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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 27 OCTOBER 2022

(Continued from 26/10/2022)

Transcribed by:  
EPIQ

THE CORONER: Sergeant King.

MR COLERIDGE: Your Honour, I recall Sergeant King.

MEACHAM KING:

THE CORONER: And you're on the same promise to tell the truth?---Yes, your Honour. Good morning.

THE CORONER: Mr Edwardson.

MR EDWARDSON: Thank you, your Honour.

XXN BY MR EDWARDSON:

MR EDWARDSON: Sergeant King, before I move on to the topic which we were discussing just before court rose yesterday, I just want to return, again briefly, if I could turn to what I'll call a combination of the hypothetical situation that was put by counsel assisting, that is, TRG being deployed and so on. But really, with the same factual matrix that underpinned the shooting on the day of 9 November 2019. You would understand that?---Yes.

Now, I just want to clear up a little bit of ambiguity, as I see it at least, in your evidence about the difference between an active search on the one hand and intelligence-gathering on the other. When you were asked questions by counsel assisting - - -

At page 2517, your Honour.

- - - you said this, or the question was put. You used the word "intelligence-gathering". "If you were, you know, going at some point to arrest an offender and you wanted to do a little bit of intelligence-gathering, what would that involve?" And you said, "Well, for starter, we would look at the alert, obviously, and a map at the station. Every police station normally has a map of the community where the houses are - sorry, the roads. The roads to the houses, or where the road is to the clinic, the road to the police station, the road to the airstrip, just to get some situational awareness of where everything is. So, I assume your evidence there at that point is simply using a map as a reference point to understand the lay of the land?---Correct.

The area over which you might intelligence-gather?---Correct.

The area over which you might move through the community, trying to get information about the whereabouts of the person who is the target of apprehension? ---Yes, correct.

You went on to say - - -

THE CORONER: But he also said that maybe they were just staying in the safe

station and that would be all the intelligence-gathering that would do.

MR EDWARDSON: Your Honour, can I just finish the balance of his evidence in question and then I'll discuss it in a moment.

THE CORONER: Sure.

MR EDWARDSON: You continued in that answer to say,

“Then, if they could nominate houses where these people are going to be, then we would look out and how we could drive in and we could drive out. The last thing you want to do is drive into a cul-de-sac or to an area, then a confrontation occurs and we haven't got an egress route to get out of the area. So, we're looking at all of that. Then of course, we're looking at the houses themselves, where's the front door, where's the back door? Are there dogs there? How many people in the house? This list can go on, depending on the circumstances.”

I just want to develop that answer, if I may. When you were asked that question and bear in mind that counsel assisting spoke of your intention at that point in that question to the word “intelligence-gathering”, which is what you explained?---Correct.

All right. So, the first point, as I just mentioned a moment ago, you have a map of the community where houses are?---Yes.

We know that in this particular instance, there was some limited intelligence of the potential whereabouts of Kumanjaya Walker; houses that he had previously frequented?---Yes.

The most obvious and prominent being House 577, where the axe incident occurred two days before the shooting?---Yes.

Identified by a map. And you would have seen the video footage that I played to you yesterday, where they were moving House 577, and I think I pointed out – or you can't see him – but who it is. That it's Zachary Rolfe in the passenger seat and there appears to be a map of the community area on the front dashboard?---Yes.

You saw that?---Yes.

And you'd expect, wouldn't you, that those officers, as they were, were armed with a map of the area and particularly identifying House 577, much as you describe there, that's intelligence, information and you're going to a particular location where he might go?---Yes.

And of course intelligence gathering includes, as I understand your evidence, talking to members of the community to see if they are or are willing to tell you as a police officer making those enquiries where he might be?---Yeah.

Now you talked about the bush network or – sorry, what was the description you used, the - - -?---Bush Telegraph.

Bush Telegraph, thank you. The Bush Telegraph. The practical reality of the Bush Telegraph I think, as you've told us, is that once police presence is known there is obviously the potential for a person to decamp, leave, because they don't want to get caught?---Yes, yes.

And unless the community itself actively embraces the notion of apprehension by police, that is always a very real risk?---It's a risk for trying to apprehend anyone anywhere, yes.

Of course. And so the mere fact that you – first of all, permission is given, as you saw in the video, to go into the house?---Yes.

That's part and parcel of what police are expected to do, seek permission to go into the house?---Yep. If they don't have the grounds for a warrant to force entry, yep.

Of course. And part of that – and that's intelligence gathering, isn't it, asking is anybody in the house?---Well you're asking whether the person is there, yes.

And the mere fact that a person says they're not in the house, you don't necessarily have to accept that at face value. People do lie?---They do.

And often?---May, yes. If they're protecting a family member particularly.

And so from what you saw, given your expertise and experience in how you would go about your business, do you accept this. Asking a person who's connected to the particular house, the house where Kumanjaya Walker was last seen, is an appropriate link of investigation?---Yes.

It's intelligence gathering?---Yes.

Permission was sought to go into the house?---Yes.

You'd expect in those circumstances the police to check the information was given to them was accurate and correct?---Yes.

And then you saw them go through and you accepted, I think, that Officers Kirstenfeldt and Rolfe both cleared that house?---Yes.

And they went through that house making sure that Kumanjaya Walker was not actually inside?---That's correct.

And they did that consistent with a – in a perfectly proper way and consistent with their training?---Yes.

And so once that's done you can put that house to one side?---Yes.

You've got the significant development which we informed you about yesterday, was that they got, when they were speaking to those members of the community, a bit more information, some significant information. And the significant information was that police had only just missed Kumanjaji Walker by a matter of minutes?---Yes.

We know there's an apprehension – sorry, a warrant for his apprehension out which requires police in those circumstances to arrest?---Yes.

We know that they've missed him by a matter of minutes?---Yes.

We know from the information, the intelligence that's been gathered and received, of his likely location where he's heading to?---I think they spoke to the guy and he pointed out on a map on the phone, yes.

Two separate houses?---Yep.

You may not know the fine detail but you can accept from me that's the information? ---Yep.

And you know, of course, because of the Bush Telegraph that nothing's done about it, because there's every chance that he'll be tipped off?---Yes.

You'd expect in those circumstances – and you've been told by the officer in charge before being deployed at 7.05 pm that night, you'd been told if you come across Kumanjaji Walker, arrest him?---I think I've read words to that effect, yes.

So assume those facts. You would accept, would you not, consistent with your police training, you would accept, would you not, that it was incumbent at that point in time for those members who had been deployed at 7.05 to follow that lead?---In the general policing sense as we discussed yesterday, yes.

Yes. And that's what they did. They then moved to House 511 and then – I don't need to go through the detail again. It transpires that once permission is given they go into House – a person eventually presents themselves with a false name that is identified as Kumanjaji Walker and the rest is well documented?---Yes.

All right. That is all perfectly consistent, is it not, with proper training?---Yes.

And it's the way you would go about your business in those circumstances?---In normal circumstances looking for people, yeah, that's how we do business, yep.

The one – there are two factors I think from your evidence that emerged yesterday which do not seem to fit into what I'll call the factual matrix of what happened in fact on 9 November. The first is that you would have required a community police officer to be in your presence or to accompany you ideally when you went in the community that night?---If we were out there looking to arrest someone, yes, I would have taken a local member with me, yes.

What if – when you say you were looking to arrest, what if initially you were looking to try and find out where he was, but if you came across him to arrest him, would you still nonetheless take the community officer with you so that he could assist if you needed to identify, for example?---Well yes, if I didn't know what – in this case Kumanjaya Walker looked like, I would take the local member, especially since they've had dealings with him.

On the other hand you might have a photograph on your phone?---Yeah, yep, or printout, yes.

Or a printout. And that's commonly used by police officers to identify a person who's the subject of an outstanding warrant?---Yes, I agree with that.

And it's not always possible to have somebody present with you on the occasion that you might come across an individual who turns out to be the person who is to be apprehended?---Yeah, definitely.

And ultimately, as you've said I think, right at the beginning, you put it this way at page 2514. And you were asked about the responsibilities of the Forward Commander and you said – the question was put to you by counsel assisting was this, "They are effectively the ones coming to you with the need". And your answer was, "The Forward Commander is in charge. Everything falls under it and they're in charge of all of the sources. They are responsible for all of the outcomes and it's – they're responsible, all of it. So if anything goes good, bad or otherwise, it all goes to that". That was the evidence that you gave?---To that person, yes.

And so the officer in charge is extremely important in this context, isn't it?---The Forward Commander?

Yes?---The Forward Commander, yes.

And in the context of this case the Forward Commander was Sergeant Julie Frost? ---That's correct.

So – and you also said this. You were asked some questions about more information, like coming in such that the original plan changes, the question then became if the plan changes what do you do, do you have to go back up the chain of command and so on. You remember that line of questioning that was asked of you?---Yes.

And I think you wanted to have it qualified, as I understand your evidence, about how significant is the change, is it just a timing issue or is it substantial, significant and the like?---Yes.

They are the sorts of matters that would inform you, for example, as a member of the TRG, because you'd been deployed in similar circumstances, are they the sorts of matters that you would consider in determining whether you should go back up the

chain of command and say to your commanding officer, for example, look, there's been a change here, are you comfortable with this change?---I'd discuss with the Forward Commander first and yes, and then I would brief up if my mission was such to do something and it had changed, I would brief up and say look, we're doing something different now.

But you're in a slightly different position in TRG, aren't you, because of course these men are general police officers who happen to be members of the IRT?---Yeah, I agree with that.

And so ultimately the chain of command goes from then to Sergeant Frost who in turn goes up in this case to Superintendent Nobbs who in turn goes up to Assistant Commissioner Wurst?---Yeah, I'd agree with that.

That's the chain of command?---Yep, for this incidence, yes.

So whatever Superintendent Nobbs may have directed or instructed Sergeant Frost to do, it was incumbent upon her to carry out his orders?---Yes.

And insofar as the IRT were being deployed by Sergeant Frost as the officer in charge, the person responsible for all outcomes, whether they're good, bad or otherwise, it was incumbent upon her to faithfully follow the orders that Nobbs, if any, were given, were given to her?---I'd agree. She would have had some discretion obviously but ideally, yes, whatever they'd agreed upon she would have to follow that out as a direct instruction.

So the chain of command – what I'm simply saying to you is whatever these men did was contingent entirely upon what they were told by Sergeant Frost?---Yes.

What information was conveyed to them?---Yes.

And what their understanding was of what the expectation of them was in circumstances where they came upon, for example, Kumanjayi Walker?---Correct.

I'm going to turn now to a separate topic and the last topic I need to discuss with you. And I'm going to ask that two videos be played. I'll just give you a reference if I can, 3-162 PROMIS 900 5467 being body worn of Constable Rolfe in Chris Walker matter. Now in this case, there's a separate arrest, separate incident, that's been the subject of some evidence in this coronial enquiry. And one officer who was present – present during the arrest, was asked by Counsel Assisting, having played the video about his view as to whether the way in which police entered this particular house, was appropriate and so on. And what I want to do is firstly read you the evidence that he gave about that – about that issue. Counsel Assisting played the video and then said this. "Constable, I asked you earlier about working with your fellow officers." This is at page 2306. "And Constable Rolfe, you suggested, that he always spoke respectfully. He behaved appropriately. He used the minimum force. Do you recall that incident with Mr Walker?" That's the incident on the video I'm

about to play to you. He said "I do, yes, ma'am." And then he went on to say this. Sorry, Counsel Assisting went on to say this.

"He rang the door. He was the first in the door, and he said 'Police, don't move', he had his gun out, 'Get on the ground, get on the fucking ground'. Do you think that's an appropriate way for an officer to behave in those circumstances?" And this was his response, "Your Honour, in those circumstances I do. As we were driving to that residence that night, the man that had called the police was still on the phone to the police, and our radio communications were relaying what was saying – what he was saying to us. He said that he was barricaded in the bathroom. He had gone in there because the offender, Mr Walker, had had a knife, and was trying to kill him. So right up until that moment, when we left the vehicle, that communication was telling us that there was somebody trying to get into the bathroom to kill a man, and that he had a knife in his hand. When we got there, there was a number of police officers standing outside the chain-link fence, that you see, both myself and Zach scale to go in. The threat to that man, at that stage, was imminent, as was being relayed at the time on the phone. Inside of the house, or at premises, it is very hard to keep a reactionary gap with anyone, let alone somebody that is potentially, as we know, we're being told, armed with a knife. What I saw on the video then, I do believe to be proportionate to what we were being told. Zach, from what I could see on that video right then, the moment that he saw the man – of that man, of the offender, Walker's hands, and he wasn't holding that knife, put his firearm to the side, and used a strike to put him on the ground. I think that shows great restraint, him being able to both deal with what's in front of him, and manipulate that firearm. At that time, and you'll hear in the video, your Honour, he suspects, that the man on the ground is the man we were looking for with the knife, but we can't be sure. We don't know that we're going to walk up the corridor and then be ambushed from the left with a man with a knife, and I can hear him saying in there ma'am, 'That's Walker, I think that's Walker.' Someone else took custody of him. The house was cleared. That night my body-worn would show that I immediately went to the back yard and cleared the back yard, and we realised that we had the man that we were looking for in custody."

Now that's the evidence that he gave, having been played the video. What I want from you, if I may, Sergeant, is I'd like you to view this video carefully, and then you provide us with your expertise, as to how you see, with that information that they had, how you see this unfolding?---Okay.

DVD PLAYED

MR EDWARDSON: Can you start playing – there's a second video. I want to play it, because it wasn't played to Constable Sykes, but it's another body-worn video of the same incident, but from a different perspective, and I'll explain why that's important in a moment.

DVD PLAYED



THE CORONER: Is that a fire alarm?

MR EDWARDSON: Hopefully not.

All right Sergeant, now what I want to do is ask you a number of things. The first thing I wanted to ask you about is the use of the expression "Get on the fucking ground." Now it's true is it not, that police officers do use robust languages in cases where there is a sense of urgency, and to convey a very serious message about the seriousness of the situation?---That's correct.

Do you, yourself, and it was put by Counsel Assisting, that the use of that language was inappropriate in the circumstances of this case. Do you, yourself, see any difficulty with directing potential target, who might be a potential – armed with a knife, and on the limited information that police had, was trying to kill the other occupant of the house. Do you see any difficulty with police using robust language in the practical reality of day to day policing, in those extreme circumstances?---Yeah, your Honour, that's a – that's a good question. So when we do our training for what we do, we try to encourage our operators to take emotion out of language, or swearing, so to speak. But it does occur, especially when we see junior officers come in, where a lot of sensory overload was going on, they're hyped up, they do it. It's – the biggest point from me when we try to talk about communicating with offenders, is making sure that communication is effective, they understand what you're trying to ask them to do. Sometimes, in some circumstances language is required, because if you're dealing with a mob of people already swearing and agitated, and you can communicate that level, it works. In that circumstance there, look, I can understand where it's come from, with a person of a junior experience to say that. It – he's already announced get on the ground to start with. And then of course there's been no movement, or no response from Walker was it?

(Inaudible) - - - ?---From Walker?

THE CORONER: He didn't get on the ground - - - ?---No he didn't.

- - - he hands up?---Yeah he put his hands up. And we see that a lot where they get that sensory overload, police officer coming in aggressively yelling, and there's the idea in their head like trying to process what's happening in front of them. And I can explain the process of why they went through in a second, if that's asked. But look, I think – it's a difficult question, because I have – I have used that. I've used language myself, and sometimes I've it to be highly effective. And other times I've found that it was probably not appropriate. So in that circumstance there I think, he probably just could have yelled, just "Get on the ground", again, or something similar. But we're talking about a person with not as experienced as what I am and others and I have done that before, so it's a really hard question. I think it can be seen to be inappropriate, it can be seen to be abusive but I think in the dynamic situation they're in, they're trying to get subject control through communication and I'm - I'm on the fence, your Honour, I really am with that one.

All right, I'll take you through the whole thing shortly, but I just want to go back to something you said yesterday, again in answer to counsel assisting's questions. I think you said something I didn't pick up specifically in the transcript but I think you said that "In the TRG we debrief after an incident" and presumably that debrief would include downloading body-worn video for example, replaying it and seeing how everyone participated in a particular event?---Yes, that's correct.

So let's assume for example that this was a TRG operation and you were doing the debrief. In the debrief would you look at the language that was used by the individuals?---Yeah, we cover everything.

And would, for example, it be open for discussion as to whether it was of use, utility, appropriate or otherwise to say, "Get on the fucking ground" as opposed to "Get on the ground"?---Yes definitely. Yes.

And as I understand your evidence and, in a sense, I am asking you to debrief or to re-unpack - sorry, to unpack - this particular event you say, "Well, look, he's not as experienced as us" you don't regard it as inappropriate but it may not have added anything to it. Is that what you're saying?---Yes, I don't grant it is inappropriate, but if I was to debrief that I would've said, "Look, you know, you probably could've said, 'Get on the ground now', or used better language to try and control that" and then - and again that's an experience and a learning opportunity for that officer.

And so that's an example of how you might be improve the performance and education of the individual who is responsible for the event?---Yes.

All right, now the other thing you would have noticed from - self-evidently from the various videos we've seen, is the police officers have their guns drawn when they enter the house?---Yes, I did see that, yes.

And they have them drawn because of the information that had been conveyed to them there was a person barricaded in the bathroom, there was another man who was - with a knife and trying to kill him?---That's correct.

That's all the information they have?---Yes.

Would you accept in those circumstances, police to go through the front door as they did, with their weapons drawn in that heat of the moment?---Yes.

That decision as opposed for example, walking up and going knock knock, "Hello, we're police officers here"?---I think the entry was justified - the rapid entry justified. The decision to draw your firearm is an individual choice of each officer.

Right?---And that's based purely upon your perception of what's happening, your experience, your confidence and obviously Constable Rolfe being a member of the IRT, has been trained in close quarter tactics, being the black role we've mentioned before, so he has obviously got a higher level of training and clearing the buildings, he is probably more comfortable and confident in using his firearm because of the

training he has undertaken so - but anyone there would've been justified in entering that building with their firearm out - in my opinion.

Are you familiar with the RISC principle?---Yes, rapid, intense, specific and competent.

What does that mean?---Well, it means if you're going to undertake an action you need to determine how that action is undertaken. So if it needs a rapid response or a measured response, intense, specific, what you're looking at and competent - you need to be competent in your skills in what you're trying to do to achieve whatever aim you're trying to achieve.

And plainly, on the information that you've got and what you now know about this particular incident, it required a rapid response, didn't it?---I would agree with that, yes.

And an intense response?---Yes.

And it had to be specific because there was a particular target on the information the police had. He was armed with a knife and apparently intending to kill the other occupant?---Yes, specific in a sense that stopping that person from being harmed or if they had been harmed, to render medical aid.

Can I suggest to you Sergeant, and I am asking you - or drawing on your considerable expertise, that there was nothing that any police officer did as we saw it on that video that appeared to be excessive force in the circumstances?---I don't believe so, no.

You provided a statement, did you not, to the prosecution - it's the same statement - I think it's been produced here, for the purposes of the criminal trial - the Zachary Rolfe criminal trial?---Yeah, the statement in front of me? Yes, yes.

But you were not called by the prosecution, were you?---No, no that's correct, I wasn't.

So today and yesterday is the first time that you've given evidence, given your considerable expertise, about all of the events that you have been called upon to express an opinion about?---Yes, that's correct.

Nothing further, thank you, your Honour.

THE CORONER: Mr Coleridge? Or?

MR COLERIDGE: I think Mr Freckelton is next.

THE CORONER: I'm sorry, Dr Freckelton?

XXN BY DR FRECKELTON:

DR FRECKELTON: Sir, were you aware of the absence of health facilities in the community when you attended there upon request?---I think I first became aware there was no medical facilities when they landed and spoke to Sergeant Frost.

Were you aware of a presence of an ambulance on police premises?---Yes, when we drove in the back of the compound that night I saw the ambulance at the back of it.

Did you undertake any measures to enable health responses as a result of the presence of the ambulance and your awareness of the absence of the nurses? ---Yes, your Honour. That was a concern I identified the first - the next day, once the Yuelamu nurses left and I raised with the INT "What's our medical response if we get an injury?" And it wasn't so much of a conversation between police, we have numerous people in Aboriginal communities who are on dialysis. What happens if a child was to fall off and break their arm on a pushbike or there was a domestic violence incident and as I mentioned in my statement, I had a TRG medic down on my team and I was a medic as well. Then when we had an opportunity, I think it was Tuesday - I'll have to check the dates - we got permission to use those ambulances, the Yuelamu ambulance we cleaned all the glass out of it. I went through all the equipment and got it working myself and the TRG medica got up and running and we were able to get that capability up so if we were called we could attend and provide some level of care and then transport them to the airstrip for evacuation by plane if required.

You made reference in response to a variety of questions to the responsibility of police to undertake risk assessments when they are discharging their duties? ---That's correct.

That's particularly important if there is a GRT OR IRT callout?---Yes, I would say so, yes.

That's a dynamic process requiring ongoing re-evaluation of risk and appropriate adjustment and responses to that risk?---Yes, I'd agree, yes.

I am just going to ask that you be shown exhibit 14, which is the set of - it's the action plan if you like, from Sergeant Frost, given amongst others, to the IRT members of Northern District, by email. Now you have reviewed that document. I think yesterday you had that on the stand is that right?---That's correct.

I have just described it as an action plan. Is that what you would designate it as? ---Yes, I'd agree with that. It's got the format - the sematic format and it's got information on how you would undertake an operation, yes.

Now, a TRG generates slightly different documentation when it has a pre-prepared - a pre-organised call-out and has the opportunity to make detailed plans about how it is going to undertake its tasks, is that right?---That's correct, yes.

But the TRG itself is called upon to undertake action at short notice on many occasions, is it not?---On many occasions, yes.

And is this the kind of document that is provided to the TRG to undertake its responsibilities at short notice?---At short notice we will get - sometimes it will be a phone call and then the phone call would go to the superintended - the Assistant Commissioner where we'd go. We wouldn't often get an action plan or operations order on a short notice due to the urgency of attending.

Nonetheless, what is the significance, if any, of the provision of a document like this, where there is a response by a tactical response group such as the IRT?---It's an important document. It outlines the situation, what it is. It outlines the hierarchy of command, it outlines what your task is to be, where you are going, what you are doing and what you will eventually be undertaking.

THE CORONER: Can I just ask, if it's an urgent deployment?---Yes.

Sometimes it is going to require travel?---Yes.

Like the flight that was taken on this particular night?---Yep.

Sometimes, you might urgently – I assume, I'm just assuming here?---Yep.

I don't know. You get an urgent deployment, Air Wing's available. You go to the airport. You jump on Air Wing - - -?---Yep.

- - - and document - if there's some period of time that you're in flight, you might expect somebody else to be preparing some documentation about what you're going to do on arrival and indeed, you might be preparing it on the flight?---Yeah, so your Honour, we – TRG is lucky with our tactical intel support cell or other members in the unit. So, if I was flying down, I hadn't even sent that information, the OIC would be tasked to take into or another sergeant to start building that picture up for me, and I would be working on the plane. And then, as soon as I got on the ground, they would have a better picture to support my information, as well as what I would get on the ground from the members as well.

DR FRECKELTON: This document does not contain any specific risk assessment documentation. Do you have any comment to make in respect to that omission?---Just give us a second.

Do you have a copy of that, do you?---Yeah, yeah, I'm just flicking through it now. No, it doesn't have any formal risk assessment or rating on it, but I know the situation. It does mention his sister in relation to the axe incident, which obviously would provide some sort of awareness to the members that he has a propensity for violence or a recent propensity for violence. And then underneath, it talks about what he is to be arrested for. So, you get some formal picture of what sort of person you were going after. But it doesn't actually categorise a risk per se.

Or gives specific guidance as to how to respond to the risks that are known about the offender?---No, it doesn't.

However, if we could scroll down to immediately below the photographs, please? I'm trying to get a visual of those. It's the wording which is in red. That's it, thank you. There is, however, what you can see at the top of that screen, is it not?---Yes, that's obviously the alerts in our PROMIS system that they've taken of, yes.

All right. So, in those circumstances, what are the responsibilities of police officers, knowing as they did about the incident on 6 November, to undertake a risk evaluation and incorporate it as part of their response in the course of any arrest? ---Yeah, so I guess that's from a General Duties-type police response. They would look at that and go, okay so he may try to escape custody. So, we need to put something in place, in case he tries to run, and we can apprehend him.

Yes?---The suicidal thing merely points to me that if we get him into custody, we need to be conscious of what - - -

Yes?--- - - - he may do in custody. And the violence alerts, obviously take into account that he may be violent towards us, which would indicate a negotiation of process would be a more valued option to definitely consider. And then if we had that combined with the axe incident, which occurred indoors, it would be a case of - I would probably be a little bit cautious about the apprehension inside a house, because if we're inside a house, he's exhibited some violence inside a house before. Our options; our responses are limited in what we can do. So, if anything, I would prefer to be in a position where I could engage with him outside of a house, if I could, bearing in mind it's a great opportunity for him to run. But I think, from my perspective, that I would want to take a good look and work out what we're doing it, that everyone was on the same page and how we were going to do it and had some contingencies that, if he was to approach us with an edged weapon again, how will we deal with it.

And is that the kind of discussion which members ought to engage in before going into a house and confronting this offender in these particular circumstances? ---I would expect, at some point in time, the members would talk about that.

Yes?---And your Honour, I must admit, I probably am a little bit tainted in my evidence because of my extensive experience in TRG, but working in frontline, especially in the last couple of months, with talking to members, I always encourage them, when you go into the job on the radio before you walk in, think about everything that's going to happen if you're going (inaudible) because we get alive (inaudible) of each weapon in Darwin as well. Don't put yourself in a position where you're forced to react for you, put yourself in a position as most tactically advantaged, if that makes any sense.

But was this particularly necessary by reason of what had happened only 72 hours before when two police had gone into a house and had the difficulties which they experienced and endeavouring to apprehend from that?---Yeah, I would say,

your Honour, it would probably almost be essential, because from what I've seen of the axe incident, and I haven't seen it in its entirety, I must admit, is that Kumanjaya Walker appears to rush at the police officers in a totally unprovoked attack in a manner that it wasn't – they weren't threatening him at that point in time, so it shows that his escalation of violence and propensity for violence is a little bit higher. So, you would have to be extremely cautious about how you were going to approach him to prevent that happening again; that sort of thing happening again, if that makes sense.

And the attempts to apprehend him a mere three days before was in the late afternoon inside 577?---Yes, I don't know. I'm not aware of the time.

All right?---If you say that it's the afternoon, I'll accept that.

So, was it incumbent upon police to be very cautious about putting themselves in a position to repeat the risk scenario which had manifested just three days before? ---I think they would have to be conscious in their decision-making in relation to that, yes.

Now, as you can see from looking at the written plan on day one that there was what is indicated in respect of their duties at 11 pm and which conduct high visibility patrols and respond to call-outs?---Yes.

You see that?---Yep.

And then the next entry about what they were supposed to do was what you can see at 5 am?---Yes.

What do you say in the circumstances about the appropriateness or otherwise of a plan to arrest Kumanjaya Walker, not late in the afternoon inside a house, but by an early morning entry into a house?---Well, an early morning apprehension, as we know, are more effective. It's been proven that it works better and it's probably more safer to officers and the people we're arresting.

Safer by reason of the fact that the person is likely to be less alert and less in a position to resist?---And also, they'd be asleep.

Firstly?---Yes.

All right. And in this context, arrangements had been made to have a dog handler and a dog present?---That's correct.

And the purpose of that, I suppose, was to deal with any attempt by the person to abscond?---Yes, but also provides a good less-lethal option if the person approaches you with an edged weapon, yep.

All right. So, on the basis of this plan, can you see any indication that was the proposal that an attempt be made to go and gather intelligence prior to an

apprehension in the evening?---Well, it doesn't say it in the plan, but I guess that's something that they would have discussed about whether they needed to or not. I guess when Sergeant Frost wrote that, "If you have members who have worked in the unit before, it might not be required, or members haven't been there may be required, but there's nothing on that plan to indicate that, not."

But the absence of a person, if they haven't worked there before, this highlighted the need for a person who actually knew the target to be present, so that they could assist in location and identification?---I believe it would have helped, yes.

Scroll down, if you would, please, to – just a little bit further, thank you. A bit further. Stop, thank you.

And there, you can see the locations of interest which are identified in this plan with the first entry being 577?---That's correct.

Do you see that?---Yes.

So, unless something different was communicated by Sergeant Frost as the forward commander, what would you expect a prudent police officer, part of his task it was to arrest the offender, to do?---If I read that, I would undertake that House 577, that we were going there at 5 o'clock in the morning. That's the primary residence, yep.

All right. And how different is it to attend House 577 for allegedly intelligence-gathering at 7 o'clock the night before?---I'm sorry, I don't understand the question.

I'll put it another way. As you know, the members of the IRT attended at House 577?---Yes.

At about 7 o'clock in the evening before the 5 o'clock plan?---That's correct, yep.

How do you characterise that departure from the written plan?---Well, your Honour, that wasn't intelligence-gathering, if that answers your question.

All right. Let's start there. Why do you say it was not intelligence gathering in this context?---Well the idea of intelligence gathering, like I said, is to understand the layout of the place or intelligence on how you would effect the apprehension at 5 o'clock in the morning. We – I've mentioned before, if you go into the community and you're not from there and you're driving around and they see that you're not from there, you're going to tip off your – your person you're trying to apprehend. So going to that house that afternoon and looking for him would probably highly – make it highly unlikely he would be there the next morning, knowing you've already been there and you're from out of town.

What's being put to you is that by reason of it not being certain that Kumanjayi Walker was at 577 or would be at 577 at 5 o'clock in the morning, it was appropriate to do this form of intelligence gathering at 7 o'clock in the evening. What do you say?---Well again, intelligence gathering would be to drive past 577 and get an



understanding of where the doors are, how to get through the gate, but not to actually attend the residence and make enquiries, I wouldn't think.

Well they attended the residence at 577 and said we're here to grab Kumanjaya. Is that intelligence gathering?---That's not intelligence gathering.

Is it in any way in conformity with a 5 o'clock apprehension the next day?---No, because they're actually searching and looking to apprehend Kumanjaya at that point in time.

And of course as you've heard from my learned friend, Mr Ibbotson, they received information out of that exercise that he may be at 511 or another house very close to it?---Yep.

And they went there?---Yes.

Is that implementation of intelligence gathering or further intelligence gathering? ---Well no, because they're continuing on with their – well if they went to 511, drove past it, had a look and took some photos and went past, that would be intelligence gathering but actually attending the residence and making enquiries, no, that's the search and apprehension phase, in my opinion.

Is it the situation that by attending 577, the first house in the way that they did, they'd effectively undermined what seems to be the intent of the 5 o'clock apprehension the next morning at 577 or anywhere else?---Well there was the potential, yes, because the – Kumanjaya might have left the community.

With all the dangers that this entailed for an attempted apprehension that was very similar to what had taken place a mere three days before?---Yes.

Now if that was the idea that the members formed as a result of whatever took place between them and Sergeant Frost at the station in a briefing, what was their responsibility in terms of discussion about this change of plan in terms of the risk assessment process?---Are you talking about moving from 577 to 511 or just going straight - - -

No, I'm talking about moving from the 5 o'clock plan to the journey straight away to 577. If they were going to do this, for whatever reason, what did they need to do to mitigate risk?---Interesting. Well again, they would have had to take into account what had happened previously and if they turned up to the house and there was a lot of people drinking they would have had to determine whether it was appropriate to go in or not. And I guess the interaction with that first person, the male they spoke to in the yard with the communication of how the community of that house was going. Then of course they would have had to take into account that once he said that he's not there or do you mind if I look inside, they're moving inside the house which potentially could cause confrontation in the afternoon as opposed to 5:00 in the morning when he's likely to be asleep.

So what was the planning that would have been needed to undertake this process of attempted apprehension at 577, for instance, if that was what they were intent upon doing? What should they have done to make it as safe as possible?---If they thought that at that point in time it would be better in the afternoon, they probably should have contacted back to Sergeant Frost and said look, I think we're in a better position to apprehend him now; can you come out and assist us and give us more numbers to put an effective cordon in; give us the capability to negotiate with him, because the members know him if we see him; and also extra police on the ground provides an extra presence.

Thank you.

THE CORONER: Mr Coleridge.

MR COLERIDGE: I have no further questions, your Honour.

THE CORONER: I've just got one question?---Yes.

You talked about with the TRG and work obviously closely together and you know each other. There can be a natural sort of formation of, or identification of the leader?---Yes.

And when you send out the TRG you would expect there to be a person with the leadership either training or suitability to take on a role of leadership?---That's correct.

So if it was naturally forming, there would be within that group someone who had that capacity?---There'd be that capacity but also we would nominate the team leader before they left the office. The OIC or sergeant would have said this is your responsibility, so it would be clear the chain of command.

Sorry, did you want to ask something along these lines, Mr Coleridge?

MR COLERIDGE: It occurred to me that I had a note to myself to do it.

THE CORONER: No, you do it.

MR COLERIDGE: Perhaps I'll let the sergeant finish his evidence.

THE CORONER: I think he did?---Yeah, yeah. So we would nominate someone before they left that they would be in charge, they'd be the point of contact and it would be their responsibility to – well be my point of contact as OIC to them and how that would work and everyone would be clear how it works. Because there's also admin responsibilities in relation to rostering, overtime, who does the post operation debrief, the team leader does that, any equipment that's damaged or broken or anything we need to do, the team leader's responsibility is to do that when they come back. So there's a lot of admin tasks afterwards, so then it sort of like puts

them in the mind of on the job running it and he'd be conscientious of how I do that to effect my debrief and post operational task (inaudible).

MR COLERIDGE: And you gave some, I think, quite impressive evidence yesterday about how structured the progression of members within the TRG is once they join. Do you recall giving that evidence?---Yes, correct.

And that it starts with some initial training and then over the period of approximately two years they might be trained as a team leader, is that right?---After two years they'll probably look at being selected to do the national course and after the national course they'll start being developed into a 2IC towards the team leader mark I'd say is around the four to five year mark, depending on attrition rates obviously.

So when team leaders are nominated, even though the nomination might not be formal in the sense that it's put in a written document, the team leaders would ordinarily be relatively experienced as TRG members, is that correct?---Yes, they would have experience in operations, yes.

Can I also ask you this? I take it that a lot of applicants to the Northern Territory Police Force and also the TRG are young men?---We used to see a lot of younger members but now we're starting to see members more in their 30s applying, yeah. I'm not too sure why.

You've also given a little bit of evidence about how some younger or more junior police officers can be – can experience sensory overload or be a bit more hyped up than more senior officers?---Yeah, definitely.

And that might apply even to junior police officers who are highly intelligent, very hard working, very goal orientated and efficient police officers?---Yes. Yeah. So your Honour, we run what are called reality based training scenarios which are based on real life events and we set them up to be replicating what the people come across with. And even with our members, we can still run a training exercise so they can become overwhelmed and with a sensory overload to it. When we work the General Duties officer and I ran an active shooter continuum which ran over four months in Darwin, we had. To use a practical scenario Casuarina Square where we had people running around and we'd done a couple of months of build up to give those officers an ample opportunity to build up to that and we did some training that afternoon. We had a break. We went in the evening to Casuarina Square and everything we taught them, some of them just forgot all of it, because it just totally overwhelms. They've never been in a situation before with people lying, bleeding or people running with a gun. So we can get the most highly qualified, skilled General Duty officer and put them in an environment like an edged weapon, they'd never been in a position where someone's attacked them with a knife before. Even with the training and even they could freeze and not respond accordingly. So yeah. It's – does that answer your question?

It does. And is it also correct that with some of the junior officers, despite the fact that they're highly intelligent, really hard working, ambitious, they want to do the right thing, you do need to teach them discipline, don't you?---Discipline in what form?

Respect for command, structure, respecting authority, taking commands without, you know - - -?---Yeah, I think – I think that that's instilled in the – from the college, the rank structure. How we do our response stuff, and the responsibility in relation to you are to follow orders and instruction, yeah. I – again, sometimes if you have – where it falls down a little bit, if you have an officer on the ground who is more experienced, and he sees that I need to do something right now, because this person gave me an instruction. I know that that's not going to work, and is going to – outcome could be people could be hurt or injured, and they go off track and do something differently. And in the debrief we'll find out that maybe that instruction from that senior officer wasn't the best at the time, they weren't informed, or something like that.

Would you agree that when deploying a tactical team like the TRG, to affect the arrest of a high risk arrest target, who was known to have threatened, potentially lethal violence against two police officers?---Yes.

In circumstances where the team was being deployed with semi-automatic weapons, like the AR-15s, would you agree that ordinarily, the team leader of that group, should be a police officer with more than two years and 10 months experience in General Duties?---Yeah I probably – I agree with that. Again, it'd depend on the training that member undertook. But I would – if that member had undertaken specific team leader training, and had been deemed competent, and depending what operations that person had been involved in, then fine. But I would say yes, a bit more experience would probably be advantageous.

And the type of training you'd want them to have is not just specialist tactical skills, but demonstrated expertise in leading, is that right?---Yeah, it'd be a leadership, the ability to take appreciations, and identify risk and mitigating risk, and understanding how you could communicate that up the chain, if you saw something wrong, how you could change that, or suggest it, something be (inaudible).

Can I just ask you one last question about the chain of command? There is some evidence in this case that the 5 am arrest plan, which had been devised by Sergeant Julie Frost, was sent to Superintendent Nobbs for approval?---Okay.

And following that approval, was sent on to the members of the IRT, and I won't ask that it be bought up, but in the document, the heading involved says "Authorised by Supt Nobbs", Superintendent Nobbs. I think it's the second line down in the body? ---I see, "Authorisation, Superintendent Nobbs", yes.

Yes?---Yep.

In circumstances where it appeared that a superintendent had been involved in devising the plan?---Mm mm.

Even though it might have been forward commanders responsibility to brief up the chain?---Mm mm.

Would you expect that the team leader of the tactical group discuss with the forward commander, hey, do we need to brief this up the chain, has that discussion occurred?---I guess it'd depend on the experience and the – and the maturity and confidence of the officer. If you're just a constable, and your sergeant's telling you to do stuff, you're not going to go past the sergeant and ring straight to the superintendent. There's another rank in-between, being the senior sergeant. I would expect them to raise the concern with the – with, in this case, Sergeant Frost, saying I think this is a good, bad, idea, what, otherwise. And then I would expect Sergeant Frost then to brief up, or take responsibility of any change to the plan. If, however, the – her – her command to me of that situation was, I saw that it was risk, and it could potentially cause harm to the organisation, the community, or – or our members, then I would – I would go above her and ring – or ring someone to say – it could have been a case, I think Sergeant McCormack was the member who tasked them - - -

Yes?---So they might have had an in-road to him, and say, Sergeant McCormack, just listen, letting you know somethings come through, I've got a few concerns. Sergeant Frost has listened to them, but I don't think she's appreciating what we're doing. It could be because of the fatigue level, can you raise that up with them, or what would you do, and what would you suggest I do. And we encourage that throughout the police force to do that. But, it – always raise it with the person in front of you first. Allow that immediate rank to have the opportunity to do it. But then respect that, and follow that, unless you see something that's manifestly unlawful, negligent, I guess.

No further questions, your Honour.

THE CORONER: Thank you.

Thank you for seeing the last day and a bit with us?---That's all right.

We've appreciated your evidence, and it's certainly given us a lot to think about and reflect on?---Thank you, your Honour, thank you.

WITNESS WITHDREW

THE CORONER: Yes, the next witness.

MR COLERIDGE: Your Honour, the next witness is Mitchell Hansen. I know it's a little bit early, but we would appreciate five to ten minutes to get his evidence ready.

THE CORONER: Sure.

MR COLERIDGE: And he's got to come over to court. So perhaps we could take the morning break a little early?

THE CORONER: Sure, we'll take the morning break for 15 minutes.

ADJOURNED

RESUMED

THE CORONER: Mr Coleridge.

MR COLERIDGE: Thank you, your Honour. Surprise witness. No, Sergeant Terry – Senior Sergeant Terry Zhang was available and so given that he'll be a relatively brief witness I thought that we could call him now. So we're grateful to the senior sergeant.

THE CORONER: I'm sure he'll be grateful.

MR COLERIDGE: I formally call - - -

THE CORONER: We're not keeping him in the waiting room any further.

TERRY ZHANG, affirmed:

MR COLERIDGE: Your Honour, I'll just deal with the formalities.

THE CORONER: Sure.

MR COLERIDGE: Senior Sergeant Zhang, can you state your full name for the record?---Ken Fong Zhang (?).

And your current rank is senior sergeant?---Correct.

And where are you currently stationed?---Professional Standards Command in Darwin.

In Darwin. And in November 2019 – sorry, on 9 November 2019 you attended Yuendumu?---Correct.

Following a report of a shooting of a community member by a police officer?  
---Correct.

And you were ultimately made the Police Forward Commander?---Correct.

You've given a recorded statutory declaration to Coronial detectives, is that right?  
---Yes.

And you gave that statutory declaration on 5 December 2019?---Yes.

And your Honour, that's at 7-147.

THE CORONER: Thank you.

MR COLERIDGE: Those are my questions.

THE CORONER: Yes.

Yes, Mr Mullins.

MR MULLINS: Thank you, your Honour.

XXN BY MR MULLINS:

MR MULLINS: Sergeant Zhang, my name is Mullins. I appear on behalf of the Brown family. Can you hear me okay?---Yes.

Now have you ever been in the course of your career involved in something like this before?---Not to this level of complication and complexity, no.

Did you have any experience in communities before November of 2019?---Very limited. I had been to Yuendumu twice but I've never permanently worked in a remote community.

And how long had you worked at the Alice Springs Police Station?---Since 2016.

Now when you arrived you were, as you understood it, to be the Forward Commander?---Correct.

And can you – that is when you arrived in Yuendumu. Did your role as Forward Commander commence as you were enroute to Yuendumu or when you arrived on the ground in Yuendumu?---Prior to departure at the airport we received a briefing by telephone from Superintendent Nobbs and he instructed on arrival I would assume the role of Forward Commander.

And so did you understand that you were Forward Commander from that point in time?---Correct.

So can you just describe your understanding of what the hierarchy was after you arrived in Yuendumu and your – and how Sergeant Frost related to that?---When I arrived I assumed the role for the commander. Sergeant Frost as the officer in charge of the station would assist me as required and also understanding the fact that they had just been through a traumatic event and they had been up for a long period of time. The understanding was to allow her to finish duty, have some rest as soon as possible. And I was reporting directly to the Incident Management Team in Alice Springs headed by Superintendent Nobbs.

So your direct report was Superintendent Nobbs?---Correct.

Now you were – your job in Alice Springs, as I understand it, was two-fold. Firstly, to secure the safety of members at the station, that's correct?---That's one of the objectives.



Yes. And then the second one was to commence the investigation into the shooting incident?---Correct.

And in respect to that second one, your primary task was to secure the scene?  
---Correct, when it's safe to do so.

Now after you arrived you had a telephone meeting with Superintendent Nobbs, that's right?---Yes.

And you discussed those two issues with him?---Yes. That was an ongoing dialogue we had every 15 minutes after telephone calls.

And it's the case that Sergeant King from the TRG with a group of members from the TRG arrived later in the evening?---Correct.

Now at about 11 pm am I correct to say that – sorry, I'll withdraw that. Just going back a step. You were part of the convoy of vehicles that went from the airport to the police station in Yuendumu, that's right?---Yes.

And was one of your vehicles or the vehicle that you were in, rocked? Was it hit by rocks as you came into the station?---Yes. I was in the vehicle driven by Constable Kirstenfeldt and the back seat passengers, from my recollection, was Constable Sykes and Constable Lynch.

Now were you aware that there was an ambulance that was also part of that convoy?---Yes, they were behind us.

And did you know what role the ambulance was playing in the convoy?---I didn't know they would attend the airstrip. So the first time I knew there was ambulance was when they arrived. I didn't know exactly the reason why they were there at the time.

Soon after you arrived at the station did you discover that the reason why the ambulance went with the convoy from the station to the airport and returned was effectively a ruse? Do you understand the word ruse?---It was a reasonable assumption, although we never discussed the reason why the ambulance went there. But that was an assumption made by me.

And you made the assumption that what was done, was an attempt to represent to the community, that Kumanjayi was going to be conveyed – Kumanjayi Walker was going to be conveyed to the airport and taken away, when that wasn't in fact the case?---Correct, that was my understanding.

And you knew that, pretty much soon after you arrived in Yuendumu?---Once we had got to the station, yes.

And as an officer yourself, did you feel comfortable about that happening?---On reflection, I don't feel comfortable. And that I don't think that was the most

appropriate thing to do. However, at the time I didn't turn my mind to that. I just had to deal with what's in front of me.

Well you also weren't involved in the decision making process for the rouse, were you? That was somebody else's decision to do that, not yours?---Correct, so when we left Alice Springs, we still didn't know if the airstrip was safe for us to land. And in fact, we had to hover for a period of time, just east of Yuendumu to receive confirmation that it was safe for us to land.

Now by about 11 pm, am I correct to say that most people who were at the front of the police station, that is, from the community, had gone home, to your knowledge? ---Sorry could you repeat that time again?

By about 11 pm, is it the case that outside the front of the police station was calm? ---I cannot recall exactly what time. When we arrived, there was a period of time, people gathered outside the station. A lot of rocks were being thrown onto the roof. And yes, as time went by, the intensity of that decreased, and people started to dissipate, the crowd at the front of the station.

ACPO Williams had been providing information to Sergeant Frost, are you aware of that?---Yes.

You were also aware that there were elders who had been out the front of the police station who were also assisting in keeping people calm?---I didn't know that at the time, and I became aware of that later on, evidenced by the fact that the crowd dissipated, and there was no further incidents.

May the witness please see the statement which is 7-147, and in particular, page 8.

I just want to show you a copy of your statement, and ask you some questions about what occurred around 11 o'clock?---Thank you.

And if we go to the bottom of the page, we just – to anchor ourselves to the time. Little further up, sorry a little further down I mean, about –

So we can see there, "What sort of time was that?---Um if I put a time, that'll – 11:00 o'clock, 11 or 11.30." Morrissey then says "Okay."

And then if we go to the next page. And you say this, "So I relayed that information to um the incident controller here, and another thing, the urgent sort of matter that was took my attention was, um, Sergeant Frost said, um a community member actually Elder in the community, Eddy Robertson, she – oh sorry, he is the family member of um Mr Walker, and he wanted an update as to ah the status." And Morrissey says "Yep." And you say, "Of Mr Walker. And in discussion, in consultation with the incident controller, the – the agreement was that I will ring Eddy, tell him that um Mr Walker was still receiving treatment at the time, um, as a way of mitigating the risk of the community, sort of, not jeopardising the safety of the

members in the station. So I ring him at um seven past midnight on his mobile.”  
Okay?---Yes.

Now, I'll come back to that statement in a moment –

If we can just scroll down a little further.

But, a few things about that. It's the case, isn't it – well, that this conversation you had with Eddy, was a conversation that you had, at the direction of Superintendent Nobbs, correct?---Correct, to the extent that I had a discussion with Superintendent Nobbs, and we discussed that what information we would have to give Mr Robertson, if pressed up on. And – but that time, we accepted, that we – to – we operated under assumption that the community believed Kumanjayi had been taken to Alice Springs. And we wanted to maintain that, until it was – the arrive – at least until the arrival of TRG, in the most unfortunate event, if there's also a community riot, which we were not equipped to deal with at the time.

Can I suggest to you that another witness has put it this way?

This is Sergeant King, page 255 of the transcript. We don't need to bring it up.

When giving evidence about why Mr Robertson wasn't told on the phone, about the passing of Kumanjayi Walker. “We didn't want to tell him on the phone, because we couldn't control the narrative, in case he went out and started telling everyone in the community that Kumanjayi had passed.” And that was also the situation with your telephone call, wasn't it?---Yes, although at the time, Sergeant King hadn't arrived. That – he was referring to a second phone call to Mr Robertson, yes, but that's for that exact reason, there was a level of deception, I accept that. And I feel sorry for that. At the time it was a necessary lie.

And it was even more significant in this community, because you understand, don't you, that for the Warlpiri people, and other Aboriginal and First Nation's people, that death and family are very important?---I understand that, yes.

And so this message that you were giving to Eddy, wasn't just Eddy. You understood that the message that you were giving to Eddy, was to the whole community?---Correct. I understood that he would have discussed that message - - -

All right - - - ?---That information with other members of the community.

Thank you, Sergeant.

If we could just go down a little further then please. So then we just go to the telephone call. Maybe we've gone down a little too far, sorry. Go up a little, that's it.

“So um, I introduced myself, and he said ‘I want to know what's happening, what happened to Mr Walker’, and I said ‘He's receiving treatment, I'll get you further

information when I can.' He said 'Yes please', and I said 'I'll call you on this number.' And then" –

And then scroll down a little further. I think you're discussing the same conversation. If we could scroll down a little further please.

Where you say then, in that – in paragraph, "Yeah, um yeah, so that conversation again was very brief with him, I just said 'We're providing treatment to that effect.' And he said 'Oh thank you', then he hung up." Is that the same conversation?---Yes.

So it was the one conversation?---Yes it was a very brief phone call.

Now that statement that you made, that he was receiving treatment, was obviously untrue?---Correct.

It's untrue in two respects. One is that he was obviously not receiving treatment, that's true?---Yes.

And the second is, that that suggests, by implication if he's receiving treatment, that he's still alive?---Correct.

And of course, that wasn't the case. He had passed several hours before?---Yes.

Now can I say to you that you were very uncomfortable, telling that untruth, weren't you?---I wasn't very comfortable. It was a lie.

And you had to be careful, when you were engaged in that conversation, because you were aware of the first lie, about him going to Alice Springs, weren't you?---The – yes, the impression we give the community, that Kumanjayi had gone to Alice Springs, yes.

You see, in the statement that we can see on the screen in the second line there, you say "We're providing treatment." You needed to be very careful about how you framed that second untruth, because you didn't want to compromise the first untruth?---Yes.

Which put you in an even more difficult situation?---That wasn't an easy situation, yes.

Now, you had a further conversation with Eddy, later in the morning. And I think that conversation was around 4 am, when he came down to the station. Do you remember that?---Yes.

And you were present – sorry, I meant to ask you one question, just before I go on, about that last conversation, at 12.07. Did you have your body-worn on for that? ---I thought I had I had my body-worn on, and I have looked for that. I haven't been able to find it. I can't explain that.

That's all right. So, going back then to the 4 am conversation, Sergeant King has given evidence about that, and his summary of the conversation appears at par 26 of his statement.

I don't need this to be called up. I'm happy just to read it out.

He says, "Zhang and I spoke with him -", that's being Eddy, this is about 4:50 am,

"in the foyer and informed him that Walker was deceased. He explained his relationship to him and we explained that the police officer involved had left Yuendumu and that the reason he discharged his firearm was that he was in fear of his life."

Now, do you have any recollection of Sergeant King saying that?---I remember we were there and the conversation – not that particular sentence you just referred to, but Constable Rolfe fearing for his life. I don't recall exactly he said that, but that conversation was captured on the body-worn. So, if it's on the body-worn, I accept that it was what Sergeant King said.

All right. Had you heard that being discussed around the police station that Constable Rolfe was in fear for his life, and that's why he shot Kumanjayi Walker? ---No. So, when I arrived at the station, I conducted a briefing with most of the members present, minus the ones that had to maintain security of the station. And I clearly stated that, just to maintain the integrities of the investigation, I asked him not to discuss this matter. So, in that context, I - - -

So, your direction to the staff at the time, as the forward commander, was to not discuss matters between them consistent with the deaths in custody general order? ---Correct. And it was a difficult situation in this instance, because I said to them, "I cannot afford to allow anyone to – I could not stand anyone down from duties. I need everyone here. So, to the best we can, do not discuss what had happened in relation to the shooting.

Another matter Sergeant King makes reference to is that Robertson was "Amicable and calm"?---Correct.

Yes?---Yes.

All right. Now, there was a further conversation with Eddy and Lottie Robertson out at House 577 a couple of hours later?---Yes.

Do you remember that?---Yes.

Maybe an hour - - -?---I was part of that conversation.

Now, we've all seen the body-worn video and we don't need to see it again, but there's also reference there to – words to the effect that Constable Rolfe feared for

his life?---Yes.

And again, do you understand that that's a subjective term, that it talks about a state of mind of a particular person?---I fully understand that.

And do you – had you heard anything at the station yourself that was consistent with that?---I did not.

Did you feel comfortable that that was being said to Eddy and Lottie Robertson?  
---No. In hindsight, on reflection, before we left the station, we should have formulated the communication strategy as exactly what we'll do and notify the family. Obviously, that wasn't the case. And I didn't – yes, I heard that conversation, what was said, I wasn't comfortable. I didn't (inaudible).

Now, you were the Forward Commander, that's right?---Yes.

But in terms of experience in managing this type of situation, there were others around you who had a lot more experience?---Correct. And I respect Sergeant King's expertise in this particular area.

Now, do you recollect having a conversation with Samara Fernandez-Brown in the days following the shooting?---Not the days following. It was in the morning, not long after we came back from 577.

Can the witness please see document 8- either 25A or 254, I've forgotten now; 25A, please. And it's a pars 45 to 46. Page 7, thank you.

And this is Ms Fernandez-Brown's statement,

“I ended up going to the police station with my sister to ask some questions. We spoke with an officer. He had an Asian background. He couldn't give me a lot of information, but he did confirm that Kumanjaya was not flown, rather he was taken in the car to Alice Springs.”

Now, is that the conversation that you recollect having with Samara Fernandez-Brown?---Yes.

Now, she says that was disrespectful, but not what you said – sorry, not the way that you said it, but the content of what was said, and I understand - this is not a criticism of you, but did you understand that that might be disrespectful to an Indigenous person for the body to be treated in that way?---Sorry, I don't understand your question. Looking at that, I think – looking at the statement, this particular paragraph, I think she was referring to the way we notified the family; the delay and the deception was disrespectful. I don't see any correlation between what is disrespectful, how that Kumanjaya was transported to Alice Springs, whether he was flown or in the vehicle.

All right. But in any case, do you understand her expression that it was disrespectful

to the family that they were deceived and not told the truth?---I fully understand that and as I said, I'm sorry. I apologise for that, for the deception.

Now, in the days that followed, there was an increased police presence in the community?---Yes, although I left Yuendumu that afternoon because of family commitment. Before I went out, I said I have – I had to return the next day.

Now, as I said earlier, you weren't involved in the first deception, but you were in the second, as the person who was instructed to convey it. And you have said that you apologise for that?---Yes, absolutely.

Thank you, your Honour. Nothing further.

THE CORONER: Any other questions?

MR ESPIE: I have a few questions, your Honour.

THE CORONER: Mr Espie.

XXN BY MR ESPIE:

MR ESPIE: Sergeant, my name is Espie. I appear on behalf of NAAJA. Can I just clarify your surname is pronounced "Zhang". Is that correct?---Correct.

All right. And your full name is TM (?) Zhang. Is that how I pronounce it?---Yes. I'm known as Terry.

Right. And is that a nickname or a name that you've got since joining - - -?---Yes.

- - - the police force or - - -?---Yes.

- - - people called you that prior to - - -?---People know me as Terry since I join the police.

All right. Is your background Chinese?---Chinese.

Right. Sergeant, you were just asked about the period of time in Yuendumu when you attended a house and spoke with Eddy and Lottie and others, and I'll try not to repeat what my friend has just said, you obviously understood the importance of not dictating a narrative to the community, which you've said. Do you recall Lottie, in her – some of the comments she made, speaking about some of the things that Sergeant Frost had told her prior to the shooting?---Having watching the body-worn, yes.

You've rewatched that recently, have you?---Yes.

All right. Do you recall she had made some comments about things that she alleges Sergeant Frost had said about wanting to - I think the words were, "Wanting to shoot

her grandson or bring dogs" or something of that nature?---Yes.

Sergeant Frost then denied that and then there was a bit of conversation between the two of them?---Yes.

At that stage you obviously weren't aware of the full extent or the details of what has led to the shooting, which you just said before?---Correct.

In hindsight would you agree that while Sergeant Frost may have been one of the local police, it was unfortunate that she was put in a situation where perhaps her and Lottie may become witnesses in this inquest or in whatever investigation took place? ---Potentially. But everyone at the time who had local knowledge of Yuendumu community would be in a very similar situation. Those challenges would be the same for anyone.

Were you concerned about that conversation contaminating potential witnesses including Lottie and others that may have been at that house?---I didn't turn my mind to that particular point you just mentioned purely because there was a number of things - a number of other priorities at the time and it wasn't helpful to further consider or investigate that allegation at that time. We needed to move on to notify Kumanjayi's mother, Margaret, who was at a different location at the time.

In re-watching our body-worn footage and just from your own recollection, whilst it's clear that you've just said you respect the experience of Sergeant King, was there any conversation about who would lead the meeting or who would sort of lead the discussion at Eddy's house prior to arriving at the house?---No, that's when I said we should have formulated a better communication strategy. Our planning was around the safety, how it's going to be conducted, the notification and which house we needed to attend and there was a lot of planning went into it but exactly who is going to say what wasn't part of that discussion.

Right?---We could have done better in that regard.

Would you assume, given that you were the forward command and the senior officer, would you assume that you would be the person, in the absence of any specific plan, that you would lead that conversation?---Correct. The initial plan was that Mr Robertson offered to come to the station, follow us to the house and he will do a soft introduction, he was to assist us engage with the family. That didn't go according to the plan, so we just attended a house and naturally Sergeant King, being - he's a very good communicator and in that circumstances, he took charge. He started to engage with the family.

Do you recall at the time and re-watching the footage, I am para-phrasing here, but did you - had started to say, "I'm terribly sorry for what's happened, if you want to talk about it and you can arrange for our bosses" - I assume you were going to say "to come and talk to you" and then being cut off by Sergeant King who then goes into, "Yes, but before you get - get that anger and that hurt, just come to the station" and



then he continues on. Do you recall that?---Yes, I have seen that - I've seen that on the body-worn.

I see. I guess the question is was it something that was frustrating you, the fact that he was quite continuously talking over the top of you when you were trying to - particularly then when you were trying to give a heartfelt apology and perhaps establish a bit of a rapport at the start of that conversation with the family?---I don't think "frustration" is the right word but it just - at the time a lot of things going through my mind and the family, they were processing their emotions and what we just told him. I didn't think too much about it at the time.

Sergeant, in your time in policing in the Northern Territory, have you - I don't now if you've answered this but have you worked in remote communities to any extent? ---No, so I have never worked in any remote communities not in the Northern Territory. With Yuendumu few month before this incident I went out there with a team of police officers because of - there was a spike in the crimes in the community and we were there to work the weekends, just to give the permanent members a chance to recover and I was quite grateful that as part of that process, ACPO Derek Williams showed me around the community, introduced me to some elders including his dad and also took me to Yuelamu, Mt Allen, so that was my introduction to the community.

And in your time in the Northern Territory you worked with other ACPOs or other Aboriginal Police Officers anywhere else?---Yes, throughout the years I worked with many ACPOs.

Right, so prior to this occasion you have met Derek Williams on that occasion, he'd been someone that gave you a bit of an induction to people and places in Yuendumu?---Yes.

You've also said when you arrived that - in the early hours of the morning, in the community, you were aware that he had some contact, whilst he wasn't in the station he'd be liaising with Sergeant Frost and Others?---Correct.

Were you aware during - or upon your arrival or prior to talking to the family to notify them of the death, were you aware that he hadn't been told of Kumanjayi's passing? ---Mr Williams?

That's correct?---We notified him before went to notify the family.

Up until that point were you aware that there was - he was - or heard some evidence that he was actively - or intentionally not notified throughout the evening?---Correct.

Prior to - or in planning to go and speak to Eddy and Lottie and Others, did you discuss whether there would be any benefit in Derek, the local community member, attending that and being part of that conversation with the family or with others?

---Not when we went to 577. I had a conversation with Derek. He was at Margaret's house, so he was there to assist us and, as I said, Mr Eddy Robertson, he was going to introduce us to Lottie and Kumanjayi's wife.

Was there any discussion about involving any other community leaders or elders in those conversations with family?---Not those conversations but there was - it was a work in progress so I understood that IMP in Alice Springs, they were trying to tap into the resources of people who had worked in Yuendumu to give us some insight into influential elders in the community, and intention was for senior detectives to fly in that day to have - to hold an open community meeting.

And other than the conversation with the family, did you engage any of those elders subsequent to that, throughout that day?---Police engaged with them. I think Assistant Commissioner Wurst engaged with them as soon as he arrived, but I left the community at lunch time that day.

Sergeant, one of the other things we've heard evidence of which no doubt you are aware, is racism within the police force?---I've heard that in the inquest, yes.

I'd just like to ask you your experiences of being a member in the NT Police Force, have you observed or experienced yourself any forms of racism either directed at you or that you're aware of?---Not directed at me. And also I can't say I've never observed any any racist comment or anything but it's very low level and I would have addressed it on the spot.

So no one's directed any racism towards you?---No. I'm not saying that, you know, in the recent say two, three, four years, even when I first arrived in the NT as a constable I've never personally been subjected to that.

Have you been made aware of what you could do as far as support or as far as notifying people, you've been made aware of those sort of processes? You feel comfortable that if racism was directed to you that you could address that?  
---Absolutely, yeah.

What about racist or derogatory comments towards Aboriginal people, is that something you've observed or you're aware of?---As I said, I have observed what I would describe as low level, you know, those sort of comments. And also me or other supervisors would have no problem addressing that, pull that up on the spot.

Have you had instances where you've had to pull people up for that sort of thing?  
---For inappropriate comments, yes.

Yes. And is it something that you've had to escalate or is it simply that you've addressed it there and then and told people?---Immediate intervention seems to be effective. As from my supervisor, I never had risk like that. In my current role at the Professional Standards Command I've seen that and when it's referred to us, it's collated to us, we would have taken the immediate action.

Right. Do you recall what the inappropriate comments were that you've had to address?---I'm trying to remember. I think referring to Aboriginal people, use the word black fellas while making fun of discussing sort of in that context. Something they have observed when attending jobs. As I say, it's very low level and I don't – I'm not certain that is directed at Aboriginal people, it could be just they are discussing those specific incidents, expressing disbelief. If they express that in a disrespectful way, as supervisors we have an obligation to address that immediately, to manage the perception.

Throughout your life have you experienced racism prior to joining the NT Police Force?---Outside work place, maybe at times, but nothing that would be serious enough to concern me personally.

And are you able to convey the sort of feelings that you've had yourself with fellow officers, is that something you're able to convey your own feelings of those experiences when they may direct comments at people in the community?---Sorry, I don't understand the question.

Your own experiences of racism, obviously you know how that feels for yourself or for any of your family, for example. Is that something you're able to convey to fellow officers if you need to address any of their inappropriate or racist comments?  
---Absolutely, yes.

Thank you, sergeant.

Nothing further.

THE CORONER: Mr Hearn.

MR HEARN: Thank you, your Honour.

XXN BY MR HEARN:

MR HEARN: Officer, my name is Hearn and I represent the Robertson, Lane and Walker families. Do you know who they are?---I know the Walker family.

They are families connected with Kumanjaya Walker?---Thank you.

I want to ask you some questions about the communications that you had with Eddy Robertson and you've been asked some questions already about some of the matters I'll touch upon. The first phone call that you had with Eddy followed a conversation in which an agreement had been reached that Eddy would in effect be misled about certain matters. Is that correct?---Correct.

And as Mr Mullins has clarified with you, that that contained effectively two, involved two falsities. One being the representation that Kumanjaya was still alive. Correct?  
---Yes.

And the second that he was still receiving treatment?---Yes.

It didn't say anything or it wasn't agreed that he'd be told anything specific about where that treatment was taking place. Correct?---Correct.

But you understood that there had been, by that time, a number of – or that there were during the evening a number of airplanes that had come and gone from Yuendumu?---There was only one, the one we arrived in.

Do you agree that the agreement or plan to tell Eddy these untruths was primarily informed by a desire to maintain community order?---Correct. So at the time evacuation police evacuating from the community was still a real possibility. It was an evolving situation. And we are doing everything we could to try and avoid that and that was part of the reason why we deceived Mr Robertson.

And it was based on an assumption about how the community and the family might respond if they received the true information, is that right?---Correct. We're just – we had to be prepared for all possible scenarios and retaliation and you know, riot, it was one possibility.

And just jumping forward in time, you spoke with both the Robertson family and also the Brown families in the early hours of the next day, the 10th?---After 6 am, yes.

After 6 am. And while there was obviously distress and upset expressed by those persons, the delivery of the news of Kumanjaji's passing did not in fact prompt any violent outbursts or volatile behaviour. Do you agree with that?---I fully agree. And I'm very grateful for their cooperation and understanding. I was really surprised how they behaved and the restraint they've shown, yes.

Did it suggest to you that assumptions that had been made earlier that night were perhaps wrong and misconceived?---Yes, the scenarios were (inaudible). It turned out to the best for everyone, the way the community behaved.

But assumptions about how they may behave or would be likely to behave when receiving that information were wrong?---Correct. There wasn't – all I can say it wasn't an unreasonable assumption of one possibility but I'm glad they proved us wrong.

Has it caused you to reflect upon making assumptions about how groups of people might behave in response to certain events?---100 percent. And in hindsight, if we had the resource, more consultation would have better informed us. But the time – the decision made at the time was – we didn't have the benefit of all the information and definitely I think the organisation would have learned and assessed the risk differently based on how the community reacted this time. Moving forward, 100 percent.

In terms of how Eddy Robertson was identified as the point of contact, is that something that was decided in consultation with you or was that something that was

effectively dictated to you?---There were a number of discussions in that regard. I think that was based on information provided by Sergeant Frost, Mr Derek Williams and also the information IMT in Alice Springs, they went out to obtain. They identified that one is that he is well respected elder; and two, is his family relationship with Kumanjaji.

Did you – or were you part of any conversations in which consideration was given to which other family members or which other family groups might need to be contacted?---For the purpose of notification of death or giving an update, that information came from the IMT and Sergeant Frost who had worked in the community for an extended period of time, agreed, that was – he was the most appropriate person.

But when you say “appropriate”, is that appropriate for the purposes that – that police wanted to achieve, or was that the most appropriate person in terms of delivery of this tragic news to the family?---I would say it’s both. He was identified as someone who was close to Kumanjaji, but also had shown leadership and capability in reaching the police and the community in this type of hostile situations.

And did it factor into your consideration, or the police, as an institution’s consideration, that he was somebody who was likely to assist the police in the delivery of that news?---That was definitely an important part of the consideration.

Did you understand that he was not biologically connected to Kumanjaji?---Correct. I think not at the time of the first phone call. But as time went by, more information became available, I think – Kumanjaji’s biological parents were not in Yuendumu, they are from Papunya. Even Margaret was – wasn’t biologically connected, but we were working on the information we received at the time. And he was very close to Kumanjaji.

You understood, and I think you said in response to questions from Mr Mullins, that you understood that whatever information you gave to Eddy, was likely to be further communicated amongst the family groups, amongst the community, and more broadly. Is that fair to say?---Correct.

And so you understood therefore, that the information, to the effect that Kumanjaji was still alive and receiving medical treatment, was likely to, after that phone call, be widely dispersed?---Very likely, and as I said, until we put enough security measures in place, we wanted to maintain that false impression the community had.

It would not surprise you to learn that that information very quickly made its way, also to Alice Springs?---I didn’t know that.

But it wouldn’t be surprising to learn – to learn that?---No.

Did you become aware at any point that family in Alice Springs, who believed that Kumanjaji was alive and receiving medical treatment, attended Alice Springs

Hospital in quite large numbers?---I didn't know that, but it's a reasonable course of action family would do, yes.

And that people remained there in quite large numbers, young children, babies, waiting for his arrival, until almost dawn?---I didn't know that. I didn't consider that implication.

Was there any consideration given to just how broadly and significantly this false information might affect family and communities?---As I said, at the time, the consideration was maintaining police service in the community, and to wait – buy some, what has been proven to be incorrect – incorrect assumptions, how the community may behave, react. But at the time, to avoid any evacuation, it was believed to be an appropriate course of action, at the time.

If I suggest to you that policing the community was the dominant, and almost exclusive consideration in this decision, would you agree with that?---I have to disagree with that. It is the safety of police officers, and police assets that was an important consideration. But also if we had to evacuate from the community, Yuendumu is a very large community, when they do require police service there, we – it'll be very difficult for us to provide that service for days to come, if we couldn't avoid evacuation.

There was a second phone call, or at least a further phone call, that you made to Eddy, at some time around four o'clock in the morning?---Yes.

And that was after a decision had been made, and on page 12 of your statement you say, "Because it was identified that he's the family member, and elder, and is someone whose had a good relationship with police"?---Yes.

And the purpose of that call, at about four o'clock in the morning, was to ask him to come down to the police station?---Correct.

And the purpose behind that request was to finally tell Eddy, that in fact, Kumanjaji had passed away?---Correct.

Did sometime after that phone call – well, I suggest to you, that in that phone call, that Eddy expressed some reluctance to coming down to the police station at that time?---Yes he didn't want to come, but my – the impression I had at the time, was that it was just because of the time of the day, and also he didn't know the reason, because – because of the first phone call, it was reasonable for him to assume Kumanjaji had already been taken to Alice Springs. And there was no other reason that could be urgent enough for him to attend the police station at 4 am.

And you didn't give any – or you couldn't – or you didn't feel that during that phone call, you could give him the real explanation as to why you were asking him to get up at 4 o'clock in the morning?---Correct, that if I told him the real reason that defeats the purpose. We wanted to talk to him in a safe environment, and let him process the emotions, and then assist us contacting the family in the morning.

When you say a safe environment, safe environment for who?---For all of us. If I – another option was to attend House 577, we didn't know how many people who were going to be there, how they're going to react. And as I said, we identified that Mr Robertson is someone who is capable of provide that leadership in the community. And assist us.

Sorry, you talked about wanted to give him a space in which he could deal with the emotions associated with receiving the news?---Correct.

Do you recall that it was explicitly requested that Eddy to come to the police station by himself?---No, he's – I think he mentioned I have – I can ask my wife Lotti to drive me there.

But in terms of entering the police station, for the delivery of the news, are you aware that Eddy was told to come alone?---I can't remember exactly what was said to him, but intention was to discuss the matter with him, or if he had two or three support person, a small group, I think we were able to accommodate that. Which – what we tried to avoid was that having to break the news in front of a large group of families.

If I suggest to you that not only was he asked, in the phone call with you to come to the police station alone, or into the police station alone, but there had in fact been a plan, an agreement amongst the police, that that is what was to happen. Is that something you're able to comment on?---I – I'm not aware of those discussions. But if – even if that being the case, being the person in charge on the ground, if Mr Robertson came with family members, it depends on the size of the group, I would have let them in.

And you would agree that a request for him to be alone, while receiving that information at 4 o'clock in the morning would have been, on anyone's assessment, an insensitive request to make?---If the request is specifically to have him alone, by himself, it wouldn't be appropriate. I think the context of that was along being away from the large family groups.

Was it also to quarantine information? You wanted to give the information to him, and him alone, so that there could be a control of who was receiving the information?---Correct, until we can attend the family house in day light. It was – we were trying to balance the need to deliver that message in a respectful way. Being us doing that in person, standing in front of the family members, but also in the controlled environment, to the best we can.

You delivered this information personally to Eddy?---Yes.

And you did it in the – in the reception, or the waiting area of the police station, is that right?---Yes.

During that conversation, did you correct the earlier falsity that had been represented to Eddy that Kumanjayi had been alive at 12:07 am?---Yes, that conversation would clarify that, yes.

You say you clarified to Eddy that, in fact, some four hours earlier, you'd lied to him? ---What I explicit said, I'd have to watch the body-worn. The conversation we had would have made it very clear, we lied to him earlier.

Do you have any recollection of how you explained to him why you had lied to him? ---I would have to refer to the body-worn of that conversation.

So, that conversation was recorded by body-worn camera, was it?---Yes, yes.

Now, after that news had been delivered, Eddy was asked to identify the body. Is that correct?---Yes.

And what consideration had been given to whether or not Eddy was, in a cultural sense, the appropriate person to be doing that?---It wasn't a request. It was an invitation for him to – if he wanted, he could spend some time with Kumanjayi Walker. But he - - -

Was it not the final stage in the forensic process before the body could leave the community?---Forensics, they conducted an initial examination and by that stage, I believe, yes, that was completed.

But this was the last thing that needed to be done before the body could leave the community. Is that correct?---Yes, and that was the consideration. We didn't want to take the body away from the community without – Mr Robertson had that opportunity.

Well, I suggest to you, it wasn't about giving loved ones an opportunity to spend time with the body, it was simply – well, I won't say simply, but primarily so that police could move to the next stage of dealing with the body?---I disagree with that. Obviously, transporting the body to Alice Springs, that was a priority. But notifying Mr Robertson was, at that time, was the sole purpose that - - -

If this – if giving family time with the body before it left the community was a significant consideration, why were no other family members contacted for that purpose?---The 4:30 contact with Mr Robertson was to arrange for the 6 o'clock notification that we formally notify the family.

I'm sorry, I don't understand?---But acting on the advice from Mr Robertson. I can't remember the exact words he said, but the advice was, the body needed to go before daylight.

That's what Eddy said once he found out the body was there?---Correct.

And I suggest to you that the – what Eddy was expressing to you is that if the family



found out that it had been misrepresented to them and the community that the body had in fact left the community for medical treatment, there would be a lot of anger? ---Yes, that was a reasonable conclusion. That's the impression I received from him.

So, after Eddy had been woken up at 4 am, delivered this news about the passing of Kumanjayi, been told that he had been lied to, been asked to identify the body in a way without regard to culture. He was asked by police also to attend his home, the Robertson home, to assist in the delivery of the news to that family group?---Yes, that's the assistance we – from him that we discussed and he agreed to assist us in that way. But it wasn't – he wasn't obliged to do that.

No, he was prevailed upon?---We discussed that and we – I think, initially, there was some reluctance, correct. But it was a difficult situation for the – in the interest of the police operation and those people of Yuendumu. Yes, I pressed up on him for that.

But not only the delivery of the news to his family, but the delivery of the news to the biological Brown – sorry, the Brown family?---Mr Derek Williams assisted with that.

Was Eddy asked whether or not he would assist police with that process?---I don't recall speaking to Eddy in relation to that. We discussed, how are we going to notify the family at 577 and then going to – I'm just trying to remember to notify Margaret. I do remember asking his assistance for that. He was present, which I'm grateful. I think the main point we discussed was how we were going to notify Kumanjayi's wife.

Sorry, just to be clear, he was present at the Brown family gathering?---He arrived at 577 shortly after we arrived, and then I think he walked over with us. The two houses, the Brown family house was very close. It was in walking distance.

I suggest to you that he had been, again, prevailed upon to attend the Brown family to assist the police and that he had reluctantly agreed to do so?---So, for the involvement of Mr Robertson, if he felt he was pushed up onto do that, I apologise for that. But certainly, his assistance was very, very valuable to us and yes, he showed me reluctance and we insisted, pressured him into helping us.

Did you think that this was perhaps an inappropriate use of a grieving family member, to prevail upon to assist the police in this way?---If Mr Robertson felt that way, I accept that, yes.

No more questions, thank you.

THE CORONER: Mr Edwardson?

MR EDWARDSON: Yes, just some very brief ones, if I may.

XXN BY MR EDWARDSON:

MR EDWARDSON: Had you ever experienced before you attendance as the

forward commander on 9 November 2019 anything like this event?---No, this, I've never experienced anything like this in my policing career, a shooting in a remote community, no.

And so, you had very limited, if I could put it that way, experience in dealing with members of the Indigenous community, in particular, in Yuendumu?---I agree.

And you were, can I suggest and I say this quite respectfully, very much deferring to the expertise and advice that you were getting from Sergeant King?---Since he arrived, it was a big relief for us and his operational background in dealing with potential community riot, I accept that his advice and opinions, yes.

Yes. So, whilst you were the forward commander, and to put it in my terms, not in other's terms, but the buck stops with you. Ultimately, you were very much dependent upon the advice that he gave you as to how you could best manage what was clearly a very, very difficult situation?---In terms of tactical options, yes. But also, I was supported by the IMT in Alice Springs.

And do you recall that when you were having – certainly, can I put it this way, Sergeant King put you on notice that this was a very, very significant event?---Sorry, could you help? In what context?

Sergeant King put you on notice that because of the significance of this event, it was very important that you document everything in the course of the events that would unfold thereafter?---I do remember him saying this is a very significant event, our decisions will be scrutinised.

Did he say words to this effect,

“This is the biggest thing this organisation has seen in 17 years. You need to be conscious of the fact that everything we do right now is going to be looked upon from everyone right to this point to managers right through to the Coroners and the families. We have to show effective leadership. We have to show effective controls.”

Did he say words to that effect to you?---I don't remember the particular words he said but it was for everyone's understanding.

But in any event what he was plainly conveying to you – I don't expect you to remember the exact words – but he was plainly indicating to you that this was a very significant event?---Correct.

And accordingly it had to be managed properly?---Correct.

And that everything that was done thereafter had to be properly documented?  
---Correct.

And when you went out and you went and spoke to Lottie I think in the presence of Sergeant King, he took control, it would appear, of that conversation?---Yes.

That narrative, if I can put it that way. You tried to communicate with members of the community?---I think watching that body worn, yes, once I just – I apologised.

Sure. But obviously you had little or no experience in dealing with community members or leaders or anything of that sort?---In that context, no.

No. Let alone a case or an event of such significance?---Yes.

And would it be fair to say that in those circumstances and given the experience and expertise that Sergeant King had, he took control of how best to deal with the situation as it was presented to you (inaudible)?---Sorry, can you repeat that question?

Given that you had little or no idea, if I can put it that way, of how to deal with the community, let alone the magnitude of this event, he really took control of that conversation?---That conversation, yes.

Yes?---So when he arrived we had a discussion and we discussed the roles and you know, each one chosen responsibilities. He said – I think he mentioned his experience in dealing with this type of situation and a previous riot in the same community and he said the responsibility sits with you, I'll give you advice on technical options and how we deal with those situations.

Now in the context of that advice, before you left the police station to go and speak with the community on that occasion, you must have conversed with each other as to how you were going to deal with the situation?---Correct.

By that stage you knew that Kumanjaya Walker was deceased?---Yes.

You knew this much, didn't you, that he had effectively been shot by Constable Rolfe?---Yes.

You knew that Constable Rolfe had been stabbed by Kumanjaya Walker with a pair of scissors?---Yes.

And you knew this much, that the shooting was in response to that stabbing?---Yes.

And that is knowledge you and Sergeant King had before you departed and before the conversation that we've seen on the body worn occurred?---Correct.

Now this is important. Did Sergeant King discuss with you the problem of what I'll call – well he called first in evidence here, the Bush Telegraph? Do you know what I mean by that?---Can you explain that please?

Sure. Did you have a conversation before you left the Yuendumu Police Station, before we have this communication which is on body worn video, about the problem of Chinese whispers. Now I'll use that as an alternative to the Bush Telegraph. And I say that respectfully. I mean people talking and basically one person – the narrative basically being created. Do you understand?---Yes.

And did you have that – something along those lines, you know, it's important that we make sure that they understand that this is a serious matter, but it's not just as simple as a shooting, it has to be put in context?---I don't remember having those conversations.

You didn't have any conversation about how you were going to tell the community what, if anything, happened?---No, not – that's – that's what I said earlier. The planning was pretty much focused on who should we be speaking to, which house to go to and the security arrangement.

The next thing I want to turn to briefly is the topic of racist comments that you've observed from time to time. As I understand the evidence that you've just given, you said that you yourself have never been exposed to racial comments or taunts by fellow members of the police and the like?---Yes.

But you have observed and been present for what you called very low level racist comments or inappropriate remarks?---Correct.

And you said that you have been present when that has occurred in a day to day sense and also in the context of disciplinary proceedings?---Correct.

I want to deal with the day to day observations. You mentioned, I think and I think when you were asked about an example of one of those inappropriate comments you mentioned something along the lines of black fellas?---Yes.

Is that what you mean or is that just the descriptor of the type of comments that had been made in your presence?---It's a representation of some derogatory terms, yes.

And that's what I took it to be. When you say a representation, you mean that they're not the words that were used?---Definitely those words, I'm heard them before.

Yes?---But also there are other words, derogatory words.

Can you give us some examples of other words, that you've heard?---I can't think off the top of my mind, no. It's – I think it's just the context of some of the conversations when it says inappropriate.

Well let's say a police officer – I'll give you a hypothetical. Let's say a police officer is involved in some sort of arrest or conflict with an Indigenous person. Can you think of any occasion when police officers in your presence have used inappropriate

language referable to the person apprehended?---Very rarely those comments were made in front of the person the public we are dealing with. When I say - - -

They were made privately?---Well yes. When I say inappropriate, in workplace, in the police station Muster Room.

So in the workplace Muster Room when that sort of private inappropriate sentiment was made by a police officer, have you intervened personally?---Yes.

In what way?---Cut it out, hey, don't say that.

Right. And have they taken that onboard?---Yes.

Now you seem to be able to say where it occurred, in the Muster Room. You say it happened at a police station, not directly to the individual but in a, what I'll call a private setting?---That's just my observation. I mean of course there are times, many times comments were made in front of the public and usually there will be a complaint against police. Or in my Professional Standards Command day to day job I see a lot of – not a lot but - - -

I'll come to the Professional Standards issue separately but in a minute. But what I'm asking you about at the moment are these inappropriate comments which – are they racially inappropriate?---It's difficult to draw a connection, a certain connection in the overall context, yes, it's racially inappropriate.

The descriptions of a person, an offender, should not be used?---Yes.

And that's happened in your presence. You've told us, for example, in the Muster Room?---Correct.

And you've told them to cut it out and that's happened?---Yes.

And that's what you've described as very low level inappropriate conduct?---Yes.

All right. Now let's go to – well what – sorry, I'm not from the Territory but it's disciplinary proceedings?---Yes, the - - -

PC, what's it called, Professional Standards Command. Thank you. The Professional Standards Command deal with complaints?---Yes.

Disciplinary proceedings involving officers if allegations are made against them?---Yes.

That officers are investigated for one reason or another?---Correct.

In your position – how long have you been in that position?---Nearly two years.

Nearly two years. So since the events of 9 November 2019?---Yes.

And over those two years have you had to deal with disciplinary matters that relate specifically to the use of racially disparaging remarks, things of that nature?---I'll have to review the records but yes, there will be. I can't say with confidence how many, the extent of it or - - -

But - - -?---But yes, those kind of behaviour, they're not in line with our code of conduct.

Right. And can you give us examples? I don't expect you to remember every single one, but can you give us some examples?---Derogatory comments about the persons we deal with, inappropriate comments in the workplace.

And those things are again what you would describe as low level?---When I say low level, it's restricted to what I've observed.

Yes?---And it's a relative thing, you know, in terms of seriousness if - usually if it reaches PSC it's escalated, it's beyond what a supervisor in the field can deal with, so those matters I would say they're not low level, they're serious.

All right. Let's go back to the workplace for a minute?---Mm mm.

Inappropriate racially inappropriate comments made in your presence in the muster room which you told them off about, and said, "That's just inappropriate - don't do it". Right?---Correct.

Would you agree with this, not only then but now, in your current position, that there is a world of difference between an inappropriate, even racially vile comment made in the muster room as opposed to it being directed specifically to the individual?  
---There is a difference, yes.

Would you also - and if I can ask you this, in your experience have you actually seen police conduct in the Northern Territory which from your perception appears to be their conduct is driven by racial motivation - skin colour if you like, as to how they conduct their policing?---If you ask my opinion there are certain conduct, you know, the inference can be drawn, it's driven by discrimination or racism.

Yes?---But yes, but I can't give you specific examples. I'm not sure - - -

But for example you could draw that inference if at the time of the conduct a person was being apprehended, for example, words were used which were consistent with that sentiment - that type of thing?---Correct. I think it's - a better way to describe it is we deal with - police officers in the NT spend a lot of time dealing with Indigenous community and the members of the Indigenous communities, so inappropriate conduct, unfair treatment or any other conduct, this is - whether it's driven by racism, discrimination or it's just the way that particular officer conducts themselves, I don't think there's reliable data to say with confidence which one is the case.

What might motivate an individual in a given case? That's what I understand your answer is?---Yes.

Nothing further, thank you, your Honour.

THE CORONER: Yes, Dr Freckelton?

DR FRECKELTON: Thank your Honour.

XXN BY DR FRECKELTON:

DR FRECKELTON: Detective Senior Sergeant, just a couple of matters about your own background. You were a police detective in New Zealand, I think, for the best part of seven years, starting in 2006, is that right?---Yes.

And then you spend a bit over a year as Senior Investigator of the Victorian Institute of Sport?---Yes.

And you hold a law degree from the University of New England, is that right?  
---Correct.

And a Graduate Diploma in Legal Practice from the Australian National University?  
---Yes.

And you joined the Northern Territory Police Force in 2013, so you're coming up to your 10th anniversary?---Yes.

However, the latter two years have been spent by you in the Professional Services Command - Professional Standards, I beg your pardon?---Yes.

And you haven't spent time in remote communities?---No.

Now, you were assigned the role of being forward commander at Yuendumu in the aftermath of the tragic shooting, is that right?---Yes.

Can you put a time on when you assumed that role? Was it on arrival at Yuendumu?---On arrival, correct.

And that was at roughly what time?---I have to refer to my notes. I can't give you the exact time. It was a long night, it's - I can't remember the - we spent a lot of time organising to travel to Yuendumu.

Yes?---I can't remember the exact time we arrived.

That's all right. When did you finish up your duties as forward commander?---2 pm on Saturday when I flew back to Alice Springs with the IRT members and the two nurses.

Was that on the Sunday?---Saturday - Sunday - Sunday, yes.

And whom did you hand over that responsibility to?---I think it was Acting Senior Sergeant Jared Thompson. He arrived by the Air Wing flight, yes.

Let's go then, if we could, to your coming to the Yuendumu community. You - there was some delays in your arrival I think, at the community, is that right?---Correct.

Can you tell her Honour what associated with the Royal Flying Doctor Service led to the delays of your own arrival?---Yes, your Honour, so when I arrived at the station initially I was asked to work in the IMT and then because of the imminent departure of the RFDS flight I was told I need to take a team out there. They were loading up the aircraft to see how many police members they could carry, due to the weight restriction. I arrived there with Constables Sykes, Lynch - I can't remember, there was - there was another - and Zach Hughes. I entered the hanger, the nurses were loading up the aircraft and I spoke to - if I remember correct his name was Damien - or the pilot. There was a robust conversation, they said they were not prepared to leave Alice Springs unless we can provide them assurance the runway is safe to land. They were concerned that the community members might have sabotaged the runway or it wasn't safe for us to land. So there were some delays and to give them some assurance I think making phone calls back to the station to see if someone can actually observe - see the runway physically, then there were discussions, the RFDS will take us to Mr Allen and land there, wait until it was safe. It's only a five minutes flight to Yuendumu from there. While that was occurring I think they went on 20 minutes - half an hour, I got a phone call that Kumanjayi had passed away so there's no need for the RFDS to attend. I relayed that to the pilot. Then we walked over to the police air wing hangar and the pilot was doing his night time flight certification at the time so we couldn't reach him, but he came back later and - to refuel the aircraft and that was the cause of the delay and when we left, while we were airborne and there was no communication and we didn't know if the airstrip was safe. So when we could see the lights of Yuendumu we were in the holding pattern for a period of time until there was a phone call from the INT say "Members are on the ground, it's safe for you to land" and that was predominantly the delay, yes.

When you did arrive then, you were transported to the police station?---Correct.

Was the situation calm outside the police station when you arrived?---It was far from calm. So the sense of urgency - when I landed I disembarked the aircraft, the members there appeared to be very nervous. They just said, "Let's go - let's go" then they were pointing - they were shining their torches at the boundary fence of the airfield and the urgency was demonstrated, I think one of our members left his bag in the aircraft and they said, "Don't worry about the bags - we need to go" so we all jumped in the car. As we exited the drive through the gate of the airfield I could see a group of people, it was a large crowd some distance and - - -

Can you give any estimate of the size of the crowd. You've described it as large? ---It would be in the vicinity of 100 plus. I couldn't see clearly, predominantly because the first - the car in front of me as they travelled through the crowd, I saw a



lot of dust and rocks hitting their car and from there - actually I used the first aid bag to block my head just in case a rock come through and then I sort of - I kept my head down, Constable Sykes did got hit by a rock in the arm and then I also I tried to look in the rear view mirror to see if the ambulance as with us, so I didn't have a good observation of the crowd as I - from distance it was a large crowd but I can't say with confidence the exact number.

And were there members of the community along the road, on the way back to the police station?---Yes, I – so we got to the station, there are people outside, they're not that many. But I believe they followed us to the station, because in the car park I check on the welfare of everyone, ask them if they're okay. And then I started to hear commotions outside the police station. And as I walked in to the station, rocks were landing on the roof, and there were commotions outside. So I gathered – I couldn't see directly, because the – it was dark outside, but the situation was quite intense. I assumed there was a large number of people there.

You described the situation as “intense” at the police station. What observations did you make of the state of the police station, and what people were doing?---Inside the police station?

Yes?---When I first walked into there, there was a sense that I think evacuation was a possibility, and people are talking about evacuation. And that was evidenced by the – there were firearms and ammunitions on the desk. And I asked them what's this for, and they said “We're leaving, in case we have to leave at short notice, here it is.” And then the intensity of rock throwing on to the roof increased, and the people yelling outside. So at that time, there's no way for me to tell whether there were more community members coming, or you know, the situation was stabilising. I just couldn't assess that. And we discussed about evacuation, as to there was a back gate, who had keys. That was the – the feeling I had when I walked into the station.

So what was your early assessment of the security risk, upon arrival at the station? ---Due to the construction of the station, it was very challenging for us to maintain security, and actually make an accurate assessment as to what we are dealing with, because the – the crowd had gathered at the front. And from the inside, it's very difficult to see through. There were large glass doors and windows, people could see us. And from the rear car park of the station, it's very limited visibility to the road, it's due to high fence and gates and all that. The - - -

So did you take control and issue orders, as to what should be done while you stayed at the station?---Yes, and that's the first briefing. My – this was – it was very quick. I allocated people task they need to use whatever they can find to block the windows, to tape it up. And another group - - -

Why – why was that necessary sir?---So that people outside couldn't see our activities inside.

Why was that important?---We're worried about people may just – may break into the station, it was very easy, if they could see. And also I need to task people to go to

the – to secure the crime scene, the vehicles, that means there wouldn't be many people actually left in the office. And if people saw that, and naturally they may think that – it's an opportunity, if someone wanted to retaliate, with less police officers in the station, the risk is higher, for us.

Now you did conduct a number of briefings over the course of the period from about midnight onwards, did you not?---And the first briefing was conducted – was in – ten minutes after I arrived. That was before midnight.

Now did you give any instructions to the members who were present, who had been involved in the incident, in the community, not to talk to one another?---Yes.

Would you tell her Honour about those instructions that you gave?---Sure.

(Inaudible) of them, please?---So the first instruction was at the briefing. It was an instruction, but also - - -

This is the first briefing that you've just described?---Yes, as soon as we arrived.

Thank you?---I think most of the members who are in the – inside the station, but from my recollection, Constable Donaldson and Kirstenfeldt, they were still out the back, the rear car park, making sure no one jumped the fence, try to get into the police station. And it was in the context that I said, thanked everyone for what they have done for maintaining the security of the station, for being there. And I said, I understood they had just gone through a traumatic event, however, I couldn't afford to stand any of them down. I still need them to give me their 100 percent. And in that regard, I said, "I ask you, even you're working together with each other, to not discuss about the circumstances of the shooting." So that's the first.

Why did you give that instruction?---So they don't contaminate each other's memory that when they are interviewed, they will have the first – that'll be the first time they can retell their experience.

And you were about to say that you had other briefings, or other discussions with them?---Yes. So the second one was a more thorough briefing, as to how we can attend the airport and pick up TRG members. I may or may not have discussed about not to discuss the incident – the shooting incident with each other. I can't say with confidence. The third one was about half an hour after TRG arrived. Sergeant King conducted a briefing, directing people, basically discussing the security arrangement. Directing people to get fire extinguishers and discussing possible scenarios, if there's a fire, what do we do. If there's a riot, what we do. And then we put people into groups, stood them down. If they – it's supposed to be the IRT members and the people attached to Yuendumu Police Station. I allocated – it was a block of unit, what we called the VOQs, the Visible Officers Quarter.

Yes?---I allocated those unit to the members. They had to – a number of officers had to share those unit. And some of the IRT members, they were allocated a same unit. I didn't want to break them up into other teams, because if I had to call out

anyone for any emergency, people came with me from Alice Springs, would be the first port of call, because they're – simply because they hadn't been through a traumatic event. And I try not to disturb the IRT members. And I – as I walk into each unit, I said, to not discuss this until you are interviewed, or until you speak to the detectives.

And did the detectives commence to speak to people somewhere around 3 o'clock in the morning?---Yes, after they arrived, I told them which unit IRT members are at. I believe, yes, they started to speak to them.

Now were members who came from Alice Springs, allocated long arms to carry with them to the community?---Yes, before we left the station, if I remembered right, Constable Sykes and Lynch – actually I said to the group, "Find some long arms or patrol rifles, whatever you can find." And I remember they came out with two firearms, the M-4s.

Why did you tell them to take the those or obtain those?---It was – we were going into the unknowns, and we had be prepared for the worst situation, and the long arms, they are part of our tactical options. And logically, we need to have all the options available to us, going into volatile unknown situations.

So do you know Senior Sergeant, how many long arms were taken by Alice Springs members to Yuendumu?---Two or three.

Now, was it your intention that when discharging the duties assigned to them, police officers carry those long arms in the community, from your point of view?---In that situation, yes.

When they arrived?---When they arrived.

What about when they were given other responsibilities in the course of the Sunday? Did you want them to be carrying those in the community?---I didn't discuss that with them. Simply because I didn't turn my mind to it.

All right. Now, at the time that you arrived in Yuendumu, did you know anything about the Coniston Massacre?---At that time, I didn't know.

So, did you know anything about any particular sensibilities and sensitivities about the carrying of long-arms in this community?---No.

Do you know about the Coniston Massacre now?---Yes. Since after the commencement of this inquest, yes.

Have you been informed too that when three members guarded the crime scene, they did carry long-arms?---Yes, I've learnt that during the inquest.

Did you give them order to do so?---No. And I also didn't give them orders not to carry it.

In the circumstances where you were the senior sergeant, the person of highest rank in the police station, do you now regret that they did carry those long-arms in the community?---From what I've heard in this inquest, yes.

Was there a need for them to be carrying and holding those long-arms to guard the crime scene?---Absolutely not.

And what do you say now to members of the community about that having happened?---I apologise for the upset we have caused. It's – I simply didn't consider that and when assigning officers to guard the crime scene. It may well be the case there's just those members. The other ones have the rifles, but yes, on reflection, we should have made – I should have made an ongoing risk assessment, and by then, the risk didn't justify the presence of long-arms.

Thank you. The members of the community would have heard what you said, Senior Sergeant. I would like to pass now to the other sensitive matter about which you've been asked questions, namely the provision of information about the passing of Kumanjaya to his family members. All right?---Yes.

Now, a decision was made for the reasons that you've explained to her Honour, not to provide that information until after the TRG arrived. Is that right?---Until after TRG has arrived and also we have implemented measures in place to deal - - -

Yes?--- - - - with different scenarios.

And did that arise from the risks that you perceived from the time that you arrived in Yuendumu, the provision of that information that could prompt an adverse response from members of the community?---Yes.

You've told her Honour that a decision was made not to provide information to members of the community, apart from Mr Robertson, until about 6 o'clock in the morning. Is that right?---Correct.

That meant, quite a number of hours had passed from the time that TRG arrived, security measures were put in place until the provision of that information?---Correct.

What was the thinking about delaying provision of that information until 6 o'clock? ---The main consideration is whether the first one – TRG arrived at 1:30. We were not in a position to do anything until at least 2:30.

Yes?---By then, notifying family of the passing of Kumanjaya is not something we take lightly. We would like to do that in person in a respectful way. Before 6 o'clock, that defeats the purpose. Waking family up, telling them that Kumanjaya had passed in those hours is unreasonable. And another consideration was again the security. It was dark. Members are fatigued and leaving the station to attend House 577 in those hours increased the risk.

Yourself and Sergeant Keane and Sergeant Frost, however, did leave the police station a little while before 6 o'clock to go to House 577. Is that right?---Correct. So, we waited for a little while. Mr Robertson initially agreed to come and see us and take us there.

Yes?---He didn't attend, so around 6 am, we thought, that's the time we told Mr Robertson we would go to the house. Had he already told the family? We don't want to be late. So, we left the house – left the station around that time.

Now, there's been a suggestion that evidence – it's a matter for her Honour, but it seems a little unclear. But there's a suggestion about whether there was a person in the vicinity of House 577 when the three police members were there to speak to family members who was in possession of a machine gun. Do you know anything about that?---I can't explain that, but the only possible explanation is, so we attended House – that's part of our planning, was that only Sergeant Keane, Sergeant Frost and myself would attend the house. And there was a TRG vehicle containing TRG members were told to park 100/150 metres away and to not approach us, unless it's necessary. I can't remember, I think those members might have been carrying long-arms and they accepted police practice as if it's your firearm, you secure it. I don't think – it could be general duty members that came with me from Alice Springs. But leaving firearms in the vehicle is not acceptable usually. So, if for any reason they exited the vehicle, they might have had it on them and created that impression that it was a person that was armed purposely, but no, other than that, I can't provide any explanations.

Except in absolutely extraordinary circumstances when delivering information that a loved one had passed away as a result of shots discharged by police officers, it would be problematic for a police officer to be in the vicinity of such delivery of news in possession of a long-arm or a machine gun. Do you agree?---Absolutely, I agree, yes.

Did you have any intention or knowledge that that was taking place?---No.

And do you still have any knowledge that there was any person outside a police vehicle, 100 or 150 metres away with such a weapon?---No. And the TRG members were told to stay inside the vehicle, but we were there for a period of time. I can't say none of them actually left the vehicle to stretch their legs, but that's only – that's the only possibility I can think of.

Thank you. Now, I'm asking you this last set of questions in your role as the most senior officer at that time at Yuendumu. You attended there with Sergeant King and Sergeant Frost and the three of you spoke with members of Kumanjaji's family. Is that right?---Yes.

Now, do you recall that the first name of Kumanjaji was utilised by Sergeant King and that the wrong name was used?---That was an embarrassment, yes.

Well, did you also know that, a) first name was used when the right thing to do would

have been to refer to him as Kumanjayi, given that he had passed?---Yes.

Do you understand that that would have been distressing, offensive and perceived as insensitive by members of his family group?---Absolutely.]

On behalf of the Northern Territory Police, do you have anything to say to the family members about that?---I apologise for the offensive caused sincerely. It's – there were a number of oversights and failings on my part, and I accept those.

Thank you.

MR COLERIDGE: Your Honour, I just have five minutes, I think.

THE CORONER: Sure.

REXN BY MR COLERIDGE:

MR COLERIDGE: Just very briefly, I think you've given evidence that you were very appreciative of the guidance and advice that you received from Sergeant King. Is that right?---Yes.

And that was because he was a very senior police officer. Is that right?---Yes.

He held a very senior position within the TRG?---Yes.

And you knew of the TRG, I take it?---Yes.

Everyone in the Northern Territory Police Force knows that they are a highly skilled and specialised unit?---Correct.

And respect them?---Yes.

And it sounded like you also said – sorry, I'll withdraw that. He had decades of experience in responding to incidents similar to these, would you agree?---I assume, in Yuendumu was the first time I met Sergeant King and he – I was very impressed with his capability and his knowledge. He shared his experience of the previous riot in the community and to me that's very valuable because he had first hand experience to deal with these other things in the context of that particular community.

So it was a combination of his seniority, experience as a tactical officer but also experience with Yuendumu in similar circumstances?---Correct.

If Meacham King had been a junior police constable with two to three years experience who'd never been to Yuendumu, you wouldn't have deferred to him in the same way, would you?---No. He was the tactical commander from TRG and that role usually requires a lot of experience and knowledge in that regard.

Thank you. I just want to ask you some questions about the use of inappropriate language within the Northern Territory Police Force and PSC. The first thing I'm going to ask you and I don't mean to offend you, I want to ask you if you've heard some words, either in the context of your work in the PSC or within the Muster Room. Have you ever heard the word coon used by a police officer?---No. Actually – no, the – because of my role at PSC I've seen some of the messages and that's the first time I've seen that's being expressed between two police officers.

I see. And is that the same answer with the other text messages that you've seen? ---Yes. I've never seen – I'm confident to say those language, if – expressions, if they were overt, you know, people would have addressed them straight away.

Okay. So when you were talking about low level inappropriate language, you weren't talking about that kind of language?---Certainly not.

You've reviewed all of the text messages, is that right?---Some of them, yes.

Have you ever heard the word niggers?---Yes.

Used by a police officer?---It is a derogatory term but more often police officers call each other that but not in a public, no.

Certainly if that term were used to describe an Aboriginal person it would be deeply - -?---Offending.

- - - improper?---Correct.

It is just offensive, it's not inappropriate, it's offensive?---Correct.

It's racist. I just want to ask you, you in fact distinguished language of that kind from the type of low-level language you'd heard elsewhere, but you also gave evidence that when using the description low level, everything is relative. Do you remember that?---Yes.

And what I understood you to say was that by the time something is escalated to the PSC the matter is already relatively serious to have reached the PSC, is that correct?---Correct. Low level, when they say that, is to supervisors in the field can address it immediately.

And when you use the description low level in the context of the work for the PSC, what you're describing – what you're doing effectively is distinguishing that low level matter from a much more serious matter that the PSC might deal with?---Correct. I'm distinguish it from the matters that require formal disciplinary actions.

Some of those matters might involve overt police corruption or use of force, for example?---Correct.

I also just want to ask you about the use of the word private to discuss communications between police officers in the workplace. Obviously when a police officer talks to another police officer within the workplace, they're not using inappropriate language in front of an Aboriginal person, but they're still public officials, would you agree?---I agree.

And they have significant responsibility to the public?---Yes.

And so in that sense it isn't quite right, is it, to say that these are entirely private conversations. They occur in the workplace?---Correct. In the workplace everyone is still bound by code of conduct, even outside workplace. But no, it's not appropriate for anyone to express those languages, even though it's private between two police officers.

And although it's obviously better in some ways that a police officer doesn't use inappropriate or racist language in front of an Aboriginal person, it would still concern you if they used that language within the workplace, correct?---It would concern me in the regard if it reflects their thought process. It may reflect on their behaviour, how they deal with members of the public.

And to use a word that you've used, if a police officer is regularly using racist language when communicating between police officers, you might draw different inferences about their conduct in the field when doing things like using force, correct?---Correct. Their general conduct in the field, yes.

Because thoughts and attitudes influence behaviour?---Potentially, yes.

Nothing further, your Honour.

DR FRECKELTON: Your Honour, could I have the indulgence of asking one additional question that I omitted to ask?

THE CORONER: Sure.

DR FRECKELTON: Thank you.

FXXN BY DR FRECKELTON:

DR FRECKELTON: Detective Senior Sergeant, one of the roles that her Honour is to make recommendations and the police force generally is reflecting on what we've learnt from the experience of Kumanjayi's passing and also the police response to it. You were assigned as Detective Senior Sergeant as Forward Commander in, (inaudible), circumstances to take control of the town and to look after the welfare of everyone concerned. Yes?---Yes.

However, like probably most detective senior sergeants, you had limited experience. Can you see merit if such an incident should ever occur again in a more senior officer being sent out immediately to take control and be the Forward Commander,



say someone of superintendent or higher?---Certainly. To manage a critical incident of this scale, I see the benefit. Because one of the challenging aspects for me was when I arrived I had to be the eyes and ears of the IMT in Alice Springs, because they were – I could only deal with what's in front of me. And IMT's job is to – IMT is to plan ahead, identify resources, identify risks. And they relied on me to provide in that information. And there was – it wasn't very efficient because I spent a lot of time instead of dealing with what's in front of me I spent a lot of time providing updates to Superintendent Nobbs who then relayed it and escalated. I certainly see benefit if in this particular scenario having a superintendent, an incident controller based in Yuendumu and just manage it from there. But I say that with the qualification that when we were on the way there, it's – we're talking about whether we evacuate or not. In hindsight I think that they should have planned for that at an early stage. That's all I can say.

Thank you, your Honour.

THE CORONER: Thank you very much for coming and giving your evidence and we appreciate the information that you've been able to provide to the inquest?---My pleasure, your Honour. Thank you.

WITNESS WITHDREW

THE CORONER: We'll adjourn for lunch until 1.30.

LUNCHEON ADJOURNMENT

RESUMED

DR DWYER: Thank you, your Honour. Your Honour, Officer Mitchell Hanson is in the witness box, and I call Officer Hanson.

THE CORONER: Thank you.

MITCHELL HANSON, affirmed:

THE CORONER: Thank you.

XN BY DR DWYER:

DR DWYER: Sir, could you please tell the court your full name and your rank?  
---Sure. My full name is Mitchell Brian Hanson. My rank is Constable First Class.

And where are you currently based?---I'm currently based at the Peter McAulay Centre and I worked with the Territory Response Group.

How long have you been with the Territory Response Group?---I've been working with the Territory Response Group since 13 August 2020.

Constable, you've provided a number of documents that are of assistance to her Honour. The first is, you participated in an interview on 17 January 2020, in fact, two interviews on that same day. Do you recall that?---Yeah, I do.

The first started at 9:52 and went to 10:34; and the next one at 11:52 and went to 12:09 pm. Now, her Honour has the transcript of those interviews and they're in front of you as well.

At 7-54 and 7-55, your Honour.

And then you also gave evidence at the trial of Constable Zachary Rolfe. Is that right?---That's correct.

And that transcript is at 7-55A, your Honour.

Constable, can I start off with your background? You joined the Northern Territory Police Force on 30 May 2016. Is that right?---Yes, that's correct.

And I just want to ask you about how you came to be a police officer, but before that, you grew up in the Northern Territory. Is that right?---Yes, yes, I did.

Whereabouts did you grow up?---I've been pretty lucky to grow up all over the Territory. I was born in Victoria. I moved to the Territory when I was – before I could remember. I've lived in Darwin. I've lived in Alice Springs. And then I spent a good portion of my sort of early teens and grew into a man on Groote Eylandt.

Your dad was working at Groote Eylandt. Is that correct?---Correct, my dad was a bush cop.

Okay?---Yep.

And so, how old were you when you first went to Groote Eylandt?---I can't remember exactly how old I was. I think I was – I would have been around 13, 12, 13-years-old. It was – yeah, it was quite a while ago.

And you were there into adulthood, obviously?---Yes, that's right.

You went to school on Groote Eylandt?---Yep, I went to school. I did – I completed – I did Year 7 to 10 on Groote Eylandt. And then I completed an apprenticeship as a welder in the mines out there.

When you were going to school, was there bilingual education?---There was for a period of time where we learnt the bits and pieces of the Anindilyakwa language, yeah.

And did you, as a result of going to school on Groote Eylandt and growing up there for so long, have friendships with Aboriginal people from Groote?---Yeah, I did. My dad went out there as the school-based constable. So, fortunately, I got to – I did get to spend a lot of time with the Indigenous schools. There was a – I remember once, there was a time when dad – I don't know if he let me have the day off school. It was a weekday, so it was a bit – you know, it may have happened, and then I went out to Umbakumba and we made fishing spears with the local Indigenous guys that were around – like probably a little bit older than me, but around my age. And then we went to a place called – I think it was 13 Mile Beach or something, somewhere you're not locally allowed to go without the – you know, Indigenous community members, where we went fishing and collected turtle eggs and you know, did those sorts of things.

Do you still have those friendships?---I haven't been Groote Eylandt for quite some time, but I do hear the names of the people from there come up over the radio. I have run into a couple of the guys from the Durilla family. It's a particular family that I was quite close to. I did a music program with a lot of Indigenous guys as well. And yeah, I just know how they are. If I was to go back there, I would fall straight back into those relationships immediately.

And what about your time in the rest of the Territory. As a result of that, do you have friends who are Aboriginal people?---Yeah, I do. A couple of the guys off my squad were Indigenous. One was from the Barunga area, who I was fortunate enough to serve with in Port Keats when I lived and worked out there. I haven't had the opportunity to go and meet his family, but he says that he's got – you know, they've got a skin name for me and some of the other guys from my squad. And yeah, I've been lucky enough to develop awesome relationships from all over the Territory.

What was it like growing up in Groote Eylandt?---It was a very interesting place. There was – it was probably a lot more diverse than you would think, being you know, such a remote community. Obviously you can only get there by plane or by boat, you can't – you know, you don't have – you can't just freely leave and come back. But there was families from all kinds of – different walks of life. There was a lot of people that were employed in the mines were from South Africa, so we had lots of friends from, you know, from South Africa. We had friends that had grown up, you know, in a similar circumstance to myself. The police family was really good and obviously the police force is quite diverse now. The – I had Indigenous kids in the school that I went with and I, you know, hung out with. I did music – I did my music program after school. So – and that was basically me, myself and my brother and then it was 13 other Indigenous kids from the other communities. So it wasn't like – you know, we were the minority there, which was really cool. It was very eye opening, yeah. A good experience.

You said that you left school at you think year 10 and you became a boiler – well you did a boilermaker's apprenticeship, is that right?---Yes, that's correct.

And then you worked as a boilermaker for a while, is that right?---Yeah. So I finished school – I completed year 10 and I'd – you know, I had a decision to make whether I would stay in school and go down that road or – I'm more of a creative individual, I like to work with my hands. I grew up working with dad, so for me the choice was pretty easy to fall into the workplace and do that. So I became a boilermaker. I completed my apprenticeship out there. I worked within the mines there for two years. And then I began doing fly-in, fly-out. I did that for a further two years, living in Darwin and working out on Groote.

And then what made you join the police force in 2016?---Well I – you know, dad was a cop and you know, I guess – that was probably a big part of the influence. But the cops that were out on Groote, they were all there – that was like our family out there, all of those – those other guys. And dad's – my dad's pretty good relationally, like he – he gets to know people quite well. And so it was easy to feel like the police was really comfortable, I guess, the police family. And so I guess that sewed the seeds of what I wanted to do for a living there. So it was a bit of a sort of career aspiration, I guess.

So you grew up, am I right, with a respect and an admiration for the police officers? ---Absolutely, yeah.

Including your dad?---Of course, yeah.

But other officers as well?---Yep, 100 percent.

What was it that you admired about them as a young person?---I guess the – I like – you know, I'm pretty – I like to be – to have good strong relationships with my friends. And I could see that, you know, if you were in trouble – well I don't remember – I remember dad getting a callout in the middle of the night. I don't even know if he was on call. There might have been a riot. I don't know what the job was.

But I remember dad, like running to the bedroom, throwing his overalls on, chucking his boots on and running out the door. And just that sense of mateship that was there, I guess that really spoke to me and I really appreciate having those relationships. And so that was a big – that was a big thing for me.

Did you get an opportunity as a kid to observe how the local – you describe your dad as a bush cop I think at the beginning?---Yeah, yeah.

How he, for example, interacted with people in the community?---Yes, I did. My dad's a really good communicator. I probably was too young and I didn't have the policing – the knowledge of policing. So I didn't really – I couldn't probably relate that to bush policing in and of its own, versus the difference of policing in, you know, in town. But I definitely got to see dad's relationships and how, you know, using your mouth is a much better weapon than using – than other things. And I remember – yeah, you're sort of never off duty in a small town. So when we were down the street or you know, or whatever and there was something going on, you know, dad would just start yarning away to these people and they would very quickly – you know, he could just de-escalate stuff just by talking and it was really something to see. Yeah, it was really cool.

And he worked hard, your dad?---Yeah, he did. He worked a bit too hard sometimes. He – you know, he was always chipping away as a police officer but then on – you know, he used to love fixing boats. And so I think that's where I sort of got my passion for working with my hands, because I would work with dad fixing up his boats or you know, just on his projects and stuff.

I might come back to some of your reflections on policing out bush?---Sure.

After you'd had an opportunity to do some policing and you told us about your time in Wadeye and Port Keats. So I'll come back to that as we go along chronologically, if you don't mind?---Sure.

You tell us in your interviews that you joined the police force on 30 May 2016 or that was the first day at police college?---Correct.

And did you have any friends in the job, apart from your dad or your dad's older friends? Did you have any mates around your own age when you were joining? ---No. I sort of – you know, I knew what I wanted to do. I wasn't doing it for anyone else, I guess. And I don't – I didn't join – you know, I didn't have any buddies going through. All the relationships that I have in the police have been fostered since that point.

How old were you, Constable, when you joined?---I think I'd just turned 22 or I may have still been 21. I haven't done the maths, sorry.

But 21, 22. A pretty young fellow, is that fair?---Quite young, yeah. Yep.

When you joined in your group at college there was Constable Rolfe, is that right?

---That's correct.

And he was your squad mate obviously and you became good close friends is how I think you describe him in one of the interviews?---Yes, that's correct.

And you'd still describe him today as a good close friend?---Yes.

Can you recall back in college doing any training or education about cultural competency?---Yeah, we did. We had a – it was like a field day with – at the Bagot Community where we went out and we had local presenters speaking to us about all kinds of different things. It was really – it was quite hard to get a sense of the culture in that place because it wasn't – it's not necessarily a remote community. And those – I believe that a lot of the camps around Darwin are made up of people from different cultures. So we did do some – I think they called it cultural sensitivity training, something similar to that. But for me, that was – that was a – you know, I'd grown up immersed in the different cultures and stuff from Alice Springs to Groote Eylandt and had family that lived in Gove, so I spent quite a bit of time out in Gove as well. And you know, it was just a nice experience for me rather than a big learning curve like it was for some.

Very different to someone who's never met an Aboriginal person ever?---Absolutely. Absolutely.

But do you recall being given any particular instruction as to how you should communicate with Aboriginal people sensitively?---Not that I recall.

Do you recall during that – I just grouped in together Aboriginal people?---Sure.

You know, don't you, that not all Aboriginal people are the same?---Of course.

And it's offensive to think of all Aboriginal people as being the same culture?---Absolutely.

Was there anything that you learnt about trying to understand the different cultures from different areas around the Territory, during that training with the police?---I had a pretty good grasp at the time that something that works for one – like even one family within the same community isn't going to be what necessarily is effective for another one.

Sure. But was there any training on that? I'm just trying to get you to help us understand what the training was like?---Yeah, sure. I don't recall that – specifically that training on that topic specifically.

Do you recall, constable, any education being delivered about the history of relationships between police and Aboriginal people in different parts of our country?---Yeah. During – it wasn't during that cultural sensitivity side of things. But during our police training at the college we did have a – it was like a group project where we had – everyone was sort of assigned a different topic and then we would present on

that. And a lot of that was about the history of Aboriginals in Australia and their relationship with police.

What sort of things did you learn?---We learned about incidents like the Kalkaringi walk off. We learned about incidents similar to the Coniston massacre, things of that nature.

Do you recall were you given some curricula materials?---I think it was – we were given a brief of what our study topic was to be and then from that point we sort of developed, you know – we built what we were going to discuss with the rest of our squad mates. It was really sort of a good way to do it because we had five or six different groups. And each one had their own topic, so we got to learn about, you know, five or six topics. We learnt one really well, because that's what we presented on. But then we learnt about the rest of them from the others, which was really good.

When you would – I appreciate I'm asking you to cast your mind back now?---Sure.

Six years. But when you learnt about something like – or incidents like the Coniston Massacre, do you recall learning that there were in Australia state-sanctioned massacres?---Yeah, so the Coniston Massacre, I believe I learnt about back then, but also was – fortunately, it was – I was talking with someone in the station yesterday and they brought it up with me, jogged my memory on it. So, I remember that there was a – there was a state-sanctioned massacre which was – where they even fudged the numbers on what occurred. The – I can't remember what started it, but they said basically that 32 members of the community were killed, but it was more, 60 was more accurate.

Okay. So, the State minimised the numbers of Aboriginal people?---Yeah, that's the – that's what I understand.

Do you remember when you were learning about it in 2016 that you learnt anything about the fact that Aboriginal people today have – may well have fear as a result of the history of the relationships between police and Aboriginal people in this country? ---I don't remember learning that specifically. I do understand that, having grown up in – you know, that world.

And that was my next question, Constable, is that something that you accept? ---Yeah, absolutely. There's definitely things that linger from that.

In my opinion, it's no different to how a Jew might feel after World War II, like those things hang around, absolutely.

Do you appreciate the value in learning about our history and learning about it from Aboriginal people so they can tell us how they feel?---Yeah, I do. I've come to – you know, as I've grown, I've come to learn the importance of having a more holistic view of what is going on around me, not just seeing things from my perspective, but you know, understanding where other people come from also.

Okay. I'll come back to some of those issues as we go along, but your first posting was November 2016 in Alice Springs. Is that right?---That's correct.

Did you receive, when you got down to Alice Springs, any specific training or learning about the Arrernte people of Alice Springs?---I don't believe so.

Okay. And I take it, it flows from that, that you didn't receive any specific training or education about different cultural groups who live around Alice Springs, for example, Yuendumu or Papunya?---I don't believe so. I think we saw a map where the family – different family groups were located. That's where I learnt about the Warlpiri people being from the Yuendumu area and so on.

But there was no specific induction or orientation along those lines. Is that right? ---I don't recall. I don't believe so.

You stayed in Alice Springs, I think, from November 2016 until the end of 2019. Is that right?---That's correct.

Okay. So, during those three years, Constable Rolfe was here in Alice Springs as well. Is that right?---Yes, that's correct.

And you were on the same patrol group as Constable Rolfe for part of that time? ---Yes, I was.

How long? How many of those years, do you think?---I was on the same patrol group; Patrol Group 5, for my entire time here, which is really uncommon. So, in that time, we had people come and go from the group. I believe that there may be eight to 12 months where Zach and I worked consistently on the same group.

Is that Patrol Group 5?---That's correct.

And Superintendent Proctor who's prepared a report to assist her Honour says that you're the officer who worked the most shifts with Constable Rolfe. There's 42 shifts that you worked with him. I'm sure you weren't counting them at the time?---No, no, not at all.

Does that surprise you, or does that seem about right?---That sounds about fair, yep.

Was that by choice or accident that you two were in the same patrol group?---I've never asked to be placed on a different patrol group. I like to sort of just make the most of what I've got and – so if those shifts where Zach and I were together would have been by chance.

That Patrol Group 5 in 2019, am I right that that included Mark Sykes as well? ---I don't recall exactly. I think he was on – I remember when he came down to Alice Springs. I think he was in like a POSI cage type - - -



Okay?--- - - - set up for a good period of it. I don't – there would have been times when I definitely worked with him.

Okay?---But I have – I remember working with Mark Sykes, but I don't remember what periods and for how long he was dedicated to Patrol Group 5.

James Kirstenfeldt, was he someone you worked with regularly?---Yes, I've worked with James Kirstenfeldt quite a bit.]

In Patrol Group 5?---That's correct.

And what about Sergeant Kirkby?---Sergeant Kirkby was my shift sergeant for quite a few shifts, I believe. But the shift sergeant and the watch commander would regularly change. So, I'm not 100 percent sure at what period, sorry, at what periods throughout that – my three years here in Alice Springs were with Paul Kirkby as my shifty.

When you joined – when you got down to Alice Springs, you joined the IRT, Immediate Response Team. Is that right?---That's correct.

When did you do that?---At a guess, I don't know the dates, at a guess I would say it would be about six months before I left.

So, some time in 2019?---Yes, that's correct.

Was Constable Rolfe already a member of that team - - -?---Yes.

- - - when you joined?---Yes, he was.

And was one of your reasons for joining that your mate, Zach, was already in there? ---My main reason for joining was that I had – I did have desires to go to the Territory Response Group. It's a field that interests me. So, I wanted to sort of build up as much experience as I could in that area so that I would be the most capable police officer I could be for the role that I wanted to progress into.

Did Constable Rolfe tell you anything about the role before you started?---I don't recall conversations specifically about it. It wouldn't surprise me if he had.

Did he give you the impression, for example, that it was good fun; anything of that nature?---I was under the impression that the training was really good because it would further our ability to do general duties a lot of the time, have a little bit more – help us with like, building an appreciation of how to, you know, attend jobs in the safest manner possible. You know, a lot of the time, we – in those high-pressure moments, we'd fall back to the – you know, to our training baseline. So, my intention, which has always been the case with, you know, policing, I believe it's so important is to – if I can raise my baseline of my training as high as possible, when I am under stress, I can fall to - and still land on a high standard.

Constable, when you – I'll withdraw that. In that last – in that year of 2019 when you were a member of the IRT, did you – do you recall how many jobs you would have gone out on?---Jobs that were specifically IRT deployments, I think it would be less than ten, maybe five.

In your first interview at page 19, you say, "Generally, most of the times that I've been deployed on IRT jobs was for things like search and rescue. It was for things like large community and civil unrest. We even went out to just relieve members sometimes"?---That's correct.

Like we went to Borroloola a couple of times where their members were just flat out and they needed someone to go and help us. So, we went out a couple of times? ---That's correct.

You also explained, at page 21 for my friends, "Normally, when we get called out, we get a phone call from Sergeant Bauwens. He'll make us aware of whatever job it is and then we go." Correct?---That's correct.

Okay. So, in relation to the jobs that you went, putting aside search and rescue for a moment - - -?---Sure.

- - - the jobs like large community and civil unrest, or relieving local members, did you have any formal briefing before you went out for those jobs?---No, we didn't have formal briefings every time where we would come together in a room and have a conversation. Quite often, it would be – quite a few of those jobs, I had attended with Lee Bauwens, Sergeant Bauwens. So, I would have time – you know, for example, there was a – there was civil unrest in Hermannsburg and we attended after the fact to have a positive presence in the community. We – I sat in the car with – I think it was Brendon Donathawn (?) and Lee Bauwens and we, you know, talked about what was going on. You know, we – I guess you could call that a formal briefing where we learnt about the job.

Isn't "informal briefing" a better way to describe it?---Informal briefing is definitely – I would agree that that is a better way to describe it. Since joining the Territory Response Group, I've seen a much – the planned responses from the Territory Response Group are totally different. Where we would do – we all, you know, someone yells out briefing, everyone yells it out, and then we'd get – we'd charge to the briefing room. And we'd have – we'd sit down for those formal briefings.

Do you - - - ?---It definitely wasn't set up.

- - - do you know what I mean by SMEAC briefing?---Yeah, the situation, mission, execution, action and coordination.

And is there something like sort of briefing in the TRG, whenever there's a job? ---Yeah, that's – that's essentially, I think the framework in which briefings run off. It's a little bit different I think, once it's get to the – you know, the national guidelines for the way that these jobs run. Especially when it's – back – back then, I didn't

understand the difference between general support and high risk. And I would just use the term high risk willy nilly. Whereas now, I've come to learn the difference, and yeah, there's a certain requirement for how we commit to those tactical operations.

All right, and the TRG, there is, is what you're telling her Honour?---Yes, that's correct.

And do I understand your evidence, in the TRG, before you go out to a mission, there's a call-in briefing, everybody gets – so in the TRG where you are now, someone calls out briefing, and you all huddle together, and it's very clear to everybody whose standing there that this is a formal briefing, correct?---Yes, that's correct. There's no ambiguity of what's going on what so ever.

And we've heard evidence that in the IRT, when you were there in 2019, there was no process for formally allocating a team leader to the job, at least not from the – that we haven't heard about that from the witnesses so far. Is that your experience? ---My experience now, looking back, it's sort of fortunate I get to see both worlds. The tactical policing world, and then the – just the – you know, the general duties side of things. My experience would suggest that there was – that we didn't understand those roles within the – within these deployments. And because a lot of the time, probably 99 percent of the deployments we went on were general support. So it – it wasn't an necessarily, like in my – from my understanding, it wasn't necessarily an IRT deployment. It was a general duties deployment with IRT members, because they would often be the only ones to – you know, that were proactive enough, that wanted to go out and – and make a difference, I guess.

And is it your experience that the members of the IRT in 2019, were not just proactive, but a number of them, including yourself, were ambitious to do other things in the police force, correct?---Yes, that's correct. A lot of us were, you know – we – we were aware of why we joined the police, you know. We want to make a difference in the community. And that was a big part of – I think that's a big part of why I joined TRG. The majority of jobs I go to, have an impact. And that for me, is totally satisfying.

And in terms of your work in the IRT, please understand this is not a criticism, but the IRT, do I take it, were seen, by yourself for example, as a gateway to the TRG, because it was an opportunity to prove yourself on some of those risky jobs?---I can understand why – why you would think that. I definitely didn't see it as a gateway, because the people that were – I wasn't proving myself to anyone from TRG. And – and it wasn't so much about proving myself to others, it was more about trying to develop myself, because I knew the pathway I wanted to go down. I'd already completed selection for the Territory Response Group. And I failed the firearms assessment. I – you know, I got through the two-day barrier. And then I – I'd been unsuccessful. So I knew, you know, I evaluated that. I knew I had things that I needed to work on. And you know, I wanted to take every opportunity I could to improve my skills, my knowledge, so that I could achieve the desired outcome at the end of the day.

And when you applied again for the TRG, is the fact that you're in the IRT something that you put on your application?---I don't think so. Yeah, I don't think it – I don't think it held any weight in that space.

Do you remember doing – when you're doing your training with Sergeant Bauwens, and do you remember learning about the green operations roles, and black operations roles?---Yeah, we had a – we did a two week course, did a two week course. And in that two-week course we had a – the first week was dedicated to what's called black role. Where it's like working in and out and around a strong hold, where you may have an offender inside, like in a cordon situation, that basically where an immediate emergency action has been committed to. And you need to make entry under rare and urgent circumstances. And then the other week was green role, where we would learn about inserting, in a way that gives us good, you know, we have eyes on a place. We can get really good intel, and conduct recognisance essentially, and a cordon role.

And so the green roles would be covert, leading up to a job, for example?---Not – not necessarily. But if there was a job that required it, and absolutely.

So I take it though from what you've told us, that those – those training, in black operations roles and green operations roles, were of assistance in terms of the TRG, is that right? Those skills?---Yeah, I had a – I had more of an understanding about what the two different – what the difference was between the two. That's definitely true.

But your cordon and – well I withdraw that. Your skills in terms of clearing a room, for example, they were all skills that were going to be of assistance to you in the TRG, is that right?---Understanding the way a team works in those situations is really important. And the tactics we used in IRT were different to the tactics (inaudible) doing black role with the Territory Response Group. Also the – you know, the amount of times I – the amount of time that we got to train, like that is such a niche, it's such a difficult skill to master, that black role. To do that well, and to do it safely, like we, in the TRG, we train that two to three times a week. And you know, we're always learning and improving.

So one of the things that her Honour already has heard evidence about is that the IRT was part-time?---That's correct.

TRG is full-time?---Yes, that's correct.

So you can develop a different skill level in those areas - - - ?---Absolutely.

- - - when you're dedicated to it full-time?---Yeah, 100 percent.

You started to give some evidence earlier about the briefings, and the differences between the IRT and the TRG. I take it that when you were in the IRT in 2019, you didn't see the Standard Operations Order? The SOPS?---I probably – I think I would

have – I definitely had access to it, I think. I didn't have a – I didn't understand how important it was back then.

Do you remember being trained on it? Are you trained - - - ?---Yeah - - -

- - - about the significance of it?---Yep, when we did the – when we began that two week course, we started with all of that sort of learning. But basically, the course started with the – almost like an induction. We start with all those PowerPoints and what not. And then we progress through to the hands on training.

You've drawn a distinction today between general duties jobs - - - ?---Yep.

- - - and high-risk jobs. And you've said that when you were a member of the IRT, you didn't sometimes really know whether you were going out on general duties, but just happened to be members of the IRT, or whether it was specific IRT job, is that right?---There was never – I was never confused about whether it was an IRT deployment, or if it was a deployment, just with IRT members. Does that make sense?

How did you learn the difference in each case?---Because, Sergeant Bauwens would – would say, in a text message, something along the lines of, we just need a couple of members to go out and provide respite for members at X, Y, Z. Like Hermannsburg, Borroloola, wherever it was.

If the words in the text – if you – if it was an IRT deployment, you would expect the words IRT in the text message, is that right?---That's correct.

But did that make any difference to the sort of – or to whether a team leader was appointed?---I don't recall. Because we – because we didn't have those formal briefings like we do in TRG, we didn't have – I wasn't always aware. I – on TR – on – sorry, on IRT deployments, I was always comfortable with who was the team leader. For example, we would go out, and there would be members like Luke Bevan, or Brendan Donathawn, depend – you know, Tony Hawkings. We'd have those senior members and we would often - - -

What do you mean by – but do you mean you were always comfortable, because you make an assumption, that the most senior member was the team leader?---Part of our police training, just in – just – that everyone gets, is that the most competent person would be the team leader of a job. They did – it might not necessarily come across as words "team leader", that's only something I've really come to understand in TRG.

In the TRG, is a team leader appointed for every job?---Each team gets a team leader. And there's usually between three – three and four teams, depending on the numbers we have for each specific job.

In relation to the most competent person, is it the case – this is when you're in General Duties, for example – is it the case that the level of competence might be different depending on what skill is required for a job?---Yes, that is the case.

So if – some people might have a different view as to who is the most competent in that team to lead the job?---When I say most competent, I mean person of the highest rank.

When you're in a job though, looking back on it, it's a good idea, isn't it, to make sure that everybody understands who is a team leader for a particular job?---Yeah, it definitely makes command and control over that team way more effective.

Did you ever see any sort of written operations of order or arrest plan or anything of that nature when you went to do a job for IRT in 2019?---No, I don't recall.

What about in TRG?---We use a program call ISERV (?) and on that program – it's really awesome. We all have access to the different, you know, the different – I don't know what it's called – the different folders on that program you would say, on that application. And generally the orders get written up in that program. So we've got - -  
-

So you've all got access?---Yeah, we've got the means to be able to just click on it and open it and see it if we want to.

And her Honour has heard – and tell us if you need a break, I'm sorry?---I've just got a bit of a - - -

Tickle?---Chest thing going on. I'm sorry.

Okay. Do you need a break at all?---No, I'm feeling good.

Constable, her Honour has heard that of course some jobs need more planning, require more planning or others or you've got the luxury of planning in some occasions and not others?---Yes.

Where you have the luxury of planning, so something that is not super urgent, you would always expect that there will be a written operations order that you can access on ISERV?---As part of the TRG, that's the case.

But that was not a thing for the IRT was it?---No. I don't think it was quite – I don't think it was given quite the – like other jurisdictions have the – what they call a tier 1 tactical group and then they have a tier 2. And that second tier is generally a really formal – it's just like the Territory Response Group in a sense. It's a formal – this is what it is. A certain amount of funding just gets dumped into that and so on. I don't think we quite had that set up. We were just sort of making the best of what we could with what we had essentially with IRT.

One of the things her Honour has heard about is the vest that you might wear, like armour?---Sure, body armour.

I'm sorry?---Body armour.

Body armour?---Yep.

And is that something that you would wear on TRG jobs or does it depend on the type of job?---Depending on the role at the time. And I can't – there's some things I can't comment on.

Sure?---But there is occasions where we won't wear body armour, even though it is technically a, you know, a more high risk job.

So I won't ask you about when you choose - - -?---Thank you. I appreciate that.

Which jobs you choose to wear body armour on. But when you're wearing body armour in TRG, you understand, I take it, that that's body armour that is within date? ---Yes, that's correct. We ordered our armour to make sure that we are not going to, you know, tack around and not have it within date essentially.

So when you were with IRT do you remember any body armour that you had might have been out of date or not a concern?---I don't recall. I don't recall auditing the body armour. I think for – because I was only in there for six months or so before I left.

Okay. Did you ever wear body armour on any of the jobs you went to?---Don't recall. I used to wear a plate carrier when I did General Duties, just for my own – just for my own safety.

Is that something that's optional, a plate carrier?---Well we get given the ELBV which is – that's the name of the blue vest that we have. But it used to make my back really sore. And so – but I still wanted some level of protection. And so yeah, I would wear my own – I just bought a plate carrier and I took the plate from that ELBV that I was issued, which was in date and I would wear that.

Something that you organised for yourself, is that right?---That's correct.

I just want to ask you about a couple of the jobs you did with the IRT. There's one job we've got a record of from Proctor which involves you and Constable Rolfe, Officer Bevan and Officer Hawkings out at Borroloola from 27 to 28 December. And you recall some jobs out at Borroloola?---Yes, that's correct.

Do you recall why you were sent out at that time?---For that deployment that you're referring to with Bevan and Hawkings?

Yes?---Yeah, there was an arrest target within the community and that was – that was one of those deployments where we knew that we were – that it was an IRT deployment and Luke Bevan was the team leader.

And you assumed he was the team leader because he was the one who was the most senior of that group, is that right?---I believe he was the most senior.

What rank was he?---Assess my memory. I think he was a senior constable first class.

Officer Hawkings was also senior constable though, wasn't he?---I believe so.

Why did you make the assumption that Luke Bevan was the team leader for that one?---He's of a higher rank and he had taken charge at that location.

Her Honour's already heard about this particular job, I think, because it involved a gentleman with the surname Noble who had thrown a hot drink on a police officer, is that right?---Yes, that's right, yep.

So do you recall the arrest of that person?---Yeah, I do. I do remember.

Were you there for the arrest?---Yes, I was.

Did Constable Rolfe affect the arrest or - - -?---Yes.

And you witnessed it, is that right?---Yeah.

Do you recall hearing any members of the community complaining about the use of force?---No, I don't remember anyone complaining about the use of force. I remember we – we'd basically been liaising with the community that entire day and they were saying things like if you don't find him we're going to bash you, things like that.

What time of the day was he located?---He was located some point during the night.

Or the early hours of the morning? Is that fair or do you think it's the night?---It may well have been the early hours of the morning. I remember it was dark. I don't recall the exact time. There was a lot of – we worked – I'd love to see the, you know, the PROMIS log. I think we worked for nearly 20 something hours on that one.

And what did you do in an effort to locate him?---We basically just went to his last known residence. We talked – we knew he wasn't there because of intel that we'd received from the local members that he had alighted from the community. So we basically were making – we went to his house to make enquiries about his potential location.

And then did you go to other houses around the community to try and locate him?



---Yeah, we did. We did foot patrols of the community. We spoke with pretty much every single member we saw in that town. We told them what we were there for, what we were trying to achieve. And the town was very much onboard because they were pretty upset about the initial offending that he had been involved in.

In - - -?---I can't remember what it was at the time.

We've got the fact sheet that suggests that the police officer handed him a hot cup of tea and he threw it on the police officer?---Sure. But the incident that he was arrested for prior to that.

Okay. Do you recall whether or not you went into a number of houses, as in forced entry into houses?---I don't think we forced entry into any house.

Did you knock and go straight in?---No. I don't believe so. I'd try and be pretty polite. I always ask permission to enter.

Do you recall how many houses you would have entered over that job?---I'm not sure, sorry.

Was it less than ten or more than ten?---It would have been less than ten, I believe.

Do you recall during that job anything else that you did in terms of looking for him in the community, anything else?---Yeah, we – we essentially going back to that green role training. We sort of – we snuck into the bushland behind the house to get – to try and just get some intel on whether he was coming and going from the house. Because that time I think it was quite late. We figured if he hasn't been – like Borroloola is a fairly isolated place. The outstations are quite some way away. And we didn't believe that he was walking to those outstations. So we were under the impression that he was coming and going from the Borroloola community itself. So we waited outside – I think it might have been his girlfriend's place potentially. Just – I think we sat in a bush and we kept eyes on that location for a few hours.

And then eventually he came, is that right?---I don't recall. He did come back. I think one of the community members called up and said he's at house such and such and we went there to try and arrest him at that point.

Do you remember between December and March, so December of 2018 and March 2019, whether you went back to Borroloola again?---Yeah, I did a few – I did do a few deployments out in Borroloola.

Did you go back to Borroloola with Constable Rolfe?---I don't think so. I don't think so.

A document that we know as MFIC, which is another list of text messages, Constable Rolfe writes to somebody on 10 March, "I'm out at Borroloola, a random community on the coast because they're rioting. But we came up last time they did

this and smashed the whole community. So this time, as soon as we arrived, they started behaving"?---Sure.

Do you know what he means – can you help us to understand what he might have meant?---Yeah, so when we – it was a common terminology. When - - -

Smash the whole community?---Not necessarily the community, but just that word “smashed.” Often times we would come in and start working, just like doing normal General Duties type work, and – and the shifty would say, okay guys I need you to go out and smash the jobs tonight. Because there was obviously a lot of jobs back up on the screen.

But listen, just if you will - - - ?---Sure.

- - - to what I’m reading again. “We came up last time they did this and smashed the whole community”?---I can definitely understand how that sounds. I don’t know – I don’t think he meant - - -

Have you - - - ?---It’s hard to know what he meant - - -

- - - Yes, sure, and - - - ?---I don’t even – I don’t know if that text message was sent to me?

No it wasn’t. No it wasn’t, Constable. In relation to the time that you were in Borroloola in December, did you carry a long arm?---I carried a less lethal shot gun, for - - -

Meaning a bean bag shot gun?---Yes, that’s correct. It was bright orange. And the only reason I carried it was because we didn’t have the ability to store it in the vehicle safely. But we needed to have – we did need to have it with us. It wasn’t any good to us locked in the armoury. We needed to have it with us, but I didn’t have the capacity to put it in – you know, lock it into the car.

When you say “You needed to have it with us.” There was no rioting at that time, was there, in the community?---We were there, post-incident. And we’d gotten a feeling of how unsettled the community was. And that we – Borroloola was in quite a bad way at the time.

But I think you just told us earlier, that the community had been helpful to the police, when you went there?---That was on a different occasion. That was – I think that was months earlier.

So on 27th to 28 December, didn’t you give evidence earlier, that the community had assisted you in the arrest of Mr Noble - - - ?---Yes.

- - - because they cross with - - -?---Yes, that’s correct.

So there was no – there was no actual rioting at any time when you were there on the 27th to the 28th?---No I think that the reason we had attended Borroloola was because the community with angry with police. I'm not sure for what reason.

Was it – weren't you attending Borroloola, for the arrest of Mr Noble?---Oh sorry, I – I thought you were talking about other deployments.

No, just on that one, 27, 28 - - - ?---I don't think I carried a long arm - - -

- - - did you carry a - - - ?---For that.

Did any of your colleagues carry a long arm in relation to - - - ?---I don't – I don't recall seeing them with anything like that at the time.

On occasions when you've been to the community because there has been unrest, have you carried a bean bag weapon?---Yes, once the – we had to have approval to carry that. And once the – you know, on those deployments where the potential threat against police was – was higher, then we would – we would carry that.

Who would you seek approval from to carry the bean bag?---It would – when we would get the informal briefing for that job, we would get told whether it was approved or not.

Do you know who was doing the approving? Was it Sergeant Bauwens, or at that level?---Yeah, I'm not sure. I think it was probably above Sergeant Bauwens at that time.

In – you also had an AR-15, is that right, for your role in the IRT?---I had one – I had an AR-15 issued to me, yeah.

And were you trained in the use of an AR - - - ?---Yes.

And did you ever carry the AR-15 on any jobs?---I don't recall carrying it on any jobs. I do recall we would take it with us. But then we would just basically take it the armoury, have it there as a worst case scenario type.

Did you receive any training as to the circumstances in which those weapons are carried, the AR-15s?---I don't think I was trained in like what jobs specifically would justify us carry in.

So, for example, in terms of the arrest of Mr Noble, you've given evidence you don't think you did take your AR-15. Was that your personal choice that you wouldn't use it, or was it not appropriate in an arrest scenario?---It can definitely be appropriate in an arrest scenario, but at that – on that specific day, it's hard to remember exactly what we did, because it was quite some time ago. I believe we would have taken it with us. Because it was sort of the general – the standard practise, was to take the – the tools that – you know, the worst case scenario tools. But I believe it would have been locked in the armoury immediately, because – once I got there, I realised I had

– I got a better briefing on who the offender was. And I didn't feel like he was of such a risk to my personal safety that I felt the need to carry it.

And that was for you to make that assessment, rather than for you to be instructed about it by the team leader, is that right?---I don't know if I was – I don't think – I think I would have been instructed not to carry it. But I don't think I would have – I don't think I felt the need to carry it on that day either.

When you say "I think I would have been instructed", do you actually recall getting out on a job, and a team leader instructing that, or are you just - - - ?---No I don't. I don't recall, exactly.

Can I come now to the lead up to the death of Kumanjayi. When – your first involvement in any arrest plan for Kumanjayi was 7 November 2019, is that right? ---Yes, I believe so.

You'd never met Kumanjayi at any time?---No, I don't think so.

On 7 November, you explain in your first interview, and I'm just going to read it to you, but if I get to some point and you want to see it, please let me know - - - ? ---Sure.

- - - see something in your interview. Page 9,

"Part of my daily habit would be to look at the management significant events. Zach must have got to work before I did, and he looked at it. And he told me about the incident in Yuendumu with the axe, that had taken place two or three days before, or whatever it is, or whenever it was. So we had a look at that body-worn, and we had a look at who Kumanjayi was on our system, which is PROMIS."

?---That's correct.

When you got in and Zach identified that job for you, and you watched the body-worn video footage, you were in the muster room?---Correct.

Who else was there?---The – I remember – obviously Zach was there with me. I think – I think Brianna Bonney was there, on reflection. And I also remember there was a fellow, and for the life of me, I can't remember his first name, his last name was King. And he was at the far end of the muster room.

Do – if I said Suan King (?) does that ring a bell or – or - - - ?---Yeah I – I remember his face. He's a South African fellow. It's definitely not – it's definitely not that - - -

Not Meacham King?---No, definitely not Meacham King either.

Okay. You explain parts of this in your second interview, and you – this is the one you do on 17 January still. And you say this, at page two. You were asked, "Did you

make comments about the actions of the members". And you're being asked of course about whether or not, when you were standing around watching the body-worn video, you made any comments about Officers Hand and Smith. Did you know Officers Hand and Smith, before that time?---I – I didn't know them, and I still don't – I don't know them now.

Had you ever been to Yuendumu at any time before then?---I'd only been to Yuendumu off duty. I hadn't been – I hadn't been there for – in a working capacity.

What had you gone to Yuendumu off duty for?---I like 4-wheel driving.

Okay?---And there was an opportunity for me to go and check out a – one of the cattle stations out on the Papunya Road. And then some of the Indigenous guys invited us to drive the back way from there, from Papunya to Yuendumu. And so, you know, just for the sake of a new experience, we did – we did do that.

That's some of the Indigenous guys in the police force, is that right?---No, it was the guys in the community.

How did you get to know those guys in the community?---I didn't. They just – I saw them at the shop, and I'm a pretty, you know, forthcoming guy, I just started talking to them. And they said oh what are you doing in town. I said we're just getting a feel for it really, having a look around. And – I don't even know if they knew I was a police officer, I'm not sure. But they said oh, where are you going next. And we were going to drive all the way out of – on the Papunya Road, and then back up to Yuendumu. They said oh there's a bush track there. And so we're like, and they said, oh why don't you drive that, so we did.

Is that you and Zach that did that?---No, that was some of my guys from my – from a youth group that I volunteered at.

Okay. Were you taking kids out from the youth group?---It wasn't – it wasn't for the youth group, but it was – you know, we'd gone to that – to Derwent Station, sort of looking for things to do in that space. Yeah.

Did you have some Indigenous kids with you then, or were you - - - ?---No, it was like the – myself and a couple of the other leaders of the group.

Constable Hansen, just coming back to 7 November, and watching the video. I was just asking you some questions about Yuendumu. You had not done any work as a community police officer by this time?---No, that's correct.

And you're about 22 years old, something like that?---Yeah, about 22 – 23 years old.

You said you watched it with Zach. You were asked whether you guys talked about it. And you say "Yeah." You were asked "What was the discussion you guys had about the video?" And you say,

"We looked at it. We analysed the footage in terms of – we were being critical of the members that were there. We analysed the footage, and I don't – yeah, I don't want to be the guy that's talking shit about other members and the way they – they were, and that stuff. But we counted the amount of seconds it went, from when Kumanjaya picked up the axe to when he ran out the door and the whole time in that footage of Lanyon Smith you can see his hands in front of the camera. And I think it was like eight or nine seconds where he didn't do anything".

And then the question is, "Did you guys discuss what you would have done" and you said, "We discussed what tactical options we would have at the time. But you know, neither Zach nor I have ever killed someone" as it was at that time. So when you're discussing that with Constable Rolfe, can I take it that you're explaining to the interviewers pretty frankly that when you guys were watching it you were critical at that time – you may not be now – but you were critical at that time of the officers just holding their hands in the air rather than taking more aggression action, is that right?---Yeah. That's – yeah, that's a fair thing to say, yeah.

Do you – the next question was, "We discussed what tactical options we would have at the time". What did you say about that?---I really don't remember the specifics of the conversation. We sort of – I just know myself and I know what things I'm likely to have said and that's why in my statement and then again, under oath in trial, I said it was – the conversation would have gone something along the lines of X, Y and Z.

Along the lines of he could have shot him or he should have shot him?---Yeah. No, not necessarily he should have shot him but it was more about what – you know how you, you know, you ask the question how could that have gone differently. It was that sort of a conversation.

Sure. But I want you to be really frank with her Honour when you're talking about this?---Sure.

You're a young bloke?---Yep.

You're standing there with your mate?---Yep.

You're watching this body worn. You're critical of the two officers. You were basically suggesting, weren't you, that they should have at least pulled their firearm?---Yeah, that – that – that's – that is correct. I was very junior in experience and I basically – I probably hadn't attended enough jobs realistically in that – in the remote community especially where I had more knowledge other than just what we were trained to do. And when we were at the college, that is the training we received, that edged weapon equals gun. That is that – that is the training that we got. And so, you know, from my naïve perspective, from the outset I guess, I was back then and probably being a bit egotistical as well, being a young guy, I thought they hadn't abided by their training because it was – all I knew was my training. I didn't have that experience, I guess.

Thank you for that frank evidence and do I take it that Zach was saying words to the same effect or was agreeing with you?---It's really hard to know. I remember thoughts and feelings a lot better than I remember conversations.

You remember enough to say as you go on in this interview, you say, "You know, neither Zach nor I had ever killed someone so we don't know". Was it one of the other guys in the Muster Room, King, some King, he was only really fresh on the PG. He was saying – he was up the other end of that Muster Room when we were looking at the footage. Like this has just come back to me. And he said, 'You never know what would happen in that situation. You don't know how you'd react'?"  
---Yeah, that's right. I think what he was suggesting to us is that, you know – he's older as well. He probably was – well he definitely was more mature than I was back then. He – I think what he was picking up from what I was saying is that, you know, you don't know how you're going to react until you test it. And I think what he was getting at is like I really haven't been tested and so you just don't know.

He was saying, in effect, wasn't he, pull your head in, you can't be critical of other police members in that situation?---Yes, that's correct.

And in terms of maturity, you look back on that, don't you and think that it was not the right thing to do, to be critiquing them?---I would hate to have, you know, in such a high stress like ten seconds, I would hate to have someone – we weren't poking fun or anything like that, but I would hate to have someone critical of me the way I was back then probably, yeah.

Because one of the options that you're taught about is to retreat in some circumstances, is that right?---Yeah, it's part of the – I think it's part of the Ten Operation Safety Principles to tactically withdraw.

Chris Hand (?) was one of those members. He was significantly older in years than you and he had a correspondence with Travis Wurst. You know who Assistant Commissioner Wurst is?---Yes.

Where Assistant Commissioner Wurst was checking on his welfare after the event and Senior Constable Hand writes back, "I don't think he wanted to chop us up. He just wanted to escape. No one was injured and that's the best result, in my view?"  
---I agree, yeah. The – you know, our clientele are what comes first to us and you know, I'm so thankful that those guys – because that's why that footage was so confronting for me because – like whether I know Chris Hand or Lanyon Smith or not, they are my police brothers. And when I watched that video I thought one of them was going to die. And so I was – I was petrified just watching it because I didn't want – I didn't want those guys to get hurt. But the – and they didn't. So the result is the best option that they didn't – no one got hurt.

What you now know, don't you, is that those officers knew Kumanjaya, or at least one of them knew Kumanjaya? Did you know that?---I do know that now, yeah.

And they were aware that Kumanjayi had had some significant trauma in his life growing up?---Yep.

And they were aware that he had some learning difficulties and they had some indication of his personality, so that Chris Hand had a basis for saying, "I don't think he wanted to chop us up, he wanted to get away"?---Sure.

And it's – do you reflect on that and think that's some of the advantages of community policing that police get an awareness of who their community members are?---Yeah, it's not something that you – it's a really hard thing to have an appreciation for when you've only worked in a regional or you know, a main centre. Because your only exposure to people of the community is them either going through something on their worst day or them behaving in the worst way. So when you're remote, you get – you are so emersed in that community that you get the time to see the other side of it as well. You're not just there responding to the terrible situations, you actually get the bigger picture on those situations themselves and the things that play into it. And so I can see that they would have the experience to do that whereas I just didn't have it.

And you've given some really frank evidence about your maturity levels and also the ego?---Yeah.

Of a young man in those circumstances?---Yeah.

Do you think that drops off a bit with age?---With age, definitely, but more probably – more importantly with experience. You know, we get a lot of people that are quite old come through and they've – I guess policing checks a lot of people. It certainly has checked me. And also, you know, in that period of time I think, you know, my son was only two months old or something like that and I've learned a lot from, you know, as you do from that experience as well.

I'm going to come to some of those checks in a moment?---Sure.

In relation to looking at this job, you go on to explain in your interviews that you and Zac decided that – you look on PROMIS?---Yep.

You see any alerts on PROMIS, is that right?---I don't recall exactly what we found. Obviously search a lot of people on PROMIS. They're all blurs.

You recall finding out that he was to be arrested for the assault of the police?---Yes.

And that there was an outstanding warrant for his arrest, is that right?---Yes, I do remember the warrant.

And is it your evidence that you just can't recall whether or not you read any alerts in relation to him?---I know there was alerts but I can't remember what they are.



What about going on your general practice, when you're looking on PROMIS and checking on a job, was it your practice to look at the alerts?---Yeah, absolutely, yeah. That was one of the most important things to us. Because that was – it's like that's the difference between bush policing and you know, policing in a regional centre is you don't have that, I guess, quality time with members of the community. And so unless you've had a bad experience or an experience with someone, you don't – you don't get to know them. So your only option for, you know, giving yourself some intel prior to throwing yourself into something is to look at PROMIS and seeing what's been recorded in the data.

So there are alerts we know for Kumanjaya that include, "May be violent, may assault police on arrest"?---Yep, sure.

It may well be that you looked at them?---Yeah, I definitely would.

But in any event, given you had seen the body-worn video, that would not have been a surprise to you; those alerts?---No, no.

Do you – do you learn anything more about Kumanjaya, for example, the background that I told you about with FASD – with potentially FASD or intellectual difficulties or mental health concerns?---I don't think I had any – I don't think I knew anyone that knew him specifically - - -

And - - -?--- - - - because – sorry.

Sorry, Constable, I interrupted you?---That's okay. Yeah, I don't think it – I just don't think I had the capacity to learn those things about him at that point in time.

And it follows from that, doesn't it, there was nothing on PROMIS that would have alerted you to those issues?---I don't think so.

Do you think it would be helpful?---I have seen an alert for FASD before, but it's usually someone – it's also hard to get people's medical records and to actually confirm things.

Sure?---So, it is challenging to understand that side of things.

Have you ever had a situation where you've looked on PROMIS and you've seen an alert in relation to mental health or behavioural issues - - -?---Yeah.

- - - that has been helpful for you in determining how you approach an arrest, for example?---Yeah, there's – there may be a suicidal alert, is a common one that we see. It just helps to know basically where someone's head goes when they – like for a lot of people, getting arrested is the worst thing that could ever happen to them, obviously. And you know, that little bit of insight can be really helpful.

In relation to what you did next, you and Officer – sorry, you and Constable Rolfe then went to Abbott's Camp. Is that right?---That's correct.

And Warlpiri Camp?---Correct.

You were basically just looking for Kumanjayi to see if he was there, so that you would detain him if he was?---I think in Abbott's Camp, I had a version of events to obtain from a domestic incident that I attended previously. It was sort of like a short in the dark. We just – I just asked someone who was there, "Oh have you seen Walker?" And they're like, they said, "Oh no, he's not from Abbott's Camp, that's Warlpiri." And I'm like, "Okay."

All right. And that's how you describe it in your second interview. You say, "It was just a shot in the dark?---Sure.

It was just a random discussion - - -?---Yeah, yeah, it was.

- - - at Abbott's Camp. But then you went to Warlpiri Camp, did you, with Constable Rolfe?---That's correct.

And what did you do when you were there, just the two of you this time?---I don't think – I don't know if we went there, just the two of us.

I see. So, you then go onto explain. You say, "We went to Abbott's Camp. It was just a shot in the dark. Just random." You did go to Warlpiri Camp later in the day. correct?---Correct.

Was that when the other members arrived?---I believe so, yeah.

So, in your memory, was there only once that you went to Warlpiri Camp on 7 November? I'm not trying to trip you up?---Now, that you say it. No, I know.

I genuinely don't know, so I'm just asking you?---Sure. Now that you say it, I don't know. I can only remember one time.

Okay. So, you explain in your first interview, "There was a bit of a lull in the shift, so the other members were available to help us." I beg your pardon, there is something that might help you. You say you went back to Warlpiri Camp. So, let me just prompt your memory from this first interview. You say you went to Abbott's Camp and they were like,

"Nah, no one from Warlpiri Camp, or no one from Yuendumu is here. Try Warlpiri Camp. So, we were like, 'Oh yeah, all right, fair enough. So, we went to – we decided we were going to go to Warlpiri Camp just to check that out. I think his links were like House 6 or House 2, or something like that in Warlpiri. I think there was like a bit of a lull in the shift, so the other members were available to help us. So, we went to Bunnings, which is near Warlpiri Camp."

?---Correct.

Does that assist you in any way?---Yeah, so just listening to what I've said in that statement, it sounds to me like you're talking about the one occasion when we went to Warlpiri Camp.

Okay. And you've explained in your statement, you went to Bunnings before you went to Warlpiri Camp. There was a bit of a brief, what we heard referred to as a "bonnet brief". Do you - - -?---Yeah, so we went – we attended Bunnings with the intention of – you know, we didn't want people sort of rocking up halfway through or – we wanted it to go as smoothly as possible, because we'd seen those alerts, we'd seen what had happened in the body-worn footage. And you know, a well-executed plan is a bit mitigation for a lot of risk that we face. And so, we just wanted to cross our Ts and cross our Is on that. We wanted the house to be cordoned off immediately so that we could basically control that space to minimise any risk to members or, you know, our clients.

And in terms of the plan, while you were there, you explain at page 12, "We made the decision that Zach, Evan Kelly and I would go to the front door." Now, that's three officers at the front door, one of whom is a sergeant. Is that right?---Yes.

So, was Sergeant Kelly the team leader, in effect?---That was my understanding.

And then you go on to say, "The other members would surround the house and cordoned it, so that if he did try and run, which is what we thought would be the most likely scenario, we would try and secure the backdoor, have some chance of catching Kumanjayi"?---Correct.

Was there a discussion at the bonnet briefing about the risk, the level of risk presented?---I think everyone in my patrol group was aware of the footage and aware of his alerts.

So, your understanding was that everyone there had seen the body-worn video footage?---That's my understanding, yeah.

And was the type – the discussion of the use of force that would be required or anticipated?---No, I don't think we had any anticipated.

Was there a discussion of the entry powers?---No, I think – I don't think so.

You're all expected, as police officers, to understand what your powers of entry are? ---That's right. We've all worked together. We all know – you know, we all know the law for the most part.

In relation to that job, going out to Warlpiri Camp and the bonnet briefing, did you have an ACPO with you?---I don't recall.

Was there ever any discussion of using an ACPO to try and speak with Kumanjayi? ---I don't think there was. We very rarely had an ACPO on our patrol group. I don't

think so.

At page 18 of your first interview, you say, "It didn't seem like an out of the ordinary thing to do, to go and arrest an offender." So, you've at some point acknowledged that he was higher risk, but it was still at that stage, being viewed as an ordinary general duties job. Is that right?---That's correct. I wasn't – in that period of time, I wasn't aware of the risk matrix that we use in TRG to actually classify someone as a high – a job as being high-risk and that's what I meant earlier when I said I used that term willy-nilly, and often at times, inappropriately.

What would happen on a TRG job now, if your job as TRG was to detain an alleged offender who had been involved in the axe incident on 6 November, in terms of the risk assessment matrix that you're talking about?---Yes, so that would go through our tactical intelligence place. They would look at the behaviour of that person. One of the things that jumps – that brings that score, because it's based off – like every box that gets ticked, they get a certain score and once it crosses the threshold, I don't know what exactly – I don't know if it's a score of 12 or something similar, then they would have to be categorised as potentially high-risk. And then, what happens is, over the top of that gets the risk mitigation strategies. So, a method of arrest or – a plan gets put in place and then that would mitigate that risk and bring that score back down to whatever is it.

And in terms of planning to mitigate the risk, would you – in the TRG, would you be considering things like if somebody was alleged to have had – been mentally ill?  
---Yeah.

Say psychotic. I'm not suggesting - - -?---Yeah.

- - - for a second that was Kumanjayi, but you would consider - - -?---Yeah, for sure.

- - - that if they were?---Yep.

What about if they were alleged to have poor impulse control because they had FASD?---Yeah, all of those things. Obviously, we can only work off the information that we have. But if we have that information, absolutely, that would get included in that.

And if you know that somebody has a history of lashing out at police with a weapon if they're cornered closely, you'd factor that into a risk assessment, I take it?---Yeah, that would probably come in under the risk mitigation side of it, potentially. I'm not actually one of the ones that does these.

Sure?---You know, I don't work with that side of things, so I'm not 100 percent across that.

You go to the briefing where you're told - - -?---That's right.

- - - what the results of that risk meeting are?---Yeah, we – the teams, the operators

come into it after that has been completed. Do you get to have input when you're discussing that at the briefing?---No, we don't have a direct impact on the risk rating, because we are not – I guess we're not trained in that.

Okay. So, in terms of the arrest plan or operations order, you don't get to question that, do you, or do you?---If – it's definitely an adult environment.

Sure?---Like, we do have some input. If there's a glaringly obvious thing that has just been missed, whether it's by human error or whatever, there's no issues, even with the newest guys on the team. Bringing that up and you know, you know, we all want to achieve the gold standard.

And you'd expect to have a mature conversation about it?---Absolutely, yeah.

And you've got some experience and expertise, you would expect that people would respect that in the group, even if they're more senior?---Yeah, especially when it comes to like – there is – there is members of TRG that are from all over the place. Some of the guys have never worked remote. On deployments to like Wadeye, for example, they will often try and get to go because I'm one of the few members that have served in that community. And obviously that local knowledge is priceless.

Sure. But ultimately, is it the team leader, who decided what – how to execute the plan?---Yes.

Officer, I'm going to come now to a challenging topic for you?---Yes.

Which relates to the text messages, that you're aware are in existence?---Yes.

You've had the opportunity now to see text messages that were sent to you, and from you, to Constable Rolfe. And you were aware that they were obtained because Constable Rolfe's phone was seized after he was charged with murder?---Yes, that's correct.

One of the ones I want to ask you about first relates to 7 November, Constable – and it's not on that chart. It's Sergeant McCormack, someone that you know from your time in Alice Springs, is that right?---Yes, that's correct.

Was he on your patrol group sometimes?---I don't believe so.

Did he work in the watch house when you were there?---I'm – I'm not – I can only assume that he did, yeah.

You came to know him as another officer at the station, is that right?---That's correct, yeah.

And is he – and is it fair to say that he's somebody who's pretty personable?  
---Absolutely.

And good fun?---Yeah, he's a – a typical - - -

Irishman?---Irishman, yeah, he's a great guy.

And – and he was well respected, as – by yourself, is that right?---Yeah I had – I had quite a love for him, he's a great – great dude.

And so well liked, am I right - - - ?---Yeah, yeah, definitely not alone.

On 7 November, he sent Constable Rolfe a text message. You won't find it there, so I'll just read it to you?---Sure.

It says, in relation to the body-worn video, it's about ten minutes after Constable Rolfe has watched the body-worn footage, and - - - ?---Of the axe incident sorry?

- - - sorry, yes, that's right, the axe incident?---Yep, sure.

And he says, "I know aye, fuck my whole life. You imagine if that other cop got killed, and he stood there and watched it with his fucking hands up. What the fuck have we become." Was that consistent with a discussion that you and Zach were having, when you were standing around watching it?---It may well have been consistent with my attitude towards it, for sure.

And did you receive that text message from Sergeant McCormack as well?---I don't believe so.

Did Zach tell you about receiving that text message?---No, I wasn't aware of it, until you told me then.

Okay, was Sergeant McCormack there with you, watching the body-worn video, do you remember?---I don't believe so. He may have watched it afterwards.

Do you recall Constable Rolfe making a phone call to him after watching the body-worn video?---No I don't, sorry.

In relation to – before I get to the text messages, I'm going to ask you about body-worn video footage. Do you remember it coming in, at some point when you were an officer?---Yeah I think I did the first – approximately the first twelve months without a camera.

When it first came in, there was some resistance to police wearing it, wasn't there?---Everyone weighed the pros and cons of it. For the most – for the most part, people were really accepting of it, because it was such a good way to mitigate our own complaints against police.

Because it's an objective account of what happens?---Yeah it is. It generally paints a pretty accurate picture of what's going on. It doesn't – it obviously doesn't give you things like a member's facial expression.

Sure?---Like it wouldn't show my facial expression, or how I'm feeling. But it – you know, it isolates what I'm seeing, to some degree.

It captures words and images?---Correct.

In a way that can assist in relation to presenting evidence in court?---Yes, that's correct.

And you would understand it as a very important piece of evidence presented in court, correct?---Yeah, that's correct.

And you'd appreciate, wouldn't you, that if you lost your body-worn video footage or something, you'd have to be seriously accountable for that, because it's important? ---Yeah, absolutely.

Have you heard at any time, of police making the camera, or acting up for that body-worn video footage?---No I haven't.

What about turning the camera on them, so they can capture their own facial expressions?---Turn the camera on themselves?

That's right?---No, no.

Have you heard about officers for example, crying out in pain, particularly loudly, or anything like that, so that you can present evidence a particular way?---No I haven't heard of anyone trying to fudge the camera in any way.

What would you think of – of someone who did, or what would you think of behaviour, in terms of fudging - - - ?---I think that would be totally - - -

MR EDWARDSON: (Inaudible) your Honour, I mean why – how's that relevant? It cannot possible - - -

DR DWYER: It's a matter for your Honour, I'll withdraw it.

On the second of – on 3 September 2019, Sergeant Kirkby engaged in correspondence with – with Constable Rolfe. And he write – well, Sergeant Kirkby wrote, "Sorry about the stress caused by losing my shit the other night, stress you didn't need. You sorted it well. I just had enough. He was the second person to press my button that night." Constable Rolfe replies, "Bro there was literally no stress about it. I'm all for that shit. I've done the same thing to you more than once before. I'm always ready to make my camera face the other way and be a dramatic cunt for the film." And Sergeant Kirkby wrote, "And the Oscar goes to", and Constable Rolfe wrote "Ha ha." Have you ever been on a job with Constable Rolfe where he's turned the footage on himself and acted out?---No, not at all, no.

Do you recall – Sergeant Kirkby told us about a particular job around that time, where he, to quote his words “Lost his shit.” And he says that there was an incident where he was running after an alleged offender, and they crashed into a wall. Do you – he says it was around that time, 2 September. He described it at some point as a shed. Do you – and Constable Rolfe then came (inaudible) immediately after him. Were you on that job?---I don't believe so.

Do you recall any discussion of that job?---No I don't.

Do you recall any incident where Sergeant Kirkby lost his temper - - - ?---No.

- - - during the course of an apprehension?---My experience with Kirkby's – has not been – he – he's got a lot of experience. He's been working in the police in New Zealand and in Australia, and I haven't – I haven't seen him to be that way.

So you're surprised to hear that he lost his shit, is that right?---Yeah I am, yeah.

In relation to another job in 2019, it involved Antonio Woods, on 28 June. Mr Woods was at Warlpiri Camp. The investigation identified, after he made a complaint, that neither Constable Rolfe, nor Sergeant Kirkby, had activated their body-worn video cameras. You had activated your camera and then de-activated it early, after eight seconds. Do you recall that?---I do recall the job - - -

Why did you activate and then de-activate your camera?---I don't remember activating it. I don't remember de-activating it. But I do remember the job, because I had a – I was involved in a complaint against police relating to that matter. I can't give an excuse or a reason as to why I didn't activate my camera. Well – why – sorry, why I did activate it, and then why I didn't leave it running. I'm not sure.

Do – you received some instruction in relation to that, is that right, because there was a complaint?---Yeah there was a – there was a couple of complaints, where I'd been less diligent with my camera. And – other members at those jobs had – had their camera rolling, and there was no substantiated complaints against myself. It was just that I had, you know, I'd been unprofessional, I hadn't turned my camera on (inaudible) received counselling.

One of the reasons where it might have been difficult to determine the complaint, is because there was a lack of body-worn video footage?---Yeah I agree.

In these circumstances?---Yep.

And that may – can I suggest to you, makes it difficult for members of the public, who might make a complaint - - - ?---Yeah.

- - - do you agree with that?---Yes I agree.

Do you agree that it might also cause other members of the public to question the integrity of police, if they don't turn their body-worn video footage on?---Yeah,



especially when the community knows we've got, you know, the capacity to record everything I guess, yeah. It does – it definitely comes across that way.

Since that incident, on 28 June, were you more diligent in relation to your body-worn video footage?---Yeah, I – there – now that I'm in the Territory Response Group, there are times when, for the – for the protection of our tactics and stuff, that we are – we're not to use the cameras. But I have – I don't think I've missed an opportunity to use it. And in fact, I try and hold the other guys accountable as well, because, you know, after we've made our arrest, and we'd finished with certain tactics, and we are obligated to use it as well.

When you were in Alice Springs Police Station in 2019, were there any of the sergeants who gave you any instruction in relation to body-worn video footage? ---I don't – I don't recall sitting down, doing like a formal training session on it but there was always a – you know, the – in the muster briefing, the sergeant would – the sergeants would regularly say to remember to turn your body worn on and so on.

In this case Sergeant Kirkby had not turned his body worn video footage on. Do you recall any reluctance from him not to?---No.

Can I come back to the text messages then? I'm going to start – if you just have a look at that table – with the very first text message where Constable Rolfe texts you on 10 June in relation to another – a female member of the police force whose name I won't use at this stage. "Bro, did you hear" insert female member of the Alice Springs Police, "past TRG. What a fucking joke. Her and two others". Was it – remember back in those days you were a younger man?---Yeah.

Constable Rolfe was a young man. Was – did you – do you recall Constable Rolfe having an attitude that it was a bit of a joke that women got into the TRG, some women?---At that point she hadn't got into TRG but I do – I hear what you're saying. I don't - - -

He's expressing some incredulation or he's surprised that a female police officer, this particular one, has passed the TRG and he thinks it's a fucking joke?---Yeah, I can see that from the text messages, yeah.

Was there an attitude generally towards some members of the – female members of the police force that they weren't fit for TRG?---It was definitely surprising when a female passed the selection because it was so demanding. But I don't remember feeling like they didn't deserve a place there or – if they hadn't earned it.

Well to be fair, you don't respond?---Yeah, that's correct.

But you go on and one thing I wanted to ask you about was 22 June 2019. In an exchange with Constable Rolfe you're talking about again these places on the units, the TRG. And the expression you use in apparent sympathy with Constable Rolfe for not getting into the TRG at that stage is, "Gay cunts"?---Yep. Yeah, I did use that  
- - -

You're talking about the bosses at TRG or management?---Are you talking about - - -

Just have a look at the exchange on 22 June?---Yeah.

“Hey bro, any info on Nandy (?). We only got 17. Louis (?), the other places aren't linked. Three units already. I snooze and losed”. And then the next – your expression is, “Gay cunts”. Who are you referring to?---I really don't know. I don't think that's got anything to do with the Territory Response Group.

All right. So in that case I'll just take you to one other time when you use an expression like that and it's 31 October. And you're actually referring to your other team mates in the IRG?---Sorry, I'm just trying to find that.

Yes, sure. It's page 6?---Thanks. That helps. Okay.

And Constable Rolfe, you're sending him a text message after a number of people, “Might head to Monty's or somewhere gay tomorrow for a few beers if you're keen to be fags with moi”. And you say, “I have youth tomorrow at 5.30 but if you're out afterwards I'll be a fag with you mate”?---Yeah.

Are you referring to each other using what is, I'm going to suggest to you, a homophobic term. Do you agree with that?---Yeah, I do agree.

What do you want to say about that now?---It disappoints me because I, you know, I didn't – I didn't fully sort of understand my own, you know, how much power my words have, I guess. It's sort of embarrassing that I would refer to the youth group where I'm a leader, I'm sort of, you know – probably should be a little bit more – you know, I should be better than that.

Well tell us, Constable, are you homophobic?---No, not at all.

So you're using that language as slang without thinking about it too much, is that right?---Growing up that language was probably a little bit more acceptable and it's like a habit that I've gotten into which I haven't – I guess I haven't, up until this point really had the self-discipline or, you know, what not to address.

Just in your own words because I don't want to put them into your mouth, why do you think it might be hurtful to use that phrase?---I just – you know, when I was 12 or 13 years old and that sort of language came into my repertoire I guess I didn't have friends that were, you know, I didn't have friends that were gay or anything like that and so it was – I guess in my brain back then it was meaningless. Whereas now, especially in, you know – these text messages are out there for everyone to see and you know, it's like the other language I use later on which we'll obviously talk about.

Sure?---It has an impact on my – the people that I love and care about.

And it normalises the use of the language, doesn't it?---Yeah. It desensitises – you know, it's not good for my brain but it also desensitises the people that I use that language with. So like for example, where I've used that language with Zach, it's, you know, it compromises Zach's integrity as well as my own.

But he uses that language with you too, to be fair. I think you're responding to him? ---Yeah, but I can't, you know – yeah.

You take responsibility?---I take responsibility for my – for the things I've said.

And can I suggest to you also that you're using that language or that language is being used with a group of guys, at least by Constable Rolfe and you respond to it. You've got no idea whether anyone of those other members of the police force are gay themselves, bi-sexual, have bi-sexual friends, have bi-sexual siblings and might actually be offended by the use of it. Do you agree?---Yeah, I – you never know where someone's at or what they're doing, I guess, yeah.

Sure. And if you're comfortable using the language there, you might get comfortable using it elsewhere where someone else is?---It's exactly the same as what we talked about with the training where you fall to your lowest like – I might, you know – it's like when I've got a huge adrenalin dump I might use language that's unprofessional when I shouldn't because that's the – you know, that's in my repertoire and just yeah, doesn't have a good impact on anyone.

Well I think you get into a great analogy, constable. Are you saying that what you should actually do is set a bar for yourself so you don't slip below it?---Yeah, I've come to learn that the higher my own personal standard is, the lower I'll – the less I'll fall below that when I'm not – when I don't have the capacity to consciously make decisions especially. And obviously in the police force we go to so many critical incidents that we have – we're often going to things and we don't have the time to – it's not so much in TRG but in GDs especially where we don't have the time to make conscious decisions about every single action that we take and we sort of run on instinct a little bit and that's where it comes out.

On 12 July, if you go over the page you see an exchange. It begins down the bottom and Constable Rolfe texts you, "Literally 50 percent of the women at our work" and then there's a photo of somebody. Someone told me where that came from. I think it's a gif or a photo of - - ?---Someone from batman.

But it's obviously unflattering?---Yes.

And it says, "Girls shape like this talk the most shit". And your reply is, "Yeah, been a detective. The cops out here have fucked this town. They've been letting the niggers drink wherever they want ha ha". Where were you when you sent that message?---I was working – I was on one of those member respite trips to Borroloola at the time.

And Constable Rolfe writes back, "Bush cops are fucking shithouse". And then you say, "Ha ha, just got the photo". And Constable Rolfe says, "Girls and bush cops all disgust me, ha ha". I'm just going to take you to your message for the time being, constable?---Yep, sure.

I won't read it to you again, but you use what's sometimes referred to as the N word. You know it's extremely offensive, don't you?---Yeah, I do.

Do you understand that the history of that word and how loaded it is?---I do, yeah, absolutely.

In terms of the horrific treatment of people with dark skin across the world?---Yep.

What do you think now about using that term?---Well like I said before, I grew up with indigenous people and I do have such close friends and the guys that were on my squad, I've come to – guys like Lucas O'Donohue (?) and Justin Murray (?). I've come to respect them so much and you know, it breaks my heart to think that they would have to sit here and listen to my evidence.

Would you ever use that term when you're talking to an Aboriginal term?---No, never.

And what about in front of an Aboriginal person?---No, no way.

Do you accept that the use of the term, with mates, might normalise it?---It definitely desensitises like – I definitely don't have the emotional response to words like that, that are probably I should have. Definitely does desensitise it.

We can see how difficult it is for you and I'm not going to labour on some of these, I just want to finish taking you through them. So if you go over the page to the 17th. It's still in relation to the conversation when you're out at Borroloola and Constable Rolfe says, "Fuck, have the losers taken over" and you refer to another female police officer, is that right? I'm not going to use her name?---That's correct.

"Is here and doesn't want to 'ruin the community by getting them offside'". And Constable Rolfe says, "Damn man, that's hit". And you say, "Well at least I can go running". What did you mean by that – well firstly, that female police officer was the sergeant, was she, out at - - -?---No, I think she was – she wasn't in Borroloola. I think she was like the divisional super or something similar. I can't quite remember.

And she's come into the community. It just says, have a look at that, female officer, "is here and doesn't want to ruin the community"?---Maybe she was, yeah. I don't recall exactly what her position was.

What instructions had she given that made you write that?---Basically that we'd had two deployments to Borroloola. In the first one there was a no – they didn't want us to tolerate any unruly behaviour. We wanted to – they wanted us to be assertive and enforce the law. And then on the second one, on the second deployment, I guess, that was the polar opposite of what they wanted us to do. And I didn't have – you

know, this is a point in time in my career where I was still obviously quite young. I didn't have the maturity to look at the bigger picture, the tactics that get used by the police, the wider police force when dealing with communities. I just was – I just didn't have the operational experience to see the good in policing in the other way as well. And so I basically was venting. I was a bit annoyed because I was away from my family as well and I felt like we weren't doing the community a service because I couldn't understand those other tactics that police were using.

What were the other tactics that you now realise were being employed at that time? ---So – I'm still learning, obviously, about how these things go down. And I don't know if this is a formal thing but this is just what I perceive. We went in there on the first deployment and we basically just did normal policing that you would do in town. If you detect an offence you, you know, you take the appropriate measures to hold that person accountable and so on. And so they – bush policing isn't like that all the time. It's more of a – there's more of a human side of policing that I wasn't aware of. And so what I think they were trying to achieve at the time was go in and sort of not put up with any rubbish. But then you know, scaling that back to then go in and be more human, more personable, to reconnect with the community and to rebuild those relationships.

So community engagement essentially?---Absolutely.

And do you now recognise in a way you didn't then the skill that's involved in that? ---Yes. It was a big learning curve for me. Obviously grew up in the communities but I didn't have – I didn't have a job to do in the communities like that. I wasn't accountable for the community at the point in time. Whereas when I moved to Wadeye, that was what policing in Wadeye was all about. There was times when you needed to be assertive, like during the riots, when you'd have 400 or 500 people throwing spears at each other. When you could get involved and help people, you had to go in and it was scary but you had to go and sort of do what you could. But then there was other times too when – like there was a family called the D family that I had come to know really well and they – one of the young fellows from that family, TD, he had – he had – he was like 17, sort of around that age. He'd begun getting involved in these riots. And so you know, if you can get an understanding, if someone – when you're in a regional centre, if someone sort of getting involved in that activity you would detect an offence, potentially arrest them and hold them accountable through the court system. Whereas out there it's so much different. And the human aspect of it comes in where you know, I did what the cops out on Groote Eylandt did to me when I was a kid, you know. I remember I was driving too fast and one of the cops out there pulls me up and goes if I catch you speeding again, I'm not going to give you a ticket, I'm going to tell your dad. And I was like aw. So I went and did that to this young fellow that was getting involved in the riots. I went and spoke with his old man. Because I knew – he had – he respected his dad. And so I did the same thing to him and it was, you know, highly effective. And that was probably the day that I came to understand this much, much better, probably.

Can I just get you to pause for a second, constable and this is no criticism?

But your Honour, might I have a non-publication order over the name TD.

THE CORONER: It doesn't matter, we've sorted that.

DR DWYER: In relation to your time at Port Keats or Wadeye – can I just ask you to look at one more text message?---Sure.

And I expect it's going to pain you but have a look at page 6 and it's up the top end?  
---Yep.

You refer to "blacks are drunk full time." This is before you get out to Wadeye?  
---Correct.

And you've had a lot of time to reflect on this now?---Yeah.

I understand you want to say something about that, Constable?---I just – I just truly sorry. You know, like I've got such good relationships with the people out there, you know, such that I could go out there at any point in time, whether for work or not and I would immediately, you know, have that respect with them. And I just, you know, I'm so apologetic that the words that I've used describing those guys, especially before I knew them now, before I knew them, you know, it just embarrasses me. It's something that I'm really sorry about because it's, you know, good people that obviously don't deserve to be treated this way.

You accept that it's racist language?---Yeah, I do.

Would you ever use that language in front of Aboriginal people?---No, I wouldn't – I wouldn't use that language in front of them. I wouldn't use that language moving forwards. You know, I've learned a lot.

Have you talked to Aboriginal friends that you know about the fact that you've engaged in that text exchange?---Yeah, I have. Yep.

Was it important to you to speak to them before you gave evidence and explain?  
---Yeah, I've spoken to a few people before I gave evidence. It's not, you know – I've compromised my own integrity so much in this and I don't want to lose the respect of the people that I care about.

I take it this has been a big learning curve for you?---Yes, absolutely.

Do you think there's an important lessons here for other police officers that you'll be able to pass on?---Yeah. You know, I've had, just in the last couple of days since coming to Alice, I've had some pretty wholesome conversations with some guys that I work with back there and it's been quite encouraging because the – you know, the other guys have seen what I'm going through and they're looking at it going, man, even I've reflected, you know. And it feels good. I don't even – although I'm deeply offended by my own conversations, the growth that I've got from this is sort of like – it's a little bit invaluable, something that I can, you know – it's experience that I can

pass onto my young fellow and it's not – it gives me experience in owning my mistakes, I guess. And that is seen by the other members that I work with and they are doing the same thing, without me prompting them, which is awesome.

Constable, I'm nearly finished and there's just one more text message exchange that I wanted to ask you about. You – it's actually the message that you sent to Constable Rolfe. You explain in some detail in your statement how you first heard that there had been a shooting in Yuendumu. You had nothing to do with the job out at Yuendumu on 9 November, correct?---Correct.

Just so that everybody listening understands?---Sure, yep.

You in fact were at home on sick leave on 9 November?---Yeah.

And you explain in your statement that you had a Facebook message from your brother-in-law who's also a member and he said – it was late at night, about 11 o'clock. He said, "Is Mitch at work". You thought that's a bit weird, because (inaudible) talking about you?---Yeah, he's messaging my wife.

Okay. And then you looked at your phone. You'd received a text message from him and he'd heard about the incident at Yuendumu. He was checking that you were safe or whether you were involved. You then at some point phoned Constable Rolfe?---Yeah, that's correct.

Why did you phone Zach at that time?---I just had a feeling. I just had – I just knew in my gut that they'd sent the team out. Because we were sort of expecting that they were going to deploy the IRT. I didn't even receive a text message. Like, I had no invitation for that deployment whatsoever, obviously, because I was on sick leave. And so when, you know, I got that message from my brother-in-law, well when my wife got the message from my brother-in-law, I – yeah, I just called the first person who came to mind, who was Zach.

And Zach had been interested in that job. I don't mean that in any critical sense, but he had had a look at the body-worn video. He was the one that showed you the body-worn video on 7 November, did you understand that he'd looked at the body-worn video a number of times between the 7th and the 9th?---Sure, yeah.

Okay. And so, it was something that he felt strongly about, the fact that there had been this axe incident?---I think – I can't remember what shifts I'd worked with him in the lead up to that, but I think we both – like I went back and viewed that body-worn footage time after time.

Okay?---I tried to get as much sort of intelligence from it as I could.

And did you do that with Zach prior to 9 November, a couple of times at least? ---I don't recall exactly who I watched it with. I may have watched it with other members as well.

Okay?---Yeah.

And so, did you think to yourself, I bet Zach is on that job, the IRT?---Yeah, I did. I did think that.

And did you think to yourself – did you have a gut feeling that it was him who was involved?---Not necessarily that he was involved, but I had a gut feeling that he was going to be there.

So, you rang him?---Yep.

And can you recall now what he said to you at that stage? He was at the hospital? ---I think by that stage, I already knew that there was a shooting. It's really hard to remember because it was – I think it was like 1 o'clock in the morning or something similar and I hadn't been sleeping because of that, because I'd been ill, and I don't sleep that well majority of the time. I'm a really light sleeper.

I might just cut to the chase, because you set it out in your statement. But I'll just - - -?---Yeah, yeah, for sure.

- - - explain it so the family and community understand. You gave Zach a call. You wanted to see if – you say in your first statement, “I wanted to see if he was all right and it must have been when he was just getting to hospital or something because he was – he couldn't really talk.” And then you called James Kirstenfeldt?---Yes.

Do you know that he was on the job or was that just a hunch?---No, that was just another hunch I – obviously, I knew which members were on IRT and I was just going to start calling every single one of them until I got someone that could – that would actually reassure me, because I was just so stressed. I was just so anxious for my team essentially.

And did Officer Kirstenfeldt tell you what had happened?---No. So, one of the text messages I received prior to calling Zach said, “I heard there was a shooting” or something similar. I don't have that phone anymore and I can't remember exactly what it was.

Sure?---But I remember that that alerted me to the fact and so, I called Zach. Zach was like stressed, panicked, obviously couldn't talk to me. So, then I called Jimmy, because Jimmy's like the next - you know, one of the guys that I know pretty well on the job. So, I called him just to try and get an understanding of what happened and I said – I think I said to him on the phone, you know, I heard there was a shooting, blah, blah, blah. And he basically reassured me, he said, “Mate, it's all good.” He said, “I can't -”, he actually said the words, “I can't talk to you about it, but everything's all good.”

You then – you tried to sleep, you couldn't sleep. You then called Zach and then Zach called you back and you spoke to him, I think, for about half an hour in the morning?---Sure.



What did – during that half hour, he must have told you what had happened in the house. Is that right?---It's not correct. We – I think – I stayed away from – for that whole period of time. And you know what it's like when you're laying in bed and you want to go back to sleep, but it's just never going to happen, but for some reason, you don't get up and occupy your brain still, you just still lay there. So, I did that for a long time. I called Zach again and said – which I think back now was quite selfish because now I know what he was going through, just you know vicariously. And so, when we talked for that half an hour, I think there was a bit of me being on the phone to him, but him not being able to talk. I didn't want to talk to him about the incident, because again, I was pretty junior. I wasn't aware - you know, such a critical incident. There's so much – you know, the guys I know that have been overseas in combat and stuff like that, it's not something that they want to talk to me about, which is totally understandable. And I didn't want to be the guy that was pressing Zach for information about something that he'd just experienced that was traumatic to him. So, I talked to him about his welfare, you know, about what the process was, from memory. But I don't recall the exact conversations.

On 10 November 20 – I withdraw that. On the Monday night, which is the 11th, there was a barbecue – I'll withdraw that, there was a gathering at Constable Rolfe's house. Paddy McCormack on that day sent a text around and to Rolfe saying, "Is everyone free for an IRT debrief tomorrow at around 1630 at the IRT office? I'll bring the beers and let Adam and Jimmy know." Did you get that text message?---I don't believe so. I think that's probably the first I've heard of it.

Okay?---I have no recollection of that.

In your statement – I'm sorry, I spoke over you?---I just – sorry, I don't have any recollection of it.

You then – in your statement, you say, "I remember we went to his house." So, if I tell you it appears that some sort of informal debrief was originally planned for the IRT office, it appears that there was a change in venue?---Okay.

Because Constable Rolfe suggested everybody come to his house. Your evidence is, the first you heard about it was, "Come to Zach's house."?---Yeah, the first I knew about it, we were going to Zach's house.

And did Zach invite you to that?---I don't recall exactly how I became aware of it, sorry.

You're his close mate. You still are - - -?---Yeah.

- - - his close mate. It's natural that you would want to go and comfort him, can I suggest to you?---Sure, exactly.

Did you have an understanding that other IRT members would be at Zach's house on that day?---I guess I assumed as much.

Did you assume that James Kirstenfeldt would be there, for example?---James and Zach aren't close friends, like and I or James and I. And so, I wasn't – I don't know if I was expecting to see James there.

Were you expecting to see the other members of the IRT who'd gone out on that job and were then going to debrief about it over beers? I'll withdraw that. That's a number of questions wrapped up - - -?---Yeah.

- - - in there. I'll break it down?---Yeah, sure.

Did you expect to see the other members of the IRT who had been out on the job there?---I didn't expect not to see them.

Okay. You didn't know who to expect, but you weren't thinking - - -?---Yeah, I wasn't thinking about things like that.

When you got there, we've heard a number of the name who were there; Adam Eberl was there, James Kirstenfeldt, Luke Crotty?---Yep.

Tony Hawkins, Evan Kelly. Do you remember seeing those guys there?---Yes. Yes, I do.

Did you see Paddy McCormack there?---I think there were quite a few people there and I remember sitting in the – in his loungeroom and there was enough people there that you sort of couldn't find somewhere to sit. There was like people standing around the loungeroom.

Do you remember Bree Bonney being there?---I don't remember seeing her there.

We've heard some evidence from Officer Kirstenfeldt about this. He sent a text message to Constable Rolfe while he was there at about 6:10 pm saying, "Don't trust these snake fucks. Lawyers told you not to comment." When Constable Kirstenfeldt was giving evidence, he found it difficult to remember who he was referring to? ---Sure.

But he agreed that it must have involved some – one of the other officers - - -? ---Okay.

- - - speaking to Constable Rolfe and he was telling him, "Don't trust these snake fucks." In effect, the lawyer had told him not to comment?---Sure.

Do you remember what that discussion was?---I don't think I was privy to it. You weren't privy to the text messages from Constable – from Officer Kirstenfeldt to Rolfe. Is that right?---No. No, I wasn't.

You didn't know that he was sending text messages at that time?---No, I had no idea.

Does Constable Rolfe wear an Apple watch?---He does, yeah.

On his left hand?---It's hard for me to say, yeah, I'm not sure.

Okay. But he wears an Apple watch that you can access your messages on. Is that right?---Yeah, yep.

Okay. And do you recall him speaking – Senior Constable Rolfe speak with Paddy McCormack at any time that you were there?---I don't specifically remember seeing Shane there.

Okay. Do you recall – you do remember specifically seeing Evan Kelly, yes?  
---I think Evan Kelly was there for a very short period of time at the beginning.

Do you remember anybody talking about the incident in Yuendumu?---No, nope. I remember James saying out loud, "Don't talk about it" and so I was sort of like, you know, James is a lot older than me, and I was sort of - - -

Well what prompted James to say don't talk about it?---I really don't know. I'm not sure. I remember he was sitting on my left, and he – I just remember him saying, just don't talk about it. Just don't talk about it.

Bree Bonney gave evidence when she was being interviewed, that she recalls a discussion about Yuendumu. You're saying you don't recall her discussing it all, or anybody discussing it with her?---No, like I said, there was quite a – there was quite a number of people there. Sort of like enough that I – my memory is – they've all blurred onto one person, essentially. So she may well have heard people – or taking part in a conversation about it, but I may not have been privy to it.

At the time of this gathering, were you aware of a General Order in relation to Deaths in Custody?---I know that there is one. I don't think at the time that'd I'd read it.

Okay, and so I take it – does it follow from that, that you weren't specifically trained in what that meant, what – during the course of your time in the academy, you can recall?---I don't remember the training. I would like to – I would like to think that we definitely would have been trained, but I don't recall it.

One of the requirements for – under the General Order, is that anybody involved in a death in custody, is separated until they give a version of events. And you would appreciate the importance of that, wouldn't you?---Yeah I do. I remember – so since this whole incident, I was – I've been involved in another one. And I – from that, I guess, I didn't make the connection of death in custody, police shooting. I don't know why. I just probably didn't have the experience, I guess. And so from this other one, I've learned a lot about that side of things. Yeah, it actually quite surprised me, what – how foolish I'd been in my dealings with some of my mates, you know, after this, because I wasn't fully aware of my responsibilities, just as a constable with – in relating – relation to deaths in custody.

Going back a step, you know, just as a general principle, if you go to a scene, and there's a party and somethings happened at the party, and there are five witnesses, you separate the witnesses, don't you, so that they don't contaminate each other's account?---Yes, yes.

Extremely important isn't it, to do that when you've got a death in custody?---Yeah, yep, 100 percent.

And that's important for – so that public maintain confidence in police?---Yeah, I guess – it – it definitely is important. I just didn't make the connection, you know, like the criminal investigation. I didn't think there was a criminal investigation at the time. And so I didn't connect that with – obviously a death in custody's an investigating - - -

Sure?---And I can't believe it now, but I was just too foolish to recognise it.

To – too junior, is that right?---Too junior, it's not something that occurs often. Like rarely we have a death in custody.

But I take it that nobody instructed you specifically, in relation to – that you can recall - - - ?---No, not during that period of time.

- - - in relation to what occurred. In – on 10 November 2019, so this is just the – the day after, the morning after the shooting, you send a text message to Constable Rolfe. And it reads,

“Assistant Commissioner Michael White's press conference, fucking woeful. Idiot is just replying to every question with ‘that'll be a member for the Coroner’, fucking clown. He should say the body-worn video will show the true story and exonerate the police from any other option. As hard as it is to read the fuckhead's comments.”

And that's in relation to Assistant Commissioner White, “Don't post anything. We know the members will be fine, but comments don't matter.” Are they your words, or are they the words of somebody else that you're forwarding on to Constable Rolfe? ---I genuinely don't remember exactly what part of this text message is mine. However, you know, I accepted it, I sent it. And so, they may as well be fine, if that makes - - -

Well that's very honourable of you, Constable, but I do want to try and work out - - - ?---Sure.

- - - and I appreciate you want to take responsibility for it?---Yeah.

But look at that text message now, before I ask you, are you able to draw a line under some comments that are definitely not yours?---Yeah there is – there is definitely a part. Like, some of it I know for sure is language that I don't use. Don't

know exactly what – obviously I don't want to – I don't want to get – I'm not – I'm not intending to be deceitful in any way. I definitely want to be honest. I just don't know at what point. From the point, if you look at the – I think where it says "The member has to answer his critics with - - -"

Yes?---That is not language I use, from that point onwards. As far as the comments about the press conference, I don't remember typing, or writing those words. But it was – it's probably a fair reflection of how I felt at the time.

What do you think now, about using that language to – well take the language out - - - ?---Yeah.

- - - about expressing that criticism of an Assistant Commissioner, whose giving a police conference – that – a press conference to just alert the public to - - - ?---Yep so since then, I've come to learn that Assistant Commissioner Michael White had done – he'd been really ill, I think – I think he'd – someone told me that he hadn't slept for like – I don't know, I think it was like 40 something hours. I wasn't aware of any of that. I was emotionally charged. I was – I was sympathising with Zach. It also sort of goes to show how little my capacity for seeing things from someone else's point of view was at the time. Since then, I've got to know – I haven't really got to know Assistant Commissioner Michael White, but I have – like in – in recent times, we've had some challenges within the Territory Response Group, you know, with things that have gone on with previous members. And you know, he was one of the first guys to come down and go, you guys going all right, you know, and – yeah I just – I get a good sense of what his actual leadership's like from that. And I don't think this is really a fair representation of his.

And he's a bloke, I don't know him personally, but it's fair to say he's been in the Northern Territory Police for a significant period of time?---Yeah, I remember his – I remember he stood out in front of the Alice Springs Station, and I think he – I think there was a media release about his length of service, or something similar.

And he's a mature gentleman?---He is, yeah.

And he's thoughtful?---Yeah, appears to be.

And he appears, giving your dealings with him since, to genuinely care about members?---I think he definitely cares about members more than I allowed by you know, forwarding this message.

And in relation to your words there about an assistant commissioner, he's also somebody who is a considerable number of ranks above you, at the time, and was deserving of respect. Do you accept that?---What I've – since this – since this time, I've read a book called Extreme Ownership from a guy called Jocko Willink (?), and it's all about, you know, leadership and how to – how to be a leader, even as a subordinate. And it goes back exactly to what I talked about earlier with you know, as a leader of my peers, I haven't – I've compromised Zach's integrity here, by sending that message to him. I haven't shown leadership amongst people of my

rank, let alone, the people below me. The guys that have just started, you know. I'm a likeable guy, and they look up – people do look up to me, and you know, I said it in private. But that means nothing when it's – you know, it doesn't matter that it was in private, it's still a genuine mistake.

Do we see a bit of ego in that do you think?---Oh absolutely, yeah. It's got young bloke written all over it, unfortunately.

You go on to write some comments, and just so everybody understands, they're on the – I'll read them onto the record. But I will also read the exchange that follows so we can see where you were getting that from. You write

"The member has to answer his critics with IAMO plus P, I intent, the shit cunt was telling him that he was going to stab the police. A, ability, you have the ability to do so, because he both said it and was a young fit male who looking at Rolfe, would have had size disparity. M equals means. He had an edged weapon and told the police he, more like – more than like said was going to kill them. O, opportunity. The members let him get close enough to be afforded the opportunity to stab one of them, and coupled with all of the above, IAMO plus P, equals preclusion 'I was precluded from all other options available to me, being distance, time, cover, Taser, baton, spray etcetera, so I had no other option but to protect myself and those with me, by shooting the offender to gain immediate subject control and incapacitation. That what I did taught by some very experienced old members in 1994, never forget it. IAMO plus P."

Now that clearly wasn't written by you - - - ?---Yeah.

- - - because you weren't not taught by some very old experienced members in 1994, were you - - - ?---I was one.

- - - I don't think you were born then. Okay?---Wasn't learning anything about policing then.

So you then send that to Constable Rolfe and say, "Ian Nankivell sent me this to send to you. He was involved in shooting someone in VicPol so he said to send this through". And Constable Rolfe writes back, "Awesome awesome awesome, thank you for that brother." You haven't volunteered this information. We got it in the text messages?---Yes.

And so I appreciate I am putting you in a difficult position, Constable, asking you about your communications with a senior officers, but who is Ian Nankivell?

---Ian Nankivell was my sergeant in Port Keats and now he's a friend.

And is he - he's a member of the Northern Territory Police Association, is that right?  
---I'm - I think - - -

I withdraw that. Did you understand him to be an active - on the executive of the Northern Territory Police Association at that time?---No, not at that time.

So he was - you were working with him as - he was your sergeant, is that right?  
---No, no, during this period of time I was still working in Alice Springs I believe/

Where was Sergeant Nankivell?---He was in Port Keats. I think basically I was - I'd been gazetted that position in Port Keats because I'd applied for it prior to this incident and he was aware that I was coming and so he had reached out to me because he knew - I don't know how - but he knew that I was friends with Zach and so he reached out to me to support me and - you know, to make sure I was okay, even before I was under his command I guess.

And he sent you that text message and told you to forward it on to Constable Rolfe?  
---That's what I've said in the text, yes.

And that's what - is it uncomfortable because I'm asking you these - - -?---Yes, it is - it is - it is uncomfortable, you know, I respect Ian Nankivell and I naively forwarded that message on and I never expected to - I only found out last night that the text message below, you know, "Ian Nankivell sent me this to send to you" you know. I've read this message, I thought I'd sent it up until last night, and so it's just - you know - it's hard for me - it makes my friends look bad. I don't like it.

You know you were talking before about in relation to Assistant Commissioner White, not seeing from his perspective?---Yes.

And I appreciate what you said about your sympathy for Constable Rolfe and your concern for him. Do you reflect on this now and thing you weren't thinking about Kumanjayi's family and their loss at that time?---At the time I was really probably selfishly caught up in what was going on around me, you know, I was a dad at the time but I was not long a dad, so I didn't have - like I didn't have a bigger view of the world as I do now and I think about my boy - I don't care what that kid does, you know, if he does the wrong thing and he gets - if he's involved in an altercation where he loses his life for any reason - whether he's done the right thing or the wrong thing at that - the thought of that breaks my heart and I didn't have that perspective then.

Is there - I need to give you a break and I've only got one short topic. I think I said five minutes about 40 minutes ago?---I'm feeling comfortable still. I'm happy to continue.

Okay. Is there anything that - you know that Kumanjayi's family is - a lot of them are listening in?---Yes, absolutely.

And a lot of them may listen later. Is there something that you want to say to them?  
---Yes, I - you know - this has highlighted a lot about myself. So I'd probably - more about myself than the police but it definitely has brought up some things about the police. I hope that they can see where I've come from, you know, my upbringing, the standard that I hold myself to now - and I thought I held myself to then. I let myself

get to a place where this sort of thing wasn't offensive to me and that was obviously - you know, I don't fully understand how I got there but I'm still - and I am working that out. It's clear to me that the things that I have said have offended not only, you know, people in this courtroom, the people I work with, but sort of most importantly, Walker's family. I never intended to offend anyone with it but, you know, it's - like I said before - I think our words sort of had more power than that, even - with or without intent and that just that, you know, I'm wholeheartedly sorry for the things that I've said and the way I've behaved.

And it's been important for you to come and be able to say that to the family?---It is, yeah, the you know, there probably would have been ways to put it off and, you know, I didn't really consider doing that because it takes away my opportunity to do - to stand by what I believe in and what I, you know, I believe in owning your mistakes and having the - you know, I want to be the man that I expect my son to be. And so, you know, this is the opportunity that I've had to do that and that probably, you know, I can't walk out on the street and start apologising to people left right and centre because it doesn't have the same impact. It definitely doesn't have the same impact as my words have had in these text messages. So, you know, I appreciate the opportunity to say something. And I can understand that, you know, it's affected the - like we talked about before, with the Coniston massacre and all that. I realise that the police have sort of little by little taken back a bit of ground when it comes to having the respect of the community and, you know, I have probably undone a bit of that work and - you know, professionally, it's not good enough either.

Constable, I want to be really fair on you. Have a look at the terminology that's used about Kumanjayi. I won't repeat it?---Yes.

Into the I - the intent?---Yes.

When I read that at first I thought that that was your descriptor but in fact you're cutting and pasting the descriptor that was sent to you by Ian Nankivell, is that right? ---That's correct.

When you sent that text message - when you forwarded it on did you have in your mind that you might corrupt - deliberately or inadvertently - the evidence that Constable Rolfe would be giving - or influence it?---I can see now - and I'm in my seventh year of policing and that - as I said before, like I didn't realise how foolish and naïve I was back then. So this is a good opportunity for me to reflect on that. My only intent was to look after Zach. Like when I read this I felt - and so my intent was to make Zach feel as best I can. Obviously it's not my place and you know, I sort of - I don't know, just - I didn't have any intent to lead Zach or to school Zach or anything like that. I know that that's the position of his lawyers, not mine. I just was - I just didn't realise.

Constable, you've got some really interesting insights, I know from speaking to you outside the courtroom about post traumatic stress or the sorts of responses that police might experience if they go to some really serious jobs. Have you read about that?---I have. It's something that I'm - I am really interested in it because I see - like



especially in this process I have seen my - you know, colleagues, go through all kinds of different emotional stages relating to it - to all this stuff and then just in general policing. I know that hormonally like the average person goes to like - I think it's 1.5 critical incidents for their entire lifetime whereas a police officer will go to between two and 400 for - in over a ten-year period and in a place like Alice Springs where the workload is extremely high compared to elsewhere. You know, in five years it's potentially someone's gone to 300 - or more - critical incidents and it's - and so for each one of those sort of instances there's a hormonal release from the amygdala in the brain, of adrenalin. And that coupled with like shift work and not being in line with the circadian rhythm, you know, people don't eat well, people struggle to exercise, all of those things that really make a difference. Hormonally police just aren't the same as, you know, members of the public and it's - it is an oppressive job and it is hard to go to the same problems say after day after day. Obviously we need a - we are - we're cops, we do need to be - we need to hold ourself to a higher standard than we would hold the community to I guess.

When you were going through your training in 2016 did you learn anything about how to - what to anticipate and how to handle it?---All of the learning that I've done in relation to post traumatic stress basically has been, I think mostly my own, you know, research and whatnot. Since joining the Territory Response Group it's a big deal for us. Obviously we go to less jobs but the jobs we do go to generally - you know, we go to the more intense jobs. And so my OIC, you know, it's important for him to invest in us for our mental welfare. And we had almost like a seminar with some guys called Dan and Ben Pronk (?). He's a doctor from the Special Air Service, who - you know, after his time in the defence force, he's now sort of leading the charge on resilience. And I read his book, the Resilience Shield and it basically imparted to me all these different techniques and strategies for getting over and getting through the hardship. I would describe that book as like a cop's best friend. I wish that I could make every single cop read it. It is - - -

Do you think it would be a good idea to incorporate some of that learning in the training?---It's very extensive but the philosophies and the - like the things that are learned in that book, yeah, it would be so beneficial for us. It would be most excellent.

Your Honour, is that a convenient time to have the afternoon break? And I'm just going to find out from your Honour how long we can sit for. We have some challenges that your Honour might need to consider stopwatch orders for with respect to this witness, because we have to get through the witness for tomorrow in one day.

I'm told that our wonderful court officer is available until 5:00.

THE CORONER: Look, we definitely need to take a break though.

DR DWYER: Sure.

THE CORONER: So we'll take a 15 minute break and we'll try and come back to court in 15 minutes.

ADJOURNED

## RESUMED

MEACHAM KING, under former oath:

THE CORONER: It is important that we complete the evidence today. It means that there will be 20 minutes for each person. So you can assume you've got ten.

DR DWYER: And I apologise to Mr Mullins, I just have a couple of questions following one topic.

THE CORONER: So we shouldn't start Mr Mullins' stopwatch just yet.

MEACHAM KING, under former oath:

XN BY DR DWYER:

DR DWYER: Constable, can you have a look – do you have those text messages in front of you still?---I do.

Could you have a look at page 4 please. Can you see there an exchange with yourself and Constable Rolfe in relation to working out?---Yes, I can.

Obviously it's an important part of your job at the IRT, particularly to keep fit?---Yes, that's correct.

And was Zac somebody you regularly worked out with at the gym?---Yeah, we did our best to stay fit for the job.

And you see the exchange there, Constable Rolfe, halfway down the page talks about, "If we do two weekends in a row, big workouts and then one weekend monster monster workout, have a weekend off", etcetera. And you write, "Good idea. Don't want to be sore so I can't improve my fitness". And he writes, "Exactly. So two big workouts. Hopefully they'll make us sore for a day or two but we can train through it. That'll be the plan and the monster workout can make us sore for a few days", etcetera. Over the page you use a term – I'm not going to dwell on this but you use the term, the N word effectively talking to Constable Rolfe?---Yes, that's correct.

How are you using that term?---I was – I guess I was using the term colloquially, but yeah. I was referring to him.

And I've asked you about this term, I don't want to labour the point. Do you think it's appropriate to use that term colloquially?---I don't think it's appropriate to use that term in any circumstance.

Constable Rolfe then says to you, "I should get some roids off my mate in Canberra" and you write back, "Get us full monster ha ha". And – sorry, and then he says, "Get

us full monster, ha ha” and you write back, “You know I’m keen, I want to get some of the old man testosterone”. By roids, you understood that to mean steroids?  
---Steroids.

Have you ever used steroids in the course of your workouts?---No, I haven’t.

Do you know Constable Rolfe to be someone who has used steroids?---No, I don’t know Zach to be that sort of a guy.

What about testosterone?---I don’t exactly know the difference.

Any performance enhancing drugs at all?---No.

Did you know that he was somebody who on occasions used illicit drugs, recreational drugs?---No, I wasn’t aware.

Cannabis, were you aware of that?---No, not aware.

What about MDMA?---No, I didn’t.

Thank you. Those are my questions, your Honour.

THE CORONER: Yes.

MR MULLINS: Thank you, your Honour.

XXN BY MR MULLINS:

MR MULLINS: Constable, my name is Mullins. I appear on behalf of the Brown family. One of my clients is the mother of Kumanjayi Walker?---Sure.

The preservation of evidence is a critical matter to policing, isn't it?---Yes.

It’s policing 101?---Correct.

And many of the things that you were dealing with during the course of 2019, for example, body worn video that you’ve spoken about, is for preservation of evidence?---I agree.

And ensuring the quality of the evidence?---It’s extremely important.

And ensuring that the court hears the true story?---Yes, I agree.

That's right?---Correct.

Now at what point in time did you decide that you had had a change of heart about the text messages that you’ve sent and the way you behaved during the course of 2019? When did that happen?---I was aware – obviously I was aware of my own

language. I've always been aware of the way I speak. I became aware of the text messages that I'd sent to Zach approximately two months ago, two to three months, I think. And I guess I've had time in the Territory Response Group to be around people that are better than me in almost every capacity. And that has given me the time, I guess, to reflect on that, on that language and on the way that I've conducted.

You see on 17 January 2020 you knew that you had sent this text – I'm going to call it the Nankivell text?---Sure.

You knew you had sent the Nankivell text on 10 November 2019 and so when you gave your statement on 17 January 2020 you knew you'd sent it but you didn't tell the investigators about it, did you?---That's correct.

And when you gave evidence in the Supreme Court trial on 14 February 2022, you did not tell the prosecutor that you had sent the Nankivell message, did you?---No, I did not.

And you did not tell the court that you had sent the Nankivell message?---That's correct.

Because was it the case at that point in time you hadn't had the period of reflection that you've had now?---I think that's fair to say.

You must have known that the Nankivell text might have – I'm not saying it did – but might have contaminated the legal process that Constable Rolfe was going through?---Looking back on it objectively I can see that.

Yes. You can see that now?---At the time I don't think I had the experience to really recognise that.

Excuse me one moment. Of course it may have been embarrassing to tell the interviewers on 17 January 2020 about the Nankivell text because Sergeant Nankivell was your support person at the interview?---I'm not concerned about being vulnerable or embarrassed in front of, you know, clearly.

Well now you're coming clean, so to speak, now?---Yep.

When the texts have been revealed, is appreciated. But can you understand that Samara Fernandez-Brown, do you know her?---I do not.

Well she stood in front of the Supreme Court after the High Court made a ruling and she said the only thing the family wants is for justice, is for a fair process to unfold? ---Sure.

You understand that?---Yeah.

And that's what the family wanted. And do you understand that you might well have compromised that within 48 hours of the event?---I haven't considered that until

you've spoken to me about it right now. And if that is the case then I wish there was something I could do to give those guys peace about it, obviously.

Well it's a very important message, isn't it, not just for you but for other police in that first 24 to 48 hours your behaviour might influence the outcome?---Sure.

And for the Warlpiri people who don't even want this law, it's not in their law, the least they could ask if that the law that's imposed upon them can be applied fairly? ---I agree.

Is that an unreasonable request do you think?---I don't think so.

You mentioned – you were asked some questions about medication and policing can be a very stressful occupation?---Sure.

And police officers get depressed. You know that?---Yeah, absolutely.

And are you aware whether – or did Constable Rolfe ever confide with you that he was depressed?---Not from my recollection.

Did he ever suggest – tell you that he was taking medication?---No. No, I don't have any recollection of that.

Do you know Claudia Campagnaro?---I do remember her.

And you know that she was engaged?---Yes.

To Constable Rolfe?---Yes, I'm aware of that.

And she was a police officer as well, that's right?---Yeah.

Did you ever work with her?---She was on my patrol group for a period of time.

She's a good officer, isn't she – she was a good officer?---I don't think I did any shifts with her as a senior partner so I probably am not fit to comment on her abilities as an officer.

From time to time you engaged socially with her?---I don't think so. She may have been there when I was engaging socially with Zach. But I don't recall a specific time.

Do you ever recall saying in front of her that you wanted to join the TRG?---I don't recall saying it but it wouldn't surprise me.

Do you ever remember saying in front of her that you enjoyed arresting people? ---Don't recall saying it but again, it wouldn't surprise me.

Was there ever any time when you and Zac Rolfe had a conversation where you were being boisterous and you said you enjoyed roughing people up or words to that effect?---Not that I recall.

Do you ever recall a conversation in front of Ms Campagnaro where you said you hated Indigenous people?---Certainly not. I've never hated Indigenous people.

But you felt or you sent those texts that we've read where you've referred to people in offensive – in an offensive manner?---Yes, I have.

Could you have said those words in a joking way?---Yes, certainly.

THE CORONER: Sorry, I think you need to clarify which words are you talking about there, Mr Mullins.

MR MULLINS: Could you have said the words in front of Ms Campagnaro that you hated Indigenous people in a joking way?---No. I don't think I've ever said that I hate Indigenous people, in my life.

Thank you, your Honour. Nothing further.

THE CORONER: Mr Hearn?

Thank you, your Honour.

MR HEARNE: Thank you, your Honour.

XXN BY MR HEARN:

MR HEARN: Constable, the message - - -

THE CORONER: Sorry, just to let the officer know who you are.

MR HEARN: My apologies.

THE CORONER: It's okay.

MR HEARN: Officer, my name is Hearn. I am the legal representative for the Walker, Lane and Robertson families?---Good afternoon.

The Nankivell message that's been discussed was sent at 11:05 am on 10 November 2019?---Sure.

The point being the before the barbecue that was held at Zachary Rolfe's house? ---Okay.

At that time, to be clear, you'd had a number of conversations with Zachary Rolfe, but you say that you had not been given an account by him of what had taken

place?---Correct.

Okay. Other than, perhaps, some very bare details. The message that you received from Nankivell and forwarded on to Zachary Rolfe, would you agree, provides a framework for providing a justification for a use of force?---Yes, I agree.

And that had been provided by somebody who was a police officer?---Correct.]

And somebody who had been involved in a police shooting?---Yes, that's correct.

And somebody who told you that he had utilised that in answering and some way responding to an investigation in relation to the shooting?---That is the framework that we get taught at the college, yeah.

Sorry? This is the framework you get taught at the college?---Yeah, we get taught this framework.

"IAMO and P"?---Correct.

And that exact term?---I think there's more than one way to say it, but yeah.

The distinction here is that you're not going providing the framework, but you are forwarding to Zachary Rolfe suggested content that can be provided, I suppose, to inform that framework?---To inform?

Badly put. You're providing a narrative in the messages as well, not just the framework, but providing a narrative?---I don't fully understand what you're saying.

Okay. Well, under "I" for "Intent"?---Yep.

It says, and I appreciate these are words you were forwarding, not drafting?---Yeah, yeah.

THE CORONER: Can – Mr Hearn, we have avoided using the language just in this text message because of the timing of this text message in relation to the passing.

MR HEARN: Yes.

THE CORONER: So, I'm not – I'm just letting you know that we've avoided it so far. If you want to deal with it in a different way, that's a matter for you. But our – in the interests of the family; that's what we've tried to do.

MR HEARN: I understand, thank you, your Honour.

Each of the letters of the acronym - - -?---Sure.

- - - in this message are accompanied by such suggested narrative?---Okay.



Do you agree with that, to avoid me having to read - - -?---I'm trying.

- - - the content?---Yeah. I don't want to agree without fully understanding what I'm agreeing to.

Well, there is a suggested version of events that could be put.

MR EDWARDSON: Your Honour, I actually object to this line of cross-examination for this reason. This officer, as I understand his evidence, has acknowledged quite candidly that he was simply, as it were, forwarding on a message from a third party. It's a matter for your Honour as to what the consequences of the content of that message are in the overall scheme of things, as far as evidence is concerned.

This officer has expressly disavowed the notion that he was intending to somehow manipulate or get Zachary Rolfe to create a story in accordance with this message. And that effectively is what my learned friend is trying to use this cross-examination for, and that's not appropriate.

THE CORONER: Well, I think he might be able to ask whether this officer now understands the impact of what he has forwarded.

MR EDWARDSON: Well, the potential impact.

THE CORONER: The potential impact, yes.

MR EDWARDSON: That's your question. I have no difficulty with that at all, but it's not the question that's being asked.

MR HEARN: I might adopt that question, your Honour.

Constable, did you understand at the time that the words that are contained in that message had – carried the risk that they might be adopted by Zachary Rolfe? ---I – I genuinely didn't understand – I didn't realise at the time that that was the potential that this message had. Had I understood that, I wouldn't have sent it.

Well, can you explain how that – you did not appreciate that?---Well, I've - - -

You say you don't appreciate it, but how could you not have appreciated that, given that there is a narrative provided in that statement – in that text message?

MS OZOLINS: Your Honour, I object. If the witness says that he can't appreciate something, then it would be difficult for him to explain why he can't explain the narrative.

MR HEARN: I'm happy to move on.

THE CORONER: Well, what's – I think what's being put is that, given the normal approach to policing and the normal way of taking statements, this seems inconsistent with that normal approach to policing. Is that fair enough?

MR HEARN: Yes?---What's the question, sorry?

Officer, would you have – if you were dealing with a civilian and a civilian was being investigated for a crime, would you have sent a message akin to this – to that person?---I wouldn't have sent this message. The – I think at the time, I wasn't – I didn't make the connection between a death in custody and a criminal investigation. My exposure to a death in custody was none at the time. And I lacked the experience to remain 100 percent professional at that point in time.

If I could move onto the barbecue on 11 November, by that time, do I understand that you still had not had any conversation with Zachary Rolfe in which he'd given you any details about what had occurred? Thank you. When you attended that barbecue on the late afternoon of 11 November, there were already people there when you arrived?---Yes, I believe there was.

And in part 8 of your statement, you set out the people that you recall being there, and they are of course, Zachary Rolfe, Adam Eberl, James Kirstenfeldt, Tony Hawkins and two other people, Evan Kelly and Luke Crotty?---Sure.

Do you also recall Breanna Bonney being there?---I think I said earlier today that I do recall her being there. I think also in my statement, I say that I could be wrong about the people that I named there.

Well, the statement that you provided when you named those persons was made in January 2020?---Yes.

So, that was relatively shortly after the relevant events?---Two to three months.

Yes?---Yep, I don't know exactly. Of those people Zachary Rolfe, Adam Eberl, James Kirstenfeldt and Tony Hawkins had all been present and in some way involved in the shooting that took place in Yuendumu. Do you understand that?---I do understand that.

And of the remaining persons, Evan Kelly, Luke Crotty – sorry, I'll reframe that. There were also – sorry, I withdraw that. The other people who were there, Evan Kelly and Luke Crotty, they had been part of the team that had gone to Warlpiri Camp on 6 November?---I believe so.

So, every person that you name as having been there at the barbecue had either been to Warlpiri Camp looking for Kumanjayi Walker on 6 November or had been in some way involved in the shooting in Yuendumu on 9 November?---Yes.

I suggest to you that the purpose clearly of this meeting was that there would be some discussion about what had occurred at Yuendumu on 9 November?

MR EDWARDSON: Well I object to that question. Your Honour, that's not consistent with any of the evidence that's been put before this Coronial inquest. My learned friend is not entitled to pluck stuff out of the air and put positive facts which have no foundation in evidence.

THE CORONER: Well I don't know if this officer would know the purpose in the sense of what other people might have intended.

MR HEARN: Did you understand from any messages that you received that there was to be something of a debriefing that was to take place?---That's no the text messages I received.

Do you recall how you received your invitation to this event?---I don't recall.

And do you recall whether or not there was in fact any conversation about what had occurred?---I think I've already said that I don't. I don't remember talking about the incident at that time.

Those are the questions. Thank you.

THE CORONER: Mr Derrig.

XXN BY MR DERRIG:

MR DERRIG: Good afternoon. I'm Mr Derrig from NAAJA. In your evidence you've said you've had a number of positive interactions with Aboriginal people in your background?---Yeah.

So you've said you've lived on Groote Eylandt?---Correct.

And you grew up into maturity while you were out there?---Yeah.

You were able to do things like that 15 Mile Beach which is normally reserved for Aboriginal people only. You started learning Anindilyakwa, is that right?---Correct.

You were able to go out and meet friends at Umbakumba. You were able to go to school on Groote. You were able to do a music course and you weren't part of the majority which you've still enjoyed? All those things are true, is that right?---Correct.

Later on, as I understand it, you got a skin name out at Wadeye, is that correct? ---That's incorrect. It was the member that I worked with there.

Excuse me?---Yep.

You also had family who stayed out at Nhulunbuy?---Yeah.

So you started to have appreciation for culture out there as well?---Yeah, my uncle was the CEO of the Dhimurru (?) Land Council.

Okay. And later on when you joined the police force you did cultural sensitivity training and things like that?---That's correct.

Now I will put it to you that this is a good and culturally appropriate background, is that fair?---Sure.

And - however, despite that you still sent those text messages?---That's correct.

Which to be (inaudible) clearly have racial overtones and are racist?---That's correct.

Okay. Now people would make an assumption with your good and proper cultural appropriate background that these kinds of texts shouldn't happen. Is it fair to say that in this case it shows that that assumption shouldn't be made?---It's a good question. I think I've probably let - people that grew up in my background, I've probably let them down a bit and it's clear that I've had a negative impact on the reputation of people like myself that have come from those places. But generally, I think that those assumptions would be made on good grounds.

Maybe putting it in a slightly different way. Maybe you'd agree that it's important that everyone's prejudices and vices should be always checked. Is that fair to say? ---Absolutely.

Now how do you think that you've got to a place where you had that background but then ended up sending these kinds of texts?---I guess as a police officer, you know, I remember - I remember coming into the job and the first time somebody used that sort of language against, you know, to me, I was quite shocked by it. But I guess, you know, we get racial and derogative terms used against us every shift. And after a period of time my level of sensitivity has probably declined to the point where they - those sorts of - that sort of language doesn't offend me, all right. And so when it's used against me I don't have an emotional response. And I guess in turn, because I let my guard down, I've allowed myself to use that kind of language without holding myself accountable, because I don't have the emotional response that probably a normal person would have that isn't a police officer.

And correct me if I'm wrong but I understand that earlier you conceded that this kind of language is something that you've used with other officers, is that correct? And maybe heard from other officers?---There's text messages to other officers of me using that language.

Yes. And is it fair to say so more generally other than these text messages that that's the kind of languages that you used with other officers and other officers have used with you?---I don't - I don't - I definitely used that language with other officers.

You also received or sent on that text from Nankivell - I'm not sure if I've got that name correct?---Yeah, correct.

And there's a particular phrase used in that text, which is after the word – and I'm trying to be sensitive here?---Sure.

After the words, "I equals intent" and there's a two-word phrase. You'd accept in the circumstances where that's coming from a police officer who is non-indigenous that that kind of language has racial overtones as well. Would you accept that? Or at least is dehumanising towards - - -?---Certainly dehumanising to that individual that it was – that it's directed at.

What I'd suggest to you is perhaps that what's happened is that you've been in a culture that's led to these text messages, would that be fair to say?---I think I've experienced probably a lot of trauma throughout my career so far and I haven't had to self-discipline to stay on guard to this sort of behaviour.

Okay. Would you at least accept that in some parts, some of the kinds of language used say, as an example of the Nankervill text, that that's also had a part to play? ---Sorry.

Sorry. So the dehumanising words used by Nankervill, we've discussed earlier, would you say that that kind of discussion also had a part to play to lead you to where you were sending those text messages?---I think that sort of language is used in everyday conversation by people that are confronted by the things that we as police are confronted by. And as I said, that de-sensitivity is a very real thing and that I guess has had a part to play in it.

And we're talking – when you say de-sensitivity, we're talking about specifically de-sensitivity to Aboriginal people, is that correct?---No, I'm talking about the moral code that I was grown up with, you know, the way my dad brought me up, the way my mum has brought me up. The ethical – the ethicacy that I would otherwise hold myself to that has been diminished over time.

Well returning I suppose to the text messages you personally sent, you'd accept, I think you've already accepted that these text messages are desensitising and dehumanising?---Yep.

And would you agree that sentiments can lead to conduct? Meaning if you've got these kinds of thoughts in your head or these – you're sending these kinds of texts, it might have an impact on the way you conduct yourself or the way you might - - -? ---I don't think I have – and I've got countless hours of body worn footage. I don't think I've let this kind of conversation influence my behaviour when I come into contact with our clientele.

Okay. Well I would like to show you some footage which I believe the court officers have teamed up.

Just while it's loading up I'll give you a bit of an indication of what this is about? ---Yep.

This is an incident involving – and I apologise if I've got this name incorrect, pronunciation – David Jajunga and Larry Jajunga (?) and it occurred on 18 February 2019. And it appears that yourself and Constable Rolfe were involved in this particular matter?---Sure.

So it's in document 31 – 3-161 and the video title is IMG\_0157.MOV.

Thank you.

DVD PLAYED

MR DERRIG: Do you remember that incident?---Yes I do, yes.

Now, in the footage, wouldn't you - you'd agree that it's Constable Rolfe's body-worn camera?---Sure.

So we're seeing it from his perspective?---Yes.

You'd accept, wouldn't you, as Constable Rolfe is approaching two men, the man in the red shirt is already walking away from the man in the grey shirt?---Looks like he's approaching Constable Rolfe to me.

I might ask you to replay that part because I think he's (inaudible) in general?---Sure.

If you're talking about the man in the grey shirt, I believe - - - ?---Yeah, I'm not - sorry, I didn't - - -

(Inaudible) the man in the red shirt?---I'm not sure which one was which, sorry.

Yes.

THE CORONER: Yes, play it again.

MR DERRIG: Just once.

DVD PLAYED

MR DERRIG; Like I said, do you accept that about the man in the red shirt, that he's walking - - - ?---That was the person I was referring to earlier. I - yeah, he could've been walking away, he could've been walking towards Zach.

Okay. I put it to you that that man is walking away from the man in the grey shirt as Constable Rolfe approaches him and on that basis I would put to you that - wouldn't you accept that it was not necessary for Constable Rolfe to push the man in the red shirt?---If that man was walking towards Constable Rolfe, that - that - Constable Rolfe may have had the impression that that assault was going to continue towards him - I don't know. You have to ask him about it, I guess.

Yes. On the basis that he was walking - if you assume for a second he was walking away?---Yes, assuming that he is walking away from Constable Rolfe and he is walking away from that other man it may well not have been 100 per cent (inaudible).

Okay. I put it to you that that's the situation and I asked the question, I put it to you that therefore there was no need for Constable Rolfe to do that. Did you ever raise this use of force with the senior officer?

MS OZOLINS: Your Honour can I - I object. The witness has given evidence but hadn't viewed the footage. He is unable to discern whether the person is walking away from the incident or walking towards Constable Rolfe. He is now being asked to comment on reportable uses of force. In my submissions - - -

THE CORONER: Well, whatever the situation it's a use of force, so as I understand it it needs to be reported.

MS OZOLINS: I just want to make sure that the witness is clear what they are being asked to comment on in circumstances where he said it's not clear to him from the footage what is actually happening.

THE CORONER: Sure. It's clear that it's a use of force?---Yes.

MR DERRIG: Did you report that to the senior officer?---I don't - - -

DR DWYER: Just to clarify, it was the subject of a C & E so it was the subject of a use of force report.

MR DERRIG: I don't recall.

You don't recall?---I don't - yeah.

That's all right, no worries, okay, you don't. My final set of questions goes back to - - -

THE CORONER: I take it looking at that now, with additional experience?---Yes.

You would reflect on the possibility that there were other ways of dealing with that situation?---I have reflected on it and potentially there's a number of different ways it could have been dealt with.

Even just using our voice, for example, which doesn't appear to have been used? ---Yes, it was - it all unfolded very quickly. I don't - I don't discount the fact that tactical communications could have been extremely effective there.

MR DERRIG: I suppose then my point being is that in the context of these two men being Indigenous, could it be the case that, you know, the circumstances which led you to sending those text messages that those thoughts in our mind have in this

case manifested to your conduct, which was not to use you know, directions and things like that?---I don't think the colour of those men's' skin had any impact on Zach's actions there. Is that what you're asking?

Well, the problem we're asking about your own actions, but that's okay?---My own actions? I think I just got out of the car and walked over to them.

And not given a direction - taken other steps?---It's one of those moment when I probably - when I can understand why me not having my body-worn on is such a pain. I don't know if I was getting out of the car from the other side at the time and whether I even saw Zach push those two gentlemen over - I'm not sure.

In our first recorded interview - and this is my last topic?---Sure.

You talked about the circumstance where the news was broken that Constable Rolfe had been charged and in that recorded interview at page 7 you say, "Which obviously didn't sit well with any of us" and then "Yeah, most people didn't come to work - at all, and that sort of stuff happens." Do you remember that?---Yeah, I do.

Now, those officers who were advising an arrest of Constable Rolfe, did they provide their reasons when they said he had been charged?---I've never had to reflect on that. I don't think they gave - as in I think they said "He's been arrested and charged with murder" but I don't think they elaborated any further than that.

You did mention that "It didn't sit well with any of us" and that most people didn't come to work". Do you mean that officers didn't attend their next usual shift, is that right?---That's correct.

As a result of this?---Yes.

And you say, "And all that sort of stuff happened". Was there any other similar comments to that from officers after the news had broken? Sort of - of the same usual direction to come to work, things like that?---I think people were very affected by it emotionally and they felt very unsure about their - I don't know. It's really hard to describe a group of people's perception of a thing, you know. I - at the time I came to work, I did my job and that was sort of what I was concerned with at the time, to make sure that I was doing the best I could. I'm not sure if there as more that happened other people just not coming to work.

Do you remember how long that - - -

THE CORONER: Mr Derrig, you're out of time.

MR DERRIG: Okay, thank you.

THE CORONER: If there's an important question you need to ask then that - - -

MR DERRIG: No, that's fine actually.



THE CORONER: You had one minute and 43 seconds, I'd lost the timing - no. Okay, sorry.

MR MCMAHON: I will impose two minutes on myself, your Honour.

THE CORONER: Thank you.

XXN BY MR MCMAHON:

MR MCMAHON: My name is McMahon, I act for Parumpurru Committee of Yuendumu which is a justice committee. I am not going to ask about individual texts, I just want you to focus your mind and bearing in mind and bearing your mind on your efforts today, trying to be courageous. I want you to focus your mind on the culture of the time in 2019 when you were working in Alice Springs. As you well know, there's lots of racist words and expressions and dreadful things in these texts and some of them have come from you?---Ye.

Presumably - and you have also spoken about how you recognise now that you were desensitised to it and that expressions which would seem terrible and upsetting to you now were not offensive to you then?---Correct.

What about around the station and on the job at the time? Would you agree that you heard racist language around the station and on the job back in 2019?---I would agree that there was - that sort of language was used occasionally. I don't have a specific instance in mind.

So because it didn't seem all that offensive to you at the time, it's not - you don't expect to remember particular sentences now, is that what you're saying?---Correct.

But you agree that the language of the racism that you've read in these text messages and that the media recently - I won't repeat them all but words like coon and the N word and those kind of words, you agree that they were used around the station on the job from time to time? Firstly, you agree with that?---Very rarely, yes.

And secondly, did you ever see anyone disciplined or get taken to task over using that kind of language, either at the station or on the job?---I remember - no.

Thank you?---I don't think so.

No further questions.

XXN BY MR EDWARDSON:

MR EDWARDSON: Constable, there are three areas that I want to cover. I just want to deal firstly with this desensitisation.

THE CORONER: This is Mr Edwardson?---Good. G'day.

MR EDWARDSON: Yes.

Constable, anyway, desensitisation. That's sort of a description that applies equally, can I suggest, to lawyers and doctors who see all sorts of things that are quite removed from the general public which are graphic and confronting?---Yes.

And police officers obviously, as you've already suggested, see some terribly graphic and confronting things?---Yes, I believe that's the case.

And you have really quite candidly admitted, as I understand your evidence, that in your relatively short career as a police officer you've found some, and seen no doubt, some horrendous things?---Unfortunately.

Confronting things?---Yes.

And one way that people deal with that traumatic situation is to sometimes make light of an incident by using inappropriate language?---Yeah.

I'm not for a minute trying to condone the language that you and Constable Rolfe have used. Plainly they're offensive?---Yep.

And now that they've been released to the public and more particularly to members of the communities, they're no doubt abhorrent from their respect?---Agreed.

But as I understand your evidence, that was never ever the intent?---That's correct.

What you're talking about is a way – a mechanism, an inappropriate mechanism, you've now acknowledged, to deal with the sorts of horrific situations that you've had to deal with over the limited time that you've been a police officer?---I have no intent to come in here and justify the things that I've said.

I'm not asking you to?---But I do agree with that.

And the difficulty is of course that when you're a police officer or a lawyer or judge, high responsibilities must prevail?---Correct.

In other words, no matter how confronting and no matter how little intent there was on your part, or for that matter Zachary Rolfe's part of anybody else, to offend anyone by using that language, you now acknowledge of course that you have to rise above it?---Absolutely.

And that's what you've attempted to do in a very candid and honest fashion today? ---That was my – that's my entire purpose today.

And as I understand your evidence, because of your particular background, you actually have a genuine love and affection for people in the communities? ---Absolutely.

And the last thing you would ever have intended, despite the way in which you expressed yourself in these text messages, was ever to suggest that you are truly racist?---Correct.

Or that those views which are expressed in those text messages are the way you actually feel about members who are within the indigenous community?---Yeah, that's correct.

The next thing I want to ask you a little bit about is – much has been made of course of what you now understand of the potential consequences of that text message, the last text message?---Sure.

I won't refer to the timing, but it's on 10 November 2019. There are a number of things I just want to ask you about. Firstly as I understand it, the IAMO plus P is a training technique that was taught to you, Zachary Rolfe and every other police officer?---Yeah, that – that – I can't remember every aspect of my training.

No?---But - - -

But certainly, if you draw on it, think back on it, it plainly was part of your training when you first became a police officer?---I believe so.

Yes. You've told this court that it was never your intention in any way to somehow try and influence Zachary Rolfe about whatever he might say when asked or called upon to give his account about the circumstances of this incident?---I never believed – yeah, I didn't – I didn't intend to.

As a police officer you'd recognise, don't you, that you all have what we call a notebook, a police notebook?---Yes, that's correct.

You on this occasion, 10 November 2019, you've told us had no sort of understanding or comprehension would you think of this as being in a context of a death in custody?---That's correct.

You certainly didn't think of it in the context of a criminal investigation?---That's correct.

In your wildest of dreams you at that stage would never have thought that your friend, Zachary Rolfe, would be charged with murder?---Correct.

And so insofar as you were communicating with him on that occasion and you had passed on the messages from the person named in that sheet, you didn't intend in any way for that to have some sort of effect on whatever version he might put forward?---That's correct.

Now I want to come back to the notebook?---Sure.

Basic 101 police training is that you should try, if you can, document as contemporaneous with the events as you can, the incident in question?---That's correct.

Now in the modern world one way of doing that of course is the body worn video? ---That's correct.

And we now know how invaluable that was and how critical is was in the trial of Zachary Rolfe?---Correct.

Because everybody had worn body worn videos and they've captured the incident from beginning to end?---Yes.

In plain sight. The second way of course, because video can't capture everything, the video might, for example, look in one direction but the officer might be looking in another?---That's correct.

The video can't tell you what he's thinking?---No.

At the time of the incident?---Correct.

And that's why documenting as soon as possible the incident in question becomes very important or may become very important before any contamination?---Correct.

And you'd understand of course that what's been put to you in these proceedings is that there was the capacity for this message to corrupt, as it were, Zachary Rolfe's narrative of the events that occurred in the shooting?---Yes, I understand that.

Although quite unintentionally?---Yes.

Now notebooks. In this case I can tell you for your own, so at least when you leave here you don't think for a minute that that's in fact what happened. But we've got and has been provided, with Zachary Rolfe's notebook which on the instructions of his solicitor were – recorded the events from his point of view at 0147 am, was photographed at 3 o'clock in the morning and then sent to the solicitor acting for and on behalf of Zachary Rolfe and then in turn handed over to the court and the Coroner. In other words, his narrative recorded with his hand was recorded before this particular message was ever sent?---Sure.

So I just want you to understand that because I don't want you leaving this place thinking – given what's been put to you, that that has somehow influenced his narrative. The last thing I want to ask you about - - -

THE CORONER: So that wasn't a question.

MR EDWARDSON: Well the question is this. That is consistent, is it not, with the practice and training that you would have in the normal course of recording in your notebook the events in question when the facts are fresh in your mind so that you

can call upon your notebook to say this is a contemporaneous note, I want to refresh my memory and tell the court what happened?

DR DWYER: I object on this basis. That notebook was not, as I understand it, provided for the purpose of the criminal trial. So it was not, as I understand it, available to the prosecutor in those circumstances. Just so there's no - - -

MR EDWARDSON: It's in reference to his statement, your Honour. I'll come to that later.

Can I take you down finally at page 14 of your first statement which is 17 January 2020? I just want to ask you a couple of quick questions about the Walpiri attempted arrest of Kumanjaya Walker, which I think is on the 7th, wasn't it, of November 2019 or was it the 8th?---I can't exactly recall the dates.

I can't remember. It's one or the other?---Sure, yep.

In any event, it's either a day or two days before the 9th which is when the shooting occurs. You say at page 14 of your statement that there was a briefing and I think it was described by counsel assisting as a bonnet briefing?---Sure.

And then you were asked this question, "Can you recall what was said at the briefing and what the plan was". So there was a plan of sorts?---Yep.

How many officers were there?---Approximately five.

Approximately five. Zachary Rolfe that was giving the briefing?---It was Zachary Rolfe or myself.

And yourself. All right. And basically you had limited information, a hunch almost, a possibility that he might be in the house that you were about to knock on the door? ---Correct.

And so you say this when you were asked a question just what was said to you in the briefing and you said – Officer Morrisey then put to you, "Just a cordon" and you said, "Cordoned it off and then a knock on the door and if we'd seen him inside, obviously go in and arrest him." So the plan was this. You didn't know whether he was inside, there was no one there to get consent or approval to enter the premises. Is that right?---Correct.

You have no direct evidence that he was in fact inside that building?---Only he was linked to that building.

That's right. So, as part of the investigation, police officers surrounded the property; that's a cordon?---Correct.

The idea was to knock on the door?---Correct.

If it transpired he was inside, as you say, you would have gone in and arrested him?  
---That's correct.

That is, into the house?---Yes.

If he was there. And of course, at that stage, there was a warrant for apprehension as well?---Yes, that's correct.

Yes, thank you.

Nothing further.

THE CORONER: Yes.

MS OZOLINS: Your Honour, just before Dr Freckelton, I just have two matters I – I won't be very long.

THE CORONER: Thank you, Ms Ozolins.

XXN BY MS OZOLINS:

MS OZOLINS: Senior Constable, my name is Sally Ozolins. I'm appearing in these proceedings for the Northern Territory Police Association?---Okay.

I just wanted to ask you about – well first of all, you gave some evidence earlier about the importance which police relationships and the idea of mateship – and I think you called it a “police brotherhood” and how that concept drove you to join police, essentially?---That is a part of that.

And have you maintained that – does that concept – is that still important to you as you do your work now?---Yes, absolutely.

And can I presume than, that's why, even though you weren't specifically involved in the incident on 9 November, that you immediately reached out to your IRT colleges. I think you initially contacted Zachary Rolfe and then James Kirstenfeldt via telephone to check on their welfare?---Yes, that's correct.

Yes. And then, you did, I think, give some evidence earlier today about a subsequent conversation about Zach's stress, and you said you talked about how he was feeling and in fact, how you were feeling about it?---I perceived from the way he spoke to me that he was under a lot of stress.

All right. Were you aware whether or not any welfare support had been offered to him at that time?---I wasn't aware at that time, yep.

Was any welfare support or any briefing or debriefing offered to you as a member of a close-knit unit at that time?---No.

Are you aware of any debriefing that occurred for the members involved as well as the broader IRT members in relation to the critical incident at Yuendumu?---I'm not aware of any, sorry.

And I just now would like to ask you about the text message that you've been asked about a lot; the "IAMO plus P" - - -?---Sure.

- - - text message. Now, you gave some evidence earlier that there was a Sergeant Nankivell that said that to you, and I think your evidence was that he reached out to you to support you to make sure you were okay?---Yes, that's correct.

Now, he was the sergeant at Port Keats at the time, wasn't he?---Correct.

And you were about to go to Port Keats?---That's correct.

And he was worried about your mental health and your welfare at that time?---Yes, that's correct.

And in fact, I think as was pointed out earlier, he then acted as your support person during the interview in relation to this matter in January 2020?---Yes. Yes, he did.

Now, Sergeant Nankivell, a former Victorian police officer who had some experience in a critical incident, which was a shooting in Victoria, hadn't he?---Yes.

And as you said, the IAMO plus P method is something that officers learn in terms of assessing conduct in breaking down incidents, isn't it?---Yes, that's correct.

And you were aware, weren't you, that when Sergeant Nankivell sent you that message, he intended that you use it as a reflection tool in terms of assessing conduct so that you could – like a method of thinking through the fog, if you like.

DR DWYER: I object. That's not the evidence. The evidence from the text message includes that Constable Hanson texts Rolfe to say, "Ian Nankivell sent me this to send to you. He was involved in shooting someone in the Vic Pol. So, he said to send this through."

MS OZOLINS: I was actually asking the witness about his understanding of when Sergeant Nankivell sent it to him, what the purpose was.

THE CORONER: But he wasn't sending it – well, it seems clear from the text message that he was sending it to him for the purpose of sending it to Rolfe. Are you suggesting there's been some other conversation?

MS OZOLINS: I don't know. That's what I'm asking.

THE CORONER: Then you can ask if there was another conversation.

MS OZOLINS: Thank you, your Honour.

Did you have any other contact or conversations with Sergeant Nankivell in relation to the incident on 9 November or dealing with stress after that?---He had – he periodically called me, pretty much for that point onwards, and checked in with me to make sure that I was okay.

And do you - - -?---I don't think - - -

Sorry?---I don't think we had any further conversation about this text message whatsoever.

Are you aware of whether those principles that IAMO plus P, if you like, is used in other jurisdictions as a reflection tool?---Sorry?

Sorry, are you aware of that?---I'm not aware.

All right. And that it might be used as a method endorsed to be used in debriefing of officers after critical incidents?---I'm not totally aware. I'm not sure.

Nothing further. Thank you, your Honour.

THE CORONER: Dr Freckelton?

MR FRECKELTON: Thank you, your Honour.

XXN BY MR FRECKELTON:

MR FRECKELTON: When Sergeant Nankivell did interact with you during this period, did he do so as a representative of the Police Association?---I don't – I'm not sure.

Okay. You've told her Honour that you've experienced a lot of trauma, that you've experienced abuse on almost every shift, but in retrospect, you became desensitised. Do you put any of those forward to her Honour as justification or an excuse for the language that you used?---No, not at all.

You've expressed to her, regret, embarrassment and shame. Is that how you want her Honour to understand how you feel about it looking back?---Wholeheartedly.

You've described yourself as immature and naïve from the period when you wrote these text messages, is that right?---That's correct.

Have you grown up?---A lot.

Has it been painful?---It's been extremely difficult. But it's been extremely rewarding as well and, you know, I just want to be a good - I want to be the best version of myself I can be. I want to set an example for my son and for my colleagues, for my family - for anyone that I can really.



Will you use this kind of disrespectful racist, sexist, homophobic language in future?  
---No.

What would you say to other police members who contemplate using these denigrating terms?---I think - I don't think I will allow those opportunities of accountability to slip past me. I think I will definitely - I don't know what I'll say in the moment but I'm definitely going to make a point of correcting that sort of behaviour.

You will personally intervene and tell them why that kind of conduct is wrong?  
---I think pretty much anyone that knows me has probably learned from my actions and anyone that doesn't know me already and that, you know, if I see this repeated we will be having a conversation.

Thank you very much sir.

THE CORONER: Officer, thank you for coming and giving your evidence. It has obviously been a difficult process. It's difficult sitting here in court, knowing that your answers and what has occurred is now open for scrutiny, but I can also appreciate that a lot of the difficult work has been done in the lead up to today. From personal reflection and no doubt through a lot of conversations that you've had with your family and colleagues?---Yes.

I expect that through those conversations not only have you grown, not only have you reflected but everybody else that you're communicating with has learned from this difficult process?---Absolutely.

The inquest is here for the family to learn and understand as much as they can about the passing in very traumatic circumstances of their family member but it's obviously also a process of reflection and learning for the organisations who are involved and for the individuals who are involved and we very much appreciate that you have taken the process very seriously and I hope that you have benefitted from it?  
---Greatly.

You've obviously set yourself a high standard moving forward?---I have.

You probably won't always be able to live up to that very high standard and everyone fails from time to time but it's fiddling with it and moving on that is the important thing and I think you've set a very excellent example about dealing with these difficult issues and I appreciate that you came to court and you have participated in the way that you have?---I appreciate the opportunity. Thank you.

DR DWYER: Your Honour, can I add to that before you leave - I don't purport to speak on behalf of the community or of the family but as I understand it, there are a significant number of the community and family who are grateful to the constable for what your Honour just said, for coming to court and facing up to that and acknowledging the mistakes made, and particularly in relation to the racists text messages and that it is meaningful that he did so. So thank you. I just pass that on.

A PERSON UNKNOWN: Your Honour, I understand that the only witness to be called tomorrow is Ms Capagnaro.

THE CORONER: Yes.

A PERSON UNKNOWN: I don't expect her evidence will (inaudible) and I seek leave to be excused.

THE CORONER: And you would like to be excused. Yes, thank you for bringing that to my attention.

Would you like to say something, Mr Edwardson?

MR EDWARDSON: No, your Honour, could I just ask - can I just confirm that the list - I have got a particular (inaudible) to do. I will be here obviously tomorrow and Monday as well. Superintendent Nobb is still for Monday?

DR DWYER: Yes, your Honour. That's yes as I understand it.

MR EDWARDSON: Right, thank you.

THE CORONER: All right. We can adjourn to 9.30.

WITNESS WITHDREW

ADJOURNED