the car; you can remember that.

You can remember that you got over the fence first. This is 10 years ago. You can remember that you got over the fence first and then you say - and then you pushed down the fence and then you helped Mtombeni to get over the fence after he had helped you to get over the fence first.

You can remember those details, but you cannot remember what Van Schalkwyk says when somebody is allegedly escaping from him. I would think that that would be something which would be vivid in your head; that you would remember that Van Schalkwyk shouted "Hey, hy hardloop weg." "Kom help" of - that you can't remember, but other details of that night you can remember.

MR MULLER: Mr Chairperson, Chairperson, is it correct that he said that he jumped the fence first? My note is ... (intervention).

DR ALLY: Oh, no, no. Just listen to what I said. I said that he said Van Schalkwyk went over the fence first with George. Okay. He can't remember whether Van Schalkwyk went over first or George went over first. He can't remember, because he can't - you couldn't see.

What he then says is that him together with Mtombeni then got over the fence. He got over the fence first, Mtombeni helped him, he then helped Mtombeni then to get over the fence.

That's my recollection of what your client said to us. Is that correct?

MR MULLER: Yes, but the context in which you put the question to him, wasn't correct and if it is put like this that you've explained it now; then I'm happy with it.

CHAIRPERSON: Fine. Proceed to answer.

MR MAGAGULA: May you please repeat the question you asked?

DR ALLY: I want to know why is it that certain things you can remember very well to the last detail and yet on important issues, important to this case, pertinent to this case, you seem not to be able to remember?

MR MAGAGULA: I thought everything or any fact I said is of importance. I'll never leave anything because of my wisdom. I'm here to tell the truth. I speak of what I remember. I would never

change things I cannot remember and put it as an fact. I want to put it as it was.

CHAIRPERSON: You've already changed what you've said. I want you to - I'm going to offer you another opportunity. Tell us what happened once you got over the fence, from the time you say you heard Van Schalkwyk scream. How far did you walk before Van Schalkwyk screamed?

Tell us the details of what happened?

MR MAGAGULA: After jumping the fence, the people who started walking were Mr Van Schalkwyk and Tshabangu, because I was still helping Mtombeni to jump the fence. If - when I think, it would be about five to six metres when I heard Mr Van Schalkwyk saying "hey".

MR MOHEMA: Then again you weren't all other members.

MR MAGAGULA: Mtombeni jumped the fence, because I thought either maybe George has hit him or he's fighting Van Schalkwyk. That's my first thought. That's when we came nearer to the scene. Then when we came nearer then he said he is running away. Then we started to run, though it was dark and there were rocks or stones.

MR MOHEMA: Was Kritzinger already there? Kritzinger, Const Kritzinger and Dumisani when you start running?

MR MAGAGULA: It seems they were there if I remember well. I remember that when we returned they have already jumped the fence. They were on our side of the fence. If I'm not mistaken,

because their car stopped when we went to the car. But I don't know as whether when we started running, they were with us or not.

DR ALLY: You didn't try to get torches?

MR MAGAGULA: That is - I started to see that the torches were not there.

DR ALLY: Did you get torches I'm asking you. Did anybody ask, did anybody shout, get a torch, go and fetch a torch. That's what I'm asking you.

MR MAGAGULA: I don't understand your question, Sir.

MS SEROKE: Is there somebody who said at that time, instead of running chasing that person, was there any person who said go and look for a torch?

MR MAGAGULA: I don't remember.

DR ALLY: Now, how is it?

MR MAGAGULA: I don't remember.

DR ALLY: So you were running around in the dark ... (intervention).

MR MAGAGULA: I said I don't remember hearing somebody saying let us go and look for a torch when we started to run.

DR ALLY: Did you instruct somebody to find a torch? After all, you were one of the front people, the first to hear Van Schalkwyk shout. Did you ask somebody?

MR MAGAGULA: No, never.

DR ALLY: Didn't you have a lighter? Are you a smoker?

MR MAGAGULA: I'm not smoking.

DR ALLY: Did nobody shout to light a match, strike a match or put on a lighter or anything like that? Any way that would assist you in actually trying to see what was going on, because you keep on telling us, you tell us all the time, it was dark, there were bushes, there were stones. You know, you were falling around I would imagine. You couldn't see each other. At no point you give any indication of anybody saying, get some light.

The simplest most obvious thing to do.

MR MAGAGULA: I don't remember.

CHAIRPERSON: Tell me - who - you say that Van Schalkwyk was in front. When George crossed the fence, tell me more about that? What did you remember seeing?

MR MAGAGULA: As I said, I don't remember who jumped first between van Schalkwyk and George, because I was coming at the time to the fence.

CHAIRPERSON: Now carry on.

MR MAGAGULA: If I remember well it seems Van Schalkwyk, I heard Van Schalkwyk to jump the fence. Then he jumped. Then Mr Tshabangu followed.

CHAIRPERSON: Did Mr Tshabangu not need help in jumping the fence? After all you were helping everybody else jumping the fence, so how did Mr Tshabangu get over the fence?

MR MAGAGULA: That's what I say I helped Tshabangu to jump the fence. You wouldn't be able to jump alone. After Van Schalkwyk has jumped, I don't know as whether Van Schalkwyk helped to hold the fence, because Mtombeni helped me to jump the fence. Then thereafter I helped Mtombeni to jump the fence, if I remember well.

DR ALLY: Can I just ask you a question? Isn't the usual police practice that when you have a suspect in a situation like this, which is a fairly dangerous situation, because you're going to look for arms, that you allow the suspect to be with one policeman only? Is that - what is the usual standard police practice in a situation like that?

MR MAGAGULA: At that time he was not alone. I thought Van Schalkwyk, he would say - after he has jumped the fence, then after George has jumped, they would wait for us.

I didn't think that they would proceed. It's not usual that a person would control the suspect alone.

DR ALLY: Why did you not say anything? As Capt Mohema has pointed out over and over again. You were the senior officer. How is it then that Van Schalkwyk gets over the fence first, George then gets over the fence second and without any other assistance; there are two other policemen, yourself was still there and there's Mtombeni, Van Schalkwyk then goes off alone with George uncuffed. The handcuffs having been unlocked?

CHAIRPERSON: They have been unlocked.

DR ALLY: They have been unlocked, the handcuffs at that point. They're saying they were uncuffed, because even if -according to Van Schalkwyk's version, it would have been unlocked at that point.

In your version it would have been unlocked even earlier. He goes off alone with George in the dead of night, no torches, you can see nothing, but you're quite happy to allow Van Schalkwyk to go off with George on his own.

MR MAGAGULA: As I said that I didn't think that he would proceed. I thought he would ... (intervention).

CHAIRPERSON: Did you shout and say to him, hold on for us?

MR MAGAGULA: No. At that time I was not able to see that they were proceeding.

CHAIRPERSON: How far ahead of you were they when you heard Van Schalkwyk screaming?

MR MAGAGULA: As I said before that it could have been five to six metres.

CHAIRPERSON: When he screamed he screamed "hey" according to your evidence. Did you shout back and say "Hey, what's happening?" Or did you - because from what you say you just kept quiet?

MR MAGAGULA: The way it happened - that's why I said it happened in a very short space of time. When he said "hey", I could

hear the sound of the dry leaves. Then thereafter I heard him saying he is running away. Then we started to run.

CHAIRPERSON: Did all of you run? How many of you ran? In which direction did you run?

MR MAGAGULA: At the time when we were running I was just following that sound of those trees.

CHAIRPERSON: What happened after that? Tell us in detail what happened after that?

MR MAGAGULA: After that we tried to look around in that darkness. Then we returned to the cars. We thought maybe that we'll find him along the road. Then from there we radioed other police vans to help us to look.

MR MOHEMA: Did Kritzinger and Dumisani also assisted you in rushing Tshabangu?

MR MAGAGULA: I don't remember that I saw them, but as whether they followed us, I don't know, because it was dark and everybody was running about.

MR MOHEMA: Were they just standing around; Kritzinger and Dumisani?

MR MAGAGULA: If I remember, we were running. Nobody was talking. That's what I said that I remember that they were there, but I don't know that while we were running, we were running at different directions. What I remember is that the person whom I never saw near us, is Mike.

That's the person I never saw in ... (intervention).

CHAIRPERSON: How could you see if it was dark. It was pitch dark according to almost all the witnesses. So how would you know who was running and who was not running?

MR MAGAGULA: If you are merely running in a forest, you're able to see or to hear that you see that one person is following this direction, the other one in this direction.

CHAIRPERSON: So could you see George?

MR MAGAGULA: You would be able to see though he's quite nearer, but if he's a little bit further or behind Mr Mohema, you would not be able to see, because the area was so bushy that you would not be able to see people.

CHAIRPERSON: But you say they were all running in the different directions. How would you know? I mean you yourself, presumably are running. So how do you know how all the others are running if you can't see? It's pitch dark. Stones, trees ... (intervention).

MR MAGAGULA: I would hear through the sounds of the trees, because those people who were running were tampering with the leaves.

MR KILLIAN: Would you know who you are following now? You might be following one of your own colleagues? You know you wouldn't know whether you're running after Tshabangu or after a ghost?

MR MAGAGULA: You'd never know, because it was dark and we were many. You'll never know.

CHAIRPERSON: So it's true you couldn't see anybody. So you really don't know what you were doing. Or maybe it's because you weren't chasing anybody after all. Maybe George was dead already. Isn't that the truth of the matter?

MR MAGAGULA: That is not true.

CHAIRPERSON: That's the truth isn't it? That you weren't chasing anybody, because after all you had no torches. You didn't know who you were chasing. You didn't know who was there.

MR MAGAGULA: We were chasing George.

CHAIRPERSON: But you couldn't see George. So what were you chasing? What were you chasing, Sgt Magagula?

MR MAGAGULA: We were chasing George and I repeat that we were chasing George, because I cannot just imagine us running to one direction not knowing what we're doing.

CHAIRPERSON: But isn't that the truth? You say you couldn't see. They were ahead of you. All you heard was the sounds. "Hy hardloop weg." Then you all start chasing. Now what are you chasing and who are you chasing? How do you know?

MR MAGAGULA: That is why I say when we ran, we were following the sound that the other one - if the person was -who was behind just approximately behind Mr Mohema, at that distance you

would be able to see that person. Then from there it would be dark.

You will not be able to see.

CHAIRPERSON: But it's dark. Everybody else has said that they could see nothing, but you could see as far as Mr Mohema. Which is it? Either you could see or you couldn't see. Which is it? Tell us, or else you've got eyes that see in the dark. Is that it?

MR MAGAGULA: I speak the distance which I've estimated between myself and Van Schalkwyk that between that distance of five to six metres, I would be able to see although not clearly.

CHAIRPERSON: How long did it take before you people gave up the search?

MR MAGAGULA: If I remember well it took us time.

CHAIRPERSON: Half an hour, 20 minutes, 10 minutes, how long?

MR MAGAGULA: I would not be able to remember well, but we'll stayed there for some time.

MR MOHEMA: Then what instruction did you give to your members thereafter?

MR MAGAGULA: I never gave any instruction. What happened there is that everybody was talking that others should go to Bundu Inn and that others should go to Mazibi. I went with Schalkwyk and Dumisani to Bundu Inn.

CHAIRPERSON: Did you leave any person behind at the place where George had escaped?

MR MAGAGULA: No, we never said to any person that he should leave, but I believe that those with the small car, we left them there and then we went.

CHAIRPERSON: So you left somebody at the scene? Is that your version?

MR MAGAGULA: I'm saying that I don't remember that somebody was left, but we left those with the small car there. They were still going to the car when we left, but we said others should go to Mazibi and others should go to Bundu Inn.

CHAIRPERSON: What happened next?

MR MAGAGULA: I went with Van Schalkwyk and we arrived at Bundu Inn. I entered with Van Schalkwyk and Dumisani was left behind outside, because that is a hotel. We went to the place where it looked like a bar next to the reception. I met with a female person whom I saw during the day who opened Mtombeni a certain door of a certain room.

Then I heard Mr Van Schalkwyk. I never said anything. I went behind the counter to look there as whether George is not hiding there. It seems he - Van Schalkwyk has already told this lady has George not arrived or what, because he has escaped.

MS SEROKE: You think that a person who has escaped; the he'd go to Bundu Inn. Do you think he can hide behind the counter, because he knew that you would come back and look there? Why do you go behind the counter?

MR MAGAGULA: I didn't go only to the counter, because Dumisani was also searching outside.

MR NOLSEN: Who was searching inside the Bundu Inn? Who was searching the rooms at the Bundu Inn?

MR MAGAGULA: Do you mean that night?

MR NOLSEN: Yes, I mean that night when you were looking for the escaped George Tshabangu. Who searched George's room? Who searched the other rooms on the premises?

MR MAGAGULA: I don't remember, because I was searching inside. I don't know maybe outside, but inside I searched. Even at the back, but I didn't go to the rooms.

I would say if there was somebody who was searching in the rooms and people were accommodated in those rooms, there would be a person who would accompany him to open the room of Tshabangu or if it was not like that, if there were people who booked and were sleeping in those rooms, there would be a person who'd go to from room to room searching those rooms.

MR NOLSEN: So who did that searching?

MR MAGAGULA: At the time when I was there I didn't see any person. I was inside, but I didn't know outside what Dumisani was doing. Van Schalkwyk was there speaking to that lady whom I said I saw her during the day.

MR NOLSEN: Capt Magagula, if a suspect lived in a motel full of rooms and he escaped earlier in the evening and if he'd return to his

home, I would imagine that you would, (a) check his room to see maybe perhaps he's taken some clothes in haste for his departure or maybe he's sitting in his room or his family who owns the inn would be hiding him in a room that allegedly occupied by someone else to protect him.

Did you do or any other members of your unit, did you do anything to follow-up these potential hiding places or these potential leads?

MR MAGAGULA: No, I didn't do that personally, because I said after we searched inside, after I searched inside, I went to the Combi.

MR NOLSEN: Capt Magagula, with respect, I didn't ask you just if you had did it. You're already trying to tell us what you did. I ask you very specifically, you, the person who the next day made the statement about the escaped George Tshabangu, the claimant in the escape of George Tshabangu, who opened the case docket and made the original statement; I'm asking you did you or any other members you were with - and to refresh your memory that would be; Van Schalkwyk and Dumisani Mahlangu, did you or did they search any rooms and I find it incredibly hard to believe that you, the person opening the docket, wouldn't have asked if anyone searched those rooms.

So what I put to you is a very simple question. Were those rooms searched that night at the Bundu Inn?

MR MAGAGULA: That is why I said I don't know as whether Dumisani did that. I was talking about myself, because I was inside. I don't know as whether they were searched or not searched.

MR NOLSEN: And you as the claimant in this case didn't bother to ask Dumisani if he'd searched the rooms, the obvious place that he would be hiding?

Isn't it more likely that George Tshabangu would be hiding in a room than rather than behind a cupboard in the open area of the Bundu Inn or below a desk?

MR MAGAGULA: I apologise, because I never looked only behind the desk, because Dumisani was outside, because Van Schalkwyk - when I finished I found Van Schalkwyk being there where I left him and at the time we went to the Combi to leave, our intention was not to leave, we should go and open the case.

MR NOLSEN: Where did you search? Sorry, Capt Magagula, before you go on, tell us exactly the places where you searched, you personally?

MR MAGAGULA: That is behind the counter. Then I went behind.

Then there is a door which proceed to the outside, but it's a big building. It seems it looked like a store room. That is where I searched inside, because it's a big room. Then I left and I found Mr Schalkwyk where I left him.

DR ALLY: That is the only areas that you actually searched, open areas?

MR MAGAGULA: That is correct.

DR ALLY: Did you ask anybody to search further, did you ask Dumisane or Van Schalkwyk? Did you, did the three of you have some co-ordinated plan as to how you were going to conduct the search?

MR MAGAGULA: No, we never sat down. After we climbed the Combi when we were just about to leave, we decided that it is better that we should hide somewhere to make surveillance of the area.

CAPT MOHEMA: Then, during that time, what happened to the firearm you found there earlier on?

MR MAGAGULA: We took this, the gun was taken to Denilton Police Station. It was handed over at Siyabuswa Police Station.

CAPT MOHEMA: Who handed it in?

MR MAGAGULA: It seems it is Mtombeni.

CAPT MOHEMA: So, was he telling us lies yesterday when he said he handed the firearm to Kritzinger?

MR MAGAGULA: I do not know that.

CAPT MOHEMA: And was the escape case opened the very same night when you, when Mtombeni handed in the firearm?

MR MAGAGULA: Yes, I opened the case on the same night.

CAPT MOHEMA: Are you telling us the truth, Captain?

MR MAGAGULA: Yes, I am telling the full truth.

CAPT MOHEMA: I am telling you, you are telling us lies, Captain. You opened, that night, according to the record we get, we got from the Denilton Police Station, you opened the "besit van", I mean, handling of possession of unlicensed firearm at 20H00. You even signed for it. The

following day, nine o' clock, you opened the escape case, but maybe that cannot be your signature, I do not know, but it looks like your signature.

MR MULLER: Chairperson, can you assist us in just telling us what the headings of the document is. It is not ... (intervention).

CAPT MOHEMA: That is a copy of CR register. I mean, Captain Magagula can see his signature there.

COL KILLIAN: It says at the top exactly what is ... (intervention).

MR MULLER: Yes, but what ... (intervention).

COL KILLIAN: ... applicable to which portion.

MR MULLER: What stands there, what is standing there?

COL KILLIAN: "Handtekening", signature, date and time. That is the second last column where the signature appears here.

MR MULLER: Okay, and then it is that one previous to that one.

COL KILLIAN: Previous to that one, name and address of the complainant.

CAPT MOHEMA: Nine o' clock the following day you opened an escape case.

MR MULLER: Sorry, is this the same?

CAPT MOHEMA: I mean, that is ... (intervention).

COL KILLIAN: It is the same register, it pertains to a different charge.

MR MULLER: Okay, ja, so we can leave.

COL KILLIAN: Ja.

CAPT MOHEMA: Is it your handwriting, Captain?

MR MULLER: Can we just establish to which of the two documents do you refer us now.

CAPT MOHEMA: The ... (intervention).

COL KILLIAN: The crime is specified in one of those columns there.

CAPT MOHEMA: The possession of illegal firearm, somebody signed there.

COL KILLIAN: Ja, it says you charge.

MR MULLER: In the first column.

COL KILLIAN: There you can read what the charge is.

MR MULLER: Ja.

COL KILLIAN: And that is a different charge again. So, the one would refer to the escaping and the other one to the possession, illegal possession of firearms.

CAPT MOHEMA: Is that your signature, Captain?

MR MAGAGULA: Yes, it is CR22.

CAPT MOHEMA: You opened a case on, I mean, during the same night, I believe?

COL KILLIAN: In the first column there is the case, the very first column on that page there is the date on which the matter was reported.

INTERPRETER: The mike was not on.

CHAIRPERSON: Is there a problem, Captain?

MR MULLER: I am sorry, but we cannot hear anything.

CHAIRPERSON: Is there a problem?

INTERPRETER: When the question was put, the mike was not on so ...
(intervention).

CHAIRPERSON: Oh.

INTERPRETER: ... probably was not interpreted.

COL KILLIAN: The first column of ... (intervention).

MR MAGAGULA: There is no problem.

COL KILLIAN: ... that register reflects the date on which the issue
which reported. Then the second column reflects the charge and so it
goes on until how the matter was finally disposed of.

CAPT MOHEMA: So, do you agree with that document, Captain?

MR MULLER: I am sorry, Chairperson, I just, I am not sure what is
going on now. We can

CAPT MOHEMA: Do you agree with that document?

MR MAGAGULA: Ja.

CAPT MOHEMA: Then, Captain, what prevented you to open the escape
case, I mean, escape case the same night, because you decided to open
the escape case the following day at nine o' clock. Was the case not so
serious according to you, the escape case?

MR MAGAGULA: The escape of George was serious.

COL KILLIAN: If the escape was that serious, isn't the standing
instruction whenever, in all cases of escaping that, no matter where and
when it takes place, it must be reported at the Duty Officer immediately?

MR MAGAGULA: That is the law.

COL KILLIAN: So, did you comply with these requirements on that particular evening?

MR MAGAGULA: Yes, I followed that, this regulations, because I think there is a problem. I opened the case of escape. I do not remember as whether I left it at the charge office or what. Maybe at the charge office when they registered they made a mistake, they, I would not able to remember, because Skosana signed. Maybe I left at the Charge Office and that person maybe continued with that case, then he signed thereafter.

COL KILLIAN: But when you reported the matter to the duty officer immediately after he escaped, it would have been required from you to supply him with the CR number under which this investigation is proceeding and, if that was the case, then this matter must have been registered simultaneously with your registering the possession of the unlicensed firearm which, apparently, from what appears in the records in front of you, is not the case.

MR MAGAGULA: In terms of this paper, it is so.

COL KILLIAN: So, it was irregular. It was, the standing instructions were not followed.

MR MAGAGULA: Yes, I agree.

COL KILLIAN: Is this not, perhaps, because there was some mischief involved somewhere along the line that you could not file your formal complaint at that particular stage?

MR MAGAGULA: I was supposed to put my complaint, but on the CR26. If I remember well, is that I've written, I have entered the case of escape. The person who was registering, it seems, even if I wrote it on Friday, I give it to him, that is why this person has signed this case on Monday. So, maybe ... (intervention).

COL KILLIAN: But you are merely guessing now. You are guessing, you are speculating. It is, you cannot vouch for what you are saying. It is mere speculation on your part.

MS SEROKE: It seems as if you are guessing, you do not know what is correct.

MR MAGAGULA: I am not guessing, it is like that, because when you look at this, at the person who signed on that page, he signed that thing on Monday, because I am not, the date is not even clear there. The case which I can remember well is that the other case which I have signed for.

COL KILLIAN: I appreciate ... (intervention).

MR MAGAGULA: The one which I have signed it for, we registered it.

COL KILLIAN: I appreciate the fact that somebody signed well, after the matter was registered. I am not putting that in dispute, but if you look at the first column of that page, you will also find the date there on which this case was registered, not the date on which it was signed for further investigation.

CHAIRPERSON: And, of course, it is probably another mishap as all the other mishaps in this particular matter.

MR MAGAGULA: Just for a minute.

CHAIRPERSON: I do not think it is necessary to pursue this matter any further. We have, in fact, begun to establish that it is just another mishap in a series of mishaps like the not taking torches and the whole misadventure of this matter. May I ask you a question? Have you considered applying for amnesty?

MR MAGAGULA: I am, I do not know should I ask amnesty in regard to what.

CHAIRPERSON: Are you aware of the fact that if this Commission makes a finding in respect of this particular matter, that it is very possible that the matter will be handed over to the Attorney-General for prosecution and that the families of the victims in this case could, possibly, bring a civil action against you? Has that been explained to you?

MR MAGAGULA: They would do that if George Tshabangu has died. If he is still alive, the, on, I will not apply for amnesty, because I cannot ask for amnesty for somebody who is still living.

CHAIRPERSON: Well, you have set out your position fairly clearly, but one can certainly say, given the inconsistencies in this case, that one would, if I were you I would seriously consider my position. In any event, this hearing is now closed. Thank you for coming in. If there are any further questions, we will address you further in this regard. This hearing is now over.

COMMITTEE ADJOURNS