

RESUMED

HIS HONOUR: Yes, Mr Strickland.

MR STRICKLAND: I call Adam Eberl.

HIS HONOUR: Thank you.

ADAM CRAIG EBERL, affirmed:

HIS HONOUR: Thank you very much, please have a seat.

XN BY MR STRICKLAND:

HIS HONOUR: Yes, Mr Strickland. Do you wish to provide a copy of the transcript of the officer's interview to him?

MR STRICKLAND: Yes, I do. Thank you, your Honour.

Could I ask you to state your full name please?---Yes, Adam Craig Eberl.

How long have you been a member of the Northern Territory Police?---Just over five years.

Anything I ask you you'd like me to repeat or you don't understand please say so?---Okay.

What's your current rank?---Remote Sergeant.

Now you have conducted some records of interview in relation to this matter, I think three of them?---That's correct. Well, you know, I've provided statements, yeah, further statements, yeah.

Have you had a chance to listen to those or read the transcripts of those?---Yes. I read – I read them last night, yep.

All right. And you also worn body-worn video at the time of the incident?---Yes, I did.

Have you had a chance to listen to or watch the body-worn video?---Only approximately five minutes of the entire thing.

Was that the first five minutes?---No, it was the five minutes surrounding the incident at house 511.

Thank you. So I want to ask you some questions about Saturday 9 November 2019 – you – did you receive a briefing about going to Yuendumu at Alice Springs Police Station on that day?---Well there wasn't really a briefing as such, just – just was informed that there was an arrest target that we were heading out there for and

would get further details when we get there. We knew his name, watched some body-worn footage of an incident approximately three days prior and other than that not much.

And what do you remember seeing in the incident you saw three days prior, what was on there – what was on it?---Okay. There was a computer there, there was two body-worns playing simultaneously, it was a split screen of two different officers, I believe one officer was Chris Hand, the other one Lanyon, I'm not sure of his other name.

What happened?---During the incident there it appears that one of the officers speaking to a female who I later realised is Mr Walker's partner and Mr Walker is on the bed in the room. It's a fairly dark bed – dark room, sorry.

Yes?---Then the – Mr Walker appears to have picked up an edged weapon which was an axe and scrape it along the concrete with in the room a couple of times. He then approached the officer at the door and the officer stood back, put his hands up, I suppose struck with fear, the other officer retreated back to the doorway in the entrance of the house and Mr Walker charged at him then acting as if he was about to chop at him like as he arrived and the officer again stood up with his hands in fear before Mr Walker ran out of the door and they gave chase a short way before the body-worn was stopped.

Do you remember when that was played whether there was any comments amongst the IRT team about they'd watched?---I can only recall what I said. I was surprised that – in that circumstance that the officers didn't use a firearm to incapacitate the person.

When you say incapacitate you mean to shoot them?---To stop the threat, yep. So if it's a firearm with a edged weapon, that's correct.

When you say incapacitate - - -?---Yep.

- - - can you explain what you mean by that?---So to stop the threat, so not necessarily to – we're not trying to ever kill anyone, that's not our – our role, our role is to stop the threat so we are – we, us as people and any members of the public are safe.

And so there was a comment about – do you remember who made that comment?---Yes, I did.

You did. Doing the best you can, what – what was the substance of what you said, try – can you use the approximate language of what you actually said?---“Wow, I'm surprised they didn't shoot him.”

Right, okay. And did anyone else make comment?---Not that I recall.

And who was present when you were watching that video?---There was myself, Anthony Hawkings, James Kirstenfeldt, Zachary Rolfe, and Shane McCormack he was floating between his office and we were stationed in the muster area there.

Was there any discussion amongst the team about what would happen if any of you were confronted by Kwementyaye Walker in a similar situation?---Not that I recall.

Do you remember if Breanna Bonney was present during the playing of the video or was in the muster room?---Not that I recall. There was a number of people in the muster room, but I can't recall who was there.

Okay, all right. So what else do you recall happened or – sorry, what else do you recall was said in that – I'll call it 'informal briefing' at Alice Springs Police Station?---I think we were talking about what equipment we were going to take. Myself and Anthony Hawkings agreed that we'd take our IRT equipment consisting of a 10-calibre ballistic vest and our assault rifles, and I believe I think it might have been James Kirstenfeldt might have grabbed the bean bag shotgun, but they – they didn't opt to take any other equipment, they just took their usual general duties equipment.

What function does the ballistic vest perform?---So for – it forms a few different functions, but mainly the stab proof aspect of it, just the kevlar will stop the knives and the plate will stop a rifle round – you know, but the kevlar will stop also a handgun round as well.

What's the 'kevlar'?---It's a particular material used in the creation of the vest.

At the incident itself at house 511 did you wear your ballistic vest?---No.

Why was that?---Because we were informed by our superintendent, Jody Nobbs, that we were – we could take it but we weren't in that role at that time, we're just to be plain clothes, so less confronting I guess for members of the public.

When you say Superintendent Nobbs said you were not in that role, you mean in the role as Immediate Response Team?---No, no. So the call out was under the Immediate Response Team. But as far as – so we can take the equipment. If it escalates then we've got the equipment there to respond. If it goes to a firearm job or if someone's standing there, you know, in the community while we're there, so. Because situations can change very rapidly.

Did you – at the briefing at Alice Springs did you bring your ballistic vest with you to Yuendumu?---Yes, I did.

And did you attend the briefing at the Yuendumu Police Station? I put briefing in inverted commas?---Okay. Yes, yes.

It wasn't what you would call a formal briefing, is that right?---That's correct.

How would you describe it?---It was – we were shown a map of the Yuendumu area, because I'm not – I've never been there before, than a prisoner escort. So I've never been around the community so I wasn't aware. So we were shown a map of a particular house. I believe – I recall making – House 577. And the route to go there and a little bit about, I think, one of the members there, Alex Alafeo offered some information about him. And - - -

What was the information he offered?---Just that he's dealt with him before. Usually if you go in and just arrest him before, rather than just wait and talk to him, usually doesn't give him a chance to react because he can be quite aggressive from his past before. Yeah, so. But that's how he's handled it and it's – yeah.

Can you just expand a little more. So how did Felix say he handled Kwementyaye Walker?---When he was after him as an arrest target he just went straight in and grabbed him, yep, as opposed to standing potentially like the other members at the door and speaking to him.

I see. And he gave – and Felix gave a reason for saying that, did he?---Because he's known him and dealt with him a couple of times. As I say know him, he's just, you know, just dealt with him a couple of times. Doesn't know him know him.

So what else do you recall being told at the Yuendumu – I'm going to call it an informal briefing, is that okay? Can we agree on that or not?---Sure, that's fine, if that's what you would like to call it.

No, no, it's your evidence that counts, not mine. What description, what – just so I can have a short answer, discussion or?---That's fine. Discussion of what we're going to do. That sounds great.

So what was the discussion that you had at Yuendumu Police Station about what you were going to do?---Okay. So we were going to head out there and try and locate Mr Walker. If we were to find him and arrest him, I think Sergeant Frost was saying it would put him on 137 and then we'll talk about it from there if we find him.

I know it's obvious but 137 is?---Well it's a position to hold someone in custody while you investigate under the provisions of s 138 of the *Police Administration Act*.

And was there a discussion about whether you were to perform any high visibility intelligence gathering?---No, not to – not that I recall.

Do you have any other jobs to do there apart from – sorry, were you told you had any other jobs to do at Yuendumu apart from Mr Walker?---No.

Was there a discussion – did you hear any discussion about break-ins, unlawful entries at Yuendumu?---Not until after the fact.

But not at this discussion at Yuendumu?---No.

Could the witness please be shown exhibit P1.

So you – this is an email from Julie Frost to various people including yourself, Saturday 9 November 4:59 pm. Do I take it you were en route at the time – at that time, 4:59 pm en route from Alice Springs to Yuendumu?---Yes. So from what I recall we left Alice Springs approximately 1600 hours or 4 pm. And approximately two and a half hours drive to Yuendumu (inaudible) I would confirm, your Honour.

So when you arrived at Yuendumu did you receive this email? Did you get a copy of this email from Julie Frost or anyone else?---Not that I recall.

Do you recall it being read – do you recall anyone reading an email to you?---No, I do not.

Do you recall anyone discussing a plan about arresting Kwementyaye Walker at about 5 am or 5:30 am on the Sunday morning?---The day after?

I'll make it clearer, I can tell it's perplexing. At this briefing - - ?---Yes.

Or the discussion, I'm sorry, at Yuendumu Station, did you hear any instruction or any discussion that the plan was to arrest Kwementyaye Walker the following morning, Sunday morning at about 5:00 in the morning?---No, as I said previously, it was just a discussion. There was nothing around any arrest plan. Just a discussion. And like I said, it was just to arrest him if we found him and put him on a 137.

Was there any discussion with Felix – was Felix present at that discussion?---Yes.

And was there a discussion that he would join you as part of the team that would be arresting Kwementyaye Walker?---Not that I recall, no.

Do you remember if Sergeant Frost gave any input at all at this discussion?---A little bit, just about the layout of Yuendumu, from memory, but yeah, it's very vague.

Was it confined to that, her participation?---And she mentioned about the 137 as I previously stated.

Apart from those two things was it confined – was that her contribution?---That was about it, I think, from - - -

Who led the discussion at Yuendumu?---She said a little bit but it was Zach – Zach was mentioning it, where we were going, what we were doing.

Did you – as at the time – before you left Yuendumu Station to go out into the community did you consider Kwementyaye Walker a high risk target?---Right. So if I was in a situation that officers with the axe coming at me, that's high risk. If someone's standing in the street and he's 'our target and I'm not presented with any weapons, then for that moment it's not high risk. But in the flip of a hat things can

change from low risk to high risk. But he has the propensity to grab weapons, so he had the potential for it to be high risk, definitely.

So in that case and particularly given the axe incident, is there any reason that you did not wear the ballistics vest that you had brought with you from Alice Springs?---Yeah, I don't usually wear it unless I know I'm going to a, you know, someone wielding a knife or something like that, then I put it on. Because my duties at Alice Springs mainly was pushbike patrols. Don't usually wear it because it's a bit hot.

You mentioned before that Superintendent Nobbs told you not to wear the best?---No. Our - - -

Because you were not in the role. Do you remember saying that?---Yes, more along the lines of – because that's part of the IRT uniform and we have an IRT uniform as well, but you know, he was told – we're just told to wear our normal uniform. So that would conform with the uniform because it's different colour, et cetera.

And you said you were told, by Superintendent Nobbs?---That was the – not directly, no. That was information that I received.

But I thought you said earlier that Superintendent Nobbs told you something, is that right?---Well that was not me personally.

Who did he tell?---Wasn't too sure if it was before or after the fact we found out that he was the one that ordered that we weren't to wear our uniforms.

You didn't hear that from him directly?---No.

Who told you personally you couldn't wear your uniform?---I think when Paddy called me, or Shane McCormack, I was at my house and I think, I believe, I asked him do we wear a uniform, normal one or our CANS and he goes just wear your normal uniform but brings your CANS just in case.

What does CANS stand for?---Camouflage uniform. So to blend into the environment around you.

So is CANS the normal IRT kit, is that - - -?---That's correct.

So when you left the Yuendumu Police Station did you go – which house did you go to first, do you recall?---I believe – well from what I recall, 577.

Yes. And, were you told anything about that house, as to why - - - ?---I think that's where the incident happened three days prior.

Okay?---I think.

Did anyone give you any other information about House 577 and it's – why you should go there first?---Because, he frequents that address.

He, being Kwementyaye Walker?---Correct.

Right. And, who told you that?---Julie. I think that was part of the thing, Julie Frost, she's – she knows the layout, but I can't recall that coming from her mouth.

And so, you went to 577. Whose car did you travel in?---The vehicle that myself and Anthony Hawkings were in, maybe 652, it was a LandCruiser, two-seater, caged vehicle, marked.

I forgot to ask you, as you were driving from – a two and a half-hour journey from Alice to Yuendumu, did you speak by phone to the other IRT members by car, Mr Rolfe and Kirstenfeldt?---No. We didn't have a sat phone and that was the only phone that would work out there, so - - -

Because, it doesn't get – there's no mobile phone reception. Is that right?---That's correct.

After leaving Alice Springs?---Yeah. Yeah. I don't know how far out, maybe 20Ks out of Alice Springs it stops working.

So, you get to 577, and did you have a police radio in your car?---The vehicle is fitted with police radio, that's correct.

Did you communicate – could you have communicated by police radio with Mr Rolfe and Mr Kirstenfeldt?---There is a Simplex channel that you can put on the vehicle so you can communicate within a line of sight, but it only works within a certain range.

Yes. In any event, did you do so or not?---I can't recall.

So, when you left Yuendumu station to go into the community, you had a radio of sorts. Is that right? Or, you had some form of communication where you could communicate with the other members of the team. Is that right?---I can't recall whether I was carrying a radio.

Do you know if anyone was carrying a radio?---Can't recall.

So, do you recall what happened at House 577 when you got there?---Yes.

Tell us what you recall – what you can recall?---Okay. We organised the plan. I believe Zac and James were going to the front of the house. Adam Donaldson, the dog handler, was on the side of the house and myself and Anthony Hawkings went to the rear of the place.

And, was there a decision made to enter the house?---I believe – I can't remember if it was Anthony – someone was speaking to someone at the rear of the house and

someone was raking the ground there and we were asking him if Mr Walker was in the house and he said, "No one is in the house." But, I believe there was – someone ran past the window and I believe, Anthony was saying something, "There is someone in the house. I just saw them." So, I believe they had a look in the house and it was a 12-year old.

This is 577?---That's correct.

So, was the – to your understanding, what was the purpose of going to House 577?---To confirm whether he was there or not, to arrest Mr Walker.

After Mr Rolfe and Mr Kirstenfeldt left House 577, did the four of you have any discussion about what to do next?---Yeah. We were asking the person at the – not me personally, just someone asked him, "Where is he?"

And, when you say "he", who did you ask?---The guy at the rear of the place, you know, that I said was raking it?

Yes?---So, he said that - - -

Was that an elderly gentleman, by the way? Or, it was a man, not a boy?---It was a man. Yes.

Go on?---He said, "He's in one of those two houses," pointing across the oval area there, you know, toward a red and a blue house.

Did that man say anything about whether Kwementyaye Walker would be coming back to House 577?---Not that I recall.

Okay. So, having the man – I take it an Aboriginal man?---Yes.

He, having told you that there was – Kwementyaye was at one of those two houses, did he mention the number of the houses, or did you know by your map what houses they refer to?---Well, I didn't – I wasn't personally holding the map. I think Zac and James had the map, so we were just following them over to that one. So, I didn't know the numbers at the time until we got there.

What was the discussion, if you can recall, after you left House 577 about going to the next two houses?---I believe they were going to – James and Zac were going to go have a look at the blue house and we were going to go around the red house.

And, "we" being? Who is we?---Me and Anthony and – well Adam Donaldson was going to get his dog out, but obviously he didn't, because there was a lot of camp dogs around, so he just stayed just outside the fence between the, sort of, two houses.

So, you're saying as a result of the discussion amongst the four of you, you and Anthony Hawkings were to go to the blue house, did you say?---No. The red house.



Red house. I'm sorry. And, Mr Rolfe and Mr Kirstenfeldt were going to go to the blue house?---Yes.

Right. Is that what actually happened when you got there?---Yes. So, I went to the – myself and Tony went to the red house.

What – just so we get – what's the number? The red house is 5 - - - ?---511, I think.

Yes. Go on?---And, I think the blue one is 517.

Yes?---They were speaking to one of the members of the community.

“They” is?---Zac and James.

Yes?---Speaking to a member of the community, sort of, between – near the blue house, but, sort of, in between the blue and red as well.

And, how far were you from them at that stage?---A couple of metres maybe.

And, then what happened?---Well, Tony – or Anthony, sorry, went around the house. He was carrying the AR at that time and I stood – I went to the front of the house there and spoke with a couple of the members of the public there out the front and I was asking them if Mr Walker was inside. Then the lady was commenting on why the person had the gun there - - -

Okay. So, I think at this part – by this stage you turned your body-worn video on. Correct?---I think I turned it off.

Okay?---Yeah.

Now, when - - - ?---From when we went to the 577.

You did not turn it off?---I don't recall that I did. No.

I'm going to play a part of the – your body-worn video from the time you were approaching 511 that you've just described?---Okay.

Your Honour, I'm just going to play about four or five minutes of this body-worn. This does contain in the last 20 – 30 seconds some very graphic images.

HIS HONOUR: All right.

Once again, the body-worn video will be played depicting Mr Walker. If there is anyone who wishes to leave the courtroom, you may do so whilst this is being played and also, if you are in any other venue where it is being screened, then you may also leave.

Yes. Mr Strickland.

MR STRICKLAND: If your Honour just give me one moment, please. Your Honour, I will just give Mr Eberl a copy of the transcript that I am about to play him, so he can follow it on the transcript as well as the video.

So, I am just going to be playing what is called, "Body-worn video Adam Eberl 2 of 4". I'll get (inaudible).

MR STRICKLAND: Your Honour, can Ms Dixon approach please?

MS DIXON: Certainly.

MR STRICKLAND: We would like to use our own – so we will tender that.

#### DVD PLAYED

MR STRICKLAND: Can you pause please.

Now this is where you're approaching House 511, correct, the front of the house?---That's correct.

And there's a woman that you can hear saying "why, why's he got a gun". You heard that?---Yes.

Who's he referring – who was that woman referring to, do you know?---Yeah, like I said before, Anthony Hawkings was carrying the AR 15.

And do you know which direction was it being pointed at, do you know?---Looking directly – because he had a sling on, so it sort of points down to the ground.

Okay, thank you.

Can you pause please.

Was that you who said, "Someone probably shouldn't run at police with an axe yet"?---That's correct.

And why did you say that?---Potentially because it was a different response than a normal community police.

Can you explain that answer please?---So that's why they called us, because it was too high risk for community members to deal with the incident a few days prior. So that's why we went out there, to effect an arrest. Because they felt they couldn't deal with it.

But why did you say that to that woman at that time?---Because she was talking about the gun the officer was holding.

Were you angry at that point time in time?---No, I wasn't angry at all.

Yes, thank you.

Can you pause there please.

Now you said you recorded as saying, "Someone went in the back room here". Is that something you saw?---Yes.

What exactly did you see?---Before I walked around to the side of the house when I spoke to Zach, there was someone in the back room walked across. There's sort of like the house, it's got like the room, one room there, then it goes a doorway at the back and there's like an open space there as well. And I saw someone walk past the doorway there.

And did you suspect that person could be Kwementyaye Walker?---I didn't know who it was because it was too dark in there to see, to get a clear look as to who it was at the time.

My question was did you suspect that person could be Kwementyaye Walker?---Yeah, definitely.

And did you hear someone say – well was apparently, "Me and Adam are just going to clear this red house"? Did you hear that on the - - -

Can you just play – you just go back a – five seconds or so.

THE WITNESS: Yeah, okay.

MR STRICKLAND: You heard that then?---Yeah.

Do you recall if that was Mr Rolfe who said that?---It sounds similar to him, yeah.

Was it you who said it?---No, it wasn't me either.

Was there anyone else who could have said that, apart from Mr Rolfe?---No, it was only me and him standing there, yeah.

So if it wasn't you does that mean it was him?---More than likely.

Do you know if he was using a radio at that time?---Don't recall, no. Because Adam Donaldson was just outside the fence there, so potentially could have been speaking to him.

I see. You don't recall if Mr Rolfe had a radio at that time?---No, I don't recall that.

Was there a plan before you went into 511 amongst the four members of the IRT team and Donaldson what would happen if you suspected that Kwementyaye Walker was in House 511?---No.

Now the phrase, "Me and Adam are just going to clear this red house", are you familiar with that expression, clearing a house?---Yes.

Is that a term, from your understanding that is a military term?---It's used in the military, yeah.

And what did you understand the term meant, to clear a house?---Search the rooms and make sure there's – the person that we're not looking for is not there.

I see. Right.

Yes, could you continue please. Thank you.

Would your Honour excuse me for a moment? Would your Honour just give me 30 seconds please? Your Honour, I just wanted to play a section of Mr Rolfe's body-worn footage because it comes in a different angle. Before I do that.

Is it the case that your body-worn video came off?---Yes, I believe both of ours fell off.

Both of yours fell off at some stage. But when did your falls off, as far as you can recall?---I don't know when it fell off but all I know afterwards, I picked up the body-worn, want sure if it was mine at the time, just picked one up off the ground.

I just want to ask a couple of questions about what happened and then I'm going to just finally play one other excerpt of it. After Mr Kwementyaye Walker was asked to turn around and face the wall he almost immediately then struggles?---That's correct. Is that when you're saying that Zach told him to turn around and put your hands behind your back?

That's right. Sorry I (inaudible) make that more clear?---Right, yeah.

So he immediately struggles. You then – do you then get behind him?---Not straight away, no.

You put him in a headlock of some sort or a bear hug of some sorts?---After he come off the wall?

Yes?---And tried to get back behind me.

Yes?---That's when I jumped in behind him, yep, that's correct.

You jumped in behind him?---Yep, to stop him, you know, so he can't sort of – because his body is not designed to fight backwards so hence, you know, got in behind him.

I see. And when you got in behind him, what did you actually do? What did you manage to do?---So I was holding his left arm and held him like this and said, "Stop fighting", and then I looked over and I could see some sort of edged weapon in his right hand. I couldn't tell exactly what it was at the time.

Right. Did you say anything to Mr Rolfe that you saw an edged weapon in his hand?---No, I just said, "Stop fighting."

Right?---I couldn't – I couldn't tell exactly what the weapon was, it was just some sort of sharp edged, yeah, weapon of some sort 'cause it was dark, so it was – darkish.

Right. Do you – do you know why you didn't say to Mr Rolfe he had an edged weapon?---I didn't know exactly what was at the time.

Right, is that the reason?---And things – and things were happening very fast, so.

Okay. What was the next thing you can recall happening after you grabbed him from behind and saw him with the edged weapon?---I believe I heard a dull bang.

One or two?---One at the time.

Right?---I thought – I thought potentially James had a bean bag shotgun and had shot Mr Walker.

Yes?---'Cause it was a dull sound, not the – not the high pitch clapping noise that you – you would get from a firearm without wearing earmuffs.

Yes?---Then I thought for a second was it my weapon that went off, and looked down to see my holstered firearm, and then I thought, "How am I going to get this guy down."

Before you get to that, are you saying that you saw the edged weapon before you heard the bang, the dull bang?---Yep.

Okay. Now – then you said you thought, "How am I going to get this guy down"?---Yep.

And what was the next thing you can recall happening?---There was like a modified seatbelt throw that they teach in defensive tactics.

What is that?---It's where – it's like you use your – off to the side you use your hip to put them on to the ground.

Yes?---Yep.

And you did that?---Yeah, but I had hold of his other arm.

Which arm?---His – his left arm.

Yes, go on?---Yep, and then put him down like that to sort of stop him turning around with the edged weapon to try and get me.

And now which arm was the edged weapon?---The right, the right hand.

Right. So you - - ?---But I didn't know it was an edged weapon until after, I knew it was a sharp – some sort of sharp thing in his hand 'cause of the point – I could see a point.

Okay. You saw a – we'll call it a sharp object then?---Yeah, okay.

So is that – what you – how you perceived?---Yeah, we'll describe it as that, yeah.

Okay. So how did you – you saw that in his right arm, how – you got him on to the ground?---Yes.

Were you on top of him?---No, I was off to the side.

And how were you gripping him you on your side?---'Cause I still had a hold – so my left – my right arm assisted to put him on the ground, and my left arm was pinning his arm across there.

Yes, you said pinning his arm, which arm?---His left arm.

And pinning his arm just can you – it's got to be described for the court as well?---Okay. So my left hand was around his left wrist.

Yes?---And I was holding it on to the ground.

Yes?---So preventing him from turning his body 'cause if I let go of that he would have turned his body and – yep, potentially stabbed me.

And so was – when he was on the ground was he face down or face up?---Neither, he was more like on the side.

And so when you – were you facing him from behind, that is when you were facing – you were on his side, is that correct?---He was looking in my direction, that's correct.

Right. And you had his left hand pinned with your left hand?---Yep.

And what about his – and did – could you see where his right arm was?---Yep.

Where was his right arm?---It was across his body and I could see that at that point that there were silver coloured scissors.

Okay. Was his right arm underneath his body?---Yeah, he was on his side. Yeah, that's right, yeah.

On his side underneath his body?---That's correct.

Okay.

Your Honour, I just wish to play one part of the – Mr Rolfe's body-worn because it captures a different perspective, if I might – again that will – this also contains disturbing - - -

HIS HONOUR: Yes. I've already given warning.

MR STRICKLAND: Yes.

HIS HONOUR: Do you wish to ask the officer any questions about that body-worn, Mr Strickland?

MR STRICKLAND: I do. Yes, I do, your Honour. Only on the basis that he's present during it.

HIS HONOUR: Well we know that he's present during it.

MR STRICKLAND: Your Honour, I need – the reason I will ask him questions is because that body-worn doesn't capture a particular perspective that this one does.

HIS HONOUR: All right.

MR STRICKLAND: Your Honour, there's been – it's my fault. There was some miscommunication, could I just ask for a three or four minute adjournment please.

HIS HONOUR: Sure.

Officer, I'm happy for you to remain in the witness box or if you want to go outside for a few minutes you're welcome too. Don't discuss your evidence with anybody else.

WITNESS WITHDREW

HIS HONOUR: So we will adjourn for a short time.

ADJOURNED

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HIS HONOUR: Mr Strickland.

MR STRICKLAND: Your Honour, thank you for that.

HIS HONOUR: Going to play the video?

MR STRICKLAND: Yes, we are.

DVD PLAYED

MR STRICKLAND: Just pause please. I'm sorry. I'm playing now from 3 – I'm playing the Zac Rolfe body-worn 2 of 4 from the time at the bottom is 3 but it started, was 3:20?---Okay.

Pause it please. I just want you to – sorry, if you can just go to 4:12, two more seconds. Keep playing it just until 4:12. Pause, thank you. Then can you just flick it forwards. Just pause it at the fifth screen, the 4:13.

Whose body can you use there?---Well Zac's body-worn, that must be me.

And can you see in that video at 4:13 the body of Kwementyaye Walker?---No.

Can you just do a couple of freeze frames?---Thanks.

I'm sorry, you've just gone one too far, one too far. That's it. Could you just pause there.

So that again is another frame at 4:13. Can you see Mr Walker's body there?---Yes.

Does that capture what you described before where he was – you're on top of him but on – he's on his side?---He's on his side, yeah.

And that's when you described that his right arm was under his body, correct?---Yes.

And you were ensuring that he couldn't turn over and start swinging the scissors at you – start swinging the scissors at you, correct?---That's why I was holding his left arm so he couldn't turn on me, yep.

So he couldn't turn and swing the scissors at you, correct?---That's right.

At that point in time at that picture you knew he had scissors in his hand?---Yeah, I sighted them, yeah.

Yes, they're my questions. Thank you, your Honour.



HIS HONOUR: Yes, Mr Edwardson.

XXN BY MR EDWARDSON:

MR EDWARDSON: Mr Eberl, I want to start if I can with - - -

HIS HONOUR: Do you need that up anymore?

MR EDWARDSON: I am actually going to have it played. I wonder – it's probably just as easy to leave it there rather than reload it, if that's all right, your Honour.

HIS HONOUR: All right.

MR EDWARDSON: It can just be paused. From the beginning it will be played in due course, but not now.

Paddy is Shane McCormack, isn't it?---Yes, that's correct.

Right, okay. Now on 9 November 2019 you were off duty at around about 2 o'clock, is that right?---That's correct.

And then the position is, as I understand it, you receive a phone call from Paddy or Shane McCormack?---That's correct.

And you were called back to duty?---That's correct.

And he effectively told you that you would be deployed in your capacity as an IRT member, correct?---Correct.

Did he tell you at that stage what the deployment was, in other words, to effect an arrest, go to Yuendumu or what?---Go to Yuendumu, potentially one to two or two to three days.

Did he identify Kwementyaye Walker at that stage?---No.

So you didn't know Kwementyaye Walker?---No.

Was the target I mean, sorry?---No, I did not, at the time.

And while I'm at it, before 9 November 2019 had you had any direct dealings with Kwementyaye Walker?---No, I hadn't.

Did you know anything about him?---No.

In any event, when you had this conversation with Paddy, he told you that you would be deployed, it may be two or three days and it was in that telephone conversation that there was a discussion about what uniform you should wear?---That's correct.

And, I think you said you were told not to wear the cams or camouflage gear that you normally wear as an IRT member?---That's correct.

You were to wear your general duties?---Correct.

The blue uniform you're wearing now?---Correct.

All right. But, nonetheless, you were to take with you your kit?---Correct.

And, the kit would include whatever weapons you needed, potentially the flap jacket. Anything else?---That's basically it. Yes.

All right. So, the next thing that happens is that after that telephone call, you then attend at the Alice Springs Police Station?---Correct.

And, it's at the Alice Springs Police Station that you meet Zac Rolfe?---Correct.

And, the other members of the IRT team?---Involved in the deployment. Correct.

It was there, I think, that Zac Rolfe gave you a rundown on what might be expected of you in this particular deployment?---Correct.

So, who was present? There was you, Zac Rolfe - - - ?---James Kirstenfeldt.

Yes?---Anthony Hawkings.

Yes?---And, Shane McCormack, but fluctuating between his office in the area and us.

So, on that occasion on a split screen you watched what we have been describing as the axe incident?---Correct.

The axe incident occurring involving Mr Linden Smith and also Mr Chris Hand?---Correct.

And, basically the split screen was their respective body cam footage that was displayed?  
---Correct.

So, at least by the time you'd looked at that video footage you knew that your target was Kwementyaye Walker?---Correct.

You knew because you'd seen the footage that he was potentially a very dangerous offender?---Correct.

Dangerous because he had the capacity – what I call the predisposition to violence – but he had the capacity to be violent if confronted by police in an arrest

situation?---Correct.

And, you knew that because you'd seen it actually unfold before your eyes on video?  
---Correct.

Only a couple of days before?---Correct.

Now, it's self-evident, isn't it, can I suggest, that the accessing and then subsequent deployment of an axe as seen in that particular footage could have been fatal to those police officers?---Definitely.

And indeed, they appear to be frozen, almost incapacitated as a consequence. That's what seems to emerge from the video?---Correct.

And, is that why you said in answer to a question put by my learned friend who is prosecuting that you were surprised that they didn't shoot him?---Correct.

because, your training is such that knife equals gun?---Correct.

Axe would equal gun?---Each weapon. Yep.

Each weapon?---Correct.

Because, clearly an axe in those circumstances, particularly when it's presented approximate and close and at high speed, in those circumstances your training would suggest that you could – you would be perfectly entitled to draw your weapon and if necessary, shoot him?---Correct.

At that time, that is when you were at the Alice Springs Police Station, was the only conversation about your deployment the apprehension of Kwementyaye Walker?--- That was what we were going there for. So, that was wholly and solely what we were doing. Yes.

So, that was the only discussion that it focussed around?---Correct.

So, from there you then move to Yuendumu?---Correct.

And, that takes about two and a half hours?---Correct.

And, you travel with who?---Anthony Hawkings.

Anthony Hawkings and were you – when you got to the police station was Zac Rolfe already there?---He was.

And, who was he with?---James Kirstenfeldt.

How long after they got there did you arrive, do you know?---Approximately 15 minutes.

And it is there that you meet Julie Frost, amongst others?---Correct.

Chris Hand is also there?---Correct.

And, you knew that Chris Hand was one of the two people that had been involved in the axe incident on the Wednesday?---Correct.

At that particular meeting, you had no knowledge as I understand it, of the contents of an email that had apparently been sent whilst you were in transit between Alice Springs and Yuendumu. I am referring, of course, to exhibit P1, which is the email which was produced to you earlier?---Yes. I wasn't aware of that.

And, that was never sighted by you on 9 November, was it?---No. It was not.

And, a copy, or the contents of it were not brought to your attention by Ms Frost on that particular day. That's true too, isn't it?---That is true.

And, as I understand your evidence, her contribution to assisting you in the deployment that you were about to effect was to produce a map and to identify particular houses or a house that might be the location where Kwementyaye Walker could be arrested?---Correct.

And, that was 577 that was certainly a house that was identified specifically to the group collectively?---Correct.

Was the footage played again? That's the footage of the axe incident at that particular police station?---Not that I recall.

All right. So, your recollection is that you viewed it back at Alice Springs, not at Yuendumu?---Yes.

Was there discussion, nonetheless, about the axe incident in the context of this deployment once you got to Yuendumu?---No. I didn't want to mention it because Officer Hand was present. So - - -

All right. But, it is correct, is it not, that certainly by the time you get there and when you actually leave the police station to go and try and find Kwementyaye Walker you knew a bit about him?---Correct.

You knew this: you knew that he was violent?---Yes.

You knew that he had the capacity to source a weapon?---Correct.

You knew that he was capable of deploying a weapon; a sharp-edged or an edged device or any weapon for that matter, against police?---Correct.

And so, he was probably categorised as a high-risk target?---Correct.

And, all of that was effectively the information that each member of the IRT group must have known?---That's correct.

Because of what you had been told and because of what you had seen?---Correct.

Now, I am going to play both videos in their entirety, not frame-by-frame as it happened in real life and then I am going to ask you some questions about it.

HIS HONOUR: Are you only going to play a specific part of it, or - - -

MR EDWARDSON: No. I will play it up to – from the moment they enter the house when he presents himself through – it's only relatively short, your Honour.

HIS HONOUR: All right.

MR EDWARDSON: And, we've got the one at the moment, which is Mr Rolfe's lined up, I think. So, we may as well play that in any event.

Actually, you can move forward, if you like, to where he presents himself inside the house.

DVD PLAYED

MR EDWARDSON: Just back a bit please. About there. Thank you.

DVD PLAYED

MR EDWARDSON: Can you just pause there for a moment please?

Can I just ask you a couple of questions before we move on? First of all, Bernard Dixon's obviously a false name?---Correct.

He says there, as we see in the video footage, "She's my auntie," and appears to indicate somewhere – indicate someone who is off camera. Was there somebody else visible to you at least?---There was a couple of people outside, but I wasn't focussing on them outside at the time.

All right. You don't know who they were specifically or who it was that he was referring to?---No. I do not.

Thank you.

DVD PLAYED

MR EDWARDSON: Can you pause there, please?

Now, we can't see it on the camera, but is it the case that he, at all relevant times, from that position forward until everything erupts, he had his hand inside his pocket?---He keeps going for that right-hand pocket. Correct.

He keeps going for that right-hand pocket?---Correct.

At that stage, you have no knowledge – well first of all he hadn't been identified?---No. He had not.

And, you certainly didn't know whether he had a weapon on him?---No. I did not.

And, you didn't know anything about what we now know to be scissors, until he deployed them?---Correct.

Thank you. You can play.

DVD PLAYED

MR EDWARDSON: Please pause.

So Mr Rolfe then says, "Just put your hands behind your back", and it's at that split second that all hell breaks loose basically?---Correct.

Because we now know that he is about to deploy a pair of scissors?---Correct.

Can you push play please.

MR STRICKLAND: Your Honour, sorry, could it just be – when there's a pause can we just get the time for the purpose of the transcript.

MR EDWARDSON: At 4:03, thank you.

DVD PLAYED

MR EDWARDSON: Can you pause there please.

I want to take you through the sequence. It's one thing to do it frame by frame, but that's not the way it happened, is it?---No, it's not.

It happened incredibly quickly?---It did.

The evidence establishes that there were three shots that were discharged?---Correct.

The first one I think you described as what you heard as a thud?---Correct.

A dull thud. It didn't sound or it didn't register to you as what you might call a normal gunshot?---Correct.

And you thought at that stage in your mind it was possible that – I can't remember who you said - - -?---James.

James Kirstenfeldt?---Yes.

Had discharged, what, his gun?---A bean bag shotgun, yeah.

A bean bag shotgun, and there's a short pause and then there's two more shots fired, before that first sound, that dull thud which we now know as the first shot?---Correct.

Before that happened you'd already seen at least that Kwementyaye Walker had in his right hand a weapon?---Correct.

You didn't know they were scissors?---No.

But you certainly knew that it was some sort of sharp object?---Correct.

So you knew he was armed at that stage?---Yes.

And he certainly was not complying in any way with your attempts to restrain him?---Correct.

He was resisting at all times?---Correct.

And you never actually got control of his right arm, did you?---No.

Your control and focus was on the left arm and whilst you rolled him I think, as you called it, down on to the ground and you tried to roll him over you were never able to actually get hold of his right arm?---Correct.

Now we know that two more shots are fired, even after the third shot had been discharged he was still resisting, wasn't he?---Correct.

He still had control of that weapon in his right hand?---Correct.

It had not been removed from his hand?---Correct.

And so effectively at least at that point in time the three shots had not stopped him?---Correct.

Did you receive any injuries to yourself?---I received a small scratch here straight down my left chest area.

If you could have a look at the photograph which I now produce to you.

This comes from the biomechanics report, your Honour, it's par 61 of Dr McIntosh, and if you don't mind, your Honour, because I've just pulled it from the brief, can I just get a copy of it at a convenient time.

HIS HONOUR: Sure.

MR EDWARDSON: Thank you. I'll tender it shortly.

Is that you in those photographs?---Yes.

And specifically can we see the scratch that you're talking about?---Yes.

Was that brought to your attention by any – did you know how it got there at the time?---I did not.

When was it brought to your attention?---I realised that a day later.

Right. And then you had it photographed?---Correct.

All right.

I tender that, your Honour.

HIS HONOUR: The photograph will be exhibit D14.

EXHIBIT D14 Photograph.

MR EDWARDSON: Now I want to ask you a little bit about your training. Were you trained or was it part and parcel of your training that if an offender presents him or herself with a blade or a sharp object, scissors, for example, that that a gun – in a response police can present their weapon?---A firearm?

A firearm?---Correct.

And you've told us that in the context of the axe incident you were surprised that the police didn't shoot him?---Yes, that's correct.

So it would – in that incident it would have been consistent with your training and given the magnitude of what happened, that is the presentation of an axe towards those two police officers very quickly, training would suggest that the response would have been the discharging of a firearm?---Correct.

How many times you discharge in consistent with training might depend upon whether or not one shot for example incapacitates the individual whereas if that didn't happen more shots might be justified?---Correct.



From the moment you first saw that Kwementyaye Walker had in his right hand a sharp object later to be identified as scissors that happens before the first shot?---Correct.

When we have the first – so we have the first shot and then he goes to the ground?---Correct.

As you've described?---Correct.

At that time he's still got control, as we've seen on the video, he's still got control of the scissors?---Correct.

And what did you say – were you saying anything to him in that process?---“Stop fighting.”

“Stop fighting”?---Yep.

And did he continue to fight?---Yes.

And we know that two more shots were fired?---Correct.

And was he still fighting?---Correct.

I want to take your attention to the – actually I'll play your body-cam now if may through, and then I'll just ask you a couple of questions about aspects of it. Can you have in front of you the transcript of your - - -?---body-worn video.

Yes, your body-worn video please?---I do.

From the beginning please.

DVD PLAYED

MR EDWARDSON: Can you just pause there?

Now that comment or that response which you made, “Someone shouldn't probably have” – what was it, “Chase police with an axe”?

HIS HONOUR: “Run at police with an axe.”

MR EDWARDSON: “Run at police – run at police” – thank you – “with an axe.” You were doing no more than simply explaining why it was you there in context, in the sense that you have got weapons out and about, you have been questioned about the weapon and you're really saying, “Look, someone shouldn't” ie. The person you're looking for have run at police with an axe?---Correct.

That was the motive behind that particular comment?---Correct.

MR EDWARDSON: Thank you.

Play.

DVD PLAYED

MR EDWARDSON: Could you pause that please.

Now obviously the evidence is the video itself, not the transcript, so I just need to confirm a couple of things by reference to the transcript and if need be we can replay it but hopefully that's not necessary.

Can you turn to page 3 of the transcript and in particular at about .7?

MR STRICKLAND: This is the transcript of?

MR EDWARDSON: Of the video.

MR STRICKLAND: Is it the Eberl one?

MR EDWARDSON: Yes, it is.

MR STRICKLAND: Thank you.

MR EDWARDSON: Start at .5 where as we saw in the video, Zac Rolfe says, "Okay, cool man, cool. Easy mate, easy. Just put your hands behind your back"?---Correct.

And it's immediately after that it goes off?---Correct.

You say, "Stop it mate". So you're telling him effectively not to resist?---Correct.

Did you hit him at all?---I did.

Where did you hit him?---Struck him to the side of the face and it was a distraction strike to give me the upper hand through that moment to try and effect an arrest.

And did that happen before you saw what you now know what to be scissors in his right hand?---Correct.

So then if we continue on we can see, "Shot fired", that's the dull thud that you were referring to. And then we've got subsequently the two other shots, by which stage he's gone to the ground with you?---Correct.

Now if you look at the transcript it says, you say, "Fuck around" or something like that. I assume, "Don't fuck around"?---Don't – yes, correct.

And that's again you trying to get hm to stop doing what he's doing?---Correct.

And then you say, according to the transcript, "Don't fuck around, I'll fucking smash you, mate". That's you?---Yeah, that was me, yes.

And again you're saying to him it's your way of effectively trying to get across to him that he's got to stop?---To stop resisting, yeah.

This happens after the shots have been fired?---Correct.

And as you can see Mr Rolfe says, "It's all good, he was stabbing me, he was stabbing me. It's all good, he's got scissors in his hand, he was stabbing me, he was stabbing you"?---Correct.

"He's got scissors, right, he's got scissors right here. Let go of the scissors. Let go of the scissors. Drop the scissors". So three shots have been fired and even at this late stage he's still got control of the scissors and he hasn't relinquished them?---Correct.

You say at about .4 on page 4, "Let go of the scissors". What's his response, "I'm going to kill you mob".

And that's – we can hear that, can't we, on the video?---Correct.

But even at that stage three shots had been fired at him, you haven't been able to get control of the scissors and he's saying I'm going to kill you mob?---Correct, yep.

Do you know Officer Barram?---In Darwin? Andrew Barram?

Yes?---Correct.

Did you do the same entry course with him, firearms course, I'm sorry? Firearms instructor course?---I have done a firearms instructor course, correct.

And did you do it with him or at the same time or is it the same course that he did?---I'm not sure what course Mr Barram did as far as what – which firearms course he did. But if he's done the firearms course then possibly. I did the same Glock armouries course, he was sitting there doing that, but – yeah.

So you did the same Glock. What's that involve?---It's disassembling, figuring out problems with the weapon and yeah, remedy and - - -

Separate from that is there another firearms course you did?---Yes, actually, yes.

What is that?---An instructors course. It's over five weeks where you teach – you learn to teach people how to use the different weapons.

So are you a qualified firearms instructor as a consequence of completing that course?---I am.

One last thing. I think it's self-evident. But there didn't appear to be any sort of hierarchal – I know hierarchy as between the IRT group on 9 November 2019?---Correct, yeah.

I mean was it just coincidental that it happened to be you and Mr Rolfe who went into the house at that particular point intime?---It was, yes.

In other words, the roles could have been reversed if it was a different house?---Correct.

Depending upon who presented first, if I could put it that way?---Correct.

Thank you.

Nothing further, thank you, your Honour.

HIS HONOUR: Any re-examination?

MR STRICKLAND: Yes, thank you, your Honour.

REXN BY MR STRICKLAND:

MR STRICKLAND: You were asked about injuries that you may have received during that incident?---Correct.

Do you remember you were asked a question about that in your record of interview, the long record of interview on - - -?---The second one?

The second one on 13 November 2019?---Correct.

I'll just get you to go to page 59 please?---Okay.

Top of page 59, you were asked, "Did you receive any injuries" and you said, "Not that I know of but I would have to look at my shirt, because I have a scratch here which could have been from the scissors, I don't know"?---Correct.

Is that a truthful answer?---Correct.

And do you say that the photograph that was shown to you may have come from the incident or may not have, is that right?---Yeah, I didn't recognise it before, so correct.

You didn't recognise it before, you didn't feel it at the time, is that right?---Correct. You were asked about the fact that you had control of his left hand, remember that?---Yes.

And you were asked whether you had control over his right arm, which is at the time of or around about the time of the shooting. Do you remember that?---In the statement or?

No, just in the questions by my learned friend?---Correct.

You said you didn't have control over his right arm, correct?---Correct.

But you've told earlier when I was asking you questions and you said at around that time as shown in the video you believed his right arm was under his body. That is under his - - -?---Yeah, he was on his side, he was – yes, correct.

His arm was underneath his body, that is Kwementyaye Walker's body.

MR EDWARDSON: Your Honour, I object to this. I object to in on a number of bases. One is it's not a proper basis for re-examination. Secondly, the witness is leading and he's cross-examining his own witness which he's not entitled to. And in any event, as my learned friend well knows, at page 52 of the interview with Mr Eberl, the 77 page interview, at the bottom of the page your Honour will see that Mr Eberl at that occasion gave evidence specifically about the fact that he did not have control of the right arm consistent with the evidence that he gave. So I object to this line of question.

MR STRICKLAND: Yes. Well, your Honour, I do rarely press it, but I should press it in the absence of the witness.

HIS HONOUR: Yes, all right.

Would you like to just step out for a few moments please, officer. Just wait outside the courtroom?---Sure.

And then I'll ask you to come back in a few minutes.

WITNESS WITHDREW

HIS HONOUR: Please ask the witness to return.

Officer, you're still on your oath to tell the truth. Please have a seat.

ADAM CRAIG EBERL:

HIS HONOUR: Yes, Mr Strickland, thank you.

MR STRICKLAND: Thank you.

Now you have been asked by my learned friend about when you saw – when you first were aware of the scissors in the hands of Kwementyaye Walker. Do you recall before you gave any record of interview speaking to Mr Rolfe outside the Yuendumu Police Station?

MR EDWARDSON: Well I object to this, your Honour, this isn't re-examination. You can't frame a question with "Do you recall" and then put as it were the evidence  
- - -

HIS HONOUR: I won't allow the question in that form.

MR STRICKLAND: Well if that's the case, your Honour, I'll seek to play a part – it's another person's body-worn but it's in the presence of Mr Eberl.

HIS HONOUR: Well how does it arise out of cross-examination?

MR STRICKLAND: Because, your Honour, he was cross-examined about his knowledge of when the – I'll have to put this elliptically as the witness is here. He's cross-examined about when he was aware that Kwementyaye Walker was holding the scissors, and there is a – there's a statement I wish to put to him made by him in the – that will – is relevant to that line of cross-examination.

HIS HONOUR: I'll just ask you to wait outside again for a moment, officer, please?---No worries, your Honour.

WITNESS WITHDREW

Could you ask the officer to come back in please.

ADAM EBERL:

HIS HONOUR: Yes, Mr Strickland.

MR STRICKLAND: Thank you.

Could you just play Mr Hawkings' body-worn 3 of 10 please and it's about the 11 minute mark please.

DVD PLAYED

MR STRICKLAND: Can you just pause it please? Just trying to find the part.

Yes, if you could continue please?

DVD PLAYED

MR STRICKLAND: Could you just pause it?

Could you see yourself in that part of the video?---Yep.

And you see Mr Rolfe?---Yes.

And did you speak to him?---It looked like I spoke to him, yes.

Could you hear what you said?---No.

I'll just get that back, just that part played and I'll just show you this part of the transcript please.

MR EDWARDSON: Well I object to that. The evidence is this, it's not what somebody else might have discerned from the video. He can listen to the video as many times as he likes and if he can hear and understand what he says, then so be it. But he can't use the transcript, as it were, in leading fashion to substitute what the real evidence is, which is the video.

MR STRICKLAND: Your Honour, I've used the transcript all the time. What I've done, which I continue to do with your Honour's leave, is to say – and I've said it every time, can you hear it. If you can't hear it, it's correct.

HIS HONOUR: Well we'll replay it, Mr Strickland.

MR STRICKLAND: Okay.

HIS HONOUR: From what point would you like it played?

MR STRICKLAND: Just from the part - - -

HIS HONOUR: Well have you got a time?

MR STRICKLAND: It's about – not the precise time. It's about 11:15, 11:20.

HIS HONOUR: Just take it back slightly before that.

DVD PLAYED

MR STRICKLAND: Just pause it please.

This is the bit that I was wondering – can you see yourself there?---Yes.



You're on the right-hand side?---Of Zac?

Sorry. On the - - - ?---My left.

Yes. On the right-hand side of Zac and he's on your left?---Correct.

Well, as you look at the screen, you're on the left, he's on the right?---Correct.

It's the next bit, if you can hear it please?---Okay.

DVD PLAYED

MR STRICKLAND: Pause it.

Did you hear what you said?---Not specifically. No.

Didn't hear anything?---I heard myself speak, but I couldn't ascertain what was said, specifically.

Okay?---Yep.

Do you recall speaking to him about whether you could see the scissors?

MR EDWARDSON: Well, I object to that, your Honour. That's leading. That's leading. This is not – it's – my learned friend can't do this.

MR STRICKLAND: Your Honour, it's on the tape.

MR EDWARDSON: It's not on the tape at all.

HIS HONOUR: No. It's not. It's not audible, Mr Strickland.

MR STRICKLAND: Well, I ask your Honour to notice that I heard it, but I would ask  
- - -

HIS HONOUR: Well, we can turn it up to see if - - -

MR STRICKLAND: No. I'd ask that we have the facilities so that the witness can hear it. Perhaps if there was a – if he has a microphone or an earpiece, I would ask for that to be used.

HIS HONOUR: Well, can you turn it up?

MR STRICKLAND: Your Honour, can I indicate this: if you have an earphone that concentrates the sound.

HIS HONOUR: I am not sure there is that facility on these machines, Mr Strickland. Anyway, just turn it up as loud as you can and replay it, thanks.

DVD PLAYED

MR STRICKLAND: Yes. Can you hear that?---Something about scissors and then me grabbing him.

That's all you heard?---That's all I heard in that. Yep. But, it's not specifically clear to me to give you a precise of what I've said there.

At the time before you heard the shots and you were on the ground with Kwementyaye Walker, could you actually see Kwementyaye Walker holding any scissors?

MR EDWARDSON: I object to that. I object, your Honour, because my learned friend led specifically before we had this argument and before I commenced cross-examination, he actually led from this witness the fact that he sighted an object earlier on; that is before the first shot was fired and – but at that time he couldn't identify them as scissors.

That was the evidence he gave and then re-affirmed in cross-examination.

HIS HONOUR: Yes. Thank you.

Mr Strickland.

MR STRICKLAND: Your Honour, I don't really see how that evidence is – how that evidence – and my learned friend has accurately summarised it – does not permit that question to be asked.

HIS HONOUR: I will allow you to ask the question as you have just put.

MR STRICKLAND: The court pleases.

Would you like me to repeat it?---Please.

Sure. So, I am focussing on the time before the shots were fired and you were on the ground. do you understand that?---That's incorrect. Because - - -

I haven't asked the question?---Sorry.

Sorry. Do you remember my question?---Yes. But, the statement is incorrect.

Okay. Yes. Okay. Go ahead?---You were saying, "Do you remember the shots before when I had him on the ground." Is that what your question - - -

No. No. Before the shots were fired, when you were on the ground with Mr Kwementyaye Walker, did you see the scissors in his hand?---So, there was

already one shot fired before he was on the ground. Once he was on the ground I saw the scissors once he was on the ground.

Is that the first time you saw the scissors?---Once he was on the ground. Yes.

And, was that before or after the shots?---Between them.

Between shots two and three?---No. Between shots one and two.

I see. Do you recall saying anything to Mr Rolfe about whether you could see the scissors?---I do not recall.

Thank you. Last topic. You were asked some questions about your training and whether the training was consistent with the scenario that you faced – that was faced at the time of shooting. Do you recall those questions?---(No audible response).

You were asked some questions about your training?---Yes. Yes.

When presented with a knife – when an offender presented with a knife?---Yes.

Is it the case that what you do when you're presented with a knife is very scenario specific? It depends on the precise scenario?---If someone is handing me one because they found it on the ground, I wouldn't draw my weapon. But, if someone is presenting it as a threat, then that would be the case where I would draw my firearm. That's correct.

Sure. So, whether you deploy your firearm or fire your firearm depends on the precise scenario. Is that consistent with your training?---Just give me a minute to think about that.

Yes. Sure?---In my training, when they teach you to present – it's usually with an offender with an edged weapon. So, the scenario that's given is always with an offender with an edged weapon.

Yes?---So, whether – if you're asking whether it is specific to the training to draw the firearm with each scenario, if it is an offender, not really, but if it's – if they're not an offender with an edged weapon, then it would be specific to the offender, not the - - -

If it is an offender with an edged weapon - - - ?---Correct.

- - - and you then draw your firearm, being knife means gun, does your training – is it consistent with your training that that gives you particular options – tactical options, depending upon the precise scenario?---Well, it would depend on that, because in one instance I had hold of Mr Walker. I wasn't going to release him to draw my firearm in that instance if I knew it was scissors at the time.

I'm talking about the training you receive. When you've received your training. Do you understand what I'm talking about?---(No audible response).

Not exactly?---Not exactly. No.

Okay. Well, I'll try again. I've asked, when did you receive training about what to do in front of an edged weapon?---So, it's annual training. You do – we receive it in two different sessions, both in defensive tactics and also in firearms training.

And, when you – so I'm talking about the training – when you receive such training, sometimes a scenario is presented where the offender presents an edge weapon?  
---Correct.

And, where you've decided to draw your firearm in the face of the edged weapon, that gives you – that presentation then gives you a number of options. Do you agree with that?---True.

One option is to fire. Correct?---One option is. Correct.

Another option is that can be used to deescalate the situation by forcing the offender to submit. That's another option?---Yep. Confer for direction. Correct.

And, it depends on the precise scenarios?---Correct.

Have you ever had a scenario in training equivalent to what happened to you in this situation on 9 November?---No.

Thank you.

Nothing further, thank your Honour.

HIS HONOUR: Yes. Mr Edwardson.

FXXN BY MR EDWARDSON:

MR EDWARDSON: I just want to remind you about the evidence that you gave in answer to questions by my learned friend before I started to cross-examine you. You were asked, "Could you see some sort of edged weapon" and you said you couldn't tell what it was because, "It was just some sort of edged weapon"?---Correct.

You then said the first shot was a dull bang?---Correct.

And you said you saw the edged weapon before the dull bang?---Well yes, correct.

So as I understand what you were saying in answer to my learned friend's questions a moment ago, you didn't know at that stage that he had a pair of scissors in his hand?---Correct.

That is before the first shot was fired?---Correct.

What you did know is he had something in his hand which was edged?---Correct.

It was only once you got to the ground that you were able to identify that in fact he was in possession of scissors?---Correct.

And that identification, that is precisely what was in his right hand, occurred after the second and third shots or was it between the first, second and third – sorry, between the two?---Between the first and second shot that I identified that was scissors.

So the sequence of events is this. We know that he must have secreted in his right hand what we now know to be scissors?---Correct.

Before the first shot was fired, that is before you go to the ground, you identify that he's got something in his right hand?---Correct.

An edged object?---Correct.

You go to the ground in the manner that you've described?---Correct.

And then before the second and third shots are fired you identify that what in fact he has in his hand are scissors?---Correct.

Nothing further. Thank you, your Honour.

HIS HONOUR: Thank you.

Thank you very much, officer. That completes your evidence and you may leave.

WITNESS WITHDREW