CORONER'S COURT

OF NEW SOUTH WALES

Inquest:	Inquest into the death of Shane Mulville
Hearing dates:	30 June 2025; 2 July 2025 – 4 July 2025; 18 February 2026 – 20 February 2026; 20 May 2026
Date of findings:	19 November 2026
Place of findings:	State Coroners Court, Lidcombe
Findings of:	Judge Kasey Pearce, Deputy State Coroner
Catchwords:	CORONIAL LAW - death as a result of police operation — self-inflicted death – lawfulness of police entry and search of premises
File number:	2022/00256477
Representation:	R Ranken, Counsel Assisting the Coroner, instructed by J Clifford of the Crown Solicitor's Office I Fraser, instructed by D Ayache & S Ienna of Legal Aid NSW, representing the Senior Next of Kin, Lexxie Brand S Love, instructed by E Payenda of the Office of the General Counsel, NSW Police Force, representing the Commissioner of Police T Lowe instructed by W Anderson of Anderson Boemi Lawyers representing Sergeant K Page Inspector R Mansley representing himself
Non publication order:	No non-publication orders have been made in relation to this matter.
Findings:	Shane Mulville died on 28 August 2022 near the corner of Woodville Road and Christina Road in Villawood, NSW. He died of a gunshot wound to the head. Shane inflicted the gunshot wound with the intention of taking his own life after he left his home during a police operation in which police had unlawfully entered and then searched his property.

Recommendations:	**To the Commissioner of the NSW Police Force** Recommendation 1 That he reviews the *Session 2 Application of DFV Legislation* component of the NSWPF *Domestic and Family Violence Fundamentals* course in light of the comments made in these findings to ensure that it accurately reflects and instructs police officers in the application of Part 6 of the *Law Enforcement (Powers and Responsibilities) Act 2002.* Recommendation 2 That he reviews the provisions of Part 6 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, particularly the wording of s82, to ensure that these provisions are expressed in a way that allows police officers to clearly understand their powers of search, entry, and seizure under Part 6, and that he considers whether legislative reform is desirable in order to more clearly delineate and articulate police powers under Part 6. **Copy of findings to be provided** Recommendation 3 That a copy of these findings be referred to the NSW Department of Communities and Justice Policy Reform and Legislation Branch for its information.

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1 Introduction

1.1 Shortly after midnight on 28 August 2022 officers from the NSW Police Force **(NSWPF**) attended the property where Shane Mulville (**Shane**) lived with his partner, Lexxie Brand (**Lexxie**) at 21 McClelland Street, Chester Hill (**21 McClelland Street**). They attended that address in response to a triple zero call advising of what the caller believed to be a home invasion involving a firearm. On arrival, the responding officers were advised by Lexxie that Shane, a Type 1 diabetic, had suffered a hypoglycaemic episode, and that on her return from a concert, he had mistaken her for an intruder and exited the house through a flyscreen window. Several police officers ultimately entered the house. While they there, Shane left 21 McClelland Street, unnoticed by the police. Several hours later, Shane was found deceased down an embankment on the corner of Woodville Road and Christina Street in Villawood. He had suffered a single gunshot wound to the right side of his head. The wound was apparently self-inflicted. He was 44 years old.

1.2 Shane loved movies, animals, and was a passionate and talented sports shooter. He was an avid reader, whose favourite author was Cormac McCarthy. Shane enjoyed the love and support of his parents, Joy and John, his brother, Matthew, and Lexxie, his partner of 12 years, as well as a close group of friends. That his life ended so suddenly and in the way that it did was, and continues to be, devastating for those who loved him.

1.3 On behalf of the Coroners Court of NSW, I acknowledge the tragic circumstances of Shane's death and extend my deepest sympathies to Shane's friends and family for their loss.

2 Why was an inquest held?

2.1 Under the *Coroners Act 2009* (**the Act**) a coroner is responsible for investigating all reportable deaths. This investigation is conducted primarily so that a coroner can answer questions that are required to be answered by s81 of the Act, namely, the identity of the person who died, when and where they died, and the cause and manner of that person's death. A secondary function of a coroner is to make recommendations, if appropriate, that arise from the evidence, in relation to any matter connected with the death.

2.2 The combined effect of s23(c) and s27(1)(b) of the Act is that it is mandatory for a senior coroner to hold an inquest in circumstances where, as in this case, a person has died as a result of a police operation. This is because in such cases, it is important to examine whether the significant power that the state places in the hands of police officers, is used in a way

that is both lawful and appropriate.

2.3 An investigation into Shane's death was conducted by the NSW Police Force (**NSWPF**) and the coronial team assisting the inquest, and a significant volume of evidence was obtained. This evidence was tendered at the commencement of the inquest in the form of a 6-volume brief of evidence, which included electronic material. In addition to the brief of evidence, several witnesses gave oral evidence, and further material was tendered during the inquest.

2.4 An issues list was developed to guide the coronial investigation and the conduct of the inquest. These issues were:

1. *Was the entry and search of 21 McClelland Street lawful? In particular:*
    a. *why did police believe they were authorised to enter and/or search 21 McClelland Street? and*
    b. *was that belief reasonable in the circumstances?*
2. *When and how did police first become aware of suspected contraventions of laws relating to the possession and/or storage of firearms by Mr Mulville? What were the suspected contraventions?*
3. *Was there a legal basis for Sergeant Page's assertion to Mr Mulville that police would be suspending his firearms licence and seizing his firearms prior to conducting the search of the premises or detecting any contraventions of the firearms legislation? In particular:*
    a. *why did Sergeant Page believe at that time police had the power or authority to suspend Mr Mulville's firearms licence and seize his firearms? And*
    b. *was that belief reasonable in the circumstances?*
4. *Having determined to search 21 McClelland Street to locate any firearms, why did police not ask Mr Mulville and/or Ms Brand whether either of them had any firearms on their person or conduct a search of their person for that purpose?*
5. *Why was Mr Mulville left unaccompanied and/or unsupervised while police conducted a search of 21 McClelland Street?*
6. *Was the search of 21 McClelland Street conducted in a manner that complied with any NSW Police policies and/or procedures that applied to the activity of searching premises and/or persons? In particular:*
    a. *Was the failure to ask Mr Mulville and/or Ms Brand whether either of them had any firearms on their person or conduct a search of their person for that purpose a departure from any such policies and/or procedures?*

b. Was the failure to ensure Mr Mulville was accompanied or supervised by a police officer a departure from any such policies and/or procedures?

c. Was there a proper and reasonable chain of command established at 21 McClelland Street on 28 August 2022? If not:

i. was that a departure from any policies and/or procedures that applied to the activity of searching premises and/or persons? and

ii. to what extent did that contribute to the circumstances where Mr Mulville was able to leave 21 McClelland Street unnoticed by police and in possession of a firearm and ammunition?

d. Was there appropriate communication between those police who attended 21 McClelland Street in the early hours of 28 August 2022, particularly regarding their roles and responsibilities?

7. Were police interactions with respect to Mr Mulville on 28 August 2022 otherwise appropriate having regard to Mr Mulville's health and medical condition (including the fact Mr Mulville had very recently experienced a hypoglycaemic episode) and what was known to police about those matters?

2.5 As is often the case, in the course of the inquest some issues assumed greater significance, while others receded in importance. While it has not been possible in these findings to address all the evidence adduced as part of the inquest, I have outlined what I consider to be the most important evidence under the headings below.

3 Shane's background

3.1 Shane was born on 3 May 1978. He grew up in Toormina and later in Boambee, near Coffs Harbour with his family. He attended Boambee Public School and later, Toormina High School and Coffs Harbour Senior College.

3.2 Shane enjoyed farm work while he was growing up and learned to do house repairs and improvements.

3.3 After leaving school Shane was unable to find work in Coffs Harbour. He moved to Sydney in 1999 and found a job at Wagner Electronics in Summer Hill. He remained working there for over 23 years.

3.4 Shane and Lexxie commenced a relationship in 2010. In 2013 Shane moved into the home that Lexxie was renting at 21 McClelland Street.

Medical issues

3.5 Shane was diagnosed with Type 1 diabetes during his childhood. His mother Joy and brother Matthew also have diagnoses of Type 1 diabetes. Shane required insulin to manage his diabetes, which he self-administered by injection.

3.6 Lexxie was aware of Shane's diabetes and how to treat it. She recognised the signs to look for when Shane's blood sugar was low and required immediate treatment. According to Lexxie, Shane was methodical in monitoring his blood sugar levels: checking his insulin levels before eating breakfast, lunch, and dinner and throughout the day if he was feeling unwell. Shane would generally administer insulin via injection into his stomach or upper thigh before eating meals. If management was required at other times of the day, he would test and then use food, such as a glucose powder, jellybeans, biscuits, or fruit juice to raise his levels.

3.7 Shane had suffered several hypoglycaemic episodes over the years, both at home and at work. According to Lexxie, Shane would become *spaced out* and have a *glazed look in his eyes* when his blood sugar levels plummeted. On occasion, she also observed him to become disorientated. On the occasions that Lexxie observed Shane displaying signs consistent with low blood sugar levels, she would give him a tablespoon of powdered glucose and some apple juice. After Shane had consumed this, it took about 5-10 minutes to take effect. He would then become alert and return to normal. According to Lexxie, Shane's diabetes was well managed by these actions.

3.8 From 2006, Shane's treating endocrinologist was Dr Stephen Thornley. Dr Thornley saw Shane every six months, but Shane also had access to him via email or phone if he was experiencing any problems between visits. According to Dr Thornley, Shane had no kidney problems, eye issues, or problems with circulation in his legs, which suggests that his diabetes was generally well managed.

3.9 Shane underwent blood tests before his biannual appointments with Dr Thornley. The results of these tests indicated that Shane's diabetes was well controlled. Shane was prescribed four insulin injections daily and Actrapid three times a day at mealtimes. He was also taking Lantus, a long-acting insulin, as well as Olmetec, a blood pressure medication once a day.

3.10 Dr Thornley last saw Shane on 10 May 2022. According to Dr Thornley, he had discussed with Shane the possibility of him switching to continuous glucose monitoring. This involves the use of a small device around the size of a twenty-cent piece and a pump attached to the body to constantly monitor the patient's glucose levels and inject insulin as required to maintain optimal glucose levels. Dr Thornley felt that Shane was not very responsive to trying the device. Dr Thornley recommended this course because in his experience, patients like Shane who had managed their diabetes for a long time can lose the ability to identify the warning signs of hypoglycaemic episodes, a phenomenon known as *hypoglycaemic unawareness*.

3.11 During the coronial investigation, Dr Thornley reviewed Shane's blood glucose monitor, noting that the last blood glucose level taken prior to Shane's death was at 11:06am on 27 August 2022, that is, approximately 12 hours prior police attending at 21 McClelland Street at around midnight. According to Dr Thornley, of the 22 readings recorded by the monitor over the preceding 2 weeks, one third were in the hypoglycaemic range, which in his view strongly suggested hypoglycaemic unawareness.

Shane's interest in firearms

3.12 Shane was a licensed firearms owner. He had a passion for pistols and was a talented sports shooter. He was a member of two gun clubs and would attend ranges regularly for tournaments.

3.13 Over the years Shane had owned a number of firearms. On 1 March 2003, he reported to the NSWPF that 8 firearms registered to him at the time had been stolen during a break and enter. As of 28 August 2022, Shane had 8 firearms registered in his name.

3.14 Shane had a practice of reusing his ammunition. He purchased ammunition and after using it, would repurpose it to save money. He had saved for a few years and purchased a machine called a *Dillon* for the purpose of reloading his ammunition. The Dillon was located on a workbench in the lounge room of 21 McClelland Street. On this workbench were bags of projectiles, boxes of casing, powder and primer. According to Lexxie, Shane only repurposed ammunition for his own use. According to Shane's father, John, Shane took a keen interest in mechanics and ballistics information when he made his ammunition.

3.15 Lexxie recalled that Shane had said to her many times throughout their relationship that he was so passionate about his firearms and loved sports shooting so much that if he was no

longer able to shoot, his life would not be worth living. Shane had also repeatedly told her that he feared his firearms licence would be taken from him because of his diabetes.

4 Events of Saturday 28 August 2022

4.1 On Saturday, 27 August 2022, Lexxie left 21 McClelland Street to attend a KISS concert. Shane stayed home on his own.

4.2 At around 12:10am on Sunday, 28 August 2022, Lexxie returned home. She walked down the front driveway, approached the front door, and was in the process of using the key to open it when she saw Shane lean out of the front bedroom window, which was located to the side of the front door. He had pushed the fly screen out and was yelling loudly *Aaarrggghhh* and *Where are they? Where are they?* According to Lexxie, Shane was holding a big silver pistol in his right hand and waving it about. Lexxie heard a clicking noise which indicated to her the gun was being fired but was not loaded.

4.3 Lexxie went inside the house and pulled Shane back from the window. She walked him to the kitchen, sat him on a chair and administered glucose and other foods to raise his blood sugars as she believed that he was having a hypoglycaemic episode. By the time she entered the kitchen, she said that she was no longer able to see the gun. Shane told her he had been watching a scary movie and thought someone was trying to get into the house.

Triple-0 call

4.4 Just after midnight on 28 August 2022, a neighbour who lived across the road from 21 McClelland Street heard a loud scream. He thought that it sounded like a female. He went outside to see what was happening, looked across the road, and saw that the front light on the house across the road was on. The neighbour remained in his driveway and saw a male coming out the front window. He believed that the man was holding a gun, possibly in his right hand. It looked silver or chrome in colour.

4.5 The neighbour contacted Triple-0 and told the operator what he saw. Relevantly, he advised the operator:

1. *I think someone got a gun and was trying to shoot someone in front of my house…I think it's a home invasion;*
2. *I think I seen a gun. Someone jumping out of the window and someone held at gunpoint, I think;*

3. he was *pretty sure someone's home* and that *a car came [and] someone was trying to jump in and out of the window*;

4. he didn't know what he had seen, adding, *I don't know if it was a gun. I don't know what it is. I seen something shiny in his hand. Could you just send someone down*; and

5. *I heard screaming and screaming and screaming and then what the fuck? And then I heard someone trying to shoot, but nothing was coming out*, endorsing the description of *someone trying to click on the trigger … a couple of times.*

The attendance of police and initial interactions with Lexxie and Shane

4.6 The police despatcher entered a job in the NSWPF Computer Aided Despatch (**CAD**) system stating, *INFT THINKS HE SAW SOMEONE WITH A GUN DOING A HOME INVASION*. A radio broadcast was made at 12:26am and various police proceeded to the address. A further message was broadcast at approximately 12:27am stating, *INFT SAID HE SAW M JUMP OUT WINDOW WITH A GUN*. Shortly afterwards further information was added to the broadcast; *HEARD SCREAMING AND WHAT THE FUCK – COULD HEAR SOMEONE TRYING TO CLICK A TRIGGER - NO SHOTS HEARD.*

4.7 The first police arrived on scene at 12:28am. These were Constable Kristie Partridge and Constable Keera Harvey, in Bankstown 38 (**BK38**). Constable Braydy Seeley and Probationary Constable Elise Tanner, who were rostered to Bass Hill Police station that night and operating under call sign Bass Hill 81 (**BH81**), also travelled in BK38 with Constables Partridge and Harvey. Immediately following them were officers from the Operations Support Group (**OSG**) in South West Metro 514 (**SWM 514**), namely Senior Constable Tony Stocker, Senior Constable Michael Morhi, and Constable Kathy Suntsov.

4.8 Initially, the police approached the neighbour, who was standing out the front of his house across the road holding a knife. The neighbour explained that he was the person who had called Triple-0 and that he had the knife for self-defence and was sure he had seen a male holding a gun jump out of the window across the road. The police then moved across the road to 21 McClelland Street.

4.9 When she saw the police, Lexxie told Shane that the police were outside. When Shane asked why the police were there, she told him the neighbour must have called them. At that time, it appeared to Lexxie that Shane was about 90% back to a good blood sugar level although, according to her, he appeared annoyed.

4.10 The OSG officers attended the front door first, while Constable Partridge and Probationary Constable Tanner remained at the bottom of the front steps. Lexxie met the attending police outside, while Shane remained sitting in the kitchen. It seems that Constable Harvey and Constable Seeley were canvassing neighbours at this point.

4.11 The accounts of what was said in the subsequent exchange between Lexxie and Senior Constable Stocker at the front door are broadly consistent. Lexxie told the officers that she and Shane were the only people in the house and that Shane was a Type-1 diabetic and had suffered a diabetic episode and needed some glucose but that he was fine. A female police officer said to Lexxie: *Oh, so it's a medical emergency*, to which she replied *yes*. The police officers saw the fly screen still partly hanging from the window frame. At the request of the officers, Shane presented himself at the front door and spoke to them, confirming that he was fine now that he had had some glucose and that he did not need an ambulance to be called.

4.12 At approximately 12:33am, shortly after the officers spoke to Lexxie at the front door to 21 McClelland Street, information was broadcast that there were firearms registered at the address. A female constable (likely Constable Partridge) approached Senior Constable Stocker and advised him of this. In response, it appears, Senior Constable Stocker asked Shane and Lexxie whether there had been any arguing recently between the two of them, which they both denied.

4.13 Senior Constable Stocker did not ask either Shane or Lexxie whether there were any firearms on the premises. However, according to Constable Partridge, she explained to Lexxie that someone reported seeing a firearm and that she knew there were registered firearms at the address. When Constable Partridge asked Lexxie if she could tell her if anything like that had happened, Lexxie reportedly said, *No. No. No, nothing like that. Just a medical episode*. Lexxie later told police she kept the fact of a firearm being involved from police because she believed it would make everything *go downhill* and she did not want to get Shane into trouble.

4.14 At 12:34am in response to information provided to the despatcher by BK38, the despatcher broadcast *HUSBAND AND WIFE HERE WITNESS LIVES ACROSS RD SAW THE M COME OUTSIDE AND HAVE SOMETHING LOOK LIKE GUN IN HAND M HAD MEDICAL EPISODE GOT TYPE 1 DIABETES HAD A BIT OF AN EPISODE PULLED OPEN THE WINDOW AND CAME OUTSIDE*.

4.15 At 12:38am, the mobile supervisor, Sergeant Katherine Page, and Probationary Constable Matt Windeatt arrived on scene in Bankstown 14 (**BK14**). When she arrived, Sergeant Page was told by either Constable Harvey or Constable Partridge that the occupants had been spoken to and had told police that Shane had come out of the window and that he was suffering a hypoglycaemic episode and for some reason thought someone was breaking into the house when Lexxie returned home.

4.16 Despite Shane having indicated to Senior Constable Stocker that he did not require an ambulance, at about 12:41am, Sergeant Page arranged for an ambulance to attend to medically assess him.

4.17 At 12:42am, Inspector Richard Mansley arrived in Bankstown 10 (**BK10**). Sergeant Page briefed Inspector Mansley that the incident was a medical episode, not a home invasion with a gun, that Lexxie had told them everything was okay, and that an ambulance had been called to come and examine Shane.

4.18 At 12:47pm, Senior Constable Stocker determined that the general duties police had the matter in hand, and he left the scene with Senior Constable Morhi and Constable Suntsov in SWM514.

4.19 Up to that point, no police officer had entered the dwelling at 21 McClelland Street.

Police enter 21 McClelland St

4.20 The circumstances in which police entered the premises at 21 McClelland Street and commenced searching for firearms, without a warrant, are unclear. Only Sergeant Page, Probationary Constable Windeatt and Constable Partridge were wearing body worn video (**BWV**) cameras on the morning of 28 August 2022. None of these officers activated their BWV prior to entering the premises. In addition, none of the involved officers made any contemporaneous notes of what transpired either before or immediately after the premises were entered. The earliest footage captured by Probationary Constable Windeatt commenced at about 12:59am, after police had already entered the dwelling. The earliest footage captured by Constable Partridge commenced even later at about 1:20am. The evidence was that Sergeant Page attempted to activate her BWV later, after she had entered 21 McClelland Street, but that it did not work.

4.21 Constable Seeley and Probationary Constable Windeatt were the first to enter 21 McClelland Street. The evidence suggests that this occurred after Sergeant Page arrived at

12:38am, but before the arrival of Inspector Mansley at 12:42am. The evidence of Constable Seeley was that at the front door he told Lexxie that he wanted to enter to conduct an inspection to ensure the firearms registered at the premises were stored safely. According to Probationary Constable Windeatt, he told Lexxie he wanted to enter to ensure that Shane was okay due to him having suffered a hypoglycaemic episode.

4.22 Lexxie then went inside the house and closed the screen door. She walked to the kitchen area where Shane was still sitting and told him the police wanted to come in.

4.23 According to Lexxie, Shane did not respond or make any facial expression. She then walked back towards the front door and opened the screen door. Lexxie said she did not say anything to the police, who started to enter her home, one after the other, without saying anything to her. Lexxie has denied any police officer sought her consent to enter the premises.

4.24 Shane advised Constable Seeley and Probationary Constable Windeatt of the location of the firearm safe in the laundry at the rear of the property and showed them where that was. According to the officers, he told them that some firearms had gone missing in transit but said that he would not be saying anything else in relation to that as he was seeking legal advice. He also told them there were two firearms at the residence and another, which was a collector's item stored at the Condell Park Gun Club. Constable Seeley and Probationary Constable Windeatt conducted a check of the firearm safe and located two firearms inside, which Constable Seeley rendered safe and placed back in the safe.

4.25 Probationary Constable Windeatt went to the front door and informed Sergeant Page what Shane had said about his firearms. He unlocked the screen door, which Lexxie had locked, and allowed the other officers to enter the premises. He then returned to the kitchen where Constable Seeley remained with Shane and Lexxie.

4.26 The BWV footage captured by Probationary Constable Windeatt commenced at 12:59am with a conversation between Shane and Constable Seeley in the kitchen area of the residence. When the audio commences (about 22 seconds into the footage), Shane can be heard explaining, *It's just a drop in sugar. It happens occasionally. Ninety-nine percent of the time, I'm good. It's happened once or twice at work where I've had to actually just, um, take the rest of the day off. Once I, y'know, have glucose or something to eat I'm good.* When asked how many drinks he had that night, Shane told police he'd had six drinks, being whiskey and beer. When asked how he was feeling at that time, he said, *Fine.*

<u>The suspension of Shane's firearms licence and search of 21 McClelland Street</u>

4.27 At 1:01am Sergeant page advised Shane of her intention to suspend his firearms licence, seize the firearms in the gun safe, and search 21 McClelland Street for the remaining firearms. This is captured on Probationary Constable Windeatt's BWV.

4.28 Shane and Lexxie initially remained in the kitchen area. At 1:05am, Shane was recorded saying to Lexxie, *Hey, I'm sorry. I'm really, really sorry. Ah it's my fuck up…Nothing I can do.* Lexxie said, *Shhhh … it's alright.*

4.29 At about 1:15am, Inspector Mansley left 21 McClelland Street. According to the CAD Incident Log, he later returned at about 3:20am, however he is captured on Constable Partridge's BWV as present at about 2:41am, some 40 minutes earlier.

4.30 According to Constable Partridge, the search of the premises commenced shortly after 1:20am when she activated her BWV. She and Probationary Constable Windeatt were allocated the role of searching officers because they were the only two officers who were wearing functioning BWV cameras.

4.31 Shane was last captured on Constable Partridge's BWV at 1:20am, at which time he was in the kitchen area of the house in the company of Lexxie and Constable Partridge. Shortly after this, Constable Partridge followed Lexxie out of the kitchen to the lounge room, leaving Shane alone in the kitchen. The last time Constable Partridge recalled seeing Shane was shortly after she left the kitchen when she saw him standing in the doorway between the kitchen and loungeroom.

4.32 While police were undertaking a search of 21 McClelland Street, Shane left the premises unnoticed. The precise time at which he left is not known, although it is likely within the 8 minutes between 1:20am, when he was last captured on Constable Partridge's BWV and 1:28am, when Constable Partridge's BWV captured her being told by other officers that Shane had left.

4.33 Once police became aware that Shane had left, they made several attempts to locate him, including having Lexxie attempt to contact him via mobile phone. Shane spoke to Lexxie on one occasion and said words to the effect of *I'm so, so sorry for everything. I love you. I'm not coming back.*

4.34 Sometime prior to 3:19am, Police requested a triangulation of Shane's mobile phone, which provided a location in Villawood.

4.35 Between 3:16am and 3:24am, Shane exchanged a series of messages with his friend and work colleague Adrian Windsor:

SHANE: *Hey man I'm in pretty serious trouble- won't be around too much longer, sorry to bother you so late, take care all the best.*

WINDSOR: *What's going on mate?*

SHANE: *Police trouble sadly it's all over for me…Sorry to bother you just letting you know.*

WINDSOR: *You're not bothering me at all I'm just worried for you, mate*

SHANE: *Thanks I appreciate that and everything else, take care.*

WINDSOR: *Mate, hang in there. I dunno what's going on but I'm always gonna be your friend. Nothing will change that.*

WINDSOR: *Hey mate. Just dropping a line to see how you're going. Hope you're doing okay.*

4.36 Mr Windsor did not receive any further communication from Shane.

4.37 At around 3:30am, Shane transferred a large sum of money ($14,500) from his bank account to Lexxie. Inquiries later made by police suggest Shane's phone was turned off at about this time.

4.38 During the search of the 21 McClelland Street, police ultimately located numerous firearms in various locations in the house, as well as firearm parts and homemade ammunition that was incorrectly stored.

4.39 Contrary to Shane's earlier assertion that his firearms had been stolen in transit, all but two of the firearms known to be registered to him were located at 21 McClelland Street. One of the remaining firearms was later seized from the Condell Park gun range on 31 August 2022.

4.40 Among the firearms located at 21 McClelland Street was one that had been previously registered in Shane's name, but that Shane had reported stolen in 2003.

4.41 Several firearms parts were also located and seized. Two of the firearm parts located appear to be associated with firearms registered to Shane at the time, however, it is not known whether the remaining firearm parts were associated with any firearms presently or previously registered in Shane's name.

4.42 At approximately 3:00am on 28 August 2022 NSWPF detectives were contacted. Upon arrival they declared 21 McClelland Street a crime scene. Lexxie was advised that she was required to leave. A warrant was subsequently issued, and examinations began in relation to the firearms and ammunition that had been found at 21 McClelland Street.

Discovery of Shane's body and examinations of the scene

4.43 At around 7:20am on 28 August 2022, a passer-by located Shane's body down an embankment on the corner of Woodville Road and Christina Street in Villawood, approximately 3.5 kilometres from 21 McClelland Street.

4.44 Shane had an entry wound to his right temple and an exit wound from his left temple. There was a Samsung mobile phone on the grassy slope behind his feet and a Glock pistol in a blood-stained area of the grassy slope beside his right hip. The pistol had 7 rounds in the magazine and 1 round in the chamber. All rounds were *Federal 40 S&W* ammunition. There was blood staining on the surface of the pistol and a serial number engraved on the right side of the slide. That serial number matched the serial number of a Glock Model 22 pistol that was previously registered in Shane's name, but which he had reported stolen in 2003.

4.45 About 3 metres south of where Shane was positioned, on the path before it split into two sections, was a fired cartridge case (**FCC**). The headstamp of the FCC was the same as the rounds located in the Glock pistol and the magazines, *Federal 40 S&W*.

4.46 Shane was wearing a firearm holster on the right side of his lower back. He had a further three magazines on his person, each containing 14 rounds. He also had three bundles of Australian currency being $5000, $900 and $1167 as well as needles and insulin vials in his pocket.

5 Investigations after Shane's death

Critical incident

5.1 On the morning of 28 August 2022, shortly after Shane's body was found, Assistant Commissioner Stuart Smith, Commander of the South West Metropolitan Region declared a Critical Incident.

5.2 Detective Senior Sergeant Michelle Cragg of the Liverpool Police Area Command was appointed the Senior Critical Incident Investigator (**SCII**). Detective Senior Constable Jason Dack was appointed the Officer in Charge (**OIC**) of the investigation.

Post-mortem examination

5.3 On 31 August 2022, Forensic Pathologist, Dr Maria du Plessis, performed an autopsy. The examination was limited to an external examination of the body and toxicological analysis. Dr du Plessis identified a single stellate-shaped gunshot contact entry gunshot wound on the right side of the head, and an exit wound on the left temporal side of the head. The projectile direction was from right to left, slightly from the front to the back, and horizontal. No projectiles were recovered during examination.

5.4 Dr du Plessis concluded the cause of death was a gunshot wound to the head.

5.5 Toxicological analysis detected no alcohol and non-toxic concentrations of antihistamine, cold medicine, ibuprofen and paracetamol. Postmortem analysis was unable to determine Shane's glucose levels at the time of his death.

6 Was the police entry into 21 McClelland Street lawful?

The Law

6.1 At the time police entered 21 McClelland Street, they did not have a warrant authorising them to do so. The powers available to police to enter a dwelling without a warrant are contained in the *Law Enforcement (Powers and Responsibilities) Act 2002* (**LEPRA**).

Powers of entry under LEPRA

6.2 In addition to the general powers available to police under Part 2 of LEPRA to enter premises without a warrant in emergencies (s9) or to enter to arrest or detain someone or to execute a warrant (s10), Part 6 of LEPRA gives police officers powers to enter and search dwellings and seize items in relation to domestic violence offences.

6.3 Section 82(1) of LEPRA authorises a police officer who believes on reasonable grounds[1] that a *domestic violence offence*[2] is being, or may have recently been, committed, or is imminent, or is likely to be committed in any dwelling, to enter the dwelling and remain in the dwelling for the purposes of investigating whether a domestic violence offence has been committed or to take action to prevent the commission or further commission of a domestic violence offence. However, a police officer may only enter if invited to do so by a

1 Any underlining throughout these findings is my own

2 Section 81 of LEPRA provides that domestic violence offence has the same meaning as in the Crimes (Domestic and Personal Violence) Act 2007.

person who apparently resides in the dwelling.

6.4 A police officer may not enter or remain in a dwelling even if invited, if authority to enter or remain is expressly refused by an occupier of the dwelling (s82(2)), unless the invitation to enter and remain is given by a person who apparently resides in the dwelling and whom the police officer believes to be the victim of a domestic violence offence (s82(3)). If any occupier of a dwelling refuses a police officer authority to enter and remain and the police officer is not otherwise authorised to enter or remain, then the officer must apply for a warrant (s83).

6.5 When exercising their powers of entry, police officers must comply with the safeguards in Part 15 of LEPRA. Pursuant to s202(1) these include providing the person subject to the exercise of the power with the following information:

i. evidence that the police officer is a police officer (unless the officer is in uniform);

ii. the name of the officer and his or her place of duty; and

iii. the reason for the exercise of the power.

6.6 This information must be provided as soon as it is reasonably practicable to do so (s202(2)(a)).

The evidence

Constable Seeley, Constable Partridge, Constable Harvey, and Probationary Constable Tanner

6.7 Constable Seeley, Constable Partridge, Constable Harvey and Probationary Constable Tanner gave evidence that although they had initially understood the job they were called to at 21 McClelland Street to be a home invasion, after initial inquiries had been made at the scene, and by the time Sergeant Page had arrived, they had formed the view that they were dealing with a medical episode related to Shane's diabetes.

6.8 Constable Seeley's evidence was that after Sergeant Page arrived at 21 McClelland Street and the general duties officers had updated her on what was happening, Sergeant Page *advised that we were going to do a safe storage inspection of the firearms at the location to ensure everything was okay with that*.

6.9 In her record of interview, Constable Harvey said there was no discussion that there might have been a possible domestic at the location. After speaking to the neighbours, Constable Harvey concluded that although the broadcast had originally been for a home invasion*…this*

big thing had de-escalated massively and to me it was a medical episode.

6.10 In her record of interview, Probationary Constable Tanner said it went through her head, *possibly* a domestic but she did not recall whether she voiced that thought. Soon after she arrived at 21 McClelland Street, she said *I just remember hearing that there was a medical episode. And it seemed to me like the situation was fine. No one seemed concerned…that I'm aware of. No one went into the house…and searched the house or did anything like that*.

6.11 Constable Partridge's evidence was that she believed that the officers were dealing with a medical episode.

6.12 None of these officers recalled hearing Sergeant Page suggest at any time that they were investigating a domestic violence incident and throughout the events at 21 McClelland Street all four believed they were investigating a medical episode.

6.13 The evidence of Constable Partridge was only after Inspector Mansley had left and then returned to 21 McClelland Street that she recalled anyone referring to the possibility of it being a domestic violence incident. She said that Inspector Mansley had said words to the effect of *we're on scene because of 85(2)* which Constable Partridge understood referred to circumstances relating to a domestic violence offence.

6.14 Constable Partridge's evidence was that when she later created the event on COPS relating to the incident at 21 McClelland Street, despite believing that the incident was a medical episode, she recorded it as a domestic violence incident because she did not know how to categorise it, and because when the officers were inside 21 McClelland Street, Inspector Mansley had referred to the powers available to police under s85 of LEPRA. She said that she was unable to record the event as *firearms related* which was the categorisation she felt was most appropriate as she did not have the necessary information to complete the event. She assumed that the detectives, who by then had taken over carriage for the matter, would complete the event, amend its categorisation, and enter the relevant details later.

<u>Probationary Constable Windeatt</u>

6.15 In his directed interview, Probationary Constable Windeatt said the initial call over the police radio was *a priority job for a domestic involving a firearm* although on the way to the job, he was *under the impression that it had been deescalated from what originally the call was*. Then when he and Sergeant Page arrived on the scene, they spoke with Constables

Partridge, Harvey, Seeley and Probationary Constable Tanner, who gave them a quick rundown of the situation and advised they had spoken to the tenants of the address who said it was a medical episode to do with Type 1 diabetes.

6.16 Probationary Constable Windeatt said that he (mistakenly) believed Constables Partridge and Harvey had been inside 21 McClelland Street prior to his arrival but had exited leaving Shane and Lexxie in the house without any police. Probationary Constable Windeatt offered to go inside *just to make sure that medically everything was okay.* In his directed interview he expanded on this to explain that he had some personal experience with people he was close to who had Type 1 diabetes. He said:

> *So I was, at that time, was worried about his medical condition, um, 'cause I know that when we're outside, was speaking to Harvey, um, it she said it didn't really make much sense if it was low blood sugar, um, but I've had, yeah, experience in my private life and said that that actually does make sense. Everything, the disorientation, um, did make sense if he had, um, if he was hypoglycaemic at the time, um, so I wanted to head inside just to make sure that, medically, he was sound. Yeah.*

Probationary Constable Windeatt went on to tell investigators that at that time there was no talk of him going in to check for firearms. In his directed interview, he made no mention of any belief on his part that a domestic violence incident had occurred.

6.17 Probationary Constable Windeatt's oral evidence at the hearing was somewhat different from the account he gave during his directed interview. He accepted that he did not have a positive belief that a domestic violence incident had occurred; that he did not believe a domestic violence incident was ongoing at the time, or that a domestic violence offence inside the premises was imminent or being threatened. He explained, however, that he still had in his mind the *possibility* that a domestic violence offence may have been committed, which he described as *being the malicious damage on [sic] the window…from the inside leading to the outside*. Although he acknowledged that Lexxie and Shane had provided an explanation of the circumstances in which that damage occurred, he said he did not know the extent to which that explanation *had been probed* so it was not *sufficient…to discount that offences had occurred*.

6.18 The evidence of Probationary Constable Windeatt was that as he and Constable Seeley approached the front door, he understood they were *going in to locate and seize firearms*. He could not recall the words *safe storage inspection* being used but recalled Constable

Seeley speaking about *checking the firearms*. So far as anything he might have said to Lexxie at the front door to 21 McClelland Street as to the reason he was exercising the power of entry, Probationary Constable Windeatt said the only thing he mentioned was *Shane's medical condition*.

Sergeant Page

6.19 In her directed interview, Sergeant Page said that when she arrived at 21 McClelland Street, the police who were already there told her that they had spoken to the occupants and had been advised that Shane had come out the window, that he was experiencing a hypoglycaemic episode, and for some reason thought someone was breaking into the house when it was his wife coming home from the KISS concert. However, Sergeant Page added that she was told that Shane had *for some reason, come out the window and obviously had some sort of confrontation with [Lexxie]*. She also said she asked some of the officers to conduct a canvas of the neighbours and the officers reported that the neighbours had heard screaming as well. She concluded: *[s]o we obviously considered that there was a high possibility of some, domestic violence, um, incident or offence had taken place. So decided to remain there to investigate it* and seize any firearms, as per the obligation on police under s85 of LEPRA. She explained that *so, uh, I walked inside the premises*.

6.20 In her evidence at the hearing, Sergeant Page explained that the fact that the original report of a home invasion was *downplayed* and then it became apparent the people involved were in an intimate domestic relationship is what made her concerned that it was possibly a domestic violence incident. She initially said she believed from the conversations she had with Constable Seeley and the other officers that were present that Constable Seeley *was going in to check on the firearms*. When asked what the conversation was that she had with Constable Seeley about *checking on the firearms*, she said, *I think it was something to go in there and make further inquiries and check on the guns*. She disputed that she instructed Constable Seeley to conduct a safe storage inspection saying, *I don't think I would have said that* adding *[b]ecause I know the grounds for safe storage*. She acknowledged in her oral evidence that both Probationary Constable Tanner and Constable Harvey had given evidence that she had told them Constable Seeley was doing a safe storage inspection, consistent with what Constable Seeley had said about her instructing him to do a safe storage inspection.

6.21 Contrary to Constable Seeley's evidence, Sergeant Page said she believed she raised with Constable Seeley the prospect that it might be a domestic violence incident. However, Sergeant Page's recollection of this seemed to be in the context of her belief that she had had a conversation with Constable Seeley and Probationary Constable Windeatt in the presence of Inspector Mansley prior to them entering the dwelling. However, when asked who was present at that discussion, the only person she was able to nominate was Constable Partridge. Sergeant Page's evidence was that the conversation with Inspector Mansley concerned the question of fitness and the possibility of it being a domestic violence incident and the guns being on scene. However, Constable Partridge's evidence was that Sergeant Page had never raised with her or in her presence the possibility that the incident could be a domestic violence incident.

6.22 In her directed interview Sergeant Page seemed to suggest that she had instructed Constable Seeley and Probationary Constable Windeatt to enter the premises before she had received the results of the canvass of the neighbours that Constable Harvey and Probationary Constable Tanner conducted after the arrival of Inspector Mansley. Contrary to Sergeant Page's oral evidence, Inspector Mansley's evidence was that Constable Seeley and Probationary Constable Windeatt had already entered the premises by the time he arrived and that the first discussion or mention of the possibility of a domestic violence offence having been committed was raised between him and Sergeant Page at a point in time when Constable Seeley and Probationary Constable Windeatt were already inside the premises. That is consistent with the evidence of Probationary Constable Windeatt and Constable Seeley, who both said Inspector Mansley had not yet arrived when they entered 21 McClelland Street.

6.23 In her directed interview Sergeant Page reported that the only conversation she had with Lexxie in relation to Shane after she entered the premises was that she *asked 'em if this has happened before, like the [medical] episode, and she said, Doesn't happen very often, but, um, it has happened in the past.* In her oral evidence Sergeant Page acknowledged that she did not make any inquiries as to whether there had been any previous reports of domestic violence at the address, she did not instruct the officers present to ask questions of Lexxie or Shane as to whether a domestic violence incident had occurred, and in so far as she assumed those enquiries had been made by other officers, those officers had reported to her that it appeared to be a medical episode rather than a domestic violence matter. She

acknowledged that she did not herself ask any question of either Lexxie or Shane as to whether a domestic violence offence may have been committed and did not advise either Lexxie or Shane that she was there to investigate whether a domestic violence offence may have been committed.

Inspector Mansley

6.24 According to Inspector Mansley, when he arrived, he saw Sergeant Page with Constable Partridge and Constable Harvey. He said that at that point he and Sergeant Page *determined it was only a, um, a medical episode not a home invasion with a gun*. He said he then hung around for 10 or 15 minutes before determining that the incident was what he termed a *nothing burger*.

6.25 Inspector Mansley later said that when they determined there had been some yelling and screaming going on, *we figured it was probably either just a domestic or, it, well just merely a, um medical episode.* He added*, So I said to 14 [Sergeant Page], I said, Well, you know under LEPRA we can, we can search for firearms*. He explained that they knew there were registered firearms listed at the premises so they would be looking for those and when Shane told police that four of his firearms had been lost in transit or stolen, Inspector Mansley thought it was odd that he had not told anyone and thought that Shane *had some explaining to do about his licences* and as he had had a medical episode, *this guy's gunna have his licence suspended until he gets that stuff sorted out*. However, Inspector Mansley also said that although Shane told them it was a medical episode, that may have been a story he had made up because the neighbours said they heard shouting and screaming so he thought they had to investigate whether it was a domestic or not. Even so, he admitted that at that stage, they *were probably treating it as a medical episode*.

6.26 He later added he was sure the decision to search for firearms was probably made already and he just told 14 [Sergeant Page] to make sure they would be searching for firearms because they were investigating a domestic, because under LEPRA they have the power to search for firearms. Inspector Mansley later described having left 21 McClelland Street after what he estimated to be 15 or 20 minutes and returned to the police station where he firmed up *our power to be in the premises and...tried to find certain offences and, for the Firearms Act.* He later returned to 21 McClelland Street.

6.27 Later in his directed interview in answer to a line of questioning as to why greater safety precautions were not taken to protect police officers attending 21 McClelland Street when

it was believed that firearms may have been involved in the incident, Inspector Mansley replied *because like I said it had all been, we'd all decided it was a medical episode, no actual firearm was involved, his wife was there telling…us this.*

Discussion

6.28 A lawful entry to a dwelling under s82(1) of LEPRA requires:

i. A belief on reasonable grounds on the part of the police officer entering the dwelling as to the recent, present, or imminent commission of a domestic violence offence in that dwelling; and

ii. an invitation to enter made by a person who apparently resides in that dwelling.

6.29 Once an officer has lawfully entered the dwelling, the only purposes for the police officer remaining on the premises must be the investigation or prevention of a domestic violence offence.

Believes on reasonable grounds

6.30 Although it is a phrase that is used in many sections of LEPRA, no guidance is provided in LEPRA as to what is meant by the phrase *believes on reasonable grounds*.

6.31 In *R v Rondo*[3] the NSW Court of Criminal Appeal considered the meaning of the term *reasonable suspicion* in the context of what was then *s357E of the Crimes Act 1900,* which gave police power to stop, search and detain persons and vehicles in certain circumstances. Smart AJ reviewed several relevant authorities. Based on these authorities, he concluded that a *reasonable suspicion* involves less than a reasonable belief but more than a possibility, may be based on hearsay or inadmissible material, and must be assessed by reference to the information in the officer's mind at the time. According to Smart AJ, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence.

6.32 According to the Macquarie Dictionary *belief* is defined to include relevantly *conviction of the truth or reality of a thing, based upon grounds insufficient to afford positive knowledge.* Counsel for Sergeant Page suggested that s82(1) can be paraphrased to suggest that [a]*n officer can lawfully enter to investigate whether an offence has been committed where the available facts support a reasonable belief in the possibility that such an offence may*

3 (2001) 126 A Crim R 562; [2001] NSWCCA 540

recently have occurred. I do not accept this interpretation of s82(1), which both misstates the wording of the section, and conflates a belief on reasonable grounds, with a possibility, contrary to the decision in *Rondo*, which clearly distinguishes between the two.

6.33 A determination as to whether an officer held the relevant state of mind anticipated by s82 encompasses both subjective considerations (*what was in the mind of the officer at the relevant time?*) and objective considerations (*were there reasonable grounds for the officer's state of mind?*). Whether the entry into 21 McClelland Street was lawful depends upon the state of mind of the two officers who effected the entry, namely Constable Seeley and Probationary Constable Windeatt. The evidence of Detective Senior Sergeant Cragg was that the knowledge of different police officers cannot be aggregated when determining this question.

6.34 The evidence of Constable Partridge, Constable Seeley, Constable Harvey, and Probationary Constable Tanner was that they believed that the incident at 21 McClelland Street was a medical episode rather than one involving domestic violence. The evidence of Probationary Constable Windeatt, Sergeant Page and Inspector Mansley was fundamentally to the same effect, that is, that they believed that what had occurred was a medical episode, as opposed to an incident of domestic violence. That this was the subjective belief of these officers is supported by the fact that nothing said or done by any officer at the door to 21 McClelland Street, or once they entered the premises, suggested that they believed a domestic violence incident had occurred or was in any way directed to investigating whether a domestic violence offence had occurred. At best, Sergeant Page, Inspector Mansley, and Probationary Constable Windeatt had not entirely discounted the possibility that a domestic violence offence had occurred. Counsel appearing for Probationary Constable Windeatt and Sergeant Page conceded as much in their submissions.

6.35 The weight of the evidence suggests that relevantly, neither Constable Seeley nor Probationary Constable Windeatt had the requisite state of mind that might enliven the power to enter the premises under s82, even if they had been invited to do so by a person who apparently resided there.

Conclusion

- There is no evidence that at the time they entered 21 McClelland Street, either Constable Seeley or Probationary Constable Windeatt (or indeed any other officer) held a subjective

belief on reasonable grounds that a domestic violence offence may have been recently committed, or was imminent, or was likely to be committed in that dwelling.

- The evidence establishes that in relation to the two officers who effected the entry into 21 McClelland Street:
  - the purpose for Probationary Constable Windeatt's entry was to check on Shane's welfare in the context of Probationary Constable Windeatt's experience with persons with Type 1 diabetes.
  - the purpose of Constable Seeley's entry was to conduct a safe storage check in relation to firearms registered to Shane, and that he had been requested to do so by Sergeant Page.
- To the extent that any officer entered 21 McClelland Street in the purported exercise of the power to enter and remain in a dwelling under s82 of LEPRA, that entry was unlawful.

An Invitation to enter

6.36 For an entry pursuant to s82 to be lawful, in conjunction with the relevant officer holding the requisite state of mind an *invitation* to enter a dwelling must be made by *a person who apparently resides in a dwelling*.

6.37 Due to the conclusion I have already reached in relation to the absence of any belief on reasonable grounds on the part of any of the involved police officers that a domestic violence offence may have been committed, and the absence of any indication on the part of either Constable Seeley or Probationary Constable Windeatt that they were exercising their powers of entry in order to investigate whether a domestic violence offence had been committed, the question as to whether as to whether Lexxie had issued an *invitation* to enter 21 McClelland Street pursuant to s82 of LEPRA does not arise. However, during the inquest, considerable discussion took place in relation to the interpretation of *invite* and *invitation* in the context of s82 that highlighted the complexity of s82 and warrants further exploration.

6.38 Section 82 is the only section of LEPRA in which the words *invite* and *invitation* are used. Neither term is defined. The NSWPF *Domestic and Family Violence Standard Operating Procedures* (**DV SOPs**) and associated training materials also provide no guidance as to what constitutes an *invitation* for the purpose of s82.

6.39 The use of the word *invite* or *invitation* in s82 suggest a request on the part of *a person who apparently resides in the dwelling* that police enter the premises. By contrast, the word *consent*, which is used many times throughout LEPRA[4] suggests a request on the part of police that is acceded to by the person to whom the request is directed. Despite what might be said to be obvious differences between these two concepts, the various NSWPF training materials included in the brief of evidence suggest that for training purposes, the words *invite* or *invitation* in s82 are treated as analogous to *consent*.

6.40 In his closing submissions, counsel for the Senior Next of Kin agreed with Senior Counsel Assisting in suggesting that an *invitation* involves *a positive desire for police to enter and remain*. However, in his submissions, Inspector Mansley pointed out the issues associated with treating *invite* and *invitation* as different to *consent*. He submitted that there were practical difficulties in police appearing at the door to a residence in relation to what they believe on reasonable grounds to be a domestic violence incident but being unable to request entry due to the requirement in s82 that any lawful entry can only be effected by *invitation*, that is, initiated by a person who is apparently a resident of the premises.

6.41 The precursor of s82 of LEPRA, section 357F of the *Crimes Act 1900* was enacted by the *Crimes (Domestic Violence) Amendment Act 1982*, part of a suite of pioneering domestic violence legislative reforms introduced in 1982 by the Wran Government. The justification for s357F was expressed as follows in the second reading speech to the *Crimes (Domestic Violence) Amendment Bill 1982*:

> *One of the major difficulties confronting police who are called to premises to investigate an allegation of domestic assault is that they are frequently confronted by someone at the premises who assures them that nothing untoward has occurred and that there is no reason for the police to make further inquiries. All too often in such cases, the victim of the assault is intimidated or is unable, because of injury, to communicate with the police. This problem is compounded by the uncertainty as to the circumstances in which the police may lawfully enter private premises, without invitation, to investigate cases of suspected domestic violence. Proposed section 357F makes it clear that the police may enter premises on the invitation of a resident to investigate suspected domestic violence but must leave at the request of an occupier.*

4 See for example, sections 9(c), 29, 34A, 75A(c), 95, 95A, 108D, 135, 138, 200AA and 210I

This provision preserves the existing common law distinction between occupiers and residents of real property, but an exception is provided where the resident who invites the police to enter is the victim of domestic violence. In these circumstances, the police may remain to investigate the incident and cannot be compelled by someone else to leave.[5]

6.42 It is not immediately clear from the Second Reading Speech why the term *invitation* is used in the section, as opposed to a term such as *permitted* or *allowed*. It may reflect a distinction between the legal status of an *occupier* and a *resident* in relation to a premises: a person can enter at the invitation of a resident but can remain only with the consent of an occupier and must leave if an occupier withdraws consent unless the exception applies (the resident is believed to be the victim of the domestic violence incident being investigated).

6.43 The intention of the 1982 legislators in drafting s357F was apparently to make it easier for police officers to enter and remain in a dwelling to assist victims of domestic violence in circumstances where at that time women may perhaps have been less likely to have legal rights in relation to the dwelling in which they lived than their spouses or intimate partners. In this context, the words *invite* or *invitation*, do not appear to have been intended to be used as terms of art, to suggest a specific process, mechanism, or form of words by which police officers could enter a dwelling, but rather as analogous to the word *consent*, the different words signifying only the different legal status of the occupier and resident in relation to the dwelling.

6.44 Despite differences in the lay understanding of *invitation* and *consent*, there are clear public policy reasons why, despite the use of different words, there should be no distinction between the mechanism by which police officers can enter a dwelling to assist a victim of domestic violence or to investigate an incident of domestic violence depending on whether the person appearing at the front door of premises is a resident, occupier, or a visitor to a dwelling.

6.45 Section 82 was included in LEPRA upon its enactment in 2002. The wording was largely the same as s357F. Section 81 of LEPRA imports the same definition of *occupier* used in s357F(1) as meaning *a person immediately entitled to possession of the dwelling*. It is not

5 New South Wales, Parliamentary Debates, Legislative Council, 25 November 1982 2894 (D P Landa, Minister for Energy, Minister for Mineral Resources, Vice-President of the Executive Council)

immediately apparent how police would determine whether a person is a *resident* or *occupier* of a dwelling, or why they should make this distinction, given the purpose of s82 is to enable police to remain in a residence in circumstances where they are invited to enter by a person who is apparently a victim of domestic violence, despite any other person, irrespective of their legal rights in relation to the dwelling, asking that they leave.

6.46 Section 82 of LEPRA is the key provision by which police officers are enabled to enter a dwelling without a warrant to investigate what they believe to be a domestic violence offence. Despite its importance as the lynchpin provision of Part 6 of LEPRA, s82 is an extremely complicated provision. The use of the word *invite* and *invitation* in the section is likely to lead to confusion, as is the distinction between a *resident* and an *occupier*. There are additional issues concerning the powers police have in circumstances where they are invited into a dwelling by a person who is not a *victim of a domestic violence offence*, or by someone who may be a visitor to a dwelling as opposed to a resident. Section 82 is ripe for misinterpretation, particularly by police officers who are inexperienced or, as is frequently the case, pressed for time. There may be some benefit in a review of s82 with a view to simplifying the section and ensuring that it meets current public policy considerations in relation to the detection and investigation of domestic violence offences and is able to be easily understood.

7 Was there a basis for police to enter 21 McClelland Street for the purpose of conducting a firearms safe storage inspection?

The Law

*Clause 37 Firearms Regulation 2017 (**Firearms Regulation**) and section 19(2)(c) Firearms Act 1996 (**Firearms Act**)*

7.1 Clause 37 of the *Firearms Regulation* provides that *[a] licensee must make all efforts to accommodate any reasonable request by the Commissioner to enter an arrangement under s19(2)(c) of the [Firearms] Act*.

7.2 Section 19(2)(c) of the *Firearms Act* relevantly provides that a licensee *must, in accordance with such arrangements as are agreed on by the licensee and the Commissioner, … permit inspection by a police officer (or such other person as may be prescribed by the regulations) of the licensee's facilities in respect of the storage and safe keeping of the firearms in the licensee's possession*.

The evidence

7.3 Constable Seeley's evidence was that Sergeant Page directed that he and Probationary Constable Windeatt do a safe storage inspection of the firearms at 21 McClelland Street.

7.4 Constable Partridge's evidence was that although she did not see Constable Seeley and Probationary Constable Windeatt enter 21 McClelland Street, she became aware that they had done so when she walked back over to towards the property after speaking with Sergeant Page and Inspector Mansley and someone told her that the officers were inside doing a safe storage inspection. She did not, she said, see anyone instruct Constable Seeley or Constable Windeatt to enter the premises and conduct a safe storage inspection. As far as she was concerned, *everyone else was inside* and she went in *under the premise of a safe storage* inspection.

7.5 At the hearing, Constable Harvey said she first became aware that officers Seeley and Windeatt had entered the dwelling when she returned from having conducted a canvas of neighbouring properties. She did not see them enter the premises. She said Sergeant Page told her that Constable Seeley and Probationary Constable Windeatt were inside *doing safe storage checks*. Constable Harvey entered 21 McClelland Street with, or just behind, Sergeant Page. Asked for what purpose she understood she was entering, she replied, *[f]or the safe storage*.

7.6 According to Probationary Constable Tanner, at some point she became aware that Constable Seeley and Probationary Constable Windeatt were inside *doing a safe storage inspection*. At the hearing, Probationary Constable Tanner said she entered with Sergeant Page after Constable Seeley and Probationary Constable Windeatt had already entered. Her evidence was that she told Sergeant Page, *Shall we go in and make sure Constable Windeatt and Seeley are okay, because they've been in there a little bit?* She said that Sergeant Page *went to go open the door*, which was locked. Probationary Constable Tanner's understanding of the purpose for which she was entering was she *thought we were going in to make sure that they knew everything — like, that it was all stored safely, they were doing the safe storage inspection, but, to my understanding, we were still figuring out what had happened*.

Discussion

7.7 It was clear from the evidence given by some of the involved officers that they believed that police were empowered to attend a firearm licensee's home at any time and request the occupier's consent to enter and conduct a firearm safe storage inspection.

7.8 To the extent that there is any doubt about whether such a power exists, the NSWPF Fact Sheet entitled *FIREARMS REGISTRY: Powers of Entry-Firearms and Weapons Matters* makes clear that police officers do not possess the power to enter premises for the purposes of conducting a firearms safe storage inspection. Under the heading *Do police have the power to enter premises to conduct a safe storage inspection?* the following answer is provided:

> *No. A licence or permit holder has a legal obligation to store firearms or weapons in accordance with the requirements prescribed by the legislation. It is a condition of their licence that they allow police to inspect those safe storage facilities at a mutually agreed time – section 19(2)(c) of the Firearms Act.*

7.9 Safe storage inspections of the kind contemplated by s19(2)(c) and cl37 are ordinarily done by officers attached to the Firearms Registry and by prior arrangement with the licensee.

Conclusion

- Police have no power to enter premises for the purposes of conducting a firearms safe storage inspection except at a time that has been mutually agreed between the licence holder and police.
- To the extent that any officer entered 21 McClelland Street pursuant to what they believed to be a power to conduct a firearms safe storage inspection, that entry was unlawful.

8 On what basis was Shane's firearms licence suspended and his firearms seized?

The Law

Section 85 LEPRA

8.1 Section 85(1) of LEPRA provides that a police officer who enters a dwelling pursuant to a power conferred by or under Part 6 of LEPRA, is to take only the action in the dwelling that is reasonably necessary

- to investigate whether a domestic violence offence has been committed,

- to render aid to any person who appears to be injured;
- to exercise any lawful power to arrest a person, and
- to prevent the commission or further commission of a domestic violence offence.

8.2 Section 85(2) of LEPRA flows from s85(1) in referring to a *police officer who so enters a dwelling*, and provides that such an officer must inquire as to the presence of any firearms in the dwelling and if informed that there is/are a firearm/s, must take all such action as is reasonably practicable to search for and to seize and detain the firearm/s.

8.3 Neither s85(1) nor s85(2) provides a separate power of entry. The lawful exercise of the powers/obligations conferred by s85 are dependent on the relevant officer/s having already lawfully entered a dwelling pursuant to the powers of entry conferred by s82 (entry by invitation) or s83 (entry by warrant).

8.4 It is not the outcome of any investigation into the commission of a domestic violence offence that triggers s85, but the lawful exercise of the power of entry into a dwelling pursuant to s82 or s83 of LEPRA, so that even if, after investigating, police determine that no domestic violence offence has been committed, if they have entered premises pursuant to s82 or s83, they are then required to search for and seize firearms pursuant to s85.

8.5 Section 85 of LEPRA does not give police any power to suspend a firearms licence.

8.6 If police are told that there are no firearms in a dwelling, but they believe on reasonable grounds that there is or are firearms in a dwelling, they must apply for the issue of a search warrant (s86(1)).

On what basis can a firearms licence be suspended?

8.7 Section 22(1) of the *Firearms Act* gives the Commissioner power to suspend a licence. This power is predicated on the Commissioner being satisfied there may be grounds for revoking the licence. There does not appear to be any power to suspend a firearms licence under s22(1) without service on the licensee of a written notice stating the reasons for suspension and requesting that the licensee provide reasons why the licence should not be revoked.

8.8 Section 22(2) provides that the Commissioner must suspend a licence if the Commissioner is aware that the licensee has been charged with a domestic violence offence within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007* or the Commissioner has reasonable cause to believe that the licensee has committed or has threatened to commit

a domestic violence offence within the meaning of that Act.

8.9 A suspended licence does not authorise the possession or use of firearms during the period specified in the notice suspending it (s22(3)).

8.10 Pursuant to section 81(1) of the *Firearms Act*, the Commissioner has delegated police officers with the power to suspend a firearm licence or permit under s22.

What are the grounds for revocation of a firearms licence?

8.11 Under some circumstances a licence may be automatically revoked, such as if the licensee becomes subject to a firearms prohibition order, an apprehended violence order, or a serious domestic abuse prevention order (s24).

8.12 A licence may also be revoked:

- For any reason for which the licensee would be required to be refused a licence of the same kind (s24(2)(a));
- If the licensee contravenes any provision of the *Firearms Act* or the *Firearms Regulation*, whether or not the licensee has been convicted of an offence for the contravention (s24(2)(b)(i));
- If the licensee contravenes any condition of the licence (s24(2)(b)(iii));
- if the Commissioner is of the opinion that the licensee is no longer a fit and proper person to hold a licence (s24(2)(c));
- if the Commissioner is satisfied that the licensee, through any negligence or fraud on the part of the licensee, has caused a firearm to be lost or stolen, (s24(2)(c1)); or
- for any other reason prescribed by the regulations (s24(2)(d))

What are the consequences of suspension/revocation?

8.13 If a licence is suspended, revoked, or otherwise ceases to be in force, the person to whom it was issued must immediately surrender to a police officer any firearm in the person's possession, and the licence/permit (s25(1)).

8.14 Section 25(2) authorises police to seize the licence/permit and any firearms in the possession of a licence or permit holder who has been served with a suspension notice. Police should also seize firearm parts and ammunition.

8.15 Section 47(1) of LEPRA gives a police officer power to apply for a search warrant in respect of any premises if the police officer believes on reasonable grounds that there is, or within 72 hours will be, in or on the premises a thing connected with a searchable offence in relation to the warrant. A *searchable offence* is defined to include an offence under the *Firearms Act*.

The evidence

8.16 At 1:01am on 28 August 2022 Sergeant Page entered the kitchen of 21 McClelland Street followed by Constables Partridge and Harvey and had the following exchange with Shane, which was captured on Probationary Constable Windeatt's BWV:

PAGE: *In relation to the firearms, one of my colleagues said that you, you have, is it seven or eight?*

MULVILLE: *I have eight. Seven is registered under the 'H' category. One is under the 'G' category at Condell Park.*

PAGE: *Okay. Where are those firearms at the moment?*

MULVILLE: *They are, have been, stolen, as I said, in transit and that was …[ind] … so um I haven't reported it yet, as I said I am seeking legal advice.*

PAGE: *What do you need to seek legal advice about … [ind]?*

MULVILLE: *Because it's happened to me previously and I did not want to be in a position where I'm going to get charged, obviously.*

PAGE: *Okay. You say in transit. In transit from where to where?*

MULVILLE: *I was moving them, ah, I was going to take them to a friend's place and as I say I don't wanna… They have safe keeping. Obviously, I'm not going to incriminate anybody else at this point. But everything was above board and legal. And, so, it's unfortunate.*

PAGE: *And you didn't think to report that, firearms going missing? You didn't think that was important?*

MULVILLE: *I have seven days legally. I do understand that it is important. However, the situation being as it is, I wanna seek legal advice. I am well entitled to report that within seven days and that's precisely what I'm gonna do.*

PAGE: *The firearms that you have here now, where are they?*

MULVILLE: *They're in the safe. They have seen them.*

WINDEATT: *They're back here, yep.*

PAGE: *Okay. We're going to take those firearms.*

MULVILLE: *Yeah. That's fine.*

PAGE: *We're also, um, we'll need your licence because we're going to suspend that too.*

MULVILLE: *Yep. That's not a problem.*

PAGE: *Also, what we intend to do is conduct a search to try and locate the other firearms.*

MULVILLE: *Yep. Go for it.*

PAGE: *Okay. You're fine with that? You're giving us your permission.*

MULVILLE: *I wouldn't say I've given you my permission but if you need to go seek it then that's fine too.*

PAGE: *Okay.*

8.17 It is clear from this exchange that Sergeant Page did not explain to Shane the reason that his firearms licence was to be suspended. In oral evidence she agreed that she also did not serve on him any notice explaining the reason for the suspension. Sergeant Page did not appear to be under any apprehension that Shane consented to the search to locate the firearms that he said had been *stolen…in transit*. She said in her directed interview in relation to the search *Well, you know, he, as I said, he wasn't saying that we couldn't, but he was, obviously wasn't pleased.*

8.18 Although Shane had advised Constable Seeley and Probationary Constable Windeatt that some of his firearms were missing, the basis on which Shane's firearms licence was suspended, his firearms seized, and his residence searched is unclear. However, the evidence suggests that the decision to suspend Shane's firearms licence and seize his firearms, although communicated to Shane by Sergeant Page, was made by her in consultation with Inspector Mansley.

8.19 Constable Partridge's evidence was that Inspector Mansley said the firearms were to be

seized because of a *question of fitness of a medical episode*, which she understood to be a reference to the fact of the hypoglycaemic episode Shane had apparently suffered. Similarly, Constable Harvey said she overheard Inspector Mansley say to Constable Partridge that they were doing something along the lines of seizing Shane's firearms because of a *question of fitness*, and that Shane could apply for them to be returned, although she did not hear him say anything as to why there was a question of fitness.

8.20 Other officers had a different understanding of the reason the firearms were seized. For example, Probationary Constable Windeatt explained that *my understanding at that point…was that…we're seizing it because of improper storage…my opinion at that time was that was improper storage of firearms…and the suspension of the firearms licence.* Similarly, in her directed interview, Probationary Constable Tanner's response to the question as to whether she had been told the reason for seizing the firearms was *I was not told…I'd just assumed that they weren't stored safely.*

8.21 In her evidence, Sergeant Page said she believed at the time that she had a power to suspend a firearms licence on the spot if she was of the view that it was in the public interest to do so. In this instance, the matter of concern to her was the reported behaviour of Shane in the context of him suffering a medical episode associated with his type 1 diabetes such that she was concerned he was not a fit and proper person to hold a firearms licence. According to Sergeant Page, she discussed the issue with Inspector Mansley, and they jointly decided to go in, seize the firearms that were present, and suspend Shane's firearms licence. She accepted that as a matter of procedure, a notice of suspension is required, that the relevant forms were available in Bankstown 14 (the supervisor's vehicle she had driven to the scene), but that she did not complete one. Her evidence was that she did not do so because inquiries were still ongoing and once Shane had left 21 McClelland Street, she was no longer able to serve him with a notice.

8.22 Inspector Mansley took issue with the proposition that he and Sergeant Page had discussed suspending Shane's firearms licence before they entered the dwelling. In questioning of Sergeant Page, Inspector Mansley suggested to her that the discussion about Shane's fitness was in the context of what might occur when Shane applied to get his firearms back after they had been seized under s85 of LEPRA. Sergeant Page accepted that the conversation could have possibly been something like that as she could not recall the exact conversation. Inspector Mansley gave evidence consistent with the conversation with

Sergeant Page that he had suggested to her during questioning that they had had. He said the possibility of an immediate suspension of Shane's licence did not cross his mind at the time, beyond a thought that down the line, suspension might be a matter for the licensing people. He maintained that he told Sergeant Page that if they seized firearms under LEPRA and Shane made an application for them to be returned, there might be problems with that.

8.23 Neither Sergeant Page nor Inspector Mansley asserted that the power to suspend a firearms licence included a power to enter premises for that purpose. Detective Senior Sergeant Cragg accepted that the delegated power to suspend a firearms licence required service of a written notice specifying reasons and that the mere fact of a suspension decision did not confer a power of entry.

Discussion

8.24 Material produced by the NSWPF Firearms Registry and contained in the brief of evidence advises that *where police attend an incident involving a firearms licence holder, police are strongly advised to suspend the firearms licence, whether or not there are firearms in possession.* Police are further advised that they *must be satisfied that the suspended licence holder does not have access to any firearms.*

8.25 There may have been a reasonable basis for Shane's firearms licence to be suspended pursuant to s22(1) of the *Firearms Act* given that he had advised police that some of the firearms registered to him had been lost or stolen and also on the basis of the reports from at least one neighbour that they believed that a firearm had been involved in the incident that had resulted in police attending 21 McClelland Street, even if what had originally been reported as a home invasion was believed to have ultimately resulted from a medical episode. The bar for suspension of a firearms licence under s22 is set relatively low, requiring only that the Commissioner be satisfied that there may be grounds for revocation of the licence.

8.26 The difficulty with any reliance on s22, is that suspension of the licence is predicated on the service of a suspension notice, which did not occur in this case. Assuming Shane's firearms licence had been validly suspended, he then had an obligation to surrender any firearms in his possession. The suspension of Shane's firearms licence did not give police power to enter his residence and search for any firearms that they believed remained on the premises, although they may have been able to apply for a search warrant, given an offence under the *Firearms Act* (unauthorised use or possession of a pistol) falls within the

definition of a *searchable offence* pursuant to s47 of LEPRA.

8.27 There was some suggestion in the evidence that Shane's firearms were searched for and seized pursuant to s85(2) of LEPRA. For the reasons I have already given, I am not satisfied that police entered 21 McClelland Street pursuant to any power under Part 6 of LEPRA. However, assuming that there had been a valid entry into 21 McClelland Street, in circumstances where Shane had denied that firearms registered to him, other than the ones that were secured in the laundry safe, were on the premises, the obligation was on the police to apply for a warrant to search for the remaining firearms under s86(1) of LEPRA. Despite this, nothing in Part 6 of LEPRA gave police the power to suspend Shane's firearms licence.

Conclusion

- For the reasons I have already given, I am not satisfied that any officer entered 21 McClelland Street in accordance with any power available to them under Part 6 of LEPRA. Accordingly, I am not satisfied that the power to search for, seize and detain Shane's firearms was available to police under s85(2) of LEPRA.
- Irrespective of the above, s85 of LEPRA does not provide any basis for the suspension of Shane's firearms licence.
- Although s22(1) of the *Firearms Act* may provide a basis for the suspension of Shane's firearms licence, the effect of the non-service of the firearms suspension notice is that there was no lawful suspension of the licence.
- The obligation on a licensee to surrender a firearms licence and any firearms in their possession only arises when the licence is suspended pursuant to s22. As the licence was not validly suspended, Shane was under no obligation to surrender either his licence or his firearms.
- The obligation on an individual to surrender a firearms licence and any firearm in their possession on the suspension of a firearms licence, does not confer on police any power to enter premises and search for firearms without a warrant.

9 Should Shane have been detained and/or searched?

The Law

9.1 A police officer who has entered a dwelling by invitation in accordance with s82 of LEPRA

may remain to investigate whether a domestic violence offence has been committed and/or take action to prevent the commission or further commission of a domestic violence offence.

9.2 Section 82(3A) provides that a police officer who has entered a dwelling in accordance with s82 of LEPRA may remain in the dwelling and exercise any of the following powers pursuant to s82(3A) until such time as a warrant is issued:

- remove from the dwelling a person who fails to comply with a direction to leave the dwelling;
- prevent a person from entering a dwelling;
- prevent a person from removing evidence from or otherwise interfering with the dwelling or anything in it, and for that purpose, detain or search the person.

9.3 Section 99 of LEPRA provides that police can arrest without a warrant based on reasonable suspicion of an offence and if it is reasonably necessary for specific purposes. These purposes include stopping further offences or flight, establishing identity, ensuring court appearance, preserving evidence, or protecting personal safety. A person under arrest may be searched (s27).

The evidence

9.4 The evidence establishes that Shane was not searched after police entered 21 McClelland Street, nor did any officer maintain a watch over him while the search of the premises was taking place.

9.5 During her directed interview Sergeant Page was asked whether Shane was searched. She replied *I would assume so* although she does not provide any reason as to the basis on which she believed that Shane should have been searched. She is then asked *so there was no conversations around whether he was searched, though. You just would assume he was?* She replied, *yes*. She was asked whether after Shane had left 21 McClelland Street, whether she had asked any of the car crews whether he had been searched, to which she replied, *No*.

Discussion

9.6 Shane was never placed under arrest so there was no power to detain or search him pursuant to s99 of LEPRA. However, in circumstances where police were undertaking a

search for firearms that they believed should have been in the firearms safe at 21 McClelland Street, and in circumstances where the initial report, regardless of its truth, related to a possible firearm in a home invasion, basic police practice might have suggested the wisdom of some level of inquiry of Shane as to whether he had any firearms on his person.

9.7 Sergeant Page acknowledged in her evidence that she should have told one of the officers to watch Shane. In her statement Detective Senior Sergeant Cragg stated:

> *It would be common practice to separate parties potentially involved in a domestic violence incident to gain further information as to what had occurred. Neither are necessarily supervised and can be asked not to interfere with the search.*

She went on to say, *Mr Mulville was not under arrest and was not interfering with the search. While it is prudent to know the locations of persons in the premises, he was quite within his rights and he could have left at any time*.

9.8 It might also have been sensible to keep Shane under some level of supervision, not because police should have understood that he was at risk of self-harm, but because he had suffered a medical episode and for reasons of their own safety. That is consistent with Inspector Mansley's evidence and the evidence of the Detective Senior Sergeant Cragg.

Conclusion

- Although it may have been prudent for police to enquire as to whether Shane had any firearms on his person and to maintain a watch over him after they had entered 21 McClelland Street, he was not under arrest and there was no legal basis for police to either search or detain him.

10 Police use of BWV

10.1 At the date of Shane's death, police use of BWV was guided by the NSWPF *Body-Worn Video Standard Operating Procedures* (**BWV SOPs**) version 2.4 dated November 2021.

10.2 Version 2.4 of the BWV SOPs provided that:

> *All police officers wearing police uniform, whilst engaged in duties of operational response, must where practicable, wear as part of their uniform, a BWV camera for use in accordance with these SOPs. Police engaged in proactive and/or investigative duties should also take and use BWV cameras in support of their policing activities.*

10.3 Under the heading, *Police Use of BWV*, the BWV SOPs state the following:

A police officer will activate their BWV camera when it is appropriate to do so. In making the decision to activate the BWV camera, a police officer will use their own judgement and take into account a number of factors, including:

- *officer safety and protection*
- *the need to capture evidence*
- *accountability*
- *community expectations*
- *contentious situations*
- *involvement of vulnerable people*
- *protection for offenders and the community*
- *any other relevant factors that exist.*

10.4 Under the subheading *When to Use BWV* the BWV SOPs state that a BWV camera *should* be used in circumstances including the following:

- *When police would normally use their official police notebook to record information;*
- *to capture evidence or record something of relevance;*
- *when a police power is anticipated or being exercised, or whilst performing a policing function;*
- *first response crime and incident investigation; and*
- *conversations with members of the public that relate to an incident, is relevant to an investigation, potential criminal proceedings, or contain possibly valuable information.*

10.5 Of the officers who attended 21 McClelland Street on the morning of 28 August 2022, only Constable Partridge, Probationary Constable Windeatt and Sergeant Page were wearing BWV cameras. Sergeant page's BWV camera did not function.

10.6 Although it was clear that the decision as to whether an officer decided to activate their BWV was at the officer's discretion, Constable Partridge accepted in her oral evidence that with the benefit of hindsight, she should have activated her BWV when she approached the

house.

Discussion

10.7 The failure of any officer to activate their BWV camera prior to entering 21 McClelland Street meant that nothing of the accounts given by neighbours as to what they saw or heard on 28 August 2022 was captured, nothing of the interaction between Lexxie, Shane, and any police officer at the front door of 21 McClelland Street was recorded, and the alleged admissions by Shane to Constable Seeley and Probationary Constable Windeatt inside 21 McClelland Street, before the other officers entered, was also not recorded. In addition, no police officer made any contemporaneous notes in their notebooks as to any of the above information.

10.8 All the circumstances listed above are included in the circumstances where it is suggested in the BWV SOPs that police officers *should* activate their BWV.

Conclusion

- The failure of Constable Partridge and Probationary Constable Windeatt to activate their BWV prior to entry into 21 McClelland Street was not reasonable in all the circumstances and constituted a breach of the NSWPF policy, as it then was, in relation to the use of BWV cameras.

11 Was Shane's death intentionally self-inflicted?

11.1 The evidence establishes the bullet that caused Shane's death was likely fired from the .40 Smith & Wesson calibre Glock Model 22 self-loading pistol located with Shane's body. Although no projectile was located at the scene, a comparative microscopic examination between the fired cartridge case located at the scene and test-fired cartridge cases discharged in that firearm, in the opinion of Forensic Firearm Examiner Sergeant Alan Dusting, revealed they had been discharged from the same firearm.

1.1 Several circumstances suggest it is likely the gunshot wound was self-inflicted, including:

i. the description of the entry wound as a contact wound, indicating the muzzle of the firearm was either in contact with or very close to Shane's head when it was fired;

ii. the description of the trajectory of the wound as being from right to left, slightly front to back and horizontal is also consistent with a self-inflicted gunshot wound;

iii. the location of the firearm with Shane's body;

iv. the absence of any other physical evidence that might establish the presence or involvement of a third party;

v. the lack of any wounds or injuries on Shane's body that might be consistent with defensive wounds or suggest he was involved in a struggle with another person; and

vi. the fact that Shane had a large sum of money on his person, which tends against a finding of the involvement of a third party.

11.2 As to why Shane might have taken his own life, there was evidence that he was *so passionate about his firearms and loved the sport so much that if he was not able to do [it] any longer, his life would not be worth living*. The evidence was that immediately before he left 21 McClelland Street, Shane was told that police would be suspending his firearms licence and searching for and seizing any firearms located at 21 McClelland Street. Shane must have known at that point that police would identify that he had lied about the firearms that were currently registered in his name being stolen in transit, and that police would find firearms and firearms parts that he had falsely reported as stolen in 2003. In those circumstances, Shane would have had a reasonable basis to expect the prospects of him regaining his licence or possession of his firearms were remote or worse, and further, that he would likely be charged with firearms offences.

Conclusion

- I am satisfied based on the evidence that the gunshot wound to Shane's head was intentionally self-inflicted.

12 Conclusion

12.1 Most of the general duties officers that attended 21 McClelland Street on 28 August 2022 were both young and of relatively little experience. The least experienced of the junior officers had been a police officer for only five months, the most experienced for slightly more than two years. Understandably, they looked to their shift supervisor, Sergeant Page, and perhaps to a lesser extent, to the duty officer, Inspector Mansley, to provide information and guidance in relation to the investigation of the incident that they attended. Unfortunately, the sort of guidance that these junior officers could reasonably expect from their more senior officers in relation to communication, coordination, and an

understanding of their responsibilities was significantly lacking. There was little real oversight of the actions of the junior officers from the two senior officers in attendance.

12.2 That said, the presence of senior police officers does not remove the obligation on the part of junior officers to ensure they act in accordance with the law. I was troubled by the extent to which the many failures by police in this matter were referred to by counsel during closing submissions as *technical compliance issues* or *technical departures from legislation*. Counsel also repeatedly reminded me of the difficulties associated with domestic violence matters and of the risks associated with firearms, as though the nature of these issues somehow excused or accounted for the failures of individual police officers and the police collectively on this occasion.

12.3 Ultimately, it does not matter whether all, or any, of the involved officers, were well-meaning, acting in good faith, or were doing what they thought was right in all the circumstances. There is no evidence that any of the involved officers intended harm, or that they could have foreseen what ultimately occurred. However, the law applies to police officers in the same way that it applies to those who are not police officers. Police are only permitted to act in accordance with the powers given to them. If they act outside their powers, their actions are unlawful. I am satisfied that in this case, there was no deliberate disregard of the law, but rather either a concerning misunderstanding of the law, or a failure on the part of the police officers to turn their minds to what the law permitted them to do.

12.4 At the very least, one practical consequence of police acting unlawfully is that evidence obtained as a consequence of an illegality may be inadmissible in criminal proceedings. This may well have been what would have occurred in this case, had Shane ultimately been charged with an offence. However, police may also be subject to civil proceedings. A police officer who enters a person's property unlawfully commits a trespass in the same way as any other person who unlawfully enters property.

12.5 Police officers cannot reasonably be expected to recite by heart all the provisions of LEPRA or the *Firearms Act*. They should, however, know and record the powers they are relying on and articulate their reasons for exercising their powers in relation to all matters. This is not asking any more than the NSWPF itself asks of its officers. A shared understanding between officers attending an incident of the reasons for their attendance, the reasons for the exercise of their powers to investigate a matter, and the results of their investigations, relies on good leadership and effective communication, and sets a framework within which

officers can act lawfully and with a unity of purpose. An absence of these factors can risk the lives of officers and members of the community.

12.6 In my view, the entry into Shane and Lexxie's home was unlawful, the suspension of Shane's firearms licence was unlawful, the seizure of the firearms in the gun safe was unlawful and the subsequent search for the missing firearms was also unlawful. The five junior officers and their supervisor, Sergeant Page, did not have a shared understanding of why they were entering and later searching Shane and Lexxie's home, nor did the two senior officers share an understanding with each other of the powers they were exercising and why. No officer kept a contemporaneous record, either in their notebooks or on BWV, of the accounts given by the witness who called police or any other witness who was spoken to, of the entry into Shane and Lexxie's residence, of the initial comments made by Shane when the gun safe was accessed, or of the basis for the purported suspension of Shane's firearms licence and seizure of his firearms.

13 The need for recommendations

13.1 After the evidence in the inquest had concluded, Senior Counsel Assisting suggested several draft recommendations arising from the evidence directed to the Commissioner of the NSW Police Force. Counsel for the Senior Next of Kin suggested an addition to recommendation 1, which was later incorporated into the proposed recommendations provided to the Commissioner for comment.

13.2 These draft recommendations and the responses to them from the Commissioner were as follows:

Recommendation 1

That the NSW Commissioner of Police develop and implement training for police officers concerning the powers provided in Part 6 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), including specific training on:

a) The preconditions for the exercise of the power to enter a dwelling under s82;

b) What constitutes an invitation to enter a dwelling for the purposes of s82(1) as contrasted with an occupier consenting to a police request to enter a dwelling;

c) What enquiries are to be made of any persons within the dwelling concerning whether they have any firearms on their person and if so, what action(s) can be taken to secure any such firearms;

d) What safeguards under Part 15 are required to be implemented or followed when exercising the powers under Part 6; and

e) ***The circumstances in which a search warrant is required to search for firearms under Part 6 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW).***

13.3 The Commissioner advised that the NSWPF currently delivers comprehensive training on powers to enter and remain on premises, as well as the search and seizure of firearms under Part 6 of LEPRA, as part of the Domestic and Family Violence (**DFV**) Fundamentals course. According to the Commissioner, the modules of the DFV Fundamentals course align with the matters outlined in the recommendation, including:

- The preconditions for entry to a dwelling, including reasonable ground requirements and necessity thresholds under relevant provisions such as s9, s10 and s82.
- The distinction between entry by invitation under s82 and circumstances where authority is refused or withdrawn, including limitations on remaining in a dwelling.
- Officer obligations on entry, including the requirement to enquire about the presence of firearms and take reasonable steps to secure them under s85.
- The application of safeguards governing the lawful exercise of powers including requirements to act within legislative boundaries and justify actions.
- Circumstances in which a search warrant is required, including when entry is denied (s83) or where firearms are suspected to be present (s86).

13.4 The Commissioner advised that the DFV Fundamentals course is completed through a combination of online and face-to-face learning activities with reflective and reasoning written components to ensure uptake of content. The course features a video scenario where participants are required to justify their decisions or provide reason as to why they have taken a specific action with reference to sections under Part 6. The DFV Fundamentals course is also a core module of the Constable Development Program (**CDP**), which is a requirement for all newly confirmed Constables to complete within their first five years of appointment, and must be completed prior to appointment as a Senior Constable. The

Commissioner advised that DFV Fundamentals has been included as a mandatory course within all programs since July 2022.

13.5 The Commissioner advised that in addition, an *implied licence* training package was mandatory for all sworn staff in 2024/2025 which also contains extensive content regarding powers of entry.

13.6 Following receipt of the Commissioner's response to proposed recommendation 1, those assisting me requested, and were provided with, a copy of the training packages to which the Commissioner referred in his submissions.

Discussion

13.7 Having reviewed the material provided, it became clear that the *implied licence* training package focuses on entry onto property as opposed to entry into dwellings, and for that reason did not address the matters contained in Senior Counsel Assisting's proposed recommendation 1.

13.8 Although the court was provided with the entirety of the DFV Fundamentals course, Session 2, which dealt with DFV legislation, was the most relevant in terms of the issues intended to be addressed by proposed recommendation1. I provide the following comments in relation to the content of Session 2 of the DFV Fundamentals Workshop.

13.9 The example in scenario 3 of what constitutes an *invitation* for the purposes of s82 of LEPRA is difficult to distinguish from *consent* in that it is initiated by the police officer rather than the child resident:

Officer: Can we come in?

Child: Yes.

13.10 Similar comment can be made in relation to scenario 9, which looks even less like an *invitation* as such a term is commonly understood.

Officer: We're here about a report of a disturbance. Can we come in?

Female: Yeah, if you have to.

13.11 While there are other issues in relation to scenario 6, which I will come to below, the interaction between the police and the person answering the door in this scenario probably best approximates an *invitation* as most people would understand the word:

Neighbour: Do you want to come in?

13.12 In scenario 5, the child resident in scenario 3 has *invited* the police to enter a dwelling, a male has demanded that the police leave, and a woman has given permission for the police to remain. Police officers are advised that *[o]nly a person you identify as a domestic violence victim can override another occupant asking you to leave, in this case the male.* This scenario is apparently intended to be illustrative of s82(3) of LEPRA, however, the wording of s82(3) requires that the person who has *invited* the police to enter and remain in the dwelling must be the person *whom the police officer believes to be the victim of a domestic violence offence* if the police are to remain in purported exercise of their powers under s82(3). Here the invitation to enter is given by the child, while the woman (presumably the *victim of domestic violence*), is the person who overrides the male's objection to the police remaining. It may be that it is the child rather than the woman that is intended to be identified as the *victim of domestic violence*, although the scenario does not make this clear.

13.13 In scenario 6 a non-resident neighbour, who identifies herself as such to police at the door of a dwelling, permits/invites the police to enter. Another woman emerges from a room inside the dwelling and demands that police leave the dwelling. Police officers are provided with this explanation:

The invitation by the non-resident (the neighbour)…is clearly refused by the apparent resident of the dwelling, therefore the police officers do not have the power to enter or remain in the dwelling.

This scenario is intended to be illustrative of the power for police to remain in a dwelling and preserve a crime scene under s82(3A) until a warrant is obtained pursuant to s83 of LEPRA.

13.14 There are several difficulties with the scenario as presented. Firstly, the police have no power to enter the premises pursuant to s82 as an invitation to enter can only be made by *a person who apparently resides in the dwelling*, which clearly the neighbour does not. Secondly, the instruction given to police in the training is that *authority to remain is refused by the apparent resident of the dwelling*, in circumstances where s82(2) refers to authority

to enter and remain being expressly refused by an *occupier* of the dwelling. There is no instruction given to police as to the difference between a resident or occupier or how they are to determine whether the person refusing authority is one or the other. In fact, both the daughter/granddaughter in the scenario and the supposed *victim of a domestic violence offence* ask that police leave the premises, which leaves open the question as to whether the officers would be entitled to remain pursuant to s82(3A). Third, the power for police to remain and preserve a crime scene pursuant to s82(3A) pending the issue of a warrant is predicated on police having entered the dwelling in accordance with s82(1), which in the scenario they have not, as they have not been invited by a resident of the dwelling.

13.15 Scenario 7 is intended to demonstrate the obligation on police pursuant to s85(2), to inquire as to the presence of firearms in a dwelling and to take all such action as is reasonably practicable to search for and to seize and detain the firearm/s. This scenario shows the police entering a dwelling via what appears to be an open back door and asking the resident of the dwelling about the presence of firearms. The scenario as presented is misleading in that it fails to illustrate that the exercise of police powers under s85 is predicated on a lawful entry into a dwelling pursuant to a power under Part 6 of LEPRA, that is, under s82 (without a warrant) or s83 (with a warrant). Section 85 does not of itself provide any power to enter a dwelling.

13.16 Session 2 of the NSWPF DFV Fundamentals course was illustrative of the statement made at the commencement of the course, *[l]egislation can be confusing and hard to understand*. While the course is accessible, easy to follow, and provides police officers with a basic understanding of Part 6 of LEPRA and some associated provisions of the *Firearms Act,* in several respects it is inaccurate and demonstrates some of the difficulties associated with police officers understanding and applying Part 6.

Conclusion

- The NSWPF DFV Fundamentals course demonstrates many of the difficulties associated with the interpretation and practical application of what is an undeniably complex piece of legislation.
- There remains a need for a recommendation that ensures that the training provided to police officers is both accurate and provides useful guidance in understanding and applying Part 6 of LEPRA.

Recommendation 2

That the NSW Commissioner of Police amend its Body Worn Video Standard Operating Procedures to mandate the activation and use of a BWV camera when a police power is anticipated or being exercised, or whilst performing a policing function, including when effecting entry to a dwelling and when implementing any safeguards required under Part 15 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW).

13.17 In response to this proposed recommendation, the Commissioner advised that in December 2024 the NSWPF commenced a review of the NSWPF BWV SOPs. Following extensive consultation, a revised version of the BWV SOPs was approved and published on 11 June 2026. The revied version of the SOPs now mandates:

- that officers must wear and use a BWV camera when undertaking operational policing duties unless it is reasonably impractical or an exemption exists in accordance with the SOPs;
- if the BWV camera is not worn and used in accordance with the SOPs then the officer must make a record of the reasons;
- an officer wearing a BWV camera must activate the camera unless it is impractical or unsafe to do so whenever they exercise a police power under any legislation or regulation or reasonably suspect that a police power will be used (eg traffic stop, exercising a search power, arrest, firearms prohibition orders, search warrant, or other lawful entry into a premise).

Discussion

13.18 As of August 2022, there was a subjective component to the NSWPF BWV SOPs as to when officers needed to switch on their BWV cameras. The subjective component of the BWV SOPs had been the subject of criticism in several inquests and most recently in the report of the Law Enforcement Conduct Commission (LECC) *Review of NSW Police Force body-worn video policy and practice.* LECC criticised the BWV SOPs as ambiguous and allowing officers too much discretion around when to activate. The report referred to *varying attitudes and inconsistent practices among officers around when to activate or deactivate BWV.*

13.19 This review of the BWV SOPs was completed in mid-2026 and resulted in significant changes being made to the NSWPF BWV policy and procedures.

13.20 The BWV SOPs now provide that as a general principle, all police working in an operational capacity must wear a BWV camera unless there is an exemption, or it is reasonably impractical to do so. The new BWV SOPs specifically state that an officer wearing a BWV camera must activate the camera, unless it is impractical or unsafe to do so, whenever they:

- exercise a police power under any legislation or regulation, or reasonably suspect that a police power will be used;
- attend a serious crime incident;
- use a tactical option that involves a use of force;
- exit a vehicle upon attendance at Priority 1 or Priority 2 jobs
- are engaged in a police pursuit (passenger/observer only); and
- are in the vicinity of other officers who are obviously exercising a power (all officers are to turn on BWV).

13.21 Irrespective of whether other officers are already recording an incident or interaction in the above circumstances, it is now expected that all police on scene will activate their BWV cameras.

Conclusion

- Because the current version of the NSWPF BWV SOPs mandates the activation of BWV cameras whenever police are working in an operational capacity, there no longer appears to be a need for a recommendation in terms of proposed recommendation 2.

14 Recommendations pursuant to s82 Coroners Act 2009

14.1 I have reviewed the draft recommendations and the submissions and additional information provided by the Commissioner for the NSW Police Force and make the following recommendations:

To the NSW Commissioner of Police:

Recommendation 1

That he reviews the *Session 2 Application of DFV Legislation* component of the NSWPF *Domestic and Family Violence Fundamentals* course in light of the comments made in these findings to ensure that it accurately reflects and instructs police officers in the

application of Part 6 of the *Law Enforcement (Powers and Responsibilities Act 2002.*

Recommendation 2

That he reviews the provisions of Part 6 of the Law Enforcement (Powers and Responsibilities) Act 2002, particularly the wording of s82, to ensure these provisions are expressed in a way that allows police officers to clearly understand their powers of search, entry, and seizure under Part 6, and that he considers whether legislative reform is desirable in order to more clearly delineate and articulate police powers under Part 6.

14.2 Given its role in supporting the development of the legislative program for a range of Ministers who have responsibility in the communities and justice sectors, including the Attorney General, the Minister for Police and Counter-Terrorism and the Minister for the Prevention of Domestic Violence and Sexual Assault, I will refer a copy of these findings to the NSW Department of Communities and Justice Policy Reform and Legislation Branch for its information.

Recommendation 3

That a copy of these findings be referred to the NSW Department of Communities and Justice's Policy Reform and Legislation Branch for its information.

15 Findings required pursuant to s81(1)

15.1 I make the following findings in relation to Shane's death.

Shane Mulville died on 28 August 2022 near the corner of Woodville Road and Christina Road in Villawood NSW.

He died of a gunshot wound to the head.

Shane inflicted the gunshot wound with the intention of taking his own life after he left his home during a police operation in which police had unlawfully entered and then searched his property.

16 Close of Inquest

16.1 I thank Senior Counsel Assisting, Rob Ranken, and his instructing solicitors, Jack Clifford, and before him, David Yang, of the Crown Solicitor's Office, for all the assistance they have

16.2 provided to me in the preparation and conduct of this inquest. I also thank Detective Senior Constable Jason Dack for the very comprehensive investigation he conducted into the circumstances of Shane's death.

16.3 Once again on behalf of the Coroners Court, I offer my sincere and respectful condolences to Shane's friends and family.

16.4 It is fitting that these findings end with a quotation from Shane's favourite novel, Cormac McCarthy's *No Country for Old Men*. In this quotation, which I'm sure would have resonated with Shane, Bell speaks about meeting Loretta, the love of his life.

> *Me I was always lucky. My whole life. I wouldn't be here otherwise. Scrapes I been in. But the day I seen her come out of Kerr Mercantile and cross the street and she passed me and I tipped my hat to her and got just almost a smile back, that was the luckiest.*

16.5 I close this inquest.



Judge Kasey Pearce
Deputy State Coroner
19 November 2026