



CORONERS REGULATIONS 1996

Form 1

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24th July, 2006
Case No: 759/05

RECORD OF INVESTIGATION INTO DEATH

I, **AUDREY JAMIESON**, Coroner,

having investigated the death of **TYSON OWEN VAN DILLEN** with Inquest held at Coronial Services Centre, Southbank on the 3rd July, 2006

find that the identity of the deceased was **TYSON OWEN VAN DILLEN** and that death occurred on **6 March 2005**, at the intersection of Chapel Street and Osbourne Avenue, Cowes, from:

I(a) HEAD INJURY

in the following circumstances:

Tyson Owen Van Dillen died in a single motor vehicle collision on Sunday 6 March 2005. Mr Van Dillen was driving his 2000 Holden Commodore station wagon at the time.

Shortly before the fatal collision Police had radioed to Morwell D24 informing the operator that they were "in pursuit" of Mr Van Dillen's vehicle.

An Inquest into the death of Tyson Van Dillen was held pursuant to Section 17(1)(b) *Coroners Act* 1985 as arguably, immediately before death, Mr Van Dillen was *a person held in care*¹ as defined by Section 3 of the Act. Section 17(2)² was also applicable.

¹"person held in care" means-

- (a) a person under the control, care or custody of the Secretary to the Department of Human Services; or
- (ab) a person-
- (i) in the legal custody of the Secretary to the Department of Justice or the Chief Commissioner of Police; or
- (ii) **in the custody of a member of the police force**; or
- (iii) in the custody of a protective services officer appointed under the Police Regulation Act 1958; or
- (b) a patient in an assessment or treatment centre under the Alcoholics and Drug-dependent Persons Act 1968; or
- (c) a patient in an approved mental health service within the meaning of the Mental Health Act 1986;

²s.17(2) A coroner who has jurisdiction to investigate a death may hold an inquest if the coroner believes it is desirable.

Background:

Tyson Van Dillen was born on 20 December 1979. He was 25 years old at the time of his death. Mr Van Dillen married Caroline Van Dillen on 13 March 2004. They lived at 56 Hassett Street, Leongatha. Mr Van Dillen was employed as a tree lopper.

Summary of Circumstances:

On Saturday 5 March 2005, Tyson and Caroline Van Dillen drove to Phillip Island with friends, Melissa Dowell and Scott Cameron, to attend the wedding of a mutual friend. Tyson Van Dillen drove his VT Holden Commodore station wagon.

The two couples intended to stay the night at the Coachman Motel in Chapel Street, Cowes, following the ceremony and reception. They left Leongatha at approximately 10.30am, arriving at the motel at approximately midday. The wedding ceremony was scheduled for 3.30pm on Churchill Island. Mr Van Dillen and Scott Cameron had a beer. Soon after, Mr Van Dillen drove the others to the wedding ceremony.

After the ceremony, the friends returned to the Coachman Motel. Mr Van Dillen and Mr Cameron consumed approximately 3 full strength stubby Corona beers before walking to the reception centre, The Continental in Cowes. They arrived just after 6.00pm. During the course of the evening, Mr Van Dillen was noted to consume a large amount of alcohol and eat little.

At approximately 9.00pm, Tyson and Caroline Van Dillen had a disagreement. Mr Van Dillen appeared intoxicated. He left the reception with Mr Cameron. They went to the Isle of White Hotel on the corner of The Esplanade and Bass Avenue. They were denied entry on the grounds Mr Cameron did not have identification with him. They returned to the reception, arriving back at approximately 10.00pm. They went to the bar and obtained a glass of wine each. Mr Van Dillen immediately skulled his. He was slurring his words and requesting more wine. Consequently, bar staff refused Mr Van Dillen further service.

Mr Cameron stated in his *viva voce* evidence that his friend was the drunkest he had seen him. He stated Tyson was louder than normal, dancing, stumbling, and had slurred speech.

Mr Van Dillen left the reception after a short period on the dance floor. He did not inform his wife or Mr Cameron why he was leaving or where he was going.

Caroline Van Dillen recounted that she had never seen her husband as drunk as he was that night at the reception.

At approximately 11.00pm, Virginia Jeffrey was disturbed, whilst reading in bed, by an argument coming from the next room at the Coachman Motel. She distinctly heard a male and female voice arguing and some banging noises over a period of approximately 30 minutes. She heard the same female say "*no, no, no*" followed by the male leaving the motel room and getting into a station wagon³.

³All efforts to identify the female voice that Mrs Jeffrey so distinctly heard have been to no avail. It was not Caroline Van Dillen. She was still with her friends, Ms Dowell and Mr Cameron.

At approximately 11.30pm, Mrs Jeffrey witnessed Tyson Van Dillen drive out of the Coachman Motel *"like a maniac"*. She stated that:

" It was accelerated so hard that it went sideways and nearly slid into the security fence around the swimming pool. The driver missed the fence by millimetres and it was only luck that he missed it."

Senior Constable Ross Newton and Sergeant David MacDonald were performing divisional van duties out of Cowes Police Station on the night of 5 March 2005. They commenced duty at 8.00pm. Sergeant MacDonald drove the van. Senior Constable (S/C) Newton acted as observer. At approximately 11.00pm the officers became stationary in the divisional van in Chapel Street approximately 80 metres east of Thompson Avenue. The vehicle was facing east on the northern side of Chapel Street. The intention of the officers was to intercept alcohol affected drivers leaving hotels in the area. At 11.10pm they intercepted a driver and performed a Preliminary Breath Test (PBT) which was negative. They resumed their stationary position on Chapel Street. At 11.20pm the officers performed another intercept and PBT. Again it was negative. At approximately 11.25pm they resumed their stationary position on Chapel Street.

Upon resuming their stationary position, with headlights off, Sergeant MacDonald and S/C Newton observed a camper type van stop at the intersection of Bass Avenue and Chapel Street. It was travelling in a southerly direction on Bass Avenue, intending to turn left into Chapel Street and had come to a stop above the "Give Way" line. While it was stationary, the occupants and the police officers observed another vehicle travelling west on Chapel Street.

Tyson Van Dillen was driving his Holden Commodore station wagon west on Chapel Street. As he has approached Bass Avenue his vehicle veered approximately 2 metres into the wrong lane. The station wagon came within a metre and a half of the front of the camper type van. As it went past the divisional van, the station wagon straightened up but continued down the wrong side of Chapel Street.

Both police officers observed Mr Van Dillen's motor vehicle to be on the wrong side of the road and accelerating.

Sergeant MacDonald executed a 3 point turn in order to follow Mr Van Dillen west along Chapel Street. The divisional van was approximately 50 metres behind the station wagon at this stage. Mr Van Dillen was observed to drive on the right hand side of a "Keep Left" sign at the roundabout situated at the intersection of Chapel Street and Thompson Avenue, and turn hard left into Thompson Avenue. As the divisional van turned into Thompson Avenue S/C Newton activated the emergency lights. Mr Van Dillen's motor vehicle was observed *fishtailing*⁴ violently down the centre of the road before it rotated 180 degrees clockwise onto the incorrect side of Thompson Avenue, whilst sliding towards a cypress

⁴ an uncontrolled sideways movement of the back of a motor vehicle- *Oxford Dictionary of English*.

tree on the west side of the road. The station wagon made contact with the concrete raised kerbing surrounding the tree allowing it to narrowly avoid hitting the tree.

As the divisional van came within approximately 20 metres of the station wagon, Mr Van Dillen accelerated very hard. His vehicle fishtailed past the divisional van in a northerly direction. The station wagon's tyres were heard to be *squealing* and the engine *roaring*.

Sergeant MacDonald executed a "U" turn. Both vehicles were travelling in a northerly direction towards Chapel Street. The station wagon was at this stage, approximately 60 metres ahead of the divisional van.

Mr Van Dillen turned his vehicle left into Chapel Street and accelerated. A pedestrian crossing the road from south to north, was noted to jump out of the way to avoid being hit.⁵ As the divisional van turned into Chapel Street the station wagon was approximately 80 metres ahead and soon disappeared over a crest, near the location of the Cowes Police Station.

At about the same time, S/C Newton activated the police radio to Morwell D24 and communicated "*Cowes 358 in pursuit*". When he finished his transmission S/C Newton heard a voice on the radio which led him to believe that D24 had been transmitting and did not hear his communication. He immediately radioed D24 a second time, "*Cowes 358 in pursuit*". The second transmission was acknowledged.

Within seconds of S/C Newton advising D24 that they were in pursuit, Mr Van Dillen had reached the end of Chapel Street where it terminates at a "T" intersection with Osbourne Avenue. He has driven through the intersection at high speed, without stopping or slowing, made contact with the kerb on the far side of the intersection wherein his vehicle has become airborne before colliding into a block of two storey townhouses on the western side of Osbourne Avenue, directly opposite Chapel Street. The station wagon struck the left side of the right townhouse, bounced off and came to rest with the passenger side near the left townhouse.

Sergeant MacDonald and S/C Newton were still in Chapel Street, when they observed the station wagon go through the intersection into the townhouses. When they reached the location, the station wagon was still revving loudly. Sergeant MacDonald radioed D24 advising them that the vehicle they were pursuing had come to grief and that an ambulance was needed.

S/C Newton went to the driver's side of the station wagon. He located Tyson Van Dillen as the only occupant. He had a severe head injury. S/C Newton turned off the engine, retrieved a pair of protective gloves from the divisional van and returned to the station wagon. He entered the station wagon via the front passenger door wherein he supported Mr Van Dillen's head and cleared his airway. S/C Newton remained in that position until Emergency Services were in attendance and had removed Mr Van Dillen from his motor vehicle.

⁵ see the statement of Sergeant Scott MacDonald- p.40 of the Brief of Evidence

Advanced Life Support Paramedics, Scott Newman and Garry O'Brien, received requests to attend the scene of the collision at 11.27pm. They arrived at 11.33pm. Mr Van Dillen was assessed as having suffered significant life threatening head and chest injuries. He was trapped in his car due to significant damage to the driver's door and "B" pillar. Mr Van Dillen's condition rapidly deteriorated requiring cardiopulmonary resuscitation measures to be implemented. Once extricated from the vehicle by SES and CFA officers, resuscitation attempts continued in the Rural Ambulance Vehicle. Mobile Intensive Care Ambulance paramedics continued with the resuscitation attempts on their arrival.

All resuscitation attempts were to no avail. Mr Van Dillen did not regain consciousness. Resuscitation attempts ceased at 12.35am on 6 March 2005. Tyson Owen Van Dillen died at the scene of the collision.

At the time of the collision it was dark, street lights were operating, the road was damp but it was not raining. Visibility was good. The speed limit in both Chapel Street and Thompson Avenue is 60 kms/hour. Sergeant MacDonald estimated that the entire incident from the time he and S/C Newton first observed Mr Van Dillen's station wagon, to the collision was between 60 and 90 seconds. S/C Newton estimated the time frame between 35 and 45 seconds.

Investigations:

An autopsy was performed by Dr Michael Burke, Forensic Pathologist, at the Victorian Institute of Forensic Medicine. Dr Burke summarised his anatomical findings as follows:

1. *Head Injury*
 - (a) *Hinge fracture of middle cranial fossa*
 - (b) *Microscopic and macroscopic evidence of diffuse axonal injury*
 - (c) *Brain contusions*
2. *Chest Injury with multiple fractured ribs, minor lung contusions and minor haemothoax.*
3. *Ruptured liver with haemoperitoneum.*

Dr Burke attributed the cause of death to head injury.

Toxicological analysis demonstrated a blood alcohol concentration of 0.21g/100ml(⁶). Cannabis was also identified in blood at 8ng/ml⁷.

Dr Morris Odell, Forensic Physician, at the Clinical Division of the Victorian Institute of Forensic Medicine, discussed the individual and combined effects of alcohol and cannabis on psychomotor function and on driving. He opined that Mr Van Dillen's

....driving skills would have been adversely affected by the combined effects of alcohol and drugs at the time of the collision. He would have been absolutely

⁶ The legal limit for blood alcohol for fully licensed drivers is 0.05% (gram/100ml)

⁷ Cannabis contains as the main active psycho-active ingredient tetrahydrocannabinol (THC). The presence of THC in blood at concentrations in excess of 2 ng/ml strongly suggests recent use of cannabis (within a few hours).

incapable of having proper control of a motor vehicle. It is not possible to know whether he was aware that a police vehicle was in pursuit during the final drive.

In his *viva voce* evidence Dr Odell stated that Mr Van Dillen's thought process would have been completely abnormal due to the level of alcohol and cannabis in blood. It would not have mattered to him if he had seen the police divisional van or not as he would not have been capable of reacting to the information.

Senior Sergeant Robert Gordon Le Guier of the Mechanical Investigation Unit of Victoria Police, carried out a mechanical inspection of Mr Van Dillen's motor vehicle. Senior Sergeant Le Guier opined that the station wagon would have been classed as roadworthy prior to and at the time of the incident. His inspection failed to identify any fault that could have caused or contributed to the collision.

Sergeant Geoffrey Wayne Exton of the Major Collision Investigation Unit of Victoria Police, had the carriage of the police investigation. As part of his investigation he inspected and test drove the divisional van driven by Sergeant MacDonald. During the test drive he reenacted the course the divisional van took from their stationary position in Chapel Street to the townhouses driveway in Osbourne Avenue. He drove the vehicle under normal to heavy acceleration. The journey was completed in 45 seconds.

Civilian Witnesses to the pursuit:

A number of witnesses observed various aspects of the pursuit of Mr Van Dillen's vehicle by the police divisional van. In general terms, the statements consistently referred to the roaring of the engine, squealing of tyres and the reckless manner in which the station wagon was being driven. None of the witnesses indicated that the divisional van was being driven aggressively or above the speed limit.

Penelope Millaras was the driver of the "camper type van" which had stopped at the "Give Way" sign on Bass Avenue. She was in fact driving a Holden Jackeroo four wheel drive with a Jet Ski trailer attached to the tow bar. Ms Millaras gave evidence that the station wagon was heading straight for the front of the Jackeroo and only straightened up within a metre of coming into contact with her vehicle. She witnessed the Police execute a "U" turn in a normal fashion and saw their headlights come on. Ms Millaras stated that the emergency lights and siren did not come on while she was watching which was up to the time the divisional van was going around the roundabout at Thompson Avenue.

Gerritt Veerman, Taxi Driver, had been at the Taxi rank at the intersection of Chapel Street and Thompson Avenue since approximately 11.00pm. He noticed Mr Van Dillen's vehicle turn left into Thompson Avenue then do a 360 degree turn before continuing south down Thompson Avenue. He saw the divisional van turn into Thompson Avenue. It was being driven at a normal speed. It had its emergency lights on but no siren. He witnessed the station wagon do a 180 degree turn, narrowly missing a tree before continuing back toward his direction, Chapel Street. He could hear the station wagon's engine screaming as though it was being driven at faster speed appropriate for the gear it was in.

Mr Veerman stopped a car from entering the roundabout when he saw the station wagon heading back towards it. He witnessed the station wagon nearly hit the "Keep Left" sign on the raised concrete divider in Chapel Street as it turned left into Chapel Street. He saw it fishtail down the centre of Chapel Street. Mr Veerman estimated that the station wagon was approximately a third of the way down Chapel Street by the time the divisional van turned left into Chapel from Thompson Avenue. Mr Veerman estimated that the divisional van was between Warley Avenue and Genesta Street when he heard the first of two large bangs.

Matthew O'Neill was walking down Chapel Street, with his girlfriend, when he heard a car in full acceleration. The couple were on the right hand side of the street at the bottom of the hill, near the corner of Osbourne Avenue. Mr O'Neill estimated the station wagon was travelling at approximately 100 kms/hour. He did not see or hear any evidence of the station wagon breaking. He witnessed it go straight through the intersection, hit the gutter, become airborne, hit the fence around the townhouses and collide with one of the townhouse. Mr O'Neill stated that he only became aware of the divisional van approximately 10 seconds later, after he had crossed the road to the collision scene. He could not recall hearing any sirens or seeing the emergency flashing lights of the police vehicle.

Both Sergeant MacDonald and S/C Newton were excused from attending the Inquest for health reasons. The absence of the officers involved in the pursuit of Mr Van Dillen is unfortunate. Their absence denies the family and the public an open and rigorous enquiry into the events of the evening. Such an enquiry is expected when there is police involvement in a fatality. "Police pursuits" *per se* have been the subject of several coronial investigations with recommendations⁸ made for improvement in police practises and procedures including training and re-training in pursuit driving skills. Since 2003 there has been significant improvement to the urgent duty/ pursuit driving policy and training.

Nevertheless, I did accept the officer's grounds for being excused as legitimate. Their statements, made within hours of the critical incident, were tendered in evidence. The description of the type of pursuit the officers were undertaking was a notable difference in their statements. Sergeant MacDonald stated:

I am aware of the Victoria Police pursuit policy. I would class this pursuit as being an elective pursuit. All we wanted to do was to pull the driver over to conduct a preliminary breath test. If it had become obvious to me that this person was not going to pull over for us, I would have abandoned the pursuit. I am not interested in jeopardising my safety, or anyone else's safety to pull over a drink driver.

Whereas S/C Newton stated:

I have no doubt the pursuit of this vehicle was imperative and if not intercepted the driver was a danger to the general public and himself.

⁸See for example Victorian Case No: 3510/01(Repinski),3763/01 & 3764/01 (Rich & French), 1822/02,1821/02 &1823/02 (Lovitt, Law & Vo), 1311/04 (Nicole Maree Knox-Smith).

Sergeant Geoffrey Exton sought to explain how the officers' description of the pursuit varied from *elective* to *imperative*. He opined that Sergeant MacDonald was in shock on the night following the collision and merely failed to state that, at some stage, the pursuit changed from elective to imperative. He surmised that this could have been when Sergeant MacDonald saw the pedestrian jump out the way of Mr Van Dillen's vehicle.

Sergeant Exton's explanation is consistent with the *Chief Commissioner's Instruction 6/03* which defines the two types of pursuits. No other evidence was received that led me to otherwise question the accuracy of the officers' statements.

Sergeant Exton provided additional information to the Inquest regarding the driver training of both Sergeant MacDonald and S/C Newton. Both officers had completed a compulsory OSTT package inclusive of urgent duty / pursuit driving instruction, within the previous 6 months. Sergeant MacDonald held a "silver driving authority", a requirement for divisional vans and permits the driver to drive up to a speed of 150kms/hour.

The D24 radio recording was played to the Court. Within approximately 12 seconds of the "*Cowes 358 in pursuit*" transmission, the second transmission "*driver has come to grief*" is made. The total period represents approximately 20 seconds.

The weight of the evidence indicates that a pursuit of Mr Van Dillen's vehicle was imperative. From the time that he was first observed by Ms Millaras and both officers, he was driving in an erratic and dangerous manner. The evidence is overwhelming that Mr Van Dillen was driving in a manner that represented a danger to himself and to the general public.

Although there was no opportunity to hear directly from Sergeant MacDonald and S/C Newton I am satisfied that they complied with Police Pursuit policy and continued to assess the risks of their actions. It is impossible to determine with any certainty whether Mr Van Dillen was actually aware the police vehicle was following him, such that he sped off down Chapel Street and through the "T" intersection at Osbourne Avenue, in an attempt to evade them. It seems unlikely, having regard to Dr Odell's evidence and the fact that he was driving in an erratic and dangerous manner beforehand.

There was no opportunity for the pursuit to be managed by police command as there was insufficient time from calling in the pursuit to appoint a Pursuit Controller. The delay in S/C Newton's transmission being received by D24 did not, in these circumstances, alter the outcome.

I am satisfied, in these circumstances, that the police pursuit of Tyson Van Dillen played no role in his tragic outcome.

The family of Mr Van Dillen publicly acknowledged a similar view to my own. Through Counsel Assisting the Coroner, Mr Van Dillen's Mother and sisters informed the Court that they had no criticism of the Police and acknowledge and accept that, in this case, they were merely doing their job.

Finding:

I find that Tyson Owen Van Dillen died from head injuries sustained in a motor vehicle collision. Alcohol, drugs and speed contributed to the cause of the collision. I am satisfied on the evidence, that only Tyson Van Dillen could have altered the course of events on Saturday 5 March 2005, which may have avoided his death in the early hours of 6 March 2005.

Comment:

Police Pursuit management continues to be the subject of public scrutiny and criticism particularly when the loss of life occurs. Such scrutiny is appropriate and effective particularly when the response is improvement in the management of this police activity. The State Coroner has recently made further recommendations to improve the post pursuit phase of the activity⁹ following the death of a member of the public by a person who had recently been under pursuit.

The Police have an obligation to the public to continue to train and re-train their members in driving and management skills which enable them to carry out this police activity, when necessary, with the utmost expertise and safety for the public and themselves.

The Police officers involved in the pursuit of Tyson Van Dillen belong to the group of people who are adversely affected by his death. The acknowledgment that they were merely doing their job on the night emphasises the difficult nature of this particular policing activity.

*AUDREY JAMIESON
CORONER
24 JULY 2006*

Appearances:

Ms Kimberley Swadesir- Assisting the Coroner
Mr Martin Grimberg of Counsel- on behalf of the Chief Commissioner of Police

Distribution of Finding:

Ms Caroline Van Dillen
Sergeant Geoffrey Wayne Exton (fascimile: 9562 2918)
Ms Kimberley Swadesir- Office of Public Prosecutions
Chief Commissioner of Police

⁹ See the matter of Nicole Maree Knox-Smith, case No:1311/04