

REDACTED FINDING INTO DEATH WITH INQUEST

TYLER JORDAN CASSIDY

TABLE OF CONTENTS

SUMMARY	7
MANDATORY FINDINGS	10
Identity (s. 67 (1) (a)).....	11
Cause of death (s. 67 (1) (b))	11
The circumstances in which the death occurred (s. 67 (1) (c)).....	11
Background to the setting of the scope of the circumstances	11
The breadth of the investigation	12
BRIEF HISTORY/SOME BACKGROUND TO TYLER	13
Why relevant?	13
Tyler’s background	14
Racism and Xenophobia – membership of Southern Cross Soldiers	18
Tyler and alcohol	19
Previous history with the police.....	20
TYLER’S LAST DAY	20
During the day.....	20
Events of the evening of 11 December 2008	22
Tyler arrives home	23
On the way to Northcote Plaza and at Northcote Plaza before police arrive.....	25
TYLER AT NORTHCOTE PLAZA	27
The police arrive at Northcote Plaza and locate Tyler.....	30
The initial approach to Tyler by LSC Dods and S/C Blundell	32
Chasing Tyler into the park after the first foaming.....	35
The second foaming.....	36
The final advance and the shooting	37
The sequence of shots	43
Which police member caused the fatal wound?	44
Conclusion as to who fired the fatal bullet	45
Conclusions on the evidence as to the shooting.....	45
WHAT CAUSED TYLER’S STATE OF CRISIS? WAS TYLER ASSAULTED THAT NIGHT?.....	48
Conclusion	51
SUICIDE.....	51
The law of “suicide”	52
Not a crime.....	52
The Coroners’ test for “suicide”	52
The presumption	52
Burden of proof.....	53
The evidentiary standard or standard of proof.....	53

Intention	54
The evidence as to voluntary, conscious and deliberate acts and intent	54
Was Tyler’s capacity to form the intent to end his life vitiated because of his age, the effects of alcohol and his unstable and erratic behaviour?	58
Conclusions on the issue of whether Tyler was engaged in an act or acts intended to end his life.....	59
DISCUSSION AS TO WHAT COULD HAVE BEEN DIFFERENT	60
Operational Safety and Tactics Training (OSTT).....	60
EXAMINATION OF THIS INCIDENT AGAINST TRAINING AS AT DECEMBER 2008.....	62
Background and training of these particular members	62
Risk assessment	63
Gathering information.....	63
What information did the police have?.....	63
Locating Tyler as part of the risk assessment	64
Estimate of age of Tyler.....	64
Consideration of Tyler’s state of mind as part of the risk assessment and style of initial approach.....	65
Planned response.....	67
Communicating the plan between each other	69
Locking down the Plaza.....	70
Getting out of the van	70
Form of communication with the subject / negotiation or confrontation	72
Style of communication	74
Cordon and contain/manage	75
Administering of the first foam.....	77
Chasing Tyler into the park after the foaming.....	77
The second foaming.....	78
Tyler’s final advance and the shooting.....	78
Warning shots	79
Firing into the legs	80
Ultimatum (form of communication).....	80
Use of resources also form part of the 10 Operational Safety Principles	81
Ballistic vest.....	81
The police resources that night	81
Critical Incident Response Team (CIRT)	82
Management and supervision	82
SHORTFALLS IN TRAINING AS AT 2008	83
Recurrent features of police shootings identified	83
The decline in the emphasis on operational safety principles.....	84
IMPROVEMENTS AND DEVELOPMENTS IN OPERATIONAL SAFETY AND TACTICS TRAINING SINCE DECEMBER 2008	87
Specific training to assist police deal with vulnerable people	87
Training specific to vulnerable young people.....	88
Data and trend monitoring and analysis to ensure evidence-based developments in training.....	89

Police awareness/training for “suicide by cop”	89
Conclusions as to training.....	90
CONTRIBUTION: DID THE POLICE MEMBERS OR VICTORIA POLICE “CAUSE” OR “CONTRIBUTE” TO TYLER’S DEATH?	90
Conclusion on causation/contribution.....	91
EMERGENCY SERVICES TELECOMMUNICATIONS AUTHORITY (ESTA).....	92
IMMEDIATE AFTERMATH OF THE INCIDENT AT THE SCENE.....	93
Separation of the members in the wake of the shooting.....	93
Conclusion as to separation of the members.....	95
Drug and alcohol testing of the four members.....	96
Conclusion	97
Gunshot residue	98
Delay in contacting the Homicide Squad.....	99
Contact with the Cassidy family/Dealing with the family at the scene and in the immediate aftermath	100
Restraint of Blake	100
Delivery of the death message	102
Conclusion	103
Making a statement that night back at Preston police station.....	104
Media interaction	104
THE INVESTIGATION	106
Adequacy of investigation by police.....	106
Model of investigating police contact related deaths.....	107
CRIME SCENE EXAMINATION.....	109
Recovery of bullets	109
No reconstruction.....	110
Conclusion	110
EXAMINATION OF TYLER’S COMPUTER AND MOBILE PHONE	111
Conclusion	111
TAKING OF STATEMENTS FROM MEMBERS INVOLVED IN THE INCIDENT.....	112
Conclusion	113
FAILURE TO CALL FOR WITNESSES AND EVIDENCE	113
Conclusion	114
COVERT RECORDINGS MADE BY THE INVESTIGATORS OF THEIR ATTENDANCES ON THE FAMILY.....	114
Conclusion	116
COMMENTS.....	117
Youth mental health services	117
Previous reviews and commentary on police use of force.....	117
Command and control.....	118
Evaluation of the effectiveness of OSTT for individual members	119
Delays in notification.....	119
Attendance of forensic services in a timely way	119
Public call for witnesses.....	120
Family welfare issues.....	120
Delivery of the death message	121

Model of police investigating police for the Coroner	121
Taking of police statements	123
Control of the Coroner's investigation/timeliness of the delivery of the Brief	124
Police statements to media	125
RECOMMENDATIONS	127

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 5542 / 08

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: TYLER JORDAN CASSIDY

Delivered on: November 23, 2011

Delivered at: Coroners Court of Victoria
Level 11, 222 Exhibition Street
Melbourne, Victoria 3000

Hearing dates: October 19, 20, 21, 22, 25, 26, 27, 28, 29, 2010
November 1, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 2010
December 2, 3, 14, 15, 16, 17, 20, 21, 22, 23, 24, 2010
March 10, 11, 2011

Findings of: JUDGE JENNIFER COATE

Representation: Cassidy Family
Mr Christopher Dane QC
Ms Jane Dixon SC
Mr Michael Stanton
Galbally & O'Bryan, Solicitors

Austin Health
Mr Paul Halley
Minter Ellison, Solicitors

Human Rights Law Resource Centre

Mr Brian Walters SC, Counsel

Mr Sam Ure

Allens Arthur Robinson, Solicitors

Victoria Legal Aid

Mr Marcus Dempsey

ESTA

Mr William Southey

Gadens Lawyers, Solicitors

Chief Commissioner of Police

Ms Kerri Judd SC

Mr Ben Ihle

VGSO, Solicitors

Four Police Members

Dr Ian Freckelton SC

Mr Paul Lawrie

Russell Kennedy, Solicitors

Counsel assisting the
Coroner:

Ms Fiona Ellis

DLA Piper, Solicitors

I, Judge Jennifer Coate, State Coroner having investigated the death of TYLER JORDAN CASSIDY

and having held an inquest in relation to this death on October 19, 20, 21, 22, 25, 26, 27, 28, 29, November 1, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, December 2, 3, 14, 15, 16, 17, 20, 21, 22, 23 and 24, 2010

at County Court of Victoria, 250 William Street, Melbourne

and March 10 and 11, 2011

at Coroners Court of Victoria, Level 11, 222 Exhibition Street, Melbourne

find that the identity of the deceased was TYLER JORDAN CASSIDY

born on April 20, 1993

and the death occurred on December 11, 2008

at All Nations Park, Northcote

from:

1a. GUNSHOT WOUND TO THE CHEST¹

In the following circumstances:

SUMMARY

1. Tyler Jordan Cassidy was shot dead by police on the evening of 11 December 2008 at All Nations Park, Northcote. He was 15 years and 8 months old at the time of his death.
2. Ten shots were fired by three of the four police officers present in the park at the time of his death. Five of those shots struck Tyler, one of them fatally entering his body below his left clavicle and causing significant internal bleeding and the collapse of his right lung. He died within minutes at the scene.
3. About 11 minutes and 25 seconds² before this shooting, Tyler had armed himself with two large knives he had very publicly stolen from a Kmart store inside the Northcote Plaza Shopping Centre which is adjacent to All Nations Park. He had then moved swiftly through the shopping centre, and adjoining shops and car park, pointing the knives at people and demanding that the police be called or people would die that night.

¹ Autopsy Findings contained in report from Dr Noel Woodford dated February 27, 2009.

² See Inquest Brief 2203 for the time at which the ambulance was called by 3NC303 (21.31.25) and exhibit 121, remainder of exhibits which includes date and time stamped CCTV footage of Tyler entering and exiting Kmart.

4. Indeed about three minutes and two seconds³ before entering the Kmart store he had called 000 himself and said there was a “psychopath” with a shotgun that had gone crazy and that the police should *“shoot him fucken dead”*.

5. At least four people⁴ in and around Northcote Plaza that night had contacted 000⁵ advising police of the presence of a male armed with knives threatening people.

6. Four police arrived in two vans in response to these 000 calls. They were Leading Senior Constable Colin Dods (LSC Dods) and Senior Constable Richard Blundell (S/C Blundell) in one police van and Constable Antonia Ferrante (C. Ferrante) and Constable Nicole De Propertis (C. De Propertis) in the second van.⁶

7. LSC Dods and S/C Blundell quickly located Tyler who, upon seeing the police arrive, had run onto the roadway and placed himself in front of the van being driven by S/C Blundell. Upon seeing Tyler, S/C Blundell pulled up immediately and both he and LSC Dods got out of the van. LSC Dods had taken out his Oleoresin Capsicum (OC) foam spray and S/C Blundell immediately withdrew his firearm once he got out of the van.⁷

8. The first words spoken to Tyler were commands to him to show his hands, which he held behind his back.

9. Tyler produced two knives, firmly gripping one in each hand. When asked to show his hands and drop the knives,⁸ Tyler said *“you’re going to have to kill me”*, *“you’re going to have to shoot me”*⁹ and *“I’ll hurt you”*.¹⁰

10. Upon seeing the knives LSC Dods and S/C Blundell demanded he drop the knives. Tyler did not drop the knives. There is some mixed evidence about whether or not Tyler stepped forward towards LSC Dods and S/C Blundell upon them exiting their van. LSC Dods stepped forward and sprayed Tyler with OC foam. At this point, according to the evidence of LSC Dods he moved forward so that he was within the range of distance

³ See Inquest Brief 2173 for the time at which Tyler calls ESTA and exhibit 121, remainder of exhibits which includes date and time stamped CCTV footage of Tyler entering and exiting Kmart.

⁴ These four are: Mr Petidis, Mr Mascetti, Mr Gregory and Mr Sood (in addition Mrs Mascetti had also telephoned ESTA following what her husband had told her and Ms Firanyi had rung Northcote Police Station following her observations of Tyler whilst at the bus stop.

⁵ 000 is the number for emergency services. It is operated by the Emergency Services and Telecommunications Authority (ESTA). Intermittent references to 000 or ESTA or even D24 throughout the evidence all refer to the emergency services 000 number operated by ESTA.

⁶ Throughout this Finding each of the four members involved in Tyler’s death are addressed in the abbreviated form of the rank they held at the time, rather than the rank at the time of the Inquest.

⁷ Transcript page 3868.

⁸ See statement of S/C Blundell at Inquest Brief page 386 and statement of LSC Dods at Inquest Brief page 368.

⁹ Transcript page 3651.

¹⁰ Exhibit 102, statement of LSC Dods at Inquest brief page 369.

for the OC foam to be effective.¹¹

11. After this foaming, Tyler ran across the adjoining skate park and into the grassed open area of All Nations Park. By this time the two police members in the second van, C. Ferrante and C. De Propertis, had joined LSC Dods and S/C Blundell on foot as they pursued Tyler into the park.

12. Some metres into the grassed area of All Nations Park, past the skate park and across a track, Tyler stopped running and turned and faced all four police members who had chased him into the Park. LSC Dods described Tyler as pointing the knives at them in a “threatening manner”. He was again foamed by LSC Dods, but apparently to no effect in that it did not result in Tyler laying down the knives or indicating his intention to stop.

13. Refusing to obey the police calls to throw down the knives, Tyler started advancing slowly on the police. The police stated they were commanding him to put down the knives and stop coming towards them or he would be shot. Throughout this exchange the police evidence was that Tyler responded by saying “*I’m going to kill you*” and “*you’re going to have to shoot me*”.

14. All four police stated they backed away as Tyler continued to advance despite commands to him to stop and put down the knives.

15. Tyler focused his advance on LSC Dods. LSC Dods continued to issue commands to Tyler to stop and disarm.

16. LSC Dods fired a warning shot into the ground beside Tyler which did not halt Tyler’s advance. After this warning shot was fired, LSC Dods became isolated from the other three members as Tyler continued to advance on LSC Dods. LSC Dods stated he felt forced to back up a set of concrete steps leading to a raised area of the adjoining skate park. LSC Dods then fired two shots at Tyler’s legs as Tyler walked up the steps towards him. Apart from a “flinch” or “stumble”, Tyler did not stop advancing on LSC Dods with the knives held firmly in each hand.

17. As LSC Dods got to the top of the steps, he came up against a railing running around the steps’ apex.

18. As Tyler commenced his ascent of the steps towards LSC Dods, S/C Blundell fired twice and C. De Propertis fired once. As Tyler walked towards LSC Dods, S/C Blundell fired again. At this time, Tyler was standing in the vicinity of the top of a ramp in the skate park, down which he ultimately fell. LSC Dods stated that, fearing for his life and having exhausted all other non-lethal options, he fired three shots directly at Tyler’s chest area as Tyler walked towards him, and as he (i.e. LSC Dods) was standing a step in from a ledge to the back of him and a ramp to the right. There were several shots fired in rapid succession at this time after which Tyler fell down the ramp and died minutes later.

¹¹ Transcript page 3652

19. It was 73 seconds from the time LSC Dods first saw and engaged with Tyler on the roadway to the call for the ambulance in the wake of the shooting.

20. Relying upon the range and extent of public commentary which emerged in the wake of the fatal shooting of Tyler, it was both apparent and understandable that the death of Tyler, a 15-year-old boy, at the hands of four members of Victoria Police both shocked and bewildered us as a community.

21. The evidence and closing submissions raised issues about whether or not Tyler was engaged in an act of suicidal behaviour on this night, a conclusion strongly resisted by his family. The evidence and closing submissions raised issues about whether or not a range of aspects of the conduct of the four members on this night was inconsistent with their training, culminating in a submission that the conduct should be considered as using force so disproportionate to the threat posed by Tyler, that their conduct should be referred to the Director of Public Prosecutions for the DPP to consider laying criminal charges. The evidence raised issues about whether or not police training itself had moved away from its own operational safety principles and become overly focused on the use of police issue equipment rather than verbal communication and conflict resolution skills; especially in circumstances where the police are required to deal with persons with mental health issues. The evidence and final submissions raised issues about the way in which the police handled aspects of the aftermath of the shooting and the investigation into the shooting. This included whether or not the very model itself, of having police investigating police, produced a less than competent and impartial and, therefore, unsatisfactory result in this case which hampered the Court's capacity to complete its tasks.

MANDATORY FINDINGS

22. Section 67 (1) of the *Coroners Act 2008* (Vic) (the Act) sets out the mandatory matters a Coroner must find if possible. **Section 67 provides that:**

- a. a Coroner investigating a death must find if possible—
 - i. the identity of the deceased; and
 - ii. the cause of death; and
 - iii. the circumstances in which the death occurred.

23. Given the circumstances of Tyler's death, no party raised any issue as to the mandatory requirement for an inquest.¹² In the wake of an investigation including an inquest, a Coroner has the discretion to make any comment or recommendations on any matter connected with the death including matters related to public health and safety or the administration of justice.¹³

¹² Tyler's death was the death of a *person placed in custody or care* pursuant to section 3 of the Act – *a person who a member of the police force ... is attempting to take into custody* and a mandatory inquest is required pursuant to s. 52 (2) (b) of the Act.

¹³ Section 67 (3) *Coroners Act 2008*.

Identity (s. 67 (1) (a))

24. Tyler's identity was not in issue. He was formally identified both by way of a fingerprint identification report and a statement of identification by his mother made at 10.25am on 12 December 2008.

Cause of death (s. 67 (1) (b))

25. This section of the Act is generally accepted as meaning the *medical* cause of death. Whilst it was contentious as to which one of the three police members present, who discharged their firearms, was responsible for the fatal shot to Tyler's chest, the fatal wound itself was not contentious.

26. Forensic pathologist Dr Noel Woodford performed an autopsy on Tyler at 11am on 12 December 2008. Dr Woodford found an exit wound for each entry wound. He found no bullets had lodged in Tyler's body. Dr Woodford stated, without challenge, that the bullet which entered Tyler's chest was the fatal bullet. His evidence was that it was likely to have taken minutes before death would occur as a result of such an injury.

27. Mr Simon Ward, paramedic, gave the following evidence when asked about likely time to death:

Mr Dane: Did the boy suffer that you were able to see?—

Answer: I'm unable to say, but given how quickly according to... there was movement to lack of life in this poor boy, I would say he didn't suffer. I would say that he lost consciousness very quickly given that something this catastrophic had occurred.

Mr Dane: So whatever the period of time, it would have been quite quick?—

Answer: Very definitely.¹⁴

The circumstances in which the death occurred (s. 67 (1) (c))

28. It was the circumstances in which this death occurred and the aftermath of the shooting which was the focus of the investigation at Inquest. There was some tension in the setting of the parameters of this Inquest and given its length and complexity, I consider it worthwhile to make some observations on this issue at the outset.

Background to the setting of the scope of the circumstances

29. The scope and limits of the Coroner's inquiry is a perennial and legitimate topic for debate and from time to time the issue gets some attention from the superior courts. In Victoria, this issue was most recently addressed by His Honour Justice Beach in *Thales Australia Limited v Coroners Court of Victoria [2011] VSC 133* on 11 April 2011.

30. In that case, His Honour had reason to consider the meaning of the term "the circumstances in which the death occurred" in s. 67 (1) (c). In the course of doing so, he

¹⁴ Transcript 2782; Inquest Brief 15–23.

stated that the *Coroners Act 2008* should be read as a whole and that “assistance in ascertaining the meaning of the Act may be obtained from the Preamble”.¹⁵ I understand His Honour to be ruling that the interpretation of “circumstances in which the death occurred” will be a matter for the Coroner to interpret in each case, using the scheme of the Act as a whole, but with particular assistance from the purposes of the Act contained in s. 1 (c) read together with the Preamble.

31. Considerable time and attention was given to setting the scope for the Inquest during the Directions Hearing process.¹⁶ Given that the “circumstances in which the death occurred” is such a movable concept, depending on the nature of the apparent facts and the issues which arise from those facts, this process was adopted. This was done in an endeavour to make clear to the interested parties the parameters of the Inquest as set by me (after giving all interested parties the opportunity to be heard on the setting of those parameters), to assist all, including the public, to follow what was and what was not being examined and why, and in an endeavour to contain an interested party or parties from pursuing areas which were ruled as outside the scope of the inquiry.

The breadth of the investigation

32. There was a considerable amount of contention raised in the material gathered prior to the Inquest as to what may have happened to Tyler earlier in the night of 11 December including when Tyler was on his way home from a day out, what happened when he got to his home that night and then went out again, the state of mind of Tyler both generally and on the night, what happened in the lead up to the shooting and the actual shooting. The aftermath of the shooting and the investigation were also contentious.

33. The scope of the inquiry and who would be given status as an interested party in this inquiry were contentious at the outset.¹⁷

34. The Inquest heard 34 days of evidence and sat for two days taking final oral submissions. The Brief of evidence extended beyond 3,710 pages, the Inquest produced 4,499 pages of transcript and the final written submissions from the interested parties were in excess of 500 pages in total. At the Inquest, 63 witnesses gave evidence and produced 124 documentary exhibits including disks and photographs, notes, reports and reviews and general documents.

35. I do not propose to recount or summarise all of that evidence or to incorporate it into this Finding, but rather to refer to those parts of the evidence as is necessary touching upon those matters of significance as they fall within the scope of this inquiry into this tragic death.

¹⁵ Para 69 of *Thales*.

¹⁶ The Scope of the Inquest was finalised and ruled upon by me after two Directions hearings and the opportunity for parties to be heard orally. The Scope document is appended to this Finding as Appendix 1.

¹⁷ This issue was the subject of a preliminary ruling which was delivered on 8 July 2010 and can be found on the Court website in the **Case Rulings** section.

BRIEF HISTORY/SOME BACKGROUND TO TYLER

36. An intense analysis was undertaken of both Tyler's day leading up to this evening and his past history; looking for clues, understanding, explanations, motivations, rationale for what lay ahead, and how to assess the meaning of Tyler's actions on the night and the police response.

Why relevant?

37. Given the way in which information about Tyler emerged into the public arena in the wake of his death, his family was understandably distressed at the prospect of a public examination of Tyler's life and questioned what purpose it would serve other than to add misery and hurt to their traumatic loss.

38. Tyler's family submitted that no matter what Tyler's background or state of mind, the actions towards him on the evening of 11 December 2008 were unjustified and disproportionate in the circumstances.¹⁸

39. However Tyler's family were also anxious to understand what caused Tyler to be in such a state of distress that evening. It was not possible to do justice to that question without some understanding of Tyler. To do otherwise simply would not give a true picture.

40. Further, the relevance of some evidence as to his history goes not only to the question of what caused his extreme and uncontrolled state on that evening, but also whether his history may be relevant to his state of mind on that night and whether it would have been possible to rationalise with him or contain him in his highly aroused state.

41. The four police members, through both oral and written closing submissions, submitted that Tyler's behaviour should be seen as him having formed an intention to provoke police into killing him in an act of suicide and that this caused him to be shot by the police despite the measures taken by police to avoid this outcome.¹⁹ Clearly, whether or not Tyler was engaged in an act of self harm on this night is central to the circumstances in which his death occurred. To do justice to this question, relevant factors to take into account are matters such as any previous history of mental ill health, any previous history of suicide attempts or suicidal ideation or behavioural disturbance. Such a weighty decision about whether or not Tyler was intent upon ending his life can only be properly considered in the context of his available history. At all times, I endeavoured to balance the need to minimise any unnecessary intrusion into both Tyler's personal and health information and that of the Cassidy family, to only that which was required for the purposes of fairly and appropriately assessing the circumstances in which Tyler's death occurred.

¹⁸ Paragraph 39, page 16 Final written submissions of the family.

¹⁹ Written submissions of the four police members, page 3.

42. There was much that was inaccurate about Tyler that made its way into the forum of public opinion in the wake of his death. One of the recognised functions of an inquest is to address rumour and innuendo that has filtered into the public mind.

43. Finally, given the Coroner's role to endeavour to assist in the reduction of preventable deaths, an accurate and balanced sense of this young man must be achieved in order to make proper, accurate and fair findings, and any relevant comments and/or recommendations which may flow from those findings towards preventing future deaths in similar circumstances. This approach is consistent with the opinion of Professor McGorry²⁰ that police must understand something of the possible range and complexity of issues that a young person may present with and the need to differentiate in basic ways between someone who is engaged in a purely criminal act as opposed to someone who is experiencing a mental or emotional crisis.

44. Following is a short synopsis of *some* aspects of Tyler's history and *some isolated* issues touching upon Tyler's life and *some* aspects of his behaviour relevant to this investigation.

Tyler's background

45. As at the evening of 11 December 2008, Tyler Cassidy (Tyler)²¹ was a 15-year-old boy living at home with his mother, his mother's partner Greg Taylor and his brother Blake. His mother Shani Cassidy and his father Ian Cassidy had devoted a great deal of time and love and emotional energy into endeavouring to keep Tyler in mainstream education. Sadly, Tyler's father, Mr Cassidy passed away on 4 December 2004 when Tyler was 11 years of age. This left Mrs Cassidy to manage on her own with the care of two sons and the loss of her husband.

46. At the Inquest, Tyler's mother described Tyler as a typical 15-year-old boy. She gave evidence that he would swear, throw tantrums and express emotion just like any child and that he would sometimes express himself by getting upset quite easily. It was her evidence that he was developing better coping skills to deal with things that upset him from the age of about 13 to 14.²² Mrs Cassidy agreed that Tyler had engaged in swearing and intimidation and property damage at the school he was expelled from in 2008 but she gave evidence that Tyler expressed remorse for this behaviour, accepted that he had made a mistake and apologised for it.²³

47. Tyler's family wished him to be seen and remembered as a warm, caring, sociable and loyal 15-year-old boy who was deeply loved by his family and his wide circle of friends. While Tyler was sometimes troubled, as Blake Cassidy said: "... *he'd always want to*

²⁰ VLA assisted the Inquest by arranging the attendance of Professor McGorry as an expert witness in the area of youth mental health.

²¹ Confirmation as to the agreed form of address for Tyler was sought from Counsel for the family at the commencement of the inquiry.

²² Transcript 534.

²³ Transcript 541.

*help people and yeah he was just – just a good kid”.*²⁴ Tyler’s family submitted that, like many teenagers, he was attempting to find his way in the world and was concerned about the way he was perceived by others, experimenting with alcohol, learning to control his temper and beginning to seek greater independence as he began to make the transition to adulthood.²⁵ It was submitted on behalf of the family that the evidence demonstrated that Tyler could be polite, well-mannered and respectful towards adults. This submission was made by reference to the evidence of Mr McGenniskin (the father of Aaron and Emily McGenniskin,) at whose home Tyler had spent his last evening.²⁶

48. Paragraph redacted pursuant to Section 73 (2) of the Coroners Act 2008 in accordance with Non Publication Order 2 made by the State Coroner on 19 October 2010.

49. On 15 December 2004 Tyler, deeply affected by his father’s death, walked out of school and lay down in the middle of the road stating “he wanted to be run over by a car and killed”.²⁸ He was placed in the Austin Child and Adolescent Mental Health Service (CAMHS) as an inpatient for three weeks in the wake of that incident. During this time, Tyler was allocated a case manager whose name was Vic Sant.

50. An examination of the records provided by Austin Health reveals that this was Tyler’s first referral to the Austin. On admission, he was noted to be extremely abusive, uncontrolled and violent.²⁹ He was again referred to the Austin Child and Adolescent Mental Health Service (CAMHS) for a crisis referral on 1 February 2005 after an incident over the previous weekend of attempted self-harm and escalating behaviour over the previous few days.

51. He was admitted as an inpatient to the Austin for a planned five-week period during March and April 2005. In the nursing discharge summary for 14 April 2005 following that five-week planned inpatient admission, it was noted as follows:

Presenting problems were related to behavioural issues associated both at home and school. These revolved around aggression and lack of control when agitated. In the past he has absconded from school and home on several occasions and has become verbally abusive towards others. He has also taken knives to school and threatened the school principal. He has run out of the school grounds and attempted to harm himself by running out onto a road into oncoming traffic. Tyler tends to bottle things up and eventually explodes, shuts off to everyone around him and won't talk about his feelings for hours.

52. That summary notes that Tyler had also had difficulty at school:

²⁴ Paragraph 40 written submissions of family, page 16

²⁵ See paragraphs 40–42 written submissions of the family and references to parts of the evidence contained therein.

²⁶ Transcript 727.

²⁸ Appendix 32, pages 1483–1552.

²⁹ See Appendix 27, page 1078 of Inquest Brief.

He was referred due to ongoing concerns about Tyler's sustained behavioural outbursts in the classroom and on the playground as well as difficulties staying on task. ... At home Tyler became quite oppositional, unable to listen to his mother especially when limits were set for him to do something he didn't want to do. He would hide knives from his mother and at times when Tyler became agitated he would use these to threaten himself, his mother or others.

53. He was found to have had two large knives in his bag when he arrived at the Austin CAMHS for his first admission.³⁰ When questioned as to what he was going to do with the knives, according to the discharge summary, he stated “*to threaten the nurses*”. Tyler was noted to become highly anxious and use anger and aggression to try and cover his anxiety.

54. He was noted to have expressed thoughts of suicide, stating that he did not want to be there, and became highly anxious. However, it was also noted that given space to calm down and with firm limits, the staff were able to manage his anxiety and settle him. He was noted to respond particularly well to positive reinforcement and rewards for good behaviour.

55. The Austin records paint a picture of an extremely anxious boy, severely constrained in expressing his emotions, who endeavoured to cope with his anxiety by projecting anger and aggression.³¹

56. This pattern was consistent with the evidence given by Vic Sant, his case manager at the Austin, that whilst Tyler agreed to see him on a sporadic basis, he did not want to look at the issues surrounding his anger too intensely and that it was difficult to go too deep with Tyler: “... *he tended to keep his emotions to himself*”.³²

57. By 2008, Tyler was very resistant to attending any counselling. With considerable encouragement and assistance from his mother, he was prepared to have the occasional attendance with Vic Sant. Between 14 April 2005 and 16 September 2008, Mr Sant had seen Tyler and/or his mother on approximately 40 occasions. Specifically, Mr Sant had seen Tyler on 18 of those occasions.³³ Tyler had last been seen by Mr Sant on 25 August 2008.

58. Whilst it was Mr Sant’s oral evidence that as Tyler got older, he was much more developmentally on track,³⁴ the value of that evidence and what weight could be put on it was limited given Mr Sant’s sporadic contact with Tyler and Mr Sant’s apparent lack of knowledge of what was actually happening in Tyler's life. For example, Mr Sant’s

³⁰ He was admitted to the Austin on 15 March 2005 and discharged on 14 April 2005.

³¹ In the first statement that Greg Taylor made to police (Inquest Brief, page 185) he stated that Tyler “*had anger management problems and little things could set him off and make him angry. He has threatened Shani before with a knife and told her he was going to kill her but she had managed to eventually to calm him down*”.

³² Transcript 875.

³³ Statement of Vic Sant, Inquest Brief at pages 1952, 1953.

³⁴ Transcript 868 – 14.

evidence was that he was unaware that Tyler had been charged with an assault upon another child in 2008, he was unaware that Tyler had been having difficulties at his previous schools and he was unaware that Tyler was drinking alcohol and having difficulty managing his behaviour whilst under the influence of alcohol.³⁵

59. Dr Neil Coventry, an adolescent psychiatrist from Austin CAMHS provided a statement from his assessment of the records held at the Austin. He stated:

*There was no evidence of psychotic symptoms, major depressive disorder, bipolar mood disorders or substance disorder. Tyler had some self harming behaviours, which appeared transient and impulsive and related to external stressors. He never expressed any clear suicidal ideation with planned intent. Tyler struggled with anger management and control of strong emotional states making him prone to acting out his feelings with aggressive behaviour directed towards others.*³⁶

The entry in Tyler's Austin CAMHS records indicates a mental health diagnosis of "Oppositional defiant disorder".

60. Tyler had attended three secondary schools before commencing at a school called "The Island" in November 2008.³⁷ His attendance at The Island was at the recommendation of and with the assistance of Mr Sant. Despite his mother's best efforts, Tyler had been expelled in August 2008 from the school he was attending at that time. Ms Rowena Bailey from The Island gave evidence that during the period Tyler attended the school (5 November to 11 December 2008³⁸), there were no incidents whatsoever concerning his behaviour and that he was settling well and showing definite skills in the kitchen.³⁹

61. It was clear from the evidence that Tyler had a close and loving relationship with his brother Blake and that this was reciprocated by Blake. It is also clear that Mrs Cassidy relied upon this closeness to assist her from time to time in the control and management of Tyler. Blake gave evidence that when Tyler was angry he would usually get frustrated and take himself off for a walk.⁴⁰ Blake gave evidence that he was aware that Tyler did on occasion carry knives.⁴¹

62. Statements were taken and oral evidence was given from a number of Tyler's friends with whom he had spent the day. He was generally seen by his friends as the one who was hyperactive,⁴² always joking around and trying to make the others laugh. To most of

³⁵ Transcript 935 – 6.

³⁶ Statement of Dr Coventry at Inquest Brief, page 338; see also Appendix 27 Austin CAMHS records.

³⁷ The Island at Collingwood College is a vocational school for young people having difficulty with mainstream education.

³⁸ Evidence of Rowena Bailey at transcript pages 1024, 1025.

³⁹ Transcript 1030.

⁴⁰ Transcript 567.

⁴¹ Transcript 659.

⁴² Transcript 598.

Tyler's friends it was apparent from their evidence that the day of socialising together (11 December 2008) seemed generally unremarkable, as was Tyler's behaviour. There was only one piece of evidence from Tyler's friend Emily McGenniskin which cast a different light on Tyler's state of mind in the lead up to the tragic events of 11 December.

63. Emily gave evidence that she was in daily contact with Tyler in the months leading up to his death. She described him as a happy boy and someone who just wanted to make people smile. She said that Tyler would confide in her from time to time. Tyler had told her that the anniversary of his father's death was coming up and that he was finding 2008 harder than a lot of the previous years.⁴³ Emily gave evidence that she had been communicating with Tyler on MSN Messenger the night before he died. Emily's evidence was that Tyler told her he felt very depressed but he would not tell her why. Emily's evidence was that when she asked Tyler why he was feeling depressed he said to her "*I'm not telling anyone, it's pointless*".⁴⁴ Despite further efforts by Emily, Tyler did not tell her what was bothering him. It was apparent on examination of the SMS messages produced between Tyler and Emily, that Tyler was very fond of Emily. Indeed Emily agreed that Tyler would have liked to have been her boyfriend, but she had previously explained to him that she already had a boyfriend. Tyler knew that Emily was going to meet that boyfriend when she left the group on the evening of 11 December.⁴⁵

Racism and Xenophobia – membership of Southern Cross Soldiers

64. As a result of information that found its way into the public domain very shortly after Tyler's death, Tyler's membership of the Southern Cross Soldiers assumed some significance in the Inquest. Counsel for the family was critical of Counsel for the four police members in pursuing the issue and endeavouring to establish a causal relationship between Tyler's membership of Southern Cross Soldiers⁴⁶ and the circumstances of his death.⁴⁷

65. I allowed this issue to be explored for a short time at Inquest for several reasons. There had been considerable apparently gratuitous public attention given to Tyler's involvement in this group, which was distressing for his family and raised a public perception that there was a link between this group and Tyler's death, in that the activities of the group itself might have encouraged hostility towards police. Further, it became apparent that Tyler had been asked to leave the group some time prior to his death⁴⁸ and this raised a question as to whether or not his expulsion may have been a catalyst for his extreme state of agitation on this night. Finally, as Tyler had given away his Southern Cross Soldiers' jumper earlier on the night of 11 December 2008 (an item of apparent consequence to Tyler), it raised the possibility that he was giving away his precious items in preparation for his actions later in the evening.

⁴³ See Transcript 804.

⁴⁴ Inquest Brief 732.

⁴⁵ Transcript 807.

⁴⁶ This group was characterised variously as a white supremacist group through to a group who enjoys each other's company and wish to express their love of Australia.

⁴⁷ Paragraph 43, page 17 written submissions of the family.

⁴⁸ Evidence of Jarrod Felicetti.

66. In the end, the evidence from Tyler's friends was very mixed and contradictory about the nature of the Southern Cross Soldiers and Tyler's connection to the group. On the one hand, there was evidence that Tyler was not particularly perturbed about being asked to leave and on the other, there was evidence that he was "pretty shattered" about not being wanted in the group any more.⁴⁹ There was not sufficient cogent evidence to make any relevant finding connecting Tyler's membership of, or apparent expulsion from, the Southern Cross Soldiers to the circumstances in which his death occurred. I found his actions in giving away his Southern Cross Soldiers' jumper that night far too ambivalent to draw any conclusion, as this action was equally consistent with an adolescent boy wanting to show a sign of affection to a girl.

Tyler and alcohol

67. According to Tyler's friend Rory Jones, Tyler drank five or six cans of Bundaberg rum and Coke and a small bottle of Bundaberg rum throughout the afternoon and early evening.

68. According to Dr Noel Woodford, forensic pathologist, toxicological analysis showed a post mortem blood alcohol concentration of 0.09g/100ml.⁵⁰ Professor McGorry gave evidence that the effects of alcohol could extend to an increase in emotional lability, irrationality, anger and distress⁵¹ and that control over the frontal part of the adolescent brain, the emotional part, is weakened with alcohol use.⁵²

69. There is evidence that Tyler became particularly unstable and reckless when affected by alcohol. Blake gave evidence of an incident that had occurred approximately six weeks before Tyler's death. On that occasion Tyler came home upset, agitated and according to Blake was possibly a little drunk.⁵³ Indeed, when Blake was trying to reason with Tyler during the exchange of text messages set out below, before Tyler got to Northcote Plaza, Blake was obviously trying to remind Tyler of an earlier occasion when sending him the following messages: "*Just let me C U..... U have so much 2 live 4.... Remember what was talku about lart time... The alchole is not making u think....*"

70. Tyler's friend Rory, who had been drinking with him that afternoon, gave evidence about an occasion a few months earlier when Tyler had seemed to get angry for no reason. Tyler had wanted to go swimming at the beach at night. Rory described Tyler as having got upset and angry and that Tyler had tried to run out of the gate, but they had pulled him inside and calmed him down.⁵⁴ Tyler's friend Jarrod remembered this incident too and described Tyler as "a bit tipsy" that night.⁵⁵

⁴⁹ Transcript 792.

⁵⁰ Exhibit 67; Inquest Brief, page 116.

⁵¹ Transcript 2633.

⁵² Transcript 3500.

⁵³ Transcript 573.

⁵⁴ Transcript 601.

⁵⁵ Transcript 628.

71. On 11 December 2008 between 21.07 and 21.36, Blake exchanged a number of text messages with Tyler. As stated above, he texted Tyler that the alcohol was not making him think.⁵⁶ In his statement to the Court, Blake said that when his mum rang him that evening about Tyler she told him that she thought Tyler was “pissed” and by that he thought she meant affected by alcohol.⁵⁷ Emily McGenniskin who was close to Tyler also thought that after leaving her house, he was more drunk and out of control than she had realised.⁵⁸ The family conceded in closing submissions that Tyler was affected by alcohol on the evening and that would have impacted upon his behaviour and mood.⁵⁹ Understandably, his friends and family felt very protective of Tyler’s history but there was enough in the material to draw an inference that this conduct was on a continuum for Tyler.

Previous history with the police

72. What occurred on that night raised speculation that Tyler may have had some vendetta against the police or some feelings of hostility directed towards the police. The evidence was that on the one and only previous occasion that Tyler had an encounter with police he had been cooperative. There was no other evidence of any underlying hostility towards the police on the part of Tyler.

TYLER’S LAST DAY

During the day

73. As at 11 December 2008, Tyler had finished school for the year. He spent much of that day socialising with a group of friends in the outer suburbs of Melbourne around Eltham and Diamond Creek.

74. At about 1.00pm, Tyler met his friend Rory Jones in Eltham. Rory found Tyler loud and excited and hyperactive consistent with his usual self.⁶⁰ They purchased a slab of Bundaberg cans and Tyler also purchased a small bottle of Bundaberg rum. They went by train to the home of their friend Aaron McGenniskin where they remained for the afternoon drinking and socialising with others who arrived at the house. Mr and Mrs McGenniskin both observed Tyler that afternoon and evening. Mr McGenniskin described Tyler as a very polite and well-mannered kid he had grown to like.⁶¹ Other than both Mr and Mrs McGenniskin noting that Tyler looked uncharacteristically messy and unkempt that evening, with a stain on his singlet, they did not notice anything out of the ordinary.

75. During the afternoon Tyler and some of the group travelled to McDonald’s in Diamond Creek. Whilst there, Emily McGenniskin, gave evidence that he received a text

⁵⁶ See exhibit 6, Inquest Brief, 910–922.

⁵⁷ Inquest Brief, page 190.

⁵⁸ Inquest Brief, page 144.

⁵⁹ Paragraph 4, 5, page 17 written submissions of the family.

⁶⁰ Transcript 598.

⁶¹ Transcript 727.

message from his ex-girlfriend's new boyfriend. Emily stated that Tyler told her he was either upset or angry about the message. Emily recalled that Tyler became quiet for a while in the wake of that message.⁶²

76. The group returned back to the McGenniskin household. Sometime before 7.00pm they left to go to the Diamond Creek station to enable Tyler and his friend S to catch a train back into the city.

77. Emily gave evidence that on the way to the station she saw Tyler climb onto the roof of a taxi which made her realise that Tyler was more drunk and out of control than she had thought.⁶³

78. CCTV footage obtained from Diamond Creek station captures some footage of Tyler with his friends, S, Aaron and Jarrod at that time. Tyler can be seen attempting to climb up a pole on the station and then falling apparently quite heavily onto his back. He lay in situ for about a minute after this fall. None of the group appears to express any interest or concern. It would appear that this behaviour was not out of character for Tyler. The CCTV footage shows Tyler and his friend S boarding the train at 19.07⁶⁴ from Diamond Creek station to travel into the city.

79. The evidence is that Tyler had intended to return to Diamond Creek after taking S home. He had left his bag and wallet at Aaron McGenniskin's home, apparently consistent with his intention to return that night.

80. Whilst Tyler was on the train travelling into the city, Jarrod spoke to him and told him it would be better if he went home rather than come back to Diamond Creek and that Aaron had to work the next day.⁶⁵ Rory tried to call Tyler to make sure he was on his way home but the phone kept cutting out. Rory's evidence was that he started to worry because he could not speak to Tyler properly⁶⁶ and he was also worried that Tyler had had a bit to drink. He was concerned about Tyler's vulnerability as a result of him being affected by alcohol.⁶⁷

81. The news that he was unable to return to Diamond Creek appeared to upset Tyler considerably. He sent a text message to Emily, requesting she try and persuade Aaron to allow him to return. Emily did do that, but it did not change the situation. Tyler sent a text message to Emily in the wake of the news which stated he was in the "worst mood ever".⁶⁸ It was Emily's evidence that Tyler liked being out with his friends and on that night he did not particularly want to go home.⁶⁹

⁶² Inquest Brief 146.

⁶³ Inquest Brief 144.

⁶⁴ This time does not reflect the variation for daylight savings.

⁶⁵ Transcript 600.

⁶⁶ Transcript, pages 600–613.

⁶⁷ Transcript 600.

⁶⁸ Exhibit 19, Inquest Brief 145.

⁶⁹ Further evidence of Tyler's apparent wish not to be at home that night and to look for company amongst his peers came from Tyler's friend Daniel Chowne, who Tyler contacted when he got home to make the

82. Consistent with Emily's view, Tyler, whilst travelling back into the city, made contact with two friends, Shona and Shannon. He arranged to meet them at Heidelberg station. Tyler got off at Heidelberg station and S continued into the city on the train. He spent some time with Shona and Shannon but they were not able to stay for long. Shona knew that she had to go and she told Tyler this.⁷⁰ She and Shannon waited until Tyler's train arrived.⁷¹ Neither Shona nor Shannon noticed anything untoward about Tyler when they met with him. Tyler boarded the Hurstbridge to Flinders Street train and got off at Alphington station at about 8.16pm.

Events of the evening of 11 December 2008

83. There is a milk bar opposite Alphington station which on that night was operated by Mr Chen and his wife. Mr Chen made a statement that he and his wife were in their shop on the evening of 11 December 2008 when a boy came into his shop and asked for water. Mr Chen gave evidence that the boy looked menacing with an angry expression on his face. He stated that the boy indicated he wanted water. Mr Chen gave the boy a bottle of water. Mr Chen stated that after he gave the boy water, the boy pointed at Mr Chen and said "*I let you alive*".⁷² Mr Chen had clearly been fearful of the boy as he described that the hairs on the back of his hand stood up as he let him out the shop. Mr Chen watched the boy leave and cross the road to the bus stop and saw the boy kick the bus stop so hard that the boy fell over onto his back.⁷³ I am satisfied on the balance of probabilities that the boy was Tyler.

84. At about 8.35pm⁷⁴ Tyler boarded a bus from the bus stop opposite Mr Chen's milk bar. The bus driver, Peter Pecovski, described Tyler as looking like he had been running or wrestling and thought somebody may have been chasing him. Tyler asked if he could get on the bus and travel without money.⁷⁵ The bus driver thought that Tyler may have been in a fight because of the state that he was in. He appeared upset and agitated and thus the bus driver let him travel without paying, however, kept his eye on Tyler.

85. Tyler alighted from the bus right near his home. A woman,⁷⁶ Ms Firanyi, waiting on a bus stop at Arthurton Road observed Tyler to be in a very agitated and aggressive state.⁷⁷ The bus driver observed Tyler jump onto a nearby cyclone fence pulling at and banging on the fence. The bus driver then saw Tyler disappear through a gap in the fence. Indeed the cyclone fence was erected around a spare block of land which abutted Tyler's home.

arrangement to meet at the skate park. Whilst he had chatted regularly with Tyler online he had only met him twice before. He stated however that Tyler seemed "keener" to meet up this night (Inquest Brief 305).

⁷⁰ Inquest Brief, page 164.

⁷¹ Inquest Brief, page 164.

⁷² Transcript 674.

⁷³ Exhibit 12 Inquest Brief 1893.

⁷⁴ Note: It is probable that Tyler boarded the 8.35pm bus given the chronology of events. The bus driver, Mr Pecovski, allowed for there being an error with time.

⁷⁵ Tyler had left his bag and wallet behind at the home of Aaron and Emily.

⁷⁶ See Exhibit 14: Statement of Lydia Firanyi Inquest Brief, page 178.

⁷⁷ See Exhibit 27: Statement of Peter Pecovski.

86. Ms Firanyi was so concerned about the behaviour she had observed that she called Northcote police station to report her observations.⁷⁸ According to Northcote police she stated that a male was yelling abuse at nobody and going ballistic. This was the first call to police that night reporting Tyler's behaviour. Neither the caller nor police knew his identity.⁷⁹

87. A neighbour living across the road from Tyler's home heard loud banging and knocking which caused him to look outside and see Tyler walking up the front steps of his house and ringing on the doorbell a number of times. He too noted that Tyler appeared agitated and he heard loud bangs and what sounded like doors slamming or something breaking as Tyler entered the home.⁸⁰

Tyler arrives home

88. What happened inside Tyler's home that night has been the subject of several statements by Mrs Cassidy and her partner Mr Greg Taylor. Both have been very critical of the conduct of the police towards them on that night and the tenor and contents of the statements they made on the night, changed considerably in the weeks and months after.

89. Mr Taylor made two statements to police. The first statement was made on the night Tyler died.⁸¹ In that first statement, Mr Taylor described Tyler arriving home in a very agitated state stomping in through the door and screaming at the dog to shut up because it was barking. He said:

I heard Shani ask Tyler what had happened, and why he was acting like he was. I heard Tyler tell Shani that he was going to kill someone or that someone was going to kill him. Tyler went into the kitchen and grabbed two knives. They were the two biggest knives in the kitchen... About five minutes later Tyler came down from upstairs and I saw that he was only carrying one knife. I think Shani came down with the other knife because she put it back into the knife rack. She told me that Tyler had threatened suicide while he was up on the roof. He threatened to jump off. I told Shani that she should ring the police. Shani rang Blake because Tyler idolised Blake and Blake could talk to him and have a calming influence. ... Tyler went back upstairs to his bedroom and I followed Shani upstairs where she tried to get Tyler to give her the second knife, I told Tyler to come down. I went back downstairs and I could hear Tyler running around on the roof. Shani came down shortly after and said that Tyler was out of control. He was threatening to kill himself and said that the police were after him.

90. Mr Taylor further stated that Shani got the second knife from Tyler and Tyler stomped off out the front door with Shani chasing him: "Tyler was screaming that he was

⁷⁸ See Exhibit 14: Statement of Lydia Firanyi dated 15 January 2009.

⁷⁹ Note: subsequent telephone calls to ESTA and/or police were not connected at the time to this first report.

⁸⁰ Exhibit 22, Inquest Brief 183.

⁸¹ Statement was witnessed at 12.13am on 12 December 2008, page 185, Inquest Brief.

either going to kill someone or be killed by the police. Shani was pleading with him to come back but he stormed off."

91. Mr Taylor made a second statement on 5 February 2009. In this second statement, he claimed that his original statement was made under duress when he was shocked, confused and that the statement was fabricated by the police member who took it. In that second statement, Mr Taylor stated that Tyler was agitated when he came home and that he did grab two knives from the kitchen and run upstairs and did say he was angry and the police were after him, but he did not say that he was going to kill himself or the police.

92. Through Counsel for the family, the Court was advised that Mr Taylor did not want to be called to give oral evidence at the inquest. The Court was advised that Mr Taylor was struggling with the upset caused by the proceedings. Both Counsel for the four police members and Counsel for the Chief Commissioner requested the opportunity to put questions to Mr Taylor, about the variation of facts between his two statements and his allegations of duress made against the police. In the circumstances, I did not consider it appropriate to "force" Mr Taylor to give oral evidence. However, neither do I consider it appropriate to place reliance on allegations of duress and fabrication made against the members of Victoria Police who took the first statement in circumstances where they have not been given the opportunity to test those allegations.

93. Whilst I accept without doubt that Mr Taylor would have been shocked, distressed and confused and, therefore, could have easily forgotten and confused the sequence of events or words used in his first statement, there is no basis to find that he fundamentally mistook what happened in the home that night and what Tyler was doing and saying.

94. Mrs Cassidy made her first statement to police at 11.50pm on 11 December 2008 at Mill Park police station. She stated that Tyler had some anger management problems and that he came home that night *"boiling and furious, his jugular veins were popping out of his neck, and his face was bright red"*. She stated that he kept saying *"I'm messed up, my brain is fucked"*.

95. Mrs Cassidy stated that she saw scratches on Tyler's back and that his left elbow was bleeding. She thought it looked like he had wrestled with someone. She described Tyler collecting the knives from the kitchen and retreating to his bedroom. She also stated that he asked where the baseball bat was. She stated that he sat on his computer in his bedroom messaging someone for about 10 minutes and then he got up and calmly walked out of the house. She said he stated he was just going for a walk.

96. Despite this description of Tyler leaving the house, Mrs Cassidy stated that she rang the police at about 9.30pm and told them to look out for Tyler as he was angry and she was "scared he might do something". She went on to say: "I wanted the police to watch out for him, because I thought he might just be sitting in the street somewhere". Mrs

Cassidy's evidence was that she had not ever taken such a step before and did so as she was worried about the way Tyler was acting and his level of distress.⁸²

97. In the meantime, as a result of Tyler's behaviour at home, Tyler's mother called his brother Blake at work telling him that Tyler had a knife with him in his room and that Tyler was affected by alcohol. The evidence was that this call to Blake was made as Blake had been able to successfully intervene in the past when Tyler had become highly agitated. Blake told his mother that he would leave work and would be there in 20 minutes to half an hour.

98. Mrs Cassidy called Blake for the second time and asked him to come home after Tyler had left the house.

99. On 6 February 2009, Mrs Cassidy made a second statement correcting some matters in the first statement.⁸³ On 11 October 2010, Mrs Cassidy made her third and final statement covering a number of issues, in particular, matters relevant to the conduct of the investigation carried out by Victoria Police. Whilst it was submitted that the later statements of Mrs Cassidy were an attempt to sanitise the evidence touching upon Tyler's conduct, I do not draw such a conclusion. Rather, whilst I find that the statements taken on the night are more likely to be an accurate picture, it is a reasonable and predictable part of a family's grieving process to want the lasting memory of their lost loved one to focus on all the things that were positive and good about him.

100. During the time that Tyler was in his room at home that night, he got onto his computer and made contact with Daniel Chowne. Daniel was a 16-year-old friend of Tyler's who stated that he was chatting online to several people at the same time when Tyler came online. Tyler seemed keen to meet up that night and Daniel agreed to meet him at the skate park. Daniel does not recall what they discussed but he stated that Tyler did not give any particular reason for meeting up and he did not state he was angry or distressed about anything according to Daniel.⁸⁴

On the way to Northcote Plaza and at Northcote Plaza before police arrive

101. After Tyler left his home, he walked to Northcote Plaza which adjoins All Nations Park. This is where he had arranged to meet his friend Daniel Chowne.

102. As Tyler was approaching Northcote Plaza Shopping Centre at 9.18pm, Tyler called 000⁸⁵ and spoke to the operator. Tyler sounded highly agitated. He was demanding that the operator send the police to Northcote as there was a guy with a shotgun. Tyler was trying to describe where he was by telling the operator to send police to the corner of Blythe and High Streets. He described what he was wearing by telling the operator "*he's*

⁸² Statement of Shani Cassidy, 11 October 2010.

⁸³ Exhibit 3.

⁸⁴ Transcript 1631.

⁸⁵ When a person dials 000, they are put through to the Emergency Service Authority that is called Emergency Services Telecommunications Authority or (ESTA). The service is sometimes referred to by police as D24 which was the emergency number for police only before an amalgamation of the emergency services. These various terms are used interchangeably throughout the evidence.

wearing a blue flanny". As the operator was trying to establish the location, Tyler repeated several times: "Shoot him dead. Shoot him fucken dead, you hear me?" As the operator tried to clarify what the problem was the following exchange happened:

Operator: What's the problem?

Tyler: He is a psychopath...

Operator: What is he doing?

Tyler: ...and he's got a shot gun. He's gone crazy. Shoot him now. Alright? Shoot him.

Operator: Whereabouts is he at the moment?

Tyler: Northcote Plaza. Shoot him fucking dead.

Operator: How can he be at Northcote Plaza and you've given me Blythe Street and High Street?

Tyler: Yeah, coz that's where he fucken is. That's fucken Northcote Plaza, you dumb shit.

Operator: That's not Northcote Plaza.

Tyler: Shoot him fucken dead⁸⁶.

103. Tyler repeated this a couple more times with increasing agitation and volume and then hung up.

104. On Blake's way home, he had a number of text message exchanges with Tyler the contents of which caused considerable concern to Blake, including the concern that Tyler was going to harm himself. Blake stated that he was worried about Tyler's state of mind as a result of the information he had from his mother at the time of Tyler's messages and the fact that he was not answering his calls. Between 9.07pm and 9.36pm, the following text messages passed between Tyler and Blake:

Tyler to Blake: I'm sick of it

Blake replied: of wat

Blake to Tyler: plz answer my call

Blake to Tyler: I love u just remember. Nothing elce matters

Tyler replied: I fucken hate what I am plear go b happy 4 me

Blake replied: Tyler u r the smartest person i have ev met. Where can i meet u

Tyler replied: No were stow talken just rember i love t nd mum and r 2 week 4 this life

Blake replied: No your not I love u. u r strong. Les tak about it. Just let me c u. U have so much 2 live 4 and Remember what we talku about lart time. The alchole is not making u think⁸⁷

105. In Blake's statement, he said that he was concerned that Tyler was going to kill himself. He stated that when he sent Tyler the message: "U have so much 2 live 4" that was because he was concerned about what he was going to do. "I thought he was going to

⁸⁶ Inquest Brief 2173.

⁸⁷ Inquest Brief page 920.

kill himself.”⁸⁸ Blake told his friend James Wendt, that he thought Tyler was going to kill himself.⁸⁹

106. The evidence is that Blake called 000 at 9.23pm and said to the ESTA operator: *“my brother said he was going to top himself and he just called me and said that police were going to shoot him.”*⁹⁰

TYLER AT NORTHCOTE PLAZA

107. A minute or two after Tyler’s call to ESTA, he entered Northcote Plaza and went to the entrance of the Kmart store. He approached Mitchell Papas performing security duties for Kmart and demanded to know where the biggest kitchen knives were in the store. Mr Papas directed Tyler to the kitchen section and then told two of his work colleagues what had just happened. There is CCTV footage of Tyler entering and leaving the store.⁹¹

108. Tyler went to the kitchen section of Kmart, selected two large kitchen knives removed them from their packaging and left the store clutching one knife in each hand with the tips pointed upwards and slashing at packaging and a drink machine as he exited from Kmart.

109. Eyewitness accounts, from a number of people in and around the Northcote Plaza shopping centre on that night, described Tyler as aggressive, dangerous looking and behaving in a very threatening manner. He was described as walking like he was “on a mission”, with a “blank look on his face”. He was threatening to kill people and demanding that the police be called.

110. The duty manager of the Kmart store, Michael Petidis, called 000 at 9.24pm to report what had happened. In the course of the exchange he told the operator that Tyler *“didn’t attack anyone but walked out looked like he was gunna kill someone”*.⁹² When Mr Petidis was asked by the operator if the male looked like he was going to use the knives, Mr Petidis responded: *“oh definitely. It was like I was in the movie. Like we were we were just a bit ... My door guy is just a bit, just shocked at the moment.”*

111. Two men, Mr Jay Westaway-Shaw and Mr Angelo Mascetti who were employees of Coles supermarket were taking a break seated on a bench outside the Plaza as Tyler went by. Tyler told both of these men to call the police as he was about to kill someone as no one was taking him seriously.

⁸⁸ Inquest Brief 191.

⁸⁹ Evidence of James Wendt at Transcript, page 839. James gave evidence that he believes this telephone call took place at 9.15–9.20pm although the telephone records from Blake’s phone have him placing a call to James at 21:42 (see Inquest Brief, page 1891).

⁹⁰ Inquest Brief 2192 (Blake is referring to the final call in which Tyler tells him about the presence of the police in All Nations Park – just before the second foaming – minutes before he was shot dead).

⁹¹ Exhibit 121.

⁹² Inquest Brief 2175.

112. Mr Mascetti, who was the duty manager at Coles that night, gave evidence that he thought that Tyler was going to harm someone if they did not call the police. Mr Mascetti called 000 at 21.26 and told them what had transpired, including that the male with two knives had suggested that he call the police as no one was listening to him and he was going to start killing people. Mr Mascetti told the operator when asked about the male's age: "*He looked young ... oooh ... I reckon ... mid-teens probably looked about 17 to 18 years old*". Mr Mascetti went on to tell the operator: "*He said no one is listening to him. He said guys I suggest you call the cops. I'm killing people tonight*".⁹³

113. In evidence, Mr Mascetti made it clear that he believed Tyler was going to harm someone if they did not call the police. In fact, Mr Mascetti told the ESTA call operator: "*Now I'm gunna have to lock this Plaza down. I've got no choice but to lock this Plaza down. I don't want him in here*".⁹⁴

114. Seconds after this encounter, Tyler walked into a Liquorland store at Northcote Plaza, outside the shopping centre and on the edge of the car park. It was 21.25.14. There were two shop attendants behind the counter Mr Skordos and Mr Gregory and two customers in the store standing at the front counter, Ms Birney and one other unidentified person. Tyler entered the store with the knives still in each hand pointing upwards. Tyler approached Mr Gregory and said "*call the fucking cops and tell them there's a guy in your store with two knives threatening to kill you*" or "*I'm gonna kill someone*". Mr Gregory called 000 at 21.26.45. He told the operator that a guy tried to walk in behind the counter with two big knives and said "*call the cops or something*". He told the operator that Tyler had walked towards the skate park in the adjoining All Nations Park.

115. Ms Birney described Tyler as appearing agitated and distressed and that on Tyler's threat being repeated she felt the situation escalate. She described herself as "*frozen to the spot*".⁹⁵ Her evidence was that Tyler said something like "*Call the fucking cops and tell them I'm going to kill you*".⁹⁶ She later told friends that she thought the male was about 16 or 17.⁹⁷

116. CCTV footage depicts Tyler coming around the edge of the counter at Liquorland holding the knives at chest height as he approaches Mr Skordos and Mr Gregory. Mr Skordos gave evidence that he tried to stay calm as he and Mr Gregory moved back around the counter. Mr Skordos stated that he thought Tyler was going to try and slash them or hurt them in some way. After this encounter, Tyler retreated back out of Liquorland. As he walked away he said something like "*someone's going to die if you don't call the cops now. I'm serious*".⁹⁸ Mr Skordos gave evidence that he would have described Tyler as a teenager.

⁹³ Inquest Brief 2180.

⁹⁴ Inquest Brief 2180.

⁹⁵ Transcript 1135.

⁹⁶ Inquest Brief 274.

⁹⁷ Inquest Brief 275.

⁹⁸ Exhibit 41 at Inquest Brief 270 and Transcript 1257.

117. It is not clear from the evidence as to the sequence of events, but it is likely that just before Tyler arrived at the Liquorland store he approached a car going by which contained two boys being taken to a video shop by the father of one of the boys. George Panagiotidis was one of those boys. George stated that he saw a man walking towards them in the middle of the road appearing angry and carrying a knife. As the male got closer, George could see he had a knife in each hand. He described an initial tapping on the window of the car with the knife and then as his car sped off he saw the man strike the rear of the car with the knife in his right hand.⁹⁹ The other boy in the car was 16-year-old Peter Afendoulides. Mr Afendoulides saw the male tap on the driver's side window with the knife trying to get his father to wind down the window. He stated that as they drove off the male "*stabbed the window*" using a lot more force. Mr Afendoulides thought the male looked about 19 years old.¹⁰⁰

118. As Tyler left Liquorland, he approached two women who were walking with their dog near the Liquorland store. They were Ms Kim Model and Ms Kathryn Fradd. As Tyler went past he bent down and patted their dog and according to both of them said "*you better watch out, your dog likes crazy people*".¹⁰¹ Ms Model gave evidence that she did not feel personally threatened by Tyler, although she thought he was "*intense*" and "*a little strange*"¹⁰² and Ms Fradd described Tyler in evidence as appearing "*confident and a little cheeky*" to her.¹⁰³ Ms Model thought the male looked around 16 years of age.¹⁰⁴ Ms Model stated that Tyler looked quite "*intense, it was almost like he was upset and craved attention*". Ms Fradd thought the male would have been about 14 to 16 years old.¹⁰⁵ Tyler still had the knives in his hands as he bent down and patted the dog.

119. There was a consistency of description from the majority of the eyewitness accounts of various persons in and around the Plaza of Tyler as looking like he was "*on a mission*,"¹⁰⁶ angry, unstable, frightening, and threatening.

120. When Tyler left the Liquorland store, he walked towards Daniel Chowne who was waiting for him as arranged in the skate park. Before Daniel saw Tyler he heard a thump and saw Tyler jump in front of a car and approach the driver's side window and tell the driver to call the police. Daniel stated that Tyler was yelling and he could hear him clearly.¹⁰⁷ Daniel noted that Tyler appeared agitated and different to how he had been on the previous occasions he had met him. Tyler put the knives down to approach Daniel and shake hands with him. Daniel asked Tyler about the knives he could see Tyler was holding and told him to throw them in the bush but Tyler did not do that.

⁹⁹ Inquest Brief 283.

¹⁰⁰ Inquest Brief 287.

¹⁰¹ Transcript 1148.

¹⁰² Inquest Brief 277.

¹⁰³ Transcript 1188.

¹⁰⁴ Inquest Brief 276.

¹⁰⁵ Inquest Brief 280.

¹⁰⁶ Statement of Mitchell Pappas Inquest Brief 222.

¹⁰⁷ Statement of Daniel Chowne p 307 Inquest Brief.

121. Daniel stated that Tyler went back and picked up the knives. It was at that point that both he and Tyler saw two police vans arrive at the drive-through at Liquorland. Daniel stated that he saw Tyler run towards the police cars as they drove down the roadway in front of the skate park. Daniel then moved into a position where he could not see what took place between Tyler and the police in the two vans.

The police arrive at Northcote Plaza and locate Tyler

122. Emergency Services Telecommunications Authority (ESTA) not only operates the 000 system of taking emergency calls for fire police and ambulance, but is also responsible for dispatching the calls to the appropriate services. Putting to one side the calls of Ms Firanyi and Tyler's own call to 000,¹⁰⁸ ESTA received five further calls for police assistance at Northcote Plaza between 21.24.24 and 21.33.05.¹⁰⁹

123. The first of these calls was from Mr Michael Petidis from the Kmart store. He called about five minutes after Tyler's call. Mr Angelo Mascetti (the duty manager from Coles) and Mr Daniel Gregory and then Mr Karan Sood (the Centre security person) (21.28.40) and the wife of Angelo Mascetti after receiving a call from her husband. (21.33.05).

124. It was the 000 call of Michael Petidis from the Kmart store, about five minutes after Tyler made his call to 000, which LSC Dods responded to and whilst en route to Northcote Plaza, LSC Dods got the contents of the 000 call from Angelo Mascetti from Coles supermarket.¹¹⁰

125. The call of Michael Petidis was dispatched at 21.26.31. Both Northcote 303 and Preston 303 heard from the ESTA dispatcher "...there is a male that has grabbed two large machetes from the kitchen area at Kmart Northcote Plaza and stormed out. Um... without paying for them. Priority 1 job; 5 foot 9, skin head, blue chequered flannelette shirt ... that's come from Kmart."

126. Two police vans took this Priority 1 call from ESTA. One van contained S/C Blundell and LSC Dods, that night they were patrolling in a police van whose designated call sign was Northcote 303. A second van containing C. De Propertis and C. Ferrante

¹⁰⁸ Tyler's call was made at 21.18.18 and terminated by Tyler at 21.19.38.

¹⁰⁹ Over this nine minute period, each call was given a Priority 1 status, consistent with ESTA's Standard Operating Procedures. Each call was dispatched within 160 seconds from the time the event appeared on the screen. The dispatching to both the primary and backup police unit, informing the supervising 251 of the event and ensuring a Beacon One Safety Warning was done as per the requirements for ESTA. (I note that shortly after 9.00pm, LSC Dods and S/C Blundell received a job to attend a male "yelling and screaming" at a building site in Blythe Street, Thornbury. This was the response to the call made by Lydia Firanyi. LSC Dods and S/C Blundell patrolled up and down in Blythe Street, Thornbury (which of course was the wrong location) looking and listening for a disturbance but found none and thus decided to leave the area. Had they been in the right street they would not have found Tyler anyway, as he had gone into his home by then, and Lydia Firanyi did not make this call until five or 10 minutes after she saw Tyler. The family submitted that because Constable Jones, when he took the call from Lidia Firanyi sent the van to Blythe Street, Thornbury rather than Arthurton Road, Northcote that it created some kind of missed opportunity for the police to intervene with Tyler. This simply does not stand up to scrutiny. Whilst Constable Jones' call taking was less than thorough, they would not have found Tyler.)

¹¹⁰ Statement of LSC Dods page 366 of Inquest Brief.

also responded to the priority one call. They were patrolling in a police van that night whose designated call sign was Preston 303.

127. LSC Dods heard Preston 303 advise over the radio they would attend as backup. Whilst on their way to Northcote Plaza within the next minute, LSC Dods asked the ESTA operator what the direction of travel was of the male and heard back from the ESTA dispatcher: “...*there’s a bloke with two knives heading towards Liquorland. Making threats to kill people... Description again of shaved head. He’s outside the shopping centre walking past the car park. He did state to a passerby ... call the cops as I’m killing people tonight*”. That appears to have been the call from Angelo Mascetti.

128. Immediately after this, LSC Dods and S/C Blundell heard the Canine Unit (Canine 304) come up and say they were heading there too. That was at 21.28.15.

129. Ten seconds later, LSC Dods and S/C Blundell broadcast that they were 30 seconds away from Liquorland. Acting Sergeant Gevaux, the duty supervisor that night confirmed that he had heard this transmission and that he was going to Northcote Plaza too. He asked for the Preston 203 unit to be directed there and he asked the operator to “*get as many down there as you can*”. That was between 21.28 and 21.29.

130. Mr Gregory was still on the phone to 000 when LSC Dods and S/C Blundell arrived in the Liquorland drive-through. During the call that Mr Gregory made initially at 21.26.45, LSC Dods and S/C Blundell actually arrive. They have an estimate of no more than four seconds of discussion with Mr Gregory asking where the male has gone and then drive off. The timing of this is apparent from the CCTV footage that was available to view at Inquest. LSC Dods and S/C Blundell do not hear the contents of the call to 000 from Mr Gregory in which he tells the 000 operator that the male threatened them but he did not try to steal anything and said “*call the cops*”.

131. The contents of what Mr Gregory had to say to the 000 call taker did not get relayed to LSC Dods and S/C Blundell. As Mr Gregory was indicating to the 000 call taker what was happening at the scene, there was effectively a “*real time*” description of the events as they unfolded, contained in the transcript of Mr Gregory’s call to 000. The 000 call taker indicated that given the police were already there, and had the male, he would not put through the contents of the call.

132. Had LSC Dods and S/C Blundell got the contents of the call, they would have heard that the male was carrying two large knives and threatening people, he did not steal anything and told Gregory to “*call the cops or something like that...*”.¹¹¹

133. Mr Gregory told LSC Dods and S/C Blundell that the male was carrying two large knives and indicated the direction in which he travelled. They also had a description of the male as wearing a blue flannelette shirt and having a shaved head. There is no evidence that they asked any other questions of either Mr Gregory or Ms Fradd and Ms Model. Mr Skordos did not speak to LSC Dods and S/C Blundell. Had Mr Skordos been

¹¹¹ ESTA transcript of the call from Mr Gregory to 000.

asked for a description he would have said that he thought the male was a teenager of about 17.¹¹²

134. LSC Dods told the ESTA operator that the male had gone east into All Nations Park and he asked what the AirWing was doing, advising the operator that he knew it was quite inaccessible in the park.

135. A few seconds later, LSC Dods requested over the radio for Preston 303 to go to the northern side of All Nations Park, but in the same sentence he said, "*we've got the bloke in sight*".

136. At 21.29.54, Acting Sergeant Gevaux asked ESTA how far away the Canine Unit was and the Canine Unit responded immediately and stated about four or five minutes.

137. Acting Sergeant Gevaux confirmed that he heard that, and he then, at 21.30.12, told the members at the scene over the radio, to "*just cordon and contain at the moment. Just wait for the canine.*"

The initial approach to Tyler by LSC Dods and S/C Blundell

138. After leaving the Liquorland drive-through, LSC Dods and S/C Blundell drove around from Liquorland onto the roadway in front of the skate park.

139. The evidence of LSC Dods is that he had his head down looking at a street directory as S/C Blundell took off and when he looked up he saw a male standing in the middle of the road with both hands behind his back. This stance prevented the police from being able to see if the male had the knives which he was reported as carrying. His clothing and shaved head matched the description previously given by the radio operator.

140. The evidence of LSC Dods was that after announcing on air that they had the fellow they were looking for in sight, he heard Acting Sergeant Gevaux, as his immediate supervisor on that night, say that the members in attendance at the scene were to cordon and contain and wait for the canine.¹¹³ When questioned as to whether he heard the direction from Acting Sergeant Gevaux to cordon and contain and wait for the canine before or after he got out of the van, his evidence is a little unclear. LSC Dods initially indicated that he heard the instruction just prior to getting out of the car but then re-stated that it was "*just after we had emerged from the van*". He thought that he had already started to engage with Tyler and had commenced issuing commands. LSC Dods gave evidence that the instruction to cordon and contain quickly became irrelevant as on being asked to show his hands, Tyler immediately produced the knives and then, according to the police, Tyler escalated the situation by advancing upon the police. LSC Dods stated that he accepted that the direction to cordon and contain was standard procedure and he saw no problem with it as a general instruction, but that he considered the instruction became irrelevant because immediately Tyler produced the knives upon being asked to

¹¹² Exhibit 36 Inquest Brief 263.

¹¹³ Inquest Brief 2202; Transcript 3644.

show his hands, he then escalated the situation by advancing upon them so the cordon and contain direction then “*lacked some relevance at that stage*”.¹¹⁴

141. In any event, on the issue of whether he had heard the instruction before he got out of the van or after, LSC Dods stated it “*probably*” would not have made any difference to his plan because he saw the plan as one in which they needed to establish if he had the knives. LSC Dods stated that if they did not get out of the van it would have been quite simple for him to run off into an area where they could not follow in the vehicle so “*I still say we needed to get out of the car and at least speak with him to find out if he still had the weapons and what was going on in his mind*”.¹¹⁵

142. LSC Dods, when asked by Counsel Assisting what was the first thing he said to Tyler when they got out of the car, stated that he said in his loudest voice: “*Show me your hands, I want to see what’s in your hands*”.¹¹⁶

143. S/C Blundell stopped the van straight away upon seeing the male who he described as “*having come out of nowhere*”. He estimated that Tyler was about 20 metres away but advancing towards them as they got out of the van. He estimated Tyler was about 15 metres away from them by the time he left the van. S/C Blundell stated that he was not sure when Tyler stopped advancing during this first encounter, but stated that he was advancing when S/C Blundell stopped the van and when he got out to the front of the van Tyler had stopped and he estimated that at that point he was about 15 metres away.¹¹⁷

LSC Dods estimated¹¹⁸ that the male was standing approximately 20 feet away from the van when it stopped and he got out.¹¹⁹ He described Tyler as having taken up an aggressive stance and looking like he wanted a confrontation. He estimated that Tyler moved forward about 5 feet towards them when they were telling him to drop the knives.¹²⁰

144. LSC Dods and S/C Blundell both got out of the van. LSC Dods stated that he was carrying his canister of OC foam in his right hand, which he had armed himself with when he got out of the vehicle. S/C Blundell also got out of the van and immediately drew his firearm.¹²¹

145. LSC Dods stated his reason for getting out of van was so that he was in a position to access his equipment if required. LSC Dods described his plan at the point of getting out

¹¹⁴ Transcript 3645.

¹¹⁵ Transcript 3645.

¹¹⁶ Transcript 3646.

¹¹⁷ Transcript 3870.

¹¹⁸ LSC Dods, together with the other three police members were very concerned to convey that times and distances were their best estimates but ultimately no more than estimates.

¹¹⁹ Transcript 3732; Inquest Brief page 367.

¹²⁰ Inquest Brief 370; Exhibit 102.

¹²¹ Transcript 3868.

of the van was to: *“Try and attempt some negotiations. To establish whether he was armed, trying to determine what his demeanour was and proceed from there”*.¹²²

146. In his statement, LSC Dods stated that both he and S/C Blundell asked the male at least twice to show his hands. After the second command Tyler took his hands from behind his back to reveal two large kitchen knives which he was holding about chest height with the two blades pointing upwards and according to LSC Dods waving the knives around. LSC Dods stated that on seeing the knives he yelled at Tyler in his *“loudest voice”* to drop the knives. He stated that S/C Blundell was also *“yelling similar instructions”*. LSC Dods stated that the male responded to their commands by yelling *“you are going to have to kill me”*, *“you are going to have to shoot me”* and waving the knives around in their direction as he continued to say things like *“I’ll hurt you. I’ll fucken kill you.”* S/C Blundell’s statement, made on the night, was consistent with this account. LSC Dods and S/C Blundell were both yelling at Tyler but according to LSC Dods, they were not speaking over one another.¹²³

147. LSC Dods stated that both he and S/C Blundell continued to give verbal commands to Tyler telling him to drop the knives and get on the ground. According to LSC Dods, Tyler then began slowly moving towards them, waving the knives towards them and making threats. LSC Dods said that seconds after revealing the knives, Tyler started to advance on them and at that point he was fearful of an imminent and serious confrontation in which he feared for his life.

148. LSC Dods stated that once he estimated that the male was within range of the OC foam he removed the pin and discharged the foam towards him. LSC Dods estimated that Tyler was about 15 feet away at the time he discharged the foam. His evidence was that Tyler had moved about 5 feet towards him.¹²⁴ When Tyler was foamed, he ran off into the skate park.

149. At this point, LSC Dods believed that Preston 303 were behind them.¹²⁵ In fact, upon hearing that LSC Dods and S/C Blundell had the male in sight, C. De Propertis and C. Ferrante came back into the car park adjoining All Nations Park and pulled up behind S/C Blundell’s van and got out of their van.

150. C. De Propertis stated that when she first saw Tyler he was standing about 20 metres in front of the Northcote van from her van which she estimates was about 40 metres from Tyler. Her evidence was that when she first saw Tyler she could see the knives in his hands. She gave evidence that once she got out of the car, she withdrew her firearm and also commenced yelling at Tyler to drop the knives and get on the ground.¹²⁶

¹²² Transcript 3641.

¹²³ Transcript 3650–1.

¹²⁴ Transcript 3788.

¹²⁵ Transcript 3856–3861.

¹²⁶ Transcript 4020–4022; Exhibit 107.

151. C. Ferrante estimated that Tyler was about 20 metres in front of the Northcote van when she first saw him.

152. The evidence from LSC Dods is that he sprayed a solid burst of foam towards Tyler's upper body for about three seconds.¹²⁷ Whilst the evidence was that it appeared to have hit Tyler, the only effect it had on him was to cause him to turn and run east into All Nations Park.

153. There was variation in the estimates between the four members as to the distance between LSC Dods and S/C Blundell and Tyler during these first few seconds of the initial encounter on the road. Both C. Ferrante and C. De Propertis wanted to change their estimates whilst giving evidence on the basis that they had returned to the scene and revised their original estimates as a result. Variations of estimates of distance are not unusual in the circumstances of such a highly charged and dynamic situation, all being recounted by witnesses trying to do their best. (This raises the issue about the value of an early reconstruction which I shall return to later.)

154. Evidence as to whether or not Tyler advanced upon LSC Dods and S/C Blundell when they alighted from their vehicle and if there was an advance, what was the nature of it, was mixed. A summary of the police evidence was that immediately before or around the time of this foaming, Tyler came to a stop

155. In oral evidence, LSC Dods stated Tyler advanced about five feet¹²⁸ before he stepped in to spray him. C. De Propertis stated she did not see Tyler move.¹²⁹ C. Ferrante's statement is silent on whether or not Tyler advanced when LSC Dods and S/C Blundell were standing in front of him.

156. Sally Grey was a shopper attending the Plaza that night. She was some distance away. She gave evidence that prior to seeing the spray, she did not see Tyler move forward.¹³⁰

Chasing Tyler into the park after the first foaming

157. After Tyler was foamed, he ran into the adjoining All Nations Park and the four members ran after him. LSC Dods did not know that C. De Propertis and C. Ferrante were with him and S/C Blundell.

158. There was no evidence of any communication between any of the four members as they took off after Tyler. LSC Dods stated that he was extremely concerned about the aggressive behaviour of the male armed with two large kitchen knives and, in particular, he had concerns for the wellbeing and safety of the general public. LSC Dods stated he wanted to keep the male in view but also wanted to maintain a safe distance and try not to force action between the male and himself. LSC Dods gave evidence that he was

¹²⁷ Statement of Colin Dods, Inquest Brief page 370.

¹²⁸ Transcript 3652.

¹²⁹ Transcript 4021.

¹³⁰ Transcript 1377.

concerned when Tyler turned and ran into the park that they were going to lose sight of him and risk him coming into contact with other members of the public, in circumstances where he was threatening to kill people.¹³¹

159. LSC Dods gave evidence that he was conscious of the importance of not closing in on Tyler and prompting him into further violence. The police evidence was consistent in that they were all focused on endeavouring to keep Tyler at a distance sufficient for him not to feel too closed in but ensuring that they did not lose sight of him.

160. A short way into the park Tyler stopped and turned towards LSC Dods and S/C Blundell. LSC Dods estimates that he was about five to seven metres¹³² away from Tyler at this time. LSC Dods stated that he was still hopeful that the foam he had initially deployed would take effect. S/C Blundell estimated they stopped about 7–8 metres away from Tyler.¹³³ C. De Propertis estimates she was about 15 metres from Tyler when she stopped to form the loose cordon¹³⁴ and C. Ferrante stated they were about 10 metres from Tyler.¹³⁵

161. S/C Blundell communicated over the radio that the male had stopped in the park and that things were under control.¹³⁶ S/C Blundell said in evidence that the situation was under control for a short time until Tyler “*broke*” their cordon.

162. LSC Dods stated that he and S/C Blundell continued verbal commands to Tyler to drop the knives and get on the ground. LSC Dods stated that he was telling Tyler there was no need for anyone to get hurt. S/C Blundell recalls Tyler screaming at them repeatedly saying “*fucking shoot me*”¹³⁷ and C. De Propertis remembers Tyler yelling “*I’m going to kill you*”, “*shoot me*” and “*kill me*”.¹³⁸

The second foaming

163. LSC Dods stated that it was at this time, as they stood facing Tyler who was still holding the knives and yelling at the police to shoot him, that he saw a mobile phone in Tyler’s pocket light up. According to LSC Dods, whilst still holding the knife in his left hand, Tyler took the call and appeared to talk to someone on the phone for about five seconds. The evidence of LSC Dods is that he heard Tyler say something like “*the cops are here now and someone is going to die*”. In fact, it was Tyler’s brother Blake that was on the other end of that phone call. LSC Dods stated that he formed the view after having heard those words that “*it was unlikely he was listening to our commands and not prepared to enter into any negotiation*”. LSC Dods stated that after the phone call, Tyler continued to point the knives towards them and wave them around. LSC Dods stated in

¹³¹ Transcript 3665.

¹³² Statement of Colin Dods, Inquest Brief page 371.

¹³³ Transcript 3875.

¹³⁴ Statement of Nicole De Propertis, Inquest Brief page 399.

¹³⁵ Statement of Antonia Ferrante, Inquest Brief page 412.

¹³⁶ ESTA transcript.

¹³⁷ Statement of Richard Blundell, Inquest Brief page 388.

¹³⁸ Statement of Nicole De Propertis Inquest Brief page 399.

evidence that this call was only a momentary diversion and not a real opportunity for disengagement.¹³⁹

164. Having heard Tyler say to the person on the other end of the phone that he wanted to kill or be killed, it was LSC Dods' evidence that at that point he feared how this encounter would end.¹⁴⁰ It was the consistent evidence of each of the four members that Tyler continued his aggression in that he was pointing the knives towards LSC Dods and S/C Blundell saying words such as "*you're going to have to shoot me*".

165. LSC Dods stated that it was at this point he considered that a "*serious confrontation was imminent*"¹⁴¹ and he moved within about 5–6 metres of Tyler¹⁴² and again sprayed Tyler with OC foam until the contents of the canister were exhausted. It was LSC Dods' observation that the foam appeared to have no effect on Tyler other than to exacerbate him, even though he thought he had administered a good primary dose.¹⁴³ LSC Dods stated at this point Tyler started walking steadily towards him in what he described as a "*steady marching tempo*".

166. It was LSC Dods' evidence that Tyler's focus seemed to be completely on him and it was his view that Tyler had made up his mind to carry out whatever it was he wanted to do. He described Tyler as having a "*calculated and cold look to his face*".¹⁴⁴

The final advance and the shooting

167. LSC Dods stated that he continued to give verbal commands yelling "*stop moving towards me*" and "*stop moving towards me or you will be shot*". LSC Dods stated that this was the point at which he drew his firearm as, by this time, he was expecting to get hurt by the male, and considered this was his only safe option. He stated he continued to issue verbal commands telling the male to stop or he would be shot as he walked backwards to try and maintain a distance between himself and Tyler but not take his eyes off him.

168. LSC Dods stated that as he was walking backwards, he knew he was walking towards concrete steps that were at the base of the skate ramps of the skate park.¹⁴⁵ Indeed, he stated that as he walked backwards, as Tyler was advancing on him, that he tripped on the bottom step and this caused him to realise that he was going to struggle to keep his eye on Tyler and also negotiate steps. It was his observation that Tyler still seemed as determined as ever to close the distance between them.

¹³⁹ Transcript 3675.

¹⁴⁰ Transcript 3676.

¹⁴¹ Transcript 3681–3682

¹⁴² Evidence of S/C Blundell at transcript 3880.

¹⁴³ Transcript 3684.

¹⁴⁴ Transcript 3677–3678.

¹⁴⁵ The skate park is an area that contains a collection of inclined ramps, steps and one deep bowl that drops away very steeply from the adjoining raised platform area. It was the raised platform area, above the set of concrete steps and bordering the deep bowl to its north, where LSC Dods moved backwards as Tyler advanced on him.

169. It was at this point that LSC Dods decided to fire a warning shot into the soft ground to try and deter Tyler. He did so. It was his observation that apart from Tyler flinching and turning away for a second, he continued to advance on LSC Dods who stated that at this point the distance between himself and Tyler started to close to a point where he became “extremely fearful” for his safety.

170. At this point, all of the eyewitness accounts are consistent that LSC Dods was walking backwards up the concrete steps as Tyler was walking forwards towards him. LSC Dods stated he decided that, given Tyler was wearing light pants, he may be able to successfully shoot him in the legs and thus endeavour to avoid a fatal outcome. It was his evidence that as Tyler was moving up the steps, knives still pointed at him, Tyler continued to yell “*I’m going to kill you*” and “*you’re going to have to kill me*” that he fired two shots about a second apart towards Tyler’s thighs. Tyler was, according to LSC Dods, possibly one or two steps up the set of steps, about three metres from him at this time. It was the evidence of LSC Dods that even though he was in fear of his life at this point, he still tried to attempt something less than a lethal option by shooting at Tyler’s legs.¹⁴⁶

171. LSC Dods stated that he discharged two rounds aimed at Tyler’s thighs at a time at which Tyler was about 4–5 metres away from him, still holding the knives and still yelling threats such as “*I’m going to kill you*”, “*you’re going to have to kill me*” and “*you’re going to have to shoot me*”.¹⁴⁷ At the time of the discharge of these rounds, LSC Dods states he was standing on the top of the concrete steps. It was the evidence of LSC Dods that he observed nothing more than a slight stumble by Tyler in the wake of those two shots aimed at his legs.¹⁴⁸ It was the evidence of C. De Propertis that she believed Tyler was hit as a result of these discharges but that he did not fall and began to move again almost straight away.¹⁴⁹ The evidence of LSC Dods is that he continued to move backwards up the steps and around the handrail at the top of the steps.

172. It was at this point that four or five further shots were fired by the members down on the flat, to Tyler’s left. It was clear that one of the shots struck the handrail causing LSC Dods to call out “*watch crossfire*”.¹⁵⁰

173. S/C Blundell recalled first discharging his firearm when Tyler was at the base of the steps advancing towards LSC Dods. He stated that he fired again when Tyler was about halfway up the steps as the gap between LSC Dods and S/C Blundell was closing. He stated he was about four metres from Tyler when each of these shots were fired.¹⁵¹ He

¹⁴⁶ Transcript 3698.

¹⁴⁷ There was some variation in the evidence about the actual words being said at this time. Daniel Chowne and Daniel Holden state Tyler was saying “shoot me” and “kill me I want to die anyway”. It should be noted that both of these witnesses also state that Tyler was advancing with the knives pointed at LSC Dods as he was saying this.

¹⁴⁸ Transcript 3702. On post mortem examination, Tyler did have injuries consistent with shots to his thighs.

¹⁴⁹ Transcript 4007–4008.

¹⁵⁰ Inquest Brief 175.

¹⁵¹ Transcript 3890–3897; Exhibit 105.

thought that he was about four metres away from Tyler at that time but observed that on both occasions the discharge appeared not to have any visible effect on Tyler. Consistent with LSC Dods, S/C Blundell describes Tyler as advancing at a “*very steady and determined pace*”.¹⁵² S/C Blundell stated that he then fired a third time when Tyler was in the vicinity of the ramp down which he ultimately fell. S/C Blundell stated that when he fired this third shot he considered LSC Dods’ life was in extreme danger as he was aware of the ramps and falls on this part of the skate park and he did not think LSC Dods would be able to get away from Tyler. S/C Blundell stated that he aimed all of his shots at the centre of visible mass.

174. At this same time, the evidence of C. De Propertis is that she described Tyler as turning “slightly like he had been hit” but that he kept advancing toward LSC Dods and so she discharged a round at him stating that she did so to prevent the attack upon and in defence of LSC Dods. C. De Propertis stated that she aimed toward Tyler’s chest¹⁵³ at which time Tyler was still upright. C. De Propertis thought she was about 7–10 metres away from Tyler when she discharged her firearm. She said in her statement that was taken in the hours after the shooting “*when I discharged a round, I was certain it was necessary to stop him attacking LSC Dods. He was virtually within arm’s length. If he was to lunge at him he would have caused a serious injury. I was just concerned for LSC Dods’ welfare. It was just his whole demeanour*”.¹⁵⁴ She stated that at about the same time or immediately after, S/C Blundell fired another shot and Tyler stopped “*and he kind of fell to his left*”.

175. The only significant variation between the four members came from the first statement of C. De Propertis when she described Tyler, about three steps from the top of the steps as dropping onto his knees, like he had been hit. She stated that he still held both of the knives and that he then got back up and began to approach LSC Dods again. She described this as the time that she fired a shot aimed at Tyler’s chest in defence of LSC Dods as he resumed his advance on LSC Dods.¹⁵⁵ In the second statement made by C. De Propertis on 21 October 2010 after a visit back to the scene, she changed the description of Tyler dropping to his knees as Tyler falling forward with his knees bent, but not to the ground and that neither his hands nor knees got to the ground. She clarified that it was only a very brief pause when Tyler was not upright.

176. C. Ferrante gave an account which was consistent with the other members but for some minor variations, which are to be expected.

177. All of the evidence, including the evidence from witnesses who heard but did not see, is that the shots were fired in rapid succession.

178. LSC Dods stated that after he fired the shots aimed at Tyler’s legs there were four or five shots fired in close succession from where the other three members were standing

¹⁵² Transcript 3893; Exhibit 107.

¹⁵³ Transcript 4712.

¹⁵⁴ Statement of Nicole De Propertis, Inquest Brief 405.

¹⁵⁵ Exhibit 107.

down on the flat concrete area. LSC Dods stated that he had first become aware of the presence of C. De Propertis and C. Ferrante only when he had reached the top of the steps.

179. What S/C Blundell stated confirmed the substance of LSC Dods' account. S/C Blundell stated that he saw Tyler move on to the landing at the top of the steps and this caused him to fire the third round. He stated that at this stage he heard what he thought was a ricochet.¹⁵⁶

180. C. Ferrante did not discharge any rounds although she had her firearm drawn. She explained that she too would have discharged her firearm were she not in a crossfire position which put LSC Dods in danger of being hit by her discharge. She stated that the distance between LSC Dods and Tyler at that time was about three metres but possibly less and *"it would have been a matter of one lunge forward and LSC Dods would possibly have been killed"*.¹⁵⁷

181. LSC Dods stated that despite the shots, Tyler continued to advance upon him. He stated that at this point he formed the belief that he had to *"stop the male by any means and took aim and shot on target at his chest area"*. His evidence was that as he continued to move backwards into the uneven terrain of the skate park area, he felt unable to take his eyes off Tyler because of the threat he posed. As previously described, once at the top of the steps, on the raised platform area the skate park area drops away on both sides. It has various ramps and raised steps and to the back of where LSC Dods was moving, quite a significant drop into the bowl-like cavity.

182. LSC Dods gave evidence that his knowledge of the *"nothingness"* behind him as he backed towards it lead him to fire the final shots, in fear for his life.¹⁵⁸ His evidence was that he then fired three rounds towards Tyler's chest and that the three shots would have been within three seconds of each other. He stated that he kept firing until Tyler dropped to the ground. LSC Dods summed up his thoughts at that point by stating in evidence: *"I decided that I had gone through a range of – I'd gone through the whole range of non-violent resolutions to everything between foam and lethal discharge of the firearm. The warning shot hadn't worked. The rounds in the legs hadn't worked for whatever reason. And I know that's outside what we are taught... but I... take a moral comfort from what I did. It was only when I exhausted all possibilities... That I decided I would just have to keep firing until this male went to ground"*.¹⁵⁹

183. LSC Dods stated that he kept firing at the male's chest until he went to the ground. It was his evidence that he believed he discharged three rounds at Tyler's chest.¹⁶⁰

¹⁵⁶ Statement of Richard Blundell, Inquest Brief 391.

¹⁵⁷ Transcript 4130.

¹⁵⁸ Transcript 3708.

¹⁵⁹ Transcript 3710.

¹⁶⁰ The above account is taken from LSC Dods' statement made in the immediate wake of the events, Inquest Brief 375.

184. There were two significant non-police, eyewitness accounts of what took place in this final fatal encounter between Tyler and the police. One of these accounts came from Daniel Chowne, the 16-year-old friend of Tyler's who had met up with him that night in the park and had moved out of sight when Tyler ran down to confront the police van. The second account came from Daniel Holden, who was walking through the All Nations Park at the time, and whose attention was drawn to these events. Both witnesses made statements and gave evidence.

185. Daniel Chowne, not having seen the initial standoff and foaming as between Tyler and the police, next sees Tyler running into the park after being foamed by LSC Dods. Daniel saw four police chasing Tyler and stated he could hear the police yelling at Tyler to put the knives down and then, consistent with what the four police say happened, he saw Tyler stop and turn around and face the police. Mr Chowne estimated he was about 15 to 20 metres away from where this was happening and that he had a clear view.¹⁶¹ He stated he saw Tyler still holding the knives up pointed at the police who he stated, consistent with the police evidence, had formed a semi-circle around Tyler about five metres away from him.

186. Mr Chowne stated that he saw one police member spray Tyler with foam which looked like it went all over his back.

187. Again, consistent with the evidence of the police, Mr Chowne stated that he then saw Tyler start walking towards the police member that had sprayed him. Although LSC Dods described Tyler as walking at a steady marching tempo as he advanced on him, Mr Chowne described Tyler's advance on LSC Dods as "*real slow*" but he confirmed in evidence that Tyler kept advancing on LSC Dods. Daniel also stated that he heard the police telling Tyler to put the knives down and keep away. Mr Chowne stated he heard Tyler say to the police twice "*just shoot me I want to die anyway*".

188. Mr Chowne stated he saw the police creep back slowly, trying to keep the same distance between themselves and Tyler as he walked towards them. He described them as all moving in a semi-circle backwards away from Tyler. According to Mr Chowne's account, again largely consistent with the police members, he saw the four police move backwards to the edge of where a path ran through which bordered the skate park itself. This path was at the base of the steps leading up to the raised platform above the skate ramps.

189. It was at that point that Mr Chowne stated he heard two shots fired in quick succession. Mr Chowne stated that he could see that all of the police had their guns drawn at the point at which he first heard shots fired.

190. It was Mr Chowne's evidence that Tyler still kept walking towards the police after those two shots were fired, yelling "*kill me I want to die anyway*" and sometimes saying "*just shoot me*". He could also hear the police telling Tyler to put the knives down and

¹⁶¹ Statement of Daniel Chowne, Inquest Brief 308.

keep away. He described the voices of the police as “*elevated and authoritative*”. He noted that he thought he could hear one or two voices, not all four.¹⁶²

191. Mr Chowne then moved about 50 metres away from where he had been standing and when he looked back, he could see Tyler walking up the steps to the skate park, still holding the knives upwards. He estimated that Tyler was walking at a normal pace. He estimated that he had had his back to Tyler for about 20 seconds. He could see police standing bunched together on the flat ground at the bottom of the skate ramp. He initially thought they were about 15 metres away from Tyler, but during his oral evidence he changed that estimate to about 10 metres.¹⁶³

192. Mr Chowne could not see if there was a police member standing at the top of the ramp. His oral evidence was that Tyler was facing the police down on the flat when he got to the top of the ramp.¹⁶⁴

193. His evidence of Tyler’s movement up the steps and position at the time at which the final volley of shots occurs, has Tyler moving up the steps without stopping or stumbling to the “*little hump*” three or four steps into the skate park at the top of the stairs.¹⁶⁵

194. In his original statement, Mr Chowne said that he saw Tyler standing for about two seconds at the top of the stairs, on that little hump, and then he heard several gunshots go off. He stated that when the shots first went off Tyler was standing and not moving and then he saw Tyler fall down the ramp. In his oral evidence, he stated he could have stopped for one second before he was shot but he was stationary at the time he was shot.¹⁶⁶

195. His evidence is not that Tyler was falling or getting up from having fallen, when he was shot.

196. He stated he heard a “*whole bunch of shots go off at once*”.¹⁶⁷

197. Mr Chowne impressed as a young man who, despite the horrendous circumstances he witnessed, was very composed when giving his evidence and appeared to be doing his best to give an accurate account. He indicated when he commenced his evidence that he was unsure of the distances he gave in his statements and remained unsure. Whilst issue was taken with where he was standing and some lateral aspects of his evidence, his account was largely unchallenged as to its substance.

198. The other non-police evidence of the final encounter between Tyler and the police came from Daniel Holden who was walking through the park to go shopping in the Plaza

¹⁶² Transcript 1621.

¹⁶³ Transcript 1591.

¹⁶⁴ Transcript 1605.

¹⁶⁵ Transcript 1626.

¹⁶⁶ Transcript 1630.

¹⁶⁷ Transcript 1606.

that night. He was a 32-year-old man at the time, who happened to be walking past on this evening. He stated his attention was drawn to the sound of an agitated male swearing. It was Mr Holden's evidence that it sounded like the male was trying to get himself "*fired up*". The sound came from the skate park where he could see two males standing on a raised area of the skate park. He appears to be describing a period when Tyler was standing with Mr Chowne before the police arrived.¹⁶⁸

199. Mr Holden felt so concerned for his safety as a result of this agitated yelling that he walked in a circuitous way through the park to avoid a confrontation with this male. His attention was then again drawn when he heard another male voice say "*put the weapon down*".¹⁶⁹ This appears to be at the point where Tyler and the police had run into the grassed area of the park. He saw the second foaming and saw the police officer that sprayed, back away and again say "*put the weapon down*". Mr Holden estimated he was about 100 metres away.

200. Mr Holden then heard the police voice scream "*put the knife down or I will shoot you*". Mr Holden states that he heard the male reply in what he described was almost a "*martyr call*", "*that would be right, shot by the police*".¹⁷⁰ He saw two police officers moving backwards in the direction of the skate park as Tyler advanced on them. He stated he then looked away and kept himself at a safe distance, as his evidence was that there was almost an inevitability about what was going to happen. He described Tyler as being extremely confrontational.¹⁷¹

The sequence of shots

201. The evidence is that the first shot was fired by LSC Dods into the ground as the warning shot when he was at the base of the stairs and Tyler was about four metres away from him. S/C Blundell was about 3–5 metres out to LSC Dods' right.

202. Tyler continued to advance on LSC Dods and when LSC Dods was either one or two paces up the steps or LSC Dods was either at the top of the steps or one step from the top, he fired two more shots into Tyler's thighs. He estimated the distance between them as about three metres.¹⁷² There were then three shots in rapid succession. S/C Blundell fired two shots at Tyler as he climbed the steps towards LSC Dods as he perceived the gap closing as Tyler continued to advance on LSC Dods. S/C Blundell fires his third shot when Tyler got to the top of the ramp down which he ultimately fell. C. De Propertis stated that she fired her shot after she saw Tyler stumble or lunge on the steps but then continue advancing on LSC Dods. LSC Dods stated that he then fired three more shots in rapid succession when Tyler was advancing upon him on the platform about the ramp and he believed he was backed up against a drop behind him.

¹⁶⁸ Daniel Chowne did not recall that Tyler was yelling when they met and spoke with each other.

¹⁶⁹ Statement of Daniel Holden, Inquest Brief 297.

¹⁷⁰ Inquest Brief 299.

¹⁷¹ Transcript 1741.

¹⁷² Transcript 3690–3698.

Which police member caused the fatal wound?

203. Of the 10 shots fired, six by LSC Dods, three by S/C Blundell and one by C. De Propertis, one was fatal. That is, the bullet which entered his chest. The question of which member fired it was the subject of considerable evidence and examination during the Inquest. It was also the subject of considerable criticism from Counsel for the family on the issue of the adequacy of the investigation, in particular the failure to recover any spent bullets from the scene. This is an issue addressed below.

204. The family submitted that it was “*highly likely*”¹⁷³ that it was LSC Dods who fired the fatal shot as he was the only officer who had sufficient elevation to do so and was in the right position for the trajectory of the fatal bullet, given the evidence of Dr Woodford about the likely trajectory of the bullet.

205. Dr Noel Woodford, the Head of Forensic Pathology at the Victorian Institute of Forensic Medicine, performed the post mortem examination upon Tyler and prepared an autopsy report.¹⁷⁴ Dr Woodford gave evidence at the Inquest. The evidence of Dr Woodford was that five bullets hit Tyler but none remained in his body. He was able to identify the fatal shot as the one which entered Tyler’s upper left chest area and moved through his body to the right, backwards and downwards. The bullet passed through the right upper lobe of his lung and exited his body.

206. Dr Woodford identified two bullet wounds in Tyler’s thighs, his right forearm and his right knee.

207. It was the evidence of Dr Woodford that Tyler would have been capable of purposeful movement after any one of these wounds, even including the fatal one, as none of the wounds had gone through his spinal cord.¹⁷⁵

208. In oral evidence, Dr Woodford was clear that he was unable to assist with an opinion about the position of Tyler at the time each of the shots which hit him was fired, other than to say that the gunshot wounds were fired from “*distant range*”.¹⁷⁶ It was his opinion that the fatal bullet travelled from the left to the right side of Tyler’s body and generally slightly downwards.¹⁷⁷ The evidence of the bullet travelling from the left to the right side of Tyler’s body was consistent with the evidence of Leading Senior Constable Raymond Vincent, who was a firearm and tool-mark examiner with Victoria Police Forensics Services who examined Tyler’s clothing.¹⁷⁸

209. Dr Woodford explained that it was such a “*fluid situation*”, not only with Tyler moving around, but with each bullet which connected having the possible effect of

¹⁷³ Final written submissions, page 56.

¹⁷⁴ Post mortem report of Dr Noel Woodford, 27 February 2009, Inquest Brief 115.

¹⁷⁵ Transcript 2289, Dr Woodford.

¹⁷⁶ Dr Woodford described distant range as “beyond about two and a half to three barrel lengths away ... anything from outside that distance onwards”, transcript page 2254.

¹⁷⁷ Transcript 2293–2298.

¹⁷⁸ Transcript 3156.

causing him to move up or down and therefore potentially changing from “*millisecond to millisecond*”.¹⁷⁹ As various scenarios were put to Dr Woodford about the position of the person who fired the fatal shot, Dr Woodford continued to explain that there was such a range of possibilities, he said “*I don’t know whether we can look at this wound track and imply a particular direction or height from which the bullet has come*”.¹⁸⁰ Dr Woodford also made it clear that he was unable to assist with the sequence in which the injuries occurred.¹⁸¹ Dr Woodford elaborated on his reasons as to this by saying as follows: “*...Unless all the shots were delivered at one time, in other words instantaneously, the effect of one may have an effect on his body; he may perhaps lean down after he’s been shot in the leg or lean back after he’s been shot in the chest. None of the wounds is immediately incapacitating, meaning that none of them had gone through his spinal cord...*”.¹⁸²

210. Mr Harold Wrobel, a forensic scientist specialising in the examination of gunshot residue, examined Tyler’s clothing for gunshot residue. The effect of his evidence was that he could say that the holes in Tyler’s trousers were fired up to approximately four metres away but was otherwise unable to assist.

Conclusion as to who fired the fatal bullet

211. As stated above, there was considerable criticism from the family as to why the investigation did not recover any fired bullets. The focus of their concern was that the recovery of the fired bullets would assist in identifying which police member fired the fatal shot, understandably a matter of significance for the family. However, the evidence was that even if bullets had been recovered from the scene, however far spread, it would not have assisted in identifying which member did or may have fired which bullet.¹⁸³

212. I find that the state of the evidence does not allow me to draw a conclusion about who fired the fatal bullet. All three members gave evidence that they fired at Tyler’s chest. Based on Dr Woodford’s opinion, I conclude that even with a reconstruction and bullets recovered from the scene; it would not be reliable to draw conclusions about who fired the fatal bullet because of the dynamic nature of the scene as described by Dr Woodford. The evidence was that in this scenario, unless the bullet was recovered from Tyler’s body, it is too speculative to draw a conclusion as to which member fired this fatal bullet.

Conclusions on the evidence as to the shooting

213. The four members directly involved in this death made statements in the immediate wake of the shooting. They also all voluntarily gave evidence after seeking the indemnity

¹⁷⁹ Transcript 2262.

¹⁸⁰ Transcript 2279–2292.

¹⁸¹ Transcript 2292.

¹⁸² Transcript 2262.

¹⁸³ Detective Sergeant Birch, the primary investigator in this matter, gave evidence that the only way he would have been able to pursue the issue of which bullet caused the fatal shot was if a bullet or bullets remained in Tyler’s body. He stated “*I think there are so many variables once the projectile exited Tyler, that it would be impossible to determine what injury that particular projectile caused based on where it was found*”, transcript 4232–4233.

available to witnesses in this jurisdiction.¹⁸⁴ The ability to have their accounts heard and tested in open court was of immeasurable benefit in gaining an understanding of the circumstances in which Tyler's death occurred. Further, Mr Dane of Counsel for the family stated that the family wanted to have the opportunity to question each member as to what happened.¹⁸⁵

214. As a witness, LSC Dods impressed as an intelligent and articulate man who was palpably deeply affected by Tyler's death and his role in it. The other three police members all appeared palpably affected too. There was nothing about the content or the manner of how they provided evidence, either in their statements or in Court which could lead to a conclusion other than they were all doing their best to recount the events of this terrible evening in an honest and forthright manner.

215. It was submitted on their behalf that given the effects of stress and trauma upon these witnesses, I should accept that there would be a certain amount of inconsistency as between the accounts of each of the four police members. I accept this submission. This is a concept well known to the law.

216. The accounts of the police members as to what took place are largely consistent. The accounts of Daniel Chowne and Daniel Holden, one a friend of Tyler's and one a complete stranger to the events, largely confirm the police accounts as to those parts of the events that they witnessed. Tyler continued to advance on LSC Dods with knives pointed at him threatening to kill LSC Dods, if LSC Dods did not shoot him. Even after bullets were fired at and around him, some of which must have struck him, Tyler continued to move forward threatening to kill LSC Dods by his actions and words.

217. All of the evidence is consistent with LSC Dods having fired a warning shot into the ground, after which Tyler continued to advance up the steps towards LSC Dods with the knives still held up. It is **after** this warning shot that LSC Dods continues to back away up the steps with Tyler still advancing on him. The evidence is that two more shots are fired from LSC Dods towards the thighs of Tyler, and two from S/C Blundell as Tyler is advancing on LSC Dods up the steps. Tyler continues to advance, even after these shots are fired.

218. It was submitted on behalf of LSC Dods that he should be assessed as a careful, considered man, unlikely to have panicked even as Tyler advanced upon him and, although gravely fearful, he did not lose his rationality. The weight of the evidence is that LSC Dods did continue to try and get Tyler to stop advancing upon him at the skate park by firing warning shots and firing into the legs of Tyler and commanding Tyler to stop.

¹⁸⁴ See s. 57 for the legislative framework for witnesses to seek the protection of self-incrimination privilege to enable a certificate to be granted which prohibits the use of the evidence given in the coronial proceedings from being used to pursue a criminal or civil penalty. No issue was raised in the applications for s. 57 certificates by each of the four members and each application was granted.

¹⁸⁵ Prior to the introduction of the *Coroners Act 2008*, and the ability to give evidence with the protection of the indemnity certificate, police involved in police contact-related deaths of this kind would virtually always adopt their professional and legal advice to exercise their right to remain silent.

C. Ferrante observed that LSC Dods appeared to be composed and in control.¹⁸⁶ The firing of the shots in rapid succession is consistent with the evidence that, despite warning shots, Tyler kept walking towards LSC Dods as he not only pointed his gun at him, but had already fired bullets at Tyler which had struck him.

219. LSC Dods was walking backwards in a dimly lit area with Tyler advancing upon him with knives pointing at him threatening to kill him. Even after shots had already been fired at him, Tyler continued to advance, pushing LSC Dods into an area where he feared he was walking backwards into a steep drop. I accept this situation must have felt extremely perilous and life threatening.

220. Counsel for the family submitted in closing that Tyler was shot at when prone or falling or standing still and, therefore, not posing any threat. The weight of the evidence does not support such a finding.

221. Counsel for the family submitted that I should find that Tyler was standing still at the moment at which he was fatally shot, based on Daniel Chowne's evidence. Daniel originally stated he thought Tyler stood still for two seconds, but he changed that estimate to "about one second" in evidence. He stated that Tyler seemed to him to stand still for about a second at the top of the ramp before the final shots and Tyler's fall. The submission from Counsel for the family was that this evidence established that the use of force was, therefore, disproportionate in the circumstances, in that the police members must have perceived that the bullets already fired had impacted upon Tyler by previous rounds. This submission does not accord with a realistic view of the evidence or the situation. Even if Tyler had been stationary for one second, and Daniel Chowne is the only one who says so, the evidence of what had happened up until that point gives little meaning to a pause of one second. What is more likely, is that the three members all fired in rapid succession as, consistent with their evidence, they observed Tyler continuing to advance on LSC Dods with his knives held in such a way that LSC Dods' life was being put in apparent immediate peril, given he was on a platform that had drops and uneven surfaces which could have caused him to lose his footing any moment.

222. The question of what could have been done differently on this night and whether or not it would or could have lead to a different outcome is addressed below.

223. Before turning to this question however, it is important to consider the evidence as to Tyler's state of mind; to discuss what may have been different, taking into account his youth and his condition and all of the other circumstances including what the police knew or could have known on the night.

¹⁸⁶ Inquest Brief 415.

WHAT CAUSED TYLER'S STATE OF CRISIS? WAS TYLER ASSAULTED THAT NIGHT?

224. Mrs Cassidy was convinced that Tyler had been assaulted sometime between leaving Shona and Shannon at Heidelberg station, getting out at Alphington and boarding the bus which delivered him home. Mrs Cassidy was convinced that this assault explained why Tyler was so agitated on this night and that a poor effort by police to investigate this had resulted in crucial information not being uncovered about the assault.

225. In an effort to resolve this issue, I directed the police investigators to conduct a door knock in the area around the Alphington station. As a result of that door knock, a statement was obtained from Mr Chen, the proprietor of a milk bar which is located about 100 metres from Alphington station, across the road from the bus stop where Tyler took the bus home that night.

226. Mr Chen made a statement that he and his wife were in their shop on the evening of 11 December 2008 when a boy came into the shop and asked for water. Mr Chen gave evidence that the boy looked menacing, with an angry expression on his face, and that after he was given the water he pointed at Mr Chen and said "I let you alive".¹⁸⁷ Mr Chen had clearly been fearful of the boy as he described that the hairs on the back of his hand stood up as he let him out of the shop. Mr Chen watched him leave his shop and cross the road to the bus stop and saw the boy kick the bus stop so hard that the boy fell over onto his back.¹⁸⁸ I am satisfied on the balance of probabilities that the boy was Tyler.

227. Mrs Cassidy has consistently stated that Tyler's appearance on his return to the family home that night convinced her that he had been in some kind of fight or had been assaulted. Her recollection of the marks on him and his agitation and anger lead her to form this view. She stated that when he arrived home that night she observed scratches on his back, that his elbow was bleeding and that he was so angry his jugular vein was "popping" out.

228. Police sought and collected CCTV footage from various parts of Tyler's trip home commencing at the Diamond Creek railway station, together with accounts from those of his friends who had contact with him on his way home. This did not produce any evidence of an assault upon Tyler. He made no mention of an attack or threat to any of the friends he communicated with on his way home, including the two girls he met with at Heidelberg station. There is no evidence from S, Shona or Shannon of witnessing any assaults upon Tyler or the effects of any assaults or Tyler mentioning any assaults or attacks upon himself. Similarly, he makes no mention to his family when he gets home of any assaults or to Daniel Chowne when he made arrangements with him to meet at the

¹⁸⁷ Transcript 674.

¹⁸⁸ Exhibit 12, Inquest Brief 1893.

skate park. Given Tyler's contact with Shona and Shannon at Heidelberg, the only window of opportunity for an assault to have occurred upon Tyler was on the train from Heidelberg to Alphington or in or around Alphington station. There was CCTV footage from the train he took to Alphington at 20.16, which did not reveal any evidence of an assault and some CCTV footage from Alphington station which also did not reveal any evidence of an assault. Further, these pieces of footage do not show any apparent injuries to Tyler.

229. As stated above, the investigating police were directed back to the Alphington area to conduct a "*door knock*" style investigation to attempt to gather any further information about Tyler's movements that night. It was this door knock that produced the evidence of Tyler's threats to Mr Chen from the milk bar opposite the bus stop, but no evidence of any assault upon Tyler including no observations of marks on Tyler by Mr Chen.

230. Putting to one side Tyler's emotional and psychological condition, which I shall return to shortly, the evidence as to the scratches and marks that Mrs Cassidy observed on Tyler and were noted at autopsy, could well be explained by his observed physical activities at several locations on his way home. The CCTV footage from the Diamond Creek railway station, where Tyler boarded the train after leaving his friends, shows Tyler climbing a pole and then falling, apparently quite heavily, onto his back where he lay for about a minute before getting up again. At Alphington, he was seen by Mr Chen heavily kicking the bus shelter and again falling onto his back as a result of the force of his own exertion. The bus driver observes that when he collected Tyler he seemed out of breath and as if he had been in a fight, which appears to be explained by Mr Chen's observations of Tyler's activity at the Alphington bus stop. After Tyler alighted from the bus ride, Mr Pecovski's evidence was that Tyler caused a loud bang on the back of the departing bus which Mr Pecovski was "pretty sure" was a kick or a punch on the back door of the bus.¹⁸⁹ He then saw Tyler, as did Ms Firanyi, climbing on a cyclone fence; kicking, pulling and banging on that fence in such a way that it caused Ms Firanyi to call the police and report it.

231. In my view, any one or a combination of these physical activities provide a reasonable explanation for the scratches on Tyler's back and bleeding from his elbows and hands. Tyler told no one of an assault. There is no evidence of an assault upon Tyler that night.

232. As stated above, Tyler's family were understandably concerned to try to understand what had caused Tyler to become so agitated on that evening.¹⁹⁰ It was their assessment that the lack of explanation was as a direct result of a failing or inadequacy in the investigation. In contrast, it was the submission of the four police that, whilst the actual detail of why Tyler was in such a violent and threatening state did not emerge, it can be seen as part of a pattern of conduct for him and part of his conduct all day that day.¹⁹¹ The police cite a range of incidences of antisocial and potentially intimidatory behaviour,

¹⁸⁹ Inquest Brief page 174.

¹⁹⁰ Final written submissions of family, paragraph 52.

¹⁹¹ Written submissions of four members, page 9.

which formed part of the Inquest Brief, that Tyler engaged in throughout the course of that day, including stealing a bicycle from a child, jumping on the roof of a taxi and behaving in a menacing way to a milk bar operator as well as being observed kicking bus shelters and attempting to damage a fence and swearing and yelling near his home.

233. Whilst this investigation has endeavoured to find some “*cause*” for Tyler’s crisis on the night, the evidence does not reveal one single “*cause*” or event. In my view, I do not conclude that this is as a result of an inadequate police investigation. Whilst there might be other information available to Tyler’s family or friends which has not emerged in this investigation, I consider that it is equally open to conclude that there was not one single “*cause*”. To continue to search for one is to put a rational process onto a tragically irrational piece of conduct on the part of Tyler. His behaviour must also be seen in the context of his history. He had some history of uncontrolled irrational outbursts of anger and aggression, particularly in the context of alcohol. He had told Emily he was “*in the worst mood ever*”, and he was looking desperately for company and distractions that night. His behaviour appeared to be deteriorating over the course of the day. This communication to Emily, before he had exited the train at Alphington, produces an inference that something or some chain of events or thinking or combination of an underlying condition and confluence of events had put him into the “*worst mood ever*” before he got off the train at Alphington.

234. Professor McGorry, Executive Director, Orygen Youth Health Research Centre, provided an expert opinion to the Inquest based on his qualifications and experience in the area of youth mental health. Professor McGorry made it clear that he had not met Tyler and was not in a position to give any opinion about Tyler’s mental state or a diagnosis of him, either at the time generally or on this night. Professor McGorry was provided with a considerable amount of material including the file from Austin Child and Adolescent Mental Health Unit, a number of statements from the Inquest Brief and a large volume of material containing Tyler’s education and health history generally.

235. Professor McGorry was asked whether, based on the material he had been provided with, if he could proffer any opinion as to what may have triggered Tyler’s crisis on this evening. Professor McGorry gave evidence that he was unable, from the material, to pinpoint the trigger to Tyler’s crisis. He stated:

I could find no real clues, in what I was provided with, as to why he became so intensely distressed on that night and disturbed... That was something I looked very carefully for, but I ended up feeling there was a bit of a mystery as to how he got into that highly disturbed and distressed and angry and possibly suicidal mental state, having the reports of him having been quite calm and settled, earlier in the day, and – so that’s, to me – in my mind, it’s a mystery, as to how he changed so dramatically and quickly.¹⁹²

236. Professor McGorry stated that for a young person like Tyler with his history and a combination of features including Tyler’s unresolved grief over the loss of his father, his

¹⁹² Transcript 2630.