

IN THE CORONERS COURT

OF VICTORIA

AT MELBOURNE

Court Reference: COR 2009 3951

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: Vontharasmey Ban

Delivered On: 10 October 2013

Delivered At: Melbourne

Hearing Dates: 10 October 2013

Findings of: Iain West, Deputy State Coroner

Counsel Assisting the Coroner Sarah Gebert

I, IAIN TRELOAR WEST, Deputy State Coroner having investigated the death of

Vontharasmey Ban

AND having held an inquest in relation to this death on 10 October 2013

at Melbourne

find that the identity of the deceased was Vontharasmey Ban

born on 13 July 1984

and the death occurred on 14 August 2009

at a location on Centre Road, approximately 43 metres west of the intersection with Mitchell Street, Bentleigh

from:

1 (a) Atlanto-Occipital Dislocation

in the following circumstances:

Background

1. Vontharasmey Ban (referred to in my finding as Smey¹) was 25 years of age at the time of his death. He was living with his girlfriend, Ms Ellen Orm in Keysborough. Smey was studying marketing at Holmesglen TAFE and was the holder of a full Victorian driver licence.

Circumstances of death

2. At approximately 1.30 am on 14 August 2009, Smey left home following an argument with his girlfriend. Ms Orm says it is likely that he intended to visit his brother's home in Newport Road, Clayton South as he worked afternoon shift and would likely to be up late.
3. At approximately 1.43am, Senior Constables² Stephen Mottram and Chris Georgiou of the Kingston Traffic Management Unit observed Smey's vehicle, a green Holden Commodore Sedan with registration OBP558 with it's high beams activated, being driven on Whiteside

¹ Smey is the name his Cambodian family called him

² Senior Constable is abbreviated to S/C

Road in Clayton South travelling towards them. They were out of their vehicle at the time they observed Smey attending to another driver.

4. Smey's vehicle was observed by the police officers to cut the corner by travelling onto the wrong side of the road and then nearly collide with Armco barriers on the south side of Whiteside Road.
5. S/C Mottram signalled for Smey to stop and he reportedly slowed when he was approximately 20 metres from the police vehicle but then started to accelerate away. S/C Mottram yelled for the vehicle to stop and S/C Georgiou reported: *The speed of the vehicle began to increase slowly. I thought that the driver was unsure as to whether he was required to stop. This vehicle then accelerated heavily and it then became evident that the driver was not going to stop.*
6. A conversation took place between the police officers and it was decided that S/C Georgiou would try to intercept Smey whilst S/C Mottram remained at the scene.
7. The evidence suggests that Smey turned right into Clayton Road without stopping and at a fast rate of speed. As S/C Georgiou approached the intersection with Clayton Road, he says he activated his lights and followed Smey's vehicle right into Clayton Road attempting to intercept his vehicle. He estimated Smey's speed to be 90kph at that time.
8. It appears that Smey then accelerated away and travelled a full block by turning left into Kimbarra Street, then left into Frank Avenue, then left into Newport Road and finally left back onto Clayton Road.
9. S/C Georgiou says that he activated his siren when he observed Smey travelling towards Clayton Road whilst he was on Newport Road. S/C Georgiou notified the Police Communication Centre (PCC) that he was in pursuit at that time.
10. The evidence suggests that Smey again turned left into Kimbarra Street but this time he turned right into Frank Avenue and headed towards Centre Road where he turned left.
11. S/C Georgiou followed Smey's vehicle along Centre Road and observed that he continued to accelerate. Both vehicles travelled through a green light at Spring Road where a speed camera was activated. Smey's vehicle was detected by the speed camera at 1.43.32am at 145 kph and S/C Georgiou's vehicle was detected by the speed camera at 1.43.37am at 139 kph.
12. S/C Georgiou then observed Smey's vehicle travel through the intersection with Warrigal Road at an estimated speed of 180kph. He observed a vehicle stationary at that intersection.

S/C Georgiou's vehicle was in the vicinity of Cameron Avenue when he made these observations. He decided to terminate the pursuit at that time and informed PCC. S/C Georgiou reported to PCC: *Kingston 611, I'm terminating the pursuit. Too dangerous, he just punched a red light at Warrigal Road, still travelling west, fast rate of speed. I would estimate it about 170, 180.* S/C Georgiou reported that he never got close enough to get the vehicle registration number prior to terminating the pursuit.

13. The Pursuit Controller was Sergeant William Manning who monitored the communications between the PCC operator and S/C Georgiou but was unable to make communications due to other traffic on the D24 airways.
14. Smey's vehicle was observed by police in an unmarked police vehicle, who were monitoring the pursuit via the police radio (Detective Senior Constables Tulloch and Hughes). They observed Smey's vehicle as it passed through the East Boundary Road intersection with Centre Road at high speed. These police officers say they did not intend to pursue Smey's vehicle and, consistent with this evidence, did not activate their lights or sirens.
15. It appears that Smey's vehicle travelled through the East Bentleigh Shopping Centre and overtook a vehicle on the wrong side of the road. He then continued across Tucker Road and a short distance later lost control of the vehicle eventually becoming airborne and running into retail shops at approximately 1.46am. The vehicle was engulfed by fire and Smey died at the scene.
16. Smey was later identified via DNA matching conducted by Dr Dadna Hartman, Molecular Biologist.
17. The distance of the police pursuit was estimated to be approximately 3 kilometres. Its duration lasted for approximately 68 seconds. The distance from where the pursuit was terminated and the point of impact at Jasper Road was approximately 3.5 km.
18. Senior Constable Jenelle Mehegan, a police reconstructionist estimated that the speed of Smey's vehicle at the point of impact was 204 kph.
19. Senior Constable Stuart Jones, a qualified mechanical investigator could not determine the pre-impact roadworthiness of the vehicle, but could find no mechanical faults that would have caused or contributed to the collision.
20. S/C Georgiou said he engaged in an *elective pursuit* which is defined in the relevant Victoria Police Manual (VPM) as a vehicle: *that has failed to stop after being signalled to stop for a*

*lawful purpose. The reason for the pursuit is to intercept an offending driver.*³ At the time of the incident S/C Georgiou held a Gold Class licence which allowed him to travel at unlimited speed.⁴

21. The police vehicle was fitted with a Mobile Data Terminal from which Global Positioning System (GPS) data can be downloaded recording time, direction and speed of the police vehicle. The GPS indicated that the pursuit commenced at 1.43.24 hours at which time the police vehicle was travelling at 117 kmph near Knight Street on Centre Road. According to the GPS the highest recorded speed of S/C Georgiou's vehicle was 180 kmph at 1.43.59 near Huntingdale Road. After this reading his vehicle is noted to decelerate to 74 kmph near Cameron Avenue where the pursuit was terminated and S/C Georgiou changes direction and returns to where he has left his partner.
22. All police officers underwent critical incident blood testing for drugs and alcohol which produced negative results.
23. The collision was investigated by Senior Sergeant Brendan Butland of the Major Collision Investigation Unit with oversight by the Ethical Standards Department.

Post Mortem Examination

24. Dr David Ranson, Medical Practitioner and Specialist Forensic Pathologist at the Victorian Institute of Forensic Medicine, conducted an autopsy and determined the cause of death as 'Atlanto-Occipital Dislocation'. Death was likely to have been immediate or within a short time frame.
25. The toxicology analysis of body fluids disclosed a Blood Alcohol Concentration of between 0.16-0.18, with no other drugs detected.
26. In the opinion of Dr Angela Sungaila, Forensic Physician: '*A blood alcohol concentration in this range produces a significant adverse effect on driving skills...It is probable that the disinhibition effects of a blood alcohol level in this range led the subject speeding and subsequent loss of control.*'

³ The following are relevant Victoria Police documents: *Victoria Police Manual - Policy Rules - Urgent duty driving and pursuits*, *Victoria Police Manual - Procedures and Guidelines - Urgent duty driving and pursuits* and *Victoria Police Manual - Policy Rules - Police Vehicles*.

⁴ In accordance with the *Victoria Police Manual* Victoria Police personnel are required to hold an Approved Driving Authority in order to drive police vehicles. This is an internal licensing system which has a colour coded system. The Victoria police fleet also have classification that are colour coded. The licence codes and vehicle codes are linked together. The highest is a Gold Class licence which enables the driver to drive a Gold Class vehicle at unrestricted speeds.

Was Vontharasmey Ban in custody at the time of his death?

27. As part of my investigation I have turned my mind to whether at the time of Smey's death, he was a *person placed in custody or care* in accordance with section 3 of the *Coroners Act 2008* (the Act). Section 3(j) includes:
- a person who a member of the police force was attempting to take into custody*
28. I have considered whether the police were actively trying to arrest Smey at the time of his death as well as what might have been going through Smey's mind at this time. The Act does not define the meaning of *attempting to take into custody*.
29. The relevant VPMs at the time of the death set out the policies and procedures regarding the conduct of a police pursuit.⁵ S/C Georgiou clearly tried to intercept Smey and when that failed, he engaged in a pursuit by activating his siren and contacting PCC to advise them of this fact. However, S/C Georgiou terminated the pursuit after approximately 3 kilometres and 68 seconds duration.
30. I note that the accident occurred a further 3.5 km from where the pursuit was terminated and so it is clear that S/C Georgiou was not actively trying to apprehend Smey at the time of his death.
31. What Smey was thinking in the moments before his death can only be a matter of speculation and will remain unknown, although it is likely that he was affected by the alcohol he had consumed.
32. It is clear from the evidence that the manner of Smey's driving was in direct response to the police attempt to intercept him and the pursuit that followed. That is, he appears to have actively and quite deliberately tried to avoid police interception in the deliberate manner of his driving. In particular, I also note that his estimated speed at the point of impact was said to be 204 kmph, which suggests that the speed of his vehicle increased despite the termination of the pursuit.

⁵ See note 3. I note that Coroner John Olle is investigating issues with respect to current Victoria Police pursuit policy in the death of Sarah Booth, COR 2006 4974.

33. I further note that the Chief Commissioner of Police has indicated to me: *that on the balance of probabilities, the factual circumstances surrounding the death of the deceased would meet the definition of 'a person placed in custody or care' pursuant to section(j) of the Act.*⁶
38. On the basis of all these matters I find on balance that that Smey was a person who should be considered a person who was *in custody* as defined by the Act at the time of his death.

Conclusions

42. Having considered all the evidence I find that Vontharasmey Ban born on 13 July 1984 died on 14 August 2009 at Bentleigh as a result of atlanto-occipital dislocation.
43. I find that Senior Constable Chris Georgiou acted in accordance with Victoria Police policies and procedures and did not contribute to his death.
44. I have further directed that a copy of this Finding be provided to Coroner John Olle for the benefit of his investigation into the broader issue of the current Victorian Police pursuit policy.

Pursuant to section 73(1) of the **Coroners Act 2008**, I order that this Finding be published as part of the Court record.

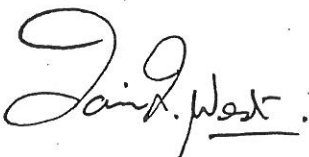
I direct that a copy of this finding be provided to the following:

Mrs Touch Say

Victorian Government Solicitors Office

Brendan Butland, Investigating Member

Signature:



IAIN WEST
DEPUTY STATE CORONER
Date: **10 October 2013**

⁶ Letter dated 26 April 2013 from the Victorian Government Solicitors Office.