



QUEENSLAND  
COURTS

## OFFICE OF THE STATE CORONER

### FINDINGS OF INQUEST

**CITATION:** Inquest into the death of Antonio Carmelo Galeano

**TITLE OF COURT:** Coroner's Court

**JURISDICTION:** Brisbane

**FILE NO(s):** COR 2009/5876

**DELIVERED ON:** 14 November 2012

**DELIVERED AT:** Brisbane

**HEARING DATE(s):** 10 June, 12 August, 15 October, 1-11 November 2010, 7-13 March, 21 March-1 April, 14-16 June, 11-12 July 2011

**FINDINGS OF:** Ms Christine Clements, Deputy State Coroner

**CATCHWORDS:** Death in custody; mental health assessment; protracted struggle with police; multiple & prolonged Taser activations; oleoresin spray; paramedic attendance; excited delirium; emergency management of highly agitated, likely drug affected individuals

**REPRESENTATION:**

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Mr Justin Harper  
Ms Ainslie Kirkegaard

Galeano Family	Mr Harvey Walters (i/b Arthur Browne & Associates)
QPS Commissioner:	Hon Timothy Carmody SC (i/b QPS Solicitors Office)
Senior Constable Craig Myles	Mr Martin Burns SC (i/b Gilshenan & Luton)
Constable Marina Cross	Mr Andrew McGinness (i/b McGinness & Associates)
Sandra Wynne	Mr Joshua Trevino (i/b Caxton Legal Centre)
QAS	Dr Madonna Callaghan (i/b Department of Community Safety)
State of QLD Townsville Health Service District	Mr Brad Farr (i/b Minter Ellison)
Taser International	Mr Stephen Zillman (i/b Clarke Kann)
Constable Darren Smith Constable Andrew McDowell	Mr Gavin Hansen (i/b QPS Solicitor)

## Table of Contents

Introduction.....	3
Preliminary matter of the sequence of events – time records .....	4
The adequacy and appropriateness of the mental health assessments .....	5
Treatment at Ayr Hospital.....	7
Treatment at Townsville Hospital .....	9
Events following Mr Galeano's discharge from Townsville Hospital.....	12
Appropriateness of the QPS response to the triple zero emergency call ...	18
The appropriateness of the attending officers' assessment and response	22
Consideration of police response up to entry of the premises .....	30
QPS Taser guidelines operative at the time .....	31
Sequent of events inside Ms Wynne's flat.....	33
Adequacy of paramedic attendance at incident .....	50
Police Management of incident after Mr Galeano's death.....	52
Conduct of the police investigation .....	53
Forensics.....	53
Overall management of police investigation .....	54
Overall consideration of use of the taser.....	58
The number and effectiveness of taser activations .....	59
Cause of death .....	66
Autopsy performed by Professor David Williams.....	66
Professor Ansford.....	69
Professor Johan Duflou .....	72
Professor Steven Karch .....	81
Dr Dhanunjaya Lakkireddy .....	85
Dr Donald Dawes .....	87
Dr Gary Vilke .....	88
Discussion and Consideration of Cause and Contribution to Death.....	90
Coroner's findings.....	93
Consideration of reporting offences or misconduct.....	93
CORONIAL COMMENTS.....	96
Recommendation 1: Forensic pathology.....	96
Recommendation 2: Variation in Queensland Police time records .....	97
Recommendation 3: Strategies for minimising mortality rate of persons displaying symptoms of excited delirium syndrome.....	97
Recommendation 4: The Thresholds for Taser Use and Multiple Use....	98
Recommendation 5: Repeated or prolonged use of Taser .....	99
Recommendation 6: Review of multiple or prolonged Taser deployments .....	100
Recommendation 7: Safeguards by way of Technological Advance ....	100
Recommendations 8 & 9: Mental Health, the effect of Illicit drugs and Police Intervention Strategies.....	101
Recommendation 10: The role of Police Communications.....	102
Recommendation 11: Advising the Police Service of Discharges from Hospital .....	102
Recommendations 12-17: .....Investigation of deaths in police custody .....	103
Recommendation 18: Review of adequacy of QPS first aid masks .....	105

## Introduction

Antonio Carmelo Galeano died suddenly and unexpectedly in the early hours of 12 June 2009. He was at the residence of a friend, Sandra Wynne, in the small town of Brandon in North Queensland. Ms Wynne called police for assistance due to Mr Galeano's deteriorating behaviour during the course of the evening. Over several hours he became disturbed, incoherent, and physically violent to her and had caused significant damage to property.

On the previous day, Mr Galeano was discharged from the Townsville Hospital after a diagnosis of acute amphetamine toxicity was made. On 10 June, police officers called to Brandon observed Mr Galeano acting bizarrely while walking along the main north/south railway line. They were concerned about his safety and physically removed him from the railway line and transported him directly to the Ayr Hospital for assessment. Mr Galeano was sedated and then transferred to Townsville Hospital. A mental health assessment was performed following a physical assessment in the emergency department. The assessment concluded Mr Galeano was not suffering from a mental illness. He had been sedated. He agreed to stay overnight in the emergency department before his return to Brandon on the morning of 11 June 2009.

In the early hours of 12 June 2009, two police officers attended at the flat in Green Street, Brandon in response to Ms Wynne's request. They attempted to bring Mr Galeano under their control. He appeared injured, was naked, apparently not in a rational state and did not respond to police. They used a range of methods in attempting to physically control him, including the multiple use of a taser. Their efforts to control him occurred over about 25 minutes concluding with the handcuffing of Mr Galeano facedown on the floor of the lounge room with the two officers maintaining physical control over him. Ms Wynne noticed Mr Galeano's face 'had gone black'. The ambulance had already been called but the request was upgraded to 'urgent'. Handcuffs were removed and attempts were then made to resuscitate Mr Galeano via chest compressions. On their arrival, ambulance officers continued efforts to resuscitate Mr Galeano for a short period before assessing him and declaring him deceased.

Mr Galeano's death occurred in the course of police attempting to detain him; it is classified as a death in custody and therefore mandatorily subject to coronial investigation and an inquest.<sup>1</sup>

The Ethical Standards Branch of the Queensland Police Service (QPS) investigated Mr Galeano's death on behalf of the coroner. A number of issues were identified to be addressed in the course of the investigation. The issues examined at inquest were as follows:

- (a) the findings required by section 45(2) of the *Coroners Act 2003*, namely the identity of the deceased, when, where and how he died and what caused his death;

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<sup>1</sup> Sections 11(7) and 27(1)(a)(i)

- (b) the adequacy and appropriateness of the mental health assessment undertaken and the treatment provided to Mr Galeano by the Ayr Hospital and the Townsville Hospital over the period April-June 2009;
- (c) the appropriateness, in all the circumstances, of the QPS response to the 000 emergency call made in the early hours of 12 June 2009 including the seniority, training and experience of officers assigned to attend the incident;
- (d) the appropriateness or otherwise of the attending officers' assessment of, and response to, the incident and whether the officers' decision-making and subsequent actions complied with relevant QPS policies and procedures in force at the time of the incident;
- (e) the adequacy or otherwise of the attending officers' training and experience in using a taser device and/or oleoresin capsicum spray prior to the incident;
- (f) determination of the facts concerning the timing, nature and number of taser deployments during the incident, including whether the taser device was functioning properly;
- (g) the adequacy or otherwise of the attending officers' use of the taser device during the incident including issues of compliance with the QPS taser policy and procedure in force at the time of the incident;
- (h) the adequacy and reasonableness or otherwise of the response by the attending officers and the Queensland Ambulance Service (QAS) to Mr Galeano's collapse;
- (i) the extent to which, if any, various factors causally contributed to Mr Galeano's death including Mr Galeano's pre-existing emotional and physical state; the deployment of the taser device; the deployment of oleoresin capsicum spray; and the restraining forces applied by the attending officers to Mr Galeano;
- (j) the adequacy and appropriateness or otherwise of current QPS taser policy and procedures, training and monitoring processes; and
- (k) the adequacy and appropriateness or otherwise of current QPS policies, procedures and officer training for managing interactions with people in an apparently highly agitated state including people suspected of suffering drug induced psychosis.

### ***Preliminary matter of the sequence of events – time records***

Various records were examined to establish the sequence of events on the 11–12 June 2009. These included records from the QPS the QAS and the Taser X26 weapon. Within the QPS there were different systems to record the times of telephone and radio communications. The NICE system was used to automatically record all incoming and outgoing telephone and radio conversations by staff of the Townsville Telecommunications Centre of the QPS. The timing device in the NICE computer was not maintained by reference to external timing sources, whereas the Computer Aided Despatch (CAD) system used by police was referenced to the external federal government national measurement institute timing. A review of all of the timing devices referred to in the inquest, based on the evidence of the primary investigator, Inspector Sakzewski, led to a revised common understanding at the inquest. This exercise involved a careful cross referencing of times from

the internal systems of NICE, CAD and the Taser X26 device with records from the QAS, ISDN (Integrated Service Digital Network), Telstra and PABX (Private Automatic Branch Exchange).

Counsel assisting helpfully summarised a corrected timeline in an amended version of exhibit R5. Some of the time discrepancies were not minor; an adjustment requiring the adding of 16 minutes and 11 seconds to the stand alone police NICE computer times was required to bring this record in line with other external time records which are maintained against internationally recognised and reliable standards.

I am satisfied the adjustments made to the exhibited time flow chart<sup>2</sup> of events can now be relied upon. I note the NICE times have been adjusted by adding 16 minutes and 11 seconds; the taser activation times have been adjusted by subtracting one minute; the ISDN times for the two calls made by Senior Sergeant Oates to the unrecorded line at Townsville COMCO have been adjusted by subtracting one minute 54 seconds.

All references to time recordings made in these findings are those resulting from this adjustment exercise.

It must be said despite best efforts a degree of uncertainty remains regarding issues of timing of various events.

***The adequacy and appropriateness of the mental health assessments undertaken by, and treatment provided to Mr Galeano, by the Ayr Hospital and Townsville Hospital over the period April-June 2009***

During the inquest, questions were asked on behalf of Mr Galeano's family querying the adequacy and appropriateness of decisions made by medical personnel with respect to Mr Galeano, particularly on 11 and 12 June 2009. His sister, Giovanna Tama, raised issues shortly after her brother's death regarding his mental health. She considered her brother suffered from psychosis, although reading through the interview with Inspector Sakzewski, she accepts this was drug induced. Irrespective of the cause of the psychosis, she considered he suffered from mental health problems. She raised the question whether Mr Galeano was properly assessed in Townsville, particularly as he had been sedated. It is noted the family did not pursue any matters relating to health services in their final written submission to the inquest.

Mr Galeano came to police attention in Brandon twice on 10 June 2009. At about 0445 that morning, Lennard Phillips opened the Brandon Convenience Store for business. He found Mr Galeano was already there, cold and shivering. He was talking 'fast and erratic'. He was in a very agitated state and the shopkeeper thought he was on another planet. He cooked him breakfast. Mr Galeano kept referring to the police and to evidence and alibi.

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<sup>2</sup> Exhibit R5 as amended by Counsel Assisting, attached to the submissions of Counsel Assisting dated 23 November 2011,

Eventually the shopkeeper became concerned and called the police at Mr Galeano's request.

Mr Phillips<sup>3</sup> knew Mr Galeano over an 18 month period during which he and his (then) girlfriend, Sandy, attended the shop almost daily. He described Mr Galeano as *quite a good bloke, he used to talk a lot, always very happy, thankful, pleasant.*<sup>4</sup> In more recent times the shopkeeper observed Mr Galeano less frequently. He was a little bit agitated and he seemed to have girl troubles and sometimes mumbled to himself. He mentioned he had diabetes. On that morning the shopkeeper observed a golf sized bump on his head, like a growth.

At about 0640, Constable Simon Wylie and Constable Tom Madison attended the Brandon Convenience Store at the request of Mr Phillips. He told police there was a man present (Mr Galeano) who refused to leave the shop and he wanted police to take him away. Mr Galeano told the officers it was 10 years since his brother Sam had stabbed him and attempted to kill him. He wanted police to take action against his brother, but said he had not spoken with Sam for 10 years and he would not provide a statement. The police considered there was no immediate threat. They confirmed Mr Galeano had a large sum of money on his person. He agreed to a taxi being called and he was warned not to waste police time.

The second interaction between Mr Galeano and the police occurred at about 1500 on 10 June. Constable Wylie received a call at the Ayr Police Station from his wife who was at home in Brandon with their children. She was concerned about a shirtless man who walked past her house, muttering unintelligibly. He then climbed over the fence onto the railway line. He was sitting in between the railway lines and then laying down between the tracks. Constable Darren Smith accompanied Constable Wylie to Brandon where they found Mr Galeano. By this time he was walking in the middle of the north/south train line, running parallel with Hellier Street. Mr Galeano did not respond to police calls and was mumbling. He stumbled and went to his knees on the metal base for the train tracks. Police climbed the one and a half metre fence and tried to restrain him. Constable Wylie observed Mr Galeano had blood on his hands and face. He was wearing just black pants and did not appear to have a weapon or the wallet he had been seen with earlier that morning.

The two police officers decided it was necessary to remove Mr Galeano from the railway line for his own safety. Mr Galeano resisted strongly and it took considerable physical effort for the two male officers to restrain him. His legs were spasming and it was necessary for them to carry him under the armpits about 300 metres to the railway crossing.

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<sup>3</sup> Exhibit G7

<sup>4</sup> Exhibit G7, page 4

Mr Galeano was taken directly to the Ayr Hospital as the police were concerned for his welfare. He was seen to have scratches and abrasions on his chin, elbows and knees, as well as an egg-like lump on his left side scalp.

### **Treatment at Ayr Hospital**

Police spoke with Dr Row, telling him they assumed Mr Galeano was under the influence, probably of a drug. His speech was different from their conversation with him earlier that day. His pupils were dilated and his eyes were rolling backwards.

Constable Wylie was interviewed by Inspector Sakzewski and told him he saw the handcuffs at Mr Galeano's back had caused indentations, but could still be moved. He said Mr Galeano remained cuffed at the Ayr Hospital because he was still aggressive up till the time he handed over responsibility to another officer and prior to his transfer to Townsville. Constable Wylie did not think Mr Galeano even recognised him in the afternoon encounter, which was completely different to his behaviour earlier that day. By afternoon there was no sign Mr Galeano had the wallet or any money on his person.

It is quite obvious the police officers' actions to remove Mr Galeano from the railway track and take him to the Ayr Hospital were entirely appropriate and necessary.

Dr Row was the medical superintendent at the Ayr Hospital, a position he held since 2004. He was called in by a nurse to the 'quiet room' at the Ayr Hospital on the 10 June to see Mr Galeano. Mr Galeano was on the carpeted floor, sitting in handcuffs between two police officers. It was about 1550. Dr Row immediately noticed Mr Galeano was profusely sweating, 'dripping down onto the carpet'.<sup>5</sup> He was salivating and mucus was coming from his nose. He was examined. Mr Galeano did not say anything intelligible but made 'neologisms', meaning nonsensical phrases. Dr Row observed his eyes were widely dilated. He examined his chest and heart and checked observations taken by nursing staff. There was nothing of major concern. He spoke with police who gave a background both from the morning encounter and the afternoon interaction. Dr Row assessed Mr Galeano as most likely suffering acute amphetamine toxicity.

Dr Row considered Mr Galeano needed a period of observation and this could not be managed at Ayr Hospital, which did not have security arrangements. He felt Mr Galeano was quite ill and was aware of the risk of cardiac problems due to blood pressure changes and dehydration. He ordered 10mg of Midazolam to sedate Mr Galeano quickly. To administer the medication, five people were required to hold him down, during which he was thrashing around, conscious but uncooperative.

Dr Row could not converse with him at all. He resisted the treatment. Dr Row checked with an emergency medicine text to ensure Midazolam was safe to administer. In Dr Row's experience, people affected by

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<sup>5</sup> Exhibit H9, page 5



amphetamines required a dose of 10mg. He was still handcuffed. Dr Row considered it possible some injury could have occurred to Mr Galeano's wrists during this necessary treatment.

Dr Row arranged his transfer to Townsville as the safest most appropriate place for his continued medical observation during the period of presumed amphetamine toxicity.

A little later, Dr Row authorised another dose of 10mg of Midazolam and 10mg of longer acting Valium as Mr Galeano was still not very well sedated. He considered this reduced the risk of heart attack due to sudden increase in blood pressure and reduced the risk of dehydration and fitting. A male medical student, male doctor and Constable Smith accompanied Mr Galeano to Townsville in the ambulance. Dr Row was cautious due to the possible risk of cardiac arrest.

At Dr Row's request, the police officers filled out an emergency examination order. Dr Row conceded in his view he did not really think Mr Galeano required a psychiatric examination, as he thought the condition was purely due to drug toxicity. He did not think there was any evidence of the co-existence of a psychiatric problem, particularly after reviewing Mr Galeano's notes. Dr Row had not previously seen Mr Galeano. Dr Row therefore did not complete a recommendation for psychiatric examination in the paperwork.

Dr Row said police described Mr Galeano's bizarre behaviour and the events of the day. He observed blood on both Mr Galeano and the police officers. There were no gross injuries. He could see some marks on Mr Galeano's back, which was bare. Dr Row filled out the medical part of the form, including the description 'acutely unwell and suspect amphetamine toxicity'. He discussed with Dr Bunungham that he was capable of inserting an intravenous cannula in the course of the transfer if the need arose. Mr Galeano was beginning to calm. There was a discussion aimed to position him on his side in the handcuffs for the trip to reduce the risk of aspiration in the event of vomiting.

In reviewing Mr Galeano's medical history, Dr Row noted an incident in January 2007 referring to an alleged assault against him when he was kicked with steel capped shoes. His blood pressure and pulse were also high on that occasion. There were other high blood pressure readings as well as a reference to the use of speed (amphetamine) in 2006. What was most remarkable to Dr Row was the volume of sweat pouring from him, which he had previously observed in the context of amphetamine toxicity, and also with poisoning from insecticide. He said the necessary testing could only be performed in Townsville. He expected Mr Galeano would be observed in Townsville Hospital for six-12 hours and would then be released unless some other problem arose. Dr Row would often enquire of a patient regarding issues of mental health, but not at a time when the patient appeared significantly intoxicated. In his view, Mr Galeano was suffering drug intoxication making him acutely unwell and did not appear to be suffering from

a mental health issue per se but for the purpose of accessing proper medical care and review, he supported the transfer to the Townsville Hospital with the emergency examination order paperwork. In Dr Row's extensive experience, he considered Mr Galeano was an extreme case. He needed immediate medical observation backed up with security. Dr Row did not consider Mr Galeano was exhibiting abnormal strength; rather it was a matter of precaution to have sufficient people present to restrain him when sedation was given as he was uncooperative. He was certainly very agitated.

This initial presentation at Ayr Hospital has been independently reviewed by consultant psychiatrist Adjunct Professor Joan Lawrence and consulting psychiatrist Associate Professor Frank Varghese.

Dr Lawrence reviewed Mr Galeano's known history as recorded in hospital records from Ayr and Townsville. Mr Galeano had presented to hospital on a number of occasions with injuries following conflicts and attacks. There was an acknowledged history of use of amphetamines. His presentation with bizarre, uncontrollable behaviour and history together with excessive salivation and sweating as well as elevated pulse and blood pressure was noted. Dr Lawrence affirmed the initial provisional diagnosis concluding it was likely acute amphetamine toxicity or a delirium likely to be caused by stimulants of the amphetamine type.<sup>6</sup>

Dr Varghese's review reached a similar conclusion that Mr Galeano's behaviour and clinical observations were consistent with a drug induced state such as produced by amphetamines. In addition to bizarre behaviour, he noted there was drooling and profuse sweating indicating a high level of arousal. Dr Varghese considered there was no obvious evidence of psychosis other than grossly disturbed behaviour. There did not appear to be any specific psychotic symptoms.

Both experts considered the treatment of Midazolam and Diazepam was appropriate. Dr Lawrence and Dr Varghese agreed Mr Galeano was appropriately assessed and treated with sedation at the Ayr Hospital.

I accept their expert opinion that Mr Galeano was appropriately dealt with in response to his exhibited behaviour that morning.

### **Treatment at Townsville Hospital**

This was an issue of significant concern to Mr Galeano's sister, Giovanna Tama.

Upon arrival at Townsville Hospital, Mr Galeano was much calmer. Dr Richard Brown, who was the consultant emergency physician, examined Mr Galeano and ordered blood tests and a urine drug screen. Mr Galeano was cooperative in the emergency department. Drs Brown and Vicki Stonehouse, the principal house officer, arranged for a psychiatric review. His handcuffs were removed, confirming he had calmed. He denied the use of drugs.

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<sup>6</sup> Exhibit D1, page 8

However, the urine drug screen<sup>7</sup> detected benzodiazepines, cannabinoids, sympathomimetic amines but not cocaine, methadone or opiates. The emergency examination order was due to expire at 2040 and a psychiatric review was therefore arranged.

After arrival at Townsville Hospital, Mr Galeano was given 2.5mg of Midazolam. He went to sleep. By 1945, the need for security had diminished and they were dismissed. At 2015, Mr Galeano was noted to be drowsy but rousable with increasing level of consciousness. He ate and drank and by midnight, he could be interviewed.

Dr Lawrence reviewed the psychiatric assessment conducted by Dr Amol Deshmukh. Mr Galeano continued his denial of drug use. Dr Lawrence considered pertinent questions were asked. Dr Deshmukh evaluated Mr Galeano's state of orientation, checked to see whether there was any evidence of psychotic features including delusions, hallucinations, thought disorder or behaviour. Dr Lawrence agreed with Dr Deshmukh's assessment that there were no grounds to continue the emergency examination order pursuant to the *Mental Health Act 2000*. She considered the assessment was appropriate and adequate. She noted Dr Deshmukh had discussed his assessment with his superior, the consultant Dr Gundabawady.

Likewise, Dr Varghese considered Dr Deshmukh's assessment was appropriate and he agreed there was no indication requiring Mr Galeano's admission to hospital. He said there was certainly no indication for compulsory admission once the emergency examination order had expired. He noted Mr Galeano had recently exhibited very bizarre behaviour and had signs of amphetamine psychosis. Therefore, he considered the most appropriate diagnosis was amphetamine toxicity, currently in remission.<sup>8</sup> He did not consider this diagnosis changed the management plan with respect to admission. Dr Varghese concluded there was no evidence Mr Galeano suffered from any psychiatric illness such as schizophrenia, bipolar disorder or any other psychosis. He noted a previous period in 2001 when he appeared depressed. There was no history at Ayr or Townsville of psychiatric illness or treatment. The only reference appears to have been by a Magistrate in Ayr requiring Mr Galeano to speak with a social worker. His treating general practitioner was Dr Oats. His only reference to any mental health issue was with respect to depression in 2001.

In conclusion, the evidence does not reveal any past history of mental illness excepting depression. Dr Varghese's only qualification of the diagnosis was he considered the most appropriate description of the situation at Townsville on the 10 June 2009 was 'amphetamine toxicity, currently in remission'. There was no evidence of mental illness at the time of assessment or upon discharge at the Townsville Hospital. There was no reason to admit him voluntarily, and no basis to detain him involuntarily.

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<sup>7</sup> Exhibit B2

<sup>8</sup> Exhibit D2, page 4

There was always the risk he might return to use of amphetamines, and thus, the problem would reappear. Mr Galeano was given information about the community assessment and treatment teams. Given the time of night, he agreed to stay in the emergency department overnight.

Both Drs Lawrence and Varghese were satisfied the administration of Diazepam and Midazolam would not have impacted on the psychiatric assessment. I accept their view. Dr Varghese said he would have attempted to see Mr Galeano again in the morning prior to his discharge, but neither reviewing psychiatrist considered there was any basis for admission to the mental health unit for treatment or for medical treatment.

There was clearly a longstanding problem on the evidence that Mr Galeano had a history of use of amphetamines which he denied. In these circumstances there was little likelihood of a successful intervention with Mr Galeano regarding his drug use given his denial. Nothing could prevent his action in returning to use amphetamines and there is no legal authority under which Mr Galeano could have been detained simply because of the potential risk of such behaviour. Nor could police have intervened at the time of his discharge.

Mr Galeano's family of course were dismayed they remained unaware of the initial incident causing his transfer to the Ayr Hospital and on to the Townsville Hospital. It is a perennial problem observed at inquests that families complain about a lack of communication. However, the sad reality is, where a person does not choose to authorise a treating doctor to contact or discuss medical matters with family members, the treating team is circumspect in initiating unauthorised contact or release of information. Mr Galeano's sister indicated he was living at various places, and although he had the support of his family, he was not in close contact with them at the time. He told the hospital he lived alone and did not request contact with family members.

There was also a concern expressed that police were not informed of the decision to discharge Mr Galeano. However, given the hospital's conclusion he was not suffering mental illness, and did not require any type of admission and was fit for discharge, it is hard to see on what basis they could be entitled to share information with police. There is a working memorandum of understanding between the QPS and Queensland Health relating to mental health matters. It would appear to require legislative change if Parliament considered it essential to change fundamental privacy considerations of patients to authorise the release of information other than with patient consent, or where there is assessed to be a real risk of possible criminal activity justifying the release of information to police. I endorse consideration of legislative change to enable release of personal health information to family and police.

### ***Events following Mr Galeano's discharge from Townsville Hospital on 11 June 2009***

Mr Galeano returned to Brandon on the morning of 11 June in a Townsville Hospital patient transport vehicle driven by Keith McDonald. He was dropped

off in the vicinity of Payard Street, Brandon. He was wearing some item of hospital attire tucked into his black shorts. He went to the Brandon Store and Mr Phillips recalled seeing him at about 1115. He again noticed the golf sized bump on his head at the time. Mr Galeano requested credit, and eventually the shopkeeper gave him \$30 for tobacco and thongs. There was then a bizarre incident when Mr Galeano went to the rubbish bin and retrieved a cigarette box which he had disposed of on the previous day. He extracted a \$50 note and paid the shopkeeper. He left with his tobacco. During the exchange, Mr Galeano referred to being handcuffed and Mr Phillips observed his wrists were red and swollen.<sup>9</sup> Mr Galeano mentioned he would make a complaint about the two police officers. Mr Phillips' impression of Mr Galeano that morning was that he was *not the Tony that I knew a year ago*.<sup>10</sup>

Mr Galeano went to a friend's residence at Unit 2, 16 Green Street, Brandon. Sandra Wynne was the occupant of that residence. She was interviewed by Inspector Sakzewski on the 12 June 2009 at 1425. She was clearly upset at the time. On consideration of all Ms Wynne's evidence, it appears the most reliable information was provided to Inspector Sakzewski on that first occasion. Her account is as follows:

*Well, Tony, I don't know what happened yesterday but Tony had turned up at my place at lunchtime yesterday in a hospital gown – apparently he had been arrested from the police and taken to Townsville to the Mental Health Department. They released him and he came straight to my place. There was no way in the world that he should have been released or that he was able to walk around the streets okay. I suffer with bipolar and that and he had problems yesterday. I settled him down. He was okay most of the day and then last night, I don't know what happened but Tony had bruises all over him that I wanted to take photos of okay, that the police had apparently had done the day before. I wasn't there to witness it, it was what Tony had been saying to me, he had marks on his arms where he was handcuffed, his hands were swollen, he had a black eye, his knees were skinned, his elbows were skinned and he had bruises up the side of his on his belly, on his back sorry and I asked Tony, I said to Tony you need to stay here tonight so I can take photos of them in the morning so that we can get onto this. I can get hold of Mental Health and the police and find out why you were arrested, why you were belted, why they sent you over there and then released you and I have...I suffer with bipolar so I go through Mental Health myself.*

With respect to Ms Wynne's complaint regarding Mental Health releasing Mr Galeano, it is noteworthy to consider her sworn statement taken at Ayr Police Station on 12 June. She said:

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<sup>9</sup> Exhibit G7, page 17

<sup>10</sup> Exhibit G7, page 19

*I thought Tony may have had a mental health problem, but he'd never been to a doctor about it. He used to have mood swings, be happy one moment and cranky the next, and always thought someone was after him...he had diabetes and was taking two tablets a day for that. He was taking pills for high blood pressure and Endep for depression, and I think to help him sleep. His doctor prescribed all these tablets and he would go to him regularly. His doctor was Dr Darren Oates from the Ayr Medical Centre.<sup>11</sup>*

Clearly Ms Wynne was unaware of the circumstances involving Mr Galeano on 10 June. She did not know about his bizarre behaviour at the store where the police were called and a taxi was arranged for him to leave. She was unaware of the later circumstances leading to members of the public calling police because they feared Mr Galeano was in a highly disturbed state, lying in the middle of the road. When police located him, Mr Galeano was walking along the main railway line wearing just shorts and no shirt, having earlier left his boots in the bin at the convenience store.

In her earlier statement to police on 12 June, Ms Wynne said Tony told her:

*I was walking along the railway tracks and they (the police) came up behind and followed me down to the crossing and grabbed me and bashed me on the side of the road."<sup>12</sup>*

Ms Wynne did not know Mr Galeano ignored the police who tried to persuade him to leave the railway line for his own safety. She did not know he resisted their physical efforts to remove him to safety and she did not witness the physical interaction involved when it was necessary for police to manhandle him to remove him from the railway line. He was not formally arrested, but he was handcuffed in order to restrain him and he was conveyed immediately to the Ayr Hospital. She was unaware of Dr Row's assessment of him as most likely suffering from acute amphetamine toxicity. Nor did she know it again took physical restraint, this time by five people in the carpeted 'quiet room' at the Ayr Hospital, to permit a nurse to administer sedation. The handcuffs necessarily remained in place during his subsequent transfer to the Townsville Hospital for further observation and treatment as indicated. While the handcuffs certainly were tight and caused minor injury, the circumstances did not allow lenience or his release until he finally settled in the emergency department at Townsville Hospital. Ms Wynne was unaware Mr Galeano had been transported back to Brandon by Keith McDonald, a Queensland Fleet Courier driver for the Townsville Hospital. Mr Galeano had told her 'police dropped me back to Brandon at the shops; there was no-one else in the white unmarked van, apart from the police officer'.

In all these circumstances, it was unsurprising that Mr Galeano had sustained minor injuries as observed by Dr Row, Townsville Hospital medical staff, the shopkeeper, Ms Wynne and the police involved in removing him to the Ayr

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<sup>11</sup> Exhibit G12.1, page 2

<sup>12</sup> Exhibit G12.1, page 4

Hospital from the railway line. I do not consider there was evidence of undue force exercised by the police or medical staff on 10 June 2009.

After arriving at Ms Wynne's residence, Mr Galeano and Ms Wynne went to pick up his vehicle and returned to Green Street where he then worked on the utility. He was involved in a conversation with Robert Byron, who lived in the adjoining unit number 1. Mr Galeano left Green Street in his vehicle late in the afternoon for a short period. It is unknown where he went. He returned and worked again on the vehicle with Mr Byron and others. A friend, Dale Robertson visited Mr Galeano to announce the birth of his baby. He stayed for some hours and was drinking, but Mr Galeano did not do so.

It was after Mr Robertson's departure that Mr Galeano's behaviour began to change. It escalated and became more extreme and bizarre as the night progressed. Ms Wynne's evidence was she did not observe Mr Galeano in possession of or consuming any drugs on 11 June. She said:

*Tony doesn't drink alcohol and I have never seen him with an alcoholic drink. I have never seen Tony take any drugs.*<sup>13</sup>

However, I accept evidence of post-mortem toxicology testing indicating Mr Galeano had consumed amphetamines prior to his death, which the pathologist, Professor Williams, described as 'toxic levels of methylamphetamine'.<sup>14</sup> I also accept the evidence of Dr Varghese, one of the independent reviewing psychiatrists who gave evidence at the inquest. In his report Dr Varghese said:

*Mr Galeano does not appear to have shown any evidence of subsequent behavioural disturbance as can be gleaned from the observations of others up until 1700 hours on 11 June 2009 when he was reported as being 'seemingly normal' by Ms Wynne.*

It is clear that subsequently there was a return of very grossly disturbed behaviour indicative of amphetamine intoxication later on 11 June 2009 from around 2030 with increasingly disturbed and destructive violent behaviour. Importantly, it is most unlikely this was a recurrence or relapse of the same amphetamine intoxication of 10 June 2009, rather the most likely explanation is that Mr Galeano had consumed a further quantity of amphetamine or methamphetamine or both. This is borne out by the high level of methylamphetamine noted in the toxicology studies which is suggestive of recent ingestion.

There was the opportunity for Mr Galeano to have obtained and consumed drugs when he left the residence at Green Street. Alternatively, he may have

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<sup>13</sup> Exhibit G12.1, page 2

<sup>14</sup> Exhibit A3, page 7 – amphetamines .04 mg/kg, methylamphetamine .46 mg/kg, diazepam .01 mg/kg, nordiazepam detected less than .01 mg/kg, temazepam detected less than .01 mg/kg, amitriptyline .05 mg/kg, nortriptyline .08 mg/kg, delta 9 tetrahydrocannabinol (THC) .003 mg/kg, 11-nor delta 9 tetrahydrocannabinol-9-carboxylic acid .005 mg/kg, alcohol not detected

received and consumed drugs at the Green Street premises. I infer on all the evidence Mr Galeano obtained and consumed these drugs some time on 11 June after his discharge from the Townsville Hospital that morning. It is noted the bus driver who transported Mr Galeano from the Townsville Hospital back to Brandon said Mr Galeano *didn't seem like he was injured in any way or under the influence of any drugs or anything like that.*<sup>15</sup> Nor did Ms Wynne make any observation with respect to unusual behaviour until after Mr Robertson left late in the evening of 11 June.

I accept Ms Wynne's evidence in her statement given closer to the events is likely to be more reliable than her oral evidence at the inquest many months later. I also accept that some of the explanation for this variation can be found in Ms Wynne's reaction of grief and distress at her friend's death which occurred after she called the police for help. A summary of Ms Wynne's recollection of events leading to her escape from the unit to seek assistance is as follows:

After Dale Robertson left, she locked the front door and she and Mr Galeano went to her bedroom where she was watching television. He sat beside her on the bed. She said he started talking loudly but he was not making any sense. She told him to *shut your mouth or leave*. She put her hand over his mouth and encouraged him to go to sleep. She said he had never hurt her and she believed he never would. She estimates a couple of hours passed and he asked to use the shower.

It was by this stage about 0100 and he kept on talking all the time. He continued to rave on loudly. She recalled him saying repeatedly single words endlessly and *one, two, three*.

He started the shower, took his clothes off and got in the shower, but then came out to the bedroom and grabbed Ms Wynne by the hair, pulling out a clump. He used his right hand in imitation of a gun and held it to her head saying *bang bang you're dead*.

He ran back to the shower and then ran back to the bedroom and pulled out more of Ms Wynne's hair. He also signalled *bang bang you're dead* to himself. He pushed her face into the mattress. She had never seen him act like this before. She then hid under the bed as she was *scared for her own safety*. She continued to talk to him, pretending she was outside and he did not appear to realise where she was. He then started throwing items of furniture around. He ripped the television from the wall and took it with the lamp into the shower. A painting and a blanket used as a curtain were also taken into the shower. Ms Wynne took the opportunity to escape from under the bed, running past the open bathroom, out the back door to the next door neighbour's place. She took refuge with Robert Byron. He and his partner were awake due to the noise and offered to ring the police, but Ms Wynne eventually did this herself.

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<sup>15</sup> Exhibit H6, page 16



While speaking with an emergency services operator she heard the sound of crashing and smashing which she interpreted as her television going through the bathroom window, as well as the sound of other smashing glass.

A transcript of the triple zero call made by Ms Wynne was received into the Townsville Communications Centre at 0236. It was recorded as follows:<sup>16</sup>

*Hello I was looking for the police. I need a car, the police to come out to Brandon.*

*Yeah what address?*

*Unit 2, 16 Green Street*

*Yep and what's the emergency?*

*The emergency is I have one Tony Galeano wrecking my house, just destroying my house. Turned up just going off.*

*Okay what's he to you?*

*He was a friend, I bought a car off him*

*He, and how old's Tony?*

*38*

*Is he affected by anything?*

*I don't know. I don't know, he's not his usual self. He is off his head. He's doing I don't know, he's just running from the shower, he's naked running from the shower*

*Okay.*

*To my bedroom ripping everything off the wall.*

*Okay what's your name?*

*And he's taking the TV with him. Sandra*

*Sandra?*

*Wynne*

*Wynne?*

*Okay and he's still in the house?*

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<sup>16</sup> Exhibit L1, transcript 01

*Yes he is I'm actually over at the neighbours at the moment. I just got out. He's ripped half of me hair out of me head and he's just going off his head, I don't know what ..No way's wrong with him.. So I can't even talk to him*

*Is this Tony as in Antonio?*

*Yeah*

*Galeano?*

*Yeah and I*

*Did you?*

*I just don't want him charged. I just want him to go away you know like I've been asking him to for ages, for ages to go, and he just, he's just losing it you know he just, I don't know I don't know if he's been drinking or what he's been doing.*

*Do you know where he used to live, what street?  
I'm just trying to do history check*

*I don't know*

*On him*

*He lived with his parents last I know but they're in an old people's home now so I don't know.*

*Alright. No worries we'll send the locals out.*

*You need to get someone out here. He's smashed my home up bad, ay.*

*Okay that's what I said we'll get someone out*

*Okay*

*And so what address are you currently at?*

*I'm right next door in unit 1*

*So you're at unit 1?*

*Yeah*

*Alright thank you*

*Okay thank you darl.*

Mr Byron offered to ring the police but Ms Wynne chose to do this. He said she looked like she was in a pretty bad way when she arrived at his unit seeking help. He described her as hysterical. He saw she had hair missing and marks on her face. She was upset and in fear of Mr Galeano. Although by the time of the inquest Ms Wynne denied this, there is little doubt that on that night she was frightened of Mr Galeano, particularly because she had never seen him act in such a way before, and he did not respond to her pleas to stop his behaviour.

Mr Byron went outside his unit and could see in through the locked screened front door. Mr Galeano was very angry and bleeding on his arm. He was throwing furniture around. Like Ms Wynne, Mr Byron remembered Mr Galeano calling out *one two three*. Mr Byron yelled out, asking Mr Galeano if there was anything he could do, but he was verbally abused by Mr Galeano and he departed quickly back to his unit. He said in the past he could recall seeing Mr Galeano *go off, yelling and ranting*, but not like this. It made Mr Byron feel pretty scared. He could still hear smashing noises from Ms Wynne's unit.

In Mr Byron's recollection, it wasn't very long at all before the police arrived, whereas Ms Wynne was mistaken thinking it took 45 minutes according to her first statement to the police.<sup>17</sup>

Evidence from the Telstra records indicates the triple zero call from Ms Wynne to Townsville Communications Centre at shortly before 0236. Details were then provided to the Ayr Police Station in a conversation starting at 0239. At 0250, Senior Constable Myles contacted Townsville Communications via police radio confirming he was *off air* at Brandon, indicating he had arrived at the Green Street address.

### ***Appropriateness of the QPS response to the triple zero emergency call at 0236 on the 12 June 2009***

Senior Constable Myles and Constable Cross were the only two officers rostered on the night shift at the Ayr Police Station when the emergency call was relayed to them from the Townsville Communications Centre. The shift commenced at 2200 on the 11 June 2009. Senior Constable Myles was sworn in as a police officer in 2002. He commenced at the Townsville Police Station where he spent a year. From 2003 he worked at Ayr. He was appointed as Senior Constable in 2007. He attended a five day taser training course in May 2009. He was the senior officer with the major decision making responsibility during this shift. He had sole responsibility for use of the taser.

Constable Cross was sworn in as a police officer in November 2008. She previously worked as a child safety officer and as a parole and probation officer. She was working at the Ayr Police Station as her first posting. Senior

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<sup>17</sup> Exhibit G12.1, page 5

Constable Myles was her designated field training officer for eight weeks. He then continued as her supervising officer responsible for reviewing her first year workbook, as well as acting in a mentoring role. She had not undergone the taser training course and knew very little about the weapon. She had undertaken QPS training including the use of force training as well as online learning concerning people with an apparent mental illness. She had some experience from previous work dealing with people who were drug affected or suffering mental illness, but overall, she was inexperienced with only seven months involvement in the QPS.

Constable Cross did not know Mr Galeano and had no previous dealings with him. She became aware of the events involving Mr Galeano on the 10 June 2009. At the commencement of her night shift on the 11 June she read the occurrence sheet which briefly detailed the incident which had occurred on the railway track. At handover at the commencement of her shift she spoke with Constable Smith, who had been involved with Mr Galeano earlier that day. He described the incident to her and said Mr Galeano was displaying suicidal behaviour and was quite aggressive and violent towards the police. He said handcuffs were required to restrain him and Constable Smith had injured his shoulder in the interaction. Constable Cross was aware Mr Galeano was taken to the Ayr Hospital and then transferred for further mental health assessment to the Townsville Hospital. She had also been told of the concern that Mr Galeano was under the influence of drugs during this episode.

Constable Cross received the call via the Townsville Police Communications Centre to attend the disturbance at Green Street, Brandon. The call ended at about 0240. She was told Antonio (Tony) Galeano had smashed up Sandra Wynne's home and assaulted her. Ms Wynne had escaped and taken refuge at the home of a neighbour. She was told Mr Galeano had ripped out her hair and was running around naked. She received the printed job card<sup>18</sup> from the Townsville Communication Centre. This included information that Mr Galeano had a past history involving the use of drugs and also going armed with a pistol. It did not document previous mental health issues.

She told Senior Constable Myles about the earlier episode involving Mr Galeano.<sup>19</sup> He was aware of this from the CAD sheet from the earlier shift.

Both officers recognised Mr Galeano's name and were aware of the recent incident leading to his transfer to the Townsville Hospital. Senior Constable Myles was surprised that Mr Galeano was 'back in town' after his transfer to Townsville Hospital the previous day. In his experience, Mr Galeano 'could be aggressive, and under the influence of drugs'.<sup>20</sup> He had been found in possession of a loaded handgun before.<sup>21</sup> Senior Constable Myles considered it was appropriate in the circumstances to equip himself with a taser X26 conducted energy weapon as well as the glock firearm. He

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<sup>18</sup> Exhibit R1

<sup>19</sup> Transcript 13.85

<sup>20</sup> T 15-112

<sup>21</sup> T15-113

considered it a matter of some urgency to attend the disturbance and, in his haste, he failed to make the required notation in the record documenting he had removed the weapon from its safe custody. He explained this was due to the urgency 'to get out there'.<sup>22</sup> It is noted the job assigned to the two officers was only given a Code 3 classification, meaning police were required to attend the incident 'in the normal course'.

Senior Constable Myles had been involved with Mr Galeano on 15 or more occasions whilst working at the Ayr Police Station.<sup>23</sup> The incidents varied, but one traffic incident escalated resulting in Senior Constable Myles searching the vehicle and finding a baseball bat and a cane knife. Another incident suggested Mr Galeano was hearing voices in his head, which Senior Constable Myles assumed may have been due to some sort of drug episode.<sup>24</sup> On that occasion Mr Galeano had been amenable to the proactive response of Senior Constable Myles, who locked up the police station and drove Mr Galeano to hospital.

Senior Constable Myles explained there was a radio in the police car and he didn't have enough room on his utility belt to be able to sit in the car properly if he wore a personal police radio. This decision (or ongoing practice by Senior Constable Myles) meant Constable Cross had the responsibility to maintain communication with police communications once they left the police vehicle.

Constable Cross was wearing a personal radio. She was also wearing a privately owned tape recording device secured on a lanyard around her neck and worn underneath her police uniform shirt and jumper. It was her usual practice to activate the device manually when she thought of it, typically to record traffic infringement interactions. Senior Constable Myles had a torch with him, but he found it did not work when he attempted to use it at the scene.

Constable Cross drove to Brandon. She said events unfolded very rapidly and she overlooked activating the tape recording device.

Evidence from both officers indicated they discussed the need to arrest Mr Galeano to stop his behaviour as they travelled to Brandon. This decision was based on the evaluation of available information. It was considered there was information to indicate the commission of several offences. It was agreed that Mr Galeano needed to be removed due to an apparent assault and wilful damage. Constable Cross' evidence was that Mr Galeano's mental health status was not discussed. Constable Cross considered removing Mr Galeano would de-escalate the situation. This was her first attendance at a potentially violent domestic disturbance as a police officer.

It is clear on reviewing the evidence there was no discussion between them of what tactics or plan they would employ to achieve the stated goal. Had it

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<sup>22</sup> T 15-113

<sup>23</sup> T15, 114, 115

<sup>24</sup> T15, 115

been considered a 'serious' event, Senior Constable Myles would have notified the officer in charge at Ayr Police Station, Senior Sergeant Oates. Although Senior Constable Myles did not consider it necessary to inform Senior Sergeant Oates prior to attending the scene, he obviously considered it might be necessary to deploy force as he specifically armed himself with both the taser X26 as well as the glock firearm. His evidence was he warned Constable Cross because of the potential danger of the situation, all force options including the glock, OC spray, and all the use of force options needed to be considered.<sup>25</sup> Despite this he did not consider it was necessary to call for backup at the outset, nor to inform the station's senior officer, Senior Sergeant Oates.

Constable Cross did not recall Senior Constable Myles advising her in the course of their short trip to the scene to consider all possible use of force options. In evidence she was asked:

*In terms of arresting him, can I ask, did you have a discussion around how that arrest might occur and what might be involved? –*

*No*

*Did you discuss what-what levels of force might be required? - No*

*No? There was no discussion at all? I don't recall, no.*<sup>26</sup>

Senior Constable Myles gave evidence he did not consider it was necessary to get backup when the call was received. He said it was not uncommon to go to a disturbance from some person smashing up a house and assaulting someone. He said he did not consider the issue of backup at the time.<sup>27</sup> He had been successful in the past dealing with Mr Galeano but wanted Constable Cross to be alert to the situation because of the risk of danger if he was using drugs.

I have considered all of the information and find it is incongruous for Senior Sergeant Myles to warn the inexperienced Constable Cross to consider all use of force options against Mr Galeano including lethal force, but not to consider in advance the possibility of a need for backup or the responsibility to inform Senior Sergeant Oates of the incident. An alternative interpretation is Senior Constable Myles was simply warning Constable Cross to be alert for all possibilities and to use the situational force model as appropriate. This could be consistent with Constable Cross not recalling a discussion regarding the level of force which might be required. But it is highly unlikely the inexperienced Constable Cross, who was attending her first incident of potential violence, would not be able to recall such a warning had it been given in such detail during the journey to the incident. I therefore prefer her recollection to that of Senior Constable Myles. The glock was not deployed and I do not consider it necessary to consider this issue further at this point.

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<sup>25</sup> T15, 118

<sup>26</sup> T 13, 92

<sup>27</sup> T15.119

***The appropriateness or otherwise of the attending officers' assessment of, and response to, the incident and whether the officers' decision making and subsequent actions complied with relevant QPS policies and procedures in force at the time of the incident***

At the outset of any consideration of the events which subsequently unfolded upon police arriving at Green Street it is important to remember:

- (a) The situation Senior Constable Myles and Constable Cross discovered on their arrival was much more acute than they anticipated. It was a highly stressful and challenging situation to both officers, irrespective of their respective experience and training;
- (b) Constable Cross had not attended a scene like this or encountered a person displaying such behaviour before;
- (c) Events unfolded rapidly from arrival at the scene at 0250 until the arrival of the QAS at 0319;
- (d) It was a poorly lit outside environment with significant physical obstacles as well as an extraordinary degree of clutter and disarray inside the poorly lit interior of the premises; and
- (e) There was a high level of noise throughout the incident from
  - Mr Galeano incessantly and loudly chanting;
  - sounds of smashing and breaking of items from inside the unit;
  - loud shouted attempts by the police officers to converse with Mr Galeano, and shouted directions from both police officers; and
  - loud participation from Sandra Wynne.

It must be remembered that it is against this background of noise that evidence of any potential sounds emitted by the taser must be considered.

There are some issues of fact which are in dispute between the two officers, not all of which can be resolved. The broad outline of what occurred is as follows.

The police officers were approached by Sandra Wynne immediately upon their arrival at the site of the duplex flats on the corner of Smith and Green Streets. As they alighted from the police vehicle they could hear the sound of smashing glass from the flats and some yelling. Ms Wynne approached as the two police officers moved towards the duplex flats. Although the officers described her as hysterical, Senior Constable Myles agreed it was a coherent conversation with Ms Wynne and she answered his questions in a meaningful way despite being upset.

She told the officers: *Tony's inside smashing the place.* Senior Constable Myles asked what was the best way to get into the flat and was there anybody

else inside with him. Ms Wynne confirmed Mr Galeano was in her flat and the front door was locked. There was no-one else inside with him.

Senior Constable Myles was checking to see if there was anyone in imminent danger from anything that was getting smashed inside the house. Once this was known, he considered the immediate risk in the situation was the risk to Mr Galeano himself. He did not pursue the issue of the allegation of assault against Ms Wynne at this time.

Senior Constable Myles has no recollection of Robert Byron speaking with him prior to the police officers approaching the back of the flat. Mr Byron says he asked Senior Constable Myles where his backup was, but Senior Constable Myles has no recollection of this, nor does Constable Cross. I place little reliance on Mr Byron's evidence. I do so because of his florid exaggeration of his recollections. While I appreciate the situation was stressful and no doubt highly distressing to those who knew Mr Galeano, Mr Byron's subsequent description of the taser, with blue, red and yellow glowing wires challenges his credibility as a witness generally.

Senior Constable Myles decided appropriately he needed to go and see what was going on and try and calm Mr Galeano down. The officers approached the back of the duplex dwelling. Senior Constable Myles intended to enter via the back door. There was no discussion between the two officers upon their arrival at the scene. As well, neither of the officers asked Ms Wynne whether she had any idea why Mr Galeano was *going off*. Nor was there any inquiry to her whether or not she knew of any weapon in Mr Galeano's possession.

It would have to be regarded as a premature decision for Senior Constable Myles simply to approach the backdoor with a plan (undisclosed to his partner) to go inside and see what was happening.

In Constable Cross' position she did not consider there was any agreed position between the two officers as they approached the dwelling. There was no discussion between them about tactics at this time immediately prior to approaching the dwelling. It was however clear they both wanted to assess the situation.

A Scenes of Crime photograph of the back entrance to the unit, depicting the bathroom windows<sup>28</sup> and a photograph of the bathroom, taken from the internal hallway,<sup>29</sup> are included in these findings to assist the reader to understand the sequence of events discussed below.

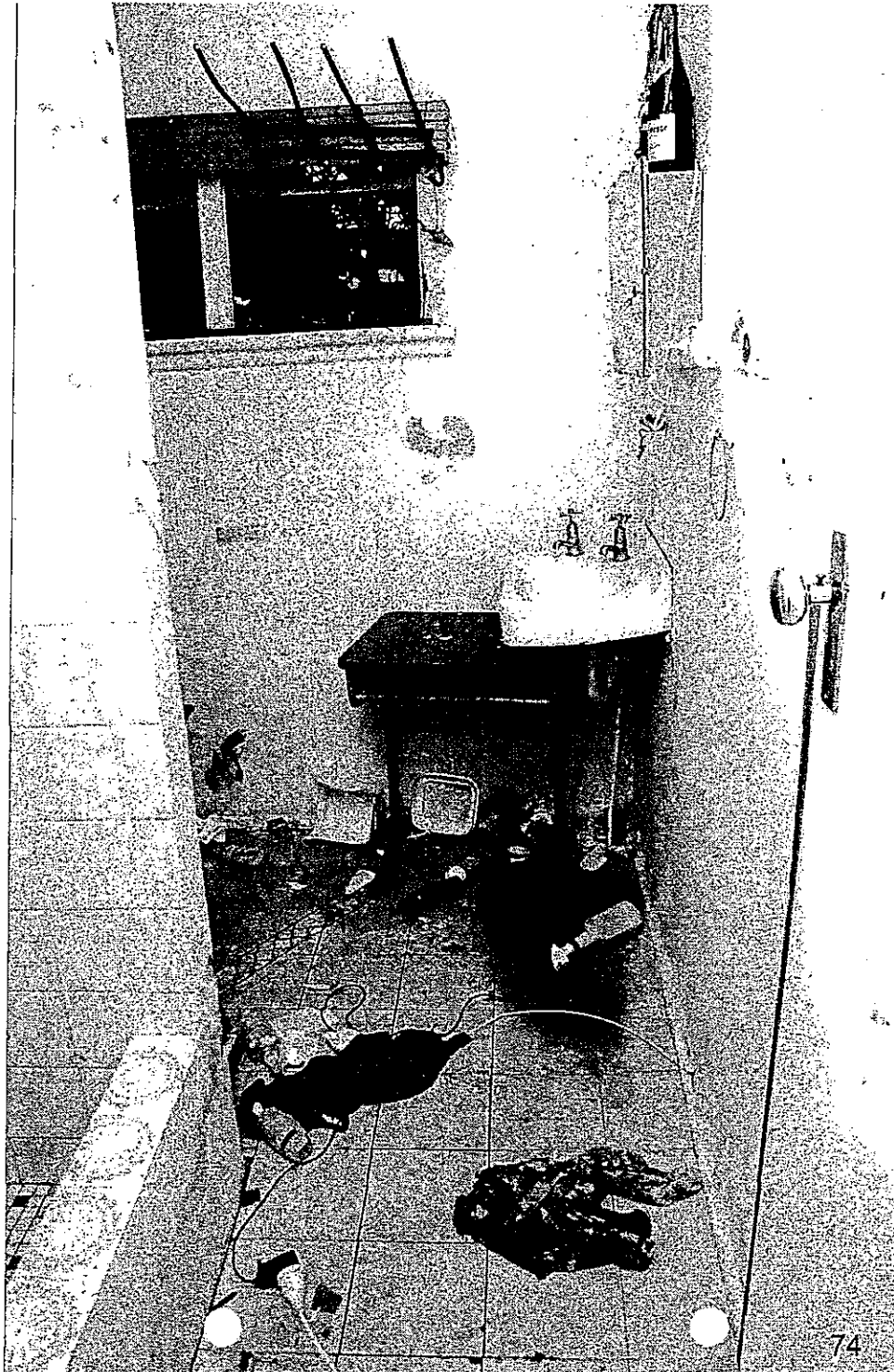
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<sup>28</sup> Exhibit M1, photograph 13

<sup>29</sup> Exhibit M1, photograph 74







No doubt Senior Constable Myles was confident in his own capacity to deal with the situation given his previous experience with Mr Galeano. As he approached the back steps of the dwelling he said Mr Galeano's face appeared in the left-hand window of the bathroom. He could see broken glass, but he could not recall if the hopper window was open or not.

Prior to his approach he considered the information indicated the threat posed by Mr Galeano was to himself. As he approached the scene he discarded his torch, having discovered it was not working.

He heard Tony ranting and chanting. His recollection of what was said was: *One two three you're dead one two three you're dead*, repeated endlessly. He did not recall Mr Galeano referring to his own death or being dead.

When he first saw Mr Galeano he recalled Constable Cross was somewhere behind and to the side of him. He saw Mr Galeano and recognised his face in the window. He was in view from just below his neck upwards. His face was red and covered in blood. He was shaking his head from side to side. Senior Constable Myles saw a big gash on his forehead and one on his wrist which looked wide and deep. He could see his hands on the windowsill.

Again, Senior Constable Myles' response was immediate, without first giving pause for calmly watching and considering the best course of action. Once he engaged with Mr Galeano, events unfolded so rapidly there seemed no chance for him to consider and plan the police response - he simply reacted as best he could to the episode as it escalated out of his control.

He identified himself and tried to speak with Mr Galeano. He said: *Tony it's Craig from the police get down on the ground put your hands behind your back.*

At this point Senior Constable Myles said he had very quickly made an assessment that Mr Galeano was out of control from a drug overdose or intoxication at least, and that it was imperative for his own safety that the officers got him under control. In retrospect this was the critical point to consider pausing to instruct Constable Cross to call on the radio for back up and ambulance assistance. It was plainly evident Mr Galeano was injured and it was also quite apparent they would need back up as he was 'out of control', even if that back up would take time to arrive.

Constable Cross' recollection is similar. She was following behind Senior Constable Myles as he approached the back of the duplex unit. She saw Mr Galeano appear at the window. Senior Constable Myles was only about two metres away at the time. She could not recall which window. Mr Galeano appeared from his shoulders upwards. She confirmed he was completely covered in blood and had some sort of injury on his forehead. He was so covered in blood it was difficult to ascertain the extent of his injury. She saw his fingers grasped over the window frame. His fingers were also covered in blood, as was the windowsill.

Her recollection of what he was saying was: *One, two, three, A, B, C, I'm dead, I'm already dead, you're dead, kill me, kill you, I'm going to kill you, A, B, C, one two three.* This was repeated over and over. She thought he was fairly incoherent and he did not appear to be looking at them. He looked like his eyes were very wide and he was having difficulty focusing.

She had never seen anyone in this state before. She thought there were possible mental health issues and he was obviously injured. His behaviour was bizarre and delusional.

At this point she thought the threat level (which is assessed either at high or unknown) was unknown with respect to Mr Galeano.

Events unfolded rapidly. Senior Constable Myles said Mr Galeano disappeared from the window and then came back up to the window, but he seemed taller. His head and his right arm were now outside the window. Senior Constable Myles could see the top of his chest covered in blood also.

He said: *Tony settle down and get down on the ground. Put your hands behind your back.*

Senior Constable Myles recalled Mr Galeano looked at him and said: *Kill you cops* as he looked in his direction.

It was at this stage that Senior Constable Myles said he noticed Mr Galeano gripping something in his left hand but he was not sure of the exact position. He could not recall if the hand was inside or outside of the window. He was still moving his head from side to side.

Senior Constable Myles said he saw a cylindrical-looking item in Mr Galeano's left hand. All he could describe was some kind of metal object, a long cylindrical metal bar sort of thing. He could only see one end of it and so he could not estimate its size. Constable Cross did not see anything in his hand at this time, however Ms Wynne also saw Mr Galeano gripping something like the end of an electrical cord. I note subsequent forensic examination of the scene did not locate any item matching Senior Constable Myles' description. There was an internal clothesline with a series of curved metal hooks mounted on the wall at the top of the windows. It is possible this was what Senior Constable Myles saw. Later inspection inside the bathroom revealed a student desk against the wall where Mr Galeano had reappeared in a taller position, above which was mounted the metal clothesline with curved hooks. This was constructed of apparent black metal.

Mr Galeano continued to chant, *Kill you cops*, as well as making incoherent sounds.

It was at this point that Mr Galeano literally launched more of himself through the window so that his body from his waist up was visible and outside the window. Senior Constable Myles described this as more upright than leaning forward. It can be assumed he was standing or kneeling on the student desk under the window. Senior Constable Myles agreed it was a rapid movement and it was at this point that he fired the taser.

He was asked whether or not he had warned Mr Galeano about the taser and he said he had taken the taser out of the holster when Mr Galeano reappeared at the window in the 'taller' position with a little bit of his body through the window. It was at this time Senior Constable Myles noticed something in his hand.

Senior Constable Myles expanded on what he had earlier said to Mr Galeano. He said he told Mr Galeano, *Tony settle down. Get on the ground. Put your hands behind your back or I'll taser you.*

He said he warned him a second time that he would use the taser when he was still in that position and ranting.

When Mr Galeano suddenly launched himself Senior Constable Myles said he just fired the taser straight away. He raised the taser from down beside his body to a firing position and fired it.

He was approximately two metres away from Mr Galeano and the window was just above his head level.

He explained his decision as thinking that if Mr Galeano got out of the window and out into the open, then Marina (Constable Cross), Sandra (Ms Wynne), himself and whoever else was in the flat next door would be in danger.

At the time of giving evidence at the inquest he still believed this was the case and that it would have been very hard to control Mr Galeano in a big open backyard.

Constable Cross was similarly engaged in calling out to Mr Galeano. She had not met him before and she was calling out, *Antonio identify yourself this is the police.* She confirmed Senior Constable Myles was saying, *Tony calm down get on the ground.* She confirmed the efforts of both to communicate with him but confirmed it was all at a loud level in an attempt to be heard. It could not be described as conversation as Mr Galeano was not responding and continued his ranting.

She saw Mr Galeano's hands on the windowsill. She did not see anything in his hand. She did not see a pipe. She could see his hands visible on the sill.

She confirmed Senior Constable Myles did produce the taser when Mr Galeano reappeared in a taller position at the window. She recalled him aiming the taser at his chest and she recalled seeing the two laser lights on Mr Galeano's chest area. She also recalled Senior Constable Myles warning him to *get down on the ground or you will be tasered. Calm down Tony.* There was no response. She said she saw Mr Galeano brace himself in the window to project himself out, and Senior Constable Myles deployed the taser for the first time. She saw two probes go into Mr Galeano's chest. She believed it was effective as she saw his body seize up, clench up, and he made a groaning noise. She said it was not a scream; it was more like a groaning sound like AAAHHH.

She said both she and Senior Constable Myles were both yelling at him, telling him to stop moving. Her recollection was he continued in exactly the same behaviour, rambling over and over. He braced himself up on the window and appeared to lunge himself out again. She said there were further

warnings and directions between the first and second activation of the taser. She did not think the taser was active for more than five seconds.

Her description of the second deployment of the taser was when Mr Galeano made a motion indicating his intention to come out of the window. Again, she observed an apparent effect of the taser causing him to seize up. She heard Mr Galeano make a noise again.

It is important that she said in her evidence that in her limited knowledge, she had been unaware the taser could go for longer than five seconds.

She said after the second activation of the taser, Senior Constable Myles said to her 'go in'.

With respect to whether or not it was physically possible for Mr Galeano to exit the flat through the bathroom window, Constable Cross was uncertain. She wasn't sure whether he was capable of fitting his body through the window space. She could only see him from the shoulders up. She said it was a very small space and she agreed he would have had to come out head first. She said he appeared to be standing on something inside the bathroom prior to his movement as if to exit the window. He wasn't struggling to physically hold his own body weight in that position. She considered the threat assessment at this time was that there was still a threat to Mr Galeano in terms of his physical and mental health. There was also an ongoing threat to property.

She confirmed there was no opportunity for discussion with Senior Constable Myles. She did consider there was a threat to her own safety by this stage if he got out of the window. It was not discussed but it was in her mind. Senior Constable Myles' assessment of the size of the window was that it was large enough for Mr Galeano to exit from. He said this because he could see Mr Galeano with his head, shoulders and torso down to his waistline through the window or window frame. He acknowledged he did not know whether he could clamber through that space feet first and it was more likely he would fall out arms first.

However, he acknowledged, *To be honest with you I didn't think of how he would fall. That was secondary to what could happen if he got out.* It was also suggested to him that had Mr Galeano fallen out of the window it would have given Senior Constable Myles and his partner a chance to control the situation.

Senior Constable Myles acknowledged this but said he did not think of that at the time. Even in retrospect, he did not consider this possibility as relevant to the analysis of what happened.

It was also suggested to Senior Constable Myles that there would have been an advantage had he used the taser when Mr Galeano was outside with both officers present and accessible. Senior Constable Myles responded that he wanted to contain him in the bathroom. He acknowledged that he did not

consider Mr Galeano might be in danger of falling when he tasered him. He was asked whether he knew if Mr Galeano would fall forwards or backwards when he tasered him and he said, *No, that honestly didn't cross my mind.* Senior Constable Myles was not aware of the position of the taser wires when Mr Galeano slid downwards into the bathroom. He had no recollection of the sound of the taser, although he was aware from training there was a different sound when the taser is effectively deployed as distinct from a non-effective deployment. The non-effective deployment is louder and described as similar to the sound of static on a radio. He had no recollection of sound during the course of the incident.

He also said at the time he thought it was just for five seconds that a taser could deploy. He did not think it was possible that he might have pushed the trigger again a very short time after the first deployment.

His thinking in explaining his actions was by deployment of the taser he could contain Mr Galeano in the bathroom and that Marina (Constable Cross), possibly assisted by one of the men from next door, could restrain him and get handcuffs in place.

After Mr Galeano was tasered and slid down out of view Senior Constable Myles gained access on a bench seat and looked into the bathroom. He saw Mr Galeano on his hands and knees angled across the bathroom in a position towards the shower recess.

### ***Consideration of police response up to entry of the premises by Constable Cross***

It is accepted that the police officers were totally unprepared for the extreme nature of the incident occurring at Ms Wynne's dwelling. This is despite the information they had received from her emergency call for assistance and the knowledge they had about the identity, as well as the past and recent behaviour of Mr Galeano. I accept there was a very short period of time available for Senior Constable Myles to assess the situation from the time he first saw Mr Galeano appear at the window and his decision to deploy the taser.<sup>30</sup> He has acknowledged he realised Mr Galeano was injured and from his repeated chanting and lack of response to the police officers, he formed the opinion he was drug affected or at least intoxicated. He considered Mr Galeano was a threat to himself but when Mr Galeano commenced to launch himself from the bathroom window, Senior Constable Myles considered the threat to himself, Constable Cross, Ms Wynne and other occupants of the flat was real and he had to respond. In retrospect, this was the moment he could have retreated, instructed Constable Cross to call for back up and the ambulance and waited to see if Mr Galeano exited from the window. The officers would still have been forced to deal with the situation as best they could until help arrived. He might also have been a little more cautious in his initial approach to the building with a plan simply to enter. It is of course speculation that this might have given him the opportunity to observe Mr

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<sup>30</sup> Senior Constable Myles is recorded as booking off at the scene at 02:50:45 and the first taser activation is recorded as commencing at 2:53:03

Galeano, his injuries and his overall state and then prompt him, or Constable Cross to immediately summons the ambulance. It was of course Constable Cross who was wearing a police radio at the time and presumably it was within her power to have initiated such a call as soon as she observed Mr Galeano. However, the rapid decision making by Senior Constable Myles forced by Mr Galeano's apparent movement to exit from the bathroom window meant there was little opportunity to calmly consider and plan the best response.

I note also at this time neither Ms Wynne nor Mr Byron had yet called the ambulance. Their first reaction after Ms Wynne's escape was to call for police to deal with Mr Galeano. The reality was Mr Galeano needed to be somehow constrained before medical assistance was a possibility.

When Senior Constable Myles fired the taser he acknowledges he did not think of how Mr Galeano would fall, where he would fall or whether that would present a possibility to overpower him outside.

He reacted with the primary aim of containing the situation to reduce the threat he had perceived of further harm to Mr Galeano, or harm to the officers and others present if Mr Galeano escaped. His means of doing so was to deploy the taser.

### **QPS Taser guidelines operative at the time**

The taser policy applicable at the time was documented in Commissioner's Circular No 33/2008 which commenced from 1 January 2009. This was during the twelve month state-wide roll out of the taser following pilot testing in selected regions.

With respect to the guidelines in place at the time, two matters are relevant to Senior Constable Myles' decision to use the taser in Mr Galeano's circumstances. At the time the directive included a list of situations where the taser was not to be used, including on suspects where there is a likelihood of significant secondary injuries from a fall (e.g. standing on a ladder or other elevated position). That section of the circular concluded with the following direction -

*If initial applications of the taser in either the probe or drive stun modes are ineffective, officers should reassess the situation and consider other available options.<sup>31</sup>*

In retrospect, there may have been other possible responses than the deployment of the taser. If Senior Constable Myles had let Mr Galeano continue to attempt to launch himself from the bathroom window, he may have been unsuccessful. In this case Senior Constable Myles might have reverted to the original plan of entering the dwelling with Constable Cross and together attempt to confine and control Mr Galeano in the bathroom. The difficulty in achieving control would have remained. If he had stood back and waited to see if Mr Galeano could exit from the bathroom window, it is likely

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<sup>31</sup> Exhibit E3



Mr Galeano would have sustained some further injury, possibly serious. The opportunity might have presented for the two officers acting together to physically restrain him and apply handcuffs. It is acknowledged not to have acted at this time to prevent Mr Galeano's possible escape/fall from the bathroom could also have caused difficulties, and all of these comments are purely speculative.

I accept that the reality of the situation was there were no backup resources immediately available to the two officers rostered on duty. On Senior Constable Myles' evidence, back-up would take a minimum of 20 to 30 minutes to be called from the barracks at Ayr or further afield. This was with the exception of the station senior officer, Senior Sergeant Oates, who lived in Brandon. However, he was not on duty and it cannot be presumed he could have been instantly available. Nor would he have his accoutrements with him at home.

Senior Constable Myles considered Mr Galeano was affected by drugs or intoxicated to such an extent he was not responding to the police directions, or to the entreaties of Ms Wynne. He considered he needed to use some means to bring Mr Galeano under control before the two officers attempted to restrain him. He believed the taser was *a very effective tool in controlling drug affected and highly motivated individuals*.<sup>32</sup> The decision was made very quickly and forced upon Senior Constable Myles by Mr Galeano's actions. Mr Galeano was repeatedly voicing violent threats and appeared to be injured, incoherent and deluded. Senior Constable Myles acknowledged he had not thought through some of the likely consequences of the decision to use the taser. He did not consider where Mr Galeano might fall. The decision created further problems in a very difficult situation. First and foremost it led to him ordering Constable Cross to enter the dwelling while he remained outside with the taser. One of the fundamental problems of the taser being deployed is that the officer doing so is restricted from involvement in restraint of the person for the duration of whatever period they continue holding the taser whilst the probes are attached to the person and linked to the wires from the weapon. This is what occurred.

Both officers considered the taser had been successful. Subsequent examination of Mr Galeano by Professor Williams at autopsy revealed only one probe mark evident on Mr Galeano's torso. However, other explanations were before the inquest to explain this scenario consistent with the officers' belief the taser had been successfully deployed outside the dwelling. Expert witnesses explained the possibility of a circuit being completed and the taser therefore deployed effectively against a person when the probes and wires are in sufficient proximity to the person to complete a circuit by 'arcing'. Alternatively, a probe might have been in place for a short period before being displaced by movement and the circuit then breaking. Expert witnesses also attested to instances during training exercises where participants were hit with a taser barb on bare skin and a circuit was established and yet there was

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<sup>32</sup> T16, 8

no physical sign on the skin after removal of the probe.<sup>33</sup> Therefore it is concluded the taser was effective in establishing a circuit when deployed from outside the flat.

### **Sequent of events inside Ms Wynne's flat**

The first consideration is the time during which the restraint of Mr Galeano was achieved. The taser device itself has a timing device which, along with every other timing device referred to in this inquest, was not consistent with any other timing device. However, it is usefully referred to here to delineate the period during which the trigger was activated in the early hours of 12 June 2009. The first activation of the taser was at 2.53.03 (on the basis the time stamp occurs at the end of each trigger activation which goes for five seconds, and allowing for the correction of the device being one minute fast). The 28th activation of the taser trigger ended at 3.00.05. I hasten to add I am NOT indicating the taser was being effectively deployed against Mr Galeano for that period, I am simply highlighting the trigger of the taser was activated over a seven minute period during which the two officers were involved in trying to bring Mr Galeano under their physical control.

Constable Cross immediately obeyed her senior officer's direction to *go in* and attempt to restrain Mr Galeano. Irrespective of her legal requirement to do so, it was a brave move. Neither officer could know what she would find. Senior Constable Myles remained outside the bathroom window holding the taser which was linked by the taser wires to the probe (or probes) imbedded in Mr Galeano's torso. Senior Constable Myles was acutely aware of the dilemma and asked Mr Byron to go in and help his partner. This was a risk, given his past interaction and knowledge of Mr Byron but one which he took given the situation.

Constable Cross entered through the kitchen area and on into the barely lit lounge area to the doorway of the bathroom. The small flat consisted of an exterior laundry area under a rear porch which led into the kitchen area and then into the lounge area. Three other internal doorways led off the lounge into the bathroom and into each of the two bedrooms. The flat was extraordinarily cluttered with furniture and possessions. There was very little room to move and it was apparent Mr Galeano's activities had worsened the chaos by his destructive behaviour during the evening.

She arrived at the bathroom entry and observed it was completely smashed. There was blood and water on the floor, there was blood on the walls and large chunks of glass and porcelain throughout. Later she observed the toilet bowl had been smashed.

As she looked through the bathroom door she saw Mr Galeano was on the ground. She described him seated on his backside with his legs stretched out in front, facing towards Constable Cross. He was naked.

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<sup>33</sup> Oral evidence of Master Trainer Patrick Burrell and Richard Wyant

It was then she observed he had some sort of metal pole in his hand and he was moving in an attempt to get to his feet. She was quite clear he was on the ground facing her and Senior Constable Myles was still outside the dwelling although she could not see him.

She did not observe taser probes or wires at this time. She did not see the taser activated while Mr Galeano was in this position. She did not move towards him. She heard Senior Constable Myles from outside requesting someone to *go in and give my partner a hand, I can't leave here.*

A male person (Mr Byron) appeared at the bathroom door and stood slightly behind Constable Cross and peered over her. He then walked away and stood in the lounge. As he was walking away he asked her if she wanted him to call the ambulance and she said: *Yes, call an ambulance immediately for Tony's injuries.*

Mr Byron's call to the ambulance was played during the inquest. It provided an understanding of the level of tension and fear that was present at the time. Mr Byron of course was a friend of Mr Galeano. He had already approached him once after Ms Wynne escaped from her flat. His efforts then to communicate with Mr Galeano came to nothing and he retreated in fear. When asked to assist the police he did so to the extent of entering the flat and standing behind Constable Cross at the bathroom entry and peering in at Mr Galeano. His assessment reinforced his opinion it was not safe to try to approach Mr Galeano and he needed an ambulance. His call to the ambulance (recorded at 2.56 by QAS) was in colourful language and included information, not all of it accurate, but certainly indicative of the situation which was unfolding. He said Mr Galeano was bleeding to death (incorrect), was psycho, had put his hand through a few windows, he'd been tasered three times, he's still going off, he's ..... violent, he's going off fighting the coppers, the cops are trying to pin him down. Mr Byron stated he was in the other side of the house (duplex) while he made the phone call. He also made it plain to the ambulance telephone operator he was afraid Mr Galeano would kill him if he tried to assist the police. In the background of the recorded call to the QAS yelling can be heard, mostly by a female voice which was saying repeatedly, *Tony put your hands behind your back, and you need help.* This was likely to be the voice of Ms Wynne who was in Mr Byron's flat when he entered her flat and then rang the ambulance.

When Constable Cross arrived at the entry to the bathroom she said Mr Galeano was holding a metal pole in his right hand. He was continuing to say: *I'm dead, I'm already dead, you're dead, I'm going to kill you, a b c, one two three.*

She started to yell at him to make herself heard over his ranting. She told him to calm down, to stop moving, but he continued to rant and attempted to stand up. He slipped and fell on the wet floor. He fell onto his side and tried again which resulted in him lying on his stomach with his head towards the bathroom door. The distance between Constable Cross and Mr Galeano had decreased and she moved back about one metre from the doorway. She was

standing to the left-hand side of the doorway. He still had a metal pole clutched in his right hand, he was continuing to wriggle on his forearms towards her and trying to get a grip with his legs to stand up. She continued to call out to him, telling him to calm down and stop moving.

She then heard Senior Constable Myles saying *I'm coming in, I'm coming around; spray him if you need to.*

Senior Constable Myles denies he instructed Constable Cross to spray Mr Galeano. Mr Galeano was still wriggling towards Constable Cross and his head was in the doorway. She stood back and removed the OC spray from her utility belt. She gave him a warning, saying: *Calm down Tony, calm down, stop moving, stop moving or I'll spray you.* She said she gave him another warning but he continued to try and wriggle and prop himself up towards her. She then sprayed a short burst of OC spray into his eye region. She said it had absolutely no effect. He continued to try to get up. She did not move forward to try and restrain him as she did not feel comfortable to do so. She felt at risk. She said Mr Galeano did not make any noise associated with being sprayed with OC spray. She lent a little forward and saw a slight orange film in his eye area. His face was very bloodied and wet. There is no reason to doubt her evidence this occurred.

She said Senior Constable Myles was not in the unit when she sprayed Mr Galeano. I accept Constable Cross' evidence she applied the OC spray. I do not consider it unreasonable she did so in the circumstances when she was alone in the flat with Mr Galeano and in fear of him. I do not consider it of any particular significance that Senior Constable Myles denied telling her to do so. It may be an absence of memory, which I accept can occur in highly traumatic circumstances. There was expert evidence about this phenomenon (critical stress amnesia) which there is no reason to doubt.<sup>34</sup>

What is more difficult to reconcile is the differing accounts of where Mr Galeano was positioned when Senior Constable Myles entered the flat and he deployed the taser again on a number of occasions.

According to Constable Cross' recollection Senior Constable Myles arrived inside the unit and both officers continued to give verbal direction to Mr Galeano, telling him to stop moving and put his hands behind his back. Senior Constable Myles was standing on the right-hand side of the bathroom door so that Mr Galeano was effectively triangulated. Constable Cross said when Senior Constable Myles arrived Mr Galeano was in the doorway on his stomach, propped on his elbows. He was wriggling and ranting and yelling. Senior Constable Myles' recollection differs and will be referred to later.

A number of warnings were given by Senior Constable Myles telling him to stop moving or he would be tasered. There was no compliance and Senior Constable Myles deployed the taser.

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<sup>34</sup> Oral evidence of Richard Wyant and William Turner

Constable Cross stated she was totally focused on Mr Galeano. She said she had *tunnel vision* and did not take her eyes off Mr Galeano. She has no recollection of Senior Constable Myles changing the cartridge for the taser.

She said the taser was deployed a second time by Senior Constable Myles, who was standing at the same point outside the bathroom door on the right-hand side. She said Mr Galeano was on his stomach near the entrance to the bathroom with his head closest to her. She said she observed a response and she saw Mr Galeano seize up and be incapacitated. His whole upper body actually clenched up and then, after a period, she saw his body slump.

She said there was no discussion between the officers at this stage.

Constable Cross said she did not see Mr Galeano run/move towards her but he was crawling towards her on the floor, trying to get up. Nor did she see Mr Galeano run towards the window. The question was repeated several times but she was quite clear she did not see him upright and going back towards the window at any time. She was quite clear the taser was fired while Mr Galeano was lying on the bathroom floor. She said Mr Galeano was in that position from when she had capsicum sprayed him and he remained in that position when Senior Constable Myles entered and stood on the other side of him.

She said both she and Senior Constable Myles were just outside the bathroom door to either side.

She said she did not feel safe to move in and attempt to arrest Mr Galeano while he continued to rant repeatedly. Nor did Senior Constable Myles move in at this point.

Her recollection was the taser was applied three times whilst Mr Galeano was lying on the floor. Afterwards she observed Mr Galeano was not struggling around as much and he stopped trying to get his footing to stand up. She then felt comfortable enough to move in to attempt to restrain him even though he was still ranting.

Senior Constable Myles' recollection of this period differs. He had moved onto a bench to look inside the bathroom. He was aware of Ms Wynne close to him also calling out to Mr Galeano to *just do what they say. Put your hands behind your back Tony, why are you doing this?* Senior Constable Myles said he could see Constable Cross at the bathroom door as Mr Galeano again started repeating *1,2,3. You're dead.* Mr Galeano was moving towards Constable Cross in a crawling manner and Senior Constable Myles deployed the taser, and yelled at Mr Galeano to get on his stomach. He could see the taser wires were still connected to Mr Galeano as they were visible when he moved. Senior Constable Myles was constantly yelling for him to put his hands behind his back.

Senior Constable Myles said he deployed the taser for a second time from outside the bathroom as Mr Galeano kept on crawling on his hands and elbows towards Constable Cross. Senior Constable Myles had the impression the taser was still effective at this point because Mr Galeano was thrashing around again. He told him to stay on the ground and put his hands behind his back. He said he warned him again and then pulled the trigger but there was no reaction from Mr Galeano like before. He thought one of the barbs must have been detached and he was extremely concerned for Constable Cross alone inside. He raced inside. (Constable Cross does not recall seeing or was unaware the taser was deployed from outside during this time).

It is possible that during this period Constable Cross deployed her OC spray and this was not seen by Senior Constable Myles. He believes he must have reloaded the taser during this period, although he cannot specifically recall this. It must have happened, as the second cartridge was used inside the flat.

The next period of Senior Constable Myles' recollection is what occurred upon him entering the flat. He pushed Constable Cross out of the way so she was not in Mr Galeano's line of vision. He said he could see Ms Wynne at the bathroom window at this time, presumably standing on the bench recently vacated by Senior Constable Myles. She was continuing to yell at Mr Galeano. Senior Constable Myles said Mr Galeano was on his feet and he drew the taser again, warning Mr Galeano if he did not get on his stomach and put his hands behind his back he would be tasered again. Senior Constable Myles said he was standing in the frame of the bathroom door with Constable Cross behind him somewhere. (He is a large man weighing 120kg at the time and it is likely he would have obscured her vision if this occurred). He yelled at her to get someone else to come for back up, they could not do it on their own.

It is possible this was when Constable Cross next spoke with Townsville Communications. They had called on the radio and there was a 14 second delay before the operator spoke again with their call sign VKR to Ayr 2-50.

Constable Cross then responded *Urgent*.

The conversation continued - *Yeah go*.

Constable Cross said, *2-50 urgent*.

The operator said *2-50 received, go ahead we're calling back up*.

Constable Cross said: *Urgent to this address, we're going to need a few officers*.

The operator said *Received*.

The conversation ended. The time was recorded on the police CAD system at approximately 0259.

Senior Constable Myles said Mr Galeano started coming towards him and he stepped back and aimed the taser at the centre of his chest. Senior Constable Myles saw him holding a black cord with a hair dryer (not a pole) dangling from it. He warned him to get on the ground, put his arms behind his back or he would taser him again. He said Mr Galeano moved forward

towards him and suddenly turned towards the window and his hand was going towards some broken glass. Senior Constable Myles feared he would be stabbed and he fired the taser with the second cartridge. He saw the probes strike him in the back left shoulder and the second probe lower in the back towards the middle. He saw Mr Galeano stiffen up in response to the taser, and lean on the table (desk) and from there down to the floor. Mr Galeano turned so he was again facing Senior Constable Myles.

Senior Constable Myles was then aware Ms Wynne was yelling at the window and Constable Cross was yelling at him also. He asked Constable Cross and she confirmed back up was coming and also the ambulance. By this time Mr Galeano had fallen to the floor in the right hand corner area of the bathroom.

Mr Galeano got onto his knees and came towards Senior Constable Myles, threatening to kill him and repeating the 1,2,3 mantra. Ms Wynne was still yelling at Mr Galeano to do as they say. At some point Ms Wynne shouted to Senior Constable Myles to stop tasering him. Senior Constable Myles' recollection is Mr Galeano was moving forward by crawling even while he was applying the taser. When the taser cycle stopped Senior Constable Myles told Mr Galeano to put his hands behind his back. There was an exchange between Ms Wynne and Senior Constable Myles to stop tasering him, to which he responded he wasn't even tasering him at the time.

He said Mr Galeano moved forward again on his hands and knees, still ranting 1,2,3, *you're dead*. By this time Senior Constable Myles said Mr Galeano was half a metre from the doorway and he stepped back so he was half a metre back from the doorway and tasered him again ending up with Mr Galeano face down through the doorway.

Ms Wynne's version of these events is taken from her first statement provided to Inspector Sakzewski on 12 June 2009. I consider this is most likely more reliable than later versions as it was taken closest to the time of the events that occurred. She said she met the two police officers at the back door of Mr Byron's flat next door to hers. She was standing on the back step and could look through to an extent towards her unit. She could still hear breaking glass as she saw the officers approach her back door with the male officer leading. She heard a voice she recognised as Mr Galeano say *police* followed by something undecipherable. She heard what she recognised as her back door slam.

She said there were no lights on in her unit except a lamp in the bathroom.

She then saw Mr Galeano coming out of the bathroom window which opens out and upwards. She said there was a hole in the glass from where Mr Galeano had thrown her television out the window. She described Mr Galeano as *hanging out of the window, his upper body and both arms of the window with something in his right hand*, which she thought was the electrical cord from her lamp.

This is broadly consistent with the recollection of the police officers and is likely to be from the point where Mr Galeano appears at the bathroom window in the 'taller' position.

I consider Ms Wynne was mistaken in saying she heard the male police officer say 1,2,3 and then something else she did not hear. I accept it was Mr Galeano repeating these numbers, and that Ms Wynne did not hear what else was then said.

She then described seeing the wires of the taser coming from the direction of the police hitting Mr Galeano in the left side of the chest. She said she saw Mr Galeano throw his arms up, let go of the cords, yell *Arghhhh* and disappear backwards out of the window. She heard a loud bang on the ground in the bathroom.

Again, this is broadly consistent with the version of events from the police officers. I have accepted the police officers' account that Senior Constable Myles did give a verbal warning before firing the taser.

Ms Wynne was upset and went back inside telling Mr Byron to go and see what's going on. Mr Byron went outside and Mr Byron's female partner stopped Ms Wynne from going out for a period of time.

When Mr Byron returned after a couple of minutes he swore and said he 'wasn't watching that'. He said the police were tasering Mr Galeano. I understand from this that Ms Wynne did not see anything which occurred from the time of the first taser when Mr Galeano fell back down into the bathroom, until sometime after Senior Constable Myles entered the unit and what happened afterwards

Ms Wynne then went out the back door to the back of her unit and stood on a chair under the bathroom window. She leaned in the window and looked in.

She saw Mr Galeano naked on the ground. She said he was on his stomach, with his bottom half in the bathroom and his head and shoulders in the hallway. His arms and hands were out in front of him. His face was facing the hallway.

She said he was struggling with the police, and the police officer was saying *stop struggling*.

She said she saw the male police officer with his right knee on the small of Mr Galeano's back and his left hand on the base of his neck, like holding his head down.

She said the police officer had something yellow in his right hand.

She said the female police officer was trying to handcuff Mr Galeano and she got one cuff on his right hand. They were trying to cuff the other hand.



She said she saw a spark, like lightning, out of the wire from the male police officer's right hand go into Mr Galeano's left side.

It is not clear exactly where she places the two officers at the time she says she saw a discharge from the taser.

Overall I cannot see any reason to reject this portion of her statement given the subsequent taser download and the fact the bathroom was barely illuminated, presumably making the taser discharge more apparent. Whether Senior Constable Myles was aware of taser application at any given time is unable to be resolved. It is quite possible given other expert evidence that his simultaneous attempts to help Constable Cross while still holding the taser in his dominant right hand resulted in sufficient pressure from his finger on the trigger to cause a discharge. Or, it could coincide with one of the occasions which Senior Constable Myles referred to when he was aware he did activate the taser when Constable Cross was trying to put the handcuffs on in the doorway of the bathroom and Mr Galeano was resisting her.

Ms Wynne said she could see one of the wires up high near the left shoulder and the other lower down in his lower back on the same side. This is consistent with the evidence from autopsy.

She said she saw about an inch high white/blue spark from the tip of the wire on Mr Galeano's back. She said she saw the sparks about seven times and heard an electrical buzz like sound each time. She said every time the spark went Mr Galeano would yell out, *arghhh*. This section of her statement is not reflected by the police officers' account with respect to the number of discharges or a verbal response from Mr Galeano.

She said he was still struggling, trying to get away but pulling himself along the floor.

Ms Wynne said she told the officer, *stop, please stop*. It really scared her and she said: *How many times can you hit him with that before you kill him?* She said the male officer said: *Shut up, I'm not trying to kill him*.

Again broadly there is a common thread through the account of Ms Wynne and that of Senior Constable Myles.

I have considered all of the information about what happened inside the flat up to this point. I am unable to determine exactly what sequence of events occurred nor the respective positions of the two police officers and Mr Galeano as the interaction unfolded. I do not consider either officer is withholding information or deliberately misleading the court. They have been repeatedly and thoroughly questioned by investigating officers and again in the forum of the inquest. It must be remembered the episode was a sudden, violent incident during which each considered they were at physical risk of harm and were unable to gain control of the situation. I accept expert

evidence<sup>35</sup> that memory can be affected and not be a continuous stream after being involved in such chaos. I also note Senior Constable Myles' recollection includes more deployments of the taser, both through the bathroom window and inside the unit than Constable Cross was aware of. This could be said to be against his interest to have acknowledged these.

It was urged upon the court to consider the appearance of the taser probe wounds in Mr Galeano's back and use this information to either draw the conclusion Mr Galeano was on the floor when he was tasered inside the bathroom, or he was in an upright stance facing away from Senior Constable Myles when the taser was fired. Expert evidence explained if the taser is fired at a right angle to the target surface the upper taser wire will direct the probe at a right angle to the perpendicular surface and the lower wire will issue at an angle beneath the upper wire. The distance between the two wounds would reflect the distance from the target. The appearance of the entry wounds would be expected to be round in this instance.

If the taser was deployed from a standing position towards a person lying on the ground then a greater 'spread' between the two wounds could be expected and the entry wounds would be expected to be of a crescent shape to reflect the more acute angle of impact. I was directed to Professor Williams' language describing the two wounds as 'rounded', but also to examination of the photos, of which there were possible interpretations of round and crescent shapes. It was of course Professor Williams' first examination of taser wounds, and the peer review was also by a pathologist whose general expertise is substantial but whose knowledge of taser wounds was restricted to his reading.

Despite respective counsels' detailed and persuasive arguments on both sides I am unable to accept this approach is determinative. There is simply too much uncertainty in the positions of Senior Constable Myles and Mr Galeano and the taser and whether or not the situation was static or people were in motion when the taser was fired. I am not persuaded of either conclusion by this evidence. It is possible Senior Sergeant Myles did push Constable Cross aside when he entered and blocked her view while this sequence unfolded. She may have been attending to the radio before the subsequent events they commonly describe in attempting to handcuff Mr Galeano unfolded. I cannot resolve this issue. A taser device with an automatic camera or a video recording device worn by officers seems to be the only way to establish clear evidence in such a melee.

Constable Cross' recollection from this point coincides to a large extent with Senior Constable Myles' who directed her to put the cuff on the right arm that was forward. He said he put his boot on the very top of Mr Galeano's shoulders to stop him from moving, although most of the pressure was on the other leg. He acknowledged the boot restricted Mr Galeano from throwing his shoulders up.

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<sup>35</sup> Oral evidence of Richard Wyant and William Turner

Constable Cross' recollection includes removing what she recalled was a rod from Mr Galeano's hand. This differs from Senior Constable Myles' recollection who recalled seeing a hair dryer. She moved in and knelt next to Mr Galeano. His grasp on the pole had loosened and she was able to slip it out of his grasp and out of the way. I note the item referred to was never satisfactorily identified at the scene or in subsequent scene photographs.

Constable Cross said Senior Constable Myles was still standing in the same position. She recalled wires from the taser were attached to Mr Galeano at this stage. Constable Cross said there was not a lot of room to move and she thought the restricted space to move, as well as the taser wires attached to Mr Galeano, were the reason why Senior Constable Myles did not help her at this point.

She said Senior Constable Myles did not apply the taser whilst she was attempting to apply handcuffs to Mr Galeano. She said Senior Constable Myles had moved in slightly closer and placed his foot on Mr Galeano on his shoulderblade area.

Her first attempt to apply handcuffs was unsuccessful because when she grabbed Mr Galeano's arm, her finger went into an open wound on his elbow. She retracted in shock and stood up and obtained gloves from her utility belt. She said she put the gloves on very quickly.

Mr Galeano continued to rant and wriggle a bit. She said Senior Constable Myles did not need to use the taser at this time. She did not recall Senior Constable Myles' foot being on the shoulder at this point. Her recollection was there was no further use of the taser from this point. However, at some point after Constable Cross attached the first handcuff Senior Constable Myles stated he used the taser again because Mr Galeano tried getting up again and tried swinging Constable Cross around on his arm. Senior Constable Myles did not have room to get into the same narrow doorway. He said they then dragged Mr Galeano a bit further out into the lounge room so he could help. He then threw his taser away to help Constable Cross.

During the efforts to restrain Mr Galeano in the bathroom she said Senior Constable Myles referred to the use of the glock firearm. She said this occurred between the second and third activation of the taser inside the premises. She described what occurred as a short comment rather than a conversation. She said Senior Constable Myles looked at her and made a comment, the gist of which was: *If he doesn't calm down one of us may have to shoot him.* She could not recall verbally responding to this but she believed she subconsciously placed her hand on her firearm.

She did not consider there was any basis for the use of the glock at that point. Nor did she think Senior Constable Myles was in fact proposing this to occur at that time. She interpreted it as a comment that was considering this possibility if the circumstances worsened and they were unable to gain control. She thought about the possibility of Mr Galeano picking up a piece of

glass and using it as a weapon. Although she used the words 'retrospective hindsight assessment', it appears her understanding was Senior Constable Myles was thinking ahead if the situation worsened.

Senior Constable Myles denies this exchange occurred. After hearing the evidence from both officers I consider it is the case Senior Constable Myles made the comment. The glock of course was not used and I consider the comment was simply voicing his concern that they had not gained control over Mr Galeano at that point. Unless there was a situation involving a real threat of death or grievous bodily harm against them, the officers were not entitled to use lethal force. The glock was not used at any time and I do not remark further on this variation in recollection.

Senior Constable Myles recalls Ms Wynne entering the flat at about this time through the back door and switching on a light at the front wall of the lounge room at his request. According to Senior Constable Myles' recollection, Ms Wynne remained in the flat as the two officers continued to bring Mr Galeano's hands together at his back to secure the hand cuffs. Constable Cross was unable to match Mr Galeano's strength. She discovered her handcuffs were locked and Senior Constable Myles obtained his from his utility belt after discarding the taser from his right hand. He had been assisting Constable Cross with his left hand to this point. Mr Galeano was still repeating the mantra and Ms Wynne was still yelling back at him to shut up and do what they say. Physical control was gained by Senior Constable Myles putting his knee into Mr Galeano's left tricep.

Constable Cross' recollection is Ms Wynne came inside at some point. She heard her voice. Ms Wynne was also saying to Mr Galeano: *Calm down, stop moving, do what the police say.*

Constable Cross could not recall hearing Ms Wynne saying stop tasering him while they were inside the flat.

Constable Cross said they managed to pull Mr Galeano out to the lounge. He was still resisting, squirming and wriggling. She managed to bend his right arm behind his back and Senior Constable Myles got the left arm behind his back. She thinks by this stage Senior Constable Myles had holstered his taser, but she did not see him do this. It was no longer in his hands and both of them were involved in handcuffing him in the lounge. She denied the use of the taser in the lounge.

She said the whole time Mr Galeano remained in the bathroom Senior Constable Myles had the taser in his hand. She recalled at some point she described as after the third application of the taser inside, she heard Senior Constable Myles say: *That's it.* She did not know what to make of that comment.

Constable Cross had no recollection of hearing the taser noise at all throughout the incident. She did not recall seeing the probes or knowing whether they were still attached to Mr Galeano when they dragged him out to

the lounge room. She could not estimate relative time intervals between events occurring. She thought it was fairly soon after he was handcuffed that radio communications (VKR) from Townsville requested a SITREP. At this point she recalls she was on the right-hand side of Mr Galeano's body and Senior Constable Myles was on the left-hand side, consistent with how they had pulled him out to the lounge. She had her right knee into his right tricep and her left knee was on his thigh or on the ground, she was not sure. She said there was no weight on his back. She denied there was any weight applied by Senior Constable Myles onto Mr Galeano's neck or back when in the bathroom.

At 0302 a call was made which was acknowledged by the call sign (2-50), but there was then no response to the question asked - *yeah guys have you got him detained at all, can you give me further SITREP?*

The next communication from police communication in Townsville was shortly before 0306. This informed Constable Cross the Senior Sergeant is heading your way (Senior Sergeant Oates) and QAS have also been contacted. Constable Cross then said:

*Yes, we've currently got the offender restrained on the ground, both of us on top of him but we're just restraining him at this moment we're not going to move him until we get assistance. We've deployed the taser several times.*

Despite the use of this language, Constable Cross' evidence was they were restraining Mr Galeano but not applying weight to him other than to his triceps and back of knees.

The two officers took a little time to get their breath back. Constable Cross said Mr Galeano continued to rant the whole time, but in the lounge room he was using a softer voice which was still audible. She said she told him the ambulance was coming and he said - *Let me up, just let me up. I'm dead. I'm already dead, you're dead.*

She said: *you're not dead Tony the ambulance is coming.* Senior Constable Myles said to Mr Galeano they were going to get him up. He could recall Mr Galeano was still breathing, with a visible sign of his breath on the blood on the floor. She said he was still wriggling and there was movement and some kicking of his legs up towards her face. She perceived a risk and so she shifted her weight from right to left to hold his legs.

Constable Cross acknowledged his ranting became a 'slur' and no actual words were being said. She said they continued to talk to him and to elicit a response. She did not check his pulse but was aware he was still breathing. She could see his eyes flickering, but no other health checks were made at this time. She was holding his legs and they were still wriggling with a little bit of movement occasionally. By this stage she said Mr Galeano was not looking at her and there was no indication that he could hear her.

Senior Constable Myles said he believed Mr Galeano was still breathing when Senior Sergeant Oates arrived in the room where he and Constable Cross were continuing to restrain Mr Galeano face down in hand cuffs. Mr Galeano had however stopped struggling and kicking a short time before Senior Sergeant Oates' arrival. He had earlier spoken with the radio operator as he approached the scene and stated he could see the parked police car ahead of him. This conversation finished at 03:10:01. I accept therefore Senior Sergeant Oates arrived on the scene before 0311, which was four to five minutes after Constable Cross' conversation over the radio confirming Mr Galeano had been restrained.

After his arrival, Senior Sergeant Oates made an initial assessment and then went outside and made a call on his mobile to an unrecorded line at Townsville Police Station, speaking with Sergeant Camilleri for one minute 20 seconds. The adjusted ISDN time for that call was 03:11:44 and Senior Sergeant Oates' phone records indicate 0311.

Senior Sergeant Oates then returned and asked Ms Wynne to find a pair of shorts for Mr Galeano and she did so. Senior Sergeant Oates took over Constable Cross' position and then put Mr Galeano's shorts on with Senior Constable Myles' help. There was no struggle to achieve this and no appreciation Mr Galeano was in trouble at this time. It was immediately after or as they put on the shorts that Ms Wynne observed a change in Mr Galeano's colour and said his face had gone black. Senior Sergeant Oates instructed him to check for a pulse, but Senior Constable Myles could not detect one either at the wrist or neck.

Ms Wynne's version given to Inspector Sakzewski on 12 June 2009 was that by the time she arrived inside the unit, Mr Galeano was on the ground on his stomach out in the lounge room with his hands handcuffed behind his back. She said the male officer was leaning on him, with one knee on his back and one on his side.

She said the male officer immediately asked her to go into the bathroom and find his taser gun. She said the female officer was standing in the lounge room next to them and she said: *keep still, or I'll use the spray*, to Mr Galeano.

Ms Wynne said the wires were still in the same position she had seen on the left side of his back.

She could not remember sparks after entering the flat.

She turned on the bedroom, lounge room light, and a tall pole light near the kitchen.

She then recalled another male officer coming through the back door in overalls (Senior Sergeant Oates). She said he crouched down on the floor next to Mr Galeano who she said was not moving by this time.

She said she was near the bathroom door. (It is a very small space). She was looking down and Mr Galeano's head was on the side towards her. She saw a pool of blood on the floor. She saw his eyes rolled back in his head and blood coming from his mouth which was dark red and some was bubble like. She was (understandably) crying and upset. She then thought his face was black and she looked further and saw his ear was also black. She yelled out, *He's not breathing, his face is black. There is something wrong.*

She moved to the front door and stood in the doorway and rang triple zero. She remained there speaking with the ambulance operator until the ambulance arrived.

She said the original male officer (Senior Constable Myles) put his hand in the 'dimple' on Mr Galeano's shoulder blade and said something like, *I can't find anything* and pulled his hand away. The police officer in overalls (Senior Sergeant Oates) asked the other male officer to get off Mr Galeano and they put him on his side and the female police officer (Constable Cross) came over and they removed the handcuffs. The officer in overalls said something like, *I can't find nothing.*

Ms Wynne responded verbally as she was very upset.

The ambulance officer on the phone asked her to ask the police if they knew CPR. The police said, *yeah we're starting.* Ms Wynne said she *never saw the police do any CPR* on Mr Galeano.

A call was made immediately by Constable Cross to communications stating they had a male person with no pulse and an ambulance was needed immediately. This was at 03:15:20. Senior Sergeant Oates had completed his call on the mobile at 3:12:08. The swapping of positions between the two officers (Cross by Oates), the obtaining of shorts for modesty and placing them on him followed by the discovery he was a different colour and then that there was no pulse, occurred within that three minute timeframe. By this time Mr Galeano had been face down in handcuffs restrained with pressure on his triceps and legs between 0306 and 0315.

After this radio call, Senior Sergeant Oates said they would roll Mr Galeano into the recovery position and the cuffs needed to come off. He was rolled onto his side and Constable Cross unlocked the handcuffs. Mr Galeano was then rolled onto his back and Senior Sergeant Oates commenced compressions.

There was then a request and search for gloves and mask. Senior Constable Myles had left the room to search for a first aid kit which was brought back inside and placed on the lounge. Constable Cross said she went to the kit to look for a mask. None was found although there was some variation in evidence on this issue at different times during the investigation. No mouth-to-mouth resuscitation was provided prior to the arrival of the ambulance. Senior Sergeant Oates' evidence was he performed two sets of compressions. I accept no mouth to mouth resuscitation was given but

Senior Sergeant Oates did provide 20 and then 30 chest compressions after a cloth was found to protect him from contact with blood.

Ms Wynne then called the ambulance. Her call to the ambulance is important. The criticism of the reliability of Ms Wynne's evidence must be considered in the context of her lucid communication back and forward to the ambulance radio operator and back to the police officers attending to Mr Galeano. The time the call commenced is recorded by QAS as 03:15:52. The recordings are in four parts with the last section commencing at 3:18:52 and concluding with Ms Wynne saying she can see the ambulance has arrived. The ambulance arrived at 0319.

It was submitted a reasonable estimate of the time from when Ms Wynne alerted the officers to a problem, and the commencement of compressions was around three minutes. During this time checks were made to see if a pulse could be found, the first aid kit was retrieved by Senior Constable Myles, searches were made for a mask, Mr Galeano was rolled onto his side, the handcuffs removed and then, compressions were started.

There has been criticism of the length of time before compressions were commenced, and hearing this evidence would trouble the family. While it is understandable and justifiable that mouth to mouth resuscitation could not be expected in the circumstances in the absence of a mask, the question must be posed whether there was a degree of delay before compressions commenced. The radio call captures a male voice saying: *he won't live*. It is likely from the evidence this was Senior Sergeant Oates' voice. The arrival of the ambulance was imminent but it could be said compressions might have started earlier than occurred. However, the police officers were entitled to have regard to their own safety in providing first aid.

The transcript of the call between Ms Wynne and the ambulance service is annexed which gives a clear contemporaneous record of the sequence of events between 03:15:52 – 03:18:12 as recorded by QAS time.

*[Telephone ringing]*

*Operator: Queensland Ambulance Service, the town or suburb of the emergency.*

*Female: Um I've already, you've already been contacted, we need an ambulance um urgently at unit 2, 16 Green Street, Brandon.*

*Operator: It appears we actually have a unit on the way now ma'am.*

*Female: Yep. Okay.*

*Operator: Has anything changed since you called?*

*Female: Yes. He's unconscious and, and yes we're worried.*

*Operator: He's unconscious?*

*Female: Yes, and we're worried, yes.*



*Operator: Okay. The, the crews are on their way, they're coming to you lights and siren.*

*Female: Okay. Thank you.*

*Operator: Thank you. Bye. You, you there?*

*Female: UI.*

*Operator: Have you got him on his side?*

*Female: The police have got him.*

*Operator: The police have got him, have they got him -*

*Female: The police are here.*

*Operator: - on his side?*

*Female: Yes they have.*

*Operator: They have. And he's breathing?*

*Female: Is he breathing?*

*[Voice in background] UI about a minute away.*

*Female: Is he breathing?*

*[No audible response]*

*Female: No he's not.*

*Operator: He's not breathing?*

*Female: No he's not breathing.*

*Operator: Okay. Are the officers there?*

*Female: Yes they are.*

*Operator: Are they doing C-P-R?*

*Female: No they're not doing C-P-R.*

*Operator: They're not doing C-P-R but -*

*Female: They're about to start.*

*Operator: - he's not breathing?*

*Female: No they're not breathing, he's not breathing.*

*Operator: Okay.*

*Female: I got a bit worried -*

*Operator: He needs -*

*Female: - about him when I looked at him and he UI.*

*Operator: - he needs to be flat on his back.*

*Female: He needs to be flat on his back.*

*[Voice in background] UI.*

*Female: UI.*

*Operator: Have they got him on his back?*

*Female: No not yet they're un-handcuffing.*

*Operator: They have to un-handcuff him. Okay. UI didn't un-handcuff -*

*Female: They're just going to send, they're just going to send me outside now so that I can wave down the ambulance when it comes. And yeah, but they're un-un-handcuffing him UI.*

*[Male in background] UI can't help UI.*

*Operator: Now ma'am do they know, know how to do C-P-R?*

*Female: Do youse know how to do C-P-R the lady wants to know.*

*[Male in background] UI.*

*Female: Yes they're going to start.*

*[Voice in background] UI.*

*Operator: Okay. So now you're going outside?*

*Female: No only me.*

*Operator: No. I said -*

*Female: I'm, I'm -*

*Operator: - you're going outside.*

*Female: Yeah, I'm out here I can see, yeah I'll see it when it comes.*

*Operator: Okay. They said they're only about a minute away.*

*Female: Yeah. Ambulance is only a minute away guys.*

*[Voice in background] UI.*

*Female: Yes they're only a minute away.*

*[Male in background] UI [he won't live]*

*Male: Yeah.*

*Operator: So you can still talk to him while you're outside can you?*

*Female: I'm standing in the doorway opening here.*

*Operator: Oh okay.*

*Female: I can see -*

*Operator: Righteo.*

*Female: - the ambulance when it comes down or whatever.*

*Operator: Have, have they, have they -*

*Female: UI.*

*Operator: - got the handcuffs off and have -*

*Female: Oh -*

*Operator: - do they have him -*

*Female: - guys, guys.*

*Operator: Hello.*

*Female: Yeah I'm here, I'm here. What are youse looking for UI.*

*Operator: Have they got the handcuffs off him?*

*Female: Now. Okay here look pillowcase, there's a sheet there too darl.*

*Female: Quick guys, the ambulance is here darl.*

*Operator: The ambulance is there, excellent.*

*Female: Yeah.*

*Operator: Okay. Thank you very much ma'am.*

*Female: Thank you very much.*

*Operator: Ta.*

*Female: Bye.*

*Operator: Bye.*<sup>36</sup>

### ***Adequacy of paramedic attendance at incident***

Mr Byron's call for the ambulance at 2.56.38 resulted in despatch of an ambulance from Ayr at 0307 after confirming police attendance for assistance given the nature of the information provided. The Officer in Charge of the Ayr Ambulance Station, Ted Bawden, who is a qualified ambulance officer, was accompanied by Robert Bird. Mr Bird was an advanced care paramedic at the time. Both were at home on call. Mr Bird collected the ambulance and then Mr Bawden and travelled to Brandon, arriving at 0319. In the course of the journey the situation changed with respect to Mr Galeano's condition and information was relayed to the ambulance officers en route. They upgraded their response to a code 1 lights and siren response when told to do so as the patient had no pulse.

Assisting police officers, Smith and McDowell arrived immediately after the ambulance officers. Senior Constable Myles met the ambulance officers outside and told them to *get in there as quick as you can because there is no pulse*. When they entered, Senior Sergeant Oates was performing compressions and handed over to them. They started work with Mr Bawden taking the primary care role with Mr Bird assisting. Mr Bawden assessed Mr Galeano and confirmed he was not breathing and there was no pulse. He was cool to the touch and his pupils were fixed and dilated. Mr Bird applied a cardiac monitor/defibrillator and this showed Mr Galeano was in asystole, meaning there was no mechanical or electrical activity of the heart. The monitor was turned on at 0321 for this purpose. Mr Bird commenced compressions while Mr Bawden established an airway and started ventilation via bag and mask.

Meanwhile, Senior Sergeant Oates was at the rear of the flat with officers Myles and Cross. When Senior Sergeant Oates returned inside, the

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<sup>36</sup> Exhibit L, Transcripts 23,30,31,32

ambulance officers advised him Mr Galeano was deceased, and he phoned Sergeant Camilleri to inform him at 0323.

The ambulance officers continued their resuscitation efforts but discontinued at the decision of Mr Bawden at 0328 because there was no shockable rhythm. By this time Mr Bawden's assessment was Mr Galeano had been without ventilation for more than 15 minutes.

Prior to resuscitation efforts by the QAS, no information was provided by the police regarding the deployment of the taser or OC spray. However, I accept the expert advice and opinion of Dr Rashford, who is the clinical director of the QAS, that this information would not have altered the clinical response to the patient's care.

The actions of the two ambulance officers were reviewed internally by Dr Stephen Rashford. It was concluded that:

- (i) CPR was performed for an insufficient period. It was found this was due to Mr Bawden's misunderstanding of the relevant criteria to discontinue;
- (ii) no advanced life support procedures were performed;
- (iii) a poor amount of information (history) was obtained from the police; and
- (iv) Mr Bird should have assumed the lead role as he was the more qualified.

I am satisfied QAS has appropriately reviewed, trained, counselled and assessed the officers and reviewed their procedure to address these issues.

More importantly, from Mr Galeano's family's perspective, I am satisfied with the evidence from Dr Rashford that these deficiencies did not affect or diminish Mr Galeano's chance of recovery. Dr Rashford stated it is well established that when a patient presents in 'asystole' cardiac condition there is *almost zero chance of survival*. The pattern is not responsive to defibrillation rhythm. Evidence from Dr Griffin, from the Queensland Health Clinical Forensic Medicine Unit, confirmed this advice.

It was also noted that chest compressions are of more importance than airway resuscitation and this is also relevant when considering the efforts made by the police. It is to be remembered police have basic skills in the area but are not to be judged according to the standard applicable to a trained ambulance officer or paramedic. Dr Rashford noted ideally he would consider 200-300 compressions could have been performed prior to the arrival of the ambulance. This estimate must be considered in context that the police officers had first to remove handcuffs and there was delay apparently due to safety concerns. This related to searching for a mask and limiting contact with blood in the course of compressions.

Finally, I accept the evidence from Dr Rashford that it was appropriate and in accordance with best practice that patients are treated at the scene rather

than immediately attempting to transfer them to a hospital as the evidence is persuasive that this maximises the patient's chance of recovery.

### ***Police Management of incident after Mr Galeano's death***

Mr Galeano died in police custody and it is legally required that his death must be treated and investigated as if it were a homicide. The applicable guideline at the time is annexed.<sup>37</sup> The policy consideration underlying this approach should be obvious. There is public interest to ensure an open, reviewable and robust examination of the circumstances leading to the death of a citizen in the custody of police. The definition includes any period during which police are attempting to bring a person into custody. Failure to comply with these provisions will inevitably cause unease and possible suspicion and further distress family members of the deceased. It also denies the opportunity for the police officers themselves to be fully exonerated in their actions if doubts remain due to disregarding these protocols.

It is appreciated that remote localities create difficulties and this must be considered in reviewing this issue. However, the simplest of directions at the scene from Senior Sergeant Oates, and subsequently others, could have improved the compliance with these requirements. When Constable Cross became aware Mr Galeano had died she was understandably upset - as were all officers present. She walked out the back door and was joined by Senior Constable Myles, who inquired as to her welfare. While this is a perfectly reasonable human response to involvement in an unexpected tragedy, it was Senior Sergeant Oates' responsibility as the senior officer to direct and ensure compliance with the rules. As with any investigation considered to be a homicide, witnesses are separated to reduce the risk of contamination of evidence, and the perception this might have occurred. The senior officer was clearly trying to assist by his subsequent actions, but risked the perception of allowing the opportunity for collusion between witnesses by allowing them initially to be alone together. Leaving the scene to bring coffee from his home was very kind, but misguided. He needed to be alert to his responsibility as senior officer at the time.

He could have been better assisted by reminders, prompts and review of the guideline from police communications in Townsville. They had ready access to online guidelines and the advantage of not being physically and emotionally involved in the scene, whereas Senior Sergeant Oates had been awoken in the early hours of the morning and rushed into a situation already out of control. There were enough officers present (McDowell and Smith) to supervise, obtain hot drinks and otherwise deal with the situation had Senior Sergeant Oates thought through his true responsibilities and been better supported remotely via police communications.

Because of the lack of separation, there was exchange of certain information including that Constable Cross had used the OC spray, and reference to Constable Cross' tape recorder, which she said she had not turned on.

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<sup>37</sup> Exhibit L3

These conversations should not have occurred and had the potential to influence accounts given.

Senior Sergeant Oates asked Senior Constable Myles what happened in the presence of Constable Cross. Senior Constable Myles said he gave only the briefest outline of events, but this should not have occurred. It is as much the perception as the reality that if the guidelines are not complied with, there is further uncertainty about the reliability of accounts given. This impacts on everybody's interest - the family of the deceased person, the officers involved, and the proper public interest in a thorough and independent investigation, including the opportunity of a meaningful inquest.

## ***Conduct of the police investigation***

### **Forensics**

The forensic examination by Sergeant Bartulovich and Senior Sergeant Arthy and Sergeant Burke was challenging for several reasons. The first was Ms Wynne's flat. She acknowledged she faces her own significant mental health problems which may well explain the physical circumstances in which she lived. The flat was extraordinarily cluttered, unkempt and overlaid with possessions.

When Senior Sergeant Arthy arrived at the scene he was unaware of the deployment of the taser. It was not until a conversation with Inspector Kitching occurred that this information was passed to the forensic team. None of the team were aware that when a taser is deployed minute sized confetti is dispersed (known as AFIDs). Even with this knowledge I agree with Senior Sergeant Arthy that the interior of the dwelling would render such evidence invisible or incapable of interpretation amidst the plethora of items inside. I note there has been follow up training on forensic issues related to taser use.

Nor was information provided to the forensic team at an early enough time to enable observation or any examination of the scene seeking signs of the use of OC spray. I understand the detection of smell of the spray is short lived and I do not find it surprising this was not detected in the flat. I place on record I attended the scene during the afternoon of 12 June 2009. If Senior Sergeant Arthy resisted the possibility of use of OC spray when this was conveyed to him (as suggested by Counsel Assisting), then I trust he has now had the opportunity to reflect on the need for his directions to the forensic team to be comprehensive and inclusive of all possible interpretations of the evidence.

I agree the first aid kit should have been located and audited and photographed, including any item likely to have been removed from it, such as gloves, vomit bag or mask/s. As pointed out by Counsel Assisting there was earlier evidence of Senior Constable Myles indicating he had found and removed masks from the first aid kit when interviewed by Officers Sakzewski and Stacey. Later, the evidence presented to the inquest was there was no mask, but it may be there was a QPS mask available but Senior Sergeant Oates was not prepared to use this as a protective measure if called upon to

give mouth to mouth resuscitation. Definitive forensic evidence would have assisted the court to determine this issue conclusively.

### **Overall management of police investigation**

The first senior officer to arrive at the scene who was not involved in the incident was Inspector Dominic McHugh. He had 34 years policing experience. He was informed by Inspector Harms to attend the scene. He was told the taser had been deployed and a person was deceased. He arrived at the scene at 0458, about two and a half hours after Mr Galeano was declared deceased. He observed officers Myles, Oates, Cross and Smith together on the footpath. He was told officer McDowell had departed to pick up warm clothing from Ayr as it was a cold night by local standards. He checked to ensure the perimeter of the house was secure but failed to immediately separate the officers involved in the incident and did not issue a direction not to discuss events. He frankly assumed they had already done so given the passage of time but made no inquiries. He was clearly concerned for the officers' wellbeing after a traumatic experience and this influenced his thinking. He had the responsibility to establish control. His genuine concern for the officers' welfare misled him to overlook the proper concern which was best served by strict adherence to formal investigation procedures. Senior Sergeant Oates told him he had left the scene to obtain hot drinks for them from his home, but this information was not passed on by Inspector McHugh. It became known at the time of inquest.

He informed them an Ethical Standards Command (ESC) inquiry would occur under guidance from the Crime and Misconduct Commission (CMC). The guidance he gave to the officers was in the following kind of language - they should chill out, distil their own thoughts, not contaminate it now by hypothesising about what went on.

He did not commence a formal log or take charge of the accoutrements which necessarily were going to be part of the investigation.

Throughout the investigation there was a degree of uncertainty as to who was in fact in control of the decision making. Inspector McHugh was briefly in that role until his role was taken over by Acting Inspector Kitching, who was the Regional Crime Co-ordinator for the Northern Region. He had been informed by Sergeant Camilleri from police communications at 0338 that Mr Galeano had died after the use of the taser weapon on multiple occasions. He drove to Mundingburra Police Station and spoke with the departing forensics officers but they were not told of the multiple use of the taser. They should have been informed of this.

By 0430 Inspector Kitching had been replaced by Inspector Brian Cannon, (the Regional Traffic Co-ordinator) who was to be in charge of the investigation. This decision was made by Chief Superintendent Keating as the most appropriate one given some unresolved issues concerning another investigation by Inspector Kitching. There was difficulty which arose from this decision due to Inspector Cannon's relative inexperience in the role in

comparison with Inspector Kitching and a consequent degree of confusion about who was making decisions as the first day of investigations unfolded.

Inspector Kitching arrived at the scene at 0510 and took charge from Inspector McHugh. He had checked to secure the perimeters of the scene and then remained in company of the officers at the scene. Inspector Kitching commenced investigations with details of the officers present being taken as well as vehicles. He gave brief information to those present of what to expect starting with a brief overview statement to be taken at the scene from one officer only, Senior Constable Myles. There appears to be no instruction to officers involved not to discuss matters. This was while he was in charge at the scene. The officers left and travelled to Ayr Police Station with no apparent warnings given to all not to discuss matters. Senior Sergeant Oates drove his own vehicle, while Constable Cross was accompanied by a service support officer and Senior Constable Myles was driven by a Police Union representative at the scene.

By the time Inspector Cannon arrived at the scene at 0610, Senior Constable Myles had completed his initial overview interview and Inspector Kitching briefed Inspector Cannon. Inspector Cannon then returned to the station to inform the next of kin leaving Inspector Kitching at the scene continuing with the investigation.

Assistant Commissioner O'Regan rang Inspector Kitching at 0632 for a briefing (rather than Inspector Cannon) and Inspector Scanlon rang Inspector Kitching back informing him of the senior investigators who would attend.

When Chief Superintendent Keating arrived at the scene at 0645 he received a briefing from Inspector Kitching before directing Inspector Cannon to return to the scene and swap with Inspector Kitching. There seems to have been little discussion between these two officers (Kitching and Cannon) as to who was responsible for what. It was in this context that there was no briefing back to the forensic team from the initial interviews to properly inform and direct their forensic investigation. Inspector Kitching's involvement ended that evening.

The task of criminal investigation, particularly of a death in custody was not a familiar one for Inspector Cannon. He was informed en route to the scene of the use of taser in the incident and a briefing from Inspector Kitching. After returning to the scene Inspector Cannon remained there for the rest of the day but does not appear to have kept himself informed about the interview process back at the station. Although he signed the initial Form 1 report of Mr Galeano's death to the coroner, this had been prepared by Inspector Kitching.

The decision that Inspector Cannon was to head the investigation had been made by Assistant Commissioner O'Regan and communicated to Chief Superintendent Keating after discussion with Deputy Commissioner Ian Stewart. It was assumed both Inspectors Cannon and Kitching, who were both experienced officers, would understand what was required of them in the circumstances. It was an unfamiliar role for Inspector Cannon and this



became apparent. All of this was preparatory to the involvement of Ethical Standards Command who would assume the carriage of the investigation. In the meantime there was a lack of clarity in decision making, communication and ultimate authority of who was in charge of investigations. This led to some oversights in important information not being provided from interviews back to the forensics team and to officers at the scene. It was more of a muddle and a lot of activity occurring at once but without clear oversight of how the investigation should develop.

Superintendent Sheppard was responsible as Manager of the Internal Investigations Branch of QPS Ethical Standards Command. He was informed of Mr Galeano's death at 0350 on 12 June by Inspector Sakzewski who knew there had been a struggle and the taser had been deployed. Inspector Sakzewski was appointed as lead investigator and tasked to inform the Crime and Misconduct Commission and State Coroner.

Subsequently information was provided to Superintendent Sheppard of multiple use of the taser.

Superintendent Sheppard communicated with Chief Superintendent Keating emphasizing the importance of scene preservation, specialist scenes of crime officers, breath testing of involved officers and separation of the officers involved with preliminary interviews to be conducted.

It is noted at this point the taser was not seized immediately after the incident.

By 1600 Inspector Sakzewski and Senior Sergeant Stacey were in control of the investigation.

Information about the multiple taser activation unfolded and the taser was safeguarded and initially downloaded in Darwin by an appropriately qualified Taser International delegate, Andrew Hinz.

I consider the QPS has recognised and had regard to the various issues as summarised by Counsel Assisting's questions to Superintendent Sheppard at the inquest. Senior Superintendent Sheppard:

- (a) acknowledged that, with hindsight, optimally a more senior officer should have been dispatched from Home Hill or another station closer than Townsville to relieve Senior Sergeant Oates from his dual role as an officer involved in the incident and the most senior officer at the scene;
- (b) considered Senior Sergeant Oates' decision to leave the scene to get coffee was 'a poor decision' and he would have expected Senior Sergeant Oates to have made a call to his supervisors before he did that;
- (c) considered the OPM was clear about the need to guard against the versions of involved officers being tainted by inappropriate discussion

and acknowledged the best way to achieve this will vary depending on the incident scene. He indicated an expectation that first responding officers such as supervisors with non-commissioned rank should be in a position to 'set that train in motion';

- (d) acknowledged the situation whereby Senior Sergeant Oates took a version from Senior Constable Myles within earshot of Constable Cross was, with hindsight, 'going beyond his own personal knowledge of the events and speaking with the other officers is probably not the optimal course' and 'a situation that we need to address';
- (e) when asked to comment on Inspector McHugh's decision not to actually separate the officers at the scene (because he thought there was no point since they probably had already had ample opportunity to discuss the matter), Superintendent Sheppard was clear in his opinion that simply because someone reaches the view that some damage may have been done is no reason why steps shouldn't be taken to prevent further damage being done and 'it's our policy, and it's our preference, that that be done in rather formal terms';
- (f) recalled a discussion with Chief Superintendent Keating about the issues that may arise from the fact that the taser had not been secured as a priority. He considered that while, ultimately, it should have been seized, the investigators were still in a position to account for its possession and the manner in which it was held prior to it being seized and, further, the download data was still available to them. Chief Superintendent Keating's evidence confirmed discussion of this issue; and
- (g) confirmed that, where possible, any material witnesses should be escorted to the place where they will be interviewed, 'but that's always going to be subject to the exigencies that exist at that place at that time'. He went on to say 'if resources are available, then it would be best if the members involved travel with someone who's going to be responsible for conducting or being part of the preliminary interview process' but he 'wouldn't necessarily unduly criticise someone for not complying with that particular area'. Superintendent Sheppard commented that 'one would hope, in those sorts of circumstances, a direction properly given by the first commissioned officer at the scene, with a view to not discussing the matters with anyone prior to a formal interview taking place, would somewhat mitigate those times when optimally you can't have the interviewer, or part of the investigative team, involved in transport of witnesses'.

I accept Superintendent Sheppard's point that:

*There will be no doubt be times when it's difficult to comply with all components of the policy, because of resourcing, but where that difficulty does arise, there's an expectation that senior officers will*

*do what they can to minimise and mitigate any damage insofar as not complying with that policy*

Superintendent Sheppard proffered the opinion that, with hindsight, there was room for improvement in the initial investigation and ESC Internal Investigations Branch (IIB) probably did not support the region as well as it could have to ensure consistency in decision making. He advised that, as a direct result of learnings from this investigation, ESC IIB has developed new standard operating procedures (SOPs) to guide the ESC response to a death in police custody and formalised the role of Senior Investigating Officer (SIO) to better coordinate the investigation. The SOPs were tendered at the inquest.<sup>38</sup> The Senior Investigating Officer is appointed to liaise closely with the Regional Crime Co-ordinator and District Officer to ensure effective and unambiguous coordination of the investigative response. In 'remote' incidents (where several hours will be lost in travel response by IIB), the SIO is responsible for establishing and continuing coordination, liaising with the region and specialist support from the IIB operations room, while the investigating and support members travel to the incident scene. He also advised that other changes made include the deployment of more ESC staff to the incident, other than simply the interview team, to deal with other logistical issues relating to the crime scene, exhibits and other issues.

I am confident as a result of Superintendent Sheppard's evidence the QPS has made significant changes to QPS policy and guidelines about investigations of deaths in custody, especially in remote locations. It is crucially important that the earliest control and highest propriety is assumed in the conduct of these investigations in the best interests of all interested parties.

### ***Overall consideration of use of the taser***

As previously stated, the Taser guidelines at the time were quite succinct. The use of the taser from outside the building aimed at a man who was clearly injured, out of control and in an elevated position reaching forwards through broken glass and at risk of falling was inappropriate and contrary to guidelines at the time.

Once Senior Constable Myles committed to use of the taser, the course was set and this created more difficulties in separating the two officers for a period. The multiple applications of the taser is a difficult area to consider. The guidelines indicate an officer was required to reassess the situation and consider other available options if the initial applications of the taser in either probe or drive stun modes are ineffective. It must be noted the guideline at the time did not stipulate a particular number of taser applications.

The first issue to consider is the impact it had on Senior Constable Myles' capacity to become physically involved in attempting to restrain Mr Galeano. He was of course using his dominant hand (right) to fire and had to maintain control of the weapon and consider whether or not he should be activating the

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<sup>38</sup> Exhibit L6

weapon again. While doing this he was of little assistance to Constable Cross, whom he knew was smaller and inexperienced.

If indeed Mr Galeano was attempting to equip himself with a piece of glass inside the bathroom, then Senior Constable Myles was entitled to take appropriate measures to guard against this threat and protect himself and Constable Cross. Use of the taser at that point might be considered justified, although by this time there must have been doubt it was influencing Mr Galeano's behaviour even if it was seen to physically cause muscle clenching and falling to the ground. Alternatives were Senior Constable Myles' own physical size and strength aided with a baton. Had Mr Galeano gained a weapon and evidenced an intention to cause grievous bodily harm, then use of all options of force was open to the officers.

It must be said that once both officers were together inside the flat, Constable Myles could and probably should have put aside the taser and entered the fray. His probationary and much smaller partner needed his help to bring Mr Galeano under physical restraint. That was evident at the outset. Senior Constable Myles had repeatedly observed the taser was not resulting in a degree of control sufficient to enable the much smaller Constable Cross to secure Mr Galeano with hand cuffs, and he could have put aside the taser and physically engaged at an earlier time.

### **The number and effectiveness of taser activations**

The evidence from download of the taser showed 28 activations over a seven minute period. I accept this evidence which was repeatedly independently reviewed and checked. It does not however establish when in the sequence of events the taser was deployed, and for how long an effective circuit was maintained.

On my understanding of the evidence while outside the flat, Constable Myles thought it was twice he deployed the taser. He then activated it again when he looked through the bathroom window and saw Mr Galeano on the floor but moving towards Constable Cross, whom he could see in the bathroom door. The two officers had differing perceptions of how many times the taser was activated inside the flat. Constable Cross thought it was three times and Senior Constable Myles thought it was five times. The civilian witnesses thought there were six activations (Mr Byron) and seven activations (Ms Wynne). All were wrong.

The circumstances were fraught and dangerous. It is unsurprising that recollections vary. The officers could not recall the sound of the taser at any time. I note it makes a louder more 'static' sound if it is fired but does not make an effective circuit. It is quieter when successfully deployed delivering current to the target. Civilian witnesses said they heard the noise but I consider their evidence is unreliable to establish whether any particular deployment was effective or not.

A consideration of the device is required. Neither officer knew at the time that a taser could deliver a charge for longer than five seconds. All that is

required for this to happen is for the person firing the device to hold sufficient finger pressure on the trigger for longer than five seconds. Although called a 'trigger', it was explained the device is activated by a solenoid, more in the nature of a switch. The degree of pressure required was very little, equivalent to a 'hair' trigger degree of sensitivity in a firearm.

If, unwittingly or otherwise, the switch is held on past the elapse of the pre-set five second interval, the taser continues to cycle. It is akin to an automatic weapon in that sense. The slightest pressure will re-activate the device to cycle for another five seconds unless the trigger remains depressed, in which case, the taser continues to cycle for the duration of the trigger depression.

This must be considered together with the context of Senior Constable Myles' use of the device.

It was the first time he had fired a taser other than in his five day training during May 2009.

He continued to hold the weapon after he fired it for the first time outside until he made the decision to release the first cartridge and go inside. During this period he attempted to peer into the bathroom from the steps on the porch area before climbing onto a bench seat and looking into the bathroom - all whilst holding the weapon in his hand, with wires attached to Mr Galeano through the bathroom window.

He was not alert to the risk of holding pressure on the trigger/switch for longer than five seconds.

When he went inside the problems multiplied. It was a very confined, cluttered, dark and unknown environment. He said he felt at risk of being stabbed due to the presence of shards of glass and broken porcelain which he considered were in reach of Mr Galeano. He was attempting to manage the weapon and be ready to fire it whilst simultaneously assisting his partner with his left hand.

I accept the expert evidence it is likely in this situation that there will be an involuntary and unperceived engagement of the muscles in his right dominant hand when using his left.<sup>39</sup>

I accept Senior Constable Myles' evidence he was unaware of the number of times the taser was activated during the seven minute period. I also accept it was possible in the circumstances he held the trigger on for more than five seconds or re-activated the trigger after a short interval without realising he had done so. I do not consider there is any reasonable explanation of the activation being otherwise than via pressure from his hand while being held, given the enclosed space of the trigger position.

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<sup>39</sup> Oral evidence of Master Trainer Patrick Burrell and Richard Wyant

Can it be determined how many of the 28 taser activations achieved an effective circuit? The short answer is no. In all of the circumstances the officers' perception is unreliable and does not assist. This is not to be critical of the officers on this issue. I accept they were unaware of the number of times the device was activated and there were varying responses from Mr Galeano after application of the taser. Senior Constable Myles indicated he activated the taser after Mr Galeano had been dragged into the lounge room because he was still not handcuffed and Constable Cross was having difficulties. But he did not think this was effective due to lack of response from Mr Galeano.

Various other information can be considered. The radio transcripts can assist to some extent. Their account of events inside the flat when examined with the transcript of the radio calls indicates periods of non response from Constable Cross when it might be inferred she was engaged in trying to restrain Mr Galeano. However this does not assist with whether or not the taser was being used at the time.

I do consider the recording of the radio call with police communications where the sound of a loud groan, or as described by Counsel Assisting, a 'foreshortened scream' is noteworthy.<sup>40</sup> This occurred at approximately 0259. The officers could not otherwise explain the sound and it was submitted it was the sound of Mr Galeano reacting to the taser application. This was submitted to occur late in the sequence of events. It was suggested to be associated with the radio call that commenced at 02:58:30 and concluded at 2:59:20. Comparing this information with the taser times correlates with the 21<sup>st</sup> – 24<sup>th</sup> activations of the taser.

While there is subsequent evidence urging this court to accept Mr Galeano was suffering from excited delirium and this necessarily meant he did not experience pain, I am cautious to adopt that proposition in the face of evidence to the contrary. Constable Cross gave evidence that the very first application of the taser outside resulted with muscle contraction accompanied by a groan from Mr Galeano she described as a sound like – AAAHHHH. Subsequent radio call recordings capture such a sound which has not otherwise been explained. The court is entitled to draw the conclusion this was indeed a verbal expression of pain simultaneously with the successful application of the taser.

I consider now the more scientific approach in attempting to resolve for what period of time there were circuits capable of delivering an impact on Mr Galeano during the seven minute period.

The download of the taser activations is inserted here to assist in understanding the information<sup>41</sup>. I note the download exercise was replicated with the same results. It should be noted that this document has been

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<sup>40</sup> Exhibit L1, Transcript 05 ,

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reproduced in its exhibited state, meaning the time references have not been adjusted to account for the internal timing device being one minute fast.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
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It has been submitted that the first cartridge use concerns activations numbered 1-4, and the second cartridge is from 5-28. The rationale that there is a 36 second interval between the 4<sup>th</sup> and 5<sup>th</sup> deployments seems most likely to match up with the evidence from both officers about the use of the first taser cartridge outside, and then the second cartridge inside.

There was exhaustive, expert examination, investigation and testing of the wires and probes from the taser. These efforts were also collaborative and the court is appreciative of the advice from Mr Dick Coldham<sup>42</sup>, Mr John Price<sup>43</sup> and Mr Rick Wyant<sup>44</sup>.

Mr Coldham is a consultant metallurgical engineer with HRL Technology Pty Ltd in Melbourne, Victoria, with extensive experience in the investigation of metal and corrosion failure.

Mr Price practises as a mechanical and materials engineering consultant in Melbourne. Mr Wyant has forensic science qualifications and has worked as a forensic scientist for law enforcement agencies in Texas and Washington since 1995. He also has a private consultancy in the same field.

Mr Coldham worked in collaboration with Dr Price and Mr Gates. They designed and conducted tests to compare taser wires and probes after use in different circumstances, including periods of time. Observations were made of damage caused by electrical arcing which could be seen on the wires, insulation around the wires, and the probes. The result indicated greater appearance of blackening with the longer time exposure of current, as might be anticipated. But examination under the microscope produced variable appearances depending on the orientation of the wire. For example a sample where current had passed for 34 seconds could not be distinguished with one of 120 seconds. Probe damage was more variable again.

Mr Coldham's conclusion was his observation of the particular probes led to his opinion of 5-10 and possibly up to 20 seconds passage of current through each set of probes. This was far less than as recorded by the download.

Dr Price is a mechanical and material engineer who examined the changes in the ends of the wire after arcing. He considered the reliability of information produced decreased after the period exceeded 20-30 seconds duration of current. He could not find any evidence of short circuiting after examining the wires.

In his opinion the first probe was energised for 5-10 seconds. His final opinion regarding the second probe was uncertain because of the possibility of a parallel circuit due to the wet floor. This brought his estimate down to as low as 10-20 seconds from a starting position of more than 30 seconds with

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<sup>42</sup> Exhibit 6.1,6.2,6.3,6.4

<sup>43</sup> Exhibit D11,11.1,11.2,11.3,11.4

<sup>44</sup> Exhibit D9,D9.1, D9.2

respect to the second probe, which gives a total range between 15 and 30 seconds.

There was further evidence suggesting marks on the wet bathroom floor did indicate short circuiting due to the wires coming together. This would then reduce the number of effective circuits despite the evidence the two probes remained in Mr Galeano's torso until he had been handcuffed.

It was submitted Mr Wyant had greatest experience examining taser probes and wires, and his evidence should be preferred. I accept this.

His photos demonstrated short circuit marks on the wires of the second cartridge where the insulation had melted. A short circuit would lead to a reduced impact on the person tasered. He could not determine the length of time for any particular short circuit. He could duplicate a short circuit occurring. He also identified the presence of biological material on the probe which could impact on interpretation.

He concluded after examination that the probes used outside showed current passing between 10-30 seconds, with an estimate of 20 seconds being his preferred position.

The set of probes used inside showed physical evidence of energy passing through them for between 30-60 seconds with 40 seconds his nominated position. He concluded his totalled range was between 40-90 seconds and certainly less than the 154 seconds

I accept this evidence as the best information available to estimate the length of time Mr Galeano was exposed to electrical energy via the taser. It remains an estimate only between the lowest interval of 10 plus 30, and the highest interval of 30 plus 60.

Mr Wyant also had previous experience and could give evidence that probes could make a circuit with only the slightest of abrasions being evident on the skin. Indeed, he had seen it demonstrated that there was no wound evident at all despite clear evidence of an effective circuit. This was consistent with evidence from Mr Burrell in his experience within the police service in Australia and New Zealand.

Counsel Assisting has suggested consideration should also be given to evidence that the probes were still in place until Mr Galeano was restrained. There was other evidence (the presumed calling out by Mr Galeano in response to the taser captured on radio) which it was submitted should also be noted when considering a possible range of effective taser activation. If this is accepted, then the range could be as long as 110 seconds. The final submission by Counsel Assisting was a range of at least 80 seconds in total.

There is a great deal of uncertainty despite everybody's best endeavours. I note while the probes were clearly still embedded in Mr Galeano when he was finally restrained, the evidence of his lack of response to the application

in the lounge room suggests it was ineffective by this stage. I do not necessarily accept the proposition that Mr Galeano was incapable of feeling pain. The problem remains without a camera device on the taser, it cannot be concluded a particular cry out was a response to the taser, to handcuff attempts or his experience of the terrible psychotic furore which had engulfed him. The other relevant information is there was a portion of taser wire missing when examined. It is unknown when the wires were broken or what became of them.

In these circumstances the most reliable evidence must be the collaborative scientific examination. I am inclined to accept the best this inquest can conclude is a range of 40-60 seconds effective total application of electrical energy applied to Mr Galeano.

## **Cause of death**

### **Autopsy performed by Professor David Williams<sup>45</sup>**

Autopsy examination was undertaken by consultant forensic pathologist, Professor David Williams on 13 June 2009. A re-examination was performed on 15 June 2009. At the request of the coroner, Professor Williams attended the scene at about 1800 on the evening of 12 June. In particular, Professor Williams noted extensive damage to the house, a lot of it recent. He noted occasional blood stains but not vast quantities of blood.

Professor Williams' report<sup>46</sup> records Mr Galeano's height as 181 centimetres and 85 kilograms in weight. He catalogued a significant list of wounds, including cuts, many described as 'glass cuts', bruises, abrasions to his head, both flanks, left upper limb, right upper limb, legs, front and back of chest, front and back of abdomen and buttocks. However, these injuries were all described as surface injuries. There was bruising around the wrists probably related to being handcuffed. The seventh and eighth left lateral ribs were fractured. Professor Williams speculated this could be consistent with injuries from a fall on a wet bathroom floor during Mr Galeano's (assumed) demolition of the toilet, or any blunt trauma to the area of the seventh and eighth ribs on left side.<sup>47</sup> There was also a finding of acute catarrhal appendicitis but not of peritonitis. There were no obvious injuries to the neck that suggested some kind of struggle hold on the neck or manipulation of the neck.

Professor Williams identified three rounded injuries he considered to be probable taser injuries. Each injury was a bruise of 9mm across, 6mm deep, with a central cut/abrasion 5mm across. These injuries were located as follows;

- (1) On the front of the body adjacent to and below the left clavicle, 7.6cm to the left of the midline and 147cm above the heel.

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<sup>45</sup> Exhibit A3

<sup>46</sup> Exhibit A3

<sup>47</sup> T22-14, L 1-11

- (2) On the back of the body, 12cm to the left of the midline, 147.3cm above the heels, and
- (3) On the back of the body 10cms to the left of the midline, and 115cms above the heels.

One of the taser injuries on the back showed signs of electrical burning on examination of tissue samples. Professor Williams considered as there was 'just one injury on the front ... doesn't necessarily imply that this man had any taser effects from a frontal tasing'.<sup>48</sup>

Professor Williams essentially queried whether there was any taser effect when the taser was applied to the front of the body due to the absence of any second physical wound. There was other evidence from the attending police officers as well as the independent experts from which it can be concluded the taser could have contacted the front of Mr Galeano's body sufficiently for a circuit to be created without leaving a physical mark. This is consistent with evidence of Mr Burrell, the Queensland police training officer and Mr Wyant, whose expertise was gained in the USA. Both had witnessed experiments which demonstrated instances where although a taser circuit was successfully completed there was no physical evidence on the skin. There was also the evidence of the attending officers' observations at the time and their conclusion the taser was effective when fired to the front of Mr Galeano's body while outside the unit.

The most significant findings at autopsy were of 'severe coronary artery narrowing of such severity that he was at risk of sudden death at any time, but particularly after blood loss and during any form of exercise'.<sup>49</sup> The heart weighed 550 grams and demonstrated a degree of mitral valve prolapse as well as occasional areas of ischaemic fibrosis and of ischaemic injury to the myocardium. In his oral evidence Professor Williams stated any heart weighing more than 450 grams and demonstrating coronary atherosclerosis is a potential risk of sudden death 'particularly whilst excited or involved in some exercise or having lost some blood'.<sup>50</sup>

Toxicology tests did not reveal alcohol but showed toxic levels of amphetamine (.04mg/kg) and methylamphetamine (.46mg/kg). Acetone in the urine was thought to be related to not eating for a while.

Professor Williams was informed of the general events and behaviour of Mr Galeano prior to his sudden death. He noted the use of a taser and also the application of pepper (OC) spray. His research indicated any causal connection between the use of a taser or of OC exposure and death was controversial. It was Professor Williams' first autopsy relating to a death occurring in circumstances including the use of a taser.<sup>51</sup> He reviewed literature considering excited or agitated delirium noting it was a distinct

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<sup>48</sup> T 21-20, L 4-8

<sup>49</sup> Exhibit A3, page 8

<sup>50</sup> T22-12 L14-15

<sup>51</sup> T 21-6, L2-3

disorder characterised by the acute onset of violent and bizarre behaviour such as incoherent shouting, paranoia, combativeness, hyperactivity, aggression and a demonstration of extreme strength that is quickly followed by death. He discounted the possibility of the taser application causing cardiac arrhythmia, noting literature said to review 1.4 million applications of the taser without any credible evidence of a resulting cardiac arrhythmia, even in those with known cardiac problems.<sup>52</sup> Professor Williams' report indicates he had been informed by a senior police officer the taser download indicated 24 pulses had been delivered. He was aware of the history of events from 10 June including Mr Galeano's admission with amphetamine poisoning, review by the mental health team at Townsville Hospital and discharge after concluding there was no mental illness. Professor Williams' review of information suggested to him Mr Galeano was psychotic, destructive, violent, agitated and acting bizarrely. He noted attempts to subdue him with taser application and OC spray before he was handcuffed behind his back.

Finally Professor Williams noted 'autopsy findings in individuals dying of excited delirium can be non specific or normal and the autopsy on Mr Galeano did not demonstrate any pathology either confirming or excluding excited or agitated delirium. Never-the-less the features described in this condition fit very closely to the descriptions of the deceased prior to his death and the toxicology demonstrates toxic levels of methylamphetamine'.<sup>53</sup> He concluded Mr Galeano died due to excited or agitated delirium, due to amphetamine toxicity. He considered coronary atherosclerosis, mitral valve prolapse and emphysema were underlying contributory factors to the death.

In reaching his conclusion Professor Williams explained he did not necessarily accept the background information, but started from the position of finding very severe coronary atherosclerosis and that Mr Galeano had a big heart. He also noted toxicology showing a wide range of different types of drugs which he thought was perhaps the main reason for his death. He said the behaviour he demonstrated was entirely consistent with excited delirium. He had never examined a case in which he concluded excited delirium was the cause of death and so he relied on advice from other pathologists<sup>54</sup> and general reading. On general reading he concluded tasering and OC spray was not relevant to Mr Galeano's death.

When asked:

*Are you aware of what impact or what effect on the condition of excited delirium in a person the fact of tasering them might have?*

Professor Williams said:

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<sup>52</sup>

<sup>53</sup> Exhibit A3 page 8

<sup>54</sup> Professor Tony Ansford and Dr Alex Olumbe, as well as emergency department physicians at Townsville Hospital

*I've read about it, but I'm not too clear how to answer that in that I'm not sure what the conclusions are.*<sup>55</sup>

He noted four key factors of excited delirium as:

- Delirium
- Respiratory failure
- Hyperthermia
- Death<sup>56</sup>

He agreed his conclusion of excited delirium was essentially an observation about the particular characteristics surrounding the death.<sup>57</sup> He noted some deaths due to this syndrome which occurred in hospital provided additional information including measurement of temperature and of serum potassium which can lead to asystole rhythm of the heart and death. He was aware of a mortality rate associated with excited delirium of 8-10 %.

Professor Williams agreed with Professor Karch's interpretation of slides of heart material from the autopsy examination. Professor Karch concluded there was hypertrophic cardiomyopathy and Professor Williams agreed with his opinion after reviewing the slides.

With respect to questions arising from the use of OC spray, Professor Williams expressed the conclusion there was no evidence of laryngeal spasm, although this was tempered by the fact he had never observed an example in autopsy and considered it a clinical term.<sup>58</sup> In Professor Williams' opinion there was absolutely no connection between OC spray and the death. Nor did he consider that application of the taser could have caused any impact on the heart, although this was his first consideration of the issue and his research was apparently less extensive than other witnesses appearing at the inquest.

Professor Williams agreed there was nothing he observed at autopsy to establish Mr Galeano was an intravenous user of amphetamine. He agreed there was possibility of a range of what could be a toxic level of the drug depending on the person's previous history of using the drug.

Professor Williams also considered it would have taken four to five minutes for Mr Galeano to develop the darkened facial appearance which, in these circumstances would have been caused due to depleted oxygen due to cessation of circulation.

### **Professor Ansford<sup>59</sup>**

Professor Anthony Ansford is an experienced and senior forensic pathologist in Queensland with whom Professor Williams conferred in preparation of Professor Williams' autopsy report. Professor Ansford peer reviewed

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<sup>55</sup> T21-19, L 51-55

<sup>56</sup> Exhibit A8.4.1

<sup>57</sup> T 21-17, L 34-37

<sup>58</sup> T21-28, L 55-57

<sup>59</sup> Exhibit D8

Professor Williams' autopsy report and also prepared a report reviewing the autopsy report and providing a 'second opinion' regarding the cause of death conclusions reached by Professor Williams. Professor Ansford noted Professor Williams had already come to a conclusion regarding the cause of death prior to Professor Ansford's peer review.

Professor Ansford was in agreement that Mr Galeano's heart was enlarged or heavier than normal. He would have included information about the thickness of the ventricles and whether the chambers of the heart were dilated or widened. His review of the microscopic slide led him to the opinion the thickness of the walls 'didn't look too bad, they didn't look markedly thickened'. This assessment, he said, was helpful with respect to issue of hypertrophy. He considered there was some sort of disease of the left ventricle. If primary, it could be a type of cardiomyopathy, if secondary, it could be due to elevated blood pressure, coronary artery disease or alcohol. Indeed he noted there were opinions that amphetamine use over time can cause cardiomyopathy or coronary artery disease.<sup>60</sup> Although he could not exclude hypertrophic cardiomyopathy, he would not diagnose the condition on the basis of the information he reviewed.

In Professor Ansford's experience (noting he reviews heart tissue daily) he did not consider there was evidence of familial hypertrophic cardiomyopathy which has a singular appearance under microscopic examination. But he considered there was evidence of cardiomyopathy which could have caused Mr Galeano's death at any time. He agreed with the conclusion of severe coronary atherosclerosis with up to 80% narrowing of vessels. The overall condition of Mr Galeano's heart was such that Professor Ansford could not exclude the possibility that death was due to the effect of his cardiac disease, particularly the coronary artery disease which can cause deaths by asystole.<sup>61</sup> Nor could he exclude the background of struggle, physical exertion or taser application between 60 and 90 seconds, or the use of amphetamines precipitating a coronary event.<sup>62</sup> On cross examination he did clarify that not excluding the possibility of some factor contributing to the death was not to say that this factor had been established.

He did however exclude application of OC spray to the eyes for about one second as a likely precipitator of a coronary arrest. He did not consider OC spray as a possible contributory factor in the death because Mr Galeano continued uninterrupted with his behaviour and there was no other evidence of the possibility of OC spray causing such a reaction.

He said activity of any sort, particularly unaccustomed vigorous activity, can precipitate heart attacks. Essentially the increased load on the heart together with narrowed blood vessels can precipitate a heart attack.

Professor Ansford did not expect application of the taser to have an affect on the heart but he said you can never exclude that. He could not comment on

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<sup>60</sup> T26-60

<sup>61</sup> Exhibit D8, page 12

<sup>62</sup> T26-76

any possible impact of repeated taser application or longer length of deployment of taser application. Nor could he explain the affects on the heart of a person with a bad heart who has excited delirium.<sup>63</sup> Professor Ansford explained with respect to the possibility of taser application being relevant to Mr Galeano's death, it would be as a result of catecholamines increasing or the stress of rising blood pressure. It was beyond his experience to elaborate further. He was unaware of any research of whether catecholamines might be measured at a given time where death has resulted.

He excluded respiratory arrest caused by asphyxia based on the evidence which did not indicate firm applied pressure to the back of his body although Mr Galeano was face down. He explained that if Mr Galeano was vocalising in any form it would indicate he was still breathing and not suffering from restraint asphyxia.<sup>64</sup>

Professor Ansford concluded Mr Galeano died due to excited delirium which he understood to be:

*it's an effect of catecholamines particularly adrenalin and similar things on the heart which causes them to collapse and the interesting thing is and what persuades me to that diagnosis was that so called lucid period. Now, you're saying that it may not have been as lucid as I thought it was but characteristic of excited delirium is that people die after they stop struggling and usually get this person who's behaving like Mr Galeano due to a - some form of psychosis or delirium and then they stop struggling, they become amenable and they're obvious - and often able to be restrained by - by restrained I mean, you know, have handcuffs put on them - they are controlled and then minutes or so after that according to the classic descriptions, they suddenly go blue and they become pulseless and then asystole and that's the characteristic history. About an hour's worth of struggling and violence and screaming out things which are unintelligible or may even be intelligible sentences, struggling, very, very strong, resisting things - any - anything that anybody can throw at them to try and sedate them - sorry, I didn't mean throw at them but you know what I mean in a metaphorical term - any form of trying to subdue and then suddenly they go quiet and, as in this case, the police ring up or radio or whatever they do these days, and say, "We're right for the car," or the - the truck or whatever it is which implies that they had him in a - that he was then in a situation where they could get him into the - into the van and take him to hospital or wherever they were going to take him. But that's a characteristic - that - that latent period.*

Professor Ansford had not previously diagnosed excited delirium as a cause of death prior to consideration of Mr Galeano's death.

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<sup>63</sup> T 26- 60

<sup>64</sup> T26-67



Professor Ansford explained – 'Excited delirium's been around for years and years before TASERs and before capsicum and those sorts of things and it's sometimes seen in psychiatric patients or it has been seen in psychiatric patients.'<sup>65</sup> Initially he would have adopted a more cautious approach and stated death was undetermined, but upon reflection and further consideration of literature he agreed that excited delirium was the cause of death on balance of probability. He was affirmed in this conclusion by cross checking a clinical checklist originating from emergency department medicine in the USA.<sup>66</sup>

He was asked to comment on the more inclusive description of cause of death adopted by Professor Duflou. He said:

*Well, I - I think that really he's really just had - he's just included everything, and lumped it {in} as a cause of death, and I think it's our duty to the Court and to the next-of-kin to try and be a little bit more specific, if we can be, particularly if you're being asked as an expert to give an opinion, apart from the opinion that the pathologist who did the autopsy has given.*

In Professor Ansford's opinion the two most likely causes of death were heart disease and excited delirium. He preferred to narrow the field rather than what he considered to be a too inclusive approach adopted by Professor Duflou. He considered the excited delirium was most likely due to the drug toxicity of amphetamine toxicity. He would not have included emphysema and mitral valve prolapse as contributory factors, whereas he might have included cardiomyopathy (but not hypertrophic cardiomyopathy) as contributing to the death.

### **Professor Johan Duflou<sup>67</sup>**

I have referred to Professor Duflou's report to the court and his oral evidence at the inquest. I have not considered further material prepared by Professor Duflou at the request of Ms Wynne's legal representatives. This was forwarded to the court months after the close of submissions. There was no satisfactory reason why matters addressed in the material could not have been raised at the inquest and I decline to admit that material.

Professor Johan Duflou is an experienced specialist forensic pathologist who is the Chief Forensic Pathologist of the Department of Forensic Medicine in Sydney, amongst other appointments. Professor Duflou reviewed the autopsy report and toxicology results, the medical records, photographs and witness statements. He considered in Mr Galeano's case there were multiple potentials. He considered that if he took a very high level of certainty in approaching the task it would be impossible to come to a definite cause of death. But if he approached it from a perspective of what are some of the

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<sup>65</sup> T26-69

<sup>66</sup> Exhibit A4.1

<sup>67</sup> Exhibit D7

critical matters in the case which could have contributed significantly, then he came up with another cause of death altogether.

Professor Duflou considered the significant factors were:

- (1) Heart disease. Had Mr Galeano been found dead in his bed, he would have been satisfied on the condition of his heart alone as the cause of death.
- (2) Moderately enlarged heart, which could be due to hypertension, chronic stimulant use, coronary artery disease, noting myocardial ischaemia on its own can cause a degree of enlargement of the heart.

He did not necessarily agree with Professor Karch's finding of hypertrophic cardiomyopathy. Professor Duflou stated diagnosis requires enlargement of the heart to be due to ventricular enlargement as well as other abnormalities. This measurement/observation of thickening of the interventricular septum was not recorded at autopsy. The mitral valve was ballooning, but not a change typical of hypertrophy. The most significantly absent sign was visual extensive myocardial disarray on microscopic examination of tissue. A diagnosis requires more than 10% of the myocardium involved by disarray. More particularly, Professor Duflou considered the disarray had to be at a part of the heart that was not naturally and normally associated with this appearance. The slides pointed to by Professor Karch did not demonstrate an area of the heart to properly establish the diagnosis of hypertrophic cardiomyopathy. Professor Duflou and others who also reviewed slides from the heart did not see evidence to support a disproportionate thickening of the interventricular septum, which is significant in diagnosing hypertrophic cardiomyopathy.

The other requirement was of 'perinuclear clearing' which was not observed by Professor Duflou to an extent necessary for diagnosis purposes. What Professor Duflou observed was consistent with ischaemic damage due to lack of oxygen. Finally, Professor Karch's reference to the presence of abnormalities in the small blood vessels was unconvincing to Professor Duflou as these were observed in the papillary muscle region, which he considered was absolutely standard. Therefore, he was unconvinced of the diagnosis of hypertrophic cardiomyopathy in Mr Galeano.

Professor Duflou could not exclude the possibility of hypertrophic cardiomyopathy on reviewing the slides but he did not observe sufficient abnormalities in reviewing the slides to establish the diagnosis. If hypertrophic cardiomyopathy was assumed, then it could lead to sudden death, particularly during exercise. He agreed it would add to Mr Galeano's underlying vulnerable heart condition.

He explained the phenomenon of cyanosis as a decrease in the amount of oxygen in circulation blood usually due to either a sudden cardiac or respiratory arrest. It was more common in a sudden deterioration in cardiac function, most typically ventricular fibrillation or asystole. The history was also more consistent with a sudden cardiac arrest rather than a respiratory

arrest. Cyanosis caused by cardiac arrest was much quicker than due to respiratory arrest. It was likely Mr Galeano's heart stopped at about the time of development of cyanosis. Professor Duflou said:

*I feel that his cardiac arrest occurred very shortly before his death occurred, or before the onset of that (cyanosis) and, essentially, if that is, he is (in?) cardiac arrest then that is about the time that he died.<sup>68</sup>*

It is not an uncommon sequence of events in Professor Duflou's experience to have a sudden cardiac arrest, going blue and then dying.

He commented on the ambulance officer's recording of Mr Galeano's cardiac rhythm as 'asystole' upon their examination of him. Professor Duflou explained this as meaning essentially being dead, unless their heart rhythm is restored. It is consistent with the heart stopping rather than a respiratory cause of death, where he would not necessarily expect asystole.

Professor Duflou considered the issue of the application of the taser. He said;

*It appears there may have been quite prolonged TASERing, to use the term, that the deceased was then restrained in a face down position and then appears to have had a cardiac arrest with the terminal rhythm, in any event, been asystole. And I am aware that there is a time period between the final TASERing and the-----*

*Cardiac arrest-----?--cyanosis asystole. I - I think it's fair to say that I don't think that the TASERing directly resulted in a cardiac arrest. My - my view is predominately one of the added effect of the TASERing to the other conditions as well. So, the potentially extensive and lengthy TASERing with its generalised affect on body, which could include certain cardiac effects, but need not necessarily be the case, would, in my view, be a significant contributor to the death.<sup>69</sup>*

In considering the impact of taser application, Professor Duflou referred to: *extreme pain and discomfort*. He said he thought *it's fair to say that it causes significant distress in almost everybody. If you add that distress and potentially multiply episodes of such distress, certainly to me it would be a significant contributor to the death, essentially, of what is probably in the end a cardiac event.*

He was asked if his opinion would change if Mr Galeano's experience of pain was significantly lessened. He did not know and he did not think it could be answered how much of a decrease in perception of pain there was. He had seen videos of people being tasered.

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<sup>68</sup> T 23-11

<sup>69</sup> T23-23, 23-23

He was aware of an impact of taser application being 'neuro muscular incapacitation', which he confirmed placed a load on the muscle of the body, which he described as a tetanic spasm, meaning a rigid, uncontrolled spasm. This involved a contraction and a degree of inco-ordination. He said he considered this would have a significant additional load on a diseased heart.<sup>70</sup> He explained, similarly to exercise, especially isometric exercise in terms of not significant movement, but at the same time compression all round by muscles, there is an increased strain put on the heart.

Professor Duflou identified there were very few independent studies looking at very prolonged taser applications in a person with significant disease, such research simply being unable to be performed. Instead there is a review of what has occurred after such an event. The extent of tasering asked to be considered was 'say seconds of tasering over 7 minutes'.<sup>71</sup> Professor Duflou could not express an opinion on the possible impact of this.

He noted chronic lung disease (emphysema/chronic obstructive pulmonary disease) but discounted this as a direct cause of a cardiac arrest. He did not see any evidence of the application of OC spray causing an acute allergic reaction on examination of microscope slides. It could potentially add to overall stress of the situation.

The effect of physical struggle with the police officers would have added a strain on his heart, elevating his blood pressure, requiring a greater oxygen supply. This could predispose to cardiac arrhythmia, and then, depending on the type of arrhythmia, to cardiac arrest. The period of possible physical interaction with the police including application of the taser was said to be about 8-10 minutes. Professor Duflou indicated this would trigger the release of adrenergic substances, including adrenalin which results in the heart speeding up by itself and raising the blood pressure.

Professor Duflou could not accept or understand the basis on which Professor Karch suggested by this stage Mr Galeano would not undergo any significant additional impact because he thought the sympathetic nervous system would have been operating flat to the board.

Professor Duflou did not consider it was able to be calculated when a person had reached 100% adrenergic stimulation. He considered it more likely the longer the physical activity, the greater the risk of damage to the heart muscle due to constriction of the heart muscle which can predispose to heart arrhythmia.

Likewise, Mr Galeano's described behaviour prior to the arrival of the police, which involved breaking things, throwing things and constant movement, would cause the same stress on the heart as with significant exercise.

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<sup>70</sup> T 23-13

<sup>71</sup> T23-25

Professor Duflou concurred that the level of amphetamine recorded in Mr Galeano's body is consistent with experience of people who have died and also, of people who have survived. He agreed with Professor Karch in this opinion.

*The impact of methamphetamine in this situation would behave probably very closely to adrenaline itself and, in fact, if you look at many of the actions of methamphetamine, and amphetamine like substances, they are identical to the adrenergic substances, there's really very little between the two. So, as such, it would behave in a similar way to a stress type reaction.*<sup>72</sup>

Professor Duflou considered the evidence of appendicitis as the 'joker in the pack'. He considered in the days prior to his death it was recorded at some point he had a fever. He also had a raised white blood cell count due to acute inflammatory cells responding to early infection. It could be associated with elevated white cell count, fever and, potentially delirium as well. Poorly controlled diabetes could also be a factor leading to delirium. He also noted on the day he was admitted to hospital he required fluids due to dehydration, which could also be a factor in his later irrational behaviours. Thus Professor Duflou considered there may be other causes of the delirium than 'excited' delirium. He did not however think the state of the appendix or diabetes was such to contribute to a cardiac arrest occurring.

Professor Duflou said *the release of adrenergic substances directly affects pH levels, but increased activity associated with release of adrenergic substances can result in a release of lactate and that release lactate can result in a dropping of pH or the formation of acidosis.* He could not further explain this area of expert knowledge.

Professor Duflou did not consider taser application would result in a cardiac arrhythmia.<sup>73</sup>

He also conceded Mr Galeano's heart rhythm leading to death was asystole.

With respect to the issue of identification of one taser wound on the front of the body, and the inferences which follow, Professor Duflou said:

*It sounds very likely to me that there was a probe somewhere else as well. That certainly is, from my reading of the material, that there was successful, if you like, activation of the TASER in the front position. The fact that it wasn't located with any degree of certainty - in fact, I - as far as I can tell, it wasn't located at all - doesn't mean that a TASER probe did not come in contact with the body.*<sup>74</sup>

Professor Duflou differed with Professor Williams with respect to review of the anterior wound on the chest. His examination of the slides under microscope

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<sup>72</sup> T23-18

<sup>73</sup> T23-21

<sup>74</sup> T 23-22

led him to believe there was evidence of electrical discharge in the taser injury, which, he noted, was also consistent with witness statements of the apparent neuromuscular incapacitation of Mr Galeano at the time.

He explained his conclusion as follows-

*Certainly a wet body, and especially a wet body with an electrolyte rich substance, and blood is an example of that, would allow conduction of electricity more effectively into the body than a dry body, which is a way, I suppose, of saying that I don't think you necessarily need to have the barb go into the body, especially when there was blood on the body. The other thing I - I do want to point out is that I agree that it's unlikely it wasn't the typical axis of the heart, but when you look at electrocution cases, and I've certainly looked at large numbers of those, it's not invariably through the axis of the heart. That need not be the case and - and, in fact, one of the things that we argue as forensic pathologists is that in fact the electricity passes through the blood vessels or through the electrolyte in the blood vessels. So, as such, it doesn't matter that it's directly across the heart or in whatever plane, or from the back or the front. It's the fact that it's going through the blood that becomes important. Now, whether that can be applied to this case or not, I don't know, but certainly in 220, 240 volts electrocution-----*

*Mmm?-----that certainly appears to be the case.*

*But that would be a different scenario from this one?--Well, yes. I - I'm referring to electricity in general.<sup>75</sup>*

He conceded the qualification that his opinion was referring to electrocution, rather than a lower voltage taser application.

Professor Duflou considered the possibility of direct impact of taser application causing a significant cardiac effect. He noted upon looking at such cases they are relatively uncommon, and invariably there are other confounding variables associated with it. He would not concede there would be no effect at all (from the taser).

Professor Duflou's emphasis was:

*that the TASER does not only have potentially an effect on the heart but - a direct effect on the heart by affecting its heart rhythm, but certainly has an effect on the remainder of the body, which I believe could have a significant indirect effect on the heart, not at all unlike extreme stress and physical exercise.<sup>76</sup>*

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<sup>75</sup> T23-22

<sup>76</sup> T23-25

He considered, but rejected a respiratory arrest as causative of death, having considered Mr Galeano's emphysema, application of OC spray, and being held in a face down position. He said there was no evidence at autopsy of restraint asphyxia. Assuming though Mr Galeano experienced stress at being held face down, Professor Duflou stated that would produce an adrenergic reaction with release of adrenalin, nor-adrenalin and other adrenergic substances. (It is noted there was evidence Mr Galeano asked to be able to sit up). Professor Duflou again stated he disagreed with Professor Karch's suggestion Mr Galeano would not have continued to have an adrenergic reaction by this time. Professor Duflou's emphasis was on a stress response rather than a direct impact from any physical pressure as being the relevant factor in these circumstances. He also said there was no evidence of allergic tendency in Mr Galeano and no evidence to indicate laryngospasm reaction.

Describing the typical scenario of a person suffering from excited delirium, Professor Duflou said:

*essentially the typical story is one of a person who has pronounced delirium and excitement who appears to be almost always involved in a law enforcement situation although there are certainly situations which have caused me concern. For example, in psychiatric institutions where it is said there is a diagnosis of hyperthermia, in other words, a raised body temperature where the person, usually during restraint while there's an attempt at restraining the person that there is an apparent sudden cardiac arrest. And that cardiac arrest is resistant to resuscitation in the main.<sup>77</sup>*

From a pathologist's viewpoint the diagnosis is usually made after excluding other causes and reviewing the history. At autopsy there would usually be handcuffs restraint marks, the presence of psycho stimulant, irrational behaviour, hyperthermia, and sudden cardiac arrest. The rest of the autopsy is essentially negative. He said although he was aware there are some possible tests for analysis of brain tissue, this testing has not occurred in Sydney (and certainly not in Townsville).

Professor Duflou had some concerns with respect to the checklist referenced by Professor Williams and others. The existence of various symptoms, which when grouped together are identified as a syndrome, might also be individually explained by other factors. The appearance of delirium might be explained by irrational behaviour associated with high amphetamine use, or badly managed diabetes. There were other possible explanations for why Mr Galeano might have a fever (appendicitis, possible sepsis, diabetes). He conceded though delirium associated with diabetes is more often confusional than excited. There was not strong evidence of hyperthermia, but if so, then there were other possible explanations for this.

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<sup>77</sup> T23-31

Professor Duflou acknowledged it was difficult to distinguish the possible interaction or primacy of excited delirium over underlying cardiac conditions as the explanation for the death. And, he considered the application of the taser would add to the stress involved and he would therefore include it in the cause of death statement.

Of those who survive excited delirium, which was said to have a mortality rate between 8-10%, it is the presence in hospital at the time of excited delirium being diagnosed that is likely to reduce mortality, particularly if treated with tranquilising drugs.

Professor Duflou agreed there was evidence from other situations that a person would go into cardiac arrest at some period after they had completed exercise.

As to the final cause of death, Professor Duflou had considered his original conclusion. He could not be absolutely certain about a cause of death, but he was prepared to state a descriptive cause of death. He was certain there had been a sudden cardiac arrest. He would remove ventricular fibrillation from the descriptive narrative of cause of death after due consideration. The underlying cause was his heart disease and his amphetamine use, which are also probably linked. To this was added the delirium, which Professor Duflou viewed in the context of his interaction with other people, including physical force, electrical force, chemical force and his own actions.

Professor Duflou was pressed to explain an association between taser application and an effect of added burden on the heart. He responded with the release of lactate, causing acidosis, the titanic contractions of the muscle as well as creatine kinase and troponin levels. He also noted the combined additive impact of other factors as well as the particular impact under study of taser application by itself.

He was invited to respond to Dr Vilke's conclusion that exertional changes of exercise are more significant in their impact than those caused by taser exposure. Dr Vilke considered although there would be a change (drop) in pH after taser application, there would have been more impact had the officers reverted to physical efforts to restrain him.

There was robust exchange of views. Professor Duflou held to his view a taser deployment impacted on the entire body, beyond just an impact on the muscles between the two probes, citing particularly the effect of taser application being for the collapse of a person to the ground, which he did not consider could simply be explained as a pain response. Professor Duflou would not agree that delirium, of whatever origin, meant there was no experience of pain, and thus the stress associated with pain would be absent.

He said-



*What it is, is that people do not appear to respond to pain, which is quite different to there is no pain.*<sup>78</sup>

He was asked-

*Does that give you cause to reconsider excited delirium in the facts of this case?--No, not really. I mean, as I've said, I don't exclude at all the possibility that this (was) excited delirium as opposed to another reason for delirium.*

He did however move to agreeing that the delirious state, whatever its cause, could result in death alone possibly, and, as well a reasonable possibility that the heart disease on its own could have. He was resolute that both should remain in the explanation of Mr Galeano's death.

Excited delirium was described by Professor Duflou as a complex syndrome typically described as –

Sudden death in a person without obvious cause;  
Who, prior to death was involved in violent behaviour often well in excess of that normally expected;  
With erratic behaviour and paranoia often predominating;  
Who often is restrained in some way or other;  
Usually with the presence of stimulants in the blood (most commonly cocaine), followed by amphetamines and phencyclidine;  
Who is noted to be hyperthermic (ie having high body temperature).<sup>79</sup>

Mr Galeano's circumstances and behaviour fitted all of these except hyperthermia, which was not able to be established as his temperature was not taken by ambulance officers whose attention was directed to attempting his resuscitation. There was some evidence which might suggest he was feeling hot, as he was naked on what was described to be a cold night by north Queensland standards. As well, he kept returning to the shower. But as Professor Duflou pointed out, nakedness can also be seen as paradoxical behaviour in situations of hyperthermia.

Additional factors associated with the excited delirium syndrome have been formulated in the 'excited delirium checklist' which was referred to by Professor Williams in an attachment to his statutory declaration.<sup>80</sup>

The list has headings of-

- Emergency contact for assistance
- Law enforcement
- Capture, control and restraint of subject
- Emergency medical services contact and intervention
- Emergency Department
- Law enforcement / Forensic Investigation death investigation

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<sup>78</sup> T23-71

<sup>79</sup> Exhibit D7 page 15

<sup>80</sup> Exhibit A4 Authors Kroll, Wetli, Mash, Karch, Graham Ho.

## **-Pathologist- Medical Examiner Investigation**

*The notes to the list indicate- a syndrome is an aggregate of signs and symptoms that define a medical condition. Not all persons with a certain syndrome have all the same signs and symptoms. Not all the cases of a syndrome result from the same cause.....Persons with excited delirium syndrome will have a combination of some of the signs and symptoms...The cause of the excited delirium syndrome in any individual may be due to one or more of a number of conditions. The most common conditions are mental illness and illegal stimulant abuse (especially cocaine and methamphetamine.)*

What is of interest is the list includes behaviours, apparent mental states, (mania, paranoia, anxiety, disorientation, hallucination), impressions of a person's experience of or response to pain, examples of verbal statements indicative of fear of impending death, and also incoherent or disorganised speech. A brief quiet period before collapse is included before the list continues with specific medical observations. In the event the person presents to an emergency medical service the observation has been of a heart rhythm either of pulseless electrical activity or asystole. High body temperature, acidosis and rhabdomyolysis following on from resuscitation is included. Also included in the list is a history of chronic stimulant abuse or mental illness, of violence or drug related arrests, mental health histories and treatment and drug rehabilitation interventions. Damage to shiny objects such as glass, mirrors and lights was also included. Occasionally generalised vandalism was documented.

Specific findings at autopsy were very few and depended on whether highly specialised samples and testing were performed. The list included positive mash test (central nervous system biomarkers) test for dopamine transporter assay. Positive brain and hair toxicology screen for chronic stimulant abuse was also recorded, noting post incident drug levels may be low to negative.

### **Professor Steven Karch<sup>81</sup>**

Professor Steven Karch practises out of Berkeley, California. He holds fellowship qualifications in forensic medicine and forensic science and has worked as an assistant medical examiner in San Francisco, particularly in the area of drug related deaths.

Professor Karch provided expert testimony, particularly based on experience of toxic effects of drugs on the heart and investigation of drug related deaths. His published text<sup>82</sup> includes a chapter on methamphetamine deaths and deaths due to excited delirium syndrome. He also informed the court in his prepared statement he had previously given sworn testimony that taser use had contributory cause of death and in other cases where this was not the case.

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<sup>81</sup> Exhibit D12

<sup>82</sup> Karch's Pathology of Drug Abuse

In reviewing the available material and records, Professor Karch noted Mr Galeano's heart was enlarged and even a modest degree of enlargement is associated with increased risk for sudden cardiac death. He also referred to evidence that amphetamine use can cause heart enlargement. He noted the presence of coronary artery disease. He expressed the opinion the anatomic alteration was probably lethal, given the larger the heart, the larger requirement for blood supply, which was impaired due to coronary artery disease. Interestingly, he later noted – *No arbitrary weight cut off has ever been established.*<sup>83</sup>

He noted the examination of the heart did not include measurement or comment regarding the dimensions of the walls of the heart - something also commented upon by Professor Dufflou. He also noted there was an association between hypertrophic cardiomyopathy and mitral valve disease, but again, there was no further detail in the autopsy report pertaining to mitral valve abnormality.

Professor Karch was of the view that increased autonomic stimulation produced by taser application was minimal according to studies he referred to, and far less than seen during exercise.<sup>84</sup>

The most contentious opinion expressed by Professor Karch was his assessment that Mr Galeano was suffering from hypertrophic cardiomyopathy. This was based on his review of the microscopic slides which displayed disarray in his interpretation.

In reaching this conclusion Professor Karch referred to the size of the heart, marked interstitial fibrosis, myocardial disarray, and marked perivascular.

Professor Karch agreed with other expert evidence before the inquest that oleoresin capsicum (OC) was not relevant to the cause of Mr Galeano's death, there being no expert peer reviewed literature to indicate the application could result in death.

In rejecting the possibility that taser application could have directly caused Mr Galeano's death, Professor Karch leaves open the possibility of such a result in situations where 'electrical capture' can occur where there is contact with a pacemaker or defibrillator wire, and also if a person is shot with a taser in the sternum where there have been instances of ventricular fibrillation. Others exposed to a taser in the same area did not develop this abnormal rhythm. This was not pertinent to Mr Galeano's exposure to the taser. When assessed by ambulance officers at the scene, Mr Galeano was found to be in asystole.

Interestingly, Professor Karch rejected the relevance of studies relating to taser application on swine, as too dissimilar to human physiology to be of any

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<sup>83</sup> Exhibit D12, page 7

<sup>84</sup> Exhibit D12, referring to paper titled "Acidosis and catecholamines evaluation following simulated law enforcement use of force encounters."-Ho, Dawes, Nelson, Ryan, Overton, et al

value. He distinguished pigs from humans where 'the heart would have to be located in the path of current flow for the conduction system ever to be affected'.<sup>85</sup>

Professor Karch's interpretation of the wounds found at autopsy was- *three dart strikes; one on the left chest, just below the left clavicle. The other two darts entered on the left flank.* He concluded it was inconceivable therefore for any current (even presuming it could be conducted through air in the chest, which was unlikely) would have followed a path that would have come close to the heart, and therefore the heart would never become part of the circuit.

In reviewing Dr Varghese's reports, Professor Karch referred to distinct neurochemical findings in people dying from excited delirium. There were no samples and thus no evidence relevant to Mr Galeano in this category. Professor Karch expressed the view the disorder, once established, is usually fatal, with or without the police or taser encounter. Professor Karch appears to consider himself expert to refute Dr Varghese's conclusion that there was no evidence that Mr Galeano suffered from any psychiatric illness such as schizophrenia, bipolar, or other psychosis. Professor Karch expressed the view Mr Galeano was suffering from a toxic, drug induced psychosis, one of the most common chronic and debilitating consequences of chronic methamphetamine abuse.

On reviewing Dr Varghese's material I consider Professor Karch has misrepresented Dr Varghese's view. Dr Varghese certainly acknowledges bizarre behaviour consistent with amphetamine psychosis. Dr Varghese went on to say- *The appropriate diagnosis on the information available at the time is amphetamine intoxication currently in remission.*<sup>86</sup> He was then referring to Mr Galeano at time of his assessment by Dr Deshmukh at the Townsville Mental Health Unit.

Professor Karch disagrees with Dr Varghese's conclusions that Mr Galeano was not suffering any psychiatric illness requiring specific treatment. Professor Karch said Dr Varghese failed to make the connection with amphetamine induced psychosis, but Professor Karch appears to have ignored or overlooked Dr Varghese then going on in his later paragraphs under conclusions in which he referred to amphetamine toxicity producing marked behavioural disturbances, appropriately treated with midazolam and diazepam. He referred to Mr Galeano settling after sedation and falling level of stimulant indicating he was in remission from toxicity. He then went on to note the return of grossly disturbed behaviour indicative of amphetamine toxicity later on 11 June. He considered this more likely to relate to further ingestion of stimulant rather than a relapse. There was post mortem evidence of stimulant suggesting further ingestion, whereas Professor Karch took the view it was methamphetamine illness which recurs. I consider Dr

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<sup>85</sup> Odell, The Human Body as an Electrical Circuit.

<sup>86</sup> Exhibit D2 page 4

Varghese's view should be preferred to Professor Karch's view with respect to the existence or not of a psychiatric illness.

Professor Karch agreed with Professor Duflou that enlarged heart could lead to death, but disagreed with Professor Duflou that the degree of enlargement was not sufficient to establish it as a cause of death here. I note there were other experts who also noted the enlarged heart but did not consider this was the explanation of death. It is acknowledged, as stated by Professor Karch, that there is no definitive measurement which is critical.

Professor Karch's understanding of the evidence excluded the possibility of restrain asphyxia as a causative or contributory to death.

As with Professor Duflou and Professor Karch, I express a difficulty in understanding precisely what excited delirium syndrome is. Professor Duflou raises the issue there is no physical evidence available, but Professor Karch states it is possible to obtain such if particular testing of neurological samples are made.<sup>87</sup> This was unknown to the pathologist in this matter and no such samples were taken. It would be helpful in the future if such sampling could be considered and investigation of appropriate tests be pursued. Without this we are left with an odd list of varied symptoms and behaviours which together are purported to demonstrate the existence of excited delirium.

There was common ground between Professor Karch and Professor Duflou that all of the deceased's behavioural changes could have been due to amphetamine toxicity – the distinction between amphetamine toxicity and excited delirium has little significance.

Professor Karch agreed with Professor Duflou that there is very little evidence that capsicum spray causes fatality, except perhaps in gravely ill asthmatics.

Professor Ansford and Professor Duflou agree with respect to interstitial fibrosis and the presence of perivascular being irrelevant to the cause of death, whereas Professor Karch considered this pertinent. Professor Karch says these features are caused by methamphetamine abuse and such changes can cause death.

Professor Karch dismissed Professor Duflou's raising as mere unproven hypothesis that Mr Galeano could have been triggered into an irregular rhythm of the heart (ventricular fibrillation) due to the taser. Professor Karch says the heart was not within the circuit of the taser barbs and this it was impossible and there had been no proven instance of this hypothesis.

With respect to Professor Williams, Professor Karch agrees Mr Galeano suffered methamphetamine toxicity.

Professor Karch rejected excited delirium as follows:

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<sup>87</sup> Mash, Duque, Pablo, Qin, Adi, Hearn et al- Brain biomarkers for identifying excited delirium as a cause of sudden death.

- No testing was done to confirm or deny its presence
- Methamphetamine can produce recurrent psychosis, even in the absence of excited delirium (and even in long periods of abstinence in Professor Karch's experience).

Therefore he considers excited delirium has not been established.

Professor Karch concluded that *methamphetamine related heart disease superimposed on pre-existing congenital heart disease was the cause of death, and that Taser application had nothing to do with the demise of Mr Galeano.*<sup>88</sup> He considered the toxicology tests showing methamphetamine were slightly lower than other cases he had reviewed but did not consider this especially significant.

I consider an alternative conclusion can be reached that there is evidence of both excited delirium and also of amphetamine toxicity impacting on a poor heart. There is an overlap of behaviours and symptoms that is consistent with both conclusions.

### **Dr Dhanunjaya Lakkireddy<sup>89</sup>**

Dr Lakkireddy is an associate professor of medicine from University of Kansas. He is an electro-physiologist and cardiologist who has published articles related to conducted electricity weapons.

In common with other witnesses, he rejected the possibility of a cardiac failure due directly to arrhythmia caused by the taser application. He considered it was significant that Mr Galeano was in asystole when examined by the ambulance officers and that he had been observed to be cyanotic prior to this. These observations were at some interval of time after the application of the taser, and Mr Galeano had resisted the police after the last application of the taser, in his understanding.

He considered the theoretical possibility the taser might have caused an abnormal heart rhythm of slow ventricular tachycardia that then degenerated to asystole. However this progression would take about thirty minutes, not 5-10 minutes.

For the possibility of heart to be 'entrained', the taser barbs must be in a particular alignment through the axis of the heart, which runs from just below the sternal notch, to the tip of the ventricles. This was not applicable in Mr Galeano's case.

He agreed with other reviewing doctors Mr Galeano was demonstrating features of excited delirium which had caused his death. He acknowledged there was little to distinguish amphetamine induced delirium and excited delirium,<sup>90</sup> stating his opinion was his 'best bet.' Mr Galeano's sudden death was itself supportive of a diagnosis of excited delirium, particularly in the

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<sup>88</sup> Exhibit D12, page 1

<sup>89</sup> Exhibit D13

<sup>90</sup> T25-13

context of the various behaviours demonstrated by Mr Galeano and identified with this syndrome.

Dr Lakkireddy considered Mr Galeano's physical exertion and interaction with the police would have caused physiological changes leading to pulseless electrical activity of the heart and then to an asystole heart. He did not consider taser application was particularly relevant. In his evidence he initially agreed with Professor Karch's 'flat to the floor' hypothesis (meaning Mr Galeano's heart had reached a stage that no further reaction would occur after a certain point). However he conceded subsequent interactions would have led to an unknown increase in adrenergic stimulation impacting further on the heart.<sup>91</sup> The cardiac event was caused by an accumulation of all the factors that occurred that evening, including *underlying physical condition, underlying mental condition, the drugs on board, and the scuffle with the police and everything else.*<sup>92</sup>

As with other witnesses, he considered the particular amphetamine levels were not particularly high, especially for a person who was tolerant. However amphetamine use definitely raised the risk of cardiac failure as short term effect and as a result of changes to the heart over long term use.

Noting Dr Lakkireddy is a cardiologist, he also agreed with the overwhelming opinion Mr Galeano's existing heart condition was such he could die at any time without other aggravating factors. As with Professor Duflou, he did not consider there was evidence of hypertrophic cardiomyopathy. His review of the slides considered by Professor Karch concluded that the anatomical changes in the heart were due to amphetamine use. It was quite apparent there was underlying severe coronary atherosclerosis and a significantly enlarged heart (cardiac hypertrophy).<sup>93</sup>

Dr Lakkireddy's review noted the cumulative effects of a number of factors - acute stress before and during Mr Galeano's struggle with police and methamphetamine use with exhaustion. Together this would lead to severe systemic lactic acidosis which would cause a at risk heart to develop an asystole cardiac arrest.<sup>94</sup>

He stated the application of conducted electricity weapons produces slightly higher lactate levels and slightly lower pH levels which are similar to the effects of exertion.<sup>95</sup> He said experiments quantified this impact as quite small compared with the effects of exercise exertion. As previously referred to, he did agree with the notion of plateau reaction to impacts on the heart and therefore it being unlikely the taser would add an impact. But he said significant muscle contraction (as caused by the taser) would increase demand on the heart. He agreed Mr Galeano's physiological status would be worse after taser application, but that the taser would not have been a

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<sup>91</sup> T25-90

<sup>92</sup> T25-73

<sup>93</sup> T25- 24

<sup>94</sup> T D13, p 13

<sup>95</sup> D13, p18

primary cause of death.<sup>96</sup> There were observable and calculable changes in physiology where a person has died after extreme agitation. There was also the interplay of these effects on a heart damaged by long term use of amphetamines which is then less capable of reacting to adrenergic substances released in the context of exertion.

Dr Lakkireddy dismissed the role of coronary atherosclerosis, blood loss, elevated ketone levels, low grade appendicitis and mitral valve disease as causative conditions in his death.

### **Dr Donald Dawes<sup>97</sup>**

Dr Dawes assisted the inquest with his varied expertise. He is an experienced emergency physician working at the Lompoc District Hospital in California, who originally qualified in electrical engineering. He also obtained Certificate II qualifications in law enforcement from the Ventura County Police and Sheriff's Reserve, and continues to work on the beat as a law enforcement officer. Dr Dawes is also a medical consultant to Taser International since June 2005.

He distinguished excited delirium from acute drug intoxication syndromes but stated excited delirium can have its origins in either chronic illicit drug use or chronic psychiatric illness. In his opinion, Mr Galeano's presentation was very consistent with excited delirium from either acute or chronic amphetamine abuse. It is noted this view appears to be consistent with Professor Duflou's approach of not finding it necessary or possible to distinguish between the two descriptors of the condition.<sup>98</sup>

It was also interesting that he described the list of behaviours associated with the syndrome as a continuum, meaning not all characteristics need to be demonstrated for the syndrome to exist.

In particular, I note he expressed the view the sedation administered on 10<sup>th</sup> of June may have prevented the condition leading to his death at that time.<sup>99</sup> I consider this of particular importance given Dr Dawes is a practising emergency physician as distinct from a pathologist. He was able to inform the court of physiological abnormalities arising when a person presents with excited delirium. Given Mr Galeano's underlying cardiac condition he was at risk of death if he was additionally in a state of excited delirium, and could have died from exertion alone.

As an emergency physician he had observed a short period of quietus prior to ensuing death in other patients.

Dr Dawes was also able to inform the court of research work about restraint deaths involving the prone position. It is work I would agree our police force and mental health professionals may well wish to keep themselves informed

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<sup>96</sup> T25-74

<sup>97</sup> Exhibit D14.1 and transcript, pages 22 41 – 22-43

<sup>98</sup> D14, p6, and 19-20 and T 22-44

<sup>99</sup> D 14, p7, and T 22-92



of, but is not directly relevant here. The risk identified is of compression of the inferior venous cava. He did not consider the separate positional asphyxia arose in the facts of the situation being reviewed.

Dr Dawes discounted taser application being directly causative of death having regard to the position of the probes and a review of literature. With Dr Lakkireddy he agreed there were metabolic changes caused by taser application, but these were likely to be less than the impact of physical exertion. He referred to studies showing taser application could cause stress and the release of catecholamines (adrenaline like substances) but he considered this would be a lesser impact than caused by physical exertion involved in a physical restraint. It must be said at this point Mr Galeano was subjected to both.

Dr Dawes also agreed with the likelihood of a 'plateau' effect from the various stressors impacting upon Mr Galeano. Although Dr Dawes suggested the possibility of laryngospasm arising after oleoresin pepper spray, I discount this due to the lack of evidence of this at autopsy.

Dr Dawes' conclusion was Mr Galeano died due to excited delirium due to acute or chronic amphetamine use in the context of acute cardiac conditions. He considered it impossible to separate out contributions from increased agitation due to police presence, increased stress and exertion from restraint and other possible restraint-related mechanisms (such as IVC compression). Dr Dawes concluded that taser exposure was, in this case, unlikely to have caused a fatal arrhythmia. Dr Dawes thought the use of the taser was unlikely to be worse than other forms of restraint and control methods as an indirect contributor to the death. It is of course speculative to consider whether the outcome would have been any different had other approaches or actions been taken.

### **Dr Gary Vilke<sup>100</sup>**

Dr Vilke is an experienced emergency physician working at University of California San Diego Campus as well as teaching. He is the Medical Director at American Heart Association Training Centre at UCSD Centre for Resuscitation Science. His research work includes the effect of electronic control devices including tasers on the human body. Although retained by the law firm representing Taser International in this inquiry, Dr Vilke has never been retained by or funded by that company in his professional medical work and research.<sup>101</sup>

Dr Vilke rejected the idea that the application of the taser device could cause cardiac arrest or death in humans, and specifically in the case of Mr Galeano. He rejected any proposition that Mr Galeano's death was caused or contributed to by his being restrained and positioned on his stomach. Dr Vilke also rejected that any weight placed on Mr Galeano's back by Senior Constable Myles and Constable Cross had caused or contributed to Mr

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<sup>100</sup> Exhibit D15

<sup>101</sup> T 26-3

Galeano's death. Dr Vilke took a similar view concerning the application of OC Spray by Constable Cross.

In Dr Vilke's opinion, Mr Galeano died of excited delirium secondary to methamphetamine use. Dr Vilke's observations reflect the approach of Professor Duflou and other witnesses on the difficulty of classifying the excited state. Dr Vilke concluded that an enlarged heart and coronary vascular disease were also contributing factors to Mr Galeano's death.

Dr Vilke stated there was no peer-reviewed published scientific or medical literature which concluded that Taser ECDs cause ventricular fibrillation or cardiac dysrhythmias in humans. He noted that more than 1.19 million volunteer subjects had undergone taser activations and none had developed ventricular fibrillation or died. In Mr Galeano case, the probes were not located near his heart and certainly were not located in a trans-cardiac vector. Dr Vilke also noted Mr Galeano's presentation to ambulance officers with an asystole heart. Dr Vilke also noted the significant period of time that elapsed between the last taser application and Mr Galeano's collapsing. All of these factors were relied upon by Dr Vilke to conclude that the taser applications did not cause Mr Galeano to suffer cardiac failure and die.

He referred to research in which he and others were involved. Muscle activity from a taser application has been shown to increase lactic acid levels and creatine kinase levels over time. Dr Vilke compared these effects to a basic seizure. However, Dr Vilke also noted that the research indicated that these impacts on markers of stress were not nearly as great as similar changes brought about by other exertional activities. The research included comparisons with a 150 metre sprint and wall hurdle and 45 seconds heavy bag exercise.

When considering the possibility of restraint asphyxia, he noted that Mr Galeano talked and moved while in this position. He referred to 23,000 applications of oleoresin pepper spray without a fatality and the fact he had shown no reaction to the spray.

As with other medical experts who reviewed the information about Mr Galeano, he considered he was 'A ticking time bomb at risk to go into cardiac arrest whether or not police were involved'.<sup>102</sup> He agreed he was demonstrating signs and symptoms of excited delirium syndrome, which in his experience was most commonly caused by stimulant drugs such as cocaine, methamphetamine and phencyclidine. Dr Vilke indicated that another cause of the syndrome was long term schizophrenia. The syndrome is 'thought by many' to be caused by the body's loss of its ability to control its auto-regulatory function such that the chaos in the brain results in delusions and delirium. It places the heart at risk because of increased stress on the heart by the over-excited, over-stimulated, agitated state.

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<sup>102</sup> D 15, p 21

Dr Vilke also described, as frequently happening, the pattern observed in the present case, where the patient appears to have calmed and is then found to be in cardiac arrest. He agreed with Professor Williams that the cause of Mr Galeano's state was the excited delirium. Dr Vilke stated that neither the restraining process nor the use of the taser had any physiologic impact on the death of Mr Galeano.

### *Discussion and Consideration of Evidence relating to Cause and Contribution to Death*

The consensus from the reviewing expert doctors was Mr Galeano had a significantly serious underlying heart condition (severe coronary atherosclerosis) sufficient to have caused his death at any time. The heart was also large in size and showing signs of cardiomyopathy which added to the overall vulnerability of the heart. I am persuaded particularly by Professor Duflou, Professor Ansford and Dr Lakkireddy that the evidence was unconvincing that Mr Galeano in fact suffered from a particular type of cardiomyopathy, namely hypertrophic cardiomyopathy. Professor Karch's explanation was not persuasive against the alternative interpretations as previously discussed.

Despite these differences in the specific nature of cardiac disease, the heart was in such an underlying compromised condition, it was agreed by all that Mr Galeano could die at any time and exertion would be a significant risk and could trigger a fatal cardiac event.

Added to this, Mr Galeano had a level of amphetamine and methamphetamine in his blood which of itself was toxic, although the overall impression from the evidence suggests Mr Galeano was a user of amphetamine and the drug alone may not have therefore caused his death given his presumed tolerance. However, in Professor Karch's experience, methamphetamine related heart disease superimposed on the pre-existing heart disease was the cause of death. Other opinions considered the overall context of events leading to the cardiac arrest as contributory in various degrees.

Prior to the arrival of police Mr Galeano was involved in considerable physical exertion over several hours. During this period he demonstrated most of the indicia said to be associated with excited delirium according to the known literature. He was naked and barefoot. By the time the police arrived he had sustained cuts associated with the breaking of several windows. It is probable the toilet bowl was also broken by Mr Galeano prior to the police arrival. He was highly agitated, incoherently yelling out, unresponsive to close friends known to him, and repeatedly chanting words indicating obsessive concentration on his own death and also verbal threats of death to others. He was not rational. The police were involved in trying to contain him in the dwelling and ultimately to restrain him. This interaction involved two officers shouting at him (so as to be heard), then multiple applications of the taser, followed by a one second spray to the eyes of OC capsicum spray before further application of the taser.

The taser was applied over a seven minute period during this interaction. While it was activated 28 times, the best estimate of effective completion of a circuit impacting upon Mr Galeano is within a range of between 40 and 60 seconds in total. The lengths of time of each application vary between five and 16 seconds.

Physical attempts to restrain him face down on the floor to apply handcuffs behind his back ensued. One cuff was applied and he was dragged a short distance from the entrance of the bathroom into the adjacent living area. He was actively resisting the slightly built 63kg female officer and the larger built 120kg male officer. Together they achieved the securing of the handcuffs whilst holding him in position face down. There was evidence of pressure to his legs and arms and some pressure in the region of his shoulder blade during this process. His resistance and verbalisation continued, then lessened. Another more senior officer arrived. He briefly assessed the situation and shorts were found and put on Mr Galeano. His friend who was in the room (it was her home) then noticed a change in colour in his face. She described it as going black. His pulse was checked and found to be absent. He was not breathing. This sequence of events took about nine minutes from 0306 until 0315. There was then a short period of time before his handcuffs were removed and he was rolled over and chest compressions commenced. No mouth to mouth resuscitation was given prior to ambulance arrival approximately four minutes later.

Upon their arrival, ambulance officers assessed his condition noting he was in asystole before attempting resuscitation for a short period. He was declared deceased.

After consideration of the varying opinions whether any of the events which occurred after the police arrival caused or contributed to Mr Galeano's death it is noted as follows.

Although Mr Galeano was finally physically restrained by the two officers in a face down handcuffed position with some pressure exerted on his limbs and back of the shoulder, the expert opinion was generally in agreement that this sequence, duration and extent of force was not such to induce positional asphyxia. There was no evidence from the autopsy to suggest positional asphyxia.

The consensus of expert evidence was that Mr Galeano's heart was not 'entrained' by application of the taser. The evidence was the application of the taser did not directly cause an impact or disruption of the rhythm of his heart. I conclude there was no evidence on which it could be established that the deployment of the taser directly caused Mr Galeano's death by electrical disruption of the heart's rhythm.

However there was evidence, which I accept, that effective application of the taser causes muscle incapacitation, pain, and tetanic muscle contraction, and adrenergic response. I am not persuaded that Mr Galeano's continued resistance meant that he was impervious to pain, or that medical evidence is

emphatic on this issue. I do so on the basis of hearing the tapes played which clearly record what could only have been Mr Galeano crying out. I consider it is within normal human experience to conclude that this was likely to be evidence of an expression of pain to some stimuli, irrespective of the impact of the taser on his behaviour at the time. Professor Duflou expressed this view when he said, *What it is, is people do not appear to respond to pain, which is quite different to there is no pain.*<sup>103</sup>

The evidence from all sources was consistent that muscle contraction caused by effective taser application causes an adrenergic response similar to the impact of exertion upon the heart. The degree of this impact was moot. Testing upon humans after repeated taser application showed an increase in adrenergic response but only to a minor extent.

There was a contrary opinion expressed by Professor Karch that Mr Galeano had by this stage effectively reached a point where his system no longer had remaining capacity to respond in such a way as to cause an adrenergic response. Dr Vilke also supported this view. The adrenergic response releases adrenalin and causes an impact on the 'work' required of the heart. Professor Karch hypothesised Mr Galeano had passed a point where this was occurring. After considering other evidence, which I have detailed, refuting this idea I do not consider the 'plateau' effect to be more than a working hypothesis.

Therefore it is considered that tetanic muscle contraction caused by the application of the taser has been demonstrated in controlled experimental situations to trigger an adrenergic response releasing adrenaline. This stimulates the heart. I cannot see any reason why this impact on the heart should be excluded as a contributory factor in a similar way to the impact of exertion, both of which had ceased prior to the discovery he was no longer breathing.

Additionally, Mr Galeano had early appendicitis, mitral valve prolapse, emphysema and poorly controlled diabetes.

There remains some question relating to excited delirium because it is a syndrome described by a collection of observations of behaviours as well as medical symptoms. The biological markers said to be identifiable in brain specimens of others who have died of the syndrome were not tested for or identified in this case. The testing was unknown at the time of the autopsy. Elevated temperature was not properly established, except by inference from the circumstance of his nakedness, and repeated showering on a cool evening.<sup>104</sup> By the time the ambulance officers arrived, their documentation indicated his skin felt cool.

However, I accept there was evidence of the preponderance of behaviours and symptoms previously identified in matters classified as excited delirium.

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<sup>103</sup> T23-71

<sup>104</sup> 8.7degree Celsius minimum overnight 12 July 2009, Exhi8bit L4

The evidence was equally compelling that Mr Galeano was suffering either a recurrence of amphetamine toxicity or another episode of amphetamine toxicity due to further ingestion of methamphetamine. This led to the same list of behaviours and bizarre behaviour identified by Dr Varghese and others as amphetamine induced psychosis.

Both excited delirium and amphetamine induced psychosis can lead to death, particularly in the circumstances of Mr Galeano's pre-existing cardiac condition.

It is the severity of his underlying condition and the common opinion that he could have died at any time, but that he was at added risk in the event of exertion, which leads to inclusion of the taser application as part of the underlying background of events contributing to his death. It would be impossible not to include Mr Galeano's exertion in the course of the evening as a contributory factor in his death. As the evidence at least establishes that taser application causes an adrenergic response in the muscles which can be quantitated in lactate changes, the taser application must also be included as part of the contributory factors leading to the final cardiac event resulting in Mr Galeano's death.

## **Coroner's findings**

It is concluded in accordance with section 45 of the *Coroners Act 2003* that:

- (a) The identity of the deceased is Antonio Carmelo Galeano who was born on 6 August 1969
- (b) Mr Galeano died in the custody of police while restrained after a protracted struggle and multiple applications of a Taser device
- (c) He died on 12 June 2009
- (d) He died at Green Street, Brandon in Queensland
- (e) The cause of Mr Galeano's death was excited delirium, probably caused by amphetamine toxicity induced psychosis. His death was contributed to by adrenergic impact upon the heart caused during exertion and taser application where the heart was severely affected by coronary atherosclerosis, anatomical changes due to amphetamine use, and cardiomyopathy. I note specifically there is no evidence the application of the taser directly caused Mr Galeano's death. There is no evidence the application of oleoresin capicum spray caused or contributed to Mr Galeano's death.

*Consideration of reporting offences or misconduct pursuant to s.48 of the Coroners Act 2003*

*48 Reporting offences or misconduct*

- (2) *If, from information obtained while investigating a death, a coroner reasonably suspects a person has committed an offence, the coroner must give the information to—*
- (a) for an indictable offence—the director of public prosecutions; or*
  - (b) for any other offence—the chief executive of the department in which the legislation creating the offence is administered.*
- (3) *A coroner may give information about official misconduct or police misconduct under the Crime and Misconduct Act 2001 to the Crime and Misconduct Commission.)*
- (4) *A coroner may give information about a person's conduct in a profession or trade, obtained while investigating a death, to a disciplinary body for the person's profession or trade if the coroner reasonably believes the information might cause the body to inquire into, or take steps in relation to, the conduct.*

It has been submitted by Mr Galeano's family that the coroner must give information to the Director of Public Prosecutions with respect to the actions of Senior Constable Myles in his use of the taser as excessive, whether deliberate or reckless. Counsel for Ms Wynne submitted there should be referral for disciplinary action due to breaches of QPS Policy.

The findings of fact clearly establish the taser was activated 28 times but there is no clarity around the number of times the device was consciously deployed. I consider the initial decision to use the taser was against the guidelines due to the elevated position of Mr Galeano and therefore likely to contribute to a risk of injury. This initial decision caused further problems for Senior Constable Myles, particularly in restricting his physical involvement in assisting his probationary partner to physically restrain and handcuff Mr Galeano. However, I consider the circumstances in which this decision was made should be taken into account. Despite knowing Mr Galeano's past and recent history, the officers were totally unprepared for the severity of his psychotic furore induced by amphetamines. The decision making can be considered with the benefit of hindsight to be hasty but to a large extent was forced by the circumstances. The officers were faced with an extremely agitated and irrational man who was unresponsive to any communication from his friends or police officers. It is apt to consider Professor Varghese's conclusions at this point when considering the situation faced by the police officers and their decision making:

*Mr Galeano's mental state is best described as a 'psychotic furore'. It is usually the case that an amphetamine induced psychosis brings about a situation resembling schizophrenia. The clinical picture is one of clear consciousness, meaning that there is no clouding of consciousness or 'delirium' although a dream-like state is often present. However if a large amount of amphetamine has been consumed then superimposed on the psychosis, there is sometimes*

*a delirium meaning a state of clouding. This results in a furore by which I mean a state of intense psychotic disturbance and grossly disturbed motor behaviour.*

*In such a state Mr Galeano would not have been amenable to reasoning or even threats. It is unlikely he would have been taking in anything that was said to him. His thinking and perception would have been totally consumed with psychotic phenomena and the delirium. Such a situation constitutes a psychiatric emergency given the risk to others and indeed the individual.*

*If such a situation was to occur in a hospital setting, it would be dealt with by employing overwhelming force with several nurses and security guards using protective gear including mattresses in order to subdue the patient in as safe a manner as possible and with an aim to given intravenous or intra-muscular injection.*

*Obviously the above procedure requires hospitalisation and the presence of medical and appropriately trained nursing staff.*

*I find it difficult to advise how the Police could have responded in a small country town like Ayr with limited resources. I note that policies and procedures have been developed by consultation with mental health practitioners and the Police with respect to responding to psychotic individuals, but these policies and procedures are unlikely to be applicable in such a situation as presented by Mr Galeano.*

In this context it must be recognised it was imperative that police brought Mr Galeano under control before any other assistance could be sought. Senior Constable Myles had been recently trained to use the taser and he was instructed and expected the taser would achieve the goal when used against drug affected and highly motivated individuals.<sup>105</sup> Senior Constable Myles made the decision he could not wait for further back up because of the risk to Mr Galeano, and to others should Mr Galeano escape the confines of the bathroom. Senior Constable Myles was accompanied by a slightly built probationary officer and it was quickly clear she needed help. Hindsight suggests he could have moved in physically himself at an earlier point but it was a very confined cluttered space with risks. Mr Galeano was continuing his threats to the police officers and himself and there was a real risk he could access a possible weapon including broken porcelain and glass. In these circumstances the evidence justifies use of force alternatives to achieve the outcome of restraining Mr Galeano. It cannot be determined how many of the taser applications were deliberate and how many accidental. I have accepted the probability that some activations were unconsciously made. He then recognised he had to participate in a physical way to assist in handcuffing Mr Galeano.

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<sup>105</sup> T16-8



Considering all of this information I do not consider there is a proper basis for referral to the DPP or for disciplinary consideration.

With respect to Senior Sergeant Oates, I do not consider there is reliable evidence to substantiate the suggestion he did not provide first aid. I have remarked elsewhere about problems with forensic evidence consideration which failed to consider, retain, examine, photograph or audit the contents of the first aid box. I have accept he provided compressions but did not provide mouth to mouth resuscitation and has provided an explanation.

Within a very short time of being awoken from sleep and attending the scene he was thrust into the role of providing first aid to Mr Galeano and then being faced with the awful realisation Mr Galeano had died. He was the senior officer at the scene for a considerable time before a non-commissioned senior officer not involved in the incident could attend. Senior Sergeant Oates was also the officer directly in charge of the two police officers who were involved in the call out. His actions must be viewed in this context. There was little guidance provided via police communications over the radio to remind him what was required to preserve the scene and ensure there was no contamination of witness accounts or collusion. His decision to leave the scene was misguided kindness and should not be harshly judged. I do not consider his actions or inactions require consideration of disciplinary action in all the circumstances.

## **CORONIAL COMMENTS**

Section 46 of the *Coroners Act 2003* provides that

- (1) A coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to—
  - (a) public health or safety; or
  - (b) the administration of justice; or
  - (c) ways to prevent deaths from happening in similar circumstances in the future.

I acknowledge the assistance of Counsel Assisting and other representatives before the inquest in formulating these comments.

### **Recommendation 1: Forensic pathology**

**I commence with a comment arising from the difficulty in determining excited delirium as a cause of death. The inquest heard evidence there is a neurological tissue test known as a positive Mash test available in the United States of America. Inquiry should be made to see if such a test is commonly accepted by forensic pathologists to be determinative or probative of a diagnosis of excited delirium, and if so, I suggest resources be made available to enable the test to be performed where it is considered there is prima facie evidence of reasonable possibility of excited delirium. Investigating police, coroners and forensic police would be assisted by advice from forensic pathologists on this matter.**

## **Recommendation 2: Variation in Queensland Police time records**

**QPS should review the evidence on variation of timekeeping within their organisation, audit the various systems and consider standardisation and monitoring in accordance with a recognised international time keeping standard.**

## **Recommendation 3: Strategies for minimising mortality rate of persons displaying symptoms of excited delirium syndrome**

Dr Dawes provided some guidance about the mortality of the condition of excited delirium.<sup>106</sup> Of those who survive excited delirium, which was said to have a mortality rate between 8-10%, it is the presence in hospital at the time of excited delirium being diagnosed that is likely to reduce mortality, particularly if treated with tranquilising drugs.

Sadly the reality is these episodes occur in our community as often as six times per week according to the Queensland Director of Ambulance Services, Dr Rashford. Restraint is required before ambulance officers can provide treatment, particularly sedation. He said the restraint requires five people to safely achieve control and it takes about 15 minutes to set up required equipment to safely administer sedation with the assistance of police in the field. Only highly trained paramedics are skilled to administer sedation in the field but they could not do so until police had secured the scene and controlled the patient. He advised there were fewer trained specialist paramedics in regional and remote areas. In these situations the person needed to be quickly restrained and transported immediately to the nearest hospital.

Evidence provided to the inquest from international experts in the emergency medicine field supports this approach (Doctors Dawes, Karch, Vilke et al). The common theme was to reduce the period of struggle and bring the agitated person under control as quickly as possible. This required special training. Police should be alert to the appearance or onset of a state of exhaustion in the agitated person as a sign of particular danger for their well being.

I add that training should also include an awareness that the focus is on managing and responding to a high medical risk to the person in an agitated state and their need for urgent medical attention. Whether the episode arises against a background of drug use or psychiatric illness or of unknown background is irrelevant at the time. The incident should be responded to initially as a medical emergency.

I note the response, management and treatment received by Mr Galeano on the 10 June 2009 by the police and the medical staff at Ayr Hospital was in accordance with this suggested practice and provided Mr Galeano all necessary medical care.

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<sup>106</sup> Reference paper by Stratton and others American Emergency Medicine 2001.21.187-191

A review should be conducted by the QAS and the QPS to ensure that joint protocols and training of officers fully deal with the cooperation required to deal with and treat severely disturbed individuals involved in anti-social behaviour showing apparent agitation. This review should ensure:

- the first response should be focused on safely providing urgent medical attention as a first priority
- police are trained and aware of the need to involve QAS officers as early as possible in dealing with such individuals
- medical input should inform the police approach how best to achieve a rapid take down with out escalation of the struggle
- adequate numbers of responding trained officers should be resourced in accordance with medical advice
- training should address the need to transport restrained individuals to hospital as quickly as possible after restraint is achieved.

#### **Recommendation 4: The Thresholds for Taser Use and Multiple Use**

At the time of Mr Galeano's death a Commissioner's circular dated 23 December 2008 directed how the taser was to be used.<sup>107</sup> That policy dealt with taser deployment as one form of force option to be deployed as part of the situational use of force model which identified a range of available use of force options. Officers were reminded that all use of force applications must be authorised, justified, reasonable and proportionate (paragraph 14.3.2). The policy gave several forms of guidance in respect of tasers including a number of circumstances where taser use should not be resorted to (paragraph 14.23.3). The only additional guidance concerning multiple or prolonged taser deployment was to the effect that, if initial applications of the taser are ineffective, officers should reassess the situation and consider other available options.

Since Mr Galeano's death a number of reviews have occurred with respect to the use of the taser device. These included:

A review of the trial deployment of tasers.<sup>108</sup> This was released on 2 July 2009, about three weeks after Mr Galeano's death.

The Minister for Police, Corrective Services and Emergency Services, Mr Roberts, announced, on Monday, 15 June 2009, a review of taser training and operational policies jointly conducted by the CMC and the QPS.

The joint QPS-CMC *Review of Taser Policy, Training, and Monitoring and Review Practices* was published in July 2009.<sup>109</sup> The joint review contained a

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<sup>107</sup> Exhibit E3

<sup>108</sup> Exhibit E6

<sup>109</sup> Exhibit E7

number of recommendations. In response, a new Commissioner's Guideline was issued on 22 September 2009 (Circular No. 15/2009).<sup>110</sup> This document is still current.

The current policy states *there must be a risk of serious injury to a person before an officer can deploy a Taser*. It goes on to state that the decision to deploy is an individual one for which every officer shall be held accountable.

In April 2011, the CMC issued another report called *Evaluating Taser Reforms: A review of Queensland Police Service policy and practice*.<sup>111</sup> The report identified that both Australian and overseas jurisdictions now include a reference to *imminent risk of serious harm to a person*. However, no express recommendation was made to change QPS policy to include the reference to the imminence of the risk as part of the threshold for taser use. The inquest was informed by Inspector Wayne Hutchings QPS who considered there was no need to include a reference to 'imminent risk'. He thought the present policy wording works well and adding 'imminent' would add no value.

**I support including the words 'imminent risk' (of serious harm to a person) to the threshold test for application of taser. This would help to emphasize and guide police officers not to resort to taser deployment unless the situation demands that course.**

#### **Recommendation 5: Repeated or prolonged use of Taser**

The policy in circular 15/2009 says that repeated or prolonged (greater than five seconds) use of the taser should not occur unless exceptional circumstances exist.

This is clearly an improvement over the policy that existed on 12 June 2009<sup>112</sup> which did little more than require that, where a deployment is ineffective, the officer should reassess the situation and consider all other options. It is clear that the officers, Myles and Cross, received little guidance from that aspect of the policy.

In his oral evidence Inspector Hutchings pointed out that the panel to whose work he had contributed had recommended that the criterion for prolonged or repeated use should involve both the existence of exceptional and justifiable circumstances.<sup>113</sup> He remained of the view that the reference to 'justifiable' would be appropriate.

**I support the inclusion of the word 'justifiable' to the word exceptional to establish the context in which an officer can consider prolonged or repeated use of the taser.**

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<sup>110</sup> Exhibit E8

<sup>111</sup> Exhibit E9

<sup>112</sup> Exhibit E3

<sup>113</sup> T 27-13

### **Recommendation 6: Review of multiple or prolonged Taser deployments**

I support there being a requirement by QPS as part of the Operational Procedures Manual to review and audit every occasion when a taser is deployed on multiple or for a prolonged period (longer than five seconds). This should occur within a short timeframe and involve a debrief, and re-training if required. This is important given the evidence before the inquest about this deployment as well as evidence of other deployments in the field where an officer was unaware of multiple applications or holding the device 'on' past the five second setting.

### **Recommendation 7: Safeguards by way of Technological Advance**

In response to recommendation 22 of the Joint CMC/QPS Review, the QPS investigated the potential of the X2 version of the taser to deliver improved safety. In particular, the X2 provides a means to avoid prolonged use of the taser without the officer being aware.<sup>114</sup>

The X2 can provide better transparency and avoid some unintended prolonged uses of the taser. However, the use of the arc button (after the first five second deployment) could result in a prolonged second use, without warning from the device.<sup>115</sup>

Acting Inspector Charysse Pond gave evidence of a trial being conducted of video camera technology.<sup>116</sup> The evidence indicated advantages and disadvantages associated with certainty of the camera being deployed (camera fitted to the taser scored well here) and the desire to have a broader field of vision and capture the whole of the incident (camera attached to clothing scored well on this objective).

A camera will not improve safety per se in the use of the taser but it will assist all, civilian and police alike, in the transparent use of CEW during police intervention in conflict situations.

**I support the QPS investigating options to acquire safer and more technologically advanced weapons including;**

**Consideration of the X2 model taser or other alternative Conducted Electricity Weapons. The aim should be a device which is engineered to prevent the trigger/switch being held 'on' for longer than five seconds without a specific conscious re-activation of the switch/trigger.**

**Consideration of upgrade of the taser or other Conducted Electricity Weapon which incorporate a camera which is activated on deployment, or alternatively,**

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<sup>114</sup> Insp Hutchings, Exhibit F33.3, T27

<sup>115</sup> T 27-37

<sup>116</sup> T 27-59

**Consideration of other camera recording devices to be used by officers in accordance with particular guidelines.**

**In the context of evidence that some officers supply and wear their own audible recording devices, consideration of this practice and review of whether the QPS should supply standard devices to all officers and the guidelines for their use.**

### **Recommendations 8 & 9: Mental Health, the effect of Illicit drugs and Police Intervention Strategies**

It was clear on the evidence that some police officers differentiate between persons suffering from poor mental health and persons affected by illicit drugs. This distinction was maintained even when it was clear that the mental functioning of the person in question was severely affected.

It was submitted this lack of integrated thinking may be reflected in the way in which policies developed to deal with mental health; drug induced psychosis; and use of force responses to confrontation situations.

Acting Senior Sergeant Damien Hayden, the officer in charge of the operational skills and tactics training at the Queensland Police Academy, assisted the court with evidence. The OPMs of the QPS now includes a section headed 'Psychotic Episodes'.<sup>117</sup> The Mental Health Intervention Policy includes a requirement for QPS officers to promptly seek information from Queensland Health to ensure the health and safety of the person involved in the incident.<sup>118</sup> The Policy also requires QPS officers to obtain the assistance of the Ambulance service to ensure the best possible medical response and transportation to a mental health facility.<sup>119</sup>

Senior Sergeant Hayden stated the Mental Health Intervention Policy needed to be cross-referencing to the Use of Force and Operational Skills and Tactics section of the OPM.<sup>120</sup>

He agreed that the ability to deal with incidents involving psychologically disturbed persons required both the ability to use the appropriate operational skills and tactics when required as well as the knowledge to appropriately involve both Queensland Health and the Ambulance Service at appropriate junctures in an incident.

In addition, a policy has been developed in recent years and has been incorporated in the OPM at paragraph 14.3.6 under the heading: 'Acute psycho-stimulant-induced episode and excited delirium'.<sup>121</sup> (This policy was developed by the OST section of QPS without a significant contribution by the Mental Health Intervention Project).

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<sup>117</sup> Exhibit F37

<sup>118</sup> T28-23

<sup>119</sup> T 28-23

<sup>120</sup> Exhibit E11

<sup>121</sup> E10, E11

**I recommend a review of the OPM informed by the comments in this inquest and the evidence of Acting Senior Sergeant Hayden. The aim should be to cross reference and incorporate the various sections dealing with operational use of force, psychotic episodes and acute psycho-stimulant-induced episode and excited delirium.**

**All of these policies need to be reviewed and informed by input from the Mental Health Intervention Project. Education should aim to ensure an understanding that drug induced psychosis is a form of mental illness and should be dealt with in the same way as any other incident involving other forms of mental illness.**

I was also concerned it was possible on the evidence there may have been concern by officers with respect to their own safety in providing first aid and cardiopulmonary resuscitation. This should not be an issue troubling officers at the time when they are called upon to discharge their duty to assist a person in their custody who is in life threatening circumstances.

**I reiterate my earlier commentary that it would be wise to incorporate a review of QPS personal safety equipment with respect to administering first aid and/or cardiopulmonary resuscitation by the QAS. Police officers are entitled to be safe in their work and they need to be assured their equipment and the expectations required of them do not place their health at risk.**

#### **Recommendation 10: The role of Police Communications**

One of the matters that arose from the inquest was the importance of police communications centres and officers providing maximum assistance and information to frontline officers who are asked to attend scenes of disturbance.

**There is an opportunity for these key personnel to better assist front line police by guiding them and supporting them to a greater extent. This can include contemporaneous advice informed by online checks with OPM requirements. Processes could be evolved for the Communications Centre to alert ambulance or other health services at the earliest opportunity when it is identified a person with a known history places them at elevated health risk.**

#### **Recommendation 11: Advising the Police Service and family of Discharges from Hospital**

It was submitted Queensland Health and QPS should examine and consult to consider whether notifications to the police can be made under the Memorandum of Understanding and the *Health Services Act 1991* when a patient is discharged from hospital in particular circumstances or when particular risks are identified in the context of mental health. This may require legislative or administrative changes to enable these notifications to local police.

I simply refer the matter for consideration. I note it involves complex balancing of an individual's right to privacy weighed against possible risk to public safety.

#### **Recommendations 12-17: Investigation of deaths in police custody Scenes of Crime and Innovation**

I consider that the QPS should review its in service training of forensic scientific officers to ensure that, as new technology comes on line, officers are kept abreast of its implications for their work. This comment is made due to the forensic officers being unaware of the existence of minute confetti like markers known as AFIDs which are dispersed at the point of deployment of the taser. Further technical and expert resources should be identifiable and readily available to forensic officers to ensure they remain best equipped to perform their work.

With respect to the issue of the forensic investigation required in a death in custody scenario, it is important that forensics are properly directed and briefed and remain open to all possible scenarios. A refocusing of forensic evidence gathering for death in custody investigations is required. Items relating to resuscitation efforts, police equipment and accoutrements all need to be considered which is different from the usual investigation focus.

#### *Treat the death in custody like a homicide*

There persists a difficulty in death in custody situations where police find it difficult to respond assiduously to the requirement to treat such a death like a homicide.

In particular there was a failure to separate officers involved, and a failure to give clear instructions not to discuss the incident, and a failure to document, record and preserve the contents of the first aid kit.

It was submitted most of these failings derived from blind spots in the thinking of officers rather than a failure of desire or intent to abide by the policy. The QPS needs to reflect upon what treating a death in custody like a homicide means.

A death in custody has transparency requirements that are different to a civilian homicide. The first aid kit was a good example. Normally, attempts at resuscitation are irrelevant to a homicide investigation. All the relevant action has occurred before police or ambulance officers have arrived. In the case of a death in custody, the performance of the resuscitation attempts may be the matter in respect of which an inquiry displays most interest. As, in the case of Mr Galeano's death, the used or unused resuscitation equipment may be an important component of the scene.

**I suggest changing the approach and rigour with which these situations are investigated may properly involve some seminars involving officers from various ranks and various areas of expertise. Such a process could identify the needs of effective investigation of deaths in custody**



so that the appropriate attitude, in the future, may be supplemented by clear thinking as to the special needs of such investigations. It needs to be appreciated that public confidence in QPS, the legitimate interest of the deceased person and their family, and the opportunity to fully exonerate the police all depend on a rigorous, transparent and professional investigation. The results of such a process may then be effectively fed back to officers through the development of an expanded policy and improved training processes.

#### *The Role of the Ethical Standards Command*

The evidence of Superintendent Sheppard indicated that the investigation into Mr Galeano's death had been a salutary learning experience for the QPS as a whole, and ESC in particular. A number of changes had been made to procedure. I note one of these involved the ESC officers on the ground being supported by ESC officers in a coordination role. In that way, clear direction that was missing in Mr Galeano's case, will be available. I consider this would rectify any of the confusion of the kind that arose because of the lack of communication between Inspectors Cannon and Kitching.

**It is appropriate for QPS to review the changed Standard Operating Procedures to ensure that all the difficulties identified in the evidence in this inquest are addressed. This should be an ongoing responsibility of a senior level officer.**

#### *Leadership*

The inquest has identified a number of areas where leadership at various levels that one might reasonably expect was not forthcoming. At all times, it is necessary to convey to officers under one's supervision that the highest standards of conduct are required.

**The opportunity now arises for QPS to reflect and discuss the topic of leadership. There is significant pressure brought to bear when a serious incident suddenly demands active leadership, especially when thrust back into a front line role.**

#### *Communication*

Police officers operate as a team often engaged in stressful tasks and environments. For these reasons, effective communication is one of the most important resources available to officers.

The evidence has revealed various failures in effective communication between police officers throughout the hierarchy. At times of stress and operational crisis, communication is critical but appears to falter.

**Again, an opportunity to reflect and discuss how best to address this challenge should be availed.**

### **Recommendation 18: Review of adequacy of QPS first aid masks**

I consider this is enough of an issue on the available evidence to entitle the comment that QPS urgently review the standard and health and safety quality of the masks supplied to their officers. This should be done in conjunction with QAS. If it is determined the QPS masks are deficient, they should be upgraded to an appropriate standard to ensure QPS officers are not at risk when using them. If the current masks are of a suitable standard then QPS should still address its members to inform and reassure them that their equipment does comply with necessary health and safety standards.

### *Conclusion*

I accept the QPS is making serious efforts to improve the ability of its front line officers to intervene safely in situations involving disturbed behaviour by persons who are psychotic or otherwise adversely affected in their mental functioning. This was not an isolated or unusual incident. It is important that there is a continued focus on this work to develop integrated policies and training. This must be informed by expert medical advice including from Queensland Health and QAS to assist police in identifying persons at particular risk and responding appropriately. Specific advice should be sought on the appropriateness of deployment of conducted electricity weapons in these circumstances.

Finally, it is important to state the episode leading to police responding to Mr Galeano is something that can happen in anyone's family. The condition of excited delirium can occur in the context of mental illness. It can also be triggered after ingestion/administration of drugs, typically amphetamines or cocaine which is an all too common occurrence.

Irrespective of the cause of the condition it is potentially lethal and must always be treated as a medical emergency. The focus must be on the quickest safest means of controlling the person and accessing emergency medical treatment.

It is hoped this inquest has assisted in understanding these situations and appropriate responses will help avert another tragedy.

I thank sincerely all those who have assisted the inquest, which is now closed.

Chris Clements  
Deputy State Coroner  
14 November 2012  
Brisbane