



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 29th day of September 2009 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 death of Mark Anthony Whyte.

The said Court finds that Mark Anthony Whyte aged 36 years, late of 11 Mansfield Road, Northfield, South Australia died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 10th day of February 2008 as a result of multiple injuries. The said Court finds that the circumstances of his death were as follows:

1. Introduction and background

- 1.1. Mark Anthony Whyte was 36 years of age when he died on 10 February 2008 from injuries sustained in a motor vehicle collision. The motorcycle that Mr Whyte was riding collided with two cars at the traffic light controlled intersection of Botanic Road, Hackney Road, North Terrace and Dequetteville Terrace at Kent Town.
- 1.2. The collision occurred at approximately 9pm on the evening of Saturday, 9 February 2008. Mr Whyte succumbed to his injuries on the morning of 10 February 2008. Life extinct was declared at 6'clock that morning at the Royal Adelaide Hospital (the RAH). A post-mortem examination was conducted in respect of Mr Whyte's remains and in the report of Dr John Gilbert, a forensic pathologist, the cause of death was given as multiple injuries¹. I find the cause of Mr Whyte's death to have been multiple injuries.

¹ Exhibit C3a

- 1.3. The fatal collision occurred just after Mr Whyte, contrary to a direction by police to pull over, rode his motorcycle through a police driver testing station established pursuant to section 47DA of the Road Traffic Act 1961, commonly known as a random breath testing station (RBT), that was set up on the northern side of Botanic Road to the west of the intersection to which I have referred. Police officers deployed at the RBT were randomly stopping motorists travelling along Botanic Road in a north-easterly direction and testing them for alcohol analysis. The direction for Mr Whyte to stop was a direction with which he was by law obligated to comply. He would also have been lawfully obliged then to undergo an alcotest². Mr Whyte failed to comply with that direction and continued on to the fate that I have described. The evidence suggests that the RBT was quite visible and, as will be seen, Mr Whyte's riding behaviour suggested that he had seen the station, had recognised it for what it was and had deliberately proceeded through it in the knowledge that he was required to stop and provide a breath sample for alcohol analysis.
- 1.4. That Mr Whyte would deliberately proceed through the RBT station having been directed to stop can be explained by the fact that an analysis of the specimen of blood taken on his subsequent admission to hospital showed a blood alcohol concentration of 0.138%. This is significantly in excess of the limit of 0.05%. Detection at the RBT for this blood alcohol concentration, or a concentration that might have approximated that, would no doubt have led to Mr Whyte's prosecution and probable disqualification from holding or obtaining a driver's licence. As well, at the time with which this Inquest is concerned Mr Whyte was already the subject of a licence disqualification in respect of an offence of driving at a speed dangerous for which he had been convicted in the Whyalla Magistrates Court on 14 March 2007. The licence disqualification was for a period of 12 months commencing on 1 April 2007. It was thus active at the time Mr Whyte proceeded through the RBT without stopping as directed. Moreover, Mr Whyte had a previous 1993 conviction for driving whilst disqualified for which he had been placed on a suspended prison sentence.
- 1.5. At the time of his death Mr Whyte was in a defacto relationship with Ms April Susan McInerney. According to Ms McInerney's statement³ Mr Whyte habitually rode his motorcycle in contravention of his disqualification. It cannot be determined with certainty whether if Mr Whyte had been detected with more than the prescribed concentration of alcohol, and with driving under disqualification, these circumstances

² Section 47E of the Road Traffic Act 1961

³ Exhibit C1a

would have invited a prison sentence. However, such a penalty would not have been out of the question and, in accordance with the usual practice, Mr Whyte would no doubt have been warned in 2007 by the Whyalla Magistrates Court that imprisonment was a possible consequence should he be detected driving whilst under disqualification. It is a fair inference that all of these matters were operating on his mind when he chose not to stop as directed at the RBT on Botanic Road.

2. The incident at the RBT station

- 2.1. The setup of the RBT is described by Senior Constable Brett Tuckey of SAPOL in his statement⁴. The station had the usual features such as blue and red emergency lights and a pop-up message bar that indicated 'Breath Testing'. There were a number of large red traffic cones situated at the station. In addition there was a single, metal 40 kilometres per hour sign positioned on the roadway and within the centre lane which was designed to reduce the speed of vehicles approaching the site. The sign was on an A-frame, was self-supporting and was clearly visible for east bound vehicles.
- 2.2. SC Tuckey performed the duties of 'stopper'. This entailed the selection of approaching vehicles to be stopped for breath testing. He was dressed in uniform that included an orange safety vest that had the word 'Police' displayed visibly across the front. He carried a torch with a red wand.
- 2.3. From that description both the RBT as well as the officer performing the duties of stopper were clearly visible and identifiable as such.
- 2.4. Just before 9pm SC Tuckey was waiting for traffic to come around a bend in Botanic Road and approach the site. At about that time he heard the sound of a motorcycle accelerating rapidly from the direction of the East Terrace junction, that is to say from the west. SC Tuckey walked to the centre of the right lane and as the motorcycle came around the bend he activated his torch. SC Tuckey then held the torch vertical above shoulder height and held up his left hand with the palm facing forward toward oncoming vehicles indicating that they should stop. This direction applied to Mr Whyte. When the motorcycle came into view SC Tuckey could see that it was travelling at a speed in excess of the 60 kilometres per hour limit and was travelling in the right-hand lane. He heard and saw the motorcycle momentarily ease off on its rate of acceleration and at the same time the headlight of the motorcycle was switched to high beam. SC Tuckey remained in his position until he heard the acceleration of the

⁴ Exhibit C19a

motorcycle increase rapidly from which it became clear that the rider was not going to stop. SC Tuckey backed off as the motorcycle approached. The motorcycle then went past him at an estimated speed of about 80 kilometres per hour. The motorcycle continued to accelerate towards the Hackney Road intersection, increasing its speed on SC Tuckey's estimate to approximately 110 to 120 kilometres per hour.

- 2.5. In my view, on that description of the event, which I accept, the rider of the motorcycle, Mr Whyte, deliberately avoided the RBT station knowing that he had been directed to pull over.

3. The fatal collision

- 3.1. The fatal collision was witnessed by several motorists and passengers who were also in the process of negotiating the intersection where it occurred. At the intersection Mr Whyte's motorcycle firstly collided at high speed with a taxi, driven by a Mr Liyun Qu⁵, that had been stationary at the intersection on Hackney Road heading south. Just as Mr Qu entered the intersection after the lights changed in his favour, the impact occurred. Mr Whyte entered the intersection at speed and against a red light. Having struck the taxi the motorcycle then cannoned, as it were, into a Holden Astra that was stationary facing west in the right turn lane from which traffic could turn right from North Terrace into Hackney Road in order to head in a northerly direction. The driver of this vehicle, a Ms Anne Maree Connelly⁶, estimates that the motorcycle had been travelling at approximately 80 kilometres per hour just before she saw it collide with the taxi. After it collided with the taxi the motorcycle, still with rider on board at that point, continued east and then collided with the front of her vehicle. Mr Whyte was ejected from the motorcycle and suffered serious injuries as a result of the forces of the impact or impacts.
- 3.2. Emergency services were called to the scene and Mr Whyte was conveyed by ambulance to the RAH.
- 3.3. As indicated earlier, the injuries that Mr Whyte sustained in the collision were fatal.
- 3.4. There is no suggestion in this case that police acted in anything other than an appropriate manner.

⁵ Exhibit C6a

⁶ Exhibit C7a

3.5. It is clear to me that Mr Whyte's intoxication played a significant role in his demise by diminishing his ability to exercise effective control over his motorcycle and by adversely affecting his ability to make proper judgments in relation to his own safety and that of others. This matter, together with my findings delivered on the same day in the matters of the deaths of Rhys Allan Gerard Ryan, Jake Spencer Henschke⁷ and Derrick Terence Lee Wanganeen⁸, illustrates the utter folly connected with and the extreme dangers presented by intoxicated drivers of motor vehicles endeavouring to evade police. It is fortunate that none of the occupants of the taxi or of Ms Connelly's vehicle were harmed.

4. **Recommendations**

4.1. I have no recommendations to make in this matter other than to refer to the recommendations made in my findings delivered on the same day in the matters of the deaths of Rhys Allan Gerard Ryan and Jake Spencer Henschke.

⁷ Inquest 37/2010

⁸ Inquest 03/2011

Key Words: Drink-Driving; Motorcycle

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

Seal the 17th day of February, 2011.

Deputy State Coroner

Inquest Number 26/2009 (0183/2008)