



CORONERS REGULATIONS 1996

Form 1

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Case No: 1311/04

I, **GRAEME JOHNSTONE**, State Coroner,

having investigated the death of NICOLE MAREE KNOX-SMITH with Inquest held at Coronial Services Centre, Southbank on the 26th June to 3rd July, 2006

find that the identity of the deceased was NICOLE MAREE KNOX-SMITH and that death occurred on 16th April, 2004 at Princes Freeway, Point Cook, Victoria 3030 from

1(a). MULTIPLE INJURIES (FRACTURE DISLOCATION CERVICAL SPINE, FRACTURED LARYNX, MULTIPLE LOWER LIMB FRACTURES)

in the following circumstances:

Summary of circumstances

Ms. Knox-Smith was aged 29 at the time of her death. She was a Document Controller with Origin Energy and lived in Werribee.

At about 8.36 am, the morning of the incident, Ms. Knox-Smith was travelling east on her motorcycle on the Princes Highway near the exit to Forsyth Road, Hoppers Crossing (Forsyth Road on ramp) when she was involved in a collision with a stolen motor car. She collided with a stolen Ford Station wagon (Registered Number SLZ 036) which was being driven by Mr. Jeffrey Dobbin west (the wrong way) on the east bound section of the highway. He was travelling in the emergency lane nearest to the centre median. Mr. Dobbin was heavily under the influence of drugs at the time of the pursuits and collision.

At the time of the collision Ms. Knox-Smith was in the second lane from the centre median. The collision between her motor cycle and the stolen car was at right angles and at 100 kilometres per hour. Mr. Dobbin had attempted a "U Turn" across her path with the apparent intention of travelling up the Forsyth Road on ramp.

The police investigator's summary in the brief of evidence for the Coroner effectively explains the sequence of events near to the time of the collision thus:

"Nicole Knox-Smith was riding her Yamaha AY 222 in the second travelling lane from the centre median strip in an easterly direction towards Melbourne. Directly behind Knox-Smith was a commercial heavy vehicle driven by witness Pendlebury. When Dobbin executed the "U" turn he did so directly into the path of Knox-Smith. She did not get the

opportunity to either apply the hand or footbrake on the motor cycle. The collision occurred in the centre of the second travelling lane from the centre median strip.

The front section of the motor cycle came into contact with the near side rear quarter panel in the approximate centre of the rear wheel arch. Knox-Smith struck the stolen Ford station wagon at 100 kilometres per hour and had no chance of survival."

Shortly prior to the collision Mr. Dobbin had been pursued by police. This pursuit was the second of two police pursuits involving a separate stolen vehicle being driven by Mr. Dobbin that morning. The second of the pursuits had been abandoned a few minutes prior to the collision and the police had been following Mr. Dobbin along the Princes Highway in an attempt to "hem him in" when the collision occurred. A few kilometres before the collision and after he entered the Princes Freeway the vehicle being driven by Mr. Dobbin had begun to run out of fuel. As a result he was driving at slow rate of speed being followed by police when he crossed through a gap in the centre median wire rope barrier to drive the wrong way down the freeway. Apparently he was attempting to create distance between himself and the police so that he could escape.

Seconds before the first of the police vehicles (Sunshine 307) entered the Princes Freeway there was a potential opportunity for all police vehicles to stop. One police officer, a sergeant (Wyndham 650), gave the radio command at 8:33:30 "*he's driving pretty bad, just all units back off thanks.*" Unfortunately, the early part of the message that gave a very clear instruction "*all pull over and just let him go*" was overridden by another officer's radio call. Wyndham 650 was not aware that his earlier command had not been heard. The 650 unit continued to give instructions to the effect "*let him go*" but by then, it was probably too late as police vehicles and the offender were locked in a slow and problematic following operation on the freeway.

During the morning Mr. Dobbin had also committed a number of burglary and theft offences in the Werribee/Seaholme/Hoppers Crossing area.

It is noted that all police involved in the incident gave evidence and were questioned about their role and perspective of the events.

Background of directly involved individuals

Ms. Knox-Smith was described in the police brief for the Coroner 'summary of the circumstances' as being a:

"29-year-old resident of Werribee. She was a Document Controller for Origin Energy for many years. In early 2004 Nicole decided to become a personal trainer. She enrolled with the Australian Institute of Fitness and the day she was killed was her very last day of that course. Nicole was a very energetic and fit woman who loved life and that is one of the reasons for riding a motor cycle, the freedom."

Mr. Dobbin was described as being aged 30 at the time of the collision. He lived in Reservoir and was "*a massive user of illicit drugs*" and tended to "*lose sections of his life from impairment.*" He did not hold a driver's licence.

Following the death of Ms. Knox-Smith, Mr. Dobbin pleaded guilty at the Melbourne County Court to a number of counts including one of Culpable Driving Causing Death. He was sentenced on 24th November 2004 to a total effective sentence of 10 years with a minimum of 8 years to be served before becoming eligible for parole.

It is noted that Mr. Dobbin had a lengthy history with a number of driving offences and was a disqualified and unlicensed driver.

**The lead up to the incident and the incident
(Including the first and second pursuits)**

In the Coroner's brief the police investigator's "*summary of circumstances*" explained the lead up to the incidents thus:

"On Wednesday the 14th of April 2004 Jeffrey Allan Dobbin had his young daughter taken from his care by his sister in law. Dobbin, has been a very heavy illicit drug user over many years. As a result of his daughter being taken from his care, he went on a 'bender'. From mid afternoon on that Wednesday up until about 8 pm the following day Dobbin ingested or injected twelve caps of heroin, a shot of speed, some rock heroin, ten codeine based tablets and ten Zannex tablets. By this point in time Dobbin had no idea what he was doing."

- The first pursuit

The summary indicates that at approximately 8.20 pm, Mr. Dobbin:

"stole a green coloured Ford Fairlane sedan registration number QBZ 195 from High Street, Thornbury. For the next ten hours Dobbin can not give an account for his movements. He can not explain what he was doing in the Werribee area or even how he got there. He can not remember being in Werribee before."

Earlier in the day, at approximately 6.30 am, Mr. Dobbin was disturbed:

"whilst committing an aggravated burglary inside the house at 2 Seaview Crescent, Seaholme. The complainant Jason Catlow chased Dobbin and observed him get into the stolen Ford QBZ 195 and drive away. Catlow called police and after checking realised the garage had also been broken into. His motor car had been criminally damaged with jemmy marks in an attempt to open the vehicle. Numerous items were stolen."

Then the police arrived at the address and, whilst talking to Mr. Catlow at the front of his house, they all observed Mr. Dobbin drive past. The:

"Police began patrolling for the Ford QBZ 195 with the assistance of the Werribee crime unit. Shortly before 7am the Altona North divisional van, call sign Altona North 311, was attempting to catch up to QBZ 195 which was the suspect for this earlier aggravated burglary, travelling west in Kororoit Creek Road, Altona North. After some time, the Altona North 311 unit declared it was in pursuit of the suspect vehicle. The pursuit crossed the Princes Freeway in Kororoit Creek Road, then west in Sayers Road before the Altona North 311 unit abandoned the pursuit for safety reasons. The last sighting of the Fairlane was in Sayers Road in the vicinity of Morris Road. A search of that vicinity then commenced with the assistance of other units and an Air Wing helicopter, call sign Air 495. Sergeant Close of Altona North, call sign Altona North 251, was the declared Pursuit Controller for the duration of this pursuit. Amongst the other units assisting in the subsequent search was Werribee 251, Sergeant Kissak of Werribee."

Following the abandonment of the first pursuit the stolen Ford was observed to be travelling at between 60 and 80 kilometres per hour through the car park of the Werribee Mercy Hospital. The police summary explains that:

"The exit boom struck the vehicle as it passed the guard box luckily causing no damage. The stolen Ford was driven at a speed and manner that was dangerous to the public. The vehicle was positively identified as the stolen Ford that Dobbin was driving."

The stolen Ford was sighted in numerous other locations and on each occasion the various descriptions of driving were dangerous to reckless. Between 7.20 am and 7.45 am the stolen Ford was sighted:

"travelling very fast along Beach Road, Werribee South. The stolen Ford failed to negotiate a curve in Beach Road and left the road coming to stop in some bushes. Dobbin was unable to move the vehicle from its crashed position. He left the stolen Ford and approached a man and woman and requested assistance to push the Ford out. The description given by this witness was of a good likeness to Dobbin and she formed the opinion that Dobbin was "off his face" on drugs because she could not smell alcohol. Dobbin was not assisted and abandoned the stolen Ford sedan."

- The lead up to the second pursuit

The summary then describes Mr. Dobbin's movements following the crash of the first stolen vehicle. He then proceeded to steal another vehicle and:

"walked from where he left the stolen Ford to the BP Caravan Park which is situated on O'Connor's Road near the intersection of Beach Road. Once at the Caravan Park he broke into and entered the caravan owned by John Dickinson. Dobbin stole a gold watch and shortly after leaving the caravan he was confronted by Dickinson and two friends. His pockets were emptied and Dickinson's watch was returned. Dobbin then ran away down towards the back of the Caravan Park, later doubling back to Dickinson's caravan. Parked beside his caravan was Dickinson's 1987 white Ford Falcon station wagon, registration SLZ036. Dobbin used the numerous keys in his possession to start and steal Dickinson's Ford station wagon."

- The second pursuit and its termination

Several witnesses, both civilian and police, observed the driver of the stolen Ford station wagon driving recklessly in numerous locations. The:

"stolen Ford Station wagon SLZ 036 was later observed travelling north in Duncans Road, before turning right onto the inbound lanes of the Princes Freeway where Wyndham 611 pursued it. The stolen Ford then came under the observation of Air 495 shortly after, and Werribee 251 (Sergeant Kissack) became the Nominated Pursuit Controller."

The investigator's summary notes that:

"Acting Senior Sergeant Normington (Werribee 260) was in the area and monitoring the pursuit. The Pursuit Controller Sergeant Kissack was actively monitoring, Air 495 (Police Helicopter Bullas and Courtney) was providing direct observations and running short on fuel. The primary pursuit unit was a specialist traffic unit pursuing the stolen Ford SLZ 036."

And, as to Mr. Dobbin's movements:

"Dobbin passed under the Point Cook Road overpass and exited the Princes Freeway into High Street, Laverton before turning left into Railway Avenue and travelling back towards the Point Cook Road, parallel to the Freeway."

The investigator summarised the road environment and the abandonment of the pursuit as follows:

*"Railway Avenue is a wide thoroughfare that intersects with the Aviation Road shopping precinct adjacent to the Point Cook Road overpass. As **the pursuit continued into the shopping precinct Pursuit Controller Sergeant Kissack ordered the termination of the pursuit.**" (words in bold added by Coroner)*

Shortly prior to the abandonment of the pursuit Mr. Dobbin was travelling at speeds in excess of 150 kilometres per hour along the freeway.

- Police actions following abandonment of the pursuit

Following the abandonment of the pursuit the police operation continued in a mode that was designed to "hem the offender in". The investigator's summary notes that:

"Dobbin continued to the intersection of Railway Avenue and Point Cook Road where he drove clockwise round the roundabout at a very fast rate of speed. Subsequently as he turned onto Point Cook Road exiting the roundabout he drove up onto the footpath narrowly missing a pedestrian. The pedestrian had to quickly move out of the vehicle's way or she would have been impacted. If an impact had taken place serious injury would have been the only outcome with death a possibility."

Then:

"Air 495 continued to monitor the stolen Ford, which crossed the Point Cook Road overpass, continuing south in Point Cook Road. As the stolen Ford travelled down Point Cook Road Sergeant Kissack's termination instruction was reinforced over the Police communications and Air 495 noted that all police units were well back at a safe distance. It appeared that the pursuit was fully disengaged and that Dobbin was about to exit the populated area and return to the Werribee South area."

And:

"Shortly after Dobbin performed a "U" turn in Point Cook Road and began returning north, before turning left into Shane Avenue. Shane Avenue is a long semicircular street that intersects Point Cook Road at two points."

After Dobbin turned into Shane Avenue from the southern roundabout it was monitored that Wyndham 650, (Acting Sergeant Basham) a traffic management supervisory unit, intended to take up a position to observe the offender at the northern roundabout. Wyndham 650 was in an unmarked Police vehicle."

Significantly, Mr. Dobbin then drove through the northern roundabout back into Point Cook Road and he entered the on-ramp to the Princes Freeway outbound lanes (travelling towards Geelong).

- The entry of Mr. Dobbin's vehicle and police onto the freeway

However, just before Mr. Dobbin entered onto the freeway, he:

"passed through the northern roundabout Acting Sergeant Basham's (Wyndham 650) transmission showed concern about the manner in which Dobbin travelled through the roundabout, and his very clear instruction was that there was to be no re-engagement of the pursuit."

Unfortunately, Acting Sergeant Basham's radio instruction was overridden by another call. He had said *"all pull over and just let him go."* This call was made shortly before Sunshine 307 and the other police units entered onto the freeway unexpectedly to be faced with a slow moving vehicle. Once that occurred risk management decision making became difficult with a number of competing potential hazards to consider.

The sequence of events following Sergeant Basham's missed instruction was:

"It was then observed by Sunshine 307 that Dobbin was westbound on the Princes Freeway. Acting Sergeant Basham (Wyndham 650) again communicated that units were to "let him go".

Over the radio Sunshine 307 responded that Mr. Dobbin was only travelling at 40 kilometres per hour and they were finding it difficult to fall back. The suggestion was that this slow progress was in itself creating a hazard to outbound traffic on the freeway. That:

"Shortly after this communication, Air 495 transmitted that the stolen Ford had crossed the median strip onto the incorrect (inbound) lanes of the Freeway. Wyndham 650 again directed that no Police unit was to follow the stolen Ford. The Intergraph radio operator who added that all units should "back off" repeated this instruction."

And the police investigator's summary continues:

"Sunshine 307 stopped in the centre emergency stopping lane, Geelong bound when Dobbin crossed the median strip and commenced to travel on the incorrect side of the freeway. Dobbin believed the pursuit was called off when he observed the police cars stopping. He knew there were no police cars following him. To put further distance between himself and the police Dobbin crossed the centre median strip, between the Brifen barriers, smashing down the security posts allowing access to the east bound (Melbourne) lanes. At this point the stolen Ford station wagon commenced to run out of Liquid Petroleum Gas. At this time Dobbin was travelling on the emergency-stopping lane adjacent to the centre median strip the wrong way. He was travelling against the flow of traffic in peak hour. As Dobbin confronted them, the oncoming drivers took different types of evasive action. Some just slowed, others changed lanes and some just froze and drove straight past him in disbelief."

- The explanation for Mr. Dobbin's slow speed on the freeway

On the freeway the vehicle being driven by Mr. Dobbin ran out of LPG. The explanation is summarised in the brief for the Coroner thus:

"Dobbin then switched the engine fuel from LPG to petrol and the engine immediately cut out. He quickly switched it back to LPG and the engine was picking up small quantities of

fuel and then drawing air. The engine was running in "spits and spurts" and whilst this was occurring Dobbin commenced executing a U-turn across the four lanes of the east bound carriageway to access the onramp of Forsyth Road. In any event he was attempting to put a little extra distance between the Police and himself."

The collision and its aftermath

Apparently the police in the Sunshine 307 vehicle were watching the stolen Ford's progress and saw a large amount of dust rise near the Forsyth Road on ramp. As they feared that the stolen Ford had been involved in a collision the Police vehicle was accelerated flat-out to the collision scene.

Also Air 495 transmitted that the offender had attempted to perform a "U" turn near the Forsyth Road overpass and had collided with a motor cyclist.

After the collision Mr. Dobbin continued on in the stolen Ford station wagon and came to a stop on the northern side of the Princes Freeway facing east. He immediately left the vehicle and ran in a northerly direction to try to escape. He did not try to help Ms. Knox-Smith. He was arrested shortly after by a number of police who were following him on foot. Some police officers went to Ms. Knox-Smith in an attempt to administer first aid.

The Helicopter (Air 495) landed at the scene and confirmed that the injuries to the motorcyclist were fatal.

Road and weather conditions

At the time of the collision the road was dry, visibility was excellent and traffic was assessed by police investigators as being "heavy."

The detail of the mechanical condition of the involved vehicles

The police "summary" for the Coroner's brief of evidence notes that:

"Senior Constable Borg, a Major Collision Investigation Group Mechanic examined Ford SLZ 036 identifying it would have been classed as being in an unroadworthy condition due to perished outer tie rod end dust caps and front shock absorbers weeping hydraulic oil. The inspection did not reveal any mechanical fault, which would have caused or contributed to the collision. He also examined the Yamaha solo AY 220 and found it to be in a roadworthy condition. This inspection did not reveal any mechanical fault, which would have caused or contributed to the collision. He also examined Ford QBZ 195 identifying it would have been classed as being in an unroadworthy condition due to the near side rear tyre lacking serviceable tread depth and structural rust in both "C" pillar bases."

The radio transcript and discussion on the timing of the relevant messages

The radio transcript starkly illustrates the problems of multiple vehicles managing a pursuit and then in the context of an ongoing operation designed to continue in order to "hem" the offender in. Some of the relevant sections of the transcript are as follows (the times in bold, underlined and larger font have been added later):

"Roger.

Altona North 311, What's the rego of the vehicle.

8:27:00

Altona North, stand by. Wyndham 611, the registration Sierra - Lima - Zulu, we don't know the numerals.

Zero - three - six

Zero - three - six, is that correct? Sierra - Lima - Zulu - zero - three - six.

Affirmative.

Roger that. Altona North 311.

Just for the members that are following him, be aware he was fairly erratic when we terminated our pursuit earlier with him, over.

Roger that. Wyndham 611, a Beacon warning applies, he was quite erratic earlier when they abandoned the pursuit.

8:27:30

Roger that. Still very erratic, um doing about 150.

Doing 150, 150 kays, confirming

Affirmative.

Roger. VKC to Werribee 251.

251.

251, ah, Wyndham 611's following 150 kays in towards Melbourne, you happy to be a pursuit controller?

251, ah, yes, I've got Air Wing on him, ah I'd like the Air Wing to stay on him.

8:28:00

Yeah Roger. Is that affirmative for pursuit controller please?

Yeah

Air 495.

Air 495, go.

Air 495, just gone under Forsyth Road. As I said before, we've only got five minutes fuel before we have to leave.

Werribee 251 Forsyth Road and the highway and they've only got five more minutes left of fuel.

Seeing we've got him we can still, um, is there another air unit that can come out?

I don't believe so, Air 495?

Go again, sorry.

There's no other Air Wing I take it?

8:28:30

Can make the call, um, but our police crew wasn't starting until about ten.

Yeah Roger. My sergeant has actually rung 251, there's no Air Wing available.

Crime 542

Crime 542 go ahead.

Can we get the dog coming to this one, just in case he does a runner.

Yeah roger, 211's behind the "toggie"

495, he's under Point Cook Road continuing into Melbourne.

Roger, Point Cook Road, Wyndham 611, just your welfare please.

8:29:00

611 fine still a couple hundred metres away (indercipherable)

Werribee 251, how's he going through the traffic?

Wyndham 611

611(indercipherable)

611, your radio is terrible. Canine 211, hows the traffic.

Traffic's medium.

8:29:30

495 brake, he's turned off at High street and he's nearly come to grief, he's back on track and heading down High Street.

I think he might have stopped, just bear with us.

I've got both of you telling me the traffic, Air 495, you go please.

495, he's turned off, he's down High Street approaching the section of railroads place, and turning left past Laverton Railway Station.

Roger that. Canine 211.

Canine 211, I'm going back.

Roger, your traffics right?

Canine 211, I think they've come off the highway now, haven't they?

8:30:00

VKC to Wyndham 611.

Laverton Railway Avenue at Laverton back west down coming back toward Aviation Road.

Roger that. Canine 211 copy.

211 received that.

Werribee 508, we've gotta come off the freeway to Railway Ave at ah, From Point Cook Road.

Roger.

495, 100 metres from Aviation Road approaching the roundabout.

8:30:30

Werribee 251 abandon this, abandon this, and get the chopper just sit on him please.

Roger that. All units please abandon pursuit thank you.

ABANDON PURSUIT TONE AUDIBLE"

The abandon pursuit instruction occurs and is combined with a very short audible tone. Then the offending driver continues driving with the following recoded transcript describing the path being taken:

"And Air 495 you're still with him for the moment while you can last that long.

Affirmative he's back over Point Cook Road but like I say, he's turned right around the roundabout. Unfortunately, we gonna have to go in the next couple of minutes he's, he's just leading a merry dance around the roundabout, now heading back over the Point Cook Overpass, back down towards Point Cook.

8:31:00

Roger. Werribee 508 copy - Point Cook Road back towards Point Cook.

Yeah 508 received that.

495 continuing down Point Cook Road, ah, 508.

There's a couple of uniform units just going over freeway south bound at this stage.

Roger that. Over the freeway south bound, thanks.

8:31:30

495, all units have dropped back to a good safe distance but he's still going fairly hard.

Roger that. 251 received.

Received that. I want this abandoned, can we see if we can hem him in, he's obviously clearly not gonna stop and hopefully he'll come to grief all by himself and we'll track him down again. (bold added by Coroner to this instruction from the pursuit controller - Sergeant Kissack)

Roger.

Yeah. Pass Dunning's Road, still heading south towards down Point Cook Road.

8:32:00

Roger. South down Point Cook Road, which one did he just cross south 495.

Approaching Sanctuary Road roundabout.

Roger that. 508 received.

Received.

Turned right.

Roger, right down where 495.

Hobsons Bay 650.

8:32:30

Hobsons Bay 650.

Roger, I'm in a "Q'ey" heading out that way.

Roger. And 650, do you know what your looking for.

White wagon, isn't it?

Yeah affirmative, we've got a rego, it's an '87 vehicle, ah Sierra - Lima -

Air 495, he's on Shane Avenue heading back north towards Seabrook.

Roger, 650 copy.

Going that way in a "Q'ey".

8:33:00

roger. And 251 received Hobsons Bay 650 is two up in a Q'ey.

Wyndham 650.

Wyndham 650, go.

We're at Seabrook and Shane, ah, two up in an unmarked car which, here he comes, he has just gone past us.

Yeah approaching the intersection of Seabrook.

Yeah roger. 6501 Seabrook now.

Melton 650.

8:33:30

...he's driving pretty bad, just all units back off thanks.

Roger that. All units back off please from Wyndham 650, ah, all units back off, and the other 650, Melton.

There's that many 650's its hard to judge what we're doing can you tell Hobsons Bay that he's 610, all pull over and just let him go, let the chopper follow him.

Yeah roger. Wyndham 650, the Air Wing's about to drop out of the sky in about two minutes without fuel.

Yeah, Well too bad just let him go.

Roger.

Sunshine 307.

8:34:00

Sunshine 307 go ahead.

Yeah, Sunshine 307 he's back onto the freeway west bound.

Roger, on the freeway west bound thanks units.

650, I'm not sure if I was quite clear enough - Let him go.

Yeah roger, all units from 650, he's quite erratic, let him go.

Sunshine 307 affirmative, we're now doing forty kilometres on the freeway trying to let him get away, he's ah, doing 40'ks in front of us.

Roger he's on the freeway doing 40 kilometres, four zero."

Then the next phase of the incident commences:

8:34:30

"495, the vehicle is slowing, it's getting in the way of all other traffic now.

Roger.

VKC to Wyndham 650.

650, he's ah obviously trying to head back towards Werribee South. I believe there's still units down Werribee South.

8:35:00

650, are you going after him?

No, why would I go after him. I told everyone else not to go after him.

Yeah roger, I'm just confirming.

Air 495, just for your information, he's crossed onto the opposite traffic at (indecipherable) Road and he's on the east side lane. The units are far enough back.

Roger.

8:35:30

650, no one is to follow that unit, if the chopper has to go, the chopper has to go, he went past me and almost had an accident, I don't want to be involved in another one.

All units do not follow the vehicle please, all units back off.

Yeah 150, I think all units better come to a stop.

Crime 542

Crime 542.

542, can I confirm that Werribee 307 is still out with the first.

8:36:00

Air 495.

Stand-by Air 495.

495. This person just turned in front of a motor cyclist, can we have an ambulance at Forsyth Road overpass please.

Wyndham 650.

Air 495, were going to land at Foryth Road next to K-Mart.

Roger. Wyndham 650.

Heading that way now.

8:36:30

Werribee 251, we'll be out very shortly.

Roger.

Werribee 260.

260.

260. Is that actually on the overpass or on the freeway?

Ah, Air 495, they've got the offender in custody now. We're gonna try and land somewhere here for this motor cyclist.

8:37:00

Confirming one in custody."

Discussion on radio commands

As indicated, the section in the transcript at **8:33:30** where the Wyndam 650 unit (Acting Sergeant Dennis Basham) is reported as having said " *..he's driving pretty bad, just all units back off thanks*" is, unfortunately, not complete. The beginning of the signal was overridden by another call. The hidden instruction by the Sergeant was "***all pull over and just let him go.***" (bold added by the Coroner) No units pulled over as they did not hear the instruction and the Sergeant was unaware that this part of his radio instruction was not heard. Over the next two minutes (plus) Sergeant Basham (as 650) continued to re-enforce his original instruction with words like:

"all pull over and just let him go, let the chopper follow him."

"Yeah, Well to bad just let him go." (to the fact that the Air Wing was almost out of fuel)

"650, I'm not sure if I was quite clear enough - Let him go." (to the discussion that the vehicle is being followed onto the freeway)

"Yeah roger, all units from 650, he's quite erratic, let him go."

"No, why would I go after him. I told everyone else not to go after him." (to the question "are you going after him?)

"650, no one is to follow that unit, if the chopper has to go, the chopper has to go, he went past me and almost had an accident, I don't want to be involved in another one."

All units do not follow the vehicle please, all units back off."

Acting Sergeant Dennis Basham, was in an unmarked police car. Mr. Dobbin went past him at 70 kilometres and locked up his brakes on entry into a roundabout. Sergeant Basham considered that the driving was erratic. Sergeant Basham was driving and executed a 'U' turn to head in general direction of the offending vehicle. He believed Wyndham 251 (Kissack) was in control. He noted that he directed over the radio *"all pull over and just let him go, let the chopper follow him"*. Unfortunately, his instruction was overridden by another call. Sergeant Basham considered his direction *"is a direction"*. His thinking on the direction was that the driver had gone into roundabout at 70 kms and locked up brakes. He said in evidence that he had *"though I'd told units to pull over."* His risk analysis was that *"he should not be followed by any units on the ground."* Sergeant Basham noted that although he had taken some control of the incident because of his directives, Sergeant Kissack was still in control. He considered that there was no pursuit at this stage and noted that the Air Wing said units far enough back. However, he was of the belief that the offender could see units following and therefore he instructed all units *to "stop."*

Senior Constable Andrew McSwain was in Sunshine 307 with Constable Rosewarne. After the offending vehicle passed behind his vehicle which was undertaking a U turn he stated:

"I completed my U turn and drove north in Point Cook Road with the intention of watching which way the vehicle went at the intersection. The offender's car was two or three cars in front of me. I saw him skid through the roundabout at Central Avenue and proceed onto the freeway. When I reached the roundabout I could see the vehicle was heading onto the freeway. I turned left at the roundabout and drove onto the freeway on ramp west bound towards Geelong."

I reported to police communications the direction of travel of the vehicle. Immediately after I did this, a police unit who I think was a 265 unit repeated he did not want anybody to pursue the vehicle. I acknowledged this and indicated that I was travelling slowly trying to create distance. I did not have lights and sirens operating ..."

A study of the transcript indicates that Acting Sergeant Basham's instruction came first. In evidence Senior Constable McSwain agreed. When the call came he was about half way along on on-ramp. The Senior Constable believed *"let him go"* was directed at him. He interpreted the instruction *"as not to engage in a pursuit"* and *"did not consider it meant stop"*. *"Let him go"* meant *"not to chase him"*.

Senior Constable McSwain approached to about 50 to 100 meters away from the offending vehicle and then he put brakes on and dropped back. He stated that he did not stop but that he and his colleague had discussion about putting lights/siren on to warn upcoming traffic. He noted that the offender's car was surging. He did not see any other police cars and did not *"feel it was safe to stop because of cars going around him and coming close"* to where the police vehicle was on the road. Senior Constable McSwain expected the offending vehicle *"to be long gone because of his driving history."* He noted that 650 had repeated *"let him go so many times"* it took on a different meaning and after some discussion with his partner they stopped. They stopped for few seconds and then followed 611 along highway to Forsyth Road. The Senior Constable did not consider that they were *"in pursuit"*. They were patrolling the last known direction of travel. Senior Constable McSwain indicated that they stopped because they both decided that it *"was the best course of action in view of the confusion"* with *"let him go"*.

The Air Wing

Senior Constable John Courtney, Police Air Wing observer stated:

"The approaching Ford wagon slowed down and nearly stopped, then drove around the front of the stopped divisional van and continued along Point Cook Road. It approached the Princes Freeway and turned left and entered the freeway.

I heard a 650 Traffic unit request us to continue and follow the vehicle. Constable Bullas then informed me that we had to clear and proceed to Avalon Airport for fuel. We turned left and were still able to observe the vehicle from a position north and to the rear of the vehicle.

The vehicle then appeared to slow right down and I saw a police divisional van close up behind the slowing vehicle. All other traffic was passing both these vehicles. I then hear the 150 unit announce for all vehicle (sic) to pull over and stop. The vehicle appeared to gain speed and crossed to the right hand lane on the freeway.

We continued to observe the vehicle as we paralleled the freeway heading to Avalon Airport.

I was awaiting a break in radio transmissions to inform D24 we were clearing for fuel when the vehicle crossed through the median strip break and start travelling in the inside emergency lane of the opposing Melbourne bound traffic. I immediately informed D24 of the vehicle's location and direction. After the vehicle passed under the Forsyth Road overpass it slowed down and then suddenly executed a right hand turn across oncoming traffic."

Civilian Witnesses

A number of witnesses observed various aspects of the two pursuits, the following operation on the Princes Freeway and the collision. In general, the witnesses disclose an erratic pattern of driving and dangerous behaviour. The following witnesses are selected as overall examples of the evidence. As with all witnesses to a sudden and unexpected event, they each have different impressions.

Mr. Barry Roberts, Gatekeeper, Werribee Mercy Hospital, described an incident at the hospital in the early morning (6.15 to 6.45 am) involving a light green Ford Fairlane. Mr. Roberts, who was on the gate at the time, observed a car speeding through the boom gate. He noted that the car increased its speed after entering a nearby roundabout.

At about 7.30a.m. Ms. Lynette Deacon, a Training Consultant was walking in Beach Road, Werribee. She described a series of bends along Beach Road. She heard tyres squealing behind her which lasted for about 30 seconds. Then the car, a green coloured Ford sedan, was in sight coming straight for her "out of control". Ms. Deacon moved backwards to avoid the vehicle and it went into the bushes on the other side of the road. She did not observe any other vehicle chasing the green Ford. She went over to help the driver who was revving the engine and seemed to be in a panic. As she left the scene she observed the driver leaving the scene.

Mr. Dennis Naphthine, Parliamentarian, was travelling towards Geelong. He was of the view that the vehicle was parallel with him as he went past the Point Cook overpass. The vehicle was travelling about 15 to 20 percent slower than his vehicle. He was watching the vehicle about half way between Point Cook and Forsyth Road overpasses. He had been viewing police in his rear vision mirrors and noted that they were slightly behind. The police vehicles were *"shadowing it or running parallel to it."* He noted that the vehicles continued to about Forsyth Road and the police took the lanes that when onto the exit. He *"didn't actually see them then go over overpass."* Just under the overpass Mr. Naphthine stated that he *"heard loud bang"* however he did not see the accident.

Mr. Robert Pendlebury, Truck Driver, was travelling towards Melbourne when he saw incident. He noted that the Ford was only travelling at a very slow pace and only turned about 30 meters in front of the motorcyclist. He said that it was a slow turn. Apart from the Helicopter, he did not observe any police activity prior to the collision. It took him about 20 to 25 secs to pull up and police were *"doing hurdles to get over wire barrier"* about 10 seconds after he alighted from the truck.

Mr. Stephen Wilson, Publican, was also travelling in the same direction as (but ahead of) Mr. Pendlebury. He noted that as the car was approaching he realised that it *"was actually travelling westbound on the east bound side of the highway."* He *"then became concerned that a major collision would take place and moved to the left side of the outside lane."* When Mr. Wilson first observed the Ford it was near the buildings depicted in photograph 2 (and near the red car). He noted that the Ford was travelling slightly quicker and *"there was a gap between him and police cars"* which he estimated at a kilometre.

Ms. Nichole Ellis, Child Care Worker, was a pedestrian walking along Point Cook Road. She noted that the traffic was average as it was not peak hour. She observed the backing police car which was about 3 or 4 houses south of the roundabout. Ms. Ellis observed that the white car, which was travelling over the speed limit, come over the dotted white line and nearly missing a car coming around the corner. She could only see as far as the bend on freeway entrance. Ms. Ellis said that the car picked up speed as it was going onto freeway. The divisional van was about 30 secs behind the white car *"as they had to give way to 1 or 2 cars."* The police car was a *"fair way back 150 meters back"*. She noted that the highway patrol car passed by about 30 seconds later and then other police car followed another 30 seconds behind.

Ms. Katye Walsh, Business Process Design Manager, was travelling towards Melbourne. She stated:

"After the XF passed my vehicle I saw two police cars in the Geelong bound lanes stopped in the emergency lane on the southern side of the freeway. The first was a multi coloured pursuit car and the second was a normal marked police car. Neither had lights or sirens operating and the police persons were just sitting in the cars. I couldn't get over that, a person driving up the wrong side of the freeway and they were just sitting there. I felt sick afterwards that they were doing nothing to stop the man driving the wrong way.

A little bit further down the road, logic kicked in and I thought how stupid it would have been, if they had chased him down the wrong side of the Freeway in peak traffic."

In evidence, Ms. Walsh noted that she observed the police vehicles about 5 seconds after seeing the white car going through barrier. She also observed the police vehicles for a number of seconds and they had not moved. She did not *"see anyone shadowing the vehicle"*.

Ms. Noema Buretic, Rental Sales Agent, observed Mr. Dobbin's vehicle and the collision. She noted that she *"didn't hear sirens"* (or lights flashing) and that it *"looked like he floored it to get across the freeway."* He took 20 to 30 seconds to come to complete stop. Ms. Buretic did not observe the helicopter and she was *"surprised police coming so quickly, under a minute."*

Mr. Dobbin's evidence

In evidence Mr. Dobbin indicated that he had taken a number of drugs in the preceding day (heroin and speed). During the second pursuit he remembered a lot of police cars before he got onto the freeway. He noted that he *"just wanted to get away"* and took the view that it *"was my fault I don't blame myself for the whole lot"*. He noted he was on drugs and that *"If police had have stopped it wouldn't have happened"* He was aware that at times they were on his tail *"they were around sometimes beside some times behind 1 or 2 cars."* The only memory he had is *"of police cars being around vehicle....."* He noted that *"just before crossing over think they were behind me some further back some right behind....."* He noted that he could see flashing red and blue lights and could not say whether one or more.

All of the evidence would indicate that there were no flashing red and blue lights operating during that phase of the incident.

The relevant Police Commissioner's Instruction for pursuits

In June 2003 new Police Commissioner's Instructions for pursuits were released. The new instructions were appropriately introduced in the face of a significant increase in the number of deaths during pursuits in Victoria. The relevant sections of the Instructions for this pursuit are (VPM 102-3 *"Urgent Duty Driving and Pursuits"*):

"7.6.2 When a pursuit must be terminated

All those involved in a pursuit must continually assess the risks for the pursuit. A pursuit must be terminated:

- *Whenever the risks outweigh the results to be achieved*

7.6.3 Action on terminating a pursuit

All police vehicles involved

- *immediately stop*
- *acknowledge the termination*
- *state that they are stationary and give their location*
- *turn of any flashing blue/red lights and alarm*

Pursuit controller may

- *direct resumption of duties conducted before the initiation of the pursuit*
- *coordinate a debrief*
- *direct police to patrol the last known location* "

And, significantly pursuit is defined:

"Pursuit - *exists when a driver*

- *Fails to stop after being signalled to stop by a police member*

and/or

- *a driver is taking deliberate action to avoid being stopped*

and police begin to follow the driver"

Toxicology testing of Mr. Dobbin

Ms. Deborah Stephen, Scientist, Victorian Police Forensic Science Centre, examined a blood sample relating to Mr. Dobbin. The report indicated that Mr. Dobbin had:

- *Methylamphetamine detected.*
- *Diazepam, desmethyldiazepam and oxazepam each detected, trace only.*
- *Morphine not detected.*
- *Codeine not detected.*
- *Cannabinoids not detected.*
- *Alcohol not detected.*

Submissions

A number of submissions were made on behalf of individual police and the Chief Commissioner.

On behalf of Sergeant Kissack his Counsel made the point that the second pursuit was conducted in accordance with the Victoria Police Manual Instruction. That:

- (a) *at 8.27.30, within moments of Bosnjak initiating the pursuit Sergeant Kissack acknowledged commencement of the pursuit and indicated to D24 he would be the pursuit controller;*
- (b) *he immediately utilised available resources by instructing Air 495 to "stay on" Dobbin;*
- (c) *he closely monitored all relevant radio transmissions, particularly from Air 495;*
- (d) *he did not engage in unnecessary radio transmissions which can have the effect of confusing communications during a pursuit;*
- (e) *throughout the pursuit he conducted risk assessments in accordance with the instruction and was satisfied that the traffic, weather and road conditions were conducive to the pursuit continuing.*

Counsel also submitted:

"Under cross-examination Sergeant Kissack rejected any suggestion that the fact that he was "one up" and "on the move" during the second pursuit and search which ensued impeded his performance or decision making in any way. It is submitted that no evidence of any deficiency in his actions has been identified which justifies any criticism of him on the basis that he was not stationary during the pursuit and search. The instruction does not impose such a requirement on a pursuit controller."

Counsel noted that the *"second pursuit was correctly abandoned by Sergeant Kissack at 8.30.30 just 2 minutes and 26 seconds after it was instigated"* and that:

"The abandonment was ordered due to changed circumstances which impacted on the Sergeant's risk assessment. In particular Sergeant Kissack was concerned that the conditions in Railway Avenue were not suitable for a pursuit due to the fact it was densely populated and had a lot of vehicle and pedestrian traffic."

Counsel observed that:

"Shortly after the instruction to terminate, the audible tone was sounded and at 8.31.03 Air 495 confirmed that "all units have dropped back to a good safe distance". Air 495's observation was consistent with its role under 7.3.1 of the instruction which includes "advising the pursuit controller of any police vehicles observed not complying with [the] instruction". Sergeant Kissack also had the benefit of his direct observations of the primary unit in Railway Avenue after the abandonment of the pursuit which confirmed that Bosnjak was complying with the direction to terminate the pursuit."

Counsel noted that the post pursuit strategy was appropriate in that one of the options for the Pursuit Controller was *"directing police to patrol the last known location"*. The directions of the Sergeant at 8.31.30:

"that "I want this abandoned, can we see if we can hem him in, he's obviously clearly not gonna stop and hopefully he will come to grief all by himself and we will track him down again". Thereafter the became the incident controller obtained situation reports of the offender from Air 495 and together with other units, namely Wyndham 611 and Werribee 307, he moved in the general direction of the offender, mindful that the units should not re-engage in a pursuit with Dobbin. Through direct observations of police units and reports from Air 495 he was confident and had every reason to be confident that members were in compliance with his abandonment instruction. The Sergeant gave evidence that he did not want to allocate search areas until the helicopter provided a final situation report prior to departing due to its fuel needs."

And that:

"At no time during the course of the Inquest was it suggested by any party or the learned Coroner that Sergeant Kissack's decision to seek to co-ordinate a patrol of the last known location of the offender was inappropriate. It is also noteworthy that 7.3.1 of the instruction supports the concept of such a search as it states in effect that the air wing can assist the pursuit controller by "monitoring and relaying information via police communications after the pursuit has been terminated The pursuit controller may use this information to.... detect and arrest offenders"."

On the execution of the post pursuit strategy, Counsel noted:

"All members who gave evidence purported to have been familiar with the instruction and to have received training in relation to it. Your Honour has expressed concern that after termination of the second pursuit by Sergeant Kissack members may have engaged in a "creeping pursuit" of the offender. It is submitted that based on the evidence of Bosnjak, McSwain, Courtney, Bullas and various civilian witnesses including Nicole Ellis and Kate Walsh, no such creeping pursuit in fact took place. Rather, Bosnjak and McSwain were placed in an invidious position when Dobbin unexpectedly doubled back on Point Cook Road and then proceeded onto the Freeway at a slower pace than anticipated due to the Ford's fuel situation."

And if ultimately it is found that a creeping pursuit transpired, that:

- (a) Sergeant Kissack and Acting Sergeant Basham did not engage in such conduct themselves;*
- (b) Sergeant Kissack's instructions as to abandonment were clear;*
- (c) Sergeant Kissack's conduct in ensuring he was not too close to the offender by monitoring the Air 495 situation reports of the offender demonstrated a prudent approach designed to ensure he did not unwittingly engage in a 3rd pursuit with the offender;*
- (d) Wyndham 650's instructions (Basham and Martinez) between 8.33.30 and 8.35.30 were to the following effect that "just all units back off thanks", "All units pull over and just let him go, let the chopper follow him", "well too bad just let him go", "I'm not quite sure if I was clear enough - let him go", "No, why would I go after him, I told everyone else not to go after him" and "no one is to follow that unit, if the chopper has to go, the chopper has to go, he went past me and almost had an accident, I don't want to be involved in another one." Bosnjak and McSwain each acknowledged that they heard those communications. Each was clear that there was to be no re-engagement. Basham was acting as a Sergeant, his call sign indicated that fact and the relevant members accepted that he had authority to issue those instructions. Sergeant Kissack was in agreement with Basham's directions and saw no need to add to them, indeed to do so may have further convoluted communications which were busy and choppy. Basham's communication at 8.33.30 was cut over by Melton 650, with the effect that the important words "tell all units to pull over" were not audible. I note that this will no longer occur due to the installation of a new radio system.*
- (e) According to the evidence Bosnjak was out of Sergeant Kissack's sight on Point Cook Road shortly after 8.33.00 when Wyndham 650 advised the offender had passed them in Shane Ave. Sunshine 307 had provided no indication that it was present in Point Cook Road or that it had any proximity to the offender until it came up for the first time at 8.34.00 indicating that it was "now doing forty kilometers on the freeway trying to let him get away" and "he's doing 40k's in front of us". Werribee 307 also ended up in Dobbin's vicinity on the Freeway, but provided no radio communication as to its whereabouts. Air 495 advised at 8.35.00 that "all units are far enough back" and within less than 60 seconds the collision had occurred. Sergeant Kissack gave evidence that he was not in a position to observe police units first hand monitoring the offender on the Freeway.*
- (f) Based on the information available to him, Sergeant Kissack had every reason to think the conduct of members on the freeway was consistent with the patrol he wanted."*

In relation to Mr. Dobbin's evidence Counsel noted:

"When he gave evidence Dobbin claimed he traveled onto the wrong side of the Freeway because he was being chased by police. It is submitted that his conduct was the sole cause of the death of Ms Knox-Smith. His claims that police were somehow to blame for the tragedy must be viewed in light of the following:

- a) his earlier admissions in his record of interview that he knew the police had stopped chasing him;*
- b) the fact he instructed his legal representatives at the time of his plea that he agreed the police had stopped chasing him;*

c) the fact he was observed to be driving erratically at times when the police were clearly not in pursuit of him (for example in the hospital car park prior to the first pursuit);

d) the fact he believed he was being chased by police at times when he was not (for example when he crashed the green car);

e) his drug use on the relevant day and prior to that;

f) his long history of offending (and the fact he has been convicted of a multitude of dishonesty offences);

g) the observations and evidence of police and civilian witnesses concerning the proximity of the police to the white Ford in the minutes before the accident on 16 April 2004."

Counsel for the Chief Commissioner submitted under the sub-heading "*Command, control and communications issues*" that:

(a) Adequate communications and information flow are obviously critical to the risk assessments and control that a pursuit controller is able to exercise both during a pursuit and following its termination. Likewise, the flow of information during the occurrence of an incident is critical to the way in which all members respond to the pursuit and any subsequent incident.

(b) It is submitted that there is no issue in this case arising in relation to the communications which occurred prior to or at the point of termination of both pursuits. This is made clear by the radio transmissions themselves.

i. The decision to terminate the second pursuit was made at an appropriate time in circumstances where the risk to the offender, the primary pursuit vehicle and the public had risen to an unacceptable level.

ii. The instruction from Werribee 251 was "abandon this, abandon this, and get the chopper just to sit on him please". This was followed by the sounding of the audible alert tone. Air 495 acknowledged their ability to continue in this role.

iii. Just prior to 8:31:30 Air 485 reported that "all units have dropped back to a good safe distance". Thus the pursuit controller was reassured that the pursuit had been terminated and that the police members involved were disengaging. This was confirmed by the transmission from Mr. Kissack at 8:31:45 when he said "Received that. I want this abandoned, can we see if we can hem him in, he's obviously clearly not gonna stop and hopefully he'll come to grief all by himself and we'll track him down again.

iv. This disengagement was occurring over a wide area in fluid circumstances where Dobbin was still traveling at speed and continued to represent a danger to the community. However, Dobbin was accurately reported to be traveling south along Point Cook Road and hence back towards Werribee South. This was the scene of the previous containment attempt. A containment approach was clearly appropriate.

v. The instruction to "hem him in" was understood by the members to require them to travel in Dobbins known direction of travel with a view to ultimately containing

him. It was not an instruction to re-engage in a pursuit or to intercept Dobbin. The implementation of a containment approach was understood by everyone

vi. The evidence is that all members, including Mr Kissack anticipated that Dobbin would continue traveling south. When at about 8:32:30 Dobbin doubled back along Shane Avenue to enter Point Cook Road and travel north, this did not result in him coming into contact with Mr Bosnjak in the former primary pursuit vehicle - the Candy car. He did pass Wyndham 650 (Mr. Basham) at the intersection of Shane Avenue and Seabrook Avenue. However, they were in an unmarked car and it is unlikely that he saw them as he proceeding along Point Cook Road.

vii. Because of Dobbin's erratic driving Mr Basham gave a direction shortly after 8:33:30 saying "he's driving pretty bad, just all units back off thanks". This was clearly in the context of an attempt by police to implement a policy of containment in respect of Dobbin and not in the context of any re-engagement or new pursuit. This instruction was confirmed by VKC. This instruction was reinforced shortly after 8:33:30 when (although in an interrupted transmission) Mr Basham said "all pull over and just let him go, let the chopper follow him." This was confirmed by VKC and by Mr. Basham.

A. Mr. Kissack had not seen Dobbin after abandonment of the pursuit. He knew Mr. Basham was was a very well qualified TMU member. Apart from Air 495 Mr. Basham was the last member to see Dobbin and observe his driving and the person best placed to determine what steps should then occur.

B. Mr Kissack agreed with the instruction given by Mr. Basham. Given the previous events it would have been surprising if he had not. Consequently, it was unnecessary for Mr Kissack to intervene to reinforce the instruction and indeed to do so would not have enhanced the situation. That he did not intervene cannot be criticized and did not represent any failure of control on his part. Furthermore, it is not consistent with any systemic failure or issue.

C. As a result of the implementation of the new data terminals and the new communications system the level of and detail of information available to a pursuit controller has been significantly enhanced.

D. Thus, it is not apparent that any useful modification of the current role of the pursuit controller could be implemented which would enhance that role

viii. The critical incident commenced when Dobbin passed in front of Sunshine 307 who was executing a U turn in Point Cook Road a few house south of the Central Avenue roundabout. At this point the other police vehicles in Point Cook Road were not in sight of Dobbin as he turned from Shane Avenue

ix. The evidence of Senior Constable McSwain concerning the movements of his vehicle and that of Dobbin was corroborated by that of Ms. Ellis. She, Ms Walsh and Mr. Wilson were impressive witnesses who gave evidence which not only supported that of the members but also gave the lie to the evidence of Dobbin, particularly that pertaining to the location of the various police vehicles as they entered and proceeded West along the Freeway.

Counsel for the Chief Commissioner noted that, on the freeway:

"Ms. Ellis confirmed that Senior Constable McSwain divisional van completed its U turn in an unhurried way, gave way to 2 or 3 other vehicles and approached the roundabout at a normal speed.

She also confirmed that Dobbin's vehicle was well ahead of the divisional van and accelerated hard as it entered the freeway on ramp and disappeared out of view. She saw no other police vehicles at that time. There were no lights or sirens activated

A. McSwain has given evidence that when he completed his U turn his was not seeking to re-engage with Dobbin or commence a pursuit. He anticipated that Dobbin would continue to drive at high speed. He was simply seeking to travel in the same direction as Dobbin so that he could be in a position to ultimately assist in his containment. There was no reason for him to do otherwise. Air 495 was still available and

B. Prior to 8:34:22 Mr Basham reiterated that he wanted all units to "Let him go". This was confirmed by VKC and also by McSwain at 8:32:22 who advised "affirmative, we're now doing 40 kilometres on the freeway trying to let him get away. he's ah, doing 40 k's in front of us." At 8:34:30 Senior Constable Courtney confirmed that Dobbin's vehicle was slowing and "it's getting in the way of all other traffic now". These transmissions are strongly confirmative of the true position which is that the police were trying to let Dobbin go and remove any pressure on him.

C. Dobbin says that on any occasion he now recalls there was one or more police vehicle "around him" with their lights on. His adamant denial of the fact that he knew the pursuit had ended (despite his own admissions at the time and the agreed facts which were put before Judge Duggan) and his assertion that the police were "shadowing" him on the freeway in the way he described are either deliberate lies or the products of a delusional and distorted memory. He is a man with numerous driving convictions who had already escaped from two pursuits. That he believed there were 3 helicopters observing him suggests that it was this which was the motive for his driving on the freeway rather than the presence of any police vehicles."

And concluded by submitting that "there was no failure in command or control in relation to this incident either whilst the pursuit was underway or in relation to the post pursuit incident."

Counsel for the Chief Commissioner also submitted that there "was adequate information conveyed to the pursuit controller throughout the pursuit and that adequate information was received and instructions given to the members throughout the incident which followed." That:

"Mr Kissack was able to and did properly control the event and the subsequent incident which arose. In this regard he was properly assisted by Mr. Basham and Mr. Courtney. This is as it should be. Air 495 was in the best position to observe Dobbin's movements during the post pursuit incident. Mr. Basham was able to confirm those observations at a critical time and relay information as to the dangerous nature of Dobbin's driving. The information from Air 495 and Mr. Brasham was available to all other police members including Mr. McSwain. Mr. Basham's directions were proper and enhanced the command and control process rather than degrading it."

And that:

"From the point at which the second pursuit was terminated McSwain's decision to travel onto Point Cook Road was appropriate in the circumstances. He did not require a blow by blow instruction in this regard. In fact such are likely to be counter productive in what is

likely to be a dynamic event. There is a real danger of seeking to micro-manage such situations which can create more problems than they solve. Given that McSwain was not part of the second pursuit, in either a primary or secondary role, there was no need for him to stop on termination and give his position or wait for instructions.

In any event an appropriate instruction was given to all the units which was understood by the members including McSwain. It was in that context that he moved onto Point Cook Road.

Point Cook Road was the key arterial leading from Railway Avenue. It was reasonable to anticipate that would either continue along Point Cook Road or turn onto the freeway. Any possible containment had to involve traveling along that road at least in part. Once Dobbin had committed to continue along Point Cook Road his decision to turn into Shane Avenue and head for the freeway was completely unprovoked by the presence of any police vehicle.

Given the speed with which the event unfolded thereafter it is unlikely that any position statements by McSwain at the time he heard the command to terminate the pursuit would have changed anything."

On the issue of risk assessment, Counsel for the Chief Commissioner noted that: *"the risk assessment which was made by the various members at the time the instruction was given to attempt to contain Dobbin was proper and appropriate."* But that because Mr. Dobbin:

"chose to drive onto an East bound carriage way of the freeway into oncoming traffic was his decision alone. Given Dobbin's paranoid state it is likely that he would have attempted this maneuver whether the police had come onto the freeway simply because he was running out of fuel."

And:

"Prior to entering onto the freeway Dobbin's observation of the police is likely to have been confined to Sunshine 307. In this case whilst there were multiple vehicles in the area there is no basis for forming any impression that a pursuit was continuing once the abandonment had occurred - the evidence of the civilian witnesses confirms this. There were no lights and sirens being used and all the police vehicles were operating in conformity with the road rules. No urgent duty driving was involved. Furthermore, if one accepts Dobbin's record of interview then it follows that at best he was only of the view that a pursuit had resumed, at the most for a short time, when he first entered the freeway."

On the role of the Pursuit Controller, Counsel for the Chief Commissioner submitted that *"there was no flaw in the transition by Mr Kissack from the role of pursuit controlled to controller of the post pursuit incident or in the allocation of resources available to him".* Counsel also made the following points:

"All members accepted that once the pursuit had terminated the transition to incident controller occurred and was acted upon. The members training supports this approach which is the only practical way of dealing matters once a pursuit has ended.

Whilst more resources are always desirable there is a limit to what is achievable. Access to a second helicopter is an obvious example. It is clear from the evidence of Mr Kissack and Mr Basham that they had sufficient information to make properly informed risk assessments and decisions."

In summary Counsel for the Chief Commissioner noted *"there was no failure in the risk assessments made in this case irrespective of the intention of the offender or otherwise."* That:

"From the outset it was apparent that Dobbin would do anything to get away. All his driving was consistent with this. He has admitted that on a previous occasion he had successfully avoided apprehension during a high speed pursuit. He knew that to do this he had to drive in a sufficiently dangerous manner. All of Dobbin's actions on 16th April 2004 are consistent with his adoption of this approach."

And from a police management perspective:

"The fact that the police abandoned the two pursuits in the timely manner that they did having regard to the risks which were occurring and thereafter did all they could to "let him go" shows that they were appropriately mindful of Dobbin's intention and the application of appropriate risk assessment."

About Mr. Dobbin's attitude:

"That Dobbin chose to drive across the Brifen barrier into the path of oncoming traffic on a freeway is nearly beyond imagining. His glib assertion that he did simply because he "just wanted to get away" from the police suggests a degree of indifference to his own safety and that of others which is quite beyond comprehension. This indifference suggests that this is the sort of action that was likely to take irrespective of the true circumstances which obtained. It is certainly consistent with his driving throughout that morning".

Counsel for Senior Constable Bosnjak, Senior Constable McSwain and Constable Wallace also made a number of points in his submission: On the actions of the officers when they entered the Freeway:

- (a) *On entering the freeway McSwain and Bosnjak observed the offending vehicle in the right lane of the Princes Freeway but travelling at about 40 kilometres per hour which was later ascertained to be due to the vehicle losing power as it was running out of LPG.*
- (b) *McSwain and Bosnjak had no intention of pursuing the vehicle and tried to let the offending vehicle go, in accordance with Acting Sergeant Dennis Basham's instructions over the police radio, but this was difficult due to the slow speed of the offending vehicle.*
- (c) *McSwain and Bosnjak considered stopping immediately on the Freeway to let the vehicle go however their risk assessment included the danger the offending vehicle posed to traffic travelling west along the Freeway at 100 kmh and considered that a marked police car travelling at that speed at some distance behind the offending vehicle posed less of the threat.*
- (d) *In addition to danger to other traffic, McSwain considered that to stop on the Freeway where there was a guard rail on the left of the Freeway was also unsafe.*
- (e) *Within a matter of only a few seconds, and in compliance with an instruction from Inspector Millen as Altona North 150 to "stop", McSwain stopped his vehicle on the grass verge and emergency stopping lane on the southern side of the Freeway just past the end of the guard rail (see photo 2, Folio 2). This is corroborated by the evidence of Wallace who was approximately 200 metres behind at this time. The fact that at least*

one police car came to a halt at about this location is corroborated by Ms Kate Walsh although she recalls the police vehicles stopped in the right emergency lane.

(f) Bosnjak did not come to a complete stop but was travelling at a very low speed and slowly passed McSwain's stationary divisional van. At this time the offending vehicle had passed through the break in the Brifen barrier and was travelling west along the eastbound carriageway of the Freeway and eventually he and also McSwain lost sight of the offending vehicle. At the time the offending vehicle turn right causing the collision, it was estimated that Wallace was approximately 1 kilometre from the collision scene and accordingly, Bosnjak and McSwain would have been approximately 800 metres away."

On the issue of "following" Counsel submitted that:

"whilst Bosnjak, Wallace and McSwain each conceded that travelling in the last known direction of the offending vehicle could be construed as "following" the offending vehicle, their understanding of what constituted "following" or "to follow" must necessarily include visual contact with the vehicle which at no time was their intention."

And:

"The decision to enter the freeway with the expectation that they would be some considerable distance behind the offending vehicle and not in visual contact was reasonable conduct and consistent with the instruction to "hem him in" or patrol the last known location. The only way to "hem in" or conduct a patrol for a vehicle seen on a freeway is to enter the freeway, albeit from a distance to the offending vehicle."

Conclusion

It is difficult to escape the conclusion that, whilst the intention of police was very different in that the continuation of police involvement was, if possible, to contain Mr. Dobbin and arrest him later, the practical reality was very different. This was because of circumstances and the behaviour of Mr. Dobbin.

The offender, who was under the influence of drugs, operated without concern for the safety of the public, stole two vehicles and was involved in two pursuits before the collision occurred. During these two pursuits he was driving erratically, dangerously and at high speed. Following the termination of the first pursuit he crashed the vehicle he was driving.

From the police perspective the second pursuit was abandoned a number of minutes before the collision, but from some aspects of Mr. Dobbin's perspective it appears that it effectively continued from time to time in a following mode (a hemming in operation). He testified of the involvement of a number of police vehicles until moments before the collision. Had the pursuit in fact terminated at or close to the time of 8.30.30 am. (and without a continuing operation designed to "hem the offender in") there is the possibility that the incident may not have occurred. However, that said, the operation to hem the offender was legitimate in that it was permitted by VPM 102-3.

However, because of the conflicting nature of Mr. Dobbin's story (both at trial and his evidence before the Coroner) it is not possible to determine whether or not he actually knew the police were following him on the freeway. Accordingly, the effect on the outcome of police actually stopping prior to entering the Freeway has an additional level of speculation.

Shortly after the termination of the second pursuit Mr. Dobbin backtracked on his path and came across police vehicles that were seeking to comply with the direction to "hem him in." He then proceeded onto the Princes Freeway and began to have fuel problems resulting in a driving pattern that, whilst erratic, was very different from his previous patterns - he was travelling on the main, 100 kilometres per hour highway, at a slow speed (of about 40 kilometres per hour). This created a problem for the police vehicles that were by now "following" Mr. Dobbin. They were on a highway with fast moving traffic and were in a dilemma. This was the need to protect the fast moving vehicles from the slower moving hazards or put on lights and sirens to warn of the hazard. Of course, there is the possibility that the consequences of that police action (lights and sirens) may have prompted Mr. Dobbin to behave even more erratically.

RECOMMENDATIONS AND COMMENTS

Introduction

Recent events would indicate that pursuits are an on-going and difficult risk management roll for Victoria Police. In some pursuits a tragedy is the result. Certainly, both before and after a series of coronial inquests and recommendations over the last two years (stemming from a significant number of deaths during pursuits), there has been considerable amount of positive work by Victoria Police to improve the management of pursuits.

However, there still remains the question for our community and police as to whether pursuits should continue as a risk management tool.

The difficult nature of these particular circumstances for pursuit management

It would appear that the new rules for management of pursuits did not anticipate the difficulties that occurred surrounding the management of a pursuit on the Princes Freeway on 16th April 2004.

Counsel for Senior Constable Bosnjak, Senior Constable McSwain and Constable Wallace submitted that it was *"these unexpected events which caused McSwain and Bosnjak and to a lesser extent Wallace"* to come within *"visual range with the offending vehicle post-abandonment were not as a result of the police officers NOT complying with the pursuit policy or exercising poor judgment."*

Counsel noted the difficulty is that:

"the pursuit policy set out in VPM 102-3 failed to take into account this eventuality when it provided the pursuit controller the discretion to direct police to "patrol the last known location" [see Clause 7.6.3]."

And conceded that *"it is extremely difficult, if not impossible to devise a policy that covers every eventuality"*. Counsel commented that:

"the policy as devised has failed to consider the eventuality that the offending vehicle may double back on police or try to evade the police whilst doing 40 kmh on a freeway. Bosnjak gave evidence that he has been involved in dozens of pursuits and this was the first he experienced where police had trouble letting the offender go or where the offender had doubled back."

But that had this eventuality been considered then:

"one could expect that the discretion for the pursuit controller to direct "police to patrol the last known location" would have been removed from the policy. It wasn't and Bosnjak, McSwain and Wallace merely implemented the policy as it was. They cannot now be criticized for doing what they were trained and instructed to do when the policy is flawed at least in this respect."

Counsel also commented about another perceived difficulty *"in the policy lies in the definition of a pursuit where there appears to be an insufficient explanation as to what is meant to "follow the driver" [Clause 3]."* Counsel suggested that the term *"to follow"* must be clarified to include reference to maintaining visual contact with the offending vehicle."

In the event that pursuits are to be considered as a continuing part of policing, then circumstances similar to those presented in this case form part of the risk to the community. The risk management difficulties having been demonstrated by these circumstances now need to be reviewed and new more protective procedures considered by Victoria Police. The comments of Counsel (above) need to be examined and there are some additional suggestions under the following sub-headings.

The need for a specific set of commands for post-pursuit incident management

There is some speculation that the death of Nichole Marie Knox-Smith may possibly have been avoided had police vehicles not entered onto the Geelong bound section of the Princes Freeway and, as a result, Mr. Dobbin would not have undertaken the same evasive action. However, it is also not possible to determine whether Mr. Dobbin would have continued to act in the same way or taken alternative action resulting in another tragedy. It is not possible to determine with any certainty whether he was actually aware that police vehicles were following him on the freeway or not. Also the history of his driving patterns on the day of the incident was erratic and dangerous, with no concern for the safety of the public.

As we now know had all police vehicles in the vicinity of the stolen car being driven by Mr. Dobbin heard Sergeant Basham's direction to *"pull over"* when it was first given and immediately complied, there may not have been any police vehicles following onto the Princes Freeway. Unfortunately the first part of the Basham direction was overridden by another signal. Other directions continued like *"let him go"* and it was not until Inspector Millen (150) said *"I think all units better come to a stop"* that all police vehicles stopped. Whilst it is understood that the police vehicles that were on the Freeway were operating under some difficulties, the clarity of that instruction had a clear effect. Whilst there is no criticism of Acting Sergeant Basham, as demonstrated by Senior Constable McSwain's evidence, both he and his partner were in some confusion as to what was meant by *"let him go."*

This incident is somewhat unusual in that the circumstances test management of the aftermath when the Police Pursuit Controller, having instructed the pursuit to be abandoned, then made a decision which in effect is to *"direct police to patrol the last known location."* This direction was made in accordance with VPM 102-3 but it had unforeseen consequences. Accordingly, the following recommendation is made in order to alleviate any confusion in future circumstances where a pursuit has been called off but there is a patrol of last known location (without pursuit being re-activated). When the offending driver crosses the path of police vehicles additional procedures may be necessary as this situation has some potential for the driver to consider that the pursuit is still in operation. In these circumstances a clear set of verbal instructions (like *"stop"*) may need to be developed.

It is understood that the new radio system avoids the problem of voice over as occurred with the old system.

Recommendation 1

The Chief Commissioner consider developing a set of clear verbal instructions to provide for the type of circumstances that occurred in the management of the post pursuit phase in this incident.

The duration of the ‘pursuit abandonment’ radio tone

There was some concern about the duration of the pursuit abandonment tone that is delivered over the radio following a command by the Pursuit Controller to abandon the pursuit. It is of very short duration and there was at least one officer who did not hear the tone. Counsel for the Chief Commissioner noted in his submission under the sub-heading "*Adequacy of the audible alert tone*" that:

"(a) The tone is adequate although in this case the tone was only sounded for a short time. However, the use of the tone is only a confirmatory part of the pursuit control system. In this case it was preceded by a direct command by the pursuit controller which was heard by the members and was followed by a confirmation by the VKC announcer.

(b) The limitations in relation to the length of the tone in this case can be explained due to a number of operational features associated with the equipment and in particular -

x. the needs of other members to continue communications;

xi the exigencies of the existing systems;

(c) However, as is clear, the new digital communications systems have enhanced the reliability and audibility of equipment. Thus all that need be said is that there should be an emphasis on ensuring that the tone is sounded for a sufficiently long period to ensure that it is heard by all members."

Recommendation 2

The Chief Commissioner consider the feasibility of increasing the duration of the audible tone which signals the abandonment of a pursuit.

Working alone and managing a pursuit

Whilst there can be no criticism of the Pursuit Controller for undertaking the difficult and responsible task of managing the pursuit as a solo officer in a police vehicle this is a matter that needs review.

Evidence would suggest that a Pursuit Controller was driving and monitoring the pursuit from time to time. There are obvious potential difficulties for risk management when an officer is required to undertake difficult and time critical management decisions one up in a vehicle.

Suggestions for improvement in practices by officers Kissack and Basham

In the submission made on behalf of Sergeant Kissack and Acting Sergeant Basham there are some suggestions for improvements in D24 practices and procedures in view of the recent introduction of

of the Mobile Data Terminals to all police vehicles¹. These suggestions should be considered by the Chief Commissioner.

Findings distribution list

A copy of this finding, recommendations and comments will be forwarded to the:

- Attorney General
- Minister for Police and Emergency Services;
- Secretary, Department of Justice, and the
- Chief Commissioner of Police.

Graeme Johnstone
State Coroner
21st July 2006

Mr. Ron Gipp for Senior Constables, Scott, Bosnjnak and McSwain and for Constable Wallace,
Ms. Erin Gardner for Acting Senior Sergeants Kissack and Basham,
Mr. James Laurie for Senior Constables Jenkins, Courtney and Sergeant Close,
Mr. Gerard McGuire for the Chief Commissioner, and
Mr. Michael Jones, Assisting the Coroner.

¹ See Submissions of Counsel on behalf of Sergeant Kissack and Senior Constable Basham, 30th June 2006, pp. 6 to 7. Paragraph G (a) to (c) as follows:

"Mobile Data Terminals have now been installed in all police vehicles. As a result of this technology D24 has access to real time information (via satellite) as to the whereabouts of police vehicles. It is submitted that Victoria Police should consider amending the instruction to provide that:-

- a)D24 communicate the location of all units at the conclusion of a pursuit and seek confirmation the unit is stationery;
- b)D24 assist the incident controller to deploy units at the conclusion of a pursuit in the event that a decision is taken to patrol the last known location;
- c)D24 advise the incident controller of any information it has available to it through MDT that suggests there is a risk police may unwittingly re-engage with the offender and give the offender the impression he is being pursued post abandonment."