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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 17 OCTOBER 2022

(Continued from 14/10/2022)

Transcribed by:
EPIQ

THE CORONER: Please, take a seat.

Dr Dwyer.

MR SUTTNER: Hello.

THE CORONER: Hello, is that someone on the phone? Is that Mr Sutner?

MR SUTTNER: It is, it is.

THE CORONER: Thank you. And who are you acting for today?

MR SUTTNER: First of all, I am with Ms McNally of McNally and Co. We act for Sergeant Lee Bauwens.

THE CORONER: Thank you.

MR SUTTNER: Your Honour, I just mention that because we're on the phone, there is a time delay between me talking and you hearing, and vice versa. So I would just ask you a) not to record my silence or my voice as rude. I propose to mute my phone in a moment. And secondly, if you invite me to address you, and I don't immediately address you, will you just bear in mind the time lapse.

THE CORONER: I'll try and remember that. And I'm sure you'll remind me if I forget.

MR SUTTNER: Thank you, your Honour.

THE CORONER: And have we formally granted leave for Mr Sutner to appear on behalf of Mr Bauwens?

DR DWYER: Yes, your Honour, that was done on the papers.

THE CORONER: Thank you.

MR SUTTNER: That's for both Ms McNally and me, that has been granted, thank you, your Honour.

THE CORONER: Thank you.

And Mr Read, you're here today as well.

MR READ SC: Your Honour, if it please, I appear on behalf of the witness Constable Eberl, and I understand that you granted leave for me to appear pursuant to s 40 (inaudible) Act(?).

THE CORONER: Thank you. Thank you, Mr Reed.

MR ZICHY-WOINARSKI: And if Your Honour please, my name is Casimir Zichy-Woinarski, I appear for NT Health.

THE CORONER: Thank you. Someone's helpfully provided the spelling.

MR BOE: Your Honour, can I indicate that Ms O'Neill and I return to appear for the Walker and the Robertson families.

THE CORONER: Thanks, Mr Boe.

Now, just before we begin, I handed down a decision on Friday last week with a non-publication order. I have received some submissions on behalf of Constable Kirstenfeldt in relation to the non-publication order. The non-publication order will continue, and I'll deal with those submissions, and the future of the non-publication order a little bit later today. Perhaps at morning tea, or perhaps at lunchtime.

DR DWYER: May it please the court. Your Honour, I call First Class Constable Adam Eberl.

ADAM CRAIG EBERL, affirmed:

XN BY DR DWYER:

DR DWYER: Sir, could you please tell the court your full name?---Yep, Adam Craig Eberl.

And your current rank and station?---Constable First Class, and I'm stationed at the Alice Springs Police Station, attached to the College in Darwin.

How long have you held a role attached to the College in Darwin?---Not long, maybe about a month.

And what are your duties there with the College?---Instructor. I instruct firearms, yep.

Your Honour, I'm just checking – the livestream is working, thank you.

Sorry, First Class Constable. You're giving evidence because you were one of four IRT members, plus a dog handler, Officer Donaldson, who went to Yuendumu, and were in Yuendumu on the day that Kumanjayi passed away. Correct?---Correct.

You were in fact in House 511, when Kumanjayi was shot by Constable Rolfe?---Correct.

In relation to that, you've given previous evidence in a number of forums. I'll just point those out. You were interviewed on 10 November 2019 at 3.05 am. Is that right?---Correct.

And you were interviewed on 13 November 2019 at 2.14 pm, to provide some further details?---Correct.

Have you read the transcript of those interviews recently?---No.

At some stage, prior to giving evidence today, did you read the transcripts?---At some stage, yeah.

You also then gave evidence on 2 September 2020 in the committal in relation to Constable Rolfe having been charged with murder and manslaughter as a result of the death, correct?---Correct.

And you gave evidence at his trial on 22 February 2022?---Correct.

Sir, your training and experience as a police officer tells you, doesn't it, that it is important to capture a record of an event as soon as possible after it occurs? ---Correct.

And that is because your memory is freshest at that time?---Correct.

And that earlier account is important because it captures before your memory can be contaminated by another account?---Correct.

That is true of all witnesses to any incident, isn't it?---Correct, yes.

And in your case you were interviewed at 3:05 am just the morning after, to create a formal record for this important investigation, correct?---Correct.

And that interview was recorded in terms of your - a video recording and an audio recording, correct?---Correct, yes.

And that first account of what happened with the shooting of Kumanjaya is one where you gave evidence that is honest, is that right?---Yes.

And to the best of your ability you gave a free account of what had occurred? ---Correct.

And it's an accurate account of what occurred?---To the best of my - yes, memory yes, correct.

What you say at page 2 of the transcript from that first interview is, "All right mate, I'll do my best. Obviously it's 3 in the morning so I'm a little bit fatigued. It's been a long day but okay" and you did do your best to give an account?---Correct.

Your Honour, I am going to ask that that account be played in court.

THE CORONER: Thank you. Was this recorded on body-worn video?

DR DWYER: No, your Honour, I thought it was a stationery - - -

THE CORONER: I think it might be body-worn.

DR DWYER: It might be by actual body - - -

DVD PLAYED

DR DWYER: Can you just pause that there?

Constable, can I ask you, do you recall where this interview took place?
--Yes, one of the rooms within the Yuendumu Police Station.

And do you see there at the top of that notation, "Acts on body 2" does that indicate to you that the actual recording is done with body-worn video?---Correct, yes.

Do we take it that that's because at that time you were in Yuendumu and there weren't the same facilities that you might find in Alice Springs in terms of video recording?---Correct.

Thank you.

DVD PLAYED

DR DWYER: We are going to need some technical support, your Honour. I am just going to ask if that could be paused.

THE CORONER: We will adjourn briefly.

ADJOURNED

RESUMED

THE CORONER: Take a seat.

ADAM EBERL:

THE CORONER: Dr Dwyer, we've been incredibly successful so far with the minimal delays due to technological difficulties, so it's not unexpected that we have them occasionally, and as I said, I think the technology has been working really well.

Sorry for that day?---No worries.

You probably think otherwise, Officer, because probably every time you come to court, there's some sort of technical delay, but we've actually been doing really, really well. We'll see how we go.

DR DWYER: And your Honour, I think the issue here is just that it was captured on body-worn video, so it creates a different technical challenge. In my respectful submission, we should give it another go and see if we can all hear. And if not, then Constable Eberl will assist us - - -

THE CORONER: Thank you.

DR DWYER: - - - by having access to the transcript and reading it. So, if we could just try that now.

DVD PLAYED

THE CORONER: Occasionally, as I said, I think the technology has gone really well.

I'm sorry for that delay?---No worries.

You probably - - -

DVD PLAYED

DR DWYER: Constable Eberl, when you got the call on 9 November in the afternoon, to ask if you'd come in from the IRT, you explain in that first interview that Sergeant McCormack said "You might be out there for a couple of days, so just bring whatever for a couple of days." And then you got ready, and raced off to the station. Correct?---That's correct.

You were due to start at 4 pm that day?---Correct.

But you were happy to go in earlier, as requested?---Correct.

And in your second interview on 13 November, you explain this, about what happened when you got to the station. "The sergeant was there with a couple of other members." And you were asked there, "What did he tell you in relation to the deployment." And you said, "I asked him – I was at home, and he goes, 'you want an IRT deployment', and I go, 'Okay, where are we going?' And he goes 'Yuendumu, should be for one or two days, so maybe two or three days.'" And you said, "No worries, I'll get my kit together and meet at the station. You got your stuff together, headed there, maybe just after three. You met in the muster room. The sergeant was there." You said, "Um watch commander, and then a posse(?) sort of thing, so he was in there and said 'No worries, just go and see Zach, he's got some information in relation to what you're doing'"?---Yeah that's correct.

From that time on, did you form the view that Senior – I withdraw that. That Constable Rolfe was in effect, the team leader for the mission out to Yuendumu?---I wouldn't think that he would be the team leader. Just that he had the information from that point, so.

So from that point he was going to lead the briefing?---He had information in relation to what we were doing from there.

Where did you think he'd got that information from?---I would have thought he would have got it from Shane McCormack.

At page 39 of your second interview on the 13th, you said this. You were asked – you said "Initially when you got to the station, Shane McCormack did say to you 'I would usually have a briefing planned, but I haven't read it'". "Is that correct?" And you said "No he said 'I would' – something like 'I would have a briefing note, but I'm going to have to go through the things and try and find where it is and create one.'" You'd done two IRT deployments I think, prior to this day, is that right?---Correct.

Had you had a briefing note, or a written operations order in relation to either of them?---Not to my knowledge that I recall, no.

Would you expect the sergeant to have a briefing note, or a written operation order?---Correct, I would, yes.

So when Sergeant McCormack said to you "I'm going to have to go through things and try and find a briefing note, or create one" was that out of the ordinary to you?---Yeah didn't seem to be the usual practise, no.

Didn't seem to be as organised as the usual practise, is that right?---Correct.

But did you expect that at some stage, prior to going out to Yuendumu, you would see a briefing note?---Yes.

And did you ever see a briefing note, or written operations order in relation to this job?---I did, but it was some time after the fact.

Sometime after Kumanjayi had been shot, is that right?---Yeah, yeah, several – I can't remember if it was weeks, or months or.

So when you got into the station and Sergeant McCormack said "Just go and see Zach" you then went to, what you described as, a little bit of a briefing?---Yeah I – yeah, if you could call it that.

In your first interview at 3 am on the 10th, you say:

"We're at the station, we had a little bit of a briefing. Saw a little bit of footage about this incident that happened a few days ago, where Kumanjayi apparently breached his parole. A couple of members from there had attended. Tried to arrest him. When he picked up an axe and ran at members before escaping. So, we knew that obviously he would try and get away by any means possible, whether he's grabbed a weapon or whatever. So, yep, no worries."

How long did that – what you describe as "a little bit of a briefing" last for?---We – well, we watched the footage of the incident that happened a few days prior to 9 November. So, however long that took to play that. And then, after that, we had a bit of a discussion about, you know, who was going in what vehicle and of what equipment we were taking. And then after that – so, I'm not too sure the length of time, but it wasn't a lengthy one.

When you say "we watched the footage", Constable Rolfe showed you the footage. Is that right?---That's correct. It was a – on the one computer, it showed both body-worn from both Chris Hand and Lanyon Smith from the axe incident. We'll call it "the axe incident" where – but it was sort of a split screen so we could watch both at the same time. So, there as me, Zach, I think Anthony Hawkings and James Kirstenfeldt was there. But it was sort of in general duties muster area, so there was some other people in the room, but they were doing their own thing. I wasn't too sure.

Do you remember seeing Breanna Bonney there, another police officer?---No, can't remember seeing her there.

She may have been there and you just didn't - - -?---Correct.

- - - clock that. In relation to the issue of team leader, this is what you said in your second interview at page 6. You were asked whether there had been a team leader on previous deployments and you said, "There has been a team leader, usually, that I've been told about." In this instance, you weren't. You say, "I wasn't told that this particular person was a team leader, but I know Zach, that he'd been in the team longer than me. I've been in as long as the other three members. So, I assumed he was doing it, to be honest, because when I came to the station, he was the one that was showing me some footage prior to - and giving us a rundown on who Kumanjayi was." Correct?---Yeah, correct.

Had you ever met Kumanjayi Walker prior to this time?---No, I had not.

Had you ever been involved in any attempted arrest of him prior to this time?---No, I had not.

Had you ever met Chris Hand, the senior constable who was out at Yuendumu?---I don't think I had.

Had you met Lanyon Smith, the other police officer who was - - -?---No, I don't I had actually met her, no.

Had you met Sergeant Frost?---I can't recall that I had, no.

While the video was played during that time, the little bit of a briefing, there was discussion about what had happened on 6 November, wasn't there?---There was.

What did Constable Rolfe say about it?---I can't remember what he said, only what I said.

You said – well, what did you say at that time?---Well, I was surprised that the members didn't draw their firearm.

In response to that incident on the 6th – I'll withdraw that. On 6 November, what you saw on the body-worn video footage was an image of Kumanjayi picking up an axe and appearing to run with it towards the two members, Lanyon Smith and Chris Hand. Is that right?---Correct.

And at that time, you were surprised that somebody hadn't draw their firearm in response?---Correct.

Is it right to say that, in relation to that incident, there might be a number of ways of dealing with that in accordance with your training as a police officer?---Correct.

What you might do in those circumstances depends on a number of the factors, as you perceived them at the time. Is that fair?---Correct, yes.

It might depend, for example, on your assessment of the space in the room?---Definitely.

On whether or not you've got back up present with you in or outside the room?---Yep, definitely, yep.

And also on your skill set?---Correct, yep.

When you were discussing what had happened on 6 November, were you critical of the attending police?---Not critical, just surprised they didn't draw their firearm.

One option that you thought of was that perhaps you could draw your firearm and then step back and create some space. Is that right?---Yeah, that was an option,

yeah definitely, yeah.

What would you do in those circumstances?---Yeah, so definitely draw your firearm, use tactical communication, identify yourself as a police officer, tell him to drop the axe, trying to create distance, give you more time. So, time and distance cover, they're your friends as a police officer. So, if you're creating distance, you've got time to negotiate and de-escalate the situation, yep.

You didn't have that sort of detailed conversation when you were watching the body-worn though, did you?---No.

You just said you were surprised they hadn't used their gun?---Correct.

As you understood it, when you left the police station in Alice Springs, the mission was to arrest Kumanjayi. Correct?---Correct.

That was clear from what Constable Rolfe said?---Correct.

And there was no other reason that was given to you as to why you were going out to Yuendumu on that day?---No.

In your second statement – I withdraw that. In your second interview, you say when you're asked about what was discussed at the brief at the station:

“Kumanjayi Walker was wanted for breach of parole. And then obviously, he'd used a weapon, aggravated assault and then used the weapon to facilitate his escape of lawful custody. So, that was the real reason, in my mind, while we were going there, because of what he'd done to members with an axe, because it was a higher level.”

Correct?---Correct.]

And that was the impression that was conveyed to you by other police who were there in the station?---Alice Springs Station?

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

So, that was certainly the view that was expressed by Constable Rolfe. Is that right?---Yeah, I think by all of us, yep.

Also, in your second interview, you mentioned this at page 28, “On the one hand, there were houses at Yuendumu and they were running – they had a funeral there that day and he was more likely out there somewhere, and that was all the information we had.” Who told you about there being a funeral out in Yuendumu that day?---It must have been community members. I can't recall who told me, but it was either the police, the community police, or it could have been Zach, I'm not sure.

I see. Were you told that at any time before you left Alice Springs to - - ?---No.

- - - get to Yuendumu?---No.

So, that was information that you received at some time after you got to Yuendumu?---Correct.

Either in the briefing with Sergeant Frost?---Yep.

Is that possible?---It – potentially, yeah.

Or somebody in the community told you. Is that right?---Potentially, yeah.

Okay. I appreciate how long a time has passed and how many times you've been asked to reflect on what occurred, but do you now have a memory of what happened during the brief – the second briefing that occurred in Yuendumu?---It hasn't changed from, I think, from my first account of what I can remember, yeah.

So, the account that you gave on 10 November supplemented by the 13th is likely to be the most accurate account in your mind?---Yes.

It's certainly possible that you've forgotten some things that were discussed at the second briefing in Yuendumu?---Yep, potentially. I think, like I mentioned before, when you're having a conversation with someone, they're talking about a subject matter, you're gaining what you need out of that conversation and you know, and then you know what your, you know, what your task is in relation to that. And then the rest of the information, you know, is kind of irrelevant when you're task-orientated in a particular – yeah.

Can I stick with what happened at the first briefing then? At the first briefing, you have information about Kumanjayi from what happened on 6 November. And you know then that he, in your words:

“He would obviously try and run away – try and get away by any means possible, whether he's grabbed a weapon or whatever.”

In that first briefing, did you – in Alice Springs, did you discuss anything further about what type of arrest you would effect?---Not that I recall, no.

Was there a discussion of an arrest plan?---No, I think it would just be referred to how we usually go out and do our business. You know, when you're looking for someone, you – we're quite fluid in how we enact a situation and yeah.

Did you think that there would be further discussion when you got to Yuendumu as to an arrest plan?---I would have thought there would be more information, 'cause we didn't know that layout – well, I certainly didn't know the layout of Yuendumu, so we'd need to get some bearings about the community and, you know, where we were going and who we were looking for, et cetera.

You thought about that, just based on your general experience - - -?---Correct.

- - - within police. You assumed there would be some sort of further briefing when you got to Yuendumu. Is that fair?---Correct.

Before November 2019, had you read a document which is referred to as the "Standard Operating Procedures for the IRT"?---Probably did.

There's a lot of policies and procedures that police need to know about. Is that right?---Correct.

You're not expected to memorise them. Agreed?---Correct.

But you're expected to be aware of their existence. Correct?---Correct.

And the general important points from them. Is that correct?---Yep. I think most of their points in relation to the standard operating procedures are in relation to getting the authority to head out. And usually that's done from a senior member within the IRT and then obviously the taskings are passed down to us as the members, so usually that's done by a higher ranking officer.

A higher ranking officer than you were at that stage?---Yes, usually a sergeant or, you know, a senior sergeant, depending on who was running the IRT at the time.

The IRT policy, can I remind you, at that stage referred to jobs being either high-risk jobs or a general support job. Was that terminology familiar to you at that time? ---Yes.

Did you think that what you were doing, in heading off to Yuendumu on 9 November, was a high-risk job or a general support job or neither?---General support with the potential for it to become high-risk but just general support at that time.

Who did you think approval was required from? What rank was require to approve a general support?---I'm not - I'm not in a position to know that information, so.

You knew in this case with the job in Yuendumu, it had been approved by Commander Nobbs?---Not at that time, no.

When did you find out that Commander Nobbs had had any role in approving the job?---Not until some time after the fact.

Not until after Kumanjayi had been shot, is that right?---Yeah.

So, some weeks or months after?---Yeah, I'm not to sure when, you know, I've become aware of that but.

So in terms of the approval for the mission out there that day, did you think that had come from Sergeant McCormack?---He would've got it from someone but he

wouldn't have made up himself, he would've got the direction from someone above him but I didn't know at the time who that was.

You did know though, that in terms of the IRT being sent out that day, a sergeant - the rank of sergeant and then someone above the rank of sergeant would have to approve the IRT mission, correct?---Correct.

Just to be clear, what mission did you think had been approved on that day?
---Well, what I gathered when I was at the police station in Alice Springs before I headed out was just to locate and arrest Kumanjaji.

There as no risk assessment that was completed before you headed out from Alice Springs, is that right?---I'm not aware that one was done, no.

In previous jobs you've done with the IRT did either of them involve an arrest of a suspect?---No.

Before you headed out to Yuendumu on the basis of that short briefing that had taken place, was there any discussion at all about whether it was a high-risk arrest?
---No, I don't - I don't recall one, no.

Did you make an assessment yourself as to the level of risk that would be involved in arresting Kumanjaji?---Yeah, I think so. Like I think we all - we're always conducting risk assessments as we go about our business.

Just in your mind then, before you left Alice Springs, what level of risk did you think was involved in arresting Kumanjaji?---I don't think I processed it like that.

And as far as you recall, nobody else talked about it in those terms either, correct?
---No.

On the back of what Sergeant McCormack had said, that he would look for a briefing note or prepare a briefing note, did you assume that one would be provided to you a some stage before you went to arrest Kumanjaji?---I would've thought that it would've been presented at some stage, yes.

When you were asked about your training for the IRT on 13 November, you speak about training for a black role or a green role and you say this, I'll just read to you from page 8. You explain that:

"They do a number of scenarios out there in the bush during training. You go out there and you hide and relay observations and intel to them, based on your observations and that sort of stuff."

Is it a green role where you wear camouflage gear and you might sneak up to cordon and make observations to let them - you will not let them know you are there, so that is one role you get trained in and there's a black role that's more like your entry - your immediate action - like there might be a shooter in the building or whatever and

you've got to clear the room. Did you think about this job in terms of the arrest of Kumanjayi as either a green role or a black role?---No.

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

So there was no discussion of cordon and contain and make observations, correct? ---I think we did that automatically when we moved up to the house and members just moved around, it just - we didn't have to discuss it, we just, you know, pretty fluid in our actions and what we do.

So I take it from your response there was no discussion of cordon and contain at any time before you approached house - - -?---I think I might have mentioned when we went up to the 577 that myself and Tony were going to go around the back of the house, I think that's what we mentioned, but that's probably the only part of the conversation that you could probably look at that the cordon containment concept but other than that, yeah, nothing.

And that wasn't preplanning, that was deciding when you go there what to do? ---Yeah, on the way there, yeah.

And similarly there was no discussion of an immediate action response and how you would enter the building, correct?---Correct.

You travelled to Yuendumu in pairs. Constable Rolfe was with Officer Kirstenfeldt and that was followed by yourself and Tony Hawkings. How did that pairing occur? ---I think we organised that at the station at Alice Springs, who was going with who.

Prior to that time had you spent much time working with Constable Rolfe?---No.

Had you - you hadn't trained with him, is that right?---He might've done a little bit when we were doing our IRT training, but that's pretty vague, yeah.

So you certainly didn't do your initial training?----No.

You joined the Northern Territory Police Force in 2015, is that right?---Correct, I did, yes.

I will come to some of your experiences later, First Class Constable, but you joined in 2015, he joined two years later, but - and when did you join the IRT?---I think it was 2019 I think it was, yeah.

And I think you signed up in December 2018, does that refresh your memory that you then did your first training in 2019?---Possibly, yes.

Do you recall how many training sessions you would have done with Constable Rolfe?

---We ran training once every sort of roster period, which is five weeks and if you're available, usually on a training day which is usually run on a Wednesday, so if you're available he might have - we might have been on the same training but depending on what roster shifts you were and that sort of stuff, whether we were both there at the same time, so it's hard to determine how many trainings I would have done, it could've been a couple, could have been five. I'm not sure.

I take it from your answer though, he wasn't somebody that was well known to you. Is that right?---I think everyone sort of knew, you know, of him, because he was pretty pro-active sort of police officer.

What do you mean by that?---He was energetic and, you know, was happy to look for arrest targets and, you know, you see people in the police who are pro-active and energetic and people are a little bit sort of relaxed and sort of - a little bit complacent I guess at times, so.

How did you come to know that he was somebody who was pro-active and happy to look for arrest targets?---I'm not too sure. It's just - yeah, just speaking around the station and knowledge and we were a - we were a pro-active team ourselves, being in youth engagement and so, you know, we were happy to get out there and ride bikes and engage with the kids and whatever, so.

You were happy to get out there and ride bikes and engage with the kids. His reputation are you telling her Honour was that he was someone who was proactive in looking for arrest targets?---Correct, yes.

And he was someone who was enthusiastic in terms of his role in the IRT, is that right?---Yes, definitely.

Did you come to know that he was somebody who was being - who was thought to have been involved in a number of use of force incidents?---Not until some time later I think.

Did you hear any rumours that he was someone who used force more aggressively or excessively than others?---No.

Did you work with Constable Kirstenfeldt at all, prior to that time?---I think - it's hard to - hard to remember. I think just with IRT mainly, because he was in a different patrol group, and yeah.

Was Constable Rolfe in your patrol group?---No. No, I was attached to the Community Youth Engagement Team I think when he started.

Did you socialise with Constable Rolfe or Constable Kirstenfeldt, at any time prior to November 2019?---Only while we were attached I guess, to the IRT, you know, afterwards, whether to clean weapons, but that's within the work confines, I guess.

Did you socialise with him outside of work?---Not that I recall, no.

How well did you know Tony Hawkings before that day?---Pretty well.

So you knew him better than you knew Constable Rolfe and Kirstenfeldt, is that right?---Definitely.

And so had you worked with Senior Constable Hawkings, prior to that time?---Yes I had, yes.

On many occasions?---Many occasions, for a couple of years.

Why was that?---We were both of the Community Youth Engagement Team, and were likeminded with our thoughts about policing, and how we communicate and engage with the communities.

So it was a pretty natural pairing, in terms of the trip to Yuendumu wasn't it? You knew Tony Hawkings much better, and you were - - - ?---Definitely.

- - - you jumped in the car with and Constable Rolfe and Constable Kirstenfeldt went separately, correct?---Correct.

Was there any communication on the way between you, as officers, the group of four?---Not that I recall. I think we might have mentioned that when we were leaving Alice Springs, because we had to go get some food and stuff like that, after we left the station, before we went out to Yuendumu, so.

How much food did you – well did you get, at that time?---Can't recall how much.

Which – the reason I'm asking - - - ?---Yeah.

- - - is - were you equipping yourself for a night or a day or how long?---Well I initially, it was – they say bring stuff for a couple of days. So you know, you might not get your – might not find your arrest target on the first day. It might take a couple of days. So need to be prepared for that.

You explain in one of your interviews, that just before four o'clock you left Alice Springs. By the time you left, you had not yet received any written operations order, or arrest plan, or arrest note, or anything of that nature, correct?---Correct.

And it wasn't suggested to you that you'd get one in your email or be provided one at a later date? Sorry, you just have to answer for the transcript, you're shaking - - - ?---Yes, correct, sorry.

You – do you recall now arriving at Yuendumu?---I do recall arriving there, yes.

You understand don't you that there's CCTV footage at Yuendumu Police Station?---Yes.

And that gives us an accurate account of when the different officers arrived at various times?---Yes.

If I can ask you to accept from me that Officer Donaldson arrived first. You know that don't you?---Yes.

He arrived at 6.09 pm. The CCTV footage, if I can ask you to accept from me, shows that Officers Kirstenfeldt and Rolfe, arrived at 6.33 pm. You and – you and Officer Hawkings arrived at 6.56 pm. Does that accord with your memory?---It was sometime after, yeah.

All right. You accept those timings from me?---Sure.

You're aware now aren't you, that when Officers Rolfe and Kirstenfeldt arrived, they had a discussion with Sergeant Frost, and others, in the police station?---So they would have, yes.

When you arrived, you also were introduced to Sergeant Frost, correct?---Correct.

And you had a discussion with her and other officers who were present at the time?---We did, yes.

And you've been asked about this on many occasions, subsequently. When you spoke to Sergeant Frost – or I withdraw that. During the course of that discussion, do you recall now who was leading it?---The general conversation before Zach was pointing to the maps, I can't recall. But I know Julie was saying a couple of things. And I – I remember something that she mentioned, but yeah, so it probably was a combination of both her and Zach, but.

You were asked about this during the committal, on 2 September 2020, and you said this. You were asked by Mr Strickland, who led the discussion at Yuendumu, and you said "She" as in Sergeant Frost "Said a little bit, but it was Zach. Zach was mentioning it. Where we were going. What we were doing." At the time – that – that's correct, isn't it, that evidence?---Yep.

It was Constable Rolfe who was taking charge – or appeared to be taking charge, at that stage, in terms of directing you and the other officers from the IRT, about what would happen next?---Definitely, yep.

And that appeared to fit in with your idea before you left the station, that it was to – you were out there to arrest Kumanjayi, correct?---Correct.

Did you ask about a written note or an MPS order, or anything that would give you guidance as to what had been planned?---No I did not. Not that I recall.

Do you recall any discussion of one?---Not that I recall, no.

I'll show you some CCTV footage in a moment. But you weren't present in the trial when Constable Rolfe gave evidence were you?---I was not.

You didn't listen on the livestream at any time when he gave evidence?---I did not.

You didn't have any access to any link where you were listening to his evidence, is that right?---I did not.

This is what he said in the trial transcript, at page 1061. "Previously before the officers arrived, I discussed with Julie Frost how if she wanted us to arrest Kumanjaya at 5 am, we had no intelligence as to where he was. We couldn't create a plan. I informed her that generally when the IRT would attend a community, we would introduce ourselves to the community, because we're guests in the community. We would introduce ourselves to the community, while attempting to gather intelligence about the person that we are generally trying to locate. And at the same time, trying to gain community assistance for our task." Constable, at any time prior to 9 November entering House 511, did you have any appreciation that there was a 5 am arrest plan?---I did not.

Did Constable Rolfe ever mention to you that there was a written operations order?---Not that I recall, no.

Did Constable Rolfe ever tell you what had been discussed with him and Officer Kirstenfeldt and Julie Frost?---The only thing he mentioned was about where we were going. So he obviously obtained information prior to us arriving at Yuendumu Police Station. So he knew where we were going, and the house where the axe incident happened, which he referred to on a map.

When he told you there about the axe incident, and where you were going, who was present?---Obviously myself, Anthony Hawkings, James Kirstenfeldt, Julie Frost, Adam Donaldson, Chris Hand, and I'm not too sure whether Felix Alefaio was there at that time or not.

Felix Alefaio has given evidence that he was there at some part of the briefing, when all four of the officers, as in yourself, and the other IRT members were there. So that's entirely possible isn't it?---Yeah, definitely.

He – I'm reminded that he gave evidence, he was sitting about four metres away. Do you recall him sitting down there at any time?---I do recall him sitting down there at some time, but I don't know whether that was before the incident with Kumanjaya or after.

There was no discussion with you, in – by – I withdraw that. Constable Rolfe never mentioned anything to you about gathering intelligence did he?---No, because generally when you're trying to speak to community members to find out where someone is, that's in a form of gathering intelligence. But you're just searching, looking for someone.

When you went out from the police station some time at – or I think you left the station at 7.06 pm. You left the station clearly with a plan to arrest Kumanjayi, correct?---Definitely, yep.

Consistent with what you thought was the plan when you left Alice Springs?---Correct.

And consistent with Constable Rolfe showing you where the house was on the map?---Yep, and the comment from Sergeant Frost about if you locate him, arrest him, bring him back, we'll put him on s 137 of the PAA, and we'll do the paperwork.

Do you recall at any time, Constable Kirstenfeldt saying something like we are going to have to go out and gather a bit of intel?---I can't remember anything from him, no.

Do you recall Sergeant Frost, in the conversation you've just relayed saying something like, look by all means if you come across him, arrest him?---Maybe it was something like that, but I can only recall what I – I conveyed to you a moment ago.

Have you since this day, seen the written operation plan that was prepared?---I have.

Do you understand that it was prepared by Sergeant Frost and with the input of another officer?---Not too sure the – who the other officer is, but I know it had that input from Julie, yeah.

Do you understand that it approved by Commander Nobbs, as he was then?---I know that now.

But you didn't – well, you've given evidence previously, you had no idea at the time that he was involved, but you do know now that that written operations order is what was approved by Commander Nobbs?---Correct.

I ask that that be put on the screen, 19:56. After this, your Honour, I'll ask for a short break.

DVD PLAYED

DR DWYER: You see there that that's an email that I'm showing you.

For the benefit of those at the Bar table, it's at 19:56 at 1.1.14.

It's an email sent by Sergeant Frost at 16:59 and you are included as one of a number of people who receives that email. You didn't see that at any time prior to Kumanjayi being shot, did you?---I did not.

If I could just ask the court officer to scan down quickly over the photo of Kumanjayi.

THE CORONER: Over?

DR DWYER: Over, so down past it. Thank you. And then up a bit, sorry, at day 1.

THE CORONER: Keep going up a little bit?---Yep.

DVD PLAYED

DR DWYER: Saturday, 9 November, 11 pm:

“IRT commenced duty and conduct high visibility patrols and respond to call outs.”

Did anybody ever tell you that the written plan for that day was that you were to commence duty at 11 pm.”?---Not that I recall.

Did anybody ever tell you, you were to conduct high visibility patrols for that evening?---Not that I recall.

Do you see down there:

“Sunday, the 10th of November, the plan was that at 5 am, Officer Donaldson and Felix Alefaio would commence duty along with the IRT members to effect the arrest of Kumanjayi.”

Did anybody ever tell you about that 5 am plan before Kumanjayi was shot?---They did not.

Sorry?---They did not, sorry.

Just scan down please, if you don't mind, court officer, to the plan for day 2.

Do you see there, “Plan Day 2, 11 pm, IRT commenced duty and conducted high visibility patrols and respond to call-outs.” Did anybody ever tell you that that was the plan for the second day, if Kumanjayi had not been located at the 5 am arrest?---No, they did not.

And you see there, Monday, 11 November, exactly the same plan repeated at 5 am?---Correct.

But that's not something that you were ever told about?---No.

You understand now, don't you, that Commander Nobbs has given evidence that this written operations order was what he approved, not an immediate arrest of Kumanjayi. Correct?---Correct.

If you had known that the commander had approved a written operations order saying that, you would want to know about it, wouldn't you?---A hundred percent.

And you would not deviate from that plan without an understanding that the commander knew there was a change?---No, you follow orders, follow directions, correct.

Your Honour, might we have a short break?

THE CORONER: Yes, we'll have a 15-minute morning tea break.

ADJOURNED

RESUMED

ADAM CRAIG EBERL:

THE CORONER: Please be seated.

Yes, Dr Dwyer.

DR DWYER: Thank you, your Honour.

Constable, just going back to when you were in Alice Springs Police Station, and getting ready to head out to Yuendumu. There was a discussion before you left, wasn't there, about what outfits you would wear as police officer, and what gear you would take, in terms of accoutrements?---Yeah I think there was, yeah.

And in terms of the uniform that you would wear, there was a – you were instructed, weren't you, that you would just be wearing the ordinary police blue uniform, similar to what you've got on today, is that right?---Correct.

Not the camouflage gear that is sometimes used by IRT members, correct?---Correct.

And in terms of what you took the IRT equipment, were you able to make a decision for yourself which equipment you'd use, or you'd take out?---Well yeah, correct. I – we made a decision what we would take individually.

And what did you take, yourself?---I took the ballistic vest associated with the – the uniform with IRT. Not the blue uniform. And I took a – a AR-15.

And in terms - - - ?---Or (inaudible).

- - - of actual – actually making – after you left Yuendumu Police Station, and headed out at 7.06 pm into the community, you were in your blues, correct?---Correct.

And did you wear your vest?---No.

And you didn't – what – what weapons did you take?---Just my normal accoutrements, Glock, spray, baton, handcuffs.

You didn't take the AR-15 that you'd bought into the community did you?---Not on that occasion, no.

When you were asked about this at the committal, in relation to the equipment that you took, you were asked the question "The incident itself at House 511, did you wear your ballistic vest?" And you said, "No." When you were asked why, you said, "Because we were informed by our Superintendent Jody Nobbs that we were – we could take it, but we weren't in that role at the time. We just be – just to be plain clothes, so less confronting I guess, for members of the public." You referred there

at the committal to being informed by your Superintendent Jody Nobbs, of the need to wear plain clothes, so it's less confronting by members of the public. Were you meaning to say that you had actually had a conversation with Superintendent Nobbs?---No.

Where did that information come from?---Just was passed on from another member that was there. I can't recall who it was. But yeah, it definitely wasn't a direct conversation between myself and Superintendent Nobbs, no.

Was it possibly passed on by Sergeant McCormack?---Potentially.

Or one of the other IRT members, correct?---It could have been anyone, yeah.

All right. Whatever the message was that was passed on, was it specifically said to you that you should wear your plain clothes, as in your blues, to be less confronting for the members of the public?---No, that was the assumption that I developed about being confronting to the members of the public.

You knew you were going into a remote community, where if you came in wearing camouflage gear, that might be upsetting for the community, correct?---Potentially.

Or it might suggest that there was something that – that it might be confrontational, do you agree?---Yeah, when you're wearing a larger ballistic vest, and wearing different uniform, then you know something's going on, but yeah. Might bring them to some sort of alarm, yeah.

And did it occur to you that if you're in your green – in your camouflage gear, it might give the impression that it was as if you were from the army, going into a community?---Potentially, yeah.

And certainly if you're in camouflage gear, and carrying a long arm weapon, that would be quite a surprise to members of the community, wouldn't it?---Correct, yeah.

And could be seen as intimidating?---Potentially.

And frightening for members of the community?---Potentially, yes.

I read to you prior to the break, the evidence of Officer Rolfe at trial. And I just want to take you to the – to a more complete version of it. I take it that until today, you have not been told about the evidence that Constable Rolfe gave at trial, is that right?---I don't – or I can't recall, yeah.

I'm reading from, for the benefit of my friends, page 1061 on 3 March this year.

Constable Rolfe is being asked by the Senior Counsel, who was prosecuting, Mr Strickland, about what documents he looked at when he arrived at Yuendumu, before you got there. He gave evidence that he was not handed the written operations order. He gave evidence that he looked at maps of the community. He

said "I took a photo of the map. I can't recall if it was the A4 or the A3." And then Sergeant Frost directed him to a piece of paper with house numbers of relevance on it. Did you subsequently have a look at the map of – from the – I withdraw that. Did you subsequently have a look at any photographs that Constable Rolfe had taken on his phone of the map?---No.

Did you - - - ?---Not that I recall, sorry, yeah.

- - - prior to confronting Kumanjaya in House 511, did you have a look at any photographs of him on Constable Rolfe's phone?---Prior to entering House 511?

Yes?---No.

Did Constable Rolfe ever mention to you that he had taken any photographs of Kumanjaya Walker?---No, not that I recall, no.

Do you agree that it would have been relevant for you, given that you're one of the four members of the IRT, to see photographs of Kumanjaya if they were in existence, before you went into the house?---Definitely.

Are you surprised that you weren't shown those photographs? I'll withdraw that. I'll ask you this. It's not the best planning is it? For four - - - ?---No.

- - - of the IRT not to be shown photographs of the arrest target?---No.

Constable Rolfe said – is asked:

"When you took a photograph of that piece of paper, did Sergeant Frost verbally or indirectly, identify it as part of the arrest plan?"

And he said "No, the only part of that piece of paper that was brought to my attention was a small section with the relevant houses on it."

He's then asked this. "After the other two members arrived, was there a further discussion in the presence of Officer Frost?"

And Constable Rolfe said, "There was. There was. Because previously, before the officers arrived, I discussed with Julie Frost, how if she wanted us to arrest Kumanjaya at 5 am, that we had no intelligence as to where he was. We couldn't create a plan. I informed her that generally, when IRT would attend a community, we would introduce ourselves to the community, because we're guests in the community. We would introduce ourselves to the community while attempting to gather intelligence about the person that we're generally trying to locate, and at that same time, try to gain community assistance for our task. I said 'perhaps that's the best course forward', seeing as we had no intelligence. And she agreed with me at that point. That was before the other officers arrived at the station."

And your evidence is, you had no idea, prior to that time, that Julie Frost had an arrest plan for Kumanjaya to get him at 5 am in the morning, correct?---Correct.

And that is something that you would have wanted to know?---Definitely.

And you certainly would have wanted to know if that was the plan that had been approved by a commander on that day?---Correct.

And you certainly wouldn't have wilfully disobeyed that plan, if you understood it was the written operations order, correct?---Correct.

And do you now understand that Sergeant Frost had available at 5 am in the morning, Constable Felix Alefaio, who knew Kumanjaya by sight?---Sorry, can you repeat the question?

You now understand don't you, that Sergeant – I'll withdraw that. That Constable Felix Alefaio was available to meet police at 5 am?---Correct.

You didn't know that at the time, correct?---No.

You would have wanted to know, wouldn't you, if you had a resource like Felix Alefaio available, who knew Kumanjaya by sight?---Yes.

And who had a relationship with him?---Definitely.

And if you knew that information, that might have factored in to a discussion as to how the arrest could be affected?---Definitely, yeah.

So all five members of the IRT should have been involved, that is, Donaldson, and the four members of the IRT, should have been involved in a discussion with Sergeant Frost, as to how the arrest should be carried out, correct?---Correct.

And that planning should have taken place, so as to enable you to minimise the risk of any adverse confrontation, you agree?---Correct. You have to look at every angle, not just the risk, but yeah.

But it's part of your training, and procedure, to – in every attempted arrest, try and minimise the use of force, correct?---Yeah definitely, yeah.

And planning is crucial in order to make sure you can minimise the use of force, correct?---Correct.

So all those pieces of information, the 5 am arrest plan that Sergeant Frost had in mind, the availability of Felix Alefaio as a resource, that was crucial for you to understand, prior to going out into the community that day?---Yes.

Are you disappointed that that wasn't provided to you?---Definitely, yes.

You left at 7:06 pm and you headed out to House 577. And you explain in that first interview that we heard this morning, you drove around to the back of the premises just to create a bit of a cordon. We there any discussion between yourself and the other three members of the IRT about what would take place after that – I withdraw that, about creating a bit of a cordon?---I just remember mentioning it, whether it was on the radio, to the other members that – what we were doing. I can't recall call – I knew that Adam Donaldson was going to go around the other side onsite, because he had the dog. But – yeah, I don't know whether that was a plan from everyone or we just mentioned it. But obviously, we knew what was happening.

When you say "we", you headed out to House 577 with Officer Hawkings. Is that right?---Yeah, we were in the same vehicle. That's correct.

And in another vehicle were Officers Kirstenfeldt and - - -?---Rolfe.

- - - Rolfe?---Correct.

So, when you say, obviously we knew what you were doing – what we were doing, you and Officer Hawkings knew that you were going to create a bit of a cordon at House 577?---Correct.

Did you know what the other two officers were going to be doing; Rolfe and Kirstenfeldt?---That's what I'm not sure whether we conveyed what we were doing so we all sort of knew, but yeah.

You imagined that while you created the cordon, the other one or both of those officers would be entering House 577. Is that right?---To engage first, because there was a person at the back. So, they engaged with that person prior to entering.

Well, when you got there, you saw there was a person out the back. Correct?---Yes, correct.

Could you see someone engage with that person out the back?---Yeah, I think Zach and – well James went up there.

Okay, Zach Rolfe or James Kirstenfeldt. Correct?---Yeah, that's correct.

And do you now know that Zach Rolfe entered into that House 577?---Yes.

And you imagined, didn't you, that he was effectively clearing the house?---Well, finding out who that person that we originally saw run across was, yeah.

Did you assume that he was going to enter into the house?---Yes.

And in terms of how he did that, was that for him to determine when he got there?---Yes.

In your second interview on 13 November in describing what the situation was in

relation to the arrest of Kumanjayi, you say this at page 36, "We knew he was a bit of a high risk because he was willing to take – to grab a weapon and to go to police. So, we knew that was a fairly high risk and I didn't think – I mean, Felix had mentioned, I'm trying to recall now, when he's arrested the bloke, he always wants to fight. So, we already had that in the back of our mind. Nothing was mentioned, this is a high risk or a medium risk, nothing was put to us like that, you know what I mean." At that time when all four officers headed towards House 577, you knew Kumanjayi was a bit of a high risk because he was willing to grab a weapon and to go to police. You stayed outside to cordon, Constable Rolfe entered into the home. In terms of the decision Constable Rolfe made at that time, that was purely for him to make that decision", is you evidence. Correct?---Correct.

But there was no planning, as far as you're aware, as to how Kumanjayi would be engaged with, if at all, if he was in House 577?---Correct.

That's not optimal planning, is it?---It's probably not the best planning, but that's how we operate generally with general duties. You know, when you're looking for an arrest target – yeah. It's not - - -

It's not how you operate generally with IRT though, is it, when you're looking for an arrest target?---Unless it's designated that the arrest target situation is a high risk, it's going to be treated like your general duties' response potentially.

In this case on 6 November, you had body-worn video footage showing that Kumanjayi had run towards police carrying an axe. Do you think that that was a high risk situation?---That was, yes.

Do you think this should have been designated then as high risk in relation to Kumanjayi?---No.

Had you ever seen any alerts in relation to Kumanjayi prior to going out to House 577?---No.

Did you have any understanding that on previous occasions when he was arrested, he had used any force?---No.

Do you think you should have been informed as to how Kumanjayi had reacted on previous occasions, not just on 6 November?---I think any information pertaining to Kumanjayi would be helpful, yes.

If I can let you know now that we have the alert system that you have available on your computer system. In relation to Kumanjayi, this is – it doesn't need to go on the screen, but it's 19-58 exhibit 7 in the trial. The alerts and warnings that were put up for Kumanjayi following 6 November were – so this was put up on 6 November, "Can be arrested, assault police, and may be violent towards police." If you put those pieces of information together with the video from 6 November, this was potentially a high risk situation, wasn't it?---On 9 November, potentially.

Yes?---Well, he – no, he has the potential for it to be high risk, but he’s not walking around the community with a weapon. If he was, then that would be a high risk, but he has the propensity to raise the level of the situation to high risk. But it wouldn’t have been designated as that.

Did you have any understanding of Kumanjayi’s mental health situation at any time prior to entering the house?---No, I did not.

Did you have any understanding that he was a young person who was likely to have FASD?---No.

Do you know what I mean by FASD, Foetal Alcohol Syndrome?---I do.

You understand, don’t you, given your experience as a police officer, particularly with youth engagement, that somebody who has – who is suffering from FASD may well have problems with impulse control?---Definitely.

And did you appreciate that Kumanjayi was a young person who had hearing difficulties?---No, I did not. I do appreciate that if he did, it would have been good. But yeah, I didn’t know about it, no.

Don’t you think what I’ve just told you about, that he was somebody who was likely to be suffering from FASD, that he was somebody who had poor impulse control, that he had hearing difficulties; that’s crucial information in planning an arrest, isn’t it?---Definitely.

How does that help you to plan to minimise the risk?---Well, if he had poor impulse control, you’d probably try and get the family members to assist you with trying to put together a plan to mitigate the risks. So, he’s going to have less anxiety, et cetera, about trying to come in with police and have family members be present during the process and yep.

And it underscores, doesn’t it, the importance of having someone like Felix Alefaio who knows and can engage with that person. Correct?---Yeah, definitely.

Okay. And having family or Constable Alefaio would have been a way to minimise the risk of a violent confrontation?---That would have – yeah, it would have been a way, yep.

Her Honour has been the video footage of Constable Rolfe entering House 577 and leaving again. You waited outside. I don’t think we need to play that again, but you waited outside while Constable Rolfe was in the house. Correct?---Correct.

And then, did you see him come outside the house?---I can’t recall, but I probably did, yes.

At the time that Constable Rolfe entered the house, your colleagues, Constable Kirstenfeldt and Constable Hawkings were in the near vicinity. Is that

right?---Yes.

What weapon was Constable Hawkings carrying?---He had the AR-15 or M4, whatever, yep.

Was he standing close to you?---Near me. I think we were sort of separated a little bit.

He was part of the cordon idea. Is that right?---Correct.

And where was Officer Kirstenfeldt at that time?---I can't recall.

He had a beanbag shotgun. Is that right?---Whether he was carrying it at the time, I can't recall, but I know they had one in the vehicle.

After House 577, you spoke to Constable Rolfe. Is that right?---I think we had a brief discussion, yeah.

Do you recall that, as you relayed in your first interview that we just heard, you and Officer Hawkings spoke to a member of the community?---At the back of the house?

Yes?---I don't know. I don't think I spoke to him, no.

This is what you say in your interview, just to remind you. It might have been before you went in. I believe you say:

“Zach Rolfe” – this is page three, “Jimmy Kirstenfeldt went to the front, James Kirstenfeldt, and Adam Donaldson, the dog handler, he came around to the side of the house. When we arrive at the back of the place, there was a fellow out the back, and he was sort of raking the dirt. Sort of cleaning up his yard a bit. And one of the other colleagues approached him and asked him if he knew where Kumanjaji Walker was, and if anyone was in the house.”

Was that before Constable Rolfe went in?---Yes.

And that person outside in the community said:

“Nah, he's not here. There's no one else in the house. But then my colleague mentioned, because I was in the clear audible sort of distance, so I could hear what he was saying. And my colleague mentioned, 'I can see someone run across, there's someone in the house, don't lie to us mate'.”

Who was it that said “Don't lie to us mate”?---I'm not too sure. This was a few years ago, so it's hard for me to recall sorry.

You then say: “So James Kirstenfeldt and Zach, they went into the house and search, and just found a young 12 year old kid there.”?---Yep.

So you – one of your colleagues had an AR-15, correct?---Correct.

And if I ask you to accept that another colleague, Officer James – Kirstenfeldt had a bean bag rifle that he carried in the community, correct? Can I ask you to accept that from me?---Okay, sure.

And one of your colleagues approaches a member of the community and says: “Have you seen Kumanjayi? Don’t lie to us mate.” It’s not exactly being less confronting for members of the public, can I suggest to you, that that approach was adopted, by officers in the community, including yourself?---Yeah, definitely. Definitely, yeah.

It’s certainly not a way – a good way to gain community assistance for your task is it?---No, it’s not necessarily to go about it, no.

You can understand, can’t you, why a member of the community in Yuendumu, who’s asked – who is with colleagues carrying an AR-15, might not want to tell them whether or not a 19 year old boy’s inside the house, do you agree?---That would be one of the reasons.

They may well be frightened about what might happen to that young fellow?---Potentially.

After House 577 was cleared by Constable Rolfe, you and Senior Constable Hawkings jumped in the car, and followed the other two officers to the red house, correct?---Correct.

I think I suggested to you that Officer Kirstenfeldt had a bean bag, I’m being informed that he left the bean bag shotgun in the car, at one point. Senior Constable Hawkings was standing with the AR-15, correct?---He had that, yep.

And you saw him, didn’t you?---I did.

And other members of the community obviously saw him standing with the AR-15 too, didn’t they?---They did, yes.

I’m going to ask that this footage be shown. It’s footage of the approach to the second House 511.

DVD PLAYED

DR DWYER: Bec, you can pause that there.

Constable, I asked you earlier about your seeing for the community’s – from the community’s perspective, seeing an IRT member, carrying an AR-15, is likely to be confronting. Do you accept that?---Sure.

That police don't normally walk around Aboriginal communities carrying an AR-15, do they?---They do not.

They don't walk around any communities in Australia normally, carrying an AR-15, do they they?---They do not, not that I'm aware, no.

And do you accept that for a non-police officer, that weaponry is very confronting?---Correct.

And Ms Snape actually says to you at the time, "I'm just figuring out why you have a gun. Why he's got a gun. He's like, got it aimed to shoot someone." And you tell her he's not aiming to shoot it at anyone. You accept, don't you, that it was confronting for her, in the community, to see a police officer carrying a long arm weapon, while she's there with her children?---Potentially, yeah.

Well she told you it was, didn't she, when she said "Trying to work out why he's got a gun, and it looks like he's aiming to shoot" - - - ?---Well she's was confronting with it, so she was questioning, yeah.

And you said, "We don't have a holster for that one, so we have to carry it." And then you added, "So probably – so someone probably shouldn't run at police with an axe hey." You've reflected on that comment in the years since you made it?---Correct.

What do you think now of the fact that you said that – of what you said?---Well the whole thing, I was just basically stating facts, but the last comment, on hindsight, was probably not required. Definitely.

I'm going to suggest to you, that that comment was sarcastic, do you agree with that?---Maybe a level of it, potentially, yeah.

I'm going to suggest to you that it was unprofessional. Do you accept that?---I'd just say, it was, you know, probably uncalled for.

It was inappropriate for a police officer to use that comment, or to make that comment to a member of the community, do you agree?---Sure.

Well I'll read to you what Commander Proctor said in his overview statement, when he was an officer assisting her Honour in this investigation. He said:

"That comment was entirely inappropriate, and suggested a retaliatory policing response to the events that occurred on the preceding Wednesday 6 November."

Can you appreciate what Commander Proctor was saying there?---Yes.

That to a member of the community, who knew about what had happened on 6 November, it might look like police were there to retaliate for that?---Definitely.

Is that what you meant? Is that what you meant to convey to Ms Snape?---Yeah, basically meaning that if – if the community act in a certain way, then we would – extra police would come, or what have you, so.

But what she actually said was it looks like someone was there to shoot someone. It looks like that gun was aimed to shoot someone. And you said, “We don’t have a holster for that one, so we have to carry it. So someone probably shouldn’t run at police with an axe hey.” Can you understand, from her perspective as a member of the community, standing there with her children, that she might think that police were there to exact some revenge for what happened on 6 November?---Potentially she could - - -

No, that’s not what you meant. That’s not what you meant by it, is it?---No.

But it’s a good reason why you have to be particularly professional in those circumstances?---Definitely.

And you should have shown more empathy to a member of the community who was asking you why a long arm was being carried. Do you agree with that?---Sure, yeah.

And I take it, Constable, that you regret having said that to Ms Snape?---Yeah, definitely.

Is there anything else you want to say in your own words, rather than me put it to you, now?---You know, if I saw her, I’d apologise for saying that, and you know probable be a little bit scary I suppose for her children, and things like that, so yeah.

In relation to House 511, there was no specific plan, was there, as to what would happen when you entered that house?---No.

You’ve given evidence about this previously of course, when you were interviewed by police. And on 13 November, at page 43, for starters. You explain:

"There was an elderly sort of gentleman, maybe - maybe mid-40s - maybe 50s, sitting an old like old bed with a mattress sort of thing. There as a lady with a little child running around there. There was two children maybe looking at the body-worn, there might have been two children, from memory it was only one."

Constable, I am going through this because I am not going to show that footage again because it is upsetting for members of the community, you would appreciate that. You then say;

"There was someone who went into the back room but it was a glimpse and I didn't get a good look at them."

I am going to paus there. Can I suggest even if you had got a good look at the person who went in there, you didn't have any photograph or knowledge of that person to compare them with did you?---No, only the brief footage from the axe incident only.

Yes. And you say:

"Obviously it was out the front anyway but inside that's different, that's all I can recall that I saw there."

You are then asked;

"Okay, I might go back one. Just in relation to the division to break up the - and this is to break up the IRT team - do you generally break up?"

And you say:

"Like we're a two-man team to - - -"

THE CORONER: No, that's part of the question.

DR DWYER: Thank you, your Honour.

The question is:

"Do you generally break up, like for a two man team to inspect a house or do you normally stay together?"

And your answer is:

"You would usually stay two people at a time. You would never go into a house by yourself, so if they were going to do an entry they would go at least two together."

And then officer Woods says:

"Considering that it' possibly a high-risk target?" And you say "Yep."

"Is that still the case where two members?"

And you say:

"Considering we only had four plus Donnie" - that's the dog handler - "you wouldn't all four go in there because who is going to man how many other exit doors is there to the house? There might be three or, you know, you're not going to leave Donnie out there himself. He's got a dog. You'd at least want a couple of people because if you try and grab him what's he going to do with the dog?"

I will just stop there. Whose idea was it to go into House 511?---I think it was just both - both mine and Zac's after he spoke to the community member and then we went in to engage who the person was.

And who was the first person in the door?---Me.

And where was officer Kirstenfeldt at that time?---I think I left him over - he was between the blue house and the red House 511, that's where Zach and him were at the time and then Zach sort of followed me over to the front of the house.

So, when you entered the house did you know actually where Constable Kirstenfeldt was?---Well after I was i the house I didn't now where he was, no.

Before you went to the house? Could you see him? Did you have a perception of where he was?---When I've turned around to walk back to the front of the house I hadn't looked back to where he was since that time.

So you didn't know exactly where he was in relation to creating any cover for you?
---No.

And what about officer Hawkings, where was he when you went to the house?---I believe he was over to the left side of the house.

How far away was he from you at that time roughly?---I'm not too sure, maybe 15 metres.

I take it there was no discussion between yourself and Constable Rolfe as to any role that officer Hawkings or Kirstenfeldt would lay?---No.

Where was officer Donaldson jus before you entered House 511?---he was on the outside of the house, next to his car. His dog was still in the - in the vehicles. There was a lot of other community dogs and staff so he didn't want to let his dog out at that time.

And how far away was he from House 511 do you think?---I'm only guessing, maybe 20 metres.

I take it from your answer there is no discussion with him as to any role that he might play, if any, in entering House 511?---No.

And there was no planning, we understand, as to what type of arrest would be affected of any person inside the house?---No.

This is what you say at page 44, you finished talking about the question, finished talking about the dog, you said;

"Because if you try and grab him what's he going to do with the dog - the dog will bite him. You might not want him to bite him while he's trying to arrest someone so it's very difficult to run a situation like that with the numbers?
---Yeah. If you wanted to do it properly, if I was saying, you know, if I wanted to do this then I'd have four members on the outside cordon."

"If you wanted to do it properly" - do you mean by that the arrest of Kumanjayi?
---Correct. Or of anyone - if you knew they were in the house - of anyone, yeah, you would need more numbers than four and a dog handler.

There was no urgency in terms of arresting Kumanjayi immediately at home, was there?---No.

Why not try to do it properly?---Because - well, it's - it's up to management to release that many people to assist and often they won't approve that many members.

So what you meant by "If you wanted to do it properly then I'd have four members on the outside of the cordon". You'd have four members of the IRT on the outside and another officer going inside for example - another two officers going inside, is that right?---Ideally you would have four on the outside, running a cordon and then potentially another four members to go into the house.

Have you ever had that situation in an IRT arrest?---No.

Have you ever had that situation with a general duties arrest when you've had the opportunity to plan it?---Not to that - not to that level of scale, no.

In this case, the resourcing you did have available to you was at least an extra local member in Felix Alefaio, correct?---Correct.

And it would have been better, wouldn't it, to have a plan as to an arrest that encompassed Felix Alefaio as well as your other members?---Definitely. Local knowledge is always best.

You were there to affect an arrest if Kumanjayi was inside the house, correct?
---Correct.

Did you suspect that he was inside the house?---When I saw the young fellow I suspected it could be him but I hadn't formed that belief at that stage.

Did you see where that young fellow came from?---Within the house, or - ?

No, to enter the house? Where had he come from to enter the house?---No, he was already in the house. So as I walked past the front door I could see in and I could see him walk past. There's a one room when you enter the house then there's another doorway and there's some sort of breezeway behind that.

You were there to affect an arrest, as you've told us. Did you think that permissions was required before you entered the house?---Yes.

Did you obtain permission from anybody before you entered the house?---I think Zach did.

Did you know that at the time, or did you know that subsequently?---I heard him.

What did you hear him say?---"Is it all right if we go into the house?" Yeah.

Is your understanding that you could obtain permission to enter that house from anybody in the community in Yuendumu?---From a person who lives there or any person that lives there, provided they're of the age of consent.

Did Zach ever find - ever obtain information as to who lived there?---I'm not too sure.

Did you anticipate that he would - in order to get permission, he would have a conversation to establish first who lived there and whether that person had the ability to give permission to enter?---Correct.

You left that bit to him, is that right?---Yeah, I thought - I thought that was the person that lived there because he spoke to her and then we were good to go.

That's what you gathered from overhearing that conversation, is that right?
---Correct.

In your very first interview at 3:05 am, page 4, this is what you say about that;

"I was speaking to a couple out the front. I went to the red house, Tony walked around the back just in case someone was going to run out the back of the place. I was speaking to a couple out the front."

And then there's a quote;

"Do you know, um, if there is anyone else in the house? Do you know - do you know if Kumanjayi Walker is here?' and they're like, 'Well, I don't know if anyone is in the house because we're not - we're not the owners, they're over there at that funeral thing'. 'Okay'".

So at that time you knew, didn't you, that the people that were immediately outside the house were not the owners?---Initially *I was speaking to the fellow on the bed near the doorway and the only interaction I had with - I can't remember her name, sorry, but the lady who mentioned about the gun.

Ms (inaudible)?---Yeah, so that was the person that Zach spoke to because I was speaking to the gentleman out the front near the door but I didn't speak to that lady who Zach spoke to, Ms Snape.

You then go on in that interview to say;

"I waited with one of my other colleagues, Zach to come over and I said, 'I had a look in the house and I seen someone go to the back and shut the door' so I said 'I knew there was someone in the house.' I didn't now who it was."

I'll just stop you there, is your evidence that you saw him - someone - already in the house at that time or that someone entered the house?---No, someone was already in the house.

You said to Zach, "There's someone else in the house, mate, do you want to come in with me and we'll search it." So, he said, 'Yep, no worries.' So, me and Zach went into the house. I walked in and there's this fella there -", and then you confront Kumanjaya. Just reflecting on this and giving us your best and honest answer to it, did you actually turn your mind at the time to whether or not you needed permission to enter the house or was your focus just on seeing who was inside and effecting the arrest?---It's hard to take myself back to that, you know, particular time, you know, and what I was thinking. You can reflect on the whole thing as a whole and you know, the fella over there at 577 said, you know, he was saying that he was in one of those two houses over there, so we went over there. So, you know, there was a high level of suspicion that he was in one of those houses, but you know, to form that belief, I guess it's hard to say a hundred percent whether I was focused on one hundred percent him or you know, definitely we were looking for him, so our focus one hundred percent was – probably was that, but yeah.

Your focus probably one hundred percent was on looking for and finding Kumanjaya, rather than obtaining permission to enter the house. Is that fair?---At that time, yep.

When you first went into the house and you saw a young fella inside, you didn't know that it was Kumanjaya. Is that right?---Initially, no.

Her Honour has seen the video, so we understand from the body-worn video from just the conversations that were had with Kumanjaya at that time, at some point, Kumanjaya says to Zach some – I withdraw that. Zach says to Kumanjaya something like, "Stand over here mate, against the wall." Do you recall that?---Yes.

He asked him to take his hat off?---Yes.

And then he says something like, "You're not in trouble, just take your hat off. No worries, put your hands behind your back." You heard him say that?---Yes.

At no time prior to that had there been any explanation to Kumanjaya as to why police were there. Do you agree?---No, I don't – we didn't explain to him, no.

You understand that now, that this was a young fella who had FASD, poor impulse control.

THE CORONER: Maybe had FASD.

DR DWYER: Perhaps had FASD, poor impulse control, had a history of lashing out if he was cornered. Do you understand that?---Yes.

If you'd known that at the time, you wouldn't have approached Kumanjaya like that in the house, would you?---If I knew it was him?

Yes?---Correct.

And if you knew he had that history that he possibly had FASD and had poor impulse control, you wouldn't think it was a good idea to corner him against the – one of the walls with you and Officer Rolfe in close proximity without any indication as to why you were there or attempt to engage him?---I think like from an understanding, if we are arresting somebody and they know we're coming to arrest them, like if they know, then we know that they're going to try and run away nine times out of 10. So, if we're still determining who they are, like ideally, you would do it that way. You would communicate with them and do it calmly, that sort of thing. But generally, if you're trying to arrest somebody, you're not going to say, hey, you know, we're looking for you, you know, you've done this. We want to arrest you. We're not going to explain it like that. We have to be – you know, 'cause – because we need to – we don't want them to run away and escape and something like that. We need to arrest them so that we can put them before the court and deal with them that way. But I understand what you're saying.

At the time Kumanjaya had his back to the wall and was asked to stand there and take his hat off?---Yeah.

How far away from him do you think you were?---Pretty close, within half a metre, maybe.

Within half a metre? And what about Constable Rolfe?---Same – or he had his phone comparing the photograph next to him, so he was probably a little bit closer than me.

So, what we see in this – in the footage, I appreciate it's difficult because I'm not showing it to you and I can do if you want to?---That's all right.

Is that Constable Rolfe used his left hand to hold up a phone next to Kumanjaya's face?---Yeah, that's right.

And he was comparing the photo that he had of Kumanjaya?---Correct.

Did you know at that time where that photo came from?---Don't know where the photo was, no.

In effect, Constable Rolfe's taken – using - one of his hands is taken up with holding the phone. Correct?---Correct.

That limits some options he's got in terms of responding to Kumanjaya at short notice, doesn't it?---Definitely.

And you're within half a metre, that limits the options you've got in terms of responding, doesn't it, because you've in such close proximity?---Definitely.

And so, the beginning of your first interview, what you said is, "We knew, obviously", this is before you left Alice Springs, "We knew, obviously, that he would try and get away by whatever means possible, whether he's grabbing a weapon or whatever." But the situation that you and Constable Rolfe had put yourself in, in that House 511, was to limit the options you had to respond if he grabbed a weapon, because you're in close quarters and Constable Rolfe's holding up a phone near his face. Do you agree with that?---It works both ways. You're seeing it from one perspective, but we're seeing it from another perspective. If you give someone distance, then they can look around the room to try and grab something from the ground or move to a kitchen to grab a weapon, where if you don't – if you limit their movement, then they've only got what they have on them.

You didn't know what Kumanjaya had on him, did you?---No, I did not.

But given what you knew from 6 November, it was entirely plausible that he might have tried to grab a weapon if he saw or heard police in the community?---Definitely.

And before you entered House 511, you entered another House 577. You were visible to members of the public. Correct?---Yes.

You might have been visible to Kumanjaya if he was in there – if he was standing outside House 511?---Yes.

You might have been visible to him if he was looking through a window and saw you. Correct?---Definitely.

Did it occur to you before you entered House 511 that if Kumanjaya had seen officers outside that house with a longarm, he might be frightened of them when they came in the house?---Definitely.

And you can – reflecting on it – did you reflect on that at the time?---No.

Looking back on it now, you can see, can't you, why a young man who, if he has poor impulse control and a history of confrontation with the police and he's seen police outside carrying a longarm weapon, might well be frightened when they come in and tell him to put his hands behind his back against a wall?---He might be, yes.

Your Honour, might we break there? I appreciate we've had a number of breaks, but I just wanted to refresh my memory from - - -

THE CORONER: Yes. We will break for the lunch break and return at just after 2 o'clock.

ADJOURNED

RESUMED

ADRIAN EBERL:

THE CORONER: Please be seated.

DR DWYER: Thanks, officer. Constable Eberl, before the break I asked you whether or not you wanted to have a look again at that body-worn video footage but you have seen it many times and you are comfortable with it without having watched (inaudible)?---Correct.

One of the things that you have explained previously in giving evidence is that in an attempt to contain Kumanjaya when you were in the house standing beside Constable Rolfe after he struggled, you - you did this manoeuvre, there was a distraction strike to Kumanjaya's face, is that right?---Yes.

So by a, "distraction strike" you mean an actual - a strike to Kumanjaya's face using your fist, is that right?---Correct.

And by "distraction" what is the aim there?---Your brain can't think of two things at once, so if you - if you are triggered by a particular pain or anything you are then thinking about that and not about resisting for that split second.

And then straight after that you moved in behind Kumanjaya is that right?---Not straight away, because he was still against the wall.

Okay. I will just read to you, rather than try and summarise it I will just read to you what you say in your first interview, and this is at page 5 - page 4:

"Zach goes, 'No worries' and put his phone in his pocket and he goes 'Put your hands behind your back' and that's when the guy started to struggle, so we grabbed him and then he started to really kick off, so I've, um, distraction struck to the side of his face - his left side. I think I hit him here so he didn't - so he would relinquish, stop fighting so I could get his arm. Then he sort of came out from the wall at this stage and Zach looked like he'd lost his arms and so the guy sort of stated slipping out, sort of back this way so I sort of come around and then tried to grab him from behind. That way he can't fight from behind because you're not designed to fight backwards."

And at this stage you say:

"I heard a couple of loud bangs like boom - boom".

In relation to the manoeuvre that you performed when you went behind Kumanjaya to try to grab him from behind, that's something that you've been taught, is that right? ---It's my - the - what I use is a modified technique but part of that is the technique that the police do teach, yes.

What is the technique that the police teach - or taught prior to November 2019 first?
---It's - it's a - it's a seat belt hold - they call it a "seat belt' like running across - across here, it's like the seat belt.

Running across your body, is that right?---Yeah, like from over the shoulder, across - across here.

And you said you modified your technique. Is that because you've had particular training elsewhere?---Potentially, it could've been. I was just staying in control of his arm, to stay away from the weapon when I saw it.

All right, well I just want to go back a step because at this stage I think when you moved in behind Kumanjayi you hadn't seen any weapon, had you?---No.

And you moved in behind him because you understood - well, this is the evidence you give - that people are not designed to fight backwards, correct?---Correct.

So your thinking there was that if you come in behind Kumanjayi that would be an effective way for you to gain control over him?---Correct.

And at the time of the incident you were, I think, 184 centimetres tall?---Yes.

95 kilograms?---Yes.

In top condition, correct? Physical condition?---I wasn't broken, yes.

I don't want you to be falsely modest about it. You've always trained and kept fit, is that right?---Yes.

You did then, in November 2019?---Correct.

And you do still, don't you?---Correct.

And Kumanjayi you now know, don't you, was 175 centimetres?---Correct.

Significantly shorter than you. 10 centimetres shorter than you. If I ask you to accept that he was at that time, 72 kilograms, 20 kilograms or so lighter than you?---Okay.

You would have noticed, wouldn't you, that he was a considerably smaller frame than you?---Correct.

So it was reasonable for you to think, that getting in behind him, would have been an effective way for you to maintain control?---Correct.

You've had specific training, above and beyond your police training, in martial arts, is that right?---Correct.

Can you tell her Honour about that?---I've had a little bit of training within Brazilian jiu-jitsu, some Aikido and some – some trapping within Wing Chun techniques. And also I've had training, for about a decade, in Aboriginal martial art called Ramindjeri Martial Arts.

I'm sure that everybody will be interested to hear about that specific training you've had in the Aboriginal martial art that you've just told us about. That was in South Australia, is that right?---Correct.

I'm going to come back to that, constable, but in relation to your training in martial arts. Has that involved training in both the physical aspect of martial arts, and as well as the mental aspect?---There is, yeah, there is a mental aspect.

And have you found that of use whenever you have needed to tactically engage with people?---Yeah it helps keep you calm and you know.

And do the – do the forms of physical training, in terms of restraint, for example, also assist you?---It does, yep.

Do they – does it give you, do you think, a particular skill set in being able to restrain a – potential offenders, or members of the public, without having to resort to other means, that involve, for example, a baton or spray?---I think it helps you understand how the body functions a bit more. So you understand how to control someone a bit better. But you still – you still have to stay within the confines of what's instructed within the department. For – you know, so then you're not stepping out the guidelines and potentially be liable, and things like that.

All right. But the manoeuvre that you just told us about, a moving in behind Kumanjayi to effect that restraint, that was broadly within your - - - ?---Correct.

It certainly wasn't outside of the guidelines of what was available to you, is that right?---That's correct.

And drawing then on your second interview at page 51, when you explain this again. You say

“A struggle has ensued. Kumanjayi sort of came off the wall, facing further to the house. And then he pulled back, as if to go to the exit backwards. And Zach sort of disappeared to my left against the wall, where we had maybe initially had him”, meaning Kumanjayi. And you say, “From that point, I moved in behind Kumanjayi. I put my arm around him. And that's where 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, because it was fairly dark. And then I told him to stop fighting, and that sort of stuff. To calm down. And that's when I heard the first bang, when I was sort of behind him.”

So at the time that you heard the first bang, you were directly behind Kumanjayi is that right?---Correct.

You said in your interview, "Then I looked down at my weapon, is my weapon going off, because you know that sort of – I was disorientated, focussing on dealing with him", meaning Kumanjayi?---Correct.

And you say

"Then somehow we've – I pulled him down to the ground, and that's when looking at the body-worn, it looks at that point when I sort of – on the other side, that's when a couple more bangs had gone off, yeah. But initially in my memory, it was all a bit blurred. And that's when I seen him, as I pulled him down."

And then you say, "The question was about how many bangs did you hear, where were you at the time." And Officer Wood says, "No that's all good." You go on to explain that manoeuvre about standing behind Kumanjayi. And you were asked this question, at page 52. "Do you believe that you full control of Kumanjayi at that stage? Like full control, before you heard those bangs go off?" And you say

"Full control, now I – his arms – one of his arms, I think I had his left arm, and then I hooked it over the top, just to hold him. I said 'stop fighting', but I could see armed with weapon. So I didn't have control of that. So no, so not until did we have him stabilised on the ground, and I got the weapon out, then we had full control. But he wasn't go anywhere, if that's your question, but yeah full control, no not necessarily."

That's correct evidence?---Yeah, that's correct.

Page 56, you were asked this question by Officer Wood. "I guess inside the house, when everything's a struggle, and everything's unfolding, did you feel physically threatened by Kumanjayi?" And you say, "Do you mean physically, was I frightened? Like from him? I wasn't – I wasn't frightened trying to restrain him, to arrest him. No, not at all." Is that right?---Correct.

And you were asked by Officer Wood, "Were you at any stage concerned for your welfare or your partner's welfare, safety?" And you said

"I think once I saw there was something sharp in his hand I was concerned about how I'm going to sort of take him down, to make sure that I'm not going to get stabbed or whatever. But yeah, like I wasn't thinking – I sort of was thinking about the moment. How am I going to get him down, and that sort of stuff, which happened so fast. I wasn't sort of thinking about, oh I better move him over here, because I didn't even know where my colleague was."

Over the page

"He wasn't in my vision. I was vision behind him, looking at his weapon, or taking down, yelling at him, to stop fighting. I don't know, I was just – to me, it

was more like, just like any other sort of arrest. Like get him down, handcuff him, and then take him away as a prisoner. I didn't – like I didn't even know that he was shot."

That's correct, isn't it?---Yeah.

You didn't consider getting your weapon out, at any time, during the course of that arrest did you?---No.

And what I've just read to you, and what you said in your first interview, expresses your surprise, when you realised that Kumanjaya had been shot?---Definitely.

In your first interview you express it like this. "I've heard a couple of loud bangs, like boom, boom, like that's what – and I was like bloody hell, like had my gun off or what." Because it didn't sound to you like you would expect a gunshot?---No that's right, yeah.

And you didn't – it didn't occur to you that Constable Rolfe had fired in those circumstances?---Not at that point.

At the time the first shot was fired, you were standing directly behind Kumanjaya, correct?---Correct.

Do you know now where you were when the second and third shots were fired?---Yep, sort of laying sort of down next to him - - -

Like laying next to Kumanjaya on the ground?---Yeah.

Directly – or on top of him or beside him?---Kind of in the same position, but he was sort of like – I was sort of off to the side more, but still holding his arm (inaudible).

Did it occur to you that your colleague would fire a weapon in those close circumstances, firstly when you were standing directly behind Kumanjaya?---No.

And then second and third time, when you were directly behind him on the ground?---No, not from my perception, no.

Do you think, looking back on it – or I withdraw that. Is it fair to say that you were centimetres away from Kumanjaya at the time the shots were fired?---Yeah well I – I was touching him, so, yep.

Do you think that, in those circumstances, there was a real risk that you could have been shot?---Potentially, yep.

Officer, I'm not going to ask you many questions about the scene, back at the police station. I understand that you have detailed this on many occasions prior, that the handcuffs were placed on Kumanjaya. He was placed in the back of the police

wagon. You got him to the station. There were significant efforts to try and assist Kumanjayi in rendering first aid, correct?---Correct.

And you, yourself, we can hear on the video, were trying to comfort Kumanjayi. You can appreciate from his family's perspective, they will understand that you were – you were offering Kumanjayi some words of comfort. We can hear them in the video, is that right?---Yes.

You can understand from their perspective, how distressing it must be that they weren't in there, being able to offer him comfort themselves?---Yeah, one hundred percent.

I just want to ask you some questions about a conversation that you had with one of your colleagues, when you were still in Yuendumu. And you were asked about this in your very first interview. You say, at page 12, you were asked this question by Officer Parbs(?).

“Beside this statement you've given me now, have you had any conversations with any person about what's occurred in regards to providing a complete version of events to them?”

Now it's 3 am on the morning just after this tragedy has occurred. You say:

“I had a bit of a chat to one of the other members, but it was more for my own sanity. A bit of a debrief about my own thoughts, and you know, well what I was doing, and that sort of stuff. Because I only had a one-person view, yeah.”

By one person view, do you mean your own view, or somebody else's?---No my view, yeah.

And you go on to say, “He mentioned what he'd seen, and I was saying, oh well, I didn't even see that, because he was there too.” And you explain that that's Tony Hawkings?---Correct.

I'm not being critical of you about that conversation, but just to the best of your memory, can you tell her Honour what you and Tony Hawkings said to each other before you left Yuendumu?---Basically, it was just – I explained my account, what I was seeing and what I was dealing with and he explained his account, which was totally different from his perspective. So, yeah, that's all. We just basically ran through, you know, around the house and what was going on and yeah.

What did Officer Hawkings say to you was his perspective at the time?---I think he mentioned he was outside on his cordon point and then he heard what he thought was a gunshot. He ran into the doorway and that's when he saw Zach coming over the top and firing two more shots. Yep, and that was basically what he saw from his perspective, because at that point, I only realised – I thought there was only two shots from on my original statement and then it was not until afterwards.

Not until after you watched the body-worn video. Is that right?---Yeah, that's correct, yeah.

When you were interviewed at 3 am, had you been on duty until that time?---I had.

And so you weren't relieved at any point up until that point. Is that right?---No, that's correct.

When you were interviewed, you were still there in Yuendumu?---Correct.

What did you do after that?---After the interview?

Yes?---I think for – to just after 4 o'clock, I was still sort of walking around the station before I went back – went and had a bit of a rest. I think when I was speaking to the detectives, that's when I realised I actually had Constable Rolfe's body-worn which I mentioned to him and they took it from me after that. And then yeah, until about 8 o'clock in the morning and then got up again and - - -

And you've explained in your interview, you accidentally swapped videos – body-worn videos with Constable Rolfe. Is that right?---Yeah, it must have been during the altercation and they fell on the floor and then that's when they got sort of swapped over there.

In any event, your body-worn video was handed over, is that right – I'll withdraw that. You provided the body-worn video of Constable Rolfe to - - -?---Yeah, I think it was Detective Senior Constable Greg Keane, I believe.

On that evening – I withdraw that. In the early hours of the morning of the 10th, did you notice any injury on yourself?---That period – not at that stage, no.

At any time – I withdraw that. Can you recall when Constable Rolfe left the community of Yuendumu?---I think it was the – when we first went to pick up those extra officers, the first trip to the airstrip there.

That was prior to midnight. Is that right?---Correct.

Did you have any conversation with Constable Rolfe before he left as to what had occurred?---There might have been a conversation – I'm just trying to remember.

Sure?---There might have been a bit of a conversation, but it was more about his injury, about that, yeah not about the whole thing, because there was a lot going on, so – and I was patrolling around the back with Tony in the – and I'm not too sure what – where Zach was. I think he was inside the police station.

When did you get back to Alice Springs?---The afternoon the next day on the 10th, I believe, later afternoon.

When you came in later afternoon, did you – sorry, that was a Sunday. Is that correct?---I think so.

Okay. If I can ask you to accept that that was the Sunday that you flew back. Kumanjayi passed away on the Saturday evening. You were interviewed in the early hours of the morning on Sunday, the 10th?---Yes.

You then came back into Alice Springs in that afternoon - - -?---Yes.

- - - of the 10th?---Yes.

Did you go home or into the station, or what did you do?---Yeah, so from the airstrip, we just come back to the station, then I handed over my clothes, because I still had my clothes from the incident. So, that was seized for evidence and that sort of stuff. Then we had a quick chat to union reps, I think, just about, you know, welfare, make sure, you know, you're okay and that sort of stuff. And then basically, I went home from there.

Did you have any – you're talking about "we" there, did you have any further – was that you and Officer Hawkings?---Yeah. And it might have been someone else, I can't recall who was there, but I remember Tony was there.

And was there any further discussion with Tony about what had happened with Kumanjayi's death?---We were exhausted, I think.

Okay?---Yep.

So, you then went home, tried to get some sleep. Is that right?---Yeah.

How did you feel at that time?---Emotional, yep, stressed.

The next day was Monday?---Yep.

Was – did you go to work on that day, the 11th?---No, I don't think so. It's a bit of a blur really.

Do you recall now, did you have any contact with Constable Rolfe on the afternoon or evening of Sunday the 10th?---I think he was in the station, but I can't recall having any conversation with him.

You recall seeing him in the station. Is that right?---It's blurred, that memory because people have mentioned it and I don't know whether I did or whether that was them telling me that he was there and, you know, so.

Okay?---Yep.

On Monday, the 11th, was there a debrief planned as to what had occurred?---That's right, yep.

And where was it initially going to take place?---I think at the police station, but we had an IRT office across the road from the police station. So, originally, we were going to go there. It got changed though.

Who was originally organising it?---I'm don't know, I think it might have been Shane McCormack.

And is that just to the best of your memory, or can - - -?---That's just to the best of my memory.

All right. And what was the purpose of that initial IRT - - -?---Well, I thought it was a bit of a debrief, a bit of a chat about how things were and how are you going and that sort of stuff.

Were you told who was going to go then?---No, just the IRT members from memory.

And did you – so, you assumed that Constable Rolfe would be there. Is that right?---Yeah.

And at any time after you were interviewed at 3 am, did any senior officer ever direct you not to speak about the incident with any of your colleagues?---No.

Did the debrief take place at the IRT office?---No, it did not.

Was there any sort of debrief on that day?---Well, what I thought was going to be a debrief wasn't really a debrief.

What happened?---It was changed, I think, to Zach's house. We went around for a barbecue and had a bit of a chat, well just about general things. I tried to mention – talk about the incident, but Shane McCormack said, "No, no, don't talk about it", so.

I'll just stop you there. So, there was an informal – or there was a barbecue at Zach's house, wasn't there?---Correct.

You were invited to come. Had you ever been to Zach's place at - - -?---No.

- - - any time prior?---No.

Who invited you to go there?---I had a text – I can't remember if it was a text message or a call. I can't even remember who contacted me, whether it was Tony or Shane.

What – Tony Hawkings or Shane McCormack?---Correct.

Is that right? Did you go to Zach's place with anybody?---No, I drove there myself.

What time did you get there, do you think?---It was sort of like late afternoon, maybe

around 5:00 maybe. I'm only guessing.

When you arrived, what other police were there?---Obviously Zach was there. I think Paul Henderson was there. Who else, I don't know, I think Tony was there, Anthony Hawkings. And I don't know whether they were there at the time, there were some other police that were there.

Do you remember Mitch Hanson being there?---It's a vague memory. He probably would have been there.

Why do you say that?---Because he was part of the IRT team and yep.

What about Breanna Bonney, was she there?---She was there, yep.

And is she a member of the IRT?---No.

What about Kirstenfeldt, was he there?---I can't recall, but I could assume he probably would be, but yeah.

And that's because he was a member of the IRT?---Yep.

And he'd been out there on the night?---Yep.

And you assumed that everybody who had been out there, the four members of the IRT, were invited to that barbecue?---Correct.

Because it was part of the debrief. Is that right?---Yep.

Was Donaldson there?---I can't even recall whether he was there or not.

Do you know an Officer Evan Kelly?---Yeah, he was there.

Evan was there, okay?---Yep.

And you said earlier, I think, you started to mention the incident?---Yeah, that's right.

What did you say?---I think I was talking about in the room where I was and stuff like that and then talking about the actual sort of crux in, you know, where the actual shooting happened and I was talking about positions and that's when Shane's like, "No, no, don't talk about it."

Okay. When you started to talk about it where you were, the crux of it, the positions, was Zach there?---I believe they all were sitting in there.

And which part of the house were you in at that time?---Just in the lounge room, just as you go in through the front door.

Now, at the – was Brooke(?) – was (inaudible) there for that conversation?---I can't

recall that.

In her recorded statement, if I can just ask you to take this from me, I'm not suggesting you've heard it, she says this:

"There was a discussion about use of force, the training that we all receive in terms of use of force, other similar incident that have happened in the past and we were all kind of having that conversation under the premise that Zach, at the fact of it, had adhered to our training, the edged weapon - gun, and we all thought he'd be back at work within the week."

Do you remember any conversation firstly about the use of force training?---No.

Do you remember any conversation about edged weapons?---(No audible response).

Do you remember any conversation about the fact that really, Zach - what Zach had done was justified?---No, the only thing I can remember there was some talk about Zach thought it would be over in no time and we were sort of - and the suggestion that "No, it's going to be a bit long-winded, it's not going to be over in a short space of time so that's all - - -

What did Zach say about it?---I've only got a rough recollection. I don't have specific words.

Sure. What is the best - to the best of your recollection what did he say?---Basically what I just said, that's basically what I can sort of recall the gist of it, so.

That it would be over pretty quick?---Yeah.

And you thought, "No, no, it's going to take some time"?---Yes.

You thought, didn't you, that it needed to be properly investigated?---Correct.

And that there would need to be a full police investigation as to whether or not use of force in that instance was justified?---Definitely, yes, plus that and plus obviously, you know, someone had - had died, so there would be a Coronial and all sorts of things, so yeah.

You knew it was a serious event didn't you?---Definitely, yes.

And you said the night before you'd been emotional?---(No audible response).

What - did you reflect at all, at that time, on the fact that a young man had lost his life?---I think definitely would've - yeah, definitely. We never go to work to, you know, to wish that on anybody, you know.

And in terms of the investigation, you certainly didn't resent the fact that there would be a full investigation as to what had occurred?

Can you please repeat that?---Sure. I will put it a different way. You've been a Northern Territory Police officer since 2015?---Yes.

You've given evidence earlier that you would've respected a written operations order from a commander. You respect the fact that there's a need for a full investigation in circumstances where any use of force is - occurs, don't you?---Definitely, yes.

You would certainly expect a full and thorough investigation when there's a use of force that results in a loss of life?---One hundred percent.

And you would expect that to take some time not to be over in a short period of time, correct?---Correct.

When you were at that barbecue do you recall that a phone call was made to any sergeant?---No.

You've given evidence about a discussion, where you tried to have a discussion and Sergeant McCormack says something and stops it. What did McCormack say at that time, to the best of your memory?---Just I think what I mentioned before, he just said, "No, no, don't talk about it", yeah.

I asked you earlier about your knowledge of protocols. There's a protocol in place that is called "The death in custody and investigation of serious incidents or fatal incident resulting from police contact with the public." Did you know of the existence of that protocol as at November 2019?---No, I did not.

Do you know now that what that protocol requires is that officers be separated after a death in custody?---Yes, I do.

And do you appreciate now that the importance of that is so that their account is not contaminated by another officer either accidentally or deliberately?---Definitely.

And do you also appreciate the significance of that so that the public maintains confidence in the evidence given by police officers?---Yes.

Do you understand that Commander Proctor, when he did his investigation for her Honour as part of the Coronial, is critical of the fact that there was this meeting during a barbecue where officers had the opportunity to discuss things in front of each other?---I wasn't aware of what he mentioned but obviously that would be an issue in his - from his perspective, yes.

Do you accept that now that there has been a breach of that protocol, the Deaths in Custody protocol?---Yes, I understand, yes.

It certainly wasn't your intention to deliberately disobey it was it?---No.

You were never given any direction by somebody more senior to you as to the fact that you should have been separated?---No.

If you had been, would you have gone to that barbecue and discussed matters as to what occurred?---No. I wouldn't. And probably me and Anthony Hawkings wouldn't be patrolling around the rear of the police station together either. So we could've been separated a lot earlier and dealt with, yes.

What do you think - I am grateful for your reflections about that. You're talking about still when you were back at Yuendumu?---Correct.

After the tragic death?---Correct.

You should have been given a clear direction at that stage, shouldn't you, that you be separated from your fellow officers?---Definitely.

Particularly after the first aid had been administered?---Yes, definitely.

After that time you should have been separated so that there was no opportunity for you to inadvertently contaminate each other's evidence?---Correct.

THE CORONER: if that opportunity wasn't available because of the circumstances, another possible protection would be maintaining the body-worn video so that all conversations were recorded and interactions were recorded?

DR DWYER: Do you agree with her Honour's question there?---Yes, that's a good - good point.

A PERSON UNKNOWN: Always a good point, the judge's point.

DR DWYER: I am going to come to, at the end of my questions for you, a number of lessons to be learned from this tragic death but one of them is the importance of educating all officers about that protocol into deaths in custody isn't it?---Definitely, yes.

At the time that you were - just coming back to your experience in police, you jointed the Northern Territory Police Force in 2015?---Correct.

Prior to that where were you working?---With the South Australian Police.

When did you join the South Australian Police?---2012.

And what role did you have in the South Australian Police?---General duties in a bit of a regional locality.

And what brought you to the Northern Territory, Constable?---I had family living up here and they were sort of encouraging me to come up, so.

You joined the Territory force in 2015, you went into general duties initially, is that right?---Correct.

Did you stay in general duties or move around?---I did it for about 12 months, did some relief in one of the communities in 2016, just a short relief and then maybe in 2016 - partway through 2016 - 2017 - I joined the Youth and Community Engagement.

And you told us earlier to the best of your memory you started with the IRT effectively in early 2019?---yes, that's correct.

And since then I know you've had some experience in remote communities, which I will come back to but at the time - November 2019 you had done what you described as "short relief"? I think there was about six weeks remote service in 2017, is that right?---Yes, it must be something like that, yes.

Which community was that?---Finke or Aputula is the local name.

When you started with the IRT the sergeant who was in control of the - or in charge of the IRT was Sergeant Bowers, is that right?---Bauwens, yes.

Bauwens, I beg your pardon, thank you. Had you worked - did you work with him a any time outside of your work at the IRT?---I don't recall, so no.

He certainly wasn't somebody you had much to do with, is that right?
---Correct.

Did he conduct the training sessions for the IRT?---Him and one other officer, yes.

I don't need you to go through the whole training regime, but with the IRT you were trained a little bit more than general duties in specific areas, is that right?---Correct. How often did you meet with your fellow IRT members to do training?---Yes, so once we were qualified, which is over a couple of weeks, then we you know, once every roster period - and I think I mentioned earlier today, if we're available, usually on a Wednesday, which is allocated training day for a particular patrol group for that week, and so you would've jumped on there as long as you were free you can jump on the training and - yes.

Sometimes you weren't free, obviously?---Correct.

In 2019 are you able to estimate how many times you would have done specific training with the IRT prior to November?---I couldn't tell you exactly, you know, I was - we were okay to do a fair few of them because we worked in the youth - engagement we were predominantly permanent nights so we just worked four on, four off from 4 pm to 4 am.

And when you say "we" you are referring to you and officer Hawkings, is that right?

---Correct.

And whenever you - sorry, are you able to say then in terms of your training with the IRT, would it be more than five times you did training with the IRT?---I'm just reflecting, trying to think. It might - might be around that number.

Was there a record kept of any training that was done with the IRT?---I think - I think Sergeant Bauwens kept a record but I don't know how he filed those records of people passing the confine.

We can ask Sergeant - - - ?---Bauwens, yeah.

- - - Bauwens about that. In relation to your training with the IRT, on each occasion was that conducted with Sergeant Bauwens?

THE CORONER: Bauwens.

DR DWYER: Bauwens, sorry?---Yes.

Outside of your work with the IRT, you were based in Alice Springs in November 2019, correct?---Correct.

And part from that six weeks remote stint that you told us about, you were based in Alice Springs, correct?---Correct.

Did you have any perception, over the time that you were in Alice Springs, that the crime rate was increasing, or decreasing, or being – or was it stable?---In 2019?

No. From the time you came into the NT Police in 2015, through to 2019?---I wouldn't be able to remember to tell you that, sorry.

One of the roles of police, in Alice Springs, and throughout the Northern Territory, is to detail people and put them in protective custody, if they're deemed to be – so intoxicated, that they might be at risk to themselves or others. Is that right?---Yeah, basically unable to care for themselves, and yeah.

Is it – did you have any perception that between 2015 to 2019 – I withdraw that. From your time in the NT Police, from 2015 to 2019, did you, from time to time, put people in protective custody?---Yes, many times.

Okay. They hadn't committed any criminal offences, but they were put in protective custody for their own welfare essentially - - - ?---Yes.

- - - is that right? Did you have any perception that between 2015 and 2019, the number of people placed in protective custody was increasing or decreasing, or staying the same?---It was hard, because it fluctuated, you know, through different times of the year. Depending on whether there was events on in Alice Springs, where a lot of people come in. Like it sort of, you know, through those times, you

know, around the show and things like that, then you know, those sorts of things increased a little bit. So it's not really – it's hard to determine without looking at facts and figures, yeah.

When you were in South Australia, working as a police officer between 2012 to 2015, did you have much engagement with Aboriginal people?---Fair bit, yep.

When you came to the Northern Territory, did you have more or less engagement with Aboriginal people?---Generally on a day to day basis, it would be more, yeah.

When you were in South Australia, were you trained in cultural competency?---Yes.

Do you know what I mean by that?---Ye.

Cultural – and did you have that training again in the Northern Territory? Cultural competency?---I can't recall whether I did or I didn't.

You - - -

THE CORONER: Did you have to go through the full training when you swapped from South Australia to NT?---No – no it was a shortened course. So they call it the Accelerated Recruit Program. Which is a bit of a bridging course.

DR DWYER: Where you grew up in – did – where did you grow up Adam, which area?---Couple of different areas, yeah.

You spent time in South Australia growing up, is that right?---Little bit, yes.

You mentioned earlier, Ramindjeri Arts is that right?--- Ramindjeri Martial Arts, yeah.

Martial Arts, who did you learn that form of martial arts from?---From an Elder within a community, yep.

In South Australia, is that right?---Yes, yes.

Where is that community?---It's – it goes from the Murray Mouth, up near Victor Harbour, right down around Kangaroo Island, and along the coast up to the Torrens, yep.

And how was it that you came to have an engagement with an Aboriginal Elder from that community?---Because I moved in next door, and found that he was interested in martial arts. And I had a particular – an old item that I wasn't using any more, that I used to use for martial arts. And though, oh he could use that, since he likes, you know, those sorts of things. And presented it to him, and just gave it to him. And that's when he wasn't going to take it for nothing, and said "Oh, this for knowledge then?" And I'm like, okay, it was a bit of an open book, so yeah.

So what happened after that, in terms of your relationship with that

gentleman?---Well yeah he started – I started training with him. And he started, you know, sharing, not only the martial arts, but part of the spiritual you know, journey with the, you know, the Ramindjeri people. And he eventually taught me a ceremony, and – you know, which was, you know, which he hadn't even taught to his own son, so yeah.

How old were you when you met that fellow?---About 25.

And how long was your relationship with him?---About a decade, before he passed away.

Is – was that a meaningful relationship to you?---Yep.

Can you tell her Honour, because her Honour will be interested, what was that relationship like?---Basically he was – basically he turned into a best friend, you know, like sharing you know common – common interests. And you know, I was really interested in culture. And he taught me many, many great things. And I was – I was glad I was there in his last hours, and helped him out, so that was good. But I don't know if that really sheds a light on – on it, but yeah. Yep, and I knew he had a number of issues when he was growing up, you know with – with the law, and things like that. And I know when I applied to be a police officer, when I was going to apply, I actually asked him what he thought. Because I knew that he'd had some negative run ins, and he gave me – he gave me a blessing to do it, you know, so that was – that was – that was really good, so, yeah.

You were there when he actually passed away?---I was. He was doing martial arts at the time, helping out with a grading, and yeah, he fell down with a heart attack, and we weren't able to revive him, so.

That relationship was really what – one where you were able to be mentored by an Aboriginal man, is that right?---Correct.

And that remains to you, doesn't it, an extremely important relationship?---A hundred percent, yeah.

And you had that relationship before you came to the Northern Territory?---I did.

Is it one that you think has assisted you – that learning, that you got from that Aboriginal man, has it helped you, in your work in the Northern Territory?---A hundred percent, you know, like showing respect to country when you travel, and working in another area. Like which was taught in the old ways, when – when a tribe was – or a community group was going to travel to another community group, they would stop on the border, and they would light a fire to attract the community to ask permission to walk their land. And that's what I do when I go and work somewhere. I ask permission to walk their land. Seek out the Elders of the area, and it shows respect. And they tell you where you can and can't walk. They also explain you know, cultural areas. And they'll also tell you stories and things, so yeah.

So that – learning about the respect that you need to pay to Elders was something that was embedded really, for you, with that relationship with that - - - ?---Correct.

When you came to Alice Springs, did you ever hear any of the officers in Alice Springs express negatives attitudes about Aboriginal people?---No, not – not – not, you know hearing voices or things like – that wouldn't - - -

Excuse me one moment. Sorry constable, did you, yourself, in front of any other officers, I'm not suggesting you did, and I'm not about to show you any text messages to suggest you did either, did you any use any negative expressions about Aboriginal people when you were working? You're aware, aren't you, that her Honour has in evidence, text messages, that were sent to and from Constable Rolfe, that describe Aboriginal people, in deeply offensive ways. You know about that?---Yeah I've heard that, yeah.

The sorts of expressions used, are – include, Constable Rolfe referring to – I withdraw that. I just want to start – I know these are causing distress in the community, so I just want to give a warning that I'm going to refer, just very briefly to some of the things that are said, and apologise.

A PERSON UNKNOWN: Perhaps, your Honour, I think everyone's aware of the general nature, can it be put on that basis as to what (inaudible).

DR DWYER: Well I'm going to use the specific expressions, and just ask if the officer has heard them, if my learned friend has no further objections about it.

Have you ever heard anybody referring to Aboriginal people as coons?---While - - -

In the police station?---No.

Neanderthals?---No.

Grubby fucks?---No.

THE CORONER: It should be in the police station, or by any police officers, at any time?---No way, no.

DR DWYER: You say "No way." What would you do if you heard a fellow police officer refer to Aboriginal people using those expressions?---I'd address it.

How?---Well if they were of the same, similar rank, I would tell him that's not on, not appropriate. And if they were a higher rank, then I would seek a senior person that I – who I come under, and then let them know, so say they can address it.

When that evidence came out, in this inquest, did you come to learn that in fact, there was a sergeant who was involved in Alice Springs police, who was using some

of that language? You are now aware of that?---Yeah, via a text message you mean?

Yes?---Yeah.

Does it shock you to know that?---I was surprised, yeah.

That level of leadership that is required by a sergeant is extremely important, isn't it?---Definitely.

To have a sergeant use terms – use a term like “coon” is disgraceful, isn't it?---It's definitely derogatory, you know, yep.

And there's no place for it in the Northern Territory Police Force, is there?---Not anywhere, to be honest.

I'm nearly finished, Constable. I just want to ask you – finish by asking you two different topics. One is an important one about the lessons that we can learn from the tragic death of Kumanjayi. You're familiar, aren't you, with the Northern Territory Police Force practice and procedures which says that, “The emphasis will always be on avoidance of conflict, where possible, with police in the community”?---Correct.

And you respect that policy?---Yep. So, community means anywhere basically where we work in, not just in remote communities, yep.

And what it says is, “Prior to attendance at incidents, officers should thoroughly analyse all available information and evaluate the full potential of the situation in order to avoid potential confrontation.” You're aware of that? In relation to planning for an arrest, I think this is consistent with the evidence you've given so far, there are a number of options when you're planning. Correct?---Correct.

You might do a cordon and contain, so that you can negotiate with somebody. Correct?---Yeah, so that would be like a hostage-type situation, yep.

But in some circumstances when you're on general duties and effecting an arrest, would there be cause for cordon and contain?---Only – yeah, if you didn't know where he was in a particular area, you would cordon off the area, yep.

In general duties when you're arresting someone, there would certainly be an option to negotiate with them as to arrest?---We always negotiate with people, yeah.

In a community environment, you might spend some more time with people that you know negotiating with them. Is that right?---Yes.

In other circumstances, you might need to use the element of surprise if you're effecting an arrest. Is that right?---By not informing them that – yeah, correct.

But in all circumstances prior to attending, officers should analyse the available

information and plan to avoid a confrontation?---Definitely.

I'm going to suggest to you that these lessons come from the attempted arrest of – or the arrest of Kumanjayi on 9 November, that given the arrest of Kumanjayi was thought to be the primary purpose of 9 November, there should have been more planning for a risk assessment. Do you agree with that in hindsight?---Yeah, more information should have been obtained prior to – yep.

And then that information should have been used to agree on the risk assessment?--
-Yes.

And there should have been a written operations order that we could ensure all members of the IRT had read before they went to House 511 and 577?---Well a plan, yeah. Operations order is usually a lot larger scale, but yeah.

An arrest plan?---Correct.

And each of the members who are going to be engaged in the arrest should have been in agreement as to what the plan was. Do you agree?---Yes, and if it was to change, if there was a plan, that would have to be run by – through the commander or whoever initiated it.

The worst-case scenario in an arrest is where somebody gets killed, either a police officer or a civilian, isn't it?---Yes.

That needs to be avoided at all costs?---Yes.

Correct? In this circumstance, there was – I withdraw that. In this circumstance, in terms of the arrest of Kumanjayi, more thorough planning may have avoided a fatal confrontation. Do you agree with that?---Yes.

This scenario of the planned arrest of Kumanjayi, I'm going to suggest to you might be an important learning scenario to present to members of the police force at a training session?---Yes.

Do you agree with that? You're now working in the – as a trainer. Is that right?---Correct.

Do you agree that you could take this – it could be incorporated in your learning manual for - - -?---Yes.

- - - other officers?---Yep.

I just want to finish on this point, Constable Eberl, before we came in today, we were discussing some issues and I asked you about your time in a remote community since Kumanjayi passed away, after in fact the committal in relation to the charges laid against Constable Rolfe, you went to work in Arlparra. Is that right?---Arlparra, yeah.

Arlparra?---Yep.

Can you tell her Honour about that community?---Yes, the community is approximately 250 kilometres north-east of Alice Springs. It's a little bit different to a lot of remote communities, because although the police station is in the community Arlparra, Arlparra is part of the Utopia Homelands Outstation movement where it's consisted of about 16 different outstations spread out with the different family group sort of living in the little outstations. It also encompasses the community of Ampilatwatja and a couple of other small outstations that are not part of the Utopia Homelands. There's about 1400 people that live there in total when everyone's there. And yeah, that's basically the - - -

Were you the acting sergeant for that period of time?---Remote sergeant is the rank there.

And how long were you there for?---A little bit over two years.

Which community or which outstation were you based at?---Yeah, so the police station is in Arlparra itself, yeah.

How many officers did you have working underneath you at that time?---Well, initially there was only me and one other for about 14 months, and then recently, I suppose within the last bit before I left, there was three of us, including myself.

You mentioned to me outside of the courtroom that you actually presented yourself on two different occasions to members of the community to explain what had happened with the arrest of Kumanjayi?---Yeah, so when – in community, when someone is, you know, being questioned by the community members from something they might have done that, you know, is questionable whether they agree or disagree to it, they would often present in front of the community members in a member with a Elders and they will explain what happened and then the person would go away and then the community would talk about, you know, what's going to happen to that person, whether they get punishment or whatever it might be. So, out of respect to the community, I also did the same thing. So, after the committal hearing was here, obviously, the evidence was out there in the public, so then I presented in front of the community members in Arlparra and I also explained my involvement in the incident at Yuendumu. And then I did that in Arlparra and then left the room, and then all the community members spoke about it and then come in and they still accepted me and you know, they knew that I wasn't the one that had fired the gun and so they were happy to keep me there and you know, that sort of thing. So, I also did that in Ampilatwatja as well in front of the community. And they had some requests in relation to that. They wanted me – because they didn't want this sort of thing to happen anywhere and they didn't want it especially out there, and so they asked if you come to community and you're looking for someone and there was particular Elders that we could speak to that knew most of the people in community and then they would say, you need to go and speak to this family member, that's their parents. And then you would go there and speak to the parents,

if we were looking for an arrest target and then they would present him to us and we'd do it peacefully like that, so – yeah.

And so did that help you in - - -?---Definitely.

- - - performing your role?---Yep.

And were there occasions in the community where there were conflicts between different family groups?---Definitely, yeah.

Did you or any other officers play a role in helping to mediate that?---Yep, definitely. There was an incident there was a bit of a sorry camp and one of the other family members come in there with weapons and you know, disrespectful is very – there was quite a lot of anger within the communities. So, we mediated, because they wanted to obviously go back at them with weapons and things like that. So, we mediated and so they got rid of the weapons and they still, you know, met with one another, had a little bit of an altercation, but it wasn't any severe and they shook hands, hugged and the problem was dealt with in a peaceful – the most peaceful way that we – it could have been.

Was that meaningful work for you to help the communities sort through that conflict?--Definitely, yep.

Final question, do you enjoy your time at Arlparra?---Yep, it was amazing, yep.

Why?---Just the people and you know, you become part of the community, you know. And yeah, I had my kids there and you know, they also went to the local school and they made friends and it's just an eye opener, you know, and just be there to help your family, basically. Because that's what they are, your community; basically they're your extended family. So, yeah, it was good.

THE CORONER: Why did you leave?---Because of my son. He was doing high school and it was a bit hard to be separated, so we moved. Otherwise, we'd still stay out there, it was great.

You also seem to have a very extensive understanding, through your experiences, of Aboriginal culture. We've heard about perhaps even some slightly conflicting evidence about the risk created by what we have heard of as payback, but which we are told is not a cultural concept of payback. Were you concerned for your safety or that something would occur to the members in Yuendumu after the shooting?--- While we were out there in the police station? I mean that – I'm sure that was going through your mind, potentially the community members potentially trying to break into the police station, because they were very angry while we were patrolling out the back. They were throwing rocks and we were ducking down behind things. I mean, we knew they were really angry, so that was – that definitely went through our minds, yeah.

When that went through your mind, that was – am I right that that was more your

understanding that there were some members of the community that were angry as a result of someone being shot?---Definitely.

And you could understand that. You didn't understand that in any terms of any sort of traditional sense of payback?---Okay, so just in general, like I mean, you know, in general, I think someone would be unhappy if, you know, you lost any loved one and that was at the hands of someone else, you would be upset about it.

You could certainly appreciate the community's distress at not knowing what had happened to Kumanjaya after he'd been shot?---Of course.

Your Honour, is that a convenient time to break?

THE CORONER: Yes, afternoon break?

DR DWYER: Yes, thank you, your Honour.

THE CORONER: We'll take the afternoon adjournment.

ADJOURNED

RESUMED

ADRIAN EBERL:

DR DWYER: Constable Eberl, I have almost finished asking you questions. I just wanted to note, at the beginning I read to you a number of records of evidence that you have given previously from the first time at 3:05 am on 10 November, right through to evidence at the committal and the trial involving Zachary Rolfe. You also gave an interview to Alice Springs Police on 11 February 2020, is that right?
---That's correct, yes.

And that transcript is in the brief of evidence, your Honour.

THE CORONER: Thank you, yes.

Mr Boe?

MR BOE: Thank you, your Honour.

THE CORONER: Nice to have you back.

MR BOE: Nice to be back, your Honour.

XXN BY MR BOE

MR BOE: Constable, the evidence that counsel assisting took you through, the terms of your engagement firstly with your mentor in Adelaide and then your time at Aputula. You recall you and I having a conversation about this (inaudible) trial back in February this year?---Correct.

When you sat down after you worked out that I was not a work experience student. Sorry, for the record, I am appearing for the Walker, Lane and Robertson families. What I want to ask you is this. Is it clear that prior to going to Yuendumu on 9 November, you had, other than your very important relationship with your mentor, very little understanding of the cultural issues in Yuendumu?---Yes, I didn't know much about - I've only ever been to that community once but that was only to the airstrip and that was it, so.

And you spoke about having gained some knowledge in Aputula about how the Elders there sought to give you some assistance on how you might not be faced with a similar situation as you encountered in Yuendumu by suggesting things like, "Come and speak to particular Elders in order to find someone you needed to arrest in Aputula?---No, it wasn't in Aputula because that was earlier on, that was in Ampilatwatja which was after the fact, yes.

All of this was after 9 November - this is after the committal that you went to those communities?---No Aputula, I went there before the incident.

I stand corrected, I apologise. I meant the communities in which you learned a bit more about the culture of the communities you were servicing after the committal?
---Yes, so yes, that was Utopia Homelands and that - yeah.

And that's where they gave you some information as to how you might more peacefully conduct an arrest by coming and speaking to Elders and the like?
---Correct.

Alparara (sic), that's right?---Yeah, Alpara, yeah, and Ampilatwatja, yeah.

Thank you. Had you known what you now know from those teachings, would you have approached you duties on 9 November differently?---I think now that I've been - spent a couple of years in community, I think, things definitely would've run a little bit differently, yes.

That's' a bit of an understatement isn't it. You would've taken a lot of different steps?
---Yeah, definitely. But obviously the sergeant of that community probably didn't run it like that either. But I think, we can all learn, I think, from that experience and potentially what the community out at Ampilatwatja has suggested I think is another good tool.

You also, if I may say, said some important things that you observed, you said something along the lines of "Any information as to Kumanjayi would have been very helpful before you embarked upon the arrest attempt at around 7 o'clock" correct?
---Correct.

And you added, "Local knowledge is always best" correct?---Correct.

Yes, and so from the induction - IRT induction course Southern Command document, which is at 336 in the brief, I notice that there is almost nothing in that induction course that deals with approaching a community in a culturally appropriate way. Do you agree with that?---I'm not sure of that document you're referring to but - so I can't comment.

As part of your - your induction in the IRT did not involve any regard for cultural information. Is that fair?---Yes, no, it wasn't - wasn't designed around that, no.

And to be precise, you joined the IRT on 26 November 2018 but you only passed your IRT weapons qualifications in August 2019, is that accurate? I get that from the brief at 732. Do you agree with that generally?---I'm not - no, you - that wouldn't have been like that. Usually - when we applied for the IRT there was an application process then after you had passed then when they did the two week - which was then summer because I remember it being very hot, which probably would've been January/February when we did the two weeks, that's when we had to pass all of our competencies in relation to that, would've been then, not - it's not in the middle of the year in August, no.

In any event, the general issue that I wanted to just ask you a few questions about first, is that the actions you took as being deployed as part of the IRT team did not take into account any cultural sensitivities in Yuendumu as of that time?---No.

Is that fair? Do you agree with that?---Yes.

And that's something, I suspect from what you've said so far, that you regret, is that fair?---Yes.

Now, can I just turn to just some topics covered by Dr Dwyer first, before I get to the three issues I want to cover. In relation to the barbecue, were you on duty at that time?---No.

Was it your understanding that others were not on duty either?---Correct.

So although it started as a proposed debrief, in a formal sense, it ended up being really, just a social occasion where the people involved in the incident were gathering. Is that fair?---Yes, plus others that weren't involved.

Yes, and as to the others that weren't involved, were you - was Bonney there when you arrived?---I can't recall that, no.

How long were you there for?---I know it was late-ish afternoon, whether it was 5 o'clock when I got there. I know it was dark when I left. I don't think it was that late. We didn't - I didn't stay that long, so I can't really say for sure, maybe three hours - maybe.

And was alcohol being consumed?---Yes.

Now, you have been taken to the - if I may say - reasonable point that had you been directed not to discuss, you would not have?---I wouldn't have went there, no.

But, as a police officer you would understand the absolute need for witnesses not to be tainted?---Generally, yes.

In your case, you had given a version prior to the barbecue?---Correct.

And you know that Rolfe had not given a version prior to the barbecue?---Yes.

You didn't need to be told did you, that you shouldn't be talking about your version, in front of Rolfe, surely? You knew you should not be doing that, whether or not you had a direction, is that fair?---Yeah but I wasn't doing it - I wasn't doing it just to - I was doing it more for - from a mental health perspective.

I understand?---Yeah.

And I'm not going to disparage the need to address mental health. But as a police officer, and an investigator, it's - investigation 101 is it not, to not to give a version in

the presence of another person who is likely to give evidence. Is that fair?---Yeah, sure.

And you're the most critical witness in the sense, you were the one in the room, is that correct?---One of them, yes.

So you would accept that without having to be told, you should not have embarked on a narrative of what happened in that room. Is that fair?---On hindsight, sure.

Now you accept, do you not, as a general proposition, that the entire project of this arrest of Kumanjaya Walker was a failure in execution by the IRT team?---In the sense of the loss of life?

Yes?---Yeah, definitely, in that – in that sense.

Yes, and in more than that sense, in the sense that you now know, or your evidence is that you had no knowledge of the arrest plan that had been organised by Sergeant Frost, correct?---Correct.

You had no idea that her plan, as designed, with her local knowledge, was not to arrest that night, but rather to arrest in the morning, correct?---Correct.

With all those other features that Dr Dwyer took you through, on having somebody that recognised Kumanjaya attending with you, correct?---Correct.

And you weren't asked about this, but the use of the knowledge, that he may be - the most safe time to arrest was in the morning, whilst people were still asleep, to have the element of surprise?---Yeah that - - -

Correct?---No that plan is faulty.

What you did was faulty, but the plan was something that you, yourself, did not even know about?---No I know – I know that, yes.

Yes, that's a complete failure of directions and commands, surely you accept that?---Correct.

So the questions that I wish to go through are on issues that may look forward, if you like, as I with respect, see and hear that you're acknowledging things that you have learnt since then. Is that fair?---Yeah.

And one of the matters that interested my clients and – if not others, is the fact that there seemed to be no regard in the arrest attempt by the IRT, for the circumstances surrounding the funeral that was on that day. Do you understand? That is a matter of some concern to them?---Yes, okay.

Now back then, that is, before some of your – the knowledge that you've acquired since then, did you understand that there's a high – issues of respect and disrespect

associated with police interactions in a community, during sorry business. Were you aware of that, as a concept, at all?---Not – not at that time.

You discovered that after the event?---Yes, to some degree, I am in agreeance with you. And other areas, that's not necessarily the case.

Might you explain?---So in – while I was in Utopia Homelands there was a sorry camp. And often we would go there, and present ourselves in – to say sorry to the family, you know, that sort of thing. So – and they respected that. But there was an occasion where there was someone that was acting up within that sorry camp. And disrespecting the people. Where we had – we had to arrest him, to take him away. So –so we had – we have arrested people during a sorry camp. And it was well respected, and appreciated by the community.

But that's information after 9 November, is that correct?---Yeah.

So in so far as any conversation, let alone plan, amongst the IRT, was there any discussion of what the impact of a funeral might have on the timing of the arrest?---No.

And I'm going to have to put something to you, that you might find difficult. At the trial, you were asked certain questions by Mr Strickland, as to whether or not you were aware that there was a funeral going on that day. Your answer was –

This is at 733B at pages 688 to 689. Transcript trial, 688 to689.

You were asked:

“Where you aware that there was a funeral going on that day?---After the fact I was. I had.”

“You mean again? After the fact, after the shooting?---After the incident.”

“You weren't told – you didn't know about what – before you left Yuendumu Station?---I did not.”

“Were you told anything about whether Mr Walker was likely to attend the funeral?---I was not.”

Do you recall that they were the questions that you were asked and the answers that you – do you accept that they were the answers you gave?---I'll accept them, I can't remember though, yeah.

Yes. But that wasn't true was it?---What do you mean?

That you were aware, for example, when you were comforting Kumanjayi, as he was laying down, that you said to him –

The reference is recorded statement number one, page seven.

You were heard on the body-worn video saying “Just relax man. Hey you relax hey. You just relax Arnold. So was it your uncle – uncle’s funeral, or grandfather?” “Grandfather.” “How old was he? How many years”, etcetera. Do you recall saying that to him?---No.

Well you accept it’s on the video, surely?---Yeah.

Yes. So that stands different to your evidence at trial that you didn’t know. Do you accept that?---Yes.

So which is – surely what you said at the trial was not in fact true?---Well I think - - -

Because it’s different to the – I’ll put it another way. I’m not trying to catch you out, or have you prosecuted or anything like that. I’m just trying to understand what you did and did not know. The evidence from the body-worn video suggests to me that you were well aware that he had his grandfather’s funeral that day, correct?---Well I - - -

You wouldn’t have been asking him about it - - - ?---Well I must have at some stage been aware of it, yeah.

And you accept that that’s different from the answers that you gave under oath at the criminal trial?---Must have been.

Any explanation for that? Did you regard – so if you did know about the funeral, and this is not a memory test, I’m proceeding on the evidence that you did know, did you regard that important only in terms of intelligence, as to where he might be that night, as distinct from recognising the need to show some respect, and perhaps defer arrest?---Just thinking, because I can’t recall – recall when – if I did know about the funeral, where that would have been, at what stage that I would have been aware - - -

THE CORONER: Can I just say that we’ve already heard evidence today from the very first recorded statement that was played. It was your evidence that when you were asking about the house, and whether there were – or whether there was someone in there, you said the person answered, “Well I don’t know if anyone’s in the house, because we’re not the owners, they’re over there at that funeral thing.”

MR BOE: Is that page – I was – thank you, your Honour, you’re ahead of me as always, but that’s at page four.

And the precise words were, “Well I don’t know if anyone (inaudible), quote ‘We’re not – we’re not the owners, they’re over there at the funeral thing.’ That’s what they said to you, and recorded on your video. And earlier, if I may say, at page – at page three, in the same statement. You said, in your interview, you saw the funeral gathering near the store. So that sort of stands across the idea that you had

no idea that there was a funeral before the arrest attempt. And indeed you had a sense that you saw things which suggested that there was a funeral gathering near the store. Do you accept that?---Sure.

So – and I say this respectfully, we’ve heard how much you had acquired knowledge about the need to be respectful, and we, with respect, I acknowledge that you have a great sense of humanity with the man that taught you combat, etcetera. But it suggests to me that you did not apply any sensitivity to the notion of something that we’ve heard, is critically important in relation to timing of an arrest. Do you accept that?---Sure.

And do you accept that the person who might be in a slightly better position than you to know all these things would be the officer in charge of that community, Sergeant Frost. Correct?---Correct.

And you would also accept that the other people that would have been of great assistance to the IRT in order to effect an arrest which had the most likelihood of being peaceful would have been the ACPO who worked in the community. Correct?---Are you referring to Derek Williams?

He happens to be the particular ACPO, but generally, an ACPO would be a source of knowledge about the importance of these issues - - -?---Sure.

- - - in relation to the impact on the timing - - -?---Yep.

- - - of the arrest?---Or ALOs, yep.

Yes?---Yep.

But more so ACPOs with the police officers who are working side by side with you. Correct?---I disagree in that sense, because I feel that – community members know that their police officers, where a liaison officer doesn’t hold that – the same level of – you know, doesn’t have the powers of the police, et cetera, so they feel they can engage with them probably better, I think, than an ACPO.

Right?---From my perspective.

Yes, we don’t have to resolve that disagreement - - -?---Yep.

- - - if there is any. The point I’m getting to is this, you arrived at the police station with four members of a team of whom only one of whom you had worked with closely before, that’s Hawkings?---Correct.

The other two, you had no idea who they were other than they were police officers. And you explained to us how you knew of Rolfe?---Yep. Other than the training we had done with the IRT.

So, let’s not even worry about working about whether Sergeant Frost’s version about

the arrest plan as having been distributed is correct or your version that you never saw it, or Constable Rolfe's version that he only took certain pictures of things, let's just leave that to the side for the moment. How can you explain leaving that station without having any idea of how to time your arrest, such as to be culturally appropriate, but more importantly, to have the greatest prospect of a peaceful arrest. How do you explain leaving that station with no enquiry of anyone about the local information that should have been used to plan the arrest?---Sure. So, when – just like when we're doing general duties in Alice Springs, for example, you don't know – you've got some details where someone might be, so you go there trying to find them and you're speaking to people when you arrive there and you sort of gather information on the run, whether you find the person you're looking for there or go to another place. And so, that's – basically, it's the same concept we followed because we weren't working within – as community police, you know, remote community police. So, we don't know anyone there, so we go there in the same way we would within Alice Springs, the same concept as that, you know, engaging see where it takes us, and then go from there.

Well, may I just raise two things about that, you knew when you went there as the IRT, that you were under the direct command of Sergeant Frost, surely you knew that?---Well, she's the officer in charge, so yes.

And when an IRT goes into a remote centre, you are under her authority?---Well - - -

Do you not accept that?--- - - - their authority, yeah, because it's whether he or she, it doesn't matter.

Right, under Sergeant Frost's authority on this occasion?---For that – correct.

And although it's true if you're in Alice, you might do what you just said, but here you had the person who had the greatest likelihood of actually understanding the local issues from which to plan an arrest. Correct?---Correct.

Well, she should be the point of call, shouldn't she? Is there something we should know about when we are to arrest this person. That would be a simple question, wouldn't it? Forget the plan. Forget whatever she had and didn't say and do, you as a person going into that house at 7:15 pm, you had not accessed any information about the local circumstances that affected the timing of the arrest. Is that fair?---Yes.

And that's an absolute abject failing on your part, surely?---If that's what you believe.

Well, I'm asking you to comment on my suggestion?---Sure.

Now, you mentioned that in Alice Springs one of the things you do is go and find out and gather intelligence of where the person might be. Correct?---Sure.

And you would have known at the trial, Mr Rolfe's counsel used this proposition quite a lot, that they were out there to gather intelligence, and if you didn't know where he

was, how could you perform the arrest. Do you understand that line of reasoning?---Mm mm.

And therefore, you needed to find out where he was. Correct?---Correct.

When you did find out where he was most likely to be and you're outside the house, surely that's the time that you've gathered the intelligence and then to formulate a plan, surely? That – you achieved the project of finding intelligence about where he might be. Correct?---Where he might be, that's correct.

Yes. You used the word, you had a "suspicion" - - -?---Yes.

- - - that he was in that house?---Or one of the two houses, the blue one or the red one.

Yes?---Yep.

But once you got to that point, you'd achieved the project of finding where this fellow was. Do you accept that?---Potentially was, yes.

Surely, at that time, was the time to ring Frost, or Sergeant Frost, saying we've located him. Shall we go in and arrest him, surely?---I hadn't confirmed that was him, so how could I say that?

Well, surely, you could say, we think he's in this house. Shall we go get him? Because – you don't want to respond to that question, I don't mind. You're not going to respond?

THE CORONER: Do you want to respond?---I wasn't – who knows what I was thinking at that time, that was a long time ago, so I can't really say.

MR BOE: Well, with respect, please don't deflect. We do want to know what you were thinking and why you didn't do certain things. That's the only way we're going to learn going forward. You're on an instructor's course, you've been agreeing with the notion you might be able to teach people how to better do this, in your position that you came in there in the way you were, you had ascertained and formed a great suspicion that he was in that house. Fair?---Fair.

What would you be now instructing a constable in that situation to do with that information?---Well, you can't act on a suspicion, so you need to determine for sure whether that person's in there. So, you need to ask the people if he's in there.

Now, at that point, you had the disadvantage of not knowing what he looked like. Correct?---Correct.

MR READ: That's not quite right, your Honour. It's true he didn't have photographs. His evidence was encased in the video with (inaudible).

MR BOE: Fair, no fair. I stand corrected, that's fair.

But you didn't see yourself being in a position to identify him by sight, did you?---No.

From what you'd been shown on the video. Is that fair?---That's fair.

Yes. So, wasn't one thing you might have do, knowing that Alefaio was still in the station, you'd just left him five minutes earlier, and say listen, he might be in there. Can you come down and help us identify him. Would that have been one possibility?---Definitely.

And might it also not have been - even less nuanced is simply to ring Sergeant Frost and say, what do you want us to do? You told us to arrest him if we come across him, we've now worked out where he's likely to be, what do you want us to do?---That could have been an option, yeah, definitely.

And we now know that what you would have been likely told is to come back?---Correct.

And attend the arrest in the framework that she had designed with her experience and knowledge in the personnel available to her.

MR READ: Your Honour, that's not quite right. I think it is the evidence that Sergeant Frost said, if you come across him, grab him and bring him back under 137. They were sent there as special police up from Alice Springs to do a task and found him and sought to arrest him.

MR BOE: I don't know if that's an objection or a submission, your Honour.

MR READ: No, well it's just – it's part of the questioning.

THE CORONER: I don't think he can surmise what Sergeant Frost may or may not have done - - -

MR BOE: That's fair.

THE CORONER: - - - if they made a call.

MR BOE: That's fair. One thing I meant to ask you in the narrative as you left Alice Springs, you had no specific communications with Sergeant Furniss, did you? We've been told that he had understood and had communicated to McCormack with the understanding that you would know that there was – that "No arrest was to be attempted that night, and to wait for the next day following the funeral". Will you accept that that's his evidence?---How would I have known, sorry - - -

No, I'm just asking, would you accept that that was his evidence?

THE CORONER: Just accept that?---Okay, so I accept.

MR BOE: Would you accept also, that that's the information that you should have been given by those who were briefing you to go out? You accept that?---Yeah.

I want to raise with you, this is my final topic for you. Your evidence is that you did not access the PROMIS system at all in relation to Kumanjayi Walker? Is that correct? Is there a reason why you didn't do that, knowing that you understood your instructions were to go and arrest this fellow?---I don't know why I didn't.

Do you think you should have?---Usually I would.

Do you think you should have on this occasion?---Sure.

And can you assist us in why you didn't do that on this occasion?---I don't know why.

Nobody was in a hurry were they?---No.

You got there early. You got there four hours earlier than expected, correct?---Well I didn't know what time she was expecting us out there, so I can't really say whether I got there early or not I - - -

Certainly, but you certainly knew that the arrest of Kumanjayi was not an urgent event, is that correct?---Yeah well he wasn't running around with a weapon in community at that time, so yeah.

And as you were about to go find this person, would not a crucial piece of information be what is known about Kumanjayi Walker before you take steps to go arrest him? Is that – you've accepted that before?---Sure.

What I want to raise, probably as an issue for further submissions down the track, is that some improvement on the PROMIS system, accepting that you didn't access it on this occasions. One of the things about the PROMIS system, as I understand it, is that it accumulates information in a chronological way. Is that fair?---Yes.

So you might have an initial arrest alert. And then there might be some information logged in by somebody, then it's adding sequentially, further information, correct? Do you think it may be useful if the system for information about an arrestee, was a bit, if you like, like a – like a Tinder like dating APP, where you can information that you need to know about that person, and you can look at how its modified and changed in time. So at a point in time, namely 9 November, there would be a – two or three pages, which gave you the essential information that we've been talking about, you understand?

THE CORONER: I'm not going to ask you if you're familiar with a Tinder like APP, so - - -

MR BOE: Sorry, I – you're – you're aware of the concept of a dating APP?---The concept, yes, but I - - -

I'm not suggesting that you've used one at all. I – you know the idea is that information about that person, can be updated, correct?---On the – on the PROMIS system?

No?---On the dating APP?

Yes - - - ?---Okay.

- - - like somebody (inaudible) profile picture, right?---I don't use them, so I don't know.

Have you ever seen one?---I've seen it, yeah.

Okay, well you know what I'm talking about. There's a picture of a person sometimes?---Yes.

Maybe a dated picture, correct?---Okay.

There'll be information about who they are, their age, etcetera?---Okay.

I've introduced a light heartedness, I'll stop now, but what I - - -

THE CORONER: I understand most of the pictures are data, but I haven't used them.

MR BOE: I'm going to stop, your Honour. I'm going to stop on that analogy for now.

The point I'm trying to make is this. Rather than having to roll through sequential information, that various people are putting up, some of which – which may in fact be inaccurate, it's better to have an up to date document, that sets out the information, of the kind that Dr Dwyer was putting to you, of what you ought to have known?---Yes.

His age, possible FASD, cognitive impairment, hearing impairment. You said earlier, they're all matters which were vital to formulating the best way to arrest this young man?---Definitely.

Right. And my suggestion to you is, and wonder whether you agree, that it would be useful to have an arrest profile, which was up to date, at the time a person, seeking to go and arrest somebody, can access. For example, Kumanjayi's profile would have changed from 29 October, when he absconded from CAAAPU, to 6 November on the axe incident, for example?---Yes.

So he's – the information needed to be known about him, changed significantly on 6 November, when information of that video, correct?---Yeah.

It would have been useful would you not – or would it not be, to not just see a video of that act, but the information from the police officers involved in that incident, to hear what they thought of that incident. Would that be fair? I'll use - - - ?---I – yes, but then wouldn't that – I agree with that, it definitely – it could help you, definitely.

Because you would contextualised what is captured on the video, which may not always fairly capture all that occurred in the incident, is that fair?---Correct.

And we now know a lot more about that, because Lanyon Smith and Chris Hand have in fact told us what they felt and thought at the time, and what they reported to Sergeant Frost, okay? For example, that they never felt that he was going to use the axe, but rather he used it in order to get past them and run away, and that he'd thrown the axe away. Right, so that ameliorates some – some aspect of the seriousness of the actions. Would you agree with that?---No.

Okay. You did not want to know how the police officers viewed Kumanjayi after the axe incident, in taking into account how to arrest him?---That – that's important, sure, because I understand, you know, bush policing, and the community, and the engagement and things, but if someone has presented with an axe, that's a risk that they're putting themselves into that you shouldn't really be doing that, yeah.

And is it fair to say that your focus on what you should do, in your arrest, was informed by what you saw in the video?---In that particular circumstance?

On that day, on the ninth?---Yes.

You'd seen it at least times, being shown by Rolfe, this video of the axe incident, fair? You saw that three times?---Well I don't know about three times, but yep, okay.

You saw it multiple times?---I saw two at once.

So you saw two at once, on more than one occasion?---Can't recall.

All right, okay. But you used that to provide the primary information of how to arrest this young man, is that fair?---Not how to arrest him, no. But information obtained from him that he had potential to be put in a high risk situation, yeah.

Would you agree that in so far as an arrest profile, for a member of the Yuendumu Community, it would be very useful, if not necessary, to have some information about the cultural issues that would be encountered in attempting an arrest at Yuendumu?---Definitely, yeah.

You would find it useful to work out the timing of the arrest?---Yes.

And you would find it useful, knowing how you might contact the ACPO that worked in the community, to see if they could assist, is that fair?---Yes.

One of the pieces of information that had been accumulated in this inquest is that on several occasions, when Kumanjaya was being arrested, whether for cognitive reasons, or hearing reasons, or any other reasons, it sometimes took a person that knew him, up to 40 minutes to explain to him what was going to happen, in order for him to peacefully give him up. Had you heard that before?---No.

Surely that's an important piece of information isn't it, of the arrest – history of the arresting?---Definitely.

You would think that that's critical information that should be available for anybody embarking upon an arrest attempt on somebody in the community?---Definitely.

You agree? Do you think it would be useful, that you are required as a police officer, to in fact ascertain in the current system, in access the PROMIS system, to make sure they know who they're going to arrest, and it's a requirement, rather than a choice?---You saying to put that in practise though it – they make it a requirement?

Yes?---Okay, yeah.

It's a bad idea?---No it's not a bad idea.

In a case like this, I'm not going to survey all the issues here on this question, but one of the matters that Dr Dwyer was able to get from you that there was actually no line of command in that IRT, as you left on the 7.07?---Not on that particular day, no.

And that's an absolute dangerous framework isn't it, for police to be going into the community with no line of command or team leader as to what to do. Is that fair? ---Yes.

You didn't take your AR-15 from the station or from the car into the community, is that correct?---I did but that was after the fact.

Yes, certainly. When you left to go look for Kumanjaya, you made the decision not to take your AR-15?---Correct.

And we've heard why one might not do that in the community. I don't want to touch that. You saw that another person in your team had an AR-15?---Yes.

Correct? Did that not concern you that for the very reasons why you didn't take one that somebody else in your team in fact had one?---No.

Any conversation about that?---No. I think the police around better to have it and not need it than need it and not have it. It's always been - - -

Why did you not follow that policy?---Because he had one so I didn't need one.

Is that an afterthought or was that a thought you had at the time?---That's a common - common thought like - a thought process.

Did you have that thought at that time?---I don't know - that was three years ago.

Sorry, there was one matter I did want to take you to. I don't want to get into the anthropological conversation about what payback is but just on some of the answers that you gave when counsel assisting her Honour was asking you. I want to read to you from page 59 of the interview on 13 November. You are asked this question by Wood. Question,

"We might do that after?---Yeah." "Why was a crime scene not established at the house?"

Your answer was this:

"For safety reasons we needed to get out there because - um - it's - you can only see how things would have unfolded. I know being - what community members are like. If we were there rendering first aid, whether they would have attacked us there while we were trying but if he would've passed away there in the house then they would have wanted payback then and there."

Do you recall saying that?---No, I don't recall saying that but obviously I did.

Do you accept that you did say that?---Yes.

It doesn't seem to stand with what you just spoke about just before the break, does it?---In relation to?

Payback?---Well, when you're talking about payback, yes, so in relation to a general sense of vengeance, it's a similar concept. If you were to - you know, lose someone close to you and it was the police or whoever had done that, if they were rendering first aid you could appreciate potentially you'd be angry about what's happened, but if they passed away then you know, how your emotions would be affected, whether you'd be distraught - anger - all sorts of things could come over you, not just as, you know, part of the Warlpiri people but also as anyone, in any community.

When you say "any community" you mean any non-Indigenous community as well? ---Correct.

So you're not - you weren't - when you were using the word "payback" in that answer were you referring to the natural human desire for revenge? Is that what you were talking about?---Yes, but I also have family who are Warlpiri. I understand from their perspective about their payback concepts as well, so I understand both.

Where have you understood the Warlpiri understanding of what you call payback? ---Well, I've been out to Willowra for that - for a they were trying to seek payback for a family of someone that was - that lost their life here in Alice Springs and so that

concept of payback I understand they wanted to seek payback, you know, like spearing in the leg, that's as payback for what had happened and anyone involved, so there's mediation goes on in between and - yep.

Okay, I'll just finish with this question. Would you accept that from a general proposition, there's a great need for there to be a greater understanding of customary matters such as that before you assume that your understanding is, in fact, correct. You've said some things about payback then with which, with respect, doesn't accord with my understanding of the notion?---Yep.

Even with the limited study I've had of it, okay. Do you accept that? Before you use it as a premise for a policing decision or as a force, use it as a premise. There'd have to be greater understanding of having payback explained to non-Indigenous people instead of working on the interpretation as picked up on the job, as it were? ---I think it can only help.

Well, sometimes it's the little knowledge is dangerous. Would you accept that if you'd misinterpreted what the notion of payback is - to use your word - that's a dangerous piece of information if you want to use that in terms of policing decisions? ---It could be.

Thank you, our Honour, I have no further questions.

THE CORONER: Yes, thank you Mr Boe.

Mr Mullins?

MR MULLINS: Thank you, your Honour.

XXN BY MR MULLINS:

MR MULLINS: I think I will be 20 minutes.

Constable Eberl - is that pronunciation correct?---Yes.

My name is Mullins. I appear on behalf of the Brown family. I am going to raise an issue that some members of the Brown family might find distressing. I put up that first and I just tell people that - who might be watching on the live screen.

As Kumanjayi Walker lay dying in the police station on the evening of 9 November 2019 you sat next to him and he said to you, "Help me". And a second time he said to you, "Help me", that's right?---(No audible response).

Have you ever sat with a dying teenage boy before?---No.

You have a son yourself, you volunteered?---I have a son, yes.

So you do have some understanding of what the loss of a son might be for a father?

---Yes, I have intimate understanding actually.

And you held his hand - that is you held Kumanjayi's hand?---Correct.

You stroked his hair? That's right. You just have to answer?---Yes. Sorry.

It doesn't have to be yes or no but you have to answer. And you think that he got some comfort from that?---Well, I don't know what he was thinking at the time but I was offering what I thought, you know, would be comforting, yes.

And you didn't have to do that?---No.

Did it ever occur to you at the time that irrespective of what he had done or what had been alleged against him, that it would have been good if one of his family was there with him in his final moments?---Definitely.

And did you ever think to raise that with other people within the police station that "Maybe we should try to get in contact with some family who might be outside to come and join him inside"?---Not at the time, no.

Did you think or ever contemplate bringing a person or suggesting that a person be brought in from outside the police station - inside the police station, during the course of the evening?---No.

And is the reason you didn't contemplate that because you were scared yourself? ---Well, potentially we didn't want to escalate anything and if you bring a thought process - like I wasn't making the decisions as to - that was Sergeant Frost - as to what was going on but probably the concept behind not bringing someone in because if - if they then become aggressive or angry about what's happening and then you're going to have to deal with that situation and, you know, it's all about protecting the community as much as possible and not putting anyone in harm's way, or - yep.

But to bring one or two people in is unlikely to have caused problems within the police station itself - given that almost every person in the police station was armed with a weapon - except for the nurses?---I don't think whether someone is armed with a weapon or not, when they're emotionally compromised has any bearing on how they want to react in that circumstance, from my experience.

You said earlier in the evidence that you and Constable Hawkings had a similar philosophy of policing. Can you just briefly describe that philosophy?---Yeah, so I'm relating to the Youth and Community Engagement around being firm but fair. So a lot of the kids, you know, roaming the streets, we're engaging them in a positive sense. You know, kicking the footy with them, having running races, what have you. But then there's also a line in the sand where if they cross that, then we sort of - we have to, you know, this is not okay. And so we'd address it, you know in a - in a fair way, but a firm way as well, in the sense of that's not - you're breaking the law or

something, and then we'd deal with it appropriately. Like obviously take them home, or what have you, yeah - - -

And part of that is dealing with people with respect?---Of course.

And that's always been part of your philosophy of policing is treating people with respect?---Yes.

When you watched the body-worn camera video of the axe incident. You recollect that took about three second? Three or four seconds, the whole incident, from start to finish?---Yes.

That's right?---Yes.

And you understood that before that incident, on 6 November 2019, Kumanjayi Walker was wanted for the breach of a suspended sentence?---I wasn't aware, but after – afterwards I was, yes.

And if you had been sent out in Alice Springs to pick up the person who was wanted for the breach of a suspended sentence, it's pretty low level offence isn't it?---Depends on what the suspended sentence is for, but - - -

Well it - - - ?---It's just a general, arrest them, and take them before the court, and then, yep.

But it's pretty low level in the scheme of arrests?---What do you – what do you mean by low level? Can you define that – what you mean by that.

In the sense that the person's not wanted for murder, or he's not wanted for armed robbery. He's wanted for a fairly low level offence?---Yep.

Now that three seconds of the axe incident that you watched changed Kumanjayi to a, potentially, a very dangerous offender, in your view?---Potentially.

That's right?---Yes.

So when the group of four in the IRT rode into the community in the vehicle, armed with the guns that you had, to arrest him, you were looking for a potentially very dangerous offender?---Correct.

That's right? And you've described already the assault rifles that were in the vehicle?---Correct.

Was only one bean bag shotgun, is that right?---Yeah, it's just a general shotgun, but it can be utilised for – with a bean bag round, that goes in there. So any shotgun, 12 gauge is able to utilise the bean bag round.

But all four of you had your Glocks?---Yes.

And so – you said in one of your interviews, that the IRT were often used in hostage type situations?---Yeah that'd be from a cordon – cordon point of view, yeah.

Now you – you'd been to Yuendumu once before, is that right?---Yeah, just to the airstrip.

So you realised that that was a people's home?---Of – yeah, of course.

It was a community. Did you know anything about the history of the Warlpiri people? Did I hear you say that you had family who are Warlpiri?---Yeah.

Did you know the history of the Warlpiri people?---Not out that way, no.

Did you know about the Coniston Station mascara?---No.

Did you have any idea of how the people within the Warlpiri Community might feel about guns – sorry, the Warlpiri Community or the Yuendumu Community, might feel about guns?---No.

I'm going to suggest to you that when you went and spoke to Sergeant Frost, that she gave you an informal briefing, consistent with the plan that you've seen on the screen here today?---I don't recall any.

In any case, as the sun set, on 9 November, you headed out with the other IRT members into the community. And you've told the inquest already, that you stopped first at house number 577, and you spoke to the occupants there. That's right?---Yes.

Can you explain this. When you're arresting Kumanjayi did you think he might have a firearm?---Who? Kumanjayi?

Kumanjayi Walker, yes?---That he might have a firearm?

Yes?---No.

No, okay. Sorry, I'll just say this again. You just have to answer audibly – orally, because it's recorded. So to shake your head, yes, I'll have to keep asking you –so you understand?---Sure.

All right. So you didn't think he might have a firearm. So why was it that you needed, or anybody needed, an AR-15 assault rifle?---So just because someone has a – doesn't have a firearm, that doesn't mean – the justification for use of any firearm that we, as police, is not necessarily based on whether someone's armed with a firearm or not.

So why did you need an AR-15 assault rifle?---So with a Glock pistol, so most – most shootings in relation to an engagement up to about four metres, so yeah. So with a

Glock pistol, the accuracy deteriorates very quickly, once the range exceeds that. Where an assault rifle, in the sense of – is more accurate over a longer – longer distance. So for example, if – if Kumanjaji, let's – let's just say, was to run out at one of the police with an edged weapon, and that officer might be stumbling, he might fall over, trying to get his Glock out or something like that, that other officer with the assault rifle, may be engage to Kumanjaji, like hypothetical, or anybody, that's charging at that police officer, to preserve his life.

So the A15 assault rifle was for the purposes of taking Kumanjaji down from a distance?---Well not just – not just Kumanjaji, but anyone potentially, yeah.

Well you weren't – there was no one else was there, that was out in the community that was going to cause you a problem. It was Kumanjaji. And you had the AR-15 assault rifle ready at any point in time, to take him down from a distance? That's it?---Correct.

And it's – and what about the – what about the bean bag shotgun, what was that for?---So that's for a less lethal option. So it's to gain subject control via pain compliance. That's what it's used for. So it gives you a greater range than say the Taser, for example.

When you're in normal uniform duties, and you go out to a house to arrest a person, as you described to Mr Boe a few moments ago, do you ordinarily take an AR-15 assault rifle, to protect against the circumstances that you've described?---Now?

Yes?---No the concept around the use of that weapon has changed.

When you were working on uniform duties in Alice Springs, and you went out to arrest somebody, just in ordinary uniform duties, would somebody take an AR-15 assault rifle? Sorry, AR-15 assault rifle?---Like now or back then?

No, no, back then?---No. Not generally, no, that's not the case.

So even though what you were doing here was effectively uniform duties, and you're tasked to go and arrest a person in these circumstances, the four of you felt it was needed, to have the assault rifle the entire time, on show?---I can't answer for – for Anthony Hawkings, but like I said before, that was part of the IRT kit that we - - -

Well, and do you accept that – I think you accepted when you were answering questions from Counsel Assisting, that that would be frightening to people in the community?---Potentially.

Is – is that actually deliberate, because it's used as a persuasion tool?---I can't answer that, I'm sorry.

Well, you were part of a group of four, who went out into the community, with an assault rifle, that was brandished whilst almost every - - -

A PERSON UNKNOWN: There's no evidence that it was brandished, your Honour.

MR MULLINS: Well, it's a verb, your Honour, and I think it's – and we've seen the video footage of the – Constable Hawkings holding it, but I'll use another term.

It was carried - - -

A PERSON UNKNOWN: Yes.

MR MULLINS: - - - the entire time, openly and visibly to almost every person who would have observed Constable Hawkings. Was that designed to persuade people to comply? Not - - - ?---Don't know.

Now you then went to Houses 581 and 511, and you've already answered some questions about that to counsel assisting. We've seen Ms Snape, with the child on her hip. And the little toddler also running in and out of the screen. And am I right to say that the toddler followed you a little bit down the – as you were walking?---Yes.

And I think you've conceded that it was inappropriate that you said what you said to Ms Snape about the – a person shouldn't run a police with an axe or something?---Correct.

And was it the case though that that was also another attempt to persuade the people in the area, including that woman at that point in time, to cooperate with police?---I think I used the term that – I think I said before that I said that in reference that, if people are going to run at police then extra police are going to come in that set of circumstances. That – I think that's what I was referring to.

Yes?---Yep.

And so, what you were searching for was an attempt to achieve compliance, that is, you were trying to persuade that person to comply with your direction to provide information. That's what it's all about?---No.

And I suggest to you, that's what your language was all about?---No, that's not correct.

And I suggest to you, that's what the firearms were all about, was attempting to persuade people to comply with your direction.

MR READ: Your Honour, his earlier evidence was that, in effect, that is was a precaution and he gave the expression that it's better to have the AR-15 and not need it than to need it and not have it. That was his early evidence. It's been suggested that he's done it for the purpose, bringing down Mr Walker and that was not his evidence earlier.

THE CORONER: Sure, but I'm going to allow the cross-examination, Mr Read.

MR READ: As your Honour pleases.

MR MULLINS: Just for clarity, your Honour.

I'm not suggesting to you that that was your evidence before, what I'm suggesting – I'm putting a proposition because I'm going to address on it in due course. Now, the events happened in House 511. I'm not going to go through those. But they also took about three seconds, didn't they?---Something like that, yep.

And as you walk the perimeter of House 511, you had no concerns about your safety, did you, before that event happened?---No.

But the moment that event happened, after those three seconds and those three shots, everything changed, didn't it?---Definitely.

You heard the wailing outside. That's right?---Yes.

You heard the screaming of the women and the children who were outside the house?---Yes.

That's right? We can hear it on the video footage. We don't need to play it again. And it goes – it's loud and it's invasive. That's right?---Yes.

Now, your obligation at the crime scene was to do at least three things. The first was to secure the crime scene. That's true?---Establish a crime scene - - -

Yes?--- - - - is the first thing, yes.

And you didn't do that?---No.

The second thing was to call 000 to bring first aid to the person who had been injured. That's right?---It would be, yep.

You didn't do it. There wasn't much point, because there was no – Northern Territory Health had withdrawn their people, but anyway, you didn't do that. The third thing that you needed to do was to stabilise and do the best you could for the person who had been severely wounded?---Yes.

And you didn't do that either?---How so?

Well, you didn't stabilise him. You dragged him back to the vehicle and put him in the back of the police vehicle. That's right?---It wasn't a safe environment, yes.

And handcuffed him. When you safe "safe environment", safe environment for Kumanjaya Walker or safe environment for the IRT?---Safe environment for everybody, including the community.

You see, the reason you didn't do your duty was because you were now scared, weren't you?---It's against our - - -

MR READ: And he hasn't accepted that he didn't do his duty, your Honour.

MR MULLINS: First of all, do you - - -

MR READ: It's most unfair in those circumstances.

THE CORONER: Sure, to roll it up in that way, Mr Mullins.

MR MULLINS: Well, you didn't secure the crime scene. That's right?

THE CORONER: We've been through that.

MR MULLINS: Yes, so I've got that concession.

You didn't secure the crime scene?---No, I did not.

All right. So, that one thing you didn't do because you were scared?---I was concerned for the safety of the community, as our primary role is to protect life.

Did you think the community was going to effect payback, and that's using your words from your interview on 13 November, against anybody other than the four IRT members?---If we stayed there?

Yes, if you stayed there?---I think that's a – like I said before, you don't want to put yourself in undue risk to potentially escalate a situation. So, we want to minimise risk and so we moved away, so potentially mitigate those risks of an escalation.

Yes, that's risk of danger to you?---And to the community.

Well, the only danger to the community is if you responded to somebody putting you in danger?---Correct.

That's right. So, if somebody tried to assault you and you shot another person, that's the danger you're talking about in respect of the community?---I'm sure they had firearms in the community as well for hunting, et cetera. So, it can – you don't want to put yourselves in any of that.

Did a single person touch you?---No.

Did a single person try to touch you?---No.

I know a dog bit you?---Other than Kumanjayi.

I know a dog bit you, but no one in the community who you thought were posing a threat to you either touched you or moved to touch you?

DR DWYER: I object. I don't think his evidence is that the people in the community were posing a threat to him, to be fair, your Honour. There's evidence that they moved out quickly from the situation for various reasons, but not that the community was posing a threat, in fairness to the community.

MR MULLINS: I'm not suggesting the community were posing a threat, I'm putting the actual reverse proposition that no one in the community posed a threat to you before you got in the vehicle, did they?---No, not before we got in the vehicle, no.

You took Kumanjayi back to the police station. That's right?---Correct.

You assisted to provide CPR to the best you could, although your involvement wasn't substantial, was it, in providing the CPR?---No.

No?---No.

There were other trained military people who had that expertise that you didn't?---Correct.

You are aware that people outside the station were throwing rocks and they were angry. That's right?---Yes.

And they were crying?---I think they would have been probably, yes.

Now, at one point in time, a convoy of police vehicles drove from the police station to the airport. That's right?---Correct.

And you were the driver of one of those vehicles?---No, I was not.

Were you a passenger?---I was.

Do you know what the arrangement was – I'll withdraw that. Did you understand that an ambulance was going to be part of that convoy?---No.

Now, in the days that followed, you said to my learned friend, Mr Boe, that – I think your words were "in hindsight" you realised you probably shouldn't have been talking to other people who had been at the scene in the days that followed. That right?---Yes.

It's not a question of hindsight, you knew at the time you shouldn't have been talking to them, didn't you?---No.

In your first interview at 3 o'clock in the morning on 10 November, you observed to is it Sergeant Powell, that Tony – who's Tony, Hawkings, isn't it?---Correct.

That he had taken Rolfe's shirt and put it in an exhibit bag. That's right?---Yes.

And he had his weapons taken off him; that's Rolfe. That's right?---Yes.

You understand that the evidence-gathering process had started as early as the night of 9 November?---Yes.

And are you saying that you didn't know that it was inappropriate for you to speak to other people who were engaged in the event in an informal way in the days that followed before they were interviewed?---That didn't cross my mind, no.

Right. Now, you told counsel assisting that you learnt from a friend about the importance of respect, of speaking to Elders before you came onto country and so on in dealing with Indigenous people. Is that right?---Yep.

And that was before – correct me if I'm wrong, that was before 9 November that you'd had those learnings?---Yes.

That's right? I suggest to you that you didn't apply any of that on 9 November?---No, I did not.

You treated Sergeant Frost and the instructions that she gave you with disrespect, didn't you?---No, I did not.

I suggest to you that when you spoke to – you had no regard, I should say, you had no regard for the fact that there was a funeral on that day?---I don't know. I can't recall whether I regarded that or didn't regard that.

I suggest to you that you accept that the comments to Elizabeth Snape were entirely inappropriate?---Yes, that's what my evidence suggested.

I suggest to you that your entry to House 577 was done without seeking the appropriate permission?---I never went into House 577.

But you were present as part of the team that did?---Well, Zach went in there, I'm not too sure what approval or what he did to gain entry in there.

I suggest that your entry to the House 511 was also without appropriate approval? ---Well, I thought that Zach had approval and we went in together. That was - that was where my basis was formed, yes.

And I suggest to you that the talk about your appreciation of the respect that needed to be shown to Indigenous people was not on show on the evening of 9 November 2019, do you accept that?---Sure.

Nothing further, thank you, your Honour.

THE CORONER: I note the time. I think we have made - or you might have made some arrangements to stay a little bit longer tomorrow than had otherwise planned.

Thanks for making those arrangements or making yourself available. We will adjourn until 9.30 tomorrow.

WITNESS WITHDREW

ADJOURNED