



OFFICE OF THE STATE CORONER

FINDING OF INQUEST

CITATION: **Inquest into the death of Daniel Cory Rhodes**

TITLE OF COURT: **Coroner's Court**

JURISDICTION: Bundaberg

FILE NO(s):

DELIVERED ON: 24 March 2006

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HEARING DATE(s): 21, 22, 23, & 24 March 2006

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: Coroners: Inquest, police shooting

REPRESENTATION:

Counsel Assisting: Mr Craig Chowdhury

Counsel for subject police officers: Mr S Zillman instructed by Gilshenan and Luton

Counsel for the Commissioner of the QPS: Mr W Kelly

Findings of the inquest into the death of Daniel Cory Rhodes

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The *Coroners Act 1958* provides in s43(1) that after considering all of the evidence given before a coroner at an inquest the coroner shall give his or her findings in open court. What follows are my findings of the inquest held into the death of Daniel Cory Rhodes.

Introduction

At about 4.30 on the afternoon of 7 October 2002, Daniel Rhodes was driving with friends in the inner city streets of Bundaberg when police, who were conducting a routine patrol of the area, commenced to follow the car. This caused Mr Rhodes to become agitated and he alighted from the vehicle when it slowed at an intersection. His behaviour further aroused the suspicion of the police officers who had been following the car. They attempted to intercept Mr Rhodes to speak with him but he sought to avoid them. This prompted the officers to try to apprehend Mr Rhodes. A struggle ensued which ended with Mr Rhodes being shot dead.

These findings seek to explain how that happened and determine whether anyone should be charged with a criminal offence as a result of the death.

The Coroner's jurisdiction

Before turning to the evidence, I will say something about the nature of the coronial jurisdiction.

The basis of the jurisdiction

Although the inquest was held in 2006, as the death being investigated occurred before 1 December 2003, the date on which the *Coroners Act 2003* was proclaimed, it is a "*pre-commencement death*" within the terms of s100 of that Act and the provisions of the *Coroners Act 1958* (the Act) are therefore preserved in relation to it.

Because the death was "*violent or unnatural*" the police officers who were summoned to the scene were obliged by s12(1) of the Act to report it to a coroner. Section 7(1)(a)(i) confers jurisdiction on a coroner to investigate such a death and s7B authorises the holding of an inquest into it.

The scope of the Coroner's inquiry and findings

A coroner has jurisdiction to inquire into the cause and the circumstances of a reportable death.

The Act, in s24, provides that where an inquest is held, it shall be for the purpose of establishing as far as practicable:-

- the fact that a person has died,
- the identity of the deceased,
- when, where and how the death occurred, and
- whether anyone should be charged with a criminal offence alleging he/she caused the death.

After considering all of the evidence presented at the inquest, findings must be given in relation to each of those matters to the extent that they are able to be proven.

An inquest is not a trial between opposing parties but an inquiry into the death. In a leading English case it was described in this way:-

*It is an inquisitorial process, a process of investigation quite unlike a criminal trial, where the prosecutor accuses and the accused defends... The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires.*¹

The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred with a view to reducing the likelihood of similar deaths. As a result, the Act authorises a coroner to make preventive recommendations,² referred to as “riders” but prohibits findings or riders being framed in a way that appears to determine questions of civil liability or suggests a person is guilty of any criminal offence.³

The admissibility of evidence and the standard of proof

Proceedings in a coroner’s court are not bound by the rules of evidence because s34 of the Act provides that “*the coroner may admit any evidence the coroner thinks fit,*” provided the coroner considers it necessary to establish any of the matters within the scope of the inquest.

This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt, an inquiry rather than a trial.⁴

A coroner should apply the civil standard of proof, namely the balance of probabilities, but the approach referred to as the *Briginshaw* sliding scale is applicable.⁵ This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.⁶

Of course, when determining whether anyone should be committed for trial, a coroner can only have regard to evidence that could be admitted in a criminal trial and will only commit if he/she considers an offence could be proven to the criminal standard of beyond reasonable doubt.

¹ *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

² s43(5)

³ s43(6)

⁴ *R v South London Coroner; ex parte Thompson* per Lord Lane CJ, (1982) 126 S.J. 625

⁵ *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.⁷ This means that no findings adverse to the interest of any party may be made without that party first being given a right to be heard in opposition to that finding. As *Annetts v McCann*⁸ makes clear, that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation.

The investigation

I turn now to a description of the investigation. Immediately after the shooting, the officers involved summoned assistance on the police radio and an ambulance and other police attended within minutes.

The scene was cordoned off and the potential witnesses, who had been with Mr Rhodes in the car he had alighted from, were detained. The two officers involved in the incident were transported separately to the police station where they were kept apart until interviewed. The handguns issued to those officers were seized and forensically examined.

The scene was photographed and items of interest were located and tested.

Later that evening, detectives from the Homicide Investigation Group and the Crime and Misconduct Commission attended at the scene.

Fingerprints taken from Mr Rhodes confirmed his identity that had initially been supplied by those he had been driving with. Police then contacted the mother of Mr Rhodes to inform her of the death but it seems she had already heard of the shooting from another family member.

Eye-witnesses were located and interviewed and videotaped during a walk through of the scene.

An autopsy was performed on Mr Rhodes' body the next morning by Dr Rosemary Ashby an experienced forensic pathologist.

Prisoners, who had been incarcerated with Mr Rhodes, and an intelligence officer from the Capricornia Correctional Centre also supplied relevant information.

I am satisfied that the investigation was thorough and carried out in a competent manner.

The inquest

At the request of the local coroner, I took responsibility for the inquest on account of the difficulty of fitting such a lengthy matter into the diary of a single magistrate court.

⁷ *Harmsworth v State Coroner* [1989] VR 989 at 994 and see a useful discussion of the issue in Freckelton I., "Inquest Law" in *The inquest handbook*, Selby H., Federation Press, 1998 at 13

⁸ (1990) 65 ALJR 167 at 168

A directions hearing was held on 14 October 2005. Mr Chowdhury was appointed counsel assisting and leave to appear was granted to the two officers involved in the shooting and the Commissioner of the QPS. The family of Mr Rhodes were not represented but they attended the inquest and conferred regularly with Mr Chowdhury.

A view and the taking of evidence

On 20 March 2006, a view of the scene was undertaken by the Court and those with leave to appear. The inquest commenced on 21 March and evidence was given over the succeeding three days. Sixteen witnesses gave evidence, 148 exhibits were tendered.

The evidence

I turn now to the evidence. Of course, I cannot even summarise all of the information contained in the exhibits and transcript but I consider it appropriate to record here the evidence I believe is necessary to understand the findings I have made.

Background

The parents of Mr Rhodes separated when he was quite young. He lived with his mother until he was 17, when he left home. He soon after moved from the Northern Territory, where they had been living, to Queensland where his father lived. His father was frequently in prison in Queensland and within a short time, Daniel joined him. Of course, I am reluctant to speak ill of the dead but it has to be said that Mr Rhodes had a terrible criminal history. By the time he was 20, he had convictions for drug offences, weapons offences, robbery and other offences of violence and dishonesty. He had served a number of prison sentences.

Throughout 2002, Mr Rhodes was in custody at the Capricornia Correctional Centre as a result of new convictions triggering earlier suspended jail terms. The last of these re-imposed suspended terms expired on 27 August and he was granted bail on some other outstanding charges on the condition that he live with his sister in Smithfield near Cairns.

It seems that Mr Rhodes did not comply with this condition as, within a day of his being released from prison he was found in premises suspected of being used to manufacture drugs in Rockhampton when police executed a search warrant. A week later Mr Rhodes is alleged to have stolen a Phoenix .22 calibre pistol from the partner of an inmate at the Capricornia Correctional Centre. By early October prison intelligence officers were aware that Mr Rhodes was frequently at a Bundaberg address where another former inmate resided. This information was passed on to police. The POLARIS computer system was updated to reflect the intelligence that Mr Rhodes was thought to have a concealable firearm and Bundaberg police officers were advised to be on the look out for him. The officer in charge of the Bundaberg Criminal Investigation Branch gave evidence that at the time of the shooting, an application was being prepared to have a specialist police unit come to Bundaberg from Brisbane to assist with the location and apprehension of Mr

Rhodes. However, neither of the officers involved in the incident were aware of any recent intelligence concerning Mr Rhodes, nor had they seen a photograph of him.

Events on the day of the shooting

Constable Ricky Lynch⁹ and Constable Robert Jorna were general duties officers stationed at Bundaberg who were rostered to work a 2.00 to 10.00pm shift on 7 October 2002.

At about 3.30pm, after attending to a number of routine matters that don't concern this inquiry, they were instructed go to a house at 17 Anderson Road to receive a complaint regarding a break and enter offence that had occurred at those premises earlier that day.

While there, they spoke with a neighbour who told the officers that earlier in the day, on two occasions, he had seen an early model blue Commodore sedan driving past the house that had been broken into. The neighbour considered it was being driven in a suspicious manner.

At about the time officers Jorna and Lynch were preparing to go to the break and enter job on Anderson Road, a kilometre so closer to the centre of town, Daniel Rhodes was visiting a person he'd met in jail. Rodney Knight lived in Griffith Street with his partner and their two children but when Mr Rhodes visited only Mr Knight and his friend, Colin Campbell, were home. Mr Knight says that when Mr Rhodes arrived at about 2.45pm, he asked if he could have a shower and borrow a change of clothes. Mr Knight knew that Mr Rhodes was in Bundaberg as he had stayed at the Griffith Street premises on a couple of occasions of late but he claims not to know where else he was staying or what he was doing.

In any event, he says that he readily agreed to the requests made by Mr Rhodes and got some clothes for him to change into. Mr Knight says that he and Mr Campbell then had to leave the house to collect his partner from work and his elder daughter from school. When they returned at about 3.15pm, Mr Rhodes was in the kitchen using a computer. He had apparently showered and was wearing one of the t-shirts Mr Knight had left for him but was still wearing his own jeans.

The four adults made small talk for a while until it was decided that they would all go into the city centre and to the child care centre where the younger Knight child was to be collected. So, Mr Knight, his then partner, Melissa Patterson, their daughter Alexandra, Mr Campbell and Mr Rhodes got into the Knight's blue Commodore sedan.

Mr Campbell was driving, Ms Patterson was in the front passenger seat, Mr Rhodes was in the seat behind the front passenger seat and Mr Knight sat in

⁹ This officer has since been promoted to the rank of Senior Constable but throughout these findings I shall refer to him by the rank he held at the time of the incident.

the rear passenger seat behind the driver, with his daughter Alexandra on his lap.

They had only travelled one block and turned into Ruddell Street when they came across Constables Lynch and Jorna, who were heading back to the station to write up the break and enter job. Messrs Rhodes and Knight were in a car that matched the description of the vehicle seen near the Anderson Street break and enter and the officers were mindful of the general instruction they had been given to “*prop and stop*” all vehicles and individuals that might be involved in an upsurge of property crime that was troubling the police division at this time. They therefore executed a U turn and followed the blue Commodore.

The driver of the Commodore, Mr Campbell, says he was simply taking the most direct route to the pawn shop they were heading towards and that required him to make a left turn, the next right and the next left turn in quick succession. It led the police to think that those in the blue Commodore were trying to avoid them and made the officers determined to intercept the vehicle.

Those in the blue Commodore were aware that the police car had turned around and was following them. Mr Knight and his then partner say they assumed the police were showing their usual interest in Mr Knight and he gave evidence that their vehicle sped up to “*put some distance*” between it and the police car. They all say that as the car approached the intersection of Burnett and Targo Streets, Mr Rhodes became quite agitated and insisted on getting out of the vehicle just after it turned left into Targo Street. They say that he was so anxious to get out of the vehicle that he didn't even wait for it to come to a complete stop and did not close the door. The Commodore then continued down Targo Street. There is some dispute among its occupants as to what if anything was agreed to concerning their being re-united with Mr Rhodes. Mr Knight says that they arranged for, or presumed, that Mr Rhodes would cut across the block by going through the yards of houses and that they would collect him on the other side of the block. Ms Patterson says that they agreed to meet him at the house of a mutual acquaintance nearby. Whatever the arrangement, the blue Commodore went to the end of the first block on Targo Street and turned left, left and left again so that they were, a minute or so later, back at the intersection of Burnett and Targo Streets. A lot had happened while they were away.

The police pursue Mr Rhodes

The police officers say that when they came to the same intersection and looked down Targo Street, they were surprised that the blue Commodore was not further down that street. It had been a full block ahead of them when they saw it turn into Targo Street, but when they got to that point it appeared to be just moving off and was only some 20 or 30 metres from the intersection. They also say that they saw a man dressed in dark clothes moving quickly away from the curb in the vicinity of where the Commodore had been.

They formed the impression that the man had gotten out of the blue

Commodore and Constable Lynch decided to try and intercept him. He directed Constable Jorna to stop the police car. It stopped a little more than a car length back from an alley way that runs off Targo Street about 25 metres from its intersection with Burnett Street. Constable Lynch saw Mr Rhodes rush down that alley.

After Constable Lynch got out of the police car, Constable Jorna drove into the entrance of the alley way. As soon as he did so, he saw the man we now know was Mr Rhodes coming back towards the car. Mr Rhodes had obviously discovered that there was no other easy way out as the alley ends in a car park and is surrounded by buildings and a high fence.

As Constable Jorna was getting out of the car, Constable Lynch arrived at the entrance to the alley way and came face to face with Mr Rhodes. He approached him and asked *"Did you just get out of the car?"* The man said *"No"* and pushed straight passed him and tried to move off. As he did so he dropped a magazine and a phone but made no effort to recover them. As Mr Rhodes pushed passed Constable Lynch, the officer turned around and grabbed the back of his t-shirt with both hands. Mr Rhodes immediately attempted to struggle free and in doing so slipped his shirt off over his head so that Constable Lynch was left holding only the shirt.

Mr Rhodes then made off down Targo Street back towards the intersection with Burnett Street but before he got very far, Constable Jorna, who had alighted from the police vehicle and run around the back of it, caught up to him and grabbed the belt loops of Mr Rhodes' jeans. Constable Lynch says that he was rushing to assist with the detaining of Mr Rhodes when he saw that Mr Rhodes had a pistol in his hand. He was moving to the left of Mr Rhodes and Constable Jorna who were predominantly facing down Targo Street towards Burnett Street, although they were also swivelling around as Mr Rhodes was attempting to dislodge Constable Jorna's hold on him and Constable Jorna was attempting to throw Mr Rhodes to the ground.

Constable Lynch says that he was two to five metres away from Mr Rhodes when he saw the gun in his right hand. He says that this caused him to immediately stop his advance and to begin to back away. At the same time he says he drew his service revolver and yelled at Mr Rhodes to drop his gun. Constable Lynch says that Mr Rhodes pointed the gun he was holding at him and then drew it across his own body, and pointed it under his left arm at Constable Jorna's head. On seeing this, Constable Lynch says he thought that either he or Constable Jorna were in immediate danger of being shot and so Constable Lynch fired one shot, aimed at the upper torso of Mr Rhodes in accordance with his police training with the intention of incapacitating him. He says he considers he had no other option by which to save Constable Jorna's life.

Constable Jorna gives a very similar account of the incident. He says as he was struggling with Mr Rhodes in the centre of Targo Street, he was bent over at the waist as he was being pulled forward while holding onto the belt loops in Mr Rhodes jeans. He says he heard Constable Lynch yelling and he then

saw that Mr Rhodes had a gun in his hand which was pointed at him around the left side of Mr Rhodes' body. He says this caused him to immediately release his grip on Mr Rhodes trousers and cover his face with his hands. He then heard a gun shot and sunk to the ground

At this stage both officers thought that Constable Jorna had been shot, either by the other officer or by Mr Rhodes. They quickly realized that this was not the case and looked up to see Mr Rhodes running around the corner into Burnett Street.

The officers say that they cautiously edged along Targo Street in the direction of Burnett Street so that they could see where Mr Rhodes was. They saw that he was prone, on the ground, some 20 to 25 metres from the intersection and they cautiously approached. As they were doing so they made radio contact with the Bundaberg communications centre and requested backup and an ambulance.

They continued to approach Mr Rhodes and they realised that he was seriously wounded. They also saw on the ground some three or four metres closer to the intersection the gun they say Mr Rhodes had previously brandished.

Eye witnesses to the shooting

A number of other people also witnessed the shooting. Their accounts differ in some significant respects.

Scott Fredericks, an employee of the Queensland Ambulance Service, drove onto the scene of the incident from the other direction in Burnett Street to that taken by the blue Commodore and the police car. He stopped at the intersection intending to turn right, which would have taken him through the scene of the struggle. Immediately he looked in that direction he saw the two police officers and a person we now know was Mr Rhodes.

He says he saw the two officers struggling with Mr Rhodes in manner that to Mr Fredericks seemed like they were trying to get his arms behind his back. Before they could do this, Mr Rhodes spun out of their grasp by turning his body and slipping out of his shirt.

Mr Fredericks says that very soon after this happened, when the two officers pursued Mr Rhodes onto the road, he saw Mr Rhodes had a pistol in his hand. He says that he saw Mr Rhodes point the pistol at the police; he "*did a broad sweep at the two officers.*"

In his interview on the day after the shooting Mr Fredericks said that on seeing the weapon in Mr Rhodes' hand both officers backed away from him drawing their guns as they did so. When he gave evidence at the inquest, however, Mr Fredericks was prepared to concede that one of the officers may still have had hold of Mr Rhodes when he produced the gun but he did not see him point the gun at that officer. He also conceded that it may have happened and he didn't see because it happened so quickly. He also qualified

his version in the interview by saying he was not sure if both officers drew their guns.

He says that one of the officers moved further down Targo Street away from the intersection yelling and swearing at Mr Rhodes. He says that Mr Rhodes then ran to near the intersection of Targo and Burnett Streets, on the other side of the intersection from where Mr Fredericks was watching. Mr Rhodes then again pointed his pistol at both officers in the same sweeping motion and at that point the officer who was in the outbound lane of Targo Street fired one shot.

In his interview, Mr Fredericks says that when the shot was fired, both officers were about 20 metres from Mr Rhodes. In evidence at the inquest he was prepared to reduce this estimation to 15 metres.

He says Mr Rhodes then ran down the footpath in Burnett Street leading Mr Fredericks to think that the shot had missed him. He then saw the officers moving cautiously up Targo Street towards the intersection, craning their heads to see around the corner. When he looked back at Mr Rhodes, he saw him stagger a few steps and then fall to the ground.

He saw the officers approach the prone figure of Mr Rhodes and then Mr Fredericks drove off. When he came back after making a U turn a block and a half away, he saw that the blue Commodore was at the intersection and that a heated exchange between its occupants and the police officers was unfolding. He therefore kept driving.

Sara Samuels was driving outbound on Targo Street, that is in the opposite direction to that taken by the blue Commodore and the police car, when she came across the incident.

She says that she saw a marked police car with its roof bar lights flashing. In the re-enactment she did with investigators the day after the incident she placed this car at the intersection of Burnett and Targo Streets on the southern side of Burnett street, that is the side furthest away from where the shooting occurred.

She says that two officers alighted from this vehicle and ran up Targo Street towards her, where they grabbed the person we now know was Mr Rhodes, as he came out onto the roadway. She saw the man and police struggle and Mr Rhodes' shirt come off.

She says that as soon as this happened Mr Rhodes backed away up Targo Street and the fatter of the two police men took out his gun and shot Mr Rhodes in the stomach or hip area. She saw a large amount of blood come from the resulting wound and a little later, as she drove away, she saw blood on his t-shirt which had been dropped onto the road.

She is adamant that Mr Rhodes did not have a gun in his hand at any time. The incident occurred right in front of her: he was facing her and had his

hands in front of his body and raised, near his head, as he backed away and was shot.

When interviewed Ms Samuels said that Mr Rhodes only ran a few steps after being shot before he collapsed, but in her re-enactment she indicated that he ran around the corner and as she drove off she saw him collapse onto the footpath in Burnett Street.

She says she had to drive up onto the footpath to get around the back of the police vehicle. It seems that when she gave evidence at the inquest her memory of where that vehicle was had changed, in that she now thought it was on the city side of the intersection but still across the road.

At about 4.30pm, on the afternoon of 7 October, Justin Tamaki was jogging along Burnett Street. He was on the southern side of the street. As he approached the intersection with Targo Street, he heard something like the sound of a car door slamming shut. Soon after, he saw a man run from Targo Street into Burnett Street on the other side of road, almost adjacent to where Mr Tamaki was running. He saw that the man we now know was Mr Rhodes had no shirt on and was running in an unnatural or awkward style. When interviewed, Mr Tamaki said he saw that Mr Rhodes had something shiny in his hand.

As Mr Rhodes rounded the corner and ran down Burnett Street, Mr Tamaki saw two police officers in the middle of Targo Street a short distance back from the corner. He saw that they both had their guns drawn and he heard them yelling for the man to stop. Mr Tamaki then heard what he thought was a gun shot – he described it variously as a loud pop or a loud clap. Mr Rhodes ran twenty to twenty five metres more and then collapsed on the footpath in Burnett Street. Just before Mr Rhodes collapsed, Mr Tamaki saw him drop something that he later realised was a gun.

He then saw the police cautiously approach the man on the ground and heard them using their radios to summon assistance.

The post shooting response

The first news of the shooting was heard over the police radio at 16hours 31minutes 27seconds. It advised that there was a man, armed with a gun, on the ground. It advised of the location and indicated that an ambulance was urgently needed. It said the man had been shot.

The first officer on the scene was Constable Darney. He says he was only a few blocks away when he heard the radio transmission referred to above. He said the voice making the call was screaming; it was extremely distressed. He went to the location on code 1 – lights and siren activated and at high speed. He estimates he reached the scene of the shooting within 20 seconds of the radio broadcast.

On arriving at the scene Constable Darney parked his police vehicle on

Burnett Street adjacent to where Mr Rhodes was lying on the footpath. He examined Mr Rhodes and noted an entry wound on his left shoulder blade. He looked on the other side of Mr Rhodes' body and could find no exit wound. He checked Mr Rhodes airway and noted frothy blood coming from his mouth. He observed Mr Rhodes take a number of convulsive gasps of air. He moved Mr Rhodes into the recovery position.

Constable Darney then turned his attention to Constables Jorna and Lynch. He says they were non responsive, visibly upset and shaking. Constable Lynch was saying repeatedly "*What have I done?*"

The blue Commodore then arrived at the intersection having come back up Burnett Street after circling the block. Mr Knight and Ms Patterson got out and were understandably very upset. They began abusing police and generally making a commotion.

Other officers arrived. The scene was secured, to some extent. Constable Darney stood guard over the pistol Mr Rhodes dropped until it was taken by a ballistics expert.

The ambulance arrived at 16.38. The para medics could not find a pulse and Mr Rhodes was not breathing. They performed emergency first aid by inserting an intubation tube and intervascular lines, together with an anterior chest drain. They utilised a defibrillator to try and re-establish a spontaneous heart rhythm. They rushed Mr Rhodes to the Bundaberg Base Hospital but he was declared dead on arrival.

Forensic evidence

Autopsy results

On 8 October 2002, Dr Ashby performed an autopsy on Mr Rhodes' body. She found:-

- There was a gunshot entry wound to the left scapula area 6 cm from the posterior axillary fold and 140 cm from the heel.
- There was no visible gunshot residue.
- The bullet had passed through the left scapula (shoulder blade), between lumbar ribs 5 and 6 and created a large ragged hole in the left chest wall.
- It has also left a lesion in the posterior aspect of the upper lobe of the left lung.
- The bullet has separated into two pieces as it has gone into the body; one part was recovered from the aorta, while the other passed through the medial aspect of the upper lobe of the right lung and lodged in the right pectoral muscle.
- The trajectory of the bullet was from behind on the left of the body diagonally across the body to its right side, somewhat forward and slightly upward.

- The fragment of the bullet retrieved from the right pectoral muscle was 144 cm above the heel.

In her opinion, the cause of death was internal haemorrhage as a result of a single gun shot wound.

Toxicological analysis of the blood of the deceased found amphetamine and methylamphetamine in the following concentrations:-

Amphetamine:	0.09 mg/kg
Methylamphetamine:	0.6 mg/kg

Cannabis was detected in the urine sample.

In the post-mortem examination certificate Dr Ashby stated that the level of methylamphetamine in the blood was at a “toxic-fatal” level.

Ballistics

An examination of the gun issued to Constable Jorna found that it contained 15 bullets in its magazine. That is the maximum that type of magazine could hold. The gun had not been recently fired.

The gun issued to and seized from Constable Lynch had one bullet missing; it contained 14 bullets in the magazine.

An examination of the projectile removed from Mr Rhodes’ body at autopsy showed that it was consistent with the type issued to QPS officers and markings on it were consistent with it having been fired by a Glock pistol such as those issued to the officers involved in this incident. However, the markings were not able to connect the projectile to Constable Lynch’s gun. Such a connection was able to be made with a spent cartridge case found on Targo Street near the scene of the shooting. However, it was damaged in a manner suggesting that it had been stood on or run over by a car and so its position could not be relied on for calculating where Constable Lynch was when he fired the shot.

The Phoenix .22 calibre handgun found near Mr Rhodes was also examined. It had six bullets in the magazine and one in the chamber. Both safety catches were in the fire position and the hammer was cocked. A ballistics expert gave evidence that the gun could come to be in this state in three ways: one, someone had activated the slide to insert a bullet into the chamber; two, the gun had been fired and not de-cocked afterwards, or three, there was already a bullet in the chamber and someone cocked the gun by drawing back the hammer with his finger or thumb. As it is most unlikely that Mr Rhodes would ride around in a car with the gun cocked and loaded while it was down the front of his pants, the first and third options seem the most likely explanation, meaning that the gun was cocked after Mr Rhodes got out of the car. As it wasn’t in his hands when he was first confronted by police he must have done this when he produced it during the struggle.

The ballistic expert also advised that the weapon had been subjected to amateurish repairs involving the fitting of hand fashioned grips to the sides of the handle. One of these had come loose as a result of one of the two screws required to hold the grip in position being missing. Also missing was the trigger disconnect, a component that is held in place by the hand grips. As a result the gun could not be fired in the normal manner. To cause it to fire, the operator would have to know to put pressure on another internal component while squeezing the trigger.

The prisoner referred to earlier who had reported that Mr Rhodes had stolen a Phoenix pistol from the prisoner's female partner was interviewed after the shooting. He gave a detailed description of the stolen gun that included the distinctive characteristics of the gun found at the scene of the shooting. He was shown a photograph of that gun and positively identified it as his and provided a plausible explanation for its modifications.

Findings required by s43(2)

I am required to find, so far as has been proved, who the deceased was and when, where and how he came by his death.

As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses, I am able to make the following findings.

Identity of the deceased – The deceased was Daniel Cory Rhodes

Place of death – Mr Rhodes died in Burnett Street, Bundaberg, Queensland

Date of death – He died on 7 October 2002.

Cause of death – Mr Rhodes died from internal haemorrhaging as a result of being shot by Constable Lynch

The committal question

In addition to the findings concerning the particulars of the death that I have just pronounced, I am also required by s43(2)(b) of the Act to find whether anyone should be charged with murder or manslaughter as a result of the death. That requires me to determine whether a *prima facie* case for such a charge is made out.

Section 291 of the Code provides that it is unlawful to kill another person unless that killing is authorised, justified or excused by law.

Section 300 *Criminal Code* states that “*any person who unlawfully kills another person is guilty of a crime, which is called murder, or manslaughter, according to the circumstances of the case.*”

There are various definitions of murder provided by s.302 of the Code. Most relevantly to this case, s.302(1) provides that a person who unlawfully kills another person with the intention of causing the death or doing grievous bodily harm is guilty of the crime of murder.

In this case there is an abundance of evidence indicating that Daniel Rhodes was killed by Constable Lynch. There is also compelling evidence that Constable Lynch intended to either to kill him or to do him some grievous bodily harm. The evidence of Constable Lynch is that he intentionally shot the deceased intending to incapacitate him. Further, the necessary intention can be inferred from other evidence on the basis that a person is held to have intended the natural and likely consequences of his/her act

Therefore, the only issue to be further considered is whether the killing was authorised, justified or excused by law. If it was, that is the end of the matter. If not, I must commit Constable Lynch for trial and allow the Director of Public Prosecutions consider whether an indictment should be presented.

There are three statutory provisions relevant to that issue in this case, namely s271 and s273 of the *Criminal Code* and s.377 *Police Powers & Responsibilities Act 2000*

Section 271, short-titled "*Self-defence against unprovoked assault*," provides that if a person is assaulted in such a way as to cause reasonable apprehension of death or grievous bodily harm, and the person reasonably believes that he can not otherwise protect himself from that, it is lawful for the person to use such force as is necessary for his defence even though that force may cause death or grievous boldly harm.

Section 273, short-titled "*Aiding in self-defence*", provides that in any case where a person could lawfully use deadly force to protect themselves, it is also lawful for any other person acting in good faith to use a like degree of force to protect the first person.

It is also important to note that s283, short-titled "*Excessive force*", provides that "*(i)n any case in which the use of force by one person to another is lawful the use of more force than is justified by law under the circumstances is unlawful.*"

Insofar as may be relevant to this case s377(2) of the *Police Powers and Responsibilities Act 2000* provides that where a police officer reasonably suspects a person is about to do something likely to cause grievous bodily harm or the death of another person and reasonably suspects he or she can not prevent the grievous bodily harm or death other than by using force it is lawful for the officer to do so even if the force is likely to cause death or grievous bodily harm.

I will now attempt to apply that law to the facts of this case.

Constable Jorna's evidence is that he believed he was about to be shot by Daniel Rhodes and that he would die. Constable Lynch gave evidence that he shot Daniel Rhodes because he believed that Mr Rhodes was about to kill Constable Jorna, and he believed there was no other way he could preserve Constable Jorna's life.

If each of these beliefs were held on reasonable grounds Constable Lynch is protected by s273 of the Code. If there is a reasonable suspicion that the use of fatal force was necessary to preserve Constable Jorna's life, Senior Constable Lynch is also protected by the PPRA provision.

There is no doubt that the two officers became involved in a violent struggle with Mr Rhodes near the intersection of Burnett and Targo Streets. There is also ample evidence that during this struggle Mr Rhodes produced the Phoenix pistol found on the ground near where he fell. That evidence is in the version of events supplied by Constable Lynch, Constable Jorna, Scott Fredericks, Justin Tamaki, Emma Egan and Jasmine Egan and supported by the evidence which explained how he came by that particular gun.

Sarah Samuels states that Mr Rhodes has nothing in his hands at the time he was shot. However, her account of events is so manifestly unreliable that little if any weight could be placed upon it. For example,

- Her description of where Constable Lynch and Constable Jorna's police car was parked is clearly wrong, as it is inconsistent with the photographs taken of the scene and with the evidence of Lynch, Jorna, Fredericks and Darney.
- Her description of this police car having its emergency lights activated is inconsistent with the evidence of Lynch, Jorna, Knight, Patterson and Campbell.
- She was adamant that the deceased was shot in the stomach or hip area, clearly indicating the front of the abdomen in her evidence, and there was immediately a lot of blood. This is clearly wrong as the evidence of Dr Ashby established.

I do not suggest that Ms Samuels is dishonest in her evidence. It is simply that she provides a stark example of how, after witnessing a fast-moving, traumatic incident, an apparently honest witness can be completely mistaken.

There is however, also conflicting evidence given by other witnesses concerning the level of threat posed by Mr Rhodes at the time he was shot that is relevant to an assessment of how likely it was that he was about to kill or maim Constable Jorna.

Constable Lynch and Constable Jorna give similar accounts of how the shooting took place. Constable Jorna had grabbed the belt loops of the deceased's jeans in an effort to swing him to the ground. The deceased was struggling in an effort to shake Jorna off. During this struggle Mr Rhodes

produced the pistol and pointed it at Constable Lynch, who stepped back. Constable Lynch removed his service pistol and yelled at the deceased. The deceased then pointed the gun around his body behind him at Jorna, who immediately let go of the deceased's jeans and crouched down covering his head with his hands. Constable Lynch then shot the deceased.

Scott Fredericks' supports the officers' version to the extent that he agrees there was an initial struggle with Mr Rhodes in which the t-shirt was removed, after which he produced a weapon and pointed it at the police officers. However in his interviews and re-enactments Mr Fredericks clearly has the deceased standing away from the police at that time, and the police moving back and away from him. He had the deceased waving his pistol from side to side towards the two police officers. The deceased then moved backwards to the corner of Targo and Burnett Streets, and pointed his gun at the two officers. It was this point that he heard the shot fired, and saw the deceased run down the footpath of Burnett St and collapse on the driveway.

On this version Constable Lynch may or may not have been justified in using lethal force but I don't need to decide that because during his evidence Fredericks made a number of important concessions. He said that:

- He may have been mistaken about the position of the police officers, and that one of the police officers may have been behind the deceased grabbing on to his jeans when Mr Rhodes produced the gun;
- The deceased may have pointed the gun around him towards the police officer behind him; and
- One of the officers may have yelled, "*Drop the fucking gun!*"

Fredericks was adamant, however, that the shot was fired when the deceased was at the corner of Burnett and Targo Streets. In his re-enactment of 8 October 2002 Senior Constable Lynch had the location where he fired the shot a little way back in Targo St. However, recently the diagram drawn by Lynch in his first interview on 8 October 2002 has been produced and it shows the position of Jorna and the deceased very close to the intersection of Burnett and Targo Streets, consistent with Fredericks' evidence.

In any event given the short space of time and the activity involved in the incident any discrepancies as to precise locations are of little concern.

Justin Tamaki's account on its face is inconsistent with that of Senior Constable Lynch and Constable Jorna. It will be recalled that his version in the interviews and re-enactment is that Mr Rhodes is shot when he is running down Burnett Street away from the officers. He was facing away from them and did not look back. The officers were, to use Mr Tamaki's words, "square on" to Mr Rhodes or a little to his right as he was facing away from them when he was shot. He is, in that version, posing no threat to either officer.

However the following aspects need to be considered. When Mr Tamaki first saw him, Mr Rhodes was running towards the corner “as fast as he could”, but “he had a bit of a strange running style...he just didn’t look natural.” He looked “awkward.” He told us this morning and demonstrated how Mr Rhodes was holding his left arm away from his body and not using it in running as an able bodied person would. Before Mr Rhodes had come into his view, Mr Tamaki heard a noise like the sound of a car door slamming. Mr Tamaki was prepared to concede that this first noise may have been a gunshot. He acknowledged that he assumed that Mr Rhodes was shot when in Burnett Street because it was there that he saw him wince and arch his back at the same time as Mr Tamaki heard a noise and saw the officers with their guns drawn and pointing at Mr Rhodes.

But what is crucial in my view, and would prevent a properly instructed jury from convicting Constable Lynch based on the evidence of either Mr Fredericks or Mr Tamaki is that their versions cannot explain the trajectory of the bullet, while the versions of the officers Lynch and Jorna can.

I am sure that the evidence of all of the witnesses are the results of genuine attempts at reconstructing a shocking, confronting and dynamic incident that they came upon without warning and that lasted probably less than a minute. They conflict with each other and are inconsistent with provable facts. However, I can see no basis on which a jury could reject Dr Ashby’s evidence gathered in the clinical setting of the mortuary. She said, and the photographs demonstrate, that the shot entered Mr Rhodes’ body in the left scapular region and traversed it from left to right while inclining towards the front of the body and increasing slightly in elevation. This was tested and confirmed with thin metal rods especially designed for this purpose that are inserted through the holes in the body made by the bullet.

The position of the entry wound is consistent with Constable Lynch being to the left of Mr Rhodes as he claims. The diagonal path of the bullet across and towards the front of the body is consistent with Mr Rhodes twisting his torso so as to point his gun under his left arm which would also result in his right shoulder dropping, accounting for the bullet coming to rest more towards the top of his chest than the entry point.

There is no evidence that when the officers first gave an account of the incident, they were aware of this medical evidence and so could have concocted a story to fit it, even were they capable of so doing.

It might be suggested that these are jury questions not to be decided by a coroner or a magistrate deciding whether to commit a person for trial and that I should leave it to the DPP to determine whether the matter goes to trial in a higher court. That is not my understanding of the law. In assessing whether a properly instructed jury could reasonably convict a magistrate presiding at committal proceedings or a coroner should have regard to the reliability of the evidence: Purcell v Venardos (No.2) [1997] 1 Qd R 317.

I therefore find that no one should be charged with any offence in connection with this death.

Police officers are not above the law. They are equally liable to be prosecuted if the evidence is sufficient but police officers are also entitled to the protection of the law, in this case that afforded by the self-defence provisions. When one has regard to how Constable Lynch came to be in the position he found himself in on the afternoon of 7 October 2002, no fair minded person could have any concerns about that. The incident that has been the subject of this inquiry harmed numerous people. Daniel Rhodes lost his life, his sister lost her brother. The officers involved were obviously traumatised and I am pleased to see that they have had sufficient resilience to continue with their careers as police officers. Their actions on the day in question demonstrate that they are well suited to the demands of the job. Ms Samuels says she has still not recovered from her involvement in it. I offer my condolences to all those affected.

Issues of concern, riders and recommendations

Pursuant to s43(5) of the Act I am authorised to make riders or recommendations designed to reduce the occurrence of similar deaths to the one investigated by this inquest. I do not consider that this sad death was reasonably foreseeable and therefore there is nothing, in my view, the authorities could have done to prevent it. It follows there are no riders or recommendations I could make.

I order that the documentary exhibits be retained by the Court, that the service handguns be returned to the Commissioner of the Police Service for re-issue and that the Phoenix pistol be given into the custody of the appropriate police officer for destruction. I order that the t-shirt worn by Mr Rhodes on the day of his death be returned to Mr Knight. I order that his mobile phone be given to his sister Abby Rhodes.

This inquest is now closed.

Michael Barnes
State Coroner
24 March 2006