

SOUTH



AUSTRALIA

## FINDING OF INQUEST

*An Inquest taken on behalf of our Sovereign Lady the Queen at Port Lincoln in the State of South Australia, on the 4<sup>th</sup> September and the 4<sup>th</sup> of December 2002, before Anthony Ernest Schapel, a Coroner for the said State, concerning the death of Justin Reny Edward Hyde.*

*I, the said Coroner, find that, Justin Reny Edward Hyde aged 18 years, late of 75 Baltimore Street, Port Lincoln, South Australia died at Normandy Place, Port Lincoln, South Australia on the 16<sup>th</sup> day of June 2000 as a result of left haemopneumothorax due to a traumatic rupture of the lower lobe of the left lung.*

### **1. Introduction**

- 1.1. Justin Hyde was born on the 14 August 1981. He was 18 years of age at the time of his death which occurred on Friday evening, 16 June 2000. He lived at 75 Baltimore Street, Port Lincoln.
- 1.2. At the time of his death, Justin Hyde was suspended from holding or obtaining a driver's licence. However, he possessed a Yamaha WR200 motor cycle. The motor cycle had an engine capacity of 200cc and had a six-speed transmission. It was a dirt bike, fitted with appropriate sports tyres for that purpose. However, it was a motor cycle that also could be ridden on the road. Although it was otherwise roadworthy, the motor cycle did not have any number plate, indicator lights, rear vision mirrors nor speedometer. It also did not have a rear tail-light. The likelihood was that such a vehicle, if ridden on the streets in and around Port Lincoln, would eventually have attracted the attention of the Police. It did on the night of 16 June 2000.

- 1.3. On the night in question, the deceased was riding the motor cycle along Tasman Terrace in Port Lincoln. Tasman Terrace abuts the foreshore. Another 18 year old, Benjamin Daniel Potts, was riding as pillion passenger. Both the deceased and Potts were wearing full face motor cycle helmets. The weather was dry.
- 1.4. At about 10.15pm a police patrol, driven by Constable Stephen Fitzgerald and in which Sergeant Jeffrey Gordon Page was a passenger, encountered the motor cycle as it was being ridden by the deceased along Tasman Terrace. There is a side street off Tasman Terrace called Lewis Street. The officers were travelling towards the waterfront along Lewis Street when they observed the motor cycle travelling along Tasman Terrace across the mouth of the junction with Lewis. The condition of the motor cycle as described and the fact that there didn't appear to be any lighting operating on the bike caused the officers to direct the rider of the motor cycle to pull over.
- 1.5. The deceased, who was in control of the motor cycle, refused to pull over and at one point in time sped away from the police vehicle along Flinders Highway. The police patrol followed. The cycle turned off Flinders Highway and then negotiated a number of side streets in Port Lincoln at moderate speeds. In due course it turned into a thoroughfare called Normandy Place. The police patrol had continued to follow in the hope and expectation that the bike would pull over. In Normandy Place the motor cycle left the bitumen surface and then proceeded onto the dirt verge on the right-hand side of Normandy Place for the motor cycle's direction of travel. At that point along Normandy Place there was a reserve. Having negotiated the dirt verge the cycle then proceeded into a culvert that separated Normandy Place from the reserve. The bike became airborne as it proceeded into the culvert where it crashed, dislodging the deceased and Potts. The police patrol stopped and attended to the deceased and Benjamin Potts. First aid was administered and an ambulance was called and attended. The deceased suffered internal injuries as a result of the impact and died in spite of efforts to save him. Potts also suffered injury including a broken arm and internal injuries. He recovered from those injuries.
- 1.6. It is plain that at the time it left the road and crashed, the motor cycle was being followed by the uniformed police patrol that I have mentioned. At all material times it was the desire of the police officers to have that motor cycle and its riders pull over.

Both officers claimed that they did not know the identities of either the rider or the pillion passenger at any time prior to the collision.

- 1.7. The death of Justin Hyde is to be regarded as one where there is reason to believe that this death occurred, or the cause, or a possible cause of that death, arose or may have arisen whilst the deceased was detained in custody pursuant to an Act or law of South Australia. Accordingly, I have been directed to hold an inquest into the death of Justin Hyde pursuant to Section 14 (1)(a) of the Coroner's Act 1975. On the 4 September 2000 at Port Lincoln I held that inquest and did so with a view to ascertaining the cause and circumstances of that death.
- 1.8. I heard evidence from Benjamin Daniel Potts who had been the pillion passenger on the motor cycle on the night in question. I also heard evidence from Constable Stephen Fitzgerald who was the driver of the police patrol and from Sergeant Jeffrey Page who had been the passenger in the police patrol. I also received in evidence a number of affidavits from other witnesses together with some documentary exhibits.
- 1.9. The cause of the deceased's death was a left haemopneumothorax due to a traumatic rupture of the lower lobe of the left lung (Exhibit C3a).
- 1.10. The above fatal injuries were caused as the result of the motor cycle crashing in the culvert and the consequent trauma occasioned thereby.
- 1.11. This inquest examined the reasons why and the circumstances in which the motor cycle ridden by the deceased left the paved surface of the road and crashed into the culvert, thereby causing this death.

## **2. Circumstances**

- 2.1. The pillion passenger, Benjamin Potts, was called to give evidence at the inquest. In addition I received in evidence a record of an interview between an officer of the Major Crash Investigation Unit and Potts taken on 22 June 2000. Potts confirmed the accuracy of the transcript of that interview as well as the accuracy of the information that he gave to the police during the course of that interview. Potts told me that he had been in the company of the deceased during the evening of 16 June 2000, the day of the deceased's death. They had been to a number of places and alcohol had been consumed. Potts said that he had been drinking but he did not see the deceased drink

any alcohol. As far as marijuana consumption was concerned it appears that some was consumed amongst a group of young men with whom they associated that day, but Potts told me that he couldn't recall whether the deceased had smoked any marijuana. However, THC which is the effective component of marijuana, was found to be present in a sample of his blood taken post-mortem. Alcohol was not detected in his bloodstream. None of the drugs morphine, amphetamines or other common drugs were detected in the bloodstream. As the deceased died very shortly after the accident, I am prepared to infer that THC was in the deceased's bloodstream at the time of the accident but that alcohol and the other drugs I have mentioned were not present (Exhibit C4a).

- 2.2. Potts gave me a detailed description of his movements and those of the deceased that evening. Those movements do not need to be repeated here in the same detail. However, at one point during the course of the evening Potts and the deceased rode the motor cycle back to the deceased's home in Baltimore Street, Port Lincoln. On the way they obtained a Playstation game from a video shop. The deceased was in fact living in a caravan at the Baltimore Street address and the pair of them there played the Playstation game. It was then that they decided that they would go for what turned out to be the fatal ride.
- 2.3. The deceased and Potts had no other purpose in mind than, to use Potts' words, 'just go for a ride' (T18).
- 2.4. The deceased rode the motor cycle and Potts rode as pillion passenger. As I have mentioned earlier they both had full face motor cycle helmets on. In addition, the motor cycle did not have any number plates. In those circumstances, it would have been difficult for a police patrol to readily identify the riders of the motor cycle or indeed the motor cycle itself.
- 2.5. Potts told me that they rode down to the waterfront onto Tasman Terrace and it was approximately at the corner of Lewis Street that Potts' attention was drawn to the police vehicle. When Potts spotted the police vehicle he believed he said to the deceased that there was a police vehicle there, and the deceased had responded by looking back at the car. The police vehicle was a marked police vehicle and obviously so. Potts had little doubt that the deceased saw the police vehicle for himself (T19). The deceased continued to ride along Tasman Terrace and the police

patrol followed. There is no suggestion at that point that the motor cycle was being ridden at an excessive speed. However, after the motor cycle negotiated the roundabout at the junction of Tasman Terrace and Flinders Highway the motor cycle sped off with the police vehicle in pursuit and, according to Potts, the motor cycle reached a speed of somewhere between 60 and 100 kilometres per hour at one point along Flinders Highway.

- 2.6. It was obvious to Potts that the police wanted the deceased to pull over (T24). Although Potts thought that the police vehicle did not have its flashing lights on, nor was operating its siren, the evidence of the officers to which I will refer confirms in my mind that those devices were operating. In addition it is obvious from the fact that the deceased accelerated to an unlawful speed along Flinders Highway that he was at that point attempting to put distance between him and the police vehicle with a view to avoid having to pull over. Potts had the clear understanding that the deceased was trying to evade the police and that his motivation for so doing was the fact that he didn't want to get caught without a licence.
- 2.7. Eventually the motor cycle turned off Flinders Highway and then negotiated some rather windy side streets. It appeared to Potts that the deceased was slightly confused about where he was at that point in time (T27). The police vehicle followed at what Potts estimated would have been a distance of about 20 or 30 metres. The motor cycle's speed in these streets was slower than the speed at which the motor cycle had negotiated Flinders Highway. There is no suggestion anywhere else in the evidence that the speed of the motor cycle was in any way excessive as it negotiated these side streets off Flinders Highway.
- 2.8. Eventually the motor cycle returned to Flinders Highway, proceeded along that road, still followed by the police vehicle, and turned right into a side street where it again continued its journey at a moderate speed. It ultimately turned into a street called Oxford Terrace at the end of which there is a rather steep section immediately before the junction of Oxford Terrace and Normandy Place. The police vehicle continued to follow and at the junction of Oxford Terrace and Normandy Place, the police vehicle, according to Potts, came to within a distance that he pointed out in the courtroom, estimated to be about 4 or 5 metres. At one point Potts thought he could hear the police officers, through some form of amplification, telling them to pull over, although it was plain by then that such was their objective. The motor cycle turned

left into Normandy Place and then proceeded up a gradual incline. Normandy Place had a bitumen surface with dirt verges on either side of the road. As one proceeds in a westerly direction along Normandy Place one encounters a junction of a side street on the right. That side street is Alexander Crescent. West of Alexander Crescent along the northern side of Normandy Place is a large reserve. Potts told me that he knew that the reserve was there as he had played there in the past (T28). He also knew that there was a culvert between the northern dirt verge of Normandy Place and the edge of the reserve. However, it is obvious from the evidence that this section of Normandy Place was extremely dark that night. Potts told me that it was. He said he couldn't see beyond the dirt verge. In addition, there is no street lighting along that section of Normandy Place. However, it could be seen, notwithstanding darkness, that it was a cleared area in the sense that there were no buildings nor houses on that side of the street. There was an issue as to whether or not the headlight of the motor cycle was on along Normandy Place, with or without a light what lay beyond the dirt verge of Normandy Place could have been a complete mystery to the deceased. Potts had no reason to suppose that the deceased was familiar with that location (T28).

- 2.9. Along Normandy Place Potts told me that it was clear that all the police wanted was for the deceased to stop (T35). After the left-hand turn into Normandy Place was executed Potts said that the police vehicle was still behind them. He could not say in his evidence how far the police were behind the motor cycle along Normandy Place as he had been looking mainly ahead. However, he said in his record of interview that in Normandy Place the police vehicle was 'right behind us. About half a car length, if that' (Exhibit C30, p9). He said in his record of interview that he thought the police were trying to get past them. He kept thinking that the police were going to shoot out the back tyre. He thought they were trying to get up beside the motor cycle in an attempt to pull them over. He said that by that stage the police were 'heaps close' and that when he looked back the headlights were 'just right there. Near the back wheel' (Exhibit C30, p10).
- 2.10. I pause here to observe that there is no evidence that the police officers were in any way attempting to make contact with any part of the motor cycle, however proximate they may have been to the motor cycle. I think that Potts' comment that they were going to shoot out one of the tyres of the motor cycle was his way of illustrating his

point that they were very close. The proximity of the police vehicle is a matter upon which I will comment later.

- 2.11. When the motor cycle left the bitumen Potts told me that it was a slow movement and that the deceased appeared to have full control of the bike. He said that it left the bitumen at about the speed limit. He said that the motor cycle became airborne as it negotiated the culvert and then crashed. He agreed with Mr Ikonopolos who appeared for the Commissioner of Police that the apparent intent of the deceased was to cut through the reserve to evade the police. I observe here that this motor cycle was essentially an off-road vehicle and that having examined the scene myself and having looked at photographs of the scene, it is obvious that the police vehicle would not have been able to follow the motor cycle either across the culvert or across the reserve, due to the nature of the terrain. A matter of significance is that Potts was of the opinion that the deceased was 'an excellent rider' (T41). Potts would of course know this because he had ridden on the back of the motor cycle with the deceased riding on a number of occasions. Potts told me that at no stage did he ever request or encourage the deceased to pull over.
- 2.12. I also heard evidence from both of the police officers in the following police patrol vehicle. I also had before me copies of records of interview between Inspector Bubner of South Australia Police and both officers (Exhibits C32 and C35). Much of what the officers told me and what they had said in their respective interviews was not vastly different from the description of the incident that was given to me by Potts. The officers confirmed that the motor cycle was first observed when they were driving along Lewis Street towards Tasman Terrace. The attention of the officers was drawn to the state of the motor cycle and the fact that it did not appear to have any headlight on, although they were possibly not in any position to say whether it was on or not given that they were behind the motor cycle. The officers communicated with their base when they decided to follow the motor cycle. The flashing lights were on and the sirens were activated at some point along Flinders Highway. The flashing lights and siren were to remain on for the rest of the journey. The rider of the motor cycle at no stage made any attempt to stop or slow down. On the contrary, along Flinders Highway the motor cycle accelerated to a speed possibly in excess of 90 kilometres per hour. The distance of separation at one point along Flinders Highway was about 100 metres.

- 2.13. The police vehicle was able to catch up with the motor cycle along Flinders Highway and followed it into the side streets I have mentioned. The speeds in these side streets were very moderate given their windy and steep nature, and the fact that there were a number of spoon drains in the area dictated caution. The nature of these thoroughfares was such that it prompted Constable Page to say that if any vehicle was attempting to do 60 kilometres per hour along these streets they would be considered driving most erratically or dangerously and that that certainly hadn't been the case in this instance. Along these side streets Page told me that he couldn't recall getting any closer than about 30 or 40 metres to the motor cycle. The officers followed the motor cycle all the way back to Flinders Highway. They then followed the motor cycle along Flinders Highway itself before turning right into Trigg Street. They then turned left into Oxford Terrace and then left again into Normandy Place where the accident occurred. Again, the speeds along these thoroughfares were unremarkable. I was told that the motor cycle slowed down considerably at the junction of Oxford Terrace and Normandy Place due to the presence of a spoon drain at that junction. At the junction of Oxford Terrace and Normandy Place an attempt was made to draw level with the motor cycle and Page shouted out to the rider of the motor cycle to stop and pull over.
- 2.14. However, the motor cycle executed a left-hand turn into Normandy Place and proceeded along it in a westerly direction. Page told me 'the bike to me appeared to be in a normal riding position, like keeping to the left probably a metre or two from the edge of the road in a normal riding position, it certainly was not on the incorrect side of the road' (T55). He told me that the motor cycle along Normandy Place remained about 40 metres or so ahead of the police vehicle. Page told me that at the point where the motor cycle left the road they were probably still 40 or so metres back from the motor cycle. He said that the driver of the vehicle, Constable Fitzgerald, had tried to maintain a distance sufficient to give the deceased an opportunity to pull over. He said that the closest that the police vehicle got to the motor cycle along Normandy Place was that distance of 40 metres (T74).
- 2.15. Page told me that when the motor cycle left the road it was not a sudden movement. He observed no untoward leaning of the motor cycle. It made what he estimated to be about a 30° change in direction and that after it negotiated the dirt verge it dropped out of sight (T72). This is consistent with the evidence of Potts who regarded the leaving of the bitumen surface as a controlled movement by the deceased. It is also consistent

with tyre marks observed on the dirt verge. Those marks indicate a change of direction in keeping with Page's assessment.

- 2.16. Fitzgerald told me that the fastest speed achieved by the police vehicle was about 90 kilometres per hour along Flinders Highway and they had maintained that speed until they gained on the motor cycle (T85). In the side streets south of Flinders Highway he said that he had maintained a safe distance. He estimated that the distance varied from 40 metres on the straight sections but that when corners were negotiated the police vehicle naturally closed on the motor cycle.
- 2.17. Fitzgerald also told me that at the junction of Oxford Terrace and Normandy Place the motor cycle slowed considerably to a point where it almost stopped such that at that point he gained the impression that the motor cycle was finally going to pull over. However, the motor cycle turned left into Normandy Place and according to Fitzgerald it 'accelerated again heavily up Normandy' (T89). Along Normandy Place Fitzgerald said that the rider appeared to have good control of the motor cycle and was riding it in a deliberate way. He said that in the course of the whole pursuit his police vehicle never came into contact with the bike and in fact he said that he didn't get anywhere near it (T95). As far as the pursuit along Normandy Place was concerned he said that he had kept a reasonable distance from the motor cycle and that there was sufficient distance for the police vehicle to stop if there had been the need. He said that the action of the rider of the motor cycle in leaving the bitumen surface to him was a very deliberate action which had not caused him to alter his course nor driving behaviour in any way. At the junction of Oxford Terrace and Normandy Place, where the motor cycle slowed down as if to pull over, the police vehicle got to within 5 metres of the motor cycle, but that along Normandy Place the motor cycle accelerated putting a distance of '30m plus in front' (T101). Fitzgerald said in his record of interview with Inspector Bubner that the motorcyclist had put about 30 to 40 metres distance between the motor cycle and the police vehicle by the time Fitzgerald set the police vehicle in motion again along Normandy Place (Exhibit C35, p11). Fitzgerald told Bubner that safety had been his number one priority in the course of this pursuit (Exhibit C35, p16).
- 2.18. Both officers rejected any suggestion that frustration had crept into their thinking (T75, T102).

- 2.19. It will be observed that there were in a sense two phases to this pursuit. The first phase was that which involved the vehicles proceeding west along Flinders Highway where, as I have said, the police vehicle attained a speed of about 90 kilometres per hour but had caught up with the motor cycle and also part of that phase was the pursuit along the thoroughfares to the south of Flinders Highway. The other phase of the pursuit is that part of the journey represented by the pursuit again along Flinders Highway but then into side streets to the north of Flinders Highway which included Trigg Street, Oxford Terrace and Normandy Place where the accident occurred. As far as the first phase is concerned, and in particular the pursuit along the rather winding and hilly thoroughfares, there is evidence in the form of eyewitness statements that very much suggests that the vehicles were not travelling at an excessive speed in negotiating those thoroughfares and, in addition that the police vehicle maintained a safe distance behind the motor cycle. I refer here to the statements of Michael Joseph Everlyn (Exhibit C8a) who as it happens was an off-duty police officer who lived in Kaye Drive at Port Lincoln, a Douglas Frederick Pryde (Exhibit C9a) who lived in the vicinity of Flinders Highway and Trigg Street and his wife Kay Sandra Pryde (Exhibit C10a).
- 2.20. However, there is a divergence in the evidence as far as the distance that was maintained between the police vehicle and the motor cycle along Normandy Place is concerned. Statements were taken from the occupants of 62 and 64 Normandy Place. Since this inquest was conducted, I have received a statement of Constable Archibald Kempster who has taken measurements in relation to the position of these two premises relative to other features of the scene. He states that 62 and 64 Normandy Place are both on the northern side of that street. The eastern boundary of number 62 is 209 metres west of the western curb alignment of Alexander Crescent which forms a junction with the northern side of Normandy Place. The reserve to which I have referred is between 62 Normandy Place and the junction of Alexander Crescent and Normandy Place. The occupants of 62 and 64 Normandy Place all had an unobstructed view along Normandy Place as the police vehicle proceeded up Normandy Place from the junction of Oxford Terrace. Mrs Anita Dempsey of 64 Normandy Place said in her statement (Exhibit C11a) that she had heard a siren in the vicinity of Normandy Place. She was walking outside as a guest was leaving. She states that she saw the police vehicle coming up Normandy Place somewhere in the vicinity of Alexander Crescent. The junction with Alexander Crescent is between the

junction of Oxford Terrace and the location where the motor cycle left the road and crashed. Mrs Dempsey said that when she noticed the police vehicle at that vicinity, there were no other vehicles either in front or to the rear of the police vehicle. This is very much suggestive of the fact that by the time she had first seen the police vehicle in the vicinity of the Alexander Crescent junction, the motor cycle had already left the road and had disappeared into the culvert. This would in turn suggest that the police vehicle was an appreciable distance behind the motor cycle when the motor cycle left the road.

- 2.21. Another occupant of that same premises, Ms Megan Dempsey, described a similar scenario in her witness statement (Exhibit C12a). She said that her attention to the police vehicle was drawn when it was slightly further down than the junction of Alexander Crescent. It was proceeding along Normandy Place in a westerly direction towards her position and she could not see any other vehicles on Normandy Place. She made the observation that the speed of the vehicle did not appear to be excessive and that it was on the correct side of the road. Again, this tends to suggest that by the time she saw the police vehicle the motor cycle had left the road and was out of sight, suggesting further, as with the evidence of Mrs Dempsey, that the police vehicle had been an appreciable distance behind the motor cycle when the latter left the road. A Colleen Warland had been a guest of the Dempsey's at 64 Normandy Place. Her account of proceedings (Exhibit C13a) was that her attention was drawn to the police vehicle coming up Normandy Place and her impression was that the police vehicle was going to execute a right-hand turn into Alexander Crescent. She maintains that she did not see any motor cycle when she saw the police vehicle and did not hear any sound that she could associate with a motor cycle. The police vehicle on her estimate was about 150 metres down Normandy Place when she first saw it. However, if the vehicle was approaching the Alexander Crescent junction, the actual distance would have been just in excess of 200 metres on the basis of Constable Kempster's measurements. As with the other two witnesses who were in the vicinity of 64 Normandy Place, the statement of Ms Warland suggests that her attention was first drawn to the police vehicle at a time after the motor cycle had left the road, suggesting again that the police vehicle had been an appreciable distance behind the motor cycle at that time.

- 2.22. A Mr Graeme Cunningham lived at 62 Normandy Place. His statement was produced in evidence and marked C14a. He was aware of the presence of his neighbours at 64 Normandy Place (no doubt the Dempsey's and their guest). I infer from that that he saw what they saw. However, he may have seen the police vehicle a little earlier than the Dempseys and their guest because from his position he could see the vehicle coming up Oxford Terrace before it negotiated what was to be a left-hand turn into Normandy Place. He at no stage could see any vehicle in front of the police vehicle on Normandy Place but he did go on to say 'if there was it must have been a motorbike or a small vehicle, as a larger vehicle would have blocked out some vision of the police car'. He said the police vehicle was on the correct side of the road and the speed of it did not appear to be excessive. Given that the evidence of the police officers was to the effect that they had at the junction of Oxford Terrace and Normandy Place become quite close to the motor cycle, it is surprising that Mr Cunningham did not see the motor cycle at any stage after it turned into Normandy Place. However, his evidence is consistent with that of the Dempseys and Ms Warland insofar as it tends to suggest that the motor cycle was not immediately in front of the police vehicle in Normandy Place as in such a situation the motor cycle would have most likely been illuminated by the headlights of the police vehicle.
- 2.23. I received statements from two further witnesses who were in the vicinity of Normandy Place on the evening in question. These two witnesses were in fact in Alexander Crescent. A Mr Darren Williams was driving his taxi along Alexander Crescent towards the junction of Normandy Place (Exhibit C15a). When he was about 15 to 20 metres from that junction his attention was drawn to a siren and then noticed a police vehicle coming up Normandy Place on his left. At that time he saw a motor cycle pass in front of his position. It looked like an off-road motor cycle and it had two riders. He thought at the time that the motor cycle was exceeding the 60 kilometres per hour limit but he could not give any better estimate. Less than a car length behind the motor cycle was the police vehicle and, as it passed his position, he said that it started to move on to the right-hand side of the road. It gave him the impression that it was going to come up alongside the motor cycle. The police vehicle appeared to be travelling slightly faster than the bike and edging up to it. He then describes seeing the bike 'radically swerve to the right and disappear out of sight' (Exhibit C15a, p2). He said he couldn't see any reason for it to swerve in such a manner. He said the police vehicle continued along Normandy Place on what he

believed to be the incorrect side of the road. Mr Willams executed a left-hand turn into Normandy Place away from the direction in which the motor cycle and the police vehicle had been travelling and observed in his rear vision mirror that the police vehicle had executed a u-turn. This latter observation of course is in keeping with the admitted driving behaviour of the police after the motor cycle left the road.

- 2.24. A Ms Sharyn White lived at 6 Alexander Crescent, Port Lincoln (Exhibit C16a). She was awoken by the sound of sirens and this caused her to look out of her bedroom window that overlooked the reserve on the northern side of Normandy Place. She saw the police vehicle going up the hill along Normandy Place and in the headlights of the police vehicle she could see a motor cycle. She estimated she saw this from a distance of between 'about 1½ netball courts to the length of a football field'. She said that her view was unobstructed and that the front of the police vehicle was 'as much as 1½ car lengths from the rear of the motor cycle' (Exhibit C16a, p2). She said that the headlights on the police vehicle illuminated the motor cycle very well. She thought that both vehicles were travelling at about the speed limit, maybe less. She then described a manoeuvre undertaken by the motor cycle in terms of it doing a u-turn. She said it disappeared down the gully that runs along the reserve. The sirens on the police vehicle were then switched off and the police vehicle pulled over.
- 2.25. There is thus a divergence in the evidence as to the distance between the front of the police vehicle and the motor cycle at the time the motor cycle left the road.

### **3. Technical evidence relating to the scene**

- 3.1. I received in evidence an affidavit of Senior Constable John Arthur Mylchreest which verified his statement (Exhibits C20 and C20a). Mylchreest is a member of the South Australia Police Department, Forensic Services Branch. He attended the scene at Normandy Place at about 11pm on the night in question. He observed the motor cycle lying in the culvert amongst several large rocks. The motor cycle was in a position about 3 metres below the road level on the northern side of Normandy Place. There was a single tyre mark leading off the northern side of the bitumen towards the culvert. The line of the tyre mark across the dirt verge led directly to where the motor cycle was lying in the culvert. Mylchreest examined the police vehicle and found that there was no apparent collision damage to the front and right side of the vehicle. The fact that there was no collision damage was later confirmed in the course of a more

detailed examination by a police mechanic. Beyond the culvert was a large grass reserve, at the eastern end of which was Alexander Crescent. At the location of the accident the position is very dark. Despite an almost full moon, the culvert was almost indiscernible in the dark due to the presence of several shrubs and trees. However, the far side of the reserve is visible because of street lighting in Mena Place situation at the far side of the reserve. There are no street lights in the immediate vicinity. I infer from that description that anyone not familiar with the road and surrounding terrain could quite easily be led to believe that the terrain between the northern verge of Normandy Place and the reserve consisted of a continuously flat surface. The reserve itself is quite visible but the culvert is not. This evidence goes some way in my opinion to explain why in the circumstances the deceased undertook a manoeuvre that would inevitably cause him to lose control of the motor cycle in the culvert. This of course is relevant as to whether or not the deceased deliberately left the bitumen surface. He may have believed that once he had negotiated the northern verge of Normandy Place he would have been presented with a relatively smooth surface upon which to ride. I return to this issue later in my conclusions.

- 3.2. I also received in evidence an affidavit and attached statement from Senior Sergeant Graham England of the Traffic Operations and Investigation Section, Traffic Support Branch of South Australia Police (Exhibits C21 and 21a). England attended the scene of the accident on the morning after the accident. He was met by Mylchreest to whom I have already referred. Mylchreest indicated certain features of the scene to England including the position of the motor cycle and the single tyre mark which extended from the bitumen surface of the road across the verge and then towards the culvert. In the opinion of England the tyre mark had the appearance of having been made by a free rolling tyre across the dirt surface. This indicates to me that the motor cycle was not under any severe braking at the time it negotiated the non-bituminised surface that led towards the culvert. From measurements taken at the scene England concluded that the speed of the motor cycle at the moment it drove over the edge of the embankment and became airborne was 57.6 kilometres per hour. He also concluded that for the motor cycle to have stopped prior to it going over an embankment leading to the culvert the rider would have needed to have seen the embankment and commenced his reaction process at a distance of between 50 and 89 metres from the point where he went over the embankment. This would have placed him in the vicinity of or to the east of Alexander Crescent and at a position where it

was probably impossible for him to have seen the culvert because of the lack of lighting in the area. This evidence again is relevant to the question of whether or not the deceased deliberately rode the motor cycle off the road and whether or not he was aware of the existence of the culvert.

#### **4. Urgent duty driving**

- 4.1. An issue arose in this inquest as to whether or not the driving behaviour of the driver of the police vehicle involved what has been referred to as an urgent duty driving situation, and if so, what bearing that should have had on the driving behaviour of Fitzgerald.
- 4.2. Such a situation envisages the pursuit of another vehicle by the police in a police vehicle. There is a protocol which describes a number of parameters to be considered in deciding whether or not police should commence or continue the pursuit of another vehicle (Exhibit C33). Issues such as the inherent danger or otherwise of the pursuit, bearing in mind such things as traffic conditions, are relevant considerations.
- 4.3. Page and Fitzgerald both rejected the notion that this was an urgent duty driving situation. The fact of the matter was that, other than along Flinders Highway where speeds in excess of 80 kilometres per hour may have been reached, what this pursuit amounted to in reality was a situation in which the police following at moderate speeds within the local speed limits and in the hope that the driver of a vehicle, who was clearly aware of their presence, would pull over in accordance with plainly communicated instructions.
- 4.4. When an urgent duty driving situation arises the issue to be considered is whether the police should cease and desist from pursuit where a situation of danger arises either in respect of the safety of the vehicle being pursued or that of the police, or indeed that of the general public.
- 4.5. This pursuit involved speeds that were moderate and there was minimal danger to the general public. There was little traffic. Another factor to be borne in mind is that both riders of the motor cycle were wearing full faced motor cycle helmets and the motor cycle itself bore no registration plate. Neither the riders nor the motor cycle were to these officers identifiable and it was plain that if the riders of the motor cycle could escape from the police pursuit then they were essentially home free. There was

in reality no means by which the police could subsequently have identified either of the riders or the motor cycle. Notwithstanding the fact that the officers recognised both riders after their helmets were removed, the fact that they were wearing full face motor cycle helmets during the pursuit would have concealed their identity. This issue is relevant as to whether or not the police should have desisted from pursuing the motor cycle. If they had identified either the riders or the motor cycle there may have been a case for concluding that they should have let the motor cycle go and made appropriate enquiries later. However, that was not the situation here.

4.6. Fitzgerald gave the following evidence:

- 'Q. You thought at one point, and that was at the bottom of Oxford, that the motorbike was going to stop, is that right.
- A. I thought it was a possibility, yes.
- Q. But it didn't.
- A. No.
- Q. When it didn't and you were proceeding along Normandy Place, did it appear at that stage that there was really no end in sight to this pursuit.
- A. Well, I thought that if he would - he could pull over at any time. Had he gone across the park, purely the time factor for us to get around the streets and back on to Mena Place where he would have come out would have made it pointless. I think I would have said, 'Look, we'll let it go at that,' but other than that, no, I saw no reason, no real reason, to stop.
- Q. On his part you saw no -
- A. Sorry.
- Q. - prospect of him stopping. As you are following him along Normandy Place did you consider at that point that there was little prospect in this person stopping of his own volition.
- A. Well, I thought that if we maintain this he would give up - 'give up' is not a good word - but see that it's just pointless and that he would stop.
- Q. Right.
- A. I'm sorry, I don't know if I'm answering the question as you want it.
- Q. I mean, did it occur to you that you could be driving around like this all night.
- A. Not at the time. However, it was all of only a few minutes, it was still not a long time. I mean, obviously if it was protracted and it went for 10 minutes, 20 minutes, 40 minutes, you - not that this was a high speed but in other cases in the city, etc., like that when you have what they call high speeds, sometimes they go for 40 minutes. This was only a few minutes.' (T101-102)

I received in evidence the affidavit of Senior Constable Shane Wisseman (Exhibit C27). It attached the communications log relative to the movements of the vehicle occupied by Page and Fitzgerald (Exhibit C27a). It demonstrates that at 2215 hours the two officers advised communications that they were following the motor cycle

north-west along Flinders Highway. This was not long after the police had commenced following the motor cycle. At 2217 hours the officers advised that the motor cycle had left the road and had entered the 'ditch' on the northern side of Normandy Place. The whole pursuit, therefore, occurred over a matter of a few minutes. It was not a protracted pursuit. In those circumstances I find that it was appropriate for the police officers to have continued their pursuit into and along Normandy Place. To my mind, there was no breach of the Urgent Duty Driving protocol.

**5. The treatment of the deceased at the scene**

- 5.1. After the two officers observed the motor cycle leave the road they executed a u-turn on Normandy Place and returned to the position where they thought the motor cycle had left the road.
- 5.2. They observed the deceased and his pillion passenger Potts in the culvert. The motor cycle had obviously crashed and dislodged them.
- 5.3. The details of the deceased's treatment at the scene do not need to be repeated to any great extent. The officers removed the deceased's helmet as at that stage the deceased complained that he couldn't breathe and the chin strap of the helmet was very tight. It appeared to be restricting his airway. The deceased was at that time conscious and was able to tell the officers his name. Blood was coming from the deceased's nose and mouth. He kept trying to sit up but was urged by the officers not to move. An ambulance was called by the police. The accident was reported by way of a radio transmission from the scene. This occurred at 2217 hours. At that precise minute the local ambulance service received a tasking via their communications facility and an ambulance crew arrived at the scene of the accident at 2221 hours. This was a prompt response. The ambulance officers saw that the deceased to be conscious. He wanted to get up from where he was lying. However, it is evident that shortly after the arrival of the ambulance officers, the deceased stopped breathing. Cardio-pulmonary resuscitation was administered as well as defibrillation. Other ambulance officers arrived at the scene shortly thereafter. The deceased was placed in an ambulance and resuscitation efforts continued until they arrived at the Port Lincoln Health Service. The ambulance that took the deceased to the Port Lincoln Health Service left the scene of the accident at 10:44pm and arrived at the hospital at 10:48pm. At the Port

Lincoln Health Service medical assistance was administered but sadly at 11pm the deceased was pronounced life extinct.

## **6. Conclusions**

- 6.1. I find that both Benjamin Potts and the deceased were fully aware of the presence of the police vehicle and that they both knew that the police wanted them to pull over.
- 6.2. I find that the deceased's intention was to evade the police patrol and that his riding behaviour was motivated by that desire. The likely explanation for this behaviour was his appreciation of the fact that he was riding whilst under disqualification coupled with his desire not to experience the consequences.
- 6.3. I find that the deceased was seeking an opportunity to utilise the off-road capabilities of the motor cycle to evade the police. I think that he continued the journey looking for a suitable escape route so as to prevent the police from continuing their pursuit. I think that the 'cat and mouse' nature of the pursuit, that is to say, a pursuit at slow to moderate speeds, illustrates this.
- 6.4. I find that at least until Normandy Place the police pursued the motor cycle at a safe distance and at moderate speeds.
- 6.5. Although the four witnesses who were in the vicinity of 62 and 64 Normandy Place made their initial observations from a distance in excess of about 200 metres, it is still surprising that if the police vehicle was behind the motor cycle as close as that stated by Potts in his record of interview, or as that stated by the witness Darren Williams, the motor cycle was not seen nor heard by any of those four witnesses. To my mind it would have been illuminated by the headlights of the police vehicle if it had been as close as that. When the motor cycle left the road it was by then considerably less than 200 metres from the position of the four witnesses. I am led to conclude that if the motor cycle was only a car length or less in front of the police vehicle when it left the road, at least one of those witnesses would probably have observed that fact and, as well, seen the motor cycle leave the road. I do not think that the police vehicle was as close as less than a car length behind the motor cycle in Normandy Place for those reasons. On the other hand, the evidence of the two police officers that the motor cycle was between 30 and 40 metres ahead of the police vehicle is possibly an over-estimation. I think on the evidence of Darren Williams and Sharyn White the police

vehicle was probably closer than that estimated distance, at least when the motor cycle and the police vehicle crossed the junction of Alexander Crescent. However, there was certainly no contact between the police vehicle and the motor cycle at any time, and a conclusion that the officers were attempting to intimidate the deceased and Potts by utilising the presence and size of their vehicle is not open. I accept their evidence that they were not frustrated at the failure of the deceased to pull over. I would reject any suggestion that the deceased's leaving the bitumen surface was caused by fear generated by the proximity of the police vehicle. I find that in Normandy Place the police continued their pursuit at a safe distance and at a safe speed.

- 6.6. The riding behaviour of the deceased at all stages of the pursuit leads me to conclude that his intention to evade the police by using the off-road capabilities of the motor cycle still existed in Normandy Place and this is what motivated the deceased to leave the bitumen surface of that road. My view in this regard is reinforced by the fact that the deceased was said to be a skilled rider and by the fact that his deviation from the road surface was a controlled movement undertaken at a speed estimated to be less than the speed limit of 60 kilometres per hour.
- 6.7. I think the likelihood is that the deceased left the bitumen surface with the intention of cutting across the reserve on the northern side of Normandy Place, either not being aware of the intervening culvert that lay beyond the dirt verge of Normandy Place or believing that he could successfully negotiate that culvert.
- 6.8. I find that this was not an Urgent Duty Driving situation and that the police officers pursued the motor cycle appropriately in all circumstances.
- 6.9. I find that proper first aid, paramedical and medical assistance was afforded to the deceased and in a timely manner.

## 7. **Recommendations**

- 7.1. I have considered whether additional lighting should be installed on the northern side of Normandy Place adjacent to the reserve, so as to alert motorists to the existence of the culvert. It seems to me that the lack of lighting played some part in this tragedy. However, this was a most unusual set of circumstances in that it involved a police pursuit conducted at moderate speeds and involving, as I find, a deliberate leaving of the bitumen surface of Normandy Place by the deceased. There does not appear to be any evidence to suggest that a lack of lighting in that location might lead a motorist to enter the culvert accidentally. In the absence of any suggestion that the darkness of Normandy Place and the presence of the culvert causes an ongoing and general situation of danger, I do not think it would be appropriate to make any recommendation in relation to lighting in this location.
- 7.2. However, the situation should be monitored by the local council and if any evidence emerges demonstrating that the lack of lighting might lead a motorist to enter the culvert at night accidentally, the council should give consideration to the issue of extra lighting or signage in that location.

*Key Words: Drive Disqualified; Driver Error; Lighting Conditions; Motor Cycle; Police; Urgent Duty Driving.*

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

*Seal the 4<sup>th</sup> day of December, 2002.*

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*Coroner*