



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 23/16

*I, Evelyn Felicia VICKER, Deputy State Coroner, having investigated the death of **Simon John ROWE** with an Inquest held at Perth Coroners Court, Court 51, CLC, 501 Hay Street, Perth, on 13 July 2016 and 1-3 August 2016 find the identity of the deceased was **Simon John ROWE** and that death occurred on 12 April 2012 at Novotel Perth Langley Hotel, 221 Adelaide Terrace, Perth, as a result of multiple injuries in a man with methylamphetamine effect in the following circumstances -*

Counsel Appearing :

Ms Kate Ellson assisting the Deputy State Coroner

Mr Gary Huggins appeared on 13 July 2016 and Mr Ben Humphris appeared on 1-3 August 2016 (WA Police Legal) for the Commissioner of Police

SUPPRESSION ORDERS

That there be no recording or publication of any information or image which may identify or tend to identify TO 9 or TO 42.

And that there be no reporting or publication of the details of the Tactical Response Group operational policies.

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INTRODUCTION

In the very early minutes of Thursday 12 April 2012 the deceased, Simon John Rowe (Simon), smashed the window of a 12th level hotel room and began throwing items out of the window. Following complaints of noise by other guests, and concerns as to the smell of smoke by hotel staff, the police were asked to attend.

The first police to attend established the need for further assistance and ultimately officers from the Tactical Response Group (TRG) and members of the Fire and Emergency Services Association (FESA) arrived. Simon was not prepared to engage with any attempts to communicate with him and eventually, at approximately 5.30 am, police and fire officers decided the risk of fire was too great to continue with passive action. A decision was made to enter the room, which had been barricaded with items from the room on the inside.

Two Tactical Officers (TOs) entered the room with a range of weapons directed towards a non-lethal outcome for Simon. They were unable to negotiate a barricade into the room to intervene between Simon and the window. Initially, Simon was in the corner furthest away from the window with some form of baton, attempting to prevent entry into the room.

TO9 used a shotgun with bean bag rounds in an attempt to dislodge the baton from Simon's hand. This was ineffective. Simon moved further into the room, between the TOs and the window. TO9 fired two more bean bag rounds at Simon in an attempt to stop him, without success.

TO42, behind and to the right of TO9, then fired a Taser at Simon with the same intention, but it did not make effective contact, which was necessary to stop Simon.

Simon approached the window and eye-witness accounts support the proposition he deliberately pulled himself/vaulted out of the open window and fell to his death below, where he was also severely burnt by fire.

Simon was 37 years of age.

The matter comes to inquest for the purposes of an independent review of the actions of the police officers involved during the course of events which culminated in Simon's death: ss3, 22(1)(b) *Coroners Act 1996*.

BACKGROUND

The Deceased

Simon was born on the 26 June 1974 and had an older brother. His parents separated when he was 6 years of age and the boys lived with their father, a civil engineer and his grandmother, but there was no difficulty with his access to

his mother when desired.¹ He also lived with his mother for a time when he was approximately 12 to 14 years of age.

Simon ended school in year 10, but was inclined to mix with older students and did not achieve particularly well while at school, although clearly an intelligent person. He worked towards an apprenticeship as a boilermaker/welder, but became involved in alcohol and drugs and eventually serious crime. At 19 years of age Simon was sentenced to imprisonment for a number of offences and was not paroled until February 1999, when he was 24 years of age.

While on parole Simon committed further offences and was returned to prison for a further 7 years with no parole. He self-reported heroin addiction.

Simon did well in prison and achieved qualifications towards a degree from Queensland University, equivalent to an Advanced Diploma in Structural Engineering. He also taught maths to other inmates to a year 12 level and a drawing package called Auto CAD.²

His mother described him as very loving and caring towards her. His father stated that when he was not under the influence of drugs or alcohol, Simon was an intelligent, caring and responsible person. He was always prepared to

¹ t.1.8.2016 p.63

² Exhibit 1, tab 6.1

help friends and family in times of their troubles, provided he was not under the influence of drugs or the “*drug scene*”.



Exhibit “9” – depicts a photograph of Simon as provided by his mother

There seem to have been two incidents of significance in Simon’s life which affected him quite severely. One was the later suicide of a female welfare worker who had helped Simon while he was in prison; and the other was ongoing tension around the birth and later access to his son, who lived in Queensland. His son was born in Queensland in approximately 2006 or 2007.³ Simon loved his son and the fact of the difficulty with access to, and later communication with, his son, and tensions related to the mother of his son, caused him ongoing distress. It possibly gave some reality to

³ t. 1.8.2016, p.75

the background of his apparent paranoia when drug affected.⁴

Following successfully educating himself while in prison, Simon obtained employment in the mining industry in 2004, working at the Newcrest Mine, Telfer, as a draft person,⁵ using his structural engineering qualifications. Unfortunately, Simon was injured while at work at the beginning of 2005 and was unable to continue. While he received an invalid pension for his loss of earning capacity, the expected compensation pay out did not materialise in the envisaged amount and contributed to Simon's apparent inability to re-establish himself in purposeful employment. He had received instalments for that pay out at the time of his death⁶ which he used to buy new clothes and methamphetamines on the day before his death.

In the timeframe leading up to his death Simon had been staying at his father's home, then with his aunty to help her with flooding in her home, and in the days leading up to his death, with his current girlfriend or various hotels. His girlfriend had children and would not allow Simon in her children's home when he was drug affected. One of the hotels he used was the Novotel Langley in the city.

⁴ t. 1.8.2016, p.72-74

⁵ Exhibit 1, Vol 1, Tab 7

⁶ t. 1.8.2016, p.70 - Exhibit 1, Tab 6.1

On 11 April 2012 Simon visited his mother. He was using his father's car which he had borrowed the previous day. He had promised to return the car on the day he died. It was eventually returned to Mr Rowe (Senior) by police.⁷

While visiting his mother Simon made some remarks which she did not fully understand. In hindsight, his mother believed Simon was attempting to tell her he did not expect to see her again. He told her he had come to say goodbye and that he was going to meet his prophet.⁸ Some of the comments also reflected a degree of paranoia, which in view of his history may have been grounded in reality, not assisted by his history of amphetamine use which can promote paranoid fears.⁹ He emphasised a feeling of an impending ending of his life.¹⁰

Simon also spent time on the telephone to his girlfriend and referred to the delivery of a letter to her from him. It is not clear when that actually happened. His girlfriend heard a car draw up and her mail box open, but there does not appear to have been anything written to her to explain what later happened. Later a note was located in Simon's jeans, addressed to his girlfriend, which may have been intended for her letter box, but not left there. It does not clarify his

⁷ Exhibit 1, Tab 6.1

⁸ t. 1.8.2016, p.72

⁹ Exhibit 1, Tab 7

¹⁰ t.1.8.2016, p.73

actions.¹¹ Simon's girlfriend also expressed Simon's ongoing fear of his history catching up with him.¹²

The Hotel

Simon booked into the Novotel Perth Langley (the Hotel) situated on Adelaide Terrace on 11 April 2012 at approximately 5.30 pm. He used a valid credit card and gave his correct identity. It was noted he did not have any luggage and seemed a bit edgy and sweaty, although perfectly friendly and rational.¹³ Simon did not specify he wanted a high rise room, but did request a king size room which was available on the computer as 1201. The hotel was fairly full and it was the only room of the type he requested still available.

Room 1201 is on the 12th floor and its window looks out onto an adjacent apartment block. Immediately below that window, a number of stories down, is the roof of part of the hotel, and on that the plant room of the Hotel.

Overnight from the 11-12 April 2012 the hotel was staffed by a night manager, Tushar Bhargava, a trainee manager, Pratik Raval, and a night porter, Clarence Ng. They had come on duty at 11pm on 11 April 2012.

¹¹ Exhibit 2, Tab 17

¹² Exhibit 1, Tab 6.2

¹³ Exhibit 3, Tab 43.3

At approximately 1.00 to 1.30 am on 12 April 2012 reception received a call from a guest on level 1 complaining there were bottles being thrown at her window and the sound of breaking glass.¹⁴ The guest also requested room service.

The night manager, Mr Bhargava, decided to deliver room service so he could see the problem for himself. Mr Bhargava went to the guest's window, opened the curtains and observed shattered glass to be falling outside the window at the time he opened the curtains on level 1. Mr Bhargava was not able to decide exactly what was happening. He went to look on the plant room roof to see if he could see what was happening. He went with the trainee manager, Mr Raval, and once on the plant room roof they examined the smashed glass and decided it was safety glass. They looked up at the hotel windows and believed the glass came from room 1201.

Mr Bhargava was concerned because the windows of the hotel are made of shatter proof glass and he believed would require a lot of force to smash. Mr Bhargava checked the roof of the plant room a couple of times to make sure his understanding of the situation was correct.¹⁵

The guest who had originally complained to reception later reported to police that following the first incidence of

¹⁴ Exhibit 3, Tab 43.4

¹⁵ t. 13.7.2016, p.6

smashed glass, she was aware of items being thrown past her window from approximately 2.30-5.00 am that morning.¹⁶

Mr Bhargava, and both Mr Raval and Mr Ng went up to the 12th floor to see if they could make any observations about the situation in room 1201. They reported very little noise coming from the room, but there was a smell of burning. Mr Bhargava stated the room was in darkness but there appeared to be a draft coming from under the door and the smell of burning came with that breeze. The hotel staff did not knock on the door, but decided they needed to call the police.¹⁷

Once satisfied the glass was safety glass and that it appeared to belong to one of the windows of the hotel on the 12th floor, Mr Bhargava was concerned the person in that room may have been contemplating suicide because of the force needed to smash the glass. He rang the police at 3.30 am and the 000 call and was put through to WA Police Operations Centre (POC). He expressed his concern someone had smashed a hotel window on the 12th floor. The call taker treated the call as a report of damage.¹⁸ The call taker clearly considered the call was about the glass causing a hazard, with which Mr Bhargava agreed, and despatched police officers to investigate.

¹⁶ Exhibit 1, Vol 3, Tab 43.4

¹⁷ T. 13.7.2016, p.8

¹⁸ Exhibit 1, Tab 3

ARRIVAL OF POLICE

Although the transcript of the 000 call from Mr Bhargava to the POC shows Mr Bhargava mentioned a suicide attempt, it appears the call-taker did not hear that, and listening to the audio recording I can understand he may have missed that piece of information as he was logging the task on. A Computer Aided Despatch (CAD) task was created for the local police and recorded with a priority 3 which indicated it was for a complaint about damage.¹⁹

As a result of the CAD job, Police Constables Hall (Hall) and Small (Small) were despatched to attend at the Hotel at 3.43 am. They arrived at the Hotel at 3.46 am and approached management as to their concerns. Mr Bhargava pointed out the room he suspected was the problem from the outside, and then they went to room 1201 and in company with Mr Bhargava, attempted to make contact with Simon.²⁰

Mr Bhargava had supplied the police officers with the Guest's Registration Card for 1201 and the police asked Mr Bhargava to knock on the door first to see if there was any response. There was no response to Mr Bhargava, and the police then knocked a couple of times identifying themselves as the police to which there was no answer.

¹⁹ Exhibit 1

²⁰ t.13.7.2016, p.11

Hall contacted the City Support Channel in an attempt to obtain information about the guest named on the card. The police officer investigating the identity advised Hall there were some warnings with respect to Simon including the fact he had been known to attempt self-harm and that he could become violent. Due to her concerns there may be glass inside the hotel room and possible difficulties with Simon, Hall contacted police communications and asked for backup. They did not try to get into 1201 at that point.²¹ Within 10 minutes another two police officers attended the Hotel. They were First Class Constable O'Donnell (O'Donnell) and Constable Black (Black). On arrival O'Donnell knocked on the door and advised Simon it was the police and it was necessary he respond. Simon responded and asked them to go away. The police could hear more glass smashing inside the room. The police became concerned for Simon's welfare and in view of the police warnings of self-harm asked Mr Bhargava to use the master pass so they could access the room.

The pass opened the door but Simon had secured the security chain and propped a chair against the door to prevent entry. Simon attempted to shut the door on the police, but O'Donnell managed to place his baton through the door to prevent it from being closed again. Mr Raval went to obtain some bolt cutters to allow the police to cut the chain.

²¹ t.1.8.2016, p.81

Once the chain was cut the door still could not be opened because Simon had begun to barricade the door with furniture from the room. The police could see, through the gap they had managed to make, the base of the bed and were able to catch glimpses of Simon as he started to throw glass from the room at the door.

Small stated that while the police were attempting to open the door the lights in the room were flickering on and off. The police turned them on through the crack in the door to try and see into the room and then Simon turned them off. Small described how Simon attempted to prevent the police from turning the lights on by using a rod²² to whip the open space in an attempt to prevent the police from accessing the light switch.²³

Hall went down the hallway to use her radio and advised POC they were unsuccessful in negotiating with Simon. She received other warnings about Simon and returned to the door. She advised everybody around the door they should move away from the door due to some concerns about Simon's response to the police presence. Basically, with the information they had the police officers thought it was unsafe to remain in the vicinity of the door.

More senior members of the police arrived at the scene and two Tactical Operatives (TOs), who were rostered on duty,

²² Photo 21 in Ex 2 Tab 14B shows an item similar to that described by Small

²³ t. 1.8.2016, p.92

arrived to assist in attempting to persuade Simon to leave the room before there was further damage, or the potential for him to cause harm to himself or others. Of the two operatives who arrived, TO9 was the most senior and he liaised with senior police at the scene to formulate a plan to assist the Hotel and Simon. The police on-road-supervisor had arrived at the Hotel at 3.48 am, the two TOs arrived at 4.28 am, while the Duty Patrol Commander and Incident Controller arrived at 4.44 am.

The two TO's were taken up to the 12th floor. They informed themselves of the floor and room layouts. They noted the baton in the hotel room door.

At approximately the same time as the TOs arrived the attending police officers and hotel staff noticed an increase in the level of smoke from room 1201 into the hall. Both the TOs and FESA had arrived and a decision was made between the emergency services personnel and hotel staff to evacuate the floor. Residents were ringing reception querying both the noise and the activities.

Following the arrival of the TOs Simon asked for a police negotiator and medic. TO9 is a trained medic for police purposes, that is, he holds first aid qualifications, but also additional first aid qualifications which allow him to provide immediate response treatment in situations with which the TOs may be confronted. Simon did not identify to TO9 why

he required a medic, and TO9 attempted to persuade Simon to come out of the room because it was necessary to assess him to be able to help him.²⁴

Simon asked TO9 if he could speak to him on the telephone, and arrangements were made with the hotel staff for TO9 to use a nearby room in order to call room 1201. They were unable to connect with room 1201 and it became evident later in events that Simon had dislodged telephone communication with room 1201 in the process of barricading the door with the bed. TO42 advised TO9 he was unable to hear the telephone ringing in room 1201.

TO9 returned to room 1201 and asked Simon what was happening with the telephone and to check whether it was plugged in. Simon stopped responding to the police.

TO9 then contacted the On-Call Police Negotiator and asked him to attend the scene in an attempt to provide Simon with a negotiator he had asked for, and establish a line of communication with Simon.

TO9 also called the TRG On-Call Tactical Commander and asked he attend the scene as a senior officer to liaise with other senior officers. As a result more police officers and

²⁴ t. 1.8.2016, p.104

TRG officers became available in an attempt to assist at the Hotel.²⁵

TO9 described the situation as becoming a concern due to the level of smoke coming from room 1201, and what TO9 described as a smell of something like “*plastic burning.*” The smoke was evident to the extent the lights in the lift recess were misty and the atmosphere was becoming quite dense.²⁶

Evidence of Independent Observers

Opposite room 1201, approximately 20-30 metres away, is an apartment block.²⁷ A couple staying in the apartment block, on level 10, were awake in the early hours of 12 April 2012 because John Healy (Mr Healy) wished to watch a football game. As a result his partner, Susan Wagner (Ms Wagner) had also woken.

Ms Wagner was concerned about the sound of smashing glass and on looking out of their balcony observed items, including lamps and bits of furniture, on the roof of the hotel below their apartment block. Ms Wagner also noticed a window on the top level of the hotel had been smashed and she could see a male person throwing more objects out onto the roof below. Ms Wagner and Mr Healy then saw that person light bedding or curtains and hang them out of the window. They could see there was a fire in the hotel

²⁵ t. 1.8.2016, p.185

²⁶ t. 1.8.2016, p.105

²⁷ t.3.8.2016, p.221

room and Ms Wagner suggested Mr Healy go across to the hotel and tell them what was happening in case they did not know.²⁸

Mr Healy attended the hotel at approximately 5.08 am to tell the night staff there was a fire on the top floor of the Hotel. Mr Healy could see from the activity in the foyer, with the attendance of police that was already known, nevertheless, he advised them of the events he and Ms Wagner could see from their room.²⁹

Ms Wagner had stayed behind in their apartment and advised the inquest she kept watch on room 1201. She could see a little into the room, but not very much because of the fire. It seemed the fire was mainly around the window and remained reasonably consistent, with only small objects being set alight. She thought there appeared to be bedding hanging on the window ledge around the smashed window. Due to the angle of their apartment on the 10th floor, to the 12th floor of the hotel, they could not see clearly into the room. It was dark and the fire at the window lit up their view of what was occurring.³⁰

Ms Wagner described the male occupant of the room as appearing to pace backwards and forwards in the room, and peering out of the window on occasion to add more furniture

²⁸ t.3.8.2016, p.222

²⁹ t.3.8.2016, p.230

³⁰ t. 3.8.2016, p.224

to the objects on the roof below. She could not hear him yelling or screaming. On occasion she observed an object in the man's hands which was similar to a baseball bat shape, although she was not sure it was a baseball bat.³¹ Ms Wagner and Mr Healy could also see the outlines of people in the window next to room 1201, which is the lift foyer. TO9 confirmed the shadows seen at that window were those of attending police.

Overall, Ms Wagner believed they watched the events in and around the window of room 1201 for between 1-2 hours.³²

Police Negotiation

The police negotiator attended at the hotel at approximately 5.15 am and attempted to talk to Simon through the door of room 1201.

The TRG Commander arrived at approximately 5.25 am and the Deliberate Action Commander at 5.37 am. FESA had arrived at 5.10 am and SJA arrived at the Hotel at 5.42 am.

The police negotiator identified himself to Simon following a briefing from police in attendance of their understanding of both Simon and the situation. Despite the fact Simon had asked for a negotiator, he was not responsive other than acknowledging he was in room 1201 so the negotiator

³¹ photographs of inside room 1201 after the event include an item of furniture, possibly a chair leg, blackened, which is similar to a baseball bat in shape. Ex 2, Tab 14B photo 48

³² t.3.8.2016, p.226

understood Simon was still in the room and not overcome by smoke. The police negotiator described the level of smoke as making visibility difficult at times and that there was a strong smell of smoke which was why he was anxious to ensure Simon was still conscious.³³

It was not the police negotiator's impression Simon was directly behind the door. The sound appeared to be muffled from somewhere further inside the room. Simon did not respond at all to queries as to what he wanted or whether there was a reason for his earlier request for a medic.³⁴ The police negotiator found he was completely unable to establish Simon's concerns and be effective as a negotiator.

The police negotiator was concerned about Simon's welfare when he was silent for long periods of time and there came a point when the fire officers attending the floor on behalf of FESA were concerned the level of smoke made it necessary the room be entered in an effort to ensure Simon remained alive.

In the negotiator's view, from the time Simon stopped responding to when a decision was made the room needed to be entered, was not particularly long, and he noted there was more smoke in the corridor than when he had arrived. The police officers described the smell as being quite strong and causing some irritation to breathing. The FESA officers

³³ t. 2.8.2016, p.178

³⁴ t. 2.8.2016, p.177

had on breathing apparatus and were in a better position to cope with the smoke.³⁵

Eventually, the police negotiator moved away from the room as a decision was made by all senior officers, in conjunction with FESA, it was necessary the barricade be breached in an effort to protect Simon and the hotel. It was impossible from outside room 1201 to determine the extent of the fire inside. The police negotiator believed he moved away from room 1201 at approximately 5.35 am.³⁶

Entry to Room 1201

On viewing the video provided by Mr Healy and Ms Wagner of their view of the fire from their apartment block, Senior Fire Officer Lance Speller (Speller) advised the court, that in fire-fighting terms, the scene represented a category 5 fire. This was partially due to the fact it was a visibly significant fire, in a high rise building which would present concern to other occupants of the building.³⁷ It required the highest response available.

Speller recalled police speaking with the occupant of room 1201, while the fire officers donned breathing apparatus and were preparing to approach the room with their fire-fighting equipment. He advised the court they had no idea as to what was happening in the room, but were concerned

³⁵ t. 2.8.2016, p.200, 209: t. 1.8.2016, p.112

³⁶ t. 2.8.2016, p.180

³⁷ t. 2.8.2016, p.215

the smoke was getting thicker and thicker and there were still guests in the hotel.

TO9 advised the court another TO actually breeched the door enough to allow a hose to be directed into the room, but to enable the TOs to get in it was necessary the door be removed.³⁸ Speller heard the TOs tell Simon it was necessary the fire was controlled by the FESA officers, but there was little response from Simon. Speller could hear when the room was breeched and the TOs telling Simon, *“Mate, we need to get some water on this”*. Simon was not responding, although he seemed to be yelling and screaming.³⁹ He heard the TOs calling to Simon to *“get down, get down”* as they managed to go through the door and the FESA officer with the hose was able to direct some water into the room.

TO9 was the first officer in as the door was removed and was able to see the fire was in the vicinity of the window and looked relatively substantial. The room was filled with smoke, but it was possible to see it was the curtains and the window treatments inside the room which were alight. Due to the barricading around the door TO9 was not able to step fully into the room, but was in the entry corridor with the kitchenette on one side and the bathroom on the other.

³⁸ t. 1.8.2016, p.114

³⁹ t. 2.8.2016, p.199

Simon was around the right hand corner from the bathroom and TO9 believed he was in an elevated position, so he could strike down at people with a baton-like weapon as they approached the opening into the room proper. TO9 believed Simon was standing on something, although he acknowledged Simon was quite tall. He was in the corner and using the weapon to extend his reach in an attempt to stop the police officers entering the room.

Simon had been striking out at the TO attempting to open the door and TO9 observed Simon was still striking out in an effort to prevent him from properly accessing the room. TO9 did not wish to get any further into the room. He was simply trying to make contact with Simon to ensure Simon understood they were police officers and attempting to take control of the situation. TO9 was anxious to see what exactly it was Simon was armed with so he could decide on his appropriate level of response.

TO9 asked Simon to drop what he was holding in his hands. He was repeatedly told by Simon he had no intention of complying with any of his requests. In an attempt to take control of the situation TO9 remained in the entry corridor while a FESA officer directed water into the room in an attempt to extinguish the fire. Simon continued to attempt to prevent TO9's progress further into the room by use of the baton. He did not strike TO9.⁴⁰ TO9 was concerned the

⁴⁰ t. 1.8.2016, p.115

situation was not under control and fired a bean bag round at Simon's hand in an attempt to encourage him to drop the baton which looked like a metal bar or rod.

Simon did not drop the baton, but did recoil back into the corner and TO9 believed he had hit Simon in the hand, due to his response. TO9 continued asking Simon to stop what he was doing and to get down, but was prevented from moving further into the room by the items lodged in the entry way before the door had been opened.

TO9 believed Simon jumped down from whatever he was standing on, if he had been standing on something, and moved into the centre of the room. He was still holding the baton. TO9 believed Simon said he was going to jump, and continued to move towards the window while TO9 asked him to get away from the window and get down. TO9 made the decision that in order to keep Simon away from the window he needed to incapacitate him and he fired two more bean bag rounds at Simon in a conscious effort to stop him from moving.

TO9 described that, while he was still in the entry corridor to the room, Simon *“placed his right leg over the window, and then he has sort of sat on the window ledge, so he is facing, sort of to the left, as I am looking at him, facing to the left. I am standing back, probably about a couple of metres from the hotel room door and he has then used his hands to*

lower his other leg over the window ledge and then he has lowered himself down".⁴¹

This is largely consistent with the observations of both Ms Wagner and Mr Healy who were watching, although each person gives a slightly different description of Simon's actions.

Ms Wagner said there had been a period of silence while she was watching from their window, which she believed would have been people attempting to negotiate with Simon. She then said that after a fair time of silence she heard what sounded like one gun shot and she believed the male person then sat on the window ledge before going back inside. Then after a period of yelling she could hear another two shots and that the person then went back to the window, "*Put his feet over and jumped*" and when asked why she believed he jumped she said, "*Because he did not hesitate*".⁴²

Mr Healy had a similar view although he was unsure whether he had seen the outline of the man sitting on the window ledge before or after the first shot, but both Ms Wagner and Mr Healy were clear there was one sound of a shot, then a period of time before there were the other two shots, reasonably close together.

⁴¹ t. 1.8.2016, p.117

⁴² t. 3.8.2016, p.226

Mr Healy recalled the man inside the room came to the window the first time and put his legs out of the window. Mr Healy saw, what he believed looked like a baseball bat in his hand, and that the man was sitting on the window ledge. The man had gone back into the room and he had heard what sounded like a gun shot. After a period of time there were another two gun shots and Mr Healy said Simon, “*actually jumped and vaulted straight out of the window*”.⁴³

Mr Healy described Simon as being reasonably controlled. He did not hear him screaming and shouting. Originally, Mr Healy believed he had heard Simon yell something about jumping, although he was not sure of that by the time we heard evidence in court. While there was the discrepancy with the timing of the first shot and Ms Wagner’s view of Simon sitting in the window and then going back into the room, I am satisfied people have different recollections of traumatic events depending on their own view and actions. The civilian witnesses are quite consistent with the police in that there was first the sound of a shot, then a period of time before the other two shots in close succession.

This is entirely consistent with TO9, who had a view of the inside of the room and is confident the first shot was fired by himself when Simon was in the corner of the room and not at the window. It was an attempt to dislodge the weapon from Simon’s hand, following which he continued to

⁴³ t. 3.8.2016, p.232

try and negotiate with Simon to put the weapon down and remain in the room, before Simon moved into the centre of the room and TO9 attempted to incapacitate him by firing two more shots.

Ms Wagner, although positive of what she saw, acknowledged it was very traumatic, she was concerned for the person in the room, and agreed that when Simon jumped she screamed.⁴⁴ TO9 believed he heard a scream from Simon as he fell, but it is entirely possible it was Ms Wagner.

As Simon accessed the window to jump, so TO42 who was still in the entry corridor of the room, but behind and to the right of TO9, made a last attempt to incapacitate Simon before he reached the window, and fired his Taser at Simon. He discharged it for a full five seconds in an attempt to paralyse Simon and prevent him jumping from the window. TO42 was also unsuccessful in stopping Simon. Although one of the Taser probes imbedded in Simon's clothing, the other did not and was located hanging out of the window.

The Tactical Response Commander immediately seized both the shot gun from TO9, and the Taser from TO42.

⁴⁴ t. 3.8.2016, p.228

When Simon jumped out of the window both TO9 and TO42 immediately attempted to find access to the roof top upon which they could see Simon had landed. There was a visible fire around him. The two officers were unable to access the roof from where they exited the building and Simon was attended to by other officers and the paramedics. He was on fire and it seems likely he deliberately enveloped himself in the items hanging out of the window as he fell.

The TOs were then separated while forensics examined their weapons. They remained segregated prior to being interviewed.

Meanwhile FESA entered room 1201 properly and were able to extinguish the remnants of the fire in the room.

On the plant room roof a FESA officer used a carbon dioxide extinguisher to douse the fire engulfing Simon. Simon was examined by the St John Ambulance Paramedics and found to be already deceased.

The Incident Controller cordoned the area and identified the different forensic scenes, and the Internal Affairs Unit (IAU) took control of the entire incident at 6.43 am to arrange examination and overview of all police activities to do with the incident.

These types of incidents are traumatic for all officers involved, and any civilians involved in either the incident or observing the incident. It is necessary they are fully investigated to ensure compliance with all policies and procedures and in an attempt to gain information which may improve the outcome of future incidents.

It was clear both Ms Wagner and Mr Healy were very distressed by Simon's death,⁴⁵ and Mr Bhargava⁴⁶ and Mr Raval⁴⁷ both believed the police had behaved very professionally from their perspectives.

POST MORTEM EXAMINATION

The post mortem examination of Simon was undertaken by Dr G A Cadden, State Forensic Pathologist, on the 16 April 2012.

At initial examination Dr Cadden advised there were extensive thermal injuries to the external surfaces of the body. The chest showed severe injury involving the rib cage, lungs and heart. Other injuries included skeletal injury. Further investigations were undertaken.

⁴⁵ t. 3.8.2016, p.228

⁴⁶ t. 13.7.2016, p.18

⁴⁷ t. 2.8.2016, p.154

Initially Dr Cadden determined Simon's cause of death as 'undetermined' pending those further investigations which involved neuropathology and toxicology.⁴⁸

On receipt of the further investigations Dr Cadden confirmed Simon exhibited severe injury including thermal injury and that toxicology had quantified methylamphetamine/amphetamine and some cannabis products. Dr Cadden advised "*given that methylamphetamine has the known potential to cause heightening of aggression and potential violence and is also known to potentially bring about paranoid behaviour then, given the scenario outline above, the fact that this man had potential methylamphetamine affect was included in the cause of death*".

Dr Cadden's final view was that in his opinion Simon had died as the result of multiple injuries in a man with methylamphetamine effect.

POLICE INVESTIGATIONS

In any incident which has involved police and resulted in a fatality or serious injury, an investigation of those police is conducted by independent police officers to ensure all police policies, procedures and guidelines were appropriately

⁴⁸ Exhibit 3, Tab 40

followed to ensure proper risk assessment guided the desired outcome.

Any use of force is separately investigated to ensure police officers have complied with all requirements with respect to the use of force. Examination of the weapons indicated the shot gun had been fired three times in accordance with TO9's recollection, and the Taser once, for the full five second cycle, in accordance with TO42's recollection.

In addition, all relevant scenes are forensically examined in an attempt to provide independent evidence of the reliability of witnesses' recollections of what are usually traumatic events.

Mr Healy provided police investigators with a video recording of his observations as events unfolded from opposite room 1201 of the Hotel.⁴⁹

Photographs taken by the forensic police after the event also supported the evidence of those involved in the incident in the early hours of 12 April 2012. Items fitting the description given by police of a metal rod and baseball bat shaped weapon, also observed by Ms Wagner and Mr Healy, can be seen in the mostly smoke damaged aftermath left in room 1201.⁵⁰

⁴⁹ t. 3.8.2016, p.234

⁵⁰ Ex 2 Tab 14

CONCLUSION AS TO THE DEATH OF THE DECEASED

I am satisfied Simon was a 37 year old man who had been involved in the drug scene and associated serious criminal connections from a young age. Despite having a supportive family Simon had spent considerable periods of his adult life in custody, which he used to good advantage by educating himself, but it had also exposed him to a particular view of life.

Simon was very loyal to his family and friends and had a young son to whom he had no access and very little contact, which greatly distressed him.⁵¹

It is difficult to determine whether Simon's apparent paranoia resulted from his drug use, or was grounded in reality as a result of circumstances surrounding his son and ongoing drug use. Simon does not seem to have been able to establish himself in a productive life style following his release from prison and injury while working. From that time it seems likely he used drugs when in a position to do so. This probably did not help his negative view of the world outside his family and friends.

By the time of his death it seems likely Simon was quite unstable with respect to his future prospects. He appears to have been fascinated by fire⁵² and erratic in his emotions.

⁵¹ Ex 1, Tab 6.1 & 6.3

⁵² Exhibit 1, Tab 6.3

I am satisfied Simon was experiencing a period of intense disappointment following his inability to fund a more stable lifestyle due to injury and uncertainty about compensation. He used drugs when he could purchase them and was insecure about his potential to achieve a desirable future for himself.

By the 11 April 2012 I am of the view Simon had decided he was unlikely to reach old age and would determine his own destiny by creating a situation in which he was likely to die. He visited his mother on 11 April 2012 and advised her he intended to “*meet his prophet*”. His mother was uncertain as to his meaning. He also made reference to people targeting him and not wanting others to suffer by association with him.⁵³

I believe he had settled on a plan of action which was likely to end his life, but was undecided at the time he attended his girlfriend’s house and hesitated about leaving the note, later found in his jeans, at her premises on the evening of 11 April 2012.

In any event, Simon obtained a quantity of methylamphetamine and retreated to room 1201 at the Novotel Langley at approximately 5.30 pm on the 11 April 2012 intending to cause some sort of incident. He did not try to hide his identity.

⁵³ t. 1.8.2016, p.72

In the early minutes of 12 April 2012 he smashed the window of room 1201 and began throwing items out of the window onto the roof of the hotel below. This caused enough noise to create anxiety in guests in the lower levels of the hotel and so attracted the attention of hotel staff. It also, later in the morning, attracted the attention of residents in surrounding buildings.

As a result of the disturbance police attended and Simon escalated his behaviour to the extent of creating a drama. He engaged with police to the level of ensuring a number of different services would be involved in a siege of the hotel room because of concerns about fire, as well as events in the room.

I am satisfied that by 5:00am on the 12 April 2012 Simon was preparing to jump from the hotel room in dramatic circumstances. He appears to have controlled the fire around the window to ensure maximum attention and encourage emergency services to believe they needed to access room 1201 in an attempt to save him from being overcome by smoke. I believe Simon intended to die in dramatic circumstances, but did not intend others to be physically harmed by his actions. He seems to have attempted to ensure the fire remained well fuelled in the vicinity of the window, and created lots of smoke, but did not penetrate further into the building. He threw burning items out of the window onto a rooftop below.

The fact the Hotel sprinklers did not activate was later thought to be because the temperature in room 1201 did not reach the required level to trigger the alarms or sprinklers.

Smoke, however, can kill.

I am satisfied TOs 9 and 42 attempted to incapacitate Simon, without using lethal force, to prevent him from both harming himself and potentially others. The forensic evidence and the evidence of independent observers is consistent with the recollections and activities recounted by the police officers.

I am satisfied Simon jumped from the window of room 1201 intending to die and while that intention may have been enhanced by his level of methylamphetamine intoxication, the evidence available suggests it was his intention during the preceding 24 hours.

I find death occurred by way of suicide.

ACTIONS OF THE POLICE IN ATTEMPTING TO CONTROL SIMON PRIOR TO HIS SUICIDE

The whole of the evidence supports the proposition police ended the siege on room 1201 at the time they did out of concern for Simon and the level of smoke evident in the corridor outside that room. It was impossible to tell from

outside the room that Simon was controlling the level of fire within the room by throwing burning items outside.

Simon created an environment where police officers had no option but to attempt to enter room 1201 in an effort to reach him before he became overcome by smoke. On breaching the room TO9 was prevented from moving further into the room, both by Simon's actions and the barricade in the entry corridor.

TO9 fired the first bean bag round at Simon's hand in an attempt to dislodge the weapon, and later fired two more rounds when it became evident Simon was determined to prevent the police from getting control of him. Simon had moved into the centre of the room, threatening to jump, and when the bean bag rounds had failed to incapacitate him TO42 fired his Taser in an attempt to paralyse Simon before he could jump from the window.

I am satisfied Simon jumped from the window as a result of his own volition as observed by Ms Wagner, Mr Healy and TO9 and TO42. He fell onto a part of the hotel roof below, as observed by Mr Bhargava⁵⁴ and Mr Raval.⁵⁵

In the circumstances of this case I consider the actions of the police officers were warranted. Lethal force was not used because the police officers' intention at all times was to save

⁵⁴ t.13.7.2016, p.21

⁵⁵ t.2.8.2016, p.154

Simon from himself, and prevent fire from spreading throughout the hotel with its potential to affect the life of others.

In hindsight, it may be the lives of others were not at risk while Simon remained in room 1201, but it would not have been realistic for police to take that chance in the circumstances apparent from outside room 1201 at the time.

It is a tragedy Simon was so at odds with the world he left it in such a violent way.

E F Vicker
Deputy State Coroner
4 November 2016