

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

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 18 NOVEMBER 2022

(Continued from 17/11/2022)

Transcribed by:
EPIQ

MR OFFICER: Your Honour, I just have a brief matter to raise if I might - - -

THE CORONER: Sure.

MR OFFICER: - - - borrow five minutes of your time. And it stems from the proceedings this week, and in particular, the attendance of Constable Rolfe, and the evidence he gave, and the claim of privilege.

THE CORONER: Yes.

MR OFFICER: As your Honour is well aware, four days after the incident, Constable Rolfe was charged with murder. And in the two and a half years or most, before his trial, he exercised the right, a right that every person has. He waived that right in the course of his trial by giving evidence, over a period of three days. And subjected to cross-examination by very senior counsel. Some might say that the investigation in which he was charged in the four days, was lack-lustre, or not fulsome.

And here we are three years down the track. And your Honour is conducting an investigation. And we know, through Dr Freckelton, that the Commissioner has formed the view that the appropriate outcome seems to be for 9 November, having putting aside for a moment, the arguments about the penalty privilege, that remedial advice was appropriate in those circumstances. Your Honour, on Tuesday, during this courts visit to Yuendumu, we heard about, and it was reported about, the concept of spearing Constable Rolfe.

And indeed, comments attributed that there won't be any rest or healing until his blood is spilt. Now your Honour, one could be forgiven for the impression that that leaves not only Constable Rolfe, but all police officers, that the way in which to appropriately respond is to resort to a level of violence. Then your Honour, on the very next day, 16 November, Constable Rolfe fronts your court, in person, in answer to his summons. He gives evidence. And all he does in the course of that evidence, is then assert a right.

Nothing more, nothing less. He does no more than what any witness who comes before this court, might do in the circumstances, and that is assert the right. And this court, your court, your Honour, fiercely guard the assertion and protection of rights. And so your Honour, I'm troubled when yesterday, the comments that are made, and comments that are made by a witness, at least attributed to her, that what Constable Rolfe did on Wednesday, was disgraceful, or a cop out, and a coward, and that he should be sacked, are not a true reflection of what occurred in your court on Wednesday.

They are inflammatory. They are divisive. And it's different as to the circumstances of what actually occurred on Wednesday. It has been said time and time again by your Counsel Assisting, that witnesses should feel comfortable coming before your court. That they will be treated with courteous, respect, so that they, in fairness, can give their evidence, truthfully, in the comfort of knowing that. And so

your Honour, those comments are extraordinarily unhelpful to your Honour's investigation.

Your Honour has not made findings. And as your Honour knows, you cannot prejudge an issue. Unless it be unclear your Honour, all that Constable Rolfe did on Wednesday, was assert a right, that he is entitled to do, as anybody is. Nothing more. Nothing less. And your Honour, I brought to your attention the gross misreporting of the Canberra Times about a matter a couple of weeks ago. And at that time, I said it was a timely reminder, given the significance and sensitivity of the issues being abated, that everyone approach this matter with the same sensitivity and caution that it deserves, so that your Honour can properly commence your investigation as you have done.

And I simply wish to raise that for the record, so that it is clear, Constable Rolfe has simply asserted a right. Thank you, your Honour.

THE CORONER: Yes, Mr Officer.

Dr Dwyer.

DR DWYER: I don't feel the need to respond, your Honour. I'm not aware of the comments that have been referred to. I'm not slavishly following the media. So I actually don't – not aware of what my friend's talking to. It hasn't been raised with me beforehand. I am aware, that during the period of time that Constable Rolfe was in court, he was treated with great respect, including by the people that were in court, all of the people who were in court. Yapa and Kartiya. And when I asked Constable Rolfe whether he was comfortable, and when he was leaving court, he said that he was fine.

So I'm not aware of any difficulties at all.

THE CORONER: Yes.

DR DWYER: And I intend to call the first witness, unless anybody wants to say anything in response.

THE CORONER: No, there's been much media reporting over many years, reporting many different views and perspectives. But this inquest will proceed on the evidence that is received during the course of the inquest, and on the information that is provided during the course of the proceedings only.

DR DWYER: Thank you, your Honour. And one thing I will point out, because it – I have at times pointed out other media who have been inappropriate, or inaccurate, and inflammatory, and abusive on times, to witnesses. It is not appropriate. But one thing I'm sure of, is that your Honour will not be influenced by any media reporting. This court will take into account the evidence that is heard on oath, and will take into account the evidence that we know, and deal with it in a fair and objective manner, as is expected.

THE CORONER: Yes.

DR DWYER: Your Honour, I call Acting Superintendent Andrew Barram.

ANDREW JAMES BARRAM, affirmed:

XN BY DR DWYER:

DR DWYER: Sir, could you please tell the court your full name?---Andrew James Barram.

And what is your current rank?---Acting Superintendent.

Of what – of what part of the police force in the Northern Territory?---The Drug and Organised Crime Division.

What's your substantive position within the force?---Detective Senior Sergeant of the Technology and Economic Crime Section.

Acting Superintendent, you were, in short measure, the Crown's expert, called in the trial that was faced by Constable Zachary Rolfe, for the murder of – as was articulated in the indictment of Kumanjayi Walker. Is that right?---Yes.

You gave evidence at the committal - - - ?---Yes.

- - - in respect to the matter. And also at the trial in February of this year?---Yes.

Please be reassured that her Honour has the transcript of both the committal and the trial. In preparation for that proceeding, you drafted – or you wrote and signed five expert statements, is that right?---Yes.

Your Honour, they are in the brief. From 10.3, over to 10.8, and I don't intend to go through each of them, because we simply wouldn't get through Acting Superintendent Barram's evidence today.

THE CORONER: Yes.

DR DWYER: Superintendent, when we look at those statements we see that you have clearly set out your qualifications. Just so that everybody in court understands, why was it that you were chosen to be the Crown's expert at the trial?---For about seven years preceding that event, I was the officer in charge of the Operational Safety Section, which was the section that delivered all the use of force training and incident management training to police recruits and police.

So just on a practical level, what does that use of force training involve for recruits?---Extensive theory on police use of force. On incident management. And then practical defensive tactics. Practical firearms training.

You in fact helped develop some of the modules and manuals, is that right - - - ?---Yes.

- - - for the training? I'll take you to those shortly. But just before I do, a little bit about your experience of policing in the Northern Territory. How old were you when you joined the force?---I was 28.

And so you've had over 25 years of experience, or 20 years of experience in policing?---Twenty five, it'll be 26 in January.

And for six of those years, I think you based in the – in Alice Springs, is that right?---Yes.

Have you worked in remote communities in the Northern Territory?---I've relieved in several.

I spoke to you about this outside of the court, but they include, in terms of the central desert communities, Santa Teresa, Finke area?---Yes. It would be common to attend incidents in those nearer communities from Alice Springs.

And in the Top End, you have been to communities, I think you told me about, for example, Tiwi Islands for a six week relieving stint?---Yes, I relieved for six weeks in the Tiwis.

Your Honour, I just make the point, because I'm not going to take Superintendent Barram through them, but in his statements there is an extensive outline of his experience.

And that includes, Superintendent, the fact that you've given evidence in a significant number of matters in court. Is that right?---Yes.

Are you able to estimate how many?---I've provided statements about reviews of use of force on, I think, 25 occasions.

Separate to this one. Is that right?---Yes.

In relation to your statements, I will take you in particular to your first two statements on 13 March and then your second one on 26 March. You don't have them in front of you. Is that right?---I may have.

Or have you got a copy of them there?---Yes, I do have them here.

Okay, terrific. Can I ask you to turn, please, to the second one, just for convenience, 26 March 2020. I'm just going to ask you initially about some of the principles of training for the use of force for police. Of course, unfortunately, policing does, on occasion, involve the use of force and officers have to be taught what is appropriate and how they use their different tools. Is that right?---Yes, that's right.

In par 22 of that statement, you note that:

“Northern Territory Police are provided with a number of guidelines and models to support decision-making regarding use of force. These are covered early in police recruitment training and constantly reiterated through the months of training at the police college and further reiterated as part of mandatory annual requalification training.”

One thing that the court heard about in the trial of Zachary Rolfe was the 10 operational safety principles, which are noted to be central to everything an officer does operationally. And I'll just put those on the screen now. They're at par 23 of that statement from 26 March 2020. I note that they're elsewhere in the brief as well. I'll just do this for convenience, because you set them out in your statement.

The 26th of March and par 23. So, it's 10-5. That's it and if you wouldn't mind just scrolling down. Thank you very much. So, we see them there. I just note – the paragraph above notes that the main purpose is to resolve confrontations with a minimal amount of force and the maximum level of safety possible?---Yes.

So, the 10 operational safety principles are up there. We can all read them. But the first one is safety first, and that includes safety of police, safety of the public and safety of the offender and suspects?---Yes.

Elsewhere in the documents, I've read the statement to the effect of, to the extent to which force can be minimised is really a mark of the measure of success of an arrest, for example?---Yeah, the success of any operation will primarily be judged by the extent to which the use of force is avoided or minimised.

The second operational safety principle is risk assessment and assessment of the possible risks associated with the course of action or option being considered. I take it that the extent to which a risk assessment can be done depends on the circumstances, or the amount of time for a risk assessment depends on the circumstances?---Yes, but it's an ongoing process. You are constantly assessing and reassessing risk.

Relevant to risk assessment is number 4, “The planned response”. Can you explain that concept?---Well, as it says there, a lot of the incidents we go to, we don't know exactly what's going to happen and it's always best, where possible, to turn that unplanned incident into a planned response by implementing the ICENCIRE police plan.

Number five on that list is, “cordon and contain” and the captain next to it is, “Unless it is impractical to do so, a cordon and contain approach is to be adopted.” My first question is, what is “cordon and contain”?---Well, it's setting up a boundary that defines the incident and separates it from the rest of the world, essentially, and isolates it and contains it.

Is the cordon and contain a physical barrier?---It can be. But it's an area controlled by police, like an in or an out of cordon.

And why is that the favoured approach?---One, it isolates the incident from other members of the public to keep them safe. And a cordon and contain approach generally allows police to take their time and make considered decisions.

Number 3 that I skipped over was, "Take charge, effective command and control must be exercised." How is an officer taught to take charge?---Well, they're taught that if they're the first person on the scene, they take charge until such time as they're relieved by a higher ranking officer or someone else takes charge.

Does "taking charge" refer to physical force?---No. No, it means controlling what resources are there at that time.

Number 6 is, "Avoiding Confrontation, that is confrontation is to be avoided as much as is reasonably possible." Are police taught ways in which to avoid confrontation?---Yes, they are. They're taught to follow that cordon and contain approach, implement ICENCIRE, not go rushing into situations and not creating that situation of a confrontation.

So, number 7 related to that, "Avoid Force as much as is reasonably possible"?---Yes.

"Use minimum force"?---Yes.

"Only minimum force reasonably necessary and justifiable is to be used"?---Correct.

Number 9 is, "Avoid forced entry searches" and the note next to it is that they are to be a last resort. Why is that the case?---Because they're probably the most dangerous situation that police can put themselves into, by going into or forcing entry into a building where there is a known offender, potentially armed. Buildings by their nature contain all kinds of weapons; knives and kitchen is a perfect example of that.

And the last one is, "Resources" and the note next to it is, "It is accepted that the safety first principle may require more resources, more complex planning and more time." Are police taught that in fact it's important to reassess and determine, throughout the course of a job, whether you should stop or pause and request further resourcing?---Yes, that's exactly what we're taught.

You referred there to a plan called the – using the acronym "ICENCIRE"?---Yeah.

Is that right, ICENCIRE?---Yes.

That involves the cordon and contain approach wherever possible and Bec will scan a little further down in that same document and see ICENCIRE set out there, "Isolate, Contain, Evacuate, Negotiate, Conclude, Investigate, Rehabilitate and Evaluate". It is intended that with ICENCIRE, you go through each of those steps in

sequential order?---To wherever possible. Yeah, there are considerations at various stages of an incident, obviously isolate and contain happen at the beginning.

And "evacuate" is evacuating those who may be in danger within the premises?---Evacuation is a consideration for evacuating not involved in the incident from within those cordons.

"Negotiate to bring about a successful resolution if applicable"?---Yes.

"Conclude the incident in the most appropriate manner"?---Yup.

And then the materials make it clear that that could be, for example, making an arrest, taking someone to hospital, making the area safe?---Yes, that's right.

"Investigate by appropriate action the cause and consequences of the incident"?
---Yes.

"Rehabilitate the scene, residents, victim and officers involved" - what does it mean to "rehabilitate the scene including the resident, victim and the offender"?---To formally stand down the cordons and try and get things back to normal as quickly as possible, take down roadblocks, move cars or other vehicles that have been used to make those roadblocks and cordons.

Does the training suggest that that would include explaining to residents if they are upset by a situation, what has gone on?---To an extent, it could.

The last one is "Evaluate procedures used to identify deficiencies and successes. Obviously that might not be done at the scene." When is it envisaged that the evaluation takes place?---Well, that's the debriefing process, that can be an informal or hot debrief immediately after the incident with the supervisor and the people involved or there can be a more formal debrief process days or weeks after the incident.

In your statement at page 9, you indicate - that can come off now thank you Bec - that although the ICENCIRE model is introduced as a model for dealing with siege or barricade and other serious high-risk incidents, the principles can actually be applied in a much wider variety of jobs and situations. It may be that not all steps are used, example, negotiate. But for many reasons the principles of isolating the scene or individuals with apply, and it goes to note:

"In summary, those principles are a sound policing approach for most involvements and are as applicable for high-risk volatile situations as they may be for many more routine matters".

Is that something that police are taught at the academy?---Yes, yes.

We have got an example within the brief of evidence of a notebook and the pro forma outlining the notebook that is some typed directions for NT police or instructions?---Yes, that's in the front cover of the police issued notebook.

Bec, would you mind putting that on the screen please? So you see that's the words - Rolfe had written in there, is this an example of the notebooks that are issued to police around the Northern Territory?---Yes.

And used by general duties officers?---Yes.

If you could scroll down please there. We see there the 10 operational safety principles that we've been through?---Yes.

And then scrolling down we see ICENCIRE there?---Yes.

Is it your expectation as somebody who has been involved in the training of police that those principles would be looked at regularly by Northern Territory Police who are involved in general duties?---Yes, but in an expectation that they should be known to all police, given the amount that we cover them in training and then the amount of practical application actually on the job.

So in terms of the training at the academy which you go through in some detail in your statements and the annexures, is that reinforced throughout the career of the police officer?---Yes. Annual re-quals and also, as I said, practical application on an almost daily basis.

One other part of the training I wanted to ask you about appears at pages 9 and 10 of that statement on 26 March, the 10-5 and that is the tactical operations model which has been developed, you say, to assist officers in understanding the appropriate level of force in operational situations?---Yes.

Bec, if I could ask you for page 10 please, of 10-5, the statement there. Am I right to refer to that wheel that we see there, as part of the training for the tactical options model?---Yes, that is the tactical options one.

In the middle - you might not be able to - or those watching might not be able to see the writing but it clearly indicates above the photograph of the police officer, "Safety first"?---Yes.

And then below the photograph of the police officer assess and reassess?---Yes.

Why is that in the centre of that wheel?---Because they are the most important and they are the first considerations of the - or should be the first considerations of the officer, safety of themselves and other police there, the public and any offenders or suspects and then assess and reassess refers to that ongoing risk assessment process.

Then beyond that red centre circle is a green one that says, "Communicate", why is that there in the centre of the wheel?---Because communication is seen as essential in bringing about a minimum use of force resolution.

Then on the outer rim of the circle are the various options that police have to deal with a potential situation, is that right?---Yes, that's right.

You note in that statement in March:

"Physical confrontations are not static but are dynamic by nature. The tactical options wheel turns in either direction, moment by moment to the appropriate option, depending on all the circumstances. These circumstances may include factors such as size, special skills, age or sex of the subject and the police officer."

We take it from the reference there to the different circumstances that in terms of the planning phase, it would be best to try and determine what the circumstances of the suspect are?---Yes, of course, you always try and gather as much information as you can in the time allowed.

So the size of the suspect is obviously a relevant factor in terms of the use of force options?---Yes.

Very different if you're dealing with 12 year-old child than if you're dealing with a well built, fully developed man?---Yes.

And similarly, if you are dealing with somebody who is suspected of committing an offence and they have an intellectual disability or potentially they have FASD and they are - have poor function control or poor emotional regulation, that's something that you would want to know about, as a police officer going into a situation?---If that information is available to you of course it is something you would want to know.

If it's available to you and you don't look at it it's a lost opportunity in terms of the plan isn't it, and preparation?---Yes, I'd agree with that.

Before we move off that wheel, I just note that the document you've taken information from for your statement says that; "Members should be aware that mere presence is a tactical option". What does that mean?---It means the simple fact of police turning up to an incident can change that incident and often resolve it.

One of the options listed there is "Tactical disengagement". Can you explain what that means?---Well, that means police moving back, essentially, to a safe zone to reconsider tactics and options.

Included within or underneath the "training for tactical options" each of those options is spelled out in more detail and I take it is the subject of significant training during the course of your academy period?---Yes, it is.

And the subject to ongoing training throughout the course of your career?---Yes.

Your statement makes it clear that one of the most beneficial and effective ways an officer can safeguard themselves is the ability to anticipate danger. "The anticipation of danger requires the use of all available senses by being prepared for the unexpected. Members must stay alert, be aware of their surroundings, develop effective intuition and a hinderance to all these skills is complacency." Is that something that is actually taught in the academy?---Yes, I believe that is straight out of the manual.

And in terms of your evaluation of use of force episodes that go wrong or have unintended consequences, have you seen complacency being part of a problem? ---Yes.

So you, at page 13 of your statement, the following is outlined in terms of staying alert and the importance of it. "Stay alert. Maintain situational awareness", is one to nine.

"Always watch the subjects hands. Anticipate danger and problems before the happen. Have a plan. Identify behavioural warning signs. Expect the unexpected or unusual. Be aware of surrounds. Always put yourself in a position of advantage. Do not become complacent."

Is that part of the teaching - - - ?---Yes.

- - - for Northern Territory Police officers?---That's straight out the manual too.

In terms of anticipating danger or problems before they happened, and identifying behavioural warning signs, is that another example of where, if you know something about the person you're going to detain, it's helpful in terms of your planning and preparation?---Yes, very helpful.

Paragraph 27 of that statement notes:

"The Northern Territory Police are taught that the use of a firearm should only be as a last resort. It's a force option that is likely to cause serious harm or death."

Are both those concepts, firearms is a last resort, and the fact that it's likely to cause serious harm or death, part of the training for Northern Territory Police?---Yes.

Your document goes on to nominate a number of significant safety rules. Safety rule – there are four, outlined at par 29. That's part of the safety rules for attending a shooting range. One of them, for example, is keeping your finger off the trigger?---Well they're – they're the firearms safety principles. So they're applicable at any time you're handling a firearm.

That was my question?---Yeah, so at start of shift, when you're getting your firearm out of your gun locker, for example.

And do police receive – so one of them – safety rule three is “Keep your finger off the trigger and outside the trigger guard until your sights are on the target and you have decided to fire”?---Yes.

Are police taught anything about keeping their gun in their holster, or how that should be dealt with?---We do firearm retention drills for when someone is trying to grab your firearm, that's - - -

And - - - ?---Well safest place for the firearm is in the holster. It has – it's built to cover the trigger so it can't be fired inside the – the holster. So that's what our training revolves around. If someone grabs your holstered firearm, you then grab their hands and try as hard as you can to keep that firearm inside the holster. And then disengage their – their hands.

I'll come back to that topic. Finally, before I move on from these – this broader outline, what are police taught, in the academy, and I mean this, taking into account your period of time over seven years, what were police taught in relation to edged weapons?---Police are taught that an edged weapon is potentially able to cause serious harm or death. And we're taught that the appropriate response is to maintain a minimum safety gap of at least six metres. And to negotiate and that potentially you will draw your firearm.

Potentially you will draw your firearm, does it depend on the circumstances?---Of course it does.

Was that the training in 2016, to the best of your knowledge?---Yes it was.

In terms of – I'm coming now to Constable Zachary Rolfe. In your statement of 26 March, you outline your review of Constable Rolfe's use of force incidents, from the time that his first operational shift on 21 December 2016, through to 9 November 2019, with the tragic death of Kumanjayi. There were 46 use of force case note entries on PROMIS. And as you set out in your statement, you did your best to review the use of force for each of those incidents?---Yes.

Where body-worn video was available, did you review the body-worn video footage?---Yes I did.

In terms of the previous jobs Rolfe was involved in the use of force, were you limited in terms of your review, to jobs where a use of force case note entry was completed, and on PROMIS?---Yes. I reviewed the cases that had a use of force form added.

I'm not going to go into details with you about this incident, other counsel may do, but we have been – it had been drawn to our attention, that there was a young person by the name of Master Gibson. There's a non-publication order over that name. He was located in a wheelie bin in a school, after he had breached

bail?---Yep.

And you I think have seen the video - - - ?---Yes.

- - - of that incident?---Yes.

Was that a use of force incident?---Yes it was.

Why was that?---Well force was used. A hold down technique was used, and handcuffs were used.

And in terms of pulling the bin down, was that a use of force as well?---Yes it was.

So should that have been subject of a use of force?---Definitely.

And because it was not, it was not one of the 46 that you reviewed, is that right?---That's right.

And it's not possible for you to say, sitting in the witness box, whether there were other use of force incidents that were just not subject to a report?---That's right, I can't say.

You formed the opinion, that of the 46 use of force incidents that you reviewed, five of them, were instances where Constable Rolfe had used excessive force?---Yes.

I'll just broadly nominate those. The 2 April 2017 at Bojangles, with Sergeant McCormack. That's outlined in par 34 of your statement. The 11 January 2018, arrest of Malcolm Ryder, with Officer Zendelli and others. That's par 36. The 18 February 2019, at Araluen Park, par 44. The incident of Todd Tavern on 24 September 2019, par 45. And the incident on 12 October 2019, at the Town Council building, with the arrest of Mr Bailey. Have you, at any time, had cause to change your view about those matters?---No, I have not.

You still believe that they are examples of excessive use of force?---Yes.

At par 49 of your statement, on 26 March, you say:

“Having reviewed historical use of force incidents in which Constable Zachary Rolfe has been involved, I do not believe he endeavours to bring about a peaceful resolution to some incidents. And instead, uses quite heavy handed tactics. I have identified five incidents, in which in my opinion, the force used by Constable Rolfe was excessive, and inconsistent with the use of force philosophy, and the 10 operational safety principles. In these five incidents, Constable Rolfe chose to use a tactical option that was reasonable, necessary, proportionate and appropriate to the circumstances. Constable Rolfe's choice of tactical option in these cases has resulted in injuries to subjects, and the potential for injury to himself, which could easily have been avoided.”

Have you changed your mind about that at any time between - - - ?---No. No I stand by that.

You note, at par 50:

“That Constable Rolfe consistently fails to use effective communication as a tactic option to diffuse a situation. And appears to prefer to go hands on, which is not in line with the force philosophy. This precludes any opportunity for uncooperative subjects to modify their behaviour and become more cooperative. The result is that in the matters reviewed, force is used where none is needed. It is my view that Constable Rolfe interprets any non-compliance, or lack of cooperation as a threat. And he therefore responds with a higher level of force than would reasonable be considered necessary in the circumstances.”

Do you stand by that opinion?---Yes I do.

At par 51, finally you note,

“In my opinion, Constable Rolfe also demonstrates a tendency to want to ‘Get his man’, no matter what. And pays little or no regard to the consequences of his actions, which has resulted in quite severe, and totally unnecessary injuries to suspects, in some cases. In disregarding the consequences of his actions, he also disregards his training, and the use of force policy. Constable Rolfe’s decisions and actions precipitate confrontations, where he then uses force. The force would not have been necessary, but for Constable Rolfe’s decisions and actions in precipitating the confrontation.”

Do you stand by that opinion?---Yes.

Within the various training materials that you have provided to the court, there’s a document –

I don’t necessarily need it on the screen, but for the benefit of my friends and those following, it is annexure D. And it’s page two – excuse me one moment.

Bec I think you do have that, it’s 10-5. Annexure D, page two. Yes, thank you very much.

So, annexure D for those following the evidence is the National Minimum Guidelines for Incident Management, Conflict Resolution and Use of Force. It’s a document from the National Police Research Unit. Does some of the information in this document inform the training for police officers in the Northern Territory?---Yes, it does.

How is that?---Well, it forms the principles on which we base our training.

So, from documents like this, the National Guidelines, you then develop guidelines for the Northern Territory?---Yep, so this document was developed as a result of Australia is obviously signatory to a number of international treaties on various things, including police deployment and police use of force. This is like a motherhood document from which all police jurisdictions then develop their force philosophy and their training and even the legislation.

So, “excessive force” is defined in this document - if Bec could just scroll down – as:

“Any force where none is needed, more force than is needed, any force or level of force continuing after the necessity for it has ended, knowingly wrongful uses of force and well-intentioned mistakes that result in undesired use of force.”

Superintendent, given your – drawing on your 25 years of experience, including in the training facility, and your evaluation of events, can good well-intentioned officers make mistakes and use excessive force?---Yes.

And where that happens, would you expect there to be evaluation and correction of their behaviour?---Yes, to an extent. There would be some kind of review and corrective action taken, if necessary.

Within the Northern Territory, are the use of force reports and feedback given to officers supposed to be an important part of reviewing those – the potential for excessive force?---Yes.

Are they an opportunity where you think a good officer has used excessive force for a sergeant or senior constable or someone of senior rank to pull that officer up and guide them as to why it was excessive?---Most definitely.

And is that an expectation within the Northern Territory Police Force of senior officers?---Yes.

By 2019, Northern Territory Police had notice of use of force incidents, including those that you’d set out there, Araluen Park in February. They then had the decision of Judge Borchers which related to the Ryder incident, which came down in May 2019, The Todd Tavern incident in September and then Mr Bailey in October. Do you see there yourself, reviewing those matters, a pattern with respect to Constable Rolfe’s behaviour?---Yes, there is a bit of a pattern.

And that it’s a pattern involving rushing in and using excessive force as outlined in the paragraphs that I read to you?---Yes.

What was your – putting aside any disciplinary proceedings, would you have an expectation that superiors would be speaking to him about that behaviour and trying to identify the causes?---Yes.

And trying to modify the behaviour?---Yes.

In that document, Bec might scroll down a little further, the causal factors connected with the use of inappropriate levels of force are set out. And it's noted that there is an abundance of literature in this regard. There are – I'll just break some of these down. Three categories listed there, "Personal factors, "Situational factors or Organisational factors". That might be relevant to an excessive use of force. And I will just read some of them to you:

"The personal factors include behavioural makeup, a desire for excitement, domestic disputes, financial troubles, burnout or substance abuse".

So, all those factors, or one of them, might be playing on a particular officer and leading to an excessive use of force in a particular incident?---Potentially, yes.

And secondly:

"Situational factors including dealing with aggressive and abusive people. Highly charged incidents, for example, car chases, demonstrations, a perceived lack of respect and cooperation from the community."

Those sorts of factors can play into an officer on a particular occasion using excessive force?---Yes.

And then finally, "Organisational Factors", the policy on use of force and well that is promoted. The overt expression of support for the policy by executives, managers and supervisors, workloads, shift work, career stagnation, things like that?---Yes.

That can come down now.

Might I just add to that a suggestion to you that organisational factors might also include the level of and effectiveness of supervision and mentoring that an officer can receive?---Yes, I would agree with that.

Because if you don't get good mentoring, there can be tacit approval of those sorts of excessive force events?---Correct.

And if in fact a senior constable or sergeant is right there with you when it happens and doesn't say anything to you to discourage it, that's tacit approval in itself, isn't it?---It is.

I'm going to ask you to cast your mind back to when you came into the force as a 28-year-old, were there occasions that you can tell her Honour about where you received some good mentoring and support. Well, I'll go back a step. When you came into the police force in the Northern Territory, were you enthusiastic about your role in policing?---Yes, I was very keen to be an effective and seen to be a good police officer.

And were you enthusiastic about helping the people you believed to be victims and vulnerable in a situation?---Yes.

Were you someone who was hardworking and put their hand up for jobs?---Yes.

And someone who was happy to go into a conflict and help sort it out?---Yes.

Do you feel looking back that, as a young man of 28, you were in need of mentoring and support and guidance as to how to effectively do that, even after your time in the college?---Most definitely. A lot of us come out of college super keen and – which can lead to, I guess, overzealousness and if that's not – you know, if you haven't got that guiding hand on your shoulder to say, hang on, let's try and talk our way through this, you can end up in conflict that could be – could have been avoided.

And were there times when you had that guiding hand on your shoulder?---Yes.

Do you look back on that period of time in your life and think you had good mentoring and leadership from sergeants you worked with?---In general, absolutely, yeah. I had some very good mentors.

Can I come to the incidents which led up to the passing of Kumanjayi? You have reviewed, of course, the situation for Kumanjayi from the time when he took off his electronic bracelet and left CAAAPU up until his tragic passing on 9 November?---Yes.

You've looked at different incidents along your way. The incident I want to start with is 6 November. I'm not going to play the footage again, the court is well familiar with it. It's the footage that involves Officers Chris Hand and Lanyon Smith, and they confront Kumanjayi and he takes out a weapon?---Yes.

I think a hatchet, it's sometimes described, and then he evades their arrest?---Yes.

And leaves the house, if I can describe it like that. Now, you watched that video in preparation for giving expert evidence. Is that right?---Yes.

In your view, is that an example of the ICENCIRE tactics being used?---To an extent, yes. They'd attempted to contain Mr Walker to that bedroom. It was the presentation of a weapon which made them have to tactically withdraw.

They've given evidence they were very – that was uncharacteristic of Kumanjayi. They were not expecting that at the time. Is what those officers did an example of tactical disengagement in terms of what you saw in the video?---Yes, stepping back, trying to make distance, trying to make some time to reassess.

I appreciate that you're basing your assessment on the body-worn video. Have you since read the accounts given by Chris Hand and Lanyon Smith?---Yes.

And they say, in effect, that it was their view that it was a good thing that day;

nobody was hurt. Kumanjayi wasn't hurt; they weren't hurt, and they can come back on another occasion and attempt an arrest?---Yes.

Are you critical in any way of their actions on 6 November?---No.

Can I come now to 7 November. In your statement of 13 March 2020, you deal with this from par 63 – well, at par 63 and some of those that preceded it. I'll start at par 59. Tell me when you get there, Superintendent. I don't want to rush you?---I'm there, thank you.

Paragraph 59 you note:

“That on Thursday, 7 November, at around 3 pm, Sergeant Evan Kelly notes that he commenced work. He was handed paperwork relating to Kumanjayi's suspended sentence. And that he was an arrest target, and he passed that information on.”?---Yes.

And in summary, your statement goes on to note, how he and a group of other officers, including Officers Bonney, Sergeant Kelly, and Constable Rolfe and Kirstenfeldt, met, to try and – or to attempt to search for Kumanjayi at Warlpiri Camp?---Yes.

“There was a briefing, sometimes referred to as a bonnet briefing, near the Bunnings Hardware Store. A plan was formulated in line with the ICENCIRE Plan, that involved identifying the house of interest on a satellite map at Warlpiri Camp. Delegating sides of the house for each crew to cordon around the house. And once a cordon was in place, they would knock on the door and try to facilitate Kumanjayi's arrest, by calling him out of the house. A discussion was had in relation to it being undesirable for police to enter inside the house due to safety concerns about Kumanjayi possibly arming himself, and to try to get Kumanjayi out of the house to effect the arrest. That briefing was mostly conducted by Constable Rolfe, as Sergeant Kelly arrived late, due to other duties”?---Yes.

“One the plan had been actioned, there was no response to the door knocks. Further discussion was had, in which it was decided that police did not have sufficient grounds to enter that house in Warlpiri Camp. And subsequently they disbanded the cordon and returned to other duties.” You say that you believe that that planned police operation at Warlpiri Camp was a good application of the ICENCIRE plan, the 10 Operational Safety Principles, that we went through today?---Yes I do.

And you stand by that opinion?---Yes.

That did not contradict the use of force philosophy?---No.

I'm going to come shortly to the events of 9 November. But before I do, there is some evidence before her Honour, to suggest that different police officers had a look

at the body-worn video of Chris Hand and Lanyon Smith, and it was shown to them by Constable Rolfe at different times, between the sixth and 9 November. On occasion, when it was being shown, there was criticism of the behaviour of Chris – of the actions of Chris Hand and Lanyon Smith, who were being said – it was being suggested that they froze in fear, and that they didn't take enough action, and that they should have pulled their firearm. As an instructor in the college, what do you think of the fact that police officers stood around the muster room in Alice Springs and talked about – on occasion talked about the body-worn video footage in a critical sense?---I find that quite disappointing. Particularly that both of them are very experienced officers, and Zach Rolfe, at that time, was barely off probation. You know, a very junior police officer. For him to be judging the actions of very experienced police officers, it was patently wrong, for him to be showing that footage. Patently wrong, and those sorts of attitude are, you know, second guessing someone with limited information, that's what breaks the thin blue line.

We've got some evidence that in fact Constable Rolfe was also sent a text message from a sergeant, saying something like, and I quote "Fuck my whole life" and critical of those two officers for freezing in that moment. That sort of suggestion from a sergeant, that those two officers have done the wrong thing, and that what's the police force coming to, words to that effect. How – how do you view that exchange, in terms of mentoring and leadership?---I think it's a pretty poor example of mentoring.

And you just used an expression there, "That sort of critiquing or commentary amongst officers – of other officers who are dealing with a very challenging situation, is what breaks the thin blue line"?---Yes.

What do you mean by that?---It's a colloquial expression for police and the thin blue line, it's – yeah, it's just a colloquial expression.

So just breaking that down, Superintendent, because you've been a police officer now for well over 20 years. You care about your profession, are you meaning to say there, that by officers critiquing other officers in that overtly critical and dismissive way, it breaks down morale within the police force?---Absolutely, that's what – exactly what I mean.

Can I come now then to 9 November. I read to you earlier something about the – what the success of an operation is judged on. If the success of an operation is judged on the extent to which force is minimised, then this operation, which involved the arrest and death of Kumanjaya, was an abject failure, wasn't it?---Yes.

The death of someone in the course of an arrest, whether it's a citizen, or a police officer, is the absolute worst possible outcome, isn't it?---Yes.

And it's the reason why all that training exists in the college, and beyond, to try and avoid that sort of tragedy?---Yes it is.

In drawing on your experience, do you agree that that tragedy was not only profound for the family of Kumanjaya, and Kumanjaya himself, but it has a ripple effect for the community and the police force for many years?---Yes it does.

And we've seen that with Kumanjaya's tragic passing?---Unfortunately we have.

The IRT were deployed – I withdraw that. Just going back a step. I'm going to ask you to try and reflect on some of the reasons for that failure. The IRT were deployed to Yuendumu on that day, with no appointed supervisor, or sergeant, apparently in command, within the IRT group at least?---Yep.

Do you have any comment on that? That is, the failure to appoint a team leader for the IRT?---Well it's my understanding they were sent as general duties support. They weren't deployed in their capacity as IRT. And it – had they been deployed as a pseudo tactical team, it would have followed that a tactical leader would have been appointed.

And that would have been helpful, is that right?---Yes, you don't deploy a tactical team without a tactical commander.

We've heard that in fact the person who was supposed to be in charge of that operation, and maintain control of that operation, was Sergeant Frost. Because of her rank, and because she was the officer in charge of Yuendumu?---Yes.

Do you see, reflecting on this incident, that there may have been some confusion as to who ultimately retained control?---It appears to me that some officers may have been confused.

But they should not have been, is that right?---I think so, yeah.

You have had a look of course at the operational plan, arrest plan it's sometimes referred to, which was approved of by Superintendent Jody Nobbs?---Yes.

That plan, I don't think it needs to come up, we've seen it a lot, but I'll hand you a copy, just to remind you, Superintendent Barram.

Excuse me one moment, your Honour. I'll identify the MFI shortly, your Honour, but that's the email from Sergeant Frost, of 9 November, sent at 4.59 pm.

The plan for day one was 11 pm IRT commence duty and conduct high visibility patrols, and respond to call outs. Five am, Officer Donaldson, Yuendumu Alefaio commence duty, along with IRT members to the effect the arrest of Kumanjaya.

That's exhibit 14 in our inquest, your Honour.

And that plan is to be repeated on day two if Kumanjaya was not located. It's evident in that from watching the body-worn video footage available from the

members of the IRT, that that – somewhere, between that plan being formulated and sent out, and the execution of that plan, there was a break-down?---Clearly.

That plan was not what was executed on the day on 9 November?---No.

MR EDWARDSON KC: Your Honour, are you planning on having a break about 11:00? I just ask because I've got a new computer, and I can't get access to these documents. They're coming up, but it won't let me access them, and I might need Ms Wallace's help during the break.

THE CORONER: We will take a break, on or about 11 o'clock at a suitable point in time.

MR EDWARDSON: Thank you, your Honour.

DR DWYER: I am going to draw on your evidence in your statement from 13 March 2020. From par 68 you set out the situation after the IRT arrived. I will just note this briefly on the record, particularly for anybody following the evidence;

"At about 6.33 pm Constables Rolfe and Kirstenfeldt arrived at Yuendumu Police Station and had a conversation with Sergeant Frost. Eberl and Hawkings arrived a short time later at 6.53 pm, about 20 minutes later. Officer Donaldson was patrolling the area at that time. He was called back to the station for a briefing which occurred at about 7 pm."

The plan that came out of this briefing, as you note, was that:

"the IRT members would conduct high visibility patrols during the evening, obtain intelligence relating to Kumanjayi's location and attempt to arrest him at around 5 am the next morning."

You note Sergeant Frost's evidence that she said words to the effect of,

"Of course if you come across Kumanjayi then arrest him." However, no plan was made to cover this scenario which, in my opinion, would have to be considered as a probable outcome in a community the size of Yuendumu."

Do you - in making that comment are you suggesting that there should have been a plan for the scenario where members did come across him?---I think that's a consideration that should have been made about whether or not if they came across him, whether or not to proceed with the arrest or engage but yeah, I think it could have been expanded on a bit further.

And that would have been consistent with the safety principles and the planning principles that you've taken us through?---Yes.

"At approximately 7.06 pm the IRT members and Donaldson left the station. At 7:11 pm they arrived at house 577 which the intelligence holdings - or that

information available to police showed was Kumanjayi's primary residence. IRT members had been informed that this was the house that Kumanjayi had been in two days prior when he armed himself with a hatchet and was confronted by police.

And you go on to note that:

"Constable Rolfe had a conversation with a man who was in the yard. That person, with the surname Robertson, advised Constable Rolfe Kumanjayi wasn't there, he'd left a few minutes prior, further that Rakeisha had left with him a few minutes earlier and he advised on a general area on the other side of the oval where he thought that Kumanjayi might be, along with Rakeisha seeing other members. Officer Kirstenfeldt was informed through a window of house 577 by a child who was inside that house that Kumanjayi was not there and that Kumanjayi stayed there at night time and would be staying there that night. The child"

- and I won't name that person -

"checked and came back and confirmed that he had left a few minutes ago. Constable Rolfe was further informed by one of the community members that Kumanjayi and Rakeisha may be at house 511 or 518 which is where some other family members lived on the other side of the football oval to House 577."

Given the information that was being provided by community members there, if the purpose was intel gathering, was that significant?---Yes. That was the intel that they were after.

So if the arrest plan was being followed, what should have happened after that? ---That information should have been relayed to Sergeant Frost and you know, a smart operator would have potentially asked Mr Roberts - is it Robertson - sorry - yes, to potentially open the front door for them at 5 am.

I will come back to the 5 am plan at the end here. You note at par 71;

"Despite being told by two people who lived at that house that Kumanjayi wasn't there, Constable Rolfe and Kirstenfeldt decided to conduct a forced entry search. The ten operational safety principles advise to avoid forced entry searches and they should only be conducted as a last resort."

Was this a last resort in the circumstances?---No, it wasn't.

Constable Rolfe obtained the consent of Ethan Robertson to search the house. Was that sufficient to justify that search?---Well, you've got the consent of the householder, but whether or not you would proceed would be a judgment call.

Well, whether or not you've got the consent of the person to enter the house at that time, was that consistent with the arrest plan that was approved by Superintendent Nobbs?---No, it wasn't.

You note in your statement, from par 72 that;

"Constable Rolfe places his right hand onto his firearm as he moves through the house".

And I will show you some photographs of this shortly.

"At 7:13.35 Constable Rolfe can be seen on Kirstenfeldt's body-worn video disengaging the initial retention devices on his holster. A click consistent with this action can also be heard. This indicates preparation for a fast draw of the firearm. This is not taught to NT Police as it makes the officer focus solely on their firearm. It limits the ability to deploy other tactical operation options and disengages two of the three safety retention mechanism of a holster which means that there is only one retentive feature left engaged, making it much easier for an offender to pull the firearm out of the holster."

Do you stand by that opinion?---Yes.

In one of your statements from 11 June 2020 you provide some assistance for the court by looking at the photographs of Constable Rolfe's hand as he moved through that house, is that right?---Yes.

Can I ask please, the court officer to place on the projector 10-7 and annexure A, thank you. Do you see there, it's a bit greyer than what we can see in our photocopies but Superintendent Barram, what does that photo depict in comparison 1?---Well, as I've labelled, he's got his thumb rotating the hood closure forward.

THE CORONER: Thank you.

DR DWYER: So comparison 1 notes, "Thumb resting on thumb lever, rotating hood closure is forward and disengaged, rotating hood closure is" - it's cut off there I'm afraid - "disengaged and engage with thumb resting on hood button" is that right? ---Yes. So the larger photo shows the holster as it should be carried, with all the safety features engaged.

I see?---The smaller photo shows the hood closure rotated forward.

Okay, so we'll pause to look at that for a moment and then if you scroll up, what does that photo show, sorry?---Well, it shows the hood forward.

And then if you can scroll right down, Bec, if you don't mind, to comparison 2A.

What does that show again?---That shows the rotating hood forward on the holster.

In your statement you set out the timing of these actions as Constable Rolfe moves through the house?---Yes.

Your Honour, is that a convenient time to pause? I am going to see if I can assist with the actual physical holster during the break.

THE CORONER: Yes.

We will adjourn for the 15-minute morning tea break.

WITNESS WITHDREW

ADJOURNED

RESUMED

ANDREW BARRAM:

XN BY DR DWYER:

DR DWYER: Superintendent, following on from what I was asking before the break in terms of the release of the retention device, you set this out in your first statement on 13 March 2020, you note that at 7:13:35 pm:

“Constable Rolfe can be seen on Constable Kirstenfeldt’s body-worn video disengaging the initial retention devices on his holster.”

And just a reminder, this is at House 577, the first house that the officers go to.

“He disengages the initial retention devices on his holster and a click consistent with that action can be heard.”

You note, “This indicates preparation for a fast draw of the firearm.” Now in court, and I say this by way of warning as well, because we’re about to – I’m going to ask the Superintendent to demonstrate what that action is, in terms of disengagement. And we have in court, it’s agreed between the parties, an example of the holster that Constable Rolfe would have been wearing and what’s known as a “blue gun”, which is a plastic gun which I can assure everybody is not a real gun and is not and has never been capable of firing any bullets, but it sits within a holster. If you could just hold that up, Superintendent Barram? And does that holster – is that consistent with what you’re talking about, one that has a number of engagement devices?---Yes.

So, can you indicate - you describe it, I think, as a three-step process of taking a gun out of a holster. Is that right?---Yes.

Can you go through those three steps slowly with us?---All right. So, step one is you depress this hood lock switch, step two, that gets rotated forward and then step three is a switch in here that must be moved backwards slightly before the gun can come out. So, it’s that switch there which you use your thumb to manipulate. Right now, the gun can’t come out. Once that switch is pushed back, the gun can come out.

And this might sound an obvious question, but what’s the purpose of having the three steps to remove your gun?---To make it more difficult for an offender or someone trying to get the gun out to use it against you.

For a trained police officer, is it actually quite a quick process to go through those three steps?---Yes, it is.

And is it part of your training to use how to go through those three steps within a second?---Yes.

But for a member of the public not familiar with that retention device, is it difficult to

remove that gun from your holster?---Yes.

In terms of what you saw on the body-worn video footage of Constable Kirstenfeldt, you described at 7:13:36, Constable Rolfe can be seen disengaging the initial retention devices on his holster?---Yes.

Are they the steps one and step two?---Yes.

And then, what did Constable Rolfe do as he moved through the house in terms of the position of his hand on the holster?---Well, the hood was forward and he had his hand gripping the grip of the firearm and his thumb resting on that third switch or that third movement.

So, there was only the third movement to go before the gun was drawn?---Yes.

And is that what you indicate was indication of – or you say in your statement, “It was an indication of his preparedness for a fast draw of a firearm.”?---Yes.

Was that move appropriate as he continued through the house at 577?---I don't think so and it's certainly not what is trained.

You can put that down now for the moment and somebody else might ask you any questions about it. You, of course, have to give your statements and in fact, give your oral evidence, prior to hearing a version of events from Constable Rolfe. Correct?---Yes.

And Constable Rolfe, this is not a criticism, but didn't participate in a record of interview where he provided a version. Is that right?---Correct.

So, it wasn't until the trial that you get to hear his full explanation for what occurred. Is that right?---Yes.

So, I just want to put to you then some of the evidence that Constable Rolfe gave about this issue in trial. Mr Edwardson was asking him questions on 3 March 2022, and this doesn't need to come up, but it can do, if Bec likes. It's at page 1057 of the transcript. Mr Edwardson says:

“I want to ask you a couple of questions, if I may, about your hand position in relation to your Glock”, referring to House 577.

He asked Constable Rolfe, “Can you explain what we see there?” And Constable Rolfe says, “What you can see there is me placing my hand on my Glock in its holster and using my thumb to release the first retention device on that holster.”

Mr Edwardson asked, “How many retention devices are there on that particular holster?” Constable Rolfe says, “Technically, there are three, but there are only two devices that require any action by us to release to Glock.

There is one static device”.

So, there was a bit of confusion by Detective Senior Sergeant Barram in his description of it.

“There’s one static device that we don’t interact with at all. It’s a guard at the front of the holster which can be seen.”

He’s asked, “So, what did you actually do?” And he says, “So, the retention device that I released requires downwards motion and forwards motion. So, two actions in one fluid movement to release.”

That’s what you described as step one and two. Is that right?---Yes. And that’s what the manufacturer describes as well.

Was there any confusion on your part, Superintendent?---No.

He goes onto say:

“So, I placed my hand on the Glock and pushed down. A device pushed it forward to release that first retention device from covering the rear of my Glock.”

And Mr Edwardson says, “For the jury’s consideration, can you please explain why you did that at that point in time as you moved effectively through House 577?”

And Constable Rolfe says, and I’ll just ask you to consider this to see whether it affects your evidence, Superintendent. He says:

“We are trained, in training, we train to prepare for a potential threat or a potential situation, which was described as ‘if then thinking’. So, at that time, clearing that house or searching through that house, I was wearing (sic), for a violent offender -”, it might be, ‘I was looking for a violent offender’ – “who had just, days previously in that same house, attacks two police officers with a potentially lethal weapon. So, all I was doing was preparing for, if I was presented with a case where I had to follow my training and utilise drawing my firearm, depending on the situation I was presented with.”

And Mr Edwardson says, “In other words, it was a state of readiness.” And he says, “Correct.”

Is that evidence, in your expert opinion, a justification for removing the retention device, or steps one and two?---No.

Why is that?---Our training is to keep those retention devices in place for your safety and everyone else’s until you’ve decided to draw the firearm.

What Constable Rolfe seems to be explaining is that, in training, he was trained to prepare for a potential threat and it was described as, "if then thinking". And so, he's effectively saying that it's a state of preparedness, it was put to him, or readiness, as Mr Edwardson described, that if Kumanjaya came armed with a weapon, then he would be better prepared if he released those steps one and two on his retention device. Is that acceptable?---Obviously, "if then thinking" is part of the training, but I don't think that was a good application of, "if then thinking".

Sorry, you don't - - ?---I don't think that was a good application of "if then thinking".

Did it in fact increase the risk at all?---It increased the risk of Constable Rolfe being able to be disarmed by Mr Walker or someone else.

And to your mind, did it increase the likelihood of the use of that weapon, if Kumanjaya presented suddenly?---Yes.

Can I move now to House 511, you set out the movements of Constable Rolfe and others in your statement from about page – or par 74, I beg your pardon, 75. Sorry, just before I move on from House 577, the conclusion you reach at par 74 was that:

"The forced entry search of House 577 was not reasonable or necessary and is departure from police training, practice and procedure. Constable Rolfe moving through the house with his hand on his firearm and the holster disengaged is a disproportionate use of force and not appropriate in the circumstances, given it was known there were young children in the house."

Do you stand by that opinion?---Yes, I do.

Are police officers trained to consider the fact that other citizens are in the near vicinity when they're thinking about the tactical tools that they'll use?---Absolutely. And if you're considering the use of a firearm, you certainly have to take into account anyone that might be standing behind the offender.

And I'll come to that issue shortly, but the fact of the presence of children in the house. Is that something the police officers would be trained to be aware of?---Of course it is. If that was your house with your 12-year-old playing PlayStation, do you think that would be acceptable for police to do? I don't.

You note in your statement, that at paragraph – at par 75:

"Once they'd completed the search of the house, they left to attend the second location, as indicated to Constable Rolfe by a member of the community on the map."

And that was by Mr Robertson.

"At approximately 7.17 they arrived in the vicinity of House 511", that's the red house now known as Memory House. "Constable Rolfe activated his body-

worn camera at this time, which back captured 30 seconds of footage. Some of the police members began questioning people in the area regarding the whereabouts of Kumanjayi and Rakeisha. At 7.19 pm, Constable Rolfe jumped over the fence, despite there being a gate, in short distance away.”

Is there anything significant about that, that you noted?---Yes. It could be seen as disrespectful, because anyone that’s worked any time in the Central Desert, knows that a lot of the time, beds and bedding are placed in the back yard, and people sleep outdoors. So the entire yard is, I guess, an extension of a bedroom.

So you’re entering into someone’s home without permission at that point?---Yes.

“He spoke to a female with a surname Lewis”, and you set out the conversation that he had with her at par 77. Effectively Constable Rolfe was asking her a series of questions. It included, and I won’t use Kumanjayi’s name of course, “We’re here to grab up Kumanjayi hey.” And he asked, “Where’s Kumanjayi’s? Where’s Rakeisha?” And she told him, “I don’t know, I’m a visitor.” You set out the conversation captured on the body-worn video?---Yes.

“After that, Constable Rolfe made his way around the side of the house, and he was approached by Constable Eberl, who confirmed with Constable Rolfe the name of the person they were looking for, that is that it was Kumanjayi. And Constable Eberl said ‘Someone just went in the back room here’, and that was captured on Eberl’s body-worn video at 7.20.19. Both officers went to the front corner of the house with Constable Eberl moving towards the front door, while Constable Rolfe spoke to a child and a woman who were in the yard. Constable Rolfe had a conversation with someone we know now to be Leanne Oldfield. Constable Rolfe said, ‘Hey missus, hey missus, where’s Kumanjayi at?’ Leanne said ‘I don’t know.’ ‘Where’s Rakesha today?’ Leanne said, ‘I’m not from here.’ And Constable Rolfe said ‘Righto, whose house is this?’ And we can hear on the body-worn video, a reply, ‘Margaret’s, but they still in um’ and then the reply is, ‘Can we go inside, cause looking for’, and Leanne Oldfield says ‘Go, go’, and then something that can’t be heard.”

Is that right?---From recollection, yeah.

Do you recall seeing there was a gesture that Leanne was making at the time?---Vaguely.

Can – was that sufficient, somebody whose house it wasn’t - - - ?---Mm mm.

- - - that is, indicating it was someone else’s house, saying “Go, go” and then obviously words after that, that’s not sufficient permission to enter into that house is it?---I don’t think so.

“Constable Eberl said to a man sitting outside in the front yard, ‘So’” and that was Nathan Coulthard, “So you don’t know who else is in the house?” And he

said, 'I don't know.' And that's captured on Constable Eberl's video at 7.20.39."

I'm reading from par 81 of your statement.

"Constable Rolfe then proceeded towards Eberl who was at that point standing approximately two metres from the front door of House 511, which was open. Constable Rolfe's body-worn video records that at 7.20.54 pm, he transmitted on the police radio stating, 'Me and Adam are just going to clear this red house'".

The concept of clearing a house, is that one taught to Northern Territory Police?---No it's not really. It's more a military thing.

You note at par 83:

"In choosing to enter and clear a premises where they suspected Kumanjayi could possibly be, combined with their prior knowledge that he had previously armed himself with a hatchet when confronted by police two days earlier, these officers put themselves into a potentially very dangerous situation. With all the training they had received, plus their combined experience as police officers, it would be reasonable to expect that they should have realised the potential danger. They either didn't perceive that risk, or they chose to ignore it, and instead chose to conduct a forced entry search. Which policy states is to be avoided, and should only be used as a last resort."

You stand by that opinion?---Yes.

This was not a last resort, and instead appears to be the first or preferred option?---Yes.

That's evident, isn't it, not just from the entry into House 511, but the entry into House 577 previously?---Yes.

And you go on to note, "That predicated the confrontation with Kumanjayi and that could have been avoided if the officers had followed standard police procedure of cordon and contain"?---Yes.

"Those officers ignored training, policy and procedures, which states that the emphasis will always be on the avoidance of conflict where possible"?---Yes.

You stand by that opinion?---Yes I do.

And you note in your statement that clearing a house constitutes a forced entry search, correct?---Yes.

In terms of avoiding conflict, you note:

“That prior to attendance of an incident, officers should thoroughly analyse all available information and evaluate the full potential of the situation, in order to avoid any potential confrontation. This can be done by the correct use of tactics, coupled with communication skills.”

Putting aside the fact that going into this house by forced entry, at that time, was not consistent with the 5 am plan, which I’m going to circle back to. If the officers – assume the plan didn’t exist, or the plan had changed for some reason. When the officers got to that house, and saw that someone had entered into the house, what should they have done?---Well standard training and the polite thing to do would be knock on the door, announce police here, can you come and talk to us, or some similar words.

You point out at par 89, “That no one positively identified to police that Kumanjayi had gone into the house”?---Correct.

And you also note, “That in Eberl’s statement, he says ‘I had a look in the house. I seen someone go into the back and shut the door. So I said I knew someone was in the house. I didn’t know who it was.’ They were told that House 511 was Margaret’s house, but she wasn’t present. And they did not have the house holders permission to enter in the house?---That would appear to be the case.

In terms of actually – the situation they found themselves in, you note “That the circumstances around House 511 in Yuendumu, were not significantly different to the circumstances that the group of police officers found themselves in at Warlpiri Camp on 7 November, and yet a completely different decision was made”?---Yes I did draw that comparison.

Appropriate decision on 7 November, consistent with the ICENCIRE training?---Yep.

And the Operational Principles. And a decision on 9 November, which was not consistent with the ICENCIRE principles and training?---Correct.

In terms of a risk assessment, which is principle two in the 10 Operational Safety Principles, you note at par 94, “That little, if any, risk assessment was made, of the risk of entering and precipitating a force or confrontation, or that fact that Kumanjayi could be armed”?---Yes.

And there was no planning process or discussion prior to entering House 511?---No, did not appear to be.

The evidence that we’ve heard to date, suggests that was a discussion of a cordon and containment to the extent – that is a loose cordon, around the house?---Yes.

Did that – does that constitute a plan and a risk assessment?---It constitutes a cordon. Whether or not that’s part of a plan, I – I don’t know.

Was that sufficient risk assessment for this situation for Kumanjayi?---Well risk assessments can be either formal and written, or informal and ongoing assessment. So I can't say exactly what was in their minds.

You note, "That there's no circumstances that made it impractical to adopt a cordon and contain approach in that situation, and that the ICENCIRE plan should have been implemented." What did you envisage there?---That they would have cordoned the house and let – let Sergeant Frost, or other police know. And got as many resources there as they could, whilst they maintained that cordon, and isolated the person that was in the house – or sorry, contain the person that was in the house, and isolated the house from anyone else.

So we've heard some evidence to the effect that they were limited, compared to 7 November, because they only had the five police officers there. The four members of the IRT, plus the Dog Squad member. Your point is, they could have called on local members for assistance at that time?---Yes.

If they had reasonable belief that Kumanjayi was in the house?---Yes.

In terms of going into the house, in that small space, at that time of night, after 7 pm, when it was darker, what do you say about that, given the risk assessment, or lack thereof?---It was a risky move to go into the house.

What were the particular risks as you see them at that time?---Low light conditions, which is a known condition of danger to police that you can't see as well, even though you do have flashlights, et cetera. The risk that they didn't know who was in there, they didn't know anything about what potential weapons were in there. Going into any house - a house has a multitude of weapons for example kitchen knives that can be used or many other improvised weapons. Going into the house at all was a risky manoeuvre and our training says should have been avoided.

You note that at 7:20:57 pm, this is at par 106 of your first statement:

"While still in the threshold of the front door Eberl's body-worn video shows he turned on his torch, which illuminated the front room and showed a male person can be seen on the other side of the room who was unseen at that point due to the darkness inside the room. Prior to entering, a number of options were still available to the police members, such as knocking on the door and asking the person they saw to come and talk to them or if the person reacted violently, closing the door and containing the person inside the house, then applying the INCENCIRE plan to the incident and attempting to negotiate a peaceful solution. Based on their training, Rolfe and Eberl should not have considered entering the house a reasonable tactic at that time."

Do you stand by that opinion?---Yes.

"At 7:21 pm Constables Eberl and Rolfe entered the front room of the premises via the open front door. Neither officer appeared to notice that the

male in the front room had his hand in his pants pocket, possibly already holding a weapon - or if they did notice, they didn't take account of it and did nothing to mitigate this potential danger."

What is the training with respect to looking for offenders' access to pockets?---Well, you want to be able to see an offender's hands because it's their hands and what their hands are holding that are going to harm or kill you. So - the reasonable response in that circumstances, the first one would have been, "Stop where you are - show me your hands." They didn't do that. They closed distance with him.

You note that:

"Eberl immediately began questioning the male as to his identity. The male attempted to leave and tried to brush past the police officers. Constable Eberl stopped him by placing a hand on his chest saying; 'Stop there - stop mate, we're asking - we're just asking you questions, no need to keep walking.' Kumanjayi provided a false name of Vernon Dixon. Constable Rolfe guided him to his position - to a position with his back to a wall next to the open front door.

We see on the body-worn video - and I won't play it again - Constable Rolfe unlocking his phone to access a photo he had of Kumanjayi on it. One of the police outside asked via radio if they were at the front of the red house and Eberl replied, "We just inside the front door mate, stand by". You note;

"Constable Eberl did not relay the presence of a person inside or that they were actually speaking with someone they suspected might be Kumanjayi."

What should have happened then?---Communication, that "We think we've potentially got him here" and - potentially, given the knowledge that they had of him that potentially he was armed, that a couple of days ago he had armed himself, we are taught to maintain a minimum of six metres distance from someone that you suspect might be armed.

But - sorry?---So, they could've - or should've made considerable distance from him - or, if they were going to stay there they should have taken firm control of both of his arms.

What is the purpose of the six metre distance?---To give you a bit of time and distance to react and move back further if required or do whatever else is required.

In terms of the circle that we saw with the tactical options on the outer perimeter, does it increase the number of options you've got if you maintain that distance? ---Yes.

You note - just before I move on from that paragraph, that;

"The failure to communicate the information that we had demonstrates the lack of effective communication and coordination between the team members and the lack of any effective leadership or plan of action and that is not consistent with the training that Northern Territory Police get".

Is that right?---Correct.

The next thing that happened was Constable Rolfe holding his phone with a photograph of Kumanjayi on the screen, next to his face to make a positive identification. Constable Rolfe appeared - or either officer appears to say, "Easy mate - easy" and this appears to indicate a positive identification of Kumanjayi was made. Your opinion is that closing the distance between the officers and the subject without any kind of subject control is poor practice and against training. Why is that? ---Because his arms were unrestrained, he was able to do whatever he wanted with his hands and arms. They put themselves into potential striking distance, even though they had intel that he had previously armed himself. It's just poor tactics to be that close to someone and not have effective control. Had they both grasped his arms firmly or, you know, decided "You are now under arrest" said that and taken control of one arm each, that would have mitigated the risk to an extent, but they didn't do any of that.

So you say they shouldn't have been in the house in the first place. If they were in the house they shouldn't have put themselves in that close proximity?---Yes.

But once they'd done that - if they were going to do that - at least mitigate the risk by taking control early?---Yes.

You note that:

"It's a breach of the principles used to minimise force, which we went through this morning, which start with staying alert, maintaining a safe distance, always watching the subject's hands anticipating problems, identifying behavioural warning signs, expecting the unexpected, being aware of surrounds, putting yourself in a position of advantage, not becoming complacent."

Those principles I've just read through 1 to 9 - are they drilled into recruits when they are going through their training?---Yes.

And are they reinforced in training each year?---Yes.

So in terms of the options available to them at that time, noting that they had put themselves in a dangerous position, par 114, you say:

"Given the prior knowledge that Kumanjayi was a flight risk and had previously grabbed a hidden weapon, they should have closed in rapidly and taken firm control to ensure that he didn't escape. Had they done that and taken effective control of one arm each, an arrest could likely be made without

further incident. The other tactical option available to them was tactical disengagement. They were positioned right next to the opened front door. One or two paces would have taken them back outside and there was nothing between them and the door to impede their exit. They could have contained him inside the house by staying a short distance and by closing the door on exiting and they would have given them the distance to implement the ICENCIRE plan”?---Time, distance and cover.

Would you excuse me one moment?

I will just ask Bec to play a portion from Spotlight where we see Constable Rolfe give an explanation of why you might be wrong with the ICENCIRE and I will ask for your comment.

DVD PLAYED

DR DWYER: Well, I'll ask you later whether it all got a bit sticky for you, Superintendent Barram, and whether you were out of your depth. I want to focus on the first thing about the ICENCIRE. According to Constable Rolfe, you got it wrong and the ICENCIRE didn't apply, in spite of the fact that it sits on your notebook as we went through and it's part of the training. What do you say about that?---He's completely wrong. It even says it in the training manual that it was originated as procedural response, but that is applicable and scalable to just about every incident the police attend.

And it was applicable to this incident. Is that right?---Yes.

So, you've point out what the two tactical options were; either to take control at that point in time, this is prior to the first shot, take control or to tactically disengage. What happened after that, you set out from par 116:

“The officers persisted in their attempts to grab Kumanjaya. The officers still had the option to disengage or to go to another tactical option, such as a baton, OC spray or taser. Due to Constable Rolfe not having effective control of Kumanjaya's right arm, this allowed Kumanjaya to obtain a pair of scissors with his right hand. It appeared that those scissors may have been secreted in his pants pocket and Constable Rolfe's body-worn video footage indicate that Kumanjaya first produced the scissors at 7:21:56. He used those scissors as an improvised weapon. He used those scissors in a downward stabbing motion at Constable Rolfe at 7:21:57 pm.”

And you note that:

“We see on the body-worn video Constable Rolfe raise his left arm to ward off the strike which may have deflected the downward trajectory of Kumanjaya's strike to some extent. However, it appears from the body-worn video footage and from the resulted wound to Constable Rolfe left shoulder that the movement did cause a stab wound to Constable Rolfe.”

At any time prior to the stab wound – well, I withdraw that. If the officers had moved back, as you suggested might be one of the tactical options, the tactical disengagement, this is prior to Kumanjaya producing the scissors, they would then have been positioned right next to the open door, one or two paces would have taken them back outside. There was nothing between them and the door to impede their exit. They could have contained Kumanjaya inside the house by staying a short distance from the doorway or closing the door on exit. This would have allowed some distance between them and Kumanjaya. If they'd exited and left the door open, would that have given those officers more of an opportunity to use a tactical option such as a baton, OC spray or Taser if Kumanjaya produced the scissors?---Yes.

From the point at – we know they didn't do that in terms of the tactical disengagement, from the point at which Constable Rolfe was struck with the scissors, did he have a limited number of options available to him to protect his life and Constable Eberl's?---Yes.

You note that body-worn video footage shows Constable Rolfe lowered his height and move backwards, and it was unclear whether that was a result of the force of the blow or his attempts to avoid the blow. You say at par 121:

“Best practice at that point, as taught and practiced in police defence training tactics, would have been to yell, ‘knife, knife, knife’ to alert and warn his partner and other police in earshot of the presence of an edged weapon. That didn't occur. His actions in not verbalising heightened the risk to Constable Eberl by limiting his opportunity to consider his tactical options. It appears that Constable Eberl was not aware of the presence of the scissors. Had Rolfe yelled, ‘knife, knife, knife’, it most likely would have Eberl to disengage from a wrestle with Kumanjaya, thus removing him from the immediate danger. Police are taught early in the recruit program to maximise distance when a knife or other weapon is informed. And it is reiterated through defensive tactics and firearm training and requalification.”

You stand by that opinion?---Yes.

Are police also taught to yell, “knife, knife, knife” if an edged weapon is produced?---Yes.

And that's for the purpose of alerting the other officer who's there and anybody else?---Yes, potential witnesses as well.

Those two officers, in terms of confronting the threat, had their combined skill and presence and tactical options in terms of dealing with the threat. Is that right?---Yes.

And do they need to think about it, as such, that they're a team there working together?---Of course I do.

Okay. You note when Rolfe was moving back and drawing his firearm:

“The struggle between Constable Eberl and Kumanjaya continued past Constable Rolfe to the point that Constable Eberl and Kumanjaya had their backs to Constable Rolfe by the time he drew and presented his firearm.”

Did that present a particular risk as you were assessing it?---The fact that he had his back?

Yes?---No. Well, potentially a risk to Eberl, because he was still within reach.

You say at that point, Constable Rolfe had the option to draw his Taser, spray or baton instead of his firearm. However, police training is that these other weapons are not the best option when an edged weapon's involved due to the potential fatality of the edged weapon. Does it depend, in those circumstances, consistent with your evidence previously today on the particular circumstances?---Yes.

Police are taught to draw their firearm in response to an edged weapon to provide lethal cover and once the lethal cover is in place, police can then consider the use of less-lethal tactical options?---Yes.

If the situation permits it, consistent with the training, any less lethal option should be used than a gun. Correct?---Yes.

At no point did – I withdraw that. If police pull their gun so that they've got a tactical cover or a lethal cover, should they be saying something at the time?---Yes, “Police, drop the weapon”.

At any time prior to Kumanjaya being shot, could you hear Constable Rolfe warning Eberl of the presence of an edged weapon or a knife or scissors or anything?---No.

At 7:22, Constable Rolfe's body-worn video shows he has his firearm drawn and a double-handed grip on it. You say, at that stage, Constable Rolfe was not in immediate danger from Kumanjaya, because Kumanjaya had his back to Constable Rolfe?---Yes.

The footage shows Constable Rolfe maintaining a right-handed grip on his firearm and using his left arm to brace against Constable Eberl's back. It appears that Kumanjaya was trying to slip out of Constable Eberl's headlock by moving forward, which also caused Constable Eberl to move forward towards Constable Rolfe?---I think it's “rearward”.

“Rearward”, I get your pardon, thank you. “It appears Constable Rolfe braced his left hand on Eberl's back to halt his rearward movement.” This appears, looking at it on video and even reading it, to be a very dangerous situation that these two officers are in with Kumanjaya?---Yes.

That is, all three of them are in danger at that time. Would you agree?---Yes.

Does that just reinforce what you've told us already, Superintendent Barram, that they shouldn't have been in that position in the first place?---Yes, it does.

At 7:22:01, Constable Rolfe fired shot one from his firearm, as indicated by the muzzle flash seen on his body-worn video footage. Shot one struck Kumanjaya in the middle to upper right region of his back and that shot was not fatal. You note that Constable Rolfe did not use any dynamic verbal commands, such as "Police, drop the weapon" or call on Kumanjaya to surrender or give any other warning that he was about to shoot. Should he have done, given the short time period that he had to react?---Yeah. There was potentially time for him to say something like that.

And would best practice have been for him to do that?---Yes.

Because that would have given Kumanjaya a warning, and also Constable Eberl a warning?---Yes.

You note, "That had Constable Rolfe called on Kumanjaya to stop there might not have been a need to fire the first shot, if Kumanjaya had complied with the command." Are police taught to continuously reassess in a situation like that, to see whether or not a suspect is complying?---Yes they are.

You go on to note though, "That given Kumanjaya's prior behaviour it wasn't certain that he would have complied, and the delay caused by calling on him to stop may have been sufficient time for Kumanjaya to stab Constable Eberl, putting him in danger of death of serious harm"?---Yes.

And we just don't know now what Kumanjaya would have done in those circumstances?---No we don't.

And the police don't – didn't know at that time?---No.

Constable Rolfe wouldn't have known at that time?---Correct.

So your conclusion, ultimately, is that it is – that Constable Rolfe had a defence to that first shot?---Yes.

In terms of self – defence of another?---Yes.

The first shot was fired at a time when the officers were upright, correct?---Yes.

What was the position of Constable – I withdraw that. What was the position of Kumanjaya compared to Constable Eberl, at that time?---Standing at his side.

I'm going to read to you some of the evidence that Officer Eberl gave in this inquest on 17 October.

Page 1701 for my friends at the Bar table.

Constable Eberl gave evidence that he was surprised, even after the third shot that Kumanjayi had been shot. He was not expecting that. I read to him his first interview, where he had said:

“I’ve heard a couple of loud bangs like boom, boom, that’s what and I was like bloody hell, like had my gun off or what, because it didn’t” – and I asked “Because it didn’t sound to you like you would expect a gunshot?”

And he said “Yeah, that’s right, yeah.”

“It didn’t occur to you that Constable Rolfe had fired in those circumstances?” And he said “Not at that point.”

And I asked, “At the time of the first shot fired, you were standing directly behind Kumanjayi correct?”

And he said “Correct” that was his perception at the time.

“Do you now know where you were with the second and third shots?”

And he said “Laying down next to him.” I asked, “Directly, or on top of him?---Kind of in the same position. I was sort off to the side, but still holding his arm.”

“Did it occur to you that your colleague would fire a weapon in those close circumstances, firstly, when you were standing directly behind Kumanjayi?---No.”

“And then second and third, when you were directly behind him on the ground?---Not from my perception, no.”

“Do you think looking back on it”, I asked him, “Is it fair to say that you were centimetres away from Kumanjayi at the time the shots were fired?---Yeah well I was touching him, so yep.”

“Do you think that in those circumstances there was a real risk that you could have been shot?---Potentially, yep.”

Superintendent Barram, drawing on your training and expertise, what do you say about the situational risk for Constable Eberl, given Constable Rolfe firing, firstly the first shot?---Well first shot he was at extreme danger of potentially being shot himself.

Constable Eberl was?---Yeah, it was a very dynamic situation at that point.

And for the second and third?---Well it was a lot more static, but again had Eberl made a sudden movement to try and get into a better position, potentially, he could have been shot then too.

Your conclusion, in relation to the second – I withdraw that. I think I will ask you about the second and third shot. You deal with this at pars 141 to 142 of your first statement, 13 March.

“At 7.22.03, Constable Rolfe stood over Eberl and Kumanjayi, placed his left hand onto Constable Eberl’s lower back, and fired shot two into Kumanjayi’s left side. At 7.22.04, less than a second later, Constable Rolfe fired shot three into Kumanjayi’s left side, in close proximity to shot two. Constable Rolfe did not use any dynamic verbal commands, or call on Kumanjayi to drop the weapon, or surrender, or give any the warning that he was about to shoot. Constable Rolfe did not say anything, and fired both shots in rapid succession.”

Should he have been giving verbal commands, after that first shot?---Yes.

You describe those two shots, in rapid succession, as being sometimes referred to as a “Double tap”?---Yes.

Is that a technique that’s taught by the Northern Territory Police?---Yes.

In what circumstances is it appropriate?---Well it depends on the situation - - -

Sure?---And it’s up to the officers judgement. So sometimes one shot may be sufficient. Sometimes more shots are required.

If lethal force is required to stop a threat in some circumstances, a double tap might be needed?---Yes.

And you note, “Firing multiple shots in rapid succession into the same target area on a person increases the trauma caused to the body, thereby increasing the chance of incapacitating the subject”?---Yes.

Now I’m dealing with this in a very clinical way, but I appreciate that those listening might – might be thinking of the loss of their loved one.

So I just want to note, your Honour, that we’re conscious of that going through, and I apologise for how clinical this sounds in dealing with this technical evidence.

When Constable Rolfe is asked about this in trial, in examination – in cross-examination, he said to Mr Strickland of Senior Counsel - - -

MR EDWARDSON: Sorry, can we have a page reference please.

DR DWYER: I’ll find it for you in the break - - -

MR EDWARDSON: Sure.

DR DWYER: - - - Mr Edwardson.

That – there’s a difference between a double tap, and a controlled pair. Is a controlled – well, firstly, do you recognise that expression, “controlled pair”?---I do, but it’s not in our training manuals.

What – why do you recognise it?---Because I’ve read other police training manuals. I was a member of the International Association of Law Enforcement Firearm Instructors. So I’ve read manuals from other countries, other places. And it’s a term used by them.

That’s at 1096, for the benefit of my learned friends.

MR EDWARDSON: Thank you.

DR DWYER: And in any way, if this was being thought of as a controlled pair by Constable Rolfe, would that justify the use of force in shots two and three?---No.

You say, at par 144, “Whilst Northern Territory Police do train to fire multiple shots when necessary”, you question the need for it in this situation. You believe Constable Rolfe had a number of viable tactical options, other than to fire shots two and three. Because the circumstances had changed from those under which shot one was fired?---Yes.

What were the changed circumstances that meant that lethal force was no longer required?---Change in position of Mr Walker. He went from being – standing up to being laying on the ground, with Eberl restraining him.

And in terms of Constable Eberl restraining him, you formed the opinion that Kumanjayi’s right hand was underneath him, is that right?---Yes.

I’m just going to read to you some of the evidence of Constable Rolfe. Because of course, just to go back a step again, you were providing your written statements, and your oral evidence, prior to hearing from Constable Rolfe as to what his explanation was, correct?---Yes.

Constable Rolfe gives evidence at trial, on page 1072, about what was going on as in terms of what he asked the jury to accept. And I’ll just read from halfway down that page. After explaining that he was struck with a hammer like motion, and he realised that it was a metal blade, didn’t realise it was scissors. He’s asked by Mr Edwardson KC:

“When was the first time you realised that what in fact he had deployed through exchange was the scissors?”

And Constable Rolfe said, “Not until I had him on his stomach. I was in mount, and I was pulling his hands, right hand, behind his back.”

Mr Edwardson says, "So anyway, you saw what appeared to be a blade?"

He says, "So I saw him holding a blade in a dagger like grip, and then I had my shoulder up, and my arm out to protect myself, and then he stabbed me in my left shoulder."

And Mr Edwardson said, "Right, and what did you do then?"

He said, "Instinctively from then - from then I jabbed him, just with my left hand. Jabbed him in the face with my left fist."

"And then what were you doing with your right arm or hand?"

And Constable Rolfe said, "Instinctively, at the same time, I put my hand on my Glock, which - at which point I realised his left hand was already on my Glock."

So Constable Rolfe is indicating for the first time there that, "Kumanjayi's left hand was already on my Glock." Mr Edwardson says;

"Can I ask you this. Were you aware - in these split seconds were you aware of where Eberl was and what he was doing and his proximity to this blade which had just stabbed you?"

And he says: "I was aware he was in close proximity."

"So what did you do with your Glock?---So as soon as I saw him with a blade I immediately feared for my life and I instinctively I went for my Glock. His hand was on my Glock and I twisted my hips back, which we are trained to do, with speed, to knock that hand off my Glock and step back. As soon as I stepped back Kumanjayi's focus turned to Eberl and I immediately feared for Eberl's life - Kumanjayi is starting to stab Eberl in the chest and neck area."

If the court accepts that in the instance as described Kumanjayi was - that is when Constable Rolfe had reached down for his Glock, he realised that Kumanjayi's left hand was already on his Glock, is it consistent with the training of Northern Territory Police to twist your hips back, knock the hand off your Glock, step back and then at that point he draws his weapon and fires?---No.

Why not?---Well, as I touched on earlier, we are trained in firearm retention and stepping back, twisting your hips, is part of that but keeping the gun in the holster is the training, so that that's where it is least risk to yourself or anyone else is that you keep it in the holster.

So you would knock an offender's hand off your weapon area and then make sure that your gun was properly secured and stayed in its holster?---Yes. So the acronym for that training is "GUN" which stands for "Grab - undo - neutralise".

There was much said in the committal and the trial about the police being trained on "edged weapon equals gun". In terms of shots 2 and 3, you still - in spite of the fact that Constable Rolfe was presented with an edged weapon, say that those two shots were inappropriate and excessive?---Yes.

And is that because the circumstances did not justify it at that time?---Correct.

For the first time at trial you got to hear Constable Rolfe's explanation as to why, in his mind, shots 2 and 3 were justified. Mr Strickland, in cross-examination, for example, at page 1175 said:

"While Kumanjayi was on the mattress and before you fired your shots you couldn't see Kumanjayi's right arm, could you?"

And Constable Rolfe said, "I could."

Mr Strickland says, "It was under his own body wasn't it?"

And Constable Rolfe says, "Incorrect."

He goes on to say - Mr Strickland says, "You couldn't see Kumanjayi's upper body moving, could you, before you fired the shots 2 and 3?"

And Constable Rolfe said; "If you count his right arm as his upper body, I could see that moving."

So he maintained that the right arm was still moving and therefore was still capable of inflicting injury on Constable Eberl. Do you accept that as a possibility?---Not in the position that they were in.

So you maintain the evidence that you gave in your statements and at trial that the second and third shots were excessive?---Yes.

And that there were other options available at that time?---Yes.

What were they?---Well, had Rolfe holstered his firearm he had all the other accoutrements available and empty hand tactics assisting his partner with controlling Kumanjayi with empty hand tactics.

And did I understand your evidence earlier to be that in terms of the risk to Constable Eberl, because Constable Rolfe couldn't predict how Constable Eberl was going to move his own body at that time, not appreciating that the shot had been fired, he could have placed himself in a situation where he was shot?---Yes.

I want to ask you - I have only got a couple of topics left - about something you referred to as "DIAMO plus P". It is referred to in par 130 of your statement from 13 March. D-I-A-M-O plus P model, as you outlined there, is taught to police as a model that sums up the elements in considering whether the use of legal force is

justified. The model means D for defence of life, serious harm - are police in a position of defending life or at risk of serious harm, does the threat presented have the I - intent to carry out the action, A - ability to carry out their intent, M- means to carry out their action or threat, O- opportunity to carry out the action or threat and P, precluded of all other options, is there no other option available to police to resolve the incident less forcefully. Is that model a way of training police how to think in terms of assessing a threat?---Yes.

And is that acronym something that was used while you were teaching police?
---Yes, it's been used for quite some time.

Regardless of the particular acronym, is it standard training that is is it consistent with broader principles?---Yes, and it's still in the manual.

And it's still in the manual?---Yes.

That acronym or the training principles?---The training principles.

So that acronym is now no longer used, is that right?---Yes, it's been taken out of the manual.

But the training principles are exactly the same?---Yes.

I just want to show you a memo which was sent by Superintendent Scott Pollock who for a period of time was the officer-in-charge of the Charwell(?) Coronial Investigation. This is a memo dated 20 October 2020, it appears at 5-60 of the brief of evidence. Have you had an opportunity to read through this memorandum, Superintendent?---I don't think I've seen this before. I'm not 100 per cent sure but I don't think I have.

I just want to ask you about a suggestion made by Superintendent Pollock about the use of that acronym. It's just at the bottom of that page 1. He expresses some concern in this memorandum which is sent to Commander Proctor about the use of the D-I-A-M-O plus P acronym. He says;

"An issue of obvious concern is Barram's reference to a police use of force training acronym, D-I-A-M-O plus P. Officer Barram has relied heavily on the acronym in determining that Constable Rolfe had not adhered to elements when considering whether the use of legal force is justified."

And he notes that you've dedicated five pages of your statutory declaration to that in determining that Constable Rolfe did not adhere to the DIAMO plus P training he received while under recruit training. If you turn over the page it suggest that - sorry - Superintendent Pollock suggests that when that fact was raised, that is that DIAMO plus P is no longer used, you provided a further statutory declaration suggesting that only the acronym DIAMO plus P was removed from the training content and that the elements were still contained in a facilitated guide. Further research, according to the then Superintendent Pollock now indicates that

DIAMO plus P was a training reference like as to verbal judo, that ceased being used by Northern Territory Police Force as a training mechanism in 2007 and at that time, because of copyright, the acronym was removed, and you should have been aware of that. Just putting that to one side - and that can come down, does that change in any way your opinion with respect to options that Constable Rolfe had available to him with shots - in avoiding shots 2 and 3?---No, not in any way.

Finally, officer, I just want to remind you of the comments of Constable Rolfe in the Spotlight video that we saw. He says, towards the end of that particular frame, "He got tripped up" - meaning you:

"He got tripped up, at some point after he started making those statements. Medical evidence that has come in and has shown the first shot was not incapacitating in a medical sense."

I will just pause there. Does it affect your opinion in any way, that medical evidence shows that the first shot would not have killed or incapacitated Kumanjayi ?---No.

He goes on to say:

"And in fact the second and third shots were not incapacitating to Kumanjayi's right arm".

Does that affect your opinion in any way?---No.

Do you maintain your position that your view of the body-worn video shows that Kumanjayi's right arm must have been pinned under his body?---Absolutely, yes.

And do you understand that to be consistent with the evidence of Constable Eberl?---Yes.

Go on – he goes on to say:

"So I believe along the way he's changed his story, and I think he was just willing to toe the line by the executive, and it all got a bit sticky for him, and he was out of his depth."

Did you in any way change your story to toe the line by the executive?---No.

What do you think of that suggestion?---Aligns with other conspiracy theories.

In terms of your role in this court, you are being called as an expert witness, correct?---Yes.

You understand, that as an expert witness, it's your obligation to this court, above other obligations you might have to the Northern Territory Police Force, to tell the truth?---Yes, absolutely.

And to be objective?---Yes.

And to analyse any new material that comes forward, to see whether or not it changes your opinion?---Yes.

And you don't take a side in these proceedings, do you?---No.

You're not against Constable Rolfe, are you?---No, I've never – I don't recall ever meeting him.

And you're not for any particular party in these proceedings?---No.

Do you say to her Honour, that you have at all times, attempted to give evidence in a fair and objective way?---Absolutely I have.

I won't ask you to go into details about it, but after you gave evidence – or I withdraw that. Even during the trial, was it the case that you were subjected to adverse comments?---Yes, from certain parties.

And after the trial, did some of those adverse comments continue to be directed to you?

MR EDWARDSON: Your Honour, I object to this, how is this relevant? It can't possibly assist your Honour at all. It – I mean this really is extraneous to cause of circumstance of death.

THE CORONER: Dr Dwyer.

DR DWYER: Your Honour, the relevance is how this Northern Territory Police Force recovers in terms of morale, and caring for each other, in the wake of this tragedy. It is my submission that a number of witnesses who gave evidence in the trial, have been subjected to abuse on social media, and in some circumstances, face to face. Which is completely inappropriate, and not in keeping with a police force that works together, to protect members of the public. And that it's important that they develop strategies, to find ways to move through this, and to learn to support each other, if they are going to be an effective force, to work together as a team, to serve members of the community.

THE CORONER: And if members are willing to speak independently, and objectively of their opinions, without feeling that they might be intimidated after the event.

DR DWYER: Yes, your Honour.

THE CORONER: So it goes to the very heart of being able to investigate independently.

DR DWYER: Yes, your Honour.

MR BOULTEN SC: Your Honour, and in particular, any communications to this witness, before he had finished giving his evidence during the trial. So there was a conversation, alleged to have occurred, by this witness, which was revealed in the trial, that there was an approach by Richard Rolfe to him, during – before he had finished his evidence. And that's particularly important.

MR EDWARDSON: No, it's not your Honour, and that's a side collateral issue which was emphatically denied by Richard Rolfe at the time. It's a contest that your Honour can never resolve, and has nothing what so ever to do with this inquiry - - -

THE CORONER: Yes - - -

MR EDWARDSON: - - - I quite understand your Honour's point a moment ago, in the exchange that you've just had with Dr Dwyer, but that's a very different category to what my learned friend's talking about.

THE CORONER: - - - yes, and I don't think the timing of anything is particularly relevant to what I said. At any stage, police should be – feel that they are able to give honest and objective opinions and feedback during the course of an investigation - - -

MR EDWARDSON: There's no argument about that, your Honour.

THE CORONER: - - - and for that reason, I'm going to allow the question.

MR EDWARDSON: If your Honour pleases.

DR DWYER: You were the subject of abusive and derogatory comments on social media, is that right?---Yes.

And you were prior to giving your evidence?---Yes.

And you have been since giving your evidence - - - ?---Yes.

- - - in the trial?---Yes.

And prior to coming to give evidence today?---Yes, dated somewhat.

Has that – and in fact, you were sent something in the mail which was derogatory and inappropriate as well, after giving your evidence, is that right?---Yes.

And has that in any way, influenced the evidence that you're prepared to give in this court, in a fair, independent, and objective manner?---No.

Those are my questions, your Honour.

THE CORONER: Yes.

Mr Mullins we - - -

DR DWYER: I beg your pardon, just before Mr Mullins, your Honour, I just might note that we have a Senior Mparntwe custodian in the court. Elaine Inwarrye Peckham(?). And I know the court would welcome a senior Ambatwe custodian in the court. We are grateful for the presence in this court, and it honours the court, and I want to acknowledge that.

THE CORONER: Thank you, Dr Dwyer, for bringing that to our attention.

Mr Mullins.

MR MULLINS: Thank you, your Honour. I'll be 20 minutes, so I'll be - - -

THE CORONER: Thank you.

MR MULLINS: - - - done by one.

XXN BY MY MULLINS:

MR MULLINS: I will be referring to document 10-04, and starting at page 14 please.

Superintendent, my name is Mullins. I appear on behalf of the Brown family. In the statement that you prepared for the purposes of the criminal trial, you make reference to the circumstances in which it's appropriate for a police officer to discharge a firearm, in a particular situation.

If we can pull up that page 14 please, and it's par 31. Just so we can review it precisely.

You say:

"The rationale behind police discharging a firearm at a human being is that there is such an overwhelming need present, to stop that person immediately, and prevent them from continuing with the actions that they are presently engaged in. That a firearm, an option of lethal force, must be deployed."

And then you say, "The need must be so great that it justifies the potential to cause serious harm or death to the offender, as a result of the shooting, to the preclusion of all tactical options."

So the need you're referring to there, if it was on a scale, it's at the very top of the scale, that's correct?---Yes.

And so the need is one that must be overwhelming, that's right?---Yes.

And it must be present at that current time?---Yes.

On to the next page at par 34, you then say:

“A police officer resorts to the use of a firearm when they assess that their own life, or the life of another person, is at stake.”

Now when you refer there to “they assess”, you are talking about a subjective element, that’s correct?---Yes.

That is an assessment by the individual police officer that, either their own life is at stake, or the life of another person, that’s right?---Yes.

And you add:

“That if the situation is so serious that an offender must be shot, then it should be done in such a manner, that the offender’s actions are discontinued in the shortest possible time.”

And you go along to describe, “That the primary goal is to incapacitate the person”, that’s right?---Yes.

Now, at par 19 –

And we don’t need to go to par 19 –

But you identify that Constable Rolfe exercised his right to silence, that’s right?---Yes.

And at the time you were preparing this statement you say:

“Rolfe has not provided what his apprehensions and beliefs were at the time of firing the shots, and has exercised his right to silence. Therefore I am unable to consider these mental elements in coming to an opinion about the necessity and proportionality of the force used in this situation.”

So is it correct to say that even though you emphasised in par 34, the importance of that subjective element, when you came to prepare your report, you couldn’t rely upon an assessment of Constable Rolfe’s subjective element, because he hadn’t given his evidence, or he hadn’t given an explanation as to what he had done?---Correct.

All right, now can I just explore with you for a moment, the interface between what I might call that subjective element, and the objective assessment that you did, based on the body-worn video and other material?---Sure.

You understand that? Now you understand what I’m saying, you carried out, what is effectively an objective assessment, by looking at the body-worn video and what was

happening at the time, and making a determination whether that was a reasonable use of force, you with me?---Agree.

So there's an objective element to this and a subjective element?---Yes.

All right. Now, let's take a couple of examples. Assume we have a particularly anxious police officer who sees a person holding a butter knife and he's at a distance of about 10 or 15 metres and he decides that person is a risk to him and to shoot, all right? Now, the officer might say when he's being investigating that he thought that the offender had the ability, the means and the opportunity to cause him a serious injury and that his life was effectively at stake. Do you understand what I'm saying there?---Yes.

So, subjectively, it may be that he holds the belief?---Yes.

But objectively, you determine that that's not a reasonable use of force?---Yep.

That's right? Now, you would conclude in that situation that it is not a reasonable use of force because of the objective element demonstrating that it's not?---Yes.

All right. Now, take another example. A police officer is one metre away from an offender and the offender has secreted a foot knife, and the police officer doesn't know that. So, he's secreted it in his hand and when the offender is later interviewed, he said, I was going to use it on the officer and slash him. In that situation, again the police officer shoots, because he believes that, for whatever reason, he's the same particularly anxious officer, that there might be a problem. Now, from the subjective sense, there is – subjectively, he holds the view that – it's not that he thinks there's a reasonable risk of death, or a risk of death. Is that right? He doesn't see the flick knife. He doesn't know that the man holds a flick knife. Are you following me?---Kind of.

All right. Objectively, when one looks at the situation with what one views afterward, there was a significant risk, wasn't there?---Potential.

Potential. Now, in that situation, if the objective is present, but the subjective is not, you would still say there's an unreasonable use of force. Is that right?---To shoot him?

Yes?---Well, you would have to assess all of the circumstances.

Right. Can we accept that neither will necessarily be determinative and that one has to look at all the circumstances in the particular case?---Yeah, I accept that.

But when you're gone through your assessment in respect of the second and third shots, you can say that objectively, from what you can see, the use of force was excessive?---Yes.

And you don't need the subjective assessment to assist you with that, because

objectively, the test is proved or satisfied?---Yes.

But when it comes to the first shot, the situation is different, isn't it, because you say, well objectively in respect of the first shot, I think that the use of force was not excessive or not justified?---My actual words are, "With all the circumstances considered, minus Rolfe's mental element, that there is a scenario open in which firing that shot was reasonable."

Correct. Can we go to par 128 of your statement, please, 13 March?---13 March.

Yeah, 13 March. It's 10-04?---Yep, thank you.

It's page 34. And if you could just scroll down to 128, please and we can see there,

"It appears to me that Rolfe fired shot one in defence of Eberl in line with training. To have drawn and fired his firearm, Rolfe must have formed the belief that death or serious harm would result to Eberl."

So, you're making an assumption there that, based upon the objective material that you have seen, that Constable Rolfe did have a particular state of mind?---Yes.

And you set out in the paragraphs below the various factors that you rely upon there:

- "(i) prior knowledge that Walker had armed himself two days prior to resist arrest;
- (ii) Rolfe had seen a bladed weapon in Walker's hand;
- (iii) Rolfe had actually been stabbed by Walker with that improvised weapon, the logical extension of which is that if Walker was prepared to stab Rolfe, he was prepared to stab Eberl;
- (iv) Eberl was in close physical contact with Walker, who was still armed."

And am I correct to say, in addition to that, he also had the arm unrestrained in respect of the first shot?---Yes.

Which was what was different in the second and third shots?---Yes.

That Walker's - Kumanjayi Walker's, I'm sorry, arm was restrained:

- "(v) the police training around the potential lethality of edged weapons, particularly when in close proximity;
- (vi) such close proximity means there is no time or distance in which to consider and deploy other tactical options."

Now, in the page that follows, can we just go to page 35, you then apply the DIAMO plus P model that you have already been referred to by counsel assisting. And if we then go through to the next page, which is page 36, you say at par 135:

"The next question to ask is, 'Did Walker have the opportunity to stab Eberl,

given that Eberl that in close physical contact with Walker and that Walker's right arm was not restrained, there was opportunity for Walker to stab Eberl'."

Now, you say there, from your reading of the body-worn video material, that you understood that Kumanjaya Walker's arm was not restrained at the time of the first shot?---His right arm was not.

His right arm, that's right. And as a consequence of that you say that Constable Eberl did not have Kumanjaya Walker under control?---Yes.

Now if you just assume for the moment that contrary to the objective evidence Constable Rolfe in fact did believe that Eberl had Kumanjaya Walker under control would you agree that that element is not satisfied?---If Rolfe thought in that standing position that Eberl had the right arm under control.

That's right?---Then potentially it would not have been justified.

And because your conclusion is really based only on the objective evidence, you don't know what Constable Rolfe actually believed do you?---No, I don't.

And it's the case isn't it if the Coroner ultimately found that Constable Rolfe did not believe that Constable Eberl's life was at stake such that there was an overwhelming need to stop Kumanjaya Walker, you would agree that the use of a firearm for the first shot was not a reasonable use of force?---If that's the Coroner's finding then, yes.

Yes, thank you.

Nothing further your Honour.

THE CORONER: Yes, I note the time, we'll take the lunch break. We will return at 10 to 2:00.

ADJOURNED

RESUMED

THE CORONER: Mr Boe.

XXN BY MR BOE:

MR BOE: Thank you, your Honour. I expect to be less than 20 minutes.

Superintendent, my name is Andrew Boe and I appear with Ms Boe for the Walker, Lane and Robertson families. Just touching on a matter that Mr Mullins spoke to you about earlier, when he took you to the factors you took into account in par 128 of your statement. May I ask you this, in relation to (iii), which doesn't need to come up on the screen, that you observed, "Rolfe had actually been stabbed by Walker", et cetera. You see that entry?---Yes.

In including that in the list, you were actually talking about not the fact that he'd been stabbed, but that he perceived, or felt that he'd been stabbed. Would it only be relevant if he knew he had been stabbed is that fair?---Yes.

Thank you. In determining that, did you look at the body-worn videos – sorry, take it back. Did you assume that he knew he had been stabbed, in including in that list? That's the only way it would have been relevant, wouldn't it?---I saw – my perception of the body-worn video was that he was initially chasing Walker's right arm, as it went up. And then he'd - saw perhaps something in the hand, but he did appear to me to be taking evasive action with his left hand to – to block that downward strike.

I'm making a distinction between seeing swipe?---Yep.

And him knowing that he'd been stabbed, do you understand?---Yes.

In so far as the inclusion of that entry, it only has force, if he knew he had been stabbed, would you agree with that?---Yes, I'd agree with that.

And then looking at the material, did you look at the body-worn videos in the station at the time when the – the officers looked at his shirt, and they took his shirt away?---Yes.

And did you listen to it carefully, and would you accept that it's open, that he was surprised that there was in fact a stab there. And that was the first there'd been any mention by him, to anyone, up at that point, that he knew he had been stabbed?---No, I don't accept that, because at the time that they were trying to handcuff him, he did say, "He was stabbing me, he was stabbing you."

Yes. That's a declaration - - - ?---Yes.

- - - I get that. It could be construed in different ways. But in so far as reporting an injury, the first time was when it was revealed in video exhibit 25 at the trial, which is

when somebody it out to him, and he pulled it apart, and then go, "There you go, there you go." And you'll remember that part of the video?---Yes.

Yes. We'll make submissions about what can be said about that, but you would accept that if he did not know he'd been stabbed, at the time of the interaction, that that would not be a factor relevant to determining the objective reasonableness of the force?

DR DWYER: I'm so sorry to interrupt Mr Boe, the livestream's not working, for a moment, if we could just pause.

MR BOE: All of it or – was it all of it or just that - - -

DR DWYER: Just that one. And it's right now, sorry.

MR BOE: All right, thank you.

Do I need to repeat that, or is that sufficient to keep going?

A PERSON UNKNOWN: I think you need to keep going.

MR BOE: Thank you, thank you.

All right, in your – Dr Dwyer took you through part of your statements, 49, 50 and 51, in which you gave your opinions concerning five incidents consistent on the issue of the reasonableness of force used in those five incidents. Do you know what I'm referring to?---Yes.

Now may I ask you this. If that information had been available prior to 9 November, would you accept that that information would have been sufficient to stand Constable Rolfe down from any operational duties?

MR FRECKELTON AO SC: Your Honour, I object to that question. It's asking for some kind of an expert analysis of what the disciplinary processes are, and what Professional Standards Command does - - -

MR BOE: No, no.

MR FRECKELTON: - - - it's not appropriate for this witness. Others will come to whom the question will be answered.

MR BOE: Your Honour, I press it. It's not so much about the quality of the review. I'm not asking this witness to assess the quality of the review. This witness has given evidence, repeated here, that he formed a view as to Constable Rolfe's if you like, state of mind. And in my respectful submission, it's relevant to submissions, as to any changes that may be warranted. Especially given Sergeant Vicary's view, that she felt that he should have been stood down from the IRT, at the very least, when she became aware that he was subject to a review process.

MR FRECKELTON: I press the objection, your Honour. It's the wrong witness. The question can be asked of others.

THE CORONER: Yes, I don't think the disciplinary or corrective procedures that might be taken by the NT Police Force are within this particular officer's area of practise or expertise in the police force. So I'm not going to allow the question of this witness.

MR BOE: Thank you, your Honour. As your Honour pleases.

Can I go to a question that was asked by Dr Dwyer and an answer you gave, in relation to your assessment of the steps taken by Hand and Smith, when they were facing the axe incident?---Yes.

You were asked a number of questions. But one of them was that you agreed that you were not critical of their actions, do you remember that?---Yes.

Is it fair to say that the focus of that answer was in relation to, not critical of their withdrawal, once a situation arose?---Yes.

You weren't examining, or you weren't, may I suggest, making an assessment in those answers, to whether or not their steps in going to the house in the first place were – were matters of judgement by you, is that fair?---Yes, that's - - -

You were just simply looking at what they did, in terms of following procedures when confronted with a situation by de-escalation?---Yes.

Thank you. You told us that you believe that the deployment, which included Constable Rolfe, was a general duties deployment. Do you recall saying that?---Yes.

From where have you got that, to form that opinion?---When I was stationed in Alice Springs, I was a member of, it was at that time called, The Cordon and Containment Team. And likewise, we would take callouts for general support, as well as calls for tactical and cordon and containment reasons.

And that team was a precursor or the – or subsequently renamed, the IRT?---Yes.

So your answer really on that issue was, that what you assumed their deployment was. Is that fair?---Okay, yes, that's fair.

What I'm asking is, were you aware of the view by Acting Commissioner Wurst that he thought it was a general duties deployment at all?---I believe it says it in the plan that it's a general duties deployment.

Yes, but are you also aware that Superintendent Nobbs and Officer in Charge Frost, were of the view that it was an IRT deployment?---No I wasn't.

Now you were taken earlier to some evidence concerning matters that you were not aware when you gave your statements and your evidence at the trial, by reference to the narrative given by Constable Rolfe in his case, that he felt, when he went for his gun, that Kumanjaya Walker had his left hand on the gun. Do you recall that evidence?---Yes.

Did you see anything that suggested that that act occurred, from your viewing of the body-worn videos?---No.

You're aware that around that same page, transcript 12072, Constable Rolfe also gave a narrative which included that he had suffered strikes to his head with a fist like action from Kumanjaya Walker, you're aware of that, that was part of his evidence?---Yes I'm aware of that I - - -

Again, was there anything in the body-worn videos that you saw, or any other evidence, that suggested that confirmed or corroborated that allegation?---I saw nothing in the body-worn video to support that.

Now at one point you, I think it's transcript 979, Mr Edwardson KC, puts some matters to you for you to accept, including that in your viewing of what Constable Rolfe had been doing, he was polite and calm. Do you recall that? And you agreed with that?---Are we talking whilst he was outside?

I just didn't hear you?---Are we talking about when he was outside the house?

Yes, when – when his movement and communications were being captured?---Yes.

But you would, I think you've touched on this, but you would say, that what he was doing, was clearly not respectful of the community? And I can go to your particulars. "Not respectful in jumping the fence. Not respectful in entering House 577 in the manner he did", et cetera?---Jumping the fence, I accept it was – well, I said earlier, it could have been seen as disrespectful. Entering the house without knocking or trying to get someone to come to the door also – at anyone's house, that would be seen as disrespectful.

Yes. And especially, as you said, in circumstances where there's children inside playing video games, et cetera?---Yes.

The – you used the phrase, which was later explained in a way that was adopted by Dr Dwyer, as referring to a thin blue line earlier in your evidence today?---Yes.

And you adopted the description that included that if an officer was to embark upon a critique of other officers, other than in your position where you're doing it as part of your function, that that would – that may attract criticism from other members?---No, I said - - -

I may have phrased that badly, but perhaps you can use your words?---That it may

undermine morale.

Morale? Morale within the rest of the members, because one member was choosing to criticise or critique the actions of other members?---Yes, they're divisive comments.

Yes. Now, it's the everyday responsibility of senior sergeants and the like to review the actions of members?---Yes.

Does that attack on morale occur when that happens as well, when you have senior sergeants with the duty to examine whether or not the use of force was reasonable in various situations?---I'm not really a psychologist, but - - -

No, what I mean is this, right, I mean it's, with respect, fairly obvious that it's quite inappropriate for young constables to be sitting there critiquing others - - -?---Yep.

- - - in the way that that issue arose. What I'm trying to get to is something a little bit more nuanced and important, in our submission, is that it brings into focus the difficulties for the review of other people's conduct, but by those in the same organisation - - -?---Yes.

- - - in that, as you know, when there have been commissions and criminal justice commissions around the country, when there's special units looking at police, alleged police misconduct, there becomes a division, doesn't there, that these are now coppers looking at coppers?---Yes, that's often been mentioned in the media, et cetera.

Yes. What I was asking really about is that, given you are in the position, in that important independent position of examining those things, is pressure brought upon you about how you ought to find allegations in that way, whether consciously or unconsciously?---I guess it's - you may put yourself under pressure or feel or guess that a majority view is something that you might want to go with, but I've never been influenced by that because, you know, I see what I see and make the judgments that I make and try to be as impartial and honest as I can.

Yes. Thank you, Superintendent. I have no further questions.

Your Honour, I'm going to withdraw from the bar table for the rest of the afternoon.

THE CORONER: Thank you.

Yes, other questions? Mr Boulten.

XXN BY MR BOULTEN:

MR BOULTEN: Superintendent, I appear for the Northern Australia Aboriginal Justice Agency. As you know, NAAJA generated a number of complaints about

Constable Rolfe's use of force in the period prior to the constable's arrest?---Yes.

Some of those were the subject to use of force notifications; some were not. So, you're already accepted that your analysis of the 46 use of force documents is limited by the fact that you scoped the use of force documents and there may be other documents, films and the like that might suggest excessive use of force in the records of the Northern Territory Police?---Yes, I can accept that.

One of which relates to the 14 year old teenager, who was in the garbage bin. Your attention was drawn to that prior to you giving evidence?---Yes.

You explained that Constable Rolfe's use of force in various respects during that incident should have been the subject of a use of force notification?---Yes.

Right? I want to ask you about your opinion about whether Constable Rolfe used excessive force during his dealings with that teenager on that occasion. Do you understand?---Yes.

Could we look at the video for that incident, please?

DR DWYER: There should be sound for this.

MR BOULTEN: And there is.

DVD PLAYED

MR BOULTEN: That will do. Thank you very much.

You know my question, what do you think?---Yeah, I think that could have been handled much better.

Well, it was excessive use of force, I'm suggesting to you, to have first of all slammed the lid down on him. Do you agree or disagree?---I agree.

Do you agree or disagree that it was excessive use of force to tip the bin over the way that it was? Do you agree?---I agree. Yes, I agree.

And do you agree that it was excessive use of force to drag the teenager along the ground out of the bin, as depicted on the video?---Yes.

I want you to accept that that arrest was the subject of a complaint made by NAAJA on that young man's behalf and that for a range of reasons we don't need to go into, there was no excessive use of force found to have occurred. But rather, the officers reviewing the facts and circumstances of that arrest commended Constable Rolfe for having his body-worn footage on. Accepting all of that, do you think that Constable Rolfe was given adequate guidance about the way he handled that particular young person?---No.

You have found, in your report, five examples of excessive use of force. Would you add this one to the list of examples that you have been able to comment on?---Yes.

The first incident that you commented on in your statement, which is 10-5 in the brief, it appears at par 34, and I'll describe it as the "Bojangles incident". Do you remember that?---I do.

That occurred some what - some months after the one that you just saw in the video, you understand that?---Yes.

The next incident that you identified as involving excessive use of force appears from par 36 of that statement that you made and it relates to the Malcolm Ryder incident? ---Yes.

You formed the view in reviewing all of the material, that Constable Rolfe's handling of Malcolm Ryder involved excessive use of force, correct?---Yes.

I want to suggest to you that if you look at the video you might see that he deals with other people who were at the scene on that occasion as well and I want you to comment on that eventually, so could we have a look please, at the Malcolm Ryder arrest please?---The date that it happened, is that what you want? Sorry.

DVD PLAYED

MR BOULTEN: That was Constable Rolfe dealing with a female?---Yes.

Who was at the door of the bedroom that had a mobile telephone in her hand. Would you regard Constable Rolfe's dealings with that lady in those circumstances as use of force?---Yes.

Why?---He's pushed her into a door.

Was that necessary to push her into the door?---I don't think so. I don't think so.

Why not?---Because there was no need to use force.

Why not?---Because she wasn't doing anything that required or justified use of force.

She seemed to be protesting about what was going on in the house, do you agree? ---Yes.

She may have been attempting to videotape what was going on in the house, do you agree?---Perhaps.

Perhaps. Do you see her as posing a threat to the personal safety of Mr Rolfe or any of the other arresting police officers, as you saw that incident?---Well, we're unsure of their intent on entering the room.

Yes?---It is police training and practice to keep other people away from a person being arrested and to watch the back of the person conducting that arrest, so in that regard some kind of control would've been appropriate.

But not pushing in the chest into a door?---No, I think that went a bit too far.

On a lady, firstly, and I had to be sort of male oriented here, but it was wrong, wasn't it, to push an adult lady, in her own home, into the door when she wasn't really suspected of doing anything wrong?---Yes.

So had you factored that use of force as an example of excessive use of force when you tabulated five?---Yes, I had recognised that and - can I refresh my memory as what I actually wrote?

Paragraph 39. Maybe not?---Yes, par 37.

Thirty-seven?---I state, "Rolfe immediately pursued them, knocking the offender's mother, Hayes, to the floor and continuing up the hallway, chasing after the stepfather.

So the example, which is example 2, involved excessive use of force to two people? ---Yes.

Okay. The next use of force identified as excessive in your statement is what I will describe as the "Araluen Park incident" which is identified as the third excessive use of force commencing at par 44?---Yes.

And we have all seen that video multiple times. Did you appreciate that there was, in fact a video of the footage of that incident that was located on Constable Rolfe's mobile telephone?---No, I was not aware of that.

Are you aware of that now?---I was made aware of that last night.

Have you seen that footage?---No.

It might be necessary, I'm afraid, to play that. Could we have that footage played to the witness please? The Araluen Park video on the mobile telephone camera. The phone one. So this is it.

DVD PLAYED

MR BOULTEN: I want you to assume that the body-worn video was being viewed in an area of the Alice Springs Police Station, that Mr Rolfe was present and another police officer was with him as the footage was played and that Mr Rolfe or someone else was recording the computer image on a mobile telephone. Do you understand that?---Yes.

And the voices that you heard at the start of that video were Constable Rolfe and another male police officer in all probability, running a commentary on what they were viewing. Do you understand that?---Yes.

And you will have heard one of them - and I would suggest Mr Rolfe - saying something like "Butz - butz" each time the video depicted Mr Rolfe's application of force to the men in Araluen Park. Did you appreciate that?---Yes.

And that when the two men were on the ground both male voices were laughing, presumably laughing about the fact that these two Aboriginal men had been pushed over by Mr Rolfe. Do you understand that?---Yes.

Okay. So, I'm not even going to ask you about whether it's appropriate or inappropriate to video-tape, on your own mobile phone, that sort of police body-worn footage. But, an attitude to violence is a relevant consideration in determining the appropriate conduct of an officer who is using force, right?---Yes.

So that if an officer regards violence as a matter of some amusement on one occasion, that would be a worrying feature about their attitude to violence on another occasion, do you agree?---Yes.

It should be no part of a police officer's duty to enjoy the application of force to anybody, do you agree?---I agree.

And would you accept that a police officer who enjoyed the process of delivering violence, would be most inappropriate to hold office as a police officer?---Yes.

To publish to others, for their amusement, a police officer's violence, what would you have to say about that, Superintendent?---It's embarrassing and disgraceful conduct.

Mm mm. In fact, in many senses, a more reliable indicator about the person's fitness for office than the original application of force, do you agree?---Quite possibly.

Now I want to ask you about another incident altogether. This one involved the arrest of [REDACTED] on 1 April 2019, on Anzac Hill in Alice Springs. But you did review this particular incident, and your analysis led you to a conclusion that it is just not possible to see what actually happened during the course of the arrest. Do you want to check your notes?---No, I can recall that.

You accept that?---Yes.

This was not a positive endorsement of what has occurred, was it?---No.

It was simply a matter of you not being able to make a conclusion, on the evidence that you had before you, is that correct?---That is correct.

I want to ask you about your methodology though, in the way that you dealt with that incident, and in fact, the other incidents as well, all 46 of them. Was it your process

to look at the relevant evidence in relation to each one of the notifications of use of force?---No. I had 46 matters to review. I reviewed, as quickly as I could each matter.

Yes?---And formed an opinion that I need to look further into a certain number. From that certain number, which I'm sorry I don't recall right now, but from that certain number, I identified that these were instances of excessive force.

And you cut it down to five?---Yes.

Okay. When reaching your concluded view about whether excessive use of force was used or not, did you confine your consideration to the evidence that related to the particular matter, or did you draw comfort from your findings in relation to any of the others, for instance?---The five that I identified, obviously they're seen through the lens of 25 years of policing - - -

Yes?---And producing prosecution files.

Yes?---So those five I believed, were potentially prosecutable.

On the face of the evidence that related only and most directly to those particular incidents?---Yes.

Individually? So in silence?---Yes.

So for instance, in determining whether or not the use of force in relation to Mr Ryder, Ryder's incident was excessive, you did not go to consider the Bojangles incident to inform you about the use of force in the Ryder incident, do you agree?---No. I did not do that. I tried to examine each incident on its own, on its own merits, or lack thereof.

Yes. So I want to ask you then about your inability to be able to reach a concluded view about the [REDACTED] matter. When you considered the [REDACTED] matter, were you aware that Mr Walker, through his lawyers, had made a complaint about Mr Rolfe's use of force?---I think I was aware of that complaint, yes.

But were you aware that Mr Ryder had contemporaneously complained about Mr Rolfe's use of force?---Contemporaneous to what or when?

It was on the video. It's on the body-worn video, after the incident (inaudible) - - - ?---Yes I - - -

- - - he's complaining - - - ?---Yeah.

- - - why did you do that, you hit my head into the rock - - - ?---Yes.

- - - et cetera, et cetera. So you've got a version from the alleged victim, the complainant?---Yes.

You've got it on video, right?---Yes.

Then you've got the fact that Mr Rolfe did not video it on his – did not video the arrest on his body-worn footage, right?---Yes.

You've got, have you not, an example of where Mr Ryder's body-worn – sorry, Mr Rolfe's body-worn footage should have been activated when he commenced to chase after Mr Ryder, correct?---Yes it should have been.

And you know, don't you, that when this was examined in the course of a complaint process, Mr Rolfe gave an explanation about why he didn't activate his body-worn video?---Yes.

Namely, it was in the dark, I didn't want the flashing light to give my position away, or words to that effect?---Yes.

Which his supervisors, you understood, did not accept as being a valid excuse?---I can't recall that part.

It's not a valid excuse, is it?---No, I don't think it is.

Sorry?---No, I don't think it is.

Yes. So in determining that you could not make a complaint – a finding whether the [REDACTED] application of force was excessive or not, you did not factor in Mr Rolfe's demonstrated excessive use of force, to two people in Ryder's case, did you?---No, I didn't factor that.

Nor did you factor in his apparent and obvious excessive use of force in the other – other four that you were aware of, did you?---No I didn't.

And you simply had word against word, and you did not choose to decide which word to accept, is that fair?---Yes.

So in that respect, would you accept that deciding not to decide who to believe, errs maybe appropriately, on the side of the arresting constable, rather than on the side of the victim, who was complaining?---No. I think my wording, and I stick by my wording on that, that if Rolfe's version is to be believed, no assault occurred. If Ryder's version is to be believed, then an assault did occur. But there is not enough evidence to say conclusively either way.

And as a result of that, is one of the 46 incidents that does not get calculated as being excessive, right?---I think what I'm saying is potentially it was, but there's not enough - - -

Potentially?--- - - - evidence to say that it was.

The potential, but we're all going to have to deal with, apparently, on the basis there's only five. That's what's going to be said, okay?---Yep.

But the fact that there's only five means there's five absolutely obvious ones, right?---Yep. That's been my (inaudible) - - -

You just look (inaudible) up to six?---Okay.

And another person, seven altogether, so seven people?---Yep.

All right. I want to ask you about another incident, Mr [REDACTED] was on 1 April 2019. I want to show you a video tape that relates to an incident at the Epilogue Café on 10 April 2019. And this tape was played to Constable Rolfe in court on Wednesday morning.

I just wonder if we could have that one, please, your Honour?

DVD PLAYED

MR BOULTEN: Now, I want you to assume that what you just saw was a mobile telephone camera that recorded footage that was played on a computer, have I got that right? And that the footage on computer must have been played in or around some police station or police environment. Do you understand that?---Yep.

Constable Rolfe told the court here on Wednesday that he was not depicted in that video. Now, it seems that the footage was found on his mobile telephone. Do you understand that?---Yes.

So, again, there would be no legitimate reason for Mr Rolfe to have footage of someone else's arrest on his telephone. Would you agree?---Yes.

Not this particular arrest in these circumstances. Do you agree?---Yes.

Would you be prepared to comment about whether the officer who is depicted using force in that footage was using force appropriately or not?---Not at this point in time, no.

Do you have concerns about it?---If I was asked to investigate it, I would certainly be seeking a lot more information.

On its face, it looks like someone's at the Epilogue Café and there is no appreciable movement that causes any particular problem before the officer applied a significant degree of force to the man who was at the Epilogue Café. Do you agree with that?

MR EDWARDSON: I object to that question, your Honour. Your Honour, I object to it on two grounds. Firstly, the officer, quite properly in my view, respectfully, said that he would need a lot more if he was to investigate it. Secondly, what my learned friend is seeking to do is asking him to speculate and also express an opinion

without all of that information. That doesn't assist your Honour at all.

THE CORONER: He's not being asked to express an opinion at this stage, Mr Edwardson. What he is being asked to express and opinion on is what is shown on this particular - - -

MR EDWARDSON: That's right.

THE CORONER: - - - piece of footage.

MR EDWARDSON: Exactly, your Honour. And my point is really this, how is that relevant to these proceedings; that is, what you've shown on this footage, when there is no other evidence, as far as I'm aware, on the prosecution brief that could assist your Honour in resolving the question.

THE CORONER: I don't think I'm going – I don't think I'm going to be asked to resolve that question. I think I'm going to be asked about the videoing of this incident on a phone, given what is depicted apparently on this piece of footage. That's what I think it's going to.

MR EDWARDSON: All right. And that is relevant to?

MR BOULTEN: So, it's relevant to this.

Whether or not Mr Rolfe had a particular state of mind, namely, the favourable view about the excessive use of force in arrests, such that he got pleasure from viewing it and publishing it to other police officers and his family.

And therefore, whether or not that particular state of mind gave rise to any significant buttressing of other states of mind, such as consistent failure to use effective communication as a tactical option to defuse a situation and a tendency to get his man, no matter what, and paying little or no regard to the consequences for his actions. So, that's what it's all going to.

MR EDWARDSON: Well, I object to that, your Honour. I object to it on multiple grounds now I understand the basis upon which my learned friend seeks to adduce this evidence. He's bootstrapping. It's basically inference upon inference upon inference, none of which can be possibly resolved.

It's one thing, over objection, for your Honour to rule that individual incidents that can be established one way or another in the evidence attributable specifically to Zachary Rolfe may have a bearing on your Honour's ultimate finding. This is not one of those incidents.

It's got nothing more than a video footage without any background, which finds its way, as I understand it, onto Zachary Rolfe's mobile phone. How can that possibly inform your Honour at all in relation to the cause and circumstance of death, his state of mind at the time that he pulled the trigger in relation to Kumanjayi, which

is what this inquest is really all about. I maintain my objection.

MR BOULTEN: So, inference upon inference is something that courts are used to having to deal with a lot. It's called circumstantial evidence.

MR EDWARDSON: No, I'm talking about bootstrap upon bootstrap upon bootstrap.

MR BOULTEN: So, your Honour, I have noticed that Mr Edwardson does rise to continue his arguments when other barristers are giving the court the benefit of their arguments. And it is not appropriate to do that.

THE CORONER: Yes.

MR BOULTEN: Anyway, your Honour is aware of the significance of this footage. It is about whether or not Mr Rolfe was – had a particular interest in the application of force. It is very similar to his running commentary about the Araluen Park footage. It's, "Ha ha ha" matters.

And there are other examples of it in the brief and your Honour is aware of those, I'm sure. But I'm going to take this witness to some of them as well. So, your Honour, it is laying the groundwork for a submission that the use of force on multiple occasions informs the state of mind that Mr Rolfe had when he did a number of things on 9 November 2019.

THE CORONER: Can this officer's opinion assist me in drawing relevant inferences or are they simply available on the objective evidence, and submissions and can be made on the objective evidence without the benefit of an additional opinion.

MR BOULTEN: I'm not going to press it too far, but what this officer's opinion can be informed of, as he gives his evidence now, rather than just look at each incident in a silo, he can now be invited to say, well now that you know this, now that you know that, now that you know this, now that you know that, do you change your opinion?

THE CORONER: Certainly. And I would allow it to be used for that purpose.

DR DWYER: Your Honour, can I just assist my learned friend in this regard, and it's to support something I think that Mr Edwardson might have been going to, which is there is other evidence, as I understand it, about this incident at Epilogue and the two officers who were involved in it, which we haven't included in the brief of evidence because it won't be your Honour's role to make a determination about that. So there is evidence that includes what was happening in the lead up to that incident at Epilogue and what those two officers knew when they attended that incident, that is what that alleged suspect had done prior to that time and what the complaint was that was made by the manager of Epilogue. That's not in the brief of evidence so this officer's looking at it can only be limited to what, on the face of it he sees.

THE CORONER: Yes.

DR DWYER: And how that might be relevant to why it was on Constable Rolfe's phone.

THE CORONER: Yes. Can I just ask this? The date of the incident that is depicted in the - the date of the actual incident at Epilogue café is 10 April 2019, is that correct or is that the date on the phone?

DR DWYER: That is the date on the phone.

MR BOULTON: I see, right.

THE CORONER: Do we know what the date of the actual incident is?

DR DWYER: I will be able to tell your Honour that in a few short minutes because I think we have been able to obtain that information for the purposes of seeing how soon it was on Constable Rolfe's phone and I will be able to provide that information, but none of the background material is in the brief of evidence because your Honour won't be asked to make a determination about it.

THE CORONER: Sure.

DR DWYER: I will get that date while the evidence continues.

MR EDWARDSON: Your Honour, I am grateful to Dr Dwyer for informing of that result. It certainly is my knowledge that something in the brief to give that background. If anything, that reinforces, in my submission, the objection that I took and the limited utility, if any utility at all of this line of cross-examination. But given that you're not even going to be asked to resolve it - if I can put it that way - the background of a force in circumstance of (inaudible).

DR DWYER: So might I just assist a bit further, with the assistance of Ms Walz. The incident occurred on 6 April, we know that from a PROMIS entry and that's the date of the CCTV footage. As I understand it, your Honour, if I can say this, the gentleman was actually charged for assaulting the police officer in those circumstances. It ended up on Constable Rolfe's phone, self evidently, from the objective evidence on 10 April.

One can draw an inference as to how it ended up on Constable Rolfe's phone but because he took the objection there is no answer to that at this stage and we need to await the Supreme Court's ruling before any further questions will be asked of Constable Rolfe about how it ended up on his phone. When he returns I - subject to the Supreme Court's ruling - if that question is allowable, I intend to ask Constable Rolfe why that is on his phone.

THE CORONER: Yes.

Yes, Mr Boulton?

MR BOULTEN: I think as a result of all of the discussion, I am going to withdraw the question and I am going to ask something somewhat different.

THE CORONER: Okay.

MR BOULTEN: But about the same topic.

THE CORONER: Yes.

MR BOULTEN: So, Superintendent, on an assumption that may or may not be proved in the evidence, that Constable Rolfe had no reason to deal with his duties as a police officer, to film that CCTV footage that was being played on a computer, presumably. Would you regard his interest in that arrest as contrary to his duties?

MR EDWARDSON: I object to that your Honour. Again, it's one thing for this witness to give evidence, and expertise that was permitted, I think back in the day when Mildren J ultimately ruled on the extent to which this witness was able to give expertise. This is going way beyond defensive tactics, the way in which an officer reacts in certain circumstances, training, all those of things which effectively have been crystallised in the statements that have been given by this officer on multiple occasions in other jurisdictions and now even in this court, so I do make note.

THE CORONER: This officer is now being asked to provide an opinion generally on the appropriateness or otherwise of police filming on a private phone, CCTV or body-worn video obtained during the course of policing duties. Do you feel that you are able to provide an opinion as to whether or not that is appropriate policing behaviour and, if you feel you can provide such an opinion, why do you think you are able to give that opinion?---Your Honour, with the deepest respect, I don't think that is - I think that is way above my paid rate to decide on the appropriateness of that conduct and what, if any, penalties are - - -

We're not asking you about penalties?---Yes.

You are being asked to provide an opinion as to whether it is appropriate for a police officer to film on their private phone video which is obtained during the course of working duties?---I do not think it is appropriate.

And why do you think that?---Because that is controlled footage. It could even be evidence and the publication of that goes against our Code of Conduct and laws and other police officers have been prosecuted and lost their job for revealing matters to the public - information - documents and footage.

And that is in your knowledge because of your experience and training in the police force?---That is in my knowledge due to the time I spent at the Professional Standards Command and also knowledge of some matters against actual police officers.

Yes, well I am going to allow the opinion based on that experience and expertise.

MR EDWARDSON: If your Honour please.

MR BOULTEN: So I am not going to ask anything more about that because your Honour just dealt with it.

If someone was being trained by you about use of force and in the course of their training you became aware that they thought assaulting people was funny – I withdraw that - but applying force excessively was funny and worthy of publication and chatter, what would your opinion be as a trainer?---That it's inappropriate.

THE CORONER: Would that be limited to applying excessive force? What if people just thought applying force, even if there was a justification for it was funny. Would that be appropriate?---That's a very blanket question - sorry, your Honour, I don't feel able to answer it because - - -

It's laughing at using force?---Yes.

Is that appropriate?---No.

MR BOULTEN: MFI C is a chart of text messages that has been the subject of evidence from quite a lot of witnesses in this inquest. I am going to ask you about a couple of those text messages. On 10 March 2019 Mr Rolfe sent a text message to a female that said,

"I'm out at Borroloola, a random community on the coast, because they're rioting. We came up last time they did this and smashed the whole community so this time as soon as we arrived they started behaving."

When you were given the job of reviewing the Use of Force forms was this text message drawn to your attention?---No, it was not.

Were you aware of it?---No.

Were you aware of it before you gave your evidence in this inquest?---No.

Presumably then you have not done anything to try and find any job or any evidence that related to a job at Borroloola on or about 10 March 2019?---No, I have not.

On 19 April 2019 Mr Rolfe arrested a NAAJA client called Luke Madrill, M-A-D-D-R-I-L (sic) or similar. That was the subject of a Use of Force notification and it's amongst the jobs that you reviewed and so you've got in that folder that's in front of you, your notes concerning the Madrill arrest?---My notes?

It's – it's in that folder?---But the table - - -

The table?---With the details, yeah, yeah, yep.

By way of background, Superintendent, the complaint made by NAAJA on Mr Madrill's behalf, was that the arresting officer, who turned out to be Mr Rolfe, picked Mr Madrill up, and slung him down the hill, causing Mr Madrill to roll three or four times, and to collide with a large rock. Your conclusion in relation to that matter, was "No further issue", do you agree?---Well, if I haven't written into my statement.

It's not in the statement?---Was there body-worn video of it?

No. There was no body-worn footage on this occasion, either. This is an example, isn't it, of you not just – just not having the evidence that would enable you to safely draw a conclusion about whether Mr Rolfe used excessive force or not, do you agree?---Yes, there wasn't enough evidence.

And you certainly did not try to adjudicate this dispute by reference to any other use of force that you knew was excessive at Mr Rolfe's hands, did you?---No.

On 22 June 2019, there was another incident that involved Mr Rolfe. This one in relation to Christopher Walker. There is some video footage of this incident. And I'd like you to look at this incident.

DVD PLAYED

MR BOULTEN: I think that's enough please.

You reviewed this one as well?---Yes.

You can see that Mr Rolfe, who entered the premises first, had his hand gun out on entry, right?---Yes.

Are you necessarily critical of that?---Not given the information they had prior to attending.

It was quite a serious incident that had allegedly occurred in that house, right?---A home invasion with a knife, yeah.

It was something that required a significant use of force, right? Or potential use of force?---Yeah, an edged weapon and a home invasion, yes.

You saw - - - ?---(Inaudible).

- - - when Mr Rolfe entered the bedroom, where the suspect was immediately located, a direction was given, loudly and clearly for the man to get on the floor?---Yep.

More than once?---Yep.

Then a step towards Mr Rolfe, correct?---Yes.

The man had nothing in his hands, do you agree?---Yes.

And then Mr Rolfe applied force and put him on the ground, right?---Yes.

Was the use of the force to put him on the ground appropriate?---In those circumstances, yes.

Why do you say that?---Because the information they had was that this was a man who'd done a home invasion, armed with a knife. There was every chance that he just concealed the knife somewhere on his person. Putting the person – taking the person down, is what we're trained to do, when we've got a – a suspect that we – is either being violent, or we have a belief that they're going to be, or potential to be violent. Taking him down was appropriate in this circumstance, in my opinion.

And you, in your review, determined though, that this case will need further review?---Yeah.

Why did you say that?---Because initially, yeah it was a high – high level incident. And it was one that I put aside to look deeper into.

On 28 June 2019, Mr Rolfe was involved in the arrest of Antonio Woods. And that matter was also the subject of a use of force notification that you reviewed. On this occasion, in short summary, the police were called to a house, after it has been alleged that Master Woods had become – had come to the house looking for a fight. When police arrived, he ran off. He was chased by two police officers. One of whom was Mr Rolfe. He was said, by one of the police, that Mr Woods fell over climbing a fence, and ended up face down on the ground. Whereas Mr Woods, through his lawyers, made a complaint that alleged that Mr Rolfe had kicked him in the head a number of times. There was no body-worn footage activated when Mr Rolfe chased him, nor when he arrived at the scene. Do you understand that?---Yes.

And the body-worn footage that was available, was limited to depicting something that had occurred after Mr Rolfe had arrived at the scene. You are left with word against word - - - ?---Yes.

- - - therefore. Do you agree?---Yes.

Therefore, you were not then in a position to be able to judge this matter, as to whether or not Mr Wood's versions was correct, or Mr Rolfe's version was correct. Do you agree?---I agree.

On 9 July 2019, Mr Rolfe exchanged a number of text messages with Sergeant Bauwens. Mr Bauwens sent a text message to Mr Rolfe, saying:

“Cool, as long as we got him. Had a run hey?”

Mr Rolfe said in response, "Yeah the bush cops would never have been able to get him, impossible for them."

Then shortly after, sent another text message to Mr Bauwens:

"So it was good we went. The bush cops fucked up as usual. But that just means we had a run instead of getting in cordon properly, so it's all good."

Were you aware of that exchange of text messages before you gave your evidence?---No.

So you'd made no enquiries about what it was, that Mr Rolfe and Mr Bauwens were talking about in that exchange of text messages?---No, I wasn't aware of it.

On 24 September 2019, there was an incident which you dealt with in your statement at par 45, what I will describe as, the chase down Todd Mall ending up at Sporties – going past Sporties. You regarded the action depicted in the video that deals with this matter as an excessive use of force?---Yes.

And then on 12 October 2019, there was an incident on the council lawns in Alice Springs that you've referred to in par 46 of your statement involving a man called Albert Bailey?---Yes.

And you regarded that, in all the circumstances, to be an excessive use of force. Correct?---I did, yes.

So, going to par 50 of your statement when you conclude that "Constable Rolfe consistently fails to use effective communication as a tactical option to defuse a situation and appears to prefer to go hands on, contrary to Northern Territory Police Force philosophy." Did you draw those conclusions solely from the five examples that you referred to in the paragraphs immediately beforehand?---I think that's fair to say, yes.

And you completely ignored the other 41 instances that you had examined as well?---I'm not sure I completely ignored them, but the evidence in the five that I identified, I thought were sufficient for me to draw the conclusions that I did.

Was that likely, in your opinion, to be a relevant state of affairs as at 9 November 2019?---What's the relevant state of affairs?

Well, Mr Rolfe was somebody who, as at that date, consistently failed to use effective communication as a tactical option to defuse a situation?---Well, given that this evidence wasn't allowed in – through voir dire, my opinion, I think, is not relevant.

So, this is an legal issue that the Coroner will determine, but I am asking you to give evidence about issues that are relevant to the inquest, unless I am stopped?---Okay.

So, Superintendent, I'm asking you, par 50 where you describe a state of affairs or a state of mind concerning Mr Rolfe was that – is it your opinion that he had those characteristics as at 9 November 2019?---It's my opinion that it is highly likely that, yes, he did.

What about par 51 where you stated that "Mr Rolfe demonstrates a tendency to want to get his man, no matter what". Do you think that was a state of affairs that pertained as at 9 November 2019?---Yes.

What about the opinion that you expressed that Mr Rolfe paid little or no regard to the consequences of his actions?---Yes.

And that on occasions, that had resulted in quite severe and totally unnecessary injuries to subjects in some cases. All relevant as at the date of the shooting of Kumanjayi, right?---Yes.

If it is the case that Mr Rolfe – I forgot to put something to you, in fact, a couple of things. Firstly, in relation to [REDACTED], the 11 April 2019 issue. Have a look at this document, if you wouldn't mind. This is a printout from the handset that Constable Rolfe was using in the period leading up to his arrest. And you will see at the top of the page, there's – what's this system called? The Cellebrite download has a message that was said to be delivered on 11 April 2019 at 8:21:04 UTC. Do you see that?---Yes.

And it's a picture of a man with a bandaged hand. Do you see that?---Yes.

And the picture, I want you to assume, is a picture of [REDACTED] on the night that he got arrested, and having been injured, was treated at the hospital and returned to the police station. Do you understand that?---Yes.

And I want you to assume that this particular image of a man who'd been arrested and injured was sent to at least one person, a female. Do you understand that?---By Zachary Rolfe?

By Zachary Rolfe – or by the user of the handset?---Yep.

Okay?---Right.

So, on the assumption that there was no reason associated with the investigation into Mr Walker's conduct or any other matter concerning his arrest, and that the text was sent with the image of an injured man to another person, contrary to duty, would you regard that as a worrying factor in relation to Mr Walker's (sic) interest in the use of violence?---Sorry, sir, that's a little confusing. Mr Walker's interest in the use of violence?

Sorry, Mr Rolfe's interest in the use of violence?---It appears it could certainly be relevant.

And if you add that to this, if you have a look at this document, if you wouldn't mind just taking the opportunity to review it, but again, this is from a Cellebrite download of the handset that was normally used by Mr Rolfe, which was seized upon arrest. The top message shows an attachment - - -?---Yep.

- - - to a communication sent via the user of the handset. It seems that it's a VLC file of a movie?---Yep.

It was sent at 22.33 hours UTC on 23 June 2019. And I want to tell you that the Christopher Walker arrest, the home invasion matter, was on 22 June 2019. And I want you to assume that this video was sent to members of Mr Rolfe's family. Do you understand that?---Yes.

And we've seen probably the very footage that was sent to his family members. Do you understand that?---Yes.

Even the use of appropriate use of force, albeit dramatic use of force, should never be published in such a way, should it?---No.

Do you regard Mr Rolfe's distribution of this footage to his close family members, as showing an unacceptable and unsavoury interest in his application of force to others?

MR EDWARDSON: I object to that, your Honour. He's not qualified. It's random speculation. It has absolutely nothing to do with the cause and circumstance of death. It's so remote, it's ridiculous.

THE CORONER: How is this officer's opinion – are you just asking it as a personal opinion? Is it something to do with his experience and expertise in the police force?

MR BOULTEN: Yes, well I would imagine, I can deal with this in about three or four questions if the expertise is the objection, I think that I can deal with it in a few questions, your Honour.

MR EDWARDSON: It's more than expertise, its relevance. How can this assist your Honour? You've got enough, with the greatest of respect, your Honour, I would have thought - - -

MR BOULTEN: So can I just say again - - -

MR EDWARDSON: I thought you (Inaudible) - - -

MR BOULTEN: - - - I have watched this for weeks. And when someone is making a submission and my friend wants to say something about it, he just stands up and says it.

THE CORONER: Mr Boulten, you have the floor, and I would like to be able to listen to you, uninterrupted.

MR BOULTEN: So your Honour, to anticipate what my friend is concerned about, if Mr Rolfe is publishing this material, in a manner which gives him mirth and which is meant to give other people mirth then that is an unsavoury, unsatisfactory interest in his own use of force. That then is a relevant factor in determining what his mindset was, at the relevant time, that is 9 November 2019.

It might not be the most probative. It might not be the driving force. But it is a factor, which can be, and we will submit, ought to be weighed in the balance, when your Honour comes to determining, for instance, whether Mr Rolfe was likely to be acting in good faith, when he entered the house, at the time he went to arrest the deceased, and other relevant factors, which go to the same issues.

As I appreciate it, these are not the be all and end all of everything. But they help to paint the picture, your Honour.

THE CORONER: The real issue, Mr Boulten, from me, is how the opinion of this witness assists with that. And I'm not sure how his opinion might assist with that.

MR BOULTEN: I will just say this, your Honour. He's already expressed opinions about a state of affairs, if they're not called a state of mind, or – or a particular way of behaving, in paras 49, 50 and 51, of his evidence, of his statement. And this is another aspect that could be weighed in the balance, in determining whether or not to accept the expressions of opinion that are outlined in those paragraphs, your Honour.

THE CORONER: So you're asking him whether his opinion, in relation to the use of this video footage, causes him to depart from his previous opinions, or in fact strengthens - - -

MR BOULTEN: That's it.

THE CORONER: - - - those previous opinions.

MR BOULTEN: Yes, your Honour.

THE CORONER: I'll allow it for that purpose.

MR BOULTEN: Yes, your Honour.

MR EDWARDSON: If the court pleases.

MR BOULTEN: Okay.

THE CORONER: Sorry, sorry, Mr Edwardson, did you have any further - - -

MR EDWARDSON: No, no, I said if your Honour pleases. I acknowledge your ruling.

THE CORONER: Sure, no I know that you said that, but I hadn't returned to you so
- - -

MR EDWARDSON: No.

THE CORONER: - - - yes.

MR BOULTEN: Superintendent, we got to this point. It seems that some part of footage, to do with the Christopher Walker arrest, was inappropriately published, sent, transmitted, to Mr Rolfe's family. Do you understand that?---Yes. I agree it's inappropriate that it's transmitted.

And do you accept that that may well demonstrate, that Mr Rolfe had an inappropriate attitude towards the use of force, in that he used to share it with others, as a form of entertainment?---I accept that there is that possibility.

If that is accepted to be the case, if the court accepts that to be the case, you would accept, wouldn't it, that that would cause a strengthening in your conclusions, that Mr Rolfe failed to effectively communicate as a tactical option, when arresting people, agreed?---Yes.

And it would cause you to be stronger in your opinion, that Mr Rolfe had a tendency to want to get his man, no matter what. Do you agree?---Yes.

And that he paid little or no regard to the consequences of his actions, do you agree?---Yes.

That's all I wish to ask.

THE CORONER: Yes.

Mr McMahon, do you - - -

MR MCMAHON AC SC: I'll be very brief.

THE CORONER: If you're going to be very brief, we'll hear your examination, and then we might take the afternoon adjournment.

XXN BY MR MCMAHON:

MR MCMAHON: I only have one question Senior Sergeant - - -

MR BOULTEN: No, no, that's not right. (Inaudible).

MR MCMAHON: (Inaudible) challenge accepted.

MR BOULTEN: It's going to be a long though.

MR MCMAHON: In your earlier evidence, when Mr Boulten asking you about the five matters where you've identified excessive use of force, if I heard you correctly, you said the standard that reached in your own mind, when making that finding, was that each of those five matters was prosecutable?---Yes.

Could you just explain what you mean by that?---That - - -

Sorry, I'm going to keep going with that question, because I'm only asking one. In the sense that are you referring to prosecutable in courts of law, such as a magistrate's court, or does it extend to prosecutable in the sense of disciplinary action within the police force?---To the extent that it might be – they might be worthy of referral to the Director of Public Prosecutions, for an opinion, and also to the extent that they may be open to disciplinary action.

Thank you.

MR EDWARDSON: Your Honour, I'm probably about half an hour. Would you rather I pushed on, or do you want to have a break?

THE CORONER: I think it's fair on everyone if we have the short break.

MR EDWARDSON: If your Honour pleases.

THE CORONER: But we'll try and keep it to the 15 minutes, I know we sometimes go over longer. But we'll try and keep to 15 minutes.

WITNESS WITHDREW

ADJOURNED

RESUMED

ANDREW BARRAM:

THE CORONER: Yes, Mr Edwardson?

MR EDWARDSON: Thank you.

Acting Superintendent, can I just - I want to cut through a lot of the issues that might otherwise have needed to be traversed. Dr Dwyer, as counsel assisting, took you through, in effect, chapter and verse, one of the two statements that you provided, in particular in relation to the incident and the events which occurred on 9 November and they were encapsulated, I think in your statement dated 13 March 2020?---Yes.

And in effect, counsel assisting did, understandably, was taken to each of the paragraphs, how you expressed them, repeating them to you and then ultimately you were asked a question, "Do you still adhere to the opinions that you expressed in that statement?" And you said "Yes, I do"?---Yes.

And you would agree, wouldn't you, that those statements replicate the evidence that you gave and for which you were subsequently cross-examined at trial, in the jury trial involving Zachary Rolfe?---Yes.

And, of course, all of those opinions were ventilated at length in the course of that trial?---Yes.

And ultimately went to the jury?---Yes.

You having given that evidence?---Yes.

And we now know that the jury returned a verdict of not guilty? In relation to the matters of the disciplinary matters which were, of course, as you know and quite properly addressed earlier, which were the subject of challenge before the trial judge, that is what I'll call the "tendency evidence" which arose because of a request, I think that was made of you - I think - by police officer Detective Acting Superintendent (inaudible) to review all the police use of force incidents that Constable Zachary Rolfe had been involved in?---Yes.

And then you isolated, as I understand it, five specifically?---Six initially.

Six - sorry - six and they were in - the subject of each matter that would you were taken through again today and are encapsulated in your statement dated 26 March 2020?---Yes.

And again, you effectively were taken to each of those matters and all of those statements are on file and they were served on the defence, the prosecution, the trial

judge of course had access to those statements before the jury trial of Zachary Rolfe?---Yes.

And nothing has changed. I mean, you haven't filed any additional statements since that time, so since the trial?---No.

No. So really what we are talking about today is no more than that which was presented either in court or out of court if it was a changed piece of evidence but certainly before the jury trial commenced, that is the jury trial of Zachary Rolfe? ---Yes.

I want to ask you - - -

DR DWYER: I did - your Honour, I did take this witness specifically to the evidence of Constable Rolfe at trial and he commented on it and he was asked whether or not that changed his opinion and his answer was no, it didn't change his opinion.

MR EDWARDSON: I don't know what the objection is, anyway - - -

DR DWYER: Well, the objection is - sorry, your Honour.

THE CORONER: Sorry, yes it - there has – there is, in fact, additional evidence.

MR EDWARDSON: My question was you haven't provided a subsequent statement since the statements were filed before the jury trial. That's correct, is it not? ---Correct.

So the first time that you've given any evidence about any, if you like, revisit of the opinion, is as a consequence to the questions that were asked today for the first time by counsel assisting?---Yes.

And they have never been reduced in writing in any form?---No.

Until today?---No.

No, thank you. What I want to do is I want to ask you a little bit, if I can, about the two statements that we have just discussed. Both of course include the same paragraph. I think, in these terms;

"I have read and understood the Supreme Court of the Northern Territory Practice Direction Number 4 of 2009, expert reports, including the expert witness Code of Conduct"?---Yes.

And you went through the relevant practice direction did you, and satisfied to yourself that you complied and understood the requirements of that particular practice direction?---Yes.

And you understood of course, that you were giving evidence, or at least providing statements, and then subsequently gave evidence before the jury, and then again in this enquiry for – as an expert?---Yes.

And so as an expert, you of course are duty bound to confine any opinion you might express that's consistent with your expertise?---Yes.

Your qualifications?---Yes.

And you'd understand also, wouldn't you, that if you are an expert, and there's anything that might impinge upon your impartiality or capacity to express an independent opinion, it's encumbered upon you to bring that to the attention of the court?---Yes.

And anybody else who might have a vested interest in the opinion that you're expressing?---Yes.

And you'd agree, wouldn't you, that you're really saying no more than this is the opinion that I express, and you do so, and set out the reasons why you express that opinion, whether it be in written form, or in the evidence that you give, either at trial before a jury, or here, before this Coronial inquest?---Yes.

And as an opinion, of course, it is no more than that. Others might have a different opinion from you. And you'd accept and respect that?---Yes.

For example, we know that one witness that was called to the trial was an ex AFP police officer by the name of (inaudible)?---Yes.

And you know that he gave evidence, and I think you watched his evidence, did you not?---Yes.

In the same way, as experts do, he watched your evidence when you were giving it before the jury?---Yes.

And the reason for that is that because you both have a common area of expertise?--Yes.

Albeit that you were both expressing different opinions?---Yes.

He didn't agree with some of the opinions that you expressed, and vice versa, (inaudible)?---Yes.

And that of course was a matter that the jury had to resolve?---Yes.

All right. Now since you've given evidence and provided statements, that is the two statements to which I've addressed, has anybody brought to your attention the opinions that have been expressed either by a police officer by the name of Pollock,

or a police officer by the name of Proctor?---Quite recently I was made aware of some sections from a report that was produced, or co-produced by them.

When you say co-produced, were you aware that opinions have been expressed about your impartiality?---When I read it.

So you've read the Proctor Report?---No.

What - - - ?---Parts of it.

- - - have you read? You've read parts of it. Who bought parts of the Proctor Report to your attention?---I think counsel assisting through Sandy Lau.

Right, and was that the Proctor Report or the Pollock Report, when I say the Pollock Report, they're in draft form, or both?---I'm not sure.

All right.

DR DWYER: Well I can assist with that. It was the memorandum that was shown to the witness in court today.

MR EDWARDSON: All right, so from the memorandum, I take it that you have not actually seen the full, un-redacted version of what I'll call the report of David Proctor, dated 31 August 2021?---I have not.

I want to ask you some questions then about communications that you might have had, about your capacity to be independent, in the context of the expert opinions that you'd expressed on any occasion, certainly starting with the two statements that I've just mentioned. That is, the statement dated 30 March 2020, and 26 March 2020. Are you familiar with the concept of investigative bias?---Yes.

What do you understand that term to mean?---Forming a preconceived idea of the outcome of the investigation, and then finding evidence that supports that.

At any stage, did any senior members of the police force, who were responsible for directing you, or asking you to compile the statements that we now have, suggest to you, or put you on notice, that there may be a perception of investigative bias?---No.

Has anybody ever expressed the concern to you, for example, about you having a preliminary view? That is, pre-determined view, which is not at arm's length?---No.

Has anybody, a senior police officer of any sort, for example, brought to your attention concerns expressed by the DPP, about your capacity to express the opinions which you have, both in the Supreme Court, and in this Coronial inquest?---No.

Do you know a police officer – sorry, a – a Senior Counsel, by the name of Mark Nathan – Matt Nathan, my apologies?---No I don't think I do.

Did you – just bear with me a moment. Did you or were you part of a police delegation that attended Yuendumu on 5 December 2019?---I object to the term “delegation”.

Why do you object to the term delegation?---I wasn't part of any delegation. I went with some other police officers, for the matter of expediency and budget, to Yuendumu, to see the crime scene, first hand.

Are you familiar with that expression being used in the context of your attendance at Yuendumu on 5 December 2019?---I think I recall it being used in something written by Mr Pollock.

Was it specifically the Pollock Report that I have mentioned, that is the full, comprehensive, complete report, dated 31 August 2021?---I'm not entirely sure.

When did you read those words, the reference to a “delegation” that you were a party to, when you attended Yuendumu on 5 December 2019?

Page 147 of 170,your Honour?---About two weeks ago I think.

And who brought that to your attention?---Again, counsel assisting.

All right.

DR DWYER: Can I – sorry, can I just ask the witness to clarify, by counsel assisting, is he referring to me, or Dr Freckelton?

THE CORONER: He - - - ?---I - - -

- - - mentioned the name Ms Lau earlier, as well, so - - -

MR EDWARDSON: Yes no, quite so. I should have mentioned it, quite right.

I should ask you, I think, who are you essentially referring to?---Well I've – everything I received was via Ms Lau. I don't know exactly who asked her to give them to me.

Either way, were you provided, by Ms Lau, with the entire report of David Proctor, dated 31 August 2021?---No I don't believe I was.

All right, but whatever it was that you were provided with, somebody certainly provided you with, or you read, a reference to you being party to a delegation, an expression or term that you object to?---Yes, I also was made aware of that when I was required to answer a complaint made by your client about me to the criminal justice – sorry, I forget the actual – the Crime Corruption Commission whatever they're called - - -

Well don't say anything about that Commission that you're not allowed to say - - - ?---All right, I'm just saying - - -

- - - don't know what the restrictions are - - -?---I was required to respond to a complaint made by your client through – to that - - -

Well just so we're clear - - -

MR BOULTEN: Well he's answering the question.

MR EDWARDSON: Is that the subject of any suppression or prohibition order?---Not that I'm aware of.

Right, thank you. I can you questions - - -

MR BOULTEN: Let him answer the question.

MR EDWARDSON: - - - so I can ask you questions about it?---I presume so, yes.

All right. Well I'm just going to read this to you, and just ask you if you've read this passage.

And I'm now referring to page 146, your Honour, of the Proctor Report, exhibit 1-1A.

THE CORONER: Sorry - - -

MR EDWARDSON: In - - -

THE CORONER: - - - sorry, which part of the Proctor Report?

MR EDWARDSON: Page 146.

THE CORONER: Page 146.

MR EDWARDSON: The last paragraph, starting at the last paragraph.

“Detective Senior Sergeant Barram was selected to provide the ‘critical evidence’, and in reviewing the content of his first statement, it was evident he was subject to confirmation advice. The pressure bought to bear on him to provide his expert opinion, was done so in haste, and similarly to Professor Albert, prior to all available relevant evidence, including possible exculpatory evidence, being made available to him for consideration.”

Have you read that passage, or has it at least been bought to your attention?---Yes.

And how did that come about?---How did what come about?

You being asked to identify, or when did you read that passage?---Again, a couple of weeks ago when it was provided to me by Ms Lau.

Do you know Officer Pollock or Officer Proctor?---Yes.

In Mr Pollock's statement –

Which is 7-111A,

He says this at par 6.

“My policing experience in preparing and managing Coronial investigations as a detective in the Northern Territory is vast. With over 25 years' service as an investigator, I have appeared multiple times before the Northern Territory Coroner to give evidence in relation to Coronial investigations that I had investigated as officer in charge. I have been appointed the commissioned officer in charge of Coronial investigations on many occasions, and upon reflection, I consider that no other investigator in the Northern Territory Police Force, has my level of depth and experience when undertaking Coronial investigations. My computer records indicate that as far back as 1998, I had been appointed to these positions, if not possibly before. All investigations involve reportable deaths, required a Coronial file, and I have been leading various homicide investigations since around 1990. I have received multiple letters of recognition, commissioner's group recommended commendations and a personal commissioner's commendation for my work around Coronial investigations. Now obviously, that's self-serving in the sense that it's put in his statement and explains his position from his perspective and his qualification and experience in that jurisdiction. But would you agree with this, having heard that, that it reflects at least the status or standing that he was held among the police community insofar as Coronial investigations are concerned?”---Yes.

Over many, many years?---Yes.

And he was regarded as very much the go to police officer for the purposes of Coronial investigations, was he not?---I'm not sure about that.

All right. What about Mr Proctor? You know him?---Yes.

Is he similarly regarded as having the sort of expertise that has been identified by Mr Pollock?---He's a long-serving police officer in the rank of commander.

And certainly, you would defer to him by way of rank?---Yes.

And expertise in the context of Coronial investigations?

MR BOULTEN: I object to the question, expertise in Coronial investigations?

MR EDWARDSON: No, I accept that, your Honour. I'll withdraw it. I'll put it another way.

You don't profess to be an expert for the purposes of crime investigations?

MR BOULTEN: I object. What does that mean?

THE CORONER: I don't know.

MR BOULTEN: Clearly, he's an expert in use of force, and that's been heard in the Coronial

MR EDWARDSON: I'll rephrase.

You're an expert in the use of force, that's the area of your expertise?---Yes.

And that's the area that you've proffered the opinions that you've expressed?---Yes.

All right. I want to go back again to the Proctor report which apparently has been brought to your attention. He says this – I'm now referring to page 143, your Honour, of the report. I'll start at the top. "On Wednesday, 13 November 2019, the director and deputy-director gave interim advice to Assistant Commissioner Anticich, Commander Gall and Acting Superintendent Pennuto indicated that they believed Rolfe was prima facie criminally liable for his actions and that they would support a charge of murder. Rolfe was arrested soon after. The evidence, as it stood at the time, was basically around Rolfe's body-worn video footage. Further corroborative evidence was required from use of force experts in support of a prima facie case against Rolfe. Northern Territory Police Officer, Detective Senior Sergeant Andrew Barram, who advocated that he was a use of force expert, provided a statement indicating that he was of the opinion that the firing of shots two and three in rapid succession at Walker was not justified because it was not reasonably necessary, proportionate and appropriate in the circumstances, having regard to the force philosophy." Now, firstly, you agree, don't you, that that accurately reflects the opinion that you'd expressed in your written statement and the evidence that you gave before the jury and then, ultimately, reconfirmed in essence, the expression of that opinion in this Coronial inquest?---Yes.

And again, you were holding yourself out, were you not, as an expert, use of force expert, for the purpose of expressing that opinion?---How do you mean, holding myself out?

Well, exactly as it was put?---I certainly wasn't advertising for - - -

Well, how did it come about that you got involved in this case? Were you approached or did you put your hand up? Tell us how it happened?---I was approached.

And who approached you?---Initially, one of the investigators, Andrew Cren. I said I'd prefer not to be involved, if you can keep me out of it.

Yes. And he said?---Then I was told – then I spoke to my commander at the time, Commander Bacon, when I was in professional standards command and I said, “Is there any chance I'm going to have to be involved in this?” He said, “No, you've moved on from operational safety, so you shouldn't have to be involved.” And then two days later, I was told I will be involved.

And were you told that after the arrest or before the arrest of Zachary Rolfe?---After.

After. And then, as we know, you provided those two statements, but certainly, you attended, as we've heard Yuendumu on 5 December 2019?---Yes.

And you attended along with Assistant Commissioner, Crime and Integrity Anticich, Commander, Crime Gall and the senior investigator, Acting Superintendent Pennuto?---Yes.

And there was a select committee which answered questions from family regarding aspects of the investigation?---I don't know what a select committee is and I was certainly no part of that.

But you were present though, were you not?---At Yuendumu.

Yes. And present when those questions were being asked?---No.

MR BOULTEN: Your Honour, it's not clear what questions are being referred to.

THE CORONER: I don't know either.

MR EDWARDSON: Well, were questions asked by family regarding aspects of the investigation into Zachary Rolfe in your presence?---No.

Where were you when they – sorry, I withdraw that. He goes on to say this, “It was highly inappropriate for Barram to attend a meeting of this type and it potentially compromised his integrity and independent status as an expert by doing so.” Now, firstly, did you give any consideration to the extent to which you might be compromised as an expert, an independent expert, by attending Yuendumu on 5 December 2019.

DR DWYER: Well, I object. And it's clear that the opinion being expressed by Pollock is that the inappropriate – sorry, the compromise of integrity and independence is because Superintendent Barram attended a meeting of a select committee. And the evidence he's given is that he didn't attend that meeting.

MR EDWARDSON: Well, my question is actually directed, not to the meeting, but my question as I framed it and I'll repeat it again is, did you, yourself, give any consideration to the notion that it might be appropriate for you to attend Yuendumu

on 5 December 2019 as an independent expert?---No, I didn't.

Was there any conversation or discussion between you or any other senior officer about the appropriateness of you being at arm's length and not going to Yuendumu, for example, on that occasion?---No.

Was it confirmed as at 6 February 2020 and recorded, according to this report, in the minutes of Operation Charwell, was it confirmed that you, Superintendent Andrew Barram, would stay with the crime investigating team until his project work is completed.

THE CORONER: I'm sorry, I'm not quite sure I understand that. Just the proposition, I don't - - -

MR EDWARDSON: Were you informed, Superintendent, that confirmation as recorded in minutes were that you were to stay with the crime investigating team until your project work was completed?---So, when this happened, I was attached to Professional Standards Command.

Yes?---When I was told I was required to do a review of the tactics, I was taken offline and I had an office up the hallway from the investigative team for Operation Charwell. And I remained there until my initial statement was complete and then I was asked to stay on and do the use of force review for the 40-odd jobs. But I was separate to the actual investigative team because I was not part of the investigative team.

All right. But in any event, was there any conversation between you and any other senior member of that team about the significance of you remaining part of – and I say that loosely, the crime investigative team, given that you were an expert and had to be at arm's length.

MR BOULTEN: So, I object.

MR FRECKELTON: I object to the question being put that way.

MR EDWARDSON: I'll withdraw it.

MR FRECKELTON: It's just for a (inaudible).

MR EDWARDSON: I understand.

THE CORONER: Even loosely.

MR EDWARDSON: Understood.

I'll get the number in a moment, but you are listed in the Operation Charwell personnel list as at Monday, 25 November 2019 as being part of the criminal investigation team. Did you know that?---I think I started there at the end of

November, but at no time was I part of the investigators. I was there as an expert witness to review the use of force used in the incident.

Did any other member of that team, any other senior officer, particularly those who had (inaudible) engaged you for the purposes of you expressing an opinion one way or another, did any police officer ever convey to you concerns expressed by the DPP about your arm's length capacity and qualifications to express opinions?---No.

That's the first time - you're aware of that by now, having read the Proctor report?---Yes.

And that's the first time you became aware of it?---Yes.

Did any senior police officer attached to that team, for example, approach you and ask you who else within Australia who was at arm's length, not involved, for example, with the Northern Territory Police Force, might have the appropriate expertise to assist in addressing opinions about Zachary Rolfe's use of force?---Yes, I did, it was - - -

By who and when?---Acting Superintendent Pennuto, right at - when I commenced.

All right, and can you tell us about that conversation? Where was it?---It was at NAB House.

Anybody else present?---I think Senior Sergeant Newell was.

Yes? Did this occur before or after you arrested Zachary Rolfe?---After - way after.

Way after?---Well, I didn't start there until late November. He was arrested early November. So - - -

So in this - sorry - my fault, I cut you off?---So I had nothing to do with any decision about whether or not he was to be arrested. I had nothing to do with any actual investigation. I was asked to provide a statement due to my former capacity of seven years as the officer-in-charge of the Operational Safety Section.

As to the appropriateness of the use of force, firstly in relation to the incident in question that is the subject of a murder trial and then secondly in the supplementary statement - my words not yours - the second statement that went to the isolated incidents that you had targeted, as it were, after an overall review of use of force by Zachary Rolfe?---Yes.

So when you had this meeting with Pennuto and Newell, you said that there was a discussion about other experts around the country that might be appropriately qualified to express that expertise?---Yes.

And it's important - I mean, was this documented, this meeting?---I didn't document it.

Do you know whether the other two did?---It wasn't even a meeting, it was a question.

What was the question?---Who do you recommend we could get other than yourself, to review this.

And did they explain to you why it was important to consider the use of another expert apart from yourself?---No.

So you weren't told why they were asking?---No.

At that stage had you provided either of the statements that we now find in the brief - the two statements I've just mentioned before, one dated 13 March and the other 26 March both 2020?---No, I had not.

So it's before that time?---Yes.

Before the time you'd ever expressed an opinion?---Yes.

About the use of force by Zachary Rolfe?---Yes.

Did you identify anybody in this country would have that suitable expertise?---I directed their attention towards NSW Police who had only recently dealt with the Lindt Café incident and I said whoever worked on that would probably be the most appropriate people, if you can engage them, and then I gave them my opposite number in NSW Police who was in charge of Operational Safety, whose name escapes me at the moment I'm sorry.

It doesn't - it's not a memory test - but would you be able to provide that in due course, the name of that person?---I can look it up in my phone, yes.

If you wouldn't mind and just pass that on, the name of the person that you identified so as we understand it they asked you specifically who, apart from yourself, they could get as an expert dealing with this topic, this issue of use of force?---Yes.

And you suggested the NSW Police Force and nominated your counterpart or equivalent thereof in that police force?---As a point of contact.

As a point of contact and it was against the background, as I understand it, of the tragic events of the Lindt Café?---Yes.

You, yourself have never conducted any analysis of the appropriateness or otherwise of the investigation, if I can put it that way, into Zachary Rolfe?---No, I've kept myself separate from the investigation.

So insofar as there may be a suggestion of any investigative bias in a wider sense, that's not part of any job that you conducted?---Correct.

But investigative bias was raised specifically, as you read and told us about, in the context of your provision of the critical evidence that I have mentioned?---Sorry?

THE CORONER: So, raised in the context of his use of force opinions?

MR EDWARDSON: Yes.

THE CORONER: By the document that you've read from?

MR EDWARDSON: Yes. Yes, exactly.

THE WITNESS: Yes, and it's raised by Mr Pollock (inaudible).

MR EDWARDSON: And I just want to be clear about this, this is the first time, you say, I won't say the first time - not today - but the first time that you looked at this particular document, it having been provided to you, that's the first time you say that you were ever aware of a suggestion by either Proctor or Pollock that you may have been subject to confirmation bias?---Yes.

Or that you were not suitably qualified or that it was inappropriate for you to be an expert as part of this investigation into Zachary Rolfe?---Yes.

And that you were never told by those other officers at all about any concerns that had been expressed by the DPP about you having the capacity to express this opinion at arm's length?

MR BOULTON: He has already answered this hasn't he?

MR EDWARDSON: But I just want to make sure. Is that right?---Yes.

Thank you, and finally, when you were asked specifically to identify - and you've told us about the NSW - I want to be absolutely crystal clear about this, neither Newell or Pennuto, when they made that request of you, ever identified why they might be asking you to identify somebody other than yourself for the purposes of an expert opinion?---They mentioned that they were - more than just my opinion, like as in other witnesses, to get various opinions.

What, they wanted an additional opinion beyond your own?---Yes.

You hadn't expressed an opinion at all at that stage?---No, but I'd been asked to commence that work.

You might have been asked to commence that work but had you at that stage - at that point in time, when you had this conversation with those two officers, actually expressed the opinion which found its way into these two statements in March 2020?

MR BOULTON: There's a lot of opinions in those statements, your Honour, which one is he talking about?

MR EDWARDSON: Any opinion as to the appropriateness of the use of force by Zachary Rolfe?---As I said before, this conversation occurred on around 25 November. That statement I've clearly provided in March.

Right?---Of the next year.

So to be absolutely clear, you had not expressed any opinion one way or the other, to anybody, about the use of force by Zachary Rolfe in the context of the events on 9 November or for that matter any other use of force that he had exercised in relation to unrelated incidents?---As at 25 November, no.

Thank you. And you think that's the day that you had that conversation with them or thereabouts?---Late November.

Late November?---Yes.

Thank you. Excuse me, your Honour. I just want to ask you this much. At any stage has anybody brought to your attention - leaving aside your own assessment and opinions that you've expressed about the incidents that are the subject of that statement dated 26 March 2020, or supplemented, if you like, in the course of this Coronial inquest, has anybody brought to your attention the way in which each of those incidents specifically have been disposed of within the Northern Territory Police?---Each of which incidents?

The incidents that you have identified in your statement dated 26 March 2020?
---No, I've received no formal advice.

No. So all that's happened is Pennuto asked you to conduct those enquiries, you conducted, you isolate specific incidents which are set out in that statement, you have now given that evidence about those matters either directly by reference to the statements or in the course of evidence in this Coronial inquest?---Yes.

And insofar as other investigators or other investigation teams may have analysed, considered and looked at globally everything involved in any of those incidents, with an outcome, you're not aware of that outcome?---No.

Or why an opinion might be different from yours, for example?---No.

It's just simply you've done what you've done and that's as far as you can take it?
---Yes.

Thank you, nothing further, your Honour.

THE CORONER: Dr Freckelton, did you have any questions?

DR FRECKELTON: Yes, thank you, your Honour.

XXN BY DR FRECKELTON:

DR FRECKELTON: You've been asked about why you travelled to Yuendumu?
---Yes.

And you referred to the crime scene?---Yes.

Why did you go to Yuendumu and look at the crime scene?---Because I was asked to provide an opinion on the tactics used and I wanted to see the place first hand.

Thank you, your Honour.

THE CORONER: Anything further, Dr Dwyer?

REXN BY DR DWYER:

THE CORONER: That was one question.

DR DWYER: Yes.

MR BOULTEN: But not (inaudible) question.

DR DWYER: Acting Superintendent, in the course of your role over 25 years as a police officer in the Northern Territory, have you been involved in putting together files for prosecution of a number of different individuals?---Yes.

Are you current – in your current role, are you involved in putting together prosecution files?---Not – it's - people lower rank than me that deal with the majority of that. However, with regard to assets forfeiture, which comes under my purview, those files do come across my desk, because they're civil proceedings, and they required the approval of – initially SFNT and then the Director of Public Prosecutions, to proceed.

And you had a period of time in general duties in police in Northern Territory?---Yes.

And in that role, you would be involved in putting together files for prosecution?---
Yes.

You've given evidence in – as an expert witness in a number of different cases in the Northern Territory, is that right?---Yes.

Around 25, apart from this case, involved – well the murder trial involving Constable Rolfe?---Well it's 25 statements I've provided. Not all proceeded, because sometimes my opinion was that the force used was reasonable.

Justified, okay. And so in terms of preparing a statement, you prepared that as an expert witness, correct?---Yes.

And you had to understand the expert Code of Conduct?---Yes.

In relation to any time that you've given a statement with respect to your expertise on the use of force, has it, on occasion, involved the death of somebody?---I think – no, this is the only one that involved a death.

And on the occasions – on the other occasions where it didn't involve the death of somebody, would you tend to inspect the crime scene on occasion?---On occasion.

I just want to take you back briefly to the Coronial memorandum from Commander Proctor. At page 146, which my learned friend, Mr Edwardson read from. It notes down the bottom there:

“Detective Senior Sergeant Barram was selected to provide the critical evidence”, this is in relation to use of force. “And in reviewing the content of his first statement, it was evident he was subject to confirmation bias. The pressure bought to bear on him to provide his expert opinion, was done so in haste, and similar to Professor Albert, prior to all available and relevant evidence, including possible exculpatory evidence, being made available to him for consideration.”

Your first statement is dated 13 March 2020. By that period of time, you had the body-worn video footage of all the officers who were present on 9 November - - - ?---Yes.

- - - at the house. You had interviews that had been conducted with the IRT members, other than Constable Rolfe?---Yes.

And am I right that there was no interview at all, from Constable Rolfe, that was available to you, at any time, prior to the trial to view?---Yes, you're correct.

So just let me read to you what the General Order is on Major Crime, Major Investigation and Critical Incident Response on confirmation bias, and ask for you to comment on it.

“Confirmation bias is defined as something that happens when examiners give extra weight to, or intentionally seek advice that will endorse their expectations and beliefs, while unintentionally ignoring evidence that could negate their belief.”

Do you think it's possible that you were subject to investigation bias?---I guess anything's possible, but I did my best to remain unbiased, and provide my honest opinion.

Well you'd had an opportunity to do that, in terms of providing an expert report in 25 matters prior to this occasion with Constable Rolfe. Did you do your best – 25 statements, did you do your best, in terms of providing those statements, to give independent evidence?---Yes.

And did you continue to do your best with respect to providing the statement in the Constable Rolfe matter?---Yes.

And in terms of any exculpatory evidence being available to you for consideration, if a statement had been produced by Constable Rolfe, or an interview done, would you have been prepared to review that, and prepare another statement or report, taking that into consideration?---Absolutely.

Did you sit through the trial for Constable Rolfe?---No.

After you had given your evidence, were you – did you sit through and listen to that evidence?---I listened to – sorry, brain fade for names today.

McDevitt?---McDevitt, I listened to McDevitt's evidence, and I listened to Constable Rolfe's evidence.

When you listened to McDevitt's evidence, and indeed prior to that, you would have read the report that was prepared, is that right, or did you not?---McDevitt's report?

Yes?---Yes.

And did you – do you say to this court, that you considered the evidence in McDevitt's report with an open mind?---Yes.

Had you on previous occasions, had cause to change your original expert opinion, when you read further evidence?---None spring to mind.

Okay. Well on this occasion, when you listened to McDevitt give evidence, were you open to changing your mind if it persuaded you of one thing or another?---Yes.

And did you?---No.

When you listened to Constable Rolfe's evidence, you would have heard for the first time, Constable Rolfe giving any evidence, at all, is that right?---Yes.

And you would have heard for the first time the suggestion, for example, that Kumanjayi's hand was reaching for Constable Rolfe's Glock?---Yes.

Did you – you weren't called on at any time to give evidence after that were you?---No.

But you've had an opportunity in this court to reflect on the evidence of Constable Rolfe that you heard - - - ?---Yes.

- - - while you were in the Supreme Court. And does any of it cause you to change your mind?---No.

What this statement goes on to say, is “That the pressure placed on” – I withdraw that. So at any time prior to going to Yuendumu on 5 December 2019, do you feel that any pressure was provided on you to – by the Northern Territory Police to provide one opinion or another?---No, I think Superintendent Penuto and others were at pains to not try and influence my opinion.

And at any time after 5 December 2019, and prior to Constable Rolfe’s trial, was any pressure placed on your to provide an opinion one way or the other?---No.

And at any time after the trial of Constable Rolfe, leading up to this inquest, has any pressure been placed on you by the Northern Territory Police to provide an opinion?--No.

Would you be comfortable telling this court, if members of the executive had tried to pressure you in any way?---Absolutely.

And so what this report goes on to say, is when – that you went to Yuendumu on 5 December 2019. And that – and a police delegation, and you reject that term, which included Assistant Commissioner of Crime and Integrity Anticich, Crime Commander Dole, Senior Investigator Pennuto, met with a select committee answering questions for the family. Did you ever meet with any sort of select committee that provided answers to family members?---I met with a group of people at the station, who were going to take me to the house, so that I could politely enter there, and have a look at the crime scene.

And did you answer – or meet with any members of the family to answer their questions, to the best of your memory?---I didn’t answer any questions, other than introduce myself, and say that my role is that I’m here to review the tactics that were used.

And that was with a view to getting access to the crime scene to inspect it, is that right?---Yes. Then then there was another lady who performed the ceremony prior to me entering the house.

Was that a smoking ceremony of the house, were you present for that ceremony?---It wasn’t a smoking ceremony. It was a ceremony that involved a lot of calling out in language and clapping hands. I was told later it was to let Kumanjayi’s spirit know that I was going into the house. And so when that was done, I went into the house.

Did you think that that was an appropriate mark of respect to allow that to happen prior to entering the house?---Absolutely.

And did any of that, in any way, compromise your integrity or independence in providing an opinion to - - - ?---Not at all.

You were asked, this is my last topic, you were asked by Mr Boulten, about some questions that involved an incident with Christopher Walker. And you were asked about the dissemination of those videos. You were also I think asked about questions of – questions relating to them being on his phone. I just want to show you the stills, and then I'm going to ask you a question about training particular – training police officers, given your experience. These were the stills that were found on the phone of Constable Rolfe.

MR BOULTEN: Not necessarily the ones that were broadcast.

DR DWYER: That's correct, they – I don't believe he broadcast these. I think he broadcast the whole file, or longer portions of it.

So that's the first, did you see that, Superintendent Barram?---Yes.

The second?---Yes.

So that's the first, that's the second. A photograph of a man holding his hands –

Can we have that back please.

Holding his hands up, while two – at least one officer points a gun relatively close to his face, and the other officer reaches towards him with something in his hand?---Another officer? It's very hard to make out.

Yes, you can see at least one officer there with a gun, some inches away from that man's face?---Yes.

That's a photograph that's taken, if I could ask you to accept, from the body-worn video footage, it's clear isn't it, from the Axon notification there?---Yes.

And then a third photograph, another photograph similar to that previous image?---Yes.

We don't have any evidence yet as to why these were on the phones of Constable Rolfe. You were a trainer, I think, from around 2012 to 2019. Is that right?---Yes.

That can come down now, thanks.

When you started in the police force, when you were a man of 28, there weren't the same social media opportunities that exist today. When you were training in the college in 2012, do you – up until 2019, do you recall anything teaching police officers about what was a respectful use of – sorry, of evidence in court. That would be on your body-worn or elsewhere?---Not specifically, but that wasn't my role to teach them about evidence and court proceedings.

You regard having that content on your phone, that is, police officers taking a

photograph – this is the evidence, police officers taking a photograph of material which is evidence in court from body-worn is completely inappropriate. Correct?---
Yes.

Do you think it is necessary then to educate young officers about how inappropriate that is?---Apparently so.

You would hope it's common-sense and integrity, wouldn't you?---You would hope, but the evidence suggests otherwise.

Thanks very much.

Those are my questions.

THE CORONER: Yes.

Thank you for coming to give your evidence today and that is the end of the questions, you'll be pleased to know. You're free to go?---Thank you, your Honour.

WITNESS WITHDREW

THE CORONER: We'll adjourn until Monday at 9:30.

ADJOURNED