



LOCAL COURT of NEW SOUTH WALES

Coronial Jurisdiction

Inquest into the death of Ali Antoni El Hafiane

SUMMARY

Findings:

I find that Ali Antoni El Hafiane died on 22 November, 2010 in the forecourt of the High Flyer Inn, Condell Park, New South Wales as a result of a gunshot wound inflicted by a NSW police officer while Mr El Hafiane was engaged in an armed hold-up at the hotel.

Recommendations: *To the Minister and Commissioner of Police*

I recommend:

- (1) That consideration should be given to requiring that the chain of command be clearly stated, with means of communication and officers identified, in all Robbery and Serious Crime Squad operational orders.
- (2) That, as far as is reasonably possible, when different units are combined or work together for the purposes of a high-risk operation or an operation with the potential to become high-risk, the operational planning should involve senior members of each of

the units, and the members of all teams should receive a joint briefing before the commencement of the operation.

- (3) That consideration should be given to amending the Robbery and Serious Crime Squad Standard Operating Procedures to include a requirement that operational orders in respect of an operation that may lead to the arrest of a person of interest include operational orders:
- a. setting out contingency planning;
 - b. requiring an assessment of resources and consideration of what additional resources may be required and/or accessed should the operation move to an arrest phase;
 - c. setting out certain predetermined actions that may be appropriate should the operation move to an arrest phase;
 - d. setting out as guiding principles, to be departed from only if necessary in the particular circumstances,:
 - i. that if physical or electronic surveillance leads to a reasonable belief that an offence involving violence is imminent, the Field Commander will take all reasonable steps to prevent that offence occurring and, if possible, arrest the target and secure any weapons;
 - ii. that if the threat of imminent violence or an offence involving violence cannot be neutralised by the apprehension of the target(s) the Field Commander will take all reasonable steps to prevent the commission of the offence by using overt strategies such as securing the target location and/or causing High Visibility Policing in the vicinity of the target location if known. If the target location is unknown the Field Commander

will cause the description of the target(s), any vehicle involved and relevant warnings to be broadcast via VKG for information of police generally;

- iii.* that if armed targets enter premises with an apparent intention to commit a serious offence, and it is not possible to prevent that offence being attempted or committed, priority should be given to containment, negotiation and the deployment of the Tactical Operations Unit if possible;
- iv.* that if armed targets enter premises in which members of the public are present and commit an offence of violence prior to interception, they ought not be approached whilst in the premises or in the process of committing an armed robbery unless this is the only reasonable way to prevent further harm or risk of harm to members of the public within the premises;
- v.* that where reasonably possible, an arrest will only be effected once all targets have left premises or there is no immediate danger to potential victims including other police officers;
- vi.* that armed offenders who are contained ought be given a reasonable opportunity to comprehend this and to surrender before police resort to the use of force,

especially deadly force.

- (4) To simplify planning for potentially high-risk police operations in exigent circumstances, that the Robbery and Serious Crime Squad develop and append to its Standard Operating Procedures a simple checklist (like the Australian Army's "Military Appreciation Process) for developing an appreciation of the situation and a second simple checklist (like the Australian Army's "SMEAC") for operational orders.
- (5) That consideration should be given to amending the Standard Operating Procedures to emphasise that during the conduct of operations the following general principles should be adhered to by members of the Robbery and Serious Crime Squad, and that these should be inserted into any written operational orders instructions:
 - a. that if a high-risk police operation may be required the Tactical Operations Unit should be requested to assist at a point in time when they are likely to be able to deploy in the field before the point at which it is envisaged that a high-risk police operation may be required;
 - b. that if the Tactical Operations Unit responds by indicating that it does not intend to deploy immediately, any significant additional information potentially affecting that decision should be communicated to the Tactical Operations Unit;
 - c. that interoperability of communications and sharing of communications is a priority during high-risk police operations;
 - d. that effective communications should be established as a priority, with an officer being responsible for communications, for any high-risk police operation;
 - e. that the priority should generally be prevention of offences of violence even at the expense of arrest of the targets and/or securing any weapons;

- f. that other than in exceptional circumstances, high-risk arrests should not be attempted except on an immediate order from the Field Commander or in accordance with operational orders;
 - g. that the preferred option for controlling any high-risk situation is containment and negotiation, and non-violent means shall be used as far as is reasonable before resorting to the use of force;
 - h. that in a high-risk operation police should first consider their options to contain and negotiate. Containment and negotiation should be the primary option considered;
 - i. that after high-risk incident has been confirmed, where possible control should be gained by containing the threat within an inner perimeter, without compromising the point of exit for offenders, and isolating the threat by establishing an outer perimeter; and
 - j. that officers should if possible avoid any action which would place hostages, uninvolved civilians, other emergency personnel or police officers in any further danger.
- (6) That, in addition to and following the thorough investigation into the conduct of involved police officers that follows a Critical Incident, the NSW Police Force conduct a policy and procedure analysis, similar to NSW Health's "Root Cause Analysis" process, to determine whether or not latent systems defects have been revealed by the incident and, if so, what measures ought be taken to rectify them.

Significant findings of DSC Dillon:

1. During 2010, a series of armed robberies of hotels and TAB outlets in south-western Sydney led to the Robbery & Serious Crime Squad setting up a strike

force to investigate. It was during that ongoing operation that Mr El Hafiane was killed by police.

2. When a person dies in the course of a police operation, the Coroners Act requires that a senior coroner (the State Coroner or a Deputy State Coroner) conduct an inquest.
3. **An inquest under s 23 of the Coroners Act is NOT a criminal trial either of the police officers or the armed robbers. It is an inquiry into whether the police operation was managed appropriately and whether improvements can be made in the way police operations are conducted with a view to avoiding unnecessary future deaths. Focussing primarily on the conduct of the police officers IN NOW WAY is condonation of armed robbery or exculpation of those who commit such offences.**
4. NSW Police detectives were taken by surprise when Mr El Hafiane and another man robbed the High Flyer Inn in Condell Park on 22 November 2010.
5. Although they acted with great courage in confronting an armed robbery at the hotel, they did not employ the tactics recommended by NSW Police guidelines of containment and negotiation.
6. Had they done so, it is likely that the death of Mr El Hafiane and the severe wounding of his co-offender by police gunshots would have been avoided.
7. Although police did not know this at the time of the shooting, Mr El Hafiane did not have a weapon and Mr Musleh was not armed with a gun. Police assumed that both men were armed with pistols or shotguns or both.
8. The planning and execution of the police operation to investigate a gang of armed robbers in south-west Sydney was flawed in a number of ways. (See paragraphs [111] and following.)
9. The Robbery & Serious Crime squad made assumptions based on past experience about the modus operandi of the gang that a robbery would not be attempted before closing time of a hotel or TAB. They did not anticipate a change in MO by the robbers who in fact raided the High Flyer Inn at about 8.30pm that evening.
10. The Robbery Squad prepared itself only to conduct surveillance and other evidence-gathering activities. Its officers were unprepared to arrest the robbers in the course of an armed hold-up attempt.
11. Some officers went on the operation unarmed.
12. The members of the strike force were in plain clothes and were not easily identifiable as police officers even when confronting the robbers at the Inn.
13. Communications between officers in the field and with other units involved were complex and to some extent unreliable due to the use of multiple radio channels and mobile telephones. This complicated command and control unnecessarily.

14. Undercover officers were unable to identify strike force officers and vice-versa during the operation. At the hotel this led to significant confusion.
15. The Tactical Operations Unit, which specialises in dealing with high-risk and dangerous situations, especially those involving armed offenders or suspects, were on stand-by but were not called out in sufficient time to deal with the situation at the High Flyer Inn.
16. Planning for the operation did not include consideration of using the undercover police to support the strike force in an overt role.
17. Contingency plans were not developed before the operation began for dealing with armed robbers if the strike force or undercover police detected them committing an armed robbery before the TOU could be deployed to challenge them.
18. The commanders of the operation in the field and back at the Command Post at Police HQ were unable to exercise complete or efficient command and control due to the incomplete information they were getting from police in the field. This in turn was caused in large degree by the use of multiple channels of communication. (See paragraphs [125] and following.)
19. Some decisions were made by individual officers or small groups of them in the field without notification to or consultation with commanders of the operation. This create potentially dangerous situations for police officers, civilian bystanders and the armed robbers themselves.
20. Two notable examples of this were the decisions of three detectives, two of whom were unarmed, to check out the High Flyer Inn. They did so coincidentally only minutes before the arrival of the armed robbers. They did not notify their commanders nor have a back-up plan if the unarmed police were confronted with an armed robbery in progress. One of the unarmed detectives was surprised inside the hotel as he tried to lock the robbers out. He was lucky to get away in the confusion that then arose.
21. A second example is that another detective (armed) entered the hotel alone and without support and without knowing what was going on in the hotel during the armed robbery. This very brave but very foolhardy and against police guidelines and training. It unnecessarily created a potentially very dangerous situation for him, the civilians inside the hotel, bar staff and, of course, the robbers.
22. The two senior officers in the field, Det Snr Sgt Dukes and Det Sgt Chalker, did not order that a perimeter to contain the robbers be set up but entered the premises themselves. Again, this was not the procedure laid down in police guidelines for such situations.
23. The two senior detectives were suddenly confronted by the two armed robbers running straight at them out of the hotel doors only metres away. They assumed that the robbers were armed and that they were desperate to get away and may use their weapons to do so.

24. Mr El Hafiane and Mr Musleh were at that time being pursued by Det Tarren inside the hotel and did not know that police were outside. They probably did not hear Det Dukes, Chalker or Tarren calling on them to stop. They probably did not see Dukes and Chalker clearly outside. They did not stop and the detectives outside fired on them, killing Mr El Hafiane and wounding Mr Musleh.
25. The fatal shot was almost certainly fired by Det Snr Sgt Dukes.
26. The detectives perceived Mr El Hafiane and Mr Musleh as threats to their lives and safety and responded very quickly. In the circumstances as they *perceived* them to be, the response was reasonable. They did not act with any malice and did not enter the hotel intending to kill or wound anyone.
27. Nevertheless, if standard police procedure of containment and negotiation had been followed police would probably have captured Mr El Hafiane and Mr Musleh without harm to them or risk to the police officers or civilians at the High Flyer Inn.
28. Despite their experience, the detectives were insufficiently well-prepared to deal with the situation that arose. Their training failed them.
29. As a result of the incident the NSW Police have undertaken a review of the procedures and practices of the Robbery & Serious Crime Squad. Operational planning is now significantly more thorough and the squad is better equipped. Extra training has been undertaken. (See paragraphs [169] and following.)
30. Ali El Hafiane was a young man, only 19 years old when he died. His act was foolish, dangerous and highly anti-social. Yet he came from a family whom the police acknowledge are good people with good values. He had obviously been heavily influenced by older men with corrupt values. Had he lived, however, there is reason to believe that, as he matured, his family's influence would have reasserted itself over him for the good. (See [192] and following.)

Magistrate Hugh Dillon
Deputy State Coroner