

FINDING AFTER AN INQUEST INTO THE DEATH OF ELIJAH HOLCOMBE

The hearing of this mandatory inquest was finalised only on 19 March 2014, having been heard over an inordinate amount of time, as it began in October 2010, sixteen months after Elijah died on 2 June 2009. After two weeks of hearing evidence in Armidale, I suspended the inquest and referred the matter under s 78 of the Coroners Act 2009 for the Director of Public Prosecutions to consider commencing proceedings against a known person.

The subsequent delays were due to first, the Director of Public Prosecutions taking over fourteen months to decide not to proceed with charges against any known person, and then to certain decisions being the subject of proceedings, first in the Supreme Court, and then in the Court of Appeal. Sympathies are due to the involved parties for that length of time, and in particular to the Holcombe family.

Counsel Assisting in the initial proceedings was Mr Hoy SC, whom we lost to the District Court bench during the first long adjournment, and who has been most ably replaced since by Mr Jeremy Gormly, SC, again leading Mr Ranken of Counsel and instructed by Mr Stephen Hogan of the Crown Solicitor's Office.

Mr Hood and Mr Haverfield of Counsel appeared throughout for the Police Commissioner and the involved officer. At the initial hearing, Ms Alexander appeared for Nurse O'Brien and Ms Rudland for Nurse Rutherford, while Mr Gregg appeared for the Area Health Network, and Mr Stewart for the Holcombe family at the initial hearing. Mr Sheller of Counsel appeared for the family following the resumption of the inquest and Mr Thangaraj SC also appeared for the involved officer.

At the time I suspended the inquest, I made limited findings as to the fact that Elijah had died at Armidale on 2 June 2009. I am now required to conclude my

statutory task by making findings that encompass the manner and cause of Elijah's death.

THE FACTS

I will give the basic facts as briefly as possible, as they have been fully summed up in the submissions of Counsel Assisting, and are now well known to all.

Elijah Holcombe was a young man of 24 who was suffering from a mental illness which had at earlier points caused him to spend a period of time in a mental health facility. He sought the help of his family, who lived in Narrabri, which was lovingly, caringly and promptly given. His father brought him home to Narrabri from Sydney in late May 2009 and sought medical assistance. On the afternoon of 1 June 2009, Elijah took off in his father's car.

Mr Holcombe advised the Narrabri police that he was hugely concerned about Elijah's mental state, that he was not reporting the car stolen, but that Elijah needed care. He told the police that Elijah was particularly paranoid about police. This information was all recorded on the COPS system, and the following message was broadcast over police radio :

"POI suffers from mental health issues and is extremely frightened of Police-Use caution when dealing with-Concerns he will run from POL"

The next day, 2 June, Elijah walked into the Armidale Police Station, having abandoned the car somewhere in town, and asked for help. The Station police, particularly Sergeant Aiken (who noted the COPS event on the computer system, and phoned Narrabri police) treated him with kindness and care, and persuaded him to be taken to the Armidale Hospital for assessment.

Unfortunately, although Elijah was triaged quickly, he then had to wait for assessment by the Mental Health nurse. By the time she began to interview him, it seems he had become increasingly upset and asked if he was free to go. As he

had not been scheduled, or fully assessed under the Mental Health Act, he was told he was a voluntary patient and free to leave. Sadly, he promptly did so.

Shortly after, Senior Constables Rich and Dufty who had been asked to look for the Holcombe car, arrived at the hospital apparently with a view to locating Elijah so he might help them in their search. They were told by Nurse O'Brien that he had left. She then said words to the effect of "Bring him back if you can, we are worried about him". She specifically told the officers that he had not been scheduled.

The officers then left the hospital in their unmarked police car and came upon Elijah on Rusden Street, a short distance from the hospital.

Rich approached Elijah on foot, and, after a brief interaction, Elijah turned and ran from Rich. Rich chased after him (while Dufty went in a different direction). Elijah ran down Rusden and across Dangar Streets, into the Beardy Street mall, and turned in to Caffiends, a coffee shop, where he ran through the shop to the car park behind, grabbing a bread knife from its kitchen on the way. Rich pursued Elijah through the café and into the laneway behind the café, Cinders Lane. Elijah walked rapidly on through the Cinders Lane car park, passing several civilians, and dropping his jumper on the ground with Rich, gun drawn, running after him. It was the end of a weekday lunchtime, and a large number of people were returning to their work from lunch, and variously observed the chase and its consequences. Rich called on Elijah to drop the knife, but Elijah did not comply and continued to walk away. Rich drew his firearm and continued to call on Elijah to drop the knife, closing the distance between them as he did so.

At a point some distance along the footpath, Elijah turned to face Rich. There is an enormous discrepancy in the evidence of what then occurred. Rich claimed in two directed interviews and a walk-through, that Elijah roared and ran towards him, brandishing the knife. Rich then shot him in the chest. He died before the ambulance arrived.

THE ISSUES

1. Why did Senior Constable Rich chase Elijah? Was he justified in doing so?
2. Are police sufficiently trained in recognising and dealing with mentally ill people?
3. Was Rich acting in self-defence or not when he fired the fatal shot?

THE EVIDENCE

I have been greatly assisted by Counsel, including Mr Haverfield for Rich, providing me with painstaking summations of the evidence given by the large number of eye-witnesses to events in Cinders Lane. I will not reiterate those submissions/summations, but have taken them into account, and accept that some witnesses contradict others, although in many cases as a consequence, in my view, of the differing positions from which each of them saw the chase and the shooting.

The Brief included DVD footage from a number of CCTV cameras located in and about the Armidale CBD capturing most of the foot pursuit, and importantly, events in Cinders Lane, unfortunately not including the actual shooting. That footage was vital in not only assessing the behavior of Elijah and Rich, but also in showing the positions of most of the eye witnesses.

Exhibits 15, 16 and 17(the aerial maps pinpointing the whereabouts of all witnesses in relation to Rich and Elijah) were valuable in assessing those positions.

Sergeant Aiken and Constable Shelton who took Elijah to the Hospital both described him as co-operative, sitting calmly and quietly and displaying no signs of threat to himself or others. Nurses O'Brien and Rutherford described him in similar terms, and as pleasant and not aggressive. The kitchen staff at Caffiends, despite seeing him pick up the knife, did not feel threatened or frightened by Elijah, because he was not waving the knife or threatening anyone. They described him as looking 'a bit scared'. No person who witnessed the events in Cinders Lane described feeling threatened by or frightened of Elijah (I refer, for example, to the evidence of Belinda See, Kim and Tom Blomfield).

Rather, most seemed to have felt compassion for him, and some expressed fear of Constable Rich, who was in ordinary dress, with a baseball cap and a gun (see for example, Crystal Standen, Vicki Dennison and Brian Simpson).

Those witnesses who saw some movement by Elijah towards Rich immediately before the shooting were all a considerable distance from the two (see Guthrey, Schaefer, and Hallman). With the single exception of William Browning, the nature and degree of movement attributed to Elijah by each of these witnesses was significantly less than that initially stated.

William Browning did maintain that Elijah ran up to 13 or 15 metres at Rich before the shot was fired, but was contradicted by all other evidence. At least six witnesses were adamant that he made only a very slight movement if any, one noting that it may have been backwards, and one maintained that Elijah neither moved or ran towards Rich (see for example, Leesa Moore, Judith Tennant, Joan Whitburn inter alia).

A civilian, Bernard Mauer, gave evidence that when Rich first approached Elijah in Rusden Street, he jiggled the car keys and said "Hey mate, do you want your keys?" and chuckled as Elijah moved away before announcing that he was an 'undercover cop' and that Elijah was obliged to stop. Both Constable Dufty and another civilian, Willow Grieves, broadly corroborate Mr Mauer, although Rich in his interviews and walk-through denies waving the keys or chuckling. He says that he held his police badge out and announced himself as police, telling Elijah that they wanted him back at the hospital. His version is not corroborated by any other witness.

Constable Rich gave evidence before me finally on 17 and 18 March this year under the protection of a s 61 Certificate.

The court had been shown the filmed walk-through with Rich conducted by Senior Constable Richardson, as well as the transcripts of the two directed interviews which he had given to Inspector Olen, the senior Investigator, the first the day after the shooting, the second 5 months later.

Rich agreed that he was wearing plain clothes, and equipped with his Glock and handcuffs, but no baton. He said he had had OC spray with him, but had somehow lost it. Rich also agreed that he saw Elijah 'engaging' with Sergeant Aiken in the Station and said he had Elijah pointed out to him as "the man who came in and confessed to stealing a car". On request, he went out alone to search for the car but after 10-15 minutes returned to the Station and collected Dufty, his partner for the day to assist. After further fruitless searching for the car, Rich telephoned Aiken, who told him that Elijah had been taken to the hospital for assessing or scheduling. The two police then went to the hospital. However, prior to their arrival, they were informed by Sergeant Aitken that Elijah had left (Rich's word was 'absconded', though this was contrary to the evidence of the two nurses). Rich's evidence was that he was told that Elijah had left before being seen by the psychiatric Registrar and knew that he had not been scheduled. The nurses said that they were concerned for Elijah's safety and would like him brought back if possible. Rich intended, he said, to see if he could find Elijah and whether he would come back to the hospital of his own free will.

Rich described his actions when he first confronted Elijah as trying to build a rapport with no intention then of arresting him. He said he only formed that intention when Elijah suddenly ran across the road through busy traffic, causing Rich to be concerned for Elijah's safety. I have already noted the discrepancy between Rich's evidence as to his first interaction with Elijah in Rusden St, and that of other witnesses. On balance, I prefer the evidence of Maurer, Grieves and Dufty. They noted Elijah as running down the footpath for some metres, before crossing the road, and not having to dodge traffic.

Rich's evidence then became confused and, to an extent, self-contradictory. He initially said that he had no intention of arresting Elijah, who was not his case, and that he was only interested in the location of the car. He said he intended only to drive Elijah back to the hospital if he came of his own free will. He later said that after Elijah ran from him, he did intend to "follow" him, because he considered that Elijah needed a psychiatric assessment, based on the warnings of the nurses, Elijah's demeanour, his dangerous running, and the 'fact that he had recently committed an offence'. For these reasons, said Rich, he believed that s 22 of the Mental Health Act would apply, as Elijah was posing a risk to himself or others. Under cross-examination from Mr Sheller for the

Holcombe family, Rich accepted that it would have been better if he had had more information including what was on COPS. However, he maintained that he had believed Elijah had recently committed a crime. He denied drawing his gun before he entered the café, and did not recall crouching behind a freezer within the café, as described by the kitchen staff and said at that point he reached for his OC spray only to find it missing. He was fearful, he said, for the staff. He only realised that Elijah had picked up a knife after reaching for the spray, and as Elijah walked out of the open kitchen door towards Cinders Lane. Rich rang the Station as he followed and spoke to Sergeant Aiken, advising that Elijah had a knife and their location.

At this point, during his evidence on 18 March 2014, Rich said that he now had no memory whatsoever of what happened in Cinders Lane, although he had been specific in his two directed interviews and the walk-through. A Report from his treating psychologist was admitted into evidence. That report indicated that during 16 sessions since 2009, Rich was exhibiting clear signs and behaviours of Post Traumatic Stress Disorder which can have a clinical effect on memory. Most recently (13 March 2014), he had told the psychologist that 'there are certain parts I don't remember' and that his mind was 'mush'. The psychologist was not called. I allowed Senior Constable Rich to leave the witness box.

Earlier, Senior Sergeant Peter Davis, a police instructor and firearms expert, gave evidence. In addition to providing a detailed statement and materials concerning the use of force, and the circumstances in which a police officer is entitled to discharge a firearm, (Exhibit 20), Senior Sergeant Davis concluded that the actions of Senior Constable Rich in discharging his firearm were, in the circumstances, appropriate and within the scope of organisational policy/procedure and training practice guidelines.

In October 2010, Superintendent David Donohue, NSW Police Force Corporate Spokesperson for Mental Health, provided a statement detailing the intensive four-day training course administered by the Mental Health Intervention Team. Important material was tendered, supplied by the Police, shortly before the final days of this inquest (Exhibit 24) with details of a one-day Mental Health Workshop that is now being rolled out state-wide to all Operational police over two years from February

2014. I had within the last year heard other evidence from the Commander of the Mental Health Intervention Team and endorsed the then proposal for the training course. I do not doubt that Police Executive are dedicated to improving the understanding and training of on the ground police, of methods of managing persons with mental illness.

Due to the illness of Mr Holcombe Senior, the court heard an eloquent and moving eulogy to Elijah from a close relation. Family members attended every day of the hearings.

CONCLUSIONS

As Senior Counsel Assisting submitted, the criticism of Senior Sergeant Davis's evidence is firstly that his opinion is based on his acceptance of Rich's version and of those witnesses who were consistent with Rich only. He does not take in to account the body of evidence from witnesses who said that Elijah did not move towards Rich aggressively or at all. Secondly, he demonstrated a narrow concept of control and communication in its application to policing, involving submission by civilians to the officer's view and communication as command and compliance. I agree that this concept is inherently flawed for police dealing with a mentally ill person such as Elijah, where that person's perception may be distorted and irrational.

I further agree with Counsel Assisting that Davis's view of appropriate action being assessed by reference to the fact that the tactical options model leaves the decision as to what level of force is appropriate to the discretion of each officer, should be rejected. That assessment after an incident would inevitably lead to the conclusion that every decision of every officer is correct. The possibility of accountability is then excluded.

Mr Hood for the Commissioner pointed out in his submissions that the officers were 'passed the ball' by the hospital, with limited legislative powers. Mr Hood submitted that 'there is a dilemma for any officer if a person refuses a request to accompany as the public may well have expected police in this case to make concerted efforts to locate Elijah and return him to hospital.'

Mr Thangaraj of Senior Counsel for Rich, set out 10 factors relevant to why the court should accept that Rich was justified in shooting Elijah:

1. Elijah's mental health issues
2. That Elijah was holding a knife
3. That Elijah , holding the knife, stopped, turned and faced Rich
4. That Rich was alone
5. Rich's concern for the safety of civilians
6. Elijah was not co-operating, refused to drop the knife
7. That in apparently adopting a 'crucifix' position, Elijah was seen by Rich as aggressive.
8. Rich knew that expert nurses were concerned for Elijah
9. Elijah was aggressive in supposedly twice calling "Shoot me!" to Rich
10. Elijah's demeanour did not lead to any view of him as passive.

In my opinion, 1, 8 and 10 are factors which ought to have influenced a police officer to adopt an approach which might have avoided the shooting. I am not convinced on the evidence of the truth or accuracy of 3, 5, 7 or 9. Of course, Elijah was holding a knife but his so-called "refusal" to drop it may well have been the result of his state of mind, like his dropping his jumper apparently without noticing. Most witnesses saw Elijah's demeanour as passive and non-aggressive throughout, and if they even noticed the bread knife, described it as dangling down from his hand, never raised or pointed.

It seems, overall, that the reasons Rich gave chase to Elijah were spurious and spontaneous. He has given a number of different reasons for doing so, not one of which is persuasive in justifying the chase. His original task was to find the car. When that changed by his coming upon Elijah, or even after Elijah ran off from Rusden Street, he should have then reported in to Sergeant Aiken, and asked for further information. Information he had received from the nurses was insufficient for him to act as he did. Elijah's perceived demeanour was not a basis for depriving him of his liberty. Nor is it credible that Rich saw Elijah as putting himself in danger from the traffic. That is corroborated by no one. Rich had no basis for arresting, stopping or chasing Elijah.

It seems that police have not been sufficiently trained in the past in how to deal with mentally ill people. Rich himself had had a basic one hour lecture while a student officer at the Police Academy, and had undertaken two required online modules subsequently. Given the current incidence of mental illness, and the frequency with which officers are expected to handle such difficult situations, that is obviously not enough.

I accept that that is now in hand, with the new workshops to which I have already referred. I endorse their introduction as quickly and broadly as possible.

The situation undoubtedly altered when Elijah picked up the bread knife, despite his apparently never wielding it or threatening to do so. The circumstances then became very fraught. When Elijah finally stopped and turned, it seems on balance that he made some movement, although it may have been no more than a step or two, or even a stumble on the gutter. But there was a distance of about 10 metres between Rich and Elijah, and the moment Elijah turned, Rich, who had control of that space, fired. It was overly hasty and precipitous. Only Rich and one other witness claim that Elijah roared and said 'Shoot me". That is not credible. Even if he did, that should have no bearing on Rich's decision to shoot; it was not an invitation or a lawful one.

Rich in the tension of the moment may have believed Elijah was being, or about to be, aggressive. That may have been what Rich perceived. I don't accept that it was in fact so.

As well as expressing my deep sympathy to Elijah's family, I wish to thank not only Mr Gormly, Mr Ranken and Mr Hogan, for their exceptional assistance, but all Counsel, Senior and otherwise, who appeared throughout this lengthy inquest. I also thank Inspector Olen, the primary investigator in the matter, for his long and skilled dedication to this tragic death.

FINDING

That Elijah Jay Holcombe died on the second of June, 2009, at Cinders Lane, Armidale, in the State of New South Wales, as a result of a gunshot wound to the chest inflicted by Senior Constable Rich of the New South Wales Police, while Elijah Holcombe was suffering the effects of a mental illness.

Mary S Jerram (previously State Coroner)
Chambers, Glebe

1 May 2014