

Second volley of shots Constable Zachary Rolfe fired at Kumanjayi Walker ‘excessive’, court hears

Although first shot fired by police at teenager was justified, second two shots were not, expert tells Alice Springs supreme court



Supporters of Kumanjayi Walker gather outside the Alice Springs courthouse on Thursday for the committal hearing of police constable Zachary Rolfe, who shot and killed the 19-year-old as officers tried to arrest him in his home in Yuendumu.

Neda Vanovac in Darwin
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The first shot Northern Territory police officer Zachary Rolfe fired during a struggle with Yuendumu man Kumanjayi Walker was “reasonable”, but his two follow-up shots were “excessive, unreasonable and unnecessary”, an expert criminologist has told the Alice Springs supreme court.

Kumanjayi Walker, 19, died after being shot three times by Rolfe as four officers attempted to arrest him in the remote Aboriginal community of Yuendumu in central Australia on 9 November last year.

Rolfe is on bail and appeared before the court via video link from Canberra.

Officers had attended a house in Yuendumu in an effort to arrest Walker after he’d breached a court order by returning to the community, and then threatened officers with an axe.

The court heard on Thursday that local officers had given him a grace period to attend a funeral and then asked that he hand himself in.

Officer in charge, sergeant Julie Frost, asked Walker's family to encourage him to surrender peacefully.

"I reiterated that the actions of [Walker] are extremely serious, he's made it far worse for himself now ... I reiterated the fact that what he did could have got my members killed or Walker himself could have been killed as well, or could have been shot as a result of his actions," the court heard that Frost told Walker's family.

"I'm going to allow [Walker] the liberty to go to the funeral tomorrow without us trying to get him in the next day or so... as soon as that funeral is over he needs to come to the police station and present himself, I'm going to give you the respect to do that."

Walker did not hand himself in, so officers from Alice Springs travelled to Yuendumu to help arrest him.

When four officers attended a home he was at and tried to arrest Walker, he hid his face under a hat and gave a false name, before trying to back away with a weapon in his hand, which turned out to be a pair of scissors.

In the resulting struggle with Constable Adam Eberl and Rolfe, Walker stabbed Rolfe, who shot him.

Dr Geoffrey Alpert, who researches high-risk police activities, including the terrorist attack at the Lindt Cafe in Sydney, gave evidence on Thursday via video link from the US, and told the court that the first shot was justified.

"This happened very quickly and the first shot was ... a reasonable shot because the three of them were fighting and [Walker] stabbed Constable Rolfe with the scissors ... it was an ongoing and very rapidly evolving situation in which a weapon was used, the first shot I found to be perfectly reasonable," he said.

Alpert said that once the initial struggle ended, Rolfe "had the time, the distance and the opportunity to reassess the threat ... [which] could be very easily handled by hands on to help Constable Eberl, who was on the mattress with him, and/or the use of his taser or less lethal weapon if necessary, either in probe or drive-stun mode to control [Mr Walker] at that point."

He said that using less lethal force or hands-on assistance were "far more reasonable responses than going and shooting, at very close range, two shots in the chest".

"The second volley of shots was not quite reasonable or proportionate to the circumstances; the second volley of shots was excessive, unreasonable and unnecessary."

Alpert said that once the initial struggle ended, Rolfe "saw this rapidly evolving sight but he had time ... to go hands-on or use less-lethal force such as a taser, far more reasonable responses than going and shooting, at very close range, two shots in the chest".

Defence counsel Anthony Allen said the whole incident unfolded in a matter of seconds.

“You accept though, don’t you, that it’s going to take more time for someone to reholster a firearm, unholster a taser, produce the taser, level the taser at the target and then deploy the taser?” he asked Alpert.

“You opine that Constable Rolfe was in a dangerous, adrenaline-driven, high-stress encounter, at the commencement of that encounter he had been stabbed, that it was likely he didn’t know the extent of his injuries, and that against that background he’s required to make what you described as split-second decisions,” he said.

“The situation was tense, uncertain and rapidly evolving, his partner is locked in combat with an armed assailant, he did not have the right hand of that assailant which was the hand holding the weapon under control, against the background of Constable Rolfe knowing of Kumanjayi Walker’s predisposition to violence, having regard to what he knew about the axe incident.”

The court previously heard on Wednesday that police were trained to draw their firearms if suspects had an edged weapon.

“If an edged weapon is produced by another person, then we are to take our firearm out. We have a little catchphrase of ‘knife equals gun’,” said Constable James Kierstenfeldt, one of the officers present when Walker was shot.

Allen asked Alpert if he was aware of a mode of training in NT law enforcement whereby “officers continue to discharge their firearm until the threat they face is eliminated”.

“What I’m suggesting to you, doctor, is that this is precisely one of those situations. We know the engagement between Kumanjayi Walker and police was ongoing even after the firing of the second and third shots.”

Alpert said good law enforcement departments in the US and Australia all taught the concept of double-tapping, or firing two shots in rapid succession.

“Had Constable Rolfe fired two shots in the beginning, after he had gotten stabbed, instead of the one shot, I would be perfectly in support of those discharges,” he said.

“My point is that event had ended, and he had the time and distance to reassess. And it’s the decision he made to fire his weapon, not the number of shots that I’m opining about.”

Alpert said he had reviewed “hundreds and hundreds” of officer-involved shootings, and that they followed a similar formula.

“These second volleys of shots are quite often unnecessary,” he said. “I think officers are trained to assess and trained to not use deadly force when other options are available.”

NT Detective Senior Sergeant Andrew Barram from the professional standards command told the court that the second shot was fired by Constable Rolfe 2.6 seconds after the first shot, with the third shot fired half a second after that. He said the second two shots were unnecessary.

Defence counsel David Edwardson replied that Walker “was instructed on multiple occasions to let go of the scissors and he didn’t”.

“They had control of him. He was face down on the ground, incapable of stabbing anyone, with an officer on top of him, and with his arm pinned under him, jammed up by a mattress,” Det Snr Sgt Barram said.

“You can’t see that his arm was pinned underneath him in the video footage,” Mr Edwardson said, to which Det Snr Sgt Barram replied, “It wouldn’t be anywhere else.”

“Why do you say that?” Mr Edwardson asked.

“Because it’s attached to his right shoulder, which is on the ground,” Det Snr Sgt Barram replied.

“I’m suggesting to you that you are deliberately wanting to put forward the most sinister interpretation of what can be seen on that video footage, rather than accepting that there may be alternative explanations for what happened,” Edwardson said.

“I’m suggesting that before deploying potentially lethal force, careful consideration should be given,” Det Snr Sgt Barram said.

The committal hearing will resume later this month.