



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Michael James MILLER**

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

FILE NO(s): COR00002935/08 (2)

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FINDINGS OF: Mr Michael Barnes, State Coroner

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REPRESENTATION:

Counsel Assisting:

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Queensland Police Service Commissioner:

Ms Christina Heffner (QPS Solicitors)

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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 specified officials with responsibility for the justice system. These are my findings in relation to the death of Michael James Miller. They will be distributed in accordance with the requirements of the Act and posted on the web site of the Office of State Coroner.

Introduction

On 20 February 2006, Michael James Miller, 51, a full fledged member of the Rebels outlaw motorcycle gang, failed to appear at the Supreme Court at Rockhampton for the commencement of his trial on charges of drug trafficking. A warrant was issued for his arrest.

He evaded police for over two years by continually moving his place of residence, living on a boat and "laying low." On Sunday, 25 May 2008 his luck ran out.

On that day, two water police officers conducting a low key patrol of the anchorage in the Round Hill Creek estuary approached him to enquire about the registration of the boat he was on. Mr Miller must have been relieved when his answers seemed to satisfy the police officers and they departed.

However, the officers soon returned, having been unable to find in police records the alias Mr Miller had given them. A minute or so later, Mr Miller fell into the water, dead from a gunshot wound to the head.

These findings

- confirm the identity of the deceased, the time, place and medical cause of his death;
- establish "how" the death occurred, i.e. the circumstances of the death;
- consider whether changes to procedures or policies could reduce the likelihood of deaths occurring in similar circumstances or otherwise contribute to public health and safety (in particular that of police officers) or to the administration of justice; and
- critique the QPS Ethical Standards Command investigation into the death.

The investigation

The crime scene was preserved and a schedule of all police officers boarding the yacht on which Mr Miller had been shot was kept. The rigid hull inflatable boat (RHIB) used by the police officers involved in the incident was seized as were the uniforms and weapons of those officers.

The incident was initially investigated by the Regional Crime Coordinator, Central Region but, appropriately, handed over to Detective Inspector Gary Brown, Internal Investigations Branch, Ethical Standards Command early on the morning of 26 May 2008. As Mr Miller was apparently trying to avoid being taken into custody when he died his was a death in custody, within the terms of the Coroners Act.¹

The two officers directly involved in the incident took part in electronically recorded interviews on the evening of 25 May 2008. Both officers provided specimens of breath and samples of urine for drug analysis. A video re-enactment involving Constable Findlay took place after the arrival of Detective Inspector Brown at the scene.

All QPS officers and staff involved in the incident provided written statements and further statements were obtained from eye witnesses. A video recording taken by a nearby member of the public was seized.

QPS scientific officers conducted examinations of the yacht, RHIB, the deceased's clothing and the officers' firearms. Photographs of all relevant items and locations were taken. A fingerprint examination of the yacht, RHIB and deceased's body was compared with QPS fingerprint records. Gunshot residue analysis was conducted on swabs taken from the deceased's hands.

QPS dive squad officers conducted a five day search of the riverbed underneath the deceased's yacht; ultimately recovering and photographing *in situ* a Tokarev pistol. A mobile phone was also recovered.

Ballistics experts examined the Tokarev firearm, the magazine and ammunition located by the divers and compared the latter with ammunition found aboard the yacht.

Blood spatter analysis of markings on the yacht was undertaken by a QPS scientific officer.

Enquiries into the deceased's background were undertaken and interviews conducted with a former partner and friend of the deceased. Records pertaining to the outstanding criminal charges against the deceased were obtained and the officer overseeing the operation that led to those charges was contacted.

I am satisfied that the integrity of relevant evidence in this case was maintained as well as was possible in circumstances where Mr Miller's body fell into the water immediately after death. I find that the investigation into this matter was thoroughly and professionally conducted and again note the desirability and benefit of having investigators from the Ethical Standards Command involved from an early point in time. I commend Detective Inspector Brown for his considerable efforts in collating the coronial brief.

¹ s10(1)(c)

Jurisdiction

Mr Miller's death was a reportable death by virtue of it occurring in Queensland and in a violent manner. It was treated from the outset as a death in custody for the purposes of the *Coroners Act 2003* ('the Act') after discussion with the State Coroner.

Mr Miller was the subject of a Supreme Court bench warrant and would have been arrested if police had learned his identity. The basis for this warrant and Mr Miller's state of mind are examined later in these findings.

I find that in the moments before death he understood that he was liable to be detained by police. The facts which form the basis for my findings, below, are sufficient to constitute a 'death in custody'² for the purposes of the Act and therefore an Inquest must be held.³

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 history

Michael James Miller was born in Melbourne on 19 January 1957, one of six children. He is survived by his mother Jessie Miller.

Mr Miller moved to Queensland in 1971. He never married; however, a long term relationship that ended in 1992 resulted in two sons, Sean and Jessie. He had another son, Christian, from a more recent relationship and a lack of contact with that child seemingly bore heavily on Mr Miller in the months leading to his death.

Mr Miller was a carpenter by trade and continued to work intermittently in this field, even during the last years of his life when "on the run."

It seems that he spent the last six months living on the yacht on which he died. It was owned by his friend and fellow member of the Rebels gang, Cameron Moir.

Mr Moir provided police with a picture of a man depressed by his circumstances; concerned by the criminal charges against him and angry over the associated stripping of his assets on the basis of their being proceeds of crime.

Mr Miller had apparently told Mr Moir that if he were confronted by police he would take his own life rather than being taken into custody.

² s.10

³ s.27

Criminal history

Prior to the charges that led to Mr Miller going into hiding, he had only been convicted of some traffic offences and a minor drug offence.

In 2003 Mr Miller was charged with two other members of the Rebels OMCG, with trafficking the dangerous drug methyl amphetamine. Mr Miller was also charged with several counts of supplying a dangerous drug.

All three co-defendants were committed to stand trial on 11 February 2005. An indictment was presented in the Supreme Court on 28 July 2005. A joint trial was ordered and listed to commence on 20 February 2006. On that date Mr Miller and another of the three co-accused failed to appear.

A warrant was issued for Mr Miller's arrest and police issued inter and intra-state 'Be on the Lookout For' (BOLF) notices. Over the course of the subsequent year, and following specific intelligence, several operations were conducted and search warrants issued in an attempt to locate Mr Miller. The last of these was in January 2007. Information supplied informally to police by solicitors for Mr Miller's co-accused after his death suggested that it was common knowledge that Mr Miller was in the Rockhampton area during the time that he was at large. Mr Moir has told police he would meet with Mr Miller occasionally (and did so as recently as nine days prior to his death) to, amongst other things, help him buy groceries before returning to the yacht.

The only one of the three accused have yet gone to trial. He was found guilty and sentenced to 14 years imprisonment.

Operation Lyric

The '1770 Festival' was expected to attract large numbers of people to various events between 22 and 25 May 2008 in the towns of Agnes Water and 1770. A police operation code named 'Lyric' was planned to address the crime that could be expected to be associated with the event and was to involve police from Agnes Water, Miriam Vale and Gladstone. The operational order detailed plans for a high visibility presence of police over that period and called for a focus on checking licences, random breath testing and detection of street and liquor offences. The operation included personnel and vessels from Gladstone and Agnes Water water police. It was anticipated those officers would perform water safety equipment checks, boat registration checks and RBTs.

Because much of the focus of the operation would be on boating safety and compliance, the police launch, the *Wrembeck* was to be brought down from Gladstone for the duration of the festival. It was skippered by the officer in charge of the Gladstone water police Sergeant Jeffrey Barnett.

Constable Christopher Findlay of Gladstone water police and Constable Jaella Christensen of Agnes Water general duties were among the 15 officers assigned shifts on 25 May 2008 as part of Operation Lyric. During the course of the day they were assigned by Sergeant Barnett to perform patrols as a pair in a small RHIB with a particular focus on registration compliance of

nearby vessels, RBT of boat operators and a general community policing role. The boat they were to use had only recently been added as a tender to the *Wrembeck* and had not been used for enforcement or patrolling functions previously. It was very small. It has no seats or lockers and was tiller steered.

In the course of approaching vessels and seeking details from its occupants the officers were exercising their statutory powers under s153 of the *Transport Operations (Marine Safety) Act 1994*. Names and addresses would be sought in accordance with s173 of that Act. Section 57(1) establishes the offence in relation to a vessel not being properly registered.

The Round Hill Creek estuary is aligned approximately north south; the navigable section is about 2 km long and varies in width from about 200 to 400 metres. It is subject to strong tidal flows. There are about 30 mooring buoys dotted along the channel.

It was envisaged the officers in the RHIB would patrol the navigable length of the estuary while the *Wrembeck* remained moored adjacent to the council camping ground about three quarters of the way from the most upstream buoy to the open sea.

Neither officer was wearing an accoutrement belt or a holstered firearm. Both indicated the small amount of freeboard on the RHIB meant that it would be very difficult to prevent holstered guns from getting wet. It was also difficult to wear hip holsters with a PFD. They therefore stored their belts on the *Wrembeck* and put their service issued Glocks in a watertight carry case on the floor of the RHIB.

They commenced patrolling at about midday with Constable Findlay operating the motor and Constable Christensen sitting up forward on the inflated gunwale of the port bow. They performed a number of safety checks and RBTs as they made their way up-stream without incident

Police approach Mr Miller's yacht

At about 1:35pm the officers approached a white eight metre yacht anchored near mooring HKO27. It displayed no registration details and as the officers pulled alongside the starboard aft quarter of the yacht they called out to gain the attention of any occupants. Mr Miller appeared from the cabin of the vessel and was visible to the officers from the waist up standing in the companionway.

A relatively cordial conversation then took place in which police pointed out the registration requirements of a vessel with a 15 hp motor and sought Mr Miller's details. Mr Miller professed ignorance in relation to the registration requirements, telling officers that he was in the process of 'doing up' the vessel. He told them that he held a boat licence but had no identification on him. He gave his name as Michael John Andrew and provided his correct date of birth, 19 January 1957. He provided the officers with an address in the Brisbane suburb of Thornlands. The officers advised Mr Miller that he would receive an infringement notice in the mail.

Constable Christensen then released her hold on the yacht and the tender was carried down-stream by the ebbing tide. Constable Findlay started the motor but left it idle while he and Constable Christensen checked with police communications the name they had been given by the person on the yacht.

When no details for 'Michael John Andrew' could be found on any police data base the officers decided to return to the yacht to seek further clarification of its occupant's identity.

Police return to the yacht

Constable Findlay steered the RHIB back to the starboard aft quarter of the yacht and Constable Christensen belayed the RHIB's anchor line around a stanchion, a metre or so forward of the yacht's stern. The officers observed Mr Miller as they pulled alongside: he was still standing in the companionway where they had last seen him but it seems he may have changed some of his clothing.

Constable Findlay explained "*we have a problem*", namely they could not locate any reference to the name given in the police databases. The officers asked again whether the man on the yacht had any identification. At this Mr Miller emerged from the cabin into the cockpit telling them that in fact '*they all have problems*'. As he did this the officers saw that he was holding a pistol. Constable Findlay who had stood up when they first approached the boat now sat down.

Mr Miller stood above them on the aft deck and pointed the pistol alternately at each of the officers as they spoke. He repeated words to the effect that they all had a problem or that the officers had just stumbled into a big problem. Constable Findlay recalls him stating "*I'm going to kill you*" or "*I'm going to kill us.*"

The officers attempted to calm Mr Miller, making it clear that they were seeking nothing more than to establish his identity and indicating that they were happy to leave. Constable Findlay told Mr Miller they were unarmed. This seemed to prompt Mr Miller to move closer to the boat, standing on coaming 200 mm inboard from the gunwale. He looked at each of the officers to confirm the claim.

He then raised the pistol to the left side of his head and fired a single shot splattering the officers in blood and gore. Mr Miller's body and the pistol fell into the water beside the yacht and in front of the RHIB.

Immediate aftermath

Constable Christensen had already been untying the line securing the tender to the yacht and as soon as Mr Miller's body fell into the water they drifted with it downstream. Both officers called their immediate superiors and then set about securing Mr Miller's body as directed. He was too heavy for the officers to drag into the unstable tender and so they held him against its side until they soon drifted to a large motor cruiser moored about 50 to 100 metres down

stream. There, Constable Findlay managed to drag Mr Miller's clearly dead body onto the tender while Constable Christensen helped balance the boat while standing on the cruiser's duckboard.

The officers then returned to Mr Miller's yacht to check if anyone else was inside but did not open the curtain across the galley or enter that part of the yacht. Constable Christensen returned to the cruiser in order to maintain watch of Mr Miller's yacht while Constable Findlay transported the body to the *Wrembeck* which could not come to them because of its draught.

Eyewitness accounts

At the time of the shot being fired, Wayne Bristow and Amanda Jones, a couple holidaying in the area, were checking crab pots from a boat located 50-100 metres from Mr Miller's yacht. Ms Jones was making a video recording of Mr Bristow and, on hearing the shot, turned the camera towards the yacht and the RHIB. Constable Findlay noticed Ms Jones was filming and shortly after the shot had been fired called to her and Mr Bristow for assistance. Constable Findlay asked Ms Jones to use her camera to video areas he thought may subsequently be of interest. The video shows the two police officers, without their accoutrements or firearms, on the RHIB only moments after Ms Jones and Mr Bristow had heard the shot. Their account of what followed corroborates the officers' version.

Steven Williams was on his brother's yacht at mooring HK035 about 280 metres upstream from Mr Miller's vessel. He was on the back deck fishing when he heard a gunshot. He did not see Mr Miller fire the shot or fall into the water. He does however recall seeing a puff of smoke at a point high enough above the yacht that it led him to a view that it could not have emanated from the lower position of the police officers. When interviewed, Mr Williams was adamant he saw Constable Findlay draw his revolver shortly after hearing the shot. In evidence he candidly acknowledged his claim the item the officer produced was a gun was based on what he expected to happen in such circumstances. He also acknowledged that although he thought the boats were only about 100 metres apart, he could not tell if the person he saw standing on the yacht was male or female.

I find Mr Williams was mistaken about the officer producing a gun and accept the officer's version that he took a hand held radio from his trouser pocket very soon after the shot was fired.

Autopsy results

A post mortem examination was carried out on 26 May 2008 at the Rockhampton mortuary by an experienced forensic pathologist, Dr Nigel Buxton.

Gunshot wounds were evident at points slightly above both ears. Dr Buxton noted that on reflection of the scalp, the left side wound showed internal bevelling while the right side wound exhibited external bevelling. This, he stated, '*confirmed the bullet track was from left to right*'. This was supported by the presence of soot and a slight burn over the point of the left ear.

An external examination of the body revealed no injuries suggestive of any cause of death other than the gunshot wound. There was no evidence of violence to the body and no marking suggestive of Mr Miller having been restrained. Dr Buxton found that the markings on the left ear were consistent with a gun being fired within 2-3 centimetres of the head. He opined that the nature of the wounds was consistent with what would be expected from the firing of a high velocity projectile.

Toxicology analysis of blood and urine samples taken at autopsy did not detect the presence of alcohol or any drugs.

As a result of his examination Dr Buxton issued an autopsy certificate listing the cause of death as:

1(a) Gunshot wound to the head (self inflicted).

Investigation findings

Drug and alcohol testing from the breath and urine samples taken from Constables Christensen and Findlay were negative.

The Tokarev pistol found on the creek bed by police divers contained six rounds in the magazine and one round in the chamber. A fully loaded magazine contains eight rounds. When found and photographed *in situ* the pistol was in the fully cocked position as it would be after being fired. The projectile fired by Mr Miller was, unsurprisingly, not recovered. However, the ammunition contained in the weapon matched that found on the yacht. An examination of the yacht and search of the cabin revealed a sawn off double barrellled shotgun, 17 shotgun cartridges and around 250 rounds of Tokarev and other ammunition.

Analysis of the blood spatter pattern on the yacht suggested the blood had originated from a point above and towards the bow of where the blood was located. This is consistent with the accounts of Mr Miller's location from Constables Findlay and Christensen.

Although gunshot residue is soluble in water, swabs taken from the back of Mr Miller's hands reveal small amounts of such residue. The forensic scientist who conducted the examination, Gary Asmussen opined that this would be indicative of a heavy deposit prior to Mr Miller falling in the water.

Fingerprint analysis of prints taken from the body show that they matched those on QPS records for Michael James Miller.

Inspection of the Glock revolvers seized from the RHIB after the incident show that the weapon of Constable Findlay contained only 14 rounds despite a capacity of 15. Constable Findlay was subsequently re-interviewed and explained that it was his long standing practice, based on advice during weapons training, to only insert 14 rounds into the magazine in order to preserve the spring. Advice from ballistics experts was to the effect that while an inspection of the Glocks may determine if they have been fired since last

cleaned, they would be unable to place any timeline on when the weapon was fired. It was not necessary to pursue this point.

Inquiries established that Mr Miller was left handed.

Conclusions

I am satisfied that when faced with the prospect of arrest Mr Miller chose to take his own life. He did this by shooting himself in the left side of the head with a single round from his Tokarev pistol in the circumstances outlined above.

The conduct of Constables Findlay and Christensen immediately prior to Mr Miller's death was entirely appropriate as were their actions in dealing with the body and securing relevant evidence in the immediate aftermath.

They were understandably shaken by the events. Constable Findlay commented in evidence that as he stared up at the larger, older, tattooed man pointing a gun at him and threatening to kill him, he had "*passed panic*" and had moved to expecting his own death which "*had a calming effect.*" Seconds later he heard a bullet whistle past him before he heard the shot and was sprayed with Mr Miller's blood and brain matter. I record these ghastly details not as voyeuristic surplusage but to document the challenges that can, without warning, confront a police officer going about what only moments before had seemed to be an easy and pleasant day's work.

I commend the officers for maintaining their focus on the job at hand and doing what was necessary before handing over the follow up to others. It is gratifying that both continue to serve. I wish them well for their future careers.

Findings required by s45

I am required to find, as far as is possible, who the deceased person was and how, when, where and by what cause 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 Michael James Miller
How he died	He died from a self inflicted gun shot wound while seeking to avoid being taken into custody by police officers.
Place of death	Mr Miller died on a yacht moored in Round Hill Creek near the Town of 1770 in Queensland.
Date of death	He died on 25 May 2008.

Cause of death

He died from a self inflicted gun shot wound to the head

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 only prevention issue raised by the circumstances of this case is why the officers were unarmed and operating from an unstable platform when they were confronted by Mr Miller.

I acknowledge the paradox: it may be postulated that Mr Miller shot only himself because the officers were unarmed – denied the chance of dying in a shoot out with police he stepped back from cold blooded murder and chose suicide simpliciter.

Nevertheless, in most circumstances being armed would be an advantage when confronting a fugitive which is why the QPS OPMs require officers to be armed when on operational duty.

Section 14.9 states (as it did on 25 May 2008):

Officers should carry loaded concealable firearms when performing operational duties unless directed not to carry such firearms in relation to any occurrence or occasion.

Constable Findlay stated in his evidence that while on patrol earlier in the day he had worn his accoutrement belt along with his standard holster and firearm. He told the court the proximity of the small tender to the water, and the requirement to sit on its edge while in transit led to water splashing onto the firearm. He decided to remove it prior to his afternoon patrol and suggested to Constable Christenson that she do the same.

Sergeant Barnett gave no direction to the officers not to wear their guns but nor did he point out their departure from strict compliance with regulations when they left on patrol without them.

It is clear from the evidence water police frequently work in conditions where the wearing of firearms is inappropriate or imprudent. Sergeant Barnett and Superintendent Chepely confirmed this. I conclude the patrol the officers undertook in the small tender on the day of Mr Miller's death was of this nature.

The inquest heard that, in part, the propensity for water police to avoid wearing their firearm related to the unsuitability of the standard hip holster. As a result of approaches in 2006, the then State Water Police Co-ordinator, Superintendent Shane Chepely instigated a research program with a view to adopting alternative means of carrying firearms. This resulted in a trial of

tactical thigh holsters and a decision in December 2007 to allow water police, once adequately trained, to use this type of holster during operational policing. The wearing and use of these holsters was governed by a Standard Operating Procedure and recognised as part of the OPM's in September 2008. The unique problems faced by water police in this regard had been recognised by the time of Mr Miller's death and I am satisfied that the steps taken to address them are adequate.

The size and design of the tender used by the two officers in this case was not conducive to the safe use of firearms in any case. I am of the view that it is unlikely the officers would have worn their firearms even if thigh holsters were an option. To that end, I note that this particular vessel is no longer used in an enforcement role. A Gladstone Water Police SOP now makes it clear that the vessel is not to be used for this purpose other than in exceptional circumstances. I accept the evidence given at the inquest that the other vessels used for interception of vessels by Gladstone Water Police are adequately designed for the wearing of firearms and that the use of thigh holsters has been adopted and well received by the officers at that station.

I also accept an element of discretion needs to be retained in relation to the wearing of firearms. However, the discretion ought to be applied by those in a supervisory position applying recognised principles; not by the most junior of officers on an *ad hoc* basis. This does not require an amendment of the OPM, which broadly provides for such discretion. Rather, it requires the QPS to ensure that officers are aware of their obligations in this regard and of the need to properly communicate directions made in exercise of the discretion. For example, the operational order created to advise those participating in Operation Lyric and senior officers in the region of what was proposed appears to grant to individual officers the choice of whether they wore firearms.⁴

Recommendation- the carrying of firearms by operational officers

I recommend the QPS remind officers of the provisions of the OPM section 14.9 and consider whether guidelines should be developed to assist officers with the power to direct subordinates not to wear firearms as how they should exercise that discretion.

I close the Inquest.

Michael Barnes
State Coroner
Bundaberg
9 December 2009

⁴ Order for Operation Lyric para 4.2