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NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

A 51 of 2019

AN INQUEST INTO THE DEATH

OF KUMANJAYI WALKER

ON 9 NOVEMBER 2019

AT YUENDUMU POLICE STATION

JUDGE ARMITAGE, Coroner

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 18 OCTOBER 2022

(Continued from 17/10/2022)

Transcribed by:  
EPIQ

THE CORONER: Just before we recommence with your evidence, Officer, there was one matter that had not been finalised yesterday in relation to non-publication orders of ruling number 3.

In relation to those orders, reasons will be published on the website today and basically, just in short form, I'm persuaded that there is a proper basis for a non-publication order in the case of the author of one text message until the conclusion of that author's evidence. And at the conclusion of that author's evidence, I will reconsider whether there are grounds to extend the order.

However, although I have not received an application for an extension of the order from Sergeants Bauwens or Kirkby, given the obligatory terms of s 43 of the Act, I have nevertheless considered whether I'm obliged to make a further order in their cases. And ultimately, I am not persuaded that there is a proper foundation for such an order.

So, on the website today, there will be a redacted version consistent with that ruling of the reasons and there will also be a new, short minutes of order in relation to the current non-publication orders.

Dr Dwyer?

DR DWYER: Thank you, your Honour. Your Honour, I note that First Class Constable Eberl continues his evidence today. And just before we start again, I just note also that Mr Suttner is on the phone again and that he appears with Ms McNally for Sergeant Bauwens in this matter. Thank you.

ADAM EBERL, on former oath:

THE CORONER: Yes, who would like to go next? Ms Wild, yes?

MS WILD: Yes.

THE CORONER: Thank you.

XXN BY MS WILD:

MS WILD JC: Officer Eberl, my name is Wild and I appear for NAAJA. I'm going to try not to be repetitive because I know we've been over a lot of the evidence. And in saying that, first thing I'm going to take you to is the piece of evidence we have gone over a lot, which is the interaction you had with community member, Elizabeth Snape. Now, she asked you about her (inaudible) and says "It's not right". And you say to her, "(inaudible) run at police with an axe." Now, Proctor says of this, that's at page 136 that, "This comment is suggestive of a retaliatory policing response to the events that occurred preceding Wednesday". And Superintendent Nobbs gave evidence of the same comments, said that "It's extremely disappointing, provocative in nature and wouldn't serve to address the first element of my plan, which was community reassurance and inherent in that respect". Yesterday, you said words to

the effect that what you meant in saying that is that if the community acts in a certain way, then the community can expect extra police to attend. So, whilst perhaps your comments to Ms Snape were harsh, you stand behind them. Is that right?---As I said yesterday, on hindsight, I probably shouldn't have said what I said and like yesterday, I apologised for saying that. So, they asked the reason why I said it initially, and I stated that yesterday. So, in hindsight, obviously, I wouldn't say that, those comments, so to say that I stand by them is probably incorrect.

I see, so you were explaining why you said them at the time?---Correct.

Rather than standing by them?---Correct.

Okay. At the time, you wanted her to know that it would be a different response than a normal community arrest response. Is that right? Would you agree with that?---I just said "more police" I think was my remark, yep.

At the committal, you were asked why you said it and you said potentially a different response than a normal community police?---Okay.

And you wanted – you were alerting her that things were going to be different from a normal community police response?---Okay, if that's what I said, okay, yep.

What you're saying to her was that if a member of her community acts in a certain way, then they should expect a heightened police presence with this weaponry regardless of whether children are around. Is that what you're saying to her?---That's not what I said, no.

MR READ SC: He didn't say if the community behaves in a certain way, it's if somebody goes at police with an axe. It was not directed towards the community. It was directed towards an individual.

MS WILD: Yesterday, what you said is that you meant that if a community acts in a certain way, you can expect extra police to attend. That's what you said yesterday?---If that's what I said, yep.

It's at transcript 1778. In your second statement to police when, again, you're asked about the axe incident, you said that Ms Snape smirked. I'll give you the direct quote, and it's at page 45 of your statement taken by police on 13 November. You said, "I remember when I said to her – about – you know that someone shouldn't run at police with an axe as why he might have that. She had a bit of a smirk on her face that I noticed, so I think she knew about that."?---That's correct.

All right. So, it was your view that she smirked when you talked about the axe incident?---Correct.

As though she knew about it?---Correct.

And it didn't make her smile, but smirk, that was the particular use of word that you

used and it made you think that she was in on it, in effect. Is that right?---I don't know about "in on it", but she knew what I was referring to.

And that made her smirk?---Yes.

This is the lady with the crying baby on her hip who's telling you off about the gun. So, you still believe she knew about the axe incident?---I was referring to her – the smirk that she made in reference to, she – it seemed like she knew what I was talking about.

And it suggests that she was somehow complicit in it. Would you agree with that?---You would have to ask her that comment to see what she meant.

Well, I'm asking - - -?---You know, what she meant by that reaction to my comment.

Okay, well I'll ask – your impression of her smirk - - -?---Yep.

- - - was that she knew about the axe incident and she found it somehow amusing?---I don't know whether she found it amusing, but that was her response.

You said she smirked - - -?---Yes.

- - - when you talked about the axe incident?---Correct.

To you, it suggested she was somehow complicit. Correct?---I said that referred to - she knew what I was referring to, yep, whether she found it amusing or not.

Now, in this exchange. You're not treating her as an innocent civilian, aren't you?---I was just referring to her, just speaking to her. What do you mean by "innocent civilian"?

Well, you've talked to her in a way that suggests, of what Proctor says is suggestive of a retaliatory policing response, that Nobbs says wouldn't serve to address the first element of his plan, which was community reassurance. You have said, even yesterday, that what you meant was that, if a community acts in a certain way, they can expect police to attend. Now, if you are not treating her as if she is an innocent civilian, but rather that she is part of the community that has a member that's going at police with an axe?---I wouldn't say – I wouldn't use those terms as a reference. I was just speaking to her.

And you think she knew about the axe incident?---From the reference to the smirk, yep.

You would have to agree that by this stage, you are not acting as a community police officer. Correct?---I'm not – I wasn't working from that community, so I was from Alice Springs, yep.

But instead, you've adopted an "us and them" mentality, a police versus a

community?---Not at all. I was there to do a job, to find Kumanjayi and arrest him. That was my purpose.

But you didn't know this lady, is that right?---No.

Would it surprise you to learn that she's not even from Yuendumu?---Surprise – no, it wouldn't surprise me. A lot of the community members are quite transient.

No evidence whatsoever that she even knows Kumanjayi?---Not from my knowledge, no.

And you've assumed she knew about the axe incident?---From her reaction to my comment, yes.

And it wouldn't surprise you to learn that she was in fact visiting from another community to attend the funeral?---Wouldn't surprise me, no.

And yet you still think she knew about the axe incident?

THE CORONER: He's already explained that, Ms Dwyer.

MS WILD: Now Constable Eberl, you're not ex-army are you?---No.

And you're – at the time that you were an Youth Engagement Officer in Alice Springs?---Correct.

And in that role, you're aiming to have a really impact on the kids that you're working with?---Correct.

Now Officer Kirstenfeldt and Rolfe did used to be in the militia, is that right?---I believe so.

And you've said in evidence yesterday that you undertook regular training sessions?---Well regular, once every rostered period, which is a five week period. But you weren't always able to make it within that time, so.

But you were often able to make it because you - - - ?---Correct.

- - - had seen a roster?---Correct.

And – and sometimes Kirstenfeldt and Rolfe, and other ex-defence force IRT members would be at those training sessions, is that right?---Yeah, correct.

And you would – and if – if any of those members had a skill set that they were able to pass on to the other members, then that was encouraged. Would you agree with that?---It was helpful, yes.

Yes. And in fact Lee Bauwens has said, that for example, if the army boys had anything to offer, it was introduced into the training sessions?---Yeah, as long as it stayed within the confines of police duties and yep, what was – what was training within the police.

Now Constable Eberl, I'm going to take you to your theory on policing. So – and I'm not sure what is taught (inaudible), so you'll have to pull me up. But this – I got this from page 135 of the Proctor Report. Which is that the policing in Australia find its foundation in the policing principles established by Sir Robert Peel in 1829. Are you – do you know about all of this? Is this taught in policing?---This is a topic above my head, but I'll do my best to try and comprehend what you're talking about.

The Peel in principle, so says Proctor, has a strong focussing on policing by consent. And that is respecting community principles and obtaining the support and trust of the community. And they also have a strong focus around use of force, (inaudible) and to use only the minimum force necessary for achieving a police objective. And that's consistent with your learnings in the police force, is that right?---Yeah, yep.

And theory of policing is that it's based on contract with its community members, that the police serve and protect, in effect. And in doing so, use the minimum force. Do you agree with that?---Yes.

Now these principles of policing can be at odds with military engagement. Would you agree with that?---I don't really know a lot of it, as I said, I'm not from the military, so I don't know the rules of engagement within the military, I'm afraid.

Okay. You said yesterday, of your gun, that it's better to have it, and not need it, rather to need it and not have it?---That's right.

But that's an own verse simplification, is it not?---That's not just with that, that's with other accoutrements as well. Other items that you might have.

Okay, but you agree that if you have it, you're more likely to use it?---Well if you don't have it, you can't can you.

Yes?---Yes.

But it may be that you have more ready access to those – to that weaponry, when otherwise, you would have used different tools to achieve the same result. Would you agree with that?---Not entirely no, I don't agree with that.

Could you expand upon that?---Sure. In the circumstance of – let's talk about circumstance of what – what had occurred, you know the terrible, you know, situation that happened. If – if there wasn't a firearm, or something, used for example, and we – we didn't gain subject control via immediate incapacitation, for example, then that person might continue to use that weapon. And so we might have had a different result where it could have – it could have went the other way, for example.

Okay - - - ?---So you can't have the same result if you don't have the same items. For example, if you're using spray – OC spray, if you don't have that, then you're not going to get the same result, because you don't have that – that particular item.

But less lethal weaponry certainly can be deployed to stabilise someone?---Yeah, definitely.

And you have a black belt in martial arts?---No I don't.

Don't you? What – tell us about your martial arts?---I've done a – a few different martial arts, but yeah.

But not a (inaudible), I misunderstood, I apologise?---That's all right.

I'm now going to take you to the – you watching the footage of the events of 6 November?---At the Alice Springs Police Station?

Yes?---Okay.

But – but what you're watching. So you were surprised that the members then didn't draw their firearm, that's right?---Correct.

And you were critical of them?---Critical, how so?

Well you said you were base – “It was criticising what the members were doing, is what you said, around operational safety, what the members were thinking, why were they standing there with their hands up. Why weren't they taking action, you know yeah they weren't. Yeah, basically it was criticising what the members were doing.”

THE CORONER: Where are you reading from, Ms Wild?

MS WILD: That is the – I think it's the second statement. And I'll have to pull up the reference from my solicitor.

(Inaudible)?---That's okay.

Do you remember saying that?---No.

You – are you saying you weren't critical of them?---We look at – we look at a – a situation, and like I said, you know, I was surprised they didn't use their firearm because of – because of the training they – we receive in certain circumstances. Until you're in that circumstance, as an individual, you know, you haven't got – emotions in play et cetera, so you can't really – you're not going to discredit someone for what they did, but you can question, in relation to, why they didn't do this, why they didn't do that, you know from that – from that point. But not – you're not in that point, so you're not – you're not emotionally comprised potentially, so.

Now was the view of Chris Hand, "That no one was injured, and that's the best result in my view." That's what Officer Hand's take away from that failed arrest attempt was. Now that you've had a really good opportunity to be based in Alpara as a community police officer - - - ?---I'm not there anymore but.

Yes, you've had the opportunity of those (inaudible)?---Yeah.

Do you understand that sentiment of Officer Hand?---That you're glad no one was injured?

Yes?---Yeah like that's – that's not necessarily just in community, that's across anywhere. That's what we all – we want to achieve every day we go to work. We don't want anyone to be injured.

Now he said "That's the best result, in my view"?---That's – that's not a bad result, yeah sure, definitely.

But for you, your priority was ensuring this – on 9 November, was ensuring that Kumanjaya didn't get away, so that he could be bought before a court. Is that right?---That's our job to do, yes, as police, yeah.

And you agree that that's best achieved by the minimum use of force?---It's always best to avoid confrontation before you use any force, but in that circumstance, if you have to use force, then a minimum is best.

Prior to going in, you assessed a number of things, the first of which was that Kumanjaya Walker was a target that may respond with threats of violence to police? And the second is that he might run away? Is that right?---These are alerts on - - -

Yes?---And this was put on after that incident on the 6th.

Yes, so that was in your mind though, before you went in?---I don't think - I don't think it would've been.

That he may - Kumanjaya may respond with threats of violence to police and that he might run away?---That's a common - that's a common alert that a lot of people have that we deal with from day to day, that they - that they may respond with threats of violence to assist in their escape, or they may assault police. That's a common alert on a lot of people. So it's not like out of the ordinary.

Yes. You had plans for the second issue, which is that he might run away, in that you had that police dog and the degree of cordoning around the building, is that right?---Yes.

You also had plans or contingencies for the use of force, the threats by Kumanjaya in that you were - you were armed. Is that right?---By our accoutrement belt, yes.



What you didn't plan for was how to prevent the need to use force against Kumanjayi Walker - you had no contingencies to prevent him from reacting to police such that you may need to use force against him. Would you agree with that?---I'm just thinking - 'cause - there certainly wasn't a - a contingency to be able to not use, you know, any force whatsoever.

But you hadn't planned for how to minimise the use of force necessary to affect the arrest?---If you were going to use force - - -

If you had to use force?---Yes.

You hadn't - - -?---We always - always start at the lower end, like in the - in that particular circumstance, so if someone was presenting, you know, unarmed, you know, you would say, "You're under arrest" if they start struggling you would use, you know, empty hand tactics in what you get taught, yeah. If they're presented with a weapon you may - you might use different accoutrements, so you're not going to go empty hand tactics, you know, you're going to communicate. If that doesn't work then you're going to have to use a particular accoutrement because of the level of force that they're using, you know, we need to - we need to be able to override - overcome that level of force that they're using.

But there were no plans with your officers as to how to minimise the use of force necessary in affecting that arrest?---No, like plan on a piece of paper. I think you make a plan as you go, like it's fluid - in the moment. So you don't - you don't write down, "All right, you know, we're going to do this. If he does this were going to do this". It's not like that.

It wasn't just that there was no plan on a piece of paper, there was no plan at all as to that, was there?---Like I said, we're fluid. We move - we move in the moment.

So no?---There was no written plan, no.

You would agree that this has been a divisive matter in the community and within police?---This incident?

Yes?---Yes.

And we have seen that - we've seen "I back Zach" campaign - the blue handprints across Facebook sites?---No. I don't know about that.

You don't know about that?---No. I don't go on Facebook and that, so.

So I'd suggest it's more than just a hashtag, there's T-shirts, there's - it's not just on social media. You're not aware of all the T-shirts that have been printed and so on? ---Not about the blue hands or anything, no.

Or the "I back Zach" T-shirts? No?---No.

There's certainly been strong support from the Police Association, you'd agree with that?---Yeah, definitely, yes.

Lots of police came to the trial to your evidence. Is that right?---There was a few police there, yes.

Did you feel supported by that presence? Or pressured by it?---By the police members?

Yes, that all came to attend your evidence in the trial?---The few that were there, no, I didn't feel pressure. It was support.

Thank you, your Honour, no further questions.

THE CORONER: Your turn, Mr Edwardson.

MR EDWARDSON KC: He is welcome to go next.

THE CORONER: Mr McMahon?

DR DWYER: Could I just - I am just getting some messages back that the audio is quite soft this morning. I would just ask Mr McMahon if he wouldn't mind keeping his voice up.

THE CORONER: And if need be - - -

THE WITNESS: Do I need to speak up?

DR DWYER: No, I think you're okay.

THE CORONER: If need be, just take a seat if it is easier to be closer to the microphone. I am just not sure but see how you go.

MR MCMAHON AC SC: We'll see how we go.

XXN BY MR MCMAHON:

THE CORONER: Yes.

MR MCMAHON: Constable, my name is McMahon and I act for the Parumpurru Committee of Yuendumu, which is essentially a justice committee of people from Yuendumu and we're generally looking more at systemic issues than specific issues and an issue I will discuss with you, given that you're a weapons instructor - you are a weapon instructor are you?---Correct.

Is the AR-15, the ArmaLite 15. For people not familiar with that it is very similar to the M16 used - is that correct - the M16 rifle?---Yeah, it's pretty similar, yes.

In your interview which you - the M16 is the rifle used in - by the Australian and American armies in previous wars in our region, correct?---Correct.

In your interview of 13 November you were talking about IRT training and things like that - 13 November 2019. And you were talking about this particular weapon and you said that it's your primary weapon in the IRT is the AR-15?---So if you're - if you're carrying for that you use an M4 or AR-15, it's the same kind of - or M16, so all very similar weapon system, there's a couple of little minor differences but if you have possession of that then and you have a Glock pistol then that becomes your primary weapon. If you don't have the AR-15 - well I say the AR-15 then your Glock in a firearms incident, that will be your primary weapon. So whatever, the rifle overrides the Glock.

So the most lethal weapon in your hands is the primary weapon, whatever that might be?---Well - - -

Well, if you're holding a rifle you're not going to put the rifle down to pull out a Glock, are you?---No, no.

So you mean the one that you're holding is your primary weapon or the one that you can first access is your primary weapon?

DR DWYER: I'm so sorry to interrupt my learned friend, we are just getting a message that it's difficult to hear him. I'm wondering if you might sit down, Mr McMahon or if that is going to be too difficult. It's just the distance from the microphone is the problem I think.

MR MCMAHON: I will just lean in - I am just going to lean in. No, I have got my things here, I am just going to lean in. In an intimidatory fashion. To take control.

So, okay, so you've explained what a primary weapon is. So it's not necessarily accurate as I understood it, so this is my mistake, to say that the primary weapon of the IRT is the AR-15? That's not an accurate understanding by me?---It depends on what weapon you have in possession so if - - -

All right, I understand now. On the day in question, 9 November, you were carrying a Glock, correct?---On 9 November, yes, on my hip, correct.

9 November 2019?---Not for the whole time, but through the incident, yes.

When you say, "Not for the whole time" what are you thinking of?---That after the incident I was in possession of an AR-15 as well.

All right, well just quickly tell us, when - when were you using an AR-15, after the incident?---Yeah, so when we drove to the airport, and when I was patrolling around the back of the police station within the - within the confines of the compound.

Is that patrolling with Constable Hawkings?---Yeah, in the rear of the police – yep, that's correct.

So when you were at the House 577 – 511, those houses, you – you had a Glock with you, correct?---Correct.

And magazine in the Glock?---Correct.

How many rounds in the magazine?---In my magazine, I think there was 14. It holds 15.

Yes, and did you have one round in the chamber?---Correct, it's in the action condition. All of our weapons when we carry them are in the action – action condition.

Ready to shoot, is that what you mean?---Ready to use, if we need to.

Yes, well - - - ?---Because if it's not action, you have to rack the slide for it to – to chamber around.

And you have a safety on?---There is no safety.

There's no safety, so you're holding - - - ?---Well, there is a drop safety, a firing pin safety, and a – there's a bit of a trigger safety, but not like an ambidextrous safety – thumb safety, as they would use in say South Australian Police for example.

So just for the benefit of people who don't use firearms much. A second kind of safety, it means you have to use your thumb and move the – like a switch, like a light switch or some other kind of switch?---Yeah, that's correct.

And if you pull the trigger on a rifle or a pistol, and the safety's on, nothing happens?---Correct.

But if you take the safety off, then it's a live weapon, and can immediately discharge?---Yeah you go from action condition to an incident, that's the condition.

Yes, and the – the Glock that you use, is a Glock 17?---No, it's a Glock 22.

Okay. But that doesn't have a safety?---Not an external safety, no.

Not requiring a separate safety move by you?---No.

Okay. So it can be used very quickly, if you need to?---Yes.

So you've got a magazine with 14 rounds in it. Are you carrying other magazines?---Yes.

At the time? How many magazines?---Including the one in the gun, or separate?  
Including the one in the gun, three.

So 45 rounds all together, yes. Yesterday you were asked some questions about a Glock, and you said at CD18-28, "Most shootings in relation to an engagement are up to about four metres." But I just want to make sure I understand that. We're talking about a Glock at the moment?---Correct.

When you say most shootings in an engagement, you mean that in a situation where a police officer has to use a gun and fire it – fire a round, that typically happens within a range of about four metres?---Yes.

Is that what you were saying?---That's right, yeah.

Okay, and pretty much any trained police officer would be able to hit a target with a Glock, in a four metre range. You'd agree with that?---Correct.

And even if you were uncertain about that, you'd be competent that any IRT trained officer using a Glock, should be able to hit a target within four metres?---Correct.

You – it's clear that you took an AR-15 from Alice Springs to Yuendumu?---Correct.

Yes. How many rounds in a magazine for an AR-15?---It holds – maximum capacity is 30, but you – you would – you can't run at 30, it won't – it won't lock into the gun. So you run maybe 28 in the magazine.

Twenty-eight in a magazine, and one in the chamber, or barrel? Or 28 altogether?---Yes, so the – if you're taking the weapon out, then you would action the weapon, but generally yeah, so 28 in the magazine, and you'd have a spare magazine for example, so.

How many magazines did you take out for the AR-15 on 9 November?---I don't – don't remember. It – I would have maybe had a spare magazine.

There's a reference somewhere in the materials, maybe more than one reference about – talking about two AR-15 magazines. So you'd take only one spare AR-15 magazine. Is that your standard practice?---I would say, yeah. Unless - - -

So you have about - - - ?---Yeah unless I had a vest, then I'd maybe have a couple more, but yeah. I can't remember.

Okay, so you've got a bit under 60 AR-15 rounds, and about 45 Glock rounds, okay. And – and just so people understand what an AR-15 can do, it can kill somebody at about 500 metres, you'd agree with that?---Yeah.

We'll you're sounding uncertain. I'm not talking about how – how good a shot you are, I'm talking about - - - ?---If you - - -

- - - if you manage to hit the target, it can kill at 500 metres?---Yeah, even probably further than that if - - -

Okay, what would you say? How far?---Well I don't – I wouldn't know the specific, but I reckon it would be above 500 if you – yeah.

All right, and these AR-15's they're semi-automatics, is that right?---Correct.

And just for the benefit of people unfamiliar, an automatic rifle, or a machine gun, if you hold the trigger and keep it held, all the rounds come up through the magazine and go out through the barrel?---That's correct.

So you can shoot 30 or 60 rounds, depending on the weapon, 30 or 60 rounds in say - - - ?---Less than 10 seconds.

Yes. But the AR-15's a semi-automatic?---Correct, just like the Glock.

And would you agree that a semi-automatic can – the AR-15 semi-automatic, can shoot, if the shooter is trained well enough, approximately 45 rounds in a minute?---Yeah that's be achievable, yeah.

Yes, that's – as a trainer, you would say that's achievable? And especially if you're training policemen who are not your average punter, but someone who's focused on elite training?---Yes.

All right. And the velocity of a round from an AR-15 or an ArmaLite is about a kilometre a second. You agree with that? Well it – take it from me - - - ?---Okay I can it from you.

- - - that is the velocity, (inaudible) kilometres. But even if you don't know the exact specifications, that's about right, to your understanding?---Probably something like that.

Yes, all right. Now with regard to what you did on that day, and the AR-15. You've taken the AR-15 to Yuendumu?---Correct.

And can you just clarify why you did that?---To have it there in case we needed it. Like if it – if it become like a, you know a high risk situation for example. The – we needed to raise the level, depending on the situation. That way I had it there, rather than – because they don't have anything like that out there. They just have the standard weapons for a remote station, like a 308, 22, which was for small and large animal destruction. And they had – they would have a pump action shot gun for tactical purposes.

For what?---Tactical purposes.

Tactical, against human beings?---Correct.

Pump action shot gun?---Correct.

Twelve gauge?---Yes.

And by pump action, you mean you can shoot quite a lot of rounds quickly?---It's not as fast as a AR – AR-15 or a Glock, but you can, yeah. But it's limited with the amount of rounds. There's only four in the – four in the magazine tube, and yeah.

That wasn't clear to me. Four in the magazine and - - - ?---Tube, yeah. It's got a magazine tube, so capacity is four - - -

And how many in the barrel?---And then you could put one in the chamber, so five, yeah.

Okay. And a pump action 12-gauge shotgun, for instance, if you fired it at me from where you are, I would be absolutely dead for sure? Assuming you were a good shot?---Potentially, yeah.

Well not potentially. I mean there's no way I'd live - - - ?---Well depends.

- - - at this distance, with a 12-gauge pump action?---Well I've never – I've never used it on a person, so I wouldn't - - -

But you know it's capabilities don't you?---It probably wouldn't be good, no.

No. And so they're sitting out at Yuendumu. So they've got that there, and you said that a 22, just to explain to people, a 22 is a rifle with a relatively smaller round than the other weapons we've been talking about. Is that right?---That's correct, yeah.

Well a smaller round than the AR-15?---Yeah.

The AR-15 is a 5.56 mil round?---Correct.

Nato round. Much bigger than a 22 round?---Correct.

And capable of causing much more damage?---Correct.

For instance, if you shot me now, at this distance, with an AR-15, it would probably go straight through me and kill one or two other people, if they were lined up behind me? Correct? Well if it went through the flesh?---It – yeah, well if it went through the flesh and depends if – on the projectile you were using, whether it was hollow point or not.

Yes, well what do you use in IRT? What sort of projectiles?---I haven't been in there for like three years, so I'd have to go have a look, but I think they might be hollow points.

Yes, which are more - - -?---I can't confirm.

Hollow points are more lethal than other rounds, aren't they?---The greater stopping power, but they don't have - - -

What do you mean by "greater stopping power"?---Because they open up, they expand.

Yes?---But they don't have the penetration like a full metal jacket like the military use, for example.

So, by "greater stopping power", you mean that if you shot someone with an AR-15 hollow point round, when it entered the body, the round opens up and creates a very large cavity as the bullet exits from the body at the back?---If it exits, yes.

If it exits at all, okay. So, you said that Yuendumu Station had other weapons and they weren't good enough for your purposes, that's why you needed to AR-15. I just want to focus on what's at Yuendumu. There's 22 rifles.

MR READ: I don't think he said they weren't good enough. I don't think - - -

MR MCMAHON: Well, what did you mean when you said that?---No, no, so the 22 is used for animal destruction, because we use firearms for – to protect and also to lawfully destroy animals, so - - -

So, no police force would use a 22 rifle in dangerous situations they know (inaudible). Correct?---Correct. You wouldn't use it, you know, in a – you know.

But the 308, can you just explain to her Honour what that is?---So, that's a larger calibre rifle. It's bolt action rifle, just like the 22 we use. It's a Remington 700 rifle we use and that's for large animal destruction, like cattle, camel, horses, that sort of stuff.

And just to show people, the round it what six or eight – six – five, six centimetres' long?---Something like that, yeah.

Yes. And it's a heavy round when you hold it. It's heavy and weighty and feels – and it's a very - - -?---Yeah, I think the projectiles are either 165, 180 grain, yep.

And obviously enough if you can kill a wild animal like a wild bull or camel or something, it certainly can destroy a human being?---Yeah, but we don't use that rifle for tactical purposes. Not within – not the bush station rifles and things like that, no.

No. Well, it's not much use for tactical purposes, is it, because it's bolt action. You have to keep using the bolt to load each round in the chamber, right? It takes too long to do it?---Well, I think some police forces use it for – within their sniper - - -

Yes?---It will have like, you know, the - - -



Single shot long distance?---Correct, yes.

Yes. But that's not what you guys are up to is it?---No.

You're out at Yuendumu doing an arrest, a find somebody and arrest them. So, when you were Yuendumu Station, you carried out your AR-15, you personally had taken an AR-15, you'd chosen to do that when you were back in Alice Springs Station, and you know that at least one other person has, Constable Hawkings?---Yes.

And correct me if I'm wrong, but the status of your knowledge hasn't significantly changed from when you left Alice Springs Station to when you leave Yuendumu Station to head out to find Kumanjaji Walker. Correct?---Correct.

So, why did you not take the AR-15 with you when you left Yuendumu Station?---Because at that point, in my mind, it wasn't required from my perspective.

What changed? It sounded like, from what you've answered already, it was required when you left Alice Springs. It might be required?---Just in – I took it just in case the situation escalated.

All right?---Yep.

So, you didn't take it for the purposes of going to find and arrest Kumanjaji Walker. When you left Alice Springs, you did not take the AR-15 for the purpose of going to find and arrest Kumanjaji Walker. Is that correct?---That's right.

You took it in case something unexpected happened and it would be there in the vehicle or in the station safe?---Correct.

All right. And that's why you didn't take it with you when you left Yuendumu Station to go to House 577. Correct?---Correct.

But you will be aware, as everyone in this room is aware - - -?---Yep.

- - - that one of the other police officers did take his AR-15. Do you know why that was done?---The only thing – like I said, I think I said yesterday, someone asked me, you know, why he took that and the only thing – a logical reason I could think of was from the point of view that if, you know – this is for anyone, but anyone ran out with a weapon at a police officer and they were stumbling back, you know, struggling – like fell over, then that would be something you could engage with which is probably safer than a Glock over longer distance because of the accuracy. So, to protect – protect life, in that sense.

But you didn't need to take one for that reason?---No, I didn't, no.

And I know it's uncomfortable speaking against other police officers in the witness box, but you would agree with me, wouldn't you, that nobody needed to take an AR-

15 on that exercise when you left Yuendumu Station? That's plainly right, isn't it?---I don't know. I don't know, you'd have to ask that officer why he took it to clarify.

Yes, I know you don't want to give evidence which might embarrass another officer, in your judgment with your experience, you didn't need one, did you?---From what we dealt with, you know, it wasn't needed in that moment, no.

You didn't even need a Kevlar vest. You didn't take a Kevlar vest. You didn't take a Kevlar vest with you when you were going out to find Kumanjayi Walker, did you?---No, I did not.

And a Kevlar vest is something that you wear which provides a lot of protection in the case of weapons being used against you, yes?---Yeah, it covers your torso, yeah.

Yes. And you didn't take a Taser with you?---Nope.

You didn't take a helmet?---Nope.

So, no Taser, no helmet, no AR-15, but you were content to go out and do the job that you thought needed to be done. Correct?---Correct.

Which is the same sort of attitude, I'm talking about you only, not the other officers, just the same sort of attitude that you would employ if you were in Alice Springs going out to do a similar kind of operation. You wouldn't take an AR-15 with you. If you were given this job to go up to a suburb in Alice Springs for an arrest, you wouldn't have taken an AR-15?---Well, the policy around it has changed since that time.

Go back to that time?---No, you wouldn't, not unless they were in possession of a weapon, you know, like the job was not that high risk, but - - -

Based on the information you had and on the type of operation it was, you wouldn't have taken an AR-15 into Alice Springs. Correct?---Correct.

And you applied the same attitude for yourself in Yuendumu?---Yeah, well I was on the youth engagement, so we rode around on pushbikes.

I'm not talking about all that?---And so - - -

I'm talking about the decision that was made at the time at Yuendumu and if you're making the same kind of decision for the same kind of arrest in Alice Springs at that time, you would not have taken an AR-15. Correct?---Correct.

And if you were in Alice Springs at that time for the same kind of arrest, none of your team would have taken an AR-15, is that correct - - -?---You would have to ask them.

- - - at that time. So, they could have, in terms of policy, they could have?---You would - no you wouldn't do it, unless it was deemed to be a high risk, probably.

All right. Yesterday and today, you've made the expression – you've said the words, "Effectively, things have changed with the use of AR-15s." Can you just explain that to us?---Just around taking it when it's in possession – well, if visible to members of the public. So, when the weapon is visible to members of the public or potentially be seen, there's a requirement to put in a use of force.

Prior to taking the weapon out?---So, for – I'll give you an example. So, at the back of the police station here at Alice Springs, the car park's visible, the vehicles are visible from members of the public from outside of the boundary of the police station. Now, if I was to walk out of the back of the police station with the AR-15, carrying it in my hands to the vehicle, technically, that's visible to the public, so I would be required to submit a use of force.

Before or after?---After I've – at the end of that particular job or by the end of the day, it's a requirement by the end of shift, yep.

And as most – not everyone in the room knows that, at the end of the shift, if there's a use of force that has occurred, for instance, if you've been in a violent incident, you have to fill out a form called a "Use of force case note entry"?---Correct.

And I'm not – so, if someone swung punches at you and you blocked the punches, brought the person to ground and they got any injury, that necessitates a whole lot of paperwork, the use of force entry?---Yeah. Applied to any level of force, yep.

Any level of force? And there are many others. Unleashing a dog to bite somebody is another one, isn't it?---I think so, I'm not a dog handler, but I think - - -

Okay?--- - - - that is correct, yeah.

So, when did this change, because it may have some significance for what we're doing. In 2019, November, that obviously wasn't the rule that you had to submit a use of force case note entry if you were displaying an AR-15 in public. When did that change?---I don't know the date when that changed.

Just roughly?---I can't – I can't tell you, I'm sorry.

Okay?---I'm sure we could probably find out, but yeah.

I'm sure - someone is probably sending a message already. But was it explained to you why the rules changed about displaying AR-15's in public?---No, it was not.

What's the purpose of the rule as you understand it? I might summarise, just to be quicker. Is the idea that the public don't have to see police holding AR-15's if that can be avoided?---Probably just gets reviewed as to why. I didn't implement the policy around that, so.

All right, we'll leave it?---Yes.

Yesterday and today you used an example, which I must say I find a bit troubling, as to why you might need an AR-15 in an emergency situation, (inaudible) today given the example that perhaps not we're just stumbling and some one is charging at them and you need to use your AR-15 to protect the officer. Have I summarised that fairly?---Yeah.

So you're anticipating that your significantly further away than four metres?  
---Correct.

A well trained shooter such as yourself, using your Glock, could hit a person at approximately 20 - 25 metres? That's about the outer range of what you would be confident with, is that right?---Not - not in a - not in a - I wouldn't be able to shoot that person or, you know, that target, for example, within a short space of time from that distance accurately. That would - that would take time to, you know, aim and that sort of stuff, so - - -

Well that's what you were dealing with?---But from - from four metres - - -

Four metres - just point and shoot - we all get that.

So that's what I - that's what I'm referring to, so - - -

Yes?---Where an AR-15 has a scope on it.

If there's an officer over there - and I am just pointing in the distance - who has stumbled and there's someone running at them, for you to pull out an AR-15, lift it up from your - you usually hold with two hands, don't you?---That's right, it usually has a sling on it as well.

It has an AR-15 sling and you hold it with two hands as a matter of safety?  
---Control of it, yes.

And control?---Yes.

Yes, you would never walk around just hanging onto it with one hand, nonchalantly swinging it around, would you?---Dep - depend - - -

Do you ever walk around with an AR-15 with one hand holding the weapon?  
---Depends on where you are, like if you walk - if you - around the range, for example, in between shooting you not put the weapon down, you would just sling it down and you'd hold it with your left hand, for example - because I'm right-handed and then I would go and do my other tasks if I need to.

What if you're walking through a community, to houses with people - women and children?---You would keep it down in the guard position, generally.

"Guard position" means both hands?---But you're pointing down, yes.

Pointing down with both hands?---Correct.

And so I'm saying two hands, not one?---Yes.

You don't walk around amidst women and children, holding a rifle - an AR-15 with one hand?---Generally not.

There's no good reason for that? Correct? That you can think of?---That I can think of, yeah.

So this example that you're using, IRT officers go and do a lot of training at the range - extra training - and you might not have done it all but you've done a fair bit, correct? ---Correct.

And when you're doing it at the range you've got a target down the range - 200 metres probably, or something like that, is that correct?---No, not that far. Usually we only - we only practice - - -

I'm talking about the AR-15?---Yeah, we only - we only usually practice with that weapon at about maybe 12 metres.

An AR-15 at 12 metres?---When we're doing the drills with IRT, back in - you know, a few years ago. Now - now there's a requirement to do both a five metre and a 25 metre shoot.

With an AR-15?---Correct.

All right, so it's plain that using a Glock at five metres requires no more skill than any police officer would have and that using - do you agree with that?---Can you say that again please?

Using a Glock at five metres is pretty basic time isn't it - you don't have to be specialist trained to do that?---It does require some training.

Yes, you've got training but, everyone in the police force who is trained with a Glock has got training, they can use it for a five-metre shoot. Do you agree with that?

---To be operational, yes, they - - -

Yes, yes. In fact, is that the test? Is five metres the test?---Four, it is.

Okay?---And twelve.

So what I am getting at is - and I just want to be blunt with you, I think the example you used which you made on the run yesterday - I am not criticising you for it, no-one wants to be in the witness box being asked to create examples, but it's just - it's a kind of fantastical example isn't it. If there's a police officer who's stumbled and there's another person running at the police officer, for someone to bring up an

AR-15 to their eyes, sight it, take off the safety and hit a running target requires a great deal of skill, doesn't it?---It requires a level of skill, yes.

And I've read through everything I can on IRT trained to hit running targets with AR-15s?---No.

Yes, so the example that you gave is completely outside the training that we're talking about. I mean you personally may be able to do it but you don't expect it of your colleagues as a matter of certification and training, do you?---I expect them to be able to, you know, do their best to - protecting the life, but - - -

Sure, sure, you expect them to be able to hit a static target at certain distances but you don't expect them to be able to hit a running target with an AR-15 at the same - - -?---Well, it's not - it's not part of the training.

So the example that you gave yesterday - I am just trying to be quick, but thank you for the comment, Mr Edwardson.

If I am going too fast, make sure you stop me, all right? And that's before you - in a community such as Yuendumu, that's before you ask the question of who else might be in the line of danger if I am moving an AR-15 across - what - 45 or 90 degree arc, at high speed while someone is running five to 10 metres to an officer, you've got to assess every person in that distance up to a distance of at least 500 metres as to where the round might go. So it's not something you would ever really do, is it? ---We have to conduct a risk assessment to ensure that, you know, you're within a safe direction.

All right?---That was just a hypothetical situation, so - - -

Yes, I'm not criticising you for making a hypothetical under pressure in the witness box, I'm just saying it doesn't stand much of balances, does it?---Well maybe - maybe that person is running in a straight line from your direction. You know, and you're just putting the hypothetical that they're running sideways to me - - -

In which case - in which case (inaudible) - - -?--- - - - but potentially maybe they're not. So I mean, it's just the hypothetical situation, so - - -

If they were running in a straight line to a police officer and you were in the same straight line you could not use your AR-15 because you run the risk of killing both the person and the officer?---That would be a risk, yes.

A very high-risk, wouldn't it? Especially at 5 or 12 metres?---This is all the risk assessment you have to make.

Yeah?---Yep, in the moment.

While we're talking about risk assessment - and on this case, knowing what you knew when you left Alice Springs and knowing what you knew when you left

Yuendumu Police Station, it was quite unrealistic to expect that you would have to shoot Kumanjayi Walker as he ran off and ran away. So if he was fleeing target running into the bush, in an arrest situation?---Yep.

And that itself is not a particularly unusual circumstance, you'd agree with that?  
---That's correct.

You would not raise your AR-15 to take him down and shoot him and kill him just because he was within range and it was a safe shot?---No, you would not.

Nothing in this whole scenario presents the likelihood or even the remote likelihood of that happening, does it?---No.

Just one quick final point if I may. There's been a fair bit of talk about your - not necessarily in this court but in the papers that we had and some of the answers you gave about our training in martial arts and correct me if I'm wrong, but you've trained in martial arts for a significant period of your adult life?---Yeah, there's - yes, it's been on and off, yes.

More than 10 years training I think you've said in evidence, in the past, correct?  
---Correct.

And you've trained in Wing Chun Kung Fu, correct?---A little bit, yes.

Jiu jitsu?---Yep.

And Aikido?---Yes.

So all martial arts - - -?---And the Aboriginal martial art Ramindjeri.

Aboriginal martial art, which - I don't know anything about. Is it a close form of martial art?---Yep.

So like the others, Aikido is all about using someone else's energy to restrain them, yes?---Yes.

Jiu Jitsu is particularly known for its specialist holds and restraining people. And Wing Chun King Fu is managing attacking at a very close combat. And so all of those are very well suited for the sort of work you might have to do in a hand-on physical arrest?---Yes. But unlike - like I said yesterday, you can't - you can't use techniques that are not taught within the police so you have to - but some of them are pretty much very similar in the sense, so you have to - you can't step out the boundaries of what you get taught.

Sure, because within the martial arts there are - the one's we've just discussed, there are moves you can do which are unacceptably dangerous and potentially lethal?---Of course.

But within the range of your police work, Ms Dwyer took – Dr Dwyer took you to – and I won't play the video either, it's too distressing, but at the moment, in which the shooting occurred, you've come in behind Mr Walker?---Yeah.

You've got one arm over him, and you're in the process of restraining him?---Yeah.

You've taken him down to the ground?---Correct.

Correct?---Correct.

And to summarise, a lot of evidence, you've – you're bigger, you're heavier, you've got a lot of skill, and you're behind him, which gives you all of the advantages, correct?---Correct.

In addition to your many years of training. When you bring him down, you've got him – you're in the process of containing him, and trapping him, correct?---Correct.

If shots had not been fired, you would have been confident that you would never the less have him contained and restrained within a second or so?---That's a hypothetical situation that it's hard to determine what would have happen. Because it didn't happen like that.

No, well your previous summary of it in another court, was he wasn't going anywhere?---After he was on the ground?

Yes?---Yeah.

And you put him on the ground?---Yep, but that was after he was already shot once, yep.

But he's on – but you were putting him on the ground anyway?---Well hopefully that would have happened, yeah.

And it maybe a hypothetical you're not prepared to answer, but if he hadn't been shot, that first shot, are you able to say that you would competently have got him on the ground and restrained him in the next second or two anyway?---I can't – I can't say, yeah. That was what my goal was, after I determined that he had some sort of weapon in his right hand, but yeah, but that was – it's hard to say what would have happened. You know, maybe that was the determining factor, after the first shot was fired, as to my ability to get him down. I don't know. Because as it – as you know, or have heard in the past, adrenalin – adrenalin makes people extraordinarily strong. There's report of an elderly lady, 70 years old threw a security guard across the room, which she's a lot smaller than him, so.

But precisely because of what you said, it's unknowable now whether the first shot in fact had any effect on the energy being extended by the – by Mr Walker?---We're not sure, yeah.



All right. Just going back, and finally, to the police station. Just to clarify something. You said you were walking around the police station with Mr Hawkings at the end of the day, pardon me, after the shooting, back at the police station. Into the next day, you're doing patrolling, is that – have I understood that correctly?---Yeah, I think this was after – after the – we've been to the airstrip the first time, and we've come back.

Yes?---And then there was other officers inside, so before that we were sort of stationed inside the police station. If that makes sense.

Yes. So you're – now I'm just clarifying this business about patrolling. As I understood the evidence that you gave yesterday, you said briefly yesterday that you spoke with Mr Hawkings briefly about the incident at the House 511, is that right?---Yes so this was then – yeah, so we were having a conversation while we're walking around the rear of the police compound, yeah.

Okay, can you just tell us what was said about the incident at 511, when you were in that walk?---I think I said it yesterday, but I think it was, this is what I experienced and explained my interaction. And then he explained where he was outside the house. He heard a gunshot, come to the doorway and then saw Zach come over the top, what he believed to be coming over the top and fire two more shots. That's basically, you know, the gist of what – kind of what we were talking about. So we had different viewpoints and yeah.

Well what's the difference? What's the different viewpoint? That's what I'm asking you?---Well he – well it's also more of your mental health. So this is what your experience in you know, this emotional part of your brain, and so you speak about it so – so it responds to your logical part of your brain, so it helps cope with the stress.

What did you say to Mr Hawkings about the incident?---Just spoke about where I was. I – this is where I was, and then as we were arresting him, he moved off the wall. Zach disappeared, and then basically went through the motion. I – I initially didn't think it was a gunshot, until I saw the blood, and then realised that he had been shot, and you know that sort of stuff. So we were just going through a little bit about that – what happened in that room, yeah. I can't remember specifics, because it was such a long time ago, but yeah, that's basically what we were kind of like discussing.

Did either of you express an opinion about the shooting happening at all?---I can't recall.

I see the time, your Honour, I've - - -

THE CORONER: How many hands-on arrests approximately have you done?---I don't – I can't say, for sure, your Honour.

Ten's, 20's, 50?---May be like between 20 and 50 maybe.

And how many people have got away?---Not many, because I can run okay.

MR MCMAHON: I've got nothing else, your Honour.

THE CORONER: Mr Edwardson.

MR EDWARDSON SC: Thank you, your Honour, I'll just grab a lectern if I may.

THE CORONER: Sure, are you okay to do it from that position, or - - -

MR EDWARDSON: No, I can move, yes, yes.

THE CORONER: - - - would you like to - - -

XXN BY MR EDWARDSON:

MR EDWARDSON: I want to start if I can, just by running through the training that you've had in terms of cultural competencies, and so on. And I don't want to repeat everything that's been said, so I'll give you a few dot points of key matters that were raised yesterday in your evidence. When you were in South Australia, you told Dr Dwyer that you were trained in cultural competency, in the context of being a South Australian police officer?---Correct.

You told us about how you developed a friendship with a neighbour, and Indigenous neighbour, and how he taught you what you call Ramindjeri Arts – martial arts?---Correct, yep.

And he became a very close, if not, best friend?---Correct.

And you trained regularly together?---Correct.

And he taught you a great deal, did he not, about cultural respect?---He did.

And that's something, and a concept which you embraced?---I did.

And have continued to embrace, and build upon, since becoming a police officer in the Northern Territory?---Correct.

As you told Dr Dwyer, it was an extremely meaningful relationship?---Definitely, yes.

You gave examples of cultural respect, by saying that you show respect to country when you travel and work in another area?---Correct.

You said you asked permission to walk on their land?---Correct.

You said you seek out the Elders of the area, and it shows respect?---Correct.

And they tell you where you can and can't walk?---Correct.

They also explain, you know, cultural areas, so you've told us?---Correct.

And you also told us that they tell you stories and things?---Correct.

Now that was an understanding that you had, and a rich, can I suggest, appreciation of it, even before you became a Northern Territory police officer?---Correct.

So it would follow, that when you started as a Northern Territory police officer, you had an intimate knowledge of the boundaries of mixing within the community, and conducting yourself as a police officer?---Correct.

Now as a police officer, both in South Australia, and perhaps more relevantly in the Northern Territory, have you been exposed to criminal activity by members of – within the communities?---Yes I have.

Apparently, they can't hear me. I do move around a bit. I'm sorry I'll try and – I'll try in a different spot. Is that better?

All right, so obviously, as a police officer, it's extremely important that you respect the community, in so far as you're able, when you're performing your duties as a police officer?---Correct.

But would it also follow, that there are occasions where that sort of respect is simply not possible?---Definitely.

And that of course depends upon the circumstances?---Yeah, well I mean if someone's committing an offence, regardless if they're within a community, we've got a job to do, and we need to arrest them if – you know, in the last resort if that – if there's no other option.

Now, one of the issues that's become very alive and important to the Coroner, and something which, as I understand it, you were not aware of when you were deployed by Sergeant Frost at 7:05 pm with the other members of the IRT on 9 November 2019, was the possibility that Kumanjayi Walker might be attending a funeral. You didn't know that at that time?---No, I did not.

Nor did you know, nor did she brief you, on the fact that he'd been given multiple opportunities to surrender himself through senior members of the community?---No, I was not.

You were aware, however, as I understand it from the initial briefing that occurred with Sergeant McCormack, I think it was?---Yes.

You were aware that the mission on this occasion was to find him and arrest him?---Correct.

At that point in time, you knew that there was a warrant out for his arrest?---Yes.

You knew that he was to be also charged for subsequent offending arising from what we've been calling the "axe incident"?---That's correct.

And you had seen that footage, that confronting footage, can I suggest, on video before you departed the Alice Springs Police Station and attended at Yuendumu?---That's correct, yep.

At that stage, you weren't aware of his prior criminal history?---No, I was not.

You didn't know, for example, the extent to which he might have committed violent acts or offences?---No.

So, all you really knew was, there's a warrant for his arrest, you knew about the axe incident, that it was the axe incident which informed you, as I understand you evidence yesterday, that he was a flight risk in the sense that he was likely to decamp?---Yes.

There was a real possibility that if given the opportunity, he might arm himself with a lethal weapon?---That's correct.

And it was always the live possibility in those circumstances of his deploying that weapon is that situation arose?---Yes.

And so, it's against that background that you departed ultimately at 7:05 pm with the other members of the IRT and Mr Donaldson, who was the dog man?---Correct.

Now, I want to ask you a little bit about a warrant and general orders. You understand what general orders are?---I do.

General orders are orders which are promulgated by the Commissioner of Police?---Correct.

And they require police to perform their duties in a particular way?---That's correct.

Are you familiar, and I'll show you a copy of this general order, if I may.

Your Honour, I've got a copy for you and counsel assisting and a few copies for the others. If I could hand them up to you.

THE CORONER: Thank you.

MR EDWARDSON: Thank you. (inaudible).

I want to direct your attention to general order W1, which was gazetted or came into effect on 1 March 2003 and you will see that there's general orders dealing specifically with warrants. Do you see that?---Number three is it, did you say?

No, I'm saying it's general order W1?---Yep, yes.

It took effect from 1 March 2003 and it deals specifically with arrest pursuant to a warrant amongst other things?---Correct.

And you will see it in par 2.1, "Warrants of arrest are generally issued for the apprehension of persons accused or suspected of serious crimes --"?---Correct.

And a bit further down, "or may issue a warrant for the defendant's apprehension in the first instance. In most cases of serious offences, a warrant will probably be issued at once." Do you understand that?---Yes.

And you understood about – you might not have read this and kept it by your bedside table, but you certainly understood that this general order existed?---Yes.

And you understood, didn't you, the importance of you complying with that general order, as you do with any other general order?---Yes.

I want to direct your attention to par 9.1, please, of the general order and you will see that there's a heading, "Withholding execution". Do you see that?---Yes.

"A member must not withhold execution of any warrant because of personal consideration for a defendant." Do you see that?---Yes.

That would apply, would it not, that general order, to Kumanjayi Walker in the circumstances of your deployment and arrest, because you knew that there was a warrant out for his arrest?---Yes.

Consistent with that general order, you were not to consider personal circumstances of him?---Correct.

You were to apprehend him as soon as you were able?---Yes.

And that's what you did on this occasion?---Yes.

Or attempted to, I should say?---Yep.

All right. I want to take you a little bit further, if I can. Yesterday, Mr Boe asked you some questions about sorry business and a funeral, showing respect and so on, and I think you gave an example of where you had been put in a position where you had to arrest the offender despite the fact that sorry business was ongoing?---Correct.

And you did that because the offender needed to be apprehended?---Yes.

And whilst there might be some cultural respect, sentiment and understanding, if not empathy, for members of the community in circumstances of sorry business, sometimes police business must override that consideration?---Correct.

For example, as this general order makes absolutely plain, personal circumstances

of the defendant are not to be considered when you're arresting a person - - -

THE CORONER: It's not for personal circumstances, it's personal consideration - - -

MR EDWARDSON: Consideration, sorry, my apologies.

THE CORONER: - - - for a defendant, which I think is a slightly different concept.

MR EDWARDSON: You're quite right, your Honour. Personal consideration of the defendant. In other words, his desire for example to attend a funeral would not override your obligations, as you understand this general order, to arrest him?---Correct.

All right. Now, I want to ask you a little bit more about the fluid nature and what we've called "risk assessment". Do you remember, you were asked a series of questions about risk assessment, whether a risk assessment had been conducted?---Correct.

And you said that you have to be fluid?---Yes.

Now, we know that the arrest plan which was ultimately sent to you by email, but which you never sighted until many months' later, was never handed to you by Sergeant Frost at Yuendumu Police Station?---That's correct.

Nor did she specifically bring it to your attention in the eight or nine minutes that you were present at the police station?---Correct.

And as I understand your evidence, there was no discussion at all or direction by her that he was, that's Kumanjayi Walker, was not to be arrested until 5 am in the morning, the following morning?---No, I wasn't, no.

You knew nothing about being deployed, or not being deployed, until 11 pm that night?---No, I knew nothing of that, no.

What you did know, and the extent to which you knew it was that Sergeant Frost was the officer in charge of the Yuendumu Police Station?---Correct.

She was effectively your senior officer?---She was.

And she was the person that ultimately deployed the four members of the IRT, including yourself and the dog handler, Donaldson?---Correct.

Now, the mission was to arrest Kumanjayi Walker. You knew that if you came upon him, not only consistent with this general order, but also by virtue of the warrant for apprehension and what you'd been told by McCormack and in turn, Frost, that he was to be arrested and that's what you were going to do?---Yes.

It's clear, isn't it, that at least when you departed with the other members, you had no

idea where Kumanjayi Walker was in fact going to be?---No.

What you did know was that the last time you'd been seen was at House 577?---Yep, hence we – that's why we went there first.

Right, And that's where the axe incident occurred?---Correct.

So, you went with the other members directly to that location?---Yes.

I want to talk a little bit more generally, if I can, about policing. Obviously, if you've got a flight risk and he fell into that category because of what happened, he'd run off and decamped before. But it doesn't have to be him, it could be anybody, covert activity, the element of surprise, might be important?---Yes.

As soon as you, as a police officer in full uniform, let alone with some members holding long-arms go into the community, inevitably, it's going to run through the community like wildfire?---Yes.

And so, as a police officer with some experience and training, you would understand that as soon as you were identified as police officers, let alone talking to members of the community saying, we want to arrest – or we're here to arrest Kumanjayi Walker, there's a real chance that he'd be tipped off?---Yes.

That he might flee and the opportunity's lost?---Yes.

So, that's an example, is it not, of you having to be fluid in assessing, at all relevant times, intelligence or information that comes to the police officers responsible for this arrest?---Yes, 100 percent.

What do you understand by "intelligence gathering"?---Speaking to people, obtaining information is pertinent to our mission.

Intelligence gathering is sort of 101 policing, is it not?---It is.

And it doesn't matter whether you're in the community, dealing with Indigenous members, or whether you're dealing with somebody else in Alice Springs. It's the same process?---Yes.

You talk to people to try and get a lead, particularly if you're going to try and arrest somebody and you don't know where they are?---Correct.

And that's what happened here, isn't it?---It was.

You go, effectively, to House 577, and what we now know, to cut to the chase, is that information was provided to police, that you'd missed him only by minutes?---Yep.

And that he was likely to be at two other houses. One of which we now know was House 511?---Yep.

So armed with that intelligence, which had been gathered by police, consistent with your training, you then move to the next location?---We did.

Now a risk assessment, you said we – we conducted this assessment on an ongoing basis. And much has been made, of example, of long arms, what their capability is, all that sort of thing. Every arrest situation turns on its facts, does it not?---It does.

And indeed, it may be, and as it happened in this particular case, you're in very close proximity of Kumanjaya Walker when he produces a concealed, potentially, lethal weapon?---Yes, that's right.

A pair of surgical scissors?---Yes.

A weapon that fell within your training, as being an edged weapon?---Correct.

Within your training, potentially lethal?---Definitely.

Your training tells you also, that you are entitled to protect yourself, in those circumstances?---Correct.

Now you were asked a series of questions a moment ago, about what may or may not have happened, after the first shot. And whether you could have, as it were, apprehended him or controlled him, without the necessity for example, of the second and third shots. That was in effect what was being put to you. And your response was, well look that's hypothetical. And that must be so must it not?---Correct.

Because what we do know, is that when you were grappling with Kumanjaya Walker on that bed, he was armed with a pair of scissors?---He was.

He was being – he was not – he was resisting at all relevant times?---Yes.

He was deploying the scissors, as we now know?---Yes.

And we also know that even after the second and third shots, he continued to resist?---Yes.

And you told him, to stop mucking around, or even more inflammatory colourful language than that?---Yes.

And it actually took quite some time, even after the second and third shots, before you were able to restrain him?---To handcuff him in the – yep.

Handcuff him and remove the scissors from his hands?---Correct.

Again, consistent entirely with your training?---Correct.



In other words, you have to secure him. You have to handcuff him. You have to remove the weapon, before anything further can be done?---Correct.

Right. Now moving back to cultural sensitivity, and your understanding of it. You have told us that there's a way in which you speak to members of the community, out of respect?---Yes.

And leaving aside the remark that you made about the may be somebody shouldn't be deploying an axe, that flippant if I can suggest, remark that should never have been made?---Yes.

Which you retracted and apologised for. Leaving that aside, did you ever see any member of the recruit training unit, on that day, when in the community, say or do anything which you regarded as being culturally insensitive?---Do you mean the IRT members?

Yes?---No.

Sorry, (inaudible), my apologies?---Yes.

The IRT?---No.

I want to ask you a few questions about Zachary Rolfe. At any stage, when you were in his presence, did you see or hear him say or do anything, which appeared to be racially motivated?---No I did not.

Did you see him say or do anything, which was consistent with a lack of respect to members of the community?---No it was quite the opposite actually.

When you say it was quite the opposite, what do you mean?---He was polite and courteous. Spoke to people with respect, as you would want a police officer to speak to your family, or, you know, yeah.

At any time, did you see – have you ever heard him, leaving aside this particular day, say or do anything, which suggested that he had some particular racial vendetta to members of the Indigenous community?---No, nothing at all.

Or in fact, any of the other members of the IRT?---No.

I want to turn now if I can, to the occasion where you were in the – is it Alpara?---Alpara, yes.

You told us that after the committal, at that stage, I think, you were working in that community?---Correct.

And it's a community which is approximately 250 kilometres north east of Alice Springs?---Correct.

It's a remote community?---It is.

Does it have similar sort of – sorry, I'll start again. Is the only occasion that you'd been to Yuendumu, the occasion of the shooting?---I went there one other time, but only to the airstrip, so I hadn't actually been into the community.

So are we to understand that you'd had very limited, if not zero, direct involvement with members of the Yuendumu Community?---Correct.

Are they, so I can – or we can understand it, indeed the Coroner can understand, if she doesn't already, are there any parallels that one can draw between the Yuendumu Community and say the Alpara Community?---Yeah there's some people within – well we call it Utopia, Utopia Homelands, there are people there that are from the Warlpiri background. So they're Warlpiri people. Direct links to people in Yuendumu.

Right?---So there are people there from – from that area, yeah.

Do both communities, and again, please if you don't know about the Yuendumu Community say, but certainly from the Alpara Community, are there problems within the community from time to time?---Yes.

Issues of violence?---Yes.

Domestic violence?---Yes.

Weapons?---Yes.

Police officers potentially put at risk?---Yes.

Is that a quite frequent occurrence, or an occurrence that police have to be regularly aware of?---Yes.

Now you chose, on the occasion of 9 November 2019, to not take with you one of the long arm weapons?---From the police station?

From the police station?---Yes.

And you said, and you've acknowledged you didn't have a vest, and you didn't have Taser, but you certainly had your Glock, didn't you?---I did.

Now again, one of the live issues for the consideration in this – of the Coroner in this inquest, is whether police should have weapons, their weapons, in communities – in Indigenous communities. And we know now, that unlike perhaps some police officers, you have a much wider and extended empathy, understanding of cultural sensitivities?---Yes.

And you've worked in the communities for some time, and you love, for example, working with Alpara?---Yes.

I ask you this then, in those circumstances, what's your view on police officers carrying a Glock, for example, whilst in the community?---Well I think that's part of our kit, and I, whilst out there in Alpara, there was a large disturbance where I had to draw my firearm and – at several members of the community, to stop them from viciously assaulting someone with a – with a weapon.

And when did that happen?---That would have been the sports carnival in Alpara last year.

So would it be fair to say, that it is really quite unrealistic to think of police, within the community, without having a weapon, when and if necessary?---Yes.

So is it your opinion, and you're not just a police officer, you're now a weapons instructor are you not?---I am.

Is it your opinion, that that is an essential part of the kit?---Definitely.

Of a police officer?---Yes.

Regardless of whether the policing is within the Indigenous community?---Yes, that's correct.

In other words, it's part and parcel of policing, day in, day out, wherever you might be working?---That is correct.

Have you ever experienced, as a police officer in the Northern Territory, to notion that the use of force, or the motivation for the use of force, was driven by some sort of racial motivation?---No.

Is that a sentiment that you've ever experienced?---No.

I want to ask you a little bit about, again, after the committal, you've told us that you went into Alpara, and you decided you would engage with the community, given that you have been one of the participants involved in the tragic death of Kumanjaji Walker?---Yes.

And so they knew, or you told them, that you were involved in that incident?---Yes.

And you were seeking to give them an understanding of how and why it ,happened?--Yes.

So you must have told them about the circumstances that led up to the shooting incident itself?---Yes.

For example, otherwise they wouldn't understand the complexity of it, are we to understand that you would have conveyed what you knew, I'll start with the axe incident?---Yes, that was – that was something I explained to them.

And while I'm on the axe incident, and of course every police officer's different, and you were very careful, so you know, I was expressing my opinion, having looked at the video. What was the actual opinion that you expressed when you first saw that axe incident?---I was surprised that the members didn't use their firearm.

When you say "Use their firearm", potentially discharge it?---Potentially, yes.

And that would have been consistent with the training that you've received?---Yes.

All right, now back to Alpara, at this meeting. You told the members of the community about the axe incident?---Yes.

Presumably so that you could convey to them why there was not only a warrant for his apprehension but also why he was going to be charged with this very serious offence?---Yes.

Did you also convey that he was very lucky that he wasn't shot on that occasion? ---Yes, I did.

And so they understood that too?---They understood the seriousness of the incident, yes.

And how was that received by the community? That is, when you were explaining to them what happened?---Well, during the concept they were quiet and wanted me - waited till I'd finished my story - the whole thing and then they deliberated about what actually to say - - -

I'll come to that in a minute - I am sorry - I will come to that in a minute. First of all, can you tell us how many were present?---There was two occasions, so I did two meetings. So the first one there would've maybe been maybe 100 and there would've been maybe 150 or something at the second time.

And where was it held?---So the first one was the Alpara Council office and the second time was in the basketball court within the Ampilatwatja community.

Were there any other police officers present?---The second one there was. I can't recall the first - first time.

How did you get it out to the community that that's what you were going to do and why?---Yes. I spoke to - I believe they were having a meeting in Alpara anyway, a council meeting so I asked if I could talk, I wanted to tell my story of what happened and they gave me an opportunity and then the second time I asked for a community meeting and speaking to the Elders and they gathered everyone down to the basketball court.

Out of interest, what were you wearing. Were you in uniform?---I was in my uniform, yes.

Did you have your Glock?---I did.

And you had your Glock with you when you were giving this discussion?---Correct, yes.

Did you have a microphone?---No.

No, all right. Anyway, you've told us how you'd explained to them - was this was at the first meeting - what I call the "axe incident"?---Yes.

The warrant of apprehension?---Yes.

The fact that he was going to be charged with two further offences arising from that incident?---Yes.

And we know - and it's well documented that of course unbeknown to you and Constable Rolfe, Kumanjayi had secreted in his pocket this pair of scissors which he deployed initially and stabbed Rolfe?---Yes.

And then was seeking to deploy it against you, that's the background of the whole case?---Yes.

What did you say to the members of the community about the circumstances of this shooting - the catalyst for it - how it happened?---I simply - I walked through the moment where I engaged with him in the - this is in the house - I engaged with him in there, was asking his name, just walked through the whole process. He gave me a different name, and then - - -

That was Bernard Dixon, wasn't it?---Bernard Dixon(?), correct.

Which was a false name of course?---Correct. And then Zach moved him over to the wall where he used the phone to gather a likeness picture and then after he was - we established that this was him, Zach informed him he was under arrest, "Put your hands behind your back" a struggle ensued and then Zach disengaged and that was the moment that he as stabbed in the shoulder with the scissors and then basically I basically walked through the process - I don't know if you want to - me to say it.

No, no, we don't need to go through the whole process again?---Yes. Yes.

What I am trying to understand and I want, hopefully, the Coroner to understand is, did you take these members of the community in through - almost frame by frame if you like?---I did, and also after the fact, back at the police station when we were rendering first aid and, you know, through that process as well.

Your Honour, is that a convenient time for a break?

THE CORONER: It is.

We will adjourn for the break.

WITNESS WITHDREW

ADJOURNED

## RESUMED

### ADRIAN EBERL:

MR EDWARDSON: Constable, I just want to go back if I can to complete the sequence of events at the Alpara community when you explained to them how this tragic incident had occurred?---Yes.

You told her Honour that there were two separate occasions where you - one was the second occasion was when you called for a community meeting?---Correct.

You told us before the break that you went through the sequence of events that gave rise to this shooting incident?---Correct.

How it had happened, including the lead-up. Did all of that happen on the first occasion or was it a mixture of first and second?---For both - yes, they were separate - separate, so I ran through everything in the first one and then I ran through it in the second one was well.

So you did it - you repeated it twice?---I did.

So that it would, I assume, reach a wider representation of the community?  
---Yes, so Ampilatwatja is outside the Utopia Homeland so Ampilatwatja community comprises of up to 600 people within that one community and it's sort of condensed and there's a couple of little outstations where Utopia Homelands is spread out into various little outstations, yes.

At any stage on either of those two occasions where you described to those who were present how this incident had occurred, did you in any way suggest that somehow Zachary Rolfe was at fault?---No.

How did the community - or the members of the community on each occasion, receive your explanation for how this incident had unfolded?---They asked a couple of different times. The first one they sort of didn't - didn't ask that many questions and then when I came in after they deliberated, they were happy with me in the sense that - of my interactions in the involvement in there and they shook my hands.

Did they welcome your explanation?---Yes, yes. Yes. So - and the second occasion as well, they respected obviously my explanation and they - that's when they put in a couple of - you know, they wanted - they wanted us to do certain things when we look for them because obviously they don't want that sort of thing to happen in their community and so they asked, you know, "Can you approach an Elder when you - - -"

Well, I will come to that in a moment?---Yes.

That's the specific - you touched on this yesterday?---Yes, correct.

The specific request that they made of you?---Yes.

In the hope that that might avoid repetition of this incident? As I understand it?  
---Correct, yes.

What I want to ask you about is they obviously respected the fact that you had - so I'll start - the two occasions that you had these meetings occurred after the committal hearing?---Correct.

I think it's fair to say, is it not, that before the committal there was a great deal of publicity was misinform - misinformation and all sorts of errors?---Correct.

It clearly did not represent that facts that had occurred?---Correct.

And so, against that background was it important that you've - to explain to the community what, in fact, had happened and what had been the catalyst for this tragic shooting?---I think on the side I think that was one of the reasons because there was - there was a member within the community, he was a stakeholder, so not from there originally and he was - I heard that he was spreading some negative rumours about it and obviously didn't know the correct story. So that was another reason that was helpful I think.

So it was important that you conveyed to that community what had, in truth, happened?---Correct.

As opposed to rumour, innuendo and false allegations?---Definitely, yes.

And did they seem to welcome the fact that they had actually been told what had happened?---Yes.

Now, one of the things that they discussed with you - when I say "they" - senior members of the community, was the ways in which this incident could be avoided a repetition of?---Yes.

And I think the example you gave yesterday and you touched on it a moment ago, was the idea that nominated and identified particular Elders that could be spoken to in the hope that they would then, as it were, seek out and find the person that needed to be apprehended and hand him over, as it were, or facilitate the handing over, to avoid this sort of confrontation?---Yes, well direct - direct me to - if it was a young fellow, their parents, for example and then speak to the parents and then they would facilitate you know, handing over their son in a peaceful manner, yes.

Did you have any understanding at all of the extent to which Julie Frost, for example, had attempted to engage Elders within the Yuendumu community to have Kumanjaji Walker hand himself in - before the shooting incident?---No.

Had you come to understand more about what had happened, even though you weren't aware of it at the time of the shooting?---Yes.



And is that similar sort of approach - a hopeful approach at least - that if the members - the Elders can make sure that the individual who is to be apprehended, forget Kumanjayi Walker for a minute - anybody - is to be apprehended, hands themselves in and of course that results in a peaceful solution?---Yes.

Your experience within communities would tell you this much though, would it not, that that's not always possible?---No.

There are some who simply do not comply with Elders?---No, that's right. We at least try that in the first instance, to gain that, but if you're not getting the result or they're not really - they're hiding them away and, you know, and you're hearing that they are in community from other community members, then you have to go about it a more direct way to try and find them.

And is it your experience that on occasions members of the community - member within the community - do try and hide offenders away?---Correct.

And that can be a problem from a police perspective?---Correct.

I want to turn back now if I can to a couple of matters - I am nearly finished - a couple of matters that you touched on yesterday. One of the questions that was asked by Dr Dwyer was who was the team leader, you might remember that line of questioning?---Correct.

At no stage did Zachary Rolfe actually nominate himself as a team leader?  
---He did not.

Nor did anybody suggest to you that he was the team leader?---They did not.

As I understand the extent of your evidence yesterday, was this. You knew that by the time you got to the Alice Springs Police Station McCormack - Shane McCormack told you that the target was Kumanjayi Walker and the mission was to find him and arrest him?---Yes.

And by that stage you had an understanding that Zachary Rolfe had been briefed in part by Shane McCormack?---Yes.

In other words he'd been given some information about this mission?---Yes.

And it was against that background that Zachary Rolfe spoke to you?---Yes, so he said, "Go over there and speak to Zach, he's got some details about what you're doing."

And it was in that context I think that Zachary Rolfe, in the presence of other members of the IRT, played the axe incident?---Correct.

Which was the background to your departure from Alice Springs to Yuendumu?

---Yes, that's right.

And then when you get to Yuendumu you're only at the Yuendumu Police Station for, I think it was about - somebody will correct me - about nine minutes - a very short period of time?---Yes.

Before you were deployed by Sergeant Frost at 7:05 pm?---Yes.

And we don't need to traverse that again. Excuse me a moment, your Honour. I am going to ask you about the description that you gave of Zachary Rolfe - sorry, before I get there - you were asked this question at page 1760 by Dr Dwyer:

"Did you think this job, in terms of the arrest of Kumanjaji as either a green role or a black role" and you said "No."

"Why not?---Because it wasn't designated, we weren't operating to that level. To me it was just a general search for an arrest target and arrest him, something that a general duties officer might do."

THE WITNESS: Correct.

MR EDWARDSON: I just want to unscramble that if I can?---Yes.

The IRT - the members of the IRT can be deployed in two different ways. On this occasion general duties but the team was made up of IRT members?---Yes.

Or it could be categorised as high-risk?---Yes.

And in the normal course, as I understand the function of the IRT as it existed back then, if it's a high risk deployment, you "cordon and contain" is the practice, that's the training - - -?---Yes.

- - - until the TRG arrive?---Correct.

This was not one of those missions?---No.

It hadn't reached that level?---Yes.

And in terms of general duties, forget the fact that for a moment you are, as it happens, all members of the IRT, which gave you each an elevated level of experience and expertise, but leaving that aside, when one deals with general duties as a police officer, would it be the normal course of have a true arrest plan in circumstances where you're looking for somebody to be arrested?---No.

No. Is it no more than, we'll see what intelligence we can get, we'll find out where they are and then we'll apprehend him?---Correct.

And in this case, when you entered the house first, followed by Zachary Rolfe, that's

House 511, you told us that you didn't know – you didn't identify him, or you weren't able to, as it were, ID him when you first saw him, but you had a suspicion that it was likely to be Kumanjayi Walker?---Yes.

Which turned out to be correct?---Yes.

At no stage did he indicate to you anything to suggest that he was armed?---No.

In fact, quite the opposite, as we know, the scissors were secreted in his pocket?---Yes.

Which we now know. Many questions have been asked about what could or would have happened if things had been different and framed in terms of hindsight. Now, hindsight is a wonderful thing?---Yes.

We can all look back and learn from an experience. But in this particular case, with the information that you have, was that anything that you did or the other members of the IRT did, given the limited information that you had, as you understand it, that was inconsistent with the way that you'd been trained?---No.

Or how you would normally go about your business of identifying a target and arresting him?---No.

Was it perfectly consistent with what you would do, day in/day out as a police officer, regardless of whether it was an Indigenous defendant?---Yes.

Regardless of whether the arrest would take place within the community?---Yes.

Whether it would happen, for example, in Alice Springs?---Exactly the same.

All right. Now, yesterday, you were also asked this at page 1761, you said, "I don't know Zachary Rolfe or didn't know him well."?---Yes.

And then you said this, "I think everyone sort of knew, you know, of him because he was a pretty proactive sort of a police officer." And then you were asked, "What do you mean by that?" And you said, "He was energetic and you know, was happy to look for arrest targets and you know, you see people in the police who are proactive and energetic people, and are a little bit sort of relaxed and sort of – a little bit complacent, I guess, at times." And then you went on to say, "We were a proactive team ourselves"?---Yes.

That description that you attributed to Zachary Rolfe, was not a disparaging description at all, was it?---No.

In fact, one would have thought it was complementary?---Yes.

Would you agree that that description reflects what you think is a true representation of each one of the members of the IRT team who were deployed on this particular

occasion?---Definitely.

So, in other words, you would describe yourself in the same way, that is a proactive, energetic person?---Correct.

I've nothing further, your Honour. Sorry, just – sorry, your Honour.  
Your Honour, can I just hand you - - -

THE CORONER: Sure.

MR EDWARDSON: - - - the general order.

THE CORONER: Yes, if it's not part of our brief already, is it?

DR DWYER: I don't believe that it is, your Honour.

MR EDWARDSON: No, it isn't.

THE CORONER: All right, well we'll give that an exhibit number in due course, Mr Edwardson.

DR DWYER: I think, your Honour, Mr Suttner has indicated that he would like to some questions on behalf of Sergeant Bauwens.

THE CORONER: Sure. So, Mr Suttner, you're on the phone.

MR SUTTNER: That's correct, your Honour.

THE CORONER: Thank you. We'll see how we go?---Of course.

I mean if you could just let the officer know your role in these proceedings.

MR SUTTNER: Your Honour, I'm battling to hear you. Are you able to hear me?

THE CORONER: I can hear you quite well. Can you hear me now?

MR SUTTNER: I can now hear you.

THE CORONER: All right, I'll just - - -

MR SUTTNER: Can I go ahead.

THE CORONER: Go ahead, just let the officer know exactly your role in these proceedings.

MR SUTTNER: Yes.

XXN BY MR SUTTNER:

MR SUTTNER: Constable Eberl, I apologise for the fact that you cannot see me. I represent Sergeant Bauwens. I just have a few questions for you. First, it's correct that most of the work performed by the IRT was performed in remote communities?---Yes, from my memory, that would be correct.

Yes. And you mentioned that Yuendumu was the only time that you were involved in an arrest with the IRT?---Yes, that's correct.

Now, so most of the IRT work was geared at restoring and maintaining peace in these communities?---From my involvement, the other two occasions were around that, yes.

Yes. And in fact, protection of the communities?---Correct.

Yes. And funnily enough, even arrests within the communities are usually in protection of the community as a whole?---Definitely.

Were you ever aware of the IRT using excessive force?---Not to my knowledge.

Yes. And my client in fact was the officer in command of the IRT?---Yes.

Correct? And he was passionate about maintaining the IRT and maintaining it at optimum capability?---Yes, that's right.

And behind that, there was also an equally passionate approach to policing and to securing and protecting these communities?---Yes, that's correct.

Yes. He was also always looking at less lethal forms of weapons to assist in de-escalating potentially violent situations?---Yes, that's why we had the beanbag shotgun as one of those less lethal options.

Exactly. Now, yesterday, you mentioned that you had never encountered racism in the IRT?---Correct.

And nor had you encountered the particularly racist words that had been put to you when you were examined?---Correct.

In fact, to the extent that a particular text message was attributed to my client, can I say that you are absolutely shocked that that was attributed to him?---Definitely, yes.

And that it is entirely out of character with the man that you know?---Yes, that's correct, yep.

Are you aware of the struggles that my client had in his attempts to get the Southern Command Executive to provide funding and opportunities to maintain the training and the equipping of the IRT?---I had some idea, not to the full extent. But I did –

I was aware that there was a struggle to get new equipment which we just got as the team was suspended.

Yes. And in fact, some of the equipment you used like your vest and helmet were hand me downs from the TRG in Darwin?---Yes, that's correct. And they were also expired, I believe.

Yes. And just to conclude, in the case of Yuendumu, the IRT was called there to help.

Thank you, your Honour. No further questions.

THE CORONER: Thank you. Yes, Mr Read?

Sorry, Ms Ozolins.

MS OZOLINS: I just – I thought that given it might be best if Mr Read goes last.

THE CORONER: Sure.

XXN BY MS OZOLINS:

MS OZOLINS: I would just – sorry, my name is Sally Ozolins. I'm appearing for the Northern Territory Police Association. I just wanted to ask you about – or ask you some further questions about the evidence you gave yesterday about when you arrived back in Alice Springs on 10 November, following the incident obviously, at Yuendumu. And I think your evidence was that upon arrival, back in Alice Springs, you said you had a quick chat to union reps for welfare checks, and then you went home from there. So other than having a quick chat with the union rep in relation to your welfare, did you have opportunity to speak to anyone else about your welfare, or support services, or anything that was available to you in dealing with what had happened?---Yeah I think – I can't remember if was a couple of days after, we were – we were informed that we had to come and speak to someone from that department, from welfare, just about, you know, how we're feeling, and that sort of stuff, so.

Sure, and did you do that?---Yeah.

And do you recall who you spoke to?---I do not, sorry.

So on the 10th though, you got home and – or sorry, you said you got to the station, and then you went home. And I think your description of how you were feeling at that time, that being on the tenth, you said you were exhausted. You were emotional. And you were distressed. And then you had the 11th off work. When did you return to work?---I think it was more for my family. They were concerned about what had happened. And so we went away, for them, just for a week. And I think it was about a week later I come back to work.

Okay, so you got to have a bit of a break?---Little bit, yeah.

So you've given some evidence about attending at Zachary Rolfe's house on the – I think it was Monday, the 12th, so between – when you just said you spoke to someone in the welfare department, was that before or after you went to Zachary Rolfe's house?---I'm not sure, I can't remember that.

Okay?---Yep.

And the only other thing I wanted to ask you about was you've been interviewed, and given evidence a number of times in this matter. I think there's three interviews that are in evidence in this matter. You gave evidence at committal in September 2020. You gave - - - ?---Yes.

- - - evidence in a Supreme Court trial in March 2022?---Correct.

You're obviously giving evidence now. Is it the case that you were directed to attend for a further interview, in relation to this matter, in August of this year, a month before the committal started – sorry, the inquest started?---Direct – yes I was, that's correct.

So there was a direct to interview, and would it be fair to say that reliving all of these events, causes you ongoing stress and concern?---Definitely.

And in all of that time, and through all of those interviews, and all of that evidence, has there been a debrief, in relation to the lead up to, and what followed in Yuendumu in November 2019?---A formal debrief from the department, no.

No. Do you think that that's something that would assist you, and potentially other members, in dealing with traumatic events like this?---Definitely, yep.

Yes, that's all, thank you.

MR EDWARDSON: Your Honour, my apologies, I have failed two very discrete comments, I seek your Honour's leave to ask.

THE CORONER: Yes.

MR EDWARDSON: They are (inaudible) - - -

THE CORONER: Yes, Mr Edwardson.

XXN BY MR EDWARDSON:

MR EDWARDSON: You gave evidence about your attendance at the barbeque?---Yes.

And you told the court that you started to, as it were, relay what you saw and heard in the events leading up to the shooting, or (inaudible) shooting?---Yes.

And I think your evidence was that Shane McCormack basically closed you down, and said don't talk about it?---Yes, that's correct.

You've also went on to say that you were doing it from really a mental health point of view?---Yes.

There was no intention by you, in any way, to as it were, contaminate potential other witnesses?---No.

Was there anything that occurred in the barbeque, or at the barbeque in your presence, that in any way, suggested to you now, upon reflection, that your account that you gave either in statements, or for the trial of Zachary Rolfe, or indeed in this Coronial inquest, has in any way been contaminated or influenced, by what occurred at that barbeque?---No.

Thank you. One last thing. When you were deployed from the Yuendumu Police Station at 7.05 by Sergeant Frost, we know on the evidence, that Alex Alefaio was actually present at the police station?---Yeah, Felix Alefaio, yes, that's correct.

And you said yesterday, I think, that obviously if you've got a member such as him that could assist in identifying where an individual is, then that would be a resource that would be valuable to those who are deployed?---Definitely, yeah.

Was it ever suggested to you, by anyone, including Sergeant Frost, that Felix Alefaio had intelligence or information that would assist you, in identifying where Kumanjayi Walker was, on 9 November?---No.

Was it ever suggested to you, or any other member of the team, in your presence, that he could accompany you for that purpose?---No.

No.

Thank you, nothing further.

MR ZICHY-WOINARSKI: Your Honour, I have a couple of questions.

THE CORONER: Yes, thank you. I'm going to get you to tell this witness your name, because I don't know that I have got a handle on the pronunciation. Sorry about that.

XXN BY MR ZICHY-WOINARSKI:

MR ZICHY-WOINARSKI: Constable Eberl, my name's Casimir Zichy-Woinarski. I appear for NT Health. Yesterday, and again today, in response to questions from Mr Edwardson, you gave evidence about presenting to Elders in Alpara and Ampilatwatja?---Correct.



I won't traverse the details again, but the outcome on education was that the community deliberated, and determined that it was happy to accept you policing the community?---Correct.

Are you aware of any occasions on which Elders have indicated that community did not want to be policed by a particular police officer?---I think, after the incident at Yuendumu, I believe they were saying that they didn't want Sergeant Frost to be the sergeant there, because they were expressing "They don't want me here, I have to go."

And no other occasions?---Not that I can recall.

Are you aware of any occasions in which communities requested the particular staff from other organisations, leave the community?---Yes.

How many occasions?---A couple of occasions. While out Utopia there was – it was in relation to Health actually.

Could you just tell me a little bit more about that?---There was an occasion where there was a – a death of a community member. And the way the nurse manager handled it was questionable which the community weren't happy with. They were speaking to the CEO of the – because that's a – an Aboriginal organisation, it's not through NT Health. The – they were encouraging the CEO like you know, questioning why she's still doing here, and he wouldn't move her on, and so the board got together and – this is trying to remember, but got – removed – removed the CEO from the – from the community, and the nurse manager as well, on that occasion, yeah.

So just to go through that again a little slower. There was a death in the community?---Correct.

A patient?---Correct.

The patient was there – was – medical assistance was provided to that patient by NT Health Service?---Yeah, which was to an unsatisfactory level, in the view of the community, and also question - was questioned some stuff by police, yep.

Subsequently, the community asked that the nurse manager and the CEO leave the community?---Yes.

Thank you.

THE CORONER: I think it's your turn, Mr Read.

XXN BY MR READ:

MR READ: Mr Edwardson had finished up with Mr Alefaio. He did say, the only information he gave to you was that he might – he might run, and might try to escape, or something to that effect, is that right?---Can you say that again, sorry?

When you were at Yuendumu - - - ?---Yes.

- - - did Mr Alefaio say that he might run or he might - - - ?---Alefaio?

Yes?---I can't recall him saying that, no.

Now you were asked yesterday about, and you made the concession more information is always best - - - ?---Yes.

- - - and various pieces of information as to the deceased's hearing, that he was flighty, that he might be have poor impulse control, that they didn't know, that he might have FASD?---Yes.

That might have been information that could have been provided, that might have – might have ameliorate the way you conducted your arrest, is that right?---Yes it may have changed a little bit, yes.

May have changed?---Yes.

That was all information that the officer in charge could have said, look, you're there at the police station for 12 minutes, said look just wait a minute, I need to tell you these things?---Yes.

That – that was within the community sergeant with the local knowledge, is that right?---Yes.

You were not provided with that information?---No.

On the other hand, have you also been provided with information that the deceased was involved in the family safety framework, and that he may well have been in – living with the previous victim. Is that also a consideration that may have indicated to you slightly more need to affect the arrest?---Yes, definitely.

Okay. Now, questions were asked about permission to enter the house yesterday, and you indicate – well, I thought there was permission. But the reality is, there was a warrant for his arrest, there was also very strong evidence that he had committed an indictable – an aggravated assault, an indictable offence, and in those circumstances, provided you had a reasonable suspicion, and suspicion is not knowledge, that the person was in the house, you were entitled to go into a house without permission. Is that right?---I would need to form a belief.

That's right?---Yeah, yes.

And on the information you had in the fluid situation, you went to 577 – there was an indication that you had left 577 on to the other house, and there was a man in the house, a person in the house that appeared to be keeping away from. Is that right?---Well, the likeness of probably the person we were looking for, yep.

Yes. Now, you were also asked about the question of high risk. Now, in a command situation, if a situation is designated as high risk, that is a designation that is assessed and made by command, isn't it?---Correct.

That is not your assessment, is it?---It is not.

No. That assessment that it was high risk was not made in this situation, was it?---It was not.

Because if it had been made, more hoops have to be jumped through, and if it was designated like that, you would be simply in a cordon and contain situation, and you would wait for the TRG, yes?---Potentially, yes.

If the TRG came, there really may be a more military type entrance into the community. Would that be right?---Correct, yes.

So by not being designated as high risk, it meant you didn't have the TRG. Is that right?---Yes.

Yes. Now, had the situation been that you watched a video at the Alice Springs Police Station, and you or some of the others looked at the video and said, "Look, this is just too risky for us to do a general duties (inaudible) with your experience, this really is a high-risk situation. You could have said something to Mr – Sergeant McCormack, and said, "Look, this needs to be reconsidered. This is a bit hot to handle." And it could have been reconsidered, is that right?---Yes, that's right.

If that were the case. That was not the case, and even though you saw the video, all of you were comfortable that this was appropriate to be a general duties type arrest?---Yes.

Given your particular extra training and experience. Is that right?---Yes.

And even though you gave evidence yesterday that in a perfect world, you might have had eight people - - -?---Yes.

That's not the real world, is it, of police?---It is not.

You were also asked to, Mr Eberl, about planning on many occasions. And I think my learned friend Mr Edwardson has covered this, but with a normal general duties type arrest, there's no formal written plan. Is that right?---There is not. That's correct.

But to say that there is no plan is, I suggest, a little misleading, and I put it for this reason. Your training is the default planning, isn't it?---I would say that is correct, yes.

Because that is what you fall back on in a fluid situation, isn't it?---It is.

So you could have gone to a house and you could have written down, and said, "Right, we're going to go to this house, let's pause for a bit, jot it down on a piece of paper, write it in (inaudible) whatever," and said, "Well, you go around the back, knock on the side. Us two will go in the front. This is what we will do if he does that." But in fact, that is unnecessary for people of your experience, because that is intuitive, isn't it?---It is, yes.

Cordon and contain two officers in, the dog on the side. The purpose is to try and identify the target. And in this case, where it could potentially escalate, act quickly, restrained and handcuffed and hopefully walking back to the police station. Is that right?---Yes.

In circumstances where you had seen the video, it's not really appropriate just to sort of stand back and talk to him and chat, is that right? You needed to act quickly. Would that be fair to say?---Yeah, be dynamic.

Be dynamic? Even when you have written plans, they don't always go to plan, and you have to use experience, your training and your judgment. Is that right?---Correct.

Now, Mr Mullins suggested to you, (inaudible) after this tragic incident, that you should have stayed in the house?---Yes.

I might put these propositions to you. I don't – I'll put that (inaudible) in relation to the plan. He suggested that once you had a – a reasonable basis, which you appeared to have, that he was in the house, you could have run back and contacted the officer in charge. Is that right?---Yes.

That's what he put to you. And I put this to you. One, she never asked you or told you to do that. Is that right?---Correct.

In fact, the direct opposite. She said, if you come across him, arrest him and bring him to the station on a 137 and she will do the paperwork. Is that right?---Correct, yes.

Two, there was nothing in the information that you were provided with as to particular circumstances about the deceased that would suggest you would be better to stand down, hold back and wait for further direction from the officer in charge?---Correct.

There was nothing you were told that indicated that you should not act decisively and quickly. Is that right?---Correct.

Now, I've complained that everybody has asked you about the rifle descriptor, and here I go about it. So it's – Dr Dwyer asked you about that, and I suggest she very fairly played you the video of that comment, and that remark?---Yes.

You accept that?---Yes.

Because when it is in context, I suggest to you that you were walking through the community, you were talking in a low-key fashion. Is that right?---Yes.

You had no raised voice or aggressive tone, yes?---Yes.

Your tone was quite different, for instance, from Mr Mullins' tone yesterday when he was asking you questions. Is that right?---Yes.

Yes. On reflection, do you accept, well, it wasn't a necessary remark to make, and your – your apology, is that right?---Correct, yes.

And to make it quite clear, different people have different sensibilities. I think the Dutch people say some people have long toes, which means they can be trodden on more easily, I think that's one of my problems. You never intended to cause offence or hurt any person, did you?---No I did not.

And if we are to be quite blunt about this, irrespective of you saying, well I didn't think I needed to take a long rifle, the reason was that even though it was general duties, this was a precaution that one of your other members felt that he needed to take, for whatever reason?---Yes.

The suggestion that the rifle was branded is entirely false, is that correct?---Correct.

It was held in the, if you could explain what position it was held?---The guard position, which is - - -

Well could you stand up and show that to us please?---Yep, so the rifle would be slung across, and then you would have it down, pointing down like this way, and carrying it, walking like this with a – with the muzzle pointing to the ground.

Sorry? Perhaps you could describe it again, I think, you're the arms instructor?---Okay, yep. Okay I'll – a bit more detail. So the safety catch would be on. Which as an – an ambidextrous safety, so either side of the weapon, where you hold it. The muzzle will be pointing down, and the butt of the rifle, if you were to raise it, that goes into the shoulder, that would be up here. And you walk around with the – holding the weapon with both hands, and the muzzle would be pointing down to the ground.

Thank you?---Yep.

And is that really the – the least pretentious way of holding a weapon whilst walking around?---That is correct, yes.

And Mr Mullins also made the suggestion, that the rifle was taken into the community, after your arrival, to take down Mr – the deceased. Is that a totally offensive to you?---Very much so. We don't – we don't have guns to – to shoot people. We have guns on – for two reasons.

Yes?---To lawfully destroy animals, or to protect human life.

That remark – that suggestion to you, it was untrue, and unfair, is that right?---Yes.

Thank you. And it's again a perception of perception, and I can assure you that Mr Mullins didn't intend any offense towards you. He's my colleague, and I'm quite sure he was putting what he thought was appropriate. But for you, that might have felt offensive, is that right?---Definitely, it definitely felt offensive, yes.

It's a question of perception isn't it?---Yes.

Then Mr Mullins suggested, and at this stage, I think he did retract it, that by not staying in the house, you failed in your duty?---Mm mm.

I want to ask you these questions. What type of first aid kits are normally in the – you know, the vehicles that you patrol around in?---They're just a basic first aid kit. They're not like a trauma pack. So it's just as a – as we would take to the shooting range. We've got a proper trauma pack.

Yes?---But they're just the basic first aid kit.

Am I correct in saying that not only for police, but for all first responders, the first rule is assess danger, and perhaps the other side of the coin, is it safe. Is that the first rule?---Yes, danger is the first rule, yeah.

Is the first rule. I think there's an acronym of some kind?---Doctors, a, b, c, d.

Okay. And that comes from the – the well-known saying, that you have to be able to look after yourself first before you can look after other people, is that right?---That's correct.

You were told, and in fact, your friend, Tony Hawkings, but – he was a senior constable in fact, isn't that right?---Yes.

He was outside, and you were told, if not ordered, by Senior Constable Hawkings, who was outside, that it was not safe, and that you needed to extract. Is that right?---Yeah, that's correct.

That was a call that was made?---Yes.

You relied on him, firstly, because of his judgement, is that right?---Yes.

And followed his directions, is that right?---Yes.

Further, you knew Mr Walker had been shot by now didn't you?---I did.

Yes. It was critical to get him back – it would have been perhaps medical (inaudible) critical at the very least, to get him back to the police station, where you would be better positioned to administer first aid, hopefully. Sadly it didn't work out, but to stabilise and save his life, is that right?---Yes in a - - -

(Inaudible) - - -?---- - - - in a safer environment, yes.

And where you had first aid equipment at the station, is that right?---Yes.

When you were caring for Kumanjayi Walker, by that stage, the disastrous arrest had come to an end, is that right?---Yes.

It was now in a different – everything was in a different mode. It's a question of trying to help him, and it was then the role, as the officer in charge, and the local members, to work out what to do, what was safe. Is that right?---Yeah I think that role changed as soon as we were in the back of the police vehicle.

Yes?---When we were – I think that's when we took the handcuffs off, and then we were conducting a bit of a head to toe, to see his injuries, to go from there, yeah.

But when you were back at the police station with the various perceptions as to what was happening outside - - - ?---Yes.

- - - and that, whether a family member might come in, that was not then your role to get involved in that process was it?---No.

You were doing your best just to give him some comfort, is that right?---Yeah.

And perhaps just picking up, and really it's – Mr Edwardson has really covered this, but this question of making a decision as an IRT person, as to whether you take a rifle, whether you don't. It – these are balancing considerations of a critical nature, of the question of is this a matter that's important for the protection of life, versus avoiding perceptions of an over exercise of police power, isn't that right? It's a balancing exercise always, isn't it?---Yeah, definitely.

Your Honour, they are the questions I have of Constable Eberl.

THE CORONER: Thank you, Mr Read.

Dr Dwyer.

DR DWYER: Thank you, your Honour. Is your Honour content for me to continue? I think – I have a – at least 20 minutes of cross – re-examination, your Honour, but I've – if your Honour's - - -

THE CORONER: I'm sure – I'm pretty sure, that the officer would prefer to finish and then have the lunch break?---Yes please.

Okay.

If no one else objects, that's the way we'll proceed.

DR DWYER: Thank you.

REXN BY DR DWYER:

DR DWYER: First of all, First Class Constable, I just want to take you to some matters that have been raised to give you an opportunity to comment further if you wish. The first is in relation to some questions that her Honour asked you about being presented with an edged weapon. In the trial of Constable Zachary Rolfe, you were asked a question by senior counsel prospecting, and it was this, "Were you taught that when presented with an edged weapon, you have the option to draw your firearm." And you replied, "Depending on the circumstances, but potentially yes, it depends on the situation. That's the case, isn't it?---That's correct, yes.

And you go on to note - I'm summarising your evidence, "One option is to draw your firearm, if that's warranted by the circumstances. Another option is to try and de-escalate using voice commands - - -?---Correct.

- - - depending on the scenario." And I'm going to suggest to you, the absolutely worst-case scenario for any police officer such as yourself – well, I'll limit it to you. The worst-case scenario for you, as a police officer, is to have to discharge your weapon. Correct?---Correct.

That is absolutely devastating for someone like you, who goes into the police force to serve and protect. Am I right?---You are right, that's correct.

So, you want to avoid it at all costs. Throughout your career, you have obviously had many hands-on arrests?---Yes.

How – and I think your Honour was asking you some questions about how many occasions have people managed to get away from you in those circumstances?---Yes.

Very few or none. Is that right?---Yes.

Okay. Have you been threatened with what is often called a – or what is sometimes called, at least in this context, an edged weapon, a knife for example?---Yes.

Have you ever withdrawn your firearm - - -?---Yes.

- - - in response to that? How many occasions, do you think?---Once in relation to



an edged weapon.

Okay. And what was that edged weapon?---A machete.

That's the one that you described earlier. Is that right? Well, have you told us about that yet today?---No, I haven't.

Where was that?---That was in South Australia Police, actually.

Okay. An offender at a police station who presented a machete. Is that right?---Not at a police station, but within the – on a public street.

Okay. Did you discharge your weapon?---No.

What did you do?---I gave him tactical communication. So, I was verbalising. He wasn't threatening me, he was threatening another person. The other person was on the other side, sort of off a little bit to the left. The offender was there and he had a machete. We popped around the corner, I hit the – tapped the siren, so he would spin around and take his attention off of that person. I drew my firearm, because if he ran at the victim, I wouldn't be able to gain that distance and communicated, "Drop the weapon", which he chucked away straightaway, yep.

You didn't have to shoot somebody. That was a good day. Correct?---Yes, 100 percent.

In your work up here in the Northern Territory, is – have you been presented at all with a knife on any occasion?---Yes.

How many occasions, do you think?---That was one occasion where it was presenting to me personally, yes.

And what did you do?---Communicate with him from a distance. He had two knives, actually. He wanted us to shoot him. That was what he was trying to achieve. So, I had my colleague with me. She was behind me. I was comfortable. I started to get a bit closer. I had a Taser on me at the time. As I got closer, he raised it up like he was going to throw the knife at me, so obviously, he – that's the way he wanted to go. So, then we created a distraction, the vehicle come from behind and drove up to him which made him turn and gave me the opportunity to move in and utilised my Taser and we effected the arrest.

How much distance was there between you and that person when you were – when he was presenting the knife and looking like he was going to throw it?---Maybe from myself to the Fire Safety door over there.

Twenty metres – 15 metres?---Fifteen, maybe.

Fifteen metres for the transcript.

Being able to maintain that distance was an important part of risk assessment and planning. Is that right?---Well, from my perspective, yeah. I'm involved in some sports and I'm a good judge of my ability to react over that distance, yep.

You didn't have to shoot somebody on that occasion. That was a much better outcome for you as an officer and obviously for that individual. Correct?---Correct.

Are there any other occasions where you've used your Taser?---Yes.

And have they been – what sort of occasions have they been in response to?--- Someone trying to physical assault and then I've used that to immobilise the threat and arrest that person.

So, in general duties' policing in an arrest context, a Taser is an effective option and nonlethal. Is that your experience?---Yes.

You were asked some questions – I'll withdraw that. Just before I go on then, just thinking about a Taser, I've asked you some questions and I'll come to them about planning and risk assessment and what might have been done better yesterday in circumstances of planning for Kumanjayi's arrest. Do you think that, given your reflections about it being similar to a general duties' arrest, it would have been a good idea, in hindsight, for all officers to carry their Taser?---Yes.

You were asked some questions by, particularly Mr McMahon, about the AR-15 weapon. I just want to make this clear, particularly for people on the livestream, you, yourself, had an AR-15 available back in the station at Yuendumu when you went on 9 November. Correct.

But you made a decision that you would not take it out into the community in relation to the arrest of Kumanjayi?---Yes.

In terms of working as a team, if you're four members of an IRT as you were on that day, plus Donaldson, if one of you had an AR-15, it limits their options in terms of hand on arrests in the community?---Yes, because the rifle would get in the way, yes.

And you can't exactly put it down on the ground and leave it unattended while you effect a hands-on arrest, can you?---You could try and swing it around the back, but we only had the single point sling. I don't know if you know the two point and a single point sling, but the single point sling, it will just dangle and it will potentially come around again, so – which could, you know, hit yourself or obviously, the person you're trying to arrest.

So, in those circumstances, your colleague who had the AR-15 was not going to be able to leave it dangling on his body and use his hands for a hands-on arrest. Is that right?---It wouldn't be ideal, yes.

It would present a danger to him in those circumstances?---It could be, yes, yes.

And potentially to another community member, is that right, someone who access to his weapon?---Yeah, well he could – yeah, if he – while he’s grabbing the defendant or whoever it is, they might be able to grab his weapon potentially, yes.

This might seem like an obvious question, but if you were going to effect a general duties’ arrest, you wouldn’t be carrying an AR-15, would you?---No.

You were asked some questions about the briefing that happened in Yuendumu with Sergeant Frost. I just want to give you an opportunity to comment on the evidence that’s been given by Sergeant Frost and Constable Felix Alefaio, I’m asking you these just to get you to genuinely reflect and try and prompt your memory. I don’t want to suggest to you anything. I appreciate the length of time since this happened. Sergeant Frost, in her evidence, that is in these proceedings, was asked the same question. So, just reflect and try and give us her best memory, and I asked her this question. I said, “I’m not going to play you this footage again, unless anybody asks me to, but the CCTV footage shows that at 7 pm and 30 seconds through to 7:05 and 16 seconds, so it’s roughly five minutes, the four IRT members and for the most part, Officer Donaldson, are there. What was said by you to those IRT members during that five minutes or so?” And this is what Sergeant Frost said, “So, I gave them the briefing. It was an informal briefing. It was more like a conversation. But it was effectively what had been happening in the community and what I expected them to do.” Do you remember Sergeant Frost talking to you during those five minutes about anything that had been happening in the community more generally?---I can’t recall.

She goes on to say, “At the time of the – I ask her, “At the time of that informal briefing, do you recall actually referring to the written document, the operations order?” And Sergeant Frost said, “I can’t recall now, but I know that – I know in my head, I was satisfied that they were all aware of it.” I asked her how she satisfied herself of that and she said, 'I know that the plan was on the table'" Did you see the written operations at all on that day on a desk?---I - I do not remember seeing that on the desk.

Sergeant Frost said that in her memory she made reference to the fact that they'd all seen the emails in relation to the written Operations Order. Do you recall that?---No.

Do you think it's possible, given that memories can differ about events that don't appear to be that relevant at the time, do you think it's possible Sergeant Frost said something like, "Did you guys all get the email"?---Potentially, yes.

But what would have actually assisted you in those circumstances, I take it, is for someone to hand you the written operations order and go through it with you at the time?---Yes.

And that would've really drawn to your attention what the actual - the fact that there was a written order, firstly, and what was being suggested in the order?---Yes, it should've been laid out like a SMEAC briefing - we call that, yes.

What does SMEAC stand for?---Situation - situation is, you know, we're here, we need to arrest Kumanjaya Walker, this is the mission is to affect the peaceful arrest, you know, with no injuries, for example. Execution might be time/place et cetera, what you're doing - command and control about what's - and all that basically - admin, logistics, you know, how you're getting there, what you're doing and - yeah.

Do you think part of the learning then from this tragedy is that it would be appropriate if you were drafting standard operating procedures involving something equivalent to the IRT in the future? You'd write in there that here needs to be a SMEAC briefing? ---Yes, yes.

THE CORONER: What did the "C" stand for?---I think it's communication, control, yes.

DR DWYER: Just before I finish on that point I just want to put to you in fairness what Felix Alefaio said about this. He gave evidence in these proceedings and for the benefit of my friends, it was 20 September 2022, page 734, he said - he is asked what he overheard during the briefing when Sergeant Frost was there with the IRT. He said, "What I heard was Sergeant Frost telling them that the arrest will take place at 5:00 - 5:30 the next morning and that we have to meet at Yuendumu Police Station at 5 o'clock." You didn't hear that is your evidence?---No, I did not.

Do you think it's possible that that was said while you were focussed on something else?---Anything is possible.

You were asked some questions by Mr Edwardson of Kings Counsel about the written Operations Order at least in terms of your knowledge about Felix Alefaio being available?---Yes.

And Mr Edwardson asked you - or suggest to you - that it was never - advice was never given to you that Felix Alefaio was available as a local member to assist in the arrest?---Yes, I don't recall that, no.

Can I - I will see if Bec is able to do this at short notice, but I wonder if you can put on the screen 19-56 which is trial exhibit 1.13, it's the written Operations Order. I just want to remind you again of exactly what it says and then I will ask you a question? ---Yes.

If Bec is able to do that it's at page 2 that I'm after. 19-56. It might be easier, her Honour - I am grateful, your Honour, thank you very much. Her Honour will just hand you a written copy. So if you don't mind having a look, Constable, at page 2, you will see there various members are listed underneath the photographs of Kumanjaya and then there's the plan for day 1, "11 pm IRT commenced duty and

conduct high visibility patrols and respond to call-outs" and you've already given evidence you didn't see this?---Yes.

Over the page you see "5 am Donaldson Yuendumu Alefaio commenced duty along with IRT members to affect arrest of Walker"?---Yes.

So you see there that what Sergeant Frost and Sergeant McCormack had actually written in the plan approved by Constable (sic) Nobbs is that Felix Alefaio would be available?---Yes.

And if you and other members of the IRT had read that plan, that information would have been available to you too?---Yes.

Another topic is just in relation to memory and how it works. Thank you, Bec, that can come off now. I apologise for not giving you notice Bec. So I previously asked you, Constable, about the way memory works, given your experience as a police officer and the different version of events that you've given in relation to Kumanjayi's death - Kumanjayi's passing I should say. For the first version, 10 November, 3 am, although you're tired, the events are fresh in your memory?---Yes.

And you are asked to give a free-flowing event - a free-flowing account of what happened without anybody suggesting to you in the way that lawyers often do, about particular ideas?---Mm mm.

Do you agree with me?---That's correct.

And so that makes that account that you give particularly significant, doesn't it? ---I think so.

You see, in your account on 10 November, when you were asked about what Kumanjayi had in his hand you say this at page 5, "At this time I could see 'cause I had - had him, I could see over his right shoulder and I could see he had like a little - I didn't know what it was at the time but I thought it was maybe a sharp stick - came out of his right hand and then I put him to the ground" et cetera?---Yes.

And then similarly, on 13 November when you were asked to give evidence about what happened you said, "I put my arm around him" - you described the manoeuvre from behind - "that's when I could see he had something in his hand. I didn't now what it was initially, it looked like something sharp out of his hand - maybe a stick or something." And that's genuinely what your perception was at that time, in that moment?---Yes.

And on 11 February you describe it as some sort of weapon. By the time you get to committal - and please understand I am not suggesting any impropriety - by the time you get to committal you say, when you are asked to describe what Kumanjayi had, "So I was holding his left arm and I held him like this and said, "Stop fighting" and then I looked over and I could see some sort of edged weapon in his right hand." The first time you introduced the idea of what Kumanjayi had as an edged weapon is

at committal. In the preparation for committal - I'm not suggesting any impropriety, you had spoken to Constable Rolfe's legal team, is that right?---Yes, I think so.

And did they describe that - what Kumanjaya had as an "edged weapon"?---I think they referred to - well, I'm only - I can't recall exactly, but the scissors in general is it would be identified as an edged weapon.

And you were reminded of that during your conferences with that legal team, is that right?---I can't - I can't recall but I can only guess, probably.

And you could guess probably because there's been the evolution of your evidence as we look at it, do you agree?---Yes.

In your early interviews with police you talk about when you first watched the body-worn video footage on 9 November when you were in Alice Springs Police Station and you expressed some surprise - surprise they didn't use their weapon - or surprised they didn't draw their guns - - -?---Firearm.

Their firearm or something like that. You are in no way critical, you've given clear evidence - at that time in no way could (inaudible)?---No.

By the time you get to committal you give some particular evidence about this and you talk about those officers being struck with fear - I am going to find you the reference. You say, in response to a question by Mr Strickland:

"Then Mr Walker appears to have picked up an edged weapon, which was an axe, and scraped it along the concrete in the room a couple of times. He then approached the officer at the door and the officer stood back, put his hands up, I suppose, struck with fear. The other officer retreated back into the doorway at the entrance of the house."

And I suggest to you that you said that and then Mr Edwardson, when he was cross-examining you, suggest to you various things, including:

"And indeed, they appear to be frozen, almost incapacitated as a consequence. That's what seems to emerge from the video." And you say, "Correct."

Can I suggest to you, Constable Eberl, you have no idea – do you now, sitting in the witness box – what the reasoning was of Constable Chris Hand and Lanyon Smith when they were faced with that situation on 6 November, correct?---Well, I don't know what emotion they're going through at that time.

That's right?---That's correct. I'm only making an observation on what I see, yeah. Yeah, that's correct.

But now, reflecting on it, it's not your place to say they that they were struck with fear, is it?---No.

And Officer Hand actually has a communication with Assistant Commissioner Wurst in relation to this. And he says on 7 November in an email exchange:

“I don’t think he wanted to chop us up. He just wanted to escape. No one was injured and that’s the best result, in my view.”

You agree with that? That is, that if no one is injured – neither Kumanjayi nor police – that’s a good day, isn’t it?---Yeah, it is.

So you weren’t trying in any way to be disrespectful to your colleagues, Officer Hand and Lanyon Smith?---No, not at all.

You were asked some questions by Mr Edwardson about whether you have – I withdraw that. You were asked some questions, I think, by Mr Suttner about whether you had seen anything to indicate a racial vendetta? I apologise. It was one of the – it was either Mr Edwardson or Mr Suttner. And I’m not suggesting to you for one second that what was this was a racial vendetta. You didn’t see anything like – to suggest that, correct?---No.

But you also gave evidence yesterday that you had not – no knowledge of any racist language being used by Constable Rolfe or other members of the IRT, correct?---Correct.

And it would surprise you – or I withdraw that. It has surprised you to understand that that language has been used, correct?---Yeah, that’s right.

And can I suggest to you it had disappointed you?---Yes.

And it gives you great concern that that language would be used?---Yes.

It’s not professional?---No, definitely not.

And it has the effect, doesn’t it, of dehumanising people who you serve in the community?---100 percent.

And yet – I’m going to show you MFI C. I’m not going to read these text messages to you, necessarily.

MR EDWARDSON: Well, I would ask that she doesn’t. My learned friend doesn’t unless there is some particular reason.

DR DWYER: Well- - -

THE CORONER: I’m sure Dr Dwyer will only do it if she considers that it is appropriate and necessary.

DR DWYER: That is absolutely the case, your Honour.

In relation to Constable Rolfe – if you have a look at page 2 of that document, for example, there's an email exchange between Constable Rolfe and a colleague, where he refers to having a licence to, "Towel up," locals. That language is completely inappropriate, isn't it?---It is.

You would – you didn't understand him to be someone who would use that language?---No, no. I never heard any – any of them mention anything like this before, no.

And if you mentioned – if he said something like that in front of you, you would have picked him up on it, wouldn't you?---I would indeed, yes.

And you would have told him that there's no place for speaking like that in the police force?---No, that's correct.

I think your language was yesterday, "There's no place for it anywhere in society"?---No.

And then have a look at page 3 and have a look at the language – I'm not going to read this one on the record – that Constable Rolfe uses in exchange with Sergeant Mark Sykes?---Mm mm. Yeah.

I mean, that is racist language, isn't it?---It is. It is indeed, yes.

And where racist language like that is communicated to a senior officer, you would expect that senior officer to jump on it and tell a junior that that is not appropriate?---That would be, you know, his role as a senior member to deal with that, yes.

Because if senior members like that don't address racist language, then young and impressionable officers can get – have an understanding that that's okay and they perpetrate it themselves?---Potentially, yes.

And it can create a culture, I'm going to suggest to you – at least within a group of police – of disrespect. Do you agree?---It has a potential to create that, yes.

Have a look, if you don't mind, at page 4. Do you – would you mind just taking the time to read the whole of that page to yourself?---Okay.

Do you see who is involved in that exchange?---Yes.

You will see there that the – firstly, there are disparaging remarks about bush cops there, where Constable Rolfe is saying to Sergeant Bauwens:

"Yeah, the bush cops would never have been able to get him, if possible, for them. So it was good we went. The bush cops fucked up, as usual, and that



just meant we had a run instead of getting him cordoned properly, so it's all good. He was fair rapid."

And then Sergeant Bauwens replies:

"Good job, I'll let Nobbs know the details. I want to do more of this stuff. There's a couple we've got for Nobbs."

And then you see later in the page, Constable Rolfe says,

"Yeah, bush cops blow my mind. I'll tell you about these dudes when I see them."

What do you think about Constable Rolfe having used that language to disparage community police or bush cops, that they "Fucked up, as usual"?---Well, he is referring to a situation – well, it must be more than one situation where he has had dealings with some bush cops. And they haven't been able to do the job to his – to his level of expectation, and- - -

If you're – I'm so sorry?---No, it's okay.

But it's totally inappropriate, isn't it, to refer to your fellow police officers like that? "The bush cops are all hopeless"?---Yes.

I mean, you've been a Community Police Officer. You've been a bush cop for two years. Were you lazy?---No.

Were you stupid?---No.

Were you incompetent?---No.

It's absolutely outrageous for fellow officers to refer to community police in those derogatory terms. Do you agree with me?---Yes, it's certainly not professional.

It's not professional, it certainly doesn't help to build a good culture within the Northern Territory Police Force, does it?---No, it would not.

And you see there that Constable Rolfe is expressing that to Sergeant Bauwens, who is the head of the IRT. It was incumbent on Sergeant Bauwens, wasn't it, to say to that young officer, "That is not – that's not the way that we speak about our colleagues. If you've got a particular problem with someone, let me talk about it and I'll raise it with them"?---Yes, that's- - -

That's what you would expect from a leader, wouldn't you?---I would.

And this is the only text message that I will read to you. Sergeant Bauwens, he texts Constable Rolfe:

“These bush coons aren’t used to people going after them.”

What do you think of that language?---It’s derogatory towards the people that live in the community.

And it’s racist, isn’t it?---It is.

Let’s not dress it up. It’s disgusting racism from a sergeant who is a head of the IRT. Do you agree with that?---Yeah, it’s certainly inappropriate, to put it – to put it, at least. Yeah.

Constable Eberl, you’ve been asked some questions about the concept of the IRT by Mr Suttner, who appears for Sergeant Bauwens, who puts to you – effectively – that Sergeant Bauwens advocated for the IRT, wanted to get it properly resourced?---Yes, that’s correct.

And that it’s important to have, in effect, a second tier TRG available in Alice Springs?---Yes, it’s- - -

You would agree, I take it, that you need to have a Tactical Response Group available in Alice Springs?---Yes.

The IRT has now been disbanded?---That is correct, yes.

And you would like to see some sort of professional unit being made available in Alice Springs in the future, correct?---Yes.

If that is going to happen, you want to see them properly resourced?---Definitely.

I’m going to suggest to you, if that is going to happen, then we have to have a leadership structure that is respectful, professional- - -?---One hundred percent, yeah.

- - -and a leadership structure that does not tolerate racist views amongst any of its members, correct?---Yes.

You were asked some questions about the – about risk assessment and planning, yesterday, when I asked you about whether it was a green – I think it was green - - - ?---Green role, black role.

- - - green role or black role, you said you weren’t operating in that level. Can I just clarify, you don’t lower your level of professionalism or attention to detail because you’re acting in a different capacity though do you?---No, no, you just – it’s a different function you’re applying. For green role, for example, you would use cover and concealment, and you would do a cordon using observations, and then relay the information to whoever is in charge. And then black role would be you’re – you’re potentially searching through a building, every room by room, looking for a threat, or whatever it might be. So that’s – that’s the – a higher level of response, yeah.

But it requires the same level of professionalism?---Yes.

A different degree of planning might be involved, depending on how complex the job is, correct?---Correct.

And how much time you've got - - - ?---Yes.

- - - in relation to it. In the committal proceeding, you were explaining about why you were called out as the IRT to Yuendumu on 9 November. And you said "That's why they called us out, because it was too high risk for community members to deal with what had happened a few days prior", and that's the axe incident?---Yes.

I anticipate submitting to her Honour, that the level of – that in this particular case, you had knowledge of Kumanjaji's axe incident, on 6 November?---Yes.

You had knowledge that he was – he was possibly someone who would lash out if he was cornered - - - ?---Yes.

- - - given the experience of that. That this job did call for a higher level of planning than was involved – or sorry, than actually eventuated?---I don't agree with that 100 percent.

Okay?---Yeah.

Well can I suggest to you this, that it called for a risk – a risk assessment, to be discussed amongst the four IRT members - - - ?---Yes.

- - - before you went out?---Yeah I agree with that.

And if that was – I withdraw that. And it also called – because it was an IRT deployment, there was a level of approval that was required for the deployment, you understand that?---Yes.

And a level of planning went into this deployment, correct?---Yes.

And all the members of the IRT who were responsible for executing that plan needed to know about it, correct?---Yes.

So there was a breakdown in communication wasn't there, between - - - ?---Yes.

- - - the point at which the written plan was approved by Officer Nobbs, and ultimately, how it was communicated to officers on the ground?---Yes.

And I'm not going to try and sheet home responsibility for that, it might not even matter, but if that breakdown of communication hadn't happened, you would have had a really good opportunity to discuss with Sergeant Frost, in Yuendumu, what this written operations order required, and to plan around that?---Yes.

Would you agree? And if something different was going to be done, then to come up with a different agreed plan, do you agree?---Yeah, definitely.

The – you’ve given some evidence about those text messages, and I’m not taking you back to them. And my learned friends have asked you some questions, including Ms Wild for NAAJA, about the impact of Kumanjayi’s tragic death. Tragic for his family, of course. Impact on Constable Rolfe being charged. Impact on the Northern Territory Police Force. Terrible impact on a number of different communities. Aboriginal people deeply hurt about this death in custody, in the way in which it occurred - - - ?---Yes.

- - - do you agree with me?---Yes.

When something like this tragedy occurs, it’s an absolute disaster, isn’t it?---Yes it is.

And in terms of the Northern Territory Police Force, it’s important isn’t it, for members to try and support each other?---I think that’s important, definitely.

Have you seen – I withdraw that. I think you’ve given evidence, you don’t look at the social media sites?---Correct.

And you don’t look at the “I back Zach” campaign?---No.

You didn’t buy a t-shirt?---No.

You – do you read the NT Independent?---No.

Can I suggest to you that what would help the Northern Territory Police Force going forward, is a culture of respect for each other?---Yes.

And then my last question – well I’ll withdraw that. Do you have – but do you have any idea as to how that might be achieved, going forward, given those text messages that have been revealed?---To prevent this sort of thing from – from happening, or occurring and – it’s very difficult. I mean, you know, I’m – obviously it has to come down from management. You know, ideas, suggestions. It’s always good I think if management use their troops and get ideas from everyone. I don’t really have an idea, on the spot for you, here at the moment. But I mean, if I had time to think about it, I’m sure we could present something like that to – to management, and you know, from all the troops on the ground, and they could come up with a solution, you know, yeah.

So a genuine sort of lessons learnt reflection, without trying to blame anybody, but actually – actually learning the lessons - - - ?---Definitely.

- - - you think that would be something that would be helpful, for the troops to understand they can participate in?---Yes.

Final question just relates to the evidence that you've given about community meetings. Presenting yourself to the communities, when you were working as a police officer?---Yes.

And explaining the situation. The – I have an understanding that some members of the community who are listening in to your evidence are particularly interested in that?---Yes.

I think you've done that twice in two areas in the communities?---I have.

On one occasion, did you say that there were a 100 people there or around that?---Yeah, approximately, yes.

And whereabouts did that meeting take place?---So that was in Alpara, yeah.

Did you have an interpreter in those circumstances?---There was some people there that understood English, within the community. They were well spoken, who also talked language. So when I left the room, they were communicating in language, discussing what had happened, yeah.

So did you present yourself, and then leave the room, so that you left the community to be able to speak about it?---Correct, yes I did.

Was it important to you in those circumstances, to try and have the trust of the community?---Yes, I think without trust there is nothing.

And outside the court room, when I had an opportunity to talk to you, you just explained one concept of policing that I forgot to ask you about, which is that when you're speaking with community members, you explain to them your concepts of policing, or them being – can you tell us about that?---Yeah so it's a – it's a frame of mind that we need to have as police. So when you go to a community, I know we wear this uniform, but we are part of the community. But the people in the community, even the community here in Alice Springs, for example, they're the police, because they are seeing what's going on. They don't necessarily have the skills to deal with the escalating and that sort of stuff. So they refer to us. We wear this – identify this uniform, we understand the law, and how to de-escalate situations better than, you know, members of the – of the community. But it's the frame of mind that you guys are the police, you know, you guys see stuff, you guys report, and you know, and we're here to help as part of the community.

And do you feel like, in your two years, you were able to develop some trust and repour with – with people in the community?---Well I had a senior Aranda man mention to me, that he had report from the members of that community, that they trusted me, and were very pleased with my efforts out there.

What did that mean to you?---It meant a lot, because that coming through a third person, and it wasn't just me explaining my story, and it was – obviously the word gets around, you know, what – what working you're doing is – is positive.

So is it – do we draw from your evidence, that there are particular skills that community police have, in terms of engaging with the – with community members that should be - - - ?---Yes I think that - - -

Retained?---I think some of those skills or things that I had experienced and shared and learnt out there, is skills that some community police could learn, and others are doing – doing that as well already.

Thank you, Constable, those are my questions.

MR READ: Your Honour, just arising out of that - - -

THE CORONER: Sorry, yes Mr Read.

MR READ: - - - and not that I want to have the last say, but.

REXN BY MR READ:

MR READ: Mr Edwardson, and also taking up Dr (inaudible), did – part of the reason was so you could explain your situation, from your perspective?---Yes.

That the other part of it was, you were doing it out of respect for the community and their people, is that – that's the - - - ?---That's correct, because that's – that's the – how the community members deal with problems. And being part of the community, I also did the same thing.

It's just about as much about them as you?---Correct, yes.

And that's about listening to them?---It is.

Thank you.

THE CORONER: Constable Eberl, we've had you in the witness box for a day and a half longer than you expected. I appreciate that these are traumatic events that you've had to recall yet again?---Yes.

I hope that you take the time to ensure that you're well after giving your evidence today?---Yes.

And you get any additional support that you need to assist you with dealing with everything that's happened, including all the times that you've been required to give evidence. I also hope you go away knowing that we have listened to your evidence closely and the inquest is all the better for hearing from you?---Thank you.

WITNESS WITHDREW

THE CORONER: We'll adjourn for lunch.

MR READ: As your Honour pleases.

ADJOURNED

## RESUMED

THE CORONER: Yes, Dr Dwyer.

DR DWYER: Your Honour, I call Senior Constable Anthony Hawkings.

THE CORONER: Thank you.

ANTHONY CHARLES HAWKINGS, affirmed:

THE CORONER: Thank you.

XN BY DR DWYER:

DR DWYER: Sir, could you please tell the court your full name, your rank and where you're currently stationed?---Yeah, my full name is Anthony Charles Hawkings. My current rank is senior constable and I work for the Alice Springs Defensive Tactics as an instructor for the Southern Division.

Okay. So, you're not longer frontline policing?---No.

Your whole career at the moment is training other police officers. Is that right?---Yes, that's correct.

Senior Constable Hawkings, I just want to start by acknowledging the number of times when you've given evidence which is available to the court, that starts with your interview with police, a directed interview on 10 November, the morning after Kumanjayi's tragic passing. It was at 3:06 am and your interview was captured using body-worn video technology that was available in Yuendumu before that?---Yes.

And there's a transcript and recording of that evidence available?---Yes.

You were – at the time, I think you have access to a notebook or an entry, or at least, some paper that you made some notes on. Is that right?---Yes, correct.

You have been able to provide us with some email exchanges where you indicate that you seem to have lost or misplaced a notebook which had been – what was dated up to 9 January 2020 and you made an attempt to look for it after that time. Correct?---Yes, that's correct.

Have you ever been able to find that diary entry?---Unfortunately not.

Was there much of significance in the diary in relation to the events of 9 November?---I think the entries that were made were very brief, perhaps arrival at Alice Springs for – initial arrival for the call-out, for the IRT call-out and then arrival at the Yuendumu Police Station and perhaps one or two house numbers may have been written. That's about as much as I put in that notebook at that time in relation to the incident.



Did you bring that notebook back with you from Yuendumu into Alice Springs on 10 November?---Yes, I did.

What happened to it after that, do you think?---Well, I used it as part of my duties. So, it was continual – continually being used in my role in community engagement whereby somehow it was either misplaced or lost.

Senior Constable, at any time, well you were interviewed on 10 November and interviewed again on 13 November 2019, did anybody ever take a copy of that notebook entry?---I honestly don't recall.

I take it that you were never asked to surrender that notebook?---No, I don't believe so.

I'm not suggesting that there's anything deliberately that went wrong there, but it would have been a good idea, wouldn't it, just learning from the lessons of this investigation, for that notebook to have been provided to police at that time so it could be stored safely?---Yes, I think so.

You – I mentioned that you were interviewed on 13 November at 4:44 pm. You were then interview again on 11 February 2020. You then gave evidence at committal on 2 September 2020. Correct?---Yes, correct.

And you gave evidence at trial, this is the committal and trial in relation to the charges against Constable Rolfe, the trial was 18 February 2022?---Yes.

Does it become difficult as the years go by when you are asked to accurately recall something that happened, particularly traumatic events?---Absolutely, yes.

And does it become difficult to have an accurate memory of exactly what happened blow by blow, particularly when things are suggested to you. I'm not putting - - -?---Yes.

- - - it as an impropriety, but when lawyers suggest to you that certain things happened - - -?---Yes.

- - - it can confuse your own memory of that, can't it?---I think it's a normal reaction, yes, human reaction.

So, can we assume that the version of events that you gave to police at 3:06 am that was recorded when you were just asked to say in your own words what happened is likely to be the most accurate outline of events?---I think so, yes.

Can I come back to a different topic which is some of your background in policing, we can hear from your accent, Senior Constable Hawkings, you're initially from New Zealand. Is that right?---Yes, correct.

You were a police officer in New Zealand. Is that right?---Yes.

When did you start work as a police officer there?---I initially joined in 1998 in Auckland and I conducted general duties in West Auckland for a number of – or for a few years until I transferred to a northern part of the outskirts of Auckland, which was a country beach, coastal area; a smaller station to what I started with.

And did you – you worked in New Zealand, I think you were telling me outside of court, until 2004, had a short break and then got recruited back into the force. Is that right?---Yes, that's correct.

So, you started again in 2005 and you worked as a police officer in New Zealand until 2014 when you came to Australia?---Yes, I did.

Did you work with Māori people in New Zealand?---Yes, yes I did.

And some of your work in general duties involved engaging with Māori people in New Zealand?---Yes. And Pacific Islander people, yes.

Did you think that that was a value to you in terms of understanding general duties in the Northern Territory?---I think so, yeah. I think you learn obviously different types of custom and yeah.

I'm not suggesting to you for a second that Māori culture is the same as the different Aboriginal cultures that we experience in Australia?---Correct.

But do you think that it gave you an appreciation and respect for other people's culture within policing?---I think so. I think working in Auckland is quite a – as we say, a melting pot of different ethnicities, so we learnt a lot of different culture and how to deal with the various cultures that may not have been our own.

When you were in New Zealand, do you recall that there was ever anything about cultural competency that you learnt?---I can't - sorry, I can't recall that far back. I'm sure there were.

It was some time ago?---Yes.

Let me come to Australia then. When you came to Australia, you were posted to Alice Springs on 25 April 2014. Was it part of your training as a Northern Territory Police Officer to do what's sometimes referred to as "cross-cultural training" or "cultural competency training"?---I believe we may have touched – I did a 10 or 11 week course, the transitional course, accelerated recruitment program, so we may have touched on that, but it would have been very brief.

You don't recall anything of great significance in terms of cultural competency when you joined?---No, I think I learnt a lot of that when I arrived in Alice Springs.

How did you do that?---Conversing with our community.

When you were working in Alice Springs, you have available to you, ACPOs. Is that right?---Yes.

Aboriginal Community Police Officers?---Yes.

Were they of assistance to you in understanding cultural considerations?---I think – I think they were and still are, yes.

You've given evidence previously about different relief postings that you had to more remote communities. Can you tell her Honour about that?---Yes, your Honour, I - quite a short time after I arrived in Alice Springs, I was fortunate enough to be able to do some short stints posting out at various bush communities in the southern regions. I really enjoyed it. It was good.

What communities were you posted to?---At the top of my head, Santa Teresa, which is approximately an hour from here.

That's Ltyentye Apurte, is the Aboriginal name. Is that right?---Good pronunciation, yes. The Finke community, which is also not too far away from here, Haasts Bluff, Alpurrurulam, which is quite some distance from here, seven hour drive approximately, and just a few weeks here and there at various other communities, remote communities.

We have a report from Commander Proctor who was an investigating officer assisting her Honour in this inquiry and in his report, it suggests that you did about six months' service in remote communities between 2014 and 2015. How was it that you came to be placed in a number of different communities for just weeks at a time?---I think - looking back at it now, I think it was more of a staffing issue and having, I think, the right people to work out there. I think perhaps because of my previous experience, I was asked if I would like to go and participate in some stints out there.

What previous experience had you had that your superiors thought might make you well qualified?---I think diverse cultural awareness.

When you arrived in different communities take, for example, Haasts Bluff - - -?---Yes.

- - - was there a process of induction into that community?---I think – yeah upon arrival, from my memory now, I met the officer in charge at the time who gave me an induction, obviously a station induction, and it was an induction explaining various locations in the community, where to go, where may be culturally sensitive in relation to men's business or you know, areas where we shouldn't be going due to situations that might be happening.

Do you recall meeting Elders in different communities that you worked in?---Yes.

And did anybody introduce you to the Elders in those communities?---Yes, I was introduced generally by the officers that were already at the station when I arrived.

Do you have a recollection of working with ACPOs in those communities?---Yes, I believe in Santa Teresa, I did work with an ACPO who worked there, as well as an ex-ACPO who was a member of the community who quite often engaged with police there and come and talk to us.

Can you tell her Honour what was your perception of the significance of having an ACPO available?---Your Honour, I think as a – I guess a stand in between educating us as to how the culture works and the people who's who in the community, et cetera, giving us an idea of how – who to respect, how to respect them, as well as them obviously doing the same with their community about us and introducing us as new people in the community.

Can I come to your work in the IRT. You joined the IRT according to, again I'm taking this from Commander Proctor's report, on 26 November 2018. What was it – I'll withdraw that. Why did you join the IRT?---I think just a change, a different style of policing that may be able to assist me, not just doing the IRT, but also in general duties' capability.

Did you join with another of your colleagues?---Yeah, there were a few of us that joined at that particular time, yes.

I see. Had you ever – well, what did you understand the IRT to be at that time?---I think we were an intermediary tactical group as a stand in between general duties and the TRG, to be able to address potentially high-risk and high-profile situations that arise.

Was Sergeant Bauwens the head of that IRT team at that time?---Yes, he was.

Do you recall now how many jobs, prior to November 9, 2019, you had been out to for the IRT?---I think off the top of my head, four.

Were any of those jobs ones where Constable Rolfe accompanied you?---Yes.

How many?---I think two.

And were they in community?---Yes.

I'm sorry, I should say - -?---One was – sorry, one was in community, yeah, not counting the incident of the night. So, one previous and a search and rescue exercise we were sent to as well.

I see. So, I'll leave aside the search and rescue?---Yep.

The other IRT call-out prior to 9 November where you were with Constable Rolfe, what was that job?---It was a – to apprehend and arrest an offender at Borroloola.

Do you recall when that was?---I don't. It would have been possibly six months to eight months prior to the incident.

I will come back to this because I want to allow you to refresh your memory from some of the material but I think that I will be suggesting to you that the IRT were in Borroloola for that job from 9 to 10 March 2019?---Possibly.

I beg your pardon. I withdraw that. My information suggests that on 28 December 2018 IRT were deployed to Borroloola for a high-risk arrest of a particular offender. Does that ring a bell?---Possibly. I know there were - off the top of my head I think there may have been two IRT callouts to Borroloola. I did go to one of them but I can't remember which date it was.

It appears that the IRT members on that job were Constable Rolfe, Officers Hansen, yourself and Officer Bevan deployed for that task?---Yes.

And Constable Rolfe appears to be the one who affected the arrest?---Yes.

Did you socialise prior to 9 November with Constable Rolfe?---No.

Was he somebody that you knew well outside of your roles at the IRT?---Probably no different to any other of the constables in the Alice Springs Police Station.

Apart from any work in the IRT did you ever do any jobs with Constable Rolfe, general duties jobs?---I think he worked with me one night not long after he started, when he joined Alice Springs.

In relation to the job at Borroloola, was Sergeant Bauwens with you at that time?---No.

Did he actually accompany you on any IRT jobs?---Yes.

On more than one or just one?---I think from the top of my head it was a Docker River deployment.

Prior to 9 November?---Yes.

What was that deployment for?---That was also to locate and apprehend an offender who was wanted for arrest.

Do you recall the time when that Docker River incident occurred, what the call-outs were?---I'm pretty sure it was after the Borroloola deployment.

Might I just start with Borroloola and ask you some general questions about it. In relation to the IRT call-out to affect an arrest on somebody, was that a high-risk arrest or was it a general job?---I don't think it was ever designated as a high-risk.

In relation to that call-out was it affected - did you understand in your role as one of the IRT members that for the IRT to be called out for a job there needed to be approval at a higher rank level?---I believe so, yes.

And do you know which rank had to approve which call-outs?---I know it was above Senior Sergeant.

And did you understand that in relation to the call-out for Borroloola, in terms of planning it, Sergeant Bauwens was involved in that?---I can't recall.

In relation to that call-out I mentioned to you a number names, yourself, Officer Hansen and Officer Bevan. Out of those four IRT members, who is the most senior there?---I think Officer Bevan, yes.

Was there a team leader appointed for that job?---I don't know if there was a specific mention of a team leader but Constable Bevan was the - I think the most senior member also with the IRT and he was calling the - calling the shots I guess, yeah, taking control.

Do you know - I'm not going to name the particular person who was arrested on that job but do you recall the name now yourself?---No.

Do you recall why the IRT were called in to assist the local police in relation to that arrest?---To Borroloola?

Yes?---I honestly couldn't tell you now, sorry.

Just if I refresh your memory from it, the circumstances appear to be that there was a particular offender who had been detained and he assaulted a police officer after he was detained by throwing a hot cup of tea on her when she turned her back?---Yes, you brought it back.

So the IRT were called in in those circumstances, were they in part, because there was a conflict with the local member who had been assaulted?---Yes, I believe, he escaped custody, yes.

And so it was seen that then it would be helpful to have IRT members with particular tactical skills being called in to assist in those circumstances?---Yes.

Do you recall prior to being sent out, seeing any sort of written operations order or arrest plan?---I don't recall, sorry.

I will ask you a slightly different question. Was it your understanding back in 2018 or 2019 that in order for the IRT to go out and arrest somebody there needed to be a written ops order or arrest plan?---Prior to, did you say, sorry?

Yes?---Yes. I - looking back now, I think - I don't know if there was to be - it was always an arrest plan as such, I don't know if that was a mandatory thing because it

may have been possibly that we may have been called out to something extremely quick and we may not have the time to - for a plan to have been developed, et cetera.

Sure, so the extent to which you can plan depends on the amount of time you've got?---Yes.

In an urgent situation where somebody's life is in danger you need to affect an arrest - in those circumstances you wouldn't have time to do a written ops order?---No.

But where there - some planning always occurs?---Yes.

Am I right about that?---Yes.

Whether it's as five minute plan or a 24 hour plan?---Yes.

Have you ever, prior to being called out on either the Borroloola job or the Docker River job, seen any documentation that's prepared?---Not prior to, no, I don't believe so.

So when you went out on 9 November 2019 were you expecting to see any written documentation as to what the plan was in terms of arresting Kumanjayi?---Not really, no. I wasn't sure what I was expecting. I guess whatever information was given is generally what we would go with, yes.

Your job was to effectively do what you were instructed to do by those superior to you organising a job, is that right?---More or less, yes.

On 9 November 2019 you received a phone call asking for you to be involved in a deployment out to Yuendumu with three other members and you used these words on the 13 November "In relation to a high-risk arrest target?---Yes.

You received that phone call from Sergeant McCormack, is that right?---Yes, yes.

And you arrived at the station at roughly 2:30 pm. Is that fair?---I that's what I've said, yes.

And I absolutely don't want to suggest - put words in your mouth, I am trying to go a bit quickly so that you're not here longer than you need be?---Sure.

I will just read to you from page 2 of your first interview. You say, "I arrived at the station at roughly 2:30 and proceeded to equip myself with standard gear that I wear and take out in relation to an IRT". What we know ultimately is that you took out to Yuendumu on that day, your Glock pistol, and AR-15 rifle, an ECO (sic)?---ECD maybe - a Taser.

ECD, I beg your pardon, the Taser, that's Electronic Control Device, is that right?---Yes.

ASR, which is your capsicum spray?---Yes.

A baton?---Yes.

And a 10 calibre ballistic vest?---Yes. Well, a ballistic vest - the IRT vest, yes.

The IRT vest?---Yes.

What is the IRT vest - or what was it?---It is a ballistic rated vest that we wear, it carries a hard plate and it has pockets and pouches that can contain your radio, magazine - ammunition magazines et cetera and any other pieces of equipment that you may be able to attach to it.

In relation to that vest, does the hard plate act as an effective protection from a knife wound?---Yes, it would do.

In relation to grabbing that gear to take out to Yuendumu, did you give much thought to it or did you take your whole IRT kit?---I generally - yes, took my whole kit, I guess.

Do you recall getting any instructions in relation to the uniform that you were to wear?---I think I received a text or may have had a discussion at the time of the phone call from Constable - Senior Constable McCormack that we were to go in our blues "but bring our kit."

Had that ever happened to you before - had you ever got that instruction in relation to any IRT job beforehand?---Yes, I think so.

So did you find that instruction confusing or concerning in any way, or did you just grab your blues?---I think I may have questioned it, and thought, well we're getting deployed as an IRT unit, should we not be taking - I don't know if I questioned it as such, but I may have queried it. Should we not be going in our kit, but I think - pretty sure that Constable McCormack said, well, you know, we've been told go in your blues, I think Superintendent Nobbs said go in your blues, but take your kit anyway.

And having given that - have been given that clear instruction, you - - - ?---Yes.

- - - did what you were told and heard, correct?---Yes, yes.

In your second interview on 13 November, at page 22, I'll just read it to you, because you were asked some questions - I beg your pardon, that's when McCormack tells you, "I know you're freshly married up" - - - ?---Yes.

- - - "But are you happy to come in and do the job", and you were happy to come in and do the job?---I think I actually asked if there was anybody else available - - -



I see?---Because I would have preferred not to, however, I was told there was nobody else available.

When you got into the station, was Sergeant McCormack there, physically, present?---Yeah I think he was in the – one of the sergeant's offices.

Do you recall being directed to go over to see Constable Rolfe, who had some information about the job?---Yes.

When you went over to see Constable Rolfe, he had ready to play, didn't he, the body-worn video footage from 6 November?---From what I recall, yes.

And do you recall standing around a computer to watch that?---Yes I do.

And Constable Eberl was there as well?---No I think when I arrived, I think Constable Rolfe was there – excuse me. And possibly Constable Kirstenfeldt might have been there as well.

Did you watch the body-worn video with Constables Rolfe and Kirstenfeldt before Constable Eberl arrived?---Yes.

During that playing of that video, was there any discussion about it?---There may have been a few words spoken, but I couldn't tell you what that discussion was word for word.

Did Constable Rolfe tell you that he had had any involvement, or any attempted involvement with Kumanjayi prior to that time?---Not to my knowledge.

Were you aware at that time that there was an alert that had been placed on the PROMIS system in relation to Kumanjayi?---I honestly couldn't tell you now, sorry.

When – so you watched that body-worn video with Constable Rolfe and Officer Kirstenfeldt, do you recall any discussion about the community police who were involved in that attempted arrest?---I don't recall a discussion, no. I can't recall.

Was there any criticism of them, from Constable Rolfe or Constable Kirstenfeldt, that you heard?---I really couldn't tell you to be honest, sorry.

So Constable Eberl then comes again, is that right?---Yes.

And you watched – sorry, Constable Eberl comes in, joins the briefing, and watches the body-worn video footage again, is that right?---Yes.

After that time, you set out to Yuendumu, you were with Constable Rolfe, and we know that Constable – Kirstenfeldt sorry, Senior – Constable Kirstenfeldt I think, and Constable Rolfe travelled in the same car, correct?---Yeah, I was with Constable Eberl.

Yes?---Yes, yes.

And that paring was a pretty natural paring wasn't it, given that you and Constable Eberl knew each other well?---Yeah, we – yeah I guess, yeah just naturally happened like that, yes, because of that.

I suppose that's my question. Was there any discussion as to how you travelled to Yuendumu, or did you just naturally break up in pairs?---I've worked with Adam a lot prior to that, Constable Eberl. And yeah, I guess it was just a – a natural paring, perhaps, it may have been discussed, we'll go and do this, and you guys go and do that. Go and get some food maybe, I don't know, I can't recall.

At – because you went to the supermarket I think - - - ?---Yes.

- - - before you went to Yuendumu, is that right? In November 2019, you were working together with Adam Eberl, in relation to the Youth Engagement Squad, is that right?---Yes.

And he described you as like-minded people, similar philosophy on policing, is that fair?---Yes I think so, yes.

At the end of the briefing that happened at Alice Springs Station, where you'd watched the body-worn video twice, once before Constable Eberl got there, and once after, what did you understand to be the mission for the IRT in Yuendumu?--- Well it was obviously to identify, apprehend and arrest the offender in relation to that.

So it was to identify, apprehend and arrest Kumanjayi?---Yes.

Did you think that you were going to do anything else in the community while you were there?---Not at that time, no.

Did you have a perception as to how long you would be in the community for?---I think possibly overnight, and maybe another day. I – I really don't recall. But it – I don't – I don't think I envisaged we were going to be there for any long – long period.

When you went to the supermarket on your way into Yuendumu - - - ?---Yes.

- - - to grab some food, how long were you grabbing it for?---A day or two. Yeah.

After you did – you engaged in the briefing in Alice Springs, where you watched the body-worn video twice, was there any specific discussion that you recall with Sergeant McCormack?---Not that I can recall, no.

Any discussion that you had with Sergeant McCormack, reinforced this view that your job, on that day, was to go up to Yuendumu – or that night, and assist in the identification, apprehension, arrest of Kumanjayi?---I – yeah, look I – to be honest, I – I can't really remember what discussions may have been had back then.

I'll just ask you then what was clear in your mind. In your mind, as a result of what information you had been given - - - ?---Yes.

- - - It was firmly focused on the arrest of Kumanjayi, correct?---Yes, yes.

We take it from your evidence to date, that there was no risk assessment that was done or – in relation to the arrest, in Alice Springs?---Not to my knowledge, no.

And there was no specific plan developed, that you were aware of, in terms of how Kumanjayi would be arrested?---No, no.

And you've come to know, haven't you, that prior to 5 pm, in fact Sergeant Frost, who was the sergeant based in Yuendumu, and Sergeant McCormack, had formulated an – a written operations order, or arrest plan? You know that now?---Vaguely, yes. Yes.

At the time you left Alice Springs, did you have any idea that that was going to be sent to you?---No, no.

So I'll come now to your arrival in Yuendumu. Documentation suggests that you – that Officer Donaldson arrived first, and then Rolfe – Constables Rolfe and Kirstenfeldt arrive at 6.33 pm. And yourself and Constable Eberl arrived at 6.56 pm. Do you need me to show you the raw evidence about that, or are you happy to accept that?---No, I'll accept that.

When you got to the station at 6.56 pm, you went in, and there were a group of officers already there. Do you have a memory now of who was there when you walked into the Yuendumu Police Station?---I – I know, obviously Constable Rolfe, Constable Kirstenfeldt, I think Constable Donaldson may have arrived a short while after, but was already present prior to our arrival. Sergeant Frost, I may – may have seen Constable Hand there. And that's all I remember when I look back at it even now, yeah.

Had you met Sergeant Julie Frost prior to that day?---Yes I had. Once before.

You have a memory of greeting – of her greeting you, and vice versa, don't you?---Yes.

And had you met Chris Hand, who is her partner (inaudible)?---I may have crossed paths, and – and just a quick, hey how you doing, but no – I've never really had a conversation with him before, no.

Do you know Officer Felix Alefaio?---Yes I do.

Had you met him - - - ?---From New Zealand.

- - - prior to 9 November?---I remember him from New Zealand police.

I see?---Yes.

And so when you walked in the room, do you remember seeing Felix there at any stage?---No I'm sorry I don't. I don't know why, but I don't.

So you're not suggesting that he wasn't there, but - - - ?---No.

- - - just that that's not in your memory?---Just that it's not in my memory, for whatever reason.

As you explain in your first interview, "When we got to" – I'm reading from page two. "When we got to the station, I met up with Adam Eberl, who also came out. Rolfe – Zach Rolfe, and James Kirstenfeldt were also at the station. When I got to the station I was briefed. Adam and I were greeted by Zach Rolfe. In relation to him showing us the footage of an incident, which involved the target, who I know as Kumanjayi Walker, where he's assaulted members of the police over the last couple of days with an axe". I'm sorry – that's referring of course to Alice Springs?---Yes.

Did you watch that body-worn video again in Yuendumu?---No I don't think so.

So at page two, when you were interviewed about this at three in the morning on the 10th, you say that "Rolfe and Kirstenfeldt had arrived at the station probably 15 minutes or so before us. And we went to the station. Zach Rolfe had gathered information and intel from the station here, that I believe from Julie Frost, the OIC. He said 'We don't have a lot of information', however we did have a house number that we were going to do a low-key door knock on, House 577." Do I take it from that, that when you first walked into the station, you actually spoke to Constable Rolfe, away from Sergeant Frost?---I think so. I don't know, she may have been in the office when we first arrived, but yeah, I'd be guessing now, sorry.

It really suggests, doesn't it, that there was some form of briefing given to you, very soon after you walked in, by - - - ?---Yes.

- - - Constable Rolfe?---Yes, and maybe Kirstenfeldt. I – I recall them being there when I – when I arrived, from what I recall now.

And they were giving you the impression that they had particular information about this job, that they'd gleaned from Sergeant Frost?---Which was very little, yep, sorry.

Which was very little? You were asked about this again of course on 13 November. So I'm just going to assist you by reading you some of your evidence from that interview. It's page 30 of that interview. You say this:

"Constable Rolfe had a map of the town. He said something along the lines of 'We haven't got much intel from the members here, there's not much to go by, other than I believe family, or he may be at this address, which is a family address, House number 577', which is what I wrote in my notebook."

So you had your notebook there, writing down what was told to you by Constable Rolfe at the time?---I think so, yes.

“And then he said ‘Failing that, there’s another address’, and I think it was House number 511, or 111”.

We know now that was the second house that you went to at – on that day, is that right?---Yeah five – I think 511 was the house we went to, yes.

And you go on to say:

“So number 511, or I don’t know, but I knew it was on the other side of the oval, looking at the map. So our first address was going to be 577.”

Et cetera. And you were asked whether power of entry or use of force was discussed at that brief, and you said “It was not”, agreed?---I’ll agree with that, yes.

So I take it that that discussion with Constable Rolfe gave you the impression then, didn’t it, that nothing had changed in terms of your primary focus being there to arrest Kumanjayi Walker?---Yes.

You say in your second interview, this is the 13th again:

“I did see Julie Frost. She said ‘Hey Tony how are you’. I hadn’t seen her since I’d been out there to assist some months ago. But she didn’t, from what I recall – I don’t think she participated in that briefing. I think she was in her office. She may have come over and just looked over, or something. I really don’t remember.”

And you were asked how long that briefing went for, and you said “A few minutes.” So your clear memory on 13 November, was that the briefing that had taken place in Yuendumu, was conducted primarily by Constable Rolfe, correct?---From what I recall, if that’s what I’ve said too, yes.

Okay. And it wasn’t much of a briefing, because he was essentially saying we don’t have much - - - ?---Yes.

- - - but we’ve got these two houses and here’s a map?---That’s what I recall.

If I can ask you to accept from me that it’s clear from the CCTV footage, that there’s approximately five minutes, where the four IRT officers, yourself, Eberl, Kirstenfeldt, Rolfe, are in the muster room with Sergeant Frost. And there – what we now know is the written operation order is over to the side, on a desk. And words are spoken, unfortunately it’s not recorded. Do you have any memory – well I withdraw that. Do you accept first of all, that some words were spoken by Sergeant Frost, in your presence?---I think so, there – there must have been some words spoken, but I couldn’t tell you what, sorry.

Sergeant Frost has given evidence, I'll just try and summarise it for you now, in these proceedings, that the written operations order was in fact printed out, she'd emailed it at about 4.49. She had printed it out then. I'm not suggested you received that email, prior to the attempted arrest of Kumanjaji. But it was printed out there, and in her mind, she thought you must have seen it. And she has an – she believes that she referred to the written operations order, and a 5 am arrest plan. Do you think it's possible that she did, and you can't recall it?---I – I can only go by what I recall, and the information that I remember, to be fair. I think if something reasonably prominent was shown to me, I'd possibly remember that.

She – she gave evidence, just to be clear, she's not suggesting she has a clear memory of handing out the written operations plan?---Yep.

She believed that you would have received the email. But what she thinks she said is something about the 5 am arrest plan - - - ?---Well I don't recall that - - -

- - - you have no memory of it?---No.

Felix Alefaio gave evidence in these proceedings, and you accept that Felix Alefaio was at the police station, you just don't recall seeing him?---Yeah, he – I saw him later on in the evening, yes.

Felix was sitting off to one side, and he – his memory is that while the four IRT members were there, the 5 am arrest plan was discussed?---All right.

That doesn't prompt your memory in any way?---Not at all, no.

You would appreciate, wouldn't you, that in these circumstances, where people are being asked to recall what was said, hours before an extremely stressful event, it can be difficult to accurately remember, is that fair?---Look, I totally agree, yes.

That accords with your experience as a police officer?---Yes.

I just want to show you what the written operations order actually said. I appreciate that your clear evidence is that you didn't see it at any time prior to the arrest of Kumanjaji.

Can I ask that that come up on the screen?

I'll just check, senior constable, have you had an opportunity to see it since Kumanjaji's death?---Would that be the – yes.

That's it there, and it might be easier rather than putting it on the screen, just to ask you to refer to it?---Yes.

It's there because First Class Constable Eberl was asked to look at it. Have you actually seen that prior to today? Have a look - - - ?---Yes I have seen it prior to today, if this was the one that was emailed to me.

It was emailed to you, can you remind us of the time it was emailed?---16.59, 4.59 pm on 9 November 2019.

When was the first time you saw it do you think?---It was some months later. I think somebody made me aware of the email, and then I went and checked my emails and – and located it.

You see that it's addressed to yourself and a number of other police, including the IRT members?---Yes.

And if you just remind yourself what it looks like, that document. Have you ever been sent anything like this document, at any time prior to an IRT call out?---Not in this country, no.

Were you in anything equivalent to the IRT in New Zealand?---No.

When you were – did you, never the less, participate in some, I'll call them high risk, but high or higher risk arrests in New Zealand?---Yes.

That is, arrest of people who were known to have assaulted a police officer, for example?---Yeah, yeah high profile offenders, yes.

Did you participate in any arrest of a high profile offender in New Zealand, where you were given an arrest plan?---Yes.

Did you find it helpful?---Yes.

What sort of things would it have on it?---Obviously a clear identification of our – of our target. Where they may or may not live. Associates to – to the person. Risks at the properties. Ways of mitigating those risks. Types of vehicles that they're – they may have, may or may not have. Any up to date relevant information. And probably resources that we had, that would help us along the way.

Sounds like a sensible way for mitigating the risk - - - ?---Yes.

- - - and planning for an arrest. Do you agree?---Yes, I agree.

In relation to the up to date information about the suspect. Might that include for example, any mental health concerns that they had?---Yes.

So for example, of somebody was known to be off their medication and to have particular actions as a result, or behaviours as a result, that might be included?---Yes, high drug user, prone to violence, et cetera.

What about – have you – did you ever see in New Zealand, any particular alert on an arrest plan like that for somebody who had intellectual difficulties, or hearing difficulties?---I can't recall, but I'm pretty sure if there was something that was quite substantial and noticeable that would obviously be beneficial to us, then I'm sure it would have been noted down and presented.

Anything that would help you to cater for an effective arrest of that person?---Yes.

And anything that would help you to minimise the risk of use of force which would be good to include in the arrest plan?---Yes.

And you mentioned earlier the resources that you would have available. That would include, of course, human resources that might be useful in those circumstances? ---Human resources, equipment, helicopters, et cetera, yes, anything that's available to obviously mitigate any sort of use of force risk.

And photographs of the suspect to apprehend, is that right?---Yes.

If you turn over the page you will see on the written operations order, the member are listed there?---Yes.

And they include yourself and other members of the IRT and then local members, Felix Alefaio, Julie Frost?---Yes.

And a note that Member Hand would remain separate to the operation due to the conflict of interest as a result of the axe incident?---Okay.

Well, I withdraw that. Just have a look there. "Member hand will remain separate to operation due to conflict of interest. Do you see that that is recorded in that?---Yes.

But the local members being listed as available to assist are Felix Alefaio and Julie Frost. And then Plan day 1, Saturday 9 November 11 pm IRT commenced duty and conduct high visibility controls and respond to call-outs"?---Yes.

And then over the page, "Sunday 10 November, 5 am, Donaldson and Alefaio will commence duty alongside the IRT members to affect the arrest of Walker"?---Yes.

That plan was not known to you at any time before you set out at 7:06 pm from Yuendumu Police Station, correct?---not to my knowledge.

And you have no memory of a discussion of the 5 am plan?---Not to - not to my knowledge, no.

Or a discussion that it was originally proposed that Felix Alefaio could go with police officers?---No.

Do you agree that Felix Alefaio, because he had a good relationship with Kumanjayi and knew him by sight, would have been a very useful resource?---I think anybody



that has a relationship with somebody that we'd like to apprehend would be of benefit.

Why is that?---They may be able to contact them first and be able to create a rapport and discuss that "This is what is required", it's a first option, it's a passive approach and then obviously if that doesn't work then we would look at other options.

That passive approach enables you, doesn't it, to - it gives you an option of minimising the risk of use of force?---Yes, it can do.

In relation to this plan, if you had known that a written operations order with that plan, high visibility patrol, so 11 pm and 5 am arrest with Felix Alefaio, was the plan approved by Commander Nobbs, would that have been the plan that you would have stuck to?--Yes.

During the trial of Constable Rolfe after he was charged with murder and manslaughter for the death of Kumanjayi, you gave evidence at trial, of course? ---Yes.

Did you then sit in for Constable Rolfe's evidence himself?---No.

Have you ever read any of the trial transcript of the evidence Constable Rolfe gave? ---No, I haven't.

Has anybody ever told you about aspects of the evidence that he gave?---Not to my knowledge, no.

Can I just ask you to listen carefully then to the evidence that I will read to you now. At page 1061 of the trial transcript he says this;

"Previously before the officers arrived"

And he is referring to yourself and Constable Eberl.

"I discussed with Julie Frost how if she wanted us to arrest Kumanjayi at 5 am we had no intelligence as to where he was. We couldn't create a plan. I informed her that generally when IRT would attend a community we would introduce ourselves to the community because we're guests in the community. We would introduce ourselves to the community while attempting to gather intelligence about a person that we are generally trying to locate and at the same time trying to gain community assistance for our task. I said, 'Perhaps that's the best course forward' seeing as we had no intelligence. And she agreed with me at that point, that was before the other officers arrived at the station."

Senior Constable, if Constable Rolfe had information from Sergeant Frost that there was a 5 am plan for arresting Kumanjayi that should have been conveyed to you, shouldn't it?---I think if anybody had anything that could benefit us then by all means.

But if anybody - if one of your fellow officers in the IRT was told that actually there was an arrest plan that involved a 5 am arrest the following morning - - -?---It would be nice to have that information, yes.

Absolutely, it would have been essential for your planning, wouldn't it?---Yes.

And what - effective teamwork requires that everybody in the team has the same information?---Yes.

And that you can participate in the planning for an arrest together?---Yes.

Not that information is siloed so that two out of the four have it or less than two, do you agree?--- I understand. I understand that.

You were the most senior member of the IRT I think, that went out on that day, is that right?---No, I was the most senior rank out of the four members but not the most senior member. I actually - - -

Who did you regard to be the most senior member of the IRT?---Zachary Rolfe.

Why was that?---He had been in the IRT longer. So he had more experience and I think considerably longer than me.

Was there a team leader actually appointed for his job?---No.

Did you think, in effect, that Zachary Rolfe was taking the lead on the job?  
---He made suggestions, I think with the knowledge that he had, I guess, and the suggestions he made seemed that we were in - I was in agreeance with, so he had more information than what I'd had.

When you got to - I am not being critical of him and I am not asking you to be critical of him?---Yes.

When you got to the station in Alice Springs you were directed to Constable Rolfe who was going to do the first part of the briefing?---Yes.

When you got to Yuendumu it was Constable Rolfe who approached and did the second part of the briefing?---Yes. Yes.

And that would have given you the impression didn't it, that out of all of you it was Constable Rolfe who was taking the lead in the job?---In a sense, yes.

In the report of Commander Proctor that he is prepared for it to assist her Honour he says this at page 70;

"The IRT member were not expecting to receive any orders from Sergeant Frost when they arrived in Yuendumu. They were aware of the mission, they

believed they had been tasked with by Acting Sergeant McCormack and remained focussed on quickly locating and arresting Kumanjaya Walker."

Is that true of your belief at the time?---Generally, yes.

In your second interview at page 33, in fact you say this, "We were literally, from what Constable Rolfe said, we're just going to go standard, entry to the address, we'll have Tony - you and Adam Eberl take the back."

That was just how it was going to go, wasn't it? You were just going - soon as you arrive in Yuendumu you were going to head out and arrest Kumanjaya if you could locate him?---Locate, yes.

When you left Yuendumu station at 7:06 pm you went straight to House 577, you and the other officers?---Yes.

And there was an attempt there, or I think Constable Rolfe entered that house and there's an attempt there to search and detain Kumanjaya?---I think, yes, and obviously make enquiries at the house with the view that if he's there, obviously, yes, to detain him.

To detain him, and similarly with House 511 when the IRT team heads to that house the idea is to locate Kumanjaya and arrest him?---had he been there, yes and if our enquiries revealed that he happened to be there then obviously we'd have to act upon it.

It's not gathering intel with a view to then picking him up at 5 am the next morning, is it?---It's - no, it's getting information to deal with - if the information is there then - and obviously if we did not locate him during that night then that may, you know, had the arrest made.

Sure?---But in the perfect world, being shown to everybody or we'd seen that then, yes, it would be more information I guess.

If the arrest plan - if and your evidence is then that if you had been shown an arrest plan?---Yes.

And told that that was the arrest plan that had been approved by your commander - Commander Nobbs?---Yes.

That would have been the plan that you would have stuck to?---We wouldn't have left the station until 11 pm, according to the plan.

Your Honour, is that a convenient time to have a short break?

THE CORONER: Yes. We'll just have a short break?---Thank you your Honour.

WITNESS WITHDREW

ADJOURNED

## RESUMED

THE CORONER: Dr Dwyer.

DR DWYER: Thank you.

ANTHONY HAWKINGS:

DR DWYER: Senior Constable, I'll move on from this shortly, but you were – I was asking you before the break about the briefing that takes place in the station at Yuendumu when you arrive, before you leave at 7:06 to go into the community?---Yes.

When you were asked about this in your second interview on 13 November, you say this; you were asked the question by Officer Wood:

“How long after you arrived did this briefing occur?” And you say, “Pretty much immediately upon our arrival. It was like, ‘Let’s get in there and let’s pretty much get out there and locate him’. And the idea was to get back to the station, hopefully identify him, locate him quickly and then get back to the station and come back to Alice Springs.”

And “him” there is Kumanjayi, of course?---Yes.

And I’ve been referring to Officer Nobbs as Commander Nobbs, I apologise. Superintendent - - -?---Superintendent.

- - -Nobbs. When Superintendent Nobbs was giving evidence to her Honour on 27 November, I put to him – I asked him if he accepted the proposition when he watched the body-worn video of the IRT officers arriving at House 577 and 511, that the IRT did not appear to be conducting or gathering intelligence with a view to seeing if they came across Kumanjayi, but they appeared to be searching for him, and he agreed. You agree with that too, don’t you? You were searching for Kumanjayi?---Yes. And obviously, using whatever information we could obtain to establish his whereabouts.

Sure. And in the absence of knowing that, actually, there was an arrest plan for Sunday morning at 5 am?---Yes.

I’m so sorry, Senior Constable, the livestream’s down. So, I’ll just pause so that it can come back again?---Sure.

THE CORONER: Great.

DR DWYER: Senior Constable, before you left the Yuendumu Police Station with the IRT at around 7:06 pm, was there a discussion as to which of your accoutrements you would take, which of the, for example, weapons you had with you that you would take?---Not that I can recall.

You left the station carrying the long-arm firearm that – which is known as an AR-15. Is that right?---Yes, that's correct.

Have you ever in the course of your duties discharged that weapon?---Only in training.

Why did you take with you an AR-15 on this job, which you thought involved the arrest of Kumanjaya?---I think I probably – looking at it now, I would have made an assumption that nobody else had an AR-15 with them at that particular time we were leaving. So, I made the decision to take my AR-15 which, for IRT, is our primary weapon, as opposed to taking – well, your Glock. In the event of the possibility of something extraordinary occurring where we may not have had – may have needed it, but may not have had it.

Do you think, looking back on it, that you took the AR-15 because it was a weapon often carried by the IRT, rather than thinking about what was actually going to be of most assistance in the arrest of Kumanjaya?---Potentially both, to be fair. Yes, I can understand both of those comments.

Okay. Well, I'll just ask you an open question. The primary mission was to arrest Kumanjaya - - -?---Yes.

- - - in your mind?---Yes.

How did you think that it would have been of assistance in – I withdraw that. Were you thinking that it would have been of assistance to the four of you in that job?---Not to do a hands-on arrest, no.

Okay?---But it certainly could, in the event if the situation became critical for whatever purpose, then at least I was comfortable in the fact that we had all of our relevant accoutrements to deal with any possible situation that may arise.

What were the possible situations, in your mind, that may arise that would have justified – well, I withdraw that, that justified carrying the AR-15?---The presentation of a firearm. The presentation of any weapons that may cover distance further than a handheld weapon. So, something to that effect as an option.

When you had been out on that IRT job in Borroloola- - -?---Yes.

- - - did you carry an AR-15 in the community?---I believe initially, yes.

Was that for the purpose of arresting somebody?---I don't think the AR-15 was for the purpose of arresting somebody, no.

I'm just trying to help her Honour to understand, I appreciate the IRT - - -?---Yes.

- - - doesn't exist anymore in a form?---Yes.

But was it part of the general tactics of the IRT to carry an AR-15 if you were called out to a job?---Yes, generally, your Honour. It's to have something – like I say, depending on the risk of the situation or the fact that it may elevate to something that may certainly be critical, then we at least would have the necessary equipment to potentially deal with it, if need be.

In this case, you've told us, there was no specific risk assessment that was done in relation to this job - - - ?---No.

- - - though was there?---Correct.

So I'm going to suggest to you, that on reading the material, there wasn't a whole lot of specific thought that went in to who would carry what, before you went out to carry – to arrest Kumanjayi, is that fair?---Correct.

If you were asked to assist with a hands on arrest with Kumanjayi, an AR-15 would not have helped you, do you agree?---No, not for a hands on, no. It would be an encumbrance.

Yes?---Yes.

And that's because you can't put – easily put it down and leave it unattended while you deal with a hands on arrest?---No, although it is a weapon that can be slung. So you can still utilise – sling it to the rear, if you need to go hands on.

We heard from senior – from First Class Constable Eberl though, that there are particular slings that you wear?---Yes.

And you weren't wearing a sling on that day, that would have assisted you to put the AR-15 safely and comfortably behind you, is that right?---No I believe the sling that I had, from memory, well, would have been fine to sling to the rear, if need be.

Would – would you have felt then though, that it was accessibly potentially to members of the public, if you were involved in some sort of melee where you were doing a hands on arrest where the gun was on a sling behind you?---If – for somebody to come up from behind - - -

Yes?---To access the firearm?

Yes?---Potentially. Potentially, but they'd probably have an issue trying to take that, because it's slung to my body.

Did you have a Taser on you - - - ?---Yes.

- - - when you went out to arrest Kumanjayi?---Yes.

And did you carry your baton?---Yes.

And did you have your vest on, that was protective against - - - ?---No - - -

- - - (Inaudible)?---I don't believe I had my – my ELBV vest.

Did you have any discussion with the other IRT members, as to who would be – as to who would attempt a hands on arrest, if Kumanjayi was located?---No. No.

Can I suggest to you, I'll come to points about the benefit of a plan, but one benefit of – of discussing with the other members, is that you can work out what tactical options you each carry as part of a team, more effectively, if there's a discussion about it beforehand?---Yes I can understand what you're saying, yes.

I'll come back to that shortly. Can I suggest to you that the open carry of an AR-15, in terms of limiting your options, was something that you reflected on, on 13 November, because when you were asked about what happened after Kumanjayi was shot, you say "The situation after that didn't require me to go in." And you said "From memory" – this is at page 43. "From memory, because I was conscious of the fact that they were already in there and containing the guy, so I didn't require me to go in, plus I was carrying a long arm rifle. So I didn't want to get into a wrestle with a rifle, and they looked like they'd contained the guy"?---Yes.

What did you mean by that in terms of not wanting to get into a wrestle with somebody when you had a rifle around you?---Unless it's absolutely necessary then there was no point in me going in with a rear slung AR-15 on - - -

Sure?---My back, yeah.

But is there also a danger to going in with a rear strung - - - ?---There's potential. Possibly, yeah.

I'm just borrowing your words?---Yes, yes.

As to why you didn't want to do it. So just - - - ?---Yes, I - - -

- - - if you could just explain?---I think – I think I explained that they were in the process of containing Kumanjayi.

Yes you did and - - - ?---Yeah.

- - - just to remind you, what you say is "Plus I didn't want to go in"?---Yes.

"Plus I was carrying a long arm rifle"?---Yes.

"So I didn't want to get into a wrestle with a rifle"?---Yes.

What are the dangers of getting into a wrestle with a rifle?---It's just an encumbrance between two people, I would assume. I've never been involved in a wrestle with



someone. It's more of a distance thing. However, I wouldn't want to get into any type of physical altercation if I'm in possession of the rifle, but - - -

Is there a possibility that your rifle can be discharged by somebody else engaged in the wrestle?---There's a possibility if somebody understands firearms, and yeah.

Can I suggest to you that there's another reason – and I'll just be clear, Senior Constable Hawkings, I'm asking you to reflect on this, so that we can learn the lessons of this tragedy?---Yes.

I'm going to suggest to you that there's a – a reason why – another reason why an AR-15 shouldn't have been carried in these circumstances when the primary focus was the arrest of Kumanjaya. And that is, that it is intimidating, for members of the community, in a way that was unnecessary, given the limited risk that was posed by Kumanjaya, at that time?---Yes I understand what you're saying, yes.

Do you agree with me? Reflecting on it?---I can understand that people would be surprised at the sight of a police officer carrying an AR-15, yes.

And you know, don't you, that Elizabeth Snape, who was there with her babies, this – had a discussion with Constable Eberl, which she's given evidence about, and he's apologised and said - - - ?---Sure.

- - - it was not professional, and he wasn't trying to be offensive. But she says to him, "I'm wondering why he's got a gun", and she points at you. And she says "It looks like he's aimed to shoot – shoot at somebody." You can accept, don't you, that if you're – members of the community aren't used to seeing an AR-15 long arm rifle being carried around?---Yes.

You don't want them to become accustomed - - - ?---No.

- - - to seeing those sorts of rifles being carried in the community?---No.

And you accept, don't they, that for somebody who's not a police officer, they're pretty intimidating looking?---Yes.

And you don't want to – to create an environment where the community are intimidated or fearful of police?---No, certainly not. Certainly not.

You want to create a trusting environment between community and police?---Yes.

So for that reason, unless it's absolutely necessary, because of unrest, or something else in the community, it's a good idea not to carry them (inaudible)?---In hindsight, yes I understand that.

I'm going to ask you now about what happened, not at the first house you went you, which we have clearly understood in your evidence, but the second house. The house where Kumanjaya was ultimately located was 511?---Yes.

When you went to that house, was there any discussion beforehand, as to the particular formation of the IRT outside the house?---I think, from memory, it was – words may have been spoken to the effect of the same as what we had just done at the previous house, to the back. Which is obviously where I went.

So there'd be a repeat, effectively, of the manoeuvre that – from the the first house?---More or less, yes, yes.

Was there any discussion that Constable Rolfe would take the lead, or another officer?---I can't recall that at all - - -

And - - - ?---But I don't think so.

- - - was there any discussion as to what your specific role would be, outside that house?---I think it was once again, just a – like I say, a few word would have been mentioned, it's the same as what we'd done at the previous house, at 577.

You have since watched the body-worn video - - - ?---Yeah.

- - - from yourself and others, is that right?---I – yeah, I have once or twice, but not recently.

Do we take it that apart from what is captured on the body-worn video footage, there was no – no other discussions?---Not really, no.

In relation to that particular entry at House 511, did you observe Constable Eberl and Constable Rolfe enter into the house?---No I didn't.

Why – why is that? Where were you positioned?---I was positioned to the – at the rear door of the house. Which was well out of sight.

You understand, don't you, that we have in evidence, your interview, and the transcript of it, from when you very first reflected on this, at three in the morning, on 10 November?---Yes.

I'm going to ask that that be played to you now. Just that portion of it. So that I don't have to ask you again, Senior Constable - - - ?---Yes.

- - - about it. But you understand there's people listening from the community?---Yes.

I want to give a warning about this, because it's distressing. It covers the time when Kumanjayi passed away. But the reason I'm playing it, is because we are getting some feedback from some members of the community, they really want to try and understand what happened in the lead up to Kumanjayi's tragic death.

So I'll just play this interview from Senior Constable. He was outside the house. He saw some part of what took place in Kumanjayi being shot.

So I'll ask Bec to play that now.

DVD PLAYED

DR DWYER: And that sentence finishes:

"Which I thought was – I believe in hindsight now that the first noise that I heard, which I thought was furniture falling down, as possibly the first gunshot."

And Senior Constable Hawkings, we've all been following along with our transcript and I think it's louder on the livestream for people to hear. Had you ever been involved in a situation where a member of the community was shot by a police colleague?---No.

Do you remember now what that experience was like for you as a police officer?---Very shocking, yes.

Is that anything that you thought might possibly happen when you set out from Yuendumu Police Station at 7:06?---No.

You go on in that interview to say that people were coming out of nowhere, was your perception?---Yes.

This is at least at 3 o'clock in the morning. You demanded they stay back and move back and I told the women that. I recall women holding babies saying, "Get them out of here. Take them away." People were saying, "He's shot him. He's shot him", et cetera. You can understand, can't you, the enormous shock that the community felt having heard those - - -?---Yes.

- - - gunshots?---Yes.

And then on top of that, that was somebody who was a loved member of the community?---Yes.

It must have been extremely distressing for those members of the community?---Very, very.

You are asked about your main concerns in your second interview and you say:

"Officer safety, everybody's safety."

You go on to say: "There are two things, a male had just been shot in front of my eyes and I knew that he was shot more than once, so he needed immediate first aid."

In terms of the first aid, her Honour has an understanding from the body-worn video footage and CCTV footage of first aid for Kumanjayi. When was that first commenced, first aid?---I believe it occurred the moment that the two officers and Kumanjayi were placed in the back of the vehicle.

What was your role after the – in terms of moving from House 511 through to the station?---I drove the vehicle. So, I told them – I think I recall saying hop in the back and I'll – and start first aid, or words to that effect, and drove back.

At the station, I'm not going to go through must of this with you, others may, but you seized Constable Rolfe's firearm. Is that right?---Yes.

Why did you do that?---Just to preserve the evidence. I was aware it was a very critical incident. With everything happening, I thought at that particular time, if I can seize that firearm just to preserve that for a pending investigation that may occur.

You knew, didn't you, that this – in circumstances where a member of the community had been shot, there would have to be a full and thorough investigation in relation to what had occurred?---I think where anybody is shot by police, regardless, yes.

Had you at any time prior to this incident read the general operations order in relation to deaths in custody?---No.

Did you know that one existed?---I believe there was one of sorts that did exist, yes.

But did you receive any training in relation to that document when you started working at the Northern Territory Police?---No, we have a lot of general orders - - -

Sure?--- - - - that we obviously don't cover and obviously, didn't get to – I didn't get to read and that was one of them.

On that night of 9 November or in the morning on the 10th, did anybody mention to you, look there is in existence a general order covering deaths in custody and we need to make sure that we go through the steps?---Not to my knowledge.

So, you were just relying on your general understanding of police investigations in making sure that Constable Rolfe's firearm was seized?---Yes.

You also note in one of your interviews that Constable Rolfe had a noticeably sore shoulder, had a hole in his shirt and he told you that that's where – he says, "That's where I think I got stabbed." You had a look. You could see a puncture wound in his left shoulder, so he took his shirt off. And you also then seized and exhibited that shirt. Is that right?---Yes. I took photos of – I think before – possibly before and after the wound and then I seized the shirt.

When you say, "before and after", what do you mean by that?---Prior to him taking his shirt off, I think. I may be wrong, I'm trying to think back, yeah.

You had a mind at that time, didn't you, to preserving the available evidence for an investigation that should take place?---At least something, yes.

Did you at any time have in mind that the officers should be separated after – I don't mean before first aid was administered, because that had to be your top priority, didn't it?---Yes.

After Kumanjayi had tragically passed away, did you give any thought to the need to separate officers so that they couldn't contaminate each other's account?---I don't think it was possible, just due to the low numbers that we had there and the evolving situation. So, I don't know if that thought crossed my mind, to be fair, because we were only a small number of people.

When did you leave Yuendumu to head back to Alice Springs?---I think I caught a police flight back when the nurses returned the next day.

That was on 10 November?---The following afternoon, yes.

By "nurses returning" who do you mean by that?---The two nurses that visited to assist. I think one was injured, so when we left, they left with us at the same time on the flight.

That's Nurse Walcott and Nurse Zanker. Is that right?---I think if that's their names.

All right?---Yes.

The two nurses who came in from Yuelamu?---Yes.

At any time prior to you leaving to go back to Alice Springs, do you recall any conversation you had with any of the four IRT members about how Kumanjayi had died?---I think at one stage, Adam and I were – we were outside the back of the station. It was still quite a volatile feeling, you know, in the environment. There were rocks that were getting thrown. And I think we were just coming to terms with, did this actually happen, you know, are you okay, what – you know, what on earth happened? It was a brief – well, you know, reality – you know, I don't do – I can't remember what was said, but that was what I'm remembering back now to. It was coming to realisation with what actually happened.

Do you think you were still in shock on the night – for the whole of the night?---Yes, yes.

And what about the next day?---I think I was in shock for several weeks, yeah.

Did you get much sleep in the few nights after?---No. No.

I am going to ask you now, with the benefit of all the reflection you've done since this tragedy, to think back about things that we might learn from it. In your first interview,

at page 8, accepting what you've just said about being in shock, you say this; "From my view" - you were asked if there's anything else you want to say and you say;

"From my view it appeared to be a text book enquiry, it was low key, we were in full police uniform, all of us were in police uniform, so we stood out as police even though we were on an IRT deployment. I believe we should've been in the full IRT equipment and kit, that probably would've stood us out different from police."

Putting the uniform issue to one side, your first line about that is, "It appeared to be a text book enquiry. Did you mean to suggest that from your perspective at that time everything had gone according to plan?---Yes. I don't think it was any different to the general duties making an enquiry to locate someone at an address, you have enough members to be able to cover the back, contain - you know, cordon and contain, somebody does a door knock to see if that person is at the address. Straightforward, I guess.

In terms of what you believed when you were setting out to arrest Kumanjaji at 7:06 pm?---Yes.

Was that it would be a straightforward arrest?---Yes.

Have you read the report that Commander Proctor has written for this - for her Honour about this?---No, I haven't.

Is there a reason why you haven't read the report that's prepared by Commander Proctor?---It's never been - I've never been made aware of it.

Would you like to read the 170 page report that Commander Proctor has written, with his assessment and what the lessons are?---Look, I'd love to providing I don't have to read it between now and the end of giving this evidence, yes. Absolutely.

I'm definitely not going to ask you to do that?---Yes.

You want to reflect and learn from this tragic event, don't you?---Yes.

You're now in a situation where you're teaching other police?---Yes.

You want to understand if anybody is suggesting that it could - should have been don differently, don't you?---Yes. I'd like - - -

You don't feel defensive about that? You want to hear what they have to say? ---Yes.

And if it can be incorporated in your teachings to others?---Absolutely.

I am going to suggest to you that there is this to learn, that Sergeant McCormack and Sergeant Frost drafted a written operations order with an arrest plan that was

approved by Superintendent Nobbs. That should have been the discussion - the subject of understanding by all members of the IRT. That's clear isn't it?---Yes.

Superintendent Nobbs gave evidence that's what he would have expected is a briefing to take place on the arrest plan, with any further detailed discussions as to how the arrest was going to be affected at Yuendumu. You'd agree with that wouldn't you?---Yes.

At the time of the IRT deployment to arrest - which you thought was with the sole purpose of arresting Kumanjayi, police knew of the axe incident, as it's been termed, from 6 November?---Yes.

And police knew that there were alerts on PROMIS that he was - that he may well have presented a risk to police, if I can summarise them like that?---Police generally knew or management knew.

Are you familiar with the PROMIS system, as it was then?---Yes, I'm a bit rusty now because I don't use it, but yes.

Have you ever had a look at the PROMIS alert that was put on for Kumanjayi?---No.

I will just read it to you. So the PROMIS alert said, on 6 November, following the axe incident, "Can be arrested - assault police" and another alert "May be violent - he may be violent towards police". I mean, that was clear from the axe incident, wasn't it?---Yes, if that's been put on from that axe incident, yes, that would be.

But that accords - I am not being critical of - I am not trying to demonise Kumanjayi, it was evident from what happened on 6 November?---Yes.

That in those circumstances when he was faced with police in the room attempting to arrest him, he picked up an axe and ran towards - - -?---Yes.

When you looked at that, you could understand why that was frightening for police in the circumstances?---yes.

And it was very fortunate that in those circumstances neither police nor Kumanjayi was injured?---Absolutely.

So it would have been obvious to you from watching the 6 November video, that arresting Kumanjayi in similar circumstances where police entered a house and he had an opportunity to grab a weapon, presented a danger to police?---I thin - sorry, can you say that one more time?

Sure. From watching the video of 6 November?---Yes.

And knowing what had happened on that day, it would have been evident to you that if police entered a house and found Kumanjayi and he had an opportunity to grab a

weapon, police may well be in danger?---Yes. If he had the opportunity, yes, absolutely, yes.

And in the same circumstances Kumanjaya might be in danger of being shot if he presented a weapon?---Yes.

And I am going to suggest to you that that presented a particular risk - an elevated risk - in relation to the arrest of Kumanjaya than it would be arresting somebody where you don't know that background?---Yeah, I guess it's very common for a lot of people in the Central Desert Region that have those alerts though, so it's not uncommon.

Well, I will just stick with the body worn video?---Yes, sure, but in relation to this, yes.

That particular incident, where you were being sent out?---Yes.

As the IRT tactical squad to affect an arrest?---Yes.

Should have involved a higher level of planning for the arrest?---I think so, looking - - -

And it should have involved a risk assessment, shouldn't it?---Yes.

And it should have involved discussion of a particular arrest plan, particularly knowing now that one had been devised and approved by a Superintendent? ---Yes. Knowing now.

And that if there was better planning to accommodate that risk, that might have minimised the need for the use of force, looking at it in hindsight?---That's a hard one to answer actually, yes.

I am not suggesting to you that we would know for certain?---Yes, yes.

That nobody would have been injured?---But any - I think any planning and risk assessment will certainly go towards being advantageous of reducing the opportunity to use of force or mitigating or minimising and avoiding use of force, yes.

And that's what you tell us takes place in New Zealand in relation to an IRT equivalent squad being sent out to detain somebody?---Yes.

I expect that there will be some evidence before her Honour that Alice Springs should have a second tier TRG or some access to some resources of a highly trained squad that would be able to assist for different strategic arrests?---Yes.

And unrest. Do you agree with that?---I do. I do, yes.

It's essential, isn't it, that if you are going to have an IRT team equipped in that way they need to be well disciplined?---Yes.



Highly professional?---Yes.

And to ensure that before detaining or attempting to detain somebody where the risk is elevated, a proper plan is done?---Yes, I think so.

After you came back into Alice Springs we understand that a barbecue took place at Constable Rolfe's house on 11 November?---Yes.

In the evening. Did you attend that barbecue?---I attended the address. I didn't stay for the barbecue, so I don't know if the barbecue - - -

Yes, sorry, that's by consequence. You attended Constable Rolfe's address in Alice Springs?---Yes.

How did you come to get an invite to that?---I received a text the day before from Senior Constable McCormack stipulating - or saying something along the lines of it was to be an IRT briefing - debrief I should say, the following day in the IRT office, which is at the police station, at about 4:30.

Did you understand that Constable Rolfe would be invited, as well as the rest of the IRT to that debrief?---I actually did, yes.

Did you know what the purpose of that debrief was?---I think it was to, from my thoughts, it would have been to a) first and foremost, check on everybody's welfare. Secondly to more than likely go over general orders that may have needed to have been covered off since the incident, to be able to ensure that, you know, process was continued.

Ultimately, that debriefing in the station didn't occur - - - ?---No - - -

- - - is that right?---It didn't occur.

How was it called off?---I think I received another text the following day, probably a couple of hours before that time, saying that change of address. Now it's at Zach Rolfe's house, and the address was given to me.

And did Sergeant McCormack send you that text message?---Yes.

And so you went to Constable Rolfe's house?---Yes.

Do you know how long you stayed for that night?---I actually thought I – I was only there for about 15 minutes, but I – I left with Constable Eberl, who left, and I had no sleep. So I – I was a little bit – bit of a zombie to be fair. I just sat there, and I think I had a stubbie of beer, maybe two. And then I realised that's not a debrief, and we – I think Adam at some stage said it's time to go, well he was going to go and I said can I – can I get a lift home with you. And he did.

If it wasn't a debrief, what was it?---Turned out, from what I can recall it was going to be, or was some sort of welfare check, I guess. It wasn't just IRT, it was I think, members obviously from his patrol group possibly, or his social group.

Who do you remember now being there?---When I arrived, obviously Zach Rolfe was there. Adam Eberl turned up a little bit after me I think. I think Shane McCormack was there.

Evan Kelly?---Yes, Evan Kelly I recall Evan Kelly being there. I think – sorry, I can't – can't think through - - -

I'll just suggest them to you - - - ?---Sure.

- - - and see if you remember?---Yes.

And if you don't remember, please just tell us. Officer Hanson, do you remember him being there?---Yes, I think he was there.

Kirstenfeldt?---Yeah I think – I think Kirstenfeldt was there.

Boney or Bonny?---Brianna Bonney?

Yes?---Yeah I think – she'd – obviously these people weren't there when I first arrived - - -

Right?---I think the majority of them might have turned up a bit later, I think. Brianna Bonney turned up not before we left.

Henderson?---Paul Henderson, yes.

At any time while you were there, do you recall a phone call being made to another officer, and a discussion with him?---No.

While you were there, was there a discussion as to the events of 9 November?---I- I don't remember. I think I just remember sitting at – on a couch, or in a chair, a soft chair, just sitting there, looking into my bottle and thinking – I'd – I was – I hadn't slept for pretty much two – since the incident. And it wasn't – just wasn't my desire to be there. And I was either going to give my wife a call to pick me up, or get a lift home with somebody. And it turned out that Adam gave me a lift home.

Did it occur to you, when you were there, that it was the wrong thing to do, to be socialising, at that time, given the events of 9 November? I don't mean in terms of – I'm not making a moral judgement about socialising?---Yes.

About – in circumstances where there may well be a discussion as to what had taken place previously?---I – yeah, look I think, looking back, it's probably not the wisest of things to do. I think – yeah, I don't – yeah, looking back, I don't think it was the wisest thing to do, to be there.

In New Zealand - - - ?---Yes.

- - - are you familiar with any sort of protocol that requires, after there's a death in custody, for officers to be separated, so that their results can't be – sorry, so that their versions can't be contaminated, by mistake, or you know, by accident, or deliberately?---I can't really recall to be fair. But I'm sure there would be some type of protocol to, you know, obviously perseveration.

It makes perfect sense, doesn't it?---Yes.

Because, as you've told us today, the first version of events you give - - - ?---Yes.

- - - it's often the most accurate, and you don't want to have people suggest things to you that contaminate your own version?---I understand that.

And particularly important isn't it, in a death in custody, when it's going to be such an important investigation for the police?---Yes.

And for the family whose lost somebody?---Yes.

And it's important, isn't it, to maintain public confidence?---Yes.

Are you familiar with a Royal Commission in Australia in 1991, that looked into the deaths of 99 Aboriginal and Torres Strait Islanders in custody?---Not too familiar. I have read some excerpts of on-line information that have related to deaths of Aboriginals in custody.

Following the Royal Commission, there were protocols, or general orders in the Northern Territory case, that were introduced, to make sure that we had a good standard of investigation following a death in custody. One of those is the General Order in the Northern Territory in the investigation of deaths in custody. Have you since Kumanjaji's death, seen that?---Not that I can recall, no.

Do you understand any of the – or has anybody referred you to the principles in that General Order?---Possibly, but I guess I would have to see it to know, to be fair.

Sure. Well you – it's called The Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public. I might ask, if you wouldn't mind, if there's no objection, reading that overnight. And I'll ask you a question about it tomorrow. But I take it that it – you think that if there's an important General Order that relates to investigation of deaths in custody, and how - - - ?---Yes.

- - - to maintain evidence, you would want to be directed to it, wouldn't you?---Yes.

As a police officer who is involved?---Yes.

And if you'd been told not to meet with Constable Rolfe, or other members of the IRT for a certain period of time - - - ?---Yes.

- - - until the investigation was completed, you wouldn't have done that, would you?---Well I hadn't done so, obviously up until the – the end of the trial, yes.

But Sergeant McCormack suggesting to you that there was going to be a debrief that afternoon, and then the debrief was moved to Constable Rolfe's house. It might – it must have appeared to you that that was sanctioned by Sergeant McCormack?---Yes and no. Constable Rolfe was at the police station the following day when we arrived back from – from Yuendumu. So he was already at the station, just talking to people, discussing I don't know what, but you know, having discussions with everybody at the station I guess. Sergeants, Senior Sergeants, like he had already been there, and he was obviously in the station, so I had no idea what his status was. And I guess, in hindsight, I could have looked into that, to find out whether it would be a wise choice or not to visit that address.

But nobody senior to – directed - - - ?---No.

- - - that it wasn't a wise choice?---No, (inaudible), no.

Thank you.

Is that a convenient time - - -

THE CORONER: And they also were demonstrating it by their own behaviour?---Yes, your Honour.

MR EDWARDSON: But I think he did say, earlier in his evidence, that he thought there was a debriefing, that that would be part of the debriefing, that instruction as to how they conduct themselves (inaudible).

THE WITNESS: I think that would have been very important, your Honour.

THE CORONER: Yes. Thank you for giving your evidence today. I know that you thought, and we had planned for it to have been completed today, but are you available to come back tomorrow?---Yes I am.

Thank you. We'll see you at 9.30?---Thank you.

WITNESS WITHDREW

ADJOURNED 4.18 PM WEDNESDAY 19 OCTOBER 2022