

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 3810/06

FINDING INTO DEATH WITH INQUEST

*Form 37 Rule 60(1)
Section 67 of the Coroners Act 2008*

Inquest into the Death of MANABU KONDO

Delivered On:

Delivered At: Coroners Court of Victoria
Level 11, 222 Exhibition Street
Melbourne 3000

Hearing Dates: 11, 12 October, 2007
24, 25 September, 2008 at
State Coroners Office, 57-83 Kavanagh Street,
Southbank 3006

Findings of: PETER WHITE

Police Coronial Support Unit
(PCSU): Acting Sergeant J. Stewart

I, PETER WHITE, Coroner having investigated the death of MANABU KONDO

AND having held an inquest in relation to this death on 11th, 12th October, 2007 and 24th, 25th September, 2008
at Southbank

find that the identity of the deceased was MANABU KONDO

aged 38 years

and the death occurred on 8 October 2006

at Heathcote Park Raceway, Knowsley-Barnadown Road, Knowsley, Victoria 3523

from:

1a. MULTIPLE INJURIES

in the following circumstances:

1. Mr Manabu Kondo, a thirty eight year old Japanese national, visited Taree in New South Wales in late September 2006, to view a jet propelled drag car owned by Mr Kevin Hinkling, with a view to the possible purchase of the vehicle and its importation into Japan.
2. A friend and business associate of Mr Kondo, Mr Horoshi Kojima, had earlier contacted Mr Russell Clarke, the owner/manager of Heathcote Park Raceway and himself an experienced drag vehicle driver, to seek advice about jet propelled motor vehicles which may be available for purchase.
3. Thereafter, Mr Clarke contacted Mr Hinkling, who was known to him through their mutual interest, about his jet motor dragster which, to Mr Clarke's knowledge, had first been offered for sale by Mr Hinkling some 3 years earlier.
4. As a result, and on learning the vehicle was still available, Mr Clarke arranged for Mr Kojima and the prospective purchaser, Mr Kondo, to meet him at Mr Hinkling's property at Taree on a date in late August 2006.
5. Mr Hinkling was an experienced jet car driver and had contracted the building of the vehicle 'Aussie Thunder', in 1993, through a Mr Jim Wilton.
6. Mr Wilton's evidence was that the vehicle was not designed or built for drag racing and was not built for driving at a speed greater than 140-150 mph.
7. Mr Wilton's further testimony was that he was surprised to learn that it had been used by a Mr Matt Brock for drag racing but was not sure what adjustments may have been made after he passed it to Mr Hinkling. His further evidence was that the amendments needed for it to be able to reach 416 kmph plus would have been considerable and would have necessitated a substantial reduction in the vehicle's weight.
8. Mr Wilton's further opinion was that typically a jet-propelled car would travel smoothly across the track and that any vibration was likely to be a result of wheels not being properly balanced or of loose steering.

9. Mr Brock carried out additional work in 1996 and thereafter raced the vehicle. The vehicle was returned to Mr Hinkling in the same year and remained in his possession until 2002, at which time it was again taken over by Mr Brock.

10. I note here that the vehicle was not used for racing after 2003, following its return to Mr Hinkling, and was put up for sale by him in 2005 and remained in his possession at Taree until its sale to Mr Kondo.¹

11. It follows that prior to the events, the subject of this investigation, the vehicle had not been used for drag racing over the previous several years. It is also the case that it had not been surveyed or upgraded to meet the Australian National Drag Racing Association (ANDRA), standards since being raced by Mr Brock in 2002.²

12. I further note that as far as the other interested parties were concerned, it was Mr Hinkling alone who knew of the above-described history.

13. Conflicting testimony was given by Messrs Kojima and Clarke on the one hand and Hinkling on the other, as to the nature of the arrangements entered into in Taree, and about what later occurred at Heathcote Park Raceway on Friday June 6th when the parties met to hand over possession of the vehicle.³

14. These matters, together with the events of the following two days, are relevant to my investigation into this accident, and are set out below.

Taree, NSW and the period leading up to the arrival of the vehicle and parties at Heathcote Raceway.

15. Mr Kojima acted as an interpreter for Mr Kondo in both the Taree meeting and his later dealings at Heathcote Park Raceway.⁴

16. According to Mr Kojima, after they arrived at the Taree property, Kevin Hinkling started the car and demonstrated how to do a 'wet' start and after burner 'pops'. Further from Mr Kojima, Mr Kondo's wish to have access to the vehicle and to drive the vehicle at speed was conveyed directly to Kevin Hinkling through himself.⁵

¹ See evidence of Mr Hinkling from transcript page 6 and at pages 39 and 40, to the effect that no one else had showed an interest in purchasing the vehicle.

² See the statement of Kevin Hinkling at Exhibit 1.

³ Mr Hinkling's testimony as to his belief was as follows:

'But at no time was there any indication he was going to drive it. I thought they were just going to sit in it and learn how to start the - this particular dragster; it is not a simple operation on starting these cars, and to learn the afterburner pop and fire display. And that was where it all seemed to stop and finish. We sat in the same place there (at Heathcote Park Raceway), for nearly three and a half, four hours, doing all of this and they were still practising that when it was time for us to leave and I left.

In addition, I also knew Russell was there... he is very experienced and would be able to advise and continue with what they wanted for the rest of the day. Or the rest of the following day. So I mean I just left it totally under that control.'

See evidence of Mr Hinkling at transcript page 24.

⁴ Mr Kojima was a Japanese national, who had a considerable experience in the US at an early age, and later in Australia, and whose command of the English language was observed to be of a reasonable standard.

⁵ See transcript at page 132 See also the cross-examination on these matters put by Mr Kojima to Mr Hinkling at pages 33-38 and at pages 40-41, concerning the gift to Mr Kondo of wheel balancing weights made by Mr Hinkling, prior to his departure from Heathcote.

17. Mr Kojima further testified that it was Mr Hinkling who told him that the vehicle had been driven at 416 kmph, which information appears to have further excited Mr Kondo's interest. It is also the case that Mr Hinkling showed the party a DVD, which further impressed Mr Kondo.

'This is my dream. I want that vehicle. It does 400 kilometres per hour'.⁶

18. They discussed price and, according to Mr Kojima, Mr Kondo again indicated his wish to purchase the dragster and to drive it at speed or 'performance test' the vehicle. Thereafter, a price of Aust \$55,000⁷ was set by Mr Hinkling, which was accepted by Mr Kondo who then attempted to make a down payment for the purchase with Japanese yen banknotes.⁸

19. Mr Kondo also requested that Mr Hinkling tow the vehicle to Heathcote Park,

"So we can inspect the vehicle and run the car and test the vehicle and (Manabu) can learn to drive the vehicle and for him to learn maintenance of the vehicle."

And later,

"...I asked Kevin Hinkling to prepare the vehicle for test drive and we make payments (indistinct) arrangements but later it was changed."⁹

20. According to Mr Kojima, the later change was made at the insistence of Mr Hinkling, as a result of which, full payment was made before the dragster was transferred to Melbourne and, Mr Kojima (as purchaser), took on the responsibility for the transport of the vehicle to Heathcote Park Raceway.

Q. 'What was your understanding of the state of the sale when you wired the money to Hinkling's account?

A. Well I wanted to make it to subject condition car being in - just as all he said, but we had to make payment before the car left there. So arrangement was changed.'¹⁰

21. Mr Kojima further testified that Mr Hinkling explained the use of the after burner and how to light it and about the use of the parachute as a braking device.

22. His further testimony was that in response to the request that he teach Mr Kondo how to drive the car,

'Yes he said, OK, I spend two days with you showing how to drive the vehicle

⁶ See evidence of Mr Kojima as to Mr Kondo's statement to him, at transcript at pages 131-132. See also the evidence of Mr Hinkling at transcript page 7 where he acknowledges the showing of the DVD.

Mr Hinkling's evidence on this matter at transcript page 34 was, 'well, I presumed it was for these afterburner pops and to run on these NASCAR tracks over in Japan. That was my whole understanding.'

⁷ The evidence of Mr Wilton was that the materials used by him to build the car had been paid for by Mr Hinkling and amounted to 'around A\$3000'.

⁸ See transcript at 132-133. Later Mr Kojima sent a cheque to Mr Hinkling for the whole A\$ amount as requested by him.

⁹ See transcript at page 133

¹⁰ See transcript page 134.

because I have no knowledge of jet powered vehicles and Kondo did not have knowledge of jet-powered vehicle. The best person to learn is the people who own the car for years.’¹¹

23. This version of events was supported by Russell Clarke who was a witness to conversations at Taree and was party to the arrangement to bring the vehicle to his track at Heathcote.¹²

24. Mr Clarke’s testimony was that these arrangements were put in place,

‘because they won’t have jet-powered vehicles on West Sydney National Drag way. So he brought it down (to Heathcote), to spend a couple of days teaching Kondo how to go through it, doing after-burner pops and to teach him how to drive it.’¹³

25. He further confirmed how it was made clear to Mr Hinkling by Mr Kojima that the vehicle was to be bought to Japan, to be used to drive and to be driven at speed.¹⁴

26. Mr Clarke further re-stated this version of events when he returned to Court to testify on the 25th September 2008. At that time, he made the point that Mr Hinkling had earlier testified that the car was built for ‘show purposes’ which was inconsistent with the fact that he also testified that it had been let to a Mr Matt Brock to be used for performance testing, i.e. running at high speed.¹⁵

27. He also agreed with Mr Kojima’s assertions, concerning the arrangements under which the vehicle had been brought to Heathcote.

‘Q. What was the agreement at the time of purchasing the vehicle? What was Kevin supposed to do?

A. He agreed to the purchase. They were going to make arrangements for it to be brought down to Heathcote for testing, for performance testing (by Kondo), and you asked that he could go through and check the vehicle, which he said he would and he agreed to do the - make the modifications for steering.’¹⁶

28. Mr Clarke further alleged that his belief now was that Mr Hinkling’s (false) claim the vehicle had been driven by Mr Kondo at too greater speed, arose in fact from an earlier pre-accident reservation that Mr Hinkling had about the vehicle,

‘which he didn’t convey to us.’¹⁷

29. I further note here that in the face of Mr Clarke’s evidence on the arrangements entered into by the parties at Taree, Mr Hinkling, who cross-examined Mr Clarke, did not challenge Mr Clarke’s testimony that he (Hinkling) had always understood the performance testing, purpose behind Mr Kondo’s purchase of the vehicle and his bringing it to Melbourne. It is also the case that he did not seek

¹¹ See the evidence of Mr Kojima at transcript pages 135-36

¹² See transcript at page 133 (Kojima), and at 187-188 (Clarke), concerning the receipt of the vehicle at Heathcote by Clarke’s agent. See the evidence of Mr Clarke at page 183 concerning the initial inspection and how Mr Brock had brought the car up to ‘the current ANDRA specifications.’ See also his evidence at pages 188-89 that (apart from some spare parts incidentally provided to him by Mr Hinkling), he received no financial advantage from the sale.

¹³ See evidence of Mr Clarke at transcript page 186.

¹⁴ See transcript at page 187.

¹⁵ See transcript at page 364

¹⁶ See transcript at page 360.

¹⁷ See newspaper report at Exhibit 19 and discussion at transcript 361-363

to challenge Mr Clarke's evidence about their intention to speed test the vehicle when they got it to Heathcote Raceway or the agreement that he would check the vehicle, this notwithstanding the Courts explanation to Mr Hinkling concerning his rights in regard to these matters.¹⁸

Heathcote Park Raceway, Victoria¹⁹

30. On the afternoon of Friday the 6th, Mr Hinkling arrived at Heathcote Park and supervised the taking of the vehicle from the trailer, which had arrived separately.

31. According to Mr Clarke, an examination of the vehicle then took place following which Mr Hinkling provided instruction to Mr Kondo in regard to starting and closing down the afterburner while the vehicle was stationary and was happy with his progress in that action.²⁰

32. On the Saturday morning, with Mr Hinkling having departed the previous afternoon, Mr Kondo began his familiarisation and speed testing of the vehicle. Mr Kondo completed some fourteen separate runs over the one-quarter mile track at slowly increasing speeds, this all under supervision provided by Russell Clarke.²¹

33. After the fifth or sixth of the runs on Saturday, Mr Kondo is alleged to have commented to Mr Kojima that he felt the vehicle vibrating which, according to Mr Clarke, was not communicated to him.²²

34. On the Saturday evening, it is clear that Messrs Hinkling and Clarke discussed the events of the day on the phone. Mr Hinkling testified that he remonstrated with Mr Clarke about the number of runs undertaken and the speed of the runs.²³ These matters were not disputed by Mr Clarke, who stated that he felt that Mr Hinkling, (incorrectly),

'thought he was a cowboy...

Did Mr Hinkling express any surprise to you that you were doing any runs at all?

¹⁸ See transcript at page 368-370.

¹⁹ According to Mr Hinkling, Heathcote Park Raceway, was the only raceway in Australia where you might be permitted to run a jet dragster without a license (vehicle and driver), issued by the Australian National Drag Racers Association, ANDRA. See transcript page 2-4. This evidence was later modified at transcript page 20 cont /28, when Mr Hinkling agreed with Mr Clarke, that there were at least three other ANDRA non-compliant drag racing strips in Australia, at that time.

²⁰ See transcript page 272. Mr Clarke stated that on Friday the 7th he had conducted an examination of the vehicle which involved applying force to the front and rear wheel 'bearers' to see if there was any lateral movement. This was done with the wheels on the ground, (ie without the use of a hoist), and did not disclose any fault.

When challenged on this by the Coroners Assistant he stated that,

'...in a perfect world you'd give a check and if you had any doubts or queries you could jack it up.' See transcript at pages 191-92.

²¹ Transcript page 285-288. It is clear that over both days Mr Clarke was required to supervise the running of all dragsters participating in what he described as a 'club' weekend. Mr Clarke's further evidence was that he spoke with both visitors before and after each run and that he was very happy with Mr Kondo's progress. See transcript at page 292.

²² See Mr Kojima's evidence of Mr Kondo complaining about feeling vehicle vibration following the fifth or sixth run (without after burner), on Saturday and of mentioning this matter to Mr Clarke, at transcript page 155-57 and of their discussion about the tyres not yet being warm.

Mr Clarke later stated that this observation from Mr Kondo, was in fact communicated to him but that he was satisfied after the next run that Mr Kondo was no longer concerned about the matter. See discussion between the Court and Mr Clarke in his submission to me from page 378.

Mr Kojima stated that he asked Mr Kondo about vibration after the next pass and was told it had gone away.

Mr Hinkling testified at transcript pages 13-14, that if vibration was observed at all during these runs, then the exercise should have been discontinued immediately.

²³ Transcript page 11-12.

No not really no.’²⁴

35. It is also known that on the Saturday evening Mr Clarke and his party purchased a second seat booster for the vehicle at Autobarn, Bendigo, to better seat Mr Kondo, who had been using a house brick until that time.

36. The next morning Mr Clarke stated that he went to check the car again and discovered cracking on the fibreglass cover near the two fins at the back. At 9.00am, at Mr Kondo’s request, he rang Mr Hinkling who was still, according to Mr Clarke, surprisingly in Cranbourne (just outside of Melbourne). He asked about the wings and their usefulness and about what was the fastest speed at which the vehicle had ever been run. Mr Hinkling’s response that the vehicle had been run with and without the wings, and had a maximum speed of 250mph, was conveyed to Mr Kondo.

37. Because of this body deterioration identified by Mr Clarke, the wings were then removed before racing commenced on the Sunday.

38. I note here that apart from Mr Hinkling’s phone opinion, there is no evidence as to what, if any, effect the removal of the wings actually caused upon the dynamic of running the vehicle at speed. I also note that Mr Kondo was instructed by Mr Clarke to take the first pass at a slower speed, to seek to assess this matter and was evidently happy with the result.²⁵

39. During the next, the second pass of the day, the vehicle ran out of petrol and on the next run something apparently went wrong with the positioning and/or movement of Mr Kondo’s crash helmet which later caused Mr Clarke’s son, who was at the scene, to allow Mr Kondo the use of a neck brace, kept in the office.

40. On this same pass, it was also observed that a parachute used for braking had deployed at the wrong time.²⁶

41. This according to Mr Clarke was, ‘not a major catastrophe,’ and did not require him to step in to re-evaluate the situation.

42. At this time, I also note that Mr Clarke was unable to speak to Mr Kondo (as he usually would after each run), because of an oil spill on the track which needed his attention.²⁷

43. Before the start of the fourth pass, Mr Clarke went through his procedure of checking Mr Kondo’s seatbelt and helmet and he made sure that the neck brace was properly in position. The vehicle was started and Mr Kondo checked his gauges.

44. It is also the evidence that early on the Sunday Mr Clarke was conscious of a cross wind from the southwest coming across from the right of the track which was positioned in a north south directional aspect. According to Mr Clarke, this did not impact upon Mr Kondo’s first run on the

²⁴ See transcript page 293-294.

²⁵ See transcript at pages 297-300.

²⁶ See transcript from page 304-05.

²⁷ See transcript page 307 and his further evidence that the spill was cleaned up and did not impact upon Mr Kondo’s next (and final) pass.

Sunday and was not a factor in what later occurred.²⁸

45. Before the start of the fourth and, what was planned to be the final run, Mr Clarke indicated that Mr Kondo could attempt to achieve full power. I note here that this was contrary to the version he later adopted from his statement in which he refers to 95% of power.²⁹

46. Mr Kondo then indicated his wish to achieve full power and Mr Clarke's further evidence was that he could not know at exactly where Mr Kondo preset the power gauge, although he believed that Mr Kondo's intent was to hit 200mph before he left Australia, which Mr Clarke felt was possible at 95% of power.

47. Mr Clarke then observed the commencement of the run and felt that in the first 60 feet Mr Kondo was achieving a higher speed than previously. The after burner was on and he felt things were going well.

48. Then at the 660 foot mark, 'half track', Mr Clarke stated that he saw the car commence to shake violently.³⁰

'rapidly to right, left, right, then just snaking really violently'

'...It was in the middle of the right hand lane. And from there leaving marks on the ground from around 600 feet to 1000 feet and veering to its left, with the afterburner still on ... and the car out of control.'³¹

I felt... before I saw the helmet... that he had on the shaking he'd knocked it on the roll cage and it either stunned him or knocked him out... the vehicle not even any attempt to control it.'³²

'It (then), went through the railing at 1320 feet ... around about 1400 feet from the start line ...

(On the Monday Mr Clarke went back to the track.)

I walked down the track I got to the 660 ...

You started to see a black-single black line started to develop that continued all the way up to the 1000 foot mark where it started to turn and it continued all the way where it went through the Amcor railing and you could see the last couple of hundred feet out - it was like skipping and it was as if the wheel has come in - lifting off, coming back down, like it was skipping going in so by looking at that it was the left hand wheel, (which was skipping).'³³

²⁸ See transcript page 310.

²⁹ See transcript at page 313.

³⁰ See transcript at page 323.

³¹ See exhibit 16 photo 1.

³² See *ibid* photo 10 and Exhibit 17a, b and c, and evidence at transcript page 327-28 as to the position of the helmet next to the roll bar and Mr Clarke's allegation concerning his finding of paint on the helmet which he believed came from the rollbar. I note here that I was unable to determine if paint from the roll bar was indeed found on the helmet as the helmet had been returned to Mr Kojima by unknown persons and was not available to the Court at the time of inquest. In the circumstances, I direct myself that little weight can attach to Mr Clarke's allegation concerning the finding of black paint on Mr Kondo's helmet.

See also the expert evidence of Mr Laycock as to the connect between jet car 'tyre shake' and drivers being knocked out, at transcript page 93.

³³ See transcript page 329-33. I also note an earlier statement Ex 11 in which Mr Clarke suggested it was the right wheel, which locked, at this time. Finally, Mr Clarke indicated some uncertainty about this matter. See transcript page 333.

49. Finally, it was Mr Clarke's opinion that the vehicle commenced to shake at the 660 foot mark because of a mechanical defect. His further opinion was that jet propelled vehicles can be unpredictable and that it simply wasn't possible to determine which wheel had locked by looking to see in which direction the car then veered off the runway.

'They have a mind of their own.'³⁴

50. Mr Clarke, who stated that he had visited with Senior Sergeant Le Guier to examine the wheel hubs, went on to describe how his theory was consistent with Senior Sergeant Le Guier evidence concerning the gouge marks found on the brake calliper. He further suggested that this may have occurred because the rear bearings on the vehicle were ill fitting, and were the incorrect bearings, which were held in place by the use of the adhesive 'Loctite'.

51. Mr Clarke further opined that the evidence suggested to him that there had been a modification done to the hub component which was carried out poorly with an ill fitting assembly which had come loose on both sides, leading also to a loosening of the wheel nuts as found by Senior Sergeant Le Guier.

52. Mr Allan James was also a witness to the collision.

53. Mr James was employed as the official drag strip starter by Mr Clarke on both the Saturday and Sunday.

54. The starter's position was located about six feet off to the left hand side of the drivers starting position.

55. He testified that there were approximately 15 to 20 cars testing on the Sunday and that the day was largely a day for people to test and tune their cars.³⁵ Jet car racing was not a regular occurrence at Heathcote.

56. According to Mr James, there did not appear to be any problem on either day with Mr Kondo's car until the final run.

57. Mr James further testified as to his observations on the last run describing Mr Kondo as using,

'heaps more power than before - than at any other time, and it gave a slight movement as I watched it go down the track and then all of a sudden it veered off towards the left and straight into the Armco.'

58. His further evidence was that 'it seemed to be doing a lot faster than previously, this from "half track", followed by a ball of flame and then an explosion'.³⁶

59. Mr James gave further evidence about the thumbs up hand signals used by both Mr Clarke and Mr Kondo on all of the runs, to indicate that each was ready to proceed and about the noise at the scene generated by the jet engine, which necessitated the use of hand signals.

³⁴ See transcript page 338.

³⁵ See statement at Exhibit 3 and transcript from page 64 and at page 69-72.

³⁶ See transcript page 65 and 66.

60. Mr James also stated that he saw Mr Clarke indicate by his fingers that Mr Kondo might use up to 95% of available power, to which Mr Kondo nodded. Mr James later testified that he did not really understand to what the 95 signal referred.³⁷

61. His further testimony was that the company did own a hydraulic lift which was kept at the compound, rather than the raceway and that he was unable to recall whether he saw that or any other hydraulic lift at the raceway, on the Sunday.

62. Mr James further described the sense of excitement at the track generated by the runs made by 'Aussie Thunder' and that Mr Kondo appeared to enjoy that atmosphere, as he continued to undertake faster runs, under the supervision of Mr Clarke.³⁸

63. His further evidence was that the conditions were,

'a bit breezy.'³⁹

64. In cross-examination from Mr Kojima, Mr James described Mr Kondo as a happy-go-lucky sort of person who seemed consistently pleased with the car.

65. It appeared to Mr James that the run, to be the last of the day, was attempted at full power with the jet afterburner activated.

The Investigation

66. Following receipt of a report to Heathcote police made by Mrs Clarke, a Victoria Police investigation commenced immediately, with a brief later received.

67. On the 19th and 20th of October 2009, Senior Sergeant Le Guier of the Mechanical Investigation Unit, Victoria Police, examined the jet car driven by Mr Kondo.

68. Senior Sergeant Le Guier found that both rear wheels when rocked horizontally had 10 millimetres of free play. When removing the rear wheels from the hubs he also found that the wheel nuts were loose. On removal of the wheels, all wheel stud holes had been elongated and that there were obvious signs of fretting on the hubs from the loose wheels. On the off side rear hub there was a score mark the entire circumference of the hub where the hub had been in contact with the off side rear disc brake calliper.

69. Senior Sergeant Le Guier removed the offside hub and bearings from the stub axle and found the bearings had scored the hub which is consistent with the hub rotating on the bearings instead of the bearings rotating on the stub axle.

70. He formed the opinion that incorrect bearings had been fitted.

³⁷ See transcript page 68. Mr Clarke's later evidence was that the signalling described by Mr James related to the maximum percentage revs, or power, rather than speed. See transcript page 290.

³⁸ See transcript page 71.

³⁹ See *ibid.*

71. Senior Sergeant Le Guier also found that the throttle lever was in full position and the afterburner lever was in the off position as was the master shut off, fuel shut off and emergency parachute lever.⁴⁰

72. Senior Sergeant Le Guier further opined that the issues identified concerning the rear wheel lateral movement and loose wheel nuts could have been easily detected had the vehicle been placed on a jack before use.

73. His further opinion was that the rear wheel deficiencies could have caused vibration throughout the vehicle, leading to the collision.⁴¹

74. The results of this investigation were later sought to be supplemented by the Courts seeking of a laboratory examination and report on the condition of the rear wheel hubs and whether it was true, as Mr Clarke claimed, that the appearance of the hubs suggested that a Loctite sealant might have been used as a temporary measure to bind the hubs.⁴²

75. In addition, the Court also sought information from Mr Kondo's family in Japan concerning his medical history, this because of a matter raised by Mr Kojima.⁴³

76. In addition, further investigation established that the tracks computerised timing and speed detection equipment logged the fourth run by Mr Kondo as commencing at 2.37 pm. At the point that it left the track the vehicle was independently measured as travelling at a speed of 299.82 kmph and, following the collision, Mr Kondo's body was located strapped into the vehicle's cockpit with wreckage strewn over a distance of several hundred metres.

77. Consideration was also given to the opinion obtained from Mr Ronald Laycock, an experienced professional driver of jet-powered vehicles, whose independent expert evidence as to the cause of the accident broadly supported the opinions of Senior Sergeant Le Guier and Mr Clarke.⁴⁴

Findings

78. After the arrival of Mr Kondo's remains at the Southbank mortuary, an application was made under Section 29 of the Act by Mr Kondo's family that no autopsy be undertaken.

⁴⁰ See Exhibit 4

⁴¹ S/Sgt Le Guier supported the evidence of builder Mr Wilton and advised that his earlier statement that he could see no connection between his findings and the collision, was made without the benefit of evidence that the vehicle had been observed to vibrate before the driver lost control. See comment at the end of page 7, Exhibit 4.

⁴² The report of Vic Police Forensic Services Department dated 24/6/2011 (Peter Ross) was inconclusive on the issue of whether or not Loctite adhesive had been applied to the rear wheel bearings and wheel hub in earlier maintenance (to attempt to lock the ill fitting bearings and hub). These results were circulated to the interested parties who were invited to comment. No further submissions were received from the interested parties.

See report at MFI 21 and file correspondence.

⁴³ Mr Kojima suggested that he believed that Mr Kondo had a previous incident of fitting which was associated with epilepsy. See transcript at page 126-7.

The Kondo families' response with supporting medical documentation relating to a successful application by Mr Kondo for a pilots license, is found at MFI 20. This report was also circulated to interested parties, together with the original Medical Examiners inspection report Exhibit 19. No further submissions were received in respect of these further documents.

⁴⁴ See transcript from page 91-101, and Mr Laycock's opinion that the accident was consistent with a wheel locking up, '...(because) the wheel was locking too far ...a disc is likely to grab on the rotor and lock on the brakes, or just the disk itself lock up. So that's a very likely cause of what's the problem in the wheel area and once you have lost one wheel you have got serious problems with the control of the vehicle.' See transcript page 99-100.

79. An external examination was undertaken at the time by Senior Pathologist Dr S Robertson who opined that, while the injuries sustained were horrendous (and sufficient to have caused death), in the absence of autopsy she was unable to say whether natural disease caused or contributed to the accident. Ultimately, the application by the family that no autopsy be undertaken was accepted by the then presiding Duty Coroner.

80. I have now reviewed Dr Robertson's opinion and the comments made by Mr Kojima about the possibility of underlying natural disease. I have also considered the written response of Mr Kondo's family concerning Mr Kondo's health and associated reports, which seek to establish that he had no relevant medical history.⁴⁵

81. In addition, I have further considered the evidence concerning Mr Clarke's observations of the steel frame and helmet and the narrow gap between the frame and the racing position of the helmet, and of the location of a fracture to the helmet casing.⁴⁶

82. I have also considered his evidence about a metal deposit, which he testified to have later found on the helmet.⁴⁷

83. Also relevant to my consideration is the evidence of the passage of the vehicle and its continued high speed as it moved away from its intended path and the further observations concerning the mechanical examination of the vehicle later made by S/Sergeant Le Guier.

84. I note here that all of the evidence tends to establish that Mr Kondo was unable to close the throttle down after initial vibration and that the violent damage done to parts of the wheel hub by the brake callipers occurred just before his loss of control and directly led to the events, which resulted in his death.

85. I now direct myself concerning how, and in what circumstances, circumstantial evidence may be relied upon in determining questions of fact.

86. Having so directed myself, and having considered the parties various submissions, oral and written, and all of the evidence and the inferences which can be properly drawn therefrom, I find myself satisfied that Mr Kondo lost consciousness or was otherwise stunned after hitting and fracturing his helmet against the steel uprights of his vehicle. I am further satisfied that these events followed a mechanical failure which caused an immediate vibration.

87. I also conclude that after receiving this blow, he was unable to exercise control over his vehicle as it sped away from the track towards the safety wall.

88. The following collision resulted in Mr Kondo's immediate death, after which Mr Kojima quickly arrived at the scene of his friend's death and undertook a religious ceremony of farewell.

89. I further find myself satisfied that Mr Kondo's driving was not materially impacted by natural disease at this time and instead that he died from injuries sustained in a jet car accident, which occurred because of vehicle malfunction.

⁴⁵ See MFI 20.

⁴⁶ See Transcript at page 327 and Photographic exhibits 16 and 17.

⁴⁷ I direct myself that in the absence of supporting scientific evidence that little or no weight should be given to this assertion.

90. Accordingly, I find that death occurred at Heathcote Park Raceway on Sunday October, 8th 2006 and that the cause of death was

1(a) Injuries sustained in a jet dragster accident by the driver

91. Having reviewed all of the evidence, together with Mr Hinkling's written submissions and earlier statements, and the submissions made at the conclusion of court proceedings by and on behalf of Mr Kondo's family and Messrs Hinkling and Clarke, I make the following findings concerning the circumstances in which this accidental death occurred.

92. I find that Mr Hinkling was not a credible witness and that I did not believe his evidence.⁴⁸ It follows that where his evidence was contradicted by Mr Kojima or Mr Clarke that little or no weight can properly attach to it.

93. I further hold that Mr Kondo, while an experienced racing car driver in Japan, was an unlicensed driver in Victoria with no previous jet car experience in Victoria or elsewhere. It is further the case that he was not qualified to be licensed by ANDRA⁴⁹ and that the car he was driving was unlicensed.

94. I note that Mr Hinkling always understood that Mr Kondo, who did not speak English,⁵⁰ intended to high-speed performance test the vehicle in Melbourne. Mr Hinkling also knew that Mr Kondo had no previous jet car experience and that the vehicle had not in recent years been submitted for an ANDRA licensing examination.

95. I further note that Mr Hinkling was selling a vehicle, which he had previously and unsuccessfully offered to the market for some 3 years, at a price that was far in excess of its estimated cost.⁵¹

96. I find that it was in these circumstances that Mr Hinkling left Heathcote Raceway early on the Friday evening, this to the mutual surprise of Mr Kondo and Mr Kojima.

97. This departure occurred without Mr Hinkling having fulfilled his undertaking, as arranged through Mr Kojima, to check the vehicle out as suitable for performance testing and without Mr Hinkling having provided Mr Kondo with driver training in the vehicle or, indeed, with any training to drive at speed, whatsoever.

98. Jet Car drag racing is an inherently dangerous and unpredictable sporting activity.⁵² Notwithstanding, it is the case that Mr Clarke, with the tacit support of Mr Hinkling, permitted the performance testing to proceed without conducting any meaningful examination of the vehicle himself, and without considering or giving adequate consideration to the risks involved in such activity.⁵³

⁴⁸ Mr Hinkling was untruthful in testimony concerning the arrangements he made with Mr Kondo about the important issues of driver training and vehicle inspection and preparation. He was also not believed concerning his testimony as to Mr Kondo's reason for bringing the vehicle to Melbourne. See evidence of Mr Hinkling at transcript page 5.

Mr Kojima's claim that he was told by Mr Hinkling that the vehicle was ANDRA compliant see documentation Exhibit 8 produced through Mr Kojima, and transcript 149 (Kojima), was not put to Mr Hinkling and I direct myself to attach little or no weight to it.

⁴⁹ See discussion at transcript page 31 as to what amounts to a suitable training before a driver may become (ANDRA) licensed.

⁵⁰ See evidence of Mr Hinkling at transcript page 6.

⁵¹ See discussion of evidence of Mr Wilton above and footnote 7.

⁵² See discussion from transcript page 17.

⁵³ See the examination undertaken of the vehicle on Friday the 6th of October by Mr Clarke, described above in footnote 20

99. I find that in the circumstances which presented and given his experience and his uncertain knowledge about the immediate past history of the vehicle, that before permitting its use on his raceway, Mr Clarke should have insisted upon a vehicle survey by a properly qualified person.⁵⁴

100. Such a pre-test survey might have been conducted at Heathcote on the Friday, Saturday or Sunday morning and should, at the very minimum, have included an on-site hoisting of the vehicle and a thorough review of its design structure and axle wheel system.⁵⁵

101. I further note here that Mr Kondo's decision to go ahead following Mr Hinkling's departure, and Mr Clarke's failure to intervene, occurred against a backdrop of Mr Kondo's enthusiasm at the prospect of achieving a successful 200mph plus performance prior to his imminent return to Japan. Also relevant was the somewhat charged up atmosphere created at the track by the success of Mr Kondo's earlier speedway runs, at steadily increasing speeds.

102. I also observe that, following the evidence of vibration midway through Saturday October 7th, the interested parties should again have called for a vehicle examination and should not have proceeded further until they were able to reasonably exclude mechanical defect as the cause of such vibration.

103. While I note that it is easy to be wise in hindsight, I further find that the various (cumulative) difficulties, which emerged with both the vehicle and the track on the Sunday, might also have reasonably caused Mr Clarke and Mr Kondo to discontinue the speed testing that they were undertaking on that day.

104. In these circumstances, then Mr Kondo unwittingly drove his jet-car, while increasing its speed performance, until he suffered a severe systems failure on his fourth run on Sunday, which failure resulted in his death.

Conclusion

105. As indicated above, I am satisfied that Mr Hinkling had been requested by Mr Kojima to prepare the vehicle for performance testing and was aware that performance testing was the reason that Mr Kondo was bringing the vehicle to Melbourne.

was wholly inadequate. See the opinion of S/Sgt Le Guier at transcript page 78.

⁵⁴ The fact that the vehicle had previously been examined by ANDRA does not establish its condition when Mr Hinkling later stored it, and I reject the contrary argument raised on this matter by the legal representative of Mr Hinkling. Similarly, the argument that loose wheel nuts may have been caused following its arrival at Heathcote does not account for the excess play in the rear hubs and the contribution to this of the inappropriate wheel bearing construction and the impact this had upon the brake callipers, discovered in his examination by S/Sgt Le Guier.

I note, however, that the rear hub defect might not have been picked up in an inspection if an adhesive had been used which had not yet broken down. See evidence of Mr Laycock at transcript page 111, and it follows that there is no certain evidence that an inspection of the vehicle before testing commenced would have disclosed evidence of the dubious workmanship, or the resulting malfunction which later occurred.

⁵⁵ While I cannot say whether the (later) established defects would have been evident and would have been disclosed by such an examination, I am satisfied by the evidence of both S/Sgt Le Guier and Mr Laycock that it was dangerous in the extreme for Messrs Hinkley, Clarke and Kondo, to proceed without such an examination.

The fact that Mr Hinkling departed Heathcote unexpectedly on the Friday, coupled with Mr Clarke's earlier undertaking to Mr Kondo to allow performance testing at Heathcote, may have contributed to Mr Clarke's lack of decisiveness concerning these matters. Further, the fact that Mr Clarke had a broken relationship with ANDRA at the relevant time also appears to have been a contributing factor.

106. Rather than comply with Mr Kojima's request, it is clear from Mr Hinkling's own evidence that he did not undertake or cause others to undertake an inspection and preparation for testing.⁵⁶

107. I am also satisfied that (had they have then been present), the excessive free play and loose wheel nuts would have been disclosed by any examination which included a rocking of the wheels once the vehicle was placed on a hoist.⁵⁷

108. I also find that Mr Hinkling's failure to bring the matter of his omission to the attention of Mr Kondo and Mr Clarke, prior to the commencement of Mr Kondo's driving, took from them one opportunity to make an informed decision about how they ought then to proceed.

109. Over and above this omission by Mr Hinkling, the failure of Mr Clarke, Mr Kondo (and Mr Hinkling), all whom had either experience or training in engineering to undertake either jointly or individually, anything approaching an adequate risk evaluation of the ongoing performance testing of the jet car 'Aussie Thunder', was dangerous in the extreme.

Signature:



PETER WHITE
CORONER
15 February, 2012



I direct that a copy of this finding be provided to the following:

DISTRIBUTION:

Mrs Yuko Kondo, the widow of Manabu Kondo, for distribution to the family of Mr Kondo.

The Acting Commissioner for Police, in the State of Victoria.

The Consul-General, Consulate of Japan, in the State of Victoria.

The Secretary, the Department of Planning and Community Development, in the State of Victoria.

The Chief Executive Officer, Australian National Drag Racing Association.

Mr Hiroshi Kojima.

Mr Russell Clarke.

Mr Kevin Hinkling.

Mr James Bruce.

⁵⁶ It is not in dispute that before leaving for Victoria, Mr Hinkling did make an adjustment to lengthen the steering column, this to better allow Mr Kondo to control the vehicle. See transcript page 265.

⁵⁷ See evidence of Senior Sgt Le Guier in his report at exhibit 4 and at transcript from page 74. Such an examination may or not have disclosed the use of inappropriate wheel bearings (Laycock page 110) and I further note that the evidence does not establish whether Mr Hinkling was previously aware of this matter.