



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of
Kristina Ann TYNAN**

TITLE OF COURT: Coroner's Court

JURISDICTION: Maryborough

FILE NO(s): COR 1524/06(2)

DELIVERED ON: 27 November 2008

DELIVERED AT: Maryborough

HEARING DATE(s): 23 October 2008, 25 – 27 November 2008

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Police pursuits

REPRESENTATION:

Counsel Assisting:	Mr Justin Harper
Senior Constable Paul Behne, Constable Benjamin Tasker:	Mr Adrian Braithwaite (Gilshenan & Luton Lawyers)
Queensland Police Service Commissioner:	Mr Wayne Kelly (QPS Solicitors Office)

Table of Contents

Introduction	1
The investigation.....	1
The evidence	3
Social history	3
Background to the pursuit	3
The pursuit	4
The aftermath	6
The autopsy.....	8
Criminal charges	8
Findings required by s45.....	8
Concerns, comments and recommendations.....	9
QPS pursuit policy	9
The obligations of the pursuing officers	9
The responsibility of the “pursuit controller”	10
The “known circumstances”	11
Balancing the utility of the pursuit and the risks	11
Other issues.....	11
Conclusion.....	11

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 Kristina Ann Tynan. 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 22 May 2006, Kristina Tynan was a passenger in a vehicle that crashed into a lagoon after leaving the road on Ann Street, Maryborough. Moments prior to the crash, the vehicle had been pursued by police after failing to stop on their direction. The driver of the vehicle, Edward Keyworth and the only other passenger, Trent Bowles, were able to escape from the vehicle as it lay in the lagoon. Ms Tynan died at the scene.

These findings

- confirm the identity of the deceased, the time, place and medical cause of her death;
- explain how she came to be in the car and how the crash occurred; and
- consider whether the pursuing officers 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 police 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 notionally overseen by the QPS Ethical Standards Command and a detailed report for the Coroner was prepared by Detective Sergeant Bruce Hodgins, the officer in charge of the nearby Hervey Bay Criminal Investigation Branch.

The two officers involved in the pursuit were interviewed as were the officers who found the partially submerged vehicle and Sergeant George Pope of Maryborough Station who attended the scene.

The scene was examined by Maryborough scenes of crime officers and a qualified accident investigator Senior Constable Kevin Monteith. They were later assisted by Senior Constable Lonergan of the Accident Investigation Squad, Sunshine Coast District. A detailed forensic map was prepared from the observations and measurements recorded at the scene and a series of photographs of the scene were taken.

The driver, Edward Keyworth, was breath tested, returning a reading of 0.00% blood alcohol concentration.

The Nissan Skyline involved in the crash was inspected by a QPS Vehicle Inspector. He found no mechanical defects which would have contributed to the crash.

There are two aspects of the investigation which raise some concern:

- neither officer in the pursuing vehicle was required to undertake a breath test following the pursuit; and
- the driver of the crashed vehicle, Mr Keyworth, was initially interviewed, both at the roadside and later in hospital, by Senior Constable Behne – the senior officer in the pursuit vehicle.

The circumstances of this matter are such that I am able to confidently make my findings notwithstanding the concerns these aspects raise. I accept the evidence of the officers in this case that they would not have been affected by alcohol at the time of the pursuit. There is no evidence at all to suggest they were. However, it would clearly have been desirable for breath tests to have been conducted as a matter of course in an investigation of this nature. I am advised that amendments to police policy subsequent to this incident make such testing mandatory in these circumstances.

It was appropriate for Senior Constable Behne to converse with Mr Keyworth shortly after Mr Keyworth was initially located to determine his identity and to ascertain whether he was the driver of the vehicle.

However, in my view, it was not appropriate for Senior Constable Behne to again interview Mr Keyworth at hospital, as he did some hours later. Apparently Sergeant Pope asked Senior Constable Behne to conduct the interview.

It was obvious from the outset that Senior Constable Behne was likely to be a material witness in the criminal proceedings that would be initiated against Mr Keyworth and be the subject of a death in custody investigation. I don't accept

the explanation that there was no one else available to undertake the interview.

As can be readily appreciated, whenever a death is connected with a police officer's actions it is essential the matter be thoroughly, transparently and independently 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."

Although they had the potential to undermine the integrity of the investigation, I do not suggest the two lapses I referred to earlier had that effect in this case. Rather, I find that the investigation was thorough and professionally conducted. I commend Sergeant Hodgins on his endeavours.

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

Kristina Ann Tynan was born in Rockhampton on 5 January 1986. She was 21 when she died.

She grew up in Rockhampton attending Park Avenue State Primary School and later Glenmore High School where she continued until year eleven. She had completed a TAFE hospitality course and had been working for Foodworks supermarkets in the lead up to her death.

About a year before her death, Ms Tynan moved to Brooweena to be closer to and ultimately live with her boyfriend Edward Keyworth, the driver of the vehicle involved in the accident leading to her death.

Kristina was the second youngest of seven siblings. She had a large circle of friends in Rockhampton. Her death, and particularly the manner in which it happened, has had a devastating effect on her family who very much miss her.

I offer Ms Tynan's family my sincere condolences.

Background to the pursuit

A few days before her death, Ms Tynan took up residence in a caravan in a caravan park near the centre of Maryborough with Mr Keyworth and his brother, Trent Bowles. The brothers say that on the evening of 21 May, the

three of them spent the evening at the caravan, cleaning it and watching DVDs. They say that at around 1.00am on 22 May they decided to go to an ATM, allegedly to get money for food and fuel. Mr Bowles got into the rear passenger seat of his brother's Nissan Skyline sedan and Ms Tynan into the front passenger seat. I accept both of them knew Mr Keyworth did not have a valid driving licence. He was not able to give any sensible explanation as to why he nonetheless drove despite having only recently been released after serving a sentence of imprisonment for driving while disqualified.

They drove out of the caravan park into Queen Street and then into Adelaide Lane. They stopped near an ANZ bank and Mr Bowles and Ms Tynan got out to get money from the ATM. Shortly after they got back into the vehicle and were driving down Kent Street the car was observed by a police patrol vehicle containing Constable Tasker and Senior Constable Behne. The officers were having a very quiet night and the senior member, Mr Behne, decided to do a random breath test on the driver of the Nissan.

The police officers therefore followed the vehicle as it turned left into Lennox Street a short time later. The Nissan stopped at a red light at the next intersection and the police car almost caught up to it before the light changed to green. The police officers were able to observe the registered number of the Nissan and radioed the local communications centre for information about it. The driver of the police car, Senior Constable Behne, flashed his headlights as an indication for the Nissan to stop. It did not.

The brothers Keyworth and Bowles admit that as they approached the next intersection, they were aware the police vehicle was behind them and that its occupants wanted them to stop. They agree that they saw the police vehicle's headlights flashed and its red and blue roof top lights illuminated. This caused Mr Keyworth to become extremely anxious. His evidence is that an argument then occurred amongst the occupants of the Nissan Skyline as to whether they should pull over or attempt to evade police. He recalls Ms Tynan saying words to the effect of '*do what you have to do*' but conceded in evidence that she could have made comments to the effect that he should pull over as his brother reported when first interviewed.

Senior Constable Behne agrees that during this part of his interaction with the Nissan it was being driven conservatively; indeed he says he thought the vehicle was about to obey his instructions and stop, because it seemed to slow and move to the left of the lane. However it continued on, so as they approached the next major intersection, Lennox and Ann, he activated the siren. As soon as this happened he noticed the vehicle start to accelerate away.

The pursuit

The vehicle driven by Mr Keyworth continued to accelerate along Lennox St before turning right into Ann Street without stopping at the stop sign located at that intersection. At this time Senior Constable Behne told Constable Tasker to call a pursuit which Tasker then did by informing police communications via

the police radio of the fact of the pursuit and their location. (On Senior Constable Behne's instructions Tasker mistakenly informed communications that they were turning into Albert St rather than Ann St but nothing turns on that). The officers acknowledge there was some slight delay in the making of this transmission due to Constable Tasker's inexperience: this was his first pursuit.

As the police vehicle turned right into Ann Street they noted that the Skyline had pulled away from them to a distance of about 50 to 60 metres but this quickly increased to between 250 and 300 metres. Senior Constable Behne estimated the speed of the Skyline at this time to be 160km/h. This is not inconsistent with the speculation by Mr Keyworth that he may have been travelling at 200km/h along Ann St.

The police officers observed the Skyline approaching the intersection of Ann St and Ferry St, a major road leading out of the city. The Skyline travelled through the stop sign at high speed, without slowing.

When giving evidence Senior Constable Behne expressed his horror at seeing this manoeuvre. He recognised the real possibility of it causing a serious collision. He immediately determined the risk of continuing the pursuit was too great and instructed his partner to radio in that the pursuit was being terminated.

This conversation was of course recorded. The recording allows me to determine that the officers were engaged in pursuing the Nissan for something like seven seconds. The purpose of advising the communications centre of the pursuit is so that a senior officer not involved in it can discharge the responsibilities of pursuit controller, a role that will be discussed later. In this case the time that elapsed between the pursuit being called and terminated was so short that the senior officer who was to undertake that role did not have time to walk from his office to the communications room.

Senior Constable Behne stopped the police vehicle at the intersection of Ferry and Ann Street and regained his composure. When he looked down Ann Street in the direction the Nissan had taken, he could not see it. He proceeded slowly across the intersection and began searching for the car by looking in driveways and down side streets. He soon realised the flashing coloured bar lights were still illuminated and extinguished them. The police vehicle turned right into Pallas St and patrolled around the immediate area but the officers were unable to locate the fleeing Nissan.

Mr Keyworth gave evidence that the last time he observed the police vehicle it was at the Ferry Street intersection. In view of the other evidence that the police vehicle was stationary for a few seconds at this point and that it then proceeded slowly down Ann Street, I have no trouble in accepting that the officers did not see the Nissan again before it left the road and crashed into the lagoon.

The crash

Mr Bowles recalls the Skyline approaching the T-intersection that is formed by the western end of Ann St meeting Cheapside Street. He recalls that Mr Keyworth:

“...braked to try and stop still doing well over 100km/h and the car slid on the gravel, hitting the gutter and rolled. I do not know how many times we rolled.”

Mr Keyworth estimates that while driving along Ann St on the approach to Cheapside Street the vehicle may have been travelling at more than 200km/h. In his interview with police he states that on approaching the intersection he changed down to second gear, braked and attempted to turn the vehicle to the left. In evidence at the inquest he stated that he was not aware that Ann Street ended in a T-intersection. He said he did not have time to brake at all before turning the vehicle sharply to the left.

There is a large reflective sign at the end of Ann Street signifying that the road ends at that point. In his evidence Mr Keyworth acknowledged this sign would ordinarily be highly visible. He does not recall seeing it and is unable to explain why.

The vehicle flipped and flew in the air before shooting across the grassy embankment and continuing out into the water for more than 10 metres, coming to rest upside down in 1.5 to 2 metres of water with the nose of the car buried in the mud and one rear wheel above the surface. The crash occurred a very short time after the pursuit had been abandoned, at approximately 1:20am.

Later investigation found that after travelling through the intersection of Cheapside and Ann Streets, the Skyline became airborne for a distance of 17.5 metres. It then landed on the grass embankment leading down into Ululah Lagoon and continued a further 37 metres down that embankment into the lagoon. The lagoon lies 8 metres below the level of Ann Street.

The aftermath

Mr Bowles recalls finding himself upside down in the vehicle which was flooded immediately. He and Mr Keyworth climbed out the windows nearest to them. There was no sign of Ms Tynan. They realised she must be trapped in the car.

I accept both men made repeated attempts to get her out of the inverted and partially crushed car. They say Ms Tynan could not be moved as neither surviving passenger was able to undo her seatbelt buckle. This is consistent with the police officers who subsequently found the car also being unable to extract Ms Tynan. Mr Keyworth states that he held Ms Tynan's hand at some point during these attempts and *“knew she was dead”*.

It is now known that Ms Tynan was not killed by the effects of the initial impact but it is likely she was unconscious. In those circumstances she could not have survived more than a few minutes. It is estimated by Mr Bowles that they spent 10 minutes trying to extricate her from the vehicle without success.

Mr Keyworth and Mr Bowles left the lagoon and walked back to their caravan. They changed clothes, grabbed a bag of photographs and walked back towards the lagoon. On the way Mr Keyworth made a telephone call to his mother to tell her what had happened and to organise for her to pick up him and Mr Bowles. He then made two calls to Ms Tynan's sister Melissa Tynan telling her that he had killed her sister during a police chase but failing to give any further details of significance.

The noise of the crash was heard by the residents of a nearby house. They alerted police.

This information was relayed to patrol units and another car joined in searching for the Nissan. A short time later police communications were advised by Senior Constable Renouf, who was patrolling with Constable Cunningham, that the vehicle had been found in the lagoon. This was at 1.40 am, about 20 minutes after the crash.

Senior Constable Behne and Constable Tasker arrived shortly after. Constable Cunningham immediately entered the water and made efforts to locate any occupants trapped in the vehicle. He was joined by Constable Tasker and they tried without success to use a torch to prise open the damaged doors of the car. The murkiness of the water and time of night made visibility non-existent and their efforts failed to detect Ms Tynan. Nevertheless I commend them on their efforts.

Sergeant Pope arrived at the scene and while considering the next course of action received information from police communications about a telephone call from Melissa Tynan. He immediately rang Qld Fire and Rescue Service and the Queensland Ambulance Service.

At approximately 2:20am the vehicle was towed from the lagoon and the body of Ms Tynan was revealed strapped into the front passenger seat. Paramedics immediately examined her. She was clearly dead.

Ms Tynan's body was transported to Maryborough Hospital where a life extinct certificate was issued.

As Mr Bowles and Mr Keyworth waited for their mother to pick them up they were spotted by QFRS personnel and shortly after picked up by police. They admitted their involvement in the incident.

An assessment of the marks made on the road and embankment by the Skyline enabled Senior Constable Lonergan to conclude that at the time of becoming airborne, the minimum speed of the vehicle was 85km/h. In view of

the estimates of the driver, Mr Bowles and the pursuing officers I consider the likely speed to be far greater than that.

Ms Tynan's body was formally identified by her brother at 10am on 23 May 2006.

The autopsy

On 23 May 2006, an autopsy was conducted on Ms Tynan's body by Dr Paul Anderson. It revealed significant head injuries.

Dr Anderson also noted that both lungs appeared to be over inflated and the right and left major bronchioles contained brackish fluid, mud and weed. There was also macroscopic evidence of fluid present throughout the smaller airways of both lungs.

Blood and urine samples were sent for toxicology and tissue samples sent for histological examination. These tests revealed no presence of alcohol or other drugs.

Dr Anderson concluded that the head injuries suffered by Ms Tynan may have rendered her unconscious. However, they were not sufficiently severe to have killed her. In his view, the autopsy findings were more consistent with Ms Tynan having drowned when the car became submerged.

Criminal charges

On 21 March 2007, Mr Keyworth pleaded guilty to a charge of manslaughter and was sentenced to seven years imprisonment.

Findings required by s45

I am required to find, as far as is possible, who the deceased was, when and where she died, what caused the death and how she came by her 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 Kristina Ann Tynan |
| Place of death – | She died at Maryborough, in Queensland |
| Date of death – | Ms Tynan died on 22 May 2006 |
| Cause of death – | She died from the effects of immersion following a car crash. |

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.

Ms Tynan's death is one of seven that followed a police pursuit in the period June 2005 to December 2006. Two inquests have 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 been in force 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.

Obligations after abandoning a pursuit

The policy provides at section 14.23.7 that once advice has been given that a decision to abandon a pursuit has been made, *“each unit involved in the pursuit is to immediately:*

- (i) acknowledge the direction to abandon pursuit;*
- (ii) turn off flashing warning lights and siren;*
- (iii) pull over and stop the police vehicle in the first available safe position;*
- (iv) advise the pursuit controller of their location;*
- (v) conduct a safety check of the police vehicle.”*

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”*.

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”

In this case the pursuit commenced after the driver of the Nissan Skyline had failed to stop when signalled to do so and had proceeded through a stop sign without stopping.

I am satisfied that in the circumstances which prevailed Senior Constable Behne was acting appropriately and in accordance with the policy when he initiated the pursuit. The factors which lead me to this conclusion include the absence of any other traffic, the good road and weather conditions and the officer’s knowledge of the roads in question.

Further, the chances of positively identifying the driver later were slight.

Balancing the utility of the pursuit and the risks

In view of the very minor nature of traffic offences the non complying driver was known to have committed the continuing risk assessment a pursuing officer was required to undertake would lead him to conclude that the pursuit should be abandoned on evidence of even a very low level of risk of harm to any person.

This is what happened. As soon as the Skyline was observed to go through a second stop sign at a major intersection the pursuit was abandoned. It had lasted for only a few seconds.

Other issues

As indicated earlier, there was a slight delay in notifying the radio room of the commencement of the pursuit and Senior Constable Behne acknowledges he did not immediately extinguish the rotating coloured lights and siren immediately he terminated the pursuit. These are minor matters not warranting any criticism.

Sergeant Pope was unable to assume the role of pursuit controller because of the very short duration of the pursuit.

Conclusion

I do not accept the submission that the pursuit did not contribute to Mr Keyworth speeding. As indicated by the pursuing officers, when they observed him initially he was driving appropriately and only sped off when they activated the siren. However the causal link is not really the issue. Rather, the relevant question is whether the actions of the officers involved in the incident were reasonable and in accordance with the policy then in place. I am satisfied they were. I consider Senior Constable Behne’s conduct was exemplary. Despite

that, due to the extremely dangerous response of Mr Keyworth, Ms Tynan lost her life and her family lost a treasured member.

This inquest is closed.

Michael Barnes
State Coroner
Maryborough
27 November 2008