



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of
Carl Antony Grillo**

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

FILE NO(s): COR 2009/2144

DELIVERED ON: 07 September 2011

DELIVERED AT: Brisbane

HEARING DATE(s): 15 July 2011; 30 August - 2 September 2011

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Death in custody; vascular neck
restraint; positional asphyxia

REPRESENTATION:

Counsel Assisting:	Mr Peter Johns
Sergeant Kenneth Farmer, Senior Constable Tom Jakes:	Mr Ralph Devlin SC (instructed by Gilshenan & Luton Legal Practice)
QPS Commissioner:	Ms Christina Heffner (QPS Solicitors Office)

Table of Contents

<i>Introduction</i>	1
<i>The investigation</i>	1
<i>The evidence</i>	2
Health and social history	2
Mr Grillo is confronted by police	3
The chase	4
Mr Grillo is caught and restrained	4
The ambulance is called	6
QAS treatment and hospitalisation	7
<i>The investigation findings</i>	8
The autopsy	8
Further expert medical evidence	9
<i>Findings required by s45</i>	10
Identity of the deceased	10
How he died	10
Place of death	10
Date of death	10
Cause of death	10
<i>Section 48 referral</i>	10
Relevant Police Powers	11
Recovery position	12
<i>Concerns, comments and recommendations</i>	13

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 justice system including the Attorney-General and the Minister for Police, Corrective Services and Emergency Services. These are my findings in relation to the death of Carl Antony Grillo. They will be distributed in accordance with the requirements of the Act and posted on the website of the Office of the State Coroner.

Introduction

Shortly before 3:00pm on 14 September 2009, Mr Grillo was walking in Spring Hill when two patrolling police officers stopped their car with the intention of speaking to him. Mr Grillo ran off and one of the officers gave chase. When he caught up to Mr Grillo some minutes later, a violent struggle ensued before Mr Grillo was restrained and handcuffed. A few minutes later an ambulance was called but by the time they arrived Mr Grillo had stopped breathing and had no detectable pulse. Prolonged resuscitation caused spontaneous circulation and respiration to be returned and he was taken to the Royal Brisbane and Women's Hospital where he was given intensive care over two days. However, Mr Grillo did not regain consciousness and two days later, after consulting his family, life support was withdrawn and Mr Grillo died. He was 42 years of age.

These findings:-

- establish the circumstances in which the fatal injuries were sustained;
- confirm the identity of the deceased person, the time, place and medical cause of his death;
- consider whether the police officers involved were justified in using force against Mr Grillo; whether the force used was necessary and reasonable, and whether it caused his death;
- consider whether the police officers involved provided adequate medical care to Mr Grillo after he was detained; and
- determine whether any changes to police policies or procedures would reduce the likelihood of deaths occurring in similar circumstances in future.

As the death followed immediately a series of events involving police and the incident was investigated by other police officers, the findings also critique the quality of that investigation.

The investigation

The investigation was conducted by the QPS Ethical Standards Command (ESC) and a detailed report was prepared by Inspector Christopher Hobbs.

Inspector Hobbs and other ESC officers attended the scene within an hour of Mr Grillo being detained and only minutes after he was transported from the scene by ambulance. The District Duty Officer, Senior Sergeant Ian Potter had arrived at the scene and taken command at 3:10pm. On arrival it was noted that the two officers involved in detaining Mr Grillo had been separated and the relevant area secured.

Inspector Hobbs and Inspector Roger Lowe conducted video-recorded 'walk-through' interviews that evening with all four police officers who had been at the scene prior to the arrival of the Queensland Ambulance Service (QAS). Those officers voluntarily provided urine samples which were later tested for the presence of alcohol or drugs. Interviews were conducted with the many witnesses who had observed relevant parts of the incident leading to Mr Grillo suffering cardiac arrest.

A forensic examination of the scene was undertaken and a detailed set of photographs taken. Inspector Hobbs oversaw investigations into the background of Mr Grillo and into relevant aspects of QPS training and policy. Records were downloaded from Mr Grillo's phone and persons in contact with Mr Grillo in the lead up to the incident identified.

Inspector Hobbs commissioned a specialist medical report from a toxicologist to address the significance of the level of amphetamines detected in blood taken on Mr Grillo's admission to hospital. This was augmented by further specialist reports obtained at the request of counsel assisting.

A post mortem examination was conducted on the body of Mr Grillo at the Queensland Health Forensic and Scientific Services (QHFSS) facility at Cooper Plains on 17 September 2009. Blood and Urine samples taken on admission at the RBWH were obtained and subject to further toxicological testing.

I am satisfied this matter has been thoroughly and professionally investigated and all sources of relevant information have been accessed and analysed. I commend all those concerned.

The evidence

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

Health and social history

Carl Grillo was born in Sydney on 28 April 1967 making him 42 years of age when he died. He was survived by his mother Jean Grillo, who has sadly also now also passed away, and is survived by a son, daughter and two younger siblings. At the time of his death he was in a close relationship with Belinda Wallis and was living with her at Spring Hill.

After leaving school in year nine he spent the intervening years employed in a variety of jobs throughout Queensland. These included fencing, bull catching, acting as a hotel bouncer and driving a scraper.

His involvement in criminal activity appears to have started abnormally late in life with his first drug offence not until age 30 and apparently escalating in the latter years of his life. As at 14 September 2009 he was subject to an arrest warrant for failing to appear on various drug and weapons charges. He was evidently a heavy user of cannabis and amphetamines and likely engaged in their supply.

Two months prior to his death Mr Grillo had suffered from flu-like symptoms. Although undiagnosed, there is some suspicion he had been infected with avian influenza as this was the diagnosis for his daughter with whom he was staying at the time. In any event these symptoms had abated by 14 September 2009 and he was

otherwise considered a relatively healthy, well-built man to the outside observer. Ms Wallis says that he regularly engaged in exercise such as running and sit-ups.

It is clear that Mr Grillo's passing was a very sad event in the lives of his mother, partner and daughter. I offer them my sincere condolences.

Mr Grillo is confronted by police

Mr Grillo spent the morning at his girlfriend's flat in Spring Hill. She said that in the early afternoon he left saying he was going to the local shops to get some food. Although she was well aware of his drug use she says he largely kept it hidden from her. On this occasion she considered that he was acting a little suspiciously.

Sergeant Kenneth Farmer and Senior Constable Tom Jakes were both in plain clothes conducting intelligence gathering patrols of various inner-city areas. They told the inquest this mainly involved speaking to people they considered might have useful information and that this process was usually undertaken without them having to exercise their powers of search or arrest. The area around Water Street, Spring Hill was of interest as it was understood by them to have a high incidence of drug activity and property offending.

The officers first encountered Mr Grillo as they turned left into Water Street from Boundary Road heading north. He was dressed in dark shorts and a t-shirt and was wearing a backpack secured with both arms and walking on the footpath in the same direction as they were travelling. The officers say that these features, combined with hairstyle (shaved head save for a ponytail) in an area predominantly used by office workers at that hour caused them to be suspicious of him. Both say they very quickly formed the intention to speak to him about his activity but both agree that at this stage there was no proper basis for them to exercise any powers of detainment, search or arrest.

Sergeant Farmer was driving the vehicle. He said he drove 10 to 15 metres past Mr Grillo and stopped in the intersection of Water Street and Dickens Street. Mr Grillo diverted from Water Street into Dickens Street and noticeably quickened his pace and moved his backpack onto one arm and held it away from his body as if about to discard it. Senior Constable Jakes also noticed Mr Grillo quicken pace as they pulled up but then lost sight of him momentarily. After alighting from the police vehicle he saw Mr Grillo walking west along the northern footpath of Dickens Street, already some 20 to 30 metres further up the street. Both officers were convinced that Mr Grillo had identified them as police officers and changed his pace and direction as a result.

Senior Constable Jakes called out to Mr Grillo telling him they were police and to stop. They say Mr Grillo turned briefly and yelled out "*fuck off, leave me alone*". Senior Constable Jakes began walking in the direction of Mr Grillo and shortly after both men began to run at full pace to the end of Dickens Street and right into Fortescue Street. Sergeant Farmer reversed the police vehicle, turned left into Dickens Street and set off with a view to catching up to Mr Grillo. At this stage both officers say they suspected Mr Grillo of being in possession of illicit drugs and both intended to exercise the power granted by section 29 of the *Police Powers and Responsibilities Act 2000* ("PPRA") to detain and search him.

The chase

Sergeant Farmer was initially successful in the execution of his plan as he managed to pass Mr Grillo as they travelled north on Fortescue Street. He stopped some distance ahead of Mr Grillo and got out. He looked down the street and couldn't see Mr Grillo or Senior Constable Jakes. Immediate searches of the area failed to indicate where exactly they had gone. It is now known that as Sergeant Farmer pulled up Mr Grillo turned sharply to his left, crossed Fortescue Street and entered an adjacent property. He made his way through a backyard, over quite rough terrain before coming across an easement that led him further to the left and out onto nearby Wedd Street. Senior Constable Jakes followed, running as fast as he could, keeping a distance of 5 to 10 metres behind Mr Grillo and calling for him to stop.

Mr Grillo ran across Wedd Street and into a car park of the Department of Transport and Main Roads (DTMR). At the southern end of the car park were eight steps that led to a park that ran along side the DTMR building up to Boundary Street. The park, otherwise grassed, contained several concreted sections on which were located picnic tables and chairs and a shed which at the time was under construction.

As Mr Grillo and Senior Constable Jakes ran across the car park towards the steps they were noticed by Ian Giersch. He was standing at the top of the steps having gone to the park to make a mobile telephone call to his wife. He believes that Senior Constable Jakes called out "*stop him*" and that a moment later Mr Grillo said "*please don't stop me mate*" as he laboured up the steps. Mr Giersch said he tried to move out of the way but as Mr Grillo ascended the steps he stumbled and, apparently trying to balance himself, momentarily grabbed Mr Giersch's leg. He remembers that Mr Grillo appeared to be extremely fatigued and "*very out of breath*". Mr Giersch swung around and saw Mr Grillo drop the backpack he had been carrying. Mr Giersch went down the steps as Senior Constable Jakes passed him going up. He said that when he last saw the two men Senior Constable Jakes had appeared to catch Mr Grillo and the two were in a scuffle with the former "*laying across or something*" the latter.

Moments later Mr Giersch heard someone yell out "*I can't breathe*". He continued on his way out of the car park and while doing so heard a person he presumes was Senior Constable Jakes yelling for someone to assist him and saying, presumably to Mr Grillo, "*stop struggling, I'll let you breathe*".

Senior Constable Jakes told the inquest of his observations during this period and they appear to be largely consistent with Mr Giersch's recollections apart, perhaps, from the last comment "*I'll let you breathe*". Senior Constable Jakes said that he had considered withdrawing from the foot chase before reaching this point. He was mindful that Mr Grillo was clearly larger and more muscled than he was; that Mr Grillo may be under the influence of drugs, that he had no accoutrements on him and had been isolated from his partner. He said though that he felt duty-bound to continue. He says that all of these factors were nonetheless on his mind when deciding the level of force necessary to apply in order to detain Mr Grillo.

Mr Grillo is caught and restrained

In his initial account Senior Constable Jakes said he took hold of Mr Grillo "*in a neck restraint fashion*" which he later clarified was a specific type of neck restraint taught as part of the Police Operations Skills and Training (POST) program, namely a lateral vascular neck restraint (LVNR). In a later interview, and at the inquest, Senior Constable Jakes said his memory of the initial contact with Mr Grillo was unclear and that he had only moved into the application of a LVNR after an initial period of

wrestling. He did this as the two came to rest on a grassed patch very close to the concrete base for one of the two picnic tables.

Senior Constable Jakes says that once he was in position to apply a LVNR that he did so on about three occasions, each for less than ten seconds. This is corroborated by Craig Stanley who observed events from level B2 of the DTMR building. Although the line of sight of observers from that level was obscured by fixed vertical sun shades set at an angle and by some foliage, I am satisfied they would have had a reasonable view of events. Mr Stanley saw Senior Constable Jakes applying a “*headlock*” to Mr Grillo. He said he clearly saw the neck restraint being applied and then released “*probably three times*”. He said that Mr Grillo was very aggressive, struggling to get away and yelling out during the periods when the restraint was loosened, while he appeared to go limp during the brief periods it was applied.

The evidence that Mr Grillo struggled intensely to escape from Senior Constable Jakes in the initial stages of restraint is well corroborated. As is the fact that by this stage both men were near exhaustion. The calls by Senior Constable Jakes to civilians nearby to assist him initially went unanswered.

Russell Ward, the building services manager for the DTMR building, heard a commotion outside and was then told of the scuffle in the adjacent park by an employee. He went to the top of the steps from where he saw Mr Grillo being restrained by Senior Constable Jakes. Although Mr Ward said he does not recall any neck restraint being applied at this time I accept the version of Senior Constable Jakes and other witnesses that there was. Mr Ward heard the cries for help from the plain clothed officer and approached the two men. He soon gained an understanding that Jakes was a police officer and he agreed to help restrain Mr Grillo. Mr Ward placed a knee on Mr Grillo’s lower back, brought Mr Grillo’s right lower leg back towards his bottom and held down his left shoulder.

Senior Constable Jakes told investigators that this allowed him to move from his LVNR position to the application of a wrist restraint. He placed his knee on the lower right back of Mr Grillo while holding his right arm behind his upper back. He said he remained concerned by the fact that Mr Grillo’s left arm remained under his body. It was providing leverage for Mr Grillo’s continued struggles and he said he feared Mr Grillo might still be able to reach for his pockets which were yet to be searched. Initially unable to get the left arm into a mirror position of the right despite instructing Mr Grillo to move it, Senior Constable Jakes applied two or three “*hammer fist*” blows to the back of Mr Grillo’s head. The inquest heard that this application of force in which the subject is hit with the soft, lower part of a clenched fist is taught to police officers as a way of distracting attention. It has the benefit, the inquest was told, of reducing risk of injury to the hand of the person delivering the blow.

In the course of delivering these blows, or shortly after, Mr Grillo’s left arm was successfully manoeuvred around behind his back. Both of Mr Grillo’s arms were restrained in a prone position and his lower back or hips restrained by the knees of Senior Constable Jakes and Mr Ward, for a period of two to three minutes until the arrival of Sergeant Farmer.

After losing sight of Mr Grillo and his partner, Sergeant Farmer had driven around the local streets before being directed by some workmen to the area where Mr Grillo was being detained. He told the inquest he could hear the screams of Mr Grillo over the noise of the car engine as he approached the DTMR car park. His observations of Mr Grillo and the type of restraint imposed is consistent with other witnesses. He immediately applied handcuffs so that Mr Grillo’s hands were secured behind his

lower back. Mr Ward immediately released his hold and then walked to the top of the stairs where he retrieved a mobile phone and a black backpack which he gave to Sergeant Farmer.

The inquest was presented with sharply conflicting evidence regarding timing of the “*hammer-fist*” blows applied to the back of Mr Grillo’s head. In short, some witnesses say that Mr Grillo was struck in such a fashion at least once after the application of handcuffs. At the inquest Senior Constable Jakes denied any such use of force was applied after Mr Grillo had been restrained with handcuffs. He said that the sole purpose of the strikes to the head were to assist in the process of shifting Mr Grillo’s left hand behind his back. This had been achieved, he says, prior to the handcuffs being applied and he had no further reason to strike Mr Grillo to the head.

Sergeant Farmer says that he maintained a sufficiently good view of Mr Grillo from the time he arrived at the scene that he can be sure no such strike to the head occurred after the application of handcuffs.

Mr Ward referred to the application of open palm strikes to the back of Mr Grillo’s head. He confirmed that these occurred prior to the arrival of Sergeant Farmer. His evidence was that the strikes were accompanied by a direction from Senior Constable Jakes to Mr Grillo to “*shut up*”.

The inquest heard from Andy Lau, a chef at restaurant located to the immediate south-west of the incident scene. He recalled three or four strikes to the back of Mr Grillo’s head occurring before the application of handcuffs. Sonia Woutersz was watching events from the DTMR building level B2 and says that she saw two forceful open palmed strikes to Mr Grillo’s head. In her view the strikes seemed “*excessive*” but she is sure that they occurred prior to the application of handcuffs.

Two witnesses at the inquest gave evidence that Senior Constable Jakes had delivered at least one strike to the back of Mr Grillo’s head after handcuffs had been applied. Stephen Wockner and Leith Phillips were watching events from different areas within the DTMR building. The latter was in the same room as Ms Woutersz and the two appear to have been discussing events as they unfolded. Notwithstanding this, unlike Ms Woutersz, Ms Phillips believes that all blows to the back of Mr Grillo’s head were delivered after the application of handcuffs.

I found Mr Wockner to be the most impressive of the lay witnesses. The accuracy of his evidence was no doubt honed by his decision to type out an account of his observations shortly after they occurred. This account was later provided to police when he was interviewed. Mr Wockner told the inquest that Senior Constable Jakes had delivered two strikes to the back of Mr Grillo’s head prior to the application of handcuffs. He was quite sure that one further strike occurred after Mr Grillo had been handcuffed.

The ambulance is called

After he was handed the black backpack, apparently belonging to Mr Grillo, Sergeant Farmer placed it on a nearby picnic table and began inspecting the contents. He found a tomahawk and two partially filled syringes. He searched Mr Grillo’s pockets. Although the handcuffed man did not respond when asked whether he had any needles of “*sharps*” in his pockets, the two officers and Mr Ward are sure that Mr Grillo was breathing at this point and Sergeant Farmer says that in the course of the search Mr Grillo appeared to be complying with direction to move his body so that his pockets could be more readily accessed.

After the search Sergeant Farmer called for a police van with a view to transporting Mr Grillo from the scene. At around this time he says that he noticed Mr Grillo had closed his eyes and become unresponsive. His initial thoughts were that Mr Grillo was faking illness, something he had experienced many times before. As a precaution Sergeant Farmer called for an ambulance to attend the scene. His discussion with police communications staff at this point in time confirms that he thought Mr Grillo was probably faking an illness or "*playing possum*". Sergeant Farmer told the inquest he is sure that Mr Grillo was still breathing at this point in time. Records show that the request for an ambulance was made to police communications at 2:45pm and the first ambulance dispatched at 2:48pm (albeit, the two times were taken from different, un-calibrated clocks).

Constables Nathan Wheeler and Kim Ludicke, uniformed officers performing general duties, heard the radio broadcast from Sergeant Farmer and, although they did not have a van, travelled to the scene to offer what assistance they could. The QPS communications tape shows that they booked off at 2:46pm. It is likely that this occurred when they parked on Boundary Street before making their way down into the park. When they got there they both say they saw Mr Grillo in a prone position being held by a clearly exhausted Senior Constable Jakes. On all accounts Senior Constable Jakes asked Constable Wheeler to take over his role in securing Mr Grillo. Constable Wheeler was warned that Mr Grillo would "*try to run*". Constable Wheeler says that he took up a position similar to that in which he had seen Senior Constable Jakes; namely crouched beside Mr Grillo, holding onto his forearm but not placing any weight on him through the use of knees. He recalls that Mr Grillo was "*rolled on his side*" only at the point that he could hear the ambulance sirens.

The weight of evidence heard at the inquest supported the proposition that Mr Grillo was not placed on his side or into the *recovery position* until shortly before the arrival of QAS officers. In addition to the evidence of the uniformed constables, the lay witnesses Phillips, Ward and Wockner all say that Mr Grillo was placed in the recovery position or on his side only very shortly before the arrival of ambulance staff.

The evidence of Senior Constable Jakes and Sergeant Farmer is that Mr Grillo was placed in the recovery position very shortly after the application of handcuffs. Sergeant Farmer says he was particularly mindful of the risk of positional asphyxia in such circumstances and that he had no reason to keep Mr Grillo face down. Both officers acknowledged though, that they remained concerned that Mr Grillo might try to escape if given the opportunity. Sergeant Farmer candidly admitted that he continued to think Mr Grillo was faking his illness until just prior to the arrival of QAS staff. Senior Constable Jakes stated that he had no concerns for Mr Grillo's health during the period prior to him being relieved by Constable Wheeler. He therefore presumed the order to place Mr Grillo in the recovery position had come from Sergeant Farmer as a precaution. The possibility that Mr Grillo may have only been placed partially on his side was explored at the inquest, but both officers maintained that Mr Grillo was in an obviously side-on position shortly after the handcuffs were applied.

QAS treatment and hospitalisation

QAS records indicate that the first ambulance to arrive at the scene did so at 2:56pm with the officers at the patient by 2:57pm. The first treating paramedic was Danielle Brown. She told the inquest that on arrival Mr Grillo was lying in a right lateral position with his hands handcuffed behind his back. She was not able to detect a

pulse nor any sign of respiration. Mr Grillo's eyes were fixed though his skin colouring, skin moisture and temperature felt and appeared normal. Mr Grillo did not respond to painful stimuli in the form of a sternum rub.

All three police officers at the scene say that it was only during this initial check by paramedic Brown that they realised that Mr Grillo was not breathing and in a critical condition. Constable Ludicke was away from the scene guiding the arrival of a second ambulance at this point but she too says that prior to the arrival of QAS staff she believed that Mr Grillo was breathing.

At the request of QAS staff Sergeant Farmer worked over the next 20 minutes providing chest compressions as part of the CPR process. A second ambulance arrived at 3:09pm and intensive care paramedic David Wharton took charge of treatment. An endotracheal intubation tube was inserted and in combination with resuscitation drugs and a further eight minutes of CPR spontaneous circulation and respiration was returned at 3:17pm. Mr Grillo was stabilised and then transferred to RBWH.

Mr Grillo arrived at the RBWH at 3:40pm and underwent further treatment to stabilise his condition. At 8:20pm a CT scan of the brain exhibited signs suggestive of hypoxic-ischemic injury secondary to cardiac arrest. An intra-cranial pressure monitor was inserted and despite the 'dismal' prognosis from an early stage, treatment in the form of, inter alia, ongoing sedation and cooling was applied.

Over the course of 15 September 2009 Mr Grillo entered a state of irretrievable multiple organ dysfunction which worsened rapidly despite treatment. After discussions with his mother and other family members a decision was made to cease life support and Mr Grillo died at 12:33pm on 16 September 2009. Life extinct was certified by Dr Dwane Jackson and the body later formally identified by Mr Grillo's mother.

The investigation findings

All urine samples provided by the four officers in attendance at the scene prior to QAS arrival were tested and returned no positive results for alcohol or drugs.

All four officers were shown to have undergone training by the QPS in which they received instruction on the dangers of positional asphyxia and methods by which it may be avoided.

An examination of Mr Grillo's backpack showed it to have contained, amongst other items, a tomahawk, property later identified as having been stolen, syringes, electronic scales, clip seal bags and a glass vial containing methamphetamine.

The autopsy

A post mortem examination on the body of Mr Grillo was conducted by Dr Alex Olumbe, an experienced forensic pathologist, at QHFSS on 17 September 2009. At autopsy Dr Olumbe noted the body of Mr Grillo to measure 182cm in height and weigh 94kg.

Dr Olumbe noted petechial haemorrhages consistent with asphyxia. He noted damage to the strap and an acute fracture of the right superior cornu of thyroid cartilage which he said was consistent with the use of a "moderate" amount of force to the lateral aspects of the neck.

Toxicology results from blood taken at RBWH soon after Mr Grillo's admission revealed amphetamine toxicity of 0.06mg/kg and methylamphetamine at 1.2mg/kg. A metabolite of cannabis, but no alcohol was detected.

Dr Olumbe drew the following conclusion:

"In my opinion, the cause of death is not determined. A descriptive cause of death statements (sic) that includes the activity/neck restraint with pathophysiological possibilities associated with amphetamine toxicity in the presence of significant natural disease in the form of coronary atherosclerosis and cardiomyopathy. The chain of events could have led to hypoxic brain insult/injury (which was non-survivable)."

Further expert medical evidence

Expert medical opinions were sought from three further specialists. Dr Olaf Drummer a forensic toxicologist considered the level of methamphetamine in this case to be in the high range *"ie to represent one of the higher concentrations seen in methamphetamine users"*.

Dr Drummer explained the link between methamphetamine, a strong stimulant drug, and the consequent increase in blood pressure and heart rate. Combined with excessive stimulation through excessive exertion catecholamine's, such as noradrenaline, are released in sufficient doses that it may cause the heart to go into an arrhythmia.

Dr Anthony Brown, a specialist in emergency medicine told the inquest that he thought Mr Grillo had experienced an arrhythmia, a process that leaves no sign at autopsy. He considered the descriptive cause of death adopted by Dr Olumbe was appropriate to the circumstances.

Dr David Ranson, a forensic pathologist also agreed broadly with the conclusions drawn by Dr Olumbe. He was careful to point out though that in setting out a descriptive cause of death it is important to note whether any particular factor is considered to have more weight in causing the ultimate cause of death. In the absence of proper explanation importance could be unduly attached to one factor over another simply because it is listed first.

Dr Ranson was of the view that in this case no one particular factor could be quantifiably identified as the main precipitating cause for the death of Mr Grillo. Dr Ranson and Dr Brown agreed that as each factor in the series of events of 14 September 2009 was added to the mix that the risk of arrhythmia and subsequent death increased. Both said that Mr Grillo was at risk of a sudden arrhythmia before any contact with police due to his amphetamine levels and underlying heart disease. The extra risk associated with the addition of the foot chase, then the neck restraint and then the prone restraint could not be quantified although each clearly added to the likelihood of a cardiac event.

Dr Brown told the inquest that, having reviewed the evidence, he was not critical of the decision not to commence CPR prior to ambulance arrival. The inquest heard that this decision was in fact not thought necessary as none of the police officers at the scene believed Mr Grillo had stopped breathing prior to the arrival of QAS officers. Dr Brown cited academic research noting the difficulty associated with identifying when a person goes into cardiac arrest and that this was not a case where he could say it should have been obvious before CPR in fact commenced. He was

also of the view that the commencement of CPR a few minutes earlier would have made no difference to the outcome.

Dr Brown and Dr Ranson agreed that, if properly applied, a LVNR should have had no impact on Mr Grillo's subsequent death. Properly applied, a LVNR does not restrict the airway. It is the process of asphyxia that would have aggravated the risk of arrhythmia in the case of Mr Grillo. While an LVNR has the intention to restrict blood flow to the brain, this would not have affected the oxygen content in the blood in the short term and would not have caused any increased risk of arrhythmia. That is not to say it does not have its own risks, even if properly applied, simply that it would not have influenced this situation. It was acknowledged that the attempted application of an LVNR in a dynamic situation may be difficult and might therefore affect the windpipe, at least momentarily. Dr Olumbe on the other hand, considered that the interruption of the blood flow to the brain could have further stressed the already compromised cardiac output.

Findings required by s45

I am required to find, as far as is possible, who the deceased person was, how he died, when and where he died and what caused his death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses, the material parts of which I have summarised above, I am able to make the following findings.

Identity of the deceased -	The deceased person was Carl Antony Grillo.
How he died -	He died after he tried to evade being detained by police by running from, and then wrestling with an officer during which a lateral vascular neck restraint was applied. This physical exertion, combined with underlying cardiac disease, high levels of amphetamine in the blood and prone restraint, greatly increased his risk of cardiac arrest due to an arrhythmia. Although he was able to be revived by ambulance officers, he suffered an irreversible hypoxic brain injury and died two days later.
Place of death -	He died at the Royal Brisbane and Women's Hospital in Herston, Queensland.
Date of death -	Mr Grillo died on 16 September 2009.
Cause of death -	Mr Grillo died from the combined effects of moderately severe physical exertion; a lateral vascular neck restraint and restraint in a prone position; and a high level of amphetamine toxicity on a background of myocardial fibrosis and coronary artery atheroma.

Section 48 referral

I have found that the force used to restrain Mr Grillo, how it was done and the manner in which he was treated after he was restrained may have contributed to his

death. This then requires me to consider whether the conduct of the officers should be referred to the DPP for consideration of a criminal prosecution or to the police service for the consideration of disciplinary action. Those questions require me to determine whether the force used against Mr Grillo was lawful and reasonable in the circumstances.

Relevant Police Powers

Section 29 of the PPRA provides:

Searching persons without warrant

(1) A police officer who reasonably suspects any of the prescribed circumstances for searching a person without a warrant exist may, without a warrant, do any of the following—

(a) stop and detain a person;

(b) search the person and anything in the person's possession for anything relevant to the circumstances for which the person is detained.

“Prescribed circumstances” relevantly includes that “the person has something that may bean unlawful dangerous drug - s30(a)(ii).

Section 615 of the PPRA provides:

Power to use force against individuals

(1) It is lawful for a police officer exercising or attempting to exercise a power under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force to exercise the power.

Example—

A police officer may use reasonable force to prevent a person evading arrest.

Reasonable suspicion

The precondition for a lawful basis for the exercise of any powers against Mr Grillo was a reasonable suspicion of a *prescribed circumstance* as set out in section 29 of the PPRA. The two officers involved in this case both say that they suspected Mr Grillo of possessing illicit drugs. They cited various reasons for this including his appearance and clothing and the location in which he was seen, but ultimately both acknowledged their power to detain and search only arose once Mr Grillo began running away from them.

In *Queensland Bacon Pty Ltd v Rees (1966) 115 CLR 266* Kitto J stated:

A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust amounting to a ‘slight opinion, but without sufficient evidence’, as Chambers Dictionary expresses it. Consequently, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence.

The judgement of Kitto J was cited with approval in *George v Rockett (1990) 170 CLR 104 at 115* in which the High Court in a joint judgement stated:

The facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief, yet some factual basis for the suspicion must be shown.

As to whether the fact of a person running away from police (in the context of all other information known to police) forms the basis for a reasonable suspicion, there appears a dearth of case law in this country. The point was considered by the United States Supreme Court in *Illinois v. Wardlow* 528 U.S. 119 (2000). In a 5-4 judgment the Supreme Court overturned a decision of the Illinois Supreme Court and ruled that running from police in a high crime area is sufficient to give rise to a reasonable suspicion of criminal activity.

There are of course reasons why a person may run from police that do not involve the person having contraband on their person. Some individuals and racial groups are for good reason, mistrusting of police and would prefer to avoid any contact with them. However in this case, I am satisfied, on balance, that the suspicion the officers had with respect to Mr Grillo was reasonable. I am therefore satisfied that they were, pursuant so s615 of the PPRA, entitled to use reasonably necessary force to detain and search Mr Grillo.

Reasonably necessary force

I am satisfied that the level and type of force used by Senior Constable Jakes prior to the application of handcuffs was reasonably necessary. The comparative sizes of the men, the demeanour of Mr Grillo in the initial stages of the scuffle and the fact the officer was alone and without accoutrements are key considerations in coming to this conclusion. The application of the LVNR, and the strikes to Mr Grillo's head using a *hammer-fist*, were consistent with the officer's training. Guided by the QPS use of force model to which officers are expected to adhere, I am satisfied that they were reasonably necessary in a situation where Mr Grillo's left hand remained under his body providing leverage and potential access to his pockets.

Any such strike to Mr Grillo's head after the application of handcuffs could not be classified as reasonably necessary in the circumstances. Two independent witnesses say they saw that happen, although I note they viewed the scene from some distance and through some visual obstructions. They were watching a dynamic and confronting incident rapidly unfold. Recalling the precise sequence of events is difficult in such circumstances. Both officers deny it and their version is supported by other independent witnesses. In the circumstances I do not believe the allegation could be sustained to the requisite standard for either a criminal prosecution or disciplinary action. On the other hand, such a reaction by Senior Constable Jakes was foreseeable, having regard to the emotive state he would have been in when the danger had subsided but the adrenaline continued to flow. It is surprising the more senior officer did not step in and take control of the handcuffed prisoner, allowing the severely fatigued and frustrated officer to move away to regain his breath and composure.

Recovery position

I am not persuaded by the evidence of Senior Constable Jakes and Sergeant Farmer that Mr Grillo was placed in the recovery position shortly after the application of handcuffs and that he remained in that position until the arrival of QAS officers.

Their evidence is not supported by the other two police officers, both of whom said when they arrived Mr Grillo was in a prone position with his torso facing to the

ground. There is independent eye witness evidence to support the proposition that Mr Grillo was only moved onto his side in the period immediately prior to the arrival of paramedics – probably after the ambulance was called as a result of Sergeant Farmer becoming concerned about his condition. Alternatively, it may have been that Sergeant Farmer gave the order to keep Mr Grillo in a recovery position but that he was pre-occupied with radio communication and searching of the backpack and Senior Constable Jakes was simply too fatigued to properly maintain Mr Grillo's positioning. It may have been that the officers were in fact concerned that Mr Grillo would make attempts to escape and holding him in a face down position was better protection against this risk.

It can not be established that Mr Grillo would not have died had he been placed into a recovery position as soon as he was handcuffed and accordingly I don't intend referring the matter to the DPP. It is apparent that both officers are now very conscious of the need to protect prisoners against the risk of positional asphyxia and so nothing would be gained by referring that aspect of the matter for the consideration of disciplinary action.

Concerns, comments and recommendations

Section 46, in so far 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.

I am satisfied that Mr Grillo's death became far more likely when he decided to flee from police, wrestled with Senior Constable Jakes, was restrained by that officer and Mr Ward and then handcuffed and placed in a position that was likely to have further impeded respiration at least to some extent.

I am also satisfied though; that the officers were entitled to pursue Mr Grillo and that the force used to detain him was appropriately necessary. Although I have found that Mr Grillo was not placed in the recovery position as would have been highly desirable and consistent with QPS training, I am unable to conclude that this of itself made any difference to the outcome in this case.

In his report Inspector Hobbs notes that the QPS Operational Skills and Tactics Program Committee are reviewing the use of LVNR. The inquest heard that this review concerned confusion that arises from the classification of this restraint as "lethal". I agree that different wording, while continuing to express the significant risks involved, may be appropriate. I do not consider that I can usefully add to that process.

In his report Inspector Hobbs drew attention to the failure of Senior Constable Jakes to carry appropriate accoutrements while on duty. The inquest heard that the practice was not uncommon given the difficulties in concealing such equipment when wearing plain clothes. I do not consider that the lack of accoutrements influenced the outcome in this case and do not seek to add to the Inspector's recommendation.

I close the inquest.

Michael Barnes
State Coroner
Brisbane
7 September 2011