CORONERS ACT, 2003

SOUTH *AUSTRALIA*

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 14th, 19th, 21st and 25th days of October 2010 and the 31st day of August 2011, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Stephen Brian Elliott.

The said Court finds that Stephen Brian Elliott aged 41 years, late of 12 Japonica Crescent, Parafield Gardens, South Australia died at Parafield Gardens, South Australia on the 19th day of November 2008 as a result of a gunshot wound to chest. The said Court finds that the circumstances of his death were as follows:

1. <u>Cause of death and reason for Inquest</u>

1.1. Stephen Brian Elliott was aged 41 years at the time of his death on 19 November 2008. An autopsy was carried out the following day by Dr John Gilbert, forensic pathologist at Forensic Science South Australia. He prepared a report in which he gave the cause of death as gunshot wound to chest[1] and I so find. Dr Gilbert commented that death was due to a single gunshot wound to the chest. He found that the projectile severed the aorta and passed through the right ventricle of the heart. Dr Gilbert commented that the injury would have resulted in immediate loss of blood pressure and a loss of consciousness within 10 to 20 seconds. The injuries were rapidly lethal and not amenable to medical intervention. Dr Gilbert reported that toxicological examination of a specimen of blood obtained at autopsy showed a very high blood alcohol concentration of 0.313% and a high, potentially toxic, level of tramadol which is a synthetic opiate.

1.2. The projectile which killed Mr Elliott was fired from a weapon wielded by a police officer in the course of an operation to apprehend Mr Elliott following an attempted

[1] Exhibit C3a

armed robbery at the Hollywood Plaza branch of the Savings & Loans Credit Union (SLCU) earlier that day. Accordingly, the death was a death in custody within the meaning of the Coroners Act 2003 and an Inquest was held as required by section 21(1)(a) of that Act.

2. Background

2.1. At approximately 2:30pm on 19 November 2008 a single male offender[2] threatened staff at the SLCU at Hollywood Plaza. The male brandished two handguns, but no money was obtained and the offender walked from the SLCU to a parked getaway vehicle. The registration number of that vehicle was provided to the police by witnesses at the scene. Police rapidly traced the vehicle to premises at 12 Japonica Crescent, Parafield Gardens and soon established, through aerial and ground surveillance, that both the vehicle and a male person were present at that address. As the offender appeared to possess a firearm, the incident was classified as high risk by police and the STAR Group were deployed to safely arrest the suspect for the attempted armed robbery.

2.2. An investigation was carried out by Detective Superintendent Venditto. The final report of the investigation was comprehensive and thorough and evidences a transparent objective assessment of the conduct of the officers involved in this incident and of relevant police policies and procedures. I commend Detective Superintendent Venditto once again for his work[3]. It does appear that Mr Elliott's behaviour on the day of his death was extremely reckless by any standards. It appeared that he had been suffering from depression in the period leading to his death and his behaviour had been somewhat unusual, even causing concern to Mr Elliott himself. When attempting to rob the SLCU, Mr Elliott did not use any kind of mask or disguise. The weapons which he used were subsequently found to be replicas, albeit convincing replicas. He left the SLCU before he had obtained any money and returned to a vehicle that could readily be linked to his own home address and to him. He had not made any attempt to disguise the vehicle or to conceal the number plates. He did not leave Hollywood Plaza hurriedly. He then returned to his home address at which the vehicle was registered. He left the vehicle in the driveway where it was visible from the street. He then remained at the premises until police arrived.

[2] Later found to be Mr Elliott
[3] See Report at Exhibit C110j

3. The deployment of STAR Group

3.1. Apart from the extensive documentary evidence obtained in the course of Detective Superintendent Venditto's investigation, I heard oral evidence from four members of STAR Group including the Officer in Charge of the operation to arrest Mr Elliott on that day, and the officer who actually fired the fatal shot. All four of the police witnesses were consistent in their evidence about the major aspects of the incident on 19 November 2008.

3.2. Sergeant Shane Johnson

Sergeant Johnson was the Deputy Tactical Commander for the incident on the day in question. He had responsibility for the management of the officers at the scene and for determining the strategies for resolving the incident. He was responsible for agreeing those plans with the Forward Commander[4]. STAR Group were contacted to attend at Japonica Crescent. While the group travelled to the scene, Sergeant Johnson assigned roles to the various team members, dividing the group into two: the Cordon Team and the Arrest Team. Each officer was assigned a particular role. Sergeant Johnson assigned Sergeant Wood to be the Cordon Team leader and Sergeant Wheeler to be the Arrest Team leader.

3.3. The STAR Group officers arrived at the forward command post at 3:54pm. Here Sergeant Johnson conferred with Inspector Shannahan, the Forward Commander. He carried out his assessment and determined the appropriate response to be what he described as a 'cordon and call' in which a cordon would be established to secure the scene and then trained negotiators would attempt to make telephone contact with Mr Elliott in order to bring about a negotiated peaceful resolution of the situation.

3.4. Once the cordon was in place, Sergeant Johnson received regular updates from the Arrest Team leader and the Cordon Team leader. At approximately 4:10pm a man was sighted in the rear yard of 12 Japonica Crescent. At that point Sergeant Johnson used radio communications to advise all officers of their responsibilities under the General Orders as to the use of firearms. He explained in evidence that the General Orders require that police must not resort to the use of firearms, including levelling or sighting firearms, unless they believe on reasonable grounds that the use is necessary to protect life or prevent serious injury and only then when there is no other means available[5].

---

[4] Transcript, page 62
[5] Transcript, page 73

3.5. Soon after this Sergeant Johnson spoke with the Special Operations Team ambulance paramedic, David Tingey, about arrangements should ambulance officers be required to attend the scene if anyone was wounded. In the event, these plans were necessary and enabled the urgent attendance of ambulance officers after Mr Elliott was shot. In fact, Sergeant Johnson estimated that it was only approximately 30 seconds before the ambulance was deployed after he became aware of Mr Elliott having been shot[6].

3.6. The evidence of Brevet Sergeants Ayres and Penhall

Both of these officers were members of the Arrest Team. They gave evidence about approaching 12 Japonica Street from the eastern side using the cover of other houses and vehicles.

3.7. Brevet Sergeant Penhall recounted that the Arrest Team had moved to a position at the front of the house next door, on the eastern side to 12 Japonica Crescent. A STAR Group 4WD was brought forward to that position and the Arrest Team had taken cover on the roadside of the 4WD. At about this time Brevet Sergeant Penhall observed a woman coming out of the front door of 12 Japonica Crescent[7]. Very shortly after, he saw a man just behind the gate of the driveway to 12 Japonica Crescent[8]. The woman left the premises and made her way to Brevet Sergeant Penhall's position[9]. Brevet Sergeant Penhall said that when Mr Elliott got to the gate he raised an arm and pointed what Brevet Sergeant Penhall believed at the time was a firearm at him[10]. Mr Elliott then withdrew from the gate and walked back into the rear yard in a matter of only seconds. This appears to have occurred at around 4:22pm.

3.8. Brevet Sergeant Ayres said that the next sighting of Mr Elliott was at approximately 4:40pm. Brevet Sergeant Ayres was behind the driver's door of the 4WD and was watching the gate when he saw Mr Elliott approach the gate from the yard of 12 Japonica Crescent. This time Mr Elliott had both of his hands above his head and each of the hands held what appeared to be black, semi-automatic handguns. Brevet Sergeant Ayres said that Mr Elliott was looking directly at himself and the rest of the Arrest Team and both of his hands were above his head, cocked so that the firearms were pointing directly at the Arrest Team[11]. Mr Elliott was approximately 20 metres

[6] Transcript, page 79
[7] Transcript, page 140
[8] Transcript, page 140
[9] Transcript, page 142
[10] Transcript, page 144
[11] Transcript, page 107

away from the Arrest Team at this point. He remained at the gate only for a matter of seconds and then turned and walked back towards the house[12].

3.9. The next sighting of Mr Elliott, according to Brevet Sergeant Ayres, occurred approximately 3 minutes later and came to his notice when he heard the voice of Sergeant Wood, who was positioned on the western side of 12 Japonica Street. Sergeant Wood was clearly calling out to a person who had come out of the house at 12 Japonica Street but at that point Brevet Sergeant Ayres' vision was obscured by a tray-top truck parked in the driveway of 12 Japonica Street[13]. Once the person - subsequently found to be Mr Elliott - cleared the cover of the truck he could be seen by members of the Arrest Team including Brevet Sergeant Ayres. Brevet Sergeant Ayres said that he first saw Mr Elliott in the middle of the front yard of 12 Japonica Street. He was walking at a 'quicker than standard pace'[14] and was 'walking with intent'[15]. He was walking towards the road and he had both of his hands above his head with the handguns in each hand. At that point the handguns were pointing upwards.

3.10. At this time Mr Elliott looked in the direction of Sergeant Wood but then almost immediately turned his direction towards the Arrest Team and continued walking at the same pace out of 12 Japonica Street onto the roadway and towards the Arrest Team, including Brevet Sergeant Ayres[16]. Brevet Sergeant Ayres said that Mr Elliott then moved his hands down to his side. Each hand was pointing out at a 45 degree angle from the side of his body. Brevet Sergeant Ayres said that Mr Elliott's attention was clearly focussed on himself and the rest of the Arrest Team[17]. Brevet Sergeant Ayres said, in an extremely loud voice:

> 'Police. Drop the guns. Drop the guns. Don't move. Don't move.' [18]

The Arrest Team commenced to step backwards in order to create distance between themselves and Mr Elliott but they were unable to move backwards as fast as Mr Elliott was approaching them[19]. At this stage Brevet Sergeant Ayres formed the belief that Mr Elliott was going to use the two firearms to either seriously hurt or kill himself or other members of the Arrest Team[20]. As a result of this, Brevet Sergeant Ayres raised his rifle and took a sight picture of Mr Elliott. He aimed the weapon at

[12] Transcript, page 109
[13] Transcript, page 110
[14] Transcript, page 111
[15] Transcript, page 111
[16] Transcript, page 112
[17] Transcript, page 114
[18] Transcript, page 114
[19] Transcript, page 115
[20] Transcript, page 115

the centre of Mr Elliott's body, took the weapon off safe mode, put his finger on the trigger and began to take up trigger pressure[21]. Before Brevet Sergeant Ayres could discharge his weapon he heard a single gunshot come from behind Mr Elliott and saw Mr Elliott slump forward onto the ground. Brevet Sergeant Ayres said that had it not been for hearing the shot and seeing Mr Elliott fall to the ground, he himself would have fired at Mr Elliott[22]. Brevet Sergeant Ayres said that it was not only he who was yelling at Mr Elliott to drop the weapons but that a number of other officers were doing so at the same time.

3.11. Brevet Sergeant Penhall gave evidence that he also saw Mr Elliott approach at a 'fast walk'[23] and that he himself called out loudly to Mr Elliott to 'drop the gun'. He also heard Brevet Sergeant Ayres and Sergeant Wheeler calling out similar things[24].

3.12. Brevet Sergeant Penhall's account of this crucial aspect of the incident accords very closely with that of Brevet Sergeant Ayres. Brevet Sergeant Penhall himself took a sighting on Mr Elliott and aimed at the centre of his body[25]. Brevet Sergeant Penhall also flicked his weapon from safe to fire and put his finger on the trigger and began to put pressure on the trigger[26]. He gave evidence that at that point his belief was that his life was in danger. He had a proper understanding of the General Orders relating to firearms and he believed that he was justified in using his firearm at that point. Before he could fire a shot he heard Sergeant Wood's shot ring out and saw Mr Elliott fall to the ground. He said that Mr Elliott was approximately 10 metres away from him and the rest of the Arrest Team when the shot was taken and that, to that point, the whole incident had taken approximately 10 to 15 seconds[27].

3.13. Brevet Sergeant Penhall said that Brevet Sergeant Ayres and Senior Constable Collingridge recovered Mr Elliott from the position where he had fallen and brought him back behind the 4WD. At that point the officers were operating on the basis that there may still be some danger presented by an occupant or occupants of 12 Japonica Street. As it turned out there was no further danger.

3.14. <u>Sergeant Wood</u>

Sergeant Wood was, as I have already noted, the leader of the Cordon Team. He took up a position on the eastern side of 12 Japonica Street. Sergeant Wood gave evidence that he did not see Mr Elliott until Mr Elliott's final presentation in which he moved

[21] Transcript, page 115
[22] Transcript, page 116
[23] Transcript, page 153
[24] Transcript, page 153
[25] Transcript, page 156
[26] Transcript, page 157
[27] Transcript, page 159

out onto the roadway and approached the Arrest Team. He said that when he first saw Mr Elliott he started yelling 'Police. Don't move'[28]. He also said that he saw Mr Elliott look towards him, just as Brevet Sergeant Ayres had noted, thus causing Sergeant Wood to believe that Mr Elliott had heard Sergeant Wood yelling at him[29]. Sergeant Wood observed that Mr Elliott had a handgun in each of his hands. Initially Mr Elliott was walking straight towards the road but then he veered to the right towards the Arrest Team. Sergeant Wood said:

> 'I believed that he showed a deliberate intent to get to the arrest team. So, as he walked out he commenced walking and then he walked faster and faster and very deliberately. I formed the view that he heard me the first time when I said 'Police, don't move', and then I instructed him to put his hands on his head - which when he's presented the hand guns - so, I formed the view that he was not complying with my direction and that he showed no intention to comply with my direction.' [30]

3.15. At that point, Sergeant Wood formed the view that he would have to shoot Mr Elliott to stop him. Sergeant Wood was in a kneeling position against the tree and had his rifle at his shoulder. He was looking over the top of the sighting device for the rifle while he was yelling out for Mr Elliott to stop moving and to place his hands on his head and to drop the guns. He then raised the rifle up slightly and took a sight picture on Mr Elliott, aiming at the centre of his body. Sergeant Wood then took the safety catch off the rifle and took up the first pressure of the trigger. Sergeant Wood said that he was aware that Mr Elliott was moving towards the Arrest Team and that if he was to shoot Mr Elliott he had to do it before Mr Elliott reached a particular position beyond which it would be dangerous for Sergeant Wood to take a shot as he would be placing the Arrest Team at risk by bringing them into his field of fire. Sergeant Wood said that there was a point that he had visualised that was in line with the back of one of the vehicles. He knew that he had to squeeze the trigger prior to that point otherwise it would be too late to engage. Sergeant Wood said that he fired his weapon and then observed Mr Elliott fall to the ground immediately. He maintained his attention on the house because of the possibility that another suspect might have been inside the house.

3.16. Sergeant Wood understood the General Orders in relation to the use of firearms and gave evidence that he had them in contemplation in determining whether he should fire upon Mr Elliott. He said that he believed that he was justified in discharging his weapon[31]. Sergeant Wood said that he believed the threat was that Mr Elliott had two handguns, one in each hand, and he could fire one of those handguns at the members

[28] Transcript, page 193
[29] Transcript, page 193
[30] Transcript, page 195
[31] Transcript, page 199

of the Arrest Team. It was Sergeant Wood's intention to stop the threat of Mr Elliott being able to 'deliver or fire one of those two handguns'[32]. Of course, Sergeant Wood was not aware of the fact that the handguns were not genuine.

4. Conclusion

4.1. I am firmly of the view that the SAPOL officers involved in this sad event acted appropriately and responsibly. Mr Elliott had committed a serious offence that day. He needed to be apprehended. It was the duty of the officers concerned to apprehend him safely. That was their plan, but it was prudent and necessary that they be armed as he was believed, on reasonable grounds (brought about by his own behaviour), to be armed. Mr Elliott approached police while displaying firearms. His behaviour was aggressive. All officers reasonably believed that their lives and the lives of other officers in the vicinity were in imminent danger and the shooting of Mr Elliott was left until the last moment at which it could be safely done. The arrest group were actually retreating in an effort to defuse the situation. Sergeant Wood acted appropriately and carried out his duties in accordance with General Orders and the law.

5. Recommendations

5.1. I have no recommendations to make in this matter.

[32] Transcript, page 202

Key Words: Death in Custody (police); STAR Group

In witness whereof the said Coroner has hereunto set and subscribed his hand and Seal the 31st day of August, 2011.

_____

State Coroner

Inquest Number 30/2010 (1702/2008)