



# OFFICE OF THE STATE CORONER

## FINDING OF INQUEST

CITATION: **Inquest into the death of Joseph Douglas DUNCAN**

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

FILE NO(s): COR 307/06(8)

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FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Police pursuits,

REPRESENTATION:

Counsel Assisting: Family of Mr Duncan:	Mr Justin Harper Mr Simon Hamlyn-Harris (instructed by ATSILS)
Senior Constable Anthony Chiverall, Senior Sergeant Ian Elder:	Mr Glen Cranny (Gilshenan & Luton Lawyers)
Queensland Police Service Commissioner:	Mr Liam Burrow (QPS Solicitors Office)

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The *Coroners Act 2003* provides in s45 that when an inquest is held into a death in custody, the coroner's written findings must be given to the family of the person who died, each of the persons or organizations granted leave to appear at the inquest and to various specified officials with responsibility for the justice system including the Attorney-General and the Minister for Police and Corrective Services. These are my findings in relation to the death of Joseph Douglas Duncan. They will be distributed in accordance with the requirements of the Act and posted on the website of the Office of the State Coroner.

## **Introduction**

In the early hours of 9 January 2006, Joseph Duncan 18 was a passenger in a vehicle that crashed as it sped from a pursuing police vehicle on Beaudesert Road, Moorooka. He died at the scene.

These findings

- confirm the identity of the deceased youth, the time, place and medical cause of his death
- seek to explain how he came to be in the car and how the crash occurred; and
- consider whether the pursuing officer acted in accordance with the Queensland Police Service (QPS) policies and procedures then in force.

As this is an inquest and not a criminal or civil trial, these findings will not seek to lay blame or suggest anyone has been guilty of a criminal offence or is civilly liable for the death.

In a later bracket of evidence consideration shall be given to whether any changes to current policies or practices would reduce the likelihood of deaths occurring in similar circumstances in the future.

As the death followed a police pursuit and the incident was investigated by other police officers, the findings also critique the quality of that investigation.

## **The investigation**

The investigation was overseen by the QPS Ethical Standards Command and a detailed report for the Coroner was prepared by Inspector Bradley Weller.

The pursuing officer, Senior Constable Chiverall, was interviewed, as were the four surviving occupants of the Hyundai and the pursuit controller, Senior Sergeant Ian Elder and Communications Room officer Christopher Retrot. Later on the day of the incident a re-enactment of the pursuit was conducted with Senior Constable Chiverall.

Arrangements were made for a specialist accident investigator, Senior Constable Johannes Boon, to attend the scene. A series of detailed tests were carried out concerning the tyre marks left by the vehicle. Senior Constable Boon also took a series of photographs of the incident scene.

A road side breath test was conducted on Senior Constable Chiverall and a blood sample was also later taken. A breath and blood sample was taken from the driver of the vehicle, Mr Chambers, as well as one of the passengers Mr Fewquandie, who at one point claimed to have been the driver.

The pursued Hyundai and the police vehicle were inspected by an authorised motor vehicle inspector. He did not find anything wrong with either vehicle relevant to the cause of the crash.

As can be readily appreciated, whenever a death is connected with a police officer's actions it is essential the matter be thoroughly investigated to allay any suspicions that inappropriate action by the officer may have contributed to the death. It is also desirable that the general public be fully apprised of the circumstances of the death so they can be assured the actions of the officer have been appropriately scrutinised. The police officer involved also has a right to have an independent assessment made of his actions so there can in future be no suggestion there has been any "cover up."

I am satisfied this matter has been thoroughly and professionally investigated and all sources of information have been accessed and analysed.

## **The evidence**

I turn now to the evidence. Of course I can not even summarise all of the information contained in the exhibits and transcript but I consider it appropriate to record in these reasons the evidence I believe is necessary to understand the findings I have made.

### ***Social history***

Joseph Douglas Duncan was born on 12 May 1987 in Brisbane to Norma Kay Boyd and Joseph Duncan Senior.

He had two younger brothers and two younger sisters with whom he was very close.

Joseph attended Carole Park State School until year 7 and then St James High School, Spring Hill until the end of year 10. During this time he developed a passion for traditional Aboriginal dancing and country and western music. His other great love was rugby league football, playing for his school and his club, Forest Lake, until he was 16.

Joseph had a wide circle of friends, although unfortunately it appears between the ages of 13 and 16 he had become involved with these friends in a series of minor criminal matters. Despite the implications that can be drawn from the events in the hours before his death, there are indications in the material

available to me that things had begun to improve in this respect; Joseph having not been convicted of any offence in over a year prior to his death.

It has been brought to my attention by Joseph's mother, that her other two sons, Joseph's two younger brothers, died in March 2006 when they were killed after being hit by a train at Goodna. In view of the terrible sadness she must have endured, it is a testament to her that she was able to contribute in a constructive manner to these proceedings.

I offer Ms Boyd and her family my sincere condolences.

### ***Background to the pursuit***

On 8 January 2006, Joseph Duncan and four friends, Charles Chambers 21, Ashley Dynevor 20, Gavin Georgetown 21 and Richard Fewquandie 18 met at a hostel in Baynes Street, West End where a relative of one of them was living. It is not clear when they went there or if all of them stayed there all day. However, it is not disputed they were drinking and were told to leave the residence after apparently becoming rowdy late in the afternoon. They proceeded to Musgrave Park where they joined others and continued drinking in a group of approximately fifteen people. Over this period the group consumed two cartons of XXXX along with several bottles of bourbon and rum.

Mr Dynevor's said he was shown a green Hyundai Excel while walking to Musgrave Park. He correctly presumed it to be stolen. Mr Chambers said he saw the vehicle earlier in the day and remembers parking it near the Greek Club in West End but was not sure or was not prepared to say who had stolen it. The evidence from the owner of that vehicle indicates the vehicle was taken from outside his residence in Hargreaves Road, West End sometime between 7pm on 7 January 2006 and 11am on 8 January 2006. Mr Fewquandie admitted the group had used it the previous evening to drive to the scene of a break and enter.

At approximately 10.00pm the five friends got in the Hyundai and drove off with Mr Chambers at the wheel.

### ***Offences committed on the evening of 8 January 2006***

They drove around the southern suburbs and came upon the Timis Café on Boundary Road, Archerfield. They broke into the store and stole some cigarettes and drinks. Police Communications records show multiple activations of the alarm system at the Timis café at 10.47pm.

Police attended the premises and took up with security staff. They discovered no evidence that enabled them to immediately identify the offenders.

It is unclear what the group did over the next two hours. In his record of interview Mr Georgetown has some recollection that "*we did over a couple of bottle shops*". Mr Chambers also thought they had entered or attempted to enter two liquor stores. However, independent evidence only links them with

one such offence; namely an attempted “ram-raid” at Mr Cork’s liquor store at Toohey Road, Salisbury. This seems to have involved Mr Chambers attempting to reverse the car into a roller door on the premises. An alarm soon went off, the passengers returned to the vehicle and it was driven off by Mr Chambers.

Police Communication’s records show police were made aware of this incident at 2.17am when informed by a security guard who had gone to check the alarm. Closed circuit television footage enabled the vehicle to be identified.

### ***They come to the attention of police***

On Sunday 8 January Senior Constable Chiverall was working a 6.00pm to 4.00am shift providing general purpose police dog support to the Brisbane Metropolitan South Region. He was the sole occupant and driver of a marked police utility with a radio call sign T 763.

At about 2.00am on 9 January 2006, Senior Constable Chiverall was stationary at a red light at the intersection of Riawena and Beaudesert Roads Coopers Plains facing west. Before the light changed, he saw the green Hyundai travel across his path from right to left, heading outbound in a southerly direction along Beaudesert Road.

Senior Constable Chiverall estimated it to be travelling at around 75-80km per hour. He observed four Indigenous males in the vehicle. He candidly admitted their ethnicity, number and the time of day aroused his suspicions and he determined to intercept the vehicle.

He turned left onto Beaudesert Road to follow the vehicle and accelerated to within 50 metres of it to confirm its registration. Noting it matched a partial registration he had been told related to a stolen vehicle; he activated his emergency lights and sounded a short blast of the police siren. The Hyundai accelerate away from his vehicle.

### ***The pursuit***

Senior Constable Chiverall immediately notified the Police Communications Centre (VKR) of the pursuit. Shortly after the chase commenced, both cars overtook another vehicle travelling in the same direction, but otherwise there were no cars on the road.

At this point Beaudesert Road consists of two lanes in each direction with a concrete median strip. After the officer had followed the Hyundai for about 800 metres it mounted the median strip and crossed to the other side of the road where it continued to drive south in the northern or inbound lanes for a short distance variously estimated as 100 to 200 metres. Senior Constable Chiverall did not follow it onto the wrong side of the road but continued to travel in the same direction as the Hyundai but on the correct side of the road.

While this was going on the officer was advising VKR of the location, a description of the vehicle, its registration, the number of occupants and that the vehicle had "*just gone onto the wrong side of the road*".

The radio operator who received this information, Christopher Retrot, says he immediately called out "*chase*" in order to alert the Senior Sergeant in the Communications Centre of his need to assume responsibility for monitoring the pursuit in accordance with QPS policy. That officer, Senior Sergeant Elder agrees this occurred but there is some disagreement as to what else he was told and when, an issue I shall return to later.

The Hyundai came to a stop still facing in a southerly direction in the vicinity of 1185 Beaudesert Rd, Acacia Ridge; before doing a three point turn and heading back into town; this time on the correct side of the road. In response Senior Constable Chiverall turned the police vehicle around and headed in a northerly direction in pursuit of the Hyundai. He was travelling in the southbound lanes. The officer maintains this was reasonably safe in the circumstances. He says the distance he travelled down the wrong side of the road was only about 200 metres to the first intersection at Kerry Road, but when measured during the view it was closer to 500 metres. Senior Constable Chiverall is correct when he says it was a straight piece of road and I accept there was only a small likelihood of any traffic coming along. With the coloured flashing lights illuminating the police vehicle, any other vehicles would certainly have seen it in time to take evasive action. I therefore accept this manoeuvre was not unduly dangerous.

It seems it was during this part of the chase that the officer was advised by VKR that the vehicle was stolen.

At Kerry Road, the officer crossed over to the northbound lanes and continued the pursuit. Senior Constable Chiverall accelerated as the Hyundai had opened a gap of approximately 300 metres. At about this stage Senior Constable Chiverall informed VKR they were heading inbound towards Moorooka at 120 km per hour. He also confirmed there was no traffic and the road conditions were fine and dry.

The Hyundai continued north passing over the Fairlie Terrace overpass at which time the pursuing officer momentarily lost sight of the Hyundai. He says he was 150-200 metres behind the sedan when he reached the crest of the overpass and regained sight of the Hyundai. Another eye witness who had heard the vehicles and the police siren, Seth Bauer, estimates the distance between the vehicles as approximately 50 metres.

Senior Constable Chiverall saw the Hyundai begin to slide at the bottom of the overpass off ramp moving from right to left before mounting the median strip, rolling a number of times and coming to rest upon the eastern curb of the south bound lanes in the vicinity of 485 Beaudesert Road, Moorooka.

The evidence of the Police Communications Room operator on the timing of the commencement and length of the pursuit allow me to conclude the crash occurred at approximately 2.04am. It seems from when the pursuit was first called until the crash, 2 minutes 30 seconds elapsed.

None of the four surviving passengers have any detailed memory of the crash or the pursuit. Initially, there was some uncertainty as to who was driving but there is now no doubt it was Mr Chambers.

During the course of the pursuit, Mr Retrot called for other units to assist as he knew Senior Constable Chiverall was patrolling alone. He instructed a uniformed crew to take over as the primary pursuit vehicle. However, the crash occurred before this could take place. It seems there was also insufficient time for Senior Sergeant Elder to exercise his responsibilities as pursuit controller. He says as he plugged his headset into Mr Retrot's console to begin monitoring the pursuit, he heard Senior Constable Chiverall call for an ambulance.

### ***The aftermath***

Senior Constable Chiverall ran to the crashed vehicle. He saw Mr Chambers get out and he sought to detain him. A struggle ensued. The officer was assisted by Mr Bauer to subdue Mr Chambers; he then turned his attention to the others in the car. The three young men in the back were not seriously hurt, but it was obvious immediately, that Mr Duncan, in the front passenger seat, was seriously injured. The front near side door was jammed so he could not be removed from the car.

Mr Bauer had called 000 when the crash occurred. As a result other police vehicles and a Queensland Ambulance Service unit quickly arrived on the scene.

An ambulance officer confirmed Mr Duncan was dead.

Mr Chambers and Mr Fewquandie were transported to the Mater Hospital and Mr Georgetown and Mr Dynevor to the Princess Alexandra Hospital for treatment. None sustained serious injuries and all were transported later in the day to the Richlands watch house.

### ***The investigation findings***

Senior police were immediately notified of the death of Mr Duncan and the investigation referred to earlier in these findings then proceeded.

A roadside breath test of Mr Chambers taken shortly after the crash showed a blood alcohol reading of 0.234%.

Andrew MacDonald a QPS vehicle inspection officer conducted an extensive examination of both the Hyundai and the Ford Falcon police utility. He was of the opinion the vehicles were in a satisfactory mechanical condition and no

mechanical defects were found which could have contributed to the cause of the incident.

Senior Constable Johannes Boon stationed from the Accident Investigation Squad attended the scene of the accident at 3.30am, took photographs and mapped the scene taking measurements by using a Total Station. He observed a series of tyre marks commencing in the right lane of the two north bound lanes of Beaudesert Road. The tyre marks were diverging and each formed an arc leading to the left lane and then back to the right. The tyre marks continued in an arc towards the centre raised median into an area where vegetation had been disturbed. Applying relevant mathematical formulas the opinion of Senior Constable Boon is that at the commencement point of the tyre marks the speed of the Hyundai was 123 km/h (+/- 5 km/h). Senior Constable Boon produced detailed maps outlining the scene and the position of the tyre marks. In evidence he said the speed of the vehicle was close to the maximum at which it could negotiate the curve without centrifugal forces overcoming the friction needed to keep it on course.

On 12 May 2006 Mr Chambers was convicted on 6 charges including one of dangerous operation of a motor vehicle causing death while affected by alcohol and sentenced to 6 years imprisonment. He also pleaded guilty to offences committed at the First Choice Liquor Superstore at Capalaba on 2 January 2006, the Timis Café on 8 January 2006 and Mr Cork's at Salisbury on 9 January 2006.

Sergeant Gavin Watling of the QPS fingerprint bureau, forensic services branch attended the John Tonge centre to take fingerprints from the body and was later able to identify them as matching existing fingerprint records of Joseph Duncan.

### ***The autopsy***

On 10 January 2006, an autopsy was conducted on the body of Joseph Duncan by Dr Nathan Milne, an experienced forensic pathologist. It revealed numerous severe fractures of the skull and severe injury to the brain. There were no other significant injuries. Dr Milne concluded:

*“In my opinion the cause of death is head injuries resulting from a motor vehicle accident. Given that the only significant injuries were present on the head, it is possible that his head did strike the ground through the window”.*

Toxicology results indicated Mr Duncan had a blood alcohol concentration of 78mg/100mL and a urine alcohol concentration of 114mg/ml.

Metabolites of cannabis were also detected in the blood and urine.

### **Findings required by s45**

I am required to find, as far as is possible, who the deceased was, when and where he died, what caused the death and how he came by his death. I have

already dealt with this last issue, the manner and circumstances of the death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses I am able to make the following findings in relation to the other aspects of the death.

- Identity of the deceased –** The deceased person was Joseph Douglas Duncan
- Place of death –** He died at Moorooka, in Queensland
- Date of death –** Mr Duncan died on 9 January 2006
- Cause of death –** He died from head injuries sustained in a car crash following a police pursuit.

### **Concerns, comments and recommendations**

Section 46, in so far as it is relevant to this matter, provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

As counsel assisting mentioned at the opening of this inquest, Mr Duncan's death is one of seven that followed a police pursuit in the period June 2005 to December 2006. One inquest has already been held and inquests will be held in relation to each of the other deaths in coming months. In relation to each, the conduct of the officers involved will be judged against the QPS policies in force at the relevant time. However, as those policies have changed significantly during that period, I shall refrain from making any recommendations for further change until the evidence from all seven inquests has been considered and the impact of the changes are evaluated.

In these findings I shall summarise the relevant policies in force at the time, and assess whether they were complied with.

#### ***QPS pursuit policy***

The pursuit policy in place at the time of the accident had only been in place since 1 January 2006. It amended the earlier policy which had been developed over a number of years.

The policy has two layers of controls. It requires the officers undertaking the pursuit to apply a set of risk assessment criteria to determine whether a pursuit should be commenced and continued, and their actions are to be over viewed by another officer who is kept informed of developments via the police radio. That second officer has authority to direct the pursuers to terminate the pursuit. I will deal with the two components separately.

## **The obligations of the pursuing officers**

In the part headed “*Justification for initiating or continuing a pursuit*” the policy stipulates that “*(t)he risks involved must be balanced against the necessity for the pursuit. Pursuits may be conducted only when;*

- (i) the known circumstances are sufficient to justify a pursuit;*
- (ii) identifying or apprehending the occupant(s) of the pursued vehicle at a later time is unlikely.*

A definition section provides; “*known circumstances means what is known (not what is suspected or uncertain) in terms of all the circumstances, including the initial offence, that amounts to justifying the risks involved in the urgent duty or pursuit driving.*”

The policy goes on to direct that “*a risk assessment must be conducted in relation to every pursuit.*” It then lists 12 factors which must form part of the assessment.

The standard risk management approach is continued by the direction that “*(t)he reasons for and risks involved must be assessed before initiating the pursuit and be continually reassessed during the pursuit. The mandatory operating principle is ‘the safety of police, the public and the offenders or suspects is paramount.’ The pursuit must be abandoned if the risk outweighs the necessity for and known circumstances of the pursuit.*”

The policy provides at section 14.23.7 that:

*“A pursuit must be abandoned immediately if it creates an unacceptable risk to the safety of any person.”*

As can be seen, the policies required the pursuing officers to balance the utility of a pursuit against the risks it generates. The utility is gauged by considering the consequences of failing to intercept the pursued. In this balancing exercise issues of safety are to be paramount.

Quite specific and useful examples are given of characteristics which will be relevant to assessing the risk of the pursuit resulting in injury or death. No guidance is given to assist officers to calculate the necessity of the pursuit with reference to the diminution of law enforcement.

## **The responsibility of the “pursuit controller”**

The driver of the pursuit vehicle is not the only officer who had a responsibility to undertake the risk assessment and balancing of likely outcomes I have described. In recognition that junior officers caught up in a chase can have difficulty making objectively reasonable assessments, the QPS has in its procedures added a second layer of control that gives the primary responsibility for continuing a pursuit to the duty officer at the closest police communications centre. That officer is designated the “*pursuit controller*”. In

the Brisbane metropolitan area a senior non commissioned officer is always on duty at the Brisbane Communications Centre to discharge this role.

The policy provides that immediately an officer initiates a pursuit, the nearest police communications centre is to be advised and the circumstances of the chase must be relayed as they unfold. The communications centre advises the duty officer who then monitors the chase as it is described by the officer in the pursuing vehicle. The officers in the pursuing vehicle are obliged to comply with any directions given by this senior officer. The pursuit controller is obliged to undertake the same risk assessment and balancing of risk and utility I have already described and to terminate the pursuit if he/she considers it poses an unacceptable risk to the safety of anyone who might be affected.

### ***Did this pursuit comply with the policy?***

#### **The “known circumstances”**

The basis of the decision to pursue is set out in Senior Constable Chiverall’s statement as follows:

*“Having regard to **previously supplied intelligence information, the intent of the driver to evade interception, and the Queensland Police Service Pursuit Policy, I decided to initiate a pursuit of the Hyundai sedan**”.*

In his interview with police he said the following:

*“I notified VKR of the registration, my position as far as my location, my direction of travel...-....and I was informed immediately by the Comm - ah by the Comm - Communications Operator that **the vehicle was a stolen serial**”*

He goes on to state:

*“Oh well with that in mind and also **my belief ah that this vehicle had been involved in three ram raid offences, one earlier that evening and two the previous night, um and ah I also – just go back a – a second also, when I notified VKR of the ah registration of the vehicle, I noted that the last three numbers of the registration plate were ah H-E-K, Hotel, Ex-ray, Kilo ah, I had a conversation with my shift supervisor earlier in the night ah Senior Constable Clint Thomasson who had also um advised me of the last three letters of – of the registration from the BOLF that I hadn’t as yet heard but later in the shift, did hear. I immediately ah – ah put two and two together and believed it was ah **the vehicle with offenders – multiple offenders – ah on board that were involved in – in these ram raid offences.*****

Senior Constable Thomasson confirmed a discussion took place at the commencement of the shift as outlined by officer Chiverall. He says the

incomplete registration was passed on because he didn't remember the numbers.

Records obtained from Police Communications show that two "*Be on the look out for*" (BOLF) transmissions were broadcast in relation to the stolen vehicle. The records show the first broadcast was made between 12.10pm and 12.33pm on 8 January 2006 and the second broadcast was made between 5.40pm and 5.42pm on the same day.

It is not clear what Senior Constable Chiverall is referring to when he talks of the "*three ram-raid offences*" in his interview. Certainly the vehicle had been involved in one ram-raid offence prior to the pursuit; however, the evidence establishes police were not aware of that offence until after the pursuit had concluded.

The other incident that evening in which the Hyundai was clearly involved; that at the Timis Café, was known to police late on the evening of 8 January. It is of course possible Senior Constable Chiverall heard radio broadcasts relating to this incident. However, there is no evidence that shows police had any knowledge of the identity of the individuals or vehicle involved in that incident until after the pursuit and crash had occurred.

The report compiled by Inspector Weller contains statements relating to several other "ram-raid" type offences which I briefly summarise as follows:

- An attempted entry to a bottle shop trading as Liquorland Capalaba early on the morning of 31 December 2005. There is no evidence provided in relation to what individuals or vehicle were involved in this incident.
- A break and enter of the premises of the First Choice Liquor Superstore at Capalaba on 2 January 2006. Charles Chambers later pleaded guilty to offences relating to this incident. The vehicle used in this offence was a white Holden Commodore sedan registration 103 BWF. The statement provided from the investigating officer, Constable Gough indicates security footage of the incident was not obtained until 15 January 2006. There is no evidence indicating Chambers was known to be involved in this incident as at 9 January 2006.
- A break and enter at a bottle shop trading as Liquorland Carindale in which 101 bottles of spirits and 180 packets of cigarettes were stolen. The statement of the complainant Ms Katherine Russell is dated 28 January 2006 and refers to her being advised of the break in early on the morning of 31 January 2005, it having occurred over the course of the previous evening. It is not evident how this incident relates to the current matter.

Senior Constable Chiverall gave evidence about another break and enter committed on a bottle shop in Sunnybank the previous evening. Five

Indigenous men using a dark coloured Hyundai were suspects. He continued to assert in evidence before the court that he was aware of some involvement of the dark green Hyundai and/or its occupants in previous offences. His evidence on this point is troubling, for the following reasons:-

- he could not have known about the attempted break and enter performed that night, as it had not been reported to police until after the accident;
- there is no evidence linking the green Hyundai to the earlier incidents, and a check of the registration would have confirmed this; and
- he did not communicate that information to the pursuit controller, nor mention any specifics in his statement to police.

Inspector Weller, Senior Constable Thomasson and Senior Constable Chiverall all made reference to a police media release dated 8 January referring to the Sunnybank offence. Despite all of those witnesses providing statements previously, the first time this was raised by anybody was in evidence before the court.

Constable Retrot (as he now is) spoke of unnamed people murmuring about the car's involvement in ram raids as he communicated with Senior Constable Chiverall but he agreed had there been any evidence to support this he would have found it on the QPS systems and advised the officer accordingly.

I am not persuaded Senior Constable Chiverall had any knowledge about the involvement of this Hyundai and its occupants in any offences at the time he commenced to pursue it, although he may have had suspicions. He agreed he can not now say when he came by information concerning the possible link to other offences but it is obvious he was told after the crash and before he was interviewed of the offence committed by the group at Mr Corks, Salisbury. In my view, the most likely scenario is that Senior Constable Chiverall received information about the other ram-raids after the accident, and this was what he was relying on in his interview.

In any event, it is largely irrelevant for two reasons:-

- a suspicion is expressly excluded from the definition of "*known circumstances*"; and
- even if factual, involvement in a number of break and enters on commercial premises would not justify the assumption of any greater risk than the truly known circumstance that the car was reported stolen.

Senior Constable Chiverall's reference to "*the intent of the driver to evade interception*" as a basis for pursuing is also problematic. Logically, a pursuit

can not occur unless the other driver fails to stop, but if this occurs, that failure can't be used as a basis to justify the pursuit.

In my view the known circumstances which officer Chiverall was obliged to consider when considering whether to initiate the pursuit were:-

- four (he thought) young Indigenous males;
- in a stolen car;
- late at night;
- on a wide, straight, well lit road;
- with little or no traffic;
- driving in a controlled fashion;
- over a road the officer was familiar with.

### **The risk assessment**

I am readily persuaded the officer was acting in accordance with the policy when he commenced to pursue the vehicle. However, as mentioned earlier, he had to continually reassess the risk as the pursuit unfolded.

It has been submitted that when the Hyundai crossed to the wrong side of the road, the pursuit should have been abandoned. I have some sympathy with the view this action demonstrated such a wild disregard for the safety of the vehicle's occupants and other potential road users that Senior Constable Chiverall should have concluded that to continue to pursue them was too dangerous. I also accept however, this is a matter of judgement the officer had to resolve in an instant. He says the Hyundai did not travel far in this manner before stopping and turning around. He says if they had continued closer to the brow of the hill a little further south, he would have discontinued. In those circumstances, I do not consider the officer's decision to continue the pursuit was one no reasonable officer could have made.

The next significant change of circumstances was when the Hyundai sped towards the city at over 120 km per hour. From the turn around to the crash, slightly less than 2 minutes elapsed. Senior Constable Chiverall sought to justify continuing the pursuit while this was occurring by saying he had driven that road at even higher speeds and in this case, the vehicle was being driven in a stable manner.

With respect, the officer's reasoning is flawed in a number of respects in my view:-

- As an officer with over a decade of service he has had advanced driver training at regular intervals and is experienced at driving under such conditions. His capability was not a reasonable benchmark against which to compare the driver in the car being pursued.
- His assumption the driver of the Hyundai was capable and sober was unwarranted. He candidly admitted that seeing four young Indigenous

males driving around late at night made him suspect they may have been offending; the same insight should have lead him to suspect they might be under influence of liquor and/or drugs.

- The road they had driven over to the flyover was virtually straight. It then became quite complex: first a sharp right; then back to the left just before the crest; followed by a sweeping right at the bottom of the off ramp. It is not surprising the drunk, young driver crashed. The road ahead was even more serpentine. Senior Constable Chiverall knew this.

The other aspect of the policy the officer was required to consider was the likelihood of the fleeing offenders being apprehended at some later time.

As is apparent from the conviction of Mr Chambers for offences committed in the days before this chase in another car, it is likely this car would have been recovered in the near future even if it had not crashed. The finger prints found on it, together with the cc tv footage from the attempted ram raid at Mr Corks are likely to have led to Mr Chambers apprehension. It is apparent Senior Constable Chiverall gave no thought to this eventuation.

## **Conclusion**

When balancing the risk against the necessity to pursue, the requirement that safety be given primacy must mean uncertainties are not resolved by presuming no harm will be done. In this case pursuing the car at high speed towards the city was fraught with risk and the known circumstances in my view did not justify such dangerous action. We now know the assumptions Senior Constable Chiverall made were wrong and the death of a young man resulted.

Undoubtedly, the primary cause of Mr Duncan's death was the dangerous driving of Mr Chambers. But that does not excuse Senior Constable Chiverall from all responsibility. The community is entitled to expect a higher standard of behaviour from its police officers than that demonstrated by young criminals. Of course it can not be shown that had he abandoned the pursuit the death would not have occurred; but the likelihood would certainly have been reduced.

Equally, it is clear the officer was doing his duty as he believed he was obliged to. There can be no suggestion he recklessly ignored the inherent risks: the radio transmission shows he was attempting to apply the policy diligently, in very difficult circumstances. I have come to a different conclusion about the wisdom of pursuing but that does not necessarily mean the officer failed to adhere to the policy. The test is: could a reasonable officer apprised of the same circumstances as Senior Constable Chiverall genuinely have regard to the mandates of the policy and reasonably conclude that it permitted him to continue the pursuit as long as was done in this case. I consider he/she could. I therefore find that Senior Constable Chiverall did not breach the policy.

## **The pursuit controllers performance**

As described earlier, the policy stipulates that a senior officer in the communications centre is obliged to monitor the pursuit and direct that it be abandoned if he or she comes to the conclusion it is unduly risky having regard to the same criteria the pursuing officer must consider.

In this case there was some confusion about when the pursuit controller assumed these responsibilities and what he was told about the unfolding situation.

It appears that a critical piece of information namely, that the Hyundai had crossed to the wrong side of the road, was not communicated to Senior Sergeant Elder.

Senior Sergeant Elder says had he known this it is likely he would have terminated the pursuit, although he could not conclude he would have done so immediately or in sufficient time to avert the disaster that followed.

## **Conclusion**

The pursuit controller had insufficient information and insufficient time to take effective control of the chase. There is no basis on which to conclude any individual officer failed to comply with the policy.

## **Policy issues for future consideration**

At the completion of the seven inquests connected to police pursuits, I will address the policy issues thrown up by these cases.

In this case there seemed a degree of uncertainty about when the pursuit controller assumed control of the pursuit. The policy is silent on that issue and on whether the transfer of control should be communicated to the pursuing officer.

With strained logic, Senior Constable Chiverall rejected the suggestion that he might have inferred tacit approval from the pursuit controller for his continuing the pursuit even though he assumed a senior officer was monitoring the situation.

This is an issue worthy of further consideration.

This inquest is closed.

Michael Barnes  
State Coroner  
Brisbane

24 October 2008