



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of
Allan Duncan LEE-CHUE**

TITLE OF COURT: Coroner's Court

JURISDICTION: Mareeba

FILE NO(s): COR 2919/07(9)

DELIVERED ON: 10 February 2009

DELIVERED AT: Mareeba

HEARING DATE(s): 10 February 2009

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: Coroners: inquest, death in custody, natural
causes

REPRESENTATION:

Counsel Assisting: Mr Peter Johns

Queensland Police Service
Commissioner: Mr Wayne Kelly (QPS Solicitors)

Sergeant James Price and
Lachlan Hart: Mr Adrian Braithwaite (Gilshenan & Luton
Lawyers)

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The *Coroners Act 2003* provides in s45 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 corrections and justice system. These are my findings in relation to the death of Allan Duncan Lee-Chue. 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

Allan Duncan LEE-CHUE was 45 years of age when he died on the Burke Development road between Dimbulah and Mareeba on 26 June 2007. He had been arrested by police earlier in the morning and was being transported in a police utility vehicle to Mareeba. During conversation with one of the officers he stopped talking mid sentence and began to convulse. The officers removed him from the vehicle, by which time he had stopped breathing, had lost consciousness and had no pulse. Despite treatment from Queensland Ambulance Service officers, who arrived some minutes later, he never regained consciousness and was declared deceased at the scene.

Mr Lee-Chue's death was a "*death in custody*"¹ within the terms of the Act and so it was reported to the State Coroner for investigation and inquest.²

These findings

- confirm the identity of the deceased, the time, place and medical cause of his death;
- consider whether any third party contributed to his death;
- examine whether his arrest on 26 June 2007 was lawful;
- determine whether the response to his collapse by QPS officers was adequate and appropriate; and
- consider whether any changes to procedures or policies could reduce the likelihood of deaths occurring in similar circumstances or otherwise contribute to public health and safety or the administration of justice.

The investigation

The investigation was commenced under the direction of the Mareeba District Duty Officer and subsequently taken over by the QPS Ethical Standards Command (ESC). Two ESC officers made their way to Mareeba from Brisbane in the hours following the incident.

¹ See s10

² s8(3) defines "*reportable death*" to include deaths in custody and s7(2) requires that such deaths be reported to the state coroners or deputy state coroner. S27 requires an inquest be held in relation to all deaths in custody

Inspector David Hickey of the ESC prepared a detailed coronial report into the death of Mr Lee-Chue.

Interviews were conducted with both police officers involved in the arrest of Mr Lee-Chue. The ESC officers located several witnesses to the events in Dimbulah on the morning of 26 June 2007. Taped interviews took place with seven individuals who had either seen police deal with Mr Lee-Chue or had dealt with police themselves in the moments leading to the arrest.

Both officers involved in the arrest and transport of Mr Lee-Chue were breath tested at the scene and later provided urine specimens under direction.

The secure prisoner compartment of the police vehicle was subjected to a thorough forensic examination as was the clothing of Mr Lee-Chue and the two police officers.

Mr Lee-Chue's body was inspected for any injuries or signs of assault by forensic officers prior to a full autopsy being carried out by a qualified pathologist.

Investigations continued into the alleged horse theft that had resulted in Mr Lee-Chue's arrest. Statements were obtained from two employees of the complainant and a forensic examination was carried out on shoe prints left at the scene.

As can be readily appreciated whenever a death is connected with police action it is essential that the matter be thoroughly investigated to allay any suspicions that inappropriate action by the officers may have contributed to the death. It is also desirable that the general public be fully apprised of the circumstances of the death so that they can be assured the actions of the officers has been appropriately scrutinised. The police officers involved also have a right to have an independent assessment made of their actions so there can in future be no suggestion there has been any "cover up."

I consider the investigation into this matter was thoroughly and professionally conducted. I acknowledge the benefit of having independent ESC investigators involved in the investigation from an early point. I commend Inspector Hickey for his efforts.

The inquest

An inquest was held at Mareeba on 10 February 2009. Mr Johns was appointed as counsel to assist me with the inquest. Leave to appear was granted to the Queensland Police Service and the two officers involved in Mr Lee-Chue's arrest.

All of the statements, records of interview, photographs and materials gathered during the investigation were tendered at the inquest. The investigating officer, Inspector David Hickey, the two police involved in the

arrest of Mr Lee-Chue and two witnesses to the lead up to that arrest were called to give evidence.

Mr Lee-Chue's brother and sister were sent a copy of the police investigation report prior to the inquest and both were advised of the date of the inquest. The Aboriginal and Torres Strait Islander Legal Service was also given a copy of the police report. The Deaths in Custody officer for ATSILS in Brisbane considered the material along with an outline of the submissions of Mr Johns. Representatives of the Australian Human Rights Commission also considered involvement in the inquest and considered the material by way of liaison with ATSILS. Neither party submitted that any other witnesses should be called.

In the circumstances I determined that the evidence contained in these materials and the oral evidence heard was sufficient to enable me to make the findings required by the Act and there was no other purpose which would warrant any further witnesses being called to give oral evidence.

The evidence

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

Personal Background

Allan Lee-Chue was born in the bush around Chillagoe on 26 January 1962. He was one of eight children to Caesar and Gladys Lee-Chue, both of whom passed away while Allan was in his teens. Mr Lee-Chue attended primary school in Chillagoe, however, it appears his schooling was limited. He began working on cattle stations at an early age and continued in this vein on and off until his death.

Mr Lee-Chue spent time working on various stations around the Chillagoe area and in the Northern Territory as well as spending a period working for Mr Joe Portelli on his Arab horse stud near Dimbulah.

I am advised that Mr Lee-Chue has a son, Jason Lowdown, who is in his early 20's. He had not been in a domestic relationship for some time prior to his death and had been a heavy drinker over a lengthy period. Notwithstanding this, the evidence shows he was a well regarded and skilled horseman.

Complaint of theft

Dimbulah police station is a two person station situated within the Mareeba Police District. The two officers assigned to the station as at 26 June 2007 were Sergeant Jim Price and Constable Lachlan Hart. On that morning neither officer was rostered on duty, however, the station telephone was diverted to Constable Hart's residence.

At about 7:30am Constable Hart received a call from Mr Paul Whiteman, an employee of Mr Joe Portelli, a local horse breeder. Mr Whiteman had called to

report the apparent theft of a horse from Mr Portelli's property at Davenport Road, Dimbulah.

Constable Hart attended the property in the police Landcruiser and took details of the theft, observing the empty yard where the horse had been placed the evening before. Parallel horse and human prints were observed leading away from the enclosure and an Australian flag that had been found draped over the rails of the enclosure was handed to Senior Constable Hart.

Mr Whiteman nominated Allan Lee-Chue as their most likely suspect for the following reasons:-

- Mr Lee-Chue had been arrested and jailed after an incident at the Portelli property some months before. The complainant had heard rumours to the effect that Mr Lee-Chue intended to seek revenge of sorts by releasing horses owned by Mr Portelli.
- Mr Lee-Chue was well known amongst locals for making references to service with the Australian Defence Force and complaining of perceived ill treatment by the government pursuant to that service. He had apparently made it known on previous occasions that he had stolen Australian flags, stating to others this was a form of retribution for his ill treatment.
- The property contained a number of dogs and it was thought only someone known to the dogs would have been able to approach the horse's enclosure without the dogs barking to such an extent that occupants of the property would have been alerted.

Previous incident with Mr Lee-Chue

During the investigation, Mr Whiteman and Senior Constable Hart recounted details of an incident involving Mr Lee-Chue in late 2006. After an argument with Mr Portelli, followed by a long session of drinking in Dimbulah township, Mr Lee-Chue entered the Portelli property and created a disturbance.

Police were called and Constable Hart attended. Mr Lee-Chue was initially cooperative with Senior Constable Hart and left the property, however, shortly after he became aggressive. As Constable Hart attempted to arrest him a violent scuffle broke out with Mr Lee-Chue tackling and then punching the officer who retaliated and Mr Lee-Chue was subdued. As a result of this incident, Mr Lee-Chue was sentenced to a term of imprisonment. This was served at Lotus Glen Correctional Centre and Mr Lee-Chue was released a few weeks before his death.

Arrest of Mr Lee-Chue

On noticing the absence of the police land cruiser Sergeant Price called Constable Hart. On hearing about the complaint and the suspected involvement of Mr Lee-Chue, Sergeant Price suggested Constable Hart collect him from the police station. Sergeant Price had, as a matter of chance, seen Mr Lee-Chue in town earlier that morning. He wisely decided it was

undesirable for Constable Hart to approach Mr Lee-Chue alone given their history. Constable Hart had also seen Mr Lee-Chue in town when returning from the horse stud and came to a similar conclusion. He therefore willingly accepted Sergeant Price's offer of assistance.

The officers spoke to a number of people in the town and soon established it was likely Mr Lee-Chue was at premises in Park Avenue. These were the rooms and buildings adjoining a disused restaurant where some farm labourers and others were living. The officers went there. They spoke to a young woman who was leaving the yard of the premises and she confirmed Mr Lee-Chue was inside.

In fact he had not been there long. He had met a family member in town and had been invited to the premises for some breakfast. He was drinking tea with a group of six to eight family and friends when the officers arrived and told him they wanted to speak to him about a matter.

It appears that one or both of the police officers put the allegation of horse theft directly to Mr Lee-Chue and asked him where the horse was. Mr Lee-Chue told them the horse was "*down by the river*". Sergeant Price says that he didn't want Mr Lee-Chue to say anything further at that point and asked him to come out of the compound and onto the footpath. All parties state that Mr Lee-Chue did this without any apparent reluctance or complaint.

The police accounts differ at this point as to whether Mr Lee-Chue was arrested. Senior Constable Hart states that he told Mr Lee-Chue he was under arrest for stealing the horse. Sergeant Price makes no reference to this having occurred. In any case I accept the intention of both was to take Mr Lee-Chue to firstly attempt to locate the horse and then to Mareeba police station for questioning. I accept that Mr Lee-Chue was told of this intention.

Both officers and an independent witness state Mr Lee-Chue entered the rear of the police Landcruiser unaided and was not handcuffed. I have no doubt that, even if not arrested, Mr Lee-Chue felt compelled to a degree to enter the police vehicle. I accept though that he did so without the need for any force or restraint.

There is some inconsistency as to what was said about the investigation and when. I consider it likely something fairly specific was said about the theft of the horse and Mr Lee-Chue acknowledged some involvement in the matters before he was asked to come outside. Despite some further conflict in the evidence, I am satisfied he went voluntarily out of the yard with the officers without being restrained. It also seems likely he was at this stage or soon after arrested and placed in the police van. There is no evidence he resisted these steps or that any violence was done to him or by him.

Mr Lee-Chue agreed to show the officers where he had tethered the horse and left his bag down by a near-by creek. Constable Hart drove as Mr Lee-Chue directed. When the officers couldn't find the horse they let Mr Lee-Chue out of the van so he could assist. Still nothing was found. It later transpired

workers from the horse stud had found the horse and the bag and taken them back to the farm.

Travelling to Mareeba

When interviewed, both officers stated the decision to conduct an interview with Mr Lee-Chue at Mareeba rather than Dimbulah was due to the availability of video recording facilities there. In evidence they added the presence of ATSILS and a stock squad branch in the larger town were also relevant considerations. Whatever the dominant reason, I accept there was nothing improper about the decision to take Mr Lee-Chue to Mareeba.

After failing to find the horse, the officers then returned to the Dimbulah police station to allow Constable Hart to pick up clothing and equipment for a 2pm-10pm shift he was to carry out that afternoon and evening in Cairns.

Sergeant Price opened the rear of the police van and conversed with the unrestrained Mr Lee-Chue while they waited for Constable Hart to collect his gear. Mr Lee-Chue again raised no concern when the door was closed and the vehicle commenced travelling towards Mareeba.

The officers state that at all times Mr Lee-Chue was co-operative, talkative and it was evident to them he was not affected by alcohol. They state no force or restraint was applied to him during the period outlined above. There is no evidence at all to suggest otherwise and I accept this was the case.

Mr Lee-Chue collapses

Shortly after 9.00am, they commenced the 43km journey to Mareeba. After having travelled only about 3 or 4km, while in conversation with Sergeant Price, Mr Lee-Chue stopped mid sentence and made a loud snorting noise likened by Senior Constable Hart to that of a chainsaw. He was observed by Sergeant Price to be convulsing and sitting upright with his arms protruding stiffly in front of him. Constable Hart, who was driving, pulled the vehicle over at the intersection of the Burke Development Road and Bruce Weir Road.

Both officers alighted and opened the rear of the vehicle. Sergeant Price said Mr Lee-Chue was continuing to convulse. The officers shook him with no response and checked for a pulse without success. It appeared to Constable Hart that he had liquid coming from one of his nostrils. He called Mareeba communications advising them Mr Lee-Chue was unconscious and they could not feel a pulse; he told the radio operator they needed an ambulance urgently. This call was made at 9:12am. An ambulance was dispatched from Dimbulah at 9.14am.

Medical Treatment

The officers removed Mr Lee-Chue from the vehicle and placed him on the road in the 'recovery' position. Both officers indicate their initial concern was there may be an obstruction of Mr Lee-Chue's airway. Once in the recovery position it appeared that Mr Lee-Chue's tongue may have been obstructing his breathing. Each of the officers said they returned to the vehicle to obtain a plastic mouthpiece normally used for roadside breath tests. This was then

placed in Mr Lee-Chue's mouth in an attempt to pry open his lips and clear his airway. It is likely only one of them initiated this process and I doubt both made attempts to use it on Mr Lee-Chue. In any event this was ineffective.

Neither officer attempted to perform CPR on Mr Lee-Chue. They said variously they did not think it appropriate when they hadn't established an airway; they did not know what the problem was and therefore know whether CPR would be effective; and, that by the time it might have been appropriate to perform CPR they could hear the sirens of the approaching ambulance.

Unfortunately, the first aid kit normally kept in the police vehicle had been left at the police station after being taken out to be refurbished.

Further, while both officers had been trained in first aid and CPR techniques, neither was up to date with their training. Indeed both officers indicated their knowledge of CPR procedure was scant.

These factors combined, perhaps, with the unpleasantness of the task, may have left the officers reluctant to commence CPR. Timing from police communications shows that by 9:18am, six minutes after the initial call, Sergeant Price called via radio seeking an update on the progress of the ambulance. However, the QAS records show them on the scene at 9.17. This discrepancy can be explained by variations in clock settings. It is apparent the first para medic arrived in quick time.

The paramedic noted no respirations and no carotid pulse. A defibrillator was attached to Mr Lee-Chue, he was shocked with it and CPR commenced after his airway was suctioned.

A short time later another ambulance officer arrived and assisted. The defibrillator's automatic assessment of heart rhythms did not advise any further shocks until some 10 minutes later when another shock was delivered. CPR continued without success. After approximately 15 minutes of treatment, at 9:34am, and with no result, the ambulance officers ceased treatment and advised Mr Lee-Chue was deceased.

At 11:45am Government Medical Officer Dr Grant Manypeney attended the scene and confirmed life to be extinct.

The regional duty officer, Inspector Rolf Straatameier, attended the scene shortly afterwards and arranged for local scenes of crime officers to take photographs and video of the scene. Assistance from Cairns scenes of crime scientific officers was sought and this led to the extensive forensic testing outlined earlier.

The QPS Ethical Standards Command was notified of the incident and investigating officers from Brisbane arrived in Mareeba at 5:55pm on the date of Mr Lee-Chu's death.

Autopsy results

An autopsy examination was carried out on 27 June 2007 by an experienced forensic pathologist Professor David Williams.

A detailed external examination revealed no recent injuries.

Internal examination revealed significant atheroma in the coronary arteries. A haemorrhage into atheromatous plaque was evident in the right coronary artery and this had caused the lumen of that artery to narrow significantly. The main branch of the left coronary artery, the anterior descending coronary artery, showed several areas of significant occlusive atheroma.

The histology report of the coronary arteries stated:

'The coronary arteries are confirmed to have significant occlusive atheroma particularly in the branches of the left coronary artery. The left anterior descending has less than 20% of the area it should have in the lumen, this lumen being compressed by calcified atheroma.'

There was no significant toxicology.

In Professor Williams' opinion, the cause of death was coronary atherosclerosis. Hypertensive heart disease was noted as having contributed to the death.

In the words of Professor Williams, the autopsy and tests carried out on Mr Lee-Chue:

'...demonstrated he had severe narrowing of the coronary arteries. Apart from this severe narrowing, he had evidence of recent haemorrhage into atheromatous plaque within the right coronary artery, this haemorrhage compromising the lumen of the right coronary artery and precipitating fatal heart attack.'

The sudden seizure witnessed by the police officers would be consistent with such an incident.

Professor Williams later confirmed a view he had expressed at the time of the post-mortem examination; namely that no standard first aid treatment given by police at the scene would have saved Mr Lee-Chue.

Investigation Findings

Mr Lee-Chue's body was identified by his brother Fred at 2:15pm on 27 June 2007. It was confirmed by fingerprint comparison.

Breath and urine testing of both police officers showed negative results for the presence of alcohol or drugs.

An analysis of footprints left at the scene of the alleged horse theft showed they could have been made by the boots being worn by Mr Lee-Chue at the time of his death.

Conclusions

A comprehensive police investigation has been conducted into the circumstances of this death. The investigation, coupled with the autopsy results, reveals that Mr Lee-Chue passed away suddenly after having suffered a 'heart attack' or acute myocardial infarction caused by significant coronary atherosclerosis. This occurred while he was seated in the rear of a police vehicle in the process of being transported to Mareeba for questioning in relation to the alleged theft of a horse.

There is no evidence of his suffering any violence or of there being any involvement of any other person in his death.

One may speculate the stress of the day's events contributed to Mr Lee-Chue's death; however, I find his death is not otherwise attributable to the actions of the two police officers or indeed any other person. I accept both police officers acted appropriately at all times in their dealings with Mr Lee-Chue.

Medical treatment from the Queensland Ambulance Service was prompt. In any case, sadly, it is now clear nothing could have been done to save Mr Lee-Chue.

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. I have already dealt with this last aspect of the matter, the manner of the death. As a result of considering all of the material contained in the exhibits, I am able to make the following findings in relation to the other aspects of the matter.

Identity of the deceased – The deceased person was Allan Duncan Lee-Chue

Place of death – He died on the Burke Development Road, east of Dimbulah in Queensland, shortly after being taken into custody by the Queensland Police Service.

Date of death – He died on 26 June 2007.

Cause of death – He died from natural causes namely acute myocardial infarct due to or as a consequence of coronary atherosclerosis.

Comments and recommendations

Section 46, insofar as it is relevant to this matter, 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.

The issues which warrant consideration from this perspective are:-

- The lawfulness of the arrest; and
- The response of the officers to the medical emergency.

Lawfulness of arrest

The *Police Powers and Responsibilities Act 2000* in section 21(2) requires that if the place contains a dwelling, the police officer may only enter the dwelling without the consent of the occupier if he or she reasonably suspects the person he or she is seeking to detain or arrest is at the dwelling.

Section 365(2) of the Act allows a police officer to arrest a person without warrant, where the police officer reasonably suspects the person has committed an indictable offence, for the purpose of questioning that person about the offence or investigating the offence.

In this case I accept the premises where Mr Lee-Chu was found were being used as a dwelling. I accept that when the officers entered the yard of the dwelling, Constable Hart had a reasonable basis to suspect Mr Lee-Chue was in the premises and he reasonably decided to arrest Mr Lee-Chue for questioning in relation to the theft of the horse.

I accept that when approached by police Mr Lee-Chue made admissions in relation to the theft of the horse that justified his arrest.

I find the actions of the police officers in the lead up to Mr Lee-Chue's collapse were appropriate and lawful at all times.

The response to the medical emergency

When Mr Lee-Chue suffered the heart attack and stopped breathing, the officers removed him from the police vehicle, placed him in the recovery position and attempted to maintain his airway by using a plastic tube.

They did not attempt cardio pulmonary resuscitation as would usually be expected in such circumstances. It seems a number of factors contributed to this.

First, both officers say they could not open Mr Lee-Chue's mouth because his jaws were clenched shut. They say they attempted to address this by prising open his jaws with the breath test tube without success. On that basis they say as they had not established an airway they could not attempt expired air resuscitation.

Second, the first aid kit usually carried in all police vehicles had been taken out of the Dimbulah vehicle by Constable Hart a day or so before for replenishing and had not been returned to the vehicle. This deprived the officers of access to a LearDAL Mask that would have enabled them to perform CPR without risking contracting a communicable disease. While both officers denied they refrained from undertaking resuscitation because of this, it would be understandable if it caused them some hesitation.

I accept the absence of a first aid kit in the police vehicle was an episodic oversight that does not point to any systemic failure. I also accept it would have made no difference in this case had CPR been attempted. The evidence of Professor Williams is that only emergency surgical intervention could have had any prospects of prolonging Mr Lee-Chue's life.

Thirdly, neither officer had a current first aid certificate. Both had received training in first aid throughout their careers. However, the system administered by the Queensland Ambulance Service which provides training to QPS officers stipulates that once an officer has undertaken the necessary training it remains current for three years provided the officer undertakes a refresher course in CPR annually. Neither officer had done so and both expressed some reservation about their knowledge and skills.

Clearly, police officers in all areas, but particularly in regional or rural areas, are likely to be first to attend accident scenes where CPR or other first aid techniques need to be applied. The Mareeba District Officer accepted the evidence in this case indicated a policy deficiency and he has taken steps to address it.

Following the death of Mr Lee-Chue, Inspector Straatemeier issued a standing order that sets out in detail the requirements for first aid training of relevant officers in the district. It also sets out the order of priority in which they are to be trained and notes the need for CPR training to be renewed every 12 months. I accept Inspector Straatemeier's evidence that the extent to which this order is adhered to is adequately monitored. This was confirmed by the evidence of Sergeant Price who remains the officer in charge of the Dimbulah station.

The Mareeba District Education and Training Officer maintains a spreadsheet alerting six months in advance as to when an officer is coming out of qualification. It is clear there is a good ongoing understanding between the Education and Training Officer at Mareeba and the QAS in terms of facilitating training courses.

I am satisfied the processes put in place have adequately addressed the problem of first-aid training for officers in the Mareeba District.

Conclusions

In conclusion, I am satisfied the officers lawfully and appropriately took Mr Lee-Chue into custody; they treated him appropriately while he was in their custody and nothing they did caused or contributed to his death. While their

first aid response was not perfect, I accept Mr Lee-Chue's condition, the lack of a first aid kit in their vehicle and a lack of recent first aid training all may have contributed to this suboptimal performance to some extent. However, I am also satisfied no first aid which could have been given at the road side would have saved Mr Lee-Chue. Further, I am persuaded the only systemic issue, namely the first aid training, has been remedied.

I close the Inquest.

Michael Barnes
State Coroner
Mareeba
10 February 2009