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14 Nov. 2012

NEW SOUTH WALES STATE CORONER

Name of Deceased: Roberto Laudisio Curti
File Number: 2012 / 00086603
Hearing Dates: 8th – 19th October 2012
Location of Inquest: NSW State Coroner's Court, Glebe
Date of Finding: 14th November 2012
Coroner: NSW State Coroner , Magistrate Mary Jerram

Representations:

- Jeremy Gormly SC with Peter Aitken instructed by Ian Fraser of the *Crown Solicitor's Office* appeared to assist the Coroner.
- Peter Hamill SC with Kieran Ginges instructed by Sebastian De Brennan on behalf of the Laudisio family.
- Officers in Charge – Detective Inspector David Laidlaw and Detective Sergeant Glen Browne.

- **Bruce Hodgkinson SC with Michael Spartalis instructed by Stuart Robinson of the Office of the General Counsel on behalf of the NSW Police Force.**
- **Stephen Zillman instructed by Ashton East on behalf of Taser International.**
- **Stephen Wilkinson instructed by Kenneth Madden on behalf of police officers Hyung Joon (David) Kim, Damien Ralph, Annalese Ryan and Michael Waugh.**
- **Murugan Thangaraj SC with Brent Haverfield instructed by Eric Oates on behalf of police officers Daniel Barling, Chin Aun (Eric) Lim, Scott Edmondson, Ling Chien (Ernest) Chan and Craig Partridge.**
- **Peter Skinner instructed by Mr Greg Willis on behalf of police officers Devin Bourke, Todd Collison and Gregory Cooper.**
- **Brendan Docking instructed by Angela Mills on behalf of police officers Nathan Ferguson– Gornalle.**

Evidence was heard before this court for ten days in October regarding the death of Roberto Laudisio-Curti, a 21 year old Brazilian national, who died in Sydney on March 18, 2012. This inquest was mandatory under s 23 of the Coroners Act 2009, as he died in the course of police operations. Furthermore, facts required to be established by the Coroner under s 81 of the Act include his identity, date and place of death, and the manner and cause of that death. The autopsy performed by a senior forensic pathologist at Glebe was unable to establish that direct cause. The prime focus of this inquest therefore was to attempt to establish both that cause, and its manner, or how Roberto came to die as he did.

I have been assisted with great sensitivity and skill by Mr Jeremy Gormly of Senior Counsel, and by Mr Aitken and Mr Fraser, Advocates and Solicitors of the Crown Solicitor's Office. Roberto's family similarly were represented by Mr Peter Hamill of Senior Counsel, the Police Commissioner by Mr Bruce Hodgkinson of Senior Counsel, and the police involved variously by others, including Mr Thangaraj also of Senior Counsel. Twenty-nine witnesses gave oral evidence, including five medical experts, four of whom were concurrently examined in order to find common ground as to Roberto's cause of death.

This was an inquest which attracted more than the usual degree of interest from the media, both local and international. The story therefore of Roberto's last hours has been widely reported, mostly but not always accurately. Both Mr Gormly and Mr Hamill outlined those facts in their closing submissions, and I refer to those in particular, but consider it necessary to outline once again the facts as they were established by the evidence.

The Facts

Roberto was a fit and healthy young man, who played first grade soccer with skill and enthusiasm. He had in fact played two games the day before he died. He was resident in Australia in order to improve his English, and had been living with his sister and her husband in Inner West Sydney for a year, working part time as well as studying.

On the evening of March 17, St Patrick's Day, after soccer, Roberto went out with several friends, first for a drink at a friend's Bondi flat, and then at the bar known as "Scruffy Murphy's" on George and Goulburn Streets. He did not drink much alcohol, and indeed toxicology results showed none at the time of his death. However, some time between 9.30 and 11.30 he shared a tab of the illegal drug, LSD, with the two friends. His family have told us that he was not a regular drug user, although he had, like so many of his age, been known to try cannabis. The relevance of the LSD was not its illegality, but the effect it had on Roberto that night. Dr Jonathan Phillips an expert Psychiatrist, and Professor Alison Jones, a specialist Toxicologist, both agree that the LSD was almost certainly the cause of the bizarre and uncharacteristic behaviour which Roberto subsequently exhibited.

At this point, as Mr Gormly submitted, it is hard to avoid commenting on the enormous value to this investigation of the various electronic recording systems , particularly CCTV, throughout the city, installed both by the City of Sydney Council and by a very large number of businesses. The cameras, despite at times showing only fleeting images, enabled Roberto's route and the timing of his movements to be determined. The time saved has been remarkable, but the greatest benefit was to be able to establish precisely places, times and actions which might otherwise have remained speculative.

After taking the drug, the three men went to Kings Cross where they ate pizza and unsuccessfully attempted to enter a night club. They went to a MacDonalds in Darlinghurst Road for half an hour, and then walked down William Street to the corner of College Street. By this stage, Roberto was showing signs, according to his

friends, of alternate euphoria, agitation, and paranoia. The friends lent him money and encouraged him to go home. At 4.31, he phoned his sister and asked 'Why do you want to kill me?' The phone cut out and she was unable to recontact him, but rang one of the friends who said Roberto was still with them and that they were walking back to Kings Cross.

At 4.45am, Roberto caught a cab and asked to be taken to Glebe. At the Fish Markets, he jumped out without paying or notice, and ran off. The cab driver described him as odd and scared. He then walked up Market Street into George, where at 5.02 CCTV footage shows some unknown men chasing him. Two minutes later some private security guards intervened as four men assaulted Roberto at the corner of George and King Streets. He was calling for help and for the Police, and had incurred bleeding scratches on his elbows and back. He ran off, and two minutes later entered a convenience store on King Street. What happened there was well captured on CCTV and has been shown to the public on television.

Roberto told the manager that people were trying to kill him. He had lost his jacket by this stage, and carried his T shirt over his shoulder. The manager, Mr AlSheyab, appears to have recognised that Roberto was in fear rather than aggressive. He gave him some water and biscuits and allowed him to rest in the shop. Roberto said he was a messenger of God, and that he did not want the police. He ran out when two tourists entered the shop, but ran in again very shortly after, and forced himself into the enclosed cashier's cubicle by jumping a door with extraordinary strength, and then scrambled across the counter. He left taking two packets of biscuits with him, saying to Mr Alsheyab, "Don't tell anyone". He then is seen turning down King into York Street, walking towards Wynyard, and going in to Australia Square. Here he has obviously removed his shoes, socks and belt, and taken off his underpants while replacing his jeans. (The experts agreed that these actions were almost certainly caused by extreme body heat known to be a side effect of LSD).

Meantime, Mr Alsheyab had not called police, but a street cleaner who had by chance seen, from outside the store, Roberto climb over the counter and the other two men in the shop, assumed she was witnessing a robbery and called 000. She did tell the operator when asked that she had seen no weapons.

However, the operator reported an "Armed Robbery" to police, who initially repeated that in the VKG call. In her statement, the operator stated that this was in accordance with the relevant Police Standard Operating Procedures (SOPS). Subsequently, that was twice corrected, but at least one responding officer continued to refer over police radio to "the armed robbery" and it was to that that police in the area receiving the message responded. These were the first two links in the terrible chain of errors, misunderstandings and chaos which was shortly to lead to tragedy.

Roberto is then seen to walk up Pitt Street where two police officers, who had not yet heard the call regarding the suspected robbery, noticed his odd behaviour but did not react at that stage. About this time, a third and erroneous confusion arose when a member of the public saw some people 'breaking into a motor vehicle' on Pitt Street between Bathurst and King streets and called police. Probationary Constable Barling and Senior Constable Ralph went to investigate (the so-called break in was discovered to be by the owners of the car who had locked the keys inside, and were desperate to retrieve documents for travel that morning).

Constable Lim and Probationary Constable Collison of the Surry Hills Local Area Command heard the 'robbery' call, and sighted Roberto heading towards them on Pitt Street while they were stopped at the Bathurst Street lights. They believed him to be the suspect. Collison alighted and approached Roberto, saying, he says, "G'day, can you stop there for us? We just want to have a chat". We see Roberto on film side stepping him, pushing past Constable Lim and rushing off on Pitt Street. We see the two officers start to chase him, joined almost immediately by Senior Constable Ralph who had seen events from where he had been talking with the owners of the car with the smashed window.

Probationary Constable Barling also left that scene, and joined in, crash tackling Roberto into Collison, who was momentarily stunned, but not managing to keep hold of him. Roberto, sweating and desperate, ran off, crossing from the western to the eastern side of Pitt Street, but not before Barling had drawn and fired his Taser at close range during the initial attempt to restrain him. A civilian witness in a hotel close by saw the flash of the Taser. Two probes were later found in Roberto's flank, but he seems not to have been affected by the shot at this point.

At the same time, Sergeant Cooper of the City Central Local Area Command, who had heard the VKG call, saw the chase and drove his police vehicle on to the western footpath of Pitt Street in an attempt to block Roberto. It was clear from the evidence including the Tasercam footage, that Sergeant Cooper also fired his Taser at that point, and twice more. One probe from that Taser was later found in Roberto's abdomen, although clearly the electrical connection was not made.

Barling reloaded his Taser, caught up with the other pursuing police, and again tried to tackle Roberto outside Kings Comics. Again, Roberto evaded capture. The two officers who had first noticed his odd behaviour joined in the pursuit, and one of them, Senior Constable Edmondson, was caught in Taser wires from another Taser shot from Barling which had missed Roberto. By this time, six police officers were chasing Roberto, who ran back across Pitt Street to the western side, and evaded a third tackle attempt by Barling, but was brought to the ground on the western footpath by a Taser fired by Senior Constable Lim.

Four more officers arrived shortly after Roberto was on the ground, bringing the police total to 11. The senior officer throughout the incident was Sergeant Cooper. There was a protracted struggle to control Roberto, who police described as having super human strength. Evidence from Tasercam and some officers however, shows that after being brought to the ground he was fairly quickly handcuffed after an initial attempt that left only one cuff on one of his wrists, that one officer lay across his back until another knelt on him, and that others were holding his arms and legs. Worse, five drive stuns were then administered by Probationary Constable Barling, at a similar time to two drive stuns being administered by Senior Constable Edmondson, and at least some of the contents of each of three cans of capsicum (or OC) spray were discharged at his face by Senior Constable Ralph. During at least the first 3 minutes of Roberto's being restrained on the ground, as evident from the tasercam footage, terrible groans and screams are heard from Roberto, which clearly show his pain and distress. At about 6:11:40am (based on VKG reports) he is suddenly seen to be unresponsive and not breathing and is found to be life extinct when ambulance officers arrive as summonsed. No direct cause of death was found by autopsy.

The Issues

The issues which as agreed were investigated by this Court were:

1. The manner and cause of Roberto's death
2. The categorisation of the incident at the King St store as an 'armed robbery'
3. The lawfulness of the arrest including
 - a) whether there was a proper basis or reasonable suspicion justifying the arrest
 - b) the degree of force used
 - c) the reasonableness of the degree of force used
4. Whether police management of the incident conformed with
 - a) policies then current relating to use of force
 - b) any applicable training relating to the use of force regarding
 - i. positional asphyxia
 - ii. monitoring of vital signs
 - iii. use of Taser devices
 - iv. use of OC spray
5. Compliance with any standard operating procedures relating to police interaction with persons showing signs of mental health issues or drug affection.

Two days after evidence in this matter was finalised, the NSW Ombudsman released a report reviewing the use of Tasers by the NSW Police Force. It does not, I am advised, refer to this inquest, having been completed well beforehand and reviewing Taser usage during a period prior to Roberto's death. I have deliberately not read that Report, believing it to be inappropriate for me to consider its contents and conclusions during the preparation of these findings.

WITNESSES AND EVIDENCE

Three civilian witnesses were helpful in providing an independent view of the incident. Wendy Price had watched from her hotel window and described the flash of the first tasering, and the sounds of Roberto "like a wild animal yelling" while he was on the ground. Her comment was that "everything I saw was consistent with a man trying to get away".

Tommy Wang, who lives in the Century Tower in Pitt Street had just alighted from a taxi when he saw a topless man running with six police chasing him. He saw a police officer push him into the glass of the coffee shop and he saw the man ultimately go to the ground, screaming during constant 'zapping' sounds and yelling 'Help' several times. He described the police actions as not appropriate and quite violent and the man as "just trying to run away".

Mr Jialong Wu was one of the group who had to break in to their car that morning. He watched as the police left them and ran after the sweating man, seeing the tackle and then his falling to the ground. He saw a lot of police around him and heard a lot of police shouting, as well as constant zapping sounds. He too did not think what he saw done by the police was right, and that the man was "just trying to get away".

The first police witness was Sergeant Partridge who was on duty that shift at City Central Police Station. He received the first call that there was an 'Armed Robbery' just outside his area and called it over the VKG while he monitored Roberto's whereabouts which he then relayed. He claimed he never heard anyone say that there was no weapon as he was not paying full attention to the radio, he was tired at the end of a twelve hour shift, he was doing his change over with the oncoming shift and the incident at the store was outside his area. He did not recall telling Sergeant Cooper that there was a knife involved, as was later claimed by Cooper.

Senior Constable Lim told the court that he heard the radio call regarding a robbery as he and Probationary Constable Collison were pulling up at the intersection of Pitt and Bathurst Streets. He got out and tried to speak to Roberto who ran away. He agreed that he intended to arrest him based on the radio information and that he

believed he was the alleged robbery offender. Lim said that they were all 'bucked off' as they tried to bring Roberto down. Because he was so much smaller and thought he himself might have been injured, he changed his mind from tackling Roberto to using his taser and eventually tasered him and brought him to the ground, without knowing that there were four or five other officers immediately behind him in support.

He claimed that once Roberto was on the ground, he watched as other officers tried to cuff him, and cycled his taser again as Roberto looked as if he was going to escape. However, he had to agree that that was incorrect once he was asked to watch the video in court.

Lim became less than credible in his evidence at this point. He claimed that no officer was lying across Roberto, that he only heard a Taser once more, that he saw no officers with their tasers out and did not know that OC spray was used. He never heard Roberto say "What did I do?" He only agreed that Roberto was cuffed and that he did not 'buck' again once on the ground, after he was shown the video. Of concern, he was insistent that his use of the Taser that night was consistent with his training, and that all that he saw was justified because of the 'bucking off', the fear that Roberto would escape again, and the fact that police officers might be overpowered so that their safety was in question.

This view is in complete conflict with what is seen on the tasercam footage and with the evidence of the civilians, which indicate that Roberto was just trying to get away. Lim's professed failure to see any further tasering, spraying or excessive restraint brought him little credit given the physical evidence as well as the admissions of other officers.

Probationary Constable Chan arrived at the scene only once Roberto was on the ground. Although he saw a little more than Lim, including one drive-stun to the back, he too claimed to see very little, being concentrated on trying to hold down Roberto's leg. He did hear "why are you doing this to me?" from Roberto, but did not see any officer putting weight on the body. As with several other police, he explained this failure to see by his vision being obstructed by the others crowding around, and his 'focussing' only on that part of Roberto, i.e. the leg in his case, which he was holding.

Constable Kim of City Central Police Station was partnered with Chan that night. Arriving at the scene of the struggle on the ground, he admitted to seeing Barling entangled by taser wires and shouting "Fuck". He did not see Barling drive stun Roberto at all, let alone five times. He, Kim, merely used his baton to hold Roberto down as he was struggling. He did not see Ralph use the spray although he smelled it, and he did not see the handcuffs on Roberto.

According to Kim, Cooper only had his forearms on the lower back. Once again, he claimed to recall very little, and to have seen almost nothing (despite the evidence of other police) and to have been 'focussing' only on the leg. He appeared to make no genuine effort to give truthful evidence. The term 'focussing' was used suspiciously often by those police whose evidence was unhelpful or worse. Between those officers, there was a similarity of wording and an apparent inability to remember that which did not assist some of them in acceptance of their truthfulness or independence.

Another Probationary Constable, Collison, was in the vehicle with Lim and heard the calls regarding an 'armed robbery'. He followed Lim who failed to persuade Roberto to stop, and saw Barling tackle him, causing Roberto's head to hit Collison's so that he stumbled and fell back. This meant that he was still about three metres away when Lim used his taser to bring Roberto to the ground. He was then asked to go and search for Cooper's car keys and took no part in the following events, but heard a Taser discharged before Lim's, and did see prongs in Roberto's back.

Constable Annalese Ryan had been observed by Tommy Wang apparently to kick Roberto's prone body in the back. She and Edmondson had seen the shirtless man earlier while in a pie shop, considered him odd but harmless, and only joined in after hearing the broadcast of an armed robbery and the description of the alleged perpetrator. She observed the 2nd tackle and could see a Taser probe in Roberto's stomach. She agreed that she had put her foot on his right thigh once he was face down, for about 15-20 seconds during which time she both heard and felt one Taser used but did not kick at him. It was she who managed to place one handcuff on him, but could not manage the other, as he was too strong. She did not see Barling drive stun, because of the 'huge amount of police' but did smell OC spray, without

knowing who used it. She agreed however that Edmondson used his Taser once in drive stun mode while Roberto was on the ground. Many officers were entangled by Taser wires, and Roberto was still thrashing about. She was obliged to leave the fray to speak with the people who had earlier broken in to their own car, and who needed to be moved away. The whole event was described by her as loud, violent and scary without control, her only similar experience being once dealing with a suspect who was on 'Ice'.

Ryan gave the impression of making a real effort to be open and helpful, and said that when they first saw the shirtless man, they did not feel any need to intervene as he was doing nothing wrong. In retrospect, she told the court, their police presence when they first saw Roberto from a pie shop called Pieface, may have been the partial cause of his odd behaviour, ducking into doorways and hiding. Nevertheless, she saw and heard very little of what in fact happened as confirmed by other witnesses, such as Roberto's crying out, Barling's five drive stuns, and the repeated use of the OC spray.

Ryan was followed into the witness box by Leading Senior Constable Edmondson, her partner. He was rather more clear in his observations than some of his colleagues, but throughout his evidence was adamant that he and his colleagues had done nothing wrong, and that all of their actions were justified in response to Roberto's strength and violent behaviour. He agreed with Ryan that on first seeing the shirtless shoeless man running south down Pitt Street, while at Pieface, he saw nothing to cause him any concern, or a need to pull him up. However, after hearing reports that Roberto was a suspect for a robbery and seeing Roberto running down Pitt Street from Bathurst Street pursued by other officers, he drove to Castlereagh Street, parked, and as Roberto reached Kings Comics, shoulder-charged him. He bounced off, stumbled, staggered and continued to run.

Edmondson heard someone call "Taser, Taser" and then himself became tangled in Taser wires. Possibly as a result, he did not see any of what followed until he saw the man down on the road. Edmondson then joined the 'struggle', placing his knee on the lower back, and drive stunned him twice within twelve seconds to his lower back. He described this as seeming to have no effect, and was unaware that

Roberto had already been subjected to a Taser in probe mode by Senior Constable Lim. Simultaneously with his second stun, he became aware that Barling was using his Taser also to drive stun, but considered that there was nothing in his training which prohibited multiple tasering (although in cross examination he agreed that he knew that the Standard Operating Procedures warn that multiple cycles or prolonged use of taser may increase the risk of serious injury or death), and was in any case only aware of Barling using the drive stun mode once.

He had been taught that the Taser is a tactical option, like OC spray and batons, and not a weapon of last resort, other than a firearm. He did not concede that he used the drive stun for 'pain compliance. Edmondson confirmed that he gave Senior Constable Ralph his OC spray after seeing Ralph's run out. He then noticed that Roberto was cuffed, and had a further cuff flapping free from his right wrist. Edmondson said that Sergeant Cooper was lying with his full weight across Roberto's upper back and was not heard to make any direction to stop tasering or spraying.

When Cooper moved off, Edmondson moved down the body and removed five probes from the back. He became worried then about positional asphyxia and checked his pulse and breathing. Roberto was not put in the recovery position because of the struggle, but when no pulse could be felt, Edmondson rolled him on his back and started CPR. He estimated there to have been one to two minutes between the pulse first being checked and the commencement of CPR.

Constable Waugh gave evidence that when he and his partner Constable Ferguson-Gornalle arrived on the scene, he heard tasers several times, and a lot of shouting including "Don't use cartridges, just drive stun him", and possibly "Hit him again with the Taser". He was aware that multiple taser use was not recommended, as it could cause injury or death. He had attended the City Convenience Store with Ferguson-Gornalle, after the original call, and knew that Roberto was not armed and had merely taken biscuits. He was concerned that Roberto was on his stomach, and had been subjected to multiple taser applications, but because of his junior rank, did not feel able to speak out. When Roberto was rolled onto his side, Waugh noticed his face was a dark deep purple.

The court next heard from Constable Ferguson-Gornalle, whose time in the NSW Police was relatively short, but who had spent twelve years in both the Military Police and the Australian Federal Police, and hence was in fact more experienced than most. He heard Roberto shouting "Help me" and saw Sergeant Cooper on top of him, as well as the spray being applied 10 cm from the face. He barely took part in the fray, as he took responsibility at one point for making radio calls, but was the first to suggest that Roberto's breathing and pulse should be checked, being aware that a person was at higher risk of positional asphyxia if on their stomach.

Senior Constable Ralph was one of the officers whose evidence gave most reason for concern. He was one of the more senior police involved, yet he did not know the prevailing SOPs regarding OC spray. Nor, he said, did he consider that he should have done anything to keep himself up to date on changes. He changed his evidence more than once. He did or did not take part in cuffing Roberto on the ground. He possibly did or did not spray closer than 30 cms to the face.

Partnered with Probationary Constable Barling, he did not agree that he himself was out of control, yet he claimed to have been 'in a panic' and 'highly aroused' in reaction to what was occurring.

Ralph was attending to the alleged motor vehicle break in when he heard the broadcast about a man running down Pitt Street. With no knowledge of the background he joined the chase after Roberto. He saw who he thought was Sergeant Cooper pull up, run across Pitt Street and attempt to shoulder charge the running man, followed by Barling's ineffective tackle on the western side. He too saw Cooper lying across Roberto's back once he was brought to the ground. Ralph knew that there had been at least two taser discharges before he, deployed his spray. Ralph said that he initially sprayed Roberto to the face for two to three seconds in response to his violent actions, holding the can horizontally because it was easier to reach his face and spraying for two to three seconds as, he claimed, he was taught at the Police Academy, despite the SOPs stating one second.

In contradiction to the observations of others, Ralph claimed to have held the cans 30 cm from Roberto's face, not 10 cm, but neither, even on his own testimony, the

required 60 cm "where practicable" stated by the SOPs. With no sign of regret, he agreed that he sprayed three cans directly at the by now handcuffed Roberto, the second time for as long as seven seconds. Ralph said that he was having difficulty spraying his face because of his movements, stating that some hit the ground so he then pointed it up, and Roberto lifted his body up, and turned to face the ground, away from the spray. Ralph used at least some of three different cans of OC spray, and said that he did not consider using a fourth can as he thought it had taken effect. While he heard Cooper say "Handcuff his legs" he did not hear Cooper say "don't taser him, he's handcuffed" as Cooper later claimed he had done.

Ralph vehemently denied that his use of the spray in this incident was excessive and ineffective, and still believed that it was justified despite there being in his own words, 'half a ton of Police Officers on him'. It should be noted that Constables Ryan, Barling and Ferguson-Gornalle all saw the spray applied 10 cm or less from the face. Only on being shown the footage from Lim's Tasercam did he agree that he had initially had his knee pressed to the middle of Roberto's abdomen. He continually described Roberto as 'violently resisting', uncontrolled, forceful, and 'fighting our efforts against him'. He said in court that he would do the same again, and that he believed that all that he did was reasonable because he was still fighting, and said that it didn't cross his mind that it was in order to breathe.

Sergeant (now Inspector) Cooper's evidence was so self-contradictory, self-serving and obscure that it hardly bears narrating. Frankly, given that he was the most senior officer involved, both his actions during the event and his attempts to exonerate himself and blame more junior officers afterwards, are little short of contemptible. He was unable to explain the constant difference between his version of events, and that of other officers and what was shown by Tasercam footage other than personal difficulties and ill health.

He claimed that he had initially been told that there was a knife involved in the event at the convenience store despite there being no suggestion from any other source that that was so. He had driven his car up on to the footpath of Pitt Street in an attempt to block Roberto's flight, and contradicted himself (and the physical evidence) as to the position from which he in fact fired his first Taser. Once Roberto

had been brought down by Lim's taser, Cooper's description of his own actions fly in the face of all other evidence. He said that he merely placed some weight against Roberto's back with his knees then lightly lay across his back a little. Significantly, as not one police officer corroborated him, he said that he gave the instruction, "All Tasers turned off—cartridges out and then turn them off!" after one was deployed while on the ground, and one officer was heard saying "Stop resisting or you'll be tasered again". His asserted reason for this was that he would not have used a Taser in a circumstance such as this, with the subject on the ground, cuffed, and enough officers to control him. In any case, he was only aware of two deployments of Taser; the one which brought Roberto to the ground, and the one he heard whilst on the ground. Cooper had no explanation for why he did not hear what we now know to be the other six drive stuns during the struggle on the ground.

On one hand, he said that he had no power to stop other officers, whilst on the other, he said that he did have the power to tell them to stop tasering. Cooper denied knowledge of the wording of the Taser SOPs, saying that he had never been provided with the relevant document. When Counsel Assisting put to him that he had failed to take command of the situation and control junior officers, and failed to stop or minimise the use of Tasers and OC spray, Cooper disagreed. His evidence bore almost no credibility.

Probationary Constable Barling did not resile from the fact that he tasered Roberto twice during the run and five times while he was on ground, having assisted in handcuffing him first, and that he knew Senior Constable Ralph had used his OC spray, but insisted that these actions were reasonable (and not contrary to training) as Roberto might get up and run away. Barling, who had no idea why the running man was being chased, claimed that from when he first tried to tackle Roberto, he believed that he was justified in his actions as he was trying to protect other officers, and the man himself. Barling did concede, having seen the Tasercam footage, that what he had first stated was often incorrect. It has to be said that Barling appeared to be trying to give honest evidence, but that his judgement remained appalling, and that his use of the Taser, particularly in the drive stun mode, (which may have been partly due to his inexperience and extremely junior rank), was quite unreasonably violent. I was informed by Mr Hamill that following his evidence, Probationary

Constable Barling approached him and offered some "kind and appropriated words" to be passed onto the family. This is to Barling's credit.

The final police evidence was given by Senior Sergeant Davis, who is a Co-ordinator and Chief Instructor for the Police in Weapon and Tactics Policy and Review.

He is a senior trainer of police, both as cadets and in ongoing use of weapons. He had of course no involvement in events leading to the death of Roberto. The technical evidence which he gave was skilled and useful. He described the effects of tasering and spraying, and the operation of each with knowledge and clarity. He confirmed that Tasers, which have been used by NSW General Duties Police Officers only since November 2009, were introduced primarily to deal with persons with mental health issues, particularly those threatening self-harm, where firearm use would be inappropriate. Although less lethal than a gun, he said, the use of Tasers also required restrictions and should not exceed the procedures set out in the SOPs, which, nevertheless, do not always define terms helpfully. Senior Sergeant Davis further agreed that the criteria in the SOPs do not assist officers in determining whether they are entitled to taser a fleeing subject (although this was something that the training material did appear to authorise), and that multiple applications of a taser cannot be justified solely on the grounds that the person fails to comply with a command, in the absence of any other indication that the subject is about to flee or poses any immediate threat, particularly when more than one officer is present to assist in controlling a situation.

Despite that evidence, when asked to apply that opinion to the reasonableness of the use of both tasers and spray, and of the degree of force used by officers against Roberto, he was considerably less objective. It was put to him that the criteria which he had described were not met in the overpowering of Roberto. His response was that he believed that Roberto was not under control and was a threat, and that officers were facing violent confrontation and resistance, either occurring or imminent. The propriety of the use of tasers was up to the judgement of the individual officer, and, furthermore, as junior police required experience and exposure to gain knowledge, he believed it to be perfectly appropriate for probationary officers to be trained in, and allowed to carry, Tasers. He did not

consider the seven drive stuns applied to Roberto on the ground excessive, and accepted that the purpose of drive stun mode was as a means of 'pain compliance'.

However, when it was suggested that someone would require time to recover from the pain in order to comply, he replied that pain was the designed purpose but that recovery from that pain may occur in as little as two seconds. Nevertheless, he did express the view of the Taser Executive Committee, of which he is a member, that tasers should predominantly be used in the probe mode. Asked whether there was a risk of police becoming over-dependent on Tasers rather than other tactics, he maintained that that had not been the case with Roberto, even though he accepted that underlying all police procedures is the concept of minimal force.

In NSW, that term is replaced by 'reasonable' force, which in the view of Davis, meant the situation where Roberto was drive stunned seven times within 51 seconds by Barling and Edmondson, and sprayed with at least some of each of three cans of OC spray by Ralph while handcuffed. Davis considered it possible for a similar situation to justifiably recur, as in his opinion those actions were consistent with current NSW Police SOPs and training.

The SOPS provide criteria for the use of Tasers. They include the use of drive stunning only in 'exigent circumstances'. Officers queried about the meaning of those words gave varying answers, and all insisted that this situation met that definition. It is clear that the term is unhelpful. It is too vague and open to misinterpretation. It should, in my view, be removed from the SOPS.

By Audio Visual Link ("AVL"), evidence was taken from Dr Geoffrey Alpert, Professor of Criminology and Criminal Justice at the University of South Carolina, USA, and an expert in police tactics and weapons. His principal area of expertise, publications and research has been in the USA, but he has recently spent a winter at Griffith University, and is knowledgeable about police use of Tasers and other weapons in Australia. He provided a written report which was admitted as part of the coronial brief, and was questioned on AVL for some two hours by all parties. He was a highly helpful, useful witness whose credibility remained unchallenged. The following views were of particular importance:

1. The underlying principle is accepted that where there is a real need, any reasonable weapon of force can be used, but the use of Tasers in drive stun mode is open to abuse, which is why many American states have severe restrictions. Once a person is under control, the use of any force is a form of punishment. Once cuffed, the question must be asked, with foresight not hindsight, if there is a risk of escape; what is the impact if there is an escape, including is the person likely to commit a serious crime and what threat would thereby be posed to police or members of the public? In Roberto's case, were he to escape there was no real threat of him committing a serious crime or any threat of violence to any person. Furthermore, there were a sufficient number of officers to have controlled him without the use of tasers or OC spray once he was on the ground. Professor Alpert said "I can't imagine agreeing with the use of a Taser after someone has [sic] handcuffed on the ground, under control."
2. Given that height, weight and gender requirements are now waived for entry to the NSW Police Force, theoretically Tasers can neutralise any differences between an officer and a subject, but it can also cause 'lazy cop' syndrome, in which police turn to the use of Tasers too easily and too often. There is of course a difference if an officer is alone, rather than, here, one of many against one.
3. Overall, the NSW Police Training Guidelines and SOPs are excellent but there is a need for change, for greater definition in the criteria for use (particularly in drive stun mode), and improvements in training for officers to ensure that they fully understand be very clear on their meaning. Guidelines and SOP's are only useful if communicated to officers.
4. Training must adapt and develop, and each use of Taser should be reviewed by the relevant Committee every time.

5. The use of handcuffs as pain compliance is a very effective technique, but apparently is not taught in NSW.
6. Obviously, Tasers and spray are less injurious overall than firearms, but their use is not thereby reasonable in all situations.
7. Ralph's training was inadequate. The Professor was surprised at his, and others', including Cooper's, lack of knowledge of procedures. He found Cooper's statement that he was unaware of the warning that multiple cycles or prolonged use of Taser may increase the risk of serious injury or death to be particularly shocking.

In summary, Professor Alpert disagreed with the views of all officers, including Davis that the police actions during these events, particularly the use of Taser in drive stun mode whilst Roberto was on the ground and handcuffed, were justified, or in accordance with the prevailing SOPs and training.

Detective Sergeant Glen Browne together with Detective Inspector David Laidlaw were the Homicide detectives assigned to investigate this critical incident as required by police protocol. Some criticism was levelled at Detective Sergeant Browne that during directed interviews with some officers, he had questioned them in such a way that their answers were fed to them, and allowed discrepancies, for example in the interview with Cooper, to pass by unchallenged. I do not accept that Detective Sergeant Browne in any way interviewed officers incorrectly or improperly. On my reading of those interviews, he was at great pains to be fair, to allow the interviewee to give his or her own version of events without interruption, and to return to pertinent facts, omissions or contradictions where necessary. The inconsistencies which remained were clearly a matter for this inquest, and were aired accordingly.

There is a strong feeling in the community that police should not be investigating police incidents. That is ultimately a decision for authorities other than the Coroner. It may be that criticisms of investigations would wane if an independent, outside body took over that role. It is a difficult situation for officers, however senior, to be expected to query or worse the actions of their colleagues. I wish to comment

strongly, however, that in this case, both Detective Sergeant Browne and Detective Inspector Laidlaw demonstrated a skill and lack of bias, in my view, in a painstaking and distressing investigation. I thank them for a good job well done under various pressures, including those of time.

CONCLUSIONS

1) POLICE ACTIONS

Policing is a difficult and often dangerous job. The public rely on the police for protection and support which is, in the main, provided with professionalism and courage by the members of the NSW Police Force. They are entitled when necessary to use reasonable force, including weapons, to pursue suspects in vehicles at high speed, to arrest citizens and to place them in custody. As well as Tasers, they carry batons, firearms, OC spray and handcuffs. They are trained to use their bodies and appointments to control those who threaten others. These are not entitlements available to almost any other members of our society, and with them come huge responsibilities. Individual officers do not have a licence to act recklessly, carelessly or dangerously or with excessive force.

In the pursuit, tasing (particularly in drive stun mode), tackling, spraying and restraining of Roberto Laudisio Curti, those responsibilities were cast aside, and the actions of a number of the officers were just that: reckless, careless, dangerous, and excessively forceful. They were an abuse of police powers, in some instances even thuggish, as described by Mr Gormly. Mr Hamill's analogy with the character in Joseph Heller's *Catch 22*, screaming 'Help, Police!' as a cry for help against police action is searingly apt. Roberto's only foes during his ordeal were the police. There was no victim other than Roberto, no member of the public who suffered an iota from his delusionary fear. Certainly, he had taken an illicit drug, as has become all too common in today's society. But he was guilty of no serious offence. He was proffering no threat to anyone. There was no attempt by police to consider his mental state. He was, in the words of Mr AlShayeb, "just crazy". Left alone, there is not a shred of evidence that he would have caused any harm, other than to himself.

It is of concern to me that so many of the involved police were extremely junior and inexperienced, and yet were armed with Tasers. Senior Sergeant Davis did not agree that probationary officers should not be issued with Tasers. That opinion must be queried in light of what happened on March 18, as must current training methods. Tasers are far from toys, and cause serious pain and temporary loss of self-control. Even current SOPs warn against their multiple or prolonged use because of the risk of serious injury or death. If any officers are to be entitled to carry these significant weapons (and I recognise that they were introduced as a far safer option than a firearm), then there is a considerable need for them to be clearly taught the circumstances in which they should or should not be used, and to be educated more deeply in the exact meaning of the SOPs.

Probationary Constable Barling's wild and uncontrolled use of the drive stun mode suggests that he had no such understanding, despite only recently having undertaken the Taser course. A few of the other Constables seem to have thrown themselves into a melee with an ungoverned pack mentality, like the schoolboys in 'Lord of the Flies', with no idea what the problem was, or what threat or crime was supposedly to be averted, or concern for the value of life.

The report regarding Roberto's actions at the convenience store should not have been broadcast as an armed robbery, particularly after it was subsequently corrected on at least two occasions. I accept that it's rebroadcast as an armed robbery was a genuine oversight by Sergeant Partridge, but it was a vital one. Police VKG may need to be examined in order to prevent an incident being inaccurately categorised. Partly as a result, what eventuated was a frenzy of officers, most of them very junior and inexperienced, half of whom did not even know what Roberto was suspected of having done, as they joined in the chase, behaving out of control. I have a strong suspicion that some, particularly Barling and Edmondson, were emotional and angry because they had been 'zapped' by other Tasers, and/or sprayed inadvertently .

The lawfulness of the arrest was raised as an issue at the inquest. I am satisfied that there was a proper basis for the arrest in that the officers first attempting to arrest Roberto suspected on reasonable grounds that he was responsible for a robbery, and he immediately fled from them when they attempted to speak to him.

To the extent that the initial arrest was required to be justified by legislation, I am satisfied that s. 99(2) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, permitted an arrest.

No thought whatsoever was given to Roberto's mental state. According to the evidence, at no stage did he act aggressively, to any member of the public or officer, other than to struggle wildly to escape the pain he was experiencing from being tasered, drive stunned, sprayed and lain upon by 'half a ton' of police officers (as Ralph described it). As all the civilian witnesses, and a few officers, told the court, at all times Roberto was merely trying to get away. No one had told him he was under arrest, or why. We now know that he was almost certainly in a psychotic state of paranoia and fear, but this did not translate into any violence other than his need to flee. While not all uses of force by Police were excessive, the attempted arrest of Roberto involved ungoverned, excessive police use of force, principally during the final restraint.

The police officers now listed, should in my strong view, be referred for possible disciplinary action in relation to their actions during the pursuit and restraint of Roberto.

Inspector (then Sergeant) Gregory Cooper

Cooper's failure to maintain any objectivity, or sensible leadership, quite apart from the unreliability of his evidence, is abhorrent. His evidence in the main is rejected. The evidence of the AFIDs establishes that Cooper first fired his Taser from the western side of Pitt Street. Apart from being ineffective, it was a random act for no reason, as was his second cycling while Roberto was fleeing. His only purpose in deploying his Taser seems to have been to effect an arrest. His statement that he believed Roberto to have a knife is in stark contrast to every other witness, and hints at deliberate self-justification. Pushing his entire weight on the back of a man prone, who was handcuffed and had just been tasered was hardly the action of an experienced, senior officer. He allowed excessive use of force by junior officers. It appears that Cooper only sought to stop or limit the use of Taser when officers started to be affected.

Senior Constable Chin Aun (Eric) Lim

Lim probably was justified in his first use of his Taser, because he had seen three failed tackles, Roberto was clearly very strong and he was fleeing (something which appears to be authorised by the training). His second cycling however was not justified on the evidence. Roberto was on the ground, surrounded by six officers, and had just been handcuffed. Lim's assertion in interview that after he used Taser the first time, Roberto thrashed around and tried to "buck" the officers restraining him off, was inconsistent with the Tasercam footage from his Taser. Lim's evidence, like that of Kim, of being unaware that spray and drive stun was being used on Roberto on the ground cannot be reliable.

Senior Constable Damian Ralph

Ralph's use of OC spray was unnecessary and excessive, and aggravated rather than subdued Roberto. It was also in breach of the recommendation within the SOPs for it not to be sprayed at less than 60cm where practicable, and the prescribed duration of approximately one second.

Probationary Constable Daniel Barling

Barling's two uses of Taser during the chase may have been justified in accordance with the SOPs, but nothing excuses his five subsequent deployments in the drive stun mode. He must, or should, have known that they would cause pain, hence causing more struggling, be unlikely to subdue, and were unnecessary having regard to the number of officers and the level of restraint already imposed upon Roberto. Those five uses of the Taser were inconsistent with the SOPs and training, and were markedly excessive.

Senior Constable Scott Edmondson

Neither of Edmondson's two Taser applications in drive stun mode were justified, and the second was unreasonable. Roberto was on the ground and handcuffed. Like Ralph's use of the spray, not only did it cause Roberto to struggle to escape even more, it seems that rather than control, compliance was being sought.

After Roberto had fallen to the ground and been handcuffed, no further use of Taser or of the OC spray by any officer was justified, consistent with SOPs, or necessary, and in fact worsened the situation.

Constable Nathan Ferguson-Gornalle seems to have been the only police officer who showed care, concern or compassion for Roberto's plight at the time. He is not criticised in any way.

Further, Probationary Constable Devin Bourke, Leading Senior Constable Chad Ansted, Probationary Constable Michael Waugh, Probationary Constable Ernest Chan, Probationary Constable Todd Collison and Constable Nathan Lockett (the officer who first attended the City Convenience Store), do not warrant any adverse criticism. Counsel submitted that Sergeant Craig Partridge and Constable Annalese Ryan also should not be the subject of complaint. I will accept their views.

2) THE CAUSE OF DEATH

Five independent medical experts gave careful, informed evidence of their various opinions on what in fact caused Roberto to die. We know that the autopsy performed by forensic pathologist Dr Isabella Brouwer at the Department of Forensic Medicine was unable to elicit a direct cause of death. There were no injuries sufficient to have killed him, no signs of prior cardiac disease (despite his having had some unspecified minor heart checks before he left Brazil), no evidence of asphyxia, and his toxicology revealed only a low level of the drug LSD, and no trace of alcohol.

The highly experienced psychiatrist, Dr Jonathan Phillips provided a report, admitted without contention as part of the coronial brief, after receiving the same detailed brief

as the other four specialists. He attributed Roberto's disturbed, fearful and paranoid behaviour to a reaction to the LSD, and his non-compliance to fear arising from his drug-induced psychotic state. He rejected as a recognized psychiatric state 'excited delirium'. In oral evidence, he painted us a picture of a terrified young man running from his 'demons', perhaps with no destination other than to escape, believing that people were out to kill him, and avoiding any attempt to stop or restrain him.

The four other medical specialists gave concurrent evidence, as well as written reports. All agreed that no direct cause of death could be attributed to

i. The tasing, either in drive stun or probe mode.

Dr Cooper, an eminent cardiologist and electrophysiologist, although considering that a Taser can induce a fatal arrhythmia, found no direct evidence of such from the autopsy. There was, he said, insufficient electricity to have caused a heart rhythm disruption in drive stun mode, nor were any pair of probes positioned either side of the heart (as was the case in scholarly articles in which it has been suggested that Taser may have caused ventricular fibrillation).

ii. OC spray

Professor Alison Jones, a toxicologist, advised that it was not capable of causing Roberto's death, and Drs Brouwer and Vinen (the emergency specialist) agreed .

Dr Brouwer said that she could not exclude the possibility that the OC spray may have caused some decrease in respiration

iii. LSD

Dr Cooper said that LSD was extremely unlikely to cause death particularly in a small dose. It was not known as a direct cardiac cause. Professor Jones' evidence concurred with Dr Cooper's, that it was extremely unlikely to cause death by it's pharmacological action or its side effects.

iv. Excited delirium

Dr Vinen described it as a series of behavioural events linked with illness, seizures and drug ingestion rather than a cause of death. Dr Brouwer did not rule out that Roberto exhibited signs of excited delirium but did not postulate it as a cause of death so much as being associated with death temporally. Professor Jones and Dr Cooper offered no comment.

V. Anatomical causes.

Dr Brouwer found no evidence enabling anatomical diagnosis or structural abnormality and the others agreed. Dr Cooper was of the view that the minor heart rhythm abnormality he noted from the ECG conducted in Brazil prior to his death was not contributory to his death.

Dr Cooper saw three possibilities, none of which he could be confident to pinpoint as the cause of death:

- a) positional asphyxia causing the heart to stop within a minute of respiration ceasing;
- b) a cardiac arrhythmia, such as ventricular fibrillation induced by an excited delirium state;
- c) a neurological effect, from an outpouring of catecholamines affecting brain function.

Dr Vinen was alone in giving a definite opinion that Roberto's death was due to positional asphyxia caused by the weight of a number of officers on his body preventing respiration. He saw it as the terminal event in a series of multifactorial events.

Dr Brouwer did not accept his view that there is a scientifically established basis for finding positional asphyxia as a single cause of death. She posed two options,

a) undetermined or b) sudden unexpected death in a young man with LSD-induced psychosis, associated with police restraint and simultaneous use of OC spray and taser. She also noted the temporal relationship between excited delirium and physical restraint, taser and OC and sudden death.

Professor Jones could not suggest a predominant cause of death, other than to confirm her exclusion of the pharmacological action of OC spray and LSD, although not excluding that LSD probably caused an acute psychotic reaction with downstream consequences.

I note that Dr Dawes provided a report in which he gave his view that 'excited delirium' was the likely cause of death. The report was useful in further explaining the technical aspect of Taser operation, but Dr Dawes can not be considered completely independent, because of his acknowledged links to the Taser International Company.

Roberto's death clearly arose from complex and multi-factorial causes, with no confirmed single identifiable cause. Nevertheless, it is impossible to believe that he would have died but for the actions of police. All of the medical experts agreed that his death was not coincidental. I will make an open finding as to the cause of death, with comment as to its manner accordingly.

THE QUESTION OF REFERRAL UNDER S 78 OF THE ACT., AND OR OF THE WORKPLACE SAFETY ACT.

Mr Hamill for the family made strong submissions both oral and written, that the evidence satisfied the criteria in s.78 of the *Coroner's Act 2009*, in that it was capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence in connection with Roberto's death, there is a reasonable prospect that a jury would convict the known person of the indictable offence, and that the offence had led to the death. His submission was that I should therefore suspend the inquest and refer this matter to the Director of Public Prosecutions for consideration of charges being laid. He based those submissions on the VKG recording, the CCTV footage, the independent witnesses, the Tasercam footage and logs, and the apparent breaching of the SOPs. Dr Vinen's view that positional asphyxia should be found to be the cause was also heavily relied upon.

It was argued that whether the actions of police were grossly and criminally negligent should be a question for a jury. However, it was conceded that causation would be a problem for any prosecutor or jury.

Other Counsel, including Mr Gormly and Mr Hodgkinson, submitted otherwise, while Mr Zillman on behalf of Taser International pointed out that there was no medical evidence that a Taser was directly responsible for the death. I concur with those submissions.

I disagree that the admissible evidence reaches the standard required by s.78. Much of what was heard by this court would be inadmissible in a criminal court. Vitally, there is insufficient evidence to establish a clear cause of death, and no specific administration(s) of force could be said in themselves to be lethal.

While it is probable that those combined actions were the primary factors leading to Roberto's death, without a clear finding as to cause, the death could not be sheeted home to any or all of those actions. Mr Hamill also submitted that I should refer this matter to Workcover for investigation. I do not intend to do so as I view the issues raised by the evidence as being policing issues warranting investigation and review by policing bodies as opposed to a Workcover investigation.

After the evidence completed the court heard from Ana Laudio De Lucca Roberto's sister, and from Domingos Laudio, his Uncle. They have been, and remain, extremely distressed, angry and griefstricken by Roberto's death. They painted a picture of Roberto which none of us will forget, from childhood in Brazil to his death as an adult in Sydney. He was plainly a much loved young man. The family and his friends will miss him forever. While no words from others will comfort them, I do express my deepest personal sympathies to them all, and hope that at the very least some of their questions about this tragedy have been answered by these proceedings.

As I cannot be comfortably satisfied of the cause of death, I make the following formal finding according to s 81 of the Act:

FORMAL FINDING

That Roberto Laudisio Curti died shortly after 6am on March 18, 2012, in
Pitt Street, Sydney, in the State of New South Wales, of undetermined causes,
in the course of being restrained by members of the New South Wales Police Force

RECOMMENDATIONS: s 82 CORONER'S ACT 2009

To the Commissioner of Police

1. That the conduct of Officers Barling, Cooper, Lim, Edmondson and Ralph in their actions during the pursuit and restraint of Roberto Laudisio Curti be considered for disciplinary charges.
2. That the actions of police during the pursuit and restraint of Roberto Laudisio Curti be referred to the Police Integrity Commission.
3. That there be an immediate review of the contents of the relevant NSW Police Standard Operating Procedures and associated training relating to the use of Taser, OC spray, handcuffing, restraint and positional asphyxia to:
 - a. ensure that officers are aware of the dangers of a
 - i. positional asphyxia;
 - ii. the multiple use of Tasers and their use in drive stun mode;
 - iii. the multiple use of OC spray;
 - b. ensure that guidance provided to officers is clear and consistent, in particular removing the term "exigent circumstances";
 - c. review the criteria for the use of Tasers;
 - d. consider imposing limitations on the use of Taser in certain circumstances;
 - e. consider prohibiting the use of Tasers drive stun mode, other than where officers are defending themselves from attack;
 - f. improve training techniques and education in the appropriate and/or prohibited use of all the above.
 - g. consider whether Probationary officers should continue to be authorised to carry Tasers.
 - h. ensure that the safe management of risks of asphyxia by crush, restraint or position are included not only in the SOPs for the use of OC spray but wherever use of force must be applied to a person by a police officer.

4. That there be a review of communication procedures to ensure that signs of mental disturbance in any person the subject of a police report be communicated, and officers trained further to respond accordingly.
5. That there be an examination of NSW Police VKG procedures to ensure accurate categorisation of any incident reported.

Magistrate Mary Jerram

November 14,2012

NSW State Coroner

Chambers,Glebe