



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 7th and 9th days of December 2010 and the 17th day of February 2011, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the deaths of Rhys Allan Gerard Ryan and Jake Spencer Henschke.

The said Court finds that Rhys Allan Gerard Ryan aged 19 years, late of 5/30 Wheatsheaf Road, Morphett Vale, South Australia died at Carey Gully Road, Bridgewater, South Australia on the 25th day of March 2009 as a result of neck injury.

The said Court finds that Jake Spencer Henschke aged 19 years, late of 5/1 Brian Grove, Paradise, South Australia died at Carey Gully Road, Bridgewater, South Australia on the 25th day of March 2009 as a result of neck and chest injuries

The said Court finds that the circumstances of their deaths were as follows:

1. Introduction

- 1.1. Rhys Allan Gerard Ryan and Jake Spencer Henschke, both aged 19, died together in a single vehicle collision that took place in Bridgewater in the Adelaide Hills shortly after 2:00am during the night of Wednesday 25 March 2009. Mr Ryan was the driver of the vehicle. Mr Henschke was the front seat passenger. A third male, David Jonathon Wayne, who was also aged 19, was seated in the rear. Mr Wayne was seriously injured but survived.

- 1.2. Mr Ryan and Mr Henschke both died at the scene from injuries sustained in the collision. Both deceased were subject to autopsies. The cause of Mr Ryan's death as revealed at autopsy was neck injury, and I so find. The cause of Mr Henschke's death as revealed at autopsy was neck and chest injuries, and I so find.
- 1.3. Mr Ryan's autopsy also revealed that he had a blood alcohol concentration of 0.142%. Cannabinoids were also present in his blood stream. Mr Ryan had been the driver of the vehicle. The level of intoxication caused by his ingestion of alcohol and cannabis in combination with each other could be regarded as significant and would potentially have had the affect of impairing his ability to control a motor vehicle. One might also have expected his ingestion of those substances to have affected his ability to control impulsive behaviour and to have affected his judgment.
- 1.4. Mr Henschke had no alcohol in his system, but had cannabinoids.
- 1.5. Mr Wayne had a moderate level of alcohol in his system as well as methylamphetamine.
- 1.6. Although neither Mr Henschke nor Mr Wayne had any control over the motor vehicle at the time of the collision, the substances detected in their respective bloodstreams might have been expected to affect their general behaviour. In addition, the substances in Mr Wayne's system might affect the accuracy of his recollection of the incident. Mr Wayne provided a statement to police on 16 April 2009 in which he gave an account of the incident.
- 1.7. The collision was between an unregistered and uninsured Holden Commodore and a brick wall that was reinforced at the rear with an embankment of earth. The vehicle struck the brick wall virtually flush, which caused the vehicle instantly to decelerate from a speed estimated to have been between 88 and 100 kilometres per hour. Evidence gathered by a professional accident reconstructionist suggested that the Commodore had been travelling at a speed of between 115 and 125 kilometres per hour at the commencement of tyre marks that led towards the point of impact with the brick wall. The reconstruction evidence suggests that at the moment of impact the Commodore sedan was travelling in the 88 to 100 kilometres per hour range I have mentioned. The speed limit for the road in question was 60 kilometres per hour.

- 1.8. At the time of the collision the Commodore vehicle containing the two deceased and Mr Wayne was being pursued by police. The pursuit was being conducted by a solo uniformed police officer who was driving a marked police Holden Commodore sedan with flashing lights and sirens operating.

2. **Background**

- 2.1. Material was placed before the Court that concerned the activities and movements of the three occupants of the vehicle in the previous 24 hours and which also dealt with their alleged possible association with known criminals. There was also an element of speculation contained within the documentation tendered to the Court as to the purpose of the journey that was being undertaken by the three individuals. Included in all of this material was evidence of an earlier incident during the preceding day in which an off-duty police officer on a bicycle had been endangered by a vehicle allegedly being driven by one of these three individuals. The car had sped off when the officer tried to detain the occupants. The investigating officer's report¹ also suggests that Mr Ryan was a wanted suspect for an aggravated assault.
- 2.2. Other than the fact that the vehicle that was pursued in the early hours of the Wednesday morning was unregistered and uninsured, and that its driver Mr Ryan at the age of 19 already had a prodigious record for alcohol related driving offences and was unlicensed, I did not find much of the background material to have been helpful. There is no suggestion that anything illicit was located in the vehicle. Whatever the true purpose of their journey had been, there are instantly understandable reasons to explain why Mr Ryan would have elected to evade detection as an unlicensed, intoxicated and recidivist traffic offender and therefore to resist any form of police intervention that may have resulted from his vehicle being pulled over and his identity established; not forgetting of course the effects of alcohol and cannabis on his decision making as well as the possible influence of his peers. And, as will be seen, the police officer who pursued the Commodore and its occupants in the course of the fatal incident had no knowledge of any earlier activities of these individuals. At the time of the pursuit, the knowledge of the pursuing officer was confined to the fact that the Commodore sedan was unregistered and uninsured, and even that fact was unknown to him when he had first decided to investigate and follow the vehicle and its occupants. Prior to the commencement of what ultimately became a high speed

¹ Report of Senior Constable First Class Kylie Peters, Exhibit C37d, page 28

pursuit, the only offence or suspected offence that the officer could legitimately have investigated at that point in time was that of driving an unregistered and uninsured vehicle. He did not know who the occupants of the vehicle were and knew nothing about them whatsoever.

- 2.3. As it so happened the last registered owner of the vehicle was a person other than its three occupants. I add here that although the vehicle was unregistered and uninsured, and indeed had been for several months, it was neither stolen nor reported as having been stolen, nor was otherwise being illegally used. There was no suggestion that it bore stolen registration plates or plates that did not belong to the vehicle.
- 2.4. As to Mr Ryan's traffic record, it included exceeding the prescribed concentration of alcohol on three occasions, exceed speed limit, driving whilst disqualified and driving with an inappropriate licence.

3. Summary of the incident

- 3.1. Just after 2:00am on the morning of 25 March 2009 Sergeant Kym Webb, who was solo in a marked SAPOL Commodore sedan and was parked at a location on the northern side of the South Eastern Freeway near Crafers, was making general observations of traffic along the freeway. At that time he saw three vehicles that appeared to be travelling in close formation east along the freeway from the direction of the city. Two of those vehicles were Holden Commodore sedans, one of which was occupied by the two deceased and Mr Wayne. The other is believed to have contained associates of that trio. The third vehicle was a 4WD. As far as is known the 4WD and its occupants had no connection with either Commodore. Sergeant Webb, in his marked police Commodore, followed the vehicles east along the freeway. Sergeant Webb asserts that intuition told him on the night that there was probably a connection between the two Commodores. At all events I regard as immaterial whatever connection there may have been in fact between the occupants of any of these vehicles.
- 3.2. No doubt the police car was recognised as such. The Commodore driven by Mr Ryan suddenly and at the very last moment exited the freeway onto the Bridgewater exit ramp. Although there had been nothing unlawful about the manner in which that vehicle or the other Commodore had been driven up to this point, Sergeant Webb was later to assert that he regarded the behaviour of the occupants of the two Commodores

as suspicious. The other Commodore did not take or attempt to take the Bridgewater exit but proceeded east along the freeway and was not seen again.

- 3.3. By that stage Sergeant Webb had established through the computer in his police vehicle that the Commodore that had left the freeway was unregistered and uninsured. Once onto the exit ramp himself, Sergeant Webb activated the emergency lights of the police vehicle in order to signify to the driver of the Commodore that he or she should stop. This triggered on the part of the driver an obligation by law to stop and remain stationary². In the event the Commodore did pull up only a relatively short distance from the junction of the Bridgewater exit ramp and Bridgewater Road. Sergeant Webb alighted from his police vehicle and approached the Commodore from the rear. As he approached nearer, the Commodore suddenly drove off.
- 3.4. Sergeant Webb then returned to his vehicle and followed. The Commodore turned right at the junction with Bridgewater Road and then sped off towards Bridgewater. At a point along the journey the speed limit reduced from 80 to 60 kilometres per hour. Sergeant Webb pursued in his Commodore and he reactivated the flashing lights and activated the sirens. After crossing the bridge over the South Eastern Freeway the Commodore continued to travel at high speed with Sergeant Webb's vehicle in pursuit. After Mr Ryan's vehicle passed over the train line on Bridgewater Road it failed to take a right hand bend and, at the speed that I have already identified, struck the brick wall adjacent to the service entry to the Coles supermarket in Bridgewater.
- 3.5. Sergeant Webb who claims not to have witnessed the actual impact arrived on the scene shortly after.
- 3.6. The distance from the location where the Commodore stopped on the Bridgewater exit ramp to the location of the collision was approximately 1.46 kilometres which essentially represents the entirety of the distance over which the pursuit was conducted³.

² Section 40H of the Road Traffic Act 1961

³ Exhibit C37d, page 21

4. **Police High Risk Driving – SAPOL General Orders**

- 4.1. A Police General Order entitled ‘Operational Safety - High Risk Driving’⁴ was in force at the time with which this Inquest is concerned. Police General Orders govern police operational behaviour in general. Compliance with General Orders on the part of officers is mandatory. The particular General Order entitled Operational Safety - High Risk Driving (hereinafter referred to as ‘the General Order’) came into effect on 13 August 2008. It replaced a previous version relating to the same or similar subject matter. According to its terms, the General Order sets out policies and procedures for police officers who are driving vehicles in circumstances which might breach the road safety rules including the Australian Road Rules 1999 (the ARR). The stated aim of the document is to promote the minimisation of the risk of danger to police, members of the public and suspects that might be caused by high risk driving. The document, under the heading Rationale, rightly acknowledges that pursuit driving, as a species of high risk driving, involves great potential for the loss of life, injury or damage to property, particularly where high speeds are involved and in areas of high vehicle or pedestrian traffic. It goes on to stipulate that the justification for engaging in pursuit driving must be clearly understood. The document imposes obligations on a member of the police force to take reasonable care, to consider the circumstances against a risk assessment that takes into account the potential danger to police, members of the public, suspects or damage to property and to have regard to the likely outcome. The risks involved must be continually assessed. An important aspect of the document’s Rationale is the stipulation that police have a duty to protect life and property and that this outweighs the need to apprehend suspects, especially when the offences are minor traffic matters or where safer alternatives to apprehension are available.
- 4.2. The general purport of the document is to identify if not delimit the circumstances in which police officers should engage in high risk driving, including pursuit driving, and in which they might legitimately invoke the exemptions from compliance with the road traffic law that are provided by Rule 305 of the ARR and by Section 110AAAA of the Road Traffic Act 1961 (the RTA). Police officers behind the wheel of a motor vehicle, even in the course of performing their official duties, must comply with the various rules of the road including those contained within the ARR as well as the RTA. Police do not have a general immunity from prosecution for breaches of the

⁴ Exhibit, C37ak

road traffic law. However, Rule 305 of the ARR provides an exemption for drivers of police vehicles if in the circumstances the driver is taking reasonable care, it is reasonable that the provision should not apply and if the vehicle while moving is displaying a blue or red flashing light or is sounding an alarm. The stipulation regarding the displaying of lights and the sounding of an alarm does not apply if in the circumstances it is reasonable not to display a light or sound the alarm or for the vehicle not to be fitted or equipped with such equipment. This exemption is a limited exemption insofar as, whilst it might provide an excuse for an offence of exceeding the relevant speed limit, it would not provide any exemption in relation to a police officer who was driving a police vehicle without due care or in a manner which was dangerous to the public. Section 110AAAA of the RTA also provides police with certain exemptions from the operation of the provisions of that Act, but it too does not exempt instances of careless or dangerous driving even in the execution of official police duties. That said, it is clear that although the General Order refers to the ARR and the RTA, and to the exemptions that those pieces of legislation contain, the document does not in any way purport to authorise police to drive without due care or drive in a manner that is dangerous to the public and, as a matter of law, nor could it.

- 4.3. I would also make the observation here that while the General Order as a whole has as its primary focus the driving behaviour of a police officer, it also contains what in essence is a code in relation to the general behaviour and decision making activities of a police officer conducting high risk driving including a vehicular pursuit.
- 4.4. The Police General Order governs police behaviour in a number of instances that include pursuits. A pursuit is defined within the General Order. I set out that definition:

'Pursuit - a situation will be considered a pursuit when police are following a vehicle where the person in control:

- fails to stop after being signalled to do so by a police officer; and
- is taking deliberate action to avoid being stopped and/or;
- appears to be ignoring police attempts to stop the vehicle'⁵

I do not think there is any suggestion in this case other than that a pursuit was in progress when the collision involving the Commodore driven by Mr Ryan occurred.

⁵ Exhibit, C37ak

Thus the General Order operated in respect of this incident and particularly in respect of Sergeant Webb's driving and general behaviour.

- 4.5. Within the General Order there is a section that is devoted to, and is entitled, 'Pursuit driving'. I will return to this section in detail shortly, but it is as well to refer to some of the general provisions that appear to govern all police behaviour insofar as it might involve high risk driving.
- 4.6. The General Order mandates an officer, before undertaking any driving which is in breach of any road safety rules, to appreciate and consider all risks. This exercise must be continuously reassessed to ensure risks are always minimised. As in other sections of this document, there appears to be a heavy emphasis on police activity that might breach the road safety rules and in respect of which the exemptions to which I have referred might need to be invoked. In this regard it would be unfortunate if the document created an impression that its primary purpose is to exonerate police officers from the consequences of their actions, or to protect them from prosecution, as opposed to having been designed to address a need to protect the general public. However, I will proceed on the basis that the General Order also governs the behaviour of pursuing police officers whose behaviour generally, and driving behaviour in particular, might encourage or otherwise stimulate careless and reckless behaviour on the part of the driver of a pursued vehicle, regardless of the speed at which the pursuing vehicle is maintained and regardless of whether or not the officer driving the pursuing vehicle is committing any road traffic offences.
- 4.7. Within the section of the document entitled 'Risk assessments' there are a number of important features. It is emphasised that safety is the priority in all situations. In addition, the reason for the high risk driving '*based on the known facts*'⁶ is a relevant consideration and one that must be assessed against the risk involved. I understand this to mean that the underlying reason for conducting a pursuit is a material consideration as to whether a pursuit should be commenced or continued. The reason for the pursuit is a reason quite apart from the fact that a motorist has failed to stop or remain stationary pursuant to a legitimate direction. As has been commented upon in previous Inquests involving police pursuit driving such as the Bradford⁷ Inquest and

⁶ Exhibit, C37ak

⁷ Inquest 1/2009

the McNamara⁸ Inquest, the nature of the underlying reason for a pursuit should be regarded as the governing circumstance as to whether a pursuit should be commenced or continued. I note that the General Order that applied to this particular case specifically states that generally pursuits should not be commenced for minor traffic matters. Thus seen, the document does acknowledge, in my view, that not all pursuits will be justified even where the driver of the pursued vehicle has quite contumaciously failed to comply with a direction to stop. The need for the underlying reason for high risk driving to be '*based on the known facts*' is in my view an acknowledgment that the need for a pursuit should be based on fact that is actually known to police and not upon intuition or a hunch. Moreover, the mere fact that a motorist has been directed to pull over and has failed to do so, or once having done so fails to remain stationary, in and of itself would rarely, if ever, provide adequate justification for the commencement of a pursuit, especially one that was conducted in intrinsically dangerous circumstances. This Court has made that same observation in the past⁹.

- 4.8. I note that the General Order, other than referring to the general prohibition on commencing pursuits for minor traffic matters, does not specifically identify reasons that might justify the commencement or continuation of a pursuit and, in any event, does not define or provide any guidance as to what might constitute a minor traffic matter. The document also does not refer specifically to knowledge or suspicion on the part of the pursuing officer that a pursued vehicle is stolen, reported as stolen or is being otherwise illegally used as providing in itself a legitimate reason for commencing or continuing a pursuit.
- 4.9. In making any risk assessment the document stipulates that a number of matters should be considered. These include the danger to the lives and safety of police, public and suspects, the seriousness of the emergency or offence, whether immediate apprehension is necessary, whether the identity of the driver is known, the outcome to be achieved, local knowledge of road features and the surrounding location and, of course, the traffic conditions and speed of vehicles. Importantly, it stipulates that if at any time the risk to police, the public or suspects or damage to property outweighs the need to continue the driving, a pursuit is to cease immediately.

⁸ Inquest 20/2009

⁹ Inquest 20/2009 into the death of Adam Keneth McNamara

- 4.10. The General Order says nothing about a need to consider the possibility that the driver of a pursued vehicle may be intoxicated or otherwise be suffering an impairment of driving skill, nor about the need to have regard to the dangers that might thereby be presented to the driver or occupants of the pursued vehicle or to the general public. I make the observation here that complete sobriety and the ability to exercise effective control of the vehicle on the part of the pursued motorist in most cases cannot automatically be assumed.
- 4.11. The General Order provides that in all instances of pursuit driving an Incident Controller must be identified who must undertake the role immediately. I take it that an Incident Controller is intended to be a person other than an occupant of the pursuing police vehicle and a person, therefore, who might exercise independent judgment in relation to the appropriateness of a pursuit. The role of the Incident Controller includes taking charge of and closely monitoring the pursuit. The General Order obliges the Incident Controller to establish the reasons for the pursuit and his or her duties include ordering the termination of a pursuit if it is not justified.
- 4.12. When the role of Incident Controller is assumed the police communications centre, Comcen, must be advised immediately. Observations have been made in previous Inquests including in Bradford¹⁰ and Lawrie-Turner¹¹ that the role of the Incident Controller is not always easily assumed, especially in circumstances that involve a pursuit conducted over a very short period of time. For instance, although Comcen was advised by Sergeant Webb of the pursuit in this particular case, I do not understand an Incident Controller to have been identified at any point in time and it seems that the reason for this would be the short period of time over which the incident occurred.
- 4.13. Within the section of the General Order specifically devoted to and entitled 'Pursuit driving', there are a number of relevant requirements. Included among these is a requirement that a pursuit is not to take place when the risks outweigh the results to be achieved by such driving. In that situation a pursuit must immediately be terminated. This stipulation in my view also lends weight to the proposition that the reason for the pursuit, being relevant to the question of what is to be achieved by the pursuit, will always be a very material consideration in both the decision as to whether a pursuit

¹⁰ Inquest 1/2009

¹¹ Inquest 12/2009

should be commenced or whether it should be continued once it has been commenced. There is a requirement that Comcen/base radio operator must be advised of the pursuit and the reason for the pursuit. This would enable an independent person, such as the Incident Controller, to begin formulating a judgment as to whether the pursuit should be continued or terminated.

- 4.14. The section on pursuit driving distinguishes a situation where a pursuing police officer is solo from that where there is a second officer in the pursuing vehicle. Where there is a passenger, that person is responsible for maintaining communication with the Comcen/base radio operator. The information that needs to be imparted by that person includes immediate notification of the pursuit as well as a continuous relaying of information such as the reason for the pursuit, speed, direction of travel, environment conditions, vehicle description, whether warning equipment has been activated, the manner of driving and other relevant information. If the driver is solo, the communication role must pass to a secondary vehicle as soon as possible. If the primary vehicle is solo with no secondary vehicle involved, the pursuit has to be terminated if effective radio communication cannot be maintained safely. In any case, once the Comcen/base radio operator is notified of a pursuit, the nomination of an Incident Controller must be sought. I observe that all of this may not be feasibly established in a short period of time.
- 4.15. Where a pursued vehicle is not stopped or the pursuit is terminated, the General Order mandates enquiries to be made to locate the driver and passengers in the pursued vehicle and such enquiries might include attending at the home address of the registered owner of the pursued vehicle. The other matter worthy of note is that the General Order recognises that as an alternative to pursuit, there are other investigatory measures that at some later point in time might be employed to identify or otherwise detect the driver of the pursued vehicle.

5. **The reasons for the pursuit**

- 5.1. Sergeant Webb told me that he believed that the two Commodores were travelling together and that he was not sure why that may have been the case. Sergeant Webb's suspicions were heightened when a check on the registration of the Commodore that was ultimately to be the subject of the pursuit revealed that the vehicle was unregistered and uninsured. Sergeant Webb in fact intended to pull both vehicles

over. He told me in evidence that based on his experience he had a 'gut feeling' about the vehicles¹². He decided that he would pull the two vehicles over to assess the bona fides of the drivers and the other occupants of the vehicles, to inspect the vehicles and to establish why they were in the hills¹³. One line of inquiry may have been whether the drivers of the vehicles were licensed at the time. One of the vehicles was unregistered and uninsured. Regardless of Sergeant Webb's suspicions, section 40H of the RTA empowers a police officer, for the purpose of or in connection with exercising other powers under a 'road law', to direct the driver of a vehicle to stop the vehicle. The expression 'road law' refers to the RTA, the Motor Vehicles Act 1959 (MVA) or the rules and regulations made under either Act. The MVA, inter alia, governs the registration and insurance requirements of motor vehicles and also proscribes offences for contraventions of those requirements. There can be no doubt that section 40H of the RTA authorised Sergeant Webb to direct the driver of the Commodore to stop, based upon the fact that the vehicle was unregistered and uninsured to Sergeant Webb's knowledge. This in itself justified police in directing the driver of that vehicle to pullover and it would have necessitated appropriate action to have been taken both in respect of the presence of the vehicle on the road and as against the driver.

- 5.2. A person commits an offence if they engage in conduct that results in a contravention of a direction to stop. The maximum penalty for such an offence was at that time \$5,000. Section 40H(6) stipulates that to stop a vehicle means to stop the vehicle and to keep it stationary. Thus Mr Ryan's actions in driving away from the scene amounted to an offence against section 40H of the RTA. I have already referred to the fact that it is in contravention of the MVA to drive an unregistered and uninsured motor vehicle. The usual penalty for such an offence involves a fine and a short period of licence disqualification. Assuming that it is roadworthy, a vehicle being driven whilst it is unregistered and uninsured does not present any intrinsic danger to other users of the road or to the public in general. However, the fact that a vehicle is being driven on a road when it has no compulsory third party insurance policy in place can involve certain adverse consequences if a person is injured as a result of the negligent use of the motor vehicle. It does not necessarily mean, however, that a person who does suffer such bodily injury will therefore go uncompensated. Mr

¹² Transcript, page 68

¹³ Transcript, page 68

Biddle, who appeared for and on behalf of the nominal defendant, submitted that in practical terms the consequences of an unregistered, and particularly uninsured vehicle, being driven on the road and a person being injured as a result of its negligent use, are not necessarily dire. He points out that both now and at the time with which this Inquest is concerned there is a scheme in place pursuant to sections 116 to 119 of the MVA whereby a person claiming damages in respect of death or bodily injury caused by, or arising out of, the use of an uninsured motor vehicle on the road may bring an action for the recovery of those damages against the nominal defendant¹⁴. The nominal defendant's liability to satisfy such a claim or judgment is paid out of a fund contributed to by approved insurers pursuant to a scheme under section 119 of the MVA¹⁵. In certain circumstances the nominal defendant may in turn recover from the driver of the involved vehicle. Naturally this latter measure is not always fruitful and is dependent upon the means of the driver. Thus there are certain, albeit indirect, adverse consequences from an uninsured vehicle being involved in an incident that causes death or bodily injury. However, it is incorrect to say that an injured person will go uncompensated merely due to the fact that the vehicle was uninsured. The seriousness of the offence of driving an unregistered and uninsured motor vehicle can thus be gauged against the analysis of its possible consequences. The monetary loss as far as the public purse is concerned is the loss of the insurance premium in the individual case. While it is not the most serious offence on the criminal calendar, the system of third party insurance and compensation would be unworkable if the practice of driving uninsured vehicles was widespread and went undeterred. It is an offence that is to be heartily discouraged and vigorously prosecuted when detected, but whether it would legitimately be viewed as the underlying justification of a police high speed pursuit conducted in order to bring an offender to book is clearly a debatable proposition.

- 5.3. The above analysis reveals that when Mr Ryan drove away from the position where he had stopped his vehicle on the Bridgewater exit ramp, he was liable to investigation and prosecution for driving an unregistered and uninsured motor vehicle as well as for the contravention of section 40H of the RTA by failing to remain stationary having been directed to stop. These two offences were the only offences that Sergeant Webb had knowledge of at the time Mr Ryan drove away. I add here

¹⁴ Section 116(2) of the Motor Vehicles Act

¹⁵ Section 116(6) of the Motor Vehicles Act

that Sergeant Webb had no means of determining who the driver or other occupants of the vehicle were. Nonetheless he was still entitled to investigate the commission of the offences that he had detected and to establish the identity of the driver if he could. The means by which such an investigation should be conducted is another matter.

- 5.4. When Mr Ryan drove off he would add to the above offences by driving in excess of the relevant speed limits and by driving in a manner that was dangerous to the public. He was also well above the prescribed concentration of alcohol, although naturally there was no certain means by which that offence could be detected without Mr Ryan being apprehended.
- 5.5. In his evidence Sergeant Webb conceded that driving unregistered and uninsured would be regarded as a minor traffic matter in terms of that expression as used in the General Order¹⁶. I took this concession to mean that in his view a police pursuit of the nature that then ensued would not be justifiable merely on the basis that he wanted to investigate the offence of driving an unregistered and uninsured motor vehicle. In my view Sergeant Webb's analysis in this regard is correct. To my mind a high speed police pursuit and the dangers that it necessarily presents could rarely be justified by a simple investigation to establish the identity of a driver who was driving an unregistered and uninsured motor vehicle for the purposes of prosecution of that person. In this regard enquiries could be made of the last recorded registered owner of the vehicle as to the identity of the driver at the time at which the vehicle was seen to be driven. Such person is obliged to answer questions relating to that issue¹⁷. Even if such an exercise was to be regarded as in reality pointless if not naive, the escape of the offending driver would seem to be a relatively small price to pay when balanced against the possible consequences to the community posed by the dangers of a high speed pursuit.
- 5.6. Sergeant Webb also conceded that a failure to stop a vehicle when directed, and by extension a failure to keep it stationary, would also not of itself provide sufficient justification for the commencement of a pursuit¹⁸. To my mind this concession is also correct and I would add that an offence of failure to stop or remain stationary, even in combination with another suspected offence of driving an unregistered and uninsured motor vehicle, would rarely justify a pursuit.

¹⁶ Transcript, pages 103 and 125

¹⁷ Section 74AB of the Summary Offences Act 1953

¹⁸ Transcript, page 131

- 5.7. Sergeant Webb in fact did not rely wholly upon the fact that the vehicle was being driven unregistered and uninsured and the fact that its driver had contravened his lawful direction for the vehicle to stop as a legitimate reason for the pursuit. Sergeant Webb believed that the circumstances justified a suspicion on his part that the occupants of the vehicle had either committed offences or were planning to commit offences such as break-ins¹⁹. He pointed to the fact that the occupants of the other Commodore appeared to be working in combination with the vehicle driven by Mr Ryan and suggested that this may have been indicative of a plan on the part of all these individuals to commit offences. He also suggested that he was justified in forming a suspicion that the failure of the Commodore to remain stationary indicated that it may have been stolen. He asserted this notwithstanding the fact that if the Commodore had been reported stolen, it would have been revealed on his computer check, and notwithstanding the fact that there was nothing to suggest that the vehicle was displaying registration plates that did not belong to it. I repeat here that the vehicle was not stolen and it bore the appropriate registration plates.
- 5.8. It is to be acknowledged that the driver's action of driving away when Sergeant Webb alighted from his own vehicle and approached the Commodore naturally attracted suspicion. Suspicion of what, though? In the circumstances, Sergeant Webb favoured the notion that the driver's actions generated a suspicion that the vehicle itself was stolen and/or that offences had already been committed involving the vehicle's use or that offences were planned by those within the vehicle. It is plain, and I so find, that this was really no more than an intuitive hunch on Sergeant Webb's part of which there was no supporting evidence at the time. It was suggested to Sergeant Webb during the course of his testimony that the actions of Mr Ryan in driving away were equally consistent with a desire on his part to avoid detection for an offence such as driving whilst in excess of the prescribed concentration of alcohol. To this Sergeant Webb responded that he had seen nothing about the driver's behaviour on the South Eastern Freeway between Crafers and Bridgewater to suggest that the driver's control over the vehicle was in any way impaired by alcohol or drugs, such as might have been revealed by straddling lanes or generally being unable to keep the vehicle moving in a straight line. When it was suggested to Sergeant Webb that driving on a freeway within the speed limit when there is very little traffic at 2am would not necessarily reveal any such impairment, Sergeant Webb suggested that his

¹⁹ Transcript, page 86

experience was different from that. In the event we do know that Mr Ryan had a blood alcohol concentration of 0.142% and as well had cannabinoids in his system and that his driving on the freeway had been lawful and unremarkable. The level of alcohol in Mr Ryan's bloodstream was nearly three times the prescribed concentration of 0.05%. Sergeant Webb in the witness box seemed quite surprised by this revelation. The observation needs to be made that a motorist might wish to avoid detection of an offence of driving a vehicle with excess alcohol even if he was only marginally above the limit of 0.05%. Experience in the courts has shown that levels at or near that level will not necessarily manifest itself in an obvious impairment or by an obvious inability to exercise effective control over a motor vehicle. In short the outward lack of an impairment that might be supported by normal and lawful driving behaviour is no sure means of deducing that the motorist does not have such an underlying impairment. The impairment might only be outwardly revealed when the vehicle is driven in an intrinsically dangerous manner such as at high speed. Mr Ryan's driving is a classic illustration of what I am discussing.

- 5.9. In the event, having regard to the fact that a high speed pursuit would be rendered all the more dangerous by virtue of the pursued driver's intoxication, it came as little surprise to this Court that Sergeant Webb would avoid the notion that there was an equal degree of suspicion that the driver had decamped because he was intoxicated. All Sergeant Webb could say to this was that as far as he was concerned he had seen no evidence that was consistent with the driver of the Commodore being affected by alcohol or drugs.
- 5.10. Sergeant Webb's evidence in my view raises a serious question as to whether in any case a vehicle that is stolen or suspected as having been stolen should be pursued, particularly where the pursuit involves danger and a high speed. It is to be acknowledged that reasonable minds may well differ about that. It boils down to a question as to whether the need to restore a stolen vehicle to its owner, and the need to prosecute the thief, is outweighed by the danger that a pursuit of the vehicle might present to the public. In my view all that needs to be said is that the fact that the pursued vehicle is a stolen vehicle will not always justify a pursuit. Even less justification would be provided by a mere hunch or suspicion that the vehicle is stolen. Such a suspicion could be conjured up in just about every case of a failure to stop or a failure to remain stationary. It thus seems somewhat difficult for an

unfounded suspicion such as that to constitute a justifiable basis for the commencement of a high speed pursuit.

- 5.11. There would be even less justification in the view of this Court for a high speed pursuit to be commenced when the pursued driver is impaired by alcohol or drugs. Needless to say, this fact will not always be obvious to a pursuing police officer and this paradox in itself brings into question the appropriateness of police high speed pursuits across the board.

6. The pursuit

- 6.1. An account of the incident is supplied by the survivor, Mr David Wayne²⁰ who was the rear seat passenger. Mr Wayne states that when on the Bridgewater exit ramp the police officer alighted from his vehicle and approached their vehicle from the rear, Mr Ryan had said '*what do I do?*'. Mr Wayne believes that Mr Henschke responded and said to Mr Ryan '*just run*'. At that point Mr Ryan accelerated heavily and when Mr Wayne looked back he saw the police officer 'running' back to his car. By the time the officer had reached his police vehicle, the vehicle driven Mr Ryan was about 100 metres away. Mr Ryan then turned right from the Bridgewater exit ramp onto Bridgewater Road. Having turned right Mr Ryan accelerated. Mr Wayne observed the police vehicle at the junction at a distance by then of approximately 200 to 400 metres to the rear. As will be seen this estimate of distance is in keeping with Sergeant Webb's own estimation of the separation of the two vehicles.
- 6.2. Thereafter Mr Wayne describes the passage of their vehicle towards the collision point. He noticed a railway sign as they approached the point of collision. At one point he looked over Mr Ryan's shoulder and observed that the speedometer registered 200 kilometres per hour. Mr Wayne believes that he may have told Mr Ryan to slow down. He then describes the collision with the brick wall and the aftermath.
- 6.3. Mr Wayne's own injuries included a broken right lower arm, a ruptured bowel, broken ribs, a punctured lung, a bruised liver and kidney and a scratched spleen.
- 6.4. Other than the possible warning that he gave Mr Ryan to slow down, Mr Wayne suggests that there was no conversation in the car during the fatal journey. However,

²⁰ Exhibits C9 and C9a

his description of these events would suggest that Mr Ryan's manner of driving was consistent with knowledge on his part that he was being pursued by police and that he was motivated by an unrelenting desire to evade police. There is nothing in Mr Wayne's statement which would suggest that at any point in time Mr Ryan had any belief other than that the police officer was pursuing him.

- 6.5. I have borne in mind that at the time with which this Inquest is concerned, Mr Wayne may have been affected by the substances that he had ingested. He was also traumatised by the incident and his injuries. The estimated speed, seen as he suggested from the vehicle's speedometer of 200 kilometres per hour, may be an exaggeration having regard to the estimates of speed that were made by the police accident reconstructionist to which I have already referred. Nevertheless, that magnitude of speed remains a possibility at some point in the journey. In any event there was nothing intrinsically unlikely about Mr Wayne's description of events and his account is not materially inconsistent with that of Sergeant Webb.
- 6.6. Sergeant Webb's version is that while he could not be said to have run back to his own vehicle when the Commodore took off, he had jogged back to it. Irrespective of how his movement may have been described, there seems little doubt that his actions unequivocally signified that he intended to pursue.
- 6.7. As seen, the distance from the position on the Bridgewater exit ramp where the vehicles had stopped to the point of impact at Coles on Bridgewater Road is 1.46 kilometres. Sergeant Webb described his driving behaviour throughout that journey. As he re-entered his own vehicle he could see that the Commodore was turning right at the junction with Bridgewater Road. He then followed and also turned right into Bridgewater Road. From that point until the fatal collision, there can be no doubt that Sergeant Webb's driving behaviour could be characterised at all times as a pursuit by any definition, and in particular by that contained within the police General Order. The General order states that a situation will be considered a pursuit where police are following a vehicle that 'is taking deliberate action to avoid being stopped'.
- 6.8. Sergeant Webb told me that he activated the warning devices of his vehicle including lights and siren after he had turned right onto Bridgewater Road in pursuit of the Commodore. At the point at which he executed his own right-hand turn, the Commodore was in such a position ahead of him that he could determine that it had

already gone past the entrance to the exit ramp that would permit traffic to re-enter the freeway heading in a westerly direction. Sergeant Webb knew that the Commodore must therefore be heading into Bridgewater itself. At that point his police vehicle was in an 80 kilometres per hour zone. The Commodore at that point was about 300 to 350 metres in front of him which is in keeping with Mr Wayne's estimate. Sergeant Webb could see the taillights of the vehicle and when the road then takes a slight downward incline, that was the last he saw of the vehicle. The speed limit of 60 kilometres per hour commences at a sign situated at a point just after Bridgewater Road crosses the freeway. Sergeant Webb acknowledged that the vehicle he was pursuing was being driven at high speed and in excess of 100 kilometres per hour²¹.

- 6.9. Sergeant Webb told me that as he pursued he eventually saw debris in front of him that suggested that an impact had occurred. The debris consisted of smoke and dust. He did not actually see the impact itself. His attention was drawn to the debris for the first time when he had just gone past the CFS facility on Bridgewater Road which is on the left as one enters Bridgewater.
- 6.10. Sergeant Webb described his own speed which was 100 to 110 kilometres per hour on the Bridgewater Road in a 60 kilometres per hour zone. This meant that Sergeant Webb's own driving behaviour would have required him to invoke the exemptions contained within Rule 305 of the ARR and section 110AAAA of the RTA.
- 6.11. Sergeant Webb gave evidence that he believed the closest he would have been to the pursued vehicle was 60 or 70 metres at the point where he got back into his own vehicle and thereafter he would have been no closer than 300 metres. He assumed that when he had last seen the taillights of the vehicle that the vehicle was accelerating.
- 6.12. There was no other traffic on the road according to Sergeant Webb. The weather was clear. It was not raining at the time and there was good lighting on the road.
- 6.13. Sergeant Webb accepts that his own conduct constituted a pursuit. Sergeant Webb accepts that at no time did he terminate the pursuit prior to the impact involving the Commodore. Sergeant Webb's vehicle's lights and siren remained activated right up to the point where he arrived on the scene. From the lack of traffic on the road, the

²¹ Transcript, page 108

separation of the two vehicles of approximately 300 metres and the relative silence within the pursued vehicle an inference is available that Mr Ryan would have been able to hear the siren of the pursuing police vehicle. Sergeant Webb suggested that at that kind of distance the siren would have been audible in the circumstances²². He also suggested that the light thrown by the police vehicle lights might also have been visible to the occupants of the pursued vehicle even if the police vehicle itself may not have been in view. All of this suggests that Mr Ryan at all times realised that he was being pursued by police relentlessly.

- 6.14. Sergeant Webb told me that he was familiar with Bridgewater Road and its features as it enters Bridgewater. In the town itself, Bridgewater Road culminates at and forms a T-Junction with the Mount Barker Road. Traffic heading south along Bridgewater Road as the Commodore was heading, would either have to turn left or right onto Mount Barker Road. It was agreed that the T-Junction is approximately 180 metres from the location of the collision²³. If a vehicle failed to turn left or right at the junction for whatever reason, and continued in a straight line across Mt Barker Road, it would descend into the Bridgewater Oval through a line of trees and a fence that align the oval on its northern side. For Mr Ryan to have safely negotiated the junction, he would have needed to slow down significantly in the approximate 180 metres from Coles to the junction.
- 6.15. Sergeant Webb told me that his intention had been to determine, by direct sight, the direction in which the pursued Commodore turned at the junction and then desist from the pursuit. Sergeant Webb told me that he had strategised as follows. He believed that for a number of reasons it would have been dangerous for a pursuit to have been conducted on Mount Barker Road, either in an easterly or westerly direction as the case may have been. His intention had been that after determining which way the vehicle turned, he himself would return to the freeway and endeavour to intercept the vehicle either at Stirling to the west or Hahndorf to the east. He told me that he had adopted these tactics with success on previous occasions. It will be noted that this strategy would have required Sergeant Webb to have closed on the pursued vehicle a sufficient distance to enable him to see in which direction the Commodore headed when it negotiated the junction. Whatever distance that was, it would also have

²² Transcript, page 108

²³ Transcript, page 22

enabled the occupants of the pursued vehicle to sight the police vehicle. This would have meant that the junction would have had to have been negotiated by the Commodore in circumstances where the driver knew he was still being pursued. The angles of the T-Junction are approximately 90° in either direction. As seen a moment ago, a failure to negotiate the junction for whatever reason may have involved a vehicle continuing across the junction onto the oval or perhaps into one of the trees at the edge of the oval. Sergeant Webb told me that he did not believe that a pursued vehicle would, of necessity, strike any of the trees if it had to go onto the surface of the Bridgewater Oval. To my mind such a strategy involved a significant element of risk and uncertainty, having regard to the possibility that a pursued driver might not negotiate the junction in either direction safely, either in terms of the safety of the occupants of the pursued vehicle itself, or the safety of road users approaching the junction along Mount Barker Road from either direction, even allowing for the fact that the time was 2 o'clock in the morning. Asked as to whether it crossed his mind that the T-Junction might present significant danger, Sergeant Webb told me that he was more concerned with the potential danger that would have been presented by the pursued vehicle driving dangerously on Mount Barker Road once it had negotiated the T-Junction²⁴. In the event, of course, the Commodore did not get to the T-Junction because it failed to negotiate a right-hand bend as it approached the junction at speed and collided with the wall outside Coles. Sergeant Webb also conceded in cross-examination by Ms Cacas, counsel assisting, that his termination strategy could not in any way have been known by the driver of the pursued vehicle, even at a point once he had negotiated the T-Junction if that had occurred. This to my mind is a correct concession having regard to the fact that the driver of the pursued vehicle may well have believed that the pursuit was still on foot at that point.

- 6.16. However, it seems to me that even if Sergeant Webb had terminated the pursuit at a much earlier point in time, say on Bridgewater Road whilst still on the freeway overpass, and had immediately stopped his vehicle and turned all emergency devices off, the driver of the pursued vehicle may still have not deduced that the pursuit had been terminated. Sergeant Webb said:

²⁴ Transcript, page 111

'I'm sure that they wouldn't have been able to detect it. There's quite steep incline and it veers to the right. So if I had stopped up on top I don't think they would have seen, unless they stopped and waited for me, waited to see if I had come over the hill.'²⁵

Suffice it to say, in my view, accepting as I do the evidence of Mr Wayne that the police vehicle could be seen to have followed by turning right at the junction between the Bridgewater exit ramp and Bridgewater Road, and taking into account the behaviour of the driver Mr Ryan himself, there is no doubt that at all material times Mr Ryan believed on rational grounds right up to the point of impact that his vehicle was being pursued by Sergeant Webb's vehicle. There was nothing in the behaviour of Sergeant Webb that would have in any way ameliorated that impression. That impression would only have been heightened if, say, the occupants of the pursued Commodore, and in particular the driver, could still hear the siren of the police vehicle even if the flashing lights could not be seen.

- 6.17. As to the timing of the pursuit, a reconstruction from Police Communications records, while not free of unnecessary confusion, reveals that the approximate timeframe of the pursuit was 57 seconds.

7. Conclusions

- 7.1. Rhys Allan Gerard Ryan and Jake Spencer Henschke were occupants in a vehicle that was both unregistered and uninsured on the night in question. They were lawfully directed by Sergeant Webb to stop the vehicle. The driver of the vehicle, Mr Ryan, was by law obligated to stop the vehicle and to keep it stationary. Having stopped the vehicle Mr Ryan accelerated away in contravention of his obligation to keep the vehicle stationary.
- 7.2. Thereafter Sergeant Webb pursued Mr Ryan's and Mr Henschke's vehicle for an approximate distance of 1.46 kilometres. The pursuit culminated in the vehicle occupied by Mr Ryan, Mr Henschke and the third man, Mr David Wayne, crashing into a brick wall outside the Coles supermarket on Bridgewater Road, Bridgewater.
- 7.3. During the course of the pursuit both the vehicle driven by Mr Ryan and the police vehicle driven by Sergeant Webb exceeded, by a significant margin in each case, the speed limit or limits for the roads traversed during the pursuit.

²⁵ Transcript, page 117

- 7.4. At no point did Sergeant Webb terminate the pursuit which was still on foot at the time of the fatal collision.
- 7.5. The speed at which Sergeant Webb drove the police vehicle would have required recourse to the exemptions from compliance with the road traffic law contained within Rule 305 of the Australian Road Rules 1999 and/or Section 110AAAA of the Road Traffic Act 1961.
- 7.6. There was insufficient time to enable an Incident Controller to become involved in and exert control over the pursuit.
- 7.7. Sergeant Webb endeavoured to justify the pursuit and the speeds at which he pursued the vehicle driven by Mr Ryan by reference to a suspicion that the vehicle driven by Mr Ryan was stolen and/or by reference to the possibility that the occupants of the vehicle had been involved in, or planned to be involved in, illegal activity. In my view neither suspicion could be regarded as reasonable in the circumstances. There is no evidence that would support any suspicion or belief on Sergeant Webb's part that the vehicle was stolen or that the occupants of the vehicle had performed, or were intending to perform, any illegal act. The only possible basis upon which the pursuit could be mounted was the knowledge on Sergeant Webb's part that the vehicle that he was pursuing was unregistered and uninsured. I agree with Sergeant Webb's own analysis of the situation that this would not in itself have justified the pursuit in question.
- 7.8. To my mind to conduct a pursuit at high speed to investigate an offence of driving an unregistered and uninsured vehicle or matters that are based on unfounded suspicion would be a manifestly disproportionate response to the need to bring the individual offender to justice. I have carefully taken into consideration the fact that at that time of the night there was little traffic and that the risk of a high pursuit was less than what it would have been if conducted during the day or early evening. On the other hand, the risk of the driver of the pursued vehicle losing control of that vehicle and then striking a fixed and inanimate object was the same regardless of the time of day. But one only has to ponder this. The community would hardly thank police if an innocent bystander or motorist had been killed or seriously injured by Mr Ryan's vehicle say at the junction of Bridgewater Road and Mt Barker Road, a not negligible risk, if it was understood that the officer was simply investigating an offence of driving unregistered and uninsured vehicle and pursuing a hunch that the vehicle was

stolen when in fact it was not or was acting on an unsubstantiated belief that the occupants had been or were currently involved in illegal activity.

- 7.9. I find on the balance of probabilities that Mr Ryan's driving behaviour was influenced by knowledge on his part that he was being pursued by police and by a desire on his part to evade apprehension by police. To that extent in my view, the pursuit contributed substantially to the cause of the fatal collision.
- 7.10. I find that Mr Ryan's driving behaviour and his ability to exercise effective control over the vehicle and make proper judgments and assessments of danger was adversely affected by his ingestion of alcohol and cannabinoids.

8. Recommendations

- 8.1. By virtue of section 25(2) of the Coroners Act 2003 the Court may add to its findings any recommendation that might, in the opinion of the Court, prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.
- 8.2. Since the events with which this Inquest is concerned, another version of the police General Order has been promulgated, its date of operation being 10 August 2009²⁶. In terms of the issues that are relevant in this Inquest, there does not appear to be any material difference from the General Order which was in force at the time of these events. The document still provides operational police officers with little guidance as to the circumstances that might justify a pursuit. In particular the more recent version of the General Order perpetuates the specifically stated sentiment that pursuits should not be commenced for minor traffic matters. It does not define what a minor traffic matter is. The newer version also refers to the requirement that the reason for the high risk driving must be 'based on the known facts'. I have already made the observation that this precludes as a reason for a pursuit unsupported speculation and unreasonable suspicion. To my mind this needs to be specifically explained within the document itself.
- 8.3. Both the version of the General Order that operated at the time of these events and the new version mention nothing about the need in any risk assessment to consider whether the driver of a pursued vehicle might be suffering from an impairment due to alcohol or drugs. It is to be appreciated that the pursued driver's level of skill, as well

²⁶ Exhibit C40

as the absence or presence of an impairment caused by alcohol or drugs, is a matter that will not generally be known to the pursuing officer unless the pursued driver's driving behaviour had given some hint of it before the pursuit commenced. In this case there was no such hint, but nevertheless the fact remains that Mr Ryan had a significant blood alcohol level as well as the presence of cannabinoids in his blood. In my view this paradox in itself brings the practice of conducting high speed pursuits into serious question. If the question is asked, would a pursuit be justified when it is positively known that the pursued driver is intoxicated and that his ability to drive a vehicle at high speed safely is significantly impaired, there can sensibly only be one answer. It would be equally difficult to justify the same pursuit where the same level of intoxication and impairment exists, but where this is unknown to the pursuing officer. In both situations the level of danger presented to the pursued driver as well as to other innocent road users is precisely the same.

- 8.4. This case and two other cases, the findings in which I have delivered on the same day, namely those relating to the deaths of Derrick Terence Lee Wanganeen²⁷ and Mark Anthony Whyte²⁸, illustrate the utter folly connected with, and the extreme dangers presented by, intoxicated drivers of motor vehicles endeavouring to evade police. To my mind there is a need for outcomes such as these to be publicly emphasised in the hope that such activity will be deterred and that the resulting deaths will not be repeated.
- 8.5. In making the following recommendations I have had regard, as I have in previous Inquests, to the need to avoid creating any impression that motorists will not be pursued if they fail to stop or remain stationary or that they can ignore legitimate police directions with impunity.
- 8.6. I make the following recommendations:
- 1) That the Commissioner of Police define and exemplify the expression 'minor traffic matters' as utilised within the current General Order relating to police high risk driving, and provide police with some guidance within the document, as well as general training, relating to the need to avoid conducting high risk driving including pursuits in the investigation of offences of driving an unregistered and uninsured motor vehicle;

²⁷ Inquest 03/2011

²⁸ Inquest 26/2009

- 2) That the Commissioner of Police amend the said General Order by including specific reference to the need to avoid conducting high risk driving including pursuits on unfounded supposition that the pursued vehicle might be stolen or that the occupants of the vehicle might be engaged in illegal activity;
- 3) That the Commissioner of Police amend the said General Order by including specific reference to the need, in any risk assessment when conducting a pursuit, for the pursuing police officer and any incident controller to consider the real possibility that the driver of the pursued vehicle may have an impaired driving ability by reason of that person's consumption of alcohol or drugs and that a pursuit should not be conducted where there is a suspicion that the driver of the pursued vehicle is so impaired, unless there are exceptional circumstances where the need to apprehend the driver of the pursued vehicle, or its occupants, outweighs the danger that may be presented by a pursuit;
- 4) That the Minister for Transport initiate such public awareness campaigns designed to draw the attention of the general public to the folly connected with, the extreme dangers presented by, the futility of and the likely tragic outcomes associated with intoxicated drivers of motor vehicles endeavouring to evade police.

Key Words: Death in Custody; High Speed Chase; Police Pursuit

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

Seal the 17th day of February, 2011

Deputy State Coroner