



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 4th, 15th and 16th days of December 2008 and the 18th day of March 2009, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Joshua Luke Ortlepp.

The said Court finds that Joshua Luke Ortlepp aged 20 years, late of 8 Murat Street, Seaview Downs, South Australia died at Belair Road, Torrens Park, South Australia on the 30th day of January 2007 as a result of hinge fracture base of skull and vault of skull fractures with closed head injury. The said Court finds that the circumstances of his death were as follows:

1. Introduction and reason for Inquest

- 1.1. Joshua Luke Ortlepp, aged 20 years, died on 30 January 2007 as a result of a motor vehicle collision. At the time of the collision, Joshua was being pursued by a police vehicle at high speed. He had been attempting to evade the police for some minutes. Accordingly, his death was a death in custody within the meaning of the Coroners Act 2003 and this Inquest was held as required pursuant to section 21 of that Act.
- 1.2. Dr Karen Heath, Forensic Pathologist, conducted an autopsy upon Joshua on 31 January 2007. She gave the cause of death as 'hinge fracture base of skull and vault of skull fractures with closed head injury'¹ and I so find. An analysis of a specimen of Joshua's blood obtained at autopsy showed a blood alcohol concentration of 0.179%. Analysis of a specimen of vitrious humour obtained at autopsy showed a blood alcohol concentration of 0.211%. In addition approximately 6µg per litre of

¹ Exhibit C3a

tetrahydrocannabinol was present in the blood, consistent with recent use but not acute intoxication with cannabis at the time of death.

2. **Background**

- 2.1. Joshua had been convicted of a drink driving offence in 2005 as a result of which his driver's licence had been suspended for six months. In that incident he had rolled his motor vehicle. At the time of his conviction the Court informed him that there was a possibility that if he repeated his behaviour he might serve a prison sentence. It appears that this played on Joshua's mind and he would occasionally comment about it to his mother². According to a statement of Matthew Herbert, who was one of the passengers in the car with Joshua that night, Joshua was scared that he would get into trouble because of the previous incident in which he had been drinking³. Matthew stated that Joshua said during the police pursuit that he was not going to gaol and that if the police chased him he would push his passengers out of the car and crash the car into a tree. A similar observation was made in the statement of Tristan Adcock, another of the passengers in the vehicle that night⁴. In my opinion the evidence is clear that Joshua had convinced himself that if he was caught drink driving again, then he would be likely to go to gaol. He had a strong aversion to the idea of a custodial sentence and had expressed his intention to his friends that he would kill himself by driving into something, rather than face a gaol sentence. There is evidence that Joshua was also concerned about the possibility of being sexually assaulted or raped while in gaol and that this was a factor in his fear of prison.
- 2.2. The evidence suggests that from the late afternoon of 29 January 2007, possibly around 5pm or 6pm, Joshua began to consume alcohol with his friend Matthew Herbert. Joshua and Matthew were driving around in Joshua's Holden Commodore until approximately 10:30pm when they picked up Tristan Adcock from the Marion Hotel. Tristan had been working and he took over the driving of the motor vehicle from that point for some time. However, approximately half an hour before the police detected the vehicle, Joshua resumed driving. This was shortly after they had attended at the McDonalds at South Road, Bedford Park.

² Note of Robyn Trenouth, mother of Joshua Ortlepp, as read out by Counsel Assisting in her closing address Transcript, pages 145-146

³ Exhibit C6a

⁴ Exhibit C7a

2.3. Professor Jason White gave evidence at the Inquest. He said that the blood alcohol reading taken from Joshua was a very high one and that it would have reflected fairly accurately the blood alcohol level in his body at the time of the accident. Professor White said that such a high level of intoxication would have had a significant effect on Joshua's ability to drive. He also said that the level of cannabis intoxication in Joshua's body would have had an effect. Indeed, the combined effects of alcohol and cannabis are, according to Professor White, greater than the effect of either drug alone. The level of impairment is increased when cannabis is combined with alcohol, and this is observed for a range of characteristics of driving behaviour. In addition, cannabis will enhance the sedation produced by alcohol. Professor White said that Joshua's driving would have been adversely affected to a very marked extent by the combination of alcohol and cannabis. Some of the effects include a slowed reaction time, increased errors of vehicle operation, greater risk taking behaviour and a diminished ability to react appropriately in difficult situations so as to avoid a potential collision⁵.

3. Joshua is detected by police

3.1. Shortly before 2am police officers Carr and Watson were having a short break for a cup of coffee. They were parked just off Cross Road on the southern side, at a location west of the intersection of Cross Road and South Road. Having finished their coffee they recommenced their patrol, driving in a westerly direction towards Glenelg. Constable Watson was driving the vehicle⁶.

3.2. Both Constables Carr and Watson gave evidence at the Inquest. Their evidence was given in a frank and open manner and I accept it in its entirety. As they were travelling in a westerly direction their attention was drawn to a vehicle on the opposite side of the road at the intersection of what they later ascertained was Brinkworth Street and Cross Road. The vehicle was creating smoke and it was this smoke which attracted their attention⁷. Because Constables Carr and Watson were on the southern side of Cross Road, and Cross Road was divided at that point by an unbroken median strip, it was necessary for them to proceed some fifty metres further to the west to a break in the median strip before they could perform a u-turn⁸. It was their intention at

⁵ See generally Exhibit C88 and the evidence of Professor White

⁶ Transcript, page 35

⁷ Transcript, page 60

⁸ Transcript, page 61

that time to speak to the driver about the ‘burn-out’ and report him for that driving behaviour⁹. However the vehicle, which was the white Holden Commodore station wagon being driven by Joshua, drove off in an easterly direction on Cross Road. Constables Carr and Watson followed but the Commodore continued to increase the distance between them. They saw that the white Commodore approached the Cross Road/South Road intersection and went through the lights which were red for vehicles travelling along South Road through that intersection. Constables Carr and Watson slowed their vehicle and turned on their lights and sirens to go through that intersection. Once they had cleared the intersection, they saw that the white Commodore was still making distance on them and was travelling between Cross Road and Goodwood Road. They turned their lights and sirens off and Constable Carr advised Police Communications that they had a vehicle which had taken off.

4. A second police vehicle driven by Senior Constable Paul Clark becomes involved

- 4.1. At this time a second police vehicle, being driven by Senior Constable Clark, the Shift Manager for the Carr/Watson patrol vehicle, had become involved in the situation. Senior Constable Clark had been travelling south along Unley Road when he heard the report that had been made by Constables Carr and Watson. He made a radio transmission advising of his position and his intention to wait for the white Holden Commodore to arrive at the intersection of Unley Road and Cross Road. He positioned his vehicle on the northeast corner of that intersection, in the southbound carriageway of Unley Road.
- 4.2. According to Senior Constable Clark, who also gave evidence at the Inquest, he saw the Commodore station wagon travelling east on Cross Road at approximately 80 kilometres per hour. He said that he had turned on his flashing red and blue lights¹⁰ and would have been clearly visible to the occupants of the white Commodore. He said that Joshua’s vehicle made a right turn into Belair Road. It was a wide turn and the vehicle almost collided with the left-hand curb. Senior Constable Clark saw the right, rear passenger looking out of the back window towards him. He activated his siren and advised Communications that he was following the vehicle south along Belair Road¹¹. He said that at that point it was his intention to perform a ‘traffic stop’.

⁹ Transcript, pages 61-62

¹⁰ Transcript, page 80

¹¹ Transcript, page 80

He was hoping that the vehicle would just pull over and that he would be able to talk to the driver about the incident.

- 4.3. At this time, Constables Carr and Watson heard that Senior Constable Clark was following the white Commodore. They heard him report that the white Commodore had turned down a side street and at that point they activated their lights and sirens with the intention of proceeding to the locality of Senior Constable Clark's vehicle and assisting him. This they did, turning to travel south down Belair Road.
- 4.4. Meanwhile, Senior Constable Clark had followed the white Commodore south along Belair Road. The vehicle made a left-hand turn into Halsbury Avenue at Kingswood. This intersection is only some 440 metres south of the intersection of Cross Road and Belair Road¹². About 50 to 100 metres after the intersection of Halsbury and Belair Roads, the white Commodore slowed and the front-left and rear-right doors opened. Senior Constable Clark thought that the people were going to run from the vehicle and he advised Communications of that belief. He also asked for a dog squad patrol to attend. He observed the front-left passenger run from the vehicle and move to the northern footpath of Halsbury Avenue. The right-rear passenger stepped out of the Commodore and turned to face the police car. As he did that, his right arm was still caught in the seatbelt of the vehicle and the Commodore drove off in an easterly direction on Halsbury Avenue dragging the right-rear passenger by the arm¹³. The person who was dragged by the vehicle was Matthew Herbert to whom I have made some reference. He described in his statement that he had not quite got his right arm out of the seatbelt when Joshua accelerated quickly causing the seatbelt to retract and trap his arm¹⁴. As a result of this he suffered friction burns along his back which had gravel embedded in it. The friction burn was from the middle of his back all the way down to his buttocks. He had a tennis ball sized gaping wound to his left heel which was almost ground to the bone and an injury to the outside of his left foot near the little toe. He was quite severely injured and had extensive medical treatment. He made a full recovery from his injuries.

¹² See Exhibit C84

¹³ Transcript, page 81

¹⁴ Exhibit C6b

- 4.5. Matthew Herbert and Tristan Adcock had been yelling at Joshua to stop and let them out after they realised that the police were following. Matthew estimated the speed that Joshua was travelling at as between 140 and 180 kilometres per hour¹⁵.
- 4.6. From Senior Constable Clark's perspective, he observed Mr Herbert being dragged along the road. He said that Mr Herbert was banging on the back panel of the car and yelling out, presumably to attract the driver's attention to get him to stop. The yelling was audible to Senior Constable Clark even above the police sirens inside the police vehicle¹⁶. The white Commodore driven by Joshua turned right into Rugby Street some 200 metres from Belair Road. At that stage, Senior Constable Clark saw Mr Herbert crashing into the Commodore on the right-hand side and Senior Constable Clark believed at that stage that Mr Herbert was dead because he went limp. The Commodore continued along Rugby Street. Upon Senior Constable Clark entering Rugby Street, he pulled over and advised Communications that he was terminating the pursuit on the basis that there would be more risk to the passenger if he continued. He pulled over approximately 50 to 70 metres after the corner of Rugby Street and Halsbury Avenue. He notified Communications of what he was doing and then observed the white Commodore turn right into a laneway running between Mitcham Girls High School and Kingswood Oval and proceeding in the direction of Belair Road. In effect, the white Commodore had gone around a block consisting of the Kingswood Oval and was now approaching Belair Road again. However, the laneway was a dead end with bollards between its western end and Belair Road.
- 4.7. Approximately 30 to 50 metres into that laneway, the white Commodore stopped. At this stage Senior Constable Clark was still parked in Rugby Street but he could observe what the white Commodore was doing. He saw it come to a stop and to his surprise the passenger slowly got to his feet. He then drove his vehicle along Rugby Street and into the laneway because he knew that the passenger would need help. As he pulled up behind the white Commodore the driver (Joshua) was looking between the two front seats and pushing at Mr Herbert to get him out of the car¹⁷. Joshua succeeded in pushing Mr Herbert out of the vehicle and as Senior Constable Clark pulled up behind the white Commodore, it accelerated west along the continuation of the laneway. At the end of the laneway, it went between one of the bollards guarding

¹⁵ Exhibit C6c

¹⁶ Transcript, page 81

¹⁷ Transcript, page 83

the end of the laneway and a tree and exited onto Belair Road directly in front of the patrol vehicle driven by Constables Carr and Watson which was driving south along Belair Road at that time.

- 4.8. At that stage Senior Constable Clark's attention was devoted to Mr Herbert who clearly required assistance. However, he heard the patrol vehicle of Constables Carr and Watson engage in a pursuit with the white Commodore and they were soon out of his view travelling south on Belair Road.
- 4.9. Senior Constable Clark arranged for an ambulance to be called to attend to Mr Herbert. Senior Constable Clark was able to obtain from Mr Herbert the name of Joshua Ortlepp as the driver of the white Holden Commodore.

5. Constables Carr and Watson continue the pursuit south along Belair Road

- 5.1. As I have said, Constables Carr and Watson were travelling south along Belair Road with the intention of coming to the aid of Senior Constable Clark. Constable Watson said that when the white Commodore pulled out in front of them, they had to brake hard to avoid a collision. The white Commodore then accelerated rapidly south down Belair Road and Constable Carr then notified Police Communications that they were engaging in a pursuit. His next transmission was to advise of speed and road conditions. As Constable Carr called the speed of the police vehicle, Constable Watson observed the digital speedometer showing 139 kilometres per hour. At that time the police vehicle was near the intersection of Princes Road and Belair Road. The white Commodore was still pulling away from them. Shortly after this intersection they approached an S-bend and reduced speed to negotiate it. They lost sight of the Commodore immediately before entering the S-bend, but then regained sight of it on exiting the S-bend.
- 5.2. After exiting the S-bend, Constable Carr observed the white Commodore drive onto the wrong side of the road. He then observed the car collide with a building. The collision occurred on the western side of the intersection of Belair Road and Blythewood Road at Torrens Park. In fact, the white Commodore collided with a light pole but also caused some damage to a nearby building. Constable Carr was of

the opinion that Joshua's vehicle was travelling at a greater speed than the 140 kilometres per hour which he noted the police vehicle to be travelling at¹⁸.

- 5.3. The entire duration of the pursuit from the point on Belair Road adjacent to the Kingswood Oval to the point at which Constable Carr called Police Communications to advise that he had seen the vehicle crash was 44 seconds.
- 5.4. According to Exhibit C74g, which is a transcript of the communications between the patrol vehicle of Constables Carr and Watson and Police Communications, the incident commenced at 01:59:10 when the patrol vehicle reported that they were trying to catch a white Holden Commodore sedan heading east along Cross Road and ended at 02:02:31 when Constable Carr advised of the collision on the corner of Blythewood Road. In total, the incident lasted approximately 3 minutes and 20 seconds.

6. **Conclusion**

- 6.1. In my opinion, the various police officers involved, particularly Constables Carr and Watson and Senior Constable Clark, behaved appropriately. The duration of the entire incident was so short that it would have been almost impossible for the officers to have acted differently. It is true that in some circumstances, if the identity of the driver of a vehicle is known, it may be appropriate for police to desist in a pursuit, knowing that they can find the driver of the vehicle at a known and safe location at a later time, thus avoiding the need to endanger the public and those involved in the pursuit by engaging in a high speed pursuit. However, in the present case the identity of the driver was not known until after the collision had occurred. Matthew Herbert had provided the name of Joshua Ortlepp to Senior Constable Clark only after the collision had occurred. Thus, it was not possible for the officers involved to analyse the situation sufficiently to ascertain the fact that the vehicle was not stolen and that the driver could be found at his home address in due course.
- 6.2. The manner of driving and the behaviour of the passengers in the vehicle caused Senior Constable Clark to form the view that the vehicle may have been stolen. No doubt, Constables Carr and Watson had formed a similar view. The conduct involved in driving the vehicle for some distance with Mr Herbert dragging beside the vehicle

¹⁸ Transcript, page 45

was extremely serious. It had been reported over the radio by Senior Constable Clark and Constables Carr and Watson were aware of it in the final phase of the chase. They were justified in maintaining the pursuit.

7. Recommendations

- 7.1. In conclusion, I consider that Constable Watson, the driver of the vehicle, Constable Carr and Senior Constable Clark all behaved quite appropriately in the execution of their duties in the early morning of 30 January 2007 and I have no recommendations to make in this matter.

Key Words: Death in Custody; Motor Vehicle Accident

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

Seal the 18th day of March, 2009.

State Coroner