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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 6 SEPTEMBER 2022

(Continued from 05/09/2022)

Transcribed by:
EPIQ

THE CORONER: Yes, Dr Dwyer.

DR DWYER: Thank you, your Honour.

Your Honour, we're just continuing my opening this morning and just to give everybody a brief idea of estimates, I estimate – I know lawyers are notoriously bad at this – but I estimate an hour and a half or two hours is still left in my opening.

THE CORONER: Yes, thank you.

DR DWYER: Your Honour, yesterday, I showed a chart that investigating police prepared to assist your Honour to understand the time that Kumanjayi spent in custody and there is another visual representation of that chart.

THE CORONER: Yes.

DR DWYER: It appears in the brief of evidence and your Honour will see that, from 2014 through to 2019, Kumanjayi spent a significant period of time under restraint, including in custody, and the yellow, of course, shows there the periods in custody.

THE CORONER: Yes.

DR DWYER: Your Honour, that custody for Kumanjayi, up until the time when he was 18 – so, 2014 through to 2018 – was spent in Don Dale Juvenile Detention Centre and in the Juvenile Detention Centre in Alice Springs. In August 2016, the Royal Commission into the Treatment of Children in Care and Detention was established in the Northern Territory. A Royal Commission was called by the former Prime Minister, Malcolm Turnbull, after Four Corners aired a program called “Australia’s Shame”, showing graphic images of a child in spit-hood, children confined to isolation and children strip-searched and tear-gassed.

The Royal Commission looked at the treatment of children in detention in Don Dale in Darwin and children in detention in the Alice Springs Detention Centre, over a period that included the period Kumanjayi was in custody, from 2014 through to 2018 – I withdraw that – from 2014 through to 2016, for those periods, until the Royal Commission was established. We know that Kumanjayi spent time in both of those detention centres during a period where the Royal Commission was extremely critical of the treatment of vulnerable treatment in custody, including people like Kumanjayi.

Relevant parts of that report will be tendered in this inquest. Chapter 10 of the report contains the following findings:

The youth detention centres used during the relevant period were not fit for accommodating, let alone rehabilitating children and young people. The poor condition of youth detention centres created the potential for harm to be caused to children and young people. The inadequate facilities put children

and young people's health, safety and well-being at serious risk and played a part in incidents that occurred at youth detention centres.

At different times and in different youth detention centres during the relevant period, the conditions under which children and young people were detained fell far short of acceptable standards under international instruments and Australian guidelines. Severe prison life and unhygienic conditions, and inadequate security due to poor infrastructure caused children and young people to suffer punishment.

In Chapter 13 of the Royal Commission recommendations and findings, the Commission recorded findings of excessive use of force by some employees, including that children were restrained by using force to their head and neck areas at the current and former Don Dale detention centres and in Alice Springs. Ground-stabilising children and young people by throwing them forcefully onto the ground, in some cases, causing forcible contact to be made to their heads and surfaces occurred between 2010 and 2016 in Don Dale Youth Detention Centre.

Your Honour, I expect that we will hear evidence in this inquest that placing Kumanjaji, a child who had experienced trauma and needed safe boundaries, love and comfort was the opposite of therapeutic. Your Honour may think that it is an important part of his story that may help us to understand why those environments did not assist him to cope better each time he was then released back into the community.

When community members tell us yesterday, your Honour, that they feel that Kumanjaji was demonised after his tragic death, it may be helpful for this court to remember the way that he was treated by the state at different times and the ways in which we can learn from that and try to do better.

Kumanjaji's remaining offending – I spoke yesterday of some property offences – was most often as a result of breaches of bail or court orders, or absconding from youth detention or residential rehabilitation programs, as a means of returning back to his home at Yuendumu. Around February 2016, Kumanjaji commenced a relationship with his partner, Rakeisha, when they both visiting Alice Springs, I expect your Honour to hear.

Sometimes in April 2016, both Kumanjaji and Rakeisha returned to Yuendumu and Rakeisha was living with her grandparents at House 577 and Kumanjaji moved between different houses in Yuendumu. Your Honour, I expect that you will hear evidence that Kumanjaji and Rakeisha were in love. That doesn't mean the relationship was easy and it doesn't mean it was always healthy.

I anticipate your Honour will read in the evidence that perhaps because Kumanjaji has suffered trauma himself, he was unable to self-regulate at times and he lashed out at times, including at Rakeisha. I expect that there will be evidence that Kumanjaji was sometimes very jealous and could not easily control him

emotions and your Honour will hear about the efforts of people to help him with that and what resources there are for young people in the community like Kumanjayi.

On 12 August 2016, Kumanjayi was arrested for assaults on Rakeisha and refused bail. On remand in Alice Springs Youth Detention Centre, he received counselling from Kerri-Anne Chilvers who was then a social worker with the domestic violence specialist youth service at Tangentyere Council. Ms Chilvers was providing therapeutic sessions for domestic violence and substance abuse issues and I expect that she will give important evidence to your Honour about what she was able to achieve with Kumanjayi and what other assistance might be useful for young people in his position in the future.

At the same time, a significant amount of planning and effort had been done to try and identify suitable carers for Kumanjayi after he was released from detention. Family in the form of Joseph and Annie Lane(?), and the significant care that he was provided from those people within the Lane family, was put up as helpful to Kumanjayi. When he was released in November 2016, I expect that your Honour will hear that support services were nominated at Papunya to assist Kumanjayi.

I expect your Honour to have evidence that Kumanjayi could not or would not engage in services when he was released. On 3 February 2017, he broke into the Papunya store. He was brought to the Papunya Police Station by Senior Aboriginal Community Police Officer, Derek Williams, and he was arrested then and charged with fresh offences and later granted bail by a magistrate for a second attempt to reside in Papunya community.

Your Honour, I expect you will hear evidence shortly from Mr Williams; that's Derek Williams Junior, who will talk about the numerous occasions when he interacted with Kumanjayi, including on some occasions when he had to detain him, and that he was able to detain him without the use of any force or any threats.

On 17 February 2017, two WYDAC youth engagement workers attended an address in Yuendumu community to collect Kumanjayi and take him to Papunya, in accordance with his bail conditions. He was delivered to family, but he wouldn't get out of the car and the workers felt they had no other option but to return him to Yuendumu. And your Honour might think, at that stage, that it was complicated because, after Kumanjayi formed a relationship with Rakeisha, he wanted to be with her in Yuendumu and that's a consistent theme throughout the evidence.

On 18 February 2017, Kumanjayi was arrested in Yuendumu for outstanding criminal offences and he was remanded into the Alice Springs Youth Detention Centre. It was during this period in custody that Kumanjayi experienced what I imagine to have been a very traumatic dog bite during an attempt to escape.

On 6 March 2017, when he was 16 years old, he and two other young people broke through the air conditioning units and out onto the roof of the detention centre, before going over the fence. Police were called and used a dog to track the young people some kilometres away to the bush.

According to the use of force report, and your Honour will hear more about the use of force reports throughout the course of this inquest. According to that report, Kumanjayi was given a number of chances to surrender, but when he didn't, the police dog was sent in to detain him and he was bitten by the dog on the right thigh.

He was then taken to hospital where the wounds were cleaned and he was returned to custody at the Alice Springs Youth Detention Centre. While he was remanded in youth detention in Alice Springs, he continued to see Kerry-Anne Chilvers for counselling.

And in the background other service providers were coordinating possible accommodation or residential supported care. In April 2017, Kumanyika was transferred to Don Dale Detention Centre in Darwin.

And I expect your Honour will learn that around that time, there were significant efforts made by Ms Chilvers to return Kumanjayi to what's known as the SevGen program in Queensland and I will speak more about that shortly, or alternatively, to secure his admission into CAAPS or a similar intervention program for substance abuse therapies. However, that did not eventuate in 2017 and he was released to Yuendumu.

On 10 April 2018, Kumanjayi and Rakeisha were accepted into what is known as the Family Safety Framework or the FSF. While your Honour would be very familiar with that program as a result of your experiences as a serving judge in the youth court, others listening may not be – I'm sorry, in the adult court.

The Family Safety Framework is a multiagency approach to high risk domestic violence offenders and victims who are likely to experience risk of harm. The meeting is chaired by Northern Territory Police and includes stakeholders like Health, Education, Territory Families, the Women's Centre, Territory Housing and wider.

All the agencies are expected to share information and engage and provide support when required. While Kumanjayi and Rakeisha remained on the Family Safety Framework, they both received some multiagency case planning interventions. And I anticipate that your Honour will hear from the Northern Territory Police about what they involved, what was effective, what was not effective and whether more could be done to bolster that program to assist young people like Kumanjayi and Rakeisha.

On 10 May 2018, Kumanjayi was arrested at House 577 in Yuendumu for a number of outstanding offences and he was remanded to Alice Springs Youth Detention Centre. A Youth Outreach Re-engagement Officer known as a YOREA, conducted a bail assessment report for the Youth Justice Court on 18 May 2018.

Kumanjayi remained – I withdraw that. The YOREO recommended bail with a number of conditions, including the Kumanjayi live with Leanne at Warlpiri Camp in

Alice Springs. Your Honour will have evidence that Leanne said she was very happy to care for him again and he was welcome to come and stay with her.

On 18 May, Kumanjayi was granted conditional bail, but within a few days, he returned to Yuendumu to resume his relationship with Rakeisha and unfortunately that breached the bail agreement. That led to Kumanjayi being arrested at House 577 on 31 May 2018. And again, he was remanded in the Alice Springs Youth Detention Centre.

Later he explained to workers that he had to go back to Yuendumu because he was missing Rakeisha. I expect your Honour will receive information that while in detention, he continued to receive regular support from the YOREO and from Kerry-Anne Chilvers, who was by that time, we're now in 2018, a community psychologist with the Remote Alcohol and Drug Workforce program and she was trying to work with him to address his issues with cannabis abuse.

She also provided trauma-sensitive therapy and your Honour will hear what I anticipate to be very significant evidence from her in that regard. In the late evening on 15 July 2018, Kumanjayi escaped from Alice Springs Youth Detention Centre with another young person and the next day, he was located at Warlpiri Camp and arrested by police.

On 2 October 2018, Kumanjayi was sentenced in the Alice Springs Youth Court by a judge. He received a 9-month detention order commencing 23 May 2018, but it was suspended immediately on him entering a good behaviour bond with conditions that were set out in the presentence record. The judge told Kumanjayi this:

"I'm going to impose a sentence so you don't transition from detention into gaol. This will be the chance to get out today and go to DASA, the Drug and Alcohol Service, and hopefully learn how to control yourself and then someone will work out there where you will best stay after you get out of DASA.

That might be the big thing that needs to be worked out, where you're best able to live and hopefully, to do meaningful activities and stay out of trouble, otherwise, I am concerned for the future."

I'm setting that out now, your Honour, because I anticipate submitting to your Honour that there were attempts to assist Kumanjayi, but that a significant learning from his case is that some of those attempts were more successful than others. And I will come to some reasons throughout the course of this inquest as to why that was.

But also, that when you have a young person who has been traumatised in the way Kumanjayi was and then he's subject to re-traumatisation at different times, including likely in youth detention centres and likely during that arrest with the dog, that there are very significant intensive efforts long-term that need to be made if we are to be serious about assisting young people in his position.

So, I come now, your Honour, to a number of the interventions so that we understand the broad landscape for that is available currently in the Northern Territory to assist young people in Kumanjaya's position. If I could ask the court officer's assistance in this regard with some of the images.

I'm first just going to show a snapshot of WYDAC. In early 2014, Kumanjaya was independently identified as a high-risk youth by WYDAC youth workers. And I expect your Honour to have significant information about the programs that WYDAC have offered throughout the years and what's available currently, and what else WYDAC might think will be of assistance to young people.

I expect your Honour to have information that WYDAC worked with Kumanjaya's family to assist him with an early diversion program, including participation in the Mt Theo diversion program. So, that can come down now. And if I could ask for Mt Theo to come up.

On 5 March 2014, Kumanjaya entered the Mt Theo program which ran for four weeks. The program manager at the time was the then social worker, Kerry Anne Chilvers, who spent significant time with Kumanjaya making observations of his behaviour and participation in the program. So, I pause to note that these are images that are available on the internet that inform everybody about the different programs and of other services.

THE CORONER: Thank you.

DR DWYER: Kumanjaya actively engaged in all one to one program activities. The culturally-based activities, the education sessions and most of the group activities. And we know that from the very helpful information that we have already received from Ms Kerry Anne Chilvers. When describing Kumanjaya's overall engagement during the program, Ms Chilvers says this in her report to be tendered:

"He functioned well. And I would attribute this to the relatively safe, supportive, structured environment that was provided for him at Mt Theo Outstation. There were definitely signs of improvement during the four weeks. Unfortunately, four weeks wasn't really long enough time for significant changes to be made, or for any changes made to be sustained." Kumanjaya participated in the Mt Theo program on three separate occasions.

I come now to Bush Mob. Bush Mob is a residential therapeutic treatment facility for young people aged between 12 and 25 years located in Alice Springs. The program generally runs for four months and includes safe accommodation, life skills development, a comprehensive relapse prevention program with individual and group counselling and coping skills.

And the website tells us there are other opportunities like large animal exposure or adventure therapy, bush skills, art, music and sports. Cultural activities are interwoven through the program and there is daily interaction with Indigenous staff. There are mechanisms for family engagements.

Again, the website tells us that Bush Mob works closely with wider care teams, including referrers like Territory Families or case workers. Kumanjayi again participated in Bush Mob on three separate occasions in 2014. So this is early on in the efforts to try and assist Kumanjayi, in terms of outside service providers.

THE CORONER: But I understand that he didn't remain in the program for four months on each of those occasions.

DR DWYER: That's correct, your Honour.

THE CORONER: That was a shorter period.

DR DWYER: That's – exactly, thank you, your Honour.

In contrast then, I've put up SevGen, which is the next one. And hopefully we'll have more information about this program. SevGen is an alternative education program for Aboriginal young people that was developed by Terri Waller. It's called SevGen, because the idea is to look back, and learn from the past seven generations, and to think forward to the next seven generations. SevGen provided ABSTUDY accommodation at a sacred site at Mothar Mountain in Queensland.

Which we're told is similar to Mt Theo. The participants at SevGen are provided with strong cultural education and support from local elders. They're supported with some school support and weekend support. And it's described as an alternative education style, that encourages individuals to discover their passions and gifts, in a loving and supporting environment. In 2015, when Kumanjayi went to SevGen, Ms Chilvers was then a social worker for WYDAC, and she collaborated with Kumanjayi's family, with NAAJA, and with Terry Waller, to enrol Kumanjayi in the SevGen program in Brisbane.

I expect your Honour will hear important evidence from Ms Chilvers, that the SevGen program was a very positive intervention for Kumanjayi. And she will lend us her expertise, having worked with him for a significant period of time. In her statement, she writes,

“The magistrate at the time agreed for Kumanjayi to travel to Queensland for a six-month period to undertake the SevGen program. Leanne Oldfield accompanied him, and she stayed with him for the entire duration. Over this six-month period, within the context of a safe structured, culturally supportive, and loving environment, he once again thrived. And there were no issues what so ever, with either his behaviour, or the law, during this time. Not only did he stay out of trouble in Queensland, he remained out of trouble for a significant period of time, after his return to Yuendumu.”

I expect those reflections will be important when your Honour comes to look at what might be of assistance with place space, therapeutic interventions in the Northern Territory, moving forward. Your Honour will note that SevGen is a six-

month program. It was structured and long-term intervention, and importantly, family was close by, because Leanne was able to stay with Kumanjayi for the full six month period. And that appears to have had a very significant, positive impact on Kumanjayi. I expect your Honour, and it's obvious from what I've already said, that to submit that there are limited options for that kind of intervention in the Northern Territory. And that might be an issue that your Honour considers when it comes to recommendations.

And we don't have to reinvent the wheel entirely, because your Honour will be able to draw from the conclusions of the Royal Commission into the treatment of children in care and detention, that was held in the Northern Territory in 2016. Will be able to look at the recommendations made in that Royal Commission. Will be able to determine if those recommendations have been implemented. If not, whether or not there are recommendations that are relevant to your Honour.

Kumanjayi returned to SevGen on a second occasion with Leanne. But by this time, he'd already commenced the relationship with Rakeisha, and in the absence of Rakeisha being there, he wasn't able to stay and complete that program. And he didn't last longer than a couple of weeks on the second time he went back. Can I come now then to DASA. On 2 October 2018, I'm jumping forward several years, Kumanjayi was released from adult custody on a conditional suspended sentence. And one of the conditions was that he participate in the Drug and Alcohol Services Australia program. That's a residential rehabilitation program run from Arunda House, in Alice Springs.

Kumanjayi was reported to be engaged with the programs and events offered by DASA. And for a time, he was regularly attending the social and well-being sessions. Initially he settled in well. He made friendships. And your Honour will have evidence that he was accessing the YMCA for physical activities. About 20 days into his stay, on 22 October 2018, he had a confrontation with a DASA youth worker over a mobile phone. I'm not suggesting that was a – anything other than a verbal altercation.

But that meant that he left the program, because conditions were breached. That meant he breached his suspended sentence, and he returned to Yuendumu. Finally, with respect to support programs, could I just ask for the CAAAPU photos. CAAAPU is Central Australian Aboriginal Alcohol Programs Unit. After Kumanjayi turned 18, he had his first experience with CAAAPU. On 13 October 2018, he turned – Kumanjayi turned 18. At that time he had no further involvement with Territory Families child protection teams. However, he was still being provided support from the Youth Outreach Re-engagement Team, or YORT while he remained on a Youth Justice suspended sentence order.

He was managed by YOREO. And I'm told that in Central Australia, the YOREO's are known as "blue shirts", for very obvious reasons, because we see photos of them all in their blue shirts. On 24 November 2018, Kumanjayi was located at Rakeisha's house. He was arrested by local police without incident. And those police officers, your Honour will be interested to know, that arrested him

without incident, were Sergeant Julie Frost and Constable Felix Alefeio. He was remanded into Alice Springs Adult Correction Centre.

On 20 December 2018, he was given another opportunity to be released from custody on conditional bail. And Kumanjayi agreed to participate in the CAAAPU residential program, and to engage with YOREO Richard Kruger, to comply with all his bail conditions, until his next court date, of 27 March 2019. Just in relation to CAAAPU, we don't need the photo back up there. But as your Honour would know, that's an Aboriginal controlled primary provider of culturally appropriate alcohol and substance abuse counselling.

We have information that it offers an eight-week residential program, providing individual and group counselling support and education, in collaboration with the Aboriginal run – with other Aboriginal run organisations. Like the Institute for Aboriginal Development, and Desert Knowledge. Kumanjayi completed the eight-week course on 13 February 2019. And I expect to submit to your Honour, at some point, that that was a considerable achievement. And that it tells us something important about Kumanjayi, and his ability to engage with programs, in spite of some – the challenges that he had previously.

I expect your Honour will receive evidence the YOREO, Mr Kruger, that Kumanjayi spent a significant time with him, and that he was able to build a very good relationship with Kumanjayi. And in his view, when Kumanjayi was committed to completing an action to do something, he presented an “As being very resourceful, with limited supervision required. Family always remained his main draw. If they were on board and had regular contact with him, he would be happy, and able to maintain stability.”

The success of the program, at that time, was attributed to the level of support he received from the program officers at CAAAPU and from weekly visits from YOREO – so YOREO, and from family support. Kumanjayi was driven to complete the program, focussing on what he said was “Whatever it took to be free in Yuendumu, and to be able to live with Rakeisha and his family.” He's reported to have said to Mr Kruger, “I have to get this done. Everyone is supporting me to get this done.”

So at this time Kumanjayi was no longer a child under any care orders. But he opted to reside, when he came out of CAAAPU, with Leanne, at Warlpiri Camp, Alice Springs, as part of his bail conditions initially. I expect your Honour will hear that for the first three weeks, Kumanjayi was doing very well. On 6 March 2019, he attended the Alice Springs Community Corrections Office with Leanne, seeking permission to attend Yuendumu for his sister's funeral.

Consideration was given to the culturally significant role he would play in the funeral service. And he was permitted to attend. However, your Honour, strict conditions were imposed at that time. And that allowed him to travel to Yuendumu to participate in the sorry business. But then he had to come straight back to Alice Springs. He had to wear an electronic monitoring device. I expect your Honour will

read that Kumanjaya breached the conditions of his bail when he removed the electronic monitoring device, and he failed to return to Alice Springs with Leanne.

While he remained in Yuendumu community, he was charged with committing an unlawful entry at the Big Shop with two co-offenders and he was charged with stealing some – a significant quantity of cigarettes, and on 18 March 2019, he was arrested for breach of bail and remanded to Alice Springs Correctional Centre.

On 19 March 2019, Kerri-Anne Chilvers attended a community safety committee meeting in Yuendumu. Kumanjaya and Rakeisha remained on the family safety framework and they were discussed during the meeting as a couple at risk of domestic violence. Ms Chilvers made notes of the meeting in Kumanjaya's remote health medical records and suspect your Honour may find them thoughtful and significant. What she wrote includes this:

“I put forward the argument that Kumanjaya's behaviour is highly influenced by his environment, so when he was at SevGen for six months in 2015, there were no problems with his behaviour. When he was in CAAAPU there were no problems with his behaviour. Even when he was in Alice Springs at Warlpiri Camp recently, there were no behavioural or police-related issues. That was confirmed by Superintendent Nobbs who was at that meeting.”

When he was in Yuendumu, his behaviour deteriorated quickly, she said, and he was re-offending within a matter of weeks. In the view of Ms Chilvers, that presented as strong evidence towards the likelihood that Kumanjaya has FASD; that is, foetal alcohol syndrome disorder, and that if he is not to – and I quote Ms Chilvers: “If he is not to spend the rest of his life in and out of gaol, a FASD assessment needs to be undertaken and a safe, supportive plan put in place for Kumanjaya.”

Your Honour, will have direct evidence from Ms Chilvers as to why she made those comments, what she did to follow them up, and what was done, or not done, in response. I pause to note this, your Honour. Ms Chilvers' reflections might also teach us this; that in order to assist someone like Kumanjaya in the community, it's important that the whole community that he lives in is provided with the supports necessary to move forward, to support him, to support each other, and to support other young people in his position.

As your Honour will discover, Mr Kruger, the YOREO, provided a compliance report for Alice Springs Youth Justice Court on 27 March 2019. This was the last interaction that Territory Families youth engagement teams had with Kumanjaya because he had transitioned into the adult court system. Mr Kruger recommended bail to CAAAPU at that stage – this is March 2019 – and he wrote:

“Kumanjaya has shown great maturity in his current bail undertaking, completing the program at CAAAPU, reporting regularly as required, and taking considerable steps in planning for his future. At this time, in review of Kumanjaya's age and ability to better comply with his current court-ordered obligations, consideration should be given to supervision, and/or bail

undertakings monitored by Community Corrections. Considering his recent lapse resulting in a breach, Kumanjayi may benefit from re-attending the program at CAAAPU.”

In relation to Mr Kruger’s suggestion about monitoring from Community Corrections, I anticipate that your Honour will have evidence about what is available, in terms of monitoring from Community Corrections at a community like Yuendumu. So, therefore, what supports are actually available for someone in Kumanjayi’s position if they were to be released to Yuendumu at that time? And, given your Honour’s recommendations power, whether or not there is a recommendation that might be appropriate in the circumstances, relating to further assistance from Community Corrections?

While Kumanjayi was locked up at Alice Springs Correctional facility, he maintained contact with Rakeisha via the prison-monitored telephone service until August 2019. Between 19 June 2019 and 8 August 2019, he made 25 calls to Rakeisha’s registered mobile number. He remained in custody until 21 October 2019, but no further calls were successfully received after 8 August 2019 and he didn't call other family while in prison. Your Honour might imagine then that that might have been a period of real isolation for Kumanjayi prior to him being released. But we will hear more about that, I expect, during the inquest.

Just taking us back briefly to June 2019, when a Local Court suspended sentence was imposed on Kumanjayi and this was the last sentence imposed on him. Kumanjayi appeared in the Alice Springs court before a Local Court judge who dealt with all outstanding criminal matters and sentenced him to 16 months’ imprisonment, backdated to commence on 22 February 2019.

He further ordered that the sentence be suspended after Kumanjayi had served eight months and subject to him complying with ten conditions. That included successful completion of the program at CAAAPU, which was an eight-week program. When he finished at CAAAPU, the judge ordered he was not to be subject to any further supervision.

On 13 August 2019, a through-care plan interview was completed with Kumanjayi, to establish a post-release plan once he had completed the CAAAPU program, including identifying and linking him into any services he required. Kumanjayi disclosed that he intended to live with Leanne at House 511 in Yuendumu, once he finished the rehabilitation program at CAAAPU. He said that he was still in a relationship with Rakeisha and they were in regular contact. He also voiced his plan to work with WYDAC.

On 21 October 2019, Kumanjayi was released from Alice Springs Correctional Centre to enter the eight-week CAAAPU residential program immediately. He was fitted with an electronic monitoring device prior to his release and he signed the court order, agreeing to comply with the conditions.

Your Honour, some of the questions on the issues list relate to why police were wanting to arrest Kumanjaya in November 2019 and what they were doing to arrange the arrest. I expect that the following evidence will be relevant.

For a week or so after Kumanjaya was released in October, he remained in CAAAPU and he reported no issues with any of the staff or with his probation and parole officer. On Monday, 28 October 2019, Kumanjaya had to leave CAAAPU to do some shopping. Around 10 am, he travelled into Alice Springs CBD in the mall area where he walked around with Leanne and her partner.

Kumanjaya was out for about an hour with his family members before returning to CAAAPU around 11 am. He did not report any issues to CAAAPU staff on his return to the residential program, or at least none that we are aware of from the evidence currently available. However, the next day, at around 12:40, Kumanjaya packed up his belongings and he left CAAAPU, in breach of his suspended sentence – and I should say, that's 12:40 am.

His ankle bracelet was located at one of the back boundary fences. Your Honour, it would subsequently become clear that Kumanjaya left CAAAPU at that time because there was important sorry business being scheduled in Yuendumu. As your Honour will hear, Kumanjaya's uncle had passed away and a funeral was being planned and Kumanjaya very much wanted to be with his family.

The breach of his suspended sentence was reported to NT police immediately and over the next few days, inquiries to locate Kumanjaya were made by general duties police officers in both Alice Springs and Yuendumu. At around 8 am on Wednesday 30 October 2019, Sergeant Robert Kent and members of his patrol group attended the Warlpiri Camp after information was relayed to them by Sergeant Frost at Yuendumu, indicating that Kumanjaya may be there in Alice Springs.

Your Honour will have evidence from Sergeant Kent and have information about what was planned, in terms of a possible arrest on 30 October 2019, but Alice Springs police did not locate Kumanjaya. On 1 November 2019, an email was sent to Alice Springs police, disseminating a local intelligence document, which included that Kumanjaya was an arrest target because of the breach of suspended sentence and that he was potentially in the house in Warlpiri Camp, or in Yuendumu.

The same day, 1 November, Ms Chilvers received information from Leanne that Kumanjaya was at Warlpiri Camp and Ms Chilvers was asked by Leanne to come and help her to encourage Kumanjaya to go back to CAAAPU, to resume his program. In the morning, Ms Chilvers met up with Leanne and her partner and Kumanjaya and, at the request of Leanne, Ms Chilvers contacted the CAAAPU program and spoke to staff about accepting him back into the program. I expect your Honour will hear that she was advised by CAAAPU that a meeting would be held to decide if they could accept Kumanjaya back into the program.

Ms Chilvers provided with CAAAPU with Leanne's mobile number and asked them to call her back after the meeting, to advise her of the outcome. It's not yet

clear to your counsel assisting team, whether or not Leanne did receive a call back from CAAAPU. And I anticipate having that information to your Honour at some stage through the inquest. I also expect your Honour to have information that generally, if you leave the CAAAPU eight-week program, residents are not allowed to return, until the group of residents they started with, had finished their program.

But it is unclear whether or not exceptions can be made, and whether or not a decision was made in this case, and whether that was communicated. But we'll follow up further on that evidence, your Honour. Sometime between 1 and 6 November 2019, by some unknown means, Kumanjayi returned to Yuendumu. On Tuesday, 5 November 2019, a warrant of apprehension was issued for Kumanjayi in Alice Springs Local Court, for breach of the order suspending the sentence.

So I come now, your Honour, to the events in Yuendumu, in the lead up to Kumanjayi's passing. And I start with the events of 6 November. And just to give everybody some relief from hearing my voice, can I just indicate that I intend your Honour, to stop at 11:00, or thereabouts, if convenient to the court.

THE CORONER: Thank you.

DR DWYER: Around 4 pm on Wednesday, 6 November 2019, Remote Area Nurse, Duana Simmons(?) reported to Yuendumu Police, that her unit in Yuendumu had been broken into while she was at work. Senior Constables Christopher Hand, and Officer Lanyon Smith, attended her unit to speak with the nurse. They recorded in their notes, that person or persons unknown had smashed a hole in the gyprock ceiling, and jimmed opened the security screen covering the kitchen window.

As your Honour might expect, the nurse was very upset about that. The offenders had stolen around \$250 in cash and coins, and an iPhone. I expect your Honour will hear evidence that this incident formed part of the rationale for Yuendumu nurses feeling targeted and unsafe, and contributed to their decision to leave Yuendumu, on Saturday, 9 November 2019. But I can assure everybody listening, that we will hear evidence directly about that from nursing staff themselves, from senior management in the nurses, and also from the police who were receiving those reports.

Sometime on the sixth, police received information from a community source, that Kumanjayi had returned to Yuendumu, and could be located at House 577. I'll clarify this again shortly, but just to make abundantly clear at this stage, we ultimately found out that Kumanjayi at no involvement at all, in those break-ins. Around 6.25 pm, Senior Constable Smith and Hand attended House 577 to arrest Kumanjayi on his warrant. They spoke to one resident there who told them that Kumanjayi was in the house. Both officers activated their body-worn cameras, prior to entering the house.

There were six people inside the house at that time, including Lottie and Rakeisha and Kumanjayi. A number of others were outside. What I'm about to describe, in – is captured on the body-worn video that Officers Hand and Smith, who

entered the residence, and knocked on the door of the bedroom several times. That body-worn video was shown in the media a lot, because of the trial. It's publically available. And I do not intend to show it again in these proceedings, for two reasons.

Partly because it's been shown already, and also because it's distressing, and is unnecessary, and I don't intend to do that in any – to show any videos that are unnecessarily distressing to anybody.

THE CORONER: Sure. Certainly, at this stage, in the opening.

DR DWYER: Yes, your Honour.

And if – but if any videos are going to be shown, I'll just let everybody know, that I'll give a clear warning beforehand.

THE CORONER: Thank you.

DR DWYER: When the door was eventually opened by Rakeisha, after the officers knocked, the room was in darkness. Senior Constable Hand shone his torch in the room, and that revealed Kumanjayi laying on the bed. Senior Constable Smith knocked on the door and asked to speak to Kumanjayi and then moved forward slightly into the room. Kumanjayi got up from the bed and said that he wanted to talk to Lottie.

Senior Constable Hand told him he could do that, but only after they put the handcuffs on him. During that time, as your Honour knows, from watching the body-worn video, Rakeisha can be seen to put her arm across the doorway to block the police from entering the door. I expect your Honour will then see in that evidence, that Senior Constable Hand, took her by the arm, and moved her out of the doorway. And Rakeisha then began to yell out about her arm. At that point, Kumanjayi bent down and picked up what is a – sometimes referred to as a tomahawk, sometimes referred to as a small axe, and moved towards the officers, waving that implement, in what appears to be a threatening manner.

Both officers tactically retreated, and Kumanjayi continued to move out of the bedroom, towards Senior Constable Hand, shaking the small axe. The officers backed up, and can be heard on the video, telling Kumanjayi that they are leaving. A few seconds later, Kumanjayi got close to the door of the house, dropped the axe, and ran off towards the bushland, and the police ran after him for a while. There can be no mistake, that that was a violent and frightening incident, as the body-worn video demonstrates.

It took police by surprise, and it gave them a split second to decide on the response. It gave I think, everybody who was in the room a surprise, because that was not how they were used to seeing Kumanjayi respond. And your Honour will see in the evidence, that Lottie explained that to police afterwards. And she – when she told her husband Eddy, what had happened. In an email to Travis Wurst on 8

November, Senior Constable Hand explained, "I don't think he wanted to chop us up, he just wanted to escape."

In his evidence at trial, that is the trial of Constable Rolfe, Senior Constable Hand said "He had plenty of opportunity to assault us, and he didn't. He ran out of the house because he didn't want to be arrested." Also in the email of 8 November, that Senior Constable Hand had sent to Officer Wurst, he wrote, "No one was injured, and then that's the best result in my view."

At trial he expanded on that, and gave evidence, "He wasn't injured, we weren't injured, no one in the house was injured. There are a lot of young kids in there, and we knew who Kumanjayi was, where he lived. And allowing him to run out of the house, we can formulate a plan later on to affect the arrest."

Both Officers Hand and Smith gave important reflections on policing in the course of their evidence. Senior Constable Hand said, "Working in remote communities can be quite challenging. Not only working there, but you live there. And if you need to arrest anybody, or deal with somebody, you want to do it as" - - -

THE ORDERLY: I do apologise, it's coming from outside.

DR DWYER: Your Honour, both – both Officers Hand and Smith gave important reflections on policing, during the course of the trial into the – the charging of Constable Rolfe. Senior Constable Hand said,

"Working in remote communities can be quite challenging. Not only working there, but you live there. And if you need to arrest somebody, or deal with somebody, you want to do it as peacefully as possible, without the use of unnecessary violence. Because that can have consequences later on with family, and you've got to live in the community. Go to the shop, and you see, you know, the same people at the shop, and their families."

He explained that another reason for adopting that, or the most peaceful approach in the circumstances was how far back up is away when you're in a community like Yuendumu. In this evidence at trial, Officer Lanyon Smith was asked what he thought when Kumanjayi approached him with the axe. And he said,

"I was shocked, somewhat scared. Everything was processing extremely fast in a short period. I had adrenalin going through me, but I didn't feel that he was going to hurt me. It was more of an intimidation getting out of the room. I knew him. He knew me. Kumanjayi being a Warlpiri man, it was more of a show to his partner, who was in the room, and his family. But he just wanted to get away."

When asked by the prosecutor in that trial, Mr Strickland, "Why didn't you draw your Glock?" He said, "It's not a simple 'yes' or 'no' answer as to why I didn't draw it. It's a combination of training and knowledge of Kumanjayi. I didn't know what was still in the room behind Kumanjayi. There might have been another person."

I was fully aware that to the right of me, there was Lottie Robertson and Rakeisha Robertson. There was a wall, and by me drawing my Glock, there was a possibility that may escalate him as opposed to de-escalating him. And I couldn't – if I'd fired the shot, I didn't know where the shot would go. There was a potential for other people to get hurt.”

The assault by Kumanjayi on the two officers was reported through the chain of command. Later that same night, the officer in charge of Yuendumu Police Station, Sergeant Julie Frost, who we will hear from in evidence later, called herself on duty.

As your Honour will hear, Sergeant Frost is an experienced community police officer and she has been a sergeant in Yuendumu since February 2018. She is also the partner of Chris Hand, who was there on relief duties as a senior constable. After viewing the body-worn video footage, Sergeant Frost attended House 577 and spoke to Lottie, Eddy and Rakeisha about the serious nature of that assault on the two police officers.

I expect your Honour will hear that Sergeant Frost told them that police would be at the Yuendumu Station for the next two years and that would give Kumanjayi the opportunity to present himself to the police station to be arrested. I expect your Honour will hear evidence that Eddy said something like, “Okay, I'll try my hardest to get him there, but we can't make him.”

Sergeant Frost then returned to the station and contacted Superintendent Nobbs. She advised him of what had occurred, that Kumanjayi had then ran away and that his family would contact police if he returned. I expect your Honour will have evidence that says that Superintendent Nobbs classified the matter then as a critical incident, rather than a high-risk incident.

And your Honour may have some evidence as to what consequences, if any, flow from the classification of the incident at that stage. Sergeant Frost then proceeded to add an alert to the police information database. That is a database known as PROMIS. It is number 4 on the court officer's list, if she could show it to us now. This is, your Honour, a document in the brief of evidence.

And if that could scroll down, you see there – keep scrolling, if you will, please. And if you could have a look, there you will see various alerts added and there is an alert added by Sergeant Frost, 6 November 2019, two alerts; can be arrested – assault police, and may be violent towards police.

So, that was then available on the – that can come down now, thank you. That was then available on the electronic system for other officers who might then be involved in arresting Kumanjayi to understand the risk and as your Honour will hear, to enable them to plan for what the most appropriate arrest plan might be going forward.

Kumanjayi was already, at that stage, listed as having a warrant for his arrest, as

your Honour knows, because that had been issued by the Local Court on 5 November and the police had found out on 1 November, or 30 October, in fact, that he left CAAAPU.

But the arrest was effectively upgraded after what had happened with the two police officers. And that intelligence document was electronically distributed to all Alice Springs police patrol groups who then endeavoured to locate outstanding warrants and offenders, and that included Kumanjayi.

So, it was in effect a direction to other police to locate him when their duties allowed. Kumanjayi returned to the house on the night of 6 November, but as your Honour knows, he didn't hand himself in on that day.

On Thursday, 7 November 2019, senior Aboriginal community police officer, APCO, Senior APCO Derek Williams, told Sergeant Frost that there was a funeral scheduled for Friday for Kumanjayi's uncle who is a member of the Brown family, and that there was an expectation that Kumanjayi would attend that funeral.

Sergeant Frost and APCO Williams then went to House 577 and I expect your Honour will hear that they spoke to Lottie and Eddy to discuss a peaceful arrest resolution. And your Honour will hear evidence about this from the officers there themselves, so I won't go into great detail.

But I expect your Honour will hear evidence that Sergeant Frost said something to the effect of, "I'm going to allow Kumanjayi the liberty to go to the funeral tomorrow without us trying to get him in the next day or so. As soon as the funeral is over, he needs to come to the police station and present himself. I am going to allow you the respect to do that."

And Eddy agreed to send APCO Williams a text message when Kumanjayi was at his house, so that he could be detained after the funeral, if he hadn't handed himself in after that time. But there was, as your Honour will hear, a plan at that stage on 7 November that Kumanjayi would not be arrested at the funeral or beforehand because that would be disrespectful.

I anticipate that your Honour will hear that during that conversation, Sergeant Frost did tell the family by way of a warning that if Kumanjayi didn't surrender himself, additional forces from Alice Springs would be called in to assist to apprehend him and that that would include the police dog unit.

Later in the day, Sergeant Frost received a call from Superintendent Nobbs and they had a conversation about plans at a local level to locate and arrest Kumanjayi. Sergeant Frost advised that they didn't know where Kumanjayi currently was, but from the members' perspective there were no concerns about safety or Rakeisha's wellbeing based on her interactions with Kumanjayi the night before.

And the plan was that Eddy would try to bring Kumanjayi to the police station or SMS police as to his location if he returned to House 577. And the plan was that

police would not actively pursue Kumanjayi until after the funeral. Superintendent Nobbs, I expect your Honour will hear, endorsed the plan that Kumanjayi could remain in the community and attend the funeral.

And he did so on the basis that it involved less force and provided him with an opportunity to surrender himself. On the evening of Thursday, 7 November 2019, Alice Springs police received the updated alert and were aware of the outstanding warrant.

I expect your Honour to hear that they had some intel that Kumanjayi may be in Warlpiri Camp and a patrol group headed by Police Sergeant Evan Kelly, attended there to look for Kumanjayi. Constable Zachary Rolfe and Constable James Kirstenfeldt were part of that police contingent.

And I anticipate that your Honour will hear evidence in this inquest from Constable Rolfe and from Constable Kirstenfeldt as to what was planned for the arrest on that occasion and what information they had. I anticipate that your Honour will hear from Sergeant Kelly, the police, once they got to Warlpiri Camp, did not have reasonable grounds to suspect that Kumanjayi was in any of the houses and they left.

On that same Thursday night, 7 November at 8:46 pm, APCO Williams sent Sergeant Frost a text message informing her that the funeral had been delayed and it as rescheduled for Saturday, 9 November 2019.

On Friday, 8 November, Sergeant Frost and Superintendent Nobbs had a phone conversation regarding the fact that Kumanjayi had not presented himself yet and no contact had been received from Eddy. They discussed whether he should be arrested at the funeral, but again decided that no attempt would be made to locate or arrest him in accordance with the agreement of family and the hope that he would surrender himself after the funeral.

That day, Luanna Simmons, the general manager for Yuendumu Health Clinic left the community in the morning with her husband to drive to Alice Springs. I expect the evidence to be that the couple left a day earlier than they had planned because their personal vehicle had its window smashed in the night before when it was parked at Yuendumu Health Clinic and they wanted to have it repaired in town while they were there.

At about 1:30 am early on the Saturday morning, 9 November, Registered Nurse Vanessa Watts(?) spoke to Northern Territory Police and reported to them that the Yuendumu Health Housing duplexes were being broken into. The four duplexes were all occupied by remote health nurses. One nurse said that she could hear offender trying to get into Duana Simmons' unit again and Ms Simmons, of course, had left the community to get her car repaired.

The young people who were suspected of breaking in stopped when local police arrived in a marked van. I expect your Honour will have evidence that the nurses felt

very unsafe as a result of that.

At 5:46 am, Sergeant Julie Frost sent an email to Superintendent Nobbs and other supervisors, and the watch commander at Alice Springs, in relation to Yuendumu on-call availability and that, I think, is number 10 in Bec's list.

I think it's at 19 - if you've got the brief there, it's in the brief, Vol 19.56. Thank you very much.

So, I'll just read that onto the record for anybody sitting in the courtroom who can't see it. So, on Saturday, 9 November, 5:46 am, you can see it's from Sergeant Frost. It's to supervisors, watch commander and Jody Nobbs, who is the superintendent:

"Please be advised that myself and Chris Hand have been up now since 12:30 am and will be knocking off in the next 20 minutes, after attending three jobs overnight. Whilst we are rostered to start at 10 am today, we will now be starting our rostered shift at around 2 pm due to fatigue levels from being up all night and following on from a heavy workload throughout the week. We ask that you do not contact us on the on-call phone, other than for an emergency situation. There are no other members in Yuendumu at the moment that can assist with the work out and call-outs.

Having said this, I have two members, Mark Parbs and Felix Alefaio, who will be travelling from Nyirripi this morning to help out and should be here about 10:00 to 10:30 am. I've told them to look in the admin bin for any jobs and action them. I have also advised them to contact you, to provide an alternative phone number, so you don't have to call Yuendumu on-call mobile phone in the event of an emergency. Or, alternatively, you can contact the station number. Parbs and Alefaio will know to continue to look in the admin bin though. Thank you. Sergeant Julie Frost."

I put that up now, your Honour, because I anticipate it will be of some significance; the fatigue levels of the local police in the station. That, ultimately, contributed to the immediate response team being made available to assist and, obviously, I will come shortly to what was planned for them to assist. But that may be of significance when we look to the future to see, firstly, what could be done in the community when there are reports being made of nurses' units being broken into?

How could the elders be engaged in a process of being able to assist? That might be one thing that your Honour is looking at. How can the community be empowered to help the young people? How can we understand why they're doing that, when the nurses are there to help? What is the relationship between nursing staff and community?

And what would assist everybody to work together, to have a happier, safer, healthier environment in those circumstances? And it is just ringing in my ears what Ned Hargraves said to us yesterday; that everybody wants a safer community. And

so, that's where all these things interact and it is important at this stage to understand how we got to the point that the IRT came into the community?

THE CORONER: And the complicating factor of a funeral on this day as well, how it might be managed in normal circumstances, and what occurs when there is a funeral?

DR DWYER: Yes, exactly, your Honour, and the levels of fatigue and the way in which they may impact on the reasoning of police officers on the ground, who might do something normally and did something differently under these circumstances.

Your Honour, the safety concerns of the nurses were reported to management at NT Health and, consequently, a conference call was made around 9:30 am between the remote area nurses stationed at Yuendumu and the on-call executive manager, Helen Gill, from Alice Springs, and your Honour will hear evidence during the course of the inquest from people in management at the time who can explain to your Honour, and so the community can hear, what the rationale was.

The possibility of the nurses withdrawing from the community was considered at this time and I expect your Honour will hear that some of the nurses at the time were hesitant to leave the community and they voiced their preference to stay because they were concerned about the community.

Following that meeting, I expect your Honour to hear that Helen Gill briefed David Reeve, the General Manager of Primary Health Care for Central Australian Health Services, and Fiona Cameron, the Director of Nursing and Midwifery for Primary Health Care, to try and work out the best course, moving forward.

Sergeant Julie Frost commenced her next shift at 11 am that same morning, 9 November. Only a few minutes prior to arriving at work, she received a text message from Constable Mark Parbs, who was at Nyirripi station, saying that the nurses had been given a direction by their management to prepare to leave Yuendumu. I expect your Honour will hear that Sergeant Frost was concerned about that. She phoned the on-call Yuendumu Health Clinic mobile phone and spoke to a nurse who confirmed that all the nursing staff were withdrawing from community and were in the process of packing up and leaving in convoy to Alice Springs.

THE CORONER: So, she came back on earlier than she had previously planned, perhaps in response?

DR DWYER: Yes, your Honour. And Sergeant Frost then queried the contingency plan. If anyone was – she said – I expect your Honour to read in the evidence, that if anyone in Yuendumu was sick or hurt, what would happen for them? How would the community be looked after? And she was told that Yuelamu Clinic - staff would cover any medical emergencies for Yuendumu, from their community, and there was an expectation, she was told, that police would escort any medical callouts over the weekend.

Sergeant Frost explained that they did not have the capacity to provide security for health staff from the Yuelamu Clinic to attend all the callouts in Yuendumu. And I just pause to reflect on the levels of fatigue that she had already reported at that point in time.

About 11:35 am, on Saturday 9 November, Sergeant Frost contacted Superintendent Nobbs and briefed him on the situation with the medical staff evacuating Yuendumu. Sergeant Frost asked that he deal with that nursing issue at a management level and she provided him with the relevant contact numbers. I expect your Honour will have evidence that, during that conversation, she again expressed her concern that the community would be left without any medical service and that there was now an expectation by Yuelamu health staff that Yuendumu police would accompany them on future call-outs, but that they had insufficient police enabled to do that.

I expect your Honour will hear evidence that she also advised Superintendent Nobbs that local police resources were physically exhausted from having to deal with ongoing offending during the night hours, that they had not had many hours sleep over the last few nights, and she asked Superintendent Nobbs to provide more human resources and he agreed to do so. I will return to those important conversations after we have a break, if that is convenient to the court.

THE CORONER: Yes, thank you very much.

We will take a 15-minute adjournment.

ADJOURNED

RESUMED

MR FRECKELTON AO QC: Your Honour, I apologise for the delay in proceedings. An issue of some consequence arose, and it was put to endeavour to resolve it straight away. Hasn't been fully resolved, but we're in a position to start again now. I apologise to you for the delay, and also to my learned friend.

THE CORONER: Thank you, Dr Freckelton.

DR DWYER: Your Honour - - -

THE CORONER: Yes, Dr Dwyer.

DR DWYER: - - - thank you, your Honour. Your Honour, before the break I was up to the part in the evidence where there was information that Yuendumu nurses were planning to leave the community for the weekend. And senior management from Health had determined that Yuendumu would be covered for that period by the nurses from Yuelamu. I expected there will be some evidence from management, that those arrangements are in place. That is, community nurses from one community may have to cover another, where there are staff shortages, from time to time.

And in fact, Yuendumu nurses, still on occasion, cover the nurses from Yuelamu, where there are staff shortages. But in this particular night, we know that it had the consequences, that Yuendumu was left staffed by no nurses at the time that Kumanjaji was critically injured. And I'll come to that shortly.

THE CORONER: No resources in the community.

DR DWYER: Exactly.

THE CORONER: Yes.

DR DWYER: Exactly, and Yuendumu, as we know, is one of the largest remote communities in Central Australia. And so it meant that the two nurses in Yuelamu were covering their own community, and were expected to cover a large community of Yuendumu, and any potential needs that arose. So it's against that background that Sergeant Frost expressed her concerns to Sergeant – sorry, to Superintendent Nobbs. I put the email that she sent him, shortly after 5 am, on the screen before the break.

Superintendent Nobbs gave evidence in the jury trial of Constable Rolfe, in relation to the receipt of that email. And also a conversation that he had with Sergeant Frost the next day. It was noted that the email was sent at 5.46 am. And Superintendent Nobbs gave evidence, that he saw that email at 8.30 am, rather than 5.46 am, when it was sent. It was his intention to call Sergeant Frost back when she came on duty at 2 pm.

He didn't want to unnecessarily wake her up and compound those fatigue issues. But she called him, of course, at 11.35 am, because she'd called herself on duty earlier, probably as your Honour pointed out, in response to the text message that she got from Constable Alefeio. And so he was asked what he talked to Sergeant Frost about in that phone call. And he said,

"Sergeant Frost advised me of a number of things, and most specifically, that the situation in relation to Kumanjayi was essentially the same, in relation to the way it related to Rakeisha. There was no further risk for Rakeisha. He remained in the community. The warrant was outstanding. And Sergeant Frost indicated that she'd received a call from the clinic management within Yuelamu and they intended to – the Yuendumu nurses intended to evacuate from the community, and they would be covered by Yuelamu, with the expectation, that Yuendumu police would assist."

He found out that the nurses were asserting that they were the victim of a series of unreported property crime the preceding night. And he said in evidence,

"That Sergeant Frost suspected that Kumanjayi may have been part of that, although she noted that she had no definitive evidence to support that assertion. Sergeant Frost expressed that it was going to be of concern to police, in relation to the burden on police resourcing, given that medical staff were absent."

He agreed with her assessment,

"Sergeant Frost indicated that the funeral was still occurring, as far as she was concerned, that day. And she requested some additional resources to be sent out from Alice Springs, to not only assist with the community and the funeral, but to predominantly provide additional capacity for the overflow of police calls, through the next period of time, that the medical staff were away."

Superintendent Nobbs was asked by the Crown prosecutor, did she nominate any particular capability from Alice Springs Police in her request to you. And he gave evidence:

"I don't think she did. But once I hung up, I had some consideration myself as to the suitability of any sort of deployment. I considered a number of things in that consideration." He was asked, "Was it your assessment that the appropriate source of police for the deployment would be from the IRT or the Immediate Response Team?" He said, "Correct, subject to the approval being granted for the deployment of the IRT." And he explained that there were a lot of moving parts at that time.

Around 11:40 am on 9 November 2019, another telephone conference took place between Helen Gill and the Yuendumu remote area nurses, including the clinic manager, Luanna Simmons who was already in Alice Springs. A decision was made that all the nurses would leave the community and the contingency plan that had earlier been discussed on the conference call was that emergency services would be

provided by the Yuendumu team.

Health staff would stay in the community of Yuendumu, however, that afternoon for a period to release the body of Kumanjayi's uncle from the morgue for the scheduled funeral that afternoon. And then the plan was that the nurses would leave in convoy for Alice Springs.

I expect your Honour will hear evidence from David Reeve that around 12 pm, he received a call from Fiona Cameron with an update. She told him that they had made the decision to bring staff in Alice Springs and Mr Reeve accepted that decision and agreed with it, but requested that some staff, additional staff, go to Yuelamu instead of Alice Springs.

He asked if a decision to remove the staff from community had been discussed with the community and with the local police and I expect that your Honour will hear that he was told that it had been. And that, your Honour might think is important for your Honour to hear from community members at some stage during this inquest, what were the discussions with community and were they adequate and could they be improved upon in terms of learning from this situation in the future.

Sometime before 2 pm, a nurse attended the Yuendumu Police Station and spoke to Sergeant Julie Frost. She asked if Sergeant Frost wanted the keys to the Yuendumu Health Clinic and the keys to the ambulance that was being securely stored at the Yuendumu police compound.

Sergeant Frost stated that she didn't need the keys from health and that they should be – and she was told that the keys to the ambulance would be secured in the Yuendumu Clinic and the keys to the Yuendumu Clinic would be dropped off to the nurses at the Yuelamu Clinic on the way out of town.

About 2 pm, nurses met Robbie Robertson, a senior community leader at the Yuendumu leader at the Yuendumu basketball courts after receiving a call from him in relation to organising access to them all for the funeral.

The issue of nurses leaving the community and their reasons was discussed with a number of community people at the basketball court at that stage at 2 pm. I expect your Honour will hear that that discussion took place after Mr Reeve had been told that there had been community discussions.

I expect your Honour will hear evidence that there was tension with the nurses and community members because the community members voiced their grievances at that time about clinic staff leaving. Robbie Robertson and a few other men followed the two nurses to the morgue and the nurses unlocked the door and wedged it open so that community could have access, and Robbie Robertson arranged to close the door behind them when they had finished their business there.

Your Honour, I expect your Honour to hear that the last two Kartiya nurses left Yuendumu that afternoon sometime after 2:30 and delivered the clinic keys to the

Yuelamu staff before travelling to Alice Springs as was planned.

About 2:30 pm, Superintendent Nobbs contacted Helen Gill to discuss the nurses withdrawing from Yuendumu. Superintendent Nobbs informed Nurse Gill that more NT police resources were being deployed to Yuendumu. And with that in mind, she was asked whether she would reconsider leaving medical staff there.

I expect your Honour to hear that Nurse Gill told him that the decision had already been made for nurses to come into Alice Springs, but they would re-evaluate that on Monday. Nurse Gill informed Superintendent Nobbs that any medical emergencies in Yuendumu would be covered by the two remote area nurses, Lorraine Walker and Helen Zanker, who were stationed at Yuelamu, approximately 30 kilometres away.

And I expect your Honour will hear from those nurses in the inquest. I made this clear earlier, your Honour, but of course, although given what Kumanjayi had had on his criminal history, some break ins, local police thought that he may be responsible for these break ins of the nurses' units. But ultimately, a 12-year-old boy was arrested for those break ins and it appears that Kumanjayi was not involved at all in the break ins.

In any event, it may be important for family to know that the attempt to arrest him on 6 November was for breach of the suspended sentence and subsequent attempts to get him to hand himself in and to arrest him on the 9th were not directly related to the break ins, although we will hear from police as to whether or not was a factor at play in asking for additional resources.

I suspect, if it was, it was one of a number of factors in play, given the evidence available. A significant question for your Honour in this inquest is set out in the issues list at number 8, and that is how and why were Alice Springs Police, including the IRT, involved in the attempted arrest of Kumanjayi in Yuendumu on 9 November 2019.

In her contact with Superintendent Nobbs in the morning of 9 November, Sergeant Frost requested the services of specialist police from Alice Springs to supplement local police resources and assist with the arrest of Kumanjayi. The general assistance would allow Yuendumu police to get some much needed sleep after their continuous long hours.

As is made clear from Superintendent Nobbs' evidence, he supported the request and the plan to arrest Kumanjayi after his uncle's funeral. At 12 pm on 9 November, Superintendent Nobbs contacted the Alice Springs watch-house commanders, Senior Sergeant Shaun Furniss and asked him to deploy the IRT to Yuendumu for possibly the weekend.

Sometime between 11:45 am and 2 pm, Superintendent Nobbs contacted Acting Assistant Commissioner Travis Wurst and sought approval for the IRT deployment for general support for Yuendumu Police and to arrest Kumanjayi.

At 1:51 pm, Assistance Commissioner Wurst gave approval for the general support for Yuendumu Police and to arrest Kumanjayi. In formulating a loose plan for the arrest, Sergeant Frost requested the services of a police dog operations unit at that early stage, in addition to the IRT, given that Kumanjayi had a history of running from police. This verbal request was also approved by Acting Assistant Commissioner Wurst.

I expect your Honour will hear that at that time, there was no request for a trained negotiator to accompany the IRT. I expect the issues encapsulated at questions 9 and 10 on the issues list will be significant.

And they are, what was the agreed role of and plan for the IRT in Yuendumu on 9 November 2019 and was the communication concerning the role and plan sufficient. What was the change of command for the IRT members in Alice Springs and in Yuendumu?

At 2 pm, Superintendent Nobbs called Senior Sergeant Shaun Furniss and advised that the IRT deployment had been approved and should be organised. I expect the evidence to be that the request from Superintendent Nobbs to Sergeant Furniss included:

- 1) That the IRT were to take their swags because it was likely they would remain in Yuendumu for several days;
- 2) The IRT were to take their full kit to Yuendumu, and your Honour will hear more about what that means; and
- 3) The IRT were to wear blues; that is, their regular police uniform and not their camouflage gear.

I expect your Honour will hear evidence that this is an indication that the IRT was being deployed in a general support role and not in any form of tactical role. Senior Sergeant Furniss delegated the responsibility for the IRT call out and any briefing of the IRT to Acting Sergeant Shane McCormack, a qualified and experienced senior member of the IRT.

The usual sergeant in charge of the IRT, Sergeant Lee Bauwens was on recreational leave. Acting Sergeant McCormack proceeded to randomly call out IRT-qualified members, subject to their availability, and he worked down the list until he had four members willing to attend the callout. Those IRT members called onto duty were as follows: Constable First Class Anthony Hawkings, then 49 years old, a former New Zealand police officer, who served between 2004 and 2014 in the New Zealand Police, before being recruited to the Northern Territory Police Force in February 2014.

He was posted to Alice Springs on 25 April 2014 and remained there for the duration of his career. I expect your Honour to hear that he had some previous

evidence of approximately six months' service in remote communities on relief postings prior to joining the IRT on 26 November 2018, but that he had not spent any significant period of time in one community.

The second was Constable First Class Anthony Eberl, then 39 years old, a former South Australian police officer who served between 2012 and 2015 in South Australia, before being recruited to the Northern Territory Police Force on 15 June 2015. Constable Eberl was posted to Alice Springs on 2 October 2015. He had four weeks remote service experience in 2017, before returning to Alice Springs and joining the IRT on 26 November 2018.

Third, Constable James Kirstenfeldt, then 35 years old. Constable Kirstenfeldt is a former member of the Australian Defence Force who, like Constable Rolfe, conducted paramilitary-type close protection training with RONIN International in the United Kingdom. He did that in 2010. He joined the Northern Territory Police in November 2016 and was posted to Alice Springs on 9 June 2017. He joined the IRT on 26 November 2018. I expect your Honour to hear that he had no remote policing experience.

Finally, at 28 years, Constable Zachary Rolfe was the youngest of the four. During his time in Alice Springs, he had deployed on seven IRT callouts since completing his IRT training in May 2018. Like Constable Kirstenfeldt, he had never been posted to a remote police station and had never done any relief work in remote communities.

So, what was the arrest plan? A significant issue in this inquest will be what that arrest plan was. How was it formulated by police before they entered House 511 where Kumanjayi was?

Your Honour may think that the arrest plan includes:

1. Any written arrest plan or operations order which had been designed by Sergeant Frost and Officer McCormack, which I will come to;
2. Any briefing given to those four members of the IRT before they left the Alice Springs station and head to Yuendumu on 9 November;
3. Any discussions that took place between Sergeant Frost and the members of the IRT when they arrived in community, either separately or as pairs, or in a group of four;
4. Any discussions between members of the IRT before or after they met with Sergeant Frost.

At around 2 pm, on Saturday, 9 November, the four IRT members began arriving at the Alice Springs Police Station for that first briefing. As your Honour will hear, there were no written briefing notes. There was no written operations order or arrest or action plan available to them when they first arrived.

In the absence of written documents, I expect you will hear that the four IRT members were briefed verbally by Sergeant McCormack and your Honour will hear evidence from the different perspectives of the police officers and Sergeant McCormack as to what that briefing involved and whether it matched the intent of Superintendent Nobbs, who had ultimately been the one who deployed them.

I anticipate your Honour will read in the report of Commander Proctor that, in his opinion, the rationale and purpose behind the general duties or general support deployment may have been lost in that briefing. I expect your Honour will hear that there was no discussion of the family of Kumanjayi Walker being intermediaries to assist him in handing himself into police. I expect your Honour to hear that there was no mention during that briefing that Superintendent Nobbs had agreed a plan that police were not to actively pursue or arrest Kumanjayi until after the funeral had finished.

It appears that the message of Officer Nobbs to take their full kit may not have been passed on or understood, and in that case, the IRT members decided for themselves what kit to take, apparently randomly. Each of them, as your Honour will hear, took out to community a Glock pistol, a baton, and an ASR or an aerosol subject restraint, known sometimes as a capsicum spray. Several, but not all, officers took their Taser, sometimes called an ECD, or an electro-muscular control device.

Constable Kirstenfeldt carried a shotgun capable of discharging Beanbag rounds, although they may not have been – what that actually is is a less lethal means of a rifle, but I'm about to show a photo that demonstrates that may not be obvious to others – and Eberl and Hawkings took their AR15 rifles, and with the assistance of the court officer, numbers 11 and 12, photos that will be tendered in evidence about what these looked like. That is the AR15 rifle. So, two of those were taken into community, one by Eberl and one by Officer Hawkings; although your Honour will hear that, ultimately, it was only one of the weapons that was taken – to be carried in the community after the briefing with Sergeant Frost – and the second one is the Beanbag rifle.

Thank you, those can come down. They will be tendered in evidence and available to anybody who wants to see them again.

Between the four members, no specific IRT team leader was appointed. In an interview conducted with Constable James Kirstenfeldt, who I expect to give oral evidence in this inquest, he said, "We weren't there as IRT. We were there as a force multiplier." Your Honour may be interested then to understand why they took a bean bag rifle and two AR15 rifles, which are not carried by general duties police. But, no doubt, that evidence will be forthcoming in the inquest.

Prior to leaving the police station, the four IRT members took the opportunity to view the body-worn video footage recorded by Officers Hand and Smith in the attempted arrest of Kumanjayi in Yuendumu on Wednesday, 6 November. I expect

your Honour to hear that Constable Zachary Rolfe presented the footage to the other three IRT members and that there was some commentary amongst the IRT members at that time.

I expect the evidence to be that between 7 and 9 November, Constable Rolfe had accessed that body-worn video footage many times. In his evidence at trial, he told the jury that, from watching the body-worn video and from reading the initial job write-up, he formed the view that the incident on 6 November was being, in his words, “swept under the rug”, by which he meant the community police were either deliberately down-playing the incident, or deliberately hiding it. He acknowledged that he had not spoken to Officers Hand or Smith, but he came to that conclusion because the body-worn video was the trustworthy account and he had watched it so many times.

THE CORONER: It didn't take into account the individual officer's knowledge.

DR DWYER: Not at – it appears not, from the evidence he gave at trial, your Honour.

With respect to the written operations order, Superintendent Nobbs advised Sergeant Frost to contact Acting Sergeant McCormack and to ask him to assist her with it because Superintendent Nobbs thought that Acting Sergeant McCormack had experience with written operations orders. In fact, I expect your Honour will hear that Acting Sergeant McCormack had not previously drafted an operations order, but he did assist by compiling some detail around Kumanjaya and the fact that he was the arrest target, and at 4:22 pm, he forwarded it by email to Sergeant Frost and several other recipients – and I will just ask Bec to assist with that. That is an email sent by Sergeant McCormack.

We see there the timestamp is 4:22. For the benefit of my friends, it appears in the brief at tab 7101, page 112. Your Honour will see there IRT callout – and if you could just pause there for a moment, that says, on the IRT call out, although Constable Kirstenfeldt noted that he was told – or he thought that they were there as a force multiplier, arrest of violent offender, and in the name Kumanjaya is there. And I apologise to the family that his name's there on the screen. I'm certainly not going to read that out aloud.

And it notes that he's the active target for breach of suspended sentence. “Target to be arrested for assault police. Multiple alerts for violent behaviour.” And your Honour might think that intel is relevant to planning, in relation to the arrest of Kumanjaya. It notes the situation on the sixth, “That Yuendumu members Hand and Smith attended House 577.”

That Kumanjaya is noted there, to have come at members while holding an axe, and fled the location. “Of note, funeral is taking place in community this weekend. Task, provide a local presence of armed police to uphold law and order in the community. Provide support to local members. Arrest Walker and transport back to Alice Springs.”

If they could just scroll down.

The IRT members are listed there, along with the dog handler, Officer Donaldson, and his dog. And your Honour will recall that was a specific request from Sergeant Frost. And the equipment. "Bean bag shot guns x 2, 2 AR15's, swags and safety equipment." So clearly, the joint tasks there are listed. Provide a local presence of armed police to uphold law and order in the community. Provide support, and arrest Kumanjayi and transport back to Alice Springs.

About 30 minutes later, so shortly before 5 pm, the arrest plan, or operations order, was finalised by Sergeant Frost, and forwarded to Superintendent Nobbs, Watch Commanders, IRT members, Yuendumu Police members, and various other supervisors, including the Territory Duty Superintendents. And I'll just ask the court officer now to show that arrest plan, for the benefit of my friends. It's at 7101, at page 115. At its number six.

And I'm showing these, your Honour, because I expect these documents to assume some significance in the course of this inquest. And witnesses will be asked further about them.

THE CORONER: Yes.

DR DWYER: Much of the same information is provided there. But the task again –

I'll just ask Bec to pause there.

The task there is to arrest Kumanjayi and transport back to Alice Springs. Provide a local presence of armed police, to uphold law and order in the community, and provide to local members. There's some information about the situation, which is a repeat from what we've seen previously. It gives some further detail about the fact that Rakeisha had obstructed police, allegedly.

THE CORONER: Yes.

DR DWYER: And if you could scroll down a bit now, Bec.

"Kumanjayi currently facing fresh offences as follows, criminal damage, for removing the electronic device at CAAAPU, assault police, criminal damage to a police vehicle, and breach suspended sentence."

And if you could scroll down Bec.

There are photos of Kumanjayi there. I apologise to the family.

If you keep going Bec.

And then this is what I wanted to focus on here. IRT members and the dog squad member Donaldson is listed there. "Local members Felix Alefeio and Julie Frost. Member Hand will remain separate, due to his conflict of interest." And that was because of what had happened on the sixth. "Plan one, day one, Saturday, 9 November. 11 pm, IRT commence duty, and conduct high visibility patrols, and respond to call outs."

THE CORONER: Was that in the expectation that there might be some further property offending, that had been experienced earlier in the week?

DR DWYER: I expect that will be part of the evidence, your Honour. That the police would then be there overnight, the IRT police, to assist to manage that, if it – if it occurred again, so that local police can get some sleep. I expect your Honour to hear some evidence of that. They – "High visibility patrols and respond to call outs overnight", so that they could come off duty. And then Sunday, the 10th, the plan, as written on the arrest paper was, "5 am, Donaldson and Yuendumu Alefeio commence duty, along with IRT members, to affect the arrest of Walker."

And then the further note, "If arrested, Kumanjayi is to be taken to Yuendumu Watch House, and then conveyed by two of the IRT members, pending fatigue levels, into Alice Springs Watch House, along with the Senior Dog Operations Unit Member, Donaldson, travelling behind in convoy." And then a note, "The two IRT members, and Senior Dog Operations Unit Member, will remain in Alice Springs. If fatigue levels exist, Frost to be called out, and Kumanjayi will be conveyed by Sergeant Frost and Alefeio, with the Dog Member Donaldson, travelling in convoy, and two remaining IRT Members, to remain in Yuendumu on stand-down, and to provide high visibility patrols, as well as on-call duties from 11 pm to 7 am."

THE CORONER: So the fatigue that was being identified there as possible, was likely because the IRT might have been patrolling the night before – or during the night, or responding to call-outs?

DR DWYER: And I expect that to be the evidence in relation – that we will hear in relation to the planning - - -

THE CORONER: Sure.

DR DWYER: - - - documents, your Honour.

THE CORONER: Okay.

DR DWYER: So local members to commence duties as per rostered shifts, and there was no arrest of Kumanjayi, your Honour will see down the bottom there, "IRT and the Senior Dog Operations Unit, to stand down until Sunday evening, where the above plan will again be implemented." I expect that document to assume significance in this inquest.

That can come down now Bec.

Your Honour, unfortunately, I expect your Honour to hear, that by the time the IRT had left Alice Springs, that briefing document, and with the written assessment on Kumanjaya had not yet been provided to IRT. That is they hadn't – they hadn't accessed it yet, because they were on the road at the time the email was sent. However, I anticipate there to be some evidence that suggests that the IRT Members may have been provided that documentation afterwards, and that at least one of the IRT Members, Constable Rolfe, had seen the documentation, prior to the attempted arrest of Kumanjaya.

By the time – I withdraw that. The IRT standard operating procedure, or SOC, does not provide specific details of what the request and approval process should be, in relation to an IRT deployment. Other than specifying that general support requests require Commander approval, and high-risk deployments, require Assist Commissioner approval. The approval for deployment of the IRT on 9 November, was given on verbal briefings. And no – and before any supporting documentation, in terms of any detailed plans, or risk assessments, or operational orders.

The IRT SOC does not stipulate a mandatory requirement for nomination of a suitably experienced member to be a designated team leader. I expect there to be evidence, that ordinarily, the member of senior rank would assume this responsibility by virtue of their rank and experience. And where officers are all of the same rank, the member with the highest length of service would take charge. Each of the persons involved in the decision to send out the IRT, and in the development of the arrest plan, before the IRT was deployed, and after – so everyone involved in the briefing in the community.

The understanding of what that plan was, and the actions taken to be implemented, will be called in this evidence. They will be summonsed, and asked to explain to the court what briefing they got. What they did in response to it. What they understood from it. And why. And they will be asked to give evidence about what, on reflection, if anything, might have been done differently, in order to clarify the plans, to enable better communication, and to enable the safest arrest plan possible.

In other words, they will be asked to reflect on what happened on 9 November and the preparation for it, to see whether there is anything to be learned. They are asked to come to this court in good faith, and to tell the court what their honest and thoughtful reflections are. The funeral service for Kumanjaya's uncle commenced in the Yuendumu basketball court at around 4.30 pm. Kumanjaya spent some of his time that day with Rakeisha, and two cousins, walking around the community.

And the four young adults ended up at the Yuendumu football oval, where they stayed for some time, before going their separate ways.

I expect your Honour will hear that Rakeisha walked back to her grandmother's house where she remained with her family until the tragic shooting incident occurred. Kumanjaya was seen briefly walking past House 511 towards North Camp around

6:30 pm.

Leanne Oldfield and her partner were already back at Margaret Brown's house at House 511 sitting on the front veranda. Kumanjayi returned to House 511 and sat on the chair in the front veranda of the house with Leanne and her partner. He had only been sitting for a few minutes talking to Leanne before he got up and went inside.

Around that same time before IRT police handlers and the dog handler from Alice Springs – I'll withdraw that. I'll start again. Around that time, the four IRT police officers and their dog handler were in the immediate area conducting enquiries in nearby housing to ascertain where Kumanjayi was.

But I will just go back a step for a moment to the IRT and Officer Donaldson arriving. Mr Coleridge has just given me an indication that it's 12:20. So, I'll keep going for the next 10 minutes and ask your Honour if you would like me to pause at that time.

HER HONOUR: Thank you.

DR DWYER: Your Honour, the first police officer from Alice Springs to arrive in Yuendumu that afternoon at around 5:45 pm was Senior Constable Adam Donaldson of the Dog Operations Unit.

I expect there to be evidence that when he arrived, he and Sergeant Frost had some general discussions about what was going to happen, but nothing too formal because she was waiting for the other IRT – well, for the IRT members to arrive.

Senior Constable Donaldson then went for a drive around the community to familiarise himself with it. About an hour after Senior Constable Donaldson got there, IRT members, Constables Rolfe and Kirstenfeldt arrived in Yuendumu.

Sergeant Frost spoke with the two officers and rather than go through now myself what they were told at that time, I will let the court know that your Honour will have evidence from Officers Frost, Constable Rolfe and Constable Kirstenfeldt about what, if anything, was said about the plans for policing that evening and the arrest of Kumanjayi and the original arrest plan of effecting an arrest at 5 am the next morning.

At 6:50 pm, the IRT members, Hawkings and Eberl arrived. And I expect your Honour to hear evidence as to the nature of the briefing that was then given to the IRT officers once all four were in the room together.

There is CCTV footage in your Honour's – in the brief to be tendered which shows the officers speaking to Sergeant Frost at different times. That is, it shows the first two officers arriving, Constables Rolfe and Kirstenfeldt and then it shows the next two officers arriving and clearly a discussion that takes place.

The footage is of some, but still limited, assistance. And that is because first, unfortunately, it doesn't record voices, so it's not an objective record of what was said. And secondly, the filming is not sufficient to show exactly what documents each of the officers were given to look at.

But I do expect to show that CCTV footage in the inquest and suggest to your Honour that we can make a conclusion as – or some form of conclusion as to whether or not the officers, or at least one of them, had the arrest plans. And I will come to that when we hear the evidence.

I expect your Honour will hear evidence from Sergeant Frost that she held a relatively informal briefing with the members, but it was sufficient to give them important information.

I expect your Honour will hear from Sergeant Frost that her memory is that she handed a copy of the completed arrest plan for Kumanjayi to the IRT members and she instructed them that they were to commence general patrols at Yuendumu at 11 pm.

And if Kumanjayi failed to surrender himself, they would attempt to locate and arrest him the following morning at 5 am on Sunday, the 10th when he was likely to be asleep and that would involve the assistance of the local police member, Constable Felix Alefaio, who had had dealings with Kumanjayi Walker and knew him well by sight.

And as I have already said, Constable Alefaio had arrested Kumanjayi without incident on previous occasions. Sergeant Frost told the IRT members that the local health staff had left the community and the community health clinic was closed. That is what I expect your Honour will hear from Sergeant Frost.

I anticipate that Sergeant Frost will give evidence that she recalls telling the IRT members words to the effect of, "If you doing intel and you come across him, lock him up." But, in her mind, when they left the station, the plan was high visibility policing and for them to cover Yuendumu members for respite.

Your Honour, by contrast, I expect that your Honour will hear evidence from at least one or more of the IRT members, that they believe their primary mission was to arrest Kumanjayi as soon as possible and your Honour will hear, if that is the evidence they give in this inquest, why they held that view.

In an interview that was conducted with Officer Hawkings, he said, "I think the idea was, hopefully, identify him, Kumanjayi, locate him quickly, and then return him back to the station and come back to Alice Springs." The plan that was in place for Kumanjayi, and any risk assessment or planning, is a central issue in understanding what occurred in Yuendumu.

I anticipate your Honour will have the expert evidence from Professor McFarlane(?), who is a psychiatrist with many years of experience in assisting first

responders, including police and ambulance. Professor McFarlane, in his report to be tendered, is critical of the ambiguity in the arrest plan. He is critical of the lack of a clear team leader and the lack of planning for individual roles. In his report, he states, "This was an ambiguous situation where, despite the high level of risk associated with an attempt to arrest Kumanjaya, not strategy appears to have been discussed as to how this would occur."

Your Honour, of course, will hear from the police who will have an opportunity themselves to say whether they agree with assessment of Professor McFarlane, on reflection. If they don't, why not? And if they do, what are the learnings from this or what are the lessons from this?

In circumstances where there is no video recording of the briefing, the court relies on the evidence, written and oral, from the officers who were present. Your Honour may think it would be surprising if they recalled every word of what was said, or if their memories were identical as to exactly what was said. Witnesses will be asked to do their best to recall genuinely what was said and not said.

The expectation of this court, from serving members of the Northern Territory Police Force, is that they will rely on their own memories and not others, that they will give honest evidence, and that they will concede if their memories are lacking. That will be the expectation of any witness giving evidence on oath in this court.

The conversations that took place between Sergeant Frost and members of the IRT before they left the station and confronted Kumanjaya is important. Those conversations are important, not so we can blame any individual for the tragedy that then took place; not so we can pile on to one person, to say that he or she is at fault, but so this court can understand what planning took place, whether it was sufficient and whether there are lessons to be learnt about how to best assess and plan for risk in a similar situation, so that this tragedy does not occur again.

It is 12:30, your Honour. Is that a convenient time to stop?

THE CORONER: It is, thank you, Dr Dwyer.

We will return at 1:30.

LUNCHEON ADJOURNMENT

RESUMED

THE CORONER: Yes, Dr Dwyer.

DR DWYER: Your Honour, before the break, I was up to the point where Sergeant Frost and members of the IRT had had a conversation at the police station after all four members of the IRT had arrived and at a time when Officer Donaldson had left to familiarise himself with the community.

I expect the court will hear that after the conversation with Sergeant Frost, the four IRT members and Senior Dog Operations Unit Officer Donaldson spoke amongst themselves and then armed themselves with various weapons before they left the station.

Constable Hawkings made a decision that he would carry the military style AR15, but I expect your Honour will hear that Constable Eberl left his AR15 back at Yuendumu Station.

Constable Kirstenfeldt took the rifle that was capable of shooting bean bag rounds. All four officers had their Glock pistols. At around 7 pm, the five officers drove to House 577, the home of Eddy and Lottie Robertson where Kumanjayi usually stayed with Rakeisha or often stayed with Rakeisha.

Rakeisha's father told police that Kumanjayi was not there. Despite that, Constable Rolfe asked if he could search the house and he and Constable Kirstenfeldt proceeded to walk through the house while Officer Hawkings stayed outside, openly displaying his AR15 rifle.

Your Honour, before I play that video which I intend to do, just to show or to try and give the court a perspective perhaps from some of the community members who would have seen the officers at that time, can I note again that I do not intend to play any video showing any graphic footage.

THE CORONER: Thank you.

DR DWYER: But to the extent that anybody would like not to watch that video which shows police carrying guns, I just let everybody know that that's coming now.

THE CORONER: And that's number?

DR DWYER: Number 7 on our list for the court officer. It's four and a half minutes to be played, thank you.

DVD PLAYED

DR DWYER: That's probably enough of that video now. I just pause to note there, your Honour, that your Honour will obviously see, that was Constable – or you could

hear the voice of Constable Rolfe in that video. That is Constable Rolfe's body-worn video footage which will be played. And your Honour will note there were children watching or playing what appears to be a DVD in the bedrooms of one of the – of the house that Constable Rolfe moved through.

That was at around 7:20 pm. After that house, Constable Rolfe – I withdraw that.

There is other body-worn video footage that might be convenient to show here. at this point in time – and I'll explain some of the footage after I play it – captured on the body-worn video of Constable Eberl is a conversation that he had around this time with another member of the community, Ms Elizabeth Snape, who, at that stage, was a 26-year old mother of two children who had just come in from the church because of the funeral arrangements and, your Honour, I won't stop the video, but you will note here, in terms of understanding the community's perspective, you see other police in the area from where Constable Eberl is standing, including an officer holding a military-style weapon, the AR15.

Thank you, Bec.

DVD PLAYED

DR DWYER: We'll probably stop there.

So, in the event the conversation between Constable Eberl and Elizabeth Snape could not be clearly heard, I will read it onto the record.

Elizabeth says, "Yeah, I'm just figuring out why you have a gun."

Constable Eberl says, "Why we have a gun?"

Elizabeth says, "No, why he's got a gun."

Constable Eberl said, "Yeah, we all carry guns."

Elizabeth said, "Yeah, I know, but he's like got it aimed to shoot someone."

Constable Eberl: "No, he's not aiming to shoot anyone, is he?"

Elizabeth: "It's not right."

Constable Eberl: "Hey."

She said: "Stop it."

Constable Eberl: "We don't have a holster for that one, so we have to carry it. So, someone probably shouldn't run at police with an axe, hey."

Two minutes later, Constable Eberl informed Constable Rolfe that someone was inside House 511. Constable Rolfe briefly spoke to Leanne Oldfield, asking if she had seen Kumanjayi and she didn't reply. He asked for permission to enter the house, but was informed that it was not her house and was told to speak to the owner of the house.

It appears, your Honour, and I expect the evidence to show, that Constable Rolfe disregarded that and passed a brief message on police radio to the other IRT members and Officer Donaldson, saying, "Me and Adam are just going to clear this red house", Adam being Constable Adam Eberl.

The body-worn video footage of all relevant officers, much of which is already in the public domain, will be tendered in the inquest.

At around 7:20 pm, Constable Eberl entered House 511, followed by Constable Rolfe. As the body-worn video of both officers' show, a man who we now know, of course, was Kumanjayi, was standing in the living room. Constable Rolfe asked him his name and he replied, "My name is Vernon Dixon." Both officers told Kumanjayi not to keep walking and to stand still and to take off his hat while they determined who he was. Soon after, Constable Rolfe pressed on Kumanjayi's chest with his fingers and told him to stay there and not walk away and that he should relax.

What followed next is clearly captured on the body-worn video footage. It is extremely distressing footage. Constable Rolfe held up his mobile phone with the image of Kumanjayi on it. Kumanjayi has the wall behind him and the officers in front, with Constable Rolfe a distance of less than a metre, approximately 30 centimetres.

I expect the evidence from Constable Rolfe to be that he formed the view that the male was indeed Kumanjayi, not Vernon Dixon, from looking at the photograph. He had to look at the photograph for a number of seconds and held it up against Kumanjayi's face for that period of time. Constable Rolfe then told Kumanjayi to put his hands behind his back.

I expect the evidence to show that Kumanjayi reacted almost immediately by taking a pair of scissors that were in his pocket and then struggling with Constable Rolfe. I expect Constable Rolfe to give evidence that he was hit with the scissors once on his shoulder and that that caused a minor, penetrating injury to his collarbone. That was at 7:21 pm.

Constable Rolfe responded by stepping back, removing his Glock .40-caliber pistol from his holster and, without warning, firing one round into Kumanjayi's back. Kumanjayi then wrestled with Constable Eberl and they fell to the ground. At that point, Constable Eberl – I withdraw that.

At that point, Constable Rolfe moved forward and discharged his firearm twice in quick succession into Kumanjayi's chest. The first shot, while him was standing, was

fired at 7:22:01 pm. A second shot, when Kumanjaya was on the ground, was fired at 7:22:03 pm, and a third was at 7:22:04 pm.

What I say, of course, your Honour, is not evidence and your Honour will have the objective evidence from the body-worn video footage in the brief of evidence, as well as an account that was given in the trial, accounts that were given by Constable Eberl and other officers, other than Rolfe, prior to trial, and also, of course, the oral evidence of those officers when they're called in the inquest.

Kumanjaya can be seen on the video to be crying out in pain and struggling, which is one reason why I don't wish to replay the evidence in this opening. Kumanjaya was restrained on the ground and your Honour will hear evidence of that. The scissors were ultimately removed from his hand after he was shot and he was handcuffed, face-down.

During the period of time after Kumanjaya was on the ground and after he had been shot, Constable Rolfe stated to Constable Eberl, "He was stabbing me. He was stabbing you. It's all good. He's got scissors in his hand. He was stabbing me. He was stabbing you. He's got scissors here. He's got scissors here." And he shouted at Kumanjaya to let go of the scissors. At no time did Constable Rolfe issue a standard warning to Kumanjaya prior to discharging any of the three shots.

Kumanjaya was dragged out of the house by Constables Rolfe and Eberl and placed in the back of the police car driven by other members. Constables Eberl and Rolfe drove from House 511 to the police station in the back cage of the vehicle with Kumanjaya, so that they could start first aid for him.

Sergeant Frost, Senior Constable Hand and Constable Alefaio were still at the Yuendumu Police Station finishing their paperwork, when they heard a transmission over the police radio, "Shots fired. Shots fired." The IRT members were contacted by police radio and initially told Sergeant Frost that they intended to take Kumanjaya to the Yuendumu Health Clinic. Sergeant Frost reminded them that the clinic had been closed and she directed them to the police station.

Once they arrived at the station, Kumanjaya was transferred from the police vehicle to the floor of the watchhouse where medical assistance continued. Those efforts are captured on the members' body-worn video for at least some of the time, and on the CCTV footage inside the watchhouse of Yuendumu Police Station. They are then objective evidence of what Kumanjaya was experiencing at that time, at least in terms of what we can see and hear he was experiencing. Obviously I'm not going to play them in the opening, and it's evident from what I'm saying, that they're extremely distressing.

Kumanjaya remained conscious for a period. And I expect your Honour will see evidence of genuine efforts from the police there, including particularly Constables Rolfe and Kirstenfeldt, to administer first aid. Police attempted to keep Kumanjaya awake, and to reassure him that they were trying to help him. Your Honour, understandably, in my – is what I will ultimately submit to you, soon after Kumanjaya

was driven to the police station, community members began to gather outside, in order to find out what happened, and how he was.

It's impossible to know exactly how many community members. But the estimates are somewhere between 100 to 200 community members. I expect your Honour will have evidence of the exceptional assistance given to the community, and to police, by Derek Williams, Senior APCO, his father, Warren Williams, and another elder, to calm the crowd, and to try to provide some reassurance. And as we'll hear from Samara Fernandez-Brown, who's the next witness, after I finish my opening, she was also trying to assist the community by giving – providing information, and finding out information, and by urging community members to stay calm.

We can only imagine the level of anxiety and stress, and fear, that the community members were experiencing, at that stage. And I expect that your Honour will hear that they were primarily fearful for Kumanjayi and what he was going through, but also, there was the fear and anticipation, of what might happen next, given that these were such shocking events. One way I expect your Honour will be able to understand how the community felt, is to watch the video footage that was taken on mobile – on the mobile phone of Samara Fernandez-Brown.

I was going to play part of that in my opening, but if your Honour will permit me, I will wait now until Samara is called, and then play those videos in sequence. Because they give us such a good indication of what was happening, and she's able to explain them as she gives evidence.

THE CORONER: Thank you.

DR DWYER: I anticipate that your Honour will hear that for police too, inside the station, and particularly local police, it was extremely stressful. The four IRT members and Officer Donaldson, remained inside the police station, together with Yuendumu members. And the front, double-glass entrance door to the station remained locked. There were eight officers inside. The four members of the IRT, Officer Donaldson, Sergeant Frost, Senior Constable Hand, and Constable Alefeio.

At one point, Superintendent Nobbs ordered police to take Kumanjayi and evacuate. However the decision to evacuate was reconsidered by Assistant Travis Wurst, and at 9.02 pm, Acting Deputy Commissioner Beer, informed local police in Yuendumu, that they needed to stay. And I should say that more carefully, at one point after Kumanjayi had passed away, Superintendent Nobbs suggested that he be evacuated with police. Can I come back slightly to the point of involvement of clinic staff, noting that Kumanjayi was shot at 7.22 – 7.22.01 the first time, 7.22.03 the next time, and 7.22.04 for the third shot.

By 7.25, Sergeant Frost was contacting the Yuelamu Clinic on-call mobile. She told Nurse Walcott that there had been a police shooting at Yuendumu, and the nurse confirmed that they would get ready, and leave, as soon as possible. I expect your Honour will hear some evidence from the nursing staff about what was involved

before they left. And that they had to pack the ambulance, and get some gear before they got on the road.

At 7.30 pm, Sergeant Frost called Superintendent Nobbs, to report the shooting, and during that brief conversation, Superintendent Nobbs informed Sergeant Frost, that he would manage the medical response from Alice Springs. At 7.35 pm, Sergeant Frost rang the Yuendumu Health Clinic on-call mobile, and spoke to the clinic manager, Duana Simmons. Asking her to get the plane, as a matter of urgency, because they'd had a police shooting.

Immediately upon ending the call, Nurse Simmons called the Medical Retrieval and Consultation Centre, and asked them to call her urgently. At 7.40 pm, Sergeant Frost spoke to a doctor at Alice Springs Hospital, regarding the Medical Retrieval Team responding to the police shooting. Constable Rolfe, and Senior Constable Kirstenfeldt continued to head the resuscitation efforts, given their significant training in military first aid. I expect your Honour to hear that they did what they could, to try to sustain Kumanjayi's life, including packing his wounds to stop bleeding, and making him as comfortable as they could.

However, as Constable Rolfe identified at the time, and as Constable Kirstenfeldt knew and informed the others, the wounds were internal to major organs, and tragically, there was little that could be done to save Kumanjayi without the opportunity to have an operating area, and surgical skills. Your Honour will have medical expert opinion in the brief of evidence as to what the medical cause of Kumanjayi's death was, and what would have been needed to save his life, after he had been shot three times, and whether it would have possibly made a difference if the clinic staff had been available.

At 8.14 pm, CPR was commenced on Kumanjayi. A call was made by Senior Constable Chris Hand to St John's Ambulance, so that advice could be provided to members as to how best to assist Kumanjayi. But at 8.36 pm, on that Saturday evening, 9 November, resuscitation efforts were ceased. At 8.39 pm, Divisional Superintendent Nobbs was advised that – of Kumanjayi's passing. Assistant Deputy Commissioner White declared a critical incident, and Southern Crime was tasked to investigate.

At 8.45 pm, Superintendent Nobbs contacted the Royal Flying Doctor Service to advised that the patient had passed, and they were stood down. At around 9.08 pm, remote area nurses from Yeulamu Clinic arrived at Yuendumu Police Station. So it's apparent from what I've just read that sadly, Kumanjayi had passed by the time they arrived. In the statement of Nurse Zanker(?), which will be in evidence, she explains that they went to the back gate. They were let in by police. And in her words, "The clientele at the front of the clinic seemed very quiet and subdued. They didn't seem angry with us when we first came in at all. So we considered the situation to be safe, which it was at that stage."

After they entered the station, the nurses were informed by Sergeant Frost that Kumanjayi had passed. At 9.21 pm, Nurse Heather Zanker conducted a standard

medical examination, and confirmed that was the case. At the level of Assistant Commissioner, it was decided, at that point, that it would be too dangerous to tell the community about Kumanjayi having passed, at that time. I interrupt myself to note, that this is of course an issue of great significance to the community. And your Honour has already heard, in the statements of community members before we started, that it hurts them deeply, that Kumanjayi did not have somebody from the community who loved him, with him when he passed.

And that available there, were a number of family members, who loved him very much. Rakeisha was there. Leanne was there. Eddy and Lottie were available. Various other family members, who would have been more than willing to go and comfort him, and were desperate to give him some comfort. So I anticipate that we will hear in this inquest, the reasons from police, as to what they were thinking at that stage. What they were worried about. And why they made those decisions. And whether, on reflection, something differently would be done, although we're all desperately hoping that there's never a situation like this again.

Around 10.45 pm, Constable Alefeio and other police left the station to travel to the airstrip to pick up additional police coming in from Alice Springs. It was decided, at that time, as your Honour will hear, that to travel to the airstrip, there would be two police cars, with the ambulance driven by the nurses, in the middle of the convoy. At 10.45 pm, Alice Springs Police, that is Pol Air(?) arrived, carrying more Alice Springs Police members, and police and nursing staff returned to the station.

I anticipate your Honour, that when we hear from Samara Fernandez-Brown, and watch her – the videos that she took on the phone, it was her sincere belief at the time, that Kumanjayi had been – was still alive at the time, around 10.45, when the police and that ambulance travelled to the airstrip and that Kumanjayi was being transported at that time to Alice Springs to get the medical care that he needed.

And in fact, she did not learn that he had passed away by that stage until a considerable period afterwards. And what we now know is that, I expect the evidence to be that the police had wanted the community to think that Kumanjayi was still alive at that time and transported out.

Their reasons for doing so, I expect, your Honour, to hear were not malicious, but they thought at that time that that was the best option to avoid any conflict. I don't make a judgment of that and I certainly don't invite your Honour to at this point.

But I note that we will hear the perspectives of everybody involved to try and understand what their reasoning was and at least equally as importantly, so that the community can understand what the police perspective was and so that the police can understand what the community and family were experiencing at that time.

After they had been to the airstrip and returned, police and nursing staff drove again in convoy back to the station. I expect your Honour to hear that as they entered the police compound, a rock was thrown by a community member and went

through Constable Alefai's car window. It narrowly missed his face and hit his hand as he drove.

And another police vehicle was damaged and the ambulance driven by nursing staff had some of its windows broken. Nurse Walcott was struck by two rocks on the head and arm and suffered an injury. I expect your Honour will have evidence from community members as to why, on reflection, those levels of frustration had bubbled up and manifested in those incidents, which were clearly dangerous and caused injury, regrettably, to the nursing staff member.

At 11:05 pm, respected Elder Eddy Robertson contacted Yuendumu Police requesting an update on Kumanjayi's condition. He spoke to Sergeant Frost and she told him that she couldn't tell him at that time, but she would call him later. At 11:57 pm, Constable Rolfe returned via Pol Air to Alice Springs.

He provided his consent to a voluntary Non-intimate Sample Kit, known as a NISK, allowing his injury to be further photographed. At 12:38 am, Constable Rolfe was conveyed to Alice Springs Hospital where he was treated for the minor puncture wound to the region of his left collarbone.

Members of the Alice Springs patrol group were allowed to visit him at that time and to speak to him while he was waiting at the hospital. He was not questioned by investigators at that time and was allowed to rest with the intention, I expect, your Honour to hear - of obtaining his account of events later on the day.

In the early hours of Sunday, 10 November, just after midnight, Sergeant Zang who had been appointed police forward commander and was now at Yuendumu, called Eddy Robertson advising him that Kumanjayi was still receiving medical treatment. We know, of course, that that was not the case. Kumanjayi had passed away just over four hours earlier.

And the court will hear evidence from Officer Zang about why he did not tell Eddy the truth at that time. I expect your Honour will hear evidence from senior police that they regret not being able to tell Eddy. Local police station remained in - I withdraw that. Local police remained in the station with Kumanjayi's body at that time.

At 1:17 am, I expect your Honour will have evidence that the TRG members, Tactical Response Group, began arriving in Yuendumu from Darwin. At 4:50 am, Eddy was contacted by police at Yuendumu and he was requested to attend the police station.

On arrival, he was told that Kumanjayi had passed and he was asked to identify the body. So, we know, of course, that Kumanjayi was not transported by plane out of the community before midnight, but his body was still in the police station. Eddy declined to do so, and I expect your Honour may have evidence as to why he felt that he was unable to do that, at that time and that it was inappropriate for him to do so.

At 6:44 am, Yuendumu Police and TRG located Rakeisha and told her that Kumanjayi had passed away. At the time of receiving the notification from Superintendent Nobbs, Acting Assistant Commissioner Wurst was attending a social function in Darwin together with other senior police executives.

He briefed them and commenced a critical incident response. An initial decision was made to appoint Detective Superintendent Joanne Folly from Southern Crime in Alice Springs to the position of the senior investigator in charge, with Commander Wurst assuming the position of police operations commander.

The incident action plan created also known, as the commander's intent, reads that it was to ensure safety and security of members and civilians and extraction of Kumanjayi from the community. Investigations of the circumstances were to be done and the welfare of all was to be secured. Acting Commander Martin Dole was appointed as the commissioned officer in overall charge of the investigation that was subsequently named Operation Charwell.

During the morning of Sunday, 10 November, a decision was made to appoint Detective Acting Superintendent Kirk Pennuto of the crime division in Darwin to the position of the senior investigator in charge in place of Detective Superintendent Folly.

A major crime investigation team and members of the Professional Standards Command were dispatched to Alice Springs to commence a coronial and critical incident investigation. At 7:24 am, a crime scene was established at House 511. That meant that police cordoned off the area and began to collect forensic evidence.

I expect your Honour to hear evidence from Ms Fernandez-Brown when she gives – when she speaks to the court shortly, that some community members have attended the house to try and find out what had happened to Kumanjayi after he was removed from House 511 and so they saw the tragic aftermath of Kumanjayi's death in House 511 before that house was sealed off.

At 2:51 am on the morning of the 10th, the first of many incident management team meetings or IMTs took place to determine how to manage the investigation. It was chaired by Assistant Commissioner Beer, who your Honour will hear evidence from. And your Honour will have the minutes of that meeting and the various meetings that followed.

At around 3 pm that day, the body-worn video of Constable Rolfe was viewed by Detective Acting Superintendent Pennuto and Detective Senior Sergeant Malagorski. I expect your Honour will hear evidence that concerns were held over the lawfulness of Constable Rolfe's actions and at 5 pm, the first investigation management committee meeting was held in Darwin, chaired by Assistant Deputy Commissioner White.

A decision was made to try and interview Constable Rolfe under caution.

General orders relating to the investigation of a death in custody required that involved officers be given a direction that they should not discuss their evidence, not socialise and not meet with others involved. I'm paraphrasing, of course, from those general orders. In this case, I expect that the evidence may show that such a direction was not given.

On the evening of 11 November, a number of officers, including Officers Hawkings, Eberl and Kirstenfeldt met at the home of Constable Rolfe for a barbecue before any – I withdraw that, met at the home of Constable Rolfe for a barbecue. I expect your Honour to hear that the primary purpose of that was to offer some comfort to each other.

But your Honour will have in evidence some of the conversations that took place. Of course, they're not the subject of any recording and your Honour will have to rely on the memories and the honest reflections of the officers involved. Your Honour will have to consider the extent to which that may have impacted on the integrity of the coronial investigation.

I intend to submit, your Honour, that there are text messages between Constable Rolfe and other members. That may also be relevant to your Honour's considerations of whether there was any adverse impact on the integrity of the coronial investigation.

It may be that flowing from that investigation, general orders may need to be clarified or there may need to be further training for officers so that it is clear in these circumstances or the circumstances of any critical incident, that not only is there not to be any meeting to discuss evidence, but neither should there be any text exchange.

I note that the text messages are the subject of an objection from my learned friend, Mr Edwardson, senior counsel. That is why I won't say anything more about that at this stage. More will be said about it on Friday, safe to say that it will be my submission to your Honour that the text exchanges in the immediate aftermath, or the days that followed Kumanjayi's death, or at least some of them, are relevant to the issue of the integrity of the coronial investigation.

I expect that your Honour will hear that, by 12 November, police were giving serious consideration to whether Constable Rolfe would face criminal charges. The only reason I bring that up at this stage is because your Honour will see in the brief of evidence that there is no interview that was done with Constable Rolfe at any stage prior to him being charged.

So, whereas your Honour has a version of events from the perspective of Constable Eberl, Kirstenfeldt and Hawkings early on after Kumanjayi passed, there is no such interview conducted with Constable Rolfe for the purpose – that would assist your Honour in your coronial investigation and you will have the evidence, or some of the evidence, to the extent possible, as to why.

As a consequence, the decision was made to appoint a commissioned officer in charge of the coronial investigation, separate to the senior investigating officer of the criminal investigation. Acting Deputy Commissioner of Police White appointed Superintendent Scott Pollock, a highly experienced senior officer who enjoyed an excellent reputation in the Northern Territory Police Force and had been officer-in-charge of complex inquests presided by the former Coroner, Judge Cavanagh.

I anticipate that Superintendent Pollock will give evidence in these proceedings and I anticipate that he will tell your Honour that he met with the former Coroner, Mr Cavanagh, who told him at that early stage that he expected a gold-standard investigation into Kumanjayi's death.

At around 3:25 pm that day, Constable Rolfe was formally invited by the investigation team, at that stage, consisting of Detective Sergeant Wells and Detective Senior Constable Rolfe, to participate in an electronic record of interview, but he declined to do so because, I anticipate your Honour will hear, of the concerns that the actions of Constable Rolfe may have been illegal, or, at least, that further advice was required at that stage.

He was not directed to answer questions in accordance with the directed interview provisions of s 79A of the *Police Administration Act*, which require members to answer questions or give information in relation to a possible breach of discipline. I expect that your Honour will hear that the criminal investigation was regarded as taking – as needing to take precedence over the Coronial investigation.

At 5 pm that day, Constable Rolfe travelled to Darwin with his mother, who had flown in to support him. It is evident from the brief that before Constable Rolfe was charged, it appears that there were some discussions between investigating police and senior lawyers at the Office of the Director of Public Prosecutions in the Northern Territory.

Privilege has been claimed over those discussions. I note that there may be an argument before your Honour that that privilege may have been waived, but that is not to be heard until Friday, your Honour, and there is no need for it to be heard prior to that time. It is customary for police to claim – for there to be legal professional privilege over the discussions between police and the DPP in some circumstances.

If that privilege is maintained - and it is not a matter for me; it is a matter for the privilege that resides in the party who claimed it – if it is maintained, then I don't imagine that that will impede your Honour's interview; but, no doubt, your Honour can hear legal argument about that if there's something that I'm not aware of.

I make it clear that it's not within the scope of this inquest to inquire into why Constable Rolfe was charged, whether he should have been charged, or the timing of the charges. It is merely part of the background of this case, but it may be relevant to understand some issues in the conduct of the Coronial investigation which ran alongside the criminal one.

On the afternoon of 13 November, at around 5 pm, Constable Rolfe was arrested by Assistant Superintendent Pennuto in Darwin and he was charged with murder. He was granted bail by a Local Court judge over the telephone and he later travelled back to Canberra with his mother.

I expect there to be some evidence that, in the unique circumstances of this case, there were then two commissioned officers who were put in charge to manage two separate investigative streams; one Coronial and one criminal. I expect, your Honour, there to be evidence that because that was so unusual, it was not governed by existing policy and procedure, or at least there were no very clear guidelines in that regard. That created confusion, I expect your Honour will hear, when determining the priorities and the sharing of information between the investigation streams at time, with the criminal investigation having primacy over the Coronial investigation.

I anticipate that there will be evidence that, on a number of occasions, the Coronial investigation may have been directed to cease its inquiries in certain areas, or that there may be criticism where it was identified that there were issues that needed to be determined first, from the criminal perspective. If that becomes relevant in these proceedings, I anticipate, your Honour, that it would be relevant to the extent that your Honour can look at whether or not there was any interference with the Coronial investigation, but it is not for this court to have oversight of a criminal investigation and I am mindful, of course, of the scope of your Honour's powers, which are created by statute.

THE CORONER: Yes.

DR DWYER: I do expect to submit or that is possible that I will submit ultimately, after hearing the evidence, that this case highlights the need for clear guidelines to be drafted in the event that there is another similar tragic circumstance.

Your Honour, I have just finished outlining in some detail aspects of Kumanjayi's life, from his birth in Alice Springs Hospital, to living in communities outside of Alice Springs, particularly Yuendumu and Katherine, and to time that he spent in Warlpiri Camp in Alice Springs. We know a little bit about Kumanjayi, but I expect that we will hear much more and, hopefully, more from his family and the community's perspective, during the course of the inquest.

So, who is Constable Zachary Rolfe?

On 9 November 2019, he had his first brief and ultimately fatal interaction with Kumanjayi. I anticipate your Honour will see from the evidence that Constable Rolfe's life, education, family, upbringing and culture are vastly different to Kumanjayi's. Zachary Rolfe, I expect your Honour will hear, was born and raised in an affluent suburb in Canberra by two parents in a household of some material wealth.

He attended the exclusive Canberra Grammar School between 2004 and 2009 and, on completing his schooling, he was employed at his father's automotive business and then travelled overseas throughout Europe. On his return to Australia, he applied to join the Australian Army as a rifleman and he commenced with the Australian Defence Force on 26 October 2010.

He completed basic training at the Army Recruit Training Centre in Kapooka and conducted initial employment training at the School of Infantry in Singleton. He was posted to the Australian Regiment in the barracks in Townsville. In January 2014, Zachary Rolfe participated in force preparation training prior to his deployment to Afghanistan.

He deployed to Afghanistan as part of what is known as Operation Slipper and he remained on deployment between 9 July 2014 and January 2015, where his platoon operated as a force protection element. I don't downplay his role there for a moment, but I note that he did not engage in active combat while in service there.

Zachary Rolfe was ambitious to get into the elite SAS squad. On 28 August 2014, while on deployment in Afghanistan, he made an application to complete the 2015 Special Forces selection process. That application, I expect your Honour will hear, was not supported by his commanding officer at that time. He returned to Australia and completed his deployment to Afghanistan in January 2015 and, on 4 May 2015, after serving four years and seven months, he transferred from permanent service to the active reserve force within the ADF.

After resigning from the Australian Defence Force, he returned to Canberra. He commenced employment as a law clerk at the firm of which his mother is a partner. Between 2 October 2015 and 23 November 2015, Zachary Rolfe participated in a training course conducted by Trojan Securities International in Arkansas in USA.

And I interrupt myself to note, you are able to recall that that's the same course that Constable Kirstenfeldt had done five years earlier. That course focussed on advanced tactical and firearms familiarisation, close personal protection, risk management, urban warfare and driving in hostile environments.

From September 2015 to February 2016, Zachary Rolfe submitted several applications to join a number of Australian police forces. The first was the Victorian Police, which he applied to on 30 December 2015, but later withdrew his application from.

I expect your Honour will hear that he also made an application to join the Western Australian Police Force during 2016, but it appears that he did not follow that process through.

On 1 February 2016, he applied to join the Queensland Police Service. There are now questions on the issues list that are the subject of a recent objection on behalf of Constable Rolfe. They are currently related to questions number 30 and 31 on the issues list and they read:

“Did Constable Rolfe provide accurate and honest information when applying for the Northern Territory Police Force, and if not, what if anything was done about it”, and “Are the recruitment processes in the Northern Territory Police Force adequate to ensure suitable candidates are selected or should they be improved. And if so, how?”

I expect to advise your Honour on Friday that there is relevant evidence that should be tendered and that it is within the scope of the inquiry. I expect to submit that that evidence is important to shed light on whether the recruitment process of the Northern Territory were robust and appropriate, whether they have since been reformed or whether they need to be reformed further.

However, having received an objection on behalf of Constable Rolfe from his legal team, I will not outline that evidence in detail until the legal issues have been ventilated on Friday.

On 26 February – I withdraw that. On 28 February 2016, Zachary Rolfe undertook psychological testing with the Australian Institute of Forensic Psychologists, a third-party recruitment company employed by the Northern Territory Police.

On 16 March 2016, he was interviewed by a three-member panel, which included two police officers and the head psychologist with the Northern Territory Police. The interview process is a 90-minute series of questions formulated by the police and asked by the three-member panel.

On 22 April 2016, Constable Rolfe received an offer of employment as a constable in the Northern Territory Police Force to commence training with squad 129 on 30 May 2016.

The May issues list includes important questions relating to police training that read, “Did Constable Rolfe receive adequate training in relation to use of force, carrying and use of firearms and body-worn video?”

Did he comply with the Northern Territory Police Force policies, procedures and training during his involvement with and attempted arrest of Kumanjayi. And is the training of Northern Territory Police adequate or should it be improved in that regard. In particular, is the training concerning the response to an edged weapon clear, adequate and appropriate?

Is the training on policing in communities, cross-cultural engagement and conflict resolution appropriate. Squad 129 was made up of 30 recruits with the primary instructors being Sergeant Michael Hanson and Sergeant Matthew Marshall, both of whom I expect your Honour would hear have since resigned, and Sergeant Megan Blackwell.

During recruit training, Constable Rolfe and his squad members received

instruction pertaining to Northern Territory legislation, Northern Territory Police policy and procedures and three skills blocks covering police driving, firearms and defensive tactics.

Your Honour will hear that use of force by the Northern Territory police officers is guided by the general order operational safety and use of force. All police recruits receiving training in relation to the use of force and I expect your Honour will hear that the guiding principle is that members should use only the force that is reasonable, necessary, proportionate and appropriate to the circumstances.

In other words, police should only use the minimum amount of force required for the safe and effective performance of their duties. This philosophy is reinforced in police practice and procedures, which state that the emphasis will always be on the avoidance of conflict where possible, and informs members that prior to attendance at incidents, officers should thoroughly analyse all available information and evaluate the full potential of the situation in order to avoid potential confrontation.

On 2 December 2016, Zachary Rolfe graduated from recruit training and was posted to Alice Springs Police Station as a general duties officer. Between December 2016 and May 2017, Constable Rolfe moved between patrol groups 1, 2 and 3 within the Alice Springs Police Station meaning that he was supervised by several different sergeants.

I expect that some of them will give evidence about what the supervision involved and any strengths that they identified in Constable Rolfe and potentially some challenges. In February 2017, Constable Rolfe submitted an expression of interest to undergo training as part of the Immediate Response Team, or IRT.

As your Honour will hear, the IRT was a part-time capability comprised of volunteer officers who were provided with skills' enhancement training above that of a frontline general duties officer to enable them to support general duties or respond to high risk incidents in certain circumstances.

Between 8 May 2017 and 19 May 2017, Constable Rolfe attended and passed the initial training course for the IRT. Members of the TRG, the Tactical Response Group, ran that course in Alice Springs. At the time, it was called the Alice Springs Cordon and Containment Team.

I expect your Honour to hear that the focus of the course was rural cordon and containment where the introduction of basic close quarters' tactics, being room entry and hostage rescue.

On 26 October 2017, Constable Rolfe made an application to the Australian Defence Force for service in the Special Operations Command. On 15 March 2018, he completed the Australian Army Special Forces entry test which is a physical barrier test for further selection in the Australian Army Special Forces.

There is evidence to suggest that Constable Rolfe was keen to get extra training

and experience in the use of weapons and tactical operation. Between 26 July and 3 August 2018, Constable Rolfe undertook TRG selection training.

This is physical barrier test conducted over two days, followed by a five-day firearm skills block, to identify if candidates possess the fitness, capability and suitability to apply for a permanent role within the TRG. I expect your Honour to hear that Constable Rolfe scored above the required standard which was recommended and he was able to apply for future vacancies within TRG.

I expect the evidence to show that, although he passed the requirements, he was never chosen for a vacancy and that appears to have been a source of frustration for him.

On 15 October 2018, Constable Rolfe completed all of the requirements of his probation constable workplace practice and he was awarded the Diploma of Policing. He was confirmed as a constable in the gazette on 6 September 2018. Between 12 May 2019 and 15 June 2019, Constable Rolfe enrolled to undertake further training with a South African based company, Roman Security.

And your Honour will hear, that provides a four-week close protection course. He paid \$5,150 to attend the course, however, completed only one week before leaving. I expect your Honour will have evidence from the Roman CEO, Mr Erwin Smith(?), who stated that Constable Rolfe forfeited the course payment in accordance with their terms and conditions.

On his return from the Roman course, he recommenced back at work in general duties at Alice Springs on patrol group 5. And analysis of the relevant data shows that for 256 of his 432 shifts, Constable Rolfe worked with 19 police partners for seven shifts or more.

The officers who Constable Rolfe worked with the most are Constable Mitchell Hansen, who was a squad mate of Constable Rolfe's, who worked with him on 42 shifts and Constable Mark Sykes, an ex-Australian Defence Force soldier who served in Afghanistan with Constable Rolfe with worked with him on 37 shifts.

Both Officers Hanson and Sykes were members of the IRT. I anticipate your Honour will hear evidence from both of those officers in this inquest. I come briefly to the formation and deployment of the IRT. But before I do, your Honour, can I note this; I am not suggesting that that summary includes all the evidence that we should hear about who is Constable Zachary Rolfe; his motivations for joining the Northern Territory Police Force; what he thought was enjoyable about the job; what the challenges were; what his experiences were in Alice Springs; what his training was, in terms of the use of force; what his training was and understanding of the culture; whether he had any interest in, or experience of, Warlpiri culture? All those things are things that I anticipate your Honour will be interested to hear from when we call evidence from Constable Rolfe in these proceedings.

The IRT was formed in 2017, with a view to upgrade the initial response capabilities and to enhance the skills of select general duties members serving in the southern region. It is governed by Standard Operating Procedures, or SOPs. Prior to 2017, the Alice Springs police relied on what I referred to earlier as the Cordon and Containment Team. The leader of that team, Alice Springs Sergeant Lee Bauwens, as your Honour will hear, sought to enhance their skills and capability and that is how the IRT came to be formed.

I expect your Honour will hear that it was established in recognition for the need for Alice Springs and the Southern command to have a capability to respond to critical incidents, where accepted tactics of cordon, contain and negotiate had failed or been unsuccessful and the TRG were not able to respond within a suitable timeframe to resolve an incident, and where the nature of the incident was such that urgent police response was required to prevent loss of life or serious injury. I expect your Honour to hear that that was the initial plan for the IRT because, of course, the TRG is based in Darwin.

The IRT was part-time capability comprised of officers who have been provided skills-enhancement training above that provided to the frontline general duties' officers, to enable them to respond. It is clear then from what I have said already probably, your Honour, that IRT police are not trained to the level of TRG and they are not expected to fulfill that role.

IRT members were recruited from a pool of Alice Springs general duties, a group of 15 to 16 trained members was preferred, and I expect your Honour will hear evidence that with the type of skill set required, preference for selection of the IRT duties was weighted in favour of ex-military members. Training, usually firearms, was provided to selected and available IRT members one day a month and yearly training assessments of IRT were to undertaken by TRG members.

Selection for the IRT was conducted at a local level in Alice Springs. A selection panel chaired by the Commander in Alice Springs usually included the Alice Springs Divisional Superintendent, the officer-in-charge of the IRT, a Northern Territory police association local delegate. Between 2017 and the date of Kumanjayi's death, I expect your Honour to hear that there had been 39 deployments of the IRT members, including six responses to community disturbances and riots, and nine target arrests.

Your Honour will hear more from the former IRT members themselves about that training and what was required. I expect your Honour will hear evidence from at least one of the officers in charge of the former IRT at this Coronial inquest, that the type of operations to which the IRT have been deployed appears to have expanded considerably from the original role detailed in the original standard operating procedures. It has led to what some have described as mission creep.

In the wake of Kumanjayi's death, the operations of the IRT were suspended. I expect your Honour will receive evidence in relation to whether there is any plan for another cordon and containment-style unit, or an arm of the TRG, or a second-tier

TRG, or something like the IRT to ever again be based in Alice Springs. And, if so, what will its standard operating procedures look like and who will be consulted in their development? I expect your Honour will hear evidence from some members of the Northern Territory Police Force, or former members, that there should be something like a cordon and containment unit, based again in Alice Springs, to boost capacity or capability.

Your Honour, I note that recommendation 61 of the Royal Commission into Aboriginal Deaths in Custody, reporting in 1991, was that all police services review their use of paramilitary forces, such as TRG units, to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities. This recommendation was accepted by the Northern Territory government, with a review of the implementation of recommendations of the Royal Commission into Aboriginal Deaths in Custody was reported in 2018.

The Northern Territory government's TRG group, I expect your Honour will hear, has operational procedures and guidelines in place to ensure that the recommendation from the Royal Commission is put into place, so that there is no avoidable use of the TRG, in circumstances affecting Aboriginal communities.

I come now to some broader issues in policing. The investigation undertaken to assist your Honour in this inquest has exposed some broader issues of policing which I anticipate are likely to be relevant to the circumstances connected with Kumanjayi's death. They may be relevant to your Honour's power to make recommendations to the Attorney-General on a matter including public safety and the administration of justice.

They include evidence about the formation of the IRT, the training of those members, the weapons they had access to, the policies that govern them and their training in the policies. They include issues relating to the training on use of force and risk assessment, supervision of the use of force, and discipline proceedings where use of force may be exceeded.

I expect your Honour will hear that having a robust system to monitor officers for use of force is an essential way to guard against misuse of power, not just, your Honour, so that an officer might be formally disciplined, but so that if there are patterns revealed which demonstrate a lack of clear understanding by a particular officer of the use of force guidelines, they could be identified and the officer may be subject to instruction.

In the Northern Territory Police Force, a system exists for the reporting and review of incidents involving the use of force. A use of force case note entry, or CNE, is required to be entered into PROMIS by the involved police officer. When force is used, there are supervisors who then have a responsibility to order the use of force by the particular police officer, to determine whether the force used was reasonable, necessary, proportionate and appropriate.

A significant issue on the original May issues list reads, by way of a question under the broad heading, “What is known about Constable Rolfe’s use of force, use of firearms and use of body-worn video during his time as a Northern Territory police officer? Was the monitoring, supervision and response to his use of force, firearms and body-worn video adequate and appropriate? Has any inappropriate behaviour been condoned, overlooked or excused by supervisors?”

On behalf of Constable Rolfe, Mr Edwardson of senior counsel and his legal team object to those questions under that broad issue being explored. It is in the public domain that the opinion of Sergeant Barram, retained by Northern Territory Police to provide an expert report on Constable Rolfe’s use of force on 9 November 2019, conducted a review of Constable Rolfe’s history of use of force.

Sergeant Barram reviewed the use of force history of Constable Rolfe for the period of 16 December 2016, through to 9 November 2019, when there were 46 incidents where a use of force case note entry had been submitted by Constable Rolfe. I expect your Honour will read in that evidence that Sergeant Barram identified five incidents where, in his opinion, the force used was not reasonable, necessary, proportionate or appropriate.

I anticipate calling that evidence and submitting that it is relevant, particularly because, in Sergeant Barram’s view, Constable Rolfe demonstrated a tendency to rush into situations with a disregard for his and others’ safety, and a disregard for Northern Territory police training practice and procedure. And, in spite of that, in those circumstances, the five that he identified, the use of force CNE was reviewed by one or more of Constable Rolfe’s supervising officers who signed off at that time that the use of force was appropriate.

The concern for this inquest is not so much the individual officer, although that is obviously an example that is necessary to review the example of Constable Rolfe in those circumstances.

But your Honour’s particular focus will be on whether that use of force oversight was robust enough and most particularly whether it is robust enough now or whether there should be further reform to ensure that officers can be given guidance where their supervisors might be concerned about a lack of clear understanding or particular behaviours.

Your Honour will have evidence that since Sergeant Barram’s review, Assistant Commissioner Porter has also reviewed the available evidence and reached his own conclusions about that. Your Honour will have evidence as to what the view of the current police management is as to what should have happened when those five incidents were reviewed and whether Constable Rolfe should have been given further remedial instruction at that time, or indeed discipline.

I expect your Honour to have evidence of an external root and branch review currently being conducted into the PSC and a plan for significant reform. I expect your Honour to have evidence that the Northern Territory Police Force have gone to

some trouble to have expert advice from an external consultant to provide them with some robust assistance.

Under a broader heading of supervision, there are two issues on the list which invite your Honour to consider whether there were particular attitudes expressed towards a group of people in our community that have some relevance to your Honour's tasks.

Both of these questions under that broader issue are the subject of objection from the legal team of Constable Rolfe, as outlined in correspondence recently received. Issue 34 on the issues list reads:

"Is there any evidence that Constable Rolfe and other police officers based in Alice Springs discriminated against Indigenous Australians? Is there evidence that Constable Rolfe and other police officers based in Alice Springs had a negative attitude towards community police?" Question 36: "Is there any evidence of systemic racism or cultural bias in the Northern Territory Police Force or some sections of it?"

As your Honour might imagine, I expect that you will hear evidence from Kumanjayi's community and family and from the broader community in the Northern Territory, Aboriginal and non-Aboriginal that those issues are of great significance.

At the time that Constable Rolfe was arrested, his phone was seized and messages, or at least some of them, many of them, were downloaded. Earlier in these proceedings, I intend to tender specific pages from that download that show messages to and from Constable Rolfe and other police in Alice Springs, including significantly, members of the IRT or some of them.

I will not do that before Friday, so that your Honour can hear legal argument from eminent senior counsel. Taken at face value, I anticipate submitting to your Honour that some of those text messages do suggest negative attitudes towards Aboriginal people that should and will cause great concern.

I expect your Honour would see, if those text messages are tendered, evidence that Constable Rolfe and other police based in Alice Springs had a negative attitude towards community police. I don't suggest for one minute that that was all police in Alice Springs and I expect if those text messages are tendered, that they would be of significant concern to many of the serving police officers in the Northern Territory.

However, the legal team for Constable Rolfe has foreshadowed an objection, so I will not detail the messages at this stage. I will explain briefly why counsel assisting, why your counsel assisting team say that they are relevant before we break.

If there are text messages that suggest that Constable Rolfe and/or some other police officers based in Alice Springs had expressed negative sentiments about Aboriginal people generally or negative attitudes towards community police in communities where Aboriginal people predominately reside, then this court should

have them.

The purpose of this is not to demonise those who sent the text messages and it's not to publicly criticise them, it is to understand why those negative attitudes have formed, to understand that those negative attitudes do sometimes form and to understand what, if any, impact those attitudes might have on police behaviours when they are arresting people.

And particularly vulnerable people in Kumanjayi's situation and to understand then once we appreciate that some members of the police force have developed those negative attitudes, how do we prevent them developing and is there a risk that, if we don't, those attitudes may lead again to deadly confrontation.

In my respectful submission, it goes directly to your Honour's recommendations' function and it's on that basis that I intend to argue that your Honour should have that evidence before you. Your Honour, I anticipate I've got about another 20 minutes, would your Honour – and that's with the assistance of the interpreter.

HER HONOUR: Yes, we'll take a 15-minute adjournment.

DR DWYER: May it please the court.

ADJOURNED

RESUMED

THE CORONER: Thank you, Dr Dwyer.

DR DWYER: Your Honour, you might be relieved to know I have now reached the point where I have just some concluding remarks to make and then might I invite the court to retire for the afternoon and start fresh again at 9:30 am.

THE CORONER: Yes.

DR DWYER: Your Honour, might I ask for these concluding remarks for the assistance of my very learned friend, Valda Shannon, who will come and interpret with me.

THE CORONER: Thanks, Ms Shannon.

DR DWYER: Your Honour, after Kumanjayi's death, and the trial of Constable Rolfe, the media reports about what happened are often polarised, as if there were two sides, a right side and a wrong side, the good guys and the bad guys. But that is the opposite of the way that this court approaches an inquest.

The issues involved in understanding Kumanjayi's death are complex and if we are to come up with recommendations that will target those complex issues, we need to think deeply and we need respectful submissions from serious people who are committed to ensuring everything is done to avoid a repeat of this tragedy.

In an inquest, there is room for robust advocacy, to make sure the facts come to light and the issues are explored, and there are, of course, always opportunities for different perspectives to be put that your Honour will be urged to consider. But there are also shared goals of every single person in this court, every single person at this Bar table and this one, and every right-minded person in the Northern Territory.

Every interested party wants the people of Yuendumu to have happy and safe lives, and every interested party in this court wants to do what's possible to ensure there is no other shooting death of a community member by the Northern Territory Police Force. And this court asks all parties at the Bar table to lean in and try to understand and respect each other as this inquest proceeds. At all stages of this inquest, we will attempt to call evidence in a way that is respectful to all of those who are so deeply wounded by Kumanjayi's death.

Thank you, your Honour, that is the conclusion of my opening remarks, and I thank very much Valda Shannon, who has been here with us, of course, since the beginning and will be for a long time throughout this inquest, along with other colleagues of the Aboriginal Interpreter Service.

THE CORONER: Dr Dwyer, thank you very much for the very considered and thoughtful and detailed opening, which sets out a very sound basis for the progress of this inquest to explore the many complex issues that you have touched upon and,

no doubt, there could be others. But I want to thank you and I very much appreciate the care that has been taken to commence the inquest with such a careful and thorough opening.

DR DWYER: May it please the court.

THE CORONER: We can adjourn until 9:30 tomorrow.

ADJOURNED