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NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

A 51 of 2019

AN INQUEST INTO THE DEATH

OF KUMANJAYI WALKER

ON 9 NOVEMBER 2019

AT YUENDUMU POLICE STATION

JUDGE ARMITAGE, Coroner

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 28 FEBRUARY 2024

(Continued from 27/02/2024)

Transcribed by:
EPIQ

THE CORONER: Yes. Mr McMahon?

MR MCMAHON: Good morning, your Honour. May I just raise a point, your Honour. It hasn't been raised in this last week or so, but it might be a good time to raise it now.

Just on behalf of my client and the broader Aboriginal community outside, as everybody here knows, these proceedings are being live-streamed to Yuendumu and Papunya and definitely elsewhere because people from all over Australia are sending us messages and it goes without saying that the offence that we are about to discuss today, in particular in the next two days are events which were traumatising for the Yuendumu community and their families - extended families and they continue to be traumatising.

Your Honour will be aware - as everyone here will be aware, that some members of the community have come into court to watch proceedings in the last week - not very many, and there is a room outside that they can go to if the community wishes to, but not many have done that. Most of the community's families are on the lawn outside, watching us and trying to follow what is going on.

Any observant person would have noticed the lawyers speaking to them at lunch time and after court every day as we are trying to explain the issues that have arisen and so on.

So I just mention that to put it in everyone's mind that what is going to happen today and tomorrow and the next day, we lawyers of course understand the propriety and the appropriateness of what happens in the court, but it is going to be re-traumatising to visit these events and to revisit these events and I thought it might be appropriate to acknowledge - and thank you for the indulgence of letting me do this, your Honour, but I thought it might be appropriate to acknowledge the presence of all of those people who have come to sit on the lawn for the last week and just to remind ourselves that we ought to be attentive to the fact that what is unfolding in the next few days particularly, will be re-traumatising for my clients and the community of Yuendumu and that is probably all I need to say about the matter, your Honour.

It just seemed an appropriate time, given the issues that we are about to deal with, just to be mindful of them.

THE CORONER: Thank you, Mr McMahon. I appreciate that reminder of course. Those of us who are in Alice Springs are well aware that there is a very extensive community and family who are - continue to be respectful and attentive to the inquest as it reaches its closing stages and I acknowledge that they - although they are not in the courtroom - are very much a part of the proceedings that are continuing this week.

Thank you for reminding us.

MR ABBOTT: Your Honour, I had intended to rise first, but I wanted to rise to thank the Northern Territory Police, your Honour. They have, at my request, investigated the disturbing events of what occurred when we left this courtroom on Monday.

They have also investigated a threat against me personally that I received yesterday and I am pleased to say that they have resolved both matters to my satisfaction and I want to thank them for their prompt efforts in resolving both those matters.

THE CORONER: Yes. Thanks, Mr Abbott, I am glad that that has been resolved.

Mr Boe?

MR BOE: Your Honour, may I just acknowledge the families on the lawn include the Walker, Lane, Robertson, Brown, Oldfield and Williams families.

THE CORONER: Thank you.

DR DWYER: Your Honour, I might also put on the record that, as your Honour knows from the outset we have attempted to have interpreters available for family members, both Luritja and Warlpiri interpreters. We are very fortunate to have a Luritja interpreter here in the courtroom. Despite our best endeavours over a long period of time leading up to this week, because of the scarcity of Warlpiri interpreters we have not been able to find a Warlpiri interpreter. That makes it even more difficult for families to fully engage with and understand the process.

THE CORONER: Yes.

DR DWYER: On previous occasions we have been very privileged, as your Honour knows, to have Valda Naurila Shannon. She wasn't available, sadly, for this week.

We started the inquest with a 2A learning session, as your Honour will recall, with Valda Napurrula Shannon and Jodi Clarkson about deep listening and listening carefully, and we aim to make these proceedings as accessible as possible, in spite of the difficulties.

So I will try to keep my questions as clear as possible to minimise the risk of objection and I might ask my learned friends to think carefully about whether objections are necessary to assist us to get through the evidence as quickly as possible.

No doubt, of course, it is a difficult day for family and community, it is a difficult day for Mr Rolfe - or it may well be - and so he should, of course, feel free to ask for any breaks that are necessary to make sure that he doesn't feel - that he feels as comfortable as possible.

Thank you.

MR FRECKELTON: And before we start to tell your Honour, you will have noticed that Acting Commissioner, currently Deputy Commissioner Dole has been present during these proceedings and the last week as a mark of respect to the court in order to also learn anything that needs to be learned and respond to anything to which there needs to be a response straight away.

ZACHARY BRIAN ROLFE, on former oath:

THE CORONER: Thank you, Dr Freckelton.

Yes, Dr Dwyer?

DR DWYER: Mr Rolfe, you've had a lot of time to think carefully about the questions and answers in this inquest, haven't you?---I - - -

You've had a lot of time to plan the answers that you are going to - - -

MR ABBOTT: Well, I am sorry, I object to this. There's - this is a criticism - an implied criticism of my client.

THE CORONER: No, it's really a statement of what is obvious, given the amount of time that has passed, Mr Abbott. There has been a lengthy period of time.

MR ABBOTT: It's the inuendo, "You've had time to plan" that I object to.

THE CORONER: Well, it's a question then.

MR ABBOTT: It's just the question, "You've had a lot of time to think about this?" That's fine. It's when the cross-examiner goes on to say - - -

THE CORONER: It's an examination. We are not in a criminal trial here. Everyone has a chance to ask questions of this witness.

MR ABBOTT: It's a very cross-examination then.

THE CORONER: There is nothing in the tone that is suggestive of anger or aggression or accusation. They are simply questions, Mr Abbott. I don't understand how it is that you hear something that I cannot hear in the nature of the questions that are being asked.

MR ABBOTT: Maybe it is the (inaudible) standards of the defence barrister.

THE CORONER: Dr Dwyer, please continue.

DR DWYER: Mr Rolfe, you were first due to give evidence in these proceedings in November 2022. We are now in May (sic) of 2024. You have - - -

MR ABBOTT: February.

DR DWYER: Sorry, February.

MR ABBOTT: It's February now.

MR BOE: Nearly - nearly.

DR DWYER: I'll start again. You were originally scheduled to give evidence in November 2022. Kumanjaya passed away in November 2019. You've given evidence in a trial following that. We're now in February 2024, you have obviously had a lot of time to think about the answers that you are (inaudible) in court in this inquest, correct?---Well obviously I wasn't - I'm not aware of what questions I'm going to be asked. But I've had a lot of time to think about this inquest.

And counsel assisting prepared for you and - the assistance of you, your lawyers and other parties, a document that is labelled MFI MMM. It's 115 pages, with multiple text messages. You've read that document?---I've skimmed through some documents. I didn't read all the documents.

You clearly turned your attention to many of the text messages that you understood you would be asked about, as a result of that document being prepared?---No, I skimmed through some things.

You looked at, and reminded yourself of text messages that you had sent to others, that you anticipated you would be asked questions about, is that right?---Some text messages.

You've watched others give evidence in this inquest, didn't you?---I watched some evidence.

And you read the transcript of some of the witnesses who gave evidence that you were interested in. Is that right?---Yes.

When I took you to text message 521 yesterday, please have a look at that again now. I might start with 518, to give you the context. CV, someone who had been in the IRT with you, sends a message, "Thanks for the chat and hand this arvo brother, really appreciate it." If you turn now, please to 519. You write back, "Yeah, all good, brother. Always down for a chat about our weird shit ha ha." That's 14 October. He says, "This is going to sound wired bro" - - -

MR ABBOTT: I object to this. This is the fourth time these messages have been read out. And I say, enough is enough. Well, I thought today we were actually advance in terms of timing of the events of 9 November. But we've gone back to messages that have been repeated three times to this witness already.

THE CORONER: Hopefully we will advance, Mr Abbott. As I understand it there is a question arising on this text message, from the answers that were given yesterday, and I am allow Dr Dwyer to ask that question.

MR ABBOTT: Well I don't have that understanding that your Honour has, so I can't speculate.

THE CORONER: Well I can speculate based on the questions and answers that have been given this morning.

MR ABBOTT: I'll wait and see then, your Honour.

THE CORONER: As to the relevance of reviewing a previous text message.

DR DWYER: And your answer, on that same day, 14 October, is, "Nah, I feel exactly the same man. Cut from the same cloth. I've only talked to you and Syksy(?) about my head, but even he does get violent like us." You remember that text exchange?---Yes.

You've read that prior to giving evidence in this inquest, haven't you?---Yes.

And you'd read the messages that you sent to Simmo, one of your other colleagues, back earlier in the year in February, correct?---I'm not sure if I read those.

The text messages about (inaudible), have you read those?---Yeah, I'm not sure if I read those previously.

I want to suggest to you, Mr Rolfe, that when you were asked questions about these messages, you initially suggested that this was about boxing in a recreational way, and not about the violence in your head. And I want to give you an opportunity to reflect on that answer. And to ask you if you were now mistaken when you first responded to her Honour about those text messages?---I was not mistaken. I stand by my questions - my answers from yesterday. If you are - if you want to hear what you want to say - what you want me to say, then this - if I attend a job where a man has repeatedly raped his own daughter - - -

Oh Mr Rolfe - - - ?---And - this - I'm answering the question - - -

- - - no, this is not like that - - -

THE CORONER: This is not - that is not in answer to the question, Mr Rolfe?---Well there - it - - -

Ask the question question?---The feelings of violence.

DR DWYER: Please just answer my questions, Mr Rolfe. If you - when you answered that question, and you said it was about boxing, you were not being honest with the court about what those messages were really about?---I was being honest. If you want to give me the answers you want, I'm happy to read them out - - -

You crafted - - - ?---But I'm in the box under - under oath.

- - - you crafted an answer to that question, that you thought would suit your evidence best, and it is not truthful?---No. If you would let me answer the question that I've answered before - - -

THE CORONER: I'm not - - - ?---I'm happy to expand.

- - - I don't want you to expand. I would just like you to answer the question?---Well - - -

Which is, I think you've told us no that's not correct. You stand by the answers that you gave yesterday?---Yes.

Okay.

DR DWYER: In relation to 7 November, I asked you some questions about that yesterday. A lot of these questions were asked at trial. And her Honour has the trial transcript. Do you understand that?---Yes.

I'm going to ask you some questions about that day. I'm not taking you to the trial transcript for any other reason than to refresh your memory. I'm not going to try and trick you about what happened in the trial about 7 November, can you accept that?---I accept you saying it. Do I believe you? Not at all.

You were on shift on that day, can you remember the time?---On the Saturday?
Sorry, which day?

The 7 November?---No.

You logged onto the Muster Room computer and checked your emails, and accessed the daily intel sheet, you told us yesterday?---Yes.

You went into case log. You could see the body-worn video of Officers Hand and Smith. I'm just trying to summarise so that we get through this part of the evidence?---Yes.

You thought to yourself that what you had viewed in relation to that incident on the sixth, was obviously a dangerous and volatile situation. That's what you thought?---Yes.

I asked you yesterday about the fact that you were critical of Hand and Smith, Officers Hand and Smith. And you said you were critical, but understanding. Is that right?---Yes.

You weren't just critical of Hand and Smith, you were also critical of others up the chain of command, who hadn't escalated that job, is that right?---No.

Were you critical of the sergeant of the station for not escalating the job further?---I was not aware of any rank. All I knew of the two officers involved.

So the criticism you had at that time, for the failure to escalate the job, was of Hand and Smith, is that right?---Yes, they were the only two people I knew to be involved.

Did you think that they were down playing the incident?---Yes.

Was this another example in your mind, of hopeless bush cops?---No.

Was this an example in your mind of lazy bush cops?---Potentially, as I said, the statements weren't on the back of the job and in Alice Springs, for example, it's an expectation that statements for jobs are done by the end of that shift. That's an expectation in Alice Springs. I was - I was under the belief that that was expectation police force wide, unless there are extreme circumstances.

Was this - was one explanation for why it hadn't been escalated in your mind, that these bush police, or community police, were letting the locals get away with it?---No.

I mean that's what you've texted your colleagues previously, about bush police, isn't it? That they - that they - in your exchange with Mitch Hansen, for example, there was an exchange between the two of you about bush cops letting - I'll take out the racist terms, "Letting the locals get away with things." That was the thrust of the exchange wasn't it?---Yes, from him to me, yes.

And that's what you thought, didn't you? You didn't correct him on that. You thought bush cops were too soft on - - - ?---No.

- - - community members. You told us yesterday that you had no version from Officers Hand or Smith. You had no understanding of their experiences as a police officer - as I police officers - - - ?---Hang on, say that - start - can you please start again.

You have no version, at that time, from Officer Hand or Officer Smith - - -

THE CORONER: I think he said he had some version, because there was the PROMIS entry which was the summary.

DR DWYER: You hadn't spoken -

Thank you, your Honour.

You hadn't spoken to either of those officers - - - ?---Correct.

- - - about - and you said there were no statements on the job that you could read, where they set out what was in their mind?---Correct.

You had no understanding of their experience out bush, or their knowledge of Kumanjaya Walker?---Correct.

But you formed at view, at the time, that this was a perfect example of human fear based reaction, freeze and flight?---Yes.

And you said yesterday, you were critical of that response?---Yes, critical but understanding.

And you said yesterday that you were critical of that response?---Yes, critical but understanding.

All right. I'm going to show you a part of the diary entry that you did throughout the course of the trial for Spotlight. You know that program, don't you? That's the Channel 7 program - - -?---Yes.

- - - that asked you, did they, to video yourself speaking - - -?---Yes.

- - - in a diary throughout the course of the trial?---Yes.

And you comment, don't you, throughout that in those diary entries about your response to Officers Hand and Smith?---I can't recall.

And your view of the evidence that they gave?---I'll comment once you've shown me it.

Ms Walz will show that to you now.

DVD PLAYED

DR DWYER: You go on in that later with Spotlight when you're interviewed by Mr Dunham(?) to say:

"Yeah, that's where I said before and I won't lie about it, I've called those two men cowards. And I don't believe they're cowards for their actions on that night, I believe they're cowards for their actions afterwards. They're cowards because they tried to morph it to the point where that was a critical decision not to be abiding by their training or to fire their weapons, or not to draw their weapons. And I think that's a lie."

You went on a television programs, you said "Fuck them" about your other officers when they'd just given evidence under oath and you went on that program again and called them cowards. Not very understanding of you, Mr Rolfe, was it?

MR ABBOTT: Well, I object to that. This is a man who was on trial for murder at the time, who's talking about his reactions.

THE CORONER: Sorry. Is there any objection to the question itself, Mr Abbott?

MR ABBOTT: Yes, because the question doesn't recognise the stress that this man was under at the time.

THE CORONER: Well, you'll have an opportunity to ask about that. The question is clear. It's understandable and it's relevant to the issues. And it's relevant to the evidence that your client has given in these proceedings.

MR ABBOTT: Well, my submission, your Honour, is it's not relevant to the issue because you need to take this evidence, this transcript, on the basis of the circumstances in which these interviews were given. A man on trial for murder.

THE CORONER: We understand the circumstances. It was clear from the way the evidence was introduced that it was some form of video diary that was being given by your client during the course of his trial and his response, as I understand it, to certain evidence that was given.

MR ABBOTT: Well, that's what must be kept in mind for this - - -

THE CORONER: I keep that in mind.

MR ABBOTT: Thank you, your Honour.

DR DWYER: You heard yourself, Mr Rolfe. You said about those officers:

"It wasn't a response. It was a reaction. They suffered from your basic fight, flight or freeze and they're trying to justify themselves in any way possible."

And you go to say:

"Fuck them. I understand their position. I understand what they did. I'm a very understandable dude. But when you're doing it at someone else's expense, my expense, fuck them, mate. So that's me for the day. Fuck Hand and fuck Smith, whatever."

That's what you said on that video diary, correct?---Correct.

Officers Hand and Smith gave evidence under oath in a Supreme Court trial. You understood that, didn't you?---Yes.

They were merely witnesses in that trial. You understood that?---Yes.

They were not asked to critique what was in your mind on 9 November. They were asked to give evidence about what was going on for them on 6 November when they were dealing with Kumanjaya. Correct?---Correct.

But because their evidence didn't suit you, you went on the attack in relation to both of those witnesses, didn't you?---Because their evidence, I don't believe is true.

Do you think it's appropriate for you, at that stage you were a serving member of the Northern Territory Police Force, you were talking about two officers who'd given evidence under oath and you decided to go and record for a television program criticism of those officers saying "Fuck them. Fuck them for giving evidence that didn't suit my story at trial." Do you think that's appropriate?---Yes, because at that time, I had a - I had gone through the entire paperwork of the investigation against me. I think I've made it clear that my view of that investigation was incompetent, if not malicious, and I was preparing for the potentiality that if due to that incompetence or maliciousness, I would go to gaol for 25 years, I was preparing for my truth to come out to hopefully correct the course of justice.

And you thought Chris Hand and Lanyon Smith were part of this conspiracy of incompetence. Is that right?---I - - -

MR ABBOTT: He hasn't said it was a "conspiracy".

DR DWYER: That's a question.

And you thought Chris Hand and Lanyon Smith were part of this conspiracy of incompetence, is that right?---I - - -

MR ABBOTT: Objection, he hasn't said it's a conspiracy.

DR DWYER: That's a question.

THE CORONER: Well I think you'll need to break it into parts - - -

DR DWYER: Sure.

THE CORONER: - - - if you want to put that.

DR DWYER: You used the term - sorry. You used the term "incompetent and malicious" is that - - - ?---"Or."

"Incompetent or malicious." What did you think Chris Hand and Lanyon Smith had to do with that?---I believe they were not telling the truth in their evidence.

So you thought, did you, that they were not telling the truth at- to back up the Northern Territory Police Force, in terms of its prosecution of you, and the DPP and independent statutory office holder?---The narrative they told is suitable - was suitable for the criminal investigation, and has been continued to be suitable for this coronial, it seems.

So the answer to my question that I asked you before about whether you thought it was appropriate that you do that in a video diary of the spotlight was "yes", and that remains your evidence today?---In the circumstances that I was in, with the goal of protecting myself from what I believe was an injustice, yes.

And you stand by your decision making, and your manner of speech today?---I - I, in hindsight, would - wished I'd never speak - spoken to the media, because in trial we were able to prove my innocence, and the media was not required. The media was a tool that I believe sometimes used against me. And then sometimes I utilised the media as a tool as well. There was no need for that. And in hindsight I wish I never did it.

Well you utilised the media as a tool, not just before the trial, you utilised it after the trial, didn't you? On a number of occasions?---Correct. As has the coronial - - -

Mr Rolfe - Mr Rolfe - - - ?---Sorry.

- - - when you say, about your colleagues, "Fuck them, fuck Hand and fuck Smith" it's an example of your frank aggression and your short blown fuse. What do you say about that?---I disagree.

And the use of that language, which is aggressive, is a reflection of the fact that you can be aggressive in language and behaviour, what do you say about that?

MR ABBOTT: I object - I object to that.

DR DWYER: I'll move on, I'll come back to it.

MR ABBOTT: Well you can't ask a question - - -

DR DWYER: I'll move on, I withdraw it.

THE CORONER: Sorry, she's withdrawn the question.

MR ABBOTT: Right.

DR DWYER: On 7 November, after you'd watched the body-worn video, and formed a view that you say was critical but "extremely understanding", you then took on a proactive leadership role to escalate that job, is that correct?---I took on a proactive role.

You alerted Sergeant Kelly?---Yes.

You asked him to come and watch the videos, and you had a discussion about it, correct?---Correct.

And you agreed that the incident shouldn't - should have been relayed up the chain of command, and a higher response should have been organised?---Yes, Sergeant Kelly and I have the same - same opinion in that regard.

Well, who did you think it should have been relayed up the chain of command to?---I'm not sure. I believe it should have been relayed up the chain of command that

evening. And they - like the evening of the incident, to whoever high incident - high risk incidents usually gets relayed up the chain of command to. And potentially it should have been - ended up on TRG's desk for a risk assessment.

So it wasn't just Hand and Smith that you were critical of, was it? It was - you were critical of the fact that some - someone else hadn't relayed it up the chain of command? Or were you critical of them for not relaying it up the chain of command?---Well at the end of - at that time, I only knew those two were involved. I had no idea of anyone else's involvement.

Well it had been made on a PROMIS job hadn't it. And you entered into the case log. So that's how you came to see it on the daily intel sheet?---Yes.

So anyone could have relayed it up the chain of command, correct?---Correct, which is what then I did.

THE CORONER: Did the - does the chain of command see the daily intel sheet as well?---If they look at it. I imagine there's issue - there's instances where they don't look at it. I think you've see that even the chain of command that ended up having looked at this job didn't - didn't look at the body-worn video and stuff like that. So there's always human error.

DR DWYER: And you were guarding against human error by drawing it to the bosses attention, is that right?---I don't know if I was guarding against human error by doing that. I was drawing it to the bosses attention.

When you alerted Sergeant Kelly, he was also - he was also critical of the response of Hand and Smith. Is that right?---I can't recall his comments.

He's given evidence that he was watching it, surrounded by other people, or other people were there. Do you recall watching it with him at that - with - in the company of others?---Yes.

And do you recall him, or anybody else, who were watching the video, being critical of Officers Hand and Smith?---Yes I believe so, but I can't recall any specific comments.

You certainly would have shared your view of being - of being critical?---Not necessarily, not publically.

Well you certainly would have shared it with your colleagues at the police station when they were watching it?---Not necessarily.

Mr Rolfe, you've, on a regular - you often, didn't you, watched body-born video, in the Muster Room, with your colleagues?---Yes.

And you would have had no difficulty, on many occasions, in offering a commentary, about what had gone on and various uses of force or incidents?---Yes, sometimes.

And I'm suggesting that it's likely that you offered a commentary here that was critical of Hand and Smith?---I can tell you that in a public setting, like a Muster Room, with multiple police officers like that, it's likely that I wouldn't have.

Well, I think you told us earlier that there appeared to be a culture of watching body-worn videos, watching other people's body-worn videos. At least it happened on many occasions didn't it?---Yes.

Including the video that we saw yesterday at Araluen Park, the utz utz(?) video that you subsequently filmed?---Yes.

So you didn't have any difficulty on that occasion, in filming your body-worn video in the Muster Room with other people around, making a commentary?---Yes, the difference here was that again, it's a high risk incident, life or death incident. As I've said, I'm understanding that most humans, I believe, would respond - would have responded the same way, including most police officers. Often you'll get comments in situations like this, officers saying they would have done this, I would have done this better. You'll likely have the comment from Shane King saying, I believe he was referring to someone who had made a comment, saying you'll never know what you're going to do in that situation. I agree with him. So I - in situations in public like that, I'm not going to get involved in I would have done this, I would have done that, because I know - I know - I know that most police officers and most humans, would react the same way.

But this is what you said on the spotlight footage, 20-53 for my friends, page two. You said, in relation to the jurors watching the example of Lanyon Smith and Chris Hand, "None of them have the training I have, the experience I have. They're just regular citizens. And they likely have never dealt with violence with threats upon their lives. But I've dealt with lots, to the point where it's nearly normalised to me. But these are regular humans." Did you make a comment, or any comment about the fact that police officers should have been ready to deal with that, in a different way to the way Hand and Smith did?---I'm not sure if I made a comment, but I agree with that statement.

That you are - you were - you had been, at the time you were in the Northern Territory Police Force, nearly normalised, in relation to violence?---Yeah, I was desensitised - desensitised to violence and - - -

Desensitised to violence?---Conditioned to responding to violence.

Conditioned to respond assertively to violence?---Professionally, within the Use of Force Guidelines.

And in circumstances where you can have a choice to respond, you opted, didn't you, usually, for the most forceful choice available to you?---I - I disagree with that. And I don't believe I've ever been found guilty of using excessive force by the NT Police.

No, you were never pulled up on your use of force, even though, as I pointed out to you yesterday, you had been red flagged by Professional Standards, in relation to their concerns about your use of force.

MR ABBOTT: Well I object. There's no evidence that he knew about Professional - Professional Standards. The question's unfair.

THE CORONER: Yes.

DR DWYER: I'll withdraw it.

MR ABBOTT: Thank you.

DR DWYER: Sergeant Kelly said this, he recalls someone saying when you watched the video, that it demonstrated a lack of situational awareness. Was that you?---I don't think so.

So there's was - there were a number of people, weren't there, making comments in relation to that video, in the Muster Room?---Yes, there could have been.

And then the text message that I took you to yesterday, 547?---Yes.

There was obviously an exchange with you and Paddy McCormack - was he a sergeant or a senior constable?---I'm not sure.

Senior constable/acting sergeant. He has given evidence that he thinks he watched the body-worn video. He couldn't remember where he watched it. Can you remember whether you watched it with him or separately?---I can't recall.

He clearly thought it had been handled poorly and told you so, is that right?---Yes.

And you had shared your views with him about that as well, had you?---Well, you can see what I said.

Sure. He says, "I'm sorry I fuck - I watched that - fuck me." And you say, "Yeah, eh"? And he says, "Can you imagine if that other cop got killed and he stood there and watched it with his fuckin' hands up. What the fuck have we become?" And you write back, "I know, eh. Fuck my whole life." So there's you - and your senior - a senior sergeant - sorry senior constable/acting sergeant - sharing the view that what Chris Hand and Lanyon Smith did was wrong, correct?---Correct.

And you did that without any understanding from Chris Hand or Lanyon Smith about what had been in their mind and why?---Apart from the version of events that I had been given, and I believe the same thing has been done against me in a number of body-worn videos in this instance - in the coronial - eight or nine, and it was done on the trial.

The only version that you have is from the PROMIS note, correct?---The summary version of events that was on the PROMIS case - which could have been multiple paragraphs.

MR ABBOTT: Sorry, I just didn't hear that?---Sorry. It could have been multiple paragraphs.

Thank you.

DR DWYER: Can you remember any of it now?---I can remember the thing that made me more curious about it was something to do with the fact that they approached the offender at the back of the house and he was in the back bedroom and he - he escaped through a door - but I couldn't understand how that they'd - if he was in a back bedroom how he escaped through a door - something like that.

You couldn't understand it and so you thought - you still had enough evidence or enough information to assess it in a critical way. That's clear, isn't it?---There was more information than that given obviously in that. But that's what made me go into the case log and watch the body-worn footage so I could get a further understanding of what the assault was.

You called Sergeant Bauwens, who was off duty, and you told him that it was a job that the IRT should have already been called out for?---Potentially.

It was a potential job that the IRT should have been called out for. Is that what you said?---I believe so.

Your patrol group went looking for Kumanjayi at Warlpiri Camp, is that right ?
---Yes.

And that was because you were proactive about it and found the job?---That was - I guess we had a down time in between jobs that we were being called to and we would often then look for actual arrest targets and he was one of them.

Had you gone out to look for him separately, yourself?---I believe Hanson and I had.

In what circumstances?---You have the information before you and you have it better than me.

Mr Rolfe, I'm asking you a question and you are under oath and you are obliged to answer my questions in the absence of objection - - -?---I can't recall.

In what circumstances did you go and look for Mr Walker at (inaudible)?
---I cannot recall.

Do you recall that you were with Mitch Hanson at least, is that right?---Well, I recall that from the evidence that I've read.

All right. Evidence that you've read at trial or elsewhere?---Trial or coronial - I can't recall.

Did you do that before or after your patrol group went to look for Kumanjaya at Warlpiri camp?---I cannot recall.

Is it the case that you were proactive with Constable Hanson in the two of you searching for Kumanjaya Walker? Either before or after your patrol group went to Warlpiri camp?---I cannot recall. If I couldn't recall before, I can't recall specifics is the answer.

Just listen carefully to the question. You've given an answer, I think, that you and Constable Mitch Hansen looked for Kumanjaya Walker separately to an occasion where you were with (inaudible) - - -?---Yes.

And you can't remember whether that was before or after you were with the patrol group?---Correct.

And you are inviting me, as counsel assisting, to look at the evidence myself and try and work that out. Is that right? I'm not being critical of you - I am trying to understand - - -

MR ABBOTT: Does it matter what he is inviting?

DR DWYER: I will move on.

MR ABBOTT: Thank you.

DR DWYER: Are you saying that you can't remember - either way - whether it was before or after the trip to Warlpiri camp with your patrol group - that there was a separate occasion where you looked for Kumanjaya with Mitch Hanson?---Yes.

And that's an example of your proactivity about that job, correct?---I was proactive - I was a proactive police officer.

When you went to the Warlpiri camp with your patrol group there was a car bonnet briefing in the Bunnings car park, correct?---Correct.

You had seven officers with you I think, at that time - or there were seven officers, Kirstenfeldt, Hansen, Bonney, Crotty, King - Sergeant Kelly and yourself, is that right?---I accept that.

And you did the briefing on that occasion?---Yes.

You've described that as a SMEACS - Situation, Mission, Execution, Admin and Logistics and Command Supports?---Yes.

It was necessary to prepare that briefing - - -?---Logistics - yes, Admin and Logistics, yes.

Admin and Logistics. It was necessary to prepare that briefing because you knew you were dealing with a high-risk offender, correct?---Yes, and I believe there had been some talk around the station potentially that they wanted us to start doing briefings like that and potentially putting them on bod-worn video.

Well, it made sense, didn't it, to have a briefing where you made an assessment of the risk that the group were facing in terms of that arrest?---Yes.

And planned for it?---Yes.

That's in line with your training, isn't it?---Yes.

And this is how you characterised Kumanjayi at trial - - -

MR ABBOTT: So what page of the transcript?

DR DWYER: 1040.

"How did you characterise him in your mind at least" you were asked by your counsel. "I characterised him as a high-risk offender, extremely violent who was willing to use lethal weapons against police"? That's your characterisation of him on 7 November and that was your characterisation of him on 9 November, isn't it?

MR ABBOTT: Well, I object to any questions about 9 November.

THE CORONER: Yes, Mr Abbott?

MR ABBOTT: On the grounds that the answers may tend to incriminate him. Section 38(1)(b) - (1)(a) - rather.

THE CORONER: Yes. Yes.

MR COLERIDGE: The objection was foreshadowed. I understand the position to be Mr Rolfe that your Honour should (inaudible) that your Honour should (inaudible) as in the interests of justice that Mr Rolfe not provide a certificate. I understand the position to be with respect to the first shot, which was not the subject of the indictment (inaudible). Mr Rolfe (inaudible) any further prosecution and on that basis - - -

THE CORONER: Could be.

MR COLERIDGE: Could be. We concede that there are reasonable grounds to (inaudible) that his answers (inaudible).

THE CORONER: Yes. Thank you for raising that matter, Mr Abbott, and I will - I do find it expedient.

MR ABBOTT: Well, your Honour, we wish to be heard whether it is expedient. We say, your Honour, he should - he should - having declined to answer the question, no certificate should be issued and his refusal should stand and his refusal to answer any questions about 9 November should stand in relation to all or any questions, given what we know about the interests of the other parties here and in particular I refer to NAAJA and the Human Rights Law Centre, which apparently have already taken proceedings and we say, your Honour, that you probably don't know about the agenda they have, but we say, your Honour, that my client - the answers that he gives if he is required to answer because you give a certificate, can be used in a derivative way. Although the answers can't be directly used they can be - any derivative use is not barred by s 38 and Mr Boulten - my learned friend, Mr Boulten has already said - and made it clear - that his position - he said at page 348, "The verdict only relates to those two shots. The verdict does not relate directly to the first shot - to the decision to enter the premises, to arrest, to detain, to deploy the IRT", and so on and so forth."

So if my client is forced to answer these questions because you come to the view that it is expedient that he be compelled and offer a certificate, then derivative use can be made of his answers, and my client may find himself in proceedings where he has already given evidence, not only at trial, but also in these proceedings, and he has committed himself to a position which those who bring the proceedings are fully aware of, of course, because they will have the transcript.

So we say, in the interest of fairness, he should, having asserted a right, a right he has not to incriminate himself, you should not find it expedient that he be compelled, and his refusal and declining to answer questions should stand in relation to each and every question in relation to 9 November 2019.

I refer you to the NAAJA submissions this February. And again, my learned friend, Mr Boulten's submissions, he referred appropriately to s 38 and he said, "We submit that once the right against self-incrimination is abrogated, the parliament did not intend that any further additional consideration should be given to this right.

As per our submission above, the second reading speaks to the Coroner's amendment. Bill 2001 shows the parliament's particular premium on ensuring that incriminating questions are asked in full contemplation that the answers might lead to a prosecution.

So Mr Boulten, my learned friend Mr Boulten, knows that this is the potential consequence if my client is now forced to answer further questions about 9 November, and of course there are other actions that have been taken by the families, civil actions. But my client should not be forced to again go over the events of 9/11, given what is obviously contemplated by those who act for the families, by those who act for NAAJA and for presumably the possible consequences for him.

Your Honour also said this in your ruling number 2, I'm reading from paragraph, I think it's number 2, par 41. Your Honour said, "Ultimately, provided I do not include in a finding or comment or statement that the person is or may be guilty of an offence", your Honour's referring there to s 34(3), "it does not controvert an acquittal for a coroner to enquire into the facts underlying an offence of which a person has been acquitted."

Your Honour was dealing with whether or not the acquittal was a bar to any evidence being given in these proceedings. Your Honour, I want to say, in any event, as Mr Boulten has he submitted in oral argument, even if the verdict of acquittal somehow set parameters of fact-finding during the inquest, that could only be in respect of the second and third shots fired by Constable Rolfe, because only those shots were the subject of the charges which Constable Rolfe was acquitted.

And your Honour referred to the transcript of 12 September 2022 and I think that's a mistake, the page reference.

THE CORONER: You think it should be the page that you refer to?

MR ABBOTT: 348.

THE CORONER: Thank you.

MR ABBOTT: Yes. But accepting that, so I won't read page, what my learned friend, Mr Boulten, said at page 348 again. So my learned friend, Mr Boulten, did say in his February submissions on behalf of NAAJA at par 45, "If there's a concern the --"

THE CORONER: Just let me find that. Sorry, I do have it here. Yes, thank you.

MR ABBOTT: My learned friend, Mr Boulten, said, "If there's a concern about the open publication of Mr Rolfe's evidence might prejudice a further fair trial, as outlined in the second reading speech, the Act allows the Coroner to suppress that evidence."

So my learned friend, Mr Boulten, those for whom he acts - or at least those with whom acts - clearly have in mind the prospect of a future trial in relation to, not just the first shot, but presumably the other matters that have been raised. How that may come to pass, we don't know.

But all I'm saying, your Honour, is that this matter, so far as some of those interests who are represented at the Bar table are concerned, some of those interests obviously have taken action, intend to take action and will take action in some way, shape or form in relation to proceedings that involve my client.

And given that we don't know the nature and extent of all these proceedings, for example, I'm told, your Honour, hearsay on my part, that there is already a writ issued in the Darwin Supreme Court in relation to these matters. A sort of holding

writ until this Coronial Inquest is finished. I haven't seen it, so we can't obtain it, of course, because we're not parties to it, and the human rights applications on behalf of three of the persons named in the use of force matters

So there is a series of litigation, the extent of which we don't know because no one's told us, we've had to try and find out for ourselves, which involve or potentially involve my client and which would utilise, if not directly then indirectly, the answers that he gives in relation to the events of 9/11/2019.

So for all those reasons, my client declines to answer any question in relation to that date on the grounds that his answer will or may tend to incriminate him in some way, shape or form. And in our respectful submission, it's not expedient for the purposes of justice that he be compelled. Yes, and your Honour has the trial evidence, which we submit is quite sufficient for you to discharge your functions.

THE CORONER: Yes, thank you.

MR COLERIDGE: Thank you, your Honour. I might start with (inaudible) had notice of an application for an objection to be taken. We have no notice that the position of Mr Rolfe would be that your Honour will not delve in and nor was this objection (inaudible). Notwithstanding those matters, in our respectful submission, having due regards to concerns raised by Mr Abbott, your Honour, (inaudible) and relatively simple.

Can I just start by acknowledging two considerations that must be taken into account observed by Mr Abbott. They are; the possibility of liability of the offence of murder or another offence of violence associated with the shot, this starts as a possibility, and the seriousness of those offences. They are relevant considerations and your Honour must have regard to them.

Your Honour must have regard to the value (inaudible) information. And your Honour must have regard to the fact that the certificate you issue under s 38, affords Mr Rolfe a direct use (inaudible). Nevertheless, the balance of considerations of power (inaudible) with fairly mixed results (inaudible). The first can be defined, from the purpose of s 38 itself, which was inserted into the *Coroners Act* 2002, (inaudible) for the sole, and express purpose, of ensuring the Coronial proceedings are not frustrated by witnesses that refuse to give evidence. And that the Coronial objectives of getting to the truth, and preventing loss of life, are not frustrated.

Second, while we concede that it is possible that there could be liability of criminal law for the first shot, it is as a matter of law and practice, extraordinarily unlikely that there would be a prosecution (inaudible). Your Honour, Mr Rolfe has an absolute bar(?) of the Northern Territory in respect of the second and third shot. And would have a persuasive argument, for the prosecution with respect to the first shot should not proceed. Your Honour doesn't need to delve anymore into that possibility. But it would be wrong for your Honour to conclude that there is a likelihood of prosecution.

Third, there is a direct use immunity certificate. And with respect, the prospect of Mr Rolfe suffering some derivative use is artificial. Your Honour will recall, this is not a case in which Mr Rolfe is about to identify, or that there's any likelihood that he will identify other sources of (inaudible) that investigators could go and obtain. Really, the only matters he's going to be giving evidence about, are his own views of his own conduct, and his state of mind. That evidence would not be available to the prosecution, and it is really difficult to see, what derisive use could be made of it.

The second point, and this is in relation to Mr Abbott's comment that Mr Rolfe will somehow be locked into a version, and thereafter be known to the world what the version of events will be, is just absurd. He gave evidence at the criminal trial. His version is out there, for evermore, it is admissible, in a criminal court against him, and it's just fanciful to suggest, unless Mr Abbott knows something we don't know, that Mr Rolfe is about to be locked into a version of events that just wasn't provided at the trial, your Honour.

The fifth point I'd make, your Honour, involves - in relation to the spectre of civil proceedings. The direct use immunity certificate under s 13 extends to such proceedings. But a concern that those proceedings might be bought, is no longer in the Northern Territory, a proper basis to object, under s 38. Your Honour ruled that it was, but, on Mr Rolfe's appeal to the Northern Territory, your Honour was overturned in that regard. And now the law is that s 38, only recognises that failure of - the privilege against self-incrimination. So, in my respectful submission, it really is by the bar that there can't be some *Racial Discrimination Act* proceeding, for example, in another court.

Finally, your Honour, it's not for me to speak on behalf of Mr Boulten, or NAAJA -
--

MR BOULTEN: Which I would like to do.

MR COLERIDGE: - - - but certainly we do find nothing in the transcript of Mr Boulten's remarks about the legal operation of s 38 that flagged an intention, on the part of any party at the Bar table, to take such legal actions. So those submissions, your Honour, we respectfully submit that it is expedient in the administration of justice, for Mr Rolfe to (inaudible).

MR ABBOTT: Your Honour, there's one matter that I haven't mentioned that I must, on behalf of my client. The - the DPP made a concession at trial that the first shot discharged by my client was fired in self-defence. That was a concession made with full knowledge of all the circumstances, and as a consequence of reports, which the DPP have received from experts, I won't go into those reports. Your Honour I'm sure knows - have read them in far more detail than I have. That was a decision made by, as to the learned friend, counsel assisting, has said, an independent body, the Director of Public Prosecutions, transmitted to their counsel, Mr Strickland.

And made, not just at trial, but I understand, in other - in other areas, but in any event, formed part of his Honour, Burns J summing up. And - and also, in relation to his rulings. It's most conveniently found in *R v Rolfe* (No 7) [2022] NTSC 1 par 110, where his Honour said:

"The decision by the accused to fire the second and third shots was made, on the Crown case, within a period of two seconds. The deceased had produced a weapon and used that weapon to wound the accused and had then continued to struggle with Constable Eberl while still in possession of that weapon. It is accepted by the Crown that the first shot discharged by the accused was fired in self-defence, such that the decision by the accused to discharge the second and third shots came after the legitimate use by him of his firearm in self-defence against the deceased. In addition, the accused had been briefed about the violent tendencies of the deceased."

I won't read any more. But I ask, because it would assist my argument, whether there's any intention by counsel assisting, or anyone else, to challenge the acceptance by the Crown, that the first shot was fired in self-defence, should - should you give a certificate, and should cross-examination then proceed. Are we going to get into a situation where, despite the full knowledge that the independent authority, the DPP, had, and to accept, and make the concession that the first shot was fired in self-defence, are we going to get into a situation where that is going to be challenged by your counsel assisting, and by other members here at the Bar table.

If so, in my submission, that's a further matter of great consideration and weight that your Honour should take into account.

MR COLERIDGE: Briefly, on that final point -

Are you still going Mr Abbott?

MR ABBOTT: No, I'm not. No, I'm not.

MR COLERIDGE: Briefly on that final point, the short answer is, I don't (inaudible) whether that (inaudible), it would be, in our respectful submission, appropriate for your Honour to require of parties as to how they intend to cross-examine Mr Rolfe on those matters. But for the purposes (inaudible) your Honour should assume that it may occur, so that your Honour doesn't need to make an inquiry. But nevertheless, the balance of all considerations, and recognising that there is a mere possibility of a prosecution of this kind, and that (inaudible) certificate be granted, (inaudible) evidence (inaudible).

MR ABBOTT: Well your Honour, that - that leads us into a situation of comedy, your Honour. I say that with respect. He's sitting as - in an executive capacity - - -

THE CORONER: Yes.

MR ABBOTT: - - - but the persona designate, we're dealing with a concession made by one member of the executive, namely the DPP, at - at a trial, and your Honour must pay - I don't make the submission your Honour is bound by it, but your Honour must pay great respect to it. It would be quite wrong - because the government is one, and individual - one and indivisible. So you are sitting today, as one arm of the Northern Territory Government. And if this matter is raised, sorry your Honour's shaking your head as I - - -

THE CORONER: I'm sitting as the Coroner, in an inquest.

MR ABBOTT: Yes.

THE CORONER: I'm not sitting as an arm of government.

MR ABBOTT: Well you're sitting as a member of the executive of the government, albeit as a persona designate, and it's - we say, obligatory upon your Honour, to give full force and effect, to another decision of the executive, which has been made, and which is quite clear, and made on a proper basis. It can't be said to be irrational, or irresponsible, for that decision to have been made. So these are considerations that you need to take into account, I say with respect, when responding to my learned friend, who suggests - whose submission is that you should give a certificate.

MR BOULTEN: Could I just say a few things, please, your Honour?

THE CORONER: Yes, Mr Boulten.

MR BOULTEN: Just to set the factual basis straight about this application, I represent NAAJA. NAAJA is here in its institutional existence. I do not represent clients of NAAJA, past or present. But NAAJA has acted for a number of people who made complaints about Mr Rolfe's conduct.

The complaints were made to the Australian Human Rights Commission. They did not relate to the offence of the shooting of Kumanjaji Walker. They related to a number of incidents that have been the subject of extensive questioning in the course of the Inquest, including yesterday and on Monday.

As Mr Abbott described them, some are use of force incidents that occurred in the years leading up to the events that are central to the consideration of the Inquest. Those proceedings are concluded. They have all been discontinued, as I understand.

As your Honour is fully aware, NAAJA does not act for the families of Kumanjaji Walker. We do not act for any association based in Yuendumu and we don't act for the Parumpurru Committee. NAAJA has not instituted any proceedings on behalf of any client in the Supreme Court of the Northern Territory or in any other court on behalf of anyone who has a complaint about the events surrounding the death of Kumanjaji Walker.

If there is on foot some proceedings, they have nothing to do with NAAJA. Having laid that factual foundation, I simply rest on the submissions that I advanced a long time ago and which have been quoted in detail by Mr Abbott today, everything that I submitted then, I stand by. It's all correct.

I also remind your Honour, as Mr Coleridge as done, that the Court of Appeal has now made apparent that there can be no claim for privilege for any exposure to a civil penalty. And dare I say it, a position that NAAJA advanced before your Honour to contradict every single other party in this room and the Northern Territory Government eventually.

So the fact of the matter is that when your Honour needs to consider whether or not to issue the certificate, there is little, if any, exposure that we're aware of that might lead to the current witness being ordered to pay compensation or act in a particular way; there might be, but it's got nothing to do with us, if there is.

But even if there is, that is not a very strong basis to refuse to issue a certificate when the basis for the claim in this case is a claim for privilege against self-incrimination. This is sort of a back door way of trying to get around the issuing of a certificate on the basis of a claim of privilege against self-incrimination; I might not be really exposed to criminal prosecution. But we've heard somewhere, someone has some sort of civil claim against Neil Mott(?) and that's really where we're at, at the moment it seems.

So the last thing I would say is an extremely obvious thing, which - no, there are two things and both are extremely obvious. First, what Mr Coleridge says is absolutely, totally irrefutable. There is but the merest theoretical possibility, a text book possibility, an exam question possibility that Zachary Rolfe might walk out of this Coronial Inquest and one day be charged with the first shot.

We all know that that is entirely unlikely to happen in this real world. It's a theoretical possibility which is every reason why you should grant the certificate - not grant the certificate.

Secondly, the fact that the Director of Public Prosecutions, on the evidence available to him at one time made a concession in a trial, does not bind you nor this court in any way about any decision that you need to make here now. To be blunt, the concept of comity between you and the Director of Public Prosecution is a nonsense.

THE CORONER: (Inaudible).

MR MULLINS: Your Honour, may you hear the family on three brief points?

THE CORONER: Yes.

MR BOE: Firstly, the Brown family supports the submissions of Mr Boulten and counsel assisting. Secondly, against stating a proposition that might otherwise be

obvious, it is not entirely clear what worse position Mr Rolfe is in with the Inquest occurring after the criminal trial or before the criminal trial.

If the Inquest occurred before the criminal trial, he would have had exposure to prosecution for the entirety of the events. He would have applied for a s 38 certificate and been granted it. It's not clear why he's in a worse position now, in fact they're in a better position having been acquitted of the second and third shot, with the only exposure, as Mr Boulten has explained, being the technical exposure to a prosecution in respect of the first shot.

The third issue is that in terms of expediency and weighing the various considerations that your Honour must address, getting to the truth of in fact what happened with the additional material that is now available is a very important factor and that the families believe your Honour should take into account.

THE CORONER: Thank you.

Mr BOE: Your Honour, just one further matter, in our submission, your Honour should take into account in determining whether you should offer to Mr Rolfe a certificate is that this claim which is being made not only after Mr Rolfe giving evidence in a criminal trial, following upon his waiving privilege and giving interviews to the Australian newspaper in May 2019 and further in his subsequent interviews which were published in his Spotlight program. If one looks at the transcript of the interview with The Australian newspaper it goes into chapter and verse to give his version of events concerning the (inaudible) of evidence.

Before I sit down though, I just mention as a matter of courtesy that (inaudible) the maternal grandparents of Kumanjayi Walker, Mr Joseph Lane and Ms Annie Lane, have been sitting and listening.

THE CORONER: Thank you.

Dr Freckelton?

MR FRECKELTON: Thank you, your Honour. We shall be very brief. We concur with the position of Dr Dwyer, counsel assisting, and say that your Honour ought to require answers in respect to events on 9 November.

MR MCMAHON: Your Honour, just to be clear, the Parumpurru Committee - and it's not any indication of any kind except presence at this inquest, adopt the submissions of counsel assisting, Mr Boulten, Mr Mullins and Mr Boe, The steps your Honour should take are those which are going to lead to get to the truth of the matter and advance the lives (inaudible) that.

MR ABBOTT: Well, your Honour, I haven't heard any of the learned counsel who have addressed you respond to my statement that we have heard that there is a risk in existence. I don't say that that is the be all and end all, but it's a circumstance that

you should now about and should Take into account when exercising your powers under s 38.

If there is no writ and everyone says there is no writ, then that is one thing but, as I said, it has come to our attention that there is - there are some proceedings on foot that we do not know about that involve either the government of the Northern Territory and the police force or one or the other and that the proceedings involve not just - at least - the events of 9 November 20129.

So, if no-one knows about it and it's all a secret and it doesn't exist, then I want to be told.

MR BOULTEN: Well, I have already said it's not - nothing to do with us.

MR ABBOTT: Not NAAJA.

MR MCMAHON: Your Honour my respectful submissions it's not for one at the Bar table to say (inaudible) as another counsel at the Bar table to deal with the application, your Honour should simply pursue that there is such a wish, identified as a relevant consideration for the reasons identified as assault, (inaudible) weight in its consideration (inaudible) is not (inaudible).

THE CORONER: Thank you. I will now take the morning tea adjournment.

WITNESS WITHDREW

ADJOURNED

RESUMED

THE CORONER: Mr Rolfe has objected to giving evidence concerning the events of 9 November 2019, on the basis that his answers may tend to criminate or incriminate him. Mr Abbott acknowledges that the objection is to be determined under s 38 *Coroners Act*. I will not set out that section but note that it permits a witness to object to answering questions, on the basis that their answers may tend to criminate them.

Where an objection is made, I may offer a certificate under s 38, if I am satisfied it is expedient for the purposes of justice to do so. Once offered a certificate, a witness is no longer entitled to refuse to answer the questions on the grounds of privilege. Mr Abbott objects, on the basis that Mr Rolfe, could, in theory, be prosecuted for an offence arising from the events of 9 November 2019, such as the firing of the first shot or potentially in respect of some other action or omission on 9 November 2019.

I accept that this is theoretically possible. Even so, I am satisfied that it is expedient for the purposes of justice to compel Mr Rolfe to answer the questions about 9 November 2019 because firstly, although I accept there is a theoretical possibility of prosecution for a very serious offence, I consider that possibility is remote.

Two. The certificate grants Mr Rolfe an immunity over the use of any answers he might give.

Three. While I accept the certificate does not prevent derivative use, any prejudice that might arise from derivative use is hard to identify, given his previous sworn evidence at trial about the events of 9 November 2019 and other accounts that Mr Rolfe has already provided about that day.

Four. Mr Abbott raised the possibility that civil action could be taken against Mr Rolfe. Assuming that is so, it is hard to see how that is a proper basis for an objection in light of the decision in *Rolfe v The Territory Coroner* and while I take it into account, I give it little weight.

Finally, while I accept that the privilege against self-incrimination is a longstanding right, section 38 partially abrogates that right specifically for the purpose of getting to the truth in coronial proceedings.

For those reasons, I now offer Mr Rolfe a certificate under s 38 concerning the events of 9 November 2019, noting that these reasons have been given on short notice.

MR ABBOTT: If your Honour pleases.

DR DWYER: Thank you, your Honour.

Mr Rolfe, at trial in relation to the 7 November, you said that the combination of the information you had informed you as to how you would characterise him as a potential risk to police officers. Do you recall that evidence?---I recall words to the effect.

All right, I will just read it to you. It's transcript 1040. You were asked a question, "How did you characterise him, in your mind at least?" And you said, "I characterised him as a high-risk offender, extremely violent, who was using - was willing to use potentially lethal weapons against police, correct?---Correct.

And that's how you characterised them on 9 November. Nothing had happened in between to change your characterisation of him, had it?---Correct.

The briefing that you gave or participated gave - or participated in with other officers on 7 November was important to try and properly prepare to address the risk? ---Correct.

Kumanjaya was, in fact, not at Warlpiri Camp on 7 November and you then found out from that - sorry - that Sergeant Frost had intel that he was still at Yuendumu? ---Correct.

On 8 November you again accessed the body-worn video of Hand and Smith on multiple occasions to show your colleagues at the police station in Alice Springs, correct?---I accept that.

You wanted to make them aware of what had happened on 6 November and alert to this offender?---Correct.

And, no doubt, that was important. Did you also take the opportunity to share your views about the response of Hand and Smith?---I don't believe so.

On 9 November, about 2:30 pm you received a phone call from Sergeant Shane McCormack?---Correct.

I asked you earlier whether or not he was the acting officer-in-charge of the IRT at times because Sergeant Bauwens was on duty. Did - - -

MR ABBOTT: On leave.

DR DWYER: Sorry. On leave - not on duty - he was off duty. Did you recognise Sergeant McCormack at any stage as the acting or de facto head of IRT if Sergeant Bauwens was off duty?---Yes. As I said, I just wouldn't - wouldn't have thought of those in those words.

Okay?---Correct, like I would've thought 2IC.

All right. So that's how you'd describe Sergeant Shane McCormack, he's the 2IC or the IRT?---Correct. In that - in that time frame.

And so Sergeant Bauwens was the OIC and then McCormack was the 2IC, is that right?---Correct - at that time.

So it made sense though, that he was giving you a call in relation to the IRT briefing? ---Yes.

Regarding Yuendumu. Right. On previous occasions when you had deployed with the IRT was there a team leader appointed?---Yes.

And on previous occasions when you deployed with the IRT was Sergeant Bauwens always with you?---I can't recall.

When Sergeant Bauwens was with you on an IRT job, he would be the team leader, is that right?---Yes.

And if Sergeant McCormack was with you instead of Bauwens would he be the leader - team leader - of the OIC - sorry, IRT?---If - yes, he would've been. If Luke Bevan as there he may have been, but yes.

Had you ever been the team leader of the OIC.

MR BOE: IRT.

DR DWYER: Sorry - a team leader of the IRT on any job?---I can't recall, probably not officially.

Unofficially nominated as the team leader, is that right?---Perhaps.

You just can't recall certainly - but there certainly had to be a team leader, didn't there, on previous IRT jobs?---Yes.

You were told on this occasion that the mission was to arrest Kumanjaya Walker? ---Yes.

And that made sense to you. Perhaps you were - you thought yourself that the IRT might be involved in a job like that?---Yes.

Did Sergeant McCormack tell you who the team leader was?---No.

You got to the station and Sergeant McCormack was there to give a short briefing, is that right? Sorry - I'm talking about Alice Springs station. Did you see Sergeant McCormack again, or not?---Yes, I did.

Was he at Alice Springs station?---Yes.

And he provided a short briefing consistent with the idea that it was to - the major brief was to arrest Kumanjaya Walker, is that right?---I believe he told me, "We are

going out to Yuendumu to arrest Kumanjayi Walker. We would get to Yuendumu and Frost would give us more information.

MR ABBOTT: Sorry, I just didn't hear that.

DR DWYER: "We would get to Yuendumu and Frost would give us more information". Is that what you said?---Yes.

At trial you explained that you were told by Sergeant McCormack at the station that the IRT would be you, Kirstenfeldt, Ebel, Hawkings and Adam Donaldson, the dog handler, correct?---Adam Donaldson was not IRT. He would have been an attachment.

The dog handler, is that right?---Correct.

You understood him to perform that role?---Correct.

You were told that the nurses had experienced break-ins and had left?---I am not sure when I was made aware of that but it was make sense that I was told that at the station.

And you were expected to drive to Yuendumu and hopefully get further intelligence from Sergeant Frost at the time?---Yes. Further instructions.

Where you told who the team leader would be?---No, I was not.

The first briefing in Alice Springs station by Sergeant McCormack, was that just you with McCormack?---Yes, I believe so.

You arrived first, didn't you, to respond to the job?---Yes.

Were you expecting that Sergeant McCormack would come out with you on the job?---No.

Were you expecting at some stage a team leader would be nominated?---Not necessarily.

In the absence of a formal team leader being nominated, you assumed that role de facto, is that fair?---I filled a leadership vacuum, yes.

Before departing, you spoke to the other three IRT members, Kirstenfeldt, Ebel and Hawkings, about what the mission was?---Yes.

And essentially, it was to arrest Kumanjayi Walker?---Yes.

And you repeated some of the aspects that you had been told by Sergeant McCormack - Paddy McCormack, is that right?---Yes.

In the Alice Springs Police Station you played the body-worn video of Chris Hand and Lanyon Smith - the so-called "Axe Incident" is that right?---Yes.

And you were there for about half an hour, I think, before you left and went to Yuendumu. Is that right?---I'd accept that.

Did you tell them anything about Kumanjayi's previous criminal history?---I can't recall.

You made clear to them, did you, that in your mind, you characterised him as a high risk offender?---I would accept that.

And extremely violent, someone who was willing to use lethal weapons against police?---I would accept that.

And you were critical, weren't you, when you showed him the body-worn video of what Hand and Smith's reaction had been?---As per my previous answers, yes.

You and Officer Kirstenfeldt left separately. The CCTV shows that you arrived at Yuendumu at 6:33 pm. Correct?---Correct.

Now, as you know because you've been shown this document on a number of occasions in previous proceedings - I withdraw that - you've been shown this document on a number of occasions during the trial, you are aware that an arrest plan was sent by email at 4:59 pm from Julie Frost to yourself and others?---I know the email you're speaking about. I disagree that it's an arrest plan.

Thank you. You were sent an email, weren't you, by Sergeant Frost?---Yes.

I'll just give you a copy of that.

It's exhibit 14 for the persons at the bar table.

MR ABBOTT: (inaudible).

DR DWYER: It's in the brief of evidence.

MR ABBOTT: Could I have a copy of that?

DR DWYER: I don't have a copy for you, I'm sorry.

I know that you looked at this document a lot. Just refresh your memory from it, if you don't mind. You've seen that document many times before, Mr Rolfe?---Yes.

Now, your evidence is clear that you did not receive this email prior to getting on the road to drive out to Yuendumu?---Yes.

And that's because you were focussed on driving out. Is that right?---There is no reception between Alice Springs and Yuendumu.

Okay. And when you arrived at Yuendumu, you certainly had your phone. Is that right?---I had my personal phone that doesn't have work email.

Sure. When you got to Yuendumu, were you anticipating - well, I withdraw that - you were anticipating, I think, further instructions from Sergeant Frost. Correct?---Correct.

The CCTV footage shows the time that you arrived at Yuendumu, about 6:33 pm and you and Constable Kirstenfeldt obviously spoke to Sergeant Frost over that period of time before Eberl and Hawkings arrived. Correct?---Correct.

There's about 20 minutes or so before they arrive. Do you understand that?---Yes.

And during that time, Sergeant Frost wanted you to wait, didn't she, until the other officers got there before she spoke to you further about what the plan was?---I can't recall that. I'd have to refer to my trial evidence.

So sitting in the witness box there, you can't recall whether or not she asked you to wait. Is that right?---I can't recall that.

Can you recall the demeanour of Constable Kirstenfeldt in that conversation with Sergeant Frost?---Yes.

Just think back to Constable Kirstenfeldt and his demeanour generally when he was talking to people in a work situation. He could easily come across as overbearing?---He could. I don't believe he was in that situation at all.

He could come - you know Jimmy Kirstenfeldt. You can - - -?---Yes.

- - - take it from me that we have, as a court, seen the video in relation to him dealing with Antonio Woods after he was arrested. It would be fair to describe Constable Kirstenfeldt, with no disrespect, as intense?---Sometimes he can be.

Can I suggest to you that on this occasion when he wanted information from Sergeant Frost, he was intense?---I would disagree. He was, from what I saw when I was in the room with him, he was professional. As you know, there are some people that can come across as - in a more difficult way. Jimmy can be one of those people. In this instance from what I saw, given that I've worked with him for a long time, he seemed professional to me.

He took the lead in that conversation with Sergeant Frost, didn't he?---I actually disagree.

He was wanting answers from her about what the mission was, further details about what the mission was?---In my recollection, I took the lead.

What do you remember about the conversation that you had with Sergeant Frost before the other officers arrived?---Julie Frost told me that she wanted us to arrest Arnold Walker at 5 am. I asked her where he was going to be at 5 am. She said she had no idea and I said words to the effect of, "In order to make a plan, an arrest plan, we need more intelligence than that and we will need to go and gather intelligence."

While you were speaking to Sergeant Frost at Yuendumu, she pointed to a folder document which contained that email that I just showed you, didn't she?---She, as per my trial evidence, pointed out a corner of one of the pages with houses sketched (inaudible) on it.

She said to you that that was a plan in relation to the arrest, or words to that effect, didn't she?---No.

I ask you to have a look at this please. It's the video compilation of the Yuendumu Police Station CCTV from 7:05 pm.

DVD PLAYED

DR DWYER: Mr Rolfe, you've had plenty of time to think about this video and you've been shown it many times previously, haven't you?---Maybe in the trial a couple of times.

Have you've seen it again in preparation for your evidence today?---No.

Do you need to see it again now?---No.

It's clear - if I could remind you that that's the period of time after Eberl and Hawkings have arrived. And it's another part of the briefing from Sergeant Frost?---Yes. No, I disagree with that.

You don't think it was part of the briefing?---The briefing that was given at that point in time was ran by me.

All right?---I should have added to the end of that answer. When I gave Julie Frost my view that we needed more intel, she agreed with me and I told her how IRT would generally do this. In this situation, we would go into the community, introduce ourselves to the community, this is as per my trial evidence, let them know who we were, what we were there for and seek to gain community assistance of - in order to achieve our task. And she agreed with me. The task - the briefing that was given to all four boys was ran by me in her presence.

Okay. The video, I'm told, unfortunately stopped working. So you didn't get to see the whole of the video. I wanted to show it to you. Did you - just saying, Mr Rolfe, just while that video's coming up, that you explain to Sergeant Frost, that one way that you would gather further intelligence is to do community engagement?---I - just how I explained it then.

What was it? Sorry, could you repeat it?---That we would introduce ourselves to the community. That we would let the community know why we were there and who we were, and seek to obtain their cooperation with why we were there. Ideally, with local members attached to us.

Did you think it was a bit funny that you would conduct some community engagement by introducing yourself to others, then the community might know you were there, seeking to obtain their cooperation, while one officer was carrying a long-arm firearm, and the other was having a Bean Bag Rifle in their hands? Do you think that might impede on your community engagement, (Inaudible)?---I did not.

If you want to have a look at exhibit 10 as an alternative.

THE CORONER: Alternate - another alternative is to take the lunch break now, until half past one.

DR DWYER: Yes, thank you.

THE CORONER: We'll adjourn.

WITNESS WITHDREW

ADJOURNED

RESUMED

DR DWYER: Your Honour, I'm told that that technical issue has now been fixed.

THE CORONER: Thank you.

DR DWYER: I might just play that video again.

DVD PLAYED

DR DWYER: Please correct me if I'm wrong, that appears to depict a scene at the Yuendumu Police Station on 9 November, some time after 7 pm or thereabouts, when you, Constable Kirstenfeldt, Senior Constable Eberl and Senior Constable Hawkings were all together in Yuendumu Police Station. Correct?---Correct.

And Sergeant Frost was there at the same time. Is that right?---She was in the station, yes.

And you see, don't you, from that video that Constable Kirstenfeldt has a document in his hands?---I can see that he has a piece of paper.

Well, it's more than one piece of paper, isn't it, a piece of paper that's been folded, at least two pieces of paper, given that there's a fold in it?---Can't you fold one piece?

So it appears to me, Mr Rolfe, that you see Constable Kirstenfeldt holding more than one piece of paper there. Do you agree with that?---No, I don't.

Could I ask please that you be shown a still, and you're familiar with this, you were shown this at trial, of the document that is in the hands of Constable Kirstenfeldt. Probably easier for you to see it on the screen. So the screen in front of you, Mr Rolfe. You see there, don't you, you can recognise first of all Constable Kirstenfeldt. Correct?---Yes.

He's got sunglasses on his head. Is that right?---Yes.

And he's holding a document in his hand. Correct?---I can see he's holding a piece of paper.

And it appears to me, looking at that, that that is at least more than one piece of paper that's been folded over and has a fold in the corner?---I can't - I wouldn't be confident in agreeing with that.

I suggest to you that that is the email with the arrest plan, or at least the arrest plan, that was sent to you by email.

MR ABBOTT: Well, I object. He doesn't agree with the question.

DR DWYER: I suggest to you that that's the - I accept that was - - -

THE CORONER: Sorry, the email then.

DR DWYER: I suggest to you that that's the email that was sent by Sergeant Frost?---I can't tell. I know Julie Frost gave us A4 maps of Yuendumu which is why I went elsewhere in the office and found what I'm holding which is, I believe, an A3 laminated map. So perhaps - perhaps it's a - one of the maps of Yuendumu.

But you know, don't you, that Sergeant Frost had printed out copies of the document that had been sent to you by email. You didn't get a chance to read it before you left?---I believe so.

Well, you took a photograph on your own phone from the documents that had been printed out by Sergeant Frost, didn't you?---I took - again, like I took a photograph of the corner of a page of the document, yes.

And that was a document that had been handed to you by Sergeant Frost. Correct?---No. That's not my trial evidence.

No, I'm asking you what the truth is?---As per my trial evidence.

Which is what?---That it wasn't handed to me. Did you read my trial evidence?

Mr Rolfe, you took a photograph of a document that was provided to - or that was available to you at Yuendumu Police Station. Is that correct?---I took a document (sic) of a section of a piece of paper that was pointed out to me that was on a desk.

All right.

MR ABBOTT: I think he means he took a photograph.

DR DWYER: Yes, sure.

You took a photograph of a document that had been pointed out to you that was on a desk. Is that right?---Of a small corner of a document, yes.

Who pointed out to you that document that was on the desk?---Julie Frost pointed out that specific point of that piece of paper on the desk, the houses of relevance.

How did she describe the document when she pointed it out to you, what you say was a specific corner of the document on the desk?---She said words to the effect of, "These are the houses of interest."

And that would have been something that you would have been focussed on. Is that right? You obviously wanted to know that information, didn't you?---Yes.

And at the time that she pointed that out to you, she told you, didn't she, that one of the houses, in fact House 511 rather than House 512 - - -?---No.

She mention House 511 at some point during the briefing, didn't she?---I can't recall.

She showed to you, didn't she - I withdraw that - you saw on the document or documents that were available at Yuendumu that there were photographs of Kumanjayi?---No.

Well, did you see a photograph?---The only part of the document I saw was what I photographed.

You had a photograph on your phone of Kumanjayi didn't you?---Yes.

Was it a photograph from the document that had been shown to you at Yuendumu? ---No.

It was the same photograph, wasn't it, that was on that document in Yuendumu - that was available at Yuendumu. You know that?---I don't actually know that.

Let's see if we've got that article. Yes. Might I just give everybody a warning now that I am about to put on the screen - for the benefit of Mr Rolfe - perhaps I won't do that. I will just show Mr Rolfe a photograph of Kumanjayi so that I don't cause anybody any unnecessary pain. Ms Woods is going to hand scroll a photograph which is from the Celebrite Reader download found for the benefit of my friend's at the Bar table, 7-142 from the statement of Brett Wilson - Senior Sergeant Wilson?---Hey, I'm (inaudible).

Sure. It's just - for the benefit of my friends it's also in 3-161 which is the complete Celebrite download of Mr Rolfe's phone. At page 120 - at pagination 12718 and we will just show that back to you again in a second?---Thank you.

So what you are being shown there is the photograph that was on your phone, correct?---Correct.

And that's the same photograph isn't it - that was one of three on Sergeant Frost's arrest plan?

THE CORONER: The email?---Yes, the email. It's the - it's one of the mug shots, yes.

DR DWYER: Okay. Did you take that photograph from the documents or document that was provided to you at Yuendumu and you could easily tell that I didn't because on the base of that photograph it's purely black whereas if I took it from this document, you would see half of the other photo below it.

Well, you don't know, do you, whether the photographs that went into that email - let's call it an email. I'm calling it an arrest plan but you want to call it an email, is that right?---Yes.

So we're on the same page. You don't know, do you, what was on the bottom of that photograph initially when it was put onto that arrest plan? Email?

Let me - I'll withdraw that - I will ask you this, when do you say that you took a photograph of Kumanjaya on your phone?---You should be able to tell. The details should be in the information on my phone but it would've been from the police computer - probably before I left.

What time?---I can't recall.

See, the metadata suggests on the Cellebrite reader download that that photograph was created on 9 November 2019 at 18:51:31 - that's 6:51:31?---Yes, so that's off a computer.

Can you explain that answer?---I just did. If you put that photograph next to the email - so if you're saying that I took that photo from this email, the base of that photo would show the top of that photo and halfway - or a bit of a third of the way along you'd see - you'd see it would be black and then it would go white.

Why does the Cellebrite data on your phone suggest that you took a photograph that was on your phone that depicts Kumanjaya walker at 16:51?

DR FRECKELTON: 18:51.

THE CORONER: 18:51.

DR DWYER: Which is 6:51, do you know? Can you explain that?

MR ABBOTT: I must object - well, I don't object to "Have you an explanation" but not the question "Why does it say that". I mean, he's been asked for an explanation, that's fair enough.

THE WITNESS: So - - -

DR DWYER: Is there an explanation?---Yes, then I imagine I took it from the computer, but I think it's proven - it's easy to see that I didn't take it from this document.

The first part of the briefing when you were sent to Yuendumu, was provided by Sergeant Frost. Is that right?---I wouldn't call any of it a "briefing." The conversation I recall with Julie was along the lines of what I said before, with some additional information.

You assumed, didn't you, that you have more tactical experience and skill than Sergeant Frost?---Yes.

So you didn't bother to read the document that you say she pointed out and told you to take - to put it (inaudible)?---I wasn't given any further information about the document.

Were you curious about it?---No. I was given the houses of interest, at the bottom of page 3, that's it.

Weren't you curious to learn why there was a document sitting on the corner of the bench which had the numbers that would be obvious to you?---It didn't come to mind. If - I believe if it was important it would've been pointed out to me.

Sergeant Frost told you about a 5 am plan, is that right?---She said she would prefer us to arrest Kumanjaya at 5 am.

She told you that Felix Alefaio, a local member, would go with you at 5 am?---No, she didn't.

Felix Alefaio was there in the police station at the time that you and Constable Kirstenfeldt arrived, is that right?---Correct. I believe so, yes.

You didn't have a conversation with him, did you?---The only - I greeted him. The only conversation I had with Felix that I recall involving him was I asked - when we were leaving I asked - or at some point when I was talking to Julie Frost I asked her if Felix could come with us because we had no local knowledge of the community members or - and we hadn't dealt with Kumanjaya before and she said, "No, he won't be coming with you."

And he was in the room when that conversation took place, is that your evidence?---Yes.

You know he's given evidence in these proceedings?---Yes.

And he says that no such conversation took place. You know that?---I believe he has given at least one statement. He gave evidence at the trial and he gave evidence here and there's inconsistencies between each evidence, so it depends on which statement you want to pick.

You are aware, aren't you, that Felix Alefaio does not give evidence - I withdraw that - Felix Alefaio gives evidence that you did not ask whether or not he could come with you at 7 pm in the presence of Julie Frost?---To that specificity, I haven't seen him give that evidence but I have seen the inconsistencies in each statement.

In fact, Felix Alefaio gives evidence that there was a 5 am arrest plan that he was to be part of. You understand that, don't you?---Again, it depends which statement you pick.

Sergeant Bauwens has given evidence in these proceedings and I think you said earlier you listened to his evidence, is that right?---Yes, I believe I was able to listen to most of it.

You know he says that 5 am plan, in effect, is not something that the IRT would do? ---Yes.

And you thought, when Sergeant Frost said that she would prefer - in your words - prefer a 5 am arrest, you didn't agree with that, did you?---If she had - had an actual plan at 5 am and knew the location, for example, I would have followed her - - -

I suggest to you, Mr Rolfe, she did have an actual plan and she told you that the plan was to arrest Kumanjayi at 5 am with Felix Alefaio there to assist?---I don't see the plan. I'm looking at the email. I don't see a plan. I know that she said in her evidence here that she believes the nuances of the plan would be developed between the members at the time.

When you say you don't see a plan, you're looking at the email. It says - that's sent to you and numerous others, copy in Superintendent Nobbs, Superintendent Vickery et cetera, Territory Duty Superintendents?---Yes.

And it says, "IRT callout". It nominates Kumanjayi's name and sets the task as being "to arrest Walker and transport back to Alice Springs, provide a local presence of armed police to uphold law and order in the community and provide support to local members." I suggest to you that the effect of Sergeant Frost's briefing to you was that the task of the IRT was to arrest Kumanjayi and provide a local presence of the IRT police? Do you agree with that?---Yes, to an extent - the task - yes, she said the task was to arrest Kumanjayi Walker.

And she also suggested, didn't she, that she wanted IRT present in the community, that they were a presence in the community that the community would understand?---Words to that effect. Obviously if we left the police station we would be a presence in the community.

And she explained to you that the plan was, as set out on page two, in relation to Sunday morning, on 10 November, that Donaldson and Alefaio would commence duty at 5 am, along with the IRT members to effect the arrest of Kumanjayi Walker. She told you that that was the plan didn't she?---One, that is not a plan, that is a timing. Two, as per my evidence before she said she would prefer us to arrest him at 5 am.

You didn't have much regard, did you, for what she was suggesting to you, as the appropriate action to take in relation to the arrest of Kumanjayi Walker, I'm trying to put that neutrally?---No, I - I respected her, and I believe me and her had a polite and professional conversation. And I believe that's her evidence, that I was professional. I said, in order to develop a plan we need more intelligence.

Mr Rolfe, you've - I'm not suggesting you weren't polite to Sergeant Frost, but we can respectfully suggest to you, that it is clear from your text exchanges, that you have expressed an opinion of bush cops, or community police, that they were on occasions, lazy and hopeless. You agree with that, that you'd expressed that opinion previously?---Yes, and that's a generalisation, as I've said before.

Sure, it's a generalisation that you made, on a number of occasions, isn't it?---Yes.

And you had sent a text message, which is 353, I can take you to it again, but I'm sure you remember it, where you sent a meme to Constable Hansen, saying "50 percent of girls at work, girls shaped like this, talk the most shit." Which was, quite clearly, sexist and offensive towards a percentage - a significant percentage (inaudible), sexist and offensive, full stop, do you agree with that?---Okay.

Would you agree with it, that it's sexist and offensive?---Well if it's - I can say it's offensive, but if I said the same thing about fat males, then it's just - I wouldn't think it's - - -

Yes, but you didn't say the same thing about fat males did you? You said "50 percent of girls at work", and then the meme says "Girls shaped like this talk the most shit" - - - ?---Look I - I actually - I still don't believe that's - - -

- - - (Inaudible) - - - ?---I didn't write the words on the meme.

No, you read the words on the meme and you sent it?---Yes.

Well I mean, it's your evidence, Mr Rolfe, do you accept that's sexist or not?---If calling a woman fat - I wouldn't say calling a woman fat is sexist, it's just - it's a descriptive, and I understand it's offensive. But I wouldn't say it's offensive, because I can call men fat as well.

And - okay, and - - -

MR ABBOTT: I think he meant "sexist" in that answer.

THE WITNESS: Yeah sorry, yeah.

MR ABBOTT: He genuinely meant sexist.

THE CORONER: Yes, but he can answer for himself, Mr Abbott.

MR ABBOTT: Yes, I think - - -

THE CORONER: It's - - -

DR DWYER: Do you think that that text message demonstrated a lack of respect for 50 percent, or a significant percentage of the women in your work place?---No, it's meaningless that text message is.

That's your serious evidence in this court is it? That it's meaningless, and that it doesn't demonstrate a lack of respect, for a significant percentage in your work place?---Yes.

At 6.56 pm, Eberl and Hawkings arrived, and there was a further short briefing that took place. Was your evidence before lunch that you conducted that briefing, in Sergeant Frost's presence?---Yes, I believe I did.

So you took charge of that briefing did you? In your words, "The absence of other leadership, or a leadership vacuum" I think you said?---No, I believe at that point I've had the discussion with Julie Frost and informed her how IRT would usually go about business in this scenario. And she agreed that that was a good way in which to handle this situation.

That you would introduce yourself, first let the community who you were, and seek to obtain their cooperation, and you would do that while you were walking around the community with one person carrying a long-arm and the other a bean-bag shotgun. Is that what you explained to Sergeant Frost?---I didn't go into the particular details of that.

I'm suggest to you Mr Rolfe, that the CCTV footage clearly shows that there's about five minutes where Sergeant Frost was present, this is just from a CCTV, there maybe more. Sergeant Frost is present in the company of all four members of the IRT. Do you agree with that?---Yes, I accept that.

And I suggest to you that Sergeant Frost repeated some aspects of the arrest plan – I withdraw that, I'll put it more neutrally. Sergeant Frost repeated some aspects of what her expectation was, that you would do - that you and the others would do?---I'd need further specification.

I suggest to you that she said, during that five minutes again, that the plan was to arrest Kumanjaya Walker at 5 am?---I disagree.

And that she mentioned Felix Alefaio and his role during that time?---I disagree.

What you say is that you gave the other officers a briefing. What do you say you said in that briefing?---By that point in time, between agreement with Sergeant Frost and I, the - I guess the nuances of the timings had changed. Our objective now was to gather intelligence in regard to Kumanjaya Walker's whereabouts, with the secondary priority being if possible, to arrest at 5 am.

Okay, so you were going to gather intelligence, and then if possible, arrest at 5 am?---That was - or if - ideally we would - we were - would arrest as soon as possible if we were able to gather intelligence and achieve that goal at 5 am, we would do so.

And if you happened to come across him, then your understanding was you could arrest him, if you happened to come face to face with him?---Yes.

But that wasn't the immediate aim was it? The immediate aim was to gather intelligence?---The immediate aim was to gather intelligence in order to arrest him.

I'll just see if we've got this video ready. Mr Rolfe, I'm just going to play you another video. I appreciate that you've seen this body-worn video on many occasions, but it just might help to make sense of the evidence - - - ?---Yes.

- - - (inaudible) to reflect on it. It's body-worn video footage that shows attendance at the first house that you went to, which is 577, you recall that?---Yes.

Do you need more time to look at that document?---No, I - I'd just say I saw some people make faces when I said this wasn't a plan, but I'm - I was just looking that there is no execution, admin log, command or sig - - -

Okay, it's - - - ?---On this document.

- - - it's not a (inaudible) that you're used to?---No, all I can see is a timing.

Okay, have a look at that. We might - you'll have plenty of opportunity to make any further comment, but would you mind having a look at this body-worn video?---Yes.

And I should just say that Kumanjaji's first name is used in this video, so I apologise for the sensitivities.

DVD PLAYED

DR DWYER: That's probably all we need. Tell me if you want anything more played, Mr Rolfe?---No, it's all right, thank you.

Okay. You hear at the beginning of that video, you say, "Rolling (?)"?---Yes.

That's to indicate to the other officers you think that your body-worn video is on. Is that right?---Yes.

You want to alert them that your body-worn's on so that they don't say anything?---Alert them and remind them to put theirs on, yes.

And you're heard to be saying to the gentleman who's there, I won't use his name again, that, "It's your dad's house, is it? It's Eddie's house." But you understood that to be - or you knew the name Eddie Robertson?---I don't know if I did at that time.

Well, you must have known the name Eddie. Didn't you volunteer that or did you hear that from somebody else?---I - sorry, if I said that, then yes, I must have known the name.

And you can hear the words being said, "We're here to grab Kumanjaya up."?---Yes.

You were there when you're going directly to that house, because that house had been nominated as somewhere where Kumanjaya sometimes stayed?---Yes.

You weren't gathering intel, were you? You were there, in your words, "to grab Kumanjaya up."?---Our goal was to arrest Kumanjaya Walker. There are a number of forms of intelligence, one of which is human intelligence. There's others, there's geospatial intelligence, open source intelligence. In this regard, we're dealing with human intelligence. The main way to gain human intelligence is through interrogation or interviewing or speaking to people. Initially, it's information. Information becomes intelligence through analysis and interpretation. We're not intelligence analysts as police officers. We do not have the process to go through that. On the ground, we do that by corroboration or by confirmation such as going through the house. So it was intelligence collection; the goal was to arrest Kumanjaya Walker. The secondary thing was, if we could achieve that at 5 am, yes. But I'm sure we'll go into why the requirement to follow up was there.

So once you were just going to walk through that house and see if he's in that house, you had a bit of intel. Is that right? You had some intel that he wasn't in that house?---We had some intel, but the person we spoke to wasn't a ideal source of information. For example, he had said no one was in the house; two young children were in the house, for an example. But yes, we did have some intel and he gave us further intel obviously. We were unsure of the information; we were unsure of the credibility at that point.

Did it occur to you that that gentleman might not have wanted police carrying guns to walk through a house with two young children sitting watching television?

MR ABBOTT: Well - - -

DR DWYER: That's a question I'm asking you to - - -

MR ABBOTT: What relevance is it whether it occurred to him he wanted it or not? They were doing their duty. They were carrying out a task. It doesn't matter.

THE CORONER: There are many different ways to carry out tasks.

MR ABBOTT: Yes, but - - -

THE CORONER: And whether or not that was a matter that he reflected on is relevant in relation to issues of policing in communities that have come up in this Inquest, and training for police in communities.

MR ABBOTT: Certainly, I accept in view of the scope of the rulings you've made that the training is, this is not a question about training. This is a question, did it occur to you? I mean - - -

DR DWYER: Your Honour, the witness just gave evidence that the person he spoke to outside, who your Honour heard on the body-worn video, was not a creditable witness because he said no one was inside the house. But in fact, when Mr Rolfe checked there were two children inside the house, and that made him think that the witness speaking to police was not a credible witness.

The follow up question I asked was, did it occur to you that in fact he hadn't wanted police to walk through holding guns when there were two children inside the house. So rather than it being a credibility issue, it was a concern for the children issue.

THE CORONER: I'll allow the question.

MR ABBOTT: As your Honour pleases.

DR DWYER: Did you reflect on that subsequently?---No, I did not.

Well reflecting on that now?---That's a question for that man.

Sure. Not a question for you as a police officer in the Northern Territory in terms of assessing the intel that you got. Is that right?---I would - you could use it to assess the intel or the information, once I had his answer in that regard.

No question for you in terms of assessing the credibility of that person speaking with police, it sounds like?---Well, I need more information.

And when you left that house, that person, as you know, gave you two houses, spoke to you about two houses that Kumanjayi might possibly be in?---Yes.

So you now had information, didn't you, about three houses that Kumanjayi might be frequenting. Correct?---I wouldn't say that in depth.

Well, you had three houses, didn't you? You knew that Eddie Robertson's house, well you knew that Eddie's house was the first house you checked?---Yes.

And then you were given two other houses where Kumanjayi might be at. Correct?--
-Correct.

And you had enough information, didn't you, to go back at that time and discuss further the 5 am plan or to make further arrangements for that, didn't you?---I didn't believe that was an intelligent manoeuvre at the time.

Mr Rolfe, you can be heard on the body-worn video, you know, saying "We're hereto grab Kumanjayi up." You uses his first name obviously?---Yes.

I suggest to you that that is a clear indication that that was not gathering intel at that time, that you were in fact going directly to arrest Kumanjayi?---We - our intention was to arrest Kumanjayi. I refer to my answer before about what intelligence is and I

fail to see how speaking to a human and asking questions about the matter is not - or could not be seen as intelligence-gathering.

Mr Rolfe, you know that there are numerous police officers from commanders through to assistant commissioners, who have given evidence in this Inquest after watching that body-worn video that what you and the IRT did was not gathering intel. You're aware of that, aren't you?

MR ABBOTT: I object. So what – so what if officers said something to him. Let's get to the question.

THE CORONER: The question is whether or not he's aware that senior police have expressed a different opinion about what was occurring on this occasion and there will no doubt be a question following that. But the first question is, is he aware that senior police have expressed a different opinion about what was occurring, on this occasion. And there will no doubt be a question following that. But the first question is, is he aware that senior police have expressed different opinions about what is depicted.

MR ABBOTT: I've made my objection, your Honour.

THE CORONER: It's overruled, and Dr Dwyer can continue her examination.

DR DWYER: Mr Rolfe, you know that Officer M [REDACTED] K [REDACTED] gave evidence in this inquest in relation to whether that was gathering intel, don't you?---Yes.

Did you watch his evidence? Or read on a transcript subsequent?---One of the other.

He said quite clearly that what you did, in relation to the residence at 577, was not intelligence gathering. You know that?---Yes.

Did that make you angry when you heard his evidence?---No.

That's why, isn't it, that day one of your evidence in this inquest this week, you specifically nominated M [REDACTED] K [REDACTED] as a police officer, who you had heard, was present at some Christmas party at a TRG, where there was inappropriate racist - - -

MR ABBOTT: Sorry, I object to that - - -

DR DWYER: This goes to credibility, your Honour.

MR ABBOTT: - - - is it putting to him that he made up a story about this person M [REDACTED] K [REDACTED], because that person had given evidence that was contrary to what my client is now giving. If that's what's put, it ought to be put directly. It's a serious allegation to put. And it shouldn't be put in a confusing way, so this witness know exactly what is being put - - -

THE CORONER: He knows now Mr Abbott, if he didn't know before, and I'll allow the question.

DR DWYER: Mr Rolfe, you gave the evidence in court. Your evidence is that you have hearsay evidence. You've heard people say that there was a TRG Christmas party, correct?---Correct.

And you - that racist activity occurred at the Christmas party, correct?---Well the annual party, correct.

The annual party. And that happened at some period of time, you don't know when, correct?---Correct.

And you haven't heard from any of the officers who were there themselves - well I withdraw that. You weren't there yourself were you?---Correct.

You provided - what you've told her Honour, was that there were officers who told you that this had happened, correct?---Correct.

And you nominated, as one of three people who could be spoken to in that regard, M [REDACTED] K [REDACTED]?---Correct.

You're suggesting, in effect, that M [REDACTED] K [REDACTED] was there?---Correct.

And you're suggesting that on the basis of hearsay evidence that you have?---Correct.

And what I'm putting to you is that you specifically nominated M [REDACTED] K [REDACTED] as someone you had hearsay about, because you were angry that he had given evidence that didn't back you up?---Incorrect.

Well incidentally, in relation to your exposure of racism in the Northern Territory Police Force, is this right, that you're not prepared to nominate one single police officer who you have heard personally use racist language?---I - I believe - - -

Outside of the Christmas - - - ?---I gave you a - I gave you a name.

Of someone you had heard use racist text message - racist language?---Yes. I gave you a name on that piece of paper.

Excuse me. One police officer you prepared, is that right?---Correct.

He's not the only police officer is he, that you've heard use racist language in Alice Springs Police Station?---I can't recall specifics.

You gave evidence, Mr Rolfe, that it was common for people to use racist language in the Alice Springs Police Force, correct?---Correct.

But you are not prepared to nominate a whole number of those?---I can't recall names, specific moments.

You're not prepared to snitch on your friends are you?---I can't recall specific times or names.

You asked for the name that you gave of somebody who you had heard use racist language to be suppressed, is that right?---Yes I think - yes.

MR ABBOTT: He asked that it be kept confidential I think.

DR DWYER: You asked that that name be kept confidential, is that right?---Yes.

But you didn't ask that the name M [REDACTED] K [REDACTED] be kept confidential, did you?---No.

Because you were happy to through him under the bus, because he was somebody who hadn't supported you in his evidence?---No I believe the ruling kind of was if someone had given evidence before in this court, their name wouldn't be suppressed.

Mr Rolfe, you know, don't you, that Superintendent Nobbs gave evidence in this inquest?---Yes.

And his evidence is that what you did and the other officers at House 577, was not consistent with intelligence gathering. You're aware of that, aren't you?---I'm not, I accept it.

You're aware of the evidence that Superintendent Nobbs gave in this inquest, aren't you?---Not all of it. I wasn't aware that he disagreed with the intel gathering.

Well did you watch Superintendent Nobbs give evidence?---I watched I believe the first part until he got pulled off.

And did you read any of the transcript of his evidence?---I skimmed it.

And you were legally represented at the time that he gave evidence?---Yes.

And you were told, weren't you, that he criticised you?

MR ABBOTT: I object - - -

DR DWYER: Or was critical of - - -

MR ABBOTT: - - - that's - that's (inaudible) - - -

DR DWYER: - - - sorry, could I finish my question, Mr Abbott.

MR ABBOTT: It's meant to (inaudible) - - -

DR DWYER: - - - you were told -

Sorry, could I finish my question, Mr Abbott.

You were told weren't you, that he was critical of you?

MR ABBOTT: That's designed to illicit information in terms of a lawyer, then I object to it. But if it's meant to be from someone else other than from his legal advisers, obviously I can't object to it.

DR DWYER: I'll word it differently.

You were specific - you understood didn't you, that he was critical of you, at some stage, during the evidence that he gave, correct?---I actually wasn't, no.

Is that a serious answer?---Yes.

So didn't you just say to her Honour, that you were - you had listened to the first part of Officer Nobbs' evidence?---Yes.

And Superintendent Nobbs was critical of you when he gave that evidence wasn't he?---I can't recall him specifically being critical of me - - -

He gave evidence - sorry I - - - ?---I can't but recall him being specifically critical of me. Perhaps IRT.

Okay, you - he gave evidence, didn't he, that after he'd watched the body-worn video of what happened when you left Yuendumu Police Station and went straight to 577, that that was not consistent with intelligence gathering. You're aware of that, aren't you?---I accept it.

You're aware of it because you listened to his evidence, Mr Rolfe. Let's get serious?---I couldn't recall it.

Are you aware that he gave evidence that what happened, leading into 577, was not consistent with what you'd expect from a disciplined force that is following a plan?---I - I can't recall that evidence that he gave.

You've given evidence this week, that you used to respect Superintendent Nobbs when you were a police officer in the force, correct?---Oh correct, yes, as a superior and a police officer.

But you made a point of dropping in a comment that now since you've left you don't respect him, because of what you say is some sort of information that's come to you. Just answer the question yes or no?---I think there's more to it than that.

That's what - you dropped in a comment about Superintendent Nobbs, that was intending to cast a shadow on him, didn't you?---I told the truth in the box about what the question was that I was asked.

You now say that you don't respect Superintendent Nobbs, that was your evidence wasn't it?---I believe I didn't want to answer the question.

Mr Rolfe, we've got a transcript of the evidence that you've given. You've previously said that you now no longer respect Superintendent Nobbs?---I believe I said I don't want to open that bucket of fish.

I'm suggesting to you, that you made a point, of alluding to something negative about Superintendent Nobbs, because he has given evidence that is not - that you perceive is not supportive of your position?---I answered the question that you asked me truthfully. You asked me if I respected him.

Deputy Commissioner Smallpage, you know that name, don't you?---Yes.

You - do you - have you read his statements in this inquest?---Perhaps.

Did you listen to the evidence that he gave in this inquest?---I - I did not. I skimmed through his evidence.

You skimmed through the transcript of his evidence, correct?---Yes.

You'd appreciate, wouldn't you, that he has previously been a police officer in the Bureau of Criminal Intelligence, did you read that in his evidence?---Yes.

That he was the Director of Intelligence for the Western Australian Police?---Yes.

His evidence is that he has a detailed knowledge about intelligence and its functions and operations, correct?---Yes.

And he's been a frontline police officer for extended periods of time, correct?---Yes.

And he gave evidence, that what happened when you went straight to House 577, was not intelligence gathering. You're aware of that?---Yes.

Are you aware also that Deputy - Former Deputy Commissioner Smallpage has been the subject of a social media campaign, where he was relentlessly criticised?---After the Facebook livestream comment he made?

No, as a result - or I withdraw that. During this inquest. During these proceedings, you know that?---No I'm not.

You know whether your father was a regular commenter - commentator on that?---I - I don't use social media.

Have you ever criticised - - - ?---As - I mean, sorry, I don't use Facebook.

Sorry, did you just say you don't use social media?---I said I don't use - I meant to say that I don't use Facebook.

Well, you corrected a slip that you made because you know full well you use Instagram, don't you?---Yeah, 'cause I know how you're going to finish your evidence.

Rather than trying to anticipate where I'm going, could you just focus on giving truthful and accurate answers to her Honour.

MR ABBOTT: I object. I object, that's insulting. He's already said many times, he is giving truthful evidence. He's already - - -

DR DWYER: I'll withdraw it, your Honour.

MR ABBOTT: It's unfair.

THE CORONER: Yes, it's withdrawn.

MR ABBOTT: Thank you.

DR DWYER: You see, Mr Rolfe, if somebody is on your side, you vigorously defend them, don't you?---If they're good people in the right, yes.

But if somebody is prepared to disagree with you or give evidence that doesn't support you, or you perceive it doesn't support you, then you want them thoroughly discredited, don't you?---No.

Your attitude is, I'm quoting you, "Fuck them." That's what you said to the Spotlight?---My attitude is, I am completely willing to call out people who I believe are wrong or lying.

After House 577, you - - -

MR ABBOTT: Well, my learned friend is moving on. I ask that the transcript, insofar as it refers to Mr Smallpage, be deleted because all we've got from that is, is he aware of what - that Smallpage said this and this and this. There was no other question put.

DR DWYER: It shouldn't be deleted.

MR ABBOTT: It's irrelevant.

DR DWYER: I've withdrawn the question, leave the comment (inaudible).

THE CORONER: Well, if it's not relevant to anything, then it won't be given any relevance.

MR ABBOTT: Thank you, your Honour, thank you.

MR FRECKELTON: And your Honour, just to remind the media of representatives who are here, if there is an interim nonpublication order in relation to M [REDACTED] K [REDACTED] in relation to the allegations made by Mr Rolfe.

THE CORONER: Thank you for that reminder.

MR FRECKELTON: Yes.

DR DWYER: After you and other officers left House 577, you were given some information by the local community member who we can hear on that body-worn video. Is that right?---Yes.

And he pointed out to you a house on a map, it looks like, from the body-worn?---Yes, two houses.

And you can be heard saying, "House 511 or 518."?---Yes.

And then you moved after that to House 511?---Yes.

I should say, while you were going through House 577, you've explained at trial what you - that that was effectively clearing a house, as far as you understood it at that time?---I believe I explained there's multiple ways to use that word. That is one of them.

Before you went through that house or in the approach to it, you removed a catch on your Glock, didn't you?---Yes.

And that was in effect releasing the retention device on your Glock. Correct?---Yes, one of them.

And you did that - I'm sorry?---One of them.

And that would make it easier for you to draw the gun quickly?---Yes.

And that's because you anticipated that you might see Kumanjaya in that house armed?---Yes, I was following my training.

There is nothing in your training about releasing the retention device on your Glock before you walk into a house, is there?---It's the training I received in police college.

In relation to entering that house, you were preparing yourself in anticipation for using lethal force. Is that right?---I was following my training, utilising the "what if", I believe it's called, "what if" or "Venn thinking". As I said, as I've been taught in police

school. And I was abiding by my training, anticipating if there could be a threat how I could deal with it.

When you moved to House 511, your retention device was still off. Is that right?---I don't believe so.

So did you put the device - did you do anything to your gun before you moved to 511?---As far as I recall, I put the retention strap back over it.

I thought you said - or tell us now, why did you release your retention device?---I think I just answered that question.

Because you say it was in line with your training. Is that right?---Yes. I can't recall the specific wording of the training then, but it's in preparation for a potential threat. You need to think about what can occur and what you would do when it does occur, if it does occur.

This is what you said at trial, 1065, "In our training, we're taught in any use of force process to put your hand on your Glock. Nowhere have I been trained and nowhere have I read in any training material when you put you hand on your Glock not to release that retention device." That was your evidence at trial?---Yes.

Is that still your evidence now?---Yes.

So you're not saying that you were taught to release your retention device, you're saying, aren't you, that you weren't taught not to release your retention device?---I believe I would have given a lot more than that line of evidence in regard to this topic in the trial. So you would need to read out the entirety of my answers in regards to this question.

Well, you go on to say, "And the injury to my thumb. There was pain and made it harder to release that device, pushing it down and forward. So I did that. That's how that contributed to my thought process?---Yes.

That's what you explained at the trial?---That's small sections out of a large topic, yes.

But you didn't give that explanation when I just asked you then about your retention device?---As I've said, my memory in - I would - ideally, my trial evidence will be better, but I thought we weren't tricking me, obviously. But here we are, so the - my memory is going to be worse now than it was back then.

Did you make that bit up about taking the retention device off because of, in part, your sore hand?---Did I make up that I had a sore hand?

No. When you were explaining to the jury that you took the retention device off, did you add in the bit about the sore hand to make that more credible?---No.

You then moved to House 511. You have previously given evidence in relation to your view of Kumanjaya Walker or how you characterised him, that he was, quote from the trial, "A high risk offender. Extremely violent who was willing to use potentially lethal weapons against police." And that was still your view on 9 November. Correct?---Correct.

In those circumstances, before you entered a house where Kumanjaya may possibly be, you obviously needed a plan, didn't you?---It would have been ideal to have a plan. It's probably a matter of resourcing and time that we can't have a plan - organise a specific plan in every house we go inside.

Mr Rolfe, you've given evidence that Sergeant Frost told you, in your words, "That she would prefer a 5 am arrest plan."?---Yes.

It was 7 pm, or just after 7 pm that night?---Yes.

There was no immediate rush for you to enter into House 577 or 511 or any of the other houses before you had time to think about a plan. Do you agree with that?---The thought process was this, we had information that he stayed in House 577. We no longer thought that he would return to that house and it was likely that he would have been warned about presence in the community looking for him, which would cause him to run from us, hide, potentially leave to another area. So we had to move forward with our intelligence and I think that's shown in the person that we spoke to at that house, he called a community member after we left that house and warned that person that we were looking for Kumanjaya Walker. There were other factors involved as well, such as Sergeant Frost, I believe, had informed the community that she was going to get out of town police officers into the community for the purpose of arresting Kumanjaya Walker. So our mere presence alone in that community would likely have started to make the community aware of what we were there for and that we were in fact doing that task. Prior to use leaving the police station, Officer Donaldson had already been out in community. I'm not sure if that's with our without Julie Frost's request, or if he did that off his own back. The fact is that he had an out-of-town car, an out of town police vehicle. He was an out-of-town cop. He was a canine cop, but I believe that had been mentioned before as well, that would be brought in, so they would have already started the process of making the community and potentially Kumanjaya aware that we were in there with the task of arresting him.

Was that a further criticism you've got of Sergeant Frost?---That is me speaking about the evidence and my thought process going into moving forward with House 511. That's why I didn't say that she had told Officer Donaldson to do what he did. I don't know if she did or not.

You knew Officer Donaldson had been out in the community because when you arrived Officer Donaldson wasn't there?---Correct. We were informed he was out in Community.

Did you raise it with anybody - your concerns that Officer Donaldson was already out in the community?---No, I didn't.

When you went over to House 511 - this is your evidence - "I jumped the fence on the side of 511 because I didn't want to lose sight of that side of the house. I didn't see a gate" - I'm reading from 1067 - "I didn't see a gate on my side of the fence and I didn't want to lose site of my side of the house that I was approaching. I jumped the fence and then I realised that there was a woman in the backyard of 518 so I walked to the rear, I walked to the property line between the two houses and I spoke to that woman" then she is named. "I asked her if she knew who Kumanjayi or Rakeisha was and she - if she knew of their whereabouts. She said she didn't know. While I was speaking to her, towards the end of our conversation Adam Eberl approached me. He asked me to confirm Kumanjayi's first name" and you told him. "And he informed me that there had been someone that he had seen moving in the back of the house, so I started following him. I walked past the young child. I said something to her and then I spoke to two women in the front of House 511." House 511 had been given to you by the community member as one of the houses where Kumanjayi might be, correct?---Yes.

And, Adam Eberl approached you and told you to confirm Kumanjayi's first name and that there had been someone that he had seen moving in the back of that house, correct?---Correct.

And then you told him that you were just going to clear this house, correct?
---Correct.

And at the time that you entered that house was Constable Eberl in front of you?
---Yes.

You knew, didn't you, that there was a good chance that Kumanjayi might be inside that house?---I would actually disagree after I spoke to the two women out the front and asked them specifically if he was in the house and they said - I believe they said "No".

Sure, but you've just given evidence that in relation to a man you spoke to about at house 577, you didn't accept that he was credible, correct?---I said there were credibility issues after he said that there was no-one in the house and it was discovered that there were a couple of people in the house, it was on an individual person basis.

So are you saying that you were willing to accept the evidence of these two community members?---I'm saying that I wouldn't immediately classify it not credible.

You had just been told by Constable Eberl that he thought he saw somebody moving inside the house and you were going into a house that had been identified as somewhere Kumanjayi went?---Yes.

It's at least possible, isn't it, that Kumanjaya Walker was the gentleman who was inside the house?---Yes.

And that you're a smart police officer with experience that would have told you that you needed to be ready for some sort of confrontation with Kumanjaya in that house? ---Yes.

And in those circumstances can I suggest to you, thinking on reflection, it would have been preferable for you to spend some time thinking through a plan with Constable Eberl?---Again, everything can always be done better. We'd done that similar - whatever happened at that house has been done hundreds of times before. It's very similar to how Chris Hansen and Lanyon Smith went about their duties and I've heard no criticism about their duty - their entries.

Yes, but you knew exactly what had happened on that occasion. You'd seen the body-worn video. You were trying to avoid that sort of confrontation, weren't you, where you would be in a house, in effect with very little room to move, where the offender had little room to move and you might be forced or confronted with an edged weapon. You needed to avoid that, didn't you?---Correct. Sometimes you cannot avoid that situation. If we were to go on, for example, Wednesday - or if TRG were able to go in on Wednesday night, there would have been a level of tactics that you could have utilised in a higher-level situation as you were looking for the - the situation is still potentially hostile. For example, in the video that's been shown in this coronial, the house clearance where we - I forget the offender's name, but that - I don't know his last name - it could be - anyway - that house clearance. Obviously that is a very different entry than the entry that we went to on the night of the shooting. That entry, although it looks extremely bad, is probably safer for all individuals involved in that house - yes, I completely accept it could be traumatising but if we are at that level where we can control each individual and use - enter tactically, although it looks bad, it is safer. We are unable to utilise those tactics in the situation we were involved in on this Saturday because it's a different scenario now.

Sure. Just if we could just make sense of our evidence for those listening, I haven't asked you about this incident but you're talking about the incident with Christopher Walker where you jumped a fence and walked in?

MR BOE: No, it's (Inaudible) it's not (inaudible).

MR ABBOTT: No, I'm sorry.

DR DWYER: You jumped in - jumped a fence and walked in and pulled a gun and said, "Get on the fuckin' floor"?---Yes, that incident.

That was a planned arrest, wasn't it?---That wasn't a planned arrest - that was a response to a home invasion but I'm just saying that although that doesn't look good, that is actually a fairly safe response in regard to the other end when we are - and just because I have said that Kumanjaya was violent and had the potential of using

weapons against police, that doesn't mean that he does it always. So I can't treat him as if he is going to do that, all time. I have to show him - as I should to anyone, respect based on the individual at the time - which is what I did on the day of the incident.

You couldn't treat him as if he was necessarily going to do that, but you characterise him as a high-risk offender, extremely volatile who was willing to use potentially lethal weapons against police - and you had an example - from 6 November which you thought put police in a very dangerous situation where - which has been repeatedly referred to as an "axe incident" where Kumanjayi had an axe in circumstances where the police were in close quarters. That's - - -

THE CORONER: Sorry, sorry, there's an objection.

MR ABBOTT: I object because it's two or three questions and the first question, I think, he hasn't - the first part of the question and what is implicit - I don't think he has actually agreed to that in full.

THE CORONER: If you want to ask that question can you please break it down.

DR DWYER: Sure. Mr Rolfe, consistent with what you've said previously today, you had characterised Mr Walker - Kumanjayi Walker - as a high-risk offender, extremely violent, who was willing to use potentially lethal weapons against police? ---Yes.

That is in the trial transcript. You had watched body-worn video footage on a number of occasions from Chris Hand and Lanyon Smith's incident on 6 November, correct?---Correct.

You, yourself, thought that was a very dangerous and volatile situation? ---Correct.

You yourself were critical of Lanyon Smith and Chris Hand for not having taken different action?---Correct.

So you had to anticipate, didn't you, as a skilled and trained police officer, that you might be presented with a high-risk situation like they would have been presented with?---Yes.

And in those circumstances, you should have taken more time to plan once you had intel that he might be in the house. That's all I am suggesting?---We could have taken more time - ideally - if we could take more time on every job, yes.

You had more time in this job, that's what I suggesting?---We can't make a plan for every job that we suspect someone is in that house. On the lowest, I did not have much high level of suspicion. If the people at the front of the house told me he was inside then yes, we would have created a better plan.

You didn't have, you say, a high level of suspicion. I am suggesting to you that you should have had a high level of suspicion in these circumstances?---Okay, if you want to join the police force you can have your own level of suspicion that when you clear - when you go look for offenders.

I'm suggesting to you that you should - if you're seriously saying to her Honour that you didn't have level of - high level of suspicion that he was in the house, let me suggest to you, that you should have had a suspicion that he might be in the house. Do you accept that?---I had a suspicion he might be in the house.

Okay. And in circumstances where you had a suspicion where he might be in the house, you should have taken more time and plan for the arrest, in that circumstance, or a possible arrest?---Okay.

Do you agree with that or not?---I hear you. I'm saying we could always do better.

Instead of taking more time, you walked in, we've all seen the body-worn video, I can play it again if you want, but I - I don't plan to - - - ?---Yes, correct.

- - - but correct me if I - if I get anything wrong. You've explained this at the trial of course. You walked in, you walked up to Kumanjaya, you put yourself about a foot away from him, or thereabouts?---Yes, I followed - I followed Constable Eberl into the house.

There was then a situation where you put your phone up to his face?---Yes.

So that you could try and identify him?---Yes.

And you were looking specifically, I think you give evidence, about a fold in his ear?---Well I was looking at - at - just his face in general initially, and it - the mug shot did not look like him. And it ended up getting to the point where that's how I identified him, yes.

Okay, so you were - you were looking carefully for individual characteristics that would help you to identify him?---Yes.

And you had to be fairly close for that to happen?---Yes.

And you, in doing that, created no space between you and Kumanjaya, that would have given you other options - that would have given you more options for tactical manoeuvres, do you agree with that?---I was standing close to him.

You take - you told Kumanjaya to take his hat off before you put the - the phone up to his face, and you were focused on trying to identify whether that was Kumanjaya?---Yes.

Mr Rolfe, after that period of time, you were, as you've explained, stabbed in the shoulder with the scissors that we know Kumanjaya had access to?---Yes.

I want to suggest to you firstly, before I do, I'm sorry that you were stabbed in the shoulder with those scissors. That's a terrible thing to happen. Can you accept that, as a starting point. What I'm next suggesting to you though, is that you've put yourself and Eberl in a position of risk, by entering the house in the way that you did, without making a better plan. Do you accept that, upon reflection?---Yes and I also say that anyone in this court room is sitting next to someone whose probably a stranger who could stab them as well. It's in the regular course off life, you cannot avoid being close enough to someone in that regard.

Have you heard of the concept of "Officer induced jeopardy"?---Yes I have.

You know that Superintendent Pollock was the first officer in charge in relation to her Honour's inquest, or this inquest?---Yeah, yes.

Is he somebody whose opinion you respect?---I have never met him. I've heard he's a very good detective, or was, sorry, when he was in the job.

And - and - - - ?---I believe he's out, sorry.

- - - has I think over three decades of experience in the Northern Territory Police before he retired?---Yes, I've nothing but good things about him.

I just want to read to you what he says about that entry into House 511, and ask for your genuine reflection on it?---Yes.

He said, "By entering the premises in haste, both Constables Eberl and Rolfe placed themselves in a situation best described as officer induced jeopardy." He explains, "That that is where officers needlessly put themselves in danger, committing an unforced tactical error, that makes them vulnerable, and thus in a position where they must use deadly force to protect themselves." He says that happened when you and Eberl entered the building. Do you accept that now?---I would - I would accept elements of that, yes.

What elements do you accept?---I would just - if I could read it, so I could - like I - if - am I able to read it in front of me, just so I can - just don't want to make a mistake.

Sure.

THE CORONER: Can you identify that for Mr Abbott, where that's from.

MR ABBOTT: I don't have a copy.

DR DWYER: Three six nine eight.

THE CORONER: Three six?

DR DWYER: Nine eight.

THE CORONER: Nine eight, in the transcript?---So I - am I allowed to answer?

DR DWYER: Yes please?---I definitely agree with they've put themselves in a position where they could be exposed to danger. I would take out in the second paragraph - - -

So can you just read that, just so it makes sense to everybody?---Sorry, and he says "As" - so I guess is - "as in fact he referenced would - I note here at 45, and then this I imagine Pollock again. "As defined are situations where officers needlessly put themselves in danger", I would take out the "needlessly". I would say we've put ourselves in danger. And there were tactical errors. So I agree with that. I've mentioned before that I didn't notice that Kumanjayi was putting his hands in his pockets. And makes us vulnerable, correct. And I agree with the end of that, "And thus in a position where they must use deadly force to protect themselves." So I agree with most of the statement.

Okay, because what he's saying, Mr Rolfe, is - is on reflection - or what I'm asking you to do is reflect on what Superintendent Pollock has said, on reflection, you've put yourself in a situation that was needlessly putting you and - or that you and Eberl put yourselves in a situation that was needlessly putting him in danger. Because there were other options available to you. And I'm just asking you to reflect on whether you accept that?---If we take out the word "needlessly" I accept that we put ourselves in a situation that made us vulnerable, yes.

And you - and you put yourself in a situation that made you vulnerable, in circumstances where you had other options, where you would not have been so vulnerable, if there'd been more plan?---Well there are - there are countless options.

Sure?---I could have decided to stay in the station all night, and never arrested him, and never done my job, because - - -

He's what he suggests should have happened. He says - - -

MR ABBOTT: What page?

DR DWYER: Transcript 3698

"When Kumanjayi's family members were present, there was an ideal opportunity to properly call in all members to cordon the house and negotiate with a then unknown male, who had entered the premises." That was an option to you?---I wasn't aware that those people out the front were Kumanjayi's family. As I had never been in that community before. Ideally, we would have had a local police officer such as Felix, or Sergeant Frost, or any other people who had involvement with his family, ideally that would have been the situation. Because then they would have had a rapport. They would have likely known who those people were. But I don't agree with that, because we didn't know those people were his family.

You didn't ask any of the people outside whether or not they were Kumanjayi's family, is that right?---Whatever I asked is on the body-worn and the transcript.

Can you remember?---I don't believe I asked - - -

Now, whether or not you asked it?---I don't believe I asked their names.

One option would have been for you to make enquiries about who was - who was outside in terms of their relationship with Kumanjayi, and whether they were available to assist?---Correct.

And that would have been a safer option than the option you chose, of entering inside the house?---It would have just been an additional thing.

I'm sorry, what was that answer?---Well of course of speaking to a woman out the front is obviously safer than entering a house with a suspect.

You could have made enquiries about who they were, in relation to Kumanjayi, and whether there were family members present, or where they were. And that was an ideal opportunity, I suggest to you, consistent with what Superintendent Pollock says, to properly call in the rest of the members you had available, the other three IRT, and Donaldson, and negotiate with the person who'd entered the house. I'm suggesting to you that that would have been safer. Maybe not as quick, but safer and more appropriate?---If we had - if we knew Kumanjayi Walker was in - was in the house, definitely.

I'm suggesting to you that that was appropriate, on the basis of your suspicion that he might be in the house?---To negotiate with any unknown person in the house to come out, I disagree - I would say it's - it's safer. I would say it's not in our training, and I - it's - if that's the new police training, then I'd accept it, if the police changed that. But at the time, that wasn't our training.

Superintendent Nobbs gave evidence, that when you and the members made your way to House 511, in effect, you repeated the error that had been made on 6 November, that you'd seen in the body-worn video, in terms of placing yourself in a situation, in close confines, in circumstances where you had evidence of the riskiness of that - you repeated it. Do you accept that on reflection?---Well, you know in the culmination of the event, yes, as it's - that is what happened.

And Deputy Commissioner Smalpage - or then Deputy Commissioner Smalpage gave evidence that tactics should have been employed at the point where Eberl notified you that a male had entered the house and that was a house that had been given to you as one of the ones where Kumanjayi might be. tactics should have been employed at that point, establish a cordon, called Walker out, not enter the building. If you insert - or if you replace the word "Walker" and say, "Establish a cordon, called the male out and not enter the building"?---And what enter the building?

And not enter the building?---Not enter.

Call him out, establish a cordon, such as you could with the available resources, that would have been a safer option than entering the house and putting yourself in very close proximity with Kumanjaya. Do you accept that, on reflection?---I would prefer - before I accept it I would prefer some further - I think I'd need further information from Deputy Commissioner Smalpage on how I could do that with the resources that we had.

Well, I think the answer to the question I am posing to you is, "No, you don't accept that as an option"?---I would, if I was shown how I could - you do that with the resources that we had.

Well, you had four officers available including yourself?---Yes.

Sorry, in the IRT?---Yes.

And then there was a fifth officer in terms of Donaldson who had a dog, correct? ---Yes.

You could have established those officers - or set up those officers around the house, correct?---Yes, but there needs to be - with a cordon there needs to be at least - and this is not even an effective cordon, but for the worst cordon there still needs to be a line of sight between each member so that would mean that the members - say you've got the front house - front of the house - the front door, you've got - you've got five member you have two members there and then imagining you're creating the cordon with three other sides of the house. That means that there are three other officers are stationed on each side of the house but far enough away so they could still see all members, you'd still end up with the situation where you have two people at the front and three officers around the side of the house.

It still would have created more distance than you gave yourself when you went into the house, correct?---Correct.

And so the worst that might have happened in those circumstance is that Kumanjaya escapes, gets away from the cordon?---That's not the worst that could have happened but that's a situation that could have happened.

And that is still safer than the one that you and Officer Eberl found yourself in inside House 511?---Yes, potentially, unless he committed an act of violence against someone else and caused their death or injury.

So you don't make any concessions at all in fact, in relation to something that you could have done better in planning for the arrest of Kumanjaya after you had intel, that a male had entered into that house and that was a house where Kumanjaya was suspected of being?---Well, I think I made multiple concessions.

MR ABBOTT: I object. I think it's obvious he has made some concessions. I mean it is - insofar as the question suggests that he hasn't, it's just in concert with what he has been saying for the last half hour.

DR DWYER: All right. Well that will be a matter for the transcript and your Honour.

MR ABBOTT: Thank you.

DR DWYER: Mr Rolfe, you gave evidence at trial as to what occurred inside house 511 and I am not going to go through all of it again and I am certainly not going to play the video unless I am asked, but this is what you say in the trial transcript at 1072. You were asked by your counsel then, to "Describe if you can, as you recall it, what you remember seeing, hearing and perceiving up to the point where you discharged the shot for the first time?" And this is what you say:

"So when I said 'Put our hands behind your back' as soon as I said that Kumanjaya started resisting. He raised his arms and started striking me around my head and neck area and I immediately raised my left arm and left shoulder to protect my neck. Kumanjaya struck me twice on the top of the head in a hammer fist motion, which is using the writer's palm coming downwards on the top of my head. I thought this was strange because he wasn't using his knuckles so at that point I looked at his hands - that was the first time I ID'd that he had a metal blade protruding."

You were then asked whether you knew any more than that and you said, "No, I just knew it was a metal blade". And your counsel says, "Well, we now know as it turns out, they were scissors". And you say, "Correct". And you note that you - the first time you realised that it was scissors was when you had Kumanjaya on his stomach. Do you recall that evidence?---Yes.

And then you say - you were asked, "So you appeared what - so anyway, you saw what appeared to be a blade", you say:

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

And the answer is:

"Right, and what did you do then?---Instinctively from then - from then I jabbed him with my left hand - in the face - with my left fist."

And you say - you were then asked:

"What were you doing with your right arm or hand?"

And you say:

“Instinctively at the same time I put my hand on my Glock, at which point I realised his left hand was already on my Glock.”

When you said “his left hand” you meant Kumanjayi’s left hand, is that right?---Yes.

And then you were asked:

“Were you aware in these split seconds - of where Eberl was and what he was doing and his proximity to this blade which has stabbed you?”

And you said:

“I was aware he was in close proximity. So as soon as I saw him with the blade I immediately feared for my life and I instinctively went for my Glock.”

Page 1073.

“His hand was on my Glock and I twisted my hips back, which we’re trained to do with speed, and knocked the hand off my Glock and stepped back. As soon as I stepped back Kumanjayi’s focus turned to Eberl and I immediately feared for Eberl’s life. Kumanjayi started stabbing Eberl in the chest and neck area.”

That’s the evidence that you gave at trial, correct?---Correct.

Constable Eberl had no stab injuries, did he, in his chest and neck area?---He had a cut on his left armpit area.

You’re saying the graze that was around his armpit area might have been caused by Kumanjayi is that right?---Yes, I believe that’s what Superintendent Pollock said as well.

And that’s what you mean when you say, “He started stabbing Eberl in the chest and neck area, you say he did something to cause that graze?---Well, my perception was he was stabbing Eberl in the neck and chest area..

Constable Rolfe, the first time you gave an official - Mr Rolfe - the first time you gave an official version of what had occurred inside House 511 was at the trial. Is that right?---Yes.

That is the first time you gave an official public version - an official version publicly as to what had occurred?---Yes.

Because before that you wrote an entry in your notebook, didn’t you?---Yes.

And before that you did speak, I think, to officers back in Yuendumu when you get back - when you came back with Kumanjayi after he had passed out, did you have any discussion with them?---Yes, I believe so.

And when you had a discussion with them you didn't mention at all, at any time, that Kumanjaya had put his hand on your gun, did you?---No, I didn't.

And then after you left Yuendumu you went to the Alice Springs Hospital, is that right?---Yes.

And when you were in the Alice Springs Hospital you were visited by Constable Bonney, is that right - or Bonney?---Yes.

And when you were visited by Constable Bonney you had a discussion with her as to what had happened to you, naturally?---I can't recall what the discussion was about.

And then you say you just can't recall what you spoke with her about?---Yes.

After she left the hospital, at that time, she called you between 2:00 and 3 am from her personal phone to see how you were? Do you recall that?---No, I don't.

Do you understand that Constable Bonney has given an account of what she spoke to you about in that phone call?---Yes, I believe she has.

Have you read that account?---I have. I've forgotten it.

7-16 of the brief, its from 18 December 2019. You understand that she gave this account just over a month after Kumanjaya had passed away?---Yes.

And this is what she says - page 7:

“Sometime between 2:00 and 3 am I called Rolfe from my personal phone to his personal - this personal phone - and it's his personal phone. I called Rolfe because I was concerned for his welfare, and wanted to have a proper conversation with him, to know that he was okay, or what I could do to ensure that he would be okay.”

That fits with your memory, doesn't it?---Well, I can't remember the conversation.

You can't remember anything about it?---No.

All right. Well, I'll continue. She says:

“I asked where he was and he told me he'd been discharged and was at home. Rolfe then told me what happened at Yuendumu. I don't recall the conversation word for word, but his version of events that he gave me was, they got information from a relative about what house Walker was at and they attended the house.

Rolfe and Eberl were the arresting team and Kirstenfeldt and Hawkings were on the cordon. Upon entering the house, a male went to walk past Rolfe out the

front door. Rolfe stopped him and asked him who he was. The male either failed to provide his name or provided a false name. Rolfe then got his phone out which had a picture of Walker on it. Rolfe held the phone up next to the male to compare the picture with the person.”

It's right so far, isn't it?---It's - can you read it out again, please?

“Upon entering the house, a male went to walk past Rolfe out the front door. Rolfe stopped him and asked him who he was. The male either failed to provide his name or provided a false name. Rolfe then got his phone out which had a picture of Walker on it. Rolfe held the phone up next to the male to compare the picture with the person.”

It's right so far?---Yes.

“Rolfe then realised the male was in fact Walker and informed him he was under arrest.”

That's right?---Yes. Well, it's vaguely right. I said, 'Put your hands behind your back.'

“Walker then grabbed a blade from somewhere on his person. Rolfe did not see where.”

That's right?---Well, it's vaguely correct, yes.

All right. I'll just read the rest:

“Walker used his blade to stab Rolfe. The blade punctured Rolfe's left shoulder. Rolfe reacted by creating distance between him and Walker. Eberl then ended up in a tussle with Walker during which Rolfe saw that Walker still had the blade in his hand and was stabbing Eberl with it.

Rolfe later told me that Eberl didn't realise Walker had a weapon and thought he was just being punched by Walker. I don't recall if Rolfe told me where on Eberl's body Walker was stabbing him. While Walker was stabbing Eberl, Rolfe used his Glock to shoot Walker.

Rolfe told me either in one of the two statements regarding the shooting, 'I don't remember which. I think I shot him twice, but someone told me it was three shots, or I think I shot him three times, but someone told me it was two shots.' And Rolfe told me this, I remember saying words similar to, 'sorry you had to do that mate, sounds like you didn't have any other options'.”

You would expect, wouldn't you, that Constable Bonney would be doing her best to give an honest account?

MR ABBOTT: I object to this, because we do have the body-worn footage. The body-worn footage tells us exactly what happened and for this line of questioning to proceed, it proceeds on the basis that someone else's account which may or may not, to a greater or lesser extent, accord with the body-worn footage.

THE CORONER: It's not a question of whether it matches the body-worn, it's a question of whether this account reflects what Mr Rolfe told her.

MR ABBOTT: Well, that can't be put. If someone says something that you said this, it can be put to this witness, but reading it out like this is the wrong way to go about it, your Honour. I protest and object.

DR DWYER: There's nothing - it's not the wrong way, and it's a bit tiring to be perfectly honest, having Mr Abbott tell me what is the right or wrong way to examine. I am entitled to examine and cross-examine this witness in my role as counsel assisting this Inquest.

And unless the questions are improper or your Honour rules it in any other way to be improper, then I intend to ask the questions the way I want to, not the way that Mr Abbott tells me to. I press the question.

THE CORONER: In my view, there is nothing improper about putting a conversation, circumstances of the conversation, whether or not it accords with his recollection and whether or not he is of the view that it is likely to be correct, given his apparent inability to now recall the conversation.

DR DWYER: And we've heard those questions, Mr Rolfe. You accept, don't you, that Constable Bonney is an honest person?---Yes.

And that she would have been doing her best to record and account what you told her about on 18 December accurately?---Yes.

And that she would well have understood the importance of this incident and recording an accurate version?---Yes.

And that much - there's nothing that she says in there that is inaccurate that you heard, is there?---Well, there's discrepancies, but it's - she's being honest, I accept.

There is nothing in there in the account that you gave her to suggest that you told her that Kumanjaya put his hand on your gun, is there?

MR ABBOTT: Well, I object to that, because he hasn't consented to the fact that that is the account that he gave her. It's what she says is the account he gave her. But the question contains the premise that this is the account that he - and he's admitted that this is the account he gave.

DR DWYER: I'll withdraw - - -

MR ABBOTT: He hasn't admitted that.

DR DWYER: I withdraw that.

Did you tell Bree Bonney at any time when you spoke to her on the morning after Kumanjayi was shot that Kumanjayi had put his hand on your Glock?---I can't recall, but it's likely that I did not.

Mr Rolfe, the significance of Kumanjayi putting his hand on your Glock is that he could have then withdrawn the weapon and shot you or him. Correct?---If I didn't act correctly, yes.

It's one of the most serious things that could happen to an officer, isn't it, to lose control of the gun?---Literally just mirroring trials, I will go how the trial goes.

No, Mr Rolfe stop, please. Can you please just answer question seriously?---This is serious. Can you please read your question again?

Sure. It's one of the most serious things that could happen to a police officer, isn't it, to lose control of their service weapon?---Correct, which is not what occurred.

No, because you say that you acted decisively and knocked Kumanjayi's hand off your gun?---I followed my training, yes.

And you gave that account for the first time at trial?---Yes.

And you did that in spite of the fact that on a number of other occasions, you gave an account of what had happened without ever mentioning that fact?---Sorry, I gave it for the first time that it's been recorded at the trial.

Who did you tell other than the trial jury - - -

MR ABBOTT: Your Honour, I object.

DR DWYER: - - - about the gun - about Kumanjayi putting his hand on your weapon, other than the trial jury and your lawyers?---I can't recall. I can message all my mates that I talk on a general basis and ask if I talked to them.

You can't recall anybody who you told?---I know I've told other people.

Prior to the trial - - -

MR ABBOTT: Could we have a break?

DR DWYER: I'm nearly finished, your Honour, if I might just finish.

MR ABBOTT: Certainly.

DR DWYER: We just need to get through this evidence.

Prior to the trial, there were a number of accounts that you gave about what had happened to you inside House 511. Is that correct?---Yes.

One of them is to Bree Bonney. Correct?---Yes.

And your evidence is, to the best of your memory, you did not tell Bree Bonney anything about Kumanjaya putting his hand on your gun. Correct?---Correct. I recalled that at a later time.

And you wrote some notes in an official police notebook, didn't you?---Yes.

Have a look at this please, 7-1150 - 115C, I beg your pardon?---Yes.

You've read those notes, have you?---Yes.

Thank you. And there's nothing in that notebook entry about Kumanjaya putting his hand on your gun, is there?---No, there's not.

And you gave an account of what had happened to an Australian journalist by the name of Kristin Shorten. Is that right?---Yes.

And you knew in speaking to Ms Shorten, that you had a very sympathetic journalist?---Yes.

And you gave that account in December of 2019, a few weeks after Kumanjaya had passed away. Correct?---Correct.

And in the account that you gave to Ms Shorten, you had ample opportunity, didn't you, to explain all the details to her?---Correct.

And you had been communicating with Ms Shorten, certainly by text, prior to that time?---Yes.

And no doubt on the telephone as well?---Yes.

To make arrangements to take your evidence in a way where - I withdraw that - to take that account of what had occurred in a way where you could feel comfortable explaining it?---Yes.

If you have a look, please, if you have got the text messages, it is 668. Perhaps start with 666, if you might?---Yes.

You see that Ms Shorten texts you as early as 11 November 2019?---Yes.

At 10:34 pm:

“Hey mate, heard the news. Hope you and your shoulder are okay. Ignore the leftist reporting in the media. Hopefully, catch up soon.”

Was she a good friend of yours?---She was a friend, yes.

And is her partner a police officer, is that how you knew her?---Yes.

And then you text her back:

“Hey, Kristin. Yes, my shoulder is doing pretty good. All good on my end. I don’t pay attention to the losers anyway. Definitely catch up soon.”

And then it goes over and she says to you at 11:13 pm:

“For sure. Hubby on his way down there today. So glad you are okay. Could have been much worse. I know what you did was totally warranted.”

So, she is telling you that she has formed a view about what happened in the absence of having reviewed any of the evidence that she knew or believed what you did was totally warranted?---Hang on, hang. Can you ask that one – the last bit again?

Sure. She says there:

“Hubby on his way down there today.”

She is meaning her police officer husband, is that right?---Yes.

She says:

“So glad you are okay, could have been much worse. I know what you did was totally warranted.”

I will just read the rest of it:

“If you ever want me to write an article in your defence, with or without naming you, say the word. Otherwise, just take care and recover. Let us know when you are up here next. Talk soon.”

And you write back:

“100 percent. I already thought about it. If I want to put my side out there, I would always come to you. Once this investigation is over, we will get to that.”

And then you thank her heaps?---Yes.

And then she goes on to say, text 671, same night, 11 November, 11:39:

“P.S. If or when you want, I can write it without naming you or quoting you so it sounds like we never spoke.”

And your write back, text 672:

“Boy, I am down for that, ha ha.”

And she says,

“Awesome, just let me know when. I am willing to do it any time.”

So, in speaking to Ms Shorten, you were well aware that she would give you as much time as you needed to set out your version of events in a way that was very sympathetic to you. Or sympathetic to you. Do you accept that?---She was being sympathetic to me, yes.

Well, you knew you that you had ample opportunity when you were speaking with her to give a version of events?---Yes.

And you did sit down with her and do a recorded interview, correct?---Correct.

And you did that on 5 December 2019, less than a month after Kumanjayi passed away?---Correct.

And in circumstances where you had exercised your legal rights not to give an official version?---Correct.

But you were happy to sit down with that journalist and give her a complete – a version of what had occurred?---Yes, I had already had a number of concerns with the investigation. And I wanted to have what I said before, a – something that I could have on a USB, on multiple USBs, with my version of events in case the worst happened, and I was found guilty for what I believed – to correct the course of justice. The goal of this was to never release it. I don't think it was released until after the trial.

The goal of this was to never release it?---Or to not release it until after the trial.

You could have recorded your own version on any occasion with your lawyers, couldn't you?

MR ABBOTT: Well, that assumes that he didn't. I mean you can't ask him about what he did with his lawyers. I am sorry, I object.

MS DWYER: I will ask it differently. You could have recorded your version of events on a video, or in a notebook, in any way you liked prior to the trial?---Correct. And this is the option I choosed (sic) as an action on being the only person in this room probably that was facing 25 years in gaol. So, I cannot - - -

Okay?---I believe that you guys cannot comprehend the pressure that I was under.

Ms Shorten gave?---And the stress that I was- - -

Sure?---Working with. And what I was trying to do was to protect myself, my family, and my friends from a negative outcome.

And the way that you did that was to sit down to a – with a journalist who told you that she would, “Tell your story sympathetically.” And you spent time with her, as much time as you needed, giving a version of events with her. Correct?---Correct.

And there were multiple takes, weren't there? Where she went – you could say something in any way you wanted to?---I guess there were multiple takes.

And in – at no time when you were speaking with her just weeks after the incident did you ever mention that Kumanjayi put his hand on your gun?---Correct.

And I want you to think carefully about this, knowing that you have got a certificate that covers in relation to evidence you gave at the trial. I want to suggest to you, Mr Rolfe, that that evidence you gave about Kumanjayi's hand being on your gun is a lie?---It is definitely not. And if you think I look unconcerned about this, it is because I don't believe any expert has been put in this witness box that is an expert in memory in regard to critical incidents. And if you had used an expert and asked them questions about memory in regard to critical incidents, then I think they could explain how something like this could happen better than I could.

Mr Rolfe, is it the case that when you were giving evidence at the trial, you were concerned yourself that shots 2 and 3 were excessive, and you thought you better add that bit in about Kumanjayi's hand being on your gun to make that story more credible?---No.

I showed you your notebook earlier, do you have that?---Yes.

Do you see that in your notebook – have you got a typed version, as well as the written version? The typed version is easier if you can accept from us that that's an accurate version – an accurate typed entry. It is found at 7-115C. Do you see down the bottom of that page you note:

“Fearing for my own life. Started fighting and has hit me in the head. Raised my fist badly. I saw a blade in his right hand. Stabbed me in the shoulder. I believe I punched him in the face at this point. Adam Eberl and Walker ended up on the ground. I believe Walker had Adam's back. I observed Walker attempting to stab Eberl with the blade.”

You have already agreed I think that there is no mention in there about Kumanjayi's hand being on your gun?---Yes.

And you go on to say:

“Fearing for Eberl’s life. I yelled, ‘He is stabbing you,’ or words to that effect. I unholstered my Glock, fired into Walker’s torso,”

Et cetera?---Yes.

You did that version of events prior to watching the body-worn-video footage?---Correct.

And so, you included there a suggestion that you yelled out, “He is stabbing you,” or words to that effect before you unholstered your gun?---Correct.

That is not correct, is it?---Correct. And as I said before, if you bring an expert in memory in regard to critical incidents, they can explain how things like this can happen.

Is it the case that you wrote up that notebook in a way that would be most favorable to your version?---No, I hadn’t seen the body-worn yet. I.

You certainly – I withdraw that. In the body-worn-video, what can be heard is these words when you are wrestling with Kumanjayi to get the scissors off him:

“He was stabbing me. He was stabbing you.”

That is what you said, captured on your body-worn-video. Do you agree with that?---(No audible response).

Do you – I’m just (inaudible)?---Yes, sorry. I am just trying to – yes.

Take your time if there is something you want to look at?---Well, yes. Sorry, no, I – the question before where you said I was, “Writing these to give the best version in my support.” I was writing these under what I believed – I was writing these for my lawyers.

They are contemporaneous notes, is that right?

MR ABBOTT: No, that point he is not answering.

MS DWYER: It is an official police notebook transcript at 7-115C. There has been no objection to it.

Mr Rolfe, the question I was asked to you is in relation to something different in the body-worn-video?---Yes, sorry I got – I got, yes.

Sure. In the body-worn-video we hear these words, “He was stabbing me. He was stabbing you?”---Yes.

And that is captured on the body-worn-video?---Yes.

And is it the case that you wanted those words captured on the body-worn-video to help you tell your story about what had happened to you?

MR ABBOTT: He wanted – sorry, he wanted it captured? I don't understand the question.

MS DWYER: I will rephrase it, so it is clear.

Is it the case that you deliberately said those words to back up a version of events that you had – that what you had done in self-defense was appropriate and not excessive?---No.

You are, aren't you, someone who was practiced at using your body-worn-video to present a story in a particular light?---I - - -

By saying things on the body-worn-video that backed up a version of events?---I disagree with that statement.

Well, we see text messages where you say that:

“You are happy to act up for – always happy to act up for the camera.”

You remember that text message?---Yes.

Is that what you were doing in part here?---No.

By saying, “He was stabbing me. He was stabbing you.” So that version would definitely be on the body-worn-video?---No. I think that would be an unrealistic expectation of human performance to even think that thought in that moment.

I am not suggesting for a second that you weren't entitled to respond in some way after you were stabbed in the shoulder with those scissors. Or that that would not have been a traumatic event. But what I am suggesting to you is that when you gave evidence at trial, you were worried yourself that you had gone too far in your response to Kumanjayi's actions?---Incorrect.

Is that a convenient time for a break?

THE CORONER: Yes, it is. We will take the afternoon adjournment.

ADJOURNED

RESUMED

ZACHARY BRIAN ROLFE:

DR DWYER: Mr Rolfe, this was the first time as a police officer in the Northern Territory that you had been involved in a death in custody operation is it, or have there been others?---I believe it was the first.

Did you - had you read any Standard Operating Orders or General Orders, in relation to how to deal with deaths in custody?---Only whatever was presented to me at the police college. I have no recollection of doing so.

All right, did you - you would have known, as a basic proposition, that after a serious incident like this, where there had been a fatality, it was important for all the officers involved to be separated, so that they could give versions of events that weren't contaminated?---Yes.

And that - by contaminated, I mean either deliberately contaminated, or accidentally contaminated by somebody else's memory?---Yes.

That's a basic aspect of policing too, isn't it? So wherever possible you give a separate account?---Yes.

Particularly important in a serious incident like this?---Yes.

And you understood that was necessary for you, as in, before you - well when you provided a version of events, it was necessary that your own version not be contaminated accidentally or deliberately?---Yes.

There was a debrief at your house, wasn't there, after Kumanjayi was shot?---Not a debrief, no.

What would you call it?---Just beers with some mates.

Well when did that take place?---Monday night I believe.

And so how - can you remember the date of Monday night, 11 November, does that sound right?---Yes.

And in attendance at that gathering, were members of the IRT who had been with you when Kumanjayi was shot, is that right?---Yes.

Kirstenfeldt was there?---Yes.

Eberl was there, for a short period of time?---Yes.

And did Hawkings come as well?---He - he may have, I can't recall - - -

And other police officers too?---Yes.

Sergeant McCormack, Patty McCormack was there?---I believe so.

And during the course of that gathering, there must have been some discussion, about what had taken place for you at Yuendumu?---I can't recall on an extremely non-detailed level I'd accept that, yes.

What do you think about that now, as a police officer, having been involved in this, taking part in a gathering at your place, in circumstances where you were required to give a (inaudible) account?---I obviously understand the issues with it. My understanding was that all the other officers involved had given their statements. And the police had refused to take my statement or something at that point, because they couldn't determine the - whether to do it in - under Coronial powers or internal powers versus criminal powers. So I understand the issues that have arisen from that. In that regard, I - accepting that all four of us were involved in - all four of us, or five of us out there, and the other officers that they have, I didn't know them personally in Alice, we'd all been through an extremely traumatic situation. There was zero commander control on the ground I saw of that investigation afterwards. If there was some directions given to us, we would have followed them. But I can see the issues that arose from it, yes.

Okay, it was a mistake wasn't it, to have that gathering at your place, in circumstances where you had not yet given an account?

MR ABBOTT: Well I object. Could have been a mistake. The wrong phraseology. Can you it - if want to put it, it's in breach of General Orders or something - - -

THE CORONER: Sure - - -

MR ABBOTT: - - - or it's a breach of protocol, or process - - -

DR DWYER: I just - I withdraw it. I'll just ask Mr Rolfe.

You can see the issue with it, what's the issue with it?---I can see the issue that arises from that. I don't believe that affected anything moving forward. But it was a way in which all of us were supporting each other after the - after the shooting. From an investigative perspective, obviously that's the wrong thing - - -

Okay?---But there was no - from an on the ground perspective, I wouldn't say that's the wrong thing, but from an investigative perspective, yes.

Okay, so from an investigative perspective, it was the wrong thing. But you make the point, that nobody told you, through the command structure level, not to do it, is that right?---No one really told me anything. And I believe that's the case for the others. I was - once I returned to Alice Springs that night, once I was told to go home, I was told to return in the morning and speak to the psych. And after that, that

was basically - in regard to investigation, what to do and what not, there was no instructions. I think you've - yeah, there was no.

You knew in principle though, didn't you, that it should - you should not be meeting the members who had been out at that incident, in circumstances where you had not yet had an opportunity to write your account, to get your account on record, is that right?---Well there was the - there was the - if I wasn't being a - what's the right word, if they weren't using the Coronial or internal powers to compel me to write a statement, I always had the option to not give a statement.

You were only here in (inaudible) a couple of days after Kumanjayi had been shot. You didn't - had you decided yourself whether you were going to give a statement?---I can't recall.

You'd previously been willing to give a statement, is that right?---Well if they compel me I - I have to.

Okay, in circumstances where it was possible that you were going to give a statement, you, looking back on it, should have known that you shouldn't have had that gathering. That's all I'm suggesting?---Basically, basically, as per the advice we give people we arrest is that you don't need to speak to us, you can speak to a lawyer. Police abide by that. The advice I have been given throughout my career is never give a statement to the police in regards to something.

I'm not being critical of you not providing the police with a statement, or exercising your right for speaking to a lawyer?---Yes.

I'm just saying, put your investigators hat back on - - - ?---Yes.

- - - you appreciate now, don't you, that there's a problem because of the possible contamination of evidence, in terms of getting together, so close to the event - - - ?---Oh there's - - -

- - - with officers who were there?---There's a possibility.

And you understood that concept, back at the time, in terms of not contaminating your evidence?---Yes, and I didn't think any evidence would be contaminated.

You engaged in a number of text exchanges with various people, after Kumanjayi was shot, do you recall that?---Yes.

Understandably, there were lots of your friends and family who wanted to send messages of support?---Yes.

And reassurance?---Yes.

Because, obviously, they would be thinking that this was a terribly traumatic event that you had been involved in?---Of course.

A number of the messages of support came from other police officers or Army - former Army people you'd been with?---Yes.

One of the police officers that was texting you, understandably was your friend Mitch Hansen?---Yes.

Have a look at text 591?---Five nine one, yes.

Do you see there a text from Constable Hansen?---Yes.

There are some comments that are derogatory about Assistant Commissioner Michael White, I don't need to read them out. You see them there?---Yes.

And then there are some comments that are there about "The member has to answer his critics with IAMO plus P" et cetera?---Correct.

Did you know at that time, Sergeant Ian Nankivell?---I don't think so, but I'd have to see a photo of him.

Had you heard that name, Ian Nankivell?---I have - I'd heard the last name, but there's - there's other officers with that last name I believe.

Sure, so you knew at that time, that a Nankivell was likely to be another police officer?---I knew that was a police officer, yes.

Because what is texted to you there, from Constable Hansen, is this, "The member has to answer his critics with IAMO plus P." "I" equals intent, meaning, and I'll take that swear word out - - - ?---Yeah.

"The person", let's say, was telling him - "Telling them he was going to stab the police, A, ability, he had the ability to do so because he both said it was a young fit male, who looking at Rolfe, would have had size disparity. M equals means. He had an edged weapon, and told the police he, more than like said, was going to kill them. O, opportunity. The members let him get close enough to be afforded the opportunity to stab one of them, and coupled with all of the above, IAMO plus P, equals preclusion. I was precluded from all other options available to me, being distance, time, cover, Taser, baton, spray, et cetera. So I had no other option but to protect myself, and those with me, by shooting the offender, to gain immediate subject control and incapacitation. That what I did, taught by some very experienced old members in 96/94, never forget it, IAMO plus P." And the next message Mitch Hansen says, "Ian Nankivell sent this to me, sent this to send to you. He was involved in shooting someone in Big Pole(?). So he said to send this through." And you write back, "Awesome, awesome, awesome, thank you for that brother." It was extremely inappropriate, wasn't it, for this text exchange to take place, where Constable Hansen had messaged you, what another officer was effectively telling you to say in evidence?---Yes, I agree.

I'm not suggesting that you initiated that text exchange, but your response to it, "Awesome, awesome, awesome, thank you for that brother", in hindsight when you reflect on it, should have been something like, please don't text me about the incident I've got to give evidence?---Yes, correct.

I suggested to you earlier that it is - this was no doubt a traumatic event, and I'm not trying to detract from that at all. Some of your mates when they're texting you, in effect, laud you as some sort of hero, as a result of being involved in this terrible incident where a young man lost his life?---Yes.

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

And so text 600, for example - - - ?---Civilian, by the way.

Sure. That person, I'll just use the initials JG, is that a former Army officer?---A soldier, yes.

Soldier. I'm not going to suggest that his name's ever released. But current soldier or former?---He still works for the government.

He says to you, on 10 November, at 1.45, "Hey bra, super stoked for you." And you write back "My man." And then he says "Let's see those pussies in TRG say no now." And you say "Oath." Is that someone you'd spoken to previously about your frustrations of not getting into TRG?---Yes.

And he's effectively saying, "Stoked for you" as if it's some sort of celebration, that you'd just shot dead - - -?---In regard to the celebration, that there's a celebration aspect of it, I would say that obviously it's completely tragic that a young man lost his life. On the other side of it, a man tried to kill me, and I and my partner and I, survived. So there is a - there is a - there is - that's the element that I see. It's nothing against the - not even speaking about that, he's probably not even thinking about the tragedy, and in time, such as I have when I think about it in one way, in a different way, it's - there's definite sadness in that. This is I believe the idea that of course it is a good thing, from one perspective, that if someone tries to kill you, you - you - like they are not successful in that. There is an element of goodness. There is two sides to both this thing. So there is an element of that, yes. And I - I know it's there. It's a natural thing. It's a natural response to staying alive when someone tries to kill you.

But Mr Rolfe, the text exchange is not that person, JG texting you saying "Hey bra, so stoked that you're still alive, thank god you didn't get stabbed any more seriously." He's saying "Super stoked for you, let's see those pussies in TRG say no now." And you're saying "Oath." You can see, can't you, that what it is, whether it - you might have an explanation for why you talk like this with your mates, but it appears to me, to be a celebration, of the fact that you shot someone on duty because that will somehow enhance your tactical reputation, in terms of getting into the TRG - - -

MR ABBOTT: I object to what - how it appears to my learned friend.

DR DWYER: There's nothing objectionable about that question, and Mr Rolfe is entitled to reflect on it, and in fairness, he should do.

THE CORONER: Well it might appear to someone that it's this, and he can reflect on that, and answer whether that was what he understood it to be.

DR DWYER: Thank you, your Honour.

Mr Rolfe, do you want the question again, or do you understand it?---No, that's all right. I understand it. It might appear that, but it also doesn't say "Hey bruh, super stoked for you that you shot someone on duty and now you've enhanced your policing career and you're likely to get into TRG now." It doesn't say that. So on the flipside of the coin, without knowing his and my relationship, without knowing of our vocabulary, of course there could be misconceptions about what this means. And I will maintain my initial answer. I understand the perspective. You are always going to have a misunderstanding, looking at someone else's speech.

All right. It might be seen, reading these text messages, that the relationship that you appear to have, with some of your mates, involves a celebration of the use of force, whether it's letting off steam, or otherwise, that's what you do with some of your mates?---Here, in these elements, I believe it's a celebration of being alive when someone tried to kill me. And - and got very close.

Can I suggest to you, to - I really want to ask you to reflect on that message. You would appreciate reading it, that what he's saying, in effect, it appears, is, stoked for you that this incident occurred, because you're more likely to get into the TRG?---No I disagree.

Can I suggest to you on reflection, that in terms of your relationships with some of these men who you've texted, while you're a serving police officer, required to do tactical jobs, it's pretty toxic, in some aspects?---I don't know - I don't even know what the - what you mean when you say "toxic."

It's not a healthy thing to do, to celebrate the use of force, in text messages, or otherwise?---I'm not sure, I don't - I think this is healthy.

You think that's just helping letting off steam?---I think this is a healthy celebration, in a way - using your words, that I have survived someone trying to take my life.

There are other text messages that I have taken you to previously, where there is in effect, a celebration of an incident, where force has been used to cause an injury. You're aware of them?---I'm aware of the messages you're speaking about, yes.

That is not a healthy way, I'm suggesting to you on reflection, to let off steam, or to deal with what you're confronted with as a police officer?---I'm not sure if it's healthy or unhealthy. I've admitted previously that it's unprofessional bragging about that for sure. In regard to the health of whatever in the - whichever way you're venting,

there's - I don't know if health is the right word. Is it a - is it a polite way, no. Is it an offensive way, yes. But I don't know if health is the correct word. If you - yes. I don't - yeah.

Well I'm nearly finished Mr Rolfe - - - ?---Yeah.

- - - But what I want to suggest to you is that no one's going to suggest that it's okay that your life is put in danger as a police officer, or that you're ever stabbed with scissors as a police officer. That is really regrettable. But bragging about use of force is making it much more likely that you'd be willing to use it, when you're confronted with a situation. Do you accept that?---I'm not sure about that.

Just finally, before I sit down. You said earlier, that you have reflected on there are different ways to see this incident, and you've reflected on it obviously a lot since the tragedy of November 2019?---Yes.

Is there anything that you want the opportunity to say to Kumanjayi's family, or would you rather leave that to the end?---No, I have thought about this, and I don't want to - I believe it's an inauthentic way to do so in this manner. I don't want any more public spectacle. If they, or any of the family members want to speak to me privately, in any formal situation with other people there, I am willing to, after - like I would say, after this is done, when my words can no longer be used against me, ideally.

Those are my questions, your Honour.

THE CORONER: Yes, Mr Boe.

MR BOE: Thank you, your Honour.

XXN BY MR BOE:

MR BOE: Mr Rolfe, my name is Andrew Boe. I'm one of the Barristers who have been acting for the Walker, Lane and Robertson families. I have prepared a sequential series of questions, but given the time of day, my understanding is that we might sit close to five. I just want to deal with some discrete issues first. In order to do that, I will need to summarise some points on this issue. I'm not going to rehearse the evidence. I'm not going to try and trick you in any way, (inaudible). I just want to get the premise right, before I get to the propositions, okay?---Yes.

And if you've got a concern, or if Mr Abbott stands up, would you just do me the courtesy of finishing the question, but not answer it, and let Mr Abbott frame an objection, and I'll stand corrected by her Honour (inaudible)?---Yes.

The first issue I wanted to interrogate in a manner that wasn't interrogated by counsel assisting, and that's not a criticism, but just why I'm doing it, concerns the whole issue of body-worn cameras, okay?---Yes.

I just want to put three or four propositions first, with the premise, I (inaudible).

I understood from your evidence, that there was a period of time when you first started at Alice Springs, that you and your cohorts were reluctant or resistant to turning on your cameras because it felt like they were designed to catch police out and (inaudible). Is that fair?---Yes, among other examples, but yes.

But that changed on your part, after some time, and specifically after Sergeant Gall gave you some muting advice on that issue?---Yes.

That was the second time and then I think you understood from that - or believed from that that there may be, in fact, a benefit in ensuring that your conduct and language was, in fact, recorded - for your sake, in rebutting any false allegations of use of force and the like. Is that fair?---I would say less so in that regard, more so in the importance of you collecting evidence, but yes.

Thank you. And I am not going to take you to it, nor am I going to use it in in pejorative commentary. Dr Dwyer has taken you to the circumstances surrounding the Sergeant Kirkby conversation and you have answered - you have given your answers as to - you were questioned and given answers as to whether or not you started to work out that you might be able to curate a false account for your benefit, you know that whole area of questioning?---Yes.

I am not going to make any commentary about that but the suggestion that is being made - and you would expect it, from that evidence that part of the reason for changing your view and switching on your body-worn video was that that tool may become available to you, do you understand? I am not asking you to - - -?---No, I actually don't - can you say that again, maybe slowly to me?

The suggestion that as being made was that you started to turn on the video once you realised you could use it to create a false account of an event?---I understand now, yes.

And you reject that suggestion, don't you?---Yes.

Now, you also said that being the subject of remedial advice for that - for not turning on the video was a very low moment. It didn't mean much to you to be subjected to remedial advice?---Sergeant Gall did it in a good way. I think I used other - other examples where remedial advice was done so in a lot less effective manner but he - but that's, I guess, on the person giving it.

I understand?---But still, yes, it's still minor.

I understand but I am in agreeance with you. You felt that - and it was done in a perfunctory way, like an email, something to (inaudible) statement. It didn't really have much impact upon you?---Yes, definitely.

And for that reason it wasn't much of a deterrence?---Yes.

In effect. But you were persuaded as to the utility of doing so because of the manner in which Sergeant Gall explained it to you, correct?---Correct.

And the fact that it came from somebody you respect?---It was the manner in which he explained it to me and in addition of that - an error I had on the job with the lack of evidence - the evidence that I did not collect in that job that was called in as a drunk person but ended up being an assault, but yes.

I understand. Just looking forward, in terms of rules of that kind, to constables to do things which are intended by the top brass to provide assistance to constables, what would have been a more effective deterrence to make sure that you did, in fact, do something that the senior command felt was necessary and useful for consequences like a fine -or suspension - what would have been a deterrent for you?---Honestly, I think I learn off other people and my own mistakes and other people's mistakes, so I think extra training in regard to situations, for example, like the one that I utilised that - when I - when I wish that I had my body-worn on when I didn't and the cause of that was because I wasn't used to - my muscle memory wasn't used to - I didn't use it enough to create that muscle memory, so I think if there's - not - when you get your body-worn training, if there's an additional - for example, learning from officers who have - who know the benefits of it and have learned like they - how important it is. For example, how important it is when officers are looked at in serious matters. Things like that I can't think of anything else other than - and I don't know the technicality of the technique - the technical stuff and how long batteries last nowadays - maybe there's a body-worn video that can run for long enough that when you get out of the police car it turns on for the whole shift - but our body-worns had the battery issues.

May I just put to you the - my understanding what you are trying to communicate, is that once you were persuaded as to the benefits of doing something, that's when you were willing to do what you were being asked to do?---In this case, yes.

Would other steps and sanctions, more along the character (inaudible) were to find that being more effective than the prospect of being the subject of remedial advice?---Yes, definitely. If there was a - especially early on in the career, I didn't feel like there was any stick at all. If there is a - if there was a stick, yes, definitely.

And would, for example, being stood down from operational duties for a period so that you could appreciate that you can't go out on patrol without complying with these sets of rules, would that have been a greater deterrent than, say, just remedial advice?---Yes, I believe that would be a - something like that would be a good punishment because it would seem - from what you're saying, that it is not a longstanding mark against your career for example, it's a punishment that's done - dealt with in that timeframe and perhaps obviously if you don't learn from that yes, it is increased.

Look, I appreciate you are not longer a member of the service, but is there - or the force, I should say - is there anything else that you could think of as an appropriate step such that people like your cohorts at that time might more likely have complied

with those sorts of directions?---Without building resentment - what you just said, standing down from active duty into a desk duty, for most officers I believe that is a - that would be an effective punishment. Obviously that would have to increase if the issue was recurring. If there are any other - that, I think, would be - because that would be punishments along that line, I believe would be effective.

And a punishment which was known by your cohorts, so they knew why you were (inaudible) that would be part of the effectiveness?---Correct. I think if anything is going to be done like that it needs to be widely and obviously known, so there's no miscommunication or misunderstanding.

Now, moving forward with the whole issue of body-worn videos, to your trial, by then you became aware that what was being depicted on body-worn videos taken from your camera and that of Senior Constable Eberl and Hawkings - Sergeant Hawkings - those documents - if I can use that phrase - became important aspects of the prosecution case against you. You understood that?---Yes.

And in seeking to persuade the jury as to the - that your narrative should be accepted, the approach you took in your evidence - and I will take you to that if need be and in the evidence called and by the arguments made by your senior counsel, was premised upon the notion that purely relying upon the body-worn video camera footage, necessarily misses a lot of the contact and be quite misleading. That's a fair isn't it - that's a fair summation and approach - taken at your trial in your defence ?---Yes, I believe so.

At transcript 134(2) in Senior Counsel's closing it included, "Well, ladies and gentlemen, the evidence of Ben Devitt - just pausing for a moment - he was an expert called by you in your defence - correct?---Correct.

"But in any event, merely confirms that what we have been saying since the commencement of this trial that shots two and three cannot be distinguished from shot 1" - here's the point - "the notion that you can separate the shots into different incidents is again, entirely misleading and does not represent the actually confronted Zachary Rolfe in these criminal settings. And you'll recall that?---Yes.

Now - so the view then, at least by the time you were facing trial, is that body-worn video footage may not portray the sense of threat perceived by those in the situation. Is that fair?---Yes.

Assessing a situation solely on body-worn video footage necessarily excludes consideration of what happened or what was said before the cameras were rolling, for example?---Correct.

Those present, of course, may have a better appreciation of the context?---Correct.

Now, you'll accept, may I suggest, that it's absolutely critical to not jump off the gun just by looking at the body-worn video footage captured of a dynamic event. Is that fair?---Yes. Yes.

So may I then go to the approach you took in watching the body-worn footage of the axe incident?---Yes.

In forming your view – and I won't rehearse it unless you wish me to – you made an assessment of the risk that Kumanjaya Walker posed by watching the body-worn video footage coupled with a minor summary that was on the PROMIS alert. Is that fair?---Yes.

Do you see how your approach to body-worn video footage seems to turn significantly when it suits your perspective? That is – may I put the suggestion – that is you were willing to criticise the incomplete, perhaps misleading assumptions to be made from viewing body-worn footage when you were seeking to defend yourself at a trial, but you were willing to go inform conclusive, serious findings of the threat posed by Kumanjaya Walker from your view, of the body-worn video footage of that event. Can you see the hypocrisy in that proposition?

MR ABBOTT: I object to the word 'hypocrisy'.

MR BOE: Well, use whatever word you like. But can you see the distinction I'm putting to the approach you were taking to those two events, because it affects you in a different way?---I think there are some things, when you're looking at the finer details, that need other elements and need that understanding of the shortcomings of body-worn video. I believe there are some things in some situations – it's situation dependent, I believe. So I can see where the argument is – obviously can come from, but I wouldn't agree that that's what I've done.

Well, it's inconsistent, isn't it? On one level you say that your assessment of the threat posed by Kumanjaya Walker could aptly be made to set in train and course of conduct on your behalf – and I'll take you to the way in which you've referred to it in various aspects of your trial (inaudible) – but when your conduct was being viewed, you sought to persuade a jury that it was to rely only upon the body-worn footage was apt to mislead?---I think there needs to be more context and more details and if we are going to have the argument, we need to go – to delve right into the arguments, the entire arguments that we had about the body-worn video. Because a big issue was that at the trial in regards to the body-worn was the slowing it down millisecond by millisecond. That was the large issue than, for example, watching the axe incident. I understand what you're saying. I don't agree that I've done that.

You see, I know you're not going to be prosecuted again. My questions are not directed at that (inaudible). I'm trying to get evidence from you (inaudible) enquiry in having safeguards put into place that assumptions against clients – like my clients and their family and children - are not made in the way in which you made it in relation to the axe video do you understand?---I understand that.

And that's why I'm wanting to assure you that I'm wanting answers and not have an argument, I suspect?---I understand.

(inaudible) environment. I'm reasonably practiced and I'm not going to test that?---I understand.

The added information that was available to those designing any of the arrest plan or any steps to be taken in relation to Kumanjaya Walker, had you enquired or had you been told? So I put it that way because I'm not only criticising you – well, I may criticise you later – but I am also looking at the way in which the whole process of alert is issued by the NTPF(?). Do you understand?---Yes.

What we do know now and we did know back then, and it could have been ascertained from looking at it, asking a number of police that have dealt with him, that Kumanjaya Walker was profoundly deaf in one ear. You now know that, but you didn't know that at the time?---I haven't seen that medical record.

Just take it from me. And others can contextualise that in re-examination or (inaudible)?---Yeah. Yeah, I won't accept that but I understand that. Because I've read a medical record with a different version, with a rock in his ear for nine months as a young child and that's where I thought the hearing implications may have come. But if there's issues after that, I'll accept that when I see it. But I hear you, I just don't – I won't accept that until I see the (inaudible).

I'll put it another way. As at November 2019 there was police intelligence which I suggest from a number of sources that Kumanjaya Walker was profoundly deaf in one ear?---I'd accept that.

There was also intelligence and information held by a range of officers, including Superintendent Nobbs, who, as you may recall, was part of a team that was looking at domestic violence protections in relation to Rikisha (inaudible). Do you understand?---Yes.

That he was likely to have been born with FASD. Do you understand what that term means?---Yes.

Foetal alcohol symptom disorders. Okay. And you would – if I asked you to accept that some of the symptoms of FASD include poor coordination and balance; intellectual disability; learning disorders and delayed development; poor memory; trouble with attention and the process of information; difficulty with reasoning and problem solving; difficulty identifying consequences of choices; poor judgment skills, etcetera. You'd accept that?---I accept that. Yes.

The other information that was well known – and you knew some of this – is that he has an extensive youth in criminal justice system history?---Yes.

And that can be looked at in two ways. That is that he's a recalcitrant offender. Correct?---Yes. Yes.

That's one way to look at it?---Yes.

That is he's got this history of criminal convictions which suggest a certain degree of propensity or behaviour?---Yes.

Which is how you took it and how you expressed it when explaining the threat assessment you made?---Yes. There is a more sympathetic element, but I guess in regard to the role you're – what you're putting to me is correct. Yes.

What I'm putting to you is the information that was available that would augment any conclusion being made about the threat he posed, merely from looking at the body-worn video?---Yes.

And the other side of that history with the system is the concept that we spoke earlier about the trauma induced behaviour that you ought to be aware of when you're seeking to apprehend a juvenile offender?---Yes.

That we discussed earlier, on that bin incident?---Yes.

And you recognised then that there were lots of ways in which police have learnt how to more safely apprehend a juvenile or young offender with this sort of history?--
-I'm not – sorry, I'm not – I'm agreeing, but I don't know if I'm aware of the training being conducted - - -

I'm not going to have arguments with you?---I'm fully not trying to argue with you. I'm agreeing with you but I'm not aware if the training has been put in place.

Okay. Well, what I'm saying is that the knowledge we have now, after 18 months of examining some of these issues, is that there is a learning that police have made in recent years to take into account that sort of history in designing the way to view a young man or a teenager, in making sure that arrest attempts are as safe as possible in outcomes for both police and the alleged offender?---Yes, you see I agree with you. It is just that I haven't been in the police force for a number of years.

I understand?---So, I can't speak to that.

Well – okay, thank you. We will get to a point about how you dealt with it in a minute. But let me just keep going with this list. It was readily available as intelligence that English was not his first language. Is that fair?---I am not sure where I would find that information.

You would ask the people on - the bush coppers who had dealt with him surely. You would ask the Forward Commander Sergeant Frost. You could have asked ACPO, who was his uncle. You would have been able to find out with a series of questions that English was not his first language, I suggest?---Potentially, yes.

And to be fair, that is information that was information that was available to all those who were part of the decision-making that led to the IRT going there?—Yes.

He was going through what has been called in English, "Sorry business," for his grandfather. You now know that, don't you?---Yes.

And that was information that was known by the Forward Commander?---Yes.

His uncle was ACPO Williams and was in the community that night at the gravesite. Correct?---Correct.

And Acpo Williams' history which you detail in this court, included that he had previously arrested Kumanjaya Walker on numerous prior occasions?---Correct.

And that would be a clue, would it not, that this young man if approached in the appropriate way, had been successfully arrested for prior offences?

MR ABBOTT: Well, I object. Let's hear what the appropriate way is and ask my client whether he agrees as to that being the appropriate way.

MR BOE: No, I am not asking that, with respect. I am asking that there was intelligence available that if an appropriate approach was taken, Kumanjaya Walker had allowed himself to be arrested with no issue with violence. That intelligence was available.

MR ABBOTT: Well, to - - -

THE CORONER: Well, there was certainly intelligence available that he had previously been arrested without issue.

MR BOE: Yes. That is the – will you accept that?---I accept that.

And that – no just to be clear. There was one instance where several of those who was arrested and talked about happened to spend 45, 50 minutes to explain to Kumanjaya why he was being taken into custody and what would happen to him. And that he was quite happy in those circumstances to just hop into the car to go with the arresting officer. Do you remember that evidence?---I remember that evidence. And I am sure you would understand my distrust. I would like to see the PROMIS jobs for those incidents, and the police arrest statement, and potentially the body-worn before I comment on that.

Well, before you acknowledged that that was available, is that what you are saying?--If it is available.

The information that is now available from the police officers involved in the incident, and may I suggest would have been available if an appropriate enquiry or documentation of that was made, is that during the course of that arrest attempt, Kumanjaya went for the axe and got irritated when he perceived that the officers were manhandling his girlfriend. Did you pick that up on the video?---Yes, I definitely accept that.

So, in terms of contextualising or assessing his threat, what was learnt from looking at that video was that he resorted to that because of a perception that his girlfriend was being manhandled by police, yes?---I accept that.

And in so far as the Lanyon Smith account, you have accepted, have you not, that the evidence available from them, and had been received by Commander Wurst, was the assessment by hand that:

“I don’t think he wanted to chop us up. He just wanted to escape. No one was injured, and that is the best result in my view.”

You know that that was part of police intelligence in this incident prior to your involvement?---That was part of police intelligence. That was on an email, yes.

And that you heard Constable Lanyon Smith’s evidence, or you may have read it only. Transcript 496 197:

“I knew him as a known runner. Had previously run. I did not have concerns that he was going to go around the community chopping people up with the axe. I did not have concerns that he was going to do anything other than run.”

You accept that that is the evidence he gave?---I accept that he said at one point, yes.

So, at the moment I am not asking you to enter into that previous exchange you had with Dr Dwyer about what you thought about et cetera. That is fairly well settled, and submissions will be made. The proposition I am seeking to develop in this conversation is that this shows how dangerous and misleading it was to form an assessment of the threat posed by Kumanjayi Walker merely from watching the body-worn-video. Do you accept that?---I don’t think it was a dangerous thing to do to form that perception.

It was certainly dangerous for him, wasn’t it?

MR ABBOTT: That’s not – that’s a comment, not a question.

MR BOE: I am suffering from forensic fatigue, I will stop in a couple of minutes.

Can I go back to the footage? The evidence compiled suggests that the axe incident was viewed on a device connected to you 30 times. Correct?—Correct.

And you have explained that not all of it was from your (inaudible)?---Correct.

But you do accept that you viewed it on multiple times?---Correct.

More than 10, would you accept?---That would – 10 would be - - -

About that?---I would accept 10.

Okay. It is only a very short video. What if anything did you learn from repeatedly viewing it?---Well, the more you view that. Initially obviously – no, not obviously. You get further details. Initially, I didn't recognise the as you have called it – and I accept it, "The manhandling of Rakisha." I guess you – I have picked those details up watching that further. But if I was to watch that the first time, I guess not everything that you see is picked up. So only extra details that are captured in the camera. But I would say that you do pick up extra details. That is the clearest example I can tell. I wouldn't have picked that up the first time, or the second time potentially that I watched that.

And you would have picked up, I suspect on the first time. But you certainly would have picked up by the tenth time, that Kumanjaya Walker did not attempt to strike either officer with the axe. Is that fair?---Yes.

And as he – as soon as he got past them, he threw it on the ground and ran away?---Correct.

Now when you were charged, we have heard that you underwent a – you were interviewed with Kristin Shorten of the Australian Newspaper in December 2019?---Yes.

That interview was recorded and there is a transcript (inaudible)?---Yes.

Question 98, and I will ask further questions that contextualise it, just reading what it is. I am being really fair. You are asked:

"And when he assaulted police on November 6 he used a pick axe."

Answer:

"Yes. He used an axe. It is probably about a foot long which is ideal for close-corner combat. A very dangerous weapon, and from the body-worn-footage he was very quick with it. And I think if the police didn't – if the police didn't run that day, if they did. If he didn't realise that he didn't have to fight that day, he would have chopped both those police officers. There was a very high risk that they both could have lost their lives that day."

Firstly, do you accept that you gave that response to that question to Kristin Shorten?---I accept that.

And you accept that you did that in an interview with an interviewer who you were being reassured that the interviewer would be sympathetic to your circumstances?---Yes, and I knew that she wouldn't release that until after the trial.

Yes, of course?---So, yes.

But you were trying to tell the truth, I take it?---Yes.

And you were trying to, if I may say, provide a framework to defend your conduct in the most - of a version that most suited your ultimate narrative that you were facing a lethal offender and you responded in self-defence?---I wouldn't agree that I was putting forward anything other than what I remembered at the time.

Certainly, that response was given after you viewed the axe incident on the body-worn video at least 10 times?---Yes.

And would you accept that none of what you told Ms Shorten includes the matters of detail that you in fact perceived when you watched the video which really did contextualise the threat that Kumanjaya Walker posed. Is that fair?---Yes. I completely admit, it was a failure on my behalf to mention particularly the manhandling of Rakeisha.

Well, I'm suggesting to you that it was an intentional failure for you to be justifying your risk assessment of this young man?---I disagree.

So you watched the video. You saw all those things, I put to you, which suggested that there was much more to that incident than a person with a very dangerous weapon who would have chopped both those police officers. That's fair, isn't it? I mean, you didn't put in there the stuff that we've just agreed to, that was perceivable upon a close viewing of the video?---Despite what we just agreed to, I still believe what I said that day is definitely a potential outcome if something - if those officers had done something different.

That's a different point, if I may say?---Sorry.

I appreciate that you - I know I can sometimes be clumsy in my questions. I'm wanting you to acknowledge that in one of your first public attempts to justify your conduct, albeit one that might only be published later, you gave a misleading version of what was depicted on the video; that is, you didn't say in it the matters that you conceded were evident from viewing the video. You exaggerated the threat is what I'm saying?---I disagree with the exaggeration. I admit I didn't mention what I've said before about Rakeisha and I should have.

Well, the other thing I meant to raise with you is this, the information that was available on inquiry if it had to be made is that the original arrest alert was issued because Kumanjaya Walker had left a rehab centre, which he was required to complete a program as a condition of a court order?---Correct.

Did you know that?---I believe I did, yes.

And where did you acquire that from, Mr Rolfe?---I believe in a muster, in one of the musters, Evan Kelly - sorry, Sergeant Kelly, gave us the details that a warrant had - - -

Issued?--- - - - issued in regard to that.

And did you know what we now know and what could have been ascertained then, that he attempted to return to the rehab centre the very next day?---I don't believe I knew that, no.

And that that option was refused by the rehab centre?---I know that now.

And that what that meant was that, whilst he had clearly breached the order, he was not in a position to redeem himself until something else occurred?---Correct.

And you would think, leaving aside the axe incident for the moment, that was a very minor infraction?---Correct.

And in circumstances where insofar as the intention to rehabilitate him, we now know that he had actually completed the course less than six months earlier?---I accept that. I'm just not too sure, but I accept that.

So what I'm getting to and perhaps this goes more to the system rather than you. So please don't think I'm always directing it in that way, is that had he had access to a lawyer or a legal friend that could have assisted him, he could have contacted police and said, look I've breached this order and I can't go back in. Can we just go to court and see what the magistrate might be willing to do so that I can go back into this program or some alternative function?---Yes, I believe most police officers would be more than willing to accommodate that.

Yes. Now, such is the circumstances in which Kumanjayi Walker lived, he never, ever got that opportunity?---Correct.

And does that not heighten the tragedy that the moment he left that centre, he became so vulnerable within the criminal justice system, unless there was a support framework around for him to reintegrate back into the system?---I agree.

And yet, less than three or four days later, he's been shot to death?---Eight days or nine days later.

Okay. Well, let's not be too (inaudible). My point is this. Can you appreciate that in those circumstances, it is critical and will assist us in looking at the facts surrounding your role in this case, the decisions you made so that we can perhaps look at ways in which this sort of tragedy does not unfold again?---Yes.

I'm hoping tomorrow, if it's convenient to her Honour, to go back to some of the matters that were covered by Dr Dwyer. Not to rehearse any of the detail, but just because there are sometimes differences, differences sometimes, between the way in which a forensic approach is taken to the same evidence, okay?---Yes.

I'm going to take you through some of the detail, okay? The last question I'm going to ask you for tonight, if that's okay with your Honour, is that if in fact you did genuinely believe, and I'm giving you that benefit, that he was a lethal threat

following the axe incident, would not the appropriate course to be taken to be to agitate for the TRG to be called?---Because I said that I classified him as a person – I know I said, again I generalised, I said I believed that he was a violent - - -

You called him a lethal offender throughout your evidence in the trial. That's the term you called him?---If that's my transcript.

All right, I'll take you to it. We'll do it tomorrow, if you like?---No, no, I'm honestly not trying to like argue with you. I'm just saying like what I called him, I concede that that's a generalisation. Obviously, he's not like that 24 hours a day or - and it shows in this, he's done that once, but - - -

All I'm saying is, to be clear so there's no argument?---Yes.

Was that the steps you took were premised upon your assessment that he posed a lethal threat. Correct?---Correct.

Isn't that text book reasons to not have general duties police officers in pursuit, whether they be part of an IRT or not, but rather to engage with TRG?---Most definitely, yes.

And yet, the steps you took, you call yourself proactive, was to agitate in a way with the hope that you may be deployed as part of an IRT to stalk him?---I asked - - -

MR ABBOTT: To what him?

MR BOE: Stalk.

MR ABBOTT: Well, I object to the term "stalk".

MR BOE: To pursue him?---I accept what's being - I know what's being said.

Sorry?---To arrest, I'm just going to say.

Yes?---Yes, to arrest.

Sometimes we get a bit theatric, I apologise?---No, that's all right, I get it.

But you know the point I'm making?---Yes, I know the point you're making.

Because I can go through it, if you like. I'm to comply with, with respect, carefully and meticulously putting to you all the evidence on decision-making. And a submission I may make is that the steps you took were geared towards promoting the opportunity for you to be part of an IRT team to be sent to do what the bush coppers couldn't do, which is to go and arrest him?---I did what I believed was in my capabilities there. I did not believe that from me, as a constable, there was the option for me requesting, for example, TRG. All I believed I could - I could do, was pass it up my chain of command, general duties chain of command, to Sergeant

Evan Kelly, IRT chain of command, to Sergeant Bauwens, if there was a - if there was an option for me to pass it up to TRG, then yes, that's something that should have been done. I don't know if that's a responsibility of me.

Okay, well that's a fair concession, if I may say. I guess that leads to two other points, that is, it's hardly the position of a constable with less than three years' experience, to be making the sorts of assessments, as to what sort of team should be pursuing a person like Kumanjayi Walker, is it?---I believe - - -

I know you've got a pretty (inaudible) view of yourself as to your assessment capacity, but - - -

MR ABBOTT: I think he's (Inaudible).

MR BOE: - - - systemically -

I'm just making it easy for him to answer.

The - in terms of certain things, one would think people with more experience and capacity should be making that assessment?---Whoever has the - the more experience and the more capacity you have is -that's making the decision, the better, yes.

And - well I withdraw that. Thank you.

Is that a convenient time, your Honour?

THE CORONER: It is, Mr Boe.

So sorry - - -

MR MULLINS: I'm sorry, your Honour, just out of curtesy I'm unavailable tomorrow until 11.30.

THE CORONER: Thanks for letting us know.

MR MULLINS: In addition, my cross-examination, which was going to be two hours, is probably reduced to 45 minutes.

THE CORONER: Thank you for that (inaudible).

MR BOULTEN: (Inaudible).

THE CORONER: I'll keep a track of times, because we do need to finish this week. We'll adjourn and it's a 9 o'clock start tomorrow?

DR DWYER: It's (inaudible), your Honour.

A PERSON UNKNOWN: I'd ask it be a 9 o'clock start.

MR BOE: Sleep deprivation's a joy, your Honour.

DR DWYER: Did - would your Honour mind checking with the witness that - - - ?---
No - - -

That got - - - ?---Just warming up.

THE CORONER: We'll adjourn.

WITNESS WITHDREW

ADJOURNED