



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Bradley Vincent Balzan
Hearing dates:	19 to 27 June 2023; 18 and 19 March 2024
Date of findings:	13 November 2025
Place of findings:	Coroners Court of New South Wales, Lidcombe
Findings of:	State Coroner, Magistrate Teresa O'Sullivan
Catchwords:	CORONIAL LAW – s 23 – death as a result of a police operation – police powers – stop and search – constructive detention – LEPRA – decision to engage in foot pursuit – use of lethal force by police – reasonableness – OC spray – shooting – body-worn video
File number:	2020/365139

Representation:	<p>Counsel Assisting the Coroner: Mr C McGorey, instructed by Ms E Leung (Crown Solicitor's Office)</p> <p>Mr A Balzan: Mr B Neild SC, instructed by Mr A Levin (Legal Aid)</p> <p>Ms B Collins, unrepresented</p> <p>Commissioner of Police, NSW Police Force: Mr A Casselden SC, instructed by Mr A Deards (Makinson d'Apice)</p> <p>A/Sergeant S Parkinson, Senior Constable L Vingerhoed, Constable M Brimfield and Officer 4: Ms Linda Barnes, instructed by Mr Warwick Anderson (Anderson Boemi Lawyers)</p>
Non-publication order:	<p>Non-disclosure and non-publication orders can be obtained on application to the Coroners Court registry.</p>
Findings:	<p>Identity:</p> <p>The person who died is Bradley Balzan.</p> <p>Date of death:</p> <p>Bradley Balzan died on 23 December 2020.</p> <p>Place of death:</p> <p>Bradley Balzan died in St Marys NSW 2760.</p> <p>Cause of death:</p> <p>The cause of Bradley Balzan's death is gunshot wounds to the chest and abdomen.</p> <p>Manner of death:</p> <p>Bradley Balzan died from gunshot wounds inflicted by a NSW Police Force officer as a result of a police operation..</p>
Recommendations:	<p>See Appendix A</p>

Table of Contents

INTRODUCTION.....	6
INQUEST.....	7
The role of the coroner and the scope of the inquest.....	7
The proceedings.....	7
Issues.....	8
A/Sgt Parkinson.....	9
BRADLEY.....	10
BACKGROUND TO NEPEAN PACT PATROLS.....	11
What is PACT?.....	11
PACT Patrols.....	12
EVENTS PRIOR TO ENCOUNTERING BRADLEY.....	13
Nepean 140 patrol.....	13
Searches.....	14
Bradley leaves home.....	14
Bradley’s state of mind.....	16
Broadcast.....	19
ISSUE 1: What occurred when police officers initially stopped and interacted with Bradley on Nariel Street on 23 December 2020, and were those actions reasonable?.....	19
Stop and search powers.....	19
The Nepean 140 officers’ decision to engage Bradley.....	21
Initial engagement.....	25
Did Bradley know they were police?.....	29
Why did Bradley not want to stop and engage with police?.....	32
Reasonableness of the decision to engage Bradley.....	32
Whether Bradley was detained on the roadside.....	33
Rationale for the actions.....	34
Was the detention of Bradley, and/or the use of force, justified?.....	44
Significance of the roadside interaction.....	50
ISSUE 2: Were the actions of police officers in the pursuit of Bradley from Nariel Street to the backyard of his home reasonable?.....	51

ISSUE 3: What occurred at Bradley’s home, and were those actions reasonable?	53
PART A – Entering Bradley’s home	53
Entering the front yard and rear yard.....	53
Limitations on examination of what occurred in the rear yard.....	54
PART B – Engagement with Bradley in the alcove area	55
Summary of SC Vingerhoed’s and A/Sgt Parkinson’s accounts	55
Fatigue	57
Rationale for deploying OC spray	58
SC Ahmedi’s evidence about the deploying of OC spray.....	59
Significance of the OC spray deployment	59
Reasonableness of the OC spray deployment	60
PART C – Events after Bradley exited the alcove and the shooting.....	61
Overview of SC Vingerhoed’s and A/Sgt Parkinson’s accounts	61
Events post shooting.....	65
Mr Balzan’s and his partner’s accounts	68
Pathology conclusions.....	68
Items found on or with Bradley	69
Securing the firearms and magazines.....	70
Scene examination.....	70
Recovery of the casings and jackets	71
Forensic examination.....	72
Examination of A/Sgt Parkinson’s holster.....	74
DSS Grant Gilbert’s evidence	75
Search of the surrounding streets	80
Veterinarian examination	80
Amount of time SC Vingerhoed and A/Sgt Parkinson were alone in the rear yard.....	81
Whether Bradley had the shovel	84
How A/Sgt Parkinson’s pistol came out of his holster	88
How the shots came to be fired (and struggle in the rear yard)	92
Were SC Vingerhoed’s actions reasonable?	124

ISSUE 4: What were the requirements and guidelines regarding body-worn cameras in place as at 23 December 2020, and currently in force?	128
2020 BWV SOP	128
Non-Use of BWV	129
Availability of BWV.....	132
2023 BWV SOP	133
ISSUE 5: What are the objectives, practices and procedures of PACT? What training do officers assigned to PACT duties undergo? What risks arise with PACT practices?	134
Objectives, practices and procedures of PACT	134
Current training for PACT.....	135
Challenges/risks in the conduct of PACT patrols	137
ISSUE 6: Procedural fairness regarding the concept of constructive detention.....	138
THE NEED FOR ANY RECOMMENDATIONS	144
Proposed recommendations.....	144
Mandating the use of BWV	146
Guidance for proactive approaches to persons in public	152
Training for officers assigned to PACT duties	160
Review of use of force manuals relating to using communication and verbal warnings	162
Amending manuals to authorise plain clothes police to carry and use tasers	163
CONCLUDING REMARKS	166
FINDINGS.....	167
APPENDIX A.....	169

INTRODUCTION

1. This is an inquest into the tragic death of Bradley Balzan.
2. Bradley was 20 years old when he died on 23 December 2020.
3. At about 10:11am on 23 December 2020, Bradley left his home in St Marys, in which he lived with his father Adam Balzan (“Mr Balzan”) and his father’s partner.
4. That morning Senior Constable Luke Vingerhoed (“SC Vingerhoed”), Acting Sergeant Shane Parkinson (“A/Sgt Parkinson”), Constable Melissa Brimfield (“Const Brimfield”) and a fourth police officer (referred to as Officer 4) (the “Nepean 140 officers”) were in an unmarked police car (“call sign Nepean 140”). They were in plain clothes and assigned to the Nepean Police Proactive Crime Team (“PACT”) operating out of Penrith Police Station. They were carrying out a ‘patrol’¹.
5. The officers saw Bradley walking westbound along the Nariel Street footpath at about 10:18am. This was about 200 metres from Bradley’s home. The officers exited and engaged Bradley. During the initial exchange, SC Vingerhoed grabbed Bradley’s left arm. Bradley ran and was chased on foot by the four officers. Bradley ran home and entered his back yard with SC Vingerhoed and A/Sgt Parkinson following close behind. In total, about 8 minutes had passed since Bradley earlier left home.
6. While in the rear yard, Bradley was sprayed with oleoresin capsicum (“OC”) spray and a struggle ensued, during which three shots were fired. Bradley was then shot twice by SC Vingerhoed. These shots were fired at about 10:20am. Bradley died soon after.
7. The only eyewitnesses to the shooting were A/Sgt Parkinson and SC Vingerhoed. Mr Balzan and his partner were inside the home at the time of the shooting. Neither witnessed the shooting or the preceding events.
8. Bradley’s sudden and unexpected death during a police operation was extremely shocking to those who knew him. It was a devastating loss to his whole family. I acknowledge his family’s devastating loss and how their loss is profound and ongoing.

¹ Within the Nepean Police Area Command.

INQUEST

The role of the coroner and the scope of the inquest

9. The inquest is a mandatory public examination of the circumstances surrounding Bradley's death, pursuant to s 23 of the *Coroners Act 2009* (NSW) ("the Act"), as his death occurred as a result of a police operation.
10. The coroner's primary function is set out in s 81 of the Act. It is to make findings as to the identity of the person who has died, the date and place of their death and the manner and cause of death. Coronial proceedings are an inquisitorial exercise in fact finding – that is, an investigation aimed at discovering the truth, to the greatest extent possible.
11. In this inquest, Bradley's identity, the date, and the place of death were not at issue.
12. The focus of this inquest has been on the events and circumstances leading up to Bradley's death, including relating to how and why Bradley was approached by police, their interactions, why he was pursued by police, and what occurred in the rear yard of Bradley's home, ultimately leading to Bradley's tragic death.
13. A further role for a coroner is to assess whether there has been an appropriate response to the death and whether more needs to be done to protect others from a similar death.

The proceedings

14. The inquest hearing into Bradley's death was held at the Coroners Court of NSW in Lidcombe, over nine hearing days. The first tranche of seven days was conducted from 19 to 27 June 2023. The second tranche of two days was held on 18 and 19 March 2024.
15. During the inquest, the Court received extensive documentary material. 21 exhibits were tendered including a 9-volume brief of evidence. The material included witness statements, medical records, photographs and video footage, and NSW Police Force ("NSWPF") policies and procedures. The Court heard from a number of witnesses, including three of the four involved officers; experts on the forensic evidence; and from

a number of police witnesses about police practices, training and procedure: the Nepean PACT Team Leader, an operational safety instructor, the Crime Manager of the Nepean Police Area Command (“Nepean PAC”), the coordinator of the curriculum team at NSW Police Academy, and the Commander of the Police Prosecutions and Licensing Enforcement Command.

16. While I have not set out or referred to all the evidence in detail in these findings, I have had regard to, and considered, assessed, and reviewed, all the material that has been tendered, the oral evidence given by the witnesses, along with written closing submissions.
17. Many members of Bradley’s family attended each day of the inquest. At the close of the evidence in the inquest, Bradley’s aunt spoke movingly on behalf of Mr Balzan, who was also present, and Bradley’s mother Belinda Collins (“Ms Collins”) also spoke lovingly of Bradley. It is clear that Bradley was a special young man and was close to and very much loved by many family members. Both Bradley’s aunt on behalf of Mr Balzan and Ms Collins spoke of how Bradley loved to make people laugh, his sense of humour and his wit, and his warm, kind and caring nature.
18. I offer my deep thanks to Bradley’s family and for sharing their memories of Bradley with the Court, and for their patience, dignity and grace throughout this process.

Issues

19. An issues list was disseminated to the parties in advance of the hearing. At that time, it included an issue on the nature of Bradley’s previous interactions with police and whether this contributed to his response on 23 December 2020. This issue was not explored at inquest, in circumstances where Bradley had limited previous interactions with police, and submissions were not made on this issue, save for a short submission on behalf of the Nepean 140 officers which is dealt with in Issue 1 (discussed below) relating to Bradley’s state of mind.
20. At the hearing, an additional issue was raised in submissions on behalf of the Commissioner of Police, New South Wales Police Force (“Commissioner”), and joined by the Nepean 140 officers, regarding procedural fairness on the concept of constructive detention. I have included this as Issue 6 in my findings.

21. On considering what was explored at the hearing, I have summarised and rearranged the issues as outlined below:
- (1) Issue 1: What occurred when police officers initially stopped and interacted with Bradley on Nariel Street on 23 December 2020, and were those actions reasonable?
 - (2) Issue 2: Were the actions of police officers in the pursuit of Bradley from Nariel Street to the backyard of his home reasonable?
 - (3) Issue 3: What occurred at Bradley's home, and were those actions reasonable?
 - (4) Issue 4: What were the requirements and guidelines regarding body-worn cameras in place as at 23 December 2020 and currently in force?
 - (5) Issue 5: What are the objectives, practices and procedures of PACT? What training do officers assigned to PACT duties undergo? What risks arise with PACT practices and what are the safeguards?
 - (6) Issue 6: Procedural fairness regarding the concept of constructive detention.
22. In canvassing the evidence and addressing the issues, I have drawn on and/or adopted parts of the comprehensive written submissions of Counsel Assisting and those of the parties, particularly in relation to matters which were uncontested.

A/Sgt Parkinson

23. The examination in this inquest was subject to limitations, discussed further, including that A/Sgt Parkinson was excused from giving sworn evidence.
24. A/Sgt Parkinson was issued a subpoena to appear to give evidence.
25. An application was made on behalf of A/Sgt Parkinson to be excused from giving evidence at the inquest. Evidence was tendered in support of that application going to his medical unfitness to give evidence and / or risks to his wellbeing if he was required to do so.

26. There is no doubting A/Sgt Parkinson's importance as a witness in these proceedings. However, after careful consideration of the evidence going to his medical unfitness to participate, I excused A/Sgt Parkinson from giving evidence.
27. A/Sgt Parkinson's unsworn account (recorded interview on 26 December 2020) is tendered and before the Court, although, clearly, he could not be examined in the hearing.

BRADLEY

28. As of 23 December 2020, Bradley was single and living with his father Mr Balzan and his father's partner.
29. Bradley had begun a fulltime sheet metal apprenticeship in October 2019 with his uncle. He worked in a business specialising in commercial kitchens and other steel work. Bradley was described as a good worker, however issues had emerged in his attendance at work by November 2020. After discussion with his uncle, it was agreed Bradley would take some time off to consider if he wanted to continue working with his uncle. In mid-December 2020, Bradley told his uncle he wanted to come back to work, and a start date of 29 December 2020 was agreed to. Bradley's work colleagues described him as quiet and keen to learn. They were shocked to learn of the circumstances of his death.
30. Bradley had limited past recorded dealings with police. He had never been sentenced to imprisonment or detention. The recorded instances of police contact were:
 - (1) 4 July 2016: Bradley was issued a transport-related infringement at St Marys railway station for failing to have a valid ticket.
 - (2) 16 August 2018: Bradley was convicted in the Local Court for malicious damage and trespass offences for damaging a neighbour's furniture (\$1000 fine). This seems to have been a retaliation against someone suspected to have damaged Bradley's father's car.
 - (3) 23 November 2018: Bradley was stopped and searched by police in St Marys after he was seen riding a bike without a helmet. He was found to have 33.35 grams of cannabis. He was later convicted for the possession of this drug and

sentenced to a 12-month non-conviction condition release order on 11 December 2018.

31. There is no recorded instance of Bradley encountering police after 23 November 2018.
32. Bradley was known to recreationally use cannabis in the years before his death. Post-mortem blood analysis revealed indications of cannabis use, although not recent usage. No other illicit substances were detected.
33. Bradley reported to family he was robbed sometime in 2016 to 2020. This may have occurred more than once in or around the St Mary's area. Bradley's former girlfriend told police that Bradley was robbed "*a number of times*". She described a time when she was with him when they were approached by two people. She ran away and later saw Bradley with a black eye. Bradley seemed paranoid at the possibility of being robbed or assaulted in public.
34. Dr Kerri Eagle, a forensic psychiatrist, reviewed documentary evidence, including counselling and educational records from 2012 and 2013. Without being exhaustive, and accepting the limitations of the assessment she was asked to perform, Dr Eagle opined that:

"It is not apparent from the information available that [Bradley] had a major mental illness, such as a chronic psychotic disorder or serious mood disturbance at the time of his death. He had experienced some behavioural issues during childhood and adolescence in the context of parental separation and a diagnosis of [attention deficit hyperactivity disorder]. He had not been diagnosed or treated for a mental illness during adulthood. He had not been admitted to a mental health facility."

BACKGROUND TO NEPEAN PACT PATROLS

What is PACT?

35. The Nepean PACT focuses on preventing and investigating break and enters, drug crime and property offences as well as ensuring bail compliance.

36. In contradistinction to general duties, which largely involves reactive policing, PACT officers engage in proactive policing. The objective of PACT is said to be the disruption and deterrence of offending.
37. As of December 2020, there were about eight full-time officers assigned to the Nepean PACT. Sergeant Gary Russell (“Sgt Russell”) was the Nepean PACT supervisor (Team Leader). The supervisor typically attended or was briefed on the outcome of daily meetings held by superiors in the Nepean PACT (including the Crime Manager).
38. PACT attracts officers wishing to gain experience to transition to detective duties. Officers must have completed 2 years general duties post their probationary period.

PACT Patrols

39. A part of PACT is the conduct of patrols. This involves approaches of persons in public places whom the officers may have no prior information, or whom the officers may not necessarily believe or suspect as having committed an offence.
40. Patrols are typically carried out in what the Nepean Police Area Command (including Nepean PACT) considers are “*crime spots*” or “*hot spots*”. These areas are identified by the Nepean PAC considering intelligence and statistics of reported offences, arrests, and searches in particular areas. Information about these areas and offending generally are communicated to Nepean PACT officers through “*intel alerts*” and verbal briefings.
41. A common feature of PACT patrols involves officers identifying persons of interest in a public place. Amongst other matters this may consider the person’s appearance, location and / or actions.
42. Officers will approach that person and ask him or her questions about their identity and movements and, potentially, seek to search the person and his or her belongings. This search is done voluntarily or in the exercise of the power under s 21(1) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (“LEPRA”).
43. Approaches in public places can be noticeable to other persons passing by. Awareness of the public to the fact is thought to potentially deter others from engaging in criminal activity in that area.

EVENTS PRIOR TO ENCOUNTERING BRADLEY

Nepean 140 patrol

44. At about 8:30am, four officers assigned to the Nepean PACT left Penrith Station together in an unmarked dark grey Hyundai sedan fitted with lights and a siren (Nepean 140):
- (1) A/Sgt Parkinson (driver) (dressed in black T-shirt, long white pants, black cap and dark sunglasses). A/Sgt Parkinson was a Senior Constable and had been relieving as Sergeant for a “*couple of weeks*” as of 23 December 2020. He was the most senior ranked officer in the vehicle.
 - (2) Officer 4 (front passenger) (dressed pants, white T-shirt, and sunglasses).
 - (3) Const Brimfield (left rear passenger) (dressed in pants, white T-shirt, and sunglasses).
 - (4) SC Vingerhoed (right rear passenger) (dressed in olive/green T-shirt, long green pants, dark cap, and dark sunglasses).
45. These officers began their day shift at about 6am.
46. The patrol was not directed to investigating a specific reported crime but was part of proactive crime prevention.
47. The officers were in plain clothes with police lanyards² or warrant card or badge affixed by a chain or cord to their neck (when on patrol).
48. Each officer had appointments including holster, Glock pistol, handcuffs, and OC spray. The appointments were affixed to a belt. Tasers were not used or provided to Nepean PACT officers.
49. At the commencement of a shift, the usual practice of the officers included obtaining their firearm and ensuring it was securely holstered.

² The lanyards stated “NSW Police Force” and “Crime Stoppers 180033300” and included the officer’s warrant cards.

50. A/Sgt Parkinson and Const Brimfield had three portable radios between them. The officers also had a "Mobipol" device, which enables remote access to police electronic records.
51. The Nepean 140 vehicle had a radio and mobile data terminal fixed in the centre console/dashboard area. A switch in that area activated the police lights and siren. The police lights were affixed within the front end grill and internally on the windows on all sides of the vehicle.

Searches

52. During its patrol, the Nepean 140 officers pulled over and interacted with several persons, as follows:
 - (1) Two persons were stopped on Pendock Road, Cranebrook at 8:41am (searched by Const Brimfield and A/Sgt Parkinson).
 - (2) Two persons were stopped on Wainwright Lane, Kingswood at 9:19 am (searched by A/Sgt Parkinson and SC Vingerhoed).
 - (3) A person was stopped on Richmond Road, Kingswood at 9:35am (searched by A/Sgt Parkinson and SC Vingerhoed).
53. The areas where these stops occurred were near to housing commission unit complexes. SC Vingerhoed gave evidence that there were high incidences of crime in these areas, although he conceded many people coming and going to this area were not likely to be involved in criminal activity.
54. No items of interest were found during these searches.
55. None of the Nepean 140 officers' interactions with these persons were recorded on Body Worn Video ("BWV"). The only contemporaneous record of these encounters is the record of the search performed on the MobiPol.

Bradley leaves home

56. At about 10:11am, Bradley left home on foot.

57. CCTV cameras at the front of Bradley's home, and in various locations in the streets and public areas he travelled through, captured Bradley's departure and journey to and back to his home.
58. Bradley left home wearing a black hooded jumper, long pants, and a pair of sunglasses, with more layers of clothing beneath his hooded jumper, namely:
- (1) A black Nike T-shirt.
 - (2) A white long hooded jumper.
 - (3) A black long-sleeved jumper.
 - (4) A navy-blue long-sleeved fleece jacket.
 - (5) Blue work tradie pants.
 - (6) Steel cap work boots.
59. The recorded temperature at 10am this day was 23.8 to 24.3 degrees Celsius.
60. When Bradley left, Mr Balzan and his partner were at home. Neither were aware Bradley had left.
61. Bradley walked to the St Mary's shopping area adjoining Queen and Station Streets.
62. At about 10:14am, Bradley entered Station Street via the Queen/Station Street T-intersection. CCTV camera footage of Bradley in Station Street was not found.
63. At 10:15am, Bradley reappears on CCTV walking out of Queen Street, back along Queen Street, and turning right into Nariel Street (in the direction he originally came from). Bradley is only off camera for about 1 minute. When he reappears he carries a green bottle in his hand, which was probably a 'V' energy drink bottle³ bought from a shop in Station Street while he was off camera.

³ When he later saw Bradley on the roadside, A/Sgt Parkinson stated in his recorded interview on 26 December 2020, "And I realised [Bradley] was carrying, like, a, I, th, I think it was, 'cause I drank V's, it was a V bottle, like, a, not a can, a V bottle in, in his hand. - - - Like, it's green".

64. At about 10:17am, as Bradley walked west along the Nariel Street footpath (northern side of the road), the Nepean 140 vehicle is seen on CCTV turning right from Carinya Avenue into Nariel Street, which marks the beginning of its encounter with Bradley that morning.

Bradley's state of mind

Evidence

65. Post-mortem blood analysis showed delta-9-tetrahydrocannabinol (0.004 mg/L) and Delta-9-THC Acid (0.006 mg/L). No other illicit substances were detected. Dr Isabel Brouwer ("Dr Brouwer"), who performed an autopsy on Bradley, opined that the concentration of cannabinoids detected indicated previous, rather than recent, use.
66. During the 7 minutes he is captured on footage before his encounter with Nepean 140 vehicle, Bradley showed no signs of intoxication (e.g. staggering). Matters of note during that journey were:
- (1) Just before leaving his front yard at about 10:10am, the CCTV footage shows Bradley standing next to a parked car in his home's driveway. He leans forwards, resting his forearm, on the roof of a parked car in the driveway for about 7 seconds.
 - (2) While walking east along Nariel Street at about 10:13am, heading towards Queen Street, Bradley had a startled reaction when he passed by a bird on the footpath that flew off.
 - (3) After he returned from Station Street with the drink bottle at about 10:16am, Bradley stopped near the corner of Nariel and Queen Street for about 1 minute. He is seen on footage drinking from the bottle and smoking a cigarette. He then continued heading west along Nariel Street.

Submissions

67. Counsel Assisting submits that it is not evident what, if anything, can be inferred from the above as regards Bradley's mental state. Counsel for the Nepean 140 officers submits that Bradley's behaviour in the front yard and in response to the bird are "*out*

of the ordinary” behaviours that cannot be explained but “*may have provided an explanation as to why Bradley was wearing all the clothes on that day and why he ran from the police.*” Senior Counsel for Mr Balzan submits that Bradley’s response to the bird was utterly unexceptional and that no conclusion can be drawn from it regarding his state of mind at that point in time.

68. Regarding Bradley wearing multiple layers of clothing when he left home, Counsel Assisting submits that it is difficult to attribute that to the weather conditions. It is possible he wore multiple layers of clothes to project a larger build. If so, he may have done this owing to his fear of being targeted in public related to his previous experience being robbed. However, Counsel Assisting submits that a positive finding cannot be made in this respect. Senior Counsel for Mr Balzan submits that no significance can be attached to Bradley wearing multiple layers of clothing throughout relevant events, given the reason for his choice of clothing on the day cannot be known. Senior Counsel for Mr Balzan submits it is possible Bradley was not feeling well or other explanations.
69. Counsel for the Nepean 140 officers also submits that Bradley left home and took with him a weapon consisting of a modified pair of scissors and that the possession of a dangerous or offensive implement is a criminal offence, which provides an incentive to run from the police. Counsel Assisting and Senior Counsel for Mr Balzan submit in reply that it cannot be found that Bradley intentionally modified the scissors or had them for use as a weapon. They submit that it cannot be known if Bradley realised these scissors were on his person; that submissions on behalf of the Nepean 140 officers do not set out how I would find that Bradley’s possession of the scissors amount to a criminal offence; that there are a number of lawful / legitimate purposes for which scissors might be used; that the scissors were “modified” with the plastic handle being broken, and it is not known how these were broken, whether accidentally or intentionally.
70. Counsel for the Nepean 140 officers submits that Bradley’s interaction with police on 23 November 2018 “*provides some insight*” into Bradley’s state of mind when approached by the police on 23 December 2020 and that Bradley may have been concerned about the possibility of being searched, having experienced being searched and cannabis leaf located on him previously, explaining why he ran. Counsel for the Nepean 140 officers submits “*one cannot exclude the possibility that Bradley had a*

small quantity of cannabis leaf on him at the time, consistent with the bong, scissors and chopping bowl in his room” (found on examination by investigating police after the events of 23 December 2020) and that some cannabis may have been dropped while running back to his house. Senior Counsel for Mr Balzan submits in reply that there is no evidence to lend support to this submission, which rises no higher than speculation, particularly in light of the sweep of the area conducted by police on 27 December 2020 which resulted in finding Bradley’s house keys but no cannabis.

71. Counsel for the Nepean 140 officers also submits that as police approached Bradley on 23 December 2020, Bradley uttered words. *“I’m sick of this shit”*, which *“could only have been referring back to his prior interaction with police that resulted in him being required to attend court and being subject to a Conditional Release Order”* and this *“leads to the conclusion that he was either concerned about being caught with scissors fashioned as a weapon or that he had a small quantity of cannabis on him”* and *“there does not appear to be any other explanation as to why he uttered those words”*. Senior Counsel for Mr Balzan submits in reply that I would not find as a fact that Bradley did utter those words *“I’m sick of this shit”*. Counsel for Mr Balzan submits that the only one of the four officers who asserts that they were used is SC Vingerhoed. None of the other three officers corroborates that evidence; rather, the recollection of each was that they heard Bradley say *“fuck off”* or use the word *“fuck”*, which is submitted to be ambiguous as regards whether or not Bradley knew that the officers were members of the police force.

Conclusions

72. There is insufficient evidence to allow me to make a positive finding as to Bradley’s state of mind with respect to his behaviour regarding his clothing, words uttered, previous encounters with police or any awareness of the scissors or possibly cannabis. To do so would be speculating as there are multiple possible reasons why Bradley behaved in the way he did regarding the birds, why he dressed in the way he did, why he used the words he did. I can’t be satisfied that Bradley intentionally modified the scissors or had them for use as a weapon. I cannot be satisfied that Bradley even realised that the scissors were in his possession.

Broadcast

73. At 10:10am, a job was broadcast via radio (“VKG”) asking for an available unit to attend a concern for welfare report about a male who had collapsed behind a laneway near to the Westpac Bank in St Marys. The bank was on West Lane, which runs parallel with Carinya Avenue, south of Nariel Street.
74. This broadcast was heard by Nepean 140, which began driving to that location.
75. Two NSWPF officers travelling in the area in a marked police car with call sign Nepean 20 arrived at the location before Nepean 140 arrived. Nepean 20 notified VKG by radio they had found a male who was conscious but seemed dazed and who required medical attention. This led to an ambulance attending that location to help the male.
76. The Nepean 140 officers heard Nepean 20’s broadcast. A/Sgt Parkinson decided not to attend that location and to resume patrolling. By this time Nepean 140 was in or near to Carinya Avenue (shortly before it turned right into Nariel Street and encountered Bradley).
77. A/Sgt Parkinson, SC Vingerhoed and Const Brimfield, in their interviews and statement, described the broadcast, or discussions in the car about the broadcast, as referring to a “*suspicious person*” in that area.
78. The recording of the radio broadcast shows it was about a male who had collapsed. There was no request for units to keep a look out for a specific person said to be suspicious in appearance.

ISSUE 1: What occurred when police officers initially stopped and interacted with Bradley on Nariel Street on 23 December 2020, and were those actions reasonable?

Stop and search powers

79. Of relevance to Issue 1 are the statutory powers concerning the search and detaining of persons without warrant or arrest.

80. According to s 21(1) of LEPRA, a police officer may without warrant stop, search, and detain a person and anything in the possession of or under the control of the person, if the police officer suspects on reasonable grounds the person has in his or her possession or control (“reasonable suspicion threshold”⁴):
- (a) Anything stolen or otherwise unlawfully obtained.
 - (b) Anything used or intended to be used in or in connection with the commission of a relevant offence.
 - (c) In a public place a dangerous article that is being or was used in or in connection with the commission of a relevant offence.
 - (d) A prohibited plant or a prohibited drug (contrary to the *Drug Misuse and Trafficking Act 1985*).
81. According to s 21(2), a police officer may seize and detain all (or in some cases part of) the thing or article suspects is captured by subsection (1)(a)-(d).
82. According to s 9 of LEPRA, an officer may enter premises if the officer believes on reasonable grounds that (a) a breach of the peace is being or is likely to be committed and it is necessary to enter the premises immediately to end or prevent the breach of peace or (b) a person has suffered significant physical injury or there is imminent danger of significant physical injury to a person and it is necessary to enter the premises immediately to prevent further significant physical injury or significant physical injury to a person.
83. According to s 202 of LEPRA, a police officer who exercises a power (relevantly includes s 21) must provide the subject person:
- (1) Evidence the officer is a police officer (unless in uniform).
 - (2) The name of the officer and his or her place of duty.

⁴ Principles concerning the threshold of reasonable grounds to “suspect” and “believe” are canvassed in decisions including: *R v Rondo* [2001] NSWCCA 540; *Fromberg v R* [2017] NSWDC 259 and *Azar v DPP* [2014] NSWSC 132 (includes consideration of the relevance of an area or location to the development of reasonable grounds to suspect).

- (3) The reason for the exercise of the power.
84. This requirement must be complied with (a) as soon as it is reasonably practicable to do so or (b) in the case of a direction, requirement, or request to a single person – before giving or making the same. The officer must, as soon as is reasonably practicable after making the direction, requirement, or request, also warn the subject person he or she is required by law to comply: s 203, LEPRA.
85. Ensuring persons are informed that power is being exercised, and the basis for doing so, reduces the risk of ambiguity in the mind of the person and the officer(s) as to the person's status and rights and increases the legitimacy of the officer's request/direction. This reduces the risk of adverse reaction or resistance by the person to any act by the officer.
86. According to s 230 of LEPRA, it is lawful for a police officer exercising a function under LEPRA or any other Act or law to use such force as is reasonably necessary to exercise the function.

The Nepean 140 officers' decision to engage Bradley

Evidence

87. At or near to the Carinya Avenue and Nariel Street T-intersection, one or more of the Nepean 140 officers sighted Bradley walking along on the Nariel Street footpath towards Carinya Avenue. Bradley was probably heading home.
88. It appears a decision was instantaneously made to pull over to speak to Bradley.
89. About 10 seconds passed between Nepean 140 reaching the T-intersection, turning into Nariel Street, and pulling over on the side of the road just ahead of Bradley.
90. The decision was not in response to a report of a specific offence committed at or near this location.
91. In his interview, SC Vingerhoed said:

A250 *Yep. So when I sighted him, uh he was on Nariel Street, walking towards Carinya Avenue - - -*

...

Q253 *OK. And then what happened?*

A *Um, er, we. well, well I saw him, um. we sort of had a discussion. said, He, he looks suspicious.*

Q254 *Yep.*

A *Um, Let's have a chat to speak, Let's have a, stop and have a chat to him.*

Q255 *OK. So who, who said, He looks suspicious?*

A *Well, I, I'm pretty sure I said, He looks suspicious. like, sort of thing. Just like, oh, He looks suspicious. Um, but I can't recall the exact conversation that took place.*

...

Q258 *And, um, a, and what made you form the belief that he looks, sus, that he looks suspicious?*

A *Uh, well, he was wearing a hooded jumper with a hoodie, the hood over his, over his face. Um, it was also a I thought it was a hot day, so to me it was suspicious that someone would be wearing a, a hooded jumper on a, on a hot day. Um, yeah.*

92. SC Vingerhoed said he intended to stop Bradley to obtain his identification.
93. In his interview, A/Sgt Parkinson said he thought Bradley's clothing (tracksuit pants, hooded jumper and sunglasses) seemed suspicious as he considered it was a warm day. As to his expectation of their encounter, A/Sgt Parkinson stated:

“After he ducked his head and, sort of, w, what made me more suspicious, I've probably, um, got enough reasonable cause to search him to be honest with you. With the area, the location, the previous dealings in that location, his behaviour, I, I was probably gunna stop and search him, to be honest with you - - - [would be searching him for] drugs, and also doin' checks for Warrants”

94. Const Brimfield and Officer 4 similarly considered Bradley's appearance looked suspicious and said there was a consensus that they would stop and speak to him.

Submissions

95. Counsel Assisting submits that I would be satisfied that each officer expected their engagement with Bradley to proceed as follows:

- (1) Approaching and identify themselves as police officers.
- (2) Asking Bradley to stop and to answer questions about his identity and movements, using that information to conduct checks on him as to his address, whether there was intelligence or alerts and/or warrants for him.
- (3) Assessing if he showed indicia of intoxication or illicit substance use or appeared evasive, which may go to “building” a reasonable suspicion under s 21(1) LEPR.
- (4) Asking Bradley's consent to search his person and belongings or, at the very least, considering whether a search could be justified under s 21(1) of LEPR.

96. It wasn't the officers' usual practice to volunteer that the person was free not to stop or speak if they didn't wish to, although this would be disclosed if directly asked of them by the person.

97. Counsel Assisting submits that I would be satisfied that all officers expected, before the engagement began, that they would search Bradley. This considers:

- (1) The officers pulled over and engaged Bradley because they considered him suspicious. It is difficult to conceive that their suspicion would have been

resolved to their satisfaction by merely confirming Bradley's identity and his movements.

- (2) Their general practice in the conduct of PACT patrols, with the Nepean 140 officers having searched three sets of people in the preceding 90 minutes before their encounter with Bradley. None of the Nepean 140 officers suggested that the stopping and searching of three sets of people, within this 60 to 90 minute period, was outside the norm of their experience with PACT patrols.
 - (3) A/Sgt Parkinson stated in his interview that his initial intention was more than to simply stop Bradley to speak to him. A/Sgt Parkinson did not elaborate on what he meant by this statement, it can be inferred he expected Bradley would be searched.
98. The abovementioned approach, initially at least, depended on Bradley voluntarily stopping on the roadside and submitting to questioning.
 99. Counsel Assisting submits that, even had the police immediately opted to exercise the power under s 21(1) LEPRA, that power could be utilised only to detain and search Bradley rather than to question Bradley on the roadside.
 100. Counsel Assisting submits that exercising the s 21(1) power would also have required the officers to inform Bradley of the fact that the power was being exercised, the reasons for it and the consequences of non-compliance: ss 202 and 203.
 101. Counsel for the Nepean 140 officers submits that it is not open to me to find that the officers "*expected, before the engagement began, that they would search Bradley*" and that a proper analysis of the officers' evidence, along with the more senior officers who gave evidence, shows that the reality of policing (and in accordance with training) is that suspicion can build over time in circumstances where there was no expectation that a search would in fact occur. Counsel for the Nepean 140 officers submit that each of the officers stated that they did not intend to search Bradley when they first stopped

and approached him and that it is clear from the evidence that there were incremental steps in the raising of suspicion.⁵

Conclusions

102. I accept the submissions made by counsel for the Nepean 140 officers that suspicion can build over time in circumstances where there was no expectation that a search would in fact occur. For the following reasons, I do not accept that is what happened on this occasion.

- (1) A/Sgt Parkinson stated in his interview that his initial intention was more than to simply stop Bradley to speak to him. It can be inferred that he expected Bradley would be searched.
- (2) SC Vingerhoed thought that Bradley “looked suspicious”.
- (3) Const Brimfield and Officer 4 similarly considered Bradley’s appearance looked suspicious and said there was a consensus amongst the officers that they would stop and speak to Bradley.
- (4) The PACT patrols, with the Nepean 140 officers had searched three sets of people in the preceding 90 minutes before their encounter with Bradley. None of the officers suggested that this was outside the norm of their experience with PACT patrols.

103. Based on these reasons, I find that the Nepean 140 officers each expected, prior to engaging with Bradley, that they would search him.

Initial engagement

104. The Nepean 140 officers’ initial encounter with Bradley was captured from a distance by CCTV camera (visual only).

105. The Nepean 140 vehicle turned right into Nariel Street at about 10:17am heading east towards Bradley, walking in a westerly direction along the footpath.

⁵ Submissions by the 140 officers on “incremental steps” are discussed below in the section relating to whether the detention of Bradley and/or use of force was justified.

106. A/Sgt Parkinson pulled the car over on the side of the road ahead of Bradley in line of sight of him.
107. As Bradley got near to the front or side of the vehicle, A/Sgt Parkinson activated the vehicle's lights causing the lights and headlight to flash. The vehicle's police siren momentarily sounded when the lights activated.
108. According to A/Sgt Parkinson, when he activated the lights Bradley "*sort of pulled his head down*". The hoodie appeared to be pulled right down over his hair and forehead. He said he thought Bradley might have pulled his head down "to avoid us".
109. Officer 4 (front passenger seat) and Const Brimfield (rear left passenger seat) were closest to Bradley when he got alongside the car. CCTV footage shows Const Brimfield and Officer 4 exiting the car first in close succession.
110. Const Brimfield said that she opened her door and exited as Bradley passed by the car. She said to him to the effect, "*Hey mate. We're from Penrith Police. Can you just stop for a minute?*". The lanyard, which stated "*NSW Police Force*", was around her neck. Bradley momentarily paused and looked at her before continuing. He walked the footpath across the nature strip and onto the roadway, moving behind the car, toward Carinya Avenue. Bradley stated loudly, "*can you just fuck off*". He appeared to her to sound "*annoyed*" or "*agitated or even angry*" but she did not think he appeared affected by drugs or alcohol.
111. Officer 4 agreed it was clear that Bradley did not wish to engage with police.
112. SC Vingerhoed said he heard one of the female officers say to Bradley, in a "*loud, firm tone*", to the effect, "*Stop, mate, it's the police*" at which time Bradley turned his head away from the car and kept walking.
113. Const Brimfield's and SC Vingerhoed's description of Bradley's movements appears consistent with that shown in the footage. In the footage, Bradley appears to momentarily stop, turn towards an officer wearing a white top (either Officer 4 or Const Brimfield) and to then turn and walk diagonally across the nature strip onto the roadway heading away from the officers.

114. CCTV shows SC Vingerhoed exiting the rear right passenger seat, and was near to the rear of the car, by the time Bradley stepped onto the roadway.
115. SC Vingerhoed said in interview he “*sort of jogged around the car*” to where Bradley was and held out his lanyard with his warrant and said to the effect “*mate, just stop, it's the, um, police*”, about which time he heard Bradley says to the effect “*I'm sick of this shit*”. Const Brimfield said she saw SC Vingerhoed approach Bradley and say, “*Can you just stop for a sec. We just want to chat to you*”.
116. SC Vingerhoed said he saw Bradley fling his right hand, which was holding the bottle, towards the ground “*in an aggressive manner*” and increase his pace. A/Sgt Parkinson, in interview, said, “*...thought her say [Const Brimfield] name, so I, I gathered she was introducing herself and gone to speak to him. And he's sort of thrown his arm out. and I've, I heard, Fuck off, or something like that.*” Officer 4 and Const Brimfield did not mention seeing that gesture.
117. SC Vingerhoed stated that he then grabbed Bradley’s left triceps’ area and said, “*Mate, just stop there*”. He grabbed Bradley to make him stop. He wanted to question Bradley about “*what he was doing in the area, obtain identification, conduct checks...to see if he was wanted or if he had...outstanding matters with police...and his history...and reasons why he'd be in the area*”.
118. SC Vingerhoed said he jogged at a slow pace up behind Bradley to close the gap between them.
119. CCTV footage shows the distance SC Vingerhoed covered to come up behind Bradley before grabbing his arm. By that point A/Sgt Parkinson had made his way over. Const Brimfield and Officer 4 were walking in their direction, but were further back near to the rear of the vehicle:



120. SC Vingerhoed said that when he grabbed Bradley's arm, Bradley "*immediately reeled his arm out of my grip*" and began running.
121. The CCTV shows Bradley spinning around anticlockwise after being grabbed. That either resulted from SC Vingerhoed grasp pulling Bradley's arm backwards, Bradley's spinning as he used force to pull out of SC Vingerhoed's grasp, or some combination of the two. Either way SC Vingerhoed has forcefully grabbed Bradley.

Did Bradley know they were police?

122. Counsel Assisting, and Counsel for the Nepean 140 officers, submit that I would be satisfied that Bradley realised the Nepean 140 officers were police officers. That realisation was at least arrived at by the time he engaged with Const Brimfield after she exited the rear passenger side. This considers:
- (1) The Nepean 140 vehicle's lights and sirens flashed about the time Bradley got in front or alongside it. The lights were visible on the passenger side and rear windows.
 - (2) Although not in uniform, the three officers that exited the car and were near to Bradley had police lanyards and holstered firearms. SC Vingerhoed's shirt was tucked into his pants rather than covering his belt/firearm. His belt, with appointments on his righthand side, is visible in the CCTV still when he entered Bradley's front gate in pursuit of Bradley. Const Brimfield had appointments on her belt and lanyard displayed at the front of her shirt when she entered Bradley's front gate.
 - (3) Const Brimfield and Officer 4 gave evidence that both identify themselves as police, which one would expect them to do given they wanted to stop and question Bradley.
123. Counsel Assisting further submits that Bradley realised they were police officers, did not wish to stop and likely expressed frustration when the officers persisted in approaching and requesting he stop (e.g. swearing), after he made clear his wish not to engage, which would not be viewed as remarkable or as something that adversely reflects on him. Bradley was within his rights not to engage if he did not wish to unless an officer exercised a power to compel him to stop.
124. On the other hand, Senior Counsel for Mr Balzan submits that I could not be satisfied that Bradley believed the Nepean 140 officers were in fact police officers, which may assist in explaining the way in which subsequent events unfolded.

125. Senior Counsel for Mr Balzan submits that there is no direct evidence that Bradley knew that they were in fact police officers, and that the circumstantial evidence is equivocal, considering the following:

- (1) It cannot be known whether Bradley in fact observed the activation of the lights. The lights of the unmarked police vehicle were activated after Bradley had walked past the front of the vehicle. Senior Counsel for Mr Balzan submits that at least as depicted in the CCTV footage, the lights did not shine particularly strongly given the bright daylight at the time. Bradley was wearing a hoodie and sunglasses at the time, which may have at least partially obscured or diminished his ability to perceive the lights. Finally, he did not change his behaviour at the point in time when the lights were activated and kept walking at the same steady pace.

In reply, Counsel Assisting submits that the CCTV footage shows that Bradley stopped, turned and faced towards Const Brimfield at the point she exited the rear passenger side; and at the point he was facing Const Brimfield the vehicle's lights were flashing. Counsel Assisting submits it is difficult to conceive he would not have sighted (even with sunglasses on) the lights on the left-hand side and rear windscreen flashing.

- (2) Senior Counsel for Mr Balzan submits that A/Sgt Parkinson did not activate the siren of the vehicle, and that A/Sgt Parkinson himself was somewhat uncertain on the point: "*think I may have actually hit the siren, which I usually never do [then] quickly turned it back [off].*" Of the civilian witnesses who were in the vicinity, only one asserts that he heard a siren, and Senior Counsel for Mr Balzan submits it is unclear whether the witness was referring to sirens from some other police vehicle(s). This witness was apparently watching Bradley (walking) when he heard the sirens and describes the sirens as being "behind" him, that is, in the opposite direction. Nor is the siren captured on the dash cam audio recording which did later record the noise of the gunshots. SC Vingerhoed's evidence is that he did not hear the siren being activated and that if he had heard it, he would have remembered it.

- (3) Senior Counsel for Mr Balzan submits that it is not known whether Bradley observed the Nepean 140 officers' lanyards (or placed any significance upon them) or their appointments, and that a significant countervailing factor is that the officers were not in uniform, as an officer's uniform is the primary visual means by which most members of the general public would identify a person approaching them as a police officer.
- (4) Even accepting that Officer 4 and/or Const Brimfield probably did verbally identify themselves as police officers, Senior Counsel for Mr Balzan submits Bradley may simply not have heard, or heard clearly, what they said to him, particularly given that the approach would have been unexpected. Bradley's actions in response to the approach were not consistent with an understanding on his part that they were in fact police officers, noting that during his previous experiences with police no record was made of him attempting to evade police. Mr Balzan describes having a conversation with Bradley within the week prior to 23 December 2020 in which Bradley had used his mobile phone to show Adam a video of "*people acting like police and pulling people over.*" Even if Bradley had heard or registered Officer 4 and/or Brimfield identify themselves as police officers, given their clothing and the apparently random nature of their request that he stop and speak to them, Senior Counsel for Mr Balzan submits it is reasonably possible that he was unsure whether they were telling the truth when they did so.
126. I find on balance that Bradley would have known the four officers were police, at least by the time he engaged with Const Brimfield after she exited the rear passenger side. Despite the officers not being in police uniforms, Const Brimfield had appointments on her belt and lanyard displayed at the front of her shirt and I accept her evidence that she identified herself as a police officer. In addition, the CCTV footage shows that Bradley stopped, turned and faced towards Const Brimfield at the point she exited the rear passenger side and at the point he was facing Const Brimfield the vehicle's lights were flashing. I accept Counsel Assisting's submissions that it is difficult to conceive he would not have sighted the lights on the left-hand side and rear windscreen flashing.

Why did Bradley not want to stop and engage with police?

127. Counsel Assisting submits that it can only be speculated what Bradley's reasons were for not wanting to engage with police. They may have included:
- (1) He felt he had done nothing wrong and didn't have to engage if he didn't want to.
 - (2) He may have seen other stop and searches of people and felt that was not justified in his case.
 - (3) He felt some grievance over his earlier experience of being stopped and searched by police (rightly or wrongly).
 - (4) Other feelings of aggrievement for reasons not presently known or understood.
128. Counsel Assisting submits that whatever his reasons, Bradley was lawfully entitled not to stop or to engage with the Nepean 140 officers. That is unless one of the officers exercised a statutory power under s 21(1) of LEPRA in accordance with ss 202 and 203.
129. Counsel for the Nepean 140 officers submits that it is impossible to know why Bradley ran from the scene and any assessment of his conduct must include the nature of his prior interactions with police and the fact that he was in possession of the modified scissors. I earlier discussed this in relation to Bradley's state of mind.
130. Bradley was within his rights not to engage with the officers if he did not wish to unless an officer exercised a power to compel him to stop and I can only speculate as to the reasons why Bradley did not want to engage with police on that day.

Reasonableness of the decision to engage Bradley

131. Counsel Assisting submits that I would not find the decision to pull over and engage Bradley was unreasonable, but submits that is a separate issue from whether the officers could force Bradley to stop and engage against his will.

132. I agree with Counsel Assisting's submission. That is, it was not unreasonable to pull over and engage Bradley, however the decision to force Bradley to stop and engage against his will is a separate issue.

Whether Bradley was detained on the roadside

133. Counsel Assisting submits that Const Brimfield's initial engagement, in which she said to Bradley "*We're from Penrith police. Can you just stop for a minute?*", with all officers exiting the vehicle in close succession with lights flashing, may be thought to come close to the line of voluntary interaction versus constructive detention⁶ if not crossing it.
134. Putting that to one side, Counsel Assisting submits that I would be satisfied that SC Vingerhoed's actions in persisting to engage Bradley and telling him to stop, after Bradley made clear he did not want to engage, culminating in SC Vingerhoed following Bradley from behind and grabbing his arm, amounted to a roadside detention of Bradley.
135. Counsel Assisting submits that this was not a situation of SC Vingerhoed lightly touching Bradley to alert him to the presence of police or that they wanted to speak with him. SC Vingerhoed heard Const Brimfield identify herself as a police officer to Bradley. He also identified himself as a police officer to Bradley. It was clear Bradley was aware of their presence and their wish for him to stop. SC Vingerhoed's intent in grabbing Bradley was to force him to stop.
136. Counsel for the Nepean 140 officers submits that I would not make such a serious finding of constructive detention. Counsel for the Nepean 140 officers submits the concept of constructive detention is not something in respect of which any of the officers had any training and that it is a novel legal concept and there is significant difficulty in applying such a legal concept to the "real world" and practical implementation.
137. Counsel for the Nepean 140 officers also submits that it is procedurally unfair that this concept was only raised with Officer 4 while Counsel Assisting submits that the actions

⁶ The concept of constructive detention was considered in *Eatts v Dawson* (1990) 21 FCR 166 at 178 as regards what can amount to custody or detention.

of all involved officers constituted the constructive detention of Bradley and this is unjustified. I discuss the procedural unfairness aspect separately within Issue 6 further below.

138. I accept the submission of counsel for the Nepean 140 officers that none of the officers had specific training in relation to the legal concept of constructive detention, however, that does not take away from the fact that it exists. I also accept the submission that applying the law in relation to the concept in the “real world” can be challenging for police. However, having regard to the evidence of SC Vingerhoed’s actions in approaching Bradley and telling him to stop, culminating in following Bradley from behind and grabbing his arm, as set out above at [115]-[121], I find that SC Vingerhoed’s actions did amount to a roadside detention of Bradley.

Rationale for the actions

139. None of the Nepean 140 officers, who gave evidence at the inquest, said they:

- (1) Had in their mind the reasonable suspicion threshold under s 21(1) of LEPR.
- (2) In fact exercised the s 21(1) power to stop and detain Bradley on the roadside.

140. In his initial interview, SC Vingerhoed said as regards the justification for his actions on the roadside:

Q374 And in your mind, were you satisfied that you had the power to do that?

A Yes.

Q375 A, and why?

A Uh, due to the information available about the suspicious person in the area. Yeah.

Q376 Uh, anything else?

A *Um, also, um, the area, as I said, being well-known to myself for property crime and drug-related crime. Um, the, the fact that he was wearing a hooded jumper with a hoodie over his head. Um, I believed it to be a hot day, so I don't think there'd be any reason why someone would be wearing a hooded jumper in that weather. Um, and then, up until speaking to him, the fact that he turned his head away from the, from us and then continued to walk. It's made him a lot, well, raised my suspicion.*

...

Q381 *Um, but, w, but why did you want him to stop?*

A *Um, so we can ascertain who he was and what he was, in case, you now, he was wanted or whatever else.*

Q382 *A, and...in your mind, did you...believe that you had the power to do that as a police officer?*

A *Yes.*

Q383 *OK. Can you just explain that to us.*

A *Uh, the, well, we can stop, search and detain people. Am I allowed to refer to my notes that....*

Q384 *Yeah, of course you can, yeah.*

A *Yeah. Um, yeah, so essentially, um, my knowledge is, we have the power to, uh, without a Warrant, stop, search and detain someone, um, if we suspect on reasonable grounds that they have in control, or In their possession, something stolen, er, or, unlawf, er, uh, otherwise unlawfully obtained and, um, a prohibited plant or a prohibited drug, er, or has something used or intended to be used in, or in connection with, the commission of a relevant offence.*

Q385 So, w, when did you, er, so you're referring to these notes, er - - -

A Yes

Q386 - - - that. you made these notes prior to the interview, obviously.

A Uh, yes.

Q387 OK. And, w, and what. what's the purpose of that?

A Of the notes?

Q388 Yeah.

A Uh, well, notes to the solicitor and also to, um, refresh my memory.

141. At hearing, SC Vingerhoed said he had not reached the reasonable suspicion threshold and did not exercise the s 21 power to stop and detain Bradley, when he grabbed Bradley.

142. As for his state of mind, when he first sighted Bradley, SC Vingerhoed gave evidence:

Q. And at the point you say that, in your mind is the section 21 threshold satisfied.

A. No.

Q. *Is it that you see him and he appears to be someone of interest.*

A. *That's right.*

Q. *And a person of interest in what way.*

A. *His manner of dress on that day was - was odd. I thought it was suspicious. He was wearing a hooded jumper with the hood over his head and over his face, and I didn't think there was any reason*

why someone would be wearing a hooded jumper on a hot day like that.

Q. *Does it seem - I understand you would attribute like weather-wise there wasn't a need to wear a hooded jumper.*

A. *That's right.*

Q. *It would appear by him wearing a hooded jumper, he's drawing attention to himself.*

A. *That's correct. Not only the jumper but the hood over his head.*

Q. *What did you suspect he might - in terms of interest and suspicion, what were you thinking at that stage possibly relevant to section 21.*

A. *At that time, the threshold hadn't been met but there was a possibility he may have had something on him that he shouldn't have had.*

143. As for his state of mind when approached Bradley outside the vehicle, SC Vingerhoed gave evidence:

Q. *As you're getting out of the car, you want to get those details I've referred to with Bradley.*

A. *Yes.*

Q. *And at that point he's ignored the first interaction by the officer.*

A. *That's correct.*

Q. *So isn't he entitled to keep walking.*

A. *Yes at that particular time.*

- Q. *How are you going to get the information you want in that situation.*
- A. *Yeah, so I - I got out of the police vehicle. I walked to the rear of the police vehicle, which was several metres away from Bradley. I've held up my police identification and said, "Mate, it's the police."*
- Q. *So at that point he may not have realised you were the police.*
- A. *I believed he did know.*
- Q. *Well, isn't it clear that he doesn't want to engage with you by that point.*
- A. *Yes.*
- Q. *So he's lawfully entitled not to cooperate with you.*
- A. *Yes.*
- Q. *He's lawfully entitled not to stop.*
- A. *Yes.*
- Q. *He's lawfully entitled not to answer questions.*
- A. *Yes.*
- Q. *So if he's ignored the first request or made clear he doesn't want to engage--*
- A. *Yeah.*
- Q. *--what justification do you have to approach him in that manner, in your mind.*
- A. *In my mind I'm allowed to attempt to get his attention.*
- Q. *When you say, "attempt to get his attention", an officer's already done that from the window of the car, hasn't she?*

- A. Yes.
- Q. *And he knows that you're there.*
- A. Yes.
- Q. *So why would you be needed to get his attention then.*
- A. *Just to when - when - and from my recollection, when they've engaged with him out the window, he's turned his head away from the police vehicle and he's quickened his pace. That to me sort of raised my suspicion. Again, I've said, "Mate, it's the police" and I've shown him my police identification. At that time he's yelled, "I'm sick of this shit" like aggressively with his bottle and he's thrown it towards the ground without letting go of the bottle, which has again heightened my suspicion.*
- Q. *Just to break that down. So what does Officer - do you recall which female officer spoke to him.*
- A. *Again, going off recollection, I didn't know if it was Officer 4 or Brimfield at that time. Obviously now I know it was Brimfield, yeah.*
- Q. *And what did she say exactly to him at that point.*
- A. *I believe it was something like, "Stop mate, it's the police", something along those lines.*
- Q. *So she's telling him to stop.*
- A. *That's what I thought she was. At that time, I thought that's what she said.*
- Q. *But in your mind section 21 isn't enlivened.*
- A. *No.*
- Q. *So there was no lawful right to command him to stop under 21.*

A. *Not command him but ask him.*

Q. *That's not an invitation, "Hey mate, do you mind if we just chat to you. That's a "You stop, we want to talk to you", isn't it?*

A. *No. I - in my mind it was just attempting to gain his attention.*

144. SC Vingerhoed gave evidence he considered the s 21(1) reasonable suspicion threshold was only satisfied once Bradley began running:

Q. *At some point on the road side do you feel section 21 was enlivened?*

A. *No. Not at that point, no.*

Q. *All right. At any time before he runs away in your mind is section 21 enlivened?*

A. *No.*

Q. *So at no point was section 21 enlivened in your mind?*

A. *Before he runs, no.*

145. In the hearing, SC Vingerhoed gave evidence that he believed he had been justified in approaching Bradley, and grabbing his arm, without exercising s 21(1) of LEPRA:

Q. *Well, you were trying to make him stop?*

A. *It was, again, a further attempt in getting his attention.*

Q. *I want to suggest to you, your answer is - and I have just read to you - "to get him to stop".*

A. *Yes.*

- Q. *So it was not about getting his attention. You wanted him to stop moving and remain at that stop when you grabbed his arm.*
- A. *I wanted - I wanted him to engage us, yes.*
- Q. *You wanted him to stop, Officer.*
- A. *I did want him to stop.*
- Q. *That is why you grabbed his arm.*
- A. *I did want him to stop, yes.*
- Q. *To understand, what do you understand the requirements are for the use of force in the exercise of a police power, or police anything, a police action?*
- A. *In - in general?*
- Q. *Yes.*
- A. *As in, 21 of LEPPRA?*
- Q. *Yes, or in this situation. You agree that grabbing his arm is an application of force?*
- A. *Yes, somewhat. Yes.*
- Q. *Well, it is or it is not?*
- A. *It is.*
- Q. *What did you understand the threshold or the requirements were that guided your use of force in that situation? The primary--*
- A. *So in--*
- Q. *Legislation?*

A. *In my mind, I was on that threshold of 21. I had not met it yet. I was at borderline, and obviously communication, if it is - had not worked from Officer Brimfield and myself, and in my mind, the next reasonable option was to take hold of his arm to try to get him to stop.*

Q. *But you have not reached 21 yet?*

A. *That is right.*

Q. *So you are not using force to exercise 21?*

A. *That is right.*

Q. *What is the lawful basis for you making contact with him at that point?*

A. *I was of the belief that I could do that as an attempt to - to get him to stop and engage with us.*

Q. *If section 21 gives you a power to stop someone, if the suspicion is at a certain level in your mind--*

A. *Yes.*

Q. *--and you have not met that threshold--*

A. *Yes.*

Q. *--what other lawful basis do you have to justify putting your hand on someone's arm?*

A. *Can you - sorry, can you - can you repeat that?*

Q. *You are allowed to stop someone under section 21, irrespective of their wishes on the matter--*

A. *That is correct.*

Q. *--if you have reasonable grounds to suspect certain matters, yes?*

A. Yes.

Q. *You are entitled to use reasonable force, as is reasonably necessary, in the exercise of section 21?*

A. Yes.

Q. *But your evidence is that, at that point that you grab him, whether you are close to it in your mind or not, you are not at the section 21 threshold.*

A. *That is right.*

Q. *So what is the power that you had to grab him on his arm to stop him at that point?*

A. *Again, I was of the belief we could do that to get someone's attention.*

146. As to how he came to form the view that force was justified in these circumstances, SC Vingerhoed gave evidence:

"Well, I have - throughout my policing career, I have had senior officers do the exact same thing. And also, I have done training packages where they tell us that we are allowed to make physical contact with someone to try and get their attention and to engage us."

147. SC Vingerhoed's reference to the "training packages" included reference to a "Six Minute Intensive Course" instruction they received on the job titled "*Do police have power to stop a person and speak with them?*" ("SMIT"). Officer 4 and Const Brimfield also referred to undergoing this training on the job training. Included in that document is a statement to the effect that "*it may be acceptable to lay your hand on one's sleeve or tap one's shoulder*" and that officers may even be justified doing so more than once.

Was the detention of Bradley, and/or the use of force, justified?

Submissions by Counsel Assisting

148. Counsel Assisting submits that I would be satisfied SC Vingerhoed's belief that his actions were permissible under law is erroneous.
149. First, putting to one side whether the instruction in the SMIT is legally accurate, Counsel Assisting submits this was not a situation of SC Vingerhoed lightly touching Bradley to alert him to the presence of police or that they wanted to speak with him. SC Vingerhoed heard Const Brimfield identify herself as a police officer to Bradley. He also identified himself as a police officer to Bradley. It was clear Bradley was aware of their presence and their wish for him to stop. SC Vingerhoed intent in grabbing Bradley was to force him to stop.
150. Second, the use of force to detain someone is not justifiable if the detention itself is not justified.
151. Counsel Assisting submits that SC Vingerhoed's stated belief brings into question the sufficiency of police procedure and training relevant to PACT patrols. That includes the on-job instruction SC Vingerhoed and the other officers received.
152. Counsel assisting submits that, even had SC Vingerhoed purported to be exercising s 21(1) of LEPR when he grabbed Bradley, I would be satisfied that the reasonable suspicion threshold in s 21(1) had not been satisfied nor was the use of force authorised by LEPR. This considers the following.
 - (1) Even accepting the area Bradley was walking was considered by police to have a high incidence of property and low-level drug offending, this matter could not reasonably be given much (if any) weight as:
 - (a) Bradley was walking along a footpath on a public thoroughfare leading to/from suburban streets and the local train station/shops. This was not a situation whereby Bradley's presence and actions were suspect owing to the time of day or location (e.g. moving through a poorly lit carpark late at night). It was about 10:17am. Many people would be expected to be making their way to and from that area, on that

footpath, for lawful reasons.

(b) Although there were car parks nearby, which police considered were vulnerable for break-ins, Bradley was not seen in the car park or near a parked car. He wasn't observed doing anything other than walking. The decision to engage Bradley was not prompted by a broadcast to the effect that a person matching his description had been seen within or exiting a nearby car park after a suspected car break-in.

- (2) Although a hoodie and sunglasses may be worn to conceal the wearer's identity, that is far from the only possibility, nor does it follow that the person is or intends engaging in criminal activity. Whatever a person's subjective view about the suitability of hoodies and sunglasses in warmer weather, it would be a significant lowering of the bar for warrantless searches if that attire alone, worn by someone in a public place walking along a footpath, would itself satisfy the s 21(1) reasonable suspicion threshold.
- (3) Bradley had not directly threatened any officer. He was making a pointed attempt at walking away from the officers and had his back towards SC Vingerhoed when the latter grabbed his arm.
- (4) Bradley was lawfully entitled not to stop and engage with police. Although it is possible a person in Bradley's situation may not wish to engage because he or she is aware they have illicit drugs or stolen property on their person or that there is a warrant for their arrest, this possibility, of itself, cannot justify the detention or use of force on that person. Significant caution must be exercised in relying on a person's refusal to stop and engage with police to inform (or "build") as part of the s 21(1) reasonable grounds threshold. To do otherwise risks rendering the individual's rights redundant.
- (5) Even had the s 21(1) power had been exercised, it could not have been utilised to detain Bradley to question him. It could only have been utilised to search him and seize items.
- (6) Even had he been exercising s 21(1), it is difficult to conceive the grabbing of Bradley, as he walked away, without first giving him the explanations and

warning required under ss 202 and 203, would constitute reasonably necessary force under s 230.

153. Although a pair of scissors was found in Bradley's pants, it cannot be known if Bradley realised he had the scissors on him when he left home that day or when he encountered the Nepean 140 officers. The possession of a pair of scissors is not prima facie a criminal offence.⁷ Nor can their presence retrospectively justify the detention.
154. Counsel Assisting submits that I would be satisfied that SC Vingerhoed's approach towards Bradley, which included his requests to Bradley to stop and speak to police, culminating in his forceful grabbing Bradley, was not justified under LEPR nor reasonable.

Submissions on behalf of the Nepean 140 officers

155. Counsel for the Nepean 140 officers submits that I would not be satisfied that there was an unjustified or unlawful detention, and submits the following:
- (1) There can be an incremental step process in forming suspicion, and a number of factors on the day were incremental steps in the minds of the officers.
 - (2) In circumstances where the officers had activated lights and sirens, identified themselves as officers and were wearing police identification, when Bradley uttered the words, "*I'm sick of this shit*" while walking away, this was the point at which the Nepean 140 officers "*formed any view as to a stop/search pursuant to LEPR*" and that it "*would have been entirely reasonable for the officers to have incrementally reached a suspicion*".
 - (3) In relation to SC Vingerhoed's touching of Bradley on the road, this came after his suspicions had been further raised, where SC Vingerhoed perceived an aggressive movement with the bottle and reaction by Bradley, who was moving more quickly and had uttered "*I'm sick of this shit*", and in the context of the Nepean 140 officers having observed other more senior PACT officers take hold of persons in similar circumstances.

⁷ See judgment of Favretto LCM in *Police v O'Brien* [2012] NSWLC 7 concerning the construction of ss 11B and 11C of the *Summary Offences Act 1988* (NSW) with respect to the possession in a public place of scissors.

- (4) The Nepean 140 officers' observations and initial interactions with Bradley fall within their limited training, what the officers had learned on the job and the SMIT which "*deals with a scenario where there is no intention of placing the person under arrest, the same as the present situation*". There was no specific training as to how the officers were to undertake their duties as PACT officers.
 - (5) The Nepean 140 officers have not had training on constructive detention. It is a "*novel legal concept and there is significant difficulty in applying such a legal concept to "real world" and practical implementation*". There is a fine line between voluntary engagement and detention.
156. Regarding reasonable suspicion, Counsel for the Nepean 140 officers submits there were a number of different factors that the Nepean 140 officers had in their minds when they stopped and exited the car and approached Bradley. The factors include:
- (1) Bradley was in the vicinity of a car park, which was an area that was an identified hot spot, being a location where a large number of cars are parked and left all day with not many people are around and limited foot traffic going by, leaving opportunity for persons to break into cars, steal cars, and carry out drug supplies.
 - (2) Bradley was in fact wearing two hoodies up over his head on a warm summer day with long pants and sunglasses. The Nepean 140 officers and other police gave evidence that this is often used as a disguise and raises suspicion when it does not accord with the weather conditions. The CCTV footage shows other persons wearing summer wear including shorts and t-shirts and the Nepean 140 officers themselves were wearing summer clothes. Counsel for the Nepean 140 officers submits it is not the hoodie alone raises a suspicion but in combination with other factors including the hot spot location.
 - (3) Bradley's attention was drawn to the officers who were near him. The Nepean 140 officers took into account that Bradley was aware they were police officers by the activated sirens and lights and their identifying themselves orally, and noted that Bradley appeared to change direction/pace and lowered his head,

further raising suspicion. SC Vingerhoed perceived that Bradley turned his head away from the police vehicle and quickened his pace. A/Sgt Parkinson observed that Bradley “*sort of pulled his head down*” so that the hoodie was pulled further down over his hair and forehead. A/Sgt Parkinson thought this may have been done in an attempt “*to avoid [police].*” Counsel for the Nepean 140 officers submits the CCTV footage is of poor quality and is recorded from a distance away from the interaction, and the observations made by SC Vingerhoed and A/Sgt Parkinson, standing in close vicinity of Bradley, should be taken as a more reliable version of events.

- (4) SC Vingerhoed believed that Bradley made an aggressive gesture with the bottle, which can be perceived as an imminent threat to an officer. Bradley simultaneously flung his arm when he uttered the words, “*“I’m sick of this shit”*. At this point Bradley was walking quickly.
 - (5) Bradley ran from the officers, further raising the officers’ suspicions whether he may have had something in his possession.
 - (6) Bradley’s reaction to the police served to not only increase, but to in fact, justify their suspicions.
157. Counsel for the Nepean 140 officers submits there was something about Bradley that an “*independent member of the community*” to watch him, supporting the Nepean 140 officers’ initial observations. This person had parked his car on Nariel Street and was waiting close to his car. He noticed Bradley walking down the road and as this person’s car was unlocked, he looked at where Bradley was going “*just in case he walked to [his] car*”.
158. Counsel for the Nepean 140 officers submits that it is unfairly artificial to cross-examine the Nepean 140 officers on a “step by step” basis when the reality of the “*actual decision-making process was carried out by relatively junior officers in a dynamic, stressful and ultimately very dangerous environment.*” Counsel for the Nepean 140 officers submits that there is an inherent difficulty for young and relatively inexperienced police and the Nepean 140 officers had very little time to react, and “*the forming of the necessary suspicion is, in practical terms, more instinctive rather than a decision that is made in circumstances where the person has access to all the*

surrounding circumstances, ample time to consider various options and the hindsight benefit of knowing the outcome”.

Reply submissions to the Nepean 140 officers’ submissions

159. Ms Collins submits that Bradley was on his usual walking route and that everyone in St Marys wears hoodies.
160. Senior Counsel for Mr Balzan submits that from the CCTV footage it may be seen that, to the contrary to any change from Bradley’s reaction, Bradley continued to walk in the same general direction he had been taking, before crossing the road in the direction of his home. Further, he pulled his outermost hoodie back, exposing his face to the officers.
161. Counsel Assisting submits in reply, regarding SC Vingerhoed’s evidence that he saw Bradley “*fling his right hand*” aggressively was not something any other officer described seeing. Even if it is assumed Bradley did this:
- (1) SC Vingerhoed himself said in evidence he had not yet, in his mind, crossed the s 21 threshold, at this point.
 - (2) The CCTV shows that Bradley was moving away from the officers with his back to SC Vingerhoed. The stills reproduced at [119] show the distance SC Vingerhoed covered in approaching Bradley from behind after Bradley stepped off the footpath. This footage shows Bradley was walking away and posed no threat to the officers when SC Vingerhoed approached him from behind. The reported “fling” of the bottle does not, of its own or in tandem with the other factors pointed to in submissions on behalf of the Nepean 140 officers, justify SC Vingerhoed reaching out and grabbing Bradley.

Conclusions

162. I find that the roadside detention of Bradley was not justified and therefore the use of force was not justified.
163. First, on the Nepean 140 officers’ evidence at hearing, none had reached the reasonable suspicion threshold in s 21 of LEPRA and did not exercise the s 21 power

to stop and detain Bradley on the roadside. The most compelling evidence on this issue comes from SC Vingerhoed himself when he was questioned by Counsel Assisting. SC Vingerhoed said in evidence he had not yet, in his mind, crossed the s 21 threshold when he took hold of Bradley's arm. Even had the s 21(1) power had been exercised, it could not have been used to detain Bradley to question him. It could only have been used to search him and seize items.

164. As to the training alluded to by SC Vingerhoed, this was not a situation of lightly touching Bradley to alert him to the presence of police or that they wanted to speak with him. SC Vingerhoed heard Const Brimfield identify herself as a police officer to Bradley. He also identified himself as a police officer to Bradley. It was clear Bradley was aware of their presence and their wish for him to stop. SC Vingerhoed's intent in grabbing Bradley was to force him to stop.
165. I do not accept the factors outlined in submissions of counsel for the Nepean 140 officers satisfied the reasonable suspicion threshold in s 21 of LEPRA. The area Bradley was in, what Bradley was wearing and even assuming the reported fling of the bottle, do not reach the reasonable suspicion threshold. It is not reasonable simply by reason of Bradley being in the vicinity of the car park in the morning. There are many reasons why Bradley may have been wearing what he was wearing. The CCTV footage shows Bradley walking away from the officers and showed no threat to the officers when SC Vingerhoed approached from behind. Bradley had every right to walk away from police when he did.
166. As I have found that the s 21 threshold was not reached, I do not accept that any other circumstances existed to justify the detention or use of force on Bradley.

Significance of the roadside interaction

167. Counsel Assisting submits that the grabbing of Bradley was a significant escalation point in the police engagement with Bradley. Events rapidly escalated from this point onwards. Bradley responded to the grab by breaking free and running. He was then chased by the officers, which ultimately ended with the entry into the rear yard and the fatal shooting of Bradley.

168. I accept Counsel Assisting's submissions that the grabbing of Bradley in the street was a significant escalation point in the police engagement with Bradley.

ISSUE 2: Were the actions of police officers in the pursuit of Bradley from Nariel Street to the backyard of his home reasonable?

Evidence

169. Bradley ran at pace along the roadway or footpath to his home. This was about 200 metres lasting between 30 to 60 seconds. During the run, he dropped or discarded the drink bottle he had.
170. Bradley was followed close behind by SC Vingerhoed, then A/Sgt Parkinson with Const Brimfield and Officer 4 further behind. During the chase SC Vingerhoed and or A/Sgt Parkinson yelled out to Bradley the effect "Stop, Stop" and or "Stop Police".
171. SC Vingerhoed and A/Sgt Parkinson's immediate reactions were that Bradley's act of running meant he must have something to hide or conceal.
172. Once the pursuit began, both intended chasing Bradley down until they apprehended him or were prevented from doing so for some other reason. SC Vingerhoed gave evidence:

Q. And is it your evidence that's at the point where section 21's enlivened.

A. Yes. As soon as he's run, in my mind immediately I thought he's either wanted by police or he's got something on him that he shouldn't have.

Q. Would you agree other possibilities might be that he's feeling harassed or unfairly handled by you.

A. That could have been a possibility in his mind but I was of the belief, the honest belief that he either had something on him that he shouldn't have had or that he was wanted by police.

Submissions

173. Counsel Assisting submits that I can be satisfied:
- (1) The pursuit itself was not authorised by LEPR as it was prompted by SC Vingerhoed's unauthorised acts.
 - (2) The pursuit amounted to a continuation of the unjustified detention of Bradley that began on the roadside near the vehicle.
 - (3) The pursuit was *objectively* unreasonable.
 - (4) Neither SC Vingerhoed nor A/Sgt Parkinson considered in real time the possibility of stopping the pursuit.
 - (5) At the time, SC Vingerhoed's considered he was justified in pursuing Bradley owing to his incorrect belief that his earlier acts were lawful he was therefore justified in pursuing Bradley. A/Sgt Parkinson was likely of similar a mind, as he voiced no concerns about the earlier actions during the pursuit or in his subsequent interview.
174. Ms Collins submits that Bradley ran home when he felt threatened, when he was grabbed, and *"[t]hat was never thought of as a possibility [by the Nepean 140 officers], which could have very well changed the outcome."* Ms Collins submits that *"[i]f Bradley was aggressive as claimed to be, when he was grabbed, he would have retaliated at that point then and there, he would have went at the Police and he would have aggressively acted then, not ran home. If he even knew those scissors were in his pocket and if he was so aggressive, again, he would have used them."*
175. As indicated above, Counsel for the Nepean 140 officers submits that suspicion was incrementally raised by various factors reaching the s. 21 threshold, and that on any view, it would have been entirely reasonable for the Nepean 140 officers to have incrementally reached a suspicion at the point that Bradley swore and was moving away. Counsel for the Nepean 140 officers submits, once Bradley ran, the Nepean 140 officers' suspicions were further raised, and that this then gave rise to the foot pursuit in circumstances where each of the officers formed the view that Bradley may have had something on him.

Conclusions

176. I find that the pursuit itself was not authorised by LEPRA as it was prompted by SC Vingerhoed's unauthorised acts. The pursuit amounted to a continuation of the unjustified detention of Bradley that began on the roadside near the vehicle. The fact that Bradley ran after he was unlawfully held by the arm by a police officer cannot amount to a justification to continue an unauthorised detention. It was reasonably open to police to stop the pursuit but neither SC Vingerhoed nor A/Sgt Parkinson considered the possibility of stopping the pursuit. In all the circumstances, I find that the pursuit was objectively unreasonable.

ISSUE 3: What occurred at Bradley's home, and were those actions reasonable?

PART A – Entering Bradley's home

Entering the front yard and rear yard

177. CCTV footage shows Bradley entering his front gate, at significant pace, at about 10:18am, followed closely behind by SC Vingerhoed.
178. Bradley headed along a driveway, alongside a parked Ute, towards a gate/fence that divided the front and rear yards. When Bradley was near to the Ute, SC Vingerhoed momentarily grabbed Bradley from behind before losing his hold.
179. As he headed into the front yard, off camera, Bradley caused a tyre to fall in SC Vingerhoed's pathway.
180. Bradley scaled the gate/fence into the fenced rear yard, moving out of sight of SC Vingerhoed and A/Sgt Parkinson.
181. SC Vingerhoed, followed by A/Sgt Parkinson, stood on a parked sedan's bonnet and scaled the gate into the rear yard.
182. Before scaling the fence SC Vingerhoed said he called out to Bradley to the effect "*Mate, just come back here, what are you doin*". Bradley seemed to momentarily look at him and say something (inaudible) before moving further into the rear yard out of SC Vingerhoed's line of sight.

183. All three were likely in the rear yard area by about 10:18:45am. By this point, about 7 to 8 minutes had passed since Bradley originally left his home. About 1 minute had passed since the initial encounter by the roadside of Nariel Street.
184. Const Brimfield and Officer 4 entered the front yard through the front gate at about 10:18:40am and remained within the front yard. Neither witnessed what happened between Bradley, SC Vingerhoed and A/Sgt Parkinson in the rear yard.
185. SC Vingerhoed and A/Sgt Parkinson entered the rear yard with the intention of potentially arresting Bradley for unlawful entry of the premises, or at the very least to detain him to carry out checks and or determine if he had outstanding warrants.
186. The way Bradley entered the front yard, with SC Vingerhoed and A/Sgt Parkinson following close behind, indicates how escalated the encounter had become. Events were rapidly unfolding and there was likely an increasing desperation amongst all three. Bradley's, A/Sgt Parkinson's and SC Vingerhoed's capacity for measured action was becoming increasingly impaired as events unfolded.

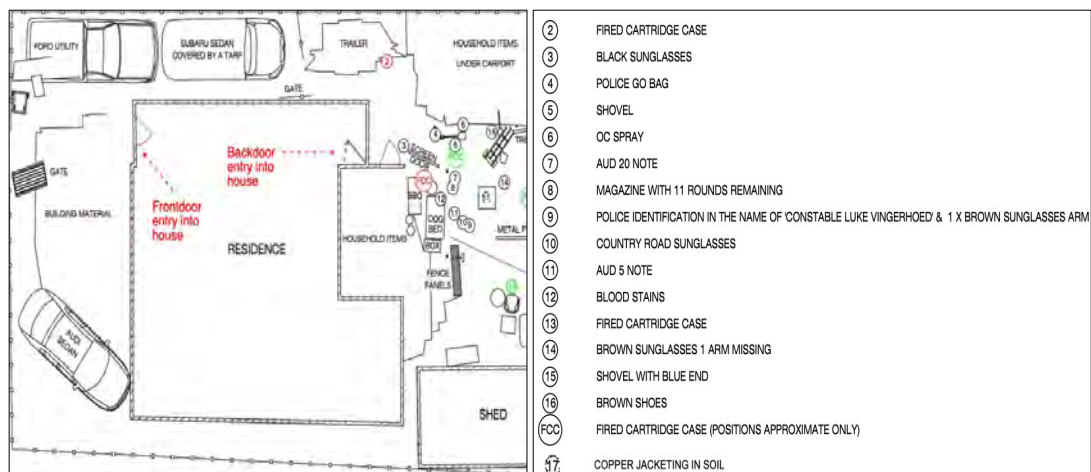
Limitations on examination of what occurred in the rear yard

187. The examination of what occurred in the rear yard is subject to limitations namely:
 - (1) There are no other eyewitnesses to what occurred other than SC Vingerhoed and A/Sgt Parkinson.
 - (2) A/Sgt Parkinson was excused from giving sworn evidence although he participated in a recorded interview on 26 December 2020.
 - (3) The absence of BWV footage and CCTV footage of events in the rear yard.
188. The absence of a BWV recording of the events in the rear yard is significant. This recording may have captured some or all of the events and provided important objective evidence as to what occurred. Its absence underscores the importance of PACT officers utilising BWV when beginning an approach towards someone they intend on engaging.

PART B – Engagement with Bradley in the alcove area

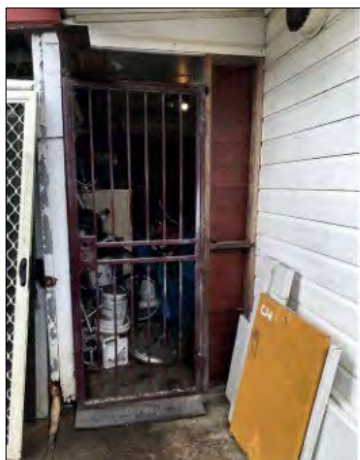
Summary of SC Vingerhoed's and A/Sgt Parkinson's accounts

189. After scaling the fence, SC Vingerhoed pulled out the OC spray as he heard dogs barking. He made his way further into the rear yard near the metal gate that led into a rear roofed alcove area that adjoined the rear of the house. He saw Bradley through the metal gate fence facing a closed rear door that led into the rear of the house. Bradley was probably looking for his house keys at this point to gain entry, however, unknown to him, he likely lost his keys during the pursuit as they were found some time later on the route he had taken.
190. The alcove area was small and enclosed by surrounding items and a metal gate, meaning Bradley was confined in that area other than him entering the home by the rear door or exiting the rear metal gate:



Extract of annotated CAD Diagram

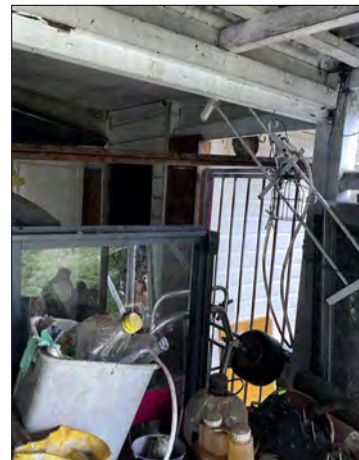
191. The metal gate, and items positioned along the western side of the alcove, are depicted:



Metal gate (looking into alcove)



Looking into alcove towards the rear door (rear door further in past items)⁸



Closer view into alcove towards the rear door

192. SC Vingerhoed sprayed Bradley with his OC spray, through the metal gate. He believes this struck Bradley in the back of his head. He then sprayed a second time hitting Bradley on the side of the face.
193. A/Sgt Parkinson, in his interview, stated that after he lowered himself down over the dividing fence/gate, he turned around and saw SC Vingerhoed deploying his OC spray towards the metal gate. He then saw SC Vingerhoed take a couple of steps back which he presumed was because of the effects of the spray. At this point, A/Sgt Parkinson could not see Bradley. As he (A/Sgt Parkinson) came near SC Vingerhoed, he held his breath, and looked through the metal gate, and saw Bradley “*facing the house and he was fidgeting around his waist*” (this action was probably Bradley searching his pocket for his house keys).
194. A/Sgt Parkinson also deployed his OC Spray after scaling the fence. A difference arises on the accounts as to when A/Sgt Parkinson deployed his OC spray and whether it was before or after Bradley exited the alcove area.

⁸ Dog mattress located next to the gas heater on 23.12.2020 was removed prior to this photograph being taken.

195. According to SC Vingerhoed, A/Sgt Parkinson came alongside him and then sprayed his OC spray at Bradley. SC Vingerhoed saw Bradley stop “for a second” and rub his face. SC Vingerhoed has A/Sgt Parkinson deploying his spray while Bradley was still inside the alcove.
196. A/Sgt Parkinson, in his interview, puts his deployment of the spray as being after Bradley exited the metal gate and ran past him into the rear yard stating:
- “...so I've tried to pull the gate. It wouldn't come. And I've reached through, I don't know what kind of lock it was, but I've sort of latched the lock. The gate's come undone. I've yelled out, Come out, and not even 5 seconds, quickly, he's come straight back out. I already had my spray out at that time. I've sprayed as he's gone past me, but he's sort of, to me, I thought he was tryin' to run again, back fence.”*
197. This difference could not be explored with A/Sgt Parkinson in examination.
198. On either account, both officers deployed their spray without giving a warning to Bradley of their intention to do so.
199. A considerable quantity was deployed. A/Sgt Parkinson described holding his breath when he looked in through the gate because “*the spray was pretty strong*”.

Fatigue

200. In his interview, SC Vingerhoed described being, “*exhausted*” when he first deployed the OC spray, but at other points, he indicated he was not exhausted.
201. Counsel Assisting submits that I would be satisfied that SC Vingerhoed and A/Sgt Parkinson were experiencing some fatigue, below that of exhaustion, when they entered the rear yard. Bradley himself would likewise have been fatigued.
202. I accept Counsel Assisting's submissions that SC Vingerhoed and A/Sgt Parkinson were experiencing some fatigue, below that of exhaustion, when they entered the rear yard.

Rationale for deploying OC spray

203. SC Vingerhoed said he “assumed” Bradley was unlawfully trying to get inside the house. He also felt fatigued from the run and was concerned at being overpowered. He believed the “*best option*” was to deploy the OC spray to disorientate Bradley so they could subdue him and avoid a significant struggle.

204. In evidence, SC Vingerhoed accepted that in hindsight, there was an opportunity to have warned Bradley before deploying the OC spray. As to this thinking in real time, SC Vingerhoed gave evidence:

Q. *I want to suggest back then even, it would have been reasonable to have just said, "I'm going to spray if you don't stop."*

A. *So at that time in my mind, as I said he - I was of the belief he was in someone else's backyard and trying to get into the door. I couldn't see his hands. I believe I said I was exhausted at that time. That was the wrong words to use. I was puffed, but I wasn't exhausted.*

Q. *Yep?*

A. *In my mind the element of surprise I was of the belief that would assist me if I was to say something there was the risk that he may enter that house and put the people inside that house at further risk of also of violent resistance, not only to myself but also to residents of that house.*

205. A/Sgt Parkinson in his interview, said that when he saw SC Vingerhoed spraying towards the metal gate, he thought Bradley had “*gone in, he's trying to get into the house*”. When he sighted Bradley in the alcove area “*fidgeting low*”, A/Sgt Parkinson thought Bradley was “*tryin' to break into this house*”. As to his reason for why he sprayed his OC spray, he stated:

“Cause, for me, I was, he's, he's ran, he's stuck in a situation now. He's gunna fight. My, my understanding is he's either gunna run, run or fight. So I thought, w, To, protect, protect myself, protect Luke. I'll spray....”

206. A/Sgt Parkinson's response is telling as to the extent the situation escalated.

SC Ahmedi's evidence about the deploying of OC spray

207. Senior Constable Ghazanfer Ahmedi ("SC Ahmedi"), an operational safety instructor with NSWPF, was asked to comment on the deployment of the OC spray. In his statement, he was not critical of SC Vingerhoed's and A/Sgt Parkinson's deployment of the spray.

208. SC Ahmedi gave evidence that, strictly looking at the situation from an operational perspective, at the point the OC spray was deployed, the primary objective of police was to "*gain control*".

209. The officer deploying a tactical option is responsible for considering what option is appropriate in a given circumstance. That includes considering the option to communicate (e.g. issuing a warning before proceeding to the next tactical option), however, an officer is not mandated to attempt communication in all instances before resort is had to a tactical option such as OC spray.

210. Essentially, SC Ahmedi's view about the appropriateness of the OC deployment was given from an operational perspective only. He considered that proceeding to deploy OC spray without warning or deploying OC spray after administering a warning were both reasonable tactical options. Each option would have accorded with tactical training and principles.

211. Counsel Assisting submits that even accepting that the use of OC spray did not contravene tactical training and principles, this does not make the deployment of the OC spray reasonable or justifiable. The latter assessment also considers the circumstances that existed at the time of deployment.

Significance of the OC spray deployment

212. Counsel Assisting submits that the deployment of the OC spray was another significant inflection point. As with the officers, Bradley's capacity for measured reflection at this point had been adversely impacted by his fatigue from the foot pursuit. He was then sprayed within a small area and found himself to be effectively trapped.

Reasonableness of the OC spray deployment

Submissions

213. Counsel Assisting submits that the evaluation of reasonableness must make appropriate allowance for the officers' level of fatigue and how rapidly events were unfolding. Their capacity for measured response was materially less than existed at the time of their initial engagement with Bradley on Nariel Street.
214. The closed metal gate provided an immediate barrier between them and Bradley, although the officers had no familiarity with the alcove's set up. Although the situation was heightened, Bradley was not in immediate striking distance of either officer (neither officer suggest this was a factor in their initial use of the OC spray).
215. Counsel Assisting submits that it can be accepted that SC Vingerhoed and A/Sgt Parkinson did not know what connection (if any) Bradley had to the residence. It was possible the person they were chasing was entering a residence unlawfully to escape. It was likewise possible the person they were chasing had run to his own residence.
216. The view that OC spray might have forced Bradley to submit was a possibility, however, as subsequently shown, it also risked aggravating his distress, agitation and sense of desperation.
217. Even allowing for their fatigue and speed at which events were unfolding, Counsel Assisting submits that I should find that Bradley should have been given warning before the OC spray was deployed. Whether Bradley would have stopped cannot be known. However, it would have given him that opportunity and possibly avoided the further escalation of the encounter. He may have been able to tell police that he lived at the residence and that his father was inside.
218. Counsel for the Nepean 140 officers submits that, whilst there was smaller space in the alcove, the Nepean 140 officers utilised the OC spray as a less lethal tool in circumstances where this followed the interaction on the street where SC Vingerhoed perceived Bradley to be aggressive, Bradley had run, and Bradley "*had leaped over a side gate as opposed to going to the front door*"; SC Vingerhoed assumed Bradley was trying to get inside a house that was not his; and the officers were fatigued.

219. Counsel for the Nepean 140 officers submits that the officers, particularly SC Vingerhoed, can only operate off the training and principles. While hindsight might suggest a different approach could have been used on this occasion, the officers' actions with respect to the OC spray were in accordance with tactical training and principles.

Conclusions

220. There is some discrepancy between the Oleoresin Capsicum Defensive Spray Manual ("OC Spray Manual"), which states that a warning is to be issued when deploying OC spray, and the Tactical Options and Use of Force Manual ("TUoFM"), which prescribes the use of OC spray in conjunction with another tactical option and does not specifically recommend or require the issue of a warning prior to use. SC Ahmedi's evidence was that proceeding to deploy OC spray without warning is in accordance with tactical training and principles.
221. Even accepting that the use of OC spray did not contravene tactical training and principles, it would have been appropriate to give a warning.
222. There appears to have been time for this to occur given Bradley's location in the alcove. A warning may have provided a pause in the fast-moving situation. It may also have provided Bradley with an opportunity to tell the officers that it was his residence and that his father was inside. Whether Bradley would have stopped can never be known. The deployment of OC spray caused a significant escalation of the interaction between Bradley and the officers.
223. I do accept that the officers were fatigued and did not know what connection (if any) Bradley had to the residence. Their ability to think clearly is likely to have been affected by the circumstances and how quickly events were unfolding.

PART C – Events after Bradley exited the alcove and the shooting

Overview of SC Vingerhoed's and A/Sgt Parkinson's accounts

224. After the OC spray was deployed, SC Vingerhoed moved around the outside of the alcove and was standing near to a gas heater.

225. A/Sgt Parkinson reached through the gate and opened the inside latch and directed Bradley to exit.
226. Bradley then ran at the door forcing it open with his body and running into the rear yard.
227. Bradley charged through the metal gate into the rear yard. He ran towards the rear fence, through the space between the alcove and a carport. SC Vingerhoed was standing near to the corner of the alcove.
228. Bradley and SC Vingerhoed came into contact, with SC Vingerhoed grabbing hold of Bradley in a type of tackle. Both went to ground near to the carport. SC Vingerhoed described being on his back with Bradley on top of him with A/Sgt Parkinson grabbing hold of Bradley's top half.
229. The ensuing struggle was a rolling one with all three changing positions and going to ground and getting up (fully or partially) multiple times. During the struggle, both officers described Bradley as exhibiting considerable strength, with each struggling in their attempts to get control of him.
230. During the struggle, SC Vingerhoed saw Bradley on top of A/Sgt Parkinson, who was on his back. SC Vingerhoed tried to pull Bradley off A/Sgt Parkinson, but Bradley was too strong. SC Vingerhoed delivered several blows by way of punch, knee and elbow strikes to Bradley's back area. He described Bradley screaming an "*angry scream*". A/Sgt Parkinson described attempting to get Bradley in a headlock at one point. The sequencing of these events cannot be precisely determined, but they seem to have occurred before the cluster of shots were fired.
231. There were two dogs within the rear of the yard when the three entered. A/Sgt Parkinson was bitten by one (or both) of the dogs (American Staffordshire Terriers) at some point. SC Vingerhoed later also discovered a bite mark on his backside, although he did not register having been bitten at the time of the struggle. It is not clear if it was one or both dogs that became involved.
232. A/Sgt Parkinson, in his interview, described seeing Bradley pick up a "*steel... tradie shovel*" near to the carport. Believing Bradley intended to strike SC Vingerhoed,

he stated he tackled Bradley. This resulted in the shovel being dropped, and both A/Sgt Parkinson and Bradley going to ground. SC Vingerhoed did not see Bradley holding the shovel.

233. A/Sgt Parkinson said he saw a pistol on the ground. This happened after going to ground. He realised it was his pistol but was unaware how it got out of his holster. Both he and Bradley reached for the gun with Bradley grabbing it first with A/Sgt Parkinson grabbing hold of Bradley's arms and hands. He believed he yelled out "gun, gun". In his interview, A/Sgt Parkinson described the events as follows:

"I've grabbed hold of his arms and he started shooting. So I'm fightin' with him. Um, he's swinging his arms, I'm trying to hold his arms down, away from my legs and away from [SC Vingerhoed], who I thought was down the bottom. And he, he just starts, w, well, I think we're wrestlin' for a little bit, er, with the gun. And I'm fightin', fightin' with him to, to keep the gun faced towards the ground, away, away from myself and away from [SC Vingerhoed]. And then he starts shooting, just bang, bang...and, like, it was two quick, two, three quick shots, but on the third shot, for some reason, we fell, fell to the ground. I don't know if it was [SC Vingerhoed] tacklin' him to the ground, but I still had hold of, um, his hands on the gun...."

234. SC Vingerhoed, in his interview, stated that all three had got to their feet when the first three gunshots were fired. It didn't register they were gunshots until the third shot was fired. About the time of the third shot, he looked over and saw Bradley holding a pistol. About this time all three went to ground again.
235. A nearby dash camera recording captured the first cluster of three gunshots at 10:20:12, 10:20:14 and 10:20:15am (3 second period).
236. After the first three shots were fired, and A/Sgt Parkinson and Bradley had again gone to ground, A/Sgt Parkinson and SC Vingerhoed each described seeing Bradley holding the gun in his right hand, with it pointed near to A/Sgt Parkinson.
237. A/Sgt Parkinson said he still had hold of the gun at this point and was trying to get control. He grabbed the pistol's muzzle to stop the gun's slide going backwards to prevent it firing a shot, stating that he felt he was "*fighting, pretty much for my life*". He

felt Bradley pulling the trigger so he tried to force his own finger behind the trigger mechanism to block its firing.

238. A/Sgt Parkinson described the feeling that he was losing power, with Bradley gaining greater control of the direction of the firearm, with the pistol turning towards him (A/Sgt Parkinson) with him using his right hand to force the barrel away from his body and face. He pushed the pistol's magazine release. This might have caused the magazine to start to fall out of the pistol's handle (the magazine eventually fell out after Bradley was shot), however this left a live round still loaded in the chamber, meaning the pistol could still be fired.
239. SC Vingerhoed said he saw the gun pointed at A/Sgt Parkinson, with the muzzle about 20cm away from A/Sgt Parkinson. Bradley had his finger on the trigger. Both were lying on the ground on their sides facing each other at the time.⁹ He feared Bradley would shoot A/Sgt Parkinson.
240. SC Vingerhoed either sat up or stood up, drew his pistol and fired two shots in close succession into Bradley's right side from about 1-metre away.
241. The second cluster of shots was recorded at 10:20:35 and 10:20:36am. The second cluster of shots were fired about 20 seconds after the first cluster.
242. After Bradley was weakened, A/Sgt Parkinson said he grabbed his firearm from Bradley's hand and re-holstered it.
243. After a momentary grapple over the magazine, Bradley came to rest on or near to a dog mattress or fabric positioned next to a gas heater on the western side of the rear alcove area.
244. SC Vingerhoed applied pressure to Bradley's wounds for a short time trying to stop the flow of blood, however both officers considered Bradley died soon after he suffered the gunshot injuries.

⁹ Depicted in a hand-drawn diagram, Exhibit 8.

Events post shooting

245. A/Sgt Parkinson stated that just after the shooting, he realised someone was trying to open the backdoor, and A/Sgt used his foot against the door to prevent that person entering the yard. This was Bradley's father, who did not realise Bradley had earlier left the house or had been shot in the rear yard.
246. Const Brimfield and Officer 4 heard the gunshots in the rear yard. They approached the dividing fence/gate and saw A/Sgt Parkinson. A/Sgt Parkinson instructed C/Brimfield and Officer 4 to return to Nepean 140 to use its radio to call for an ambulance and urgent assistance. He provided them the keys for the car.
247. Const Brimfield and Officer 4 left on foot (CCTV captures them leaving about 10:20:42am). They returned to the Nepean 140 vehicle and then drove it back to the home (CCTV captures their return at about 10:22:36am). Neither thought to call for an ambulance or assistance. Counsel Assisting submits that these officers' responses at this point were probably impacted by their shock at what had occurred.
248. After that, they provided the portable radio to A/Sgt Parkinson through the dividing fence/gate.
249. At 10:23:18am, A/Sgt Parkinson told VKG by portable radio "...*Urgent. Shots fired. Person down. Can we get ambos rolling?*" At this point about 2 minutes 58 seconds had passed since the last shots fired.
250. SC Vingerhoed and A/Sgt Parkinson both described feeling exhausted and in a state of shock after the shooting. A/Sgt Parkinson, in his interview, said he believed shock set in and that the time that passed before Officer 4 and Const Brimfield returned with the portable radio "*felt like seconds*". After he was taken from the scene to hospital he was struggling to answer basic questions such as what his date of birth was owing to his shock. SC Vingerhoed, in his evidence at inquest, described being in an exhausted state of shock.
251. SC Vingerhoed gave sworn evidence that he did not discuss what occurred with A/Sgt Parkinson after the last shot was fired before he was separated.

252. After the portable radio was handed to A/Sgt Parkinson through the fence, Officer 4 and Const Brimfield headed through the house into the rear yard.
253. Officer 4 gave evidence that on entry to the rear yard, she saw that SC Vingerhoed and A/Sgt Parkinson were panting. They were standing apart rather than together. She saw Bradley lying motionless on the mattress. A/Sgt Parkinson said to her to the effect of *"A dog bit me. This guy had my gun. I had him in a headlock and he grabbed my gun and got it out of the holster. He got off a few rounds, while I still had him in the headlock, then I was able to release the mag"*. A/Sgt Parkinson was talking quickly and appeared to her to be in a state of shock.
254. Const Brimfield asked A/Sgt Parkinson if he was okay to which he pointed at a dog and said to her, words to the effect, to be careful as he had sprayed the dog and it had bitten him (in his interview, A/Sgt Parkinson did not mention spraying one of the dogs).
255. Officer 4 left the rear yard when she heard sirens out the front of the home. Const Brimfield also re-entered the house about this time and was inside when other officers entered.
256. Acting Sergeant James Cager ("A/Sgt Cager") and Constable Isobel Church ("Const Church") were attending the collapsed male near the Westpac Bank when A/Sgt Parkinson made his radio broadcast at 10:23am. They travelled to the residence in a marked police car (call sign Nepean 12), arriving there at about 10:25am. They were the first police to arrive at the scene after Const Brimfield and Officer 4's return there with the radio. On arrival they were met out the front by Officer 4.
257. A/Sgt Cager and Const Church moved through the house into the rear yard. Both saw Bradley, motionless, on the mattress on the edge of the alcove area. He showed no signs of life.
258. According to A/Sgt Cager, on entry he saw A/Sgt Parkinson standing in the backyard towards the back fence and SC Vingerhoed standing outside the alcove area near the house's rear door. A/Sgt Parkinson and SC Vingerhoed were about 7 to 8 metres apart from each other.

259. A/Sgt Cager approached A/Sgt Parkinson and asked what had happened. A/Sgt Parkinson said to the effect, *"He picked up a shovel and came at us and we tackled him. He got my gun and started firing it"*. A/Sgt Cager saw that A/Sgt Parkinson had his Glock pistol in his holster.
260. A/Sgt Cager, who is also a weapons instructor for NSWPF, physically checked the pistol was secured in the holster. A/Sgt Parkinson also said he had been bitten by a dog and that he was concerned for SC Vingerhoed because he had shot Bradley. A/Sgt Cager approached SC Vingerhoed and asked if he was okay. He seemed emotional and in shock. A/Sgt Cager described his observations in his oral evidence as follows:
- "I called out to [SC Vingerhoed] and he didn't respond to me. I think I called out a couple of times and he just didn't respond to me, so I walked over and, as I'm walking to him, I'm saying, "Luke, are you okay?" and then, obviously, got beside him, I actually grabbed him on the back of the tricep area, just there, just so he acknowledged that I was standing beside him. I said, "Are you okay?" He didn't speak to me at that stage."*
261. A/Sgt Cager saw that SC Vingerhoed's pistol was within his holster.
262. According to Const Church, on entry she saw SC Vingerhoed leaning on a pole with his arms raised on the pole and his head resting between his arms. SC Vingerhoed was *"puffing heavily"* and appeared to her to be exhausted. She saw A/Sgt Parkinson holding a radio standing some distance away from SC Vingerhoed. A/Sgt Parkinson was also puffing heavily (more significantly than SC Vingerhoed). She heard A/Sgt Parkinson say at some point *"he grabbed my gun and then he got shot"*.
263. The descriptions of SC Vingerhoed and A/Sgt Parkinson appearing exhausted and in shock accord with the officers' own evidence about that.
264. At about 10:29am, Paramedics Rhys Jones and Brendan Bourne ("Paramedic Bourne") arrived followed closely behind by two more paramedics. The paramedics entered the rear yard through the house.

265. Paramedics, assisted by police officers, shifted Bradley from the mattress onto grass further into the rear yard to enable better access. Bradley was found not to be breathing and showed no other signs of life.
266. The paramedics administered emergency treatment although they considered there were poor prospects of reviving Bradley. Emergency first aid treatment continued at the scene until a doctor, that arrived by a Care-Flight helicopter, pronounced Bradley deceased at the scene at 10:50am.
267. After paramedics entered the rear yard, SC Vingerhoed and then A/Sgt Parkinson were separately escorted out to the front of the home. They remained under supervision in separate vehicles while at the scene.
268. Several police officers assisted paramedics in administering emergency first aid to Bradley in the rear yard including Officer 4. While in the rear yard on this occasion, before A/Sgt Parkinson was escorted to the front, she heard him say to a paramedic to the effect "*He got my gun and started to shoot and my partner shot him*".
269. At some point one or both dogs were secured in a fenced enclosure within the rear yard's left corner. This had occurred before or soon after A/Sgt Cager and Const Church entered the rear yard, as Const Church saw a dog inside the enclosure and placed a chair at its entrance to prevent the dog exiting.

Mr Balzan's and his partner's accounts

270. Mr Balzan says he awoke to banging and crashing noises. He then heard several loud bangs and tried to enter the backyard but he was prevented from doing so by a male plain clothed police officer holding a gun (which would have been A/Sgt Parkinson). Mr Balzan's partner said she awoke to the sound of loud banging, which she thinks might have been gunshots, and a lot of yelling. Neither saw the shooting of Bradley or the events preceding that.

Pathology conclusions

271. At autopsy, Bradley was found to have two gunshot wounds.

272. One shot entered his right mid-chest area (posterior-lateral). At the entry point the skin's appearance was consistent with that of a near-contact gunshot wound. The wound tract extended slightly downward from the right back side of the chest to the left front side of the chest. The projectile perforated the right lower lobe of the lung, lacerated the inferior vena cava, perforated the heart sac and extensively lacerated the heart's left ventricle with damage to the mitral heart valve. It exited the left chest cavity through the 6th rib causing extensive fractures to the rib. The copper jacket was found within subcutaneous tissue overlying the rib fracture.
273. The other gunshot entered Bradley's right lower chest area. The entry wound's skin appearance was consistent with that of an angled near-contact gunshot wound. The projectile penetrated the right chest wall, lacerating the right diaphragmatic arch, right lobe of the liver, gallbladder, mesentery, and large and small bowel. The projectile was found from the inside of the left pelvic bone.
274. Minor blunt force trauma was also seen on Bradley's face and limbs, including a linear abrasion to his right chin (about 4cm), fine abrasions on his right frontal area outside the hair line, a small abrasion/bruise on his right outer lip and abrasions and bruising to his elbow and knees.
275. In Dr Brouwer's opinion, both gunshot wounds were significant. The gunshot injury to Bradley's heart was an un-survivable injury and he likely could not have survived even with "effective resuscitation" at the scene. Dr Brouwer could not opine from examination which gunshot wound was sustained first.

Items found on or with Bradley

276. Items found in Bradley's clothing or beneath him, at the scene by a scene examiner, were:
- (1) One red case black mobile phone (front right pocket).
 - (2) One black wallet (found underneath Bradley).
 - (3) One black card wallet (found underneath Bradley).

277. During an inspection of Bradley's clothing on 3 March 2021, the following items were found:

- (1) One brown handled scissors within the long rear 'screwdriver' pocket of the blue "tradie" work pants.
- (2) Three blue plastic keys with embedded SIM chips within the front right pocket of the white long-sleeved hooded jumper.

Securing the firearms and magazines

278. A/Sgt Parkinson and SC Vingerhoed's Glock pistols and holsters were seized and exhibited by officers outside the residence. The number of rounds fired was consistent with the number of rounds that were not found in the pistols and their magazines.

Scene examination

279. An examination of the rear yard was conducted on 23 December 2020 by crime scene examiners and police ballistic experts. A laser scan was also carried out and used to create a CAD diagram of the set-up of the rear yard and where items were located. Some items (cartridge cases) were also seized by officers early on when emergency treatment was being provided to Bradley in the rear yard. A further examination was carried out in the rear yard on 29 December 2020.

280. Key items found included:

- (1) Two cartridge casings seized by officers on 23 December 2020 before scene examiners arrived (removal filmed on BWV camera – these were seized).
- (2) Two cartridge casings photographed in situ and seized by the scene examiner on 23 December 2020.
- (3) One cartridge casing found by Mr Balzan near to the barbeque (behind the gas heater) on the edge of the covered alcove and provided to police by him on 3 January 2021.
- (4) One copper jacket found embedded in the soil in the rear yard.

- (5) One OC spray cannister, which was issued to A/Sgt Parkinson (noting the OC spray issued to SC Vingerhoed was handed to Detective Sergeant Chris Skanavis (“DS Skanavis”, the 2IC in the police investigation) by SC Vingerhoed on 23 December 2020).
- (6) One metal shovel position flat on the ground near to the carport.¹⁰
- (7) Stains, which tested positive for blood, found on the northern right corner of the dog mattress.

Recovery of the casings and jackets

281. The cartridge casing is ejected from the Glock’s chamber when a round is fired.
282. DS Skanavis gave evidence that, in his opinion, there is no discernible pattern as to the direction or distance the cartridges are ejected. It is not possible to reconstruct from the position a cartridge is found exactly where a shot was fired from.
283. The five used cartridge casings found in the rear yard equate to the five shots heard to be fired in the dash camera audio recording.
284. Based on microscopic examination of the cartridges, Senior Constable Stephen Hay (“SC Hay”, ballistics’ examiner) opined:
 - (1) Two cartridges were fired from SC Vingerhoed’s firearm.
 - (2) Three cartridges were fired from A/Sgt Parkinson’s firearm.
285. A total of 3 copper jackets were recovered, being the one in the soil and two during autopsy, leaving two jackets unaccounted for.
286. Although the recovered jackets had similar markings to the markings test fired from the two seized pistols, the markings were insufficient to permit SC Hay to positively identify which seized pistol fired which bullet.

¹⁰ Photo 26, Zhongyi He photo bundle. Another shovel was located nearby leaning against the carport (marker 15, photo 53 in He photo bundle). In the view of investigators, the other shovel was not used during the struggle in the rear yard.

287. On A/Sgt Parkinson and SC Vingerhoed's accounts, the jacket found in the soil would be one of the three shots fired when Bradley had hold of A/Sgt Parkinson's Glock pistol.
288. Counsel Assisting submits that a possible explanation for the missing two jackets is that the corresponding two shots were fired into the air at some trajectory over the fence. Assuming this occurred, the jacketed projectiles likely travelled a significant distance before going to ground at a spot unknown to investigators.

Forensic examination

289. Drawing on the opinions of Dr Sienna Collins (Forensic & Analytical Science Service for NSW Health Pathology) and Helen Roebuck (forensic scientist), the main results of the forensic analysis are summarised:

- (1) Fingerprint examination of the Glock pistols: fingerprints, suitable for collection, were not found on either Glock pistol.
- (2) Fingerprint examination of A/Sgt Parkinson's gun holster: fingerprints, suitable for collection, were not found on A/Sgt Parkinson's holster.
- (3) DNA swab of the grip of A/Sgt Parkinson's Glock pistol: a mixed DNA profile was found that originated from at least three individuals for which Bradley could not be excluded as a major contributor. A/Sgt Parkinson could not be excluded as a minor contributor. The DNA from the additional minor contributor was not suitable for comparison. Assuming there were three contributors and that A/Sgt Parkinson was one of the contributors, it is greater than 100 billion times more likely to obtain this mixed profile if it originates from A/Sgt Parkinson, Bradley and an unknown, unrelated individual, rather than it originating from A/Sgt Parkinson and two unknown unrelated individuals in the Australian population.
- (4) DNA swab of the slide of A/Sgt Parkinson's Glock pistol: a partial mixed DNA profile was found. This profile was not suitable for comparison due to its low yield level and complexity.
- (5) DNA swab of the trigger of A/Sgt Parkinson's Glock pistol: a mixed DNA profile was found that originated from at least three individuals. Bradley and

A/Sgt Parkinson could not be excluded as a contributors. Assuming there are three contributors and that A/Sgt Parkinson is one of the contributors, it is greater than 100 billion times more likely to obtain this mixed profile if it originates from A/Sgt Parkinson, Bradley, and an unknown, unrelated individual, rather than if it originates from A/Sgt Parkinson and two unknown, unrelated individuals in the Australian population. The DNA from the additional contributor(s) is not suitable for comparison due to the low level. Neither expert could opine whether the profile attributable to Bradley was deposited because of Bradley handling the pistol as opposed to indirect transfer.

- (6) DNA swab of the safety of A/Sgt Parkinson's Glock pistol: an amount of DNA of insufficient quantity for testing.
- (7) DNA swab of the upper area of A/Sgt Parkinson's gun holster: a mixed DNA profile was found that originated from at least two individuals. Bradley and A/Sgt Parkinson could not be excluded as contributors. Assuming there are two contributors and that A/Sgt Parkinson is one of the contributors, it is greater than 100 billion times more likely to obtain this mixed profile if it originates from A/Sgt Parkinson and Bradley, rather than if it originates from A/Sgt Parkinson and an unknown, unrelated individual in the Australian population.
- (8) DNA swab of the rear plate of A/Sgt Parkinson's gun holster: an amount of DNA of insufficient quantity for testing.
- (9) DNA swab of the slide of SC Vingerhoed's Glock pistol: a mixed DNA profile was found. The profile originated from at least two individuals. The major profile matched that of SC Vingerhoed. The major DNA profile is greater than 100 billion times more likely to be obtained if it originates from SC Vingerhoed rather than another unknown, unrelated individual in the Australian population.
- (10) Fingerprint examination of the shovel (XF000448928): fingerprints weren't found on the handle of the shovel.

- (11) DNA swabbing of the shovel (XF000448928): DNA was not found in the swabbing of the handle.
- (12) Bradley's hands: swabbing of Bradley's left and right hands tested positive for gunshot primer residue.

Examination of A/Sgt Parkinson's holster

290. A/Sgt Parkinson had a holster fixed to a leather belt. The use of that holster was permitted by NSWPF.
291. NSWPF officers, including A/Sgt Parkinson, are trained in using this holster.
292. The holster is designed to secure the firearm in place to prevent accidental or unintentional release. When a pistol is placed into the holster the restraint mechanism engages. Once the restraint mechanism is engaged, the restraint mechanism must be manually released to enable the removal of the pistol from the holster.
293. In his interview, A/Sgt Parkinson could not explain how the firearm came to be released and did not positively suggest scenarios.
294. The operability of A/Sgt Parkinson's holster was tested by NSWPF officers after Bradley's shooting. The holster, and its securing mechanism, were in good working order. The testing by NSWPF officers included scenario testing whereby the pistol used by A/Sgt Parkinson on 23 December 2020 was placed in the holster and tests done to confirm the holster restraint when engaged worked effectively and did not allow the release of the pistol from that holster.
295. Evidence was adduced in the hearing of physical scenarios / demonstrations using A/Sgt Parkinson's holster, or a like holster, which went to the operability of A/Sgt Parkinson's holster's restraint mechanism and the possibility it may have been inadvertently disengaged on 23 December 2020.
296. SC Ahmedi himself has never had direct experience with a pistol being inadvertently released from this type of holster in a similar type scenario, nor has he received a direct report from another NSWPF officer about the same. SC Ahmedi gave evidence in re-examination that as an instructor within the police, he would expect to have been

told if a NSWPF pistol was inadvertently released from this type of holster in a similar type scenario. SC Ahmedi also gave evidence that this type of holster is still in use by officers today and there hasn't been a direction out to officers since 23 December 2020 that this type of holster should not be used.

297. Counsel Assisting submits that the evidence points to the inherent unlikelihood of the holster's restraint mechanism being inadvertently engaged. I will return to how A/Sgt Parkinson's pistol came out of his holster.

DSS Grant Gilbert's evidence

Evidence

298. By 1:50pm on 23 December 2020, the senior critical incident investigator, Detective Chief Inspector Gorman ("DCI Gorman") was made aware of a report that Bradley had held a shovel in the rear yard. DCI Gorman could not determine where that information has been sourced from. DCI Gorman briefly spoke to SC Vingerhoed at the St Mary's Police Station, during which she specifically asked him if he knew anything about a shovel being used. SC Vingerhoed advised DCI Gorman that he knew nothing about a shovel.
299. DCI Gorman confirmed that the report about the shovel had been mentioned by Detective Senior Sergeant Grant Gilbert ("DSS Gilbert").
300. DSS Gilbert made handwritten notes on 23 December 2020 about his attendance at the residence. The notes make mention of the shovel but do not specify from whom that information came from.
301. DSS Gilbert's notes appear to have been made in two parts: one which was made while speaking with SC Vingerhoed and one which was made at slightly more length while still at the scene. Gilbert transcribed the relevant portions of his note and included comments as follows:

"Proactive - Vingerhoed and Parkinson approach male in park opposite. He runs off. They chase into back yard of 16. Male swings shovel at Parko - misses. Wrestle to ground. Male manages to get Parkinson's firearm. Shoot a number of shots off.

Continue to wrestle with no result. Vingers shoots POI in abdomen.

The note at the bottom is what I wrote soon after during a lull in proceedings.:

P.O.I sighted in W/Lane (west lane). St Marys. Police attempted to speak with him and he ran off yelling "I'm sick of this shit" Chased - jumped back fence of 16 Acacia. Grabs shovel - swings it at Police. Wrestle ensued. Managed to get gun off Parko. Shots fired (?) Gun grabbed by Police. Continued to wrestle and would not let go. Vingers yelled for him to let go, refuses. In fear of further shots, Vingers shot male twice in torso. Succumbed to injuries.

The reason I have a ? after the shots fired comment is that it was not clear to me at the time if the POI had deliberately fired the shots off or the shots had occurred accidentally during the wrestle."

302. On 29 December 2020, DSS Gilbert completed a written statement. In that statement he stated he arrived at the home at about 10:45am and described his interactions with Mr Balzan. In this statement DSS Gilbert did not recount his conversation with an officer regarding the shovel.

303. DSS Gilbert was requested to complete a second statement about the report he received about the shovel. DSS Gilbert completed that statement on 9 February 2021, in which he stated:

- (1) On arrival on scene, many police were already on site out the front of the residence.
- (2) He determined that A/Sgt Parkinson was seated in a marked Public Order and Riot vehicle across the road and SC Vingerhoed was standing in front of another police vehicle about 30 metres away in the park.
- (3) He approached SC Vingerhoed to check on his welfare, during which time he (DSS Gilbert) asked SC Vingerhoed what had occurred.

- (4) He recalled SC Vingerhoed stating to the effect that after chasing the male over the fence of the residence, the male had grabbed a shovel and started “*swinging at us*”. They had got the shovel off him and wrestled the male to the ground, but he managed to get “*Parko’s*” gun and fired shots. After a struggle over the firearm, SC Vingerhoed said he shot the male as he was “*in fear he was going to shoot one of us*”.
304. Following receipt of DSS Gilbert’s second statement, investigators reinterviewed SC Vingerhoed on 22 April 2021. In his second interview, SC Vingerhoed said he recalled seeing DSS Gilbert at the scene but was “*not 100 percent sure if I actually spoke to him*”. He stated he first heard about the shovel from DCI Gorman at the station on 23 December 2020.
305. In his evidence at hearing, DSS Gilbert gave evidence consistent with what he described in his second statement. He also said he knew SC Vingerhoed before 23 December 2020 and recognised him on that date. He could not recall exactly what clothing SC Vingerhoed was wearing at the time other than that he was not in uniform.
306. In his evidence, SC Vingerhoed maintained that he did not see Bradley with the shovel.
307. DSS Gilbert’s evidence about SC Vingerhoed mentioning the shovel, if correct, is inconsistent with SC Vingerhoed’s account that he never saw Bradley holding the shovel.

Submissions

308. Counsel Assisting and Senior Counsel for the Commissioner both submit that it is not clear what motive SC Vingerhoed would have to falsely state he did not see Bradley with the shovel shortly before the shooting. Counsel Assisting and Senior Counsel for the Commissioner submit that DSS Gilbert was likely mistaken in attributing the statement he heard about the shovel to SC Vingerhoed. This considers the scene when DSS Gilbert attended, at which many officers were in attendance including some in plain clothes, and the lack of detail in the contemporaneous notes that DSS Gilbert relied on to refresh his memory when he made his second statement.

309. Senior Counsel on behalf of Mr Balzan submits that SC Vingerhoed's account of the events in the backyard subsequent was not credible and should not be accepted, and instead, DSS Gilbert's evidence should be accepted.
310. Senior Counsel on behalf of Mr Balzan submits that:
- (1) DSS Gilbert's evidence was that he was making contemporaneous notes while speaking with SC Vingerhoed, and the amount of detail in his notes is in keeping with his intention to make a record of his conversation. It is inconceivable that he would somehow insert such a crucial detail as the shovel by mistakenly attributing to SC Vingerhoed a reference made to it by someone else at the scene.
 - (2) SC Vingerhoed himself did not contradict DSS Gilbert's evidence, being unable to recall whether or not he spoke to DSS Gilbert at the time.
 - (3) There was an obvious motive for SC Vingerhoed to falsely state to DSS Gilbert that he had seen Bradley with the shovel if in fact he had not but A/Sgt Parkinson had told him that Bradley had attempted to use the shovel. SC Vingerhoed may subsequently not have maintained that version either because he subsequently forgot that he had said as much to DSS Gilbert or because he took the view that he could not sustain an account containing Bradley using the shovel because he would be unable to provide appropriate detail.
 - (4) DSS Gilbert flatly denied that he may have been mistaken in either what SC Vingerhoed said to him or who it was that had made mention of the shovel, and the decisive manner in which DSS Gilbert gave his evidence reflects the strength of his recollection.
 - (5) Senior Counsel on behalf of Mr Balzan submits that the inconsistency of SC Vingerhoed's versions in relation to the shovel undermines his overall credibility.
311. Senior Counsel on behalf of Mr Balzan submits that the version DSS Gilbert recorded in his notes was also inconsistent both with the account given by A/Sgt Parkinson in

relation to the use of the shovel by Bradley and with the account later given by SC Vingerhoed in relation to the manner in which he asserted Bradley had come into possession of A/Sgt Parkinson's firearm:

- (1) In relation to the former inconsistency, A/Sgt Parkinson's account was that Bradley had picked up the shovel in order to hit SC Vingerhoed. However, it would appear from DSS Gilbert's notes that when SC Vingerhoed was speaking to him, he indicated that Bradley had used the shovel to attempt to strike A/Sgt Parkinson.
- (2) In relation to the latter inconsistency, SC Vingerhoed told investigators and gave evidence that he did not know how Bradley came to have possession of A/Sgt Parkinson's firearm. However, to DSS Gilbert, he stated that Bradley had "*managed to get gun off Parko*". Senior Counsel on behalf of Mr Balzan submits that it is inherent in that phrase that A/Sgt Parkinson had withdrawn his firearm prior to Bradley obtaining possession of it by taking it from him. SC Vingerhoed made a similar comment to Constable Maddison Rohloff again while at the scene and shortly after the conclusion of the incident: "*He got Parko's gun.*"

Conclusions

312. On balance, I find that DSS Gilbert was likely mistaken about which officer mentioned to him that Bradley had a shovel for the following reasons.
- (1) DSS Gilbert made handwritten notes on 23 December 2020 about his attendance at the residence. The notes make mention of the shovel but do not specify from whom that information came from.
 - (2) On 29 December 2020, DSS Gilbert completed a written statement. In that statement he stated he arrived at the home at about 10:45am and described his interactions with Mr Balzan. In this statement DSS Gilbert did not recount his conversation with an officer regarding the shovel.

- (3) DSS Gilbert completed a statement on 9 February 2021, in which he recalled SC Vingerhoed stating to the effect that after chasing the male over the fence of the residence, the male had grabbed a shovel and started “swinging at us”.
 - (4) DSS Gilbert’s evidence about SC Vingerhoed mentioning the shovel, if correct, is inconsistent with SC Vingerhoed’s account that he never saw Bradley holding the shovel.
 - (5) Senior Counsel on behalf of Mr Balzan submits that SC Vingerhoed’s account of the events in the backyard subsequent was not credible and should not be accepted, and instead, DSS Gilbert’s evidence should be accepted.
313. On the basis of all the evidence before me, I find that it is inherently unlikely that SC Vingerhoed would lie about the shovel and far more likely, in the aftermath of such a traumatic incident, that DSS Gilbert was mistaken.

Search of the surrounding streets

314. On 23 December 2020, a line search was carried out along the route Bradley was understood to have taken when he was away from his home. Nil items of interest were located. A couple of days after 23 December 2020, an officer located two keys (connected by a wire) on the roadside on Nariel Street. These were found to open the door at Bradley’s home. In the view of investigators, Bradley likely dropped the keys at about the time the foot pursuit began.

Veterinarian examination

315. The two dogs in the rear yard, being a male and female American Staffordshire Terriers, were impounded on 23 December 2020. A veterinarian at the Colyton Vet Hospital examined an injury on one of the dogs including by x-ray, and observed “*a small scab associated with the right shoulder and a larger wound just behind the right scapular region*”. The veterinarian did not observe signs of foreign material in the, or around, the location of the wounds.

Amount of time SC Vingerhoed and A/Sgt Parkinson were alone in the rear yard

Evidence

316. As for timing, the evidence shows:

Approx. 10:20:12am	1 st cluster of 3 shots (all fired within 3 seconds).
Approx. 10:20:36am	2 nd cluster of 2 shots fired (both fired within 2 seconds).
10:20:42am	Const Brimfield and Officer 4 leave front yard on foot (heading to vehicle).
10:22:36am	Const Brimfield and Officer 4 arrive back at the residence (in the vehicle) and enter front yard with portable radio. After providing A/Sgt Parkinson the radio through the fence/gate, Officer 4 entered the rear yard through the house. On entry Officer 4 saw SC Vingerhoed and A/Sgt Parkinson standing apart. She left the rear yard when she heard other vehicles arriving out front (returned later).
10:23am	A/Sgt Parkinson's radio broadcast.
10:25:24am	A/Sgt Cager and Const Church (Nepean 12) arrive at the residence (met soon after arrival by Officer 4). Both headed through the house into the rear yard. Both saw SC Vingerhoed and A/Sgt Parkinson standing apart from each other on entry. From this point onwards, police officers were continuously in the rear yard with SC Vingerhoed and A/Sgt Parkinson until they were taken out the front of the residence.
10:28:29am	First paramedics arrive at the residence and head through the house into the rear yard.

10:29:28am	Front yard CCTV captures SC Vingerhoed walking out the front yard with other officers (Constables Mateo and Rohloff). He remained separated from A/Sgt Parkinson and under supervision after exiting the front yard.
10:31:39am	Front yard CCTV captures A/Sgt Parkinson walking out the front yard. A/Sgt Cager, who had walked SC Vingerhoed from the rear yard, met A/Sgt Parkinson at the front entrance and placed him in the company of with two other officers. A/Sgt Parkinson remained separated from SC Vingerhoed and under supervision after exiting the front yard.

Submissions

317. Counsel Assisting submits that the above timing is important as:

- (1) About 3 minutes passed between the last shot being fired and Officer 4 entering the back yard where she saw A/Sgt Parkinson and SC Vingerhoed standing apart from each other.
- (2) A/Sgt Parkinson and SC Vingerhoed were alone, in the rear yard, for a further short period between Officer 4 leaving and A/Sgt Cager and Const Church entering the rear yard.

318. It seems unlikely A/Sgt Parkinson and SC Vingerhoed could have fabricated an account about the struggle and how the shots came to be fired before they were separated and then been able to give broadly consistent accounts about the same in their later interviews.

319. This considers:

- (1) The limited time they were alone together in the rear yard after the first shooting.
- (2) Their respective conditions in that time (exhausted with the onset of shock).

320. Counsel Assisting submits that I may consider the above when considering whether the accounts of SC Vingerhoed and A/Sgt Parkinson, about how the shots came to be fired, ought to be accepted.
321. Senior Counsel for Mr Balzan submits that A/Sgt Parkinson's and SC Vingerhoed's versions of events are only consistent at the most basic level, and examination of the detail of their recollections of events shows them in fact to be materially inconsistent. Senior Counsel for Mr Balzan submits that it is entirely possible that they were able to concoct the joint narrative ultimately provided after Bradley had been shot in the minutes before other officers arrived, given the similarity between their accounts is no more than superficial. In addition, while accepted that both officers had exerted themselves during the pursuit and the events which had transpired in the backyard, Counsel for Adam Balzan submits that there is no evidence to support a finding that they were too tired to speak with each other. To the contrary, SC Vingerhoed's evidence is that A/Sgt Parkinson spoke briefly to him about Bradley's condition, and A/Sgt Parkinson's is that he spoke to Mr Balzan at the back door to the premises, and then to Officer 4 and Const Brimfield when they arrived, to tell them what had occurred and to direct them to obtain a radio to call for assistance.
322. Ms Collins submits that one officer spoke to both witnesses who are the only witnesses to what happened in the rear yard that day which raises potential interference/advice with their witness statements.

Conclusions

323. The second cluster of two shots occurred at 10:20:36am and Const Brimfield and Officer 4 arrive back at the residence (in the vehicle) and enter front yard with portable radio. After providing A/Sgt Parkinson the radio through the fence/gate, Officer 4 entered the rear yard through the house. On entry Officer 4 saw SC Vingerhoed and A/Sgt Parkinson standing apart. A/Sgt Cager and Const Church arrive at the residence 10:25:24am. Both headed through the house into the rear yard. Both saw SC Vingerhoed and A/Sgt Parkinson standing apart from each other on entry. From this point onwards, police officers were continuously in the rear yard with SC Vingerhoed and A/Sgt Parkinson until they were taken out the front of the residence. I find that it is unlikely for there to have been time for SC Vingerhoed and

A/Sgt Parkinson to fabricate their accounts about the struggle and how the shots came to be fired before they were separated and then been able to give broadly consistent accounts in their later interviews.

Whether Bradley had the shovel

Submissions by Counsel Assisting

324. A/Sgt Parkinson in his interview described seeing Bradley pick up a shovel.
325. As for the officers' accounts about this stage of struggle, Counsel Assisting submits that on balance I may not be able to make a positive finding either way about whether I can be comfortably satisfied that Bradley wielded a shovel as described by A/Sgt Parkinson. This considers the following.
- (1) The only evidence as to Bradley's use of the shovel is that of A/Sgt Parkinson. This part of A/Sgt Parkinson's account could not be examined under oath owing to his incapacity to give evidence.
 - (2) SC Vingerhoed did not see Bradley holding the shovel.
 - (3) Although a shovel was found on the ground in the rear yard, there is no fingerprint or DNA evidence supportive of Bradley having held the shovel, nor is there evidence that positively contradicts A/Sgt Parkinson's account about this.

Submissions on behalf of Mr Balzan

326. Senior Counsel for Mr Balzan submits that I would (a) positively find that Bradley did not have the shovel and (b) conclude that A/Sgt Parkinson's account about this is false and adverse to his credibility generally.
327. Senior Counsel for Mr Balzan submits:
- (1) Differences arise between the officers' accounts in relation to the shovel, their positioning, and the events in the rear yard.

- (2) It is overwhelmingly likely that had Bradley held the shovel and tried to strike SC Vingerhoed, SC Vingerhoed himself would have seen him do that. SC Vingerhoed gave evidence that he did not see Bradley with a shovel in his hands at any time while he was in the backyard.
- (3) A/Sgt Parkinson's account that Bradley picked up the shovel while Bradley was on his knees and tried to strike SC Vingerhoed, while the latter was "*still around [Bradley's] waistline*", is biomechanically impossible.
- (4) It is inherently unlikely Bradley would have had the ability to see or use the shovel given the use of the OC spray (impact of that on his vision) and the officers grappling with him.
- (5) In the incident scene photographs the relevant shovel is located towards the entrance to the backyard, and well away from the area where Bradley and SC Vingerhoed would have been engaged in a struggle after Bradley ran from the alcove at the back door. A/Sgt Parkinson provides no explanation for how the shovel ended up in that location. If Bradley was on his knees at that position in the backyard, and had the shovel in his hands, it is extremely unlikely that the shovel would have somehow landed in its ultimate resting place. The location of the shovel is consistent with the shovel having remained there throughout the events in the backyard, perhaps having been dropped there on a prior occasion.
- (6) A/Sgt Parkinson volunteering to investigating police that he did not know whether SC Vingerhoed would have seen the shovel is a pre-emptive attempt to explain away an expected inconsistency. The only reason A/Sgt Parkinson would have expected this inconsistency is that he knew Bradley in fact did not pick up the shovel and feared SC Vingerhoed would say as much.
- (7) A/Sgt Parkinson's account of the events in the backyard after the deployment of the OC spray by police is not credible, and the events are calculated to paint Bradley in an aggressive and threatening light and suggestive of a perceived need on his part to justify his actions, and those of SC Vingerhoed, where he must have been concerned that the truth of the events in the backyard would not assist to do so.

Submissions in reply by Counsel Assisting

328. Counsel Assisting submits that the officers' accounts about their positioning and that of Bradley, after A/Sgt Parkinson says he took Bradley to the ground, do differ, namely:
- (1) A/Sgt Parkinson describes Bradley getting from the ground to his knees and grabbing the shovel. SC Vingerhoed was around Bradley's waist area when he got to his knees at or about the time he grabbed the shovel (*note: SC Vingerhoed did not see this*). Bradley went to swing it at SC Vingerhoed (*note: SC Vingerhoed did not see this*). A/Sgt Parkinson tackled Bradley to the ground when he went to swing it at SC Vingerhoed. It appears from A/Sgt Parkinson's account that Bradley went down onto his stomach with A/Sgt Parkinson being positioned on or near his upper back at which point he had or was trying to hold Bradley in a headlock.
 - (2) SC Vingerhoed described being on his back with Bradley on top of him. SC Vingerhoed then pushed Bradley off himself. The next thing he remembered was standing up and seeing A/Sgt Parkinson on his back with Bradley on top of him. SC Vingerhoed again joined in the struggle and delivered blows / strikes to the back of Bradley (*note: A/Sgt Parkinson did not report seeing this*).
329. Counsel Assisting submits that I could not comfortably be satisfied that Bradley had the shovel. That considers that A/Sgt Parkinson's account about this is not corroborated by SC Vingerhoed.
330. It may be considered surprising that SC Vingerhoed did not see Bradley holding the shovel. However, on SC Vingerhoed's account he did not have continuous sight of A/Sgt Parkinson and Bradley at this stage. Whether there was enough time for Bradley to have grabbed the shovel, and for A/Sgt Parkinson to tackle him to the ground, without SC Vingerhoed seeing it, is not clear.
331. Counsel Assisting submits that I am not able to exclude the possibility Bradley had the shovel without SC Vingerhoed seeing him with it.

332. As for whether it would have been biomechanically impossible for Bradley to have moved the shovel at or towards SC Vingerhoed, Counsel Assisting submits that A/Sgt Parkinson's description about SC Vingerhoed's position seemed qualified namely:

(1) When asked where SC Vingerhoed was when Bradley got to his knees and had the shovel, A/Sgt Parkinson said, "*He was still down the lower, lower part of his body*" and that "*He was wrestling with him. I think he was trying to break [SC Vingerhoed's] grip when he was going for the shovel*".

(2) Asked where SC Vingerhoed's arms were at this point, A/Sgt Parkinson said "*...I'm thinkin' they're around his waist...slipping down towards his leg... I think by the time I actually got to him, he, he got one foot and one knee, you know, tryin' to push up and swing down. He turned his body, and that's when I just jumped towards the front of his body*".

(3) When asked if SC Vingerhoed was in front of Bradley, A/Sgt Parkinson said "*He was, er - - - underneath him , yeah...Yeah, be, behind. All I can think is behind him, wrestling*".

333. It is difficult to visualise exactly what A/Sgt Parkinson is describing with his answers. His description of SC Vingerhoed's position is also qualified ("*I think*"). It would be difficult to conclude on the face of this account it was impossible for Bradley to have grabbed the shovel or swung that towards SC Vingerhoed.

334. As for the submission that Bradley likely could not have seen the shovel given the OC spray and struggle itself, Counsel Assisting submits that Bradley's vision was probably impacted by the OC spray. However, it could not be found that his vision was so impaired such that he could not have seen the shovel. Counsel Assisting submits that I may not be able to make a positive finding about this either way.

Conclusions

335. On balance, I am not able to make a positive finding either way. I am not able to positively find either that Bradley had the shovel or did not have the shovel, and am not able to exclude the possibility Bradley had the shovel without SC Vingerhoed seeing him with it. The only evidence as to Bradley's use of the shovel is that of

A/Sgt Parkinson. A/Sgt Parkinson's account of this could not be examined under oath owing to his incapacity to give evidence.

336. As for whether it would have been biomechanically impossible for Bradley to have moved the shovel at or towards SC Vingerhoed, I accept Counsel Assisting's submissions that A/Sgt Parkinson's description of SC Vingerhoed's position is qualified ("*I think*"). It would be difficult to conclude on the face of this account it was impossible for Bradley to have grabbed the shovel or swung that towards SC Vingerhoed.

How A/Sgt Parkinson's pistol came out of his holster

Submissions by Counsel Assisting

337. Counsel Assisting submits that (a) I can be satisfied that A/Sgt Parkinson's Glock pistol somehow came to be out of his holster during the struggle and (b) that I would not be comfortably satisfied as to how, and in what circumstances, that occurred. This considers the following.

- (1) In his interview A/Sgt Parkinson could not account for how his firearm came to be on the ground. A/Sgt Parkinson could not be examined about this owing to his unfitness. That includes examination about whether he could have drawn his firearm in attempting to get control over Bradley, or in response to a dog attack, before losing control of it.
- (2) SC Vingerhoed's evidence is that he did not see how the firearm came to be removed or out of A/Sgt Parkinson's holster.
- (3) The holster is designed with a restraint mechanism to prevent its accidental or inadvertent release. Counsel Assisting submits that the evidence of the examination of the holster, including scenarios examined in evidence, show the inherent unlikelihood the pistol would have inadvertently been released from the holster.

Submissions on behalf of the Nepean 140 officers

338. Counsel for the Nepean 140 officers submits that "*it is unclear*" and no finding can be made as to how A/Sgt Parkinson's firearm came to be out of the holster.

Submissions on behalf of Mr Balzan

339. Senior Counsel for Mr Balzan submits that A/Sgt Parkinson gave two inconsistent and contradictory versions of how Bradley grabbed his pistol from his holster: (a) it was accidentally unholstered (implicit in his interview answers that the first he was aware that the firearm had been removed was when he saw it on the ground), and (b) in the immediate aftermath of the shooting he had stated to Mr Balzan that Bradley “*pulled one of our guns out*” and to Officer 4 that Bradley “*got it out of my holster*”. Senior Counsel for Mr Balzan submits that this militates against accepting either version and against the credibility of A/Sgt Parkinson more generally, considering also the two versions are inherently unlikely given that A/Sgt Parkinson’s holster was fitted with a restraint mechanism that was found to be in good working order.
340. Although SC Vingerhoed told investigators and gave evidence that he did not know how Bradley came to have possession of A/Sgt Parkinson’s firearm, to DSS Gilbert, he stated that Bradley had “*managed to get gun off Parko*”. Senior Counsel for Mr Balzan referred to how it is inherent in that phrase that A/Sgt Parkinson had withdrawn his firearm prior to Bradley obtaining possession of it by taking it from him. Senior Counsel for Mr Balzan submits it is noteworthy that SC Vingerhoed made a similar comment to Const Rohloff, again while at the scene and shortly after the conclusion of the incident: “*He got Parko’s gun*”.
341. Senior Counsel for Mr Balzan submits that the scenario of Bradley removing the pistol from the holster is inherently unlikely. This is compounded by how Bradley had, very shortly prior to allegedly picking up the firearm, been subjected to numerous doses of OC spray by both officers which were of sufficient volume to leave one of the OC spray cannisters almost empty and to cause Mr Balzan to experience difficulty breathing when he came to the back door after the shots had been fired. According to SC Vingerhoed the spray left Bradley rubbing his face such that he thought it had been “*effective*”, and which in evidence he accepted could have left Bradley “*disorientated*.” This gives rise to serious doubts as to whether Bradley would then have had the awareness, after having been tackled to the ground and with both officers then grappling with him, to look up, see the firearm, reach for it, beat A/Sgt Parkinson to it, and then attempt to use it against him.

342. Given the above, Senior Counsel for Mr Balzan submits that a positive finding would be made that A/Sgt Parkinson himself withdrew the pistol from his holster. A/Sgt Parkinson had a motive for removing his pistol from his holster: to shoot the dog which was biting him while he was wrestling with Bradley. Senior Counsel for Mr Balzan submits this is a clear and believable basis, with no other reasonably possible hypothesis. The fact both A/Sgt Parkinson and SC Vingerhoed were bitten during the incident and required hospital treatment is demonstrative of the role that the dogs played during the wrestle and the increased likelihood of a tactical response by either or both of those officers in order to neutralise the posed threat.

Reply submissions by Counsel Assisting

343. As for the difference between the statements made by A/Sgt Parkinson at the scene, Counsel Assisting submits it is possible his statements to Mr Balzan and Officer 4 (if made in these terms) amounted to his initial deduction as to how the pistol came out with him not knowing how that occurred (*accepting that he did not positively raise the theory of Bradley grabbing his pistol out of the holster in his interview*), or such statements may have been an attempt by A/Sgt Parkinson to avoid revealing that he himself withdrew the pistol to begin. These statements could not be explored with A/Sgt Parkinson in examination. Counsel Assisting submits it is difficult to reach a definitive conclusion or to treat this as a matter adverse to A/Sgt Parkinson's credit.

344. This matter does of course underscore the importance of approaching A/Sgt Parkinson's account regarding how the pistol came out of the holster with caution, especially his account in interview that he had no awareness or idea how his pistol came out of the holster.

345. Counsel Assisting submits that the possibility of malfunction of the holster securing mechanism has been excluded.

346. Counsel Assisting submits I may consider it very unlikely that the pistol came to be inadvertently released before or during the struggle given:

- (1) The holster is purposefully designed to minimise the risk of inadvertent release or release by someone other than by the officer to whom it is affixed.

- (2) It is difficult to conceive Bradley would have known how to activate the holster release or that he did so intentionally or inadvertently during the struggle.
 - (3) Neither A/Sgt Parkinson nor SC Vingerhoed reported sighting Bradley's hand on the gun / holster which may have accounted for an inadvertent release, accepting that the struggle described was a chaotic one and that the absence of them seeing this isn't itself evidence that this did not occur.
347. Counsel Assisting submits that it is difficult to conceive that A/Sgt Parkinson, at the time of his interview, had no knowledge, awareness or theory about how his pistol came out of his holster. The unexpected release of the pistol from his holster is such a significant event outside his ordinary experience and expectation.
348. Counsel Assisting considers there is a reasonable possibility A/Sgt Parkinson may have intentionally removed the pistol himself. In particular it may be thought plausible that:
- (1) A/Sgt Parkinson might have done so to try and force Bradley into submission or in response to the dog attack upon himself (with him potentially losing control of the pistol).
 - (2) At the time of interview he did not wish to reveal this out of concern / regret at what happened - e.g. him losing control of his pistol, shots being fired, SC Vingerhoed's safety being jeopardised and SC Vingerhoed feeling compelled to shoot Bradley to protect A/Sgt Parkinson, and Bradley's death (and if he believed their actions put himself and SC Vingerhoed in jeopardy).
349. However, although plausible, Counsel Assisting submitted that I could not be comfortably satisfied on the evidence to find this is what occurred.

Conclusions

350. The possibility of malfunction of the holster securing mechanism has been excluded. The holster is designed to minimise the risk of inadvertent release or release by someone other than by the officer to whom it is affixed. It is not feasible that Bradley would have known how to activate the holster release or that he did so intentionally or inadvertently during the struggle.

351. I accept Counsel Assisting' submission that it is difficult to conceive that A/Sgt Parkinson, at the time of his interview, had no knowledge, awareness or theory about how his pistol came out of his holster.
352. For these reasons, I find it is inherently unlikely that the pistol fell out of the holster inadvertently, that the holster's restraint mechanism malfunctioned or that Bradley took the pistol out of the holster. I accept Counsel Assisting's submission that there is a reasonable possibility A/Sgt Parkinson may have intentionally removed the pistol himself. In particular it is plausible that A/Sgt Parkinson might have done so to try and force Bradley into submission or in response to the dog attack upon himself (with him potentially losing control of the pistol). However, on the evidence before me, I cannot be comfortably satisfied to make a positive finding on how the pistol came out of the holster.

How the shots came to be fired (and struggle in the rear yard)

Evidence

353. An initial overview of SC Vingerhoed's and A/Sgt Parkinson's accounts of what happened is at [224]-[244] above.
354. On A/Sgt Parkinson's account:
- (1) After he tackled Bradley to the ground, A/Sgt Parkinson was on top of Bradley's back area and was trying to hold Bradley in a headlock.
 - (2) While looking over Bradley's shoulder he saw his gun on the ground. The exact positioning of the gun on the ground relative to A/Sgt Parkinson and Bradley at this point is difficult to discern – e.g. whether it was directly in front of Bradley and A/Sgt Parkinson's position or to the side.
 - (3) A/Sgt Parkinson slid off Bradley's back area to reach for the gun at about the same time Bradley was reaching for it.
 - (4) A/Sgt Parkinson had hold of Bradley's hands or arms and was trying to force the gun down towards the ground (e.g. he stated he was "...*fightin', fightin' with him to, to keep the gun faced towards the ground*"). At some point he got

his hands on Bradley's hands but did not make contact with the gun (at this point although he did when they subsequently went to ground – e.g. holding the slide and attempt to push magazine release button).

- (5) While not entirely clear on the face of the description, it does not appear A/Sgt Parkinson puts himself in front of, or face to face with, Bradley when the struggle over the gun occurred. He appears to describe himself coming over from the back or side of Bradley when they struggled over the gun.
- (6) When he (A/Sgt Parkinson) and Bradley were struggling over the firearm, A/Sgt Parkinson "*didn't know where [SC Vingerhoed] was*".
- (7) A/Sgt Parkinson saw the first shot fired go into the ground in front of them.
- (8) A/Sgt Parkinson saw two further shots were fired but he did not expressly state he saw the direction or trajectory of these shots or where they went (e.g. whether they were towards the ground, straight ahead or up in the air).
- (9) After the third shot was fired he and Bradley both went to ground again possibly owing to some act by SC Vingerhoed.
- (10) It is not clear how far off the ground Bradley was when they went to ground or when the first cluster of shots were fired (e.g. on his knees or standing).
- (11) When he and Bradley went to ground they ended up positioned face to face. Bradley still had hold of the gun. The gun was pointed towards A/Sgt Parkinson.
- (12) A/Sgt Parkinson had hold of Bradley's hands and / or grabbed the pistol's muzzle/slide. He was pushing the barrel away from pointing at him or to try and stop it being pointed at him.
- (13) A/Sgt Parkinson tried to press the magazine release button to pop the magazine out although he realised this would have left one round in the chamber. A/Sgt Parkinson stated Bradley's finger was on the trigger and he "*could feel his finger just pulling the trigger*".

(14) A/Sgt Parkinson yelled out something to the effect of, "*He's gunna shoot me*".

355. On SC Vingerhoed's account:

- (1) After he delivered blows / strikes to Bradley's back area, when Bradley was on top of A/Sgt Parkinson with the latter on his back on the ground, they "*all manage[d] to get back to our feet*".
- (2) Bradley was positioned between himself and A/Sgt Parkinson with them both facing each other.
- (3) SC Vingerhoed believed he was on Bradley's right side within about 20cm of Bradley. SC Vingerhoed was facing in the same direction as Bradley. This puts A/Sgt Parkinson facing back toward SC Vingerhoed.
- (4) It appears from SC Vingerhoed's account he is slightly behind Bradley (facing towards A/Sgt Parkinson) as opposed to being directly by Bradley's right side.
- (5) At this point SC Vingerhoed believed he had hold of Bradley's right arm at or near the tricep (with Bradley facing towards A/Sgt Parkinson) and believed he would have been trying to pull Bradley down to the ground to restrain him.
- (6) When in this position, "*from his angle looking down*", SC Vingerhoed saw the top part of a black item in Bradley's right hand.
- (7) Bradley and A/Sgt Parkinson were on their feet facing each other when the first two shots were fired.
- (8) As regards the angle or trajectory of the first cluster of shots fired, SC Vingerhoed believes the pistol would have been parallel to the ground and he expects the shot(s) fired would have struck the shed or fence, but he could not be completely sure or exact as to its trajectory.
- (9) After the third shot was fired, all three went to ground with each landing on their sides. SC Vingerhoed landed on his left-hand side, being the same side Bradley landed on, with A/Sgt Parkinson on his right hand side.

SC Vingerhoed and Bradley are still facing in the same direction towards A/Sgt Parkinson who was facing back towards them.

- (10) SC Vingerhoed's account about them going to ground seems broadly consistent with A/Sgt Parkinson's account about this.
- (11) By the time they went to ground after the first cluster of shots, SC Vingerhoed realised gunshots had been fired.
- (12) SC Vingerhoed either sat up or stood up and saw Bradley holding the pistol with his right hand and A/Sgt Parkinson holding his hand on the pistol's slide (SC Vingerhoed is not sure which hand A/Sgt Parkinson had on the slide).
- (13) SC Vingerhoed described Bradley and A/Sgt Parkinson on their sides "*sort of leaning up*" about this time.
- (14) SC Vingerhoed drew his pistol from his holster (on his right hand side) either while sitting up or when standing up. He then got to his feet.
- (15) SC Vingerhoed said he yelled, "*Drop the gun*".
- (16) SC Vingerhoed then fired two shots at Bradley's right hand side.

Counsel Assisting's submissions

356. Counsel Assisting submits that I can be comfortably satisfied that:

- (1) Bradley got hold of A/Sgt Parkinson's firearm.
- (2) During the struggle for control of the pistol, three shots were discharged.
- (3) During that struggle the firearm came to be pointed at or near to A/Sgt Parkinson.
- (4) SC Vingerhoed had reasonable grounds to fear for A/Sgt Parkinson's life when he fired the fatal shots at Bradley.

357. This considers:

- (1) The accounts of SC Vingerhoed and A/Sgt Parkinson, accepting that the latter has not been given under oath nor tested in examination.
 - (2) The limited opportunity SC Vingerhoed and A/Sgt Parkinson would have had, in the time available and their respective conditions, to fabricate an account about how the shots came to be fired and Bradley fatally shot.
 - (3) The forensic evidence, which is corroborative of Bradley having handled or had contact with A/Sgt Parkinson's Glock pistol and the trigger, accepting it remains theoretically possible that the DNA was deposited in other ways including transference.
358. Counsel Assisting submits that Bradley's actions around the firearm were out of character for him. That considers:
- (1) Bradley had no history of violent acts other than the one occasion of damaging property in 2018. Nowhere in the descriptions of his loved ones does a picture emerge of someone with a violent propensity.
 - (2) Before he ran out of the enclosed area, he had threatened none of the individual officers.
359. Counsel Assisting submits that I may infer:
- (1) When he emerged from the alcove, Bradley was already fatigued and elevated after the pursuit and had been exposed to OC spray within a confined area. He likely felt trapped and desperate. His capacity for measured action at that point was likely severely impaired.
 - (2) He was then engaged in a prolonged struggle with the two officers.
 - (3) By the time he got hold of the firearm, Bradley was likely gripped by fear, anger and feelings of desperation.

Submissions on behalf of the Nepean 140 officers

360. Counsel for the Nepean 140 officers submits that I would accept:

- (1) By means unknown, Bradley came into possession of A/Sgt Parkinson's pistol.
 - (2) Bradley fired the pistol three times in the vicinity of A/Sgt Parkinson.
 - (3) SC Vingerhoed heard three shots fired in quick succession and he saw Bradley in possession of the pistol. The three went to the ground again whilst Bradley still had possession of the pistol.
 - (4) The pistol was in Bradley's right hand and pointed in the direction of A/Sgt Parkinson, in very close proximity and A/Sgt Parkinson struggled to try to keep the gun faced to the ground and away from himself.
 - (5) SC Vingerhoed discharged his firearm until he determined the threat to A/Sgt Parkinson's life had ceased.
361. The DNA evidence identified that Bradley could not be excluded as a contributor to the DNA profiles on the trigger, and neither expert could opine whether this was due to Bradley handling the pistol as opposed to indirect transfer. However, Counsel for the Nepean 140 officers submits that I would find that Bradley's finger had been on the trigger and that he discharged the firearm three times in accordance with the accounts of A/Sgt Parkinson and SC Vingerhoed, and the firing of the three shots caused SC Vingerhoed to discharge his firearm in defence of A/Sgt Parkinson. Counsel for the Nepean 140 officers submits I would accept the accounts of A/Sgt Parkinson and SC Vingerhoed about how the shots came to be fired, and that it is unlikely they fabricated these accounts, including considering the period of them they were in the rear yard after the discharge of firearms.

Submissions by Ms Collins

362. Ms Collins submits that it cannot be excluded that Bradley's DNA was indirectly transferred onto the pistol and that Bradley did not have the pistol. If Bradley did have the pistol at all, Ms Collins submits that he did not pick up the pistol, or he did not have full possession of the pistol on his own.
363. Ms Collins submits that there is no BWV footage to verify A/Sgt Parkinson's or SC Vingerhoed's accounts, and there are inconsistencies and discrepancies with their

accounts, and with those of Const Brimfield and Officer 4, of what happened in the rear yard. Ms Collins submits that the radio never broadcast about a suspicious person that morning, and “*how could we believe what was later stated*”.

Submissions on behalf of Mr Balzan – overview

364. Senior Counsel for Mr Balzan submits that I would not accept the accounts of A/Sgt Parkinson and SC Vingerhoed about what occurred in the backyard after Bradley exited the alcove. Senior Counsel for Mr Balzan submits:

- (1) There is a lack of consistency between SC Vingerhoed’s and A/Sgt Parkinson’s accounts);
- (2) There are credibility issues for both officers; and
- (3) The acts attributed to Bradley by the officers are inherently improbable.

365. Senior Counsel for Mr Balzan submits that the officers’ accounts fall well short of the detail or level of consistency which might be expected if their versions were to be considered credible, and the lack of consistency and inherent improbability of the acts attributed to Bradley tells against the acceptance of either account as credible.

Submissions on behalf of Mr Balzan – Inconsistency

366. Regarding lack of consistency between SC Vingerhoed and A/Sgt Parkinson’s accounts, Senior Counsel for Mr Balzan submits there are markedly inconsistent or contradictory details as to:

- (1) In relation to the positioning of the three after Bradley ran from the alcove and was tackled by SC Vingerhoed:
 - (a) A/Sgt Parkinson stated that they were all on the ground and that Bradley was face down, with A/Sgt Parkinson “*on top of his back*” and SC Vingerhoed “*on the bottom half of his back*”. This account puts Bradley face down on the ground with both officers on top of him.
 - (b) SC Vingerhoed, however, stated that when he was on the ground with Bradley, he was on his back, with Bradley also on his back, “*lying*

sideways across” SC Vingerhoed. In his interview, SC Vingerhoed stated that A/Sgt Parkinson was on top of Bradley, however, A/Sgt Parkinson was *“on his feet”*. This account puts SC Vingerhoed face up, with Bradley face up on top of him and A/Sgt Parkinson either on top of Bradley or on his feet.

(2) In relation to the next sequence of events:

(a) A/Sgt Parkinson’s account is that while wrestling with Bradley, he was bitten by a dog which caused him to *“kick the dog off”* but lose his grip of the top half of Bradley’s body in the process. According to A/Sgt Parkinson, at that point Bradley *“sort of got to his knees and ... picked up a shovel”*, with which he then attempted to strike SC Vingerhoed, who was *“still around his waistline”*. A/Sgt Parkinson makes no mention of being on his back with Bradley on top of him, of hearing Bradley yell or scream, or of observing SC Vingerhoed knee, punch or elbow Bradley.

(b) SC Vingerhoed’s evidence, on the other hand, was that after he pushed Bradley off him, he got to his feet and observed A/Sgt Parkinson *“on his back and Bradley on top of Parkinson”*, at which point he tried without success to pull Bradley off Parkinson, heard Bradley *“yelling in, like a - an aggressive scream that went for like two or three seconds”* and *“then, in an attempt to control Bradley, I have kned him once to the side of his torso ... punched him once in the back [and] I elbowed him about six times around his spinal area, with no effect.”* SC Vingerhoed stated that he did not ever see Bradley holding a shovel during the altercation.

(3) In relation to the next event:

(a) A/Sgt Parkinson’s account is that when Bradley allegedly raised the shovel to strike at SC Vingerhoed, A/Sgt Parkinson *“jumped at”* Bradley and put him into a headlock. At this point, they were both on the ground.

- (b) SC Vingerhoed, however, gave evidence that he never saw A/Sgt Parkinson with Bradley in a headlock. His evidence was that after he had struck Bradley about his torso and back, all three had somehow managed to regain their footing, at which point he was *“on the right hand side of Bradley, trying to pull him to the ground again.”*
- (4) At the time when the officers allege that Bradley obtained A/Sgt Parkinson’s firearm:
- (a) According to A/Sgt Parkinson, while he had Bradley in a headlock on the ground he did not know if Bradley *“got on his knees, but he got, got to, like, his elbows where he started to lift me physically off the ground”*. A/Sgt Parkinson looked over Bradley’s shoulder, saw a gun on the ground and yelled out *“Gun, fuck, gun”*, and Bradley went *“straight, two hands on the gun”*. A/Sgt Parkinson *“grabbed hold of his arms and he started shooting.”* At that point, A/Sgt Parkinson thought SC Vingerhoed was *“down the bottom”* (presumably of Bradley).
- (b) SC Vingerhoed, on the other hand, gave evidence that it was while all three were on their feet and he was on Bradley’s right-hand side, trying to pull him to the ground, that *“Parkinson has yelled something.”* As regards the relative positioning of all three at this point, and again contrary to A/Sgt Parkinson, his evidence was that he, SC Vingerhoed, was behind Bradley, who was facing A/Sgt Parkinson. He went on to state that he *“heard two gunshots”* and then observed an item in Bradley’s right hand.
- (5) In relation to their positioning at the point in time when the first three shots were fired:
- (a) A/Sgt Parkinson’s account was that when Bradley grabbed the firearm he, A/Sgt Parkinson, had *“slid”* himself off Bradley’s back and moved around to be side-on in order to grab Bradley by the wrists with one hand, while the other hand remained in front of Bradley’s face. A/Sgt Parkinson went on to state that at this point he was pushing Bradley’s arm holding the firearm towards the ground and to the left,

while Bradley was pushing up and to the right. The firearm was then discharged three times. Senior Counsel for Mr Balzan submits that if A/Sgt Parkinson had been behind Bradley at the time he took possession of the firearm, Bradley had the firearm in his right hand, and A/Sgt Parkinson had come around to be side-on to Bradley in order to grab for the firearm, he must have been on the right hand side of Bradley at the point in time when the shots were fired.

- (b) SC Vingerhoed, contrary to A/Sgt Parkinson's account, gave evidence that it was however he who was on the right-hand side of Bradley when the shots were fired, and who had hold of Bradley's right arm (noting his evidence that Bradley had the firearm in his right hand). According to him, A/Sgt Parkinson was directly in front of Bradley, facing him, at that point and he gave evidence that he did not see A/Sgt Parkinson's hands on Bradley's hands when the first three shots were discharged. Unlike A/Sgt Parkinson, whose account was that the first of the three shots was fired into the ground and that he continued pushing the firearm downwards, SC Vingerhoed's evidence in relation to the direction in which Bradley was allegedly pointing the firearm at the time it was discharged was that he "*would assume that it was parallel to the ground*".
- (6) Both A/Sgt Parkinson and SC Vingerhoed state that the three fell to the ground on the third shot with the result that A/Sgt Parkinson and Bradley were on their sides, facing each other, and that Bradley was pointing the firearm towards A/Sgt Parkinson. Their accounts differ, however, in that A/Sgt Parkinson states that while he was in that position he yelled out words to the effect of "*He's gunna shoot me*" whereas SC Vingerhoed did not remember A/Sgt Parkinson saying anything while on the ground. Further, while SC Vingerhoed's evidence is that he yelled "*Drop the gun*" before firing upon Bradley; in his interview A/Sgt Parkinson did not state that he heard SC Vingerhoed do so.
- (7) Finally, in the aftermath of Bradley having been shot:

- (a) A/Sgt Parkinson's account was that Bradley "*went weak*", allowing him to retrieve his firearm, but that when he re-holstered it "*the magazine fell out*". According to A/Sgt Parkinson, Bradley was in "*a position sitting up*" and "*he's lent forward and we've wrestled over the magazine*".
- (b) According to SC Vingerhoed, once Bradley was shot he immediately let go of the firearm and rolled onto his back, with his hands in the air. SC Vingerhoed kept his firearm trained on Bradley for five to ten seconds after shooting him and did not see him move again, let alone struggle with A/Sgt Parkinson over the magazine. Senior Counsel for Mr Balzan submits that SC Vingerhoed's evidence on this topic would clearly be preferred over the inherently unlikely version provided by A/Sgt Parkinson.

367. Senior Counsel for Mr Balzan submits it is entirely possible that A/Sgt Parkinson and SC Vingerhoed were able to concoct the joint narrative ultimately provided after Bradley had been shot in the minutes before other officers arrived, given the similarity between their accounts is submitted to be no more than superficial. Senior Counsel for Mr Balzan submits that while it is accepted that both officers had exerted themselves during the pursuit and the events which had transpired in the backyard, there is no evidence to support a finding that they were too tired to speak with each other. To the contrary, SC Vingerhoed's evidence is that A/Sgt Parkinson spoke briefly to him about the condition of Bradley, and A/Sgt Parkinson's is that he spoke to Mr Balzan at the back door to the premises and then, when they arrived, to Officer 4 and Const Brimfield, to tell them what had occurred and to direct them to obtain a radio to call for assistance.

368. Senior Counsel for Mr Balzan submits it is clear that it is not possible to synthesise the officers' accounts into a unified and coherent narrative of events, given the disparity between their separate recollections on the key events which took place in the backyard and their sequence, and that the lack of consistency powerfully tells against the acceptance of the account given by either as credible.

Submissions in reply by Counsel Assisting – Inconsistency

369. As for the officers' accounts about the positioning of the three after Bradley ran from the alcove and was tackled by SC Vingerhoed at [366(1)], Counsel Assisting submits it can be accepted each officer's account differs as to their positioning, and Bradley's position, when Bradley first went to ground, which I can consider in terms of the officers' reliability. Counsel Assisting submits it would be difficult to treat this difference as an adverse matter as to the officers' credit, or at least SC Vingerhoed's credit. That considers the struggle described and that on the face of their accounts neither seemed to have had a continuous observation of the other.
370. As for the officers' accounts about whether Bradley had the shovel and how he was taken to the ground or first held on the ground at [366(2)-(3)], this is discussed earlier.
371. As for the officers' accounts about whether Bradley getting hold of A/Sgt Parkinson's firearm, and their positioning when the first cluster of shots was fired at [366(4)-(6)], Counsel Assisting submits the following.
372. First, the officers accounts about what occurred between (a) Bradley getting the gun and firing the first cluster of shots (b) to when A/Sgt Parkinson and Bradley went or were taken to ground, do differ in important respects namely:
- (1) Whether Bradley was closer to the ground (possibly on one or both his knees) when the first cluster of shots were fired.
 - (2) Where A/Sgt Parkinson and SC Vingerhoed were positioned relative to Bradley when those shots were fired with:
 - (a) A/Sgt Parkinson's account seeming to have himself at the back / side of Bradley with him holding Bradley's arms, wrist or hands area struggling for control of the gun, when those shots were fired (with A/Sgt Parkinson not being aware of SC Vingerhoed's position) and
 - (b) SC Vingerhoed's account having all three on their feet when those shots are fired, with himself slightly behind and on Bradley's right side, having hold of Bradley's right tricep's area with A/Sgt Parkinson in front of himself and Bradley (facing back towards them) with the gun held

by Bradley pointed / angled past A/Sgt Parkinson's side (not directly at him) (with SC Vingerhoed not seeing if A/Sgt Parkinson had hold of Bradley's hands or arms at this point).

373. Counsel Assisting submits these differences are relevant to assessment of reliability of the officers' accounts and are important as they concern:
- (1) How Bradley was holding the gun when the first shots were fired.
 - (2) What was occurring when the first shots were fired.
 - (3) The positioning and actions of the officers when the shots were fired.
374. Counsel Assisting submits it is difficult to treat this difference as adverse to SC Vingerhoed's credit or as evidencing potential concoction between him and A/Sgt Parkinson. It would depend on my positively finding one officer's version to be correct, with the differences in the other officer's account not being ones that arise from error in perception or recall.
375. Second, as for what happened next between (a) the first cluster of shots was fired until (b) SC Vingerhoed fired two shots - Counsel Assisting submits I may consider the officers' accounts about this are broadly consistent. Both describe Bradley and A/Sgt Parkinson going to ground and struggling over the firearm pointed towards A/Sgt Parkinson, with A/Sgt Parkinson having hold of the slide of the pistol before SC Vingerhoed fired the two shots.
376. As for the officers' accounts on the immediate aftermath of SC Vingerhoed's firing of the shots at [366(7)], Counsel Assisting submits a difference does arise in A/Sgt Parkinson and SC Vingerhoed's account about the immediate aftermath. It is likely both were in significant shock at this point. This may have affected what they perceived or their recollection of these moments. Counsel Assisting submits it is difficult to view this difference as material in terms of their credibility. Counsel Assisting submits I would not be able to positively find that A/Sgt Parkinson and Bradley momentarily grappled over the magazine.
377. I accept these submissions, that I cannot positively find that A/Sgt Parkinson and Bradley momentarily grappled over the magazine. SC Vingerhoed gave evidence that

he recalled seeing a magazine hit the ground around the time A/Sgt Parkinson was able to retrieve his firearm but did not see A/Sgt Parkinson and Bradley struggle over the magazine.

Submissions on behalf of Mr Balzan – Credibility of A/Sgt Parkinson

378. Senior Counsel for Mr Balzan submits that a number of matters count against my accepting A/Sgt Parkinson's account as credible.
379. First, A/Sgt Parkinson's account was untested in hearing and submits that I would be circumspect in accepting his evidence other than where it is clearly not in dispute.
380. Second, statements attributed to A/Sgt Parkinson at the scene by A/Sgt Cager and Acting Superintendent Stuart Gordon ("A/Supt Gordon") count against A/Sgt Parkinson's credibility, in particular:
- (1) A/Sgt Cager recalled A/Sgt Parkinson saying "*He picked up a shovel and came at us and we tackled him. He got my gun and started firing it*". In his interview A/Sgt Parkinson said Bradley got the shovel and tried to strike SC Vingerhoed, not both officers, and that this occurred after the physical struggle had begun or the tackle had occurred.
 - (2) A/Supt Gordon recalled A/Sgt Parkinson saying "*He got hold of my gun. We were trying to get it off him and he fired it. Then Luke shot him*". In his interview A/Sgt Parkinson did not describe both himself and SC Vingerhoed as struggling with Bradley. A/Sgt Parkinson described only himself struggling to get control of the pistol.
381. Third, in his interview A/Sgt Parkinson asserted that once Bradley obtained possession of the firearm he, A/Sgt Parkinson, was pushing Bradley's arm holding the firearm towards the ground and to the left, while Bradley was pushing up and to the right, and the firearm was then discharged three times. If that evidence was correct, it might be expected that all three copper jackets would have been found buried in the soil of the backyard. However, investigating police were able to locate just one. It is submitted that if A/Sgt Parkinson was directing Bradley's arms downwards in the manner he described that it is likely that other jackets would have been found in a similar position

by investigators, particularly given the short space of time between each of the first three shots which were fired from A/Sgt Parkinson's weapon.

382. Finally, Senior Counsel for Mr Balzan submits that I would outright reject A/Sgt Parkinson's evidence on a number of important topics: whether or not Bradley struggled with A/Sgt Parkinson over the magazine; how A/Sgt Parkinson's firearm came out of his holster and whether Bradley had the shovel.

Submissions in reply by Counsel Assisting – Credibility of A/Sgt Parkinson

383. As for the statements attributed to A/Sgt Parkinson at the scene by A/Sgt Cager and A/Supt Gordon, Counsel Assisting submits that it is difficult to attribute weight to the word "we" in these statements. There was little questioning or exploration at the time by what was meant. The statements were made very soon after these events when A/Sgt Parkinson was experiencing shock and fatigue. Counsel Assisting submits some allowance must also be given to the possibility that A/Sgt Cager's and A/Supt Gordon's recollection about these statements, even if it was documented contemporaneously, involved some level of interpretation on their part about what A/Sgt Parkinson was describing.

384. As for that two of the copper jackets were not found at the scene, Counsel Assisting submits there is some force to the submissions on behalf of Mr Balzan. A/Sgt Parkinson's account does not clearly account for how the trajectory of the second and third shots changed after the first shot was fired into the ground. Counsel Assisting submits I may consider the possibility that the trajectory of the second and third shots sent the jackets over the fence line, after the first shot was into the ground, cannot be fully excluded. Counsel Assisting submits it is an important matter to be weighed in the evaluation of what happened and what findings can be made, and the evaluation of the reliability of the descriptions of both officers.

Submissions on behalf of Mr Balzan – Credibility of SC Vingerhoed

385. Senior Counsel for Mr Balzan submits that a number of matters count against my accepting SC Vingerhoed's account as credible and that I would not make findings of fact adopting it.

386. First, SC Vingerhoed told investigators, and gave evidence, that when Bradley left the alcove area “*he’s run straight towards me*”. However, by reference to Exhibit 7, if SC Vingerhoed was, as he also said, positioned on the far side of the gas heater depicted in that photograph, Bradley could not have “*run straight*” at him. SC Vingerhoed largely maintained this untenable position in re-examination, only belatedly accepting it to be possible that (as must have been the case if he had been standing where he indicated) he changed his position and intercepted Bradley to tackle him as he ran from the alcove. Senior Counsel for Mr Balzan further submits that in all likelihood the reason Bradley ran from the alcove area was to attempt to escape the effects of the OC spray, given he was in a relatively confined space, which is consistent with him not running directly at SC Vingerhoed.
387. Second, SC Vingerhoed stated that throughout the entirety of the incident in the backyard, he did not sight either of the dogs and also that he did not hear any barking while he was in the backyard. Senior Counsel for Mr Balzan submits this is extremely unlikely and improbable given SC Vingerhoed agreed it was “*not a big back yard*”; SC Vingerhoed was sufficiently concerned about the presence of dogs to withdraw his OC spray in case he needed to deploy it when he heard barking in the backyard (prior to entering the backyard); and having been attacked by the dogs, SC Vingerhoed would in all likelihood have made some observation of them, even if it was at a later point in time. Senior Counsel for Mr Balzan submits SC Vingerhoed’s failure to make observation of the dogs cannot be explained away by his state of mind after shooting Bradley if he had sufficient clarity of mind to recall A/Sgt Parkinson being in the vicinity of the dog kennel, where the dogs had retreated after Bradley had been shot.
388. Senior Counsel for Mr Balzan submits SC Vingerhoed denies having made the observations of the dogs which he would inevitably have made at some point during his time in the backyard to minimise the significance of the dogs in the events which transpired.
389. Third, Senior Counsel for Mr Balzan submits SC Vingerhoed was unable to provide detail in relation to crucial issues, which he would be expected to be able to recall if providing a credible version of events, particularly when he purported to be able to recall other aspects in some detail, even allowing for the dynamic and compressed

nature of the interaction which on SC Vingerhoed's account took place in the backyard. For example, SC Vingerhoed could not recall:

- (1) How it was that all three came to be standing up at the time immediately before the first three shots were fired, having all been on the ground previously, with SC Vingerhoed striking Bradley to his back upwards of six times. In evidence he agreed that he had a "*blank*" between that stage of the incident and the point where all three were standing up.
 - (2) Whether, when A/Sgt Parkinson yelled out while all three were standing up, he yelled out "*one word, two words, a couple of sentences.*"
 - (3) Whether or not he was trying to pull Bradley to the ground when he had hold of his right arm at the point in time when he asserts that Bradley had obtained A/Sgt Parkinson's firearm.
 - (4) Whether, in taking hold of Bradley's right arm, he was using one or two hands.
 - (5) How it was that all three then came to be on the ground. SC Vingerhoed provided no explanation for this in his interview with investigating police, which was conducted a day after Bradley was shot. In evidence he stated however that he was "*pretty sure*" that they ended up on the ground because he "*tackled*" Bradley and A/Sgt Parkinson. In cross-examination he clarified that he did not actually have a memory of having done so; rather, it was an assumption that he had made.
 - (6) Whether he was still on the ground or had regained his feet at the time that he drew his firearm.
 - (7) Whether he fired one or two shots (noting that during the course of the interview investigating police ultimately informed SC Vingerhoed that he had in fact fired two shots).
390. Fourth, Senior Counsel for Mr Balzan submits I would reject SC Vingerhoed's assumption that he tackled Bradley and A/Sgt Parkinson and that this is particularly telling against his credibility. Senior Counsel for Mr Balzan submits SC Vingerhoed being prepared to "*assume*" matters rather than admit he did not recall, which evinces

a partiality undermining his credibility. In addition, the assumption is contrary to what actions he might reasonably be expected to have undertaken. In evidence he could not explain why he did not perform a leg sweep upon Bradley, despite being trained to deploy such a manoeuvre if his intention was to bring someone to ground. And, if SC Vingerhoed saw what he presumed was the top of a firearm in Bradley's hand after the first two shots were fired, or was of the belief that Bradley had a firearm in his hand after the third shot, Senior Counsel for Mr Balzan submits it is considerably more likely that, rather than tackling Bradley, he would at that point draw his own firearm and instruct Bradley to drop the weapon which he held.

391. Fifth, SC Vingerhoed asserted that while he heard loud noises, it was not until the third shot was fired that "*it sort of clicked that they're gunshots.*" Senior Counsel for Mr Balzan submits that this evidence is frankly unbelievable, given SC Vingerhoed's experience with firearms since he started with the police in 2014, some six years prior to the events, and was "*perfectly familiar*" with what a Glock pistol sounds like when discharged. Const Brimfield and Officer 4 at the front of the house heard "*gun shots*" and "*popping sounds*" which "*sounded like gun shots*". In addition, as the three shots were fired over approximately three seconds and it does not ring true that if he did not realise that the first noise was that of a gunshot, he did by the time he had heard the third such noise. SC Vingerhoed could offer no alternative explanation for what the sounds were if they were not gun shots. SC Vingerhoed gave varying accounts of what he asserts he saw in Bradley's hand at about the time that the first shots were fired. Senior Counsel for Mr Balzan submits it is incredible that despite hearing the sound of gunshots and observing something in Bradley's hand which contained the "*sights and [a] slide*" he did not instantly understand, given his training and experience, that the "*black item*" which he had observed was a firearm.
392. Senior Counsel for Mr Balzan submits the fact that SC Vingerhoed has given evidence this evidence damages his credibility. Senior Counsel for Mr Balzan submits it could not be honest error and that a clear incentive for him to do this is to distance himself from any observation of how it was that A/Sgt Parkinson's firearm came to become unholstered. Senior Counsel for Mr Balzan submits that the most likely inference which may be drawn is that A/Sgt Parkinson himself withdrew the firearm in order to shoot the dogs.

393. Sixth, it was pointed out to SC Vingerhoed that there were approximately 20 seconds between the third and fourth shots, whereas he described tackling A/Sgt Parkinson and Bradley on the third shot and then, almost immediately on hitting the ground, observing Bradley with the firearm, withdrawing his own, calling upon Bradley to drop the firearm and then, when he failed to do so, shooting him twice. He was unable to explain how the actions he recalled could have taken the 20 seconds which actually passed between the two sets of shots.
394. Seventh and eighth, Senior Counsel for Mr Balzan submits that SC Vingerhoed's account of what he said to DSS Gilbert regarding the shovel, and how A/Sgt Parkinson's firearm came out of the holster, is inconsistent with DSS Gilbert's account, and this undermines his credibility.
395. Ninth, SC Vingerhoed made a statement in the immediate aftermath of the incident to A/Supt Gordon: "*we couldn't get it off him, I was telling him, stop, drop it, then I shot him.*" Senior Counsel for Mr Balzan submits it suggests that both he and A/Sgt Parkinson had been attempting to get A/Sgt Parkinson's firearm away from Bradley. In his later accounts, however, SC Vingerhoed does not describe either himself or A/Sgt Parkinson attempting to take the firearm from Bradley. Rather, in those accounts, he was never wrestling with Bradley at a point in time when he was aware that Bradley was holding a firearm, let alone attempting to remove the weapon from Bradley's grip. Further, in those subsequent accounts he describes A/Sgt Parkinson with his hand over the slide of the firearm, presumably attempting to avoid its discharge, but does not describe A/Sgt Parkinson attempting to retrieve the firearm from Bradley.
396. Tenth, SC Vingerhoed provided inconsistent accounts of his thought processes in relation to the firing of the second of the shots which killed Bradley. In his interview with investigators SC Vingerhoed stated that he fired two shots "*straight after the other, It was just a reaction to it*" and in cross-examination SC Vingerhoed gave evidence that he didn't have time to consider the effect of the first shot before firing the second one. However, in re-examination, SC Vingerhoed stated that it was a conscious decision to fire the second shot as opposed to an instinctive-type action that was followed on immediately from the first shot. Senior Counsel for Mr Balzan submits the inconsistency between his two versions is readily apparent and significant not only for its effect upon

SC Vingerhoed's credibility in and of itself, but also the impact upon my consideration of the reasonableness of his decision to fire the second shot.

397. Finally, SC Vingerhoed's account included an assertion that after he had shot Bradley, he "*saw blood around the stomach area*" and put his hands over the top of Bradley's clothing "*where [he] thought the wound was*". However, he did not get Bradley's blood on his hands. He volunteered in evidence, unprompted, that he "*can only assume*" this was because "*I now know he had layers on*" which may have "*prevented blood from rising to the top of his clothing*". Senior Counsel for Mr Balzan submits I would reject this explanation as implausible, given the evidence of Paramedic Bourne that when he arrived on the scene he observed blood stains on Bradley's clothing near his torso, and that of SC Stephen Hay and of Senior Constable Zhongyi He ("SC He") that all of the layers of clothing worn by Bradley were bloodstained, as illustrated by the photograph taken of the outermost layer that he was wearing.

Submissions in reply by Counsel Assisting – Credibility of SC Vingerhoed

398. In relation to SC Vingerhoed's movements when he came into contact with Bradley, SC Vingerhoed initially stated that Bradley ran directly at him after he emerged from the alcove. The effect of his evidence about this at this point was that he himself did not move across into Bradley's path or to intercept him. Later in his evidence, SC Vingerhoed conceded as a possibility that he may have moved from his position near the gas heater to be in the path of Bradley or near to him before they both made contact (although he appears to have maintained that Bradley ran towards him before they came into contact).
399. Counsel Assisting submits if SC Vingerhoed was near to the gas heater when Bradley emerged from the alcove, I can find that SC Vingerhoed must have moved across a short distance either into Bradley's direct path or near to him. It otherwise seems implausible that Bradley could have run straight at SC Vingerhoed when he exited the alcove through the metal gate.
400. Counsel Assisting submits my acceptance of that submission would depend on whether I consider:

- (1) It plausible that SC Vingerhoed's recollection about this aspect is attributable to the rapidly flowing events he described occurring or
 - (2) This cannot be attributed to the stress of the events and possibly shows fashioning of his account or reconstruction of his recollection.
401. Counsel Assisting submits I may consider it difficult to reach a conclusive view on this matter either way.
402. I am not able to reach a conclusive view either way. It is plausible that SC Vingerhoed's recollection about this aspect of the events is attributable to the rapidly flowing events he described occurring.
403. In relation to SC Vingerhoed's not being able to explain why he did not perform a leg sweep, and SC Vingerhoed not drawing his firearm and instructing Bradley to drop the weapon had he seen an item in Bradley's hand, Counsel Assisting submits these are not matters that would cause me to doubt SC Vingerhoed's credibility. SC Vingerhoed described hearing the third shot, realising the sounds were gun shots, and reacting in the moment. Counsel Assisting submits it would be artificial to find that the absence of a leg sweep, or him not opting to draw his own firearm, in these circumstances is remarkable such that it reflects adversely on his credit.
404. The events that took place in Bradley's back yard were extremely fast-moving, physical and stressful for everyone involved. Whilst not performing a leg sweep on Bradley might be contrary to what actions SC Vingerhoed might reasonably be expected to have undertaken in different circumstances, the fact that he did not on this occasion is not something that adversely affects his credit. Similarly, SC Vingerhoed's actions in tackling Bradley and not opting to draw his own firearm when he saw what he presumed was the top of a firearm in Bradley's hand after the first two shots were fired is not so remarkable, in these circumstances, that it reflects adversely on his credit.
405. In relation to SC Vingerhoed not realising the sounds were shots being fired until the third short was fired, Counsel Assisting submits it is open to me to find this aspect of SC Vingerhoed's evidence is plausible. On SC Vingerhoed's account they were involved in physical struggle. The last thing he expected was the firing of guns, nor did he see A/Sgt Parkinson's firearm being removed from his holster. In these

circumstances Counsel Assisting submits I could accept that a delay of about 2 seconds, before realising the sounds were gunshots, even for an officer experienced with firearms, is not implausible.

406. I accept these submissions, that it is not implausible that SC Vingerhoed did not realise the sounds were shots being fired until the third shot was fired. As I have stated earlier, the events in the backyard were extremely heightened and stressful. Whilst the officers positioned outside the house might have immediately identified the sounds at gunshots, their experience and perception would be entirely different to the perception and experience of someone involved in the circumstances and physical struggle that all three were experiencing in the backyard.
407. In relation to the time that passed between the two cluster of shots, approximately 20 seconds, Counsel Assisting submits it is a not insignificant amount of time and I may consider this gap in time is considerable relative to what SC Vingerhoed describes taking place between the two cluster of shots. Counsel Assisting submits I may wish to consider if it is possible SC Vingerhoed's recollection of this period, including his reaction time to the shots fired the time taken by him to get to the position he did before he fired his pistol, is affected by the events transpiring at the time (as opposed to him purposefully seeking to mislead the Court). Given the immensity of what was happening in this time, Counsel Assisting submits this is not a matter I would find adverse to the credit of SC Vingerhoed.
408. I accept these submissions. SC Vingerhoed gave a version of what he recalled and perceived about what happened but was unable to explain how the actions he recalled could have taken the 20 seconds which actually passed between the two sets of shots.
409. Given the extremity of the events taking place at the time, I do not make negative findings to SC Vingerhoed's credit in relation to his recollection of the period between the two cluster of shots.
410. In relation to SC Vingerhoed's account that he placed his hands over Bradley's wound, SC Vingerhoed's initial evidence was that "...when I realised he was no longer a threat, I went over to him. I lifted his clothing and saw blood in his – around his stomach region. I've then put the clothing back down. I've put my hands over where I believed he was shot and I tried to catch my breath at that point." On the face of this answer,

SC Vingerhoed said he saw blood on Bradley's torso under his clothing. He did not state that the blood was on the outside of Bradley's clothing.

411. Accepting Paramedic Bourne saw blood stains on Bradley's outer layer when he arrived, paramedics did not arrive at the scene until 10:28pm (about 8 minutes after the last shot was fired). It is not known whether the blood may have soaked through the layers of clothing in that time. SC Hay's and SC He's observations of the bloodstaining were made after paramedics entered.
412. Counsel Assisting submits I could not comfortably find that SC Vingerhoed's evidence that there was no blood staining on the outside layer, when he says he had contact with that layer, is so implausible it should be rejected.
413. I accept these submissions. Given SC Vingerhoed's evidence as set out above, I could not find that SC Vingerhoed's evidence that there was no blood staining on the outside layer, when he says he had contact with that layer is so implausible it should be rejected. The paramedics arrived 8 minutes after the last shot and SC Hay's and SC He's observations of the bloodstaining were made after paramedics entered.
414. In relation to the dogs in the rear yard, Counsel Assisting submits that the extent of the dogs' involvement and movements in the rear yard are not entirely clear from A/Sgt Parkinson and SC Vingerhoed's evidence save that both described being bitten during the struggle. Counsel Assisting submits the involvement of the dog(s) is an important matter in the examination of what occurred in the rear yard. It is relevant to:
 - (1) The intensity and chaotic nature of the struggle for all three involved. This includes the two officers being bitten and the dogs' intervention (a) potentially triggering a protective response in Bradley if he was concerned at injury to one or both dogs and (b) considering how the dogs' involvement may have contributed to the difficulties in the officers' perception and recollection of what unfolded.
 - (2) The possibility that A/Sgt Parkinson withdrew his firearm in response to the dog's attack upon him.

415. Counsel Assisting submits it would be difficult to positively find that SC Vingerhoed and A/Sgt Parkinson deliberately set out to downplay or inaccurately recount the dog(s)' involvement in the struggle. This considers the rolling struggle described and that it is plausible their focus was directed to Bradley and their struggle with him relative to the focus given to the dogs.
416. I accept these submissions. I am not able to reach a conclusive view that SC Vingerhoed and A/Sgt Parkinson deliberately set to downplay or inaccurately recount the dog(s)' involvement in the struggle, on the evidence available before me.
417. Counsel Assisting further submits that I may consider that aspects of SC Vingerhoed's evidence reflected poorly on his credibility, namely:
- (1) SC Vingerhoed's claim not to remember why he did not use a body worn camera on this date in any of the stop and searches despite that being his usual practice.
 - (2) SC Vingerhoed's account about his intention in making requests to Bradley to stop, culminating in him grabbing his arm. SC Vingerhoed essentially said he was only trying to get Bradley's attention and wanted Bradley to engage. SC Vingerhoed only reluctantly conceded that he wanted Bradley to stop on the roadside.
418. Counsel Assisting submits it is open to me to consider these matters in assessing SC Vingerhoed's overall credibility, including regarding his evidence about the events in the rear yard. Counsel Assisting submits this does not mean I would necessarily reject the entirety of SC Vingerhoed's evidence. A trier of fact can accept parts of a witness's evidence but not others.

Submissions on behalf of Mr Balzan – Inherent improbability

419. Senior Counsel for Mr Balzan further submits that Bradley's behaviour, as asserted in attempting to shoot A/Sgt Parkinson, is inherently improbable and unbelievable and I would reject the officers' account of events in the backyard as lacking credibility.
420. Senior Counsel for Mr Balzan submits there is nothing in the evidence before the Court to suggest that Bradley was a violent person to any extent whatsoever, let alone

someone who would attempt to take a life. It would represent the most extraordinary and unlikely divergence from Bradley's usual character for him to behave in such an extreme and irrational way.

421. Senior Counsel for Mr Balzan submits there is also nothing reliable in the evidence before the Court to suggest that Bradley was behaving violently towards the police and that I would not accept Bradley formed a homicidal intention when tackled to the ground despite having attempted, up to this point, to run from them and avoid confrontation. When confronted by police in the street he had run home and attempted to gain access to his own residence. He had then run from the alcove at the back door after police deployed OC spray against him and been tackled by SC Vingerhoed. Senior Counsel for Mr Balzan submits I would reject any assertion that Bradley attempted to strike either of the officers with a shovel.
422. Senior Counsel for Mr Balzan submits there is no apparent reason why Bradley would attempt to kill A/Sgt Parkinson. He was doing nothing wrong at the time at which police stopped him nor in his own backyard. That Bradley may have been any or all of desperate, confused, fatigued or frustrated at the time he found himself on the ground in his own backyard, falls far short of that which would give rise to a motive to kill A/Sgt Parkinson.
423. Very shortly prior to the first three shots being fired, Bradley had been sprayed numerous times to the face, leaving him probably disorientated, and possibly with impaired vision. Senior Counsel for Mr Balzan submits it is an extraordinary leap to assert that under those circumstances, even if Bradley had hold of A/Sgt Parkinson's firearm in some manner, that he formed and acted upon a clear intention to do anything with it, let alone to use it to kill A/Sgt Parkinson.
424. Senior Counsel for Mr Balzan submits an intention on the part of Bradley to shoot A/Sgt Parkinson has been imputed to him by the officers based on their interpretation of his actions. There is no evidence from either A/Sgt Parkinson or SC Vingerhoed that Bradley said anything during the course of the struggle which was indicative of such an intention on his part to shoot A/Sgt Parkinson.

Submissions in reply by Counsel Assisting – Inherent improbability

425. In relation to submissions that Bradley's actions as described by the officers were out of character for him, Counsel Assisting accepts this is an important matter to be weighed. Counsel Assisting submits on balance it remains open to me to make the findings at [429] below.

Submissions on behalf of Mr Balzan – Findings of facts

426. Senior Counsel for Mr Balzan submits that I would not accept the versions of events provided by A/Sgt Parkinson and SC Vingerhoed as regards what occurred in the backyard between the deployment of spray OC against Bradley and the arrival of other police officers, and submits two alternate hypotheses:

- (1) The first cluster of shots were accidentally fired after Bradley was tackled ("Scenario 1"), or
- (2) Bradley grabbed the firearm when A/Sgt Parkinson was pointing it at the dog that was biting him. This contributed to the accidental discharge of the firearm ("Scenario 2"), and
- (3) In either scenario, Bradley refused to let go of the firearm in fear of what might happen. SC Vingerhoed, misreading Bradley's intentions, then shot Bradley (e.g. that Bradley was deliberately trying to force the gun to point at A/Sgt Parkinson or had intended shooting A/Sgt Parkinson).

427. Senior Counsel for Mr Balzan submits these hypotheses not only cannot be excluded on the evidence but are, rather, significantly more likely than that contended for by the involved officers, particularly Scenario 2, noting:

- (1) There is a significant body of evidence in relation to Bradley's love of his dogs.
- (2) A/Sgt Parkinson received dog bites which on his own account were impairing his ability to wrestle with Bradley, later led to him receiving surgery as an in-patient at hospital to suture his wound, and caused him to warn Const Brimfield about the dogs when he spoke to her after the incident. That A/Sgt Parkinson deliberately unholstered his firearm in order to shoot the dog

which was biting him provides a clear and believable basis for how it was that his firearm came to be removed from its holster, with no other reasonably possible hypothesis.

- (3) It is consistent with, and provides a motive for, the downplaying by SC Vingerhoed of the role of the dogs in the events which occurred in the backyard.
 - (4) It provides a plausible explanation for Bradley's otherwise completely uncharacteristic actions in reaching for A/Sgt Parkinson's firearm.
 - (5) It is not inconsistent with any of the evidence other than that given by A/Sgt Parkinson or SC Vingerhoed. In particular, Senior Counsel for Mr Balzan submits that no adverse inference may be drawn from the presence of Bradley's DNA on the trigger of A/Sgt Parkinson's weapon. Not only did expert opinion not exclude the possibility of transference, if Bradley was attempting to obtain control of A/Sgt Parkinson's firearm in order to prevent his dog from being shot it would be at the very least reasonably possible that he directly touched the trigger during that effort, but for a purpose other than to use the firearm to shoot A/Sgt Parkinson.
428. Senior Counsel for Mr Balzan acknowledges that there is no direct evidence that the events in the backyard transpired in accordance with either of the alternative hypotheses but submits I would draw an inference from so much of the primary evidence and that the facts upon which those hypotheses are based are largely uncontroversial, in contradistinction to the factual underpinnings of the versions given by A/Sgt Parkinson and SC Vingerhoed.

Submissions in reply by Counsel Assisting – Findings of facts

429. First, Counsel Assisting submits, on balance, it is open to me to find:
- (1) An intense physical struggle took place in the rear yard after Bradley exited the metal alcove, during which SC Vingerhoed and A/Sgt Parkinson tried to physically apprehend Bradley and bring him to submission and Bradley resisted.

- (2) The situation was already escalated by the point at which Bradley forced his way out through the metal gate.
- (3) The struggle was chaotic and ever changing, with all three participants going to ground (fully or partially) multiple times and dog(s) in the rear yard biting the officers. It is not possible to precisely determine the exact extent of the dogs' involvement in the struggle.
- (4) All involved became progressively more fatigued as the struggle progressed.
- (5) The struggle became increasingly desperate with increasing force utilised including strikes.
- (6) During the events in the rear yard A/Sgt Parkinson's pistol came out of, or was removed from, A/Sgt Parkinson's holster although a finding as to precisely how or why the pistol came out of the holster cannot be made.
- (7) At some point Bradley got hold of A/Sgt Parkinson's pistol when A/Sgt Parkinson did not have control of it.
- (8) During struggle for control of the pistol, three shots were discharged (one into the ground). One or both officers had hold of Bradley when these shots were fired. It is not possible to positively find (a) if Bradley was on his knees or standing when the three shots were fired, (b) where A/Sgt Parkinson and SC Vingerhoed were positioned relative to Bradley, (c) how one or both had hold of Bradley, (d) what Bradley's intention was at this stage as regards the shots (e.g. if accidental discharge or intentional), or (e) the trajectory of two of the three shots fired (other than they did not go into the ground near to where the struggle unfolded).
- (9) After the third shot was fired all three went to ground during which the struggle over A/Sgt Parkinson's firearm continued as between Bradley and A/Sgt Parkinson.
- (10) During that struggle the firearm came to be pointed at or near to A/Sgt Parkinson.

- (11) A/Sgt Parkinson had at least one hand on the pistol's slide.
 - (12) The struggle after the first cluster of shots was fired was not momentary, with at least 20 seconds passing between the two cluster of shots.
 - (13) When he fired the two shots, it was reasonable for SC Vingerhoed to have feared for A/Sgt Parkinson's life.
430. Counsel Assisting submits the above would involve broad acceptance of SC Vingerhoed's evidence about the rear yard struggle. This considers the limited opportunity the officers had in the immediate aftermath to concoct an account about those matters.
431. Counsel Assisting submits this does not mean I could find with precision each act, position or movement of Bradley and the two officers during the struggle.
432. Counsel Assisting submits this is so accepting:
- (1) The evidence does not establish the officers were incapable of speaking to each other in the rear yard. (Although Counsel Assisting submits the officers were significantly fatigued and to be showing signs of shock.)
 - (2) Differences arise between the officers' accounts about events in the rear yard. The differences of most significance concern (a) whether Bradley had hold of the shovel or not and (b) the positioning and actions of the officers and Bradley when the first cluster of shots were fired (outlined further below). In assessing the significance of these differences reasonable allowance must be made for the chaotic and rapidly unfolding events. If it is assumed events were of the intensity described, it would be remarkable if some inconsistencies or differences did not arise between the officers' accounts.
 - (3) In addition to these differences there are other matters to consider as regards the officers' credit and reliability. At the very least, in SC Vingerhoed's case, it is open to me to consider his evidence about (a) why his body worn camera was not used and (b) why he grabbed Bradley on the roadside, was unsatisfactory and to consider those in the assessment of his credit.

433. Second, if I accepted the key contentions by Mr Balzan, and concluded that SC Vingerhoed's evidence about the events in the rear yard should not be accepted (along with the unsworn account of A/Sgt Parkinson), Counsel Assisting submits I could not make positive findings about what occurred save that:
- (1) A struggle unfolded in the rear yard after Bradley emerged from the alcove involving both officers and Bradley.
 - (2) During the struggle A/Sgt Parkinson and SC Vingerhoed suffered bite wounds from one or both the dogs in the rear yard.
 - (3) During the events in the rear yard A/Sgt Parkinson's pistol came out of, or was removed from, the holster by A/Sgt Parkinson although a finding as to precisely how or why the pistol came out of the holster cannot be made.
 - (4) During the struggle five shots were fired, two of which were fired by SC Vingerhoed.
 - (5) Of the five shots fired, two shots struck Bradley, one shot went straight into the ground (being the recovered jacket), with the trajectory and the location of the jackets for the remaining shots not being able to be determined.
434. Counsel Assisting submits on either approach I would not be comfortably satisfied as to what Bradley's precise intentions and state of mind were when events unfolded, particularly when the first cluster of shots was fired and when SC Vingerhoed fired the two shots, save that he was in an extreme state of distress / desperation at that time.
435. Third, if I concluded SC Vingerhoed's evidence about the events in the rear yard should not be accepted, Counsel Assisting submits I could not make positive findings of the alternate scenarios as contended on behalf of Mr Balzan (the alternate scenarios). If the accounts of the two officers are put to one side, Counsel Assisting submits the remaining evidence does not permit inferences to the findings contended for on behalf of Mr Balzan.

Conclusions

436. In summary, Senior Counsel for Mr Balzan submits that I would reject the officers' accounts of the events in the backyard for the following reasons:
- (1) There is a lack of consistency between SC Vingerhoed's and A/Sgt Parkinson's accounts);
 - (2) There are credibility issues for both officers; and
 - (3) The acts attributed to Bradley by the officers are inherently improbable.
437. I will address each reason below.
438. I accept that there is a lack of consistency between SC Vingerhoed and A/Sgt Parkinson's accounts of what happened during the struggle in the backyard but that is not surprising given the chaotic and fast-moving nature of the incident.
439. On balance, I broadly accept SC Vingerhoed's and A/Sgt Parkinson's evidence about the events in the rear yard and accept the limited opportunity the officers had in the immediate aftermath to concoct an account about those matters. This does not mean I could find with precision each act, position or movement of Bradley and the two officers during the struggle.
440. As to the credibility issues raised in relation to the two officers, I had the opportunity to hear the evidence of SC Vingerhoed during the inquest and read the unsworn evidence of A/Sgt Parkinson.
441. In this regard, I do not accept SC Vingerhoed's claim not to remember why he did not use a body worn camera on this date. I also do not accept that A/Sgt Parkinson was not able to provide any explanation as to how his pistol came out of his holster. However, I do not reject the entirety of SC Vingerhoed's and A/Sgt Parkinson's evidence and broadly accept their remaining evidence on the events in the rear yard.
442. As to the improbability of the acts attributed to Bradley in the backyard, I would not be comfortably satisfied as to what Bradley's precise intentions and state of mind were when events unfolded, particularly when the first cluster of shots was fired and when

SC Vingerhoed fired the two shots. I can however be satisfied that Bradley was in an extreme state of distress / desperation at that time.

443. Senior Counsel for Mr Balzan acknowledges that there is no direct evidence that the events in the backyard transpired in accordance with either of the alternative hypotheses he puts forward. Rather, he submits I would draw an inference from the primary evidence that either of the scenarios are more likely than the versions provided by SC Vingerhoed and A/Sgt Parkinson.
444. The evidence does not permit inferences to the findings contended for on behalf of Mr Balzan. I am therefore not able to make positive findings of the alternate scenarios as proposed on behalf of Mr Balzan.
445. In relation to the events in the rear yard, I find:
- (1) An intense physical struggle took place in the rear yard after Bradley exited the metal alcove, during which SC Vingerhoed and A/Sgt Parkinson tried to physically apprehend Bradley and bring him to submission and Bradley resisted.
 - (2) The situation was already escalated by the point at which Bradley forced his way out through the metal gate.
 - (3) The struggle was chaotic and ever changing, with all three participants going to ground (fully or partially) multiple times and dog(s) in the rear yard biting the officers. It is not possible to precisely determine the exact extent of the dogs' involvement in the struggle.
 - (4) All involved became progressively more fatigued as the struggle progressed.
 - (5) The struggle became increasingly desperate with increasing force utilised including strikes.
 - (6) During the events in the rear yard A/Sgt Parkinson's pistol came out of, or was removed from, A/Sgt Parkinson's holster although I cannot make a positive finding as to precisely how or why the pistol came out of the holster.

- (7) At some point Bradley got hold of A/Sgt Parkinson's pistol when A/Sgt Parkinson did not have control of it.
- (8) There was a struggle for control of the pistol, during which three shots were discharged (one into the ground).
- (9) After the third shot was fired all three went to ground during which the struggle over A/Sgt Parkinson's firearm continued as between Bradley and A/Sgt Parkinson.
- (10) During that struggle the firearm came to be pointed at or near to A/Sgt Parkinson.
- (11) A/Sgt Parkinson had at least one hand on the pistol's slide.
- (12) The struggle after the first cluster of shots was fired was not momentary, with at least 20 seconds passing between the two cluster of shots.
- (13) When he fired the two shots, it was reasonable for SC Vingerhoed to have feared for A/Sgt Parkinson's life.

Were SC Vingerhoed's actions reasonable?

Submissions on behalf of Mr Balzan

446. Senior Counsel for Mr Balzan submits that the actions of A/Sgt Parkinson and SC Vingerhoed were not reasonable. This encompasses the initial interaction by police with Bradley, the subsequent pursuit and the deployment of OC spray without warning. Senior Counsel for Mr Balzan further submits that those unreasonable actions caused events to unfold, even on the police version, in a way that needlessly led to the situation in which A/Sgt Parkinson and SC Vingerhoed assert they ultimately found themselves in the backyard, and in which SC Vingerhoed fired the two shots which took Bradley's life.
447. Assuming the versions provided by police, Senior Counsel for Mr Balzan submits that I would be required to examine separately the reasonableness of each of the first and

second of the two shots which killed Bradley, given that different considerations will apply to each.

448. In relation to the reasonableness of the first shot, SC Vingerhoed was positioned behind Bradley, who could therefore not have seen that SC Vingerhoed had drawn his firearm and was preparing to shoot him. SC Vingerhoed gave no oral indication to Bradley that he would do so if Bradley did not drop A/Sgt Parkinson's firearm. On his evidence he yelled simply "*Drop the gun.*" The TUoFM states under the heading "*Communication*" that "[e]ffective communication gives an individual the opportunity to follow your commands or directions therefore reducing or negating the requirement for the use of force." Senior Counsel for Mr Balzan submits if SC Vingerhoed had the time and awareness to direct Bradley to drop the gun, he also had sufficient opportunity, and should have had the wherewithal, to add words which had the effect of warning Bradley that if he did not do so, SC Vingerhoed would shoot him. What might have transpired had SC Vingerhoed moved so that Bradley could see him and that he had drawn his firearm, and/or warned Bradley, cannot be known. But Senior Counsel for Mr Balzan submits that even allowing for the dynamic and elevated nature of the scenario described on SC Vingerhoed's account, it was unreasonable for him to shoot Bradley without warning him of the consequences which would follow if he did not comply with SC Vingerhoed's command and affording him an informed opportunity to follow it.
449. In relation to the reasonableness of the second shot, Senior Counsel for Mr Balzan submits there may have been no need to fire upon Bradley a second time if the asserted threat posed to A/Sgt Parkinson had dissipated consequent upon the firing of the first shot.
450. Senior Counsel for Mr Balzan submits I would find SC Vingerhoed did not consider the effect of the first shot before firing the second shot. Senior Counsel for Mr Balzan further submits I would reject SC Vingerhoed's evidence that he fired the second shot because "*that's when the threat stopped*". Not only is this contradicted by SC Vingerhoed's earlier assertion, it is also inconsistent with the fact that, as may be heard from the dash cam footage, the second shot followed almost immediately upon the first. Senior Counsel for Mr Balzan submits there was no time between the first and

second shots for SC Vingerhoed to assess the effect of the first shot upon Bradley and then form the view that any threat which he posed had not “*stopped*”.

451. Senior Counsel for Mr Balzan submits any suggestion that SC Vingerhoed was justified in shooting twice because he had been trained to “*shoot until we see a change in behaviour*”, and that it was after the second shot that “*the threat stopped*” fails to acknowledge that, if SC Vingerhoed had taken even a second or two to observe Bradley after the first shot he would, in all likelihood, have observed “*a change in behaviour*” which rendered the second shot unnecessary and unreasonable. Senior Counsel for Mr Balzan submits SC Ahmedi’s evidence that “*the assessment process effectively needs to be ongoing, rather than firing a round, wait a second, assess and fire another round*” is not relevant to the situation described by SC Vingerhoed, given that he was firing his weapon into Bradley’s torso from approximately 50 centimetres away with a clear and unobstructed view of the effect of that shot, and in all probability, the shot would undoubtedly hit the target of Bradley’s body and immobilise him, if not kill him. Senior Counsel for Mr Balzan further submits that I would reject SC Vingerhoed’s evidence that it was not likely that Bradley, having been shot in the torso at point blank range, would have released his grip on the firearm, having failed to provide a satisfactory explanation for any such asserted belief.
452. Senior Counsel for Mr Balzan submits that the significance of the unreasonableness of the second shot fired by SC Vingerhoed is underscored by how it played a causative role in Bradley’s death, acknowledging that it cannot be said that if the second shot had not been fired, Bradley would not have been killed, as the pathologist was not able to conclude which of the two wounds was sustained first.

Counsel for the Nepean 140 officers

453. Counsel for the Nepean 140 officers submits that it was the firing of the three shots, with Bradley having the firearm pointed in the vicinity of A/Sgt Parkinson, that caused SC Vingerhoed to discharge his firearm in defence of A/Sgt Parkinson.
454. Counsel for the Nepean 140 officers submits I would find the two shots were appropriate and SC Vingerhoed ceased firing when he determined the threat to A/Sgt Parkinson’s life had ceased, in accordance with training. SC Vingerhoed’s

evidence that it was “only after the second shot” that he found “it had been effective” as “it was after firing the second shot that [Bradley] let go of the gun”.

Submissions in reply by Counsel Assisting

455. Counsel Assisting refers to SC Vingerhoed's evidence on the circumstances of the second shot as follows:

Q. *Because you fired the second shot one second after the first, you didn't give the first shot the opportunity alone to give you control of the situation, did you?*

A. *I was honed in. All my attention was on Bradley trying to kill my offside. When I shot that second shot was when he let go of the gun and that was enough, in my mind, to stop that threat.*

Q. *But what I'm suggesting to you, officer, is that if you had fired the one shot and then stood back, is it not likely that Bradley would have released the gun at that point in time?*

A. *I don't believe that's likely, no.*

Q. *Well, why is that not likely when you're shooting him in the torso at point blank range?*

A. *If the one shot was not effective he could have killed my offside, and I believed he would have killed my offside.*

Q. *But why would one shot not be effectively when you're firing it into his torso at point blank range?*

A. *Sorry, can you repeat that?*

Q. *Why would shooting Bradley once, in the torso, at point blank range, not cause him to release the firearm and give you control of the situation?*

A. *It could have been due to adrenaline going through Bradley, one shot may not have been enough in that split second of time, to prevent him from killing my offside.*

Q. *But you could have stopped. Even just for a couple of seconds, to assess the effect of the first shot before firing again. Couldn't you?*

A. *No.*

456. The killing of Bradley is an immense tragedy. Events should not have reached the point they had when Bradley emerged from the alcove into the rear yard. However, assuming acceptance of SC Vingerhoed's evidence about what he saw when Bradley and A/Sgt Parkinson were on the ground struggling over the gun, Counsel Assisting submits I would not be satisfied the firing of two shots in close succession, rather than pausing after the first shot fire to assess if A/Sgt Parkinson was no longer at risk, was unreasonable.

Conclusions

457. I accept SC Vingerhoed's evidence about what he saw and that it was reasonable for SC Vingerhoed to have feared for A/Sgt Parkinson's life. SC Ahmedi's evidence is that consistent with training, SC Vingerhoed fired until he saw a change in Bradley's behaviour which he identified after two rounds. Given how present the threat was perceived by SC Vingerhoed, I am not satisfied that the firing of two shots by SC Vingerhoed, rather than pausing between shots, was unreasonable.

ISSUE 4: What were the requirements and guidelines regarding body-worn cameras in place as at 23 December 2020, and currently in force?

2020 BWV SOP

458. As of December 2020, NSWPF had a standard operating procedure ("SOP") for the use of BWV ("2020 BWV SOP"). The 2020 BWV SOP relevantly provided:

- (1) BWV "*will be used*" to "*record events, incidents and evidence*".

- (2) BWV "should be used by police who have undertaken relevant training ie: if you are trained and there is a BWV camera available you should use it".
- (3) "All police officers wearing police uniform, whilst engaged in duties of operational response, should wear as part of their uniform a BWV camera for use in accordance with these SOPs. Police engaged in proactive and/or investigative duties should also take and use BWV cameras in support of their policing activities."
- (4) BWV "should" be used when police would normally use their official police notebook to record information, to capture evidence or record something of relevance and "when exercising a police power or performing a policing function".

Non-Use of BWV

Evidence

459. The Nepean PACT supervisor, Sgt Russell, gave evidence that if a BWV was available, it was his expectation it would be used, meaning "*it would be turned on at its earliest opportunity and recording at its earliest opportunity from exiting the car*".
460. A/Sgt Parkinson, Const Brimfield and Officer 4 did not sign out BWVs before leaving the station, although it appears A/Sgt Parkinson (at the very least) was aware that SC Vingerhoed had a BWV camera when they left that morning.
461. Const Brimfield and Officer 4 (and other officers) gave evidence about the unavailability of working BWV at Penrith Station as of December 2020. Counsel Assisting submits their evidence about that can be accepted. I accept this evidence.
462. SC Vingerhoed did sign out a BWV before leaving the station. He stated it remained in the car from the time he left Penrith Station. It was not used to record any of the interactions with persons that morning.
463. In his interview, regarding his normal practice using BWV cameras on patrol, SC Vingerhoed stated:

“Um, so normally, um, when we're in the car, I'll, I'll put it, urn, if I'm in the front seat, I'll put it where the, where the sun visor is. I'll put it up there so it's easily accessible to take it off. And if I wear it on myself, I'll put it, um, at the top of my t-shirt so it's easily, uh, visible to the person I'm talking to.”

464. When asked if there was any reason he didn't take the BWV with him when he exited the vehicle to engage Bradley, SC Vingerhoed stated, *“I just didn't think of grabbing it, er, when saw him. When I saw he continued to walk, I just immediately got out of the car and tried, to say, Hey, it's police.”*

465. In his evidence at hearing, SC Vingerhoed gave the following evidence about the non-use of the BWV on this day:

Q. *What was your use of the body-worn camera if at all at that point?*

A. *I didn't use it.*

Q. *Why was that?*

A. *I can't remember why I didn't use it.*

Q. *Wouldn't that be you should use a body-worn camera for a police exercise?*

A. *That's correct.*

Q. *Or an exercise of a power?*

A. *Yes.*

Q. *You have a body-worn camera that you've signed out?*

A. *Yes.*

Q. *Your usual practice is to attach it to your shirt?*

A. *That's right.*

- Q. *Do you believe you would have had it on your shirt when you got out of the car?*
- A. *I can't recall if I did. I probably didn't.*
- Q. *But wouldn't - would that be out of your practice to not use the body-worn for a stop and or search at that point?*
- A. *Normally we would use the body-worn video.*
- Q. *Normally, or you would use the body-worn camera if you had it?*
- A. *Normally. There were some instances where I haven't used body-worn video and some that I have.*
- Q. *Why wouldn't you use body-worn camera that you had on you?*
- A. *I can't recall the reason why I didn't on that day.*
- Q. *But you - it would appear that you weren't involved in the direct search of this person. Yes?*
- A. *Yes.*
- Q. *So you're an observer?*
- A. *Yes.*
- Q. *So you're in an ideal position to use the body-worn camera to film that interaction?*
- A. *That's correct.*
- Q. *But you have no recollection why you didn't use the body-worn camera on this occasion?*
- A. *That's right. I don't know why, and I should have. But I didn't.*
- Q. *You would normally do it but you say on this occasion you didn't?*

A. *Again, sometimes I would, sometimes I wouldn't. That's what I meant.*

Q. *Just to understand, someone may not recollect exactly why they didn't - something didn't happen.*

A. *Yep.*

Q. *I'm just going to suggest this to you. If it is outside your regular practice not to use it, surely you would remember what it was on this occasion that led you not to use it?*

A. *And I can't recall why I didn't, and I should have used it.*

Submissions

466. Counsel Assisting submits whatever his reason for not using the BWV to record the interactions, it is inconceivable SC Vingerhoed would have no memory now why he didn't use the BWV given his assertion that it was his regular practice to do so. Counsel Assisting submits I would not accept his evidence that he does not remember.
467. Counsel Assisting submits that I can't positively determine what the exact reasons were for SC Vingerhoed not using the camera.

Conclusions

468. I do not accept SC Vingerhoed's evidence that he does not remember why he did not use the BWV to record his interactions on this day. I find his evidence to be implausible given his evidence that it was his usual practice to attach the BWV to his shirt.

Availability of BWV

469. Counsel Assisting submits that I received evidence about the changes made since 23 December 2020 which provided for the greater availability of BWV within the Nepean Police Station. Counsel Assisting submits that I can find that Nepean PACT officers can be expected to have ready access to BWVs. I accept this submission.

2023 BWV SOP

470. The BWV SOP has been amended since 23 December 2020.

471. The current BWV SOP is “*Body-Worn Video Standard Operating Procedures*” (Version 2.7 November 2023) (“2023 BWV SOP”).

472. The Commissioner’s foreword includes the following:

With this capability comes high expectations of professional police behaviour, including requirements to wear BWV cameras on a mandatory basis, where practicable, when operationally deployed in uniform to perform a response policing role.

Activation of BWV cameras is required when circumstances to commence recording are anticipated, evolving, or actually occurring. In addition to ensuring early activation, a BWV recording should only be deactivated when all relevant material, including interactions and evidence, has been captured and the incident has concluded. Capturing reasons for deactivation is as important as determining early activation.

...

Mandatory wearing and early activation, where practicable, will protect the overriding integrity of operational policing activity. Results already show significant outcomes of protection for operational police officers and the delivery of exceptional evidence to judicial officers in courts throughout NSW.

...

You must understand:

...

- *early activation is required wherever possible, unless it is not reasonable to do so*

- *recording of entire incidents is required*
- *early camera deactivation that results in the failure to record something of relevance will require explanation to a supervisor or a court.*

473. As for when to wear BWV, the 2023 BWV SOP states:

*All police officers wearing police uniform, whilst engaged in duties of operational response, must, where practicable, wear as part of their uniform, a BWV camera for use in accordance with these SOPs. **Police engaged in proactive and/or investigative duties should also take and use BWV cameras in support of their policing activities.***

474. As for when to use BWV, the 2023 BWV SOP states that the BWV should be used (amongst other matters):

- (1) *“When a police power is anticipated or being exercised, or whilst performing a policing function”.*
- (2) *“BWV recordings should capture interactions comprising the entire incident and only cease when all relevant evidence has been captured and the incident is determined complete. If practicable, consider providing an explanation for ceasing to record on the recording. You may be required to explain a failure to record something of relevance to your supervisor or a court.”*

475. I return to the matters in Issue 4 further in relation to the need for any recommendations.

ISSUE 5: What are the objectives, practices and procedures of PACT? What training do officers assigned to PACT duties undergo? What risks arise with PACT practices?

Objectives, practices and procedures of PACT

476. Background to the objectives, practices and procedures of PACT are set out at [35]-[43] above, which I accept.

Current training for PACT

477. As in December 2020, officers assigned to PACTs are not currently provided specific training regarding the conduct of PACT patrols.
478. Officers are instructed about their statutory powers in the police academy and before they complete the probationary period. They also engage in scenario training while in the academy. I also received evidence of the scenarios provided in training.
479. Counsel for the Nepean 140 officers submits that there was no training or requirement to inform a person that they were “free not to stop or speak if they didn’t wish” for any PACT officers at the time or any officers within the wider NSWPF, that it was not learned “on the job”, and not included in any online materials available to the Nepean 140 officers. Counsel for the Nepean 140 officers further submits there is no training which specifically addresses how to interact with a member of the public who has an encounter with police on a roadway and does not want to engage so runs away.
480. Senior Counsel for the Commissioner submits that a substantial body of evidence has been received by the Court which sets out the specific training officers presently undergo and drew my attention to the following.
- (1) Senior Sergeant Andrew Pocock (“Snr Sgt Pocock”, the coordinator of the curriculum team at NSW Police Academy) and Assistant Commissioner Scott Whyte (“Assistant Commissioner Whyte”, the Commander of the Police Prosecutions and Licensing Enforcement Command) both gave evidence that there is a particular emphasis on communication at the Police Academy.
 - (2) Snr Sgt Pocock's evidence was that when approaching a person prior to the s 21 threshold being met, police are not taught specifically what to say, but are taught that they can approach a person and ask to talk to them and to answer their questions, but that they must not say or do anything that would make that person believe that they are not free to leave.
 - (3) In relation to the use of the word "stop", Snr Sgt Pocock gave evidence that the way in which the words are spoken is of importance in the context of the whole of the circumstances, drawing a distinction between a command

("an authoritative "stop") and a request ("Can you just stop there please mate? I just want to have a conversation").

- (4) Snr Sgt Pocock also gave evidence that outside of the scenario training, police at the Academy are taught to be *"a thermostat, not a thermometer"* in other words, police should tailor their actions to the scenario with which they are faced and to seek to lower the temperature, rather than to simply match the aggression of the people with whom they are interacting.
- (5) Assistant Commissioner Whyte's evidence was that there was an expectation that police would engage with the community and estimated that in any given year, police have *"a couple of million"* interactions with the public and that those interactions reduced the likelihood of having to move to an intrusive execution of a police power. He observed that of those many million interactions with police over that year, there were 1,000 complaints, of which only 29 were sustained.
- (6) Assistant Commissioner Whyte gave evidence that every year, every police officer including himself undertake DEFTAC training, which are *"often a communication and more often than not they are an interaction similar to this scenario...where, you know, the scenario is you're approaching someone on the street. So we do train around it, absolutely."*
- (7) Assistant Commissioner Whyte gave evidence that he believes the type of training involving complex scenarios for police officers about dealing with approaches and language to be used in interactions when engaging with a person on a voluntary basis is important and that police do provide this training.
- (8) Both Assistant Commissioner Whyte and Snr Sgt Pocock gave evidence that court decisions, inquest findings and coronial or Law Enforcement Conduct Commission recommendations are regularly reviewed to use lessons from those matters to inform theoretical and scenario based training. Snr Sgt Pocock said that the Academy would review its curriculum once the findings in this matter has been released and Assistant Commissioner Whyte confirmed that the factual circumstances surrounding the initial interaction

with Bradley will be implemented in next year's training package. When asked what will be made part of the training package, Assistant Commissioner Whyte said, *"The approach in the circumstances where you're not at section 21 at a reasonable suspicion, you know, if you were speaking to someone and it will be that reiteration of, you know, if you're not at 21, then there's no power to be executed; there's no power to be executed."*

481. It is a positive step that NSWPF will be training officers specifically about their powers and the limits on their powers when faced with a scenario similar to the scenario police faced during their initial interaction with Bradley.

Challenges/risks in the conduct of PACT patrols

482. Counsel Assisting submits that I would be satisfied there are obvious challenges and risks arising regarding proactive patrolling, including:

- (1) People who are approached may not wish to engage with police and interference with a person's liberty can be the catalyst for an adverse response by the person.
- (2) Approaches increase the likelihood of police coming into contact with people with mental illness, whose reactions may be affected their illness or history, or people have grievances towards police (rightly or wrongly).
- (3) The interaction is likely to involve a power imbalance, with a person being engaged by more than one officer. This underscores the importance of BWV.
- (4) It may be challenging for an officer to stop engagement when he or she encounters an adverse response to their approach.
- (5) Reliance on a person's unwillingness to voluntarily consent risks using a person's lawful exercise of their right as part of the justification for exercising statutory powers. It may be difficult for an officer to judge where the line is to be drawn.

- (6) There is a risk of undue amplification of factors in the mind of the officer. This may disproportionately affect people in lower socio-economic areas or who depend on public transport.
 - (7) Even accepting officers are not mandated to meet search “quotas” or “targets”, PACT officers are expected to carry out proactive patrols. An officer may feel they need to prove their value by reference to the number of approaches and or searches performed.
483. I accept that there are the above challenges and risks arising regarding proactive patrolling as Counsel Assisting submits.

ISSUE 6: Procedural fairness regarding the concept of constructive detention

Submissions on behalf of the Commissioner

484. Senior Counsel for the Commissioner submits that the concept of constructive detention did not feature in the issues list circulated to the parties and Counsel Assisting did not open the inquest by reference to this concept. Senior Counsel for the Commissioner submits the first mention of constructive detention was on Day 5 of the inquest when Counsel Assisting raised it as part of his examination of Officer 4, and the next and final time constructive detention was raised was on Day 9 of the inquest when Counsel Assisting asked Detective Inspector Michael Cantrell (“DI Cantrell”, the Crime Manager of the Nepean PAC at the time when he was giving evidence) and Snr Sgt Pocock some questions about it.
485. Senior Counsel for the Commissioner submits that the term constructive detention was introduced late, and sparingly, into the proceedings. The Commissioner had no prior notice of this term or concept being an issue in the inquest or likely to form the basis for any possible recommendations until receipt of Counsel Assisting's written submissions. Senior Counsel for the Commissioner submits it very much appears to have been an afterthought by Counsel Assisting coming at the heel of the hunt.
486. Officer 4 was unfamiliar with the term and Snr Sgt Pocock gave evidence it was not a term NSWPF use. Senior Counsel for the Commissioner submits this evidence is not surprising because the term constructive detention is also foreign to the sole authority

relied upon by Counsel Assisting (*Eatts v Dawson*) to make good his submissions on this matter.

487. Senior Counsel for the Commissioner submits it is procedurally unfair at this late stage of the proceedings to seek to impose upon the Commissioner recommendations based upon a term that is unfamiliar to NSWPF and that was not the subject of any requisitions by Counsel Assisting nor a central focus by Counsel Assisting during the running of the inquest. Senior Counsel for the Commissioner submits the term constructive detention lacks any clarity of meaning and may mean different things to different persons, and accordingly, the Commissioner cannot meet this new issue and will, for the reasons mentioned above, be denied procedural fairness if any recommendations are made concerning it.

Submissions on behalf of the Nepean 140 officers

488. Counsel for the Nepean 140 officers made similar submissions to that on behalf of the Commissioner, submitting that each of the officers were not afforded procedural fairness in circumstances where constructive detention was not contained in any of the versions of the Issues List and none of the officers were put on notice that it was going to become an issue. SC Vingerhoed and Const Brimfield were not afforded the opportunity to respond in their evidence as it was not raised with them.
489. Counsel for the Nepean 140 officers submits the officers cannot be afforded procedural fairness by the raising of the issue at a late stage and in circumstances where it was not a focus of Counsel Assisting in the inquest, if any findings or recommendations are made in relation to it.
490. Counsel for the Nepean 140 officers further submits that the issue of “constructive detention” is outside the scope of the inquest.

Submissions by Counsel Assisting

491. Counsel Assisting submits I would not accept the submissions concerning procedural unfairness and the grounds advanced in opposition to proposed recommendations 1 and 2 (discussed under the need for any recommendations).

492. Counsel Assisting submits that the issues list provided to the parties in advance listed, relevant to the roadside engagement of Bradley:

“(1) What happened when police (with the Nepean LAC’s Proactive Crime Team: PACT) initially spotted and approached Bradley Balzan (Bradley) on Nariel Street on 23 December 2020 including:

- a. Why did the police officers (Nepean 140) decide to engage Bradley?*
- b. What was said/done when these officers first engaged/approached Bradley?*
- c. How did Bradley respond when approached/engaged?*
- d. How did the individual officers respond or act thereafter?*
- e. Was force or attempted force used by officer(s) to hold or detain Bradley at the scene during this initial encounter?*
- f. Can it be ascertained why Bradley ran or might have done so?*
- g. Were the actions of the individual officers during this initial encounter reasonable?”*

493. This was in circumstances where:

- (1) There was no controversy that the Nepean 140 officers made requests of Bradley to stop.
- (2) SC Vingerhoed, in his first interview, stated he grabbed Bradley by the arm.
- (3) SC Vingerhoed, in his first interview, at Q/A382-84, when asked if he believed he had the power to “stop” Bradley, stated he did in clear reference to s 21 of LERPA (in oral evidence he stated he did not exercise that power). The reliance, or potential reliance, of s 21 by SC Vingerhoed as justification for his actions was clear to all parties before the commencement of the inquest. It was not clear from the documentary evidence tendered at the commencement of the hearing that SC Vingerhoed’s position about this would change.

494. An officer who requests someone to “stop”, and in grabbing their arm to bring that about, is evidently not acting reasonably if he or she does so without lawful power or justification.

495. As for the submissions that the term “constructive detention” lacks clarity of meaning and that the Commissioner cannot “*meet this new issue and will, for the reasons mentioned above, be denied procedural fairness if any recommendations are made concerning it*”, Counsel Assisting submits:

- (1) The concept of “constructive detention” (or “constructive arrest” or unlawful arrest / unlawful apprehension) arises in criminal proceedings in the context of the admissibility of police evidence (ss 138-139, *Evidence Act 1995*) and in elements about whether police were acting in the execution of their duty (e.g. assault or resist police in execution of the duty). The principle is that set out by King CJ in *R v Lavery* (1978) 19 SASR 515 at 516-17:¹¹

“The suspect’s liberty is not under restraint simply because the police officer would or might arrest him if he were to exercise his right to depart. If, however, the circumstances are such as to convey, notwithstanding the use of words of invitation or request, that the suspect has no real choice, his freedom is under restraint . . . If such a situation comes into existence, and the police officer does not wish to make an arrest, it is incumbent upon him to make it clear by words or actions that the suspect is free to refuse the invitation and is free to depart.”

- (2) It is difficult to understand how this concept is ambiguous or outside the understanding of the Commissioner, whose officers are involved in the criminal proceedings in which this principle or concept arises.
- (3) Counsel Assisting submits the concept of an officer making a person on the roadside believe he is not being permitted to leave, even accepting there is no express statement to the effect he was being detained or arrested,

¹¹ The decision has been referred to with approval in *Van Der Meer v The Queen* (1988) 35 A Crim R 232 (Deane J at 255); *R v C* (1997) 93 A Crim R 81 at 96 and *R v O’Donoghue* (1988) 34 A Crim R 397 at 401.

constituting unlawful detention or arrest, is a well understood principle (constructive in that the detention arose without the formal exercise of the power of detention or arrest).

- (4) In Bradley's case, the officers approaching someone, requesting him to stop and persisting with those requests after he made clear he did not want to stop or engage, came close to (if not crossed) the line into constructive detention (or unlawful detention). It certainly became actual detention when SC Vingerhoed grabbed Bradley's arm to force him to stop on the roadside.
- (5) At the end of SC Vingerhoed's evidence 27 June 2023, the hearing was adjourned part-heard. At the time it was submitted by Counsel Assisting:

"Your Honour, in my respectful submission on the evidence, there isn't a lot of evidence that gives your Honour a very clear picture of the training that officers received back before December 2020, and now, as regards the potential use of s 21 LEPRA in a context of prior to patrol duties where you are intentionally going out to interact with persons in a public place and in a likelihood that you may utilise that sort of power. Unless it's of assistance, your Honour, I don't propose to refer to the particular aspects of the evidence, but in my submission the evidence of three officers who have given evidence over the last few days does raise some questions as to their understanding and/or practice, instruction and directions as to the use of those powers and that approach."

- (6) A letter was sent to the Commissioner's legal representative on 1 August 2023 asking for more evidence. Among other matters:
 - (a) It requested evidence with respect to "...the training and instruction provided to new recruits and to serving members... with regards to the use or potential use of s. 21...including (f) What conduct may amount to constructive detention before an officer reaches the s. 21 threshold and exercises that power (including whether or not continuing to approach and/or ask a person to stop and speak to police, after that

person has made clear he or she does not wish to engage, may amount to constructive detention".

(b) By way of context, it specifically directed the Commissioner's attention to the Royal Canadian Mounted Police ("RCMP") "street checks" policy, and the inquiry into the same, and the evidence of Const Brimfield, Officer 4 and SC Vingerhoed about the use of s 21 LEPR power in the context of PACT patrols, and whether the Commissioner saw utility in the development of an equivalent procedure.

496. The hearing was ultimately resumed sometime later (March 2024), at which time the Commissioner's witnesses about this training and procedure were examined.
497. At no point between during the running of the hearing on 19 and 27 June 2023, or in the period between the adjournment on 27 June 2023 and the resumption of the hearing in March 2024, did the Commissioner nor the Nepean 140 officers raise on the record any issue of procedural unfairness or contend they were being put in a procedurally unfair position.
498. Counsel Assisting submits that the submissions on behalf of the Nepean 140 officers do not address how the reasonableness of SC Vingerhoed's actions at the roadside would be examined without reference to s 21 of LEPR and what SC Vingerhoed asserted was the lawful basis for him grabbing Bradley's tricep.
499. As for the reasonableness of SC Vingerhoed's actions at the roadside, and whether he effectively was requiring Bradley to stop and using force to achieve that (meaning Bradley was detained at the roadside), these matters were squarely raised with SC Vingerhoed in examination.
500. As for whether Const Brimfield was afforded the opportunity to respond to this issue, it is not submitted that Const Brimfield's initial request to Bradley to "*stop for a minute*" itself amounted to constructive detention. Counsel Assisting submits the actions of all the officers needs to be considered in totality particularly at the point SC Vingerhoed persisted in engaging Bradley and then grabbed his arm. Counsel Assisting submits SC Vingerhoed's actions in persisting in requests, approaching Bradley from behind

and grabbing his arm did amount to constructive detention, or at the very least detention that was not justified by any power or statute.

501. As for the familiarity of Officer 4 with the concept of constructive detention, and that this is a matter she is “*familiar with*” but is not something that NSWPF officers receive training in relation to – if that is accepted it underscores the importance of express guidance being given in training and the SOPs to police.

Conclusions

502. As Counsel Assisting has set out in submissions, the issues list provided to the parties in advance listed matters relevant to the roadside engagements with Bradley. The actions of police during their first engagement with Bradley in the street was of central importance in this inquest. Questions around that interaction, including the concept of constructive detention, were raised with the relevant officers and they were afforded the opportunity to respond. The concept of constructive detention does not lack clarity and is regularly used with respect to interactions with police and citizens. I do not accept that the issue was introduced late into this inquest. It was always a central issue.

THE NEED FOR ANY RECOMMENDATIONS

Proposed recommendations

503. Section 82 permits a coroner to make recommendations which are necessary or desirable to make in relation to any matter connected with the death of a person the subject of an inquest.
504. Counsel Assisting submits that the following recommendations should be considered pursuant to section 82 of the Act:
- (1) The Commissioner consider developing a standard operating procedure for the conduct of PACT patrols, including with respect to:
 - (a) Mandating that the use of BWV is in the performance of PACT patrols unless the individual officer has a reasonable excuse for not doing so

- (b) General directions or guidance about constructive detention, the exercise of s 21 powers (of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)), and the use of reasonable force in proactive patrol situations, including identifying whether, in certain circumstances, people should be informed that they are not mandated by law to stop and answer questions if they do not wish.
- (c) General directions or guidance as to possible techniques, language, and actions that can be appropriately utilised in approaching and engaging persons on PACT patrols when powers of detention are not enlivened or being exercised.

("proposed recommendations 1(a), (b) and (c)" respectively).

- (2) The Commissioner review the training provided to officers assigned to PACT duties, and consider implementing training specifically for such officers, in relation to the conduct of PACT patrols, including with respect to:
 - (a) Instruction about constructive detention, use of reasonable force and the exercise of s 21 LEPRA powers in proactive patrol situations.
 - (b) Instruction about how possible techniques or strategies in proactive patrol situations (language, approaches, etc) to minimise the risk of (i) constructive detention and (ii) escalation (including potential strategies to deescalate encounters).
 - (c) Use of practical scenario training in providing the above training, with consideration given to using the events on 23 December 2020 as part of scenario training.

("proposed recommendations 2(a), (b) and (c)" respectively).

505. Senior Counsel for Mr Balzan submits that the following recommendations should be considered:

- (1) The Commissioner consider reviewing all use of force manuals (including the TUoFM and the OC Spray Manual) to ensure consistency in the inclusion

of a direction to use communication as a tactical option and issue a clear verbal warning before deployment of other tactical options which involve the application of force, where reasonably practicable (“proposed recommendation 3”).

- (2) The Commissioner consider amending the relevant use of force manuals to authorise plain clothes police who have been trained in the use of tasers to carry and use tasers where appropriate, with specific consideration being given to the authorisation in this respect of officers assigned to PACT duties (“proposed recommendation 4”).

Mandating the use of BWV

Evidence

506. The evidence regarding BWV SOPs, non-use of BWV and availability of BWV is set out at Issue 4 above.

Submissions by Counsel Assisting

507. In relation to proposed recommendation 1(a), Counsel Assisting submits I can be satisfied that as of December 2020:
 - (1) It was a regular occurrence of BWV not being available to PACT officers for use on patrols.
 - (2) The Nepean 140 officers were of the view that the requirement that BWV “*should*” be used did not mandate it had to be in all cases and that it was open to them to carry out patrol duties if BWV was not available.
 - (3) PACT officers may, on occasion, would approach, question and search persons without recording that interaction, even when a BWV camera was to hand.
508. Counsel Assisting submits the above practice is of concern. A member of the public who deals with multiple officers in a public place is in a vulnerable position. An audio-visual recording of the entirety of an officer’s encounter with a person:

- (1) Provides objective evidence about the encounter.
 - (2) Ensures accountability as to the manner of the police's engagement.
 - (3) Acts as a protective measure for all concerned.
509. Counsel Assisting submits that the 2023 BWV SOP has greater particularity around the requirement for use of BWV. However, regarding the use of BWV in the conduct of "proactive" duties, the SOP uses the term "should", which is the term used in the SOP that operated as of December 2020.
510. Counsel Assisting submits that it is open to me to conclude that it is necessary or desirable to make a recommendation to the Commissioner to review the current BWV SOP to mandate the use of BWV in the conduct of PACT patrols unless there is a reasonable excuse for not doing so.

Submissions on behalf of Mr Balzan

511. Senior Counsel for Mr Balzan submits that the significance of the failure by the officers to use their BWV in this respect is readily apparent, given the dearth of direct evidence of what happened in the backyard, should the accounts of the officers be rejected.
512. Senior Counsel for Mr Balzan also submits that I consider adding to proposed recommendation 1(a) a requirement that an officer asserting such a reasonable excuse must enter the reasons for that decision in the COPS system.

Submissions on behalf of the Commissioner

513. Senior Counsel for the Commissioner submits that there is no reasonable basis to make proposed recommendation 1(a), and that the current instruction provided to police performing both uniformed and plain clothes duties are adequately and appropriately outlined in the 2023 BWV SOP.
514. Senior Counsel for the Commissioner submits that the Commissioner's expectations are made clear in the forward to the 2023 BWV SOP and are well known to the officers in the field. Snr Sgt Pocock confirmed that students are taught from the very beginning of their career, at the Academy, that BWV should be activated whenever a power is

being exercised. DI Cantrell's evidence is that training is provided to all officers which highlights the important aspects of the policy and that updates to the policy are communicated by email and, where appropriate, additional training.

515. Senior Counsel for the Commissioner submits that the expectation of the Nepean PAC was, and is today, that officers undertaking PACT duties are required to use BWV in the course of their duties.
516. Detective Inspector Pietruszka (who was the Crime Manager in the Nepean PAC as at December 2020) states:

[28] Police are provided body worn video as part of their duties. They are required to wear it in both uniform and plain clothes. It is utilised to record interactions with persons during their duties.

[29] The use of Body worn video is to be determined by the officer. It is based on the following factors but based on the officer's own judgement:

- *Officer safety*
- *The need to capture evidence*
- *Accountability*
- *Community expectations*
- *Contentious situations*
- *Involvement with vulnerable people*
- *Protection for offenders and community*
- *any other relevant factors that exists.*

517. DI Cantrell gave evidence that his expectation now is, when undertaking PACT duties, not simply that the camera is taken from the police station when undertaking PACT duties, but that it would physically be on the person of the officer when they left the PACT vehicle, and that BWV would be used in any interaction of a police officer in operational capacity or anticipated interactions. When asked if there is any discretion to an officer approaching someone to question whilst on proactive patrol in activating BWV, DI Cantrell's evidence was that "*It would by my expectation that they activate the camera.*" When asked about the BWV SOPs, DI Cantrell agreed that what's

phrased there is not a mandate that the officers must use it in all cases, but that his expectation is they would.

518. Senior Counsel for the Commissioner submits that in weighing the desirability of capturing interactions between police and members of the public on camera against the public interest in officers retaining an element of anonymity when conducting PACT duties, the requirement that PACT officers "*should*" wear BWV whereas uniformed officers "*must*" is a necessary and appropriate distinction. It is a necessary consequence of the different duties that those officers perform.
519. Senior Counsel for the Commissioner submits that just as it is not possible for plain clothed police to carry the full suite of appointments available to a uniformed officer, there are circumstances in which it would inhibit the officer's ability to detect criminal activity if they were to wear the BWV device. The current SOPs require that the camera is worn overtly but as a matter of common sense, the camera must also be positioned in such a way as to enable it to adequately capture useful audio and visual evidence of the officer's interaction. Consequently, a PACT officer undertaking loss-prevention duties inside a shop and wearing a t-shirt or a jumper would have little option other than to clip the camera to the collar of their shirt, thereby readily identifying them as a police officer. Further, DI Cantrell gave evidence that it is more difficult to attach a BWV to plain clothes than it is to a police uniform, as distinct from a load-bearing vest which has a specific place to attach the camera.
520. Senior Counsel for the Commissioner submits that I would find that the checks and balances as exist presently are sufficient to ensure that any ongoing and unjustified failure to use BWV will be detected and addressed. DI Cantrell's evidence is that the use of BWV is monitored by dip samples undertaken by supervisors and the police powers panel, and that noncompliance would initially be addressed by way of education but ongoing noncompliance would result in disciplinary action.
521. DI Cantrell explained the police powers panel as follows:
- A. It's a panel which consists of the commander, myself, professional standards duty officer, executive officer and an operational GD sergeant and we review either 15 events for the month or 5%, whichever is lower, which is generally the 15 and these events that are reviewed are generally*

when we utilise a power, use of force and a varied range of events will be assessed by the powers panel.

Q. What's the purpose of undertaking that type of review of those types of incidences?

A. It's to ensure compliance with police and legislation, first and foremost, to try and see where we're lacking in a certain policy, whether we're not complying with a certain policy and then to address those failings through education, which is the focus of it is to be education, to ensure that the officers are aware of what they should be doing and how to do it and, obviously, there's a punitive aspect if they've conducted themselves with misconduct, but it's generally framed around education.

522. Regarding the proposal advanced on behalf of counsel for Mr Balzan that an officer who does not utilise BWV when on a proactive patrol should record the reason/s for that decision somewhere on COPS, this is also not supported by the Commissioner for the following reasons:

- (1) Firstly, the current checks and balances are sufficient to ensure that the use of BWV is appropriately monitored, and
- (2) Secondly, it is made clear in the forward to the 2023 BWV SOP that an officer who does not record something of relevance will be required to explain why to the officer's supervisor or to a Court.

Reply submissions by Counsel Assisting

523. Counsel Assisting submits in reply that the 2020 BWV SOP expressly provided that BWV recordings "*should*" be used if a police power was anticipated being used or actually being exercised.

524. There was evidently an expectation by the Command, as of December 2020, that members in PACT should use BWV to perform patrols (at least on the face of the SOP).

525. Despite what the 2020 BWV SOP provided, the evidence shows that:

- (1) There was regular unavailability of body-worn cameras to the Nepean PACT officers.
 - (2) On 23 December 2020, neither Const Brimfield, Officer 4 or A/Sgt Parkinson considered the unavailability of a body-worn camera (for them) as a bar to going out on patrol.
 - (3) On 23 December 2020, even though SC Vingerhoed had a BWV camera in the vehicle, he did not use it during the stop and searches that morning (including the three occasions before Nepean 140 officers encountered Bradley).
 - (4) As to why SC Vingerhoed didn't operate the camera he had during these encounters, SC Vingerhoed's evidence about this was essentially, "*I don't know why, and I should have. But I didn't*". I discussed earlier that I do not accept SC Vingerhoed's evidence that he does not remember why he did not use the BWV to record his interactions.
 - (5) Counsel Assisting submits the non-use of a BWV camera on 23 December 2020 is significant. Its use may have provided objective evidence about what happened on the roadside and in the rear yard.
526. Counsel Assisting submits that the "expectation" and express SOP as of December 2020 did not suffice to ensure the use of BWV camera(s) by the Nepean 140 officers on 23 December 2020. This underscores the importance of individual officers engaging in PACT patrols being mandated to use BWV cameras unless he or she has a reasonable excuse for not doing so. This might extend to requiring the officer document contemporaneously the reason for not using camera.

Recommendations

527. There is a need to mandate the use of BWV. It would have made a significant difference in this case and is as important for involved police as it is for the families of those injured or killed in critical incidents.
528. The fact that BWV was not used in this matter by any of the Nepean 140 officers, and no discussion was had between the officers that morning about using BWV during any

of the prior searches or interaction with Bradley shows that the current procedures in place are not working, and that there is a need for the use of BWV to be mandated.

529. I have had regard to the terms of the recommendations made by the Law Enforcement Conduct Commission in its March 2025 review of NSWPF BWV policy and practice.

530. I make the following recommendations:

Recommendation 1: The NSW Police Force amend the BWV Standard Operating Procedures to reflect that, in circumstances where BWV should have been activated but an officer failed to do so, the officer must record the reasons for non-activation, for example in the relevant COPS Event or in their police notebook.

Recommendation 2: The NSW Police Force

(a) mandate that, at a minimum, officers must activate BWV when using statutory powers, or when it is likely that an interaction may lead to the exercise of statutory powers, and

(b) reflect this policy in any future Standard Operating Procedures or Guidelines that mention BWV use.

Recommendation 3: The NSW Police Force include in any future BWV Standard Operating Procedures or guidelines a 'definitions' section which defines directions (e.g. 'must') and key terms (e.g. 'operational policing').

Guidance for proactive approaches to persons in public

Evidence

531. Evidence regarding the PACT objective, practices and procedures, and challenges/risks in the conduct of PACT patrols are discussed at Issue 5 above.

532. As in December 2020, the NSW Police Force does not have a SOP specifically dealing with the conduct of PACT or proactive patrols.

533. I received evidence about the RCMP policy for the conduct of "street checks". This was considered in the *Report of the Civilian Review and Complaints Commission for the*

Royal Canadian Mounted Police: Review of the RCMP's Policies and Procedures Regarding Street Checks (26 February 2021) ("Street Check Report").

534. The Introduction to the Street Check Report states:

Police street checks have been the topic of several recent reports and significant regulatory change in some provinces. The majority of this work has focused on the conduct of municipal and provincial police agencies when they engage in front-line police work. The traditional street check involves a police officer asking a member of the public to voluntarily identify themselves to support some underlying law enforcement purpose. For instance, the police may wish to identify people congregating in a high-crime neighbourhood, or those who associate with known criminals. A key element of a street check is that responding to the police request is voluntary. Members of the public who are asked for such information are not detained or arrested and have no legal requirement to identify themselves to the police or to provide any other information. Street checks do not include other regulatory interactions, such as traffic stops under the provincial motor vehicle legislation.

Street checks have the potential, in certain narrow situations, to be a valuable tool to the police to support investigations or to provide criminal intelligence. However, they also threaten the basic constitutional rights of Canadians. At the core, Canadians enjoy a right to privacy from state intrusion and this right must be jealously guarded. Moreover, street checks attract strong concerns given the power imbalance inherent in police–public interactions. Members of the public may not be aware of the voluntary nature of street checks and may feel compelled to identify themselves. Further, frequent street checks in marginalized communities have the strong potential to cause resentment and fear of the police. Canadian police operate by consent of the communities they police, not through fear. Bias, whether conscious or unconscious, towards marginalized groups must be avoided.

Submissions by Counsel Assisting

535. In relation to proposed recommendations 1(b) and (c), Counsel Assisting submits that I may consider that some matters referred above have relevance to the conduct of PACT patrols in NSW.
536. The Street Check Report made several findings and recommendations including as to the RCMP's national policy definition of "street check" and its training around the conduct of such checks.
537. It recommended a definition of "street check" as follows:
- "Street check means a voluntary interaction with the public, initiated by the police officer, where the police officer makes a request for personal identifying information to support a law enforcement purpose. A street check can occur anywhere and within any of the RCMP's mandates."*
538. The Street Check Report considered how a "voluntary interaction" might be defined, stating:
- "A key point in the proposed definition is that the interaction is voluntary. As previously discussed, one of the main concerns with street checks is that those involved may not be aware of the voluntary nature of responding to the police request. Certainly, many people may interpret a voluntary request from the police to be a lawful demand, with which they must comply. This effect may be magnified in certain vulnerable populations."*
539. The Street Check Report recommended that the RCMP amend its national policy to require officers to inform the person engaged as to the voluntary nature of the interaction.
540. NSWPF does not have a SOP that expressly defines what a proactive patrol engagement is. Counsel Assisting submits that I may consider there would be significant utility in the development of a SOP that provides a definition, possibly similar to the proposed "street check" definition. This would keep at the forefront of the officer's mind the voluntary nature of the encounter.

541. Counsel Assisting submits that the SOP might also provide guidance about the manner of approach, language and actions used by officers to minimise the risk of constructive detention and escalated encounters.
542. Counsel Assisting submits that it is open to me to conclude it is necessary or desirable to make a recommendation to the Commissioner to consider developing a SOP for the conduct of PACT patrols.
543. I have received evidence about the number of searches performed by PACT in various geographical areas across New South Wales, namely: spreadsheet breakdown of “Person Search (Proactive)” and “Total Number of Person Searches conducted by NSW Police Force Proactive Crime Teams”; and a letter submitted on the Commissioner’s behalf dated 1 May 2024 providing additional information relevant to the spreadsheets.
544. In the 2019-2020 and 2020-2021 financial years:
- (1) Within the Nepean PAC area, NSWPF officers carried out 6,128 and 4,664 “proactive” person searches respectively.
 - (2) Of those, 1,913 and 1,037 searches respectively were carried out by the Nepean PACT.
545. Considering the average numbers of officers assigned to the Nepean PACT, relative to the number of police officers working within the Nepean PAC area, Counsel Assisting submits it can be inferred that Nepean PACT officers are performing a significant number of “proactive” person searches relative to other officers working within that area.
546. Counsel Assisting submits it can be inferred that:
- (1) A significant portion of the “proactive” searches performed by the Nepean PACT arise from PACT patrols.
 - (2) Not all people approached on patrol are searched. The number of persons *approached* and engaged by officers during PACT patrols is likely to be far greater still.

- (3) Nepean PACT officers evidently approach many people, and personal searches, year to year.
547. Counsel Assisting submits the significant number of PACT patrols underscores the importance of NSWPF having adequate procedures and training regarding the conduct of these patrols.

Submissions on behalf of the Commissioner

548. Senior Counsel for the Commissioner opposes proposed recommendations 1(b) and (c) and submits this is not an area of policing where some standardised approach to police procedure can sensibly be taken and one size simply does not fit all when one has regard to this complex area of police procedure.
549. Senior Counsel for the Commissioner submits that it would be “*impracticable, nigh impossible*”, for NSWPF to try and develop a “*workable*” standard operating procedure as prescriptive in nature as that sought, given the exercise of the power under s 21 of LEPR can be “*highly nuanced depending on the particular circumstances involved*”, “*the complexities involved, the competing considerations at play, the subjective evaluations individual officers may need to make based on their own policing experience, situational awareness and environmental factors*” and that there is nothing standard or uniform about the wide ranging and diverse situations that may confront an officer, and given. Counsel for the Commissioner submits that no two situations will be alike for an officer and it will not always be a black and white question as to whether an officer should exercise the power or not.
550. Senior Counsel for the Commissioner submits the better course to take, and which the Commissioner adopts, is providing specific training, and that the key to addressing the various issues raised in this inquest centres on improving the communication skills of officers when contemplating the use of s 21 powers.
551. Senior Counsel for the Commissioner submits that the existing training, on which a substantial body of evidence has been received by the Court, and incorporating a practical training scenario using the events of 23 December as a factual basis (proposed recommendation 2(c)) better equips an officer in the field as to whether she or he has reached the requisite threshold under s 21 than attempting to draft

a prescriptive standard operating procedure that is meant to cover each and every situation that might arise in the field.

552. Senior Counsel for the Commissioner also opposed proposed recommendations on the basis that it is procedurally unfair, in relation to the issue of constructive detention. I have considered this above in Issue 6.

Reply submissions by Counsel Assisting

553. That the scenarios in which a PACT officer may engage a member in public during a patrol may be “*highly nuanced*” and not “*black and white*”, Counsel Assisting submits there is a risk, as occurred in Bradley’s case, that the voluntary engagement may cross the threshold into constructive detention and/or prompt an adverse response in the person being engaged. Counsel Assisting submits these matters underscore the importance of clear directives and guidance to officers required to perform PACT duties.
554. Counsel Assisting submits these considerations were evidently instrumental to the RCMP developing written procedures on the conduct of “Street Checks”. It is not evident why the development of procedures for policing in New South Wales would be unreasonable or undermine effective policing.
555. Additional to the above, SC Vingerhoed’s act of grabbing Bradley on the roadside was a significant inflection point in the escalation of events which ultimately culminated in the struggle and fatal shooting of Bradley. Counsel Assisting submits I would have regard to the evidence of SC Vingerhoed, Const Brimfield and Officer 4 about their understanding of powers and the instruction they received.
556. The Commissioner did not challenge in examination the evidence of SC Vingerhoed, or that of Officer 4 and Const Brimfield, about the following matters:
- (1) SC Vingerhoed gave evidence he considered his act of grabbing Bradley’s arm, even though he was not yet exercising the power under s 21 to require Bradley to stop, was lawful and permissible in terms of police practice.
 - (2) As to how he came to form the view that force was justified, SC Vingerhoed gave evidence: “*Well, I have - throughout my policing career, I have had*

senior officers do the exact same thing. And also, I have done training packages where they tell us that we are allowed to make physical contact with someone to try and get their attention and to engage us.”

- (3) SC Vingerhoed's reference to the “training packages” included reference to the SMIT, which Officer 4 and Const Brimfield also referred to. Included in that document is a statement to the effect that “*it may be acceptable to lay your hand on one's sleeve or tap one's shoulder*” and that officers may even be justified doing so more than once.
557. At the end of SC Vingerhoed's evidence (in re-examination), SC Vingerhoed gave evidence that he was still of the view now that he was within his rights to take grab Bradley's arm, that LEPRA or the common law authorises him to do so in that situation short of s 21 being enlivened, and that this understanding or practice comes from his observations of other senior officers.
558. Counsel Assisting submits it is not clear from SC Vingerhoed's evidence that his understanding of police powers has markedly changed notwithstanding the changes that have been implemented to training since December 2020.
559. As regards submissions on behalf of the Commissioner about the distinction between “*stop*” in the authoritative sense as compared to a request sense, and the number of engagements or interactions with police each year, these matters further underscore the importance of clear directives being around these engagements.
560. Counsel Assisting submits that I can be comfortably satisfied that the proposed recommendations (1)(b) and (c) are necessary and desirable.

Submissions on behalf of Mr Balzan

561. In respect of proposed recommendation 1(c), Senior Counsel for Mr Balzan also submits that I consider substituting “s 21 powers” for “powers of detention”.

Recommendations

562. Senior Counsel for the Commissioner submits that it would be “*impracticable, nigh impossible*”, for NSWPF to try and develop a “*workable*” standard operating procedure

as prescriptive in nature as that sought, given the exercise of the power under s 21 of LEPR can be “*highly nuanced depending on the particular circumstances involved*”, “*the complexities involved, the competing considerations at play, the subjective evaluations individual officers may need to make based on their own policing experience, situational awareness and environmental factors*”. I have considered those submissions carefully and understand the concerns raised. The work carried out does involve “*highly nuanced*” scenarios in which a PACT officer may engage a member in public, and this work does require a high level of skill and knowledge about what is permissible under law. As with most interactions the police have with the public, no two scenarios are the same. The nature of the work carried out by the significant number of PACT patrols underscores the importance of clear directives and guidance to officers, to minimise the risk of constructive detention and escalated encounters. This is in the officers’ best interests as well as in the best interests of the community.

563. The Nepean 140 officers had different understandings of their powers and what is permitted under law. This does bring into question the sufficiency of the instructions and existing training the officers had received.
564. I have earlier indicated that the concept of constructive detention does not lack clarity and is regularly used with respect to interactions with police and citizens.
565. I will make the recommendation as to “s 21 powers” rather than “powers of detention” as the latter may have a broader scope.
566. I make the following recommendation.

Recommendation 4: The NSW Police Force consider developing a standard operating procedure for the conduct of PACT patrols, including with respect to:

(a) General directions or guidance about constructive detention, the exercise of s 21 powers (of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)), and the use of reasonable force in proactive patrol situations (including identifying whether, in certain circumstances, people should be informed that they are not mandated by law to stop and answer questions if they do not wish).

(b) General directions or guidance as to possible techniques, language, and actions that can be appropriately utilised in approaching and engaging persons on PACT patrols when powers of detention are not enlivened or being exercised.

Training for officers assigned to PACT duties

Evidence

567. Evidence regarding current training for PACT is discussed at Issue 5 above.

Submissions

568. Counsel Assisting submits the training scenarios received in evidence, relevant to the use of the s 21 power, lack complexity and are not reflective of the reality of most proactive encounters, and it is questionable how beneficial these scenarios are in preparing officers to handle situations of the kind that arose on 23 December 2020.

569. Counsel Assisting submits that it is open to me to conclude it is necessary or desirable to make a recommendation to the Commissioner to review the training provided to officers expected to engage in PACT patrols (proposed recommendations 2(a)-(c)).

570. Counsel Assisting submits that this should also involve a review of any instructions or guides (e.g. Six Minute Intensive Documents) that have been issued to ensure they provide correct instruction on the use of force and the exercise of s 21 of LEPR.

571. Senior Counsel for Mr Balzan supports submits that I would decline to make the second half of proposed recommendation 2(c), given that Mr Balzan does not wish for the circumstances which led to Bradley's death to be used as a "practical scenario", and the circumstances can be conveyed by alternative means.

572. Counsel for the Nepean 140 officers submits that it may be necessary to make recommendations as to initial and ongoing training, and specific training on approaching persons when officers join PACT as well as a review of current SMITs.

573. Senior Counsel for the Commissioner opposes proposed recommendations 2(a)-(b) so far as it extends to the amorphous and ambiguous notion of "constructive detention" and otherwise submits that these are unnecessary in light of the extensive training

which is already provided to all frontline police officers (not only officers performing PACT duties).

574. Senior Counsel for the Commissioner indicated that the Commissioner agrees with the thrust of proposed recommendation 2(c), but submits that implementing a practical training scenario for all officers based on the factual circumstances of the subject events is already in train such that no formal recommendation is needed.
575. Counsel Assisting adopts in reply submissions to the submissions on behalf of the Commissioner those set out at [553]-[560] above.

Recommendations

576. For the same reasons as for Recommendation 4, there is a need to have clear guidance and training to officers, to minimise the risk of constructive detention and escalated encounters.
577. I make the following recommendation.

Recommendation 5: NSW Police Force review the training provided to officers assigned to PACT duties, and consider implementing training specifically for such officers, in relation to the conduct of PACT patrols, including with respect to:

- (a) Instruction about constructive detention, use of reasonable force and the exercise of s 21 powers (of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)) in proactive patrol situations.
- (b) Instruction about how possible techniques or strategies in proactive patrol situations (language, approaches, etc) to minimise the risk of (i) constructive detention and (ii) escalation (including potential strategies to deescalate encounters).
- (c) Use of practical scenario training in providing the above training, with consideration given to using scenarios where a person does not want to engage with police as part of scenario training. At the request of Bradley's family, the scenario which led to Bradley's death should not be used.

Review of use of force manuals relating to using communication and verbal warnings

578. In relation to proposed recommendation 3, Senior Counsel for Mr Balzan submits that to the extent that the TUoFM and OC Spray Manual are inconsistent, the latter should be preferred, and that the TUoFM be amended to address this inconsistency.

579. In the TUoFM, both communication and OC Spray are two of ten tactical options identified. While the TUoFM states, “*You use OC spray in conjunction with another tactical option*”, one of which is communication (which could presumably extend to include the provision of a warning before the deployment of spray), it does not specifically recommend, let alone require, the issue of a warning prior to use.

580. The OC Spray Manual, on the other hand, states under the heading “*Communication Techniques*”:

“As with all tactical options, issue a clear warning when deploying OC defensive spray. Use proper verbal commands to control and instruct the subject:

- *prior to spraying*
- *during spraying*
- *after spraying.*

Use verbal communication to reassure the subject after they have been sprayed.”

581. The Commissioner does not support the inclusion of a mandatory verbal warning prior to the application of force. Senior Counsel for the Commissioner submits that while it may be desirable in some instances to provide a warning prior to using an appointment because it may focus the mind of the subject on the consequences of their continued actions, in other instances a warning may change the dynamic, such as agitate that person. A request to “put the bat down,” for example, carries a different complexion to “put the bat down or I’ll spray you.” Senior Counsel for the Commissioner submits the evidence clearly establishes that communication is a key part of effective policing, and officers should retain a discretion to deploy such communication as they consider necessary and appropriate to resolve the particular situation with which they are faced.

582. Senior Counsel for the Commissioner submits further, from an officer safety point of view, the provision of a warning may enable a person to employ countermeasures against the appointment which the officer has announced may be deployed, thereby reducing or negating their effectiveness.
583. Counsel Assisting submits that it is open to me to recommend the Commissioner examine the difference that arises between the two manuals and consider the possible introduction into the TUoFM directions to officers to give a verbal warning before deploying OC spray whenever reasonably practicable to do so.

Recommendations

584. Given there may be a conflict between the OC Spray Manual and the TUoFM, I consider there is utility in making this recommendation in fairness to officers, and noting that consideration of the inclusion of a direction in the TUoFM is whenever it is reasonably practicable to do so.
585. I make the following recommendation.

Recommendation 6: NSW Police Force consider reviewing all use of force manuals (including the Tactical Options Use of Force Manual and the Oleoresin Capsicum Defensive Spray Manual) to ensure consistency in the inclusion of a direction to use communication as a tactical option and issue a clear verbal warning before deployment of other tactical options which involve the application of force, where reasonably practicable.

Amending manuals to authorise plain clothes police to carry and use tasers

Evidence

586. None of the officers who interacted with Bradley on 23 December 2020 was equipped with a taser. Tasers are not used by plain clothes police officers (including PACT officers).

Submissions

587. Senior Counsel for Mr Balzan submits that a recommendation that the adoption of tasers for PACT officers be considered by the Commissioner (proposed recommendation 4).
588. Senior Counsel for Mr Balzan submits that tasers are included in the TUoFM as one of the tactical options available to police offering “*an additional less lethal tactical option for controlling subjects who are resisting or who are violent.*” That tactical option was not available to A/Sgt Parkinson or SC Vingerhoed in the backyard during their interactions with Bradley. While it is impossible to know what might have occurred if they had been equipped with tasers, Senior Counsel for Mr Balzan submits that if they had been, that would have significantly diminished the prospect that lethal force would ultimately have been used on Bradley.
589. Senior Counsel for Mr Balzan submits that while tasers may be impractical or unnecessary in some situations where officers are in plain clothes, that cannot be said of officers performing PACT duties. When asked if there was any impediment to the use of tasers by PACT officers other than their availability, Sgt Russell answered that they were “*very much a large object and for staff in plain clothes, for various types of duties such as surveillance, et cetera, it is not something that is widely used by proactive at all*”, before agreeing that PACT officers were not engaged in surveillance duties.
590. SC Ahmedi stated that, in accordance with the Taser standard operating procedures, only uniformed police may use tasers and plain clothes officers are not authorised to use tasers. When asked to explain the reason for that policy, SC Ahmedi gave evidence that plain clothes officers “*require a certain amount of stealth*” and that when appointed with a taser “*it’s very difficult for them to be able to blend in.*” SC Ahmedi was not asked in his evidence to consider whether such a need pertained to PACT officers who were not attempting to disguise their status as members of the police force but were, rather, tasked with interacting with members of the public in a manner which explicitly required them to announce that they were police officers, and who carried police lanyards and firearms outside their clothing.

591. Senior Counsel for the Commissioner submits in response that other than expressing a view that the wearing of a taser would not be an impediment to walking up to somebody to speak to them in the course of a patrol, Sgt Russell was not asked whether there was any other impediment in the course of other duties and that his otherwise unchallenged evidence is that there is an impediment caused by the size of the taser to officers who do not wear a uniform, as PACT officers are, however he was not asked to expand on the nature or extent of such impediment.
592. Senior Counsel for the Commissioner submits that the fact PACT officers do not perform undercover surveillance overlooks the point that implicit in the purpose of an officer undertaking PACT duties is that they are less likely to be recognised from a distance than a police officer wearing full police uniform. The officer is thus more likely to detect or observe criminal behaviour. Senior Counsel for the Commissioner submits that there is a public interest in officers retaining a greater element of anonymity than can be achieved when wearing full police uniform, however, with that anonymity comes a limitation to the extent to which appointments can be carried without the aid of overt equipment such as a police vest and full appointment belt.
593. The holster in which the taser is stored, and the area in which it must be worn to achieve a cross-draw, results in a holster apparatus which is bulkier than a Glock holster. The taser itself is also conspicuously coloured yellow. Senior Counsel for the Commissioner submits that self-evidently a person with a large yellow taser protruding from their waist is as obviously a police officer, as a person wearing a police vest or cap.
594. Senior Counsel for the Commissioner submits that the appointments carried by PACT officers are appropriate to their duties.
595. In reply submissions, Counsel Assisting submits that in Bradley's case the Nepean 140 officers weren't conducting patrols on foot which required the ability to blend into the public. They were patrolling in a vehicle. Even if having a taser as part of their appointments posed difficulties there may have been the option of having taser(s) in the vehicle for ready access.

596. Counsel Assisting submits that it is open to me to recommend the Commissioner examine the possibility of PACT officers having tasers as part of their appointments when engaged in PACT patrols.

Conclusion

597. Tasers were not an option for the Nepean 140 officers in this matter. I consider it would be open to NSWPF to consider tasers to be an option for plain clothes police.
598. I make the following recommendation.

Recommendation 7: NSW Police Force consider amending the relevant use of force manuals to authorise plain clothes police who have been trained in the use of tasers to carry and use tasers where appropriate, with specific consideration being given to the authorisation in this respect of officers assigned to PACT duties.

CONCLUDING REMARKS

599. I agree and adopt Counsel Assisting's submissions as follows.
600. A protracted and intense physical struggle occurred following Bradley's emergence from the alcove at the rear of his home. That struggle culminated in SC Vingerhoed fatally shooting Bradley in defence of A/Sgt Parkinson.
601. Events should not have reached the point they had when Bradley emerged from the alcove. The origin point for the tragic encounter was the earlier unjustified roadside detention of Bradley on Nariel Street. Had Bradley been allowed to walk away, as he was trying to do, there is a significant likelihood subsequent events would not have eventuated. Other opportunities also arose for de-escalation, including consideration of desisting in the chase of Bradley, communicating with Bradley and/or others in his residence, or warning Bradley before the deployment of OC spray.
602. The line between voluntary engagement and constructive detention can be a fine one. There is a reasonable likelihood that a person approached by an officer (including potentially standing in the path of the person), who identifies themselves as an officer and asks them questions, will feel they are being required to stop or will not be allowed to leave unless they submit. Although an express demand to stop and answer

questions may not be made, that might arise by implication. The manner of approach and engagement and the language used by the police are important factors.

603. Persisting to engage a person, when he or she makes clear that they do not want to engage, elevates the risk of constructive detention. That is particularly the case when force is used to make a person comply. It also elevates the risk of an adverse reaction or resistance by the person, which may then cascade into an escalation with a physical confrontation ensuing.
604. None of the Nepean 140 officers appeared to view their initial engagement with Bradley as improper or outside the norm of their regular practice. That is a matter of significant concern.
605. Bradley's death was tragic for Bradley's family, his friends and the community.
606. These events have also significantly affected the officers involved.
607. This tragedy highlights the need for adequate procedures, practices and training of police officers required to perform PACT patrols. That includes more stringent requirements around the use of BWV cameras in the performance of these patrols.

FINDINGS

608. Before turning to the findings that I am required to make, I would like to acknowledge and thank Detective Chief Inspector Virginia Gorman and Detective Sergeant Chris Skanavis for their ongoing assistance and diligent police work throughout the coronial investigation and inquest.
609. I would also like to thank my assisting team, Chris McGorey of counsel, and Elizabeth Leung from the Crown Solicitor's Office for the enormous amount of work they put into this inquest.
610. I make the following findings pursuant to Section 81(1) of the Act:

Identity:

The person who died is Bradley Balzan.

Date of death:

Bradley Balzan died on 23 December 2020.

Place of death:

Bradley Balzan died in St Marys NSW 2760.

Cause of death:

The cause of Bradley Balzan's death is gunshot wounds to the chest and abdomen.

Manner of death:

Bradley Balzan died from gunshot wounds inflicted by a NSW Police Force officer as a result of a police operation.

611. I would like to conclude by again expressing my sincere condolences to those who knew and loved Bradley for their loss, particularly to Mr Balzan and Ms Collins.
612. Mr Balzan and Ms Collins reminded the Court that Bradley was so much more than the events this Court has been tasked to investigate. To his family, "Brad was a son, a grandson, a nephew, a cousin, a friend, a young man. Just starting life, on the cusp of adulthood, he had the world at his feet."
613. I close this inquest.

Magistrate Teresa O'Sullivan

NSW State Coroner

13 November 2025

APPENDIX A

Recommendations made pursuant to section 82(1) *Coroners Act 2009 (NSW)*

To the Commissioner of Police, NSW Police Force

Recommendation 1: The NSW Police Force amend the BWV Standard Operating Procedures to reflect that, in circumstances where BWV should have been activated but an officer failed to do so, the officer must record the reasons for non-activation, for example in the relevant COPS Event or in their police notebook.

Recommendation 2: The NSW Police Force

- a) mandate that, at a minimum, officers must activate BWV when using statutory powers, or when it is likely that an interaction may lead to the exercise of statutory powers, and
- b) reflect this policy in any future Standard Operating Procedures or Guidelines that mention BWV use.

Recommendation 3: The NSW Police Force include in any future BWV Standard Operating Procedures or guidelines a 'definitions' section which defines directions (e.g. 'must') and key terms (e.g. 'operational policing').

Recommendation 4: The NSW Police Force consider developing a standard operating procedure for the conduct of PACT patrols, including with respect to:

- a) General directions or guidance about constructive detention, the exercise of s 21 powers (of the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)*), and the use of reasonable force in proactive patrol situations (including identifying whether, in certain circumstances, people should be informed that they are not mandated by law to stop and answer questions if they do not wish).
- b) General directions or guidance as to possible techniques, language, and actions that can be appropriately utilised in approaching and engaging persons on PACT patrols when powers of detention are not enlivened or being exercised.

Recommendation 5: NSW Police Force review the training provided to officers assigned to PACT duties, and consider implementing training specifically for such officers, in relation to the conduct of PACT patrols, including with respect to:

- a) Instruction about constructive detention, use of reasonable force and the exercise of s 21 powers (of the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)*) in proactive patrol situations.
- b) Instruction about how possible techniques or strategies in proactive patrol situations (language, approaches, etc) to minimise the risk of (i) constructive detention and (ii) escalation (including potential strategies to deescalate encounters).
- c) Use of practical scenario training in providing the above training, with consideration given to using scenarios where a person does not want to engage with police as part of scenario training. At the request of Bradley's family, the scenario which led to Bradley's death should not be used.

Recommendation 6: NSW Police Force consider reviewing all use of force manuals (including the Tactical Options Use of Force Manual and the Oleoresin Capsicum Defensive Spray Manual) to ensure consistency in the inclusion of a direction to use communication as a tactical option and issue a clear verbal warning before deployment of other tactical options which involve the application of force, where reasonably practicable.

Recommendation 7: NSW Police Force consider amending the relevant use of force manuals to authorise plain clothes police who have been trained in the use of tasers to carry and use tasers where appropriate, with specific consideration being given to the authorisation in this respect of officers assigned to PACT duties.

Magistrate Teresa O'Sullivan

NSW State Coroner

13 November 2025