



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: Inquest into the death of
Jason Paul PROTHEROE

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

FILE NO(s): 2012/1326

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27 May & 29 May, 2013

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Death in custody; shooting

REPRESENTATION:

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Family of Jason Protheroe:	Mr Sam Di Carlo (instructed by A.Ace Lawyers)
Constable Thomas Hess:	Mr Steve Zillman (instructed by QPUE Legal Practice)
Senior Constable Troy Weston:	Mr Glen Cranny (Gilshenan & Luton Legal Practice)
Mr Ian Leavers:	Mr Martin Burns SC (instructed by Gilshenan & Luton Legal Practice)
Constable Belinda Baker:	Mr Paul McCowan (McInnes Wilson Lawyers)
Queensland Police Commissioner:	Mr Ralph Devlin SC (instructed by QPS Solicitors Office)

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The *Coroners Act 2003* provides in s. 47 that when an inquest is held into a death in custody, the coroner's written findings must be given to the family of the person who died, each of the persons or organisations granted leave to appear at the inquest and to various officials with responsibility for the justice system. These are my findings in relation to the death of Jason Paul Protheroe. They will be distributed in accordance with the requirements of the Act and posted on the web site of the Office of the State Coroner.

Introduction

Late on the morning of 17 April 2012, two police officers went to a house in Ivor Street, Bracken Ridge looking for Jason Protheroe. When leaving the house after a consensual search of the property, one of the officers saw Mr Protheroe in the backyard. That officer spoke to Mr Protheroe and went towards him but soon rapidly retreated. Seconds later the same officer fired four rounds from his service firearm, two of which hit Mr Protheroe and killed him. That officer says Mr Protheroe drew a firearm and pointed it at him shortly before the shots were fired but another witness denied this. A replica pistol was observed near Mr Protheroe's body after the shooting.

These findings:

- confirm the identity of the deceased person, how he died, the time, place and medical cause of his death;
- examine the events which led to the deceased coming in contact with police immediately prior to his being shot;
- examine in detail the events that led to the decision by a police officer to shoot the deceased;
- consider the adequacy of the investigation into the death conducted by officers from the Queensland Police Service (QPS) Ethical Standards Command; and
- consider whether erroneous comments made to the media by the President of the Queensland Police Union of Employees (QPUE) shortly after the shooting had an actual or potential influence on the integrity of the coronial investigation.

The investigation

The investigation was conducted by officers from the QPS Ethical Standards Command (ESC) under the nominal oversight of the Crime and Misconduct Commission (CMC). A coronial report was prepared by the lead investigator, Detective Inspector Mark Reid, and tendered at the inquest.

The shooting occurred moments before 11.48am on 17 April 2012. Inspector Reid arrived at Ivor Street with other ESC officers at about 1.30pm to find an established crime scene delineated by an inner and outer cordon. A short time after the shooting a crime scene had been declared and Senior Constable Nellis Jackson assigned to the task of keeping a crime scene log. That log which was commenced in the notebook of Senior Constable Jackson shows the crime scene

was established at 11:59am. The inner cordon was formed around the boundary of 21 Ivor Street and an outer cordon established which encompassed all of Ivor Street. A command post was established in the outer cordon on the western boundary of 21 Ivor Street.

When Detective Sergeant Michael Jones, the Officer in Charge (OIC) of Carseldine Criminal Investigation Branch (CIB), arrived at 12:02pm, he spoke with Detective Senior Constable (DSC) Weston, the officer present when Mr Protheroe was shot, who gave him a summary of what had occurred. Detective Sergeant (DS) Jones told investigators that during this time Plain Clothes Constable (PCC) Hess, the officer who shot Mr Protheroe, was in the backyard but was not part of this conversation. DS Jones did not speak to PCC Hess until 12:07pm. At that time he seized the service weapons of PCC Hess and then directed him to sit in a police vehicle. This is the first time there had been a formal separation of the two officers involved in the incident. At 12:16pm DS Jones seized the service weapon of DSC Weston and directed him to sit in a different vehicle.

Between 12:45pm and 12:55pm the Regional Duty Officer, Inspector Paul Reynolds administered breath tests to PCC Hess and DSC Weston.

Forensic and scientific officers had been called to the scene and commenced their examination after Jason Protheroe had been declared deceased by paramedics at 12:35pm. These officers were supervised at the scene by the Regional Forensic Scientific Coordinator. All relevant areas at 21 Ivor Street and on a neighbouring property were photographed. Fingerprint analysis was conducted on various items found in the backyard of the property including a handgun found several metres from the body of Mr Protheroe. Swabs were taken from the handgun and various other items and later submitted for DNA analysis. The scientific officers examined Mr Protheroe's clothing and his body. A QPS ballistics expert examined 21 Ivor Street and neighbouring properties in an effort to detect any signs of impact from projectiles fired during the incident. A metal detector was used in an effort to find the projectiles. The ballistics expert inspected the firearms seized from officers Hess and Weston. He later examined the handgun found near the body of Mr Protheroe, finding it to be a metallic replica of a specific model of handgun.

A door knock of local houses commenced with preliminary statements being taken from residents.

At 1:45pm, a short time after their arrival, ESC investigators were briefed by DS Jones. Two ESC officers were assigned to liaise with the family of Mr Protheroe. They attended the Protheroe residence and conducted interviews with most family members. The Protheroe family consented to a search of Jason's bedroom and otherwise cooperated fully with the officers notwithstanding the awful circumstances in which they found themselves. This cooperation continued throughout the investigation as evidenced by the family supplying photographs of Jason to investigators in which he is depicted holding a handgun similar to that found near his body.

The occupant of the house at 21 Ivor Street was Krystal Sinn. She was in a relationship with Mr Protheroe at the time of his death and had witnessed the

shooting. After the shooting she was monitored inside the house by Constable Belinda Baker and later transported, with her two young children, to Boondall police station. The audio of that interaction was recorded by Constable Baker and a copy was tendered at the inquest. At Boondall, Ms Sinn was interviewed by an ESC officer. Officers Hess and Weston were also taken to Boondall police station.

Officers Hess and Weston were directed to supply urine samples and both were subjected to testing for gun shot residue. Both officers were interviewed by Inspector Reid and another ESC officer. They returned to Ivor Street the following day where they were again interviewed while conducting a 'walk through' of the scene. That day both officers consented to the provision of a DNA sample for comparison purposes and supplied the clothing they had been wearing at the time of the incident to investigators.

Inspector Reid oversaw further investigation which included, but was not limited to, the downloading of information from Jason Protheroe's mobile phone; the seizure of QPS training records pertaining to officers Hess and Weston, and the conducting of interviews with the brother and partner of Krystal Sinn at Wolston Correctional Centre (WCC) in relation to alleged threats made against Jason Protheroe.

Inspector Reid supplied the inquest with recordings of his attempts to contact Krystal Sinn in the weeks after the shooting. She was clearly reticent to engage with police (she had reasons for this which I will discuss later in these findings). It is clear that Stephen Protheroe, the father of the deceased, played an important and appropriate role in encouraging Ms Sinn to speak further to the ESC investigators. This resulted in her taking part in a further interview at the Protheroe residence and, on 29 May 2012, in a walk through interview at 21 Ivor Street.

Several criticisms of the investigation were made during submissions. The first relates to the use of leading questions by investigators during the interviews of Officers Hess and Weston. Mr Di Carlo submitted that no other member of the public could expect such favourable treatment when being questioned by police. Despite making much of this from the beginning of these proceedings and on many occasions during the hearing, in the lengthy and detailed oral and written submissions the most egregious example he could point to was the following: that in the initial interview with PCC Hess, Inspector Reid suggested to him that "...*you said the gun was black?*" when in fact no description of colour had previously been given.

In this context there can be no reasonable suggestion Inspector Reid was trying to improperly assist PCC Hess. The colour of the replica was hardly a matter of forensic importance because PCC Hess had ample opportunity to observe it after the shooting and had in fact taken a brief video of it on his phone.

I acknowledge that during the course of several hours of questioning some leading questions were asked. If used at crucial points within an interview, leading questions have the capacity to prejudice an investigation and give the appearance of bias. They are to be avoided if at all possible. I am not persuaded that in this case the incidence of leading questions in the interviews of Officers

Hess and Weston prejudiced the investigation. Nor do I consider they would cause an impartial observer to believe there was any deliberate attempt to assist the officers with their answers.

When assessing how officers are questioned, it is also relevant to note that unlike civilian witnesses or suspects who can decline to answer questions during a police investigation, police officers are compelled to do as directed or face disciplinary sanction.

The second criticism relates to the failure to seize the mobile phone of PCC Hess. An agreement was reached with PCC Hess and his solicitor during the interview at Boondall on 17 April 2012 that the officer would supply a download of data from the phone to investigators. Mr Di Carlo says that no such indulgence would be given to a civilian involved in a shooting. Mr Burns SC submitted that because police officers are bound by orders not to speak to each other subsequent to such an incident that the seizure of personal mobile phones is unnecessary. Inspector Reid seemed to be comforted by the knowledge we would be able to (and later did) obtain call charge records for the phone.

This does not take into account the other functions available on smartphones. As was the case with the personal mobile phone carried by PCC Hess, these phones are also cameras, video recorders and internet portals. These other functions might contain important evidence as was the case here because PCC Hess had commenced a video recording. Although it was inadvertently stopped by him shortly after he had begun taping, it was nonetheless important to corroborate his account that he had begun a 'personal walk through' at the scene shortly after the shooting. The availability of internet based messaging which would not show up on call charge records or even on an inspection of text messages, is another reason investigators ought to seize mobile phones in such circumstances.

The concern is valid, although there is no indication the failure to seize the phone in this case actually had any impact on the investigation.

The third criticism made relates to the lack of response to the appearance of the criminal history and mug shots of Krystal Sinn and Jason Protheroe in media reports in the days following the shooting. I will address this important issue later in these findings.

It was submitted by Mr Di Carlo, with few supporting particulars, that the investigation into this matter was biased, incompetent and incomplete. I reject that submission. I am readily satisfied all of the relevant information necessary for me to make my findings has been obtained. Outside of the specific criticisms addressed above, I consider the investigation to have been thorough and appropriately conducted.

The Inquest

A pre-inquest conference was held in Brisbane on 6 February 2013. Mr Johns was appointed as counsel to assist me with the inquest. Leave to appear was granted to the father of the deceased, Stephen Protheroe, the QPS Commissioner, the police officer involved in the shooting and his partner and the president of the QPUE, Ian Leavers.

A view of the scene of the shooting was conducted on 18 March 2013. The inquest commenced later that day and continued until 22 March 2013. It resumed on 13 May 2013 for a further four days with further oral evidence heard on the afternoon of 27 May 2013. Twenty-one witnesses gave evidence. All of the statements, records of interview, medical records, photographs and materials gathered during the investigation were tendered at the inquest.

The evidence

Social and medical history

Jason Paul Protheroe was born in Brisbane on 4 October 1975. He was the eldest of five children of Stephen and Valda Protheroe. After leaving Sandgate State High School in year nine he was employed in a number of labouring jobs and later, at times, worked for his father and brothers in their tree-logging business. It appears that Jason's drug use began in his teens. This coincided with apparent untreated mental health issues although a confused picture of these difficulties was presented to the inquest.

In an interview with police, Jason's parents recalled an incident where he had slashed his wrists and another where he had taken an apparent overdose of medication. They appeared to have different views on whether these two incidents constituted suicide attempts or were merely attention seeking behaviour. At the inquest Stephen Protheroe Snr rejected the suggestion that Jason had ever attempted suicide as a teenager or young adult. He confirmed that, to his knowledge, Jason had never been diagnosed with a psychiatric condition nor received any ongoing mental health treatment. Mr Protheroe did acknowledge when interviewed by police that Jason had presented to him as being suicidal at times although none of these extended to an attempt to take his life. The only clear evidence any such event did take place comes from records of the Brisbane City watch house on 18 December 2005. On that date Jason attempted to hang himself in his cell although he was prevented from doing so by watch house staff.

Anecdotal evidence available at the inquest was suggestive of a pattern of increased drug use during periods of relationship difficulty. This usually, if not exclusively, involved the use of amphetamines in the form of 'speed'. Examples cited included Jason's apparent depression and increased drug use at the age of 19 on the breakup of a relationship which had earlier resulted in the birth of his first child. The breakdown of Jason's relationship with the mother of his second child saw a similar pattern of behaviour. That occurred while Jason was aged in his mid-20s. The accounts of Jason's behaviour by those around him are supported by prison medical records in which Jason is noted to have attempted self-harm by 'slashing up' around the year 2000 and by taking an overdose in the early 1990's. In both cases, the reason given by Jason for this behaviour related to the breakup of relationships. The timing of these two incidents recounted by Jason corresponds to the breakdown of the relationships with the mothers of his two children.

In the early 2000's, Jason met Krystal Sinn through his youngest brother, Bradley. That commenced what was, for the most part, a plutonic friendship that was to last until Jason's death. The significance of this relationship will become evident.

Jason's adult criminal history stretched back to 1994 when he was aged 18. Over the following 19 years he was imprisoned on several occasions. The most recent period commenced following his sentencing to three years imprisonment on 15 April 2010 as a result of break and enter offences, breaches of probation and the resultant partial activation of earlier suspended sentences. Although he had been convicted of a number of assaults, nowhere in the long history of his interaction with police is there an indication he had a tendency to carry or use weapons. Certainly he had no history of using firearms for criminal or non-criminal purposes.

Jason is survived by his parents, sister, three brothers and his two children. It is evident Jason could avoid drug use for lengthy periods but he would inevitably relapse. His immediate family had become familiar with this pattern and had clearly learned what signs to look for in order to detect early signs of an impending descent into criminal behaviour. They had a pragmatic approach to his interactions with the criminal justice system, seeing no benefit in hiding his conduct from police. On the contrary, it was clear to Jason that his family would, properly, report his conduct to police. This is because they considered imprisonment, as well as having the effect of preventing ongoing criminality, was the only short term solution to Jason's drug use. I expect his family did this knowing that Jason was capable of significant periods of drug free, productive living. Jason's family, friends and even former partners speak warmly of his personality and his history as a loving son, father, brother and uncle. He was part of what is clearly a very close family. The nature of his death has understandably exacerbated the grief suffered by his family. I offer them my sincere condolences.

Events leading to the shooting

Release from prison

Jason was released from WCC on 15 August 2011 after 16 months in custody. He was to be subject to conditions of parole until the end of his sentence on 14 April 2013. Initially this required his attendance at appointments with his parole officer every three weeks. He was also liable to be subjected to random urine testing, although these only occurred in connection with his parole appointments and with sufficient regularity that it is likely Jason could predict when one was approaching.

Jason's parole officer, Janet Gates, told the inquest she was dreading having to deal with Jason when he was assigned to her as she had experienced difficulties getting him to comply with probation conditions on a previous occasion. To her surprise Jason began with a positive approach to his parole; he said he had changed and signalled intent to stay away from drug use and comply with his parole conditions. Ms Gates told the inquest Jason was initially true to his word. He passed two drug screens and attended appointments with her so that, on 8 December 2011, the frequency with which Jason was required to attend was changed from every three weeks to every four weeks.

In early 2012, Jason broke his arm. Until then he had been doing semi-regular work with his brothers and father as part of their tree-logging business. The injury put a stop to this and left him with much more free time. The assessment of Jason by his family was consistent with that of Ms Gates. Stephen Protheroe Snr

and two of Jason's brothers told the inquest Jason had been staying out of trouble and off amphetamines through the latter part of 2011 and early 2012. In each case they began to notice changes in Jason's appearance and behaviour around early April 2012 that led them to suspect he had once again returned to the use of drugs. They variously described him as being 'paranoid', 'on edge', 'spaced out' and as having lost weight in the weeks before his death.

After his release from prison in August 2011, Mr Protheroe lived with his parents at Zillmere. Increasingly, in the months prior to his death, he began to spend nights at the home of Krystal Sinn. His friendship with her had developed into a sexual relationship. Problematically for the future of their relationship, Ms Sinn had a long term boyfriend in prison at WCC and by April 2012 it was becoming apparent he would soon be released on parole.

Concerns about returning to prison

Ms Gates told police Jason had spoken of being 'terrified' of going back to prison. Pressed on this at the inquest she stated she had not questioned Jason further about the reason for his fear. She was adamant, though, that he expressed his concern in a way that stood out from the usual desire not to be returned to custody that most of her clients expressed.

Stephen Protheroe Snr and Jason's brothers, Stephen Jr and Stuart, told the inquest they had not noticed any such fear. Unlike Ms Gates, they were at least vaguely aware of the fact Ms Sinn had a boyfriend in prison but did not recall this being a source of concern to Jason. Ms Sinn recalls Jason being worried after missing a parole appointment on the day prior to his death but thought this was due to his expectation of her disapproving reaction rather than the possibility it might result in a return to custody.

Apart from the usual reasons one might wish to avoid incarceration, there was a more specific basis for Jason to fear a return to prison. In the period leading to the death of Jason, Ms Sinn's brother, Brenton Sinn, was imprisoned at WCC with her boyfriend, Craig Jessup. Brenton Sinn was in a relationship with Lindsay Davis who resided with Ms Sinn until late February 2012. It is evident that in early 2012 Mr Jessup had become aware Jason was spending more time with Ms Sinn and was unhappy as a result.

When interviewed by police following Jason's death, Mr Jessup was coy as to whether he had directed any threats toward Jason. He acknowledged Ms Sinn had told him in March 2012 that she had ceased all contact with Jason. This was presumably at his request. Police say after their formal interview with Mr Jessup he told them he had sought to pass on a message to Jason via Krystal that if Jason was to return to WCC he would be 'sorted out'. This is supported by the account of Brenton Sinn to investigators that he had asked his partner, Ms Davis, to make it clear to Jason and Ms Sinn that Mr Jessup was unhappy about their spending time together. He understood Ms Davis had made it clear to Jason, at his request, that Mr Sinn and Mr Jessup wanted to have 'a chat' with Jason when they were released on parole. At the time of Jason's death both Mr Sinn and Mr Jessup had applied for parole.

During a search of Jason's room after his death a handwritten letter was found addressed to 'Craig'. It is clearly intended for Mr Jessup and seeks to address his

concerns about the nature of the relationship between Jason and Ms Sinn. In the undated letter, signed 'Jason', the writer gives assurances that the relationship was platonic and that, in any event, contact has now ceased out of respect for Craig's wishes. The letter concludes with the writer wishing Craig 'good luck with parole'. Ms Sinn told the inquest she had become aware of the letter and asked Jason not to post it.

Investigators accessed the memory in Jason's mobile phone after his death which revealed a series of text messages between him and Ms Sinn. At the inquest, Ms Sinn acknowledged she had written the text messages set out in the table below on 14 April 2012 when she was particularly angry at Jason. An argument had arisen because Jason had falsely accused her of entertaining another man at her house; when he was in fact the boyfriend of a female friend who had come to visit. Text messages from the day before and the day after support Ms Sinn's contention that the argument was brief and quickly resolved. It is difficult not to conclude, though, that the contents of the messages from Ms Sinn would have enlivened any underlying concerns Mr Protheroe already had about confrontation with Mr Jessup in or out of prison. Aspects of the messages relate to the fact Jason had been allowed to borrow Ms Sinn's car but had failed to return it when asked. Mr Jessup confirmed when interviewed that he had told Ms Sinn not to allow Jason to use the car. It seems there were concerns the absence of the vehicle from Ms Sinn's property was being noticed by people who were passing the information onto Mr Jessup.

Ms Sinn told the inquest the messages below were written after she had begun to suspect (approximately a week prior to his death) that Jason had started taking amphetamines. In arriving at this suspicion, she drew on her experience of seeing the effect of amphetamine use on other friends.

Selected messages downloaded from phone of Jason Protheroe:

Date	Time	Message
14/4/12	17:15:47	When r u bring my car back spastic
14/4/12	17:21:44	U better bring that fkn car back n bring every fucking single phone u own cause I swear to god cunt I will destroy you if u keep up ur fucking shit. I havn't fucked no cunt n how dare u get on the phone n interrogate my daughter. Who the fuck do u think you are?? YOU'RE A DOG TELL CRAIG CUNT I DARE YA
14/4/12	17:30:48	U fucking psycho stalking maniac. I heard u walk up the back ramp last night n tap on the door I was on the lounge. I also heard the gate. Open n close. Ur a fucking piece of shit keep the fucking car tell Craig ur a bad stalker n that I apparently hooked up with old mate then u will have her boyfriend looking for u too. I don't give a fuck what you do u need help just stay the fuck out of my life
14/4/12	17:59:52	You win. Craig isn't going to call until Monday n I'm going to tell him. I will not let u break his heart. That will learn

		me for ever associating for you. And I swear on my kids lives wen I tell him about everything I will dedicate the rest of my life to ruining yours
14/4/12	19:24:23	Give me my house keys u putrid fucking grub. You fucking wait cunt. U just started a war
14/4/12	19:25:59	Wat do you think all ur Chines r gonna say wen u go back to jail n they all hear u broke the golden rule.

Ms Sinn was asked about the last message at the inquest:

Mr Johnscan you just tell us what you meant by that text message?
Ms Sinn: That was me being really nasty.
Mr Johns: "Chines" is slang for mate, is it?
Ms Sinn: Yeah.
Mr Johns: What's the "golden rule"?
Ms Sinn: He was associating with somebody's girlfriend while they were in gaol.

Contrary to the assurances given to Mr Jessup, the relationship between Ms Sinn and Jason had developed into a sexual one and contact between them continued on a regular basis up until Jason's death. Other text messages from earlier in April 2012 reflect an increase in the pressure being felt by Ms Sinn to break off contact with Jason before the impending release of Mr Jessup.

The replica pistol

A series of photographs was uploaded onto the Facebook page of Jason Protheroe in late February or early March 2012. They depict Jason, Krystal Sinn and Lindsay Davis in various poses. In each photograph one of them is holding what appears to be a pistol. These photographs were commendably brought to the attention of investigators by the Protheroe family as soon as they became aware of their existence.

Krystal Sinn told the inquest that the item in the photo was a toy gun that had been at her Ivor Street residence for a year or more. She said it was used over that period by her then three year old son and was likely handled by Jason on occasion but only ever to play games with her son. Ms Sinn denied any knowledge of how the pistol had come to be at the Ivor Street residence.

When initially approached by police, Lindsay Davis denied she was depicted in one of the photographs shown and claimed no knowledge of the gun depicted in the photos. She was approached again just prior to the inquest with a clearer photograph of her holding the gun. Ms Davis at that time acknowledged her presence at the Ivor Street house with Jason, Ms Sinn and what she also called a 'toy' gun on an evening in late February 2012. Ms Davis also claimed the gun was a toy used by Ms Sinn's son.

I have already noted in these findings that shortly after his death a replica pistol was found near the body of Jason Protheroe. The officer who shot Jason says it

was in Jason's hand at the time. There is no direct evidence linking the gun depicted in the photographs to the replica pistol found near Jason on the day of the shooting. At the inquest, I had access to the replica pistol found on the day of the shooting and to various photographs of it. It appears in many key respects to be identical to the gun depicted in the photographs uploaded to Jason's Facebook page. Ms Sinn accepted under examination from counsel assisting that the 'toy' gun could have been left on the lawn as a result of her son having played with it some time earlier. It seems though that she told Ms Davis shortly after the shooting while they were discussing the events leading to Jason's death that the 'gun was inside' at the time detectives came to search her house. I am satisfied the replica pistol found near Jason's body is the same pistol depicted in the photographs taken several weeks earlier. That means he clearly had knowledge of the existence of the replica pistol at the Ivor Street house prior to the shooting and had access to it.

Tavern Newsagency – Bracken Ridge

Although Jason's family had suspected his return to drug use before the weekend prior to his death, they had not observed any behaviour consistent with drug induced psychosis. They made particular note of seeing Jason at Stuart Protheroe's house on Saturday 14 April 2012. At that time he joined in celebrations for the birthday of his nephew. He played with his nieces and nephews and nothing about his interaction with family members on that day was considered unusual or raised concern.

The next day, things took a turn for the worse.

Paul Braidon is the proprietor of Tavern News at Bracken Ridge Shopping Centre. On Sunday 15 April 2012, he was working alone shortly before the usual closing time of 1.00pm when he noticed a man acting strangely around the entrance of the shop.

Mr Braidon initially feared the man was there to rob him but soon determined that he was 'obviously quite distressed about something'. The man asked Mr Braidon if he could wait inside the shop because there were approximately 10 people outside wanting to beat him up. Mr Braidon saw and heard the man using a mobile telephone to ask the person he was speaking with to come and pick him up. Mr Braidon asked the man to point out the people who wanted to beat him up. There were no large groups in the area. The man pointed to a group of four people who were standing in a nearby walkway and a couple pushing a supermarket trolley full of groceries. Mr Braidon formed the opinion these people had no apparent interest in the man. One had just been in his shop and another was to enter his shop a short time later. All appeared to be engaged in the unremarkable conduct one would expect of a shopper at a suburban centre rather than people seeking out another. Mr Braidon told the inquest that despite this he had no doubt the man he was speaking to was 'genuinely scared'. Mr Braidon approached police when he saw a photo of Jason on television after he had been shot. Although he considered the man in the shop was much skinnier than the photo used on television, he was nonetheless sure it was the same person and found his behaviour to have been sufficiently odd that he contacted police.

CCTV footage from the shop shows the man in question was Mr Protheroe. The footage is consistent with the account given by Mr Braiden.

On that afternoon, Stuart Protheroe was in a cinema at Chermerside with his wife and children when he received a call from Jason. Consistent with what he had told Mr Braiden, Jason advised his brother that, initially seven and then ten guys were going to 'bash him up' at Bracken Ridge Woolworths. Stuart left the cinema before the movie had finished, picked up his brother, Stephen and travelled to collect Jason. Stephen Protheroe Jr also took the information seriously later telling police it was unlike his brother to be scared. On the way to collect Jason, Stephen Jr contacted '000' to report the danger he understood his brother to be in and asked for police to attend. The incident had apparently also been reported to their mother, Valda, as she too made a '000' call.

On arrival at the shopping centre the brothers saw Jason who then got into the back seat. Neither of Jason's brothers could see any person who appeared to be after Jason. Obviously sensing their scepticism Jason said words to the effect, 'I know you don't believe me' but assured his brothers there were in fact people after him. He pointed to a man leaning against a car in the car park eating a pie. His brother Stuart said in evidence the man in question was showing no interest in Jason.

As they drove towards their parents' home, Jason asked Stuart to turn down several backstreets in an apparent attempt to avoid being followed.

Mr Braiden was asked about Jason being picked up by Counsel for Mr Protheroe:

Mr Di Carlo: And, indeed, as he went outside - or ultimately, a car did turn up?

Mr Braiden: Yes.

Mr Di Carlo: Do you accept that?

Mr Braiden: Yes. He darted straight out, opened the back door and laid along the floor with his elbows sort of on the seat, and then it went up, came back down, as it came back down, you could just see his eyes above the back window looking around to see if anyone was watching.

Mr Di Carlo: All right. I understand that. But the only thing he ever mentioned to you wasn't the fact that he was scared of everybody in the area, it was simply that he had a perception or at least he believed that there was eight or 10 fellows or persons after him and it related to some threat that he had received?

Mr Braiden: Well, he told me that he'd slept with one of their girlfriends.

As Stuart drove along Zillmere Road towards his parents' house Jason asked that he pull over. He told his brothers he wanted to get a 'Slurpee' from a nearby shop and would make his own way from there.

It was apparent to Stephen Jr and Stuart Protheroe that Jason was affected by drugs when they picked him up. In interviews with police and again at the inquest they described him as 'paranoid'. I find that he was experiencing some form of delusion which led him to wrongly consider that strangers who had no interest in

him were in fact planning to do him harm. It was reasonable for him to fear that associates of Ms Sinn's boyfriend may try and assault him but as a result of the effects of drug abuse, he exaggerated this risk and cast strangers as potential assailants with no sound basis for doing so.

On forming the view there was no danger to Jason and that he had likely imagined it as a result of drug use, Stephen Protheroe Jr called '000' again to cancel his earlier request for assistance. A recording of that call was played at the inquest and some of the more significant passages are set out below:

Stephen: Yeah. I just wanted to cancel that mate, it's, it's just a waste of time.

.

Mate, basically what happened is my, my other brother and I went around to, to see what was going on and, and the person in, that I'm talking about my older brother Jason is literally off his face on drugs, hasn't slept for probably a week and is out of his mind, paranoid and delusional...

.

Operator: Should he be out on his own do you think?

Stephen: what, what sorry?

Operator: You said he is a drug user, he's delusional and perhaps hallucinating I don't know, should he be out and about on his own?

Stephen: Yes extremely paranoid mate. He is, he's got a big issue for the police.

Operator: Ah, I am able - is anyone going to collect him, is anyone going to be with him UI?

Stephen: No, no we tried, we, we tried mate we really did but he, he is that paranoid he-he's jumped out of the car while we were trying, while we were driving and he just said look I've got to be alone and just every person that looks at him, every, every car they're all after him you know.

.

Stephen: He's not, he is not a violent person, he's never really hurt anyone.

Operator: UI criminal history. Okay.

Stephen: He, when he gets on the, on the speed he has massive, massive amounts that borderline sending (sic) him insane.

Stephen and Stuart told the inquest they were angry with Jason for having recommenced drug use. They were also concerned for his safety and worried about his propensity to commit criminal offences while in this state. It was their view the best place for Jason at this time was prison. In their experience Jason being taken into custody tended to be the only way in which he would cease drug use. Stephen, supported by Stuart, says he intentionally exaggerated his brother's condition during the second '000' call in order to increase the likelihood Jason would be picked up by police. To their mind his drug affected state might in itself constitute a breach of his parole conditions.

It was on this basis that Stephen Jr denied the accuracy of some parts of his description of Jason in the second '000' call when he gave evidence at the inquest. I accept his explanation.

Stolen cars and complaints to police

Later, on the afternoon of 15 April 2012 Mr Jason Protheroe stole a red Honda Civic from Darragh Street, Bracken Ridge and drove it to McPhail Street, Zillmere where his parents lived. His brother, Stuart lived across the road from their parents. Jason visited his brother Stuart who, at that time had already taken the precautionary step of transferring the keys for his vehicle to his parents' house. Based on past experience he knew they would need to be hidden from Jason if he was using drugs. Unbeknown to Stuart, another set of keys were in the kitchen and, shortly after a conversation between the two, Stuart noticed his own vehicle being driven away by Jason. Stephen Protheroe Jr happened to be entering McPhail Street at the time and saw Jason driving away. He and Stuart attempted to catch Jason but were unsuccessful. They correctly concluded the red Honda Jason had arrived in was stolen.

The Protheroe family reported their vehicle stolen to police and told police of the apparently stolen red Honda. Investigators later obtained Jason's mobile telephone from inside the red Honda.

Early the next morning, Monday 16 April, Jason returned the Protheroe family vehicle to McPhail Street and left a message advising that the keys had been left in the letterbox at his sister's nearby residence. Stuart attended Boondall police station later in the day to withdraw their complaint about their vehicle being stolen. He was advised the vehicle had been used in a suspected theft of petrol so the family needed to be aware of the possibility of being pulled over by police investigating this offence. CCTV footage of the alleged petrol theft was obtained and tendered at the inquest. It shows Mr Jason Protheroe travelling alone and, the theft aside, not acting in any obviously unusual manner.

Later on that Monday, Stuart received a phone call from a mobile telephone number that was unfamiliar to him. It was Jason ringing to seek a lift from Geebung. Stuart told the inquest he encouraged Jason to return to their parents' house and get some rest. He recalls Jason became accusatory at this suggestion believing the real purpose of having him return to their parents' house was so the family could 'call the cops on him'. Jason had missed a scheduled appointment with his parole officer earlier that day. A 'random' urine test was scheduled and although he had not been notified, it is likely Jason knew such a test was due. He would have known he would fail. The fear his family might 'call the cops on him' might reflect some element of paranoia resulting from his drug use and missed appointment. That said, the evidence of the Protheroe family is that they probably would have called police. On past experience there was a rational basis for Jason's concern. The phone call ended with Jason declining to be collected.

Jason somehow made his way to Krystal Sinn's house later that evening. She said she did not know where he had been earlier in the day but when he arrived he told her he had missed his parole appointment. This was clearly causing him a great deal of anxiety. Reproduced below is an excerpt of Ms Sinn's evidence at the inquest in relation to that evening:

State Coroner: Did you think he was affected by drugs when you saw him on Monday night?

Ms Sinn: I don't think he was high. I think he - it was the days after using drugs, if that makes sense.

State Coroner: Yes. It makes sense but explain to me how you could tell that?

Ms Sinn: Because of how - how uptight and stressed he was.

State Coroner: And in your experience he acts like that in the days after ingestion?

Ms Sinn: No, in my experience with other people that have been on drugs that - that's how I came to that conclusion.

Morning of 17 April 2013

Mr Protheroe's movements

Ms Sinn said when she woke at around 7.00 or 7:30am the following morning Jason had left the house. She says this had never occurred before; she does not know where he went and she did not see him again until the moments before he was shot later that morning.

The investigation has not established where Mr Protheroe went after he left Ms Sinn's house early in the morning, nor what he did or whom, if anyone, he saw.

Inquiries by police

PCC Thomas Hess commenced work at Carseldine CIB at about 8.00am. He found on his computer an email from Senior Sergeant David Richards¹. It directed an investigation be undertaken into the possible involvement of Jason Protheroe in the unlawful use of the red Honda Civic. PCC Hess spent around two or three hours examining the evidence related to the alleged offences and attempted to link them to others committed over the preceding days. He explained at the inquest that he was not solely focussed on this case as he was also required to attend to various other routine matters as they arose. About mid morning he rang the Chermside office of Queensland Corrective Services (QCS) as he knew Jason was required by the terms of his parole to report there regularly. He spoke to Janet Gates, the Probation and Parole Service officer who managed Mr Protheroe's case. She informed him Jason had missed his appointment the day before and was in breach of his parole conditions.

Although this seems like a reasonably sensible thing to do, Ms Gates told the inquest she had never had a detective contact her in relation to a client in similar circumstances. PCC Hess, on the other hand, said he did this so regularly he had the QCS office number as a speed dial on his phone. The family's submissions sought to elevate the duration and intensity of this initial investigation into something sinister. I do not accept that characterisation of the events.

¹ Coincidentally S/Sgt Richards had attended the address of Stephen Protheroe Jr on the evening of Saturday 14 April 2012. Stephen had reported a robbery of a service station near his house. In the course of his conversation with S/Sgt Richards the discussion turned to Stephen's concerns for his brother Jason and his fear that Jason was once again using drugs.

PCC Hess sought the assistance of DSC Troy Weston in his attempt to locate Mr Protheroe and to question him in relation to the alleged 'unlawful use' offence. DSC Weston travelled with PCC Hess to McPhail Street where they were approached by Stuart Protheroe and Stephen Protheroe Snr. The officers were invited into the house of Jason's parents where PCC Hess advised he was looking for Jason in order to question him about the suspected 'unlawful use' offence. Mr and Mrs Protheroe and Stephen Jr made every effort to assist the officers in finding Jason. They disclosed their concerns about Jason's behaviour and their suspicion he was using amphetamines. They gave details of Krystal Sinn's residence, advising that Jason was spending some nights there. Stuart Protheroe told the police he had last spoken to Jason the day before on a mobile phone number he did not recognise. He offered to call that number to see if he could contact Jason. When Stuart dialled the number it was answered by Krystal Sinn.

Ms Sinn advised Stephen (who had his phone 'on speaker' so the police officers could hear) she did not know where Jason was and had not seen him for a few days. She told the inquest she suspected the call was being made as a result of police making enquiries. I accept her account that, at this time she was still hopeful Mr Jessup would not find out about Jason having been at the house and lied in order to avoid the trouble dissemination of that information would cause. PCC Hess does not recall this phone call being made in his presence but I conclude it occurred.

The police officers left McPhail Street and went in search of Jason at the residence of Krystal Sinn.

I have considered whether Jason might have been warned police were on their way to Ms Sinn's house. It cannot be ruled out but I consider it unlikely. Certainly Jason's subsequent conduct meant that if he was warned he made little use of the information.

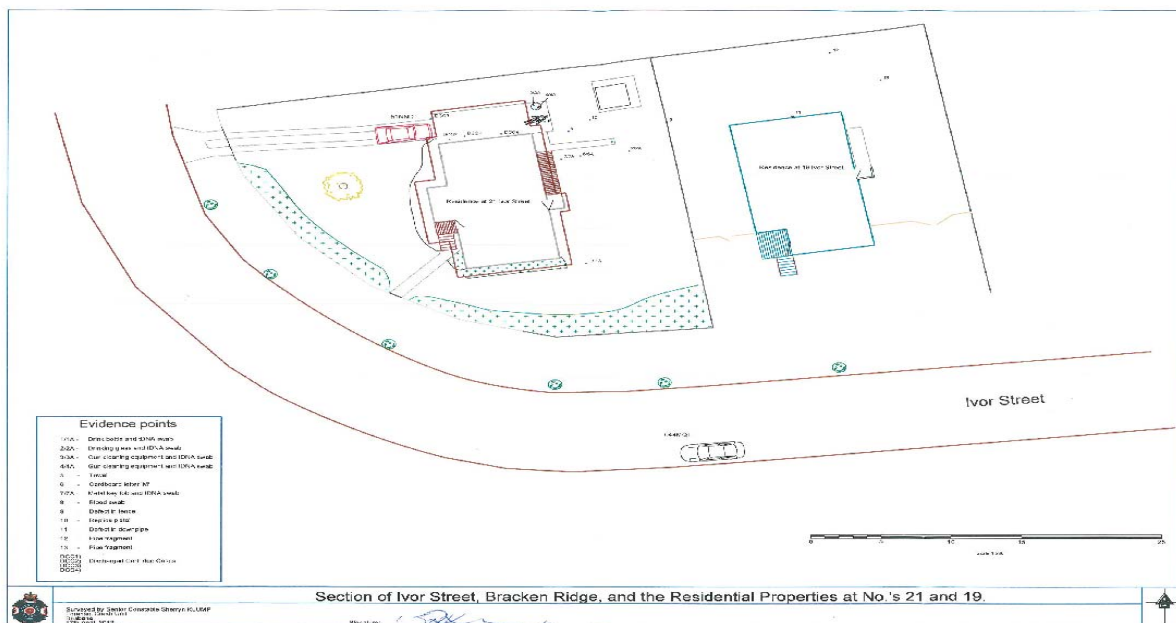
Events at Ivor Street

Krystal Sinn had been living with her two young children in the three bedroom house at 21 Ivor Street for nearly two years. An overhead representation of the property is included below. Notable features of the house are the ramp leading from the back door, and the carport on the northern side. At the time, this carport was wrapped by a shade cloth that formed eastern and northern 'walls'. Ms Sinn told the inquest the front door of the property remained permanently locked in order to prevent her young children traipsing dirt onto newly laid carpet in that part of the house.

On the morning of 17 April 2012, Ms Sinn had cleared the backyard of major obstacles in preparation for mowing the lawn. Many of these items, including a deflated jumping castle and various children's toys had been placed in the carport leaving it cluttered.

Just after 11:30am, Ms Sinn was alerted to the presence of someone near her property by the barking of her dog in the front yard. Walking to the front gate she observed two police officers she recognised by sight if not by name. The officers, Hess and Weston, made it clear they were seeking Mr Protheroe. Ms Sinn told them he was not on the property. They asked if they could conduct a search in

any event. Ms Sinn acceded to this request notwithstanding that she felt harassed by the officers' presence (and made this clear to them as they searched inside the house). After approximately five minutes inside during which the officers saw no sign of Jason, DSC Weston led his colleague and Ms Sinn out the back door of the house and onto the attached ramp.



Police confront Mr Protheroe

DSC Weston walked to the bottom of the ramp, went past the opening of the carport and then turned left, making his way westbound along the northern boundary of the carport. As he did this he could hear PCC Hess speaking with Ms Sinn.

As he reached the bottom of the ramp PCC Hess turned to his right and moved into the yard to have a further look around the backyard and underneath the ramp as he suspected Mr Protheroe might in fact be hiding there.

He said he walked a metre or two away from the house in an easterly direction when his attention was almost immediately drawn by a man he recognised as Jason, leaning casually against the south eastern corner of the house. PCC Hess said words to the effect 'We need to have a chat'. At this time Ms Sinn was still on the ramp - about half way down according to her, closer to the top according to PCC Hess.

She heard PCC Hess say these words, or similar, but from here the accounts of PCC Hess and Ms Sinn diverge. Ms Sinn says she turned to see Jason standing in the backyard several metres to the east of where PCC Hess placed him in his account – more like mid-way between the house and the back fence in the middle of the yard.

PCC Hess said he began walking towards Mr Protheroe, closing the initial distance between them by half to approximately five metres. Ms Sinn said PCC

Hess did not advance towards Jason to any significant degree. PCC Hess told investigators and the inquest that, without saying anything, Jason aggressively threw down a water bottle he had been holding and withdrew a pistol from under his clothing or from a pocket in his shorts or shirt. PCC Hess said he immediately formed the view it was a real gun pointed at him.

PCC Hess described his reaction in his interview with ESC investigators on the day of the shooting and again in a 'walk through' at the scene the following day. In the latter he recounted turning 180 degrees to his left and running for cover behind the north-eastern corner of the house. As he ran PCC Hess said he yelled the words 'gun, gun, gun, drop the gun'.

PCC Hess ran around the corner of the house and into the carport. He said that until he reached the corner of the house he had not even attempted to reach for his own firearm. When he saw Mr Protheroe draw the pistol and point it at him he said he immediately thought he was about to die. In his mind, Jason was someone likely to be under the influence of amphetamines and who had just drawn what he believed to be a real gun and pointed it directly at him.

PCC Hess took up position a metre or so inside the carport (near the northern wall of the house and 2-3 metres from the north eastern corner. He drew his service firearm and almost immediately saw Mr Protheroe round the corner still pointing a pistol at him. In his interview PCC Hess told investigators:

I'm in the garage, he's come at me with the firearm still pointed towards me. By that time I'd unclipped my, my catch, I, I drew my firearm, I fired a string of shots directly at him and then he, he, he fell down, he twisted and rolled and then I immediately run toward him, jumped over him and come back around, I was pointing it at him. Because I can't see anything, I can't see the gun at this point, I can't see his face....

Ms Sinn told the inquest that after PCC Hess spoke to Jason she turned to see him pull out the pockets of his shorts (so that the inner lining was showing). At this time she heard something drop to the ground and make a noise similar to that which she would expect to be made by something metallic such as coins. In her walk through interview she told investigators:

*Jason pulled out both of his pockets, ah something white which **now I know** is a water bottle on this side and keys or change, I thought it was change, it sounded like he was throwing it on the ground and then started walking towards the detective.(emphasis added)*

Counsel for the family relied on the proposition that Ms Sinn had seen Jason Protheroe throw the water bottle to dispute the account of PCC Hess that Jason had been very close to the house (and likely out of Ms Sinn's view) when this occurred. At no time, however, does Ms Sinn say she actually saw the water bottle being thrown to the ground. The passage above indicates she became aware of the water bottle's location later.

Ms Sinn said Jason then began walking towards the officer at a faster than normal walking pace but did not say anything.

Ms Sinn told the inquest, as she had investigators when interviewed, that Jason did not have anything in his hands as he walked towards PCC Hess. She was adamant she could not be mistaken about this as she had a close vantage point and unobstructed view of Jason as he walked past her position on the back ramp.

Ms Sinn recalled PCC Hess saying words similar to 'drop it' and said he retreated to a point near where the small circle is marked on the diagram above. This represents a circular brick BBQ that was there at the time. She was unable to recall on which side of the BBQ PCC Hess stopped.

Ms Sinn's account also differs from that of PCC Hess with regard to Jason's position at the time PCC Hess fired the first shot. She re-iterated that at this time, in her view, Jason was unarmed and had nothing in his hands. She recalls hearing the first shot and forming the view it had missed Jason. She remembered him turning to his right and, when demonstrating the movement to the court, indicated he began to lower his upper body in a 'ducking' or 'flinching' manner. Ms Sinn says it became evident Jason had been struck by at least one of the shots that followed as he stumbled a few steps forward, looked at her, made a groaning sound and fell to the ground. In this version Jason was 2-3 metres to the east of the position nominated by PCC Hess at the time he was struck by a bullet.

DSC Weston told investigators he was making his way along the northern side of the carport. He could hear PCC Hess talking to Ms Sinn and then he heard the other officer's manner change and he heard raised voices. It soon became apparent to him that PCC Hess was speaking to Mr Protheroe and, moments later, he heard his partner yell 'gun, gun, he's got a gun'.

He then observed, through green shade cloth screening the northern side of the carport, PCC Hess 'ducking and weaving' as he made his way into the carport. DSC Weston says he saw PCC Hess draw his service firearm and turn around. At the same time he saw Jason Protheroe '...run around the... corner of the house'. DSC Weston recalls PCC Hess '...yelling the whole time, he's yelled out again come, put the gun down'. DCS Weston says Mr Protheroe was still moving towards PCC Hess when he heard three shots.

DSC Weston told investigators (speaking about Mr Protheroe) '...he sort of, I don't know if he's got hit or he's appeared to try to jump behind the little concrete barrier thing and Tom shot a shot again as he's still – something's happened there like he spun around'.

Although he did not note it in his initial narrative of events to investigators, DSC Weston was adamant later in that initial interview and in all subsequent versions that, as he moved towards PCC Hess, Mr Protheroe had one of his arms raised and was pointing a black object towards PCC Hess. He told the inquest he presumed that object was a gun based on the words yelled out by PCC Hess, but was not in a position to say this with certainty.

Jason's movements as he was shot

I have set out above the account of Ms Sinn with regard to Jason's movements during the second or seconds during which PCC Hess was firing his weapon. That issue was also explored with the two police officers and below are relevant extracts from their interviews:

HESS: *Like he's gone down and, and there's, there's a big blast of like smoke and noise and, and the next thing I know he's, he's, he's down and he's facing that way um laying on his side. He's not -*

REID: *Okay. Do you recall which side he was laying on?*

HESS: *Yeah. He's laying ah left side down ah and he's not looking at me, I can't see his face.*

...
WALTON: *So how did he fall, to his left or to his right?*

HESS: *I've tried to recall that already. Um I really I'm not one hundred percent sure. I, I really, I just, I can see where he's, he's lying when I commence C-P-R but I don't, I, I, I'm not a hundred percent sure. Because I mean it doesn't, it goes um quite – it's not as si-simple like ah answer it's just like a hail of bang, bang, bang then he's gone down.*

...
REID: *When you talk about firing a string of shots explain to me what happened.*

HESS: *Um bang, bang, and he's then going down like that and by the time ...*

REID: *So you-you're indicating that he's –*

HESS: *I, I –*

REID: *- that he's ...*

HESS: *- I could, I could see that it was affecting, I, I could see that like he was, whether he was going down, whether he's ... yeah bang, bang, bang and then he, he's just gone down like that.*

REID: *So you're indicating that he's, he's dropping his shoulders. Where was the firearm during that ...?*

HESS: *In his, in his hand.*

REID: *Why did you fire more than one or two or three shots?*

HESS: *Well he's still standing there.*

REID: *Okay.*

HESS: *He was still standing there.*

REID: *So what's the purpose or what are you trained to do?*

HESS: *Yeah, to stop that threat, to stop him pointing that gun at me.*

...
WESTON: *And um I recall Tom shooting I think it was three shots directly at him as he was running towards him still because he wouldn't stop. Then he sort of I don't know if he's got hit or he's appeared to try to jump behind this little concrete barrier thing and Tom shot a shot again as he's still – something's happened there like he spun around.*

The officers gave similar accounts in their evidence at the inquest.

Accounts of neighbours

Elsie Armstrong lived alone at 19 Ivor Street, next door to Ms Sinn. She was walking home from the bus stop and had just entered Ivor Street from Shane Street when she heard a female voice saying the words 'Oh my God, oh my God, he's got a gun'. A moment later she heard two noises that she recognised as gun shots followed closely by another two gun shots.

Ms Armstrong gave evidence at the inquest and remained adamant the voice was female. At the inquest she contended that the gap between the two pairs of shots might have been as long as several seconds although in her initial interview with police she indicated the gap was much less; perhaps one second at most.

A short time after she heard the shots she saw a man fitting the description of DSC Weston walk to the end of the driveway and heard him say 'we need an ambulance' while talking on the phone. She also heard a female voice, which she believes was from the same person as the first voice she heard, yelling 'Jason, Jason' amongst other things she could not make out.

Lynette Tibbetts was alone in her house at 20 Ivor Street when the shots were fired. She was spoken to early on the afternoon of 17 April 2012 during a door knock. A more substantive interview took place later that evening. In her police statement and again in her evidence at the inquest, Ms Tibbetts said she heard a loud male voice say 'drop the gun, drop the gun' followed by at least three and maybe four gunshots in quick succession. She then went to her front window at which time she had a female screaming and crying. She was unable to see anything associated with the incident from her vantage point.

However, the record of her first account taken down during the early afternoon door knock states she heard the shots being fired before the yelling. The notebook statement records her version of events as:

At about a ¼ to 12 I was sitting in my lounge room on the computer when I heard 3 or 4 shots and then a male voice say "Drop the gun, drop the gun" then I heard a lot of screaming, the screaming went on for about 10 minutes.

That initial version of Ms Tibbetts is the only account that has a male voice yelling 'drop the gun', or in fact yelling anything, after the gun shots.

Steven Guth was in his house at 18 Ivor Street during the incident. He told investigators that he heard a male yelling and then heard three loud bangs which sounded like gun shots. He then heard a female screaming but could not understand what she was saying.

Katherine Bishop was in her lounge room at 29 Shane Street when she heard a high pitched voice coming from the direction of Ivor Street. She remembers that this voice lasted for around three seconds and agreed it could possibly have been a male voice under stress. After hearing this voice she heard five to six loud bangs in quick succession.

Leon Bradford was also at 29 Shane Street. He told investigators he heard a male voice shout in the way '...like you would at the end of an argument'. He then

heard a single gun shot followed by a woman screaming, then a pause of three seconds before hearing five shots in quick succession.

Carol Biviano was at 25 Shane Street and had seemingly observed Officers Hess and Weston enter the property at 21 Ivor Street from her front door. She says that a few minutes after this she heard some arguing (although couldn't make out the words being said) and then heard three 'pops'.

Aftermath of the shooting

As described earlier, as he was shot, Mr Protheroe twisted and fell to the ground. He came to rest lying on his left hand side, facing the back fence with his head and feet in a north south orientation respectively. Unable to see the firearm he had earlier observed, PCC Hess moved around to the east of the prone body of Mr Protheroe and called for DSC Weston to provide cover. Seeing the handgun on the concrete under Mr Protheroe's hand he reached in, grabbed it and flicked it behind him onto the grass a couple of metres away.

DSC Weston told the inquest he took up position near Mr Protheroe's head. He does not have a specific recollection of seeing PCC Hess clear the weapon and did not in fact see the weapon while he was covering Mr Protheroe until after it had come to rest on the grass some metres away. DSC Weston then called '000' on his mobile phone while PCC Hess attended to Mr Protheroe.

At this time, less than a minute and likely less than 30 seconds after the shooting, PCC Hess commenced an audio recording. That recording was played at the inquest. In it Ms Sinn can be heard screaming and crying while attempting to call '000'.

PCC Hess lifted up the clothing on Mr Protheroe's upper body and looked at his chest and torso before discovering the entry wound on the lower left hand side of his back. He then rolled Mr Protheroe onto his back and commenced CPR by exhaling air into Mr Protheroe's mouth from between his own hands and giving chest compressions.

A short time after commencing CPR he made a phone call to his supervising officer to advise Mr Protheroe had been shot. This was a very brief conversation. PCC Hess made no reference to Mr Protheroe being armed during this call, but I don't accept this indicates it was not the case. Contrary to the submissions made on behalf of the family, that was not crucial information his superiors needed at that stage.

The calls to '000' initiated by DSC Weston and Ms Sinn were made at 11:48am. A third '000' call was made by a neighbour at 11:51am. Queensland Ambulance Service (QAS) records show that two paramedics were dispatched at 11:51am and arrived at the scene at 11:55am. Those two paramedics recall seeing a black handgun lying on the ground a short distance from Mr Protheroe when they arrived. An intensive care paramedic arrived at 12:02pm with a further two specialist paramedics arriving at 12:14pm.

Prior to the first paramedics arriving two uniformed officers, Constables Belinda Baker and Ric Lee-Anderson had made their way to the scene. Constable Lee-Anderson was directed by DSC Weston to take over CPR which he did.

Constable Baker attended to Ms Sinn, taking her and the children inside the house. Both of those officers, who arrived at around 11:50am, saw a black handgun lying on the ground a short distance from Mr Protheroe.

Once relieved from performing CPR and finishing the '000' call that Ms Sinn was too distressed to complete, PCC Hess decided to record a video 'walk through' of what had just occurred on his mobile phone. That visual recording failed but most of this immediate account can be heard on the audio recording. Some of that account was overheard by DSC Weston who was in the vicinity and ultimately encouraged PCC Hess, seeing he was agitated and stressed, to stop the re-enactment.

DSC Weston provided a version of events to DS Jones when that officer arrived at 12:02pm. That version was repeated by Jones as part of his briefing to ESC staff. In that version of events DS Jones says he was advised by DSC Weston that during the incident, he had taken cover behind or beside the vehicle depicted in the diagram above. Were this the case it is unlikely DSC Weston could have seen the shooting. DSC Weston told the inquest that he thought about taking cover in that position and believes this is all he told DS Jones. He acknowledged that he might have inadvertently told DS Jones he had taken cover (rather than merely thought about it) but, in any event, he was adamant that at the time of the shooting he was standing on the northern side of the carport a little to the west of PCC Hess' position and had not moved to a position adjacent to the vehicle during the incident.

At 12.07 and 12:16pm respectively, Officers Hess and Weston had their service weapons seized and both were sent to wait in separate vehicles, each with another officer to assist with their welfare.

Intensive attempts to resuscitate Mr Protheroe continued until after 12:30pm by which time it had become sadly apparent he would not be revived. Paramedic David Wharton issued a life extinct certificate at 12:35pm.

Comments by child

Inside the house, Constable Baker was trying to calm Ms Sinn and her two young children. The eldest of the two children, a three year old boy (almost four) made a series of unprompted comments that were captured as part of the audio recording she commenced shortly after arrival. I am mindful of the age of the child and that the comments, for obvious reasons, remain untested by cross examination. I have, though, given them some weight in determining the origin of the replica handgun and the likelihood of Jason Protheroe carrying it on the day. Set out below are some of the relevant excerpts from the transcript of Constable Baker's recording:

Conversation at 1:10m into recording:

Child: "Jason , Jason bought a gun from the shops".
Baker: "Aye".
Child: "He did. He did so that, was that why your brother shot him"?
Baker: "No. I don't know what happened darling. What have you been doing today"?

Conversation at 2:50m into recording:

Child: "Do you know this, Jason he bought a gun from the shop".
Baker: "Jason's got a gun"?
Sinn: "Casey shut up"!

Conversation at 4:08m into recording:

Child: "I think Jason was pretending to be good, he was".
Baker: "Yes".
Baker: "Jason was being good".
Child: "He was pretending to be good".
Baker: "He was pretending to be good"?
Sinn: "(child's name)"!

Conversation at 20:21m into recording:

Child: "Tell your brothers Jason just bought a gun from the shop, shop. Tell them, tell them-"
Younger child: "Jason bought a gun at the shop".
Baker: "Did he".
Younger child: "Yes".

Conversation at 32:19m into recording:

Child: "Why did your brother shoot Jason? Why"?
Baker: "Don't know what happened darling. Aye".
Casey: "He did buy the, he did buy the, He did buy the gun, a gun like your one at the shop".
Baker: "Oh".
Casey: "Yes but it's not real".

Initial accounts of Ms Sinn

During the inquest an effort was made to analyse three conversations in which Ms Sinn was involved and which were recorded by Constable Baker. It is suggested by the investigating officer that these conversations evidence Ms Sinn failing to deny the proposition that Jason Protheroe had a gun in his hand when he was shot, supporting the conclusion that this proposition was true, and her subsequent denial unreliable.

The first conversation occurred approximately 20 minutes after the shooting when Detective Sergeant Adam Bennett entered the house to speak to Ms Sinn:

DS Bennett: "Do you know about Jason being armed, you know he had – did you know he had a gun?"

DS Bennett: "All seriousness Krystal. No."

When asked a year later, at the inquest, DS Bennett said Ms Sinn had not responded to his question. Conversely, Ms Sinn said she shook her head. The manner in which the officer can be hard to say 'No' does not help resolve this conflict. It is not clear if he said it as a question because she had not responded, or had shaken her head to indicate 'No' or as a statement confirming that she had denied knowing Mr Protheroe was armed.

The second is a telephone conversation in which Ms Sinn can be heard speaking to one of Mr Protheroe's brothers. This portion of the recording is very difficult to decipher because Ms Sinn can only be heard in the background when there is no interfering sounds in the foreground.

SINN: He's fucking dead.
SINN: The police did shoot him he's dead. [Emotionally upset].
SINN: The police just shot Jason, he's dead. [Emotionally upset]
SINN: UI looking for him and he wasn't here.
SINN: UI, he came in the gate when they were leaving.
SINN: They're taking me away.

Too much of the conversation is indecipherable for it to be established that Ms Sinn did not talk about whether Jason had a gun.

The third, and most closely analysed, conversation was between Ms Sinn and Stephen Protheroe Jr. It occurred while Ms Sinn was seated in the rear of a police vehicle outside her home. At her request the driver of the vehicle, Senior Constable Steven Moye, pulled over so she could speak to Jason's brother Stephen:

Stephen Jr: Is Jas alright.
Sinn: He's dead.
Male Officer: Yeah you just need to do what you need to do.
Stephen Jr: How do you know he's dead.
Sinn: Because they just told me they fucking shot him.
Stephen Jr: Was, was he armed?
Sinn: They came over to search the house and he wasn't there and they were just leaving and [emotionally upset]
Stephen Jr: So is he dead or not?
Sinn: He's ... he's [emotionally upset].
Male Officer: UI.
Sinn: Could you let me speak to him please. Please.
Male Officer: We're, we're, we're going to take you to Boondall.
....
Male Officer: Yeah obviously an incident's occurred and Jason, Jason has been shot.
Stephen Jr: Is he alive?
Male Officer: No he's not.
Sinn: [Emotionally upset]
Stephen Jr: Is he dead?
Male officer: Yeah.
Stephen Jr: UI.
Male Officer: We have to, we have to take Krystal to, to –
Stephen Jr: UI.
Male Officer: - to Boondall, to Boondall Police Station. Krystal's going to be taken to Boondall Police station.
Sinn: He wasn't even fucking there.
Stephen Jr: Was Jason armed?

Male officer: *Obviously because ... Mate I don't know, I wasn't here.*

Stephen Jr: *Was he armed Krystal?*

Male officer: *Okay. So we, we just need to go.*

Stephen Jr: **UI.**

Male officer: *Alright.*

Stephen Jr: *Okay mate, so yeah.*

It is suggested a close listening of the tape recording of the section transcribed above in bold and marked 'UI' (unintelligible) in fact records Stephen saying 'He was armed'. At the request of counsel assisting an attempt was made to enhance the recording. Even after that was done, I could not understand Stephen's response. However, even if it is as claimed it is not clear whether it was said as a confirmatory statement or a further question.

Ms Sinn and Mr Stephen Protheroe Jr both claim to recall Ms Sinn shaking her head to indicate the negative in response to the question of whether Jason Protheroe was armed.

The inquest also heard evidence from Constable Baker who claimed that while seated in the front passenger seat, she had seen Ms Sinn nod her head to indicate a positive response when asked that question. She says this did not form part of her original statement due to her inexperience (it was her first ever police statement). She provided a copy of the recording she had made to ESC investigators and then had not followed media coverage of the case closely enough, she said, to appreciate the significance of this new evidence.

Senior Constable Steven Moye was the driver of the vehicle. He is the 'male officer' in the transcript quoted above. He then heard Stephen Protheroe ask Ms Sinn if Jason had been armed but did not hear any verbal response and did not see if she made any other gesture by way of response. He claimed he heard Stephen Protheroe Jr. say 'He was armed'.

At the inquest Counsel Assisting questioned SC Moye about how this statement was said. He agreed with Counsel Assisting that such a comment could be made by way of a statement of fact; perhaps confirming what Mr Protheroe understood from the response (verbal or otherwise) of Ms Sinn, or it could be said in the form of a question; perhaps as one might to someone who had not responded to an initial enquiry. SC Moye says he wasn't in a position to distinguish between either of those possibilities.

Recordings of the interactions between ESC investigators and the Protheroe family only an hour or two after this conversation indicate a clear understanding on the part of Stephen Protheroe Jr. that Ms Sinn had indicated to him that Jason was not armed when he was shot. The contemporaneous and convincing nature of Stephen's belief at this time leads me to accept he honestly believed Krystal Sinn had conveyed to him information to the effect that Jason was not armed.

I am not satisfied this conversation or the two earlier conversations should be given much weight in determining the reliability of Krystal Sinn's account.

However, it is surprising Ms Sinn did not make a more definitive statement that Jason was unarmed when he was shot, if that was indeed the case. Similarly, I would expect her to have been demanding an explanation for what would have been clearly unlawful acts of the most serious kind had she witnessed police shoot her boyfriend without any justification. Her explanation that she was too distressed is not consistent with her having sufficient composure to intervene when her son was disclosing to a police woman details of Jason's acquisition of the replica gun and her capacity to give an account of events to Jason's brother over the phone and in person.

Investigation findings

The breath and urine tests conducted on Officers Hess and Weston showed that neither was affected by alcohol or illicit drugs at the time of the shooting.

Forensic testing established the presence of DNA belonging to Jason Protheroe on the replica pistol and the water bottle found in the yard at 21 Ivor Street. No DNA profile for Thomas Hess could be identified in the sample taken from the replica pistol. No identifiable fingerprints were located on the replica.

It has been submitted that the absence of DNA identifiable as that of Thomas Hess discredits his version of having picked up and thrown the replica pistol. Counsel for the family cites *Lockhard's theory* in this context stating:

Essentially this theory is suggesting that if Hess' version is to be believed, Hess' fingerprints and DNA (would need) to be on the gun. This is extremely difficult for Hess' version of handling the gun to be believed.

Lockhard's theory is not authority for the principle that DNA or fingerprints of a particular individual will be left on a particular object once a person has touched it. It is focussed primarily on the principle of the inherent infallibility of that evidence once left – and that the failure of any such evidence to reveal its true significance lies in 'human failure to find it, study and understand it'.

Sergeant Mark Meara is a scientific officer who conducted an examination of the scene on the afternoon of 17 April 2012. He told the inquest his initial task was to clear and inspect the Glock service pistols of Officers Hess and Weston. The weapon of Hess was found to have one round in the chamber and nine rounds in the magazine. This indicated to him on the day that up to five rounds might have been fired given the maximum capacity of 15 rounds. PCC Hess later told the inquest, as he had investigators, that it was his practice to only fill the magazine with 14 rounds in order to protect the spring.

Of significance during his examination of the body was Sgt Meara's observation that the pockets of Mr Protheroe's Adidas shorts were not pulled out. He undertook the process of pulling them out to inspect the contents and found a tube of *Polident*. He inspected the other clothing belonging to Mr Protheroe and collected a white hooded jumper, black t-shirt and black baseball cap for further analysis. A later examination of the jumper revealed a black Toyota brand key in the front right pocket.

Sgt Meara found three discharged cartridge cases in the carport near the wall of the house and a fourth just outside the carport next to the concrete slab on the north western corner. He did not locate any ricochet or impact marks within the carport. He did locate a perforation (hole) in a paling of the fence dividing 21 with 19 Ivor Street, on the eastern side of Ms Sinn's property. A search of 19 Ivor Street revealed perforations through either side of a sewer vent stack. These perforations were tested for the presence of copper or lead. The perforation in the fence was positive for lead and inconclusive for copper and the first perforation in the sewer stack was positive for both.² The projectile causing these perforations was not found and nor, despite extensive searches, was the fourth projectile. A search of the brick walls of the house at 19 Ivor Street revealed a number of marks. None were obviously impact marks and on testing none were positive for lead or copper.

On 17 April 2012, Sgt Meara ran a stringline between the two holes in the sewer stack and the hole in the fence. This stringline extended in a westerly direction through the carport at 21 Ivor Street. It indicated that, if the holes had been caused by the same projectile, that it had travelled on a slightly downward angle.³ The height of the stringline was found to be 152.1cm on the eastern side of the carport and 160.1cm at the western extremity.

A search of 19 and 21 Ivor Street with a metal detector failed to reveal any projectiles or further cartridges. An examination of the two projectiles removed at autopsy linked them, through a series of test firings, with the Glock assigned to PCC Hess.

Sgt Meara's examination of the replica pistol showed it had no firing pin or breech face and was incapable of firing. It was metallic, had a removable magazine, moving slide, trigger and hammer. Sgt Meara told the inquest that the replica resembles the size and design of a *Walther* model PPK semiautomatic pistol.

Perforations in the jumper and t-shirt of Jason Protheroe could be matched to the location of the two projectile entry marks on his body. Less explainable was damage to the black Nike baseball cap found near his body. Sgt Meara agreed that the damage to the cap could have been caused by the passage of a projectile from the Glock of PCC Hess but considered it unlikely. In his experience the nature of the damage was not consistent with that he had previously observed as a result of impact or grazing from projectiles. A test of the presence of lead at the site of the damage was negative.

Subsequent to his examination at the scene Sgt Meara conducted a series of experiments to assist his investigation. The first of these involved PCC Hess undergoing a filmed repetition of his taking up a firing stance. This resulted in a finding that PCC Hess held his service weapon at a height of between 150cm and 161cm when standing. It has been submitted that this experiment involved 'Hess being told how to stand to reach desired results'. This is not the case on

² Sgt Meara explained that the test for the presence of copper relies on a chemical reaction revealing a green discolouration. This is difficult to see on already dirty surfaces

³ Sgt Meara told the inquest that he was satisfied the holes had been caused by the same projectile. His reasoning was that the projectile which travelled through the fence paling, on any version of the witnesses, must have struck the house at 19 Ivor Street at some point. An exhaustive examination failed to show any other impact marks.

my viewing of the experiment. Obviously it is only useful to the extent that PCC Hess gave evidence that he took up his usual firing stance when firing four shots. That evidence might be challenged for many reasons but it is incorrect and unfair to submit that the experiment of Sgt Meara sought to reach a pre-determined outcome.

A second experiment caused great confusion during the inquest but was simple enough in its aim.

Sgt Meara had, by August 2012, been made aware of the version of Krystal Sinn to the effect that PCC Hess was not in the carport at the time the shots were fired. She placed him further to the north and east than where PCC Hess says he was.

Although the stringline test could not assist in determining how far along an east - west projection the shooter was when the shot that made the holes was fired, it could assist in determining any deviations to the north or south of that line. Placing the shooter to the north of a straight line starting at the vent pipe, passing through the hole in the fence and extending back towards the carport (as per Krystal Sinn's version) requires the projectile to have deviated to the left as it struck the fence paling and/or the bush that was behind the paling on the day, in order for it to go on and strike the pipe.

An extensive series of tests conducted by Sgt Meara using similar branches and sections of palings from the actual fence at 21 Ivor Street led him to a series of findings. These findings relate simply to the probability or otherwise that a shot could be fired from varying points to the north of the straight stringline and still make the three perforations found in the fence and sewer pipe.

First, it was found it was more likely a projectile would deviate to the right rather than the left when passing through the fence palings. Second, the results showed a decreasing probability of the shooter being at points north of the straight stringline up until a maximum deflection of 6.36 degrees at which time the probability of the shooter being so positioned becomes extremely remote, approaching nil. If the position nominated by Krystal Sinn in her walk through interview and again at the inquest as the point where PCC Hess began firing is correct, it would require the projectile to have deviated at least six degrees and, more accurately, seven degrees or more. In this respect, it is important to note the stringline only reflects the passage of one of the four projectiles shot by PCC Hess and that Ms Sinn, on her own account, took her eyes off PCC Hess after the first shot had been fired.

Another experiment conducted by Sergeant Meara involved an examination of the positioning of cartridge casings ejected from the Glock of PCC Hess. Although this showed the location in which they were found was consistent with the positioning of PCC Hess on his account, the significant number of obstacles and other variables impacting on the possible resting places of these cartridges on the day diminish the utility of the experiment for the purpose of these findings. That the experiment is of limited assistance is highlighted by the positioning of the fourth cartridge case referred to above. Sgt Meara explained the positioning of this cartridge case (behind and to the left of where PCC Hess says he was positioned) by the likelihood of it having bounced off the northern wall of the

house so as to change its initial trajectory. I accept this is a rational explanation but it is only one of several for how that particular cartridge came to be there. Another, for instance, is that the firing position of PCC Hess had changed when he fired that shot in relation to the other three.

Finally, a series of tests were conducted using similar material to the white jumper worn by Jason Protheroe to determine the likely range at which PCC Hess' Glock would deposit gunshot residue. The effect of this test was to show that at a range of 1.5m, residue would almost certainly be present while at 2m or further it would be very unlikely. An examination of the white jumper worn by Jason Protheroe did not reveal any gunshot residue, suggesting he was more than 2m away from PCC Hess when shot.

A search of the yard at 21 Ivor Street revealed a number of items including a set of keys apparently connected to the damaged key ring found in the pocket of Jason Protheroe's jacket. Of concern to the family of Mr Protheroe was evidence of coins being found outside the property adjacent to 21 Ivor Street. This appears to have been given more significance than it deserves because of the evidence of Krystal Sinn that she heard a noise like change falling out of pockets during the encounter between Jason Protheroe and PCC Hess. I am satisfied this is a coincidental finding and has no link to the events with which this inquest is concerned.

The examination of training records by Inspector Reid established that both Officers Hess and Weston were compliant with QPS training requirements for the Glock service pistol. PCC Hess had undergone his most recent training within the week prior to the shooting.

Autopsy results

An autopsy was undertaken on Mr Protheroe's body by an experienced forensic pathologist, Dr Beng Ong, on the morning of 18 April 2012.

A CT scan was conducted as part of the autopsy examination. Samples were taken for histological and toxicological examination.

Dr Ong identified two gunshot wounds which he described as follows:

1. An ovoid entry gunshot wound with operation margin on the outer back of the left upper arm in the shoulder region, 25.5 cm left of midline and 140 cm above the heel. The perforated whole of the gunshot wound measures 0.5 (vertical) x 0.8 (horizontal) cm while the entire wound inclusive of the operation margin measures 0.7 (vertical) x 1.2 (horizontal) cm. there are no stippling, sought or gunshot residues.

The gunshot trajectory is from left to right in a slight downward direction with little anterior or posterior deviation. It has tracked through the axilla (armpit tissue) and enters the chest cage by fracturing through the outer aspect of left fifth rib (fracture fragments deviated inwards), then perforates the posterior aspect of the upper lobe of left lung before fracturing the anterior bodies of T5 and T6 vertebrae and in the process lacerating the thoracic

aorta. It then continues to perforate the posterior aspect of the upper lobe of right lung before exiting the thoracic cage through the outer aspect of the right fourth intercostal space.

2. A circular entry gunshot wound with an abrasion margin on the right lower back, 8.5 cm right of midline and 108.5 cm above the heel. The diameter of the perforated whole is 0.8 cm with the abrasion margin figures being 0.2 cm. There are no stippling, soot or gunshot residues.

The gunshot wound has tracked slightly upward to the left and front (anteriorly). It....lacerates the inferior vena cava, and perforates the liver through the lower aspect of the right lobe before traversing the peritoneal cavity.

In both cases the projectiles were found within the body.

Dr Ong identified and documented a number of bruises on the forehead, abdomen, thigh and lower legs. He otherwise found no other signs of recent injury.

Dr Ong opined that both gunshot wounds were of a 'distant type' on the basis that he could detect no gunshot residue or propellant. He acknowledged that test firing (as conducted by Sgt Meara) would be required to determine a more accurate distance.

Dr Ong stated that most of the bruises identified were of different colours indicating that '...they were inflicted remote from the current incident'. He found that no natural disease could have caused or contributed to the death.

Toxicological results showed no alcohol was present but that amphetamine and methylamphetamine were present in concentrations of 0.02mg/kg and 0.13mg/kg respectively. The possible significance of this in regard to the behaviour of Mr Protheroe is addressed below but, once shot, it played no contributory role in the cause of his death.

Dr Ong issued an initial autopsy report on 7 August 2012 in which he found the cause of death to be:

1(a). Multiple gunshot wounds

In the *Summary and interpretation* section of his report, Dr Ong wrote:

10. Without further information, it would be difficult if not impossible to interpret and reconstruct how these shots were sustained in the circumstances as described in the Police Form 1.

Meeting with investigators

On 23 August 2012, Dr Ong held a case conference with ESC investigators, Inspectors Reid and Kajewski and as result issued an amended autopsy report in which the *Summary and interpretation* section had added to it the following paragraphs:-

12. A case conference was held with Insp. Howard Kajewski and Insp Mark Reid from the Ethical Standard Command on 23 August 2012. I was shown highlights of separate videos of interview made at the scene with the police officers involved, PO T Weston and PO T Hess and Ms C. Sinn, the only other witness.

In summary, the police officers had visited the house of Mr. Protheroe but failed to find him. They then exited the house through an elevated ramp from the back of the house. PO Weston had gone around to the left side of the house (when viewing the house from the front). PO Hess then saw Mr. Protheroe in the right rear garden (by then PO Weston was on the left side of the house and did not view the incident). It was then alleged that Mr. Protheroe had brought out a handgun and pointed to PO Hess who subsequently ran to the left side of the house (towards PO Weston). When he turned the corner, he went into the carport (essentially roofed installation with support from the wall of the house and two pillars and the 'wall' consisting of Hessian cloth on the front and side), took out his police issued gun and positioned himself in a 'shooting' stance. PO Weston was outside the carport and hence could only view the incident partially through the 'wall'.

It was alleged that Mr. Protheroe who was giving chase, saw PO Hess in his said position, stopped and pointed his gun to PO Hess. PO Hess then fired 4 consecutive shots (confirmed to me by Insp. Reid and Kajewski). The witness (Ms Sinn) thought that there was a short gap between the first and successive shots while PO Weston's version was 3 shots followed by a short gap before the last shot. Both saw Mr. Protheroe turned to his right (left side of torso going to the front) as if to avoid the shots and continued in that direction as he fell before lying on his left side with his back facing PO Hess on the ground.

Having noted the scene and described dynamic movement of Mr. Protheroe as he was shot at, it was consistent with Mr. Protheroe being shot in a way noted in the post-mortem examination. When he turned to the right in order to avoid the first shot, his left shoulder region could be facing PO Hess when he was first inflicted (injury no. 1) by a shot. The momentum of him turning would continue in spite of being inflicted with the first shot and at the same time, collapsing downwards due to the devastating nature of the shot. His back would be then facing PO Hess when he was inflicted with the second shot (injury no. 2). That would lead to him collapsing onto the ground with his back facing PO Hess as described by the witnesses. The trajectories described for both gunshot wounds would be consistent the account described.

Dr Ong was adamant that neither of the ESC officers attempted to influence his thoughts or made any suggestions with regards to the content of his amended autopsy report.

The family of Mr Protheroe have expressed concern about the nature of this case conference. That concern stems in particular from the fact that a report was reissued after meeting with investigators in which an explanation is given allowing reconciliation between the observed injuries and the account given by police at the scene. Any suggestion that the independence of Dr Ong had been compromised by this meeting would have more substance if he had only been shown videos of the police officers (rather than Ms Sinn). Similarly if he had subsequently given an opinion reconciling the injuries to the version of police to the exclusion of Ms Sinn's account.

I am satisfied the integrity of Dr Ong's opinion has not been tainted by the case conference. I accept he was shown the video accounts given by each of the three eyewitnesses. His subsequent opinion as to the possible dynamic movement of Mr Protheroe is equally consistent with the accounts of Senior Constable Weston and Ms Sinn. There can be no suggestion he has sought to postulate a series of events to explain the physical injuries in a way that favours the version of police over that of civilian witnesses.

Medical evidence

Dr Robert Hoskins is the director of the Queensland Health Clinical Forensic Medicine Unit (CFMU). He provided a report at the request of ESC investigators addressing the significance of the toxicological results obtained at autopsy. In addition to the results themselves, Dr Hoskins had access to a draft of the coronial report prepared by Inspector Reid.

In his report Dr Hoskins states:

The 'blood' levels need to be interpreted with a great deal of caution. Even in the absence of internal trauma it is possible for post-mortem redistribution to cause blood levels to change from what was present during life. In this case this would have been added to by visceral damage and possibly co-mingling with other bodily fluids such as stomach and intestinal contents. Four conclusions can be reached about these findings:

- a. Mr Protheroe had consumed methylamphetamine - nothing can be reliably said about the quantity or timing other than that it was recent (days rather than weeks).*
- b. His body had converted some of that drug to amphetamine. This indicates that the levels are not attributable to single consumption immediately prior to death.*
- c. No alcohol or other drugs were detected.*
- d. It is impossible for me or anyone else to say what the blood levels of these drugs were at the time of death.*

Dr Hoskins dismissed the significance of a high Acetone reading, stating it was likely the result of poor dietary intake of carbohydrates (possibly linked to the suppression of appetite known to be caused by intake of methamphetamine).

Dr Gary Hall gave evidence at the inquest in place of Dr Hoskins who was not available. He adopted the opinions of Dr Hoskins but was asked to expand on the

question of whether the toxicology results might be used to determine the timing of drug use.

Dr Hall indicated that the blood levels needed to be interpreted with caution because of post mortem redistribution which is particularly problematic with methyl amphetamines, even more so when chest blood is used for analysis. As a result he concluded that in this case the reading could not be used to give a reliable indication of how long before death the drug was taken.

However, the presence of amphetamine, which is a metabolite, indicated some of the parent drug had been metabolised and as it was at a lower level than the methyl amphetamine it was reasonable to presume that consumption had occurred more recently than if the level of the metabolite was higher than the parent drug.

Dr Hall did say however, that the levels of each did indicate numerous doses over a number of days. Nevertheless, it was impossible to say what the blood levels of the drugs were at the time of death.

Dr Hoskins considered the evidence relating to events at the Tavern Newsagency on 15 April 2012. He drew the conclusion that the behaviour and comments ascribed to Jason Protheroe are consistent with him having developed a drug induced psychosis. He opined that, in the absence of an underlying mental disorder, drug induced psychosis generally resolves within a matter of days, even without treatment once consumption ceases.

Another medical report was helpfully supplied by solicitors for Jason Protheroe's family. That report is from Dr Jeremy Hayllar, a very experienced general practitioner currently holding the position of Clinical Director of the Alcohol and Drug Service within Queensland Health's Metro North Mental Health Service.

Dr Hayllar concluded that no definitive answer could be given to the question of when Jason Protheroe last took methamphetamine. As with Dr Hall he referred to the possibility of the metabolite being present from some past use while the presence of the primary drug being explained by recent use. Dr Hayllar also considered the question of drug induced psychosis agreeing that his behaviour at the newsagency on 15 April 2012:

...seems to reflect a delusional and paranoid state; in the circumstances and on the balance of probabilities, this was due to a substance (here methamphetamine) induced psychosis.

He noted that Jason's apparently normal behaviour at a nephew's birthday party the day before the newsagency incident might be explained by the familiar surroundings being far less arousing of his symptoms than being alone in a shopping centre.

Dr Hayllar could not say, on the evidence relating to the events of 17 April 2012, whether Jason Protheroe was suffering from a substance induced psychosis on that day.

I consider it likely Mr Protheroe was suffering from drug induced psychosis on 15 April 2012. His normal demeanour when he visited his brother the day before does not exclude the possibility he may have ingested more drugs after that or that he may have relapsed into a psychotic state even without them.

Conclusions

Introduction

Police officers have the onerous responsibility of protecting the community. In order to do this it is necessary they have resort to firearms as it is unavoidable that, at times, they will need to use deadly force to defend themselves or others. As can be readily appreciated, the use of firearms by police officers must be strictly controlled and scrutinised; particularly when it results in a death. Citizens cede autonomy to the State for the mutual benefit of all members of society. The killing of a citizen by a police officer in the course of his or her duty is the most extreme exercise of executive power.

The sudden and violent death of a loved one is invariably traumatic for the family of the deceased person. That it should occur as a result of an intentional act of a police officer is likely to add to that distress. The family is entitled to a thorough and impartial examination of the circumstances of the death to determine whether what would otherwise be a serious crime was justified.

Police officers daily demonstrate a commitment to protecting and assisting the community. Shooting a member of the community they have sworn to protect is undoubtedly harrowing for the police officer involved. It is in his interest that the matter be scrupulously and independently investigated and publicly reported on so that there can be no suggestion of a 'cover up'. And, of course, the police service needs to be satisfied no deficiencies in the recruitment, training, equipping and supervision of its officers have contributed to an unnecessary death occurring.

The community needs to be satisfied the use of deadly force was necessary, if it is to maintain its trust and confidence in the police service. If the death was avoidable, the public is entitled to expect that those responsible will be held accountable and that changes will be made to reduce the likelihood of similar deaths occurring in future.

The *Coroners Act 2003* recognises and responds to these needs for public scrutiny and accountability by requiring all deaths in custody⁴ to be investigated by the State Coroner or the Deputy State Coroner and by mandating that an inquest be held into all such deaths.⁵

⁴ Section 10 defines 'death in custody' to include a death which occurs when the dead person is trying to avoid being taken into custody. The death of Mr Waite was dealt with under the Coroners Act 1958 which requires violent or unnatural deaths to be reported to a coroner and requires a coroner to convene an inquest when the circumstances of the death require it – see s7B

⁵ See s11(7) and s27(1)(a) respectively.

The investigation

In this case, criticisms have been made of the quality of aspects of the police investigation. Some of those criticisms are valid, although the virulent and unsupported allegations of incompetence and bias made by Mr Di Carlo are rejected. Further, I am satisfied that as a result of the inquest rigorously scrutinising the evidence and collecting more material, any shortcomings in the QPS investigation have been overcome to the extent I can confidently make findings as to what occurred.

Events preceding the shooting

On 17 April 2012, Mr Protheroe was shot in the yard of the house of his long standing friend Krystal Sinn with whom he had recently formed a sexual relationship. He was shot by PCC Hess who had gone to the house looking for him.

The officer's actions in the hours before the confrontation were of no relevance to how Mr Protheroe came to be shot. Much court time was wasted and unnecessary distress caused to the family by the pursuit of baseless theories about PCC Hess prosecuting some vendetta against Mr Protheroe.

PCC Hess came to work and found a direction in an email from his sergeant to investigate offences believed to have been committed by Mr Protheroe. He acted on it as would be expected of any junior officer in a similar position. The family seem fixated by the idea the officers were exhibiting unreasonable urgency or overzealousness in their pursuit of Mr Protheroe. I am of the view the family's perception of these matters has been distorted by what followed. If Jason had simply been arrested at Ms Sinn's house, I suspect nothing would have been said about the events which preceded such an arrest. Sadly, that did not happen and perhaps understandably, the family have therefore over analysed and misconstrued mundane, routine events.

I find PCC Hess' investigation of the offences he rightly suspected Mr Protheroe had committed and the inquiries he made in connection with that investigation, were unexceptional.

The shooting

PCC Hess acknowledged he intentionally fired his service issued firearm at Mr Protheroe in circumstances that were likely to and did result in his death. The officer said at the time he was unsure how many shots he fired but he accepted the evidence indicating four bullets were fired in quick succession.

The autopsy of Mr Protheroe's body showed two of the four shots struck him, both causing unsurvivable injuries.

PCC Hess said he fired at him because Mr Protheroe was at the time standing only a few metres from him and pointing at him what the officer believed to be a firearm, in a manner which led him to believe he was about to be shot. PCC Hess said he believed unless he fired at Mr Protheroe, he was likely to be killed himself.

Krystal Sinn was present and witnessed the events. When interviewed later that day and at the inquest Ms Sinn denied Mr Protheroe had anything in his hands at the time he was shot.

The only other person present, DSC Weston, said he saw Mr Protheroe pointing something black at DSC Hess when he was shot.

Very soon after he was shot, a realistic replica handgun was found on the ground, near Mr Protheroe's body.

The central question for this inquest is whether he was brandishing it as alleged by PCC Hess at the time he was shot. Earlier in this report I have summarised the various versions and the evidence supporting each. In this section I record my conclusions in relation to those issues.

The competing versions

All three witnesses agree that very shortly before the shooting, Ms Sinn was standing at or near the top of a ramp leading down from her back door, watching PCC Hess and DSC Weston leave the premises. DSC Weston got to the bottom of the ramp, continued straight on past an open carport, and turned left toward the front gate, moving out of sight of the other two around the north east corner of the premises. PCC Hess got to the bottom of the ramp and turned right and moved a couple of metres away from the house out into the yard, intending, he said, to look under the ramp to see if Mr Protheroe was hiding there.

PCC Hess said as he did so he was still talking to Ms Sinn when he saw Mr Protheroe leaning against the south east corner of the house holding a water bottle in his right hand. He said he immediately commenced walking towards Mr Protheroe who was about 10 metres from him, while telling him they needed to talk.

He said when they were about five metres apart, Mr Protheroe aggressively threw down the water bottle, reached under his clothing and produced what appeared to be a hand gun and pointed it directly at PCC Hess.

Ms Sinn claimed she saw Mr Protheroe as soon as PCC Hess spoke to him and that he was in the middle of the yard and had nothing in his hands. From where she was standing on the ramp, she could not see the south eastern corner of the house and I therefore conclude he only came into her view after he had thrown down the water bottle and commenced advancing on the officer. Her evidence indicating she did not see the water bottle until after it was discarded supports this.

PCC Hess concluded he did not have time to draw his gun and so he ran for cover, moving evasively as he did so. Ms Sinn and DSC Weston agree they saw him sidestepping as he ran towards the carport.

PCC Hess said he loudly called out to his partner that there was a gun and to Mr Protheroe to drop it. DSC Weston agreed he heard these calls as do numerous neighbours. The fact that one of them, in one version, recalled the shouts occurring after the shots is easily explained as an error of memory. At least three others report hearing the shouts of 'gun, gun' before the shots. Even Ms Sinn

agreed that PCC Hess was yelling something as he ran and she said she yelled at Jason to stop. At the inquest she said she did so because she was concerned he would be arrested if he continued to pursue PCC Hess. I find that explanation unpersuasive. Her calling out could better be explained by her seeing he had a gun and realising the danger unfolding.

Conversely, I don't exclude the possibility that she did not see the gun in his hand as he went across the yard below the ramp.

I reject Ms Sinn's claim Mr Protheroe was only walking quickly rather than running as he crossed the yard. He arrived at the entrance to the carport only seconds after PCC Hess, who had run there in fear of his life.

All three agree that at this stage PCC Hess fired at Mr Protheroe who twisted in a clockwise direction as he fell. They diverge a little in their accounts of where Mr Protheroe and PCC Hess were exactly positioned when the shots were fired, but that is immaterial. The evidence of Sergeant Meara tends to corroborate PCC Hess's claim he was in the carport close to the wall of the house.

The only significant difference in their version relates to whether Mr Protheroe was pointing the replica pistol at PCC Hess when he was shot.

Counsel for the family submitted PCC Hess' version should not be believed because he would not have missed with two of the four shots he fired had the shooting occurred in the circumstances he claimed. No evidence, expert opinion or experience is cited to support this contention. It is baseless and is rejected.

It is also submitted the position of the bullet wounds were inconsistent with the officers' accounts. One bullet penetrated the 'outer back of the left upper arm' before piecing the armpit and tracking across the body. There can be no reasonable doubt that when this bullet struck Mr Protheroe he was side on to the shooter. The submission that he was shot twice in the back at best discloses a complete misunderstanding of the autopsy report and photographs, at worst it is deliberately misleading. The other wound was to the right lower back and it tracked through the body, towards the front and the left, indicating Mr Protheroe was facing away from the shooter when struck.

I accept the forensic pathologist's opinion that 'the trajectories described for both gunshot wounds would be consistent with the account described' by the three witnesses who said that as PCC Hess was firing, Mr Protheroe spun to his right before collapsing on the ground. It is easy to accept that if the first shot, and possibly the second, missed Mr Protheroe, the sound of their whistling close by would cause him to flinch and turn away allowing the next shot to strike the outer aspect of his left arm; as he continued to turn, his back would have been exposed to the next or subsequent shots. The submission to the contrary is rejected.

I don't accept the suggestion PCC Hess could be honestly mistaken about whether Mr Protheroe had what appeared to be a gun. He said he distinctly remembers seeing the barrel of the gun when it was first pointed at him, thinking he was going to die, before desperately running in an evasive manner for the nearest cover in the carport. He said when he spun around while drawing his own gun, Mr Protheroe was in front of him, a few metres away with the gun still

pointing at him. It was a clear sunny morning. On each occasion PCC Hess was only a few metres from Mr Protheroe. It is most unlikely that he could be mistaken in my view.

If Mr Protheroe did not point the replica pistol at PCC Hess, it would seem the officer must be lying and must have knowingly shot an unarmed man in the presence of another officer and the dead man's girlfriend. No possible motive has been suggested for him to do this. Further, before he shot him in cold blood, PCC Hess must have either planned to plant the replica firearm next to Mr Protheroe's fallen body – although no one saw him acquire the gun or plant it - or he planned to shoot him in just the right location so that he fell next to the gun that had been left on the lawn by somebody else and that PCC Hess had noticed but not commented on previously. Without one of those plans being formulated and executed to perfection, Mr Hess would have known he would likely be facing a murder charge.

The last minute suggestion in the written submissions of the family's lawyers that Mr Protheroe threw the gun onto the ground as he ran after PCC Hess is preposterous and is not supported by any evidence.

DCS Weston's evidence supports that of PCC Hess in all respects. He heard PCC Hess calling about the gun as he ran evasively into the carport and he saw Mr Protheroe pointing something at the officer just before the shots were fired. He should not be criticised or his evidence disregarded for saying he could not see that it was gun: it was only in his vision for a few seconds and he was looking at the events through shade cloth.

The ballistics evidence relating to where the shooter was standing when the shot that pierced the fence paling and the sewer vent was fired is not conclusive but it tends to support PCC Hess' version and is far less consistent with Ms Sinn's version. The same can be said for the evidence concerning where the discharged cartridge cases were found.

The only evidence contradicting that of PCC Hess is that of Ms Sinn and for the following reasons I find her to be unreliable.

- She insisted at the inquest and before that the replica gun was in fact a toy belonging to her three year old son. Having seen and handled the item I doubt that to be the case. The photographs taken from Jason Protheroe's Facebook page showing Mr Protheroe, Ms Sinn and others with the gun posing as faux gangsters also undermines her claim it looks like a toy. Further, on a tape recording made by the officer who was with Ms Sinn and her children in her house soon after the shooting, the boy repeatedly and without prompting told the officer that 'Jason, he bought a gun from the shop'. But that 'it's not real'. If the gun was not involved in the fatal interaction, it is hard to explain Ms Sinn's lack of candour in relation to it.
- Ms Sinn said she saw Mr Protheroe turn out the pockets of his shorts before advancing on PCC Hess, demonstrating he had nothing in them and nothing in his hands. His pockets were not turned out when the body was photographed soon after he was shot. There could be no reason for

anybody to rearrange the clothing in this way. It is hard to accept Ms Sinn could have been honestly mistaken.

- Ms Sinn spoke to a number of people soon after the shooting and before she was interviewed early in the evening. There are differing versions of how she responded to questions as to whether Mr Protheroe was armed when he was shot. The tape recordings of those conversations are inconclusive and the evidence of those heard on them unpersuasive. However, it is surprising Ms Sinn did not make a more definitive statement that Jason was unarmed when he was shot, if that was indeed the case. Similarly, I would expect her to have been demanding an explanation for what would have been clearly unlawful acts of the most serious kind had she witnessed police shoot her boyfriend without any justification. Her explanation that she was too distressed is not consistent with her having sufficient composure to intervene when her son was disclosing to a police woman details of Jason's acquisition of the replica gun and her capacity to give an account of events to Jason's brother over the phone and in person. It may be that her ambivalence was the result of her knowing that in reality he was unarmed, while also knowing that he had given the appearance of being armed by brandishing a replica pistol.

Finding as to manner of death

I conclude Mr Protheroe was shot and killed when he produced a replica firearm and pointed it at PCC Hess. When the officer ran for cover Mr Protheroe followed him and again pointed the replica gun at the officer in a manner which led PCC Hess to reasonably believe his life was at risk and could only be preserved by his firing at Mr Protheroe.

Findings required by s45

I am required to find, as far as is possible, the medical cause of death, who the deceased person was and when, where and how he came by his death. As a result of considering all of the material contained in the exhibits, I am able to make the following findings.

Identity of the deceased – The deceased person was Jason Paul Protheroe.

How he died - Mr Protheroe was shot and killed when he produced a replica firearm and pointed it at PCC Hess. When the officer ran for cover Mr Protheroe followed him and again pointed the replica gun at the officer in a manner which led PCC Hess to reasonably believe his life was at risk and could only be preserved by his firing at Mr Protheroe.

Place of death – He died at Bracken Ridge in Queensland.

Date of death – He died on 17 April 2012

Cause of death – Mr Protheroe died from multiple gunshot wounds.

Comments and recommendations

Section 46 provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future. This inquest raises for consideration the following issues from this perspective:

- Management of critical incidents scenes; and
- Media comments about such incidents

Management of critical incident scenes

The *Police Powers and Responsibilities Act 2000* and the QPS Operational Procedures Manual (OPM) set out a series of powers, requirements and expectations of police officers concerning the management of the scene of a critical incident such as this.

I am satisfied the inner cordon was established sufficiently quickly and it was appropriately secured and protected in accordance with those requirements.

An 'outer cordon' was also established within which a command post was positioned.

The only criticism concerning the maintenance of the outer cordon was in relation to the access given to the QPUE President, Mr Leavers, another QPUE official and an employee of that union. Television footage tendered at the inquest shows those three people standing in and around the command post for significant periods speaking with various other officers. There is no evidence any formal briefings were held within earshot of Mr Leavers, but equally there is no evidence any effort was made to ensure such briefings would not be heard by him or the other QPUE officers.

Assistance Commissioner Michael Condon is a former Officer in Charge of the Homicide Investigation Group and is currently the head of the Crime Operations Command. At the inquest he agreed with the proposition that in an investigation such as this that 'no one who does not need to be there should be in the outer cordon'. He acknowledged there may be legitimate industrial requirements for QPUE officials to be granted access to the outer cordon of an investigation scene. He thought it much less likely that a QPUE official would need to be in close proximity to the command post.

Mr Leavers told the inquest that access was necessary to enable him to provide support to his members, in particular, the officers involved in a critical incident. He conceded that by the time he arrived at the crime scene PCC Hess and DSC Weston were already on their way to Boondall to be interviewed. However, he said there were others officers at the scene who might also need his support. When asked who they might be he replied:

Mr Leavers: ...Other police, who were at the scene, it affected them because obviously other police turned up soon after this took place and it affects each and every one of them so it's about providing Hess and Weston, they were the two primary officers involved, but it has a flow on effect, a ripple effect, with all other police. It is ensuring

that their welfare - and are provided with the assistance which is required and which is what the police union does.

When it was suggested he could arrange the necessary legal support for the officers who were to be interviewed, Mr Leavers insisted it was necessary for him to be there in person.

Mr Leavers: No, that's not practical. Often in person is the best way to be. That's - if an incident occurs in Cairns, I - I will go to Cairns. You need to be there in person. Simply to do it over the phone is impersonal. Initially you have to do that on some occasions but it is - it's out of courtesy and respect you need to be there in person. I think it's very valuable and very worthwhile.

Mr Leavers agreed that it was primarily the responsibility of the QPS to provide support and assistance to its members when they were involved in critical incidents via its network of peer support officers and human support officers, but he considered that does not mean the union does not also have a role in providing officers with food and water and contacting family members.

Mr Leavers: ...but generally the union has always taken the lead role and whether that be to co-ordinate so they can contact family to liaise with them. Even simple things, such as food and water and things, the union often takes on that responsibility. Is that the employer's responsibility? You could suggest absolutely yes but the union has taken on that role and for many years because it is quite simplistic for us to be able to do that. So, we've done that for a long time and it's part of the welfare we provide to our members and I know the Police Service has been aware of this for a long time and it is - I would suggest an understanding between the two that that's what occurs.

He also suggested that:

(A)t the end of the day the Police Service is the Police Service and it protects the Police Service. We're there for the individual welfare of the police involved.

...

What I will say is the Police Service is there to look after the Police Service, not necessarily to look after the members involved.

Mr Leavers pointed out that the conduct of police officers is subject to greater scrutiny than most other vocational groups and he accepts that is necessary.

I readily accept that is the case and I also accept the union has a vital role in attending to the welfare of its members when they are involved in critical incidents. However, I don't accept it necessarily follows that union officials and employees of the union should be given unlimited access to the scene of a critical incident. In my view their access should be to their members, not to the incident scene and not to information that is being gathered at the scene by the investigators.

The access provided to Mr Leavers and other union officials to the command post and their ready access to information relating to the incident can be contrasted with the circumstances in which the Protheroe family found themselves. The two officers involved had been provided, entirely appropriately, with high quality legal advice and emotional support.

Congregating on the boundary of the outer cordon was the extended Protheroe family. Grasping for information about their son and brother and with no channel of communication yet established with the QPS, they were understandably distraught. Although to someone with little understanding of what had happened their behaviour might have seemed unruly, it should have been sufficiently apparent to the uniformed officers maintaining security of the outer cordon that it was unnecessary and inappropriate to tell them to 'fuck off' and to threaten them with arrest if they did not leave, as they claim occurred.

The callous treatment the family members say they were subjected to when compared with the compassion shown to the shooter, understandably contributed to a perception of bias on the family's part.

Recommendation 1 – Security of critical incident scenes

In order to avoid the uncontrolled and unintended release of information and the adverse impact that can have on the integrity of an investigation, I recommend the QPS review its policies and procedures to ensure access is only granted to the outer cordon of critical incident scenes to those needed to investigate and/or respond to the incident. Union officials and employees should of course be given ready access to their members to support them but that should happen away from the incident scene whenever possible.

Recommendation 2 – Initial family liaison

I am aware the QPS has a family liaison policy that provides for the allocation of a specific family contact person in all cases of homicide. In deaths in custody, the investigators from the Ethical Standards Command discharge this role. That happened in this case.

However, as this case demonstrates, in some instances, family or 'secondary victims' will be at the scene at the time of the incident or very soon after. QPS procedures which stipulate how the incident scene is to be managed should stipulate that those with a special interest in the incident, such as family members of the deceased, are to be treated appropriately and, as soon as possible, given as much information as can be released to them without compromising the investigation.

Media comment

After attending the scene of the shooting, Mr Leavers made numerous media statements and partook in various interviews with journalists in which he purported to disclose details of the circumstances of the shooting, some of which he now concedes were wrong. He also concedes he gained some of the information (and misinformation) from officers he spoke to while in the outer cordon.

The first of the interviews were broadcast at 5.01pm that afternoon, before some of witnesses to the events had been interviewed by the investigators.

Examples include:

The police officer had nowhere to go. He was trapped in the confines of the carport and his only option was to use his firearm otherwise he may have very well been dead himself. - Channel 10 News; 5:01pm

He had nowhere to go when the man 36 years of age hunted the police officer, walked around pointed a loaded semiautomatic pistol at the police officer. A Taser may not have worked and we may have had a deceased police officer -Channel 7 News; 6:00pm

The police union allege the man had hunted and cornered a detective in a home garage before he was killed. Police union president Ian Leavers told reporters outside the cordoned-off house he'd spoken with a detective involved. ...As they were leaving from the rear of the home the detectives confronted a man outside, who drew a semi-automatic pistol. Courier-Mail on-line at 7:14pm

The home where a seasoned criminal was shot dead after trying to hunt down a police officer is a heavily secured fortress where guns were thought to have been stashed in the past. The Courier-Mail can reveal police had been warned a shotgun may have been kept at the Bracken Ridge house, in Brisbane's north, and knew to be cautious when entering.....Police union president Ian Leavers said Protheroe dropped a water bottle and pulled out a semi-automatic pistol, which he levelled at the two detectives. 'Both detectives then ran for cover, one detective running around the side of the house, the other detective running into the carport where he was cornered,' he said. '(Protheroe) walked around, pointed a loaded semi-automatic pistol at the police officer and the police officer had no choice but to use his firearm to defend his own life. He was basically hunted down by this person. It was either shoot or be shot'. Mr Leavers said the officer fired a "volley" of shots, two of them hitting the man in the abdomen and upper torso.- Courier Mail on line at 12:01am on 18/4/12

The QPUE's position

Mr Leavers accepted the accuracy of the quotes and information attributed to him. He sought to justify his premature public comments by suggesting that if he limited his comments to acknowledging the incident was to be thoroughly and impartially investigated, some police officers and some members of the public would assume the officers involved in the incident had done the wrong thing and even that a cover-up was underway.

He was concerned that others involved in the incidents could make even more outlandish and unreasonable comments that might be believed. Understandably, and appropriately, Mr Leavers was also anxious to make sure the police officers involved felt supported. He said in evidence:

And then you go to other independent witnesses and they'll give a version, and say, "This person was murdered". How is that counteracted in support of the police, because then the public believe that may have very well have happened, and I don't believe that - not on this occasion, not at all. And further, if that is not said, we've got to support the police. People forget that when police are involved in these incidents it is very traumatic upon them. And in fact, in many critical incidents, some police never return to work, or they struggle with it for a long time. The police are doing a very difficult and dangerous job, and are entitled to be supported.

I readily accept police officers are at times involved in dangerous and difficult incidents and when they are, they should be supported. I'm less convinced this necessarily means police union officials should make presumptive comments about aspects of the incidents before the facts are established, when it is obvious an investigation is underway.

The QPS position

Assistant Commissioner Condon set out the position of the QPS in relation to the conduct of Mr Leavers on 17 April 2012 and the role of the QPUE. He expressed concern about the apparent lack of clarity delineating Mr Leavers' position as a police officer and his position as a union official. He suggested there should be a review of what union officials can say about an investigation when it was in its early stages, 'to ensure the integrity and the transparency of the investigation is maintained and, further, that public confidence is maintained.'

He pointed out that generally speaking, when an investigation into a major crime is underway, all releases of information are tactical in nature, carefully considered and done for a purpose recognising that public comments have the capacity to influence witnesses' behaviour and what they might say.

Mr Condon acknowledged, as do I, the important role the union plays in caring for the welfare of its members. However, he expressed concern the comments made by Mr Leavers could have been counter-productive. He said:

I believe the comments made by Mr Leavers on the afternoon of this instance were inappropriate and, in my view, had an ability to impact on the integrity and the transparency of the investigation, had the ability to impact on potential witnesses and what they may or may not say due to the comments that were made. I think the original comment that I made in relation to the lines are blurred and it's not clear - clearly indicates to me there is a necessity for media training from the director of media of police media in relation to what comments should and shouldn't be made. Secondly, there's a lack of understanding, in my view, of the provisions of the Coroners Act, in particular, when an investigation is a reportable death in custody and the roles and the responsibility and the jurisdiction the Coroner has and that would cause me to make the comment that the union and the delegates need training in relation to that from the office of the police solicitors.

Victorian OPI review

In November 2009 the Victorian Office of Police Integrity (OPI) commenced a review of Victoria Police policies and procedures for investigating deaths associated with police contact. It included an examination of police media management following such deaths and involved ‘...an unprecedented consultation and collaboration between stakeholders representing diverse interests’. An initial process of research was followed by a forum in July 2010 involving myself and the Victorian State Coroner, representatives from Victoria Police, the Victorian Police Association, interstate oversight agencies, community legal centres, victim support agencies, academia and human rights advocates. A discussion paper based on the forum and further research was released in October 2010. Between January and March 2011 the OPI convened a series of working groups to examine specific issues within the overall scope of the review. In May 2011, a second forum heard feedback from these groups and proposed recommendations. The final report was published in June 2011

It made the following findings:

A review of police statement to media regarding six recent deaths associated with police contact identified the following themes:

- *extensive details regarding event and circumstances of death*
- *pre-emptive statements regarding fact*
- *criminalisation of the deceased*
- *sentiment*
- *support for police and exoneration.*

As can be readily appreciated each of those elements was present in the comments made about this case.

The review particularly noted the view of some senior police that it was necessary for them to show public support for police under investigation. Such show of such support had become so ingrained that it was expected by junior police. The OPI review ultimately came to the following conclusion:

Irrespective of a legitimate need to show public support, statements made in support of members that pre-empt the investigative process undermine the integrity of the investigation into the death. Far from helping the police involved, statements exonerating police reduce public confidence in the investigative process. They remove the legitimacy of the investigative process, and with it, any chance of a public acceptance that police associated with the incident have been legitimately exonerated.

The OPI recommended that police required to make statements to the media should be trained in media management and Victoria Police media protocols should be amended to:-

- Clearly state who is authorised to make statements to media at critical incidents involving a death associated with police contact.
- Require that statements to media should respond to the particulars of the incident and:
 - Acknowledge the tragedy

- Reassure the community as to public safety
- Express concern about the welfare of the family of the deceased
- Express concern as to the welfare of any police involved
- Stress that the matter will be subject to a Coroner's inquest
- State that there will be a thorough police investigation and police investigators will forward a brief of evidence to the Coroner to assist with the inquest
- State that the police investigation will be subject to oversight by the Ethical Standards Department who may also report to the Coroner
- State that OPI will also independently oversee the investigation
- Advise that neither the police investigation nor the oversight will pre-judge the outcome of the Coroner's inquest

Conclusions

I conclude that public statements by senior police or union officials detailing aspects of any critical incident under investigation and purporting to make peremptory conclusions about the merits of what has transpired have the potential to negatively impact upon the investigation by undermining public confidence in its impartiality and by influencing the memories of witnesses. That is not in the public interest, the interest of the police officers involved in the incident or the QPS.

I readily accept Mr Leavers' did not intentionally publish falsehoods. However, as an experienced police officer, he should have realised the snippets he gathered at the scene, in the few hours after the incident, from officers not directly involved in the investigation were unlikely to be accurate. Further, he could have anticipated that public comments could taint the memories of other witnesses or discourage some from coming forward.

I can appreciate that inaccurate and inflammatory comments made by relatives of a person killed in a police related incident vilifying the actions of the officers would distress union officials and police officers generally. However, that conduct can not be used as a benchmark to set the standard for appropriate conduct by QPUE officials who are and should be seen by the public and members of the union as responsible and reliable sources of information.

In this case there is no suggestion of improper media comment by those speaking on behalf of the QPS. Whereas several of the undesirable themes identified in the case studies undertaken by the OPI are evident in the comments of Mr Leavers. I consider that his position both as a sworn police officer (albeit seconded to his current role) and as someone who the public might legitimately expect to be well-informed, brings with it a responsibility to avoid public comment that includes these undesirable elements.

Mr Leavers candidly acknowledged and apologized for the distress caused by his unintentionally false statements in this case but he appeared unwilling to acknowledge the harm they could potentially cause an investigation and the wider interests of the QPS. Although he informed the court he had changed his practice as a result of this incident and was now more cautious about what he said to the media in such circumstances, he appeared unwilling to accept his privileged position as a union official should be subservient to his role as a member of the QPS.

Recommendation 3 – Union officials’ competing responsibilities

The president of the QPUE has responsibilities to the union and its members but he or she remains a member of the QPS and is subject to and must comply with its policies and procedures. There currently seems some uncertainty as to how these roles are to be accommodated if they conflict, for example, in relation to accessing and disseminating confidential information held by the QPS. Accordingly, I recommend the QPS in conjunction with the union review those aspects of the union’s areas of activity that may cause this conflict to arise to ensure both parties have in place appropriate policies and protocols so they can be managed without compromising the functions of the QPS, while allowing for the legitimate and necessary industrial activities of the union’s officials.

Recommendation 4– Responsible media comment

Public comment concerning a critical incident involving police officers can negatively impact on the integrity of the investigation of the incident, the reputation of the officers involved, the reputation of the QPS and the public confidence in those investigations. It is therefore essential the comments be limited to the release of sufficient information to satisfy the public’s right to know in very general terms what has occurred and to engender confidence the incident is under rigorous and impartial investigation, the results of which will be made public at the appropriate time. I recommend the QPS review its policies in relation to such matters and have regard to the report of the Office of Police Integrity’s suggestions as to the limit of matters that should be included in such public comments. The resulting policies should be binding on all police officers, including union officials.

Release of confidential information

One of the themes touched upon in the OPI’s report referred to earlier was ‘criminalisation of the deceased’. That was evident in this case in some of the comments of Mr Leavers but was also evident in a more concerning development. In the days after Mr Protheroe’s death copies of his and Ms Sinn’s ‘mug shots’ from historical incidents appeared in the media. Details of Ms Sinn’s criminal history, some of it incorrect or exaggerated, also appeared as did details of offences Mr Protheroe had been convicted of. Accounts of previous police visits to the premises and fanciful descriptions of it being secured like a fortress were also published.

The purposive ‘criminalisation’ of the only civilian eye witness and the deceased in the eyes of the public is a particularly sinister development. It has the potential to dissuade a witness from fearlessly and accurately giving their version of events to investigators, or affecting their inclination to be involved with the investigations at all. It is highly likely the information came from a police source, indeed some of it was published by the president of the police union, Mr Leavers.

The Police Service Administration Act provides in s. 10.1 that it is an offence for any police officer to disclose information that has come to the knowledge of the officer because of their employment in the QPS, other than for purposes of the police service. A breach of the section would also constitute misconduct within the terms of the Act.

During her walk through interview on 29 May 2012, Ms Sinn repeatedly expressed to Inspector Reid her understandable concern that her privacy had been breached in this manner. It is reasonable to conclude the unauthorised release of this confidential information was intended to and did in fact discourage her participation in the investigation.

It is essential such matters are speedily and effectively investigated. The QPS information technology systems are configured so as to record the identity of all users who access any data.

The Police Service Administration Act provides in s. 7.2 that any officer who reasonably suspects another of misconduct must report that conduct to the Commissioner of the QPS and the Chair of the CMC. Both organisations have policies and procedures to facilitate the making, receiving and processing of such reports.

Section 48(3) of the Coroners Act provides that a coroner may give information about official misconduct or police misconduct to the CMC.

I suspect the dissemination to the media of the 'mug shots' of Ms Sinn and Mr Protheroe and details of their criminal histories involved either official misconduct and/or police misconduct. Counsel for the QPS told the inquest this matter is already the subject of an investigation, although I was also advised this investigation commenced only after concerns were raised during the inquest. I intend to provide this information to the CMC to ensure the matter is vigorously pursued.

I consider I am also obliged to refer to the CMC the failure of Inspector Reid to report this suspected misconduct, which must have been apparent to him by at least 29 May 2012.

I close the Inquest.

Michael Barnes
State Coroner
Brisbane
14 June 2013