
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : Michael Andrew Gliddon Jenkin, Coroner
HEARD : 16-18 March 2020
DELIVERED : 15 JUNE 2020
FILE NO/S : CORC 514 of 2017
DECEASED : NIELSEN, THORVALD ANTHONY

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Counsel Assisting : Kathryn HESLOP
Counsel : Joshua Berson

Case(s) referred to in decision(s):

Nil

AMENDED RECORD OF INVESTIGATION INTO DEATH

*I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the death of **Thorvald Anthony NIELSEN** with an inquest held at Perth Coroner’s Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 16 - 18 March 2020, find that the identity of the deceased person was **Thorvald Anthony NIELSEN** and that death occurred on 13 April 2017 in a carpark adjacent to the Darlington Tennis Club, Darlington, from multiple gunshot wounds in the following circumstances:*

Table of Contents

INTRODUCTION	4
SUPPRESSION ORDERS	5
Suppression Order No.1	5
Suppression Order No.2	5
Suppression Order No.3	5
Suppression Order No.4	5
Suppression Order No.5	5
MR NIELSEN	6
Background	6
Criminal History	7
Issues relating to mental state	7
EVENTS LEADING TO MR NIELSEN’S DEATH	8
Background	8
Theft of Firearms	8
Police interaction with Mr Nielsen prior to 13 April 2017	9
Interactions with Mr Nielsen - 11 April 2017	10
Interactions with Mr Nielsen - 12 April 2017	10
Interactions with Mr Nielsen - 13 April 2017	11
Contact with Person C	14
TRG OPERATIONS - 13 APRIL 2017	15
General	15
Search of Pine Plantation	15
Cordon and Call	16
The snatch arrest	16
Mr Nielsen and Person A arrive at the Tennis Club	20
The snatch arrest plan is enacted	20
Mr Nielsen is shot	22
The aftermath of Mr Nielsen’s shooting	25
USE OF FORCE	27
Criminal Code	27
Police Manual	27

CAUSE AND MANNER OF DEATH.....	29
Post Mortem Examination	29
Cause of Death.....	29
ISSUES ADDRESSED BY THE INTERNAL AFFAIRS UNIT	30
Background	30
Recording of key events and decisions	30
Not telling Person A that Mr Nielsen might be armed	32
ENHANCEMENTS	36
Standard Operating Procedures.....	36
Additional Negotiators	36
COMMENTS ON POLICE ACTIONS	37
General	37
Actions of General Police	37
Actions of TRG Tactical Operators	39
Avoiding inadvertent disclosure of operational issues	41
RECOMMENDATIONS.....	42
Recommendation No.1	42
Recommendation No.2	42
CONCLUSION	43

INTRODUCTION

1. Thorvald Anthony Nielsen (Mr Nielsen) died on 13 April 2017 in the carpark adjacent to the Darlington Tennis Club (the Tennis Club) from multiple gunshot wounds. He was 29 years of age. Mr Nielsen was shot by officers from the Police Tactical Response Group (TRG) in circumstances where he was armed and the attending officers reasonably believed that their lives were at imminent risk.
2. Pursuant to the *Coroners Act 1996* (WA) (the Coroners Act), Mr Nielsen's death was a "reportable death".¹ Further, because his death may have been caused by a member of the Western Australia Police Force (the Police), a coronial inquest was mandatory.²
3. I held an inquest into the Mr Nielsen's death on 16 - 18 March 2020. Members of Mr Nielsen's family attended on the first day of the inquest and the following witnesses gave oral evidence:
 - i. Detective Senior Constable L Psaila-Borrie (Investigating officer);
 - ii. Senior Sergeant N Winstone (Police negotiator);
 - iii. Inspector D Hooper (TRG officer);
 - iv. Acting Superintendent D Heise (TRG officer);
 - v. Tactical Operator 78 (TO78, former TRG officer);
 - vi. Tactical Operator 19 (TO19);
 - vii. Tactical Operator 6 (TO6);
 - viii. Tactical Operator 17 (TO17);
 - ix. Tactical Operator 38 (TO38, former TRG officer);
 - x. Superintendent D Leekong (Officer-in-charge, TRG); and
 - xi. Mr M Downey (former investigator, Internal Affairs Unit).
4. The documentary evidence at the inquest included reports prepared by the Police,³ witness statements and other documents. Together, the Brief comprised one volume. The inquest focused on the circumstances surrounding Mr Nielsen's attempted arrest and the role of the Police in his death.

¹ Section 3, *Coroners Act 1996* (WA)

² Section 22(1)(b), *Coroners Act 1996* (WA)

³ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler

SUPPRESSION ORDERS

5. After considering written submissions filed by Mr J Berson, counsel for the Police, and on hearing his further oral submissions, I made the following suppression orders pursuant to section 49(1)(b) of the Coroners Act, on the basis that it would be contrary to the public interest:

Suppression Order No.1 (made on 16 March 2020)

- (a) there be no reporting or publication of the name, picture or any other identifying features of the witnesses referred to as Tactical Operator 33, Tactical Operator 42, Tactical Operator 17, Tactical Operator 19 and Tactical Operator 6;
- (b) there be no reporting or publication of details about the decision making criteria, response times, resourcing and any other operational aspects of the WA Police Force Tactical Response Group;
- (c) there be no reporting or publication of the methodologies, response times or resourcing of the WA Police Force Tactical Response Group Negotiators Unit; and
- (d) there be no reporting or publication of the sections of the Police Manual that are applicable to the WA Police Force Tactical Response Group, as a specialist unit.

Suppression Order No.2 (made on 16 March 2020)

there be no reporting or publication of the details of any of the versions of the WA Police Force Emergency Driving Policy and Guidelines, including, but not limited to any cap on the speed at which officers are authorised to drive.

Suppression Order No.3 (made on 17 March 2020)

there be no reporting or publication of the sections of the policies referred to in Exhibit 1, Volume 1, Tab 38 of the Brief.

Suppression Order No.4 (made on 18 March 2020)

there be no reporting or publication of the details of any of the versions of the WA Police Force Firearms Policy, being FR-01.02.

Suppression Order No.5 (made on 30 April 2020)

there be no reporting or publication of any portion of the Police Tactical Group Operations Manual produced by the Australia-New Zealand Counter Terrorism Committee (version April 2016).

MR NIELSEN

Background

6. Mr Nielsen was born in Perth on 1 April 1988⁴ and had two children from a previous relationship. In September 2016, Mr Nielsen and a woman he had known for a number of years (who I will refer to as Person A), began a relationship. At the time, Mr Nielsen was living on the streets, and Person A allowed him to move in with her.⁵ Person A played a central role in Mr Nielsen's death because, as I will explain, she was an unwitting accomplice of the Police.
7. Person A says that Mr Nielsen was a very private person and kept his life with his friends very separate from his life with her. He was very secretive with others and she had only met one of his friends. Person A said Mr Nielsen told her about his upbringing so that she could understand some of his "quirks", and he had limited contact with his own family.⁶
8. Mr Nielsen spent Christmas Day 2016 with Person A and her family. Person A's mother said she felt comfortable in his presence and had never seen Mr Nielsen use illicit drugs. She said she was aware he had been homeless and had previously associated with "some bad people" but was happy Mr Nielsen was seeing her daughter. She thought he was "good" for Person A and made her happy.⁷
9. Mr Nielsen had previously been in a two year relationship with a woman I will refer to as Person B. He and Person B had lived together in an apartment in York until April 2016, when they were evicted. Thereafter, they lived out of several cars until 26 September 2016, when Mr Nielsen moved to Northam. Mr Nielsen had told Person B that he was living in Northam with a person called Tim, but she later discovered that in fact, he was living with Person A.⁸

⁴ Exhibit 1, Vol. 1, Tab 1, P100: Report of Death

⁵ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 3-5

⁶ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 7-12

⁷ Exhibit 1, Vol. 1, Tab 13, Statement - Person A's mother, paras 9-13

⁸ Exhibit 1, Vol. 1, Tab 14, Statement - Person B, paras 3-21

Criminal History

10. Before his death, Mr Nielsen had accumulated 21 convictions for offences including: driving under the influence of alcohol, breach of violence restraining order, driving without a licence, possession of methylamphetamine, dangerous driving whilst evading police and unlawful possession of a firearm.⁹
11. On 7 December 2016, in the Northam Magistrates Court, Mr Nielsen was sentenced to two concurrent terms of imprisonment of six months and one day, each suspended for 12 months. The terms were imposed for the offences of dangerous driving to evade police and driving without a licence whilst under suspension.¹⁰

*Issues relating to mental state*¹¹

12. Person A and her mother both felt that Mr Nielsen had mental health issues, although he does not appear to have been formally diagnosed.¹² During the period 11 - 13 April 2017, in separate conversations he had with Person A, Person A's mother and Person B, Mr Nielsen said that he would kill himself rather than surrender to police.^{13,14,15}
13. Mr Nielsen was reportedly estranged from members of his family and was the subject of a violence restraining order protecting his father that superseded an order from 2007, which had protected his mother.
14. By the time of his death, Mr Nielsen had clearly formed the fixed, seemingly unshakeable belief that because he was the subject of two suspended imprisonment orders, if he was arrested by police, he would be sent to prison for seven to eight years.

⁹ Exhibit 1, Vol. 1, Tab 1A, Criminal and Traffic Offence History

¹⁰ Exhibit 1, Vol. 1, Tab 1A, Criminal and Traffic Offence History

¹¹ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, pp17-19

¹² Exhibit 1, Vol. 1, Tab 10, Report - Det. Sgt M Downey (Internal Affairs Unit), p107

¹³ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras10 & 62-63

¹⁴ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 59-61, 72-78 & 84-85

¹⁵ Exhibit 1, Vol. 1, Tab 14, Statement - Person B, paras 10, 46, 52, 58-64, 106-109 & 108-125

EVENTS LEADING TO MR NIELSEN'S DEATH

Background

15. Sergeant Taylor (Officer Taylor), the officer in charge of Mundaring Police Station, was initially the Investigating Officer (IO) with respect to driving and burglary offences allegedly committed by Mr Nielsen. Officer Taylor conducted inquiries aimed at locating him, including visiting addresses in Northam.¹⁶
16. On 12 April 2017, the investigation into the offences allegedly committed by Mr Nielsen was handed over to Detective Senior Constable Psaila-Borrie (Officer Psaila-Borrie), from Midland Detectives, who became the IO.^{17,18,19}
17. For the reasons discussed below, police formed the view that Mr Nielsen was an armed and dangerous offender, who was a risk to members of the public and needed to be apprehended. Several attempts were made to apprehend Mr Nielsen, culminating in a plan to arrest him when he attended a meeting with Person A at the Tennis Club.
18. Police were aware that Mr Nielsen's mental state was deteriorating and that he had said he would not surrender to police, and would take his life rather than do so. Perhaps the first link in the chain of events that culminated in Mr Nielsen's death was his alleged theft of firearms.

Theft of Firearms

19. Sometime between 23 December 2016 and 3 January 2017, two firearms were stolen from a locked gun safe, inside a locked shed on a rural property in St Ronans, about 12 kilometres north-west of York. A power tool had been used to cut open the gun safe and the firearms were identified as a .22 calibre Ruger semi-automatic rifle and a 12-gauge Beretta pump-action shotgun (the Firearms).^{20,21}

¹⁶ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, pp3-4

¹⁷ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p4

¹⁸ Exhibit 1, Vol. 1, Tab 17, Statement - Det. Sen. Const. L Psaila-Borrie, paras 2-13

¹⁹ ts 16.03.20 Psaila-Borrie, pp11-13

²⁰ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p3

20. Police suspected that Mr Nielsen was responsible for the theft of the Firearms because he was an associate of the owner of the Firearms and had visited that person's property and been shooting there. Mr Nielsen was also aware of the location of the Firearms and was subsequently seen by another associate, in possession of a rifle and a shotgun, which matched the description of the Firearms.^{22,23}
21. An associate of Mr Nielsen's told police that Mr Nielsen stole the Firearms from a "mate" because of an unpaid drug debt. The associate also said that Mr Nielsen would not stop for police and kept a loaded shotgun on the back seat of his car.²⁴ It was later established that the shotgun seized by police after Mr Nielsen's death bore the same serial number as the one allegedly stolen from the St Ronans property.^{25,26} It therefore seems reasonable to conclude that Mr Nielsen obtained possession of the Firearms unlawfully.

Police interaction with Mr Nielsen prior to 13 April 2017

22. In the days prior to 12 April 2017, Mr Nielsen was suspected of being the driver in two instances of failing to stop when called upon by police.²⁷ At about 1.30 pm 12 April 2017, Officer Psaila-Borrie was conducting enquiries at a house in Mount Helena. On leaving the property, he saw a vehicle thought to have been used by Mr Nielsen and after activating the police car's lights and sirens, he gave chase.^{28,29,30}
23. The driver of the vehicle failed to stop, and police deployed a "stinger" device³¹ which incapacitated the car's front left hand tyre. The driver continued at speed, with no regard for the safety of other road users and eventually abandoned the car and fled into bushland on foot. A wallet containing various cards in Mr Nielsen's name was found in the car.^{32,33}

²¹ Exhibit 1, Vol. 1, Tab 17A, Incident Report (03 Jan 17)

²² Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p4 and see also: ts 17.03.20 (TO78), p141

²³ Exhibit 1, Vol. 1, Tab 9, Email from FCC A Biggs to Det. Sgt. Fowler, (28.04.17)

²⁴ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p4

²⁵ Exhibit 1, Vol. 1, Tab 17A, Incident Report (03.01.17)

²⁶ Exhibit 1, Vol. 1, Tab 30, Report - Sen. Const. J Inskip, p5

²⁷ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p3

²⁸ Exhibit 1, Vol. 1, Tab 17, Statement - Det. Snr. Const. L Psaila-Borrie, paras 21-40

²⁹ ts 16.03.20 (Psaila-Borrie), pp14-16

³⁰ Exhibit 1, Vol. 1, Tab 17B - Incident Reports (03.04.17 & 12.04.17)

³¹ A device designed to stop a vehicle by puncturing its tyres

³² Exhibit 1, Vol. 1, Tab 17, Statement - Det. Sen. Const. L Psaila-Borrie, paras 41-57

Interactions with Mr Nielsen - 11 April 2017

24. On the morning of 11 April 2017, Mr Nielsen cooked breakfast for Person A before she left for work. During the day, Officer Taylor went to Person A's workplace and told her that police wanted to speak to Mr Nielsen about some alleged traffic offences.³⁴
25. Person A was shocked to learn that Mr Nielsen was wanted by police, as she had no prior knowledge of him being involved in any illegal activities. She called her mother who drove from Augusta to Northam to be with her.³⁵
26. Mr Nielsen contacted Person A and asked her to pack his things and meet him in Mundaring. She finished work at 3.00 pm and went home to pack Mr Nielsen's things. She had arranged to meet her mother at Mundaring, but when she arrived there, Mr Nielsen asked her to head to The Lakes Roadhouse and meet him on a gravel road.³⁶
27. Person A and her mother met with Mr Nielsen as he had requested. They spoke to him for several hours and tried, unsuccessfully, to convince him to surrender to police. During that night, Person A and Mr Nielsen exchanged numerous text messages. He said he was cold and tired and she urged him to return home.^{37,38}

Interactions with Mr Nielsen - 12 April 2017

28. On the morning of 12 April 2017, Mr Nielsen phoned Person A, and again, she tried reasoning with him. That afternoon, he called again and told her that police had tried to kill him by putting stingers on the road. When Mr Nielsen called again a while later, he was highly distressed and Person A tried in vain to calm him down. She had to hang up several times because nothing he said was making any sense.³⁹

³³ ts 16.03.20 (Psaila-Borrie), pp16-19

³⁴ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 31-34

³⁵ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 37-42

³⁶ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 43-46

³⁷ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 47-54

³⁸ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 29-47

³⁹ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 55-61

Interactions with Mr Nielsen - 13 April 2017

29. Mr Nielsen called Person A at her work at about 8.00 am on 13 April 2017. He sounded very flat and he repeated his claim that police were trying to kill him. He said he was going to kill himself because he could not face going to jail. Person A rang her mother and said they needed to let police know what he had said.⁴⁰
30. After speaking with her daughter, Person A's mother rang the Mundaring Police Station to speak to Officer Taylor. As he was unavailable, she spoke to Sergeant McEvoy (Officer McEvoy), and passed on the information she had been given about Mr Nielsen's mental state. She told Officer McEvoy that she was worried about Mr Nielsen's mental health and that she and her daughter wanted him safe, before giving Officer McEvoy Mr Nielsen's mobile number.⁴¹
31. Mr Nielsen rang Person A's mother at 8.18 am. He said he was sorry and asked for forgiveness. She pleaded with him to surrender, but he refused. He sent her a text message at 11.17 am, saying the police were trying to frame him for "*so much*". She asked him to call her back, but he refused and sent her a text saying: "*Can't no time. It's OK, I am not scared anymore, just sad*".⁴² As a result of her interactions with him, Person A's mother became convinced that Mr Nielsen was a serious self-harm risk and would kill himself, rather than allow police to arrest him.⁴³
32. Person A rang Officer McEvoy for an update and shortly afterwards, Mr Nielsen called her again to say "*goodbye*". Person A told him not to do anything, but was angry with him for the way he was acting. She called Officer McEvoy back to update her and sometime after 1.30 pm, Officers McEvoy and Thompson came to her workplace. They said the TRG and the Dog Squad were now involved in looking for Mr Nielsen and that his mental health was the "*most important thing*". They asked Person A if she thought Mr Nielsen had a gun, and she said she had no idea and that she had never seen him with a gun before.⁴⁴

⁴⁰ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 62-64

⁴¹ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 63-70

⁴² Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 72-76 & 82-84

⁴³ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 77-78 & 85

⁴⁴ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 69-79

33. At 1.46 pm, Mr Nielsen sent Person A's mother a text message saying: "*If they don't leave me alone I am worried I will be dead*". She was very concerned for his welfare and responded: "*Me too*". He replied saying he was convinced police were "*watching and listening to everything*".⁴⁵
34. At 3.00 pm, Officers McEvoy and Thompson returned to Person A's workplace and asked her to help them pinpoint Mr Nielsen's location.⁴⁶ Person A went to the station, and says she heard police speaking about Mr Nielsen in a derogatory fashion. She was unhappy about this and began to wonder if she had done the right thing by agreeing to help.⁴⁷
35. Meanwhile, at the request of Officer Psaila-Borrie, Person A's mother attended the Mundaring Police Station. At about 3.25 pm, she had a brief phone conversation with Mr Nielsen in the presence of Senior Sergeant Winstone (Officer Winstone), a TRG negotiator. Mr Nielsen said he was tired and wanted to go somewhere to sleep, but he refused to disclose his location.^{48,49,50}
36. Person A's mother was concerned that Mr Nielsen would discover that she and Person A were helping police find him and asked Officer Winstone: "*You're not going to shoot him are you?*". The reply was that the safety of herself and Person A were the foremost priority and that police did not want to shoot Mr Nielsen. Officer Winstone told her that police would arrange to have Mr Nielsen's mental health assessed once he was in custody.⁵¹
37. While all this was happening, Mr Nielsen was in the company of Person B as she drove him around the Mundaring area. At one stage, Mr Nielsen told Person B that he intended to take his life. She became very emotional and told him she would kill herself too. Eventually, at about 4.30 pm, Person B dropped Mr Nielsen off at the home of a man I will refer to as Person C.^{52,53}

⁴⁵ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 91-93

⁴⁶ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 82

⁴⁷ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 85

⁴⁸ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 103-121

⁴⁹ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p4

⁵⁰ Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, paras 16-19 and ts 16.03.20 (Winstone), p51

⁵¹ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 125-128

⁵² Exhibit 1, Vol. 1, Tab 14, Statement - Person B, paras 86-135

38. Meanwhile, Person A decided she would meet her mother at The Lakes Roadhouse and wait there to see if Mr Nielsen contacted her. On her way to the roadhouse, Mr Nielsen called and said he was tired and wanted to sleep. She suggested that they meet up and Mr Nielsen agreed. He suggested a meeting at the Tennis Club at 5.00 pm.
39. Person A arrived at The Lakes Roadhouse at about 4.20 pm and spoke to two police officers who met her there. She sent text messages to Mr Nielsen saying she was running late and he told her not to worry and that he would be at the Tennis Club at 5.20 pm.^{54,55,56}
40. Police were very reluctant for Person A to attend the meeting with Mr Nielsen. They were concerned about having a non-police person involved in the apprehension of Mr Nielsen. However, Person A made it clear she was determined to attend the meeting and said she wanted to speak with Mr Nielsen once he was in custody.^{57,58}
41. Police received information that Mr Nielsen was moving in the direction of the Tennis Club and TRG officers regrouped to that location in anticipation of Mr Nielsen's arrival.⁵⁹ Person A had agreed to wait a short time to enable police to move into position, but became impatient and left The Lakes Roadhouse and drove to the Tennis Club to meet Mr Nielsen.^{60,61}

⁵³ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p5

⁵⁴ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 123-124 & 129

⁵⁵ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p5 and ts 16.03.20 (Psaila-Borrie), p33

⁵⁶ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 87-90 & 94-96

⁵⁷ Exhibit 1, Vol. 1, Tab 15, Statement - Det. Sen. Const. T Duncan, paras 98-100 & 107-109

⁵⁸ Exhibit 1, Vol. 1, Tab 35, Statement - Det. FC. Const. K Higgs, paras 88-90

⁵⁹ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p5

⁶⁰ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 97-100 & 101-102

⁶¹ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 133-135

Contact with Person C

42. Meanwhile, sometime around 4.30 pm on 13 April 2017, Person C arrived home from work to find Mr Nielsen waiting for him. Person C lived in Boya with his dog, and knew Mr Nielsen from school, but didn't have much contact with him.⁶²
43. Person C noticed that Mr Nielsen was carrying a long object that was wrapped in a sheet or similar. When they went inside the house, Mr Nielsen told Person C that the object was a shotgun and that police were "*after him*". Mr Nielsen asked for a lift and Person C refused saying he "*didn't want to have anything to do with it*". Mr Nielsen went outside for a few minutes before coming back inside and again asking for a lift. Eventually, Person C reluctantly agreed to give him a lift because he wanted to get rid of Mr Nielsen as quickly as possible.⁶³
44. Before they left the house, Mr Nielsen said that he would use the shotgun on himself if he was apprehended by police, but at no stage did he say that he intended to shoot police. At one point, Mr Nielsen turned on his mobile to make a call and told Person C that he had to turn it on and off because the police were tracking him.⁶⁴
45. Before they got into Person C's black Ford Falcon sedan (the Ford), Person C asked Mr Nielsen if the shotgun was loaded because he intended to take his dog with him in the Ford. Mr Nielsen assured Person C that the shotgun was not loaded and they set off for the Tennis Club with Person C driving.⁶⁵
46. The shotgun, which was still wrapped in a sheet, was placed between the right-hand edge of the front passenger seat and the centre console of the Ford.⁶⁶ As it happens, the shotgun was subsequently found to have been loaded.⁶⁷

⁶² Exhibit 1, Vol. 1, Tab 19, Statement - Person C, para 3-14

⁶³ Exhibit 1, Vol. 1, Tab 19, Statement - Person C, para 19 & 22-36 & 38-45

⁶⁴ Exhibit 1, Vol. 1, Tab 19, Statement - Person C, para 58-63 & 81-85

⁶⁵ Exhibit 1, Vol. 1, Tab 19, Statement - Person C, para 101-102

⁶⁶ Exhibit 1, Vol. 1, Tab 19, Statement - Person C, para 104

⁶⁷ Exhibit 1, Vol. 1, Tab 30, Report - Sen. Const. J Inskip, pp5-6 & 30

TRG OPERATIONS - 13 APRIL 2017

General

47. The TRG provides specialist skills and capabilities beyond the scope and expertise of general duty police. In the present case, the TRG were asked to assist in locating Mr Nielsen, who was regarded as a risk to the public.⁶⁸

Search of Pine Plantation

48. At about 12.30 pm on 13 April 2017, TO38 called his superior officer, Inspector Hooper (Officer Hooper), about a request the TRG had received to assist Mundaring Police to locate Mr Nielsen by searching a pine plantation, where it was believed he might be.⁶⁹

49. Officer Hooper was told that Mr Nielsen had been involved in several police pursuits and was believed to be in possession of a stolen rifle and shotgun. Officer Hooper was also told that Mr Nielsen was possibly on foot, but may have access to a vehicle and that he had telephoned his partner to say “goodbye”.⁷⁰

50. Officer Hooper approved the plan to search for Mr Nielsen and the TRG set off for the pine plantation. However, subsequent information suggested that Mr Nielsen was no longer in the area and the planned search was abandoned. It was decided that TRG officers would remain at the Mundaring Police Station until 3.30 pm, to see if any further information emerged about Mr Nielsen’s whereabouts.⁷¹

51. Officer Hooper said he was “*highly motivated*” to apprehend Mr Nielsen because he considered him to be a significant risk to the community, to himself and to any police officer who might inadvertently stop Mr Nielsen’s car. Just before TRG officers returned to their home base, further information about Mr Nielsen was received.⁷²

⁶⁸ Exhibit 1, Vol. 1, Tab 39, Statement - Supt. D Leekong, paras 2-3

⁶⁹ Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, para 15 and ts 16.03.20 (Hooper), p68

⁷⁰ Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, para 22 and ts 16.03.20 (Hooper), pp68-69

⁷¹ Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, paras 29-37 and ts 16.03.20 (Hooper), pp69-70

⁷² Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, paras 38 & 47 and ts 16.03.20 (Hooper), pp71-73

52. At 1.29 pm on 13 April 2017, police received information suggesting Mr Nielsen may be in the vicinity of a house in Mahogany Creek. The information was forwarded to the TRG with a further request for help on the basis that it was feared that Mr Nielsen was armed.⁷³

Cordon and Call

53. At 3.22 pm, further information suggested that Mr Nielsen was now at an abandoned house in Darlington and police asked officers from the TRG for assistance. TO78 proposed a “*cordon and call*” operation at the abandoned house, which involved establishing a secure perimeter around the property and calling for any occupants inside to surrender.^{74,75,76,77}
54. Officer Hooper approved the cordon and call operation and the plan was enacted at about 5.05 pm.⁷⁸ As it turned out, Mr Nielsen was not at the house and TRG officers returned to the Mundaring Police Station, in case they were needed further. Meanwhile, Officer Psaila-Borrie had sent officers to The Lakes Roadhouse in case Mr Nielsen met Person A and her mother there. He received advice that Person A was planning to meet Mr Nielsen at the Tennis Club at 5.00 pm.^{79,80,81,82,83,84,85}

The snatch arrest

55. Once police became aware that Mr Nielsen and Person A had agreed to meet at the Tennis Club, it was decided to apprehend Mr Nielsen when he arrived by means of an opportunistic surprise apprehension, or “*snatch arrest*”.^{86,87,88}

⁷³ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p4

⁷⁴ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p5

⁷⁵ Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, paras 20-28 and ts 16.03.20 (Winstone), p54

⁷⁶ Exhibit 1, Vol. 1, Tab 24, Statement - TO78, paras 75-77 and ts 17.03.20 (TO78), pp124-125

⁷⁷ Exhibit 1, Vol. 1, Tab 17, Statement - Det. Sen. Const. L Psaila-Borrie, paras 124 & 129

⁷⁸ Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, paras 47-59 and ts 16.03.20 (Hooper), pp77-78

⁷⁹ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p5

⁸⁰ Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, para 28

⁸¹ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 37-38 and ts 17.03.20 (TO6), pp194-196

⁸² Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 24-37 and ts 18.03.20 (TO38), pp251-253

⁸³ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 25-35 and ts 17.03.20 (TO19), pp156-157

⁸⁴ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 37-38 and ts 17.03.20 (TO17), pp223-226

⁸⁵ Exhibit 1, Vol. 1, Tab 17, Statement - Det. Sen. Const. L Psaila-Borrie, paras 136-141 & 145-149

⁸⁶ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p10

⁸⁷ Exhibit 1, Vol. 1, Tab 17, Statement - Det. Sen. Const. L Psaila-Borrie, paras 150-155

⁸⁸ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, para 17

- 56.** Police were aware that Mr Nielsen and Person A had previously met at the Tennis Club. On those occasions, Mr Nielsen had arrived on foot and been unarmed.^{89,90,91,92,93,94} However, several of the TRG officers said they had no information about how Mr Nielsen would arrive at the Tennis Courts⁹⁵ and another said he was not told about the possibility that Mr Nielsen may have access to a vehicle.⁹⁶
- 57.** With respect to snatch arrests, in the vast majority of cases the offender surrenders, even on those rare occasions when the offender is armed. The reason seems to be the element of surprise and the fact that the offender becomes overwhelmed by the sight of TRG officers.⁹⁷
- 58.** Typically, the plan for a snatch arrest is devised by a more junior TRG officer in written form and is accompanied by a written risk assessment. The written plan and risk assessment is then approved by more senior TRG officers before the plan is enacted.
- 59.** In this case, there was limited time between TRG officers deploying to the Tennis Club and the expected arrival of Mr Nielsen and Person A. In those circumstances, it was not feasible to draft a written plan or risk assessment for the snatch arrest.^{98,99,100,101}
- 60.** Instead a verbal plan and risk assessment were prepared and subsequently approved by Officer Psaila-Borrie and Officer Hooper. None of these approvals were recorded by the individual officers or in the TRG running sheet.^{102,103,104,105}

⁸⁹ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p5

⁹⁰ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 38-41

⁹¹ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 37-40

⁹² Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 48-49

⁹³ Exhibit 1, Vol. 1, Tab 24, Statement - TO78, paras 79-82

⁹⁴ Exhibit 1, Vol. 1, Tab 15, Statement - Det. Sen. Const. T Duncan, para 76

⁹⁵ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 42 and see also: ts 18.03.20 (TO38), p254

⁹⁶ ts 17.03.20 (TO19), p159

⁹⁷ ts 17.03.20 (TO78), p243 and ts 17.03.20 (TO6), p215

⁹⁸ Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, paras 75-76 and ts 16.03.20 (Hooper), p78

⁹⁹ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p86

¹⁰⁰ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 41 and ts 17.03.20 (TO19), p157-158

¹⁰¹ Exhibit 1, Vol. 1, Tab 24, Statement - TO78, paras 83

¹⁰² Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, paras 75-76 and ts 16.03.20 (Hooper), p78

¹⁰³ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p86

¹⁰⁴ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 41 and ts 17.03.20 (TO19), pp157-158

¹⁰⁵ Exhibit 1, Vol. 1, Tab 24, Statement - TO78, paras 83 and ts 17.03.20 (TO78), p128

61. Although he was “*highly motivated*” to apprehend Mr Nielsen,¹⁰⁶ Officer Hooper says he only approved the snatch arrest plan on the basis that: Mr Nielsen was on foot; was not carrying a firearm; it was daylight; and Mr Nielsen was not able to escape in Person A’s car.^{107,108,109}
62. TO78, who was TO38’s immediate superior, says he told TO38 about the conditions imposed on the snatch arrest by Officer Hooper.¹¹⁰ TO38 was in charge of the TRG team carrying out the snatch arrest. Following Mr Nielsen’s death, TO38 told Detective Sergeant Downey (Mr Downey), who was then an investigator with the Internal Affairs Unit (IAU), that he was unaware of any of these conditions.^{111,112} Obviously, the absence of any written record of relevant decisions relating to the snatch arrest means that I am unable to resolve this apparent miscommunication.
63. Initially, police considered that the snatch arrest strategy was low risk on the basis that it was being conducted in public by the TRG. Further, it was expected that Mr Nielsen would be on foot and therefore, probably unarmed. However, Officer Psaila-Borrie and TO19 both agreed that once it was realised that Mr Nielsen was in a vehicle being driven by another person, the risk associated with the snatch arrest increased quite significantly.^{113,114}
64. Within the context of the conditions placed on the snatch arrest by Officer Hooper, the evidence is that the possibility that Mr Nielsen might arrive in a vehicle was still considered. According to Officer Hooper, if Mr Nielsen arrived at the Tennis Club in a vehicle but did not get out, the snatch arrest would not have been initiated. The plan was never to apprehend Mr Nielsen when he was in a motor vehicle, a strategy which is inherently more dangerous.^{115,116}

¹⁰⁶ See also: ts 17.03.20 (TO78), pp126-127

¹⁰⁷ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, pp100-101

¹⁰⁸ Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, paras 71-72

¹⁰⁹ ts 16.03.20 (Hooper), pp79-81 & 85-86

¹¹⁰ ts 17.03.20 (TO78), p133

¹¹¹ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p102

¹¹² ts 18.03.20 (TO38), p264

¹¹³ ts 16.03.20 (Psaila-Borrie), pp34-36

¹¹⁴ ts 17.03.20 (TO19), p160

¹¹⁵ ts 16.03.20 (Hooper), pp79-82

¹¹⁶ See also: ts 17.03.20 (TO78), pp131-132

65. As it turned out, when Mr Nielsen arrived at the Tennis Club in the Ford and got out to speak to Person A, the snatch arrest was initiated. However, instead of surrendering, Mr Nielsen got back into the Ford. There was no formal plan to deal with this scenario, and instead, Officer Hooper's expectation was that TO38 "*would make the appropriate decisions at that stage*".¹¹⁷
66. As far as TO38 was concerned, the snatch arrest was to proceed regardless of the manner in which Mr Nielsen arrived.¹¹⁸ At the inquest, TO38 said that from his perspective, it was important that the snatch arrest take place when Mr Nielsen was on foot. TO38 said that if Mr Nielsen arrived in a vehicle and didn't get out, TRG officers would have waited for him to exit the vehicle, because they wanted to avoid: "*a pursuit with an armed offender*".¹¹⁹
67. Although there have been situations in which TRG operations have been aborted once initiated, the evidence in this case was that when the snatch arrest had been initiated, there was no possibility it being aborted. This was because of the risk to TRG officers and others of doing so.^{120,121}
68. As for Person A's involvement, I agree with the assessment of Acting Superintendent Heise (Officer Heise) who conducted a review of the TRG's efforts to apprehend Mr Nielsen. Officer Heise said that in his view, Person A should have been briefed as to what to expect during the snatch arrest by the TRG negotiator.^{122,123}
69. As Person A's mother pointed out, neither she nor Person A had any "*appreciation of what the TRG really do or how high of a risky situation that Person A was put in*". Person A's mother says that had she known Mr Nielsen was likely to be armed, she would have talked Person A out of meeting him.¹²⁴

¹¹⁷ ts 16.03.20 (Hooper), pp80-81

¹¹⁸ Exhibit 1, Vol. 1, Tab 24, Statement - TO38, paras 87 and ts 18.03.20 (TO38), p265

¹¹⁹ ts 18.03.20 (TO38), p254

¹²⁰ ts 16.03.20 (Hooper), pp87-89

¹²¹ See also: ts 17.03.20 (TO19), p182 and ts 17.03.20 (TO78), pp139-141

¹²² Exhibit 1, Vol. 1, Tab 36, Statement - Insp. D Heise, paras 41 & 46-48 and ts 16.03.20 (Heise), pp102-103

¹²³ Exhibit 1, Vol. 1, Tab 36, Report - Insp. D Heise, p5

¹²⁴ Exhibit 1, Vol. 1, Tab 12, Statement - Person A's mother, paras 170-171

Mr Nielsen and Person A arrive at the Tennis Club

70. In preparation for the snatch arrest, TRG officers arrived at the Tennis Club and concealed themselves from view. Once in position, they waited for the order to initiate the snatch arrest.^{125,126,127,128,129}
71. At about 5.27 pm, Officer Winstone, who had changed into plain clothes, saw a person she believed was Mr Nielsen in the front passenger seat of a dark coloured Ford Falcon. She called TO78 to tell him what she had seen.^{130,131} For his part, TO78 denies that he was told by Officer Winstone that she believed Mr Nielsen was in the car. Instead, he says she told him that the person in the car “*looked familiar*”.¹³²
72. In any event, the Ford drove away from the Tennis Club, but shortly afterwards, Officer Psaila-Borrie saw it heading back. Meanwhile, at about 5.29 pm, Person A arrived at the Tennis Club in a red RAV 4. She parked her car next to the Ford and walked towards Mr Nielsen, who had exited from the Ford.^{133,134,135,136}

The snatch arrest plan is enacted

73. Mr Nielsen and Person A spoke to each other for a few moments, and knowing that the police intended to arrest Mr Nielsen, she told him “*It’s not safe*”. As she said this, the order to initiate the snatch arrest was given and TRG officers in several vehicles moved in to arrest Mr Nielsen. TO38 and TO19 approached the Ford from the rear and stopped about three metres behind it. At about the same time, TO6 and TO17 parked their vehicle in front of the Ford, effectively boxing it in.^{137,138,139,140,141,142}

¹²⁵ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p5

¹²⁶ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 50-59 and ts 17.03.20 (TO6), pp200-201

¹²⁷ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 43-50 and ts 18.03.20 (TO38), pp254-255

¹²⁸ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 43-46 and ts 17.03.20 (TO19), p163

¹²⁹ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 61-69 and ts 17.03.20 (TO17), pp226-227

¹³⁰ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p6

¹³¹ Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, paras 32-39 & ts 16.03.20 (Winstone), pp53-54

¹³² ts 17.03.20 (TO78), pp133-134

¹³³ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p6

¹³⁴ Exhibit 1, Vol. 1, Tab 17, Statement - Det. Sen. Const. L Psaila-Borrie, paras 168-175

¹³⁵ ts 16.03.20 (Psaila-Borrie), pp35-36

¹³⁶ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 103-107

¹³⁷ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 111-114

¹³⁸ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 71-83 and ts 17.03.20 (TO6), pp199-201

74. TO6 got out of his vehicle and ordered Mr Nielsen to stop. At the time, Mr Nielsen was walking back to the Ford. He ignored TO6's order, got into the front passenger seat of the Ford and shut the door. TO6 and TO17 each tried unsuccessfully to smash the Ford's front passenger window with their weapons.^{143,144,145,146}
75. Meanwhile, TO38 took up a position about two metres from the rear passenger door of the Ford. TO38 pointed his TASER at the vehicle and ordered Mr Nielsen to get on the ground. TO19, who was at the rear driver's side door of the Ford, also drew his TASER.^{147,148}
76. At about this time, Person A was standing at the rear of her RAV 4 in the vicinity of the TRG officers. She then moved so that she was between TO6 and TO17.^{149,150}
77. Officer Winstone, who was observing events from a distance, feared that Person A would "*get in the middle of the officers doing their job*" or posed "*a risk to the officers*" and at great personal risk, she ran towards Person A to apprehend her.¹⁵¹
78. It appears that TO6 opened the Ford's front passenger door, although he does not recall doing so.¹⁵² TO17 saw Mr Nielsen reach into the front passenger foot well and pick up an object that appeared to be wrapped in a sheet. As Mr Nielsen unwrapped the object, TO17, TO38 and TO6 realised it was a pump action shotgun and they all shouted words to the effect of "*gun, gun, gun, drop the gun*".^{153,154,155}

¹³⁹ Exhibit 1, Vol. 1, Tab 20A, Statement - TO6, paras 3-5

¹⁴⁰ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 6-67 and ts 18.03.20 (TO38), p257

¹⁴¹ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 84 and ts 17.03.20 (TO19), pp167-171

¹⁴² Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 80-81 and ts 17.03.20 (TO17), pp228-229

¹⁴³ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 111-114

¹⁴⁴ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 71-83 and ts 17.03.20 (TO6), pp201-203

¹⁴⁵ Exhibit 1, Vol. 1, Tab 20A, Statement - TO6, paras 3-5

¹⁴⁶ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 80-81 and ts 17.03.20 (TO17), pp230-231

¹⁴⁷ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 6-67 and ts 18.03.20 (TO38), p257

¹⁴⁸ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 84 and ts 17.03.20 (TO19), p173

¹⁴⁹ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, para 91 and ts 17.03.20 (TO17), pp233-234, 236 & 241-242

¹⁵⁰ ts 17.03.20 (TO19), pp172-173, although TO19 thought this happened after shots were fired

¹⁵¹ Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, paras 47-51 and ts 16.03.20 (Winstone), pp56-58

¹⁵² ts 17.03.20 (TO6), pp212-213

¹⁵³ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 86-94 and ts 17.03.20 (TO6), p205

¹⁵⁴ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 68-72 and ts 18.03.20 (TO38), pp258-259

¹⁵⁵ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 80-81 & 84-89 and ts 17.03.20 (TO17), pp232-233

Mr Nielsen is shot

79. TRG officers repeatedly yelled “*Police open the door*” and “*Put the gun down*” but there was no response from Mr Nielsen. At about this time, TO19 opened the Ford’s rear driver’s side door and saw Mr Nielsen holding a shotgun in both hands. As Mr Nielsen placed the muzzle of the shotgun under his chin as if to shoot himself, TO19 shouted “*TASER, TASER, TASER*” and fired his TASER at Mr Nielsen.^{156,157,158,159,160}

80. The TASER is an electrical weapon that fires two small barbed electrodes attached to wires that puncture the skin of the offender. The electrodes deliver an electric current that is designed to cause “*neuromuscular incapacitation*” and thereby subdue the person.¹⁶¹ In this case, one of TASER’s electrical probes hit Mr Nielsen’s right cheek, but the other probe missed. As a result, despite the TASER being activated for three consecutive cycles, Mr Nielsen was not subdued.¹⁶²

81. During this time, TRG officers continued to call on Mr Nielsen to drop his weapon and get on the ground as Person A called out: “*Thorvald, stop, please stop*”. However, Mr Nielsen ignored these instructions and instead, he moved the shotgun from under his chin to his right shoulder. The shotgun’s muzzle now pointed at TO19, who dropped his TASER and drew his pistol. In the time it took for TO19 to bring his pistol the “ready” position, Mr Nielsen moved the shotgun across to the left side of his body, so that the muzzle was now pointing at TO6 and TO38.^{163,164,165,166,167} By this stage, Person A was understandably distressed and was “*very animated*”. She was waving her arms around and screaming at Mr Nielsen to stop.^{168,169}

¹⁵⁶ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 116-117

¹⁵⁷ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p7

¹⁵⁸ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 97-99 and ts 17.03.20 (TO6), pp206-207

¹⁵⁹ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 85-96 and ts 17.03.20 (TO19), pp174-176

¹⁶⁰ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, para 96 and ts 17.03.20 (TO17), p233

¹⁶¹ Exhibit 1, Vol. 1, Tab 29, Report - Mr C Markham

¹⁶² Exhibit 1, Vol. 1, Tab 22, Statement - TO19, para 99 and ts 17.03.20 (TO19), p176

¹⁶³ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 120-123

¹⁶⁴ Exhibit 1, Vol. 1, Tab 8, Report - Det. A/Sen. Sgt. L Fowler, p7

¹⁶⁵ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 97-102 and ts 17.03.20 (TO6), pp206-207

¹⁶⁶ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 99 and 102-110 & ts 17.03.20 (TO19), pp176-178

¹⁶⁷ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 95-108 & ts 17.03.20 (TO17), p237

¹⁶⁸ Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, paras 47-51 & ts 16.03.20 (Winstone), p57

82. TO6 fired one round from his rifle into Mr Nielsen's left upper thigh. As TO6 moved to his right and prepared to fire a second round, TO38 fired one round from his pistol through the Ford's rear passenger window and the front passenger seat, and it struck Mr Nielsen in the neck. Mr Nielsen continued to move the shotgun around and TO17 fired one round from his rifle into Mr Nielsen's abdomen.^{170,171,172}
83. Before he fired his weapon at Mr Nielsen, TO17 considered other force options. He said that given the circumstances, he did not consider that either a baton, OC spray or TASER would have effectively subdued Mr Nielsen and thereby remove the imminent threat he posed.¹⁷³ Meanwhile, TO38 observed that Mr Nielsen was still pointing the shotgun in the direction of TO6 and he fired a second round from his pistol through the Ford's rear passenger window, striking Mr Nielsen in the shoulder.^{174,175}
84. TO19 heard the gunshots but was unsure whether Mr Nielsen had discharged the shotgun. TO19 saw that after the initial gunshots, Mr Nielsen had maintained his grip on the shotgun, which was still pointing it at TO6 and TO17. TRG officers continued to order Mr Nielsen to drop his weapon, but he continued to move it around. TO19 fired one round from his pistol and struck Mr Nielsen in the back of the neck. At this point, Mr Nielsen slumped forward and the shotgun lowered into his lap.^{176,177,178}
85. While all this was happening, Person A was two to three metres from the Ford in the general vicinity of the TO6 and TO17. After Officer Winstone heard the sound of five gunshots, she ran towards Person A and after some initial resistance, managed to move her to a position of comparative safety.^{179,180,181}

¹⁶⁹ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 124-127 & 130-132

¹⁷⁰ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 102-107 and ts 17.03.20 (TO6), pp207-208

¹⁷¹ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 74-77 and ts 18.03.20 (TO38), pp260-261

¹⁷² Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 109-112 & 118 and ts 17.03.20 (TO17), p238

¹⁷³ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, para 113-117 and ts 17.03.20 (TO17), pp220-221

¹⁷⁴ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 108-109 and ts 17.03.20 (TO6), pp208-209

¹⁷⁵ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 78-79 and ts 18.03.20 (TO38), p261

¹⁷⁶ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 108-109 and 17.03.20 (TO6), p209

¹⁷⁷ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 78-79 and ts 18.03.20 (TO38), p262

¹⁷⁸ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 115-124 and ts 17.03.20 (TO19), pp178-180 & 186

¹⁷⁹ Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, paras 47-59 and ts 16.03.20 (Winstone), pp57-58

¹⁸⁰ Exhibit 1, Vol. 1, Tab 16, Statement - Const. C McKay, para 49

86. Given that Person A was not moved to safety until after TRG officers had fired five rounds at Mr Nielsen, it follows that she was in their vicinity as those shots were fired. Person A could hardly have been in a more perilous situation. When Mr Nielsen pointed a loaded shotgun in the direction of TO6 and TO17, Person A was in their general vicinity. Any risk to those TRG officers was also a risk to her.^{182,183}
87. Person A had previously expressed concern about the fact that when police arrested Mr Nielsen, he would assume that she had assisted them. She was told that in order to give the impression that she was as surprised as Mr Nielsen, when the arrest was made, she should shout and scream. However, at the only briefing Person A received, she was given very limited information. Officer Duncan told her not to allow Mr Nielsen to get into her car or take her keys and not to approach any of the police while they were apprehending Mr Nielsen. She was also told that the plan was to apprehend Mr Nielsen before he reached her car.^{184,185,186,187,188}
88. Critically, other than being told not to approach the officers involved in arresting Mr Nielsen, Person A was not given any detailed instructions as to what to expect during the snatch arrest, nor what to do once the snatch arrest had been initiated. Person A's location during the snatch arrest does not appear to have been considered in any detail, or at all and there was no formal plan to ensure her safety. Although Officer Heise considered the snatch arrest had been carried out in accordance with TRG training and procedures, he was critical of the fact that Person A had not been appropriately briefed to ensure she was better "*controlled*" during the snatch arrest.^{189,190} At the inquest, TO6, TO17, TO38 and TO78 all expressed the view that Person A should have been briefed on what to expect once the snatch arrest had been initiated.^{191,192,193,194}

¹⁸¹ Email: Person A to Ms K Heslop (12.03.20)

¹⁸² Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, paras 47-59 and ts 16.03.20 (Winstone), p57-58

¹⁸³ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 91 and ts 17.03.20 (TO17), p236

¹⁸⁴ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p87

¹⁸⁵ Exhibit 1, Vol. 1, Tab 35, Statement - Det. FC. Const. K Higgs, paras 86-87

¹⁸⁶ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 99-100

¹⁸⁷ Exhibit 1, Vol. 1, Tab 15, Statement - Det. Sen. Const. T Duncan, paras 101-103 & 105

¹⁸⁸ Exhibit 1, Vol. 1, Tab 17, Statement - Officer Psaila-Borrie, para 168-175 and ts 16.03.20 (Psaila-Borrie), p42

¹⁸⁹ Exhibit 1, Vol. 1, Tab 36, Statement - Insp. D Heise, paras 41 & 46-48 & ts 16.03.20 (Heise), pp102-103

¹⁹⁰ See also: ts 16.03.20 (TO17), p241

¹⁹¹ ts 17.03.20 (TO6), pp213-214

The aftermath of Mr Nielsen's shooting

89. After Mr Nielsen had been shot by TRG officers, TO19 contacted TO78 and requested an ambulance urgently. TO17 removed the shotgun from the Ford and secured it as Mr Nielsen was removed from the vehicle and given first aid, including CPR.^{195,196,197}
90. Ambulance officers arrived on the scene at 5.45 pm and took over resuscitation efforts. Initially, there was some electrical activity in Mr Nielsen's heart, but as resuscitation efforts continued, this electrical activity ceased.^{198,199} Mr Nielsen was taken to St John of God Hospital Midland, but despite the efforts of hospital staff, he could not be revived. Mr Nielsen was declared deceased at 6.15 pm on 13 April 2017.²⁰⁰
91. Whilst providing first aid to Mr Nielsen, TRG 17 had tried to locate a medic pack, which contained essential first aid equipment, but was unsuccessful. Contrary to established procedures, it transpired that none of the TRG vehicles at the Tennis Club was carrying one. Instead, TRG officers used their own personal first aid kits.²⁰¹
92. I am concerned that none of the TRG vehicles at the Tennis Club was carrying a medic pack. I accept that there are a limited number of medic packs and that for operational reasons, they are not always carried in every TRG vehicle.²⁰²
93. Nevertheless, in this very serious situation, no medic packs were available at the scene at all. Instead, TRG officers were obliged to use their personal first aid kits, which are smaller and not as well-equipped.^{203,204,205}

¹⁹² ts 17.03.20 (TO17), p240

¹⁹³ ts 18.03.20 (TO38), pp265-266

¹⁹⁴ ts 17.03.20 (TO78), pp138 & 143-144

¹⁹⁵ Exhibit 1, Vol. 1, Tab 21, Statement - TO38, paras 81-93 and ts 18.03.20 (TO38), p262

¹⁹⁶ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 126-128 and see also: ts 17.03.20 (TO78), p137

¹⁹⁷ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 124-125 and ts 17.03.20 (TO17), pp239-240

¹⁹⁸ Exhibit 1, Vol. 1, Tabs 27 & 27A, SJA patient care record & Statement - Mr S Menz, paras 32-70

¹⁹⁹ Exhibit 1, Vol. 1, Tab 27B, Statement - Ms C Sainsbury, paras 10-89

²⁰⁰ Exhibit 1, Vol. 1, Tab 28, St John of God Public Hospital - Medical Notes & Death in hospital form

²⁰¹ ts 17.03.20 (TO17), p240 and see also: ts 17.03.20 (TO6), p209 & ts 17.03.20 (TO19), p162

²⁰² ts 17.03.20 (TO19), pp209-210

²⁰³ Exhibit 1, Vol. 1, Tab 20, Statement - TO6, paras 114 and ts 17.03.20 (TO6), pp209-210

²⁰⁴ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 129-132 and ts 17.03.20 (TO17), p240

94. Officer Hooper said he expected that medic packs would be available, and noted that the designated medic for a TRG operation would “normally carry the medic pack”.²⁰⁶
95. After Mr Nielsen and the shotgun had been removed from the Ford, Person C, whose dog was sitting on his lap, was removed from the driver’s seat of the Ford and handcuffed. Person C thought he was complying with instructions from TO33 to get out of the vehicle and was therefore surprised when he was hit on the head five or six times by a “hard metal object”.²⁰⁷
96. For his part, TO33 says he was concerned that Person C may have been armed when he ordered him to get out of the Ford. TO33 says that because Person C was not responding to his commands, he “lightly tapped” him to the side of the head with his handgun.²⁰⁸
97. It is reasonable to assume that as he had just witnessed Mr Nielsen being shot by TRG officers, Person C would have been understandably dazed and disorientated. For that reason, his recollection of events may not be entirely accurate.
98. However, it is noteworthy that Officer Psaila-Borrie says that after Person C had been removed from the Ford and arrested, Person C told him he had been hit on the head “a couple of times”.^{209,210} An ambulance officer noted that Person C had a large lump on the top of his head and Person C was taken to hospital by ambulance.^{211,212}
99. Person C’s comments to Officer Psaila-Borrie and the ambulance officer’s observations, tend to support Person C’s version of events. Notwithstanding the extremely dangerous situation that confronted TRG officers during the snatch arrest, it would be most unfortunate if Person C was in fact struck in the head in the manner he recalls.

²⁰⁵ See also: ts 17.03.20 (TO19), pp162-163

²⁰⁶ ts 16.03.20 (Hooper), p83

²⁰⁷ Exhibit 1, Vol. 1, Tab 19, Statement - Person C, paras 143-145 & 153-160

²⁰⁸ Exhibit 1, Vol. 1, Tab 26, Statement - TO33, paras 79-87

²⁰⁹ Exhibit 1, Vol. 1, Tab 17, Statement - Det. Sen. Const. L Psaila-Borrie, paras 198-206

²¹⁰ ts 16.03.20 (Psaila-Borrie), p37

²¹¹ Exhibit 1, Vol. 1, Tab 17, Statement - Det. Sen. Const. L Psaila-Borrie, paras 198-206

²¹² ts 16.03.20 (Psaila-Borrie), p37

USE OF FORCE

Criminal Code

- 100.** The *Criminal Code* authorises the Police to use force while effecting an arrest.²¹³ However, in any case where the use of force by a police officer is lawful, the use of more force than is justified is unlawful.²¹⁴
- 101.** A harmful act, including the killing of another, is lawful if the act is done in self-defence. An act is done by a person in self-defence if:
- (a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and
 - (b) the person's harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and
 - (c) there are reasonable grounds for those beliefs.²¹⁵

Police Manual

- 102.** Provisions of the Police Manual deal with the circumstances in which force may be used by police officers. Force options available to general duty police officers include: the baton, OC spray,²¹⁶ the TASER and a pistol. TRG officers also have additional firearms options.²¹⁷
- 103.** After carefully considering the evidence, I am satisfied that when TO6, TO17, TO19 and TO38 discharged their firearms and shot Mr Nielsen, they each had reasonable grounds to believe there was an imminent risk to their own lives, and the lives of their colleagues. At the relevant time, Mr Nielsen had control of a pump-action shotgun which he was pointing at them. It was reasonable for TRG officers to assume that it was loaded, as in fact it turned out to be. I am further satisfied that the TRG officers considered using less lethal force options, and did in fact deploy a TASER, which unfortunately did not subdue Mr Nielsen.²¹⁸

²¹³ Criminal Code, section 231

²¹⁴ Criminal Code, section 260

²¹⁵ Criminal Code, section 248

²¹⁶ Oleoresin capsicum is the oil derived from the stem of peppers, hence the colloquial term "pepper spray"

²¹⁷ ts 17.03.20 (TO19), pp161-162rare

²¹⁸ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, para 113-117 and ts 17.03.20 (TO17), pp220-221

- 104.** The Police Manual also deals with the circumstances in which force options, including firearms, may be used by police officers. As noted, I made suppression orders in relation to the police policies that were tendered into evidence, including policies relating to the use of force and the use of firearms. I therefore do not intend to set out the relevant provisions of those policies here.
- 105.** However, having carefully considered all of the available evidence, I am satisfied that the use of lethal force by each of TRG officers, namely: TO6, TO17, TO19 and TO38, was justified by the circumstances and was in accordance with the relevant provisions of the *Criminal Code* and the Police Manual. In this respect, I agree with the conclusion reached by Mr Downey in his IAU report into the conduct of the police officers involved in the attempted arrest of Mr Nielsen.²¹⁹

²¹⁹ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p110

CAUSE AND MANNER OF DEATH

Post Mortem Examination

106. Two forensic pathologists, (Dr Kueppers and Dr Vagaja) conducted a post mortem examination of Mr Nielsen's body on 19 April 2017. They found the following injuries:²²⁰

- i.** one gunshot wound to the back of Mr Nielsen's neck with associated spinal cord damage;²²¹
- ii.** two gunshot wounds to the back of his left shoulder, with associated damage to his chest organs; and
- iii.** two "*pass-through*" wounds with an entry and exit wound to his left thigh and anterior torso respectively.

107. The forensic pathologists also noted a superficial skin defect on Mr Nielsen's right cheek, which was consistent with the known history of him having been struck in that area by a TASER probe. There was evidence of resuscitation efforts, but they found no significant underlying disease was found.²²²

108. Toxicological analysis found amphetamine and methylamphetamine in Mr Nielsen's system and a urine alcohol level of 0.01%. The testing did not detect cannabinoids or other common drugs.²²³

Cause of Death

109. At the conclusion of the post mortem examination, Dr Kueppers and Dr Vagaja expressed the opinion that the cause of Mr Nielsen's death was multiple gunshot wounds. I accept and adopt that conclusion.

110. Taking account of all of the circumstances in this case, I find that **the manner of Mr Nielsen's death was homicide by way of self-defence.**

²²⁰ Exhibit 1, Vol. 1, Tab 4, Report - Supplementary post mortem, p1

²²¹ See also: Exhibit 1, Vol. 1, Tab 6, Report - Neuropathology, confirming traumatic spinal cord damage

²²² Exhibit 1, Vol. 1, Tab 4, Report - Post mortem, p9

²²³ Exhibit 1, Vol. 1, Tab 5, Report - Toxicology: Final (16.05.17)

ISSUES ADDRESSED BY THE INTERNAL AFFAIRS UNIT

Background

111. Following Mr Nielsen's death, the IAU conducted an investigation to examine the conduct of all police involved in the incident. The investigation considered five allegations against police officers and made the following findings:²²⁴

- a. an allegation that TO6, TO17, TO19 and TO38 had used unnecessary force contrary to regulation 609(b) of the *Police Force Regulations 1979* (Regulations) was not sustained;
- b. allegations that by failing to record critical decisions, Officer Hooper, Officer Psaila-Borrie and TO78 had each breached regulation 605(1)(b) of the Regulations were sustained; and
- c. an allegation that Officer Psaila-Borrie had acted in a manner likely to bring discredit on the Western Australian Police Force by not disclosing critical information to Person A and Person A's mother that placed Person A's personal safety at risk contrary to regulation 601(2) of the Regulations was not sustained.

Recording of key events and decisions

112. In his review of the TRG operation, Officer Heise was critical of the fact that Person A had not been appropriately briefed prior to the snatch arrest. He was also critical of record keeping by TRG officers during and after the snatch arrest operation,^{225,226} for example, he noted:

- a. there was no record of any of the conversations between TO78 and Officer Hooper;
- b. there was no record of any risk assessment being conducted with respect to Person A meeting Mr Nielsen nor any record of any consultation with the negotiator as to how this was to occur; and

²²⁴ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, pp3-4

²²⁵ Exhibit 1, Vol. 1, Tab 36, Statement - Insp. D Heise, paras 41 & 46-48

²²⁶ Exhibit 1, Vol. 1, Tab 36, Report - Insp. D Heise, pp5, 7 & 13 and ts 16.03.20 (Heise), pp102-103

- c. there was no record of the plan relating to the snatch arrest, including the decision to allow Person A and unarmed police officers to be within the vicinity of TRG Officers as they carried out the snatch arrest.

113. In his IAU report, Mr Downey, found that Officer Hooper, TO78 and Officer Psaila-Borrie had all failed to comply with relevant police policies by not making a record of key decisions. In each case, the officers were the subject of formal sanctions and were counselled.^{227,228}

114. Specifically, Officer Hooper failed to record his approvals of the cordon and call and snatch arrest operations. He also failed to record the conditions that he placed on the snatch arrest operation (i.e.: that the arrest would occur in daylight, that Mr Nielsen was to be on foot and unarmed and that he was not to drive away in Person A's car), and he failed to record any of his discussions with TO78. Officer Hooper acknowledged that this had been a poor decision on his part and he confirmed that he now used a recording device to keep an audio record of key events and decisions.^{229,230}

115. For his part, TO78 failed to record his conversations with Officer Hooper or TO38 concerning the conditions that applied to the snatch arrest. He also made no record of his decision to allow Officer Winstone and another unarmed officer to deploy to the Tennis Club.²³¹

116. Finally, Officer Psaila-Borrie failed to record his decision to approve the snatch arrest or the conditions which had been placed on the operation. Critically, he also did not record the reasoning behind his decision not to tell Person A that it was possible that Mr Nielsen would be armed when he attended the Tennis Club.²³²

²²⁷ Exhibit 1, Vol. 1, Tab 36, Statement - Insp. D Heise, para 49 & ts 16.03.20 (Heise), pp102-103

²²⁸ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey

²²⁹ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, pp100-101 & ts 16.03.20 (Hooper), p84

²³⁰ Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, para 83

²³¹ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p102

²³² Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p103

Not telling Person A that Mr Nielsen might be armed

117. At the relevant time, Officer Psaila-Borrie was the IO with respect to the offences allegedly committed by Mr Nielsen, and was therefore in charge of the operation to locate him.

118. Officer Psaila-Borrie made a conscious decision not to tell Person A that Mr Nielsen might be armed when she met him at the Tennis Club, in circumstances where police had credible information that in fact, Mr Nielsen might be armed. Police also suspected that Mr Nielsen may have access to a vehicle, which would have made the transport and carriage of a firearm not only possible, but more likely.^{233,234}

119. Officer Psaila-Borrie says that although he regarded Mr Nielsen as a risk to himself and the general public, he did not tell Person A that Mr Nielsen might be armed when she met him. His reasoning was that the snatch arrest was a low risk strategy and that in his view, Mr Nielsen did not pose a risk to Person A. Further, the TRG were on hand and would protect Person A whilst they arrested Mr Nielsen.²³⁵

120. The evidence at the inquest was that the use of third parties (like Person A), to assist in apprehending offenders was rare.²³⁶ In light of that fact, I would have expected that the assessment of the risk to Person A, would have been wide-ranging and comprehensive. It was not.

121. Clearly, Person A was unarmed, was not wearing body armour and had not received the specialist training that TRG officers receive which allows them to react predictably in dangerous situations.^{237,238} The risk assessment that was carried out with respect to Person A, seems to have been confined to the perceived risk to her from Mr Nielsen. That risk was regarded as low because Mr Nielsen was in a relationship with her and she was unaware of his criminal activities.

²³³ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p110

²³⁴ ts 16.03.20 (Psaila-Borrie), p45

²³⁵ ts 16.03.20 (Psaila-Borrie), p45

²³⁶ See for example: ts 17.03.20 (TO38), p265

²³⁷ ts 16.03.20 (Hooper), p75; ts 16.03.20 (Heise), pp104-105 and ts 17.03.20 (TO6), pp211-212

²³⁸ ts 17.03.20 (TO6), pp211-212 and ts 17.03.20 (TO19), pp188-189

122. What seems to have been missed is the fact that Mr Nielsen's mental state was known to be deteriorating and therefore, his actions could not necessarily be predicted with any degree of certainty.^{239,240} Another key issue that does not seem to have been adequately factored into the assessment of the risk to Person A, was how she would react, and where she would be, once the snatch arrest had been initiated.²⁴¹

123. Person A's decision to assist police by agreeing to meet with Mr Nielsen was taken in the absence of a crucial piece of information, namely that Mr Nielsen might to be armed.²⁴² Mr Downey's IAU report contains the following passage:

Psaila-Borrie considered that Nielsen being at large posed a greater danger to the general public than the [snatch arrest] would pose to Person A. For that reason, he deliberately didn't tell Person A or Person A's mother about Nielsen possibly being in possession of firearms. He didn't want to risk Person A not meeting with Nielsen and therefore Nielsen not being apprehended as a result.²⁴³

124. When asked about this passage at the inquest, Mr Downey said this was the conclusion he had reached from having interviewed Officer Psaila-Borrie on several occasions. Mr Downey considered that consciously or subconsciously, Officer Psaila-Borrie did not want to risk the possibility that Mr Nielsen might not be apprehended because Officer Psaila-Borrie considered that Mr Nielsen posed a grave risk to the public.²⁴⁴

125. For his part, Officer Psaila-Borrie categorically denied that the concern that Person A might not agree to meet with Mr Nielsen, was any part of his reason for not telling her that he might be in possession of firearms. Officer Psaila-Borrie said he did not tell Person A that Mr Nielsen might be armed because he did not consider she was in any danger and that as a member of the public, she did not need to know.²⁴⁵

²³⁹ ts 16.03.20 (Psaila-Borrie), pp33 & 46

²⁴⁰ Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, para 76 and ts 16.03.20 (Hooper), p85

²⁴¹ ts 16.03.20 (Heise), p105

²⁴² ts 16.03.20 (Psaila-Borrie), p44

²⁴³ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p104

²⁴⁴ ts 18.03.20 (Downey), pp296-297, 300 & 315

²⁴⁵ ts 16.03.20 (Psaila-Borrie), pp44-45 and Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p24

- 126.** Officer Psaila-Borrie says he took account of the fact that Person A had made it clear she was going to meet Mr Nielsen regardless of police involvement and that she had no concerns in meeting him. Further, Mr Nielsen had kept her sheltered from his activities and because he was meeting her in a public place on foot, he was unlikely to be armed.²⁴⁶ However, at the inquest, Officer Psaila-Borrie agreed that he had no contact with Mr Nielsen and that any assessment he made about the risk Mr Nielsen posed to Person A was based on information given to him by others.²⁴⁷
- 127.** At the inquest, Officer Psaila-Borrie properly conceded that Person A was not able to make an informed decision about whether to proceed with meeting Mr Nielsen, because she was not told about the very real prospect that he might be in possession of firearms. Officer Psaila-Borrie also conceded that with the benefit of hindsight, he should have given Person A this information and further, that he would now be more likely to do so if he was ever faced with a similar situation again.²⁴⁸
- 128.** Officer Hooper said that when he approved the snatch arrest plan, he was unaware the Person A had not been told that Mr Nielsen might be in possession of firearms. He said that he assumed she was already aware of this possibility because Mr Nielsen said he was not going to be taken alive by police and some of his friends had seen firearms in the back of his car. Officer Hooper also said he was told that Mr Nielsen was not considered to be a threat to Person A.²⁴⁹
- 129.** At the inquest Officer Hooper,²⁵⁰ Officer Heise²⁵¹, TO6,²⁵² TO17,²⁵³ TO38,²⁵⁴ TO78,²⁵⁵ and Mr Downey²⁵⁶ all agreed that Person A should have been told that police had good reason to believe that Mr Nielsen might be in possession of firearms. In my view, this is unsurprising.

²⁴⁶ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p110 and ts 16.03.20 (Psaila-Borrie), p44

²⁴⁷ ts 16.03.20 (Psaila-Borrie), p45

²⁴⁸ ts 16.03.20 (Psaila-Borrie), p34 & pp45-46

²⁴⁹ ts 16.03.20 (Hooper), pp76-77 and Exhibit 1, Vol. 1, Tab 33, Statement - Insp. D Hooper, paras 76

²⁵⁰ ts 16.03.20 (Hooper), pp76-77

²⁵¹ ts 16.03.20 (Heise), p105

²⁵² ts 17.03.20 (TO6), p212

²⁵³ ts 17.03.20 (TO6), pp229-230

²⁵⁴ ts 18.03.20 (TO38), p253

²⁵⁵ ts 17.03.20 (TO78), p129

²⁵⁶ ts 18.03.20 (Downey), pp297-298

130. With respect to the “*managerial issues*” found to have been sustained by the IAU investigation, Officer Hooper and TO78 were served with an official reprimand (i.e.: a managerial notice) and Officer Psaila-Borrie was served with a less serious “letter of corrective action”.²⁵⁷
131. The allegation that Officer Psaila-Borrie had acted in a manner likely to bring discredit to police was not sustained on the basis that because of his grave concerns for the general public, his decision not to tell Person A that Mr Nielsen might be armed was “*subjective and defensible*”.²⁵⁸
132. At the inquest, Mr Downey further explained, that the reason this allegation was not sustained was that Officer Psaila-Borrie had not acted dishonestly in deciding to conceal information about the fact that Mr Nielsen was likely to be in possession of firearms.²⁵⁹
133. Although I am critical of the decision to conceal relevant information from Person A, it is pleasing that Officer Psaila-Borrie said that he would be less likely to do so again if he was confronted with a similar situation.
134. In my view, the position is very straightforward. In circumstances where the Police intend to use a third party to assist in their investigations, that third party should be informed of all relevant risks. The third party is entitled to make their own assessment of the risk of assisting the Police and it would be quite inappropriate for them not to be given sufficient information to allow an informed decision to be made.

²⁵⁷ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p111 and ts 18.03.20 (Downey), p306

²⁵⁸ Exhibit 1, Vol. 1, Tab 10, IAU Report - Det. Sgt. M Downey, p104

²⁵⁹ ts 18.03.20 (Downey), p310

ENHANCEMENTS

Standard Operating Procedures

- 135.** Superintendent Dene Leekong (Officer Leekong), the officer in charge (OIC) of the TRG, confirmed that work is currently underway to develop a set of Standard Operating Procedures (SOPs) for the TRG. The SOPs will help guide the training of TRG officers and will assist them with the efficient discharge of their duties. It is intended that the SOPs will contain a section dealing with snatch arrests.²⁶⁰
- 136.** Officer Leekong agreed that the benefit of SOPs is that all members of the TRG would be able to familiarise themselves with current approaches to training and procedures. The SOPs would also ensure that TRG operations are conducted in accordance with existing legislative and policy requirements.²⁶¹
- 137.** Officer Leekong said that TRG officers would have been assisted in dealing with the attempted apprehension of Mr Nielsen, had the TRG had SOPs dealing with snatch arrests. He felt that the development of the SOPs would take some months and that the TRG would require additional resources, including additional staff, for this purpose. Officer Leekong said that the additional resources would be required on an ongoing basis to manage the vast amount of equipment owned by the TRG.²⁶²

Additional Negotiators

- 138.** Pleasingly, Officer Leekong said he had taken steps to ensure that an adequate number of negotiators were available to assist TRG officers to carry out operations in an effective and appropriate manner.²⁶³

²⁶⁰ ts 18.03.20 (Leekong), pp280-282 & 286-287

²⁶¹ ts 18.03.20 (Leekong), p287

²⁶² ts 18.03.20 (Leekong), p2880290

²⁶³ ts 18.03.20 (Leekong), pp284-285

COMMENTS ON POLICE ACTIONS

General

139. I accept that police are often called on to react to rapidly changing situations without necessarily having all of the available facts at their disposal. I am also mindful of the phenomenon known as “*hindsight bias*”. This is the common tendency to perceive events that have occurred, as having been more predictable than they actually were before the events took place.²⁶⁴

140. Nevertheless, there are lessons to be learnt from Mr Nielsen’s death, especially in relation to what Person A should have been told prior to her meeting with Mr Nielsen, and the adequacy of the snatch arrest plan.

Actions of General Police

141. Notwithstanding the strong desire on the part of the police to apprehend Mr Nielsen, Person A should have been given sufficient basic information to have enabled her to make an informed decision. Although it seems clear that Person A’s primary concern was for Mr Nielsen’s deteriorating mental state, had she been told Mr Nielsen might be armed, she would almost certainly have refused to meet him. Person A said as much in her statement to the Police at the time, and in a recent email to counsel assisting, Ms Kathryn Heslop.^{265,266}

142. Person A had a right to know what she was letting herself in for. There was no good reason to conceal from her the fact that police suspected that Mr Nielsen was in possession of firearms. The fact that if she had been told Mr Nielsen might be armed she would almost certainly have refused to cooperate with police is neither here nor there.

143. Without Person A’s help, it is difficult to see how the meeting at the Tennis Club could have occurred. In that circumstance, police would have been obliged to continue their efforts to apprehend Mr Nielsen and those efforts might have yielded a different result.

²⁶⁴ See for example: <https://www.britannica.com/topic/hindsight-bias>

²⁶⁵ Exhibit 1, Vol. 1, Tab 12, Statement - Person A, paras 149-151

²⁶⁶ Email: Person A to Ms K Heslop (12.03.20)

- 144.** Because she was unaware that Mr Nielsen might be armed when she agreed to assist police, Person A inadvertently placed herself at risk. I accept that situations where third parties are used by police to assist in the apprehension of an alleged offender are rare. Nevertheless, in my view, no other person should ever be placed in the position that Person A was placed in.
- 145.** Regardless of the experience of the officers making the assessment that Person A was unlikely to be at risk from Mr Nielsen, the simple point is that Person A should have been given the opportunity to make her own assessment of that risk. After all, she was the one most directly affected, she was the one who was in a relationship with Mr Nielsen and she was the one who had spoken with him in the days before the meeting.
- 146.** In this case, it is unclear how any valid assessment of the risk to Person A could have reasonably have been made, in circumstances where Mr Nielsen's mental state was known to be deteriorating. In any event, the possible risk Mr Nielsen posed to Person A was only part of the equation.
- 147.** It was known that Person A would be in the vicinity of armed TRG officers as they attempted to apprehend Mr Nielsen. She was unarmed and was given no detailed information about what to do once the snatch arrest had been initiated. The possibility that she might have been injured by the actions of persons other than Mr Nielsen does not appear to have been considered in any detail, or at all.
- 148.** If, after being properly advised of all relevant risks, Person A had insisted on cooperating with the Police, then a cogent plan to ensure her safety should have been developed. Further, she should have been given a detailed briefing as to what to do before, during and after the snatch arrest operation. If there was insufficient time to achieve all of this before the initiation of the snatch arrest, then the operation should have been aborted.

Actions of TRG Tactical Operators

- 149.** In my view, the cordon and call operation conducted by TRG officers was a sensible and logical strategy, based on the information available at the time. Had Mr Nielsen been located at the abandoned house in Darlington, the outcome in this case may well have had a different trajectory.
- 150.** As to the snatch arrest plan, I accept that police were keen to arrest Mr Nielsen because of the risk he posed to the community. Part of that risk was that he was thought to be armed and it was known that his mental state was deteriorating. He had also shown a proclivity for recklessness during previous police pursuits, and it was feared that a further pursuit might put the lives of innocent people in danger.
- 151.** I therefore accept that on its face, the plan to apprehend Mr Nielsen by means of a snatch arrest was appropriate. The critical question is whether there was sufficient time to plan the operation and to properly consider all relevant risks.
- 152.** I accept that there will be situations where, for operational reasons, it will not be feasible to produce a written plan and risk assessment. However, in those circumstances, the minimum requirement is surely that there is a clear plan, that a sound risk assessment is conducted, and that the plan is appropriately approved. In my view, the snatch arrest plan does not appear to have comprehensively considered the risks to persons other than those directly involved in the snatch arrest (i.e.: Mr Nielsen and the TRG officers).
- 153.** Before the arrest was initiated, it was known (or at least strongly suspected) that Mr Nielsen was a passenger in the Ford being driven by another person. Further, although the general vicinity of the Tennis Club had been checked prior to the snatch arrest being initiated, there is evidence that children were playing sport on an oval 200 metres away and members of the public, including two dog walkers were in the general area.^{267,268,269}

²⁶⁷ Exhibit 1, Vol. 1, Tab 23, Statement - TO17, paras 70-71 and ts 17.03.20 (TO17), p230

²⁶⁸ Exhibit 1, Vol. 1, Tab 22, Statement - TO19, paras 53-54 and ts 17.03.20 (TO19), p164

²⁶⁹ See also: ts 16.03.20 (Psaila-Borrie), p38 and ts 17.03.20 (TO78), pp130-131

154. As I have pointed out, it was also known that Person A would be in the vicinity of TRG officers as they interacted with Mr Nielsen during the snatch arrest. This is presumably why she was told not to approach police involved in Mr Nielsen's arrest.

155. Further, on the basis of good intelligence, police strongly suspected that Mr Nielsen might be armed and they knew he was in a vehicle prior to the snatch arrest being initiated. In my view, all of these factors should have suggested a more cautious approach.

156. As noted, the original plan was to apprehend Mr Nielsen some distance from Person A's car. However, as TO78 pointed out:

the scenario that did play out was contrary to...what the intelligence would have suggested".²⁷⁰

157. It seems clear that Officer Winstone acted on her own initiative when she ran towards Person A in order to apprehend her. However, as commendable as Officer Winstone's bravery clearly was, it is notable that her actions were primarily motivated by her concern for the safety of TRG officers.^{271,272}

158. In any event, because of the distances involved, Officer Winstone was not able to reach Person A until after TRG officers had fired five rounds into Mr Nielsen and subdued him. I am gravely concerned that Person A was able to get so close to armed TRG officers during the snatch arrest operation.

159. There was at least possibility that a stray round might have ricocheted and proceeded on an unpredictable and unintended trajectory. This could have placed those in the vicinity, including Person A, Person C, TRG officers, other police and members of the public, at risk of being seriously injured or even killed.

²⁷⁰ ts 17.03.20 (TO78), p129

²⁷¹ Exhibit 1, Vol. 1, Tab 18, Statement - Sen. Sgt. N Winstone, paras 47-51

²⁷² ts 16.03.20 (Winstone), p56-57

- 160.** I accept the evidence of TO6 and TO19 that the possibility of a round ending up somewhere it wasn't intended was low. However, both TO6, TO19 and Officer Heise all agreed that the risk of a ricochet could not be entirely discounted. For that reason alone, additional time ought to have been allocated to planning the snatch arrest so that a more fulsome consideration of all relevant risks could have been undertaken.^{273,274,275}
- 161.** Whilst TO78 considered that there was sufficient time to address all of the potential risks and evaluate contingencies, he acknowledged that given more time, a better plan could have been devised.²⁷⁶ In my view, even if it was determined that all relevant risks had been appropriately considered, there should have been a formal plan to ensure Person A's safety. In this case, that appears to have been left largely to chance.
- 162.** Although Person A does not appear to have sustained any physical injuries as a result of the snatch arrest operation, she was in close proximity to her partner when he was shot dead by TRG officers. I cannot begin to fathom the potential psychological harm she was exposed to in those circumstances.

Avoiding inadvertent disclosure of operational issues

- 163.** At my request, on 28 May 2020, Ms Heslop, forwarded a draft copy of this finding to Mr Berson to enable the Police to confirm that my description of the facts did not inadvertently reveal any issues protected by the suppression orders I made and which are set out in paragraph five of this finding.²⁷⁷
- 164.** By email dated 5 June 2020, Mr Berson raised one minor issue, which I have since addressed. By email dated 15 June 2020, Mr Berson confirmed that the Police had no further concerns.²⁷⁸

²⁷³ ts 16.03.20 (Heise), pp105-106

²⁷⁴ ts 16.03.20 (TO19), pp150-152, 181 & 187

²⁷⁵ ts 17.03.20 (TO6), p192

²⁷⁶ ts 17.03.20 (TO78), pp128 & 145 and see also: ts 17.03.20 (TO19), pp157-158

²⁷⁷ See: Email to Coroner M Jenkin from Ms K Heslop (02.06.20)

²⁷⁸ Emails to Ms K Heslop from Mr J Berson (05.06.20) & (15.06.20)

RECOMMENDATIONS

165. In light of the observations I have made, I make the following recommendations:

Recommendation No.1

Prior to any deployment, all vehicles being used in a TRG operation should be checked to ensure that between them, those vehicles are carrying a sufficient number of medical/first aid kits.

Recommendation No.2

As a matter of urgency, the TRG should consider developing standard operating procedures (SOP's) with respect to snatch arrest operations and these SOP's should include a requirement to consider the safety of any person assisting the Police, as well as any bystanders. To the extent that the TRG's current resources are insufficient to enable the timely development of SOP's in relation to snatch arrests, those resources should be made available to the TRG immediately.

166. I note that at my request, Ms Heslop forwarded a draft of these recommendations to Mr Berson by email dated 28 May 2020. By email dated 15 June 2020, Mr Berson advised that the Police supported both of the recommendations I intended to make.^{279,280}

²⁷⁹ See: Email to Coroner M Jenkin from Ms K Heslop (02.06.20)

²⁸⁰ Email to Ms K Heslop from Mr J Berson (15.06.20)

CONCLUSION

- 167.** In this case, a cascade of events led to the death of a 29-year old man. There were good reasons why the Police wished to bring Mr Nielsen into custody. It was suspected he was armed and his mental state was deteriorating. He posed a risk to himself and because of his unpredictability, he posed a risk to members of the public.
- 168.** The attempts made by police to apprehend Mr Nielsen, culminated in a fateful meeting between him and his partner, Person A, at the Darlington Tennis Club. Whilst a hastily arranged plan was enacted to arrest Mr Nielsen, Person A was not told that police strongly suspected that Mr Nielsen may be in possession of firearms.
- 169.** Had Person A been given this information, it is unlikely that she would have agreed to attend the meeting. In any event, Mr Nielsen arrived in a car and was armed with what turned out to be a loaded shotgun. He was given numerous opportunities to put the weapon down, but he refused to do so. Initially, he pointed the shotgun at himself, but he then began pointing it at TRG officers, who by that stage had surrounded his vehicle. At that point, by his own actions, Mr Nielsen had placed his life in grave danger.
- 170.** TRG officers shot Mr Nielsen a total of five times, in circumstances where they reasonably believed that their lives and those of their colleagues were in mortal danger. I do not criticise any of them for acting in accordance with their instincts and training.
- 171.** However, in my view, the failure to tell Person A that Mr Nielsen might be armed when he arrived at their meeting is indefensible. I am also concerned that there was insufficient time to properly plan the snatch arrest and that as a consequence, insufficient regard was had to all potential risks. Person A should never have been allowed to get so close to armed TRG officers. While the risk of a stray round striking someone other than Mr Nielsen may have been low, it was not zero. I do not consider that there was sufficient consideration of that potential risk.

172. The death of Mr Nielsen was the tragic culmination of a series of events that began when he stole firearms and armed himself. It ended when he was fatally wounded by TRG officers. It is my hope that future TRG snatch arrest operations will be guided by written policies, in order to help shape decision making and risk management processes.

MAG Jenkin

Coroner

31 August 2020