**CORONERS COURT OF NEW SOUTH WALES**

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| **Inquest:** | Inquest into the death of Brandon Rich |
| **Hearing dates:** | 20-23, 27, 29-30 November 2023<br>Dubbo Local Court |
| **Date of findings:** | 21 March 2024 |
| **Place of findings:** | NSW Coroners Court<br>Lidcombe NSW |
| **Findings of:** | Magistrate Harriet Grahame, Deputy State Coroner |
| **Catchwords:** | CORONIAL LAW – Death in a police operation; adequacy of response to domestic violence incident; direction and detention pursuant to s 89A of the *Crimes (Domestic and Personal Violence) Act 2007*; non-compliance with requirement for police to wear body worn video cameras and carry a taser; demand ischaemia; de-escalation training for NSWPF |
| **File Number:** | 2021/369343 |

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| **Representation:** | Jane Needham SC and Tracey Stevens, Counsel Assisting, instructed by David Yang and Tina Wu (Crown Solicitor's Office)<br><br>Nicholas Broadbent for the family of Brandon Rich, instructed by Roisin McCarthy (Aboriginal Legal Service)<br><br>Kim Burke for the Commissioner of Police, instructed by Stuart Robinson (Office of the General Counsel)<br><br>Paul Madden for Senior Constable Lyndsay Kohlet, Senior Constable Steven Bennett, Detective Senior Constable Craig Fleeton and Detective Inspector William Russell, instructed by Ken Madden (Walter Madden Jenkins) |
| **Non publication orders:** | Non publication orders made on 20, 21 and 23 November 2023<br><br>A copy of the orders can be obtained on application to the Coroners Court registry |
| **Findings** | **Identity**<br><br>The person who died was Brandon Rich<br><br>**Date of death**<br><br>He died on 29 December 2021<br><br>**Place of death**<br><br>He died at Wellington Hospital, Wellington, NSW<br><br>**Cause of death**<br><br>He died from a cardiac arrhythmia triggered by myocardial ischaemia<br><br>**Manner of death**<br><br>He died in the context of physical exertion and stress from his prolonged struggle with police, morbid obesity, high blood pressure, a history of |

methamphetamine use, smoking, and severe coronary artery disease

**Recommendations**

**To the Commissioner of the NSW Police Force**

That any training provided to officers undertaking operational duties in relation to the exercise of police powers as set out in NSWPF Domestic and Family Violence Standard Operating Procedures 2018 include a focus on the operation of the powers of direction and detention under s 89A of the *Crimes (Domestic and Personal Violence) Act 2007*.

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## Introduction

1. This inquest concerns the death of Brandon Trevor James Rich. Brandon was 29 years old when he died on 29 December 2021, following an interaction with NSW Police at his home in Wellington, NSW. Brandon was a proud Aboriginal man and proceedings commenced with a smoking ceremony. Brandon's sudden and unexpected death during a police operation was extremely shocking to those who knew him and it affected many in his home town.

2. Brandon was described by his mother as a family man who brought joy and happiness to those around him. He was close to his sisters, their children and to a host of other relatives including his aunts, uncles and cousins. He was fiercely protective of his own son, [redacted] and loved spending time with him. During a moving family statement the court heard that [redacted] loved his father very greatly and misses him every day.

3. Both Brandon's mother and his maternal grandmother described Brandon's cheeky sense of humour and his ability to make those around him laugh.

4. Many members of his family and community attended this inquest. In particular I thank Brandon's mother, Corina and his maternal grandmother, Denise for their generous participation in these difficult proceedings. Brandon's family have demonstrated a great commitment to this investigation and I thank them for their attendance. I have no doubt Brandon's death has changed them forever and I acknowledge their loss is profound and ongoing.

## The role of the coroner and the scope of the inquest

5. The role of the coroner is to make findings as to the identity of the nominated person and in relation to the place and date of their death. The coroner is also to make findings concerning the manner and cause of the person's death.[1] A coroner may make recommendations, arising from the evidence, in relation to matters that have the capacity to improve public health and safety in the future.[2]

6. This inquest was mandatory pursuant to ss 23(1)(c) and 27(1)(b) of the *Coroners Act* 2009 (NSW), given the circumstances of Brandon's detention and the police operation that was underway at the time of the acute medical emergency which

[1] Section 81 *Coroners Act 2009* (NSW).
[2] Section 82 *Coroners Act 2009* (NSW).

resulted in his death. In addition to that, Dr Benjamin Harding and Dr Leah Clifton, the forensic pathologists who conducted the post mortem examination in the days after Brandon's death were unable to ascertain a clear cause of death. This required further expert medical evidence which was then explored at inquest.

**The evidence**

7. The court took evidence over seven hearing days. The court also received extensive documentary material in nine volumes. This material included witness statements, medical records, photographs and video footage, policies and procedures.

8. The court heard from the involved officers and from civilian witnesses who saw some of Brandon's interaction with police at the relevant time. The court also heard from an independent medical expert, Professor Mark Adams, a consultant cardiologist in relation to Brandon's cause of death.

9. The Court undertook a view of the house at [redacted], Wellington, to better understand the physical surroundings of the struggle which took place. The view was of great benefit in setting the scene for the oral evidence and assisted in my understanding of exactly what happened on the morning of 29 December 2021. I thank Denise for her permission to attend her home.

10. While I am unable to refer specifically to all the available material in detail in my reasons, it has been comprehensively reviewed and assessed.

11. A list of issues was prepared before the proceedings commenced. These issues guided the investigation and after setting out a short chronology, I intend to structure these findings by reference to the matters set out below:

    a. Whether the cause of Mr Rich's death can be ascertained.

    b. Whether the circumstances in which NSW Police attended [redacted], Wellington were reasonable, appropriate and compliant with policy.

    c. Whether it was lawful for attending NSW Police to detain Mr Rich in the circumstances.

    d. Whether it was reasonable and appropriate for attending police to detain Mr Rich in the circumstances.

    e. Whether the fact that Mr Rich was a First Nations man required any particular response from attending NSW Police in the circumstances.

f. Whether the use of physical force and implements such as a baton and OC spray was by attending NSW Police was reasonable, necessary, and compliant with policy in the circumstances.

g. Whether the use of physical force and implements such as a baton and OC spray by attending NSW Police contributed to Mr Rich's death.

h. Whether attending NSW Police were required by policy to carry a taser and a body worn camera, and whether the failure to do so would have likely made any material difference to the outcome in the circumstances.

i. Whether there are any circumstances arising out of the manner and cause of Mr Rich's death that give rise to any recommendations under s 82 of the *Coroners Act 2009*.

**The context of Brandon's death**

12. It is necessary to place Brandon's death during police detention in its wider social context prior to examining the particular events of that morning. No death occurs in a vacuum.

13. This court has been advised on previous occasions that in NSW Aboriginal and Torres Strait Islander people make up around 25% of the adult prison population compared to around 3% of the general population.[3] It follows that Aboriginal people are also more likely to be detained or held in police cells.

14. Importantly, statistics collected by this court highlight the fact that the majority of Aboriginal deaths in custody or detention are the direct result of what are described as "natural" or medical causes rather than being caused accidently or in suspicious circumstances. However, while these deaths may ultimately be recorded as "natural deaths", it is clear that many occur in situations where prior medical treatment has been lacking or even at times inappropriate.[4] As governments are called upon to "close the gap" in the provision of health services, there can be no real argument that First Nations people continue to experience significant disadvantage and poorer health outcomes across the board.

[3] See for example Inquest into the death of Reuben Button (21 July 2023) the figures are variously given, with the prison population sometimes stated as 28%.
[4] Each year the State Coroner publishes a report to NSW Parliament outlining the deaths in custody and deaths in police operations which have occurred. See for example "Deaths in Custody/Police Operations Report 2022".

15. In examining Brandon's death the court was advised that his status as a First Nations man was *in itself* a known risk factor for coronary artery disease. This risk was exacerbated by factors such as his obesity and his drug use. Professor Adams told the court that "*there is still a gap in medical and health outcomes for Indigenous people*", particularly in relation to coronary heart disease. Professor Adams said that the exact reason for this is not known but that some of the contributing factors include access to healthcare, access to general practitioners and individual risk factors and lifestyle issues.[5] He went on to identify indigenous people and people in remote communities as groups who may experience coronary disease at a *younger age* than the general population. He said that deaths from coronary artery disease in people in their 20s and 30s are not uncommon but that there have been some efforts to reduce this. He referred to a Medicare benefit for indigenous people. However, one of things he would like to see is that "*rather than having to wait until 30 or 40 to have this heart check, that it might be done a little bit earlier in life, maybe at 25 or so, because modifying these risk factors has a massive benefit*". He said that getting help giving up smoking and losing weight and improving cholesterol levels and blood pressure early on "*could potentially save quite a few people*". [6]

16. The court also heard that Brandon's use of ice was a factor in his deteriorating relationship with his grandmother which precipitated the decision to detain him on the day of his death and which is also likely to have affected his cardiac health over the years he used the drug. Professor Adams explained that ice has a wide variety of effects on the heart. It is a "*sympathomimetic drug*" which causes your "*heart to beat faster and more forcefully and produce more demand on the heart"*. He explained that in the longer term, the use of ice can cause "*inflammation and other problems with the heart that can lead to a cardiomyopathy. … it can also, through that same sympathomimetic activity, can cause arrhythmias and vasospasm that can cause heart attacks as well. … The more you have of it and the longer you use it for, the more chance that you will get one of these wide range of cardiac side effects*."[7]

17. The effect of ice on Aboriginal communities which are already disadvantaged is a significant problem identified in the Special Commission of Inquiry into crystal

[5] T27/11/23 at p. 4.6-4.12
[6] T27/11/23 at p. 11.28-11.41.
[7] T27/11/23 at p. 5.8-5.19.

methylamphetamine and other amphetamine-type substances (the Ice Inquiry). The Ice inquiry paid particular attention to the needs of Aboriginal communities because ice use aggravates the substantial socioeconomic disadvantage and trauma already experienced in those communities. Members of Brandon's family spoke of the negative affect ice had on Brandon and on his relationships. In my view any investigation of his death must grapple with the problems caused by the drug in places like Wellington. The need to fully implement the recommendations of the Ice Inquiry must not be forgotten. Support for those affected by ice, including family members must be increased.

**Background and brief chronology**

18. Counsel assisting made comprehensive oral submissions summarising much of the evidence. I have used that address as the basis for these reasons, carefully analysing the evidence where differences in fact or emphasis were noted by the parties. In all matters the conclusions are my own.

***Background***

19. Brandon was born on 7 November 1992 in Wellington NSW. His parents were young and Brandon commenced his life at his mother's family home with her and his grandparents Denise and Kenneth Rich. Soon after Brandon's birth, his mother Corina commenced a relationship with Anthony Triplett. Corina and Anthony remained in a relationship for more than 20 years and had five girls. Anthony became a stepfather to Brandon and Brandon was always close to Anthony's family. Brandon did not connect with his biological father, Anthony Darney until later in life.

20. Brandon was very close to his maternal grandparents and suffered greatly when his grandfather died. Around that time he went to live with Denise at [redacted], Wellington on a more permanent basis. Corina told the court she thought Brandon "*never got over his death*", and that he continued to feel sad about it at every family function.

21. Corina, Anthony and the girls moved to Dubbo around 2008 or 2009, but the family saw each other often, even when Brandon "*clashed with the girls*". Brandon was also close to Anthony's mother, Carol Triplett and spent time with her as well.

22. Records show that Brandon had some difficulties at school and that he was diagnosed with ADHD, for which he was medicated from time to time. He had certain

learning difficulties, but the real extent of his cognitive impairment is not clear to this court. I note that a number of close family witnesses commented that he "*didn't act his age*" and that some people considered him "*special*". What is clear is that he was accepted by his family and greatly loved. He was especially fond of his nephews and nieces.

23. In 2012 Brandon met Uppannia Sullivan with whom he had a short and somewhat fractured relationship. In 2014 his son [redacted] was born. There is no doubt that Brandon was devoted to [redacted] and that he was a proud and involved father. [redacted] lived most of his life with Brandon and Denise in Wellington and had regular contact with his mother. [redacted] was only seven when Brandon died, but the photographs I have seen show their deep bond.

24. Brandon had poor physical health, with records indicating that he was a heavy smoker, was morbidly obese and had high blood pressure. While there was no evidence of recent drug use in post mortem toxicology, Brandon was known to use ice from time to time.

25. There is no doubt that Brandon suffered from mental health conditions but on the records available to this court, there was no clear diagnosis. It appears likely that he received sub-optimal and fragmented treatment in this regard. At some point he appears to have been diagnosed with schizophrenia. Notes obtained from the Wellington Aboriginal Corporation indicate that on 25 November 2021 Brandon told the GP he had not seen a psychiatrist that year and had no script for his Olanzapine, which is an anti-psychotic.

26. Brandon had numerous hospital admissions in the years leading up to his death. He also had a history of involvement with Drug and Alcohol Services at Wellington Hospital.

27. The court received records relating to a very significant admission in March 2020, where Brandon appears to have experienced a psychotic episode, thought to be drug induced. He stabbed himself in the neck and was agitated and paranoid. He underwent surgery and the wound was recorded as having occurred "*during likely episode of drug-induced psychosis."* Denise told the court that around this time Brandon was extremely paranoid and talking about tracking devices being implanted in his body. She was extremely concerned for his mental health.

28. On 16 November 2020 he was admitted to the emergency department of Dubbo Hospital again demonstrating agitation and paranoid thinking. He gave a history of ice use and again wanted to stab himself in the neck. It is reported that he left the Hospital to find his father.

29. The following day Brandon was admitted to the emergency department of Dubbo Hospital again. The records indicate that he provided a history of using ice fortnightly and having symptoms of breathlessness, tingling, chest tightness, agitation and anxiety. He expressed a wish to stop using ice but was concerned that if he went to a rehabilitation centre he would lose his son. His past medical history was cited as schizophrenia and hypertension. His Nan, Denise Rich was described as supportive.

30. It is clear that Brandon's use of drugs contributed to the deterioration of his behaviour and mental health. Whether he had schizophrenia or drug induced psychosis is less clear. His grandmother was very concerned about his drug use. She told the court:

> "*he used to torment me, and verbally abuse me quite a lot, especially if I stepped in and said something to him about his drug use, and he'd turn around and say to me, 'I haven't had anything, Nan', but you'd always go out into the bathroom, and I used to clean off the top of the cupboard in the bathroom, and I'd clean off foil, little screwed up pieces of foil, and then a couple of weeks later I'd go - go up there again and there'd be two or three pieces of foil there, foil hidden underneath the - the other cabinets in the bathroom where he could use his - use his drugs. But he'd always say, 'Nan, I haven't had anything'*."[8]

31. There is evidence that Brandon assaulted Denise at some stage in the weeks or months leading up to his death. She said that he had pushed her over. I accept her evidence in this regard. Given the circumstances, particularly Denise's age and her own short stature, this was not an insignificant incident. I accept counsel assisting's submission that such an assault would have been frightening and demoralising for Denise.

32. Brandon's ice use and related mental health decline caused considerable stress to Denise. She had a close relationship with Brandon and provided him with a stable

[8] T20/11/23 at p. 21.39-21.47.

home, food, and accommodation. She supported him as best she could through his adult life and had taken him to doctors and to hospital when he was mentally unwell. She explained to the Court: "*Life became a little harder with Brandon after he started using drugs. … He wasn't really abusive first off but later on, after he'd been using for a fair while he'd stolen off me but I still loved him."*[9]

33. The court was informed that Brandon had a criminal history comprising of some domestic violence offences in 2014, 2017 and 2018. However, he had never been sentenced to a term of imprisonment for his offending.[10]

34. There were four entries recorded by NSWPF on the COPS system relating to domestic violence incidences where Denise was named as the victim. The court was informed that a COPS record outlined verbal arguments in June 2016 and July 2018. In October 2018 a charge of malicious damage was laid and in November 2019 a further verbal argument was recorded on the COPS system.

35. It appears that there was no current Apprehended Violence Order in place at the time of Brandon's death, but previous orders had been made both in relation to Denise and his former partner Ms Sullivan.[11]

***The events of 29 December 2021***

36. The Court heard oral evidence from each of the involved officers, except for Detective Senior Constable Craig Fleeton, in relation to the events of the morning of 29 December 2021. DSC Fleeton was excused from giving evidence on medical grounds, and his directed interview was instead played to the Court.

37. At 6am on 29 December 2021 Senior Constable Steven Bennett and Senior Constable Lyndsay Kohlet commenced general duties and were using the police wagon Wellington 20 (a Holden Colorado which was referred to in evidence as a "caged vehicle" or by more familiar terms such as "paddy wagon" or "bull wagon").

38. SC Bennett commenced his duties with an Integrated Light Armour Vest (ILAV) which carried handcuffs, an extendable baton, OC spray, his appointment belt, magazine carrier, police issued pistol and police radio. He did not sign out and

[9] T20/11/23 at p. 20.26.
[10] Criminal history bail report, Tab 151.
[11] T21/11/23 at p. 27.14. The iCOPS profile in Volume 5, Tab 152 of the Brief of Evidence refers to prior AVOs for the protection of Uppannia Sullivan (see p. 7) and Denise Rich (see p. 8).

carry a Conducted Electrical Weapon (a taser). SC Bennett told the court that he had not done the required training on the use of Body Worn Video camera (BWV), so he did not use one. He has since done that training.

39. SC Kohlet commenced her duties with a MobiPol, an appointments belt, a baton, handcuffs, OC spray, a spare magazine, a firearm, and a radio. She said that she did not wear a police vest because it gave her neck issues. She did not sign out and carry a taser, nor did she sign out and carry a BWV despite having undertaken the training to do so. SC Kohlet had also undertaken mandatory training on the use of her arms and appointments, including the taser.

**The circumstances of Brandon's behaviour on the morning of 29 December 2021**

40. I accept Denise's account that there was a verbal argument between her and her grandson, Brandon on the morning of 29 December 2021. Denise said that Brandon cooked sausages and the kitchen was full of smoke. She said that after this argument, Brandon returned to his bedroom. He asked Denise to go and buy him cigarettes and she refused. She said he became verbally abusive. He returned to his room and turned on the air conditioner. She said he also had his fan and an electric blanket on.

41. I am unable to make a firm finding about exactly what occurred in relation to the fuse box at the front of the house that morning. There is some evidence, primarily in Denise's original statement to police, about both Brandon and Denise going to the fuse box on the verandah at the front of the house that morning. I note that there is no conclusive objective evidence on this issue as the available CCTV is unclear.

42. Denise maintained in oral evidence that she did not turn off the power at the fuse box that morning. She said there has been some confusion about a previous occasion when there was an argument and the power was turned off. It is relevant to note that SC Bennett said that the power was off when he arrived, and that the fuse box was reasonably high from the ground with the inference that it would be difficult for Denise to reach it without assistance.

43. I accept that it is likely that the power was turned off at the fuse box at some stage during the argument between Brandon and Denise, probably by Brandon. I accept that SC Bennett turned the power back on at the fuse box on his arrival. I note that both counsel assisting and counsel for the family submitted that little or nothing

turns on exactly what happened at the fuse box and I accept those submissions.

44. The Court heard from three neighbours in relation to the argument. Karon Horan lived next door at [redacted]. Denise and Karon were friends as well as neighbours. Karon knew the other members of the household including Brandon. Karon gave evidence that on the morning of the incident she heard yelling and in particular, yelling by Brandon and Denise. She was smoking a cigarette at the front of her house. She said that Denise was angry and she heard her say words to the effect "*I'm sick of it."*

45. Karon saw Denise get in her car and drive away.

**Denise's decision to seek assistance from police**

46. Based on the CCTV footage and the oral evidence, at 11.40am Denise left the house to locate police in order to complain about "*the arguments, the abuse."* This is consistent with her evidence in her original statement to police that *"it was my intention to drive to Wellington Police Station and speak to the police about Brandon's behaviour."*

47. Some minutes later Denise arrived at Wellington Police Station and found it closed. The Court has heard that at that time, while it is likely that Inspector Russell, and DSC Fleeton, were actually present inside, the station was closed to the public. The Aboriginal Community Liaison Officer (ACLO), Teleria Milson[12] was also at the station. Inspector Russell noted in his oral evidence that there was a sign near the front door indicating a telephone number to call for assistance when the station was closed, which would have been diverted to Dubbo Police Station. However, on finding the station closed Denise returned to her car and left.

48. CCTV footage shows that after Denise left the house, at 11.43am Brandon also left the house. Brandon walked to his step-grandmother Carol Triplett's house (known as "Nanny Carol") and he spent a short time with her. During this visit Brandon explained to Nanny Carol that he had argued with Denise and he was upset.

**Denise's request for police attendance at the house**

49. Denise explained to the Court that she drove to the police station and that, in her words, "*they were shut so I was coming back home and I saw them on Swift Street.*

[12] Statement of Teleria Milson dated 22 February 2022, Tab 69.

*I pulled up and asked them to come up to my home."*[13] It was a chance meeting in a small town. It was consistent with her original statement to police where she stated she said "*Can you come and see me at* [redacted] *when you are finished."*

50. The interaction was short. Denise did not tell the officers the reason why she wanted the police to attend the house. It appears that she spoke only to SC Kohlet, as SC Bennett was talking to the people who had prompted the police stop. SC Kohlet did not ask Denise any questions about why their attendance was necessary at her house. I accept counsel assisting's submission that this was unfortunate, and not best practice, and that it ultimately resulted in the police officers not knowing anything at all about the incident they were about to attend, which made planning impossible.

51. SC Kohlet and SC Bennett each gave evidence that they had attended other unrelated traffic and general matters that morning in the area. They were only three streets away from [redacted] when Denise stopped by in her car.

**SC Bennett and SC Kohlet's previous interactions with Brandon**

52. SC Kohlet told the court that she did not know Brandon or Denise personally. She also stated that she did not know that Brandon was an Aboriginal man. However, SC Bennett did know Brandon as he had some prior interactions with him. SC Bennett explained in his evidence that, in past interactions, *"there was never raised voices. He's polite. He listened. He asked for information; he supplied information. He was happy with the outcomes. There was never a need to take anything further towards Brandon at the time."*[14] He was aware that Brandon had been a drug user and that there had been previous interactions with police about domestic violence. He was aware that Brandon was an Aboriginal man.

53. The Court heard that either during the drive to Denise's house, or on arrival at Denise's house, SC Bennett and SC Kohlet had a very short conversation about the circumstances of this attendance. SC Bennett said to SC Kohlet that he knew Brandon Rich. He said to SC Kohlet that Brandon was, in his words, "*a bit of a grub*".

54. There was some evidence about what was meant by SC Bennett's comment that

[13] T20/11/23 at p. 25.42.
[14] T22/11/23 at p. 8.46.

Brandon was a grub. Both SC Bennett and SC Kohlet said that the term "grub" meant a person *"known to police"*. SC Bennett explained in his evidence that the term grub is "*slang that we'd normally use - and I've heard used over the years with police force - in relation to somebody who police have interacted with, whether or not it be positive or negative, but there has been some negatives, but never a negative in the extreme sense. But it is a common slang that I've heard and used in the past".* He went on to say *"so "bit of a grub" is, in the essence - is that they're somebody who has obviously been involved with drug-related - or being domestics or something along those lines that - that's what we refer to. There's other slangs that you refer to in other situations that I've heard and used in the past, and it's just one of those common things that we've - I've used and I've heard others use".*[15] SC Kohlet accepted that the term grub has negative connotations[16] but denied that SC Bennett's use of this term affected how she reacted. She said, "*you hear it all the time*".[17]

55. In my view the term is unprofessional, offensive and stigmatising. The use of pejorative language about a class of persons, in this case described as "*persons known to police*" has the capacity to impact first impressions and affect the service provided. It is unhelpful and has no place in modern policing. Brandon was demeaned to an officer who had never met him, prior to officers even arriving at the scene.

56. It was appropriate for police to conduct a risk assessment before arrival, not pre-judge those who may be at the scene.

**The arrival of police at the house**

57. The CCTV footage shows Denise returned to her house and at 11.51am SC Bennett and SC Kohlet arrived at the house in their police wagon.

58. The officers approached Denise in the front yard. SC Kohlet said that Denise was crying and she said: "*She began telling us that her grandson Brandon … had turned power off initially. She said that he'd been harassing her for money, cigarettes, that she was sick of his shit. That it had been continuous for a couple of weeks. That last week he had knocked her over*."[18] SC Kohlet said that she was trying to comfort

[15] T22/11/23 at p. 10.8-10.12, 10.17-10.22.
[16] T22/11/23 at p. 29.30.
[17] T21/11/23 at p. 84.41-84.43.
[18] T21/11/23 at p. 28.45.

Denise and obtain information from her when Brandon arrived back at the house. SC Kohlet estimated that the officers were at the house with Denise for around two minutes before Brandon arrived.

59. Brandon's arrival prompted a verbal argument which was described initially as "*bickering*" between Brandon and Denise. Brandon was, in SC Kohlet's words, *"the aggressor"*,[19] though at that stage he was not being "*actively aggressive*".[20]

60. Denise informed the officers, mainly SC Kohlet, that she was "*sick of Brandon's shit"* and she did not want him there. She informed the officers, mainly SC Kohlet, that Brandon had pushed her over at some point in the recent past. Denise said at some stage: "*I wanted an AVO put on him to help stop the abuse."*[21]

61. SC Bennett said that on arrival at the scene, he said:

> "*what's happening?, She's [Denise] then started to divulge that she can't have Brandon no more because she can't deal with his shit; he's constantly asking for money, cigarettes; he's turned the power off to the electricity and solar panels, and indicated to the electricity box on the veranda, where I've then commenced to walk up and open that, and she's continued to speak with Lyndsay. I could hear her speaking to Lyndsay, saying that 'He's pushy; he thinks he'll get this place when I leave; he's pushed me about a month ago'*."[22]

62. SC Bennett further elaborated and recalled:

> "*When he [Brandon] arrived, he started yelling, 'You can't deal with this.' He was walking swiftly like he was on a mission. He then commenced to continue to call his grandmother a cunt, I believe, off the top of my head. She's turned around and started to yell back at Brandon, saying, 'God knows what you've done to the electricity and solar. You need to fix that.' And then he's commenced to walk up to the solar - up to the electricity box, where I've followed him up with that. He's then opened it, and he's looked at me and said, 'It's turned on.' I said, 'Yeah, I've turned it on.' I said, 'Why did you turn it off?' He goes, 'Because she's constantly picking on me. She came into my room complaining about the air-conditioning.*

[19] T21/11/23 at p. 68.16.
[20] T21/11/23 at p. 30.12.
[21] T20/11/23 at p. 26.43.
[22] T22/11/23 at pp. 11.48-12.4.

*She - I didn't have any cigarettes; she wouldn't buy me cigarettes. All she has to do is leave me alone.' I can't recall what else off - at this time".*[23]

63. SC Bennett said that Brandon was worked up, slightly sweaty, and was moving swiftly.[24]

64. SC Kohlet said "*I did want to get further information from Denise as to what exactly had occurred. We were getting brief bits and pieces of it, so I would have liked a more thorough detailed explanation from her as to what had occurred*."[25] SC Kohlet conducted various checks on her MobiPol while with Denise in the front yard. She identified that there were no warnings on Brandon and no current enforceable AVOs. She was not aware of any particular history of AVOs or police involvement.

65. SC Kohlet and SC Bennett had a brief conversation and agreed that the best course was to obtain an AVO in favour of Denise. Both officers said that they did not consider that Brandon had committed any offences at that time and he was not going to be charged for any offence. SC Kohlet estimates the officers were at the scene for about 8 – 10 minutes prior to making this assessment.

66. Brandon was informed by one or both officers that he had to go to the police station for the purposes of a provisional ADVO. There is some discrepancy in the accounts of the officers, as to whether they told him he was being taken to the station (SC Kohlet) or being detained (SC Bennett).

67. Both SC Kohlet and SC Bennett said in evidence that they did not consider it was an option for Denise to take Brandon to the station. They also did not consider it an option to leave Brandon at the house and take Denise to the station for the purposes of taking a statement and obtaining an ADVO to then serve on Brandon.

68. It appears that Brandon initially accepted that he was required to go to the station for an AVO and proceeded to walk with the officers towards the police wagon.

69. At the point at which Brandon and the officers reached the cage of the police wagon, Brandon evidently changed his mind or perhaps realised that he would be placed in the caged section of the vehicle. SC Kohlet was asked: *"Do you recall him [Brandon] saying, 'no I don't want to go'"?* She replied:

"*Not at that time, so we're explaining to him the process, what's - what's*

[23] T22/11/23 at p. 15.46-16.7.
[24] T22/11/23 at p. 16.10.
[25] T21/11/23 at p. 35.24.

*happening, what we're going to be doing with him down at the station. He initially is, I guess in a word, okay with that. He goes to get into the back of the caged vehicle. He asks for a cigarette, and I say we can have one, we're two minutes away, we can have one when we get there. I think I even tell him I'm a smoker too, we'll go out the front, we'll have a coffee. We'll calm down, we'll sort this out, we'll talk it out whilst down there. A second time he goes willingly to get in the back of the caged vehicle, and then at some point he steps back again and says, 'No, I'll get Nan to take me, I want Nan to take me.'."*[26]

70. SC Bennett gave similar evidence on this point. He said that on approach to the police wagon, Brandon asked to sit in the back of the wagon and not in the caged section, and SC Bennett said that he could not do that.

71. Both officers explained that there was no available option of placing Brandon in the back seat of the police wagon (as opposed to the cage) because it contained personal items and police gear belonging to the officers. No other reason was given.

72. Karon Haron at [redacted] observed some of the interaction between police and Brandon and Denise out the front of the yard at this time. She could hear voices and heard Brandon say "*I've got nowhere to fucking go, I've got a kid".*[27] She said the two officers were "*just standing there"* on the grass. She said Denise was there and Brandon was "*standing back a bit*". She then said they "*Stood there and they were talking to Brandon for a bit and then next minute, Brandon and the police officers started to walk to the back of paddy wagon."*[28]

73. Denise's other neighbour, Cynthia Stanley at [redacted], also saw part of the incident. She had only lived at her house for a short period of time and did not know Denise. She knew Brandon by sight. On that morning, Cynthia's cousin, Erica Honeysett and her children were visiting. They arrived by car. Both Cynthia and Erica saw some of the incident once police arrived at [redacted]. Cynthia informed the Court that she saw police "*trying to put him [Brandon] in the back of the car".*[29] Cynthia heard Brandon yelling and in her words, he was "*singing*

[26] T21/11/23 at p. 44.38-44.47.
[27] T20/11/23 at p. 42.50.
[28] T20/11/23 at p. 43.3-43.24.
[29] T21/11/23 at p. 3.40.

*out to his nan. Brandon said 'let me talk to nan', and 'I just want to talk to me nan'."*[30] Erica described this exchange as Brandon "*screaming"* the request to speak with his nan.[31]

74. I find that Brandon was yelling loudly and was clearly distressed, angry and fearful about where he would go in the event an AVO was granted. Denise said that *"I think he was more or less frightened that he would be held in custody but I said to him, 'just go down and get the AVO on you, and you can come back home' and I was willing to take him back on those conditions."*[32]

**Brandon's run towards the house**

75. SC Kohlet said that Brandon refused twice to get into the back of the police wagon and on this second occasion, she grabbed his arm at his bicep and he pulled away. SC Bennett then grabbed Brandon at the wrist and Brandon again pulled away. SC Kohlet said to Brandon, words to the effect: "*please don't make me cuff you. This isn't a big deal at this point in time, let's not make this worse than what they are."*[33]

76. Karon Horan observed from next door that at this stage it all "*seemed fine*" and Brandon was willing to go with police to the station in the car. She then said: *"I don't know whether they tried to help him into the back but Brandon turned around and said 'just let me get in there me fucking self'. He said, and I'll be right'. And then he come flying back in and ran up to the veranda and I heard the big door bang and that's when the two officers ran in and up on the veranda."*[34]

77. Cynthia Stanley saw this part of the incident and explained to the Court that he *"got free of them to get to the front door".*[35]

78. SC Kohlet attempted to control Brandon with a leg sweep and this was unsuccessful. Brandon ran to the door. SC Bennet and SC Kohlet followed closely after him. Brandon entered the house and attempted to close the door, SC Bennett placed his leg in the door and tried to enter the house.

79. At some point before Brandon ran to the house, Denise had left the lawn at the front of the house, and was inside the house. While Brandon was standing behind

[30] T21/11/23 at p. 4.29-4.36.
[31] T21/11/23 at p. 12.50.
[32] T20/11/23 at p. 27.18.
[33] T21/11/23 at p. 46.7.
[34] T20/11/23 at p. 43.40-43.48.
[35] T21/11/23 at p. 5.2.

the door attempting to keep the officers out, Denise was standing either in, or at the entry to, the kitchen. The kitchen is entered from the living room through an archway and is only a matter of metres from the front door.

**The use of OC spray**

80. SC Kohlet made a call on police radio. SC Bennett told SC Kohlet that his leg was in the door and asked her to use her OC spray. SC Kohlet sprayed her OC spray twice at head height through the door [redacted]. She explained that she used the OC spray because of Brandon's violent resistance and the fact that SC Bennett's leg was jammed in between the door. She said:

> "*So this is the first time that a confrontation was happening with Brandon. Previously he was - he was running away from us. I was under the impression that had we opened, or that door opened, you know, I didn't know what was behind the door, I didn't know if Brandon was able to reach for anything and had he have of opened the door, armed himself, so I was concerned that a confrontation was likely to occur when we opened it*."[36]

81. When SC Kohlet used her OC spray, she did not know who else might have been in the house. While she knew that Denise was inside, she did not know her exact whereabouts.[37] It did not occur to her at the time that she would have to go through the door after it opened and, as a result, she was herself affected by the OC spray.[38] SC Kohlet explained that she did not consider any other options apart from OC spray at the time. She told the court that disengagement was not an option because Denise was inside and because police did not know who else might have been inside the house. SC Kohlet said that it was "*purely for [Denise's] safety*" that she did not consider disengagement to be an option.[39]

82. SC Bennett also sprayed his OC spray once through the door, [redacted]. He explained that after SC Kohlet deployed her OC spray, Brandon "*commenced even more physical pressure against the doorframe, which has caused further pain to myself, and therefore I've then stopped pushing against the*

[36] T21/11/23 at pp. 49.50-50.21.
[37] T21/11/23 at pp. 49.38, 50.26.
[38] T21/11/23 at p. 50.35-50.39.
[39] T21/11/23 at pp. 50.46-51.4.

*door and actually physically sprayed as well behind the door".*[40] He explained that by that time, he had tried other tactics such as officer presence, verbal commands, communication, gesturing and weaponless control which did not work and the next step was to attempt to use the OC spray.[41] He was aware that Denise was in the area but considered it was necessary and reasonable because his leg was stuck in the door and he was in pain. He himself felt the effects of the OC spray, experiencing stinging to his eyes.

83. Brandon then ran towards the bathroom. At this stage Denise was still inside the house. She saw police use OC spray at or around Brandon through the door. She felt the spray and said she had to go into her bedroom and was coughing and could not breathe. She said that the effect on Brandon of the OC spray was that he let go of the front door and ran down the hallway towards the bathroom. She later told Karon Horan, once Brandon had been taken to the hospital, that she had a coughing fit from the pepper spray.

**Brandon's retreat into the bathroom**

84. SC Bennett and SC Kohlet gave evidence that Brandon ran into the bathroom and closed the door. SC Bennett approached the door and attempted to open it. SC Kohlet followed him in and then ran through the sunroom and around the other side to check whether there were any other doors. She made her way outside and then saw Brandon attempting to get out of the bathroom window. The bathroom window is quite small and is higher than a tall person's body height off the ground. SC Kohlet said she saw Brandon hanging out the window with no shirt, and she could see his head, torso and arms all out the window.

85. SC Kohlet attempted unsuccessfully to place handcuffs on Brandon while he was in the window.

86. SC Bennett shoulder-charged the bathroom door and entered the bathroom and attempted to stop Brandon escaping. On entry he saw Brandon standing on the bathroom sink and attempting to climb through the window.

87. Denise's neighbour, Karon Horan, had arrived to sit with Denise while the police were at the house, and she saw Brandon hanging out of the bathroom window, not wearing a shirt.

[40] T22/11/23 at p. 36.35.
[41] T22/11/23 at p. 37.1-37.11.

88. During this time Denise returned inside the house as she said she heard something breaking. There is no evidence as to what specifically broke at this time, but given the attempts by Brandon to exit via the window, it is not surprising that something might have been knocked over or broken. Denise saw Brandon in the bathroom and attempting to escape out of the small bathroom window. In her words, *"I saw Brandon hanging out the bathroom window. I saw it from inside the house."*[42] She said she could see him from the waist down and that his body was taking up all of the space of the window.

89. Karon Horan saw Brandon hanging out of the window from the mirrored reflection from a window on the side of Cynthia Stanley's house at [redacted] next door. She saw Brandon out the window and said he looked angry and did not have a shirt on. She said she *"Couldn't get over him trying to get out through that window"*. Around this time she said she heard him say "*just leave me alone"*, and he also said he needed to go to the toilet.[43] Karon did not see SC Kohlet outside the house at this stage but she did not observe the window for the entirety of the period in which Brandon was trying to escape.

90. Cynthia Stanley and Erica Honeysett also saw Brandon try to escape from the bathroom window from their vantage inside the house at [redacted]. They both had a close and direct view onto the side of the house and at Brandon. Cynthia said that Brandon's body was "*half"* out the window.[44] Erica said that she could hear Brandon yelling out "*stop Steve*" and "*move Steve*".[45] This was a reference to SC Bennett and it indicates that Brandon knew enough of SC Bennett from his previous interactions with him to know and use his first name.

91. Cynthia Stanley also said that at the point when Brandon was attempting to get out of the window she could see the officers behind Brandon and inside the bathroom while he was trying to escape. This account may not have been entirely accurate as the window was small and high, and it is more likely that Brandon's presence in the window obscured any such view. Nothing turns on this particular evidence. I accept counsel assisting's submission that the evidence of both Cynthia and Erica generally corroborates the accounts of the police officers and is consistent with the rest of the evidentiary picture of turmoil. The evidence both Cynthia and Erica gave

[42] T20/11/23 at p. 29.37-29.43.
[43] T20/11/23 at pp. 45.41-46.5.
[44] T21/11/23 at p. 6.42.
[45] T21/11/23 at p. 14.24.

in court was less detailed than the accounts given in their original statements and they could not recall some particular parts of their original accounts. However, I accept counsel assisting's submission that this is understandable and not controversial or unexpected in the circumstances.

92. SC Kohlet then returned to the bathroom and together with SC Bennett attempted to contain Brandon. She had one leg and SC Bennett held the other leg. Brandon stood on the vanity and was pulled to the ground. SC Kohlet observed that Brandon was sweaty and "*heightened*".[46] She said he was trying to escape and was pulling away. However, he was not being actively aggressive towards the officers.

93. SC Bennett explained that he told SC Kohlet to grab Brandon's other leg. He was concerned at the time that Brandon might break the window or slice his wrist and tried to pull him back inside.

94. I accept the submission that the manner in which Brandon attempted to climb out the window, given its small size and height from the ground, indicates a level of confusion and even desperation on the part of Brandon at this stage. SC Bennett estimated the window was 30cm x 30cm. It would have been very difficult, if not impossible, for Brandon to successfully escape from that window. Even if he managed to get through it is difficult to see how he would have avoided significant injury getting onto the ground on the other side. It is perfectly clear that Brandon was not thinking rationally.

95. At some stage during the struggle in the bathroom, or possibly later, outside in the sunroom, Brandon defecated. SC Bennett alleged that while in the bathroom, Brandon intentionally smeared faeces in SC Bennett's face and inside his mouth. It is clear from all accounts that there was faecal material evident after the struggle, but SC Kohlet did not observe this action by Brandon, and SC Bennett did not inform any of the other officers of this occurring on the day. I am of the view that faecal matter is likely to have come into contact with SC Bennett accidently in the stressful and confused circumstances. I note there is evidence from Karon Horan that at some point Brandon said he needed to go to the toilet. I make no finding that Brandon deliberately smeared faeces on SC Bennett.

[46] T21/11/23 at p. 54.29-54.46.

**The attempts to detain Brandon in the corridor**

96. Both SC Kohlet and SC Bennett continued to attempt to contain and subdue Brandon. He moved out of the bathroom and was contained by SC Bennett who pushed Brandon against a wall in the corridor, in a manner akin to a rugby tackle. SC Kohlet said she told Brandon to stop resisting and to calm down. SC Bennett said Brandon continued to thrash about and was hitting him in the back. She estimated that a period of around 5 – 10 minutes elapsed from the point at which Brandon exited the bathroom until Inspector Russell arrived on the scene. Around this time Brandon asked for water. The evidence supports a finding that during this period there was no effective communication with Brandon and he did not calm down.

97. SC Kohlet expressed her opinion that at this stage there was no option of disengagement with Brandon. In her words: "*No. That was the first time we had Brandon under control. He still wasn't fully under control but that was the first time we had Brandon under control essentially. Had we of stepped back we don't know how he would have reacted. He was much bigger than all three of us. We don't know, you know, from the car to the house he's been trying to escape. Again safety was the number one thing*."[47] However, SC Kohlet was of the view that Brandon was not being aggressive, just trying to resist and escape.

98. At some point during this episode, Brandon urinated. Again, there is no evidence that this was done deliberately although SC Bennett believed that it was.

**The arrival of Inspector Russell and DSC Fleeton**

99. The police records show that at 12:13pm Inspector Russell arrived at the house in Wellington 10. He gave evidence that he was concerned as to what was unfolding during the incident (as heard over the police radio) but on arrival he did not see any immediate urgency, in part because he saw two women, likely Denise and Karon, on the front veranda, who pointed him to the police location at the rear of the house.

100. Karon Horan continued to either hear or see the incident unfolding from next door. She said: "*you could hear Brandon singing out to them, telling them to fuck off, get away, leave me alone, and then when the elder sergeant come, and he went inside,*

[47] T21/11/23 at p. 57.19.

*you heard him say to Brandon, 'just get down, just get on the floor, that's all you've got to do is just get down'. And you just heard Brandon say to fuck off and yeah that's pretty much all that we heard*."[48]

101. Inspector Russell entered the house and was confronted with the situation of the two officers and Brandon in the corridor. He acknowledged that as the senior officer present, he took immediate charge of the situation and sought to regain control. He said that SC Bennett called out, '*out here'*, or '*need help'*.[49] He saw SC Bennett half bent with his arm around Brandon and his head between his chest and abdomen. He saw "*Bennett trying to hold him still and Brandon was pushing forward*." He then said: *"I immediately just started talking to him. The first thing I did was to remove his arm, or his hand from the bottom of Senior Constable Bennett's ILAV, to restrain him, and I started to talk to him, to say, to 'stop, just stop what you're doing, why are you doing this'."*[50] He estimates he was present at the scene for about 10 minutes.

102. Inspector Russell's stated focus was to attempt to de-escalate the situation and gain control of it, and then find out what was happening. In his own words, Inspector Russell told the Court: *"[the] plan was to de-escalate and contain, and continued for 10 minutes, continuing to talk to Brandon without success."* He further explained: "*I think I even told him, 'look, more police will be arriving, you don't have to continue to do this, just stop, just stop now'. I told him to 'lay on ground, this will be over, there are more police coming', you know, giving him a warning that this situation was going to be resolved very soon, and just give him that opportunity to stop."* During this period Inspector Russell recalled that Brandon did not say anything, other than to answer the word "*no*" when he asked him if he was listening.[51]

103. It is important to note that Inspector Russell did not know that Brandon was going to be taken to the station for service of a provisional ADVO, or to be charged. He explained that his actions were just directed to de-escalation.

104. At 12:28pm DSC Fleeton arrived at the house in his unmarked vehicle. He had gone to [redacted] mistakenly and so he was delayed in his arrival. Apparently

[48] T20/11/23 at p. 45.2.
[49] T23/11/23 at p. 13.41.
[50] T23/11/23 at pp. 14.31-14.32, 14.50-15.3.
[51] T23/11/23 at p. 17.39-17.43, 23.5-23.20.

this is an occasional issue in Wellington, as two officers told the Court that there was a common confusion between [redacted], [redacted], and [redacted] over the radio. This confusion could possibly have been avoided had the officers attending the house at [redacted] called in their location but I accept counsel assisting's submission that it may not have made a difference.

105. DSC Fleeton said that on his arrival he saw *"the boss [Inspector Russell] and Lindsay [SC Kohlet] and Steve [SC Bennett], so the three police officers, they were wrestlin' with this big, big unit, in umm, sort of near the back door. The three of them were wrestling with him and I'm, the boss yells out to me, get over here and help, you know, we need your help, get over here and help, sort of thing*."

106. At the point at which DSC Fleeton arrived, Brandon was still contained, or 'pinned' in the corner outside the bathroom. The plan remained the same, that is, to attempt to control the situation. Inspector Russell reflected in evidence that Brandon was resisting the officers but was not being aggressive. This is consistent with the assessment of the situation by SC Kohlet.

107. Inspector Russell then directed the officers to get Brandon on the ground and handcuff him. This was done by DSC Fleeton taking over from SC Kohlet, and SC Bennett backing up, lifting one of Brandon's legs, and sliding him onto the ground in a sitting position.

108. The officers then moved Brandon onto his front and side so that he could be cuffed from behind. SC Bennett said that at this point there was no option for disengagement. He said: *"no, as if I disengaged, he knows the layout of the house, where he goes from there, I don't know. I had no idea where the grandmother was. I don't know what his intentions would be if I were to disengage."*[52]

**The use of the baton**

109. Around the time at which Brandon was on the ground, he continued to resist the police and was kicking out. SC Bennett used his extendable baton to strike Brandon twice on the leg. He said he did this to protect himself from being kicked. It did not have the desired effect and Brandon continued to struggle. DSC Fleeton regarded the strikes as ineffective, and took SC Bennett's baton and put it in the back of his pants.

[52] T22/11/23 at p. 48.21.

**Brandon's respiratory distress**

110. Brandon's arm was moved behind his back in an attempt to handcuff him while he continued to resist. SC Kohlet said that during this process Brandon's face began to turn red. She then said: "*His eyes went distant and that's when I was like this is not right, we need to take the handcuffs off, stop cuffing, we need to take them off."*[53] This is consistent with Inspector Russell's memory that she said: "*something along the lines of 'stop, get his handcuffs, his colour had changed, his face had change colour'."*[54] The evidence is that SC Kohlet shouted for the others to remove the cuffs in an urgent manner. It is noted that while SC Kohlet was the most junior officer present, each of the other three more senior officers complied with her request and removed the handcuffs, demonstrating an appropriate concern for Brandon's welfare.

111. Inspector Russell then rolled Brandon onto his back and explained he tried to uncuff Brandon but his hands were shaking. The handcuffs were removed. SC Kohlet saw he was breathing slowly with some white foam coming out of his mouth. His face began to turn a blue / purple colour. At some stage, described by SC Bennett as at "*the end"*, he heard Brandon say "*I can't breathe*."[55] Inspector Russell directed that DSC Fleeton perform CPR compressions. Inspector Russell also then observed the colour change in Brandon's face, to what he described as an "*unhealthy colour*".[56]

112. DSC Fleeton commenced CPR on Brandon while he was on the ground. He was later relieved by Senior Constable Martin Hemberg who was one of the police officers who arrived later at the scene, after calls for assistance were answered from other stations in the area.

113. I find that from the moment police officers realised that Brandon was having some kind of medical emergency they attempted to assist him.

**The attendance by paramedics**

114. At 12.31pm a call was received by NSW Ambulance in regard to a male in cardiac arrest at [redacted], Wellington.

[53] T21/11/23 at p. 59.31.
[54] T23/11/23 at p. 20.49.
[55] T22/11/23 at p. 54.6.
[56] T23/11/23 at p. 22.25.

115. At 12.33pm an ambulance was dispatched.

116. At 12.36pm the ambulance arrived at the scene and entered the house to find DSC Fleeton was performing chest compressions on Brandon.

117. The ambulance was not able to access the rear of the property until Leading Senior Constable Trevor Fielding drove his police car into the back gate and broke the lock.

118. At 12.56pm Brandon was placed in the ambulance, helped by police officers who had arrived from other stations.

119. Karon Horan saw the officers outside the house shortly after the incident and once Brandon had been taken to the hospital. She said they looked shattered. They were red in the face and sweating and in shock. She said they *"just couldn't believe something like that happened*."[57] I have no doubt the situation was by then extremely stressful and distressing for police. Their physical condition illustrates the exertion and intensity of the struggle which had just occurred.

120. SC Kohlet said that after the incident had occurred "*I was devastated. I think I was crying*."[58] SC Kohlet was asked by counsel assisting whether, in hindsight, she could have done anything differently. She said:

> *"Again, I mean I've had two years to look over, I - I don't know what more that I could have done. The communication with him initially it worked, it didn't work. I can't leave Brandon at the house, you know, to damage potentially, I'm not saying that he would have, but to damage property. I can't leave him there with her because he's a risk to her, yeah. I would - I would do obviously hope for a better outcome and - but yeah, I - I don't know what I would do differently."*[59]

121. In relation to the point at which Brandon was in the window, SC Kohlet said*:*

> *"Again we - I - I thought we did what we needed to do in - in those circumstances. I don't think - you know, had - had he gotten away he's still going to be a risk to Denise. If - if he was successful in getting out that window we - we don't know his whereabouts, we don't know*

[57] T20/11/23 at p. 47.13.
[58] T21/11/23 at p. 61.9.
[59] T21/11/23 at p. 62.13-62.18.

*anything. I - like yeah, I wouldn't - don't know."*[60]

122. In relation to the point at which they were in the sunroom, she said: "*I don't see why our communication wasn't working".*[61] She also said that it was not until this point that they had control over Brandon.

**Brandon's admission to Wellington Hospital and Brandon's death**

123. At 12.59 the ambulance arrived at Wellington Hospital. Brandon remained in asystole.

124. At 13.00 Brandon was triaged. Brandon was administered adrenaline but remained asystolic.

125. At 13.35 Brandon was assessed and pronounced deceased.

***The police response and declaration of a critical incident***

126. The officer in charge, Detective Superintendent Joseph Doueihi, was appointed as the Senior Critical Incident Investigator. He provided a lengthy statement for these proceedings and gave some oral evidence. The critical incident investigation was conducted in a thorough and comprehensive manner.

127. Detective Superintendent Doueihi was asked questions during the hearing about his management of the taking of a statement by an officer experienced in child protection matters, Detective Senior Constable Annemarie Buckland, of Brandon's son [redacted] (with the consent of and in the company of his mother, Uppannia Sullivan). That interview yielded very little in the way of useful information, which is unsurprising given that [redacted] was aged 7 at the time, and was not present at the house during the incident.

128. The rationale given for the interview was that [redacted] may have been able to give some information as to his father's health or other relevant issues. While interviewing family members – including children – to provide background can have a valid forensic purpose, in my view interviewing [redacted] was unnecessary in this case and had the potential to unnecessarily upset the child. Very great care must be taken in making decisions of this sort and there should always be a very significant reason to go ahead with such an interview. I do not see a compelling

[60] T21/11/23 at p. 62.33-62.37.
[61] T21/11/23 at p. 63.10.

reason in this case.

129. I note that counsel for the Commissioner submitted that this issue is not relevant to the inquest and does not assist in determining the manner and cause of Brandon's death. Counsel submitted that any issue with how a critical incident investigation is conducted is a "*matter for elsewhere*". Counsel further submitted that the interview itself was conducted by an officer with 12 years' experience in the child abuse command and that she had undertaken a number of different qualifications to be able to perform her duties within that command. Counsel submitted that the fact that the interview was conducted shows that it was a comprehensive investigation and "*they did not exclude Brandon's child just because he was a seven year old*". It was also noted that while the interview did not obtain any useful information, police did not know that until the interview was conducted. Counsel said there was the potential for police to be criticised if they did not take a statement from someone with such a close relationship to the deceased. Counsel for the Commissioner ultimately submitted that I should not refer to this issue in my findings because it is "*not relevant and is extraneous to the scope of power*".[62]

130. Having been informed of the interview, I see no reason to avoid comment. Any part of the investigative process that might be improved will undoubtedly be of interest to the officers involved.

131. That issue aside, the establishment and investigation of the critical incident was done in a thorough and professional manner. Detective Superintendent Doueihi and Detective Sergeant Mitchell Bosworth as second-in-command of the investigation attended each day of the hearing, and have continued to provide support and information throughout the proceedings.

## Consideration of List of Issues

### *Cause of death*

132. Dr Benjamin Harding performed a post-mortem examination of Brandon on 4 January 2022. He prepared an autopsy report on 12 April 2022 and an amended report with a minor correction on 9 October 2023.

[62] T29/11/23 at p. 50.35-51.31.

133. Dr Harding set out that Brandon's death was the result of a combination of factors including prolonged physical exertion, prone physical restraint, morbid obesity and severe coronary artery disease. An examination of Brandon's coronary arteries revealed luminal narrowing of 75% on the left anterior descending coronary artery and 80-90% on the right coronary artery.

134. In Dr Harding's opinion, the most significant contributing factors to Brandon's death were his morbid obesity and severe coronary artery disease in the context of prone restraint and physical exertion. However, Dr Harding was not able to conclusively define the relative contribution of each of these factors to Brandon's death and therefore found the death "*unascertained*".

135. Professor Mark Adams, cardiologist, provided expert reports and gave clear oral evidence. I accept counsel assisting's submission that his evidence was uncontested and should be accepted. Professor Adams stated that the likely cause of death was cardiac arrhythmia such as ventricular tachycardia or ventricular fibrillation triggered by myocardial ischaemia arising as a result of physical exertion and stress involved in the struggle with the police officers, in the context of an underlying undiagnosed coronary artery disease.

136. Professor Adams stated that it is most likely that the ischaemia was due to demand ischaemia brought on by physical exertion. Demand ischaemia occurs when the metabolic demands of the heart brought on by exertion or other forms of stress outstrips the blood supply that can be delivered to the heart. For Brandon, his sudden and sustained vigorous exertion during the incident would have "*been an unusual level of exertion for him".* This is backed up by the lay evidence which paints Brandon as being usually quite sedentary.

137. Professor Adams informed the Court that *"[a]s well as the exertion placing demands on [Brandon's] heart, this demand would have been increased by factors such as metabolic acidosis and possibly overheating related to the exertion*". Acidosis occurs when lactic acid builds up in the body. The presence of metabolic acidosis can further reduce the threshold for the development of arrhythmias.

138. Professor Adams also considered that the following clinical and situational risk factors may have contributed to Brandon's death:

    a. Brandon's morbid obesity;

    b. Brandon's history of smoking and high blood pressure;

c. the ambient temperature at Wellington at the time, which may have led to exertional heatstroke and contributed to cardiovascular failure;

d. Brandon's prior use of methamphetamine, which he considered played a significant role in the development of his premature coronary artery disease; and

e. Brandon's schizophrenia. Professor Adams said that patients with serious mental illnesses such as schizophrenia are also at significantly greater risk of developing coronary artery disease at an early age.

139. As I have already noted, Professor Adams pointed to the greater incidence of coronary artery disease amongst the Indigenous population and the difficulties in diagnosing that disease particularly amongst younger Indigenous men. He noted that there was a Medicare benefit for testing for coronary artery disease but he considered that it should be able to be accessed at a lower age than is currently available.

140. Professor Adams did not consider the use of OC spray to have directly contributed to Brandon's death as the adverse cardiac effects from the use of OC spray are not well documented. However he gave evidence that its use may have had some effect on the development of the ischemia because it increased Brandon's stress and stimulation. He said:

> *"I don't think there's enough evidence to suggest that it has a direct effect on causing sudden death or cardiac events, but it's certainly - in a stressful situation, you know, the use of OC spray might be increasing the levels of anxiety and stress that the person is under, and in that way it could lead to problems. But I suppose we see realistically there's probably lots of people that die after OC spray, but they're in a situation where they're getting OC spray, not for fun, but because they're in a really, you know, nasty situation and are often struggling and have a lot of other things going on."*[63]

141. Professor Adams stated that it is also possible that the abdominal pressure placed on Brandon while he was pinned in the corner by police may have reduced his breathing capacity and therefore exacerbated his acidosis.

[63] T27/11/23 at p. 7.28-7.36.

142. Professor Adams considered that Brandon's placement in the prone position did not trigger his cardiac arrest given his extremely rapid deterioration when he was placed in this position. He believes that Brandon likely went into cardiac arrest around the time he was rolled into the prone position.

143. In oral evidence Professor Adams told the court that Brandon's poor cardiac health meant that he was at high risk of a cardiac event. He said: "*He could have easily died at any stage. Like, this is really serious cardiac disease. If I was seeing him in my office, I'd be telling him to - well, a lot of things about, you know, changing these risk factors if possible, and not to do any sort of exercise or exertion at all until he had those blockages fixed, because he was just - yeah, absolutely was a walking time bomb.*"[64]

144. I accept the expert evidence and find on the balance of probabilities that Brandon's death was caused by a cardiac arrhythmia triggered by myocardial ischaemia in the context of physical exertion and stress from his prolonged struggle with police, morbid obesity, high blood pressure, a history of methamphetamine use, smoking, and severe coronary artery disease.

145. I note that Brandon's family accept that his death was caused by exertion ischaemia, in the context of pre-existing ischaemic disease.[65]

***Whether the circumstances in which NSW Police attended [redacted], Wellington were reasonable, appropriate and compliant with policy***

146. SC Kohlet and SC Bennett attended [redacted] as part of a busy, yet routine morning performing general duties in Wellington. Denise drove to the station and then located the officers only a few streets away attending to other events. Denise asked for police assistance but apparently did not disclose that it was regarding a complaint of domestic violence. SC Kohlet, to whom she spoke, apparently did not ask about the nature of the request for assistance. It is somewhat curious that on the way the way to Denise's house the police officers had a discussion about Brandon being "*a bit of a grub*", given they both stated they had no knowledge of the complaint about him before they arrived. In any event, the court was informed that Police did not know they were attending a scene where a domestic violence complaint would be made and where both parties may be

[64] T27/11/23 at p. 12.45.
[65] Family Submissions T29/11/23 at p. 32.7-32.10

present.

147. Given the complete lack of information obtained, it is not surprising that the initial complaint procedures and the operational response to domestic violence as set out in the NSW Police Domestic Violence Standard Operating Procedures (DV SOPS) were not followed.

148. SC Kohlet accepted that she had undertaken the relevant domestic violence training and was aware of the DV SOPS (although she said she had not read the document in its entirety). She had previously responded to calls about domestic violence, and was aware of the initial complaint procedures in the DV SOPS. These procedures identify that an officer who receives a complaint of domestic violence (either by phone or at a station) must obtain relevant information. This information is listed in the DV SOPS and includes, significantly: what had occurred; what had occurred previously; where the person of interest was; any court orders; and various histories relating to prior incidents and medical history. There was no compliance with these mandatory complaint procedures. SC Kohlet explained that the reason why she did not comply with the initial complaint procedures was because she was trying to listen to SC Bennett talking to two men at the scene in regard to another job they were attending to at the time. However, she also agreed that these were all important things to know *before* attendance at a scene in order to undertake a risk assessment. It was incumbent on both officers to manage the situation as it presented and ensure that, consistent with the DV SOPS, they were appraised of the situation before attending at the house at [redacted].

149. SC Bennett, as the senior officer, while he did not personally speak to Denise, should have ensured that he was appraised of the situation before attending the scene. Quite simply the officers could have asked Denise to wait for a minute or meet them back at the police station to obtain information prior to attending her home. This did not occur.

150. It follows that neither officer was in a position to assess the risk on route to the house because they did not know why they were asked to attend at Denise's house and accordingly could not undertake (among other things) relevant checks on police radio. They did not call off at the scene on Police radio as required.

151. Very soon after arrival at Denise's house the officers became aware that there was a domestic complaint. At this point the officers did attempt to take control of the

situation and, once Brandon returned to the house, they also separated Brandon and Denise to some degree. The DV SOPS requires that "all persons" be separated, however, they were not aware whether there were any other persons on the premises. The officers did not undertake a number of the other mandatory actions (which are described as such in the procedures) including:

a. Make an immediate risk assessment of the scene;

b. Enquire about children; and

c. Enquire about firearms.

152. So much was effectively acknowledged by SC Kohlet herself in the following further exchange with Counsel assisting:

> "Q. You accept that a simple, what's the problem question, might have given you more information--
>
> A. *Yes.*
>
> Q. Which you could have then used to have more of a risk assessment undertaken as you travelled to [redacted], is that correct?
>
> A. *Yes, yes.*
>
> Q. Had you had the information about this being a domestic incident before you arrived, what could you have done before you arrived to undertake some of these checks?
>
> A. *Well I would have let radio know the location, I would have asked them to do a location inquiry, and that gives us information as to who lives there, if there's any firearms, or all the things that we would need to know prior to going. And yeah, so calling off asking for that - that information, and allowing Steve and I time to - to communicate and talk and prepare about how we're going to approach the situation."*[66]

153. SC Kohlet said that only a visual risk assessment was undertaken at the time and no enquiry was made of children or any other persons.

154. SC Bennett also agreed that these mandatory actions were not undertaken. He did not provide any particular reason for the failure to do so or for the failure to call off at the scene.

[66] T21/11/23 at pp. 26.43-27.9.

155. It was also clear that neither officer used the Domestic Violence Safety Assessment Tool (DV SAT) provided in the DV SOPS. SC Kohlet was asked and agreed that asking questions using the DVSAT would have given more information about Brandon's risk to Denise, and Denise's level of fear of him. She was then asked whether the "*more information you have, the better that judgment is likely to be*?" and SC Kohlet responded, "*yes*."[67] This tool (even if only using Part B for non-intimate partner violence) would have been likely to assist the officers to identify the level of threat to the victim and the response required.

156. I accept counsel assisting's submission that the failure to comply with the DV SOPS and the DV SAT was unsatisfactory. In my view the lack of information and planning at an early stage constitutes the most significant missed opportunity in relation to these events. Separating Denise and Brandon at the initial information gathering stage so that their "bickering" did not get out of hand, may have assisted in a more peaceful process. Calmly and systematically assessing the level of threat prior to making a decision to obtain an order was appropriate where Police accept there was no immediate threat of violence. If there was a chance to de-escalate this incident it existed at the outset. I accept that policing is a difficult job, made more difficult in situations of stress, but clear and helpful processes designed to obtain useful information in domestic violence situations should, as far as possible, be adhered to and followed.

157. Counsel for the involved officers submitted that while it would have been best practice to ask Denise about the nature of her complaint when she initially approached them, whether that would have elicited information that would have enhanced a risk assessment is speculative. He submitted that when police attended the house, a risk assessment was undertaken and the officers handled the circumstances as best they could and got as much information as they could. Counsel for the involved officers further noted the difficulty in "*thinking of a checklist in a 214 page policy*" when you are dealing with dynamic events on the road and trying to deal with them and attend to the needs of an upset 70 year old woman who is the focus of their attention.[68]

158. The officers did not comply with either the DV SOPS or the DVSAT. While it was reasonable and appropriate for the police to attend [redacted] at Denise's

[67] T21/11/23 at p. 33.35.
[68] T29/11/23 at p. 46.30.

request, it was not reasonable or appropriate for them to do so without requesting more information from Denise when there was no evidence the job was urgent. A preliminary conversation with Denise, either by asking her to wait before returning home or to meet them at the Police Station or around the corner from her home might have given Police the opportunity to gather enough information to plan a safer approach at [redacted]. There is no evidence that Police needed to attend the address urgently. In my view, the real lost opportunity to avoid escalation, occurs well before police decide to detain Brandon. Once they were at the location events unfolded and escalated quickly, prior to police having adequate information to plan a response. Police made a decision to detain Brandon within minutes of their arrival, knowing very little. In my view the speed with which they came to this decision escalated the situation.

***Whether it was lawful for attending NSW Police to detain Mr Rich in the circumstances***

159. The issue of whether it was lawful to detain Brandon is determined by the provisions of s 89A of the *Crimes (Domestic and Personal Violence) Act 2007*. That section provides:

> *89A Detention of defendant for making and service of interim apprehended domestic violence order*
>
> *(1) A police officer who is making or is about to make an application for a provisional order that is an interim apprehended domestic violence order may give any of the following directions to the person against whom the order is sought—*
>
> *(a) that the person remain at the scene where the incident occurred that was the reason for making the application,*
>
> *(b) in a case where the person has left the scene of that incident—that the person remain at another place where the police officer locates the person,*
>
> *(c) that the person go to and remain at another place that has been agreed to by the person,*
>
> *(d) that the person go to and remain at a specified police station,*

*(e) that the person accompany a police officer to a police station and remain at the police station,*

*(f) that the person accompany a police officer to another place that has been agreed to by the person, or to another place (whether or not agreed to by the person) for the purpose of receiving medical attention, and remain at that other place.*

*(2) If a person refuses or fails to comply with a direction under this section, the police officer who gave the direction or another police officer may detain the person at the scene of the incident or other place, or detain the person and take the person to a police station.*

*(3) If a direction is given under subsection (1)(e) or (f), the police officer may detain the person in the vehicle in which the person accompanies the police officer to the police station or other place for so long as is necessary to transport the person to the police station or other place.*

*(4) In considering whether to detain a person under subsection (3), a police officer may have regard to the following matters—*

*(a) the need to ensure the safety of the person for whose protection the interim apprehended domestic violence order is sought, including the need to—*

*(i) ensure the service of the order, and*

*(ii) remove the defendant from the scene of the incident, and*

*(iii) prevent substantial damage to property,*

*(b) the circumstances of the defendant,*

*(c) any other relevant matter.*

160. The key provision is s 89A(1) which sets out that a police officer who is making or is about to make an application for a provisional order may give a direction to the person against whom the order is sought, including, relevantly, that the person accompany a police officer to a police station and remain at the police station. The

other key provision is s 89A(2) which provides that if a person refuses or fails to comply with a direction, the police officer who gave the direction or another police officer may detain the person at the scene of the incident or other place, or detain the person and take the person to a police station.

161. This power to give a direction and the power to detain (in the event of a refusal or failure to comply) only applies in circumstances where an officer is making or is about to make an application for an AVO. Section 26 of the Act provides:

> *26 When application may be made*
>
> *(1) An application may be made by telephone, facsimile or other communication device if—*
>
> *(a) an incident occurs involving the person against whom the provisional order is sought to be made and the person who would be protected by the provisional order, and*
>
> *(b) a police officer has good reason to believe a provisional order needs to be made immediately to ensure the safety and protection of the person who would be protected by the provisional order or to prevent substantial damage to any property of that person.*

162. There is an obligation to apply for an ADVO in circumstances as set out in s 27:

> *(1) An application must be made for a provisional order if—*
>
> *(a) a police officer investigating the incident concerned suspects or believes that—*
>
> *(i) a domestic violence offence or an offence against section 13 has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or*
>
> *(ii) an offence under section 227 (Child and young person abuse) of the Children and Young Persons (Care and Protection) Act 1998 (but only in relation to a child) has recently been or is being committed, or is*

*imminent, or is likely to be committed, against the person for whose protection an order would be made, or*

*(iii) proceedings have been commenced against a person for an offence referred to in subparagraph (i) or (ii) committed against the person for whose protection an order would be made, and*

*(b) the police officer has good reason to believe an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person.*

163. An authorised officer or a senior police officer may make an application for a provisional interim AVO if satisfied there are reasonable grounds for doing so (as set out in ss 28 and 28A).

164. Both SC Bennett and SC Kohlet told the court that they formed the view that an ADVO was necessary in order to protect Denise from Brandon. SC Bennett said that he considered an ADVO was appropriate: "*When she's claimed that she had been pushed previously. the turning off the electricity and solar to the house. The constant bickering. She's [sought] us to speak to us about something. She's complaining about his bullying in relation to behaviour towards her."* He did not ask Denise if she was in fear of Brandon but conceded that it "*could have been helpful*" to do so.[69]

165. SC Kohlet also agreed that an ADVO was warranted in the circumstances. She explained that there had been an assault, and there was evidence of harassment and intimidation in circumstances where Denise was an elderly lady, living in her own home. In her evidence she explained: "*Just our presence alone didn't deter him from arguing with her. … If we were to leave is it going to escalate? They couldn't sort this issue out themselves, that was obvious*."[70] She agreed that taking out an ADVO was a serious step. She said: "*I'm able to make that decision as well as a police officer that for Denise's safety then I'm able to apply for that order on her behalf.*"[71]

166. Each of the officers considered that the appropriate order, given Denise's

[69] T22/11/23 at p. 18.31-18.38.
[70] T22/11/23 at p. 38.1.
[71] T21/11/23 at p. 69.47.

acceptance that Brandon could come back to live with them, was an order which encompassed "(a), (b), and (c)" which is a reference to s 36 of the Act which provides:

> *36 Prohibitions taken to be specified in every apprehended violence order*
>
> *Every apprehended violence order is taken to specify that the defendant is prohibited from doing any of the following—*
>
> *(a) assaulting or threatening the protected person or a person with whom the protected person has a domestic relationship,*
>
> *(b) stalking, harassing or intimidating the protected person or a person with whom the protected person has a domestic relationship,*
>
> *(c) intentionally or recklessly destroying or damaging any property, or harming an animal, that belongs to, or is in the possession of, the protected person or a person with whom the protected person has a domestic relationship.*

167. Additionally, the officers claimed that the order proposed would have had a condition which prohibited Brandon from approaching, or being in the company of Denise Rich for at least 12 hours after drinking alcohol or taking illegal drugs. In my view there was little evidence to properly explain how Police came to the view that the order should be tailored that way.

168. Counsel assisting submitted that the officers had a sufficient basis to seek an ADVO in the circumstances. Accordingly, they submitted that it was lawful for the officers to give Brandon a direction under s 89A and, if the direction was not followed or complied with, it follows that it was lawful for the officers to detain Brandon (pursuant to s 89A(2)).

169. The evidence of the officers is that one or the other of them informed Brandon that police would obtain an ADVO against him in order to protect Denise. Brandon was told by one or both officers that he was required to go down to the police station for this purpose. SC Kohlet, at least, attempted to discuss this with Brandon and attempted to communicate or negotiate with him in order to de-escalate the situation. She said words to the effect that Brandon needed to go with them to the station and that he could have a cigarette at the station, as he was asking for one.

She said that she also attempted to explain that although Brandon was required to go to the station, he was not under arrest and was not charged with any offence.

170. Counsel assisting submitted that although what SC Kohlet said was not referred to specifically as a "direction" under s 89A, this was nevertheless sufficient to constitute such a direction for the purposes of the provision and that it was accordingly a lawful direction.

171. SC Bennett said that his view was that he told Brandon that he was "*detained*" for the purpose of going to the station for an ADVO, *prior* to walking down to the caged vehicle. At this point Brandon had not refused or failed to comply with a direction, and so was not able to be detained. However, counsel assisting submitted that the request by SC Bennett for Brandon to go to the station could be interpreted as a direction.

172. There was evidence of the officers and the neighbours that Brandon initially appeared to comply with the request to go to the police wagon and accompany the officers to the station. However, he apparently changed his mind and then refused to comply, specifically refusing to get in the back section of the vehicle. Counsel assisting submitted that, on the balance of probabilities, this refusal sufficiently constituted a failure to comply with a relevant direction. Accordingly, the officers had the power under s 89A(2) in these circumstances to detain Brandon for the purpose of taking him to the station, at least from the time of Brandon's refusal to enter the caged vehicle and certainly by the time that he ran to the house.

173. It must be noted that the evidence of SC Kohlet, SC Bennett and Inspector Russell demonstrated to the Court that the officers did not fully understand the operation of the police powers available under s 89A of the Act. This is despite the apparently clear explanation in the DV SOPS:

> *"Police have powers to firstly give a direction to a defendant and if this direction is not complied with then police may detain a defendant at a police station or another place.*
>
> *…*
>
> *What does this section mean?*
>
> *• Section 89A provides that if a police officer makes or is about to make application for a domestic provisional order, the officer has six alternative*

*options to choose from in directing defendants which include:*

*» To remain at the scene*

*» To remain at another place where police locate the defendant*

*» To go to another place that has been agreed to and remain there*

*» To go to a police station and remain there*

*» To accompany a police officer to a police station and remain there*

*» To accompany a police officer to another place that has been agreed to and remain there or accompany a police officer to another place for the purpose of receiving medical attention and remain there.*

*• This does not become a detention unless the defendant refuses to remain. In this situation you may detain the defendant at the scene, at another place or at the police station until the order is made and served.*

*• If the person agrees to remain but after this attempts to leave then police can detain a defendant under this section."*[72]

174. It was apparent that the attending officers on the day did not clearly understand that police have the power to give a direction to a defendant and if, and only if, the direction is not complied with, do the police have the power to detain the defendant at a police station or another place. For example, SC Bennett was asked by counsel for the family: "*Your broad understanding now, and as it was at the time, is that the process of giving a direction and the detention is one in the same step?*" SC Bennett replied: "*That is correct, because at the same time they're still going to be brought back to a station. They're not going to be put in a cell; they'll be put in a foyer area or somewhere else like that. They still can't leave. They are being detained.*"[73] SC Kohlet was asked a series of questions about the operation of the power. She was asked by counsel assisting: *"Can you see that the power to detain a person follows the giving of that direction. Do you understand that?"* and she responded: *"Not exactly, I don't understand what you're asking, sorry."*[74]

175. Inspector Russell was asked questions on the same issue by counsel assisting: *"Do you understand that is a two stage process"?* Inspector Russell responded:

[72] DV SOPS at pp. 105-106.
[73] T22/11/23 at p. 59.28-59.34.
[74] T22/11/23 at p. 73.48.

"*My understanding was it was one, all incorporated in one*." He was then asked: "*Your understanding was that you could tell someone that they are detained to go down to the station without having to give the direction first, is that right?"* and he responded: that "*So the direction and the detaining is in one.*[75]*"*

176. Further, on the question of the understanding and training of officers, Inspector Russell was asked by counsel assisting: "*And so given that your understanding, and apparently the other officers understanding was that a detention, a power to detain arose immediately, if you like, do you see the need for some better information, or clearer information about this section?"* Inspector Russell responded: "*Perhaps. I think sometimes that you could give the direction, and the refusal is, is interpreted as their action; whatever action they do, whether it's verbal or not, whatever action they give you. Simply turning away and walking away would be, to me, a refusal."*[76] Counsel assisting submitted that perhaps due to the size and the complexity of the DV SOPS officers had not fully appreciated or understood how this particular power operated. In my view as a matter of principle, the misunderstanding is significant, and of concern.

177. Counsel for the family did not necessarily accept that the circumstances were sufficient to warrant an application for a domestic violence order at the time that decision was apparently made, given the paucity of information that had been collected at the time.[77] Counsel for the family submitted that from the time of the police arrival to the "*melee in the front yard*" can only have been a matter of minutes.

178. Pursuant to s 26(1)(b) of the *Crimes (Domestic and Personal Violence) Act 2007*, a police officer needs to have a good reason to believe a provisional order needs to be made immediately to ensure the safety and protection of the person who would be protected by it or to prevent substantial damage to any property of that person. Counsel submitted that this was not the case here, particularly in the minutes after police arrived.

179. Counsel for the family submitted that both parties were in a heightened state and "*there was a capacity for further inquiries to me made*." One of those inquires suggested by counsel for the family was finding out more about Brandon's

[75] T23/11/23 at p. 27.14-27.19.
[76] T23/11/23 at p. 27.35-.27.45.
[77] Submissions of counsel for the Family T 29/11/23 at p. 33.19 onwards

relationship with Nanny Carol.

180. Counsel for the family was also concerned about the officers' lack of understanding of their powers. He submitted that any direction should have been expressed in clear terms and did not accept counsel assisting's view that what was said was enough to constitute a lawful direction. The family submitted that any deprivation of liberty carries with it significant consequences. Police officers exercising such power must have a full understanding of its limits and how it should apply. Counsel for the family also submitted that it is "*incumbent upon the officer…to ensure that the individual who is the subject of the direction understands what the direction is and understands potentially what the consequences of it are*."[78]

181. Without giving a concluded view on its legality, there is in my view considerable force to the submissions made by counsel for the family in relation to the speed with which a decision was made to apply for a domestic violence order. While rational minds might assess the limited information they had available to them differently, the decision was certainly hasty. No statement had been taken, no account had been recorded on a body worn camera or in a police notebook. Police seemed aware of a general complaint about past behaviour and had been informed of an assault but had no knowledge of when that had occurred or in what circumstances. They had very limited information upon which to ground the "good reason" they needed to apply for the order.

182. *Even if* police had adequate grounds to apply for the order, I remain particularly concerned about the evident confusion disclosed in relation to the direction given. On any reading of the evidence the original request to Brandon was that he accompany police back to the police station. A request he apparently agreed to. I do not believe a formal clear direction pursuant to s 89A was ever given to Brandon to get into the back of the caged truck. The direction and the consequences of its breach should have been clearly explained. Instead, Brandon found himself at the back of the truck in confused circumstances. He was told he was not under arrest. He confirmed he would go to the station. He suggested he would like to travel in the body of the car. He also said that he wanted his Grandmother to drive him. SC Kohlet said that Brandon refused twice to get into the caged section of the police wagon and on the second occasion, she grabbed his arm at his bicep and he pulled

[78] Submissions of counsel for the Family T29/11/23 at p. 34.40-34.43

away. I think it likely that this happened prior to any proper direction being given.

***Whether it was reasonable and appropriate for attending police to detain Mr Rich in the circumstances***

183. Whether or not it was strictly lawful pursuant to s 89A to detain Brandon once he refused to comply with the request to get into the back of the caged vehicle, the question remains whether it was *reasonable and appropriate* to detain Brandon in all of the circumstances.

184. In considering this it is useful to consider what, if any, other options were available to attending police at the time. Counsel assisting suggested that the other options available to the attending officers were first, to take Denise to the police station and take a statement; second, to encourage Brandon to go down to the police station himself; third, for Denise to take Brandon to the station; and finally; to attempt further negotiation and de-escalation with Brandon. Another option arising on the evidence may have been to ask one the other officers at the Wellington Police Station to drive up and take him back to the station in a sedan vehicle. We know there were other officers at the station because once the situation deteriorated they came immediately. These options will be addressed in turn.

185. The option of taking Denise down to the police station was explored with the relevant officers. Neither officer considered this to be a realistic option "*on the ground".* SC Kohlet said in response to this question: "*At that time no, that never occurred to me. As far as I was aware, it was her premises that we were at. And again, with the - the back and forth between Denise and Brandon, I'm trying to conduct checks at the same time on my MobiPol, you know, it didn't occur to me to do that, no."* She also said that this approach was not the "usual" approach but it was an option.[79] SC Bennett said that "*I don't believe appropriate … [it was for] her protection. So no, I did not consider that as an option."*[80]

186. It was submitted by counsel assisting that it was open to police to consider this option. It may have been an avenue that protected Denise while not escalating tension with Brandon. However, from the content and the tenor of the police evidence on this issue, it seems that the standard approach for officers is usually to take a defendant to the police station for the purposes of preparing and serving

[79] T21/11/23 at pp. 33.50-34.10.
[80] T22/11/23 at p. 28.17.

an AVO. I note the guidance given in the DV SOPS (at p.107) that NSW Police should "*strongly consider"* the use of a direction to the defendant to accompany police in order to maximise the protection of the protected person (guidance that was specifically referred to in the evidence of SC Bennett).

187. Counsel for the Commissioner of Police submitted that the officers could not have taken Denise down to the police station. She submitted that they are in a country town with only one car crew rostered on and that police could be criticised for putting "*a 71 year old woman, a person in need of protection of an AVO into the back of a police vehicle and [taking] her to the police station to get some paperwork together, for her protection*".[81] Presumably Police could still have asked her to drive down to the station herself as she had earlier that morning or asked one of the officers at the station to come and collect her.

188. The option of encouraging or asking Brandon to go to the police station himself was also explored in oral evidence. SC Kohlet was asked about whether Brandon could go to the station himself. SC Kohlet said: *"Not that I'm aware of, no, we - we leave him on scene, he - there's potential that he either flees, he destroys Nan's property, he doesn't have a vehicle himself. He's stated previously he's got nowhere else to go."*[82] Given the evidence about Brandon's state of mind, his physical condition and the fact that he did not have a car, counsel assisting submitted that this was unlikely to have been a reasonable and available option. She submitted that it was unlikely that Brandon would follow a direction to make his own way to the police station in the circumstances. It is difficult to judge, even with the benefit of hindsight, whether Brandon would have walked down if the opportunity had been given to him prior to the real escalation of events at the back of the caged truck. Nevertheless in my view there may have been an option to call for one of the police officers at the station to come up and collect him. We know at least two officers and an Aboriginal Client Liaison Officer Teleria Milson were present that morning.

189. The option of Denise taking Brandon to the station arises because it was requested on a number of occasions by Brandon on the day. The neighbours heard Brandon yelling that he wanted to "*speak to*" his nan and that he wanted to go with his nan to the police station. This evidence indicates that it is likely that when police were

[81] T29/11/23 at p. 47.22.
[82] T21/11/23 at p. 45.18.

at the house, Brandon was confused and scared about what would happen to him next. This evidence also indicates, tragically, that although the ADVO was being sought to protect Denise, it was clearly Denise upon whom Brandon relied and turned to when he needed support, guidance and protection. SC Kohlet explained that when the officers informed Brandon that he was required to go to the station, *"I think he says no, and is adamant that he wants Nan to take him and we obviously explain that that can't happen. Nan is the person in need of protection, that there's no way that Nan's taking you to the station."*[83] Counsel assisting further asked SC Kohlet: "*you've agreed that you hadn't observed any reason to fear that she was in physical danger because she was happy for him to come back home. … Why wasn't it an option for him to go down with her?"* SC Kohlet responded: "*The risk involved to her. He's angry that she's called the police on us. If we were to leave him, and he's - he's showing that anger whilst we're there in police uniform. He wasn't afraid to do that. If - just purely the risk to her safety."*[84] SC Bennett also gave similar evidence that it was not "*suitable*" for Denise to take Brandon to the station because she was the PINOP.

190. Counsel assisting submitted that although this option was available to the officers, it was likely not preferable or even desirable. It was reasonable for the officers to be concerned about Brandon if they left him at the house (in terms of potential damage to the house and the risk to others from Brandon and even the risk to himself). It was also reasonable because SC Bennett (at least) was aware from Denise that Brandon had stolen from her in the past. Further, the fact that [redacted] was "Denise's house" (even though Brandon lived there) was a relevant consideration for the police in the circumstances. I accept counsel assisting's submission on this issue. Nevertheless, there does not appear to have been any consideration of whether another relative or neighbour was available to take him down to the station.

191. Counsel assisting submitted that the final option of attempting further negotiation and de-escalation is a difficult one to consider and assess. It is difficult because of the operation of hindsight bias and because by the time the police officers walked Brandon to the police wagon and he was resistant to getting in the back of the wagon, the situation had already escalated. Counsel assisting submitted that, by

[83] T21/11/23 at p. 45.30.
[84] T21/11/23 at p. 45.38.

the time Brandon refused to comply with the direction or at least refused to get in the police wagon, it was not reasonable to attempt to pursue further negotiation. This is because, at the very least, the officers were confronted with a man who had pulled away from their attempt to hold onto his arm for that purpose. The officers were then, within a matter of moments, confronted with a man who ran from them and towards the house. The fact that Denise was inside the house at this time was significant. The police were reasonably entitled to be concerned about what Brandon would do once inside the house, particularly given that he had been verbally abusive to Denise in front of the officers and that he was clearly angry that she had contacted the police.

192. Counsel assisting submitted that it was open to find that once Brandon refused to get in the wagon and ran from police, it was effectively "*too late*" for any further negotiation and de-escalation. It is clear from the Brandon's actions that he was unwilling and possibly unable at this point to communicate rationally. It should be noted that Inspector Russell arrived with the intention of achieving de-escalation of the situation, despite the chaotic environment he entered. Inspector Russell said that Brandon grabbed his tie on two occasions and refused to speak with him, other than offering the word "*no*" in response to a question about whether he was listening. Inspector Russell said that on arrival: *"I still felt confident that I was able to talk to him into agreeing to stop"*[85] and he also said his *"Intention was always to de-escalate."*[86] Inspector Russell reflected in his evidence on other opportunities to diffuse the situation. He said: "*My actions at that point were the most appropriate into de-escalating the situation. The only thing that I may say is perhaps if I had not said to him 'to lay on the floor', but perhaps 'turn around', to submit to a handcuffing to the rear he may have, may have done that. But other than that, there was, the whole situation that I was involved in was to try and bring this to the least use of force, and just de-escalate it and contain it."*[87] Counsel assisting submitted that this was useful and thoughtful evidence and Inspector Russell did his best to attempt to contain the difficult situation at the time.

193. Counsel assisting submitted that SC Kohlet had made some made genuine attempts to engage with Brandon, empathise with him, and to contain the situation

[85] T23/11/23 at p. 24.42-24.46.
[86] T23/11/23 at p. 21.18.
[87] T23/11/23 at p. 24.33-24.38.

when she first arrived. Later the situation had escalated to such a degree that it was more difficult. When asked to reflect with hindsight on what had occurred it was certainly SC Kohlet's opinion that she could not see how things could have been done differently. She told the court:

> *"I don't know what more that I could have done. The communication with him initially it worked, it didn't work. I can't leave Brandon at the house, you know, to damage potentially, I'm not saying that he would have, but to damage property. I can't leave him there with her because he's a risk to her, yeah. I would - I would do obviously hope for a better outcome and - but yeah, I - I don't know what I would do differently."*[88]

194. Counsel assisting submitted that in all the circumstances it was reasonable and appropriate for the officers to detain Brandon for the purposes of taking him to the police station.

195. Counsel for the family submitted that there was inadequate consideration of alternative less restrictive options, particularly as there was no immediate risk to Denise's safety.[89] Counsel for the family submitted that other options included taking Denise to the police station or directing Brandon to go and remain at another place, such as Nanny Carol's house. He submitted that the Court should not accept SC Kohlet's evidence that there was a real risk of Brandon committing further offences if he was left alone at the scene.

196. Counsel for the family further submitted that there is an issue as to whether Brandon understood the difference between being detained and being arrested and that there was no evidence that a clear direction to accompany them to the police station was given before the power to detain was enlivened. Counsel referred to the common law principle that arrest is a power of last resort. While Brandon was not being arrested, he was being deprived of his liberty. Counsel referred to *Robinson v State of New South Wales* [2019] HCA 46 and *Bales v Parmeter* (1935) 35 SR (NSW) 182 and submitted that the approach that must be taken under s 89A is to ensure, as far as possible, that the liberty of the person is maintained.

197. Counsel for the family referred to the evidence of the involved officers and their

[88] T21/11/23 at p. 62.13.
[89] Submissions of counsel for the Family T29/11/23 at p. 35 onwards.

lack of knowledge of the two step process in s 89A. He submitted that "*there is a live issue of training*" and referred to the evidence of Sergeant Bentham that there is no specific training on s 89A.

198. Having considered the issue carefully I am of the view that there was indeed room for a different and more effective approach. I also accept the family submissions that the involved officers did not clearly understand their power or communicate their direction.

199. In my view the real opportunity for de-escalation was on arrival of police at the house. This opportunity required that attending police arrive at the scene with an open mind, knowledge that it was a domestic violence complaint and ideally having obtained any available background information via police radio on route. On arrival it was appropriate to take some time to understand exactly what was going on and how the situation could be best managed. Trying to force Brandon into the back of the caged wagon was always likely to escalate the situation. I am concerned that alternatives were not really explored. By the time officers physically took hold of Brandon and tried to put him into the vehicle, the situation was escalating alarmingly.

200. In my view the most critical issue arising from the evidence is the apparent lack of strategic thinking about early de-escalation techniques.

201. I note that the NSWPF is currently intending to roll out an online training package relating to mental health awareness which includes consideration of de-escalation techniques, which apply not only to incidents relating to persons demonstrating mental health issues but has a broader reach. Unfortunately, further information about that training package is not yet available but it was referred to in evidence by Detective Acting Superintendent Hales. She said that she was undertaking a review of the training provided by the NSWPF, including the training provided by the Mental Health Intervention Team. She explained that she is looking at "*training holistically across the board*" and at "*best practice around de-escalation and what is best practice in response to mental health incidents in the community, both nationally and internationally*". This includes looking at "*communication skills and de-escalation skills that centre around active listening, empathy and engaging someone*". She said that all police officers will receive a one hour mental health awareness online training package at the end of the year which will include an introduction to communication and de-escalation skills using active listening and

the behavioural stairway model. She explained that this model revolves around building rapport, using active listening and empathy to engage and then problem solving through communication. The package will then be expanded in 2024-2025 into a two hour mandatory package which will involve case studies and audio and video examples of best practice communication, which will then be assessed during defensive tactics training roleplays. She also confirmed that the previous one day and four day mental health training programs have been discontinued pending the completion of the review.[90]

202. Beyond the information provided by Detective Acting Superintendent Hales, police were not in a position to provide any further information in relation to the proposed training.[91] I would have liked further information about the de-escalation training being considered. In my view better de-escalation training is likely to be one of the most important issues presently facing the NSWPF.

***Whether the fact that Mr Rich was a First Nations man required any particular response from attending NSW Police in the circumstances***

203. Counsel assisting submitted that in the circumstances of Brandon's interaction with police, there was no particular response required arising out of Brandon's status as an Indigenous man. No party addressed me otherwise.

204. I note that it was the evidence of SC Kohlet was that she was not aware that Brandon was Indigenous. SC Bennett's evidence was that he was aware that Brandon was an Indigenous man from previous interactions. The court was informed that there was an ACLO present at Wellington Police Station on the day. Inspector Russell explained that part of the role of the ACLO, is to operate as a "*go-between"* between the police and the community. However, he stated that it would not have been possible for the ACLO to assist in this case due to the rapid development of the situation. I accept that once Brandon ran from the vehicle and there had been a significant escalation of events there was probably no time to call for Ms Milson. However, it appears clear that no person considered calling for her involvement at an earlier time, even when SC Bennett apparently knew he was attending Brandon's house and he knew Brandon was in his words "*a bit of a grub*".

205. The NSWPF had records which would have indicated that Brandon had a mental

[90] T27/11/23 at pp. 45-47.
[91] Exhibit 8

health history and had never served a sentence of imprisonment. Both involved officers stated there was no reason to arrest him for an offence. In my view NSW Police should have thought very carefully about whether it was actually necessary to place him in a caged vehicle. This includes thinking about how Brandon may feel about it, particularly in circumstances where he was not being arrested for a criminal offence.

***Whether the use of physical force and implements such as a baton and OC spray by attending NSW Police was reasonable, necessary and compliant with policy in the circumstances***

206. The use of arms and appointments such as the baton and OC spray are governed by the policies in the NSWPF Handbook (including the chapter on use of force) and the OC Spray Defensive Manual.

207. Counsel assisting submitted that it was reasonable and necessary for the officers to use the OC spray in the circumstances. This includes the circumstances where the officers and Denise were, unfortunately, impacted by the aftermath of the spray. The OC spray was used by both SC Kohlet and SC Bennett. The evidence was clear and uncontested: that Brandon ran from the police wagon and into the house and attempted to close the door on SC Bennett. SC Bennett gave evidence, correctly, that the OC spray may be used for the protection of human life, injury and control of an aggressive offender.[92] He explained that he asked SC Kohlet to deploy the spray through the door in order to prevent injury to himself because his leg was stuck in the door while Brandon was trying to close the door with his full body weight. He explained that Brandon did not respond to verbal commands and SC Bennett formed the view that he was unlikely to stop. He considered that his attempts at "*weaponless control"* of Brandon did not work and so he next considered the spray, both in requesting SC Kohlet to deploy the spray and then in deploying it himself. The photographs attached to SC Bennett's directed interview demonstrate the impact of the door closing (and being pushed closed) on his leg by way of bruising.

208. Counsel assisting submitted that although the use of the OC spray was reasonable it was not compliant with the policy as set out in the OC Spray Defensive Manual.

[92] T22/11/23 at p. 33.35.

[redacted].[93] This was an important requirement that was not complied with by either officer. [redacted]

209. Counsel for the family also submitted that the use of the OC spray was not compliant with the OC Spray Defensive Manual because [redacted] Counsel for the family further submitted that contrary to the requirements in the manual,[94] [redacted] Ultimately, he submitted that the Court "*may well find that it was necessary in the circumstances [but] could have been used differently*" and that *"it should have been used in a way which permitted Brandon Rich to take some other action.* [redacted][95]

210. [redacted]

211. Counsel assisting submitted that the use of the baton by SC Bennett while restraining Brandon in the corridor was also reasonable, necessary and compliant with policy. It was used by SC Bennett in order to attempt to control Brandon through *"pain compliance"*. This occurred once SC Bennett and the other officers had attempted through various means to control and detain Brandon. It was ineffective and did not appear to have an impact on Brandon.

212. In my view, the use of a baton may have been compliant with current policy. However it was clearly ineffective, as recognised by DSC Fleeton at the time. I have no doubt being beaten with the baton did nothing but increase Brandon's panic and distress.

213. Counsel for the family submitted that there was a real possibility of tactical de-escalation or tactical disengagement at the time Brandon was stuck in the window. He suggested that this might not have involved "*stepping way entirely*" from Brandon but "*certainly pausing*, *waiting and seeing whether his behaviour would*

[93] OC Spray Defensive Manual, version 9.2, dated August 2020 at p. 16.
[94] OC Spray Defensive Manual, version 9.2, dated August 2020 at p. 14.
[95] T29/11/23 at pp. 37-38.

*de-escalate*". Counsel for the family referred to the evidence from SC Bennett that Brandon was immobilised at the time and also to the evidence of SC Kohlet that Brandon was stuck in the window and was not presenting an imminent threat as he was just trying to escape. Counsel for the family submitted that the techniques employed by police to communicate with Brandon had not been successful and that Brandon had already evaded them twice. It was submitted that this was the one point that Brandon was properly immobilised and that SC Bennett ultimately agreed that, with the benefit of hindsight, it may have been an option to leave Brandon immobilised in the window and attempt to communicate with him and to de-escalate the situation at that point.

214. Counsel for the family referred to Sergeant Bentham's evidence that Brandon's position in the window could have compressed his chest or limited his ability to breathe and therefore pulling him down was a suitable response. He submitted that the Court reject Sergeant Bentham's evidence on the basis that the risk of some restriction on Brandon's ability to breathe was not something the officers contemplated. He also submitted that it needs to be balanced against the fact that Brandon had already evaded police twice and had exhibited some strength in doing so. Counsel for the family submitted that this was a "*pinch point … where some prospect of de-escalation existed*". He further noted that Brandon begins to resist almost immediately after he is pulled down from the window and said, *"it does beg the question of the wisdom of bringing him [down] in the first place, without the benefit of more police being present".*[96]

215. I have carefully considered whether the period of time that Brandon was in the window presented an opportunity for de-escalation. It is clear to me that NSWPF officers did not try to pull Brandon down because they were concerned that his breathing might be compromised. It is clear that they wanted to bring him down to detain him or by then to place him under arrest. Nevertheless, Brandon seems to have been in a precarious position hanging out the window and I understand the impulse to get him back on the ground. I do not accept that de-escalation is likely at this point. Tragically I think NSWPF had already lost this opportunity.

[96] T29/11/23 at pp. 38-40.

***Whether the use of physical force and implements such as a baton and OC spray by attending NSW Police contributed to Mr Rich's death***

216. The evidence of Professor Adams is that while the use of physical force and implements such as a baton and OC spray did not directly cause Brandon's death, it may have contributed to the physical exertion and stress experienced by Brandon. Professor Adams explained that in the context of Brandon's underlying coronary artery disease and other risk factors, physical exertion triggered the myocardial ischaemia that led to a fatal cardiac arrythmia. In relation to the OC spray specifically, Professor Adams gave an opinion that there were no documented cardiac effects of OC spray. However, he gave evidence that anything which causes stress, including the use of OC spray, can induce ischaemia.

217. In these circumstances, it is not possible to tease out what the separate contributions, if any, to Brandon's death, arise from the use of the baton or the OC spray. I find that while the use of physical force, the baton and the OC spray were all part of the overall context whereby Brandon experienced significant exertion, no one technique can be said to have caused his death.

***Whether attending NSW Police were required by policy to carry a taser and a body worn camera, and whether the failure to do so would have likely made any material difference to the outcome in the circumstances***

218. It is clear from the policies in evidence that both SC Bennett and SC Kohlet were required to wear body worn camera and to carry a taser. Neither complied with the policies in this regard.

219. The reason provided by SC Kohlet for her failure to wear a BWV was that she understood that there were no working cameras available on the day. Although the evidence sets out that some of the cameras on the day were not working, it was not correct that there were *no* working cameras. She said that she did not know to check this for herself. She also said, candidly, that a reason for not wearing a camera on the day was "*complacency*". SC Kohlet was asked whether since the incident she has worn BWC. Her response was "*absolutely*".

220. SC Bennett gave evidence that he did not wear the body worn camera because he had not completed the requisite training. He has since done so and now wears a camera when undertaking operational work.

221. Both officers agreed that it would have been preferable for them to wear a body worn camera. It is deeply regrettable that they did not as the incident would otherwise have been recorded. This was in the interests of the officers and important for accountability in these proceedings. We note the evidence of the OIC Detective Superintendent Doueihi that compiling CCTV evidence to ascertain timings (including pinning down when various police attended at the house) took a number of weeks of police time. Perhaps even more importantly the court was denied a record it should have had access to.

222. The failure of both attending officers, SC Bennett and SC Kohlet, to carry a taser was also regrettable. It was a requirement of police procedure, and it was best practice to do so. However, in the circumstances, it is unlikely that there would have been a material difference to the outcome if a taser had been available at the time.

223. The reasons given by SC Kohlet for her failure to wear a taser were that it is "*for the senior officer to wear*"; that she did not have enough room on her belt for a taser, and, in her words, "*more complacency*." SC Bennett did not provide any particular reason for his failure to wear the taser. It was likely complacency. I accept counsel assisting's submission that it did not reflect well on SC Bennett that he did not engage with the issue in evidence.

224. It was the evidence of both attending officers that even if they had a taser, it would not have been considered as an option in the circumstances. SC Bennett gave evidence in response to a question about the potential use of a taser: "*I don't think a taser would have been used at that time, no, and it would have been nowhere near effective or be able to be utilised property."*[97]

225. SC Kohlet was asked about the potential use of a taser and she said that the resort to this use of force was not justified. She said in relation to contained Brandon while in the bathroom:

> "*No. Because there's no justification to use it. He's trying to escape, there's Not, at that point in time when he's out the window, there's not any imminent … prospect of us being hurt at that time*."[98] She further commented: "*He was trying to escape, to get away from us. He was*

[97] T22/11/23 at p. 37.15.
[98] T21/11/23 at p. 53.31.

> *handsy, I mean he was flailing his arms about…I don't believe he wanted to hurt, if he wanted to he would have. There was resistance, but it wasn't wasn't violent, it was more him trying to get us off him*."[99]

226. Detective Sergeant Bentham's identification of three opportunities where the taser may have been used in his written report was subject to his review of the attending officer's evidence, and he gave oral evidence that none of the three opportunities would have been suitable for a taser to have been used.

227. In any event, there is no guarantee that, had a taser been used on Brandon, that the outcome would have been different. Professor Adams gave evidence that his physical condition made it very likely that he would have been subject to myocardial ischaemia at any time of significant exertion. Use of a taser may not have halted or avoided this process.

228. I note that counsel for the involved officers agreed that, both SC Kohlet and SC Bennett were non-compliant with BWV policies and that SC Bennett was non-complaint in relation to the taser policy. However he submitted that "*it would not have made any difference*" to "*the sad outcome in this case"*. In my view the submission misses the point, at least in relation to the BWV issue. The practise is an important one and provides useful evidence for proceedings such as these.

**The need for any recommendations under s 82 of the Coroners Act**

229. Counsel assisting put forward a draft recommendation for consideration. The recommendation was directed to training in relation to the NSPF Domestic Violence (Standard Operating Procedures). It stated:

> That any training provided to officers undertaking operational duties in relation to the exercise of police powers as set out in NSWPF *Domestic Violence (Standard Operating Procedures)* include a focus on the operation of the powers of direction and detention under s 89A *Crimes (Domestic and Personal Violence) Act*.

230. The recommendation was supported by Brandon's family.

231. Counsel for the Commissioner of Police appeared to suggest the recommendation was unnecessary and overlooked the evidence contained within Sergeant

[99] T21/11/23 at p. 85.20.

Bentham's statement, specifically the Certificates of Competency Compliance for SC Bennett, SC Kohlet and Inspector Russell which show that they completed the mandatory domestic violence and firearms training modules online. Counsel for the Commissioner of Police submitted that *"[t]here's nothing to show that that did not include domestic violence training with respect to the application of and the interpretation of powers that are provided under s 89A*". Counsel further noted that SC Bennett gave clear evidence that the training he had undergone included training on s 89A.

232. To some extent the submission misses the point. There was clear evidence before me that whether or not the involved officers had done the training, they did not understand the legislation. I intend to make the recommendation.

233. Counsel for Brandon's family submitted that the evidence also raised the ongoing need for further training regarding techniques for de-escalation in the context where the use of force is considered. It is a compelling submission and an issue about which I am particularly interested.

234. I have already referred to the evidence of Detective Acting Superintendent Hales in this regard. I repeat that in my view one of the most important issues facing NSWPF is to improve training for officers in relation to de-escalation techniques. However, given that I am informed the training is already under review I have decided not to make a formal recommendation. However, I intend to send a copy of these findings to Detective Acting Superintendent Hales to be considered in any review.

**Findings and Recommendations**

235. For reasons stated above I make the following formal findings pursuant to section 81 of the Coroners Act:

***Identity***

The person who died was Brandon Rich.

***Date of death***

He died on 29 December 2021.

***Place of death***

He died at Wellington Hospital.

***Cause of death***

He died from a cardiac arrhythmia triggered by myocardial ischaemia**.**

***Manner of death***

He died in the context of physical exertion and stress from his prolonged struggle with police, morbid obesity, high blood pressure, a history of methamphetamine use, smoking, and severe coronary artery disease.

236. For reasons stated above I make the following recommendations pursuant to section 82 of the Coroners Act:

**To the Commissioner of the NSW Police Force**

That any training provided to officers undertaking operational duties in relation to the exercise of police powers as set out in NSWPF *Domestic and Family Violence Standard Operating Procedures 2018* include a focus on the operation of the powers of direction and detention under s 89A of the *Crimes (Domestic and Personal Violence) Act 2007*.

## Conclusion

237. I offer my sincere thanks to counsel assisting Jane Needham SC and Tracey Stevens and their instructing solicitors David Yang and Tina Wu for their assistance in this matter. The court was also greatly assisted by Nicolle Lowe and Elizabeth Jarrett, Aboriginal Coronial Information and Support Workers from the NSW Coroners Court. Their work was invaluable. I am aware the family also received outstanding support from the Dhadjowa Foundation, particularly Apryl Day. Family participation is central to the integrity of the inquest process. The Dhadjowa Foundation should be recognised for its significant contribution to making family participation in matters of this kind a reality. I thank them.

238. Thank you to Detective Superintendent Joseph Doueihi and Detective Sergeant Mitchell Bosworth for their assistance in these proceedings. I recognise the stress of these proceedings on the involved officers, and I thank them for the open and conscientious participation in proceedings.

239. Finally, once again I offer my sincere condolences to Brandon's family. Brandon's grandmother, Denise reminded the court that Brandon was so much more than the events this court has been tasked to investigate. He was a loved and loving family

member. In closing this inquest I conclude with her words. "*I want my grandson to be remembered as more than just what the evidence has stated here. He was a human being that had his struggles just as we all can have*." I respect the family's participation in these proceedings and thank them for sharing a little of who Brandon was with us all.

240. I close this inquest.

Magistrate Harriet Grahame
Deputy State Coroner,
NSW State Coroner's Court, Lidcombe
21 March 2024