

**TRANSCRIPT OF PROCEEDINGS**  
**UNCLASSIFIED**

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**AUSTRALIAN DEFENCE FORCE**

**AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW**

**INQUIRY INTO THE DEATH OF  
PTE JACOB BRUCE KOVCO**

**PRESIDING:**

**GPCAPT W COOK, President**  
**COL M CHARLES, Board Member**  
**MR J O'SULLIVAN, Board Member**

**COL M GRIFFIN, Senior Counsel Assisting**  
**MAJ E JOLLY, Counsel Assisting**  
**MAJ J HYDE, Counsel Assisting**  
**MAJ A BELKIN, Counsel Assisting**

**LTCOL P WILKINSON, representing Soldier 2**  
**LTCOL B GREEN, representing Soldier 14**  
**LTCOL T BERKLEY, representing Next of Kin**  
**LTCOL F HOLLES, representing PTE Kovco's Parents**  
**COL L YOUNG, representing PTE Kovco**

**1004 FRIDAY 25 AUGUST 2006**  
**DAY 29**

The transcript has been checked and cleared for operational security issues.

**TRANSCRIPT VERIFICATION**

I hereby certify that the following transcript was made from the sound recording of the above stated case and is true and correct

Signed.....  ..... Date .....25/08/06.....(President)

Signed.....  ..... Date ..... 25/08/06.....(Recorder)

Signed.....  ..... Date ..... 25/08/06.....(Transcriber)

Signed.....  ..... Date ..... 25/08/06.....(Transcriber)

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**RESUMED**

**[1004]**

5 PRESIDENT: Good morning, Major.

MAJ JOLLY: Good morning, Mr President. Mr President, I call Ms Stephanie Hales.

10 PRESIDENT: Thank you.

<STEPHANIE HALES, sworn

**[1005]**

15 <EXAMINATION BY MAJ JOLLY

20 MAJ JOLLY: Ms Hales, I'm MAJ Jolly, one of the Counsel Assisting in this Inquiry. Do you recall giving a statement in relation to some testing you did in relation to gunshot residue?---Yes, I do.

Do you have that statement in front of you?---Yes, I do.

25 Sir, I tender that.

PRESIDENT: Is there any opposition to the reception of that document?

COUNSEL REPRESENTING: No, sir.

30 #EXHIBIT 173 - STATEMENT OF MS STEPHANIE HALES

35 MAJ JOLLY: Ms Hales, in the course of your testing did you take notes? ---Yes, I did.

Do you have those notes here with you in the courtroom today?---Yes, I do.

40 Do you seek the President's leave if you need to refer to those notes during the course of giving your evidence?---Yes, I do.

PRESIDENT: Certainly?---Thank you.

45 MAJ JOLLY: Ms Hales, I note from your statement that you're undertaking a PhD?---Yes, that's correct.

That is in relation to the analysis of gunshot residue?---Yes.

5 How far advanced are you in terms of your studies?---I'm just about to submit my thesis.

10 Ms Hales, in terms of the analysis of gunshot residue particles that you deal with in your report, what are the different components of gunshot residue?---Gunshot residue arises from the ammunition. So it arises from each of the different components of the ammunition. When a firearm is discharged the firing pin comes down and hits the base of the cartridge case where the primer cup is housed. The primer is a tiny amount of explosive at the base of the cartridge case. This detonates and flames pass through flash holes into the main body of the cartridge case where the  
15 gunpowder or propellant is housed. This ignites, causing a large amount of hot expanding gases to then force the bullet down the barrel of the firearm and out of the muzzle. This all happens very quickly, within about a thousandth of a second. At the same time gunshot residue is expelled from any gaps in the construction of the firearm as well as the  
20 muzzle of the firearm as a cloud. The gunshot residue results from each of those different components of the ammunition; from the projectile, from the cartridge case itself, from the gunshot primer, the tiny amount of explosive, and from the gunpowder or propellant.

25 Ms Hales, from that am I right in saying that there's primer residue and then there's also gunpowder residue as one of the two components that you've just mentioned?---Yes, that's correct.

30 Is it the case that it's the analysis of the primer residue that you're most interested in in your technical analysis?---Yes, that's correct.

35 Why is that?---Gunshot primer residue is the worldwide accepted components to be detected, to be used as evidential value as to whether someone has handled or discharged a firearm.

Were you aware in your analysis that the weapon you were performing your testing on was a weapon that had been discharged in a closed environment?---Yes.

40 And that in addition to PTE Kovco there were another two people in the room with him?---Yes, I believe - that's my understanding.

45 Is your analysis able to differentiate between the primer residue fired from a pistol versus say the primer residue that would be left from the firing of a rifle?---As I mentioned, gunshot residue arises from the ammunition

5 itself and some ammunitions do have some different components that will allow residue from those ammunitions to be distinguished. However, in general, most ammunitions contain the components lead, antimony and barium. However, with some ammunitions there are other components present that will allow it to be distinguished from other types of ammunition.

10 Was it significant to your inquiries the fact that PTE Kovco and his colleagues were handling weapons on a daily basis?---Certainly. I believe that it's extremely likely due to a soldier's day-to-day duties of handling and discharging a firearm on a regular basis that their entire environment could have become contaminated with gunshot residues.

15 On that basis, in terms of the other two people that were in the room with PTE Kovco, would there have been any significance in your analysis if it had returned positive findings for gunshot residue on those two people? ---No, I don't believe so. There would certainly be legitimate reasons for gunshot residue to be present on those persons.

20 You talk towards the end of your report on the factors that would operate on a finding that there was no gunshot residue such as medical intervention and such. Could you just expand upon that, please, in terms of what factors operate to remove gunshot residue from a person or indeed objects?---Certainly. I refer to paragraph 28 of my statement where I say that in relation to this specific shooting incident it's my understanding that the victim Jacob Kovco was found being after shot in the head. He then underwent extensive medical treatment at the scene and after being transported to the hospital the deceased was later transferred to a morgue in Kuwait where it is likely that the body was washed and refrigerated and then prepared for transport. The deceased was then transported to Australia. The deceased was received at the Institute of Forensic Medicine Glebe with a bandage present on the head and the deceased's hands and wound after removal of the bandage were then sampled for the presence of gunshot residue at post-mortem at the Institute of Forensic Medicine Glebe. I then state in paragraph 29(b) that a negative result for the presence of gunshot residue on a victim has several potential explanations, including the firearm ammunition combination, the manner of discharge, environmental factors such as wind or rain, delay between the incident and sampling and processes carried out on the victim before sampling took place, including medical treatment, movement of the victim and other processes carried out on the victim. So any of those processes referred to in paragraph 28 could have removed gunshot residue.

45 Building on those two parts of your statement that you've just read out, could I ask you to consider the scenario where the hands of PTE Kovco

were bagged. Would that have had any significance in terms of the subsequent testing that you carried out?---I believe in this case that gunshot residue was unlikely to add anything further to the investigation due to numerous different factors. There are several explanations for either the presence or the absence of gunshot residue on the hands and clothing of PTE Kovco, including, as I mentioned, the contamination of a soldier's environment. Whether the victim had been shot at close range or had shot himself at close range, it's likely he would have been engulfed in a cloud of gunshot residue which would then have resulted in the presence of gunshot residue on himself. Neither of those scenarios would have been able to be distinguished from the presence of gunshot residue. And alternatively, a negative result for gunshot residue has several other legitimate explanations as detailed previously.

I take it from that, Ms Hales, that a failure to have bagged PTE Kovco's hands at the time of the shooting therefore had no significance in terms of your technical analysis?---That's correct.

Could I take that the next step further. The Board has heard evidence that the room that PTE Kovco was in when the weapon discharged was cleaned soon after the shooting. Are you able to say whether that cleaning had any impact on your ability to carry out your technical analysis? ---Again I don't believe that had any effect on the ability to carry out my technical analysis.

Ms Hales, on the last page of your statement at subparagraph (c) at the top, you deal with the issue of being able to determine the proximity of the pistol to PTE Kovco's head at the time of firing and you conclude that you're unable to determine that distance. Could you explain why you're unable to perform that calculation?---Certainly. Gunshot primer residue, which is the type of residue that we're attempting to detect in this type of examination, has been known to travel up to several metres. So there's no way from this type of examination that we can distinguish between anything from a contact shot up to several metres.

Given the close proximity that the shooting take place in, would there have been any benefit of an analysis of gunpowder or any gunpowder pattern?---I don't believe that the gunpowder pattern on a wound is generally examined for those purposes. I believe, in general, to determine firing range based on a wound it's more common for a doctor to examine the actual wound characteristics themselves.

On that basis would you defer to a medical analysis of the distance between the pistol and PTE Kovco's wound?---Yes, I would.

Thank you, Ms Hales. Thank you, Mr President, nothing further.

PRESIDENT: Thank you. LTCOL Green.

5 LTCOL GREEN: No questions, thank you, sir.

PRESIDENT: LTCOL Berkley.

10 LTCOL BERKLEY: No, sir, that was comprehensive. Thank you.

PRESIDENT: COL Young.

COL YOUNG: No, not from me either. Thank you, sir.

15 MAJ JOLLY: Sir, I've just been told that we've lost the link to the media room. I think that occurred in either my penultimate question of Ms Hales or indeed the last one. We're just trying to re-establish that link.

20 PRESIDENT: We might pause then while we re-establish communication to the outside world.

MAJ JOLLY: Am I right in saying, sir, that none of Counsel Representing have got any questions?

25 PRESIDENT: I'll invite whether as a result of that you've got any re-examination.

MAJ JOLLY: Just one question, sir.

30 PRESIDENT: Thank you, Major, you may continue.

35 MAJ JOLLY: Thank you, sir. Ms Hales, I asked you a question about the other two people in the room at the time that PTE Kovco was shot and the significance, if any, of the fact that they were in close proximity and handling weapons along with PTE Kovco. The Board has heard evidence that soon after the shooting the other two occupants in the room had their clothes washed. Given my earlier question to you in asking you to consider the fact that they handle weapons on a daily basis and they were in close proximity, that is, it was a small room, is there any significance in  
40 terms of the inquiries that you carried out as to the fact that their clothes were washed soon after the shooting?---No, I don't believe so. Again I believe that there would be several legitimate reasons for the presence of gunshot residue.

45 Thank you, Ms Hales. Thank you, Mr President.

PRESIDENT: Thank you, madam, you may stand down. Thank you for your presence.

5

<WITNESS WITHDREW

[1022]

MAJ JOLLY: I'll hand over to COL Griffin, sir.

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PRESIDENT: Thank you.

COL GRIFFIN: Sir, we have no further witnesses today. We return on Monday with the DNA specialist evidence for further inquiry in respect of the significance of the DNA. We did produce yesterday a substantial volume of material, you'll recall, with the Chief of Defence Force's instruction in respect of further policy development, which I know is a matter of concern to COL Young and I believe LTCOL Berkley. As COL Young indicated, that until he's in a position to absorb that material he can't give an indication of whether or not he requires further examination of that and perhaps other witnesses.

15

Again because of the classified nature of the material, it can only be absorbed on the Board premises. So I'd ask that we adjourn now and make that material available for Counsel for consideration with a view to returning Monday morning not before 10 o'clock to resume with the DNA specialist evidence.

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PRESIDENT: Thank you. Is everybody comfortable with that approach?

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LTCOL BERKLEY: Yes, I am, sir.

COL YOUNG: Mr President, might I just inquire if Soldier 14 will be available Monday as well?

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COL GRIFFIN: Yes, he will, sir.

PRESIDENT: Thank you.

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**MATTER ADJOURNED AT 1024 UNTIL  
MONDAY 28 AUGUST 2006 AT 1000**