



**CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Warren Matthew SIMON
Hearing dates:	8 October 2024 – 10 October 2024
Date of findings:	21 March 2025
Place of findings:	State Coroners Court, Lidcombe
Findings of:	Magistrate Kasey Pearce, Deputy State Coroner
Catchwords:	CORONIAL LAW – death as a result of police operation – First Nations man – appropriateness of police response
File number:	2023/00115388 & 2023/00160820
Representation:	Ms T Stevens, Counsel Assisting the Coroner, instructed by A Galasso, of the Crown Solicitors Office Mr A Mykkeltvedt, instructed by A Barrie of the Office of the General Counsel, representing the Commissioner of the NSW Police Force, Constable L Sweeney, and Constable S Haime Ms E Parker, instructed by G Price of the Aboriginal Legal Service, representing Mr Simon's family
Non publication order:	A non-publication order has been made pursuant to section 74(1)(b) of the Coroners Act 2009 (NSW). A copy of this order is on the Registry file.
Findings:	Warren Matthew Simon died on 7 April 2023 in an ambulance on Throsby Street, Wickham, NSW. He died of gunshot wounds to the chest. He was shot by a police officer acting in the lawful execution of his duties following an altercation where Warren Simon wounded one police officer and attempted to wound another while attempting to escape from lawful custody.

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1 Introduction

- 1.1 The inquest into the death of Warren Matthew Simon took place at Newcastle courthouse, on the traditional lands of the Awabakal and Worimi peoples. I acknowledge their longstanding connection to Country, and I pay my respects to Elders past, present, and emerging.
- 1.2 Warren Matthew Simon was a proud Awabakal man. He died on 7 April 2023 when he was thirty-eight years old. At the beginning of the inquest into Mr Simon's death, his family asked that he be referred to as 'Warren'. For this reason, throughout these findings I will refer to him by his first name only.
- 1.3 Warren came from a large and loving family. He had grown up in Toronto and was a gifted artist and sportsperson who was well known in his community. However, he had had a difficult life in many respects and had suffered significant trauma. He had spent all but approximately eighteen months of his adult life in gaol. Given this, it is not surprising that Warren struggled with life outside of gaol, particularly with his mental health and a long-term addiction to illicit drugs that underpinned his lengthy criminal history.
- 1.4 On the morning of 7 April 2023 when police attempted to arrest him for possession of stolen goods, Warren produced a large knife that he had hidden in his clothing, with which he stabbed one police officer and attempted to stab another. It was in this context that he was shot by police, causing injuries from which he died soon after.
- 1.5 The circumstances of Warren's death were tragic and confronting in themselves, but when any First Nations person dies at the hands of police, there is an added layer of trauma for First Nations people due to their historically troubled relationship with police. During the inquest, it was clear that Warren's death and the circumstances in which he died were felt acutely by his family, who were represented at the inquest by his Auntie Marlene and Uncle Ken.
- 1.6 On behalf of the Coroner's Court of NSW I acknowledge the tragic circumstances of Warren's death and extend my deepest sympathies to Warren's friends and family for their loss.

2 Why was an inquest held?

- 2.1 Under the *Coroners Act 2009* (**the Act**) a coroner is responsible for investigating all reportable deaths. This investigation is conducted primarily so that a coroner can answer questions that are required to be answered by section 81 of the Act, namely, the identity of the person who died, when and where they died, and the cause and manner of that person's death. A secondary function of a coroner is to make recommendations, if appropriate, that arise from the evidence, in relation to any matter connected with the death.
- 2.2 The combined effect of sections 23 and 27 of the Act is that it is mandatory for a senior coroner to hold an inquest in circumstances where, as in this case, a person has died as a result of a police operation. This is because where an individual dies at the hands of police, it is important to examine whether the significant power that the state places in the hands of police officers, is used in a way that is both lawful and reasonable.
- 2.3 An investigation into Warren's death was conducted by the NSW Police Force (**NSWPF**) and the coronial team assisting the inquest, and a significant volume of evidence was obtained. This evidence was tendered at the commencement of the inquest in the form of a 4-volume brief of evidence which included electronic material. In addition to the brief of evidence, oral evidence was heard from the following witnesses:
- Chief Inspector Shane Buggy;
 - Senior Sergeant William Watt;
 - Constable Shaanan Haime; and
 - Constable Luke Sweeney.
- 2.4 Most of what occurred in the short period that police interacted with Warren immediately prior to his death was captured on Constable Haime's body worn video (**BWV**), and because of this, was uncontested. The inquest, therefore, focussed solely on issues relating to the lawfulness, appropriateness, and reasonableness of the actions of police immediately prior to Warren's death.

3 Warren's life

- 3.1 Before I begin to consider the circumstances of Warren's death, it is important to give a brief account of his life.

Early life

- 3.2 Warren was born on 12 November 1984, the only child of a relationship between Penelope (**Penny**) Simon and Morgan Simon. Penny and Morgan were second or third cousins. Penny was 14 years old when Warren was born. Morgan was 16. In 1989 Penny had another son, Jason, from a different relationship. She went on to have a third son and three daughters. Morgan also had further children.
- 3.3 Penny and Morgan had issues with drugs and alcohol and both spent time in gaol. They were unable to care for Warren and Jason, who were instead raised by their maternal grandparents, Kenneth and Rebecca Simon, at the family home in Toronto. Warren had little contact with his parents while he was growing up, and, except for Jason, little contact with his half siblings. Despite this, Warren grew up surrounded by a large and loving extended family. He was especially close to his grandmother, who was his primary carer. He played Rugby League as a boy and was known as a gifted sports person. He had a large circle of friends and was very well-known in his community.
- 3.4 Warren went to Awabakal Pre-School, Biroban Primary School, and Toronto High School. His first cousin, Cara Lloyd, was about the same age as him and they went through school together. They were very close, and according to Cara, were more like brother and sister, than cousins.
- 3.5 Warren had significant learning and attention difficulties from the outset of his schooling and was often supported by teacher's aides in primary school. His high school years were difficult, and he had numerous suspensions before he was eventually expelled in year 8.

Drug and Alcohol History

- 3.6 Warren began smoking cigarettes at age 8 or 9 and began using alcohol by age 11. His first use of amphetamines was intravenously at age 12 and he quickly became a daily user. He continued to use amphetamines intravenously until age 14 when he began using heroin. Around the same time, he also began using methylamphetamine (**ice**). Warren later reported to psychologists that he spoke to while in custody, that over time ice became the most problematic drug for him as it exacerbated the symptoms of his mental illness and became associated with his criminal offending.
- 3.7 According to a psychological report prepared in relation to his 2023 sentencing proceedings, Warren was able to mostly remain abstinent from illicit drugs while in custody

but found it very difficult to remain abstinent while in the community. He had intermittently been on opioid replacement treatment since around age 19, at various points being prescribed methadone and suboxone, although he had reportedly never attended a rehabilitation program or had any other support around his drug use. Warren estimated that the longest period he had remained abstinent in the community was 2-3 months.

Mental Health

- 3.8 Warren was both exposed to, and subjected to, violence when he was a child. He was also sexually abused several times from the age of 10 by a neighbour, Robert Holland, who worked as a youth officer in his local area. Although in 2015 Warren reported the abuse to police, unfortunately, no action could be taken against Holland as he had died in custody in 2009, while awaiting trial for more than a hundred counts of sexual offences against more than twenty children. Warren described to psychologists that he saw in custody various symptoms of post-traumatic stress disorder, including features of intrusion, avoidance, hyperarousal, hypervigilance, and negative changes in cognition and mood.
- 3.9 Warren reported the onset of symptoms of psychosis during his early teens but said that his first 'full blown' psychotic episode was in 2012. He was hospitalised for a week at that time and prescribed anti-psychotic medication. Aside from that admission, Warren reported that he had never had any mental health treatment in the community and had only seen psychiatrists and psychologists while in custody.
- 3.10 Over the course of his life, Warren was diagnosed with drug induced psychosis with a differential diagnosis of schizophrenia, post-traumatic stress disorder, and social anxiety, for which he was prescribed antidepressant and antipsychotic medications (mirtazapine and olanzapine). He reported that he was compliant with his medication while in custody but sometimes stopped taking his medication while in the community resulting in a resurgence of psychotic symptoms.

Criminal History

- 3.11 The NSWPF database records that Warren was charged with criminal offences on 75 different occasions over his lifetime, with the first listed charge in September 1997 (at age 13) and the last charge laid in February 2022.
- 3.12 Warren's offending while a juvenile primarily involved property offences including larceny, break, enter and steal, and possession of stolen property.

3.13 He continued to offend as an adult. Several of his offences involved significant violence and he received lengthy full time custodial sentences. Ultimately Warren spent all but approximately 18 months of his adult life in custody.

4 Events following Warren's release from custody on 21 February 2023

4.1 On 9 October 2021 Warren was arrested after being involved in a pursuit with police while he was driving a stolen motor vehicle. During this arrest, Warren was searched, and police located a kitchen knife down the front of his pants, underneath the waistband. He was remanded in custody in relation to these offences.

4.2 On 21 February 2023, after a lengthy period as a remand prisoner, Warren was sentenced at Newcastle District Court to a 9-month intensive corrections order (**ICO**) in relation to these offences. He was released from custody the same day. The conditions of this ICO required that he not commit any further offences, abstain from drugs, participate in rehabilitation, and comply with the directions of Community Corrections.

4.3 On 23 February 2023, Warren attended the Community Corrections office at Lake Macquarie. His Community Corrections officer noted that he appeared to be under the influence of illicit drugs, although he denied this when questioned. However, when he was challenged on his presentation, he apologised. Warren advised Community Corrections that he was, at that point, living in Toronto with his cousin, Cara. A further appointment was made for him to attend Community Corrections on 1 March.

4.4 Warren failed to attend Community Corrections on 1 March although he did attend on 2 March. He was clearly under the influence of ice when he attended. Warren submitted to a drug test and tested positive for ice. He indicated he would participate in rehabilitation. At that point he was unable to provide a fixed address as he had moved out of Cara's house due to a disagreement about the payment of rent. A further appointment was made for Warren to attend Community Corrections on 9 March.

4.5 On 9 March Warren failed to attend his appointment with Community Corrections, although he later attended unannounced on 13 March. He attended further appointments on 16 and 23 March, where it appears that the key issues discussed were Warren's unstable accommodation situation, his drug use, and his wish to obtain medication for his schizophrenia.

- 4.6 Warren failed to attend a scheduled appointment with Community Corrections on 30 March and attempts to contact him by phone were unsuccessful. A letter directing him to report on 25 April was sent to Warren's family home in Toronto.
- 4.7 Police considered Warren to be a suspect in relation to some stealing offences that had been committed on 27 February 2023. It appears that he was also wanted for goods in custody and possess prohibited drugs charges.
- 4.8 Records obtained from Newcastle Pharmacotherapy Services show that during the time between his release from custody and his death, except for 25 February and 1 April, Warren attended Newcastle Community Health Centre daily for dosing with methadone.

5 Events of 6 April 2023 - 7 April 2023

- 5.1 Late in the evening of 6 April 2023, premises at 3/77 Bull Street, Cooks Hill, the home of Jamie Kelly and Laura See were broken into. Property was stolen, including a television, laptop computer, clothing, car key, and Apple AirPods. The Apple AirPods were owned by Nicola Kelly, Jamie's sister. Jamie Kelly's Toyota Hilux was also stolen from the rear of the address.
- 5.2 At 12:33 am on 7 April 2023, Laura See contacted 000 and reported the break in. She was transferred to the Police Assistance Line where the operator took details of the incident.
- 5.3 Later that morning, Nicola Kelly accessed an application on her mobile phone which showed that her stolen Apple AirPods were located at 80 Bishopsgate Street, Wickham. As a result of this information Jamie Kelly and Laura See went to Bishopsgate Street, where Jamie Kelly saw his stolen Hilux parked in the street. When he looked inside the vehicle, he saw some of the property that had been stolen from his home.
- 5.4 At 7:13 am Laura See called 000 from Bishopsgate Street and advised that the stolen AirPods had been tracked to 80 Bishopsgate Street in Wickham. Jamie Kelly walked past unit 2 at 80 Bishopsgate Street (**the Bishopsgate premises**) and was able to see inside the unit. He saw his television sitting on the floor of the front room and a male asleep on the floor, surrounded by property that had been stolen from his home. There was no issue in the inquest that this male was Warren.

- 5.5 At 7:24 am, Nicola Kelly, who was still at 3/77 Bull Street, Cooks Hill contacted the NSW Police Assistance Line and informed the operator that she had tracked her stolen AirPods to 80 Bishopsgate Street in Wickham.
- 5.6 At 7:52 am Laura See again contacted 000 and requested an arrival time for police. At about the same time Jamie Kelly contacted Newcastle Police Station directly and spoke to Probationary Constable Lincoln Dearden. According to Probationary Constable Dearden Mr Kelly sounded as if he 'might take matters into his own hands and confront the bloke sleeping in the house'. Probationary Constable Dearden created a further job on the police computer requesting that police attend the Bishopsgate premises.

Police Attendance

- 5.7 On the morning of 7 April 2023 Constable Shaanan Haime and Constable Luke Sweeney were rostered together for a shift that began at 6:00 am out of Newcastle Police Station.
- 5.8 At 7:29 am, Constable Haime acknowledged the job in relation to the location of the stolen property in Bishopsgate Street. The officers went first to the Cooks Hill address. They obtained the contact details of Laura See, and after speaking to her, proceeded to Bishopsgate Street.
- 5.9 At about 7:59 am, Constables Haime and Sweeney arrived in Bishopsgate Street in police vehicle Newcastle City 18 where they had a conversation with Jamie Kelly and Laura See.
- 5.10 At 8:00:10 am Constable Sweeney activated his police radio and requested another police vehicle to attend the location as there was a person sleeping inside the Bishopsgate premises. He indicated that the person may have outstanding warrants and was wearing stolen clothes.
- 5.11 At 8:00:25 am, Constable Haime opened the small wooden gate at the front of the Bishopsgate premises and activated her BWV.
- 5.12 At 8:00:35 am, Constable Haime knocked on the front glass doors of the Bishopsgate premises, waking Warren, who was sleeping on the floor inside the loungeroom area, surrounded by clothing, a television, and other items. Warren went to the front door, which he opened and walked out onto the front doorstep to talk with the officers. Constable Haime asked him to provide his name, which he did. Constable Haime questioned him about the property inside the townhouse as well as how he came to be at the Bishopsgate premises. She advised Warren that she believed he was in possession of a stolen vehicle

and stolen property, and then cautioned him. She continued to ask Warren about the property inside the unit and how he came to be staying there. Warren admitted that he had been squatting in the unit.

- 5.13 At 08:01:10 am, Chief Inspector Shane Buggy, who was working as the Newcastle City District Inspector for the shift, responded to the police radio request made by Constable Sweeney for a car to assist Newcastle City 18 at Bishopsgate Street.

Warren's arrest

- 5.14 At 8:02:58 am, while still standing at the front door to the Bishopsgate premises, Constable Haime and Warren had the following conversation:

Constable Haime: *So at this point in time you are under arrest for goods in custody and a stolen motor vehicle.*

Warren: *Yeah, yep, no worries.*

Constable Haime: *Do you understand that?*

Warren: *Yep, yep.*

Constable Haime: *So, we're gonna get you in the back of a truck, do you have anything on you?*

Warren: *No, I'll just grab me um, rest of my stuff.*

- 5.15 At 8:03:09 am Warren moved from the front doorstep and started to walk back into the front room of the Bishopsgate premises. Constable Haime followed directly behind, and Constable Sweeney followed behind her. Warren continued to walk into the front room, walking away from Constable Haime. She said to him, *'What else have you got?'* Warren then placed his left hand down towards the waistband of his pants. Constable Sweeney said to him *'Mate, can you just keep your hand out of your pocket for us?'*

- 5.16 At 8:03:16 am, while facing away from the police, Warren removed a large knife from around the waistband of his pants. He then turned and swung the knife directly at Constable Sweeney. Constable Sweeney blocked this swing. Warren then lunged again towards Constable Sweeney with the knife, pushing him back at the same time. Constable Sweeney managed to fend Warren off, however during this struggle, Constable Sweeney sustained a stab wound to the left side of his body, under the armpit.

- 5.17 At 8:03:19 am, Warren ran out of the front door of the townhouse and onto Bishopsgate Street before turning into a small alcove next to 80 Bishopsgate Street. He was followed by Constable Haime, who was approximately 4-5 metres behind. She activated her police radio and transmitted '*City 18*'.
- 5.18 At 8:03:25 am, Warren attempted to climb a wooden fence in the alcove area but was unsuccessful. By this time Constable Haime had also entered the alcove area. Warren turned back to face her and ran at her, holding the knife in front of him in his right hand. As he reached Constable Haime, he swung the knife towards her face. Constable Haime put her hands up and started to fall back with Warren above her, holding the knife. She managed to grab hold of Warren 's right hand with her left hand.
- 5.19 At 8:03:26 am, Constable Sweeney ran towards Constable Haime and Warren. He discharged his firearm three times and Warren fell to the ground where he was restrained by Constable Haime. Both officers called police radio for urgent assistance. It is likely that Constables Sweeney and Haime transmitted over each other, as the only transmission heard over the police radio was '*fired, urgent, City 18 urgent*' from Constable Sweeney.
- 5.20 At 8:03 31 am, Constable Haime got up and sat on Warren's back to restrain him. Warren had an injury to his right hand. Constable Haime also was injured and was bleeding from her right hand. The knife had been shattered by one of the rounds fired by Constable Sweeney and the blade lay on the ground within Warren's reach.
- 5.21 At 8:03:35 am, police radio transmitted a priority response for cars to expedite to Bishopsgate Street.
- 5.22 At 8:03:40 am, Constable Haime activated her police radio and attempted to transmit '*City 18, shots fired.*' It is likely that Constable Haime transmitted at the same time as the police radio operator, as her transmission was not heard over the police radio.
- 5.23 At 8:03:43 am, Constable Haime asked Constable Sweeney to move the knife away. Constable Sweeney kicked the knife down Bishopsgate Street, out of Warren's reach. At this point, Warren was still moving, with his head raised from the ground, shifting his bodyweight upwards. Constable Haime remained on top of him, holding his hands on the ground. Sergeant Dayne Gumley, an off-duty police officer who was staying at a house in Bishopsgate Street, came and assisted Constable Haime in restraining Warren.

- 5.24 At 8:03:52 am, Constable Sweeney activated his police radio and transmitted '*City 18, ah I've been stabbed as well.*' The police radio operator requested confirmation of this, and Constable Sweeney replied '*That's correct. I believe so, I have under my arm.*'
- 5.25 At 8:04:51 am, the police radio operator advised over police radio that NSW Ambulance had been contacted.
- 5.26 At 8:05:10 am, an update on the situation was requested over police radio by Newcastle City 14. Constable Sweeney activated his police radio and replied '*No he is not armed. We have currently got him restrained. Injuries to both officers and POI.*'

The arrival of further police

- 5.27 At 8:06:00 am, Chief Inspector Shane Buggy in Newcastle City 10 and Sergeant Matthew Dickson and Probationary Constable Lincoln Dearden in Newcastle City 14 arrived in Bishopsgate Street. They were followed shortly afterwards by Constable Sean Crowe and Sergeant Walton in Newcastle City 35 and by Senior Constable Benjamin Bridge and Senior Constable Luke Withers in Newcastle City 17.
- 5.28 Chief Inspector Buggy approached Constable Haime, who was still restraining Warren. Constable Haime stood up. Chief Inspector Buggy instructed Sergeant Dickson and Constable Dearden to handcuff Warren.
- 5.29 At 8:06:11 am, Constable Sweeney activated his police radio and transmitted '*POI is seriously bleeding and both officers seriously bleeding.*'
- 5.30 Chief Inspector Buggy assessed the injuries to Constables Haime and Sweeney as well as those Warren had sustained. Constable Sweeney had a small wound under his left armpit that was about 10 to 15 millimetres in length and appeared to be a puncture wound. The wound was not bleeding profusely, and Chief Inspector Buggy did not consider it to be serious. Constable Haime had several lacerations to her right wrist and hand, which were bleeding profusely. Chief Inspector Buggy also saw that Warren's hands were badly injured but that he was breathing and appeared conscious. He did not believe the injury to Warren's hands to be life threatening and, at that point, was not aware that Warren had been shot.
- 5.31 At 8:06:55 am, Warren was handcuffed while still lying face down on Bishopsgate Street.

5.32 Chief Inspector Buggy walked Constable Haime towards a police vehicle and asked her what had happened. The following conversation took place:

Constable Haime: *Um yeah he just came straight, we're inside the unit about to arrest him. He went to go grab something and he just came straight at Sweeney with the knife and then he ran and I ran after him and he came at me with the knife and Sweeney just, just shot him.*

Chief Inspector Buggy: *You shot him?*

Constable Haime: *No, Sweeney shot him.*

Chief Inspector Buggy: *Shot him with the Glock?*

Constable Haime: *Yes.*

Chief Inspector Buggy: *Fucking hell, is this the first we've heard of this? It's okay. Where's he shot him?*

Constable Haime: *On the hands.*

Chief Inspector Buggy: *Right, okay. So it's actually a shooting?*

Constable Haime: *Yes.*

5.33 At 8:08:00 am, Chief Inspector Buggy transmitted on police radio that Warren had been shot.

5.34 Chief Inspector Buggy walked over to where Warren was being restrained and assessed him for injuries. He noticed that his condition was deteriorating. He saw a wound to the right side of his chest and initially thought this may have been a stab wound. This wound was not bleeding much.

5.35 At 8:08:30 am, Chief Inspector Buggy provided an update to police radio, requesting an arrival time for ambulance. He instructed the police restraining Warren to remove the handcuffs. Warren was then rolled onto his right side, where Chief Inspector Buggy saw another wound to the left side of his back.

5.36 At 8:11:10 am, the first ambulance arrived at the scene and paramedics began treating Warren. The paramedics performed bilateral chest decompression to both sides of Warren's chest.

- 5.37 At 8:17 am, Warren was placed in an ambulance and intubated. At this stage Warren was in cardiac arrest. He remained in asystole on the way to the hospital and received further immediate treatment from a medical retrieval specialist doctor, Doctor Samuel Peschardt, and a critical care paramedic who intercepted the initial ambulance enroute.
- 5.38 Unfortunately, Warren was unable to be saved. He was declared life extinct by Dr Peschardt at 8:35 am on 7 April 2023.

6 Events after Warren's death

Critical incident

- 6.1 At 8:50 am on 7 April 2023 Warren's shooting was declared a Level 1 Critical Incident by Assistant Commissioner Peter McKenna due to 'death resulting from the discharge of a firearm by a police officer.'
- 6.2 Soon after, a Critical Incident Investigation Team was formed with Detective Chief Inspector Paul Smith of the Homicide Squad assigned to be the Senior Critical Incident Investigator. Detective Inspector Matthieu Russell from the NSWPF Professional Standards Command was appointed as the Review Officer for the Critical Incident.

Postmortem

- 6.3 A postmortem conducted by forensic pathologist, Alison Ward, of Forensic Medicine Newcastle on 12 April 2023 identified Warren's cause of death as 'gunshot wounds to the chest'. There were two entrance gunshot wounds to Warren's chest and gunshot wounds to Warren's right and left hands. A postmortem toxicology analysis of femoral blood identified the presence of methylamphetamine in Warren's system at the time of his death.

Injuries to police officers

- 6.4 The two involved officers, Constables Sweeney and Haime, were also treated by paramedics and taken to hospital. Constable Haime suffered two injuries:
- a wound 4.5 cm long and 1 cm wide around the area of her little finger which was caused by the 'channelling' of a discharge round by Constable Sweeney; and
 - a thumb wound of appropriately 2 cm long and 1 cm wide also from the 'channelling' of the same round.

- 6.5 Constable Haime underwent surgery for exploration of nerve damage and cleaning of the wounds.
- 6.6 Constable Sweeney suffered a superficial wound to the area under the shoulder joint as a result of being stabbed by Warren while in the townhouse.

7 What issues did the inquest examine?

7.1 The following issues were considered at the inquest:

1. Was the conduct of Constable Haime and Constable Sweeney on 7 April 2023 reasonable, appropriate, and consistent with any applicable NSWPF policy or procedure when they:
 - (a) attended the premises at 80 Bishopsgate Street, Wickham (Bishopsgate premises);
 - (b) approached and initially engaged with Mr Simon at the Bishopsgate premises;
 - (c) responded to Mr Simon's conduct inside, and as he exited, the Bishopsgate premises; and
 - (d) approached and engaged with Mr Simon in the carport alcove area of the Bishopsgate premises?
2. Was the discharge of Constable Sweeney's firearm on 7 April 2023 necessary, reasonable and consistent with any applicable NSWPF policy or procedure?

8 Issues arising from the evidence

8.1 Several issues arose from the evidence considered during the inquest.

Whether the pairing of Constables Haime and Sweeney on the morning of 7 April 2023 was appropriate

8.2 As of 7 April 2023, Constables Haime and Sweeney had, respectively, about 2½ years and 1 year experience as police officers. Counsel for Warren's family questioned the appropriateness of two relatively junior officers being paired together on the morning of 7 April in circumstances where it appears that more senior officers were also rostered to the same shift and could potentially have been paired with Constables Haime and Sweeney.

- 8.3 Chief Inspector Buggy gave evidence that the pairing of two constables, as opposed to, for example, a sergeant and a constable, was not exceptional. His evidence was that any officer who has passed their probationary period can be paired with any other such officer and that various factors would affect the pairing of officers.
- 8.4 It was apparent from the evidence that the pairings of officers might change at short notice depending on operational requirements. For example, at the beginning of the 6:00 am shift at Newcastle Police Station on 7 April, Constable Chivers and Probationary Constable Dearden were paired together on station duties. However, by 7:00 am Constable Dearden had been paired with Sergeant Dickson to conduct random breath testing and then to work at Waratah Police Station.

The carrying of a taser

- 8.5 It is NSWPF policy that each car crew carries a taser. Due to some miscommunication between them, Constables Haime and Sweeney did not have a taser between them on 7 April 2023. Both officers acknowledged that this was a breach of policy and that although they realised when they were in the police vehicle that they did not have a taser they did not return to Newcastle police station to obtain one.

The call for backup

- 8.6 When the two officers initially arrived in Bishopsgate Street, Constable Sweeney called for a second car to attend. According to Constable Haime, this was because she initially thought the person responsible for the theft may have been a person she knew from a previous unrelated incident in Bishopsgate Street, who had, as she put it, 'got fiery'. She thought this person may also have had a warrant out for his arrest. However, once the premises in Bishopsgate Street where Warren was apparently sleeping was pointed out to her, Constable Haime realised that the residence was not the same one that she had previously attended.

The use of the Mobipol

- 8.7 Constable Sweeney conducted checks on the Mobipol while Constable Haime was speaking to Warren at the door to the Bishopsgate premises. After Warren gave his name, Constable Sweeney looked up the name 'Warren Simon' on the Mobipol and then showed the Mobipol to Constable Haime. Constable Haime's recollection was that the person she was speaking to at the door matched the photograph Constable Sweeney showed her. Her

evidence was that she saw 'red writing' which she understood to be police warnings, but that she did not look at them. She explained that this was because 'it wasn't hugely important to me at the time' and 'a lot of people that we come into contact with have warnings.'

8.8 Constable Sweeney's evidence was that when he looked at the image on the Mobipol that was linked to the name 'Warren Simon', he did not believe that the image matched the appearance of the person that Constable Haime was speaking to at the door to the Bishopsgate premises. He noticed that Warren had blue eyes, whereas the person in the Mobipol image he was looking at had brown eyes. Because of this discrepancy, Constable Sweeney believed that Warren had given a false name.

8.9 Further evidence made clear that linked to the profile for Warren Matthew Simon, born 11 December 1984 on the NSWPF Computerised Operational Policing System (**COPS**) was the NSW Drivers Licence for a Warren Floyd Simon. The charge photographs of Warren Matthew Simon and the NSW Drivers Licence of Warren Floyd Simon were clearly not photographs of the same person. Evidence established that Warren's NSWPF 'POI Profile' in the COPS system listed five 'COPS warnings'. One of these warnings, which was entered into the COPS system in October 2021 reads 'Has level of resistance; Armed with edged weapon; hinder without force.'

8.10 Ultimately neither Constable Haime nor Constable Sweeney could be sure which photograph of 'Warren Simon' they had seen on the Mobipol on 7 April 2023.

The decision to arrest

8.11 Once she had decided that there were reasonable grounds to suspect that Warren had committed an offence, Constable Haime decided to arrest him. During her oral evidence, she was asked whether she had considered issuing Warren with a Court Attendance Notice (**CAN**). Her evidence was that she did not consider this an appropriate course, firstly due to the seriousness of the offences she believed he had committed and secondly because he did not have a fixed address to which, presumably, a CAN could be sent.

The decision not to handcuff

8.12 According to Constable Haime, once she had decided to arrest Warren, she planned to walk him to the police vehicle where he would be searched prior to being placed in the vehicle. It was suggested to her during her oral evidence that she could, or should, have handcuffed

Warren at the door to the Bishopsgate premises. Her evidence was that she did not consider it 'normal' practice to use handcuffs when effecting an arrest and that she did not see the need to use what she described as 'such a restrictive option' if 'the person is being compliant', which she considered Warren was up to the point where he pulled the knife from his clothing. Constable Haime's evidence was that because he was being compliant, she thought it would be 'fair' to allow him to get the things he needed, like his wallet. She did not believe that there was any need to hold onto Warren at this point, although she and Constable Sweeney escorted him into the unit to 'get his stuff', by which she meant that they walked with him.

- 8.13 Constable Sweeney gave similar evidence to the effect that he did not think it was necessary to handcuff Warren at the door to the Bishopsgate premises as he was being compliant and that he did not think that it was unusual to allow him to walk back into the townhouse to get some property.

The decision to pursue Warren out of the Bishopsgate premises

- 8.14 The possibility of 'tactical disengagement' at the point after Warren had wounded Constable Sweeney was pursued during Constable Haime's oral evidence. Her evidence was that she did not consider it to be an option in the circumstances. Constable Haime was asked about whether she considered her own subjective factors before commencing the foot pursuit, meaning the fact that she was female and smaller than Warren, who was male and physically larger than her. She responded 'I am smaller and he's male and bigger than me, but that's my job. It's a serious offence that has been committed, so all I know at that point is he is very dangerous and is willing to do something like that' by which she appears to refer to Warren's willingness to stab Constable Sweeney.

The possibility of a taser being used in the alcove

- 8.15 Constable Haime stated that even if she had had a taser, she would not have chosen the taser as an option when Warren came towards her with a knife in the alcove outside the Bishopsgate premises.
- 8.16 Constable Sweeney's evidence was that when Warren was moving towards Constable Haime in the alcove next to the townhouse, he, that is, Warren, had moved the knife to above his shoulder. He thought Warren was going to strike Constable Haime and kill her. He stated at this point Warren was less than a metre away from Constable Haime. His

evidence was that he did not consider any other tactical option as viable as it was very close quarters and Warren had a knife. There was, he said, insufficient time to give Warren any warning of his intention to shoot.

9 Evidence as to compliance with NSWPF policies and procedures

The evidence of Senior Sergeant William Watt

- 9.1 Senior Sergeant William Watt has been a Senior Operational Safety Instructor with the NSWPF for 20 years. He is currently attached to the Operational Training Safety & Governance unit of NSWPF, and his role includes providing expert advice to Critical Incident Investigation Teams in relation to the use of police weapons and defensive tactics.
- 9.2 Senior Sergeant Watt provided a 28–page expert certificate that detailed the results of his review of the circumstances surrounding Warren’s death. The review is extensive and detailed. Senior Sergeant Watt also provided oral evidence in the inquest. I don’t propose to go into the detail of his evidence, which is comprehensively set out in his statement, but rather to replicate its most salient points.
- 9.3 According to Senior Sergeant Watt, philosophically, policing involves balancing the need to use force with an avoidance of the excessive application of force. He explained that police should use only that force that is reasonable, necessary, proportionate, and appropriate in the circumstances and should use no more force than is reasonably necessary to the safe and effective performance of their duties.
- 9.4 Senior Sergeant Watt’s evidence was that the tactical options model used by NSWPF does not provide a hierarchical list of options for the use of force, but instead provides a range of different responses that police can use with the primary goal being to gain and then maintain control of a given situation. This model forms a core part of training at the police academy and is regularly reviewed. While there are criteria for use associated with particular tactical options, Senior Sergeant Watt explained that it is a matter for the officer involved considering a number of factors as to what option they choose. The options are as follows:
 - **Officer presence** – the mere fact of an officer being present.
 - **Communication** – between police and members of the public.

- **Weaponless control** - also known as 'empty hand techniques' or 'manual control techniques'.
- **Conducted Electrical Weapon (CEW)** – 'Taser', a conducted electrical weapon considered as a less lethal tactical option designed to temporarily incapacitate human beings or animals by the delivery of short duration electrical impulses.
- **Oleoresin Capsicum Spray** – a device which uses an airborne delivery system to convey an inflammatory agent to a subject's location to discourage or limit the subject's actions
- **Baton** – used to discourage or limit the subject's actions through pain compliance and disruption of motor function.
- **Firearm** – only discharged when there is no other reasonable course of action available, where there is an immediate risk to the officer's life or the life of someone else, or there is an immediate risk of serious injury to the officer or someone else, and there is no other way of preventing that risk.
- **Contain and negotiate** – principally used in response to high-risk incidents, where the intention is to contain the subject and incident to a single location, limit access to reoccurs and potential victims, while allowing time for additional resources and communication techniques to be employed.
- **Tactical disengagement** – to be used where police are presented with a situation where the subject possesses a significant tactical advantage, or the police themselves lack the skills and equipment to resolve the situation appropriately.
- **Active armed offender** – to be used where an individual or group of individual's primary intent is to kill or injury as many persons as possible.

9.5 According to Senior Sergeant Watt, one of the limitations of using a Taser is the requirement to have a completed circuit to have any physical effect, which can be difficult to achieve in close quarters. His evidence was that the rationale behind police discharging a firearm at a human being is that there is such an overwhelming need to stop that person immediately and prevent them from continuing in the actions they are engaged in, that an option of lethal force must be employed. The need must be so great that it justifies the potential to cause serious injury or death to the offender as a result of the shooting.

9.6 The ultimate conclusions of Senior Sergeant Watt in relation to the actions of Constables Haime and Sweeney on 7 April 2023 were as follows:

- The initial police interaction between Constables Haime and Sweeney and Warren at the front door of 2/80 Bishopsgate Street was in accordance with training. There was no initial information that identified Warren prior to them speaking with him, nor was there information to suggest he could be armed. There was no information to suggest the incident should have been considered 'high-risk'. The communication used by Constable Haime was appropriate.
- Warren's stated intention to retrieve property from within the townhouse would not be considered unusual, nor was the decision of Constables Haime and Sweeney to allow Warren to re-enter the townhouse. Further, Constable Haime and Sweeney had insufficient time to stop Warren, even if they had decided to, without the use of significant force.
- The decision to follow Warren into the unit is in accordance with training and was appropriate in the circumstances. At that point, there was no indication that Warren was armed, and he had been placed under arrest.
- The initial attack on Constable Sweeney occurred very quickly and without warning.
- The actions of Constable Sweeney in attempting to block the attack appear to be completely instinctive, to avoid being cut.
- Constable Haime's decision to chase Warren after he exited the townhouse is within the ambit of police training. Whilst chasing an armed offender presents a considerable risk, there is the competing risk of an armed offender confronting a member of the public.
- Whilst either Constable Haime or Sweeney should have been carrying a taser, the use of a taser in this incident would not have been the most appropriate choice.
- The decision by Constable Sweeney to discharge his firearm is entirely consistent with training. Warren had rapidly advanced on Constable Haime and was in the process of slashing at her with the knife. Constable Sweeney was of the belief that Warren was going to kill, or at least seriously injure Constable Haime.
- Once Warren had been shot and fell to the ground, the decision by Constable Haime to restrain him by kneeling over his back and holding his upper body and arms is consistent with training. The blade of the knife was still close by, and Warren was still offering a low level of resistance.
- Initial responding police were not aware that Warren had been shot due to issues with transmissions over the police radio. As such, the initial attending police focussed on

assessment of injuries to Constables Haime and Sweeney. Once Chief Inspector Buggy became aware that Warren had been shot, he immediately made the appropriate assessment and the first-aid treatment that followed is consistent with training and policy.

The evidence of Detective Chief Inspector Paul Smith

- 9.7 The Senior Critical Incident Investigator, Detective Chief Inspector Paul Smith, did not identify any issues of concern to him regarding the actions of any police officer that required referral for remedial or disciplinary action by the NSWPF prior to the coronial inquest, nor did he find any direct or indirect breaches of legislation, policy or standard operating procedure relating to this incident that would have changed the outcome of the incident.
- 9.8 In relation to the discharge of the firearm by Constable Sweeney, he agreed with the view of Senior Sergeant Watt that the discharge of the firearm was entirely consistent with training. He did not believe that Constable Sweeney had any alternative option available to him other than to use his firearm to protect Constable Haime from serious injury or loss of life.

10 Consideration

Issue 1(a) The conduct of Constables Haime and Sweeney when they attended the Bishopsgate premises

- 10.1 When the two police officers attended the Bishopsgate premises, they were responding to several reports in relation to the break and enter the night before, the location of the stolen car in Bishopsgate Street, and the location of some of the stolen property inside the unit where Warren was sleeping. In my view, the officers had a reasonable basis to suspect that the individual in the Bishopsgate premises had committed several serious offences and their attendance at that address was reasonable and appropriate.
- 10.2 Although counsel for Warren's family explored the wisdom of pairing two less experienced officers together on a shift, there was no evidence that such a pairing was inappropriate, unreasonable, or contrary to NSWPF policy and practice. In addition, there was no evidence to suggest that another officer with more experience would, or should, have responded differently to the situation with Warren as it unfolded.

- 10.3 Although concern that Mr Kelly might take matters into his own hands if police did not soon attend the Bishopsgate premises on the morning of 7 April may have played a part in ensuring police attendance was prioritised, there was no suggestion that once at the premises, the officers were rushed or pressured by the presence of Mr Kelly and Ms See in Bishopsgate Street, or that they proceeded with undue haste. Both officers denied this in their evidence.
- 10.4 It would, of course, have been preferable if Constable Sweeney had turned his BWV on. His evidence was that he didn't feel the need to do so as Constable Haime already had hers on. While there is no suggestion that Constable Sweeney's failure to turn on his BWV was a breach of NSWPF policy or procedure, this case demonstrates how important the use of BWV can be in circumstances such as that these officers found themselves in.
- 10.5 Apart from their failure to carry a Taser, which was a clear breach of NSWPF policy, I find that the conduct of Constables Haime and Sweeney was reasonable, appropriate, and consistent with NSWPF policy and procedure when they first attended the Bishopsgate premises.

Issue 1(b) The conduct of Constables Haime and Sweeney when they engaged with Warren at the Bishopsgate premises

- 10.6 There was no suggestion that the two officers were anything other than polite and professional in their interaction with Warren at the door to the Bishopsgate premises.
- 10.7 There was some confusion in the evidence about which of the POI profiles on the Mobipol under the name, 'Warren Simon' were viewed by the officers when they first interacted with Warren. Unfortunately, I do not think this is an issue that can be resolved. There was, however, no suggestion that any similarity or discrepancy between Warren's appearance and that of the 'Warren Simon' shown on the Mobipol had any bearing on the conduct of either police officer.
- 10.8 The use of warnings in the POI Profiles contained on the NSWPF COPS system is designed to give police officers quick access to pertinent information about an individual that may be relevant to their interaction with them. When the two officers were engaging with Warren at the door to the Bishopsgate premises, it would have been better for them to have ensured that they had the correct 'Warren Simon' and to have read the warnings against his name, particularly the warning from October 2021. The presence, or content of

warnings does not, however, prescribe a particular response to an individual. It is unlikely that even if Constables Haime and Sweeney had read the warnings against Warren's POI profile, that they would have dealt with him differently, as his apparent compliance was the major factor in the decision made by the officers as to how best to approach him.

10.9 No submission was made to the effect that Constable Haime exercised her power to arrest Warren unlawfully or unreasonably and it was conceded in submissions made on behalf of Warren's family that at the time Constable Haime advised Warren that he was under arrest, it was in her discretion to choose not to handcuff or search him. It was suggested, however, that this was 'a departure from what is often standard and routine everyday policing procedure' and that had he been handcuffed and searched at the time he was placed under arrest, that the knife that he had secreted in his clothing may have been found at that point.

10.10 It is worth noting that Warren had opened the door to the Bishopsgate premises at the request of Constable Haime and stood close to both officers at the entrance with a large knife already secreted on his person. Of course, one possible scenario is that had Constables Haime and Sweeney decided to handcuff and search Warren at the door, he would have complied, the police would have found and removed the knife, and the chain of events which ultimately led to Warren's death would have been avoided. Another possible scenario is that Warren would have resisted the attempt to handcuff and search him, produced the knife, and that the two police officers would have been faced with having to resist Warren's attempts to harm one or both in the close confines of the entrance to the Bishopsgate premises. In this case, there is simply no way of knowing whether a more forceful approach at the time of Warren's arrest would have been a better or worse option.

10.11 Constables Haime and Sweeney had had a clear view of Warren through the glass doors at the front of the Bishopsgate premises from the time he appeared to wake up. There was nothing to indicate that he was armed with a knife. He was polite and compliant in his interactions with the two officers at the door. The conduct of the two officers was in accordance with the principles that police officers should use only force that is 'reasonable, necessary, proportionate, and appropriate in the circumstances' and 'no more force than is necessary to the safe and effective performance of their duties.' There was nothing about Warren's conduct that suggested a different approach to the one adopted by police was indicated.

10.12 I find that the conduct of Constables Haime and Sweeney was reasonable, appropriate, and consistent with NSWPF policy or procedure when they approached and initially engaged with Warren at the Bishopsgate premises.

Issue 1(c) The conduct of Constables Haime and Sweeney when they engaged with Warren inside, and as he exited, the Bishopsgate premises

10.13 In relation to this issue, it was suggested by the legal representatives for Warren's family that 'tactical disengagement' should perhaps have been the better option once Warren ran from the Bishopsgate premises, that Constable Haime was 'tunnel-visioned in her chase of Warren once he'd left the townhouse' and that Constable Sweeney 'followed her lead'. I do not accept this submission.

10.14 When Warren moved inside the Bishopsgate premises the two police officers effectively maintained control over him by positioning themselves close to him. At the point where in retrospect Warren moved his hands to pull the knife from within his clothing, Constable Sweeney immediately said to him 'keep your hands out of your pocket'.

10.15 Warren's attack on Constable Sweeney was without warning and entirely unexpected. At the point where Constable Sweeney is wounded, Constable Haime knew that Warren had likely committed several serious offences, that he was armed with a knife, and that he was prepared to use the knife to ensure he was not apprehended. In these circumstances it might reasonably be presumed that he posed a risk to members of the public. Although tactical disengagement was an option available to Constable Haime, the fact that she did not choose this option in no way detracts from the reasonableness of her decision to seek to pursue Warren.

10.16 It was suggested in submissions made on behalf of Warren's family that Constable Haime was driven by ego when she chose to pursue Warren. I do not accept this submission. She was a trained police officer of several years' experience. She checked on the welfare of her partner before she gave chase to an individual that she suspected of having committed several serious offences, who she had just witnessed stab Constable Sweeney, and who was attempting to escape arrest.

10.17 I find that the conduct of Constables Haime and Sweeney was reasonable, appropriate, and consistent with NSWPF policy and procedure when they responded to and engaged with Warren inside, and as he exited, the Bishopsgate premises.

Issue 1 (d) The conduct of Constables Haime and Sweeney when they engaged with Warren in the carport alcove area of the Bishopsgate premises?

10.18 It was clear that once Constable Haime had turned the corner into the alcove area 'tactical disengagement was not available.' Warren had reached a dead end in the alcove and Constable Haime had blocked his exit from that area. At this point Constable Haime found herself in a situation where her options were very limited. Short of drawing her firearm, she was at considerable risk of serious harm from an individual who was armed with a knife and was clearly prepared to cause her harm to secure his escape.

10.19 Despite the risk that following Warren into the alcove posed to her own safety, the decision to do so was made in a matter of seconds, in the context of a quickly evolving situation. I am satisfied that in the context of what she knew at the time, that Constable Haime acted reasonably, appropriately, and in compliance with NSWPF policies and procedures when she approached and engaged with Warren in the alcove area of the Bishopsgate premises.

Issue 2 Whether the discharge of Constable Sweeney's firearm on 7 April 2023 was necessary, reasonable and consistent with any applicable NSWPF policy or procedure?

10.20 Constable Sweeney did not have a Taser. However, all the evidence was that the use of a Taser would have been inappropriate in the circumstances as they unfolded in the alcove given the physical proximity of Constable Sweeney to Warren and the imminent threat that Warren posed to Constable Haime. I accept the submission made by counsel for the Commissioner of Police and the two officers that it is difficult to conceive of a situation where the use of a firearm was more necessary or reasonable, and in accordance with NSWPF policy and procedure.

11 Conclusion

11.1 Only 3 minutes elapsed between Constable Haime opening the front gate of the Bishopsgate premises and turning on her BWV, and Constable Sweeney shooting Warren in the chest. Police officers are often required to make difficult decisions in very short periods of time. In the course of their work, they encounter situations that are physically or psychologically confronting, or which involve people with mental illness, those who are drug or alcohol affected, or individuals who are violent, unpredictable, or emotionally heightened. By contrast, inquests are conducted in the relative calm of a courtroom, with the benefit of time and the clarity brought by hindsight.

- 11.2 It is understandable for those who have lost a loved one to ask, 'what if?', to speculate whether if one thing or another had or had not occurred, the person they love might still be with them. There must be oversight of the use of the considerable powers given to police, particularly, as in this case, the exercise of those powers results in loss of life. However, the focus of an inquest is not to speculate about what could have happened if different decisions had been made, but to consider whether there has been a failure of policy or procedure, or non-compliance with policy and procedure and, if so, to make recommendations as to how best such failures can be remedied. In this case no failure of policy or procedure was identified, and except for the failure to carry a Taser, no non-compliance with policy and procedure.
- 11.3 I am satisfied that throughout their interaction with Warren on 7 April 2023 Constables Haime and Sweeney acted reasonably, appropriately, and in compliance with NSWPF policies and procedures.

12 Findings required by s81(1)

- 12.1 I make the following findings in relation to Warren's death.

Warren Matthew Simon died on 7 April 2023 in an ambulance on Throsby Street, Wickham, NSW. He died of gunshot wounds to the chest. He was shot by a police officer acting in the lawful execution of his duties following an altercation where Warren Simon wounded one police officer and attempted to wound another while attempting to escape from lawful custody.

13 Close of Inquest

- 13.1 I thank counsel assisting, Tracey Stevens, her instructing solicitor, Alana Galasso of the Crown Solicitors Office, Aboriginal Coronial Information and Support Officer, Nicolle Lowe, and the legal representatives of the parties, for all the assistance they have provided in preparing and conducting this inquest. I also thank Detective Chief Inspector Paul Smith and Detective Sergeant Nathan Surplice for the very comprehensive investigation they conducted into the circumstances of Warren's death.
- 13.2 Once again on behalf of the Coroners Court, I offer my sincere and respectful condolences to Warren's friends and family.
- 13.3 I close this inquest.



Kasey Pearce

Deputy State Coroner

21 March 2025