



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 20th day of October 2015, the 3rd day of December 2015, the 4th day of February 2016, the 16th day of September 2016, the 28th day of February 2018, the 6th, 13th, 16th, 23rd and 29th days of March 2018, the 3rd, 4th and 5th days of April 2018, the 22nd day of June 2018, the 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, 11th, 12th, 13th, 16th, 17th, 18th, 19th, 20th, 23rd and 24th days of July 2018, the 24th day of August 2018 and the 14th day of August 2019, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Alexander Peter Kuskoff.

The said Court finds that Alexander Peter Kuskoff aged 50 years, late of 43 Elwomple Road, Elwomple, South Australia died at Elwomple, South Australia on the 16th day of September 2015 as a result of gunshot wounds to chest and abdomen. The said Court finds that the circumstances of his death were as follows:

1. Introduction and reason for inquest

- 1.1. Mr Alexander Peter Kuskoff was 50 years of age when he met his death at about 11:28pm on the evening of Wednesday 16 September 2015. The place of his death was his own rural property at a location known as Elwomple which is near Taillem Bend. Mr Kuskoff, who lived alone on that property, died when he was shot twice by a police officer attached to the SAPOL Special Task and Rescue (STAR) Group. The STAR Group is a section of the police force that deals with high risk situations. During the inquest the officer who caused Mr Kuskoff's death was referred to by the initials DA. Throughout these findings members of the STAR Group, including DA and others who were involved in the incident that culminated in Mr Kuskoff's death, will be referred to

by initials only. This owes itself to orders of the Full Court of the Supreme Court dated 13 April 2018. I should add here that this Court is aware of the actual identities of these officers. STAR Group officers who were called to give oral evidence during the inquest did so in open court but their identities were not revealed publicly.

- 1.2. During the course of the afternoon and evening of the day in question Mr Kuskoff had been making bizarre and at times threatening phone calls to Police Communications which in the first instance necessitated the attendance of local police at his property. At that time Mr Kuskoff was in possession of what was a veritable arsenal comprising several high-powered firearms including shotguns, bolt action rifles and handguns, together with ammunition for the same. Some of those firearms were properly registered and some were not. They were all kept at the Elwomple property.
- 1.3. It is plain that at the time with which this inquest is concerned Mr Kuskoff was mentally disturbed. It is highly likely that he had been in a pathologically disturbed frame of mind for a considerable duration as evidenced by sustained dysfunctionality as well as by certain behaviours leading up to, and exhibited on, the day and evening in question. Although as far as is known Mr Kuskoff had no prior contact with mental health services, since his death a psychiatric opinion based on his recent and longitudinal known behaviours has been obtained which in my view suggests conclusively that Mr Kuskoff had an undiagnosed mental illness that included paranoid traits. I mention something about this in greater detail throughout the course of these findings.
- 1.4. Mr Kuskoff did not have a criminal record.
- 1.5. As a result of behaviour exhibited by Mr Kuskoff, particularly on the day and evening of his death, police attended his property that evening with a view, pursuant to Section 57(4) of the Mental Health Act 2009, to taking Mr Kuskoff into their care and control and then transporting him to a facility for the purposes of a medical examination and treatment. There is no suggestion other than that his detention under that Act would have been an appropriate course of action. When local police attended his property for these purposes it soon became evident that Mr Kuskoff would not willingly co-operate with police but would act irrationally. Indeed, the situation escalated to such a degree that without provocation Mr Kuskoff fired a number of shots with a high-powered rifle. Although these shots were not fired at police, they were certainly fired in their presence and in their sight and were intended to intimidate police and keep them at bay. This

circumstance rightly gave rise to a conclusion that a situation involving high risk had developed.

- 1.6. In fact, with the possibility in mind that Mr Kuskoff might not be co-operative, even before local police attended the property that evening the STAR Group had already been alerted to the contingency that their attendance might be required, such had been Mr Kuskoff's erratic behaviour during the course of the evening. Mr Kuskoff's contemplated lack of co-operation had come to pass, and then some. The situation was declared 'high risk' so STAR officers made their way from Adelaide to the scene at Elwomple.
- 1.7. The STAR Group attendance at the property did not alter the overall objective that Mr Kuskoff be detained pursuant to the Mental Health Act. The other fact that did not alter was Mr Kuskoff's determination not to be detained. The overall strategy was to endeavour to maintain observation of Mr Kuskoff, to ensure that he would remain on the property and to wait and hope that with or without attempted negotiation he would ultimately capitulate and go willingly with police without the use of force. There is no evidence to suggest that this strategy was anything other than the correct strategy.
- 1.8. The night on which Mr Kuskoff died was very dark. His property of some 67 hectares was somewhat isolated. Its northern border is the Mallee Highway which is a major bituminised road running parallel to the train line between Adelaide and Melbourne. The property was bordered on its western side by Elwomple Road which is a dirt road. A dirt driveway, which is about 430 metres from the intersection of Elwomple Road and the Mallee Highway¹, led from Elwomple Road to a cluttered and largely unkempt homestead which is situated only a relatively short distance from the road. Mr Kuskoff lived in that structure. There were other structures on the premises including a shed which Mr Kuskoff wanted to convert into a church.
- 1.9. Mr Kuskoff was alone on the property at all material times. Throughout the course of the evening and even before members of the STAR Group arrived, Mr Kuskoff could be heard, although not seen, to be firing shots from a high-powered firearm. The only officers who would set foot on his property before Mr Kuskoff was shot were two STAR officers who covertly took up a position in circumstances that I shall describe in a moment. Those officers would have no role in the shooting of Mr Kuskoff that took

¹ Transcript, page 596

place later in the evening. One reason, if not the principal reason, for reluctance of police to enter the property overtly was the utterance of threats by Mr Kuskoff to the effect that he would shoot anyone that came onto his property. No attempt was made to storm the property or take Mr Kuskoff by force.

- 1.10. Upon the arrival of members of the STAR Group an inner cordon was established that involved the placement of four STAR Group officers. The two officers I have mentioned in the preceding paragraph placed themselves approximately 480 metres to the east of the homestead (the black side of the cordon) and another pair were situated in the vegetation along the western side of Elwomple Road diagonally opposite the homestead (the white side). One of those officers was DA, the officer who would shoot and kill Mr Kuskoff.
- 1.11. In the course of setting up the cordon, and after it had been set up, Mr Kuskoff could be heard, and ultimately was seen, to fire shots using a high-powered bolt action rifle. At one point it was suspected by police, although not positively confirmed, that Mr Kuskoff may have deliberately fired at a vehicle being driven by a police officer on the Mallee Highway. It was also believed that Mr Kuskoff fired shots deliberately at a police helicopter that had been deployed to the scene and which was visible and audible in the night sky above the property. None of those shots fired either at the vehicle, if that was the case, or at the helicopter, struck either of those objects. Other shots fired by Mr Kuskoff cannot positively be shown to have been deliberately fired at or in the vicinity of any person or object. However, it is possible that Mr Kuskoff fired in the direction of lights occasionally emanating from police and other vehicles situated on the Mallee Highway several hundred metres to the west of the Elwomple Road intersection.
- 1.12. From spent ammunition cartridges located at the scene it is estimated that throughout the course of the incident Mr Kuskoff fired a total of thirty-seven shots using the rifle that would be located near Mr Kuskoff's body. Of that number thirty-three spent cartridges were located in the general vicinity of the house environs where his body was located and the other four were found at a location on his property adjacent to the Mallee Highway where he had confronted and fired shots in the presence of police who had set

up a command post in that location. That post was situated to the east of the Elwomple Road intersection.

- 1.13. In the event, in circumstances that will be discussed in these findings, and which were extensively ventilated during the course of the evidence presented in the inquest, Mr Kuskoff was shot twice by officer DA who with another STAR officer (AM) had remained in the cordon on the western side of Elwomple Road diagonally opposite the homestead. It is contended that the shooting of Mr Kuskoff by the STAR Group officer DA was as the result of DA forming the belief that he and his partner were in danger of being shot by projectiles fired by Mr Kuskoff from his rifle. At that time Mr Kuskoff was in the vicinity of the homestead. The distance between officer DA and Mr Kuskoff was approximately 141 metres at the time Mr Kuskoff was shot twice.
- 1.14. Mr Kuskoff died at the scene.
- 1.15. There is no doubt that the circumstances surrounding Mr Kuskoff's shooting and death dictate that Mr Kuskoff's death was a death in custody as defined within the Coroners Act 2003. Therefore, a mandatory inquest was held into the cause and circumstances of his death. These are the findings of that inquest.
- 1.16. In this inquest the Court examined a number of issues including the following:
 - Whether there had been earlier opportunities to have afforded Mr Kuskoff the necessary medical treatment prior to the incident in question;
 - Whether there had been opportunities for Mr Kuskoff's firearms and ammunition hoard to have been lawfully removed from his possession;
 - Whether the removal of Mr Kuskoff's hoard of firearms and ammunition would necessarily have meant that on the night in question he would not have been otherwise armed;
 - Whether on the night in question any earlier action on the part of police may have prevented the circumstances in which Mr Kuskoff came to be shot and killed;
 - An examination of the circumstances in which Mr Kuskoff was shot and killed;
 - Whether Mr Kuskoff's death could have been prevented.

- 1.17. In this inquest Mr Andrew Harris QC and Ms Naomi Kereru of counsel assisted the Court. Ms Frances Nelson QC and Mr Stephen McDonald of counsel represented the Commissioner of Police, the Department for Health and Wellbeing and various SAPOL and SA Health witnesses, including officer DA. At the commencement of this inquest I granted leave to Mr Kuskoff's sister, Ms Lena Liemareff, to appear on behalf of the Kuskoff family. It was soon evident that Ms Liemareff was unable to bring an objective mind to the issues at hand and, unsurprisingly given her lay status, did not have the necessary forensic skills to promote her interests and those of her family. Moreover, there was a suggestion that Mr Kuskoff's behaviour both before and on the night in question may have been attributable in part to his irrational attitude towards his siblings and to a fractious incident that had occurred earlier in the evening involving Mr Kuskoff, Ms Liemareff and his brother Sirgey. As well, Ms Liemareff and Sirgey Kuskoff were at the scene, although not in the immediate vicinity, of the shooting of their brother at the time it occurred. She and Sirgey Kuskoff were in fact in the company of police at that time. I add that none of this is said by way of criticism of Ms Liemareff and her siblings. It would have been very difficult for her to have taken part in this long inquest and to have remained appropriately detached throughout. I detected that the proceedings were taking their toll on Ms Liemareff. As a result of all that I invited Ms Liemareff to consider her position and if necessary to obtain legal advice. I was not at all surprised that she decided that she would take no further part in the proceedings. Ms Liemareff and her siblings can be assured, however, that the proceedings were conducted with fairness, balance and thoroughness. This of course is in total keeping with the identities and calibre of counsel appearing in these proceedings. A debt of gratitude is owed to all counsel and those instructing them.
- 1.18. It will become evident during the course of these findings that the act that resulted in Mr Kuskoff's death was a deliberate one in the sense that the officer who fired the fatal shots deliberately did so with the intent that Mr Kuskoff be struck by the projectiles and in the realisation that Mr Kuskoff would probably suffer a fatal wound or wounds as a result. In essence DA's explanation for doing so was self-defence and the defence of the other STAR officer AM whom he was with. I keep in mind the prohibition set out in Section 25(3) of the Coroners Act 2003 that this Court must not make any finding or suggestion of criminal liability. This is not to say, however, that the Court is precluded from making findings of fact and findings in relation to the state of mind of the officer

who fired the fatal shot or shots at the time those shots were fired, from which findings the reader might independently conclude that a criminal offence has or has not been committed.

- 1.19. The law of self-defence is encapsulated in Part 3 Division 2 of the Criminal Law Consolidation Act 1935. I here set out the relevant provisions as they existed in September 2015 and as they still exist²:

15 – Self defence

- (1) It is a defence to a charge of an offence if –
 - (a) the defendant genuinely believed the conduct to which the charge relates to be necessary and reasonable for a defensive purpose; and
 - (b) the conduct was, in the circumstances as the defendant believed them to be, reasonably proportionate to the threat that the defendant genuinely believed to exist.
- (2) It is a partial defence to a charge of murder (reducing the offence to manslaughter) if –
 - (a) the defendant genuinely believed the conduct to which the charge relates to be necessary and reasonable for a defensive purpose; but
 - (b) the conduct was not, in the circumstances as the defendant genuinely believed them to be, reasonably proportionate to the threat that the defendant genuinely believed to exist.
- (3) For the purposes of this section, a person acts for a *defensive purpose* if the person acts-
 - (a) in self defence or in the defence of another; or
 - (b) to prevent or terminate the unlawful imprisonment of himself, herself or another.
- (4) (not relevant)
- (5) If a defendant raises a defence under this section, the defence is taken to have been established unless the prosecution disproves the defence beyond reasonable doubt.

15B – Reasonable proportionality

A requirement under this Division that the defendant’s conduct be (objectively) reasonably proportionate to the threat that the defendant genuinely believed to exist does not imply that the force used by the defendant cannot exceed the force used against him or her.

- 1.20. At the time with which this inquest is concerned SAPOL General Orders which are mandatory in their application stated as follows:

‘Use

A member, community constable or protective security officer may only use a firearm, which includes sighting or levelling it:

- when they believe on reasonable grounds it is necessary to protect life or prevent serious injury and they are satisfied no other means are available; or

² Specifically Sections 15 and 15B of the Criminal Law Consolidation Act 1935

- to lawfully destroy animals or birds.

When using a firearm, every practicable precaution must be taken to minimise any risk to innocent persons.

When attacked by a dog or other animal, consider using other tactical options including a baton or defensive spray to fend it off.'³

- 1.21. The evidence also revealed that there is in existence, and was at the time with which this inquest is concerned, a policy within SAPOL against the use of extremity shooting. Extremity shooting refers to aiming the firearm and firing at a limb of a person as distinct from aiming and firing at a person's centre mass. In practical terms the centre mass would almost invariably be the person's torso⁴. Tendered to the Court was documentation concerning the subject of extremity shooting. This material consisted of a number of memoranda promulgated and signed by senior police officers. The various memoranda which appear to be dated between 2005 and 2008 make it plain that extremity shooting is '*not considered a tactical option*'. One memorandum mandates the reinforcement of the fact that firearms procedures for general police officers do not include '*extremity shooting*'. Another memorandum states as follows:

'Officers when justified in using the tactical option of firearm against a person must always aim at the centre of the seen mass, mainly the chest area, and in the vicinity of all the major organs (heart, spine, etc). At no time are officers taught to attempt a shot at a person in the vicinity of an arm, legs or elsewhere, due to the chances of missing, hitting someone else and not causing instantaneous incapacitation.'

- 1.22. It will be seen that officer DA, the person who shot and killed Mr Kuskoff, aimed his rifle at Mr Kuskoff's centre mass as it was revealed to him through the scope of his rifle. It will be clear that he did not at any stage contemplate shooting at any of Mr Kuskoff's extremities such as an arm or a leg. In light of SAPOL police directives about extremity shooting it is difficult to be critical of DA in selecting Mr Kuskoff's centre mass as his target. This of course is predicated on whether or not it was necessary for DA to have fired at Mr Kuskoff at all. That is a matter that will be discussed later in these findings.

- 1.23. Needless to say, police internal policies, orders and directives cannot supplant the criminal law. Save for extraordinary circumstances such as those contemplated in the

³ Exhibit C111ax, page 41

⁴ Exhibit C142

Terrorism (Police Powers) Act 2005, police officers are as much subject to the rigours of the criminal law as any other citizen even in the execution of their duty.

- 1.24. Apart from the prohibition in Section 25(3) of the Coroners Act to which I have referred, it will need to be borne in mind that the law relating to self-defence as it applies to homicide charges is predicated on the basis that the defence is one that has to be disproved by the prosecution beyond reasonable doubt, that is to say, that if the elements of self-defence are established as a reasonable possibility, the defence to a homicide charge is made out. Clearly that is not the exercise that this Court has embarked upon. I raise this as an issue because in her final address to the Court Ms Nelson QC, on behalf of the Commissioner of Police and individual officers including DA, invited the Court to make express findings that officer DA reasonably considered that the use of his firearm was necessary to protect his life and that of the other officer or to prevent serious injury to them, that there were no other means reasonably available to DA to do so and that the actions of DA were reasonably proportionate to the threat created by Mr Kuskoff's actions in respect of him and the officer with him. It will be noted that questions of reasonableness and proportionality are concepts contained within the self-defence legislation to which I have referred. I deal with Ms Nelson QC's invitation later in these findings.

2. Mr Kuskoff's post mortem examination

- 2.1. Mr Kuskoff's post mortem examination, which consisted of a full autopsy, was conducted by Dr John Gilbert a forensic pathologist employed by Forensic Science South Australia. Dr Gilbert furnished the Court with his post mortem report and he gave oral evidence.⁵
- 2.2. In his report Dr Gilbert expressed the cause of Mr Kuskoff's death as 'gunshot wounds to chest and abdomen'. I accept that opinion and find that Mr Kuskoff's cause of death was gunshot wounds to chest and abdomen.
- 2.3. Mr Kuskoff's toxicology at post mortem revealed that neither alcohol nor common drugs were present in any of his bodily fluids.

⁵ Exhibit C116

- 2.4. In evaluating Mr Kuskoff's post mortem findings it is necessary to discuss ballistics. Both in his report and in his oral evidence Dr Gilbert makes reference to the type of projectile which caused Mr Kuskoff's wounds. The projectiles in question were .308 calibre hollow point copper jacketed bullets. These projectiles were fired from a semi-automatic rifle in the possession of officer DA. The semi-automatic nature of the rifle refers to the fact that one round is fired on each application of the trigger without the need to manually reload a round into the chamber by means of a bolt with an external bolt lever. The rifle had a telescopic sight and was equipped with a device that enhanced night vision through that sight. Officer DA fired three rounds from his rifle and only three rounds, two of which struck Mr Kuskoff. The other round struck and passed through a wooden gate that was situated behind Mr Kuskoff.
- 2.5. By way of contrast, the rifle that Mr Kuskoff possessed and was firing was a Carl Gustafs M/96 bolt action rifle that required manual one-at-a-time reloading of rounds either by way of a loaded magazine or by the manipulation of individual rounds directly into the chamber. The rifle fired 6.5 x 55mm Swedish centre fire ammunition. When examined after the shooting the rifle magazine was empty as was the chamber of the rifle itself. The bolt was open. There was a large amount of spare ammunition for this rifle located in the house. The weapon had open sights without telescopic or night vision capability. In every respect, and as one would expect in the realm of law enforcement, DA's rifle was a vastly more sophisticated and superior weapon, especially in the hands of a trained and skilled marksman such as officer DA.
- 2.6. I should add that when Mr Kuskoff's body was searched after he was shot a functioning and loaded Fabrique Nationale Browning Model 1910 self-loading handgun was located in his rear left pocket. An additional loaded magazine for this weapon was also located in the house. There is no evidence that this weapon was fired by Mr Kuskoff on the night in question.
- 2.7. According to calculations and observations made at the scene after Mr Kuskoff's death, the distance from which the fatal shot or shots were fired was approximately 141 metres. I have accepted that evidence. A suggestion which is understood to have emanated from a member or members of Mr Kuskoff's family to the effect that Mr Kuskoff was shot by a police officer who was in closer proximity to him than 141 metres, and who was allegedly on Mr Kuskoff's property and in very close proximity to him when the

fatal shots were fired, must be rejected⁶. The suggestion has no rational basis and is unsupported by evidence. Indeed, evidence that I will discuss in due course in my view positively refutes that suggestion.

- 2.8. Dr Gilbert's report and oral evidence establishes beyond any doubt that Mr Kuskoff suffered two separate gunshot wounds. This conclusion is not only supported anatomically but is also supported by evidence given by officer DA in which he asserts that Mr Kuskoff appeared to react in a physical manner to two of the shots that he fired and not to the remaining shot he fired.
- 2.9. In his evidence Dr Gilbert dealt with a number of issues of significance including matters such as the possible order in which the wounds were sustained, Mr Kuskoff's position or positions when he was struck by the two projectiles, whether or not when Mr Kuskoff was struck by either projectile he was holding his own firearm in a certain position relative to his body and whether the direction from which Mr Kuskoff was struck by the two projectiles could be established.
- 2.10. Another matter that required evaluation was Mr Kuskoff's chances of survivability. This issue required an examination of the lethality of each wound when considered in isolation from the other as well as the order in which the separate wounds were inflicted. In other words, the question was whether or not he might have survived if only one shot had been fired at Mr Kuskoff and had struck him.
- 2.11. Dr Gilbert gave evidence about the characteristics of the projectile in question and its likely effect on the human body when struck by it. Other evidence was given about these characteristics that did not materially differ from Dr Gilbert's evidence. Indeed, the characteristics are well known. The projectile was a .308 calibre projectile that was copper jacketed and had a hollow point. Upon impact with the human body the projectile quickly fragments and produces extensive internal injury due to fragmentation and expansion. The fragments disperse within the human body and produce very few if any exit wounds. This is due to the hollow point of the projectile. Other evidence given which is not in dispute and which I accept was that this type of ammunition is not the only type of ammunition used by police. However, the ammunition in question is favoured because it is likely to more effectively and more

⁶ The evidence of Andrew Plummer at Transcript, pages 1351-1354 deals with this theory. Mr Plummer's evidence refutes it conclusively.

quickly disable a person and therefore neutralise the threat that the person is presenting. In addition, because the projectile fragments and disperses within the human body, as distinct from remaining intact and passing through the body, the possibility of collateral and unintended injury to innocent persons who might be struck by the projectile after it passes through its target is significantly minimised. One would make the obvious comment, however, that this scenario was hardly likely to apply in the case at hand given that there was no real or convincing suggestion that anyone would have been at risk of being struck by a projectile after it had struck Mr Kuskoff. However, the evidence adduced before me suggested that the type of ammunition with which DA's rifle was loaded is standard ammunition for police operations such as these, the primary consideration being its ability to more effectively neutralise the target⁷.

- 2.12. The copper jacketed hollow point ammunition was used to fell Mr Kuskoff. It was loaded within the semi-automatic rifle in the possession of officer DA. As will be seen officer DA, as one would expect in a skilled marksman, had a full appreciation of the characteristics and properties of the ammunition he had at his disposal. Indeed, in his evidence he acknowledged that in firing at the centre mass of Mr Kuskoff, in this case at his torso, he realised that he would probably kill Mr Kuskoff. More of that later.
- 2.13. In his report and in his evidence Dr Gilbert described the two gunshot injuries. The known characteristics of the type of projectile that struck Mr Kuskoff were fully in evidence in his autopsy. Dr Gilbert described one gunshot wound, which I will call wound 1, as having involved an entry wound in the left lower forearm with an exit wound from that forearm. There were then multiple re-entry wounds to the torso from fragments emanating from the gunshot wound to the left arm. Dr Gilbert described the internal injuries in detail. There were also a number of exit wounds from fragmented pieces of the original projectile.
- 2.14. The second injury, which I will call wound 2, involved an entry wound to the right lower back. This projectile had also fragmented on impact and had caused extensive internal injuries including to the right kidney, the colon, the liver and the heart. There did not appear to be an exit wound involved with this projectile.

⁷ See the evidence of Inspector DE at Transcript, pages 796-797

- 2.15. In his oral evidence Dr Gilbert suggested that both injuries would have produced similar degrees of incapacity.
- 2.16. Dr Gilbert gave evidence and demonstrated that in his view wound 1 was consistent with Mr Kuskoff holding his rifle with the left hand along the stock with the butt in the vicinity of the right shoulder, in other words, consistent with a conventional right handed aiming position. On the assumption that Mr Kuskoff was standing upright, the rifle in this position would have been approximately parallel to the ground. Dr Gilbert also opined that the wound track was entirely consistent with the projectile having been fired from the direction in which Mr Kuskoff had been pointing his own rifle. As will be seen all of this evidence is consistent with evidence that officer DA would give to the effect that when he fired the first of the shots at Mr Kuskoff he believed that Mr Kuskoff was pointing the rifle in his direction.
- 2.17. Wound 2, involving an entry wound to the right lower back, would not be consistent with the firearm that was used to inflict that injury having been aimed at Mr Kuskoff's front. At the time he was struck Mr Kuskoff clearly had his back presented to the trajectory of this projectile.
- 2.18. There is no suggestion of ricochet in the case of either shot that struck Mr Kuskoff.
- 2.19. Before Ms Liemareff's withdrawal from the proceedings she had taken part in the cross-examination of Dr Gilbert. When pressed in cross-examination by Ms Liemareff, Dr Gilbert suggested that wound 1 could conceivably have been sustained if Mr Kuskoff had been holding the rifle pointed in an upward direction but with the butt in the vicinity of the hip and not at his shoulder at the time he was struck by the projectile. As I understand the point made by Ms Liemareff, it is that firing from the hip in an upward direction is consistent with Mr Kuskoff having sustained wound 1 while he was firing the rifle at or in the direction of the police helicopter and not in the direction of DA. This scenario does not strike me as inherently likely. I think it is more likely that when Mr Kuskoff was firing at or in the direction of the helicopter he would have been sighting the rifle in the usual way, that is to say, with the butt against his shoulder. Dr Gilbert did not suggest in his evidence that wound 1 was consistent with Mr Kuskoff holding the firearm from the shoulder and pointing it in an upward direction. In any event I have accepted the evidence of officer DA who stated (a) that it was at a time after Mr Kuskoff had stopped firing shots in the direction of the

helicopter that he came to fire the fatal shots at Mr Kuskoff, and (b) that he believed that Mr Kuskoff was pointing the rifle in his direction when DA fired his first shot. The notion that Mr Kuskoff's rifle was held in the manner described and that it was parallel to the ground is also supported by the evidence of a SAPOL ballistics expert, Brevet Sergeant Andrew Plummer⁸.

- 2.20. I find that when Mr Kuskoff sustained wound 1 he was supporting his rifle with his left hand at the stock and had the butt against his right shoulder. I also find that the rifle was approximately parallel to the ground and that he was pointing it in the direction of officer DA's location. That is not to say that Mr Kuskoff was necessarily deliberately aiming and firing at DA or his partner. As to whether or not at the point Mr Kuskoff was shot he was aware of their presence and was deliberately firing at them, or at least deliberately firing in their general direction, as distinct from firing his rifle aimlessly, is a question that I will deal with later.
- 2.21. As to the order in which the two discrete injuries were sustained by Mr Kuskoff, Dr Gilbert both in his post mortem report and in his oral evidence expressed the view that wound 1 was sustained first in time. The basis for his opinion was an acceptance of the account given by officer DA that at the time he fired the first shot he believed Mr Kuskoff was aiming the rifle in his general direction. In my view there is another compelling reason for that conclusion. If Mr Kuskoff had sustained wound 2 to the back first, it is highly unlikely that he would have been in any physical condition to have been in the position that I find he was in when wound 1 to the forearm and then to the torso was sustained. It is highly unlikely that having been shot in the back he was able to stand erect and raise the rifle to his shoulder in an attempt to return fire in the direction of the source of the first shot. I reject that scenario as fanciful. The suggestion that wound 1 was sustained first is also supported by the evidence of the ballistics expert, Mr Plummer⁹. Equally, I would also regard as fanciful the notion that Mr Kuskoff could have maintained a composed and erect posture after he sustained wound 1.

⁸ Transcript, page 1324

⁹ Transcript, page 1719

- 2.22. I find that the first injury that was sustained by Mr Kuskoff was wound 1. This was the injury that involved the left forearm and the torso, that is to say the wound that was sustained at the time he was pointing his rifle in the direction of officers DA and AM.
- 2.23. Dr Gilbert also gave evidence about the lethality of both wounds. In particular, he was asked his opinion as to whether or not either injury on its own would necessarily have been fatal. As far as wound 2 is concerned, that is the wound to Mr Kuskoff's back, I accept Dr Gilbert's evidence that this wound would necessarily have been fatal in the short term. Dr Gilbert told the Court that this injury involved massive damage to the right kidney and to the liver which would be expected to produce a substantial amount of internal haemorrhage. He said:

‘If that injury occurred in a remote location it would be difficult, without the intervention of a surgeon, to control that haemorrhage, and that in the short-term would commonly be expected to be lethal that pattern of injury.’¹⁰

He went on to say that these injuries were more significant than the injuries associated with wound 1 and would have been more rapidly lethal. As to how long it would have taken for Mr Kuskoff to succumb to wound 2, he said ‘*I think it would be more in minutes as opposed to minutes to hours*’.¹¹ The mechanism leading to death would have been internal blood loss.

- 2.24. As far as wound 1 looked at in isolation is concerned, Dr Gilbert characterised the resulting internal injuries as on the one hand ‘*potentially fatal*’¹² if left untreated, and on the other ‘*potentially treatable*’. The principal internal injuries of concern were lacerations to the lower lobe of the left lung which would have produced collapse of the left lung and blood loss into the chest. There would also have been blood loss associated with injuries to the skin, to the fractured ribs, as well as muscle damage. Asked as to how quickly Mr Kuskoff might have succumbed to the injuries from wound 1, Dr Gilbert said ‘*One can never be certain but it could be a matter of minutes to hours, I think this pattern of injury is potentially treatable if addressed quickly*’.¹³ Dr Gilbert went on to say that he would have expected surgical intervention to have been required to treat that injury in the short term, with the introduction of a chest tube to drain blood and air and with the replacement of lost blood. He said that if paramedics had been able

¹⁰ Transcript, page 183

¹¹ Transcript, pages 183-184

¹² Transcript, page 176

¹³ Transcript, page 177

to get to Mr Kuskoff shortly after wound 1 was sustained, and they had managed to stabilise him before conveying him to a major hospital such as the Royal Adelaide Hospital, he believed that it would have been a survivable injury. He emphasised, however, that this would only have been so if medical resources had been available within a reasonable period of time. Dr Gilbert said that if treatment could have been instituted quickly, the injury was treatable and he would have expected a good prognosis¹⁴.

- 2.25. Ms Nelson QC on behalf of the Commissioner for Police correctly and relevantly pointed out that it took a number of minutes for medical assistance to be delivered to Mr Kuskoff. This was so because police needed time to approach him and to establish that Mr Kuskoff was no longer a threat before paramedics in turn could be allowed to approach him. With this in mind Dr Gilbert was asked by me what the situation would be if only the first injury had been sustained in terms of Mr Kuskoff's survivability. He said:

'Even with a seven minute or so delay and assuming you have got paramedics on site who can get to him within that period of 10 minutes or so, I reckon there is a reasonable chance of being able to treat him and have him survive that injury. There is nothing - the injury to the lung which as I said was the most significant one, wasn't such that it was going to inevitably cause death because it involved a peripheral area of the lung without many large vessels. So the rate of bleeding I would expect wouldn't be terribly great as opposed to an injury more towards the centre of the lung where we are involving the peripheral area of the lung which is not heavily supplied by large blood vessels.'¹⁵

- 2.26. Dr Gilbert said that on the assumption that both shots emanated from the same point of fire, the first shot probably caused Mr Kuskoff to swing around in an anti-clockwise direction and that in the course of collapsing from the effects of that shot he presented his right lower back to the shooter. The trajectory of the second projectile internally was basically forwards, upwards and to the left. This was consistent with Mr Kuskoff bending over and facing away from the line of fire when he was struck by the second shot. I accept that evidence. To my mind this a strong indication that Mr Kuskoff was significantly incapacitated by that first shot and had therefore been neutralised as a threat. This then brings into question whether or not the second shot was necessary. The answer to that question might depend on whether the shooter had a realisation that his first shot had struck Mr Kuskoff and to what extent if any Mr Kuskoff had been

¹⁴ Transcript, page 187

¹⁵ Transcript, pages 206-207

incapacitated by it. The question would then become whether any hope of survival that Mr Kuskoff had in respect of the first shot was unnecessarily dashed by the second shot. These will all be matters that I will consider when dealing with the evidence of the circumstances surrounding Mr Kuskoff's shooting and the evidence of the shooter, officer DA.

- 2.27. Dr Gilbert dealt with two other issues. The first concerned whether Mr Kuskoff might have survived the injuries if less lethal ammunition had been used. The other issue was whether a gunshot wound to a part of Mr Kuskoff's body other than his torso would have resulted in fatal injuries. Dr Gilbert exhibited some reluctance to offer a conclusive view about either matter. He said that the evaluation of either issue would depend on where the projectile entered the body. However, he said that less lethal ammunition would produce a neater and narrower wound track and that the consequences would be less dramatic. As to the second issue Dr Gilbert said that if a bullet had struck Mr Kuskoff's upper legs it might have brought him down to the ground, but he still might have been able to point the weapon and fire it from the ground. In any event a bullet wound to the upper leg might have had lethality due to injury to the femoral arteries and femoral veins. This could also cause rapid blood loss and cause death within minutes unless the bleeding was controlled with a tourniquet or by firm pressure applied by a person who knew what they were doing. As far as his lower legs being targeted was concerned, again Dr Gilbert would have expected an injury to bring Mr Kuskoff to the ground. There would be blood loss but not to the extent that would be sustained from injury to the femoral artery and the bleeding would be easier to control and be less likely to prove fatal¹⁶. In the event it has not been necessary to reach firm conclusions about these issues as I do not believe that if it was necessary for DA to have fired at Mr Kuskoff at all it would have been a realistic proposition for DA from a distance of 141 metres in the conditions that prevailed and using a sight that provided only limited vision to have aimed at anything other than the centre mass of Mr Kuskoff. And as seen earlier, aiming at the centre mass of the target was in any event SAPOL policy¹⁷.

¹⁶ Transcript, pages 184-185

¹⁷ Exhibit C142 and C142a

3. The evidence of Dr Maria Naso - psychiatrist

- 3.1. Dr Maria Naso is a practising psychiatrist. Dr Naso was engaged to provide an opinion as to a number of matters connected with Mr Kuskoff's recent and longitudinal behaviour. The engagement of Dr Naso was undertaken with a view to establishing whether Mr Kuskoff's behaviour may have been the reflection of an underlying psychiatric illness. In addition, Dr Naso was asked to provide an opinion as to Mr Kuskoff's likely response to police action had a more aggressive approach to his apprehension been taken. Dr Naso provided a written report and also gave extensive oral evidence.
- 3.2. I have alluded to the fact that Mr Kuskoff had no psychiatric history nor any engagement with mental health services in the past. As far as is known there had not been any diagnosis made in connection with his mental health or his behaviour at any stage during his life. Dr Naso's opinions naturally have their limitations having as she had not examined Mr Kuskoff during his life. However, Dr Naso is an experienced psychiatrist who to my mind had an excellent grasp of the facts surrounding Mr Kuskoff's death and of his exhibited behaviours during life. In my view her opinions as to his behaviour and the underlying causes of it are of value in this case.
- 3.3. In other sections I will deal with the evidence of Dr Naso as it might illuminate certain issues that come to be evaluated particularly as they relate to Mr Kuskoff's anticipated behaviour and predictability. However, in this section I will simply outline in general terms the nature of Dr Naso's opinions concerning Mr Kuskoff.
- 3.4. Dr Naso gave evidence about a number of matters which can be summarised as follows:
- That Mr Kuskoff had been experiencing psychotic symptoms for a significant period of time but had an ability to cover them up;
 - That challenging behaviour on the part of police officers interacting with Mr Kuskoff could potentially place those officers at risk;
 - That it was highly unlikely that Mr Kuskoff would have gone willingly with police in any attempt to apprehend or detain him;

- That Mr Kuskoff's stated sleeping patterns and sleep deprivation was a common trait in people who are psychotic and paranoid due to the perceived need to protect themselves and to protect their environment;
- That in any attempt to apprehend or detain Mr Kuskoff there should have been more than one police officer together with mental health services if available;
- On the day of his death he was quite unwell and had experienced a falling out with his siblings. A premonition that his sister would betray him was validated in his mind and as a result he would have been even more paranoid;
- Mr Kuskoff's calls to 000 which had provided the principal impetus for police attendance at his property were the actions of a man who was floridly psychotic. He displayed nihilistic delusions as evidenced by comments that he made that he had died three days earlier and that there was nothing that could happen to him because he was already dead. This would tend to suggest that Mr Kuskoff believed he was invincible. This belief would make him even more dangerous;
- That the plan on the part of the police to attend with the ambulance service for the purpose of detaining Mr Kuskoff under the Mental Health Act was an appropriate plan;
- That attempts on the part of police to engage with Mr Kuskoff on the evening of his death were tenuous and fractious. This was due to Mr Kuskoff being a highly psychotic man who was hypervigilant. He was also probably responding to hallucinations;
- That on the evening in question there was no way that Mr Kuskoff was going to allow anyone onto his property;
- Mr Kuskoff was entirely unpredictable that evening;
- That it was not an option for police to have left Mr Kuskoff on his property and to have withdrawn in the hope that he would sleep it off and be calmer the following day. Dr Naso opined that the way that Mr Kuskoff was presenting he would have been worse the following morning;
- That the police strategy in cordoning Mr Kuskoff was appropriate from a psychiatric perspective. Dr Naso opined that Mr Kuskoff presented as a risk to himself and to others. He was also at risk of being harmed by somebody in the

public arena. His belief that he had died three days earlier was of significance in this regard;

- That saying that he was listening to God and following God's instructions evidenced that he was experiencing command hallucinations. These commands might be acted upon and as a result Mr Kuskoff could be highly dangerous;
- That Mr Kuskoff's behaviour was more than simply 'letting off steam'. Mr Kuskoff displayed thought disorder and thought disconnection which demonstrated that he was psychotic;
- That the situation that had developed on the night of Mr Kuskoff's death was a highly risky situation as he would not have capitulated peacefully;
- That the firearms and ammunition that Mr Kuskoff possessed were seemingly excessive and were consistent with Mr Kuskoff having a persecutory delusion that required on his part a plan of self-protection. This suggested that Mr Kuskoff had been paranoid for some time. It was possible that if police either alone or with mental health services had approached Mr Kuskoff's house by way of the driveway and had unsuccessfully attempted to detain him either by negotiation or by force, and he had retreated into the house, Mr Kuskoff might have started firing at those people;
- That Mr Kuskoff's siblings were potentially at risk from him;
- Dr Naso agreed with the proposition that a transition from Mr Kuskoff firing apparently indiscriminately to then firing at a target such as a helicopter meant that his behaviour had escalated to a point where he could target specific people whom he believed were in and around his property.

I have accepted all of that evidence. The events of 15 and 16 September 2015 and in particular those of the night of Mr Kuskoff's death need to be viewed against that background.

4. Mr Kuskoff's dealings with the RSPCA

- 4.1. On 22 October 2010 officers of the RSPCA had attended at Mr Kuskoff's property at Elwomple in relation to the condition of his sheep, the allegation being that the sheep had been neglected. After a protracted attendance at the property RSPCA officers removed the sheep. The reason this event was examined during the course of the

inquest was that it conceivably had represented an opportunity for Mr Kuskoff's firearms to have been seized by police. This issue in turn was relevant to the question as to whether or not on the night of Mr Kuskoff's death he would have been in possession of a firearm. Clearly Mr Kuskoff's possession and use of a firearm was the precipitant for the level of police action on the evening of his death.

- 4.2. On the occasion in 2010 a member of the police force, Senior Constable Barry Howson (now retired), had attended the property with the RSPCA officers. The RSCPA officer in charge of the seizure was Mr Timothy Bidgood. Both Mr Bidgood and Mr Howson gave oral evidence at the inquest.
- 4.3. It is not necessary for me to recite every detail of this event and the evidence relating to it. I was not satisfied that Mr Howson's failure to seize Mr Kuskoff's firearms was unreasonable.
- 4.4. During the RSPCA attendance Mr Howson examined Mr Kuskoff's firearm collection and formed the opinion that, as the collection then was and as it was revealed to him, it complied with the necessary requirements under the Firearms Act 1977. At some point Mr Howson was called away on another police matter. Mr Kuskoff became argumentative and obstructive in relation to the activities of the RSPCA officers. It was alleged that during Mr Howson's absence from the property Mr Kuskoff said to Mr Bidgood words to the effect that as Howson had not taken Mr Kuskoff's firearms he could therefore go and get them and shoot every one of the RSPCA officers. The alleged utterance by Mr Kuskoff as understood and related by Mr Bidgood was something of a taunt; it was a thinly veiled reference to the fact that he possessed firearms and that the police officer not having seized them enabled him to shoot the RSPCA officers. Whether and to what extent the RSPCA officers were intimidated by this, on its face it was a serious threat.
- 4.5. There is little doubt in my mind that Mr Bidgood, both in a statement made in 2010 and in his evidence before this Court, accurately related what Mr Kuskoff had allegedly said. When the threat was uttered he notified the police. There is also no doubt from police records that Mr Howson was made aware of the threat on that day via Police Communications. Indeed, as a result of it he returned to the property. When Mr Howson returned to the property he concluded that Mr Kuskoff did not in fact pose

any threat to the RSPCA officers. Mr Kuskoff's behaviour posed no concern to him. He spoke to Mr Kuskoff for an extended period of time. Video footage of the RSPCA activities that day which was tendered to the inquest does not give any strong hint of the effect of any intimidation that Mr Kuskoff may have held out to those officers. They appear to have calmly gone about their work.

- 4.6. Reasonable views might well differ, but I was not satisfied that any discretion that Mr Howson had to seize, or cause to be seized, Mr Kuskoff's firearms had miscarried.
- 4.7. However, in his evidence before this Court Mr Howson readily agreed that the incident should have resulted in him compiling a SAPOL ancillary report which would have been uploaded into the Police Information Management System (PIMS). This report would have recited the events of that day with particular reference to Mr Kuskoff's possession of firearms and any threat actually or allegedly made by him towards RSPCA officers. Such an ancillary report would have remained on the information system and have been available for further reference if Mr Kuskoff was to have come under police notice in the future. Mr Howson failed to compile and file an ancillary report. Of course, Mr Kuskoff did in fact come to the attention of police in 2015. By then he had a prodigious collection of firearms both registered and unregistered. Having regard to Mr Kuskoff's behaviour on 15 and 16 September 2015, his continued right to possess a firearm lawfully or otherwise was a matter that was very much open to question.
- 4.8. I was not satisfied that the events of October 2010 had been a missed opportunity to have prevented what took place in September 2015. It also cannot be known whether if firearms had been seized in 2010 all of them would have been seized, or whether or not by 2015 Mr Kuskoff would have re-armed himself in any case. He plainly had the ability and the wit to enable him to acquire and possess unregistered firearms.
- 4.9. I will mention something more about the lack of an ancillary report in relation to this incident when dealing with the circumstances surrounding the police attendance at Mr Kuskoff's property on the day before the shooting.

5. **Recent background to the events of 16 September 2015**

- 5.1. On 7 and 8 September 2015 Mr Kuskoff conducted a number of protracted telephone conversations with staff of the Australian Taxation Office (ATO). The calls for the most part concern a number of taxation issues raised by Mr Kuskoff that involved the Elwomple property, the estate of his late parents and the tax implications relating to the same. There was also discussion about the setting up of a family trust. In one very long conversation on 7 September 2015 lasting 1 hour and 49 minutes, Mr Kuskoff indicated that his desire was to sell his farm as a going concern. There was discussion about capital gains tax and the possibility of selling the property to the family trust. There is also reference to sheep on the property having been seized by the RSPCA, the event that had taken place in 2010 much to Mr Kuskoff's annoyance to the point where he had virtually threatened to shoot RSPCA officers.
- 5.2. The above was one of two conversations that day that lasted over an hour. There is no suggestion that Mr Kuskoff was overtly irrational, but it is evident from the conversations that took place that he was very persistent and loquacious. On 8 September 2015 there were further lengthy telephone conversations with the ATO, two being over 30 minutes. The subject matter of the telephone conversations appears to be the same as the day before and his demeanour is similar to the previous day.
- 5.3. However, in three further conversations that Mr Kuskoff conducted with staff of the ATO Mr Kuskoff's demeanour was less than rational. In these conversations Mr Kuskoff was quite irrational about the activities of his sister and his sister's business as well his sister's husband whom he appeared to suggest was assaulting his sister. One such conversation lasted approximately 29 minutes and another lasted approximately 46 minutes. In a shorter conversation of approximately seven minutes he identified himself as a Cossack who wanted to protect his sister because she was being raped, a theme that he would also develop in 000 telephone calls to SAPOL. In that conversation he ultimately told the operator to '*piss off*' and hung up. He was yelling and exhibited an agitated demeanour.
- 5.4. In the final telephone conversation with the ATO which lasts for 46 minutes Mr Kuskoff referred to his having rung the police. There is reference to his sister's husband having bashed her. A phone call to the police was also mentioned wherein he had told the police that he thought his sister was dead or dead financially. There is also

reference to the police approaching his sister and that she had been upset with him as a result. Police had in fact approached his sister. I will refer to this matter in a moment.

- 5.5. There are a number of phone calls made to the police on 15 September 2015 as well as on 16 September 2015. The calls to police on 16 September 2015 were made from approximately 6:28pm onwards following an incident at the Elwomple property that had involved Mr Kuskoff's sister Ms Liemareff and a brother.
- 5.6. I will refer firstly to the calls made on 15 September 2015 and action that was taken in respect of those calls.
- 5.7. Mr Kuskoff telephoned the police at 9:57am on 15 September 2015 and told the operator that his sister was being raped and murdered by her husband. He identified himself by name. Asked as to why he believed that his sister was in danger he said that his sister had told him that her husband had tried to murder her. In this call Mr Kuskoff referred to a taxation reason underlying his sister's dangerous situation. He told the operator his sister's name and the nature and location of her business. Mr Kuskoff was shouting and yelling during the course of this conversation. Asked again as to why he thought his sister was in danger he said '*because God told me and you won't believe me*'. At one stage he told the operator to '*piss off*' and referred to her as a '*dumb bitch*'. He urged the operator to send the police to his sister's address. The call terminated with Mr Kuskoff shouting down the phone at the operator.
- 5.8. Ms Ruth Hudson was the operator during the course of that call. She is a Senior Constable First Class of Police. Ms Hudson's statement¹⁸ asserts that she would describe Mr Kuskoff as '*clearly having mental health issues in that he was going off on tangents, was shouting, was rude, aggressive and demanding*'.
- 5.9. Mr Kuskoff again telephoned 000 at 10:03am. This call was taken by another officer, Ms Heather McVicar. Ms McVicar gave oral evidence during the course of the inquest. The transcript of this conversation was tendered to the Court and the call was played. I have listened to this telephone conversation on a number of occasions both in and out of Court. Mr Kuskoff referred to his approaches to the ATO. He identified himself and referred to himself as a Cossack. Mr Kuskoff began by asserting that his sister had been raped and that she was in danger. He said that her husband, whom he identified by

¹⁸ Exhibit C36

name as well as calling him *'that pig'*, had manipulated her. He also referred to his belief that his sister's husband was going to bash his sister. He asked the operator to send the police to her premises. At one stage he appeared to be crying. He also made reference to his sister's husband being a murderer and a swindler and a big fat pig and that for all he knew he may have killed his sister. Kuskoff himself said *'I want to kill the c**t'*. He was yelling which prompted the operator, Ms McVicar, to tell him to stop doing that. She told him that he was getting a little bit out of control. Much of Mr Kuskoff's utterances were disjointed and incoherent and moved from one topic to another topic that was quite unrelated to the first. When asked whether his sister's husband had threatened to kill her he said *'well I don't know if she said that, she's said he has never punched her, but not that I know he has punched her, he puts her in a bear hug'*. Asked as to why the police should be sent, Mr Kuskoff replied *'well he hugged my sister because he is a big man and he is squishing my sister, he wasn't screwing her, he is squishing her and she said that he virtually broke her back after I rang her up she....'* and the audio becomes inaudible at that point. He then went on to say that the husband was going to squeeze the life out of her. He stated that when he was talking to his sister she could barely breathe and was saying *'he will kill me Alex, he will kill me'*. He asserted that she was scared for her life. The call ended with the operator Ms McVicar saying that she would send the police, meaning that she would send the police to see Ms Liemareff.

5.10. Mr Kuskoff again appears to have called police almost immediately after terminating the call with Ms McVicar. This call commenced at 10:23am. On this occasion he spoke to an operator by the name of Emma Van der Linden. The theme of the conversation was the same as before, namely an assertion by Mr Kuskoff that his sister was in danger and that harm had been caused to her by her husband. He requested a patrol to be sent to her address. Ms Van der Linden's statement¹⁹ asserts that it was difficult to obtain information from Mr Kuskoff who was frantic and emotional and who at times raised his voice. He was erratic and she states, *'it seemed to me that he may have been suffering from mental health issues at the time of the call'*.

5.11. Ultimately that day police were able to communicate with Mr Kuskoff's sister, Ms Lena Liemareff. Constables Stratford²⁰ and Turner²¹ spoke to Ms Liemareff in regard to the

¹⁹ Exhibit C38

²⁰ Exhibit C34

²¹ Exhibit C35

allegations that Mr Kuskoff had made. Ms Liemareff told police that although she and her husband were going through a rough patch or something similar, her brother's allegations were not true. When asked as to what had prompted Mr Kuskoff to make these telephone calls with police and to level such allegations she stated that her brother was going through a rough patch in respect of financial issues and thought that the family was turning against him. She stated that Mr Kuskoff was the only unsuccessful member of the family financially. She stated that she believed that her brother had mental health issues and that this was normal behaviour for him. She did not want the police to attend his home address. Rather, she would have a friend or family member see Mr Kuskoff during the day. According to Constable Turner's statement Ms Liemareff was more specific about Mr Kuskoff's financial position in that she said that there was an issue with a Will in which she was going to give her share under the Will to Mr Kuskoff in the hope that it would help him find his feet. She gave police the impression that Mr Kuskoff's behaviour was not out of character for him.

- 5.12. As indicated earlier Ms McVicar, the operator who had received the second of the three calls that Mr Kuskoff made to 000, was called to give oral evidence. Three statements that Ms McVicar had given to investigating police were also tendered to the inquest. As a result of the communication that was made to police on the morning of 15 September 2015, that afternoon a police welfare check was conducted in relation to Mr Kuskoff. I will come to that in a moment. At the time at which this inquest is concerned there was a SAPOL Welfare Check Policy²² which stipulated that in formulating a risk assessment in respect of a communication, a firearm check was an integral part. The document went on to stipulate that such must be conducted '*for all domestic violence and mental health events*'. In her oral evidence Ms McVicar said that if the caller had a history of mental health illness a firearm check would be conducted. Mr Kuskoff did not have a mental health history. Ms McVicar said that she did not perform a firearms check in relation to Mr Kuskoff because under the Policy a check on welfare did not specify such a requirement. That was her oral evidence.
- 5.13. However, in Ms McVicar's first interview with investigating police it is plain that she said that she did not perform a firearms check because it may have been oversight on her part. She said at the time of the interview she felt as if the officer was directing and encouraging her to indicate that she should have performed a firearms check as a mental

²² Exhibit C37f

health issue was involved²³. Ms McVicar said that Mr Kuskoff's mannerisms and demeanour over the phone did concern her²⁴. In cross-examination Mr Harris QC, leading counsel assisting, pointed out to Ms McVicar that she had said in her first statement to the police that during the call Mr Kuskoff had been rambling and at times was highly emotional, ranging from being angry and frustrated to crying. She had said that she had been mainly concerned with his wellbeing and that it was obvious to her that he was suffering from a type of mental health issue. Ms McVicar signed that statement. Ms McVicar had considerable difficulty in explaining that away, particularly when it was also recorded in her second statement that as a call centre operator she knew that she needed to conduct a firearms check on all domestic violence and mental health taskings and that she was surprised that she had not done so on this occasion. Indeed, she had said in that statement that she found it '*highly unusual*' that she had not conducted a firearms check on Mr Kuskoff²⁵. In cross-examination she was adamant, contrary to all that she had said in previous written statements, that in her assessment it was not a mental health incident, '*as I was not able to assess Mr Kuskoff myself as I am not an expert on psychology or mental health*'²⁶. The fallacy of that is manifest in that if the operator needed to be an expert in order to make an assessment that a caller might be suffering from a mental health event or illness, no assessment that mental health issues were at work would ever be made. The result would be that there would never be a firearms check conducted in respect of such a caller. The whole policy would thereby be rendered pointless.

- 5.14. When one listens to the call that Ms McVicar received and when one examines the transcript, the wisdom of hindsight is not required to conclude that Mr Kuskoff was very likely acting under the influence of a mental disturbance. His disturbed frame of mind was not a benign one when regard is had to utterances that suggested he bore an abiding hatred towards his sister's husband, that he was deluded into thinking that the husband was a danger to his sister and that he would kill that person if it was not against the law. A firearms check would have revealed to police at that point that in any dealings with Mr Kuskoff he had the means to act upon any delusion that he might be experiencing.

²³ Transcript, page 223

²⁴ Transcript, page 221

²⁵ Transcript, pages 232-233

²⁶ Transcript, page 233

- 5.15. It is plain and I find that a firearms check should have been conducted by police on 15 September 2015 and that any welfare check that was to be conducted on the basis of the calls made by Mr Kuskoff to police that day should have been an informed one in terms of Mr Kuskoff's firearm access. It will be noted that the firearm that Mr Kuskoff was firing the following night, that is to say the night of his death, was one of the firearms that was registered to him.
- 5.16. This brings me to the check that was conducted by police as a result of the calls made on 15 September 2015. The check was conducted by Constable Daniel Hall at about 11:50am. Constable Hall conducted the check on his own. Fortunately, by then Mr Kuskoff was in a more stable mood.
- 5.17. Constable Hall compiled three witness statements that were tendered to the inquest²⁷ and he gave oral evidence. The information that Constable Hall possessed at the time of his visit to the Elwomple property was that Mr Kuskoff had contacted police and had been ranting and screaming into the phone saying that his sister had been assaulted by her partner. Constable Hall himself did not hear any recording of the conversation. Constable Hall conducted a Police Incident Management System (PIMS) check to determine whether Mr Kuskoff had any prior history relating to criminal offences, drug history or mental health incidents and established that Mr Kuskoff had no such history. He did not perform a firearm check and accordingly was not aware of any firearms that were registered to Mr Kuskoff or were otherwise in his possession. The reason he gave for not conducting such a check was that he had been tasked to perform a check on welfare and to make an assessment of Mr Kuskoff. Moreover, during the assessment Constable Hall did not entertain any concern about Mr Kuskoff. The need for a firearms check was not something that crossed his mind²⁸. However, asked in evidence as to whether in a tasking such as the one he was asked to undertake he would have expected to have been provided with information about whether a person had firearms registered to his name, Constable Hall said that he would have expected that. He said police do routinely receive such information from SAPOL call takers. In this particular case information provided by the call takers had contained nothing to suggest that Mr Kuskoff was in possession of registered firearms²⁹. He said that if he had been aware that Mr Kuskoff had firearms he may have checked them to ensure they were being

²⁷ Exhibits C121, C121a and C121b

²⁸ Transcript, page 393

²⁹ Transcript, page 394

secured in accordance with the law. I would add that it would not have been a stroke of genius for Hall to have guessed that as a farmer Mr Kuskoff would have possessed a firearm or firearms.

5.18. Constable Hall was also unaware of the circumstances in which RSPCA officers in 2010 had attended Mr Kuskoff's property and had been threatened. As seen, no ancillary report had been placed on PIMS in respect of that incident. Constable Hall stated to the Court that if he had known of the 2010 incident he would have wondered why firearms in Mr Kuskoff's possession had not been seized at that time. He further suggested that if he had known about that matter he probably would have formed the intention to seize Mr Kuskoff's firearms³⁰ but he would not have attended the property on his own. However, Hall said that given Mr Kuskoff's benign demeanour during his visit to the property he was not so sure as to whether in fact he would have seized his firearms at that time. There had been nothing that had concerned him about Mr Kuskoff's appearance during the visit. He told the Court that Mr Kuskoff had spoken well, had introduced himself, had offered his hand and had appeared to be appropriately engaging in conversation³¹. He assessed Mr Kuskoff as posing no risk to himself or to any other person³². Constable Hall elicited an assertion from Mr Kuskoff that due to stress he had been having trouble sleeping. To this Constable Hall asked him whether he wanted to see anybody about his stress to which Mr Kuskoff said that he was fine.

5.19. In a written witness statement Constable Hall described his conversation with Mr Kuskoff in more detail. He had said that he had asked Mr Kuskoff how he then felt given that he had been ranting and screaming on the phone to the operator. Mr Kuskoff chuckled in relation to that, saying words to the effect that they must think he was crazy and that he had had only had two hours sleep. He apologised for ranting. Constable Hall formed an impression that Mr Kuskoff's allegations relating to Ms Liemareff may have been made mischievously in order to cause difficulty for her.

5.20. In cross-examination by Mr Harris QC Constable Hall reiterated that if through an ancillary report he had known of the 2010 RSPCA incident he would have asked his supervisor to make an assessment of the situation. He believed that a better police

³⁰ Transcript, page 396

³¹ Transcript, page 399

³² Transcript, page 400

response than he simply attending on his own would have been required, and the attendance would have been made with a view to seizing his firearms. However, he did say that a seizure of firearms probably would have been limited to those that were in open view and those that were registered³³. It will be borne in mind that Mr Kuskoff possessed firearms and ammunition quite apart from those that were actually registered to him. There is no guarantee that a seizure of firearms would have resulted in all weapons being removed from his possession.

- 5.21. There is one further matter arising from Constable Hall's attendance. At one point during their conversation Mr Kuskoff asked Constable Hall about the taser device on Constable Hall's equipment belt. Mr Kuskoff asked him whether it was a taser. Constable Hall had replied affirmatively. That was the only conversation about that item. Comment would later be made by Mr Kuskoff's sister to the effect that her brother had told her that the officer had actually tasered him during this police attendance. I find that Constable Hall did not taser or threaten to taser Mr Kuskoff. Later assertions made by Mr Kuskoff that he had been tasered were either mischievous or, more probably, the result of a deluded mind.
- 5.22. I have referred to Dr Naso the psychiatrist. Dr Naso gave specific evidence about the events of the 15 September 2015. She opined that the conversation that Mr Kuskoff conducted with Ms McVicar evinced a disconnection in thought processes as illustrated by him moving from one topic, namely the possible murder of his sister, to another, namely taxation office issues. His assertions to the effect that his sister's husband was hugging her too hard verged on the bizarre insofar as he was suggesting that this might cause someone's death³⁴. In light of that Dr Naso suggested that Constable Hall's task would have been a difficult and dangerous one if it had involved Constable Hall asking '*triggering questions*' or questions that would have challenged Mr Kuskoff's delusional beliefs³⁵. It would have been especially dangerous for Constable Hall to have embarked upon such an exercise on his own. Dr Naso suggested that he would have needed experience to challenge a person with a psychotic illness. She would not have expected Constable Hall to have the necessary skills to do that.

³³ Transcript, page 438

³⁴ Transcript, pages 1757-1758

³⁵ Transcript, page 1759

5.23. However, on the basis of Constable Hall's assessment of Mr Kuskoff's demeanour during his visit, Dr Naso did not believe that at that point in time Mr Kuskoff had been detainable by Constable Hall under the Mental Health Act³⁶. She said that Mr Kuskoff would not have fulfilled the criteria for detention if it had been contemplated by Constable Hall. However, she also believed that the underlying reality was that he was detainable. She said:

'If there was more information then there would have been a discussion with mental health services. Based on those two phone calls, he was quite clearly detainable under the Mental Health Act and then a structured visit during the day with ambulance, with police and with mental health workers.'³⁷

Dr Naso also said this:

'My opinion is that at the time that Constable Hall saw Mr Kuskoff, that he had psychotic symptoms present but that he was covering them up.'³⁸

In any event Dr Naso did not believe that if Constable Hall had endeavoured to detain Mr Kuskoff he would have gone peacefully with Constable Hall³⁹.

5.24. In addition Dr Naso suggested that there was nothing unusual in the fact that only a matter of hours after the 000 phone calls he presented to Constable Hall quite well. She said, '*we see that all the time*'⁴⁰.

5.25. In many ways it was fortuitous that Constable Hall on his own did not present in any challenging way to Mr Kuskoff, either by attempting to detain him under the Mental Health Act or by attempting to seize firearms. That said, it is clear to me that Constable Hall attended at the property when not fully informed. He knew nothing about any previous incident involving the RSPCA nor had any positive knowledge of Mr Kuskoff's possession of firearms.

5.26. Thus it would have been much better if Constable Hall had been accompanied by mental health services personnel. However, it cannot be known what Mr Kuskoff's reaction would have been and whether the behaviour that he would manifest the following day would have been displayed on 15 September 2015. In short, one cannot know what

³⁶ Transcript, pages 1760, 1797

³⁷ Transcript, page 1761

³⁸ Transcript, page 1760

³⁹ Transcript, page 1765

⁴⁰ Transcript, page 1798

might have transpired if a more robust approach had been taken to Mr Kuskoff on 15 September 2015.

- 5.27. The question is whether this was a missed opportunity for Mr Kuskoff to have been relieved of his firearms. In all of the circumstances Constable Hall cannot be criticised. He attended at Mr Kuskoff's property for a limited purpose and with limited information. Mr Kuskoff presented as reasonable and not aggressive. However, there can be little doubt that if Hall had been armed with appropriate information he would have attended with a greater number of officers and possibly with mental health professionals. However, the success of any such attendance would have been largely dependent upon Mr Kuskoff's reaction to their presence and to the nature of any action police may have decided to take in terms of seizing firearms or seizing him. There would have been no certainty that Mr Kuskoff's reaction would have been as benign as it was with Constable Hall on his own. If Mr Kuskoff had reacted adversely the outcome is difficult to predict. There would have been no guarantee that it would have ended in any way other than badly.
- 5.28. Later that day Constable Hall also conducted a conversation with Ms Liemareff. He asked her about the allegations that had been made by Mr Kuskoff in relation to her welfare. He also spoke to Ms Liemareff the following day on which occasion Ms Liemareff said that she intended to see Mr Kuskoff later in the day. That was the day of Mr Kuskoff's death. Indeed Ms Liemareff and her brother did attend at the property to see Mr Kuskoff. The attendance did not go well as will be seen shortly.

6. Further events on 15 September 2015 involving mental health services

- 6.1. At 4:10pm on 15 September 2015 Mr Illya Kuskoff, who was the elder brother of Alexander Kuskoff, contacted the SA Health Emergency Triage Liaison Service (ETLS) which was based at Glenside. At that time Illya Kuskoff spoke with Maureen Bath who was a mental health nurse. Ms Bath's responsibilities included the receipt of calls from the general public and the triage of the matters to which the calls related. The ETLS would respond to the call and appropriate action would be taken if it was considered necessary.
- 6.2. Following this approach by Illya Kuskoff there would ensue during that evening and also during the following morning a rather confusing series of dialogues between

members of the Kuskoff family and the mental health services about Alex Kuskoff. Ultimately it came to nothing as far as assistance for Alex Kuskoff was concerned.

- 6.3. In the first phone contact Illya Kuskoff told Ms Bath that he thought his brother Alex might have a brain tumour because his behaviour had become very strange in the last few days. He said that his brother was very angry with the family because he wanted money from his inheritance in respect of which there was a family dispute. Asked if Alex Kuskoff had any previous mental health history, Illya Kuskoff said that he had never had any mental illness. In fact mental health services had no record of Alex Kuskoff at all. Asked as to whether Alex Kuskoff was a risk to any person, Illya Kuskoff said that while he was angry and verbally aggressive to his family he was not a risk to any other person. There was further discussion about Alex Kuskoff possibly seeing a general practitioner and there being a welfare check, with the possibility of a mental health team trying to make contact with him. Illya Kuskoff said that he did not believe that Alex would want to access any services. He suggested that his brother would present very well if somebody went to see him or speak with him and that people would not gain any appreciation that there was anything wrong with him, perhaps suggesting that there would be an element of futility in any approach to him. This lability of mood and presentation appears to have been in evidence when earlier that day he had been seen by Constable Hall and is in keeping with Dr Naso's opinions.
- 6.4. Notwithstanding what Illya Kuskoff had said, Ms Bath then attempted to contact Alex Kuskoff on a number of occasions by telephoning him. The phone was engaged every time she attempted to contact him.
- 6.5. At about 5:30pm Illya Kuskoff again rang Ms Bath and advised that the reason that Ms Bath had been unable to contact his brother was because Alex Kuskoff had been talking to his sister. Evidently a tape recording of that telephone conversation with his sister had been made but Ms Bath was unable to understand it when it was played over the phone to her. During this second phone call Illya Kuskoff said more about his brother and his background including about his employment and the fact that he had lost money on the stock market. It was in this conversation that it was revealed that Alex Kuskoff lived on a farm and that the RSPCA had taken his sheep away from him because he was not looking after them. Due to the fact that Ms Bath was told that Alex Kuskoff lived on a farm, she asked the brother whether Alex Kuskoff possessed a gun. This was answered in the affirmative. Illya Kuskoff reiterated that he did not

believe that Alex Kuskoff would hurt anybody or himself. Ms Bath suggested that Illya Kuskoff let the police know that there were concerns about his brother and that he had a gun. Illya Kuskoff agreed to talk to police.

- 6.6. During this phone discussion Illya Kuskoff told Ms Bath that Alex Kuskoff had made a complaint to the police that his sister had been harmed by her partner and that this was a false complaint. Ms Bath telephoned Ms Lena Liemareff who said that she was going to see Alex Kuskoff the following day. She said that Alex was a gentle man and that he would not harm anybody. In this conversation Ms Liemareff said to Ms Bath that Alex Kuskoff had told her about a premonition that he had experienced in which Lena was going to betray him.
- 6.7. At 9pm Ms Bath decided to call Illya Kuskoff as he had not called back. According to Ms Bath Illya told her that he had spoken to the police and had talked to them about his brother's change in behaviour and had mentioned that he had a gun. However, he said that it had all settled down and it would be best if everything was left to lie until the following day. Ms Bath in the meantime had referred Mr Kuskoff to the local mental health team for follow up the next day.
- 6.8. On the basis of the information that Ms Bath had to date she did not feel that grounds existed for police or anyone else to perform a welfare check on Alex Kuskoff or for him to be apprehended under the Mental Health Act.
- 6.9. Ms Bath's expectation was that the following day the triage liaison service would have the matter reviewed by a consultant psychiatrist which happens at 9:30am each day.
- 6.10. Ms Bath told the Court that she did not believe that she had any reason to contact SAPOL herself and ask them to do anything. She did not have anything further to do with the Kuskoffs or Ms Liemareff after that day.
- 6.11. Ms Bath documented her involvement in the matter including reference to Illya Kuskoff's information about Mr Alex Kuskoff possessing firearms at the property.
- 6.12. In cross-examination Ms Bath told the Court that it had been her suggestion that Illya Kuskoff call SAPOL and request a welfare check. She suggested it and he agreed to do that. She did say that she had told Illya Kuskoff that she did not feel that the police would act upon it as there was not sufficient risk. When asked as to whether a request

for a police welfare check may have been given greater weight by police if it had come from her rather than from Illya Kuskoff, Ms Bath said that if she had made the request they probably would have listened.⁴¹ She also said in cross-examination that she had not regarded herself as under any mandatory obligation to do anything about Mr Kuskoff's possession of firearms because she felt there was not a risk at that point in time and he had not made any threats to harm others. Also, he had possessed the guns for some time without any issues having arisen to her knowledge.

- 6.13. Ms Bath told the Court that from time to time police and mental health services perform joint visits.
- 6.14. There are records within SAPOL that illustrate that Illya Kuskoff made, or attempted to make, two phone calls to police on the evening of 15 September 2015. Both phone calls, which were made respectively to the Tailem Bend Police Station and to the Meningie Police Station, were received just after 5:30pm. The evidence was unclear as to the fate of these attempted communications.
- 6.15. The following morning the Country Emergency Triage Liaison Service met and discussed Mr Kuskoff's referral which had been sent overnight by Ms Bath. Mr Mark Gerschwitz, a mental health nurse employed by the ETLIS, told the Court that at 9am on the morning of 16 September 2015 he was present at a meeting that included a consultant psychiatrist. Mr Kuskoff's case was discussed in the light of the information that had been referred from the previous day. They were requested to follow up with the Murray Bridge team to make sure that something was happening regarding Mr Kuskoff. To this end Mr Gerschwitz rang the Murray Bridge team and a member of that team said that an attempt would be made to contact Mr Alex Kuskoff directly.
- 6.16. That morning Mr Gerschwitz spoke to Ms Lena Liemareff. Mr Gerschwitz asserted that she told him that SAPOL had gone out to see her brother to remove his firearms and that they had tasered him. This appears to have been a reference to Constable Hall's attendance the day before. Naturally this information was incorrect in just about every respect. In any event Ms Liemareff indicated that she would ring police at Murray Bridge.

⁴¹ Transcript, page 486

- 6.17. It appears that Ms Liemareff had contact with mental health services that day. It is not necessary to recite every detail about that. Mr Gerschwitz also had a conversation with Illya Kuskoff. In neither conversation with Ms Liemareff nor Mr Illya Kuskoff was anything said about firearms.
- 6.18. Mr Gerschwitz explained to the Court that they had very little information to go on about Alex Kuskoff. It was impossible to make any form of diagnosis without Mr Kuskoff being seen. In South Australia they relied heavily on SAPOL officers to go out and perform welfare checks. That difficulty was compounded by the fact that SAPOL were not trained in mental health, that they relied purely on their lay observation and their innate sense that something might be wrong.
- 6.19. Mr Gerschwitz agreed in cross-examination by counsel assisting Ms Kereru that a number of important matters were missed. He believed that at the beginning the service should have requested a welfare check and have submitted a firearms report, based on a suspicion of firearms even if they did not know exactly what the situation was in that regard.⁴² He also agreed with Ms Kereru that he believed that a notification should have been made to police about firearms right from the very start.⁴³ He said that he would not ask family members to perform firearm reports or request welfare checks of SAPOL. He said:
- 'No. I believe that as a mental health clinician that should come from us to request that so that you can give as much current and relevant information as possible. It's very hard to ask a family member - in my opinion - to report anything to police, it's very difficult for them to do that, puts them in a difficult situation where they can be accused later of, you know, dobbing them into the police, that sort of thing.'⁴⁴
- 6.20. In re-examination Mr Gerschwitz was asked by Ms Nelson QC as to whether if he had been told that a police welfare check had been conducted on 15 September 2015 and that Mr Kuskoff had presented as chatty, sociable and calm it would have reassured him in any way. Mr Gerschwitz said it would certainly have reassured him.⁴⁵
- 6.21. In the event mental health services were not able to contact Mr Alex Kuskoff on 16 September 2015. Events were somewhat overtaken by the visit by Ms Liemareff and Sirgey Kuskoff and Mr Kuskoff's subsequent unhinged telephone calls of that day

⁴² Transcript, page 548

⁴³ Transcript, page 552

⁴⁴ Transcript, page 552

⁴⁵ Transcript, page 554

which culminated in police that evening attending at Mr Kuskoff's property with the ambulance service, the objective being his detention under the Mental Health Act.

- 6.22. In her evidence Dr Naso suggested that when mental health services receive referrals it is the responsibility of mental health professionals to ask whether the clients had any access to firearms and it was their responsibility to contact police. In respect of the Kuskoff family being asked to contact police, Dr Naso had this to say:

'What I say to that is that all concerned family members are able to contact the police for a welfare check on their loved one. However what we need to remember here though is that Illya the brother had contacted for help. So he had contacted with concerns about his brother Alex and that his behaviour was escalating and that this was unusual behaviour for his brother for Alex. So even though the family yes they could have contacted police for a welfare check, the mental health service should have done that as well as the brother. In terms of contacting SAPOL about guns on the property it's completely inappropriate to ask any family member to contact police about removing guns from someone's property. Completely inappropriate' ⁴⁶

- 6.23. To my mind it would have been far better if police had attended with mental health services at a time before Ms Liemareff and Mr Sirgey Kuskoff attended the property early in the evening of 16 September 2015. It appears that whatever occurred on that occasion was something that caused an escalation in Mr Kuskoff's behaviour to the point where he began making the more floridly psychotic phone calls. To my mind there had been an opportunity for police to have attended with mental health services earlier on 16 September in daylight and at a time before Mr Kuskoff's behaviour escalated following the visit by his siblings. There was inadequate collaboration between mental health services and SAPOL. Mental health services should have contacted SAPOL about Mr Kuskoff and not left it to the family.

- 6.24. One matter on which Mr Gerschwitz laid emphasis was his belief that it would not have been appropriate for police to have simply ignored the problem. He was asked by Ms Nelson QC as to what he would say to the suggestion that if someone is in a psychotic state and is left alone they will calm down and the problem will go away, he said:

'In my experience that is not the case. It tends to exacerbate the problem because they are left alone with their own thoughts and if the thoughts are fairly deluded then that just keeps compounding and becomes more difficult to approach the person. The longer you leave it the more difficult it is, the more ultrasensitive and hyper-alert they are.' ⁴⁷

⁴⁶ Transcript, page 1767

⁴⁷ Transcript, page 518

6.25. It will be noted that this answer is completely in keeping with the opinion of Dr Naso. There is no question in my mind but that the intervention by police early in the evening of 16 September 2015 was completely justified, as was their persistence in remaining at the premises in the hope that Mr Kuskoff would come with them quietly.

7. Early events of the evening of 16 September 2015

7.1. A starting point here is a visit to Mr Kuskoff by his sister Ms Lena Liemareff and his brother, Mr Sirgey Kuskoff. The precise details of what transpired on this visit are not entirely clear.

7.2. However, what is known is that Mr Kuskoff's sister and brother attended the property and provided Mr Kuskoff with some groceries that were left inside the house. At some point Mr Kuskoff became agitated and it is believed that he chased his brother and sister off the property. In the process he fell over. This left Mr Kuskoff alone on the property.

7.3. At 6:28pm that evening Mr Kuskoff telephoned 000 and was connected to police⁴⁸. It is evident that he was panting during this conversation. I infer that he rang police almost immediately after he had chased his siblings off the property. He announced himself as Alexander Kuskoff, gave his correct address at Elwomple and claimed that he was in fact Alexander the First, the Tsar of Elwomple. He said that he claimed immunity, had declared a holy Russian war and that he wanted Mr Putin as a defender. He said that he had killed his brother and his sister, which seems to be a reference to the incident that had recently occurred on his property. He said that he had killed them in self-defence. He told police that he was a Cossack as he had said in previous calls. He ordered police not to come onto his property. Mr Kuskoff hung up. The only contribution by the police operator to this conversation was to ask where Mr Kuskoff was and to enquire after the names of this brother and sister. He did not divulge those names.

7.4. Mr Kuskoff again rang at 6:33pm⁴⁹, at 6:47pm⁵⁰, at 7:01pm⁵¹ and at 7:02pm. The next phone call after that would not be made until 8:49pm. In the intervening period local police attended at Mr Kuskoff's property in an attempt to engage him in conversation and hopefully persuade him to go with them pursuant to the Mental Health Act. I have

⁴⁸ Exhibit C45 – Transcript of call

⁴⁹ Exhibit C46 – Transcript of call

⁵⁰ Exhibit C47 – Transcript of call

⁵¹ Exhibit C48 – Transcript of call

earlier referred to this police attendance in paragraph 1.5 herein. It was the attendance that involved Mr Kuskoff firing a number of shots in the presence of police and was the catalyst for the attendance of the STAR Group at the Elwomple location.

- 7.5. To summarise, in the calls made by Mr Kuskoff between 6:33pm and 7:02pm before the attendance of police Mr Kuskoff made outlandish statements beginning with a declaration on his part that he was claiming political asylum. Mr Kuskoff asserted that his brother had attacked him and that he had killed his brother, but then withdrew that assertion. He said that if police approached him he would unite with the Aboriginals whose land had been stolen. He declared that Mr Putin would protect him. He said that he would fight the '*fucken State*'. He made references to the Queen protecting him, to Nicolai the Second and to how one hundred thousand Cossacks had been killed by the British. He also made references to fighting and killing every Muslim and every Pentecostal. He claimed to have a machine gun with five thousand bullets, to have one hundred guns as well as pistols and that he would '*kill you fucken arses*', presumably a reference to police. In the first conversation, while yelling, he insisted that he was not mad but that God had told him to do it. It was unclear what he was asserting God had told him to do. In another conversation he said that he wanted to talk to Malcolm, the Prime Minister, and shouted at the operator '*get fucked*'.
- 7.6. In the final two calls that Mr Kuskoff made before the attendance of police (made just after 7pm) he ordered police not to come within 16 kilometres of his property. He did not explain why that specific distance was somehow relevant. However, there would be a disconnected assertion made in a later call just after 9pm to the effect that his firearms had an effective range of 16 kilometres. This is an interesting observation as the two disconnected assertions involving a distance of 16 kilometres when examined together strongly suggest that it was within Mr Kuskoff's contemplation that random shots that he would fire would put police in danger of being shot if they were anywhere within 16 kilometres of him.
- 7.7. Also in the two calls made just after 7pm he asserted that he had just called a war against the State. He threatened to kick the arse of the operator and called that person a '*gutless wonder*'. In the second of those two conversations he referred to the Prime Minister of the day being a Communist bastard. He knew this because God had told him. Mr Kuskoff then hung up.

8. The arrival of police

- 8.1. Police arrived at Mr Kuskoff's property at about 8:15pm that evening. The group of police officers were from Tailem Bend, Meningie and Murray Bridge. Four officers attended, the most senior officer being Senior Constable First Class Allan Claughton from the Tailem Bend Police Station. He was accompanied by Senior Constable Natasha Parsons of the Meningie police station and a Constable Jonathan Harris of the Murray Bridge police station. Constable Harris was accompanied by a Community Constable Jenner. Officers Claughton, Parsons and Harris all gave statements to the investigating police and gave oral evidence.
- 8.2. The evidence was clear that the purpose of the attendance at the premises was for police to exercise their powers under the Mental Health Act 2009 and to detain Mr Kuskoff with a view to conveying him for the purposes of medical examination and treatment.
- 8.3. Upon arrival at the premises officers Harris and Jenner were placed some distance along Elwomple Road to the south of the driveway. An ambulance crew from the South Australian Ambulance Service that was enlisted to attend remained on the Mallee Highway approximately 100 metres from the intersection of Elwomple Road and the Mallee Highway.
- 8.4. Senior Constable Claughton provided witness statements to the inquest and he gave oral evidence. He was an impressive and careful witness. He struck me as a careful police officer generally.
- 8.5. Senior Constable Claughton told the Court that he was able to establish communication with Mr Kuskoff on a landline that was believed to be situated in the homestead. Mr Kuskoff answered the phone and agreed to come out unarmed onto the roadway of Elwomple Road. Mr Kuskoff emerged from his property onto the road and a conversation between Senior Constable Claughton and Mr Kuskoff ensued. According to Senior Constable Claughton, Mr Kuskoff was ranting and raving about his property being the State of Elwomple and that if anyone went onto the property this would be regarded by him as an act of war and he would shoot that person or persons. Mr Kuskoff became more agitated particularly when he saw Senior Constable Parsons for the first time and would not allow Senior Constable Claughton to approach him. When Senior Constable Claughton attempted to continue to speak with Mr Kuskoff, Mr Kuskoff would not listen and became agitated and started to pace back and forth. During this

conversation Constable Harris unexpectedly made his way on foot towards the location where Senior Constable Claughton was speaking with Mr Kuskoff. What rapport there was between Mr Kuskoff and Senior Constable Claughton, and there was in reality very little, dissolved when Mr Kuskoff detected Constable Harris' approach. Mr Kuskoff then retreated to the other side of the fence that divided his property from the road. He appeared to display paranoid thinking stating that police were trying to sneak up on him. At one point Senior Constable Claughton considered using his taser device but did not believe that it would be effective given the nature of Mr Kuskoff's clothing and the fence between them. Senior Constable Claughton was also concerned that Mr Kuskoff may have hidden firearms in the nearby vegetation. Ultimately Mr Kuskoff turned and ran off towards the trees in the direction of the house.

- 8.6. At about 8:21pm Senior Constable Claughton notified Police Communications and declared the incident high risk. He also contacted the STAR Group and requested and was granted their assistance.
- 8.7. Although Constable Harris' unexpected appearance on the scene appears to have been the catalyst whereby Mr Kuskoff broke off any conversation that was taking place between him and Senior Constable Claughton and then fled to the other side of the dividing fence, I do not believe Mr Kuskoff would otherwise have cooperated and have gone with police willingly. It is evident that even before Constable Harris' arrival at the scene Mr Kuskoff was agitated, ranting and raving and making threats towards any person who would go onto his property. He said that he would shoot them. In my view Mr Kuskoff's reference to police trying to surround him and sneak up on him was cogent evidence that he was implacable.
- 8.8. Dr Naso stated in her evidence that in her opinion the incident between Mr Kuskoff and his siblings earlier that evening had been the catalyst for the acute escalation of his condition and the series of 000 calls that then followed. Dr Naso agreed that the plan to detain Mr Kuskoff under the Mental Health Act, which was the objective of Senior Constable Claughton and the other officers, was an appropriate plan. However, Dr Naso suggested that there was no way that Mr Kuskoff was going to allow any person to enter his property. There appeared to be very little evidence that Mr Kuskoff was listening to Senior Constable Claughton in a meaningful way. Dr Naso's interpretation of the interaction that had taken place was that the engagement between Senior Constable Claughton and Mr Kuskoff had been tenuous and fractious. Mr Kuskoff

appeared to be a highly psychotic man who was incredibly hypervigilant. Although Constable Harris' unexpected arrival at the scene was not helpful, Dr Naso said that ultimately she did not believe it made any difference. She said

'I really don't believe that it would have because there was nothing that the negotiator at the time was able to hook into with Mr Kuskoff to truly gain his trust and whenever he started to move forward Mr Kuskoff would move back.'⁵²

- 8.9. Asked by me as to how Dr Naso would have brought Mr Kuskoff within the terms of the Mental Health Act so as to enable his lawful detention, she said that even before Mr Kuskoff had started to fire indiscriminate shots from his property he was quite clearly psychotic and no longer in touch with reality. That meant that he was completely insightful which placed both him and the community at a huge risk. She had no doubt that if Mr Kuskoff had been taken to a facility where he could be medically examined he would have been detained under an Inpatient Treatment Order on an ongoing basis. She agreed that it was imperative for police to apprehend him under Section 57 of the Mental Health Act. Dr Naso encapsulated her views in the following way:

'I think he was so unwell, like I think in one of my reports I've mentioned that in the 23 years of working as a psychiatrist, as a mental health worker, I've never come across that degree of thought disorder and the active hallucinations. We have a duty of care to try and treat this man and to protect him from the community and from himself.'⁵³

- 8.10. I accept all of that evidence from Dr Naso and find that despite Senior Constable Claughton's best endeavours it was highly unlikely that Mr Kuskoff would have been persuaded to go willingly with him for the purposes of examination under the Mental Health Act. I do not believe that Constable Harris' intervention made any difference to the outcome.
- 8.11. It is not known why Mr Kuskoff had originally agreed to come out onto the road apparently unarmed to speak with Senior Constable Claughton, but I do not believe that it was a sign that Mr Kuskoff might capitulate. According to Dr Naso he was of an unpredictable disposition and that earlier apparent cooperation would not necessarily have borne fruit. In my view his reactions to seeing Senior Constable Parson and then Constable Harris suggests strongly that he had no intention of going with police and that he regarded them as a threat. His earlier warning on the phone shortly after 7pm

⁵² Transcript, page 1781

⁵³ Transcript, page 1790

that police should not come within 16 kilometres of his property to my mind was an indication that he would regard police as an unwelcome and threatening intrusion and one that he might take dangerous steps to avoid. I find that Dr Naso is correct when she asserts that an early appearance of possible cooperation was no sure sign that Mr Kuskoff would allow himself to be apprehended under the Mental Health Act.

- 8.12. Following the incident on Elwomple Road, and pending the arranged arrival of STAR Group personnel, Senior Constable Claughton took up a position on the Mallee Highway some distance to the east of the Elwomple Road intersection. That position was adjacent to the northern border of Mr Kuskoff's property. According to the statement of Senior Constable Claughton, at 8:45pm he heard a number of clear and loud gunshots. At 8:57pm he heard more loud gunshots and could hear Mr Kuskoff yelling from the direction of his homestead. Senior Constable Claughton's operation log also reveals that at 9:05pm further shots were heard. Mr Kuskoff could not be seen.
- 8.13. Senior Constable Claughton moved his position on the Mallee Highway to a point further east, about 300 metres from the Elwomple Road intersection. This location was also adjacent to Mr Kuskoff's property. This was at about 9:14pm. At about 9:15pm Sergeant Robert Petersen of Murray Bridge Police arrived at Senior Constable Claughton's location. Senior Constable Claughton gave Sergeant Petersen a briefing handover. As this was taking place he noticed a torch beam coming along the fence line from the direction of Mr Kuskoff's house. It was making its way towards his and Sergeant Petersen's location. It was Mr Kuskoff. Mr Kuskoff was in possession of a rifle. The time was about 9:25pm. After taking cover Senior Constable Claughton attempted to communicate with Mr Kuskoff. The latter was yelling, ranting and raving. Although most of what he said was unintelligible, Senior Constable Claughton determined that something was said about shooting at the police. Senior Constable Claughton saw the rifle in Mr Kuskoff's right hand. When Senior Constable Claughton directed Mr Kuskoff to put the gun down he complied. However, he then reached behind his back as if to grab something and stated that he had a pistol. As alluded to earlier, a handgun was located in Mr Kuskoff's rear pocket when his body was searched after the shooting. Mr Kuskoff said that Senior Constable Claughton would have to shoot him. When Senior Constable Claughton yelled at Mr Kuskoff to put his hands where they could be seen, Mr Kuskoff picked up the rifle again and fired shots into the air. He then ran a short distance and fired more shots into the air. At no time did he

point the weapon in the direction of police. Ultimately a total of four spent cartridges were located at that site.

9. Mr Kuskoff continues to make phone calls

- 9.1. The first call made by Mr Kuskoff following the incident with Senior Constable Claughton and Sergeant Petersen on the Mallee Highway occurred at 8:49pm⁵⁴.
- 9.2. In that 8:49pm call Mr Kuskoff purported to declare a state of emergency and urged police to leave the environs of his property by saying '*get the fuck out of there boys*'. He made reference to having declared his property a State. There is also reference to police having tried to grab him which is a reference to the incident involving Senior Constable Claughton and the other officers on Elwomple Road. There is also reference to him negotiating the fence during that incident. He urged the operator to arrange for some ambulances and the fire brigade to attend the property. He said that he was not frightened if the authorities came onto his property which he referred to as '*my State*'. He threatened to make war and that he would blow the legs off police although he would not shoot them in the head. The ambulance would be needed for the police because he himself could not die as he had died three days earlier. There is reference to the former Prime Minister, Mr Abbott, and he ends this conversation by telling the operator to '*fuck off*'.
- 9.3. In a further telephone call at 8:55pm Mr Kuskoff told police that he had just shot up the sky⁵⁵. He said that he had gone out and fired more bullets and that he was shooting in the sky. There is further reference to Mr Abbott and possibly speaking with him, and he referred to the then current Prime Minister as a '*carbon tax pooftah*'. He also made reference to '*RSPCA communism*' which was probably a reference to his unfavourable interaction with the RSPCA in the past. He said, '*Listen I've still got to get my ammunition all ready and all this*'. He said that he was ready for a fight if police wanted to come onto the property. He said, '*If your guys step on my property, okay, that I could declare little Russia. I'll fucking blow their legs off. I, God will guide the bullets to their legs*'. He again declared that he was the Tsar of Elwomple and that he wanted to build a monastery and a seminary on the property. There then follows a lengthy diatribe about Aborigines, Muslims, Liberals, Arabia and Cossacks. There was further

⁵⁴ Exhibit C51 – Transcript of call

⁵⁵ Exhibit C52 – Transcript of call

reference to his interaction with Senior Constable Claughton and how he had threatened harm to Senior Constable Claughton were he to come onto his side of the fence. He said that if police deployed an armoured vehicle he would not be in the house but would be five kilometres away.

9.4. There is a further long call made at 9:01pm⁵⁶ in which Mr Kuskoff made reference to having gone out and fired his gun again. He made an enquiry as to whether a 'truce' had been reached or could be reached and whether he could go to sleep. He said that he would not fire his gun but that he would watch his premises, and said '*Any c**ts walk on my parade, property, he has committed war.. I've committed ... I've, I've, I've said that I've made a state*'. There is further reference to killing Muslims and to Mr Putin whom he called a coward. At one point he urged the operator to wake up the Commissioner of Police. He referred to any person who walked onto his property as committing war, and that he would blow the legs off of anyone who walked onto his place. He said that he would not kill anyone but that if they walked onto his place he would blow the person's legs off. He referred to himself as shooting up the sky and he suggested that he might have shot a plane. Asked by the operator as to why he was shooting guns when police were there, he said he had told them to '*fuck off*'. He had told them not to go on his property. He made further reference to his belief that he had died three days ago, that they therefore would not be able to kill him and that God talked to him. He again queried whether a truce was in existence. He suggested that the police could ring him, but if they came onto his property he would shoot. He referred to having a good night's sleep, presumably on the basis of the perceived truce, but then stated that he would have to keep awake because police were going to come for him.

9.5. There does not appear to have been any further phone conversations with police until shortly after 11:08pm⁵⁷ and then at 11:22pm⁵⁸. By that time STAR Group officers were present at the scene. In the first of those two conversations he referred to himself being Tsar Alexander. He said that he wanted the Commissioner, Tony Abbott and the current Prime Minister as well as Mr Putin, presumably to talk to. He threatened to attend the Tailem Bend police station and shoot it up. In the latter conversation he repeated that he was going to the Tailem Bend Police Station and shoot it up and that they should get all of the police out of there. He again insisted on talking to Tony Abbott and said '*If,*

⁵⁶ Exhibit C48 – Transcript of call

⁵⁷ Exhibit C69 - Transcript of call

⁵⁸ Exhibit C70 - Transcript of call

if I see a cop, I'm going to fucking shoot to kill'. The conversation ended when he said that if anyone violated the state of Russia and came onto his property when he was away, presumably when he was in Tailem Bend, they would see his wrath and that there would be war. He then hung up. That was the last known conversation with Mr Kuskoff. He would be shot to death within the next ten minutes.

10. The involvement of STAR Group

- 10.1. Officers from the STAR Group arrived at the scene from approximately 10pm onwards.
- 10.2. It is not necessary to refer to each and every facet of the involvement of the STAR Group. I have already made reference to the overall objective that Mr Kuskoff be detained under the Mental Health Act. The plan was for Mr Kuskoff to be observed and not be allowed to leave the property. I was satisfied that this plan was a legitimate objective. There is no evidence to the contrary. To my mind it was out of the question that Mr Kuskoff be permitted to leave the property either on foot or by using a working vehicle. Furthermore, any attempt to forcibly detain Mr Kuskoff could easily have involved injury both to him or to police. There was no reason to suppose that Mr Kuskoff's threat to shoot any person who came onto his property was idle or that his threat to shoot up the Tailem Bend Police Station was idle. Police could have acted on no basis other than Mr Kuskoff was both capable and willing to carry out either threat. There was a clear imperative to keep Mr Kuskoff confined to the property. Observation of him was therefore an important element of that strategy.
- 10.3. I was also satisfied that STAR Group members including officer DA were reminded of their responsibilities in relation to the use of firearms pursuant to the SAPOL General Orders.
- 10.4. Some of the STAR Group officers travelled to the location in an armoured vehicle colloquially known as the 'Bearcat'. It was envisaged that this vehicle might be used to approach Mr Kuskoff if he left the property, or indeed while on the property if necessary. The vehicle would have protected the officers inside it. As well, officers inside the vehicle would have had access to a non-lethal weapon that may have been able to subdue or incapacitate Mr Kuskoff without causing serious injury. The difficulty with the use of the armoured vehicle was obvious, especially if used while Mr Kuskoff was still on his property in the vicinity of the homestead. There seems little doubt that he would have been able to make his way into the homestead even if pursued

by the armoured vehicle. He would have easily detected its approach. Once inside the homestead the utility of the armoured vehicle would have been nullified. Furthermore, assertions made by Mr Kuskoff's sister and brother who were in the company of police awaiting the outcome of the incident were that Mr Kuskoff might regard the armoured vehicle as a tank and act accordingly. I was satisfied that the non-use of the armoured vehicle up until the point in time at which Mr Kuskoff was shot was appropriate.

- 10.5. In addition, although police negotiators were present at the scene during the course of this incident, their value was limited due not only to their inability to maintain contact with Mr Kuskoff, but to his inability to see reason. Negotiators were present also at the Police Communications Centre at the time of Mr Kuskoff's later calls. That negotiators were unable to successfully negotiate a peaceful outcome is not surprising. The 'truce' that Mr Kuskoff referred to during one of his telephone calls seemed to have been premised on police leaving the property, or at least not taking any further action in respect of him. That was an unrealistic proposition. In her evidence Dr Naso was asked whether Mr Kuskoff's stated desire for a truce was a positive indication that negotiators might be able to persuade him to come out peacefully. Dr Naso expressed the view that this circumstance on its own was not indicative of the possibility that Mr Kuskoff might agree to cooperate with police. She said that when individuals are floridly paranoid with persecutory beliefs it is easy to fall into the trap of believing that if the individual is given what they want it will keep the situation calm. She said that if anything it might escalate matters to a level where one could no longer provide what is being sought. For instance, even if the Commissioner of Police had been produced that would not have placated Mr Kuskoff. On the contrary, Mr Kuskoff was interpreting matters in a psychotic manner and this would only have served to reinforce his delusional beliefs. It would also have served to reinforce his perceived invincibility⁵⁹. In short, I do not believe that Mr Kuskoff's assertions about a truce should have altered the manner in which police continued to act throughout the course of the evening.
- 10.6. The STAR Group objective that night is encapsulated in the following instructions to personnel as given by STAR Group officer JA.

'Local Police have declared this incident High Risk, they are at a Forward Command Post nearby. Multiple shots have been fired by this male, unknown if in the direction of the police or not. He is to be arrested under the Mental Health Act at this stage and various firearms offences. The Mission for this operation, will be to safely arrest Alexander

⁵⁹ Transcript, page 1809-T1810

Kuskoff. Execution will be via a cordon and call or search to locate and then a cordon and call to arrest the male safely. Roles will be issued by JA. We will operate on 204 for STAR, the local channel is DG12, they've isolated and, Elwomple Command is the Command Post. Standby for roles from JA 'Police are located in the Bearcat will be myself AM, CS and SK. SK you will drive the Bearcat. All members will be in possession of full high risk kit, including the wireless. We'll have basic MOE inside the Bearcat, we'll have the less lethal REDACTED loaded and actions in the Bearcat. More to follow. All members are to have in their possession and attached to their helmet NVG. Also have in the Bearcat hand held thermal and we'll be utilising the cameras on the Bearcat. Cordon team details to follow from DA but that will be (DL?), AC, TM. DA understand that these numbers can and should be used as cordon members but at this stage we'll position them in the Bearcat in the event that we have to challenge this male. More to follow. We'll continue with the amber response all the way to Tailern Bend, we'll have an, we have an updated Police Forward Command location and we will retain a low signature from Tailern Bend to the Police Forward Command Post. The execution will be as described by STAR Mitre. There will be a cordon and call, search to locate where required and envisage that this search will be conducted using the Bearcat with members inside prepared for an emergency action where required. More to follow.'⁶⁰

- 10.7. The strategy described in that passage as 'cordon and call' is a measure that involves the target not being able to leave the location undetected and the negotiation of a peaceful outcome with that target. There were a number of significant difficulties that confronted STAR Group in respect of the implementation of the strategy set out in those instructions. The darkness was but one matter. The size of Mr Kuskoff's property was another. It would have been virtually impossible for STAR Group to have set an impenetrable cordon having regard to the number of personnel available and the large perimeter of the property. It was thus necessary for STAR Group to know at all material times where Mr Kuskoff was situated. Hence the need for close and constant observation.
- 10.8. The need for observation was the catalyst for the introduction of the PoAir helicopter, but the evidence suggested that the helicopter would only have a limited role to play as far as observation is concerned in light of the fact that it would not necessarily be able to pinpoint Mr Kuskoff's location were he to be concealed by vegetation or structures on the property. Furthermore, due to the darkness, observation was not made from the helicopter by direct sight. It was effected by infra-red sighting by way of camera and monitor in a system known as FLIR. A person would be displayed on the screen as a relatively indistinct figure that would have been difficult to visualise unless it moved. I have examined the FLIR footage. It was plainly no substitute for direct observation

⁶⁰ Exhibit C140, L308

at ground level. It was necessary for STAR Group to actually have eyes on Mr Kuskoff at ground level.

- 10.9. I agree with the submission of counsel assisting that the fact that by the time of the arrival of STAR personnel at the scene there was no plan in place as to precisely how the threat posed by Mr Kuskoff was to be neutralised, is not a matter which should be the subject of criticism. Until an assessment had been made of the scene there were too many uncertainties for deliberate police action to be initiated beyond the cordon and call strategy. That strategy required knowledge of Mr Kuskoff's whereabouts and for observation to be maintained on him. I also agree with counsel assisting's submission that an observation position which enabled observation of the farmhouse, driveway and gate was integral to an effective cordon and call. It was hoped that Mr Kuskoff would remain in the vicinity of the homestead and this proved to be the case for the most part. If any location on the property called to be observed it was that location in my view. Even this was not a perfect solution because if Mr Kuskoff were to have disappeared from that location it would have been very difficult for police to pick him up again, except possibly by use of the helicopter.
- 10.10. Accordingly, in my view the fact that officer DA, who was the cordon commander, and officer AM took up a position from which Mr Kuskoff could physically be observed cannot be the subject of criticism in principle. The evidence satisfied me that observation exclusively by way of helicopter would not have been a realistic proposition. But the reality was, as will be seen, that the position that DA and AM assumed relative to Mr Kuskoff exposed them to the danger that might be posed by Mr Kuskoff's demonstrated and known propensity to fire his rifle randomly around and out of his property, and that this in turn exposed Mr Kuskoff to the possibility that police might have to take lethal action against him in order to protect themselves. More of that later.
- 10.11. I also agree with counsel for the Commissioner of Police that the utility of the black side of the cordon, as constituted by two officers who placed themselves 480 metres from the homestead, was necessarily limited. Given that these officers were situated on Mr Kuskoff's property and in light of the fact that Mr Kuskoff had made explicit threats to shoot anyone on the property which naturally included police, it was appropriate that they maintained a greater distance from the homestead. In any event,

even if the black side officers had been able to maintain observation of Mr Kuskoff it would not necessarily have prevented Mr Kuskoff from leaving on foot to the relatively unprotected south of the homestead.

11. Interviews that investigating police conducted with STAR Group officer AM

- 11.1. I will discuss the oral evidence of officers AM and DA in due course. However, before that occurs it is necessary to describe in detail what each officer said to investigating police when questioned about the incident, particularly what they said on the morning of that incident. It is appropriate to analyse this material in more detail than usual because as it happens there were very important omissions about highly relevant matters from the account given by AM in his first interview, omissions that he sought to rectify in his second interview and ultimately in his oral evidence. For reasons that appear below, even allowing for the effect that these dramatic and emotive events may have had on his ability to recall important detail, I formed the view that AM was a poor historian whose evidence would be difficult to act upon unless corroborated by other compelling evidence.
- 11.2. I here describe what officer AM said when interviewed by investigating police. Officer AM was interviewed on two occasions. The first occasion occurred at 0555 hours on the morning of 17 September 2015. AM was still on duty at this time. The second occasion occurred at the scene at Elwomple on 22 October 2015 at 1454 hours.
- 11.3. AM was a Brevet Sergeant within STAR Group Operations. At that time he had been a member of the STAR Group for approximately 5 years. He had a certain specialty within the STAR Group but it was not as a marksman. Officer AM did not have the benefit of the device that officer DA had which could enhance night vision through the scope of his firearm. His night vision goggles did not provide him with any, or any effective, view of Mr Kuskoff.
- 11.4. Officer AM did not fire any shots from his firearm at any stage during the incident.
- 11.5. On 17 September 2015 AM was interviewed by Detective Brevet Sergeant Horder of the Major Crime Investigation Branch in the presence of Detective Brevet Sergeant John Schneemilch of the same branch. Mr Joseph Henderson, a solicitor from Tindall Gask Bentley Lawyers, was also present. Naturally AM was separately interviewed from DA who was also interviewed that morning.

11.6. I will commence a description of what AM said in his first interview from the time that he and DA took up their position on the western side of Elwomple Road. AM took up a position of cover behind a tree where he sat down cross-legged. He described this as an ‘*observation platform*’⁶¹. He said that in adopting this position he was seeking cover to protect himself from any rounds that Mr Kuskoff might fire in his direction. He described this as a physical barrier protecting himself and it also served the purpose of concealment⁶². The trunk of the tree would have been approximately 30 centimetres in diameter. He said this:

‘No the tree provided me with complete protection um and that’s just due to the width of the tree.’⁶³

11.7. AM described the difficulties that he had experienced with radio communication and also the vision difficulty caused by flaring from a light that was attached to the house under observation. He said that he only briefly saw Mr Kuskoff walk across as he was looking through vegetation. He said that he might have seen a flash of movement but at no time was he able to make detailed observations of Mr Kuskoff. This was due to the flaring from the night vision goggles and also from the fact that vegetation obscured his view.

11.8. AM told interviewing officers that when the PolAir helicopter was above the property a volley of shots was heard.

11.9. DA told him that he had seen Mr Kuskoff but that AM could not see him⁶⁴.

11.10. AM described a number of volleys of shots and ultimately heard a volley of three shots in quick succession which were much louder than previous shots that he had heard. He said that on the last shot he heard what sounded like a crack and then the sound of vegetation being struck. He did not see that and did not hear vegetation falling, but said to the interviewing officers that it sounded like something hitting vegetation in very close proximity to him⁶⁵. Asked as to whether there had been more than one occasion that he had heard the sound of something hitting vegetation he said that due to the fact that the shots were fired in quick succession, ‘*I can say definitely on the third shot*

⁶¹ Exhibit C138a L130

⁶² Exhibit C138a L135-139

⁶³ Exhibit C138a L161-162

⁶⁴ Exhibit C138a L259

⁶⁵ Exhibit C138a L302

*maybe on the second shot I can't be sure*⁶⁶. I shall from here on, where appropriate, refer to the shot that is said to have struck vegetation as the 'vegetation shot'.

11.11. AM was asked what had happened from there and he said:

'So from there a ah short time period after I've heard three (3) [redacted] shots so I was aware Brevet Sergeant DA deployed with a rifle with a [redacted], so heard three (3)) [redacted] shots that I recognised to be from Brevet Sergeant DA weapon, ah distinctly different in sound from the firearm that I heard just immediately before that. Um still with the communications issues I tried to get, ask him what happened um then a short time later I heard him provide out a situation update over that radio, it didn't come through my communications, it was just I was in close proximity to him that I was able to hear it, um that he had engaged Mr Kuskoff.'

11.12. AM gave a further description of the three shots that he heard from Mr Kuskoff. He said that the three shots that he heard prior to DA using his rifle were distinctly different from the previous shots that he had heard in that the last three shots from Mr Kuskoff sounded a lot closer, were much louder and sounded like they came from a more specific direction as distinct from a direction away from AM's location⁶⁷. Asked:

'Q. And immediately after were you aware that um DA had fired three (3) rounds.

A. I heard three (3) yeah three (3) [redacted] rounds had fired.'⁶⁸

11.13. AM elaborated further, he said:

'So the last volley that I heard sounded like it was very, the vegetation was very close to me um at that point I have immediately gone behind the tree to protect myself um as I feared for my safety at that point.'⁶⁹

11.14. AM repeated on a number of occasions that he feared for his safety. He heard the crack and the disturbed vegetation. He was not sure if the crack was from a projectile moving past his location in close proximity, but said that the vegetation that was struck sounded as if it was in close proximity to him.⁷⁰

11.15. When asked as to what verbal interaction AM had with officer DA, AM said:

'We could talk to each other but we didn't have too much conversation he would just identify to me if he had observations on Mr Kuskoff.'⁷¹

⁶⁶ Exhibit C138a L307

⁶⁷ Exhibit C138a L328-332

⁶⁸ Exhibit C138a L339-342

⁶⁹ Exhibit C138a L422-424

⁷⁰ Exhibit C138a L446-451

⁷¹ Exhibit C138a L529-530

- 11.16. Towards the end of the interview officer AM added that he thought that a shot had definitely been fired in his direction. He said that he did not have any visual observation of Mr Kuskoff and that he saw no muzzle flash from the weapon. He again said that Mr Kuskoff fired a volley of three shots. He did not take any notice of the nature of the cover available to DA during the incident.
- 11.17. It will be noted that in describing these events AM did not say anything about an important verbal exchange that DA would assert took place between them, a matter I shall mention again in a moment. The answer reproduced above at para 11.15. tended to suggest that there was little conversation with DA other than DA occasionally indicating to him whether or not he had visual observation of Mr Kuskoff.
- 11.18. When analysed as a whole, AM's first interview gives one the impression that three shots were heard, a crack and/or nearby vegetation being struck was also heard and that DA returned fire virtually immediately.
- 11.19. AM's second interview with investigating police was conducted by Senior Constable Matthew Fullston of the Major Crime Investigation Branch. As indicated above this occurred on 22 October 2015 which was over a month since Mr Kuskoff's death. In the intervening period there would have been no real restriction against participants in the events of 16 September speaking about the matter. A representative from Tindall Gask Bentley Lawyers was present during this second interview. The interview was conducted during a walk-through of the location at Elwomple.
- 11.20. In the walk-through interview at the Elwomple scene AM told the investigating detective that at the location at which they were endeavouring to make observations of Mr Kuskoff he recalled seeing DA with his weapon resting on a branch and that DA was in a kneeling position. He said that he himself was sitting down. He repeated what he had said in his first interview that there were *'three distinctive different shots that I heard'*⁷², referring to the last volley of shots fired by Mr Kuskoff. He went on to say that the shots were much louder. He recalled that the noise level of each became progressively louder. The final shot was significantly louder and was followed by a crack and vegetation being disturbed. He said that it sounded like a projectile travelling at high velocity⁷³. He said that the sound of vegetation being disturbed came from above

⁷² Exhibit C138b L389-390

⁷³ Exhibit C138b L394-397

him and to the right. Asked as to how far away that may have been from him, he said that he would be guessing⁷⁴. He did say that it felt '*really close*'⁷⁵ and that he believed his life was '*in jeopardy*' and that he was '*at imminent risk*'⁷⁶.

11.21. AM said that upon hearing the shots he moved further back behind the tree to optimise his cover and to enhance his protection. The tree did not cover his entire body, rendering him susceptible to a fired projectile striking him.

11.22. When asked as to what happened after that, he said as follows:

'So I recall, I didn't recall it on the day, it's coming back to me a couple of days after. I recall DA saying something to the effect of 'that was close' and I remember saying, 'excuse the language that was fucking close'. And then between when the rounds came close and between to add, DA engagement, it's all not 100 percent clear to me, I feel that there's was something, something else that happened in there.'⁷⁷

11.23. A number of things need to be said about this answer. Firstly, this was the first occasion on which AM told investigators that he recalled DA remarking on the proximity of the shot that was fired and of AM's response in agreement. He said nothing of that in the first interview. Secondly, the assertion that this recollection was not something that AM had recalled on the day of the incident and that it had only '*come back*' to him a couple of days after the incident was a clear acknowledgement that since his first interview he had come to the realisation that during that first interview he had said nothing about that. Thirdly, it will also be noticed that the description in the second interview of what he asserts DA said to him and what he said to DA in response was volunteered by AM in the sense that it was not elicited from him by the interviewer. The manner in which AM mentions this exchange smacks of a realisation on his part of a need to get it on the record. Fourthly, if the exchange between DA and AM occurred it was an important exchange for two reasons. The first is that it serves as corroboration that DA also detected the proximity of the vegetation shot. The second is that AM's response to DA's assertion that the shot was close was affirmation that Mr Kuskoff was firing his rifle in their direction and would raise a question as to whether that affirmation was a key element in DA's decision to return fire at Mr Kuskoff. Fifthly, having regard to the importance of the exchange it is surprising that AM failed to tell investigating police about it during his first interview. Sixthly, at first blush it would be difficult to

⁷⁴ Exhibit C138b L423

⁷⁵ Exhibit C138b L435

⁷⁶ Exhibit C138b L439 and L443

⁷⁷ Exhibit C138b L461-466

accept that between his first interview and the second interview AM's recollection of this important exchange with DA was revived without input by another person or persons.

- 11.24. The reference in the above passage from AM's second interview to '*something else that happened in there*' appears to have been an apparent and oblique reference to AM forming a belief that, contrary to what he had said in his first interview about there having been only three shots fired by Mr Kuskoff, there had been a fourth shot by Mr Kuskoff before DA returned fire. He would ventilate that belief when he came to give oral evidence in the inquest.

12. Interviews that investigating police conducted with STAR Group officer DA

- 12.1. Officer DA was also interviewed on the morning of 17 September 2015 while still on duty. He was again interviewed on 22 October 2015 which was the same day on which officer AM was interviewed for the second time. A third interview was conducted with DA on 2 March 2016.
- 12.2. The interviewer on the first occasion was Detective Brevet Sergeant Huppertz of the Major Crime Investigation Branch. The interview took place in the presence of another officer and a solicitor from Tindall Gask Bentley Lawyers. The time of commencement was 0605 hours⁷⁸.
- 12.3. I begin at the point where DA and AM took up their position on the western side of Elwomple Road opposite the homestead.
- 12.4. DA said that after taking up their position he could see a portion of the house. There was what appeared to be a pergola light on as well as another light in that area. DA's rifle had a device within its sighting system that assisted in being able to see in dark circumstances. AM did not have that device. DA stated that initially he saw Mr Kuskoff with his naked eye. When looking through the optics of his rifle he could see that Mr Kuskoff was carrying something that looked like a rifle. The officers were advised that attempts were being made to contact Mr Kuskoff by telephone. Mr Kuskoff came in and out of view on a couple of occasions. DA did not know from where Mr Kuskoff was coming and going, but he observed him coming out and letting off volleys of shots which appeared to be in the air and not in their direction. He

⁷⁸ Exhibit C140

observed him for about 10 or 15 minutes in front of the house, but on a couple of occasions he could not see Mr Kuskoff. On a number of occasions Mr Kuskoff appeared to be jumping around and kicking his legs and waving his arms.

12.5. Asked as to what transpired, DA said as follows:

'So he was, he had been letting off rounds while we were there into the unknown, unknown where he was shooting. When the helicopter had gone round he ah started shooting at the helicopter and the shots become, became more frequent as the helicopter was there um he then started shooting, it looked like he started shooting into the bush as if he was just shooting at random people that he thought might have been in the bush. Um he fired a number of shots which then, I believe were directed in our direction. Um there was a bang and then a crack which indicates the bullet is coming in your direct, direction, it sounded very close. Um I believe I heard it hitting, light brush or foliage in our immediate vicinity. I said sometime in the, something like to AM 'fuck that's close that's coming right next to us' and he said 'yep that's fucken close' or something along those lines, ah he started firing again and that is when I fired.'⁷⁹

12.6. At that time DA was part kneeling, part sitting and had the rifle supported on the branch of a tree. There was no cover apart from a log in front of him and the foliage around them.

12.7. DA went on to say that he did not think that Mr Kuskoff knew exactly where they were, but as he put it '*as luck has it one of us would end up getting it, random round in our face or something so*'⁸⁰. DA went on to say:

'I believed on reasonable grounds, that is (sic) was necessary to protect life or prevent serious injury and I believe that we were in imminent danger of a round possible (sic) hitting us.'⁸¹

12.8. He then fired what he said was about three shots. He said he did not know the exact number, but it was about three. He said that he believed their lives were in danger.

12.9. I digress at this point to indicate that it is known that DA fired only the three shots. Only three spent cartridges were located at the scene. As well, when DA's rifle was examined after the incident there were sixteen rounds in the magazine and one in the chamber. The chambered round had been automatically reloaded after the final shot was fired from that weapon. The magazine was originally loaded to its capacity of twenty and so every round was accounted for.

⁷⁹ Exhibit C140 L821-833

⁸⁰ Exhibit C140 L837-838

⁸¹ Exhibit C140 L871-873

12.10. DA was asked by the interviewing detective to explain in some detail the sequence of events as he fired his shots. He said that when he fired the first round Mr Kuskoff went down, and to use DA's terminology '*sort of shrugged and went down a little bit*'⁸². He said that at that point he did not know whether or not Mr Kuskoff was getting down because the shot had missed him and did not know whether or not Mr Kuskoff was going to fire another shot. Thus, DA fired another shot of his own. Mr Kuskoff was still standing at that point so DA fired again and saw Mr Kuskoff drop down. It was at that point that DA stopped firing. He was not sure whether Mr Kuskoff had dropped down because he thought he was being shot at and had run off, or whether DA had actually hit him. DA then communicated on the radio to advise what had taken place. The text of the communication is as follows:

'Clear channel, clear channel, I've fired shots at the male, we've had shots coming at our location, if we can get the Bearcat to the front of the strong hold, I think he's gone down.'⁸³

12.11. DA told interviewing police that he was aware of the fact that Mr Kuskoff had declared that he would shoot at police if they came onto his property or if he saw them and so he and AM had remained covert for their own safety. He was also aware that Mr Kuskoff had fired some shots when he had been in the vicinity of the Forward Command post, a reference to what he knew of the incident involving officers Claughton and Petersen.

12.12. DA also said in this interview that he did not believe there was any other option but to shoot at Mr Kuskoff. This was because Mr Kuskoff was firing randomly and he could not take the risk that one of those rounds would hit him or his companion⁸⁴. Asked whether he could see any other tactical option, he said '*no not when someone is firing at you*'⁸⁵ '*... because that next round could be the one that gets you*'.⁸⁶

12.13. The second interview with DA which occurred on 22 October 2015 was conducted by Detective Peter Moore of the SAPOL Coronial Investigation Section. A solicitor from Tindall Gask Bentley was also present. As with officer AM, this interview was also conducted at the Elwomple location. I should add here that AM and DA were interviewed separately that day. DA's interview was conducted during a walk-through of the Elwomple scene.

⁸² Exhibit C140 L902-903

⁸³ Exhibit C130 Page 26

⁸⁴ Exhibit C140 L1018-1020

⁸⁵ Exhibit C140 L1032

⁸⁶ Exhibit C140 L1036

- 12.14. During the walk-through DA explained that there had been several shots fired as he and AM were moving into position. He said that they approached the house which appeared to have a porch light at the front of it and that when they were walking through the paddock he could tell that there were shots possibly coming in their direction. They would stop and prop, but did not take cover because there appeared to be a lot of scrub between them and the light that they were moving towards⁸⁷. During this part of the interview DA explained that when a projectile passes in close proximity there is a crack and also the boom from the rifle such that when one hears a crack rather than a boom, one knows that the projectile has passed close to one's location.
- 12.15. DA said that at the location where they commenced observation he could not lie down and keep his head up as well. He maintained observations through his rifle scope⁸⁸. He said that the cover that he had was '*probably not very much*'.⁸⁹ He said that Mr Kuskoff would not have been able to see him⁹⁰.
- 12.16. DA said that he could see the flash of Mr Kuskoff's rifle muzzle when Kuskoff was pointing the rifle out to the right. He said he could see a long muzzle flash emanate from the rifle which was parallel to the ground⁹¹. DA said that he could not see Mr Kuskoff at all times because for some of the time he would be behind scrub. He said that after the helicopter had flown over it appeared that Mr Kuskoff began shooting around his property. He had seen him fire to the right, that is to say to the south. The shooting had started in that direction. Mr Kuskoff continued firing in the nature of an arc. The shooting started coming in his direction and he said, '*that's when we could hear the sound of the crack coming pass (sic) as well.*'⁹² DA said that he was sitting down and he felt that the rounds were coming slightly high and right into the canopy of vegetation just above him, approximately 3 to 6 metres away. Asked as to whether any of the rounds that Mr Kuskoff fired in his direction struck any foliage he said that he thought they may have done so, but the sound that he heard may have been the sound of the round going through foliage or it may have been the crack of the round.⁹³ He thought that a round hit some foliage nearby. He thought he remembered hearing something that sounded like foliage being struck, but that there was a crack happening

⁸⁷ Exhibit C140a L277-280

⁸⁸ Exhibit C140a L424

⁸⁹ Exhibit C140a L506

⁹⁰ Exhibit C140a L521

⁹¹ Exhibit C140a L627-631

⁹² Exhibit C140a L707

⁹³ Exhibit C140a L751-755

at the same time.⁹⁴ DA repeated that he had turned towards AM and they had the exchange about the rounds being close. AM had responded to that suggestion affirmatively. When he looked back through his scope Mr Kuskoff was in his sight and then Mr Kuskoff fired again. It was at that point that DA fired back at Mr Kuskoff.

12.17. DA explained that his own shots were in quick succession but that he was assessing each shot as he fired. In response to the first shot Mr Kuskoff slumped or squatted. DA did not know whether Mr Kuskoff had ducked down in the realisation he was being fired at or whether he had been hit. He was still standing there. He believed that Mr Kuskoff was still a threat insofar as he could still take a shot. So DA fired again – Mr Kuskoff was still standing so he did not know whether he had missed him. DA took the view that Mr Kuskoff was still a threat to him and so he fired a third time. That is when Mr Kuskoff dropped down. DA thought he had fired about three shots in total. It is known that three shots were fired by DA.

12.18. Asked by interviewing detectives about the timing of these events, DA said that when Mr Kuskoff's shots had passed he had turned to AM and they had their conversation about the shots being close. He had then turned back to look into the scope of his rifle. He said that it was under a minute. He said '*So the rounds went past, I turned to AM said what I said, turned back around to look into the scope and then it was within under a minute then*'.⁹⁵ In his third interview he explained what he meant by under a minute. I come to that in a moment.

12.19. DA made it clear that the decision to fire at Mr Kuskoff was his own and that he did not seek or obtain permission to do so. I add here that permission from another officer is not a requirement for an officer to use his or her firearm where there is in effect an acute need to use it.

12.20. DA was asked again as to whether he believed Mr Kuskoff knew that he and AM were there. DA said there was no way of knowing whether Mr Kuskoff knew they were there, but that it was highly unlikely having regard to the manner in which they arrived at their location and the equipment that they were using, equipment that had given off

⁹⁴ Exhibit C140a L760-762

⁹⁵ Exhibit C140a L838-840

no visible light source. He said '*It was a very dark night, so I don't think there was any chance that he knew we're here*'⁹⁶.

12.21. DA was again interviewed on 2 March 2016 by Detective Sergeant McEachern of the Major Crime Investigation Branch and again in the presence of a solicitor. In this interview officer DA was asked to explain what had been detected as an approximate 30 second delay between the sound of him firing his shots at the deceased and the radio transmission to confirm that he had fired those shots. DA explained that there had been communication issues involving the radio communications. I will deal with that aspect of the matter later in these findings.

12.22. DA was also asked whether he had any opportunity to tactically withdraw, or whether he had considered withdrawing. He said that he had not considered it because their role had been to maintain observations on Mr Kuskoff. He had been aware that Mr Kuskoff had attended at the Forward Command Post and had fired shots. So he stated that his role was to maintain observations on Mr Kuskoff and his activities '*for the safety of everyone else*'⁹⁷.

12.23. As to the occasion when Mr Kuskoff started firing in their direction, they did not know whether Mr Kuskoff had actually seen them. If they had stood up and moved they may have presented as a target as he may have seen their movement. DA said '*I was of the belief that he hadn't seen us so why would we move, he was shooting randomly around so*'⁹⁸. He did not think that it would have been a wise option to move.

12.24. DA was asked to provide more detail about what he perceived Mr Kuskoff had been doing before he fired at Mr Kuskoff. He said:

'So when I saw him aiming I really only saw him aiming off to the right because of the silhouette you see, I can see him aiming off in say directly if you are looking at that you can see the rifle out to the side but then as he came around further and further it then starts to blend into one so I can't say for certain that I saw him pointing it directly at me because it's pretty much a silhouette that you are looking at.'⁹⁹

⁹⁶ Exhibit C140a L975-976

⁹⁷ Exhibit C140b L153-154

⁹⁸ Exhibit C140b L164-165

⁹⁹ Exhibit C140b L205-210

- 12.25. In this interview DA repeated that he had had the conversation with AM about the fact that the shots had come close to them.¹⁰⁰
- 12.26. DA was asked by Detective Sergeant McEachern to clarify what he had meant when he had said in his previous interview that something had occurred within under a minute. Detective McEachern asked him what the time lapse was between DA hearing the cracking sound over his head to him returning fire. DA said that he did not know exactly. He had turned around and looked through his scope again, Mr Kuskoff fired again and then he fired at Mr Kuskoff. DA acknowledged that in his original interview he had mentioned a time lapse of under a minute. He said that he believed that it was under a minute, he could not say whether it was 10 or 20 or 30 seconds. If it is correctly understood, what DA was asserting was that the time lapse between the shot which was detected as coming close to them, the vegetation shot, and him firing his own first shot was under a minute and in that time the following events had occurred, namely, he must have taken his eye away from the scope, he had his exchange with AM about the proximity of the shot, he then looked back through the scope, Mr Kuskoff fired again and he fired his first shot. He said *'I don't know it was, it was under a minute but I can't give anything more accurate than that'*.¹⁰¹
- 12.27. I have set out above the evidence relating to the interviews of both officers with a view to demonstrating the consistency or otherwise of the individual officer's accounts of what took place during the course of the fatal incident. The other purpose was to compare what AM and DA had respectively told investigating police at the first opportunity. As seen, there were material differences in their first interviews. It will be observed that, unlike AM, DA told investigating police at the outset that there had been the exchange between him and DA about the proximity of Mr Kuskoff's shot or shots and that before DA fired the first shot there had been an additional shot fired by Mr Kuskoff. It was only in his second interview that AM alluded to the exchange with DA about proximity of the vegetation shot and *'something else happening'* before DA fired his rifle.
- 12.28. The oral evidence that AM and DA gave at the inquest needs to be seen against a background of consistency or otherwise when compared to what they had respectively

¹⁰⁰ Exhibit C140b L267

¹⁰¹ Exhibit C140b L343-344

said to investigating police. I now deal with the oral evidence that officers AM and DA gave in the Inquest.

13. The evidence of officer AM

- 13.1. AM told the Court in effect that the position that he and DA chose to conduct their observations was selected because a position any further back into the paddock to the west of Elwomple Road would have been too distant to enable them to see Mr Kuskoff or to effectively intercept or cordon him if he was to move¹⁰². On assuming the position at the side of Elwomple Road AM was at first in the prone position. However, lying flat meant that the slight elevation of the road obscured his view and would have hindered observations of Mr Kuskoff were he to leave the property. So he sat up and assumed the cross-legged position that he had described in his police interviews. He took up a position about a metre behind a tree.
- 13.2. He said he did not see Mr Kuskoff at any time that evening. The only time that DA would speak to him during the course of their observations was to indicate that he could see Mr Kuskoff.¹⁰³
- 13.3. AM described the arrival of the helicopter and what took place at that time. DA told him that Mr Kuskoff was shooting at the helicopter. Following this there was a volley of three shots that were significantly louder than previous shots that had been heard from their cordon location. AM said that each of the three shots in that volley became increasingly louder. He heard a crack and he heard a sound like something passing through vegetation. He then gave evidence that DA said '*that was fucken close*'. He said that he was not one hundred per cent sure if there was another gunshot after that, that is to say a fourth gunshot. He then heard three shots fired by DA. DA did not then say anything until AM himself asked DA where Mr Kuskoff was, to which DA replied that '*he had gone down*'.
- 13.4. In his evidence in chief AM was asked by his counsel, Ms Nelson QC, as to his state of mind at the time he heard the three shots, and possibly a fourth, fired by Mr Kuskoff. He said '*At the time I feared for my life, yeah. It felt like it came really close, so yeah, at the time I feared for my safety*'.¹⁰⁴

¹⁰² Transcript, page 1379

¹⁰³ Transcript, page 1381

¹⁰⁴ Transcript, page 1385

- 13.5. He said he could not say how close to him the vegetation had been disturbed but at the time of hearing it he instinctively wanted to look up and to the right within the canopy of the tree under which he was sitting.
- 13.6. The evidence in chief given by the witness AM was largely consistent with what he had told investigating officers in his second interview, remembering that in the interview that had been given on the morning of the incident he had said nothing about DA having remarked in those colourful terms on the proximity of one of Mr Kuskoff's shots. As well, in his evidence in chief AM raised the possibility of a fourth shot having been fired by Mr Kuskoff. The possibility of a fourth shot had been the subject of a vague allusion in only his second interview.
- 13.7. In cross-examination AM said that while at the observation point there were no less than three to five volleys of shots heard from Mr Kuskoff and that each of those volleys consisted of two to four gunshots.¹⁰⁵ The volleys of shots became more frequent when the helicopter arrived on the scene¹⁰⁶.
- 13.8. Counsel assisting, Mr Harris QC, cross-examined AM about the detail of what had then followed. He suggested to AM that in his first interview with investigating police on the morning of 17 September 2015 he had said nothing about the possibility of a fourth gunshot. AM agreed with that proposition. Mr Harris cross-examined AM in these terms:
- ‘Q. Can I suggest to you that your omission to allow for the possibility of a fourth shot is incomprehensible given the circumstances that you were in in the immediate few hours after the shooting.
- A. So it certainly wasn't an omission, I just didn't recall it at the time.
- Q. Well can I suggest, how could you possibly not recall a fourth shot which was, according to the evidence you gave on Monday, the very last thing that happened before DA fired his weapon.
- A. So I guess to be clear, I'm not 100% sure that there was another shot. There had been a lot of gunshot from the – a lot of gunshots from the property. Post interview, a couple days later, I was reviewing the facts and then I kind of felt like something happened in that period of time and then at such time that I received my transcript from the interview, I was reading through it and I kind of felt like that something had happened in that period. My next record of interview, which was conducted on 22

¹⁰⁵ Transcript, page 1443

¹⁰⁶ Transcript, page 1449

October, I made the detectives aware, who were conducting the interview, of those details.

Q. You didn't take any steps in the immediate aftermath of getting the transcript of your first record of interview to correct it at that time.

A. No.¹⁰⁷

13.9. AM also suggested that his recollection of the incident 24 to 48 hours after the first interview was better. He asserted that upon reading the transcript of the first interview, which he had done prior to the second walk-through interview, he recalled the possibility of the fourth shot.¹⁰⁸ In further cross-examination about the issue he said that he did not believe that any person had pointed out to him that in his first interview he had omitted to tell police of the possibility of a fourth shot.¹⁰⁹

13.10. As to the sound that had been made, he said that the crack was a sound that was independent of the blast of Mr Kuskoff's weapon being discharged,¹¹⁰ although it was almost at the same time.¹¹¹ The sound of the disturbance of the vegetation was also heard around the same time, but it was a sound separate from the muzzle blast and the crack that he described.¹¹² The effect of the evidence of AM was that there were three distinct sounds, albeit occurring very close together, namely the muzzle blast, the crack and the sound of disturbed foliage.¹¹³

13.11. Mr Harris QC also cross-examined AM about the fact that in his first interview he had said nothing about the exchange between himself and DA about one of the projectiles having come in close proximity to their position. AM agreed, as he had to, that he had said nothing about that in that first interview. Asked as to why he had not said anything in his first interview about that exchange, he said that he had not recalled it at that point in time.¹¹⁴ He agreed with Mr Harris QC that the exchange between him and DA was important information concerning the events of that night; he somewhat evasively said '*yeah, any association conversation or observation is important*'.¹¹⁵ He then agreed with Mr Harris QC that it was important because it would indicate that both he and DA

¹⁰⁷ Transcript, page 1464

¹⁰⁸ Transcript, page 1468

¹⁰⁹ Transcript, page 1468

¹¹⁰ Transcript, page 1470

¹¹¹ Transcript, page 1471

¹¹² Transcript, page 1471

¹¹³ Transcript, page 1472

¹¹⁴ Transcript, page 1476

¹¹⁵ Transcript, page 1476

had an appreciation of the projectile coming in close proximity to them.¹¹⁶ As with the fourth shot, he said that he recalled the exchange with DA in the 24 to 48 hours after the first interview. He said that he recalled it as an independent thought, meaning that it had not been the subject of discussion between himself, DA or officer JA who was DA's brother, also a STAR officer, and who had been first on the scene after the shooting, a matter that I will come back to in due course.

13.12. Mr Harris QC also closely questioned AM about the time gap between the volley of three shots fired by Mr Kuskoff and DA returning fire. He agreed with Mr Harris QC that there was no reason for him to think that after the three shots had been fired that the next shot was going to come in his direction.¹¹⁷ He also agreed that if there had been a fourth shot immediately prior to DA discharging his weapon, it would have been an important piece of information. He agreed that the fourth shot was important because it would tend to indicate that Mr Kuskoff was going to continue to shoot and would add to DA's justification for returning fire. AM reiterated, however, that he was not 100% sure that a fourth shot had occurred.¹¹⁸

13.13. AM told the Court that DA's shots were probably less than a second apart from each other.

13.14. Asked by Mr Harris QC as to whether at the time he thought Mr Kuskoff had been aware of their location, he said that he did not believe that Kuskoff had been aware.¹¹⁹ Asked as to whether Mr Kuskoff had been aiming at him or DA specifically, he said that he could not be sure. He said he could not be sure as to what Mr Kuskoff had or had not seen. He said:

'I was unsure at that point in time if we had been seen.'¹²⁰

AM agreed that nothing that he had done or that DA had done would have given their position away.¹²¹

13.15. AM rejected the suggestion squarely put to him by Mr Harris QC that in reality he had not detected by his own senses the passage of a projectile through foliage of the trees.

¹¹⁶ Transcript, page 1476

¹¹⁷ Transcript, page 1486

¹¹⁸ Transcript, page 1487

¹¹⁹ Transcript, page 1483

¹²⁰ Transcript, page 1483

¹²¹ Transcript, page 1486

Similarly, he rejected Mr Harris QC's suggestion that the exchange between him and DA about the proximity of the projectile had not occurred but had been suggested to him later by another person. He said:

'I would say it's false. Everything that I have relayed to the Court is from my own independent memory.'¹²²

The manner in which AM's account of this event emerged over time, one would be forgiven for thinking otherwise.

13.16. In questioning by me AM made a number of acknowledgements. These included the fact that before he and DA took up their observation position at the side of Elwomple Road he knew that Mr Kuskoff had been firing shots from within his property and that he did not know in which direction he had been firing those shots.¹²³ The only exception was his knowledge through DA that Mr Kuskoff was firing at the helicopter. Other than that, he had not known where Mr Kuskoff had been firing. AM also agreed that before and at the time of taking up the observation position the possibility that Mr Kuskoff might fire in that direction, not deliberately but indiscriminately, had occurred to him.¹²⁴ He said that he had not been completely satisfied with the cover that he had, but said in effect that the need to make observations of Mr Kuskoff had dictated the location that he positioned himself in.¹²⁵ That said, he did not have any conversation with DA either before or when they took up their position about the possibility that Mr Kuskoff might indiscriminately fire in their direction, but did agree that it had occurred to him that Mr Kuskoff might start firing in his direction. He said:

'Yes, absolutely, there's a possibility that if I was located within the 360 degree area of his property that there was an equal chance that I could be fired at indiscriminately or directly.'¹²⁶

13.17. AM then asserted that a person has a right to protect himself. If he himself had seen Mr Kuskoff pointing his weapon in his direction and if there had been no other means available, he would have taken steps to protect himself. Asked as to whether all that had occurred to him prior to taking up their observation position, he said:

'Absolutely, when taking up any position, you have an appreciation of what cover's available, actions in relation to withdrawal if he was to move what we were going to do,

¹²² Transcript, page 1511

¹²³ Transcript, page 1513

¹²⁴ Transcript, page 1514

¹²⁵ Transcript, page 1515

¹²⁶ Transcript, page 1515

thinking about if he was to move how we would move, DA and I would move together; everything is considered whilst taking up a position.' ¹²⁷

So, the question was then asked of AM as to whether when he took up the observation position it had occurred to him that there was a possibility that either he or DA would have to return lethal fire to Mr Kuskoff. To this he said that he did have an appreciation that it might be necessary to protect his life or others.¹²⁸ In the light of those answers I asked AM whether when he and DA took up their observation position they did so on the understanding and in the belief that he or DA might have to shoot at Mr Kuskoff. To this AM suggested that he had taken up that position in order to obtain observations of the property. But when it was pointed out to him that while observation had been their objective, the real question was whether it had occurred to him that there might be a circumstance in which either he or DA might have to shoot Mr Kuskoff, he said:

'I did and the same appreciation was made 100 to 150m further west that that position was vulnerable to being indiscriminately fired at or directly fired at.' ¹²⁹

Asked then as to whether he would have had an appreciation at that time that a round fired either by himself or DA would very likely kill Mr Kuskoff, AM said that he would have an appreciation that someone would be seriously injured. However, he added that his appreciation was not so much that he would be firing a weapon to seriously injure or kill a person, it would be to protect himself because there were no other means available. I would make the observation that while the objective might be to protect oneself, the intent to seriously injure or even kill would also have been part of the frame of mind of any shooter in those circumstances. That said, AM was not the shooter in this case.

13.18. Asked as to whether or not when the helicopter arrived he or DA had considered withdrawing from their position due to its ability to maintain some level of observation of Mr Kuskoff, AM said that it would certainly be a consideration, but he stated that it was still necessary for them to be in a position to intercept Mr Kuskoff if required.¹³⁰

13.19. Asked by me as to the nature of any conversation that he and DA conducted immediately after DA fired his shots, including whether or not DA could still see Mr Kuskoff, what Mr Kuskoff had been doing immediately prior to DA firing his three

¹²⁷ Transcript, page 1516

¹²⁸ Transcript, page 1516

¹²⁹ Transcript, page 1516

¹³⁰ Transcript, page 1518

shots, and what Mr Kuskoff was doing following those three shots, AM said that there had been no such conversation and agreed with the proposition that this meant that following DA's shots there had been virtual silence between him and DA for several minutes.¹³¹ I found that rather difficult to believe.

14. The evidence of officer DA

- 14.1. DA was a Brevet Sergeant within the STAR Group and is a qualified marksman.
- 14.2. In his evidence in chief DA told the Court that on the evening in question he was the cordon team leader. He had the responsibility for placing personnel in cordon positions. He explained that he placed two officers to the rear of homestead and that he and AM proceeded to the front of the homestead, otherwise known as the white side. There were four STAR members in the cordon team. He allocated himself to the white side because he thought he would be able to exert more effective control over the situation and would be able to see the premises. He had no previous knowledge of the location.
- 14.3. DA told the Court that his understanding of the mission was that Mr Kuskoff was ultimately to be detained under the Mental Health Act.
- 14.4. DA told the Court that he and AM proceeded on foot approximately 100 to 150 metres south along Elwomple Road until they heard more shots being fired. When they heard the shots being fired they moved into the paddock on the western side of the road. They did this in order to provide more cover and concealment as they continued walking south. This area of land was not part of the Kuskoff property. The two officers did not venture onto Mr Kuskoff's property because they wanted to avoid provoking a confrontation with him. They had no idea where Mr Kuskoff was at that stage and so for their own safety they moved further west towards a tree line within that western paddock.
- 14.5. As seen earlier, the distance from the intersection of the Mallee Highway and Elwomple Road to the entrance of Mr Kuskoff's driveway was about 430 metres. Of that distance DA and AM walked about 100 to 150 metres along the road. That section of the road was the western border of the Kuskoff property. The road and verges were unsealed. There was no guarantee that footfalls would not be heard. I am bound to say that DA and AM walking along Elwomple Road for that distance had an air of unnecessary

¹³¹ Transcript, page 1521

bravado if not recklessness about it. Even allowing for the fact that they had the advantage of night vision equipment they could not have known where Mr Kuskoff, who had been firing shots, was at that point in time. It is not surprising that when they heard further shooting DA and AM left the road and elected to approach the homestead through the land to the west of the road.

- 14.6. DA told the Court that in the western paddock he and AM proceeded until they saw a light from Mr Kuskoff's house. They then moved inwards towards the house to obtain better observation. Ultimately they took up their position at the side of Elwomple Road because the location provided them with the greatest ability to make observations. In other areas trees had blocked their view.
- 14.7. DA told the Court that their principal role was to maintain observations on Mr Kuskoff. They were to take up a position where they would have optimal observation of him and his house and the areas to which he would be likely to move. Clearly the driveway was one such location. He said that they were trying to create as much distance as they could from Mr Kuskoff while still being able to maintain observation of him. Any location further west of the road may have involved them losing sight of Mr Kuskoff and it possibly would have enabled him to disappear into the scrub. Locations further west also involved the disadvantage of obstruction of observation by trees. It is naturally to be accepted that in selecting a suitable position to conduct observations the darkness would not have helped.
- 14.8. Once at their observation point DA made his observations using both naked eyesight and the night vision capability of his rifle's sighting system. DA took up a kneeling position on the ground with his rifle supported on the branch of a tree. He acknowledged that this would not have provided him with cover from a rifle fired towards him.¹³² But he said that other locations would not have enabled them to make the observations they needed to make. He said that he did not lie on the ground prone. This was due to the fact that he needed to be elevated so he could see over the different terrain features on the ground. As seen, AM in his evidence also alluded to this difficulty. Having attended at the location in question on the Court's site visit I can also understand this difficulty. Nevertheless, there is no escaping the fact that DA's observation position exposed him to danger.

¹³² Transcript, page 1541

- 14.9. Once in the observation position DA could see Mr Kuskoff moving around at the front of the house. Kuskoff had a long firearm in his possession. He would occasionally fire it. He had a torch and was moving around the front of the premises.
- 14.10. As to the reason why the maintaining of observations on Mr Kuskoff was important, DA said as follows:
- 'Given his - what he was doing at that stage with a firearm and discharging rounds, it was important to keep observations on him, given there are surrounding farm properties and also other police nearby. So we needed to keep observations on him so we knew what he was doing, to keep it safe for everyone in the vicinity.'¹³³
- 14.11. DA said that as far as he was aware no other personnel had any visual observation of Mr Kuskoff.
- 14.12. At their observation point DA heard gunshots emanating from the general direction of the house.
- 14.13. During this period DA and AM were in radio communication with STAR Group officers at another location. I deal with the relevant communications in greater detail in a separate section but it is worthwhile reciting here what is revealed by the communication transcript in order to place DA's activity in proper context.
- 14.14. At 11:06pm there was radio communication reference to Mr Kuskoff having been on the telephone and having been angry. A direction from a STAR Group 'Mitre' (sergeant) to all cordon members was that Mr Kuskoff was not to leave the cordon area due to his demeanour and his stated intentions.
- 14.15. There were further periodic transmissions. At 11:20pm DA communicated that Mr Kuskoff appeared to have a single barrelled rifle or shotgun. At 11:24pm there was a transmission to the effect that three shots were heard at the time a police vehicle was driving in the area. Shortly thereafter there was a transmission from the helicopter to the effect that a human figure could be seen near the building which we know to be the homestead. At 11:26pm there was a communication that Mr Kuskoff was firing shots at the helicopter. DA told the Court that at that point Mr Kuskoff was at the front of his house and that he could see him aiming his rifle in the direction of the helicopter and was firing rounds. His firearm was pointed skywards in the same plane that the

¹³³ Transcript, page 1546

helicopter was occupying.¹³⁴ That transmission was timed at precisely 23:26:38. A transmission at precisely 23:28:00 was interrupted by DA requesting that the channel be cleared as Mr Kuskoff had gone down. This transmission is reproduced earlier in paragraph 12.10.

14.16. Thus it is that the shooting of Mr Kuskoff occurred between 23:26:38 and 23:28:00. DA gave evidence as to what transpired in the intervening period. He told the Court that the helicopter moved away and that Mr Kuskoff, standing in DA's clear line of sight, began firing off to the south which was to the right of DA as he was looking at Mr Kuskoff. As DA had said in his police interviews he could see that Mr Kuskoff was firing in that direction because his rifle was levelled in that direction and was protruding from Mr Kuskoff's silhouette. He could also see that the muzzle flash from the rifle appeared to be directed to the south. DA then observed Mr Kuskoff making his way around firing shots at ground level until he appeared to fire directly at their location. There had been possibly four to six shots fired by Mr Kuskoff and that they were quite rapid as they were going around in an arc. It was then that he heard a bullet crack and go through the adjacent foliage. Asked as to how he determined that Mr Kuskoff had fired in their direction DA said that he was looking at his silhouette and that the rifle had moved from a point where he could see it to a point where he could not see it. From this he inferred that the rifle was no longer pointed at right angles to him but was now pointed in a straight line towards his position. He said that the crack that he heard was affirmation that the rifle had been fired directly at his location.

14.17. DA testified that he then turned to AM and said something along the lines of '*fuck, that was close*' to which AM said '*Yep, that was fucken close*' or something similar. DA said that he then turned back to look through the rifle scope in which he again picked up Mr Kuskoff. He still could not see the rifle protruding from Mr Kuskoff's figure from which DA again determined that he was still pointing it in his direction. Mr Kuskoff then fired again and it was at that point that DA fired his first shot. Asked in his evidence as to why he fired that shot, he said:

'Cos I was in fear of myself or AM. I believe on reasonable grounds that it was necessary to protect our life or prevent serious injury to us.'¹³⁵

¹³⁴ Transcript, page 1558

¹³⁵ Transcript, page 1562

DA was asked by his counsel Ms Nelson QC what he had understood about the effect of Police General Orders relating to the use of firearms. To this DA said that his understanding was that when one believes on reasonable grounds that it was necessary to protect life or prevent serious injury and one was satisfied that there was no other means available, the use of a firearm was justified. It will immediately be observed that DA's answer reproduced above was a somewhat formulaic response that parrots the SAPOL General Order relating to the use of firearms. As well, the answer does not differentiate between the first, second and third shots that DA fired, two of which were of themselves capable of killing Mr Kuskoff.

14.18. Asked in more detail about his state of mind DA said as follows:

'Yes, so that's the first time I've ever had someone firing back at me like that. It was one thing to have shots going off around but as soon as one has come straight back past you it suddenly starts to get very real that you're in real threat of being shot in the face, in the head, not going home to your family and all that sort of I suppose runs through you head very quickly in those times. So when he was to discharge his rifle in our direction again that's when I fired.'¹³⁶

14.19. Asked to explain in more detail why DA fired three shots, he said:

'I've fired until I thought the threat wasn't present any more. So the first shot he appeared to shrug, and I didn't know whether he'd shrugged because a bullet had gone past him. I believe the threat was still there at that point; I fired again. I didn't see any reaction, and then I fired again and I saw the figure and the silhouette go down to the ground, and at that point I still didn't know whether any of my shots had actually hit Mr Kuskoff.'¹³⁷

14.20. I have already referred to the communication in which DA sought the clearing of the radio communication channel. At precisely 23:29:06 there was a further communication in which DA was asked for a situation report. DA's response included reference to shots going past their location, around the bushes near them and that he had engaged the male with approximately three shots. He said that he believed the male had gone down. This transmission also appears to serve as confirmation that DA had detected rifle fire in close proximity to their location. Mention of the shots and the bushes appears to be a reference to him hearing the vegetation shot or shots. This transmission was made while DA and AM were still at their observation position and before any other police officer arrived at that location. The first person on that scene was officer JA who as I have indicated earlier was DA's brother. JA was in fact of a

¹³⁶ Transcript, page 1655

¹³⁷ Transcript, page 1562

higher rank than DA. In his evidence in chief DA said that he did not have any conversation with AM after he had returned fire and before JA approached their location.¹³⁸

14.21. DA was cross-examined extensively by Mr Harris QC, counsel assisting. DA acknowledged that the ammunition that he was using would give rise to a likelihood that if it struck the torso of a person it would kill that person.¹³⁹ When asked to acknowledge that his training involved not shooting at the extremities of a subject but to shoot at the torso, DA agreed that one would shoot at the ‘*centre mass*’. He said that one would shoot at the centre of what one could see.¹⁴⁰ DA agreed that unless there was a limb protruding from a human target, in practical terms the centre mass of the target would be the torso. He explained that one would most likely disable a person by aiming at the centre of their mass. In addition, one would be more likely to hit the target if one aimed at the centre mass.¹⁴¹ He said that arms and legs are much smaller targets than the torso and that if one was to hit a person in the arm or leg it would not necessarily eliminate the threat posed by that person; the target would more than likely still have the ability to return fire.

14.22. DA readily acknowledged that when he fired at Mr Kuskoff he intended to hit him in the torso¹⁴². He said that he could not see Mr Kuskoff’s whole body above his knees. Asked by Mr Harris QC as to whether by firing at Mr Kuskoff and striking him in the part of the body at which he was aiming he knew he would probably kill him, at first he said, ‘*Possibly yep*’.¹⁴³ But when pressed he agreed with Mr Harris that it would probably kill him¹⁴⁴. He was then asked:

‘Q. So if you hit where you were aiming at him you were likely going to kill him?’

A. Yes.’¹⁴⁵

14.23. DA also acknowledged in answer to me that when he pulled the trigger it was his conscious realisation that in doing so he would likely kill or cause serious bodily injury to Mr Kuskoff.¹⁴⁶ Taking into account those answers and DA’s knowledge of the

¹³⁸ Transcript, page 1565

¹³⁹ Transcript, pages 1592 and 1593

¹⁴⁰ Transcript, page 1593

¹⁴¹ Transcript, page 1593

¹⁴² Transcript, page 1594

¹⁴³ Transcript, page 1594

¹⁴⁴ Transcript, page 1594

¹⁴⁵ Transcript, page 1594

¹⁴⁶ Transcript, page 1646

ballistic capabilities of his weapon and the ammunition that he was firing, I have no doubt that when he fired at Mr Kuskoff he did so with the realisation that he would probably kill Mr Kuskoff. I so find.

- 14.24. As far as Mr Kuskoff's shooting was concerned DA said that there was only one shot where there was an audible crack. He said that he could hear the boom from the rifle but then the crack went near to them. He also said that there was only one projectile interfering with the foliage in his vicinity.¹⁴⁷ He said from his observation that the other shots were away from his position to the south east.
- 14.25. DA agreed with Mr Harris QC that during the course of the exchange between himself and AM about the proximity of the shot to them he had taken his eye away from the scope of his rifle and had looked towards AM who was slightly behind him. He told Mr Harris QC that he had turned back and regained sight of Mr Kuskoff through the sight of the rifle and it was then that Mr Kuskoff fired again. He could not recall whether there was any disturbance of foliage from that round, but as soon as Mr Kuskoff fired he fired back.
- 14.26. Mr Harris QC closely questioned DA about that sequence of events. He asked DA whether it may have been the case that the shot that Mr Kuskoff fired just before DA fired his own weapon had moved further around to a point north west of his position. DA denied that. He said that he could see that the rifle was not protruding from Mr Kuskoff's silhouette. This had suggested to him that it was still in line with his body, that is to say pointed in his direction.
- 14.27. Mr Harris QC asked DA in effect why if the shot from which he heard the crack had not prompted him to shoot at Mr Kuskoff, the next shot had caused him to do that. Why could he not have waited to see what would happen? To this DA said that the next shot could have shot them in the face. He said that he did not shoot at Mr Kuskoff after he had heard the shot that had made the cracking sound because he clarified with AM whether the shot had actually travelled in close proximity to their location. AM's response had effectively confirmed what DA had perceived. Asked as to whether AM's

¹⁴⁷ Transcript, page 1616

confirmation of what he had perceived was validation of his decision to shoot Mr Kuskoff, DA said:

‘It validated that the bullet had gone close but my decision to shoot him wasn’t until I had turned back around and he’d fired again to what I believed was straight into our location. So at that point I don’t know whether we may have accidentally activated a torch or something like that. He may have known what our location was, I don’t know that at that time so I’m acting on that threat that he may now know where we were.’¹⁴⁸

14.28. However, DA had previously told the Court in evidence that from the time that he and AM had covertly inserted themselves into their observation position, until the time that he discharged his weapon, he did not think that Mr Kuskoff had become aware of his location. He said that he still regarded himself as being covert right up until the time that he discharged his firearm.¹⁴⁹ Mr Harris QC pointed out to DA the apparent inconsistency between that evidence and his latest assertion, reproduced above, that Mr Kuskoff may have known of their location. To this DA said that he could not confirm whether Mr Kuskoff did or did not know where they were and that by the stage that he decided to shoot Mr Kuskoff he could not be sure that Mr Kuskoff did not know they were there.¹⁵⁰ He said that he thought that by that stage Mr Kuskoff may have known where they were.¹⁵¹ One of the considerations was that Mr Kuskoff may after all have been deliberately shooting in his direction. He believed that the rifle was still pointing straight towards them when Mr Kuskoff fired his last shot.¹⁵²

14.29. My interpretation of what DA was saying was that his decision to fire at Mr Kuskoff was the result of a combination of firstly, AM’s confirmation that a projectile had been fired in close proximity to them, secondly his seeing (through the scope) Mr Kuskoff again firing in his direction and thirdly his uncertainty as to whether or not Mr Kuskoff had detected their presence and the possibility that he may now have been deliberately firing at them after all.

14.30. I do not believe that there is any material inconsistency of the kind suggested by Mr Harris QC. DA’s earlier answers were predicated on the basis that until he came to shoot at Mr Kuskoff he had believed, not unreasonably having regard to the dark conditions, that Mr Kuskoff had not become aware of their presence. However, to my

¹⁴⁸ Transcript, pages 1619-1620

¹⁴⁹ Transcript, page 1599

¹⁵⁰ Transcript, page 1620

¹⁵¹ Transcript, page 1621

¹⁵² Transcript, page 1621

mind now that Mr Kuskoff was firing in their general direction it would be natural for DA to begin having doubts about whether his covert status had been compromised after all.

- 14.31. Mr Harris QC challenged DA as to why after the vegetation shot, and after his conversation with AM about that, he did not consider moving his position. To this DA said that he did not know whether, if they moved, he would be able to resume observation of Mr Kuskoff. He added that he would not have wanted to move laterally because it would have increased his silhouette and made him more of a target. When it was pointed out to him that the risk to his and AM's safety was such that the importance of maintaining observations on Mr Kuskoff needed to defer to safety, DA said:

'Yep, it all happened very quickly, it was all within seconds.'¹⁵³

Mr Harris QC also asked DA about the sequence of his three shots. DA said there was about a second between each shot and that he conducted a critical evaluation of the effect of each shot before deciding whether to fire the next one.¹⁵⁴ DA agreed that the '*shrug*' from the first shot might have been Mr Kuskoff spinning around.¹⁵⁵ For reasons that I have already explained, in my view the first shot that struck Mr Kuskoff was the one that struck him to the forearm and then entered his torso. I think that the shrug reaction described by DA was Mr Kuskoff's reaction to being shot the first time. I think Mr Kuskoff was disabled by that first shot and the reality was that there was no need for a second and third shot. I do not believe that Mr Kuskoff still presented in a threatening manner after the first of DA's shots. I think it highly unlikely that he could have been perceived as still standing there after both the first and second shots. However, having regard to the limited and imperfect view that DA had of Mr Kuskoff through the night vision scope it is possible that DA was uncertain as to what Mr Kuskoff's reaction to that first shot was. It seems clear to me that DA did not pause long to ascertain what the result of his first shot was before he fired his second and third.

- 14.32. Mr Harris QC also asked DA about the duration of time between his exchange with AM and when he discharged his weapon for the first time. DA said that the exchange had

¹⁵³ Transcript, page 1623

¹⁵⁴ Transcript, page 1625

¹⁵⁵ Transcript, page 1629

occurred, he turned back and took a '*sight picture*' through the scope, Mr Kuskoff fired almost immediately and that was when DA fired. So, he said that it was '*a matter of seconds*'.¹⁵⁶ However, it will be remembered that in his second and third interviews with the police DA had suggested that the duration was under a minute, which of course could be interpreted as being something significantly longer than a matter of seconds.

14.33. Mr Harris QC asked DA the obvious question as to why he would take his eye off Mr Kuskoff after the vegetation shot in order to converse with AM, especially having regard to the need for him to continue to observe Mr Kuskoff and to the possibility that when he returned his eye to the scope he would not be able to locate him again. DA responded by saying that the rifle had been anchored into his shoulder and was maintained in much the same position. He said it was only a '*head check*', not a whole body turn towards AM. Asked as to why in the circumstances he would take his eye off the scope at all, DA said:

'Yeah, I suppose it was just the shock of a round actually coming in our direction after the whole night they'd been going everywhere else.'¹⁵⁷

14.34. DA was closely questioned by Mr Harris QC about the position he had assumed at the observation location. He told the Court that he had initially taken up a prone position but this had not been satisfactory due to the undulation of the land. That was why he had taken up a kneeling position. He was asked whether after the shots had come close to the area, he had given thought to the possibility of giving up observation activity and placing himself prone on the ground in order to obtain better cover. To this suggestion DA said that when the shot came through the foliage near them:

'...the time that that took for that to happen and then for me to look back through the scope I hadn't considered it again until the point where once I'd looked at him through the scope again and then he fired that's when I fired. So I hadn't considered during that time going prone, no.'¹⁵⁸

He added:

'Well, initially it was the shock of the bullet going past and then when I quickly took back observations it was pretty much straight away that he fired again; so I didn't have time and I didn't think about it at that point.'¹⁵⁹

¹⁵⁶ Transcript, page 1629

¹⁵⁷ Transcript, page 1638

¹⁵⁸ Transcript, page 1821

¹⁵⁹ Transcript, page 1822

Meaning that he did not have time and did not think about options other than firing his own weapon.

- 14.35. Mr Harris QC drew DA's attention to his assertions in interviews that there was a time gap that he had described as being '*under a minute*', a matter to which I have already referred. DA was asked by Mr Harris QC if he agreed with the proposition that his first shot had not occurred instantaneously, but that a period of time that had elapsed. To this DA suggested that it all happened quite quickly. He acknowledged that he had used the expression '*under a minute*', but there may have been a slight pause between it happening - he could not be 100% sure. Asked as to whether whatever the time lapse was it was time enough to reflect on an alternative to firing his weapon, namely by moving from the kneeling position to lying flat on the ground to take advantage of the undulations of the terrain, DA said:

'So what happened was it had happened and I quickly turned to AM, I turned back and that's why I'm saying now from what I recall, it pretty much happened instantaneously because he fired again and then I fired. If there was a volley of shots coming in then it would have changed my mind as to what was happening but because it was a single shot I turned back around to take observations up on him. But the exact time I can't be sure of, I feel like it happened very quickly.'¹⁶⁰

- 14.36. In light of that answer he was asked whether there had been any opportunity for him to take cover by lying on the ground as distinct from him firing his own weapon he said:

'If I had have laid down on the ground I would have lost sight of him and if I still had sight of him while I was laying on the ground there still would have been a target there for him to hit, and AM was still in a position behind me where he could have been hit as well.'¹⁶¹

In essence DA said that the thought of taking up a prone position on the ground did not really enter his mind which led him to believe that everything had happened very quickly.¹⁶²

- 14.37. I asked DA a number of questions in the course of his cross-examination. He was asked whether having regard to the helicopter's capacity to observe Mr Kuskoff he had considered withdrawing from his position on its arrival. DA said that he did not consider that as they had good observation of Mr Kuskoff. DA later stated in re-examination that due to the terrain he did not believe that PolAir would have had

¹⁶⁰ Transcript, page 1828

¹⁶¹ Transcript, page 1828

¹⁶² Transcript, page 1832

unlimited ability to observe Mr Kuskoff, particularly if he was to disappear under foliage or trees or, had gone inside the house.¹⁶³

14.38. He was also asked whether when he assumed the observation position on Elwomple Road he had any plan or thought in relation to what action he would take if Mr Kuskoff had indiscriminately fired in his general direction. The following exchange of evidence occurred:

‘Q. Did you before you took up position A and started observing him did it occur to you that if he was likely to be situated anywhere on his property it would be in the vicinity of his house.

A. Yes.

Q. So when you took up position A then did it occur to you that you were going to place you, yourself and AM within a reasonably close proximity to Mr Kuskoff.

A. Yeah, we had to do that so we were able to keep observations.

Q. Having regard to the fact that Mr Kuskoff had been firing a number of shots indiscriminately, when you took up position A did it occur to you that even at that point that he might fire indiscriminately but in your general direction.

A. Yeah, it was a thought, yep.

Q. Did you have a plan then in your own mind at any rate as to how you would handle that situation if it arose.

A. Not at the time. It would have been situation dependent depending on what the situation was or what his actions were.

Q. Well, if his actions consisted of indiscriminately shooting in your general direction, when you took up that position did you have any plan or thought as to what you might have to do to counter that possibility if it arose.

A. No, not particularly, no.

Q. Did it occur to you when you took position A that you might have to engage him in an exchange of gunfire if he started shooting in your direction.

A. I had set myself up in that position so I had the ability to return fire if I needed to, yep.

Q. What circumstances were there that may have dictated a need for you to exchange fire with him.

A. That could have been anything from a direct threat to ourselves, if the arrest team had to make an action and he was a threat to them while they were doing that action.

Q. Direct threat to yourselves could have consisted of indiscriminate fire in your direction having regard to the fact that he was in the habit of doing that.

A. Yep.

¹⁶³ Transcript, page 1649

Q. Before you actually took up that position. You agree with that.

A. Yep.

Q. When you took up position A did you have an appreciation of a risk that you might have to actually shoot Mr Kuskoff.

A. There's always that risk going into every job we do, so we always know in the back of our head that that action might have to occur. So we put ourselves into a position where we are best able to do that if it necessitates it.' ¹⁶⁴

14.39. DA was also asked by me about the time interval between the gun blast and hearing the crack and foliage being disturbed. He said it was almost instantaneous although he could distinguish the different sounds of the blast and the crack.

14.40. Notwithstanding the fact that Mr Kuskoff appeared to be firing indiscriminately and not necessarily intending to hit either him or AM, whereas DA's own actions had been undertaken with an intent to hit Mr Kuskoff, DA asserted that he believed his actions had been reasonably proportionate to Mr Kuskoff's actions. ¹⁶⁵

14.41. DA reiterated on his oath that the exchange between himself and AM about the shot coming close did occur. He was asked:

'Q. Were you seeking confirmation from him as to what you had heard and felt.

A. Yeah, probably I'd suggest I was, just that my – what I had experienced was the same as what he had experienced.

Q. If he'd remained silent or didn't appear to know what you were talking about have you got any idea how you might have reacted.

A. I think I still would have reacted the same.

Q. You tell me on your oath do you that this exchange between you and AM did occur.

A. Yes.' ¹⁶⁶

15. **The FLIR footage**

15.1. FLIR is a system that enabled infrared observation of objects at night and the video and audio recording of the same. This device was available in the PolAir helicopter that flew over the scene prior to the shooting.

15.2. The device was operated by a member of the STAR Group, officer DW. DW gave oral evidence at the inquest. The FLIR footage from the incident was played to the Court

¹⁶⁴Transcript, pages 1644-1645

¹⁶⁵ Transcript, page 1648

¹⁶⁶ Transcript, page 1648

during DW's oral evidence. I have also privately viewed the footage on a number of occasions.

- 15.3. The helicopter operated at an altitude of 4,500 feet above the property. The magnification of the FLIR camera was on the maximum setting. From that altitude the aircraft could be heard from the Elwomple scene. It could not operate covertly, and as seen Mr Kuskoff fired shots at it. The chances of him actually hitting it at that altitude were not very high.
- 15.4. The FLIR footage has audio from GRN 205 STAR OPS which was the radio communications channel between members of the STAR Group including personnel in the helicopter which was designated PolAir 53.
- 15.5. I have examined the footage in conjunction with the transcript of radio communications that were made on the GRN 205 STAR OPS channel. I note that the times recorded in the transcript at which various communications are made are accurate, but that the times as recorded on the FLIR footage are approximately ten minutes earlier than real time.
- 15.6. It is necessary only to deal with the FLIR material as it relates to events before and at the time of the shooting.
- 15.7. In various scenes within the FLIR footage Mr Kuskoff can be seen as a black figure moving in the vicinity of the homestead. The footage in general is not especially clear. It is fair to say that as a means of close observation of Mr Kuskoff it would have left something to be desired. I do not doubt that if Mr Kuskoff had attempted to hide from observations made from the helicopter he would have had little difficulty in doing so. I do not believe that eyes on him could have been maintained solely by means of this modality of observation.
- 15.8. Before discussing the FLIR footage in conjunction with the communications transcript it should be mentioned that at critical moments the footage displays a black screen with no detail. In his evidence DW explained that this was due to him altering the settings on the device when he received reports of shots being fired in the direction of the helicopter. He told the Court that he altered the setting so that it might detect a muzzle flash from anything that was in the possession of the figure under observation. There were three occasions when the screen is virtually completely black. The duration of

blackness amounts to a total of approximately thirteen seconds. For that reason I am not certain whether the instant at which Mr Kuskoff was shot appears in the footage.

- 15.9. I was satisfied by evidence on oath from DW that there is nothing questionable or sinister about the black periods of the footage. He did not interfere with the video footage and assured me that no other person did. I mention this because of the suggestion raised by members of Mr Kuskoff's family that the person or persons responsible for Mr Kuskoff's shooting were in very close proximity to him at the time he was shot and that the black sections of the footage are part of a concerted effort to cover that up. I have indicated earlier that I reject that contention. The FLIR footage, even with the black sections missing, demonstrates that no person was in Mr Kuskoff's immediate vicinity before or after his shooting. Notwithstanding gaps in the footage amounting to 13 seconds, it would not have been possible for any person or persons to have entered onto the property before the shooting and not have been detected at times when the device was operating with relative clarity. The footage displays the entry onto the property of the armoured vehicle which was sent to the location after it was clear that Mr Kuskoff had probably been shot. This is the only evidence of the presence of any person on the property in Mr Kuskoff's vicinity as revealed by FLIR. Furthermore, DW gave evidence on oath which I accept that he would have detected the presence of another person on the property and that he detected no such person¹⁶⁷.
- 15.10. At 23:25:32 (11:25pm and 32 seconds) there was a transmission from the helicopter to the effect that they had picked up a human figure near what is referred to as the '*stronghold*', that is to say the house. The figure was said to be about one or two metres from the north-eastern corner of the building and was moving around in that vicinity.
- 15.11. At 23:26:38 there is a transmission that Mr Kuskoff was firing shots at the helicopter. Helicopter personnel responded by indicating that if the helicopter was to move to a less proximate location they would lose observations, but it is then said that they might move away in any event. As well there is reference made to an observation that the figure was still close to the main stronghold and that more shots were being fired, with the figure running to and from the house. I add here that these observations of the human figure as described in the radio communications transcript are borne out faithfully by the FLIR footage. But as indicated earlier the times on the FLIR footage

¹⁶⁷ Transcript, page 1740

precede real time by about ten minutes. Following the transmission describing the figure firing shots at the helicopter there are the three black periods to which I have already referred. The next transmission of relevance is a few seconds after 23:28:00 when officer DA states as follows:

'Clear channel, clear channel, I've fired shots at the male, we've had shots coming at our location, if we can get the Bearcat to the front of the strong hold, I think he's gone down.'

This transmission made by DA is audible on the FLIR footage and one can see from the footage that the human figure is now stationary and apparently lying on the ground in the vicinity of the house. There is no doubt that Mr Kuskoff has been shot at this juncture.

- 15.12. The transmission by DA at about 23:28:00 is significant in a number of respects. Firstly, it is made approximately 1 minute and 22 seconds after reference was made to Mr Kuskoff firing his shots at the helicopter. This is not inconsistent with the evidence of both DA and AM. Secondly, in the first transmission made by DA following the shooting of Mr Kuskoff he has made explicit reference to shots having come towards their location. Although self-serving to a degree, to my mind the circumstances are such that DA's very early utterances that shots had been fired towards his location has a tendency to confirm that this was not an invention on his part or a concoction on the part of both AM and DA.
- 15.13. At 23:29:06 DA was asked for a situation report of his location. DA's response again included reference to *'we've had shots going pass (sic) our location around the bushes near us, I engaged approximately three shots. I believe the male may of (sic) gone down, I am not 100% sure'*. The utterance again is consistent with the account that DA has given in relation to the circumstances in which he shot Mr Kuskoff.
- 15.14. As indicated earlier, the FLIR footage may or may not display the moment Mr Kuskoff was shot. The footage demonstrates that an officer remarks per radio that more shots were being fired. This is the final reference to any shots being fired. To my mind this is almost undoubtedly a reference to the final shots fired by Mr Kuskoff and DA's return of fire. The screen is black when this utterance was made, but when a moment later the FLIR image returns, Mr Kuskoff's figure can be seen to be moving towards the house which is only a few metres away. He is then seen to stop. The FLIR footage then almost immediately goes black for about 4 seconds. When the image returns Mr

Kuskoff's figure can be seen to be in the same motionless position that he had been in just before the screen went black. He does not move from that position again. An inference is available that he has been shot by this time. DA's transmission asking for the channel to be cleared occurs approximately 29 seconds after Mr Kuskoff first appears to assume that motionless position before the screen goes black and approximately 25 seconds after the image resumes with Mr Kuskoff still in that motionless position. Thus there is an approximate delay of at least 25 seconds between Mr Kuskoff being shot and felled and DA making his transmission. It could be as much as 29 seconds.

15.15. The other matter from the communications transcript that is worthy of note is that at 23:14:30 there is reference to the call that Mr Kuskoff made to SAPOL communications to which I have already referred. This call was made at 11:08pm¹⁶⁸. The radio communication made at 23:14:30 asserts that at 2308 (11:08pm) Mr Kuskoff had called police and had been yelling and screaming into the phone. The radio communication made reference to Mr Kuskoff wanting the Commissioner, Mr Tony Abbott and Mr Putin. The communication also made reference to Mr Kuskoff's assertions about the Tailem Bend Police Station and Mr Kuskoff's asserted intention that he was going to shoot it up. The transcript of that telephone communication is highly consistent with the SAPOL comms radio communication that would have been heard by STAR Group members in the field. Thus the need for Mr Kuskoff to be observed and confined to his property was even more acute, certainly from 11:08pm onwards. Police were entitled to regard Mr Kuskoff's utterances as more than simply the idle threat of an agitated individual.

15.16. I should emphasise here that the FLIR footage cannot shed light on the precise activity of Mr Kuskoff at the moment he was shot. His figure is simply too indistinct for any assessment to be made as to what he was doing at that moment.

16. Independent perceptions of the final shots

16.1. Evidence has been given by witnesses all of whom were police officers as to the nature of gun shots heard prior to DA's communication in which he asked for the channel to be cleared and announced that he had fired shots at the male person.

¹⁶⁸ Exhibit C69

- 16.2. I will deal with each of these evidence sources in turn.
- 16.3. Officer JA was a Sergeant in the STAR Group. He is DA's younger brother. He was DA's superior officer. JA provided statements to investigating officers and gave oral evidence in the inquest. I found JA to be a witness of truth. His evidence was unshaken in cross-examination. But I think he is mistaken in relation to one matter that I will come back to in a moment. I am mindful of the fact that JA was the first person at the scene of DA and AM's observation location following the shooting and that the three of those officers for a number of minutes were left alone together in circumstances where in the normal course of events one would have expected some kind of exchange between them as to what had just transpired. JA acknowledged in his evidence he had obtained what he referred to as a '*brief synopsis*' as to what had taken place. I do not believe that JA was party to any discussion designed to hide the truth. It is also worthwhile observing that by the time JA arrived on the scene DA had already made both of his radio communications in which he indicated that he believed Mr Kuskoff had fired towards their location and he had fired in return.
- 16.4. JA compiled handwritten notes of the evening's events¹⁶⁹. The notes are timed at 0055 hours on 17 September 2015. Among other things the notes deal with the incident whereby Mr Kuskoff was said to be firing at the PolAir helicopter. The notes go on to describe that within a matter of minutes JA heard a number of shots, approximately six. Initially there had only been the one distinct type of sound, but then there had been a second group of shots which were different in sound. In my view it can be inferred that the second group of shots JA noted were the shots fired from DA's weapon, it not having been fired at any stage prior to this. JA then noted that '*immediately after*' this DA reported on the radio that he had been fired at and had returned fire to the male who was possibly lying motionless.
- 16.5. JA's first witness statement¹⁷⁰ made on 17 September 2015 describes what he heard in the same terms as his handwritten notes. The statement asserts that there were six shots, the last three of which had a distinctly different sound, which is a reference to those fired by DA. The statement then asserts that '*immediately*' after those shots DA reported that shots had been fired into their position and that police had returned fire. This is a reference to the transmission that occurred a few seconds after 23:28:00.

¹⁶⁹ Exhibit C128a

¹⁷⁰ Exhibit C128b

16.6. In his oral evidence before the Court JA described what he heard in these terms:

'So heard three gunshots in reasonably quick succession, followed by another three in quicker succession, both groups of gunshots distinctly different in sound. And almost immediately after that, DA coming up on radio telling everyone to minimise communications and then went on to say that their position had been fired upon and that they'd fired back and they believed that Mr Kuskoff may have been hit and was lying motionless in the driveway.'¹⁷¹

This evidence was not challenged in any way.

16.7. There are two inferences that might be drawn from JA's assertions as to what he heard. Firstly, the three distinctly different sounding gunshots which are attributed to DA's weapon were fired very quickly after the preceding gunshots from which it can be inferred that DA's return of fire was not significantly delayed after the shots had been fired by Mr Kuskoff. Secondly, if one accepts the evidence of JA that it was immediately after the last three shots were fired that DA communicated by radio that shots had been fired at his location and that he had fired shots at the male, there had been no time for any reflection on the part of DA or AM, or for collusion between them as to what had just transpired. In other words, if DA's utterances in the radio communication were as spontaneous as JA said they were they were therefore likely to be true.

16.8. Senior Constable CB of the STAR Group was situated in the vicinity of the armoured vehicle at the time of the shooting. The armoured vehicle was parked on Elwomple Road but on the other side of the Mallee Highway. His witness statement asserts as follows:

'Sometime later I heard more shots from the property followed by three (3) different sounding shots. Until this time all of the shots sounded the same. I then heard via police communications from Brevet Sergeant DA that shots had been fired at their location and he had returned fire.'¹⁷²

Officer CB gave evidence at the Inquest. In that evidence he told the Court that following the discharge of a number of shots he heard what sounded like a different weapon being discharged. He said it was '*distinctively different*' to the sound of the firearm that had been fired previously. What CB was alluding to here in my view were

¹⁷¹ Transcript, pages 863-864

¹⁷² Exhibit C136

the shots fired by DA. CB then said, '*shortly after that I heard DA's transmission that he had fired shots towards Mr Kuskoff*'¹⁷³.

- 16.9. Brevet Sergeant AC was one of the two officers on the black side of the stronghold approximately 480 metres to the east. He was with officer TM. In his witness statement made on 17 September 2015 he asserts:

'I then heard a volley of multiple gun shots followed by three gun shots from a different firearm, the latter being a quieter, sharper sound. DA then reported over the radio that he had returned fire and that he thought the male was down.'

In his oral evidence before the Court AC described a volley of gun fire that he had been hearing up to that point, which clearly was that fired by Mr Kuskoff, and that that volley of shots was followed by three shots from a weapon that had a much quieter sound. He said that he then heard the transmission from DA indicating that he had returned fire.¹⁷⁴

- 16.10. In questioning by me AC reiterated that the last three shots made a distinctly different sound. He said that it had occurred to him at the time that these last shots had been fired by a weapon in the hands of a police officer. I then asked AC how long after those three shots were fired did he hear the transmission from DA. AC replied, '*quite quickly. It would only be a matter of seconds*'.¹⁷⁵

- 16.11. The statements and evidence of officer TM, the other STAR Group officer on the black side, did not deal with this issue.

- 16.12. The above evidence might suggest that DA had virtually no time for reflection or for him to have invented a reason for firing at Mr Kuskoff before DA made his radio transmission, a transmission that is in total keeping with his account of why he fired at Mr Kuskoff. Similarly it might establish that there was no time for DA and AM to have colluded about that matter.

- 16.13. However, the immediacy of DA's transmission as described particularly by JA and AC is seemingly contradicted by the FLIR footage which demonstrates that DA's transmission occurred several seconds after Mr Kuskoff first became motionless, never to move again. In my view, JA is mistaken when he asserts that DA's first transmission after the shooting was immediate. In my view there was a delay, possibly as much as

¹⁷³ Transcript, pages 1237-1238

¹⁷⁴ Transcript, page 1268

¹⁷⁵ Transcript, page 1293

about 29 seconds and almost certainly about 25 seconds. DA's explanation for the delay, as given in his third interview with investigating detectives, was the difficulty that had been experienced in conducting radio transmissions that night. It is unlikely, although admittedly not impossible, that DA, if he had shot Mr Kuskoff for no reason, which is inherently unlikely, or for a spurious reason, would have had sufficient time to invent a story based on a knowingly false perception of shots having been fired at his position. If that story was an invention arrived at in those several seconds, DA was incredibly fortunate that the later post mortem examination would prove that at the moment he fired his first shot at Mr Kuskoff, the latter had his rifle at his shoulder and was aiming it in DA's general direction. In short, any delay in DA reporting the shooting, whatever the reason, did not shake my confidence in his account that he believed Mr Kuskoff was firing his rifle in his general direction.

17. The ballistic evidence

- 17.1. I have already referred to certain facets of the evidence given by Andrew Plummer, the SAPOL ballistics expert. Mr Plummer is a Brevet Sergeant of SAPOL. Mr Plummer provided a comprehensive witness statement¹⁷⁶ and gave oral evidence.
- 17.2. I found Mr Plummer to be an honest witness who clearly knows his craft. I detected no partisanship towards police whatsoever.
- 17.3. I do not see the need to repeat in this section the matters that I have already referred to as far as ballistics are concerned.
- 17.4. However, there are other aspects of Mr Plummer's evidence that should be mentioned. Mr Plummer told the Court that he had briefed other police officers to conduct a search within the paddock to the west of Elwomple Road for any signs of projectile or projectile impact. Mr Plummer himself inspected the area where DA and AM had conducted their observations. As to the outlying areas to the west of Elwomple Road, a number of areas of concern were drawn to his attention. Mr Plummer was able to eliminate those areas as having been impacted by bullets. No projectiles were located which is hardly surprising. As to the area where DA and AM had been conducting their observations, Mr Plummer himself was not able to find anything at that location that could be ascribed to bullet damage. He searched approximately 100 metres to the west

¹⁷⁶ Exhibit C100

of that position as well. Damage to disturbed tree bark that Mr Plummer observed that was nothing other than ordinary tree wear and tear¹⁷⁷. It is not as if the evidence of DA and AM was to the effect that a branch had been dislodged by a projectile. It is not surprising that no real evidence was found to support the suggestion that a projectile or projectiles had passed in close proximity to DA and AM's location.

- 17.5. In short, the fact that there was no visible damage to vegetation either at the observation location or beyond means nothing.
- 17.6. I have already referred to the shot fired by DA that did not strike Mr Kuskoff. Rather, it struck a gate and passed through it. When Mr Plummer inspected the gate and the surrounding areas he formed the view that a hole in the gate was consistent with it having been penetrated by a .308 rifle round of the kind fired by DA. As it happened, Mr Illya Kuskoff was present when Mr Plummer was conducting his investigation concerning this projectile. Mr Plummer explained that Mr Illya Kuskoff had a theory about the passage of a projectile, suggesting I think that all was not what it seemed to be and that there may have been another shot or shots fired, or indeed shots fired from a closer position than from DA's observation point. Mr Plummer explained that Mr Illya Kuskoff's demeanour was not a calm one as this exchange was taking place. Mr Plummer came to the conclusion that there was no evidence of any other projectile having been fired by DA and that any other damage to objects in the vicinity, apart from the gate, was probably the result of that bullet. I have accepted that evidence. Mr Plummer also stated that there was no evidence from the investigation that he conducted, or was conducted on his instructions, to indicate that the shots which hit Mr Kuskoff, producing the wounds that they did, had been fired from a position other than the location where DA and AM had been situated on the opposite side of Elwomple Road¹⁷⁸. He also said that there was no evidence that the shots which hit Mr Kuskoff had been fired from a closer range and from a location actually inside the Kuskoff property¹⁷⁹. I accept all of that evidence. It appeared that Mr Illya Kuskoff was still not persuaded that his theory was not correct. So be it. The evidence is overwhelming that DA only fired three shots and did so from the observation position on the other side of

¹⁷⁷ Transcript, pages 1714-1715

¹⁷⁸ Transcript, page 1716

¹⁷⁹ Transcript, page 1716

Elwomple Road. Two of those shots struck Mr Kuskoff and the other struck and passed through the wooden gate. They were the only shots fired by police. I so find.

- 17.7. Mr Plummer also gave some detailed evidence about the phenomenon of an audible crack when a projectile passes in close proximity to a person. Mr Plummer suggested that experiments and literature had suggested that the crack could be heard by the human ear if a projectile passed within approximately eight metres or less of that person¹⁸⁰. The crack is an audible sound which is different from the blast of the rifle when it is fired. Mr Plummer did suggest that over a distance of 141 metres the crack and the blast of the rifle firing the projectile would be heard almost simultaneously. He suggested at one point that if the two sounds were virtually simultaneous it would be difficult for him personally with his hearing to distinguish one sound from the other¹⁸¹. However, he did say that the ability to distinguish the sounds would depend upon the '*audible acuity of the person*'¹⁸², and that scientific instruments could measure the different intensities and time gaps between the two different sound sources. He did suggest that the closer the projectile passes the person, the more audible the crack would be because it will be more intense¹⁸³. When asked by Mr Harris QC whether if the projectile passed closer than eight metres the capacity to distinguish two different sounds may be uncertain for an individual listener, and that some people might hear it as one, Mr Plummer said:

'No I'm not sure that's right. Between 8 m and the observer that's where the sound from the sonic shockwave is detectable and present.'¹⁸⁴

That said, he did acknowledge that it would be possible that some people may not be able to distinguish the crack and the blast from eight metres inwards¹⁸⁵. To this Mr Plummer said '*potentially, yes*'¹⁸⁶.

- 17.8. To my mind Mr Plummer's evidence could not and did not in any way refute either DA's or AM's contention that they believed they heard a crack as a projectile passed them. Other evidence from police sources suggested that the hearing of a crack as a

¹⁸⁰ Transcript, pages 1370, 1694

¹⁸¹ Transcript, page 1371

¹⁸² Transcript, page 1700

¹⁸³ Transcript, page 1702

¹⁸⁴ Transcript, page 1712

¹⁸⁵ Transcript, page 1713

¹⁸⁶ Transcript, page 1713

projectile passes, say in range conditions, is a well-known phenomenon. I accept that evidence.

- 17.9. Mr Plummer's evidence did not shake my belief that DA heard something that caused him to conclude that a projectile had come in very close proximity to them, probably a crack as the projectile went within eight metres of him. As will be seen in the next section I have been left in no doubt that DA heard a crack that was from a projectile fired by Mr Kuskoff and that the projectile passed probably within less than eight metres of him.

18. Discussion re the circumstances of Mr Kuskoff's shooting

- 18.1. It was clear to me from the evidence adduced in this inquest and from my own observations during the Court's site visit that DA and AM had very limited cover at the position from which they chose to conduct their observations. Evidence was given during the inquest which I accept that ballistic shields as a means of cover would as a matter of practicality not have been useful. I was told that they would have been too cumbersome and immobile while moving through scrub to have been of use. Furthermore, these devices are typically used to provide cover for officers who are required to approach within close range of persons, buildings or vehicles. The intention was never to approach Mr Kuskoff at any time due to the risk he posed. The priority was at all times to avoid any confrontation with him by the covert positioning of cordons¹⁸⁷. DA was more exposed than AM in that AM at least had the cover provided by a tree trunk. Both DA and AM were not able to conduct observations from a prone position due to the terrain.
- 18.2. I accept that it was necessary for DA and AM and for police in general to have eyes on Mr Kuskoff quite apart from the limited observation that might have been provided by helicopter personnel. The fact of the matter, however, is that DA and AM's exposure to the possibility of random fire coming in their direction, which was not a risk that was hidden, meant that Mr Kuskoff was exposed to a concomitant risk that one or both of the officers might have to return fire in order to neutralise the threat that Mr Kuskoff posed.

¹⁸⁷ Statement of Inspector IB, Exhibit C131c, page 2

- 18.3. Officer AM's account of what happened is in many ways unsatisfactory in that the first account that he gave omitted important features that might otherwise have cast doubt on the notion that DA's firing at Mr Kuskoff was in response to Mr Kuskoff firing in their direction and putting them at risk. However, I have accepted the evidence of DA. DA was a most impressive witness. Mr Harris QC submitted to the Court that DA was an impressive witness who answered questions in an apparently open and forthright manner. I agree with that submission. It is also worth observing that answers that DA gave in a most searching cross-examination were on the whole consistent, persuasive, had the ring of truth and was supported by the objective evidence.
- 18.4. DA's evidence that he perceived that Mr Kuskoff was firing his rifle in the general direction of him and AM and that a projectile had passed very close to their position, and that he believed that they were in peril of being shot if Mr Kuskoff was to fire again is supported by the evidence of Dr Gilbert that Mr Kuskoff was indeed pointing his rifle in their direction.
- 18.5. I do not believe that both DA and AM had an adequate opportunity to take cover by assuming a prone position. I accept DA's evidence that it all happened very quickly. Furthermore, I have accepted DA's evidence that the first shot that he fired was an immediate reaction to a shot fired by Mr Kuskoff and that this occurred after he had received affirmation from AM that a projectile had come very close to their location.
- 18.6. I do not believe that DA fired his weapon at Mr Kuskoff for a reason other than his shared perception with AM that Mr Kuskoff had fired a shot or shots in their direction. It is intrinsically unlikely that DA fired at Mr Kuskoff gratuitously. To come to such a conclusion would fly in the face of the evidence and of human experience. Cogent evidence would be required before such a finding could be made. There is no such evidence. Similarly, I do not believe that DA fired at Mr Kuskoff because Mr Kuskoff was firing at the helicopter. That circumstance had passed. Mr Kuskoff was now firing his rifle parallel to the ground.
- 18.7. I have found that DA did in fact perceive that his location was being fired at by Mr Kuskoff. I do not believe that Mr Kuskoff was deliberately firing at a location at which he had perceived the presence of police officers. It may be that he was firing at a location at which the lights of vehicles were or had been illuminated. To my mind it is probable that he was simply firing randomly and indiscriminately in an arc around his

property. This was in keeping with the fact that Mr Kuskoff was firing shots indiscriminately throughout the course of the night. However, Mr Kuskoff was clearly reckless in this regard, particularly when firing with the rifle parallel to the ground. In doing so, he could have hit a person or persons at the range at which DA and AM were situated from him. That said, although I do not believe that DA or AM had concluded positively that Mr Kuskoff was firing in their direction, DA was alive to the possibility that another shot may well come in their direction and I accept his evidence that the last shot that was fired by Mr Kuskoff was perceived by DA to have been fired in their general direction. I accept his evidence that he saw, through his scope, Mr Kuskoff apparently with the rifle pointed at their location. It has also to be borne in mind that DA not only needed to protect himself, he needed to protect AM as well. Although AM had better cover than DA, it was not perfect and AM was virtually defenceless given that he could not see Mr Kuskoff. For that reason AM was in no position to return effective fire of his own.

- 18.8. I do not believe that AM's serious omissions in his first interview with investigating detectives impinges on the creditworthiness of DA. If DA had not been such a compelling witness I may well have entertained serious doubts about the accuracy of the circumstances of the shooting as described by both DA and AM.
- 18.9. DA fired three shots at Mr Kuskoff and only three shots. The magazine of DA's rifle had a capacity of twenty rounds. Sixteen unspent live rounds were found to be within the magazine following the incident and another was in the chamber having been automatically reloaded after the rifle had been most recently fired. Thus it is that this confirms that only three shots were fired from that rifle. In addition, there were only three spent cartridges located in the vicinity of the observation point. AM's weapon had not been fired. A theory espoused by the Kuskoff family that there may have been more shots fired by police, or that shots were fired by police from much closer range, is unsupported by evidence. The shot that missed Mr Kuskoff clearly struck a wooden gate behind him and insofar as there may have been projectile damage to other features in the vicinity, it is explained by ricochet.
- 18.10. I find that the three shots fired by officer DA were all fired with the intention that each of the three rounds would strike Mr Kuskoff. I have also found that when DA fired the three shots each of the three shots was fired with the realisation that he would probably kill Mr Kuskoff. I find that the three shots were fired in rapid succession. This gave

DA very little time for him after he had fired the first and second shots to reflect on whether the second or third shots were necessary. I have accepted DA's evidence that he perceived that Mr Kuskoff reacted to the first shot that DA fired. I have found that this shot in fact was the shot that hit Mr Kuskoff in the arm and then penetrated his body. I have also found that Mr Kuskoff was incapacitated by that shot. There is no other sensible conclusion. In my view he was at that point rendered incapable of any further act of aggression. I do not believe that he was simply standing there during DA's second and third shots. However, it is possible that DA would not have been able to fully perceive what had happened to Mr Kuskoff as a result of his first shot. All that can be said is that Mr Kuskoff reacted to it visibly and that DA saw this. This naturally brings into question whether the second and third shots were objectively necessary and whether DA should have more carefully reflected on what the result of the first shot was before firing another.

19. Conclusions

- 19.1. The Court reached the following conclusions.
- 19.2. On 15 and 16 September 2015 Mr Alexander Kuskoff was psychotic and capable of unpredictable behaviour. His mental illness had probably existed for a significant duration. It would have been dangerous for a police officer to have gone onto his property and have exhibited challenging behaviour to Mr Kuskoff. That would have been especially so if the police officer had been alone. I do not believe that on 15 or 16 September 2015 Mr Kuskoff could have been persuaded either to relinquish his firearms and ammunition collection to police or to have accompanied them willingly for the purposes of a mental health evaluation.
- 19.3. On the evening of 15 September 2015, or at the latest on the morning of 16 September 2015, mental health services should have made police aware of the concerns expressed by members of Mr Kuskoff's family about Mr Kuskoff's mental health and stability and the fact that he possessed firearms. It should not have been left to members of Mr Kuskoff's family to attempt to contact police about that matter. If mental health services had contacted police about it is conceivable that police, with mental health services, could have attended Mr Kuskoff's property at Elwomple in daylight hours with a view to assessing him and possibly detaining him under the Mental Health Act 2009 if necessary. It is possible that Mr Kuskoff may have been in a less agitated frame

of mind if he had been approached in those circumstances. However, there is no guarantee that his reaction to the attendance of police and/or mental health services during daylight hours on 16 September 2015 would have been significantly different from the way he reacted when police attended at his property that evening.

- 19.4. Ultimately police attended at Mr Kuskoff's Elwomple property at approximately 8:15pm following an incident that had taken place on that property involving Mr Kuskoff and his siblings which had ended in Mr Kuskoff becoming agitated and combative. This was soon followed by a series of bizarre and threatening calls that Mr Kuskoff made to police.
- 19.5. Senior Constable Claughton and other police officers attended at Mr Kuskoff's property. Mr Kuskoff was in an agitated frame of mind. I do not believe that there was any possibility that Mr Kuskoff could have been persuaded to go with Senior Constable Claughton and the other officers and have been detained pursuant to the Mental Health Act.
- 19.6. Mr Kuskoff fired his rifle on approximately four occasions in the presence of police officers at his property. He also drew attention to his possession of a pistol in his back pocket. These actions were those of a completely irrational man, but were calculated to intimidate police and keep them at bay.
- 19.7. The need to detain Mr Kuskoff under the Mental Health Act was acute and ongoing during the evening in question.
- 19.8. STAR Group, an arm of SAPOL with a responsibility of dealing with high risk incidents, were rightly engaged to attend the Elwomple property. It was clearly a high risk set of circumstances. Notwithstanding the involvement of STAR Group, I find that the objective as far as Mr Kuskoff was concerned remained the same, namely that he be detained under the Mental Health Act. The clear preference was that he be persuaded to go willingly with police without force being applied. It was necessary for members of the STAR Group to remain for as long as it took for Mr Kuskoff to capitulate if that was his ultimate action. I reject any suggestion that it would have been more appropriate for police to have left the scene.
- 19.9. Police could have acted on no basis other than that Mr Kuskoff constituted a potential danger both to himself and to the public were he to leave the property.

- 19.10. There is no evidence that the police strategy of cordon and call was not the correct strategy in all of the circumstances.
- 19.11. I find that it was necessary for police to attempt to maintain observation at ground level in respect of Mr Kuskoff. That need became all the more acute when after 11pm Mr Kuskoff attempted negotiations conducted from Police Communications via telephone culminated in Mr Kuskoff threatening to attend at the Taillem Bend Police Station and to shoot it up. It cannot be known with certainty whether Mr Kuskoff did harbour such an intention, but police could have acted on no basis other than that the threats were real. It was imperative that Mr Kuskoff not be allowed to leave the property. Observation on him to ensure that this did not occur was essential. PolAir was a sub-optimal method of maintaining observation on Mr Kuskoff. Mr Kuskoff fired shots at the helicopter.
- 19.12. Mr Kuskoff continued to fire a number of shots in and around his property. It appears that he remained in the vicinity of his house while doing so.
- 19.13. Officers DA and AM took up an observation position across the road from Mr Kuskoff's house. The selection of an effective but completely safe observation position had its manifest difficulties due to the dark conditions. The location was approximately 141 metres away from where Mr Kuskoff was situated when he was shot.
- 19.14. The observation position of DA and AM was sub-optimal in that it afforded very little cover from a ballistic perspective, although it at least meant that they could remain covert while conducting their observations. The fact of the matter, however, was that in light of the fact that Mr Kuskoff had to the knowledge of police been firing his rifle indiscriminately, there was a significant possibility that Mr Kuskoff might fire in the general direction of the position where DA and AM were located. I find that both DA and AM were aware of that possibility. This possibility in turn gave rise to a further contingency that officers DA and AM might have to return fire to Mr Kuskoff in order to protect themselves and to eliminate the danger that Mr Kuskoff might pose. I find that both DA and AM realised that this was a possibility.
- 19.15. I find that at approximately 11:27pm Mr Kuskoff fired, and was seen by officer DA through the scope of his rifle to fire, shots in an arc beginning from the south around to the west. He was firing his rifle from the shoulder and the rifle was parallel to the

ground. Ultimately he fired a shot or shots that passed in very close proximity to the position where DA and AM were making their observations. I do not believe that Mr Kuskoff was aware of their presence or was firing deliberately at either DA or AM. It is possible that he was firing at a location where lights were being shone, or had earlier been shone, by police and other vehicles that were situated on the Mallee Highway to the west of the Elwomple Road intersection. It so happened that the position of DA and AM was situated roughly between Mr Kuskoff and those lights. Although it is not entirely certain that the lights of those vehicles were on at that time, it is possible that Mr Kuskoff may have seen them earlier. In any event it is clear and I find that Mr Kuskoff deliberately fired his rifle in the general direction of DA and AM but without knowing that they were there.

- 19.16. I find that DA perceived the crack of a projectile passing close to his location and he also possibly heard vegetation being disturbed by that projectile. I find that DA took his eye away from the scope of his rifle and in an exchange with AM confirmed in his own mind that Mr Kuskoff had fired a shot that has passed very close to their location. I find that DA then looked back through the scope of his rifle and again saw Mr Kuskoff. He perceived that Mr Kuskoff fired another shot in his general direction. I find that DA formed the belief that in order to eliminate the possibility that Mr Kuskoff might fire another shot in their direction, and in the light of the possibility that Mr Kuskoff may have after all detected their presence, DA fired a shot at Mr Kuskoff intending to hit him in the torso and in the realisation that he would likely kill Mr Kuskoff.
- 19.17. At the time DA fired his first shot Mr Kuskoff was holding his rifle at his shoulder and was aiming it in the general direction of the position where DA and AM were located, some 141 metres away. I find that he had fired a shot in that direction just before DA fired his first shot at Mr Kuskoff. I find that DA's first shot struck Mr Kuskoff in the left arm and that the projectile passed through that arm in a fragmented form and entered Mr Kuskoff's body. Mr Kuskoff was still holding the rifle at his shoulder and aiming it in the general direction of DA and AM's location when he was struck by DA's first shot. DA's first shot did not immediately kill Mr Kuskoff, but it incapacitated him. DA fired two further shots. One of those shots missed Mr Kuskoff. The other shot struck Mr Kuskoff in the back. The first shot that DA had fired at Mr Kuskoff and which had struck him had caused Mr Kuskoff to turn around with the result that his

back was presented to DA. This explains why Mr Kuskoff received his second gunshot wound to the back. I find that the reality was that Mr Kuskoff had been incapacitated by the first gunshot wound such that he could not have presented and did not present any further threat to DA and AM. That is not to say, however, that DA perceived that to have been the case. Although I am uncertain as to what DA actually believed he saw of Mr Kuskoff after the first shot, it is possible that at the time he fired his second and third shots he mistakenly believed that he and AM were still under threat from Mr Kuskoff. I make allowances for the possibility that all three shots were rapidly fired in the agony of the moment, but I am unable to determine whether or not DA gave himself a sufficient opportunity to reflect on what his first shot had achieved before he fired his second and third shots.

- 19.18. I refer to the invitation of Ms Nelson QC that I should find that DA reasonably considered that the use of his firearm was necessary to protect his and AM's lives or prevent serious injury to them, that there were no other means reasonably available to DA to do so and that the actions of DA were reasonably proportionate to the threat created by Mr Kuskoff's actions. Ms Nelson's invitation, of course, relates to the totality of DA's actions, that is to say each and all of his three shots. I decline Ms Nelson QC's invitation to make those findings.
- 19.19. The first gunshot wound sustained by Mr Kuskoff was not necessarily of itself fatal. I accept Dr Gilbert's evidence that rapid medical intervention may have saved his life. However, a positive finding that Mr Kuskoff would have survived that gunshot wound if it had been the only injury cannot in the circumstances possibly be made.
- 19.20. I find that the second gunshot wound that Mr Kuskoff sustained was of itself necessarily fatal. There was no possibility that he could have survived that gunshot wound. Whatever chance that Mr Kuskoff had of surviving the first gunshot wound, the second gunshot wound put paid to it.
- 19.21. It is impossible to say with certainty whether or not less lethal ammunition would have resulted in the sustaining of fatal wounds if it had been used in the weapon possessed and fired by DA.
- 19.22. I agree with counsel assisting Mr Harris QC that whether or not it is appropriate to make an extremity such as a limb the target, or to shoot at the torso, is a question of a matter of response to the particular circumstances that present themselves.

20. **Recommendations**

- 20.1. Pursuant to section 25(2) of the Coroner's Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.
- 20.2. In my view there is limited scope in this inquest for the making of meaningful recommendations that might achieve the aims recited in the preceding paragraph. However, there are two general areas arising from the inquest that should be the subject of comment.
- 20.3. Firstly, there is the issue involving the lack of liaison between mental health services and SAPOL on 15 and 16 September 2015. I have already made the observation that mental health services should have advised the police of the concerns that had been expressed by members of Mr Kuskoff's family and the fact that Mr Kuskoff was in possession of firearms. Proper liaison may well have resulted in an appropriately resourced joint presence of police and mental health services at Mr Kuskoff's property during daylight hours on 16 September 2015. Clearly this would have been a much more manageable set of circumstances than what transpired later that evening. From previous inquests I am aware of the existence of a Mental Health Memorandum of Understanding (MOU) signed on behalf of various entities including the Department of Health, the South Australian Ambulance Service and SAPOL. One of the stated objectives of the document is to commit those entities to work cooperatively in order to promote a safe and coordinated system of care to meet the needs of individuals with a known or suspected mental illness or who exhibit behaviours of community concern¹⁸⁸. In this current inquest I would encourage the Chief Executive of the Department of Health and the Commissioner of Police to discuss means by which the lack of appropriate liaison in the case of Mr Kuskoff might not be repeated and in particular to develop strategies to ensure that SAPOL are made aware of cases that might require its intervention. I recommend accordingly.
- 20.4. The only other matter that requires discussion is the SAPOL policy of avoidance of extremity shooting. I have already referred to this earlier in these findings. The SAPOL

¹⁸⁸ See Finding of the Court in the matter of the death of Ricky James Bais, Inquest number 29/2009 at paragraph 4.1 and following

policy is that if it is necessary to use a firearm to disable a human threat, the centre mass of the individual is the appropriate target. Clearly this is more likely to result in death or very serious injury as distinct from a situation where a limb is the target. The policy might well give rise to an appropriate and lawful defensive response in many cases. However, there may be occasions in which the shooting of a person with the torso as a target, with an accompanying intention to kill, will not be regarded as necessary and reasonable or be seen as a proportionate response to the threat posed by that person. Whether it is so will naturally depend on all of the circumstances confronting the particular officer. This should be borne in mind by police in the field.

Key Words: Death in Custody; SAPOL; STAR Group; Shootin; Psychiatric/Mental Illness

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 14th day of August, 2019.

Deputy State Coroner