

SOUTH



AUSTRALIA

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 20th, 21st and 24th days of June 2002 and the 5th day of July 2002, before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Jason Troy Barber.

I, the said Coroner, find that, Jason Troy Barber aged 20 years, late of Unit 1, 2 Leeds Street, Salisbury East, South Australia died at the Royal Adelaide Hospital, Adelaide, South Australia on the 4th day of October 2000 as a result of a closed head injury.

1. Reason for inquest

- 1.1. This inquest concerns the death of Jason Troy Barber in a motor vehicle collision at the intersection of Prospect Road and Fitzroy Terrace, North Adelaide on Tuesday 3 October 2000.
- 1.2. Just prior to the collision, the vehicle being driven by Mr Barber, which had been stolen shortly beforehand, had been pursued by a marked police vehicle driven by Senior Constable David Gardner.
- 1.3. For that reason, the Deputy Commissioner of Police directed that the incident be investigated by Inspector Kym Zander, who was then stationed at the Northern Operations Service, as a Commissioner's Inquiry. Inspector Zander has since been promoted to Chief Inspector.
- 1.4. It is arguable whether Mr Barber's death constitutes a 'death in custody' within the meaning of Section 12(1)(da) of the Coroner's Act 1975. A protocol for investigation of deaths in custody, developed between my office and the Commissioner of Police,

treats such cases as deaths in custody, and the investigation was to the appropriate standard for such a case.

2. Introduction

- 2.1. As I have already said, at about 8:30pm on Tuesday, 3 October 2000 a fatal motor vehicle collision occurred at the intersection of Prospect Road and Fitzroy Terrace at North Adelaide.
- 2.2. A Holden Calais sedan being driven by the deceased had been travelling at a fast speed in a northerly direction along Prospect Road. It disobeyed traffic lights at the intersection, and was struck on the driver's side by a Ford Falcon station sedan which had been driven in a westerly direction along Fitzroy Terrace by Gennaro Guerrera. The traffic lights for vehicles travelling in a westerly direction were green. A third vehicle, a Mitsubishi Magna sedan driven by Russell William Atwell, was stationary facing in an easterly direction of Fitzroy Terrace, awaiting an opportunity to turn right and travel south along Prospect Road.
- 2.3. The Holden Calais sedan being driven by the deceased had been stolen from Bank Street, Adelaide shortly beforehand.
- 2.4. As a result of the irresponsible driving of the deceased, the vehicle had attracted the attention of Senior Constable David Gardner who was stationed at Adelaide Traffic Police. Senior Constable Gardner had followed the vehicle from the city in a northerly direction along King William Road, O'Connell Street and Prospect Road until such time as the collision occurred.
- 2.5. The two occupants of the Holden Calais sedan, the deceased and Dale Daniel Newman, were conveyed to the Royal Adelaide Hospital. Messrs Guerrera and Atwell were not injured in the collision. Mr Newman's injuries were not serious, and he was released from hospital on 7 October 2000.
- 2.6. As a result of the collision, Mr Barber sustained severe closed head injuries. He was admitted to the Intensive Care Unit of the Royal Adelaide Hospital at 11pm that evening. He remained comatose and was unconscious, intubated and ventilated.

2.7. Unfortunately, Mr Barber's condition deteriorated to the extent that tests conducted on Wednesday, 4 October 2000 indicated that he was brain dead. Dr E J Merry certified his life extinct at 12:30pm on Wednesday, 4 October 2000 (see Exhibit C2a).

2.8. Cause of death

A post-mortem examination of the body of the deceased was performed by Professor R W Byard, Forensic Pathologist, on 4 October 2000. Professor Byard's conclusion was that the cause of death was 'closed head injury'. He commented:

'Death was due to a severe closed head injury. Formal neuropathological evaluation will be available subsequently. The other injuries that were present were relatively minor but would be in keeping with the described accident. Although no markings from a seat belt were noted, these may have been obscured by the interposition of clothing. The presence of polarisable material at an old injection site in the arm indicates previous intravenous drug usage. The results of toxicological evaluations were not available at the time of this report. There were no underlying organic disease which could have caused or contributed to death.'

(Exhibit C3a, p2)

2.9. A neuropathological examination was performed by Dr Grace Scott at the Institute of Medical and Veterinary Science. Dr Scott's investigations confirmed the nature and extent of Mr Barber's extensive closed head injuries including subarachnoid haemorrhage, cerebral contusions, diffuse vascular injury, axonal injury, brain swelling and raised intracranial pressure leading to tentorial and tonsillar herniation and brain stem haemorrhage (see Exhibit C4a and C4b).

2.10. A toxicological investigation was performed by Ms H E Felgate, Forensic Scientist. Details of the analysis were as follows:

1. The blood contained:

- (1) 0.123% alcohol
- (2) approximately 2 µg tetrahydrocannabinol (THC) per L.
- (3) 11-nor-9-carboxy-THC (metabolite of THC)

2. None of the drugs amphetamines, benzodiazepines, methadone, tricyclic antidepressants, other basic drugs and opiates were detected in the blood.'

(Exhibit C5a)

3. **Background**

- 3.1. A statement taken from Mrs M P Barber, the mother of the deceased, indicates that Mr Barber had a history of drug abuse, particularly of marijuana. She also confirmed that he was in the habit of driving recklessly. She said:

'Jason got his driver's licence when he was sixteen. About two years ago he bought a VK Holden Commodore. The Commodore broke down a few months ago and hasn't been driven by Jason for a while. I've been a passenger in the Commodore when Jason drove. His driving was scary, too fast and over the speed limit. I would yell at Jason to slow down when he sped. I don't know whose vehicle Jason would have been driving when he was involved in the collision.'

(Exhibit C1a, p2)

- 3.2. As to Mr Barber's movements on 3 October 2000, I have evidence from his housemate, Dale Daniel Newman, and his friend Geoffrey Kent.
- 3.3. Mr Newman states that he and Mr Barber smoked three or four cones of marijuana each between 6:30am and about 11am that morning (Exhibit C6, p1).
- 3.4. Mr Kent confirmed that he saw them have three or four cones of marijuana after he arrived at the house at about 9:30am.
- 3.5. At about 11am or 11:30am the three young men caught the bus into the city. They walked into Rundle Mall and ate at McDonald's Restaurant. They walked to the East end of Pirie Street to Checkmates Restaurant, where they stayed all afternoon until the restaurant closed at 6:30pm. Mr Newman said that they drank 'about 8 jugs of Victoria Bitter beer each' (Exhibit C6a, p1). Mr Kent thought that they may have had four jugs each (T20).
- 3.6. Mr Newman said that he could not recall leaving Checkmates. Mr Kent said that Barber and Newman were both 'rowdy' on the way back down Rundle Mall, and they were banging the street signs and generally being disorderly. He said they were both 'yelling and screaming' that they were 'para' (paralytic). He confirmed that they were 'pretty intoxicated' (T25).
- 3.7. Mr Newman said that he has no memory of what occurred after they left Checkmates (Exhibit C6a, p2). Mr Kent said that he left Barber and Newman at the intersection of

King William Street and Hindley Street. They proceeded down Hindley Street, and he walked to his bus stop in King William Street and caught the bus home.

- 3.8. Mr Guiseppe Valente parked his Holden Calais sedan in Bank Street, Adelaide, 30 or 40 metres North of Hindley Street, at about 7pm that evening. He returned at about 8:30pm and found that his vehicle must have been stolen. He reported that fact to the Hindley Street Police Station. While he was at the station, he was told by the police that his car had just been involved in a collision. He made his way to the scene of the collision and identified his car as the one involved (Exhibit C8a, p2).

4. Circumstances leading to the collision

- 4.1. Senior Constable Gardner was driving the marked police vehicle east on Hindley Street when he heard the sound of screeching tyres. He turned left into Gresham Street and could see smoke and smell rubber in the air. He saw a silver Holden Commodore sedan stationary at the northern end of Gresham Street at the junction of that street with North Terrace. He said that he saw the vehicle suddenly accelerate hard, causing the rear tyres to squeal loudly as it turned left to travel west on North Terrace.
- 4.2. This evidence is corroborated by the statement of Graham Keith Daniels (Exhibit C11a). Mr Daniels was standing on the steps of Parliament House, in North Terrace, in a position where he could see straight down what he described as a side street, which must have been Gresham Street. Mr Daniels saw what he described as a late model Holden Commodore sedan turn left into North Terrace ‘causing a lot of wheel spin’, and then travel west along North Terrace at a fast rate of speed, ‘in excess of sixty kilometres per hour and continuing to accelerate’ (p2). Mr Daniels then saw a police vehicle follow the car west along North Terrace.
- 4.3. Senior Constable Gardner saw the vehicle about 300 metres ahead of him. The brake lights came on and as it braked, the vehicle swerved harshly from the right to the left lane to avoid roadworks in the area.
- 4.4. When the vehicle was about 100 metres west of the Morphett Street bridge, it performed a U-Turn and doing so embarrassed another vehicle, which was in the right-hand lane, in the process. During the U-Turn the tyres of the vehicle were squealing continuously. The vehicle then accelerated rapidly travelling east along

North Terrace, swerving harshly between other traffic, and then turned left onto King William Road.

- 4.5. This manoeuvre was also seen by Mr Daniels (Exhibit C11a, p3).
- 4.6. The vehicle then travelled north along King William Road, swerving in and out of the traffic. Senior Constable Gardner said he accelerated to about 100 kilometres per hour in an attempt to catch up to the vehicle but appeared to be making no ground. The vehicle disobeyed the red traffic lights at the intersection of War Memorial Drive and King William Road and continued to travel north.
- 4.7. At the intersection of Kermode Street and King William Road the vehicle again disobeyed the red traffic lights and proceeded north into O'Connell Street at a 'fast rate of speed'. Senior Constable Gardner said that he activated the red and blue flashing dome lights on the vehicle as he passed Kermode Street. He said that he did not believe that the driver of the other vehicle was aware of his presence prior to this time (T117). He said that it was his hope that by activating the lights the driver would pull over and stop.
- 4.8. The vehicle disobeyed the traffic lights at the intersections of O'Connell Street with Brougham Place, Ward Street, Archer Street and Tynte Street. Senior Constable Gardner said:

'On each occasion the Holden sedan braked hard, causing the tyres to squeal loudly and the rear of the vehicle to swing harshly to the right and swerve as it went around the stationary vehicles. On each occasion the Holden sedan used the "right turn only" lane and continued through the intersections, disobeying the red traffic lights. These manoeuvres were all done at a speed of between 50 to 60 km/h. Once the Holden sedan had travelled through the intersections and disobeyed the red traffic lights, it would accelerate rapidly before repeating the same procedure at the next intersection.'

(Exhibit C32, p3-4)

- 4.9. Senior Constable Gardner's evidence about these matters is substantially corroborated by a number of witnesses. Mr A W Newland (Exhibit C10a) confirmed the alleged manner of driving at the O'Connell Street/Tynte Street intersection, and Ms A M Selby (Exhibit C12a) also witnessed the driving from the vicinity of this intersection.

- 4.10. Mr J F W Biggs was about to enter O'Connell Street from Childers Street when he was forced to brake harshly to avoid a silver vehicle travelling at a speed which he estimated at 120 kilometres per hour (T34).
- 4.11. Senior Constable Gardner continued to follow the vehicle and saw that it also disobeyed traffic lights at the intersection of Barton Terrace West, O'Connell Street and Main North Road. Mr Biggs also saw this, saying that the vehicle braked harshly (to the extent that smoke was emitted from the tyres), swerved harshly into the left lane to avoid two stationary vehicles, and then proceeded through the intersection against the red light before proceeding north on Prospect road.
- 4.12. At about this time, Senior Constable Gardner decided not to continue following the vehicle. He slowed his vehicle and continued north on Prospect Road. Mr Biggs confirmed that the police vehicle slowed to about 20 kilometres per hour before entering the intersection of Barton Terrace West, O'Connell Street and Prospect Road, and then proceeded north on Prospect Road (T43).
- 4.13. Both Mr Biggs and Senior Constable Gardner lost sight of the vehicle as it negotiated the curve on Prospect Road.
- 4.14. Mr Guerrero told me that he had been travelling west on Fitzroy Terrace in the centre lane in his Ford Falcon station sedan at about 60 kilometres per hour approaching the intersection with Prospect Road. He said that he saw a vehicle's lights 'out of the corner of my eye' and then saw a vehicle approaching from his left. He said the traffic lights were still showing green for his direction of travel but the vehicle had already crossed over the stop line and was in the intersection and was travelling at about a speed faster than 80 kilometres per hour (T49).
- 4.15. Mr Guerrero said that the front of his vehicle collided with the driver's side of the other vehicle, as a result of which his car was spun through 180° and came to rest facing east.
- 4.16. Mr R W Attwell was the driver of a Mitsubishi Magna sedan which was stationary at the intersection of Fitzroy Terrace and Prospect Road, waiting to turn right onto Prospect Road. He said that the traffic lights for his direction of travel were green and so he moved into the centre of the intersection before stopping. He saw the Ford Falcon station wagon, which was obviously Mr Guerrero's car, approach the

intersection from the opposite direction. He said that he heard the sound of a 'high revving engine' and looked to his right and saw what was obviously the vehicle driven by Mr Barber. He estimated the speed of the vehicle at 'not less than 120 kilometres per hour' as it entered the intersection in violation of the traffic lights. He said:

'As soon as I saw the Holden sedan, I knew that it was going to collide with my car ... no sooner had I seen the Holden sedan when it collided with the front right corner of my car. As a result of that collision I was pushed around in an anticlockwise direction. I felt another impact along the right-hand side of my car, but I didn't know if that was the Holden sedan or the Ford Falcon station wagon. I came to rest on the north-western corner of the intersection and facing in a north-westerly direction.'

(Exhibit C, p3)

4.17. The evidence of Mr Guerrero and Mr Atwell was corroborated by that of Mr D J Norvell who was driving west along Fitzroy Terrace behind Mr Guerrero's vehicle. He was in the left-hand lane of Fitzroy Terrace, intending to turn left into Prospect Road. He confirmed that the traffic lights on Fitzroy Terrace were green for vehicles travelling west. As he was about to turn left he saw a silver Holden Calais sedan travelling north on Prospect Road at a 'fast rate', although he was unable to estimate the speed. He said that the Calais entered the intersection at about the same time as the Ford Falcon did. He said that the Calais was 'going too fast to be able to turn' (Exhibit C, p3).

4.18. Mr Norvell saw the collision between the Holden Calais sedan and the Ford Falcon station wagon. He did not see the collision involving Mr Atwell's Magna.

4.19. Conclusion

It is obvious from the evidence outlined above that Mr Barber was driving the stolen Holden Calais sedan at a very fast rate of speed in a northerly direction along King William Road, O'Connell Street and Prospect Road prior to the collision. He violated a total of seven red traffic lights at intersections along the way, negotiating each intersection at a fast rate of speed and without regard for the safety of other traffic or pedestrians who may have been in the vicinity. He entered the intersection of Fitzroy Terrace and Prospect Road at a very fast rate of speed, in violation of the red light, and without regard for the presence of the other vehicles and with apparent total disregard for his own safety and the safety of others.

5. **Issues arising at inquest**

5.1. Rule 305 of the Australian Road Rules is as follows:

'(1) A provision of the Australian Road Rules does not apply to the driver of a police vehicle if:

(a) in the circumstances:

(i) the driver is taking reasonable care; and

(ii) it is reasonable that the provision should not apply; and

(b) if the vehicle is a motor vehicle that is moving – the vehicle is displaying a blue or red flashing light or sounding an alarm.

Note Motor vehicle and police vehicle are defined in the dictionary.

(2) Subrule (1) (b) does not apply to the driver if, in the circumstances, it is reasonable:

(a) not to display the light or sound or alarm; or

(b) for the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm.'

(Exhibit C33, Appendix S)

5.2. Police General Order 196/2000 promulgated by the Commissioner of Police include the following statement:

'When you use the exemption provided in Rule 305 of the Australian Road Rules in responding to taskings or driving in a manner which, when compared to normal risks, substantially increases the risk of injury to police, the public or suspects, or of damage to property, the driving will be considered urgent duty driving.

In all urgent duty driving situations SAPOL's operational safety philosophy and principles must be applied. Safety must be the primary concern ahead of capture.

...

Urgent duty driving may only be undertaken:

- In response to an emergency involving obvious danger to human life; or
- When the seriousness of the crime warrants it.'

(Exhibit C33)

5.3. The Order then goes on to stipulate a number of directions where urgent duty driving is considered necessary. These directions deal with issues such as when urgent duty driving may be warranted, the decision making process for commencing urgent duty driving, directions as to when urgent duty driving should be terminated, an obligation to activate audible emergency warning devices, flashing roof lights, and headlights, unless there are 'exceptional operational circumstances', and obligations to

communicate by radio, advising Comcen or base of a substantial amount of information concerning the incident, and updating the progress of the incident. In particular, radio communications must be maintained throughout the incident, so that Commanders can allocate other vehicles/resources as required (see pages 197-198).

- 5.4. Senior Constable Gardner told me that it was his judgment that he was not involved in urgent duty driving until after it had disobeyed the red light at the intersection of King William Road and Kermode Street. It was at this point that he activated the red and blue flashing lights on the roof of the police vehicle (T91).
- 5.5. Senior Constable Gardner told me that it was an everyday occurrence for a police traffic patrol to utilise Australian Road Rules 305 and exceed the speed limit, without activating the light or sounding the alarm in order to approach the offending vehicle without giving notice of his presence. He said that it was only after the vehicle had ‘crashed’ the traffic lights at Kermode Street that he decided that the pursuit might ‘substantially increase the risk of injury to police, the public ...’ within the meaning of the General Orders that he activated the lights.
- 5.6. Senior Constable Gardner explained that he did not engage the audible warning device, or the flashing headlights of the vehicle, nor did he comply with the requirements of the General Orders in relation to radio communication, because there was a need to keep both hands on the steering wheel while negotiating the ‘S’ bend in King William Road, and the intersections along O’Connell Street. He said that the radio microphone was in his lap and he was unable to take his eyes from the road in order to locate it. He was unable to activate the switch for the warning device or the headlights because it was in the centre console and he was unwilling to take his eyes from the road or his hand from the wheel in order to activate the switch.
- 5.7. I have considerable reservations about Senior Constable Gardner’s evidence in this regard. The transcript of the radio communication between him and Comcen indicates that he was making regular radio communication both at the commencement of the incident, while the vehicles were passing the Women’s and Children’s Hospital on King William Road, and while they were in O’Connell Street (see Exhibit C33, Appendix R, p1).
- 5.8. Chief Inspector Zander was critical of Senior Constable Gardner in his report (Exhibit C33). It was his conclusion that Senior Constable Gardner’s assessment that there

was no substantial increase in the risk until after Kermode Street was inappropriate, and that he should have assessed that he was engaged in urgent duty driving while he was driving at 100 kilometres per hour in King William Road, and after the vehicle disobeyed the red traffic light at War Memorial Drive (T146). He said:

'I do acknowledge that he was a solo patrol officer with a considerable amount of knowledge and driving experience and that he was faced with many decisions on this night however the decision making process and conveyance of information to the Police Communications Centre was not to the required standard.' (p13).

- 5.9. Chief Inspector Zander also concluded that the manner in which the pursuit was conducted was inappropriate in that Senior Constable Gardner did not fully activate the warning devices on the vehicle, nor did he adequately communicate the situation to Comcen (p15).
- 5.10. By the time he gave oral evidence, Chief Inspector Zander was less critical of Senior Constable Gardner. While maintaining that Senior Constable Gardner should have concluded that he was engaged in urgent duty driving at an earlier stage, he acknowledged that the distance involved was from War Memorial Drive to Kermode Street, a distance of only 400 metres, which would have taken only a few seconds to traverse. He suggested that Senior Constable Gardner's error was at the 'lower end of the scale' (T156).
- 5.11. He also accepted Senior Constable Gardner's explanations about the difficulty he had in activating the audible warning device, the headlights and the radio, in circumstances where, as a solo officer, he was required to drive the vehicle at high speed in a challenging situation.
- 5.12. Causation
Senior Constable Gardner told me, and I accept, that it is highly unlikely that Mr Barber was aware of his presence until he activated the dome lights on his vehicle at around Kermode Street, North Adelaide. Having regard to the 'S' bend, it is unlikely that Mr Barber was aware of the presence of the police vehicle until he was in O'Connell Street.
- 5.13. Prior to that time, Mr Barber had been engaged in driving the stolen vehicle in a reckless and erratic manner in North Terrace and King William Road, long before he would have been aware that a police vehicle was pursuing him.

- 5.14. Even if Mr Barber became aware of the police vehicle in O'Connell Street, Senior Constable Gardner only pursued him for the length of O'Connell Street (approximately 900 metres), before he terminated the pursuit, decelerated to within the speed limit, and turned off the dome lights.
- 5.15. In those circumstances, I conclude that the fact that Senior Constable Gardner's pursuits played no part in Mr Barber's decision to drive the vehicle so recklessly and at such a high speed, nor did it play any part in his decision to drive through the intersection of Prospect Road and Fitzroy Terrace against the red lights. In other words, I am not satisfied that Senior Constable Gardner's pursuit was a causative factor in Mr Barber's death.

6. Recommendations

- 6.1. I have heard evidence from Senior Constable Gardner that there have been improvements made to the position of radio microphones and switches for the warning equipment in police vehicles which have made access much easier during a pursuit (T100). In view of that, I have no recommendations to make pursuant to Section 25(2) of the Coroner's Act.

Key Words: Motor Vehicle Accident; Police Investigation

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 5th day of July, 2002.

Coroner