



STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest: Inquest into the death of Mark David Bennett

Hearing dates: 28,29 & 30 July 2014

Date of findings: 15 August 2014

Place of findings: State Coroner's Court, Glebe.

Findings of: Magistrate Sharon Freund, Deputy State Coroner

Findings: Mark David Bennett died at Redfern in the State of NSW around 11.37 am on 23 November 2012 as a result of a gunshot wound to his chest inflicted by a NSW police officer. Such act was lawful and was in the exercise of his duties.

File number: 2012/366920

Representation: Mr S Buchen instructed by Ms G Lewer of the Crown Solicitor's Office as Counsel Assisting the Coroner;
Mr R Hood instructed by Walter Madden Jenkins for Leading Senior Constable Damien Livermore;
Mr B Haverfield instructed by Mr S Robinson of the NSW Police Force for the Commissioner of the NSW Police Force;
Mr S Wilkinson instructed by Carrol & O'Dea for Constable Damien Thom

FINDINGS

Mark David Bennett died on 23 November 2012 after being shot twice by a police officer in Redfern Street, Redfern. He leaves behind his partner, Nina Ihaka, his mother Cristel, and his sons Max and Bradley.

The role of a Coroner as set out in s. 81 of the *Coroners Act 2009* ("the Act") is to make findings as to:

1. the identity of the deceased;
2. the date and place of a person's death;
3. the physical or medical cause of death; and
4. the manner of death, in other words, the circumstances surrounding the death.

As Mr Bennett's death arose out of a police operation, this is a mandatory inquest pursuant to s. 23 of the Act, and the central issue for this inquest to determine is whether the force used by the police was appropriate in the circumstances. A coroner, pursuant to s.82 of the Act, also has the power to make recommendations, not in an attempt to lay blame but to look forward in an attempt to prevent future similar deaths and the pain and suffering that has been experienced by Mr Bennett's family being experienced by others in the future.

As stated at the start of the inquest there is no controversy in relation to the identity, date, place or direct cause of Mr Bennett's death. The primary issue for this inquest is in relation to the surrounding circumstances and in particular:

1. Was Mr Bennett in an impaired mental state at the time of the shooting?
2. What were the circumstances of the shooting?
3. Were the actions of the police officers namely, Constable Damien Thom and Detective Senior Constable Damien Livermore appropriate in the circumstances?

I shall deal with each of these issues in turn.

Background

Mr Bennett was born on 3 December 1965. His parents separated in 1978. He was known to his family and partner Ms Ihaka as "David". Ms Ihaka has described David as a much loved partner and father.

On all accounts, Mr Bennett had an unsettled childhood and adolescence. He left school at the age of 15, had a lengthy criminal record that dated back to his adolescent years which involved the commission of serious offences in different jurisdictions. Moreover, Mr Bennett spent the preponderance of his adult life in custody¹.

Mr Bennett had a long-standing drug problem. At the time of his death he was receiving medication for heroin addiction. He was also known to use both methylamphetamine and cannabis. Mr Bennett used both of these drugs close to the time of his death.

The evidence also suggests that Mr Bennett also suffered over the years from mental illness. In the opinion of Dr Olav Nielssen, psychiatrist who reviewed Mr Bennett's medical records, Mr Bennett had an underlying bipolar mood disorder (or manic depression)². He had a manic episode in late 2010 while he was in custody in Queensland. The episode took three weeks to resolve while Mr Bennett was hospitalised and treated with anti-psychotic medication. Mr Bennett continued to take antipsychotic medication up until the time of his death. Traces of the medication were present in his blood at the time of death³.

About six weeks prior to his death, Mr Bennett commenced staying over at an apartment occupied by Nina Ihaka, Mr Bennett's long-time partner⁴. The evidence indicates that their child Max did not stay in the apartment when Mr Bennett was sleeping over, as at the time Ms Ihaka had shared custody of Max with a family member⁵.

¹ Exhibit 1, Volume 3, Tabs 135-138;

² Exhibit 1, Volume 3, Tab 131;

³ Ibid at pp. 7-8;

⁴ Exhibit 1, Volume 2, Tab 97, paragraph 12;

⁵ Ibid at paragraph 13;

On the night of Thursday 22 November 2012, Mr Bennett was staying at Ms Ihaka's apartment. Mr Gavin Miller was also staying over as a guest. Mr Miller appears to have had a major drug habit at the time.

The evidence concerning Mr Bennett's movements during the night of 22 November 2012 and the morning of 23 November 2012, is incomplete and in certain respects, unclear. Ms Ihaka told police that she believed that Mr Bennett went to sleep at about 1.00 am. This belief does not accord with the banking records, telephone records or CCTV footage in the brief which can be summarised as follows:

1. During the early hours of 23 November, from about 2.00 am to about 7.30 am, there were multiple attempts to access funds from Mr Bennett's bank account through the use of an ATM outside a pub in Redfern which was close to Ms Ihaka's apartment. As explained by Detective Sergeant Howe, on the first day of the inquest, \$600 was successfully withdrawn from the account at 2.02 am. Thereafter, there were a number of unsuccessful attempts over the ensuing hours to obtain more cash;
2. Mr Bennett's card was used for the final time at an ATM in Redfern Street at 7.24 am. Investigators were only able to obtain CCTV footage of this final transaction. That CCTV footage depicts Mr Bennett using the ATM and then entering Redfern Railway Station. It is not possible to conclusively determine whether Mr Bennett himself used his ATM card on the earlier occasions however I note that there is other evidence that Mr Miller was out and about in the Redfern area in the early hours of the 23 November 2012;
3. Mr Miller's SIM card was removed from his phone and placed into Mr Bennett's Nokia handset sometime between 5.19 am and 7.55 am. It appears that Mr Bennett's phone service account was out of credit at this time. It is likely that Mr Bennett put the SIM card into his own phone. The phone (with Mr Miller's SIM card) was found in Mr Bennett's possession at the time of his death;

The ATM transaction and telephone evidence suggests that Mr Bennett was in a confused or disordered state in the hours preceding his death. Assuming that he performed the ATM transactions during the early hours of 23 November, he may have had difficulty inputting the correct PIN number. Later in the morning, he also misdialed at least one telephone number, Ms Ihaka's, on multiple occasions (although, this might

reflect the fact that he ordinarily relied on Ms Ihaka's number being saved to his own SIM card.) He repeatedly phoned the number connected to the very SIM card that was in his handset. It appears that he left a number of voice messages on this service. People who spoke to Mr Bennett on this telephone number during the morning of 23 November 2014 described him as being agitated, "out of it", nonsensical and drug affected⁶. Mr Bennett may also have sent a bizarre SMS message to a wrong number threatening loss of a car.

As indicated above, Mr Bennett is seen on CCTV at Redfern Street at 7:24am on 23 November 2012 walking towards Redfern train station. The cell tower locations recorded in the CCRs suggest that Mr Bennett may have travelled (likely by train) from Redfern to the Ashfield area at about 8.00 am. He appears to have travelled back to Redfern at about 11.00 am. It is not known what Mr Bennett did during this period of time, but it is possible that he collected a vacuum cleaner pole and a bike helmet in a shopping bag during this trip. According to Ms Ihaka, he did not leave the apartment with these items.

Nina Ihaka, in her statement dated 10 January 2013⁷ detailed her last moments with Mr Bennett on the morning of 23 November 2012 that when she woke Mr Bennett was already awake and dressed. He had packed a bag with some clothes and said that it was his pay day and he was going to get his medications at Regent House. He did not ultimately leave with the packed bag of clothes. Mr Bennett also said that he had to do something for Gav (Mr Miller) and that he would get the milk and paper. This was the last time that Ms Ihaka saw Mr Bennett alive.

Ms Ihaka described his behaviour that morning as "a bit strange" or "a bit off colour and stressed." He was not making a lot of sense. He told her: "Where I'm going I don't need clothes."⁸

The telephone records⁹ indicate that Ms Ihaka rang Mr Miller's number four times between 10.26am and 10.46am. Three of these calls connected. Ms Ihaka recalls that

⁶ Exhibit 1, Volume 2, Tab 99 paragraph 8;

⁷ Exhibit 1, Volume 2, Tab 97;

⁸ Ibid at paragraph 32;

⁹ Exhibit 1, Volume 4, Tabs 141-144;

Mr Bennett answered the phone and said that he was coming home and Mr Bennett also told her that he loved her.

Was Mr Bennett in an impaired mental state at the time of the shooting?

It is uncontroversial that Mr Bennett consumed methylamphetamine and cannabis in the hours prior to his death. The post mortem toxicology results record a reading of 0.12 mg/L for methylamphetamine and positive readings for chemicals associated with cannabis¹⁰.

Professor MacDonald Christie, consultant pharmacologist provided a report dated 24 May 2014¹¹ analysing the significance of the post mortem toxicology results. He opined *inter alia* that:

1. It is reasonable to conclude that Mr Bennett had most likely consumed a low to moderate dose of methylamphetamine if it was taken less than 12 hours before death, or possibly a large dose if taken much more than 12 hours earlier. Professor Christie also indicates that it possible but not certain that Mr Bennett was intoxicated by methylamphetamine at the time of the incident.
2. In respect of the cannabis results, Professor Christie concludes that it is very likely that the drug was consumed within 1–2 hours prior to death and perhaps less (possibly as little as 30 minutes before). It is very likely that Mr Bennett was intoxicated by cannabis at the time of his death.
3. It is not possible to perform a reliable back-calculation of the amount of methylamphetamine or cannabis consumed in view of the limited information available.

The drugs have different effects. The possible effects of methylamphetamine intoxication include increased energy, self-confidence, risk-taking, erratic behaviour and aggression. While increased violence is also a possible effect, Mr Bennett's reading at

¹⁰ Exhibit 1, Volume 1, Tab 5;

¹¹ Exhibit 1, Volume 3, Tab 133;

the relevant time was likely to be below the range of concentrations known to be associated with violent and irrational behaviour.

Cannabis intoxication can cause a range of effects including anxiety, paranoia, panic reactions, sensory and perceptual distortions, impairment of gross and fine motor skills and reduction in dexterity and reaction times. The degree of impairment is reduced if the user has developed tolerance to the drug. There is evidence that Mr Bennett was a long-time user of cannabis. It is reasonable to assume that he had developed a tolerance to some degree to the drug.

The evidence indicates that \$600 was withdrawn from Mr Bennett's bank account at around 2.00 am. This cash was not found on Mr Bennett at the time of his death. It is possible that this money was used by Mr Bennett to fund a drug purchase.

The other possible source of impaired thinking and cognitive functioning is some type of psychiatric episode. Dr Nielssen provided an expert opinion on this issue and opined that notwithstanding his opinion that Mr Bennett had an underlying bipolar illness, on the evidence available Dr Nielssen could not conclude that Mr Bennett experienced an acute psychiatric episode at the relevant time. Dr Nielssen was of the view that the main factor contributing to Mr Bennett's behaviour and hence to his death would appear to be the behavioural effects of self-induced methylamphetamine intoxication.

It is worth noting that Professor Christie, an expert pharmacologist, has also opined that both cannabis and methylamphetamine intoxication can exacerbate existing psychotic and hypomanic behaviours and this should be considered as a possible contribution to Mr Bennett's behaviour during the incident.

Accordingly it is not possible to determine what caused Mr Bennett to steal the truck and drive it in the manner that he did on 23 November 2012. It is also not possible to say with any degree of certainty that Mr Bennett was in an impaired mental state at the time of the incident, let alone the degree of such impairment. It is possible that his thinking and functioning were adversely affected by either his bipolar mood disorder or drug intoxication or a combination of both.

What were the circumstances of the shooting?

Much of the events as they transpired on that fateful morning, were caught on the numerous CCTV cameras located around Redfern police station and the CCTV footage provides the best evidence of the sequence of events¹².

The events as they unfolded between approximately 11:30 am and 11:39 am on 23 November 2012 can be sequentially summarised as follows:

- A. Mr Bennett can be observed on CCTV at Redfern Station at approximately 11:30am. He inserts his ticket into the ticket turnstile and exits the station onto Gibbons Street. From this time, he displayed signs of disordered or confused behaviour. It seems from the footage that he had some difficulty locating his ticket and appears to vacillate and change direction outside the train station. He then crosses Gibbons Street in what appears to be a dangerous manner, seemingly oblivious to the traffic.
- B. After crossing Gibbon Street, Mr Bennett then loiters in a shared pedestrian and vehicle zone in Redfern Street. He enters the vestibule area of Club Redfern for a short period but does not enter the club itself. He leaves the Club and returns to the shared pedestrian and vehicle zone. At that time, two workmen were working installing signage on Redfern Street. They were using a white tray top truck. This truck was parked near where they were working on the shared zone. After leaving Club Redfern, Mr Bennett appears to observe the truck for a number of minutes in what appears to be a state of indecision.
- C. Mr Bennett then enters the truck and starts to drive it. The keys were in the ignition. He drives down the shared pedestrian and vehicle zone and turns left onto Regent Street.

¹² Exhibit 1, Volume 3, Tab 105;

I note that this act of stealing the truck is somewhat bizarre in the circumstances. The truck did not appear to be a desirable vehicle and the theft occurred right outside Redfern police station.

- D. From the time he entered the vehicle, it appears that Mr Bennett had significant difficulty operating and controlling the truck.

The video and witness accounts indicate that Mr Bennett had difficulty putting the truck into gear. This is consistent with witness's observations of bunny-hopping and loud revving of the engine, and the visible bursts of exhaust emission on the CCTV. I note that the evidence is that the truck had no defects at the relevant time¹³.

- E. The workmen immediately notice the theft of their truck and draw it to the attention of police officers in a nearby marked police vehicle, RF450. RF450 then commenced following the truck down the shared pedestrian and vehicle zone and continue to follow the truck as it turns left into Regent Street then left into Lawson Street. The evidence is that the officers in RF450 set off to follow the truck with the intention of causing it to stop. It is probable that from the time they commenced following the vehicle in the shared pedestrian and vehicle zone, the RF 450's warning lights and sirens were activated. There is a controversy in the evidence as to whether RF450 commenced a pursuit. Resolution of this issue is not material to this inquest. It is probable, however, that by the time later police vehicles, RF14 and RF10, commenced following the truck, those vehicles were in pursuit of the truck.
- F. When the truck entered Lawson Street, the lights at the intersection with Gibbons Street were red. There were vehicles waiting at the intersection for the lights to change. Mr Bennett drove into the far lane of Lawson Street and stopped behind the waiting traffic. RF450 pulled up behind the truck and the CCTV clearly shows the truck reversing back into RF450 and causing damage to the car.

¹³ Exhibit I, Volume 3, Tab 129

It is distinctly possible that Mr Bennett deliberately reversed the truck back into RF450 and Probationary Constable Bradbury (who had alighted from RF450 and was running between the truck and RF450 at the time and narrowly missed being hit by the truck in the ensuing collision), however, this is not certain given the apparent difficulty that Mr Bennett had manipulating the gears of the truck.

- G. Thereafter, as the lights changed, Mr Bennett manoeuvred the truck across the three lanes of traffic on Lawson Street. His manner of driving leads me to the conclusion on the balance of probabilities that Mr Bennett was, from at least this point of time, deliberately seeking to evade the police and was not prepared to follow their instructions.
- H. Mr Bennett then executed a left-hand turn from Lawson Street into Gibbons Street against the flow of traffic. This was on any account exceptionally dangerous and it was lucky that the traffic in Gibbons St had stopped at the traffic lights near the intersection of Redfern Street. At the time Mr Bennett made the left hand turn there was at least one pedestrian close to or at the intersection with Redfern Street who was in very close proximity to the truck.
- I. The collision between the truck and RF450 on Lawson Street was witnessed by officers in two other nearby police vehicles. One vehicle, which was stopped on Lawson Street, was RF14, which was being driven by Leading Senior Constable Damien Livermore. Another police vehicle, which was waiting at the lights on Lawson Street, was RF10, which was being driven by Acting Inspector Atkins. After the collision on Lawson Street, RF450 was disabled and did not follow the truck any further. The truck was however followed from Lawson Street into Gibbons Street by RF14. RF10 also followed behind RF14 from Lawson Street into Gibbons Street. At the time of the turn into Gibbons Street, RF10 had the warning lights and sirens activated.
- J. After turning into Gibbons Street, Mr Bennett then immediately turned left back into the shared pedestrian and vehicle zone of Redfern Street. The truck collided with a light pole, causing the pole to fall over and the light to come off the top of the pole at some speed. This light fitting then struck a passing

pedestrian, Ms Irina Pavlovskikh, causing her to fall to the ground and causing some injury. After colliding with the pole, the truck came to a stop. I am satisfied on the balance of probabilities that the manner and speed at which the truck drove into the shared zone of Redfern Street was extremely dangerous. It may well be the case that collision with the light pole prevented the truck from colliding directly with a pedestrian at this time. The collision with the light pole itself posed a real danger. Ms Pavlovskikh was clearly fortunate in the extreme not to suffer more substantial injuries as a result of this collision;

- K. Upon the truck colliding with the pole in Redfern Street, RF14 (driven by Leading Senior Constable Livermore), pulled up alongside and slightly in front of the truck. RF10 pulled up behind RF14.
- L. At the time Mr Bennett executed the left hand turn from Lawson Street into Gibbons Street, Constable Damien Thom was coming out of the Redfern Police station having just delivered a pizza to a colleague. He saw the truck travel the wrong way down the one-way-street with a police vehicle following with lights and sirens activated. He followed on foot and approached the truck, shortly after the truck collided with the pole. Constable Thom did not observe the collision with the light pole but heard it and was aware that there were pedestrians in the area. He drew his firearm, and aimed it at the cabin of the truck. This occurred around the time that Leading Senior Constable Livermore was exiting his vehicle. Leading Senior Constable Livermore had not drawn his firearm at this time.
- M. The evidence indicates that Leading Senior Constable Livermore had observed Ms Pavlovskikh being hit by the projectile from the light pole and saw her in a prone position in the roadway after she was knocked off her feet. After he had exited the vehicle, Leading Senior Constable Livermore drew his pistol and also pointed it toward the driver of the truck.
- N. As they both approached the truck, Leading Senior Constable Livermore and Constable Thom both yelled repeatedly to Mr Bennett to get out of the truck. He refused to do so. This is consistent with Mr Bennett's continuing attitude of non-

compliance with police directions. There were moments when Mr Bennett was looking directly at both officers.

- O. At this time, the truck was still being driver by Mr Bennett and was shuttling backwards and forwards. This may be because Mr Bennett was continuing to have difficulty with the truck's gears. While the truck may have driven slightly over the light pole, it does not appear that the truck was actually caught on the pole. On one view of the CCTV, the truck was actually manoeuvred around the pole, which might explain its subsequent change in direction;
- P. Leading Senior Constable Livermore initially approached the truck from a position in front of and to the right of the driver's compartment. As the truck was moving backwards, Leading Senior Constable Livermore stepped towards the front of the truck, pointing his firearm at Mr Bennett. The truck then changed direction to its right and accelerated forward. This put Leading Senior Constable Livermore directly in line with the truck, such that he had to take evasive action to avoid being hit. It appears from the CCTV that Leading Senior Constable Livermore fired the first shot and then moved sharply to his left before firing a second shot. The truck commenced its forward acceleration before the shots were fired.
- Q. Leading Senior Constable Livermore fired two shots. The first shot was fired through the windscreen of the truck. That bullet struck Mr Bennett in the chest. The second shot entered through the driver's side window and grazed Mr Bennett's right shoulder and entered his neck. .
- R. The first shot was fatal. There seems to have been no discernible attempt by the driver to control the vehicle from the time of the first shot. It is reasonable to assume that the first shot incapacitated Mr Bennett. The supplementary autopsy report dated 30 July 2014¹⁴ states that the wound to the chest "was not survivable and would have caused virtually instant death".

¹⁴ Exhibit 3.

- S. After the first shot and through the second shot the truck continued to accelerate forward on a trajectory and ultimately collided forcefully with the side of the Railz Hotel.
- T. After it collided with the wall of the Railz Hotel, the truck then impacted with a recessed window area further down Redfern St. Another pedestrian, Ms Christine Saltos was in this area at this time. It does not appear to be the case that the relevant police officers were aware of her presence at the time the shots were fired. She sustained minor injuries from the collision. It is remarkable that she avoided serious injury or even death. There were other pedestrians in Redfern Street at the time, although it is fortunate that the area was less populated than is ordinarily the case.
- U. Police then approached the vehicle and attempted to render aid to Mr Bennett. Ambulance officers arrived shortly afterwards and declared Mr Bennett to be deceased.

Where the actions of the police officers appropriate in the circumstances?

Leading Senior Constable Livermore and Constable Thom both gave evidence on the final day of the inquest. I found them to be witnesses of truth and their evidence credible. They both gave evidence in a frank and forthright manner.

The evidence clearly indicates that Leading Senior Constable Livermore moved in front of the truck with firearm raised in the hope that Mr Bennett would obey his directions and get out of the truck. Mr Bennett clearly did not do so.

Leading Senior Constable Livermore gave two reasons for firing at the truck namely:

1. To avoid death or serious injury to himself as a result of being hit by the truck;
and
2. To avoid serious injury or loss of life to Ms Pavlovskikh.

In relation to his first justification, namely to avoid death or serious injury to himself, Mr Buchen, Counsel Assisting submitted that there were three potential difficulties with this first justification .

Firstly, Leading Senior Constable Livermore put himself in front of the truck, which thereby contributed to the very risk that he then sought to avoid by discharging his weapon.

The police training videos contained in Exhibit 1, specifically caution against taking this action. However, as Counsel Assisting submitted, Leading Senior Constable Livermore was entitled to take this action, so long as he did so to prevent the truck from endangering other pedestrians in the area. Indeed, as this appears to have been Leading Senior Constable Livermore's intention, placing himself in front of the truck may be considered a very brave act on his part.

The second potential problem with the first justification offered by Leading Senior Constable Livermore, is that the risk to his own life could have been avoided by moving out of the path of truck, which is precisely what he did. Although, as Counsel Assisting noted, Leading Senior Constable Livermore's evidence was that before he fired the first shot, he did not know whether he had time to get out of the way of the truck.

The third potential problem with the first justification is that shooting at the driver of the truck was not an effective means of stopping the truck. This was conceded, quite properly, by Leading Senior Constable Livermore in his evidence. Once the truck had gained momentum and, given the very short distances involved, it was highly unlikely that shooting at the driver would bring the truck to a sudden halt. This point is emphatically made in the police training videos.

The second justification provided by Leading Senior Constable Livermore for the discharge of his weapon was that the shots were fired to avoid serious injury or loss of life to Ms Pavlovskikh. Counsel Assisting highlighted two potential difficulties with this justification.

Firstly, that Ms Pavlovskikh was not in the direct path of the truck. However, as noted by Counsel Assisting, it has to be said that given the exigencies of the situation, it was reasonable for Leading Senior Constable Livermore to form the view (which he clearly did form) that there was a real risk that Ms Pavlovskikh could find herself in the line of truck. After he had exited the vehicle, Leading Senior Constable Livermore's attention was drawn to the driver and the truck, not the exact location of Ms Pavlovskikh.

The second potential difficulty is, that even if Ms Pavlovskikh were in the line of the truck (or if Leading Senior Constable Livermore believed this to be the case), shooting at Mr Bennett did not provide an effective means of stopping the truck. Indeed, the action may have increased the risks involved due to loss of control of a moving vehicle after its driver had been disabled. The risk to Ms Pavlovskikh's life was only mitigated because another pedestrian removed her from the road.

Acknowledgment must be made that the decision to discharge the firearm resulted in other risks. Firstly, there was a risk that the uncontrolled vehicle would collide with other pedestrians about whom Leading Senior Constable Livermore was unaware. This palpable risk was almost realised in this case. Second, there is always a risk that a bullet will not hit its intended target, particularly when multiple shots are fired at a moving target. Finally, and importantly given the subject of the inquest, the decision to discharge the firearm posed an overwhelming risk of serious harm or death to Mr Bennett. This risk was assumed, even though Leading Senior Constable Livermore knew nothing about Mr Bennett at the relevant time other than the knowledge he acquired in the short period during which he pursued Mr Bennett.

Leading Senior Constable Livermore found himself in a very stressful, highly charged and difficult position. He had a very short compass of time to make a most difficult decision. He must have been under significant stress. He did not have opportunity to carefully identify and weigh the relevant risks. He did not have the benefit of hindsight, which comes from watching and analysing the CCTV frame by frame. In my view, and as submitted by Counsel Assisting, the reasonableness of Leading Senior Constable Livermore's actions must be considered in this light.

Leading Senior Constable Livermore had seen the truck driven in an extremely dangerous manner. He acted in a courageous manner by approaching the truck and put his own life at risk by attempting to block its path in an attempt to put himself between it and what he thought was a pedestrian incapacitated further up the road. The driver of the truck showed no intention of stopping; Mr Bennett drove at the police officer. It was not unreasonable for Leading Senior Constable Livermore, in the circumstances as they unfolded before him, to discharge his firearm. Accordingly, I am satisfied that it was reasonable in the circumstances as they unfolded for Leading Senior Constable Livermore to discharge his firearm twice shooting Mr Bennett in the chest and neck.

In relation to Constable Thom, I note that although he pulled out his firearm he did not discharge it and his actions did not contribute to Mr Bennett's death in anyway. His actions in this regard were justifiable in the circumstances.

Recommendations

The evidence in this inquest serves to demonstrate the significant risks to public safety caused by discharging a firearm at a driver of a moving vehicle, particularly in areas populated by pedestrians.

Counsel Assisting submitted that I should consider making a recommendation pursuant to s. 82 of the Act, namely that the Commissioner of the NSW Police Force give consideration to the development or improvement of mandatory training that places greater emphasis upon:

- (1) The fact that discharging a firearm at a driver of a vehicle is not an effective means of stopping the vehicle; and
- (2) Discharging a firearm at the driver of a vehicle involves an extreme risk to innocent bystanders as a result of loss of control of the vehicle.

In support of his submission, Counsel Assisting relied on the evidence of both Senior Constable William Watt and Detective Inspector Michael Sheehy who acknowledged the potential benefit of including footage of this incident in an updated police training

package. Mr Haverfield, Counsel for NSW Police has indicated that steps are already being taken in this direction.

Counsel Assisting also submitted that I should also give consideration to a recommendation that the Commissioner of the NSW Police Force give consideration to amending the relevant guidelines so as to give effect to the principle that a firearm should only be discharged at a moving vehicle or its driver in truly exceptional circumstances, because of the extreme danger posed by an uncontrolled vehicle.

At present the relevant guideline essentially reiterates the key requirements that apply to discharge of a firearm in any situation. That is, a firearm should not be discharged unless the police officer's life or someone else's life is in real and immediate danger and there is no other means available to avoid the danger.

While the evidence of Senior Constable Watt indicates that it is important that police officers maintain an operational capacity to fire at a moving vehicle in extreme circumstances, the present guideline does not, it is submitted, communicate that this action should only be taken in exceptional circumstances because of the risks involved.

The 2009 training video¹⁵ incorporated a production prepared by the Victorian Police. This indicates (at least at the time of production) that in Victoria police are instructed to only shoot at a moving vehicle in "exceptional circumstances".

I have considered the submissions made by Counsel Assisting and stop short of making such recommendations pursuant to s. 82 of the Act. I note the comments made by Mr Haverfield for and on behalf of NSW Police that steps are underway to incorporate the footage of this incident into training packages for NSW Police about the real dangers of firing or discharging a firearm at a moving vehicle.

In relation to any amendments to the current guidelines I am of the view that for a member of the police force to discharge their firearm they must do so only in very specific situations namely when their life or someone else's life is in real and immediate danger and there is no other means available to avoid that danger. Adding an

¹⁵ Exhibit 1, Volume 4, Tab 134;

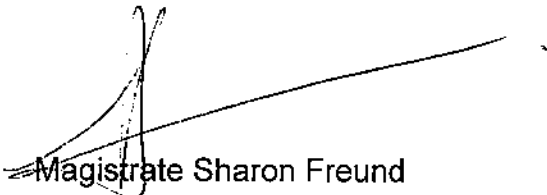
additional protocol of “exceptional circumstances” in relation to moving vehicles could, in my view, confuse those who are at the coal face and having to make quick decisions in very stressful situations. In my view training is the best way to prepare for such circumstances and to that end the addition of the CCTV footage from this inquest is a clear and real example of what can happen.

Accordingly, I now turn to the findings I am required to make pursuant to s. 81 of the *Coroners Act 2009*:

Mark David Bennett died at Redfern in the State of NSW around 11.37 am on 23 November 2012 as a result of a gunshot wound to his chest inflicted by a NSW police officer. Such act was lawful and was in the exercise of his duties.

For the reasons set out in these findings I decline to make recommendations pursuant to section 82 of the *Coroners Act 2009*.

15 August 2014

A handwritten signature in black ink, appearing to be 'Sharon Freund', written over a horizontal line.

Deputy State Coroner