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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 19 OCTOBER 2022

(Continued from 18/10/2022)

Transcribed by:  
EPIQ

THE CORONER: Dr Dwyer?

DR DWYER: Good morning, your Honour. Your Honour, I recall Senior Constable Anthony Hawkings.

ANTHONY CHARLES HAWKINGS, on former oath:

XN BY DR DWYER:

THE CORONER: Thank you. Take a seat.

DR DWYER: Senior Constable, you will recall that yesterday I read you Constable Rolfe's evidence at trial which demonstrated that he knew of a plan to - an initial plan at least - to arrest Kumanjaya at 5 am on Sunday 10, do you recall?---I do recall, yes.

I just want to, for completeness, read you from the interview of Constable Kirstenfeldt - I take it that you have not read his directed interview from 10 November?---No.

If I can ask you to accept then at 3:05 am his interview begins and he explains this to the investigators:

"Julie informed us that Adam Donaldson, the dog handler, was already here."

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"I called him on his mobile phone and he came back to the station. We devised a plan on gathering some information and some intel on his whereabouts, houses that he goes to" -

I am so sorry, your Honour, I am informed that the live stream is not working.

THE CORONER: Hopefully that will be rectified. So we need to disconnect and reconnect, perhaps?

DR DWYER: I apologise, Senior Constable. I might start that again, your Honour, just so that it makes sense to everybody who is following.

THE CORONER: Yes, thank you.

DR DWYER: Senior Constable, yesterday you will recall that I read you the evidence from Constable Rolfe at trial which demonstrated that he clearly knew at some stage there had been a plan to arrest Kumanjaya at 5 am on the Sunday morning?---Yes, you did.

And you told us yesterday that that's the first time that you learned about Constable Rolfe's evidence in that regard?---Yes.

And you told us yesterday that that's the first time that you learned about Constable Rolfe's evidence in that regard?---Yes.

I just want to read you now from Constable Kirstenfeldt's interview. Constable Kirstenfeldt was interviewed by investigating police at Yuendumu at 3:05 am on the Sunday. I take it that you have not read his directed interview?---I haven't.

He says this, in relation to aspects of the briefing before IRT members set out in Yuendumu;

"Julie informed us that Adam" - - -

MR FRECKELTON AO KC: Your Honour, I'm sorry to interrupt my learned friend, there is an issue about using directed interviews for a collateral purpose in these proceedings. It is an issue that we have been communicating with your counsel assisting team about. I am seeking instructions personally from the Commissioner about it.

There are legal issues about utilising coerced responses in this jurisdiction. It's a matter of difficult law and we would ask that that not take place for the moment, until the issue is resolved. It may need to go ahead before then.

THE CORONER: Yes, Dr Dwyer.

DR DWYER: No, I'm afraid that's the first time that has come to my attention, that that position is going to be taken.

THE CORONER: It's certainly - - -

DR DWYER: Or may be taken.

THE CORONER: - - - part of the brief and circulated since the initial circulation of the brief.

DR DWYER: Yes, it has.

THE CORONER: Is this the first time the issue has been raised in court?

MR FRECKELTON: No. There have been communications, your Honour, they haven't been fully resolved. It came to a head in fact this very day when it came to our attention that some material had been served overnight in that regard and my junior has been communicating with Ms Walz about that. We don't - - -

THE CORONER: But this particular document wasn't served overnight.

MR FRECKELTON: No. No, I accept that, your Honour. There is a difficult legal issue about this. There's a lot of case law about the lateral usage of - - -

THE CORONER: Well, there may well be. But this has been part of my brief and part of - - -

MR FRECKELTON: Yes.

THE CORONER: - - - everyone's brief.

MR FRECKELTON: Yes.

THE CORONER: And one would expect that we can go to parts of our brief to examine witnesses.

MR FRECKELTON: Only if it's lawful, your Honour.

MR COLERIDGE: May I be heard on that. We've been doing that with numerous witnesses.

THE CORONER: This is in a slightly different category, as I understand it, because it is a directed interview, but is that in fact the case, that it is a directed interview?

DR DWYER: It's a directed interview, the directed interviews of each of the witnesses have been put to them. So, if this interview can't be put to this witness, why can his own interview be put to him?

MR FRECKELTON: All right. It's only my (inaudible) your Honour, the issues are (inaudible). We use that term in different ways, whether a directed interview as is in relation to these matters has been the issue that has been traversed this morning. If it's simply the directed interview in this ordinary course of a coronial investigation - - -

DR DWYER: That's right.

MR FRECKELTON: - - - I withdraw the objection.

THE CORONER: It is.

MR FRECKELTON: I apologise. It's my fault.

THE CORONER: That's all right.

MR FRECKELTON: So, that's the issue. It's probably as well that we draw this to your attention because there is a category of Directed Interview under Part 4 of the *Police Administration Act*.

THE CORONER: Yes.

MR FRECKELTON: Which is genuinely coercive in a disciplinary sense. That's where the sensitivity lies. I apologise.

THE CORONER: That's all right.

MR FRECKELTON: Particularly to my learned friend.

THE CORONER: No, don't - - -

DR DWYER: Not at all, not at all.

THE CORONER: - - - think there is one of those in relation to this particular witness.

DR DWYER: No, that's right.

MR FRECKELTON: No, there is none.

DR DWYER: And not part of my brief.

MR FRECKELTON: Thank you.

DR DWYER: And I appreciate the distinction. Thank you.

Senior Constable, I'll just read this to you. So, this is from – just to clarify that, and particularly for anybody listening so they can work out what the lawyers are talking about, Constable Kirstenfeldt, like you and like Officer Eberl, did a directed interview at 3:05 am on the Sunday morning when it's fresh in your memory?---Yes.

And there were investigators there just wanting to capture that on video, so that they would have your memories to use?---Yes.

So, Officer Kirstenfeldt in his interview explains this; "Julie --", meaning of course, Sergeant Frost, "Julie informed us that Adam Donaldson, the dog handler, was already here. I called him on his mobile phone and he came back to the station. We devised a plan on gathering some information and some intel on his whereabouts, houses that he goes to, other breakers he hangs around with, and also importantly, family members that might give us information. So, the evening for us was initially just going to be an information-gathering session and with a plan on hitting the house that we could get down to with some intel at about 5 o'clock in the morning, sort of just as the sun's coming up. Once everyone was here, we came up with a plan to go to the initial house when it happened at 5 --", I'm going to say 577. So, do you see from listening to that that Officer Kirstenfeldt was also aware of an initial plan that Kumanjaya would be arrested at 5:00 in the morning as the sun comes up?---From hearing that, yes.

That's the first time that you're hearing that in this inquest?---Yes.

It's pretty unsatisfactory, isn't it, that two members of the IRT team knew something about a 5 am plan and you, yourself and Constable Eberl did not?---It would have been nice to have known the full plan, I guess, yes.

You're out there, the IRT. You need to be a very professional outfit, don't you?---Yes.

And that involves everybody understanding what the plan is?---Correct.

And everybody having an opportunity to discuss how the plan would be executed?---Yes.

And there's been a significant breakdown in communication, hasn't there?---It appears so, yes.

If you had known about a 5 am plan, you would have wanted to know details of that plan, I suggest?---Yes.

Who was going out with you to assist?---Yes.

Where that plan came from. Correct?---Yes.

You gave evidence yesterday to the effect that Constable Rolfe gave the impression – or I'll just ask you this as an open question, am I right that Constable Rolfe gave you the impression that he was taking a leadership role?---Yeah, I guess he had the information and with the information that he passed, like I say, yeah, he had – he was guiding us with the information he had and we were happy with the guidance that he had offered.

In fact, you were the most senior officer there, weren't you?---Yes.

It was not for Constable Rolfe to change the plan in any way, was it, if – 5 am plan, unilaterally?---It was not for anybody to change the plan, if we'd seen a plan of sorts.

I'm going to suggest to you, that really reinforces that there should have been a team leader appointed to run this IRT team for this particular mission?---In hindsight, looking at it now, there are a few things that obviously needed – should have been implemented, yes.

What do you think they are?---I think a full and frank briefing with all members present by the OIC, ensuring from her point of view that everybody was on the same page. We'd obviously all seen the arrest plan, as such, or whatever it's called, and then we were all on that same wavelength and the same page to know what we were going to do and when we were going to do it.

And the appointment of a team leader, agreed?---Yeah, looking back now, yes. I think a team leader would be important, a confirmed team leader, yes.

And a risk assessment in relation to whatever plan was ultimately agreed?---I believe that that should be part of the plan, yes.

Part of the plan. We know that Constable Rolfe and Constable Kirstenfeldt arrived before and received some information. Do you think part of the breakdown might have been that part of the briefing happened with those two and some of that information was not passed onto the other two?---Potentially. I don't know. I can only go by what information I've been given, sorry.

And of course, we'll hear from Constable Kirstenfeldt - - -?---Yes.

- - - later in the day. I want to ask you about another topic and that is, a deployment to Borroloola?---Yes.

On 28 December 2018, the IRT deployed to Borroloola for a high-risk arrest. I reminded you of some of the details yesterday?---Yes.

A young male was arrested and remanded in custody for an unlawful entry. The female police officer opened the door to give him a cup of tea and he threw the hot tea on her and then escaped?---Yes.

There was therefore then a need to arrest him in relation to that assault?---Correct.

You were involved in the IRT team that went out there?---I was, yes.

And Constable Rolfe was also involved in that IRT team?---Yes.

Do you remember much about that job now?---I remember it was very hot and we arrived on an aeroplane. And the moment we got off the aeroplane on the tarmac, we were approached by – I can't remember who it was, I think it was a police member saying that obviously the person that we were looking for has just be sighted at an address or near some addresses. So, we immediately went into search phase looking for him.

Before you got out to Borroloola then, was there an arrest plan?---I can't remember. I don't think I saw anything that was written up, but once again, it was so long ago, I honestly don't remember.

All right. And do I take it from the evidence you've given so far that at least, in your experience of the IRT, it was not customary or you weren't familiar with receiving an arrest plan or a written-up order. I think discussion were probably more what I had experienced and the few that I'd experienced was a brief discussion between, I guess the person that's leading the team, I guess.

Verbal discussions?---Verbal discussions, yes.

All right. When – in relation to this mission out to Borroloola, it was specifically for the purpose of arresting someone who was regarded as a high-risk. Is that right?---I believe so, from the instance that occurred prior.

You've had a chance to read some of the documentation in relation to that Borroloola deployment?---Yeah I briefly had a look at it.

I'm just going to read from that to refresh your memory.

THE CORONER: Can I just ask, were you in blues or camouflage?---I think we arrived in our blue uniform, but I can't remember if we transitioned to camouflage, because part of that was through the night as well. I honestly can't recall, your Honour.

DR DWYER: What equipment did you take out, in terms of weapons?---I think we took our – well I speak for myself, well I took my standard IRT equipment. Which is my uniform, accoutrements, AR-15, I believe I took me helmet, torches, et cetera.

So you've got your normal Glock that - - - ?---Yes.

- - - they carry, as well as your AR-15, is that right?---Yes.

And do I take it that you – similarly, to when you went out to Yuendumu, there wasn't a whole lot of thought as to what particular weapons would be taken out. You just grabbed your normal IRT kit?---Yes, standard equipment that we used.

The documentation that we have suggests that the four members of the IRT who went out on that day were yourself, Constable Rolfe, Mitchell Hansen, and Luke Bevan, do you recall that?---Yes.

And I asked you yesterday I think about a team leader. Do you recall a team leader being - - - ?---I believe Senior Constable Bevan was the person with all of the information, and leading the – the incident, yeah.

So was he specifically designated the role of team leader, or it was just was under your – gave you the impression that he was the team leader?---Yes, gave me the impression. I can't recall, he may – we may well have been told that he was team leader, but I don't recall, to be honest.

After you arrived, and you're given some information at the airport that the person has been located. What happened?---We immediately deployed to look for him.

And when you say "We", the four of you, who I just mentioned, is that right?---I think so, yeah the four of us, yeah.

And where did you go?---Into couple of addresses. There was some properties where he was seen running through I think the back of the properties.

Did you locate him, soon after you arrived?---We saw him. We didn't – we – I guess we located him, but we – he decamped on foot into – out into the bushland.

He was ultimate arrested?---Yes.



That young man?---Correct.

And was he arrested the same day that you arrived?---No I think he was apprehended early hours in the morning the following day.

Were you there when he was apprehended?---Moments later, yes.

Did you – do you recall roughly what time you arrived on the 28th?---No, sorry I can't recall.

Do you recall going to sleep on that evening, or did you patrol in the community?---Yes I think we did sleep that evening. We went back to a room and put our swags down and.

Was there a plan made, in relation to his arrest?---I can't remember. I – I do know that Senior Constable Bevan did communicate with the OIC quite a bit in relation to it, of Borroloola Station, the police officer.

All right. You would have expected then that in relation to any arrest arrangements, at least - - - ?---Yes.

- - - it was Officer Bevan who was doing that?---Yep, and I'm sure it would have been discussed at some point through – throughout the evening. But I couldn't tell you what was discussed.

The fact sheet that we have in our brief now, that relates to the arrest of the – the male, indicates that patrols of the area sighted him running from location to location, and at 4.30 am, he was arrested in the playground area by IRT member Zachary Rolfe?---Yes, that's – that's what I recall.

You were there moments later is that right?---Yes, yes.

Were you moments later because you weren't quite as fast?---I think we were positioned throughout the community because of the – the sighting of the person of interest. And it just so happened that I think where Zachary Rolfe was, was where he sighted him, and we were probably around the corner, or not far away. It was very dark. Reasonably close proximity, but it was only briefly. Maybe not as fast, but yes.

Do you – when you arrived in the community, between when you arrive and 4.30 am, you might have slept for some – for a few hours on your swag, but what else did you do?---I can't recall to be honest.

Do you recall interacting with anybody – any of the community members in Borroloola?---I know we visited several addresses throughout that – from our arrival to when we were obviously stood down for the evening, yes.

Did you do that as a group of four?---I think we did it as groups of two and four, yes, just discussing – talking to people to find out if our person had been seen in town.

When you broke off into groups of two, did you naturally break off with one of those members, in the way that you did with Adam when you were at Yuendumu?---I really can't recall, to be honest.

There was yourself, Mitch Hansen, Luke Bevan, did you have a natural friendship or affinity with any of those people?---No different to I guess anybody else in the – in the police, that I've worked with.

You said that you got there moments after the person was detained and arrested?---Yes.

He was detained by Constable Rolfe. Did you see him detained?---I – I don't think I initially saw him in the moment of apprehension. I think I recall, as I arrived I think Constable Rolfe and Constable Hansen may have just arrived as well, and they were handcuffing him from what I recall.

What did you see?---I just recall him – there was obviously a large crowd of people arriving out of the darkness, that were a little bit excited. And I recall him being handcuffed, and I think from memory, the few members of the crowd wanted to actually have a physical altercation with the person of interest. So it was a case of keeping them at bay. I think some persons either punched or tried to punch him, after he had been apprehended. So it was keeping them at bay.

Was he ground stabilised?---I don't recall that, I (inaudible) - - -

Do you know what I mean by that term?---Yes, I do.

Can you just explain it for us?---If somebody has been either, apparently cooperative and listening to directions and have got down onto the ground, facing, for want of a better word, star fishing on the ground. And then handcuffed onto the ground, and then stood up again.

Was he – he was on the ground though when you arrived, is that right?---I don't recall. He was either on the ground or standing, I really can't remember.

Handcuffing somebody involves some use of force, is that right?---I think the most minor use of force that's acceptable with the normal operations of policing, yes.

Does – if you have to push somebody's hands behind their back, is that a use of force that you would have to report?---No, not general handcuffing, no.

Do you recall members of the community complaining that the arrest was too rough?---No.

You understand don't you, that there's a document called MFI C, which is a collection of text messages sent by, and to, Constable Rolfe?---Yes.

I want to read you one that was sent on 10 March 2019, when he went out to Borroloola again. On this occasion you weren't there. Constable Rolfe writes, to another officer:

“I'm out at Borroloola, a random community on the coast, because they're rioting. But we came up last time they did this and smashed the whole community. So this time, as soon as we arrived, they started behaving.”

Did you see any of the IRT members smash the community when you were there in December?---Not at all. Absolutely not.

Well you didn't, is that what you say to her Honour?---No I certainly didn't, your Honour. And I don't believe that any of the members that were there, smashed anything, to be fair. I – possibly that's a figure of speech, as in we went in, and we went throughout the community to obviously – I don't know. I can't say what the intention was behind that – that comment. But there's certainly no smashing of the community, but – in my presence.

How many houses did you go through do you think before that person was arrested?---Gosh, maybe – I'd be plucking at numbers, but between three and five perhaps, speaking to people.

What were your grounds for going into the houses that you went into?---I don't even know if I went into a house, to be fair. A lot of it was talking to people outside. Whether it was family members or associates, I can't recall.

Did you, at any time, after the arrest of that male, turn your body-worn video on?---I don't recall. I can't recall if I had body-worn at that time, to be honest. I really don't recall.

Do you recall whether anybody else turned their body-worn video on?---I honestly don't know, sorry.

I anticipate there might be some evidence from community members in Borroloola that they were upset with the use of force and that no body-worn video footage was obtained and no use of force incident was put in for or report was put in for this incident. Were you ever asked to reflect on that?---No, I wasn't asked, but I wouldn't expect use of force to be put through because I did not see any force being used.

You weren't there for the initial arrest, correct?---No, no, and had I used any force I obviously would have submitted one, so I had no reason to.

And had Constable Rolfe used any force you would've expected that he would've submitted that?---Yes, especially if - had I seen anything, yes I would've obviously advised him.

I am just going to hand you that MFI C. Can I just ask, when you were patrolling, you or anybody else, was anyone carrying their AR-15?---Yes, I was. I got off the plane and I didn't have time to - to take in the fact that he was (inaudible) exact detail (inaudible) we still had (inaudible).

And (inaudible)?---I don't think so but I can't remember 100 percent.

Would it have been appropriate while you were looking for that young male to carry your AR-15 in the community?---Looking back, no. No, I don't think so.

(Inaudible)?---I think the circumstances, I guess that was fed to me, probably would've given me a (inaudible) there's no requirement to take an AR-15.

And it certainly wouldn't have helped get the cooperation of local people, carrying an AR-15?---No, it's a very hard one to answer whether you get cooperation or not just because you're carrying a different type of firearm, but it may have made people feel apprehensive at the sight of it, particularly if they don't understand why police have that type of equipment, I can definitely understand that.

Not a good idea to carry a weapon if it intimidates the community and you're trying to get - - -?---No, that's not the intention.

But do you agree that you need to give that some thought before going into a community carrying a weapon?---I do agree with that, yes.

I just want to ask you about a different topic and that is in relation to Constable Rolfe. You gave some evidence that he wasn't somebody that you socialised with outside of work, correct?---Correct, yes.

Did you know him by reputation at any time while you were - prior to November 2019?---I think - in the back of my mind I understood that he was a very pro-active and determined police officer, you know, goal oriented, from what I could understand he was very good at his job.

Pro-active, determined?---Yes.

Goal oriented?---Yeah, a good officer as a far - you know, in general.

Enthusiastic?---Yes.

Hard-working?---Yes.

Can you have a look at page - at that MFI that I just gave to you. I've already showed you one text. Have a look at page 2. Do you see that he is communicating - - -?---Yes.

- - - with a female. I won't name her but he says to her, "If you're hungry you're definitely allowed to towel locals up." And she says, "if your name rhymes with "olfe" you're allowed to towel up locals?" And he says, "I do have a licence to towel locals - I like it." Did you know him - Constable Rolfe - to have a reputation as someone who was - who used excessive force?---No, I didn't know that.

What do you think of him texting a fellow officer about towelling up the locals?  
---I - yeah, look I don't know what the context of it or the discussion is about but obviously, yeah, to have that read out it's obviously something that's - - -

(inaudible)?---It's something that's probably inappropriate to say, but - but - - -

I am going to suggest it is not probably inappropriate, it's highly inappropriate?  
---It's - yes, yes.

And it's unprofessional?---It's unprofessional.

And just have a look at page 3 and 4?---Sorry, can I just clarify, these are comments that are made by Zachary Rolfe?

Yes?---Okay.

If you see, if you have a look over - - -?---Other than italicized (sic) versions, okay.

You can see who is sending what, can't you?---Yes, I can.

"(Inaudible) heard you had a rough arvo, grubby fucks." And his reply - Constable Rolfe, is "Nuh brah, just slightly annoying ha ha - coons man."?---Yes, I can see all of that.

And then Paul Kirkby, a Sergeant, refers to - asks him:

"Who was the silly bitch?" And he replies, "Fuck knows, just some white bitch who thinks she's Aboriginal."

And then Sergeant Kirkby, "Lying in the dirt, pissed, doing a fucking good impersonate impression".

And the next page, from Constable Rolfe, comments about bush cops, and then Sergeant Bauwens, down the bottom of that page:

"These bitch coons aren't used to people going after them."

I know it's uncomfortable to critique other officers, Senior Constable, but tell us in your words what you think of the use of that language?---There's - it's inappropriate in the police - it's inappropriate anywhere. There's no call for it - there's no place for it.

It's racist?---Yes.

It's offensive?---It's offensive.

It's disgraceful. Do you agree with me?---Yes.

Brings the Northern Territory Police Force into disrepute?---It certainly can do with information like that that's been said, that's right.

I asked you some questions yesterday about the need in Alice Springs for a specialist team like the TRG or a second tier TRG like the IRT?---Yes.

And you said that your belief is that there is that need. They will need to - if they - if the IRT or something like it ever is in existence again it will need to be professional - do you agree?---Yes, I do.

Highly skilled? Agree?---Absolutely, yes.

And qualities of determination and goal-orientation and enthusiasm and hard work will be valuable in a team like that, won't they?---Yes they will, yes.

But it's important, isn't it, if you have a team like that, that you are absolutely adamant that there will not be any racism in that team. Do you agree?---That goes without saying anywhere, to be fair.

But what was happening in the IRT in 2019 is that police officers like Constable Rolfe were using filthy racist terms about people they were required to serve and protect, do you agree?---Yes.

And the sergeant who was the head of the IRT was using filthy racist terms in front of young officers, do you agree?---I agree - I'm of Samoan descent, so I've been brought up with it throughout my life, so I know what it's like to be on the receiving end, so yes.

So do you find that language offensive too?---It's offensive wherever it's used in any form of life.

And I am going to suggest to you that although it's painful, it's helpful to flush this out because if there's another IRT we need to make sure that the leadership at the top is providing proper mentoring and guidance to young officers?---Absolutely. There's no doubt about it and it should be addressed whether it - you know, it's a rehabilitative addressing or some other form of addressing, it needs to be fixed so we can move forward, absolutely.

Thank you, Senior Constable, those are my questions.

THE CORONER: Yes, so your name is?

MS O'NEILL: My name is O'Neill, your Honour, if it pleases the court.

THE CORONER: Thank you.

XXN BY MS O'NEILL:

MS O'NEILL: Senior Constable, my name is O'Neill. I appear for the Walker, Lane and Robertson families?---Good morning.

Do you have a police email address?---Yes, I do.

And did you in 2019?---Yes.

You can access that email account from any computer logged into the police system, correct?---Yes, that's correct - and my phone.

And your mobile phone?---Yes, we also have access with our iPads as well.

And did you have access on your mobile phone in November 2019?---Yes.

What network was your mobile phone on?---It's a police network. So it's through the police, I'm - I don't know what the network was.

But in any event, by the time you got to Yuendumu - - - ?---Yes.

- - - you were within network?---Yes.

And so you could access emails on your mobile phone in Yuendumu?---Yes.

Was there anything wrong with your mobile phone on 9 November?---No it was working perfectly fine.

How frequently did you access your emails?---With work, daily.

And would you access your emails throughout the course of your shift?---Generally - a general shift, yes.

On 9 November, when you left Alice Springs, did you access your emails then?---Not that I can recall, no.

What about in the car journey on the way to Yuendumu, as you became back into network?---No, not to my knowledge, no.

What about when you got to Yuendumu Police Station?---I wouldn't have thought so, no.

What about later that night, after everything had settled down?---I don't recall, yeah, I honestly don't recall.

How many emails are you receiving on a daily basis, to your police email account?---Several, several emails.

More than five?---Potentially, yes.

More than 10?---More than likely, yes.

Do you remember how many emails you received on 9 November 2019?---No I honestly don't. I – like I'm not sure if you're aware, I'd been away, I'd just recently been married and was on honey moon. So I would have had a backlog of potentially hundreds of emails.

So your first shift was due to start - - - ?---On the Monday.

- - - the Monday, the - - - ?---I actually got the call out on the Saturday, yes.

On 11 November?---I think so, yes.

Did you set any out of office to indicate that you'd been on leave?---I don't recall.

Was that your practise?---Not often, no, no.

What about if you were called out to an IRT mission, did you set an out of office then to indicate that you might - - - ?---No.

- - - might not have access?---No. I wouldn't have. No, didn't as a matter of practise, no.

Why wouldn't you have?---I generally just don't. It's just – I've never been – I'm not highly savvy with emails. However, I've never been guided to do so all the time either, so yeah.

But you were still accessing your emails on a daily basis on your mobile phone, when you were on duty, correct?---Generally on my computer, yes.

You're aware now that there was a written arrest plan, correct?---Yes.

And that this was a document that had been emailed to you, correct?---Yes.

In your experience, was it common for briefings like this to be emailed to – to police?---Not that I recall, no.

Was this the first time you'd ever received a briefing in email form?---An arrest plan in email form?

Yes?---I think so, yeah.



What about other briefings in relation to other types of missions that you might conduct from time to time? Would you receive those in email form?---They could be operation orders, yes.

And so how would you know that something had been emailed to you, that was in the form of a briefing, or an operations order?---I generally would be aware of its – with an operations order, generally there’s an operation that’s come in, and we’d be informed about it. And I check my emails on the average day, to see that there would be an email in relation to it.

So if somebody higher up the command - - - ?---Yes.

- - - was sending you something in relation to a task - - - ?---Yes.

- - - that they expected you to do - - - ?---Yes.

- - - and they were going to email you that document - - - ?---Yes.

- - - you would expect to be informed about it, orally, beforehand, is that right?---No to – I would more than likely find it when I check my emails in the mornings, when I start my normal shift.

But on this shift, you didn’t check you’re emails, is that what you’re saying?---No it wasn’t a shift, it was a deployment, yeah. So it was a little bit - - -

(Inaudible)?---A deployment, yeah.

So your practise was different, depending on whether you were on a shift, or on a deployment, is that right?---Yes, it was in this – this circumstance, yes.

In any event, you did receive this email didn’t you?---Yes, it did – it was sent I believe.

And I’m referring, your Honour, to annexure E, to the statement of Superintendent Nobbs, brief item 7-101.

The email that you received had the subject line “Arrest of Kumanjayi Walker”, or his name, as it was known at the time?---Yes.

And when you opened your emails, either on your phone, or your work computer, you could see that subject line. Do you agree with that?---Yes it would be there.

In the committal proceedings in relation to the trial of Constable Rolfe - - - ?---Yes.

- - - you gave evidence about when you first saw that email. Do you recall that?---Yes.

You were asked, "Now the evidence that you gave earlier was that it" – and this is at page 100 and – sorry, this is the committal transcript, I beg your pardon.

THE CORONER: Committal transcript?

MS O'NEILL: Yes, your Honour, 2 September 2020, page 103.

"Now the evidence that you gave earlier was that at 4.59 pm you were in transit, as it were, on your way to the location, where Kumanjaya Walker was to be apprehended?---Yes", you say?---Yes.

"Now that email was never – when I say the contents of the email, was never brought to your attention was it, at Yuendumu Police Station?---No I don't think so." Question, "And did you ever actually retrieve that email that you can now recall, from your computer, at any time?" And your answer was, "I think two to three months ago"?---Yes.

Do you recall giving that evidence?---Yes.

And was that true evidence?---From what I recall, that's the evidence that I'd given. Whether it was – yeah it was sometime – I know it was – from talking now, it was sometime well after the incident, yes.

Do you have any reason to doubt the truthfulness of the evidence you gave at committal?---It's probably the – the evidence that I gave. That's all I had.

What you were telling the court on that occasion, was that at some time two to three months prior to 2 September 2020, was the first occasion you accessed that email, is that correct?

THE CORONER: He said, "I think"?---I think, if that's the evidence I gave whether - - -

- - - it wasn't a precise recollection at that time.

MS O'NEILL: I accept that, your Honour?---I don't know the date that – it may have been months in-between, but I know it was certainly sometime after the incident.

Months after the incident?---Some – quite some time I believe.

Months, do you agree with that?---I think so. I'd have to – I'd have to have a look at my evidence.

This was an email with the subject line "Arrest of Kumanjaya Walker", correct?---Correct.

Weren't you curious to know, shortly after the events that transpired on 9 November, what was in it?---I – I didn't see it to know, I – as I said to you, just a minute ago,

I had numerous emails, and I may have overlooked it at that particular time, going through to clear out all the emails that I had when I have returned back to my shift.

I'll move on to a different topic if I may Senior Constable?---Sure.

Do you recall being interviewed by detectives on 13 November 2019?---Yes.

In relation to this matter?---Yes.

You were – you told Detective Wood, on that date, and this is from page 14 of the interview, that you questioned having to wear your police issued blue uniform when you were deployed, “Because if we’re going in as an IRT unit, then my belief is, we should be going in as, and seen as an IRT unit.” Do you recall saying that?---If I’ve said that, then yes – I don’t recall saying those exact words, but I’m – if that’s my evidence, yes, in my statement.

Do you accept that that’s - - - ?---Yes I do.

- - - something you would have told Detective Wood?---Yes.

Why did you want to – sorry, who did you want to be able to identify you as an IRT unit?---I think, personally – the – the subject that we were looking for. And it was probably a visual perception, and hopefully a – when they realised that – obviously they were told previously we’re coming, that the IRT are coming, or other police are coming from out of town, then they would see that other police are coming out of town, and perhaps that might have assisted in the mindset of the person we were looking for, as being, you know, forthcoming and surrendering without issue.

How did you know that Kumanjayi had been told that police were coming from out of town?---I didn’t. Well, I don’t know. I don’t know if I did or I didn’t.

So what you’re saying is that it was important to you that the arrest target was able to identify you as IRT, because they’d previously been told – because you assumed that somebody had previously told them that somebody was coming from out of town?---I think my thought at the time was, if we go in as IRT, we should be showing that we are IRT, that we aren’t just general police.

Why?---To show that we are there to effect our purpose.

Why does it matter whether you appear to be IRT or general duties’ police officers in order to demonstrate that you are there to effect your purpose?---I think the general population will probably realise that it’s a slightly higher than average offence that may have taken place or an offender that may be required to be taken into custody, it might be a higher risk offender.

So, when you’re talking about the general population, you’re talking about the community of Yuendumu. Is that right?---I’m talking about in any situation where we may be deployed as a tactical team or anybody – any tactical team that’s deployed.

Was it important to you that the community of Yuendumu identify you as an IRT unit?---I don't know if it was important to me.

Well, when you've said, "If we're going in as an IRT unit, then my belief is we should be seen as an IRT unit"?---Yep.

Are you speaking there about that the community sees you as an IRT unit?---I think in general, yes. I think I talk in general terms, I think. But I can't remember my reasoning behind that at the time.

Did you want to unsettle the community because of your appearance as an IRT unit?---I don't think I ever had that thought process.

Did you want them to understand that you were a display of force?---I think – no, not at all.

There was some hesitation there, Senior Constable?---Yeah, I think once again, in general terms, because I can't recall what my thoughts were at that time, other than what I've said in that statement, but I think when a tactical team is deployed, then obviously something serious is happening and there is an elevated level of tactical people there to hopefully deal with it.

In preparation for your tasks on 9 November, you spoke with Sergeant McCormack on the telephone briefly at the police station and then you had two short discussions with Constable Rolfe, one at Alice Springs and one at Yuendumu. Is that the sum total of the information or briefings that you were given in relation to the task?---From what I can recall now, yes.

Did you ask anyone in the course of any of those discussions whether there was an arrest plan?---I can't recall.

Is it possible that you did ask and you don't remember?---I don't know.

If you had asked for an arrest plan, would you – whether there was an arrest plan, would you have expected somebody to tell you if there was?---I think so.

So, the fact that you weren't told about whether there was or was not an arrest plan, does that give you any indication about whether you asked if there was one?---No, not necessarily. I don't think so.

Did you ask anyone about your powers of entry in Yuendumu?---No.

Did you ask anyone about use of force?---I don't recall.

Did you ask anyone about how local police might be utilised in your tasks?---No, I don't recall that at all.

Did you ask anyone about what was happening in the community that Saturday afternoon and evening?---No, I don't recall that.

Did you ask for details about the young man you were arresting?---I don't recall.

Even for a photo of him?---I honestly don't remember.

Is it the case that the only requests you recall asking about what you were required to do is when you asked McCormack about what you should wear?---Yeah, I remember that phone call, yeah, because I was walking my dogs.

And you asked him about the decision for you to wear your police uniform rather than your camouflage uniform. Is that correct?---We were in it, yes.

His response to you was, and I'm quoting from page 20 of the interview on 13 November, "I'm sorry, I know, but a higher authority has said to come in blues." Do you recall him saying that?---Something to that effect, yes.

What did you understand him to be apologising for?---I actually didn't take it as an apology, I don't think.

What did you take it as?---Just his response, I guess, to my question.

"I'm sorry, I know, but a higher authority has said to come in blues."?---Yeah, I took it for what that was.

Now, on 9 November when you left Yuendumu Police Station, you took your Glock. Correct?---Yes.

You took your taser. Correct?---Correct.

You also carried openly in the community, an AR-15. Correct?---Yes.

A semi-automatic longarm rifle. Correct?---Yes, that's correct.

Now, when you're carrying that rifle, you can't afford to put yourself in a position where you are at risk of losing control of that weapon. Do you agree?---That goes with all weapons that we carry, all accoutrements, yes.

And so the fact that of carrying it creates distance, doesn't it, between you and those you are dealing with. Do you agree with that?---It can do, yes. It generally does, but circumstances may arise where it may not be possible, yes.

It changes the way that you interact with community when you're carrying a longarm rifle. Do you agree?---It changes the physical way that you carry it, yes, the physical aspect of it, yes, you'd generally carry it to your front in a low ready or a low facing position, yes.

Now, that day you had capsicum spray, a taser, a baton, a Glock, a dog and a dog handler, three IRT colleagues and yourself who were specially trained and a semi-automatic longarm AR-15. Is that correct?---That's correct.

And you were performing what you described as a standard textbook low-key door knock arrest? Correct?---Correct.

In a remote community. Correct?---Yes, we were in a remote community.

In those circumstances, would you agree, it's very difficult to envisage a scenario where something has gone so wrong that your only option was to use the AR-15. Do you agree?---Well, we can't assume that situation. You never know what situation may arise and in some circumstances, you need to prepare at least – at the very least, have some type of capability for a potentially worst-case situation.

Well, Senior Constable, worst-case situation can arise anywhere?---Yes.

In any situation?---Yes.

Correct?---Yes. Yes, that's correct.

And yet, general duties' police officers manage every day in this country without carrying an AR-15's. Do you agree with that?---Not open carrying, yes, that's correct.

Now, in the critical moment when Kumanjayi was shot, you were at the door with your AR-15. Do you agree?---Yes, I was.

There were two police officers on the floor in a struggle. Correct?---Yes.

And you had seen that Constable Rolfe had drawn his firearm. Do you agree?---Yes.

You could not go to assist them because of the risk of losing control of my AR-15. Do you agree?---That wasn't my primary reason for not going to assist them. Not my primary reason. There were other situations – I think from what I remember, he was in the process of being contained, but yeah.

Well, isn't it the case that - - -?---That was part of, I guess, it's a thought that is a component of not going forward to go hands on. It's because I had the AR-15.

Because this is what you said to Detective Wood on 13 November, page 44:

“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 rifle, so I didn't want to get into a wrestle with a rifle.”

Do you recall saying that?---Yes.

And that's consistent with what you've just told the court - - -?---Yes.

- - - in your evidence now?---Yes.

Do you agree that carrying the AR-15 impeded your ability to arrest Kumanjaya that day?---Well, I didn't participate in that, so it didn't impede me from doing – from arresting him. I didn't participate in his arrest. But I can certainly agree that to go hands on, I might have explained this yesterday, to go hands on with somebody during an arrest. If you do have an AR-15 rifle, you would have to rear-sling it to go hands on and it can get somewhat complicated, it could do.

In the back of your mind - - -?---Yes.

- - - there was always that part of you that was thinking about the risk of losing control of that rifle?---There is always a thought of that with any of your accoutrements, yes, but - - -

And so it caused you - or it would have caused you to - it would have influenced decisions you made that day, or example, about whether to grab Kumanjaya to take him to the ground - to run after him, because all of those things risked losing control of the firearm, do you agree?---I - I hear what you're saying but once again, it's - it's a - a scale that I weighed at the time and the decision that I made. But looking at it in hindsight I can agree with what you're saying. Yes, it can - part of your mind could think there could be a hinderance there to possibly prevent a situation which may unfold - or may not.

With the benefit of hindsight, would you have made a different choice about taking the AR-15 to affect a low key text book doorknock arrest?---I think hindsight is a very good benefit when we look at the situation, so I - I agree, looking back at how things transpired, yes.

Those are my questions. Thank you, your Honour.

THE CORONER: Mr Mullins?

XXN BY MR MULLINS:

MR MULLINS: Thank you, your Honour.

Senior Constable Hawkings, my name is Mullins?---Good morning.

I appear on behalf of the Brown family. Just a couple of matters before we start. You have been cross-examined before?---Yes.

In criminal trials?---Yes.

And you've been cross-examined and questioned robustly?---Yes, I believe so.

So you understand the process?---Yes.

So tell me if you do feel threatened or unsafe, let me or your counsel will object?  
---Yes, I will.

Secondly, you said yourself, in your words, this was very shocking?---Yes.

After that shooting occurred it was very shocking for you, as a police officer who was present at the house?---Yes.

Now, one of my clients is the mother of Kumanjaya Walker and she was just outside the house when the shooting occurred. You can understand that was very shocking for her?---Yes - if she had seen what had happened, absolutely.

So some of the questions I am going to ask you are confronting. But understand that this is her one opportunity to ask you some questions about those events?---Sure.

And it is the one opportunity for the family to ask some questions about those events?---Absolutely.

Now, you watched the body-worn camera video of the axe incident. Remember that?---Yes, I do.

And you watched that at the Alice Springs station on 9 November 2019?---Yes.

And in one of your statements you say that after watching the video you saw that Kumanjaya was scraping the axe on the ground as if preparing to use it, do you remember that?---I don't remember it but I will accept that.

Well, do you remember having seen that?---Yes, I think I recall that, yes.

I just didn't understand what that was, you've obviously ascribed an intention?  
---Yes.

To that action. And can you just explain to me what it was that you saw and what the intention was that you ascribed?---From what I remember - or my memory now - by scraping or banging an axe on the ground, I'm think that it's a threatening gesture, that "I have a weapon and" yeah, "I'm" - it's an aggressive gesture.

Okay. Is that just from your own experience - - - ?---From - yes.

- - - when a person bangs an axe on the ground that means that they're likely to use it?---Well, it's - it doesn't appear to be a defensive gesture in my view, yes - that's just my view.

Now, you've been asked some questions about the events at House 511 - and



I won't go into that, that following the shooting, in the ordinary course when an event like that happens would you secure the crime scene?---If possible yes, yes.

Would you stabilise the patient at the - at the crime scene site?---If possible, yes.

And then call an ambulance?---Yes.

Now, you didn't do that on this occasion?---No, no.

And that's because you were concerned for your safety?---Of not just my safety, I think everybody's safety and more paramount to the commencement of first aid.

Well, you mentioned that there was a lot of screaming and yelling?---Yes. Yes.

It was mainly though women and children, is that right?---Yeah, I think so. Yes, I could certainly hear that.

You said in one of your statements that officer safety was paramount?---Yes.

Is that correct?---Yes.

And so that's what was foremost in your mind at the time?---Yes.

Did any of the people that you engage with - I withdraw that - between the moment of the shooting and the time that you left in the vehicle, was two or three minute? ---I don't know the time frame but it was pretty brief, yes.

And across that period of time did anyone touch or strike you?---No, they kept - kept their distance. I tried to keep their distance with commands and a hand gesture I think - "stay back" - from what I recall, yeah.

Did you ever raise your rifle?---No. No.

Did anyone move to touch or strike you, or any of the other officers?---I don't recall. I don't think so, no.

Do you recall that some of the people outside the house had their mobile phones recording you?---No, I don't - don't recall.

Do you recall anybody saying, "Where's the respect"?---No, I don't recall that, sorry.

Can you explain why it is that you perceived you were in danger?---The - I could generally see other people coming from - obviously further out, like it's - and I can remember - obviously the situation was quite intense and I know of - so obviously personal experience when situations arise in communities crowds gather very very quickly and it can be quite risk - risky for members in those situations where if you were affecting an arrest people start getting very excited very quickly.

And have you ever seen, in your experience, a police officer in the community threatened or assaulted by a member of the community?---I've been in situations where I've arrested people in community and in a very very short space of time - and it's been a very passive arrest might I add, people just come from everywhere and start becoming aggressive towards - towards you, so it's a case of not letting them get to you but keeping them at bay and trying to obviously calm the situation and go back to the station if you can.

When you say "becoming aggressive to you" what did they do?---Very angry, wanting to come forward but being held back by some other means at times, you know, that type of situation, being angry you know, venting anger et cetera or highly excited.

But you've never seen an officer assaulted?---I have to think. No, I don't think so, no.

You've never been assaulted yourself?---I've been assaulted several times in my career but not in a community, no.

Where have you been assaulted?---I've been assaulted here in Alice Springs, I've been assaulted in New Zealand numerous times.

Do you think - - -

THE CORONER: By people who have gathered because of what you were doing or assaulted by the person that you're dealing with?---Both, your Honour. I've been - whilst affecting arrest I've been assaulted by members of crowds nearby et cetera.

Yes.

MR MULLINS: And where was that - in New Zealand?---Yes, in New Zealand and here in Alice Springs.

But never in a community?---Not to my knowledge, no.

Do you think at all - or do you perceive it might be offensive to the people who were standing outside the house, on that day, that you perceived that they might assault you?---I don't - I don't think it was - it's - I think - I hope that wasn't the perception but I didn't perceive that I was about to be assaulted but it's a sensible tactical move not to leave yourself in a situation which the risk is elevated and there is that potential for that to occur specifically in relation to this where it was a critical incident, yes.

You drove back to the station?---Yes.

And you assisted in the CPR of Kumanjayi?---Yes, I did.

And do you recollect early in the piece two gentlemen from the community, one being Warren Williams and the second being Derek Williams, coming into the station while you were there back at the station?---Yeah I actually do remember that.

And did you know Derek?---I've worked or met him and worked with him briefly a few times, here in Alice Springs. And I have seen him briefly in Yuendumu.

And when you've worked with him, your experience of him is that he's a very sensible, gentle man?---A very quiet man, yes.

Good police officer?---I haven't really policed much with him, so I can't really say, but I – from what I've certainly heard, he – he – he's a good operator.

And when he and Warren came into the station, Warren was an older gentleman? My age?---Yeah I do recall him with a slightly older male than what he was, yeah.

And he was very calm?---Yes.

And so both of them were calm when they came into the station, that's correct?---That's correct.

And you observed them in the station, communicating with other officers, in a calm and even way?---Yes I did.

And that's at the very beginning, after the shooting had occurred, that's right?---Yes, I – I recall them – I don't know where they – I think they may have come in through the front door, I can't remember, but I – I think I remember the elderly gentleman being probably in a state of shock. He was calm, but he appeared to be a little bit nervous from what I remember, but understandably.

But they were making no threats against police?---No they weren't angry towards us.

They weren't asking can you explain what happened?---No, no.

They were actually asking how was Kumanjayi?---I can't remember what they were asking. I just remember them being in the station, but obviously.

Now you know over the course of the following hours, that the family were worried about the status of Kumanjayi's health, did you know that?---Yes.

And you knew that through your interaction with Julie Frost?---Yes.

Now you mentioned in your third statement dated I think its 11 February 2020, at one point you say "I was fully aware of an extremely volatile crowd at the front of the station"?---Yes.

Did you ever go out and look at the crowd?---I went to the front door. I think that was when Derek wanted to go back out with the elderly gentlemen to calm – he said "I'll

calm then down”, or words to that effect. I couldn’t tell you what the words were. And when the door opened, there were quite – quite a few people out there. Obviously it was dark outside, so I could see several people in that sort of front area, but I was aware of hearing people in the darkness. So I couldn’t tell you how many people there were, but there were – there were a few people there.

And what could you hear?---I think I remember saying – one woman saying to me “Why did you shoot him?” And I said “I didn’t shoot him.” And then I said “If you can just please give us some time”, or something to that – look this is very rough - - -

That’s okay?---Wording, “If you can give us – please just let us help Kumanjayi. We can’t do it” – I think, or words to that effect, “We need to go in and help him, so you can please understand it”, yeah, or something to that effect.

After that occasion, did you ever go outside again before you went out to the airport in one of the police vehicles?---No I went to – I think I was just at the rear of the station, once, maybe twice, I can’t remember.

And you could hear some yelling?---I could hear yelling. I could hear rocks being – landing on the roof, or potentially the fence as well.

Now the compound of the station, did you ever walk out and around the compound?---Yes, yes.

And it’s actually quite easy to breach. It would be quite easy to jump over?---I think, yeah most compounds, or fenced properties are, yes.

And the evidence before the inquest thus far is that not only was it not breached it was – no one even attempted to breach it?---Yeah, I didn’t see anybody breaching it whilst I was out there.

The front of the station is largely glass windows?---Yes.

Not one window was smashed by a rock?---Not at the station – not on the station windows, no.

No?---Not that I know of sorry, whether they were or not I don’t know.

Did you have any evidence that the people at the front of the station had either guns or weapons?---No I - - -

So the full extent of the extreme volatility you’re referring to, is – is derived from - - - ?---Sorry?

- - - sorry, is derived from your hearing the voices?---Ye.

In conjunction with the rocks on the roof, that’s it?---Yes, and – yeah, look I – from what I recall.

Now Kumanjayi passed away at about 20.36 hours?---Okay, yes.

And not long after that, Superintendent Nobbs initially called for everyone to leave, that's right?---Yes.

And the plan was to leave –

And if I can just have the statement of 11 February 2020, which is statement number three, brought up.

THE ORDERLY: What's the brief reference, do you know?

THE CORONER: 7-59.

MR MULLINS: Sorry, I sent it across last night.

THE ORDERLY: It's (inaudible).

MR MULLINS: I can read it to you. I can read it to you.

THE ORDERLY: If you give me a page, I'll give the witness the matter.

MR MULLINS: So it's around pages 18 to 25.

If you start at page, I think it's 21?---Yes.

Towards the top of the page, you say: "Well like I said, the plan was – and then we had two vehicles behind us and we were going to have two vehicles side by side on the road. If – if it was safe to do so on that road during the initial extraction, to prevent any other vehicles that are hostile vehicles that may have come up from the rear"?---Yes.

Now did you think, if you drove out of the station, that hostile vehicles might somehow attack you from the rear?---No.

Well why did you say that?---I think my thought process was, as we were heading back to Alice Springs, if it was potentially known that we were leaving, that we may have vehicles come and try to catch up to us to try to stop us or you know, they're other options, I was thinking of contingencies.

All right, has that ever happen to you in community before?---Not in community, no.

Has that ever happened to you before?---No, not – not in that respect, no, but this – I had never been in this situation either.

Okay. Next paragraph:

“To obviously to do whatever they potentially may have done. So it was safety evacuation plan for our members, more than anybody else. We had prepared to go, we’d loaded all the vehicles up. We had gone down the rear driveway, which is where I think Julie’s house is as well.”

And then Superintendent Jody Nobbs, at the bottom of page 21 says – can you see that?---Yes.

So you’re chatting to him, and he said:

“Whereabouts are you guys?” And I said, “We are just this second leaving the station now, and got the convoy ready to go. We have” et cetera,

“We’re on our way out.” And he said “Stop, go back in and fortify yourself.”

“Okay”, and you say, “Yep stronghold.”

And then a few lines down on the next page, there’s a passage where you ask the question, so then what happened?---I questioned it, yes.

We’ve got that, thank you. Sorry, so this is PDF H22. So – so Superintendent Nobbs has said I want you to stay, I don’t want you to leave, and to form a stronghold in the station, that’s right?---Yes.

And then if we can just scroll down again please. That’s good.

And we – you say you question that. And you said:

“Are you sure? Because we’re literally almost on our way out – out of here.”

And he said “No, it’s been told to me by a higher authority to return.”

And I – I said “Well okay, but you know, it’s pretty hostile.”

And he said “Just lock, if you need to lock yourself.”

And you said:

“I said these people could breach – breach the front of the station. You know there are a lot of people. I see, I’m concerned about what’s going on – going to happen if they do”?---Yes.

Now this was a couple of hours into – into the process wasn’t it?---I think so, yes.

And no one had – no one had breached the compound?---Not at that point, no, and I don’t think anybody ever did.

No one had smashed a window?---No.

You'd had rocks on the roof, and you had voices?---Yes.

And so why did you think someone was going to breach the station?---I – I – look it may have been discussions that were in the station. It may have been what Julie Frost had passed on to me. It may have been what ACPO Williams had – had said. You know, information that was coming to me. And from what I had initially seen. So yeah.

Had you ever been in a situation where a station had been breached by a community?---No I think I said I hadn't.

Had you ever been told about a situation where a station had been breached by a community?---I've obviously been told about vehicles that have driven through a station, but there – yeah, I wasn't – that wasn't my thought process of that. It was just – it was a contingency trying to make a judgment call or a – yeah, where we were at.

I asked you this question before and I've forgotten your answer, so I'm sorry for asking it again, but did you know during the course of the night that what the family wanted to do was to find out whether Kumanjayi Walker was okay?---I think – I don't know if I was told that, but I certainly would have obviously known – of course, anybody in that situation would have wanted to find out how their loved one was doing after an incident like that, yes.

And did you know they were not being told?---I know at some point, I recall Sergeant Frost not wanting that information to get out at that stage, I think, because of her concerns for the fact that it may become hostile or obviously quite dangerous for everybody, I guess, if they were to see the impression. In your discussions with Sergeant Frost - - -?---Yes.

- - - did you ever say, why don't we get Derek and Warren back in here so that we can talk to them and then see if we can diffuse the situation, if it required diffusing?---I don't think I would have – it was an evolving situation, so it was very hard to – it's easy to look back and think why didn't we say, or why shouldn't we say that, but when you're in that actual situation, there's a million things going on in your head, so you know, you make do with the best that you can in that sort of situation. So, I didn't even think about that off the top of my head. I don't recall thinking about that.

Is it the case that when you say there's a million things going on in your head - - -?---Yes.

- - - there's a whole bunch of contingencies that you're thinking of and possibilities - - -?---Yes.

- - - that may never have happened to you before, but you're worried they're going to happen now?---I don't know if it's a worry they're going to happen, it's just preparing

or preventing them from happening, I guess.

Did you think the approach that you took at the time not to bring community members into the station and to – sorry, I withdraw that. One last thing I was going to ask you about was, were you involved in the driving of the vehicles to the airport?---I think I was involved in driving the vehicles to uplift the TRG members when they arrived. I wasn't involved in relation to when the nurses went to the airport and returned. I didn't – I wasn't part of that convoy.

All right. Were you aware that there was a – effectively a ruse or a decoy planned?---No.

You had no knowledge of that?---I don't recall that.

Do you, on reflection, think that it was reasonable for the police involved at the time and yourself not to tell the family what was happening?---It's a very hard question to answer, Mr Mullins. Looking back at it, it's easy to say perhaps we could have, but we don't know what that outcome might have been. Every action that we take obviously there is a reaction for something in one form or another, so I – you know, it's a very hard one to answer, I'm afraid.

Have you had the opportunity to look at the video footage that Samara Fernandez-Brown took of what was happening outside the front of the station?---I think I may have seen something where she was outside the front of the station, yes.

And that video footage, I would suggest to you, depicts relative calm?---That snippet does, yes.

Yes. Can you understand that the family may be very offended or are very offended that police took that view at the time, that the family were – or the members of the community were going to overrun the station and steps needed to be taken to protect officers from that happening?---I'm sorry, I completely – you lost – can you say that again, please.

Can you put yourselves in the shoes of the people outside?---Yes.

Outside the station. Would you be offended yourself if you were not given information about your loved one who was passing away in the police station, because the police thought that the mob outside were going to overrun the station, when in fact you (sic) weren't?---If I was in that situation, yeah, I'd probably be offended if that was me in that situation and my family involved, et cetera. I can understand that, yes.

Yes. And so you can understand that they found that whole process extremely offensive and continue to find it extremely offensive?---Yeah, no I understand that from their perspective.

Nothing further.



Thank you, your Honour.

XXN BY MR DERRIG:

MR DERRIG: Good morning, Senior Constable, my name is Mr Derrig, I'm from NAAJA?---Good morning.

I'll just take you quickly to your viewing of the 6 November attempted arrest. So, you were able to see that on 9 November. Were you ever advised that one of the officers involved, Constable Lanyon Smith, formed the view that Kumanjaya Walker wasn't actually going to hit him. Were you ever advised of that?---No.

Okay?---No.

If you were provided with that information prior to attending those houses, do you think that would have affected your view of the level of risk that Kumanjaya Walker posed?---I don't think so.

I see. Why is that?---Because as a trained police officer, you do not put yourself at risk of somebody who may present a weapon towards you. So, you still have to have a contingency. We're not trained to let people approach us with weapons, we're – you know, it's about keeping that distance.

Does it change your opinion to know that Lanyon Smith had had multiple interactions with Kumanjaya Walker and had a reasonable understanding of him?---I think, once again, the overriding thought in my mind is that if there's somebody with a weapon that is approaching you, you don't allow that to happen.

Right?---It's not safe in any way, shape or form. I wouldn't let my brother approach me with a weapon.

Okay. Now, you took your AR-15 out to the community?---Yes.

Okay. And you've also said in your – at page 21 of your second recorded interview, that you noted James Kirstenfeldt took out a bean bag shotgun?---Correct.

Why did you take your AR-15, rather than say a bean bag shotgun?---I think because as nobody else was taking an AR-15, I thought it was better to have it and obviously not need it, than to – for something to arise where it may have been needed, but we didn't have it.

Okay, thank you. Now, Mr Mullins has spoken to you about the situation at House 511 where the shooting occurred. I will try not to go back through that too much. Now, at page 46 of your second recorded interview, you mentioned that officers were trying to Kumanjaya Walker into the car after he'd been shot as quickly as possible?---Yes.

And you said, "We've got to get him out of here because it's really bad. It's volatile. People were coming from everywhere. I could see them from a distance, they were coming in cars, et cetera"?---Yes.

Now, let me just – you might have a bit of a different view, having gone through the evidence this morning, but would you accept that people coming to the location in cars and people being volatile at the time the decision was made to take Kumanjayi Walker back to the station, would you accept that that was your assumption of what was occurring, rather than that actually happening at that stage?---I guess I could only go with what I was presented with, and, you know, it's – it makes sense not to dwell somewhere where, if a large crowd does end up gathering, and it can become dangerous, and you can't focus on, obviously, preservation of life for somebody or first aid.

I appreciate those things?---Yeah.

But just to be really clear - - -?---Yes.

Would you say that it would be correct to say that you were assuming things were – could become volatile, as opposed to things being volatile at that point in time?---Yeah, that's what I could see happening, in my view.

Yes. So you were – you were anticipating that to occur?---Yeah, I could – more than likely said that that was going to happen and – yes.

Okay. And then, similarly, with the cars point, you were anticipating that people would be coming in cars?---Yes.

Okay. Thank you. And so you've spoken to Mr Mullins a little bit about how, ordinarily, there wasn't that threat, you would maybe check to stabilise the person who had been injured first before moving them on, is that – that's your evidence, is that correct?---I think so, yes. That's what I said.

So at that point in time, when you were at that house, I understand from your written evidence, or, sorry, the previous interviews that you've given, that you were aware that each of the officers had their glocks at that point in time?---Yes.

That Officer Donaldson had a dog?---Yes.

That Kirstenfeld had a bean bag shotgun?---Yes.

And you also had your AR-15 at (inaudible)?---Yes.

So at that stage, you thought that there was a greater risk of the safety to the officers who had those weapons, rather than the risk to Kumanjayi Walker in immediately moving him, even though, at that stage, he had been shot three times. You thought the risk was greater to the officers, rather than Kumanjayi Walker at this

stage?---I – I think it was – it’s a very hard one to – to answer. It’s a very dynamic situation, and it’s a call that had to be made at that time, because of the – a culmination of people arriving and the immediate necessity for requiring first aid, and the potential risk to our – our safety, which would stop us to be able – would prevent us to administer that first aid. So there was a risk to – on all types of level, I guess.

Okay. Well, moving forward a little bit, at page 41 of Constable Rolfe’s second body-worn camera transcript, there is a passage where you’re talking to a health worker over the phone, back when you were in – at the station at that stage?---Yes.

And I will just read to you what’s said, and it might jog your memory. When you’re on the phone and you say:

“Just put they are - we’ve got to do mouth to mouth. Anybody comfortable doing mouth to mouth?”

Which it seems like you were asking to the other officers nearby. And then Rolfe – Constable Rolfe, sorry, says, “No.” And then seemingly in response to that officer – to the health worker, you say:

“Just to – due to the fact that he had scissors in (inaudible) hand and health and safety reasons for us.”

It sort of trails off there, but seems – by that, it seems that you were saying that you weren’t comfortable doing mouth to mouth at that stage. Would that be about correct?---Yeah, I think so, if that’s what I said.

Okay. So even though Kumanjayi Walker had been shot three times, and his condition had deteriorated enough to warrant mouth to mouth, you still thought it was too high a security risk to perform mouth to mouth. Is that right?---I can’t remember, yeah.

Now, at page 3 of the transcript of your fifth body-worn footage, body-worn camera footage, you were on the phone to Superintendent Nobbs, and you’re discussing the decision not to withdraw from the community, and you say:

“Yep, well, yeah, the – the worry is obviously fire bombs if we lock ourselves in the cell, so, um, if they have bombs, fire bombs and shit.”

The conversation trails off a little bit – do you know of any occasion where the people of Yuendumu have ever used fire bombs?---No, no, and I don’t think anyone ever has, to my knowledge, that – I don’t know if fire bombs was specific in relation to a particular fire bomb or, whether it was – I don’t know, but it was obviously a – to my thought, was throwing something which might set something like – but, yeah.

That was a possibility you were thinking about at that stage?---I think I – through the – some part of the night, there was a mention of – the health clinic would have been – attempted to be set alight or something to that effect. The information that had

come to me. So I had that thought in the back of my mind, if – obviously if we were told to lock ourselves into a – a cell, as part of our stronghold, then that was a thought. If we were locked into a cell, then there's a potential for – to – if the station was, by all means, potentially set alight, then we could get seriously injured.

Okay. So just to check, though, with that information about the clinic?---Yes.

Are you sure you had that information at that point in time, or was that something in - - -?---I – I think that was passed onto me beforehand, but, look, I could be wrong. But, yeah.

Now, at page 56 of the first – the first transcript of your body-worn footage, there's an exchange between yourself and Meacham King, who I understand is a TRG officer?---Yes.

And it appears that perhaps this occurred when you were at the airstrip. And the transcript provides King:

“Yeah, but there was supposed to be all grenades and stuff. They were supposed to be on their way by vehicle, because we've got no chemical munitions.”

Then it goes inaudible for a moment. And then you reply:

“I have no idea, mate. I mean -”

Then the conversation trails off, and I don't believe it returns to the issues of those ammunitions. But when King was mentioning these grenades and chemical weapons, what – what were you thinking at that stage?---I don't even remember that being said, to be fair, but based on now, I would assume because they were TRG, that they would have had – it was a – a crowd dispersal equipment that they have, whether it's tear gas, grenades, etcetera, that that would probably be what I would be thinking about.

All right?---Yeah.

Now, I appreciate you don't recall that being said?---Yep.

But in retrospect, do you think that that might have been a bit excessive, the chemical munitions and grenades? Do you think the situation called for it?---I don't – I don't know, I know in a volatile crowd or riot situations, that it occurred – I think that they may be useful in crowd dispersal and that type of thing, but I don't know. I didn't know what was going to be happening from here, and I can only assume that they had come with the equipment that they wanted to have, in the event that it was needed.

Okay?---Yeah.

Do you recall seeing children in the crowd and out the front and things like that, that night?---I don't recall seeing children out the front.

Or at that - - -?---There may have been, but – at the house, or?

Sorry, around the police station, after the (inaudible)?---I can't remember, yeah.

Now, at page 34 of your second recorded interview, you were asked about the awareness that you had of the Yuendumu community, and you said: "I know it's a – it can be at times quite volatile, but I was – I've done bush stints before, so I'm aware how quickly things can flare up"?---Yes.

What made you believe that it can be volatile in communities?---Well, obviously I've heard of unrest in communities. Obviously it has been in the news at times. I've been in communities where families are at odds with each other, and there are huge crowds wanting to fight each other, and I've been involved in that.

At page 34 of your second recorded interview, you also say:

"And I know that, uh, Warlpiri people, based – family background there, I know it can be quite volatile at times".

What made you believe that Warlpiri people, particularly, are volatile?---They're generally a big strong and passionate people, and I know a few people who are either a Warlpiri family, or descendants of Warlpiri family, and they – yeah, they've said they're a very strong, passionate and angry people at times, when they, obviously – when family feuds flare up.

Okay. And so that – when they do become volatile and angry - - -?---Yes.

I'm going to put it to you, couldn't this perception of the anger and volatility, could that not be caused by potentially things like neurological and neuropsychological disorders?---I don't know.

It's a possibility though?

THE CORONER: He said he didn't know.

MR DERRIG: Could that volatility or the anger, be caused by things like inter-generational trauma, caused by the Stolen Generation and Coniston Massacre?---I don't know enough about it, so I really can't – can't comment on that. A number of factors I guess that could be occurring, like – like anywhere I guess, you know, when there are historical issues. They certainly get brought up now and then, and can be re-hashed and flared up again.

And could this volatility also be caused by things like mental health disorders, exacerbated by things like over-crowding housing and unemployment, and stress

that brings?---I guess you'd have to ask the housing people in relation to that, and other – other agencies that deal with that. But from my point of view, I don't know. I don't know.

Assuming that these things could affect - - -

THE CORONER: No, no.

MR DERRIG: All right, okay, that's okay, I'll withdraw, all right.

THE CORONER: Yes, I'm not going to be assisted by opinions of this officer about such general matters. I think he has any better knowledge than I might have.

MR DERRIG: No, okay.

Now what I'm going to do, is I'm going to put to you a couple of propositions, and at the end, I'm going to ask you a question about the level of risk you perceived. And then ask you to comment on that?---Yes.

Now, what I would say is you weren't provided the full information, with respect to Kumanjaya Walker, particularly Lanyon Smith's view about the fact that he wasn't – he didn't believe he was going to hit.

THE ORDERLY: Need to keep your voice up.

MR DERRIG: Sorry, (inaudible).

And you had a view, before you went out, that Yuendumu was a place that you might require the capability of an AR-15. That is a pre-existing view. You assumed that people at House 15 would start to do things like come into this place, seen in cars, and acting in a volatile way - - - ?---House 511?

Five one one, yes that's correct?---Yes.

Now you assumed that the community might resort to fire bombing, without proper basis. You assumed, that the risk to mouth to mouth to Kumanjaya Walker was high, even at the time when he's physically – the situation was deteriorating. And you have a general view that Warlpiri people might become volatile. Wouldn't you accept that you had an overly heightened view of the risk on 9 November 2019, for those factors?---No.

I appreciate you may not agree with the first points. But you can see that some of those factors I have just mentioned, relate to pre-existing ideas, and potentially, pre-existing biases?---I guess, in a form, yes.

And you would accept, as a general proposition, that vices are not necessarily something that the person is immediately conscious of, by the very nature of them being a bias?---I understand what you're saying.

Now just last couple of questions really. At page 56 of the transcript of the hearing, you're talking – you were asked about your training as an IRT officer?---Yes.

And you said: “Generally, we make it fit it in, it would be once – once a month, once every five weeks. The training days we're able to get out most of the time, to be able to do some refreshers”?---Yes.

And at page nine of your second recorded interview, you noted, “We're taken obviously by” – sorry, “We are taken by obviously qualified instructors, so it'll be generally Lee Bauwens”?---Yes.

And so it was Sergeant Bauwens who usually led the training, would that be correct?---Yes.

Now Sergeant Bauwens has otherwise provided a statement within the brief. And at page 28 of that statement, he said - - -

THE CORONER: Which one?

MR DERRIG: Sorry, what was that?

THE CORONER: Which statement?

MR DERRIG: I apologise, your Honour, I don't have that number - - -

THE CORONER: Do you have a brief reference?

MR DERRIG: One moment. 7-6 – 28.

In any case, what he said is he took into account some of the training that the IRT members got through the army, when doing some of the training. So that's what he said. Is that your experience, that perhaps – that – you know, military background of some of the IRT members sort of came into account when doing some training?---I think so. I – I think general – the similarities, I guess in the part of that training to, obviously military based tactical training I guess.

Was any of their training incorporated into the training you were doing as IRT members?---Well from my belief it was – it was our police training, which is, yeah, it wasn't – we weren't doing specific army training as such. We weren't bringing that into something that wasn't the basis of what we are required to do as police – for police training.

Okay. They didn't borrow any part of their training (inaudible) as far as you remember?---Look, I couldn't recall. I don't – not that I would recall.

No, no problems. I'll go now to my last set of questions. Now immediately after the shooting, when you returned to Alice Springs, what was the mood like in the Alice Springs station, considering what had occurred on 9 November?---I don't recall. I really can't remember. I don't even know if I spoke to anybody at the station. I really can't remember, you're asking me now, I'm sorry, I don't know.

That's okay – all right, I'll get a bit more specific as well?---Yep.

Do you recall in the period after that, any of your colleagues being critical of what occurred?---I think – there's probably been various opinions been spoken over the years. But look, there's been so much information, on every level of – whether it's conversation, or news, or anything else, I don't know what – what has been said, what hasn't been said etcetera. So I don't recall what was said, or what's been said.

Okay. After the shooting, there was some demonstration in Alice Springs by Aboriginal people who were outraged by what occurred?---Yes.

Do you remember your colleagues ever mention – stating an opinion about what they thought about those demonstrations?---No I don't. I – I think I was advised to take some leave, and went away for a few weeks I think.

And potentially, this might answer the same question, but do you recall anyone making comments when the Chief Minister – Chief Minister made the comments about consequences will flow?---Look, I think that – that terminology's been used everywhere, that – you know, you hear it through conversation wherever you go I guess. And I don't know, I don't remember what – in what way, yeah, the comments been heard, I've heard it numerous times at various places, but I couldn't specifically tell you where and when, yeah.

Were you aware that Constable Rolfe got nominated for a Rotary Club of Darwin's Police Officer of the Year Award in 2022?

THE CORONER: How is this – and how is it – where is this going to?

MR DERRIG: It goes, I suppose to, police culture and potential discipline.

THE CORONER: All right, well if – if you want to go to that, I'd need a whole lot more detail about who he was nominated by, and I mean, do you know? Is – was it a police officer? Or was it somebody else?

MR DERRIG: I don't know, your Honour. There is one further detail that I have to raise. It has been reported that the Commissioner ended the Police Force's association with that award afterwards. My question to the officer was – will be, does he recall anyone that can comment about that, after that event.

THE CORONER: Sure?---I can answer that now and say no, no.

MR DERRIG: That's all my questions, thank you very much?---Thank you.



DR DWYER: Your Honour I wonder if we might take the break? Just for the benefit of my friends if they want to take up this issue – Mr Derrig referred to some information provided by Sergeant Bauwens, Bauwens, sorry. That's in his second statement, page 28 7-7.

THE CORONER: Thank you, we'll take the morning break.

ADJOURNED

RESUMED

ANTHONY CHARLES HAWKINGS:

THE CORONER: Mr Suttner, you are on the line and you are going to ask some questions, I think, of Constable Hawkings, is that correct?

MR SUTTNER: Your Honour, if you are addressing me, I didn't hear.

THE CORONER: Mr Suttner, thanks for being on the line. If you would like to ask some questions of officer Hawkings, now is your opportunity.

MR SUTTNER: Thank you, your Honour, and can I just remind you please that I am battling to hear you so if I could ask you to speak up when you talk to me, I would appreciate it. Thank you. Thank you, your Honour.

THE CORONER: Can you hear me now?

MR SUTTNER: I can now - now I can, thank you.

THE CORONER: I am almost on top of the microphone, so I will just have to remember to do that.

MR SUTTNER: And don't hold it against me.

THE CORONER: I don't, Mr Suttner.

XXN BY MR SUTTNER:

MR SUTTNER: Thank you, your Honour.

Constable Hawkings, my name is John Suttner and I represent Sergeant Bauwens. I apologise for the fact that you can't see me and we will do the best we can?---Sure.

Now, Constable, I've had the privilege over the last two days, of watching first Constable Eberl and then you, testify and the impression I obtained is that I was watching two honourable, disciplined and committed members of both the Northern Territory Police Force and the IRT. In fact, my last comment before I get to questions is in fact, if you - if the two of you are representative - more particularly of the IRT, I have difficulty imaging how it can be suggested that the IRT is either systematically racist or prone to use of force. Now, just to put it to you, I presume that you, like Constable Eberl, reject both the proposition that the IRT is racist and that it is prone to the use of force?---I would agree from my perspective.

Thank you, and I presume that you would also maintain that the IRT was a well trained operation to the extent that it was within the power of the officer in commend to train the members?---Yes.

And do you also, like Constable Eberl, reject the proposition that allegations of either racism or use of force do not fit the IRT?---That's correct.

And Constable Eberl said that the work of the IRT was generally performed in remote communities, do you agree with that?---Yes, I think so, from my experience.

Yes, I can only ask you about your experience. Constable Eberl said that generally the IRT was used to store and maintain peace in these communities. It gave security and protection to these communities and those operations were appreciated by the communities. Do you agree with that?---Yes, I agree that that's the intention for wherever we police.

Yes. Now, the officer in command of the IRT was Sergeant Bauwens, correct?---Correct.

And Constable Eberl said of him that he was passionate about maintaining the IRT and maintaining it at optimum capability. Do you agree with that?---Yes, that's the impression that I got, yes.

And Constable Eberl said that Sergeant Bauwens was equally passionate about policing and securing the remote communities, do you agree with that?---Yes, I think so.

And his involvement there was to assist the communities, not to harass them?---Correct.

And I presume that he was never disrespectful?---I certainly never saw any of that evidenced.

Yes. And his IRT duties were extra duties on top of his general duties at the Alice Springs Police Station?---Yes.

The same as you and with Constable Eberl?---Yes, I believe everybody involved with it, yes.

Yes. Would you regard Sergeant Bauwens as an honourable, diligent and professional member of the force?---I have always thought that of him.

Yes, and you would regard him as a proper officer in command of the IRT?---Yes, absolutely.

And is that how you perceived him to be generally regarded?---That was the general consensus from my view.

Yes, now he wasn't at Yuendumu on the unfortunate day?---No.

Yes. And to the extent that you have been examined about use of force in the IRT, it's been confined to the events at Yuendumu, correct?---Yes, I believe so.

Yes, and to the extent that you have been examined about racism in the IRT, that has been confined to the text messages, correct?---That's correct.

Yes, now you've seen those messages and nobody disputes the unpleasant nature of them?---Correct.

Constable Eberl said to the text attributed to my client that with his knowledge of my client he was shocked to see that text message and regarded it as completely contrary to my client's character. Do you agree with that?---Yes.

Have you ever heard him utter a racist remark or - - -?---No.

- - - have you ever seen racist behaviour from him?---No.

Can you confirm that my client was opposed in principle to the use of force and that he was constantly attempting to obtain less lethal weaponry for the IRT like bean bag shotguns?---Yes.

DR DWYER: I object. There's two different propositions there, an opposed in principle to the use of force is too broad. It's accepted that police will need to use force in some circumstances. What does that mean, unless it's clarified?

MR SUTTNER: Well, can I – let me put it differently. Thank you, your Honour.

Can you confirm that my client was opposed in principle to the use of force except where force was necessary?---In line with the police general orders and instructions, yes, I accept that.

Thank you. Do you believe that a unit of the nature of the IRT is required in Alice Springs?---Yes.

And without such a unit, is the area policed and to be policed from Darwin?---If in the event that a tactical team is required, yes, it would be from Darwin.

And that, we've heard, has massive logistical difficulties. Correct?---Yes.

Now, you've been examined by more than one counsel about the nature of the message you send willingly or unwillingly by carrying the rifle. Correct?---Yes, correct.

Now, can I put it to you that when you dealt with the scraping of an axe on the ground, that was also sending a message. Am I correct?---Yes.

And the message, as I understand, was perceived that there was a potential by way of an assault by way of an axe?---Absolutely.

And do I understand that a threat(?) to assault is equivalent to an actual assault?---Yes, it's very close to, yes.

Yes. And what was the response of those who were faced with the threat by way of the scraping of the axe?---From what I saw in the video, do you mean?

Yes?---Yeah, it was to obviously, I guess, raise their hands and back away to a point.

Yes. That was their response to the scraping of the axe, yes?---Yes.

Thank you, Constable. I have no further questions?---Thank you.

THE CORONER: Mr McMahon.

MR SUTTNER: Thank you, your Honour.

THE CORONER: Thank you, Mr Suttner.

MR SUTTNER: Thank you.

XXN BY MR MR MCMAHON:

MR MCMAHON AC SC: Constable, my name is McMahon. I act for the Parumpuru Committee of Yuendumu which is a justice committee set up after this shooting, all right?---Good morning.

I'm just going to ask you a few brief questions. Correct me if I'm wrong, then I won't have to ask you some of these questions, but it seemed from what answers you've given already that you are reluctant to say to this court that the four IRT members who engaged on the mission on 9 November should have had a team leader. Is that your position, that they should not have had a team leader, or do you agree that they should have had a team leader. It's just unclear from your answers?---I think, looking back now, I think it would be beneficial to have a team leader, I guess.

You think it would be beneficial, you guess? Can I put it to you that when you have an elite unit of four police officers carrying out almost military activities because of the nature of their work, armed with a significant number of lethal weapons, moving through a community of homes with families, and on your evidence, facing the possibility of various scenarios which may unfold of a very wide range in nature, that it's absolutely essential to have a command and control structure?---I think moving forward, it would be, yes.

Not just looking forward, back then?---Looking back then, I think it would be – it certainly would be beneficial, especially looking back from now, yes.

The point I'm making, Constable, is not that it would be beneficial, but that it is an

essential, necessary and professional - and to say otherwise is bordering on the absurd?---I would agree with you now, yes.

All right. We heard evidence from another police officer that the rules have changed with regard to open carrying AR-15s and that, whereas what used to happen with the police no longer happens and that for you to be engaged in open carry of an AR-15, you would have to, at the end of that shift, fill out a use of force case note entry?---Yes.

Are you aware of that?---I am.

And you're an instructor of some kind, are you, at the police training college?---Defensive tactics instructor based in Alice Springs.

Based in Alice Springs. Do you know the reason for this change?---I don't, no.

All right. There are a number of matters that I have to just put to you, well one other matter with the AR-15s. You said in evidence yesterday that it was your primary weapon?---Yes.

Can you just briefly explain what you mean by that?---If we have our AR-15, our Glock becomes our secondary weapon, so in the event that we may need to utilise it as our primary weapon.

If you're carrying an AR-15, you're using that as your primary weapon?---Yes.

And if you're not carrying an AR-15, then you would call your Glock your primary weapon. Is that correct?---Yeah, yes.

All right. Now, when you go on your IRT missions in the past, you did a number of them, I forget how many, four or five, I think, wasn't it?---Three of four, I think.

All right. Did you always take an AR-15? Did you personally always take an AR-15 on every mission?---Yes, to the locations, I believe so, except for a search and rescue.

Except for a what?---Search and rescue.

All right. But apart from a search and rescue where presumably weapons aren't anticipated as being needed - - -?---Yes.

- - - each time you engaged on an IRT mission, you personally carried an AR-15. Is that correct?---I think so, yeah, I believe so.

All right. There's just a number of matters I just need to put to you as a matter of fairness, because they come up in various ways. When you left the Yuendumu station and when to the various houses, how many AR-15s were you carrying?---I think I had the one magazine that would have been inside in the rifle,

attached to the rifle.

Just that magazine?---I think so.

No spares? How many rounds in that magazine?---I think the magazine takes up to 30 rounds, I think, from memory.

All right. And you took your Glock with you as well, didn't you?---Yes, I did.

And how many magazines were you carrying for your Glock?---There would have been one magazine inserted into the Glock and one spare magazine in the magazine pouch.

And were they each 15 round magazines?---They are 15 round magazines, yes.

Pardon?---Yes, they are.

Did you have a round in the chamber of the AR-15?---Yes, I think so. Yes, I would have.

What was the standard protocol, to have a round or not have a round in the chamber?---Just to have a round in the chamber.

Same with the Glock?---Yes.

All right. I'm not going to ask you to repeat the answers you've given with regard to why you felt it was justified to carry an AR-15, but given those answers, which you've all heard, can you just explain why you weren't wearing your Kevlar vest?---I can't recall. I probably - like my police vest, probably I didn't wear it at the time because of the heat, maybe, heat mitigation. I can't remember, to be fair.

Do you accept that wearing a vest provides much greater security for you in the event of an incident where - - -?---Yes, I do.

Yes. Early today, I think the word you used and I'm asking you to repeat the word, you held up both your arms and spoke about pointing a rifle down to the ground. Can you describe your word which - - -?---Yeah, sorry.

You used a word which described that?---I think it was the - - -

THE CORONER: It was a carry. It was a particular carry?---Yeah, it might have been - - -

MR MCMAHON: Some carry or something like that?--- - - - the low carry, low ready.

Okay. Is that the proper way to carry an AR-15?---Yes, against your body generally and down as much as possible, yes.

With one hand on the barrel and one hand on the - - -?---Often, yes, yes.

What do you mean often?---Well sometimes you have to use other hands to do stuff, so yeah, as long as you are securing your weapon, to stop it from - - -

(Inaudible) do other things, so you are just standing around with your rifle, you accept that you should have both hands on the rifle?---It's not – I don't think it's written anywhere mandatory, but yes, that's a general, to stop it from swinging around on you, or – or your harness.

Well aren't you trained to hold the rifle with both hands - - - ?---Yes.

- - - pointing to the ground?---Yes.

That's your training?---Yes, that's a matter of course, yes.

Yes, it's a matter of course - - - ?---For training.

So if you had no reason not to do that, and you're standing around in your community, is there any justification for just holding a rifle with one hand, and the rifle dangling around with one hand?---I don't know. Probably not, no real reason for it that I would think of, off the top of my head.

And you're aware that you're seen doing that on the videos on 9 November, are you aware of that?---I may have. I don't know.

But you wouldn't recommend it, and you wouldn't say that its proper training?---Look, like I say, whether I was walking around holding it away from my body, or against my body, the intention is to hold it close to your body in that position most of the time, yes.

I take it from some of your earlier answers that if Kumanjaya Walker had run away from one of these houses that you went to, and was running off into the bush, you had absolutely no intention of lining him up and shooting with your AR-15?---Absolutely not.

And you've already given answers that there was no issue in a close combat situation if you're inside a house trying to do an arrest?---Well it reduces your ability to – to do that all the – you know, often, yeah.

I just want you to ask – to think about confronting the reality of what you're doing with the AR-15. And we're going to be submitting to her Honour, that there was absolutely no legitimate, sensible purpose, for you to be carrying an AR-15, in the circumstances of this door knocking, standard general duties arrest. You follow?---I hear what you're saying, yes.

And from the answers you gave to Ms O'Neill this morning, it seems the primary thought in your mind was that it was appropriate to send a message to the



community that the elite – elite police scene was in town, so that they would understand that you were in town to do a significant task. Do you agree with that?---Yeah, and obviously to, yeah, I agree with it. I'm not going to go into detail.

And so the purpose of carrying an IR – and AR-15, now, in fact, was to send a message to the community, wasn't it?---No.

Well - - - ?---It wasn't to send a message to the community.

- - - and the message was, that they should fear you. That you were there, as an elite unit, carrying assault rifle, an ArmaLite AR-15, so that they will know that you are there, and that they would fear you. That's what you were doing, wasn't it?---No. That wasn't the intention.

You've admitted in this court – you've agreed in this court, that the community could be intimidated by police officers carrying such a rifle?---They can be.

You were carrying such a rifle?---Yes I was.

I suggest you offered no legitimate purpose to this court for why you were carrying such a rifle?---I think I – my reasoning was to – in preparation for anything that could transpire, which may have required the use of it, and you – I can't predict the future as to what may have transpired. Was my rough idea.

No further questions.

THE CORONER: Mr Edwardson.

MR EDWARDSON KC: Yes.

XXN BY MR EDWARDSON:

MR EDWARDSON: I want to start if I can, with your current position. When you were called by Dr Dwyer – just bear with me a moment please, sorry. Right at the beginning, you said that currently you're involved in defensive tactics, or you're an instructor in defensive tactics?---Yes, that's correct.

Can you just explain what that is?---My position is to re-qualify, or current police officers, with required to train recruits in the use of defensive tactics, and empty hand tactics.

Now I want to deal initially with 2019, and then I'll come to the position that might exist today, if for no other reason, than as a consequence as – a consequence of this tragic shooting?---Yes.

In 2019, at that time, specifically 9 November 2019, when the shooting occurred, there was common training amongst police officers, including yourself, can I suggest, about a concept known as edge weapon equals gun?---Yes.

You understood what that meant, back then?---Yes I did.

What did you understand it mean?---I think – if it – it meant if you were confronted with an edged weapon, that you were justified to drawing your Glock to be able to either protective yourself or other persons, or obviously, prevent anything else from happening.

And of course, part of your training, can I suggest, back in 2019, would be a different – there are a whole host of different scenarios, that might justify the pulling of a weapon, when presented with an edged weapon?---Yes.

For example, distance between the two might be an important factor?---Yes.

Opportunity to de-escalate by communicating with the individual who presents the weapon?---Correct.

If, on the other hand, the two of you, that is the police officer on the one hand, and the offender on the other, are in very close proximity, and an event evolves in a matter of seconds, you may not have the opportunity of other methods of stopping that, short of drawing your firearm and using it?---Correct.

At the time, back in 2019, can I suggest, was that if you are presented with an edged weapon, and depending upon the circumstances, if the circumstances were, for example, a threat to the life of that police officer or another person, you were entitled to discharge your firearm?---It's a last resort, yes.

Sure. And if you were to discharge your firearm, the training, at that point in time, back in 2019, was that you shoot the centre body mass of the offender?---Yes.

What do you mean by the centre body mass?---The sternum chest area of the body.

Right. Now yesterday, we had played to the court, your interview, which was conducted on 10 November 2019, at the Yuendumu Police Station at about 3.06 am?---Yes.

And I'm not going to have that replayed. But what I am going to do is just simply read to you what was said by reference to the transcript at page four of that interview. And I'll just read this to you. "I looked back inside", and I'm now referring at about point eight of of the – I'm not going to read the whole conversation. This is where you're describing what you could see from outside of House 511, looking inside it?---Yes.

You said, "I looked back inside, and at this stage, all three appeared to be on the ground wrestling. I heard the mention of um, 'watch out scissors', or something to that effect, 'he's got scissors. Look out for the scissors', and Rolfy, Zach Rolfe, Zach Rolfe, saying to Adam from what I perceived 'He's got some scissors. Watch out. Watch out.' Um, I saw Zach had his Glock in his right hand, and he pressed it up

against, well he held it, point blank, up against the mid-region of the male they were fighting with. They were wrestling with, and shot him twice. They were the two gunshots that I were 100 percent shots – in – short shots. Um I believe in hindsight now, the first shot that I heard, which I thought was furniture falling down, was possibly the first gunshot.”?---Correct.

What you were doing there, is describing, as best you could, what you could see, and what you perceived, from the position that you were in, looking back inside of House 511?---Yes.

It’s clear, that from your perspective, that is the angle that you were at, the gun that was discharged by Zachary Rolfe, was in close proximity to the now deceased Kumanjaji Walker?---Yes.

You’re not able to say, so how close, but you had a perception that it appeared to be very close, as you saw it?---I did.

And when the shots were discharged, they were discharged, from your perspective, into what we’ve described as the centre body mass?---Yes.

Which is the area that all police officers were trained to shoot at, in the event that the firearm is to be discharged, if an edged weapon had been presented?---It is.

I want to ask you a little bit about an edged weapon. What is an edged weapon?---It can be anything that can be used with an edge, or a pointed end, to inflict damage on a person.

It doesn’t have to be - - - ?---You know, stabbing – stabbing, cutting instrument.

And it doesn’t have to be metal does it?---No it doesn’t have to be – to be metal. It can be anything that’s sharp. It doesn’t have to be man-made, it can be natural.

It could for example, be a wooden shaft?---Yes.

With a pointed object?---Correct.

Can you just bear with me a moment? Sorry, your Honour. Sorry, bear with me. Would your Honour just bear with me?

THE CORONER: There is no pressure, Mr Edwardson, don't - - -

MR EDWARDSON: I had it before and I've got so many paged tabs now I've lost this now.

THE CORONER: Perhaps get your junior to use different, Mr Edwardson?

MR EDWARDSON: I think my junior's - it's all mine. Sorry, your Honour.

THE CORONER: No, no, just - .

MR EDWARDSON: 1896 from yesterday's transcript, sorry your Honour.

I am going to read to you some evidence that was given by Constable Eberl in answer to questions put by Dr Dwyer a page 1896. This is what was put:

"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 had given in relation to Kumanjayi's death - Kumanjayi's passing, I should say. For the first version, 10 November 3 am, although you were tired, the events are fresh in your memory?---Yes."

In other words, Constable Eberl was being asked about the first statement that he gave on 10 November at 3 am?---Yes.

Dr Dwyer continued:

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

He said; "Mm mm.

"Do you agree with that?---That's correct."

"And that - and so that makes that account be particularly significant, doesn't it?---Answer, 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 a little - I don'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 upon 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 what I could see he had something in his hand. I didn't know 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, is in that moment?---Yes."

Then the examiner went on to say this:

"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 Kumanjaya had, 'So I was holding his left arm and I held him like this and said, "Stop fighting" and then I looked over and could see some sort of edged weapon in his right hand.' The first time you introduced the idea of what Kumanjaya had as an edged weapon is at committal. In the preparation of the committal I am not suggesting any impropriety, you had spoken to Constable Rolfe's legal team, is that right."

Do you understand that evidence?---Yes.

So in other words, on the first two statements you describe "sharp stick" or something to that effect?---Yes.

By the time you get to the committal he describes that as an "edged weapon"?  
---Yes.

As I understand your evidence, a sharp stick is or could properly be described, consistent with the training that existed back in 2019, as an edged weapon?  
---Yes.

And indeed, the whole focus, as you well knew where at trial, was very much what is an edged weapon, was Kumanjaya Walker armed with an edged weapon, did he present it and to what extent did that have the consequence of the ultimate shots being discharged and you always understood that that was the theme that was so important at trial?---Yes.

Now, a sharp stick, as it turned out it wasn't a sharp stick, it was a pair of surgical scissors. But a sharp stick is not only properly described as an edged weapon, but you would understand back then, from your training, it could equally have fatal consequences if you were stabbed in the right place?---Yes.

And that is something that was taught to all police officers and can I suggest including Zachary Rolfe back in 2019?---Yes.

Have things change since then?---No, not to my knowledge. Not as far as the edged weapons descriptions.

You've told us that you are now an instructor?---Yes.

That you train in defensive tactics?---Yes.

Are police officers today still taught that in the event of an edged weapon being presented to a police officer - depending upon the circumstances?---Yes.

The response might be the drawing of a firearm and indeed the discharging of that firearm?---If need be, if there's no other option, yes.

And you continue to train police officers in that regard?---Yes.

And it's - I think it's slightly different in New Zealand because in New Zealand the police officers didn't actually carry firearms when you started, did they?---No, not on patrol.

Not on patrol?---They don't carry sidearms.

But nonetheless, as a police officer in New Zealand, were you still taught much the same thing?---Yes.

That is this notion of edged weapon equals gun?---That's the notion, yes.

THE CORONER: Can I just check one thing, Mr Edwardson, if you are going to another topic?

MR EDWARDSON: Yes, your Honour.

THE CORONER: One of your questions you referred to something about the trial but you also referred to the item in the hand as "surgical scissors".

MR EDWARDSON: Yes.

THE CORONER: I don't know that I have any evidence or am aware that there is evidence that they were surgical scissors as opposed to scissors.

MR EDWARDSON: I think in fairness you are quite right, your Honour. I think the evidence was, I think from Senior Constable Eberl yesterday, they were the type of scissors that you get from a - I think he called it a "first aid kit" or something to that effect, that as his evidence yesterday I think. Scissors, in any event.

And just to take up her Honour's point, again consistent with your training, there is no doubt is there, at all, that scissors are an edged weapon for the purposes of that training?---That's correct.

Including the very scissors that were in the hands of Kumanjayi Walker on this particular occasion on 9 November 2019?---Correct.

Thank you. I want to turn now if I can, to your deployment. Now, it's clear that chain of command is an important part of policing?---Yes.

Regardless of whether or not the IRT are deployed. There is a difference back then, as an IRT member, between what I will call the "high-risk deployment" and a "general duties deployment"?---Yes.

A high-risk deployment would mean, in effect, as I understand it, that the members of the IRT team when deployed to apprehend an individual, for example would, generally speaking, seek to cordon and contain until the TRG arrive?---Yes.

If it was a high-risk deployment there would necessarily be a detailed arrest plan and detailed instructions given to the members of the IRT who were deployed in that capacity?---Yes.

If it is a general duties deployment but nonetheless with members of the IRT who have a particular skill set, as was the case on 9 November 2019, do different considerations apply in the context of an arrest plan?---Yes, well it can be - like it's a different level first and foremost as opposed to the high-risk, so we haven't received - may not receive written confirmation that it has been authorised as a high-risk from a higher ranked officer and yes, it's a general deployment and that type of lower level capacity.

Although you were aware about what I will call the "axe incident" which was two days before?---Yes.

And you had viewed that video footage and you had seen with your own eyes the potential for Kumanjaya Walker to arm himself with an edged weapon such as the axe on that occasion, that would have put you on notice that there was always that possibility of a recurrence?---Yes, I had an awareness in my mind, for sure.

And so one had to be conscious in one's mind, as a member of the IRT about how you might approach him?---Yes.

When you find him?---Yes.

Now, much has been made of the so-called - what I call the "Frost arrest plan" - the email that you now was sent to all members of the IRT?---Yes.

Who were deployed on 9 November, but the universal evidence is that nobody received that email because you were in transit between Alice Springs and Yuendumu?---Yes.

And in your case, you didn't actually sight it until some months' later?---Correct.

When you were asked a series of questions, in part I think by counsel assisting, you acknowledged that if there had been this plan in existence and if there was an expectation that the arrest would occur in the way in which it's expressly set out in the arrest plan, you should have been informed of that?---Yes.

You understood, didn't you, back to the chain of command, you understood that

Sergeant Frost was effectively your commanding officer for the purposes of this deployment?---Yes.

And you understood that she was, in turn on the chain of command, that her next – well, the next one up, as it were, is Superintendent Nobbs?---Yes.

So, in other words, Nobbs going down the chain of command would instruct Frost and Frost would then in turn be responsible for your deployment on 9 November?---Correct.

And we know that you were deployed, along with the other members at roughly 7:05 pm that night?---Yes.

And certainly, from your perspective as I understand your evidence, at no time did Sergeant Frost physically hand you or direct your attention to the contents of the email which had been sent to you?---Correct.

Now, as with any arrest situation, you have to be fluid, don't you?---Yes.

Because things change?---They do.

There's nothing unique about asking, for example in this case, members of the community or anybody who might be connected to an offender, about getting information as to their whereabouts if you want to find them, locate them and arrest them?---That's correct.

Intelligence-gathering, is that a concept you're familiar with?---Yeah, I understand it, yes.

Isn't it really no more than simply getting information from third parties?---That's exactly what it can be, yes.

And in the context of this particular deployment, that's precisely what was happening once you left the Yuendumu Police Station?---Yes.

Because what is common ground, I think, nobody knew where Kumanjayi Walker was when you left the police station?---Correct.

At no stage did Sergeant Frost suggest to you or offer to have Alefaio with you?---Not that I recall, no.

Or suggest that he had some knowledge of where Kumanjayi Walker was?---Correct.

And indeed, your evidence, as I understand it, was that Zachary Rolfe had had some earlier conversations before you got to the Yuendumu Police Station with Sergeant Frost and in simple terms, I think your evidence yesterday was, look, we don't have a lot to go on. We know a couple of houses, and you identified both 577 and 511, as possible locations, but beyond that, nobody knew specifically where he



was?---Correct.

Now, with policing, and I'm talking generally and I'll come to the specific in a minute, if you've got a target who must be apprehended because there's a warrant for his arrest out, and you have to find him. Obviously, there's always the possibility that once you're visible and looking and enquiring about the whereabouts of that individual, that the individual might be tipped off?---Yes.

And of course, in the case of Kumanjaya Walker, we know that after he deployed the axe against Constable Smith and Hand, that he fled, he ran off?---Yes.

And so, there was always a real possibility, unless you found him quickly, that once all the members of the police of the IRT, together with Mr Donaldson, who was the dog man, that were deployed into the community, it would go around the community like bushfire, wouldn't it?---Yes, it would.

And so, in a sense, time was of the essence because there was a real possibility that if he was tipped off, he'd flee or be hiding somewhere else?---Yes, that's correct.

I want you to have a look – I want you to give some consideration, if I can, to this plan that was never conveyed to you. The plan contemplates a deployment at 11 pm. You were deployed at 7:05 pm?---Yes.

You were told, were you not, that if you find him, he is to be arrested and brought back to the police station?---Basically, yes.

The first place that you went was 577, because that was the last known location where he'd been seen reparable to the axe incident?---Yes.

If this plan had been presented to you, and you said it would have been better if I'd known about it, if it had been presented to you in its form, as it stands, talking about a deployment at 11 pm, an arrest at 5 am, wouldn't you question Sergeant Frost about how that's even possible?---I would have asked a few questions in relation to this. I think if we had, as per the plan, conducted high visible patrols, then it would have taken a very short time, based on my experience in policing for the people that we look for to be tipped off and potentially allude us.

In other words, yes exactly, potentially allude you. And clearly, if you're going to – if the idea in a perfect world is that he be arrested at 5 am, you have to know where he is?---Yes.

And you certainly didn't have that intelligence at all?---No.

When you and the other members of the IRT left Yuendumu Police Station?---Correct.

And so, what happened in truth is that, consistent with the information that you had, you intelligence-gathered and when I say "you", you collected the intelligence-

gathering by asking people connected to House 577 initially, conveying to those people why you were there, who you were looking for and whether they knew where he was?---Yes, more or less.

And police were told very quickly that, in effect, you'd missed him by a matter of minutes and that he'd left with a woman, his girlfriend called Rakeisha?---Yeah, I can't remember the exact words, but yes, he wasn't there and he had left.

And you knew that the – you understood, at least, on the information that was conveyed to you that he was moving to either House 511 or another house close to 511?---I believe so.

I think it was the red house or the blue house, I forget which?---Yep.

And so, having cleared, that is checked, House 577, the group then moved to the next known location of where he was likely to be?---Yes.

And again, you had identified at 577, not only is it self-evident that you're police officers and so on, but why you were there and who you were looking for?---Yes.

And so again, it must have occurred to you that there was every chance that he might be tipped off and he might allude police, as you've said?---Possibly, yes.

And so, that's why it was important to go to 511 quickly from 577?---Yes.

And as it turned out, the information that had been passed onto police turned out to be correct?---Yes.

Because we know that Kumanjayi Walker was, in truth, inside House 511?---Yes.

And so, what you did on this occasion, was that really consistent with what you would do on a daily basis, in terms of general duties, when you're looking to apprehend an offender?---It's a common policing type of operation, yes.

And so there was – apart from the fact that there was a heightened sense of sensitivity - - ?---Awareness.

- - - and awareness because of the axe incident?---Yes.

Leaving that aside and police realising that if given the chance, he might harm himself or he might deploy a weapon against police, precautions were taken?---Yes.

And that's what happened?---Yes.

And that's no different from, I imagine, hundreds of arrests?---Correct.

What was slightly unusual in this case was that all four members of the five – four of the five members who were selected for the task or the mission of finding him or

locating him and arresting him was that four of you had extra training?---Yes.

You were – you've been called elite, but you were certainly much more capable than I suggest your ordinary, run of the mill, day to day police officers?---Yes.

Okay. In other words, you had the capacity to deal with a confronting situation where readily that perhaps another police officer if confronted?---Potentially, yes.

Potentially. I want to ask you a little bit about your description of Zachary Rolfe. How did you describe him, I can't remember if it was earlier day or yesterday?---I don't know if I described him.

Or something like - - -?---I just called him - - -

- - - energetic or enthusiastic or - - -?---Yeah, to that effect, yeah, a hard worker from my knowledge and yeah.

A hard working, capable police officer?---Yes.

Would you say that his attributes were common amongst all members of the IRT who were deployed on that day?---I believe so.

You have a commonality, if I can put it that way, about the elite way in which you went about your business back then?---Yes.

At any stage, did you have any indication at all that Zachary Rolfe might have been motivated by some sort of racial tension or racial hatred or anything of that nature?---No.

At any stage, have you ever seen him behave in the work place, with a way that's consistent with him being motivated by some sort of racial feeling?---No.

Has he ever conducted himself inappropriately in your presence?---No.

Or said anything inappropriate - - - ?---No.

- - - in your presence, along the lines, for example, the text messages?---No, not in my presence.

And no one's seeking to justify the language that's used in those text messages. It's common ground?---Yes.

What I'm simply asking you is this. Did you at all times, as far as you were able to determine, regard Zachary Rolfe as a very professional and capable police officer, as a member of the IRT?---Yes I did.

And there was nothing about his behaviour, or his conduct on 9 November 2020 that gave you any indication at all, of him having a lack of respect, or a lack of empathy, for members of the community?---Nothing to my knowledge, no.

And he appeared to be at all times respectful to those he spoke to, before this tragic shooting incident?---Yes.

I've nearly finished, your Honour, just excuse me.

Just back to the plan a minute. Even if there was an indication, a desire, call it what you will, of on the part of Sergeant Frost, for a 5 am arrest. That of course, would be subject to what information you had at any point in time?---Yes.

As we've already established, no one knew where Kumanjayi Walker was, let alone where he might be at 5 am?---Correct.

And we've already established, that because of police presence, known presence within the community, there was a greater risk of him being tipped off, and absconding?---Yeah, there's a high likelihood of that.

A missed opportunity?---Yes.

And of course, as with any plan, even this plan, in so far as it existed, but not conveyed to you, it has to have the capacity to change, according to the circumstances that present themselves?---Yes.

The most obvious one is what happened here. You actually identified where he was, precisely, which of itself, required immediate apprehension?---Yes.

And that's what happened?---That's what happened.

Nothing further, thank you, your Honour.

THE CORONER: Thank you, Mr Edwardson.

Mr Read, I don't think there's any other questions from any other parties?

DR DWYER: I think Health might - - -

THE CORONER: Sorry, yes.

MR ZICHY-WOINARSKI: I just note the time also, your Honour.

THE CORONER: Well, I think we might just have your questions as least, Mr Zichy-Woinarski.

MR ZICHY-WOINARSKI: Well done, your Honour. It's Polish and Hungarian, just to make things difficult.

XXN BY MR ZICHY-WOINARSKI:

MR ZICHY-WOINARSKI: Senior Constable Hawking, my name is Zichy-Woinarski, I appear for NT Health?---Afternoon.

You've been asked a number of questions about your assessment of risk on the night of this incident. I'm afraid I'm going to ask you some more. In your first interview, made the morning after this incident, you described the events immediately after the shooting, when Kumanjayi was placed in the police vehicle. You said that you closed the vehicle doors, and said "We're going back to the station." You then state, "En-route, I was told to go to the clinic. I can't remember who said it. Somebody from the station here, and I said 'Negative, due to the ah, volatility, we're going back to the station'", do you recall that?---I don't recall – don't recall, but that's what I said I believe.

I take it you don't recall now who told you to go to the clinic?---I couldn't tell you off the top of my head, no.

But at that time, you considered it would be unsafe to take Kumanjayi to the clinic?---Yeah, look I can't remember. It – I don't recall, quite possibly, yes.

Appreciating that you don't remember. Your view was that it was safer to go back to the police station, is that correct?---I think so. I think I might have explained earlier, to – to be able to administer first aid as quickly as possible, would be to do it in a safe environment, yeah.

And when you say "A safe environment", in your experience, the police station's in remote communities usually have certain structural security features, perimeter wall?---Extra members, yes.

Yes. Reinforced doors?---Potentially, yeah.

And other features (inaudible)?---Cameras, everything, lighting.

Thing that you wouldn't ordinarily expect a remote clinic to have?---They may potentially have that. I – I don't know. I haven't thought about that.

And in addition, the station holds stock piles of various police equipment?---Yes.

Things that obviously wouldn't be immediately available at the clinic?---Yes.

I want to move now to the period between when you get Kumanjayi to the station, and when the police reinforcements arrived?---Okay.

There was some time between those two events?---Yeah, yep there was.

Don't want to re-hash the evidence, but during that time there was a large group of people gathered outside the station?---I believe so.

Rocks were thrown at the station – the station walls?---Yes.

Were you also aware that some community members were carrying weapons?---I can't remember.

But in any case, your assessment was that the crowd was extremely volatile?---Yes I believe it was at the time, I think.

Was there ever a point, during that period at the station, between when you – before the – before the first police reinforcements arrived, in which you re-evaluated the risk, and determined that it would be safe to take Kumanjaya to the clinic?---I think we were too intent on focussing on Kumanjaya to – obviously his – his first aid, to even evaluate anything else at time, it was the main thing at that point. I may have done other things throughout the station, paused, or walked away to do other things, but I don't know if I made a risk assessment of moving anywhere at that particular time, no.

You don't recall it?---I don't recall it, no, I don't recall.

Was there ever any discussion amongst the police officers present, about taking Kumanjaya to the clinic, that you recall?---I don't recall.

You're aware now, I take it, that there were no nurses present at the Yuendumu Clinic (inaudible)?---Yes I'm aware of that.

Had those nurses been present, you'd still have had concerns about the risk of taking Kumanjaya to the clinic, is that correct?---Potentially, yeah, I - - -

(Inaudible), sorry go on?---Yeah I really don't know, because I'd never thought about it at this stage, yeah, until this stage.

Thinking back now, what might have the risks have been?---Once again, I don't know if the – if it's in a compound as such. If it's a secure environment. It – it could have been, but I don't know. I really don't know, I'd have to know what the clinic was like, and to know, you know, if there wasn't sufficient members to be able to ensure that there was a stronghold of sorts, you know, security, at that location, for them to be able to focus primarily on administering help.

Assuming that it's not a secure location, but it's a location which it's more difficult to establish a stronghold, there are risks to the officers present?---I think there could be risks to everybody present, yeah.

Now, at that time, you're the highest ranking member of the IRT in Yuendumu, is that right?---Yes.

You had access to training and expertise that the non-IRT members present did not have?---I'm not sure what you mean, sorry.

To your understanding, the other members of – other police members who were there, but who are not IRT - - - ?---Yes, but non-IR – yes.

- - - did not have access to the same specialist training?---No they didn't have that training that we had, no.

So while you may not have had the final say on whether or not it was safe to take Kumanjayi to the clinic, your assessment would carry some weight in those circumstances wouldn't it?---Potentially.

You would have expected, for example, Sergeant Frost, to consider your assessment seriously?---Possibly.

And if there were other members – other members of the police hierarchy outside of Yuendumu, to take your assessment as an officer on the ground seriously?---I'd like to think so.

And your assessment was that it wasn't safe to take Kumanjayi to the clinic?  
---That's - that's the - my assessment, yes, and that's the decision I made at the time.

One final topic, Senior Constable, in your third statement made in February 2022, you discussed when the nurses arrived at Yuendumu station?---Yes.

You say that you recall the nurse being injured "And us hiding her under the desk for safety"?---Yes.

"Due to the volatility of the crown at the front"?---Yes.

"And thinking, 'We're in a bad situation here'"?---Yes.

Do you recall giving that account?---Something like that, yes.

When you say "us hiding her under the desk" - who is "us"?---Us as in the police, just to try to offer some comfort and security for the nurses.

You describe thinking, "We're in a bad situation here"?---Yes. I think the - the whole situation that we were under, we were - the whole - the whole situation was a bad situation, from a lot of angles, yes.

I appreciate that you're a (inaudible) gentleman, but that was a frightening situation to be in wasn't it?---Concerning, yes, very concerning.

It was concerning to you as a member of the IRT?---Yes.

You had experience in previous situations like that?---In policing - well, not that particular situation but in - yes, a lot of violent situations, yes.

You can appreciate how terrifying it must have been to (inaudible)?---Absolutely, yes.

To be in that situation?---Very much so.

Thank you, sir, I have no further questions?---Thank you.

THE CORONER: How long do you think you might be, Mr Read?

MR READ: Five minutes.

THE CORONER: We might just press on?

DR DWYER: Yes, and I am probably five to ten in re-examination.

THE CORONER: So I think we can finish by 1 o'clock?

DR DWYER: Yes, your Honour.

XXN BY MR READ:

MR READ SC: You had been to Yuendumu prior to this occasion on 9 November, hadn't you?---Yes.

And in what capacity was that?---To assist - I was a general duties officer I think. I potentially may have been in the Youth Engagement but a mixture of the two perhaps, to assist I think staff - staffing - fatigue levels were pretty critical out there so we went to assist.

So you were purely called up just on a general duties basis to give assistance to the Yuendumu police, is that right?---Yes, yes.

And how long were you up there for?---I think it was overnight, they'd had some - a spate of break-ins and I think they were exhausted. Some juveniles had - they had arrested several juveniles that day, so they were quite tired and we were asked to conduct patrols throughout the night to try to keep an eye out for any obviously unlawful behaviour.

Okay, and so what did you do that night?---We did just that - we literally patrolled the whole town, my partner and I and we went initially - I think we went to the sports recreation centre there and engaged with some of the youth there. Obviously I knew them, I having been in the youth engagement in Alice quite frequently so.

So you knew quite a few of the youth there?---Yes, they come up to us.



Treat a few hoops?---Yeah, we did that type of things, yeah, good engagement, yeah.

And did you - after that night did you have a discussion with Julie Frost about maybe other ways you could deal with the stresses and pressures that were on the community at that time?---Yeah, I - I think the next - we had a - thankfully, an uneventful night but we patrolled - I don't think we even came in for a break for the whole night shift, we just patrolled throughout the town non-stop with our lights et cetera and I suggested that perhaps it might be good for - to look at potentially doing some type of night shift if they were able to incorporate that into their roster.

And what - split shifts up, that - - -?---Yes, split shifts and night shifts, just to break up their type of roster that potentially the juveniles might be cottoned on to.

Perhaps I should – it's a bit of an interference with perhaps behaviour of - - -?  
---Behavioural trends and times.

People and not - - -?---Yes.

(Inaudible) yes. So you knew Julie Frost and you were the senior constable, you were certainly when you arrived on the 9th, a person - well, looking back in hindsight - that she could have come and spoken to you if she had any concerns, is that right?---I would've liked to think that, yes.

You said after the incident and that and you gave a description of being at the barbecue and that you were a bit of zombie and I think you also gave evidence that you were somewhat upset - and I use the word "traumatised" advisedly - but for a while after that, so you took some time off, is that right?---Yes.

And in fact you went to the doctor yourself?---Yes, I did, yes.

Is that right? Yes. At the scene, even though you didn't actually know, there were very real odds that Mr Kumanjayi had been seriously injured, is that right?---Yes.

For better or for worse, you made the call, "We needed to get him out of there" is that right?---I think so. I remember there was - it was to get him out and we needed to safely do - safely administer CPR for him.

Is the first - the first responders - the first step that has to be taken to ensure that it's not dangerous or alternatively that it's safe?---Yes.

I've already asked Mr Erberl this, but what is the level of first aid kits in the vehicle?  
---They are a basic first aid kit which - yes, we utilise quite a lot.

And back at a major community police station is there more sophisticated first aid equipment and capacity?---I would have thought there would have been, yes.

Apart from the safety issue was there also a concern that he would need first aid and the best space would be back at the police station?---That was my thought at the time.

Do you stand by that decision you made?---I do.

Back at ;the police station it wasn't your call but ultimately command requested that the TRG arrive, is that right?---Yes.

And the TRG did arrive later that night?---They did.

And that whole time did they have arms?---I can't recall. It was - I know it was some time. Perhaps - it could've - could've been after midnight, I don't really - really don't remember.

When that TRG arrive do they as general duties or do they - - -?---No, I think they arrived in - their - with their equipment and their - I think its camouflage uniform, their body-cam.

And when they arrived what did they do? Did they just sort of put that aside and do general duties type stuff or did they- - -?---No, I think - I think when they arrived they immediately - I think their sergeant - I think he's a sergeant - started giving them tactical duties to I think contain or form a stronghold in the perimeter in side the compound.

On an operational level when the IRT is called out, if command designates it as high-risk then that would mean the limit of the IRT's role would be cordon and contain, is that right?---Yes.

And then the TRG would come down from Darwin and complete the deployment is that right?---Yes, unless they request of us to do something to assist them.

And of courser if that extra step is taken when the TRG comes to a community, they in fact to come in what is uniform and present more as a military style, is that right? ---I think generally they have done in the past.

Back at the station, despite everything that was going on, you decided or you realised you needed to secure what evidence you could, is that right?---Yes.

First of all, did you seize Constable Rolfe's firearm?---Yes.

And then, in fact, it was returned to him because of the situation outside, is that right?---Yes.

And then it was seized back again, is that right?---Correct.

And then it was secured?---Secured, yes.

And it wasn't just that that you did. It was also his shirt as well?---Correct.

There was command developed an evacuation plan from the police station, is that right, and you had to get vehicles prepared, is that right?---Yes, there was.

And you had to think on the run – “Well, how are we going to do this?” You'd never had to do anything like that before, is that right?---Yes.

You had to get all the firearms from the station, is that right?---That's correct.

And secure them in the vehicle, is that right?---Yes.

You were just about ready to go, perhaps get everyone loaded up, is that right?---We were literally – I think the compound rear gates were open and we were almost - - -

You were loaded up already?--- - - - almost driving out of the station, on our way.

Right. Then you got a call, a change of plan. You can go back and maintain fortification in the police station, is that right?---Yes, correct.

Was that before or after the TRG arrived?---No, that was before.

Right, okay. You had some qualms about the decision to go back to the police station after you were ready to do an extraction, is that right?---Yes.

You were told that that's what you had to do?---Correct.

What did you do?---I, obviously, was given that direction, so I followed it.

Yes. You're now in a position where you are training. You're not frontline and I understand you don't propose to go back to frontline, is that right?---Correct.

Training tactical defence tactics and that. A person in that position is very much aware of the importance of following the chain of command and orders, is that right? ---Yes.

A person in that position (inaudible), one would hope, always follow orders, particularly given the type of stuff you're dealing with, is that right?---Yes, I agree, yes.

Thank you very much, Coroner.

THE CORONER: Thank you. I do note it's five to 1:00, but if everyone is happy to just sit, I would prefer to complete this witness' evidence.

DR DWYER: I won't be long, your Honour.

REXN BY DR DWYER:

DR DWYER: Senior Constable, I just want to pick up on one thing you were asked by the learned senior counsel, Mr Edwardson. It was put to you that – he began a question with this: “Even if the plan was for a 5 am arrest, and then, in effect, plans can change.” I just want to be very clear about this. I put to you some evidence that you were unaware of until this inquest, that Constable Rolfe gave at trial, where he made it clear that he knew there was initially a plan for a 5 am arrest?---Okay.

Do you agree? And just so you're clear, and everybody who is listening is clear, Constable Kirstenfeldt gave evidence at 3 am on Sunday, through (inaudible) of interview that, “The evening for us was initially just going to be an information-gathering session, with a plan on hitting the house that we could get down to with some intel at about 5 o'clock in the morning.”?---Okay.

So, he knew about the 5 am plan and Constable Kirstenfeldt, in his second interview, talks about skim-reading an email that he got from Sergeant Frost, but he knew about a 5 am plan and so did Constable Rolfe. As you know, that plan originated from an operation order that was signed off on by Superintendent Nobbs. There is a command structure within the police force, isn't there?---Yes.

Mr Edwardson put to you that, even if there a 5 am plan, plans can change. It would not have been for you or any member of the IRT to unilaterally change a 5 am arrest plan, would it?---The way I take it is, if there is a plan to do so, then that's the plan that we do. However, if - that plan may deviate depending on circumstances that we're presented with, I guess.

Sure?---Possibly.

Let's give you an example?---Yes.

You're busy working out what time you're going to leave for the community and Kumanjayi walks in the door with (inaudible)?---Yes, exactly.

That's a change of plan, obviously?---Yes.

But what really happened? Let's just be frank about it. By the time you left Alice Springs, you thought that the mission for the IRT that night was to go and arrest Kumanjayi, correct?---Correct.

And when you got to Yuendumu, in terms of any briefing you got, you still understood that the plan was to arrest Kumanjayi?---Correct.

As soon as possible, right?---Ideally, yes.

Okay. And, certainly, any conversation you had with Constable Rolfe that evening reinforced that?---Yes.

That the plan was to arrest Kumanjayi as soon as possible?---Yes.

And can I tell you that we hear audibly on the body-worn video that when Constable Rolfe arrives at House 511, he says, "We're here to grab up Kumanjaji."?---Yes.

And that's consistent with what you were told you were going to do, grab up Kumanjaji at the earliest opportunity?---Yes.

It wasn't intel-gathering with a view to arresting him at some stage in the future, was it?---No, some intel-gathering to find out where he is, so we could obviously apprehend him.

Arrest him. And Constable Kirstenfeldt will give evidence about this, but he explained in his interview that he understood that the IRT were there to be force multipliers and assist with general duties, possibly for some days. You didn't understand that, did you?---No. There is always a potential that one day may turn into two, but that's the flexibility that you have in the back of your mind all the time.

Sure, but the ultimate aim was to arrest Kumanjaji as soon as possible?---Yes.

Different topic. You were asked some questions about Sergeant Bauwens. Sergeants play a very important role in leadership in the Northern Territory Police Force, don't they?---Yes.

And the same in New Zealand?---Yes.

Within the IRT, the sergeant sets the tone, is that fair?---I guess, yes.

Can I suggest to you that that role that might be played by a sergeant is important in setting a culture or helping to develop a positive culture within the IRT?---Yes.

And, alternatively, if it's not done well, it can set a negative culture within the IRT, or some aspects of it?---Yes, there's potential for that, yes.

And you gave some evidence about what your impressions of Sergeant Bauwens were before - - -?---Yes, I did.

Before 9 November, and I don't want to detract from that. But what you now know, from reading MFI C, is that he had been involved in a text exchange with a younger officer in his group, of the rank of constable, where he used the term, "bush coon."? ---Yes.

And it's racist and it's unacceptable. Do you agree?---I think I pointed that out, yes.

You have, you have. And then, what you also know, that you didn't know before this inquest, is that Constable Rolfe used terms like, "Tallying up the locals and coons and (inaudible)?---Yes.

I won't - - -

MR READ: Your Honour, this has been already covered.

DR DWYER: It's an important question, your Honour, and I press it.

MR READ: It's already covered.

DR DWYER: I press it.

THE CORONER: Well, I'm not sure where the question is going, but I'll allow it. But there is a very limited timeframe here, Dr Dwyer.

DR DWYER: Thank you, your Honour.

Senior Constable, what I want to ask you to reflect on is that this sergeant who was heading the IRT played an important – I withdraw that – failed in his leadership because he set a tone for younger officers in using that language?---Yeah, I guess it's a hard one to answer. I certainly had no – I had no idea, like, he was a very good sergeant, as far as I was concerned, and leader in that respect.

Sure?---So, it didn't change me, I guess because it wasn't directed at me, but yeah, I can understand where you're coming from, yes.

Racism can be hidden, can't it?---Yes, obviously.

Obviously, because you didn't know Sergeant Bauwens would use that language? ---No, I didn't. I wouldn't have expected him to.

And you wouldn't have expected Constable Rolfe to use that language from what you - - -?---No.

So, obviously, that racist language was not delivered in front of you?---No.

So, what I want to suggest to you is that there was an absence of leadership in the IRT that had an impact or that may have had an impact on younger officers?---It may have.

And you were asked some questions about carrying an AR 15?---Yes.

And the circumstances in which you would carry it on an IRT deployment. Were you ever given any advice by Sergeant Bauwens as to when you should or shouldn't carry an AR-15?---I don't think so. I can't recall, to be fair. I don't think so.

(inaudible) absence of - - -?---I think it was a general – general carriage.

Do you think, looking back on it, that you should have been given some clear instruction as to when it was appropriate to carry an AR-15 in the

community?---I think moving forward, we can certainly look at how we can be dealing with those situations, yes. So I don't know what information was handed down through management, etcetera, as to what should have been portrayed, so I can't really answer that one in that respect, but certainly moving forward, there should be some sort of contingencies in relation to the carriage, yes.

Well, you're being criticised, as I anticipate, by some – some of my – the barristers at the Bar table - - - ?---Yes.

- - - for your carriage of an AR-15?---Yes.

Both in circumstances when you – or at least when you arrived in Yuendumu?---Yes.

But what I'm suggesting to you is that you were told to take your full kit out to Yuendumu?---Yes, that was what I was told, yes.

And you didn't get any – get any specific direction as to when you should or shouldn't carry it when you were out there?---No, no.

And it would have been helpful to you, wouldn't it, as a member of the IRT?---Yeah, look, absolutely, for – for anything like that.

Yes, the final question is in relation to the Kevlar vest?---Yes.

You were – you acknowledge that you didn't wear that vest. We're going to hear some evidence from Constable Kirstenfeld, as I anticipate, that the vests were out of date?---Yes.

Did you know about that?---Yeah, I was made aware of that.

Prior to November?---Yes.

One thing Sergeant Bauwens did was try and advocate for better equipment for the IRT. Is that right?---Yes.

Would it have made a difference to you in terms of carrying or wearing those vests if they were in date?---Potentially. It's hard to say. I mean, obviously, knowing that something isn't 100 percent going to be (a) in date, and it's been tested recently, you've probably got more of a chance of putting something like that on to – have added protection.

And in – so in terms of – if there is, again, any equivalent of a TRG or a TRG-like organisation in Alice Springs - - -?---Yes.

- - - it's important that they have up to date safety equipment, isn't it?---Yes, very much so.

And you would have known Sergeant Bauwens to be constantly advocating for that on behalf of the IRT. Is that the - - -?---Yes, yes.

In relation to your role – this is the final topic, as training other officers in Alice Springs – given your learning or the lessons that come from the tragic death of Kumanjayi, do you think it would be a useful scenario to use in training for other officers?---I think – yeah, obviously we have to be very sensitive about it.

Sure?---But, yeah, I – it's certainly – there are many points of topic that could be discussed that could be of benefit in that situation in a training environment, yes.

I'm not suggesting you use Kumanjayi's name or - - -?---No.

Or even any officers?---The scenario - - -

Exactly?---- - - would be very beneficial. I think historically that's probably what police in general around the world have done, as learn from their experiences, and move forward to be able to prevent similar situations from occurring again, yeah.

Thank you, your Honour.

THE CORONER: Thank you very much for coming and giving your evidence?---You're welcome.

Sorry that I've kept you here so – the number of questions have kept you here longer than anticipated. We do appreciate the care that you've provided to the evidence that you've provided to the inquest?---Thank you, your Honour.

WITNESS WITHDREW

ADJOURNED



RESUMED

THE CORONER: Dr Dwyer.

DR DWYER: Thank you, your Honour. Your Honour, I call Constable James Kirstenfeldt.

JAMES LLOYD KIRSTENFELDT, affirmed:

THE CORONER: Great, thank you.

Yes, Dr Dwyer. Sorry.

MR GNECH: Your Honour, perhaps I could announce my appearance. My name is Gnech, spelt G-N-E-C-H, initials are CR, Gnech and Associates and your Honour has given me leave to represent on behalf of Constable Kirstenfeldt.

THE CORONER: Thank you, Mr Gnech.

MR GNECH: Thank you.

THE CORONER: Yes, Dr Dwyer.

XN BY DR DWYER:

DR DWYER: Constable, could you please tell the court your full name?---James Lloyd Kirstenfeldt.

And your rank?---Constable.

And where are you currently based?---Darwin in the city.

Officer, I just wanted to start by acknowledging that the occasions when you're given evidence previously, you did an interview first up on 10 November at 2:05 am when you were still out at Yuendumu after Kumanjayi's passing. Is that right?---That's correct.

That was interviewed using body-worn video. Is that right?---Correct.

And have you recently had the chance to refresh your memory from that interview?---Yes.

After that, you were interviewed again about 11 days later on 21 November 2019. Correct?---Correct.

And then after that, you gave evidence at the committal in relation to the trial of Constable Rolfe?---Yes.

That was on 2 September 2020. You understand we've got a transcript of that evidence?---Yes.

And then finally, you've given evidence at the trial of Constable Rolfe on 15 February 2022, that is this year?---Correct.

Do you agree with me drawing on your experience as a police officer that it's important to take a record as soon as possible of an event that took place?---Yes.

Often that's done in your police notebook. Correct?---Correct.

In this case, of course, it was done formally in terms of a recorded interview?---Yes.

And the significance of taking that evidence quickly, I suggest to you, is because it's fresh in your memory, firstly?---Yes.

And it's before your memory can be contaminated by speaking to other people or by the passage of time. Do you agree?---Yes.

So, on Sunday morning at 3:05 am, you gave an account. It started at 3:05; it ended at 3:54 am. You were giving evidence in a free-flowing form. Is that right?---Yes.

And you were giving an honest account of what had taken place, from your perspective?---Yes, from my perspective to the best of my memory at the time.

Okay. And that's likely to be an accurate account, isn't it?---I believe so, yes.

When I come to ask you about some of the events of 9 November, I'll come back to that first transcript and to some extent, the second interview that you do, and ask you some questions about it. But just so you know, we've got a copy of that in front of us and please ask me for that anytime you need it. Can I start though, Constable, going back to some of your background, when did you join the Northern Territory Police Force?---November 2016.

Where were you prior to that, that is, what job did you have prior to that?---Prior to the police, I was in the Australian Defence Force.

When were you a member of the Australian Defence Force?---From 2001, on and off up until 2016 when I left.

Okay. From 2001 through to 2016. Is that right?---Yep, with a couple of breaks in between.

And I think you explain a little bit about this in your second interview on 21 November, I'll just remind you. You're talking about some members of the IRT and you note that some training - "A lot of us in the IRT are ex-military, so things like close-quarter battle drills and that sort of stuff, we're probably a little bit more versed that someone in GD that might even be of a higher rank." And then earlier, you

explained to the interviewers that you've served three operational tours overseas during your time in the ADF. Is that right?---Correct.

What were those tours of duty?---East Timor, Iraq and Afghanistan.

When did you go to East Timor, for starters?---2006.

And what was the purpose of your deployment to East Timor?---I'm not really sure I understand that.

Were you part of a peace-keeping mission in East Timor?---The – I think the peace-keeping role of East Timor was the nineties, late nineties one.

Why did you go to East Timor with the ADF?---That was after the government collapsed and the country went bad again and they needed help.

But what was your role as a member of the ADF when you were there? For example, were you on street patrols, were you working to rebuild infrastructure; what sort of things did you do?---I was in the infantry my entire time in the Defence Force.

You were in the infantry the whole time in your – in the Defence Force. Is that right?---Correct.

Okay. You mentioned that you also went overseas to Iraq. When did you do that?---2007.

How long were you in Iraq for?---I think it was about seven or eight months.

Did you only go to Iraq on the one occasion?---Yes.

And then Afghanistan, you went to as well. Is that right?---Yes.

When did you do that?---I actually don't know the year I went there, 2011, '12, '13; somewhere around there.

For how long were you there?---Same again, about eight months.

And one tour over there, or did you go back multiple times?---No, just the one tour there.

Okay. You were – explained that you were in the infantry. So, you received particular training, of course, during your period in the ADF in relation to being a member of the armed forces?---Yes.

Was it useful when you came to the Northern Territory Police Force, any of that training?---I'm not really sure. I haven't – I don't think so.

Why did you join the police force?---It felt like a similar sort of role serving the

country and community and that. And it was time to get out of the military. I'd been there for quite some time and I was never home. I hadn't seen my wife for quite some time and she wanted me home more. And unfortunately, I made the decision to leave the Defence Force.

Did you say fortunately or unfortunately?---Unfortunately.

Unfortunately?---Unfortunately, yeah.

You regret that decision now?---No, I don't regret the decision, I just enjoyed my time there.

I see. So, when you left, you came to the Northern Territory. Had you been to the Territory before?---A couple of times.

You didn't grow up in the Territory. Is that what you're saying?---No.

Why did you decide to come to the Northern Territory?---I'd been here a couple of times. I really liked the weather. The lifestyle up here is – everything to do up here is very much everything I do in my free time. It's very outdoorsy, it's fishing and 4-wheel driving and camping. It's just a great place to live.

When you came to the Northern Territory, did you come to Alice Springs or Darwin?--Alice Springs first – training at college in Darwin, and then down to Alice Springs.

And you trained in the college of Darwin, did you request to come to Alice Springs, or were you posted here?---It was part of agreement when we first joined that we either went to Katherine, Tennant Creek or Alice Springs.

And your choice was Alice Springs, is that right?---Yes.

When you first came into the Northern Territory Police Force, what training did you receive to be a police officer?---There was six months of college. They do driving, defensive tactics, firearms, your – most of the legal things. You do exams on terms of legal, and powers that we have. Do that for six months. And then you've got a year and a half on probation, completing separate tasks is what the culminating event of all those things, to show that you can do the job. And that you are suitable to be a police officer.

And constable, do you recall at any time in the college, doing any learning, or training, on cross-cultural issues, or cultural competency, sometimes it's called?---I'm not sure if it was what it was called, or anything like that. But we went to Bagot Community. We met with the head Elder there, Helen. She's still there actually. I go speak with her sometimes. And we played – played basketball against some of the – some of the kids there. They smashed us. And just telling us about the community, and a bit about her history. And where she grew up from, and all that. And she was from the Stolen Generation, and she was telling us about that, and the impacts that that had on her, and her community, and family, and all that.

And was that meaningful to you?---Yeah, it was a different – Stolen Generation was something I – I think everyone's heard of and all that, but to hear it from someone that was there was more impactful than say reading it in an article.

You haven't served any time yourself in community, is that right?---No.

Were you interested in going into a community?---Yes, I wanted to – limited in what community I can – I'd prefer to work in, just because of my wife's profession. So I wanted to go to somewhere up in the north east corner of the Northern Territory there.

Okay, I'm not going to ask you what your wife's name is, but can you tell us what her profession is, just because it's relevant to understanding what might attract officers to - - - ?---She's – she's in a medical field.

All right. And so you would discuss it as a couple and see what community would suit you both to go to, is that right?---Correct.

Did you ever put your hand up into a remote community though on work?---I don't think I was ever asked. I was - - -

Did you do ever do any relief work, this is prior to November the ninth, any relief work in the community?---No. I had been to – been to a community to help out before, but I was only there for a couple of hours and came back. I hadn't worked long term or anything, in a community.

Was that as part of the IRT deployment, or general duties?---Yes - - -

IRT?---It was a – part of an IRT deployment.

What community was that?---Docker River.

And I'll ask you about your IRT shortly, was that the only IRT deployment you had done into a community - - - ?---Yes.

- - - other than Yuendumu?---Yep, correct.

When you are transitioning from - - - ?---Sorry, I did go do some relief in the community. I went up to Borroloola for a couple of days.

Okay, when did you go to Borroloola?---I think 2018, maybe, or early 2019, I'm not 100 percent sure. So I spent a couple of days up there.

And that was part of an IRT deployment?---No, no, that was – their station hadn't had a – they only had three members I think, and may be two, one was leaving, and they hadn't had a day off in three months, and they were – they just needed

someone else to come and relieve them for a bit so they could get some sleep and police the community.

Okay, so that was a couple of days did you – did you just - - - ?---Yeah, I think it was three days. Two or three days.

When you're there for those two or three days, did you receive any induction in – from any of the Elders there?---Not from any of the Elders. The local police officers drove us around, and showed us what was where, and who was who, and all of that. And where the problem areas were and - - -

Sure?---And where everyone – there was – it's sort of broken up into three different camps, sort of communities, that form Borroloola with a – pardon me, centralised businessy type thing in the middle. And there's a – a company up there, I'm not sure what they do.

Was there an Aboriginal community police officer in Borroloola, that you worked with, when you were there for two or three days?---No.

So I appreciate how short a period of time that is, and you're there to relieve, but did you meet with any Aboriginal people when you were there, outside of you know, requiring for police - - - ?---Yeah, yeah all the time.

So did you – did you meet – were you introduced to any Elders as part of your introduction into the community?---I think we were introduced to one of the Elders when we first arrived. He – he was the one that was requesting for more police to come up, because they - no one had had a sleep for a couple of days. Everyone was just – it was like a never ending party at that time.

I'll – just want to come back to the IRT then. You were – well actually I withdraw that. Just before I do. You joined the Northern Territory Police Force in November 2016. Had you come straight from your work in the ADF?---No, I – I left the defence force in January of 2016.

And did you have a break between January and November?---Yeah, just doing some odd bits – bit of construction work, that sort of stuff. Just – just stuff to keep busy.

When you were recruited into the Northern Territory Police Force, you're obviously required to fill out some recruitment forms, correct?---Mm mm.

And then go through an interview process?---Correct.

You are required to disclose whether you've ever been in the Australian Defence Force?---Correct.

Correct? And you're required to disclose, aren't you, whether you've ever had any disciplinary proceedings, in the Australian Defence Force?---Correct.

In your case, you disclosed that you had been disciplined over a particular incident involving a cull of feral animals, is that right?---Correct.

And once that was disclosed, you were asked about it in interview?---I – I offered that information to them. Apparently it's not on my record. They didn't know about it, but I gave it to them anyway.

And you – once you'd disclosed the information, they asked you about it at interview. You explain what the circumstances were, and then you were allowed to continue with your induction - - - ?---Correct.

- - - into the Northern Territory Police Force, correct?---Correct.

In relation to your training as a police officer, was there anything specific for you, as a former ADF member, that was – that is, were you given any instruction about how to distinguish your time in the ADF, with your time in the Territory police force?---Like from the – you mean training from the police force to - - -

Yes?---No.

You explained in one of your interviews, after Kumanjayi's passing, that you have conducted, in addition to your work at the ADF, you've conducted para-military type close protection training with Ronin International, in the United Kingdom in 2010?---Yep.

Why did you – or you did that prior to joining the AFF, is that right?---No, that was in a break of service that I had from the defence force.

And why did you do that training?---That's a course that's regulated that you have to do to receive a license to be able to do corporate or hostile environment body guard work.

And were you thinking at that stage, that you might do that type of work overseas?---At the time, yes, it was an option that I was exploring.

Did you ever do that work overseas?---No.

What's involved in the training that's offered by Ronin International?---They do some vehicle driving, counter-surveillance, surveillance, how to properly assess and set a room up for a – a – they call it a principle. So someone who would be the person that you're looking after. How to walk. How to – how to basically look after an important person, without being in their road.

Is there any weapons training specific in that?---There was some weapons training, because in the UK they don't have guns. So we had to go to Europe to show them how to – show people how to use guns, but I - - -

So what guns are you trained in the use of in – for Ronin?---For them, at the time,

I think it was a Glock, and there was a rifle. I can't remember what it was.

You were in the infantry in the ADF you tell us, and you trained specifically, of course, in the use of weapons, for that purpose. What – long arm firearms, is that right, for use in the military?---Yes.

And AR-15's, are you trained in the use of those weapons?---No. Not in the military.

What about the Glock? Is that used at any time for – in military training?---No.

So I take it from what you've just told her Honour that there's nothing – when you join the Northern Territory Police Force, you're not treated any differently because you were previously a member of the ADF, is that right?---Correct.

You've joined the IRT, according to your records, which of course and in the brief, constable, you joined the IRT on 26 November 2018 and I think there were four general support operation that you went to prior to going out to Yuendumu in November. Does that sound right?---Which ones are they? For IRT?

Yes, for IRT - general support operations?---I'm not sure.

Okay. What attracted you to the IRT?---I'm not really sure. It seemed like a busy unit that as doing some work. There was - it was something - I used to do a lot down here in Alice Springs and the IRT was sort going to be the main use of that because there's just a limited staff and overwork and all that, you can't really just call on anyone, so it was search and rescue - we used to do a lot of search and rescue on the Larapinta trail. That was - yeah, that was probably my favourite thing in the police is doing search and rescue and I think IRT was going to be the head of sort of that, I'd gone on a couple of search and rescues.

THE CORONER: Had you had some successful search and rescue - - -?---All of them, your Honour.

All of them?---All of them, even one lady she - the only thing she remembered from us carrying her down was that we were saying how hot it was and that we wanted some ice blocks and she came to the station when she got out of hospital, with a thing of Zooper Doopers for us.

DR DWYER: Did you - when you joined the Northern Territory Police Force in 2016 did you have any mates from the ADF who were joining at the same time?---I did.

Who were they?---His name was Adam Rever - he didn't - he wasn't successful in the Territory.

Did you know Constable Rolfe at any time prior to joining the police force?---No.

What about Mitchell Hansen?---No. They were - they were a different squad to me at college.



When you joined the IRT in November 2018 were there mates of yours from the Northern Territory Police Force that you'd made over the couple of years who were also interested in joining the IRT?---Sorry, say that - can you say that again?

Yes, sure. You joined the Northern Territory Police Force in November 2016 and you joined the IRT in November 2018?---Mm mm.

You'd made some friends in the force over that couple of years I imagine?---Correct.

Were there a group of you who were interested in joining the IRT at the same time? ---Yes, there was myself and Mitchel Hansen. I'm not sure if Rolfe was on our little course we did or if he did something before that - I can't remember. It was sort of all the guys at the station, like it's just all the - all the usual people that you see at the station and that, so it's a small community being police down here in Alice Springs and I sort of knew everyone that was there and everyone knew each other.

You work within a squad when you're on duty, is that right?---Yeah, a patrol group we call it.

Patrol group. Were there other members of your patrol group who you got to know well?---Yeah, most of them.

And were a number of the members of your patrol group interested in joining the IRT?---It was only Mitchell Hansen and myself I think.

When you joined the IRT I take it that you were a police officer who was energetic, correct?---I don't now - I don't know how to answer that.

That's not a criticism. I am going to suggest to you that you joined the IRT because you were hard-working and you thought it would be an interesting thing to do out there?---Yes.

When you joined the IRT did you think that some of your skills from the military would come in handy?---For search and rescue, definitely.

Are you trained in search and rescue in the military?---Not search and rescue, but the principles are very much similar, in like tracking abilities and all that sort of stuff helped you a lot.

We have heard some evidence from Constable Eberl over the last couple of days about the sort of training that takes place in the IRT and that includes training in relation to cordon and contain? Do you recall that?---Correct.

And also in terms of clearing a house?---Yes, correct.

You are trained in that. In the military you would have had some training in terms of clearing a house, is that right?---Several different ways, yes.

Was that useful to you in terms of the IRT training?---No, completely different concept.

In what say?---I'm not really sure I can answer too much on the military side of things.

Because you don't want to - well, why? Just to - - -?---When I left the military I signed a non-disclosure agreement not to talk about training or deployment - well details of it and all that. Things that are public record are fine but I don't know what I would be allowed to disclose from that.

I will ask you a different question and see if that helps. In the military is there a concept of search and clear of a house?---That's not - that wasn't my role so I don't know about that.

When you joined the IRT was Sergeant Bauwens the head of the IRT?---Yes.

And he remained the head of the IRT until November 2019?---I don't know when or whatever but yes.

Well, the whole of the time you were in IRT?---The whole of the time I was there, yes.

And was Sergeant Bauwens somebody that you knew prior to joining the IRT?---Yeah, he was from Alice Station.

Was he a mate of yours?---I'd say they're all - everyone's sort of mates with each other.

And did you socialise with him outside of work?---No.

Did you tend to socialise with your patrol group outside of work?---Yeah, because that's the only cops that are off at the same time.

So, did you socialise prior to November 2019, with Constable Rolfe?---On occasion. He wasn't originally on my patrol group but later got moved to my patrol group.

And Mitch Hansen? He was someone you socialised with?---Yes. He was on my patrol group the entire time.

What about Mark Sykes?---No, he wasn't on our patrol group. I caught up with him a couple of times, sometimes patrol groups will match up on days off, sometimes there was bit barbecues or something and I'd seen him there.

Just coming back to your IRT. As apart of your training did you become aware that there were standard operating procedures for the IRT?---As in the training that we do?

I will ask it again, I might have been confusing. When you were in the IRT did you become aware that there were standard operating procedures - or SOPs that governed the IRT?---I'd imagine there would be, yes.

So my question is slightly different, which is try and cast your mind back to prior to November 2019?---Mm mm.

Did you know that there were SOPs for the IRT? Or was that something that you were - that concept was never explained to you?---I don't know if that concept was explained.

So you might guess that there are because it would be a good idea to have policies and procedures for a unit like the IRT, correct?---Yes.

But nobody ever trained you, as far as you can remember, in what the standard operating procedures were that governed the IRT?---Not the ones that governed us. The training and the things that we did and how we approached a job or situation were the same tactic every time so that everyone knew what to do - of that's what you mean, or - - -

No, I will ask you about that separately. I just wanted to stay on those SOPs for a moment. I am just pulling them up so I can read something to you. They are in our group of evidence, for the benefit of some lawyers following the evidence, at 17-23.

In those there are things called - as her Honour has read - Standard Operating Procedures, Alice Springs Immediate Response Team. It doesn't surprise you to know that there is a document called that?---Not at all.

And if I could just let you know, this is a document that is dated 30 June 2017. It was authored, according to what I am reading, by Mike Williams, who was then the Senior Sergeant in charge of the IRT. By the time you got there it was Sergeant Bauwens and if I can ask you to accept from me, we are told that the standard operating procedures were still in existence in November 2019. So these Standard Operating Procedures distinguish between a high-risk deployment and a general support operation. Are those two terms something that you are familiar with?---They sound familiar but I'm not really sure what the definition between the two would be.

Okay. A high-risk deployment needed the approval of the Assistant Commissioner before IRT could be sent out. A general support operation required approval from the commander of Southern. I appreciate that you were a constable - you're not the sergeant of the IRT, but did you know what there were different levels of approval required for different types of jobs?---No. Well, in terms of that, yes, no, like I do know that the - for certain things there are certain levels of approval and all that.

Some things can be sergeant approval and they don't have to deal with this, but I do know that that does exist for other things.

Okay. But in terms of an IRT deployment, I'm about to take you to what happened on 9 November. You might get a call-out saying, Hi James, are you available for this deployment? Do you then turn your mind to who's approving it or is that above your paygrade?---That's well above my paygrade.

According to this document, general support operations would include the following, and I'll just read them to you. "Assistance to search a warrant entry. Assistance in the arrest of violent offenders. Assistance in the arrest of persons evading police or who have escaped lawful custody. A large-scale community disorder. Civil unrest. Assistance with search and rescue operations." So, in terms of a general deployment, if I suggest to you some of our records show that you've deployed on four general support operations. Do you – is it fair to say that your memory might be a bit rusty now as to how many times you've gone out with the IRT?---Yeah, I don't recall that, unless some of the search and rescues were IRT deployments, were they?

They may well have been. The only one – you can remember Docker River, you told us about?---Yep.

Was that to assist with the arrest of somebody?---It was because firearms had been stolen in the community, so the cross-border team went down there and we were just down there because of the threat of loss – of firearms that had been stolen. But we couldn't really do too much because we don't have cross-border powers, so it was pretty much all up to them.

So, in the – the cross-border team went out there. Were you effectively underneath them in terms of a structure of command?---I was with Lee Bauwens, so I was under him; he was the sergeant there. The cross-border team pretty much sorted – I think actually the shop sorted the issue out and they all came back.

When you went out with Sergeant Bauwens to Docker River, were there other members of the IRT who went with you?---I don't recall. I think there was another person there, but it might have been one of the cross-border team guys. I can't remember.

When you were there in Docker River, you were with Sergeant Bauwens. I appreciate he's ranks above you, but was he appointed a team leader in any way?---No, I would just assume the sergeant is the team leader.

Okay. When you went out there to Docker River, did you see any document that was a written operations order or a plan for what you were to do when you were there?---No.

Given that you were there with the sergeant heading up the IRT, you would just assume that you would take your directions from him in relation to any plan while you

were out there. Is that fair?---Yes.

I'm going to come now to your knowledge of Kumanjayi. On 7 November, you attended Warlpiri Camp with some other officers in your patrol group to try and look for Kumanjayi. Is that right?---Correct.

He was not located on that day, of course?---No, he was not.

When – had you ever met Kumanjayi at any time prior to 9 November?---Not that I know of.

How did you come to be involved in attending Warlpiri Camp on 7 November?---At the time, a document gets printed out and disseminated to all police within the district that that document's relevant to and it has current hotspots to patrol, current arrest targets, current people to check for bail and things like that. And he was on the list of people to be arrested.

You've given evidence in one of your interviews that you were in the habit of checking your emails to see who was on the list of warrants or people to be arrest. Is that right?---Yep, I think most police were.

That was part of your job. Is that right?---Correct.

That you needed to be proactive in terms of noting who the arrest warrants were out for?---Correct, and the hotspots to patrol where, like sometimes a certain suburb was getting broken into a lot more, so if we're in between jobs, we might patrol through that area more and things like that. It just helps us to – helps us to conduct our shift and do our job.

Prior to – do you recall now who you went out to Warlpiri Camp with, in terms of your patrol group, to look for Kumanjayi on the 7th?---I don't know who was my partner that day.

Can I tell you that I think that Constable Rolfe was with you on that occasion. Do you – is that - - -?---He could have been. We didn't always keep the same partner. Every couple of shifts, you changed partners as to who you were working with. So, sometimes, I was working with Rolfe, sometimes I was working with other people.

Okay. Sergeant Evan Kelly, do you recall him being there?---He was our patrol sergeant at the time, yeah.

Okay. Prior to going out to Warlpiri Camp on the 7th, do you recall looking at the body-worn video footage of the incident on the 6th in Yuendumu involving Kumanjayi?---I'm not sure when that came out. That's the axe incident you're referring to.

That's right?---Yeah, I'm not sure when that came out, but I did see that when it did come out.

So, you saw it on either the 6th or the 7th. Is that right?---Yeah, whenever it came out, whenever we first saw it. I don't know the date, sorry.

I see. You know now, don't you, that Sergeant Frost put a warning, an arrest warning for Kumanjaji, so that there was a warning that he may be violent towards police?---Yes.

Did you see that on either the 6th or 7th?---I'm not sure.

When you say, "whenever it came out", the body-worn video footage, once it's placed on the computer system, can be accessed by all officers, if it's relevant. Is that right?---Yeah, I think it came out as a – there's also a management significant events' button to show what important events are happening around the Territory. And that was on there and someone had clicked on that and I think – I don't know if the body-worn was attached to that or if they'd gone – I don't know how that – that went into that, but we saw the body-worn video footage of that.

When you say, "we saw the body-worn video footage", I appreciate I'm asking you to cast your mind back, but do you recall the first time you saw that body-worn video footage?---It was I think at the start of a shift. That's usually when people check the emails, PROMIS jobs, management significant events; all of that sort of stuff, so.

And did you watch that body-worn video footage with other officers?---Well, yes, 'cause I didn't open it myself, so I would have.

When you watched the body-worn video footage, there would have been chat amongst the officers about what they were seeing. Is that right?---I don't know.

Were you shocked by what you had seen on 6 November?---I don't recall.

Was there - do you recall thinking that that was a significant event, that Kumanjaji had picked up the axe in those circumstances?---Yes, I did remember thinking at the first time I was watching it, because I didn't know what the event was about, I thought I was going to see someone hit with an axe.

You thought you were going to see someone get hit with an axe?---Yes.

Why did you think that?---The way the axe was presented and - - -

I see. So, when you started to watch it, you thought that?---Yes, that's what I thought that it was.

Did you comment on that when you were watching it?---I don't think so.

Do you recall any comments made by any other officers?---No.

Constable Rolfe was there at that time. Is that right?---I believe so.

Do you recall any comment he made?---I don't recall.

Do you recall any discussion about the community police officers and the way they'd handled that?---I don't – I don't know. I don't recall. I don't make a habit of commenting on other people's jobs. I wasn't there, so I don't know what they – the lead up to it, the afterwards, what they felt, what they saw. I don't know, I wasn't there. So, I tend not to comment on other people's jobs.

You saw that body-worn video footage on a number of occasions though, didn't you?---I think twice.

When was - - -?---Maybe three times.

When was the second time?---Before we were deployed to Yuendumu.

When you watched it the first time when – before you went out to Warlpiri Camp, did you watch it on a number of occasions with those officers?---I think it only played the once. I'm not sure.

We have in our brief of evidence a record of how many times Constable Rolfe accessed that body-worn video footage. It was more than once between 6 November and 9 November. Do you recall watching it with him on more than one occasion before the 9th?---No.

Prior to November, 9th, you said you've never worked in community yourself. Do you remember any discussion around the police station which revealed a view of community police officers?---No. A lot of the cops are either going to or coming from community. A lot of the police are community police officers.

Have you ever heard anybody talk about them as being too soft?---No.

Or lazy?---No.

Or they get a free ride or an easy run out at – when you work in - - -?---I don't think that would be the case at all.

Why don't you think that would be the case?---They have to work very differently to metropolitan police, not that you would really call Alice Springs metropolitan, but you know what I mean. They live in the community that they police. They're – like I live in a suburb, yet I police Darwin City and the surrounds and all that. It would be like if I just policed the suburb I was in. My neighbours, everyone - that's who you're policing, you live there with them. It's your neighbours. It's the people you're buying groceries from. It's – that's who – so you can't just – sometimes there's not the urgencies. It's different. It's a very different style of policing. And because of the limited people out there, and the fact that people are 24 hours a day, the – they'd have to work a lot. And they've got to – they get a chance to work on relationships a lot more than we do. And they get to talk to people. It's a very – just a very different

style of policing.

And do you agree that when you're working in community as a police officer, you'd imagine that you'd have to build up trusting relationships with the community, if you want to get their cooperation?---Yeah.

Did you know that back in November 2019, or is that something you've reflected on more since?---I've always – I think it was a pretty common knowledge thing that that's how they have to work. I'm not sure – because we had a lot of bush cops come to Alice, or to and from, like we're surrounded by bush stations so, always working with bush cops. Sometimes they're a bit funny, because they – they like to talk to people a lot. They just still they're in community when you're trying to rush to a job, and they're stopping for a conversation, but that's how they have to do it, because they're policing with their neighbours.

So you've said, I think – you never heard anybody talk in a negative way about bush cops, prior to November 2019?---I don't think so.

And if you had done, you wouldn't have agreed with them, is that fair?---I probably wouldn't engage in conversation like that, I'm a bit too busy at work.

We might come back to that. But I want to start on 9 November and what happened when you got the call out to Yuendumu. Were you on – meant to be on shift on that day?---Maybe.

Okay, you remember getting a call from Sergeant McCormack?---I do, yep.

And what did he say to you during that call?---He asked if I wanted to deploy to Yuendumu for a couple of days.

And did he say why, during that call?---I don't recall.

You clearly remember him saying for a couple of days?---I think so, yes.

And he asked you to come down to the station - - - ?---Or could – could be a couple of days.

And to come – he told you to come down to the station if that was okay?---Yeah, I said I'd ask my wife first, because we have a young child, and I didn't want to leave her alone with the young child while I went away to work, so asked her if that was all right first, and then she said that was fine. So I called him back and said that yeah I was happy to go to Yuendumu.

When you said you were happy to go to Yuendumu, can you just help us understand, in terms of saying yes to an IRT shift, what were the benefits of that for you?---I don't really know.



I haven't asked anybody this yet. Were you just being a good team player, because you were being asked to do it, or were there higher duties, allowances, or anything like that?---Yeah, I think you get a – I think you get more money for it, like for your overtime payment and all that.

Okay?---I don't know if there's a higher duties allowance and all that, but a lot of bush time, as like I said, they work a lot, is over-time, because it's just non-stop work, and they're limited staff. So whenever we go anywhere, I think it's usually on over-time. And we weren't a full-time unit. It's a part-time unit. So any of our deployments were usually done on days off, however it was on the days off, so it'd be on over-time.

So you spoke with your wife. She said it was okay for you to go. You rang Sergeant McCormack back did you, and tell him you were okay to go?---Correct.

And then you went in – headed into the station in Alice Springs?---Correct.

When you got there, do you recall that there was some sort of briefing about what the job would involve?---Not really. It was – asked what it was about. I think he was shift sergeanteeing at the time, so he was kind of doing two or three things at once. Asked what it was about. We were told it was to go out there and arrest Walker. And then I spent a lot of time looking for – we don't have a dedicated vehicle, or anything like that. So I had to try and find a vehicle that we could use, possibly for a couple of days.

Were you the first one at the station, in terms of the four IRT members?---I don't so – I think – I think the other guys were there, I'm not sure.

So you got there. You went to look at a – for a vehicle. Do you recall, back in the station, watching the body-worn video footage?---That was just before we left.

And who was there when you watched that footage?---The four people that were deployed. So myself, Constable Rolfe, Adam Eberl and Tony Hawkings.

And when you watched that body-worn video footage, what comments were made about what had happened on the sixth?---I'd have no idea.

Do you recall anybody talking about the way that those bush cops had handled it?---No.

Did you know Chris Hand, or Lanyon Smith, at any time prior to that?---No, I've never met Lanyon, and Chris Hand I met out at Yuendumu.

Constable Eberl, when he gave evidence says that he said something like "I'm surprised he didn't use his firearm", or "I'm surprised he didn't draw his firearm", or something like that. Do you remember any discussion like that?---No I don't.

How long were you in the station for, do you think, on that occasion, before left out – headed out to Yuendumu?---Like from – like the whole time, at Alice station?

Yes?---I don't know, an hour maybe, half an hour. I had to – sorry, I was looking for a vehicle a lot of the time, so trying to find out someone that was willing to part with their keys.

Did Sergeant McCormack tell you that Constable Rolfe had particular information in relation to this job?---I don't think so, I don't know.

When you were watching the body-worn video footage, did Constable Rolfe appear to be taking the lead, in terms of showing it, or explaining it?---I don't think there was any explanation of it or anything, it was just watching.

When you were with the police in Alice Springs, did anybody ever mention to you that there would be an ops order, or an arrest plan, that was in writing?---No.

Were you expecting there to be anything in writing, before you headed out to Yuendumu?---I don't know about in writing, but a formal briefing - - -

You were expecting - - - ?---I would have – I would have expected.

Where would you expect that to take place?---I'd never deployed with – on a – on a job like this before, so you know, either at Alice, or at Yuendumu. I don't - - -

You've explained that you'd had limited experience within the IRT by that stage, and you'd never deployed for a job like this before. But you would have expected a formal briefing at some stage?---Yes.

Had you, in the course of your general duties work, got a formal briefing, before you went out to do a job?---Yes.

And what sort of a job would you get a formal briefing for?---Everything.

Can you give us an example involving the arrest of an offender, where you would get a formal briefing?---I haven't had one for the arrest of an offender. I – you – I get them for traffic duties for the Saturday protests, for COVID, we have a proper formal briefing. Any – anything where there's a mission and a job, any big events where we're the police at the big event, we have a formal briefing. So like Bass in the Grass, and things like that, we have a formal briefing of how that is to occur. And everyone's – everyone understands what the job is.

Taking - - -

THE CORONER: Can I ask –

Sorry.

Did you get a briefing, before you went to Warlpiri Camp?---I don't recall, your Honour.

DR DWYER: Would you have expected one?---No.

Why not?---That seemed like just part of our GD's work that came out on that document. So it was just sort of the same as – usually what we do is when – so that's person's from Warlpiri Camp, so next time we're in Warlpiri Camp, we'll just look there. Just keep the – print the document out. It's usually in – in the car, in your kit bag. And as you're going through your job, checking the hotspots, or going to wherever the radio sends you, sometimes that person will be involved in what your general duties things are, so it wasn't really a thing to expect a briefing for that.

Can I just see if I can refresh your memory about something, Constable Kirstenfeldt. We've got some evidence, as you'd imagine, from Sergeant Kelly, and Constable Rolfe, and others, that went to the Warlpiri Camp?---Mm mm.

And they tell the court in their evidence that there was some form of briefing in the Bunnings car park that took place. It was – I anticipate her Honour will hear that it was led by Constable Rolfe, because Sergeant Kelly arrived later?---Okay.

Were you at that briefing?---Yeah, that sounds like something that we would do. I think I call that a bonnet brief.

A bonnet brief?---It's usually done on the bonnet of the car, where – before we go into somewhere, you just say, you go to the front door, you go to the back door.

So you've anticipated my next question, which is at that sort of a bonnet briefing, is there a – a discussion of the plan, for an arrest?---Not for – like, it's more like where who's doing what job, and – and where you go. You don't really know where someone is and all that. But the – the plan of the arrest, I – I don't really understand the whole concept of this questioning around the plan of arrest. Because what – what I look at is, is the significant act of arrest, as in, I could place my hand on someone and tell them they're under arrest. Not – you know, you make sure you grab his left arm. You make sure you grab his right arm. It's just not going to work on the day.

Sure. And when you're on general duties and you have to arrest somebody, it's sometimes an evolving situation, isn't it?---Always.

You might try to arrest somebody by just asking them, please sir, can you turn around and put your hands behind your back, but then it might evolve from there?---Correct.

You might think you're going – you might anticipate use of force, but actually, you're able to just calmly bring someone in. Correct?---Most of the time.

You've got to assess the situation, don't you?---Correct.

But I'm going to suggest to you, an IRT deployment into community in the circumstances in which there was an attempt to arrest Kumanjaya was in a different category, wasn't it, to a general duties' arrest?---Yes.

Because as you knew from watching the body-worn video footage, Kumanjaya was a young person who was extremely volatile on 6 November. Is that fair?---That's what it appeared, yes.

And he picked up a weapon that, as far as you could see on the body-worn video, looked very threatening?---It appeared so.

And might well have been very dangerous for police in that situation. Correct?---Correct.

And therefore, might have – I withdraw that. And therefore, did put Kumanjaya in a dangerous situation because he picked up that weapon in those circumstances?---Yes.

So you needed to do some sort of risk assessment, didn't you, as to what you might locate on 9 November?---Yeah, we didn't have a risk assessment, unfortunately.

No. And I'm suggesting to you, it would have been really helpful if one had been done. Do you agree?---Yep, I agree 100 percent, yes.

And it would have been helpful if one had been – if you'd seen one as part of a formalised plan before you went out?---Yes.

And at the very least, after you got there, you all discussed the formalised risk assessment. Do you agree?---Sorry, what was that?

It would have been helpful if, at some stage before you walked into the community in Yuendumu at 7:06 pm, the four of you in the IRT and Donaldson had discussed what that plan was - - -?---Yes, that would be - - -

- - - so that you were all on the same page effectively. Correct?---That would have been good, yes.

And then you can talk about your detailed roles in accordance with that plan. Correct?---Correct.

And if you're anticipating that Kumanjaya may well pick up a weapon, you can put in a strategy to minimise the risk, can't you?---Yes, sometimes.

Can you tell her Honour, drawing on your experience, what strategies you might use to plan for an arrest of someone who might pick up a weapon?---If you believe that they are armed when you go there.

Or might be armed?---Or might be armed, you would approach from a distance. Generally, what I would have would be the bean bag shotgun, because it provides a less lethal capability up to 25 metres as opposed to the baton, spray or taser which are very close proximity and well within the 21-foot zone. I'm sure you've heard that – the 21-foot zone thing before. So, outside of only a couple of metres, the only option other than a bean bag shotgun is a Glock. So, I like to take that because it extends that less lethal capability right out to 25 metres. Our job in the IRT – sorry, I was about to call it Cordon and Containment. That's pretty much what everyone called it down here still, because I think it was called that before I got here. I guess it depends on what they were armed with. Like, if it was an offender with a gun, then we'd cordon the whole area off as per the old name of IRT suggested and probably call TRG.

I'm just going to think about – I'm just going to ask you to reflect on a general duties' job for a moment. If you got a call-up – well, I withdraw that, a job about an arrest of somebody in Alice Springs who had, a couple of days beforehand, run towards police with an axe or a tomahawk, if you were going back into the house the next day to arrest that person, you'd make a plan, wouldn't you, as to how to best confront him?---I think that would be done higher up, not at my – I don't think I would be the one making the plan for that.

Okay. Someone – you would expect someone would make a plan as to how to approach that person. Do you agree?---Yes.

And there are a number of ways you might approach that person to minimise the risk to him or others. Is that right?---Yes.

And one way to approach that person might be to bring, if they were an Aboriginal person, an Aboriginal Community Police Officer to speak with them, to try and persuade them to hand themselves in?---Yes.

Otherwise, you might use another member of the police force who is known to that offender to try and speak with them?---Yes.

And you would create some – I think you gave an example beforehand of the benefits of creating a distance between yourself and the offender - - -?---Correct.

- - - so that you can look at their movements. Correct?---And to be out of a range where they can utilise a weapon to - - -

Sure?--- - - - inflict an injury upon you.

And it expands your tactical options, doesn't it, if there's a distance between you and the person you're going to detail?---Yes, it does. Like this is all a very perfect scenario - - -

Sure?--- - - - at college sort of deal.

Well, I'm going to suggest to you, it's a scenario that you might want to plan for?---Yeah.

If you're planning for the arrest of somebody who you know might have a sharp weapon, you would try to give yourself some distance if you're going into a house, wouldn't you?---Going into a house?

Yes?---You can't really create too much distance because of the close proximity of all the walls, like it would have to be a pretty big house to create distance.

Would you want to at least create enough distance so that you could see for yourself whether or not they had a weapon?---Well, ideally.

Okay. And you'd want to create – if possible, you would want some light, so you can see?---Always.

These are the sorts of things that you might factor into your risk assessment of the situation?---Correct.

In relation to the arrest of Kumanjayi, it was more than a general duties' arrest given that the IRT were asked to assist?---I believed so, yes.

Did you make an assessment yourself as to whether or not Kumanjayi would present a high-risk to police?---I believe I regarded him as a high-risk offender, being that he had recently used violence to escape custody and the recent alert on him for that as well.

You drove to Yuendumu that afternoon with Constable Rolfe. Is that right?---Correct.

And was there any discussion as to how you'd break up into pairs, you with Constable Rolfe and Eberl with Hawkings, or did that just happen naturally?---I don't know. That just happened.

When you got to Yuendumu, you arrived at 6:33 pm, if you can take that from me from the CCTV footage?---Yep, I've - - -

And you were asked some questions at trial based on the timings of the CCTV footage. So, you understand them generally. Is that right?---Yep.

When you got to Yuendumu, you were introduced to Sergeant Frost?---Yes.

When you arrived in Yuendumu and spoke to Sergeant Frost, was anybody else there in the police station?---She introduced us to Chris Hand as her partner. I don't know if Felix was there at the time or if he came in after, but Felix was there. I knew Felix from working here in Alice Springs.

And so, you definitely recall Felix being there at some stage prior to you setting out after 7 pm?---Yeah.

When you and Constable Rolfe arrived, was Officer Donaldson there in the police station?---No.

Were you told that Officer Donaldson was available?---Yes. When – I’m not sure how long after we arrived or anything, but Julie Frost said that he was there in the community and I said good, and I gave him a phone call and asked him to come back to the police station.

When you gave him a phone call, did Constable Rolfe stay there with Sergeant Frost?---Yes, I think so.

Did you step outside to give him a phone call, or did you phone him from within the station?---I don’t recall.

Did Officer Donaldson come back after that?---He did, yes.

Did you know him?---From working here in Alice Springs, yes.

Did you know he was going to be out there with you that day until you got to Yuendumu?---No.

You were pleased to find out that he was out there. Is that right?---Always.

Okay. Why’s that?---Dogs are a great tool for policing.

Did you think that the dog could be incorporated into the plan, in terms of the arrest of Kumanjayi?---Yeah, usually – like the dogs are used quite extensively.

Did you anticipate that there then would be some discussion between the four IRT members and Officer Donaldson and others as to how to approach the situation?---I’m not sure.

THE CORONER: Why did you call Donaldson back?---So that we were all there together. I think at that stage, I thought we were going to get a formal briefing, I think. But he was out there to work with us, so it wasn’t any good for him to be out somewhere. I’d never been to Yuendumu, so I – if he could tell me what street he was on, I wouldn’t even know how to get there.

DR DWYER: I appreciate the difficulty in me asking you questions three years after the event, so as I said earlier, I’m going to take you back to your very first interview at 3:05 am on the Sunday. And you explained this:

“Julie informed us that Adam Donaldson, the dog handler, was already here. I called him on my mobile phone and he came back to the station. We devised a plan on gathering some information and some intel on his whereabouts” -Meaning Kumanjayi – “houses that he goes to, other breakers he hangs around with and also importantly, any family members that don't like

him but might give up information and that. So the evening for us was initially just going to be an information-gathering session and with a plan on hitting the house that we could get down to with some intel, at about 5 o'clock in the morning, sort of just as the sun is coming up. Once everyone was here we came up with a plan to go to the initial House 577."

So that plan, which involved going to the house at 5 am was something that you knew about at some stage in Yuendumu, correct?---I didn't know about the - I think I'd heard the suggestion of it, the 5 am. I've tried to think about this over and over, I've anticipated this question and it's just something I don't know how we've gotten from the 5 am plan to now we're doing something else. I just don't know how that's occurred.

I appreciate you being so frank with us and telling us that, that there was a 5 am plan. It changed, didn't it, it morphed into just going straight to House 577?---I'm not sure how, like I don't know how that's all occurred. I've - I've tried to think about this, like I said.

In relation to that 5 am plan though, that was obviously something that you were told by somebody, correct?---It would've had to have been.

Is it also something that you might have read in a document?---No.

Did you know about the 5 am plan before you left Alice Springs?---No.

You knew that some part of your role there would be to assist with general duties policing, is that right - general support operations?---Yes. Julie had told us that once we got there she informed us that there was a funeral on and that we were going to have the duty phone for the night.

Did she tell you whose funeral it was?---No.

When she said you were going to have the duty phone, what was that?---The mobile phone for the police station that - because I don't think Yuendumu comes under radio coms from central in Darwin, so that the - any emergencies that need to be responded to at night while there's - I'm not sure Yuendumu is manned 24 hours. I don't quite know that - I don't know - but there's a duty phone for whoever is the senior person on that would get a call-out that way instead of via the radio.

So you told us that the 5 am plan was something you had to be told about when you - at some stage in Yuendumu, is that right?---It would've had to have been, I've got it in my statement.

In your second interview that you do on 19 November you say this at page 21, about the plan - and officer Wilson says;

"So rolling out to Yuendumu did you guys have a plan of what was going to occur when you got to Yuendumu?"



And you said: "We were going to go to the station, find out what intel we could. It was getting pretty late so we were going to cruise around, like his family's house and that, find out what info, and then we were working out whether or not we were just going to work through the night. Julie wanted us - sorry, that's later - so on the way out there we couldn't really come up with a plan on the way out there too much because I mean we had two different cars and there's Zach in one and - me and Zach in one and Tony and Adam in another. If we came up with a plan - if they came up with a plan it would be a bit silly if it wasn't the same plan."

So on arrival to the station what happened then?" You were asked, and you said:

"We got there first. Julie told us that the dog unit was in town so I thought, 'You ripper'. I didn't know he was going to be there, so I gave him a phone call and he came back to the station. Adam and Tony rocked up, spoke with Julie about what had happened, where he is, where he is most likely to be, who his family and friends are, who his little crew of housebreakers and all that and where their families are and where he's going to hide, where he is going to run, who doesn't like him, who might be willing to give us up. She wanted us to do some RBTs as well that night so she asked us how long we were happy to work for and we were happy to work all through the night."

Are "RBTs" random breath tests?---Correct.

You go on to say, at page 23, that Julie had a nap and she was pointing to houses at one point in time and you recall Felix being there. At page 24 you were asked;

"So just for the recording, it's pretty much approval that Sergeant Frost - the plan she sent in to get the approval to have you guys".

And you say:

"I'm pretty sure she sent the plan that we are going to do or what we're going to do anyway, which is just intel gathering and snatch him in the early morning."

So you're pretty clear in those first two interviews aren't you Constable Kirstenfeldt, that you knew about the 5 am plan from Julie and the plan was intel gathering and then grab Kumanjayi about 5 am in the morning?---Yeah, I think that was - the 5 am thing I think was a verbal - something that was verbally told to me, not something that I've read in the document.

Do you recall when you were verbally told about that plan by Sergeant Frost, who was there in the room with you?---I have no idea.

Constable Rolfe at least would have been there with you, is that fair?---Well he was - he arrived with me so he would've been in there with us, yes.

So it was either you and Constable Rolfe were there or you, Constable Rolfe and the two IRT other members were there, s that right?---Possibly.

Do you recall discussing the 5 am plan at all with Adam and Tony?---No.

Do you recall now, sitting in the witness box there, ever seeing any document with a plan?---Not with a plan, no. The document that I saw was the email - it was just an email asking for IRT to come out to Yuendumu.

In front of you I think you have a document which we have at 7-36. It's an email sent by Sergeant Frost on 9 November 2019 at 4.49 pm. It's been up on the screen a number of times. I don't need it to come up unless your Honour would like it to? And you have it there, sir. If you have a look, that the first page of that email, it begins, "Good afternoon" or "Please advised of the following" - is that what you are looking at?---Yes, that's what I'm looking at.

And then it finishes with some details about Kumanjayi and jus for the benefit of those listening, it notes an IRT callout for the arrest of a violent offender and it has Kumanjayi's name.

"Task - arrest Kumanjayi and transport back to Alice Springs, provide a local presence of armed police to uphold law and order in the community and provide support to local members."

And then it's got some details about what happened on 6 November. Do you see that?---Yes.

You definitely saw that page, didn't you, when you were out in Yuendumu?---No, not this - not this email. I think it was only a one paragraph email, the one I saw. It wasn't addressed to me. This one is addressed to me.

What did the one paragraph email say?---I think it was just requesting for approval - request IRT to come to Yuendumu. I think it was sent to Shane McCormack.

When you were asked about this in your second interview you say this, Officer Wilson says:

"So you received a briefing and now we're talking about the email that had been sent out which seemed to have a plan on it and a situation."

Do you recall that you sort of read that through and you answered:

"I still don't know that I have" and then you say, "Just skimmed through it;"

What did you mean by that, "Just skimmed through it"?---Because the email I saw was just the one quick paragraph. I was only a one-page document, it wasn't - it didn't have anything detailed on a plan. Unfortunately, we've crossed our wires a little bit in this interview and he keeps asking me about an email that I've agreed that I read. I'm thinking the other email and he continues asking questions about this email and I didn't realise this one existed.

Have you ever seen a copy of the email that you think that you actually read while you were out there?---Yes, at trial.

At trial that was presented to you?---Yes.

At trial it was also presented to you in the form of a - I withdraw that. At trial you were also shown the plan that was formulated by Sergeant Frost and Sergeant McCormack?---That's this one?

Yes, the one that's in front of you?---The first time I saw this was at the committal.

So if you have a look over on that page you will see - it's page 2; "The plan for day 1 was to commence work at 11 pm, high visibility patrols and respond to call-outs." You weren't aware that you were supposed to start at 11 pm, is that right?---No, I was not.

If you look over the - I beg your pardon, I am still on page 3 of that document?---Yes.

There's a clear indication in there that after the 11 pm start it reads, "5 am Donaldson and Alefaio commence duty along with IRT members to affect the arrest of Kumanjaya"?---Yep, I can see that.

That's consistent - at least that timing, with the 5 am arrest plan that you were told about by Sergeant Frost, is that right?---That seems consistent.

Your Honour, is that a convenient time for a short break for the afternoon?

THE CORONER: Yes. Officer, we will take a 15 minute break and then we will return?---Yes, your Honour.

WITNESS WITHDREW

ADJOURNED

## RESUMED

### JAMES KIRSTENFELDT:

DR DWYER: Constable Kirstenfeldt, before the break, I was asking you about the very first call you got to go and do this job for the IRT in Yuendumu. I came from Sergeant McCormack. You recall those questions?---Correct.

In your second interview, you were asked about this, and you explain that when Sergeant McCormack called you, he said “Are you happy to roll out to Yuendumu. Might be a couple of days”, and that’s the evidence you gave earlier?---Yes.

And you were asked a question:

“Did he – at that stage, did he tell you what you were going out for?”

And you say, “Oh no, he didn’t say what we were going out for, but we already knew what we were going out for. We were waiting for that phone call for a week.”

That’s a slight exaggeration, but what you meant by that, was you were waiting for that phone call from around 6 November, when you’d first become aware of the incident at Yuendumu with the axe, is that right?---Correct.

Because you go on to say, at page 18: “Obviously we knew that guy was out there. We were checking already for him in town, for the breach of bail, and we knew he wasn’t there. So he was still out at Yuendumu, plus the funeral that week. So we figured we were going out for that job”?---Correct.

Correct? So you’d looked for Kumanjayi obviously in Warlpiri Camp on the seventh. You knew it was a significant matter for the police, correct?---Yes.

You knew it was going to be a high – high risk arrest - - - ?---Yes.

- - - is that fair? And then you figured when you got the call out for the IRT, it made sense that you’d be being called out to arrest – help with the arrest, correct?---Yes.

You say, in this interview, that – in terms of going out to arrest Kumanjayi, he was still out at Yuendumu, plus the funeral that weekend. When did you first find out about the funeral that weekend?---Once we were out at Yuendumu.

So I just want to go back to the briefing you’d got at Yuendumu, from Sergeant Frost?---Yes.

You and Constable Rolfe arrived first. We know that about 20 minutes later, the other members of the IRT arrived. This is the – just taking your first and second interviews. This is the information that you tell investigating police you obtained. And I’ll just put it onto the record. It includes, for example, that part of the briefing,

you were told by Julie Frost – I withdraw that. You explain to investigators, in your second interview, that it was more just intel gathering from our side, when you were speaking to Sergeant Frost, is that right?---Correct.

You were also getting some – I withdraw that. You – you were provided with some information from Sergeant Frost that was relevant to your mission while you were out there, correct?---Yes, from the questions I was asking her.

Some of it was focussed on what was going on in the community at the time, is that right?---I'm not sure. I think I was – I was mainly focussing my questions around whereabouts Walker would be - - -

Okay?---And what houses he lives at, or frequents, and all that. My – I think my understanding of Mr Walker was that he actually lived at Warlpiri Camp here in Alice Springs, which is why we were looking for him here. And that he was out at Yuendumu at the time, but I don't know that he had a fixed permanent – I didn't know anything about the young man.

When you first got there, and you were speaking to Sergeant Frost, you were asking her a lot of questions, so that you could gather some information about Kumanjayi is that right?---Yes.

And you were pretty much focussed, can I – is it fair to say, on your task of locating Kumanjayi?---Yes.

And your task of arresting Kumanjayi on that weekend?---Yes.

You also had this information, you explain, as part of your interview. That you were informed early on: "When we were gathering our intel, that the nursing staff had left this town because of recent trouble, and break-ins and all that. So they had actually evacuated"?---Yes.

And you explain to the interviewers that you knew that going out?---Yes.

So who told you that?---I think it was Rolfe had told me that. I think – I'm not sure he had communicated with Frost, or if he got that – or I don't know where he got that information. But I remember that he'd told me, and I – I couldn't – the information was that there was no nurses out there, and I didn't understand how that was relevant to what – why we were going out there. I was trying to – try to work out in my head what the relevance of that is, there's no nurses out there.

So at some stage, Constable Rolfe told you that, when Sergeant Frost was not there, before you went out to Yuendumu?---Yeah I think that may have been – may have been either in Alice, or on the drive out, I'm not sure.

When you then got to Yuendumu, did Sergeant Frost explain that the nurses had left the community because their houses were being broken into?---Yes.

You explain in your second interview that you were told, at some point in time, well you were asked the question by Officer Wilson, "What did you believe your role to be when you arrive in Yuendumu?" And you explain, "We were there as general support for Yuendumu police. They were after a violent offender who'd previously used violence against police to escape custody"?---Yes.

And you also go on to say, "And they wanted some extra support there. There was a lot of break-ins at that time, medical staff had the shits with it all, so they left because they were sick of being broken into"?---Yes.

You had that information before you went out, after 7 pm into the community?---Yes that – that information I got at Yuendumu.

And you also go on to explain, at page three:

"There was also a big funeral going on at the same time. So there was a lot going on all at once, and they wanted more members out there, so they wanted more general support, so they called here, and I don't know how that works, but I got a phone call to go out there and I said yes."

In terms of there being a big funeral, and wanting more members for general support, that was information that was given to you when you got to Yuendumu is that right?---Yes.

In terms of the approval for that job for the IRT to go out. In your second interview, you're asked:

"Have you – do you know – have you guys rolled out of the IRT team, do you know whose approval or anything got to be given for you to do that?"

And you say, "I think it's going to depend on whose asked for us. Like, if it's out bush, I think it's – I think it's Nobbsy",

You mean Superintendent Nobbs by that?---Yes.

Did you know at that time, that given you were going out bush to Yuendumu, Superintendent Nobbs must have approved that deployment?---No I didn't, I'd just heard – that's what I would have assumed. I didn't know that as a fact.

All right. Did you make that assumption though on 9 November, that Superintendent Nobbs had approved the deployment?---No I made that assumption in that interview. I hadn't put any thought to who had authorised it.

If you had put some thought to had authorised it on 9 November, you would have thought, okay, we're going out bush, out to Yuendumu, must have been Superintendent Nobbs, is that right?---Makes sense that is would be Superintendent Nobbs.

But do you tell her Honour, that you didn't turn your mind to that on 9 November?---No.

Did you make an assumption, I appreciate this is asking you to cast your mind back, did you make an assumption, in November, that it must have been approved by someone higher up than Sergeant McCormack?---Yes.

And just before I leave you the – the general idea of your job, at page 12, you say:

“It wasn't an IRT job, it was just a force multiplier to help out Yuendumu, from a general duties policing aspect.”

Even if you were there as a force multiplier, to assist for a couple of days, you knew, didn't you, that the primary mission, or you thought the primary mission was to arrest Kumanjaji?---Yes, my understanding of the deployment to Yuendumu, was to arrest Kumanjaji Walker. Some – I've jumbled up some of that information in my answer in that, I suppose, because I'm sort of giving information that I found out there.

Sure. But what you go on to explain in your second interview also is that – when you're asked what would happen – or I'll read you the whole question. Officer Wilson says:

“Should the plan go ahead and you went out there, you looked for him and you found him and he was arrested, what was the plan after that?”

And you say, “Two members would take him to Alice Springs and the other two to remain in town and do RBTs and patrols around and all that. In that instance, we were probably going to get some sleep, depending on the town. And then we were just doing general duties within Yuendumu for a couple of days.”

That's something that you knew at some point prior to 7:05 when you head out into the community, isn't it?---Yes, that's something Julie had said to us when we were there. It was a little confusing. I thought our job was to go and arrest Kumanjaji Walker and then we'd be going, but then it turned out that she wanted us to stay for doing some general duties - - -

Okay?--- - - - stuff as well.

And that must have made sense to though in the context of the nurses having moved out of the community because of the break ins?---Once all of that information was provided, that sort of started making sense.

Okay. And all that information was provided by Sergeant Frost during the course of that briefing, yes?---Yes, I think so.

And then I just want to return to what you had in terms of any written document, or

what you thought you had in terms of any written documentation. In your very first interview, you refer to the fact that some photographs were taken of the – well, some photos were taken while you were in community?---Prior to leaving.

Prior to going out at 7:05 into – walking around with the IRT?---Correct.

So, you explained that Chris Hand was there and Felix Alefaio was there and Officer Keane then says:

“You mentioned before while we’re on the subject of your phone, can you get your phone out for me? You took a photograph of the houses from this gentleman that gave you some info first. Can you just show that to the camera?”

And you show a photograph, the same photo, just zoomed in a bit, “and I also took photos of Kumanjayi.” You took those photos when you were in Yuendumu. Is that right?---The map, I did.

Okay. I think I would have taken the photos of Kumanjayi here in Alice. I’m not sure about the reception out at Yuendumu.

Well, where did you – how did you take those photos?---A screenshot from our PROMIS system.

Did you bring the PROMIS system up on your own phone – on your police-issue mobile phone?---It was either on my phone or I took it from the screen on the computer at work. Either one, I don’t recall which one I did. But the phone came from the old one we had on PROMIS.

And so, you had that photo on your phone, but you’d also taken some photos of a map. Is that right?---Yes. There’s a map of Yuendumu at the police station.

And that was a map that was shown to you by either Sergeant Frost or someone. Is that right?---I’m not sure if it was shown to us or if it was – there was a – I think there was a big map on a table. I’m not – I can’t remember.

Okay. In relation to any physical documentation, your belief, you tell her Honour, is that you received – or you were looking at an email that had been sent by Sergeant Frost to Sergeant McCormack. Is that right?---Yes.

Are you aware now, sitting in the witness box there, that Officer Donaldson, the dog operator, had a copy of the written operations order that was prepared by Sergeant Frost and approved by Superintendent Nobbs?---Yes, I do know that.

Were you aware in Yuendumu before you set out at 7:06, that Officer Donaldson had a copy of that written ops order?---No, I found that out at the trial.

But you certainly accept that, don’t you?---Yes.



Are you aware that in fact, Constable Rolfe took some photographs of that written operations order on his own phone before you set off?---I was made aware of that at trial as well.

Have you ever discussed with Constable Rolfe how it was that he came to have photos of the written operations order?---I couldn't – wasn't able to talk with Constable Rolfe.

Have you since?---I have twice.

Have you talked about how he came to take photos of the written ops order?---No.

Did he tell you whether he's read that – whether he read that written ops order when he took photos of it?---No, we caught up for coffee for about 10 minutes.

When did you do that?---A couple of months ago.

Did you talk about anything that went on, on 9 November?---No, he was just checking in on me.

In relation to the written documentation, you accept now, having learnt about it at trial, that Officer Donaldson had that written operations order. Correct?---Yes.

And Officer Rolfe must have had it at some time in terms of taking photographs of it. Correct?---Correct.

And are you aware that there's an – there is expert evidence from a Mr Sorell that notes that the document that was on the table near where you were standing, speaking to Sergeant Frost, is in fact consistent with the written operations order?---Sorry, I'm not - - -

I'll just ask you to accept from me that there's an expert who's analysed a photograph - - -?---Okay, yep.

- - - of a document on the table?---Sorry, I didn't know who that person was.

Okay?---I thought you were saying he was there.

And do you know that an expert has analysed the document that was found on the constable's table in Yuendumu Police Station?---No, I didn't know that.

Can I ask you to accept from me that there is a report that says that the image that's found on that table near where you were standing, from the CCTV footage, shows that in fact the written operations order was in the room when you were receiving any sort of briefing from Sergeant Frost?---Okay.

Do you accept that?---Yep.

And you've accepted, of course, that Sergeant Frost explained to you that there was a plan that Kumanjaya would be arrested at 5 o'clock in the morning as the sun's coming up?---It wasn't so much of a plan as, I think that was said while I was trying to obtain information from her. Nothing she said I took as an order or a direction that was – she was telling me what a plan was. I didn't take anything that she said as that.

As what, a plan?---As a direction or an order.

But what she – what you say in your first interview is that information-gathering session with a plan of hitting the house, down with some intel at 5 o'clock in the morning as the sun's coming up?---Yep.

That was something that Sergeant Frost said to you?---I think so.

Can I suggest to you, Officer, that it is likely that what you looked at on that day was not an email to Sergeant McCormack, but in fact the written operations order, and that it is confused in your mind now what you saw?---No, I don't accept that. I'm pretty adamant that I've not seen this document. What really surprised me when I did initially see this at the – here in Alice at the committal, was that it had photos on it. Some of them are more recent photos than the one I had.

When you were given – were you handed something to look at by Sergeant Frost?---I think she gave us all a map. I think she did give me the page that email was on, I think.

And was it one page or two pages or more?---I think it was just the one page with just a little paragraph thing, I think.

And you skim-read it, didn't you?---Yeah, it was just a paragraph of sending us out there, requesting for IRT to go out there.

Why was she giving you that page?---I have no idea.

Did you say to her, well why are you giving me this page to read?---No, I was – there was a lot going on all at once. I didn't – I guess that's why I skimmed through it.

If you skimmed through it, can I suggest to you it may well be that you missed the fact that there was more than one page?---I – like this is three years ago. This is quite some time, but I think I'd remember if I had more than one page, but this is quite some time ago.

In your second interview when you were asked about it, you say, "She had another couple of – she had a map and she was pointing to houses with a stack of houses. She had another couple of houses where some other youth property offenders lived. So, this guy – all these kids follow me around and idolise him et cetera. We were just trying to intel-gather to find out where he would so – where he would be so we

could snatch and grab him later on."?---Yes.

And you go on to say, you're asked a question, when you received the briefing and now we're talking about the email that had been sent out which seemed to have a plan on it in that situation, do you recall when you sort of read that through and you say, "I still don't know that I have it. I just skimmed through it. I'm pretty sure she sent the plan that we were going to do or what we were going to do anyway, but just intel-gather and snatch him in the early morning." So, did you assume that Sergeant Frost had sent you something which had the plan on it about snatching him up in the morning?---I think I assumed that would happen. I don't know.

In any event, aside from your written documents, what you clearly understood is that Sergeant Frost's plan was for 5 am on Sunday morning when he would be arrested in the early hours. Correct?---Initially, when we got to Yuendumu, yes.

Did that change at any time before you left the police station at 7:06?---This is the part that's - it's a bit foggy I suppose, like I don't - I don't understand how it's changed from that to we're all leaving the station. I just don't know, I don't have an answer for that but it was obviously everyone that would've known about it because we've driven straight from there to the - so I don't know how that plan has - how that's come about but my understanding of the operation leaving Yuendumu was that our job was to arrest Walker.

But at some stage while you were in the station speaking to Sergeant Frost you clearly understood that her plan was 5 am on Sunday morning for the arrest of Kumanjayi?---No, as I said, I - I didn't understand anything that she said as a direction or an order.

This is what you say in your very first interview in the early hours of the morning;

"So the evening for us was initially just going to be information gathering session with a plan on hitting the house that we could get down to with the intel at about 5 o'clock in the morning, sorta as the sun's coming up."

And that plan - the initial plan - of hitting the house at 5 o'clock in the morning came from Sergeant Frost, didn't it?---I think so, yes.

There was then - and that was something that Sergeant Frost told you when you were in the presence of Constable Rolfe, correct?---I - I don't know, but I would assume so

Well, you were always in the presence of Constable Rolfe weren't you, when you were in the police station speaking with Sergeant Frost?---No.

Was there any time when you and Sergeant Frost had a direct one-on-one?---I don't think so.

So at any time when you were given the 5 am information it stands to reason, doesn't it, that Constable Rolfe was with you?---I'd imagine so.

And then at some stage after that the plan changed to going straight out to House 577 and 511 and seeing if you could find Kumanjaya and scoop him up, do you agree?---I agree. That seems to be how it's changed and what happened.

Okay, and what you're telling her Honour is that sitting there in the witness box today you've thought about it a lot and you just don't know how that plan morphed from 5 am in the morning to, "Let's go straight out and grab him"?---Correct.

After you finished speaking with Sergeant Frost you spoke with the individual IRT members, do you agree?---Well, we would've had to because we all knew exactly what to - where we were going.

Sure, and you decided amongst yourselves, didn't you, what weaponry you would take out into the community?---I don't - no, I don't think so.

Did you talk about it? You had the bean bag rifle initially when you left the police station?---Yep.

Did you talk about that with the other IRT members?---I don't think so.

You definitely had a conversation with them about where you would go to first, after you'd finished speaking with Sergeant Frost, is that right?---Yeah, I think we were all there together.

And so is it likely that the plan change from 5 am to doing something else when you were speaking with the other members of the IRT?---At the - at the station there we were with Frost like the entire time, we didn't go off to a separate area and have a private conversation. We were with her the whole time.

Officer Donaldson said that Constable Rolfe was leading the conversation about which houses to go to. Do you recall that?---Not particularly.

Do you remember suggesting to Sergeant Frost that in order to find out where Kumanjaya was, to detain him, you should do some intel gathering?---Yes, because it appeared we didn't have any information on where he was.

So when you set out from the station at 7:06 was your initial plan that you would be intel gathering for the purposes of the 5 am arrest?---My understanding from leaving the station was that we were going to the house where the axe incident occurred which was 577, to find some - find some information on his whereabouts and if he was there, arrest him.

So the whole 5 am plan was abandoned by the time that you set out into the community?---It appears to have, yes.

And you genuinely don't know how that happened?---I have no idea.

Is it possible that in fact the plan just got lost after you left out into the community?  
---After we left out into the community?

Well, when you left at 7:06 the initial plan for 5 am just drifted away - and the situation evolved?---Well, we all knew exactly where we were going and we didn't communicate on the way because we were all in different vehicles, so.

I see, so when you left the Yuendumu Police Station at 7:06 pm you knew in your mind you were going straight to House 577 with a view to (inaudible) - - -?---Straight to House 577, find some information on where Walker was and if he was there, to arrest him.

Sergeant Frost when she was interviewed on 13 November says that when you and Constable Rolfe came in it was a bit of a challenging conversation in terms of "they weren't particular listening I guess". But regardless, she gave a mini briefing, nothing formal. She goes on to say at page 31;

"The members really wanted to take over the conversation. Well, I suppose Kirstenfeldt wanted to take over the conversation and control it. He wasn't prepared to really listen to what I was saying. He just wanted - it was frustrating in terms of I felt that he was trying - totally trying to take over the station at that point in time."

She goes on to say; "He wasn't listening to me." This is the second interview, page 6. "He was just very intense in terms of 'Where's this' - 'where's that' - 'this is what we're doing' type of thing."

Do you agree with that?---Not at all.

You know your personality, Constable Kirstenfeldt, are you pretty goal oriented?  
---I - I guess I could be.

You've told us that even when you get the call up from Constable McCormack you were thinking, I've been waiting for this call. We'd been waiting for this call to go and arrest Kumanjayi. You went there from Alice Springs thinking that the primary purpose was to arrest Kumanjayi. When you got to Yuendumu you would've been very focussed, wouldn't you, on arresting Kumanjayi?---Well - and understanding that that's what I thought the job was, it would be silly not to be focussed on that if that's what I thought the job was.

Sure. Is it possible that you peppered her with questions when you came in?  
---I did ask her a lot of questions because I felt at that stage that I had absolutely no information whatsoever. It was to go and arrest Mr Walker and I didn't know where from.

When she spoke to you about the 5 am plan, did you ask her any questions as to how that should be executed?---I don't think so, no.

If you'd known that the 5 am plan was something that was formally approved by Superintendent Nobbs, would you have regarded it differently?---If I'd have known that there was a plan, and that was formally given to us, I would have followed that direction.

Well I just want to break that down. Because, let me come back to what you very first said at 3:00 in the morning, when you were interviewed the next day. You're really clear, Constable Kirstenfeldt in saying:

"The evening for us was initially just going to be an information gathering session, with a plan on hitting the house, that we could get down to with some intel, at about 5 o'clock in the morning, sort of just as the suns coming up."

And you reiterate that the plan initially, was to go and grab Kumanjayi early the next morning. So you knew that Sergeant Frost had a plan, at some stage, didn't you?---I knew that the – the idea was to arrest him at that time. I don't know how that's changed.

Well you're calling it an idea now. But when you were interviewed at – on 10 November at 3 am, you call it a plan?---It's the closest - - -

Do you see that?---Closest thing to a plan that we sort of have - - -

And the plan - - - ?---As I said, I didn't take anything that was said as a direction, or an order, or any sort of formalised briefing.

She was the sergeant in charge of Yuendumu Police Station. She was the – in rank, the most senior of the IRT members – of the officers gathered, including the IRT?---Yep, correct.

And she was the Sergeant of her particular police station in Yuendumu, correct?---Yes, correct.

So she had the authority to give you a direction didn't she?---Yes.

And she suggested, at that time, that the plan was to get Kumanjayi at 5 o'clock in the morning. Did you respect the fact that she was able to formulate a plan?---I'd respect the fact that she can formulate a plan.

Did you understand that she was giving you a direction, in relation to the 5 am briefing?---No.

Five am - why not?---If I was given a direction from a superior, I would have followed that direction.

If you had understood that that was pursuant to a written operations order, at 5 am, you wouldn't have deliberately disobeyed that - - - ?---Not at all.

- - - (inaudible) is that right?---Not at all.

Would you have unilaterally changed that plan, to go and scoop up Arnold – or I withdraw that. Scoop up Kumanjaya – I apologise to the family - scoop up Kumanjaya straight away?---As in formulate my own plan?

Yes?---No, if a plan is made by higher people than me, which everyone is, then I'd probably follow their direction.

If Sergeant Frost had a plan to arrest Kumanjaya at 5 am, why not ask her some questions about how that was to be done, and how Officer Donaldson could be used for that?---I'm not sure.

Is it possible that you weren't listening, carefully enough, to Sergeant Frost, when she was trying to explain what the plan was?---I don't – I don't know. Like I just don't know the answers to these, unfortunately.

She goes on to say in her second interview, "I basically wanted to say, 'I'll give you a'" – this is to you and Constable Rolfe:

"I'll give you a briefing when everyone's there. There's no point in me giving two briefings. One to you, and then one again when they're all here. So basically, I was trying to indicate just chill out, and we'll wait for the next crew, and then give a briefing. But Constable Kirstenfeldt was quite intense, his demeanour."

Do you accept that you might have come across as quite intense, your demeanour?---No.

Do you accept that when a document – I withdraw that. Do you accept that there has been a significant breakdown in communication here, compared to what the written Operations Order was for the IRT, to go out at 5 am, with Constable Alefaio?---Yes.

And what actually happened?---A break down in communications is exactly what has occurred during this, a formalised briefing, an elected team leader, those things would have really helped to fix a break down in – the break down in – or the mis-communication that has occurred.

And if there was a policy in the IRT that required a written Operations Order, that would have helped – that you were aware of, that would have helped you to understand - - - ?---That – that sounds like a good idea too.

Your Honour, is that a convenient time?

THE CORONER: Yes, we can adjourn.

Sorry, well thanks for coming - - - ?---No, thank you, your Honour.

- - - this afternoon. Sorry that we haven't completed your evidence - - - ?---That's all right.

- - - and you get to go home no doubt with questions running through your head, but we'll need to see you again tomorrow morning?---Not a problem, your Honour.

At 9.30. See you then.

WITNESS WITHDREW

ADJOURNED