



STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest:	Inquest into the death of Pat MORENA
Hearing dates:	3-6 February 2014 (Sutherland); 13 June 2014 (State Coroner's Court, Glebe)
Date of findings:	18 July 2014
Place of findings:	State Coroner's Court, Glebe
Findings of:	Deputy State Coroner H.C.B. Dillon
Catchwords:	CORONIAL LAW - Death in the course of police operations -- Cause and manner of death – Sudden death of detained person during struggle with arresting police – Whether due to 'excited delirium', 'positional asphyxia' or some other cause or combination of causal factors – Whether apprehension lawful – Whether excessive force used – whether method of restraint complied with standard police practice and training – Whether actions of police caused or contributed to causing death
Statutes:	Coroners Act 2009 s.81 Law Enforcement (Powers and Responsibilities) Act 2002 ss. 21(1)(d), 201, 230
File number:	2012/00349869

<p>Representation:</p>	<p>Ms S. Beckett (Counsel Assisting) instructed by Ms J. Geddes and Mr A. Mykkelvedt Crown Solicitor’s Office</p> <p>Mr D. Marr instructed by Mr D. Lock (Morena family)</p> <p>Mr S. Wilkinson instructed by Mr G. Willis, Criminal Defence Lawyers (Officers Hammond and Hone)</p> <p>Mr B. Haverfield instructed by Mr K. Madden, Walter Madden Jenkins (Officers Simpson and Rice)</p> <p>Mr R. Hood instructed by Mr S. Robinson (NSW Police Force)</p>
<p>Findings:</p>	<p>I find that Pat Morena died on 8 November 2012 at the Wollongong Hospital and that on the balance of probabilities his death resulted from a combination of factors including methylamphetamine toxicity; physical exertion; anxiety and agitation; morbid obesity and possibly some degree of compromised cardiorespiratory function due to forcible restraint by police in the prone position for a short period.</p>
<p>Non-publication orders</p>	<ol style="list-style-type: none"> 1. No publication of paras 78-81 and 399-409 of the statement of Det Insp Angelo Mammolo. 2. No publication of Field Intelligence Officer Guidelines or any evidence relating to them. 3. No publication of Exs 2, 3, 4, 7. 4. No publication of the evidence of Kylie Emery. 5. No publication of the evidence of Lauren Eager.

Table of contents

1. Introduction	4
2. Pat Morena	4
3. The coroner's role	5
4. The issues	5
5. The background to the events of 8 November 2012	6
6. The events of 8 November 2012	7
7. Why was Mr Morena apprehended?	12
8. Was the apprehension of Mr Morena lawful?	12
9. How was Mr Morena restrained and why was he restrained in the way he was?	14
10. Was he restrained in accordance with standard police training and procedure?	14
11. Did Mr Morena have relevant health issues?	15
12. What was the cause of Mr Morena's death?	15
13. To what extent, if any, did the actions of the involved officers cause or contribute to causing Mr Morena's death?	18
14. Are there any recommendations that ought be made pursuant to s.82 of the Coroners Act 2009?	19
15. Conclusion	19
16. Findings	20

PLEASE NOTE THAT NON-PUBLICATION ORDERS HAVE BEEN MADE: See cover sheet p.2

REASONS FOR DECISION

Introduction

Pat Morena died in the course of being detained by New South Wales Police on 8 November 2012 in Bulli for a search in respect of a serious suspected drug offence. While being manhandled by police on the ground outside premises in Bulli he complained that he could not breathe, then suddenly stopped breathing. The police officers at the scene called for an ambulance and commenced CPR but his heart had stopped and neither the police officers nor the paramedics were able to revive him.

Under the *Coroner's Act 2009*, when a death occurs as a result of, or in the course of, a police operation an inquest is mandatory.

In a society in which the rule of law prevails, a police force is not a law unto itself. It is accountable to the society it serves to protect. It has been observed that:

The purposes of a s.23 Inquest are to fully examine the circumstances of any death in which Police ... have been involved, in order that the public, the relatives and the relevant agency can become aware of the circumstances. In the majority of cases there will be no grounds for criticism, but in all cases the conduct of involved officers and/or the relevant department will be thoroughly reviewed, including the quality of the post-death investigation. If appropriate and warranted in a particular case, the State or Deputy State Coroner will make recommendations pursuant to s.82.¹

It should be said at the outset that there is no evidence that the involved police officers had any intention of harming Mr Morena. The basic questions with which this inquest has been concerned have been to do with the cause of Mr Morena's sudden death and whether his death could have been avoided.

Pat Morena

Although there is considerable evidence suggesting that Pat Morena was both using and supplying drugs in the Wollongong area, he was much loved by his family and friends who mourn him and who are devastated by his death. His parents Rocco and Serina, and his sister Anna Lisa, miss him desperately.

Pat was Rocco's and Serina's first-born child and therefore had a special place in the family. As a child and teenager he was an able student and a keen sportsman. After he left school, he began a plumbing apprenticeship and over time he developed other skills in the building trade – tiling, flooring, painting, landscaping, kitchen and bathroom renovations. He enjoyed flashy cars and was popular with his mates who called him 'Mr Hollywood'. Unfortunately, he also developed a taste for drugs and this led to drug dealing.

While the police naturally were focussed on his suspected criminal activities, they are not the full measure of Pat Morena. His parents and sister provided the court with a statement that demonstrates that he was a man of considerable talent and potential, as well as generosity and affection. It is therefore a great pity that he became heavily involved in a drug culture that is harmful to minds and bodies and depletes the

¹ (Abernethy et al. *Waller's Coronial Law & Practice in New South Wales* 4th Edition, Sydney (2010) at p.106 para [23.7]

potential of those who use drugs excessively. His family will remember his generous, affectionate, caring side and miss him very much.

The coroner's role

The coroner's role is to investigate sudden and unexpected deaths to determine the identity of the person who has died, the date and place of that death, the anatomical or physiological cause of the death and the manner or circumstances of the death. It follows from this that an inquest is an independent judicial inquiry in which it is hoped that the answers to these questions, and issues of fact related to them, will be identified.

This inquest, therefore, is not a quasi-criminal trial of either Mr Morena or the involved officers but an inquiry into the manner in which the police operation was conducted, how Mr Morena's death came about during it and whether the police bear any responsibility for his death.

The fundamental reasons for conducting coronial investigations start with the basic right to life that is recognised in the law, conventions and philosophies of decent, civilised societies. An inquest is one of our society's ways of demonstrating its respect for the lives of all its members. It is also a way of addressing the challenging questions that a sudden and unexpected death sometimes raises.

It is also a way of addressing problems that may jeopardise lives and finding better ways of reducing those risks.

The issues

This inquest has considered the following issues:

- Why was Mr Morena apprehended?
- Was that apprehension unlawful?
- How was Mr Morena restrained and why was he restrained in the way he was?
- Was he restrained in accordance with standard police training and procedure?
- From relevant underlying health issues did Mr Morena suffer?
- What was the cause of Mr Morena's death? In particular, was it due to natural causes, positional asphyxia, excited delirium, another physical cause or a combination of causes?
- To what extent, if any, did the actions of the involved officers cause or contribute to causing Mr Morena's death?
- Are there any recommendations that ought be made pursuant to s.82 of the Coroners Act 2009?

The background to the events of 8 November 2012

Between July 2006 and the night of his death Pat Morena regularly came to the notice of police for suspected and proven drug offences. They suspected he was using and

dealing illegal drugs. It is, of course, quite common for drug users to fund their drug habits by dealing. It is also common for drug users to associate with other drug users and drug dealers: this attracts the attention of police.

Although Mr Morena was an affectionate son and family member when he was with his family, his behaviour in the wider community was far less admirable. At the time of his death, the police intelligence system recorded 161 events that had brought him to the attention of the NSW Police Force. He was charged 12 times and was suspected of many other offences, mainly to do with drug dealing. In 2007, he was nominated as a 'high risk offender' by the Campbelltown police. This meant that, as far as the police were concerned, he was one of a relatively small number of people who were suspected of being responsible for a large proportion of the serious crime in the Local Area Command. In 2007, after being caught with a large number of pills containing 'ecstasy' and amphetamines, he was sentenced to serve 12 months in prison with a 6-month non-parole period.

In January 2009, he was arrested again on drug charges. In 2010, he was stopped by police while driving and was found to be under the influence of drugs. In 2011, he was charged again for drug offences and for 'goods in custody' when he was caught with \$8000 in cash that police suspected were the proceeds of drug sales.

In November 2011 a series of domestic violence complaints and interventions by police began. Mr Morena was alleged by the complainant, a young woman, to be threatening her. This culminated in Mr Morena being arrested in March 2012 for assaulting the young woman. When arrested, Mr Morena became violent and unco-operative with police. Relevantly for this inquest, it took four police officers to restrain and handcuff him. When he was searched, he was found to have a large amount of cash and 4.6gms of methylamphetamine ('ice') on his person. He was on bail for those offences at the time of his death.

In April 2012, Mr Morena was classified as a 'high risk offender' by the Wollongong Local Area Command of the police force. In June 2012, Mr Morena was charged with another 'goods in custody' offence in relation to a sum of \$7000 police found in his possession. In July 2012, he was charged with breaching an Apprehended Violence Order by threatening the woman whom he had allegedly assaulted in March. In August that year, he was stopped by police and was found in possession of an 'ice' pipe and \$8000 in cash. Curiously, the police did not seize the cash or charge him with 'goods in custody' in relation to it.

That Mr Morena was involved in criminal activity may be confirmed by his own report of having been robbed in May 2012. Although he and the witness who reported the robbery to police did not, of course, describe it this way, the robbery has the indicia of a classic drug 'rip off' – a case of criminals stealing from a drug dealer.

In October 2012, Mr Morena was classified as a 'high risk' HRO ('high risk offender'). He was told of this by police on 6 November 2012. (The rationale for informing HROs that they are regarded by police as such is that it has a chilling effect on them. The suspects cannot be sure when they are under police surveillance and tend either to stop or reduce their criminal activities.) Mr Morena was believed by police to be the supplier of what was regarded by customers as the 'best product' in the Wollongong area. The 'ice' found on Mr Morena on 8 November was of 78 per cent purity. This was, as one police officer put it, 'pretty much as high as we ever see in the State'.

The events of 8 November 2012

At about 7.30pm on 8 November 2012, Mr Morena reported as required by his bail conditions at Wollongong Police Station. When he left the police station, two police officers, Senior Constables Rice and Simpson, who were part of the Wollongong Target Action Group, followed him to conduct surveillance. Mr Morena drove away in a white Holden Rodeo utility vehicle registered in his mother's name.

Neither of the two officers had their appointments (firearms, handcuffs, capsicum spray, etc) with them at the time. The plan was only to conduct surveillance for intelligence purposes. They were dressed in plain clothes and were in an unmarked police car. As surveillance duties are sometimes carried out on foot, appointments can reveal a police officer's identity to targets or members of the public.

SC Simpson was an intelligence officer who knew Mr Morena from numerous past dealings with him. Although he had a general knowledge of Mr Morena's background, he had not familiarised himself with the various warnings about Mr Morena that had been placed on the police intelligence system. But he was not especially concerned about Mr Morena becoming violent because, as he stated during his evidence, 'I had dealt with him on so many occasions I felt quite comfortable in his company'. SC Rice did not know Mr Morena personally. He was carrying out surveillance as a member of the Target Action Group because he was on light duties.

The surveillance of Mr Morena was intended to identify where he was living and whether he was complying with a residential condition in his bail undertaking. It was also an opportunity to gain more general intelligence about his activities. The plan, such as it was, merely extended to surveillance. Neither SC Rice nor SC Simpson, nor any other member of the Target Action Group, discussed or planned an arrest or even what they would do in the event that they observed Mr Morena carrying out a drug transaction. SC Simpson's general methodology was to observe his targets and, if he believed a drug transaction to be taking place, or some other crime was occurring, to coordinate police back up to "stop-and-prop" the person.

Two other officers, Det Sgt Hammond and SC Hone were also involved in the surveillance operation. They were in another car. All four officers kept in touch by mobile telephone. Neither of these officers was carrying appointments.

Curiously, none of these officers appears to have given much, if any, thought to the possibility that Mr Morena, a person known to them as a 'high risk offender', might commit a serious offence under their eyes that could warrant their immediate intervention.

SCs Rice and Simpson had followed Mr Morena's vehicle a short distance from the Wollongong Police Station when they saw his vehicle enter the rear parking area of a block of units at 61 Smith St. They observed his car stand stationary in that location for 30-90 seconds during which the engine continued to run. Mr Morena did not leave the vehicle and had the window down. The car reversed out of the car park position shortly afterwards and left the location, followed directly thereafter by a second vehicle a white hatch car with three passengers and a driver in it. Neither officer saw any transaction take place between the vehicles during the period of their observation, but both officers thought that one or more of the occupants of the white car were "familiar".

SC Simpson stated in evidence that, based upon what he had seen and what he knew of Mr Morena's method of operation, namely supplying from his car, he believed that a drug exchange had taken place. SC Rice said that he had formed a suspicion that a drug exchange had taken place there and then and if he had been working on his own, he probably would have stopped the car..."*but I second guessed myself because I thought Senior Constable Simpson probably didn't want to*".

This suspicion was based on his knowledge that Mr Morena was reputed to be a drug supplier, the fact that his car had driven into an area of the car park that was concealed from the road for a short period with the engine running and the window down, and that second car had driven after it shortly thereafter driven by a person who he believed was familiar to him in some way connected with the use of methylamphetamine.

Although neither of them acted on their suspicions at that time, they called back to the station to alert Sgt Cairns, who was the TAG senior officer on duty that night, and SC Hone and Det Sgt Hammond to 'suspicious drug activity'.

SC Simpson gave evidence that despite these observations he had not formed the intention to search Mr Morena after leaving the Smith St location, and did not make any request to any back-up vehicle (containing Hone and Hammond) to assist in the arrest at that time.

From the first stop in Smith St, the police then followed Mr Morena to Bulli. When he turned off the highway, SC Simpson had a "*fairly good idea of where he was heading*" being Lauren Eager's unit block in Gwyther Avenue, a place at which he knew the supply of prohibited drugs to having taken place. Even on arrival at Gwyther Ave, he had not determined that he would affect an arrest at that time.

On 4 October 2012 Ms Eager and Mr Morena had been the subject of an intelligence report that Mr Morena was the supplier of methylamphetamine in the Wollongong area, but specifically north of Fairy Meadow. The report stated that Mr Morena spent a lot of time with Ms Eager and at the Gwyther Ave Bulli apartment and that the two had a relationship of sorts. Ms Eager was believed by police to be one of Mr Morena's "runners" and the unit car park was believed to be used as a place of supply.

SC Simpson directed SC Rice to park their car short of the Gwyther Ave premises and they walked towards the Gwyther St units. Rather than entering the driveway the officers went to the southern side of the block of units in an adjacent property where they could hear the sound of a motor vehicle's engine running.

At this point, suspecting that it was Mr Morena's car they could hear and that he was undertaking a drug transaction, the two officers decided to intervene directly. As SC Simpson stated, "*This is where it begins, it definitely starts to change.*"

The police officers walked up the driveway of the Gwyther St flats. They knew that Mr Morena would be likely to recognise Simpson so they decided that SC Rice should be the first to approach the car. He did not have his badge with him so SC Simpson lent him his so that he could show it to Mr Morena when he approached the car.

At that stage they had not notified Hammond and Hone to tell them where they were or what they intended to do. They knew that they did not have appointments on them and Simpson at least knew that there had been a recent pattern of resistance developing in Morena in 2011 and 2012 on arrest, even if he did not know the extent of it.

SC Rice gave evidence that he approached Mr Morena, who was sitting in the driver's seat of his car, and identified himself by name and badge and asked Mr Morena to get out of the vehicle. Mr Morena responded with words to the effect of "who the fuck are you?" Next to Mr Morena in the car was a walking stick. SC Rice said that Mr Morena's actions in the car made him think that he was attempting to secret drugs or reach for a weapon.

SC Simpson, who had approached behind SC Rice, stated that his concerns at the time were that Morena was still positioned in a vehicle that was running, that Mr Morena could suddenly reverse, and that he wished to prevent Mr Morena from concealing any evidence. Simpson said his immediate order was "*Pat turn the car off.*" To prevent him concealing something as he reached towards the middle of the car near the centre console (a position later found to contain cash, and behind which were located the inactive taser gun), Simpson said told Mr Morena "*Pat, I want to see your hands, leave your hands where I can see them.*"

At about the same time, SC Rice said he reached through the window and took hold of the collar of Mr Morena's shirt and pushed him backed into his seat. He said he did this to make him "recognise what was happening to him because ... he wasn't recognising we were police".

A struggle, involving Mr Morena being put in a wristlock through the window by SC Simpson, then commenced. They tussled over the keys which the police forcibly removed to disable the car.

Events escalated quickly and violently from this point. Around this time Lauren Eager, from her unit within the apartment block, reported that she heard the words "*get your hands off me*". She looked out the window and heard Mr Morena's voice yell, "*Lauren help me*". Rice also heard the deceased cry out "*Lauren*". It is possible that this was an indication by Mr Morena of genuine fear. Despite the use of the badge and the word "police", it is also possible that, because he had been taken by surprise and was drug-affected, Mr Morena had not recognized the two officers as police.

After the initial tussle between the police and Mr Morena through the car window, he flung or kicked the door open and emerged from the vehicle. The officers described Mr Morena once he was out of the car as "beserk". Simpson described Mr Morena as "frothing at the mouth" and said that he was "very strong".

Witnesses reported hearing, and at times, seeing parts of the altercation. They support police claims that a significant struggle took place. The injuries sustained by both SC Rice in particular, and Mr Morena also indicate that the struggle was vigorous and difficult for the police to quell. It is common ground that the three men careered from the car door into the adjacent wall some metres away. SC Rice said he recalled about this time striking Mr Morena to the side of this face.

SC Simpson said that during this altercation he remained calm, telling Mr Morena to “Calm down” and saying “Pat, stop resisting us, you need to calm down”. An eye witness, Ms Kathy Wills, a neighbour in the adjacent property, came to a gap in her fence to see what was happening. She described hearing an “animalistic” roar and another calmer, subduing voice. She later recalled that she heard someone calling out a name. She heard two of the males saying “Police” and “Pat, don’t move stay calm, Police calm down calm down” and later “Settle down Pat” and “Stop resisting.”

In evidence Ms Wills described one of the voices she presumed to come from a police officer: “It seemed as though they were trying to calm the person. The voice sounded firm but sort of with a touch of warmth in it..like, “Pat ..it’s you know, not somebody scary It’s us, sort of thing.” Other independent civilian witnesses gave similar accounts.

SC Simpson said that after the three of them had collided with the wall he used knee strikes to Morena’s thigh and buttocks in an attempt to get Mr Morena onto the ground to get him under control. At the same time as SC Rice attempted to restrain him by getting him into a wrist lock (a technique referred to as pain compliance). SC Simpson estimated that this struggle went on for three to four minutes culminating with all three falling to the ground together.

SC Simpson described Mr Morena as continuing to struggle, scratch and strike whilst on the ground in a sort of “seated position”. SC Rice gave a similar description.

At that stage SC Simpson used a wrist lock to get control of Mr Morena. He then decided to attempt to control Mr Morena’s legs. He took hold of the waist band of Mr Morena’s pants and placed him face down in the prone position, making it easier to prevent him “hitting out”. From this position Simpson said he took control of his legs by folding them up towards the buttocks in a “figure four leg lock”.

Once Mr Morena was in that position, SC Simpson described holding him there, positioned at and focused on holding his legs by placing his body weight against them, while SC Rice got control of Morena’s upper body, positioned slightly on an angle, face down, by placing weight on his back. SC Simpson described SC Rice as having his left knee near Mr Morena’s left shoulder with his left hand in between the legs and his other knee on the lower back. Mr Morena’s hands were held behind him in the small of his back. SC Rice said that he in fact had his left knee positioned on the left shoulder of Mr Morena and his right knee on his back. He reached for and pulled Mr Morena’s arms back although it took some time to get control of his arms.

SC Simpson said that he was exhausted by this time but could still feel the pressure of Mr Morena’s continued resistance. He said that from this position SC Rice was able to reach into his pocket and make a phone call. The records indicate that such a call was made at 7.56pm. During this call Mr Morena remained in the figure four leg lock position and, whilst Mr Morena’s struggling had “significantly decreased”, SC Simpson considered he was still resisting. It was at this time, and whilst in this position that Mr Morena said to the police officers, “Get off me, I can’t breathe.”

This part of the incident was partially witnessed by Ian Bone, another resident of Gwyther Ave. He had heard a commotion and someone shouting “fucking cunts” and screaming. Mr Bone looked out his bathroom window. He saw a “tangle of men near the brick wall. He saw one of the males pull out what he thought was a mobile phone from his pocket...he heard *“It’s the police”* and then he heard something to the effect of *“I need back up assistance and a pair of handcuffs would be handy.”*

Ms Wills had a distinct recollection of seeing two males on the ground but had the impression of a third whilst one of the males called for “back up” and gave directions. Whilst this call was being made Ms Wills said there was still a struggle going on: *“He [Morena] was still moving around”*.

SC Rice denied that extra weight was put on Mr Morena at the time of making the phone call to SC Hone. It is difficult to assess the accuracy of his account because he was attempting both to make a phone call (and give directions) and maintain control of a person he still considered to be aggressive and from whom he had already sustained a number of injuries. SC Rice said that he had considered the possibility of asphyxia at this time but did not consider any issues concerning the combination of restraint and the use of methylamphetamine or the issues related to the concept of excited delirium.

The records indicate that at some time between the phone call for assistance at 7: 56 pm and 8:01 pm when a call is placed over police radio about an unconscious male who was not breathing, Officers Hammond and Hone arrive at the Gwyther Avenue address.

According to SC Simpson, during this time Mr Morena was handcuffed using cuffs provided by SC Hone whilst he continued to hold his legs. He thought he could still feel a degree of resistance, perhaps consistent with gravity pulling the lower legs towards the ground.

Contrary to this, SC Hone said that by the time he arrived, neither SC Simpson nor SC Rice were holding Mr Morena’s legs in the position of restraint. SC Hone said he was told by officer SC Rice to “be careful” at the time of cuffing but from the time of his arrival he discerned no movement at all from the male on the ground and felt heaviness when he assisted in putting on the handcuffs. Ms Wills, looking through the hole in the fence said there was no discernable resistance by the man on the ground at the time the handcuffs were administered.

It is unnecessary to attempt to resolve the inconsistency. Given the way the incident escalated then became a sudden attempt to save Mr Morena’s life, it is unsurprising that recollections differ. In any event, the difference is relatively unimportant.

SC Simpson reported that SC Hone said words to the effect of *“Mate, we’re going to roll you over and get you to sit up”*. SC Rice said as they rolled Mr Morena over from his position on the ground he saw an *“expressionless look on his face,”* and heard a gurgling sound. SC Hone said at this point he realised something “was not right” and noticed Mr Morena’s face had gone blue. The cuffs were removed and CPR commenced. At 8.01pm the ‘000’ call was made.

The first ambulance arrived at 8.04pm. The paramedics found that Mr Morena had no pulse and took immediate action to attempt to restart his heart and to supply oxygen. He was transported to Wollongong Hospital but was unable to be revived.

Why was Mr Morena apprehended?

Mr Morena was apprehended following a decision by SCs Rice and Simpson to conduct a search of his vehicle and his person pursuant to s 21(1)(d) of the *Law Enforcement (Powers and Responsibilities) Act 2002* because they suspected that there may be illegal drugs on him or in the car or both. This is not in dispute. Counsel for the Morena family, however, submits that the police officers did not have reasonable grounds for to detain Mr Morena for that purpose. To that issue I will now turn.

Was the apprehension of Mr Morena lawful?

Section 21(1)(d) of the *Law Enforcement (Powers and Responsibilities) Act 2002* empowers police officers to 'stop, search and detain' any person if they suspect on reasonable grounds that the detained person 'has in his or her possession or under his or her control, in contravention of the *Drug Misuse and Trafficking Act 1985*, a prohibited plant or a prohibited drug'.

It was argued by counsel for the Morena family that what was seen by SCs Rice and Simpson during their surveillance of Mr Morena on that evening leading up to the fatal did not raise reasonable grounds for them to suspect that they might find illegal drugs in his car or on his person.

Mr Marr referred to the tests applied in *George v Rockett* [1990] HCA 26, *R v Rondo* [2001] NSWCCA 540 and *Azar v DPP* [2014] NSWSC 132. In summary, a suspicion is more than a 'idle wondering' and less than belief and knowledge. It has a low threshold because it is an apprehension of something without sufficient evidence to prove the fact suspected.

In *George v Rockett*, the High Court stated (at [8]):

When a statute prescribes that there must be "reasonable grounds" for a state of mind - including suspicion and belief - it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person.

So the question here is whether there were facts which were sufficient to induce in a reasonable person a suspicion that Mr Morena may have drugs on himself or in his car. In my view, there were.

The mere fact that a person may have a past history of drug-related offences is of itself insufficient to ground a reasonable suspicion. Indeed, a search undertaken on the basis of the Smith St observations alone might, arguably, not have satisfied the test for reasonableness of suspicion. But there was much more to raise a suspicion in this case.

At Bulli, the police had two independently suspicious acts that, when viewed together, combined into a reasonable suspicion that an act of supply was either about to take place or was taking place at that time. The police officers had *current* intelligence that Mr Morena was dealing and using drugs and he was on bail for drug matters. He had been followed to a block of home units that, as far as police knew, was not his home

address. SC Simpson had knowledge of the intelligence specific to the Gwyther Avenue location and Ms Eagar. Mr Morena had driven down a driveway where his car was concealed or partially concealed from the road. He kept the engine running. Those facts, taken together, were certainly suggestive that he was down the driveway to meet someone in relation to drug supply. The officers had reasonable grounds then to stop and detain him pursuant to s 21(1)(d).

Although it is not necessarily indicative of the reasonableness of the decision to search, the suspicions of the police turned out to have been well founded. The evidence shows that police found \$850 in cash in the ashtray of Mr Morena's car. A further search located a secret compartment in the white utility behind the console area, in which two mobile phones were located and an apparently disabled taser device. A search of Mr Morena's person located drugs secreted in his underpants, namely 24 packages containing a quantity of high grade methylamphetamine. Again, this evidence was consistent with the intelligence information.

Despite the overwhelming evidence that the police officers identified themselves as police and their reason for telling him to 'jump out of the car', Mr Morena refused to do so until he kicked the door open and started to struggle with the police, shouting for Lauren and powerfully resisting the efforts of the police officers to restrain him.

Pursuant to s 230 of the LEPR Act, the officers were entitled to use reasonable force to carry out the detention and search. There is no evidence that they used unreasonable force in doing so.

Mr Marr also argued that the detention and arrest of Mr Morena was unlawful because the officers did not comply with the requirements of s 201(1) of the LEPR Act. It is common ground that neither officer gave Mr Morena his name or station before the struggle began. Section 201 requires that when exercising powers under the LEPR Act, police officers must identify themselves as police [this was done]; provide their names and places of duty [this was not]; and the reason for the stop and detention [this was also done].

Section 201(2) provides that the officer(s) must provide these details to the stopped and detained person 'if it is practicable to do so, before or at the time of exercising the power, or ... if it is not practicable to do so before or at that time, as soon as is reasonably practicable after exercising the power.'

SC Simpson knew Mr Morena and had previously always found him to be 'co-operative' with police (in the sense that he had no history of violently resisting previous stops or arrests. It was probably feasible for SC Rice to have announced his name and station when he appeared at Mr Morena's car window but it is reasonable to expect that had Mr Morena's reaction not been so surprisingly angry and unco-operative reaction that he and SC Simpson would have done so when he got out of the car.

Mr Morena's sudden reaction, which necessitated the police engaging in a fierce struggle, rendered it impracticable for the police officers to engage in formal conversation with Mr Morena until he was subdued. In my view, there was no breach of the provisions of the LEPR Act.

How was Mr Morena restrained and why was he restrained in the way he was?

Mr Morena was either fell to the ground and was restrained on his belly in a prone position or was wrestled down to that position by SC Simpson and SC Rice. As has been made clear above, the reason for doing so was to gain control of a large man who had gone 'beserk' when detained by police.

It is probable that he was under the influence of 'ice' at the time. 'Ice' notoriously enables those under its influence to exert great power. It is sometimes said that they gain 'superhuman' strength from the drug.

Police are trained to gain control of violent situations using a number of techniques. SC Simpson and SC Rice had no appointments with them so were forced back on their unarmed combat training to gain control of Mr Morena. They applied various standard techniques such as the figure four leg lock.

Was he restrained in accordance with standard police training and procedure?

Acting Sgt Watts, a NSW Police Force weapons and tactics trainer, gave evidence that police restraint training is primarily about gaining control. Referring to Mr Morena's initial refusal to get out of the car, Sgt Watts said "*the entire situation is problematic and difficult with him in the car: the access is limited; you can't necessarily use other options.*"

Sgt Watts had no criticism of the wrist locks or knee strikes as mechanisms appropriate for restraint, whilst stating that punches to the head were not taught but nor were they prohibited in exigent circumstances.

His evidence was that obtaining control by positioning a person on the ground in a prone position with the arms restrained behind him was appropriate and was part of police training in 2012, and still is. He said that an officer ideally should be supporting the bulk of their own weight whilst restraining the upper body but agreed that in the context of a struggle it could be difficult to be focused on weight distribution. He did not consider it inappropriate for the figure-four leg lock to have been applied.

Concerning training about the risk of positional asphyxia Sgt Watts made the following comment:

They have to be controlled first. That's the primary goal. The primary goal is getting control of the individual. Once you have got control, once the need for pressure on their back, weight on their back, has gone, then you remove it as soon as that need has gone...generally you will roll them into a recovery position or if the situation is suitable sit them up.

Sgt Watts stated, however, that only the officers trying to gain control of the resisting person could really assess whether they had done so. This will depend on all the circumstances.

Sgt Watts confirmed the NSW Police provide ongoing training about the dangers of restraint asphyxia. The training includes discussion of the concept of excited delirium recognition of the signs.

Mr Morena was restrained in accordance with standard police training and procedure except for the fact that the arresting officers had no handcuffs with them. The standard procedure would have been for them to get Mr Morena under control, put him in the prone position, pull his arms back behind him, handcuff and then get him off his stomach. In this instance, because SCs Simpson and Rice had to call for back-up to bring handcuffs, Mr Morena was kept on his stomach probably longer than he would otherwise have been.

Did Mr Morena have relevant health issues?

Although in their statement Mr Morena's parents described him as a 'fit young man', he was, unfortunately, anything but fit. In the time leading up to his death, he was so grey and sick-looking that he was using make-up foundation to put some colour on his face. He was obese, had a poor diet, suffered sleep apnoea and was taking large amounts of methylamphetamine. We do not have evidence of his blood pressure at the time of his death but it is reasonable to assume that it was significantly elevated by these factors.

What was the cause of Mr Morena's death?

Dr Matthew Orde, the forensic pathologist, who conducted the autopsy on Mr Morena's body, reported that the cause of death was not specifically identifiable. Nevertheless he identified a number of factors that he considered were likely to have contributed to it. These included the toxic effects of the drugs in his system; agitation consistent with "so-called excited delirium", physical exertion, anxiety, elevated body mass index, and the element of asphyxia or compromised cardiorespiratory function due to forcible restraint and the position of the deceased's body.

Evidence was called in this enquiry that established that Mr Morena had a long history of drug abuse. He was apparently building up significant tolerance of the drug methylamphetamine and was also using the drug Viagra almost daily. Witnesses stated that he would take ice daily, topping up every couple of hours, with an estimated use of between \$700 and \$1000 worth per day. One witness reported that Mr Morena complained to her that he wasn't feeling he was getting the high he used to.

Toxicologist Dr Judith Perl reported that blood test results showed concentrations of 0.31 mg/L of amphetamine and 3.8 mg/L of methylamphetamine ('ice'). The 'ice' reading is well into the known lethal range (anything above 0.2 mg/L). The average concentration of methamphetamines of post mortem blood in a study of 13 methamphetamine deaths was 1.0 mg/L (range (0.09-18 mg/L)). Mr Morena had an "extremely high methamphetamine concentration", indicating that he had a very high tolerance for the drug. This meant that to get the effect he was seeking he had to take more and more of the drug. But even a very tolerant user of drugs can overdose. Dr Perl said that 'ice' usage could not be excluded as the direct cause of death, nor the prone position combined with excited delirium. In her opinion, sudden death could have occurred at any time irrespective of restraint.

Although Mr Morena had seen doctors on 12 occasions between 2009 and the time of his death, he had made no complaints of anything in the nature of chest pain, apart from after a car accident and on one occasion in the week before his death. Despite his poor

diet and weight, nothing of significance was found was found at autopsy that identified a likely cause of death (eg, evidence of heart attack).

But he was in very poor physical condition. Mr Morena's Body Mass Index placed him in the obese range. He had an unusually large abdomen. His girlfriend referred to him suffering from sleep apnoea and described him as a heavy smoker of 30 cigarettes a day whilst also eating bad food. It seems that normal daily activities were becoming problematic for him. In the weeks before his death Mr Morena was described by witnesses who knew him as looking tired, drained and "grey". His behaviour also was becoming irritable and aggressive.

Because of this, Prof Duflou, a senior forensic pathologist, considered that, despite there being no observed evidence of heart disease, it remained a possibility that Mr Morena suffered from cardiac disease, and could suffer from coronary artery spasm due to his long-term stimulant use.

Prof Duflou also considered excited delirium a possibility, but could not rule out obesity, methylamphetamine or restraint as reasonable causes of death instead of, or in combination with, excited delirium. He could not give a discrete cause of death with any degree of certainty. His diagnosis was that Mr Morena's death was probably caused by cardiorespiratory arrest in a person who is predisposed to cardiac arrhythmia because of the effects of methamphetamine, obesity, stress and possibly excited delirium while being restrained.

A day of evidence was devoted to discussing the possible role of the concepts of excited delirium or restraint asphyxia in this coronial hearing. Associate Professor Hall and Prof Duflou participated in giving concurrent evidence considering these concepts. In short, Prof Hall gave evidence of having participated in numerous studies involving the consideration of thousands of arrests, many in prone positions, only one of which involved deaths. In her opinion, the prone position during arrest is safe.

Professor Hill is a Canadian specialist in Emergency Medicine and a clinical epidemiologist. She has made a special study of the concept or phenomenon of 'excited delirium' and also of prone positioning.

Her evidence was that there are 10 signs and symptoms that are associated with fatal 'excited delirium' syndrome:

- Failing to respond to police presence
- Being naked or inappropriately clothed for the environmental conditions
- Attraction to or destruction of glass or shiny surfaces
- Constant or near constant physical activity
- Failing to tire despite heavy exertion
- Superhuman strength
- Tolerant to pain
- Rapid breathing
- Profuse sweating
- Hot to the touch

She observed that Mr Morena appeared to have five of the 10 signs or symptoms. Her evidence was that the presence of five or more of these was consistent with sudden, unexpected death due to 'excited delirium'. It is noteworthy that the list of signs and symptoms does not include 'restraint' or 'prone positioning'.

The syndrome remains scientifically controversial. It has been studied since the 1980s but, of course, it is not possible to conduct human trials or experiments. Thus the evidence is epidemiological and the conclusions those who accept the concept have been drawn inductively from ambiguous evidence. Nevertheless, although the concept of 'excited delirium' has been accepted by the American associations of forensic pathologists and emergency physicians, it is not universally accepted by physicians and psychiatrists.

Prof Hill described 'excited delirium' as 'a syndrome of devastating psychiatric discord with physiologic excitation, overload and eventual collapse, which may lead to death.' Chronic stimulant drug abuse is a risk but not all 'excited delirium' deaths are associated with stimulants. She also acknowledged that 'It is currently unknown at what point a state of excited delirium transitions from survivable metabolic derangements to a state from which evolution to cardiopulmonary collapse is inevitable.' The American College of Emergency Physicians considers that the syndrome is real but has 'uncertain, likely multiple, etiologies' [origins].²

One theory that has some scientific support is that some people who use stimulant drugs are predisposed to excessive dopamine activity in their brains. This results in changes within the body that Prof Hill likened to 'an unregulated runaway of the sympathetic nervous system'. This increase in stimulation 'drives the increased heart rate, increased respiratory rate, increased temperature and increased mental and physical activities of the individual (psychomotor agitation, being in a frenzy, beserk behaviour)... If these processes are allowed to continue unharnessed, significant physiologic catastrophe will ensue. In short, a person in a state of Excited Delirium is on a runaway physiologic train'.

Prof Hill is sceptical of the theory that the prone position may result in positional asphyxia. She and others have conducted a large study into the question whether restraint by police of arrested or detained person is inherently dangerous.³ In her report she stated:

We studied nearly 5000 use of force events that arose from 3.5 million police public interactions in seven police agencies across four major cities in Canada and in the entirety of our study one subject unexpectedly died. Because we had a single death, our study cannot determine the relative risk of death for each of abnormal status [mental illness, drug or alcohol intoxication], excited delirium, positioning and other factors like abdominal obesity save to say that death following police use of force is a profoundly rare but recordable event and that no person died in the prone position even though thousands of subjects were in that position.

² Vilke, G et al "Excited Delirium Syndrome (EXDS): Defining based on a review of the literature" *J Emerg Med*. 2012 Nov;43(5):897-905 at p.897. doi: 10.1016/j.jemermed.2011.02.017.

³ Hall, C & Votova, K *Prospective Analysis of Police Use of Force in Four Canadian Cities: Nature of events and their outcomes* Defence R&D Canada – Centre for Security Science DRDC CR 2013-011 Ottawa (2013)

Prof Duflou however, is less convinced that prone position during arrest has no risks. He gave evidence that he had conducted post mortem examinations in a number of cases in which the deceased had been held in the prone position, often with weight on their back. Professor Duflou stated that the limitation of Prof Hall's studies are that they *do not* include restraint deaths in the prone position.

The numerous studies tendered in this inquest indicate that the debate as to the existence of positional restraint asphyxia has been running since at least the 1980s and looks likely to remain an issue for some time to come.

To what extent, if any, did the actions of the involved officers cause or contribute to causing Mr Morena's death?

It is reasonable to suppose that the actions of the involved officers contributed in some way, directly or indirectly, or in some degree, directly or indirectly, to Mr Morena's death. It seems highly unlikely that it was merely coincidental that Mr Morena died while being restrained by police on his stomach.

It may be that the method of restraint contributed in some fashion as suggested by Prof Duflou. It may be, as suggested by Prof Hill, that he became so agitated by the police officers detaining him and seeking to extract him from his car that those actions set on course a chain of physiological events that ultimately caused his heart to stop. It may be that a number of factors, including his physical unfitness, his obesity, the quantity of methylamphetamine he had ingested, plus the agitation and restraint combined in immeasurable degrees at that time causing cardiac failure. In these circumstances, however, it is impossible to determine exactly how or to what extent the actions of the police contributed to the fatal chain of events.

If, as I believe is the case, the actions of the police officers contributed directly or indirectly to Mr Morena's death, it is unlikely that they were the primary or even major cause of death. As Professors Hill and Duflou agreed in evidence, most people placed in the prone position by arresting police come to no harm. Restraint by itself does not appear to constitute a major risk of sudden death. In combination with other risk factors, however, it may be the 'last straw on the camel's back' in some situations but if so science is unable at present to explain the association between restraint and sudden death.

What this coronial investigation has clarified is that labels such as excited delirium and positional asphyxia with respect are not really helpful terms for police on the ground making decisions quickly and intuitively in dangerous highly charged circumstances, doing their best to put their training into operation. As Acting Sgt Watt stated in evidence, "restraint is restraint... Officers select which technique they use when they are confronted with a situation".

Are there any recommendations that ought be made pursuant to s.82 of the Coroners Act 2009?

In the inquest into the death of Steven Bosevski, Deputy State Coroner MacMahon investigated another death in police custody. In that case, Mr Bosevski died due to cardiac arrest caused by a combination of factors: pre-existing dilated cardiomyopathy, hypertensive heart disease, morbid obesity and psycho-stimulant toxicity during a period of intense physical exertion that occurred whilst being restrained.

DSC MacMahon made recommendations to the Commissioner of Police concerning the restraint of persons, especially obese persons, in the prone position. that:

- That training provided to Operational Support Group, and other officers involved in crowd control situations, be reviewed to ensure that the risks of restraining a person in the prone position, with or without weight, particularly where the person is obese, as well as the need for careful and constant monitoring of such persons, is given appropriate emphasis and if necessary be amended to ensure that this is the case.
- That Operational Support Group teams be led by officers who have received appropriate leadership training emphasising the importance of communication and the co-ordination of an approach in crowd control situations, and
- That Operational Support Group officers receive training as to co-ordination and communication so as to ensure that appropriate procedures are adopted particularly in crown control situations.

I support those recommendations.

If, as Acting Sgt Watt gave evidence is the case, police officers receive training that the they should keep arrested persons in the prone position for the minimum time necessary to gain control an additional recommendation from me would be superfluous.

Conclusion

Unfortunately, while a violent struggle is going on there is little opportunity for police officers to undertake a full risk assessment of the person they are attempting to control. There is no evidence of unlawful or excessive use of force to restrain Mr Morena. It appears to me that this was a very unfortunate accident.

Nevertheless, because there appears to be a risk of harm associated with restraint in the prone position for some people, and a small number of people die suddenly under restraint, continual reinforcement that the restraint position may lead to sudden death in some instances is important.

I hope that Mr Morena's family will accept my sincere and respectful condolences for the loss they have suffered.

Findings s. 81 Coroners Act 2009

I find that Pat Morena died on 8 November 2012 at the Wollongong Hospital and that on the balance of probabilities his death resulted from a combination of factors including methylamphetamine toxicity; physical exertion; anxiety and agitation; morbid obesity and possibly some degree of compromised cardiorespiratory function due to forcible restraint by police in the prone position for a short period.

Magistrate Hugh Dillon
Deputy State Coroner