



## **FINDING OF INQUEST**

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 24<sup>th</sup> and 25<sup>th</sup> days of September 2007, and the 9<sup>th</sup> day of November 2007, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Robert George Daniels.*

*The said Court finds that Robert George Daniels aged 22 years, late of 62 Witonga Avenue, Salisbury North died at Underwood Park, Camira Way, Salisbury North, South Australia on the 13<sup>th</sup> day of March 2005 as a result of cerebral trauma associated with skull fractures. The said Court finds that the circumstances of his death were as follows:*

### **1. Introduction and reason for Inquest**

- 1.1. Robert George Daniels was born on 24 June 1982. He was 22 years of age at the time of his death which occurred in the early hours of the morning on Sunday, 13 March 2005. He lived at 62 Witonga Avenue, Salisbury North.
- 1.2. Mr Daniels was in a relationship with Sally-Anne Claxton with whom he lived at the above address. They had two children; a daughter aged 2 years and a newborn son aged 3 ½ weeks.
- 1.3. According to Exhibit C19i, Mr Daniels had an extensive criminal history. An antecedent report details a history of recidivist offending, mainly in the Elizabeth Police district. It records numerous traffic offences including drive unregistered, uninsured, unlicensed, without due care, contrary to a defect notice, driving with excess blood alcohol. At the date of his death, Mr Daniels' drivers licence was suspended and he had an active First Instance Warrant for serious criminal trespass issued out of the Elizabeth Magistrates Court on 24 September 2004 and endorsed

“No bail”. There was no evidence at the Inquest as to whether Mr Daniels was aware of the existence of this warrant at the time of his death. However, in view of his extensive criminal history, and the fact that he must have been aware of the Court appearance on 24 September 2004 in order for the warrant to have issued, I think he would have been aware that there was likely to be a warrant for his apprehension extant.

- 1.4. Despite the fact that he was prohibited by law from driving a motor vehicle, Mr Daniels owned a Yamaha YZ250 motorcycle. It was a dirt bike and, although it was physically possible to ride it on the road, it could not lawfully be ridden on the road as it did not have a number plate, indicator lights, headlight or taillight. Nor was it registered for road use. Notwithstanding this, the evidence at the Inquest showed that Mr Daniels regularly rode the motorcycle on the streets near his home. Not surprisingly, this attracted attention from the police and on at least one occasion prior to the incident resulting in his death, Mr Daniels was involved in a police chase while riding the motorcycle on the road. The evidence at the Inquest showed that he was also in several other police pursuits involving other vehicles.
- 1.5. Mr Daniels was riding his motorcycle on Bolivar Road, Salisbury North in the early hours of the morning of 13 March 2005 when he was noticed by uniform patrol officers Rodell and Cornish who were on uniform mobile patrol duties on Bolivar Road at the same time. The police officers performed a U-turn in Bolivar Road and started to follow Mr Daniels. Mr Daniels did not stop his motorcycle despite the fact that the police officers activated the flashing lights on the police car. After a short chase which will be described in more detail later in this Finding, the motorcycle entered a reserve through a small opening through which a larger vehicle such as a police car could not enter, and the police abandoned the chase, resuming normal duties.
- 1.6. Mr Daniels continued to ride across this reserve, which was used for various sporting activities including soccer. After riding a short distance in extremely dark conditions Mr Daniels collided with a soccer goalpost. As a result of this collision he suffered fatal injuries and died soon after the collision, probably within minutes. The collision was not heard by the police officers nor by anyone else, and Mr Daniels’ body was not discovered until the following morning when noticed by the occupier of a nearby residence. Mr Daniels had not been wearing a helmet.

1.7. Mr Daniels was, on all of the evidence, evading apprehension by officers Rodell and Cornish at the time of the collision, and accordingly his death was a death in custody within the meaning of the Coroner's Act 2003, and this Inquest was held as required by section 21(1)(a) of that Act.

2. **Mr Kristopher Daniels**

2.1. Kristopher Daniels is the younger brother of Robert Daniels and was 15 or 16 at the time of this incident. He would frequently visit Mr Daniels' home and work on cars with Mr Daniels. According to Kristopher, Mr Daniels had only had the Yamaha dirt bike for 2 to 3 weeks prior to his death. Kristopher acknowledged that Mr Daniels would sometimes ride this motorcycle around the streets although he normally took it to Port Gawler to ride.

2.2. Kristopher said that on 12 March 2005 he was at Mr Daniels' house. He said that from about 6:00 pm he and Mr Daniels and another friend called Steven consumed some alcohol. Mr Daniels also consumed some cannabis.

2.3. Kristopher said that quite late in the evening Mr Daniels rang another friend, Mr Kevin Clark who was at a wedding reception with his partner Melissa Pierce. Mr Daniels suggested that Kevin and Melissa come to his house for some drinks which they did, arriving at approximately midnight. They were there for about half an hour and Mr Daniels then suggested that he, Kevin and Kristopher go for a motorcycle ride. According to Kristopher, Kevin also has motorcycles, and the plan was that Mr Daniels would ride his motorcycle over to the nearby home of Kevin and Melissa and that Kristopher, Kevin and Melissa would drive there. From Kevin and Melissa's house they would retrieve the other motorcycles and the three men would then go for a ride.

2.4. Kristopher said that when they left Mr Daniels' house at 62 Witonga Avenue he, Kevin and Melissa drove in a northerly direction on Witonga Avenue. Mr Daniels pushed the motorcycle some distance in a southerly direction down Witonga Avenue before starting it and emerging on Bolivar Road shortly afterwards.

2.5. Because Kristopher, Kevin and Melissa took a different route to Bolivar Road from that taken by Mr Daniels, Kristopher lost sight of the latter until he and the others in the vehicle were driving in a southerly direction on Bolivar Road. At that point,

Kristopher saw Mr Daniels also riding south on Bolivar Road. Kristopher also saw another vehicle which had originally been travelling north on Bolivar Road which turned and followed Mr Daniels' motorcycle. Kristopher's evidence about when he first sighted this other vehicle and what it did immediately after he first sighted it was rather vague. He said that he was not one hundred percent sure of this detail and attributed his vagueness to being intoxicated at the time. In any case, Kristopher said that he heard Kevin say words to the effect "there are cops following Robbie". The vehicle in which Kristopher and the others were travelling turned left from Bolivar Road onto Diment Road to travel in an easterly direction, this being the direction taken by the motorcycle and the other car. Kristopher said that Melissa was driving and that Kevin was in the front passenger seat. Once they entered Diment Road they were unable to see either the motorcycle or the other vehicle. They drove to Kevin and Melissa's house in Uraidla Avenue and waited there expecting that Mr Daniels would already have arrived or would arrive shortly after evading the police. They waited for three quarters of an hour or so but Mr Daniels did not arrive. They then went back to the Witonga Avenue premises and informed Ms Claxton of what had happened.

### **3. Mr Kevin Clark**

- 3.1. Mr Clark also gave evidence at the Inquest. His evidence confirmed that of Kristopher Daniels, although his recollection was clearer in some respects. He said that he also owned a motorcycle and that he and Mr Daniels would often ride together, perhaps three or four times per week. He said that Mr Daniels usually did not wear a helmet.
- 3.2. Mr Clark said that he and Mr Daniels had been chased by the police in the past. He said that when the police tried to stop them they would just take off. He described two occasions within the weeks preceding 13 March 2005 on which he and Mr Daniels had been chased by the police. On one of these occasions they were driving a motor vehicle. Mr Daniels jumped out of that vehicle and ran away and was not apprehended. On another occasion they were riding the motorcycles, and on being seen by police they "took off" and went to Mr Clark's house without being apprehended. Mr Clark assumed that Mr Daniels evaded police because he did not have registration or a licence. Mr Clark said that he himself had a licence but did not have registration on his motorcycle.

3.3. Mr Clark confirmed Kristopher Daniels' account that he was at his cousin's wedding reception with Ms Pierce when Mr Daniels rang him and invited him for a drink after the reception. He confirmed that Mr Daniels proposed that they go for a motorcycle ride. He said that Mr Daniels syphoned some petrol from Mr Clark's vehicle for the motorcycle which was low on petrol. He said that Ms Pierce drove his vehicle and that he and Kristopher Daniels were passengers. Mr Daniels took the motorcycle. He said that he saw Mr Daniels emerge onto Bolivar Road as his vehicle was proceeding south along that road. He said that Mr Daniels' motorcycle was proceeding in the same direction. He said that another vehicle carried out a U-turn between his vehicle and the motorcycle. Mr Clark saw that it was a police car and that it was then quite close to the motorcycle. Mr Clark said that he could see that the police would be pursuing Mr Daniels and so he told Ms Pierce to "floor it – Robbie's in a chase<sup>1</sup>". Mr Clark said that he did not see the police car put on its lights nor did he hear its siren. He saw Mr Daniels and the police car turn left onto Diment Road from Bolivar Road but when their vehicle followed neither the police car nor Mr Daniels was in sight. Mr Clark said he thought that Mr Daniels would have gone straight to Mr Clark's house. He said that was what they did if they saw the police, and on arrival at the house they would put the motorcycles behind the house either behind the gates or the roller door, to evade detection. Mr Clark confirmed the rest of the account in much the same terms as given by Kristopher Daniels.

#### **4. Ms Sally-Anne Claxton and Ms Melissa Pierce**

4.1. Both Ms Claxton and Ms Pierce gave evidence at the Inquest. Ms Claxton confirmed that Mr Daniels had acquired the motorcycle several weeks before the accident. She confirmed that Mr Daniels did not own a helmet and did not necessarily use one if he was riding the motorcycle. She said that he would ride it on the street and that he was able to handle the motorcycle very well. She said that the motorcycle was extremely loud and that she thought that it did not have any exhaust silencing system. She confirmed that Mr Daniels had been pursued by the police in the past.

4.2. Ms Pierce gave evidence that she was aware that Mr Daniels and Mr Clark had been in chases with police previously, but she said that they would always make it home. She said that she remembered that they would often come home and relate that they had got into a chase but had got away. She said that on one occasion Mr Clark said

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<sup>1</sup> Transcript, page 63

that he got out of the car in which he and Mr Daniels were being pursued and stood in front of the police car so that Mr Daniels could get away. She said that Mr Clark and Mr Daniels would look after each other, and if one was being chased the other one would get in the way or do something to help the other. She said that they would then come home “bragging about it”<sup>2</sup>.

## **5. Ms Kelly Harrison**

5.1. I heard evidence from Ms Kelly Harrison who lived in Bantanga Crescent, Salisbury North. She was living there in March 2005 and did not know Mr Daniels. She was at home on Saturday, 12 March 2005 during the evening. She said that there was a gathering at her house. At some point during the evening she heard the noise of a motorcycle. She said that it was “hooning around the area which is nothing unusual”<sup>3</sup>. She said that shortly after hearing the noise she saw a motorcycle coming down Bantanga Crescent heading towards Bolivar Road with the police behind. She said that five to six minutes later the motorcycle came back up Bantanga Crescent in the opposite direction still followed by police. She said that shortly after this the motorcycle noise stopped and she assumed that the rider had given up the chase or pulled into his house. She estimated that the first time she saw the vehicles go past the gap between them would have been one and half to two car lengths. She said that when saw them on the second occasion they were going faster and that the gap on that occasion would have been only one car length.

5.2. Ms Harrison said that when she saw the police vehicle for the first time she did not see any red and blue flashing lights<sup>4</sup>. She said that when she saw it on the second occasion it still did not have its flashing lights on<sup>5</sup>. She also said that she did not hear any police siren. Ms Harrison said that if Mr Daniels had come to a sudden stop the police would have collided with him<sup>6</sup>.

## **6. Mr Daniel Harrison**

6.1. Mr Daniel Harrison is the husband of Kelly Harrison. He also gave evidence at the Inquest. According to his account he only saw the police car and the motorcycle go

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<sup>2</sup> Transcript, page 109

<sup>3</sup> Transcript, page 130

<sup>4</sup> Transcript, page 132

<sup>5</sup> Transcript, page 133

<sup>6</sup> Transcript, page 155

past once<sup>7</sup>. He estimated the speed of the motorcycle at approximately 60 kilometres per hour and the distance between the motorcycle and the police car to be three or four car lengths<sup>8</sup>. He thought that the police car and the motorcycle were travelling at approximately the same speed and he said that the police car did not have its emergency lights on. However, he acknowledged that in a statement given to police shortly after this incident which was admitted as Exhibit C59, he had stated that the police car's emergency flashing lights were activated. He acknowledged in his evidence that his recollection as given to police in his statement<sup>9</sup> was more likely to be correct in this respect than his recollection at Inquest<sup>10</sup>.

- 6.2. After the motorcycle and the vehicle went past Mr Harrison said that he went outside his house and shortly afterwards the police car came back and stopped at his house. The officers requested that they turn down the music at the party. He said that he enquired about the chase which he had seen a minute or two before but the police advised him not to worry about it, that it was not his concern.

## 7. **Ms Nicole Quinn**

Ms Nicole Quinn gave evidence at the Inquest. She said that she attended the gathering at Ms Harrison's house on Bantanga Crescent on the evening of 12-13 March 2005. She gave an account of having seen the police car coming fast down the road. At first she did not see the motorcycle. She said that she had been sitting on the gutter when she saw the police car and jumped out of the gutter when she saw that it was coming quite quickly towards her with its emergency lights on. She said that the police car came from the direction of Bolivar Road and she watched it go past turning right in Mannara Drive at the end of Bantanga Crescent. She thought that the motorcycle was travelling at 70 to 80 kilometres per hour and that the gap between the motorcycle and the police car was one or two car lengths. She said that shortly after observing this incident, the police car came back and pulled up opposite the house. The police requested that the music be kept down and were quite friendly in their manner of asking.

## 8. **Mr Matt Vorakoumane**

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<sup>7</sup> Transcript, page 171

<sup>8</sup> Transcript, page 163

<sup>9</sup> Exhibit C59

<sup>10</sup> Transcript, page 165

8.1. Mr Vorakoumane gave evidence at the Inquest. He was also a guest at the gathering at the home of Ms Harrison the same night. He gave an account of being on the gutter outside the house of Ms Harrison with Ms Quinn and others when he saw a police car travelling from the direction of Bolivar Road. He then became aware of a motorcycle in front of the police car. He said the police car and the motorcycle turned right at the end of Bantanga Crescent and then shortly after that he heard nothing further. He estimated the motorcycle's speed at between 80 and 100 kilometres per hour and the police vehicle to be travelling at the same speed. He said that the distance between the two was two to two and a half car lengths and that the police car had its red and blue emergency lights flashing. He said that about two minutes later the police car returned. He said that he spoke to the driver and asked if they were the police chasing the motorcycle. The police officer said that they were pursuing the motorcycle and had been on their way to attend at Ms Harrison's house in relation to a complaint about noise when they saw the motorcycle and followed him. Mr Vorakoumane said that the policeman asked him to turn the music down. He said that they were quite friendly and behaved normally.

**9. Mr Glen Bowering**

9.1. Mr Glen Bowering gave evidence at the Inquest. He lived in the general vicinity of the route of the pursuit. He went for a walk that night and was in Camira Way when he saw a motorcycle followed by a police car travelling in an easterly direction along Camira Way towards where he was standing. He said that the police car was about 10 metres behind the motorcycle when the motorcycle went up over the curb. The police car stopped, but the motorcycle continued along the footpath and then turned between the wooden poles bordering the park adjoining Camira Way. He said that the police car had its red and blue emergency lights flashing. Mr Bowering did not see the police get out of the car and he did not see any lights on the motorcycle. Mr Bowering was approximately 60 metres away when he made these observations. He said that his view was affected by the flashing lights of the police car which were very bright and that the general lighting in the vicinity was much less intense. After a few seconds the police car drove along Camira Way. The police car passed him and then returned very shortly afterwards. The police car stopped near him. Mr Bowering thought that the police wished to speak to him, but acknowledged that he may have been wrong in making that assumption. Mr Bowering said to the officers words to the

effect “I don’t know where he is” in relation to the motorcycle. Mr Bowering said that the police officer said that he was listening for the motorcycle’s motor<sup>11</sup>. Mr Bowering said that he had noticed the engine of the motorcycle stop before the police had driven passed him on the first occasion. He said that although he heard the motorcycle’s engine stop he did not hear a crash<sup>12</sup>. He said that he could not see anything in the park and that there was no visibility into the park. Because he could see nothing he assumed that the motorcyclist had most likely jumped off the motorcycle and gone on foot<sup>13</sup>. Mr Bowering said that when he observed the motorcycle leave Camira Way and travel over the curb onto the footpath, the motorcycle was travelling slowly. He described the manoeuvre as unhurried<sup>14</sup>.

- 9.2. Mr Bowering impressed me as a very earnest and diligent witness. He gave his evidence very conscientiously and I regard it as a very reliable and accurate account which I have no hesitation in accepting.

## **10. Dr John Gilbert**

- 10.1. Dr John Gilbert is a Forensic Pathologist of considerable experience employed at Forensic Science SA in Adelaide. He attended at the reserve at the request of police on 13 March 2005. Dr Gilbert also performed an autopsy upon Mr Daniels and prepared a post mortem report which was admitted as Exhibit C3a in these proceedings. In the report Dr Gilbert gives the cause of death as cerebral trauma associated with skull fractures and I so find.
- 10.2. Dr Gilbert stated that Mr Daniels’ injuries were mainly to his right side and that he had a very substantial injury to the skull and brain which appeared to have been from an impact to the left side of his head. Dr Gilbert stated that he would expect the brain injury to have caused death within a short period of time, perhaps even a matter of minutes<sup>15</sup>. Dr Gilbert stated that the injury was overwhelming and would not normally be survivable even given immediate attention from an ambulance and transportation to hospital. Dr Gilbert said:

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<sup>11</sup> Transcript, page 241

<sup>12</sup> Transcript, page 241

<sup>13</sup> Transcript, page 242

<sup>14</sup> Transcript, page 251

<sup>15</sup> Transcript, page 268

‘It's not a survivable injury, as far as I'm concerned.’<sup>16</sup>

## **11. Senior Constable Stephen Rodell**

- 11.1. Senior Constable Stephen Rodell gave evidence at the Inquest. He said that he was on uniform mobile patrol duties with Probationary Constable Cornish (as he then was) on the night shift starting at 2300 hours on 12 March 2005 and finishing at 0730 hours on 13 March 2005. They were operating as Salisbury Patrols in the Elizabeth Local Service Area. Senior Constable Rodell said that he was the holder of a 1B urgent duty driving permit issued by South Australia Police. A 1B permit permits holder to engage in urgent duty driving at speeds in excess of 20 kilometres per hour above the posted speed limit. A 1A permit enables officers to engage in such driving at speeds of up to 20 kilometres per hour above the posted speed limit. A 1A permit is obtained after the completion of a course, and a 1B permit is obtained after the completion of further course work. The course work includes both a theoretical and practical component in each case<sup>17</sup>.
- 11.2. Senior Constable Rodell said that he was the driver of the patrol car during the shift. He said that he and Probationary Constable Cornish were despatched to a disturbance that was reported as having occurred in Bantanga Crescent, Salisbury North. In response to that tasking they were travelling north on Bolivar Road and were north of the roundabout at the intersection of Diment Road and Bolivar Road when they saw the motorcycle ridden by Mr Daniels travelling in the opposite direction. They could see that the motorcycle did not have any lights and that the rider did not have a helmet on. As the rider passed the vehicle Senior Constable Rodell conducted a U-turn and then followed the motorcycle. Senior Constable Rodell said that at no stage did he or Probationary Constable Cornish activate the siren on their vehicle. He said that the flashing red and blue lights were activated. He believed that the flashing lights were first activated shortly after the U-turn was carried out and prior to entering Diment Road<sup>18</sup>. Senior Constable Rodell said that the motorcycle was travelling at approximately 50 kilometres per hour when first seen by him. He said that the motorcycle turned left from Bolivar Road onto Diment Road at the roundabout and that he followed. A short distance along Diment Road the motorcycle left the road surface by crossing the northern curb of Diment Road and passing across a narrow

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<sup>16</sup> Transcript, page 269

<sup>17</sup> See generally the evidence of Assistant Commissioner Barton at transcript, pages 467-468

<sup>18</sup> Transcript, page 305

roadside verge between Diment Road and Witonga Avenue before entering Witonga Avenue. Senior Constable Rodell drove the police car across the same verge from Diment Road to Witonga Avenue<sup>19</sup>. The motorcycle then travelled in a northerly direction on Witonga Avenue. Senior Constable Rodell believed that the rider of the motorcycle had been aware of the patrol car since he rode past them on Bolivar Road<sup>20</sup>. Senior Constable Rodell explained that his intention in pursuing the rider of the motorcycle was to stop him and report him for the immediate offences of which he was aware, namely riding a motorcycle without lights and helmet<sup>21</sup>. The pursuit ensued along Witonga Avenue and towards the end of Witonga Avenue before it intersected with Bantanga Crescent, Senior Constable Rodell formed the belief that the rider was not going to stop. He stated that it is not uncommon for people to try and gain some distance on police cars to avoid being stopped and that they may travel some small distance before eventually stopping. Until the motorcycle approached the end of Witonga Avenue, Senior Constable Rodell believed that it was possible that the rider may, consistent with general driver behaviour, have given up the chase<sup>22</sup>. By the end of Witonga Avenue as the motorcycle was braking for the intersection the police car gained some distance on it because the police vehicle did not have to commence braking as early as the motorcycle. When the motorcycle turned right into Bantanga Crescent Senior Constable Rodell estimated the distance between the two vehicles as approximately three car lengths. He said that as Mr Daniels executed the right hand turn into Bantanga Crescent he put out his right leg to balance the motorcycle. Senior Constable Rodell formed the view that he was very much in control of the motorcycle. In fact Senior Constable Rodell said that he was quite impressed by the style of Mr Daniels' riding<sup>23</sup>.

- 11.3. Senior Constable Rodell said that the weather was warm and the road was dry although it was a very dark night. He said that there was periodic street lighting and the streets were lined with trees and houses<sup>24</sup>. Once the motorcycle had entered Bantanga Crescent it proceeded in an easterly direction. On Bantanga Crescent they only reached a speed of approximately 50 kilometres per hour and maintained a distance of two or three car lengths behind the motorcycle. At the end of Bantanga

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<sup>19</sup> Transcript, page 306

<sup>20</sup> Transcript, page 307

<sup>21</sup> Transcript, page 307

<sup>22</sup> Transcript, page 308

<sup>23</sup> Transcript, page 309

<sup>24</sup> Transcript, page 309

Crescent the motorcycle slowed and made a right hand turn into Mannara Drive travelling a short distance before turning left into Camira Way. During the turn into Mannara Drive the motorcycle slowed to a speed of 15 to 20 kilometres per hour and the police vehicle slowed its speed proportionately. At no stage was there a risk that the police vehicle would have hit the motorcycle had it stopped<sup>25</sup>. Senior Constable Rodell said that it was not until the patrol car was on Witonga Avenue that they were able to establish communication with the South Australia Police Communications Centre and advise of the situation regarding the motorcycle. Exhibit C19g is a transcript of the conversation which took place between the Communications operator and the police officers on that night. The relevant portion of the transcript reads as follows:

<b>Time</b>	<b>Caller</b>	<b>Conversation</b>
12.41:40	3EH22	“Double two we’ve got a fail to stop.”
12.41:50	Coms Operator	“Double two location.”
12.42.00	3EH22	“We have just gone past that noisy party actually. We are on Mannara, it’s a trail bike with no registration, at all, Salisbury North on Camira Way. He’s just about to go into a park where he – “
12.42.10	Coms Operator	“Roger double two, you calling a 603, 601 sorry?”
12.42.20	3EH22	“Double two negative, we’ve lost him, he’s gone through a big parklands here. He’s got no helmet, no registration or anything like that, so it’s a little bit stupid. We’re stopped.”
12.42.30	Coms Operator	“Roger 22 thanks for that and Shift Manager received that last.”
12.42.38	3EHV20	“Shift Manager, roger.”

- 11.4. Senior Constable Rodell described the events in Camira Way in much the same way as Mr Bowering. He said that the motorcycle rider drove onto the right hand side of the road and then over the curb and onto the footpath. The police car remained on the road and drove alongside the motorcycle. There is only one house on the southern side of that part of Camira Way. The house is bounded by an iron fence. It was along this fence line that the motorcycle proceeded on the footpath. At the end of the fence line, the fence gives way to a series of horizontal permapine logs supported by permapine posts. The logs are not continuous and afford pedestrian and bicycle access between the horizontal railings. There is a gap between the end of the fence previously described and the first horizontal permapine post. It was through this gap

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<sup>25</sup> Transcript, page 311

that the motorcyclist manoeuvred the motorcycle. The permepine posts continue along the southern side of Camira Way and form a boundary between the footpath and a large reserve area which contains some sporting facilities, including a soccer ground. Immediately to the south of the permepine posts there is a line of gum trees which runs parallel with Camira Way.

- 11.5. Senior Constable Rodell said that he stopped his vehicle on the road and observed the motorcyclist enter the reserve through the gap which I have just described. He said that the motorcyclist slowed down almost to a stop and put his left foot out to avoid losing his balance. Senior Constable Rodell was reaching for his seatbelt button thinking that he might have an opportunity to pursue the motorcyclist on foot when the motorcyclist regained his balance and picked up speed to head towards the tree line and into the reserve. Senior Constable Rodell said that he realised that he could not drive the police vehicle onto the reserve because of the permepine posts. He drove the police car east on Camira Way to find whether it was possible to enter the reserve. When he came to the intersection of Camira Way and Marapana Drive he realised that he was unlikely to be able to find an entry onto the reserve in time to observe the motorcycle. At this point Senior Constable Rodell turned off the emergency lights because he felt that it was no longer worthwhile to attempt to catch the motorcyclist.
- 11.6. Senior Constable Rodell confirmed that neither he nor Probationary Constable Cornish had identified the rider of the motorcycle. They did a U-turn at the intersection of Camira Way and Marapana Drive and returned along Camira Way in a westerly direction. He stopped part way along Camira Way. He was then approached by a male adult who has since been identified as Mr Bowering. Senior Constable Rodell said that he intended to listen to see if he could hear the motorcycle and to this end he and Probationary Constable Cornish wound down the windows of the police car. Mr Bowering then approached the police vehicle and said words to the effect "I'm not with him". Senior Constable Rodell said that he informed Mr Bowering that they were listening for the motorcycle. Senior Constable Rodell said that Mr Bowering said words to the effect of "He's long gone". Senior Constable Rodell then thought that the motorcyclist had got away and gave the matter no further thought. He said that it was a very dark night and that the trees around the reserve

also served to obscure his vision. He said that he lost sight of the motorcycle very quickly when it went through the trees.

- 11.7. After this, Senior Constable Rodell and Probationary Constable Cornish went to 5 Bantanga Crescent (the house of Ms Harrison) in relation to the noisy music. They did not get out of the car. They passed on the request to keep the noise down and then resumed their patrols.
- 11.8. Senior Constable Rodell said that he and Probationary Constable Cornish logged off the patrol duty at 7:07 am. They had not returned to the reserve at all that night. While they were in the police station Probationary Constable Cornish said he had heard a report over the radio that a motorcyclist had been found on an oval at Salisbury North. Senior Constable Rodell then went to the Sergeant's office and asked the Communications Centre about this report. Senior Constable Rodell thought that it might have been the motorcycle that he and Probationary Constable Cornish had pursued. Senior Constable Rodell did not go out to the reserve but waited to hear from the first patrol on the scene as to the status of the rider. The patrol confirmed that it was a male rider who was deceased. Senior Constable Rodell then submitted to an Alcotest which returned a 0.0 reading. He was then asked to make a statement about the events of the preceding evening. This he did, and the statement was admitted as Exhibit C64 in these proceedings. Senior Constable Rodell was also interviewed and gave further statements on 7 April 2005 and 21 December 2005. The record of interview and subsequent statements were admitted as Exhibits C64a, C64b and C64c respectively.
- 11.9. Senior Constable Rodell was asked about the General Order relating to Urgent Duty Driving. He stated that he did not believe at any stage of the chase that it was a high speed pursuit. He said that he was not travelling much over the speed limit and did not think that there was any danger to anyone during the chase. He stated that under new General Orders relating to Urgent Duty Driving, even if a vehicle is travelling as slowly as 10 kilometres per hour but is failing to stop, a police car following that vehicle is regarded as being involved in a pursuit.
- 11.10. I was very impressed by Senior Constable Rodell as a witness. He was cross-examined by Mr Errol Daniels, the father of Robert Daniels. Mr Errol Daniels applied for and was granted leave to appear as a person who in the opinion of the

Court had a sufficient interest in the subject or result of the Inquest to be granted a right to appear<sup>26</sup>. Accordingly he was entitled to examine and cross-examine witnesses testifying in the proceedings. Although Mr Daniels conducted himself courteously towards witnesses, it was clear that he had some antipathy towards South Australia Police. Senior Constable Rodell could have been forgiven for assuming that Mr Daniels would have had a negative attitude towards him. As I have said, Mr Daniels behaved with courtesy towards all witnesses. However, being examined by him would have been a confronting experience for Senior Constable Rodell and Constable Cornish. I was very impressed by the patient and gentle manner in which Senior Constable Rodell responded to Mr Daniels' questioning. He provided very full answers and explanations in response to Mr Daniels questions. He was very professional and measured in handling what would have been a challenging experience and I commend him. This is well illustrated in the following passage of evidence:

‘Q. I put it to you that given that my son died, that the incident not only became life threatening but in fact did take his life, didn't it.

A. Yes, for sure. He died going across that oval. With all the considerations of a dark night, no lights, no helmet.

Q. Would you say that was due to your undertaking the chase.

A. No, I don't. I believe it to be a very unfortunate and tragic accident, which has taken a son away from his parents and taken a brother away, taken a partner away and taken a father away from his children. Other than that, I have no knowledge of who your son was but I know he was a human being who unfortunately his life was cut short under tragic circumstances.’<sup>27</sup>

11.11. Senior Constable Rodell made it completely clear that he genuinely holds the view that he regards the safety of members of the public as having a higher priority than the capture of a person who is attempting to evade police apprehension. I accept his evidence completely in that, and all other, respects.

11.12. Senior Constable Rodell made it quite clear that he had no idea that Mr Daniels had been involved in a collision on the reserve. He made it plain that if he had known or had any reason to believe that Mr Daniels was in distress he would have done what he could to assist:

‘Like I said to Mr Daniels I would have gone all out to assist his son if I knew he was in that oval. Whether it would have made any difference or not or whether he was

<sup>26</sup> Section 20(1)(b) Coroner's Act 2003

<sup>27</sup> Transcript, pages 344-345

conscious or not, I don't know, but I guarantee I would have definitely been there even if I couldn't do anything other than hold his hand. That's the way it is, it's a human life.<sup>28</sup>

## 12. Constable Steven Cornish

- 12.1. Constable Steven Cornish gave evidence at the Inquest. He confirmed that he was on duty on uniform mobile patrol with Senior Constable Rodell on the night shift of 12-13 March 2005. His account was consistent with Senior Constable Rodell's in all respects and for that reason it is not necessary for me to analyse it in any detail. It is sufficient to note that Constable Cornish was also the holder of a 1B driving permit which he obtained in May 2004 although, of course, he was not driving on that night. He gave evidence that as the motorcycle was being followed by the patrol car along Witonga Avenue it was travelling at approximately 50 kilometres per hour. The patrol car was 50 to 70 metres behind. He said that the patrol car closed the distance to the motorcycle at the end of Witonga Avenue to approximately 30 metres. The patrol car followed the motorcycle along Bantanga Crescent and the motorcycle was travelling at 50 to 70 kilometres per hour with the patrol car travelling at a commensurate speed.
- 12.2. Constable Cornish said that once the motorcycle entered the reserve it was not possible for him to see anything beyond the tree line which was 3 or 4 metres from the curb. He thought that at any time during the pursuit the motorcyclist could have stopped comfortably if he had wanted to without being embarrassed by the proximity of the patrol car. Constable Cornish thought that Mr Daniels knew how to ride the motorcycle and had it under control at all times. He did not know Mr Daniels prior to 13 March 2005.
- 12.3. Constable Cornish said that Senior Constable Rodell's driving was calm and calculated and within all parameters appropriate to the circumstances. Constable Cornish did not consider the episode to be one of urgent duty driving and described the pursuit itself, although not the aftermath, as a fairly routine event.

## 13. Mr Brian Mills

Mr Brian Mills is a retired police officer. He was employed by South Australia Police in 2005. He worked in the Major Crash Investigation Section and specialised in

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<sup>28</sup> Transcript, page 355

reconstruction of accident events. He attended at the reserve on 13 March 2005 and made observations about the path of the motorcycle, its speed at the time of the crash with the soccer goalpost and whether any other cars had been on the reserve. He said that the speed of the motorcycle was not particularly high on the reserve and at the point of impact with the soccer goalpost he estimated that the speed of the motorcycle to be between 44 and 47 kilometres per hour. He could only see one tyre mark on the reserve that was relevant to the crash and that was the single mark made by the motorcycle which followed a path more or less direct from the narrow gap already referred to in evidence and the goalpost itself.

**14. Assistant Commissioner Graeme Barton**

I heard evidence from Assistant Commissioner Graeme Barton. He provided helpful evidence in relation to the General Orders in relation Urgent Duty Driving as they existed in 2005 and the General Orders as they exist today. I have already referred to the change in the General Orders as described by Senior Constable Rodell in his evidence. Assistant Commissioner Barton also provided information in response to a number of questions that Mr Errol Daniels had in relation to his son's tragic death and the subsequent police inquiry. The investigating officer in this matter was Chief Inspector Grant Moyle. His investigation was admitted as Exhibit C19 and annexures. Chief Inspector Moyle found that the patrol was definitely engaged in a pursuit but he found that on the General Orders as they existed at the time the matter of whether the pursuit amounted to Urgent Duty Driving was very subjective and could be argued either way. Assistant Commissioner Barton appeared to hold a similar opinion at the Inquest. In any event, the only aspect of Urgent Duty Driving protocol that was not adhered to, if indeed this was an Urgent Duty Driving episode, was that of activating the siren of the police vehicle. Chief Inspector Moyle found that the activation of the siren would not have made any difference in the circumstances as it was abundantly clear that Mr Daniels was aware that he was being pursued. Furthermore, he had successfully evaded the police at the time of his tragic collision. For this reason I think that the question of whether, technically speaking, the pursuit was an episode of Urgent Duty Driving as contemplated by the General Orders as they existed at the time is an academic exercise and it is not necessary for me to reach a conclusion one way or the other.

## 15. Conclusions

- 15.1. In my opinion Senior Constable Rodell and Constable Cornish were certainly justified in their attempt to stop Mr Daniels. He was presenting a danger not only to himself by his manner of riding the motorcycle without lights or a helmet but also to other road users. It was true that it was late at night and it might not have been expected that there would be many other users on the road, however that provides no justification for driving a motorcycle without lights. Not only did the absence of lights present a danger to other road users who may not have been aware of the presence of the motorcycle as it was unlit, but it also presented a danger to Mr Daniels himself because he may have been unable to see potential obstructions. Furthermore, the fact that the motorcycle had an extremely loud exhaust would not necessarily serve as a sufficient warning to other road users, particularly if they were in a motor vehicle or if they suffered from a hearing impairment. The riding of a motorcycle that was not equipped for road use and that was unregistered and uninsured was an act that was reckless in the extreme and warranted police intervention. Furthermore, as matters transpired, Mr Daniels was affected by alcohol and cannabis. Exhibit C3a, the post mortem report of Dr Gilbert states as follows:

‘Analysis of a specimen of blood obtained at autopsy reportedly showed a blood alcohol concentration of 0/073%. The blood also contained a low level of THC (9 micrograms/L) indicative of recent cannabis consumption and possibly mild cannabis intoxication at the time of the accident. No other common drugs were identified.’

The combination of alcohol and cannabis in Mr Daniels’ system meant that his judgement and ability to control the motorcycle would have been affected, notwithstanding the observations by police during the pursuit which suggested that he was in control of the motorcycle at all times. His reaction times may not have been adequate to ensure the safety of other road users. In short, the officers were certainly justified in attempting to stop Mr Daniels.

- 15.2. Furthermore, in my opinion the pursuit was handled appropriately. The speeds that were attained by both the motorcycle and the patrol car never exceeded the posted speed limit by a substantial margin. The roads were quiet at that time and no hazard was presented to other road users. It was quite clear that Mr Daniels was aware of the pursuing police vehicle from the time at which he left the made roadway on Diment Road to take advantage of the off-road capabilities of his motorcycle to cross the verge into Witonga Avenue. After that it was plain that he was making for a

destination at which he could make further use of the off-road capabilities of his motorcycle in order to evade the police who had not been deterred by his first attempt. Indeed, it was apparent that Mr Daniels was well versed in the process of evading police in a similar manner.

- 15.3. This was not a case involving high speeds. The pursuit involved speeds that were moderate and there was minimal danger to the general public. Mr Daniels' motorcycle did not have any registration plate and in the darkness it was not possible for the police officers to identify him. Therefore it followed that if he could escape from police he was essentially free. There was no means by which Senior Constable Rodell or Constable Cornish could subsequently have identified Mr Daniels or the motorcycle. In these circumstances, given that no danger was presented to Mr Daniels, the police themselves or any other road users during the actual pursuit, the officers were well justified in the steps that they took.
- 15.4. Furthermore, in my opinion the officers were under no obligation to check what might have occurred on the reserve in the absence of any positive sign that Mr Daniels had come to grief. The officers listened to see if they could hear him. They did not hear a crash. It is interesting to note that no other witness heard a crash, and in particular, Mr Bowering, who was close by on Camira Way, heard nothing to indicate that there had been a crash. Had he heard any such sign, I have no doubt that he would have alerted the police to that fact when he spoke to them. It was his impression that Mr Daniels had made good his escape. The two police officers came to the same conclusion, in my opinion quite reasonably. It was quite open to them to assume that Mr Daniels had stopped the motorcycle and was pushing it, or had abandoned it altogether. There were a range of other possibilities that would account for the fact that he could no longer be heard and it was by no means obvious that the proper explanation was that he had collided with an obstacle somewhere on the reserve.
- 15.5. Chief Inspector Moyle considered that the openness of the two officers the following morning in volunteering their knowledge of what had occurred the previous night in connection with the motorcyclist who had been found on a reserve was commendable. Assistant Commissioner Barton took issue with that point of view because he regarded the actions of Senior Constable Rodell and Constable Cornish in reporting their knowledge of the episode to be no more than fulfilling their duty. While I agree with Assistant Commissioner Barton in this respect, I have no criticism of Chief

Inspector Moyle's characterisation of the episode. On any view the two officers behaved appropriately at all times both during the chase and in the aftermath and were open and forthright in their willingness to reveal the part that they had potentially played in the episode.

- 15.6. Mr Errol Daniels tendered a number of reports prepared by Australian Centre for Policing Research, a research unit which operated in South Australia and was a result of a collaboration of all of the Australian police services which, unfortunately, appears no longer to exist. I have carefully read and considered all of the reports tendered by Mr Daniels. Assistant Commissioner Barton gave evidence that he also read and considered them, and took them into account when preparing revisions to the General Orders relating to Urgent Duty Driving in 1997 and again more recently. I note that report Series No. 89, which is entitled "Progress Report on Urgent Duty Driving High Speed Pursuits: Offender and Pursuit Characteristics" which was part of Exhibit C67, makes the observation at page 12 that it could be argued that since high speed pursuits are potentially so dangerous and apprehension of the offender generally leads only to relatively minor convictions, a pursuit should not be initiated unless it involves an attempt to apprehend an individual who has committed a relatively serious offence. The authors noted that compromise positions had been advanced which involved administrative constraints on pursuit parameters such as maximum speed, distance, duration, the number of stop lights/signs that can be run before the pursuit must be terminated, and so on. Mr Daniels advanced the proposition that urgent duty driving protocols should be codified and more closely regulated and controlled. Thus, he would appear to be advancing a proposition which is similar to that noted by the authors of the report. I note that the authors reached the following conclusion:

'Positions such as those outlined above are restrictive in nature. That is, to varying degrees, they diminish the autonomy of the individual patrol officer. As such, they may be seen as running contrary to the professionalisation of policing. In contrast, from the perspective of the professional police officer, the following position on high speed pursuits might be proposed. Police officers (a) should be trained to assess the risks associated with initiating and maintaining pursuits and the significance of apprehending the offender, (b) should have autonomy for initiating, maintaining and terminating pursuits, and (c) should be required to undergo rigorous accountability/review procedures in association with all pursuits, with appropriate professional penalties attached to instances of unprofessional behaviour.'

It appears to me that the General Orders as presently framed, and arguably, as framed in 2005, reflected this philosophy, which appears to be that held by the authors of the report. In my opinion, while the material provided by Mr Daniels was very interesting and very informative, this was not a case of a high speed, high risk police pursuit. The aftermath was of course terrible and tragic. However, it was not foreseeable that a moderately circumscribed pursuit such as that engaged in by officers Rodell and Cornish might lead the rider of a motorcycle to ride across a reserve and collide with a solid object on that reserve. Thus, the material provided by Mr Daniels, and received as Exhibit C67, is not really apposite in this case. I do not consider that it is necessary to make any recommendations in relation to this matter.

*Key Words: Death in custody; Head injury; Motor cycle; Police; Urgent Duty Driving.*

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

*Seal the 9<sup>th</sup> day of November, 2007.*

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*State Coroner*