



CORONERS COURT OF QUEENSLAND

FINDINGS OF INQUEST

CITATION: Inquest into the passing of Robert George Kenneth Malayta

TITLE OF COURT: Coroners Court

JURISDICTION: TOWNSVILLE

FILE NO(s): 2022/907

DELIVERED ON: 12 December 2024

DELIVERED AT: Brisbane

HEARING DATE(s): 14 May 2024, 17 October 2024

FINDINGS OF: Terry Ryan, State Coroner

CATCHWORDS: Coroners: inquest, First Nations man, death in custody and in police operations, stolen vehicle, tyre deflation device, drowning, police search.

REPRESENTATION:

Counsel Assisting: Ms C McKeon and Ms N Macregeorgos, Coroners Court

Commissioner of Police: Ms T Boettcher, QPS Legal Services

Snr Sgt Dusha: Mr C Pratt, Gilshenan and Luton

ATSILS: Ms P Ryan

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Introduction

1. Mr Robert Malayta was just 18 years of age when his body was located on 25 February 2022 in the Ross River near the Riverway Precinct in Kirwan.¹
2. In the early hours of 24 February 2022, Mr Malayta got into a car with his older brother, Shakur McLennan, and a female friend of Mr McLennan's named Ms Barnes.
3. After police became aware the car was reported stolen, officers set up a tyre deflation device ("*TDD*"). The car drove over the TDD and its front left tyre was deflated. The car stopped nearby. After the three young people were observed running from the car police established a cordon of the surrounding area.²
4. Council cameras showed Mr Malayta, Mr McLennan and Ms Barnes running through the parklands and playground in the vicinity of the abandoned car.³ The two young men were observed running through the cricket and football club grounds,⁴ and then through a playground towards the edge of the Ross River.⁵
5. The Dog Squad was deployed and eventually obtained a track along the river side of the playground. Police located a set of Adidas slides and a glove floating in the water out of reach but could not locate Mr Malayta or Mr McLennan in the darkness.⁶ Police believed they had left the area and collapsed the cordon. Further foot patrols failed to locate the young people and the job was finalised.⁷
6. At about 5:30am, Mr McLennan called his mother, looking for Mr Malayta. He told her they had run from a stolen car and commenced swimming across the river to get away from police. He said he had heard Mr Malayta yelling out "*I can't breathe*". The family unsuccessfully searched the park and river during 24 February. Mr Malayta was not reported missing by his family until that evening.⁸
7. Police commenced land and water searches of the park and river ("*LANDSAR*"). Mr Malayta's body was eventually located in the river at 11:48am on 25 February 2022.
8. The cause of his passing was determined to be drowning.

Background

9. Mr Malayta was born on 27 October 2003 in the Burdekin area to Patricia McLennan and Robert Coolwell. At the time of his passing, he lived at his maternal grandmother's home at Geoffrey Court, Rasmussen with his mother, grandmother and female siblings. He had sporadic contact with his father.⁹

¹ As Mr Malayta was a First Nations man, I have used the term "*passing*" or "*passed*", consistent with cultural protocols.

² Exhibit A6 - page 1.

³ Exhibit D16; Exhibit D18; Exhibit D19.

⁴ Exhibit D20.

⁵ Exhibit D21; Exhibit A6- page 9.

⁶ Exhibit D22.

⁷ Exhibit A1; Exhibit A6- page 5.

⁸ Exhibit A1; Exhibit A6- page 7.

⁹ Exhibit A1- page 1; Exhibit A6- page 6; Exhibit D9.

10. Mr Malayta had six siblings - four sisters and two brothers including his older brother, Mr McLennan.¹⁰ Mr McLennan told police they grew up together and relied on each other during their childhood. They went to live with extended family when they were young and always had each other for support.¹¹ He described Mr Malayta as a quiet, funny kid who enjoyed playing touch football and other sports.¹²
11. Ms McLennan told police Mr Malayta looked up to his older brother and would do anything for him.¹³ She said Mr Malayta was a “*real larrikin*”¹⁴ and was healthy at the time he passed.¹⁵
12. It was clear that Mr Malayta was cherished by his mother, who called him “*my baby boy*” and “*baby Robert*”. When she initially went to search the river for her son, she said she could “*hear him calling out for me, and my heart was aching*”.¹⁶ She said he also looked after his family.¹⁷
13. Ms McLennan told police that Mr Malayta was a good swimmer.¹⁸ The family told police that Mr Malayta and “*the boys*” had swum across the river during the day about two weeks before Mr Malayta’s passing. They reported that Mr Malayta had returned scared and said, “*I nearly died in the River, I was struggling...I nearly died, it was too hard*”.¹⁹
14. Mr McLennan had a criminal history relating mostly to property-based offending and drug offending. He had been released to parole on 5 January 2022 for wilful damage, four counts of stealing and three counts of unlawful use of a motor car.²⁰ On 16 February 2022, the Parole Board suspended that parole and a return to prison warrant was issued.²¹ A further warrant for his arrest in respect of fresh property and violence-based offending had been issued by police on 18 February 2022.²²

Family Concerns

15. Ms McLennan’s grief for the loss of her son was evident in her interview with police. She told police that the night before the interview she could see Mr Malayta before her, waving and blowing her kisses.²³
16. Her expressed concerns in her initial interview included that Mr Malayta had broken ribs or punctured lungs from the car crashing, being spiked or driving dangerously.²⁴

¹⁰ Exhibit A1- page 1; Exhibit A6- page 6.

¹¹ Exhibit A6 –page 7; Exhibit D8.

¹² Exhibit A6 –page 7; Exhibit D8.

¹³ Exhibit D9.

¹⁴ Exhibit D9.

¹⁵ Exhibit D9.

¹⁶ Exhibit D9.

¹⁷ Exhibit D9.

¹⁸ Exhibit D9.

¹⁹ Exhibit D10.

²⁰ Exhibit C7.

²¹ Exhibit C12.

²² Exhibit C13.

²³ Exhibit D9.

²⁴ Exhibit D9.

17. Ms McLennan thanked police for locating her son.²⁵ However, she expressed some distress about the news coverage of Mr Malayta's body being retrieved from the river, and about commentary on social media.²⁶
18. Ms McLennan was interviewed again with family members on 11 May 2022. Concerns expressed at that time were that:
 - i. Police were chasing Mr McLennan and Mr Malayta, and effectively the police chasing them was what caused them to go into the water;²⁷
 - ii. Another male was with Mr Malayta and Mr McLennan on the night;²⁸ and
 - iii. There had been vigilantism and inappropriate comments on social media around the time of Mr Malayta's passing about young people committing crimes. While there was nothing specific to Mr Malayta's passing, the family did not want him portrayed as a criminal.²⁹
19. Further, interviewing police provided the family with various assurances that Mr Malayta and Mr McLennan were not being chased. They also provided advice that another male was not in the red Toyota. The family expressed that they would like to view the CCTV of the two running through the park, and also that they wanted to know what the version provided by Mr McLennan was.³⁰
20. When asked by police about whether anything could have been done, Mr McLennan said "*don't swim in the creek*". He said he thought there had been "*a couple of other deaths*" in the river.³¹

The investigation

21. Mr Malayta died in the course of a police operation. He was also trying to avoid being put into custody by police before he passed. In accordance with s 10(2)(a) of the *Coroners Act 2003* his passing was a "*death in custody*" and an inquest was required.³²
22. Members from the Ethical Standards Command ("*ESC*") were deployed to investigate the circumstances of Mr Malayta's passing, including the Rapid Action and Patrol unit's ("*RAP*") actions on the basis that Mr Malayta's passing was categorised as a passing in the course of a police operation.³³
23. Detective Acting Inspector Ryan, Detective Sgt Green and Detective Sgt White were tasked with the investigation and attended the RAP Hub where they reviewed the BWC, dashcam and occurrence documents. Interviews with all involved RAP officers were conducted and the family was interviewed in the

²⁵ Exhibit D9.

²⁶ Exhibit D9.

²⁷ Exhibit D10.

²⁸ Exhibit D10.

²⁹ Exhibit D10.

³⁰ Exhibit D10.

³¹ Exhibit D8.

³² *Coroners Act 2003*, s 27(1)(a)(i).

³³ Exhibit A6 –page 2.

presence of QPS Police Liaison Officer, Trevor Prior. Mr McLennan was interviewed at the Townsville Correctional Centre.

24. The Queensland Crime and Corruption Commission reviewed the BWC, CCTV, and dashcam and no concerns were identified. A coronial report was subsequently provided with various annexures, including a witness statement, recorded interviews, BWC recordings, dashcam footage, CCTV, radio communications plus limited information from QPRIME such as the missing persons report and CAD logs.³⁴
25. The relevant conclusions reached by the ESC were:
 - i. Radio communications, dash camera footage and BWC footage corroborate the versions provided by police that there was no pursuit of the stolen red Toyota Corolla sedan;
 - ii. The TDD was authorised and in an approved location;
 - iii. Crews had sufficient time, cover and distance;
 - iv. The TDD was successful and immobilised the stolen red Toyota Corolla sedan with no injury to any persons and minimum damage to the involved car;
 - v. TA700 was between 19-26 seconds behind the stolen vehicle and the total distance they travelled was about 750 metres;
 - vi. The red Toyota Corolla was abandoned on Riverway Drive and Mr Malayta fled the car along with Mr McLennan and Ms Barnes. Their identities were unknown to police at this time;
 - vii. CCTV confirms their last known sighting was in the vicinity of the playgrounds at Pioneer Park;
 - viii. Police did not pursue on foot and stayed in designated locations to await the arrival of dog squad;
 - ix. Mr McLennan stated Mr Malayta entered the water of the Ross River and was heard to yell "*I can't breathe*";
 - x. Mr Malayta was located the following day deceased in the Ross River;
 - xi. There is no evidence to support a breach of discipline or misconduct against any of the police who were involved in the co-ordination and eventual deployment of a TDD on the stolen red Toyota Corolla sedan containing Mr Malayta; and
 - xii. With regards to the police actions during the early hours of 24 February 2022, they were authorised, justified, reasonable, legally defensible and tactically sound and effective. No misconduct or breach of discipline by police has been identified in the investigation.³⁵

³⁴ Exhibit A6 –page 2.

³⁵ Exhibit A6 –page 10.

26. ATSILS submitted that the ESC investigation would have been improved if all officers who attended at the scene who were involved in the cordon and search were interviewed. In particular, it was noted that ESC had not taken a statement from the dog squad officer, Snr Const Forrest. However, I note that the inquest had the benefit of Snr Const Forrest's BWC footage as well as a statement provided by him in June 2024.
27. ATSILS also submitted that the ESC investigators appeared to take the statements of officers at "face value" and did not carry out checks in relation to compliance with QPS policies and procedures.
28. I am satisfied that the ESC investigation was appropriately targeted in the circumstances of Mr Malayta's passing. I do not agree that every officer who attended at the scene needed to be interviewed. The officers who were directly involved in the TTD deployment and subsequent cordon were interviewed, together with the key officers in decision-making roles.
29. I accept the submission from Counsel Assisting that the investigation was adequate.

The inquest

30. An inquest is a part of the coroner's investigation into the cause and the circumstances of a passing that has been reported to a coroner. The function of an inquest is to seek out and record as many of the facts concerning the passing as the public interest requires. The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability.
31. The purpose of an inquest is to make the findings required under s45 of the *Coroners Act* to inform the family and the public about how the passing occurred with a view to reducing the likelihood of similar incidents. A coroner is authorised to make recommendations concerning public health or safety, the administration of justice or ways to prevent passings from happening in similar circumstances in future. However, a coroner must not include in the findings or comments or recommendations, any statement that a person is or maybe guilty of an offence or is or maybe civilly liable for something.
32. A pre-inquest conference was held in Brisbane on 14 May 2024. Ms McKeon appeared as Counsel Assisting. I am grateful for the helpful submissions she provided in the proceedings. Leave to appear was granted to the Aboriginal and Torres Strait Islander Legal Services (ATSILS) on public interest grounds, the Commissioner of the QPS, and the police officers involved in the incident.
33. The inquest was held in Townsville on 17 October 2024. Over 150 exhibits were tendered. Snr Sgt Dusha and Det Sgt White gave oral evidence.
34. I am satisfied that all information relevant to and necessary for my findings was made available at the inquest, which considered the following issues:
 - The findings required by s. 45 (2) of the *Coroners Act 2003*; namely the identity of the deceased, when, where and how he died and what caused his death;

- The adequacy and appropriateness of the actions of the Queensland Police Service on 24 and 25 February 2022;
- The adequacy of the Ethical Standards Command Investigation.

The Evidence

The red Toyota Corolla comes to police attention

35. In the early hours of the morning of 24 February 2022, Snr Sgt Dusha was working as the District Duty Officer in TA160 in Bundock Street, North Ward. He told the inquest that this role included leadership of officers in Ingham and Ayr, as well as distal command of Mt Isa after hours – a total of 36 police divisions.
36. Snr Sgt Dusha saw a red Toyota Corolla and a black Hyundai i30 travelling outbound at high speed. He notified Police Communications and began driving in the same direction. After he located the cars at Hugh Street they drove away. He let them go and again notified Communications.³⁶ He suspected the cars were stolen because they were driving at high speed and this was a common occurrence with cars being used unlawfully.³⁷
37. At around 2:30am, RAP unit members, Constables Wiggin and McQueen in TA702, were conducting patrols when they observed a black hatchback and a red sedan travelling south past their car at Duckworth Street, Garbutt. The driver of the red car gave the police “*the finger*” and was covering his face as he drove past. Const McQueen had heard a previous communications relating to the cars being in the area and observed the driver of the red car wearing gloves. He suspected the car was stolen but could not obtain the registration number for either car. TA702 also did not attempt to intercept the cars and kept patrolling.³⁸
38. A short time later, the cars overtook RAP team members Snr Const Corbett and Const Bishop in marked police car TA701. Snr Const Corbett obtained the registration plate details. He performed checks on the red Toyota’s plate number and located the details of the registered owner.³⁹

Mr McLennan collects Ms Barnes

39. Ms Barnes was aged 19 at the time of Mr Malayta’s passing.⁴⁰ In her statement, Ms Barnes told police that:
 - i. She had known Mr McLennan since Christmas 2021, but only met Mr Malayta that night;⁴¹
 - ii. At about 2:00am she was walking towards the service station on Allambie Lane when a maroon Toyota pulled up beside her. Mr McLennan was driving and asked her where she was going. She told him she was going to the shops to get cigarettes and asked if the car

³⁶ Exhibit D3; Exhibit D1.

³⁷ Exhibit D3.

³⁸ Exhibit D7.

³⁹ Exhibit D3; Exhibit D2.

⁴⁰ Exhibit B1.

⁴¹ Exhibit B1.

was “*alright*”. Mr McLennan said it was. She said she did not think the car was stolen;⁴²

- iii. She knew Mr McLennan was “*on the run*”;⁴³
- iv. Mr McLennan was wearing red shorts and was shirtless;⁴⁴
- v. Mr McLennan asked if she wanted a lift to the service station and she got in the car. He then said he wanted to “*go get money off his nan*” and they drove to the home at Geoffrey Court;⁴⁵ and
- vi. She waited inside the car and Mr McLennan went inside the residence.⁴⁶

Mr McLennan collects Mr Malayta

40. At about 2:00am, Mr McLennan arrived at the home. He pulled the front screen to the lounge room window open. He jumped through and woke Mr Malayta.
41. Ms McLennan told police she was outside hanging towels. Her two daughters were in her room. After some coaxing on the part of Mr McLennan, Mr Malayta left with him.
42. Mr McLennan also went into Ms McLennan’s room and took a packet of cigarettes and \$100. Ms McLennan’s youngest daughter saw Mr Malayta chastising Mr McLennan for taking the property. Mr Malayta told his sister “*tell mum I love her and I’ll be back soon.*”⁴⁷
43. When Ms McLennan went inside looking for her cigarettes and Mr Malayta, her youngest daughter told her what had occurred. She told her mother that Mr McLennan looked like he was “*high off his head*” and smelled of alcohol, and that there were two cars out the front.⁴⁸ Ms McLennan found a note in her bag written by Mr Malayta. The note said “*Mum - gone with big bro to get your money back.*”⁴⁹
44. Mr McLennan told police that he was high on methylamphetamine, having shot up earlier.⁵⁰ Mr Malayta was sober.⁵¹ When asked by police what his plan was, Mr McLennan said “*just cruising around...I wasn’t gonna do nothin’ with him...he wasn’t really getting in trouble...it was just stupid.*”⁵²
45. Ms Barnes told police:

⁴² Exhibit B1.

⁴³ Exhibit B1.

⁴⁴ Exhibit B1.

⁴⁵ Exhibit B1 – this was around 4km away.

⁴⁶ Exhibit B1.

⁴⁷ Exhibit D9.

⁴⁸ Exhibit D9.

⁴⁹ Exhibit D9.

⁵⁰ Exhibit D8.

⁵¹ Exhibit D9; Exhibit D8.

⁵² Exhibit D8.

- i. When Mr McLennan came out of the house, Mr Malayta came out with him.⁵³ Mr Malayta was wearing a cream-coloured t-shirt and creamy coloured shorts and was carrying a white hat;⁵⁴
 - ii. The two got in the car, Mr McLennan was driving and Mr Malayta was in the back right passenger seat. Ms Barnes was in the front passenger seat. This was the first time Ms Barnes had met Mr Malayta and she was not told his name. The two brothers engaged in innocuous conversation as they drove off down Geoffrey Court and Santal Drive;⁵⁵ and
 - iii. The car turned left onto Riverway Drive and began up the road at normal speed. Mr McLennan then *“picked up speed on Riverway Drive. He was staying in the right lane and just driving quick, he wasn’t driving dangerously or anything.”*⁵⁶
46. At 2:50am, Mr McLennan drove the red Toyota into the Coles Express at 22 Thuringowa Drive, Kirwan. He filled the car with petrol and drove off without paying.⁵⁷

Police confirm the red Toyota Corolla is stolen

47. Snr Const Corbett began making enquiries with the registered owner of the red Toyota at 2:48am.⁵⁸ At 3:07am it was confirmed by the owner that a burglary had occurred at a unit at Paxton Street, North Ward and the red Toyota had been stolen. Communications were notified.⁵⁹
48. Snr Const Corbett accessed the automated number plate recognition (*“ANPR”*) database and entered the red Toyota and black Hyundai’s details in the system as being cars that had been stolen. A short time after that, he received a notification from the database that the subject cars had gone past an ANPR camera located on Riverway Drive, heading into the upper Ross area and moving outbound on Riverway Drive.⁶⁰ The time of the notification was thought to be approximately 3:00am⁶¹ and it was sent to all officers in the RAP team.⁶²

Police action before and at TDD deployment

49. Snr Const Corbett contacted Sgt Young (his shift supervisor) and asked for authorisation to set up a TDD site. Sgt Young agreed with this proposed course of action and sought formal approval.⁶³
50. At 3:20am, Sgt Young asked Snr Sgt Dusha for authorisation to set up the TDD site⁶⁴ as the cars were confirmed stolen, were driving dangerously at speed, had

⁵³ Exhibit B1.

⁵⁴ Exhibit B1.

⁵⁵ Exhibit B1; Exhibit D8- Mr McLennan confirmed the seating arrangements.

⁵⁶ Exhibit B1.

⁵⁷ Exhibit C9; Exhibit C16.

⁵⁸ Exhibit C4.

⁵⁹ Exhibit C4.

⁶⁰ Exhibit D2.

⁶¹ Exhibit D1.

⁶² Exhibit D6; Exhibit D4; Exhibit D5; Exhibit D1.

⁶³ Exhibit D1.

⁶⁴ Exhibit D1; Exhibit D6-; Exhibit D4.

been sighted by Snr Sgt Dusha, and were considered to be unlikely to stop and likely to evade police, causing further risk to the public.

51. Snr Sgt Dusha approved the TDD.⁶⁵ He told the inquest that police interception of stolen vehicles is ineffective 99% of the time. He said that stolen vehicles pose a high risk and the deployment of a TDD is a safer response as it shifts offenders from the vehicle to travelling on foot.
52. RAP team members Sgt Young and Const Johnson then proceeded towards the TDD site in TA700 and parked nearby.⁶⁶
53. Snr Const Corbett and Const Bishop proceeded in TA701 back towards the RAP office and saw Const Wiggin and Const McQueen in TA702 at the lights. While both cars were stopped, Snr Const Corbett briefed TA702 about the plan in respect of the stolen cars.⁶⁷
54. After Const Wiggin and Const McQueen returned to the RAP office, Const Wiggin received a call from Sgt Young asking if she and Const McQueen could set up the TDD.⁶⁸ Const Wiggin drove Constable McQueen, the deploying officer, to the site and dropped him off. She drove the car back to a nearby street. Const McQueen set up the TDD and remained at the instructed location.⁶⁹
55. Snr Const Corbett wanted to ensure the cars were still in the area so TA701 proceeded down Riverway Drive and parked in the carpark of Zarraffa's, on the corner of Riverway Drive and Gouldian Avenue. The officers sat in their marked car for a short time before the red Toyota and the black Hyundai drove into the carpark. The cars parked behind them and began blasting their horns and making offensive gestures. The cars then drove out of the carpark and turned left onto Riverway Drive (inbound). Snr Const Corbett notified Communications.⁷⁰ He could see at least two people in each car but could not identify them.⁷¹
56. At 3:34:43am, the red Toyota again passed Snr Const Corbett and Const Bishop in TA701 while it was still at Zarraffa's carpark. The black Hyundai was driving ahead of it.⁷² Snr Const Corbett notified Communications about the sighting and direction the cars were moving in.⁷³ Const McQueen confirmed he was ready to deploy the TDD.⁷⁴
57. Following this advice, Const Johnson observed the two cars driving at speed inbound past TA700.⁷⁵ He estimated them to be travelling at about 100 kilometres per hour on the 70 kilometre per hour road.⁷⁶ Sgt Young notified Const McQueen at 3:35:18 am.⁷⁷

⁶⁵ Exhibit D1

⁶⁶ Exhibit D1; Exhibit D6.

⁶⁷ Exhibit D1; Exhibit D7.

⁶⁸ Exhibit D5; Exhibit D7; Exhibit D1.

⁶⁹ Exhibit D5; Exhibit D7.

⁷⁰ Exhibit D1.

⁷¹ Exhibit D1; Exhibit D4.

⁷² Exhibit D14; Exhibit D25

⁷³ Exhibit C4; Exhibit D4

⁷⁴ Exhibit D1; Exhibit D30.

⁷⁵ Exhibit D6.

⁷⁶ Exhibit D6.

⁷⁷ Exhibit D1; Exhibit D30; Exhibit D6.

58. Both cars proceeded over the TDD at 3:35:27am and Const McQueen advised the team that both cars had been stung. He said they were last seen heading inbound.⁷⁸ He did not hear any whooshing of air coming out of the tyres. He saw both go over the TDD so called it successful.⁷⁹
59. Ms Barnes told police:
- i. *"[Mr McLennan] was driving in the right lane... A small black car came out of Gouldian Avenue and was driving a distance behind us. I think that car may have been stolen...I saw it walking home and its windows were down and its lights were on";*⁸⁰
 - ii. *"I think [Mr McLennan] was probably doing 80 or so, he drove through the red light... and I saw the flash of the red light camera";*⁸¹ and
 - iii. *"We kept driving and I heard the tyre deflating, we went straight and just before the lights at Willows we stopped the car and jumped out. [Mr McLennan] was shouting 'get out and run'. I didn't know what was going on. I was the last one out of the car. [Mr Malayta] didn't say anything, he just got out and ran."*⁸²

Police action after the TDD deployment

60. At 3:35:16, TA701 commenced driving in the direction of the cars⁸³. Snr Const Corbett advised that the unit commenced driving at the speed limit after they heard Const McQueen's "sting" confirmation. He said they drove towards the cars because it is known that offenders abandon cars after they are stung.⁸⁴
61. TA700 commenced driving in the direction of the car at 3:35:37am.⁸⁵ This was done on instruction after the deployment.⁸⁶ No lights or sirens were used.⁸⁷
62. Const Wiggin was in the process of walking back towards the TDD site at about 3:36am. She waited and saw the cars coming through. Following this she turned and walked onto Riverway Drive with her BWC on.
63. Const Wiggin is then depicted running a short way up the road. She radioed the RAP team at 3:36:35am to the effect that three juveniles were on foot running from Riverway Drive onto Ross River Road, towards Black Weir Park. Those observations are not captured on her BWC due to her distance from the abandoned car and movement of the camera.
64. Const Wiggin said she could not see who ran or tell if they were male or female.⁸⁸ She said she thought she saw three to four people jump out of the car at the

⁷⁸ Exhibit D30; Exhibit D7; Exhibit D3.

⁷⁹ Exhibit D7.

⁸⁰ Exhibit B1.

⁸¹ Exhibit B1.

⁸² Exhibit B1.

⁸³ Exhibit D15.

⁸⁴ Exhibit D2; Exhibit D4.

⁸⁵ Exhibit D11.

⁸⁶ Exhibit D6; Exhibit D1.

⁸⁷ Exhibit D7.

⁸⁸ Exhibit D5.

same time, and they ran “flat tack” towards the parklands area of the Riverway Lagoons. She described them as being First Nations and that there was perhaps a female who exited the passenger side of the car. She last saw them running into Black Weir Park before turning back to the car.⁸⁹

65. After TA700 heard Const Wiggin’s radio call advising the car had been abandoned and the three occupants were running, it increased speed but did not activate lights or sirens. Sgt Young advised he could see the car in the distance but saw no one running from it.⁹⁰
66. Const Wiggin said when she saw TA700 approach the abandoned car, she immediately ran back to her marked car and returned to Const McQueen. Const McQueen advised her to drive up to Vickers footbridge and wait there.⁹¹
67. Const McQueen stayed at the TDD site to clean up. He stayed there before posting at Itara Apartments nearby.⁹²
68. TA700 reached the red Toyota abandoned in the middle of Riverway Drive at 3:36:11am. The car had its doors open and was still rolling. TA700 parked behind the car, activating lights and sirens. Both officers approached and Const Johnson entered the car to put the handbrake on. They remained with the car. None of the occupants could be seen.⁹³
69. Snr Sgt Dusha commenced driving towards the Corolla when he heard Const McQueen’s advice about the TDD deployment. He took up with TA700 at the abandoned car and left Sgt Young to coordinate the cordon.⁹⁴
70. While TA700 waited with the abandoned car, Sgt Young rang Snr Sgt Dusha and requested authority for a police tracking dog to be deployed in the area.⁹⁵ Snr Sgt Dusha approved this. However, there was a delay because the first officer tasked had COVID, requiring another officer to be located and tasked.⁹⁶
71. TA701 also heard Const Wiggin’s radio advice as they were driving up Riverway Drive. The officers saw TA700 with the abandoned car and continued past. Lights and sirens were then activated at the onramp on to Ross River Road.⁹⁷ Const Bishop advised that lights and sirens were activated because they needed to move to their designated location to secure the area.⁹⁸
72. As TA701 turned right up Ross River Road and was adjacent to Riverway Stadium, Const Bishop observed a single person running towards Ross River Road. He told Snr Const Corbett, and they stopped the car. Snr Const Corbett got out and went towards the area of the sighting.⁹⁹ No persons could be sighted.¹⁰⁰ As Snr Const Corbett got closer, he heard Communications state that

⁸⁹ Exhibit D5.

⁹⁰ Exhibit D1; Exhibit D6.

⁹¹ Exhibit D28; Exhibit C5. Exhibit D7

⁹² Exhibit D7.

⁹³ Exhibit D11; Exhibit D12; Exhibit D13 ; Exhibit D6; Exhibit D1.

⁹⁴ Exhibit D3; Exhibit D1.

⁹⁵ Exhibit D6.

⁹⁶ Exhibit D3.

⁹⁷ Exhibit D4; Exhibit D2.

⁹⁸ Exhibit D4.

⁹⁹ Exhibit D4.

¹⁰⁰ Exhibit D29.

the young people were running towards the Lagoons, so he doubled back believing they would run away from the location. He got to a track near the Riverway Stadium and heard Communications state that the young people were at the park. He then heard over radio that the Dog Squad were being called so he stayed where he was.

73. He told Const Bishop to drive TA701 to the exit across the Weir School and stay at the carpark.¹⁰¹ Const Bishop drove up to the Weir School carpark and stayed at the Douglas footbridge.¹⁰² The officers were placed to lock the area down. Pursuing the young people was not part of strategy.¹⁰³

Mr Malayta, Mr McLennan and Ms Barnes run through the parklands

74. Mr Malayta, Mr McLennan and Ms Barnes are depicted first entering the parklands at the Riverway Skatepark at 3:36am by City Council cameras. All three are running at speed. Mr McLennan enters the frame first from the Riverway Drive side, running through the park perpendicular to Ross River Road. He is shirtless and wearing red shorts. He appears panicked, his arms flailing out at times. He is followed by Mr Malayta who is about 50 to 70 metres behind him. Mr Malayta can be seen wearing white shorts and a darker shirt. Ms Barnes follows about 50 metres behind Mr Malayta and breaks off through the skatepark while running in the same direction. She is depicted with long brown hair in a ponytail, a maroon shirt and green/yellow shorts. The three disappear behind trees at 3:36:32am.¹⁰⁴ Ms Barnes is not depicted on camera after this point.

75. Ms Barnes told police:

- i. *"I got out of the car and ran straight across through the skatepark, me and [Mr Malayta] were running in line through the skatepark. [Mr McLennan] was a bit in front of us running through the park. [Mr Malayta] ran over the top of the skatepark and I ran right beside it to the right of it. [Mr McLennan] went through the skatepark";¹⁰⁵*
- ii. *"I heard [Mr Malayta] fall, I didn't see him fall. I didn't hear him say anything. I just heard a noise of someone falling. There was a wall between us but it sounded like he fell. I think he slipped down the ramp of the skatepark. I turned to my left and said "just keep running" but he was already up and running. He ran on the footpath and got ahead of me with [Mr McLennan]. They were running on the footpath from the skatepark towards Ross River Road. [Mr Malayta] turned and looked at me and I dived into bushes on Sporting Drive near the skatepark and stayed there. [Mr Malayta] wasn't wearing a hat at this point, he was just wearing a shirt and shorts";¹⁰⁶*
- iii. *"I saw red and blue lights on Ross River Road and I saw the two boys turn and run in front of the building at the sport oval running back towards the Lagoons";¹⁰⁷ and*

¹⁰¹ Exhibit D2; Exhibit D4.

¹⁰² Exhibit D4.

¹⁰³ Exhibit D1.

¹⁰⁴ Exhibit D19; Exhibit D16; Exhibit D18.

¹⁰⁵ Exhibit B1.

¹⁰⁶ Exhibit B1.

¹⁰⁷ Exhibit B1.

iv. *"That was the last time I saw those two boys."*¹⁰⁸

76. Mr Malayta and Mr McLennan are then depicted running past the Riverway Stadium stand between the cricket grounds and the Thuringowa Bulldogs Football Club at 3:36:39am by City Council cameras. Mr Malayta is first captured on camera, running and walking. A police car with flashing lights can be seen on the main road in the background. Mr Malayta catches up to Mr McLennan at the signs marking the cricket and football clubs and the two proceed to run off towards the park with Mr McLennan about five metres ahead of Mr Malayta. They disappear out of view of cameras near a fence line at 3:38:14am.¹⁰⁹ Mr McLennan told police that when the two met at the football club, Mr Malayta was out of breath because they had *"sprinted."*¹¹⁰ The park they ran to backed onto the Ross River.¹¹¹
77. Mr Malayta and Mr McLennan are captured running through the park from the cricket and football grounds on City Council camera from 3:37:38am. Mr McLennan is about 50 metres ahead of Mr Malayta who is following him. Mr Malayta is depicted to slow to walking pace at one point. Mr McLennan hops over two fences, the second of which appears to line the river. Mr Malayta follows him, and they disappear out of view at 3:38:40am.¹¹² It is likely that they entered the river at this point. Mr McLennan told police that *"we went in at the jetty, jumped over the fence and I just slid into the water."*¹¹³
78. It is likely three to four minutes elapsed from when the car was abandoned and Mr McLennan and Mr Malayta entered the river. At no point in the footage can police be seen pursuing them on foot. Mr McLennan told police that he did not see anybody else in the parklands when he ran through and that everything happened *"pretty quick, straight away...we didn't hide. It was all pretty quick, in the blink of an eye."*¹¹⁴
79. Snr Sgt Dusha advised that aside from the delay with the Dog Squad attending, police efforts to locate the young people were hampered by two factors:
- i. Delays in the Council CCTV being accessed by and relayed to Communications; and
 - ii. The darkness given the time of the morning and the fact that the park lighting was not particularly efficient.¹¹⁵

Mr Malayta and Mr McLennan enter the Ross River

80. Mr McLennan was the last person to see Mr Malayta alive. He was unable to be interviewed until he was arrested in relation to the unlawful use of the red Toyota

¹⁰⁸ Exhibit B1.

¹⁰⁹ Exhibit D17; Exhibit D20.

¹¹⁰ Exhibit D8.

¹¹¹ Exhibit A6- page 9.

¹¹² Exhibit D21.

¹¹³ Exhibit D8.

¹¹⁴ Exhibit D8.

¹¹⁵ Exhibit D3.

and fuel drive off, along with fresh charges, charges subject to an arrest warrant and a return to prison warrant.¹¹⁶

81. At interview, Mr McLennan told police:

- i. *"I think he just tried to follow me into the creek";*¹¹⁷
- ii. [When asked what they were trying to do] *"we were trying to get across the creek, get away...I'd never swum in there to get away from police before...we were both in the water";*¹¹⁸
- iii. *"I was like a good couple of metres ahead, he was singing out to me. I tried to get back to him. I couldn't see him, y'know. And he was already under the water and took his last breath...he was singing out "big bro, I can't breathe"... I was probably about 20 or 30 metres ahead...I couldn't see him. It was too dark and yeah when I couldn't hear him, I was screaming out his name...I just thought he'd got out...I swum up the river...towards the big bridge";*¹¹⁹
- iv. He got out on the same side of the river;¹²⁰
- v. After denying that there had been any conversation between them about getting into the river to get away, said *"[Mr Malayta] just followed me...I kept running he was following";*¹²¹ and
- vi. *"As I was swimming too, I could see lots around my feet, I'm nearly drowning too. Like I was pretty hard to breathe and then I'm trying to swim back to him and I'm nearly going under. His last breath was like "Big bro, help".*¹²²

82. Const Bishop was standing at his post near the Weir school when he thought he could hear distant shouting by people he thought might be the occupants of the Corolla. He thought he heard someone shouting a name three times and then nothing.¹²³ He did not hear any splashing.¹²⁴

83. Snr Const Corbett was also standing at his post when he could hear voices coming from the park about 100 metres away. He thought they were shouting *"fuck! fuck!"* and he interpreted that to mean they were cornered in that position. He continued to hold that position. He heard Communications from another crew on the opposite side of the river and rang that crew, telling them to go to a position opposite the Lagoons and shine torches into the water from there. He thought that there might be a possibility that they would try to swim across to that location because he knew that the Riverway area was being monitored. While Snr Const

¹¹⁶ Exhibit D8; Exhibit C1.

¹¹⁷ Exhibit D8.

¹¹⁸ Exhibit D8.

¹¹⁹ Exhibit D8.

¹²⁰ Exhibit D8.

¹²¹ Exhibit D8.

¹²² Exhibit D8.

¹²³ Exhibit D4.

¹²⁴ Exhibit D4.

Corbett was waiting for the Dog Squad to arrive, he noticed the shouting had stopped but thought he could hear talking.¹²⁵

84. The shouting heard by Snr Const Corbett can be faintly heard on his BWC from 3:42am onwards. Snr Const Corbett radios Communications within 30 seconds of when it commences to advise that he is near the oval and can hear shouting near the Lagoons. He asks for Camera Control to review CCTV there. He then tells Communications that they are definitely still in the area and can hear them talking to each other.¹²⁶ From 3:43am onwards the shouting can be heard to become more urgent. Words cannot be made out. At 3:45am “Robbie” or “Robert” can be faintly heard being called out.¹²⁷ At 3:44am, “Robbie” or “Robert” is distinctly shouted.¹²⁸ This period is most likely when Mr Malayta and Mr McLennan were struggling in the water.
85. At 3:57am, Communications were advised that the Youth Co-Responder Team had sighted Ms Barnes at 3:51am walking on the centre island of Ross River Road near the stadium, before crossing the inbound lanes towards Easterbrook. She was seen wearing a maroon shirt and Brazil soccer shorts.¹²⁹ Ms Barnes told police that she had “waited a while [in bushes]” before walking home. She said she also saw the same black car that had been previously following them on her way.¹³⁰

Dog Squad attendance

86. At 4:01am, Dog Squad Officer Snr Const Forrest of unit number TZ753 was assigned to the incident.¹³¹ He arrived at the abandoned red Toyota located in the middle of Riverway Drive at 4:11am.¹³² Sgt Young and Const Johnson advised him that approximately 25 minutes had elapsed since the three young people ran away from the car.¹³³
87. The dog was leashed to commence tracking at 4:13am. All crews were advised to stay in place.¹³⁴
88. Snr Const Forrest commenced walking into the parklands with the leashed dog at about 4:18am and decided to walk towards the Lagoon, the last known place the males were sighted. He was accompanied by Const Johnson.¹³⁵ Sgt Young remained with the abandoned car until it was towed at 4:55am. From there Sgt Young went to the scene of the abandoned black car.¹³⁶

¹²⁵ Exhibit D2; Exhibit D29.

¹²⁶ Exhibit D29.

¹²⁷ Exhibit D29.

¹²⁸ Exhibit D29.

¹²⁹ Exhibit C5.

¹³⁰ Exhibit B1.

¹³¹ Exhibit C5.

¹³² Exhibit C5.

¹³³ Exhibit D31.

¹³⁴ Exhibit C5.

¹³⁵ Exhibit D32; Exhibit D6.

¹³⁶ Exhibit D1; Exhibit C5.

89. At 4:24am, Snr Const Forrest and the dog commenced tracking on the river side of the playground.¹³⁷ The river can be seen on BWC to be thick with weeds and plant life.¹³⁸
90. At 4:26am, Snr Const Forrest located Adidas slides and a glove floating in the river a metre or two out near a pontoon. He radioed Communications regarding the finding and advised that there was "*potential that they tried to swim across*". The water in this area can be seen on BWC to be thick with weeds, plant life and algae. Visibility is murky.¹³⁹ The dog was taken onto the pontoon, and it began whimpering and yelping. A torch was shone over the water by Snr Const Forrest and Const Johnson, but the males were not sighted. The banks in the vicinity were searched with the males not being located.¹⁴⁰
91. At the time, the finding of the slides in the water was not considered suspicious. The complex was heavily used at all hours so it was not considered unusual that someone had left slides behind. Also, given the fact that the males were seen running at pace, it was thought that they were not wearing thongs.¹⁴¹
92. At 4:42am, Camera Control checked the Douglas (opposite) side of the river and advised there was no sign anyone had come out of the water there. A sweep of the footpath behind the pool also proved fruitless.¹⁴²
93. At 4:47am, Snr Const Forrest advised he was not getting any tracks out of the water and that the males might still be in the water.¹⁴³
94. At 4:52am, Snr Const Forrest proceeded in the opposite direction, heading back towards his start point and sweeping towards Cranbrook.¹⁴⁴
95. At 4:58am, the dog detected a track along the side of the River towards Cranbrook.¹⁴⁵
96. At 5:08am, the dog detected a track from the playground into the concrete weir but no more tracks were detected and no persons were found. Snr Const Forrest gave police permission to patrol on foot and advised he had gone as far as the footbridge.¹⁴⁶
97. Snr Const Forrest and the dog left the scene at 5:35am.¹⁴⁷ Const Johnson advised that at no point during the tracking did he hear any splashing or hear or see anyone in the river.¹⁴⁸

¹³⁷ Exhibit C5; Exhibit D6.

¹³⁸ Exhibit D31.

¹³⁹ Exhibit C5; Exhibit D31; Exhibit D22; Exhibit D6.

¹⁴⁰ Exhibit C5; Exhibit D31; Exhibit D6.

¹⁴¹ Exhibit D3.

¹⁴² Exhibit C5.

¹⁴³ Exhibit C5; Exhibit 31.

¹⁴⁴ Exhibit C5; Exhibit 31; Exhibit D6.

¹⁴⁵ Exhibit C5; Exhibit D31.

¹⁴⁶ Exhibit C5.

¹⁴⁷ Exhibit C5.

¹⁴⁸ Exhibit D6.

98. Throughout the search, apart from some instances of yelping and whimpering, the police dog does not bark. Mr McLennan, Mr Malayta and Ms Barnes are neither seen nor heard in the 57 minutes of BWC vision.¹⁴⁹
99. At 5:09am, Sgt Young radioed the team and advised that the crews could leave their locations and go mobile. Police conducted foot patrols of the area between 5:09am and 5:37am without sighting Mr McLennan, Mr Malayta and Ms Barnes. The incident was closed at 5:51am.¹⁵⁰ Snr Sgt Dusha supported Sgt Young's decisions in these respects.¹⁵¹
100. Of the RAP team:
- i. Const McQueen went from Itara Apartments up to Garner Road (about a kilometre north) and foot patrolled there;¹⁵²
 - ii. Const Wiggin remained at Vickers Bridge until she heard the dog was finished.¹⁵³ At her post she occasionally scanned her torch across the water but ultimately did not see or hear anything or anyone. She assumed the young people had escaped the area;¹⁵⁴
 - iii. Snr Const Corbett and Const Bishop drove TA701 to the Jacana Apartments on Riverway Drive. They conducted foot patrols of the embankment of the river nearby and near the wooden playground and pontoons. Const Bishop saw two thongs floating in the water but did not locate any persons. The thongs were to the left of the pontoon, black and floating about one metre out. Approximately 30 to 40 minutes later they returned to the RAP Hub;¹⁵⁵ and
 - iv. Sgt Young photographed the abandoned black car and remained on scene with it until it was towed.¹⁵⁶
101. Sgt Young told all crews to return to the Hub at about 5:30am.¹⁵⁷
102. After this advice Const Wiggin picked up Const McQueen and they went back to the Hub.¹⁵⁸ Const Johnson left the Riverway Parklands. He called Sgt Young to obtain his location and was advised that he was at the scene of the abandoned black car. Const Bishop therefore walked back to the Hub.¹⁵⁹
103. Snr Sgt Dusha considered the searching and tracking was thorough even though the young people were not able to be located. He advised that cordons are not perfect, and it is not unusual that people escape them due to the terrain plus in this situation the darkness and the water, both of which could be utilised for hiding and escape.¹⁶⁰ He said that entering the water to apprehend offenders

¹⁴⁹ Exhibit D31.

¹⁵⁰ Exhibit C5; Exhibit D4.

¹⁵¹ Exhibit D3; Exhibit D1.

¹⁵² Exhibit D9.

¹⁵³ Exhibit D27; Exhibit C5.

¹⁵⁴ Exhibit D5.

¹⁵⁵ Exhibit D4; Exhibit D2.

¹⁵⁶ Exhibit D1.

¹⁵⁷ Exhibit D1.

¹⁵⁸ Exhibit D6; Exhibit D9.

¹⁵⁹ Exhibit D6; Exhibit D1.

¹⁶⁰ Exhibit D3.

created a high level of risk and was tactically unsafe as officers would need to leave their accoutrements out of the water.

104. Sgt Young advised that during the search, the young people were not able to be identified and none of the officers in the vicinity sighted them.¹⁶¹
105. Throughout the search, there were no sightings by any officer of anyone entering or being in the water, no ripples or splashing noises heard.¹⁶² A stolen car was located on the Douglas (opposite) side of the river and it was thought that the young people may have made it across the water and were collected by associates.¹⁶³

Shakur McLennan contacts his family

106. Mr McLennan told police he caught a taxi back to Ms Barnes' house. He said he *"then started ringing mum 'cause I thought he ran back there y'know. And I woke Dad up to see if he was there, he said no so I asked him to go look at the river."*¹⁶⁴

107. Mr McLennan made the call to his mother at 5:30am.¹⁶⁵ Of the conversation, Ms McLennan said:

*"He said mum, mum. Robbie, is he home? He goes I don't know where he is. He said they spiked us. He said mum you've got to come down here, I don't know where he is, he's injured. I think his ribs are broken, he might have punctured his lungs. I said did you see him when you ... got spiked, he said yes mum we ran towards Riverway into the Ross River, I was already in there and then he said mum- and Shakur broke down and cried- mum I don't know where he is, I don't know if he's okay. He said "big bro, I can't breathe" so I just said whereabouts are youse he said Riverway pontoons". I rang a taxi, got in a taxi went with my two girls and met my brother down there."*¹⁶⁶

108. The family was seen around the river's edge by a couple walking their dog through the area at around 7:00am. The family told them they were looking for someone from their family who was missing.¹⁶⁷
109. Mr McLennan said when his family got down to the river, he went down there. He said he walked up to the pier and thought he saw slide marks getting out of the river so he thought Mr Malayta had gotten out. He told his mother to go and put a report in. He said *"I just kept checking his Facebook page hoping he was alright and when I found out [about Mr Malayta's passing] I thought I was gonna hurt myself."*¹⁶⁸
110. The family located money and cigarettes wrapped up in a bandanna at the riverbank. Ms McLennan told police that at that point, she *"knew he was gone."*¹⁶⁹

¹⁶¹ Exhibit D1.

¹⁶² Exhibit D3; Exhibit D4.

¹⁶³ Exhibit D3.

¹⁶⁴ Exhibit D8.

¹⁶⁵ Exhibit A1- page 10; Exhibit A6- page 2.

¹⁶⁶ Exhibit D9.

¹⁶⁷ Exhibit C1; Exhibit C1.1.

¹⁶⁸ Exhibit D8.

¹⁶⁹ Exhibit D9.

111. At 5:46pm, Ms McLennan called 000. The police notes from the call state:

*"INF CONCERNED FOR HER YOUNGER SON ROBERT MALAYTA 21.01.2003. MALATA [sic] WAS ON CAR THAT WAS SPIKED BY POLICE ERLIER [sic] AND APPARENTLY HE ENDED UP WITH INJURY, MALAYTA AND HIS BROTHER SHAKUR MCLENNAN WERE SWIMMING ACROSS THE RIVER WHEN MALAYTA YELLED TO SHAKUR HE COULDN'T BREATHE PROPERLY. HE HAS NOT BEEN SEEN SINCE."*¹⁷⁰

Missing person investigation by police

112. At 5:56pm, Ms McLennan attended the Kirwan Police Station to make a formal missing person report. She told police Mr Malayta had been picked up by his brother from Geoffrey Court, Rasmussen in a stolen car at approximately 1:00am. She said at approximately 3:30am the car was "spiked" by police, which police noted related to the TDD the previous night where the occupants were not located. At around 5:30am, Mr McLennan contacted her and stated he and Mr Malayta ran from the stolen car and swam across the river to the Douglas side. Mr McLennan told her he last heard Mr Malayta yelling out "*I can't breathe, I can't breathe*". Ms McLennan told police Mr McLennan sounded serious and concerned. She said she had not spoken to Mr McLennan since and did not know where he was. The report was entered onto the police system at 6:16pm.¹⁷¹

113. Within hours of the missing person report being completed, multiple crews commenced searching along the riverbank where Mr Malayta was last sighted.¹⁷² Crews advised that there was head high grass along the bank and large lilies were scattered out along the water's edge. A pair of slides were located where Mr Malayta was last seen.¹⁷³ LANDSAR was activated at 7:14pm.¹⁷⁴ An Incident Command post was set up behind the Riverway Stadium and crews remained on scene overnight.¹⁷⁵

Search and Rescue/Diving Unit operation

114. At 8:00am on 25 February 2022, Snr Constables Fenton, Sparks and Boles¹⁷⁶ from the Brisbane Police Diving Unit arrived in Townsville. Following transfer to the site where the thongs were located and a briefing, diving commenced at 9:22am. In respect of the operation:

- i. Divers first conducted a four-man wade from the bank starting from the small jetty heading east downstream approximately 50 metres. All four divers used a tactile search whilst wading and were able to wade to about 7 metres out from the bank until it became too deep to wade. The wade search completed at 10:06am with nothing found;
- ii. A two-diver line search began at 10:29am. As the river had thick, heavy weed from bottom to top, the divers swam on of the surface to approximately 24 metres out from the bank tethered to a search line.

¹⁷⁰ Exhibit A1- page 17.

¹⁷¹ Exhibit A1- page 10; Exhibit C1.

¹⁷² Exhibit A1- page 11.

¹⁷³ Exhibit C1.

¹⁷⁴ Exhibit C1.

¹⁷⁵ Exhibit A1- page 11.

¹⁷⁶ Exhibit C1.

The two divers then descended to the bottom and were dragged back to the bank by the two dive attendants so they could penetrate and break through the weed. The maximum depth encountered was 5.8 metres and the dive ceased at 11:45am.

- iii. Whilst getting out of the river, divers' attention was brought to an object floating out from the pontoon and diver Fenton swam out and confirmed it to be a body.
 - iv. The body was located at 11:48am approximately 15 metres out from the eastern most corner of the small jetty. Divers then swam the body to the bank and placed it in a body bag to be lifted onto the footpath.
 - v. The bottom of the river consisted of a soft silty mud that changed to sand further out at depth. There was a large wall of different types of weed and lily pads that went from surface to the bottom and made searching very difficult. Divers believed Mr Malayta would not have made the bottom of the river due to the thickness of the weed and would have been caught mid water or entangled in the weed. This explained why Mr Malayta's body floated to the surface whilst the divers were breaking up the weed and aerating the water during the search.¹⁷⁷
115. Mr Malayta's body was located close to where the police dog had first located the slides and glove.¹⁷⁸
116. Townsville Scenes of Crime ("SOC") officer Snr Const Lauren O'Hanlon arrived on scene at around 12:30pm to photograph the body and document evidence. The body bag was opened and Mr Malayta was observed wearing a t-shirt, shorts and underpants but no footwear. He appeared to have an unusual lump on his right cheek bone with slight swelling to the neck on the same side. A small scratch was observed on the right elbow and some skin peeling was observed on the left elbow. No other injuries were observed. Photographs were taken of the scene and the body. Photographs of Mr Malayta's thumb print were taken by Snr Const O'Hanlon for identification purposes.¹⁷⁹

Intercepts and Pursuits - vehicular and on foot

117. All officers involved advised that at no point did they intercept or pursue the cars that had been reported stolen. Additionally, Snr Sgt Dusha in his capacity as District Duty Officer advised that he provided no authority to any officer to pursue the cars.¹⁸⁰ This was supported by the BWC and dashcam footage provided.
118. Snr Sgt Dusha had received and conducted risk management training in respect of professional police conduct for officers engaging with motor vehicles, plus driver behaviour. He advised that pursuits are treated as a high risk strategy that is only undertaken in certain circumstances. He said officers are encouraged not to intercept because that strategy is 90% likely to fail, and will result in the pursued car driving in an increasingly dangerous manner. He stated that this is particularly so in cases where cars are taken in burglaries

¹⁷⁷ Exhibit C1; Exhibit C2; Exhibit A1- page 11; Exhibit A6- page 10.

¹⁷⁸ Exhibit D3

¹⁷⁹ Exhibit A1- page 11.

¹⁸⁰ Exhibit D3; Exhibit D5; Exhibit D6; Exhibit D7; Exhibit D2; Exhibit D1.

because it is known that those cars will not stop for police. In these circumstances, officers know they must employ other means to apprehend occupants.¹⁸¹

119. Snr Const Corbett advised that:

- i. When he first sighted the red Corolla, he did not attempt to intercept it because its manner of driving suggested it was stolen, and he needed to check the registration and confirm this before anything else;¹⁸²
- ii. When he next sighted the red Corolla, he did not attempt to intercept it because he knew it was stolen and knew a TDD was being set up;¹⁸³ and
- iii. Any attempt at an intercept with lights and sirens was more likely to mean the subject car would drive more dangerously which was a risk, so different action was required to stop it.¹⁸⁴

120. The Queensland Police Service guidelines for intercepts and pursuits are detailed in Chapter 15 of the Operational Procedures Manual (“OPM”). There is no evidence to suggest that any officer engaged in an attempted interception or pursuit as defined in the OPM.¹⁸⁵

121. Various officers engaged in urgent duty driving after activation of the TDD (driving with lights and sirens, and/or over the speed limit) as defined in Chapter 15.3 of the OPM. The examples of urgent duty driving were permitted responses to a situation where an immediate police response to an incident was required.¹⁸⁶ The driving was also conducted in accordance with the remainder of the Chapter.¹⁸⁷

122. There is no evidence to suggest the involved officers engaged in any foot pursuits with any member of the group fleeing the abandoned red Toyota.

Tyre Deflation Devices

123. Snr Sgt Dusha stated that TDDs have two functions. First, to stop cars endangering members of the public. Second, to enable police to potentially apprehend the occupants of the cars.¹⁸⁸

124. At the time the TDD was deployed, Townsville District was conducting a trial of longer TDDs. Authorised sites were identified to ensure safer TDD deployment.¹⁸⁹

¹⁸¹ Exhibit D3.

¹⁸² Exhibit D2.

¹⁸³ Exhibit D2.

¹⁸⁴ Exhibit D2.

¹⁸⁵ Queensland Police Service Operational Procedures Manual at Chapter 15.

¹⁸⁶ Queensland Police Service Operational Procedures Manual at Chapter 15 at (ii).

¹⁸⁷ Queensland Police Service Operational Procedures Manual at Chapter 15.3.1 at (i)-(vi), 15.3.3 and 15.3.4.

¹⁸⁸ Exhibit D3.

¹⁸⁹ Exhibit D3.

125. Townsville District and the RAP team had received training regarding TDDs (in particular, the longer TDDs) in the week before the relevant deployment.¹⁹⁰
126. Const McQueen as deploying officer had received this training.¹⁹¹
127. Const McQueen's shift supervisor Sgt Young assessed that Const McQueen had deployed the TDD in accordance with procedure.¹⁹²
128. Snr Sgt Dusha recorded the TDD deployment in accordance with procedure.¹⁹³
129. Deployment of a TDD is a pre-planned use of force action available to police to enable them to intercept and apprehend offenders in cars. I am satisfied the action taken by police in this case was in accordance with Chapter 14.26 of the OPM.¹⁹⁴
130. Use of TDDs is covered in detail in Chapter 14.30 of the OPM. The action taken by police in this case was in accordance with this Chapter.¹⁹⁵

Autopsy results

131. On 2 March 2022, Dr Andrzej Kedziora conducted an autopsy consisting of an internal and external examination of the body, plus toxicology testing.
132. Findings were to the effect that Mr Malayta's body exhibited:
 - i. Early decomposition;
 - ii. Water immersion changes of hands and feet;
 - iii. Bilateral pleural effusions (accumulation of fluid in the space between the lungs and chest wall);
 - iv. Subcutaneous oedema in right parieto-temporo-occipital region (a build-up on fluid under the skin at the back side of the head); no evidence of injury/bruise in this area;
 - v. No external and internal injuries; and
 - vi. No evidence of natural disease.¹⁹⁶
133. The toxicology results showed that he had 0.03mg/L of tetrahydrocannabinol (an active ingredient of cannabis) in his femoral blood and 34 mg/100mL of alcohol in his vitreous humour.¹⁹⁷ Dr Kedziora opined that the concentration of alcohol located may be due to antemortem consumption or postmortem fermentation/decomposition.¹⁹⁸
134. Dr Kedziora concluded that the cause of Mr Malayta's passing was:

¹⁹⁰ Exhibit D5; Exhibit D6; Exhibit D3; Exhibit D9; Exhibit D1.

¹⁹¹ Exhibit D3; Exhibit D9.

¹⁹² Exhibit D1.

¹⁹³ Exhibit D3.

¹⁹⁴ Queensland Police Service Operational Procedures Manual at Chapter 14.26.

¹⁹⁵ Queensland Police Service Operational Procedures Manual at Chapter 14.30.

¹⁹⁶ Exhibit A5.

¹⁹⁷ Exhibit A2.

¹⁹⁸ Exhibit A5.

Conclusions on Inquest issues

The adequacy and appropriateness of the actions of the Queensland Police Service on 24 and 25 February 2022

135. I am satisfied that the Queensland Police Service's actions on 24 and 25 February were adequate and appropriate.
136. The right to appear at the inquest granted to ATSILS under s 36(3) limited the scope of its submissions to matters about which a coroner can comment under s 46(1) of the *Coroners Act*. ATSILS agreed that the QPS officers' actions were not in breach of the OPM or QPS policies in force at the time at the time.
137. Notwithstanding its limited right to make submissions, ATSILS submitted that the QPS had knowledge there was a possibility, if not a probability, that there were young people in the Ross River and "*did not take steps the general public would have expected them to take*" in a timely manner. For example, the making of the missing person report fell to the family on 25 February 2022, and there were delays in triggering the SAR, deploying water police, and identification of the occupants of the stolen vehicle and their location.
138. Most of the involved officers were from the Rapid Action Patrol group, a specialist unit that proactively identifies, reacts and responds to property crime, including vehicle theft, in the Townsville region. The facts relating to RAP involvement are set out in detail in these findings.
139. The police operation commenced with the initial sighting and investigation of the status of the red Corolla and the black Hyundai I30. While the RAP patrol is a specialist group, the initial sighting of the stolen cars was by chance and not the result of targeted investigations.
140. Snr Sgt Dusha observed two speeding cars while on patrol in the early hours of Thursday, 24 February 2022. The cars sped away from him. His suspicion that the cars were stolen was objectively reasonable. The response of police to those sightings was appropriate and suitably restrained. The sightings were communicated within the RAP team. Further information was obtained to confirm the status of the vehicles.
141. The second stage of the police operation involved the planned deployment of the TDD. SC Corbett sought approval to use a TDD and steps were then taken to deploy the device. I am satisfied all relevant QPS policies and procedures were followed by police in the approval process, the location of the TDD, the positioning of the supporting RAP members and the deployment of the TDD. I accept that the decision to use the TDD was tactically sound.
142. In the weeks leading up to this incident the involved officers had been appropriately trained.

¹⁹⁹ Exhibit A5.

143. Consistent with the objectives of the TTD deployment, the red Corolla came to a stop without harming or endangering the vehicle's occupants, police, members of the public or public property.
144. I conclude that there was no attempt to intercept or pursue the Corolla. RAP officers moved in a coordinated fashion after the car was disabled. This was based on the understanding that occupants in stolen vehicles are likely to flee. This was objectively reasonable. While some urgent duty driving was engaged in, all units were some distance from the location of the TDD deployment. The first unit arrived while the Corolla was still rolling, some 19-26 seconds after the occupants had decamped.
145. The final stage of the operation related to the decision to establish a cordon, through to the collapse of the cordon and conclusion of mobile patrols. I accept that tactical decisions post TDD were the responsibility of the lead officers in attendance and were based on their appreciation of the circumstances. The decision to set up a non-mobile cordon pending the arrival of the dog squad was tactically sound and showed reasonable restraint.
146. Given the circumstances and speed of events from first sighting to the Corolla being spiked, it was not possible for police to identify anyone in the car. The drive off from the service station was unknown to police at the time. That event was later reported by way of a stealing complaint from the service station.
147. Once the decision was made to engage the police dog, it was reasonable that foot patrols were not conducted to avoid contamination of the dog's track. The CCTV footage captured the three young people running mostly at speed through the skatepark and parklands to the point where the young men jumped the fence next to the river. That was a distance of over 500 metres and would only have taken a few minutes to cover.
148. Police were not seen on any footage apart from flashing lights on the main road. While the dog squad was requested almost immediately, there was a delay as the initial officer tasked had COVID. A second officer was located and arrived on scene at 4:11am.
149. The young men were seen hopping the fence at 3:38:40am, with Mr McLennan later telling police he slid straight into the water, followed by Mr Malayta. If it is accepted that the faint shouting captured on SC Corbett's BWC between 3:42am and 3:45am was the voices of Mr McLennan and Mr Malayta, its cessation was likely indicative of when Mr McLennan has swum off and Mr Malayta was underneath the water. The police dog did not arrive at the at the point of the river where the young men entered the water until 4:26am, some 30-40 minutes after Mr Malayta had likely drowned.
150. The delays by police in approaching the river were understandable. In addition to the delay in the arrival of the dog squad, there were delays in CCTV being accessed and relayed to police communications. There was a large area to search and visibility was poor.
151. While a slide was located in the water, and SC Forrest queried whether the car's occupants had entered the water the location of the slides in the water, there was no definitive evidence that a person or persons had entered and were still in the water.

152. The police dog received a track moving away from the potential entry point and it was considered they might have left the water. Police on both sides of the river shone torches over the water and did not see anyone or hear any splashing. The common view of the officers was that the young people had escaped the cordon, not that they were in the river.
153. I agree with the submission from Counsel Assisting that it was neither reasonable or possible for police to enter the river in the dark or have immediate searches of the river undertaken, including by deployment of water police. This is particularly so given Mr Malayta had entered the river and drowned, concealed underneath heavy weeds in dark water, within minutes of entry. His passing occurred well in advance of any first responder's attendance.
154. I accept that police searching and tracking was thorough even though the group was not located. As Snr Sgt Dusha noted, cordons are not perfect, and it is not unusual for persons actively seeking to avoid detention to escape the cordon due to the terrain, darkness and water, which can be used to hide and escape.
155. Ms McLennan called 000 to report the circumstances of her son's last sighting in the river to police at 5:46pm on 24 February 2022. She attended Kirwan station to formally report him missing 10 minutes later. Within hours, a LANDSAR was activated and multiple officers were searching the riverbank on foot.
156. The dive squad needed to travel from Brisbane and arrived on site at 9:22am on 25 February 2022. Mr Malayta's body was located by divers when it floated to the surface at 11:48am. I accept that the conduct of the LANDSAR after Mr Malayta was reported missing was professional and appropriate.
157. Mr Malayta died as a tragic consequence of following his brother into the Ross River to avoid police detection. Mr McLennan's direction to run from the disabled stolen car and decision to enter the river is perhaps understood by the fact that he was driving a stolen car and his judgment was impaired from methylamphetamine. He would have been motivated to avoid the warrants for his arrest and outstanding criminal charges.
158. The urgency to flee the scene was not precipitated by unjustified police action, which was restrained and appropriate. There were no suspicious circumstances associated with the passing.

Findings required by s. 45

159. I am required to find, if possible, the cause of the passing, who the deceased person was and when, where and how he came by his passing. As a result of considering all the evidence, including the material contained in the exhibits, I make the following findings.

Identity of the deceased – Robert George Kenneth Malayta.

How he died – Mr Malayta was a passenger in a car that was being driven by his older brother. The car was seen speeding in Townsville by officers designated to target property crime. The car was suspected of being stolen following a burglary. Police officers determined that it was

appropriate to stop the car using a tyre deflection device. After that device was successfully deployed the occupants of the vehicle ran away. Mr Malayta and his brother then entered the Ross River at the Riverway Precinct to avoid being detained by police. He was unable to swim and ran into difficulty because he was physically exhausted from running and also needed to negotiate the heavily weeded conditions near the edge of the River. He drowned at an unknown time, likely within minutes after entering the water.

Place of death –	Ross River, Riverway Precinct, Kirwan Queensland
Date of death –	24 February 2022
Cause of death –	Drowning

Comments and recommendations

160. Section 46 of the Coroners Act provides that a coroner may comment on anything connected with a passing that relates to public health or safety, the administration of justice or ways to prevent passings from happening in similar circumstances in the future.
161. ATSILS expressed concern about the broad scope of the responsibilities of the DDO in Townsville. It was submitted that I should recommend a review of the responsibilities of the DDO and increased resourcing to assist in managing competing responsibilities of the Townsville DDO.
162. I note that in the lead up to Mr Malayta's passing Snr Sgt Dusha was involved in identifying the two cars as being potentially stolen. He authorised the deployment of the TDD, and then the attendance of the dog squad to search for the young persons who had decamped. While he acknowledged the DDO role was challenging I do not consider his capacity to lead and respond appropriately was affected by the scope of his responsibilities.
163. The situation evolved rapidly after the TDD was deployed in accordance with the OPM. The cordon and search processes also followed QPS operational policies. By that time, the DDO had little capacity to affect the outcome.
164. ATSILS also submitted that the OPM should be reviewed to strengthen the process for cordon searches and the collapse of cordons, particularly those established near a body of water. It was also submitted that where a suspected offender is not located following the establishment of a cordon, QPS policy and procedures should require that suspects be identified in a timely manner, and officers required to ensure their safety and ascertain their location.
165. I accept the submission on behalf of Snr Sgt Dusha that cordons need to be established on a case by case basis in response to the needs of the specific

police operation. I also agree that a high level of prescription in the OPM about where cordons are established and steps to follow after collapse where offenders are not located is likely to be of limited assistance to officers.

166. An offender whose identity is unknown will generally evade a cordon to avoid interacting with police. It would be impractical to require police officers to undertake additional work beyond that usually involved in the identification and apprehension of suspected offenders.
167. ATSILS also submitted that there should be a review of the process for the approval of TDD locations. ATSILS noted that this process occurs at a whole of State level. It submitted that those decisions need to take into account local conditions such as the proximity of the TDD to a body of water.
168. I do not consider that a review of the TDD approval mechanism suggested by ATSILS is necessary. Much of Queensland is in close proximity to bodies of water such as beaches, rivers and bays. I acknowledge the submission from Snr Sgt Dusha that TDD deployment is an effective alternative to police pursuits in motor vehicles.
169. I extend my condolences to Mr Malayta's family and friends. It is clear that his passing has resulted in enduring grief and trauma.
170. I close the inquest.

Terry Ryan
State Coroner
BRISBANE