IN THE CORONERS COURT **NO.A0051/2019**
OF THE NORTHERN TERRITORY
HELD AT ALICE SPRINGS

INQUEST INTO THE DEATH OF KUMANJAYA WALKER

SUBMISSIONS ON BEHALF OF THE WALKER LANE & ROBERTSON FAMILIES

1. The WLR Families provide these submissions in response to submissions filed on 16 February 2024, by Zachary Rolfe who is scheduled to appear as the last witness in this Inquest.

Overview

2. On 9 November 2019, Mr Rolfe killed Kumanjayi Walker by shooting him three times at point blank range with a police issue semi-automatic handgun while attempting to arrest him in a remote Indigenous community.
3. On 13 November 2019 Mr Rolfe was charged with murder and other offences in respect of this killing. On 11 March 2022, after a five-week trial, a Darwin jury acquitted him. The arguments raised by Mr Rolfe included that he acted in good faith and in self defence both of himself and another. He gave evidence in his defence. He also argued to that jury that he conducted himself in line with his police training and followed all protocols and operational orders in his pursuit of Kumanjayi.
4. This Inquest has examined some of these propositions through the lens of other evidence including from other police witnesses and independent electronically recorded images and video recordings.
5. The process of a coronial investigation is designed to be different from the distillation of evidence for consideration by a jury at a criminal trial. The evidence to be examined at this Inquest vastly differs from the evidence before the jury and the task for a coroner is different (as a matter of substance and procedure) from that which faced that jury.
6. The submissions at RS [8] should not be accepted. The notion that Mr Rolfe's evidence should be confined in that way is inimical to the coronial processes.
7. There are however other matters raised in Mr Rolfe's submissions that are briefly addressed below. None of the issues require a ruling at the present time.

Fairness

8. It may be immediately accepted that a coroner should act fairly. Mr Rolfe has made repeated refrains that he is being treated unfairly but this has not been established. His attempts for vindication have been somewhat half-hearted and only served to be disruptive and cause delays, e.g., the timing of the recusal application and equivocation about appealing the recusal decision such that he has now waived any basis for that complaint (even if it existed).
9. The current apparent suggestion that he is going to be taken by surprise in this Inquest strains credulity.
10. In any case, the WLR families join in that expectation for fairness, noting however that nothing has occurred in this Inquest to date to suggest that *he* or indeed any other witness has been treated unfairly. The only unfairness that has resulted, as a direct consequence of tactics taken by Mr Rolfe to avoid answering questions which will likely assist the Coroner in discharging their statutory obligations, has been to the families of Kumanjayi Walker and his community by the significant delays that have been caused in this Inquest.
11. Of course, and as a matter of procedural fairness, Mr Rolfe will be put on notice of any adverse findings.[1]

Self-Incrimination/ Compellability

12. The examination of Mr Rolfe commenced on 16 November 2022 and was interrupted by a number of misconceived objections. He then argued that he was not compelled to answer questions which may tend to expose him to disciplinary proceedings. This issue has been settled.[2]
13. As already observed, Mr Rolfe has already been acquitted of criminal charges arising from this shooting and is no longer a member of the NTPF and thus no longer susceptible to criminal charges for that conduct or any disciplinary action for any of his conduct as a police officer.
14. But even if there is doubt about that, and if there are any legitimate concerns about any other conduct, the *Coroner's Act* provides the procedure for dealing with this risk by enabling the Coroner to issue a certificate.
15. Pre-emptive rulings would not be appropriate and must be deferred to where any such questions arise during his evidence.

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[1] *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564.
[2] *Rolfe v Territory Coroner & Ors* [2023] NTCA 8.

Restraint of parties' counsel in their conduct of the examination of Mr Rolfe.

16. The role and responsibilities of those who are scheduled to examine Mr Rolfe are of course varied.

17. The 'parties' have different interests and their counsel have different obligations. For example, the families and the community may have a different view of what changes are needed to take place, e.g., in recruitment and examination of police conduct/deployment etc, to prevent others from being killed by a NTPF officer, than say counsel who are appearing for the NTPF and other police interests. Indeed this is almost certainly the case. Their respective approaches to Mr Rolfe's evidence, on the same topics will be different. It would be unfair to approach the matter on the basis that 'the parties be restrained from cross-examining on topics that have already been canvassed in detail by other counsel.'

18. The submission at RS [7] should be rejected.

19. Moreover, the suggestion at RS [12] that any counsel should be required to 'provide a list of the topics they intend to cover, including principally from Counsel Assisting…' should also be rejected. All counsel are limited by the identified scope of this Inquest and rulings as to relevance or repetitive 'oppression' should occur only where objection is made or the Coroner otherwise considers appropriate. The proposition seems to be that Mr Rolfe should be warned of subject matters before he steps into the box; this idea finds no foothold in any substantive or procedural rights he has.

20. This Court has already ruled as to the scope of this Inquest and there has been no appeal from these directions/rulings. The excerpts of some of these rulings in Mr Rolfe's submissions do not advance the propositions urged by him and bear no further response or rulings.

Conclusion

21. The scope of this Inquest is abundantly clear.

22. It has never been the case, in any forensic setting, that pre-emptive rulings are made as to the conduct of a witness's examination. The idea that it should occur in an Inquest, where the rules of evidence have no application, is wrong.

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18 February 2024