



## **FINDING OF INQUEST**

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 29<sup>th</sup> days of August 2008, the 29<sup>th</sup> day of October 2008 and the 4<sup>th</sup> day of June 2009, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Zak Dean Proby.*

*The said Court finds that Zak Dean Proby aged 27 years, late of 3/1 Thirza Avenue, Mitchell Park, South Australia died at Mitchell Park, South Australia on the 21<sup>st</sup> day of June 2006 as a result of combined effects of penetrating injuries (crossbow arrows) to heart and brain. The said Court finds that the circumstances of his death were as follows:*

### **1. Background**

- 1.1. Zak Dean Proby was a young man aged 27 years who died on 21 June 2006. He shared a home with his mother in Mitchell Park. He had been living there for 10 years. He was an Aboriginal man. For some nine days prior to his death, he had been behaving oddly. His mother described his behaviour as strange and changing from morning to evening.
- 1.2. The day before his death he had called the South Australian Ambulance Service and requested an ambulance. However, upon the arrival of the ambulance Mr Proby had refused to allow the officers to examine him and had refused them admission to the house. The ambulance officers had called police for assistance but neither the police nor the ambulance officers were able to gain access to the house to arrange for his

medical assessment. The police left the scene and the ambulance officers left shortly afterwards.

- 1.3. The following day, 21 June 2006, Mr Proby asked his mother to leave the home and go to her father's house. He told her that he did not want her to be around to see 'this'. She was concerned for his well being and called the family doctor, Dr Low, to request a home visit. Upon Dr Low's arrival at the house at about 1:15pm, Mr Proby's mother left the house to go shopping. She left Dr Low alone in the house with Mr Proby. Once they were alone together, Mr Proby told Dr Low that somebody was threatening to kill him and his mother and that he was frightened to leave the house. He said that he wanted Dr Low to take him to see a psychologist at the Inner Southern Clinic and that he wanted Dr Low to take him to a place called Woodlands.
- 1.4. Dr Low formed the view that Mr Proby was paranoid. He refused Mr Proby's request. Mr Proby went to his bedroom, returned with a crossbow, and threatened Dr Low. Dr Low convinced Mr Proby to allow him to leave the premises and upon doing so he contacted his surgery. Staff at his surgery then contacted the police. Police attended at the scene. By this time Mrs Proby had returned and was inside the house and Dr Low was outside. Dr Low advised the police that Mr Proby had possession of a crossbow and another item which appeared to be a hand grenade. Mrs Proby left the house and the police contacted Mr Proby by telephone. A police negotiator was called in and a cordon was established around the scene of the house. The police negotiator made contact with Mr Proby at 3:49pm and spoke with him for approximately 70 minutes. Contact was again made at 5:51pm and that lasted for 45 minutes. At 6:47pm contact was established once more when Mr Proby asked for another 5 minutes. At approximately 6:51pm a window in the house blew out and smoke was noticed coming from the window. The fire service was called and, upon arrival, they gained access to the premises. Mr Proby's partially incinerated body was located lying on the floor of a bedroom within the house. He had barricaded several doors, including the front door, making it difficult for entry to be gained to the premises.
- 1.5. A post-mortem examination was conducted upon Mr Proby. The examination showed that Mr Proby had attempted to shoot himself in the heart with the crossbow and had then shot himself in the head with it. The cause of death given by the pathologist was combined effects of penetrating injuries (crossbow arrows) to heart and brain and I so

find. The pathologist found that Mr Proby's airways and lungs did not reveal that he had been alive for very long after the fire was established. It would therefore appear that Mr Proby set fire to the house and immediately thereafter inflicted the fatal wounds upon himself. In other words, the heat and smoke from the fire did not contribute to Mr Proby's death. The burns were post-mortem injuries. At the time of Mr Proby's death, the house was surrounded by police who were attempting to persuade Mr Proby to leave the house and give himself up. He would undoubtedly have been taken into custody had he done so. In my opinion, Mr Proby was evading apprehension immediately prior to his death and his death was therefore a death in custody within the meaning of the Coroner's Act 2003. An Inquest was required to be held pursuant to section 21(a) of that Act.

- 1.6. The Inquest focussed on two main events. The first was the attendance of the Ambulance on 20 June 2006 when the ambulance officers sought police assistance to gain entry to Mr Proby's house. The second was of course the visit of Dr Low on 21 June 2006, the subsequent attendance of police and the ensuing siege.

## **2. The events of 20 June 2006**

- 2.1. Ambulance officer Kristian Glover, police officer Sergeant Hamp and police officer Senior Constable Dawson gave evidence.
- 2.2. Mr Glover is an Intensive Care Paramedic employed by the South Australian Ambulance Service. He said that on 20 June 2006 he was on duty at the Marion ambulance station and was working with ambulance officer Sally Buckman on that shift. They responded to the call made by Mr Proby that day at 1726 hours. On their arrival shortly afterwards, they were approached by a young male who identified himself as Mr Proby's cousin. He informed them that Mr Proby was inside the house, had been acting strangely and called the ambulance wanting help. However, when he saw the ambulance arrive he had become fearful that the ambulance officers might hurt or threaten him, and now did not want their assistance<sup>1</sup>. The cousin informed the ambulance officers that Mr Proby had not been violent but it was his opinion that if Mr Proby felt threatened he might become violent. He also informed them that Mr Proby had used the drugs marijuana and crystal methamphetamine in the last few

days<sup>2</sup>. The ambulance officers approached the house and at about that time Mr Proby's mother, Karen, was leaving the house. Shortly afterwards the screen door opened again and a dog came out. Mr Glover heard someone say 'there is Zak', or words to that effect, and he approached the door and said:

'Zak, my name is Chris, I'm here to have a chat just to see what's going on.'<sup>3</sup>

However, the front door was shut and it appeared to be locked. Mr Glover did not see Mr Proby and Mr Proby did not respond to Mr Glover's greeting<sup>4</sup>.

- 2.3. Mr Glover then elicited from Mrs Proby that about nine days earlier she had returned home from a brief absence to find Mr Proby acting quite strangely. She said that he was acting 'paranoid' and that his behaviour was changing from morning to evening, in that he was being less rational towards the evening<sup>5</sup>. Mr Glover formed the view that Mr Proby was potentially suffering from some paranoia or psychotic episode and that he required assessment<sup>6</sup>. Shortly after this, another woman walked up to Mr Glover and Mrs Proby and introduced herself to Mr Glover as Mr Proby's aunty. She was verbally aggressive and demanded to know what the ambulance service were doing there<sup>7</sup>.
- 2.4. Mr Glover said that the ambulance service had no power to enter the premises against Mr Proby's will. However, Mr Glover felt that the situation required that Mr Proby be assessed because of the information provided to him about Mr Proby's recent behaviour. He asked his fellow ambulance officer, Ms Buckman, to call the police for assistance in the hope of gaining access to Mr Proby. While awaiting the arrival of the police, Mr Glover explained to Mrs Proby the reason for having called the police in order to allay any fears she might have as a result of that<sup>8</sup>.
- 2.5. Mr Glover said that shortly afterwards a single police officer arrived. The evidence showed that this was Senior Constable Dawson. Mr Glover gave evidence that he informed Senior Constable Dawson that a 27 year-old male was in the house. He had phoned the South Australian Ambulance Service for some psychiatric help and his

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<sup>1</sup> Transcript, pages 306-307

<sup>2</sup> Transcript, page 307

<sup>3</sup> Transcript, page 308

<sup>4</sup> Transcript, page 308

<sup>5</sup> Transcript, page 309

<sup>6</sup> Transcript, page 309

<sup>7</sup> Transcript, page 310

<sup>8</sup> Transcript, page 314

mother had given a history of a steady decline in his behaviour for the last 9 days with strange depressive-like behaviour as well as some paranoia<sup>9</sup>. He further informed Senior Constable Dawson that Mr Proby's cousin had said that if Mr Proby had felt threatened he might become violent.

- 2.6. Senior Constable Dawson told Mr Glover that he would await the arrival of a second police vehicle. The second police vehicle arrived with two male officers in it shortly afterwards. Senior Constable Dawson approached the two officers with Mr Glover and, according to Mr Glover, provided them with an outline of what was going on at the house. Mr Glover said that Senior Constable Dawson relayed 'all the key information that I had provided' to the other two officers<sup>10</sup>. He identified the 'key information' as being that a 27 year-old male had locked himself in the house after calling the ambulance service and that there was a potential for violence because he was feeling threatened<sup>11</sup>.
- 2.7. Mr Glover said that the most senior of the police officers - Sergeant Hamp - went to the door of Mr Proby's house. He was there for 5 or 10 minutes, apparently having a conversation with Mr Proby. Mr Glover was able to hear Sergeant Hamp but he could not hear Mr Proby<sup>12</sup>. After some time the lady who had identified herself as Mr Proby's aunty reappeared on the scene. She was more aggressive and she spoke to the police officers inappropriately and abusively, telling them to leave Mr Proby alone and that he had done nothing wrong. Mr Glover thought that she had inflamed the situation<sup>13</sup>. The police responded that they were there to help and that she was not assisting<sup>14</sup>.
- 2.8. After 5 or 10 minutes of attempting to speak with Mr Proby, the police moved away from the front door of the house and returned to the footpath. They came up to Mr Glover, who was standing with Mrs Proby and Mr Proby's cousin and aunt, and said words to the effect:

'He seems to be fine, he is saying it's okay, he is safe in the house, he doesn't want us to come in'<sup>15</sup>

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<sup>9</sup> Transcript, page 316

<sup>10</sup> Transcript, page 317

<sup>11</sup> Transcript, page 317

<sup>12</sup> Transcript, page 321

<sup>13</sup> Transcript, page 322

<sup>14</sup> Transcript, page 322

<sup>15</sup> Transcript, page 324

They then said that they would leave, as there was nothing further they could do. Mr Glover did not respond to any of this<sup>16</sup>. Mr Glover said that in the circumstances it was not possible for him to gain entry to assess Mr Proby and he started to explain to Mrs Proby what her options were. He suggested that she may wish to persuade Mr Proby to go to the Flinders Medical Centre, to contact a locum general practitioner or, if he felt safe again, to ring the ambulance service and they could return. He also mentioned the Assessment and Crisis Intervention Service (ACIS) which could be contacted the following morning. He said that he did not suggest that ACIS be contacted that evening because he was aware that would simply result in ACIS requesting that an ambulance attend, which would have the same outcome as his present intervention<sup>17</sup>.

- 2.9. Mr Glover said that he was not in agreement with the decision of Sergeant Hamp to leave the scene. He said:

'I felt Zak needed to be seen, they had all the information that I had provided regarding his nine-day history, his altered behaviour, the family concerns and locking and arming the house; however, according to what they believed and what they assessed they felt that they weren't able to.'<sup>18</sup>

- 2.10. Sergeant Hamp and Senior Constable Dawson gave an account that largely corresponded with that of Mr Glover. However, according to the police officers, they were not told about Mr Proby's nine-day history of paranoia and disturbed behaviour. They were also not told that it was Mr Proby himself who called the ambulance. Rather, Sergeant Hamp said that it was his understanding that Mrs Proby summoned the ambulance. Sergeant Hamp said that if that information had been passed on to him it would have changed his actions on that day<sup>19</sup>. He said that he would have changed the way in which he spoke to Mr Proby and assessed his responses. However, and quite crucially, he said:

'Nothing at that stage, even with - if I was armed with this information, speaking to Zak and as a forming my - and in assessing him in relation to what information he was providing me, still then even with that, armed with that information I doubt, as I said, I

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<sup>16</sup> Transcript, page 324

<sup>17</sup> Transcript, page 325

<sup>18</sup> Transcript, pages 325-326

<sup>19</sup> Transcript, page 293

would have acted under s.23 for the information that he was telling me in relation to what was happening, he didn't want us to be there.'<sup>20</sup>

In that answer Sergeant Hamp was referring to section 23 of the Mental Health Act 1993. His evidence was to the effect that, even armed with the disputed information, Sergeant Hamp would have been unable to form the requisite opinion for intervention under section 23 of the Mental Health Act 1993. That section provided that:

'(1) Where a member of the police force has reasonable cause to believe -

(a) that a person has a mental illness; and

(b) that the conduct of that person is or has recently been such as to cause danger to himself or herself or to others,

the member of the police force may apprehend that person, using only such force as is reasonably necessary for the purpose, and take him or her as soon as practicable to a medical practitioner for examination.'

- 2.11. I took Sergeant Hamp to be saying that, even if he had been told about Mr Proby's nine-day history of paranoid behaviour and the fact that he had called the ambulance himself, he would not have formed the opinion that Mr Proby had a mental illness or that Mr Proby's conduct was, or had recently been, such as to cause danger to himself or to others.
- 2.12. Looked at in the light of what is known about Mr Proby's conduct until that time, I have some sympathy with Sergeant Hamp's point of view. It must be remembered that, until that time, Mr Proby's conduct had involved what his mother described as strange behaviour for a period of nine days, the fact that he had called the ambulance but then declined its assistance, and the fact that he was reported to have overdosed, a fact which he denied when asked by Sergeant Hamp. In my opinion, this information would not have founded a reasonable cause to believe either that Mr Proby had a mental illness or that his conduct had been such as to cause danger to himself or to others. In this respect, it is difficult not to take account of what occurred on the following day. However, it is important not to judge the actions of Sergeant Hamp and Senior Constable Dawson by reference to what occurred the following day. They could do nothing more than act on the information that was available to them at the time. Even taking into account the evidence of Mr Glover, and assuming that contrary to the evidence of Sergeant Hamp and Senior Constable Dawson, they were

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<sup>20</sup> Transcript, page 294

aware of the disputed information, I do not consider that there would have been a sufficient basis to form the requisite belief pursuant to section 23 of the Mental Health Act 1993.

- 2.13. Furthermore, according to Sergeant Hamp, when he spoke with Mr Proby, Mr Proby was speaking to him in long sentences, there were no impediments or slurring and he was speaking normally. He was specifically asked whether he had taken an overdose of drugs and he denied that he had done so<sup>21</sup>. Sergeant Hamp said that Mr Proby was calm and was speaking normally, he was not yelling. It must be recalled that it was only Sergeant Hamp who spoke to Mr Proby. Mr Glover never had that opportunity. Sergeant Hamp was presented with an unusual situation. He had a person who was refusing entry to his home, while outside his mother was standing on the footpath with ambulance officers. However, it was Sergeant Hamp's understanding that the mother had called the ambulance and not Mr Proby. Even if Sergeant Hamp had been aware of the nine-day history of strange and unusual behaviour, and the fact that it was he who had called the ambulance and not Mr Proby's mother, I cannot see how, in the face of Mr Proby's apparently lucid conversation, Sergeant Hamp could have formed the view that Mr Proby was mentally ill, or was a danger to himself or others.
- 2.14. Furthermore, the evidence was clear that at that stage there was no information available to Sergeant Hamp, the other police officers, or the ambulance officers that Mr Proby had a crossbow and other weapons inside the house. Indeed, the evidence was to the contrary, Mr Proby's cousin having informed Mr Glover that there were no such weapons.
- 2.15. It is disturbing that there was a disagreement between Mr Glover on the one hand and Sergeant Hamp and Senior Constable Dawson on the other about whether important information about Mr Proby's state of mind had been conveyed. However, in light of the conclusions I have reached about what would have followed even if that information had been conveyed, and in the light of Sergeant Hamp's evidence on that point, I do not believe that it is necessary for me to resolve that question.
- 2.16. Furthermore, it is interesting to note that both Sergeant Hamp and Senior Constable Dawson, when questioned about their reactions the following day when they heard about the siege, and Mr Proby's apparent suicide, denied that they were inclined to

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<sup>21</sup> Transcript, pages 220-221

question their actions of the previous day. Both of them denied this. I was surprised by that. However, nothing turns upon it.

- 2.17. In my opinion, this case is one in which the police officer's powers under the Mental Health Act 1993 were never enlivened. On 22 April 2009, the High Court of Australia handed down its judgment in Stuart v Kirkland-Veenstra [2009] HCA 15. In that case, the widow of a man who had committed suicide by carbon monoxide intoxication had sued two Victorian police officers. The police officers had observed the man in his vehicle in a carpark on the Mornington Peninsula with a hose leading from the exhaust pipe to the interior of the vehicle. The engine was not running and, upon being questioned, the man persuaded the officers that although he had been about to do something stupid he had changed his mind and was going home to talk to his wife. He sounded rational and was responsive to their questions. He declined their various offers of assistance and removed the hose from the exhaust. The officers let him proceed from the carpark. Later that day he committed suicide by sitting in his car with the engine running and a hose connecting the interior of the vehicle to the exhaust pipe of the car. His widow sued the officers and the State of Victoria alleging the officers had breached their duty of care towards her husband and herself by failing to apprehend him under section 10 of the Mental Health Act 1983 (Victoria)<sup>22</sup>. The trial judge ruled that there was no duty of care and the woman appealed to the Court of Appeal which by majority allowed the appeal. The State of Victoria and the two officers appealed to the High Court which overturned the decision of the Court of Appeal. Chief Justice French said the following at paragraph 5:

'... there was no legal duty of care and the appeal should be allowed. The existence of a power to apprehend Mr Veenstra under s10 of the 1986 Act was critical to the reasoning of the Court of Appeal and to the case as presented in this Court. However, it was a power which was never enlivened. The officers said, and the trial judge held, that they did not think Mr Veenstra was mentally ill.'

Justices Crennan and Kiefel said at paragraph 150:

'Absent the holding of an opinion that the plaintiff's husband was mentally ill, the power to apprehend was not available. A condition necessary to the power did not exist in law. It follows that, in the circumstances of this case, the statutory provisions supplied no relevant statutory power to which a common law duty could attach.'

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<sup>22</sup> The Victorian equivalent of section 23 of the Mental Health Act 1993

- 2.18. If anything, it seems to me that the circumstances faced by Sergeant Hamp and Senior Constable Dawson were less serious than those confronting the Victorian police officers in that case. The Victorian police officers were faced with a situation in which a person had commenced steps towards harming himself. In the present case, even assuming the police officers were aware of everything that Mr Glover knew, there was no suggestion that he had any intention of harming himself except for an assertion, denied by Mr Proby himself, that he had taken an overdose. I think it is plain, having regard to Stuart v Kirkland-Veenstra, that there was no duty on the part of Sergeant Hamp to act pursuant to section 23 of the Mental Health Act 1993.

### **3. The siege**

- 3.1. I have already outlined the events of the following day which resulted in Mr Proby threatening Dr Low and the attendance of police at Mr Proby's home.
- 3.2. I heard evidence from Inspector Harold Davies who was the forward commander at the forward command post established near Mr Proby's house that afternoon<sup>23</sup>. I heard from Detective Brevet Sergeant Robert Clark who was the primary negotiator in contact with Mr Proby during the afternoon of the siege. I heard from Senior Sergeant Annemieke Baker, the negotiator/coordinator responsible for negotiators in SAPOL. I also heard from Douglas Knuckey, Chief Psychologist with SAPOL, who was involved in providing advice and guidance to Detective Clark in the course of his negotiations with Mr Proby.
- 3.3. I have carefully considered all of the evidence given by these witnesses. In my opinion it was clear that Detective Clark was doing his best to try and talk things through with Mr Proby. He demonstrated empathy and kept Mr Proby talking. Their interactions were completely appropriate. Detective Clark had reached a view, shortly before it became evident that a fire had been set in the house, that the situation was resolving and that he was succeeding to the point that Mr Proby may shortly emerge from the house.
- 3.4. Early in the course of the negotiations Mr Proby had indicated a desire to talk to certain people. He wanted a reassurance from his family that they would care for him and he wanted to talk to a lady from an organisation called Status Employment. In

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<sup>23</sup> Transcript, pages 462-463

the course of the afternoon, police contacted the lady from Status Employment and had discussions with her about what might happen in the event that Mr Proby made contact with her. The police made an effort to establish her role in relation to Mr Proby and make enquiries about why he wished to speak to her.

- 3.5. During the afternoon police became aware that Mr Proby and a family member had established phone contact outside of the police contact. This communication resulted in Mrs Proby having a conversation on a mobile phone with Mr Proby. The police became aware of that conversation while it was underway and they took no steps to prevent it from continuing. The conversation was terminated when it became somewhat heated, but the police actions in relation to that aspect of the matter were, in my opinion, very appropriate.
- 3.6. A considerable amount of evidence was devoted to the subject of third party contact with a person in a siege. The very strong view expressed by the relevant SAPOL officers was that a great deal of care has to be taken when determining whether to permit such contact. There is a considerable amount of risk involved. The issue has to be weighed very carefully.
- 3.7. I consider that police made appropriate and proper decisions in relation to the involvement of third parties in this matter.
- 3.8. During the course of the negotiations with Detective Clark, Mr Proby made reference to certain matters of Aboriginal tradition that he felt should be attended to. Detective Clark handled this aspect of the matter with considerable aplomb. Attempts were made by SAPOL to contact an Aboriginal member of the police force, a Mr Green, who might be able to assist the negotiators. Unfortunately, it turned out that Mr Green's phone was switched off and he was uncontactable. Nevertheless, suitable and appropriate efforts were made. Detective Clark's empathy was such that he handled this aspect of the contact with Mr Proby extremely well.
- 3.9. One issue that was raised during the Inquest was the fact that the Metropolitan Fire Service was not kept on standby at the scene throughout the siege. There was information to the effect that Mr Proby may have had a grenade, and although his mother did not believe it to be a real grenade, there was at least some doubt about that matter. However, the autopsy report made it plain that the cause of death involved the crossbow injuries and the fire that did eventuate played no part in Mr Proby's death.

Furthermore, it is clear that the fire was established by Mr Proby using material to hand in the house and was not caused by a grenade explosion.

- 3.10. I have examined carefully the transcript of the negotiations with Mr Proby and I am satisfied that Detective Clark acted in a competent and professional manner.
- 3.11. In addition to the transcript of the negotiations between Mr Proby and Detective Clark, transcripts were also made and admitted in evidence of the conversations that were taking place between Detective Clark and Mr Knuckey, and certain other police officers, in the police vehicle from which they were conducting the negotiations. The transcript contains a passage where one of the police officers referred to Mr Proby as a 'dickhead'. In another passage Mr Knuckey himself stated words to the effect that if questioned in the Coroner's Court he would deny something. Mr Knuckey explained that his comment was made in the heat of the moment and that he had no reason to anticipate at the time he made the comment, that Mr Proby would kill himself and that there would be an Inquest in the Coroner's Court in due course. He apologised for the remark.
- 3.12. Mr Bleechmore, who appeared for the Proby family, sought to attribute these remarks to a general police culture of which he was critical. In my opinion, this is not a case in which I see occasion to be critical of police culture. The remarks to which I have referred were foolish and unfortunate. However, they were made in the heat of the moment and under adverse circumstances by people who were feeling pressured. Mr Proby overheard none of the remarks and there was no intention that he should overhear them. It is unfortunate that someone would have referred to him as a 'dickhead'. However, it was a foolish remark made by one person under trying circumstances. It was compounded by Mr Knuckey's foolish remark about the Coroner's Court which was also extremely unfortunate. However, I accept his assurances that his remark was not a genuine indication of an intention to perjure himself at some time in the future. Indeed, one only needs to consider the situation to dismiss that notion out of hand. No-one would be foolish enough to record himself, or permit himself to be recorded, making such a remark if he genuinely believed that the occasion would arise where he would be explaining himself before the Coroner's Court after a tragic death.

3.13. In my view, the direct contact with Mr Proby in this case was professional and appropriate. The results were tragic in the extreme but I do not consider that any shortcoming of any of the police officers involved in the siege caused Mr Proby to kill himself. I consider that their actions in relation to Mr Proby, and particularly the actions of Detective Clark, were appropriate, professional and demonstrated proficiency in negotiation. In those circumstances, this is not an appropriate case to be critical of the existence of a police culture which is said to be inferred from the remarks to which I have referred. The remarks may have taken on greater significance had the actual contact with Mr Proby, and the various other actions taken by the participants in the events of the afternoon, been poorly, incompetently or carelessly carried out. In fact, the opposite was true. Great care and attention to detail was shown. I have no criticisms of the actions of police officers in connection with the siege.

#### **4. Recommendations**

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

*Key Words: Death in Custody; Police (siege); Crossbow; Fire*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the 4<sup>th</sup> day of June, 2009.*

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*State Coroner*