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NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

A 51 of 2019

AN INQUEST INTO THE DEATH

OF KUMANJAYI WALKER

ON 9 NOVEMBER 2019

AT YUENDUMU POLICE STATION

JUDGE ARMITAGE, Coroner

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 29 FEBRUARY 2024

(Continued from 28/02/2024)

Transcribed by:
EPIQ

THE CORONER: Dr Dwyer.

DR DWYER: I think we might need a few more minutes for Mr Boe. But there's some housekeeping to do.

THE CORONER: Sure.

DR DWYER: We've received a number of statements from Northern Territory Police Force. I wonder if Dr Freckelton could provide better information about that.

THE CORONER: Dr Freckelton.

MR FRECKELTON KC: Yes, thank you, your Honour. We've provided four statements, and we'll provide a further one presently from persons in senior roles with the Territory Response Group. The essence of them is that they are very clear that there has never been an award of the kind described by the witness. And they've described, in particular by the description that he attributed to it. And they've also set out the concerns about the distress caused by the allegations made by Mr Rolfe.

I'll ask him some questions about those matters at the right time.

THE CORONER: Thank you.

Those statements have been made available to the parties?

DR DWYER: Yes they have.

MR FRECKELTON: They have.

MR ABBOTT KC: Your Honour, that raises another matter. I've read the statements. It - first of all, the statements make claims which are not borne out by the evidence. And indeed, the summary, my learned friend, Dr Freckelton made of the evidence, is not correct. At page 5134, my client didn't say that the award was called "Coon of the year." Which it was - it was actually "The coon of the year award." He said it was - he said we knew it to be called the Coon of the year award. But the actual award was called the "Goonarda award" and what he was referring to, of course, is there is this Goonarda award which those who got it called it the "Coon of the year award" and it was given for exhibiting the most coon-like behaviour of the year, so he said.

THE CORONER: Well, the statements have addressed that. If there is additional evidence to be called on it, that could be identified, but at the moment we have four statements of police who are senior in the TRG - or were senior in the TRG and they have provided evidence about that and if there is to be any additional evidence or concern about that evidence, then that is a matter that you can raise with counsel assisting if you are requesting cross-examination or something like that.

MR ABBOTT: Well, your Honour, it goes wider than that. First of all, these statements are confirmation of my client's evidence given on Monday.

THE CORONER: I am not asking for you to explain the statements. They will be made available. They are available to you.

MR ABBOTT: Yes.

THE CORONER: And as I understand it, I think it is appropriate in light of the evidence, that they be placed on the coronial website, but if there is to be cross-examination or other evidence led on this issue, you could identify that for counsel assisting and we will see what arrangements can be made.

MR ABBOTT: Well, your Honour, yes, I accept all that and that is entirely appropriate. But first of all, this evidence supports what my client said on that.

THE CORONER: I am not hearing submissions in relation to the evidence.

MR ABBOTT: I am not making - - -

THE CORONER: If it supports your client then that will be evident for everyone to see once they have had an opportunity to look at the statements.

MR ABBOTT: Of course. But I am just coming to my point and that is yesterday, at page 5391 my learned friend, counsel assisting, said to my client - or put to my client, in effect, an allegation that he had perjured himself and my learned friend did it in these terms: "What I am putting to you is that you specifically nominated Meacham King as someone you had heard about - someone you had hearsay about because you were angry that he had given evidence that didn't back you up." That was a reference to the award - to the evidence he had given on Monday at page 5134 about Mr Meacham King being one of the persons who could be asked for knowledge of these awards - or sorry - this award that he referred to as the "Goonarda award" but, in fact, we now know, although the spelling varies between statements, is something to the order of "Nguda(?) award".

THE CORONER: We don't know anything at this stage. We have some evidence around these issues.

MR ABBOTT: May I finish pleas, my submission, your Honour?

THE CORONER: Sure. But we don't know anything - nothing is finalised. We have some evidence on these issues.

MR ABBOTT: Well, what I am asking is that my learned friend withdraw the allegation of perjury that my client told - gave false evidence about the awards because, to use my learned friend's words, "You specifically nominated Meacham King as someone you had hearsay about because you were angry that he had given evidence that didn't back you up." And that's the - the allegation was put that he had

- that my client had referred to Mr Meacham King as one of the persons who could be approached to confirm his evidence given on Monday about what he said were - the actual award was the Goonarda award but it was referred to colloquially as the "Coon of the year award".

So my request is that my learned friend withdraw the allegation because these statements now back up his evidence that there was an award - as I said - he called it the "Goonarda award", but it's called the - - -

THE CORONER: We don't need to hear the reference to the colloquial names or any other names of the award again. I understand your application and I will hear from counsel assisting.

MR ABBOTT: Thank you.

DR DWYER: It was not an allegation, with respect, it was a question. And it wasn't any question putting to Mr Rolfe that he had perjured himself - it was a question about his motivations for the first time ever nominating Mr King - there's a non-publication order over his name at the moment - Mr King - nominating that person as someone he had heard hearsay about because Mr King had not supported him. I don't withdraw that question.

For the first time ever, Mr Rolfe was in the box, nominating him, with no indication that that was going to be done and it was not put to Mr King when he gave evidence earlier. It was procedurally problematic for that reasons and I stand by the question that was asked of Mr Rolfe, which he has had every opportunity to answer.

THE CORONER: Yes.

DR DWYER: Might I now, your Honour, deal with the issue of a non-publication order?

MR ABBOTT: Look - - -

DR DWYER: Because there are - - -

THE CORONER: I am not going to ask her to withdraw the question. It was a question put in examination about the evidence and motivation for the evidence that was given and that is an entirely appropriate question to be asked and Mr Rolfe has given his answer.

MR ABBOTT: Yes. And there is another aspect to this. We have asked for the certificates that were given out every year from 2013 onwards to 2022 at the Nguda Awards because they are not mentioned and are not attached to these statements.

There are certificates which are clearly, in my submission, racist and we have asked for them to be produced. So they need to be attached to these four statements so your Honour has the complete picture of what these were.

THE CORONER: The police have investigated the matter. They have heard that you think these statements are lacking, if they choose to provide further evidence they can do so, there are other mechanisms for evidence to be produced to these proceedings which would be open to you.

MR ABBOTT: Thank you.

DR DWYER: And lest it be suggested that any request has been made of counsel assisting that no such request has been made. But, as your Honour says, the investigation has been handled (inaudible) - - -

THE CORONER: Yes. As far as I am aware, that is the first time the request has been raised.

MR FRECKELTON: It is. We received a request in writing literally a few minutes ago from Mr Officer and we are looking into it and should these materials be available we will make them available to the court.

THE CORONER: Just talking about fresh materials becoming available late in the proceedings, Mr Abbott, your client has already made reference to a letter of appreciation from an agency which we have not received or had any notice about. If there is to be additional material that you would like tendered or taken into account, I am asking that it be provided to counsel assisting by 2 pm today by your instructing solicitor otherwise I am very concerned that we will be at risk of not completing Mr Rolfe's evidence tomorrow.

MR ABBOTT: Thank you.

DR DWYER: Your Honour, just one final matter on the document. In the witness box on Monday, it was apparent that Mr Rolfe had documents with him. I ask my learned friends to produce those documents, particularly if they are relevant in relation to the allegations that were made.

MR ABBOTT: They are not produced. Documents that he had with him on Monday, on my understanding, were instructions to his legal team, which when I found out that he still had a copy of them I have removed from him. He hasn't had them since Monday.

DR DWYER: He has them while giving the evidence about the allegations - very serious allegations that he has made about racism and if he had them in front of him when he was giving that evidence, then they should be produced to this court.

MR ABBOTT: Well, they are not going to be produced because they were - he didn't - there's no suggestion that he was reading from them or looking at them.

THE CORONER: He had them in front of him, Mr Abbott. He may very well have been reading or referring to them as he looked down.

MR ABBOTT: Well - - -

THE CORONER: In my view, they should at least be marked for identification at this stage. I don't propose to look at them at this stage. We can raise it again later but, in my view, they should be placed in a sealed envelope and marked for identification and there can be further discussion or legal argument about this at an appropriate time.

MR ABBOTT: Well, I decline to produce them.

DR DWYER: We will deal with that at a later date, your Honour, if it is convenient for the court to move on.

THE CORONER: They are obviously able to be easily identified.

DR DWYER: Yes, your Honour, and it may well be assisted by the recording and they could be marked for identification and an LPP claim can be dealt with at an appropriate time.

Your Honour, might I return to the issue of a non-publication order with respect to the names of those who provided statements from Northern Territory Police. There is currently a non-publication order over the names James Gray-Spence, Shaun Gill and Meacham King. Might I ask Dr Freckelton to address that?

MR FRECKELTON: We're content for those names now to be made available for three persons. And of course the additional author of the statement that's been filed with the court.

THE CORONER: Thank you, Dr Freckelton. Then the non-publication - the interim non-publication order in relation to those names on the statements that have been provided, and I don't think - is there - is there any non-publication order? You said there was an additional statement coming?

MR FRECKELTON: There are four statements that have been given to the court. Three relate to the persons who subject to a non-publication order. There is a fifth statement which will be available very soon.

THE CORONER: And that's not the subject of a non-publication - - -

MR FRECKELTON: It is not, no.

THE CORONER: And are you happy for that to be dealt with in the same way as these statements made available to the parties, and also placed on the website?

MR FRECKELTON: Yes, thank you.

THE CORONER: Thank you.

Then the interim non-publication order is lifted, in relation to the three names to which it applied.

DR DWYER: May it please the court.

THE CORONER: Mr Boe.

MR BOE: Good morning, your Honour.

THE CORONER: Good morning.

MR BOE: I would hope to view that as injury time.

ZACHARY BRIAN ROLFE, on former oath:

XXN BY MR BOE:

MR BOE: Mr Rolfe, may I start by taking you - or addressing the issue for the answer you gave to Dr Dwyer, as to whether or not you wished to say anything to my clients, yesterday?---Yes.

Firstly, thank you for that indication. We're taking instructions. And you will appreciate that there are many members in that cohort. But may I say this, you would - would you appreciate that that sort of conversation would be a very confrontation one, or some of it, and difficult for some of it?---Yes.

And I'm sure it would be difficult for you. May I ask you to consider this. In - in terms of seeing if that sort of, if I may use the word "reconciliation" may occur, you would appreciate that they have had access to many statements that you have made since the event, concerning your sense and responsibility. And secondly, your directing criticism at some of them?---Yes.

Yes, I'll take you - I won't take you to it, but you know in one of the answers that you gave to Kristin Shorten, included at least implied, if not direct criticism of them. Yesterday there was applications concerning the use, if any, that may be used of the evidence in (inaudible) about the events of 9 November. You now know that you're quite protected about that, and that protection may not - not well flow to the conversation happening outside. So I invite you to consider those matters, when I'm taking you through the balance of our examination, in that that may provide fertile ground to broker some sort of reconciliation. Do you understand?---Understood.

The - I want to go through some of the areas covered by Dr Dwyer. So I'm going to do it in a way that might be expedient. That is, I'm going to generally refer to the issue. I'm not going to go back and rehearse your questions and answers. I'm proceeding on the basis that I've properly understood that evidence. And I'm just going to add some additional questions. Do you understand?---Understood.

And if you need further context, please ask me, and I'll attempt to do that. Just one factual matter. Had you ever driven from Alice Springs, out along the Tanami Highway, before 9 November?---I believe I'd driven half-way from Alice Springs to Yuendumu to do a vehicle swap of a person.

Okay, and did you get to Tilmouth Well?---I can't recall.

That's okay. What mobile service does your phone, that you had on 9 November, utilise?---Optus.

Optus. You're aware - did you in fact stop at Tilmouth Wells?---On - - -

On the way, on ninth - on 9 November?---I can't recall. I don't believe so.

You know what that place is, don't you?---Yes.

It's a service station and a café, about 89 kilometres from Yuendumu?---Yes.

You don't recall - or do you say you did not stop there?---No, I say I don't - I don't recall on the night.

Okay, thank you. I want to start chronologically at the beginning, in terms of, if I may phrase it this way, who you are, and the context within which you had any understanding or knowledge of Indigenous people. And I - I've said, most of this has been covered, but you would accept that you were bought up in Canberra, in relative middle-class comfort, if I can use that phrase?---Correct.

Your parents are quite respected in that open community?---Correct.

One's a lawyer in a large law firm?---She was, yes.

Yes, at the time of the incident?---Oh yes, correct.

And then your father operates a Aldi new car dealership of some kind?---Correct.

You - you mentioned your schooling. Were there any - was it co-educational, or just male?---Just male.

And were there any Indigenous students in that environment?---I'm only aware of one.

And did you have any interaction with that student?---Not a large amount.

And were there any Indigenous teachers in that environment?---I - I don't know.

Was any of your schooling, did it include study about Indigenous history or issues?---I believe so, not - not much.

(Inaudible) did you say - - - ?---Sorry, no, for the transcript.

At school, did you acquire any interest in pursuing further knowledge of those areas, at that stage?---I don't believe so.

Up to the period of 9 November 2019, you've mentioned aspects of introduction with Indigenous people. Did that interaction include any social interaction, in an off-duty situation?---With a number of police officers, yes.

That is, Indigenous police officers?---Yes, correct. And with civilians, yes.

And did you ever, in a social, private capacity, go into an Indigenous persons home?---I'm - I'm sure I did. But not in a - in a town camp or a remote community.

Did you - did your parents provide any education to you about how you might view or learn about Indigenous culture at all?---I can't recall.

No?---I can't recall.

Now just jumping ahead to your military circumstances. Prior to being in the ADF had you ever discharged a firearm?---Yes, I believe I have.

In what circumstances what that please?---Target shooting or hunting.

And at what age about, generally?---Late teens.

We've heard what you did after you left the ADF, including certain courses and the like, with (inaudible) investigations et cetera?---No, Trojan - - -

Trojan?---And then whilst in the police force Ronin.

Right. Is it fair to say that at that point in time, that is, just before you applied to police services across Australia, that you had a particular interest and skill in using firearms?---Yes.

Just going to the - the applications that you made to the police service. Dr Dwyer took you through the one to Queensland, and then you had one pending in Victoria, that's correct?---Yes.

And then you also had one pending in Western Australia?---Yes, I believe so.

Now, I can get precise dates for you in a minute. Is it fair to say that you made these applications basically at the one period of time, in a few weeks of each other?---Yes, I believe so.

And the - the moment you got an acceptance from Northern Territory, you withdrew your application to Western Australia?---I believe so.

Do you accept, and I can take you to it if you need to, do you accept that in your application to Western Australia, there was a very similar question to the questions that you were taken to task about, in terms of whether or not there were any investigations, et cetera, into previous issues. I'll read it to you precisely. Question nine on that application was, "Have you ever been investigated by any police, law enforcement, defence force, government department, federal, state, local, or other agencies, either in Australia or overseas" - - - ?---Yes.

- - - correct?---I accept that.

And you affixed a cross to the answer "No"?---I accept that, if that's in front of you.

And you now accept that that was an incorrect answer to that question?---Correct.

What do you say to the inference to be taken about that course of events that suggested that, once you had received an offer from the Northern Territory Police Force, you withdrew the Western Australian application so that there would not be any further investigation into that false entry?---I would say that's not correct.

You see, you've been told by Queensland that that was the reason why they wouldn't accept you, on the basis that it raised an ethical issue. You had the - the Northern Territory happened to overlook that or not see it or not act on it. Do you think it's a fair inference, one fair inference, that you withdrew the Western Australian application to avoid that detection?---Actually, now that you mention it, I do believe at the time that out of all the four applications I put in, there was a level of - the Queensland/Victoria/WA seemed a more stringent process and I believe I'd actually spoken to the NT on the phone and mentioned I made a mistake on my app and they seemed not to be worried. And for your answer, correct, I believed that once I'd been made aware of my error, I believe at the time I thought that perhaps WA and Victoria, because they were being more stringent, more - stringent will do, that they would not accept my answer as an error.

And did you in fact tell them, in fact I'm withdrawing it because I've made an incorrect statement in it, or did you just withdraw the application?---I don't believe I told them why, unless I just - I think I just withdrew it.

All right. Now, at the time that you made the applications, you were working as a clerk in a law firm?---Yes.

And that was a law firm in which your mother was a part of at the time?---Yes.

And one of the referees was an employee of your mother?---Yes.

Did either of them assist you in making those applications?---No.

You didn't consult them as to how to appropriately answer a question which you may have found to be imprecise?---No.

THE CORONER: I don't think there's any suggestion he found it to be imprecise, Mr Boe.

MR BOE: Perhaps not. That's probably not a fair way to put it. I'll put it another way.

The language used in the applications you understood clearly enough as being broad and you have acknowledged that your answers were incorrect?---Correct.

So when you commenced training, is the sum total in a general sense that, one, you had very little knowledge of Indigenous culture?---Correct.

And certainly very little knowledge of Indigenous communities in the Northern Territory?---Correct.

And you had very little knowledge of the history of police interaction with Indigenous people in the Northern Territory?---Correct.

And that anything that you may have been taught by the NTPF was limited to what was said in some sessions in your training?---Correct.

And details of which you have very little recollection. Is that correct?---Correct.

And is it fair to say that it wasn't a matter of great interest to you at that point?---I believe it was a matter of - I was definitely interested, but it wasn't conveyed in an obviously memorable way.

Yes. You found it not effective for you to meet your interest in those matters. Is that fair?---I found it not effective.

Aside from that and just being candid, in truth, it wasn't a big issue relating to why you were a police officer in the Northern Territory. Is that fair?---My desire to be a police officer did not have anything to do with culture or race, yes. And so yes.

Thank you. Now, it would follow from that that once you hit the ground running, if I use that phrase, you started to appreciate that in fact most of your contact with citizens in the Northern Territory as a police officer involved interaction with Indigenous people?---Correct.

And as a consequence of that, did you seek out in any forum any further information that may assist you in that interaction, or did you not think it was important?---I sought (sic) out - - -

MR ABBOTT: That's not - that's not fair. They're not the only terms (inaudible).

MR BOE: Of course.

THE CORONER: Sure. I think Mr Rolfe is capable of understanding the question and giving an explanation. He's readily offered that on numerous occasions and I don't think there was anything confusing. I don't think he believed he was limited to the two options.

MR ABBOTT: Maybe not, your Honour, but my role is to act on his behalf, and I believe in making the objection. My learned friend, I think would change is question.

MR BOE: Perhaps her Honour's assessment of my question.

Did you understand the question? Are you happy to answer it?---I can answer it I hope in a way that you would be answering (sic) your question.

Thank you?---I attempted to learn some of the language of the people I interacted, their first language. I attempted to learn some of their language to - I guess in order to show respect, build rapport. Learning language was definitely one of the things I attempted to do. That would have been through no formal process, just speaking to them and speaking to other officers who knew the words. Insofar - that is the main area that I did, so try to learn language in order to build some form of rapport, attempt to show respect and build that comfort in speaking.

May I ask you some clarification, when you say you attempted to learn the language, are you talking about their use of Aboriginal English or in fact, dialect?---Dialect.

Which dialect?---At the moment, all I can - I knew more words that I could have put into sentences at the moment. The words I've used are often that seem to create rapport or build comfort easy - more easily - paliah(?) and nawa(?) for yes and please, as far as my understanding. I would use them interchangeably instead of yes and please. There were other words that I can't recall any longer, being out of the NT for four years. Apart from language, there was only learning through absorption through the job, for example. Not through formal training at all. And even language wasn't formal training.

I understand. Did you pick up in your interaction with Indigenous people that there was often a resort to what is often called Aboriginal English?---I know what that means, but I haven't heard it in that term before.

Was that an area in which you received any particular training?---No, but I guess in regards to language as well, that was other areas where, yes, where I learnt that words would mean different things. And again, these are the obvious ones that I can remember, deadly verse cheeky. But yes, if that's what is referred to as Aboriginal English.

Partly that. Did you become area of work by anthropologists and linguists that try to assist non-Aboriginal people in communicating with Indigenous people to ensure that because there are English words being used, that there is not in fact a miscommunication for example?---No, I don't believe so.

Did you ever become aware of the work of Professor Diana Eades, E-a-d-e-s?---I don't think I've heard that name.

I provided a copy of that paper and just on the notebook will be fine. Before that's done, Mr Rolfe, can I just ask you more questions. Having got to Alice Springs and you would have come across Indigenous people living in different circumstances and conditions in that which you were raised in Canberra?---Correct.

You've recorded that the first couple of weeks was eye-opening?---Correct.

And in your interview you said something like, or I'll read you question 20, "Oh they're different worlds. To be honest, when I first - couple of weeks in Alice, I felt more comfortable in Kabul in Afghanistan than I did in Alice"?---Correct.

And you meant that reference to Kabul being when you were an ADF member undertaking military duties in Kabul?---Correct.

So the - and I - can I just take this, generally about that interview, I totally get that you were speaking at time when you were facing a murder charge, you understand?--Yes.

And - and that you would have been using - you said things which you hoped would address that the fact that you were being falsely accused of murder, I - do you understand?---Correct.

And so what I'm hoping in this conversation, is to get to you not feeling that pressure, and just perhaps assisting us, in the way in which this issue might be addressed by the NT Police Force in the future?---Understood.

That - and so you equated your experience as a police officer in Alice Springs, interacting with Indigenous people, as being less comfortable than the experience that you had in patrolling as an ADF officer in Afghanistan?---In that regard, I believe in what I meant was that in - in Kabul, as I've said, there is - there is a one predominant culture. Culture, religion, in - especially in the Kabul city, there is one world, and we, as ADF members were over there, knowingly, that is the - that is the culture, that is the world. Whereas what I saw in Alice Springs was - was two worlds. You could have, like, for example, white man law versus Indigenous law and culture. I saw both. And I - it didn't, from my perspective, at the time, there seemed to be a massive clash, that was not - that was still I guess, what's the right word - - -

Unresolved?---Unresolved.

Look, can I make it clear, I'm not going to try to get involved in an anthropological discussion about this. I just wanted to understand the way in which you had, in various pieces of evidence here, in other documents, made reference to the living conditions in - in the places in which you were policing?---Yes.

And just for those hearing, I'm not suggesting for a minute that this involved all Indigenous people that live in the Northern Territory or anything like that. I'm merely focussing on your interaction with Indigenous people in the policing framework, do you understand?---Yes.

And - and I know - and I'm not attempting to make the cheap point about your reference to places being "shit" etcetera, I'm not going into that area?---Yes.

Did you form the view that the - the people who were living in these circumstances, which I think you described as "third world" at some point, were to blame for those circumstances. And there may be other options, I'm going to give you one, or did you consider that it may be a direct cause of the impact of white colonisation in this particular area?---I didn't - I didn't - I don't have enough education in the history of Australia to go back to - and I admit I did - I have not studied that topic. So I can't say that I believed it was the direct - sorry, what - the direct cause or - - -

Was a direct consequence - I mean, there's a theory, if I may share, that the circumstances in which Indigenous people are enduring in this country, have a direct - is a direct consequence of the layers of injustice caused by white colonisation?--- Yeah, so I don't - as I said before, I don't have enough study in that regard to go further enough back.

Yes?---I did believe, in - in my head, it was a direct consequence as a result of the Australian Government. Obviously it spurned from that. But I - I can't go back that far.

I understand. So there - did you - just to return to my question, did you attribute blame to these people for the circumstances in which they were living?---I would attribute no blame, and I would attribute no fault. There is a level of responsibility in some circumstances, but definitely not blame, and definitely not their fault.

But as a consequence of their conditions of living, did you take a view that your - that you were more sophisticated, or more civilised than they were?---Well the - not civilised. Definitely not civilised. Depending on the explicit definition of sophistication perhaps.

Yes, but may I put it this way. It - my experience is that wealth and well-being in housing is often used by people to assess themselves against others. And then a bigger house, a better car, better schooling for your children, denote the way in which you regard their level of sophistication and civility. You understand that?---I understand that.

And you may well have experienced that. By using that metric, or perspective, did you see yourself as being more sophisticated and civilised than the people that you were (inaudible)?---Well I can say in - obviously you've mentioned my - my background, I can say that potentially yes, more sophisticated, but I wouldn't classify the - I wouldn't call those metrics into my definition of civilised, at all.

All right, thank you. Why I'm leading - covered that, was I just want to really briefly go through what I understood to be the approach you have given in your - taken in your giving of evidence concerning the - your experience in the usage of racist words in the work environment, and in text messages - - -

MR ABBOTT: I object.

MR BOE: - - - private text messages?---Yes.

And I - and can I tell you that I am going to be fair, and (inaudible) the propositions so that if you want to wait until I get to the end, please do so?---Yes.

You accept that you often spoke using words, during the course of your work, as a police officer, which were racist, and clearly offensive to Indigenous people. Is that fair?---No, and but if I have said that I'd like to be taken to the transcript.

Yes, in your - in your letter that you issued to the media, whilst there was this debate about whether or not you should be giving evidence, you wrote - sorry, you accept that that letter is something you wrote? You see the - - - ?---Yes.

You said "I have used rude and racist terms with (inaudible) any race, most often my own. I have done so in private with others with (inaudible) background. I should not have - I should not use these terms, and I am sorry for using them. But I used them, these terms in the past, I have meant nothing. Words only mean what the person using them, or hearing them puts a value on them. If I were to insult you in a language you didn't understand, it would be meaningless to you. You don't get to choose what meaning someone else puts on the words to use" etcetera. I can keep going if - - - ?---No I accept - I accept that. Sorry, I thought we were asked specifics on - about something, a bit more specific.

Sorry, I didn't hear you?---I thought we were talking about something more specific. I accept that.

Yes, okay. I'm putting in that general way. You'll understand where I'm going in - - - ?---Yeah.

You - - -

THE CORONER: I don't think we got an answer to your question, Mr Boe.

MR BOE: I'm sorry, you're more alert than I am.

THE CORONER: So in light of that - - -

MR BOE: Yes, I'll ask it again.

THE CORONER: - - - yes.

MR BOE: You accept that you often spoke, using words, during the course of your work as a police officer, which were racist and clearly offensive to Indigenous people?---I accept that I often spoke in private, in the course of my time as a police officer in racist terms. The “often” is due to the fact that I have spoke about, in racist terms, about multiple races, including my own. In regard to Indigenous, I believe there is four messages that could be called racist by me. So I don't - I wouldn't say often, in regard to Indigenous.

And if I could take you to the reference, but you accept that some of the words you used in that environment were clearly offensive to Indigenous people?---Yes.

You accept that some of your private messages - including to other police, also used such words?---Yes.

You say that that reflected - I am summarising completely here your reference to the TRG and your experience from sergeants et cetera - you say that that conduct reflected similar language being used by many other police in the station?---Yes.

Is that fair?---Yes.

And you used a phrase that the use of that language was normalised by others, including officers more senior to you?---Correct.

And the racism that you are referring to as mostly racist language about Indigenous people?---In the police station around me, yes.

Yes. You, in giving your evidence, included sergeants in that cohort, fair?---Yes.

And you specifically excluded Sergeant Bauwens and Sergeant Kirkby, you remember the evidence you gave under examination by Dr Dwyer?---Yes.

You mentioned to her Honour that you had read that the use of racist terms can dehumanise people the subject of that language?---Yes.

And is that reading a reference to the report tendered in this proceeding by Ned Dobos?---No, I would say more likely a book by the author of - potentially David Grossman.

David who, sorry?---David Grossman.

And is that a separate book that you just have come across?---Years ago, yes.

That is before 9 November?---Correct.

What did you understand was the thesis from that author concerning the issue that the use of racist terms can dehumanise the people the subject of that language? ---I believed in that - in that thesis or study it was the fact that the use of racist language to dehumanise was a tool utilised by military to - in order to dehumanise

the enemy to allow soldiers who are - to be more conditioned to engage the enemy - to see them as less than human.

Can I just unpack a little bit about that. You knew that before you were in the ADF or after the ADF?---Potentially during.

During the ADF. And the reference to racist terms is, I think we've heard in movies like referring to the Vietnamese as "Gooks"?---Correct.

That is using a physical attribute, whether it be colour or their facial presentation as a means of using derogative terms about them?---Correct.

And the thinking being is that if you dehumanise your target you are more likely to be able to use lethal force because you are not seeing them as equal to you. Is that fair?---Correct.

That is what you had understood. Did you happen to read Dr Ned Dobos's report on this issue?---No, I don't - I don't recall that name.

You do know that it's part of the brief, do you?---Is there a title?

It's exhibit number 1029 brief and it has a statutory declaration and there's a - and your 10 page report - a 5 page report with (inaudible) references?---I don't think I've read that.

That's okay. May I just take you to it - and you don't - you can be shown it because I think sometimes it's easier to read it than - you will see that at - go past the statutory declaration and go to par 8?---Yes.

And for expediency, just read through quickly 8 and 9 at the moment, to yourself? ---Yes.

Tell me when you have sufficiently consumed that information. Perhaps even skip over that and go over the page to par 11, if you can?---Eleven?

Yes? And perhaps whilst you are doing it, so the others can keep up, Dr Dobos wrote,

"In addition to making killing routine, militaries sometimes deploy rhetorical devices that dehumanise the enemy. Informally, soldiers might refer to enemy combatants as 'Comms' or 'Gooks' or 'Sandmonkeys' rather than men and women. Describing people in such derogatory terms makes it psychologically easier to kill them."

Do you see that?---Yes.

That's aligning with what you were saying that you (inaudible), is that right?---Yes, correct, and there's a - although I haven't read this, there's multiple references to David Grossman, so yes.

So that's the person on the TV?---In the previous paragraphs. The first paragraph you pointed me to is - I've actually read those quotes before, so I am more aware of - I haven't read this but I've read parts of this.

Thank you. Thank you. So you understand the point that those two academics had been driving at and that in particular these two points, "It makes violence more palatable by generating contempt, disgust or hatred for its targets"?---Correct.

"It will allow soldiers to kill and to maim repeatedly without succumbing to psychological disintegration and without being overwhelmed by feelings of guilt and remorse?---Yes, I believe it's an attempt at that.

Now, did that - when you were being trained as an ADF soldier, was that approach taken to assist you, because I - if I may say - I would find it difficult to shoot somebody to kill them? And so were you given assistance to overcome that restraint or anxiety?---They're - not - not in - I believe this has been no longer utilised - definitely not officially. There were other methodologies, yes.

But did you experience that your cohorts in the ADF did, in fact, use that sort of mental training to assist them. Did you hear those words being used when on patrol (inaudible)?---Yes. We'd often call Taliban "Terries".

Terries - as in "terrorist"?---No, as in "Terrie Taliban" just like I believe in World War II some people referred to Germans as "Gerries".

And things like "Towel-heads" for the way they wear their scarves and things like that?---Yes, but in my unit "Terries."

So are the Dr Dobos' thesis - and I can take you to it if you need to - is that once a person leaves the ADF there's a real need to demilitarise their thinking in dealing with ordinary people when they return to civilian life. Do you understand?---Yes.

You'd agree with that, there's a need for there to be hopefully some assessment program to ensure that that training - which was absolutely necessary to be a member of the ADF, in the view of some - but would be counterproductive in engagement with people?---Yes, I couldn't - I can't say for everyone that it would be necessary for the entire cohort but it could only be a positive thing.

Were you, in fact, given that sort of assistance once you left the ADF?---No.

And would you accept that if, for example, you were returning from the ADF and would be involved in, say a recreation like surfing, you may not be as critical, but if you were going to pursue a career in which many of the people that you were

dealing with would have different physical attributes, whether it be race or culture - sophistication, that this becomes a critical area of focus for you?---Yes.

And did you find that many of the people that were enrolling or seeking recruitment in the NTPS did have ADF experience?---Yes, I believe there's a large percentage.

Did you intend to say earlier that, "Whilst it may be relevant for some ex-ADF people, you did not think it was necessary for you?"---I wouldn't, "Necessary." I understand that the use of these words can dehumanise them. In my personal – in my opinion of myself, I don't believe I was affected by that.

Now, this is leading to, really, the point of this very cross-examination. Did I – or examination. Did I understand that you make a distinction between the usage of racist terms and names in language, in private, and even within the police station as being different from directing that language to a person that may have those attributes?---I believe there is a difference, yes.

And the distinction that you make is, "The former is not racist, but the latter may be racist?"---If the former is conducted about all races - - -

No, just stick to the program. I just – stick to. I am talking about racist terms about Indigenous people in the police station?---If it was - - -

Or, sorry. Or in text messages amongst police?---Yes. If it was only about Indigenous people, then yes, racist.

It is racist, okay. But you say that, "There is more harm caused if it, in fact, it's directed at a person that may have those attributes?"---I believe so, yes.

Do you accept, however, however that distinction is played out intellectually, that the fact that a person in your position as a police officer uses that language whether privately or not – even privately, I should say, does say something about that person?---Yes.

See, when some of your colleagues have been taken to task, if I may use that word, about being shown racist messages, or having conceded that they have used racist language, they have often said, "I have read that. That is not who I am." Or words to that effect. Have you heard that evidence?---Yes.

Or, "I have no explanation why I used that language?"---Yes.

Like your friend Sergeant Bauwens (inaudible). May I suggest to you that that expression, the first one, "That is not who I am," is in fact completely inaccurate. Because it does say something about who they are? Do you accept that?---"That is not who I am." If you look at the person as an entirety, obviously someone is made of lots of things.

Yes?---And you can't – I accept, for example in my regard, in my use of racist terms and offensive terms, and the way in which I speak and everything that has been seen that I have said. That is a part of who I am. I accept it's a part. So, if we make that - - -

All right, I?---Slight concession, yes, it's a part.

I was just giving you the opportunity to respond in a way which other people have dealt with it. The fact that you yourself have used that language, does that commit some assessment to part of who you are?---Yes.

That you are at least in part - conducted yourself in a racist fashion?---Yes.

You gave evidence on Monday when Dr Dwyer was examining you. We first had issue concerning the TRG (inaudible)?---Yes.

And is it referring to that generally at the moment and if you want me to give you the specifics I will. The general notion, if I may say you were saying is that, "Your explanation, or you utilising that language and conducting yourself in that way was because it – that racist culture had been normalised within the cohorts of the Northern Territory police force." Is that fair?---Yes. I obviously have to take responsibility for myself. And I did it, no one made me say anything.

Yes?---But yes, it was normalised by the culture.

And I know you have done that, this is not what I am getting to. You would accept, would you not, that your evidence on that issue was that there was in fact racism in the Northern Territory police force?---Yes.

Now, when you were interviewed by Ms Shorten, you were asked this question.

THE CORONER: Number?

MR BOE: Question 236, your Honour.

"And is the Northern Territory police force a racist police force?"

And your answer was:

"No. Definitely, no. Yes, there is no racism involved in the police force that I have seen."

Now I accept that the word, "Seen," might be specifically used. I suggest to you that you actually meant, "You hadn't heard of, or knew of any racism in the Northern Territory police force?"---I stand by the fact that I haven't seen a police officer acting with – showing racist behaviour on the streets, on the job. So, obviously, four years later and with growth, and knowledge about the words spoken et cetera, my opinion

is I am growing and learning. But I still stand by that I don't recall ever having seen an overt behaviour that was racist. That I could tell was racist.

That is why I gave the preamble earlier that that interview should be seen in the context of when it was done, and when you were in jeopardy, and you were looking at ways to paint yourself in a particular way?---I agree with the first part, 100 percent. It was – it needs to be viewed under the point that I was under immense - - -

Yes?---Pressure. The end of it, I don't concede that.

Well, what I am saying is, the question was a fairly open one. I didn't ask, "Had you seen anything?" It is a very open one in a series of questions in which there was a lot of media agitation at the time of the shooting that this was the act of a racist cop, et cetera. That was it. That was the circumstances in which you were prevailing at the time of this interview. Fair?---Correct.

What I am suggesting to you is that you gave an answer of that kind which did not seek to distinguish your perception of racism in the way in which I have sought to do so today. That's fair?---Fair.

And that you didn't explain it in any way to suggest that, "Look, I personally haven't seen something, but you should know about this stuff about the TRG. You should know about this." You actually gave an answer that was quite misleading on that issue. Is that fair?---That's fair, yes.

Now having given the explanation for how you felt that it was acceptable to utilise or tolerate racist words, you don't for a minute content that that is anything more than an explanation. It is not a justification for using that language, or having that conduct?---No, not at all.

Sergeant Kirkby, candidly conceded that, "His exposure to police work with Indigenous people was such that he formed negative views towards Indigenous people." You heard that evidence?---Yes, I recall that.

Now, when you were asked about this at question 43, the question was:

"Now how does your experience working in Alice impact on you personally? Your perception and attitude towards the Indigenous population over the last three years?---I know it may be hard to believe, I don't care what race anyone is. I never have, and never will. And it – race, will never affect how I police, or my perception regardless of how many jobs we attend. I don't – again, I care about people's behaviour, not their race."

Would you accept that that's the answer you gave?---Yes.

And accepting the context that we have discussed, can I just unpack that in a nuanced way? And I will try to do it slowly. Do you accept that not taking into account an attribute of a person can sometimes be both negative and

positive?---Yes.

So, for example, your view is that, "You don't regard a person's race in determining what – how you treat them, you only look at their behaviour?"---Okay, so – yes.

So may I suggest to you that there's another way to approach it, that if you do not take into account a - an attribute, in fact you're treating them quite unfairly. May I expand on that, or do you want to think about it?---No, please.

If a person is hard of hearing - - - ?---Mm mm.

- - - and you do not take into account that they're hard of hearing in the volume you use in speaking to them, that would be treating them unfairly, if you assume they heard you?---Yes.

If a person was blind, in the same circumstances?---Yes.

If a person's proficiency in language or such, you could in fact be treating them unfairly?---Yes.

If a person's language is such that when they speak English, that the way you speak to them can result in a miscommunication, if you don't take into account that attribute?---Yes.

So, for example, have you heard of work concerning the - a professor called Diana Eaves at all?---I don't think so.

Yes, can I just give you a summary, and I may move this along. There's a notion that's accepted I think, generally, that in questioning between police and Indigenous people who are using English, there's a concept called "gratuitous concurrence"?---Yes I know what that is.

You've heard that before?---Yes.

That is, the way in which you ask a question, may in fact illicit a concurrence, which is in fact not reflective of the truth of that persons response to your question?---Yes.

And you would understand that within police circles, there's been a controversy about interviewing Indigenous people with leading questions, as to their involvement in an event, and utilising that as an admission, for example?---Yes.

And you know, the phrase was often used verbally?---Yes.

You put things to them, "You saw them didn't you?---Yeah." "They did it, didn't they", that sort of line of questioning, you're aware of that?---Yes.

Did you, in your attempts to properly communicate to people, Indigenous people whilst policing, take into account that concept of gratuitous concurrence?---Yes,

I believe I took that - I attempted to take that in account with people of all races. I believe it can occur in all races, but I would have - it's in our training not to lead questions. I'm sure I made a number of errors in my time.

Have you experienced where police officers knowing that, use that to the disadvantage of the person?---I haven't seen that occur intentionally. I don't believe I have.

Did you see it happen and then be exploited later?---I've seen - I have seen it happen and lead to definitely false forms of confession. The confession, if that's enough to say, like but not in an official interview room, for example.

It may not be how you did it, but you've - have you seen it used as a means of short cutting the investigation? That is, let's go talk to this fellow and see if he will fess up to it. And then the process utilises that - that advantage that a police officer may have?---Oh correct, it's occurred in this court room with witnesses, gratuitous concurrence, multiple times.

What with non-Indigenous people or - - - ?---With Indigenous witness. I've got the - the times in my head. I can remember the - and I don't know the cross-examiner - - -

Sure?---But I do - it has occurred in this court room. So there are examples of it everywhere.

Could you perhaps provide that to your solicitors and they can make submissions about that in due course, but the - the - and they might have the benefit of your knowledge of how (inaudible). Can I just go back to - and I will return to that issue, in terms of how you conducted yourself on 9 November. But I'm appreciating your candour in accepting that you understand that concept?---Yes.

May I go to - back to it, and I'm sorry to chop back and forth, but I'm trying to cherry pick through my - my documents. The training, in terms of the utilisation of force in the ADF is markedly different from the training, and concepts around the utilisation of force in the police service, is that fair?---The - the tactics, the weaponry used are different. When I was involved, rules of engagement have changed throughout units throughout time. My rules of engagement, whilst I was in the service - - -

ADF?---In the ADF, my rules of engagement were - I would - I would need to see them, but I believe they were very similar, if not the exact same laws that constitute to use of lethal force in Australia.

I've been imprecise. I'll go directly to the point. When you were trained to use force in the ADF, whether hand to hand or using weapons, that training is both physical and psychological? And I mean psychological in the sense that we've discussed about dehumanising, and physical in terms of what you seek to achieve in using lethal force (inaudible)?---Yes, the psychological elements of it come in in - in the physical training.

Yes?---So it's more together, yes.

Yes that's right, that's why I put it that way?---Yeah.

So you're agreeing with it?---Yes.

That is, the training is both physical and psychological?---Yes.

Now, you understood that if the situation warranted it, you shooting somebody at point blank range, whilst in the ADF, was lawful?---If the situation warranted it, if my - my rules of engagement say that if my life was in danger, and a soldier or a civilian's life is in danger, I believe, I need to see this, I believe it's the yellow card, our rules of engagement and our training stated, shots to centre of scene mass, as per the police force, until the threat is neutralised.

Can I just be more particular. You don't need to be realistically fearing harm or death, to be a sniper and shoot somebody 300 metres away, do you?---I was never a sniper. The rules of engagement do change. I'm not trying to fight - I'm not trying to fight you - - -

No, I understand, look let me - - - ?---My rules of engagement were very, very low level, so they are very similar.

Okay, sorry. But just cutting through it a bit, you knew that in a combat situation, you could kill somebody, and it would be regarded as lawful?---No it's a lot more detailed than that.

I'm not going to get into the territory of Ben Robert Smith's discussions, you know, about whether or not a person - a combatant was armed, whether or not - I'm not interested in that. But the general philosophy of going to war, with a gun, is to shoot people? You're using your collective force to physically overcome an opposing collective force, who are armed?---I believe this question is better for a higher level ranking officer in the Army.

I (inaudible). What you did discover in becoming a member of the NTPF, was that the use of lethal force is such that "Any use of force that is likely to cause death or serious harm 'must be an option of last resort'"?---Yes.

And that's where, and we've heard your evidence of various forms, that you were taught various things about that concept, fair?---Yes.

Including the whole knife equal guns concept?---Yes.

And the shooting of the centre of mass concept, and to keep shooting until the threat is incapacitated?---Yes.

Or "neutralised" to use your word?---Yes.

Now, you're aware that that was a primary point of persuasion utilised at your criminal trial?---Yes.

And that the phrase "edged weapon equals gun", or "knife equals gun" was deployed by your senior counsel at trial as an explanation for the way in which you conducted yourself on 9 November?---Yes, part of it.

And are you aware that following your acquittal that the Commissioner of Police authorised the issue of an alert to all of the Northern Territory Police Force, which noted three things: "The belief that knife equals gun is a misconception." You're aware of this alert, aren't you?---I believe I was made aware at the time I - but I'd like the refreshment details.

I might read a few quotes and others can correct me. It also noted that the phrase couldn't come from past training, but it has since be used "incorrectly, poorly explained or wrongfully interpreted." And the third point in the alert: "Operational training does not use this phrase, as it bears no true resemblance to an officer's situational awareness, available tactical options and decision-making when confronted with a weapon, including an edged weapon." Do you accept that that's the alert?---Yes.

That was part of the alert?---Yes.

In your evidence at trial, there were questions concerning of the term double-tap. And I think you referred to as a controlled pair?---Yes.

And in short compass, Mr McMahon SC took you through - took Mr Bauwens through it. And you heard the evidence about that (inaudible)?---Yes.

You listened to that evidence?---Yes.

You agree, I take - with Sergeant Bauwens' responses to that examination?---No, I have a - an explanation. Sergeant Bauwens - there's many different terms that these things could be used. He may - he's - I believe he said he didn't know the term "controlled pair." But in fact, he described in other parts of his evidence a controlled pair. So there's - there's - a similar tactic can be - - -

The term - I'm not - I'm not attached to the term?---Yeah.

I'm concerned to the training and the way in which that action is executed?---So I'd need to get - - -

For example, my understand is that double-tap is a way of shooting at a target, which involves quick-fire shooting without resighting the target?---Yes. Double-tap is a thing that, as far as I'm aware, being away from that world for a number of years, but double-tap is thing that I'm aware now is being moved away from. You take one site picture, fire the trigger. At which point, the gun is naturally going to recoil in - and you cannot tell, specifically, which direction or - it's obviously going to go

upwards, but, specifically, what direction that gun is going to recoil. And then as - basically, as fast as you can, you pull the trigger again, not utilising the principles of the firearm principles. Therefore, the second round of the double-tap, you cannot be sure of where that is going to land. So you cannot be sure of your target. Obviously, that becomes more and more problematic the further your target is away, as the distance between those rounds will enlarge.

The purpose of it is to have maximum impact to the target area. Is that fair?---I would say the purpose of it is to have a lot more impact. Maximum impact would be emptying your magazine into it.

Doubling the impact, when you're comparing it to a single shot?---Yes.

Hence the term "double-tap"?---Yes.

And what you did in those 2.6 seconds at 7:22 am on 9 November was a double-tap, wasn't it?---It wasn't. And I believe the - to gain further evidence more than just me speaking about it, it would or could have been easy for a firearms presentation at the range just down the road that the police obviously could have done. I believe they're firearms instructors. Now, are definitely up to date with the difference between a double-tap and a controlled pair. It could have been very beneficial, because this is a point of contention, for an actual physical demonstration. In lieu of that, I am sure, on YouTube, for a physical demonstration, which may be better than my demonstration - my explanation, a quick YouTube search of double-tap verse controlled pair may be beneficial for parties.

Mr Rolfe, I've been misunderstood in my question. However you term it and whatever distinction may be made in terminology, you discharge, in those 2.6 seconds, two shots without resighting, such that the bullets were likely to enter the same point?---I disagree.

They did, in fact, enter the same point, didn't they not?---I would have to look at the images of the entry holes.

These are the evidence on that. But you were shooting at point blank range, correct?---It's been accepted that - - -

You accept that, don't you?---I accept that it was extremely close.

Intent be high in those two shots, on your part, was to continue to shoot until you believed you had neutralised the danger?---Until the threat was incapacitated, correct.

Knowing that, given where you were pointing the gun at that time, it was likely to kill that boy?---I was following my training as per - - -

Didn't ask you whether or not you were following your training. I'm going as to you state of mind at that point in time, you discharged those guns - and I know you

explained and you've been acquitted, so don't fear any consequences. Help us understand what was your intent; your intent at that point in doing that action was to kill that young man?---Yes. And I would say - not - I'm saying yes to your correction of calling him a "young man" versus a "boy", which I've previously brought up as - that - in regards in my knowledge of - - -

I accept - - -?--- - - - Aboriginal culture, that would be extremely offensive - - -

- - - that, forget the boy – forget those sorts of distractions?---But no, I do not accept that my intent was to kill.

But you knew what you were doing was likely to kill?---I - I knew that was a possible outcome, yes.

Likely outcome?---Yes.

Can I just turn to the conversation we've been having in this inquest about the Immediate Response Team, IRT?---Yes.

And again, I'm going to skip through much of the detail that Dr Dwyer helped us through in your examination so far. So if you want me to go back to anything, please let me know. You accept that your interest in being a member of the IRT was something you thought would utilise the skills you believed you have in the use of firearms?---Yes, I accept that.

And as a result, at the recruitment phase and also in terms of your work in the presence of the officer in charge and senior officers, is that you were very enthusiastic about your membership on that team?---Yes, I'd accept that.

And it was a team in which you had a significant role, in terms of how the assembled, trained and, on occasions, how it acted under deployment?---I would disagree with that.

Which part?---The significant - the word of "significance."

All right. You had a role other than just simply being a member in the way in which training is undertaken, for example?---Sometimes I assisted.

And you had a role on occasions where you were a team leader, even though you were not allocated team leadership?---Yes. Again, I would - I don't think I would ever have been called a team leader, but leadership positions, yes.

You had conversations, and I can take you to them, if you like, which suggest that you had Sergeant Bauwens' ear on these sorts of issues?---Correct.

You felt he would take into account what you had to say, fair?---To an extent, yes.

And you attempted to contribute in the IRT becoming a more effective part of the police service in Alice Springs?---Yes.

That included asking that a friend of yours from the ADF days could patrol with the IRT. Talking about - you know who I'm talking about; I - - -?---Yes.

In circumstances where he had not, in fact, been through the enrolment process with IRT?---Yes.

So your say so of that person led to and was part of him being accepted by the OIC as being deployed as part of the IRT?---My say so was part of it, yes. But I'd also shown Sergeant Bauwens a number of incidents that constables are involved in that were utilised for some forms of training of examples of good things. So there was a - one extra - yes.

I understand. You would accept then that on the issue of those who may be deployed with an IRT, failed to have adherence to standard operating procedures concerning the membership of and deployment of the IRT. And I'm not suggesting that this is your failure. I'm just simply saying that that's an example?---Yes.

SOP says, "There's a particular procedure by way senior command assess applicants for them to be able to be deployed as an IRT." Correct?---Yes, correct. I think the only difference would be, there is the roles in which - that constables are involved in. He wasn't considered a member of IRT and as an attachment.

I don't want you to (inaudible) for the moment. What happened was, he was deployed as part of an IRT deployment?---Yes, I believe so.

Without his involvement or recruitment being in line with the SOP. Is that fair?---I believe so, yes.

I'm not suggesting you're responsible for this. I'm just simply asking you to acknowledge that fact?---Yes.

Are you being distracted?---Yes, but it's all good. Not that - no, it's all good.

You just had your - - -?---It's all good. I'm just watching.

All right. In fact, were you ever shown the SOP prior to 9 November 2019?---I was, yes.

And in what circumstances where you shown it?---I know I was shown it and read through it prior to during my two week training period. After that, I can't recall.

Okay. You've heard Sergeant Bauwen's evidence on that?---Yes.

He candidly accepted that it was not distributed amongst team members. Do you agree with that?---Yes. You see, because I recall that I've read it, I'm unaware if

I had access to it from that moment onwards, but I know that I've read it.

Now, in simple terms, the only difference, the deployment of an IRT, then the deployment of additional general duties police officers, is that it was thought that the additional training would equip you to be able to provide an interim support asset in particular high risk situations?---I believe that was sometimes the case and sometimes it was just to provide additional general duties support with a - - -

That's why I put the question as I did, that the only difference is, like for example, general duties officers could be deployed to be a force multiplier for other general duties officers?---Yes.

Okay? So the IRT did do that sometimes. Correct?---Yes.

But the additional feature of the IRT deployment is that they could provide cordon and control support in high risk situations?---Yes, as an additional feature, yes.

Now, the membership of an IRT did not provide a member of an IRT to take actions any different from the general duties officers. Is that fair?---Yes, I believe so.

If the function of an IRT is to provide that extra capacity to cordon and control, what did you understand was the necessary numbers to achieve that capacity, bearing in mind some of the answers that you gave to Dr Dwyer on this issue?---That was a - one of the features that IRT was capable of. All police are taught in cordons, but it depends on the specific location. A cordon requires - an effective cordon requires a large number of people, depending on the location.

Let me help you?---Yeah.

I'll summarise it. Depending on the circumstances, three people might be sufficient to cordon and control a suspect. One door in a building, no other point of entry or exit. To control that person inside, you may not even need more than one. But you had three?---Correct. Because the walls are acting as part of the cordon.

Correct?---Yes.

So if you're in an open field, the numbers increase to effectively cordon and control?--Yes, you need enough numbers to effectively control the entry and exit of persons into and out of that location.

So one would think, if I may suggest, that a place where there are two points of entry or exit, four might be sufficient. Leaving aside windows at the moment. So two points of entry and exit?---If there were only two, four might be enough, yes.

Now, before I get to what actually unfolded once Kumanjaya Walker was the subject of the IRT's interest, I'm going to put some propositions to you, and you can comment and explain as you see fit. You accept that you did not disclose to the OIC

of the IRT that issues rose during the ADF service which meant that you did not become a member of the elite SAS team. Is that fair?---I did not disclose that, yes.

You did not disclose to Sergeant Bauwens or otherwise discuss with him that Sergeant Vickery - - -?---Superintendent.

Superintendent Vickery had declined to support your application to be a member of the TRG?---I may have, but not in a formal sense.

You did not disclose to Sergeant Bauwens that you were the subject of use of force investigations which had not been finalised. You did not disclose, I'm not saying whether they knew or not?---Yes, again, never formally.

You did not disclose the findings by Judge Borchers in relation to the Malcolm Ryder incident?---Correct.

You did not disclose to Sergeant Bauwens that you had been consulting a mental health practitioner concerning some mental health issues that you were experiencing at least by the time of October 2019?---I think it was just a GP.

I think they're called mental health practitioners, but anyway?---If they are - a general practitioner, a doctor.

That doctor prescribed you with specific medication hoping to assist you in the symptoms that you had disclosed?---Yes.

So getting back to the question, you did not disclose to Sergeant Bauwens that that diagnosis had occurred and a medication had been prescribed?---Correct.

Now, just going to - I only want to ask two questions, two additional questions concerning that medication. When you were prescribed that medication, were you told that there are potential side-effects from taking that sort of medication?---Yes, I believe the GP explained some side-effects, but explained that the dose was small that it was unlikely.

So you were told of potential side-effects, but with the reassurance that that which you'd been prescribed properly taken, that you should not be experiencing those side-effects?---Yes. And not the full list of side-effects that's listed under that drug that I'm now aware of.

You're now aware of Professor McFarland's report concerning that?---Yes.

You're now aware that potential side-effects include seeing or hearing things that others do not see or hear?---Yes.

Thoughts of harming or killing yourself or others, over-excitement or losing touch with reality?---Yes.

You do accept that they are potential side-effects of the drugs that you'd been prescribed?---Yes.

Did you take the medication as prescribed?---Yes.

Did it help you in any way, that medication?---Yes, it started allowing me to sleep (inaudible).

And did you experience any hint of any of these side effects?---No, not at all.

You would accept that the first of those potential side effects is probably not something the person would be able to be aware of. That is, "Seeing or hearing things that others do not see or hear?"---Yes, yes. Correct.

So, you wouldn't know if that was in fact a side effect from the medication?---Yes, it would be very difficult to know. Yes.

For example, in this case on several instances, you have disputed what others have alleged that you must have heard. For example, (inaudible)?---In regard to – I am not disagreeing, I just need a quick - - -

Well, you know what I am talking about. You have given narratives in which you have disputed hearing something when others say, "That that was said," for example? Well, I take you to a specific point if that is what Mr Abbott wishes. I would like a general answer first?

MR ABBOTT: Well, I object. Because the inference is that these (inaudible).

MR BOE: Is that what you do? Could you address her Honour (inaudible)?

MR ABBOTT: Yes, of course. The question has within it the suggestion that if he did what's put to him is in fact one of the side effects that affected him.

MR BOE: No, it didn't.

MR ABBOTT: Well, that's - - -

MR BOE: Well, I will rephrase it - - -

THE CORONER: I don't think he has gone that far yet - - -

MR BOE: To remove that suggestion - - -

THE CORONER: But I think the question needs to be clarified and put more specifically, Mr Boe.

MR BOE: Mr Rolfe, may I – I promise you I am not trying to trick you. I am just trying to get to the facts of your perception, okay? You have accepted that that potential side effect is probably something difficult for the person to detect. Correct?---Correct.

And I am suggesting to you now that there is evidence that that may have occurred without you being aware of it?

MR ABBOTT: Well, how - - -

MR BOE: And I will get to it specifically, Mr Abbott.

THE CORONER: I think you do need to go to the specifics - - -

MR BOE: Thank your Honour, I will - - -

THE CORONER: Rather than proposing a general statement like that, Mr Boe.

MR BOE: I will get to it in – yes, thank your Honour.

You know that there is independent recording of many events that have been traversed in this inquiry?---Yes.

Including from your own body-worn-video?---Yes.

And there has been – some of these things have very vividly captured the language being used. And sometimes it is hard to actually hear what is being said?---Yes.

And there has been suggestions made, and I will get to the specific one, that something was said, and you have said, “I didn’t hear that,” for example? You know what I mean?---I am with you now, yes.

You are comfortable in answering the questions? You understand why (inaudible)?---I believe I am with you in the instances you are talking about.

So, at the moment all I am trying to get you to accept that – is that you may well have been suffering that side effect of that medication without knowing it?---In that instance, I disagree because I have subsequently listened to the body-worn-video, and I still believe I heard what I heard. Or that’s what I heard.

I have no doubt that you are going to adhere to your perception of what you know. I am not traversing that. I am not challenging that.

MR ABBOTT: (Inaudible).

MR BOE: I’m sorry?

MR ABBOTT: I am not quite sure what the incident is that you and him in fact understand?

MR BOE: Okay, let's – that will be elucidated in good time.

MR ABBOTT: All right.

MR BOE: Getting back to my primary point on that is that that being a potential side effect, do you accept that you ought to have disclosed the fact of taking that medication to the officer in charge who was deciding who to deploy on 9 November 2019?---Yes.

And that is a failing, I take it, that you regret?---Yes, I should have disclosed that.

And you did not disclose it to the others who were deployed with you?---No, I did not.

And can you see how – what the potential dangers of that might be?---Yes.

So, you are putting others at risk, potentially. Fair?---Potentially, yes.

And your perception which may have been affected by side effects, potentially put the people you were going to interact with at danger?---Yes. I don't believe they did. But yes.

Well, you wouldn't know if they did or not. That's my point?---I don't concede that.

All right, we will get to that. Do you accept that a responsible discharge of the decision maker to deploy you needed to have that information?---Yes, I should have got a report from the GP and disclosed that.

And do you accept that had you done that, that there was a possibility if not a likelihood, that you would not have been deployed on 9 November 2019?---From the advice of the GP that I received, I don't believe it was likely. It was possible.

No, what I am saying is, if the person deploying armed IRT people into a remote Indigenous community was told that, "A side effect of the medication I have been prescribed and which I am taking, has these side effects," I suggest to you that you should not have been deployed?---Based on Alex McFarland's (sic) report - - -

Andrew McFarland?---Sorry, Andrew McFarland's report. Yes, I would agree.

So, that failing was one – was one which was contributed to by your failing. You accept that?---That I'd had different information before the shooting. Based on the GP's report in regard to the extremely minor dosage, the GP – the information I was given was that there would be extremely minimum side effects. She knew I was a police officer. And she believed that I would be completely fine to work in regard to my duties. She knew what they were. Based on Andrew McFarland's report, I am not sure if it goes into dosage, obviously it leading just with those side effects with no

further details about the – details of the actual dosage and the information that the GP gave. Based off just a list of those side effects, of course, I agree.

But you accept that we will never know what impact that medication had on your conduct?---I - - -

MR ABBOTT: I object.

THE CORONER: Yes.

MR ABBOTT: “If any.”

MR BOE: Of course.

THE WITNESS: I think there could be further details in regard to exploration of the dosage, my weight for example, my - - -

MR BOE: No, my point is we will never know what impact, if any, the medication you were taking impaired your conduct on 9 November?---Correct.

Okay.

Now may I just inquire so I can cut what I don't need to? How much longer would your Honour be willing to permit me to continue? I ask that genuinely because I (inaudible).

THE CORONER: Yes, no – I know.

MS DWYER: Could we take the morning break? I must just take some instructions for all of you.

THE CORONER: I haven't had my assessment here.

MS DWYER: (Inaudible).

THE CORONER: I haven't had my assessment here, but I might not be as accurate as others. Ms Forbes(?) has an assessment. We later focus on it - - -

MR BOE: We need that in (inaudible), please, both of you.

MS DWYER: But perhaps I could check with my learned friends and then we could resolve it during the morning break.

THE CORONER: Sure, we will take the morning tea adjournment and return in 15 minutes.

ADJOURNED

RESUMED

ZACHARY BRIAN ROLFE:

THE CORONER: Yes.

MS OZOLINS: Your Honour, may I just very briefly, so as not to take up Mr Boe's time, but re-announce my appearance if you like. I apologise for being absent for the last few days.

THE CORONER: Thanks, Ms Ozolins.

Yes, Mr Boe?

MR BOE: Mr Rolfe, you are acutely aware that I have got time limits and counsel has important issues that follow so it is going to be even briefer in the way I intent to make propositions and get onto it. Firstly, may I just show you a document entitled, "I was a good cop - Zach Rolfe breaks his silence". You are familiar with that document?---Yes.

Do you accept that that is a publication in which you contributed that was published by The Australian newspaper?---Yes.

Your Honour, I tender that document.

THE CORONER: Yes, that will be - - -

MR BOE: Well, I am tendering it to make it part of the evidence.

MR ABBOTT: Yes, but it's not in - - -

MR BOE: I don't care, with respect, whether it is in the brief. I am just tendering that document.

THE CORONER: Sure. If it is in the brief, it is part of the evidence. If it's not it will be given another exhibit - - -

DR DWYER: It's not already in the brief, so it needs another exhibit number. I am told it should be numbered exhibit number 26.

THE CORONER: Thank you.

MR BOE: I was asked to tender it. It's going to be my document.

DR DWYER: If the evidence doesn't make sense without it then it needs to be - --

THE CORONER: Sure. Are there additional copies of that document?

DR DWYER: There are.

THE CORONER: Could I get a copy, please?

DR DWYER: Certainly.

EXHIBIT 26: The Australian newspaper article.

THE CORONER: Thank you.

MR BOE: And with due respect my time starts now. Mr Rolfe, when you left the station at Yuendumu it was about 7 o'clock pm that night, the 9th?---Correct.

I am not going to cover the disagreements as to what had been said to you by Sergeant Frost and what you perceived your plan to be. But do you accept that at that point you had assumed the role of being the leader of the men with you?---Yes.

And that included the other members of the IRT and Sergeant Donaldson?---Yes.

As soon as you left the station you went directly in your vehicle to House 577?---Yes.

That being a house identified as a potential place at which Kumanjayi Walker might be?---Yes.

You went inside that house and searched it?---Yes.

In searching that house you did so to attempt to find him?---Yes.

And in language you have used with Kirsten Shorten, you "went in blind"?---I would - I would need to get written - read you that particular instance.

I stand corrected. You used that phrase in relation to House 511?---Understood.

You accept that, don't you?---Yes.

I will read it to you if you want?---No, I understood you.

You certainly didn't go in to House 577 with any belief that Kumanjayi Walker was inside, did you?---No.

You went in - on your evidence - because you believed you had permission to do so?---Yes.

And you believed that you got that permission from Ethan Robertson?---Yes.

A man that was lying down on a sofa or something like that, on the outside?---That's 511 again? 577 Ethan was standing up I believe, hosing or raking.

But he was certainly outside the house?---Correct.

You entered the property without any permission, correct?---Entered the actual - - -

Yard?---Yard. Yes, as we were allowed to do, yes.

Well, you may or may not have been allowed to do. That allowance that you are speaking about is not due to any communication by anybody at that place?
---Correct.

You are suggesting that you had implied permission to enter the yard?---Correct. Implied permission to enter the yard because we were conducting lawful duties.

In order to knock on the door, for example?---For example, yes.

So just to be clear, I am talking about permission given to you as applies to permission you believed you had?---Yes.

And you did not tell anyone within your team that you were going to enter the house to search until before you did so?---I believe I told Constable Kirstenfeldt that we were going inside.

I won't go to the evidence in detail but I suggest to you that Kirstenfeldt asked you - after you had been in, "Did you go inside"?---Kirstenfeldt came in the house with me.

Right. That happened as a result of my miscomprehension. In any event, when you left House 577 you had been given some information by a 10 year-old boy there?---I believe so, yes.

And you were circumspect about the truth about what you had been told?---Yes.

I wasn't going to use the - sorry - the evidence you actually gave was, "I still believed it was required of us to search the house as I don't trust the word of a 10 year-old child as actual intelligence"?---Yes.

And that's why you say you asked permission of Ethan to enter his property?---To enter his premise.

Well, this is your words, "And I asked permission of Ethan to enter his property"?---I accept that then.

Now, the entirety of your communications with Ethan Robertson was captured by the recording device on your body-worn video?---Correct.

And you say "We need to look at it to determine whether, in fact, we were given permission".

MR ABBOTT: Could my learned friend clarify - I object, your Honour. We need to clarify whether permission - no permission is needed for a police officer to enter upon premises in the course of his duties. Permission may be required to enter upon a house on a property. I argued the extent of the implied right of a police officer's right to enter 33 years ago before the High Court in a case of *Plenty v Dillon*, so we're not - it's a right that's been established as part of Australian law 33 years ago.

THE CORONER: Mr Boe, can you just clarify precisely what you mean by "permission"? There is implied permission and there's, you know, specific permission given by a person at the premises.

MR BOE: May I just indicate to your Honour that long after Mr Abbott argued that case, the High Court handed down a decision in 2020 which has made clear the law in relation to this issue. There is a case of *Roy v O'Neill*, a matter in which one of the senior counsel at the Bar table - not Mr Abbott - argued with the assistance of one of the junior counsel at the Bar table - so he may be assisted in reviewing the law.

I am not asking you - sorry.

Insofar as the entry to a person's property, you say, as I understand it, you proceeded on the basis of your entitlement as a police officer to proceed to that house because of the implied permission that is available because there is a gate and a pathway to the door or the like. Is that fair?---I agree that I entered the property due to my lawful right in regard to implied permission.

You did not receive actual permission to do that, correct?---I did - yeah, correct, no verbal permission.

When you entered the house, you went in there because you believed you were given actual permission by Ethan Robertson?---Yes.

How did you determine that he was a person who could give you that permission, if at all?---He said it's his father's house. He's an adult male. In the property. Front door is open. I believe that's a - he struck me as a lawful occupier.

So none of the factors that you took into account involved a communication by him to you, is that fair?---I - from our conversation, in - like in addition - all the conversation that we had, all the elements involved, added to my belief that he was a lawful occupier.

Having left 577, you were operating on further information that Kumanjaya Walker may have gone to either House 511 or 518?---Yes.

And the - when you went to the fence line of 511, you had not had any communication with anyone concerning permission?---Correct.

You jumped the fence line?---Yes.

Without permission?---Without verbal permission. Again under the implied permission.

You were - you do say now that you, in conducting your duties, had implied permission to jump the fence?---Yes.

Having jumped the house - jumped the fence I should say, sorry. The decision to jump the fence by you, as a member of the IRT, was your operation decision?---Yes.

At that point, you knew you needed actual permission to enter the house?---I did, in my view. Yes, I can't speak for Eberl, but personally yes.

That house is in an enclosed yard with a standard height fence and a gate?---I standard what, sorry?

A standard height fence and a gate?---Yes.

You did not enter through the front gate?---Correct.

You jumped the fence at 7.18 pm, Northern Territory time?---I accept that.

Zulu 94850. You told the jury at your trial, you did this because quote, trial 1067, "I didn't see a gate on my side of the fence and I didn't want to lose sight of the house"?---Of that - that side of the wall.

Your words were "I didn't want to lose sight of my side of the house"?---My side of the house, I didn't hear my side, yes, correct.

Having jumped the fence, you did not walk to the front door, correct?---Correct.

Did you?---Correct.

Rather, you questioned random people that you encountered in the backyard?---Yes, my attention, I - once I jumped the fence - - -

Yes or no will be fine, you can put that submission later. And from the backyard, you had a conversation, over the fence, to a woman on the adjacent property?---Correct.

At that point in time, there were several people, including children, standing and sitting in the yard of 511?---Correct.

You still did not immediately go to the front door, correct?---Correct.

You didn't take any action to proceed to knocking on the door, correct?---Correct.

You did not go see if there was an occupier within that home from whom to seek permission, correct?---Correct.

The first person you spoke to was that woman I mentioned, over the fence, in the adjacent yard, correct?---Correct.

And do you accept - I withdraw that. And you gave evidence at your trial, transcript 12068, that you had permission to enter the house, correct?---Correct, I believed I had permission.

And the permission you were speaking about, was in the form of verbal authorisation, rather than any implied right to it, is that correct?---That was - yes.

Thank you. And you say you received that from the woman who you now identify as Leanne Oldfield?---Correct.

The recordings have you using the term "Hey missus, hey missus", frequently. You accept that in that - when you enter that yard?---Yes.

Why do you use that sort of term?---In my career as a police officer, that became a term that we were taught was a acceptable or even respectful term to engage with women that we didn't know their names.

Right. You say you were taught to use that title?---Yes, not officially, on the job.

So taught by your cohorts?---By cohorts, but also the people that we interact with.

I just suggest to you that some find that manner of speaking quite patronising. You may not have known that, I'm just suggesting - - -

MR ABBOTT: Well, may be - I object that - - -

MR BOE: Look, it's okay, it's a comment.

I'll put it another way. If you were being now told that that sort of term may be patronising, you would hope that police would not use that sort of approach in speaking to Indigenous people?---Correct.

When you asked if they had seen Rakeisha, Leanne Oldfield said "I am not from here." Do you accept that?---Yes.

I'll try to be precise, (inaudible)?---Yeah, no I'm with you.

You then said, in response to her declaration that she's not from that property. You said, "Righto, so whose house is this?" Correct?---Correct.

You would have understood at this point, that she was not a lawful occupier?---No, incorrect.

So are you saying that because she's present there, she might be a lawful occupant, even though she was not from there?---Correct.

Were you putting in your answer that you did not believe her, that she was not from there?---No, I believe she could have been a visitor in that house.

So you accepted that she was not from there, which carries with it, in interpreting that sort of conversation, that she was telling you that she doesn't live there?---I believe she could have been staying there.

You didn't exclude the possibility she was staying there, even though she was not from there, is that what you're saying?---Correct.

She then told you the house belonged to Margaret, which was a reference to Margaret Brown?---I accept that.

She told you Margaret wasn't - was not there, and in the video, she's pointing away from the house?---Correct.

And that was the general direction to the cemetery?---I'm not aware of where that is.

You then - your camera turned away from her at that point. You accept that?---Yes.

And at that point, no one had spoken to give you permission to enter the house, at that point. Fair?---At that point, correct.

And this is where I want to get back to; two concepts and I genuinely want you to embrace those two concepts in answering these questions. The first concept is the notion that you may have been impaired in hearing everything being said to you, okay, bearing in mind the dynamic situation that was there.

THE CORONER: In fairness, are you talking about impaired because of medication or impaired - - -

MR BOE: Yes.

THE CORONER: - - - because of the dynamic situation?

MR BOE: I meant to make them both part of it, but yes, separately. Did you understand I was talking about the impairment from your medication?---Yeah, I understood.

And secondly, the dynamic situation?---Yes.

And the second concept I want you to embrace is your appreciation of gratuitous concurrence in dialogue with an obviously Indigenous woman who is speaking to you in English, okay?---Yes.

And I know you've got a dispute about what you heard on this issue that arose at the criminal trial?---Correct.

I suggest that the recording says you asked, "Can we go check inside?" Do you accept that?---I accept that.

And you accept that you were directing that at a person who you had not ascertained was a lawful occupier?---I don't accept that.

Her response is, "Go, go, ask yourself." And you dispute that, don't you?---Yes.

You say, it may have been said, you didn't hear it?---No, I don't say that.

Well, you were asked this directly by Mr Strictland, I suggest, transcript 1157. So you were asked then of who you believed was an occupier so that you could go inside. "Correct".

"And I think you said, 'Whose house is that?' Is that right?---Correct."

"She said 'Margaret'?---Yes."

"At that stage, you didn't know it was Margaret Brown?---No."

"You said, 'Whose house is this, Margaret?' And then you said, 'Can we go check inside because we're looking for -', the question says, 'And did you hear her say, 'Ask her'?---No".

Do you accept that? You were asked if you heard her say, "Ask her", meaning Margaret, and you said you did not hear it?---I accept that.

Question, "You didn't hear Leanne Oldfield say that?---No, I didn't." That makes it clear, doesn't it?---Yes.

Just excuse me one moment.

HER HONOUR: Sure.

MR BOE: So I'm suggesting to you that the recording shows that you asked, "Can we go check inside?" and she says, "Go, go, ask yourself." I know you said you didn't hear it. I suggest to you that you then - well I suggest it's a leading question, thinking gratuitous concurrence, you then said, question, "You asked a question, 'Go, go check inside.'"?---I accept that.

And it belies the concept you didn't hear, "Go, go, ask yourself", when you use the same words in your question, I suggest? You said you didn't hear it, but you acted using the words she uses and add in there, "check inside". Do you understand what I'm putting to you?---I do.

And I suggest she makes no response to you whatsoever to your leading questions.

MR ABBOTT: I object to that. I've got what - I understand. I object though.

MR BOE: What do you object to, Mr Abbott?

MR ABBOTT: What I have is - what I understood and again I stand to be corrected - is a transcript which would seem to be accurate transcript and Ms Oldfield is recorded as saying, "Yeah."

MR BOE: No, I'm not cross-examining on a transcript you may or may not have, I'm asking questions of this witness for his evidence.

MR ABBOTT: He should be played this portion then, if he's being asked about what his recollection is. It's unfair. He needs to be played this part, because there's some discrepancy. As I said, from my imperfect preparation, I've had to work with transcripts.

THE CORONER: Yes.

MR ABBOTT: But in fairness to the witness, it ought to be played as to what he hears or what we hear.

THE CORONER: Given that there might be a dispute as to what he's - can be heard, I think it's fair to play that part, Mr Boe.

MR BOE: As your Honour pleases. It's more interim type (inaudible). May I seek Mr Boulten's assistance?

THE CORONER: Absolutely.

DR DWYER: It's the video - we think it's the body-worn video of Mr Rolfe, body-worn video 2(?).

MR BOE: Correct, that's right.

Just I can take some time whilst it's being played, Mr Rolfe, the context I'm asking you to comment upon, if not agree, is that the woman told you in response to a question that you asked, "Can we go check inside?" She responded, "Go, go, ask yourself." And she's motioning to where she had suggested Margaret Brown might be. And in response to that, I accept that you have denied hearing her say that. I'm suggesting to you that after she speaks, you say, "Go, go, check inside?", as question, and that there is no further response from that person?---Understood.

DVD PLAYED

THE CORONER: Can we just stop it for one second? Is there any possibility of getting greater volume?

THE WITNESS: Your Honour, there is no way I am going to be able to answer with this volume.

THE CORONER: Yes, no, we need to get connected to the speakers like we did before.

So, what I am told is that the audio on the livestream using the speakers will not be as good as the audio in the courtroom. And – but I would like it played over the loudspeaker for the courtroom.

DVD PLAYED

THE CORONER: Just stop it. Stop it.

We will give – can we move the speaker closer to Mr Rolfe?

Mr Boe - - -

MR BOULTEN SC: May I respectfully suggest we go back a bit too, please?

THE CORONER: Sure.

Mr Boe, would you like to come forward closer to the speaker?

MR BOE: Thank you for the invitation, your Honour. I would prefer not to, I have listened to it many times.

THE CORONER: All right.

Does anyone else want to come closer to the speaker?

MR ABBOTT: Yes, I would.

THE CORONER: Come forward, Mr Abbott.

MR ABBOTT: Because my (inaudible) - - -

THE CORONER: Maybe Mr Hutton can allow you to sit there for a moment while we play?

MR HUTTON: Certainly.

MR ABBOTT: May I stand (inaudible)?

THE CORONER: Sure.

Yes.

DVD PLAYED

THE CORONER: Stop.

Does that cover the area?

MR BOE: Yes, thank you.

THE WITNESS: In - - -

MR BOE: May I proceed at the moment to ask you some questions?---Pardon?

I am just going to ask you some questions now?---Yes.

Firstly, just going back, at no point prior to the entry did you believe you could enter that house without permission. Is that fair?---That was my belief at the time.

But that's the evidence you gave at the trial?---Yes.

Transcript 1156. And you made clear from I say your answers:

“That at that point with that state of mind that I didn't have belief on reasonable grounds that Kumanjayi was in that house. I needed permission yes,”

THE WITNESS: Correct.

MR BOE: That was your evidence. That:

“You asked permission from who?”

Answer:

“The lawful occupant.”

Correct?---Correct.

You say:

“Well for example, at this point in time, I wouldn't have legally been able to enter that house without permission.”

Correct?---Correct.

Now having seen that video, you accept that you – I am doing that old person thing of losing my (inaudible). Once you jump the fence, you did not go to the front door, correct?---Correct.

You – one person said, “They weren’t from there,” correct?---Yes.

And that you could see other people around?---Yes.

That person nominated whose house it was, correct?---Listening on that, I believe it was the – now again, and obviously with my memory of this incident so long ago. And all of the times of the days I have been here. I don’t know if we are saying names. I believe the other woman, ES, may have said, “I am not from here.” And previously you and I were discussing as if Leanne Oldfield said that.

Sure, okay, I understand that?---That’s what I’m – so yes. So, the other person said, “I am not from here.” Not Leanne.

Okay, that (inaudible). With respect, thank you for that. Not interested in that distinction at the moment. Whoever said that, neither of them were inside the house. Correct?---Correct.

You did not ask them who they were. Correct?---Correct.

You didn’t – you do not ask them why they were in the yard. Correct?---Correct.

You do not ask them what their relationship was to Margaret(?). Correct?---Correct.

You do not ask them if Margaret even knew that they were there. Correct?---Correct.

And at that point in time, given that your evidence is that, “You are gathering intelligence.” There is absolutely no urgency or any emergency that had arisen for you to enter the house at that point. Correct?---There was definitely no emergency.

Nor urgency, I suggest?---I believe it was required for us to as part of our task.

See, that’s the matter of debate between you – your recollection and Sergeant Frost. She says, “She would prefer 5 am.” You said, “You were going to get intelligence.” You left believing her response to your question, “What if we come across him?” She said, “By all means go and arrest him.” That is the last information that Sergeant Frost gave you before you left. Correct?---I can’t recall the specific time that you.

All right. Like I said, I don’t want to waste my time doing that. The point I am making that in terms of inherent urgency, there was none. There wasn’t any when you left the station. And nothing had changed to that point of that conversation, I suggest?---It depends. I believe we were just working in our duty and conducting operations as part of our tasking. So.

And – see I suggest that after you asked the leading question, “Go, go. Check inside.” No response is given by any person in that yard to you. Do you dispute

that? Did you hear anything else being said on that recording?---The recording is extremely fuzzy.

Did you hear anything else that amounted to a response to your question?---I can't hear anything apart from the fuzz.

Well, others can test that later and make submissions. The next thing you did was speak into your police communications system saying, effectively that, "You and Kirstenfeldt were going to search inside the house." Correct?---Myself and Eberl.

MR ABBOTT: I object.

MR BOE: Eberl. Eberl, I should say.

MR ABBOTT: I object to that. The transcript that I have, and again it's imperfect, says - - -

THE CORONER: Well, I don't know where that transcript is from.

MR ABBOTT: It's the police one.

THE CORONER: And the question was asked about what he could hear on this recording – is of his body-worn-video.

MR ABBOTT: Sure.

THE CORONER: And he has given an answer about that.

MR BOE: You objected, Mr Abbott, unwittingly giving evidence for the witness.

MR ABBOTT: I am not giving evidence. (Inaudible).

THE CORONER: Well, I am not interested in what his Honour transcript. What somebody else says they might have heard on - - -

MR ABBOTT: Well - - -

THE CORONER: At a different place or a different occasion. There may be evidence of that on the brief. But what Mr Boe is asking about, is what Mr Rolfe can hear on his body-worn-video?

MR ABBOTT: Well, it should be put then.

THE CORONER: He did put it.

MR ABBOTT: After the words, "Go, go. Check inside." (inaudible).

THE CORONER: No, sorry. Mr Boe has said, "That there was no response."
That's the footage.

MR ABBOTT: Yes. That's right. No response from – that's what he claims and the
footage - - -

THE CORONER: Yes, and that's what he is putting to Mr Rolfe. And Mr Rolfe has
answered that question.

MR ABBOTT: Yes, and then we have moved onto the question, was, "Was the next
thing about clearing the red house?" Where I am suggesting that - - -

DR DWYER: I object to Mr Abbott reading from this transcript, put in a way that -
please, Mr Abbott - in a way that it suggests answers and in effect is leading.

THE CORONER: Yes.

MR ABBOTT: I am not leading, I am suggesting - - -

THE CORONER: All right. Mr Abbott, if you would like your client to go outside
while you make this objection, I will ask him to step outside.

MR ABBOTT: No, I don't ask you - I don't ask you that, sorry.

THE CORONER: Then I won't - I am not going to hear a transcript read onto the
record - - -

MR ABBOTT: I am not putting transcript.

THE CORONER: - - - to suggest that Mr Boe has to ask his questions in a
particular way. If you would like to make the objection in that way, then I will ask
Mr Rolfe to step outside.

MR ABBOTT: I am not going to read transcript, I am just suggesting that the
premise that the next thing that was said was clearing the red house is not borne out
but if it is the fact then - and the transcript I've got is wrong - then so be it.

MR BOE: May I continue, your Honour?

THE CORONER: Yes.

MR BOE: On what basis did you form the view that any of the people you were
speaking to were lawful occupiers?---The persons present were comfortable in the
front yard, the front door was open.

So I think that correlates with your answer at trial, at 1157 your words, "(inaudible)
inside that property and they were inside the property yard, in the front, making
themselves at home". That was your answer at the trial?---I accept that.

And that was the premise upon which you viewed them to be lawful occupiers, correct?---Correct.

And without being cute about this, you were extremely comfortable inside that property, I suggest, correct?---I felt comfortable doing my duty, I wasn't making myself at home.

And you were inside the property yard?---Correct.

And the way you were conducting yourself and the way you were talking to children, "Hey missus" you were making yourselves quite at home, weren't you?---No.

I suggest to you that the attributes you have sought to explain that you observed of these people that they were lawful occupiers could have easily have applied to your presence in that yard and you were certainly not a lawful occupier. Do you accept that proposition?---That was a question and a proposition I believe. I disagree with the - I agree with the question I believe and I disagree with the proposition.

The proposition is the description you gave of the basis for determining whether or not the people you were talking to were normal occupiers, the description you gave aptly fits the description of your presence in that yard?---I disagree.

I suggest to you that Eberl said to you, after your conversation with the women outside, question, "So you don't know who else is in the house?" And your response was, "Me an Adam are just gunna - gunna clear this red house." Do you accept that?---I'd have to listen to the body-worn again or it's only transcript that the police made.

I will let that go for now. This concept of clearing the house, transcript 12065 you were asked by your counsel - your senior counsel, "What does - have you head the expression - quote - 'clearing the house' - unquote". Answer, "Yes, I have. "What's that mean?" Question. Answer, "I think there's again been some confusion in this case as it depends on the context. There was a tactical clearance of the house where you, as a team, believe that there is - you have actual intelligence that there may be a lethal offender inside" - your words - "lethal offender" - "at which point you might enter that house with your weapons drawn, you move in a tactical fashion, which is taught, you clear the corners, you clear the dead space and reform. In the context that we are talking about it is interchangeable with a re-check - we are checking that house." All right, so you were checking the house to see, contrary to whatever you might have been told, whether Kumanjaya Walker might have been inside, correct?---Correct.

So when you said, "We are going to clear this house" you were operating under the belief that you could actually lawfully go and do that with guns drawn?---No.

Because really, at that point in time, absent permission from a lawful occupier, you were not entitled to step inside that house, were you?---In my mindset yes. I can't recall Eberl's evidence.

Well, the other thing is this, in act, Eberl was the person who first entered the house, correct?---Correct.

And you don't know - and I am not going to bother this inquiry at the moment with the basis of his belief, but he was not a person to whom you spoke to about having permission before he entered. Is that fair?---Correct.

It has been put to you by a number of people, including Dr Dwyer, that your senior police officers, having viewed that footage and examined the brief, disagree with your assessment that you were conducting intelligence. Do you understand that whole dialogue?---Yes.

As you sit here now, knowing what happened in the seconds that followed, do you accept that there is some force in their view, as expressed, that the state of knowledge you had at that point in time, even if it got to the point of being more than a suspicion - (inaudible) the right thing to do at that point, if one took into account all the matters that we have been discussing, was to step back and get assistance as to what to do next?---In hindsight, definitely things could've gone - we could've done more - in hindsight.

May I just stop you for a moment. I know you're going to answer (inaudible). The phrase you often have used, "We could have done more" or "could have done better" masks an answer to the question. The question I was asking you was that it would have been appropriate to step back and get advice on what to do to have the safest course of arresting Kumanjaya Walker?---In hindsight we could have done things differently. That option would've been, I believe, down the options I thought of because I'd already asked for assistance from the sergeant for local members to attend and was told "No".

So your response says reliant upon your narrative on the communications with Sergeant Frost being referred over hers - being preferred over yours. I will reframe it. You answer proceeds on the basis that you do not accept that she had given you the email plan, that she had not said that the reason for the 5 am is that an officer familiar with Kumanjaya would then be available?---Yes. I don't - I don't accept that.

So in stepping back from that scenario, from what you now know - and I put these things to you earlier, but just in summary, you now know that Kumanjaya Walker's uncle was an ACPO who was in the community that night?---I now know that, yes.

And that was knowledge that the forward commander had?---Yes.

And that if, once you had finished your intelligence gathering and ascertained that Kumanjaya Walker might have been inside, the safest person to approach that door to arrest him was ACPO Williams (inaudible)?---I can't answer that.

His uncle. An Aboriginal person. The person who had safely arrested him multiple times before. Surely he was the safer person to be entering that house and certainly much safer than you and Eberl at the present time?---I can't answer that question.

Surely. Mr Rolfe, sorry for my tone, just that I - - -?---No, that's fine.

The point I'm making is, it's police activity 101 that a person in Kumanjayi's position was more likely to respond passively to somebody that was his relative, that he was well known to, and who had interacted to with numerous times before. This is not a criticism of you - - - ?---No this is not a criticism, I'm going to - - -

- - - this is a question - - - ?---I'm going to say something that you're all going to get angry at.

Please don't?---No, no, because I'm - in line with what you're saying. You're saying to me, the person that Kumanjayi Walker would least likely inflict violence upon is an Aboriginal person close to him, in a relationship - - -

No, ACPO Williams, in particular?---I think if we just look at the transcript of what you just said - - -

No I did put it that way, but I'll - - - ?---You did put it that way - - -

- - - I (inaudible) argument - - - ?---Yes.

- - - I'll put it again. I'll put it again. You (inaudible). The point I'm asking you is that, now that we know everything we know about ACPO Williams, who was undergoing sorry business, as was Kumanjayi, who had arrested him numerous times before, who knew of his deficiencies, he knew him from being a child, surely he was the safest person to go in and get Kumanjayi Walker?---I can't answer the hypothetical, but I would - I would have loved if Derek Williams was there to assist us.

You didn't make - take any steps to find out the availability of that person, who the Forward Commander knew was there?---I made steps to ask the Forward Commander for local assistance. That would have included Derek Williams, who was a local officer in that - at that station.

Right, time is coming against me. So I just want to go through two more crucial matters if I may. I just pertain briefly to the Malcolm Ryder issue?---Yes.

I just want to quickly go through my summary, and again, interrupt me, only if you need to. You accept that Judge Borchers made serious findings in that case about your conduct as a police officer, your credit, your honesty and integrity?---Yes.

Second, you disagree with those findings?---Yes.

And the outcome of that case? Malcolm Ryder was acquitted?---I accept - I accept that, yep.

Third, following upon that decision, you accepted information given to you by some of your police cohort, that this judge had a history in his judicial conduct, such that you did not respect his verdict in the case, is that fair?---That's fair, yes.

And you've chosen not to provide any of that information, other than in that hearsay way that you gave earlier?---In regard to who - - -

MR ABBOTT: Well I object to that, he hasn't chosen - - -

MR BOE: All right, I withdraw it.

MR ABBOTT: - - - (Inaudible) - - -

MR BOE: I withdraw it, thank you.

Fourth, you also believe that the prosecution of Mr Ryder was not adequately undertaken, correct?---I believe there was some mistakes made, yes.

Well you commented about there being the junior police prosecutor not adequately doing the case, or not putting evidence that should have been called?---Yes I believe a witness wasn't called that could have assisted.

You believed that there was shortcomings in the prosecution?---Sorry, correct, yes.

Now, these beliefs entitled you to not accept the correctness of Mr - of the judge's findings against you. That's what prompted you to not accept his Honour's findings?---Well I was - I was there.

The view you held about Judge Borchers was something you believed others in the station shared?---Yes.

Such that his findings against you were not something that needed to be acted upon in any way?---No. I accept that - I completely accept the investigation from PSC and Crime Command, that's for them to handle. I didn't believe that there was any action required from me.

You are aware of, and I'll tell you what it is, but you're aware of the fact that an acquittal can be the subject of an appeal to a higher court?---Yes, within a timeframe.

You had the opportunity to urge those who make decisions to appeal, to review the correctness of the acquittal?---I - this - that was not my - - -

But you know that's available?---I know that now, yeah.

You've been in cases where you've been bought - you've been the complainant, or the arresting officer, there's been an acquittal, you think it's an outrageous verdict, you can go (inaudible) anyway, you know that?---I've never done, that's - - -

You know that you can?---I know that now.

So even though you rejected the integrity of this judge, you took no steps to seek to appeal this judge's assessment of you, correct?---I think that was well above me at the time, as a young, very junior constable, I did not think that - think that was even an option. That didn't even come to mind.

Well you're rejecting the findings because of the identity of the judicial officer. These findings were made against your integrity, honesty. You know you can appeal this judge's determination, and the reason why you didn't accept the determination, was because of the identity of this charge, correct?

MR ABBOTT: I object to that question. "You know you can appeal", he's got - he's got no - - -

THE CORONER: He hasn't conceded that he knew at the time, Mr Boe. It's somethings he knows now.

MR BOE: Well with respect, your Honour, he said "Within time, yes."

MR ABBOTT: In any event, your Honour, my objection goes further, because this - this person, my client's junior position, the notion that he has some basis where he can move the DPP to institute an appeal against a decision, must surely be ridiculous.

MR BOE: Thank you for your evidence, Mr Abbott, I'll just proceed with the questions of the witness.

I suggest to you that the approach you've taken is that if a judge agrees with your narrative and assessment, you might (inaudible). But if a judge does not agree with your assessment, you will find ways to impugn that judge's integrity?---I disagree.

Now in that sense, you accept that an acquittal is a legal construct, don't you?---Yes.

Clearly?---Clearly.

It turns on the evidence that was placed before the court, correct?---Correct.

And whatever directions the decision maker gives to themselves or to a jury, correct?---Correct.

So your acquittal is a legal construct as well, is it not?---Yes.

And you would expect that if members of my client community observed your criminal trial, and heard evidence in this inquest, which was not placed before the jury in your case, are perfectly entitled to show the sort of unacceptance of that acquittal as a matter of truth?

MR ABBOTT: Well I object to this. I object to this.

THE CORONER: Yes.

MR ABBOTT: Both - it's an improper question, in my respectful submission. And my learned friend (inaudible) this type of question - - -

THE CORONER: Where's it - - -

MR ABBOTT: - - - it's a matter - - -

THE CORONER: - - - going to, Mr Boe? I don't - - -

MR ABBOTT: - - - it's a matter for submission.

THE CORONER: - - - I don't quite see the relevance either.

MR BOE: I'm getting a bit excited. I'm wanting to direct Mr Rolfe's sense of appreciation, in line with his invitation for a conversation that he could well understand that many members of this community do not accept the (inaudible) that have been put. And that informs their feelings towards Mr Rolfe. But I don't need to - - -

THE CORONER: I don't know that it's particularly relevant to the issues in the inquest.

MR BOE: Now could we just go to -

Can I have 10 more minutes, your Honour.

THE CORONER: Five.

MR BOE: Did you say "fine" your Honour?

THE CORONER: Five, good - good hearing there, Mr Boe.

MR BOE: My (inaudible) affecting what I'm choosing to hear.

Let me just go to the letter that you wrote to the public. Know the document I'm talking about?---Yes.

THE CORONER: Exhibit 26.

MR BOE: Thank you, your Honour.

I covered these concepts before, but this letter prompted some - some matters which I want to finish with in terms of the submissions that may be made. Can I just make it clear to you that it's not my project to paint you as a rogue copper. Nor am I saying that the police force has in fact failed in any way in dealing with you. But there's lots of evidence that falls between those two signposts, okay. So I'm just trying to get from you, as best I can, your sense of acceptance of what you were communicating in that letter, in circumstances where you were, at that point, taking legal steps which you're entitled to do, to not come and give evidence. You understand?---Yes.

Have you got the letter with you? No, the letter that you wrote.

A PERSON UNKNOWN: Exhibit 26.

MR BOE: One, you admit to using racist words in speech and written communications. Correct?---Correct.

That is in this letter. And you accept that, quote, "Most would find it offensive."?---Correct.

Do you accept that to your schooling in an all-boys school and being in the Army?---Correct.

You asked the reader to in effect, excuse this offensive behaviour because you have on other occasions risked your life for strangers. I'll read your words, "Despite my language and my potential to be rude, I have risked my life for strangers multiple times" et cetera, et cetera. Do you see that?---Yes. I'm not asking them to excuse them, because the above - - -

What's it mention then (inaudible)?---Well, above that I say I'm sorry for using them. The connection is, I believe, actions speak louder than words.

And I think to be fair, you have been at pains to point out that one can be both. That one can be racist but at the same time be quite heroic in other situations?---Yes. But that - I'm not saying that applies to me.

All right. You spoke saying that you were not aware of Kumanjayi's - or didn't take into account Kumanjayi's race, upbringing or his past (inaudible)?---When he was stabbing me? No.

Yes, I understand?---Yes.

Just in terms of reflection, do you accept that being aware of who Kumanjayi Walker was, was critical to approaching him to arrest him?---Taking away race, all the other information is definitely beneficial to - the more information you can get prior to an arrest is always better.

Now, in that letter – and this gets a bit sensitive here, so excuse the need for having to put this to you. In your letter, in particular you say, “You don’t see the transition from protector to medic immediately trying to save Walker once he’s no longer a threat. You don’t see me call him my brother and when he asked for my help, you don’t see me and my boys do our best to save his life for over an hour. You don’t see us comforting him and reassuring him as he dies, despite our team’s best efforts.” You wrote that?---Correct.

And I’m not for a minute suggesting that you failed to do anything that might have stopped him passing away. Okay. I’m going to suggest that you did in fact most of the things that you would ordinarily do for any other person. But insofar as speaking about that in this letter to seek sympathy for your position, you’ve listened to the body-worn videos just before he passes, haven’t you? You’ve watched that?---I actually haven’t watched the entirety.

When you were talking about this in the letter, you were recalling the events that were occurring whilst you were there?---Yes.

Do you recall that the ambulance officer directs the officers to perform mouth to mouth resuscitation?---I believe that was passed onto Hawkins.

No. I’d suggest you were there when that message was coming through?---Was I on the phone?

No. You weren’t on the phone but you were there when Hawkins was on the phone?---Yes. I accept that.

And the request came and Hawkins asked, “Does anybody want to do it?” Everybody present said, “No.”?---Correct.

And the explanation for not wanting to do so is because he had been a person you had been seeking to apprehend and for hygiene reasons?---I believe – I don’t recall the first point being a reason. They hygiene reasons and I believe at the time the police first aid training is also changed to not giving mouth to mouth because they believe that compressions alone will create air.

Well, I’ve only got two minutes left. I don’t want to (inaudible). What happened on that day was the ambulance officer was asking you, that is the three of you, to perform mouth to mouth resuscitation. Correct?---Correct.

And it was declined?---Correct.

And the reasons were, I suggest, one, because he was a person you had just arrested; and two, because of issues of hygiene?---If I’ve said that, I’d like to be taken to the transcript.

You later ascertained – I'll put it another way. There is evidence in fact that there were devices in the station to ensure that there was no issue of hygiene affecting those performing mouth to mouth. You know those sorts of devices, don't you, the hygienic devices where you can apply mouth to mouth without physical contact?---I know that. I've heard that is found, but I'm not aware.

You didn't ask for one. Nobody asked for one?---I asked – we asked for all the first aid kits in the station - - -

At that point in time when you'd been asked to perform mouth to mouth, you did not ask for it?---Correct. I believe there was none there.

You could hear Kumanjaya Walker calling out several times at that point. Correct?---Yeah, correct. He spoke throughout the whole 60 minutes before he passed out, I believe.

You were aware that when you left 511 and came to the station that there were many members of the community that had seen and heard him being shot. Correct?---Correct.

And in fact you went to the station about some fear of payback of some kind?---We went to the station because we – there was no point us going to the clinic, which was locked. It was the only other place to go.

You could have performed attempts to resuscitate at the scene?---That wouldn't have been safe - - -

That's what I said. Because you were concerned that there may be some form of payback at that point, or some response violently towards you?---For a number of reasons that would – I believe that would have been appropriate.

The point I'm making is that you knew that by the time you got to the station there were family members likely to be outside (inaudible)?---By the time we got there?

Yes?---Or soon after?

Or soon after?---Correct.

This young man was dying at that point. Correct?---Correct.

You knew he was dying?---Correct.

In fact, the other person that's gone on to (inaudible) said basically you get shot there, you're not going to live?---I don't agree with that. But with the stuff that we had, yes, I knew it was a most likely there was a very small chance of survival.

He was calling out for his mother, wasn't he?---Again, I'd have to get taken. But I accept that if it's on the body-worn video, I accept that.

And you thought your comfort would be sufficient to meet his need and request for comfort from his family?---That did not – that was not in my mind at all. The option of allowing his family into the station never passed my mind. so in lieu of that, all I did was give him – provide him the highest level of comfort that I could provide.

My point is that you were spruiking your humanity in your letter to the media by pointing to how you conducted yourself, while this teenager's request for the support of his mother as he was dying was refused. Do you accept that?---I thought it was – I was waiting for a question.

Sorry?---I was waiting for a question. Can you please, say it again.

I was asking whether you accept that that was hardly a humane response to his situation at that point?---I disagree. I believe our response was extremely humane.

Thank you, your Honour. I have no further questions.

THE CORONER: Thank you, Mr Boe.

AN UNKNOWN PERSON: Thank you, your Honour.

THE CORONER: Just before we come to you, Mr Mullins, there's just one housekeeping issue.

DR DWYER: There is. Your Honour, before we go further with the next counsel and just in the event that it is relevant to other counsel's questioning, I renew my application for the documents that were brought into the witness box by Mr Rolfe on Monday. If there is a further refusal by Mr Abbott KC to produce those documents, then I will ask or invite your Honour to issue a summons pursuant to s 41 of the *Coroners Act (Northern Territory)*.

If there is a legal objection to the production of the documents that were in the witness box on Monday, then it should be made, in my respectful submission, with supporting evidence. And your Honour can make a ruling on it after reading any relevant affidavits, et cetera, on production.

THE CORONER: Can we just start with the renewed call for the documents? Can they be produced on the understanding that will be in a sealed envelope, on the basis that there might be some further legal argument about it?

MR ABBOTT: Yes, your Honour, I am instructed that to maintain the claim for legal professional privilege in respect of the documents, I don't want to be in contempt or in breach of any ruling you make. This is a sensitive matter. I haven't had time to fully explore and get full instructions.

It is not a matter that can be dealt with on the run. And I will need some further time. I would suggest at least the luncheon adjournment before we come back to this issue. And I may need until tomorrow morning.

THE CORONER: Dr Dwyer?

MS DWYER: Well, about the appropriate for my learned friend to give that further consideration. And I will have a discussion with him after the luncheon adjournment and see where he us up in that stage.

THE CORONER: Yes.

MR ABBOTT: I'm happy to have such discussion with my learned friend.

THE CORONER: Mr Mullins, sorry.

MR MULLINS: Thank your Honour.

XXN BY MR MULLINS:

MR MULLINS: Mr Rolfe, my name is Mullins, I act for the Brown family who raised Kumanjayi. They have some questions for you. Now I know there is a lot of documents that are involved in this case. And if you feel in any way that you need to look at a document, or you want to look at a transcript, please ask?---Yes.

And I will make sure that you get a copy of that. May the witness start with exhibit 20-73, please? And this is a copy of your interview with Kristin Shorten from the Australian. Do you have a copy of that handy? I am happy enough for it to be on the screen. I am happy enough for it to be just handed to him. The last thing I want to do is upset the system. So, if being handed to him is sufficient, I am happy with that. It is page 26.

And for the benefit of the people on the live screen, I will read it – the passage that I want you to address into the record. But if you want to read the answer at 140, at the top. You probably should read the question on the page before as well.

THE CORONER: Is it possible to put it on the screen without causing issues? Have we resolved that problem or not? Do we know?

A PERSON UNKNOWN: It was meant to have been resolved.

MR MULLINS: Answer 140, A140. Yes.

THE CORONER: If you could just read the question, Mr Mullins. And then it's the answers on the next page – the answer on the screen.

MR MULLINS: So the question at 140 on page 25 of exhibit 20-73. Is:

“Describe what you can hear and everything that was happening at that time? Was there a lot of screaming and commotion? Were other – had other people come into the room?”

And this is after the shooting?---Yes.

That’s right. And we are at House 511?---Yes.

And that’s the question that is being asked. And you answer this way:

“As soon as shots were fired, I could hear the screaming and wailing from family outside. And in saying that, the family outside at the time had told us that, ‘Yes, he was in the house.’ If they had even offered to go inside and pull them – bring Walker out themselves, I would have given them my handcuffs. They could have done it themselves if they had told us the truth. But they didn’t tell us that he was inside. We went in blind.”

And you agree that they are the words that you told Kristin Shorten on 5 December 2019?---Yes, I do.

Have you ever – I withdraw that. Had you provided your handcuffs to a family member to take them inside and to handcuff Kumanjaya, they would have had to have walked from where you were after you gave them the handcuffs. Gone out of sight inside the house. Applied the handcuffs to him. For some unspecified period of time. And then walked back out with Kumanjaya handcuffed. Is that right?---Correct.

Have you ever done that before?---No, there was – never been a situation where I was required.

Under what circumstances are you allowed to hand a piece of police equipment? I should say, is that part of your accoutrements?---Yes.

Under what circumstances are you allowed to give accoutrements to a member of the public to go off into an unseen place and to handcuff a person?---Obviously, that is not part of the training. It is something I would have been willing to do.

Is that in accordance with the operations manual that was operative at the time?---That part is not, no.

No, all right. It’s nonsense, isn’t it? You would never have given your handcuffs to a lay person to take into a house, out of sight, to handcuff somebody and bring them back out?---I’m – I would.

You would do that?---I would be happy to.

You see, what you are trying to do here, is to somehow suggest that the family had some responsibility for what happened inside House 511?---I agree, yes.

And in doing that, you knew at the time that you were – you performed this interview, that they had facilitated an arrangement for Kumanjayi to be handed over?---I wasn't aware of the – that information from Sergeant Frost.

No, but you were aware of that by 5 December 2019, weren't you?---No, I hadn't received any evidence.

Okay. So, you had no idea as of 5 December, some one month after these events, that there had been an arrangement with the family to hand Kumanjayi over the following morning?---Correct. It was months before we got the brief of evidence. And then the brief of evidence I believe ended up being approximately fifty thousand pages. So.

Wasn't that in the email on the phone that you received?---I – that was – the email on the phone. I had a – and this might be fixed for some people's minds I had my personal phone, I did not have a work phone. I had no access to work emails on my personal phone. So, for example, previously I was asked about the service station on the Wells(?), even if I had reception there, I wouldn't have received the work email. I could have received a work email on my iPad if I had it. Obviously, I didn't have that after I was arrested. So, I did not have access to that email until it was part of the brief.

You gave your evidence yesterday that, "You went out into the community on this afternoon to engage, introduce yourselves to the community, and gather intelligence." And there was a fourth matter that I didn't write down. Can you remember what that was?---Seek their assistance, I believe.

"Seek their assistance," all right?---Or cooperation.

Now, did you think it was a problem that when you got out of the vehicle at House 577 and House 511, that two of the four people that were seeking to engage, introduce themselves, gather intelligence, and seek assistance, had long arm firearms?---I – it was taken into consideration. I didn't consider it a problem.

Did – do you – did – think the people might be frightened by police officers with long-armed firearms? Did that ever occur to you?---It – on the individual situation.

Do you know the Warlpiri people's history with guns?---I know about the – obviously through only what's been talked about in this coronial.

Well, at the relevant time, did you know anything about Warlpiri history in relation to guns?---I can't recall.

Did you know at the time anything about the Coniston Station massacre of 1928?---I can't recall when I learnt about the Coniston massacre.

No. If you did know about that, you would be hesitant to go marching into a community with two of the four members carrying long-armed firearms, because that is going to turn people off immediately, isn't it?---I do not have a large enough understanding of intergenerational trauma to answer these questions to a proper standard.

In any case, why would you think the family of the person who was in that house would provide police officers with assistance in bringing him out, in circumstances where they didn't know you from a bar of soap, and where you had just arrived carrying long-arm firearms?---Why did I think they would provide assistance?

Why did you think they would assist you, in bringing the person out of the house and handing them over to you?---I would say I wouldn't make the assumption that they would. It's a hope that they would, but I don't automatically assume that they would.

So when you suggested in this interview, with Ms Shorten, that the family were, to some extent responsible, for not assisting to bring him out, do you think that was justified?---No, the responsibility I was placing on them was the fact that they did not tell us, and I know this is an incredibly hard time for the family to hear, and ideally they probably wouldn't like this answer, but I am here telling the truth, there is a responsibility that is to be beared by not telling us that Kumanjayi Walker was inside that house. But I accept that is hurtful, but this is about the truth, and that's the truth from my perspective.

But that's your perspective?---Yes.

Is that a convenient time, your Honour, or - - -

THE CORONER: Yes, we'll resume at half past one.

WITNESS WITHDREW

ADJOURNED

RESUMED

ZACHARY BRIAN ROLFE:

THE CORONER: Yes.

MR ABBOTT: Your Honour, could I just inform you that we had a fruitful discussion with my learned friend - your counsel assisting, Dr Dwyer - about the request for the documents that my client was said to have been considering during the course of at least part of his evidence on Monday. I am hopeful we will be able to resolve this.

We can't do anything by 2 o'clock today though and we will need the rest of - we will need to get out of this hearing and so something overnight and come back tomorrow morning.

THE CORONER: Sure. Okay. Thanks, Mr Abbott. That is not a problem.

MR ABBOTT: Thank you.

THE CORONER: Yes, Mr Mullins?

MR MULLINS: Thank you, your Honour.

Mr Rolfe, you have some evidence just before lunch and I obviously didn't write it down because I was asking the questions but you gave some evidence about the fact - or the extent of your knowledge of the family's negotiations to hand Kumanjayi in as at 5 December 2019. Can you remember that?---Yes.

And did you say you had no knowledge that there had been negotiations with the family?---I said I believe that's the case, yes.

Just have a look at - do you still have the document in front of you, which was the one that I gave you, 20-73 was it - exhibit? 20-73, yes.

MR MULLINS: Page 17.

MR BOE: What question number?

MR MULLINS: Question 91.

MR BOE: Thanks.

MR MULLINS: Third line down. You say, "The first I was aware of the negotiations to allow him to attend the funeral, which was over by the time we go there, was from the press conference by Commander White after the event and I had not heard of those negotiations. When was the press - is that correct?---I stand corrected by memory, I accept this evidence, yes.

And so you did know at the time that you gave the interview on 5 December 2019 that there had been negotiations with the family? For the return of Kumanjaya?---As per this, which I am going to rely on because it was - like because of the event I knew that the police had started negotiating with his family.

Now, I am going to move to a different topic now, so I don't want to confuse you. So I am going now to house 511. I don't want to spend too much time on it but can I just ask you a few questions associated with that?---Yes.

Before you and Constable Eberl walked through the door into the house, you knew that someone was in there?---Yes.

And you knew it might have been Kumanjaya?---Yes.

And you knew that historically he had used a weapon against police?---Yes.

And you knew that he was likely to resist arrest?---No.

Can you look at - may the witness please see - it's the same document, at question 92. Do you have question 92 in front of you?---Yes.

The answer to question 92 is, you were asked about what you'd heard and from watching the body-worn video footage of the incident on November 9 that is obviously an error because it's November 6 was the axe incident. "All I'd really heard about him, that he was a property offender - break-ins, as he got older he became more and more violent and I was informed that he would not be arrested without a fight - without assaulting police." Who informed you of that?---That must have come - and again this is - I cannot recall. I make an assumption that that would be from the Yuendumu police officers, one of them.

Yes, well you knew he was - you were of the view that he was an extremely violent offender, that's correct?---Correct.

You knew that he was willing to use weapons against police?---Correct.

You knew that he would not be arrested - or you had been informed, according to that answer that you gave, that he would not be arrested without a fight?---Correct. I'd been informed of that but I was aware of his criminal history and the number of times that he had been arrested and I believe he had only been arrested for assault police once, so the information I received there doesn't match up with the evidence.

So did you make a decision at the relevant time that you did not think he would put up a fight?---No. I have to judge every situation in front of me as it occurs.

Did you know anything of his mental health? Kumanjaya Walker's mental health? ---I don't believe so.

Did you know anything of his - what he might have been through when he went through Don Dale prison?---I don't believe so.

What was your plan to manage the risk of violent confrontation?---I would - in a situation that I was in, fall back on my training.

And did you discuss that with Constable Eberl?---It was not required.

You understood that you were walking into a house in a small community, surrounded by women and children?---There were some women and children there, yes.

Why didn't you stop at the house and make a plan like you did when you attended Warlpiri camp on 7 November 2019?---The - what we did at Yuendumu house 511 and Warlpiri was the exact same plan. The difference as in the situation that occurred, being that the front door was open and someone was inside. We set up a loose cordon and approached the front door and looked for intel. So it is - it is the same plan as Warlpiri and it was discussed at the house previous.

All right, now when you went in to House 511, and you confronted Kumanjayi, we don't have to play the video again, you're familiar with that?---Yes.

And you wound up in a position where you had your right hand on his chest, that's right?---Yes.

And you wanted to check his identity with the phone that was in your left hand?---Yes.

So whilst holding his right hand on your chest, you held the phone up and checked that it was - he was the right person?---I believe - I believe - yeah, that - I accept that.

Then you identified him by reference to the fold in the ear, is that right?---Correct.

Once you had identified him, you pulled the phone away?---Correct.

Now there was then a moment or two where you put your telephone in your pocket, that's right?---Yes.

And then you said to him, words to the effect of, "Turn around, put your arms behind your back" et cetera?---Correct.

When you identified him, and you realised he was this extremely violent offender, who may resist arrest, and go without a fight, why didn't you step back?---I was attempting to place him under arrest, in the most respectful and kind and most polite way that I could.

So you're saying that you were doing what you're doing, that is, keeping hands on him - is that called hands-on when you've got your hand on his chest?---I wouldn't

believe - I don't think that's classified as what usually the police would refer to as hands-on.

You hadn't checked in his pockets?---No, we would generally check pockets after handcuffs are applied.

You knew he was - he was likely to ignite and resist at any point in time?---That probably goes further into what I knew than what I did.

But you didn't think it was appropriate to step back and allow him space and allow yourself space?---No, you obviously saw what I did, and I thought that was appropriate at the time.

All right. Now after the shooting, you successfully removed the scissors from his hand?---Correct.

You handcuffed him?---Correct.

And then the next thing you considered was first aid?---Correct.

In the ordinary course, the first call would have been triple 0 or whatever the number is in the Northern Territory?---We would use our radios.

Radios, okay?---But they're connected to that call centre.

So you would have called emergency help?---And that's what occurred, you can hear that on the body-worn. I believe Constable Kirstenfedt says into the radio "Shots fired."

And was an ambulance actually called?---Yes.

Okay. You - did you attempt to stabilise him at all where he was shot?---I attempted to stabilise him for I believe 60 minutes.

You decided you needed to get out of there as soon as possible?---Correct.

There was a commotion outside?---Correct.

You could hear the wailing?---Correct.

You could hear people crying out?---Correct.

And you felt you needed to get out of there as soon as you could because you were frightened?---I believed that it was an unsafe place for us to provide medical care, in addition, there would be more medical supplies elsewhere.

When you say it was an unsafe place for you to provide medical care, why was that?---Just for the fact that there are multiple people, and as I said in that answer,

emotions were high, and from the reaction that we could hear already, of the community members coming towards us.

Were you frightened of being assaulted?---I believed that was a risk.

Yes, were you frightened of being assaulted?---I was probably too caught up in that moment of my focus. A critical incident had just got - occurred. I can't recall how I was feeling exactly at the time.

So in order to remove Kumanjaya as quickly as possible from the house, you dragged him across the ground?---Correct. My partner and I picked him up from either under - both of his armpits and we dragged him to the car that way.

And was that in accordance with the procedure that you were required to undertake at the time when transporting a person to a police vehicle?---No it wasn't.

All right, but you did so because?---We did so because, in my experience of moving people with injuries such as that, and that was the fastest way to get him to the police vehicle, with the goal of then being able to provide him aid. And I know – I know it doesn't go - it goes against our General Orders, obviously, you know which I believe state you are to never drag someone. I know it can be deemed disrespectful, especially when you say - not you, sorry, when it said "He was dragged." Because the connotation doesn't necessarily mean that just his feet were being dragged perhaps. In my experience, that was the fastest way to get him to the police vehicle in order to provide him aid. I am open to further training and knowledge in how to move someone in that situation. There was no disrespect intended. It was done so in an order - in a way to help him.

Well the reason why it's against the General Orders, is because it is regarded as disrespectful isn't it?---Correct.

And you dragged him for a distance of 25 metres?---I accept that.

And it gives you no surprise that the people who were present who observed that, thought it was very disrespectful?---I accept that.

You - were you ever assaulted by any person?---Have I been assaulted?

No, were you ever assaulted by any person that day?---I was stabbed, so yes.

No, apart from that. Were you ever assaulted by any person that day?---Apart from being stabbed, no I wasn't.

When you were dragging the body out, after the shooting?---No.

Did any person threaten you?---I didn't hear any threats.

Now you went back to the police station. What was the atmosphere when you returned?---In the police station?

Correct?---In the carpark?

In the police station?---So we spent time in the carpark first. In the police station the atmosphere, I - I believe - I'm not sure how to answer that question. All I know that when I got back to the police station, my focus was on Kumanjayi, and providing aid.

Do you accept that things were very tense?---Yes.

Do you accept that people were very concerned that - that people from the community may come back and, to use for want of a better word, storm the station?--
-Correct, yes.

And were those discussions being held at the station that there was a possibility that that might happen?---Yes.

Now early on after your return to the station, did you observe Warren and Derek Williams come into the station?---I don't recall, and perhaps I was just too focused at the time, I don't recall seeing either of them. But I - they may have - I - I may have had my back to them.

So you have no recollection of two Indigenous men coming into the station at all?---No I don't.

Now you assisting with CPR, you've said that?---Correct, so we worked on Kumanjayi for approximately 60 minutes before CPR was required to be commenced.

Now in the body-worn video worn by Constable Eberl, there's an exchange between you and Constable Hawkings. And this is exhibit 4-3, three of four. Would you like to see the exchange?---Yeah, please.

MS WALZ: We can put it on the screen (inaudible).

MR MULLINS: Yes, if you want to put it on the screen, thank you.

And it's page two of exhibit 4-3, three of four.

MS WALZ: So page three or page - - -

MR MULLINS: Page two.

THE CORONER: So it's the transcript that you're interested in?

MR MULLINS: Yes, your Honour, thank you.

Now can you see the word, if you scroll down, please? Can we see the word, "Oi?"---Correct.

So that's you? That's right?---Yes.

And Hawkins says:

"You all good?"

Rolfe:

"All good. He was stabbing me, bro. Hawkins, hey, he was stabbing me."

Hawkins:

"You got any injuries mate?"

Rolfe:

"No, it was to the head. Scissors. And then he tried to stab him."

Hawkins:

"I tried to get what I could of the scene just with my camera. We had to get out of there mate."

Rolfe:

"Yes. All we can do now guys. All we can do now is so he,"

And so on. You see that passage?---Yes.

And it is true, isn't it? That you said to Constable Hawkins when you returned to the station, "That you were being stabbed by Kumanjayi?"---Correct.

And you were being – you had no injuries?---Correct, I said that.

Yes. And, "You were being stabbed in the head?"---I said, "He tried in the head." Correct.

Well, he said, "No, it was to the head?"---I said what – I said that.

Yes, yes?---Correct.

You see my point is, as at that point in time you believed you had been stabbed in the head?---Correct. As per my trial evidence.

Yes. Now you subsequently had a conversation again with Constable Hawkins. And this exhibit 4-4, page 6 of 10.

The screen is fine. Is - that's all right.

Sorry, your Honour. I don't want to hold things up too much. I - - -

THE CORONER: No, we will –

Do you want to just –

If – is there going to be a bit more in this series?

MR MULLINS: No, your Honour.

THE CORONER: Okay. Because otherwise, Ms (Inaudible) could stay here. But.

MR MULLINS: And on the first page. Okay, can we see there at the top, Hawkins:

“There is a rip to your shoulder.”

Rolfe:

“The shoulder, (inaudible).”

Hawkins:

“You got some scuffs on your arm too. Keep your shirt on, though.”

Rolfe:

“I just want (inaudible).”

Eberl:

“I am going to check his shoulder mate, make sure he is not injured.”

Rolfe:

“Look there we are.”

Eberl:

“Yes, can you whatever?”

Hawkins:

“No major injuries.”

Rolfe:

“No mate.”

That’s when you found the injury to your shoulder, wasn’t it?---So, I knew he had stabbed me in the shoulder, I had previously checked. And I was wearing a shoulder tort. I have mentioned that in the trial, it may not have been mentioned here. The shoulder tort was a – when I checked initially, it was blocking my view of the injury. So, as the adrenaline wore off, and my shoulder began to increase in pain, I know there is conversations further in that I mention to the boys once. Unfortunately, “Once Kumanjayi passes, we need to check my shoulder.” Because I knew I had been stabbed and I just couldn’t see it before because of the shoulder tort that I was wearing.

Yes. You see I suggest to you that’s not the case. That, in fact, when you first arrived back at the police station, you thought you had been stabbed in the head exactly as you said earlier on. And that you later discovered that you had been stabbed in the shoulder?---I disagree.

All right. Now, you heard rocks being thrown on the roof of the police station?---Correct.

Was any glass ever broken?---I don’t believe so.

Was there any breach of the compound?---I don’t believe so.

You knew that officers were going outside and patrolling the compound?---Yes, I believe so.

You were aware that there were people outside, did you know the size of the crowd?---I did not.

Did you ever go to inspect it yourself?---No, I did not.

No. Now, you were subsequently transferred, ported to the airport. That’s right?---To the air, like, strip. Yes.

To the airstrip. And so – well, just before I get to that. There was going to be an evacuation earlier on, wasn’t there?---Correct.

And that didn’t happen?---Correct.

Were you involved in the decision-making process for that?---No.

So, arrangements were being made to get you out through aircraft?---I believe the overarching arrangement for that was to get reinforcements in, rather than to get me out. As a result of them flying in, there was the, obviously, the additional option that

I was able to be removed.

Right. Now, when you went to the airport, did you go in the ambulance?---I can't recall. I don't believe so.

So, how did you go – you think you went out in a police vehicle?---I believe so, yes.

You don't recall which vehicle you are in?---No.

You don't recall who was driving?---No.

You don't recall anybody else who was in the vehicle?---No.

Is it the case that you were in fact lying down in the ambulance?---No.

No, okay. Or were you otherwise hidden in one of the vehicles?---No.

Did you see the crowd outside when you were going to the airport?---I believe they were at the front. And the exit of the compound was to the side. So, I don't believe I saw. I may have, I can't recall this.

Why did you think you were being taken out to the airport?---By that point.

Yes?---I was made aware that I had to be removed for the purposes of the investigation and to get the – to go past Alice Springs hospital.

All right. Now I am going to put a series of propositions to you. And I am putting these propositions to you because it may well be in due course that these are the submissions that the Brown family make about the circumstances of this incident and your involvement. All right? So, you can agree, or disagree, or make a comment. My first proposition is this. After watching the body-worn-video of the axe incident, and speaking to your colleagues, you arrived at the view that Kumanjaya was a highly dangerous offender. That's right?---Correct.

And that he was likely to resist arrest?---Incorrect.

If he resisted arrest, you arrived at the view – I withdraw that. If he resisted arrest in a similar way to what you had observed in the body-worn-video Hand(?) and Smith. You had decided that you would resort to lethal force through the use of your Glock or other instruments?---Incorrect.

You thought that you had the skills to bring him in, that people like Hand and Smith didn't have. That's right?---Correct.

And those skills included high level of fitness?---Correct.

Those skills included better fighting skills?---I am not sure if I can speak on their fighting skills.

No. That's all right?---I'm not sure on that one.

Those skills included your military experience?---I don't believe - - -

THE CORONER: I think his difficulty is comparing himself to Hand and Smith because he is not aware of their skills. But he might think that they were skills that he had that were relevant. I don't know.

MR MULLINS: I will reframe the question. Thank you, your Honour.

What I am saying is that you believe you had a certain skill set that was better than the average police officer, which made you particularly equipped at bringing Kumanjayi Walker in?---I don't think I agree with that.

But that – can I suggest to you, you were highly trained in weapons?---Yes.

You had good military experience?---Yes.

You have already said, “You were a good communicator?”---Yes.

And you are – you were hard. You had done a lot of boxing your whole life?---Correct.

Now, when Kumanjayi resisted arrest and you engage in a confrontation with him, he struck you in the head. That's true?---Correct.

You thought he might have had something in his hand, but during the struggle, I suggest you did not see a blade?---Incorrect.

It was too dark and things were moving too quickly?---Incorrect.

If you did see something, wouldn't you have told Eberl immediately?---Again, I think there are unrealistic expectations of human performance in this regard.

You see, you say that, “You were concerned for Eberl's safety,” which is part of the reason why you discharged your Glock. And there were two things that concerned you. One was the blade. And the second was your affection for him as a fellow officer who had a family?---Correct.

Why would you not, when you saw the blade, say, “Knife, knife, knife,” in accordance with your training?---Again, my previous answer is that I believe is an unrealistic expectation of human performance. The only other incident involved in this coronial that we can use to relate this to, is to the axe incident. Where I don't believe I have heard any – or much criticism. And at neither point in that incident, which was related as similar or having some similarities, do I recall the officers yelling, “Axe, axe, axe” or “weapon” or anything of that regard. So the only - so I think that would support the fact that in an incident such as this, there are some unrealistic

expectations occurring. And if there needs to be further clarification, that's probably a part for a performance psychologist to give an answer to.

MR MULLINS: All right. Hand and Smith when they were confronted with the axe, there wasn't much doubt that they would have known it was there, would they?---I believe their training still states to call that out.

Even if it's clearly visible and a person is holding it above their head. You still call, "Knife, knife, knife"?---You could correct me if I'm wrong, I believe if you would access to the training.

You see, you were in the dark in a struggle with the person you're attempting to arrest, you say you saw the blade protruding from the base of his hand, and you didn't tell your partner, who was about to engage with him as well?---Correct. There is, again, unrealistic expectation of human performance and then in - if you want an example, another example - - -

I don't need another example, you just say that it was an unrealistic expectation of human performance. Is that's your answer?---That's my answer.

Yes. And I suggest to you, your answer is - the truth is, you didn't see the blade at that point in time. Now the next point, at no time did Kumanjaya Walker put his left hand on your glock. That was simply a fabrication?---Incorrect.

As Eberl and Kumanjaya struggled on the ground, Eberl's life was not in danger. He had control of the situation?---Incorrect.

What happened was that you overreacted and resorted to the plan that you had coming in over the preceding days, that if there was resistance and there was a fight, you're going to go for your glock?---Incorrect.

It was a mistaken, overreaction by you, wasn't it?---Incorrect.

But it's what you had been thinking about for the preceding three days when you had watched that video footage on multiple occasions?---Incorrect.

That is the axe incident body-worn video. When you approached Kumanjaya after the third shot, you saw he had the scissors. Is that right?---No.

MR ABBOTT: Well, if that's meant - I object. If the inference is that that's the first time, then I object to the question.

MR MULLINS: No, I said "first".

MR ABBOTT: I'm sorry.

THE CORONER: I don't think that's an inference.

MR ABBOTT: I do apologise.

MR MULLINS: That's all right.

When you approached Kumanjayi after the third shot, you saw he had the scissors?---So, I - as far as I can recall, I pushed Eberl out of the way, rolled Kumanjayi onto his stomach and put my weight on his back, trapping his arm under him. And then in a controlled manner, removed his right arm with the blade in it while controlling that arm out from under his body. At that point, I confirmed that the blade was a pair of scissors.

All right. And it's the case, isn't it, that you then said words to the effect of, "He was stabbing you. He was stabbing me." Words to that effect?---Correct.

And you did that for the body-worn video footage?---In correct.

You did not know at the time that you had been stabbed in the shoulder?---Incorrect.

We've already discussed the fact that you came back to Hawkings and you told - sorry, you came back to the police station and you told Hawkings that he had been stabbing you in the head. That's right?---From my reading of that and what I recall, I was staying he was trying to stab me in the head.

And you surmised that he had been hitting you on the head and he had the scissors in his hand when he did it?---I would refer to my previous evidence that - about what I said before, I can't recall like if I've said it in this instance, but I can go through it again. He was hitting me in the head in a hammer fist motion. I thought that was strange because he wasn't using his knuckles. I then looked at his hand and observed the blade.

No you finally got back to Alice Springs and you started on your notebook where you recorded that you had been stabbed in the shoulder. That's right?---I got back to Alice Springs. Went to the hospital. Went to the police station. Went home.

You recorded that you had been stabbed in the shoulder in the notebook as if it had actually happened and you knew about being stabbed in the shoulder at the time it happened?---I accept what I wrote in the notes.

Right. But even at that time, which is only less than six or seven hours after the events, you got the sequence wrong in your handwritten notes, didn't you?---Yes, which is a completely understandable occurrence in a critical incident in regards to memory. Anyone of you are able to call your own witnesses.

Well, that's probably expert evidence - I'm sorry to interrupt you, Mr Rolfe - - -?---It is.

- - - but that's expert evidence for a psychiatrist or a psychologist. I don't know that you're qualified to give evidence as to memory and the impact upon a person?--- Well, correct. I believe I'm allowed to answer you questions and I wasn't giving

evidence, I was saying that you would have been able to call witnesses for this Coronial and as far as I'm concerned - aware - none of you did call a witness such as you just stated. So if you wanted to gather information in the best manner, that probably would have been a good idea.

My question is a different one. My question is, you got the sequence wrong when you recorded it for the first time?---Correct.

You agree with that. And where you got the sequence wrong was that you said, "I saw the blade." That's right?---I don't have my notes in front of me.

Would you like to see them?---I don't mind. I know that I got this sequence wrong. I can't play with the details with you, but I accept that I got the sequence wrong.

Right. Well, I think it's important to you recollection that you see it if you can't remember it.

So I'm sorry, it's exhibit - thank you, your Honour.

DR DWYER: 7115.

THE CORONER: Do you want it up on the screen?

MR MULLINS: I'm happy to have it on the screen.

THE CORONER: Okay.

DR DWYER: There's also a transcript, 71157.

MR MULLINS: I won't use the transcript, I'll use the original. Thank you. I'm not far off, your Honour. I know I'm getting close to my 45 minutes, but I'm not trying to - - -

THE CORONER: No, it's fine, Mr Mullins.

MR BOE: Take your time.

MR MULLINS: Now, this is your police notebook that you recorded the history as you recollected it on that night?---Correct.

Just one point, was it just a coincidence it was a fresh notebook?---Was it just a coincidence?

Well, do you ordinarily record things in your notebook, your police notebook?---My shirt got seized at the Yuendumu station with my notebook in it. That's part of the evidence for the criminal trial.

Right, okay. So can we scroll down to the next page, please and the next page, please. And we can - now let's look just a little further down past the - just there,

thank you. We can see on that page, 0147 Alice Springs Station contemporaneous notes. And you were called in to speak with Lee Phillips - with Chris Wilson and then knocked off. And then is it right that it's at 0232 at home that you write the notes?--- 0232, correct.

Okay. So the rest of that page, we can scroll through to the next page. And at about line 6 or 7, you commenced a narrative. On 9 November 2019, you received a call from Sergeant McCormack and so on. That's correct?---Correct.

If I then go through to page 5, you can see the pages in the bottom right-hand corner.

THE CORONER: No, go up, please.

MR MULLINS: Okay. And we can see there, there's a reference to Kirstenfeldt at 518. "Myself and Eberl at 511. Informed by a lady it was empty. Asked her if we could go inside. Permission granted. On entry, approached by a male identified as Walker in photo on phone. Put phone away. Told him to turn around and place hands behind his back." And then the next page, "Starting fighting us. Hit me in the head. Raised his fists back. I saw a blade in his right hand. Stabbed me in the right shoulder. I believe I punched him in the face at this point." And then there's reference to Eberl and Walker ending up on the ground. You believed Walker had Adam's back. "I observed Walker attempting to stab Eberl with the blade." Now, there's a note on that page that says, "feared for my own life". Is that in your handwriting?---Yes.

What was the purpose of the note? I am going to come back to that sorry. What was the purpose of the note?---To say at this point I feared for my own life.

And why was it in the - in the margin?---Because it's relevant.

I see. Do you ordinarily put headings or notes in the margins of the police notebook?---Relevant notes can go in the margins, yes.

Right. If we go to the end of that page, "I observed" - "I observed Walker attempting to stab Eberl with blade." And the next page, "I yelled 'he's stabbing you', or words to that effect." Now even though what you yelled, as you've recorded it there was not "Knife, knife, knife", that was entirely, or would be entirely within your training, to have yelled immediately to your colleague that's he's stabbing you?---Correct.

And that's not the case, is it? That's not what happened. You didn't yell anything when you saw the blade?---Correct.

But you hoped you had, because you hadn't seen the body-worn video at that point in time?---Incorrect, but - - -

Well there's two things there - - - ?---Because I hadn't - - -

- - - I'm sorry. I - I mixed that question up. There are two propositions there. The first is, you hadn't seen the body-worn video, that's correct?---Correct.

And so when you were recording what you remembered happening, you hoped you had yelled out as soon as you'd seen the blade, because that would have been in accordance with your training?---Incorrect. Because it doesn't work, because I hadn't seen the body-worn video, so it doesn't make much sense for me to make notes about things I had said with the intention of them being on the body-worn video if I didn't believe. You know what I'm saying, it doesn't make sense for me to try and make something up, when I believed the body-worn video was on, and recorded everything that had occurred.

What you were recording is what you were trying to remember happened, that's right?---I recording what I was remembering had happened at the time after a critical incident, yes.

And then we can see the next line is, "I unhostered Glock, fired into Walker's torso"?---Correct.

Now I'm done with that, thanks so much.

Now that you've got the sequence wrong, in the days and weeks that followed, you saw the body-worn video, and you realised you'd got the sequence wrong?---I wouldn't agree with that. Over a few good night's sleep, my memory occur - my memory improved - - -

Right?---In regard to the incident, and again, there are arguments as a - as to whether - and this is probably in front of the times of this Coronial, but there is arguments to occur whether or not it's more effective for witnesses to talk to each other to jog each other's memory, and to watch the body-worn video to jog each other's memory. So I cannot recall now, four years on, over four years on, in what process my memory improved. Again, someone should have called an expert.

All right, well I'm sure that everybody will take that on board, but the reality is that, and I put this proposition to you, in the days and weeks that followed, number one, you watched the body-worn video, is that true?---I watched the body-worn video at some point after it was supplied to my lawyer. That could be confirmed that date.

Okay. Secondly, you then started a process of reconstruction, that was different from the record and the order of the events in the notes?---Incorrect.

And you used the body-worn video to reconstruct what had happened?---Incorrect.

And in that reconstruction, you took into account, and dealt with in a way, that supported your case of self-defence, or defence of another?---Incorrect.

And that's how you came up with the version that you ultimately gave to Kirsten Short?---Incorrect.

Now, but somewhere along the way, between 2019 and the trial, isn't it the case that you decided that maybe the presence of the small blade was not enough to convince the jury that your life and Eberl's life was truly in danger?---Incorrect.

And that's when you added to the version, that at one point in that six seconds, between the time Kumanjaya started to resist and the time you pulled the trigger, that Kumanjaya put his left hand on your Glock?---Incorrect.

And you did that to try to suggest that you were in graver danger than in fact you were?---Incorrect.

And that was a fabrication wasn't it?---I don't know how to answer that because you're - I already told you the previous question what you're going off is incorrect.

Okay. Well I put to you, I'm just giving you the chance to comment on the fact that that was a fabrication. You fabricated the evidence in the sense that it was - it's untrue?---Incorrect.

Now, you went one step further in your Spotlight Interview, and that's exhibit 20-49. And it's the third page of that document. So this was after your trial this interview, but before the verdict, is that right? It doesn't matter particularly, but it was around that time?---Yes.

Yes. I thought it was - I've got 20-49. And then it's the - yes, so it's the third page. I don't think my page - yes, my pages are numbered. Sorry, the fourth page. And if we go down towards the bottom of the page.

A PERSON UNKNOWN: Page four?

MR MULLINS: That's it, and just a little bit up. That's it, thank you, perfect.

So this is what you told the Spotlight program. "He was striking me around the head and the neck area, and he was striking me in a hammer fist motion. So his fist is like this, and he's coming down at me from above." Now you're obviously demonstrating there, and is it like this? Your fist is - his fist is coming down on you like that?---Yeah, similar to that.

And that's a motion with my arm extended above - my right arm extended above my head, and I'm making a fist in a downward motion. "And as soon as that occurred, I lifted my left hand out, and I lifted my shoulder to protect my neck. That's the first time I saw that he was holding a metal blade. Obviously immediately for me, we were in a life or death situation, and I feared for my life." But you didn't tell Eberl, Constable Eberl, did you?---Correct.

"At that point he stabbed me in the shoulder. I jabbed him in the face with my left hand and stepped back. My right hand instinctively went for my Glock. When I went for my Glock I felt his left hand on my Glock already, and at that point, I was to be

honest, I was impressed by his skills in violence. He had his presence of mind to go for my Glock with his left hand, whilst stabbing me with his right hand.” Now, you are saying, aren’t you, in that passage, that in some point - at some point, he was striking you with his right arm, above his head, that’s right - - - ?---Yes.

- - - in a downward motion. And he had his left arm around your body, towards your Glock, with his hand on your Glock?---Yes.

All right, so he’s in this type of position that I’m in, is that correct?---It was happening very fast. I don’t know the nuances of the position.

And what was Eberl doing at the time that he was in this position?---Again, we need to go back to the trial evidence if you want more accuracy, or you could play the body-worn video, because there is a very helpful part of the body-worn video, which I’m not - sure you don’t want to play, in regard to the hand on the Glock.

And at that point, when you say his hands on your Glock, you reflected and spent a moment or so, within that six seconds, thinking to yourself, well he’s got great skills in violence this fellow. That’s what you thought, is that right?---Well that’s just a - another moment of fear - - -

And - - - ?---An extra level of fear to the situation.

You’re in a fight for your life, with a man who has a blade and had his hand on your Glock, and you reflect, well this guy’s got terrific violence skills?---Have you ever been in a fight for your life?

I haven’t?---Yeah.

But I’m certain - I’m going to suggest to you that that is pure fantasy?---I reject that. And again, if you had someone with more experience and expertise, I think that would be welcome in this instance to provide further evidence to hear more information as - - -

DR DWYER: Just before that line continues, I would - might I rise to make this point. Any of the counsel who appear at the Bar table could have made suggestions, and indeed may have, about witnesses who can be called in this inquest. And inquest that commenced on 5 September 2022. Mr Rolfe has been very ably represented by King’s counsel and solicitor and junior counsel throughout the course of this inquest and as far as I know, no suggest was ever made to the counsel assisting team that there should be a memory expert or any other expert called who has not been called and neither has any report been produced.

THE CORONER: And, of course, other parties have produced expert evidence - or at least attempted.

DR DWYER: Yes, that is the case.

THE CORONER: So it was well known that that was available.

DR DWYER: That is the case, your Honour.

MR MULLENS: Thank you, Mr Rolfe. Thank you, your Honour. Those are my questions.

THE CORONER: Thank you. Mr Boulten?

MR BOULTON: If the court pleases. Mr Rolfe, my name is Phillip Boulten. I represent the North Australian Aboriginal Justice Agency in this inquest.

MR ABBOTT: Your Honour, I have to leave this court at 3 o'clock, so I don't want to interrupt Mr Boulten but if I could be excused at that time. Mr Officer will be here in my stead in that time.

THE CORONER: Yes.

MR ABBOTT: I will be back but I will be away for an hour or so.

THE CORONER: Certainly, Mr Abbott.

MR BOULTEN: You will be familiar with NAAJA from your day-to-day work here in Alice Springs?---Yes.

You have already explained today how you came to be here in Alice Springs after a life which was quite different before your arrival in Alice Springs?---Yes.

During the time that you were here, did you form the view that this is a place where life is complex for most of the people who are residents?---Yes, I think that's fair.

With challenges that people in suburban Australia don't normally have to deal with? ---Yes.

Although you didn't receive comprehensive training about cultural issues, did you start to pick up some of the important differences between life for the Indigenous people of the central desert on the one hand and the people that you normally would have dealt with in the rest of your life?---I would need more specific examples if that's - - -

Well, I am going to ask you shortly, some things about what your perception of difference there was, if any. But you would have picked up some of the thing that other people in Australia might need to read books about, you learned on the job, didn't you?---Yes.

Did you come to know who the traditional owners of Anmatyerre are?---No, I do not. In regard to - sorry - I was thinking of the - I misunderstood the question, thinking of the current elders in this situation, but yes, sorry.

So who are the traditional owners?---The - - -

Without naming the personal people, but the group?---I am going to pronounce it wrong, so I'd rather not. I am going to pronounce it wrong so I'd rather not.

Arrernte, is that (inaudible) pronounced?---Yes.

Do you know - - -?---Sorry, I believe there was an extra few letters in that so - but that was my mistake.

Do you know why they're called the "traditional owners" and not just "the owners"?
---Look, I don't have enough cultural training to understand this.

Who used to own this country?

MR ABBOTT: I object to this, your Honour. This is far, far removed - I have no objection to general questions about my client's lack of knowledge but this is not an examination on cultural awareness and, in my submission, it is entirely inappropriate that this sort of examination should be allowed of this witness, given what he said about his lack of cultural training. They can make what they like of that and obviously it is appropriate they do so, but then to test it as though this is an examination in relation to cultural awareness is in my submission going to take a very long time and achieve nothing.

MR BOULTEN: I have limited time and I am not going to spend a lot on it but I submit that what I have been asking is relevant and it seems - - -

THE CORONER: If we're looking at the training and the level of training that's required it seems to me that it's relevant, Mr Boulten.

MR ABBOTT: Your Honour pleases.

MR BOULTEN: You didn't read much about how the colony took over this country but did it occur to you whilst you worked here that there had been a change in the last century or so where Aboriginal people owned and controlled and were connected intimately to the country but now it's people from outside this area that control it?---I accept that.

Did it occur to you that that might make a difference to the way that Aboriginal people perceive outsiders who come here not just as police officers but who govern them?---Outsiders as in interstate?

Anybody how is not from this country - this country?---What do you mean when you say "this country"?

I mean Arrernte country?---I guess it didn't because - well, in some instances, yes. But we could go a lot further down this and I am just not qualified to answer these questions.

When you were living here and working amongst the people from here, did you learn anything about the strengths of their culture?---I did not have much cultural training in Alice Springs and as I have said previously, as a police officer I attend jobs where people have called the police, where they need help or where people have broken the law. I've said this previously, I have not been called to cultural events as a police officer so there is not much - there is not much opportunity for me to do so.

Did you not have casual conversations with the people amongst whom you worked - not just the police officers but the community in the police, about their country?
---No, I did not.

Did you talk about - or read about - song lines?---About what, sorry?

Song lines?---Song?

Song lines - S-O-N-G-L-I-N-E-S?---No.

Did you learn anything at all about the beliefs of the people here, about how they are connected to their country?---No.

Did you learn about their kinship system?---I - yes, all in a matter of basic terms.

Was it, in your view relevant to know how people were connected to each other through kinship connections?---In my experience as a police officer I did not, at the time, affect how I acted out my duties of the law.

Did you not ever once, in an arrest plan for instance, ask any of your colleagues what relatives the target might have that might assist you in your task?---Yes.

Did you think that Aboriginal people's connections to their relatives is a very very strong part of their culture?---I have seen no evidence that it is stronger or weaker than any other culture that I'm aware of.

Did you become aware that there are differences between kinship connections for Aboriginal people in Central Australia on the one hand, than say the kinship connections that suburban white people have in Australia?---Yes.

Is it your view that an understanding of cultural etiquette, skin names and family relationships, was relevant, at least to your work?---Skin names and family connections?

Yes, and cultural etiquettes?---From my understanding, skin names, I'm not sure. The other two, yes.

Did you know, for instance, that there are poison relationships in Aboriginal kinship ties?---Yes I'm aware of that.

Were you aware of the need to avoid trouble concerning those interactions?---I was aware of that in-between members of that culture. I've never been involved in a situation as a police officer where that has had any effect.

Did you ever tailor your interactions with Aboriginal people in order to avoid cultural conflict, like the one we've just been discussion in your last few answers?---I can't recall every job that I've been to. There may have been situations where someone has said that they can't be in the same area as a poison relative, at which point we'd never make that occur, obviously. But I can't think of specific examples.

Were you aware of the concept of establishing community trust between police and Aboriginal members of these communities in this area?---Yes, as per all communities that we work in.

Were you aware of the significance of funerary rights in Aboriginal communities?---Again, I'm not aware that funeral rights are any more or less important than in any other culture.

But did you become aware - I'll withdraw that. Did you become aware of how funerals and sorry business is undertaken in Central Australia?---Only to an extremely minor extent.

Did you become aware that sorry business is not concluded as the deceased is lowered into the grave?---Yes I have never seen any strict information on sorry business in regard to timings.

Did you understand that there is a concept of women's business and men's business, both attached to sorry business in Central Australia?---I was aware that there was both men's business and women's business and sorry business.

Did you have a view that Kumanjayi Walker was in Yuendumu when you went to arrest him because of sorry business?---Did I hold that view?

Yes?---No I did not.

Your evidence is that you didn't know that there was a funeral on?---I was made aware that there was a funeral on.

When?---I can't recall.

Were you aware that there was a funeral when you attended the two houses that you entered that evening?---Information to me was that the funeral should have been over.

Who told you that?---Sergeant Frost.

And did she tell you that sorry business was over?---No she did not.

Did you know that there was more to it and just the funeral being over?---No I did not.

You didn't know that?---No.

In a similar vein, were you aware that in Central Australia, in places like Yuendumu, families live indoors and outdoors, quite commonly?---I haven't - didn't - I haven't spent time in Yuendumu before. And the communities that I had been in, that was a common occurrence to sleep indoors or outdoors.

It was?---Yes.

And were you familiar with the idea of men's camps, women's camps and other shared spaces in Warlpiri culture?---I was aware of men's camps, women's camps and sacred sites. I'm not sure about the other shared spaces, or what that could mean, apart from - - -

Are you aware of the concept of Ngurra, N-G-U-R-R-A?---Not - I'm not aware of that word.

Okay, the importance of place, safety place. It's a safe place, my place, my community, my town, my resting place. Were you aware of the significance of those - of that concept, when you went to the house where you sought to arrest Kumanjayi Walker?---No this is the first time I've ever heard of Ngurra.

You were a very, very diligent police officer throughout your time in Alice Springs, weren't you?---Sometimes, yes.

You were energetic in your duties, as best you could be?---Again, sometimes when I had the energy, yes.

You understood that your work was important, didn't you?---Yes.

You enjoyed your work, most of the time, didn't you?---Most of the time, yes.

You came to regard your fellow officers, especially your fellow on-the-job general duties patrol member officers, those being very, very important part of your life, didn't you?---Yes, some of them were a very important part of my life.

You loved responding to your jobs?---Is that my evidence?

That's a quote from part of your interview with Ms Shorten?---I accept that. And I loved responding to some jobs, that's a generalisation again.

You loved how busy it was in Alice Springs?---Again yes, there was times I loved the business.

And you loved working with the crews on the ground?---Yes, most of the time.

You thought that your general duties colleagues were amazing to work with?---Yes, most of them.

You received a lot of positive feedback from your general duties colleagues about your work, didn't you?---Correct.

But let's not beat around the bush. You were regarded by the colleagues you trusted as an excellent police officer, (inaudible)?---I believe so.

And an exceptional police officer?---You'd have to ask them, I wouldn't say that.

But that's the way you understood your perception amongst your colleagues, right?--
-I had a good reputation.

Yes. You've said a few critical things about the brass - - - ?---Yes.

- - - in your evidence. But generally speaking, as far as you could tell, the Superintendents and Commanders here in Alice Springs, they had a positive view of you too, didn't they?---I would say two Superintendents, definitely not. But others perhaps. Yes, there was definitely some that did.

Okay, so apart from the foreman, discussions that were had officially as a result of some issues that arose in relation to use of force and body-worn-video incidents. Did any of your superiors sit down with you and say to you, "We think you should change your approach," in any way?---No.

Did any of your superiors give you positive feedback about the way that you conducted your policing duties?---Yes.

What sort of feedback did you get? What sort of positive feedback did you get?---I believe there is a couple of, I guess, commendation-like emails for jobs well done. Moreso, it would have been the utilisation, or the repeated utilisation by those higher-level staff to request me specifically in order to attempt to locate an arrest. Specific arrest targets, if potentially they were hard to catch.

Just take that example. In the years you were here, did you form the view that your methodology in planned arrests was the accepted way to conduct those planned arrests, at least so far as your superiors were concerned?---I wouldn't say it was the only accepted way. But I would accept that it was an accepted way by my superiors.

In fact, you were commended on a number of occasions for the way that you executed some of those operations?---Correct.

And did you ever receive negative feedback about the way that you conducted any of those operations?---No.

Well, what about spontaneous incidents? On the job things develop close by, quickly, you were often the first person to respond, were you not?---It depends. If – because the situation depended if I am working one-up, if I am working with another person, if I am stuck on a job. But, yes, I was proactive in my response in fluid situations like that.

You were fast. You were athletic. And you were effective, so far as you understood?---Correct.

You were faster than most? Correct?---Correct.

More athletic than nearly everyone?---Correct.

And more effective than nearly everyone?---I can't – I don't – there is data that can support that. I – more effective than the average for sure. But I accept it to a point, but I wouldn't say, "Nearly everyone."

So just as with planned arrest situations, your modus operandi in general duties policing, and arrests particularly, you understood were regarded – was regarded highly by your colleagues?---Yes.

And by your immediate superiors?---Yes.

And indeed, by the brass here in Alice Springs?---Yes.

Did you ever get any negative feedback about the way you conducted policing in Alice Springs at all? Apart from body-worn-footage, and some use of force incidents?---No. And even in regards of the use of force incidents, the only negative, if you could call it, "Negative feedback," was the request to respond to PSE for a – but none from my superiors in Alice Springs. I can't recall any other than those or the body-worn-videos incidents.

Okay, so in so far as witnesses have come into this court in the course of the inquest and offered views to suggest that your methods were on particular occasions unsatisfactory, excessive, or unwarranted. You never heard anyone say any such things to you when you were actually a police officer. Is that right?---Correct.

In the immediate aftermath of Kumanjayi's death. When there was a national focus on that incident in the media. Did you receive support from your general duties colleagues?---Yes.

Did any of them come to you after the incident and criticise you for anything that you did during the course of the events at Yuendumu on that night?---No.

What about in years that have gone by since then, have any serving police officers with whom you worked, apart from the brass, come to you and said, "Look, we have been following this inquest and we have changed our minds. We think you should have done this, you should have done that, you should have done something different?"---There has been discussions, obviously about how in hindsight everything could be done better. But I have received no criticism by any of the people in that majority of the – in anyone except for the brass that you have mentioned in this coronial. And that one witness in the trial. The use of force - - -

The use of force expert?---Yes.

Okay, sure. So, even with the benefit of hindsight, and time and reflection, do you think that what you did in the day or two and up to the time of the death of Kumanjayi, was in any way unjustified, excessive, or inappropriate?---No.

In retrospect, in considering the amount of time that has been spent in this inquest about your use of force in other circumstances besides Kumanjayi – Kumanjayi's death. Did you do anything in any arrest situation that was excessive, unnecessary, or inappropriate?---I believe in probably every situation I was nearly in I could do better. I could always do better. I don't deny that at all. I'm not saying I'm perfect by no means. I definitely am fallible and have made mistakes, I admit that. I don't – I can yes, I've done some things on the job that are inappropriate, which would be a mistake.

Well, there's body-worn footage issues?---Exactly.

Put them to one side. What about the use of force?---I would say no to excessive, and no to unjustified.

Well, why would they think that's inappropriate uses of force, if not justified and not excessive?---Sorry. I wasn't talking about use of force incidents being inappropriate. I'm talking about the things I may have said. The rudeness in my voice.

All right?---Even the Albert Bailey incident when I allowed anger to come across in my voice, losing an element of professionalism; things like that.

In the overall scheme of things, human imperfections of minor degree?---Yes, I agree.

Okay. In the aftermath of the Kumanjayi shooting, numerous colleagues sent you well wishes, didn't they?---Yes.

And you've still got a copy of these text messages, MFI MMM. If you could look at message number 553, please?---Yes.

This is a message on 9 November?---Yes.

At 7:52 pm?---Yes.

Where were you at that time?---I was still in Yuendumu.

In the police station?---Yes, without reception. I didn't have reception out there, yeah.

I'm not suggesting that you got this message immediately. But is the person who sent that message a police officer?---Yes.

"Good work. I hope you're okay."?---Yes.

It must have been the very first message that anyone sent to you about - - -?---I would accept that.

555?---Yes.

10th November?---Yes.

12:29 am. So this is still the night of the incident?---Yes.

Mark Sykes said, "You look after yourself. You're the most important person in this situation."?---Yes.

That meant a lot to you, I take it?---Yes.

And again, message 556, Jimmy Kirstenfeldt, 1:22 am, "Just checking in, you're all right mate."?---Yes.

Message 560, 1:47 am, Mitch Hansen, "If there's anything you need, just let me know, mate. Give me a ring when you have time. No stress."?---Yes.

And at 2:59 am, message 566, XZ I think was Ms Zendelli?---Yes.

"If you're having trouble sleeping, I've got pills I can drop off."?---Yes.

And at 5:28 am - - -?---Civilian.

568 - no, I'll withdraw that - well at 570?---That's a civilian. Below that, police.

Yes. Well, I won't say the note (sic), but at 570, message 570, 9:13:17 am - - -?---Yes.

- - - on 10 November, you sent a message to a person saying, "Cookies are good. They're too good, now(?)"?---Yes.

Where were you when you sent that message?---I was at home at my house in Alice Springs at the time. One of my friends, this person, had dropped off a number of baked cookies.

Okay?---And sorry, can I just confirm, no marijuana in these cookies, just Coles' bought cookies.

Well, an act of generosity from a friend?---Yes, partner of a police officer.

Okay. And message 571 and 573, are they messages from a police officer?---Yes.

Are they also on the morning of 10 November?---Yes.

And that person, that police officer, "We know. Got your back."?---Yes.

Right from the start, very firm support from the police?---Yes.

And if you got to message 598?---Yes.

Is that a message from a police officer?---Ex-police officer, yes.

That ex-police officer also said at that time, "Hope you're okay."?---Yes.

And message 600?---Civilian, yes.

That civilian sent you a message on 10 November in the afternoon, "Hey brah, super stoked for you."?---Yes.

And I think you were asked about this the other day, "Let's see those pussies in TRG say no now"?---Yes.

Again, a positive message, basically?---Yes.

And we know the difficulties that you had with the TRG rejecting your application, well several applications?---Yes, the Promotion Board rejecting it, yes.

Could you look at 617?---Yes, ex-police officer.

An ex-police officer, "Oi"?---And if you - if it matters, the person in that is an ex-police officer now as well, if that matters.

Okay. Well, we won't use - - -

DR DWYER: Sorry, your Honour, might I just be addressed in relation to nonpublication orders. There are some - it's a matter for your Honour of course to hear submissions of - but if somebody is an ex-police officer and perhaps Mr Rolfe needs to take some instructions on this, but I don't appreciate why their names couldn't be used in that. I think it might be different to civilians, but perhaps it's a matter for Mr - - -

MR FRECKELTON: Your Honour, I'll might need a brief moment, but I think it might be the name there perhaps, the time in which they became ex-police officers might be relevant. Were they ex - - -

THE CORONER: Look they're not being used at the moment.

MR FRECKELTON: I think Dr Dwyer is going to say that it's relevant for some purpose that it relates to.

DR DWYER: Perhaps at this stage, they could just be referred to an an ex-police officer and referring to another police officer. I think the point for the message to make sense is just that the person in the sentence "bad arse" was a former police officer at that current circumstances, one of the other.

MR FRECKELTON: I'm sure that he'd want to be heard about that. I don't know. But perhaps - - -

THE CORONER: Look at this stage, they're not being referred to, but the situation is, as I understand it, there is a nonpublication order over the names of civilians, except where they have been found to be relevant. There is no order in relation to police officers except if a specific order has been made. In my view that order should apply to no order in relation to police officers if they were serving at the time of this text message, but if you want to make a different application I would hear from you - or if you want to make any other suggestion, Dr Freckelton.

MR FRECKELTON: For the present, your Honour, can I respectfully suggest this, that the names of current or former police officers not be used unless it is likely to be helpful to the inquest to identify the specific individual.

THE CORONER: We probably need to clarify that at some point. They are not being used at the moment.

MR FRECKELTON: Yes, exactly.

THE CORONER: So I am going to proceed but we need to clarify the non-publication order in relation to the names of police officers.

MR FRECKELTON: Yes, thank you.

THE CORONER: So if everyone is happy to proceed, we will come back to it.

MR BOULTEN: This person said, "Oi - what (inaudible)" like (inaudible)?---Yes.

"You mad dog. You must immortalise yourself man, sheet - bad-arse now like MH but hey man, if you need anything I got your back" et cetera, et cetera, "and you are now amongst the top one per cent - what a status, bro". Do you see that?---Yes.

"Bad-arse now like MH" - what's that about?---"MH" is an expletive so with a -

I would say an exceptional reputation amongst the police force (inaudible).

For doing what?---For being - generally being a very good police officer. I'm not aware of any critical instances like you see he has been involved in.

What did you understand it to mean that you were amongst the top one percent now?---I'm not completely sure, I just took it as a - it was a - as a compliment or a show of support.

And a little later, the same person said, "You're a leg, bro"?---Yes.

Legend, right?---Yes.

So it's wholesome support?---Yes.

Wholesale support?---Yes.

And 621, I think we can say this person's name, can we not?---I think this has been said before.

This is Ms Zendelli?---Yes.

She reported to you at 11:33 pm on the day after the shooting, "Superintend Nobbs just commended you and said your conduct was justified". Do you see that?---Yes.

Did anyone else tell you anything to that effect?---I had been told that I ha been cleared on justification and excuse by detectives at the station and they were working through - their way through authorisation.

Who told you that?---Detective - perhaps Senior Sergeant Leith Phillips by my recollection.

When were you told that?---On, I believe, Sunday morning.

So this is Sunday morning?---When I had to go in to the station.

Sunday is the 10th is it not?---Yes, so - the Sunday morning - not through text - in person - I had to go to the - back into the station, so got home at about 3 am on Sunday I believe.

Yes?---I slept for a few hours and I believe approximately around 9 am I went back to the station to meet the psyche and was when I saw a few people.

So that's when you were told that people who were investigating the issue had determined it looks like you hadn't done anything wrong?---Yes.

You asked Ms Zendelli "Where id Mr Nobbs do this"? This is at 623, do you see it? ---Yes.

And she told you, "In muster last night". Do you see that?---Yes.

If you go to 626, on 11 November at 6:10 am the person that is known as "CB" sent you a message saying, "Hey brother, just touching base to see if you're still travelling all good"?---Yes.

And at 628, 7:59 am, you received another message, did you not?---Yes.

Was that from a civilian or a police officer?---Ex police officer.

That person said, "Hey, bro, heard you were involved in this Yuendumu crap, hope you're doing okay". Right?---Yes.

You told her, "I'm doing good". See that?---Yes.

And she said, "Ha ha, you're too tough for that shit, just wanted to touch base. Take care brother to another mother, kiss - stop picking on them blackfellas LOL"?---Yes, an just for context she is black. Just to - - -

No, I've got it - she's - by the look of it, Pacific Islander?---Yes. Yes.

What did you think of someone making a light-hearted comment about the fact that you'd killed an Aboriginal young man?---In regards - - -

The day after the killing?---In regard to that specific comment, sorry?

Yes?---I didn't think - obviously I can't recall my thoughts on the day specifically. I don't think I put too much weight on what was said. I saw them for a show of support and a belief that I had done.

The reference to "Stop picking on them blackfellows" puts a different angle on, "You didn't do anything wrong here, Zach." This is like - whether she is Pacific Islander, black or brown, it is a commentary about the race of the person killed, isn't it? ---It is. Again, it's not from me. I would take it as an incident dark humour in regard to a traumatic event - but it didn't come from me and I can't recall my specific thoughts at the time. I understand the perspective - the other perspective - dark humour is, I believe, always going to be found offensive by someone outside of that vacuum.

So at 6:31 you received another message of support?---No, civilian.

From a civilian. "Oh, you toughie - what about - what about after it all? You're G"? ---Yes.

"All good"? Sweet?---Yes.

And then there's an exchange of messages in what I would call a conversation?

---Yes.

And at 635 she said to you, "Do you think you will get a bit of backlash". Do you see that?---Yes.

And you said, "Not from the police - maybe from the public." Do you see that?
---Yes.

You weren't expecting backlash from the police, were you?---Not at all.

In fact, by that time you had already received positive feedback from the police?
---By that time, on the 11th - sorry, I had received positive feedback. I believed I was going back to work on - this is the Sunday - this is the Sunday - on the Monday. I believed I was going back to work on Wednesday.

But?---To carry on without any - yes, without obviously what had occurred, so yes, I did not believe there was going to be any negative consequence from the police.

This friend of yours said, at 637, "Was the lad Aboriginal?"?---Yes.

And you confirmed that he was. Then she asked you - or she said, "You're always going to get backlash from the public when it comes to dealing with an Aboriginal. All g though, I got you're back. I'll fight them for you." Do you see that?---Yes.

Okay. Where did this person live?---Rural Victoria.

Right. And to your understanding, did she have any professional experience dealing with Aboriginal or Torres Strait Islander Australian people?---It's likely. She works in a hospital. Her partner was Aboriginal. So personally yes, professionally I'm not sure, but I would expect some.

And so she was prepared to fight the Aboriginal people?---I believe she's referring to the public.

The public who were supporting the Aboriginal people?---I - I wouldn't look too much
- - -

(Inaudible)?---Into it, but yes, it's up to her.

Yes. Message 681, six eight one?---Sorry sir, would you mind - would you mind a bathroom break soon?

The witness is asking for a break.

THE CORONER: Sure?---Just that - - -

It's quarter past 3:00, so we'll take a 15 minute afternoon break?---Sorry to interrupt.

WITNESS WITHDREW

ADJOURNED

RESUMED

THE CORONER: Yes, Mr Boulten.

MR BOULTEN: If you look at message number 681, please?---Yes, a potentially current serving police officer.

Potentially?---She was a police officer at the time.

She was?---Yeah, but I haven't kept in contact.

Well, let's not use her name anyway?---Yep.

Okay. This person who was a police officer at the time sent you this message on 12 November, "I know we aren't friends or anything, but I hope you're doing okay. Don't listen to the protesters. They have no idea what it would have been like to be in your position. Your blue family is with you."?---Yes.

Clearly, she talks about the "blue family" as the police?---Yes.

And by that time, by 12 November, there were protests about the shooting in Alice Springs?---If that's the Tuesday, I believe, but yes, obviously. By 12 November, obviously, yep.

Are you aware of a meeting of police officers, an informal gathering of police officers in the police station on or about 12 November?---Sorry, is that a Tuesday?

I'm not sure. Well, it doesn't matter of the date, but soon after you were asked to wait for further (inaudible)?---I'm not aware of - I don't believe I'm aware of a - unless I get some hints as to who may have been there.

There was some evidence a year or so ago in this Inquest?---Yes.

That at or about the time that there were protests in Alice Springs where there was harsh criticism of you?---Yes.

There was an informal gathering in the police station in Alice Springs where there was favourable comment supporting you. Are you aware of anything like that?---I can't recall it at the time. I'm not saying it didn't happen. I can't recall it at the time - right now.

If you look at message 683?---Yes.

Is that a police officer?---Civilian.

That person said, "I met you in ED", Emergency Department?---Yes.

“Just wanted to let you know, I’m thinking about you and sending you strength and positive vibes during this time.” Correct?---Correct.

And 685, is that a police officer?---If you say that, it can’t be. It’s not going to tell us who it is.

You don’t know who that is?---No, I know who it is, but if you say - I can say - if you say DBK, it won’t be identified.

Is it a police officer?---Yes.

Okay. They say, “Just thought you should know that I support you. We all do. You’re a top bloke and you just did your job. Glad you’re still here.” Correct?---Yes.

And you told him?---Her.

Her in 687, “The support’s been unreal.” Do you see that?---Yes.

And at 688, again, there’s a message from Ms Zendelli?---Yes.

“Some prick is leading information. It’s making me so mad. Don’t listen/read the media, Zach. You know you did the right thing and the truth will unfold. Arseholes.” Correct?---Correct.

You probably didn’t count them at the time or even now, as I went through them with you, but there are 17 instances of those supporting you in text messages to you and from you in that period of three or four days after the shooting?---I accept that.

I’ll just take you back to 659?---Yes.

Mr Kirstenfeldt sent you a message, “Stop talking to these c’s. Lawyer, lawyer, lawyer. They’re covering their own arse.” Do you see that?---Yes.

And in the next one, “You left and didn’t get to see the aftermath of arse-covering. Stop talking to them. They are fucking covering their own arse.”?---Yes.

You said, “Got it bro.” He said, “Don’t trust these snake fucks.” Do you see that?---Yes.

Okay. Is he talking to you about something that had happened after you left the police station on 11 November?---That’s what I took it to be referring to. Sorry, in the Yuendumu Police Station.

No, I’m talking about the Alice Springs Police Station?---I - - -

He’s talking about arse-covering?---Yes. I assumed at the time that he was talking about after I left the Yuendumu Police Station. But if there was a meeting in

Alice Springs, it could be that. But I'm not aware of - I can't recall any meeting in Alice Springs.

You seemed to understand what he was talking about. You said, "Got it bro." Can you remember now what you thought he was talking about the - when he says, "You didn't see - get to see the aftermath of arse-covering. You left." After I saw that and I assumed it was the Yuendumu Police Station, because I wasn't involved in any meeting at the Alice Springs station involving the IRT members, involving any of the members that were at my house at that time that that message was sent.

He's telling you to stop talking to people. Who did you think he was urging you not to talk with?---I think Jimmy can get a bit paranoid when he's on the beers. Probably when he's not on the beers as well sometimes.

Six o'clock in the afternoon?---Yeah, the statement still stands.

All right?---He was - he must have been talking about some of the officers that were at my house. I don't agree with that assessment of those officers and I don't think he would in the clear light of day, but that's a question for Jimmy. But it has to have been one of the - one of or more of the officers at that gathering.

These are your colleagues?---Yes.

THE CORONER: Just to check my own understanding, these were messages that were sent at the gathering at your house. You were there and - - -?---Yes. So Jimmy was - - -

- - - Jimmy was there?--- - - - in the room with me when he sent - - -

And he was texting you?---Yes.

All right, so I understand now too?---Sorry, I thought that was - - -

No, got it. Thanks - - -?---Yeah. Sorry about that.

- - - Mr Rolfe. What about that one at 664, it's so filthy I'm not even going to read it out. What's that about?---I'd say for the purposes of the - I don't know how to say it politely about Jimmy(?). That is Jimmy's sense of humour. Because I - - -

It is homophobic, isn't it?---I have a Garmin watch that vibrates when I get a message. So, when he sends that message my watch will vibrate, and I would look at it. And then he would - that would make him have a little giggle.

It's a homophobic message, isn't it?

MR ABBOTT(?): Your Honour, I object, that (inaudible). He has just explained it.

MR BOULTEN: Well, I know that your lawyer doesn't think it is homophobic. What about you? Do you think it is homophobic?---I didn't take it to be homophobic.

Right. You received a lot of support from police throughout the Northern Territory in one way or another in the months and now years since the incident occurred?---Yes.

As you said in your letter, which is exhibit 26:

“No police officers that I have actually worked with have spoken poorly about me in the coronial or the trial. It is the opposite. The only members who have spoken poorly about me are those who have never met me, or senior police who hide behind desks.”

Agree?—Agreed.

You have especially now a poor opinion of commentators who haven't done what you have done. Agreed?---I – can I just ask for a bit more explanation?

Yes, people who have criticised you have not done the hard yards that you have put in as a frontline police officer. You have a poor opinion of those critics, don't you?---I have a harder time understanding criticisms from those who have a lack of understanding of which that they are criticising.

Has your support come from outside of the Northern Territory?---In addition?

Yes, in addition?---Yes.

Have you received substantial support from serving police officers in other states?---Yes.

And the ACT?---Yes, included.

Federal Police?---Yes.

You have received the full backing of your union, have you not?---Whilst the time that he – I was going through the trial process, yes, most definitely.

If you might have a look at this document.

We have copies for everybody.

A PERSON UNKNOWN: (Inaudible).

THE CORONER: But I will have a look at it, thanks, Ms - - -

MR BOULTEN: Yes, okay, it is exhibit 6.

THE CORONER: Thanks.

MR BOULTEN: I had forgotten that.

THE WITNESS: Thank you.

MR BOULTEN: This is something that was published in Police News in June 2022. Okay?---Yes, I accept that. I accept that.

And if you look at pages 30 and 31?---Yes.

It's an article about you, right?---Yes.

Police News is the official publication of the Northern Territory Police Association?---Yes, I believe so.

On page 31, you are quoted. Do you see that in the box, in the lefthand bottom of the page?---Yes.

And they are your words?---Yes.

You got support from the union right through the course of the trial, including them covering your legal expenses. Correct?---Yes.

I am not saying that's wrong, by the way?---No, I just want to be - - -

You don't?---Get it correct about that. I believe they covered it. But I believe they – perhaps Dr Freckelton can confirm, there is an agreement between them in regard to legal fees. Sometimes in situations like this. But at the time - - -

Let's just leave it on the basis that there was a financial contribution from your union?---Yes.

And as you understand it, the association is in all ways still supportive of you personally and your actions during the events that have led to this inquest?---I haven't had much interaction with the association in the last few months. Up until the point when Paul McCue left, I can say yes, 100 percent to that answer. I can't give an opinion based with the new president, I'm not sure.

You are no longer a member?---I'm no longer a member, yes.

Okay, there was quite a lot of social media activity?---Yes.

That was generated in support of you, correct?---Correct.

And particularly in support of your actions at Yuendumu on the occasion of Kumanjayi's death. Correct?---Correct.

And you can look at this document.

There is copies for everyone.

Now this is a clipping from an online article from the ABC News website in September 2020. Someone was printing off t-shirts about this incident, right? Singlets?---Yes.

Do you know people that bought any?---I believe this occurred in Darwin. But I am not aware of the – I know the officer's name – the ex-officer's name. I believe I know his name now.

It's in there?---Is it.

(Inaudible), I think?---Okay. So, I - - -

Don't worry about the name of the (inaudible)?---I don't know him and I have never met him. I am actually not aware of anyone who has bought these singlets.

Okay, see this #bluelivesmatter?---Yes, seen.

Was that a social media tag?---I imagine it would be.

Did you review Instagram, Facebook, or Twitter?---I have been shown a lot of things from – a lot of supportive pages from Facebook. I don't – pardon?

Do you know about Blue Lives Matter?---I know the saying. I imagine there is multiple groups with that slogan or similar.

"We back Zach?"---I have seen that slogan, yes.

Where did you see it?---I've seen that on social media. I believe I've seen that on car stickers and other forms of stickers.

There was a very wide spread media and social media presence from your supporters in the years after the shooting, do you agree?---Yes.

Okay.

If your Honour sees fit to, we'll see if the news item - - -

DR DWYER: Exhibit 27.

THE CORONER: Thank you.

MR BOULTEN: Mr Rolfe, when it became clear that the Coroner was likely to examine in evidence text messages like the ones I've been taking you to, there was publicity, widespread publicity about the fact that those messages included comments that a lot of people would describe as racist?---Yes.

Since it became clear that that was likely to be a topic of evidence, has anyone come to you and personally expressed disappointment about the use of that language?--- Yes.

Have they changed their views about the way you acted in any of your police duties?---No one has expressed that to me, no.

As you sit there now, do you understand that the vast majority of serving Northern Territory Police thought, and continue to think, that your policing methods were exemplary?---In - in general, or in the?

In general?---In general, I wouldn't - I don't know if exemplary is the right word.

Well how would you frame it?---I would - a bit less than that. But above average - above average, most definitely.

And you think that's the considered view of the vast majority of people, in the police force, in the Northern Territory, at least the police who have to deal with the public?-- -From what I can see from outside, and I can only say anecdotally, there's nothing to back this up, it's just a feeling, is in private, 100 percent. In public, that attitude may change, if that makes sense.

So what you're saying is, you think the genuine views, deeply held, of the vast majority of Northern Territory Police, at least up to the rank of sergeant, or even senior sergeant, is that you did an excellent job as a police officer, throughout your career?---That's my view, yes.

Okay, and they might - might not say it now, but that's what they believe?---That's what - that's what - that's the messages I'm receiving.

What about the use of what many people would describe as racist language? What's your understanding about what people think of that?---There is no acceptance for that amongst the - amongst anyone I've spoken to, or no justification for it. But I do believe, again, privately, there is an understanding, I guess publically, there was a - notion of that is not accepted anywhere in the Northern Territory Police. But I think, again, the majority privately, understand that police officers - a large number of police officers have used racist language, similar to the language that's been seen in my text messages. And I think there may initially have been a lot of shock and disappointment, but then when having a look internally at themselves, a level of understanding. No justification, but understanding.

Can you just clarify the extent to which you are aware of the use of, I'll call it "racist terms", or we might disagree with it - - - ?---I - - -

- - - but let me, for the sake of expression, call it "racist terminology"?---Yes.

You used it in text messages?---Yes.

Your closest colleagues used in text messages?---Yes.

You're aware of people using that sort of language in the Muster Room at Alice Springs Police Station during the time that you were there?---Yes.

Relatively common?---Yes.

You're aware, now, that you're hearing talk about it, that that type of language is actually quite common amongst your police colleagues, wherever they might serve in the Northern Territory?---I believe so, yes.

Well I want to ask you your views about a number of propositions, based in evidence in this inquest. What do you say to the suggestion that a colleague of yours in the IRT, had never heard Alice Springs Police Officers, or members of the IRT use that sort of racist term? Agree or disagree?

MR OFFICER(?): Which term?

MR BOULTEN: Terms. So we're talking - - -

THE CORONER: Racist language.

MR BOULTEN: Racist language.

MR OFFICER: I thought the question was "that racist term" - - -

MR BOULTEN: Those racist terms, like the ones that you've been subjected to questioning in this inquest. And you know what I'm talking about?---I do, I do, I do, I'm just - I disagree. I believe in this - the situation of this inquest, there is a number of levels that are creating fear amongst witnesses in the police force, in regard to their answers, with the perception, whether it be real or not, of negative consequences in regard to their answers. For the situation in regard to where - yeah, in regard to this Coronial.

Well may I ask you, what sort of negative consequences I would think - do you think they're concerned about?---I believe they're afraid of career, or career or punishment consequences.

Okay. May I ask what consequences did you receive for your use of racist language?---I believe, and Dr Freckelton can correct me if I'm wrong, it may have been as part of a bundle of the remedial guidance.

You got remedial guidance about your language in 2023?---Yes it was part of that - part of that bundle.

Okay. Anything else?---Pardon?

Was there any other consequence to you?---For me?

For you?---Only the - I guess the public consequence of the - obviously the shame, the embarrassment of the fact that I have used these, and it has come to light that I have these - used these terms. Which would be the same for other officers involved, but I - I take that.

MR FRECKELTON: Your Honour, since the witness invited correction - - -

MR BOULTEN: Yes.

MR FRECKELTON: - - - I will provide the correction.

MR BOULTEN: Yes.

MR FRECKELTON: The issue to do with the usage of inappropriate language has made its way public through the disciplinary process but traditional review has been sought by Mr Rolfe in respect of that and so the matter is currently in the hands of the Supreme Court. And that is in abeyance, in turn, pending issues to do with the status of Mr Rolfe's employment.

MR BOULTEN: So may I just ask?

MR FRECKELTON: Yes.

MR BOULTEN: Is it publicly known what action is the subject of judicial review now in abeyance?

MR FRECKELTON: I think that depends on how well informed the particular parts of the community are.

MR BOULTEN: Is it capable of being (inaudible) - - -

MR FRECKELTON: Yes.

MR BOULTEN: Could you tell us what the result was then, please?

MR FRECKELTON: The proceedings, as I understand it, and I will stand to be corrected, made their way partly through a hearing within the police force and on the issue of whether disciplinary action could be taken in respect of the text messages which had been discovered as a result of being seized, that issue was placed before the Supreme Court on judicial review.

MR BOULTEN: So no decision has been made?

MR FRECKELTON: Correct.

MR BOULTEN: Okay. All right.

MR FRECKELTON: (Inaudible) your Honour.

MR BOULTEN: (Inaudible) the police force?---Yes, so much legal stuff going on it gets mixed up.

It's hard for you to keep up to it?---Yes.

(Inaudible) I could imagine. Look, Jimmy Kirstenfeldt said in evidence here in evidence here he'd never heard any Alice Springs members or IRT members use those sorts of racist comments. You are obviously disagreeing with James Kirstenfeldt?---I disagree - not calling him a liar at all. I disagree.

You don't need to - but you disagree?---I disagree. I have heard those comments.

And Mr Donaldson said that he'd never heard Mr Bauwens use racist terms or engage in racist conduct. And can you agree with that?---I would - like that makes sense to me. I am not with Constable Donaldson all the time, but yes, I agree with - I've never heard him - I've never heard Sergeant Bauwens speak in that way at all and something that I didn't get an opportunity to address really quickly with the text messages, I think it shows that I - I - the first time I recognised that he wrote that word in that text message was as part of this evidence. I believe at the time I thought he said, "Bush cops" as I was talking about bush cops and then I went back to talking about bush cops, so I haven't ever heard Sergeant Bauwens talk in that way.

Yes, but it was in writing. You just - you say misapprehended what you've read - is that what you're saying?---Yes, because it was such a - so much unlike him.

Okay. Assistant Commissioner Dole gave evidence to this inquest that he had no time for police who hold racist opinions about Aboriginal people and that they shouldn't have the power of a police officer in the Northern Territory. Do you agree - disagree or do you have some other response?---Pardon, can you please read the statement that he said again?

He has no time for police who are racist and people who hold racist opinions about Aboriginal people shouldn't be given the power of a police officer in the Northern Territory. Agree, disagree or do you have some other response?---No, I definitely agree. I definitely agree. I think there needs to be a separation between using racist language and being racist. Obviously both are unacceptable but on a scale, I would say they are different - in my view.

Racist actions are informed by attitude, are they not?---I would accept that.

Racist comments are an exhibition of an attitude, agree?---Can be.

What is exchanged frankly and confidentially between police is likely to be a better and more accurate indication of an attitude than their public face?

MR OFFICER: Your Honour, I object to that.

MR BOULTEN: Do you agree or disagree?

MR OFFICER: I object to that question.

THE CORONER: On what basis?

MR OFFICER: Your Honour, on what basis can he comment that what he and I would have thought that a party - conversations to which he is not party to, had conversations - - -

THE CORONER: That's okay. Let's limit it to his own conversations and exchanges.

MR BOULTEN: I will ask something different. I think your position is that none of your actions were driven by or motivated by a belief that Aboriginal people should be treated differently and worse than non-Aboriginal people. Is that your position?---It got a bit confusing for me but I believe you're saying that I am saying that I didn't treat anyone differently based on their race?

Yes?---Yes.

Or based on their Aboriginality in particular?---Yes.

Do you understand the concept of structural racism?---Not - not enough to comment on intelligently.

Going back to an answer that you gave earlier today about the lives of Aboriginal people in these areas around you, how and why it is that their life circumstances are so different from ordinary suburban white Australians' conditions. You were asked, "Is it their fault or not?" And you ultimately expressed the opinion it was because of decisions made by Australia - by Australian government?---I believe so, yes.

So by that - without getting into political science too much, you would agree that many of the policies that impact on Aboriginal people in Central Australia are policies of both levels of government - both the Commonwealth and the Territory?---I believe so, yes.

The police are part of government, are they not?---Yes.

Attitudes amongst police, whether consciously racist or not, do you accept could - and indeed have - had negative impacts - as well as positive impacts - on Aboriginal Australians?---Sorry, I'm thinking - I'm thinking - can you please ask the question again? This is in a territory way above my once constable position, but I am willing to play.

But you also have had to think carefully about this concept of racism?---Yes.

And examine himself, right? Even if you did not consciously think that what you were doing was done to disadvantage the people you were dealing with because they were Aborigines, or Aboriginal people. Do you accept that what you did may well have made life more difficult for them than other people who are not Aboriginal people?---I don't know if I could answer that question because if it was subconscious, I wouldn't know about it.

Yes?---I haven't had - I believe I was removed from the police force before the unconscious bias training was put in. So I don't actually believe I've had any real unconscious bias training. I am aware of what it means. I don't know enough to answer that question in any form of helpful answer.

Do you accept that expressing racist comments is dehumanising individuals?---I accept that it can be.

Well, it normally would be, wouldn't it?---I accept that it can be. I do accept that it can be.

Apart from your disciplinary action, now on hold because of legal steps, are you aware of any officer, any constable, any police officer at all in the Northern Territory having been disciplined in any way for the use of racist language?---I believe the text messages in their entirety were accessed in October or November of 2020 at which points, they started to go through the text messages. During that time, a number of officers who have now been involved were - I believe they were promoted when the text messages were released publicly, externally from the police force at the start of this Coronial, I believe there was a rush of remedial guidance given to all officers involved.

They're the authors of the racist terms in the messages?---I believe so.

Okay?---I could be corrected, but that is my understanding of what has occurred.

All right. Apart from remedial action, has anyone been penalised for their use of such terms?---I'm not aware of any penalisation or official discipline in regard to that language.

What about outside the context of the text messages that were the subject of this line of questioning. Just language in the Muster Room. Language in the patrol. Language on the street?---I'm not aware of any.

None?---I'm not aware of any, no.

Not that you know of?---None that I know of.

Mr Rolfe, when you applied to join the Northern Territory Police, you remembered as you filled in the form having applied to join the Queensland Police. Right?---It's too long ago for me to remember filling out these forms. I honestly just cannot recall.

You remembered filling in the form to join up the police in Western Australia, didn't you?---I know that I - - -

MR ABBOTT: Well, I object to this overlapping. We've been through these forms twice now. Unless there's a special and specific aspect.

MR BOULTEN: All right.

MR ABBOTT: And if my learned friend can assure me of that, then I don't object.

MR BOULTEN: So I'll cut to the chase.

MR ABBOTT: Thank you.

MR BOULTEN: When you gave evidence here on Monday that you simply made a mistake when you filled in these forms, well several different mistakes?---Yes.

You were suggesting that you were not being deliberately misleading?---Correct.

Like counsel assisting, I also suggest that you knew that you were being deliberately misleading in several different respects when you filled in your form to join up the Northern Territory Police?---I disagree.

And I suggest that your answers to Dr Dwyer on this topic and now to me are deliberate, conscious, false statements on oath. What do you say about that?---I disagree.

I would suggest that you know that this is false, but you are prepared to brazen out your position, aren't you?---I would need that asked in a different way.

You're prepared to keep going with it, even though you know everybody who's putting these questions to you about this allegedly false evidence will say different. You're not going to change your position?---I'm not going to change my position.

And what I suggest is that there have been other occasions when you gave false and deliberately misleading answers to your superiors about your actions when you were a serving police officer.

MR ABBOTT: Well, I object to that.

MR BOULTEN: So I'll be specific.

MR ABBOTT: Thank you.

MR BOULTEN: You gave false, deliberately false and misleading explanations when you were asked to explain your conduct in relation to a young person CW. Do you agree or disagree with that?---Disagree.

You gave false evidence on oath in Malcolm Ryder's court case too, didn't you?---Disagree.

You gave false explanations to police who were supervising you when you were asked to explain your conduct in relation to a young man called Antonio Woods?---Disagree.

And you gave false explanations to your supervisors in relation to your dealings with Luke Madril?---Disagree.

When you were interviewed by Ms Shorten, you told her that you'd been the subject of a number of investigations, didn't you?---I accept that.

You told her, "I've had a number of complaints against the police for uses of force. Every one of those has been investigated and I have been cleared, didn't you?---Yes, that was my belief at the time.

"I've never been found to have been involved with misconduct." You said that, didn't you?---Yes. And I still think that - no, I believed that at the time.

"I have got more complaints probably than a lot of other police officers,"

You said:

"But I am a more active police officer than others."

Agreed?---That was my belief at the time, but it turns out that was an incorrect statement in comparison to other police officers.

In any event, that is what you said Ms - - -

THE CORONER: Shorten.

MR BOULTEN: Shorten, right?---Correct.

You said in this interview with Ms Shorten:

"I get a lot of high-priority arrest targets who deal with lawyers, and they know how to play the game and make the complaint."

Agree?---Agree.

Are any of the names that I just mentioned to you people that you were referring to in that part of your interview?---No, I wasn't referring to anyone specific.

Which lawyers were you referring to?---One in mind – one that comes to mind is Sofie Travett(?).

So, you are talking about a young woman who worked for NAAJA?---Yes, I believe she – it's been spoken about before that she developed a reputation for making a large number of complaints against police.

How many did she make about you?---I don't have that information.

I would have suggested of all the ones that there has been – that have been the subject of evidence at this inquest. One. What do you say about that?---I believe there is a process where a complaint can be put in before it becomes accepted into a, "Blue team," per se. So, there was a number of others that I can recall. Because it was mentioned at the station.

It was the subject of discussion amongst your colleagues that a solicitor at NAAJA was generating false complaints, is that what you are saying?---Yes.

Do you understand that lawyers act on instructions?---Yes, I do.

Did you – do you see the difference between a lawyer putting in complaints on behalf of people who tell them what has happened on the one hand, and lawyers who are playing a game by generating false complaints? Do you understand there is a difference?---I don't – say that again?

There is a difference, I suggest, between a lawyer who acts on the instructions of a client and lodges a complaint on the one hand, and a lawyer acting unethically, playing a game, simply generating complaints for the sake of it?

MR ABBOTT: I object to that.

MR BOULTEN: Do you appreciate there is a difference?

MR ABBOTT: I object to that. There is a third category, of course, that my learned friend hasn't put. And that is a lawyer acting on instructions who puts forward false complaints because those – they are false of knowledge of the person who gives the instructions. And that should be put into the equation as well.

THE CORONER: Mr Boulten.

MR BOULTEN: I don't regard myself as bound to shape my questions by anything that was just said in that objection, your Honour. It was not misleading in any way, and the witness is well capable of answering the question, especially now.

THE CORONER: And also, there is opportunities for further examination by his - - -

MR BOULTEN: Yes - - -

THE CORONER: Legal team to clarify any of these issues. But I will allow the question.

MR BOULTEN: I am going to withdraw it, in light of the objection. Any weight to the answer is likely to be diminished. So, Mr Rolfe, did you regard the pattern of complaints that were made about you as being part of a game?---No, I did not.

Why did you tell Ms Shorten that you:

“Had a lot of high-priority arrest targets who deal with lawyers, and they know how to play the game.”

Why did you say that?---That’s a figure of speech.

It was a figure of speech that was meant deliberately to be derogatory of the police who made – sorry, the lawyers who made complaints about you, right?---I would say it was in that regard, you would have to add the details of exaggerated or false complaints.

Mr Rolfe, one such complaint that Ms Travett made about you concerned your conduct in relation to Malcolm Ryder. Do you accept that?---I can accept that.

That’s the one in the evidence in this court case, about which we have been discussing complaints that was signed by Ms Trevett. Who is now deceased. You know that, don’t you?---No, I didn’t know that.

Sorry, well she is?---I had no idea.

So, I want to suggest to you that in your dealings with Malcolm Ryder, you deliberately chose not to activate your body-worn-footage when you went into the house, in order to exercise your powers as a police officer. Is that true, or not?---I didn’t turn my body-worn-video off. No, sorry, I didn’t turn body-worn on, correct.

That was not just an oversight though. On 11 January 2018, you decided to interact with the people in that house without filming it, didn’t you?---Correct.

In deliberate contravention of specific orders to activate footage in such circumstances, do you agree?---I’m not sure I agree. I can’t recall the specifics of that event so long ago.

By January 2018, there was a standing order that you should activate your body-worn-video when you are exercising powers of entry into a person’s house. Do you agree?---I accept that.

You decided not to do it on this occasion, didn’t you?---I did not activate my body-worn-video.

Well, is that an answer, or is that a way of avoiding my question?---Well, I can't say if I decided or if I forgot.

Well, at that time you were of the view that it would advantage you not to have your body-worn-footage on quite often, right?---Yes, I accept that.

Yes. Now there is no cause to retry Malcolm Ryder in this inquest?---Sorry, I didn't get the start of the question.

There is no reason for any of us to retry Malcolm Ryder in this inquest. He was found not guilty.

MR ABBOTT: Is that a question, or are you making a speech?

MR BOULTEN: But the - - -

MR ABBOTT: I object.

THE CORONER: Mr Abbott, please allow the examination to continue uninterrupted unless there is a specific objection that is significant. Because this is a senior member of the Bar, who is conducting a careful examination having followed these matters for now over a year – is it close to two years? He is allowed to take his time in developing the question.

Please continue, Mr Boulten.

MR BOULTEN: When did you hear first that Judge Borchers found Malcolm Ryder not guilty?---I can't recall.

Was it soon after, days after, weeks after, or a month or more?---Likely soon after.

Was the acquittal the subject of discussion in the Muster Room, for instance?---It would have been the subject of discussion, but not much.

Ms Zendelli, we know, sent you screenshots of parts of Judge Borchers judgement, did she not?---Correct.

Why, do you understand she - was it that she sent you those screenshots?---That's a question for her.

Well what was the context in which you received them?---They just popped up on my phone, I don't know what I was doing at the time.

Well did you talk to Ms Zendelli about the fact that she'd been found to have lied in those proceedings?---I would have, but this is eight years ago. I can't remember my conversations from eight years ago.

Sir, I'm not asking you for detail, but would you accept that you, her and other friends of yours, on active service at Alice Springs Police Station, spoke about the fact that Judge Borchers got it wrong?---I accept that.

Did Mr Bauwens engage in these discussions?---I have no recollection of Mr Bauwens engaging in these discussions.

And certainly it seems, you didn't tell him officially, according to your evidence this morning?---Correct.

What about unofficially? Did you have some words with him, about what you thought about Judge Borchers' decision?---I have no recollection of that.

What about anyone in authority at Alice Springs Police Station? Did anyone in authority come down and see you, when it became obvious that you'd been criticised as having lied on oath in Alice Springs Local Court?---I accept that it could have happened, but I have no recollection of it occurring.

There's no need to accept it from me that it could have happened. I have nothing to suggest that it did, but is your best memory that nobody above you in rank, came to talk to you about the Malcolm Ryder acquittal?---Yes, that is my recollection.

Nobody came to talk to you about a finding of a judge that you had lied on oath?---Yes, best of my recollection.

Irrespective of the judgement of the court, is it correct to say that ultimately, it was determined by the police complaints mechanism that there was insufficient evidence to sustain an allegation against you of excessive use of force, against Malcolm Ryder?---I believe so.

The only form of criticism that you received in relation to the Malcolm Ryder incident, was remedial advice from not activating your body-worn camera. Is that correct or correct?---I believe that's correct.

You have given evidence that you disregarded his Honour's decision, because of expressions and phrases that he used in a number of court cases, other than Malcolm Ryder's, is that right?---That was part of what made up that thought.

Did anybody at Alice Springs Police Station talk to you about the fact, well it was Judge Borchers' decision, and therefore unworthy of regard?---I believe I've answered this question before. He was known amongst the station for saying outrageous statements. That, on the addition of me in the location at the time, knowing what actually did occur, I was not concerned about his judgement - - -

So - - - ?---In regard to the final outcome.

- - - so, again, I'd like you to just precisely listen to the question. When people talk to you about this decision, did other police talk about it being a decision of Judge

Borchers, and therefore not that serious?---Yes, I believe words to that effect were said.

All of us have watched footage of the Araluen Park incident, and you know what I'm referring to, don't you?---Yes.

That incident did not come to the attention of the PSC, or anyone in authority, until after Kumanjayi died, do you agree?---I am not in a position to say. I believe it was cleared by a sergeant. And then I believe use of forces have to be cleared additionally by a superintendent. So depending on your level of position of authority, if that's what you said.

What I'm suggesting is that it was not the subject of complaint by either of the participants, or anyone on their behalf, or any member of the public, it came to light, as a result of reviewing your handset?---My?

Your telephone?---I - I accept that.

In 2020, to your knowledge, the PSC determined that the footage did not match what had been described on the use of force narrative?---I'd - I'd accept it. I'm not sure of when I became aware of that, or if I even have. I have received a large correspondence from PSC over the years, after the - the arrest.

Have you received any form of remedial advice, or any disciplinary action, as a consequence of what's depicted in the footage?---I'm not sure. I'd have to ask Dr Freckelton if that was included in the bundle.

Well you're - you might as well give the answer then, Dr Freckelton, if your Honour doesn't mind.

THE CORONER: Sure.

MR FRECKELTON: Mr Rolfe was advised on 30 January of last year that he would be receiving remedial advice in relation to the 10 operational safety principles, the tactical options model, minimisation of force and the need for requalification in respect of defensive tactics training, but he hasn't received that advice because his employment for the Northern Territory Police Force terminated before he could have that advice administered.

MR BOULTEN: So accepting all that to be the case, as it obviously is?---Mm mm.

Has anyone in authority in the Police Force of the Northern Territory spoken to you and expressed the opinion to you personally that the way you dealt with those men as depicted in that footage, was unacceptable?---No.

Not even informally?---No one has used the word "unacceptable". Obviously people have used - some have said that it could have been dealt with differently obviously but nothing to the point of believing that it would be excessive.

Have you been disciplined for recording the body-worn footage onto your mobile telephone?---Seems it's over to Dr Freckelton again.

We'll look to the other end of the Bar table here.

MR FRECKELTON: That's part of the investigation that has been interrupted by the application for judicial review.

MR BOULTEN: What about before you made a judicial review - sorry - an application for judicial review in the Supreme Court. Did any officer talk to you about the way you filmed the body-worn video onto your own phone?---Yes, obviously when that became apparent the attitude from the majority is that obviously, as I agree, it is unprofessional and that is their view as well.

Your attitude to what you did is demonstrated by the audio of the footage that you took of the computer screen, I suggest, when you were heard laughing. What do you say about that?---I have nothing to say about that. That was unprofessional and I shouldn't have done it.

Do you want to say anything publicly to the world and in particular to those two gentlemen about the way you reacted on the footage?---No, I don't.

On 1 April 2019 you dealt with a young man called CW, correct?---I accept that date.

You're aware that after his arrest that detainee made complaints to the people who were in the vicinity of his arrest?---Yes.

And you are aware, I take it, that when he was interviewed by police following his arrest he made similar complaints?---I believe so, yes.

In the electronic record of interview he said, "The coppers just plant me - grab my by the hair - just bang - bang - bang - and just the rock. I didn't get treated right when I got arrested". Agreed?---Do I agree that's what he said?

That's what he said?---I accept that.

And I want to suggest to you that when you were engaged in the pursuit of CW, you turned your body-worn video off after you initiated the pursuit?---Yes, correct.

And you turned it back on again after he had been detained, didn't you?---If that's the evidence - I don't know if it is but if it is, I accept it. I will be on my body-worn video, I can't recall.

When this matter was investigated following upon the complaint, you were asked to give an explanation about our body-worn video being turned off, agreed?---Agreed.

In your official response you said, "I lost sight of him and turned my body-worn video off as it was giving my position away due to the light and sound that it emits. This was a tactical consideration". Agree?---I agree.

That's what you said?--Agreed. I accept that.

You said this: "Ideally, my body-worn camera would have been on covert mode but as I am sure you are aware, there are two ways to turn your body-worn camera onto covert mode, one of which is to access evidence.com on your iPad and enter into the settings and - as long as our iPad is currently synced up to your camera and in your possession and change it that way. I am not able to do this while running after an offender. The other way is to hold down a small button for approximately 10 seconds. This is also difficult whilst on the run and further, you cannot tell if it is activated once complete". You said all of that, didn't you?---I accept that.

You said, "In addition, as far as I am aware, s 14A(b) of the *Surveillance Act* prohibits police from using body-worn video if not overt." Correct?---I accept that I said that.

As we saw from the document that as tendered earlier this week about how one activates covert mode on the Axon body-worn camera, as you say, back then it was done by depressing a button for approximately 10 seconds. Correct?---I accept that.

The button was the volume, right?---I can't recall. I haven't used a body-worn for four years.

When you gave evidence here earlier this week you explained that you hadn't really figured out how to turn your body-worn video camera on to stealth mode, didn't you? ---Yes, correct.

You knew how to turn it on to stealth mode though, didn't you?---When I was writing that statement it looks like I did. I can't recall ever having achieved that.

Are you saying that you tried to turn your body-worn camera on to stealth mode on a number of occasions prior to the chase of CW but you couldn't ever actually get it to do it. Is that what you are saying?---I believe we've had some attempts in the muster room trying to figure out how to do it, yes.

That's not what you said to your supervisors when you were asked for an explanation though, was it?---I have been asked multiple questions of incidents from over eight years ago. My answers are going to change due to memory, but I can't give you any more information. I've been in the box for four days. I've been in the box for four days, I don't know how to help you out.

Okay.

So it looks like the witness is tired.

THE CORONER: Yes. At the end of yesterday, he wasn't, he gave me a thumbs up and he said he was ready to go, but he is tired now and we'll adjourn to tomorrow at 9 o'clock.

WITNESS WITHDREW

ADJOURNED