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NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

A 51 of 2019

AN INQUEST INTO THE DEATH

OF KUMANJAYI WALKER

ON 9 NOVEMBER 2019

AT YUENDUMU POLICE STATION

JUDGE ARMITAGE, Coroner

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 28 MAY 2024

(Continued from 27/05/2024)

Transcribed by:  
EPIQ

THE CORONER: Yes.

ZACHARY ROLFE, on former oath:

DR DWYER: Your Honour, we are just missing one of the leading (inaudible). I wondered if we might just make some inquiries.

THE CORONER: Dr Freckelton.

DR FRECKELTON: Thank you, your Honour. I've got a - a supplementary submission in relation to the Carey Joy statement from yesterday. It's a matter which I should have raised with you yesterday, and it relates to just the one paragraph. It's number 58. Does your Honour have that available to you?

THE CORONER: Yes.

DR FRECKELTON: Principal focus was on the submissions, but the whole document should be - not be incorporated in the file; and we made submissions to you about par 57

On further reflection, having reflected on the attachment C which is not being incorporated on the brief, it seems to us that par 58 falls into the same category as par 57. It names a police officer. It refers to some salacious material. In our respectful submission, it falls squarely within the category of scandalous material.

It has no potential at all, we say with confidence, to advance your Honour's deliberations. And given that the material has been provided now, what we ask for is a non-publication order in relation to the one paragraph.

THE CORONER: What I'm going to do, Dr Freckelton, is make an interim non-publication order over par 58 and everybody has heard that application and everyone will have an opportunity to respond in writing. And if there are any, if it needs to be ventilated further, I will come back to.

DR FRECKELTON: Thank you very much, your Honour.

THE CORONER: So an interim non-publication order in relation to par 58 of Mr Joy's statement in the same terms as the other non-publication already in relation to par 57. Thank you. Yes.

A PERSON UNKNOWN: I have nothing further, your Honour.

HER HONOUR: Thank you. I'm not sure who is proposing or who is left to ask questions.

DR DWYER: I think it is Dr Freckelton I think at the end. I'll just check with Ms Ozolins.

DR FRECKELTON: I think Mr Boe wishes to ask some questions arising from the notes.

DR DWYER: He's withdrawn the application.

DR FRECKELTON: Has he? I see, all right. I wonder if I might have the - - -

XXN BY DR FRECKELTON KC:

DR FRECKELTON: Mr Rolfe, I just have a few questions for you on a handful of topics. Just getting into perspective your career with the Northern Territory Police Force. Would I be right in saying that you joined the police force as a recruit on 30 May 2016?---Yes, I believe so.

And you were sworn in as a constable in early December 2016?---I believe so.

And your service in the force was, aside from your training, I think wholly in Alice Springs. Is that right?---Yes, apart from minor deployments elsewhere.

Yes. And so you were a member of the Northern Territory Police Force between I think it was 7 December 2016 and the time when you were suspended on 13 November 2019 as a result of the homicide charges?---Yes, but I imagine I was still a member until I was actually fired.

Absolutely, you were. But in terms of active service, that was suspended on 13 November 2019?---Yes.

And you were found not guilty of course of the charges on 11 March 2022?---Yes.

And I'm not going to ask you any questions about your health, but you returned to service just for a short period of about three weeks in July/August 2022?---Yes.

And you were of the rank of constable in the police force. Is that right?---Yes.

Did you serve in any higher capacity at any stage?---Rank-wise?

Yes?---No.

So your service as a sworn member was for about three years?---Correct.

Nonetheless, you have expressed a variety of views about policing in the Northern Territory, especially to the media. Is that right?---Correct.

And in particular, you've expressed a number of views about the competence of persons of higher rank than you achieved within the Northern Territory Police Force?---Correct.

There has been quite a bit of evidence about the episode when you rescued people from flood waters. Do you recall giving evidence about that?---Yes.

You wrote a letter to the Northern Territory Independent, that's exhibit 26, and I don't think it needs to be put up on the screen, but you said, "In a different state, I would have got a medal for it and none of you would have ever known my name." Do you remember writing that?---Yes.

Your view in short – I beg your pardon, I've mischaracterised that. That was about the discharge of your firearm in relation to Kumanjaya Walker?---Yes.

Yes. But your view at any rate in relation to that was that you were wholly innocent of any wrongdoing at all in respect of Kumanjaya Walker?---Correct.

And had your actions been properly characterised and recognised, not only would you not have been charged with any offences, but you would have received a medal?---Yes, potentially.

So in short, you have expressed the view on many occasions and in many forums that the murder charge should never have been brought against you and that a variety of senior officers are responsible for, in essence, a malicious prosecution?---Yes.

And is it fair to say that you remain to this day resentful of a variety of persons who have been involved in the bringing of those charges and the giving of evidence against you?---It's hard to say with my feelings. I don't feel any anger at all. I'm just bored of the situation.

All right. What do you feel?---Mainly I'm bored of the situation.

You're "bored"?---Of the situation continuing. I would like to go – like for it to finalise.

Okay. So if we summarised your feelings about the experience of the tragic episode and you haven't been charged with murder, and the Coronial inquiry, what you're saying is you don't feel anger, but you're bored with the situation continuing for a lengthy period?---Correct. I'm ready to move on.

Okay. Do you appreciate that it might be hard for some of the members of the Yuendumu Community and Kumanjaya Walker's family in particular to be able to move on?---Yes.

Do you have any recognition of the fact that it may be experienced as hurtful and distressing to hear you say that your main emotion is one of boredom?---That is in regard to the processes that we're doing.

The investigation of the circumstances surrounding Kumanjaya Walker's death. That's what this inquest is?---Yes, it is.

In terms of the role of those who brought charges against you and who have expressed views that are adverse about your discharge of your duties, do you accept that they've undertaken those functions in performance of their duties as sworn officers?---I accept they say that.

But you don't accept that that's the context in which they have discharged their duties?---Potentially, yes.

Nonetheless, your view is that you have been persecuted, completely without warrant?---Yes.

Okay. Are you a man who is able to learn from feedback or from experience?---Yes.

When you were a member of the Northern Territory Police Force, did you have respect for your superiors?---If they earned respect.

Okay. So from your perspective, although it was a hierarchical and is a hierarchical organisation, it was incumbent upon your superiors to earn your respect, otherwise they didn't receive it?---I would respect their rank. The person carrying the rank would need to earn the respect, yes.

I am going to ask that the aide-memoire in relation to the messages be put up on the screen.

And I am just going to show you a handful of those and only ask you a very few questions about them. I am going to read you some of the messages and show you others if it becomes necessary. We are going to – I am going to try to avoid showing them to you for the moment because names are attached to the send list and recipients of some of the messages. We may well be able to avoid it. But I will refer to them specifically so everyone at the Bar table can have regard to them. And I think you – do you have the folder with the messages (inaudible) – good. All right. Just turn to 11 if you will then, please. This is an exchange between you and a friend of yours?---Yes.

Do you say there referring – I think to Alice Springs police station, "This station is a mess and bosses don't have a clue?"---Yes.

And that was your view, wasn't it? That the bosses at Alice Springs amongst other places didn't have a clue?---It was a generalised view that some didn't have a clue, yes.

Okay. I would like you to go to message 82 now, please. And this is a sequence of messages between you and Mitch Hansen?---Yes.

You can see the number 81. We don't need to refer to that. But that was where the exchange started. Do you see that?---Yes.

In 82 you said something about a child with a – and two persons of interest with a history of stealing cars. You say, “I sent the details to the bosses and got no reply.” Do you see that?---Yes.

And then Mr Hansen says, “Ha ha. Useless, hey?” Your response, “Yes, man.” Again that was your experience and your view about the bosses. Is that right?---In that particular instance we were trying to locate two POIs who had I believe stolen a ute with a loaded rifle in the back.

Yes?---So in regard to that, certain incidents, and us trying to assist with that investigation, yes.

Okay. And your view was that in relation to the bosses what they did much of the time was to create red tape to no useful outcome? Have a look at message 163. Again this is you communicating with a friend of yours?---Yes.

So does that pretty much sum up an opinion that you held at the time in relation to bosses creating red tape and also being lazy?---Yes. A generalised view, yes.

And in relation to the policies formulated by and implemented by those superior to you. You didn't have a lot of respect for those, did you?---For the policies?

Yes?---That would have been a specific instance. There is a lot of policies that I would and some that I wouldn't. Yes.

I see. What about the policies of particularly valuing police who had spent time in the bush?---Where is that policy written?

Well, whether or not it is written. If it was a policy of particularly valuing time spent remotely by Northern Territory police, is that something you respected?

MR ABBOTT: I object.

THE CORONER: Maybe it is the use of the word of the policy that's the problem.

DR FRECKELTON: Yes. Yes.

MR ABBOTT: It doesn't exist. And my learned friend can't produce then in my submission - - -

THE CORONER: Well, it depends whether we are talking about a written policy or an understanding attitude. And that is why I think the issue is with the word policy.

DR FRECKELTON: I will come to it another way.

Would you mind having a look at message 427, please? We will start with 426?---Yes.

This was an exchange between you and another officer in which you said about the TRG spot which you – and you wanted to be a member of the TRG, didn't you?---Yes.

You said, "They are prioritising applicants with bush time. All other applicants – three others have bush time. But I have got to put the paperwork in." You are saying there I am being relegated down the priority list because I haven't had bush time. Is that fair?---Yes. In that application, I believe a desired criteria was bush time.

Right. And your colleague says, "How does bush time put your application ahead? It doesn't. Just an arbitrary decision." You respond, "I know, hey. They are fucking idiots. Prioritising lads that go out bush so they can be lazy and do no work." Is that what you said?---Yes.

And that was pretty much your view, wasn't it? That lads who go out bush are lazy and don't really put their back into what they should be doing?---Again, that was a generalised view. Not of all bush stations in Alice Springs. The bush stations closer to the southern desert region were often less busy than the Alice Springs station.

Right. But your view was that those who committed their time and service out bush were shall we say, often lazy and didn't contribute much?---It is a generalised view.

It is?---I wouldn't say that is a view I hold about all bush stations at all.

No?---Not at all.

But a lot of them?---In my experience – again, my experience.

Yes?---But definitely with IRT I was only ever called out to bush stations to assist bush police officers that are - sometimes were unable to do the job due to potential laziness.

Right?---So I was called to assist in those instances. So that is what I saw.

Okay. So, is this right? When you were called out to bush stations, by the time you had been doing it for a while your mindset was well I am here because another lot of those lazy bush officers aren't doing their work and so I have got to come in and do what they should be doing?---Not entirely. But - - -

Right?--- - - - sometimes, yes. For example, one time I drove six hours to knock on a door and run 200 metres to arrest an offender.

Right?---In that case, that could have been done by others who are there.

So the – a – should we put it this way, a significant cohort of people, rural police officers working out bush go out there for pretty much the easy life. And when it

comes to the hard yards, people like you and the IRT had to be called in to do the more demanding work?---Sometimes. Again, it is a generalised view.

Yes?---Talking rubbish. Not too much weight should be put on these texts.

Okay. Have a look at text 648, please. This was in November of 2019. This is you communicating with Mr Kirstenfeldt. And you say, "I am waiting for dumb bosses to come see me?"---Yes.

Okay. I suggest to you that the picture that emerges from these texts is of an officer who hasn't really come to terms with the fact that a police force is a disciplined rank-based organisation?---I disagree.

And that you were an officer who had scant respect for, first of all, those who were senior to you. What do you say about that?---I had respect for lots who were senior to me and not much respect for some who were.

And you had little respect for many bush police?---I would say I had little respect for some bush police. I had little respect for some city police.

I referred earlier, wrongly, to the situation in relation to the flood where you jumped in a river and saved some tourists who were stranded in a car. Is that right?---Yeah, along those lines.

You didn't receive a bravery commendation from the Northern Territory Police Force for that did you?---No I did not.

I'll just read you something from an answer that you gave to questions from the counsel assisting at transcript 5159, "I could be wrong but I think we're the only police officers in Australia who could have received a bravery red medal, received a national bravery medal (inaudible) on duty without receiving any commendation from their police force." This was another example of you being frustrated and feeling that you didn't get proper recognition for your work in the force wasn't it?---That's just an observation.

Can I ask you about your compliance with body-worn videos, you having your camera switched on. And I'm just going to summarise the many instances. You've been asked a lot of questions by others about the individual occasions. Do you remember the Bojangles episode?---Which one, sorry?

Where there was a fight outside Bojangles. I can give you more information about it if that is helpful?---I just need a tiny little bit, yeah. Lots of fights outside Bojangles.

It was an incident where a male decamped on foot. You chased him and subsequently tackled him and the officers and the male fell to the ground. Do you remember that?---Yes. I believe we're talking about, we're on the same page.



You were with Mr McCormack when you dealt with that incident. Does that help?---I think so. Was this the incident mentioned in the tendency bundle?

It's one of the matters that we've looked at?---Yes.

It was on 2 April 2017?---Yes.

And on that occasion you didn't activate your body-worn video did you?---No, I believe I did not.

So that's April 2017. January 2018 was the Malcom Ryder incident. Do you remember that one?---Yes.

You didn't activate your body-worn video then did you?---Correct.

Now, shortly after that, ten days later, you were spoken to by Sergeant Gall about not activating your body-worn video when you should have?---Yes I accept that.

And then just a little bit later on 5 March 2018 you got an email from Superintendent Vickery remanding you of the need to activate your body-worn video. Is that right?---I would accept that.

And then the next month, again, you were remanded by Superintendent Vickery about the need to make sure your body-worn video was activated and working?---I have no recollection but happy to accept that.

Then in October 2018 I suggest to you, you got remedial advice arising from the Malcolm Ryder incident in relation to not having activated your body-worn video?---From Sergeant Gall?

I think that's right?---I'd accept that.

I'll check that for you. Now, on 1 April 2019 there was an incident involving a person we've described here as Master CW?---Yes.

Described him that way just so we know whom we're talking about?---Yes.

And that was an arrest after a foot chase where CW sustained some injuries to his head and nose. Do you recall that?---Yes.

Now, once again, you didn't activate your body-worn video. Is that right?---Yes, I turned it off.

Same month, 20 April, there was an incident involving a Luke Madrill where there were allegations ultimately about him sustaining an injury to his knee at the time of the arrest when running up the hill. Do you remember that incident?---Yes.

And, again, your body-worn video wasn't operating?---Yes.

Next one just a couple of months later, 28 June 2019, there was an incident involving a person called Antonio Woods where what said was that the person tripped and fell and he said that he was assaulted. Do you remember that?---I'm having a bit of a blank but I know we've talked about this one before.

That's okay. You were with Mr Kirstenfeldt, Mr Hansen, Mr Kirby?---Yes, at the back of Walpiri.

The only issue in relation to that that I want to raise with you is that once again you didn't activate your body-worn video did you?---Yeah, I believe I did not.

So I suggest to you that a picture emerges when one looks at these various body-worn video incidents of your not activating your video, and you were obliged to were you not. That's the expectation?---Yes.

THE CORONER: Dr Freckelton, I'm just advising you or asking you to stop as the livestream has stopped working.

DR FRECKELTON: Thank you. I'm in your hands, your Honour. If you would like a short break while we try to get it functioning again that's not a problem.

THE CORONER: We'll just take a couple of minutes. I won't go off the Bench if there's any difficulty in proceeding in any event.

DR FRECKELTON: Thank you.

HER HONOUR: Given that we've probably used up those two minutes and doesn't seem like it's resolved I'm just going to go off the Bench for five minutes. We have an alternative recording arrangement which we will put in place. It may be that it's resolved by the end but we'll bring that down and have that in place if there are any future problems. It will just be a short adjournment.

ADJOURNED

## RESUMED

HER HONOUR: Dr Freckelton, just I think we'll start from Antonio Woods.

DR FRECKELTON: Thank you, your Honour.

ZACHARY ROLFE:

DR FRECKELTON: Mr Rolfe, on 28 June of 2019 there was another occasion in relation to a man by the name of Antonio Woods where you did not activate your body-worn camera, is that right?---Yes.

Now, I said I'd check for you about who provided the remedial advice. In respect of Malcolm Ryder on 4 October of 2018, I suggest to you that you received remedial advice from Acting Senior Sergeant Roach and that was reinforced the next day by Acting Superintendent Furness. Does that ring a bell?---I'd accept it. I just can't recall who - all the names.

At any rate, would you agree that on quite a number of occasions you've failed to activate your body-worn video and received guidance and reminders and advice about those failures?---Yes.

But in spite of those measures, there were still further occasions when you did not activate your body-worn video, for whatever reason?---Correct.

I suggest to you that that is indicative of your having contempt for compliance with your obligations even when reminded of them by officers senior to you in the Northern Territory Police Force?---I disagree.

You've told the tribunal - sorry, you've told the court that you felt wronged by the whole process of the preferring of charges and the Coronial process, is that a fair summary?---Yes.

And that's one of the reasons why you have resorted to utilising the media, as you put it, as a tool?---That was a - for the criminal process, yes.

Well, your usage of the media has not been confined wholly to the criminal process but has extended during the Coronial process as well, has it not?---In regard to the letter I wrote to NT Independent?

That's one example. You've given interviews to The Australian and to Spotlight as well?---That was due to the criminal process.

The interview with The Australian was on 11 March 2022, is that right? That was the day of your being found not guilty. Is that right?---I'm having a mind blank.

It doesn't matter. That's all right. At any rate, you were directed in May of 2022 by Commander Anderson not to contravene the social media policy or the personal use of social media instructions, is that right?---Yes.

And in relation to such matters then Deputy Commissioner of Police Murphy cautioned you in relation to these matters and ordered you to be of good behaviour for two years. Do you recall that?---I accept that, maybe 12 months, or if it was two years, it was two years.

Nonetheless, on 23 February of 2023 you published an open letter in the Northern Territory Independent and also on social media. Do you recall that?---I sent to the NT Independent, yes.

And in the course of that you expressed a range of views and aggrivements?---Yes.

And I'm not going to repeat the exact words that you used for - out of respect for Kumanjayi's family but it was in that open letter that you made the assertion that Kumanjayi was a young man with a violent past who engaged in a variety of forms of abuse of young persons?---Yes.

When you did that did you do so aware of the fact that you had been the subject of directions from Commander Anderson and the imposition of the, if you like, good behaviour bond from Deputy Commissioner Murphy?---Yes.

So is it fair to say this was, aside from whatever impact it was going to have on Kumanjayi's family and the community, an open challenge basically to the persons in authority in the Northern Territory Police Force?---In part, yes. There was extreme circumstances. There was other intentions but in part, yes.

And after that a notice of alleged breach of discipline was served three days later and on 4 April you were dismissed from the Northern Territory Police Force on public interest grounds, is that right?---Yes.

And you accept that the reason stated in the dismissal related to, to summarise it, your breach of the directions from Commander Anderston and the order from Deputy Commissioner Murphy?---Yes.

I suggest to you that your use of the media as a tool, as you've put it to Dr Dwyer, is again illustrative of your unpreparedness to comply with orders, directions and guidance from your superiors in the police force by you are able to find reasons and rationalisations to do what you want?---I wouldn't agree with that completely. If I think what I do is the right thing then I will do the right thing.

Okay. So you reflect on your situation including your own feelings of having been hard done by and persecuted and in your mind that legitimises your behaving as you deem appropriate regardless of what you are directed or commanded to do by those superior to you in the police force?---I believe doing the right thing is more important

than following directions given by supervisors in regard to, for example, speaking to the media.

And when you say doing the right thing, you mean doing the right thing in your own interests?---No, I don't.

I'm going to move to a different topic now and I'm going to be very brief about this because you've been asked questions by a number of counsel about the episode three days before your attendance at Yuendumu, the episode involving Smith and Hand, in a confrontation with Kumanjayi is what I'm referring to?---Yes.

You're very familiar with that because you have watched the body-worn-footage from both Smith and Hand on a significant number of occasions, correct?---Yes.

Now without pinning you down to a specific number, and counts have been done, but can you tell her Honour roughly how many occasions you watched it or showed it to people?

THE CORONER: At what point in time?

DR FRECKELTON: Prior to – thank your Honour.

Prior to your arrival and Yuendumu?---I watched it approximately, probably 10 times. I shown it to people with the counts. As I have mentioned before, people used my Axon login.

Yes?---On my computer to watch the body-worn-video when I wasn't watching it.

Okay. Your evidence is that you believe that that is what has inflated the numbers of apparent viewings of the videos?---That is what has inflated the numbers of the views.

At any rate, you sought enough times to form views about the professionalism of the conduct of Smith and Hand. Is that fair?---In conjunction with the job write-up that I had looked at on PROMIS. Yes.

Yes. And as you have put in – as you put it in the spotlight video, your view – the view that you formed was that they responded with a flight freeze reaction?---Yes.

You said in that video, "I don't think any decision was actually made in their brain. They just – they were scared and their bodies took over. Luckily no one got hurt on that day. But they put their lives in Kumanjayi Walker's hands that day. Which is in my view unacceptable." Is that what you said?---I accept that.

And that is still your view?---Yes.

And more particularly, that was your view when you went to Yuendumu and ultimately went into the two houses in search of Kumanjayi?---I – yes.

You have called those two men cowards, haven't you?---Yes.

And to be fair, what you said is, "I don't believe they are cowards for their actions on the night. I believe they are cowards for their actions afterwards." Is that right?---Yes.

I am going to read to you some of what you said in the spotlight video. Just confirm that that is your recollection of what you said.

"From what I have seen, both of them have failed to take personal responsibility for their actions or lack of actions. I didn't see any critical thinking in that incident. And the fact is that because they haven't taken personal responsibility for their lack of conditioning or lack of training, that means they can't improve. So that if they are in a situation again, and if they honestly – if they get themselves killed, that's on them. But if they get another police officer killed or if they allow civilians even worse to be killed, it is unacceptable.

And we have had a situation here where they have really failed in their training and there has been no fix. And you can't fix it if they don't take personal responsibility. So that is why I think they are cowards. Because they haven't. They have tried to morph it to the point where that was a critical decision made to not abide by their training or not to fire their weapons, or not to draw their weapons. And I think it is a lie."

That is what you said, isn't it?---Yes. I said that.

So these are two – would you call them bush police officers?---At the time they were bush police. Yes.

Yes. Who had served in the community for an extended period of time?---I am not sure of their service.

Okay. I suggest to you they knew Kumanjayi. Knew his family. And knew the community?---Okay.

MR ABBOTT: Well, I object to that.

DR FRECKELTON: He has answered.

MR ABBOTT: I think (inaudible) he know what they know.

THE CORONER: Well, we have heard a lot of evidence about - - -

MR ABBOTT: (Inaudible).

THE CORONER: We have heard a lot of evidence from them and others about their time in the community, Mr Abbott.

MR ABBOTT: (Inaudible) my client. I suggest (inaudible).

THE CORONER: Sure.

DR FRECKELTON: I will move on.

The decision that those two officers made was not to escalate the situation and to allow Kumanjayi to pass and to flee. Correct?---I don't believe they made a conscious decision.

I see. That was the effect of their actions though. Will you concede that?---(No audible response).

He ran past them. Left the house. Dropped the axe. Went on his way?---Yes.

With an outcome that no one was physically harmed?---Yes.

Would you concede that having knowledge of the – we will call him an offender for this purpose, and of the family, and of the culture of the people of the town, are very useful pieces of information to have to deal with a difficult situation?---Yes.

Would you agree that there were lessons to be learned from that incident on the Wednesday?---Yes.

And that if a further attempt was to made to take Kumanjayi into custody, it was important that those lessons be learnt?---Yes.

And presumably, that is one of the reasons at least why you viewed that video on a significant number of occasions?---Yes.

Did you learn from that video that Kumanjayi had the potential to be volatile and impulsive?---Yes.

This is an easy one. He obviously didn't want to be taken into custody. And if given the chance, would run away?---Yes.

He could be dangerous at close quarters?---Yes.

He could if he had the opportunity have resort to a sharp weapon?---Yes.

And it could be problematic to confine him within a small area. Especially if the lighting was not too good?---I didn't take that lesson.

Okay?---It is a necessary part of arresting anyone to confine them at some point.

Yes. Absolutely it is. But of course there are different circumstances in which it can be done. And on the Wednesday incident it was in poor lighting inside a house, late in the afternoon?---I accept that. I am not – unable to control the lighting arrangements inside different houses.

Of course you are. But you can control when an attempt is made to take the person into custody. Having regard to the location and the lighting at the time?---Sometimes you can. Yes.

Yes. So, as a result of viewing the body-worn-footage, I suggest to you that the obvious lesson to learn was not to repeat the circumstances in which there was the attempt to take Kumanjaya into custody on the Wednesday evening?---Correct. That is why I – one of the reasons why the 5 am arrest plan would have been wrong, I would say. It would be nearly an exact repeat if he was in a location found then. So I agree with you. Yes.

The only difference is that he may well have been in fairly deep sleep at 5:00 in the morning and taken by surprise?---Until you knock on the door of the premises and are given permission to enter the premises which you are required because no one knew exactly where he was known to be. If you did believe on reasonable grounds that he was in those premises and didn't for some reason knock and made a loud entry, then that would potentially wake him up as well. What I saw from the video that you are talking about was that when he was sleeping in – or when he was in a bedroom he had that door locked. So regardless of we – if we were let into the house at 5 am. If we had found the house that he was located at, my lesson is that he would be behind a locked door at which point which we would need to knock on the door and subsequently wake him up.

So you don't identify any advantages really to a 5 am arrest, as against one in the afternoon or evening?---I don't identify any advantages to a 5 am arrest. Especially where his location is not known where he will be at 5 am. If anything, it could be more problematic if the – with the incident on Wednesday heightening his anxiety with the police.

Did you give consideration to the potential for cordoning and containing and requiring him to exit the premises in a peaceful way. Given that there was a dog there and given that there were a number of members, and the potential even to have a local member whom he knew?---Again, I would have loved the local member's support. If we had the number for a cordon containment and if we knew he was in a house. If we knew he was in a house.

Yes?---Of course.

Okay. So, what lesson do you say you put into operation from the Wednesday when you attempted to take Kumanjaya into custody?---Well the fact was as we have said before, I just knew the lesson was that he was a – an offender with the potential of violence. Potentially using - - -



Yes?--- - - - edged weapons. Unfortunately, you are not allowed to utilise that lesson in every situation. I am not allowed to confine every person that I think is a potential suspect. I am not allowed to physically restrain them until I can confirm whether they are or are not an offender. Unless I believe they are that offender, otherwise that would be assault. So, unfortunately, I can't put every lesson into plan and do so.

So in terms of implementation of the lessons from the Wednesday, that is your best answer, is it?---Yes.

We can do this very quickly. The process no doubt of being arrested, charged, and awaiting trial was a traumatic one for you?---Yes.

Were you assigned a person by the name of Commander John Atkin to be a liaison person with you?---Yes.

And you had some contact with him. I am not going to ask you the details?---Yes.

Were you assigned a senior psychologist by the name of Chantelle Barker. Also to provide you with some support? Once more I am not going to ask you details of any interactions that were had with her?---Yes. We basically stopped talking after she made me aware that the police were attempting to seize the notes she had made during our talks. So, those talks were no longer being held I guess privately.

Did you have – receive support and assistance from (inaudible) at Alice Springs?--- We talked on occasions, perhaps. I think the – what was that (inaudible) name?

Were you offered a – you wanted to continue to engage and exercise. You are an active man, are you not?

THE CORONER: Sorry, you just missed a question - - -

THE WITNESS: Yes.

THE CORONER: - - - from Mr Rolfe.

DR FRECKELTON: Which one sorry. I didn't - - -

THE CORONER: He was wondering who the name of the Padre. He couldn't quite remember - - -

DR FRECKELTON: Yes.

THE CORONER: - - - about the assistance, I don't think.

DR FRECKELTON: I will find out for you. I have forgotten his name as well which I shouldn't have done?---Yes.

Because he's very often at court.

DR DWYER: Jeff.

DR FRECKELTON: There he is. Jeff. Yes?---I think there was a – I think there was another Padre at the time that was - - -

There was another one, was there?---Yes.

Okay. Okay. You had some contact with that Padre as well, did you?---I didn't. A Padre may have contacted my family. May have. I don't believe – did I talk to a Padre in that time?

Were you offered a membership of a swimming pool?---No. I don't believe so.

During his time (inaudible). You don't recall?---In Canberra?

No, here?---Up here?

In Alice Springs. I beg your pardon, in Darwin. My fault?---A membership at a swimming pool?

Yes?---I don't - - -

And I – my instructions are you declined it?---I don't - - -

You don't remember?---No. I have no recollection.

Were you given a gym membership?---No.

Right?---I believe what had occurred was I requested a – access to the gym at PMC.

You did. That's right?---So I could use that. And they denied that access. And I believe they stated that they would be willing to pay for a membership at a Brazilian Jiu-Jitsu gym.

Yes. Did you accept?---I don't - - -

Did you take them up on that?---I don't – yes, I don't know anything about a pool.

It's all right?---I may have sent some receipts for the membership to them. Yes.

Well?---But that was when I was back at work for that period, I believe. Well, not at work. But you know what I mean.

In summary, your position after the years of thinking about what occurred is that if presented with the same situation you would do pretty much the same again in endeavouring to take Kumanjayi into custody. Is that right?---Well, hindsight is 20/20. If I was faced with the same situation when I am in that room?

No, generally. In – on that evening, would you go to the two houses, enter them in the way that you did?---Again, hindsight is 20/20. If I was back in time now, I would not leave a bush station without the bush members present. And I would have my body-worn on for every single conversation I had with every member. In hindsight, that is a big change that I would have. If I was an IRT member posted out bush for deployment, I would refuse to leave the station without a bush member present.

Because the involvement of a bush member in communicating with a person who may be anxious and not wanting to take – be taken into custody is a very significant tactical opportunity, is it not?---It depends on the bush member. The main reason I would do that was – would be to prevent the – obviously, the attack of not doing so. It would be to cover my own arse, as they say.

You don't actually see any advantage in enabling a person who may have some rapport with the individual to be taken into custody, speaking with them and defusing the situation?---Of course. If that bush member is up to that task. There are a number of – just because someone works out bush doesn't mean they are necessarily a good police officer or a bad police officer. But it's – again, not every bush police officer is a unicorn that can solve every situation like you are saying.

You knew on this occasion that there was an officer who was going to be available the next morning, did you not?---Who was that, sorry?

Alefaio?---Yes. Again, as per my evidence previously. We were told that he was not up to assist with the arrest.

But he could be present, he could communicate for instance during a cordoning and containing phase of the arrest process?---My belief as per my evidence is – and as per one of his statements that he has made was that he was under the belief as well that he was to stay at the station.

That could have been something that you discussed at the meeting before going out in search of Kumanjayi?---Correct. As per my previous evidence, I requested a bush member – any of the bush members present to come with us. And that was denied.

It was the proposed apprehension was to be the next morning, at which time a bush member would be available?---He was available then. He was in the muster room. I was looking at him. He was doing nothing. And again, as per my previous evidence, there was discussions that were had that changed the plan. With Sergeant Frost's blessing.

I am not going to go over that with you again. You have given your evidence about that. But at any rate, you accept that the presence of a bush officer who knows the person to be taken into custody, if they are competent can be a significant advantage in apprehending the individual?---Yes.

All right. Now just finally, you have had the opportunity to think about your own conduct. And you have said what you have learnt in that regard. And you have had the opportunity to reflect upon the suffering of Kumanjayi's family and of the community. You have heard many of the things that have been said by representatives of that community. Is there anything that you want to communicate to them? Anything further?---I would make a suggestion that I believe that it would be – I definitely feel for them and I am sorry for the trauma that they have gone through. And I am sorry for the trauma that has been multiplied over the few years. I feel very badly for them. And as I believe that they will be unable to move forward until – if I was in their shoes, I would be unable to move forward until certain things are clarified, for example. One of those being because there is two things that are occurring in regard to me, my situation, that I could not come to terms with if I was a member of the family. One is that the message I believe they have received is that I have done the wrong thing in that room and I have unlawfully killed Kumanjayi. That is Andrew Barram, the use of force expert's evidence which still seems to be supported by the police force. At the same time the police have finalised the investigation into that shooting with an email to me of remedial guidance. If I was a member of the community, I could never move forward with that. Because those two facts cannot coexist. So I believe it's – it must be horrible for them. Until one of those is established as the true – the truth, then they would be unable to move forward. So unless the police say one of those has to be wrong. If I have unlawfully killed Kumanjayi Walker yet I have received an email of remedial guidance, that is not just. If I did not unlawfully kill Kumanjayi Walker, then the police must say Andrew Barram was wrong and we are sorry for that. Or, somehow tell them that they believe that I did and that an email is the response that I got. Until that is addressed, I don't think the family can move forward at all and I don't think I can do anything about that. If the – but I can see how they would be stuck in this constant turmoil and maybe magnified trauma. Until that at least is taken responsibility. And then there was an issue – there will be an issue between the family and the police, and how to come to terms with that, with that issue.

That concludes my questions. Thank you.

THE CORONER: Yes.

(Inaudible).

A PERSON UNKNOWN: (Inaudible).

THE CORONER: I think that the next person to ask the witness – ask questions of this witness is his own counsel.

Yes.

MR BOULTEN SC: But before that happens. The transcript only captures a certain amount of what goes on in court. But for the record, after the witness gave that answer, he turned to the back of the court and nodded sagely to somebody in the back of the court. As if to say, "There it is."

MR ABBOTT: I object. I object to - - -

MR BOULTEN: That's what happened.

MR ABBOTT: Well – but I (inaudible) - - -

THE CORONER: Well - - -

MR BOULTEN: Shouldn't I say that?

MR ABBOTT: Interpretation - - - -

MR BOULTEN: Isn't that right?

MR ABBOTT: - - - is being placed upon my client. (Inaudible).

THE CORONER: All right.

MR BOULTEN: Well, he did.

THE CORONER: Well, we have heard the description of – I was looking down at my notes. I didn't see it, Mr Abbott. But we have got a description on the record of what was observed. And then we have - - -

MR ABBOTT: What he claims was observed - - -

THE CORONER: And then we have - - -

MR ABBOTT: Your Honour.

THE CORONER: And – well, I accept that Mr Boulten saw an action which he has described. Whether or not his attribution of it is correct is – I accept that is an attribution and that it is not part of the description.

MR ABBOTT: Well, I protest at the description – of Mr Boulten's description (inaudible) camera.

DR DWYER: That's right. The livestream will be able to assist in that case.

MR ABBOTT: Yes. I would have thought the livestream (inaudible) - - -

THE CORONER: Well, I don't know that - the livestream isn't recorded. There are a large number of people no doubt watching on the livestream. I won't have an opportunity because it is not saved as I understand it.

DR DWYER: It is saved, your Honour.

THE CORONER: It is saved. Okay.

MR ABBOTT: All right. Thank your Honour. (Inaudible).

THE CORONER: All right.

Yes. Mr Abbott.

MR ABBOTT: Yes – yes, your Honour. I say that my learned friend (inaudible) after all.

THE CORONER: No, Mr Abbott.

DR DWYER: It doesn't work like that.

MR ABBOTT: Well, (inaudible) - - -

THE CORONER: We are going through all the parties. It is your turn next. There may be some things arising that counsel assisting wishes to address. And we will take the usual processes we have done with all other witnesses save for potentially some institutional witnesses. And Mr Rolfe is not one of those.

MR ABBOTT: Well, your Honour, I thought re-examination time to – for documenting the (inaudible) after all the parties wish (inaudible) or examine or cross-examine. That I would then have the opportunity based on all the testing that has been put to my client in the re-examine format (inaudible).

THE CORONER: Well, you may examine him now. Counsel assisting will have an opportunity to deal with matters arising. And then if you have any difficulties with anything that is dealt with at that time, I can hear from you further.

MR ABBOTT: I expect I will. (Inaudible) counsel assisting. (Inaudible) examination of my client. Which (inaudible), my learned friend argued to (inaudible) my client. (Inaudible) my client – what my client said.

THE CORONER: There is no – nothing can be attributed to the manner in which a question is – have been asked in these proceedings in spite of those statements. Questions have been asked in order to elicit information to assist the inquest at arriving at all the available evidence. And hopefully moving forward to an identification as best is as is able of determining the truth of certain matters.

MR ABBOTT: Well I object to your Honour's ruling. I obviously accept it.

THE CORONER: Thank you.

Are you ready to proceed?

MR ABBOTT: (Inaudible). My client (inaudible). Does your Honour (inaudible) morning break?

THE CORONER: Absolutely. We can take the morning tea adjournment. Until quarter past 11:00. You have got 20 minutes, Mr Abbott.

ADJOURNED

## RESUMED

THE CORONER: Mr Abbott.

MR ABBOTT: Yes. I will be short, your Honour.

ZACHARY ROLFE:

REXN BY MR ABBOTT KX:

MR ABBOTT: Mr Rolfe, I want to ask you about some commendations that you have received during the two year – during the three years that you worked at Alice Springs in your role as a member of the Northern - - -

THE CORONER: Just – we will just take a minute to let everyone come inside.

MR ABBOTT: In your role as a member of the Northern Territory police force. I will deal with the most recent in time first. It is on the brief as document 3.173. And it is a commendation that you received you know in terms of an email on 8 September 2019, two months before the incident?---Yes - - -

Of which this inquest has been dealing with. It is a commendation from Dr Petra Niclason – Niclasen, N-I-C-L-A-S-E-N. The director of the Central Australian Retrieval Service. And it is written to, “Dear Brad.” And the email makes it clear that it is to Bradley Currie. Who was Bradley Currie at that time?---I believe he was the commander of Alice Springs station.

It says:

“Dear Brad, I wanted to send a thank you through to the local police and in particular mention Zach Rolfe for going above and beyond the other night when there was an extremely distressed 14-year-old boy in the emergency department that I accidentally became involved with. I have CC'd the doctor in charge that night, consultant Dr Anna Fairburn who was similarly impressed. This boy was very distressed and was intermittently self-harming and Zach took it upon himself to step in and help us. He was very non-confrontational, calm, and gentle. He then was able to help locate family and ensure a safe discharge location. Apparently, the night before Zach had been similarly helpful and many staff in the emergency department were telling me how helpful he had been.”

Do you recall when you received that commendation?---I recall that incident. Yes.

Was the commendation in fact sent to you?---I don't believe I received the – that email through the police force. No.

Right. Did you – were you – did the – did Mr Currie for example, say anything to you about this incident?---Not that I can recall.



And when did you first become aware of this commendation letter?---Through a mutual friend who later knew that – the woman who sent that email.

Yes?---Who made me aware that there had been an email sent.

Thank you. Going backwards in time. I now want to refer to a commendation that mentions on – it's – refers – it was sent 31 December 2018. And the letter was thereafter. It is document 3.172. And it is from Lee Bauwens to Bradley Currie. Subject, Borrooloola Police Station. And it refers to the IRT having done a great job at Borrooloola arresting escaped custody noble. Do you remember that episode?---Yes. I do.

Yes. And what was the great job that you had done?---I believe in that incident an offender had actually escaped custody out of the police station watchhouse - - -

Yes?--- - - - in Borrooloola. We attended and as IRT communicated with the community and worked with the local police and the community in order to locate and arrest that offender.

Thank you. The third document by way of commendation for the work that you did is on the Coronial brief as 3.171. And it is an email sent on 28 December 2018 to a number of people including you. And it is from Tanya Mace. Tanya Mace is described – describes herself in this email as the acting superintendent of Tennant Creek and Barkly Division of the Northern Territory Police. That's your understanding?---Yes.

Yes. It deals – it says:

“Good morning, team. I would like to take this opportunity to thank you all personally for your hard work and dedication over the past couple of days which have been rough by anyone's standard. First, you had to deal with the unlawful entries of both the Heartbreak Hotel and most significantly the Borrooloola police station on 22 December. You were then confronted with the aggravated assault of a young man from the community who succumbed to his injuries on Wednesday 26 December. Then to compound matters, at approximately 22:05 hours on Wednesday 26 December, one of the prisoners you remanded in custody escaped as he was being provided by – for a cup of tea.”

And then the – it refers to recapturing the offender which I think is in the other commendation I just referred to?---Yes.

And the commendation concludes:

“Despite having very little respite, you have without hesitation stood together side by side to investigate these offenses, recaptured the escaped prisoner, produced prosecution files and risk assessments and transport, and

(inaudible) prisoner watch, all while continuing to manage day to day running of the community. This is what policing, especially policing in the bush is all about. Standing together with your colleagues, your mates, to get the job done. Pushing through those impossible barriers. Pushing through the fatigue that very few would understand. I have been there and so have intimate knowledge of what it takes to be a bush cop. Which makes me appreciate all your hard work and dedication all the more. You should all be extremely proud of what you have achieved over the past days. Thank you.”

Do you remember receiving that commendation?---Yes. And that is in regard to working up north in a community where IRT worked regularly with the local police there out bush. And worked in a way that we try to work in all communities where we worked in conjunction with the local police. And basically, everything we did was morphed with them, and that we worked together rather than being a separate entity. (Inaudible) - - -

(Inaudible) bush police that we have heard so much about from Dr Freckelton?---Exactly. Yes.

Yes. I tender these three documents.

THE CORONER: They are already part of the brief, Mr Abbott.

MR ABBOTT: Thank you.

Could I just ask you a few questions about what I compendiously refer to as the Ryder incident?---Yes.

You gave evidence at page 5264 in answer to a question by my learned friend Dr Dwyer, who was asking you about this incident. You gave a long answer. I won't read it all out. It is about your view of his Honour, Judge (sic) Borchers. But you concluded by saying, “I also knew that he was wrong” – this is reference to his written decision that you are being asked about.

“I also knew that he was wrong about what had occurred. We had a junior – I just had a fairly junior prosecutor. A particular witness wasn't called that would have assisted us. And the defense lawyer was very good at his job.”

Who was the particular witness who would have assisted us that you are referring to?---I believe it was Cam Chatterton.

I have a copy of Cameron Chatterton's statement, his statutory declaration dated 28 March 2018. Which is document 3.110. Have you seen that statement, that statutory declaration?---In the past. Yes.

In the past. Not recently?---Not recently.

No. I won't - it's – and on the basis that he was the witness who would have assisted the case. Do you recall what he was – what he attested to in his statutory declaration?---I believe he corroborated the rest of our evidence. And he – I informed him what had occurred out the front of the location and he witnessed a slight injury to my face.

Yes. Yes. Yes, it was put to you by my learned friend counsel assisting at page 5275 of the transcript that in a – I will summarise it. That Ms Campagnaro had reported that you had told her that you got a detective to scratch your face shortly after the Ryder incident. And that was the result of the injury to your face. Do you remember being questioned about that aspect by my learned friend?---Yes.

And you denied that that was so?---Correct.

And in fact, did you have an injury to your face as a result of Mr Ryder's assault on you?---Yes. A slight one.

Yes. And could I read out to you what Mr Cameron Chatterton says at par 13 of his statutory declaration?

“Rolfe came to where 669 was parked a short time later. He stated that the second male had punched him. I observed that he had a red mark on his forehead where he had been struck.”

What is 669?---669 is one of the police vehicles.

Okay. And is it correct that you stated to Cameron Chatterton that the second male, namely Mr Ryder, had punched you?---Yes. I would accept that.

Yes. And is it correct – well, is his observation correct that you had a red mark on your forehead where you had been struck by Mr Ryder?---Yes.

Yes. And I –

By the way, your Honour. This statutory declaration is dated 28 March 2018.

THE CORONER: Thank you.

MR ABBOTT: Since it is on the brief, I need not tender it.

THE CORONER: Yes.

MR ABBOTT: Could I just ask you a couple of questions about your attitude which has been the subject of many questions from other counsel – other learned counsels in this matter? There were two aspects really. It has been put to you that your actions have been motivated by some form of racism or by race. What do you say to that suggestion?---I disagree with that completely.

Can I then put you compendiously? The use of force incidents that have been put to you, I think the suggestions all in respect to each of them has been, that each of them have been your actions in the use of force have somehow been motivated by race. What do you say to that?---Yes. There has been zero racial motivation at all.

And in particular it has been put to you that your actions on 9 November 2019 resulting in the death of Kumanjayi Walker, they were somehow motivated by race and your attitude to race and the fact that Kumanjayi was an Aboriginal person. What do you say to that?---Again, his race played no part in my motivation or what had occurred that night.

I want to ask you a question about your training. You were given some evidence about the training that you received in the Northern Territory police force. Was it extensive in some areas?---In some areas, yes.

In particular, in relation to arrests, use of force?---Yes.

And in relation to the use of force incidents that we have heard. And I won't go through them one by one. Is it your evidence that at all times you conducted yourself in accordance with the training that you had received?---Yes.

And in particular, in relation to the incident on 9 November 2019 which resulted in the death of Kumanjayi Walker, is it your evidence that all times you acted in accordance with the training that you had received?---Yes.

By the way, you did have your body-worn-camera video on that night?---Yes. I did.

Yes. Could I just ask you – I want to ask you just one question about 9 November 2019? It might be said by some in submissions or otherwise that the attack on you by the deceased Kumanjayi Walker was not serious in that it was only a pair of scissors. Was any evidence given during your trial about the possible lethal effect of those pair of scissors?---Yes. A few witnesses gave expert testimony on the lethality of those scissors. In particular, an AFP officer, I believe his last name was Simpson(?). He gave evidence that he had conducted a test utilising I believe pork belly, which is used as the main - - -

Because it is the nearest thing to human flesh that is readily available?---Correct.

Yes?---So he had – can – I believe he had placed a police shirt, the same shirt that I was wearing that night over a piece of pork belly. And I believe his evidence was that he used medium force to strike that pork belly in the same motion that Kumanjayi used on the night. And just utilising medium force, the blade penetrated the pork belly the entire way up to the handle. Further than three inches, which is more than enough to strike an artery.

Yes. One last question. My learned friend Dr Freckelton made much in his examination of you of the – of your failure to wear body-worn-video in relation to some of the use of force incidents. And he went through five of them?---Yes.

You were arrested in relation to the incident on 9 November 2019 some days later?---Yes.

Do you remember that arrest?---Yes. I do.

I am sure you do. How many police officers or members of the Northern Territory police force were present at the time when you were actually arrested?---I believe five were.

Could you give us their names, please?---Kirk Pennuto, Mark Malagorski - - -

Well, just – and their ranks if you know them (inaudible)?---I believe they are all detectives. I don't know the particular ranks.

Right?---But I believe it was Kirk Pennuto, I believe Wayne Newell, Mark Malagorski - - -

Slowly, sorry?---Sorry.

Kirk Pennuto?---Kirk Pennuto. Mark Malagorski.

Yes?---Wayne Newell.

Yes?---Izzy – Isobel Cummins – Cummins.

Yes. Yes?---And Andrew Kren.

Right. Were any of them wearing body-worn-video?---Andrew Kren was.

Yes. Did he have it turned on?---No. He did not.

So there is no body-worn-video record by the Northern Territory police of your arrest?---None that I have seen. No.

That you are aware of anyway?---None that I am aware of.

Yes.

No further questions.

THE CORONER: Yes.

DR DWYER: Would your Honour just give me one moment?

THE CORONER: Sure.

DR DWYER: Thank your Honour.

REXN BY DR DWYER:

DR DWYER: Mr Rolfe, since your evidence in February of this year, you have assisted the court to understand where there are pockets of racism in the Northern Territory police. Do you agree with that?---Yes.

You don't suggest that every police officer in the Northern Territory is racist, or has expressed racist views, do you?---No.

But you can see the value can't you, in understanding where racism creeps into the force?---Yes.

In another matter, an incident came to light in an inquest last week where there were police officers in a chat group for a particular strike force. And one officer took a photograph of a semi-naked Aboriginal woman and shared that photograph and racist commentary followed. Were you aware at any time in your period as a police force, aware officers swapped messages in a group like that? Are messages part of a strike force?---I believe potentially while I was in, there was an incident in the water squad where members were disbanded. I – but I have heard of that. I don't know what that was about. But that was a group chat situation.

I see. And did it involve an exchange of racist messages?---I'm not sure.

Did you hear about that while you were a serving officer, or afterwards?---That one I think happened while I was in.

Okay. So there was a problem in the – in the type of messages that were being exchanged between the group?---Yes. A similar situation that was talked about last week in regard to there was a group chat. Something offensive was said. One of the persons brought that to someone else's attention. Then it was then the group of water police as far as I am aware was disbanded. But I - - -

I see?--- - - - don't have further details. I think that happened while I was in the police force.

I see. And do you think that they were the subject of disciplinary action?---I believe – yes, I believe that was part of their being disbanded, et cetera.

Were you every part of a particular strike force when you were an officer in the – with Alice Springs police?---Not a – not one of those ones that are talked about. I might have been utilised an (inaudible) for.

Okay?---But I was not – I don't believe I was seconded to a strike force.

All right. Were you ever part of an i-message chat group or a WhatsApp chat group? Or something set up specifically for a job?---I don't believe so.

Okay. When you got into the witness box in February this year. It was the first time that you went public about racism in the NT police force. Is that fair?---I would accept that. Yes.

Do you say that you were the product of an environment where racism was accepted?---To an extent. I still take responsibility. But I also accept that the environment that I am in can influence my behaviour. But I take responsibility for my part of it.

Okay. Do you – particularly though in circumstances where there are officers at ranks above you like Sergeant, do you think that it – you would – became more liberal in your use of racist terms because it is accepted?---I would accept that. Yes.

You told her Honour on the last occasion about the certificates that were distributed amongst the TRG. When did you first hear about those certificates?---I heard about the awards whilst on the job. The certificates weren't to later.

I see. So the idea of their being a Nguda Award, or I think you referred to it as a Goonarda Award?---Yes.

Some sort of award with a made-up Aboriginal name. Or a made-up name sounding like an Aboriginal word?---Yes.

You heard about when you were a serving officer?---I am not even sure if I knew the Nguda or - - -

I see?--- - - - or where I was wrong. I just knew the – of the award being - - -

(Inaudible)?--- - - - what was referred to as the Coon of the Year Award.

Okay. And you heard about that when you were a serving officer?---Yes.

Who did you learn about that from?---I can't recall. But there were a number of incidences where I have worked with TRG. And spent a lot of time with the TRG members, and have a lot relationships with a number of the TRG members.

Okay. So it was from someone who was either a serving member of the TRG or had been?---I believe so, yes.

And when you were told about the award being for what was termed as the Coon of the Year Award, did you – were you told why it was given out? What sort of behaviour it was given for?---No. I don't believe so.

Can you recall now anything else you were told about it when you were a serving officer?---No. It was extremely vague.

Was the – is it fair to say that the impression given to you at that time was that that was a funny award? Was it part of a humorous, or what was thought of to be a humorous (inaudible)?---Yes. Yes.

When you first thought about did you – try and cast yourself back to your days as a younger officer? Did you think it was funny?---In the situation I was in and the group I was in, I may have thought it was humorous. Yes.

But you have acknowledged frankly that you had become a product of your environment, everybody does to some extent. Is that an example of where your – what you thought was acceptable was influenced by those around you?---Again I would – yes, there would be a small influence. But again, the responsibility lies with me for my part.

On the last occasion, you came to court with 12 pages of notes which are before the court. Sorry, which are – and parties have access to them. They refer to the term Goonarda at page 2. But what you mean by that in our example is the Nguda Award?---I - - -

It's the same thing that was being discussed about, is that right?---Correct. Yes.

On the last occasion, you came to court, I think through your lawyers you provided a copy of one of the certificates. Is that right?---Yes.

Where did that come from?---That came through Carey Joy.

At page 2 of these notes, I am only going to refer to a couple of things from them?---Yes.

But at page 2, you refer to a black card to get out of trouble?---Yes.

Do you know what that – was that something you knew about when you were a serving officer?---That was a particular incident I was referring to.

What is that incident?---I had a conversation with an ACPO in the police station who was dealing with some I guess out of work some personal issues, drama. I believe maybe an ex-partner of his had made a complaint against him. And he was dealing with a number of I guess the pressures of the investigation of that. And he told me in words to the effect of, the – I guess the PSC or the bosses were putting so much pressure on him. Gunning for him for this. And he hated to do it, but he pulled the black card. And immediately the – the black card meaning that he pulled the race card, that's what I took it to mean. And immediately the investigation was dropped.

You have that under your notes under the subheading racism police. Is that something – do you say that is an example of racism that you want to expose when you were giving evidence?---No. Not – again, the notes that I took are just thoughts and ponderings that I made while I was quickly skimming through the transcript.



That is a thought that I had when thinking about racism that was brought up through the transcript.

But you have produced those notes. And you took them into the witness box because you thought that they might prompt you or assist you in giving evidence?---I had them in the witness box just because I hadn't had the chance to give them to my lawyers.

Did – who typed up these notes?---I did.

And there is handwriting on these notes. Whose handwriting is that?---That's mine.

At page 2, there is reference to a Neanderthal dress-up. Do you remember that? Tell me if you want to see a copy of these notes. I would like to see a copy as well - -

MR ABBOTT: Or could he have a copy in front of him? If he is, you know - - -

THE WITNESS: Yes.

DR DWYER: That's what I just suggested.

MR ABBOTT: Yes.

THE WITNESS: And Dr Dwyer, I am so sorry. Because we were in here a fair bit longer. Do you mind if I have a quick bathroom break?

DR DWYER: Not at all?---Sorry, I will be a sec.

THE CORONER: Sorry, I didn't hear that.

DR DWYER: Mr Rolfe requires a bathroom break.

THE CORONER: Sure.

THE WITNESS: Yes. We have been in here a while longer.

THE CORONER: Yes. Sorry. Go ahead.

THE WITNESS: Thank you. I will be – won't be long.

THE CORONER: There is no rush.

#### GENERAL DISCUSSION

THE WITNESS: Sorry.

DR DWYER: So at – Mr Rolfe, in front of you now is a copy of that document. If you just have a look at page 2?---Yes.

You see there, third bullet point you refer to the Goonarda Award?---Yes.

For the most coon-like behaviour of the year. And then you say, “Government and NTPOL TRG emblems on it?”---Yes.

Were you told something about the emblems on the award?---Yes. This was after I had left that I had – this is more recently to the Coronial? Or?

Was it Carey Joy who told you about that? Or someone else?---I believe it was Carey Joy. Yes.

Did Mr Bauwens tell you about this – Sergeant Bauwens, I should say – tell you about the awards or so?---I don’t think so.

Neanderthal dress up. What was that?---I am not sure if that was information that I had heard when I was in the job or afterwards. That I had heard that they dressed up in Togas to receive the award.

I see. That’s the TRG dressing up as – in Togas. Is that right?---Correct.

And then you refer to the club?---Yes.

And you say, “Superintendent Gill, the club lived above the doorway usually.” That’s – you are referring to the club that her Honour now has a photograph of that?---Yes.

Had you ever seen that club when you were a member of the police force?---I may have without really noticing it, as I was in the cave – not in the cave, but I’d spent a week and a half up there for selection.

That’s the TRG training area, is that right?---Yes.

The house?---Their HQ.

And did anybody ever reference the club when you were there at their headquarters?---I can’t recall. They may have.

You write some names there, James Gray-Spence, Meacham King. So you’ve got – they are people who are either in or were in the TRG, is that right?---Yes.

Is it the case though that – you’re not suggesting that Superintendent Gill or James Gray-Spence or Meacham King ever told you about the existence of this club at any time you were a serving member?---No.

A couple of bullet points down you refer to the black diary, the Katherine piñata?---Yes.

When Mr Boulten asked you some questions about that, you didn't – I'm not being critical – but you didn't appear to actually know anything about it. Is it the case that someone else's has told you about the piñata?---Yes. Someone else has told me about the comment of the Katherine piñata and the black diary I'd heard about previously. But obviously I'd heard Chinese whispers very differently than what has come out.

Okay. I'll just break them up then?---Yep.

The black diary. What did you hear about that when you were a serving member of the police force?---So similar to what it's been presented as, as the book of truths, just a book where funny quotes made by members of TRG are kept and stored. I heard during the job that it was called a black diary.

Okay?---Again, spoken about with ex TRG members working, that I've worked with.

Called a black diary because of racist things that were in there?---I honestly assumed that it was just an actual black book.

Right?---But obviously, it's not. I believe that's referring to the book of truth which is red.

And did you – when you were told about it as a member of the police force, were you told by a member of the TRG?---Yes, I believe so.

And what were you told it was for?---As I said, just a book that they kept to write down funny quotes that members have said throughout the year.

And did you know anything that was written in there?---During my time in the police force I can't recall anything.

Afterwards did you find out that in fact someone had made a racist comment about Aboriginal people falling out of a piñata or appearing to?---Yes.

And that was recorded as if it was funny in the book of truths?---Yes.

And we now have a statement from Carey Joy where he acknowledges that he was the source of that racist comment in the first place?---Yes.

Other people thought it was funny in the TRG and wrote it down. Was it Carey Joy who told you that?---Correct.

Did you ever discuss that with Sergeant Bauwens at any time?---I don't believe so.

Do you recall being with Carey Joy and Sergeant Bauwens at some sort of barbecue or occasion at someone's house?---Yes.

When was that?---I don't know. Maybe that was around the very first time I came up where I was in here for an hour.

Okay. So you've now given – this is the third time you've been in the witness box. You were in there very briefly in November 2022?---Yes.

And you claimed privilege. And then you came back to give evidence in February 2024 and now this occasion?---Yes.

So did that barbecue occur either shortly before November 2022 or shortly before February (inaudible)?---Yes, I believe so.

THE CORONER: Which one, sorry?

DR DWYER: Can you recall which one?

THE CORONER: Do you remember?---I wouldn't. We caught up both times I've been up – all the times I've been up.

DR DWYER: Okay. So you've caught up with him as friends. Prior to November and prior to you giving evidence in February?---Yes.

Inevitably you would have discussed the issues that were being raised at the inquest?---Some.

And did you discuss the sorts of evidence or the evidence that you might give about some issues?---I - - -

I'm not being critical. That's just a – I'm suggesting to you it's inevitable that it would happen?---Yeah, definitely. There was obviously an active thought of mine to avoid discussing evidence, especially with Sergeant Bauwens that may put him in a difficult situation.

It's fair to say though, that the impression you got from both Carey Joy and Sergeant Bauwens was that you were being hard done by in the inquest in terms of the issues being covered?---Yes, I think they agreed with that.

And did Carey Joy suggest to you that what you should do, or one of the things you should do is bring up the racism of other police officers?---No.

Did Bauwens suggest to you that you do that?---No.

That was your idea, is that right?---I answered questions that I was asked, honestly.

Okay. But what you also did – just think about this carefully – is bring these notes into the witness box to be of some assistance to you while you were giving evidence?---Again, these notes were made for my lawyers to discuss. I failed to give them to my lawyers beforehand and I was not aware of the Coronial rules regarding

bringing paperwork into the box as I watched or read a lot of the transcript and I have not seen that occur with any other witness.

You produced an affidavit to assist her Honour in determining whether or not the notes should be produced. Do you recall that?---Yes.

And did you write that affidavit?---Yes.

Did somebody else type it for you and you sign it?---I wrote that statement with my lawyers.

All right. And you agree with the content of that statement?---Yes.

In that affidavit what you say is that it was – you direct – you wrote these notes to direct you in the course of your evidence. Do you recall that?

MR ABBOTT: Well, I object to that. It's one of - - -

THE CORONER: It's one of the things.

MR ABBOTT: He gave two explanations.

THE CORONER: Sure. One of the explanations - - -

MR ABBOTT: And both should be put - put as one of the - - -

DR DWYER: I withdraw.

One of the explanations that you gave was that you wrote that to direct the course of your evidence?---I accept that.

And included within those notes are a number of incidents which her Honour heard about for the first time which involved blatant racism or accusations of blatant racism from other members of the police force. Do you agree with that?---Yes.

So it was your intention if you were asked about your own racist text messages to point to others who have used racist language?---I think the reasoning for that is not to throw others under the bus, as such, but it's to maybe highlight the fact that the narrative being pushed by the Northern Territory Police Force and seemingly accepted by other legal parties was incorrect. Because the narrative that was being pushed was that this was a – IRT was a small bubble that involved the only racist language being used in the police force. This is an instance where that narrative that was being pushed and accepted was wrong and just believe this was an instance that I could show that and prove that and this is not the only instance where I believe that's the case.

And to your point earlier, it helps, doesn't it, for the court to understand your point of view that you're in fact a product of, to some extent, of the environment that you were put in from the police force, is that right?---Yes.

Do you recall participating in an interview with The Australian on the 5 December 2019 or thereabouts?---Yes.

This is the answer that you gave to Ms Shorten who was interviewing you, at answer 236. She was asked at 20-73 in the brief:

“And is the Northern Territory Police Force a racist police force.”

And you say, “No, definitely no. In – yeah, there is no racism involved in the police force that I've seen.”

Do you recall making that comment to Ms Shorten?---Yes.

And this is the article – or reading from the article that she wrote. It's 20-74. It's an article called:

“Zachary Rolfe documentary exclusive. Murder charge. NT cop reveals why he shot Kumanjayi Walker and how he tried to save his life.”

This is 5 December 2019, before you have ever given any version of events to the Northern Territory Police. Do you agree?---Yes.

And within weeks of Kumanjayi's passing?---Yes.

And what is recorded there is, “Also honestly, I have not witnessed racism among my colleagues during my time as a police officer.” That was what you told Ms Shorten?---Yes.

You agree with that. Here's some of the evidence that you've given in this court. On 26 February 2024, “Racist language was utilised nearly daily.”

MR ABBOTT: Well, I object.

DR DWYER: That's transcript 513

MR ABBOTT: Excuse me, I have an objection to this. I have objection to this. It's not proper for this to be in re-examination. This should have been raised, if it was to be raised at all, in my learned friend's examination-in-chief. And this is another go, another bite of the cherry to try and have a go at my client.

DR DWYER: I'm not having a go at Mr Rolfe at all.

MR ABBOTT: Well, it sounds like it.

DR DWYER: Sorry, Mr Abbott, could you just sit down while I'm making a submission and then I'll sit down when you're making a submission.

MR ABBOTT: I've made my objection. I'd like her Honour to rule on it.

DR DWYER: I'm not having a go at Mr Rolfe, as Mr Abbott suggests. On the contrary, I'm asking him to clarify his evidence. Notes were provided after I asked questions of Mr Rolfe and I'm entitled to ask him questions, in my respectful submission, in relation to the 12 pages that have been produced, as every other party is. If anything arises that Mr Abbott thinks is unfair that he needs to clarify, he can make an application.

It was specifically put by Mr Abbott that racism played no part in Kumanjayi's passing and Mr Rolfe was given a chance to comment on that. Issues in relation to racism and specifically what's raised in the notes do arise in re-examination (inaudible) question.

THE CORONER: Yes. In my view, it does arise, particularly from the notes that have been provided. However, I note that Mr Abbott may wish to make an application at the conclusion of his evidence if there are any other questions that he seeks to ask and I'll certainly hear Mr Abbott's application.

DR DWYER: May it please the court.

Mr Rolfe, I'm reading from evidence that you've given after I've asked you questions to other parties. It includes this. On 26 February 2024 at page 5133:

"Racist language was utilised nearly daily."

At transcript page 5134 on the same date:

"Racist language is used everywhere in the Northern Territory Police."

5138 on 26 February:

"Racism was more among the connies or the constables."

At 5138 you say the beginning of your time in the Northern Territory Police Force, the racist language you witnessed by Northern Territory Police Force officers shocked you. How does that fit with the story that you told to Ms Shorten that you had not seen racism in the Northern Territory Police Force?---Well, I've always held the fact there's a view and there's my view that there's a separation between racist language and racist actions. Racist actions being what I perceived as racism. And again, I – (inaudible) I've seen racist language in the NT Police and it's hard for me to ever say that have I seen an overt racist act in the NT Police. That's hard. Some of these are the ponderings such as the black card incident. In hindsight I can look back and I can ask myself, is there racism in the NT, is there race-based policies. Are there – is there a lower expectation for some race other than – more so than

others. Does that constitute racism. And the time on – in the most simple terms, it's the separation between racist language and racism, which is – which I believe is racist acts, that I refer to.

Mr Rolfe, what you say to Ms Shorten is:

“Honestly, I have not witnessed racism among my colleagues during my time policing.”

But what you were aware of, you say, when you were a police officer in the Northern Territory is something referred to as a (inaudible). That is clearly overt racist behaviour in the Northern Territory Police Force that you were aware of when you were interviewed by Ms Shorten. Do you accept that?---I accept it in – in my view, again, it's the difference between racist language and a racist act. And again, everything I say is not perfect in the time. There may have been memory issues or a number of things. But in my view, there was the separation between racist language and racist acts.

You were asked by Mr McMahon, I think, of – about some of your conduct and whether you reflected on whether it – on if it would be hurtful for the family. Did you reflect at the time you were giving those interviews with Ms Shorten, about whether that would be hurtful for Kumanjayi's family at community, within weeks of his death, for you to be giving interviews with The Australian?---Again, the reason I organised that interview with The Australian was I was already under the impression that the investigation was going down an obscure and potentially corrupt route and I wanted to prepare for the worst case scenario, which was getting found guilty without the full evidence being made available. So I did that for that reason. So the – honestly at the time, I wasn't really considering – that was the main priority I was considering when doing that interview.

You wanted to get on the front foot and put your own version forward, is that right?---No. I wanted to have something in my proverbial pocket for if I did get found not – found guilty or if I did get my bail revoked for some reason or another, that the truth, including the body-worn video, could come out.

Wasn't just in your proverbial pocket. Ms Shorten published an article in December 2019, within weeks of – I'll withdraw that. I'll just check my math. Do you say that you wanted a sorry out there with Ms Shorten so that it could be deployed in your favour in the event that things didn't go your way in the trial?---Again, I said that I wanted to have something that would allow the truth of the situation to get out there, if that was prevented from occurring.

I put to you on the last occasion that your – before I had the notes – that your motivation for coming into the witness box in February 2024, the first time you gave substantive evidence and you were revealing racism, was to get that – at least in part – to get back at people who were critical of your actions at the time of your arrest. Including, for example, Superintendent Nobbs. Do you recall me saying that to you?---Yes.



I suggest to you, Mr Rolfe, that your notes, those 12 pages make it clear that there were a number of officers who were critical of you that were on a hitlist, effectively, that you would criticise if you were given the opportunity. Meacham King, Mr Chalker, Vickery, Sachin Sharma, Derrick, Williams, Frost, people who had disagreed with you or given evidence that contradicted you. You were going to take the opportunity to have a go at them for giving that evidence?---I disagree. I can see how you would look that way – and again, these are – these are thoughts that I've written down while reading the transcript. Not too much weight should be put on them. They're not – not even all of them are my opinions, they're just thoughts I've had while reading the transcript. I wouldn't judge too harshly, because then we're moving into the territory of – beyond private messages, we're moving into thought policing. But reading from the transcript and people that you've just read out now are obviously mentioned, they've given evidence which would therefore make me think of them. And it's probably another thing to highlight how during this Coronial some witnesses' evidence has been accepted non-critically, face value with no corroboration. Whereas other evidence, such as my evidence and a few others, has been met argumentatively in a different manner. So there's – that's a reason where some of that evidence is there, all of those names are there.

That's a reason for you being disgruntled about a number of things, complaining about me as counsel assisting, etcetera?---I – if I was to make a complaint about you, I would say that you do accept some evidence at face value with no criticism and you are extremely argumentative with other evidence that seemingly does not fit the narrative.

Thank you for that feedback, Mr Rolfe?---Sorry, I thought that's what you're asking.

When – you accept, don't you, that your role in this evidence – in this inquest, is extremely important, because you are the one who shot dead Kumanjayi Walker?---Yes.

You accept that you've got important evidence to give in this inquest as a result of that?---Yes.

And you accept that I'm entitled to test it in my role as counsel assisting?---Yes.

Dr Freckelton outlined your service in the Northern Territory Police Force, just from December 2016, your substantive service through to November 2019. Over those three years you developed a reputation, didn't you, for being the fittest and the fastest amongst your colleagues?

MR ABBOTT: Well, I object to this. This is covered originally by my learned friend's examination.

THE CORONER: It's just a leading question, I think.

MR ABBOTT: Very well, I'll sit down.

THE CORONER: I assume there's going to be – it's going somewhere, Mr Abbott.

MR ABBOTT: Yes.

THE CORONER: And as I said, you will have an opportunity to ask - - -

MR ABBOTT: I won't be taking advantage of any opportunity although I want to make sure my client finishes shortly.

DR DWYER: I'll finish before lunch, subject to objections, your Honour.

Mr Rolfe, Dr Freckelton outlined your service. I suggested to you that during those three years you developed a reputation for being the fittest and the fastest amongst your colleagues?---I think that would be fair to say amongst them, yes.

You developed a reputation for being hard and fast and decisive?---I would accept that, that was said.

You had training in the use of force as a result of your time in the military that some of your colleagues had not had?---Yes, in other elements of use of force. Yes.

But also training because of your interest in the TRG and the IRT, and you had extra training in that regard that some of your colleagues in general duties didn't have?---Yes.

And fair to say that you used force where you could justify it?---Where it was justified, yes.

And on reflection, having viewed a number of incidents of use of force, do you accept that you also used force when it was not justified - - -?---No.

- - - on occasion?---No, I don't.

Part of your motivation was, wasn't it, to impress your colleagues?---No.

You were building a reputation for being hard and fast and fit?---I don't believe so, no.

That was important to you, wasn't it, because your career going forward, if you stayed in the Northern Territory Police Force would have been in the TRG, and if you left, you wanted it to be in the SAS or doing private contract work in dangerous countries?---Yes. I believe the next step in my career would have been - my plan, obviously, was the TRG. But that wasn't the end state, no.

But this idea that you were hard and fast and decisive was important to you, wasn't it?---Yes.

And you were pleased with the reputation that you were building in that regard?---I'm not sure of that.

Well, what we've got in the brief of evidence, through your text messages and through the videos on your phone, is a number of examples where you boast about the use of force. Do you accept that?---Yes.

For example, the text to your family, where you send body-worn video?---Yes.

The video of you and Mr Hansen, where the Aboriginal men in the park were pushed over, and it's played back with oots oots - - -?---Yes.

- - - sound effects.

The video involving Christopher Walker, where firearms were drawn when you entered the house?---Yes.

And you videoed that on your body-worn video and show it back - - -?---Yes.

They're all incidents, aren't they, where there's a fair bit of ego wrapped up in your use of force. Is that fair, on reflection?---I can - I can see you get there, yeah.

You can see me getting there, but do you accept it, on reflection, as well?---Yes.

Do you accept that on those occasions, you behaved in a way - or on some occasions; let's take the oots oots video, you behaved in a way that was over the top when you look back and reflect on the young man (inaudible)?---I reflected my behaviour in videoing. That was obviously exceptionally unprofessional. Again, on the ground on-duty, no.

Boasting about the use of force was extremely unprofessional, wasn't it?---Yes, I accept that.

But when you did that, either with your family or with your friends - I think the Christopher Walker video was sent to family and also someone with the initials NK. When you showed it to others in the muster room, no one pulled you up and said, "That's unprofessional. Zach, don't do that. Worried about your behaviour or that conduct," did they - - -?---Correct. I can - I can never recall anything like that.

That must have given you the impression then or reinforced the idea that it was okay to do that?---Correct.

Similarly, can I suggest to you; when there were text messages which were sent between you and the sergeant, which you might look back on and be embarrassed about. If nobody pulled you up on that behaviour at the time, it, effectively, gives a message that it's condoned?---Yes. I would - - -

I'll give you an example. Do you remember when you were having an exchange with Sergeant Kirkby about not getting in the TRG?---Yes.

And he responds to you. I'm paraphrasing, but I can find the text message. "It's chicks, blacks, gays. They all get in before us and then it's people like you and me, Rolfey(?)"?---Yes.

So he's supporting this idea that you're hard done by not getting in the TRG and other - or minorities are getting in before you as a white man?---Yes, he's - he's agreeing with me, yes.

Not very good mentoring or support from Sergeant Kirkby at that time, was it?---It's not done in a very professional way. The message I received from that, I don't believe is an entirely negative message. He's - intentions are to support me in that message. Obviously, the language used is not widely accepted. But the message received was a message of support.

Well, I just remind you of what it actually said, to be fair. Perhaps - it's text message 463. And you're talking about the application and getting application - the application is rejected, and you say:

"The application was fine, except Dashy(?) wrote a stupid comment (inaudible) at all. But they reckon that applicants have, quote, 'longer and more diverse careers than me,' and recommend I go out bush for 12 months, ha, ha. Fucking joke."

And then Kirkby writes back:

"That's their standard line now. Everyone knows people go out bush 'cause they're fucking lazy. Maybe that's who they're looking for now. The order of preference is blacks, chicks, gays and lazy fucks. Then Zach."

That must have given you the impression that it was okay, as a police officer in the Northern Territory, to express a view that bush police were lazy fucks and that blacks, chicks and gays were getting in over fit, young, health, white men like you, who could do better?---Well, yeah, it condones that that language is acceptable in private. But I believe a lot of that is the case in regard to special (inaudible) hiring in the Northern Territory Police. It would just be written more professionally, obviously. And the "lazy fucks" comment is more so that - I think we mentioned it before - that lazy police officers also on - often don't get complaints, because they're not doing the work that others are doing. So I - yes, it does condone that language in private.

I think you said earlier that you think he's trying to be supportive of you?---Yes.

A pretty unprofessional way to be supportive of an officer?---Correct. That's why - yeah - - -

Pretty toxic - - -?--- - - - or it was done privately.

I'm sorry, I - - -?---That's why it would have been done privately, yes.

Pretty toxic way of supporting you though?---I - my head is not wrapped around the - how the toxic is defined in this day and age, so I wouldn't be able - I'd need it asked differently.

Okay. This is another example of the support you had from your mentor. This time Sergeant Bauwens, 9 July 2019, where you tell him you've just knocked off, and he says:

"These bush coons aren't used to people going after them."

You say:

"Yeah, bush cops blow my mind. I'll tell you about these dudes when I see you."

That must have given you the impression, Mr Rolfe, that it was okay to use that language, coons?---I believe, when I read that message at the time, I read that as him writing "bush cops," because that was what we were talking about. And that's why I went straight back to talking about bush cops. The first time that I noticed that that word had been said by him was in the brief.

Well, you wouldn't have been shocked to see - to hear a police officer use the word "coon," (inaudible)?---Not a police officer. I was shocked to see that in - from Sergeant Bauwens, to be honest.

Even though Sergeant Bauwens had been himself a recipient of the Nuggadah Award?---I wasn't aware that he was.

Sergeant Bauwens had been a member of the TRG when the Nuggadah Awards were given out. You knew that, didn't you?---I believe if knew it was likely.

Certainly, there was nothing about that text message at the time that made you concerned or think it was out of the ordinary?---Again, I didn't notice that the word had been said. I thought - he'd written "bush cops."

On the last occasion, you gave evidence that you accepted that, for some people, the use of dehumanising language can impact on their behaviour?---Yes.

You reflected that that might happen in a theatre of war, for example?---Yes. It's a tool used in a theatre of war, among other tools, to condition soldiers that are less likely to actually fire at the enemy to do so.

And do you accept that for some police officers, the use of dehumanising racist language might in fact impact on their behaviour?

MR ABBOTT: Well, I object to this. First of all, it was covered in examination-in-chief. And secondly, he's not an expert in these areas. He could only give - - -

THE CORONER: This has been covered.

DR DWYER: Your Honour - - -

MR ABBOTT: Thank you.

DR DWYER: - - - Mr Abbott specifically asked Mr Rolfe whether or not racism played a part. I'm nearly finished. I'm about to move to 9 November. But I press this question with - and to give Mr Rolfe an opportunity to reflect, in fact, on what he has just been asked by Mr Abbott, for the benefit of the things I'm going to put to him.

THE CORONER: I'll allow the question.

DR DWYER: Mr Rolfe, you said on the last occasion when I was asking you questions that the use of racist language could in fact impact on some people's behaviours. But just to cut to the chase. What you said was you didn't think it impacted on yours. Correct?---Yes.

What you now have had the opportunity to reflect on in your messages and in questions asked of you, is that there are examples where you've photographed some – a black man injured in hospital; where you boast about the use of force to your family; where you – that includes use of force on a man who injured his arm, when in fact he hadn't been guilty of any offence. You remember all that?---Yes.

So can I suggest to you that your use of racist language may well have impacted on your behaviour towards members of the community?---I disagree.

Coming now to 9 November 2019. In the days leading up to 9 November, as you've given evidence, including to Mr McMahon, for example, you had been critical of the response of Officers Hand and Smith and you recall that Dr Freckelton asked you these questions this morning?---Yes.

And you acknowledged that you had been – you were critical of them in part, because you thought that they had frozen and had a fear response?---As in like freeze or flight, yes.

That's right. You thought they'd been too soft, in effect?---No.

There are text messages between yourself and Paddy McCormack. Is that Sergeant McCormack?---Yes.

Sergeant McCormack was an officer that you looked up to when you were in the Northern Territory Police Force?---Yes.

And you recall that you texted him with the body-worn video footage from Hand and Smith?---I sent him it?

Yes. Did you?---I'm not sure.

Is it the fact that you watched it – I may have misremembered the evidence – you watched that body-worn video with Sergeant McCormack in the muster room?---He may have watched it and then texted me about it.

So the impression he gives to you is that he is also critical of what they did on that day?---Yes.

He says, as you'll recall – and this is from text 547 in MFI MMM:

“Sorry, I watched that. Fuck me.”

And you say:

“Yeah, eh.”

And he says:

“You imagine if that other cop got killed and he stood there and watched it with his fucking hands up. What the fuck have we become.”

And you say:

“I know, eh. Fuck my whole life.”

So you're exchanging with him an opinion that what officers Hand and Smith did was, in effect, too soft?---It's got nothing to do with being soft or hard. It's got to do with the right response versus the – versus a response that's not right.

All right. Let me put it like that then. You're exchanging with him the idea that their response was wrong?---Yes.

And that in effect, the Northern Territory Police Force was not going to function properly if that was the sort of response that officers gave to those incidents?---If that was the general response in regard to those situations, it's developed due to the training and conditioning conducted by the NT Police and that's a failure by the NT Police Force.

So your view, that was critical of Hand and Smith, was certainly reinforced to you by Sergeant McCormack?---I wouldn't say it's reinforced but he agreed with my view. Other members shared different views than I and I still have the same view that I have.

In the three days leading up to it, the people that you were sharing the body-worn video with or watched it with or who watched it independently, were expressing a view that they were critical of what had happened?---Some were, some weren't. obviously, Shane King, I believe, who was – has given evidence that he was watching it with us and he, I believe, pulled someone else up about their view that was critical. So there was a mix.

I'm asking you about what you knew back then during those three days or two days between 7 November when you started to watch the body-worn video and the 9 November. It was your view that people senior to you and your colleagues were critical of what Hands (inaudible)?---Some, correct. Because I was there when Shane King made those comments (inaudible).

Some, including Paddy McCormack who was someone that you looked up to in the force?---Yes.

And your determination was that you'd be committed to the job of picking up Kumanjaya, scooping him up or grabbing him up if you came across him?---If I was called out to do so, yes. If I had – I believe I was given the task from Alice Springs to look for him.

And you were proactive in doing so?---Yes.

You thought, didn't you, that compared to bush cops you'd be fitter and faster and harder, better at picking him up?---In comparison to some bush cops, yes.

In comparison to bush cops like Hand and Smith?---In comparison to those two, yes.

And in comparison to a number of bush cops who you'd been critical about in your text exchanges?---Yes.

When you got to Yuendumu, you have given evidence of some conversation that you had with Sergeant Frost and you've been asked about it by a number of my colleagues?---Yes.

Do you recall that? When I asked you questions, I suggested to you that there was a photograph of Mr Walker on your phone that had been taken from the arrest plan and you denied that?---Yes.

So you got that photo elsewhere?---Looking at that photo – obviously I can't recall – but looking at that photo, it didn't match up with the photo from the arrest plan. In reflection, I'm not sure if there were two photos on my phone. I may have taken a photo earlier at the station and then screenshotted that photo which would change the data of that photo. But yes, I remember that evidence.

Might you have taken a photograph also from the arrest plan on your phone?---No.



You did take a photograph of the arrest plan though, didn't you?---Correct, of that bottom corner.

Okay. I'll just hand you a photograph of that so that the evidence can be clear about that. Ms Walz is providing it to you. That s the photograph, is it, that was taken on your telephone?---I believe so, yes.

MR ABBOTT: Can I have a copy of this, please, so I can follow the evidence.

DR DWYER: And what it says there is in red, "No arrest. Liaison with Superintendent Nobbs and Superintendent Vickery. Implementation of the plan. Locations of interest" and there's a couple of houses listed there?---Yes.

So you certainly at one point in time had access to that arrest plan that you took a photograph of. Correct?---Correct. I was – my attention was drawn to that corner of the page, yes.

And you were provided with a copy of the arrest plan?---No.

You knew that there was an arrest plan, didn't you?---I knew that there was a desired timing that me and Julie Frost then discussed with the other police officers.

And you knew, didn't you, in terms of the desired timing at 5 am in the morning or thereabouts, that Felix Alefaio was being offered to assist you?---Again, as per my previous evidence, I believe the conversation had was that he was to remain at the station and assist with the aftercare.

You knew that there was a 5 am arrest plan and that plan was expressed by Julie Frost, Sergeant Frost to you. Do you accept that?---No. She told me, again, that her desired arrest time was 0500. Again, I asked her where Kumanjayi would be at 0500. She said she had no idea. We then developed another action of moving forward.

She said she had no idea, but the photograph I just showed you demonstrates that there were a number of houses that were on a written arrest plan. Do you accept that?---Yes.

And it's the case, isn't it, Officer, that Sergeant Frost told you about an arrest plan and the arrest plan changed in your mind after you spoke to her?---The question is being slightly differently and my answer remains exactly the same as previous.

Have a look at the notes that you produced or that you took into the witness box with you, if you don't mind?---Yes.

If you turn onto page 6. There's a subheading, "Intelligence gathering plan."?---Yeah.

“Burning ourselves as soon as we started gathering evidence. Ethan Robertson warns Rakeisha after 577. 5 not safest. Intel shows he slept behind a locked door with a DV victim with potential lethal weapons. The plan was changed, as I had said, 5 am, no idea where he was going to be at all. All IRT member’s evidence is that I gave a briefing on us going to 577 to look for him in the presence of Julie Frost”, et cetera. So can I suggest to you that there’s an acknowledgment in these notes that there was a 5 am arrest plan developed by Sergeant Frost and the plan was changed after you heard her and you disagreed with her?---The word “plan” has been said that many times that you can utilise the word “plan” for this email that’s been given out. My evidence remains the same that that isn’t a full plan. That’s a desired timing. But the – obviously, the word has been used so much in this Coronial that this email is referred to as a plan. When I’m saying plan, I know what I’m referring to. These are my notes, these are my thoughts. I do not agree that this is a plan. But you could substitute that for timing, idea, the idea to arrest him at 5 am, the desired time to arrest him at 5 am.

I’m going to read to you the evidence that Sergeant Frost gave on 5 December to police, 2019, before she had any understanding of what you or others were going to say in your evidence and before she had any understanding that her evidence would conflict with yours. She gave evidence - - -?---Sorry, what was the date, sorry?

MR ABBOTT: Well, I object to this.

DR DWYER: Of December 2019.

MR ABBOTT: With respect – with respect, your Honour, this is a topic that could and should have been covered in the first round of examination my learned friend conducted.

DR DWYER: It was to some extent, your Honour. It arises because of the notes which make specific reference to the arrest plan at 5 am on the page that I just pointed out.

MR ABBOTT: It’s a matter for submissions, the evidence of what Sergeant Frost said or did in her examination.

THE CORONER: Given that the word “plan” in relation to 5 am - - -

MR ABBOTT: I give up.

THE CORONER: - - - was reproduced in these notes of Mr Rolfe, I am going to allow the question.

DR DWYER: Sergeant Frost says on that occasion on 5 December 2019:

“Overnight the plan was that they were going to do high visibility policing, familiarise themselves with the town, perhaps gather some intel and prepare

for the arrest. They were also going to cover Chris Hand and myself because we'd been up all night the previous night."

She goes on to say:

"The whole plan was that they were going to come – they were going to come – be working through the night, be available for call, anything that happens. And then at 5:30 in the morning Felix will commence duty and they'll have a briefing amongst themselves."

I suggest to you, Mr Rolfe, that that was the plan that Sergeant Frost explained and that you didn't disagree with her when she outlined the plan that in fact the plan was changed afterwards by yourself?---I disagree. Again, I believe the evidence he gave in the Coronial is different than that, that she'd expected us to play basketball with the youth. So I disagree with her evidence.

Mr Rolfe, you disagreed with the idea that that was a plan, the 5 am or the 5:30 arrest plan?---I believe the way it's set out is a desired timing. There is no completion of a plan in regard to the way that the police are taught, in regard to the SMEAC method.

But what you determined to do in going out to grab Kumanjayi, as you said on video, was an arrest arrangement with no team leader, no risk assessment and no plan for cordon or control. Is that correct?---Well, there was – again, those three things you mentioned, I'm not aware of them being – if they're the requirements for a plan in your mind. I don't see those subheadings on the email at all. But we – as I've said previously, we left the police station with the intention of arresting Kumanjayi Walker.

You left the police station without any SMEAC plan that was developed by yourself or anybody else in the IRT?---Correct. We went out to – obviously, the goal was to arrest Kumanjayi Walker. At first, we would need to gather information and gather intelligence. If we did that without locating him, then a plan would be made.

I suggest to you that the reason that you ignored the advice from Sergeant Frost, if we put it like that, her preferred time of 5:30 was because you thought better than her in what to do?---I disagree with the whole question, because I didn't ignore her advice.

You thought you knew better than a bush cop in terms of any plan or arrangement she was suggesting, didn't you?---No. Again, I didn't ignore her advice.

Mr McMahon suggested to you that in going into House 577 with the safety clasp off and clearing the house and then going into House 512 in the way that you did, suggests that you were, in his words, "itching to shoot someone". Do you remember those questions?---Yes.

Even if you – if her Honour accepts that that was not the case, accepts your evidence on that, do you accept that what you were doing in going into House 577 and 512 – 511, is indicating a clear desire – I withdraw that – is indicating that you would use violence at the slightest indication that it could be justified?---No.

Instead of mitigating the risk that Kumanjayi presented, you put yourself directly in his path, didn't you?---Yes, correct.

That was in House 577 – 511?---Correct.

Do you agree? This is what you told Ms Shorten in the interview you did on 5 December 2019, “With the situation I was put in, I would not do anything differently. I do not wish I had done anything differently. I wouldn't change what I did.” Is your evidence different now to the story that you told Ms Shorten on 5 December in that regard?---Well, it's all hypotheticals. Again, action on if I was placed in a room with – if I was a police officer again - placed in a room with an offender, I would treat the offender politely and respectfully until they caused me to treat them otherwise. Looking back beforehand, I – yeah, I'd change that if I was in hindsight now in a similar situation out bush, I would not go outside the bush station without a bush police officer, to avoid any, I guess, argument of me doing anything wrong.

What about to avoid a situation where you took a young man's life?---I - - -

What about to avoid the risk to yourself and a member of the public? Is that a good reason to do something (inaudible)?---I defended my own life against him and defended Eberl's life.

On the – yesterday you said that you made the wrong threat assessment in going into House 511. Do you remember that evidence?---Yes.

Do you accept that what was actually involved then, given your evidence yesterday, is an act of officer induced jeopardy as described by a number of senior officers?---Yes. I believe the – again, I think I've talked about it before. The idea of officer induced jeopardy isn't entirely accepted or researched, yes. But by the – the way in which people are talking about that, every time an officer does their job, every time an officer does their duty in arresting an offender, that would induce officer induced jeopardy.

Let me – you respect Superintendent Pollock, don't you?---I don't know him.

He's someone that you know had a reputation for excellence in the Northern Territory Police Force?---Correct. He has a good reputation.

And had been in the Northern Territory Police Force for over three decades before he retired recently?---I would accept that.

And you understand that he reviewed the circumstances of Kumanjayi's shooting?---Yes.

And this is what he says. Firstly, he defines officer induced jeopardy:

“Situations where officers negligently put themselves in danger, committing an unforced tactical error that makes them vulnerable and thus in a position where they must use deadly force to protect themselves and that’s what happened.”

That’s what he describes happened in this situation. Do you accept that in hindsight?---I think you may have asked the exact same question before and I answered by saying – by asking to see that quote in front of me and I went through it and changed one word or two words out of his quote and then I agreed with that.

Okay. So that's still the case now?---The exact same answer to the same question, I agree with my first answer.

Dr Freckelton put to you a quote from Spotlight, where you're talking about officers Hand and Smith and you're effectively saying you're not going to learn anything unless you take personal responsibility for what occurred?---Yes.

You take some personal responsibility, do you, for what occurred on 9 November, given your failings with respect to threat assessment?---I take complete responsibility for the death of Kumanjayi Walker.

Do you accept that it could have been avoided with a planned response with a suitably experienced team leader in place?---Yeah, there’s many things that could have occurred previously that – there are many social policies and policing policies that could have changed, including on the ground level, team leader, local police presence that could have averted that death, potentially.

And in terms of your own personal responsibility, do you accept that there were things that you could have done in terms of preparation and risk assessment that might have prevented Kumanjayi’s death?---Potentially, yes.

My final question for you. You are quoted – I withdraw that. In these notes that were produced, could I ask you, please, to have a look at the same page I referred you to earlier about the 5 am plan?---Yes.

Do you see the eighth bullet point there where you write:

“The arrest was a success. Whether you pass an examine with 75 percent or 100 percent, it’s still a success. It could just be better. Correction. From a police on the ground point of view, success. For an organisation, it seems the organisation failed.”

Do you still maintain that this arrest was a success?---So this is - - -

From a police on the ground point of view?---Well, this is a – this is a thought process. This is me pondering to myself, as I said before, this is me pondering the use of the term “failed arrest” multiple times. And this is just me questioning that and exploring that statement. As the use of force training in the NT states that the success of a mission will be judged primarily by the extent of the use of force is minimised or avoided. I’m not aware of – due to the fact that I have – as I said, before this investigation into the shooting has been finalised with me receiving remedial guidance, which doesn't reach the level of discipline, I am not aware of me being – if I have not used the minimum force, then I would assume that a finding of use of excessive force would have been made by the police force. If that’s not the case I am discussing – I’m thinking in my head, if I still use the minimum force as per the training requirement, what facilitates an arrest, success, is it the fact that the death of an offender immediately constitutes a failure or on the ground do I say I saved – I feel like I saved my life, potentially saved Eberl’s life. That's a success from on the ground. It’s just a pondering.

Okay, it’s a pondering. But you’ve got the opportunity for a thought process now in the witness box. So I’m asking you about it. But before I do, you just gave evidence about your confusion between the jury verdict of not guilty and your disciplinary process following that verdict. Is that right?---No.

Mr Rolfe, is this the situation. Please, help me explain it if it’s not. That you are confused or you reflect on the fact that it’s discordant(?) that during Barram’s evidence in the jury trial, he said that you used excessive force in the second and third shot with Kumanjayi. And yet after the trial you were only subjected to remedial advice. Is that what you’re confused about?---No, no, no. No. I’m just thinking in my head, like the success of an operation in the use of force manual does not state explicitly the success of an operation is judged by whether or not an offender lives or dies. It’s just a pondering. For example, there’s other situations in Australia where offenders have been killed by police and it’s considered a success. I don’t need to go through them. But it’s just a thought. So my thought was to – if I have not been found to use anything other than the minimum force necessary, and that's what the success of a job is judged by, that the findings are that I used the minimum force necessary, how is it not classified, in at least police doctrine, as a success. Or is it just the narrative that’s being pushed by the police and media, that the first – someone called it a bungled arrest and then everybody carried on in keeping and called a bungled arrest.

On the last occasion, that is in the evidence that you just gave, I think it was when Mr Abbott was asking you questions, you said that you didn’t understand how it could be put during a jury trial that your evidence – that your actions were (inaudible) and it was an excessive use of force, when in fact after the trial finished you were only given remedial advice. That's the evidence that you gave in response to what either Mr Abbott or Dr Freckelton - - -

MR ABBOTT: Dr Freckelton, it was.

DR DWYER: In response to Dr Freckelton?---No. I gave the evidence and it was that the police seemed to still support – I believe it may have been said in the Coronial that the police support Andrew Barram's evidence. Andrew Barram obviously stands by his evidence that – and his evidence does not change. His evidence is that it was an unlawful killing. That's his evidence that seems to be supported by the NT Police, at least (inaudible) in the Coronial. There's a number of incidents of the NT Police saying one thing and their actions are another. But then – so the fact that they're supporting this outwardly, saying – basically saying that it's an unlawful killing, but the fact is that their actions in regard to the investigation were to finalise it with remedial guidance.

Who gave you remedial guidance?---I believe the email was sent by an officer with the last name of Hill. It was mentioned initially by Dr Freckelton in my very first sitting down here.

And is it the case that you took legal action to fight the disciplinary process with respect to any use of force?---I'm not sure. Dr Freckleton is shaking his head, so I don't think so.

Were you ever disciplined in relation to your racist text messages?---I would have to look through all my – I think I received remedial guidance for every incident, except the speaking to the media.

And that's because, isn't it, at least in relation to, for example, racist text messages, over two years have passed.

MR ABBOTT: Well - - -

DR DWYER: Since they (inaudible), do you know that?.

MR ABBOTT: Well, I object to that. He's asked to give a reason to why the police took action.

DR DWYER: Is it in your knowledge? That's my question.

MR ABBOTT: How can it be.

THE CORONER: A lot of the police procedures are within Mr Rolfe's knowledge. I - - -

MR ABBOTT: Hardly that one. It's two years after the event.

DR DWYER: I'll withdraw it.

Do you suggest, Mr Rolfe, that if the police in fact are critical still of your actions in House 511, then you should have been subject to more than remedial advice after the trial?---Yeah, most definitely. If they're – if the police are of the view that

I unlawfully killed Kumanjayi Walker or used excessive force and they believe that's the case and they can prove that with their evidence, then remedial advice would surely not be the right outcome.

Then I go back to what was to be my final question, which is on that page I just referred you to, you have in your musings or thought process, written, "The arrest was a success, whether you pass an exam with 79 or 100 percent, still a success. It could just be better." In fact, on reflection, think about it now sitting there in the witness box, a young man lost his life. The community is still in mourning. The police and community are still dealing with the fallout many years after. You would agree, wouldn't you, that in fact your confrontation to try and arrest Kumanjayi Walker resulted in an abject failure in terms of policing in the Northern Territory?---Again, the thing is I need to say is that if the success of a mission is primarily judged on the extent that use of force is avoided or minimised and if the findings are that I used minimum force necessary, then by police own standards, the arrest was a success.

Who made a finding that you used the minimum force necessary?---That's what I'm saying. If the police have made the finding that I haven't done that, then I would accept that the arrest would be a failure. But I have not been made aware of that finding.

Those are my questions. Thank you, Mr Rolfe.

MR ABBOTT: Your Honour, I have one question only. I'm happy to articulate it so your Honour can rule on it.

THE CORONER: Sure.

MR ABBOTT: Do you want to hear the question or do I just ask it?

THE CORONER: I'll hear the question and if there's any objection, I'll hear the objection. And if there's no objection, I'll hear the answer.

MR ABBOTT: Yes.

Mr Rolfe, at trial did you hear Sergeant Julie Frost say that she had said to you, quote, "By all means, if you come across him, obviously, arrest him." That's the question I want to put.

DR DWYER: No objection.

THE CORONER: Yes?---Yes.

MR ABBOTT: Yes. Thank you.



DR DWYER: Your Honour, I tender those two pages that were put to Mr Rolfe from the arrest plan, the photographs. They will be – I'm informed by Ms Walz – exhibit 30.

THE CORONER: Thank you.

EXHIBIT 30 Document.

THE CORONER: That completes your evidence, Mr Rolfe. In this inquest I am determined as best I can to find the truth of the circumstances surrounding the death of Kumanjaya Walker and I assure you that your evidence is an important part of this process?---Thank you.

You're excused.

WITNESS WITHDREW

THE CORONER: Dr Dwyer - - -

DR DWYER: Your Honour, just before we break, I think we're going to break for the day and have the next witness tomorrow morning. Before we do, might Mr Coleridge put something on the record in relation to the call for production from Sergeant Bauwens yesterday.

MR COLERIDGE: Perhaps your Honour may recall Mr Suttner made submissions to the effect that a further statement was provided to the inquest and (inaudible) rejected it. I simply called for that document because (inaudible). We sent a number of emails to Mr Suttner asking them to be provided; (inaudible) have been answered. I'd ask that you give Sergeant Bauwens (inaudible) to appear tomorrow (inaudible) to the court.

THE CORONER: Yes.

DR DWYER: Your Honour, that completes the evidence for today. Tomorrow, we have Commissioner Michael Murphy who's kindly agreed to appear, I think, at 9:30 am. Commissioner Murphy will be the last witness in this inquest, but we will have a family statement by way of a video statement then played after Commissioner Murphy's evidence (inaudible).

THE CORONER: Thank you. We'll adjourn until 9:30.

ADJOURNED