



CORONERS REGULATIONS 1996

Form 1

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25th February, 2010
Case No: 1113/08

RECORD OF INVESTIGATION INTO DEATH

I, **JOHN OLLE**, Coroner,

having investigated the death of NATHAN AAKASH WSOL with Inquest held at Sale on the 21st to 22nd October, 2009

find that the identity of the deceased was NATHAN AAKASH WSOL and that death occurred on 16th March, 2008 at Alfred Hospital from

- 1a. HEAD INJURY
2. MYOCARDITIS

in the following circumstances:

Shortly after 6.00pm on the 15th March, 2008, Nathan Wsol was travelling at high speed along Dawson Street, Sale. He attempted to overtake a motor vehicle which was undertaking a right-hand turn into Cherry Place. A glancing impact caused Nathan's vehicle to lose control. He collided head-on into a tree.

Nathan was airlifted to the Alfred Hospital. He died the following day.

A coronial brief has been prepared by Sergeant Colin Schmidt of the Major Collision Investigation Unit. I have attached a Summary of Evidence prepared by Sergeant Schmidt to this finding. I am satisfied that the summary fully and accurately addresses the circumstances of death of Nathan Wsol.

The focus of this inquest has been the role of police, in particular:

1. The appropriateness of the police response to a call for assistance received by Constable Indian at approximately 5.55pm on 15 March, 2008; and
2. The appropriateness of conducting a pursuit.

1. The Response of Victoria Police

At the outset of the inquest, I expressed concern that the options, discussed by Officers Barry and Cooper, did not include the option of parking their vehicle in Nathan's driveway,

thus blocking his exit and proceeding to engage him to ascertain his state of mind. Further, I queried that option of arresting him whilst driving.

Having heard evidence of Sergeant Goodsell, Senior Constable Barry and Mr Cooper, I am satisfied that it was never the intention of attending police to allow Nathan to drive his vehicle.

Senior Constable Barry was the senior officer. He unequivocally rejected a suggestion of allowing Nathan to drive that afternoon. He was affronted by the suggestion he would permit Nathan to drive, unlicensed and intoxicated, for the purpose of arresting him.

He explained that having seen Nathan's vehicle in the driveway with its bonnet up, the urgency had lessened. Senior Constable Barry chose to park the police van in a position outside the premises which Nathan could not observe, but would allow them to sight Nathan's vehicle.

At a view I attended on the first morning of the inquest, I was shown the position adopted.

Senior Constable Barry explained that if Nathan had attempted to drive his car, he would block his exit with the police van.

The reasoning of Constable Barry, was based on his knowledge of Nathan over a number of years. Nathan could be co-operative, however, in recent years, his behaviour was deteriorating and prone to aggression.

Senior Constable Barry chose to gain more information from the station. In circumstances whereby the urgency had diminished, and confident they could observe Nathan's vehicle if it moved, I find the decision of Officers Barry and Cooper to observe the vehicle whilst it was obtaining further information, in order to consider the most appropriate means of approaching Nathan, was reasonable.

They were entitled to believe they could prevent Nathan exiting the premises.

Unfortunately, a momentary distraction whilst performing various tasks within the police vehicle coincided with Nathan exiting his unit, starting his car and driving to the road unobserved.

2. The decision to conduct a pursuit

The first time the members observed Nathan, he was at the roadway ahead of them. He sighted them and drove away at high speed.

Subsequent evidence was revealed that Nathan's mother, hoping to discourage Nathan from driving, told him the police were out the front. She had apparently observed the van. The presence of police did not dissuade Nathan.

The manner in which he drove his vehicle along the service road of the Princes Highway was dangerous and would likely place his life and the lives of road users at risk.

Importantly, in terms of assessing the decision of police to take pursuit, the following factors are relevant:

- 1) He had expressed a determination to drive, prior to police being called;
- 2) Having been informed police were in attendance, he nonetheless chose to drive;
- 3) His driving was dangerous, prior to the pursuit commencing.

Indeed, the observations of Nathan's driving by Officers Barry and Cooper was the catalyst for the decision to pursue him.

Officer Barry had no doubt Nathan's driving would place his life and the lives of others at risk. He hoped Nathan would cease if aware police were pursuing. Nathan had previously complied with police directions.

Information not in possession of Officers Barry and Cooper

Prior to police being called, Nathan's mother, father and neighbour were terrified. His behaviour had escalated to extreme. His anger and aggression palpable. The CCTV footage is evidence of his demeanour. Nathan was fuelled by alcohol and drugs. He had stewed all day about his earlier arrest.

Sadly, he was out of control. Officers Barry and Cooper had no knowledge of the extreme behaviour Nathan was exhibiting.

In this frame of mind, Nathan would not comply with police attempts to intercept him nor would he pull over voluntarily.

Did the pursuit exacerbate Nathan's driving?

The reason police were first called for assistance was to prevent Nathan driving his vehicle.

Nathan was enraged and becoming increasingly so, expressing the clear desire to drive his car. Why he was determined to drive and for what purpose is unknown. It is certain that his driving would pose a danger to himself and other road users considering his alcohol and drug affected state, combined with his extreme anger.

Nathan drove in an extremely dangerous manner along the service road prior to the pursuit commencing.

I find there is no reasonable basis to link the dangerous driving of Nathan to the police pursuit.

Conversely, had the police remained stationary when Nathan commenced his brief but terrifying journey, there is no sensible reason to conclude the manner of his driving or the tragic outcome would have been different.

The police driving was observed on CCTV footage. Witnesses Eastwood and Smart deposed at inquest the distance between the vehicles along the service road. They spoke of the appropriate manner in which the police van was being driven.

Nathan almost impaled himself into a fence at Dawson Street/service road intersection. Officers Barry and Cooper explained they were hundreds of metres behind Nathan. Witnesses Raikes, Niegut and Venables were at the vicinity of the accident scene. None of them heard a siren when the collision occurred. Their evidence supports Officers Barry and Cooper's assessment of the significant distance they travelled behind Nathan's vehicle. The collision occurred shortly after the police van commenced travelling along Dawson Street.

The pursuit in total covered 820 metres. 170 metres in the service road and 650 metres along Dawson Street.

I accept Officer Barry's evidence that his vehicle was 500 metres behind Nathan's vehicle. That is, his vehicle had only travelled some 150 metres along Dawson Street when the collision occurred.

The death of Nathan Wsol is a tragic event. Police were called to assist a family in distress. Their 17 year-old son was out of control and expressing his intention to drive his vehicle.

Mrs Wsol, whose quiet dignity was displayed through the course of this inquest, explained in her statement her fear and concern for Nathan that afternoon:¹

Senior Constable Barry is an experienced professional police officer. His demeanour and evidence greatly impressed me. He knew Nathan and sought to implement the most safe, effective means to prevent Nathan driving that afternoon.

He hoped to diffuse, not exacerbate, the situation.

Through no fault of his, Nathan carried out his stated intention, to drive.

I find no basis to criticise any member of police for their role in respect to:

1. The manner in which they sought to respond to the call for assistance; or
2. Their decision to pursue Nathan when he took flight.

This investigation has been exhaustive. The death of Nathan Wsol has touched the lives of many.

Nathan wasn't wearing a seatbelt. Quite simply, it is not possible to know his intentions whilst driving that afternoon.

¹ "Sometime after 5:00 p.m. Nathan arrived at the flat he said he was dropped off by someone and was saying that he had to take the car. I told him to come inside and have a sleep. He was totally off his brain, it wasn't Nathan. I have never seen him like this before.... He was abusive and total(ly) unreasonable. He scared me..... He eventually put a tyre and wheel back onto the car.... I couldn't stop him he was getting angrier and angrier."

The pursuit was of very short duration - ½ to ¾ minute in total. At the time of the collision, whilst 500 metres behind Nathan, Senior Constable Barry had unilaterally decided to terminate the pursuit.

The Pursuit Controller

Sergeant Goodsell, the pursuit controller, cannot be criticised for his role. However, I consider it imperative that when a pursuit is called, a dedicated police officer must be the pursuit controller.

It is essential that the pursuit controller is not involved in the pursuit

A pursuit controller must analyse the information being conveyed by members, so involved, and ensure that the Safety First principal is strictly adhered to.

A pursuit controller must be dispassionate and removed from the pursuit to ensure that the risk analysis is conducted swiftly and objectively.

I thank the coronial investigator for his excellent brief. I thank Counsel for their assistance.

I offer my condolences to Mrs Wsol and members of the family for the loss of Nathan. I note her quiet dignity. I trust that this inquest has enabled her to hear first hand what the police were attempting to achieve when they answered the call to attend a premises that afternoon.

I note the distress suffered by Senior Constable Barry.

Senior Constable Barry and other officers involved in this case bear no responsibility for Nathan's death.

Nathan was an angry young man, fuelled with alcohol and drugs. He was determined to undertake high risk behaviour.

No person, no family member, no police officer bears any responsibility for Nathan's death.

Medical Investigation

On the 20th March, 2008, Dr Michael Burke, Forensic Pathologist at the Victorian Institute of Forensic Medicine, performed an autopsy on the body of Nathan Wsol. He found the cause of death to be head injury and myocarditis. Dr Burke commented that the myocarditis is most commonly caused by a viral infection but other causes include autoimmune disease and effects of drugs.

Toxicological examination showed alcohol concentration at 0.09 g/100mL. In addition, tests revealed the presence of cannabis. Morphine, diazepam, midazolam and propofol may have been administered by medical personnel subsequent to the collision.

Finding

I **find** that **Nathan Wsol** died of head injury with a contributing factor of myocarditis.

John Olle

Coroner

23rd October, 2009