

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 192

26 FEBRUARY 2014

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1 [PROCEEDINGS ON 26 FEBRUARY 2014]  
 2 [09:23] CHAIRPERSON: The Commission resumes. I  
 3 understand that we were asked to start late this morning  
 4 because I understand an agreement was being arrived at.  
 5 The terms have been settled in relation to the extra  
 6 material we heard about yesterday. Would you like to  
 7 address us on that, Mr Semenya, or shall I ask Mr  
 8 Chaskalson to do so?  
 9 MR CHASKALSON SC: Chair, we have three  
 10 new exhibits that will go in now. They go in by agreement.  
 11 The correctness of the exhibits is subject to SAPS  
 12 verification at a later stage because these are the  
 13 exhibits that I have prepared or that the evidence leaders  
 14 have prepared on the basis of the AvL records and SAPS  
 15 hasn't yet had an opportunity to check all of the aspects  
 16 of those, of the exhibits against theirs. Let me correct  
 17 that. One of the exhibits is a SAPS document. The Google  
 18 map that you will get which plots co-ordinates has been  
 19 prepared by the evidence leaders off AvL records found on  
 20 the private hard drive of Colonel Scott and SAPS had not  
 21 yet had the opportunity to check all of those. There is a  
 22 broad correlation between, or there is no inconsistency  
 23 between what the SAPS document says and the evidence  
 24 leaders' document says but the evidence leaders' document  
 25 has additional detail which SAPS wants to check.

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1 CHAIRPERSON: Alright. So there are  
 2 three exhibits, MMM9 will be what?  
 3 MR CHASKALSON SC: MMM9 will be the  
 4 electronic Google Earth file of Major-General Naidoo's AvL  
 5 records of the 16th of August from – that Google Earth file  
 6 runs from 15:52:18 to 16:12:35.  
 7 CHAIRPERSON: Yes and MMM10?  
 8 MR CHASKALSON SC: Chair, if we can  
 9 possibly call it MMM9A, will be a graphical representation  
 10 of that electronic –  
 11 CHAIRPERSON: A graphic representation of  
 12 MMM9.  
 13 MR CHASKALSON SC: Indeed. It's the  
 14 Google Earth photograph with MMM9 mapped onto it that you  
 15 have in front of you.  
 16 CHAIRPERSON: I think we'll call MMM9A  
 17 graphical representation of MMM9 and MMM9 I shall call  
 18 electronic Google earth file of Naidoo's AvL records,  
 19 Major-General I suppose, give him his title, his rank  
 20 rather, Major-General Naidoo's AvL records of 16/8/2012  
 21 from 15:52:18 to 16:12:35. And then the third exhibit will  
 22 be MMM10, what is that?  
 23 MR CHASKALSON SC: And that is a document  
 24 called a movement report which has taken certain additional  
 25 details from the AvL records and has plotted them into a

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1 table so it marks the co-ordinates, the speed of driving  
 2 and whether the ignition was on or off.  
 3 CHAIRPERSON: That's how you describe it,  
 4 I'll simply call it a movement report re Major-General  
 5 Naidoo's vehicle on 16/8/2012 from 15:52:18 to 16:12:35.  
 6 Is that accurate?  
 7 MR CHASKALSON SC: That would be  
 8 accurate, Chairperson, and just to clarify, MMMB is SAPS's  
 9 document, MMMA is the evidence leaders' – MMM9B is SAPS's  
 10 document and MMM9A is the evidence leaders' document.  
 11 CHAIRPERSON: No, you've lost me now. I  
 12 thought we had MMM9, MMM9A and MMM10. So is what I call  
 13 MMM10, is that MMM9B?  
 14 MR CHASKALSON SC: Let's make it MMM9B  
 15 because they all flow from the same set of AvL records.  
 16 CHAIRPERSON: So MMM9 then is the  
 17 electronic Google Earth file.  
 18 MR CHASKALSON SC: That's the evidence  
 19 leaders' document.  
 20 CHAIRPERSON: Well, never mind, yes okay.  
 21 And MMM9A is a graphical representation of MMM9, 9, and  
 22 MMM9B is this movement report.  
 23 MR CHASKALSON SC: Indeed and that's a  
 24 SAPS document.  
 25 CHAIRPERSON: So the documents, they

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1 haven't been handed in yet, have they?  
 2 MR CHASKALSON SC: I think they are in  
 3 front of you, Chairperson.  
 4 CHAIRPERSON: Are these, these –  
 5 MR CHASKALSON SC: That would be MMM9A.  
 6 CHAIRPERSON: When I said these, I held  
 7 up three documents that we received this morning. The  
 8 first one is essentially a Google Earth picture of the  
 9 area, that's MMM9. And then we've got two other documents  
 10 which are stapled together and have already been marked, I  
 11 see, in anticipation, MMM9A and MMM9B. Right. You've seen  
 12 these documents – sorry, you're still under oath are you,  
 13 Major-General? Let me – I'm not asking you, I'm telling  
 14 you. You're still under oath, Major-General.  
 15 GENERAL NAIDOO: Yes.  
 16 GENERAL NAIDOO: s.u.o.  
 17 CHAIRPERSON: You've seen these  
 18 documents, have you?  
 19 GENERAL NAIDOO: Chair, yes.  
 20 CHAIRPERSON: Mr Chaskalson – yes, sorry,  
 21 you wanted to say something?  
 22 GENERAL NAIDOO: I see there's three  
 23 exhibits, I only have two. I'm not sure which is the  
 24 third.  
 25 CHAIRPERSON: Well, my copies of MMM9A

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1 and 9B were stapled together. Are yours perhaps the same?  
 2 MR CHASKALSON SC: Chairperson, I think  
 3 the confusion may be that the first MMM9A is in fact the  
 4 electronic file itself. It's not – it's what is printed  
 5 out in MMM9A.  
 6 CHAIRPERSON: Well, as long as you're  
 7 satisfied the witness has got the documents and if you're  
 8 going to question him about them he knows which are which.  
 9 MR CHASKALSON SC: Yes, I would only  
 10 question him with regard to MMM9A but the electronic file  
 11 should be there as well, just as we did in the case of  
 12 certain of the JJJ exhibits.  
 13 CHAIRPERSON: Are you happy, Major-  
 14 General, that you know what's going on because if you don't  
 15 know what's going on, none of us will know what's going on.  
 16 GENERAL NAIDOO: Chair, I have the two  
 17 exhibits. I think if we have any difficulties I'll  
 18 communicate.  
 19 CHAIRPERSON: Just put up your hand.  
 20 GENERAL NAIDOO: Thank you.  
 21 CHAIRPERSON: Alright, okay. Mr  
 22 Chaskalson, would you wish to continue then with your  
 23 cross-examination?  
 24 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):  
 25 Thank you, Chairperson. Major-General, on Monday in the

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1 Commission I indicated that two aspects of your evidence  
 2 about your movements were demonstrably wrong and they were  
 3 your evidence that you were at C7 on the map of MMM1 when  
 4 you heard the shooting and your evidence that your convoy  
 5 first attempted to reach the koppie by turning up to the  
 6 koppie on the road around the east of the substation at C7.  
 7 GENERAL NAIDOO: That is correct, Chair.  
 8 MR CHASKALSON SC: And on Monday night  
 9 SAPS analysed your vehicle tracking records and have since  
 10 discussed them with you. Do you accept that these vehicle  
 11 tracking records confirm that I was correct, that you were  
 12 not at C7 on MMM1 when you heard the shootings and that  
 13 your convoy did not attempt to reach the koppie on the road  
 14 around the east of the substation at C7?  
 15 GENERAL NAIDOO: Chair, in terms of the  
 16 AvL it indicated to us where we were as I described, but  
 17 not as indicated on the maps that we discussed on Monday at  
 18 C7. And the movement indicated as I said, however, yes,  
 19 the location was not as discussed on the map that was used  
 20 on Monday.  
 21 MR CHASKALSON SC: Major-General, we'll  
 22 get to discussing the movements in great detail in due  
 23 course.  
 24 MR SEMENYA SC: Sorry, maybe we have the  
 25 benefit of the documents, can we have them on screen so

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1 that those who are hearing these answers and questions are  
 2 able to relate to them?  
 3 CHAIRPERSON: That's a very good point,  
 4 Mr Semenya. Are those who are responsible for screening  
 5 documents in possession of the documents to which Mr  
 6 Semenya refers so that they can be put on the screen, as  
 7 they are referred to by counsel or the witness? While  
 8 we're busy with that, there's another – busy with  
 9 housekeeping issues – yesterday you gave us a copy in  
 10 chambers of a medico-legal report by Prof Boffard. Are you  
 11 going to be referring to that in your cross-examination  
 12 today?  
 13 MR CHASKALSON SC: I may, Chairperson,  
 14 but not for a long time.  
 15 CHAIRPERSON: No, no, the only reason,  
 16 the only point I raise with you is, should we mark it as an  
 17 exhibit now so that it's available to us or do you prefer  
 18 to mention it and get it marked only at a later stage? I'm  
 19 asking for directions, as it were.  
 20 MR CHASKALSON SC: I'm happy to mark it  
 21 as an exhibit now but it will be reached only at a much  
 22 later stage because we now have to go back to the vehicle  
 23 movements in the light of –  
 24 CHAIRPERSON: Yes, no, I'm just concerned  
 25 with housekeeping, to get housekeeping out of the way. If

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1 you are going to hand it in, in the course of the cross-  
 2 examination and if it's the next document, the next  
 3 exhibit, then we can mark it MMM10 now if that's –  
 4 MR CHASKALSON SC: It may not be the next  
 5 exhibit but let it be MMM10. We can make the one after  
 6 that MMM11.  
 7 CHAIRPERSON: MMM10 is then a document,  
 8 in fact it's a 40 page document headed "Medico-legal  
 9 report". It's a report by Prof KD Boffard, B-O-F-F-A-R-D,  
 10 and that's MMM10.  
 11 MR CHASKALSON SC: Major-General, we'll –  
 12 CHAIRPERSON: Sorry, can I just say this?  
 13 According to the last paragraph on page 2 of the document,  
 14 Prof Boffard was asked to consider post-mortem reports and  
 15 to prepare an expert report for the Commission as to any of  
 16 the 17 victims, that's the 17 victims at scene 1, would  
 17 have been likely to survive if they'd received emergency  
 18 treatment 30 to 40 minutes earlier than they did. That's  
 19 the subject of the report and that's now MMM10. Have you  
 20 seen that document yet, Major-General?  
 21 GENERAL NAIDOO: Chair, I received it  
 22 yesterday.  
 23 MR CHASKALSON SC: Major-General, we'll  
 24 discuss your movements as reflected on the AvL records in  
 25 some detail so you'll get your opportunity to explain the

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1 reason for your evidence on Monday or the source of your  
 2 confusion but for present purposes you do confirm that you  
 3 were not at C7 at MMM1 when you heard the shootings and  
 4 your convoy did not attempt to reach the koppie on the road  
 5 around the east of the substation at C7.  
 6 GENERAL NAIDOO: Chair, based on the map  
 7 that was present on Monday, yes.  
 8 MR CHASKALSON SC: For the purposes of  
 9 this cross-examination it's going to be quite important to  
 10 attempt to link the times that we see on the AVL records to  
 11 the times that we know as ETV time and for that purpose,  
 12 I'd like to start there. If we can go to CCC22 –  
 13 COMMISSIONER HEMRAJ: Mr Chaskalson, I'm  
 14 not sure that we have this document that's up on the  
 15 screen. We may, I'm not –  
 16 MR CHASKALSON SC: Commissioner, this is  
 17 the electronic file. It's probably zoomed in close. If I  
 18 can zoom it out –  
 19 CHAIRPERSON: No – no, let me explain to  
 20 you the problem. The document that's on the screen has got  
 21 a series of figures on it. The first row of figures says  
 22 , 16:08:05. Now our document hasn't got those  
 23 figures on it, it's got other figures.  
 24 MR CHASKALSON SC: No, this is the wrong  
 25 document.

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1 CHAIRPERSON: So MMM9A has got the top  
 2 line, 16:12:35 ignition off and then below that it's got  
 3 to 16:11:05 idling.  
 4 MR CHASKALSON SC: Thank you very much,  
 5 Commissioner, you're absolutely correct. Let me just copy  
 6 the correct one. And if we can –  
 7 CHAIRPERSON: Let's be clear, what  
 8 exactly are we looking at now?  
 9 MR CHASKALSON SC: This is CC22, the  
 10 Protea Coin chopper, if we can stop that at four seconds  
 11 into the video, four seconds.  
 12 CHAIRPERSON: - what time is this ETV  
 13 time that we're looking at?  
 14 MR CHASKALSON SC: Four seconds into the  
 15 video would be 15:57:34.  
 16 CHAIRPERSON: That is after the shooting  
 17 at scene 1.  
 18 MR CHASKALSON SC: That's correct.  
 19 CHAIRPERSON: Thank you.  
 20 MR CHASKALSON SC: Sorry, Chairperson,  
 21 did I say 15:37 or 15:57? The correct time is 15:57:34.  
 22 If I didn't say that, that's what I should have said.  
 23 CHAIRPERSON: It's 15:57?  
 24 MR CHASKALSON SC: 34, indeed yes.  
 25 CHAIRPERSON: 34, right.

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1 MR CHASKALSON SC: Yes.  
 2 CHAIRPERSON: And this is exhibit CC22,  
 3 is it? Four seconds into the video.  
 4 MR CHASKALSON SC: That's correct. If we  
 5 can see it? Now for this purpose we're going to have to  
 6 add four seconds exactly. If we can zoom in to the area  
 7 that I'm pointing out now which is the area behind the  
 8 power station on the road. Can we zoom into the area that  
 9 I'm marking now?  
 10 CHAIRPERSON: The area you're marking now  
 11 being the area behind the power station on the extreme  
 12 right of the picture, is that correct?  
 13 MR CHASKALSON SC: That's correct,  
 14 Chairperson. We'll need to zoom in a bit further, quite  
 15 substantially, and is there any way of getting better  
 16 resolution than this? I think the way – I'm sorry to waste  
 17 Commission time like this but let me just, I have a  
 18 screenshot, let me take the screenshot up which will be  
 19 easier.  
 20 [09:43] CHAIRPERSON: Is the screen – what we see  
 21 at the moment on the screen is affected by what I've been  
 22 told is called pixellation, which means it's very difficult  
 23 to make out anything. Is the screenshot not pixellated?  
 24 MR CHASKALSON SC: Can we zoom completely  
 25 out on that picture so that we can – that should be good

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1 enough for our purpose.  
 2 CHAIRPERSON: I'm sorry to interrupt you.  
 3 Is this now another exhibit or – you know, for those who,  
 4 as I've mentioned before, are going to read this record in  
 5 years to come, will they be able to follow this? The  
 6 exhibit itself that you referred to was, as a result of  
 7 pixellation, not very clear. Now is this another exhibit  
 8 or is this something that's not yet an exhibit, that must  
 9 be made an exhibit? What's going on?  
 10 MR CHASKALSON SC: Chairperson –  
 11 CHAIRPERSON: I've got to think of the  
 12 historians of the future, amongst other things.  
 13 MR CHASKALSON SC: It depends whether  
 14 they have pixellation difficulties or not, Chairperson. If  
 15 their computers have high enough resolution then this is  
 16 what they would see at four seconds into the exhibit CC22.  
 17 If you would like it to stand as a separate exhibit, we can  
 18 circulate the document and – it seems to me what you see is  
 19 what you would see at four seconds.  
 20 CHAIRPERSON: I see. So it's just a  
 21 question of the –  
 22 MR CHASKALSON SC: The convenience of the  
 23 Commission.  
 24 CHAIRPERSON: Yes, I understand. And the  
 25 pixellation is caused by the – if that's the right word –

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1 by the computer that we're using and one presumes people in  
 2 the future will have better computers than we have.  
 3 MR CHASKALSON SC: We would hope so,  
 4 Chairperson.  
 5 CHAIRPERSON: Alright.  
 6 MR CHASKALSON SC: Major-General, what we  
 7 are looking at in this screenshot at four seconds is your  
 8 convoy approaching the substation, the turnoff to the  
 9 substation. Do you recognise that?  
 10 GENERAL NAIDOO: It would appear, yes.  
 11 MR CHASKALSON SC: Now for our purposes,  
 12 if you go back to MMM9A which unfortunately – well, what we  
 13 see at MMM9A is that your AvL recorded a time at the  
 14 intersection of 15:57:25. Do you see that?  
 15 GENERAL NAIDOO: That's correct.  
 16 MR CHASKALSON SC: Now, we have attempted  
 17 to log the distance or estimate how long it would've taken  
 18 your convoy to reach – not your convoy, your vehicle. Was  
 19 your vehicle at the head of the convoy?  
 20 GENERAL NAIDOO: It was the first  
 21 vehicle.  
 22 MR CHASKALSON SC: We've estimated how  
 23 long it would take that vehicle at the head of the convoy  
 24 to reach that turnoff and using Google Earth it –  
 25 CHAIRPERSON: You say how long it would

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1 take to reach the turnoff but you don't say from where.  
 2 MR CHASKALSON SC: From the point at  
 3 which we see at four seconds into the Protea Coin chopper,  
 4 the Protea Coin video at 15:57:34 ETV time. And it's  
 5 approximately 65 metres, at an average speed of 20  
 6 kilometres an hour that would give you 11 seconds. We're  
 7 probably going to be out a couple of seconds either way but  
 8 would you accept that for your vehicle at the head of the  
 9 convoy to reach this intersection would be more or less 11  
 10 seconds?  
 11 GENERAL NAIDOO: Chair, I think I missed  
 12 the point here, I was studying the notes. Could that be  
 13 presented again, please sir?  
 14 CHAIRPERSON: What counsel says is what  
 15 we have on the screen at the moment is the video taken from  
 16 the Protea Coin helicopter.  
 17 GENERAL NAIDOO: Yes, Chair.  
 18 CHAIRPERSON: And it shows your vehicle,  
 19 which is the head vehicle of the convoy, the leading  
 20 vehicle of the convoy, a short distance away from that  
 21 turnoff at the power station which is just ahead of it.  
 22 GENERAL NAIDOO: Yes.  
 23 CHAIRPERSON: And they've used the AvL  
 24 information which indicates that you got to that turnoff at  
 25 15:57:25.

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1 GENERAL NAIDOO: That's correct.  
 2 CHAIRPERSON: And they have calculated it  
 3 would have taken you about 11 seconds to get from the spot  
 4 that we see on the screen at the moment, which is the  
 5 Protea Coin helicopter – actually it's a photograph taken  
 6 from the Protea Coin helicopter and to get from that spot  
 7 which you see on the screen at the moment to the turnoff.  
 8 That's the point. Is that right, Mr Chaskalson?  
 9 MR CHASKALSON SC: That is. I'm not  
 10 suggesting it's a precise calibration but for your convoy  
 11 to travel approximately 65 metres, would 11 seconds be a  
 12 fair estimate, a rough estimate?  
 13 GENERAL NAIDOO: A rough estimate  
 14 possibly.  
 15 MR CHASKALSON SC: If we use 11 seconds  
 16 and it's a convenient number as well because it rounds up  
 17 to 11 seconds after 15:57:34, which is the image which we  
 18 see at four seconds into the exhibit CC22 that's on the  
 19 screen now. That would be ETV time 15:37:45. So your  
 20 convoy on that projection would've reached the turnoff at  
 21 15:57:45. 15:57 -  
 22 CHAIRPERSON: Yes.  
 23 MR CHASKALSON SC: 45.  
 24 CHAIRPERSON: You said –  
 25 MR CHASKALSON SC: Did I say 30?

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1 CHAIRPERSON: A minute ago, but let's be  
 2 clear, it's 15:57 and something or other.  
 3 MR CHASKALSON SC: 45.  
 4 CHAIRPERSON: 45.  
 5 MR CHASKALSON SC: 15:57:34 plus 11  
 6 seconds is 15:57:45.  
 7 GENERAL NAIDOO: Chair, I think there's  
 8 an indication of that time on the map, yes.  
 9 MR CHASKALSON SC: The time on the map,  
 10 this is the purpose of this exercise, the time on the map  
 11 is actually 15:57:25. We're trying to work out how the one  
 12 clock compares to the other clock in rough terms. This is  
 13 not the precise exercise that we performed with the  
 14 photographs but it's in rough terms because we're going to  
 15 need to be able to understand what these times broadly mean  
 16 in terms of what we know about what else was going on in  
 17 the operation. So we, on that basis, have determined an  
 18 approximate – and I emphasise, it's not precise as it is in  
 19 the case of our time calibrations but an approximate  
 20 difference of 20 seconds between the AvL clock which has  
 21 you reaching the turnoff at 15:57:25 and the ETV clock on  
 22 the calibration that we have done, which would have you  
 23 reaching the turnoff at approximately 15:57:45. So times  
 24 are approximately 20 seconds apart.  
 25 CHAIRPERSON: Are you prepared to accept

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1 that provisionally, subject to the fact that the SAPS team  
 2 presumably will be checking it and if they come, they  
 3 discover that there's an error somewhere they will report  
 4 it to us.  
 5 GENERAL NAIDOO: Of course, Chair.  
 6 CHAIRPERSON: But for the sake of  
 7 progress you'll accept it provisionally, is that correct?  
 8 GENERAL NAIDOO: That's right, I do.  
 9 MR CHASKALSON SC: And I would like to do  
 10 the same exercise in relation to the cell phone records so  
 11 we can try and work out where you were when certain calls  
 12 were made and the one that seems easiest to pin down is the  
 13 12 second call to Brigadier Calitz's voicemail that you say  
 14 you made when you heard the shooting. That 12 second  
 15 voicemail call, on the Vodacom clock now, started at  
 16 15:53:31 according to MMM5, 15:53:31. How, I mean would it  
 17 be fair to estimate that that was a call that you would've  
 18 made 10 seconds after the shootings broke out?  
 19 GENERAL NAIDOO: As I indicated, yes,  
 20 when we heard the shooting. Seconds, ja, it could be 10,  
 21 could be 11, yes.  
 22 MR CHASKALSON SC: The volley lasted  
 23 approximately eight seconds. Would you have called in the  
 24 middle of the shooting, after the shooting? We've just  
 25 picked 10 as it seemed a reasonable estimate. This is a

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1 rough exercise, it's not a precise exercise.  
 2 GENERAL NAIDOO: Of course.  
 3 MR CHASKALSON SC: Would you be happy  
 4 with 10 on that basis, not saying it's exact but a rough  
 5 estimate of what –  
 6 GENERAL NAIDOO: Call it a rough  
 7 estimate, Chair.  
 8 CHAIRPERSON: How long does it take, I've  
 9 never timed it, how long would it have taken you to have –  
 10 in the old days we would've said dial, I don't know what  
 11 the modern verb is – in the old days, how long would it  
 12 have taken you to tap into your phone Calitz's number?  
 13 GENERAL NAIDOO: Chair, I think there's  
 14 two factors. It's a matter of record I did try to call him  
 15 a little earlier so his number would've been on the redial  
 16 list, so it would not be a matter of looking for his number  
 17 and dialling it. It would be a matter of just pressing  
 18 redial.  
 19 CHAIRPERSON: Oh, so it's just one press.  
 20 GENERAL NAIDOO: Redial.  
 21 CHAIRPERSON: One click, let's call it.  
 22 GENERAL NAIDOO: That's correct, Chair.  
 23 CHAIRPERSON: One, okay. So it sounds as  
 24 if 10 seconds then may be fairish. I thought if you took a  
 25 bit of time to dial the number in, in the old language, 10

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1 might be too short but you're happy with 10 is fair?  
 2 GENERAL NAIDOO: Chair, as I indicated,  
 3 all I had to do was just to press the redial.  
 4 CHAIRPERSON: You pressed the redial and  
 5 you got through to Calitz immediately, I take it.  
 6 GENERAL NAIDOO: As I –  
 7 CHAIRPERSON: At the speed of light or  
 8 whatever speed these things go at.  
 9 GENERAL NAIDOO: To his voicemail.  
 10 CHAIRPERSON: Yes, that's right.  
 11 MR CHASKALSON SC: Again I want to  
 12 emphasise this is not a precision exercise, it's a rough  
 13 estimate exercise. There will be a margin of seconds  
 14 either way, but if we take 10 seconds then 10 seconds after  
 15 the shooting would be 15:54 exactly ETV time, 15:54:00 and  
 16 then we would have an equation that 15:53:31 Vodacom time  
 17 is roughly 15:54 ETV time. So there's roughly 29 seconds  
 18 between them and because we're dealing with rough  
 19 estimates, let's round it to 30. Are you happy with that  
 20 on the basis that we are engaged in a rough exercise, not a  
 21 precise exercise?  
 22 GENERAL NAIDOO: Sorry, Chair, could I  
 23 have the times, the last times again?  
 24 MR CHASKALSON SC: It's 15 –  
 25 CHAIRPERSON: What he says is Vodacom

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1 sounds as if they are 30 seconds, 29 seconds he says but  
 2 let's take 30 because it's a nice round number, are they 30  
 3 seconds behind ETV or ahead of ETV? Behind, I think you  
 4 said.  
 5 MR CHASKALSON SC: Behind. 15:53:31  
 6 versus 15:54:00, 01 if we're going to round 30.  
 7 CHAIRPERSON: Provisionally you'll accept  
 8 that one as well subject to the fact that –  
 9 GENERAL NAIDOO: Of course.  
 10 CHAIRPERSON: - if the SAPS people find a  
 11 flaw and tell us, then your acceptance will be withdrawn –  
 12 GENERAL NAIDOO: Just as a rough  
 13 estimate.  
 14 CHAIRPERSON: Alright.  
 15 MR CHASKALSON SC: Now, and then to  
 16 complete the circle because we're also going to be  
 17 comparing Vodacom times with CTrack times, if Vodacom is  
 18 ETV minus 30 seconds and CTV is roughly ETV minus 20  
 19 seconds, then Vodacom is roughly – sorry, CTV, CTrack –  
 20 Vodacom is roughly CTrack minus 10 seconds. There's  
 21 roughly 10 seconds between Vodacom and CTrack.  
 22 CHAIRPERSON: Forgive my ignorance, Mr  
 23 Chaskalson, but what exactly is CTrack?  
 24 MR CHASKALSON SC: CTrack is the AvL time  
 25 -

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1 CHAIRPERSON: Oh, the AvL time.  
 2 MR CHASKALSON SC: - are the agency that  
 3 does the vehicle tracking.  
 4 CHAIRPERSON: I understand. I don't  
 5 think that was on record before.  
 6 MR CHASKALSON SC: I'm sorry. So we then  
 7 have, for rough conversions, Vodacom to ETV 30 seconds,  
 8 CTrack to ETV or AvL to ETV 20 seconds and Vodacom to  
 9 CTrack 10 seconds. The times are all within 30 seconds of  
 10 one another. At this point if we can then go to MMM9A and  
 11 the AvL records and start looking at the times that certain  
 12 things happened.  
 13 CHAIRPERSON: What we now have on the  
 14 screen is in fact MMM9A.  
 15 MR CHASKALSON SC: That is correct,  
 16 Chairperson, and we're going to concern ourselves with the  
 17 right-hand side of this picture for the time being, so if  
 18 we could just zoom in a little bit towards the right-hand  
 19 side. The first marker that I want to identify is the  
 20 marker to the time 15:52:18 ignition on. What this  
 21 reflects is that CTrack time 15:52:18 your vehicle turned  
 22 on its ignition. Its ignition was off prior to that, do  
 23 you accept that?  
 24 GENERAL NAIDOO: Correct.  
 25 MR CHASKALSON SC: And maybe for

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1 completeness we should add from MMM9B when the ignition had  
 2 previously had been switched off and that we see at the,  
 3 five rows from the bottom of MMM9B it was at 15:59:52,  
 4 15:59:52 says ignition off.  
 5 GENERAL NAIDOO: Chair –  
 6 CHAIRPERSON: 49.  
 7 MR CHASKALSON SC: 49, I keep on getting  
 8 these numbers wrong. The record is going to be very  
 9 difficult to follow.  
 10 CHAIRPERSON: It's 15:49:52.  
 11 MR CHASKALSON SC: 49:52.  
 12 CHAIRPERSON: Yes, 15:49:52 which is  
 13 ignition off.  
 14 MR CHASKALSON SC: And ignition was on at  
 15 15:52:18.  
 16 CHAIRPERSON: That's what is described on  
 17 MMM9B as start up?  
 18 MR CHASKALSON SC: That's correct,  
 19 Chairperson. Now if we convert those CTrack times into  
 20 Vodacom times, we have to take 10 seconds off them. So you  
 21 switched off your ignition, were you at the front of the  
 22 convoy at that stage at forward holding area 1?  
 23 GENERAL NAIDOO: Chair, yes. Not forward  
 24 holding area 1, at that stage, we indicated we had deployed  
 25 into what we indicated as immediate response area.

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1 MR CHASKALSON SC: No, Major-General,  
 2 this wasn't immediate response area. If we can zoom out  
 3 maybe I can reorient you. The intersection that is forward  
 4 holding area 1, the intersection at forward holding area 1  
 5 is at the far right-hand side of this photograph.  
 6 GENERAL NAIDOO: Yes.  
 7 MR CHASKALSON SC: Your vehicle is at the  
 8 front of a convoy that stretches back almost to that  
 9 intersection.  
 10 GENERAL NAIDOO: That is correct.  
 11 MR CHASKALSON SC: So at 15:49:52 you had  
 12 switched off your ignition at the front of a convoy that  
 13 stretched back to the intersection at forward holding area  
 14 1.  
 15 GENERAL NAIDOO: Chair, as I indicated,  
 16 at that stage - I testified to that fact as well – that we  
 17 parked at the area that we identified as the immediate  
 18 response but it's something that we will deal with further  
 19 in the testimony.  
 20 MR CHASKALSON SC: Sorry, Major-General.  
 21 I really don't want to – I think you are slightly confused  
 22 here because I know in fact the area that you thought was  
 23 immediate response area 1 is what I'm marking now, which is  
 24 the second green marker from the left. It's not the front  
 25 of the convoy. Sorry, from the right. It's not the front

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1 of the convoy which is the original starting point, the  
 2 first green marker from the right. If I can just orient  
 3 you, there are two substations, a little substation and a  
 4 large substation. The little substation is opposite, is  
 5 what I'm circling now which is just to the right-hand side  
 6 of the road or to the top side of the road as you look at  
 7 the picture –  
 8 CHAIRPERSON: Above the word "idling" on  
 9 the picture.  
 10 MR CHASKALSON SC: Above the word  
 11 "idling" on the picture, near where your, the second green  
 12 marker is. The large substation is towards the left-hand  
 13 side of the photograph. It's accessed by the road,  
 14 accessed from the road by the turnoff at the last green  
 15 marker on the road.  
 16 [10:03] CHAIRPERSON: And it's above the figures  
 17 15:57:45. The figures 15:15:45 are at the lower end of the  
 18 power station, as we see on the picture. If you go down to  
 19 the road, you have 15:57:25, but for purposes of indicating  
 20 where the bigger power station is, either of those figures  
 21 will suffice.  
 22 MR CHASKALSON SC: And Major General,  
 23 while we are on orientation on the map, I am just  
 24 indicating where koppie 3 is, that's above the green marker  
 25 that says 16 12 35 ignition off. Koppie 1 is to the right

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1 at the end of the wording 16:12:35 ignition off, and a  
 2 little bit below. Koppie 2 is just above koppie 1, and the  
 3 kraal is diagonally up to the right from koppies 1 and 2.  
 4 There are three kraals that are visible on the picture.  
 5 It's the small kraal at which scene 1 took place. So if we  
 6 can then go back. Your convoy had lined up stretching back  
 7 towards forward holding area 1. You were at the front of  
 8 the green marker here. The first green marker –  
 9 CHAIRPERSON: The green marker on the  
 10 right-hand side.  
 11 MR CHASKALSON SC: On the right-hand  
 12 side. You switched off your ignition in that position at  
 13 15:59:52 CTrack time and switched it on again at 15:52:18.  
 14 GENERAL NAIDOO: Chair, I think that  
 15 time, 15:59 CTrack time, you say it is 30 seconds or 10  
 16 seconds behind.  
 17 MR CHASKALSON SC: No, it's 15:49:52,  
 18 15:49:52 –  
 19 GENERAL NAIDOO: Yes, because –  
 20 MR CHASKALSON SC: - to 15:52:08, it's  
 21 about two minutes and 10 seconds.  
 22 GENERAL NAIDOO: Chair, ja. Now what I  
 23 was correcting is he indicated as 15:59, it's actually  
 24 25:49.  
 25 MR CHASKALSON SC: I will do my best not

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1 to continue along this line, but this is a very important  
 2 issue that we have to clarify. So you switch off at  
 3 15:49:52, you switch on at 15:52:18, two minutes and 20  
 4 seconds your vehicle is switched off.  
 5 GENERAL NAIDOO: Okay, I accept that.  
 6 MR CHASKALSON SC: And if we are to shift  
 7 those CTrack times to Vodacom times, you switch off at  
 8 15:49:42, you switch on at 15:52:08. At 15:49:42 you  
 9 switch off, 15:52:08 you switch on. If we can now go back  
 10 to MMM5, and if I can just ask, Major General, I think you  
 11 should just write down those two Vodacom times, because  
 12 they are going to become important now. Switch off the  
 13 vehicle at 15:49:42, switch it on at 15:52:08.  
 14 CHAIRPERSON: CTrack translated to  
 15 Vodacom?  
 16 MR CHASKALSON SC: That's correct,  
 17 Chairperson, our approximate Vodacom times. Sorry, I need  
 18 the cell phone records. Are they MMM4 or MMM?  
 19 CHAIRPERSON: - were MMM4.  
 20 MR CHASKALSON SC: And if we can go to  
 21 your call to Brigadier Calitz, at 15:49:54.  
 22 CHAIRPERSON: That's the one that lasted  
 23 nearly two minutes. That's the 119 second call that you  
 24 say didn't involve any communication with Brigadier Calitz,  
 25 do you recall that?

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1 GENERAL NAIDOO: That's correct, ja.  
 2 MR CHASKALSON SC: But what strikes us as  
 3 curious in that regard, is from the Vodacom records we know  
 4 that the call was answered on Brigadier Calitz's cell phone  
 5 and we know that the call was ultimately terminated almost  
 6 two minutes later, one second less than two minutes later.  
 7 And if we look at when it was answered, 12 seconds before  
 8 the call was answered by Brigadier Calitz's cell phone you  
 9 had switched your car off. It was answered at 15:49:54,  
 10 you switched your car off at 15:49:42, and 15 seconds after  
 11 the call ended you switched your car on. The call ends at  
 12 15:51:53, and you switch your car on at Vodacom time  
 13 15:52:08, 15 seconds after the call ends, and then, if we  
 14 go back to the CTrack information your convoy starts  
 15 moving. So if we go back to MMM9A, we will see that your  
 16 car is switched on at 15:52:13, that's 15 seconds after the  
 17 call to Brigadier Calitz ends and 40 seconds later, it's  
 18 reached - 42 seconds later it's reached the turnoff to the  
 19 small substation.  
 20 So 12 seconds before the call is answered on  
 21 Brigadier Calitz's cell phone, the ignition on your car is  
 22 switched off. 15 seconds after the call ends the ignition  
 23 is switched back on, on your car, and your convoy starts  
 24 moving almost immediately, in fact probably did start  
 25 moving practically immediately because it reaches the

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1 substation in 42 seconds. Now I'll ask you for your  
 2 response to that in due course, but the funny thing is if  
 3 we look at Brigadier Calitz's Nyala, we see a very similar  
 4 picture. Despite the fact that according to Brigadier  
 5 Calitz incident 1 and incident 2 are happening and he's  
 6 witnessing it all, his Nyala doesn't move from its starting  
 7 position until some time after JJJ11 1515 if we can call up  
 8 JJJ11 1515. This is a photograph of what SAPS described as  
 9 incident 2 on exhibit L. This is Brigadier Calitz's, and I  
 10 am circling now the lone Nyala that remains in the position  
 11 of the original negotiation team behind the chain of barbed  
 12 wire. That lone Nyala is Brigadier Calitz. Now, the time  
 13 of this photograph in ETV time is 15:51:47. That  
 14 translates to a Vodacom time of 15:51:17, that's while the  
 15 call from you to Brigadier Calitz is in progress. We don't  
 16 know when exactly Brigadier Calitz started moving, but if  
 17 we go to JJJ178.2 and we go down to page 20 we see that by  
 18 ETV time 15:52:29 which would be Vodacom time 15:51:59, if  
 19 you want to write that down, 15:51:59, Brigadier Calitz's  
 20 vehicle has started moving. His vehicle is vehicle 6, if I  
 21 recall correctly. It's vehicle 6 which is identified as  
 22 Papa1 later on in this diagram, later on in this annexure.  
 23 So by 15:52:29 ETV time, 15:51:59 Vodacom time, the FLIR  
 24 camera has picked up Brigadier Calitz's Nyala moving at  
 25 speed towards the kraal. Let's just recap in relation to

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1 Brigadier Calitz, the call runs from Vodacom time 15:49:54  
 2 where Brigadier Calitz is stationary in his starting  
 3 position, to 15:51:53 which is six seconds before the point  
 4 that we see now where the FLIR camera catches Brigadier  
 5 Calitz moving at speed towards the kraal. Now do you still  
 6 maintain that you had no conversation with Brigadier Calitz  
 7 in that two minute call?  
 8 GENERAL NAIDOO: Chair, yes, I testified  
 9 to that effect.  
 10 MR CHASKALSON SC: Do you think it's just  
 11 an extraordinary coincidence that your vehicle switched its  
 12 ignition off 12 seconds before the call was answered and  
 13 switched the ignition back on 15 seconds after the call was  
 14 terminated?  
 15 GENERAL NAIDOO: Chair, I have testified  
 16 to the effect that the vehicles, after they lined up we  
 17 switched the vehicles off, I even climbed out of the  
 18 vehicle and shortly after that I climbed in after the –  
 19 after I heard the incident taking place. I cannot say at  
 20 that stage when did my driver switch the vehicle on or off,  
 21 because I was not driving. He could have had the vehicle  
 22 idling whilst he was stationary and switched it off for  
 23 another time. I can't testify to that myself.  
 24 MR CHASKALSON SC: The AvL records  
 25 testify to that.

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1 MR SEMENYA SC: Chair, I know we have  
 2 been describing this vehicle as Major General Naidoo's  
 3 vehicle and Brigadier Calitz's vehicle, but the record must  
 4 reflect both these individuals were not themselves in the  
 5 vehicles.  
 6 CHAIRPERSON: Both the drivers, that's  
 7 correct. Mr Chaskalson, it occurs to me, I don't know how  
 8 much time we are going to spend on this, I take it you are  
 9 doing it because it's going to, you are of the view that it  
 10 will lead us somewhere, to help us but if the movement of –  
 11 well, I will loosely call Brigadier Calitz's vehicle is  
 12 relevant, then the AvL records if they are available of his  
 13 vehicle, may also help us. To avoid speculating and  
 14 inferring and so on.  
 15 MR CHASKALSON SC: Unfortunately - it's  
 16 an issue which we were going to raise later. Unfortunately  
 17 it appears that there weren't any AvL records of Brigadier  
 18 Calitz's vehicle. We asked for AvL records of all of the  
 19 armoured vehicles involved in the operation, and what we  
 20 received from SAPS was less than half the vehicles, half  
 21 the armoured vehicles and we were told that these were the  
 22 only ones that were kitted with AvL records. Maybe that's  
 23 an issue I can actually fruitfully raise with the Major  
 24 General because Brigadier Calitz's vehicle is an armoured  
 25 vehicle from the North West Province. Major General, can

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1 you explain why it wasn't equipped with AvL records in this  
 2 operation, AvL equipment in this operation?  
 3 GENERAL NAIDOO: Chair, I can't  
 4 specifically unless I get the particulars of the vehicle.  
 5 The thrust of the whole issue of the AvL is that we are  
 6 trying as much as possible to ensure every police vehicle  
 7 is fitted with an AvL. There are certain factors that  
 8 affect that, one of them being sometimes the age of the  
 9 vehicle, if it's nearing its boarding or taking out of  
 10 service, commissioning out of service. Obviously we do not  
 11 invest that, but we can establish with the specific vehicle  
 12 or specific vehicle if they do have, and if not why don't  
 13 they have.  
 14 CHAIRPERSON: That's an issue we  
 15 obviously don't have to spend time on now. I just assumed  
 16 that it would have an AvL equipment. If it's suggested it  
 17 didn't then, well then we needn't waste time on the point  
 18 further. As you say investigations can be done outside  
 19 this chamber and communicated to the evidence leaders and  
 20 if anything turns on it, it can come back into the chamber  
 21 otherwise we will leave it where it is, outside the  
 22 chamber, outside our knowledge at the moment.  
 23 GENERAL NAIDOO: Okay, thank you, Chair.  
 24 MR CHASKALSON SC: Before we leave this  
 25 point, because it was a source of some consternation for

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1 us, Major General, is there no policy in SAPS regarding  
 2 which vehicles operational commanders use and any attempt  
 3 to ensure that an operational commander's vehicle in an  
 4 operation is always a vehicle with AvL equipment.  
 5 GENERAL NAIDOO: Chair, as I indicated,  
 6 the principle is with the exception of covert vehicles  
 7 which we would not want tracked by a specific individual,  
 8 the principle is that all vehicles should have AvL. We are  
 9 in a roll out and implementation phase for the last couple  
 10 of years. The consideration that might be taken in when  
 11 not fitting into a vehicle is the possible decommissioning  
 12 of that vehicle in the near future. Obviously that would  
 13 be a fruitless exercise. So ja, the principle, every  
 14 vehicle so an operational commander should be in a vehicle  
 15 with an AvL in that principle.  
 16 CHAIRPERSON: Isn't there a register kept  
 17 somewhere indicating AvL equipment which has been supplied  
 18 to the SAPS in the North West, indicating on which vehicles  
 19 that equipment has been fitted.  
 20 GENERAL NAIDOO: Chair, yes, but we  
 21 should also remember that it was not only vehicles from the  
 22 North West –  
 23 CHAIRPERSON: No, but I understand  
 24 Brigadier Calitz's vehicle was a North West vehicle, is  
 25 that correct?

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1 GENERAL NAIDOO: Well, I am not sure.  
 2 CHAIRPERSON: That's why I asked the  
 3 question. If it wasn't a North West vehicle, of course  
 4 other points arise which may lead us down dwaalspore that  
 5 we will be wasting time going down.  
 6 GENERAL NAIDOO: Chair, ja, and a lot of  
 7 this information that was requested was provided to the  
 8 evidence leaders, but if there's any gaps we are willing to  
 9 assist to close those gaps.  
 10 COMMISSIONER HEMRAJ: Mr Chaskalson, I am  
 11 just – don't want to misunderstand the import of this, you  
 12 are suggesting that because both the vehicles were  
 13 stationary that what must have taken place was a  
 14 conversation between the witness and Brigadier Calitz?  
 15 MR CHASKALSON SC: Well, I would never  
 16 try to draw that inference without the fact that there was  
 17 a record of a cell phone call being made from the witness's  
 18 phone to Brigadier Calitz's phone.  
 19 COMMISSIONER HEMRAJ: And that phone  
 20 call, sorry to interrupt you, but that phone call you want  
 21 us to draw the inference that was actually a conversation,  
 22 both vehicles stopped?  
 23 MR CHASKALSON SC: Indeed, I suspect that  
 24 Brigadier Calitz's vehicle had started moving towards the  
 25 end of that conversation, I suspect.

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1 COMMISSIONER HEMRAJ: Yes.  
 2 MR CHASKALSON SC: But that is the  
 3 inference that I will seek –  
 4 COMMISSIONER HEMRAJ: I understand that,  
 5 thank you.  
 6 MR CHASKALSON SC: If we can then go back  
 7 to MMM9A and follow your movements a little further. You  
 8 had switched on your ignition at the point 15:52:18, where  
 9 the right-hand green marker is, and driven down the road a  
 10 very short distance, and at 15:53:00 you had reached a  
 11 turnoff to the small substation. At 15:53:23 you had  
 12 turned up towards the small substation and you've switched  
 13 off your ignition. Can you explain –  
 14 CHAIRPERSON: I am sorry, you say you,  
 15 you really mean his driver?  
 16 MR CHASKALSON SC: His driver, yes.  
 17 CHAIRPERSON: To avoid confusion on that  
 18 later.  
 19 MR CHASKALSON SC: Can you explain these  
 20 movements?  
 21 GENERAL NAIDOO: Chair, as I indicated in  
 22 my statement, that we turned at the power station, what we  
 23 refer to as the power station. I indicated also in my  
 24 testimony, we travelled down the road a short way. We came  
 25 to a point where our vehicles could not go any further, and

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1 then we made a U-turn, that's where we discussed how many  
 2 of the convoy possibly went down, etcetera. We had to make  
 3 a U-turn and come back onto the main road and as to the  
 4 ignition switching off at the particular time, Chair, as  
 5 you could see the few seconds, it's possible, I can't  
 6 specifically remember that whilst trying to turn that the  
 7 driver could have switched off the vehicle. But we did not  
 8 switch off the vehicle and remain stationary. My  
 9 recollection of whether it switched off, I can't remember  
 10 specifically.  
 11 MR CHASKALSON SC: Brigadier, why did you  
 12 turn off? Why did you turn up that road in the first  
 13 place? What were you seeking to do?  
 14 GENERAL NAIDOO: Chair –  
 15 MR CHASKALSON SC: I apologise, Major  
 16 General, I owe my colleagues a cake.  
 17 GENERAL NAIDOO: Chair, as I indicated in  
 18 my statement, at that stage I – when we took that, I was  
 19 under the impression that we were taking the shortest  
 20 possible route to where the incident had occurred.  
 21 [10:22] MR CHASKALSON SC: So, Major-General,  
 22 your testimony then is that you made that turning after you  
 23 had heard the shootings and you were trying to get to the  
 24 kraal.  
 25 GENERAL NAIDOO: That was my testimony,

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1 yes.  
 2 MR CHASKALSON SC: And is it still your  
 3 testimony?  
 4 GENERAL NAIDOO: Chair, in terms of the  
 5 timing that's the way I experienced, as we said, the timing  
 6 is approximate, yes that's still my testimony.  
 7 MR CHASKALSON SC: You see, Major-  
 8 General, my difficulty with that explanation is that even  
 9 accounting for the roughness of our approximations, your  
 10 turn off at that road took place well before the shootings  
 11 happened. The shootings at scene 1 because you turned off  
 12 that road sometime between CTrack time 15:53:00 and CTrack  
 13 time 15:53:23 where you had reached the end of that road  
 14 and the ignition is off. Now if we convert our CTrack  
 15 times into ETV times you've reached the end of the road at  
 16 15:53:43, you've reached the end of the road at 15:53:43  
 17 which is still before the shootings. The shootings only  
 18 comes 7 seconds later. So you would have had to have  
 19 turned off about 30 seconds before the shooting.  
 20 GENERAL NAIDOO: Chair, as I testified,  
 21 that's how we made the movement.  
 22 MR CHASKALSON SC: If we can zoom in on  
 23 this area where you drove and switched off your ignition.  
 24 We can try zooming in on this map, we may have to do it on  
 25 Google Earth itself. Can we zoom in on the marker where

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1 15:53:23 is? I'm sorry, I think we need to do this on  
 2 Google Earth which require a slight delay because we're  
 3 going to have to reconnect the other machine.  
 4 CHAIRPERSON: I see it's twenty five past  
 5 ten and if it's going to take some time to make these  
 6 arrangements it sounds a suitable time to take the comfort  
 7 break. I see some heads being nodded, so we'll take the  
 8 comfort break now. The electronic arrangements can be made  
 9 while we're taking the comfort break and we can then  
 10 resume.  
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 12 [10:49] CHAIRPERSON: The reason for our  
 13 adjourning when we did is now being dealt with and we can  
 14 now proceed. You're still under oath, Major General.  
 15 GENERAL NAIDOO: Still under oath.  
 16 MR CHASKALSON SC: If we can zoom in on  
 17 the MMM9 to the marker where you switched your ignition off  
 18 and then on, just to see the nature of this terrain.  
 19 CHAIRPERSON: MMM9 that we've got isn't  
 20 the same as what is on the screen because the only figures  
 21 on it are CAMG4S G4SFLIR which I take it relates to cameras  
 22 and so on. What is on the screen has got times on it. Are  
 23 they perhaps on MMM9A?  
 24 MR CHASKALSON SC: Chairperson, I don't  
 25 know who has given you MMM9. MMM9 does not exist in

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1 material form, it's an electronic file. So MMM9A is the  
 2 printout of MMM9. MMM9 is necessary so that one can zoom  
 3 into –  
 4 CHAIRPERSON: Okay, but what is on the  
 5 screen looks like part of, at least part of MMM9A, because  
 6 it's got the time 15:53:23 to 15:53:48 ignition off/on.  
 7 That's on MMM9A. The printout of, I presume part of the  
 8 file MMM9 which we've been given, which you told us was on  
 9 the screen, as I've indicated to you hasn't got those times  
 10 and the legend ignition off/on. So I don't quite know  
 11 what's going on.  
 12 MR CHASKALSON SC: Has your printout,  
 13 does your printout not have ignition off/on on it?  
 14 CHAIRPERSON: The printout of MMM9  
 15 hasn't, no.  
 16 MR CHASKALSON SC: MMM9 there shouldn't  
 17 be, MMM9 should not exist in material form, it's an  
 18 electronic file.  
 19 CHAIRPERSON: Alright, okay, no problem.  
 20 MR CHASKALSON SC: MMM9A is the printout  
 21 of MMM9.  
 22 CHAIRPERSON: MMM9A has got legends which  
 23 include the things on the screen except that it's also got  
 24 in the road 15:52:18 ignition on, which is not on the  
 25 screen at the moment. But –

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1 MR CHASKALSON SC: That's because we  
 2 zoomed in, Chairperson. It is -  
 3 CHAIRPERSON: Okay, so if we understand  
 4 there then what we're essentially looking at is MMM9A, then  
 5 I think we can proceed without, I hope, any further  
 6 confusion. Do you understand what's going on, Major-  
 7 General?  
 8 GENERAL NAIDOO: I hope so, Chair.  
 9 CHAIRPERSON: Well I'm pleased to hear  
 10 that. Alright, Mr Chaskalson, let's carry on.  
 11 MR CHASKALSON SC: Major-General, did you  
 12 order the convoy to turn off at the main road at 15:53, or  
 13 at this point where it says, 15:53 driving before 15:53:23  
 14 ignition off, did you instruct the convoy to turn up this  
 15 road?  
 16 GENERAL NAIDOO: That is correct, Chair.  
 17 I indicated them to move.  
 18 MR CHASKALSON SC: Were you at the head  
 19 of the convoy?  
 20 GENERAL NAIDOO: I was in the first  
 21 vehicle.  
 22 MR CHASKALSON SC: And why did you  
 23 instruct them to move?  
 24 GENERAL NAIDOO: Chair, as I indicated in  
 25 my statement the intention was to go directly to the scene

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1 of the incident that we've been hearing on the radio.  
 2 CHAIRPERSON: It follows from what you  
 3 tell us that the incident already happened?  
 4 GENERAL NAIDOO: That is what I said,  
 5 that is what I testified.  
 6 MR CHASKALSON SC: The incident is quite  
 7 an imprecise term. Had you heard the shootings yet?  
 8 GENERAL NAIDOO: Chair, as I indicated we  
 9 heard the pyrotechnics and shortly after that we heard the  
 10 shootings, yes.  
 11 COMMISSIONER HEMRAJ: General, did you,  
 12 sorry, did you actually order the convoy to go right or did  
 13 you instruct your driver to, or did you give your driver  
 14 some instruction?  
 15 GENERAL NAIDOO: Chair, as I testified  
 16 when we stopped at the point or when we were at the point  
 17 where we were, my understanding is if we took the right  
 18 turn that would be the shortest route to where the  
 19 negotiation area was. That was my understanding at that  
 20 stage.  
 21 MR CHASKALSON SC: So your intention –  
 22 can I get back to my question, Major General – had you  
 23 heard the shootings before you instructed the convoy to  
 24 make this turning?  
 25 GENERAL NAIDOO: Chair, as I indicated,

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1 once we heard the, once we had heard the pyrotechnics  
 2 taking place, yes, people started up and started preparing  
 3 because as I also indicated some of us had climbed out of  
 4 the vehicle. We had not, at that stage, taken the  
 5 opportunity to step out and to stretch ourselves. And the  
 6 convoy moved slowly forward and we turned, when I indicated  
 7 to the driver, go, then we turned into that place. So it's  
 8 during that process, yes, I heard the shooting. I can't  
 9 tell you exactly where we were at that point when we heard  
 10 the shooting but I was outside the vehicle climbing into  
 11 the vehicle when these things happened.

12 CHAIRPERSON: It's quite clear from what  
 13 you tell us that your vehicle had not yet turned off the  
 14 main road, gone to the right, yet because you were outside  
 15 your vehicle, presumably standing in the main road, is that  
 16 right?

17 GENERAL NAIDOO: Standing alongside the  
 18 vehicle, Chair, yes.

19 CHAIRPERSON: And it was only after that  
 20 that you heard, or it was then, did you actually hear what  
 21 I'm going to read you in a moment, what was on the radio,  
 22 did you hear that when you were standing outside your  
 23 vehicle in the road?

24 GENERAL NAIDOO: Chair, as I indicated  
 25 we, I was still outside when we heard all these things

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1 happen and that was the indication for us to start  
 2 preparing ourselves, and during that process I climbed into  
 3 the vehicle.

4 CHAIRPERSON: You see according to the  
 5 OB, the occurrence book, FFF25, there was a situation  
 6 report. I think I read it to you previously. It says,  
 7 "Papa1", it's now accepted that that's a mistake, it should  
 8 be chopper 1, "chopper 1 reporting the group are moving to  
 9 TRT members" and they tried to attack them.

10 GENERAL NAIDOO: Yes.

11 CHAIRPERSON: Again it should be,  
 12 "chopper 1 reporting that people are moving around and some  
 13 are down." And it seems to be accepted that that's on  
 14 account of, a cryptic account of the strikers or group of  
 15 strikers moving towards the TRT people, the POP people  
 16 having got out of the way, TRT people being called upon to  
 17 protect the POP people who were now out of the way. The,  
 18 seen what the police attitude or police understanding of  
 19 what was happening was that the group were advancing to  
 20 attack the TRT members, in other words they were, TRT  
 21 members were going to be attacked, hence the statement,  
 22 they tried to attack them, TRT people responded as we know  
 23 by firing. And then some were down after that.

24 GENERAL NAIDOO: Yes, Chair.

25 CHAIRPERSON: Now you, I think you told

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1 us you heard that on the radio.

2 GENERAL NAIDOO: Yes, we were all  
 3 following it on the radio, yes Chair.

4 CHAIRPERSON: And did you also, and you  
 5 then heard the gunfire, not just stun-grenade fire, but as  
 6 it were but heavy –

7 GENERAL NAIDOO: Volley.

8 CHAIRPERSON: Heavy volley, a volley of  
 9 sharp ammunition being fire.

10 GENERAL NAIDOO: That's correct.

11 CHAIRPERSON: Obviously the R5s being  
 12 fired, you heard that?

13 GENERAL NAIDOO: That is correct, Chair.

14 CHAIRPERSON: And you are adamant, are  
 15 you, that it was only after that that you then instructed  
 16 your driver, I take it, to go, to turn on the ignition, go  
 17 down, turn to the right, go down that road and you were  
 18 then presumably proceeding as best you could to wherever  
 19 the shooting and so on had taken place because you we were  
 20 required to be there. Am I understanding correctly or have  
 21 I got it wrong?

22 GENERAL NAIDOO: Chair, with one  
 23 qualification. I had, when I got into the vehicle, did not  
 24 instruct my driver to start, he had already obviously  
 25 started the vehicle in preparation for movement.

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1 CHAIRPERSON: What you were doing, even  
 2 not having told him in words, you were intending to proceed  
 3 to, we can't say scene 1 because you didn't know exactly  
 4 where scene 1 was at that stage, but wherever the shooting  
 5 had taken place and these people down that you'd heard  
 6 about on the radio, is that correct?

7 GENERAL NAIDOO: Preparing to take  
 8 whatever action is necessary, yes.

9 CHAIRPERSON: Yes, at the scene where the  
 10 people were down?

11 GENERAL NAIDOO: Chair, I think it was at  
 12 that time we had this discussion about whether I could see  
 13 the smoke, etcetera, it was during this particular period,  
 14 yes.

15 MR CHASKALSON SC: You see Major-General,  
 16 I have a problem with that explanation because if you were  
 17 outside the vehicle, or at any rate if the convoy was  
 18 static when you heard the shooting and the ignition only  
 19 got switched on at that time, the ignition was switched on  
 20 only on two separate occasions. The first occasion was at  
 21 15:52:18 where the convoy was in its starting position  
 22 going, stretching back to forward holding area 1  
 23 intersection, is that where you say you were now when you  
 24 heard the shootings?

25 GENERAL NAIDOO: Chair, I think I

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1 testified quite clearly that it was not only the shootings  
 2 we heard, we initially heard the pyrotechnic which gave us  
 3 an indication that something had started and I indicated  
 4 that we, quite a few of the members were outside the  
 5 vehicle. People started climbing into the vehicles. I  
 6 would not say that the driver started his vehicle when he  
 7 heard the shooting because when I had got into the vehicle,  
 8 the vehicle was already running. So yes, the preparation  
 9 in anticipation that something will happen occurred as we  
 10 heard the events unfolding on the radio and directly heard  
 11 things like pyrotechnics.  
 12 MR CHASKALSON SC: So you'd heard  
 13 pyrotechnics by the time that you left your starting point,  
 14 are you saying?  
 15 GENERAL NAIDOO: No, I indicated that our  
 16 preparation to respond when needed started once we heard  
 17 pyrotechnics and the conversation on the radio.  
 18 MR CHASKALSON SC: Well then the answer  
 19 should have been yes, you had heard pyrotechnics by the  
 20 time you responded?  
 21 CHAIRPERSON: Yes, what he's saying is,  
 22 as I understand, to be fair to him, he's saying he'd heard  
 23 pyrotechnics and something else. Am I right Major-General?  
 24 You heard pyrotechnics, you heard the conversation on the  
 25 radio, you then heard shots actually, you heard the volley

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1 of shots.  
 2 GENERAL NAIDOO: That's the sequence,  
 3 Chair.  
 4 CHAIRPERSON: Ja, that's the sequence.  
 5 And now trying to relate that to times and your movements  
 6 and so on, if we start, we're now looking at MMM9B, and at  
 7 the foot of the page there is a start-up. Above that is  
 8 ignition off, and I think what we discussed before the  
 9 adjournment was that your driver preparatory to doing the  
 10 U-turn that you described, must have turned the ignition  
 11 off and then started the vehicle again, because, is that  
 12 right? Sorry, let's just go through it. The start-up is  
 13 the entry at the bottom of the page.  
 14 GENERAL NAIDOO: Mm.  
 15 CHAIRPERSON: I understood you to say  
 16 that was just when the U-turn started. The ignition off  
 17 was when you'd got down the, gone somewhere down the road  
 18 and – sorry, you'd done the right turn, you were going down  
 19 the road towards the top of the slide here on 3, you then,  
 20 I think you explained that there was a problem in going  
 21 forward, you didn't have a 4x4 vehicle, you only had an  
 22 ordinary vehicle.  
 23 GENERAL NAIDOO: Ja.  
 24 CHAIRPERSON: So the vehicle stopped, it  
 25 would seem and then a U-turn was done and that stop appears

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1 to be in the ignition off, which is the second last entry  
 2 on the page. Above that is driving, that would be driving  
 3 from the main road towards the spot where you stopped, and  
 4 then above that you start up. That's the fourth entry from  
 5 the foot of the page, and that's the start-up, I take it,  
 6 in the main road at the point where the vehicle turned to  
 7 the right to go up along the, I don't know if it was the  
 8 fence or barrier of some kind.  
 9 GENERAL NAIDOO: I indicated -  
 10 CHAIRPERSON: By the power station, is  
 11 that correct?  
 12 GENERAL NAIDOO: Chair, yes, with one  
 13 qualification. The reason why I, I specifically indicated  
 14 I could not remember whether the vehicle had stalled but  
 15 looking at the location when that particular incident  
 16 occurred on the AVL, it would be probably at the time when  
 17 the vehicle was turning, so it possibly could have stalled.  
 18 But as I said I specifically could not remember it  
 19 switching off or stalling.  
 20 MR CHASKALSON SC: Major-General, if a  
 21 vehicle stalled in the context of the situation that you  
 22 are describing, an emergency situation, where you are  
 23 trying to get medical treatment to gunshot victims as  
 24 quickly as possible, do you think it's likely it would have  
 25 taken 25 seconds before the vehicle was switched on again?

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1 GENERAL NAIDOO: Chair, I would not want  
 2 to try and render some technical opinion on this matter.  
 3 What I proposed and looking at the location of that  
 4 particular signal at that time was that, as far as my  
 5 knowledge is concerned, we were making a U-turn there. I  
 6 proposed, and I said I could not remember specifically,  
 7 that in making that U-turn the vehicle could have stalled  
 8 because we were in a cramped sort of situation that we  
 9 tried to turn the vehicles around, and I think it was  
 10 aggravated by the fact right behind us was the rest of the  
 11 convoy. So I'm just offering the reason for the ignition  
 12 off and should the vehicle stall it would indicate ignition  
 13 off, it would not indicate stalled, because it's a signal  
 14 that the engine is not running.  
 15 MR CHASKALSON SC: I'm putting to you  
 16 Major-General that that's not a plausible explanation  
 17 because if you were essentially taking a convoy of  
 18 ambulances to a medical emergency scene and you stalled, it  
 19 wouldn't take you 25 seconds before you decided to switch  
 20 the engine back on. What's your response to that?  
 21 GENERAL NAIDOO: Chair, as I indicated I  
 22 would not render a technical opinion on that but we have  
 23 the vehicle still available and we could check on the  
 24 terrain as to what transpired but practically I could not  
 25 remember the vehicle switching off myself.

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1 CHAIRPERSON: I must say, I would have  
 2 thought that, to be fair to you, one would, it's possible,  
 3 if not likely that you or the driver, probably the driver,  
 4 would have wanted to give a signal to the people behind,  
 5 the rest of the convoy that you were actually turning and  
 6 doing a U-turn and going back, so it isn't just stalling  
 7 and then starting up again, you would want to ensure that  
 8 the people behind you know that there's a change of plan  
 9 and that you're doing a U-turn and going back to the main  
 10 road. So I would have thought, speaking for myself, prima  
 11 facie, that that might explain the delay of some seconds.  
 12 GENERAL NAIDOO: Chair –  
 13 CHAIRPERSON: I don't know how that  
 14 strikes you?  
 15 GENERAL NAIDOO: It might, but as I  
 16 indicated we did not alight from the vehicle, we came to an  
 17 end where the vehicle could not go anymore and the driver  
 18 tried to turn around. I did indicate there was a problem  
 19 because the vehicle following us was right up behind us so  
 20 it had a -  
 21 CHAIRPERSON: Presumably he would have  
 22 turned his flicker lights on so the vehicle behind would  
 23 have seen that he was turning to the right. It would have  
 24 been a very dangerous manoeuvre surely to suddenly turn to  
 25 the right with the convoy behind you, I don't know how

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1 close the nearest one was but not something I think a  
 2 cautious driver would have done, am I right?  
 3 GENERAL NAIDOO: Chair, I don't remember  
 4 him putting his flicker light but I remember we were all,  
 5 we both were trying to indicate to the vehicles behind us,  
 6 you know, to turn around because obviously we couldn't  
 7 proceed any further.  
 8 MR CHASKALSON SC: Major-General, let me  
 9 offer you another plausible explanation for why your  
 10 vehicle was switched off at that point, a much more  
 11 plausible explanation. Your vehicle was switched off at  
 12 15:53:23 CTrack time, that's 15:53:13 Vodacom time. The  
 13 shootings took place at 15:53:50, 5-0, that's after your  
 14 vehicle was switched off, ETV time, that's 15:53:30 CTrack  
 15 time and 15:53:20 Vodacom time. At 15:53:31, eleven  
 16 seconds after the shooting started, Vodacom time, you tried  
 17 to call Brigadier Calitz, while your ignition was still  
 18 off. And your ignition turns back on at 15:53:48 which was  
 19 seven seconds after your call to Brigadier Calitz went to  
 20 voicemail. So what I want to put to you is if one looks at  
 21 the vehicle tracking records and the cell phone records it  
 22 seems quite clear that you heard the shootings at the point  
 23 at which you had stopped and your ignition off and not at  
 24 any earlier point. What's your response to that?  
 25 GENERAL NAIDOO: Chair, no. I clearly

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1 remember that we were not on that little road at the power  
 2 station when we heard the shootings. We were still on the  
 3 main road, so I don't think that presumption is correct.  
 4 [11:06] MR CHASKALSON SC: Major-General, your  
 5 memory of your movements has already been shown to be  
 6 remarkably unreliable. Initially you put yourself  
 7 approximately 600 metres from where you say you now, or we  
 8 know you now were. How do you explain this extraordinary  
 9 correlation of times where your ignition is off, shootings  
 10 happen, you phone Brigadier Calitz and seven seconds after  
 11 you get his voice mail your ignition goes back on?  
 12 GENERAL NAIDOO: Chair, I think firstly,  
 13 with regard to the reliability, if we go to my testimony  
 14 about the location of where I was, I think I described  
 15 exactly where I was. It may not be correlation between  
 16 what I said and what was on the map, I described exactly  
 17 where I was, I indicated that we were at a particular  
 18 point, alongside a smelter. I indicated that the fact  
 19 there was a brick wall to my right which obscured our  
 20 vision of any of the action taking place at scene 1. So I  
 21 do not think - on the transcripts of the day, on page 23033  
 22 I specifically pin point where I was in terms of holding.  
 23 I recollected the power station as well as the smelter. So  
 24 I think that the presumption that I was, what was the term,  
 25 I'm not sure, that the advocate used is incorrect. I

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1 concede see it on the map, it was not what I pointed out,  
 2 but what I described is what we are discussing now, Chair.  
 3 CHAIRPERSON: He used the word unreliable  
 4 and I understand what you say about your verbal  
 5 description. The fact is you pointed out a spot on the map  
 6 which wasn't correct. So the pointing out was at least  
 7 unreliable. That's correct isn't it?  
 8 GENERAL NAIDOO: Chair, yes and on the  
 9 basis of that pointing out I have the map that we used on  
 10 the day and I'm sure if you had sight of the map you would  
 11 understand the reason for the error that I am conceding to.  
 12 MR CHASKALSON SC: And that map, if I  
 13 understand it, is MMM1.  
 14 GENERAL NAIDOO: Chair, I've already  
 15 indicated that when I testified that the map seemed  
 16 familiar and I was not sure if it is exactly the same map.  
 17 The reason why I made those comments and I think evidence  
 18 was led that forward holding area 1 is not indicated on the  
 19 map. I have the very map that we used on the particular  
 20 day. Forward holding area 1 and forward holding area 2 are  
 21 clearly indicated on the map and I'm prepared to hand it in  
 22 so that it can be seen.  
 23 CHAIRPERSON: Well if you want to hand it  
 24 in as an exhibit you're entitled to. It will then be  
 25 presumably exhibit MMM11.

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1 MR CHASKALSON SC: Well can we see the  
 2 exhibit as well?  
 3 CHAIRPERSON: Well he wants to hand it  
 4 in, I must allow him to do so, clearly.  
 5 MR CHASKALSON SC: But I'd like to see  
 6 what it is so I can ask a follow up question.  
 7 CHAIRPERSON: No, I understand. If it  
 8 goes in exhibit everyone is entitled to see it, that's what  
 9 the exhibit means, for it to be exhibited to everybody.  
 10 But it's in now, so it will be Major-General Naidoo's copy  
 11 of map used by him on 16-08-2012. That adequately  
 12 describes it. Mr Semenya.  
 13 MR SEMENYA SC: Chair, maybe if we can  
 14 also indicate that the original which authenticates it has  
 15 notes of the day behind it which your copy doesn't have.  
 16 CHAIRPERSON: Yes, yes I understand.  
 17 Anyway this is a copy he had and it will go in. We'll see  
 18 both sides and it will exhibit MMM11 and copies will be  
 19 made and so forth. Do you now understand?  
 20 MR CHASKALSON SC: We'd also like to –  
 21 CHAIRPERSON: Mr Chaskalson, everyone  
 22 will see it, Mr Chaskalson, not only Mr Semenya and me, so  
 23 don't worry. But Mr Bizos and company will see it also.  
 24 But you see I've got – perhaps I must wait until a bit  
 25 later to ask a question. My problem relates to the times

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1 you see. You were quite clear that you were still in the  
 2 main, you hadn't turned right yet –  
 3 GENERAL NAIDOO: That's correct.  
 4 CHAIRPERSON: - when you heard those  
 5 pyrotechnics, as you put it, that's the stun grenades, you  
 6 heard the report over the radio that is recorded in the  
 7 occurrence book which I read you. And you heard the volley  
 8 of that sharp ammunition. That was before you turned –  
 9 GENERAL NAIDOO: That's correct, Chair.  
 10 CHAIRPERSON: - turned right. These  
 11 times as adjusted are correct and if it's correct the time  
 12 that we have as to when the firing took place and when this  
 13 incident referred to in occurrence book took place, then it  
 14 would seem that, unless I have misunderstood, that incident  
 15 took place after you turned. Am I right, Mr Chaskalson?  
 16 MR CHASKALSON SC: After he had switched  
 17 off his ignition at the top of the road.  
 18 CHAIRPERSON: Yes, yes.  
 19 MR CHASKALSON SC: Long after he had  
 20 turned.  
 21 CHAIRPERSON: So the short point is, is  
 22 that he turned, the vehicle in which he was travelling had  
 23 turned to the right and gone up the side of the power  
 24 station prior to the shooting, prior to the pyrotechnics.  
 25 Well I presume, but anyway certainly prior to the shooting.

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1 MR CHASKALSON SC: And prior to the  
 2 pyrotechnics because the first pyrotechnic started only 20  
 3 seconds before the shooting.  
 4 CHAIRPERSON: That's my problem and my  
 5 experience over the years has been that when evidence – you  
 6 know this is on the assumption that I put to you that the  
 7 various times are correct, my experience has been that if  
 8 inaccurate information is given of an important nature,  
 9 once it is clear it is inaccurate, there's an arrow that  
 10 often points in the direction of the truth. So I'm rather  
 11 puzzled to know, if this is inaccurate, obviously if it's  
 12 not inaccurate it would fall away, but if it's inaccurate  
 13 I'm rather interested to know how the inaccuracy arose and  
 14 what it tells us in what direction the arrow points. So  
 15 that's something which I won't ask questions about now, but  
 16 I'm just telling you it's a bit of a mystery at the moment.  
 17 But I hope when we solve the mystery we will be closer to  
 18 the truth.  
 19 GENERAL NAIDOO: Chair, ja this is the  
 20 reason why when I led evidence in this I was confident that  
 21 the AVL will indicate my movements. It was not [inaudible]  
 22 and I mean this AVL already handed over to the Commission  
 23 in July, it was requested in July last year. So I would  
 24 have thought that whatever I was saying and what was being  
 25 presented on the day when I was being cross-examined would

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1 be done in relation to the AVL and not, you know, now. So  
 2 the whole –  
 3 CHAIRPERSON: Yes, yes I understand that  
 4 and I understand – I'm not suggesting that you're  
 5 necessarily deliberately telling an untruth or anything of  
 6 that kind. This is all under the assumption which may turn  
 7 out to be incorrect anyway, but it may indicate that, you  
 8 know, the passage of time has done damage to your memory as  
 9 it were. And remember you say you wrote your statement out  
 10 earlier on, it was only deposed to in November.  
 11 GENERAL NAIDOO: Yes.  
 12 CHAIRPERSON: And it may indicate that  
 13 one has to approach your memory with a fair degree of  
 14 caution because of a possibility that, you know, your  
 15 memory's been affected by the passage of time. But anyway  
 16 these are all matters we don't have to debate now, but  
 17 there are, you understand, issues on the table that we'll  
 18 have to deal with.  
 19 GENERAL NAIDOO: Of course and that's I  
 20 hope that the AVL will give us some correlation in terms of  
 21 that.  
 22 COMMISSIONER HEMRAJ: General, if you  
 23 hadn't heard the pyrotechnics, if you hadn't heard the  
 24 shooting would you have still instructed the convoy to turn  
 25 right and go up that road?

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1 GENERAL NAIDOO: Chair, we would not even  
 2 have started the vehicle, it would have not been necessary  
 3 because remember we would have been waiting. If we didn't  
 4 hear anything there was no reason because I basically  
 5 people to stand down and to wait until further  
 6 instructions. So yes if I had not heard those things I  
 7 would have not moved.  
 8 CHAIRPERSON: Unless you'd had a  
 9 conversation with Brigadier Calitz that you no longer  
 10 remember where he told you something which made you turn,  
 11 but anyway that's speculation. You see the problem is it's  
 12 suggested to you by Mr Chaskalson that there in fact was a  
 13 conversation between you and Brigadier Calitz. And that  
 14 the follow up suggestion would I imagine be that in  
 15 consequence of what was said, if there was a conversation,  
 16 you then decided to go somewhere to the right to deal with  
 17 some kind of situation, despite the fact that the actual  
 18 shooting and so forth hadn't happened. But these are all  
 19 mysteries at the moment that we may get to the bottom of or  
 20 we may not.  
 21 GENERAL NAIDOO: Of course Chair, but I  
 22 think that's why I insisted on introducing the AVL which  
 23 was already in the Commission because it will show that I  
 24 was attempting to get to scene 1 in what I thought was the  
 25 shortest possible way. I already testified of this fact, I

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1 was not familiar with the area.  
 2 CHAIRPERSON: And if the times are right  
 3 then AVL shows you were trying to get to scene 1 or some  
 4 similar scene prior to the shooting. That's the problem  
 5 we've got.  
 6 GENERAL NAIDOO: Of course the time, yes  
 7 is the issue.  
 8 MR CHASKALSON SC: There is, of course,  
 9 another possibility. If we zoom in on this area, can we  
 10 zoom in? On the area where you switched off your ignition  
 11 for the first time after you started moving at 15:53:23.  
 12 That area strikes me as the sort of area one might take a  
 13 convoy to if one wanted to park a convoy in an area off the  
 14 road, if one didn't want the convoy to be laid out on the  
 15 road. It's a position where a convoy could be parked,  
 16 where it wouldn't be visible from the koppie if one didn't  
 17 want to disclose its existence to the mineworkers. And  
 18 previously the rationale for the reserve troops being where  
 19 they were was to keep them out of sight. This strikes me  
 20 as a perfect place to park a convoy and it's a flexible  
 21 place because it enables the convoy to be parked in a way  
 22 that gives you access back to the main road to go either  
 23 left or right depending on what the occasion demands.  
 24 What's your response to that?  
 25 GENERAL NAIDOO: Chair, I think to

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1 respond to that particular one it would be very simple.  
 2 There were drivers of those 25 vehicles and we can get  
 3 their statements of wherever they were parked there on the  
 4 main road. As I testified we never parked there, we drove  
 5 down and we turned around. So we can labour the point but  
 6 the corroboration would be from other drivers as well.  
 7 CHAIRPERSON: I think you're  
 8 understanding the point correctly. I don't think Mr  
 9 Chaskalson – well he'll tell us if I'm wrong, I don't think  
 10 he's suggesting that you actually parked there. I think  
 11 he's suggesting, as I understand him, there seems to be a  
 12 neutral suggestion frankly, that you didn't want to clutter  
 13 up the road with your convoy parked there until you had to  
 14 proceed to whatever scene you had to go to. You didn't  
 15 want to be seen, he says, from the koppie. So a really  
 16 sensible thing, both from the point of view of not being  
 17 seen from the koppie and also not cluttering up the road  
 18 for other traffic, is to take your vehicles off the road,  
 19 park them off the road until they were needed. But he's  
 20 not suggesting you then parked there, he's suggesting that  
 21 as you were going there you decided to turn around. Am I  
 22 right –  
 23 MR CHASKALSON SC: Well my suggestion is  
 24 that he did stop there, but, almost at the point at which  
 25 he stopped. Maybe 20 seconds or so after he stopped the

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1 shootings happened.  
 2 CHAIRPERSON: He didn't stop for very  
 3 long.  
 4 MR CHASKALSON SC: Indeed. What prompted  
 5 him to get going again was the shootings.  
 6 COMMISSIONER HEMRAJ: It's been suggest  
 7 that what the General did was turned right with his convoy,  
 8 as your understand your question, to have his vehicles  
 9 lined up in that area.  
 10 MR CHASKALSON SC: To have his vehicles  
 11 off the main road in an area where they wouldn't be visible  
 12 from the convoy and in a position where they could redeploy  
 13 in either direction, left or right along the main road when  
 14 the occasion demanded. Because they would have come back  
 15 to the main road to deploy whatever happened. So it  
 16 prevented the need for having a convoy facing in one  
 17 direction on a main road, having to perform a U-turn on a  
 18 main road if they had to go in the other direction. What's  
 19 your response to that, General?  
 20 GENERAL NAIDOO: Chair, yes I'm not saying  
 21 it's not a rational suggestion, but what I'm saying is that  
 22 is not what we did.  
 23 MR CHASKALSON SC: Well let's take it  
 24 step by step. You thought that you were at immediate  
 25 response area 1.

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1 GENREAL NAIDOO: That is correct, Chair.  
 2 The practise previously was to keep troops at immediate  
 3 response area 1 out of sight of the miners.  
 4 GENERAL NAIDOO: That is correct, Chair.  
 5 MR CHASKALSON SC: In this situation if  
 6 your convoy's stretched back along the main road it would  
 7 be visible from the koppie would it not?  
 8 GENERAL NAIDOO: Chair, as I indicated,  
 9 from where we were we could not see the koppie. This  
 10 particular, what's now referred as the sub-station on that  
 11 side has a brick wall surrounding it. So we had no  
 12 visibility of the sub-station from where we were. Hence we  
 13 did not see some of the issues that were raised in the  
 14 previous cross-examination.  
 15 MR CHASKALSON SC: Well certainly once  
 16 you'd taken the vehicles up this road you had no visibility  
 17 of the koppie because the brick wall of the sub-station  
 18 obscured your view and equivalently protected you from the  
 19 view of the mineworkers. As a matter of fact if your  
 20 convoy was stretched out along the main road there would be  
 21 a line of sight to the koppie.  
 22 GENERAL NAIDOO: Chair, possibly. As I  
 23 said, that would have to verified by inspection in loco,  
 24 however, if the issue was about visibility, at that cross-  
 25 road we had a permanent presence, I already indicated. And

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1 I think we've seen photographs to the effect, so the police  
 2 were there on a permanent basis anyway. So vehicles being  
 3 seen from the koppie, I don't think it would have made any  
 4 difference, Chair.  
 5 MR CHASKALSON SC: Then there is the  
 6 issue of the times as well.  
 7 GENERAL NAIDOO: That's correct.  
 8 MR CHASKALSON SC: And let's pin down a  
 9 bit more of your evidence. Where were you when you heard  
 10 pyrotechnics for the first time would you say?  
 11 GENERAL NAIDOO: Chair, as I indicated,  
 12 we were – it was before we turned off. We were on the main  
 13 road, so at this stage, I may not be able to show you where  
 14 on the main road, but we were on the main road. I  
 15 indicated it initially when the pyrotechnics started I was  
 16 standing outside the vehicle. I was not inside the  
 17 vehicle.  
 18 MR CHASKALSON SC: If that's the case  
 19 then your vehicle would have had to have been stationary,  
 20 is that not right?  
 21 GENERAL NAIDOO: That is correct, Chair.  
 22 MR CHASKALSON SC: Well your vehicle was  
 23 stationary over this period only in two positions. Its  
 24 starting position here and its switching off position  
 25 there. Those are the two positions where the vehicle was

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1 stationary.  
 2 CHAIRPERSON: But you don't say what  
 3 there and there is –  
 4 MR CHASKALSON SC: 15:51:18 ignition on  
 5 marker and the 15:53:23 off marker. So the starting  
 6 position with the convoy stretching back to forward holding  
 7 area 1 and the position where you switched off your  
 8 ignition at the side of the small sub-station. So which of  
 9 those positions were you in when you heard the  
 10 pyrotechnics?  
 11 GENERAL NAIDOO: Chair, I have already  
 12 testified that I was on the road, so I possibly would be at  
 13 the indicated at 15:50 something, yes.  
 14 MR CHASKALSON SC: 15:52:18.  
 15 GENERAL NAIDOO: Yes.  
 16 MR CHASKALSON SC: Now the problem with  
 17 that proposition is, however rough our assumptions are, on  
 18 the most generous assumption in your favour there couldn't  
 19 have been pyrotechnics taking place at 15:52:18 CTrack time  
 20 because the very first pyrotechnics that took place were at  
 21 15:53:30 ETV time which is 15:53:00. Oh sorry, 15:53:10  
 22 CTrack time. So the ignition here was switched on a minute  
 23 before pyrotechnics happened.  
 24 GENERAL NAIDOO: Chair, as I indicated,  
 25 as for the time I'm not going to be able to say, but as I

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1 say, where my location was and when we started preparing or  
 2 on the possibility of something is all I can testify to.  
 3 CHAIRPERSON: It occurs to me that if the  
 4 information we have in relation to the time is right then  
 5 there's something with your evidence. But I'm not sure  
 6 it's necessarily sinister, it could indicate simply that  
 7 your memory is a bit inaccurate, that you decided to go off  
 8 the road because either you didn't want to be seen from the  
 9 koppie or you didn't want to clutter up the road for  
 10 passing traffic. You went to the position along the side  
 11 of the power station. You'd just arrived there, had been  
 12 there a few seconds when you heard the pyrotechnics and the  
 13 shooting and you then decided well we'd better get out of  
 14 here and get to the scene as soon as we can. But whichever  
 15 it is doesn't seem to be – this is prima facie view it  
 16 doesn't seem to be sinister as far as your evidence is  
 17 concerned. You may be making a mistake, but I don't think  
 18 it's a mistake that reflects any discredit on you except it  
 19 indicates, that like most of us, your memory is fallible.  
 20 GENERAL NAIDOO: Chair, yes. As I  
 21 indicated, what I testified as far as I could remember and  
 22 I clearly indicated I will not be able to testify to the  
 23 times because at that stage I was not looking at the times.  
 24 I testified as to how I experienced it at that particular  
 25 time.

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1 CHAIRPERSON: If the times are right then  
 2 they indicated your memory is wrong.  
 3 [11:28] But if your memory is wrong it doesn't  
 4 necessarily lead to any sinister inference. It just simply  
 5 indicates that you're human like the rest of us and you've  
 6 got a fallible memory, that's all.  
 7 GENERAL NAIDOO: Thank you, Chair.  
 8 MR CHASKALSON SC: You see there's  
 9 another reason why it seems to me highly unlikely that you  
 10 would've been at your starting position when you heard the  
 11 pyrotechnics and that's because from this position there is  
 12 a clear line of sight to the kraals and the scene of the  
 13 pyrotechnics, whereas from that position there is not and  
 14 your – sorry, this position is your starting position at  
 15 15:52 ignition on and that position is the 15:53:23  
 16 position. Now you're clear that you didn't see the  
 17 pyrotechnics.  
 18 GENERAL NAIDOO: Chair, two things. I  
 19 think I've already testified to the fact that I was not  
 20 sure exactly when my driver switched on the vehicle and  
 21 there were two things to consider. Remember there was  
 22 radio conversation as well as pyrotechnics and we can't see  
 23 them in isolation. So what caused him to switch the  
 24 vehicle on, I won't be able to testify to. As I indicated,  
 25 when I did get into the vehicle the vehicle was on. And on

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1 the issue of the pyrotechnics and not being able to see the  
 2 smoke, yes, I stand by what I said. We could hear what we  
 3 could not see.  
 4 MR CHASKALSON SC: Now if you were in the  
 5 position where I suggest you were, which is 15:53:23, you  
 6 wouldn't have had a view because there was a tall brick  
 7 wall obscuring your view, whereas if you were in the  
 8 position at your starting position, you would've had a  
 9 clear line of sight and I struggle to see how you would've  
 10 failed to see the pyrotechnics if you looked in that  
 11 direction. What's your response to that?  
 12 GENERAL NAIDOO: Chair, we're working on  
 13 the assumption that it's only the substation. What about  
 14 vegetation? Can we maybe have a look but as I said, in my  
 15 testimony as well I indicated I had no line of sight, me  
 16 personally.  
 17 MR CHASKALSON SC: We will be able to  
 18 indicate the vegetation to you in due course, we can switch  
 19 to street view but that will take some time and I will do  
 20 it at a later stage but let's follow the movement of your  
 21 vehicle from after you switched your ignition on at the  
 22 position where you've turned around next to the small  
 23 substation. Chairperson, I've noticed it's 11:30. I'm not  
 24 sure –  
 25 CHAIRPERSON: Well, you're quite right,

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1 it's tea time. During the tea time I would – I mentioned  
 2 that we've been given copies of MMM11 but only the front  
 3 side. I understand there's writing on the back which may  
 4 be relevant so perhaps copies could be made of that for us  
 5 while we take the tea adjournment.  
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 7 [11:59] CHAIRPERSON: - side of exhibit MMM11.  
 8 So what I'll do is I'll mark the one we've got MMM11.1 and  
 9 I'll mark the reverse side as MMM11.2, so we have that.  
 10 That is correct, is it, this is the reverse side? This is  
 11 the reverse side – sorry, I must just put you under oath  
 12 first, remind you that you're still under oath.  
 13 GENERAL NAIDOO: s.u.o.  
 14 CHAIRPERSON: This is the reverse side of  
 15 MMM11?  
 16 GENERAL NAIDOO: That is correct, Chair,  
 17 as far as I know of.  
 18 CHAIRPERSON: It's now MMM11.2, thank  
 19 you. I've reminded you, you're under oath. Mr Chaskalson  
 20 –  
 21 MR CHASKALSON SC: Before we –  
 22 CHAIRPERSON: I got the impression you  
 23 were moving on from this point. I got the impression that  
 24 almost all the juice from this particular lemon has been  
 25 extracted but –

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1 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):  
 2 Well, the lemon of the turnaround point, yes, Chairperson.  
 3 Before we put MMM11 away I just want to raise one issue  
 4 with the Major-General around it. I see at the top of this  
 5 document is a cell phone number for Lieutenant-Colonel, is  
 6 it Gaffley?  
 7 GENERAL NAIDOO: That's correct, Chair.  
 8 MR CHASKALSON SC: And you had this  
 9 document on your person on the day, on the 16th?  
 10 GENERAL NAIDOO: Chair, yes. I did  
 11 indicate that this vehicle was – this was a map that we  
 12 used on the 16th.  
 13 MR CHASKALSON SC: And why had you  
 14 written Lieutenant-Colonel Gaffley's cell phone number on  
 15 the back of the map?  
 16 GENERAL NAIDOO: Chair, yes, I indicated  
 17 in my testimony at that stage that Colonel Gaffley and  
 18 Colonel Modiba who were part of forward holding area 1 on  
 19 the 16th when we took up our positions prior to the  
 20 operation commencing, Colonel Gaffley and his members took  
 21 up position at immediate response area 1 and I did at some  
 22 stage allude to the fact that I was responsible to ensure  
 23 that the wellbeing of the members was taken care of and  
 24 that being, and make sure that they had sufficient supplies  
 25 of water and that they were fed timeously because members

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1 were waiting for long hours between eight to 12 hours and  
 2 that was one of the support functions that we discussed  
 3 previously in the testimony. So at that stage I was making  
 4 sure of what we would do in respect of all those  
 5 arrangements so I – and you would see at some stage just  
 6 prior to serving lunch I did call him to confirm that we  
 7 were going to have somebody bring stuff over to him.  
 8 Colonel Gaffley was not somebody I have worked with before  
 9 so I did not have his number on my telephone and it was not  
 10 necessary to call him previously, as far as I could recall,  
 11 until that stage.

12 MR CHASKALSON SC: Did you yourself go to  
 13 visit him at immediate response area 1 or did you send  
 14 somebody else?

15 GENERAL NAIDOO: No, Chair, I had people  
 16 that were delivering even to the people right up at the  
 17 negotiation area. The meals were taken to them from  
 18 forward holding area, not by myself as presumed previously.  
 19 I just ensured that the distribution occurred to all  
 20 members that were on deployment.

21 MR CHASKALSON SC: And did you direct  
 22 these people to immediate reaction area 1?

23 GENERAL NAIDOO: Chair, yes. I indicated  
 24 to them that they must – as I indicated, we were in  
 25 possession of this map and we just indicated that this is

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1 where the task was and NIU is and the meals should be  
 2 delivered to them. At this stage on this particular I'm  
 3 not sure whether we delivered the meals to them or whether  
 4 somebody from them came and picked it up but the  
 5 arrangement would be that the meals must get to the  
 6 members, they won't come to the meals.

7 MR CHASKALSON SC: And whoever was  
 8 responsible for that was able to find their way to  
 9 immediate reaction area 1?

10 GENERAL NAIDOO: Chair, they did not  
 11 report any difficulties in doing that so my presumption is  
 12 yes, it was a person that also went and delivered to  
 13 members at the negotiation group as well.

14 MR CHASKALSON SC: Can you explain why  
 15 you weren't able to find your way to immediate reaction  
 16 area 1?

17 GENERAL NAIDOO: Chair, I have indicated  
 18 the first time that I actually went there was at the time  
 19 when we moved forward, so I base my assumptions on this map  
 20 that I have presented here.

21 MR CHASKALSON SC: But if one looks at  
 22 the map and where the position of your convoy was, you  
 23 stopped less than half of the way that you had to travel to  
 24 get to immediate reaction area 1 and in circumstances where  
 25 the terrain was completely different. There's a very sort

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1 of built up area of the Lonmin complex opposite the place  
 2 where you stopped. To get to immediate reaction area 1  
 3 you've got to go through patches where there's open veld on  
 4 either side, a slimes dam, how did you make that mistake?

5 GENERAL NAIDOO: Chair, as you would see  
 6 from the map, this substation which we eventually stopped  
 7 at and assumed to be the location of the power station, it  
 8 does not look very substantial here on the map, it's  
 9 actually almost insignificant but it's not so when you're  
 10 on the ground, it's quite a structure. So – and with  
 11 regard to the Lonmin infrastructure on the left, remember  
 12 on the map it shows some sort of infrastructure on the  
 13 left, so it was just a wrong assumption but ja, that's it.

14 MR CHASKALSON SC: Are you, do you have  
 15 previous experience with reading maps?

16 GENERAL NAIDOO: I'm not sure. I use a  
 17 normal car map or a GPS but I don't think I've got any  
 18 advanced knowledge of map reading.

19 MR CHASKALSON SC: But normally if  
 20 someone like Colonel Scott gives you a gridded map like  
 21 this, are you able to follow where you're supposed to be?

22 GENERAL NAIDOO: Chair, on face value it  
 23 looks straightforward, yes.

24 MR CHASKALSON SC: And just to get back  
 25 to a point you were touching on yesterday, you had

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1 Lieutenant-Colonel Gaffley's cell phone number with you on  
 2 the back of your map.

3 GENERAL NAIDOO: That's correct, Chair.

4 MR CHASKALSON SC: But you didn't think  
 5 it would be appropriate when you needed an assessment to  
 6 give him a call when he was on the scene at scene 3 and you  
 7 could see his vehicle?

8 GENERAL NAIDOO: Chair, I think I already  
 9 testified to that effect yesterday, that Colonel Gaffley  
 10 was not at the point where I presumed or assumed that the  
 11 shooting was coming from. It was coming from the lines of  
 12 the NIU. That was a question and I did respond to that  
 13 yesterday.

14 MR CHASKALSON SC: Then let's get back to  
 15 your movements after you turned around. You turn around  
 16 and you come back to the intersection at the main road.

17 GENERAL NAIDOO: That's correct, Chair.

18 MR CHASKALSON SC: And you reach that  
 19 intersection, the ignition goes on at 15:53:48 and by 15:54  
 20 you've reached the intersection according to the AvL  
 21 records.

22 GENERAL NAIDOO: That's according to the  
 23 records.

24 MR CHASKALSON SC: And then your vehicle  
 25 was in a stationary position for two minutes, 15:54 to

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1 15:56.  
 2 GENERAL NAIDOO: Yes, Chair.  
 3 MR CHASKALSON SC: Were you still at the  
 4 head of the convoy at this point?  
 5 GENERAL NAIDOO: Chair, I did indicate  
 6 that that turnaround of the convoy that had to do a U-turn  
 7 did cause some confusion and it took us some time, a few  
 8 minutes to reorganise ourselves because the vehicles could  
 9 only turn about one at a time because the place was narrow.  
 10 MR CHASKALSON SC: But Major-General, I  
 11 would've thought that if you were trying to create space  
 12 for a problem of turning around, you wouldn't stay at the  
 13 intersection, you would move off in the direction where you  
 14 wanted to go so that vehicles behind you could get out of  
 15 the way and come behind you and stop cluttering up the area  
 16 where people had to turn around, would you? Do you not  
 17 think that would be logical?  
 18 GENERAL NAIDOO: Chair, it might be a  
 19 logical presumption but as I indicated that the delay was  
 20 for the convoy to reorganise themselves, those who were  
 21 turning on the road and once everybody was turned around,  
 22 we moved off.  
 23 MR CHASKALSON SC: But you'll accept,  
 24 won't you, that at the point at which you came down from  
 25 the little power station back towards the main road you

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1 could now choose to go either left or right.  
 2 GENERAL NAIDOO: That is correct, Chair.  
 3 MR CHASKALSON SC: So if we go back to  
 4 MMM5, if we can call up MMM5 – sorry, Chairperson, we have  
 5 a technical difficulty today.  
 6 CHAIRPERSON: Are these technical  
 7 difficulties going to be solved because all we have on the  
 8 screen at the moment is a block in which are the words “no  
 9 signal”.  
 10 MR CHASKALSON SC: Chairperson, the  
 11 problem is that there's only one machine that can use  
 12 Google Earth apparently, so we can't switch between the  
 13 MMM5 and the Google Earth. I'm just making a new copy of  
 14 MMM5.  
 15 CHAIRPERSON: And do you want – I  
 16 hesitate to adjourn and waste time but you are going to do  
 17 this quite quickly, are you?  
 18 MR CHASKALSON SC: Yes, it will be done  
 19 in a minute, less than a minute. So Major-General, at the  
 20 point at which you come back to the main road where you're  
 21 now at the intersection in block 6 – sorry, G8, G8 – you  
 22 have at your disposal one, two, three, four, five of the  
 23 alternative routes that are available to you on MMM5, all  
 24 of which will take you out at the koppie on the right side  
 25 of the barbed wire, do you accept that?

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1 GENERAL NAIDOO: The proposals you made  
 2 originally, yes.  
 3 MR CHASKALSON SC: Now, can I ask you why  
 4 you didn't choose at that point to go to scene 1 along what  
 5 is the ordinary road to scene 1, the main road, back to  
 6 forward holding area 1, back up along the blue arrows  
 7 towards Nkaneng, round Nkaneng and to the scene? That's  
 8 what one can describe as the ordinary route if one were to  
 9 go to scene 1. Why didn't you choose that?  
 10 GENERAL NAIDOO: Chair, a twofold reason.  
 11 One, as I indicated, our intention was to, as quickly as  
 12 possible, get to the scene. The second one is, on the map  
 13 that I have indicated that we used it was indicated to us  
 14 at the immediate response area, the reason that the  
 15 immediate response area was chosen is because at the  
 16 immediate response area there's a direct route to what was  
 17 now scene 1. That is why it was chosen as the insertion  
 18 point. So that's the reason we did not go in what we  
 19 perceived to be a longer route.  
 20 MR CHASKALSON SC: But two questions,  
 21 Major-General, had you any previous experience of getting  
 22 from forward holding area 1 to the koppies, to the area of  
 23 scene 1?  
 24 GENERAL NAIDOO: Chair, I think I've  
 25 already indicated, no.

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1 MR CHASKALSON SC: At forward holding  
 2 area 1 you had responsibility for, as it were, not  
 3 escorting but being the boom gate through which people  
 4 passed to get to the koppies, is that not correct?  
 5 GENERAL NAIDOO: That is correct, Chair.  
 6 MR CHASKALSON SC: And in which route did  
 7 those people pass you when they went to the koppies?  
 8 GENERAL NAIDOO: Chair, our police  
 9 vehicles normally went along the road that we were parked  
 10 on and at what we now know as the immediate response area  
 11 they turned into the forward holding area – that was  
 12 normally. There were vehicles that also went along the  
 13 Nkaneng township but the normal route was the one that I  
 14 indicated we were on.  
 15 MR CHASKALSON SC: Well, the normal route  
 16 and the direct route that the police vehicles would have  
 17 taken is the yellow route. Do you agree with that?  
 18 GENERAL NAIDOO: I would assume so. I  
 19 don't know that for a fact but it was indicated to us it  
 20 was alongside the power station.  
 21 MR CHASKALSON SC: Why didn't you take  
 22 that route?  
 23 GENERAL NAIDOO: Chair, I think I've  
 24 already indicated that was the route that we thought we  
 25 were taking initially and that was the route that we – that

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1 was why we came to this dead-end and we turned around. We  
 2 were obviously looking for that road. We did not presume  
 3 because this was on a, used on such a continuous basis,  
 4 that we won't be able to locate it, as had happened.  
 5 MR CHASKALSON SC: Are you saying now  
 6 that you were unable to identify the road in front of the  
 7 big substation now?  
 8 GENERAL NAIDOO: No, Chair. What I'm  
 9 indicating is, when we turned right off the road we assumed  
 10 we were in that route that was indicated in yellow on the  
 11 screen now.  
 12 MR CHASKALSON SC: No, Major-General, you  
 13 couldn't have – you can't have it both ways. If you  
 14 thought that you were at immediate response area 1 even at  
 15 that stage, what were you doing turning right? You were  
 16 then, if you look at the map, driving directly away from  
 17 the scene. If you thought that you were here and you  
 18 thought you were coming here and you turned right and drove  
 19 for –  
 20 CHAIRPERSON: Would you put the two  
 21 "here's" on record, please?  
 22 MR CHASKALSON SC: The first here, if you  
 23 thought that you were at the intersection at C8 and you  
 24 were going to turn right and drive for close to a  
 25 kilometre, you would essentially be driving away from the

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1 scene.  
 2 GENERAL NAIDOO: Chair, let me clarify  
 3 that. We were at G, at the top end of G8. We had to, we  
 4 went down the road that's on G7. We turned around because  
 5 we had assumed that that road on G7 and 8 was the road  
 6 that's indicated in yellow arrows. When we turned around,  
 7 obviously realising that something was wrong, we turned  
 8 right intending to find the route, having an understanding  
 9 of where koppie 1, trying to find the route to go to koppie  
 10 1.  
 11 MR CHASKALSON SC: Now, Major-General,  
 12 how did you avoid the three routes, the four routes that  
 13 you crossed en route before you decided to go around the  
 14 outside of the power station, the big power station?  
 15 GENERAL NAIDOO: Chair –  
 16 MR CHASKALSON SC: How did you miss them?  
 17 GENERAL NAIDOO: Chair, I think I have  
 18 testified to this on Monday. I was not in any way familiar  
 19 with that area, which is why I brought a driver from the  
 20 Rustenburg area to drive and obviously I would depend on  
 21 him taking – because we both had the understanding of where  
 22 we had to go, so he would take me where we wanted to go.  
 23 MR CHASKALSON SC: This driver had  
 24 already, on your version, taken you down a blind alley in  
 25 the mistaken belief that he was taking you on the yellow

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1 route. You still retained trust in him.  
 2 GENERAL NAIDOO: Chair, whilst we are in,  
 3 at that moment engaged in this, it's hard now to say I  
 4 don't trust you. I mean he might have made errors and he's  
 5 human, he is fallible but it's not that to say I lost trust  
 6 in him.  
 7 MR CHASKALSON SC: Did you not just look  
 8 up and see what paths other people in vehicles were taking  
 9 to and from the koppie?  
 10 GENERAL NAIDOO: Chair, there were no  
 11 other vehicles going to and from the koppie at that stage,  
 12 it was just my convoy.  
 13 MR CHASKALSON SC: Major-General, that's  
 14 actually not correct. We'll show you a photograph which  
 15 shows your convoy pass – we'll show you video footage that  
 16 shows your convoy passing the FLIR camera at the same time  
 17 as a vehicle is coming down, I can't remember whether it's  
 18 the red route or the green route at the same time. Would  
 19 you like to see that footage?  
 20 GENERAL NAIDOO: Chair, I think we  
 21 already saw the stills on that and I have already testified  
 22 to the fact that I have not seen that convoy that was  
 23 coming apparently towards my convoy. That was already  
 24 testified to on Monday.  
 25 [12:18] MR CHASKALSON SC: No, this is different

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1 footage, Major-General. This is footage of your convoy  
 2 having turned right from the intersection at G8 heading,  
 3 for reasons which are not altogether clear, in a westerly  
 4 direction, possibly to try to pick up, well, to pick up one  
 5 of these routes and at the same time as it heads in this  
 6 direction there is a vehicle either on the purple route or  
 7 the red route, I'll look at my note and confirm to you,  
 8 clearly moving away from the koppie along one of those  
 9 routes. Would you like to see that footage?  
 10 GENERAL NAIDOO: Chair, if it's necessary  
 11 but what I am testifying is I did not see the vehicle.  
 12 CHAIRPERSON: Well, that suggestion,  
 13 we'll see the footage in a moment and we will then be able  
 14 to form an opinion as to whether, regard being had to where  
 15 your vehicle was, where the convoy was and where the other  
 16 convoy was, whether the witness can be accepted that you  
 17 didn't see. But before we get there, can I just ask you  
 18 this, I understood you to say that the information you've  
 19 been given was that the path or the road you were to follow  
 20 to koppie 1 was a road that went along the side of the  
 21 power station.  
 22 GENERAL NAIDOO: That's correct, Chair.  
 23 CHAIRPERSON: Alright. Now we know that  
 24 you turned off, on your version, you turned to the right,  
 25 you went down a path along the side of a small power

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1 station.

2 GENERAL NAIDOO: That's right.

3 CHAIRPERSON: Well obviously a wrong road

4 because you couldn't get through, you had to turn round,

5 right?

6 GENERAL NAIDOO: I have acceded to that,

7 Chair.

8 CHAIRPERSON: Now why didn't you then

9 look at your map and say, ah, we obviously turned right at

10 the wrong power station. If the directions are you can get

11 to koppie 1 from where you are by going along the main

12 road, turning right at the power station and going along

13 the road next to the power station, why didn't you then

14 say, it was obvious what happened, we turned right at the

15 wrong power station. There's another power station ahead,

16 one can see, I think from this photograph that the road

17 which you could have followed to the right along that side

18 of the power station was visible. So why didn't you, when

19 you came to the next power station say, ah, this must be

20 the right road, let's turn here and follow the instructions

21 we received, but correctly by going along the correct road

22 by the side of the correct power station? You didn't do

23 that, did you, why not?

24 GENERAL NAIDOO: Chair, yes, that was

25 actually what I presume we were doing but obviously once

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1 again we went left instead of right, yes.

2 COMMISSIONER HEMRAJ: Can I just ask you,

3 General, you testified that you hadn't done a recon of this

4 area.

5 GENERAL NAIDOO: Never.

6 COMMISSIONER HEMRAJ: So when you first

7 turned right at the sub-station, you didn't know that that

8 road would practically be a dead-end for the convoy?

9 GENERAL NAIDOO: That's correct, Chair.

10 COMMISSIONER HEMRAJ: Now having done

11 that and having gotten back onto the main road, did you

12 have a discussion with the driver of your vehicle as to

13 which direction to take or did you just simply leave it to

14 him to get you there?

15 GENERAL NAIDOO: Well no, I was urging

16 him to go and get us to this place. We didn't say go left

17 or go right because obviously at that stage we used where

18 koppie 1 as a landmark to orientate ourselves to where we

19 wanted to go. So turning right would obviously bring us

20 closer to koppie 1. So our orientation was based as to

21 where our understanding of koppie 1 was.

22 COMMISSIONER HEMRAJ: But was there a

23 discussion between you and the Lieutenant-Colonel driving

24 the vehicle as to which route to take or did you really

25 depend on him to find the way?

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1 GENERAL NAIDOO: Chair, yes, we'd, well I

2 was frustrated when we came to the dead-end, you know, I

3 asked him now what happened so he said, no, we seem to have

4 made a miscalculation and we need to turn around and that's

5 why we turned and he said it should be on the right, so I

6 said, okay, go right and that's how we went. So it was not

7 a detail but I was trying to understand where we were

8 because as I said I took a driver from Rustenburg because I

9 had not been in that area at all.

10 COMMISSIONER HEMRAJ: Yes, thank you

11 General.

12 MR CHASKALSON SC: But Major-General

13 earlier when I asked you, you said that you had instructed

14 that driver to turn at the sub-station, was that not

15 correct?

16 GENERAL NAIDOO: That is correct, Chair.

17 That's based on the assumption we were at the place I

18 indicated we were at the - area, 1, and the instructions

19 that we were given that if you turn right at the power

20 station and you go straight down that road you will get to

21 what is now known as scene 1.

22 MR CHASKALSON SC: So you knew that you

23 had to turn right at a sub-station and you instructed the

24 driver to turn right at a sub-station, at the sub-station,

25 the first sub-station.

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1 GENERAL NAIDOO: What we assumed to be

2 the power station, yes Chair.

3 MR CHASKALSON SC: So when you realised

4 that it wasn't the correct sub-station, did you not look at

5 your map and see clearly there's a little sub-station

6 beforehand, that's where we are, we must turn right at the

7 correct sub-station?

8 GENERAL NAIDOO: Chair, that is why we

9 turned right to try and correct the error.

10 MR CHASKALSON SC: But you didn't turn

11 right at the front of the correct sub-station, you drove

12 straight past that intersection?

13 GENERAL NAIDOO: Chair, we've accepted

14 that as a fact, yes.

15 MR CHASKALSON SC: But how did that

16 happen? You knew you had to turn right this side of the

17 sub-station, you knew that the east side of the sub-

18 station, you knew that was the way to the koppie, how could

19 you miss the turning?

20 GENERAL NAIDOO: Chair, I cannot

21 specifically recall but as I said when we turned, I assumed

22 we were going once again to where the yellow arrows were.

23 MR CHASKALSON SC: But Major-General, by

24 the time that you turned, we've done part of this exercise

25 already, remember when I said to you that we estimated the

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1 distance on four seconds into CC24's being 65 metres to the  
 2 turn-off?  
 3 GENERAL NAIDOO: Yes.  
 4 MR CHASKALSON SC: That point, that image  
 5 that one sees at CC22, the point of the convoy is already  
 6 well past the turning to the right, so the turning to the  
 7 right at the start of the new sub-station is approximately  
 8 100 metres, maybe more from the turning that you ultimately  
 9 took. And you knew you had to be on the east side of the  
 10 sub-station, is that correct?  
 11 GENERAL NAIDOO: Before the power  
 12 station, yes.  
 13 MR CHASKALSON SC: Now you drove for  
 14 approximately 100 metres with the sub-station on your right  
 15 hand side –  
 16 CHAIRPERSON: So let's just get, what's  
 17 the answer to the point, Mr Chaskalson?  
 18 MR CHASKALSON SC: Can I put the question  
 19 more accurately because I sold the question short by 66%?  
 20 If one goes to Google earth and measures the distance  
 21 between the correct turn-off on the yellow route at block  
 22 C8 and the turn-off that you took in the line between A8  
 23 and B8 it's over 300 metres. Now you have on your version,  
 24 driven for 300 metres with the power station looming large  
 25 on your right hand side without realising that you have

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1 passed it, how can that be?  
 2 GENERAL NAIDOO: Chair, other than saying  
 3 that the road that we took was more prominent and  
 4 noticeable because it was, what's the word, levelled,  
 5 etcetera, I can't really indicate how we've missed that  
 6 road and our intention was to go, as I indicated, on the  
 7 route before the power station not after the power station,  
 8 but it's quite prominent the, even on the map that we have,  
 9 which I have handed in, the other route which is now being  
 10 shown on the screen, that road and the side is not as  
 11 prominent, so that's where we were heading to take the turn  
 12 right.  
 13 MR CHASKALSON SC: Major-General, maybe  
 14 this is something that we'll have to do at an inspection in  
 15 loco, but even if you go onto Google earth street view, you  
 16 can see an intersection at –  
 17 CHAIRPERSON: We're back to no signal.  
 18 Oh there we are, now we've got a signal again and now we're  
 19 back in business. Yes, carry on.  
 20 MR CHASKALSON SC: This is a Google  
 21 earth, maybe we need to print this out and turn it into an  
 22 exhibit, Chairperson, and we can do it a little closer to  
 23 the intersection, but this is a Google earth intersection –  
 24 CHAIRPERSON: Do you want me to mark it  
 25 in anticipation –

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1 MR CHASKALSON SC: Can we do that, Mr  
 2 Chairperson?  
 3 CHAIRPERSON: MMM12 is what?  
 4 MR CHASKALSON SC: Google earth street  
 5 view of the intersection which Major-General Naidoo missed.  
 6 CHAIRPERSON: He missed a number of  
 7 intersections, we've got to describe it more accurately.  
 8 Google earth street view of intersection on eastern side of  
 9 large power station, is that right? Widely.  
 10 COMMISSIONER HEMRAJ: Widely.  
 11 CHAIRPERSON: Google earth street view of  
 12 intersection on its eastern side of large power station, is  
 13 that right?  
 14 GENERAL NAIDOO: Chair, I think it's  
 15 southern side.  
 16 CHAIRPERSON: Sorry?  
 17 GENERAL NAIDOO: Is it not the southern  
 18 side?  
 19 CHAIRPERSON: We're travelling from east,  
 20 north -  
 21 GENERAL NAIDOO: Oh you mean the  
 22 direction?  
 23 CHAIRPERSON: You were travelling east to  
 24 west.  
 25 GENERAL NAIDOO: That's correct.

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1 CHAIRPERSON: So the route that Mr  
 2 Chaskalson is suggesting you should have followed was on  
 3 the eastern side, possibly south eastern but we won't get  
 4 back in to engage this. The eastern side of the power  
 5 station versus the western side. So the accurate  
 6 description that Google earth feed-through of intersection  
 7 on eastern side of large power station.  
 8 MR CHASKALSON SC: Chairperson, there  
 9 seems to be a dispute between SAPS and ourselves over this  
 10 image and I don't want to put the image until I –  
 11 CHAIRPERSON: I wasn't – in the image  
 12 being exhibited, what you want to show is a Google earth, I  
 13 want to make sure my description is correct, a Google earth  
 14 street view of intersection on eastern side of large power  
 15 station. You haven't shown it yet because it's suggested  
 16 that what was on the screen wasn't the right picture. But  
 17 presumably the right picture can eventually be obtained,  
 18 and I've already in anticipation given it an exhibit number  
 19 and described it. Does that make you happy, Mr Semenya?  
 20 MR SEMENYA SC: I am muted here. Okay, I  
 21 found my voice. I was muted. This wouldn't work. I found  
 22 my voice now.  
 23 CHAIRPERSON: Good.  
 24 MR SEMENYA SC: Chair, I'll be  
 25 comfortable to say that is what the evidence leaders

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1 contend is a depiction of. If I come to the conclusion  
 2 it's different, I'll deal with it in re-examination.  
 3 CHAIRPERSON: That sounds a sensible  
 4 practical suggestion. Thank you, Mr Semenya. Mr Ntsebeza,  
 5 do you want to contribute to this explanation, or have you  
 6 turned your light on by mistake?  
 7 MR NTSEBEZA: No, I'm finding my feet.  
 8 Whilst others are finding their voice I'm trying to find my  
 9 feet, just to understand what's going on. But I'll get  
 10 there, Mr Chairman.  
 11 CHAIRPERSON: Alright. I know people  
 12 normally find their feet when they're sitting down but I  
 13 know what you mean. Right, shall be carry on in the  
 14 meanwhile, and not spend any more time on –  
 15 MR CHASKALSON SC: So if we can then on  
 16 that basis put the image, we will.  
 17 CHAIRPERSON: Alright. But what the  
 18 witness says, as I understand it, was he thought that the  
 19 road they went down was clearer than the road they didn't  
 20 go down and he can't explain why they didn't go down the  
 21 one that was less clearer. Is that the summary of your  
 22 evidence, Major-General?  
 23 GENERAL NAIDOO: Chair, I said that on  
 24 the map that we were given there's obvious which road is  
 25 clearer. I can't really say why we missed the first turn

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1 and the second turn but our assumption was we were going to  
 2 what was indicated as the insertion point.  
 3 CHAIRPERSON: Judging by what's written  
 4 at the bottom of this image, this is the work of the US  
 5 Department of State geographer who has now succeeded in  
 6 finding for us, or showing us the first turn to the right,  
 7 and then presumably we will proceed down the road and come  
 8 to the second one. It is fairly clear, I must say, but  
 9 let's go on and see how much clearer the other one is.  
 10 MR CHASKALSON SC: But Chairperson, if we  
 11 can stop at this point and ask Major-General Naidoo if he  
 12 contends that this was not a clear enough indication for  
 13 him of a road that he should be taking?  
 14 CHAIRPERSON: Ask the question. What's  
 15 your answer to that, Major?  
 16 GENERAL NAIDOO: Chair, at this stage I  
 17 can't really say, you know, if I do remember this turn or  
 18 that turn. I already indicated I was not driving here.  
 19 Maybe if I was driving I would have paid more attention to  
 20 which turn to turn off.  
 21 CHAIRPERSON: You've basically, you said  
 22 you can't explain this?  
 23 GENERAL NAIDOO: That's right, I did.  
 24 CHAIRPERSON: That's, Mr Chaskalson  
 25 should surely be content with that answer, shouldn't he?

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1 GENERAL NAIDOO: Apparently he's not,  
 2 Chair.  
 3 CHAIRPERSON: He should be. Alright, Mr  
 4 Chaskalson, shall we move on?  
 5 MR CHASKALSON SC: Let's move on,  
 6 Chairperson. It may also be a fruitful place to visit when  
 7 the inspection in loco takes place. We can leave Google  
 8 earth at this point. Let's go back to MMM9A. You've now  
 9 missed the turn that you should have taken and you've  
 10 reached the turn that you didn't intend to take. That's  
 11 15:57:25, you accept that, CTrack time?  
 12 GENERAL NAIDOO: Correct, Chair.  
 13 MR CHASKALSON SC: You drive up to the  
 14 power station and you turn left when you hit the power  
 15 station, reaching a point to the left of the power station  
 16 at 15:58:05.  
 17 GENERAL NAIDOO: That is correct, Chair.  
 18 MR CHASKALSON SC: Surely at this point  
 19 you realise you have gone wrong?  
 20 GENERAL NAIDOO: Yes Chair, we obviously  
 21 realised we had passed the, what we know as koppie 1.  
 22 MR CHASKALSON SC: Well it's not  
 23 necessarily the issue of whether you passed the koppie  
 24 known as koppie 1, the issue is whether you were on the  
 25 wrong side of the power station. You wanted to be on the

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1 east side of the power station. You were now on the west  
 2 side of the power station.  
 3 GENERAL NAIDOO: That is also correct,  
 4 Chair.  
 5 MR CHASKALSON SC: So what did you do  
 6 about it?  
 7 GENERAL NAIDOO: Chair, that's where I  
 8 indicated that we had stopped to assess where we were and  
 9 an indication from our driver, look, this turn that we go  
 10 right, go straight down to where we intended to go. That  
 11 was also where I indicated that we, the first time started  
 12 hearing the shooting that was taking place in the distance.  
 13 MR CHASKALSON SC: So Major-General, you  
 14 say it was at this point that you heard the shooting?  
 15 GENERAL NAIDOO: That is correct, the  
 16 first shooting.  
 17 MR CHASKALSON SC: You see Major-General,  
 18 I'm afraid you couldn't have heard shooting at that point  
 19 because –  
 20 CHAIRPERSON: I'm sorry to interrupt you,  
 21 Mr Chaskalson, you said at this point, I don't know that  
 22 those hypothetical readers of this record in years to come  
 23 will know what at this point means, so you'd better put it  
 24 in words.  
 25 MR CHASKALSON SC: 15:58:05 to 16:02:05.

<p style="text-align: right;">Page 23431</p> <p>1 CHAIRPERSON: This is the point where the 2 vehicle in which the witness was being conveyed appears to 3 have stopped and idled for four minutes for the first time 4 and thereafter it apparently proceeded up along the line of 5 the power station on the western side, and the top corner 6 of the section over which it had gone, it then stopped and 7 idled for another four minutes, so this is the first four- 8 minute idling period that you're talking about, is that 9 right?</p> <p>10 MR CHASKALSON SC: That's correct, 11 Chairperson. You see at that point, 16:02:05, the end of 12 those four minutes of idling, that gives you an ETV time of 13 16:02:25. Now at 16:02:25 we had Brigadier Calitz' 14 reorganisation line, stationery in part of his seven-minute 15 plus stay in front of koppie 2 with the protesters lined up 16 behind koppie 2 and nothing going on, there was no 17 shooting. No one has ever suggested there was any shooting 18 at that time. No one was near koppie 3, so you couldn't 19 have heard shooting at that time.</p> <p>20 CHAIRPERSON: This is the time Brigadier 21 Calitz was near the dried river bed, is that so, the dried 22 river bed?</p> <p>23 MR CHASKALSON SC: Well it's where he had 24 reorganised, maybe if we can pick up the photograph to just 25 demonstrate it.</p>	<p style="text-align: right;">Page 23433</p> <p>1 be zoomed in like we are and they'll be looking at MMM9A. 2 CHAIRPERSON: Perhaps they can use 3 magnifying glasses. 4 MR CHASKALSON SC: No, but the lettering 5 in, because we are on zoomed in, the lettering on MMM9A 6 finishes way to the left of koppie 2. So going above the 7 "ff" on MMM9A won't take you anywhere near there. 8 CHAIRPERSON: You'd better, as Mr Mpofu 9 is fond of saying, take a step back and start again. 10 MR CHASKALSON SC: On MMM5 it would be 11 C3, says Mr Pretorius. Maybe that's a way of letting 12 future readers of the record know what we're referring to. 13 For our purposes we can indicate it on the magnified map 14 that we see now. So if there wasn't any shooting, what was 15 your convoy doing idling for four minutes when you were 16 supposed to be getting to scene 1 – 17 CHAIRPERSON: You're talking now about 18 the first idling, the first – 19 MR CHASKALSON SC: The first period of 20 idling for four minutes. 21 CHAIRPERSON: That four minutes' idling 22 period. 23 GENERAL NAIDOO: Chair, as I indicated, 24 at some stage we did realise that we were on the wrong side 25 and we did try to assess, okay, where we were. I did</p>
<p style="text-align: right;">Page 23432</p> <p>1 CHAIRPERSON: Anyway the answer is 2 probably yes, we just carry on. Then you're now proceeding 3 to put something to the witness. After that period of no 4 shooting and near the dry river bed, I think it was, 5 reorganisation point, you say the strikers hadn't gone to 6 koppie 3 yet?</p> <p>7 MR CHASKALSON SC: The bulk of the 8 strikers were still in that line behind koppie 2. There 9 were no SAPS vehicles in the vicinity of koppie 3, they 10 were all lined up where the hand is, in front of koppie 2. 11 The hand won't be there for posterity. 12 CHAIRPERSON: I don't think that hand is 13 a permanent hand, so you'd better find a more permanent 14 fixed point. The hand is not a fixed point at all. 15 MR CHASKALSON SC: The hand is a little 16 bit above the double F at the end of ignition off at 17 16:12:35. 18 [12:38] CHAIRPERSON: The hand, in fact, is in 19 line with the O, the spot between the O and the F of "off" 20 and it's some distance north, some distance above it on the 21 other side of the clearly demarcated path which runs down 22 just below it from top right to bottom left on the screen. 23 MR CHASKALSON SC: Chairperson, I 24 suddenly realised this is going to make it even more 25 confusing for readers of the record because they will not</p>	<p style="text-align: right;">Page 23434</p> <p>1 indicate that the road was shown to me as being the direct 2 route. I also had sight of what we now know as koppie 1, 3 so we were doing that self-assessment initially and as I 4 indicated and in my statement, subsequent to that we also 5 heard the shooting. That was, as I indicated, as we came 6 around the power station. So I'm not going to tell you 7 that the first point or the second point is the actual 8 point where we heard the shooting but in line with my 9 statement, I said as we came around we heard the shooting 10 and that's where I indicated to the bulk of the K9 unit 11 with the medics to stay back whilst we assess what the 12 reason for the shooting was. 13 MR CHASKALSON SC: So although you were 14 supposed to be getting emergency personnel to scene 1 on an 15 urgent basis, you spent four minutes trying to work out 16 where you were between 15:58:05 and 16:02:05, is that what 17 you're saying? 18 GENERAL NAIDOO: Chair, I did indicate 19 that we were trying to orientate ourselves because 20 obviously we were where we did not want to be. 21 MR CHASKALSON SC: Major-General, was 22 there no-one in your party who knew the most direct or the 23 simplest if not the most direct route to koppie 1? 24 GENERAL NAIDOO: Chair, nobody 25 volunteered at that stage, you know, to tell us, look,</p>

<p style="text-align: right;">Page 23435</p> <p>1 you're going wrong this way or that way obviously, so I was 2 in the hands of my driver in terms of that. 3 MR CHASKALSON SC: But you knew two 4 pieces of information and the one was that you knew that 5 some people who you had let through in the direction of 6 koppie 1 in your boom gate capacity had approached koppie 1 7 along the main road to Nkaneng, you knew that. 8 GENERAL NAIDOO: Yes, Chair. 9 MR CHASKALSON SC: You also knew that the 10 chosen SAPS route which you'd been told was the most direct 11 route, was on the east side of the substation almost 12 against its fence. 13 GENERAL NAIDOO: Chair, yes, and that's 14 what I indicated our intention was. 15 MR CHASKALSON SC: But if you wanted to 16 get to the east side of the substation why didn't you turn 17 around and go to the east side of the substation? I mean 18 presumably somebody within your party was capable of 19 looking at the sun and working out where north was. 20 GENERAL NAIDOO: Chair, I'm not sure 21 about that but as I indicated, where we ended up there was 22 now a road going right, directly in the direction of koppie 23 1. So as I testified previously on Monday, we assumed that 24 it would be logical to take the route that we saw that was 25 going to koppie 1 and if you remember, Chair, we also had</p>	<p style="text-align: right;">Page 23437</p> <p>1 spoke on the other annexure on Monday would be somewhere 2 along that rectangle between the one that says 15:58:05 and 3 the one that says 16:03:05. 4 CHAIRPERSON: Oh, in other words it's 5 between the first four minute idling spot – 6 GENERAL NAIDOO: Somewhere there, it was 7 a convoy – 8 CHAIRPERSON: - and the second four 9 minute idling spot. 10 GENERAL NAIDOO: That's correct. 11 CHAIRPERSON: Is that right? 12 GENERAL NAIDOO: That's right. 13 CHAIRPERSON: So effectively along the 14 western side of the power station between those two idling 15 points? 16 GENERAL NAIDOO: That's right, Chair. I 17 did indicate that they were at the side of the power 18 station. 19 MR CHASKALSON SC: Now if they were in 20 that position there was still a direct line, potentially 21 direct line of fire to them from the koppie, was there not, 22 koppie 3? 23 GENERAL NAIDOO: Not necessarily 24 potentially direct but possibly indirect. As I indicated, 25 it was a convoy that was going backwards and maybe the</p>
<p style="text-align: right;">Page 23436</p> <p>1 the discussion if you go down that route you're going to 2 come against the barbed wire. So yes, the decision was 3 based on the fact, logically where we stood we could see 4 where koppie 1 was and our intention was to get to scene 1, 5 which we used koppie 1 as a landmark. 6 MR CHASKALSON SC: Let's move on along 7 your route. You then, after your four minute sojourn in 8 the bottom left-hand corner of the power station, reach the 9 marker that says 16:03:05 to 16:07:05, another four minute 10 delay. What's your explanation for this one? 11 GENERAL NAIDOO: Chair, during my 12 statement, testimony, I did indicate at some stage I 13 realised that we would have to leave some of the vehicles 14 behind. I indicated the issue of shooting, which prompted 15 us to go where we went and I would assume that that 16 particular time was that reorganisation where five vehicles 17 eventually went to the point where we finally held. 18 CHAIRPERSON: Can you tell us on the 19 screen where you left the paramedics and the vehicles that 20 they were in? 21 GENERAL NAIDOO: Chair, they were not 22 fully out of, they were still in the precincts of the power 23 station. When I say precincts, the area around the power 24 station. As I indicated it was a convoy, so somewhere 25 between, on the first rectangle. My assumption when I</p>	<p style="text-align: right;">Page 23438</p> <p>1 first vehicle, which were all police vehicles, yes. 2 MR CHASKALSON SC: So the police vehicles 3 would still be in the line of fire or potentially in the 4 line of fire from koppie 3 but they would shield the 5 ambulances. 6 GENERAL NAIDOO: Potentially, yes. 7 CHAIRPERSON: I'm sorry, there's one 8 point that's not clear to me because I don't think you put 9 it clearly. At what point were you when you heard shooting 10 at koppie 3 for the first time? Were you already at the 11 second four minute idling spot or had you not reached it 12 yet or had you been there for some time or what was the 13 position? 14 GENERAL NAIDOO: Chair, as I said, when 15 we came around it and we were orientating ourselves to 16 where we were, then we heard the shooting on the right. 17 Had we not heard the shooting on our right, we would have 18 proceeded right down that road where we would have tried to 19 get to scene 1 and koppie 1. We would have not went left, 20 for all intents and purposes – 21 CHAIRPERSON: I'm sorry, Major-General, 22 you haven't answered my question. 23 GENERAL NAIDOO: Yes. 24 CHAIRPERSON: I think I probably didn't 25 put it clearly enough. Were you still at the first four</p>

<p style="text-align: right;">Page 23439</p> <p>1 minute idling spot when you heard the firing or were you 2 between the first four minute idling spot and the second 3 idling spot or were you already at the second four minute 4 idling spot when you heard the shooting. You understand 5 the question? 6 GENERAL NAIDOO: I understand the 7 question. I'm just trying to orientate myself. It's not 8 really clearly visible but, Chair, what I could say is 9 possibly in between because we had reached the road at that 10 time when we heard the shooting – my vehicle anyway had 11 reached the road. 12 CHAIRPERSON: So you hadn't yet got to 13 the second four minute idling spot? 14 GENERAL NAIDOO: I'm not sure but the 15 second four minute idling spot would be on the road. 16 CHAIRPERSON: Yes, I understand that. 17 GENERAL NAIDOO: Yes, so whether I was 18 there already or moving, I can't testify to that, but yes. 19 CHAIRPERSON: Thank you. 20 MR CHASKALSON SC: But Major-General, if 21 you only heard the shooting when your vehicle was on the 22 road, why did you first answer me, why did you first 23 explain to me the initial four minute idle as being a 24 response to shooting that you heard? 25 GENERAL NAIDOO: Chair, I think I've</p>	<p style="text-align: right;">Page 23441</p> <p>1 period. Are those the two possibilities and you're not 2 sure which is correct or have I misunderstood? 3 GENERAL NAIDOO: Chair, as I indicated, 4 we came around, we orientated ourselves and obviously the 5 decision was now we're going to go right and just as we got 6 onto the road and we started trying to make that 7 arrangement, we heard the shooting. I then asked the main 8 convoy to hold back. So yes, it's probably you know, as we 9 were moving we probably heard it to the time we came to a 10 standstill. 11 CHAIRPERSON: So what you are saying to 12 me, again if I understand you correctly, is it was 13 essentially, if one – these, we can rely on these times, 14 between 16:02:05 and 16:03:05, it was during that minute 15 while you were on the road from the first idling spot to 16 the second? 17 GENERAL NAIDOO: Probably, Chair. 18 MR CHASKALSON SC: Well, could it have 19 been after the second idling spot? Could there have been 20 any reason for you to idle a second time if you'd not heard 21 gunfire? 22 GENERAL NAIDOO: Chair, the only reason – 23 yes, something would have stopped us. The one thing was, 24 you know, we were not moving fast, we were slowly moving 25 forward because obviously the convoy was following us and I</p>
<p style="text-align: right;">Page 23440</p> <p>1 already indicated that I was trying to orientate myself. 2 It's still not clearly visible but I know I was on the road 3 at that time when I heard the shooting, just in order to 4 give guidance as to which, which spot would be the probable 5 area I heard the shooting when I was at – 6 COMMISSIONER HEMRAJ: There's one minute 7 difference between the end of the first idling and the 8 start of the second idling period. 9 GENERAL NAIDOO: That's possible then, 10 ja, we moved forward and then we stopped again. 11 MR CHASKALSON SC: Now Major-General, do 12 you remember how Lonmin you idled after you heard the 13 shooting or did you hear the shooting at the start of the 14 idling period, at the end of the idling period? 15 GENERAL NAIDOO: Chair, I can't remember 16 on that aspect of it obviously – 17 CHAIRPERSON: Is it – I just want to make 18 sure I understand your evidence. What you say is, it seems 19 to me you can't remember precisely so what I understand you 20 to be saying is you heard the shooting either during that 21 minute which Adv Hemraj just referred you to between the 22 end of the first idling period and the beginning of the 23 second idling period while you were travelling from the one 24 idling spot to the other, or it was after you'd arrived at 25 the second idling spot during that four minute idling</p>	<p style="text-align: right;">Page 23442</p> <p>1 can't think of anything else that would have probably made 2 us start idling other than an assessment of something that 3 occurred in front of us. 4 MR CHASKALSON SC: So you're fairly 5 confident that the reason for the second idling period was 6 to reassess your position in the light of shooting at the 7 koppie? 8 GENERAL NAIDOO: Chair, as far as my 9 memory serves me, yes, that possibly is. 10 MR CHASKALSON SC: You see, Major- 11 General, it couldn't have been shooting because shooting 12 still hadn't happened by that point either. If I – the 13 second idling period starts at 16:03:05. I was going to 14 zoom in on the exhibit CC22 but because of pixellation 15 problems I'll just show you some screenshots instead. 16 Chairperson, can we make these screenshots exhibits? We'll 17 have to distribute them at a later stage. 18 CHAIRPERSON: How many screenshots still 19 to put in? 20 MR CHASKALSON SC: Just two at this 21 stage. There will be – 22 CHAIRPERSON: Shall we make them MMM13.1 23 and 13.2 or 13 and 14? 24 MR CHASKALSON SC: Let's make them 13.1 25 and 13.2 because they describe the same moment in time.</p>

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1 CHAIRPERSON: Well, just then 13.1, how  
 2 do you describe it?  
 3 MR CHASKALSON SC: Screenshot from  
 4 exhibit CC22.  
 5 CHAIRPERSON: CC22, yes?  
 6 MR CHASKALSON SC: At ETV time 16:03:25,  
 7 16:03:25.  
 8 CHAIRPERSON: That's 13.1 and 13.2, how  
 9 do we describe that?  
 10 MR CHASKALSON SC: It's second screenshot  
 11 -  
 12 CHAIRPERSON: Oh, so the first one is  
 13 first and the second one is second screenshot from CC22 at  
 14 ETV time 16:03:25, is that right? Is that correct?  
 15 MR CHASKALSON SC: That is correct and,  
 16 Chairperson, the CC22 running time is five minutes and 55  
 17 seconds for these screenshots.  
 18 CHAIRPERSON: How many?  
 19 MR CHASKALSON SC: 55. And Major-  
 20 General, again it may be easier for you if you look at the  
 21 high resolution screen, what one sees and this on our 20  
 22 second correlation between ETV time and CTrack time, is  
 23 exactly the moment that the second idling period begins,  
 24 what one sees is in the circle is your, is your group of K9  
 25 members lined up at the road in the first slide. Still in

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1 formation at koppie 2 is Brigadier Calitz's reorganisation  
 2 line which I'm circling now, which are the white dots in  
 3 the bottom left-hand corner of the screen. In the yellow  
 4 circle is your line. The line of miners behind koppie 2  
 5 I'm marking now, it's a sort of long black or dark line  
 6 stretching back in the direction of koppie 3 from koppie 2.  
 7 CHAIRPERSON: Below koppie 2 on the  
 8 screen or on -  
 9 MR CHASKALSON SC: Above koppie 2 on the  
 10 screen. Koppie 2 I'm circling now, koppie 2 is very small.  
 11 Koppie 1 is behind koppie 2 and the line of miners is lined  
 12 up behind koppie 2.  
 13 CHAIRPERSON: Yes, sorry, this is wrong.  
 14 So it's actually below, on the screen it's below koppie 1  
 15 and it's in the right-hand top corner, as it were, of  
 16 koppie 2. Is that correct?  
 17 MR CHASKALSON SC: That is correct,  
 18 Chairperson. The next slide zooms in a bit more closely on  
 19 the Major-General's convoy or grouping because it's no  
 20 longer a convoy and the grouping is, most of the grouping  
 21 is gather or the position of the grouping is identified in  
 22 the red square, the red rectangle. The road that one would  
 23 take if one were going to koppie 1 is in the middle of, is  
 24 a sort of dark patch, dark line running through the middle  
 25 of the red rectangle and one vehicle has already crossed

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1 the road. Can you explain, Major-General -  
 2 CHAIRPERSON: Sorry, before you get there  
 3 let's just get that on record. Am I correct in thinking  
 4 that that yellow circle around the vehicles that you've  
 5 just referred to is on the western side of what one can  
 6 describe looking at MMM9, the western side of the - the  
 7 western side of the big power station more or less near the  
 8 top? In other words, if one looks at that red block, if  
 9 one takes a point about a third of the way along from the  
 10 left on the top line of the block and one goes diagonally  
 11 up towards the right, it looks as if that's the western  
 12 side of the big power station along - which was between the  
 13 two four minute idling positions. Is that correct?  
 14 [12:58] MR CHASKALSON SC: It is correct,  
 15 Chairperson, but I just realised to my embarrassment that  
 16 the second slide is another 20 seconds later. What I need  
 17 to show you now is a third slide which will show you that  
 18 the re-organisation line at koppie 2 is still present 20  
 19 seconds later.  
 20 CHAIRPERSON: All right, sorry let's  
 21 correct the description then of MMM13.2. It's second  
 22 screen shot from CC22 at ETV time 16:03:45.  
 23 MR CHASKALSON SC: That's correct,  
 24 Chairperson.  
 25 CHAIRPERSON: And that would be five

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1 minutes, it will be six minutes, 15 seconds into the  
 2 video. Is that right?  
 3 MR CHASKALSON SC: That's correct,  
 4 Chairperson.  
 5 CHAIRPERSON: Six minutes, 15 seconds and  
 6 the previous one MMM13.1 is 5 minutes, 55 seconds into the  
 7 video. And now we're going to have another one which is  
 8 going to be MMM13.3 and that's going to be the one you  
 9 thought was the second one. So that's going to be a third  
 10 screen shot and starting from CC22, this one will be at ETV  
 11 time ja 16:03:25. That's five minutes -  
 12 MR CHASKALSON SC: 16:03:45, no the third  
 13 one that I'm showing is the counterpart to the second one.  
 14 So it's 16:03:45.  
 15 CHAIRPERSON: So it's 45, did I say  
 16 something else. 45, no, no that's not right. MMM13.1  
 17 according to my notes is screen shot CC22 and ETV time  
 18 16:03:25.  
 19 MR CHASKALSON SC: That's correct.  
 20 That's at the moment that the first idling, that the second  
 21 idling begins.  
 22 CHAIRPERSON: That's right. 13.2 is 20  
 23 seconds later, that's ETV time 16:03:45 and MMM13.3 is  
 24 again at 16:03:25, that's the same time as the first one.  
 25 MR CHASKALSON SC: No, Chairperson. It's

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1 the same time as the second one. It's 20 seconds later.

2 CHAIRPERSON: Oh I see.

3 MR CHASKALSON SC: So it's the

4 counterpart to the second one which is 20 seconds into the

5 second idling period.

6 CHAIRPERSON: So MMM13.1 is sort of self

7 standing as it were.

8 MR CHASKALSON SC: It is.

9 CHAIRPERSON: MMM13.2 and 3 are twins

10 joined at the hip as Mr Mpofu would say.

11 MR CHASKALSON SC: That's correct,

12 Chairperson.

13 CHAIRPERSON: Siamese twins joined at the

14 hip as Mr Mpofu would say. These are Siamese twins

15 screenshots. Does that make Mr Mpofu happy?

16 COMMISSIONER HEMRAJ: Mr Chaskalson, can

17 I just understand because it doesn't appear very clearly

18 because of the distance, exactly what is the alleged within

19 that red triangle on the right of the screenshot?

20 MR CHASKALSON SC: Rectangle?

21 COMMISSIONER HEMRAJ: Rectangle, I beg

22 your pardon

23 MR CHASKALSON SC: That's Major-General

24 Naidoo's forward group of K9 vehicles. That is if one

25 follows the video going forward, in due course those

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1 vehicles will start advancing slowly on koppie 3.

2 COMMISSIONER HEMRAJ: That's not the

3 entire convoy, that's just those that move forward leaving

4 the others behind at the station.

5 MR CHASKALSON SC: Yes, I think all of

6 those vehicles do move forward, there are certainly some

7 that have already been left behind, sort of at the edge of

8 the rectangle.

9 CHAIRPERSON: It sounds to me as if this

10 is a matter we can fruitfully explore once we've had lunch.

11 All right let's look at it after lunch. It's not terribly

12 clear, I must say, at the moment. It may be my defective

13 vision and understanding and nothing else. But any way

14 we'll look at that again when we resume after lunch.

15 [COMMISSION ADJOURNS COMMISSION RESUMES]

16 [14:00] CHAIRPERSON: The commission resumes.

17 Major-General, you're still under oath.

18 GENERAL NAIDOO: Thank you.

19 CHAIRPERSON: Mr Chaskalson?

20 MR CHASKALSON: Thank you, Chairperson.

21 Major-General, I'm concerned that we might be getting a bit

22 lost in the detail and I think it might be a useful thing

23 to step back and just remind ourselves of the crucial issue

24 that we're really discussing here, an issue quite literally

25 of life and death. The issue is why did you fail in your

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1 function to get medical support to scene 1 and take all

2 sorts of wrong turns and idling moments, not moments,

3 idling periods of four minutes at a time while people were

4 literally dying at scene 1. That's what we're concerned

5 with.

6 And your explanation thus far as been that you

7 would, well, you took some wrong turns accidentally and

8 then when you started reorienting yourself you had to stop

9 because there was shooting at scene 2 which prevented you

10 from reaching the koppie. To put that all into perspective

11 and to keep our eye on the real issue what I'd like to do

12 is to just identify on MMM9A the various turns at various

13 points where you took turns or made decisions how the clock

14 had ticked since people had been gunned down at scene 1.

15 So let's start with your curious decision to turn

16 off the main road to go around the wrong side of the power

17 station. 15.57.25, that's three minutes and 55 seconds

18 since people had been shot in that volley of R5 gunfire

19 that we had seen and by this stage you'd taken the medics a

20 good deal further away from the scene or from getting to

21 the scene than they had been when the shootings took place.

22 Let's look at your idling period, your first idling period,

23 15.58.05 to 16.02.05. That starts four minutes and 35

24 seconds after the shootings so people have been lying on

25 the ground with R5 injuries for four minutes and 35 seconds

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1 when that period starts. By the time that it ends we're at

2 eight minutes and 35 seconds.

3 Let's look at the second idling period. We're

4 now nine minutes and 35 seconds after the shootings when

5 you start idling for the second time and the medics are a

6 good deal longer away from getting to the scene than they

7 were when you started. And when that idling period

8 finishes people have been lying bleeding on the ground from

9 R5 wounds for 13 minutes and 35 seconds with the medics

10 nowhere in sight. That's what we have to remember. That's

11 what you have to explain.

12 Now, your explanation thus far has been a series

13 of bad direction, bad sense of direction problems which

14 take us to eight minutes and 35 seconds after the shootings

15 and then you come to your fall back explanation which is

16 just at the point as you finally get your bearings which

17 has taken you eight minutes and 35 seconds while people

18 have been bleeding to death then gunfire erupts as scene 2

19 and just when you could've got there you have to hold back

20 because a shootout has broken out.

21 That with respect, is not a plausible explanation

22 because when you start idling for the second time nine

23 minutes and 35 seconds into this, well, nine minutes and 35

24 seconds after the scene 1 shootings there is no shooting at

25 scene 2 and we can see that if we go to the slide that we

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1 were going to show just before the break which is the  
 2 screen shot from CC22 at 6.15 into CC22 which is 16.03.45.  
 3 Now, at 16.03.45 you've already been idling – your second  
 4 idle period is ten seconds old already. We're now nine  
 5 minutes and 55 seconds after the shootings at scene 1, so  
 6 people shot with R5 have been lying on the ground for nine  
 7 minutes and 55 seconds. The medics are nowhere near them.  
 8 But if we see what's actually happening at scene  
 9 2 which is showed in this picture the re-organisation line  
 10 hasn't moved from koppie two. It's nowhere near koppie  
 11 three. Your group is lined up on the road. One of your  
 12 vehicles inside the yellow circle has actually crossed the  
 13 road already. There's no hint of shooting at this stage.  
 14 We're three or four minutes away from shooting at scene 2.  
 15 So how do you explain this idling period?  
 16 GENERAL NAIDOO: Chair, as I indicated I  
 17 did not specifically link the idling period two that was  
 18 indicated on the first slide to a specific action. I did  
 19 indicate that I could've stopped here and orientated myself  
 20 and I could have so in terms of explaining the idling  
 21 periods that relate to the picture I don't think I'm able  
 22 to indicate that, no. What I can indicate is as my  
 23 narrative went I went around it and we organised ourselves  
 24 when we heard the shooting. That's when we decided to  
 25 proceed to koppie three but that linking it to the time and

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1 idling time I don't think I'm in a position to do that at  
 2 this stage.  
 3 MR CHASKALSON: Well, Major-General, at  
 4 what stage are you going to be able to do it? We're a long  
 5 way down the line. I'd have thought if you were to explain  
 6 why nine and a half minutes after people had been gunned  
 7 down in a hail of R5 bullets fired by your colleagues you  
 8 started a new idling period and the medics that you were  
 9 supposed to have brought to the scene were further away  
 10 from the start than they had ever been you would have some  
 11 explanation for that.  
 12 GENERAL NAIDOO: Chair, two things. One  
 13 is as I indicated and testified previously. My submission  
 14 or my observation at that stage or my thought at that stage  
 15 was I was closer to koppie one because I had view of it and  
 16 I think in terms of the minutes since the shooting I don't  
 17 think we are disputing that there is this time gap in terms  
 18 of the distance of the shooting.  
 19 COMMISSIONER HEMRAJ: General, I can't  
 20 see on this screen shot where the rest of your convoy is,  
 21 the larger part of your convoy with the medics, but can I  
 22 just ask if there was no hint of danger would you have  
 23 taken the step of going forward with the few of your  
 24 vehicles and then leaving the rest behind?  
 25 GENERAL NAIDOO: No, Chair, that was

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1 already – we dealt with this previously. Had I not heard  
 2 the shooting and perceived that there would be danger  
 3 because of that we would've just turned around and  
 4 proceeded to what I could clearly see was koppie one  
 5 because as we came around the power station we fanned out,  
 6 we assessed where we were and obviously then we moved based  
 7 on what we saw.  
 8 COMMISSIONER HEMRAJ: On this screen shot  
 9 that's up on the screen at the moment can you see where the  
 10 rest of the convoy is? Is it in fact separated from the  
 11 front - so to speak?  
 12 GENERAL NAIDOO: As I previously  
 13 testified, Chair, there were some vehicles in front and  
 14 there was the rest of the convoy stretched out behind. I  
 15 am sure at some stage there will be a shot that will show  
 16 that.  
 17 MR CHASKALSON: I don't dispute that that  
 18 was the case. I don't have a shot to hand to illustrate it  
 19 but you're correct. There was a front, an advanced party  
 20 of vehicles and vehicles behind, but Major-General, the  
 21 commissioner said to you would you have moved forward if  
 22 there wasn't a threat of danger. You see, when I look at  
 23 the sequence and when I look at the sequence of when you  
 24 actually started moving in what it looks like to me is that  
 25 you only really started to advance when the dispersion

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1 operation started to approach koppie three almost as  
 2 through you were coordinating your movement with the  
 3 movement of the rest of the operation that was approaching  
 4 koppie three from the opposite direction. Let me show you  
 5 a screen shot that will illustrate that.  
 6 GENERAL NAIDOO: Okay.  
 7 MR CHASKALSON: That's the shot that was  
 8 up a minute ago. This is a screen shot from –  
 9 CHAIRPERSON: Are you going to describe  
 10 the screen shot? Is it an exhibit or are you just going to  
 11 describe it in such a way that we can – it will be capable  
 12 of being found by people who are looking at the record?  
 13 MR CHASKALSON: Chairperson, can we make  
 14 it an exhibit because it's an important shot? I forget the  
 15 number we're at but let it stand on its own.  
 16 CHAIRPERSON: MMM14.  
 17 MR CHASKALSON: Now, this is a screen  
 18 shot from nine minutes and 30 seconds into exhibit CC2.  
 19 CHAIRPERSON: Nine minutes and?  
 20 MR CHASKALSON: 30 seconds.  
 21 CHAIRPERSON: 30 seconds into what? Into  
 22 CC22?  
 23 MR CHASKALSON: CC22.  
 24 CHAIRPERSON: Thank you. How long is it  
 25 – oh, it's just a shot. It's a still.

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1 MR CHASKALSON: It's a still taken from  
 2 that moment in the video.  
 3 CHAIRPERSON: All I need to record is  
 4 screen shot, nine minutes 30 seconds into CC22 and then  
 5 I've written in brackets in my notebook ETV 16.06.30.  
 6 MR CHASKALSON: That's correct,  
 7 Chairperson. Now, this is 12 minutes and 40 seconds after  
 8 the scene 1 shootings, 12 minutes and 40 seconds after the  
 9 scene 1 shootings and if we – what we see in the red circle  
 10 is the dispersion group of POPS Nyalas supported by the  
 11 STF. Having moved past koppie two one can see the stain on  
 12 the ground where the water cannon blew, sprayed blue dye in  
 13 the sort of top right hand section of the red circle. One  
 14 can see Nyalas facing out to the north west on the left  
 15 hand side of the circle, some Nyalas approaching koppie  
 16 two. Koppie two is sort of in the bottom half of the  
 17 circle, some Nyalas approaching the northern side of koppie  
 18 two, a water cannon and a Nyala approaching from the other  
 19 side of koppie two on the right hand side of the circle.  
 20 The operation is moving – sorry, koppie three, scene 2.  
 21 The operation is moving to scene 2. And at the same time  
 22 as the operation moves to scene 2 your four dog squad  
 23 vehicles start moving in and what it looks like to me –  
 24 CHAIRPERSON: Are they in the yellow  
 25 block?

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1 MR CHASKALSON: There in the yellow  
 2 rectangle. What it looks like to me is that you were  
 3 coordinating your movements to be part of the operation.  
 4 What's your response to that?  
 5 GENERAL NAIDOO: Chair, no, I think the  
 6 scene that we see before me was described in my statement.  
 7 The Nyala and the water cannon as well as what's not  
 8 mentioned here was the special task force Casspir slightly  
 9 behind them, I did describe this. And I think, you know,  
 10 in terms of the picture we see we can't obviously see the  
 11 gunshots that we heard but I think this scene that we see  
 12 in this picture was described in my statement as well.  
 13 MR CHASKALSON: You see, Major-General,  
 14 apart from you no one in the entire SAPS has described any  
 15 gunshots happening this early in the operation at scene 2.  
 16 You are the first person to suggest – this is before the  
 17 famous picture of blue dye and white water being sprayed  
 18 simultaneously and you are the first person to suggest that  
 19 there had been shooting before that period. Nobody else  
 20 has even hinted at that.  
 21 GENERAL NAIDOO: Chair, I don't think I  
 22 would agree with that proposition because I think some of  
 23 the statements that we discussed yesterday indicates that  
 24 there was shooting in front of us. Admittedly they don't  
 25 give a specific time but they do indicate that there was

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1 shooting in front of us, members of the dog unit especially  
 2 if I could recall.  
 3 MR CHASKALSON: We'll get to those  
 4 statements. None of them corroborate your version, not  
 5 one. I'd invite you and your legal representatives in the  
 6 SAPS team to find a single statement that suggests that you  
 7 moved forward after shooting as opposed to the fact that  
 8 the shooting took place after you moved forward, but we'll  
 9 get to those. You see, another thing that's crossed my  
 10 mind with this picture of apparent coordination between  
 11 your movements and the movements of the vehicles under  
 12 Brigadier Calitz is that curious two minute conversation  
 13 which you said didn't take place, because it seems to me  
 14 when I think of that conversation is possibly you were  
 15 talking about how to coordinate your movements with the  
 16 canine personnel, with the movements of Brigadier Calitz's  
 17 group because that's certainly what it looks like was  
 18 happening.  
 19 GENERAL NAIDOO: Chair, first as I've  
 20 already testified no conversation took place between us,  
 21 voice conversation, secondly I would have appreciated  
 22 should such a conversation have taken place because I would  
 23 have been better orientated as to what was happening, so in  
 24 terms of our movement there we did not, and I think anybody  
 25 had access to all our records, did not have an opportunity

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1 to have a conversation with anybody in terms of what was  
 2 happening. I also testified to the fact that I saw the  
 3 crowds that were already dispersing past koppie three on my  
 4 left going through the filtering line of the TRT at this  
 5 time so I was aware that a dispersal was taking place  
 6 behind the koppie. I had no idea and I've testified to the  
 7 fact that the POPS were on the other side of koppie three.  
 8 I've also testified to that fact. So as far as the theory  
 9 of coordination I wish we had some coordination. I  
 10 probably would not have been lost as we were.  
 11 MR CHASKALSON: Well, let's then look at  
 12 the statements of your colleagues who moved in because to a  
 13 SAPS member if they speak about shooting they speak about  
 14 shooting happening after they moved in, not before.  
 15 GENERAL NAIDOO: Chair, it would depend,  
 16 move where, because our movement was we moved around the  
 17 power station in the direction of the koppie so I think we  
 18 need to be clear as to when we say after the movement which  
 19 movement we're talking about because the statements don't  
 20 really indicate which movements are we talking about.  
 21 MR CHASKALSON: Well, let's take them one  
 22 by one. There are lots of them.  
 23 CHAIRPERSON: Are we going to have to be  
 24 given exhibit numbers or are they already before us?  
 25 MR CHASKALSON: Some of them are already

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1 before us. I'll start with Constable Mutsi who is already  
 2 in exhibit –  
 3 CHAIRPERSON: We had him yesterday.  
 4 MR CHASKALSON: That I now have lost my  
 5 note of which number Mutsi is.  
 6 CHAIRPERSON: MMM7.  
 7 MR CHASKALSON: Thank you, Chairperson.  
 8 If we can then call up Mutsi MMM7 and if we start as at  
 9 paragraph 6, "General Naidoo gave us the instruction that  
 10 we must follow his lead and on our arrival at the power  
 11 station we moved out with the vehicles and approached the  
 12 mountain from the southern side and I was on foot as I had  
 13 left the vehicle that I was driving near the power  
 14 station." No mention of any shooting before he gets out of  
 15 his vehicle and starts to approach the southern side of the  
 16 mountain. "During the approach I then saw the miners  
 17 coming out of the mountain towards our direction," during  
 18 the approach, "and they were ordered to stop and to drop  
 19 their weapons and at that stage police officials were  
 20 trying to take cover. Then the miners turned and went and  
 21 ran back to the mountain to those bushes. So they had  
 22 hidden themselves in the bushes and then comes the  
 23 shooting. And at that stage they fired shots from the bush  
 24 where they entered and the shot was fired towards our  
 25 direction.

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1 [14:20] So Constable Mutsi remembers the event in a way  
 2 that the shooting happened after your approach, not before,  
 3 it didn't cause your approach, it was probably, possibly  
 4 precipitated by your approach. Let's look at the next  
 5 member who will be – do you have a comment on Constable  
 6 Mutsi? Why don't we read them all and then you can comment  
 7 on –  
 8 MR SEMENYA SC: Chair, perhaps not.  
 9 That's why we get confused with question and answer.  
 10 CHAIRPERSON: Mr Semanya's right, you  
 11 know. I think we're more likely to get a record that's  
 12 easier to follow if he deals with each statement seriatim  
 13 as it were rather than globularly.  
 14 COMMISSIONER HEMRAJ: And this statement  
 15 at paragraph 8 relates to, or speaks of shots fired towards  
 16 the deponent, in paragraph 8, yes?  
 17 MR CHASKALSON SC: That's correct, but  
 18 there's no mention of any shooting before that.  
 19 GENERAL NAIDOO: Chair, can I ask a  
 20 question on that part? Chair, I think yes, Colonel Mutsi  
 21 has not fluidly explained what I already testified to but I  
 22 do notice that he has indicated before mentioning the  
 23 shooting that members were already taking cover, without  
 24 mentioning. Now members won't take cover if there were not  
 25 perceived to be shots fired, etcetera. So I'm just drawing

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1 an inference.  
 2 CHAIRPERSON: It may necessarily follow.  
 3 If there were strikers in the vicinity in an aggressive  
 4 hostile posture and the police were aware of the fact that  
 5 some of the strikers had firearms, then I imagine the  
 6 sensible thing to do was to take cover before shots were  
 7 fired. It doesn't follow. I understand, I'm not rejecting  
 8 your argument outright but I am saying there is another  
 9 possibility.  
 10 MR CHASKALSON SC: Chair, can I put a  
 11 follow-up question to the witness?  
 12 CHAIRPERSON: Let him finish his answer.  
 13 GENERAL NAIDOO: Chair, because I have  
 14 testified as well when we came around, we did not see any  
 15 strikers directly in front of us. I did see them far to  
 16 the left going west, but directly in front of us, we did  
 17 not see any strikers.  
 18 MR CHASKALSON SC: Major-General, let's  
 19 look at paragraph 7 which I presume you're referring to, is  
 20 that what you're referring to?  
 21 GENERAL NAIDOO: That is correct.  
 22 MR CHASKALSON SC: Paragraph 7 comes  
 23 after paragraph 6. Paragraph 6 says, "General Naidoo gave  
 24 us the instruction that we must follow his leads and on our  
 25 arrival at the power station we moved out of the vehicle

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1 and approached the mountain." So we've already got out of  
 2 the vehicle and approached the mountain from the southern  
 3 side. "And I was on foot as I had left the vehicle that I  
 4 was driving near the station. During the approach I then  
 5 saw the miners coming out of the mountain towards our  
 6 direction and they were ordered to stop and drop their  
 7 weapons and at that stage police officials were trying to  
 8 take cover." That's plainly after you started advancing,  
 9 General.  
 10 GENERAL NAIDOO: Chair, I would not agree  
 11 with that because I'm sure even in the photographs we would  
 12 not see miners initially when we approached. As I  
 13 indicated, we did arrest three miners but when he was  
 14 driving and we came around the power station and he stopped  
 15 at that stage, there was a reason why we stopped and  
 16 there's a reason why members alighted from the vehicles.  
 17 I'm only trying to draw an inference, he's not explicitly  
 18 stating things that I have explained. So that is why I do  
 19 not agree with the presumption. Whether he heard or did  
 20 not hear, I can't testify to that fact.  
 21 MR CHASKALSON SC: Sorry General, I know  
 22 your version is different. I'm putting to you, not that  
 23 your version is the same but that your version is the  
 24 unique version that is contradicted by every single one of  
 25 your colleagues who speaks to this event. So are you

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1 suggesting to me that this version of Constable Mutsi  
 2 speaks of shooting before the approach?  
 3 GENERAL NAIDOO: Chair, that is not what  
 4 I am indicating. What I am indicating is that in my  
 5 version I specifically mentioned the shooting that I heard  
 6 on the right hand side coming from the direction of between  
 7 koppie 3 and koppie 1 and 2, as I testified, and I'm saying  
 8 in this particular version, it's not explicitly indicated  
 9 but I'm drawing the inference, but why would they alight  
 10 from the vehicle as soon as they come around the power  
 11 station? There must be a reason for taking up a defensive  
 12 position.  
 13 MR CHASKALSON SC: I will confine myself  
 14 to what they do say. Let's go to the next one which is  
 15 Constable Biyela, B-I-Y-E-L-A, which needs a new exhibit  
 16 number, Chairperson. B-I-Y-E-L-A.  
 17 CHAIRPERSON: Thank you, is he  
 18 [inaudible, microphone off].  
 19 MR CHASKALSON SC: I think he is. I'll  
 20 check in one minute.  
 21 CHAIRPERSON: Sorry, I didn't get, my  
 22 microphone wasn't on. MMM15, statement Constable Biyela, I  
 23 asked you is he a Constable and you said you would check.  
 24 MR CHASKALSON SC: I would check.  
 25 CHAIRPERSON: And he's now Warrant

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1 Officer.  
 2 MR CHASKALSON SC: He has been –  
 3 CHAIRPERSON: He has been dramatically  
 4 promoted in the space of two seconds. Warrant Officer Vusi  
 5 Musi Biyela's statement, exhibit MMM15.  
 6 MR CHASKALSON SC: Can we go down to  
 7 paragraph 2? "On Thursday, 16-08-12 I was on duty in full  
 8 uniform performing crowd management in Marikana at the said  
 9 date at about 15:30 to 15:40. I was working under the  
 10 command of Naidoo General had approached from the power  
 11 line. We had approached in a convoy with canine that do  
 12 five units on" – that's actually our arrival, in the  
 13 handwritten version – "we have got out from the vehicle.  
 14 The General had ordered us to go in to search the area.  
 15 While we were busy approaching the hill I saw a group of  
 16 men running towards us carrying spears and knobkieries. I  
 17 heard the shooting sound started, then I took cover with  
 18 state vehicle. I didn't shoot any round at the scene."  
 19 That's Warrant Officer Biyela. Again he speaks of shooting  
 20 that happens after you had ordered them to go in and search  
 21 the area and while they were busy approaching the hill.  
 22 Nothing about shooting before the approach. Any comment?  
 23 GENERAL NAIDOO: Chair, yes, the public  
 24 order police members, as far as I could remember were not  
 25 part of the five vehicles that moved forward. They held at

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1 the power station and they only moved forward at a later  
 2 stage. So I think the –  
 3 CHAIRPERSON: Is that – I'm sorry, carry  
 4 on, sorry. I was going to ask you a question. Please  
 5 complete your answer first, sorry.  
 6 GENERAL NAIDOO: So as I have already  
 7 indicated it was K9 people that were in the front line, so  
 8 to speak.  
 9 CHAIRPERSON: Of course at the end of  
 10 paragraph 2, he says, "The General had ordered us to go in  
 11 to search the area." And then he says in 3, "While we were  
 12 busy approaching the hill I saw a group of men running  
 13 towards us carrying spears and knobkerries. I heard the  
 14 shooting sound started when I took for cover with state  
 15 vehicle."  
 16 GENERAL NAIDOO: That's right.  
 17 CHAIRPERSON: So he heard shooting start,  
 18 he was one of the people under your command. He went  
 19 towards the hill pursuant to an order that you had given  
 20 him and he saw people then running towards him and his  
 21 colleagues carrying spears and knobkerries and then he  
 22 heard the shooting sound start. So that, you may not agree  
 23 with the statements. It certainly is in line with what Mr  
 24 Chaskalson has suggested that so far, so far, that your  
 25 statement is alone in suggesting the shooting started at an

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1 earlier stage but there may still be other statements that  
 2 support you, but so far we haven't seen one, but it's early  
 3 days yet.  
 4 GENERAL NAIDOO: Chair ja, neither have  
 5 I. I have not studied all the statements so I also would  
 6 not be able to say.  
 7 COMMISSIONER HEMRAJ: But even as a POPs  
 8 member he'd remained at the station and if there was  
 9 automatic fire he would have been able to hear it, surely?  
 10 GENERAL NAIDOO: I beg your pardon,  
 11 Chair?  
 12 COMMISSIONER HEMRAJ: If you say he was  
 13 one of those POPs persons who remained at the station  
 14 instead of being part of the canines that moved forward,  
 15 and if there was automatic fire at scene 2, he would have  
 16 been able to hear it from where he was?  
 17 GENERAL NAIDOO: Chair, definitely, yes.  
 18 That was my assumption that people heard what I heard.  
 19 MR SEMENYA SC: Chair, can I register  
 20 this objection with this line of cross-examination, which I  
 21 think is entirely unfair. The witness refers us to two  
 22 types of fire that caused two distinct responses on their  
 23 part. The first is the one that explains why they go to  
 24 koppie 3, the second is what happens when they get there.  
 25 Those are two distinct firings. We are being shown

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1 statements of witnesses who are talking about the second  
 2 type of shots and they say nothing about the first. Now  
 3 one would have thought if we were seeking to impeach this  
 4 witness on the basis of these statements, you at least  
 5 consult with them. Now we have evidence leaders who have  
 6 an opportunity and a right to consult this witness and say  
 7 we have an account of a General which does not deal with a  
 8 distinct element and which to us, our reading, constitutes  
 9 a contradiction. Can we ask you directly, did this happen  
 10 or didn't that happen? But to use inference of an omission  
 11 as a basis of a contradiction, is totally unfair.

12 MR CHASKALSON SC: Chairperson, these are  
 13 not abstract witnesses, these are witness statements that  
 14 were put up by SAPS to this commission. We asked SAPS for  
 15 statements of their members these were produced. If their  
 16 members were being expected to support what would be the  
 17 SAPS version and had heard shooting at scene 3 before  
 18 anybody had advanced and knew that the reason that the  
 19 medics didn't get to scene 1 timeously was that they were  
 20 about to go there when shooting broke out, I would have  
 21 expected SAPS to ensure that these members, their own  
 22 members, whose statements they gave us would have mentioned  
 23 that. The fact that they don't speak to what SAPS now  
 24 seems to regard as an important part of its case, speaks  
 25 volumes and I submit I'm entitled to go through each one of

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1 these members who speaks of being part of Major-General  
 2 Naidoo's group and says nothing about shooting before the  
 3 approach and says a lot about shooting after the approach  
 4 to show that his version, quite aside from its  
 5 inconsistency with the object of evidence relating to time  
 6 is also utterly unsupported by any one of his colleagues.

7 MR SEMENYA SC: No Chair, that would have  
 8 been true if we were parties in litigation and the evidence  
 9 leaders had no right of access to our witnesses. That  
 10 would have been an entirely different thing. But they do  
 11 consult with our witnesses, they do have an opportunity to  
 12 look at the documents and say to themselves, there is  
 13 something amiss here. They are not explaining to us why,  
 14 if something is amiss they don't call on us, even  
 15 specifically. There is this contradiction we want an  
 16 account of the witnesses from you and would obtain the  
 17 statement. I'm saying the cross-examination would be fair  
 18 if the total picture was put to the witness. What is not  
 19 put to the witness is the omissions that are standing ex  
 20 facie the document they are using. That's the complaint.

21 CHAIRPERSON: I don't think that I can  
 22 hold that the question is unfair. The basis of the  
 23 question if I understand it is he's put a number of  
 24 statements have produced by the police, by people who were  
 25 there at the time and none of them mentioned the shooting

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1 beforehand. And you, and suggested with the witness is the  
 2 first and only person to suggest that there was shooting  
 3 beforehand. I don't understand it to be put that these  
 4 statements are necessarily the truth. The point being made  
 5 at the moment is none of these statements mentions this,  
 6 it's an omission. This is the first witness who says  
 7 something different. I will allow the question to be  
 8 asked. Obviously the rights of the counsel for the police  
 9 to deal with the matter in re-examination are entirely  
 10 reserved. You may proceed, Mr Chaskalson.

11 MR CHASKALSON SC: If we can then move to  
 12 the statement of Constable Kwele.

13 CHAIRPERSON: Is it a new statement?  
 14 MR CHASKALSON SC: Yes, it will become  
 15 MMM16.

16 CHAIRPERSON: How do you spell Kwela, K-  
 17 W-E-L-A?

18 MR CHASKALSON SC: E-L-E.  
 19 CHAIRPERSON: So K-W-E-L-E, yes? MMM16.  
 20 Thank you.

21 MR CHASKALSON SC: And if we go down.  
 22 CHAIRPERSON: Previous witness's  
 23 statements weren't in your cross-examination bundle for  
 24 this witness. I take it the same applies to Constable  
 25 Kwele? Have we got Kwele?

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1 MR CHASKALSON SC: I must apologise. We  
 2 sent a supplementary set of documents to the SAPS team but  
 3 not to the Commissioners. We'll correct that in future.

4 CHAIRPERSON: I'm looking at the index  
 5 you gave us. You're correct, you did give us further  
 6 statements which I found at the back of the file. I should  
 7 have added them to the index but I, it was an omission on  
 8 my part. Kwele would be MMM16?

9 MR CHASKALSON SC: Yes Chairperson. He's  
 10 recorded on the SAPS list of members as a Constable.

11 CHAIRPERSON: Very well.  
 12 MR CHASKALSON SC: The statement's coming  
 13 up but if I can just read the contextual paragraphs. "At  
 14 approximately about 15h00 we were briefed in an operation  
 15 that we should sweep the koppie with our dogs by General  
 16 Naidoo. Afterwards General Naidoo instructed us to move to  
 17 the koppie. We then proceeded to the koppie. The people  
 18 who were at the koppie they went to the second koppie and  
 19 General Naidoo instructed to go to the second koppie. We  
 20 came from the southern side of that second koppie. We then  
 21 parked our vehicle and walked with our dogs. The  
 22 approaches begun. I was having my dog with me at that  
 23 time. At the time I approached that koppie, because it was  
 24 rocky and lots of bushes the group of people came out and  
 25 in the bushes. They wanted to attack us and they were

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1 having pangas, assegais and spears. Immediately they shot  
 2 at us with pistols and I heard bullet projectile flying. I  
 3 moved backwards – and on it goes. So again, there is a  
 4 description of shooting that happens after the approach.  
 5 No hint of any shooting that happens before the approach.  
 6 CHAIRPERSON: It goes further than that.  
 7 What the witness says is he was approaching the koppie on  
 8 the instructions of the witness. The third paragraph, he  
 9 describes how they were proceeding to the koppie, people  
 10 had gone to the second koppie and he then says, “and  
 11 General Naidoo instructed to go to the second koppie”.  
 12 Clearly anything that happened as described by him  
 13 thereafter took place after the witness had instructed this  
 14 member, and presumably others, to go to the koppie. What  
 15 do you say about that Major-General?  
 16 GENERAL NAIDOO: Chair, I think I have  
 17 testified that I did take – and this is a dog handler – I  
 18 did take members from the K9 unit in the direction of the  
 19 koppie.  
 20 CHAIRPERSON: He supports your evidence  
 21 in that regard.  
 22 GENERAL NAIDOO: That’s right.  
 23 CHAIRPERSON: But what he says, if his  
 24 description is to be regarded as a chronological account of  
 25 what happened, is that it was only after you had instructed

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1 them to go in that, go there and while he was going there,  
 2 pursuant to your instructions, that the shooting happened.  
 3 GENERAL NAIDOO: Chair, I don’t dispute  
 4 that part because I also at some stage covered that in my  
 5 statement that as we approached that koppie that shots were  
 6 fired at us. So I think what we’re dealing with is the  
 7 omission of mentioning whether he heard the shots that I  
 8 say I heard. So I’m not disputing what he has said in his  
 9 statement in terms of what happened when we approached. I  
 10 already testified that I had instructed them to move.  
 11 MR CHASKALSON SC: Major-General, did you  
 12 discuss with any of your colleagues at the sub-station how  
 13 to respond or how you were going to respond to the shots,  
 14 the facts that the shots were disturbing you?  
 15 GENERAL NAIDOO: Chair, when we say  
 16 discuss, we did not have a briefing per se. As I indicated  
 17 that I indicated to the k9, the larger group of the K9 that  
 18 they should hold there and I indicated to the smaller group  
 19 of four other vehicles from K9 that we should go forward,  
 20 and I have testified to that fact as well.  
 21 MR CHASKALSON SC: And did you mention  
 22 the fact that why you were going forward was that there had  
 23 been shooting?  
 24 GENERAL NAIDOO: Chair, my assumption,  
 25 and this is why I say I’m surprised that nobody else

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1 mentioned it, was they had heard the same shooting that I  
 2 heard and we were going forward in a patrol position,  
 3 obviously approaching something tactically.  
 4 [14:40] We were not just driving through a scene and I  
 5 testified to that fact that we had, I instructed them to  
 6 take the tactical posture because there was shooting.  
 7 MR CHASKALSON SC: And as far as you were  
 8 concerned everybody else had heard that shooting.  
 9 GENERAL NAIDOO: That was my presumption,  
 10 Chair.  
 11 MR CHASKALSON SC: But nobody seems to  
 12 have mentioned it anywhere. Any reason why they wouldn’t  
 13 mention shooting in this context?  
 14 MR SEMENYA SC: He’s calling for the  
 15 witness to speculate on the mind of those who were making  
 16 the statement.  
 17 CHAIRPERSON: He’s just being given a  
 18 chance to answer, he obviously is unable to answer. It’s  
 19 not necessarily fatal to his case but the question has been  
 20 put, the explanation is not forthcoming. If it hadn’t been  
 21 put and he hadn’t been asked to deal with it then the  
 22 objection could be raised that he wasn’t given a chance to  
 23 deal with it, so it’s one of these two-edged sword things  
 24 but I don’t see a problem with the question.  
 25 GENERAL NAIDOO: Chair, I would not

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1 speculate as to why they didn’t specifically mention it.  
 2 As I experienced it there was a lot happening and maybe  
 3 they have combined the shootings that we heard from koppie  
 4 3 but that will be pure speculation on my side.  
 5 CHAIRPERSON: I’m reminded it doesn’t  
 6 help to ask a witness to speculate about matters and I’ve  
 7 ruled that on a number of occasions, so we’re in that  
 8 territory actually.  
 9 MR CHASKALSON SC: Let me continue then  
 10 to the next witness statement which is Constable Dintwe, D-  
 11 I-N-T-W-E, and I think he needs a –  
 12 CHAIRPERSON: I think he’s got a – I  
 13 think that’s his first name, is it? Is this the statement  
 14 we were given which is on the police hard drive as OOO, it  
 15 looks like 494? Is that the same one?  
 16 MR CHASKALSON SC: That’s correct,  
 17 Chairperson.  
 18 CHAIRPERSON: It looks like Dintwe Jerry  
 19 Tsepiso, I think. I think it’s his first name.  
 20 MR CHASKALSON SC: Tsepiso and Jerry are  
 21 his first names.  
 22 CHAIRPERSON: Oh, I see. Alright, so  
 23 Constable Dintwe, he’s got to be MMM16.  
 24 MR CHASKALSON SC: 17, Chair.  
 25 CHAIRPERSON: Sorry, I beg your pardon.

<p style="text-align: right;">Page 23475</p> <p>1 16 is Kwele. MMM17, he's a constable, Constable – looks 2 like JT. 3 MR CHASKALSON SC: That's correct, Jerry 4 Tsepiso. And what Constable Dintwe says if we pick up in 5 the third paragraph, "A briefing was held by General Naidoo 6 with K9 members that as soon as the striking members left, 7 we have to sweep the place in search of dangerous weapons 8 as well as firearms. Approach the koppie from the southern 9 direction with some police vehicles parked nearby power 10 station and instruction from General Naidoo we must take 11 out our dogs and move towards the koppie. My dog Chaka" – 12 and details of Chaka are given. "Plus-minus 30 metres 13 towards second small koppie a first shot was fired at us by 14 the miners hiding behind the rocks and trees. Quickly took 15 cover with Potchefstroom flying squad member Warrant 16 Officer Mentesh" – I can't read, flying squad bakkie – 17 "Warrant Officer Mentesh of Phokeng K9. My dog got loose 18 as he tried to catch it, then while doing that heard 19 gunshots fired from where the miners had hidden." And on 20 it goes. Again a first gunshot is fired, in this case 21 plus-minus 30 metres towards the second small koppie after 22 the move towards the koppie had begun. 23 CHAIRPERSON: I take it your answer is 24 the same, you can't speculate as to why he said that. It's 25 not in accordance with what you say but on the other hand</p>	<p style="text-align: right;">Page 23477</p> <p>1 one and if there are other statements going the other way 2 then I'm sure the police will be able to deal with them in 3 re-examination. Mr Chaskalson, I think that's the way 4 forward as far as that is concerned. A key point of course 5 here is if it's possible to ascertain with objective 6 certainty what time the shooting started in the vicinity of 7 scene 2, shooting by anybody, the police or the strikers. 8 Is that something which is possible to ascertain 9 objectively by an examination of all the materials that are 10 before us? Has that exercise been performed, because I 11 mean that's the key thing, isn't it? 12 MR CHASKALSON SC: Chairperson, and it 13 relates to Roots as well, we weren't there obviously and we 14 don't know but what has always, what we have always 15 understood to be the first shooting was the shooting of 16 victim N. That we can date or fix to a time. 17 CHAIRPERSON: We need a time, dating 18 isn't going to help. 19 MR CHASKALSON SC: What we know, that 20 that took place after ETV time 16:07:24. We would put it 21 within a minute after 16:07:24, somewhere in that minute 22 because that is the point at which the TRT line from the 23 south-west reaches the dam and all of the descriptions of 24 that shooting talk about it happening just at the point as 25 the TRT confronts a group of strikers who are rushing out</p>
<p style="text-align: right;">Page 23476</p> <p>1 there are various possibilities that arise. Is that your 2 answer? 3 GENERAL NAIDOO: That is my answer. 4 MR CHASKALSON SC: Chairperson, there is 5 a long list of these statements. I don't know if I should 6 just give them all exhibit numbers and let them become 7 exhibits if the answer is going to be the same each time or 8 if I should put each one to the witness. I'm in your hands 9 on this. 10 CHAIRPERSON: If they're all effectively 11 to the same effect, I suggest that you draw up a list, give 12 it to us – obviously I mean we can't do it now but give it 13 to us at tea time or the end of the day, make the 14 statements that, police statements all along the same lines 15 as the ones we've had already. That will effectively be a 16 challenge to the police to see if they can find statements 17 that go the other way. It would help if they were 18 statements before Roots, relatively contemporaneous 19 statements but that's no reason why statements that don't 20 qualify in terms of what I've just said couldn't be put 21 before us but there would be questions of weight to be 22 considered, but that's the practical way to do it. I don't 23 think you should go through it one by one. The answers, as 24 you say, are always going to be the same if what you say is 25 correct that these statements are along the lines of this</p>	<p style="text-align: right;">Page 23478</p> <p>1 of the koppie at them as they approach the dam. So it's 2 within a minute, we would say, of 16:07:24 but a minute 3 after 16:07:24 because the TRT line has just advanced to 4 the edge of the dam by 16:07:24. We're unaware of any SAPS 5 witness other than this witness who suggests that there was 6 any shooting before that moment and that goes also to the 7 SAPS presentation because Roots is not a relevant cut-off 8 period here because one of the striking things about this 9 version is there's no hint of it in the SAPS presentation 10 and, Major-General, maybe that is a question that we should 11 put to you. Why does exhibit L make no mention of this 12 absolutely crucial fact of possible automatic gunfire from 13 scene 2 before the SAPS members reach scene 2? 14 GENERAL NAIDOO: Chair, I think I was 15 asked this question yesterday and I did respond to it, that 16 we all had an overview of the exhibit L at Roots and I 17 can't offer an explanation why it was not there. I was 18 also asked did I comment about it specifically, I also 19 indicated I did not. 20 COMMISSIONER HEMRAJ: Mr Chaskalson, can 21 I just enquire, have there been consultations with any of 22 the persons on that long list you referred to and has this 23 issue of hearing the firing been raised pertinently prior 24 to it becoming an issue in this cross-examination? 25 MR CHASKALSON SC: No. No, Commissioner,</p>

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1 we didn't – we didn't believe it was an issue. There was a  
 2 consistent SAPS version that made no mention of it.  
 3 COMMISSIONER HEMRAJ: Thank you.  
 4 CHAIRPERSON: I didn't write down, what  
 5 do you say is the – as far as you understand the situation,  
 6 what do you say is the time, according to the information  
 7 at your disposal, when shooting started in the vicinity of  
 8 koppie 3?  
 9 MR CHASKALSON SC: In the minute after  
 10 ETV time 16:07:24, the minute after photograph JJJ –  
 11 CHAIRPERSON: You say in the minute, in  
 12 other words –  
 13 MR CHASKALSON SC: Yes –  
 14 CHAIRPERSON: - but in the minute after  
 15 16:07:24.  
 16 MR CHASKALSON SC: That's correct,  
 17 Chairperson, and why we say that is, all of the accounts of  
 18 the shootings of victim N who appears to be the first  
 19 person to have been shot and the first situation in which  
 20 gunfire is mentioned in any context in scene 2, describe  
 21 essentially a collision between TRT members coming up from  
 22 the south-west and strikers running out of the koppie in  
 23 the direction of the south-west and that collision happens  
 24 around the dam.  
 25 CHAIRPERSON: Well, if that is correct it

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1 means that the – if that's correct it means the shooting at  
 2 scene 2 started after the second idling period had come to  
 3 an end. The second idling period, I don't know whether one  
 4 has got to adjust for different clocks and things but  
 5 according to MMM9A the second idling period ended at  
 6 16:07:05.  
 7 MR CHASKALSON SC: Yes, if the second  
 8 idling period hadn't finished it was almost finished on our  
 9 assessment of when the shooting started at scene 2.  
 10 CHAIRPERSON: No – no, you say it was in  
 11 the minute after 16:07:24. Now how does one have to – does  
 12 one have to adjust 16:07:05, the end of the idling period,  
 13 according to exhibit MMM –  
 14 MR CHASKALSON SC: One has to add the 20  
 15 seconds.  
 16 CHAIRPERSON: Add 20 seconds, I see. So  
 17 it could have been literally a second before the second  
 18 idling period ended or it could've been within the 60  
 19 seconds thereafter?  
 20 MR CHASKALSON SC: Yes, Chairperson, that  
 21 is our assessment of it. The other feature of all of these  
 22 statements of the members who went in with you is that none  
 23 of them mention any concerns in relation to the medics  
 24 whatsoever. Can you think of a reason for that if the  
 25 primary function of the group was to get the medics to

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1 scene 1?  
 2 CHAIRPERSON: Mr Chaskalson, isn't that  
 3 going to raise the same objection that we had before, that  
 4 you're asking him to speculate as to something, why  
 5 something is not in the statement?  
 6 MR CHASKALSON SC: No, this is genuinely  
 7 in fairness to the witness because there may be an answer  
 8 because the people who went in were K9 people and it may be  
 9 that their briefing, that they weren't aware of his  
 10 concerns in relation to the medics, I –  
 11 MR SEMENYA SC: But again, Chair, these  
 12 are warning statements given for a particular thing and I  
 13 don't see how this warning statement would be telling about  
 14 medics.  
 15 CHAIRPERSON: That may be the explanation  
 16 of the witness – that he's asked if there's any reason he  
 17 can think of why they don't mention it, well, you've given  
 18 the answer.  
 19 GENERAL NAIDOO: Chair, and I'm not sure  
 20 – we have not studied all the statements – whether any of  
 21 the witnesses mention the medics because they were part of  
 22 the convoy and they were protecting them, so we're working  
 23 on an assumption without checking whether they specifically  
 24 mention the fact that we were escorting the medics. I  
 25 don't know what the expectation was to say concern for the

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1 medics but I would expect if they do mention that we were  
 2 escorting the medics, that would address the issue that we  
 3 had that responsibility.  
 4 CHAIRPERSON: Well, the statements that  
 5 we've looked at so far don't mention that point and it may  
 6 well be that other statements to which Mr Chaskalson is  
 7 going to refer us in the list where he says the only  
 8 reference is to shooting after you'd given the instruction  
 9 to move to koppie 3, they may also be silent as far as the  
 10 medics are concerned, but again that's a matter which we  
 11 will find out about in due course. You can't think of any  
 12 reason why they didn't mention it except the fact if they  
 13 were warning statements, it's not a matter that they would  
 14 have been concerned to mention if they were themselves  
 15 answering a potential charge against them.  
 16 GENERAL NAIDOO: Chair, correct. As our  
 17 counsel has indicated, these statements were taken for IPID  
 18 in relation to the involvement with the discharge of  
 19 weapons.  
 20 MR CHASKALSON SC: Well, maybe let's take  
 21 one last statement which is quite an important statement,  
 22 in fact isn't a statement, it's an affidavit and seems to  
 23 be in a class of its own in that respect. It's the  
 24 affidavit of your driver, Lieutenant-Colonel Tongwane, and  
 25 if we can give that an exhibit number. And your driver, if

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1 I understand your evidence, must have known of your  
 2 intention to get to scene 1 because he was the man who knew  
 3 the place, he was the man on whom you relied, he was the  
 4 man who took all the wrong turns after your first wrong  
 5 turn, is that correct?  
 6 CHAIRPERSON: I'm sorry, Mr Chaskalson,  
 7 we've got to mark this an exhibit, surely? I don't think  
 8 it's an exhibit yet, is it?  
 9 MR CHASKALSON SC: It's not, Chairperson.  
 10 Can it be MMM18?  
 11 CHAIRPERSON: MMM18 statement – I see it  
 12 is a warning statement or it's so headed. The one I've got  
 13 is –  
 14 COMMISSIONER HEMRAJ: There are two  
 15 separate statements, aren't there, Mr Chaskalson? There's  
 16 one, the sworn affidavit in manuscript and then the warning  
 17 statement –  
 18 MR CHASKALSON SC: Let's look at the  
 19 affidavit. I think the warning statement is a generic  
 20 heading put on all of these retyped versions by Mr  
 21 Pretorius –  
 22 CHAIRPERSON: It was the case certainly  
 23 with some of them. Yes, I see. Now what – you say the so-  
 24 called sworn affidavit, which is a tautologous expression,  
 25 is word for word the same as the – no, it's not.

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1 MR CHASKALSON SC: It's not. There's  
 2 quite an important paragraph missing from the retyped  
 3 version.  
 4 CHAIRPERSON: Which one are we going to  
 5 use? Are we going to use the –  
 6 MR CHASKALSON SC: The authentic  
 7 affidavit.  
 8 CHAIRPERSON: The sworn affidavit, the  
 9 handwritten one which is commissioned and everything.  
 10 Alright, so it's affidavit by Lieutenant-Colonel GS  
 11 Tangwane, is it?  
 12 GENERAL NAIDOO: Tongwane.  
 13 CHAIRPERSON: Tongwane, alright, and I'll  
 14 mark that MMM18.  
 15 MR CHASKALSON SC: Now, if there's one  
 16 person who should have known what your intentions on the  
 17 day were, it would be Lieutenant-Colonel Tongwane, surely  
 18 Major-General, because he was the man who had to get your  
 19 convoy with the medics to scene 1 as quickly as possible.  
 20 GENERAL NAIDOO: That's correct.  
 21 MR CHASKALSON SC: Let's see what he  
 22 says. "I was officially reported on duty and I was posted  
 23 as a driver to group leader Major-General Naidoo. Our  
 24 group comprised of members from mounted unit, K9 and POPS.  
 25 At about 15:30 we formed up a convoy to proceed to the

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1 mountain to give a backup to the other groups which were  
 2 already at the mountain. When we approached the end of the  
 3 power station we left other vehicles and proceed with few  
 4 vehicles, plus-minus three of them, and the rest of the  
 5 members were on foot. The members of the mounted unit were  
 6 left behind on horseback and they were later called on to  
 7 do sweeping. We proceeded in a line formation towards the  
 8 mountain where the police and the group of protesters were  
 9 heading to. When we arrive at the mountain, scene 2, the  
 10 protesters were already in the mountain. What I saw and  
 11 heard was this. I heard gunshots from three directions in  
 12 which I was standing from left and right but I could not  
 13 determine if it was from the police or the crowd. During  
 14 that time there was also fire burning from the grass. I  
 15 borrowed a blanket from members of task force to put down  
 16 the fire. When I finished to put down the fire the  
 17 gunshots had already stopped and suspects were arrested.  
 18 [15:00] I could notice some people injured and went back  
 19 to my vehicle to call for," and I'm not sure, I can't read  
 20 that, "medics. I did not fire any shot nor my members did  
 21 because they were on horseback. That's all I can state."  
 22 Now, what's striking about your driver's statement is in  
 23 this description he makes no mention of the intention of  
 24 the convoy or your intention to take a convoy of medics to  
 25 where wounded people were lying at scene on.

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1 GENERAL NAIDOO: Chair, that's correct  
 2 and he also doesn't mention the fact that we took the wrong  
 3 road and we turned around and we got back onto the road, so  
 4 I would say that his affidavit does not contain the detail  
 5 in terms of what happened there. It gets to where the  
 6 issue of the incident at scene 2 went. That is true.  
 7 MR CHASKALSON: He does of course mention  
 8 the purpose of your operation on the day which was to give  
 9 a back up to the other groups which were already at the  
 10 mountain. That's what he seems to have understood as the  
 11 purpose that was worth mentioning, nothing about medics but  
 12 something about back up.  
 13 GENERAL NAIDOO: Chair, that is why I say  
 14 I don't think his affidavit has got specific or sufficient  
 15 specific detail. He doesn't cover several aspects. And I  
 16 think that issue would then need to be rectified. He  
 17 focuses primarily on the issue of scene 2.  
 18 MR CHASKALSON: You see, Major-General,  
 19 if you hadn't taken a wrong turning and indeed you had  
 20 parked your convoy behind the substation to keep it  
 21 concealed, well, then there would be no need to mention any  
 22 wrong turning because none would've existed, and if your  
 23 intention was to give back up to the other SAPS forces in  
 24 the field then maybe you didn't take a wrong turning when  
 25 you went left around the big substation. You put yourself

<p style="text-align: right;">Page 23487</p> <p>1 in the obvious position to give back up to the rest of the 2 operation.</p> <p>3 GENERAL NAIDOO: Chair, that is not 4 correct as I indicated and the reference to back up does 5 not necessarily mean back up in terms of policing. The K9 6 units, yes, were there to support. When there's reference 7 to back up I would take it in the broadest possible sense, 8 was to support and the word we've been using thus far. And 9 bringing in the medics is one of the support issues which I 10 was asked to back up the tactical units. So I still 11 maintain that the affidavit doesn't have sufficient detail 12 in terms of discussing this and just in that context it's 13 now being referred to as being something a little less than 14 sinister or more than sinister so maybe to clarify that it 15 would be important to clarify it with the driver because I 16 already testified in terms of where our intention was to 17 go.</p> <p>18 CHAIRPERSON: Mr Chaskalson, when we 19 reach a convenient stage would you let me know. It's just 20 about 3 o'clock. I was supposed to take the tea 21 adjournment, but if you want to round this point off.</p> <p>22 MR CHASKALSON: I would like to round the 23 point off, Chairperson, because I'm about to move to a very 24 different point. Major-General, I have to put to you that 25 when I look at the objective evidence in relation to times</p>	<p style="text-align: right;">Page 23489</p> <p>1 responsibility I reject that.</p> <p>2 MR CHASKALSON: But I have to come back 3 on one aspect of that answer and with your leave, Chair, 4 and then if we can move on. You say you have demonstrated 5 that medics had to be held back because they were attacked. 6 Well, Major-General, there is no evidence whatsoever that 7 there was any attack on any medic in the full hour that it 8 took the SAPS to get medics to scene 1, 59 minutes and I 9 think 40 seconds it took to get medics to scene 1 after the 10 shootings. There is no evidence whatsoever that there were 11 any attacks on medics or any attempt to stone convoys or 12 anything like that in that period. What evidence are you 13 referring to?</p> <p>14 GENERAL NAIDOO: Chair, I referred to the 15 video that we showed on Monday and if I remember correctly 16 you indicated but those are medics who can be contacted and 17 can be verified what happened there because of the 18 particular footage did not show the object was being 19 thrown, whether it did strike or get near the ambulance and 20 I think at that stage the indication was maybe those medics 21 should also – their version should also be obtained to give 22 some perspective to the video that we showed which was an 23 ETV video.</p> <p>24 MR CHASKALSON: Major-General, whatever 25 that video does or doesn't show it's a video of events that</p>
<p style="text-align: right;">Page 23488</p> <p>1 and I look at the statements that all of the SAPS members 2 have given it seems very strongly to me that you, that the 3 version that you put forward today that you went into 4 koppie three just to assist SAPS to secure the situation 5 and to assess the situation and with a view to opening up a 6 route for the medics is in fact a false version that's 7 designed to avoid the responsibility that you should bear 8 for leaving people on the ground at scene 1 bleeding and in 9 at least one case it seems dying in wholly avoidable 10 circumstances for a full hour after the R5 volley opened up 11 on them. What is your comment to that?</p> <p>12 GENERAL NAIDOO: Chair, I think saying 13 that I was avoiding my responsibility is far from the truth 14 because I think these incidents and the whole scenario 15 occurred as I indicated it and it has been verified in 16 terms of my AVL. It shows that we originally tried to go 17 directly to scene 1. And secondly I think we have also in 18 regard to the persons that were injured at scene 1, we've 19 also illustrated a video which showed that there was the 20 additional medics that were activated by the JOC who were 21 and maybe we'll have to determine the time were standing 22 off and could not approach scene 1 because of the incident 23 of the mob, so I accept that I did not get to where I was 24 required on time because of the circumstances I have 25 indicated but the insinuation that I was avoiding my</p>	<p style="text-align: right;">Page 23490</p> <p>1 happened well after the one hour period that I'm talking 2 about. That's after the one hour. It's after some medics 3 had finally been brought to the dying and wounded at scene 4 1.</p> <p>5 GENERAL NAIDOO: Chair, I don't remember 6 us dealing with the issue of time. I think that's 7 something also that would have to be addressed.</p> <p>8 CHAIRPERSON: All right. Well, let's 9 address it later and let's take the tea adjournment now.</p> <p>10 GENERAL NAIDOO: Thank you.</p> <p>11 [COMMISSION ADJOURNS COMMISSION RESUMÉS]</p> <p>12 [15:33] CHAIRPERSON: Major-General, you're still 13 under oath.</p> <p>14 GENERAL NAIDOO: Thank you Chair.</p> <p>15 CHAIRPERSON: Mr Chaskalson.</p> <p>16 MR CHASKALSON SC: Thank you, 17 Chairperson. Major-General I now want to move to the 18 consequences of your failure to get medical treatment to 19 the wounded victims at scene 1. And in this regard I am 20 going to refer to the expert report of Professor Boffard. 21 It's MMM10. And much of Professor Boffard's report is of a 22 technical nature. I don't want to go into the details of, 23 the technical details with you, it's something that SAPS 24 will obviously address through their own expert if they 25 aren't satisfied with Professor Boffard's report. What</p>

<p style="text-align: right;">Page 23491</p> <p>1 Professor Boffard was briefed to do was to look at the post  2 mortem records of the 17 victims who died at scene 1 and to  3 express a view, having regard to the nature of their  4 injuries, the availability of medical facilities or the  5 proximity of medical facilities with the capacity to deal  6 with those sorts of injuries. Whether their deaths could  7 have been avoided if medical attention had been brought to  8 them 30 or 40 minutes earlier than it did, in other words  9 it took a full hour to bring paramedics to scene 1.  10 Professor Boffard was asked to express a view on whether  11 any lives would have been saved, could have been saved if  12 paramedics had got to scene 1 not an hour after the event  13 but 20 to 30 minutes after the event. I want to refer only  14 to one passage in Professor Boffard's report where he  15 discusses his approach in the report. And it's on page 19.  16 In the technical section of the report, I just want to  17 refer to page 19. A bit, and we get an outline of what his  18 approach is. It must be borne in mind there were only  19 three possible areas of intervention, (a) those injuries  20 treatable within the scope of pre-hospital care providers  21 who were available on the scene, the majority of whom would  22 have been intermediate life support providers, paramedics  23 in other words; those patients with injuries who once  24 transported to the nearest hospital could have been  25 stabilised or dealt with by that hospital. There were only</p>	<p style="text-align: right;">Page 23493</p> <p>1 there are instances in the report which are describing a  2 fairly graphic nature and the consequences of what would  3 have happened if and when the aid was delayed and all of  4 those, have been fully explained to them. They are quite  5 comfortable with the evidence being led in their presence.  6 MR CHASKALSON SC: And Chairperson, in  7 the, as this cross-examination goes on there will be scenes  8 of a particularly graphic nature and I think it would be  9 appropriate to give the warning now so that people who want  10 to leave do leave.  11 CHAIRPERSON: I'm informed that there are  12 going to be scenes, as is being put, of very graphic  13 nature, going to be seen by us, shown to us. They are  14 likely to cause emotional trauma and distress to the  15 relatives and loved ones of some of the persons who died at  16 Marikana on the 16th August, and I'm going to ask that we  17 did not receive any evidence or any material of this kind  18 until a minute has elapsed after what I'm now saying is  19 being interpreted, for those who are following on  20 headphones, to give them an opportunity if they wish to  21 leave the chamber. The minute will start now. Mr  22 Chaskalson, I think you may now proceed.  23 MR CHASKALSON SC: Thank you, Chair. The  24 case of Mr Mdze is dealt with at page 24 of Professor  25 Boffard's report. If we can go to page 24. And there</p>
<p style="text-align: right;">Page 23492</p> <p>1 two nearby hospitals, Brits, 35 kilometres, 40 minutes,  2 Rustenburg, 43 kilometres, 45 minutes. Those patients with  3 injuries which were of such a severe level that they could  4 only have been dealt with by level 1 or good level 2  5 hospitals and he identifies what those hospitals were and  6 how far away they were. The survival of individual  7 patients is dependent on the realistic time frame between  8 when they received their injury and when they could have  9 reached care of a sufficient calibre to provide the chance  10 of survival, taking into account the circumstances and  11 logistics prevailing. I've therefore classified the death  12 of these patients with the theoretical potential to survive  13 into preventable, potentially preventable and non-  14 preventable. So that's the broad scheme of his report. I  15 don't want to go through all of the individual details of  16 the individual patients but I do want to focus on one case  17 just to illustrate the catastrophic consequences of the  18 delay of the arrival of medical treatment at scene 1. The,  19 Chair, I just want to be clear that the family of the  20 particular patient who is Mr Mdze, have been notified and  21 are not going to be distressed.  22 MR NTSEBENZA: Mr Chairman, I understand  23 that there has been a meeting with the family of Mr Mdze.  24 The fullest extent of what is conveyed in the Boffard  25 report has been communicated to them. They were told that</p>	<p style="text-align: right;">Page 23494</p> <p>1 under paragraph 4.10 the Professor lists the injuries  2 suffered by Mr Mdze and then states the following, "This  3 patient has significant high energy injuries to his arm and  4 to a lesser extent his leg. His head wound from a shotgun  5 pellet was relatively minor with a small sub-arachnoid  6 haemorrhage. He had eight shotgun pellets into his lower  7 torso from behind. It appears that most of these lodged in  8 muscle with a laceration of the upper pole of the right  9 kidney. All of these would be classified as low energy  10 wounds. Although there was bleeding described, there was  11 no intra-peritoneal blood collection and some blood in the  12 retro-peritoneal space and extra peritoneal pelvis. It  13 should be noted that the blood loss described above, in  14 other words the internal bleeding, was probably not an  15 immediate threat to life on its own. Although it is  16 conjecture, it seems that he exsanguinated externally and I  17 would suggest that the most likely site of massive bleeding  18 was from the upper limb fracture with massive damage to the  19 vessels and soft tissue." With regard to the TRISS scoring,  20 which is a system that Professor Boffard has explained  21 earlier in his report, "he is predicted as having a greater  22 than 90% chance of survival and the cause of death was  23 failure to control bleeding in a timeous fashion due to  24 non-availability of medical personnel. Bleeding in the  25 upper and lower limb could have been controlled by direct</p>

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1 pressure on the vessels or a tourniquet. This death is  
 2 potentially preventable had medical care reached him  
 3 earlier." So that is the case of Mr Mdze. According to  
 4 Professor Boffard he bled to death, principally from a limb  
 5 in his left arm.  
 6 CHAIRPERSON: Injury to the limb, I  
 7 think. You mean an injury or laceration of the left arm?  
 8 MR CHASKALSON SC: A wound to his –  
 9 CHAIRPERSON: A wound.  
 10 MR CHASKALSON SC: And R5 bullet wound to  
 11 his left arm, in fact two R5 bullet wounds to his left arm.  
 12 I now want to show the commission the circumstances in  
 13 which Mr Mdze died because I need you to see those  
 14 circumstances so that I can put some questions to you in  
 15 relation to him. And if we can start by showing a video  
 16 JJJ194.32, 194.32. And before we start if I can identify  
 17 Mr Mdze, he is the man lying at the back, lying behind the  
 18 other victim in this shot. He has a blue blanket draped  
 19 over him diagonally and dark trousers and a greyish top.  
 20 If we can play the video because we'll see – before we play  
 21 the video, let me indicate when this video is taken. It's  
 22 taken 14 minutes and 15 seconds after the shooting at ETV  
 23 time 16:08:05 and we'll see that Mr Mdze is definitely  
 24 alive and breathing heavily.  
 25 [VIDEO SHOWN]

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1 Now –  
 2 CHAIRPERSON: Is there an exhibit number  
 3 of the video?  
 4 MR CHASKALSON SC: It was JJJ194.32.  
 5 CHAIRPERSON: Thank you. Now Major-  
 6 General this is a video taken at 16:08:05. If we can  
 7 translate that time into something that makes sense in  
 8 terms of your own movements. It's 14 minutes and 15  
 9 seconds after the shootings. 14 minutes and 15 seconds.  
 10 It is 13 minutes and 45 seconds after we saw your vehicle  
 11 on the CTrack AVL records come back to the intersection  
 12 from the main road after its detour, ostensibly with the  
 13 intention of taking medical personnel to scene 1. It's 10  
 14 minutes and 20 seconds after you took your convoy off the  
 15 main road around the wrong side of the big sub-station.  
 16 It's 9 minutes and 40 seconds after you started your first  
 17 four-minute idling period at the power station. It's five  
 18 minutes after you started your second four-minute idling  
 19 period at the power station. Do you accept that if your  
 20 convoy had headed straight to the shootings from your  
 21 position when you came back to the main gravel road after  
 22 your detour, by any of the blue, green, red or purple  
 23 routes on MMM5, that paramedics would have reached Mr Mdze  
 24 long before the shot was taken?  
 25 GENERAL NAIDOO: Chair, yes possibly.

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1 MR CHASKALSON SC: On what basis would  
 2 they not have reached him before the shot was taken?  
 3 What's the possibility that one cannot rule out?  
 4 GENERAL NAIDOO: At this stage, Chair,  
 5 none particularly comes to mind but I am working on the  
 6 presumption that you made, I am saying yes, we could  
 7 possibly agree with that.  
 8 MR CHASKALSON SC: Well can you offer me  
 9 any explanation as to why they wouldn't have reached Mr  
 10 Mdze before this shot was taken if they had followed any of  
 11 those five routes?  
 12 GENERAL NAIDOO: Chair, I'm not familiar  
 13 with the terrain of those five routes, this is why I am not  
 14 closing the presumption that we may have had a problem. So  
 15 I'm not disagreeing with the presumption they put, I am  
 16 putting the possibly because I do not have the factual  
 17 information about the terrain that was referred to.  
 18 MR CHASKALSON SC: Do you accept that if  
 19 you had decided to turn around when your convoy stopped at  
 20 the side of the power station instead of sending your  
 21 canine vehicles forward, after your first idling period, in  
 22 other words do you accept that if you hadn't started your  
 23 second idling period, paramedics would have reached Mr Mdze  
 24 within a couple of minutes of the shot?  
 25 GENERAL NAIDOO: I'm not sure about the

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1 estimation of time but yes, I'm sure he would have reached,  
 2 we would have reached the scene much quicker than we, on  
 3 the given route that we have taken, yes.  
 4 MR CHASKALSON SC: Well I want to put to  
 5 you that if you had turned around instead of starting your  
 6 second idling period, if we look at the distance that you  
 7 made when you weren't idling, that you would have reached  
 8 the scene certainly no more than five minutes after that  
 9 shot that we see now. Can you dispute that?  
 10 GENERAL NAIDOO: I'm saying that it could  
 11 be possible.  
 12 MR CHASKALSON SC: I'm asking you a  
 13 different question. I'm asking you if you can dispute it?  
 14 GENERAL NAIDOO: Taking which route,  
 15 Chair?  
 16 MR CHASKALSON SC: Taking any of the  
 17 routes to scene 2 that are depicted in MMM5, scene 1, not  
 18 scene 2.  
 19 GENERAL NAIDOO: Chair, based on what I  
 20 said previously, without having the specific knowledge of  
 21 the terrain, I said it is possible that if we would have  
 22 been there quicker, yes.  
 23 MR CHASKALSON SC: I must repeat my  
 24 question, Major-General. I'm asking you if you can dispute  
 25 it, if you have anything to gainsay it, not whether you

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1 accept it but whether you can dispute it, what's your  
 2 answer to that?  
 3 GENERAL NAIDOO: Chair, I think that's  
 4 the point I'm trying to make is that I am not in a position  
 5 to dispute it without any specific information and I think  
 6 that's the point I'm trying to make.  
 7 MR CHASKALSON SC: Major-General, it is  
 8 now more than 18 months, maybe not more than 18 months, it  
 9 is more than 18 months since these events took place. Has  
 10 it not sat on your conscience that if you had reacted  
 11 differently and you had taken medics to the scene, things  
 12 may have been different?  
 13 GENERAL NAIDOO: Chair, one regret, any  
 14 loss of life or injury when we execute our duties as the  
 15 police, the number one price for us in executing these  
 16 duties is we execute it in the manner that no person is  
 17 injured or no person is killed, based on the current  
 18 framework we have and which we work in. So obviously the  
 19 fact that people have died, whether directly or indirectly  
 20 by any action or omission on my part is regrettable. And  
 21 it's not something one forgets easily. All the people that  
 22 were injured and the people who were killed, unlike most of  
 23 the people that have testified, I'm one of the few people  
 24 that was there who has seen people that were injured and  
 25 killed and that weighs heavily on one because one is human

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1 and its not something one wishes.  
 2 MR CHASKALSON SC: Have you not wanted to  
 3 know whether things would have been different, whether  
 4 there were routes, whether the terrain would have stopped  
 5 you anyway, have you not wanted to know that?  
 6 GENERAL NAIDOO: Chair, I have been back  
 7 to the scene of the incident, or I have been to the scene  
 8 of the incident three times. Once during the course of the  
 9 incident, once during the SAPS reconstruction and once  
 10 during the inspection in loco. At either of the two,  
 11 second time, I have never been to the immediate response  
 12 area or the forward holding area because of the route we  
 13 used via the Marikana Police Station. So one would, yes,  
 14 would like to reflect and have introspection in terms of  
 15 these things and I think this is the purpose of this  
 16 commission, to help us conduct that introspection and  
 17 indicate to us things that could have been done better and  
 18 should have been done better so that we rectify. This is a  
 19 platform for us to account in terms of some of these  
 20 things. So yes, one always wonders and one wants to know  
 21 professionally, could you have done better? Why didn't I  
 22 do this?  
 23 [15:53] These questions are something every human being  
 24 if they have a conscience and they have these things on the  
 25 mind will subject themselves to and I am no different from

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1 that.  
 2 MR CHASKALSON SC: But you, yourself on  
 3 the occasions that you have gone back to Marikana have not  
 4 had the curiosity to explore the alternative routes to see  
 5 if there were alternative routes, to see how long they  
 6 would have taken to put your own conscience at rest in that  
 7 respect.  
 8 GENERAL NAIDOO: Chair, I think the  
 9 approach that I have taken was to maintain the body of  
 10 information that I had and keep it, because of the time  
 11 span, to keep it as fresh as possible so that this day when  
 12 I come here to present my evidence that I am in a position  
 13 to present it without any prejudice or without any  
 14 diversion from what experienced and how I perceived things.  
 15 Yes, one would want to go and drive there and see how did  
 16 we do this, why did it take so long. But I don't think at  
 17 this time without these processes passing it is the ideal  
 18 time to do such things.  
 19 MR CHASKALSON SC: Let's move to the next  
 20 video. If we can go to JJJ194.36.  
 21 CHAIRPERSON: Mr Budlender, we have got  
 22 about five minutes left, we have been asked to – I have  
 23 made a mistake the second time. Mr Chaskalson, we have  
 24 been asked to make sure we end promptly at 4. So we have  
 25 got five minutes left by my watch. If you can deal with

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1 this video in five minutes you can carry on, otherwise we  
 2 will have to proceed in the morning.  
 3 MR CHASKALSON SC: I think we must  
 4 proceed in the morning because I can't –  
 5 CHAIRPERSON: Very well, we will then  
 6 adjourn until 9 o'clock tomorrow morning.  
 7 [COMMISSION ADJOURNED]  
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