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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 27 MAY 2024

(Continued from 01/03/2024)

Transcribed by:
EPIQ

THE CORONER: As we return to the inquest of Kumanjaya Walker, I acknowledge that today we sit on the traditional lands of the Arrernte people and I pay my respects to the elders, past and present. I also wish to acknowledge all Aboriginal persons here today, both inside and outside the courtroom, and those following on the live stream or in other formats.

You are welcome, and your participation in these proceedings is important and appreciated. There are some preliminary legal issues to deal with today, but before I start with those I'll take appearances for the record.

DR DWYER SC: May it please the court. My name is Dwyer. I appear as your counsel assisting with Mr Patrick Coleridge, and instructed by Ms Maria Walz.

THE CORONER: Thank you.

MR SUTTNER: Your Honour, my name is John Suttner. I appear for Sergeant Bauwens.

THE CORONER: Thank you, Mr Suttner.

MR BOULTEN SC: Your Honour, Phillip Boulten. I appear today for NAAJA and I'm instructed by Matt Derrick, by Natalie Fisher, with assistance from the Human Rights Law Centre's Nick Espie.

THE CORONER: Thank you.

MR MCMAHON SC: Your Honour, it pleases. My name is McMahon. I appear for the Parumpurru Committee of Yuendumu. I am instructed by Cassandra Knight-Krull.

DR FRECKELTON KC: May it please your Honour. My name is Freckelton. I appear with Amanda Burnnard, instructed by Sandy Lau for the Northern Territory Police Force and various members within it.

THE CORONER: Thank you.

MR MULLINS KC: If the court pleases, my name is Mullins. I appear on behalf of the Brown family, instructed by Prudence Watts from Streeton Lawyers.

MS PINCUS: My name is Julia Pincus. I'm appearing on behalf of the Walker, Lane and Robertson family, and Hearn legal. Christian Hearn, will be here at midday. Andrew Boe is a counsel assisting on (inaudible).

THE CORONER: Thank you.

MS OZOLINS: Yes, your Honour. Sally Ozolins appearing for the Northern Territory Police Association. I'm instructed by Ms Ivana Young also from the Northern Territory Police Association.

THE CORONER: Thank you.

MR HUTTON: Your Honour, my name is Hutton and I appear on behalf of NT Health.

THE CORONER: Thank you.

DR DWYER: Your Honour, I'm told that there is no volume on the live stream and I wonder if we might just check that.

THE CORONER: Thank you for the benefit of those listening on the live stream. We've just had appearances (inaudible) on behalf of all parties, and I'm going to repeat my acknowledgement. As we return to this inquest of Kumanjayi Walker, I acknowledge that today we sit on the traditional lands of the Arrernte people and I pay my respects to the Elders, past and present.

I also wish to acknowledge all Aboriginal persons here today, both inside and outside this courtroom and those following on the live stream. You are welcome. Your participation in these proceedings is important and it is appreciated. Sergeant Bauwens is sitting in the witness box.

Sergeant, we just have a couple of matters we need to deal with first. Sorry about delaying you further.

MR BAUWENS: Yes, your Honour.

THE CORONER: The first matter that I need to deal with are notes that Mr Rolfe had in the witness box on the last occasion. I've handed down a ruling – ruling number 10 – in relation to those notes. But there have been some further rules or parties seeking access to the notes. So I'll address that now.

Sorry, Mr Abbott, we've had written submissions.

MR ABBOTT KC: (Inaudible) oral submissions where NAAJA (inaudible) opportunity to give NAAJA a response (inaudible).

DR DWYER: Could I just have an indication from Mr Abbott as to how long that will take? I haven't been told that there is going to be any oral submissions, and obviously it's imperative that to the extent possible we finish within these three days. So could I just have an indication from Mr Abbott as to the time it would take to make these oral submissions when a written timetable was specifically set, so that we could deal with this issue?

MR ABBOTT: (Inaudible). I've not had that opportunity to make them.

THE CORONER: You may have an opportunity. The question is how long is it going to take, Mr Abbott?

MR ABBOTT: I expect it would take five minutes to make my submissions.

THE CORONER: Would there be an opportunity to reduce them to writing, Mr Abbott?

MR ABBOTT: Yes, there would be, your Honour. (Inaudible). I'm happy to reduce them to writing, your Honour. I can do that (inaudible).

DR DWYER: Your Honour, there's one suggestion that we deal with it orally, but straight after Sergeant Bauwens so that we don't keep Sergeant Bauwens waiting in the witness box any longer than is necessary.

MR ABBOTT: I'm more than happy to (inaudible). But I don't want to delay the Sergeant (inaudible).

THE CORONER: That would be then convenient. Thanks, Mr Abbott.

Sergeant Bauwens, thanks for making yourself available again.

MR BAUWENS: Thank you, your Honour.

LEE BAUWENS, affirmed:

THE CORONER: Thank you.

XN BY MR COLERIDGE

MR COLERIDGE: Sergeant Bauwens, you gave evidence on 22 and 23 February this year; is that correct?---I believe so, yes.

And you're aware that Mr Rolfe gave evidence some days later on the 26th?---That's correct.

From the 26th I think; is that right?---Yes.

Right. And have you had a conversation or conversations with Mr Rolfe prior to giving your evidence on 22 February about the evidence that either you or he would give?---I've had many conversations with Mr Rolfe preceding my evidence.

Okay. And did he tell you via (inaudible) your evidence on 22 February anything about what he was going to say in evidence?---He indicated to me that he was going to expose some truths of what he knew. So, yes.

Okay. And what were those truths?---Didn't know.

So he didn't tell you anything about the truths themselves. He just used the expression "truths?"---Correct.

Did he say to you that he was going to say anything about the TRG award?---No, not directly.

Not directly?---No, he didn't.

No, he didn't?---I was under the impression that he was not going to mention this.

Okay. That's the position as it stood on 22 February of this year. You didn't know that he was going to give evidence about the TRG awards; correct?---Correct. I was not (inaudible).

After you gave evidence from 26 February, evidence has emerged regarding annual awards ceremony held by the TRG. Are you familiar with that evidence?---Yes.

Okay. You were in the TRG from 2004 to 2014; correct?---Correct.

So a period of a decade?---Yes.

What date did you leave the TRG in 2014?---I think October.

Okay. End of the year.

THE WITNESS: Excuse me.

MR COLERIDGE: Between 2004 and 2014 you attended on a number of occasions the annual awards ceremony, did you not?---That's correct.

Okay. Tell us about the awards ceremony, please?---The awards were - the ceremony was a yearly - a yearly celebrations at TRG. They formed one of three parties, which I've said on my statement - family - family function, members' function, and wives function.

Was it at the members' function that awards like the (inaudible) award were awarded?---Correct.

And where were those functions held?---TRG office.

Colloquially known as the Cave?---Correct.

Okay. And what's the - where is that - where is the Cave?---Berrimah.

Is that the Peter McAulay Centre?---Correct.

So that is the official TRG headquarters?---Yes.

Okay. And who attended the annual awards ceremony?---The section.

It was an expectation that members of the section attended?---Not expectation, but you were free to turn up if you want to. But most of the section turn up.

Your evidence is that it might not have been a formal expectation, but most, if not everyone, turned up from (inaudible)?---It was - yeah. It was well - yeah. Most people turned up.

And while I'm not asking you to say that you were there every year without exception, do you accept that you would have been present most years between 2004 and 2014?---Yeah, that's correct.

Who presented the awards?---The awards were presented by sergeant at the time.

And this was the officer in charge of the TRG?---It's not generally the officer in charge, but could be the sergeant.

So not the commander of the unit, but someone in a position of authority?---From - my memory's vague. Generally it was handed down to us by the sergeant who (inaudible).

Can you explain the format of the presentation for us; where was everyone standing? What were people saying? How were the awards presented? That sort of thing?---It was probably not dissimilar to - well, this office changed in our time, but initially it was not dissimilar to a desk that you've got there with the members all behind the desk and would have been at the end of the desk the members would have been (inaudible) from in there and presented the awards. And it was (inaudible) equipment room where we stored our kits, and then it may have gone to another room.

And can you - - -

THE CORONER: How many - how many people were in the TRG, just approximately?---There would be, I think they had about 25 members and five sergeants. And then the OICs and (inaudible).

MR COLERIDGE: And can you recall whether a Powerpoint was ever used during the presentation of the awards?---I don't think we were that organised, sergeant. I really can't remember any specific Powerpoints.

So is your evidence that you can't remember either way because you'd probably not?---I can't recall a Powerpoint being used, but that doesn't mean it didn't happen.

What was the, just, the general vibe in the room? Light-hearted end of year, people decompressing, that sort of thing?---Absolutely.

Was there ever serious conversation or debate about the appropriateness of any of the awards?---No. They were all just taken on face value and we didn't think about - too much about them.

It was a bit of fun?---(inaudible).

Tell us about the Nuggadah award, please?---From my knowledge, I believe it started in 2006, and it came about from a - a search in Willowra. One of the members who was on a search for probably two weeks displayed some fairly average hygiene characteristics and basically named - or that was the instigator of the - of the award I would say.

So it was an award for outstanding lack of excellence. Is that correct?---It's - that was a - an extra way to describe it. Correct. It was one of the terms used.

You've made reference to the - the first of many Nuggadah Awards, which was awarded someone for an outstanding lack of hygiene. But in what other ways might a member of the TRG demonstrate an outstanding lack of excellence so as to be recognised with the award of the Nuggadah award?---Yeah, the Nuggadah was pretty broad. It could be anything. It could - an operational error, a personal stuff up, just something that was funny within the section. It really had no sort of broad - it really had no boundaries and it's - it could sort of cover everything and anything.

Lack of hygiene was one. Correct?---Well, that was - yeah. That was what instigated it and - - -

Drinking was one. Correct?---Correct.

Dishonesty was one. Correct?---Well, I wouldn't say dishonesty. It could be anything.

Any disreputable or discreditable behaviour?---Generally funny stuff.

Okay?---Not sort of, integrity, I would say.

But funny precisely because people were demonstrating an outstanding lack of excellence?---That was the term used. Correct.

The name of the award was Nuggadah. Where does that name come from?---I have no idea.

It was apparent to you, wasn't it, that that name sounded like, or at least sounded like a made up Aboriginal word?---Yep. Could be.

Okay. Ever give any thought to where the word had come from?---No. I know it wasn't indigenous word used, because I'd never heard of it.

I want to be clear about that. It wasn't a real indigenous word, but your evidence a moment ago was that you knew that it sounded like a made-up indigenous word - - - ?---It - correct.

Okay. And was - was that the joke, that it was the name itself poked fun at indigenous people and indigenous languages?---No. I wouldn't say that. It sort of poked fun at the members. But the reference - that word was used as a reference, it was a made up word.

So in poking fun at the members, the word Nuggadah didn't draw a connection between the members' outstanding lack of excellence and Aboriginal people?--- There was no link of - well, I can't speak for every single award, but generally there was no link going: "Oh, we have (inaudible) to an indigenous person." That award - it was more about the behaviour of the person, of the TRG member. But it just had that name as a reference.

Coincidence?---Well, it's not a coincidence. It was just that's what it was named. Mainly because, probably how it started, like I said in 2006 from the - the hygiene level.

Just - I really want to understand you, sergeant. You say that - - -?---I didn't name it or - - -

Yeah. I'm trying to understand what you understood, as the member who was in the TRG for 10 years. You say it started because someone had demonstrated an outstanding lack of hygiene. The name chosen for the award was a made-up indigenous name. What was the connection, in your mind, between a lack of hygiene and Aboriginality?---Well, that is the link that some indigenous have poor hygiene. So that was the link.

That is why, isn't it?---Sorry?

That is why the award was called the Coon of the Year Award or award for the most coon-like behaviour?---It was referenced. That's - like I said on my statement, from my memory, it was never referred to as, or written down as that. But if it was described, that was one of the terms used to describe the award. So.

Okay. So you say that the terms Coon of the Year and 'most coon-like behaviour' were never written down?---At the time I wrote the statement, that was my belief. I've obviously seen things which changed that.

But you've also said that the name was used openly?---Which word?

Coon?---No. Not really.

No. So is your evidence that within the TRG, people didn't refer to the Nuggadah award as the coon of the year award, or the award for most coon-like behaviour?---It would have been only that once a year when we had the - the awards. It wasn't a daily thing or it wasn't a term referenced at all. It was - it was just that one time of the year, I guess, that you mention.

Okay. But you are accepting that at the awards ceremony, the members of the TRG, they're assembled to celebrate the award of the Nuggadah, would refer to the award openly as the Coon of the Year Award?---It had that reference. Yes.

Okay. And it had that reference from 2004 until you left in 2014; correct?---I can't say for sure. I can't remember every single awards ceremony, and awards change from year to year depending who were doing them. So I can't say if that – if it's continued on for that long and I can't say when it finished or – so without any accuracy – I know I did for the first – obviously the first couple of years. But I can't say for sure how long it continued on for.

Given that you can't say for sure, why is it that you distinguish between the first couple of years and (inaudible)?---Well, that was where I've seen evidence that it was – and from the (inaudible). I know how it started. But the rest of the years I have no knowledge of because I can't remember them. So I may be wrong. But like I said that's from my memory.

Let's assume for a moment that there are no such records. Why would the link between lack of hygiene, drinking, other discreditable behaviour and Aboriginal people be broken if the name of the award remained a made-up Aboriginal word?---Well, when the section goes through – we have many people coming in the other section, then things change and definitions and terminology change, and the section changes. So just because it started in 2012 doesn't mean it goes through to '14, '20, whatever.

You were present for much of Mr Rolfe's evidence, were you not?---Correct.

Did you hear him say that the Nuggadah was still known by rank and file police officers; that is, police officers who weren't in the TRG. It was notorious for being known as Coon of the Year Award (inaudible)?---Probably – I have no – I don't have any evidence of that to correct.

Would it surprise you?---I'm not – I wouldn't be surprised if other people knew about it.

Help us to understand – you've said that the awards were about, "A bit of light-hearted fun and poking fun at the TRG members?"---Correct.

So they were jokes?---They were jokes.

Can you explain how the joke works? What's the link between outstanding lack of excellence and Aboriginal people?---The joke obviously is not a joke that everybody would associate as we all do different things and we all work in different fields. The – it's probably what we referred to as dark humour where we - - -

MR BOULTEN: "Dark humour," did you say?---Yes.

Right?---Sorry?

(Inaudible).

THE CORONER: I thought it was “staff humour.” But I didn’t - - -

MR BOULTEN: Dark – dark humour.

THE CORONER: “Dark humour.”

THE WITNESS: Daft. Can probably do both.

MR BOULTEN: What was it? Daft?

MR COLERIDGE: “Dark.” D-A-R-K. Dark humour.

MR BOULTEN: I believe his evidence was “dark.” (Inaudible).

THE WITNESS: It’s where we find things which are offensive. People see - we can see the funny side of it. Things that are unpleasant, things which most people wouldn’t like to deal with. We pull the funny side out of it. It’s obviously not appropriate but it’s one aspect of dealing with it.

MR COLERIDGE: So a lack of hygiene – not nice but funny and you can poke fun at with the TRG about it?---It was – that was the reference. It was – that was the link that that (inaudible).

Why did Aboriginal people have to be the butt of the joke?---Well, Aboriginal people is all the people we deal with. That’s how (inaudible) work 99 percent. So we had no really – when you’re in a working environment and you have one thing that you deal with, it’s human nature. That’s part of – they’re a big part of our lives in every aspect, good and bad. And, you know, it’s just – I think - - -

What part of the annual awards ceremony is celebrated in a positive TRG (inaudible)?---Positive way? Well, I have very little knowledge of the awards. They started 18 years ago. We consume large amounts of alcohol. I have a knowledge of the awards that I got. I do not have any knowledge of everybody else’s awards – what they got.

Which awards? When were you nominated for or awarded the Nuggadah Award?---I believe it was in 2012.

And that’s the only occasion that you say you were nominated?---From my memory. That’s the only ones I’ve been (inaudible).

Can we please have document 3?

You were in the TRG in 2007; correct?---Correct.

Can you recall being nominated for the Nuggadah Award in 2007?---I – through the award that I've seen, yes. I can recall that one. I don't recall the exact – 2007 (inaudible) the award.

You were in fact the runner up for the Nuggadah Award in 2007; do you recall that?---Correct.

Your nickname is Burner?---Correct.

Can we please have page 3 of that document? Sorry, page 2, and if we could zoom in slightly.

I might read that to you. The unredacted part of the page records the runner up for 2007, Nuggadah slash Outstanding (inaudible) Excellence Award as "Burner." And describes the award in these terms. "On the job at Litchfield Court, Nightcliff, after three hours in full kit, having worked up a bit of a sweat, Burner refused to have a shower and went home and climbed into bed." And this is in the same state. "Couldn't understand why she gave him a knockback when he got an AMRAS." Do you recall being nominated for that award?---No.

No?---No.

You accept, don't you, that a very negative connection is being drawn between your behaviour – unhygienic, potentially sexually inappropriate – and Aboriginal people in general?---I think the link's pretty weak. I don't know. (Inaudible) is having a go at obviously me, and the only link would be that it's a Nuggadah and the link is what we've already spoken about.

Well, let's not beat around the bush. The link is that you were the runner up for the award for most coon-like behaviour?---It doesn't say that there.

MR SUTTNER: Your Honour, this is the recipient of the award, not the awarder of the award. He received it. I think these questions should be really put to the person who awarded it. How can he have in his mind this link?

THE CORONER: Because he knew about the award like everybody else in the TRG.

MR SUTTNER: Well, that's been established.

THE CORONER: Clearly a lot of people throughout the Northern Territory Police Force even to this day. So I'm going to allow the question (inaudible). I don't know how much further you can take it.

MR SUTTNER: Because it's already been established.

THE CORONER: Yes.

MR COLERIDGE: Now, your evidence is that at this point in time – 2007 – there wasn't a good connection in your mind between the Nuggadah Award and connections with Aboriginality here?---What I'm saying is that I don't – when I read that in that award I don't really associate that with Aboriginal people. I know the Nuggadah has that (inaudible) spoke about. But that to me was – like I said the award started with that but then it just progressed into having a go at each other, and we didn't sit there and go, "Yes, that's based or part of an Aboriginal thing." It was – obviously you read that, it's got – has no real links to it.

So it started with that link, but by this point it had developed and it was about just general discreditable conduct - - -?---It was called that. But yes, it was - you're right. (Inaudible).

Can we please have page 6 of the same document. Perhaps we can zoom out slightly.

So this was the winner that very year of the Shit Barbecue Award. Scroll down, slightly. Caption is for the most coon-like barbecue ever. Do you wish to revisit the answer that you just gave about the link between racism and the Nuggadah Award?--Yeah. I mentioned that these - the awards did have reference at the beginning, and they did have reference but it didn't apply to all the awards. I said it developed from its - there was award for everything and anything, and obviously some, like that one, obviously is. But - - -

(Inaudible) in Nuggadah at this point in time?---The Nuggadah was an - was award I can see there, but it started from having the links but then it would go for everything and anything. And I guess the link faded. I think my example is probably an example of its fading, while some of them obviously didn't. So it was - they were - the awards were - have to look at each - each award I guess and - - -

Can we have the second - the next page, please.

So this is the award given to the (inaudible) at the TRG who beat you by one in 2007. It was awarded for person who expressed their utmost level of Aboriginality while being an elite member of the TRS, (inaudible). Are you seriously suggesting that - - -?---No.

- - - when you were identified as the runner-up for the Nuggadah in 2007 it wasn't abundantly clear in your mind that you were being (inaudible) role to (inaudible)?---The award I got in 2007 was the - jumped off a car.

I'm not asking about the award you got - - -?---Yeah.

- - - I'm asking you (inaudible) - - -?---I'm not - I'm not arguing with you, the awards we all agree that the Nuggadah has Aboriginal and links. So - and it's been proven. I'm not arguing about that.

Not arguing now. I wasn't sure whether we were having the argument a moment ago. But are you accepting that - - -?---I'm just saying all the wards (sic) weren't - - - that is overtly racist?---That - a 100 percent. Yes.

In 2012, you've won the Nuggadah Award. Is that correct?---12. No. I think I was runner-up.

Can we please have document 5.

Which is exhibit 28 (inaudible), your Honour.

THE WITNESS: Hang on.

MR COLERIDGE: Perhaps if we could scroll down, please. And one further.

This was the award presented to you in 2012?---Correct.

Outstanding lack of excellence in cooking sausages?---Yep.

Can you explain the context to the court behind those images?---Firstly, that's not my body. If I can say that. That's - I think as I said in my statement, background to that award was we were on a tasking in Alice Springs and we were staying in accommodation. The last night we'd had a lot of drinks. I returned back to my hotel room, cooked some sausages, I think I fell asleep. The receptionist had to (inaudible) make some inquiries and that was basically (inaudible). There was no smoke alarms or anything like that. It was all like I said in my statement; it was all pretty low rent and embellished as most of the awards were.

I think in this statement you say that: "Look, by this time, there was no connection with Aboriginal people. The butt of this joke was Jamie Oliver."?---Not the butt of the joke as Jamie Oliver. I said - I referenced that award that - while the name and the history of it does have that, I - there was no link in my mind to indigenous persons for that award.

Can we please have document 4? Can we please zoom in.

That is the award that is given to the Nuggadah?---That's for the - yes.

And perhaps take it from me, but the bottom most plaque on that stick is your name?---No. I don't think it does.

I see. If we might make that larger?---Was that 2012 was the - was I the winner on that one or was I runner-up? I can't recall now. Only the winners went on that.

Perhaps if you can scroll down slightly. No. No. If you just scroll down on this image. Thanks.

“2012. Lee Jamie Oliver Bauwens”?---I must have won it 2012.

Can you just explain your last answer to me. You say there is no persisting link at this point in time between a Nuggadah Award and generalisations about Aboriginal people. And yet the award you received was a traditional Aboriginal weapon of some kind, with a plaque with your name on it?---Sure. We're talking about the actual issuing award. And I've - I've made mention of that; yes, the - started off and I don't know how long it went but the initial award started off having indigenous connections, including the club. But as the awards went, the reason why we gave the awards were not - even though the name had, as we've discussed, had the links and was inappropriate and everything, the actual what the awards were given for were separate and really weren't linked to the indigenous people.

(Inaudible) the award was no longer about recognising the TRG members display of Aboriginality?---It could have been. But each award was different. I can't speak for all the awards.

Well, you keep saying that each award was different. We've gone through a few now. You seem to be conceding that each of them was racist.?---I'm talking about my awards. They're the only ones I really know about. Apart from those ones you've showed me.

Weren't you present on almost every occasion for these ceremonies?---Correct. That's 18 years ago and intoxicated. I can't remember the awards.

The last awards ceremony you attended was in 2013 correct?---2013. I left in (inaudible).

October 2014?---These are in December 2014.

Okay. Can we please have document 6.

Now, the date of this email was 9 December 2014. You were no longer in the TRG. Is that correct?---Correct.

Neil Mellon, senior member of the TRG?---Correct.

Do you agree with me that the award on 9 December 2014 is borne of the nominations of the internal 2014 TRG awards?---Yeah. (Inaudible) it up a bit more. Yeah. I agree with that.

And you can agree that he then says: “Categories are, there are four categories, and the final category is Nuggadah Award: best effort in displaying ones Aboriginality”?---Correct.

You agree that there's a very close racist association between the award?---Yeah. I've - like I've said before that the - the award and the links are there, but what I'm

trying to - what I'm trying to make, I guess, is the individual awards - some of them - weren't on the basis of any interactions or any dealings with an Indigenous person. I understand what they're saying is that the board itself and the club and everything has racial implications. But there is a difference between what the awards were actually issued for. Some of them, as we've seen, are still criteria that you are establishing, but some of them, I - I believe are not.

Equally, in - can we please have document 7. Could you please scroll to the final page of this document. Have you seen this document before?---I've only just seen it recently.

Okay. During preparation for these sittings of the inquest?---Yes, I think it may have even leaked to the media or something. I may have seen it on - - -

That is an overtly racist image, is it not?---It's a member dressed up as a black and white minstrel, which is fairly inappropriate these days.

It's blackface?---Yeah, black - minstrel. It's a minstrel look, I would say. Or that's my take of it but yes, blackface.

Is blackface racist?---I don't know, is it?

We're trying to understand. You were the Sergeant of the IRT. You were responsible, on your evidence - do you agree - for establishing the culture and mentoring members of the IRT. Do you agree with that?

MR SUTTNER: With respect, he wasn't there in 2015.

THE CORONER: He's being asked more generally about his understanding of what he said is not racism, and this is an example.

MR SUTTNER: But this is - - -

THE CORONER: He's being asked about it.

MR SUTTNER: Your Honour, it doesn't speak for itself, but we - - -

THE CORONER: Well, we're trying to understand members of the police force in positions of leadership, what their understanding is.

MR SUTTNER: What their understanding is of events that took place after they'd left.

THE CORONER: It's obviously information that was available about this award throughout the Force. He'd only recently left. I assume he still had some connections and information about what was happening, but it's more - now - directed at his understanding of what racism is and his attitude towards it.

MR SUTTNER: Yes, but can I just understand, your Honour has just said that this was known throughout the Force.

THE CORONER: Well, that's the evidence that we've had.

MR SUTTNER: Okay.

THE CORONER: I'm not sure how widely it was known, but it was obviously known wider on the evidence before this inquest than simply within the TRG.

MR SUTTNER: But you've said, "throughout the Force."

THE CORONER: Well, I don't know that. I - it is wider than the TRG, is all I can actually say, Mr Suttner, based on the evidence before me.

MR SUTTNER: Yes.

THE CORONER: And it was certainly known to your client, who left the TRG and went to other areas of the - as a serving police officer and sergeant, in the Northern Territory Police.

MR COLERIDGE: Is blackface racist?---It's - you have to put it in context. I - I really don't know anymore. It's depending in the context it was put it, dressing up and thinking - I'm not too sure. I've only seen that award. I have no idea of the background of it. It would be very easy to say - for me to say, "Yes, I agree, it's totally racist." But I really don't know much about it. He has got a black face, but it's more of a - it looks like it duplicates, like I said, the minstrels from America years ago. But - and I don't know the background of the award, but I'm only being honest. It's - it would be easy to say it was racist, but I don't know. I'm not sure.

Let me put it in context for you. This is an award that was historically given for an outstanding lack of excellence- - -?---I agree - you mentioned the Nuggadah. We all -

I think we all know that the Nuggadah award is racist.

Okay?---If that's the - if that's reference between the blackface and Nuggadah, then that is the link that you're going for, then I say yes, it is racist. And I - I understand that it is.

In February, you were examined about your use of racist language. You used the "racist" in quotation marks, but I understand (inaudible) it was racist. But you know what I'm talking about?---I don't accept it's racist, what - - -

I asked you some questions about whether or not you freely used racist language in and around the Alice Springs Police Station?---Correct. I don't remember it, no.

Okay. And I then asked you some questions about your use of the word "coon" in one of your texts to Rolfe, Mr Rolfe. You remember that?---You did ask me that, yes.

Okay. Can we please have the document 1 (inaudible). You recall that on 22 February, I asked you about a text message you sent to Zach Rolfe on - in July 2019 in which you said, quote, "These bush coons aren't used to people going after them"?---You recall me asking you about that?---Yes, I do recall.

You recall I said that that was, in effect, your opportunity to provide any comment you wanted to make in relation to the text message?---I don't remember the exact conversation, but it's - that's on the record.

Okay. Do you recall saying, "I have absolutely no memory or recollection of that comment whatsoever, it's not something I'd say. I don't like the term. It's not who I am, but it's there. I have to accept it, but it is completely foreign"?---Do you recall that was your evidence?---Correct.

The word "coon" was in no way foreign to you on 22 February 2024, was it, Sergeant?---24?

That's right?---Yes. Yeah, it was. You have to define - you have to - it's - I knew the word, but it's not a word I used, so it was foreign to me, and I don't - and I don't use it.

You were a part of an elite section of the Northern Territory Police Force for 10 years that awarded annually the Coon of the Year Award?---In - it was discussed, that - correct. And there's - that is the past and that - that did happen, but that does not mean that I go to use that word daily and - - -

Your evidence was, "It's completely foreign to me"?---It is foreign. I came to Alice Springs from Darwin. I left that area behind and I started at Alice Springs. And the reason I started at Alice Springs was to make a difference down here and provide capability, so I did. I was very conscious of terminology, words, anything, behaviour. So I was coming down here as a sergeant. So I was extremely careful of what I said, what I did. Onus of my role. So I do not have any knowledge of that word, as I said before. It's not a word I use. It's - it's hard to explain because it's not - it goes beyond just not remembering. It goes that I would never use that to a - a junior member. I don't even use it to people that I've known for many, many years. So while in TRG it was used and we did have awards for it, it doesn't mean I carry it with me for life and I continue to use. So you know I was truthful when I said it was foreign to me, I don't use it.

Why wasn't that long qualification - that for 10 years it was completely foreign to you, you had no difficulty with it, you never raised a concern with your superiors in the TRG. 2014, you leave, suddenly it's foreign to you. Why didn't you tell her Honour that that was the context in which you used the word "coon" in 2019?---In some respects, I should've. But my reasons for not mentioning it, it was in the past. It

was, as we know now, it was 18 years ago and on. I believe it had no - it had no effect of what we were investigating here. I also believed that it would have a detrimental effect on the police force. I also believed that would have a detrimental effect on police members and the way they did their job and how they were treated, and I honestly believe that it would cause conflict within the community. And one I speak of conflict, it only means one of two things: violence and having been locked up, and I don't believe that was the way forward.

So when you were asked questions on (inaudible) in this inquest, direct questions including the (inaudible) language before, instead of giving truthful answers you decide whether in your subjective view it's in the public interest for you to give truthful evidence?---I don't recall the exact questions you answered me. But I – you know, I should have mentioned - - -

DR FRECKELTON: Your Honour, before the witness says anything further, I ask that he be advised of the risk of incriminating himself further.

MR COLERIDGE: There is obviously a prospect, your Honour. I'm putting to him that he's (inaudible).

MR SUTTNER : Well, your Honour, can we just look at what is actually going on here? First of all, we've killed this issue to death.

MR BOULTEN: (Inaudible) the issue.

MR SUTTNER: We've killed this issue to death.

MR BOULTEN: Sorry, I didn't hear you.

MR SUTTNER: No, no. (Inaudible). But secondly - - -

THE CORONER: I think Mr Coleridge wants to proceed and ask further questions, and I'm not sure what those questions are. How relevant they're going to be. We haven't heard the questions so I can't rule on them yet. But I can give you an opportunity to speak to your client.

MR SUTTNER: Well, can I just make one sentence submission, and that is the questions were put to Sergeant Bauwens in the context of what I will call the "offending text message." That message had been dealt with over and over and over again in relation to other policemen before Sergeant Bauwens got in the witness box. That was the focus – that was really his intention.

Now, you may also recall that Mr Coleridge examined him and then over objection, you allowed him to examine again. We're now having something which suggests he's lying. I'm indebted to Mr Freckelton – I should say Dr Freckelton – for raising the question, and I do object to him being asked questions that may incriminate him.

THE CORONER: Well, I'm going to briefly adjourn so you can speak to your client of his rights.

MR SUTTNER: Yes. Yes.

THE CORONER: And we will return. How much time? Is five minutes sufficient? Do you need more than five minutes?

MR SUTTNER: Give me 10 minutes because it takes five minutes to get in and out of court.

THE CORONER: Ten minutes.

WITNESS WITHDREW

ADJOURNED

RESUMED

LEE BAUWENS:

THE CORONER: Mr Coleridge.

MR COLERIDGE: I understand there's to be an objection.

THE CORONER: Sorry, there's an objection?

MR COLERIDGE: An objection.

MR SUTTNER: Well, your Honour, I was going to wait for a specific question to object to but you may as well hear the objection so that when the comes you're in a position to rule.

THE CORONER: Yes.

MR SUTTNER: First of all I object to questions that are designed to cause the witness to incriminate himself and we are now dealing with questions of perjury. I object to it in principle but there are a couple of points I would like to make.

One if he has committed perjury there is a record and the record will compare what he said on the 24th with what he said today. And then objectively if there's been perjury there's been perjury. What we're going to now is a situation of haranguing a witness and arguing questions of interpretation of wording and relating to questions.

But what I want to also put to you is what you're actually doing here. This inquest is supposed to find out what happened on the unfortunate day in Yuendumu. And to some extent it has been broadened, and I'm not going to argue the questions, but it's been broadened into questions of why and that has gone into questions of institutional racism.

This witness wasn't there. He's been asked various things about what happened but he's part of a very small group who appear to be taking the brunt of the question of racism in the force. He attempted to file a statement dealing with this some time ago. It was rejected.

There's never been a suggestion that he has behaved towards an indigenous person in a racist manner but this seems to me to be moving away from the object or objectives of this inquest. You, your Honour, and my learned friends for you have made it clear you're trying to streamline this and get this over and done with.

We're going down a road that has nothing to do with indigenous. All of that is subsidiary to the principle point and that is I object to him being asked questions in which he may incriminate himself.

THE CORONER: And you're asking for a certificate?

MR SUTTNER: I wasn't asking for the certificate. I was asking for questions not to be put. Nobody's offered a certificate. If you're offering a certificate then I will take instructions as to whether a certificate (inaudible). It hasn't been mentioned until now.

THE CORONER: I thought you were taking instructions (inaudible) issues but in any event.

Yes, Mr Coleridge?

MR COLERIDGE: Can I just first correct something that is untrue which is that the statement provided by Sergeant Bauwens is not added to the brief. It is at item 7, item 7BB.

MR SUTTNER: Sorry, if I can just correct my learned friend. I don't mean to interrupt him. There was an attempt made previous to put in and it was rejected. The one he refers to is there I'll dig it out later and I won't interrupt further.

MR COLERIDGE: Whilst we call first a copy of that statement. I'm not aware of any such statement. Let's take a step back and identify why the evidence of this witness is so significant. Constable Rolfe was a member of the IRT. Constable Rolfe was deployed as a member of the IRT on 9 November. Constable Rolfe killed Kumanjaya Walker dead.

I had suggested to this witness on the last occasion that it was his responsibility to determine who was suitable and that he failed to discharge that responsibility. And that had he properly discharged that responsibility Constable Rolfe wouldn't have been deployed and would not have killed Kumanjaya Walker.

The nexus of the death is (inaudible) your Honour. I will be asking, your Honour, in submissions at the conclusion of the inquest to consider Sergeant Bauwens' answers, particularly in respect of Mr Rolfe, very carefully. The cross-examination today has nothing to do with establishing that the witness has perjured himself.

It is an orthodox attack on the witness' credibility on the basis that the answers he gave before we knew that Constable Rolfe was going to throw the TRG under the bus on the 26th were untrue and could only have been knowingly true. In my respectful submission there is a direct connection in the course of circumstances of Kumanjaya Walker's death. That's what I'm seeking to investigate.

If there is an application for a certificate that's one matter but I don't understand there to be such a progression.

DR FRECKELTON: Your Honour, I rise just on a question of law because there are two matters taking place here. My learned friend Mr Coleridge has said to you that

he's not seeking to explore overtly the question of whether the witness has engaged in perjury but he wants to ask further questions about it.

When the witness has engaged in perjury or will engage in perjury is an objective matter. And under s 38(3) of the *Coroners Act*:

“Even if a person is given a certificate it does not protect them on a prosecution for perjury.”

So that's part of the overall scenario in which presumably Mr Suttner is, to which Mr Suttner is giving consideration, discussing with his client as to not so much whether to ask your Honour for a certificate which would not assist him in relation to perjury but to consider whether to make submissions to you about, the issue of the certificate aside, provide protection to this witness against incriminating himself when a certificate will not help him.

THE CORONER: Do you wish to respond, Mr Coleridge or Mr Suttner.

MR SUTTNER: Only to say that I'm not aware of what protection you can give the witness. It may be a shortcoming of my knowledge of the law but I'm not aware if I can and if there is a way I would be interested in putting it to my client. At the moment I can't and I can only object to you forcing him to answer questions which will make, especially when whatever Mr Coleridge said with great respect.

If Sergeant Bauwens, I'm not conceding he's lied. He answered questions but if there's a question about the 2015 -2012 Nuggadah Awards how that's directly relatable at all to the unfortunate events which everybody regrets having happened. I cannot see a new relationship and I urge you not to allow this tangential inquiry which is just fought with objections to proceed.

THE CORONER: I'm going to take it question by question.

MR SUTTNER: Do you want me to object question by question or are you going to take control?

THE CORONER: I'll hear the question and if it's one of the ones that you object to you can let me know and if I need to hear further I will.

MR COLERIDGE: Can I please have document 1 again and it's at page 94 of the PDF, the court order as PDF and 5027 of the transcript (inaudible). I'll take it step by step and pause and allow my friend to take the objection.

THE CORONER: It's 50?

MR COLERIDGE: 5027 of the transcript and 94 of this PDF. (Inaudible) please. All right. Up. Great.

You were examined by Mr Matt Derrig for NAAJA on 27th - do you recall

that?---If you say so.

And I suggest to you that someone from NAAJA asked you some questions?---Yes.

You were asked to talk about your use of words in the text with Mr Rolfe?---Correct.

You were asked the question, "Now, you say that this, you now, you're surprised to see this, but are you suggesting that this is the first time that you've used this kind of language with another officer?---Yes, I - yes." First question. Do you agree that you were asked that question and you gave that answer?---Is it written down there? And I have a look?

THE CORONER: Yes, it's in the middle of (inaudible)?---Yes, I can read that.

MR COLERIDGE: And do you agree that you were asked the question and gave that answer?---Yes.

Based on your 10 years of participation in the annual TRG awards, that was untrue?

MR SUTTNER: I object.

MR COLERIDGE : Your Honour, if the position by my friend is that it is an objective matter for your Honour to assess the truth or untruthfulness of this, your Honour might uphold the objection under s 38 and determine that it's not expedient for the administration of justice to compel the witness to answer, on the understanding that this is his opportunity to answer it if he wants to and that counsel assisting team will be submitting that your Honour ought make findings adverse to the witness on a comparison based answer and his knowledge of the TRG awards. So on that basis if that is the position my friend takes, it would certainly be open to you to uphold his objection.

MR SUTTNER: And that is indeed the position I take, that your Honour look at it - is that (inaudible) doesn't help. You've got the information in front of you. Yes.

MR BOLTON: Your Honour, quickly.

THE CORONER: Yes.

MR BOLTON: If the objection is relevance, you should overrule it. If the objection is my client refuses to answer "on the grounds that the answer might tend to incriminate me", then your Honour may, indeed, uphold the objection.

MR COLERIDGE: And it is the latter, in respect of the submission.

THE CORONER: And it is latter, Mr Suttner.

MR SUTTNER: The objection is oath, but if you uphold it on the ground of self-incrimination then you've upheld it and then the rest comes together at this stage.

If you uphold the objection we don't need to argue relevance.

THE CORONER: (Inaudible).

MR SUTTNER: Your Honour - - -

THE CORONER: I think I understand the situation, but I am just going to give everybody an opportunity to make sure we are very clear and so just - so, Mr Suttner.

MR SUTTNER: Let me just say this. I had a twofold objection. But if you uphold one of the folds then you will have expressed no view on the other, it will be open to you to deal with the other at a later stage.

But if it is impermissible because it is self-incriminatory, that stops it for now.

THE CORONER: I uphold the objection on the basis of self-incrimination only.

MR SUTTNER: As it pleases you.

A PERSON UNKNOWN: As your Honour pleases.

MR COLERIDGE: Your Honour, I will move away from consideration of the transcript on the last occasion.

Sergeant Bauwens, what is your relationship with Carey Joy?---Carey Joy, I've known Carey Joy for about 23 years.

Very close friends?---Yes.

Picked him up from the airport last night?---Correct. It's that time of year.

And what is your relationship with Mr Rolfe today?---He's a close friend.

A PERSON UNKNOWN: I object. (Inaudible) leading - far more leading (inaudible).

MR COLERIDGE: I will come to that.

Did you introduce Mr Joy and Mr Rolfe?---No, I don't think I did. Shortly before the commencement I may - I had to - I don't - I can't remember.

Shortly before the commencement of the inquest did you meet with Mr Joy and Mr Rolfe socially?---At which inquest? This one or the one before or?

I think this is the only inquest?---I mean, sorry, the sittings I'm referring to.

Sorry, the beginning of the inquest in September 2022?---Did we meet? I met with Carey Joy and so I can't remember if I had a meeting with Zach, so I really can't remember.

Can you recall a meeting with Mr Joy and Mr Rolfe at Mr Joy's house?---Prior to the first one? No, I can't recall. It could've happened, I can't recall that.

At any time?---I think we had a barbecue there at some stage, from memory.

At that barbecue yourself and Mr Joy spoke to Mr Rolfe about the TRG awards did you not?---I can't recall exact conversations.

It's possible you did?---It is possible.

To your knowledge was it yourself or Mr Joy or both who first told Mr Rolfe about these matters?

MR SUTTNER: Which matters?

MR COLERIDGE: The TRG awards?---I believe I've had a conversation with - - -

MR ABBOTT: I object. I object (inaudible) of which (inaudible).

THE CORONER: Well, it might help me understand where the information came from or it might not but I am going to permit the question.

MR SUTTNER: Well, may I just ask what the relevance is of where Mr Rolfe got the information? He's got the information, it's before you, how does this relate to how the events that happened on the fateful day. I say that's not relevant.

THE CORONER: Sorry, Mr Coleridge .

MR COLERIDGE: If, your Honour, I can explain? Mr Rolfe's evidence when he ultimately, after many years of resistance, gave evidence in February of this year, was that out of the goodness of his heart, in effect, he was uncovering - quote unquote - truths about the Northern Territory Police Force in - - -

MR ABBOTT: Well, I object - I object to this (inaudible) your Honour - through the goodness of his heart, that is just (inaudible).

THE CORONER: Mr Coleridge, if you're just stating the facts?

MR COLERIDGE: Your Honour, the timing of Mr Rolfe's knowledge in circumstances where he might have known about these things for many years and chose only to disclose them very late in the piece, would be relevant to

your Honour's assessment of Mr Rolfe's credibility and his motivations for sharing that information.

THE CORONER: I am more interested in his motivations than in his carrying out his duties and it may be relevant to that. So I will allow the questions.

MR COLERIDGE: I will reframe it then and focus on that period.

MR ABBOTT: (Inaudible).

THE CORONER: Thank you.

MR COLERIDGE: At the time that Mr Rolfe was a police officer did you ever have conversations with him without Mr Joy, about the TRG awards?---I can't recall.

Subsequently?---Sorry?

Subsequently? After he ceased to be a police officer?---I believe I have had a conversation with him regarding that.

When was that?---I cannot recall.

Last year?---I cannot recall. It probably was in relation to my text and the link between the two (inaudible).

And what was said?---I can't recall.

So are you completely unable to say whether the conversation occurred two years ago - one year ago - this year?---It's been a crazy couple of years with information and everything. I cannot recall times I spoke to Zachary Rolfe about those awards.

And who else was there?---You're telling me about a situation where I don't remember, so I can't - - -

THE CORONER: I - you had some recollection about the barbecue and Carey Joy?---Yeah, he was - he was at the barbeque of - - -

And what was discussed?---I can't remember what was discussed, we discussed lots of things. Like I said this year has been -any discussions regarding this case, the police just about everything. To narrow it down to what was said, I really cannot recall. I can't even recall the time we had the barbecue so. I've been to many places, spoke to many people.

MR COLERIDGE: Do you recall there being any discussion of the quote unquote "Book of Truths?"

MR SUTTNER: Is that question directed to the barbecue? Or is it a general question?

THE CORONER: I think that was a general question.

MR COLERIDGE: That was directed to the barbecue.

THE CORONER: Was it? Okay.

Thanks for clarifying that, Mr Suttner.

MR SUTTNER: That's the problem – yes.

MR COLERIDGE: I'm doing my best to follow your Honour's instructions (inaudible).

THE CORONER: So we're talking about the barbecue now.

MR COLERIDGE: We're talking about the barbecue. Can you recall there being discussion of the Book of Truths?---No, I can't remember.

Do you know what I'm talking about – the Book of Truths?---Yes, sir.

Okay. What is the Book of Truths?"---As I said in my statement, it's a book where stories or quotes or – are written down that were perceived to be funny at the time or incidences to be read out later or just for prosperity, I think.

In your statement – your most recent statement, you say that work we've been discussing is not used by frontline Northern Territory Police Force members?---That's correct.

Okay. And that it would cause any officer who heard it their ears would prick up?---Yes.

And I think you go so far as to say that they might be subject to some kind of violent recrimination or threat?---Yes, I said this.

There must have been a lot of punch-ons in the TRG?---Are you referring to the Alice Springs Police Station?

I was referring to frontline police officers?---No, I was answering (inaudible) as Zach said in his evidence that ensues in the Alice Springs Police Station, and that's what I answered to (inaudible).

So you were distinguishing there between the TRG and the Alice Springs Police Station?---Correct.

Okay. You disagree with Mr Rolfe that that word was used commonly in the Alice Springs Police Station?---Yes.

Those are my questions, your Honour.

THE CORONER: Yes.

Mr Boulten?

XXN BY MR BOULTEN SC:

MR BOULTEN: Was Meacham King at any of these TRG award nights when you were present?---Yes, I believe so.

It's suggested that none of the awards had any connotation to race, and that the awards were not meant to be offensive; do you agree or disagree to the proposition that none of the awards that you've been discussing in your evidence had any connotation to race?---There's definitely some. As I said in my statement - - -

Which I did?---Yes, yes.

And the clear delineation or the clear link with the Nuggadah award was that it was Aboriginal characteristics that suggested that the person nominated might be awarded the prize?---Yeah, that was the inception of the award, how it started. But - - -

So hygiene or lack of hygiene was regarded as an Aboriginal characteristic?---Not as a whole race but it's specific to some people.

It was put in the (inaudible), wasn't it?---Well, it's not – it was – it's obviously referred to the Aboriginals.

That's quite racist, isn't it?---Well, yes.

Because not all Aboriginal people are unhygienic?---100 percent.

Nor all white people?---100 percent.

But you understand, don't you, that the characterisation of a whole race of people as having the same characteristic is what marks racism?---But we've made characteristics in this court of people (inaudible).

Do you agree with the question, Sergeant?---I don't agree. There's a whole race (inaudible) that. But that's not – it was just some of the people we deal with.

Was Acting Assistant Commissioner James Gray-Spence present at any of these awards to your knowledge? With you?---I can't remember actually seeing him there. But it would not be a difficult situation for - - -

What do you say to this proposition? That the Nuggadah Award has never had any connection to indigenous issues?---How did you say that, sorry?

MR SUTTNER: Your Honour, this has been killed by Mr Coleridge. Are we going to go through exactly the same thing when each person examines him? I object to the repetition.

THE CORONER: Mr Boulten, he has conceded that the award is a racist award. Or at least its inception was.

MR BOULTEN: Yes, all right. As the court pleases.

May I then ask you more specifically about some of the terms that you've referred to in your statement – the recent one? And in particular to the term “half-caste?”---Yes.

When do you think it was that police that you worked with stopped using the term “half-caste?”---I can only speak – well, it's been a while. I can just recall an incident when I was taking a statement from a lady - and I think it would have been before I joined TRG. Because that's when I would usually take statements. And I was describing the offender and I referred to “half-caste,” and I remember – I distinctly remember she came – she said, “I'm offended by that term.” And it was – and I went, “The term we use.” And it made me think and I went, “That's fair enough,” and from that point I never used it, and - - -

What about your colleagues?---Well, I really can't speak of them too much.

Well, you speak to them (inaudible)?---Not a great deal. I'm sure it was used, yes. I'm sure it was used. But I can't recall any incident. But it wasn't widespread.

When did it die out?---Sorry?

You suggest that it's died out as a term?---Correct.

When approximately? The last two years, five years, 10 years?---Well, we haven't used it since I've come back to Alice Springs – since September '14. And I left in 2004, and went to that specialist section, so.

What about the term “gin jockey”(?) In your experience when you heard people you worked with use the term “gin jockey,” what was the reaction amongst people who heard it?---Well, we're talking period from 2000 – 2004 which is when I first started.

And what was the reaction of people when they heard someone talk about a “gin jockey?”---Twenty-something years ago. I can't recall.

Was it positive, negative? Was there some reaction, no reaction? Was it taking its path in a normal parlance?---Well, (inaudible) term – I'd only be guessing and like it was 20 years ago – 23 years ago.

Okay. What about the term “coon?” When if ever have you ever heard the term “coon” used in your policing apart from these awards?---I’ve heard members of the public use it. So I haven’t heard it in the police station. It’s just not a – like I said in my statements, it’s not a term that we – it’s just not used.

We’ve seen your use of the term on the message that was exchanged between you and Mr Rolfe. Were you a user of social media to communicate with your police colleagues during work or outside of work hours?---Social media. I text people.

Forget about texts. But for instance, Snapchat?---Snapchat, no.

Signal?---I speak to people on Signal sometimes.

What about work issues?---I haven’t been at work for a while. So generally not. No, I can’t recall exact conversations that I’ve had on phones (inaudible).

When you were working in Alice Springs Police Station, were you aware that some of your colleagues were communicating by Facebook Messenger, Snapchat, Signal, and other forms of similar platforms?---Can you define colleagues? Because a couple of hundred people are there.

Police officers. Police officers?---Yeah.

Yes. There was three or 400 people over there. I don’t know what they are all doing.

Well, were you aware of any of them in groups – that were communicating in groups?---Recently I have been known of one, but.

Well then, which one are you talking about?---There is one that is in the media, I think.

The one that was in the media since last week?---Yes.

So, do you know Sergeant (inaudible)?---Yes.

Were you aware when you were working as a police officer that he was involved in sending messages on a social media platform with his colleagues?---No.

You have made a clear distinction in your statement between the use of what you would accept to be racist language when people are in private on the one hand?---Is this in my statement, sorry?

Yes. I think so?---Yes. I think I used derogatory comments.

Derogatory. Okay. Well lets call them derogatory comments?---Yes.

As I see the logic in your statement, you don't see a problem with people making derogatory comments about the people they police in private?---I didn't say I don't have a problem with it.

Well, do you have a problem with it?---Well, you have got to look at things case by case. People have private conversations. Everybody in this courtroom has had a private conversation which I am not privy to and either are you. So - - -

What do you see?--- - - - how do you judge what private conversations are? And how do I judge what they are?

Well, that might be a very important point. But conversations had between police officers at a police station when they are on duty. When they are exercising and functions and power as police officers. They cannot truly be regarded as private?---Maybe later at police stations - - -

And irrelevant – and irrelevant to?---(Inaudible) - - -

To policing duties, can they?---You are putting a lot information in there which is not known, this information. Conversations can happen anywhere. You are assuming they are on duty, at the station, who knows all that? Could be at home with their wife talking about what happened during the day.

So?---Private conversations, that's - - -

So if a police officer is on duty can they talk in a manner that you would regard as racially inappropriately?---Can they talk?

Should they talk racially inappropriately when they are on duty?---Not in an open place where other people can hear (inaudible).

What about when they are in private? When they are in the corner of a police station?---That's what I said to you - - -

Where no one else can hear except for the two or three sets of ears that are listening to them being racist. Is that okay, Sergeant Bauwens?---You are telling me about things I don't know.

I am not?---I don't know what they say - - -

I'm asking your?--- - - - as a private conversation - - -

Your opinion. Do you think that it is okay?---I don't agree with any racial things in the police station if that is the answer you want.

So it is not appropriate, do you agree?---Any racial words is – I think we have established is not appropriate.

It shouldn't happen?---Private conversations. How do we know?

THE CORONER: It is not a question of how you know. It was a question of---Correct, your Honour - - -

Should that racist language be used by police on duty?---Racist language in the police station should not be used.

Do you see that it has the capacity to affect a person's attitudes, generally?

MR SUTTNER: Your Honour, this has been dealt with again ad nauseum. Not even last time, but the previous time with every witness we have heard this. And the witness has said it should never be used.

THE CORONER: This is the next (inaudible) though.

MR SUTTNER: But - - -

THE CORONER: Mr Suttner and I am going to allow that. Because I need to understand what Sergeant Bauwens views were and what his views are now.

MR SUTTNER: Yes.

THE CORONER: And whether they have changed at any point in time.

MR BOULTEN: Do you think that if police officers use racist language to each other, that that racist language even in private might affect their attitudes?---What do you mean, racist language? I - - -

Anything that disregards Aboriginal people?---Well - - -

Language which ascribes characteristics to the whole race of people who are Aboriginal?---That's - - -

That's a start?---That's - - -

So if – do you want to carve out a subset of such language as being acceptable, or do you accept the whole lot of it as being unacceptable?---What I said in my statement.

What's your to the question?---I am trying to answer if you let me. I said derogatory comments – derogatory comments could be anybody. Every police officer in Australia makes derogatory comment because we work with people – criminals. Black, white, pringle, everybody. So derogatory comment is regarding about what someone has done, their behaviour, that is what I am talking about. Whether they are racist or not, I do not know.

So, if?---So with – you want to draw a link between describing an offender who has done something heinous to somebody. Killed a child and a police officer said that is a horrible thing. Then is that racist? I don't know.

Let's – this is – that is not racist? It is clearly not racist?---But you are talking about private conversations between police officers.

Mr Bauwens. You can set up this wall of words if you want. But I – I withdraw that. Listen please to this question. If a police officer used a derogatory comment about an Aboriginal person and described them as less than any other – I will start again. If a derogatory comment focuses on the person's race. And the derogatory inference is that they are unhygienic because of race?---That's – I have already answered that question. Racism is – for comment should not be used.

So do you think such comments might influence the attitude of people who hear the comments made?---Are we talking about what happens in Alice Springs? You have mentioned hygiene.

We are talking about what happened within police stations in the Northern Territory?---Sorry, you just - - -

Including Alice Springs?---You just made reference to hygienic – unhygienic, which is the instance in TRG which we were talking about 20 years ago. So, that's why I was just clarifying. Of course, any sort of racial words are inappropriate.

And you think racist words expressed in private by police to police have the capacity to influence police officers' attitudes in their duties?---That is a big call to make. And it is on so many circumstances. I really wouldn't like to - - -

You don't want to answer that question because it is too big?---It – I haven't got all the information to make it - - -

Too big of an issue?

MR SUTTNER: I think it is too – it is a question - - -

THE WITNESS: Well - - -

MR SUTTNER: - - - do you lead psychological evidence, sociological evidence. He says he can't answer the question. But what he has said is that it is unacceptable. Wherever it is, it is unacceptable.

THE CORONER: I don't think you can take it any further with Sergeant Bauwens.

MR BOULTEN: No, I think he – I think the – that your Honour is right. And I will step away from that.

How long have you been on sick leave?---(No audible response).

MR SUTTNER: What has this got to do with this inquest?

THE CORONER: I am not sure, but it – I assume Mr Boulten will make it relevant.

MR SUTTNER: Perhaps he can identify to you where he is going so that we know that it's relevant.

THE CORONER: Can you assure me of its relevance, Mr Boulten?

MR BOULTEN: Yes, your Honour.

THE CORONER: Thank you. I will allow the question.

MR BOULTEN: When did you first go off sick?---It was just before – I had a few weeks off before the murder trial. After – it would have mid-year 23 or something like that from.

July 2022?---Yes.

When do you have to return to work?---That is something that I am dealing with at the moment.

Have you discussed your sick leave with any of your colleagues?

MR SUTTNER: What is this – look, I object. Where – what has this got to do with this inquest? Are we getting into Sergeant – are we going to get into what's actually wrong with him? Why he is off leave?

THE CORONER: I don't think so. But certainly management of behaviour by police officers within the police service is an issue in relation to this inquest and whether or not it's effective or not.

MR BOULTEN: It appears - - -

THE CORONER: Is an issue in this inquest. So if that's the area that Mr Boulten is exploring.

MR BOULTEN: Well a number of the members of the IRT have given evidence in this inquest (inaudible) times having discussed the idea of sick leave (inaudible) an appropriate mechanism for any of your colleagues to deal with the pressure that they're feeling from the issues that are being explored?---I tell my members if a situation occurs and they feel they cannot perform their functions or they're under stress, anxiety, then (inaudible) we have sick leave, use it.

All right. How beneficial do you think it is that there is essentially no limit to use sick leave?---There is a limit. It's been changed. In my instance, in 23 years and you could probably count the days I've had off on a hand. I've had multiple attempts on

my life and turned up to work the next day. So what's happened to me regarding this court and the trial has had a different effect and it's a different effect on a lot of police officers as well. We can deal and cope with what we see in front of us. We're trained and equipped to do that. But things that are out of our control and that we see unjust is – it's, like I said in my statement, it's a hard pill to swallow. That's why we take the time off.

The unjust aspects of all of this is what exactly?---The unjust aspects of this start from the initial arrest of Zach Rolfe for murder. After four days with no investigation. Multiple influences from outside agencies, government, ICAC. That the corruption is the – so even without the court case, their statements and evidence manipulated, withheld. As a police officer, we live the law and people who are of a superior rank or misuse of any the law, it's very hard to take. And I myself have been morally compromised. And also during – while this was going on, I also received multiple internal charges over a very minor incident, which I was punished and sent to a different area. And that dragged on for over two years.

Sergeant, the death of Kumanjaya Walker has not been central to your concerns. It's a reaction to the death by government, police hierarchy and the Aboriginal community. Correct?---The – it encompasses everything that I've just said.

Okay. That's all I wish to ask.

THE CORONER: Mr Mullins.

XXN BY MR MULLINS KC:

MR MULLINS: Thank you, your Honour. I didn't notify that I had some questions but my clients have asked me to ask a few questions. I'll be less than ten minutes.

THE CORONER: Sure.

MR MULLINS: Sergeant Bauwens, my name is Mullins. I appear on behalf of the Brown family. Just a couple of questions. You said in your evidence at about 10:40 – and correct me if I'm wrong, because it's just my note. You said when you first came to Alice Springs you came to make a difference?---Correct.

And you said you were conscious of the work, terminology and behaviour that you used?---That's correct.

And you were extremely careful of what you did?---That's correct.

And you wouldn't use – you referred to that type of language to a junior member?---That's correct.

Do we infer from that, that you understood that the words you use make a difference?---Correct.

And you understood that the words you used to fellow officers and to junior officers might have an impact upon them?---Correct.

And it might cause them to change their behaviour towards other people?---It has the potential to do a lot of things. You could draw that assumption.

Yes. Now, did you also understand that it might cause people either consciously or unconsciously to act differently?---You're putting a lot of emphasis on words. There are so many other factors which contribute to adjusting someone's behaviour. Role modelling as a police officer is your actions and what you do on a daily basis. So while a word may have some effect, I would say it would also have to be backed up by actions and probably for a long period of time.

Now, did you work out the things we've been talking about by yourself or did you receive education from the Northern Territory Police Force about that?---Sorry, (inaudible) that first part.

The impact that derogatory words could have on you – could have on a person's behaviour, did you work that out yourself or have you been taught that? Have you had courses?---It's – I don't recall any courses but it's (inaudible) you know.

All right. The second thing I wanted to ask you about, briefly, is you were asked many questions about the TRG awards and I don't want to spend too long on them but just one thing. Can I ask you, do you know where they originated?---Where it originated?

Yes?---The Nuggadah or the (inaudible) awards?

Both?---Given the answer from that search (inaudible) 2006 was Nuggadah, they were around before that for several years, probably.

And do you know who was responsible for commencing them or designing them?---The Nuggadah or all of them? Who started it initially. I have no idea.

In the time period that you were involved, do you know who was responsible for maintaining them?---Generally the sergeant and sergeants.

And were you one of those sergeants?---I was the sergeant in TRG later on but was not involved in the awards.

Did anybody during the course of the presentations of these awards complain that they shouldn't be carried out?---Not that I (inaudible).

Were there ever any ACPOs or indigenous people present when they were handed out?---Not that I'm aware of but several members of the TRG, as we do, given the Northern Territory, I had partners which are indigenous or relatives. So it's all part of living in the Territory.

You said that you felt compromised morally by what has unfolded since the charges that were laid against Zachary Rolfe?---Correct.

Did you feel compromised morally when you were presented with the Nuggadah award?---Totally two different situations. One's drunken, misconceived humour and one is obviously, slightly different.

Now, my clients are the family of Kumanjayi Walker. And can you understand they might find this information distressing?---100 percent.

Do you have any remorse?---I've seen those awards and I do have remorse, for sure. And we all learn and we all participate in things which at the time seemed appropriate or funny or are made and you just turn a blind eye to the – to things. But in essence, we – they were just stupid jokes and that's the way we saw it and we were just having a laugh at ourselves. And it was a way that the section back then just dealt with the modern – the pressures of policing. We were 25 blokes who have sensitive – a sense of humour and that's how they deal with what they had to deal with on a daily basis. Yes, it was wrong. But it was their release. It was in a confined space and there was never any intention to assault or hurt indigenous people. Yeah. Quite the opposite. Several officers in there formed very great relationships with indigenous people and served extensively indigenous communities and are well renowned in those communities, so.

So your answer to my question is whether you have remorse, is the answer, "yes?"---Yes.

Thank you, your Honour.

THE CORONER: Any other questions?

Mr Abbott?

MR ABBOTT: Yes, (inaudible).

XXN BY MR ABBOTT KC:

THE CORONER: No one else stood up.

DR FRECKELTON: No, thank you.

MR ABBOTT: I'm [ind] Abbott. The indigenous documents I'm now referring to the prosecution (inaudible).

THE CORONER: You've just got to go back and turn (inaudible) just take a moment. Just show that to Ms Robinson she'll recognise it.

MR ABBOTT: (Inaudible) awards in front of you?---No, Alice Springs.

Yes. The 2019 report – you've got a copy (inaudible), and continuing on with our story (inaudible) the 2019 TRG (inaudible) we can assume (inaudible) December 2019 shortly after the event on 9 November 2018. (Inaudible) continuing on with our story (inaudible) each members (inaudible) professional way (inaudible) taking the piss of Kumanjaji's (inaudible)?---Have I? That's what I heard. Yes.

(Inaudible)?---Yeah. He was, yes.

Yes. And shortly became the AFP (inaudible)?---Correct.

Have you ever heard of him being referred (Inaudible) December 2019, have you ever heard anything being referred as Kumanjaji (inaudible)?---No.

In relation to the TRG Awards in 2021, there's a reference in those awards and several places to a TRG (inaudible) there's a reference in those awards and several places to a TRG (inaudible) and he's referred to as (inaudible) racist. Do you know the person I'm referring to?---Yeah, I know the person.

His surname is (inaudible).

THE CORONER: that document can come down.

MR ABBOTT: Was he – when you knew him did you know him as a (inaudible) racist?---I didn't know him as that no.

You never heard him called a (inaudible) racist?---No.

No further questions.

A PERSON UNKNOWN: (Inaudible).

Mr Suttner, my apologies.

MR SUTTNER: Thanks. I'm getting accustomed to being cut out of these proceedings, so.

THE CORONER: Mr Suttner, I'm interested in the questions that you have to ask.

XXN BY MR SUTTNER:

MR SUTTNER: Sergeant Bauwens, a point was made about the fact that Constable Rolfe spoke of racist language being used at the Alice Springs Police Station, whereas you had said it wasn't used to your knowledge. Can you explain that?---The Alice Springs Police Station as I mentioned has got over 300 members, five patrol groups, which would be from the (inaudible) area of where he would be. As you can appreciate it's a lot of people, and being a 24-hour station with three shifts a lot of social groups had no interaction with each other at all. While some

worked, some slept. So it's hard to say what other people are saying and different social groups within the station.

Yes. But in your experience with your patrol group the words weren't used?---Correct.

And people knew. Whatever they may wish, no suggestion that they may wish to use racist words, they were not appropriate (inaudible)?---No.

Now, my learned friend, Mr Boulten, asked you about the use of the word "half-caste"?---Correct.

Could you tell the Coroner when that word was used, in what context and for what purpose, and by whom it was used?---It was generally used to describe an offender and - - -

For purpose of identification?---Purpose of identification.

Yes?---When writing a statement. As I said, it would distinguish between the levels or description of the offender. That's been – that was early on, and I mentioned a scenario where I got pulled up on it and I've learned from that, and generally use different terms now.

But for instance did victims who approached the police use that terminology?---It was – yeah, indigenous people I would say use that terminology, and amongst probably less favourable terminology as well.

Yes. And can you tell her Honour in broad terms has it been many years since you've heard that term used?---Yes, it's been many years. As mentioned (inaudible) from 2004 (inaudible) and turning (inaudible).

Yes. Now, the awards that have taken up this morning's hearing, did you ever apply for one of those awards?---No.

Do you know anybody who did?---Apply, or?

Apply to win one of these awards?

THE CORONER: I don't know that anyone did. Was there an application process?

MR SUTTNER: Well, that's exactly the point I'm making, your Honour, is that it never happened.

THE CORONER: Well, I don't think there was an application process is my understanding.

MR SUTTNER: It was poking fun at somebody?---Yes, correct.

Correct. Now, you've made it clear that with the benefit of years of experience and hindsight the nature of the relationship between the wording of the awards and indigenous people was unacceptable?---Correct.

And it has been many years since you have had any part at all in these events?---Yes. When I left Darwin, they stayed in Darwin. I started IRT. I did not instigate any awards – give out any awards.

Yes. Now, would you tell her Honour in the context of life as at least in the Northern Territory, what that was like, and what was the purpose of the awards not all of which had racist connotations?---There's been much talk of thinking, coping mechanisms, police officers all have those. What they do and how they deal with what they do every day. Dealing with tragic events that we have to deal with, and it's how those officers deal with that is an individual thing. Some of the people get angry, some people depressed, some people turn to violence.

Unfortunately, quite a few officers turn to suicide. The TRG at that stage, we turn to humour. Although as we've established it's inappropriate humour. But we laughed at things that were inappropriate to desensitise I guess what we saw and dealt with on a daily basis. We thought it was a harmless way to deal with what we have to deal with. Most frontline people have what I said before is a dark humour, and it's not isolated to police. A lot of frontline agencies will laugh at situations or that, you know. Some people will find offensive. But it's what happens.

Sergeant Bauwens, again without either you or I seeking to justify the use of inappropriate terminology and references, there's a term that's often used in sporting law; that is, what goes on tour stays on tour. Was this sort of terminology that was used in relation to the Nuggadah awards used in any of the operations in which you were involved?---Yes, there was a secrecy.

It was sorry?---Private – it was a private matter.

No, no. Was it used in carrying out police duties?---No, no. It had segregated to (inaudible) of police duties. It had no impact of what we did.

And it would ever have been acceptable?---No. In TRG or GDs, I think the – as I said in my statement, the frontline officers of the Northern Territory Police are exceptional and perform a great role in the Territory.

Their job is to keep the place peaceful?---It's to maintain the peace and to protect lives, and - - -

And what percentage of that would you say occurs in the Northern Territory in relation to what we describe as indigenous people?---It would be over 95 percent. It's indigenous – it's not catching offenders. I've worked in – as a watch commander. I'm at the radio and there's people calling for help – calling police for help, and we attend.

To move to a different topic, the unfortunate text attributed to you which held the unfortunate word – unacceptable word – when did that become known to more senior members of the Northern Territory Police Force?

THE CORONER: I'm not sure if Sergeant Bauwens can know that?---I didn't know that, your Honour.

MR SUTTNER: Let's see. Let's see?---I don't know the specifics of who, but I know it would have been at an executive investigative level. Zach's phone was seized shortly after his arrest.

That was in 2019?---'19. And I believe it took close to a year to be interrogated. So he's somewhere between 2020 they would have been aware of a text message.

And when was the first time it was drawn to your attention?---That would have been at the commencement of the Corona in 2022, '23.

'22. And through that interim period, nobody said a word to you?---No, not at all.

And you were left to carry on duties as sergeant at the Alice Springs Police Station?---Correct, as sergeant and senior sergeant carrying out watch command duties.

Now, the last issue I want to deal with relates to what has been described as the plan - or the safe plan which encompassed arresting the late Mr Walker at 5 am one morning. Would you tell the Coroner your views of the plan as a plan at all, and of the acceptability of plans of that nature?

MR COLERIDGE: With respect, your Honour, I object to the question on the basis that it doesn't arise from the statement which (inaudible). As I understand it, these admissions were asked on the last (inaudible) this witness.

MR SUTTNER: Two things. One is that this is not restricted to what happened on the last occasion. In fact, Mr Coleridge himself as asked questions about the text, as an example. So I'm cross-examining a witness who's been called. As it happens, I don't specifically recall him dealing with this on a previous occasion. But I also can't understand Mr Coleridge's objection to matters which deal with the police conduct in relation to - - -

THE CORONER: I'll allow it, Mr Suttner.

MR SUTTNER: Thank you, your Honour.

THE WITNESS: Yes, your Honour. I (inaudible) to bringing this up, but I wasn't given the opportunity to address this previously. There has been much said about a 5 o'clock arrest plan and that it was safe, and that my team disobeyed a safe plan and thus putting blame on my team. Firstly, let me just give you the – to qualify my opinion. I think we know that I'm a sergeant with TRG, qualified as the 01 cordon

containment, which is the team leader of the cordon. Also nationally qualified in that role. In that role, I've written up plans, conducted plans and team-led plans for the security of dignitaries including President Obama and the Royal Family, not to mention multi-jurisdictional plans and coordinates which are – have effected the arrest of murderers in the Territory. I therefore – I'm fairly confident that I know what a plan is and I know what is in a plan. What happened at Yuendumu was not a plan, and calling something that doesn't exist safe is – implies that my team had done something wrong. The details of that plan – well, there were actually three plans. So we'll talk about the 5 o'clock one. And it's hard to talk about a 5 o'clock plan because no one – I don't believe this court has actually discussed what the plan was actually going to look like. Because I don't know it. I don't think it we - - -

MR SUTTNER: Well, I object.

THE CORONER: Yes, we've heard it. Yes. I'm not going to allow a discourse on limited information that the officer is not aware of. We've heard significant evidence in relation to the plan, the people involved and the decision making at the time. And I won't – even though you may be qualified to give an opinion on the basis of experience – you clearly can't give an opinion on this particular plan, given he's one that would be helpful to me, given the fact that he is not aware of all the information that we have in relation to this incident.

MR SUTTNER: Your Honour, well let me perhaps ask a couple of direct questions and see where – whether they are accepted.

First of all, I understand that there had been an agreement between members of the Northern Territory police force and the community that Mr Walker would be arrested after the funeral a day later. Is that correct?---That's correct.

Was that information communicated to the members of the team - - -

MR ABBOTT: I object.

MR SUTTNER: Who went - - -

THE CORONER: Yes. He wasn't present. He wasn't there on the day. And we have heard evidence from everyone who was there and have had direct evidence about this, Mr Suttner.

MR COLERIDGE: For the record, your Honour. Page 5000 of the transcript and on (inaudible). So, I maintain that (inaudible).

THE CORONER: I am not allowing that question.

MR SUTTNER: Right. (Inaudible).

THE WITNESS: No, your Honour. I was just – I just – as team leader of the IRT

I would have some input in the plan of what my team goes through and what is expected of them. And experience of further plans and what is entailed in this plan. Which is far removed of what they normally dealt with. So - - -

THE CORONER: There has been - - -

THE WITNESS: I think there is relevance there - - -

THE CORONER: - - - it's been – it has been a lot time for evidence to be gathered, statements to be taken.

THE WITNESS: Not from me though.

THE CORONER: You are being represented in these proceedings, Sergeant. And we have received evidence widely from many, many different people. And I will not be receiving any evidence further on this point from the witness box in the circumstances where I have had direct evidence from all – from many different people within the police force. Directly those on the ground and also other higher ranking people who have provided opinion on this.

THE WITNESS: I am the OIC of IRT, your Honour.

THE CORONER: I am sorry, Sergeant. It's not the time now to be introducing fresh evidence.

MR COLERIDGE: I can report your Honour, there are four statements on the brief for this witness. And lest it be forgotten the witness spent two years in the Supreme Court and the Court of Appeal fighting not to give evidence in these proceedings. So it is a little rich to suggest that he hasn't been given the opportunity.

THE WITNESS: I'm no - - -

MR SUTTNER: I'm not going to - - -

THE CORONER: Are there any other questions?

MR SUTTNER: I am not going to respond to that attack.

THE CORONER: Thank you. Are there any other questions - - -

MR SUTTNER: I have no further questions.

THE CORONER: - - - because there has been ample time.

MR SUTTNER: You have heard the view of Sergeant Bauwens.

THE CORONER: Anything else, Mr Coleridge?

MR COLERIDGE: I have further questions, your Honour.

REXN BY BY MR COLERIDGE:

MR COLERIDGE: You were very asked - briefly asked some questions by Mr Boulten about the sick leave you have been on for some time?---Yes.

You identified as one of the reasons, I am not suggesting that it is the only one, but one of the reasons was – and is my notes, that you were served with disciplinary charges, correct? Were you aware that on the brief of this matter, there is a text message from Zachary Rolfe to Paul Kirkby on 17 October 2019 in which Mr Rolfe complained to Paul Kirkby that disciplinary action taken against Mr Kirkby, he said:

“Fuck they are gay cunts. Yes, they just find the name and go through (inaudible) over and over. Fuck them. Just let them waste their time. And then if they ever have enough evidence, just stress leave until they let it go. It seems what everyone else does.”

MR ABBOTT: Well, I object to that.

DR DWYER: He hasn't asked a question.

MR SUTTNER: Well, I object to the statement.

THE CORONER: It's a –

MR ABBOTT: (Inaudible) - - -

THE CORONER: It might – I think it will be relevant to the question whether he is aware that that is the attitudes and behaviour of people within the police service. I will allow the question. I am only making an assumption there about what it might be.

MR COLERIDGE: For the record, your - - -

MR ABBOTT: (Inaudible). There is nothing more I can say (inaudible).

DR DWYER: Well can I say as senior counsel assisting, could I ask Mr Abbott not to make gratuitous, disrespectful remarks at the Bar table to – directed towards the Coroner?

MR ABBOTT: I dissent from your (inaudible). I think it is best that (inaudible) put. That there was something that didn't go to this witness. And to put it as something - - -

THE CORONER: It's – it's - - - -

MR ABBOTT: - - - (inaudible) now.

THE CORONER: It has arisen in the course of his evidence. And the course of his evidence he has been taken to as to how it arises.

Yes. Mr Coleridge.

MR ABBOTT: (Inaudible).

MR COLERIDGE: Do you need me to read you the question again?---No. But you can go through the question if you like.

All right. Well, you heard the message I just read to you. It finished with the observation by Mr Rolfe that if they – I assume the PSC ever have enough evidence, “Just stress leave until they let it go. It seems what everyone else does.” Were you aware in 2019 that officers, including officers under your command in the IRT held that view about sick leave and disciplinary action?---No. They are two totally differently related things. And if you are relating that to me, the question my case is completely different. I’m not going to answer that.

Were you aware that Commissioner Murphy, the acting – or the current commissioner of the Northern Territory police force was examined a little over a week ago about a decision he made to demote an officer? And gave as one of his reasons for a decision (inaudible) the demotion was the fact that,

“In all honesty, he would have gone on sick leave.”

That’s a quote. Were you aware that that was the – a perception of members of the executive that?---Yes. I’m sure they do have that perception. And it’s – there are people which do go off on sick leave. And there are also people that kill themselves. And I have had to pick up a few bodies, so.

Those are my questions, your Honour.

THE CORONER: Sergeant Bauwens, thank you for the difficult task of coming and making yourself available to answer further questions.

THE WITNESS: Thank your Honour.

THE CORONER: And we do have the full statements that have been provided on the brief of evidence. And they will be carefully considered. You are free to go now.

THE WITNESS: Thank you.

THE CORONER: But you are also welcome to stay if you want to.

THE WITNESS: Thank your Honour.

MR SUTTNER: As much as we appreciate the welcome to stay. You will excuse us, and hopefully we won't - - -

THE CORONER: You are excused if this - - -

MR SUTTNER: We won't have the pleasure again.

THE CORONER: Well then, I will miss you for your presence, Mr Suttner. And I am grateful for the assistance that you and your witness have provided to the inquest.

MR SUTTNER: Thank you.

THE CORONER: I don't have access to a clock. Our – my clock is missing. I have got no idea what the time is.

A PERSON UNKNOWN: Quarter past 12:00, your Honour.

THE CORONER: All right. Maybe we will take just a 10-minute adjournment. And we will come back, and I think there is some issues that Mr Abbott wishes to raise.

DR DWYER: Your Honour, just before we do that. Might I ask Mr Abbott, he has indicated that in relation to one particular issue - - -

THE CORONER: Sorry, Sergeant - - -

DR DWYER: Sorry, (inaudible).

THE CORONER: - - - you are free to go.

THE WITNESS: Thank your Honour.

THE CORONER: You don't have to stay sitting in the witness box.

WITNESS WITHDREW

DR DWYER: In relation to one particular issue which is the production of the remainder of the notes that Mr Rolfe took into evidence. He wishes to be heard for 5 minutes. In my respectful submission that is appropriate. Or that it is appropriate that your Honour might listen to him in relation to that because it might save time. But there are other legal issues he said he wanted ventilated. Can I ask my learned friend over the break now in 10 minutes, to at least inform counsel assisting what those legal issues are and how long he intends that they will take. Because it is imperative that if at all possible, we finish this week. And we have had no notification of any such issues.

MR ABBOTT: (Inaudible) informed. As you say (inaudible) issues available. The other issue about the statement he has provided. The statement copy. (Inaudible). His statement was recorded. And the other second – sorry, the third issue is that I

am instructed to receive all of the TRG witnesses. We are getting a statutory declaration from (inaudible). But I make that application noting that I (inaudible). So, I beg for 5 minutes.

THE CORONER: Thank you. We will return in 10.

ADJOURNED

RESUMED

THE CORONER: Dr Dwyer.

DR DWYER: Your Honour, might I just try to shortcut one of the issues that was raised by my learned friend, Mr Abbott KC, that I was going to deal with today in any event, which is that Mr Rolfe, as I understand it, or his counsel seeks the tender of four statements that have been recently provided to his team.

One is a statement of Mr David Koch dated 9 April 2024, and there are two statements of Mr Robert Delaine dated 22 March 2024 and a further one dated 1 May 2024. And there's a statement of Mr Carey Joy, a former police officer, dated 20 May this year, which we received last Friday.

With respect to the first three statements, that is the one statement of Mr Koch and then two of Mr Delaine, I understand that there is no objection to those statements and they should form part of the brief, given that there's no difficulty with them and they don't add to the means of these proceedings.

THE CORONER: Well, those three statements will be added to the brief of evidence.

DR DWYER: Thank you, your Honour. With respect to the statement of Mr Carey Joy, I note regrettably it was only provided last Friday. We have received some submissions in relation to it – I withdraw that - we've received the position of some parties in relation to it. I understand that Northern Territory Police Force object to it being tendered in its entirety. NAAJA has no objection up until par 63 of the statement, but objects to the remainder of the statement.

Your Honour, the position of counsel assisting is that the statement should be tendered, but only up until – it's only up until par 63 that your Honour should receive and is relevant to these proceedings, and that can be dealt with in a fair and rational way so late in the proceedings.

To be clear, the information in the statement of Mr Joy up until par 63 relates to what he says is his direct knowledge of racism, including his own participation in racism in the Northern Territory Police Force when he was a serving member.

In 2004, he joined the Northern Territory Police Force TRG. He left for a period of time, but came back in 2008 and 2009. So obviously, he was there at the time that the Nuggadah award was being given out. He explains that he was the author of some awards, although he doesn't recall being the author of the Nuggadah award.

He accepts the possibility that he may have been an author of racist awards, but can't recall them. He remained in contact with TRG members and had close friendships beyond the time that he left the TRG in 2009. He took part in training and visits to the TRG in 2010 to 2012.

He expresses a view in relation to what he regards as a person who was a serving police officer at that time as genuinely racist and what is not. He says:

“I have no doubt heard and taken part in sharing offensive, racist, homophobic and other dark humoured jokes and comments in poor taste throughout my career and life.”

And he expresses a view of that including:

“My comments of never working with a genuine racist police officer are based on what I would feel to be an obvious fact.”

And he goes on to explain the difference, or how he distinguishes racist language to racism.

The TRG, in his time he says, was professional and was working in difficult circumstances and he explains why he thinks that racist and offensive language is used as dark humour as a coping mechanism. He confirms the existence of the TRG awards and explains how he thinks the Nuggadah award came about.

This is just by way of an example as to why these paragraphs are relevant. He notes that when he returned, this is par 20, when he returned to the TRG in 2008 after a period in the AFP, the certificate and award ceremonies were still an annual event.

At par 28, he says in summary:

“I don’t consider myself racist, even though I use racist language.”

And explains why. And he notes that he was made aware of the existence of the award last year because the conduct was discussed amongst a lot of ex and current NT Police staff who were unhappy at the treatment of Mr Rolfe and the IRT team throughout the inquest.

And as a result of that, he made the decision to contact the new commissioner, Mr Murphy, and shortly after that, he met with the commissioner and another person on 31 August 2023 to discuss some issues with him in person, such as staff resentment in the Coronial information regarding the incident at the Chinese restaurant and the existence of the Nuggadah awards.

He goes on to talk about the TRG book, the so-called red book; a red hardbound A4 notebook with a label on it called, “The book of truths”. He also explains that he in fact was the source of the information in relation to the piñata and the offensive use of the “N” word in that regard.

So he details instances of racism up until par 63 and his discussion of racist themes, including discussing certificates with the commissioner in August 2023 that,

in my respectful submission, appear to be of relevance and within his direct knowledge.

The remainder of that statement however is based largely on his opinion about things that occurred when he was not a serving member of the police, where he does not have access to the full brief, and they come in on Friday before we start on Monday in circumstances where there is not time to afford all those people mentioned procedural fairness to be able to respond to them.

And they are of very little relevance, that is his opinion at this late stage in a way that would justify their lateness to proceed. With respect to the comments that he makes about his conversation with the commissioner and the information he divulged in August last year, I note that the commissioner will of course be afforded every opportunity for procedural fairness and invited to give evidence this week about that, given that it would not take a great period of time.

It's one discreet conversation which, in my respectful submission, does appear to be of relevance. So in short, I support the position put forward by Mr Boulten, the senior counsel on behalf of NAAJA, that your Honour should receive that statement, but only up to par 63. As the court pleases.

THE CORONER: Yes.

DR FRECKELTON: May it please the court, your Honour, on behalf of the Northern Territory Police Force, we have a different perspective. Mr Joy is not an interested party. He has not even been a witness. He has previously, in the course of preparation for this inquest via a statutory declaration of 4 August 2022, volunteered gratuitous opinions and extensive accounts of matters.

We invite your Honour to conclude that he is a disgruntled former member. A self-appointed activist who wishes to promote the cause of Zachary Rolfe. Not only that but his perspectives, for what little they're worth, are extremely dated. He tells her Honour in par 5 of his statement that he took himself on long service leave and worked outside the Northern Territory Police Force between 2013 and 2016 and then he resigned in 2016.

So what you have is a person who has a range of positions that he's been enthusiastic to ventilate through sympathetic media arising from his experience in the police force which now dates back in excess of a decade. I described him as "disgruntled", you know from pars 86 to 87 that he's been keen, in spite of his disgruntlement, to resume a position in the Northern Territory Police Force.

He has not been welcomed back for a variety of reasons. It appears that he remains aggrieved about that and perhaps still wanting to resume a position in the Northern Territory Police Force, and to do and say whatever will assist him in that regard.

Now, as to the material in the statement, I will confine our remarks to what precedes par 63. But what your Honour can identify is that the hearsay to which my learned friend, Dr Dwyer, referred is not confined to the paragraphs after par 63. You can see it in pars 38, 52 and 57 as well.

And in respect of 57, you can see that he refers to a conversation that he says he had with a politician who referred to a senior member of the police force. It's information of minimal probative value. It's at least second-hand hearsay. And it seems to be the kind of insinuation and inuendo which Mr Joy wishes to peddle to this court.

What we submit to your Honour is that that should not be indulged by a person who is a busybody, is a former member of a police force, he has some recollections no doubt fading with the passage of in excess of a decade. He's taken himself to ICAC and given them quite a deal of information about a variety of matters, and he's keen to reiterate what he's told ICAC at pars 50 and following. Your Honour might conclude that what he's told ICAC should remain between him and ICAC until ICAC chooses for that to be otherwise.

In essence, we respectfully submit that on an examination of the material in those first 63 paragraphs, it is more than apparent that our description of him as a disgruntled former member is accurate. There is nothing fresh, nothing which really adds to what has been provided to your Honour from more reliable sources, and mostly has been able to be the subject of cross-examination. We certainly do not propose that he be brought here to give evidence, and give him the pedestal which he appears to have been yearning for, for many years now.

Whatever information he does have is extremely dated, and it's jaundiced from a desire to be an advocate for Mr Rolfe. We urge upon your Honour not to set an unfortunate precedent by encouraging a person who wants to assume a position of importance and apparent (inaudible) who has not been identified by your Honour as worthy to be a witness or an interested party, but nonetheless wants gratuitously to express his opinions to this court. In our respectful submission, you should not receive a statement. It will not advance your capacity to evaluate the important issues in this inquest.

THE CORONER: Thank you.

Mr Boulten?

MR BOULTEN: In support of the application to include paragraphs from this statement, I submit that although it's just one more police officer's or ex-police officer's evidence about issues that touch upon racism in the Northern Territory Police, and in particular the TRG and (inaudible) in Alice Springs, it does provide some further insight into the way things might be found to occur.

Just by way of obvious background, racist attitudes in the cohort that were involved in the tactical operation that led to Kumanjayi's death is on the list of issues

for determination at the inquest. NAAJA has consistently been testing evidence about these attitudes throughout the inquest. So it was not because of NAAJA, but your Honour accepted a large body of material that related to Mr Rolfe's attitudes. When he eventually gave his evidence in court last time, he decided that he would give his version of who else was involved in this sort of racist language and conduct.

The immediate response of the Northern Territory Police was to have the Commissioner of Police stand up in public the next day and essentially to deny that there were any such attitudes, "Never seen it in my travels around the Northern Territory. There might be the odd, single or uncharacteristic officer. But that's not the way things operate in the Northern Territory."

The next day, my learned friend, Dr Freckelton, organised for a range of statements to be introduced into evidence in this inquest, including from an acting assistant commissioner of police, a superintendent of police, and the divisional superintendent of police and senior sergeant, all of whom had close connections with the TRG. And their evidence has been accepted. If their evidence is true, what Mr Rolfe says is false, what Mr Bauwens said in his evidence is false.

NAAJA will not be submitting that those aspects of Bauwens' evidence and Rolfe's evidence about the TRG awards is false. But there will be a concerted effort by the police to suggest that it's just the odd one or two bad apples who have held these views. Irrespective of Mr Joy's motives and irrespective of the legitimate criticisms that Dr Freckelton made about him just now, there is a degree of force in what he has to say in the first 63 paragraphs of this statement.

They are against interest. They are contrary to the position that the police are going to present in their submissions. But is another view of the way in which police speak about Aboriginal people in the Northern Territory, including in Alice Springs and including in the cohort which is the subject of this inquest. I don't require Mr Joy to give evidence on oath. I don't require this inquest to be prolonged because of his very late breaking statement.

But in my respectful submission, there is some real probative force in what he has to say about the issues that Dr Dwyer just mentioned in her submissions. Maybe there are some paragraphs in that first 63 that are unfair, and I would accept for instance that Mr Joy's reference to the Northern Territory politician, which is in one sense scandalous and without any other form of proof, that might not be accepted and may be carved out entirely. No one I'm sure is going to put any weight in it, and it doesn't touch upon the issues in any evident.

But otherwise, by the time you get to par 63 – the end of par 63, there's a picture that has been painted of police who accept that it's fine to talk in a racist way in private, but that it has no impact on the way that they carry out their public duties as police officers. That's exactly what we've just heard from Mr Bauwens, that's exactly what we heard from Mr Rolfe. And there's a growing body of evidence that that's a very common approach to racism in the Northern Territory Police Force, and I'd urge

your Honour to admit at least pars 1 to 63 as I say, perhaps to exclude par 67, your Honour.

THE CORONER: Does anyone else wish to – I'm just checking if there's anyone else before you just in case, Mr Abbott. Is there anyone else?

Yes?

MR MCMAHON: I'll go, your Honour. (Inaudible).

THE CORONER: Thank you.

MR MCMAHON: We would adopt the position of Mr Boulten, particularly noting the fact of the way that the distinction was developed in recent times by some witnesses as to perception of the difference between persistent racist language on the one hand, and the question whether that all that affects conduct. And essentially the – it's of real significance. It is clear that some of the parties (inaudible) arguing that in truth persistent racist language does indeed affect the conduct and the attitudes of people. And so to the extent that the statement can be given any weight, in our submission, it wouldn't be given much weight for the reasons that have already been articulated it can be of some use.

And we would also agree merging both the submissions Mr – Doctor Freckelton and Mr Boulten, that given within the first three paragraphs there may well be some paragraphs which are just so outrageous. And if so, that it's – that (inaudible) they can just be struck out.

If your Honour pleases.

THE CORONER: Mr Mullins.

MR MULLINS: The Brown family take the same position as the Parumpurru Committee and NAAJA. Thank your Honour.

THE CORONER: Are there any other submissions?

Mr Abbott.

MR ABBOTT: Thank you, your Honour.

We are seeking – we are urgently seeking the entirety of the statement be accepted. But in particular, if I am forced to make choices about what parts other than the first 63 paragraphs, I rely upon pars 106 through to I think it is 121. Which deal with the – this witnesses view of some of the events that happened on 9 November 2019. With respect to my learned friends, are prepared to accept the parts of this statement that suit their cause, namely those parts that deal with racism in the Northern Territory police. But they won't accept this witness' statement in

relation to some of the very pungent and correct criticisms he makes of the way the – what he refers to in par 106 as the tactical operation.

And the flavour of what occurs between pars 106 through to 120. He starts off by saying as a previous tactical operator, it is also simply ludicrous to suggest it is also okay to send staff into a high-risk area, high-risk event, but say I am only deploying you as a low-risk response team, therefore, I am not seeking correct approvals, providing you with any approved plans. And he goes on to say why that is ludicrous. This is all relevant information and proper comments and statements from a police officer – a former police officer, who as he says has the qualifications of a previous tactical operator, and who knows and can comment accurately on the way in which the police handled the events of November 2019.

So I ask, if I am forced to choose parts of this other than the first 63 paragraphs, I ask that in particular pars 106 through to 121 – and I won't read them out, because your Honour can see them. But they all deal with the lack of planning, the lack of risk management, what he refers to as the fake medical escort to the airstrip, and he concludes par 120 by saying everyone involved with this Coronial needs to understand Rolfe wasn't at a barbeque with racist friends who just decided to drive 300 kilometres out of Alice Springs and shoot someone. They were off duty, called in by their supervisors, and deployed by them to a remote community. Nothing about this incident has anything to do with race, religion, or gender. And he goes on to say why that is so.

In my respectful submission, these statements are relevant and should be taken into account.

THE CORONER: Dr Freckelton.

DR FRECKELTON: Very briefly, again your Honour. In respect of pars 106 to 121, we respectfully submit that those constitute a commentary. And that is clearly intended to promote the cause of Mr Rolfe. They are from a person who is not an expert. Though he (inaudible) appoint himself as such. But he does not have an informed perspective in any part of the contemporary sense. He not having been in a relevant role since 2013. And in our submission, those paragraphs are argumentative and tendentious, and unlikely to assist your Honour in any material way.

So (inaudible) ought to have been privy to a large amount of information that your Honour does know about. It was heard over many dates of the inquest. This attempt to provide these opinions force them to the same category as the evidence which such (inaudible) Mr Suttner attempted to provide to you has no prospect of assisting you. So we adhere to our submissions generally, but we do acknowledge with appreciation the observations made by Mr Boulten, they even speak to par 57. So I would ask that should your Honour permit some part of this statement to be received, which we urge against, that not include par 57.

We also note that there is some reference to attachments in the statement. We don't have any. But should there be any, we would just like to be heard in relation to any of those being received to (inaudible) services.

MS PINCUS: Your Honour, can I just say for the record the Walker, Lane, and Robertson families adopt NAAJA's submissions.

THE CORONER: Thank you.

Dr Dwyer.

DR DWYER: Your Honour, just briefly. There are attachments. I think that that was just an oversight that they weren't sent around. They can be sent around at lunch. But I don't – I'm not – it is my submission as counsel assisting that they should not be received and don't assist your Honour. In relation to pars 106 to 121, they make the very point that I had put forward earlier. Which is they are their opinion presented very late and in circumstances where Mr Joy does not have all the relevant evidence.

That is very different to the evidence that he gives about a direct conversation that he had with the current commissioner of police on the 30th – and another person on 31 August 2023 to discuss certain issues, including the Nuggadah Awards. And he goes on to say that he gave the commissioner of the police certain advice including that he should make contact with Senior Sergeant Gill to get the background and deal with the issue in the case if it was to be raised in the inquest. And that Mr Murphy enquired what form the awards were. And he clarified what form of the awards, that's par 33, as A4 certificates et cetera including one he had actually seen with the actual Aboriginal flag. He also informed Mr Murphy that potentially 100 odd people may have certificate copies, pictures of them, videos of presentation, evidence of the Nuggadah Club et cetera. So he is referring to a direct conversation that he had with Mr Murphy at that time.

That's in stark contrast to the remainder of the statement. I respectfully support what has previously been said about par 57 and suggest that there is no need. It's of no relevance to your Honour that paragraph. And I wouldn't press for that to be received.

THE CORONER: Thank you.

Are there any other issues which you wish to raise, Mr Abbott?

MR ABBOTT: Your Honour, I mention the two other issues that I wanted to raise. And I take it that I need not elaborate on them because the statement issue is being resolved - - -

THE CORONER: Yes.

MR ABBOTT: - - - other than this part of Mr Joy's statement.

THE CORONER: Yes.

MR ABBOTT: And the only issue that I raised – that I wanted to raise was the – our opposition to NAAJA’s submissions. Would your Honour wish to hear from me that -
- -

THE CORONER: Yes. I will deal with that now.

MR ABBOTT: Very well.

THE CORONER: I will hear you – hear it now, and then I will be taking lunch.

MR ABBOTT: Yes. Thank you, your Honour.

I should add, I did make an application to seek to the TRG member who have given the statements should be called. But I don’t wish to enlarge upon that issue any further.

DR DWYER: Well, your Honour. Just in relation to that, can I deal with that in brief measure? No such application was made to the counsel assisting team before today. And that is very different. So there should be no misunderstanding in relation to that. Mr Officer has no difficulty calling me, and we have a cordial relationship where we just – where we can discuss any matters at any time that is appropriate.

Mr Abbott hasn’t sought to contact me. But there are lines of communication that are open and have been urged upon all of the legal teams including Mr Rolfe’s team. There are emails that are regularly sent between members of the legal team copying in everybody so that any issues can be raised beforehand. It is simply not appropriate for these issues to be raised so late in circumstances where we are doing absolutely everything possible to manage this inquest sensibly and to finish this week.

THE CORONER: If there is any such application pressed, it can be pressed in writing and it can be dealt with at an appropriate time. But it won’t be dealt with during the course of these sittings where we have full time allocated to witnesses. But I will certainly - - -

MR ABBOTT: Of course.

THE CORONER: - - - if there is to be a - - -

MR ABBOTT: Mr Officer – well, Mr Officer will deal with that.

THE CORONER: Thank you.

MR ABBOTT: Yes. Thank you.

Can I now have my 5 minutes in relation to - - -

THE CORONER: Yes, you can, Mr Abbott.

MR ABBOTT: - - - NAAJA's written submissions. Does your Honour have those submissions in front of you or on a screen?

THE CORONER: I don't have them in front of me or on a screen. I have received them.

MR ABBOTT: All right. Well, your Honour - - -

THE CORONER: I can – I have no doubt someone can provide me with a screen.

MR BOULTEN: I have got one. I have got a copy here.

MR ABBOTT: Your Honour will see that in 4.1 - - -

THE CORONER: Yes.

MR ABBOTT: Sorry, in 4 – par 3, NAAJA now makes a formal application to the court seeking production of the notes.

THE CORONER: Yes.

MR ABBOTT: I point out that that is a very late application, it was made last night. And on the – on that basis, they say – NAAJA says at 4.1 that they have a live interest. And that live interest is set out as I discern it at par 6 where they say and speculate that the balance of the notes, "Highly likely," they say. The balance of the notes contain Mr Rolfe's opinions about matters of relevance to the inquest. But no evidence of that. And they say:

"Including one or more of the issues on the issues list in this inquest."

I haven't seen the issues list. But I understood that it was supplanted by your Honour's ruling number 2, perhaps number 3 I am thinking of. But I know that I have seen a list of your Honour's issues in one of your rulings. But in any event, they say at 6.3:

"It is possible the notes contain information in relation to at least the following. Mr Rolfe's musings about the interrelationship between the former police commissioner and the executive government, including the former Chief Minister of the Northern Territory."

Well, I'm not sure what possible relevance that would have. Assuming that the notes contained those musings. And what your Honour would do with those musings if she receives them. But they conclude with in par 7, because this is the live interest issue, by saying:

“Because the notes are representations made by the person who killed Kumanjaya Walker, they are likely to have material weight in the proceedings.”

All I can say to my learned friend, be careful what you wish for if these are to go in. Because your Honour, I say - - -

THE CORONER: There is no suggestion that they are going in anywhere at the moment. And that is not the application, Mr Abbott.

MR ABBOTT: No. I know that. I know that. But the issue is that they should be produced to him. And the basis of that is because some so-called live interest, which I say they have no live interest whatsoever and we have said so in our outline. And they give other reasons. The next one being production of the notes to NAAJA does not prejudice Mr Rolfe. They say that we have been in par 11.2 that:

“We have been aware of NAAJA’s intention to seek the notes since at least 22 March 2024.”

Well, we haven’t been aware of their intention to seek the notes since they filed their submissions. As we said in our written submissions, we proceeded on the basis that there was one application, and one application only has been made in respect of the production of these notes. And that is the application that my learned friend Dr Freckelton has made for these notes. And on that basis, as we said in our written outline, we considered the legal situation and we decided that we would not do anything in opposition to that application.

However, that I now find is being used against us because at par 15 of the NAAJA submissions, the bootstraps argument is ventilated that:

“Until the date of the filing of these submissions, Mr Rolfe has made no argument that ruling number 10 was plainly wrong. Any argument in relation to a lost appeal opportunity is without merit.”

That’s just incorrect. It’s not – in so far as the inference being that we have no argument in relation to ruling 10 and that we have no merit to any submissions we might make. And then the argument is put:

“NAAJA having access to the notes will not be any more or less contrary to Mr Rolfe’s interest than the Northern Territory police force’s possession of the notes.”

Well, we say your Honour that we have great concerns about that. Because what has happened in this inquest is that matters have a habit of finding their way to newspapers and social media. I make no criticism or allegation in relation to my learned friend Mr Boulten. But the fact of the matter is the wider dissemination that any document has in this inquest, the greater the chance of that document being

improperly distributed by a person's who happen to come into possession of it or are aware of its contents.

And the final argument which I must say I can't understand, is a claim that your Honour was guilty of infringing the slip rule when you made the order allowing the – allowing my learned friend Mr Freckelton's client to have production of the notes. We say this argument on pars 18 to 20 is just inappropriate. And that the submissions that are made that somehow your Honour proceeded upon an incorrect basis. And that what you Honour did in making your written ruling number 10 was an example of the slip rule applying, in our submission is totally without merit. And so, your Honour, we say that for those reasons and for the reasons which we set out in our written submissions, the production should be – should only be to Dr Freckelton's client.

DR DWYER: Your Honour, might I just very briefly, and I don't wish to reply to everything said. I make two points. It is not just NAAJA that has applied for those notes. It is also the Walker, Lane, Robertson family, the Brown family, the Parumpurru Committee, and - - -

MR ABBOTT: Yes.

DR DWYER: - - - the Northern Territory Police Association who has applied for access to those notes.

MR ABBOTT: I wasn't aware of it. I haven't seen those. Anyway, I accept that - - -

DR DWYER: That's in the emails that have been - - -

MR ABBOTT: Yes.

DR DWYER: - - - circulated to all the parties.

MR ABBOTT: Well, not me.

THE CORONER: Yes. There is that issue - - -

DR DWYER: And what I would propose your Honour, with respect. Is that if your Honour is to grant other parties access, then your Honour would also make a non-publication order over those notes pursuant to s 43 of the *Coroners Act*. And that is that non-publication order would be in similar terms to other orders and would read something like this. That subject to order 2, 3, and 4 – and again, I am going on the basis of other orders that your Honour has made. Subject to orders 2, 3, and 4, there be no disclosure or other publication of the 10 pages that Mr Rolfe read from or took into evidence. That doesn't prevent, however, the disclosure of the contents of the brief to parties granted leave to appear for the purpose of this Coronial proceedings. And it doesn't prevent the disclosure or publication of any evidence given in open court during this inquest.

Any documents, audiovisual, or audio material that is tendered, or any material made publicly available. So that the exclusion from that is relevant questions that are asked of any witness in relation to material within those 10 pages. And this is only if your Honour makes a determination of course that the remaining seven of the 10 that should be provided. It would also consist of the standard procedures say that order 1 does not prevent the Northern Territory police force from using or disclosing the material for the purposes of performing its statutory functions, and doesn't prevent disclosure where required by law to any other statutory entity for the purpose of disclosing of information.

So I can formalise that in writing, your Honour. But consistent with other non-publication orders that your Honour has made, it can be dealt with via a non-publication order and that might alleviate some of Mr Abbott's concerns. So that it is only relevant questions based on that documentation that become part of the evidence.

THE CORONER: Right, thank you.

Dr Freckelton.

DR FRECKELTON: As your Honour knows, we have applied for a non-publication order in respect of the contents of the notes. We referred and reviewed our submissions in that regard. We are content with the formulation as formally proposed by senior counsel assisting. We reserve our position in relation to whether a non-publication order in respect of particular evidence that ends up being given as a result of cross-examination is necessary for (inaudible).

THE CORONER: Yes, thank you.

Yes. Mr Boulten.

MR BOULTEN: I can repeat what we put in writing. That the nut of it is, just the force of the way things fell out last time and in the interim, the focus is really just on the police having the documents. Because as my learned friend called for the seven remaining pages.

THE CORONER: Yes.

MR BOULTEN: There is no property in the – in those documents that specifically relates to the Northern Territory police and nor should there be. Everybody else has much to say in forensic interest in them. And NAAJA was the one that was ventilating them for reasons (inaudible) was ventilating actively for reasons why the claim for legal professional privilege was misguided. And executives know legal professional privilege and that is what your Honour ruled. It could not have passed anybody's notice that we are interested in getting copies of them in light of the arguments that we advanced.

We are happy with the proposed non-publication orders. They have worked throughout the course of this inquest. The suggestion that somehow or other there has been a danger attaching to the distribution of documents that have been misused by people associated with parties is baseless. And in NAAJA's case, totally untrue, your Honour.

THE CORONER: We will adjourn for lunch. And we will return at 20 past 2:00.

ADJOURNED

RESUMED

MR ABBOTT: Your Honour, may I - - -

THE CORONER: Mr Abbott.

MR ABBOTT: May I just briefly mention the application I made before your Honour rose for lunch. And that was that the members of the TRG had made statements to the court. Your Honour hasn't ruled on that yet, but I - I'm happy to refine that application to an application to recall Mr Meacham King, because, after all, he's the one that gave the final statement in this series of statutory declarations where no one knew anything of the TRG. And Mr Meacham King finally acknowledged that he had actually been the presenter and created the presentations for TRG awards in 2015 to 2022.

So in my respectful submission, Mr Meacham King has a lot to answer for, having made statutory declarations, where he said, in effect, to this inquest, "I knew nothing about - I know nothing about any racist comment at any of these awards" to his final statement, a statutory declaration, 1 May, when he now says that he does. And that should be explored.

THE CORONER: Do you wish to put on any additional written application or submissions, or are you content with that application and submission, Mr Abbott?

MR ABBOTT: May I ask my learned - - -

THE CORONER: Sure.

MR ABBOTT: I'm happy for my oral application to be substituted - to be instead of a written application, your Honour, for your Honour to deal with - - -

THE CORONER: Thanks.

MR ABBOTT: - - - on that basis, having regard to - and after your Honour's consideration - further consideration of the difference between Mr Meacham King's first and second statutory declarations and his third statutory declaration.

THE CORONER: Thanks for putting that on the record. Obviously, all the parties are now advised of that, and we will invite written resources, with a very short timetable, and so I can consider the position.

In relation to the other matters that have been raised; firstly in relation to the notes that Mr Rolfe accessed when giving evidence on the last occasion. In the inquest into the death of Kumanjayi Walker ruling number 10, I dismissed an application by Mr Rolfe to be excused from compliance with a call by the Northern Territory Police Force for the production of a set of notes from which Mr Rolfe had read while giving evidence.

The only basis upon Mr Rolfe sought to be excused from compliance was that the notes were the subject of legal professional privilege. The reasons given in ruling number 10, the claim of legal professional privilege failed. Accordingly, I ordered that Mr Rolfe produce the notes in answer to all. Because of the way my order for production was framed, the notes were produced directly to the Northern Territory Police Force.

On 22 May 2024 the North Australian Aboriginal Justice Agency or NAAJA wrote to the court, seeking an order for access to the notes produced in answer to the Northern Territory Police Force and the (inaudible), although all or several parties had put on submissions in relation to that call previously, which indicated their interest in the notes.

Because the notes were produced directly to the Northern Territory Police Force rather than the court, as request for access was framed as a request for a direction that the Northern Territory Police Force produce notes to the other interested parties. The Northern Territory Police Force neither consent to nor opposes the direct, but Mr Rolfe opposes it.

The only basis for Mr Rolfe's opposition is that the application is very late, in submissions referred to as an ambush, and as such is productive of an unfairness. I reject this submission. It's clear from the outset that other interested parties, such as the North Australian Aboriginal Justice Agency, the Walker, Lane and Robertson families and the Brown families also sought access to the notes.

NAAJA filed detailed written submissions opposing Mr Rolfe's application. The family stated expressly that if the remainder of the document is produced and Lane, Robertson family seek the opportunity to view their contents to inform whether any other issues arise in respect Mr Rolfe's further testimony.

Mr Rolfe had the opportunity to and did respond to those submissions in some detail. At no point did Mr Rolfe suggest that were I to dismiss his application under a (inaudible) that there would be some additional unfairness arising from the provision of the notes to NAAJA and the families.

Mr Rolfe's submissions on the prejudice or unfairness said to arise from NAAJA's application and the other applications is somewhat difficult to follow. Mr Rolfe complained that the notes might prompt an application for leave to further cross-examine him and that any such cross-examination would be unfair. The principal difficulty is submission that NAAJA has foreshadowed no such application (inaudible).

In any event, whether any further cross-examination would be unfair is a question that would be determined on an application for such leave if it was made. NAAJA and the other interested parties have a legitimate forensic purpose in seeking access to the documents. Given what was contained in the first three pages, it is very much on the cards that the notes are relevant to issues important to this inquest.

In circumstances where I have already dismissed Mr Rolfe's claim (inaudible) professional privilege and where Mr Rolfe (inaudible) identify any other basis upon which he could resist (inaudible) by the interested parties, I am comfortably satisfied that they have a proper basis to call for the notes.

Accordingly, I order that Mr Rolfe produce the notes to the court so they can be made available to the interested parties. In doing so, I also make a non-publication order in the terms outlined as discussed by counsel assisting before lunch, which are consistent with the previous similar non-publication orders.

MR ABBOTT: Court please.

THE CORONER: Concerning the statement of Carey Joy dated 20 May '24 and which was served on the parties on Friday 24 May '24, I have carefully considered the submissions and arguments of counsel. I am persuaded that pars 1 through to 63, except for par 7, should be admitted into the brief of evidence.

Those paragraphs largely refer to matters in Mr Joy's direct knowledge and include some matters against his own interest. For example, they include his knowledge of the workings of the TRG during his police service and to some extent thereafter, and they include his admissions and knowledge concerning the use of racist language.

Concerning his conversation with Commissioner Murphy, he reports his direct participation in that conversation, and Commissioner Murphy will be afforded procedural fairness and given an opportunity to respond.

Paragraph 57 is the exception. It contains hearsay assertions that cannot be easily tested and about which I have received no other evidence. In those circumstances, I can give that hearsay no weight and I will not receive it.

With respect to the remaining paragraphs, including pars 105 to 121, I have considered the submissions of Mr Abbott, but I do not consider the information contained in these paragraphs will assist me in my duties.

It is primarily Mr Joy's opinions which are given when he does not have privy to all or even most of the evidence received in this inquest; in particular, concerning the events the night of November, Mr Joy was not a serving member of the police force and had not been for some years, nor was her present.

By contrast, I have ample evidence from persons present and from others who have direct knowledge of the events, all of whom provided timely statements, who were available for examination in a way that provided procedural fairness to all.

Accordingly, I decline to admit pars 64 to 129.

I will adjourn very briefly, and just so those notes can be produced and provided to the parties, and then we will resume Mr Rolfe's evidence.

MR ABBOTT: Your Honour, the notes, in fact, consist of 12 pages, I know they are being referred to as ten. That's an error. And the 12 pages will be produced, as they have been produced to Dr Freckelton.

THE CORONER: Thank you.

We'll just adjourn for, I can say, ten to 15 minutes so that the notes can be provided (inaudible).

ADJOURNED

RESUMED

ZACHARY BRIAN ROLFE, affirmed:

THE CORONER: Thank you.

Yes. Not sure where we're up to.

MR MCMAHON: (Inaudible) counsel assisting.

THE CORONER: Right. Thank you, Mr McMahon

XN BY MR MCMAHON SC:

MR MCMAHON: Mr Rolfe, (inaudible). Can I take you back to 8 September 2019, which is eight weeks before the shooting (inaudible). And early in the hours of that morning, about 3:30 am, you went down to the casino with a colleague of yours, (inaudible). Do you remember that police officer, Mr Rolfe?---I remember him, yes.

And you went down to the casino about 3:30 am because a young boy - pardon me, a young man called Tyson (inaudible) had thrown a (inaudible) at a security officer. And you and your colleague (inaudible) arrested him and brought him back to his home at (inaudible). Do you have any recollection of that event (inaudible)?---No, I don't.

If the court can be shown a video, please. It's number 3-169.

While that's being organised, I was going to suggest to you that you're outside the house of the young man, and your there with your colleague. (Inaudible) sergeant?---Just called him a (inaudible).

Fam?---Yeah, that's what we called him, Fam.

And you're speaking there into your body-worn camera (inaudible). And you'll see the young man leaning over to the car. He's obviously - I say "obviously," he appears to be drunk. And at various times, he's (inaudible) about having lost his phone (inaudible)?---Okay.

Play that video please.

DVD PLAYED

MR MCMAHON: If we can just pause it there.

That's your left hand that's just come into the screen. And back - far back of the video there's the other police officer (inaudible) the young man.

And can you play (inaudible).

DVD PLAYED

MR MCMAHON: Just pause there.

You'll see that the shadow on the bottom of the car (inaudible) shows that you (inaudible). You see that?---Yes.

Okay.

Press play, please.

DVD PLAYED

MR MCMAHON: Okay. You saw that video?---Yes. Yes.

You understand that to be your body-worn camera?---Yes.

You understand that to be you (inaudible)?---Yes.

Did you see on the video that you punched the young man in the head (inaudible)?---No. I didn't.

What was the force that you used (inaudible)?---I can't recall that incident.

You can see the young man being struck?---He may have been - it might have been a small slap. I'm not sure. It's not seen on the camera.

Just go back to the same video, please. Just start playing at about 30 seconds. That'll do.

DVD PLAYED

MR MCMAHON: Just stop there.

I suggest to you that it's very clear, Mr Rolfe, from that video that you just punched him in the head (inaudible)?---I disagree.

What did you do with your left hand?---As I said before, it might have been a small slap.

Are you disputing that you're hitting him in the head?---I'm saying it might have been a small slap. Yes. I'm saying I didn't see a punch - - -

(Inaudible) - - -?---Pardon?

Are you disputing that you hit him in the head?---I'm going to say it could have been a slap.

It's not a game, Mr Rolfe. Are you disputing that you hit him?---I've answered the question. I don't need to use your words. I'm saying that I've may have given him a slap.

Did you give him a slap?---I may have.

Do you deny slapping him in the head?---No. I don't.

Do you agree that there was no lawful excuse for striking him in the head, whether it was a slap or (inaudible)?---Are my certificates for use of force still - are they still in effect?

MR ABBOTT: Yeah.

THE WITNESS: Yeah.

MR ABBOTT: I applied a certificate in relation to this - - -

MR MCMAHON: (Inaudible).

THE CORONER: Yes. There is a certificate granted for this evidence Mr Rolfe - - -

THE WITNESS: Yeah.

MR MCMAHON: Do you (Inaudible) there was no lawful excuse for striking that young man in the head?---I would need greater context from the job. I would need to look in all of it.

Pardon?---I would need to look further into the job.

Why? He's standing there. You're looking at him. He strikes the car with his right hand, you strike him to the head, whether it was a slap or a punch. What further context do you need?---I'd need to look further into it. It could be a - it could be in a fear-based reaction which there are - there are areas of the - I guess, what's the word? I guess there's discretion or law for a fear-based reaction; if you are in fear that strike to the car may have caused me to have a fear-based reaction and react in a way that I did.

Do you have any recollection of this event?---No. This is the first I remember of it.

I suggest that your answer that a fear-based question response to Mr Boulten and you know, plainly, looking at that video that when he hit the car you lost your temper. You reacted very quickly and you slapped him in the head or punched him in (inaudible)?---I disagree.

Were you then charged for that event - criminally charged for anything to do with that event, the slapping him in the head or punching him?---No. It's never been brought to my attention.

Pardon?---It's not been brought to my attention.

Did you file a use of force form for that incident?---I can't recall.

I've made inquiries and (inaudible)?---Okay.

Do you agree that you should have filed a use of force?---Yes. Likely, yes.

Why?---'Cause there's a - there's a level of force utilised in that video.

Have a look at this document. (Inaudible) pulled up, please. It's document 3.168.

I'm just going to give you hard copies in fairness to you, Mr Rolfe. That's the PROMIS report. Go to the top of the first page, you'll see the situation there, who's involved, and bottom of the first page tells you that it's the Lassiter Casino song. Go over to the second page, Mr Rolfe.

Have you got that document, your Honour?

Sorry. We go to the second page. And slide down to a heading that says: "Results text." Which it's got there. See where it says: "Rolfe RPTS." What does that mean?---Reports.

Sorry. Is this you - what follows your report?---Yes.

Can you just have a read of that (inaudible). First paragraph suggests that you and your colleague attended (inaudible) youth disturbance. And you say: "Incorrect. POI (inaudible)"?---Yes.

That's because his birthday shows that he's 18 years and 2 months but not (inaudible)?---Yes. That would've been why.

And on arrival you've then spoken to the complainant (inaudible) and the offender, and there's an address give and then there's a narrative given?---Yes.

"Which became agitated when (inaudible) I picked up the radio from the front counter and threw it at Cole(?), hitting him." So that was the event that got the police at the casino. Do you recall that?---I don't recall that. No.

"Cole wishes to make a complaint (inaudible) available. Next line: "Woods conveyed to 11/1 (inaudible)"?---Yes.

And I think it's (inaudible) fair assumption that place we were looking at there will be the 11/1 Musgrave where the video (inaudible)?---Yes. I'd accept they mashed it up.

Pardon?---Yes. I'd accept that.

And over the next page, just things written by a colleague that (inaudible). You accept that?---Yes.

So as far as I can tell - I'm happy to be corrected - as far as I can tell (inaudible)?---Okay.

And it seems that there is no use of force paperwork filed (inaudible)?---Yes.

And you certainly agree with me today that there should've been?---Yes.

You've said in this court more than once, we spoke about how the eight of your engagements from this report - so the some 3176 policed actions been called into question. Do you recall giving evidence about those numbers?---Yes.

The thrust of the evidence was overall look at – at what I have done overall. And it is a very small number of use of force incidents (inaudible) examination. Firstly, that's the first one, follow?---Yes.

And secondly that generally I haven't been (inaudible)?---Yes.

You accept that if you strike people while you are working as a police officer in circumstances where there should be paperwork filed such as the use of force form, you (inaudible) in that way but there is no paperwork filed to show that there was use of force, then those statistics become rather meaningless?---I wouldn't say meaningless. But yes, I get your point.

They become statistics (inaudible)?---I would say, potentially slightly less value.

Or perhaps a great deal less valuable. There may be many incidents such as the one we just looked at over the years for some person that haven't been filed the documents showing use (inaudible)?---I follow.

So if we question your credit. And what people think about your credit is to how often that may have happened. Do you follow?---Yes.

Are you able to estimate how many times you have might have slapped or punched someone to the head and not filed a use of force form?---My estimate would be just one.

Just one, because that's the one we found, was it?---That would be my estimate.

It never happened on any other occasion?---I can't recall any.

Do you recall the one we just looked at?---No. I can't recall that.

So it follows, doesn't it, that where there is a strike to the head, whether it is a punch or a slap. The – I will call it a punch. Where there is a strike to the head like that and there is no paperwork to show there was a strike to the head, it follows that there will be no investigation. Do you agree with that?---There may be an investigation. But it wouldn't spurn from that paperwork, yes.

By saying there may be an investigation if there – a complaint was made?---If a complaint was made or if supervisors looked through the body-worn-video which they sometimes do.

Did that happen on this occasion?---Not that I am aware of. Well, obviously someone has because you have it.

Can the witness be shown the second video, please? Which is numbered 3.170.

While that is being organised, I will just tell you, Mr Rolfe, that this video goes for something like 6 minutes and I am going to play it all. We are going to stop and start 10 times or so. And what the video shows is the young man complainant. With you yelling out?---Is this the same incident, sorry?

It is the same incident?---yes.

Commences – it is not clear to me why there are two videos, I can say that. It appears to be a continuation of the first body-worn-camera. Perhaps you turned your camera off, I don't know?---Perhaps he did. I saw in the first video he was reaching for my camera.

It was before you were struck (inaudible)?---Or the contact. But I mean he can do it afterwards. But yes - - -

Is that contact? But at the very least, it is a slap in the head?---Yes, correct.

During this video you will hear him say that the pig, meaning you, hit him in the face. That he wants your name. Spells out your name. Calls you, "A fucking racist." Says that (inaudible) smack him on the face and says the same (inaudible). But I want you to have an opportunity to see and hear that.

Rather than stop and start, your Honour. I think we will just press it here. It is 6 minutes (inaudible).

THE CORONER: Yes.

MR MCMAHON: Play the video clip.

DVD PLAYED

MR MCMAHON: Do you recognise you are in the same location?---Yes.

DVD PLAYED

MR MCMAHON: We will just stop there. Are we able to keep the arrow may I ask, just so that we can properly see the time? Where the arrow is right now. So that as we watch it we can also see what the time is. Thank you.

DVD PLAYED

MR MCMAHON: I will speak while the video plays. What seems clear to you, you have (inaudible) entering the premises. And it leads back?---All right.

DVD PLAYED

MR MCMAHON: Mr Rolfe, before I played that video, I just read out a number of sentences and the kind of language you going to hear. Did you hear the kind of language that I read out to you (inaudible) accusing you of being racist (inaudible) slapped him or smacking him in the face and so on. Did you hear him say that through the video?---Yes.

It's obvious - it seemed obvious enough of the young man who was (inaudible). Do you agree with that?---Yes.

And it's obvious from the time that he was hit to the head that most of the rest of the combination of the two videos, he appears to be deeply distressed. Agree with that?---Yes.

And basically the - the guts of this, Mr Rolfe, is that he annoyed you and you hit him in the head. Correct?---I disagree.

What did you hit him on the head for?---I said I can't recall. And there's, again, a potential fear-based response to that - - -

Pardon?---Potentially a fear-based response or reaction based on him smacking the car bonnet. I'm not sure where my attention was at that time.

When you smacked him in the head - punched him or smacking him in the head - that was quite some time after he (inaudible) - - -?---No. I'm talking about when he smacked the car bonnet. That loud sound might have caused a fear-based response or reaction, more so.

Mr Rolfe, I suggest you had your hands ready to hit him and they were sitting up there and your fist was clenched and you (inaudible)?---I disagree.

That's what the shadow showed?---No. It's not.

Pardon?---No. It doesn't.

So you understand the propositions I'm putting to you: he annoyed you, you hit him, that's the proposition. Do you disagree with that?---Correct.

I'm suggesting to you that you had no compunction about punching him, or slapping him. I'll say, that again, there was no compunction to you (inaudible) slap because you believed you'd get away with it?---You'll have to get me the definition of compunction.

Sorry. You had no hesitation to slap him (inaudible) because you believed you would get away with it?---No. I disagree.

Based on your experience, that kind of violence led to no consequences against you?---I disagree.

There can be no doubt that he regarded your violence to him as racist violence?---By the sounds of his complaints, yes.

Do you accept that he regarded your violence to him as racist violence?---He said that. Yes. I'm not disputing it. I'm just saying that's what he said.

A PERSON UNKNOWN: He called him a "fucking racist."

MR MCMAHON: Is that an objection?

A PERSON UNKNOWN: No. I'm just - - -

MR MCMAHON: Do you accept that what you did to him was racist violence?---Not at all. No.

What's clear is that your paperwork conveys nothing to suggest that such an event happened. Correct?---Yeah, from - correct.

Can the witness be shown video 3.161 (inaudible) sub-video 2232.

DVD PLAYED

MR MCMAHON: Just pause it there for a moment.

I'm going to suggest to you that this is a video (inaudible) taken from (inaudible)?---Yeah.

Do you recall watching this video of you hitting that person (inaudible)?---No. I don't.

Do you recall recording this on your phone?---No. I don't.

Can we just pause it there, please.

In the bottom left-hand corner of that video it says: "Viewed by ZBRR." Does that identify you? Is that your computer?---I believe so. That's what it would suggest. Yes.

So correct me if I'm wrong, but it seems what's happening is here is your computer is playing your body-worn video?---Yes. I would suggest that.

And your phone is recording that event?---If this is on my phone, then yes.

Well, that's - that's how it is (inaudible)?---Okay. Yes.

Okay. Play the video, please.

DVD PLAYED

MR MCMAHON: (Inaudible) hands up.

DVD PLAYED

MR MCMAHON: You hear at the end of that video someone (inaudible) say: "That's all it was. It was a bit of a slap"?---Yes.

Who was that?---The words spoken, I believe, were me.

(Inaudible)?---I can't recall.

What's the basis of showing that video at work?---I can't recall this.

What's the basis of recording on your phone?---I can't recall this.

So what we've got is a video of you slapping him, your paperwork, a deeply distressed young man, the absence of any recollection from you suggests that some assumptions I'm about to make are correct; one is that you (inaudible) by any other policemen in this event?---I don't believe so.

(Inaudible) shift (inaudible)?---I don't believe so.

Or by the person you showed that video to?---No.

You didn't fill in a use of force form (inaudible). You agree that your paperwork accordingly, the PROMIS notes I showed you, is in fact - fails to give a correct picture of what happened at the event?---Yeah. It doesn't give the full picture.

It fails to leave out the critical event of you striking the citizen. Is that right?---Yes.

The effect of that is that the paperwork is dishonest paperwork. Do you agree with that?

MR ABBOTT: I object. That's a submission he made.

MR MCMAHON: I press the question, your Honour. It's a question of the witness's state of mind as to (inaudible) fill out the paperwork (inaudible).

THE CORONER: Yes. I'll allow the question - - -

MR ABBOTT: But the question's being put to - your Honour, the question by my learned witness being put to the witness: "Do you accept that you were dishonest in doing this," and it should be put that way, with respect.

MR MCMAHON: Not going to be told (inaudible) questions by my learned friend.

Were you deliberately dishonest when you filled out this paperwork and left out the fact that you'd struck young Tyson?---I can't recall filling out this paperwork. Look, there's an omission in there, yes, but everything that's written is honest.

Yes. Point is, Mr Rolfe, is what's not there that makes the paperwork dishonest?---Yes, there's an omission there.

Well, it's not just an omission. People omit things. What you've omitted to put in is your criminal conduct of striking the young man?---Well, I don't agree it's criminal conduct.

And it's clearly something that, in some way, preoccupied you or involved other people because you are videoing it on your phone sometime later – eight days later, that video was on 16 September?---Okay.

So the effect of the paperwork not revealing what happened is that he was punched to the head or was struck to the head if you prefer that word, was covered up?---Okay.

Do you agree?---Well, it was omitted from the paperwork. Obviously, it was captured on the body-worn video.

The effect of the paperwork and the fact that your colleague didn't report it in any way or the conduct means that the slap to the head or the punch to the head is covered up, you agree?---Okay.

Pardon?---Okay.

And you are just left on the job to carry on as usual, correct?---I believe so.

Do you remember giving an interview – you've already been asked a question about this – giving an interview to a journalist from the Australian, December 2019?---Yes.

Her name was Shorten(?), is that right?---Yes.

And this is a document, 20-17(?). You've already been asked questions about this document. I'm not going to go over it all. I've got one particular question I'm interested in. (inaudible) question 62 and straightforward (inaudible) Mr Rolfe question 61, "Tell us why you applied for the TRG, maybe you could mention your background." And I'm just getting up so you've got a chance to read it if you need to. Question 62 – before I continue, in case it's not clear – I should just make it clear, the reference – this interview involved some questions being repeated while the cameras rolling so that there were different takes of the same issue, correct?---Yes.

My suggestion is was anything wrong about that, but it's – from a journalist point of view, hard to get questions and answers flowing in – in a way that makes for a good story, right?---Yes.

And that's what was happening?---Yes.

And so that's why some of the questions are clearly phrased to you in a way which anyone experienced in the media would know is never going to go to air – or answer would go to air, but not necessarily the way that the question was put. So you've been a question twice, that question 61 and 62 is there?---Yes.

So question 62, "Why did you apply to the TRG and when did you successfully complete selection?" Your answer, "So I applied to the TRG because I wanted to be – I wanted to be one of the boys on that team, I wanted to do the jobs that they do and I guess I wanted to be at the pinnacle of (inaudible) the job. I have a military background (inaudible), I've always been interested in that side of things and I completed selection in August 2018." Is that all true?---Yeah, yeah. I guess, I can't recall that, but I accept that.

Well, it's your words. You've read them, so do you say – was it true? It's not a trick question?---No, are you asking if that answer was true?

Yes?---Yes, at the time, yes.

And when it says in the last few words, "I completed selection in August 2018." Just to be clear, that's TRG selection?---Yes.

And do you agree that the guts of that answer is that you've said there that you've seen TRG as the pinnacle of policing?---In that tactical sense, yes.

In the tactical sense?---Yes, rather than – for example, the investigative sense.

Sure. That's not to say that – I mean, could – it's not the pinnacle of community policing, it's not the pinnacle of detective work. It's what you say is the pinnacle of – the pinnacle of policing, so insofar as there's a suite of options in front of you in the Northern Territory Police Force – as there was, as you did so well at the training college. You accept that?---So that there's a large amount of options for me?

A large amount of options in front of you? Maybe not the next day but if you were heading towards a particular part of the police force, especially – for instance – if youth or domestic violence or (inaudible) whatever it might be. A young man who had done so well at the academy was well positioned to head to the direction that he wanted to go, right?---Well, as well as anyone else, yes.

Yes. And faced with all those options in front of you, TRG – in your – from your point of view, was the pinnacle of the police force, was the best place to go?---At that time, correct.

Okay. And to try and summarise a lot of evidence briefly, while you were in Alice Springs, including while you were in the IRT, at different points in time, you were speaking about and trying to get into the SAS and speaking about trying to get into the TRG?---Yes.

And you did that all the while, while you were in the IRT?---Yes.

I direct you to the text – do you have the text in front of you?---No, I don't.

I'll have to put it up. It's the text 489. So this is a text – you'll get it in a minute – it's a text between Mitch Hanson and you. (inaudible) on my copy, it's page 74, it's – you've got it right in front of you there?---Yes.

So that's 489. It's from Mitch Hanson to you. It's eight weeks before the – not eight weeks, it's less than seven weeks before the shooting of Kumanjayi Walker. And Mitch says to you, that – the text – three texts above – two texts above, it talks about applying for a job at Port Keats and you say, "(inaudible) it's supposed to be pretty wild, isn't it?" He says to you, "Yeah, (inaudible) known as the OIC. The blacks are drunk fulltime. (inaudible) will probably get a spot at the TG." You understand that to be "TRG"?---Yeah, I believe so.

"And we were probably get to scratch the itch before that anyway. There are two spots currently," and so on. And you say in reply, "I'm into it, really into it. (inaudible)"?---Yes.

So when you say, "I'm into it, I'm really into it," what did you understand him to be saying when he said, "We'll probably get to scratch the itch"?---I think I'm responding to his entirety of his text message, but in regard to "scratching the itch," I believe it's just talking about – it's probably high-level job that you'd attend, volatile jobs that you would attend.

As, sort of, you talking about what?

THE CORONER: "High-level, volatile jobs that" - - -

MR MCMAHON: "High-level, volatile"?---Yes. I believe so. I guess on the spectrum of jobs, you've got one end being taking statements off criminal damages.

And then on the other end, you've got – yeah, the other end of the spectrum – it's probably the other end of the spectrum that the jobs that the jobs - - -

So just to summarise that. Insofar as you understood him, you can't say for sure what's in his mind, but what matters is what you understood. You understood him to say, "Probably get to scratch the itch," and you saying, "Into it, I'm really into it." Your understanding of that exchange was we're talking about getting involved with high-level, volatile jobs?---Well, I'm talking about the entirety of his message when I say that. Like, as in saying, like, I think he's got a good idea. I would – for him, personally, I thought it was a good idea in supporting him. I would not – I don't think I was ever inclined to apply for a bush position.

And (inaudible) meant getting involved in sort of high level (inaudible) jobs that go with that kind of (inaudible)?---Yeah, I guess so.

Ms Campagnaro gave evidence at (inaudible) 761 that you and - - -

A PERSON UNKNOWN: Sorry, what reference is this?

MR MCMAHON: 761. And the question was (inaudible) precisely. And he also wanted to get – you explain in your interview he was interested to get into the SAS and (inaudible). So she's talking about you. "Did he tell you why he wanted to get into the SAS." Answer, "He wanted to be paid to go out and shoot people." Did you say that or words to that effect to Ms Campagnaro?---No.

Did you say words (inaudible) to Ms Campagnaro?---No.

Is that the reason why you wanted to be in the TRG, so you could go out and shoot people?---No.

Is that the reason why you (inaudible) SAS?---No.

I'll just ask you, have you got the text there as in the kind of bundle that I've got?---Yes.

So I'm going to take you to some other texts. If you look at text 249. I don't think it really come up much but you and – you've known Ben Robert Smith for a long time?---Yes.

Piecing together different pieces of evidence, I've probably got about (inaudible). Would you agree with that?---Yeah, around about then.

And here's a series of texts 2.9 between you and Ben Robert Smith. 2.9 down to 5.3. So the first one – I'll just run through them quickly. (Inaudible) so that's you talking to Robert Smith?---Yes.

"I think I might have (inaudible) you up." So obviously, they'd met somewhere or spoken to someone. "I'm at work at the moment. I was going to see if you were free

sometime for a chat about some work. I'm heading over to SA soon for that Ronin course." SA means South Africa?---Yes.

"Mainly just for shits and giggles. But yeah, policing is good but it's not going anywhere and I need some (inaudible)." So all these texts that I'm going through now, all occur within the space of 15 minutes on 5 May?---Yes.

He replies, "Understand, mate. Happy to chat. I have a few different contacts running contracts out at Kabul/Afg." That means Afghanistan?---Yes.

"Syria/Iraq and Libya/Africa. Will be able to connect you with the right people and doing the Ronin course will add value to your CV."?---Yes.

"(Inaudible). I know it sounds dumb for some people but you get it. I just want some dangerous shit whilst being professional." And then there's some stuff about difficulty in getting into TRG, then some (inaudible)?---Yes.

And he says effectively, "Let's chat next week" and you say, "Thanks. Yes." So you understood that exchange was about you getting some overseas contract work?---Yes.

And at that time – it's probably obvious to you but just putting it in context – you were in the police force, you were in the IRT. There's a lot of other evidence about the state of mind and unhappiness in various ways, which has really been dealt with (inaudible). We don't need to go over all of that?---Yes.

But in that context, you're going to go to South Africa and do a specialist course in Ronin, what's called a Ronin course?---Yes, the company is Ronin. Yes.

Sorry?---The company is called Ronin.

And that's a course which engages in what precisely?---There's a close personal protection element, which is your standard body guarding.

Perhaps I'll interrupt you, if I may. Is it a military style course or a ballistic style course or a (inaudible) style?---It's – I don't know how to put it. It's literally for close personal protection, such as for high-net-worth individuals or – so I probably wouldn't classify it as either. The part of the course I did was a trauma medical part of the course.

Okay. So when Ben Robert Smith says he's got contracts running out and he gives effectively – he names about four countries there, Afghanistan, Syria, Iraq and Libya. And you agreed you understood that to be concerning you having an overseas contract of work. Who did you understand – I'll go back a step. With Kabul, Afghanistan at that time, May '19, there was still fighting going on between the Taliban and the government of Afghanistan. Correct?---I think there's always fighting going on between the Taliban.

At that time the Taliban (inaudible)?---Correct.

Syria and Iraq, I don't know what he means there, but you understand - you served in Afghanistan, of course?---Correct.

At that time civil war with (inaudible) was basically over. ISIS was basically a spent force. You'd agree with that?---Mate, you're telling me. I'm not an expert on international relations.

Well, who did you understand your potential employees would be on these overseas contracts?---Generally they'd be private companies protecting locations such as mining sites, infrastructure. They'd be private companies that are working in those areas that need close personal protection.

So these are all warzones. You understand that?---Yes, areas of them.

Pardon?---Yes, areas of them.

That's right. Areas of Afghanistan, Syria, Iraq and Libya were warzones at this time. And so you agree that you were saying yes to the idea of going to places where there's a great deal of danger?---Correct.

And a great deal of violence?---Potential, yes.

Places where life is cheap?---Cheap to some. Life is cheap to some in Australia. I've seen more violence in Australia than I've seen in Afghanistan when I was there.

You'd agree that these are places where there are armed militias and regular fighting between military and armed militias and (inaudible) going on? Each one of those places that I named?---Yes.

So your idea at this time was that you were hoping to get some contract work in one of these places where a lot of killing actually occurs?---I wouldn't put it that way, that that had – that determination would not have been part of my mind, to go to a place where there was a lot of killing.

Well, you'd certainly agree, don't you, that these are places where there was a lot of killing by paramilitary, terrorist groups and (inaudible)?---Yeah. Again - - -

Far more than most places in the world, at this time in 2019?---Potentially, yes.

And you were going there, do you want to rephrase it, you go on to say, "Because there's a lot of killing." You were going there knowing that it was going to be – you were going to – it would be very dangerous?---Yes, potentially. That's why people would need close personal protection.

And there's every chance that you'd be engaged in scenarios of kill or be killed?---No, I'm not sure of that. But - - -

Isn't that the nature of close personal protection that (inaudible) someone else is trying to kill?---You're trying to protect someone.

From killing, from being killed?---From anything. From assaults up to and - - -

Well, we're not talking about assaults, are we, we're talking about killings. Bombings and executions and assassination?---I'm sure there's still assaults in those countries as well.

And I suggest (inaudible) Mr Rolfe. We're not talking about the prospect of someone being protected from assault when you engage in contracts in those countries for close personal conduct scenarios?---You're protecting them from anything. I think you'd be surprised to find the majority of contract work would be extremely boring. You would not deal with any conflict. And potentially assaults are what you are dealing with, even in those countries.

Can you switch to 9 November 2019 when you were at Yuendumu. And once again, we appreciate that we're not going to traverse all of the evidence that you've been involved in over many days?---Yes.

And for obvious reasons I'm going to ask you questions without playing videos to you (inaudible)?---Yes.

There were two houses that you entered. The second house was where the killing took place and the first house was House 577. Do you remember that?---Yes.

When you went into that house, was your holster unclipped?---I'm not sure when I've particularly unclipped that. I believe it's probably asked and answered before.

"I believe it's probably"?---Asked and answered before.

Sure. Well, let's not get preoccupied with which second that you unclipped it. But when you were in the House 577, you had (inaudible)?---I unclipped the first retention device, yes.

Yes. And you had your hand on the gun in the house?---Yes.

And just to give you a chance to be clear about it. I'm suggesting to you that unclipping your holster at that time and having your hand on the firearm at that time in that house was totally inappropriate. Right?---I follow.

You agree or disagree?---Disagree.

You, of course, (inaudible) children in the house?---Potentially.

And I suggest to you that when you had your holster unclipped and your (inaudible) firearm, that in fact what was going through your mind is that in your itching to act tough?---I disagree.

You were itching to get your gun out?---I disagree.

And that you were looking to make a violent arrest?---I disagree.

And in those moments when you went from that house to the next house, which is 511, you – at 511 you jumped the fence. You agree?---Yes.

And that when you are jumping the fence there, you were doing so because you were being disrespectful of the people that you could see there. You agree or disagree?---Disagree.

And that your intention was to show that you and your colleagues were in charge, that you were dominating as the tough guys (inaudible)?---I disagree.

You spoke to various people and then you went into House 511?---Yes, sorry, I don't know when you want me to agree with you or not.

(Inaudible). You either agree or disagree with the propositions that I - - ?---Sorry, I just don't know when you want me to – when your sentence ends.

I understand. I'll try to (inaudible). (Inaudible) to House 511. Correct?---Correct.

When you went into House 511, was your holster clipped or unclipped?---I believe it was clipped.

When you went into House 577, why was it unclipped?---Again, same answer that I've given multiple times before. I was following the "if/then" thinking in the police training model.

So (inaudible)?---I was preparing for a potential lethal assault against myself.

And that's why your holster (inaudible)?---Yep, partially. Yes.

When you went into House 511, why was your holster clipped and not unclipped?---Again, as I've said before, when I saw Kumanjaya, I made the wrong threat assessment.

Before you saw him, prior to when you went into the house, as you're heading into the house, why was your holster clipped instead of unclipped?---Again, I think I've answered before but potentially, again, I think it's because my risk assessment of the house was lower than of the initial house.

You accept that that was at all times an error of judgment? If your assessment of House 577 was correct, it follows that the risk going into House 511 was a greater risk?---I wouldn't accept that completely.

But it is – it's basically correct, isn't it? There were fewer options of where Kumanjaya Walker could be, from the point of view of the information that you had at hand?---No. I would say on 511, in my mind, that was more like – sorry, the first house, 5 - - -

577?---Sorry, the first house, 577, that was the last known location for him and I knew that the person who had given me – Mr Robertson at the front of the house, when he said no one was inside, I knew that was a lie from the information I'd received from Constable Kirstenfeldt. So I knew that was the last known location and I knew that I'd been lied to about anyone being in that house. At 511 I had no reason to believe that I was being lied to at the front of the house.

(Inaudible) told you someone was in the house? Constable Eberl told you someone was in the house?---Correct and that's why I (inaudible) house - - -

(Inaudible)?---Correct.

Yes?---And the – again, the risk level changed.

The risk level in fact went up, didn't it, because – since you know he's not in 577, since you've been directed over to 511 and since Eberl has told you that someone's in the house, the risk level has increased?---I – it actually had increased but my mindset was at the time – again, I've admitted that I made the wrong risk assessment.

You made a?---The wrong risk assessment. The women at the front of the house, again, they didn't say no one was in the house, but they did say that he wasn't in the house.

I'm not going to go over the old cross-examination about whether you should have waited or waited, because that's been done. So. The proposition I'm putting to you is that based on the information you had, you should have waited (inaudible) once you knew there was someone in the house. Played a waiting game?---If - - -

Do you agree or disagree?---I disagree but I'd like to expand just a little bit, not to be combative. But if that was our tactic on arrests to attend houses and wait outside the house if someone's in the house, we would hardly ever arrest anyone.

Well, I said I wasn't going to go over it and I'm only going to be very brief. But the point here is that we're dealing with a remote community, has its own particular way of living. You're dealing with a remote community police station which has ACPOs available and you're dealing with someone who you (inaudible) in the immediate hours and days beforehand, regarded as potentially lethal offender. And in those circumstances, it's clear, I suggest, that (inaudible) stop, wait, cordon and proceed

(inaudible)?---Potentially, again, I would have loved if a local police officer was with us, including the ACPO. We weren't given that ability. So.

All right?---It's hard to say.

We'll come to (inaudible)?---I know. It's hard to say. Like if – the situation that we had, we – it's hard to say in hindsight, we would have just potentially waited outside the house and never made entry.

(Inaudible) at that point in time you regarded Kumanjayi Walker as a potentially lethal offender?---Yes. Which is basically any offender is potentially lethal. Any person in the world is potentially lethal.

Yes. But you really want to avoid silly answers, Mr Rolfe. Everybody in the world is potentially lethal in certain circumstances. And it's completely irrelevant to what you're doing here. What we're doing here is asking about a few moments in time at a particular place with a particular offender. You are looking for and hoping to arrest (inaudible)?---Yes.

And at that moment in time – I'm not talking about (inaudible) distractions (inaudible) we're talking about a person who you may well come into contact within the next five or 10 seconds. And you regarded that person to be a potentially lethal (inaudible). Correct?---Yes.

And you see a video of that person waiting (inaudible). You've been asked a lot of questions about that; I'm not going to go through that. That's one of the - probably the primary bit of information for him that (inaudible). Correct?---Correct.

Can I suggest that with that knowledge, and having made the error going into the house (inaudible) that you then acted with an unnecessary amount of aggression to the young man that you met who was (inaudible) Kumanjayi Walker (inaudible)?---I disagree.

And the way you pushed him up against the wall with your right hand and held him (inaudible) the wall and (inaudible) the phone out was unnecessarily aggressive?---I disagree.

Not going to go into it now, all the information that you could have had about his state of mind and his mental capacity. That's (inaudible) people. You can appreciate that's why I'm not doing it again, right?---Yes.

When you hold him up against the wall, you take his hat off with your right hand. You remember that?---Yes.

At that point in time, you've got no control of - on him at all. You're standing very close to him, you move your right hand and take his hat off down to the right side. Left hand has got the phone. Follow?---Yes.

So in terms of physical control of that person, the potentially lethal person, you have no control over him at all?---Yes.

Then he takes the hat back off you, puts it back on his head?---Yes.

So you have no control over that?---Correct.

At that point in time, objectively, you're already losing control of the situation. You've got an offender close in front of you, taking a hat off you and putting it back on his head after you've taken it off him?---I didn't realise he was the - the offender at that point in time.

You realised he was a potential lethal threat?---I suspected he may have been. Yes.

And then you take the hat off him a second time, place it down to his right side; you drop it to the floor?---I accept that.

And then he bends down and picks it up?---I accept that.

You've seen that video no doubt many times?---Yes.

So at that point in time, you agree that you were in extreme danger, but he bends down to his left side to pick up the hat. If he was a potentially lethal offender, you're in extreme danger (inaudible) stabbed you as he came back up into the (inaudible). He leans down to the side, you're right in front of him, very close, you can't really see what his hands are doing and up he comes. If he had a weapon, that weapon could have gone straight (inaudible)?---Correct. I did not perceive a threat at that time.

Do you accept that you should have been alerted to the danger that you were in at that time?---I'm not exactly sure how I would have, not knowing that that was Kumanjaya Walker.

But you knew that it might be Kumanjaya Walker 'cause you've got your phone out and you're looking at your phone. Right?---Yes.

You knew that Kumanjaya Walker, in your mind, was a potentially lethal offender. Correct?---Correct.

You knew that he, if he were - if that person was Kumanjaya Walker, he may have a weapon - a sharp weapon?---Potentially. I, obviously - - -

All those things are pretty obvious, aren't they?---Through, obviously, my experience of him, he had utilised a tomahawk - - -

Yeah?--- - - - which would have been very hard to secret on his body. Not impossible, but hard.

Tomahawk or not, some kind of weapon like that. A sharp one?---Again, I believe my only experience of him was the fact that he used a tomahawk. So again, yeah.

(Inaudible)?---Yeah. I guess, from his - again, I did not perceive a threat when he bent down.

But when he went down and picked up his hat and began to lift himself up again, I'm suggesting to you he could easily have stabbed you at that time. You were at high risk. That was the one real danger to you?---I guess he could've stabbed me at any point - - -

Yes?--- - - - and I didn't realise he had a pair of scissors on him.

And then you started to raise your voice to him about keeping his hat on?---If I did, I imagine it would have been a very slight raise.

Yes. But it was and he did - - -?---Okay.

- - - (Inaudible). Follow?---Yes.

So at that point in time, can I suggest there's a number of escalating factors going on. The way you commenced with him up against the wall, the way you took his hat and he took the hat back off you is you losing control, the way the hat went down a second time and he goes right down to the ground and picks it up against your wishes, you're losing more control, and then you elevate your voice, escalating the situation. All of those things are errors increasing the danger to you, increasing the volatility of the situation. That's my proposition (inaudible)?---It's a - it's a - - -

MR ABBOTT: (Inaudible) errors. I object to the word errors.

MR MCMAHON: Forget about the word error. All those things put you in a situation of increased danger?---I won't agree with your statement because it's just dramatizing a situation, and I wouldn't call any of any of those incidences that you've just mentioned, the picking up of the hat or the slight raise of a voice an escalation. That is a - it's a dramatic way of saying what it is occurred. So I don't agree with your proposition.

Once the struggle started - because after the - after the second incident with the hat, you got the phone and then you're asking to turn (inaudible), that's when the struggle starts, right?---Yes.

At some point Kumanjaya Walker has a blade in his name, or it turned out to be scissors?---Yes - - -

Scissors in his hand. And when do you say that you saw the scissors?---The same time I've said, when I've been asked the question before.

Answer (inaudible)?---Exactly the same as my other answers. After he struck me twice in the head, I believe.

So not initially, but after he struck you twice, that's when you say you saw the scissors?---Yes.

Once that happened and once you saw the scissors, you didn't yell out anything relevant about scissors, like: "Knife, knife, knife," or anything like that?---No. I did not.

You've told this court on separate occasions that - in answer to different questions - you've been asked to comment on your skill and you've basically described your skill level as - as - as high, that is proficient. You are very skilled in what you're doing. And I think, generally most people who have given evidence relevant to that would describe you in a similar fashion?---I'd accept that.

And the evidence you've given about Lanyon Smith - I'm not interested in how critical you were of him, basically you've been critical of how that situation was handled by (inaudible)?---Critical of - of him in a, I guess in a way of abiding by your training. I wasn't critical of him as a - in a - in regards to human performance. My critique - I am critical of them in regard to abiding by their training in regard to (inaudible) yes.

Can I suggest that as soon as Kumanjayi Walker began to resist you, from that second on you began to panic in the situation that you were in?---I don't believe I panicked. I definitely felt fear for my life and the life of my partner.

I suggest that you panicked because you realised that a number of factors were coming to - together all at the same time, and I've already listed most of those factors (inaudible) but to add some more; suddenly in a situation where there's a struggle going on. That's correct, isn't it? (Inaudible) the room is dark. Correct?---Yes. I believe so.

Pretty dark. The person who is struggling hasn't been searched and is not cuffed because of what had happened up to that point in time. Correct?---Correct.

And he's a potentially lethal offender?---Correct.

And at that point you realised, I suggest, most of those things simultaneously, as you would expect in your training, assessing all the factors. Correct?---I'm not sure if I - -

(Inaudible) - - -?--- - - - I'm not sure if I went through every dot point in my head.

Pardon?---I'm not sure if I went through every dot point in my head.

Yes, I'm not expecting you to go through every dot point in my head. But based on your training, and your level of competence, and your experience in assessing a

situation quickly, a lot of those factors (inaudible)?---Yes, but I wouldn't have been able to put any of that into a - I guess a train of thought at the time.

Yes, I appreciate that. And I suggested to you earlier, when you went into House 577 with your holster undone and your hand on your gun when you're in that house, I suggested to you that you wanted to make a heightened arrest, already you said that's incorrect?---Yes.

And I suggest to you at this point in time, you're panicking because although you wanted to make a heightened arrest, you wanted to make it in circumstances where it was (inaudible) could control?---I disagree with that whole statement.

And as the events were unfolding in front of you, you were not in control at all, and that's why you panicked?---I was in fear for my life because I wasn't in control of Kumanjaya Walker, and I was in fear for Eberl's life, for the same reason, yes.

It's clear on any analysis of your evidence that you saw that you saw the blade before the shooting - saw the scissors, pardon me, before the shooting?---Yes.

And I suggest that the reason you didn't yell out something about the scissors, such as "knife, knife, knife", or something similar, is because, at that point in time, that you were panicking?---I wouldn't say panicking. I was in a - definitely a state of - like I was in fear for my life. But I wouldn't say that I was in a state of panic.

You said in your trial, and you said it here as well, that prior to the first shot being fired, somewhere in the sequence prior to that, that Kumanjaya Walker had his hand on your gun?---Yes.

His left hand on your gun. And it's clear from the evidence, and looking at the videos, that you didn't yell out anything like "gun, gun" or "hand on gun", anything similar to that, correct?---Yes.

And again the reason was - well there could be two reasons for that. It's been put to you quite plainly by other Barristers in this case, that when you say that you saw the gun (inaudible) Kumanjaya Walker's (inaudible) that you're lying (inaudible)?---Sorry.

That's been put to you?---Yes.

And it's been put squarely to you that that didn't happen at all, and that you're lying about it?---Yes.

Either way, it's clear that you didn't yell out "gun, gun, gun" or anything like that, correct?---Correct.

And I suggest to you that it's either because you panicked and failed to yell it out, or that it didn't happen at all, and his hand wasn't on your gun - Kumanjaya Walker's hand wasn't on your gun, follow?---I follow.

Which one do you say - - - ?---I say it was neither.

MR ABBOTT: Well I object to that. He has to agree that those are the only two alternatives. First of all, underlying proposition.

THE CORONER: He's answered in that way Mr Abbott, and he said he didn't agree with either.

MR MCMAHON: Heard all that?---Yes.

You don't agree that you panicked?---I'd say panicked is not a word.

But you do agree you failed yelled out to Bonson, correct?---I didn't yell out, yes.

And as I understood something that you said in - the last time you gave evidence, that (inaudible), you seemed to say that there was video evidence of the hand on the gun?---I believe there's video evidence that supports what happened.

Which video was that?---It's the video of the struggle that was just slowed down, exponentially.

Whose video, (inaudible) body-worn?---It was mine.

Your body-worn?---Yes. It's been mentioned in the - if you wanted to find the exact moment in the trial transcript, in my re-examination by Strickland, which is only short, believe he has the exact second in time.

Yes, and he says that your evidence about it is a lie?---He says that, yes.

Yes, so the - - - ?---But he's not - - -

- - - second in time that you say - - - ?---He wasn't - - -

- - - his hand was on the gun?---He wasn't - sorry, he wasn't in that video to me in that context, but that's the video that (inaudible).

But the reference that he gives, he gives a precise reference to the time, is that right?---The time, yeah. And if - and I think that would be a particular video, because I think the videos are slowed down before they're played, potentially.

Well (inaudible)?---I wouldn't know.

I'm not going to take you through the shooting. That's been done. But straight after the shooting, a few seconds later, you and Eberl are both technically on top of Kumanjaya Walker, and you're trying to put handcuffs on him?---I believe I was on top of him, and Eberl's to the side.

But together, you're actually on top of him. Let's say he's to the side then, but together, you're both pressing him down and you're trying to put handcuffs on him?---I definitely was pressing him down. I don't recall if - what Eberl's weight - weight was doing.

And when you study the video, in fact it shows, I suggest to you, that you were struggling for a long time, to get the handcuffs on Kumanjaya Walker?---Correct, his shirt got caught in the cuffs.

Pardon?---His shirt got caught in the cuffs.

And in fact the way that you conducted yourself for over 30 seconds, when you were trying to put the handcuffs on him, was, further evidence of you panicking at the time?---There was a level of arousal that affected my motor movements, for sure. But the - his shirt got stuck in the handcuffs, which slowed that - the cuffing down.

It got stuck because of the way you were putting the cuffs on, correct?---Just got stuck because it was just one of those things. The shirt was loose in the area where the cuffs were going.

I'm not going to summarise what we've just been through, it's pretty straightforward and I put it to you pretty plainly how we understand (inaudible) conduct (inaudible). Can I take you to - - -

MR ABBOTT: Sorry who - who's we?

MR MCMAHON: (Inaudible).

MR ABBOTT: Right, thank you.

MR MCMAHON: Can I take you to an event that happened in about September '23, which is an Instagram post that was the subject of quite a lot of media coverage, when you were on holiday in Bali?---Yes.

(Inaudible)?---Yes.

And the media reported on an Instagram posting which is said to have been posted by you, pardon me, not an Instagram post, but a comment on the post. And there's a picture associated with all this, it was published in the media. You follow all that?---Yes.

And the picture shows you and Ben Robert-Smith, and possibly a third person, looks like it (inaudible) in a hot tub of some kind, in some place in Bali?---Yeah, it's just a table, it's not a hot tub, it's just a table.

Pardon?---It's just a table.

A table?---Yeah, like it's got a - you know like a booth, it just looks like a hot tub.

I'll show you the picture?---I was there, I know it's not a hot tub, but I accept it can look like a hot tub.

Okay, so what do you say - you're sitting in a - - - ?---Booth.

- - - in a booth?---Yes.

So all that media about the hot tub is just incorrect?---Yes.

Okay, so in fact you're sitting in a booth with Ben Robert-Smith?---Yes.

And somebody else. And obviously you didn't take the picture because you're in the picture with others?---Correct.

And there's a text he says, "Just a couple of cops/murderers and war criminals having a lovely afternoon in the sun." Do you know that text?---Yes.

That was put up on an Instagram post is that right?---Yes.

And was that done by you?---Yes it was.

Presumably on a private account?---Yes.

Or was it a (inaudible)?---A private account. Yes.

The reference to "Cops/murderers just a couple cops/murderers", is that a reference to you?---The other guy in the post who's blurred out is a cop.

Well, who's the reference to the murderer?---Was – I think it was just – I thought, maybe it was just singular, that was me.

It's plural?---Is it? That might have been an error. But I was making a joke about myself, yes.

The point that I'm coming to is about how incredibly disrespectful this (inaudible). When you knew the media were running the story, at least The Guardian, when you knew The Gaurdian were running the story (inaudible), you engaged in correspondence with The Guardian?---Yes.

And they published that correspondence?---Some of it. Yes.

Did you ask them to publish an apology for what you'd written?---No.

The reference to murderers is you being involved in the killing of Kumanjayi Walker?---The reference to me making a joke about that was the fact that I'd been called a murderer and treated like that by, more so the organisation and the media itself. It was just a joke about that.

I can spare you some answer. I'm not suggesting that you are there confessing to being a murderer (Inaudible)?---Correct.

You're saying it was a joke and I think anyone who has read the post (inaudible) context of you laughing and possibly having a drink, but certainly laughing with your mate?---Yes.

And joking around. In that context you're calling yourself a murderer is that right?. Correct?---Yeah, correct.

Did you publish an apology on Instagram for that post that you put up?---No, I did not.

(Inaudible) public?---No, I did not.

You've given lots of evidence – when I say lots – you've given evidence a number of times. The previous time that you were in this court, about – some page references are 504, 1182 – about being light and respectful when you're on the job?---Yes.

Even – you said you were even kind, even when you're arresting or setting out to arrest Kumanjayi Walker?---Yes.

Do you accept that this post where you're just laughing about being called a murderer reveals, contrary to the evidence that you've given so far, a deep disrespect of those who have suffered as (inaudible)?---I don't think so. I can see how it's taken that way.

Can I suggest to you that the fact that you're prepared to laugh and joke and publish to this Instagram account jokes about being murderers, specific to you being a murderer, sadly reveals a rather deep and enduring disrespect for the people that suffered as a result of what happened?---I don't think so. I think – I think people will be able to become offended by things that I say regardless of what is said or the intention behind it. I have a – yeah. I've dealt with the sadness of taking Kumanjayi's life, I believe. I've dealt with it after the initial shooting. But I refuse to wallow. If I need to laugh rather than cry, I will laugh. That, again, I would never have said that in front of the family. Again, never intended that to be made national media. That was posted on a private page with a small number of followers. It was then taken off that private page and given to the media. So I can't control that. It was not meant to offend.

But more specifically to my question. The fact that you would write it at all, publish it to a modest number of people, in itself reveals an enduring and deep disrespect for the people that have suffered?---I don't think so. No. I mean no disrespect by that.

But you published no apology?---I did not publish an apology.

(Inaudible)?---No.

I'll finish this afternoon, your Honour.

THE CORONER: Sure.

MR MCMAHON: Subject to one matter, which is I haven't had a chance to look at those 10 pages and I assume I'll be the last person on my feet today.

I'll ask you about your drug use. Have you got the text messages there?---Yes.

There's already been evidence – there's evidence on the brief from psychiatrists and Professor McFarlane and there's evidence that you gave sometime – last time you were here about the drugs that you were prescribed on 9 October 2019?---Yes.

Just putting that in context. (Inaudible) your drug use through the year 2019, briefly. It's clear, do you agree – in this case I won't go (inaudible). Did you agree that throughout 2019 you're regularly making comments about marijuana or cannabis related products that you were either buying or using?---Yeah, I would accept that. I see regularly is in context. There's definitely – if you could give me a number. Obviously if you control F'd through that, I might accept there's been numerous comments on (inaudible).

And do you accept that – well, do you say that you were using cannabis related products at least from time to time during 2019?---Once in a blue moon. Yes. But just - - -

At last half a dozen times?---No.

Less than that. Sorry, the – I mean I can go through all the transcript?---No. But it may – I'd accept around six, potentially.

Go to text 27?---I'd accept – like I can accept it. A half a dozen.

Okay. You can accept that?---I'd be fine with that. Yes.

But we're just talking about cannabis related product?---Yes.

I want to take you to some other products. Look at text number 30?---30.

30. I'll call that person CV. I don't know whether – who that person is, or at least I can't remember (inaudible)?---Yes.

Is that person a policeman who's been named or a civilian who hasn't been named?---I believe he's a policeman who's suppressed.

Nonpublication. So I'll avoid saying that name. That person sends you a message saying, "Brother, you got any pain relief meds." And you answer, "No, fucking nothing. Ay, I need some too." And then you say, "Mitch got none either."?---Yes.

And the next one is, "I've just started OD'ing on Panadol instead."?---Yes.

So we're obviously not talking about Panadol?---No, I think we actually are. I have a bad back.

Pardon?---We actually are talking about Panadol. I've got a bad back.

Text 33 says, "I've just started (inaudible) on Panadol instead."?---Yes. Like, obviously I'm not overdosing on anything, because I'm still around. But I'm just saying I was taking a lot of Panadol.

So what's the pain relief entry referring to in 31 and 32?---Stronger pain relief than Panadol.

Something that's prescribed or something bought as an illegal drug?---Prescription.

Did you go to a doctor and get a prescription for - - ?---Have I?

At that time?---No, I haven't. At some points in my life, obviously I've been on painkillers and haven't used them all. So there's been leftovers. I think that's a – the situation that CV was asking about.

If you just go to text number 55.

MR ABBOTT: Well, I object. I object. My learned friend is leading it. The next 34 makes it clear that he has been – he's referring to Panadol and Nurofen.

MR MCMAHON: That text is written by CV.

MR ABBOTT: Well, that's - - -

MR MCMAHON: Not by Mr Rolfe.

Can you go to text 55, please?---Yes.

That is you talking to CV again?---Yes.

I will take it as a given that CV's a friend of yours?---Yes.

"I'm coming back tomorrow bro. Got you some pain things."

Now what are you referring to there?---I believe prescription pain meds.

Prescription pain medicine?---Yes.

What and you just give to CV, do you?---Yes. So what you go and get drugs prescribed to you and then you give them to your friends?---No it seems that I have

gone to potentially Canberra perhaps and had some leftovers there. And then yes, given them to him.

Had what?---Had some leftovers from where I used to live. And then come back to or going back to Alice Springs. And yes, I would give them to him.

So what are these pain things? What are the painkillers? What is the drug?---I'm not sure what it is called. The stronger pain relief.

Is it the strong pain relief from a doctor?---I believe so, yes.

Okay. Then can you go to text 371, please? I am just avoiding – I am just not giving the marijuana (inaudible)?---Yes.

Then go to text 371?---Yes.

This is about steroids?---Yes.

Which says to you – there is a long conversation you had the next day at 364. You are talking about monster workouts?---Yes.

You are talking – or are you talking about monster steroids? So you guys have steroids in virtue of monster steroids?---I am not aware of that, no.

So you are going through a few texts there about all the high (inaudible) and all the workouts you are going to do?---Yes.

Then you get down to 371 and you say, "I should get some roids off my mate in Canberra?"---Yes.

Roids are short for steroids, presumably?---Yes.

So what are you doing there? Buy some steroids off your mate in Canberra for Mitch?---That is a joke. I have never been on steroids. I am pretty skinny, so. I don't lift much weights, so. I have not been on steroids, that's a joke.

You mean it is a joke there, or it is a joke in your answer to me?---That's a joke.

On the page?---On the page.

So even though you say you should get some roids off your mate in Canberra, you don't mean it?---Yes.

And then Mitch comes back to you two nights later, "I'm keen. I want to get some of old man testosterone?"---Yes.

Testosterone is a drug used in steroid – pardon me, a steroid used (inaudible) using the gyms doing weights?---Testosterone is a naturally occurring chemical that you

can get replacement therapy of when you reach a certain age. Your testosterone levels are decreased.

Is that what you are talking about?---I think he is talking about testosterone replacement therapy.

You are talking about when you get to a certain age you can get your testosterone replaced legally. Is that what you are talking about with Mitch there?---Well you can get it at any time.

No, just answer the question?---His - - -

(Inaudible) that your answer is just complete nonsense. That is not what you are talking about?---It is 100 percent of what – testosterone replacement therapy is - - -

You are not talking about getting your testosterone because of your age?---No. He is saying that he would like to get some old-man testosterone. Which he would be referring to as testosterone replacement therapy which often old men get. If you got it at a young age it would also increase your testosterone temporarily. But then it would lower your testosterone production overall.

Is that right?---I would imagine he is just talking shit again.

Pretty well-informed talking shit though, isn't it?---It's good to be well-informed.

So two minutes earlier you are saying you are going to get your steroids off your mate. He says he wants some old-man testosterone. And you say this has got nothing to do with you buying, using, passing on steroids. Is that right?---I am saying we are talking shit.

Then can you got to text 381? This is 4 August. It is you to the same person again CV. "Plus I am picking up some tablet treats. I will have a heap for you. Kiss, hug, kiss, hug. Kiss, hug, kiss, hug?"---Yes.

What are you talking about there?---I can't recall what I am talking about there.

What about this (inaudible) you are going to pick up some tablet treats. What tablets do you – picking up for your mate that you see there?---Same answer to the same question worded slightly differently just before.

DR DWYER: Can I just raise this issue, Mr Rolfe has – just in fairness to Mr Rolfe, he has got a certificate that covers him for his own drug use. If he is going to make any admissions in relation to supply, the certificate doesn't cover him for that. His lawyers might want to give some consideration to that.

MR ABBOTT: Well, I can't get instructions as to whether it is likely that he might make admissions in relation to supply of drugs. However - - -

THE CORONER: Well, (inaudible) - - -

MR ABBOTT: However, out of an abundance of caution I would ask for a certificate.

THE CORONER: Well, (inaudible) - - -

MR ABBOTT: But without having any instructions.

DR DWYER: It can't be given retrospectively. It has to be given proper thought to before those questions are answered.

THE CORONER: Well, Mr Rolfe understands the issue, I'm sure. And if he is – thinks the question is going to place him in difficulty.

MR ABBOTT: Well, I would suggest your Honour should invite my client because I can't talk to him now. Unless he - - -

THE CORONER: Do you - - -

MR ABBOTT: - - - he can ask for a certificate in relation to any aspect that might be raised which would infer or indicate so that he might be – might have supplied any form of non-prescription drugs.

THE CORONER: Are you asking for a certificate, Mr Rolfe?

THE WITNESS: Yes. I may as well, your Honour.

THE CORONER: Yes. I will grant a certificate.

MR MCMAHON: We are text 381?---Yes.

I am sorry your Honour, I am going later than I anticipated.

THE CORONER: We can – just let me check with the court officer.

All right. We will sit until 5:00 and no later.

MR MCMAHON: If it convenient your Honour, I might finish in a minute and then if I have any time – I don't expect to have any more questions.

THE CORONER: Well, finish what you can do.

MR MCMAHON: Yes.

THE CORONER: And I am happy to sit until 5:00 if that is suitable for you Mr Rolfe, as well.

MR MCMAHON: So text?---Sorry, yes.

Text 389. "Plus I am picking up some tablet treats. And so I will have a heap for you." And the previous text you are talking with the same person about being in Canberra, going to get some more work done on the arms?---Yes.

Presumably that is tattooing?---Yes.

(Inaudible). "But once I get back, I have got nothing else going on and we will get into training hard." So the context is you are going to be training hard. Do you see that?---Yes.

And then in the same minute you send another text, "Plus I am picking up some tablet treat. So I will have a heap for you." So the context is clearly that you are picking up some tablet treats while you are going into the training hard environment? Do you follow?---Yes. There are two separate contexts, but yes.

Okay. Well, let's go more carefully then. At text 388 at 416.31 seconds, you are chatting to him. At the very top of (inaudible) somewhere, I am not interested in that. "And I am cruising down to Canberra for two days off work to get some work done on the arms." That's tattoos?---Yes.

"But once I am back, I got nothing else going on so I will call once back and we will get into training hard, hey." Do you see that?---Yes.

Training hard in that context means physical training?---Yes.

Is it gym training? Potentially?---Potentially.

And then a few seconds later you send another message, "Plus I am picking up some tablet treats and I will have a heap for you?"---Yes.

What are the tablet treats that you are referring to?---I cannot recall.

Can I suggest that you don't want to give the answer because it would be very awkward for you?---You can ask if they are steroids. And I can tell you that steroids are injectable more so than tablets. And I still can't recall what the tablets are.

Are you saying that they are tablets that you picked up from your doctor with a prescription?---I am saying I can't recall what they are.

So you are in a situation where you sometimes pick up tablets which are not from your doctor on prescription?---I can't recall what these are.

Do you recall the occasions of picking up tablets for somebody (inaudible)?---No. I don't know what these tablets – what I'm talking about there.

I've taken you to a number of texts between you concerning what, on the face of it, appear to be steroids?---Yes.

And on the face of it appear to be tablets obtained illegally, such as 389. That's what I'm putting to you. On the face of it, that's what the message suggests, and some of the other messages (inaudible)?---That they - the tablets were picked up illegally? I don't agree with that.

I'm suggesting to you that that's a reasonable way of reading these text messages. Not in isolation, but collectively?---I'm saying there's nothing really to suggest that it's legal or like, illegal or legal. But if you read it that way that's up to you.

So in addition to using cannabis products during 2019 - you agree that you were?---Yes.

But you say that you weren't using any steroids in 2019?---Yes.

And you don't know what these tablet treats that are referred to at section 389 refer to?---Yes.

What other illegal drugs were you using during 2019 apart from cannabis?---None.

When you were - on 9 November 2019, based on your previous answer, you would say that you were not using any illegal drugs on that day?---Correct.

When you - after the shooting incident, were you tested for drugs by the police?---No. I was not.

Did someone ask you whether they could test your for drugs?---Not that I can recall.

Your Honour, (Inaudible) I might just leave it there.

THE CORONER: Sure. Are we starting at 9:30 in the morning?

THE ASSOCIATE: Yes.

THE CORONER: Yes. We'll adjourn until 9:30 tomorrow.

WITNESS WITHDREW

ADJOURNED