

CITATION: *Inquest into the death of Eduardo Concepcion* [2001] NTMC 25

TITLE OF COURT: Coroner's Court

JURISDICTION: Darwin

FILE NO(s): 9924736  
166/99

DELIVERED ON: 25/01/2001

DELIVERED AT: Darwin

HEARING DATE(s): 24/08/2000 - 01/09/2000

JUDGMENT OF: Mr Greg Cavanagh SM

**CATCHWORDS:**

CORONERS -- INQUEST

Death in custody - police shooting - justifiable homicide - police investigation - police general orders – possible use of non-lethal weapons.

Coroners Act 1993 (NT), s 12(1)(b), s 14(2), s 26, s27, s 34, s 35

**REPRESENTATION:**

*Counsel:*

Assisting the Coroner:	Mr Jon Tippet
Commissioner of Police	Mr Colin McDonald QC
Concepcion Family:	Mr David Dalrymple
Police Constables:	Mr John Lawrence

Judgment Category Classification: A

Judgment ID Number: [2001] NTMC 25

Number of paragraphs: 74

Number of pages: 41

IN THE CORONERS COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 9924736

In the matter of an Inquest into the death of

**EDUARDO CONCEPCION**  
**ON 29/10/1999**  
**AT 9 Ferntree Street, Nightcliff**

**FINDINGS**

(Delivered 25 January 2001)

Mr G CAVANAGH SM:

**THE NATURE AND SCOPE OF THE INQUEST**

1. On the 29<sup>th</sup> October 1999, Eduardo Concepcion (“the deceased”) died at 9 Ferntree Street, Nightcliff, Darwin in the Northern Territory. He was shot to death by Northern Territory Police officers. The address was that of a suburban home occupied by the deceased and his family. He was 26 years of age. The death occurred after members of the Northern Territory Police force, acting in the execution of their duties, had attempted to restrict his movements to a certain area of the yard with a view to talking to him. The death is properly categorised as a death in custody. The deceased was a “person held in custody” within the expanded definition of that status found in Sec 12(1)(b) and (c) of the *Coroner’s Act* (“the Act”).
2. The death is a “reportable death” which is required to be investigated by the Coroner pursuant to Sec 14(2) of the Act. Also, as a consequence of the deceased dying in custody, a mandatory public inquest must be held pursuant to Sec 15(1)(a) of the Act. A further consequence is that the scope of the inquest is governed by the provisions of sections 26, 27, 34 and 35 of

the *Coroner's Act*. It is convenient and appropriate to recite these sections in full:

“26. REPORT ON ADDITIONAL MATTERS BY CORONER

- (1) Where a coroner holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody, the coroner -
  - (a) shall investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody; and
  - (b) may investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death.
- (2) A coroner who holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody shall make such recommendations with respect to the prevention of future deaths in similar circumstances as the coroner considers to be relevant.

27. CORONER TO SEND REPORT, &C., TO ATTORNEY-GENERAL

- (1) The coroner shall cause a copy of each report and recommendation made in pursuance of section 26 to be sent without delay to the Attorney-General.
- (2) Where the Attorney-General receives under subsection (1) a report or recommendation that contains comment relating to -
  - (a) an Agency, within the meaning of the *Public Sector Employment and Management Act*, the Attorney-General shall, without delay, give to the Minister a copy of the report or recommendation; or
  - (b) a Commonwealth department or agency, the Attorney-General shall, without delay, give to the Commonwealth Minister who has the responsibility for the department or agency, a copy of the report or recommendation.

- (3) The Attorney-General shall present a copy of each report or recommendation referred to in subsection (1) to the Legislative Assembly within 6 sitting days of the Assembly after receipt by the Attorney-General of the report or recommendation.

#### 34. CORONER'S FINDINGS AND COMMENTS

- (1) A coroner investigating –
  - (a) a death shall, if possible, find –
    - (i) the identity of the deceased person;
    - (ii) the time and place of death;
    - (iii) the cause of death;
    - (iv) the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act*; and;
    - (v) any relevant circumstances concerning the death; or
  - (b) . . . . .
- (2) A coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death or disaster being investigated.
- (3) A coroner shall not, in an investigation, include in a finding or comment a statement that a person is or may be guilty of an offence.
- (4) A coroner shall ensure that the particulars referred to in subsection (1)(a)(iv) are provided to the Registrar, within the meaning of the *Births, Deaths and Marriages Registration Act*.

#### 35. CORONERS' REPORTS

- (1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

- (2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.
  - (3) A coroner shall report to the Commissioner of Police and the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act* if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.”
3. The public inquest into the death commenced on the 24<sup>th</sup> August 2000 in Darwin with the last of the evidence and final submissions on the 1<sup>st</sup> September 2000. Mr Jon Tippett appeared as Counsel assisting the Coroner. I thank him for his valuable contribution. Mr McDonald QC appeared on behalf of the Commissioner of Police, Mr David Dalrymple for the senior next of kin and family of the deceased, Mr John Lawrence for Senior Constable Gordon Hillcoat and Constable Allan MacDonald.
4. Twenty-one witnesses were called to give evidence during the Inquest. All of the eye witnesses to the shooting were called to give evidence. The Police officers directly involved in the shooting (Constable Hillcoat and MacDonald) were in attendance during the several days of the inquest as were the family of the deceased. In addition to their evidence, some sixty statements from witnesses and family members were admitted into evidence.

### **CORONER’S FORMAL FINDINGS**

5. Pursuant to Section 34 of the Act, I find, as a result of evidence adduced at the Public Inquest as follows:
  - (i) The identity of the deceased person was Eduardo Concepcion also known as Edward Concepcion, born on 18 October 1973 in the Philippines who was living at 9 Ferntree Street, Nightcliff, Darwin.

- (ii) The time and place of death was at 9 Ferntree Street, Nightcliff, Darwin at about 8:47 am on 29 October 1999.
- (iii) The cause of death was multiple gunshot wounds with the mode of death likely to have involved a combination of blood loss and breathing impairment. Death rapidly followed the gunshot wounds which were four in number comprising:
  - (a) A gunshot wound in the left side of the neck;
  - (b) A gunshot wound in the upper chest;
  - (c) A gunshot wound to the right flank;
  - (d) A gunshot wound to the right thigh.
- (iv) Particulars required to register death:
  - 1. The deceased was a male.
  - 2. The deceased name was Eduardo Concepcion.
  - 3. The deceased was an Australian resident of Philippine origin.
  - 4. The cause of death was reported to the Coroner.
  - 5. The cause of death was confirmed by post-mortem examination and was multiple gunshot wounds.
  - 6. The pathologist was Dr Michael Zillman of Royal Darwin Hospital.
  - 7. The deceased's Mother was Teresita Finch.
  - 8. The deceased's usual address was, 9 Ferntree Street, Nightcliff, Darwin.

9. The deceased's usual occupation was, taxi driver and service station attendant.
10. The deceased was married to Evelyn Ocampo.
11. The deceased was aged 26 years and born on 18 October 1973.

## **RELEVANT CIRCUMSTANCES CONCERNING DEATH INCLUDING REPORTS AND RECOMMENDATIONS**

### **(a) The Man**

6. The evidence established that the deceased lived with his wife and extended family at 9 Ferntree Street, Nightcliff. He married Evelyn Ocampo in November 1998 and in the months prior to the death their marriage had been experiencing some difficulties. Evelyn was eight months pregnant at the time of the shooting. At the time of his death the deceased enjoyed a good reputation and was loved and cherished by his family. Although it is to be noted that people close to him had noticed that in the period prior to his death he had become aggressive, "cranky" and somewhat unapproachable.
7. The deceased was born in the Philippines. His father died when the deceased was three years of age. The family immigrated to Australia in 1984 and took up residence in Darwin. The deceased was educated in Darwin and attended Casuarina High School. After leaving school the deceased worked mainly in unskilled employment; working as a service station attendant, storeman, taxi driver and landscaper.
8. The deceased had a particular interest in body building and he was a regular attender at a gym. Evidence from his wife established that over approximately two years prior to his death the deceased had been injecting himself with steroids. The evidence disclosed photographs of syringes in the house of the deceased which I would infer were for use by the deceased in this regard. An analysis of pathology specimens collected from the body of the deceased at autopsy revealed the presence of Stanozol in the body of

the deceased at the time of death. Stanazol is a steroid. Also at the time of death the deceased had been having physical problems with his right knee and had been using a large amount of prescription drugs to relieve pain. The deceased was a person of impressive muscular build. I infer that he would have appeared to any person confronting him to be a person capable of exhibiting significant physical strength.

9. The evidence also established that in 1997, the deceased had attended at Royal Darwin Hospital and received treatment in respect of Mental Health problems. He was not admitted into the Mental Health ward at this time. This fact possibly explains why Police who sought information regarding his psychiatric history in the minutes before they attended at the Ferntree Street home on the morning of the shooting were advised that there was no record that he had been in the psychiatric ward at the Royal Darwin Hospital. Apparently in 1997 the deceased had become depressed over financial matters, and had attempted to cut his throat with a piece of broken glass. In the period immediately prior to the shooting the deceased was apparently exhibiting similar self harming behaviour. Indeed, Counsel Assisting me at the Inquest suggested the behaviour of the deceased in not taking any notice of police warnings they would shoot him could possibly be construed as an invitation by him for just that to happen. This remains speculation as there was insufficient evidence one way or the other in this regard. The evidence from the family indicates that the deceased was deeply troubled in the days prior to his death, however, the evidence did not disclose the reason for this. The evidence from the family does establish that on Tuesday 26 October the deceased arrived home and was, in the opinion of his wife affected by an unidentified drug. There was argument between husband and wife, after which the deceased ingested an amount of prescription medication believed to be sleeping tablets. During the argument between husband and wife the deceased had become distraught and told his wife that he wanted to die. He eventually went to bed.

10. On the morning of Wednesday 27 October Evelyn Concepcion was unable to wake her husband. She called the St John Ambulance Service. Paramedics, Domenic Porcelli and Matthew Davis attended at the family home at 10am. Evelyn requested that the ambulance officers take the deceased with them as she could not handle him. While in the deceased's bedroom the paramedics located two empty packets of "mogodons". It was determined that the deceased may have taken between 10 and 15 of those tablets over the preceding twelve hours. In the course of treating and moving the deceased he became aggressive towards the paramedics. After determining that the deceased was not in danger the ambulance officers left the premises. The deceased then slept all that day and night.
  
11. On Thursday 28 October 1999 the deceased became distraught and attempted to break glass with the apparent intention of slashing his wrists. His wife prevented the potentially harmful behaviour and removed all sharp instruments from their bedroom. Later the deceased engaged in what appears to be self destructive behaviour by striking the walls of the room with his head and fists. The evidence supports the conclusion that he did not suffer any significant harm as a result of the activity. At 5.20pm Evelyn Concepcion called the police. She stated that her husband was attempting to kill himself and she could no longer deal with him. Constable Anne Lahey in communications checked the police computer files for relevant alerts. She also checked the Cowdy Ward (psychiatric Ward) at the Royal Darwin Hospital but there was no record of the deceased. Police Constables Harris and McGarvie attended at the residence. They in turn called the St Johns Ambulance to 9 Ferntree Street. The deceased denied that he harboured any ideas of suicide. The drugs found were legitimately possessed by him. The officers advised Evelyn Concepcion that nothing could be done and advised that if she had any further concerns she should contact her family doctor. Constable Harris told the Inquiry that he did not have any power to remove the deceased from his home against his will. Indeed the Constable did not

consider that the deceased was either mentally ill or mentally disturbed at the time he spoke to him. In those circumstances the officer did not have power to apprehend the deceased pursuant to the provisions of Section 163 of the Mental Health and Related Services Act. It is to be noted that Constable Harris did refer Evelyn Concepcion to her family doctor, Dr Aralar (who does have power to involuntarily admit a patient he believes falls with the criteria for involuntary admission as set out in Section 14 of the aforementioned Act.)

**(b) The Shooting**

12. At about 7.00am on 29 October the deceased left his room and went out into the rear yard of the house. His wife followed him. His mental condition and his physical condition at that time are not clear. Observations later made by witnesses to the effect that the deceased was “staggering”, swaying from side to side, like “either totally absolutely drunk” would suggest that the deceased was affected in some way by an intoxicating substance or substances. The deceased was acting abnormally.
13. The deceased wife tended to his needs. She brought water for him to drink and some rice for breakfast. The deceased told her to leave him alone. She found him at one stage with a rope around his neck in an apparent attempt to hang himself. He wanted the keys to his motor vehicle. Evelyn refused to give them to him. She washed him down with the garden hose in an attempt to relieve the effects of drugs she believed the deceased had consumed. The deceased then walked over to an area where he kept his tools.
14. Patrocinio Ocampo (the father-in-law of the deceased) attempted to talk to the deceased. Evelyn was taken from the area by her mother and returned to the house. Later Patrocinio returned to the house. The evidence is that the doors to the house were locked at that time. Later Mr Ocampo again left the house. It was he who met the police at the front gate and restrained a dog

that was roaming free in the yard while the police entered the premises. It is important to observe that the evidence of Evelyn Concepcion was that she had tried to get the axe from the deceased but she was “scared he might hit me, so I backed away and started screaming”. While her evidence in the witness box was to the effect that she was concerned about her pregnancy and not an attack by the deceased, in my view it is clear that the members of the household held fears for one another’s safety. The fact that the doors to the house were locked prior to the arrival of police is confirmatory of that fact. The urgent and frantic calls to police by the deceased’s wife and mother-in-law Mrs Dinga Ocampo underscore the fears held by the occupants of the house. In the words of Mrs Ocampo “please bring the police over here, he got an axe.”

15. Evelyn Concepcion, the wife of the deceased gave evidence at the Inquest to the effect that she was scared of her husband’s actions on the morning of his death because she was pregnant. She told me that she was not scared that he would actually deliberately hit her, however, it is to be noted that she did not deny saying to the Police on the telephone that morning, “get the fucking Police here now before he hurts someone. Alright”. The tape recording of this telephone conversation reveals Mrs Concepcion apparently hysterical and frightened, in my view.
16. Three "000 calls" were received by police communications. The first was at 8.35am made by a neighbour Ms Gail Lidden who resides at 10 Ferntree Street. Her home is directly across the road from the deceased's residence. She told the police operator that "There's a woman screaming and a man's got an axe and I don't know what happened". She also advised that the police were there the day before.
17. A minute after the first call at 8.36am police communications was contacted by Dinga Ocampo, the mother-in-law of the deceased. She advised "... the husband of my daughter is kind of, what do you call this, he got the axe and

he is been axing all the things around (sic)". She went on to say "He's going crazy now". Further she said "but he taking something last night". The third caller appears to be Mrs Concepcion. She contacted police immediately after her mother.

18. Casuarina Police Station was advised of the calls and three mobile units responded. Mobile unit 411 was occupied by First Class Constable Gordon Hillcoat and Constable Katrina Heath. Mobile unit 414 was occupied by Constable Alan MacDonald and Constable Colin Ragg and Mobile unit 220 by Constable Paul Terawsky.
19. On route the units were advised that the subjects name was Eddie Concepcion, that he was outside the dwelling, that he had taken alcohol or sleeping tablets two days before and that police had attended the address the day before. Heath told investigators that while still in the muster room before departing for the premises she was advised that there was a man armed with an axe at 9 Ferntree Street. Terawsky said in his early statement made on 30 October that he attended in response to a report of a man with an axe. Ragg told investigators that he had been advised that there was a "man with an axe in his hand" and that subsequently he informed the officers in the muster room of that fact.
20. The units arrived at 9 Ferntree Street at almost the same time. Hillcoat and Heath were in the lead vehicle. Terawsky was the last to get there. The police officers immediately approached the front gate of the residence. The house is surrounded by a high cyclone mesh fence. The gate is a double gate approximately 2 metres high. It was opened by Mr Patrocino Ocampo. A large dog was roaming free behind the gate. Mr Patrocino Ocampo was spoken to. He could not remember if he opened the gate or police did. Hillcoat became aware of persons in the house due to sounds of female crying emanating from it. Mr Ocampo continued to converse with police.

21. Hillcoat briefly engaged Patrocino Ocampo in conversation. The entire contents of that conversation is not clear. He did inform police that he believed his son-in-law was affected by drugs. Hillcoat told investigators that there was a reference to drugs. As the situation began to "escalate" Mr Ocampo was directed to return to the house. Constable Hillcoat then approached the deceased. Officer MacDonald approached also slightly behind Hillcoat.
22. Mr Ocampo may well have mentioned to Constable Hillcoat the need in his opinion for a police negotiator. Hillcoat does not recall all the words of the conversation. Hillcoat was concerned about establishing contact with the deceased, containing the situation, and the safety of persons involved. There was no siege situation at that time. In my view it was not unreasonable for Hillcoat to seek out and talk to the deceased with a view to persuading him to calm down and drop the axe. A "stand-off" situation had at the time not developed.
23. Hillcoat maintained what is described as a reactionary gap of about 8 to 10 metres and endeavoured to engage the deceased in conversation. He asked the deceased on a number of occasions "What's wrong? Put the axe down and tell me what's wrong." The deceased remained unresponsive to the questioning. He held the axe down low. The axe head was near the ground. He then walked further into the back of the yard. There was no eye contact or reaction from him. He began to wander around in small circles. Officers Ragg and Heath moved back around the front of the house and down the left side into the rear yard.
24. Hillcoat followed the deceased maintaining the reactionary gap. Hillcoat continued to try to engage the deceased in dialogue but without success. The dialogue was maintained in quiet tones. The officers were unsuccessful in eliciting a response from the deceased. During the advance of the others into the yard Terawsky remained in the area of the front gate. The deceased

then, for no apparent reason began to move towards police and in the direction of the front gate. Terawsky ordered Mr Ocampo into the house.

25. The advance of the deceased was at first a walk. The tone of the police conversation changed to firm loud orders that the deceased put down the axe. As he moved back up the yard the deceased raised the axe holding it in the port position across his chest. His move caused the police officers to fall back. As the deceased advanced Hillcoat drew his pistol. Each police officer was armed with a standard issue "Glock" pistol in addition to a baton and handcuffs. The deceased was told to put down the axe or they would shoot. The loud commands of police to put down the weapon were overheard by nearly all the eye witnesses. The command was given on a number of occasions. Equally the threat that if the deceased did not respond to the command he would be shot was overheard by most if not all the eye witnesses.
26. Once Hillcoat had drawn his pistol in the words of Constable Ragg "...at that point of time the whole person's demeanour totally changed, he became very aggressive, he started shouting "so you're going to shoot me, come on shoot me, come on shoot me". Mr Ocampo stated that the deceased's responses also included the word "motherfucker". The deceased then began to move more swiftly towards Hillcoat who retreated up the backyard of the house to an area in which there was a small clump of palms and two wheelie bins.
27. The front gate through which police entered the yard had been closed. As the deceased advanced in the direction of the gate Constable Terawsky observed that unless it was opened the police would have difficulty disengaging from him. He went and opened the gate but by then Hillcoat had become cornered.
28. The deceased advanced over a distance of some 28 metres in a matter of approximately 20 seconds, carrying the axe. The axe was tendered in evidence; it is large, heavy and long-handled. It is obviously capable of

delivering a mortal wound in one blow from a strong man (which the deceased was). Hillcoat had fallen back to a position that prevented him from disengaging. At that point when the deceased was approximately 3 or 4 metres distant from Hillcoat the officer fired his pistol twice. By the time Constable Hillcoat discharged his firearm the deceased had come well within the safe "reactionary gap" of 8 to 10 metres from him. He observed that at least one round hit the deceased in the chest. Almost simultaneously MacDonald, who had been moving back towards the fence line along with Hillcoat fired three rounds two of which struck Edward Concepcion. The deceased fell forwards to the ground. He remained in the position he fell. Hillcoat moved forward and kicked the axe away from his reach. The ambulance had been called almost immediately the shots had been fired. The deceased was pronounced dead on the arrival of the paramedics and his body was left in situ for forensic examination. The whole incident took place over a period of no more than 5 minutes.

29. Ms Gail Lidden, a neighbour of the deceased gave evidence at the Inquest. She was an eye witness to the Police arrival and the shooting. I found her to be a mature, objective and reliable witness. She also telephoned the Police (as did, of course, family members inside the house) requesting their assistance. I quote her evidence in this regard (page 81 & 82):

“Now tell us, I understand that you were first attracted to events unfolding at 9 Ferntree Street by some loud cries or – that you heard there, is that correct, or heard coming from that place?---The first – that’s right, the first that I heard were very, very severe screams of distress. Very – bloodcurdling screams of distress.

And as a result of hearing those, did you then telephone the police?--  
-First – I had someone with me inside the house when I could hear it and I went out into the drive to see what was there and then – then I came back inside and telephoned the police, yes.

And what – when you went out to the drive to see what was there, was there anything in particular that caused you to take that additional step of telephoning the police at that stage?---The – the – the severe screams had gone on for a while. I – at first I didn’t pay

much attention and they'd gone on for a while, then I went out. By the time I went out into the drive and looked straight across, there was – a man had – had arms around a woman, pulling her on a backward sort of direction and the man- they were facing a man with an axe.

THE CORONER: You say at one stage when you went out there early on – thank you, Mr Tippett – that you saw the deceased with the axe and I think you used the word, 'looked pretty scary'?---When – when I first went out, the screams as I said had changed in tone - -

Yes?---They were now cries of more, 'no' and 'don't', that – they were actually words as opposed to the screams previously. Again it was a moving scene. Someone was taking the woman in a backwards motion which looked to me to be protective and the man with the axe looked fairly scary, yes."

30. Ms Lidden saw the Police arrive and the relevant events unfold. She gave a full and detailed statement and subjected herself to interrogation on the day of the shooting despite being upset at what had occurred. She recalled the Police ordering the deceased on several occasions to desist from approaching them with the axe. She remembered the Police backing fast away from the deceased who was coming towards Hillcoat. I quote from the transcript (page 88):

"Am I right in saying you can't, in your memory now, really distinguish what the words were in any particular (inaudible)?---I can distinguish words like – I remember, you know, 'no', 'don't', 'just put it', 'drop it', words like that. And screaming back from the man who was coming with the axe, just words, not – not – not sentences."

31. Ms Lidden left me in no doubt that she thought that the Police were endeavouring to avoid the confrontation that had developed. She told me (page 94 & 95):

"And was it the case, Ms Lidden – I gleaned from your statement and your evidence, that by the time the police arrived, the situation was less alarming than the one you'd previously seen and heard, which led you to call the police?---Yes.

However, it was still alarming to the extent because the gentleman still had an axe in his hand?---that was why I – I wanted to tell the

police he still had the axe, because I – felt that if they walked in and didn't know the man had an axe - - -

Yes?---It – it – just because it was quiet, the man had an axe and I needed to just tell them that and then I felt that they would be cautious.

Yes. Thank you. And you then heard the police approach the man and a few things said through the gate; 'hey mate' was one of them?--Yes.

And you understood from what you then had heard, that the police had approached them and the situation was calming down, defusing?--Yes.

And can I ask, Ms Lidden, did you expect the police to do that, bearing in mind what you'd seen and heard and why you'd called them; did you expect them to have a go at defusing that situation?---Well, they – they – I felt they acted very well, considering everything was quiet. I – I – personal observation, I – they didn't aggravate the situation, if that's what you- you mean. I – I thought the situation was quiet and they also were very quiet, even though I'd heard sirens previously, there were no sirens in the street, there was nothing – everything was done very calmly and quietly and that was why I was happily – went away and just thought it was a domestic dispute and thought they would - - -“

32. Various other civilian eye witnesses who were in the street on the morning of the shooting also gave evidence which was not inconsistent with that of Ms Lidden's . One of these witnesses, Mr Peter Mitchell said in evidence (page 126):

“Your first attention to this house was, I think you used the word, commotion that you actually heard coming from it?---Yes.

That included a female screaming?---Yes, I – I heard the raised voice of a female, yes, and there was a light ganging going on.

At that stage did you consider there was some kind of domestic going on in the household?---I thought so, yes.

So it didn't surprise you that the police arrived shortly thereafter?---No.

You had a squiz at what the police did?--- I had a squiz to see the vehicles arriving or, you know, after the vehicles had arrived and then found the police on the footpath, yes.

You saw the police enter the premises and speak to the persons in the yard?---Yes.

What you saw was in your opinion an appropriate reasonable approach by the police at that stage?---I believe so, yes.

You considered at that stage that in fact the situation had been defused to the extent that you ceased squizzing and you went back to what you were doing?---That's right, yes.

Only to be interrupted later by the noise that you heard coming from the yard?---Yes.

That's when you made the observations that you did, including police officers with their revolvers?---That's right."

33. Another civilian eye witness, Mr Steven Valentine also gave evidence (page 132):

"I think at one stage you say that – page 10 – that Mr Concepcion was saying things like: 'shoot me then, shoot me'?---Yes.

In relation to the words that the police were saying, was the general gist of what they were saying as it that they were asking him to drop the axe?---Yes – they were telling him to stop, drop the axe. They warned him they will shoot.

Just that last part, how definite are you about that ?---Sorry?

How definite are you about that last bit about them saying – you've said that you heard Mr Concepcion talking – using the word shoot – 'shoot me', and so?---Yes.

Are you 100 percent sure that the police also gave a warning to that effect that (inaudible)?---Yes, they did because they said, you know, 'drop the axe or we will shoot you', and he retaliated to that by saying, you know, 'shoot me then, I don't care', sort of thing."

and (page 134, 135 & 136):

“Now, the next thing you saw was a bald headed officer running backwards into your line of view from the back yard?---Yes.

He was yelling to a person whom you recognised as from next door?---Yes.

He was yelling to him to put the axe down?---Yes, correct.

He was telling him to put the axe down, repeatedly?---Yes.

His commands were clear?---Yes.

You understood, from your position in your house, what the police officer was saying?---Yes, I did.

There was no shadow of a doubt in your mind that the officer wanted the fellow to stop, put the axe down?---Yes.

Now, the movement - at one point you saw the officer, the bald headed officer, coming into view, did you then see the deceased come into view?---Yes, correct, yes.

Was the movement then of the officer, the bald headed officer, consistently move quickly backwards?---Yes, he consistently was backtracking.

You described in your statement, at page 10.1 - this is of the deceased: `and he was charging'?---Yes.

Was he consistently charging towards the bald headed officer?---Yes, he was.

From your recollection, as he was charging he was looking at the bald headed officer?---Yes.

And holding the axe in the position you've described to the Coroner, just before? ---Yes, that's right.

The deceased person seemed to be, at that time as you saw him charging towards the officer and the officer is heading backwards, he seemed to be aggressive? ---Yes.

The deceased seemed to be angry?---Yes, that's correct.

And he was, in effect, saying words that you have heard - you didn't hear all of what the deceased was saying?---No.

But he was demanding 'shoot me then', words to that effect?---Yes.

Did you see the bald headed officer halt near the front gate, near the wheelie bins?---Yes.

This was very close up on the fence?---Yes, his back towards the fence, yes.

Did you see the deceased man with the axe still charging towards him?---Yes.

Was it in this vicinity that you heard the bald headed officer - or you heard police say: 'stop or I'll shoot'?---Yes.

That was a few times?---Yes - as he was going back he - yes, he said it a few times.

That's up closer to the front of the yard?---Yes.

After he came into your view?---Yes.

He kept saying: 'put the axe down or I'll shoot'?---Yes.

Did the fellow stop charging?---No, he didn't.

From the time that you saw the officer come into view - that's the bald headed officer - to the time you heard and saw shots fired, did that happen very quickly?---Yes, a matter of seconds really.

I want you to go back to what you saw. Did you recall, as you saw that bald headed officer retreating up the yard, did he, to your observation, have his eyes on the man with the axe?---Yes.

As he was going back to the point on the fence did he keep his eyes on the man with the axe?---He consistently had his eyes on the man with the axe, but he knew he was up against - you know, towards the fence so he might have glanced back to see, you know, where he was going towards because he had his back to it.

But your recollection is that he kept a - - -?---He had a consistent look, yes.

Now, at this time were you aware of where the other officers were?---Yes, I recall another one being on the other side towards the cars coming across.

When the first shot was fired, about what distance was the officer, the bald headed officer, from the man who was charging with the axe?---Say about one and a half metres to two and a half metres, just small distance.

Was it apparent to you that the man with the axe was ignoring those clear verbal commands?---Yes, he was quite unresponsive.

Did the man with the axe, as he was charging towards the officer, continue to seem aggressive up to the time of the first shot?---Yes, he did.

You heard the man swearing at police?---Yes, that's correct.

You heard rapid fire?---Yes.

And the man fell forward?---Yes, fell on his chest.”

34. One of the Police eye witnesses (Terawsky) told me that in his view there was no need for a mediator to be called when the Police arrived (page 161):

“Yes, I – obviously it would’ve been but I think, bearing in mind in these circumstances we didn’t know that, and on arrival he wasn’t showing any outward signs of aggression or violence or threats. In my mind it was reasonable for the members to go in and try and engage him in some sort of conversation.”

35. A siege situation or a stand off had not developed when Hillcoat went down to the back yard to talk to the deceased. In my view, it was reasonable for him to do so without calling in a negotiator or mediator at that stage. It is true to say that other options, eg. standing back, awaiting developments, calling in mediators, leaving the deceased to his own devices, may not have lead to the death, however, Constable Hillcoat did not have the benefit of hindsight at the time he did what he did. In my view it was reasonable, and in accordance with training and Police practice, for him to attempt to talk to the deceased in the first instance. In all the circumstances, I reject the submission of Mr Dalrymple that Constable Hillcoat made a gross error of judgment in this regard. In Hindsight, even Constable Hillcoat concedes that he might have made a different decision, but that is with the benefit of

hindsight. He was not to know that the situation would suddenly and dramatically change with the deceased without warning advancing in an aggressive fashion. Constable Terawsky told me (page 168, 169 & 170):

“When he was initially speaking to the man with the axe, what was the tone and manner of Hillcoat's conversation?---Was very calming, reassuring, obviously trying to negotiate with this gentleman and get him to talk to us.

You were familiar with that tone and manner of conversation?---That's right, he'd - it was basically the tone that you'd use when you were talking to someone trying to get them to calm down and talk to you; it was very calming, reassuring.

Whilst you were engaged talking to the person who you thought was the father, was Officer Hillcoat still talking in that similar manner to the man with the axe?---I couldn't hear anything specifically they was saying, but the tone of voice was the same and the mannerisms were the same.

Then you say that you heard a shout from Hillcoat?---That's right.

From that point things happened very quickly?---That's right.

Was there a consistent retreat by Hillcoat and an advance by the man with the axe? ---From what I saw there was, yes.

From that point were there clear and loud verbal commands in a different tone? ---There were, very clear -(inaudible) a word yelling out quite loudly. As I said before it was just a continuous stream of verbalising, 'get back, put it down, get back', that sort of thing.

In relation to the man who you thought was the man with the axe's father, did you give him any direction?---As soon as I heard the shouting and saw the members falling back and the deceased coming forward I just turned and said: 'go, get back'.

Now they fell back, were their firearms drawn?---They were.

Were they in guard position?---They were.

Could you demonstrate to the Coroner, please, what you mean by guard position? ---It was basically a shooting position that points to the ground at about 45 degrees.

And was the movement of Hillcoat, from the time that you saw him first retreating, was it continuous?---Yes.

Was the movement of the man with the axe continuous?---Yes.

What are you able to say about the speed of the movement?---It seemed to be a fast walk.

Where was the man with the axe looking?---Directly at Hillcoat.

Where was Officer Hillcoat looking?---Directly at the deceased.

At any time did you see Officer Hillcoat vary his - where he was looking from the man with the axe?---No.

Are you able to describe this period when this movement of the - forward movement of the man with the axe, his demeanor?---When I had initial - I initially sighted him he seemed quite aggressive. My biggest recollection is seeing he didn't have a shirt on and I remember seeing the axe a bit higher across his chest and his chest muscles and arm muscles were really tense, very very tense. They were - he was really holding on tight; it seemed a very - it just struck me that it was very aggressive and the thought came to me that if we had to fight him or wrestle him or whatever, that we have a real problem.

At this point did you regard the situation as serious?---Yes.

When - were you looking at Officer Hillcoat and the man with the axe when the first shot was fired?---I - when the first shot was fired was when I - I'd gotten back to the gate, opened it and turned; I considered calling Hillcoat over and realised that it wasn't a good idea to detract his attention towards me. When the shots were fired I glanced across at the deceased and then when the shots were fired I just reflectively looked across at members.

I think you gave the distance to the Coroner in answer to questions from counsel earlier was about 2 and a half to 3 metres?---That's right.

When the first shot was fired what was your state of mind?---I was shocked. When I looked across at Hillcoat just before he fired and having - having glanced at the deceased it was - I - I felt a real fear thinking that he left it too late and he wasn't going to fire. It seemed to me that the situation had really gotten - deteriorated really badly

and - and that Hillcoat was - had gone back about as far as he could and I - I suppose I felt a bolt of fear that he wasn't going to fire.

Was the man with the axe still advancing at the time of the first shot?---He was.

Still had hold of the axe?---From what I remember, yes.”

36. I accept this evidence and I further except his evidence (page 172 & 173):

“I think you said to Mr Tippett that you - to the effect you thought it was reasonable for the officers, in particular Hillcoat and MacDonald, to seek to talk to this fellow further?---That's right.

Why was that?---Only because when we arrived he wasn't showing any outward signs of aggression towards us or anybody else. He - he was quiet. He seemed tense, but he wasn't showing any threats or aggression towards the members. I guess if he had've initially when he first saw us, sort of said - you know, reacted to our presence and became violent towards us, that would've been a bit of a - a different situation to what we had was where he was just basically walking away. And really that first contact I - when I wasn't in - I don't know what Constable Hillcoat was thinking, but to my mind it - it was worth trying to establish a little bit more contact before, if necessary, dealing with calling out negotiators or TRG or whatever.

You thought that this was still reasonable to make an assessment?---That's right. We'd only been there for less than a minute when he started walking away.

It was your expectation that the event would be diffused?---That's right.

Was it your intention then to provide a further `sit rep' to the communications section once that further assessment had been made?---That's right.

But unfortunately things turned bad, in your words, unexpectedly?---That's right.”

37. Constables Heath and Ragg also gave evidence. They were eye witnesses to the events on the morning and their evidence was consistent with that of Constable Terawsky and all of the other civilian witness and also with that of the two Police officers who shot the deceased. Constables Hillcoat and

MacDonald gave evidence before me. Constable Hillcoat was the officer in charge at the time of the shooting. I found him to an honest and reliable witness, I accept his evidence. He told me (page 282):

“What were your intentions when you left Casuarina Police Station that morning ?---To arrive at the scene as soon as possible and deal with the problem.

What did Heath do on the way to the address?---She was operating the radio and she directed me with the road map.

How long did it take you to get there?---Approximately three to four minutes.

What information, if any did you receive from Communications on the way there?---The information that we received was the fact that there was a man with an axe. He was acting in a threatening manner. We were informed that he had on the previous night or the previous couple of days had possibly been taking drugs and he may be suicidal.”

38. And he went on to tell me of his arrival and conversation with the father-in-law of the deceased. He told me he had seen the deceased with an axe. He said (page 284):

“To what effect?---Well, I took control of the situation.

What did you do next?---I attempted to approach – well, I did approach the deceased and attempted to engage him in conversation.

What were your intentions by doing that?---Well, my sole intention was to get him to put the axe down.”

and went on to say (page 288, 289 & 290):

“What happened next?---I continued to attempt to verbalise with him and within a matter of seconds the situation changed dramatically.

What happened?---All of a sudden, eye contact. The position of the axe changed and he started shouting, yelling at me and advancing towards me.

As best you can, then?---I said 'Stop, police. Put the weapon down. Get back.' 'Stop, police', 'Stop or I'll shoot', 'Put the weapon down, put the weapon down'.

And can you tell the court what volume your voice was when you issued those directions?---Very loud.

When you got to the place where you stopped, what was the deceased doing after you stopped?---He was still advancing.

And what were you doing when you were stationary at the stage in the incident?---I took aim at his centre mass.

Yes?---And continued to verbalise.

In the same way that you've just told us?---In the same manner, yes.

And he continued to advance?---Yes.

How did you feel at that stage prior to discharging the pistol?---Well, it was becoming very obvious that I'm going to effect that level of force.

Why was that?---It was plainly obvious to me that if I hadn't then I would die."

39. Mr Dalrymple, Counsel for the family, put the use of other options to Constable Hillcoat who replied as follows (page 303):

"Well, once again, wouldn't it have been more appropriate then if you wanted to isolate him from the family to - rather than dealing directly with him physically to have located all the possible entrances of the house and guarded them?---No.

No. Why's that?---Safety first.

Who's safety?--The family's safety, the safety of members, the safety of the deceased. The first point of concern as far as I was concerned was to contain the situation, safety first. Once we'd done that, then we could think of other options.

Yes, I understand what you're saying about containing the situation but wouldn't the situation have been effectively contained if, while the deceased is by himself near the tree, you had secured all the entrances to the house? Wouldn't that have effectively contained the

situation?--It possibly would have, but in doing so I possibly would have lost sight of the deceased. I acted under what I thought was the best thing to do at that time which was to remain in full view, as far as I was concerned, keep the line of sight to the deceased. I wanted to know what he was doing at all times. And this was the most effective way of doing that.”

40. Constable MacDonald gave evidence not inconsistent with that of Hillcoat and all of the other eye witness (although there were some differences in their memory). He told me of the “dramatic escalation” caused by the deceased suddenly moving towards Constable Hillcoat. He went on to say in relation to himself firing his weapon (page 329):

“Okay, What happened next?---As I emerged from that vehicle, because of the close proximity the deceased was to Constable Hillcoat, I raised my weapon and aimed it at the deceased. Unfortunately, it – it really got to a point where he was so close that I was under the direct impression that Constable Hillcoat was going to suffer serious injury or even worse, be killed. So at that stage, I discharged my weapon.”

41. Both officers rejected as impracticable the firing of warning shots. In this regard I note the evidence of the father-in-law (Mr Patrocino Ocampo) who told me that in his view there were other options available to the Police (short of actually shooting the deceased). He talked of the use of non-lethal weapons, using different methods to avoid the oncoming and obviously hostile deceased. He talked of defensive tactics short of shooting. He told me of his experience in the Philippines and of the possible use of nets, and the possible use of anything the Police could lay their hands on to immobilise the deceased short of shooting him. In my view, whatever the list in hindsight of options are, the actions of Hillcoat and MacDonald in drawing their pistols and ordering the approaching deceased to drop the axe were not unreasonable. The option taken by the police officers resulted in the tragic death, however, it must be conceded, that other options suggested by Mr Ocampo and counsel for the family, may not necessarily have resulted in any different outcome. Indeed, perhaps no harm to anyone may have

resulted, or a worse result might have happened such as death or harm to more than one person. We shall never know. Mr Ocampo conceded that he locked the house when he discovered his son-in-law in the back yard with an axe, as a precaution in case of danger from the deceased.

42. Sergeant Gregory Hanson of the “Operational Safety and Tactics Training Unit” of the Northern Territory Police Force told me (page 221):

“Can you tell us why is that so? Why do you aim – for example, why don’t you aim at a person’s knee or maybe their shoulder or what have you, a part of their body that may not lead to immediate death?--Well, shooting to wound is what you’re talking about. It’s a very difficult thing to achieve to get the person to stop doing what they’re apparently doing. If you don’t have the grounds to immediately incapacitate them then why are you shooting at them at all? If you shoot to wound it’s very unlikely that it’s going to stop the person. Most people who are gunshot victims report a surprise that it didn’t hurt. Pain is not a factor in most shooting incidents. There’s many many issues, many, you know, studies been done on this by prominent physicians about why the pain doesn’t – and I don’t – I’m not a physician so I can’t explain that. But shooting to cause pain and therefore pain compliance, doesn’t occur because there’s no pain. If you miss because of an arm or a leg is a fairly small target compared to the torso, where is that bullet going to go? I’m also a range inspector for the Northern Territory, a bullet that strikes a ricochet inducing surface within 30 metres of the muzzle, and travel at an angle of up to 45 degrees and can travel as far as that bullet would have gone in free flight from the muzzle. So a handgun round can travel up to 1500 metres and be quite dangerous. So apart from not stopping a person, where is the bullet going? Also if it – if it – even if it hit a limb such as an arm, it’s unlikely that a handgun round is going to be stopped inside the arm and it will still have considerable energy on the other side, again, where’s the bullet going to go?”

43. Given the muscular stature of the deceased and his obvious determination to close with Constable Hillcoat, I can appreciate the futility of the use of batons in the circumstances. Furthermore, I accept the evidence that the firing of the warning shot (given the suburban nature of the address) would have been unsafe.

44. The evidence is overwhelmingly in support of the conclusion that the death of Edward Concepcion was a justifiable homicide. This is a case where many eye witnesses observed the advance of the deceased on police. Their response was in accordance with their training. The evidence of the eye witnesses that I have quoted graphically describes the circumstances facing police in the last few moments of the deceased's life. On any view of the evidence police were entitled to regard the advance of the deceased as an immediate threat to the life of Constable Hillcoat. The actions of police clearly fell within the provisions of Sections 27 and 28 of the Criminal Code Act (NT) and as a consequence were justified at law.
45. It may be that people who knew the deceased well would say that he would not have really hurt anyone. However on the morning of 29 October 1999 he displayed behaviour that others, including those close to him, thought was dangerous and which presented as an immediate and potentially fatal threat to the safety of police officers who could only respond from the position that they were the subjects of that threat. At the time Hillcoat discharged his firearm he had a man advancing upon him quickly over a distance of 28m who had refused repeated demands that he drop the weapon. He failed to take any notice of the warning, "Stop or I'll shoot". The deceased was in possession of a fearsome weapon that his physique indicated he had every ability to use with devastating effect. The fact that Constable MacDonald fired his pistol almost simultaneously is indicative of the fact that more than one person was imminently fearful for the safety of Hillcoat.
46. Other members of the family were called at the Inquest and gave evidence before me. None of the family actually saw the shooting. They were struggling to understand the cause and need for the shooting to occur. At one stage there was an emotional outburst towards the end of the Inquest from family members. It was apparent to me that the family were also struggling to understand their treatment at the hands of Police investigators on the day of the shooting and how it contrasted with the treatment of Police

eye witnesses. In the depths of their grief they were interviewed and interrogated about the shooting on the very day it happened, as were all other civilian witnesses. Whereas Police eye witnesses were given some days to consider what they were going to say.

**(c) Other Matters**

47. In every one of the (fortunately few) inquests into deaths in Police custody that I have conducted since becoming the Coroner, I have been able to praise the high standard of the Police investigation carried out on my behalf into such deaths. Unfortunately in this case I cannot do so for reasons that I set out in due course.

48. However, firstly, it is appropriate to refer to two previous Inquests into deaths in Police custody in which, by coincidence, Mr McDonald QC appeared for the Police Commissioner as he does in the current Inquest. At the inquest into the death of Andrew Ross at the Alice Springs Watch house in 1998 I stated in my findings (dated 9 February 1999) that I agreed with the submissions of Mr McDonald QC as follows (page 2):

“I agree with Mr McDonald QC that in line with other jurisdictions since the Royal Commission into Aboriginal Deaths in Custody the Northern Territory legislature by amendment to the *Coroners’ Act* has emphasised the importance that it places on the care, supervision and treatment of persons who die in custody or where deaths are reportable deaths. The Northern Territory legislature, like other Australian legislatures has introduced a system of political accountability following Coronial Inquiry, which is as transparent as possible, for the agitation and publication of issues arising from a death in custody.”

49. At the same time as the forgoing amendments to the *Coroners’ Act* were made, Police Standing Orders were amended in the Northern Territory (as were Police Standing Orders in all other States) to ensure the thoroughness

and objectivity of any Coronial investigation by Police. The need for such thoroughness is especially obvious when Police are investigating Police.

50. In the finding into the death of Andrew Ross I was able to say as follows (page 34):

“The extensive and exhaustive investigation carried out under the directions of Detective Senior Sergeant Fry emphasises and reflects the independence of the inquires that were carried out --- he is to be commended.”

51. In my findings into the death in Police Custody of Bradley Wayne Gardner in 1998 which were handed down on 18 December 1998, I again commended the quality of the Police investigation. I said as follows (page 21):

“Investigations into deaths in Police custody are governed by Police General Orders, section C9, paragraphs 36 to 43. Paragraph 37 provides that each investigation into the death of a person held in custody is to be carried out on the presumption that it is a homicide. Paragraph 38 provides that the investigation is to be conducted by experienced investigators who, as far as practical, are independent of the members who are custodians at the time of death. Paragraph 39 provides that the member in charge of such of such an investigation is to be appointed by the Assistant Commissioner of the appropriate command.

52. I went on to quote General Order C9 paragraph 41.2.6 as follows:

“A search for witnesses to be carried out. The search is to thorough and statements are to be taken as soon as practicable from all persons, including other prisoners who were at or near the scene of death.”

53. In the investigation into the death of Bradley Gardner the majority of relevant Police witnesses were interviewed by way of interrogation on the evening of the death and the following day. I then went on to say as follows (page 25):

“The Coronial investigation carried out by Detective Sergeant Pryce was objective, thorough and of an excellent standard. The Sergeant with the assistance of other officers made every possible attempt to

provide me with all of the evidence relevant to the death. When a death occurs in Police custody, as this one did, public confidence in the Police Force demands nothing less. Indeed, counsel for the senior next of kin and the family of the deceased at the inquest publicly praised and thanked the Police in this regard. “

54. On the morning of the death of Eduardo Concepcion, I was called out to the scene. I attended in my capacity as the Coroner and met with the Assistant Commissioner of Police. I was shown the body of the deceased and noticed his apparent strong muscular build. I was shown the physical aspects of the location during which I heard for myself the crying and wailing of the distressed family within the house. I was told by the Assistant Commissioner that Sergeant Fredrick Huysse had been appointed by him to investigate the death. I said words to the Sergeant to the effect of encouraging him to provide me with a full and complete investigation brief including the obtaining of fully detailed statements from all relevant Police officers. Unfortunately, whereas detailed statements from all relevant Police officers were eventually obtained, in my view, they were not obtained, “as soon as practicable”, as required by Police Standing Orders.
55. Members of the family were interviewed and interrogated while in the depths of grief and despair over the death of a loved one. They were interviewed on the same day as the death, this included members of the family who were inside the house at the time and the heard the fatal shots. Such vigorous and rigorous attention to obtaining evidence is mandated by Standing Orders despite the emotional hardship it caused to the family. The importance of the investigation into such deaths necessitates such an approach. I understand that the family have concerns with the degree of counselling and sympathy offered by Police members during the course of the day. In my view these concerns are a matter for the Ombudsman rather than myself.
56. All other civilian eye witnesses were also interrogated on the day of the shooting and recorded statements obtained; including from one witness who

told me that at the time of making her statement she was still quite upset over the incident.

57. This rigorous approach to the obtaining of witness statements from members of the family and other civilian witness, is to be contrasted with the approach to the obtaining of statements from the three Police officers who were eye witnesses at the scene. These Police witnesses were interviewed some days after the incident and after statements had been taken from all civilian eye witnesses. I do not include in this comment the delay in interrogating the two Police officers who fired the fatal shots.
58. The officer in charge of the investigation agreed that Standing Orders mandated him to conduct the investigation as if it was a homicide investigation. That is to say, to conduct the investigation as if it was the most serious type of investigation carried out by Police. However, at one point in his evidence (page 34) Sergeant Huysse appeared to concede that he did not carry out the investigation on such a basis:

“TIPPETT: Now, assuming that this is a homicide investigation and of course in those circumstances the five police officers were to be treated for the purposes of such an investigation as suspects?---That's correct.

Now in those - and in those circumstances, would it not be the ordinary procedure in a homicide investigation, to speak to a suspect and record any conversations one had with a suspect as soon as reasonably practicable?---Yes, sir, depending on the circumstances. I -myself and Senior Sergeant Nixon arrived with sufficient information for us to feel or to believe that they - they were - how can I put it? - that - there was circumstances that would suggest that they were acting in their duty and not defendants as such.

But in - but that is not the point, is it, of homicide investigation. Homicide investigation assumes that in fact the people involved - or perpetrators involved in a death of a person are suspects, not police officers, anything of that kind, but are suspects and are to be treated as such until it becomes clear perhaps, that the circumstances disclose actions that perhaps don't amount to the commission of any crime?---Yeah, that - that would be right.

And it would appear that that was not done in this case; is that right?---No, sir, it was not. But again, I - I basically followed a lead, if - if that's the right word, of how other investigations that involved police shootings had been conducted.”

59. Sergeant Huysse went on to agree in his evidence that it was prudent to separate witnesses and obtain their statements as soon as possible before any allegations of collusion could be made, or before events became confused in the minds of the witnesses by hearing the accounts of others, and while events were fresh in their minds . He also agreed that the Police witnesses were the most crucial of all of the witnesses to be interviewed by him.
60. Constables Heath, Terawsky and Ragg were in attendance at the time of the shooting and were witnesses to the events. They themselves did not take part in the shooting. They can not be said at any time following the shooting to be suspects in relation to a criminal offence. They were separated from each other after the shooting and taken back to Police Headquarters that day, apparently for purposes of interview. However, for reasons that were never adequately explained to me they, together with Hillcoat and MacDonald, all ended up together in the muster room before being allowed to go without such interviews taking place. On 30 October Constables Ragg and Terawsky attended at Police Headquarters and gave recorded statements about the event to investigators while refusing to allow themselves to be questioned. Constable Heath did the same thing on 31 October. I find their resistance to questioning somewhat disturbing. I note that section 25 of the Coroners’ Act allows me to give directions to a member of the Police force for the purpose of investigating the death of a person such as the deceased; failure by a member to comply is a criminal offence. This section may be called to aid by a Coronial investigator to obtain answers to questions. Of course, Sergeant Huysse, as their superior might well have simply ordered them to answer questions. All three Police officers were again spoken to at length on 3 November 1999 when they were eventually interrogated.

61. The three Police eye witnesses were treated differently to other eye witnesses and they should not have been. I agree with the submission from Counsel Assisting me at the inquest that:

“It is unfortunate that the investigators were not as rigorous in their interrogations of the Police eyewitnesses as good practice and the maintenance of public confidence demands. Fortunately, in this case, nothing in the evidence or the findings of this inquiry is likely to be effected by the lapse of judgement that resulted in the Police officers who witness the shooting being treated differently to other witnesses.”

That is to say, at the end of the day the statements from Police which were eventually obtained were consistent with the statements of other eye witnesses. Despite the flaws in the Coronial investigation as carried out by Police, I am firmly of the view they did not effect my findings in relation to the death. However, in my view such flaws do tend to lessen public confidence in Coronial investigations and I trust they do not continue to occur.

62. I do not think this kind of thing will happen again given the final submissions of counsel for the Police Commissioner at the Inquest which I quote:

“The only substantial criticism of an otherwise thorough investigation is that three Police witnesses were not interviewed on 29 October 1999. It is apparent that this was intended by Police to be done and hence the direction from Assistant Commissioner Daulby to that effect.”

and

“The comments of Counsel Assisting in relation to the interviewing of Police witnesses as distinct from those who discharged their weapons are noted and this issue of contemporaneity of taking witness statements from all potential witnesses is not the subject of any dissent by the Commissioner. The Commissioner agrees that positive public perceptions are important and public confidence is better maintained by equal treatment of police witnesses and civilian witnesses.”

And

“The issue made of separation of police members after a police shooting is accepted and recognised and be the subject of further instruction to all members of the Northern Territory Police”.

I commend the Commissioner for his frankness.

63. Police officers Hillcoat and MacDonald fall into an entirely different category to other Police and civilian eye witnesses. Their actions placed them in the position of possible suspects in relation to criminal charges, for instance the charge of criminal negligence pursuant to section 154 of the *Criminal Code* or manslaughter. They were entitled to receive legal advice and delay (for a reasonable period) any interrogation until they were in a physical and mental position to provide a considered account of their actions. The fact that they were not spoken to until the following Monday is unremarkable. They, as with any other person in the community, were entitled to legal advice and counselling in regard to their position.
64. However, I note that Constable Hillcoat gave evidence that shortly after he had returned to Police Headquarters on the day of the shooting he briefed superior officers on what had occurred. This conversation was not taped nor were notes taken of what was said; Constable Hillcoat, in frank evidence, said it was carried out for the “bosses”. It is a pity that this briefing was not taped for the purposes of the Coronial investigation. It is also to be noted that it was naive and unwise of Police Officers Hillcoat and MacDonald to meet at the home of Constable Hillcoat on the evening of Saturday 30 October, after they had been instructed not to speak as between themselves about the shooting, and before they gave statements to investigators. The evidence disclosed that they did not talk about the shooting except in the most general of terms, however, such meetings tend to erode public confidence in such investigations, indeed Constable Hillcoat agreed that this particular Saturday night meeting was “not a good look” so far as public perception was concerned. I agree with the submission from Counsel

Assisting me at the inquest that such a meeting has “the real possibility of exposing Police officers, who had in every respect carried out their duty, to criticism”.

65. There are other aspects of the investigations that I could cavil with such as the use of leading questions in interrogating eye witnesses; for example, the witness Sean Buckler told me that he would not have used the word “trapped” in relation to Constable Hillcoat’s situation if the Police interrogator had not suggested it to him. Also, in my experience, it’s almost always the case that video re-enactments are carried out in investigations of these kind of deaths, however, in the current case the legal representatives of Constables Hillcoat and MacDonald determined that they would not be involved in such an exercise. In my view, if an experienced and trained Police investigator believes that re-enactments are necessary, and the Police investigator in this case would not have asked for such re-enactments if he did not think so, then the Police officers ought to have been ordered to do so. Of course, if they wanted to decline on the basis of their privilege against self incrimination, then so be it, however, I understand that at no time did the officers exercise any such privilege.
66. At the end of the day I agree with the submission that in this case the investigation was extensive and exhaustive, however, it was also flawed. I reiterate my view that such flaws did not stand in the way of the truth coming out.
67. It is unfortunate to say the least that as our society enters the 21<sup>st</sup> century, law enforcement officers are still resorting to 19<sup>th</sup> century measures, such as the use of lethal hand guns, when confronting aggression from their fellow citizens. I was told in evidence about the trialling of various non-lethal weapons such as capsicum spray and other options by the Northern Territory Police Force. I recommend the continued search for a non-lethal tool to subdue people like the deceased.

68. I note that the Victorian State Coroner, Mr Graham Johnson, conducted an inquest into the death of a John McConnell who died by way of police shooting. By coincidence this inquest was held around the same time as the current inquest and there are a lot of similarities especially as regards the dangers of trying to stop with batons an aggressive adult male armed with a weapon who may be minded to use it.

69. Mr Johnson also referred to the following issue (p.13 of his findings dated 13 December 2000):

“The death of Mr McConnell once again highlights the need for the government and police force to actively seek alternative methods of managing incidents where police are required to intervene to subdue a potentially violent offender”.

70. Mr Johnson went on to say and recommend as follows:

“Obviously, had OC Spray been available to both officers at the time Mr. McConnell was shot, it may have given them an option which possibly would have resulted in a different outcome.

It is understood that the use of *Air Tasers* is actively being considered by police for use by its *Special Operations Group* and that the issue is being examined by a specialist governmental committee. No doubt any practical, safe, ethical (and properly audited) alternative which results in an outcome avoiding significant injury to police and any offender is to be encouraged.

Quite apart from any practical, safety or ethical considerations which may be considered by the expert committee, the use of Tasers may also need to be examined in the context of general policing as an alternative to lethal force. It is recognised that there may be difficulties from an ethical, safety and practical perspective in the issuing of Tasers generally throughout the Police Force. However, in the event that Tasers are found to be a suitable alternative for the Special Operations Group there may be a case for a limited use of Tasers in general policing.

#### *Recommendation 1*

*The use of Air Tasers be considered (after proper consultation) as an additional alternative for general policing.”*

71. Apparently the non-lethal weapon mentioned by Mr Johnson is a type of stun gun. I agree with his comments and also I recommend that members of the Northern Territory Police Force liaise with the Victorian Police Force about the matter.
72. Mr Johnson went on to make recommendations in relation to police media releases relevant to Coronial investigations into police shootings. Whereas I have no criticism of the Northern Territory Police Force in this regard in the current case, other than to note that Police commentary was publicised before statements were obtained from all of the police witnesses, I recommend that the Police Commissioner examine, consider and adopt the comments and recommendations of Mr Johnson in this regard and which I set out hereunder:

“There is currently an understanding with the Victoria Police that release of information will be discussed with the Coroner. Perhaps it is time to formalise this understanding for future cases. Consideration should be given to the following procedures in Police Shooting incident investigations by the Coroner (but not applying to an inquest):

- (1) All media releases made by Victoria Police (other than the initial release on the day - See sub-section (2) below) relating to an incident which results in an ongoing Coroner's investigation should be discussed with the principal police investigators and the Coroner. Any agreement about release of information should be confirmed by exchange of letters.
- (2) It is not suggested that this procedure should apply to an initial summary release of information on the day of the incident by Command. Provided that any such release by Command is subject to:
  - (a) the need to briefly inform the community about an incident;
  - (b) appropriate processes have been undertaken to advise the family before such a public release of information;

- (c) an indication that the investigation is a Coroner's investigation and in its early stages;
- (d) conclusions should not be drawn; and
- (e) the release is discussed with the Coroner and the principal police investigator (and subject to direction where appropriate).

*Recommendation 2*

*That the Coroner and the Victoria Police develop a formal procedure for all media releases during the currency of a coroner's investigation (but not an inquest) into a police shooting."*

73. I note that Police General Orders have been changed recently to emphasise the need for thoroughness in investigations into deaths in custody, and this is to be commended. Order D2, sub-order 13.1 refers to liaison with my office and orders the submission of a completed file to the Coroner within 28 days of the date of death. In default of completion, a progress report is to be prepared for the Assistant Commissioner. I know of no examples of investigations into deaths in custody being completed within 28 days.
74. This case has revealed the need for my office to be kept fully informed in the early stages of an investigation into a death in custody. Accordingly, I recommend that Police General Orders in relation to the investigation in relation to "deaths in custody" provide that the investigator in overall charge of the investigation submit a written briefing memorandum to the Coroner within 28 days of the date of death in default of a completed file. The memorandum should contain relevant details and progress. I would envisage that the memorandum would summarise the details contained in the "running sheet" mentioned in sub-order 4.3.2. Perhaps the same progress report as supplied to the Assistant Commissioner would suffice.

Dated this            day of            2001.

---

GREG CAVANAGH  
TERRITORY CORONER