- 283. At 6:40pm, Mr Johnstone dropped Ms Amundsen at her home. He then contacted Mr Anastasiadis to make a statement.
- 284. Soon after Mr Johnstone and Ms Amundsen left 837 Ballarat Road in Deer Park, Mr Delosreyes went to his car and drove it to the side gate of Luke Joannou's house. Ms O'Goerk was in the front passenger seat.
- 285. Mr Joannou also came out to the kitchen and told Mark Joannou:

"Wayne when he was leaving he told us he was going up the bush to stay with (Mr Delosreyes)."

- 286. Mr Joannou went back to the bedroom and came out with his bag. Luke Joannou gave him some shoes, pants and a jumper. Mark and Luke Joannou also gave him about \$700.
- 287. Mr Joannou also gave Mark Joannou three letters. He told Mark Joannou not to give them to Luke Joannou or his father unless something happened. These letters were those he wrote at Ms Clarke's house on 8 February 2005.
- 288. Mark Joannou told the Court that Mr Joannou understood that he might die:

"Because it was like he wasn't going to see us again, that's why he brang it up.

Because he gave me letters and he said, "If you don't see me again", you know, "just make sure you let everyone know that it was in self defence."

- 289. Mr Joannou also reassured Mark Joannou that the chrome plated sawn off shotgun did not work.
- 290. Mr Joannou's letter to Luke Joannou indicates that he was trying to leave the country but he was not expecting to succeed:

"So promise me. Luke if for some crazy reason I do make it and get out of this country. One day we will see each other again, But if not I am saying Goodbye until I see you upstairs little bro..."

291. Similarly, Mr Joannou's letter to his family says inter alia:

"I don't blame anyone except myself and I will never forgive myself for failing to have a real shot at life. Instead I gave up at an early age and allowed all my talents and potential to go to waste. ....

Although I am still young and I should not give up yet my answer is to that I will not sit in a jail cell and slowly watch my loved ones age or die or need help that I could of help with for the rest of my life."

- 292. Mr Joannou then wrapped the chrome plated pump action shotgun in a jacket, took the shotgun cartridges from the table and left through the back door.
- 293. Mr Joannou returned to the house and the three brothers had a group hug. Mr Joannou also confirmed that he had shot Mr Bottomley in self-defence. He then said:

"Goodbye, I will wait for you in heaven."

- 294. At 6:31pm, Mr Joannou got into the back seat of the 1996 Toyota Camry green sedan NID-380 owned by Mr Delosreyes. He had a normal size sports bag with clothing hanging out of it. Police do not mention the sports bag in the objects subsequently seized from Mr Delosreyes' 1996 Toyota Camry green sedan NID-380. Ms O'Goerk was in the front passenger seat.
- 295. Neither Mr Delosreyes nor Ms O'Goerk mentioned that Mr Joannou also had a bum-bag with him. Although, Mr Delosreyes denied knowing that Mr Joannou had a gun, he would have seen the gun when he was in Mr Joannou's room with Mr Joannou. I do not know whether Ms O'Goerk was aware that Mr Joannou was carrying a gun.
- 296. Police later found two syringes, four tablets of diazepam, some coins, a business card for the Bail Coordinator at Melbourne Magistrates Court and 11 unused shotgun cartridges in the bum-bag. They also retained \$425 in cash from the floor on the rear passenger side of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380. This money and some other property was returned to Luke Joannou next day.
- 297. Mr Joannou directed Mr Delosreyes to drive along Canterbury Road in Deer Park towards the Western Ring Road. At 6:33pm, while Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 was stationary in traffic, the State Surveillance Unit positively identified Mr Joannou in the back seat and saw him lie down on his right side.

- 298. Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 left the Western Ring Road at the Westgate Freeway. They then turned into Kings Way and drove as far as Toorak Road. At Toorak Road, they performed a U-turn and drove back along Kings Way until Mr Delosreyes decided to park in a side street off Kings Way.
- 299. Police surveillance noted that, at 7:07pm, Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 parked in an angle parking bay facing south in Bank Street South Melbourne about 50 metres west of Eastern Road.
- 300. In evidence, Ms O'Goerk told the Court that Mr Joannou told her that he loved his family and that he had a Naltrexone implant. He asked them for some Ice. When they said they did not have any they offered him heroin.
- 301. Mr Joannou asked Mr Delosreyes to get some water so he could to mix his heroin for injection. At 7:10pm, Mr Delosreyes left his car and entered the front garden of the house in front of the car. He got some water in a syringe packet from a tap and returned to the car after a short time. Mr Joannou injected himself with heroin.
- 302. Mr Delosreyes and Ms O'Goerk then prepared to smoke some of the heroin in the front seat.

  Mr Delosreyes prepared and smoked some of the heroin. He then handed the pipe to Ms
  O'Goerk.
- 303. As Ms O'Goerk leaned forward to smoke the pipe, the car lurched forward and she was thrown into the dashboard. She thinks this happened before she was able to smoke the pipe.
- 304. Ms O'Goerk believes that she heard gun shots and then stun grenades. She was huddled over Mr Delosreyes in the front seat. She did not hear any voices until she heard the call to get out of the car.

### Victoria Police preparation for arrest of Mr Joannou

305. At 9:50am on 18 February 2005, Operator 41 used the SMEAC format to brief all Special Operations Group members involved in Operation Motto. These members included an Officer in Charge, Inspector John Noonan, and an analyst, Operator 23.

- 306. Operator 41 told the Special Operations Group members that:
  - Wayne Joannou was the target of Operation Motto;
  - Mr Joannou had prior convictions for armed robbery, assault, traffic heroin and weapons offences and was arrested by the Special Operations Group in 2003;
  - Warnings that Mr Joannou was a heavy heroin user and had access to a number of weapons;
  - Mr Joannou was the suspect for murder where the victim was shot in the head with a hand gun and his body dismembered with a power saw;
  - When detectives attempted to arrest Mr Joannou he attempted to car jack a vehicle before committing an aggravated burglary and stealing a car;
  - Reliable intelligence was that Mr Joannou now had in his possession a silver barrelled sawn off shotgun;
  - This intelligence also stated that Mr Joannou was paranoid and anxious stating he:

"would not be taken easily," and

"I know they are looking for me, I won't go without a fight."

- 307. Operator 41 told the Court that he believed that Operation Motto was a high risk operation because:
  - Mr Joannou was well and truly aware police were looking for him;
  - He was paranoid about this fact;
  - There was information to suggest he had at some of the premises he had stayed at whilst on the run he was seated within an advantageous position within that premises so he could see out into the street;
  - He had walked into premises unannounced armed with firearms with his associates;
  - He had indicated he was not going to be taken easily;
  - He was said to be carrying the shotgun with him at all times, he had it on his lap when he was seated in the vehicle; amd
  - Information being from the LEAP database that he had a prior history of drugs.

308. Operator 41 said:

"That was probably the mental state that was conveyed to me and that was certainly the impression that I got from the information delivered to me."

309. Further, Operator 14 told the Court:

"...it was made quite clear that he was paranoid and fearful of being taken into custody.

I don't know about his personality."

- 310. Accordingly, as Team Leader, Operator 41 determined the most appropriate arrest plan consistent with the information available to him. Operator 41 also allocated specific taskings to each Special Operations Group member for the planned arrest of Mr Joannou. These plans were developed in consultation with and authorised by the Tactical Commander, Operator 6.
- 311. Despite informers' reports of Mr Joannou's mental state, subsequent briefings of Special Operations Group members did not consider the possibility that Mr Joannou was considering exposing himself deliberately so that he did not have to go back to prison.
- 312. Further, despite considering Mr Joannou's mental state, Operator 41 never considered the possibility that Mr Joannou expected to die:

"it's not something that I - that I recall thinking about at the - at the time. I don't think I ever thought that he would suicide by cop. I - I - I honestly don't recall thinking about that whatsoever....

But in this particular situation they were - I can honestly say I don't think I ever thought that this person would suicide by cop....

Look, it's - I mean it's a possibility that it was his intention. All I say is that I don't recall thinking of it."

313. At 10:15am, Mr Francis, Mr Daly, Mr Sheather, Mr Noonan and Special Operations Group Operators 41, 6, 14 and 23 met to discuss Operation Motto. During this meeting, they were also updated with the disclosures made by Mr Johnstone that Mr Joannou was at 837 Ballarat Road in Deer Park, that he was still in possession of a shotgun and ammunition and that other family members were also in the house.

- 314. At 11:38pm, Operator 41 notified the Special Operations Group members of this new information and that surveillance crews had been despatched.
- 315. At 2:35pm, the Special Operations Group members on duty were despatched to the Sunshine Police Station.
- 316. The Special Operations Group members were updated throughout the afternoon by the Homicide Squad and the State Surveillance Unit about movements around 837 Ballarat Road in Deer Park. At 3:05pm, they were told that Mr Joannou was expected to be at 837 Ballarat Road later in the evening to meet his step-mother.
- 317. At about 3:40pm, Operators 66 and 44 from the Special Operations Group were tasked to assist in assessing the tactical options for arresting Mr Joannou at 837 Ballarat Road in Deer Park.
- 318. At 4:05pm, Mr Francis, Mr Daly, Mr Sheather, Mr Noonan, the Tactical Commander and Senior Sergeant, Operator 6, and the Team Leader, Operator 41, were updated with further information provided by Mr Johnstone.
- 319. At 4:25pm, Operators 66 and 44 returned to Sunshine Police Station with video footage to inform Special Operations Group plans. At 5:45pm, they returned to 837 Ballarat Road in Deer Park to support the State Surveillance Unit.
- 320. At 6:19pm, Mr Anastasiadis from the Homicide Squad reported to the Special Operations Group members that Mr Joannou was watching a television screen which could be a surveillance monitor in a front room at 837 Ballarat Road in Deer Park with an Asian man. He had a silver and black shotgun. Four other people were in the kitchen smoking cannabis and drinking alcohol.
- 321. Further, Mr Anastasiadis reported that Mr Joannou had told Ms Amundsen that he was 'getting out of the place'.
- 322. At 6:35pm, the State Surveillance Unit notified the Homicide Squad that Mr Joannou had left 837 Ballarat Road in Deer Park in the back seat of a green Toyota Camry sedan NID380. An Asian man was driving and a fair haired woman was in the passenger seat.

- 323. Attempts to check the registration information for Mr Delosreyes' green Toyota Camry sedan NID-380 were thwarted because the computer system was not operating.
- 324. At 6:40pm, Mr Francis briefed the D24 supervisor about the status of Operation Motto and involvement of the Special Operations Group.
- 325. At 6:50pm, the Special Operations Group was deployed in six vehicles. This included:
  - One vehicle carrying Mr Noonan<sup>9</sup>, Mr Francis, Operator 6 and Operator 23<sup>10</sup>;
  - A covert VW transporter carrying Operator 53 and Operator 13;
  - A grey four wheel drive vehicle carrying Operator 35, Operator 14, Operator 33 and Operator 67;
  - A new blue four wheel drive carrying Operator 40, Operator 34, Operator 18 and Operator 36;
  - An old blue four wheel drive containing Operator 55, Operator 41, Operator 16 and Operator 64; and
  - One vehicle carrying Operators 66 and 44 who had been conducting surveillance at 837 Ballarat Road in Deer Park.
- 326. These five vehicles travelled from Sunshine Police Station to Bank Street South Melbourne in the tactical formation used for a mobile intercept. They and the State Surveillance Unit undertook active observations of the green Toyota Camry sedan NID-380 during the trip.
- 327. Operator 6 authorised Operator 41 to undertake a mobile intercept of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 at the safest possible opportunity.
- 328. At 7:00pm, Mr Sheather and Mr Francis from the Homicide Squad met the Special Operations Group members in Dodds Street in South Melbourne.
- 329. At 7:06pm, State Surveillance Unit members informed all the Special Operations Group members that Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 was stationary facing into the kerb in a 45 degree angle parking bay on the south side of Bank Street

The first-named vehicle occupant was the driver.

Operator 23 was excused from giving evidence because of a medical condition.

- between Eastern Road and Moray Street. Further, Mr Joannou was lying down on the back seat of this vehicle.
- 330. There was a white 1982 Toyota Corolla BPX-856 parked in the car park on the south west side of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380. There was a blue Ford Falcon sedan parked in the car park on the north east side of Mr Delosreyes' vehicle.
- 331. The State Surveillance Unit then informed the Special Operations Group that Mr Delosreyes had left the vehicle, entered the property in front of the car and returned after a short time.
- 332. At 7:10pm, the Special Operations Group and Homicide Squad members moved to a holding area Sturt Street near the intersection with Bank Street. Mr Sheather remained with Mr Noonan, Mr Francis, Operator 6 and Operator 23 waiting for the Special Operations Group to arrest Mr Joannou.
- 333. Operator 6 authorised Operator 41 to conduct a vehicle intercept while Mr Delosreyes' 1996
  Toyota Camry green sedan NID 380 was still stationary in Bank Street. Operator 41 then
  communicated the arrest plan to his crew using his radio.
- 334. Mr Noonan told the Court that the arrest was urgent because:

"this was the first time in – in that three or four week period where we actually had sort of control over the situation."

### Police Intercept

- 335. At 7:20pm, Operators 53 and 13 entered Bank Street in the covert Special Operations Group VW transporter and drove past Mr Delosreyes' 1996 Toyota Camry green sedan NID-380. Three other Special Operations Group vehicles followed them in the positions required to deploy for vehicle intercept arrest.
- 336. Operator 53 identified and continued to drive past Mr Delosreyes' 1996 Toyota Camry green sedan NID-380.
- 337. Operator 13 identified Mr Delosreyes' vehicle to other Special Operations Group members in the three vehicles following the covert Special Operations Group VW transporter.

- 338. Operator 53 parked his vehicle 20-30 metres east of Mr Delosreyes' vehicle and secured access to and from the area from the direction of Moray Street. As he left the vehicle, he heard repeated calls of "Police don't move" followed by a succession of gunshots.
- 339. The old blue four wheel drive followed the covert Special Operations Group VW transporter into Bank Street. When they passed Mr Delosreyes' 1996 Toyota Camry green sedan NID-380, Operator 41 gave the arrest signal and the old blue four wheel drive stopped approximately parallel to the curb behind the white Toyota Corolla BPX-856. The front left corner of the old blue four wheel drive was approximately level with the right rear corner of the white Toyota Corolla BPX-856.
- 340. Operators 41, 16 and 64 immediately exited the vehicle. In the briefings, they had already been tasked to be part of the arrest team. Operator 55 stayed in the old blue four wheel drive.
- 341. Operator 41 told Mr Noonan that he saw the new blue four wheel drive hit the back of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 as he got out of the old blue four wheel drive.
- 342. Operator 41 said he was about four metres from Mr Delosreyes' vehicle. He was calling "Police don't move" repeatedly. He believes that he was the first person to call.
- 343. Through the back window, Operator 41 saw the silhouette of Mr Joannou in the left back seat. His back was against the passenger side door and he was facing towards the right. He had a black and silver coloured shotgun held vertically with the barrel pointed towards the roof.
- 344. Operator 41 saw the barrel of the shotgun begin to level in his direction. Operator 41 immediately feared for his life and believed that Mr Joannou was attempting to discharge the shotgun at him. He told the Court:

"There was no doubt in my mind that the intent was to discharge that weapon directly at me" and

"I believed, firmly believe he was firing inside the car directly at me and that was consistent with the fact he had pointed the shotgun at me and my belief that was the intent to actually do that...." and

"Clearly, with what I was presented with, with the levelling of the shotgun directly at me - I feared for my life. As I said earlier, I knew there was other people around me; I had an awareness of other people being there. Um, but my concern at that point in time was for my own life..." and

"It was being pointed at me. I'd describe it as - as being shouldered, and that means he was taking up - well, it was apparent to me that he was taking up a firing position. His arm was coming down, the weapon was being shouldered, it was pointed - being pointed directly at me...." and

"Clearly, with what I was presented with, with the levelling of the shotgun directly at me, I feared for my life."

- Operator 41 aimed and discharged his rifle in the direction of Mr Joannou through the rear windscreen and the right rear quarter panel window of Mr Delosreyes' vehicle. These shots shattered the glass in the rear windscreen and right rear quarter panel window.
- While he was shooting Operator 41 told the Court that he was not aware of what was happening around him. He did not know where Operators 16 and 64 were standing. He did not know whether they were discharging their weapons:

"The body focusing on what was going on in front of me and my sole attention was directed at that rear window and the threat that existed to me personally right in front of me. Everything else shut out....

I didn't know whether he (Operator 16) was discharging his weapon at all or not. I had no idea. After the event, it was only after the event that I became aware he had discharged his weapon. I had to go and ask all the members to ascertain who would actually discharge their firearm, I had no idea."

- Operator 41 stopped firing his gun when he could not see into Mr Delosreyes' 1996 Toyota Camry green sedan NID-380. He immediately sought cover to the right rear of the old blue four wheel drive.
- 348. Based on used cartridge cases collected after the incident, Operator 41 discharged eight shots in the direction of Mr Joannou.

- 349. He and Operator 36 both threw distraction devices at the rear window of Mr Delosreyes' 1996 Toyota Camry green sedan NID 380.
- 350. As the Team Leader, Operator 41, asked all Special Operations Group members involved in the incident whether they had discharged their weapons. Operators 16, 64, 34 nominated themselves to him.
- 351. He provided this list to the Tactical Commander, Operator 6, and Mr Noonan. Neither Operator 41 nor Operator 6 checked the weapons of anyone who did not nominate themselves as having discharged their weapons.
- 352. Subsequently, five used rifle cartridge cases were found in the rear seat of the old blue four wheel drive. Operator 41 cannot account for these used cartridge cases.
- 353. At 7:28pm, Operator 41 gave a contemporaneous account of his behaviour to Mr Noonan. I have used this account to assist me in summarising Operator 41's behaviour on 18 February 2005.
- 354. At 7:44pm, Operator 41 unloaded his firearm and handed it to the Senior Sergeant who was Operator 6.
- 355. At 8:13pm, Operator 43 drove Operators 41 and 13 back to the Special Operations Group office.
- 356. Operator 16 was armed with a pistol. He told the Court that he moved into position 5-7 metres from and to the right of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380.
- 357. Operator 16 was placed between Operators 41 and 64. He estimated that Operator 41 was about three metres to the right and slightly in front of him. Operator 64 was on his left and just within his peripheral vision. He estimated about two or three metres stood between him and Operator 64 but it was certainly less than five or six metres.
- 358. Operator 16 was already moving into this position when the new blue four wheel drive struck the rear of Mr Delosreyes' vehicle.
- 359. Operator 16 could see through the tinted rear windscreen of Mr Delosreyes' vehicle. He saw the silhouette of a person in the rear seat as it sat up quite quickly moving from left to

- right. He also saw a silver barrel shotgun pointing towards the roof and he saw the barrel drop and level towards the rear windscreen.
- 360. From his position, Operator 16 felt personally at risk from the shotgun but he believed Operator 64 was in greater danger. However, he was not aware that Operator 64 was firing his weapon.
- 361. Based on used cartridge cases collected after the incident, Operator 16 discharged three shots in the direction of the silhouette he could see in the back seat of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380.
- 362. At 8:15pm, Operator 16 gave a contemporaneous account of his behaviour to Mr Noonan. I have used this account to assist me in summarising Operator 16's behaviour on 18 February 2005.
- 363. At 8:20pm, Operator 16 unloaded his weapon and handed it to Operator 6.
- 364. Operator 16 was taken back to the Special Operations Offices by Detective Inspector Greg Doule.
- 365. Operator 64 was seated in the right rear seat of the old four wheel drive. He exited the vehicle and moved to the rear shouting constantly: "Police don't move". As he was almost in position, he saw the new blue four wheel drive hit the back of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380.
- 366. However, Operator 64 was not aware of the positions of Operators 41 and 16 who were also tasked to approach Mr Deloreyes' vehicle from the right side.
- 367. Operator 64 aimed his weapon towards the rear window of Mr Delosreyes' vehicle. As he watched, he could see the silhouette of a head and shoulders sitting up in the back seat and a vertical silver barrel of a shotgun. The glass in the rear windscreen was clear.
- 368. Operator 64 saw the silver barrel of the shotgun move to a horizontal position and pointing straight at him. He heard a single gunshot and saw a hole develop in the rear window of Mr Delosreyes' vehicle.
- 369. Operator 64 told the Court, he aimed at the silhouette in the back seat of Mr Delosreyes' vehicle:

- "I thought I'd been shot at and I wanted to stop that from happening, and to do that I fired my weapon back."
- 370. Operator 64 also told the Court that he feared for his life when he saw the barrel of Mr Joannou's shotgun levelled at him.
- 371. Operator 64 discharged his weapon in the direction of the barrel of the shotgun. He told the Court that he had no reason to believe that any of his rounds did not impact at or about his point of aim.
- 372. Based on used cartridge cases collected after the incident, Operator 64 discharged five shots in the direction of Mr Joannou.
- 373. When Operator 64 could no longer see through the rear window of Mr Delosreyes' vehicle because of the damage he stopped firing and moved to cover on the right hand side of the old blue four wheel drive.
- 374. Operator 64 assisted with approaching Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 after shooting had ceased and observed Mr Joannou lying on the back seat. Mr Joannou was holding the shotgun with both hands in his lap. His right hand was on the pistol grip. The barrel was pointing vertically.
- 375. Operator 64 also saw Operator 55 remove Mr Joannou from the back seat of Mr Delosreyes' vehicle and place him on his back on the road between Mr Delosreyes' vehicle and the white Corolla.
- 376. At 8:09pm, Operator 64 gave a contemporaneous account of his behaviour to Mr Noonan, I have used this account to assist me in summarising Operator 64's behaviour on 18 February 2005.
- 377. At 8:12pm, Operator 64 handed his weapon to Operator 6.
- 378, Operator 23 transported Operator 64 back to the Special Operations Group offices.
- 379. The new four wheel drive proceeded behind the old blue four wheel drive and executed a left hand turn behind Mr Delosreyes' 1996 Toyota Camry green sedan NID-380.
- 380. Then, the driver of the new blue four wheel drive, Operator 40, said over the radio:

"I have it on the left.... Get out of the way I need room".

- 381. Operator 40 deliberately accelerated his vehicle into the back of Mr Delosreyes' vehicle and pushed it about two metres forward on to the nature strip outside 113 Bank Street. He reversed slightly and then closed up the gap between his vehicle and Mr Delosreyes' vehicle.
- 382. Operator 40 states that he heard shouts of "Police don't move" as he was manoeuvring the new blue four wheel drive. He also says that he heard shots from his right and a flash from inside Mr Delosreyes' vehicle before he saw Operator 34 discharge his weapon.
- Operator 40 also says that the shots coming from his right shattered the rear window of Mr Delosreyes' vehicle. He believed that there were shots coming in his direction from Mr Delosreyes' vehicle as well as from Special Operations Group members towards Mr Delosreyes' vehicle. Accordingly, Operator 40 left the new blue four wheel drive and sheltered on the passenger side of his vehicle.
- 384. When the shooting had stopped. Operator 40 could see Mr Delosreyes getting out of the driver's side of his 1996 Toyota Camry green sedan NID-380. Operator 40 called to Mr Delosreyes to crawl towards him. He then took Mr Delosreyes into custody and dragged him to the rear of the new blue four wheel drive.
- 385. While Operator 40 was performing these tasks, he says that distraction grenades were still being discharged.
- 386. Operator 34 was an Acting Sergeant tasked as supervisor for and seated in the front passenger seat of the new blue four wheel drive. He was a trained marksman and carried a rifle with ammunition that is designed to pass through glass.
- 387. Operator 41 told the Court that he tasked Operator 34 with the weapon. With respect to the ammunition, that would be a choice that would be left up to him.
- 388. Operator 34 told the Court and I accept that he had an uninterrupted view of the rear of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 after they had rammed it.

- 389. Operator 34 saw someone sit up in back seat after his vehicle had rammed Mr Delosreyes' vehicle. He also saw a shotgun pointing to roof and then come down to level of the occupants of the old four wheel drive.
- 390. Operator 34 had his weapon ready to fire when he saw some kind of flash from Mr Delosreyes' vehicle and believed Mr Joannou was firing his weapon.
- 391. Operator 34 fired one shot. The round travelled through the windscreen of the new blue four wheel drive and into the rear of Mr Delosreyes' 1996 Toyota Camry green sedan NID 380. Operator 34 says that, at the time, there were other shots occurring but the back windscreen was intact.
- 392. Taking into account hiss specialist training and other Special Operations Group members evidence that their shots disrupted the back windscreen, I have formed the view that Operator 34's single shot probably hit the right side of Mr Joannou's face and caused the severe but not immediately fatal facial injuries identified by the forensic pathologist at autopsy.
- 393. Operator 34 was confident that he did not place the front seat passengers at risk when he discharged his weapon. He told the Court:
  - "...there may've been an element of risk to those people, but at the time I fired my weapon, ah you know, with the amount of training that I've had and my judgment, I was I was ah, you know, I was quite capable and able of making that shot."
- 394. Operator 34 was aware of other shots being fired from his right. They shattered the rear windscreen of Mr Delosreyes' vehicle so that he could not see Mr Joannou or discharge more shots into the car.
- 395. At 7:41pm, Operator 34 gave a contemporaneous account of his behaviour to Mr Noonan. I have used this account to assist me in summarising Operator 34's behaviour on 18 February 2005.
- 396. At 7:57pm, Operator 34 handed his weapon to Operator 6.
- 397. Operator 44 drove Operator 34 back to the Special Operations Group offices.

- 398. Operator 18 was in the rear passenger side seat of the new blue four wheel drive. He was already covering Mr Joannou while distraction devices were still being activated. Operator 67 had broken the passenger side rear window of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380.
- 399. When Mr Joannou did not respond to calls and he could see his head injuries, Operator 18 reached into the back of Mr Delosreyes' vehicle and removed his silver coloured pump action shotgun from his right hand. Operator 18 made no observations of the status of Mr Joannou's weapon.
- 400. I remain uncertain as to whether Operator 18 or someone else placed Mr Joannou's weapon against a gum tree on the nature strip outside 113 Bank Street.
- 401. Operator 18 continued to provide first aid to Mr Joannou.
- 402. The grey four wheel drive followed the new blue four wheel drive along Bank Street.

  Operator 35 was tasked to use his vehicle to block the left side of Mr Delosreyes' 1996

  Toyota Camry green sedan NID-380.
- 403. Operator 35 saw that the new blue four wheel drive had already hit Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 before the grey four wheel drive had stopped in position. He left his vehicle to take up a position that protected the scene from vehicle and pedestrian traffic. Therefore, his view of Mr Delosreyes' vehicle was largely obscured by the blue Ford Falcon parked beside it.
- 404. Operator 67 jumped from the rear right seat of the grey four wheel drive and took cover on the passenger side. From that position, he was yelling "Police don't move". He then heard a loud bang and could not determine whether it was a gun discharged from the Mr Delorsreyes' vehicle or was a Special Operations Group gun being discharged.
- 405. I have formed the opinion that this first single shot was probably that discharged by Operator 34.
- 406. Later, crime scene analysts also found five ring-pulls from distraction devices discharged near Mr Delosreyes' 1996 Toyota Camry green sedan NID-380.

- 407. While distraction devices were still being activated, Operator 67 covered Ms O'Goerk and told her to show her hands. Eventually she left the front passenger side of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380. Operator 67 took Ms O'Goerk into custody and dragged her face down on the road to the rear of the grey four wheel drive. Ms O'Goerk was not injured by any of the bullets, however she suffered minor glass-related injuries.
- 408. The surveillance vehicle driven by Operator 66 entered Bank Street from Eastern Road when he heard Operator 41 give the direction to execute the arrest plan. From that position, Operator 66 heard one loud gunshot followed by a volley of shots in quick succession. This evidence supports my opinion that Operator 34 discharged his weapon first.
- 409. By-standers' observations are complicated by their capacity to differentiate between the sounds of the new blue four wheel drive hitting the rear of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380, the sound of the single shot through two panes of glass discharged by Operator 34, the volley of shots discharged by Operators 41, 16 and 64 and the five distraction devices that followed this gun-fire.
- 410. However, to the extent that it is possible to use their evidence for this purpose, my opinion is supported by by-standers observations of hearing individual shots followed by a series of shots. These witnesses also say they heard yelling but had no idea what was being said, 11
- 411. As Operator 66 left his vehicle and approached the scene, he could still hear yelling for people to show their hands and exit their vehicle.
- 412. Operators 55, 13, 16 and 18 performed first aid on Mr Joannou.
- 413. At 7:24pm, the first ambulance arrived.
- 414. At 7:27pm, Mr Joannou was placed in the ambulance. He was unable to be revived.
- 415. Before 7:28pm when he spoke to Mr Noonan, Operator 41 had:

"I went around to every individual, ascertained whether they had been injured or not and went around a second time to ascertain whether they had discharged their firearm."

For example, James Portnier, Tatjana Medvedev, Kevin Bramich. Jacqueline Nieber (now Greet) and several other witnesses did not hear a single bang before they heard a volley of shots.

416. Operator 41 had then handed over control of the crime scene to Operator 40. He told the Court that he was aware that it was inappropriate for him to be involved in the investigation when he had discharged his weapon during the operation:

"but at the first available opportunity, I removed myself. I was very conscious of the fact that I had been responsible for discharging my firearm. Um, and I understood the need for me to be separated as soon as I possibly could. Um, I think I asked the relevant questions of people, and commenced that process to ah, secure the scene as best we possibly could, by asking the relevant questions, the immediate relevant questions. I.e. was anyone injured, and to try and identify who else had discharged their firearm, so I could remove myself - and so the scene was secure, as best I possibly could upon the point of actually handing it over."

## 417. Operator 41 also told the Court:

"There was no ill-intent, you know, from me personally to try and speak with the other people that had discharged their firearms, purely a welfare question only and to try and ascertain what needed to be done because I had no idea who else had fired their weapon."

- 418. At 7:38pm, police from South Melbourne, St Kilda and Prahran Police Stations arrived at the scene. They were directed to take over traffic control, maintenance of the crime scene and other auxiliary duties.
- 419. At 7:47pm on 18 February 2005, Wayne Joannou died.
- 420. At 7:49pm, the Duty Officer for South Melbourne Region, Inspector Clifton, and Leading Senior Constable Dean Robinson arrived at and took charge of maintaining the Crime Scene.
- 421. When they arrived, Ms O'Goerk and Mr Delosreyes were seated and restrained on the nature strip.
- 422. At 7:42pm, Mr Sheather arrested Jovan Delosreyes and Dianne O'Goerk.

# Police investigation

- 423. At 7:25pm, Mr Francis notified Police Communications of the incident and asked them to notify the Ethical Standards Department.
- 424. At 7:27pm, Mr Francis also notified Detective Acting Superintendent Bernie Rankin in his upgraded role as the Officer in Charge of the Violent Crime Investigation Division.
- 425. At 7:30pm, Leading Senior Constable Dean Robinson from Prahran Police Station established a Crime Scene and commenced a log of person entering and leaving the scene.
- 426. At 7:33pm, Mr Francis briefed Detective Inspector Stewart Westfield from the Ethical Standards Department.
- 427. At 7:45pm, Mr Rankin notified Mr Francis that the Ethical Standards Department was taking responsibility for investigating Mr Joannou's death and members of the Homicide Squad involved in Operation Motto were not to be involved in processing the scene.
- 428. However, in his substantive position, Mr Rankin was in charge of the four Homicide Squad teams not supervised by Mr Francis.
- 429. Mr Rankin told the Court that, because of his usual close working relationship with Mr Francis and Mr Daly, he was well aware of Operation Motto and had already formed a strong opinion about Mr Joannou from his discussions with Mr Francis:
  - "Based on the information I received, I regarded Joannou as being one of the most dangerous individuals that I'd been indirectly involved with investigating."
- 430. Further, Mr Rankin had seriously considered the possibility that Mr Joannou would be prepared to shoot it out with police if an arrest was attempted
- 431. Mr Rankin also told the Court that he was influenced in his concern about Mr Joannou by the knowledge that:
  - "(A)t least two people had told us that he was armed and that he told them that he wasn't going to surrender quietly. So of course that made us very concerned, particularly when you considered what we'd been told in relation to the disappearance of Bottomley and also the fact that he was known to carry firearms and his behaviour in a number of incidents between 7 February and the time of his arrest."

432. Mr Rankin told the court that this separation of the investigation of Mr Joannou's death from the investigators of his offences was important:

"Well, to demonstrate to the Coroner that there was an independent review of the circumstances surrounding the incident and to ensure that there was - there's a degree of independence in the way that the investigation is followed through."

- 433. Mr Rankin agreed with counsel for the Chief Commissioner of Police that the arrangements also avoided a real or perceived conflict of interest that could arise if the Homicide Squad investigated its own affairs.
- 434. However, although he was notified of Mr Joannou's death in his upgraded position, Mr Rankin was not independent when he accepted the role of coordinating the Homicide Squad response to Mr Joannou's death.
- 435. In particular, he would not be independent in considering whether the Special Operations Group members who attempted to arrest Mr Joannou were justified in discharging their weapons and, in fact, killing him.
- 436. At 8:09pm, Mr Noonan advised that all the Special Operations Group members had cleared the scene.
- 437. At 8:33pm, Leading Senior Constable Dean Robinson from Prahran Police Station took over responsibility for guarding Mr Joannou's weapon from Operator 53. Until that time it had been under control of Special Operations Group members.
- 438. At 9:10pm, Detective Senior Sergeant Charlie Bezzina and Mr Westfield discussed how the investigation would proceed. Mr Westfiled did not have enough Ethical Standards Department staff to perform the role alone. Therefore, Mr Bezzina took over the crime scene after a briefing from Mr Noonan.
- 439. Further, at 9:16pm, Mr Noonan directed Constable Julie Stanes from South Melbourne Police Station to take over responsibility for guarding the Special Operations Group weapons. They were still in the front yard of a house in Bank Street.
- 440. Until that time, the Special Operations Group weapons had been under control of Special Operations Group members.

- 441. As soon as the shooting was completed Operator 55 drove the old blue four wheel drive out of its position behind the white Toyota Corolla BPX-856 and parked it in the middle of Bank Street about 57 metres west of the scene. Forensic analysts did not search it because they said it had no forensic value.
- 442. Operator 55 then used a ram to break the locked driver's side rear window of Mr Delosreyes' vehicle. This destroyed any forensic analysis of the shots through that window. It was also unnecessary because Operator 55 unlocked the door though the driver's window.
- 443. The white Toyota Corolla BPX-856 was also moved several metres west of the scene. This enabled ambulance access to Mr Joannou.
- 444. Mr Joannou's silver coloured pump action shotgun was placed leaning against a tree outside 111 Bank Street. It remained in this position until after 10:25pm on 18 February 2005.
- 445. However, Operator 41 noticed Mr Joannou's weapon was unguarded and directed Operator 34 to guard it because he was closest to it.
- 446. Operator 34 observed that there was blood on the chrome part of the shotgun and the fore end was back. It did not appear to have a round in the chamber. Therefore, it was not ready for use. There was an unspent cartridge on the floor in the back of Mr Delosreyes' vehicle.
- 447. Further, for that weapon to be fired, it would have been necessary for there to be a round in the chamber and for Mr Joannou to have pulled the fore section of the gun back to lift that round up into the barrel. Mr Joannou also needed to apply 24.4 kg pressure to the trigger.
- 448. This was the first record of the state of Mr Joannou's weapon. There is no evidence about whether it was altered during its extraction from Mr Delosreyes' vehicle or while it was being transferred to its position beside the gum tree.
- 449. Further, Operator 34 explained that it was possible that Mr Joannou had attempted to fire a cartridge but had accidentally hit the release bar and expelled the unspent cartridge. It is also possible that he did not attempt to discharge his weapon at all. It is also possible that the shotgun cartridge fell out of Mr Joannou's bum bag when he was getting out the syringe to administer his heroin.

- 450. In circumstances where Mr Joannou was sitting up or lying on the back seat when Operator 34 discharged his weapon and injured his face, it seems unlikely that Mr Joannou attempted to discharge his weapon at the scene, if at all.
- 451. At 7:25pm, Operator 34 was relieved by Operator 33. Operator 41 says that he directed Operator 33 to relieve Operator 34 as soon as he realised that Operator 34 had discharged his weapon. I am unable to reconcile these two versions of the continuity provided for Mr Joannou's weapon.
- 452. Further, Operator 33 observed that the action on Mr Joannou's weapon was to the rear and there were no rounds in the chamber and no rounds in the feeder ramp. There is no other formal record of the status of Mr Joannou's weapon and how it was made safe.
- 453. At 8:00pm, Operator 33 was relieved by Operator 53. At 8:35pm, Operator 53 was relieved by Inspector Noonan.
- 454. Mr Rankin indicated that this process is contrary to usual Homicide Squad practice which is to leave the weapons under guard as is until they are reviewed by forensics.
- 455. The Special Operations Group weapons discharged in the incident were transferred to the Special Operations Groups offices and guarded by Special Operations Group officers involved in the incident.
- 456. No one checked the weapons of the other 12 Special Operations Group members. No one checked the Special Operations Group vehicles.
- 457. Further, at 7:25pm, Mr Noonan began interviewing the self-nominated Special Operations Group members who discharged their weapons at the scene to obtain a contemporaneous account of their behaviour.
- 458. Mr Rankin told the Court:
  - "I regard that as entirely appropriate. He, as the officer in charge of that operation, would need to have knowledge and be informed as to what had taken place that led to the shooting of Joannou."
- 459. However, Mr Noonan was the Officer in Charge of the Special Operations Group and was actively involved in the incident until the arrest commenced. Therefore, he was not

independent of the Special Operations Group members and could be perceived as having a conflict of interest in taking the most important exculpatory evidence from the members who discharged their weapons.

- 460. At 7:30pm, Police Communications notified that there had been a fatal shotting involving the Special Operations Group in South Melbourne.
- 461. Mr Westfield consulted with Mr Francis and Mr Westfield then contacted his superiors in the Ethical Standards Department. The Assistant Commissioner Ethical Standards had already spoken to the Assistant Commissioner Crime. They had decided that, in circumstances where the incident involved Homicide Squad and the Special Operations Group, the Ethical Standards Department would take responsibility for its investigation.
- 462. At 7:50pm, Mr Rankin advised Mr Bezzina that he was required to advise the Ethical Standards Department investigators.
- 463. Accordingly, at 8:05pm, Mr Westfield and Detective Senior Sergeant John Robertson went to the scene in Bank Street South Melbourne.
- 464. Mr Westfield took charge of the crime scene and was briefed by Mr Rankin, Mr Noonan and Mr Francis.
- 465. Detective Inspector Westfield maintained managerial responsibility for the investigation of Mr Joannou's death. Mr Robertson was the brief coordinator assisting Mr Westfield. He was assisted by Detective Senior Sergeant Geof Sedge.
- 466. At 8:25pm, Operator 13 took possession of all the Special Operations Group equipment including that used by Operator 41.
- 467. At 9:08pm, Mr Rankin arrived at the scene. At 9:10pm, Mr Bezzina with Detective Senior Constables McCann and Davey arrived at the scene to advise Mr Westfield and Mr Robertson.
- 468. At 9:20pm, Mr Noonan provided Ethical Standards Department investigators and their Homicide Squad advisers with an extensive briefing of the events that preceded Mr Joannou's death. By this time all other Special Operations Group operators involved in the attempted arrest had left the scene.

- 469. All the Special Operations Group operators who had discharged their weapons returned to the Special Operations Group offices. They were placed in separate rooms. Mr Rankin and Detective Acting Senior Sergeant Frank Torcasio from Complaints Investigations Division spoke to each of them in turn.
- 470. Mr Rankin justified these operators leaving the scene before they were independently interviewed by the 'hot' interviews already undertaken by Mr Noonan. I repeat my concerns about this procedure but I have no problem if the operators were kept separate from other members of their team. They were not.
- 471. In particular, Operators 41, 34 and 64 were driven back to Special Operations Group offices by other Special Operations Group members.
- 472. Further, other Special Operations Group members were also required to guard the equipment used by their colleagues who had discharged their weapons.
- 473. The Special Operations Group members who had discharged their weapons declined to make statements that night because Special Operations Group Standing Procedures provide a right to wait until they are rested.
- 474. The remaining 12 Special Operations Group members involved in Operation Motto completed their statements at the Special Operations Group offices on the night of 18/19 February 2005.
- 475. At 10:32pm, Mr Daly provided a further background briefing at the Homicide Squad offices.
- 476. Mr Daly and Mr Sedge then took statements from Ms O'Goerk and Mr Deloreyes.
- 477. Crime scene experts collected 18 fired cartridge cases from the scene. These cartridge cases can be allocated to Operators 34, 41, 16 and 64.
- 478. Thirteen of these bullets entered the Toyota Camry sedan NID-380 through the rear windscreen. Two entered through the right rear quarter panel window. A tree outside 111 Bank Street was damaged by a bullet hitting a branch 1.645 metres above the ground. This

bullet was consistent with the type of weapon fired by Operators 41 and 64.<sup>12</sup> Two are unaccounted for.

- 479. The damage to the left side of the rear windscreen of the Toyota Camry sedan NID380 by the single shot discharged by Operator 34 was discrete and did not cause the windscreen to shatter.
- 480. Most of the evidence of the consequences of discharge of guns was in the rear compartment of the Toyota Camry sedan NID-380. However, there was also gunshot damage in the front compartment.

# 481. In particular, there was:

- an area of damage to the driver's side boot lid caused by the passage of a bullet. The path of this bullet aligned with the front passenger side door A bullet was removed from the damaged boot lid;
- an area of bullet damage to the driver's side rear parcel shelf and speaker. The path of this bullet aligned with the front passenger side door. A damaged bullet was removed from the damage to the parcel shelf;
- a hole in the inside trim near the top rear corner of the front passenger side door.

  The path of this damage aligned with the driver's side rear window. A damaged bullet was removed from inside the door.
- 482. On 19 February 2005, the forensic pathologist who performed the autopsy formed the opinion that the cause of death was gunshot wound to the head.
- 483. The fatal wound to the head contained a copper bullet jacket fragment having characteristics of that from a rifle. Subsequent analysis showed that this fragment did not have the characteristics of the ammunition from the rifle used by Operator 34.
- 484. On 21 February 2005, Special Operations Group members found five spent rifle cartridges in the rear of the old blue four wheel drive vehicle. This spent ammunition had not been previously accounted for. Further, their source remains unidentified.

The weapon used by Operator 34 could also have fired this bullet but it is unlikely in circumstances where he fired one bullet and he fired in a different direction and his bullet is accounted for inside Mr Deloreyes' car.

- 485. On 23 February 2005, there was a Case Conference at McLeod Forensic Science Centre.

  Mr Bezzina and other Homicide Squad investigators did not participate further in the police investigation of Mr Joannou's death.
- 486. At 1:10pm on 18 March 2005, Region 1 (Central) of Victoria Police held a debrief meeting chaired by the Assistant Commissioner of the Region to examine the issues, policies and actions in relation to the events of 18 February 2005 with a view to objectively reviewing procedures in order to enhance future procedures where necessary. The debrief specifically excluded any issues that occurred prior to the shooting.
- 487. The Court was also told that the debrief involved a high level analysis of the investigation and any concerns in relation to the investigation rather than an analysis of the incident itself.
- 488. There is no evidence before me to suggest that there was any independent review of the investigation of Mr Bottomley's death or Operation Motto or the reason that Mr Joannou died.

#### **COMMENTS**

Pursuant to section 67(3) of the Coroners Act 2008, I make the following comment(s) connected with the death:

- 1. Wayne Joannou was 26 years old when he died. Since about October 2004, he had lived with his girlfriend, Kristy-Lee Hearn, at Unit 19, 555 Keilor Melton Highway in Sydenham.
- 2. Mr Joannou's medical history included abuse of benzodiazepine, heroin, cannabis and amphetamines, depression, paranoia, insomnia, anxiety and childhood family sexual abuse. He had also attempted to commit suicide with a gun and by overdose.
- 3. On 20 January 2005, Mr Joannou underwent rapid detoxification from opiates at the First Step Program Ltd in St Kilda and had a fourth Naltrexone implant surgically inserted. This was the first and last time he consulted Dr John Gunzberg.
- 4. Kristy-Lee Hearn and others said that he was using more amphetamines than usual as well as Ice and cocaine and his behaviour had become more erratic after this procedure. Ms Hearn's observation of Mr Joannou's behaviour before 2 February 2005 was repeated by Mark Tragear and Mr Bottomley's mother.

- 5. Mr Joannou also had a 10 year criminal history including drug offences, violent offences and firearms offences.
- 6. When he died, Mr Joannou was on bail for aggravated burglary, possessing a firearm, possess methamphetamine reckless conduct endanger serious injury, threat to kill and pervert the course of justice.
- 7. On 11 February 2005 he had failed to appear at Melbourne Magistrates Court. A warrant had been issued for his arrest.
- 8. Mr Joannou had already served three prison sentences. In the weeks before he died, Mr Joannou told Ms Hearn he would rather die than go back to jail.
- 9. In circumstances where he must have known it was inevitable that he would be returned to prison anyway, Mr Joannou shot Brian Bottomley on 2 February 2005. Mr Bottomley died.
- 10. I am unable to say why Mr Joannou shot Mr Bottomley. However, I note that:
  - Mr Joannou was using amphetamines and some cocaine and was erratic, unpredictable, paranoid and depressed;
  - Mr Joannou and Mr Bottomley lived close to each other in Sydenham;
  - Mr Bottomley's mother, Mr Joannou's step-mother and most of their associates believed that Mr Joannou and Mr Bottomley were friends;
  - Mr Bottomley was eight years older than Mr Joannou and had a much longer criminal history;
  - Mr Joannou and Mr Bottomley both had long histories of illicit drug use, particularly amphetamine and heroin abuse;
  - They were both in Port Phillip Prison in 1998 when Mr Joannou injured Mr Bottomley with a billiard ball in a sock;
  - On 28 April 1998, Mr Bottomley and Mr Joannou were involved in standover tactics involving other prisoners;
  - There is no overlapping period when Mr Joannou and Mr Bottomley were in prison together after 1998;

- Mr Joannou and Mr Bottomley had several mutual associates including Bayram Birsoz, Gordon Skadric and other witnesses who assisted police in their investigation of Mr Bottomley's murder;
- Mr Joannou had recently accepted a 4th Naltrexone implant;
- Mr Bottomley was Mr Joannou's carer during his recovery from the implant after his primary carer, Kristy-Lee Hearn, returned to work;
- Ms Hearn told the Court that Mr Joannou became more erratic and increased his amphetamine use after the implant. She was supported in her opinion by Mark Tragear and Mr Bottomley's mother;
- On the night of 1 February 2005, Mr Bottomley appeared annoyed that Mr Joannou had sold him an unregistered car. He told Leading Senior Constable Duncan Eland:

"I'm not copping a lagging from him this time."

Mr Eland formed the impression that he was saying:

"I'm not going to gaol because of him this time".

• Further, at 10:06pm on 1 February 2005, Ms Hearn had sent an SMS message to Mr Joannou:

"Look wayne obviously da time has come 2 say goodbye, ur no longer interested in me, so I should stop hopin things will get better and u should b up front with me"

- 11. Mr Joannou dismemembered Mr Bottomley's body with an angle grinder and a power saw. He placed it in bags and a plastic tub. He placed the plastic bags and the tub in the boot of his red Toyota Celica CRO-832. He disposed of Mr Bottomley's body in a lake or river with muddy access and egress north of Bendigo on the Midlands Highway, possibly near Echuca.
- 12. I have formed the view that Mr Joannou was assisted in these tasks by one or more other people because:
  - He was unable to manage putting Mr Bottomley's body in the car alone;
  - He had no tools when he left Melbourne in his red Toyota Celica CRO-832;

- His step-mother and other associates confirmed that, when Mr Joannou arrived back from north of Bendigo in the red Toyota Celica CRO-832 on 3 February 2005, the car was wet and muddy inside and out including in the passenger seat.
- 13. In my finding in relation to Mr Bottomley's death, I have recommended that the Chief Commissioner of Police direct the Homicide Squad to review their investigation of the death of Brian Bottomley with a view to identifying who assisted Mr Joannou in disposal of his body and ascertaining its whereabouts.
- 14. At 6:20pm on 7 February 2005, Rebecca Briffa reported Mr Bottomley's murder at Keilor Downs Police Station. She told police that:
  - Mr Joannou entered her home at Unit 4, 1149 St Albans Road in St Albans on 1
     February 2005 and shot Mr Bottomley in the neck with a pistol;
  - Mr Bottomley's body was dragged into the bathroom and then out the back door and placed in a red Celica; and
  - Mr Joannou forced her and Bayram Birsoz to go to Bunnings Hardware store to purchase tools. The body of Mr Bottomley was then dismembered.
- 15. At 7:08pm, on 7 February 2005, the Homicide Squad was notified and went to Keilor Downs Police Station. They arrived at Keilor Downs at about 9:02pm and commenced their investigation of the death of Brian Bottomley.
- 16. At 9:04pm, Mr Joannou and Ms Hearn went into the Keilor Downs Police Station together so that Mr Joannou could report on bail. The watchhouse keeper attending to the bail recognised Mr Joannou and asked him to wait.
- 17. Mr Joannou absconded when the watchhouse keeper tried to notify detectives of his presence. Police found Mr Joannou's mobile phone and a pistol in Ms Hearn's car.
- 18. On 8 February 2005, the Homicide Squad were provided with assistance from the Special Operations Group. From then, the joint Homicide Squad and Special Operations Group operation to arrest Mr Joannou was designated Operation Motto.
- 19. At 6:31pm on 18 February 2005, Mr Joannou left his brother's house at 837 Ballarat Road in Deer Park the back seat of a 1996 Toyota Camry green sedan NID-380. Jovan Delosreyes was driving the car. Dianne O'Goerk was the front seat passenger.

- 20. On 18 February 2005, Mr Joannou died from a gunshot wound to the head when the Special Operations Group of Victoria Police attempted to arrest him in relation to Mr Bottomley's death.
- 21. Toxicological evidence found that Mr Joannou had used heroin, methamphetamines and diazepam.
- 22. These comments and recommendations will address the relationships between Mr Joannou's death and the following factors:
  - Mr Joannou's Naltrexone implant;
  - The Victoria Police investigation and review of his death;
  - The Homicide Squad investigation of Mr Bottomley's death; and
  - The Special Operations Group attempt to arrest Mr Joannou.

# Mr Joannou's Naltrexone implant

- 23. On 20 January 2005, Mr Joannou had a fourth Naltrexone implant inserted in a further attempt to stop using heroin.
- 24. Naltrexone works by blocking the opioid receptors in the brain and therefore blocking the effects of heroin and other opioids. It can assist in keeping people off heroin because they will be aware that they cannot achieve a 'high' from using heroin. It does not directly stop a person wanting to use heroin, although it may reduce or prevent cravings in some people.
- 25. Therefore, Naltrexone is not a Schedule 8 Drug requiring authorisation from the Department of Health.
- 26. The effectiveness of Naltrexone in preventing opiate use depends on the commitment of the patient and the support systems in place to help them. It seems that Mr Joannou had neither of these requirements for effective Naltrexone use.
- 27. Further, although Naltrexone is generally well tolerated, the professional literature describes some side effects including depression, paranoia, fatigue, restlessness, confusion, disorientation, hallucinations, nightmares, and bad dreams.
- 28. In assessing Mr Joannou on 20 January 2005, Dr John Gunzberg did not know that seven other medical practitioners had had been issued with permit to prescribed buprenorphine or

methadone for Mr Joannou in the last six months. Dr Joannou had not followed through with any of these permits.

- 29. However, Dr Gunzberg knew that Mr Joannou's previous Naltrexone implants had been unsuccessful. He also recorded that Mr Joannou's psychiatric history included depression and excessive anxiety. Further, Mr Joannou reported using Ice or Ecstacy and intravenous amphetamines.
- 30. Dr Gunsberg also said that:

"The concern is that if a person is acutely psychotic or has acute mental problems that they will start using again as soon as the implant is - that they'll be erratic in their judgments and will not follow the program after the implant has been inserted."

- 31. Dr Gunzberg told the Court that mental health workers and psychologists were employed at First Steps to maintain contact with their patients.
- 32. Mr Joannou had a follow up appointment at First Steps booked for 27 January 2005.
- 33. However, I note that:
  - Mr Joannou increased his use of amphetamines after the Naltrexone procedure;
  - Mr Joannou did not attend First Steps or use the support services offered by First Steps after 20 January 2005;
  - Although they had his phone number and Ms Hearn's phone number, Dr Gunsberg told the court that First Steps were not able to contact him and he did not return to see them;
  - Ms Hearn was his designated carer but their relationship was fraught and she had to return to work so Mr Bottomley accepted that role; and
  - Mr Joannou used heroin a few minutes before he died.
- 34. Although I am unable to say that the Naltrexone implant on 20 January 2005 caused either Mr Bottomley's death or Mr Joannou's death, they both occurred against a background of increased irritability, paranoia and unpredictability which influenced his behaviour and the risk perceived by Homicide Squad and Special Operations Group members determining his arrest plan.

35. Further, Mr Joannou also signed consent forms which included:

"I understand that if I use heroin after detoxing (with or without Naltrexone) I could easily die of an overdose."

- Accordingly, Mr Joannou used heroin on 18 February 2005 in the knowledge that it could kill him.
- 37. Dr Gunsberg told the Court that First Steps have tightened up their acceptance criteria so that only patients who have used only heroin in the previous few months are accepted for Naltrexone implants.
- 38. Further, patients must report seven days without heroin use and succeed in a Naltrexone challenge that demonstrates their claim before a Naltrexone implant is introduced.
- 39. Under these criteria, Mr Joannou would have been rejected for his fourth Naltrexone implant in 2005. Dr Gunsberg told the Court that, if Mr Joannou presented now:

"If he turned up today he wouldn't be accepted."

40. Dr Gunsberg also accepted my suggestion that:

"...the follow-up, especially for this man and especially with the evidence before me, was totally insufficient and might have stopped a whole lot of things if it had have been done properly."

41. Accordingly, I have formed the view that the Department of Health and the College of General Practitioners should review its advice to addiction physicians in relation to Naltrexone implants to emphasise the social dangers associated with changed mental state and diversion to stimulants which, in the absence of adequate follow-up, can be associated with the procedure. **Recommendation 1.** 

## Victoria Police investigation and review of Mr Joannou's death

42. In Victoria Police, the overriding philosophy of their operation safety principles is:

"The success of an operation will primarily be judged by the extent to which the use of force is avoided or minimised".

- 43. Accordingly, any fatality arising out of police operations is a serious matter which can place police members at risk of prosecution for serious offences. In the circumstances of this operation, we know that:
  - Four Special Operations Group members discharged their firearms;
  - Mr Joannou died from a gunshot wound to the head; and
  - The ammunition that caused this injury was consistent with that discharged from the weapon of either Operator 41 or Operator 64.
- 44. Fundamental to objective review and evaluation of a death in police presence is an independent and competent investigation of the circumstances surrounding the death.
- 45. These two requirements of independence and competence are not the same:
  - Independence requires that those who investigate the death are not compromised or perceived to be compromised by conflict of interest or bias; and
  - Competence requires the independent investigators to be experienced and skilful in the specialist areas they are investigating and to call in further independent expertise when they are not able to perform their task.
- 46. It is not easy to manage an investigation to achieve these two objectives when the circumstances in which the death occurred override the usual checks and balances that apply to routine police investigations.
- 47. I will address the two issues of independence and competence separately as they relate to the way in which Victoria Police investigated Mr Joannou's death on 18 February 2005.

## Independence

- 48. Assistant Commissioner Emmett Dunne had been Assistant Commissioner for the Ethical Standards Department<sup>13</sup> of Victoria Police for three years. He had recently moved to another position when he gave evidence at the Inquest into the death of Wayne Joannou.
- 49. Mr Dunne told the Court that the primary ambition and the aim of the Victoria Police oversight strategy and all their policies is to maintain integrity of the investigation.

Now called Professional Standards Command.

50. Mr Dunne's accepted that:

"My belief is that even the staunchest supporters of Victoria Police would have some reservations about the principle of police investigating police."

51. Mr Dunne also stated in evidence that the investigation of a death in police presence is an investigation to assist a coroner:

"So therefore obviously the coroner's a significant and important stakeholder in the investigation. And also the integrity of it, in my view."

- 52. With respect, all Victoria Police investigations of a violent death have two distinct functions. One function is to assist the coroner which focuses on prevention. The other function is to support the requirements of the criminal jurisdiction which focuses on prosecution.
- 53. In Victoria, the Homicide Squad is usually responsible for undertaking these death investigations for both the prosecution and the coroner. There is no one else with the specialist training, experience and resources required to investigate violent death.
- 54. Historical issues arising out of the differing requirements of these two jurisdictions have been addressed by a Memorandum of Understanding between the State Coroner and the Chief Commissioner of Police. This places the responsibility for operational decisions in the hands of the Homicide Squad with a requirement to consult and take into account the needs of the coroner.
- 55. However, in circumstances where the death occurs in police presence, it is difficult for Victoria Police to maintain real and perceived independence if the death is investigated by the people involved in the operation in which the death occurred.
- 56. In his statement tendered to the Court, the Assistant Commissioner Ethical Standards Department in 2005, Kieran Walsh, said that there was already a Memorandum of Understanding between the Ethical Standards Department and the Homicide Squad that established procedures intended to minimise the ethical consequences involved when a death occurs in police presence.
- 57. Under the Memorandum of Understanding, the Homicide Squad performed the investigation. The scope of responsibility of the Ethical Standards Department (now

Professional Standards Command) was limited to oversight of the integrity of the investigation after an incident.

- 58. Until Mr Joannou died in an attempted arrest by the Special Operations Group, this responsibility has been performed by the Homicide Squad according to the Memorandum of Understanding without demur because the victims had not been the targets of a Homicide Squad investigation. There had been no known death arising out of a Special Operations Group attempted arrest of a Homicide Squad suspect before.
- 59. On 18 February 2005, Mr Walsh consulted the Memorandum of Understanding and formed the view that the Homicide Squad had a clear conflict of interest so that it was inappropriate for them to investigate Mr Joannou's death. Therefore, after consultation with the Assistant Commissioner Crime, Simon Overland, a decision was made for the Ethical Standards Department to conduct the investigation of Mr Joannou's death.
- 60. Accordingly, in the circumstances of Mr Joannou's death, the decision to rely on the Ethical Standards Department to investigate Mr Joannou's death was a rapid practical response to an unexpected event which focussed more on ensuring the integrity of the investigation rather than the competence of the investigators.
- 61. After the initial phase of the investigation of Mr Joannou's death was complete, Region 1 (Central) of Victoria Police held a debrief meeting chaired by the Assistant Commissioner of the Region to examine the issues, policies and actions in relation to the events of 18 February 2005 with a view to objectively reviewing procedures in order to enhance future procedures where necessary.
- 62. The Court was told that the debrief involved high level analysis of the investigation and any concerns in relation to the investigation. However, the debrief did not undertake an analysis of the incident itself.
- 63. The Court heard that, as a result of the ethical issues arising from investigating the incident in which Mr Joannou died, the Crime Department of Victoria Police now has a Major Crime Incident Response Team on call.
- 64. Each Major Crime Incident Response Team includes a number of investigators on call from Inspector rank down to Constable rank who can be called in to assist with the immediate

response at the scene. They would assist the Ethical Standards Department in the early stages of the investigation if this situation occurred again.

### Competence

- 65. The Ethical Standards Department was not skilled at investigating deaths and did not have the resources to manage the crime scene. Therefore, the Team Leader from a separate section of the Homicide Squad, Detective Senior Sergeant Charlie Bezzina, was tasked to advise the Ethical Standards Department investigators.
- 66. Later on 18 February 2005, when it became obvious that more resources were required, Mr Bezzina became involved in crime scene management.
- 67. Mr Bezzina's expertise was supplemented when Mr Walsh allocated two Ethical Standards Department investigators with Homicide Squad experience to the Ethical Standards Department investigation team.
- 68. Although most of the Special Operations Group and Homicide Squad members involved in investigating Mr Bottomley's death or attempting to arrest Mr Joannou had attended internal reviews or de-briefs, none had participated in a formal review of the factors that contributed to Mr Joannou's death.
- 69. There was no other analysis of the operational issues that arose during the attempted arrest and death of Mr Joannou.
- 70. Now, the Critical Incident Review Committee is responsible for reviewing the operational performance of Victoria Police in circumstances like those that occurred on 18 February 2005.
- 71. The Critical Incident Review Committee is chaired by the Deputy Commissioner Operations. Operational police involved in the incident are invited but it is not compulsory for them to attend and their input is not necessarily or usually sought.
- 72. However, there are still no procedures which enable independent review of operational decisions and procedures relating to a death involving the Special Operations Group. Mr Dunne responded to the suggestion that independent review of operational and tactical issues was important:

"I understand the intent, respect the intent of the suggestion. I see some challenges with it. (T)he Special Operations Group are highly trained, the tactics are developed and evolved I would think nationally and internationally, they are specialists in nature. (T)he difficulty would be in an independent body or person having that knowledge and expertise to provide, to comment on the tactics that were deployed.

I think that is an issue, there are other forums - for example, this (coronial) forum, through which the tactics could be explored. "

- 73. In circumstances where the Special Operations Group has wide-ranging powers and responsibilities to Victoria Police, the community and Australia at large, the lessons that can be learned from their experiences have implications for many involved in the police, military and diplomatic protection services.
- 74. Accordingly, I am of the view that the Special Operations Group needs to be more rather than less accountable for their operational decisions than other members of Victoria Police.
- 75. Therefore, I am surprised that Victoria Police continues to allow Special Operations Group to avoid formal independent review of operational and tactical issues when they are involved in critical incidents.
- 76. I recommend that the Chief Commissioner review the way in which Special Operations Group operations and tactics are formally and independently reviewed after a critical incident with a view to identifying how the incident occurred and ways in which the consequences can be prevented in the future. Recommendation 2
- 77. In the absence of a formal independent review of the operational and tactical issues that arose on 18 February 2005, it has fallen to me to independently investigate the degree to which Homicide Squad and Special Operations Group operations contributed to Mr Joannou's death within the limitations imposed on my jurisdiction under the *Coroners Act* 2008.
- 78. On the basis of forensic evidence, it is accepted by the Chief Commissioner of Police and the Special Operations Group members who discharged their weapons and I formally I find that:
  - Mr Joannou died at about 7:20pm on 18 February 2005;

- Mr Joannou was in the rear compartment of a 1996 Toyota Camry green sedan NID-380 registered to Jovan Delosreyes when he sustained his fatal injuries;
- Mr Joannou did not discharge his chrome coated sawn off shotgun during his attempted arrest by Special Operations Group members; and
- Either Operator 41 or Operator 64 discharged the shot that killed Mr Joannou.
- 79. I have adopted a broad systems approach to analysing the available evidence about how Mr Joannou's death occurred with a view to identifying the factors that caused Operators 41 and 64 to discharge their weapons on 18 February 2005 in circumstances that caused Mr Joannou's death and the ways in which his death could have been prevented and his arrest could have been achieved.

## The Homicide Squad investigation of Mr Bottomley's death

- 80. At 9:20pm on 7 February 2005, the Homicide Squad commenced its investigation of Brian Bottomley's death.
- 81. The Homicide Squad quickly verified the basic details of Ms Briffa's report and married this up with Mr Eland and Mr Hayes' pursuit of Mr Joannou on 2 February 2005. These known facts coupled with Mr Joannou's escape from Keilor Downs Police Station, his attempted and actual car theft with associated threats and the weapon found in Kristy-Lee Hearn's car created a situation in which Mr Joannou was identified as the person most of interest in relation to Mr Bottomley's murder.
- 82. Further, overnight on 7/8 February 2005, Mr Joannou imposed on a number of his associates to help him avoid arrest and to provide him with drugs. For example:
  - He obtained the chrome plated sawn off shotgun from Gordon Skadric;
  - He was driven around by Mr Obretcovici; and
  - He stayed overnight at Leonie Clarke's house.
- 83. These impositions created enough concern for Mr Joannou's associates to report Mr Joannou's behaviour to police. In particular, Ms Clarke told police that Mr Joannou had a chrome plated shotgun and had told her:

"They are going to have to shoot me."

- 84. Ms Clarke also told police that, on or about 1 February 2005, Mr Joannou had put a 9mm shotgun to her stomach and threatened her because he thought she had stolen a gold bracelet.
- Ms Briffa's report, Mr Joannou's absconding from Keilor Downs Police Station, the gun in Ms Hearn's vehicle, his subsequent offending overnight and his associates' reports that he was re-armed were the evidence the Homicide Squad relied on to decide they needed the assistance of the Special Operations Group of achieve Mr Joannou's safe arrest.
- 86. The Court heard that, although there is on-going consultation between the Homicide Squad and the Special Operations Group and that a Homicide Squad member equivalent in rank to the Special Operations Group commander participates in the arrest phase, the Special Operations Group takes full responsibility for the arrest tactics once approval has been given for their deployment.
- 87. Accordingly, in effect, from the time that the Special Operations Group was authorised and Operation Motto was created, the Homicide Squad investigation of Mr Bottomley's death became the eyes and ears of the Special Operations Group, at least in relation to Mr Joannou's arrest.
- 88. The Team Leader in the Special Operations Group, Operator 41, confirmed that he relied completely on the information provided to him by the Homicide Squad in considering and determining the arrest options for Mr Joannou:

"I mean look, obviously the information provided to us by the investigators or Homicide Squad, they have obtained by whatever means."

- 89. From my position, it seems that, in the period between 7 and 18 February 2005, the Homicide Squad investigations gave priority to obtaining the information that the Special Operations Group required to achieve Mr Joannou's arrest. This mostly involved attempts to find Mr Joannou and his circumstances.
- 90. In particular, the Homicide Squad was industrious in obtaining current information about Mr Joannou. They ran media stories. They interviewed associates. They spoke to and followed up Mr Joannou's family.

- 91. All this work was productive in creating an image of Mr Joannou as an extremely volatile, irrational, armed and dangerous man who would resist arrest. All these facts have been verified by history. All these characteristics justify treating him as a high-risk offender.
- 92. Acting Superintendent Bernie Rankin told the court:
  - "...we consider any information we were told about the individual who was subject to the investigation. And of course if you were told information about his behaviour or his mental state, of course you take all that into consideration.
- 93. Further, the Homicide Squad investigation, including the media coverage and their communications with associates, alerted Mr Joannou to the seriousness with which they were considering his arrest so that their assessment that he was increasingly paranoid became self-fulfilling. This and his family's intention to protect him until he was ready to give himself up to police led to his isolating himself in Geelong for several days and diverted resources to finding him.
- 94. This meant that the Homicide Squad was less able to pursue their investigation of Mr Bottomley's death or, in other words, collect the evidence that would be required to determine Mr Joannou's successful prosecution and assist the coronial process.
- 95. Accordingly, I have formed the impression that, between 7 and 18 February 2005, the Homicide Squad focussed on obtaining information to assist in the arrest of Mr Joannou at the expense of their investigation into the death and disposal of Mr Bottomley.
- 96. Further, the Homicide Squad did not attempt to verify his mental state from his medical professionals. They did not know he had recently undergone a Naltrexone implant. They did not realise he was now using extra amphetamines and cocaine. They did not consider the possibility that he did not intend to be arrested alive because he did not want to return to prison.
- 97. Therefore, the Homicide Squad did not take into account professional or alternative explanations of his behaviour and they could not provide this information to the Special Operations Group in their planning for Mr Joannou's arrest.
- 98. Accordingly, reports from Mr Joannou's associates that he told them "I won't be taken easily", were interpreted by the Special Operations Group to mean that he would engage in a

confrontation with police using a firearm and that he intended to injure or kill police. This interpretation was important in their determination of the appropriate arrest plan on 18 February 2005.

# The Special Operations Group operation to arrest Mr Joannou

- 99. On 8 February 2005, the Special Operations Group was authorised to assist the Homicide Squad in the arrest of Mr Joannou.
- 100. The Court heard that there are strict criteria in place to justify deployment of the Special Operations Group. In particular, the Operation Procedures Manual for deployment of the Special Operations Group defines high risk like this:

"An operation or incident is to be considered high risk where there is a clearly defined and established probability of a confrontation with a person who is armed or is reasonably suspected to be armed, including protection of persons or property, level 3 searches, arrest of an offender or suspect, release of hostages or prevention of suicide."

101. Mr Rankin told the Court that the factors that identified Mr Joannou as a high risk were:

"Well, the information that had been conveyed to us as to the circumstances of what had happened to Bottomley and the manner of the disposal of his body and we were certainly - I was of the belief, and the investigators had been given certain information from people who knew Joannou well, that he was rather erratic at that time and we looked at the entire circumstances. We regarded him on that date - on the 8th when I first became aware of it, we regarded him as being a person who was a very dangerous individual."

- 102. At the operational level, the Special Operations Group Team Leader, Operator 41, was also very aware that Mr Joannou knew he was being pursued, was likely to resist arrest and had a weapon.
- 103. In particular, Operator 41 said:

"That was probably the mental state that was conveyed to me and that was certainly the impression that I got from the information delivered to me."

104. Further, the Team Leader conveyed this understanding of Mr Joannou's mental state to the team executing the arrest on 18 February 2005. For example, Operator 14 told the Court:

"...it was made quite clear that he was paranoid and fearful of being taken into custody.

I don't know about his personality."

- 105. Similarly, when asked what were the key factors that he was aware of in executing Mr Joannou's arrest, Operator 34 listed:
  - He had recently murdered someone;
  - He, gone to great lengths to cover that crime up by cutting the person up with power tools and then hiding the body;
  - He was extremely surveillance conscious which could in turn jeopardise the operation further;
  - He was very paranoid in regards to police surveilling him; and
  - His previous history of violence.
- 106. However, no special arrangements were made in the mobile intercept arrest plan to take into account the possibility that Mr Joannou had a mental illness or would be affected by drugs during the arrest or was considering the possibility of dying rather than returning to prison.
- 107. In submissions, Counsel for the Chief Commissioner relied on the evidence of Inspector Trimble to the effect that Special Operations Group members are trained to deal with people with a mental illness. If Special Operations Group members receive this intelligence, their priority for these people is to effect a safe arrest.
- 108. However, at the rank and file level, Special Operations Group operators told the Court that Mr Joannou's mental state and drug use would make no difference to the way they performed the tasks allocated to them because their involvement implies that the target has already been assessed as a risk to the community and themselves.
- 109. For example, Operator 16 told the Court:
  - "Obviously we take those elements into a certain degree of account. Obviously if they've qualified for arrest by the SOG then they have a, you know, generally a history of significant violence. But in terms of tactics and and the way that we conduct the actual arrest per se it doesn't change."
- 110. Further, although they said they had to arrest people with mental illness or drug-induced states from time to time, all Special Operations Group members who gave evidence denied

any particular education or training in managing people with mental health issues apart from the Operational Tactics and Safety Training required of all Victoria Police officers.

- 111. Therefore, I have formed the view that the special role of the Special Operations Group in assisting other police units to cope with high-risk, violent situations lends itself to specialist training in the factors that can influence the success of the operation when the target has a mental illness and/or is under the influence of drugs. Recommendation 3
- In particular, although prevention of suicide is one of the criteria for deploying the Special Operations Group, no one seems to have considered the possibility that, in exposing himself to the known risk of police involvement, Mr Joannou was expecting to die. For example, the Team Leader for Operation Motto, Operator 41, told the Court:

"I don't think I ever thought that he would suicide by cop. I honestly don't recall thinking about that whatsoever..."

- 113. However, I have formed the opinion that there was a real possibility that Mr Joannou either did not expect to survive or intended to die when he left 837 Ballarat Road in Deer Park.
- 114. My opinion is supported by the following:
  - Mr Joannou's knowledge that he already faced a certain jail sentence arising from the offences for which he was on bail and his breach of bail conditions;
  - Mr Joannou's statement that:

"They are going to have to kill me".

- Mr Joannou's confession to Ms Hearn that he would rather die than go back to prison;
- Mr Joannou's letters to his family written Ms Clarke's house on 8 February 2005;
- Mr Joannou's comments to his brothers as he left Ballarat Road;

"Goodbye, I will wait for you in heaven."

- Mr Joannou's weapon was not ready for use when he died;
- Mr Joannou's weapon had no round in the chamber when he died:
- Mr Bottomley and Mr Joannou told Ms Briffa the gun did not work on 31 January 2005;
- Mr Joannou assured Mark Joannou the gun did not work on 18 February 2005:

- Mr Joannou used heroin immediately before he died when he knew or should have known from signing his admission forms on 20 January 2005 that this behaviour placed him at risk of dying.<sup>14</sup>
- 115. Therefore, it would have been appropriate for the Team Leader and the Tactical Commander to take the possibility that Mr Joannou expected or intended to die into account in determining their mobile intercept arrest plan on 18 February 2005.
- The Court heard that Victoria Police now has access to three Serious Incident Response Teams in Melbourne. Each team comprises a Senior Sergeant, a Sergeant and two crew.
- 117. These Serious Incident Response Teams provide the opportunity for implementing alternative tactical arrest options involving the use of less than lethal force. However, I am not confident that this option would have been accepted by the Homicide Squad as an alternative to the Special Operations Group on 8 February 2005 because of the assessed risk associated with Mr Joannou's arrest.
  - 118. Accordingly, in circumstances where the Special Operations Group is involved in the arrest of a high risk offender, I recommend that the Special Operations Group Tactical Commander and Team Leaders review the known characteristics of targets in appropriate circumstances with a view to identifying the possibility that they either do not expect to survive or intend to die during the planned arrest. Recommendation 4
  - 489. Further, no special arrangements were made in the mobile intercept arrest plan to reduce the risk for the front seat occupants of Mr Delosreyes' vehicle.
  - 119. In particular, Operator 64 acknowledged that the direction he was firing placed the front seat occupants at risk:

"Certainly when I fired my weapon I was still aware that there were people in that front seat. If I thought that they may have been in between my firearm and Joannou then I wouldn't have fired."

<sup>14</sup> I also note that Mr Joannou had about \$300 less money in his possession when he died than when he left Ballarat Road. He had obtained heroin from Mr Delosreyes and used it in the car. If he paid Mr Delosreyes for the heroin with this money it was very expensive heroin or there was a lot of it.

120. However, Operator 64 advised the Court that, from his perspective, no special arrangements were required to protect the front seat occupants of Mr Delosreyes' vehicle: He could see the silhouette of Mr Joannou before he discharged his firearm. He aimed at the silhouette. Therefore, the front seats and the front seat passengers were not in his line of fire.

### 121. Operator 64 also explained:

"I was confident that what I was aiming at I was able to hit...Through training, through my course, we've shot through glass before with all the weapons that we shoot. So I'm confident that what I was faced with, the ammunition that I was using was able to accurately do what it has to do."

122. Operator 34 was also confident that he did not place the front seat passengers at risk when he discharged his weapon. He told the Court:

"...there may've been an element of risk to those people, but at the time I fired my weapon, ah you know, with the amount of training that I've had and my judgment, I was quite capable and able of making that shot."

- 123. I infer from this confidence that all Special Operations Group members are similarly confident about their weapons handling skills.
- 124. However, as well as injury and damage to Mr Joannou in the back compartment, there was also gunshot damage in the front compartment of Mr Deloreyes' vehicle. In particular, there was:
  - an area of damage to the driver's side boot lid caused by the passage of a bullet. The path of this bullet aligned with the front passenger side door. A bullet was removed from the damaged boot lid;
  - an area of bullet damage to the driver's side rear parcel shelf and speaker. The path of this bullet aligned with the front passenger side door. A damaged bullet was removed from the damage to the parcel shelf;
  - a hole in the inside trim near the top rear corner of the front passenger side door. The path of this damage aligned with the driver's side rear window. A damaged bullet was removed from inside the door; and
  - damage to the front passenger seat and head-rest caused by bullets and bullet fragments entering the headrest and seat.

- 125. Any of these bullets or the disruption caused by them could have hit the front seat passengers.
- 126. Further, a tree outside 111 Bank Street was damaged by a rifle bullet hitting a branch 1.645 metres above the ground. This bullet could have hit a by-stander or a Special Operations Group member.
- 127. Therefore, I do not accept that Special Operations Group members are necessarily always accurate in achieving their targets without collateral damage.
- 128. Accordingly, I have formed the opinion that, at least in mobile intercept operations, the Team Leader and the Tactical Commander should specifically address the risks to each vehicle occupant in determining how best to effect the arrest they seek. Recommendation 4
- 129. Further, on 21 February 2005, Special Operations Group members found five spent rifle cartridges in the rear of the old blue four wheel drive vehicle. This spent ammunition had not been previously accounted for. Their source remains unidentified.
- 130. Accordingly I am unable to comment on its relevance to this enquiry.
- 131. Operator 64 confirmed that each Special Operations Group member had been allocated a specific role for the arrest option determined by the Team Leader and the Tactical Commander:

"Each one of those options, members are tasked individually as to what vehicle they're going to be in, whether they're part of an arrest team or a cut off or observations, that's all done in the briefings. "

- Operator 64 also told the Court that the strategic positions adopted by the Special Operations
  Group vehicles in a mobile intercept arrest are intended to:
  - Provide protection for Special Operations Group members;
  - Allow them to observe and cover the vehicle that we were intercepting;
  - Prevent any potential escape routes from the vehicle; and
  - Allow the people in the target vehicle to hear and clearly understand what is being asked of them to remove them from that vehicle.

- 133. However, in assessing the evidence of Operators 41, 16 and 64, I was particularly concerned that the plan for arrest of Mr Joannou required them to immediately place themselves unprotected in his expected direct line of fire.
- 134. In particular, I am concerned that Operator 41 says he was out of his vehicle and approaching four metres from Mr Delosreyes' 1996 Toyota Camry green sedan NID-380 when the new blue four wheel drive hit it and pushed it two metres on to the nature strip.
- 135. The Tactical Commander and Operator 41, in his role as Team Leader, knew that Mr Joannou was lying on the back seat of Mr Delosreyes' vehicle and unable to see what was happening around the vehicle. They also knew he was in possession of a chrome plated sawn off shotgun.
- 136. Therefore, in formulating the arrest plan for Mr Joannou, the Tactical Commander and the Team Leader should have expected that Mr Joannou would sit up when his vehicle was rammed from behind. The arrest plan did not make any allowance for Mr Joannou's normal reaction to the deliberate surprise he experienced.
- 137. Further, as the main risk identified in briefings about the arrest plan for Mr Joannou was associated with his chrome plated sawn off shotgun, any change in its position was likely to create the fear for their lives that justified their discharge of weapons.
- 138. I understand the need to surprise Mr Joannou before he could activate his weapon. However, from a systems perspective, it seems almost self-fulfilling that Operators 41 and 64 reacted to Mr Joannou's normal response to surprise in the way they did on 18 February 2005.
- 139. Operator 41 told the Court that the reason he placed himself and Operators 16 and 64 in the positions they were in was:
  - "Obviously to effect the safe arrest of Mr Joannou. There was no point sitting in my car. You know, we obviously had approach the vehicle, contain the vehicle and implement the arrest phase as quickly as we can and I was part of that as being the team leader."
- 140. In circumstances where they knew that Mr Joannou was lying down in the back seat of Mr Delosreyes' 1996 Toyota Camry green sedan NID-380, an alternative arrest plan that

allowed the occupants of the old blue four wheel drive to exit their vehicle, protect themselves for a moment as the new blue four wheel drive hit the target vehicle (perhaps behind the white 1982 Toyota Corolla BPX-856 parked on the south west side of Mr Delosreyes' vehicle) and assess the risk would have changed the outcome in this case.

- 141. I am also concerned that as Team Leader, Operator 41, placed himself in the arrest team designated by the mobile intercept arrest plan.
- 142. Operator 41 justified this position by his need to demonstrate leadership and supervision:

  "we're required to provide leadership and supervision throughout. We're an active part of the arrest phase."
- 143. However, Operators 41 and 64 both told the Court that they were not fully aware of the positions of their colleagues or whether they were discharging their weapons when they were focussed on protecting themselves from Mr Joannou's chrome plated shotgun.
- 144. For example, Operator 41 told the Court that he was not aware of what was happening around him while he was shooting at Mr Joannou. He did not know where Operators 16 and 64 were standing. He did not know whether they were discharging their weapons:

"The body focusing on what was going on in front of me and my sole attention was directed at that rear window and the threat that existed to me personally right in front of me. Everything else shut out....

I didn't know whether he (Operator 16) was discharging his weapon at all or not. I had no idea. After the event, it was only after the event that I became aware he had discharged his weapon. I had to go and ask all the members to ascertain who would actually discharge their firearm, I had no idea."

- 145. Therefore, during this crucial period of the arrest operation, Operator 41 was unable to fulfil his role of Team Leader. If circumstances had changed during this time, he would not have been able to warn, respond, change tactics or protect other members of his team.
- 146. The Team Leader, Operator 41, was also one of the four Special Operations Group members who discharged their weapons on 18 February 2005.
- 147. Within two minutes of completing the operation, the Team Leader had checked all members of his team and, separately, asked everyone whether they had discharged their weapons.

These tasks could have waited the two minutes that it took for the Operational Commander to arrive on the scene.

148. The Team Leader understood the concept of independence. He told the Court:

"I was very conscious of the fact that I had been responsible for discharging my firearm and I understood the need for me to be separated as soon as I possibly could. ...

There was no ill-intent, you know, from me personally to try and speak with the other people that had discharged their firearms, purely a welfare question only and to try and ascertain what needed to be done because I had no idea who else had fired their weapon."

- 149. However, I have formed the opinion that the Team Leader remained influenced by the stimulation of his operational involvement in the attempted arrest and discharge of his weapons. In other words, he was still under the effect of adrenalin.
- 150. Further, the Team Leader's assessment of who had discharged their weapons was relied upon by the Operation Commander and the Tactical Commander.
- 151. This failure of the operation plan to allow for immediate independent assessment of who discharged their weapons was not identified as an ethical issue in any of the documents before me.
- 152. Mr Dunne justified this limited review by his understanding that the decision about who discharged their weapons would be reviewed by forensic and other investigators. However, there is no evidence before me that anyone reviewed the weapons of operators who did not self-nominate that they had been discharged.
- 153. There is always going to be a hiatus at the completion of the active phase of an operation before the clean up phase comes into play. For operational, evidentiary, occupational health and safety and ethical reasons, it is crucial that these few seconds or minutes are used to assess the participants and secure the scene. The Team Leader knew his role was to accept this responsibility until his superiors arrived. This leadership role in his team must take priority over his shared participation in the most active role in the arrest plan.
- 154. Accordingly, I have formed the view that the Team Leader should not place himself in the main arrest role when he is allocating tasks during determination of an arrest plan. Rather,

he should be tasked to a position where he can observe, warn and change tactics as the operation unfolds and respond to the needs of his team when the operation is completed.

#### Recommendation 6

- 155. Further, relying on the evidence of Operators 66 and 67, by-standers and forensic experts, I find that it is likely that:
  - Operator 34 discharged his weapon in the split second before Operators 41, 16 ad 64 discharged their weapons;
  - The bullet from Operator 34's weapon severely injured Mr Joannou's face; and
  - This injury would have prevented Mr Joannou taking aim with his chrome plated sawn off shotgun. However, it may have resulted in him unintentionally lowering the shotgun from its perpendicular position to a horizontal position consistent with that observed by Operators 41, 16 and 64.
- 156. Therefore, although Operators 41, 16 and 64 believed that Mr Joannou was attempting to shoot and kill them, I do not accept that the evidence clearly establishes that Mr Joannou threatened police with a shotgun in the course of the mobile intercept operation undertaken by the Special Operations Group on 18 February 2005.
- 157. Section 462A of the Crimes Act 1958 provides:

"A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence."

- 158. In an arrest situation, it is difficult to argue that death of the offender is the result of reasonable force to execute an arrest.
- 159. Conversely, in circumstances where Operators 41, 16, 34 and 64 believed that Mr Joannou was attempting to kill someone, it is arguable that discharge of their weapons was necessary to prevent commission, continuance or completion of an indictable offence.
- 160. However, in this coronial investigation, rather than rely on their authority to prevent commission of an indictable offence, Operators 41 and 64 have actively asserted that they

- discharged their weapons because they were targeted by Mr Joannou and that they feared they could die.
- 161. Operators 41 and 64 both experienced aural and visual exclusion during the period when they were discharging their weapons. Accordingly, Operators 41 and 64 both told the Court that they were not fully aware of the positions of their colleagues or whether their colleagues were discharging their weapons when they were focussed on Mr Joannou's chrome plated shotgun.
- 162. However, Operator 16 did not report similar aural and visual phenomena. Operator 16 estimated that Operators 41 and 34 were between five and eight metres apart when they felt personally targeted by Mr Joannou's chrome plated sawn off shotgun, believed they could die and discharged their weapons.
- 163. Further, Operator 16 estimated that he was about equidistant between Operators 41 and 34 when he discharged his handgun. He believed that Mr Joannou was shooting in his general direction and Operator 34 was at risk but he did not feel personally targeted in the same way that Operators 41 and 34 experienced the threat.
- 164. In these circumstances, I find myself unable to explain the different experiences reported by Operators 41, 16 and 64 during the attempted arrest of Mr Joannou in the context of their reported positions relative to each other and/or their lines of sight and/or the threat they felt from Mr Joannou's lowered shotgun barrel.
- 165. Further, in the absence of a full analysis of the site including sight lines and distances, there is no evidence before me that the Victoria Police investigation of Mr Joannou's death attempted to validate or corroborate the estimates of their positions and sight lines provided by Operators 41, 16 and 64 against the physical evidence at the scene.
- 166. In circumstances where a man has died from a rifle shot wound caused by a police weapon, the Chief Commissioner must ensure, even in retrospect, that the evidence is independently examined to guarantee that this incident is treated and seen to be treated in the same way as it would have been treated if a civilian had been involved in the death of Mr Joannou.

**Recommendation 7** 

I note that Operator 18 who was a back seat passenger in the new blue four wheel drive and did not discharge his weapon or play an active role in the attempted arrest also experienced similar auditory exclusion.

# RECOMMENDATIONS

Pursuant to section 72(2) of the Coroners Act 2008, I make the following recommendation(s) connected with the death:

- 1. The Department of Health and the College of General Practitioners should review its advice to addiction physicians in relation to Naltrexone implants to emphasise the social dangers associated with changed mental state and diversion to stimulants which, in the absence of adequate follow-up, can be associated with the procedure. **Recommendation 1**
- 2. The Chief Commissioner review the way in which Special Operations Group operations are reviewed after a critical incident occurs with a view to identifying how the incident occurred and ways in which it can be prevented in the future. **Recommendation 2**
- 3. The Chief Commissioner of Police provide the Special Operations Group with specialist training in the factors that can influence the success of the operation when the target has a mental illness and/or is under the influence of drugs. Recommendation 3
- 4. The Chief Commissioner of Police require the Special Operations Group Tactical Commander and Team Leaders to formally review the known characteristics of targets in appropriate circumstances with a view to identifying the possibility that they either do not expect to survive or intend to die during the planned arrest. Recommendation 4
- 5. The Chief Commissioner of Police require the Special Operations Group Team Leader and the Tactical Commander to specifically address the risks to each vehicle occupant in determining how best to effect the arrest they seek using a mobile intercept operation.

  Recommendation 5
- 6. The Chief Commissioner of Police direct the Special Operations Group to review their tactical arrest options to ensure that the Team Leader does not place himself in the main arrest role when he is allocating tasks during determination of an arrest plan for violent offenders. Recommendation 6
- 7. The Chief Commissioner direct re-examination of all the evidence to ensure that this incident is treated and seen to be treated in the same way as it would have been treated if a civilian had been involved in causing Mr Joannou's death. Recommendation 7

I direct that a copy of this finding be provided to the following:

- Chief Commissioner of Police;
- Secretary, Department of Health; and
- Royal Australian College of General Practitioners

Signature:

Julie de la serie de la serie

DR JANE HENDTLASS

CORONER

Date: 31 December 2013

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