



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Meleta Eliza OAKLEY**

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

FILE NO(s): COR 2011/1952

DELIVERED ON: 15 November 2012

DELIVERED AT: Rockhampton

HEARING DATE(s): 10 October 2012; 14-15 November 2012

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Death in custody, police pursuit

REPRESENTATION:

Counsel Assisting:	Mr Peter Johns
Family of the deceased:	Ms Paula Morreau (instructed by Boe Williams Lawyers)
Constables Jeffrey Harvey and Brent Sheriff:	Mr Troy Schmidt (instructed by QPUE)
Queensland Police Commissioner:	Mr Ian Fraser

Table of Contents

Introduction	1
The investigation	1
The inquest	2
The evidence	3
Social history	3
Background	3
The attempted intercept	4
The crash and aftermath	6
The autopsy	8
The investigation findings	8
Conclusion as to how the crash occurred	9
<i>Findings required by s45</i>	11
Identity of the deceased	11
How she died	11
Place of death	12
Date of death	12
Cause of death	12
<i>Concerns, comments and recommendations</i>	12
QPS pursuit policy	12
When can a pursuit be commenced and continued?	12
When an intercept becomes a pursuit	14
Was a pursuit permitted in this case?	14
Was there a pursuit in this case?	14
<i>Section 48 referral</i>	15

The *Coroners Act 2003* (the Act) provides in s. 47 that when an inquest is held into a death that happened in the course of or as a result of police operations, 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 officials with responsibility for the justice system including the Attorney-General and the Minister for Police, Corrective Services and Emergency Services. These are my findings in relation to the death of Meleta Eliza Oakley. 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

On the evening of 10 June 2011, 16 year old Meleta Oakley was a passenger in a car being driven around the township of Woorabinda by Errol Miller. When Mr Miller was approached by two police officers and asked to submit to a breath test he drove off and accelerated southbound out of town. Without engaging their lights and sirens the police followed for a short distance. Several minutes later Mr Miller, driving above the speed limit and affected by alcohol, lost control of the car. Meleta Oakley was flung from the vehicle as it rolled. The vehicle came to rest on her unconscious body and moments later she died from the injuries she had sustained in the crash.

These findings:-

- establish the circumstances in which the fatal injuries were sustained;
- confirm the identity of the deceased person, the time, place and medical cause of her death; and
- consider whether the police officers involved 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. As the deaths followed immediately a series of events involving police and the incident was investigated by other police officers, the findings also critique the quality of that investigation.

The investigation

The coronial investigation was conducted by the QPS Ethical Standards Command (ESC) and a detailed report was prepared by Detective Senior Sergeant Christopher Sedl.

The ESC and CMC were notified of the incident on the evening of 10 June 2010 and investigators from both agencies arranged to travel to Rockhampton. In the interim, the investigation was overseen by the Regional Crime Co-ordinator for the Central Region, Detective Acting Inspector Lynch. Throughout the evening Senior Sergeant Sedl maintained contact with those

on the scene in Rockhampton. He confirmed that the two officers involved had been separated and both had been required to supply a specimen of breath for testing.

A forensic crash officer from Blackwater, Senior Constable Werner Crous attended the scene on the evening of 10 June 2011 along with scenes of crime officers. He marked relevant parts of the scene and gave direction for a series of photographs to be taken. He returned the following day at which time he conducted a more thorough examination and with the assistance of more advanced equipment that had by then been sent from Rockhampton, surveyed the scene to produce a detailed forensic map.

Acting Inspector Lynch and a colleague from the Central Region, Acting Inspector Hall, conducted interviews with Constables Sheriff and Harvey on 11 June 2011 and were able to use this information to brief the investigators from Brisbane.

When he arrived in Rockhampton Senior Sergeant Sedl listened to the recordings of the radio transmissions from the night before and arranged for copies to be made. He then travelled to Woorabinda, was briefed on the accounts of the two officers involved and then travelled the same course as those officers had the previous evening. Senior Sergeants Sedl and Rodger then conducted further, more detailed, interviews with Constables Sheriff and Harvey. They also interviewed Senior Sergeant Crouch and over the course of the next few days spoke to all relevant witnesses who were identified as having evidence to give.

It was submitted by counsel for the family that Constables Sheriff and Harvey should have been separated and breath tested sooner. In my view, that submission fails to give due weight to the exigencies of the circumstances: they were the first response officers at a fatal crash in a remote police division. Management of the scene had to take priority over the investigation.

It was also submitted by counsel for the family that a door knock should have been conducted. That would have been helpful but I am of the view the investigators correctly surmised that in a close knit small community, anybody with evidence to give would soon come to attention. It's true more could have been done, but that is the case in every investigation. In all cases a decision has to be made about when diminishing returns mean the expenditure of further resources can not be justified.

I am satisfied all relevant sources of information have been accessed and the results effectively collated. I commend those responsible for their efforts.

The inquest

A pre-inquest conference was held in Brisbane on 10 October 2012. Mr Johns was appointed counsel assisting and leave to appear was granted to the family of the deceased person, the Commissioner of the Queensland Police Service and the officers involved in the incident.

I conducted a view of the scene on the 13 November 2012 and the inquest was held in Rockhampton on 14 and 15 November 2012. Twelve witnesses gave evidence and 117 exhibits were tendered. I am satisfied all information relevant to and necessary for my findings was made available at the inquest

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

Meleta Oakley was a 16 year old girl who devoted herself to her nieces and nephews. She had a dog called Sheila who she loved. Her family described her as a beautiful girl who had lots of friends and loved playing sport at the Woorabinda stadium. She was clearly very much loved and is now greatly missed by her family, friends and the whole of the Woorabinda community.

Background

At around 3:00pm on the afternoon of 10 June 2011 Constable Brent Sheriff, who was off duty, was returning from a run when he was approached by a member of the Woorabinda community. That person told the officer a green Ford Falcon had been driving around the township with occupants who appeared to be affected by alcohol. A short time after being told this Constable Sheriff saw what he believed to be the car, parked outside 182 Carbine Street. There were no occupants or anyone nearby. Janelle Evans, who appeared at the inquest as an eyewitness to later events, says that she also saw the Green Falcon 'hooning' around the streets during the afternoon.

Throughout the afternoon of 10 June 2011 Meleta Oakley and her sister Anastasia had been drinking wine while socialising with family. Their relative, Errol Miller had also been drinking throughout the day. He was the owner of the green Falcon which had been drawing attention although it seems others may have been driving it at different times during the day.

Anastasia Oakley and her sister were picked up by the car in the early evening. At that time it was being driven by Malcolm Cameron. Later, when he was dropped off at his place, Marcus Conway (Errol Miller's brother) took over in the driver's seat.

Just prior to 7:00pm Marcus Conway got out of the car near his residence in Doolan Street. That left Errol Miller behind the wheel, with Meleta Oakley in the front passenger seat and her sister Anastasia in the rear. Marcus Conway says he had not long alighted from the vehicle when he saw the marked police Hi-lux approach the Falcon in Doolan Crescent. All agree that Errol Miller was at this stage very drunk.

Constable Sheriff and his partner Constable Jeffrey Harvey commenced their shifts at Woorabinda police station at 6:00pm. They were performing general

duties which included patrolling the streets of the town in a marked, diesel powered Toyota Hi-lux. Just before 7:00pm, while travelling east along Doolan Crescent Constable Sheriff spotted the same green Falcon to which he had earlier been alerted. It was parked outside a house near the intersection of Doolan Crescent and Munns Drive and was facing in the opposite direction to the police vehicle. As they got closer it was clear there were people in the car and on the basis of the information he had received earlier, he decided to conduct a breath test on the driver.

The attempted intercept

Constable Sheriff, the driver of the Hi-lux, briefly mentioned the information he had received earlier in the day and then asked Constable Harvey to conduct the breath test. Constable Harvey alighted and walked around the front of the police vehicle in order to approach the driver of the Falcon.

Approaching mid-winter, it was by now dark, cool and dry with limited ambient lighting. After pulling up slightly in front of the green Falcon, Constable Sheriff could see a male driver and a female in the front passenger seat but not sufficiently well to identify them. Constable Sheriff said to the driver *stop there mate we are just going to do a quick RBT*. As he did so he noticed the Falcon beginning to roll forward. He put his arm out of the window with his palm facing outward in a motion to stop but says the Falcon then accelerated away up Doolan Crescent. As it started to move away Constable Harvey heard the words *Fuck you* come from a male voice in the car. He also heard a female voice say words similar to, *Don't be stupid, Errol*. Both officers say the Falcon took off at a faster than normal speed but not such that there was any screeching of tyres. Constable Harvey returned to the vehicle, Constable Sheriff reversed the Hi-lux into a driveway and then drove off at a faster than normal level of acceleration in the same direction as the Falcon.

The two police officers both told the inquest they believed that, because they were now approaching the end of a cul-de-sac, the occupants of the vehicle were likely to abandon the car and run off. Instead, as it reached the end of the paved road the Falcon continued onto a make-shift track through a property at the end of the street that allowed it to travel some 30 – 50 metres onto Rankin Street. The police Hi-lux followed the same path until it too reached Rankin Street.

Janelle Evans was upstairs in her house at 86 Rankin Street with the television and air conditioning on but says she clearly heard the engines of the two vehicles as they approached the end of Doolan Crescent. She came out onto her front veranda because a girl had knocked on her front door asking for a cigarette.

The aspect of her balcony meant she could see the end of the cul-de-sac from one side while being able to look out onto Rankin Street on the other. She came out to look in part because she had her new vehicle parked on Rankin Street and held some concern for it.

Ms Evans told the inquest that both vehicles travelled behind her house and then emerged onto Rankin Street, before setting off in an easterly direction towards the intersection with Munns Drive which is formed by a roundabout. She says both vehicles accelerated hard as they entered Rankin Street and the driver of the Falcon lost control as it negotiated the roundabout. This caused it to 'fishtail'. At the same time she saw the police vehicle slow and come to a complete stop just short of the roundabout; only 60-70 metres after it had emerged onto Rankin Street. It was clear to her the police had given up on what, to that point, she described as a 'chase'. She considered this a good decision because of the number of children who regularly play on the nearby streets. At that point she considered there was nothing further to see as the Falcon continued along Rankin Street, and she returned inside. On her account, the Falcon and the police Hi-lux had both been travelling at the same speed up until the point where they reached Rankin Street. She recalls that, until the police vehicle slowed it was very close behind the Falcon, perhaps 10 metres or less.

The versions of the two police officers are different to this and to each other although not in a way that is material to my findings. The police versions certainly differ from each other to the extent I can be confident there has been no collusion between them with regards to their accounts.

It is clear the initial decision to follow the Falcon was abandoned at about the point the police vehicle reached Rankin Street. Constable Harvey said the police vehicle came to a complete halt at the end of the dirt track from where they could see the Falcon fishtailing as it travelled through the roundabout at the intersection of Rankin and Munns Drive. He said Constable Sheriff said to him they were stopping because it was not a 'pursuit matter' – which he took to be a reference to the definition in QPS policy discussed later in these findings.

Constable Sheriff agreed it was possible he had been travelling at the same speed as the Falcon up until Rankin Street. He said once he reached Rankin Street he saw the Falcon fishtailing and immediately decided they should not continue after it. Consistent with the version of Ms Evans he began to slow the police vehicle but, on his version, did not come to a complete stop. He and Constable Harvey both say they got no closer than 50m to the Falcon after they had set off after it in Doolan Crescent.

The officers said that from the intersection with Munns Drive they proceeded along Rankin Street at no more than 10km/h. Constable Sheriff directed his partner to immediately take notes of what had occurred and he then contacted Rockhampton communications. The audio recording of this transmission, made at 6:58pm, was tendered at the inquest. It reveals Constable Sheriff giving a brief account of what had just occurred and then asking for a name check on 'Errol Miller', describing him as a being in his 'mid-20's'. Constable Sheriff continued along Rankin Street at a fast walking pace until he reached the intersection with Dooley Street where he stopped. He says just prior to stopping he had seen the headlights of the Falcon more than a kilometre ahead driving up a hill out of town on the Southern Access Road.

The radio call was heard by the supervisor of the two constables and OIC of Woorabinda, Senior Sergeant Stephen Crouch. He was returning from Gladstone and was still some 20 – 30kms from Woorabinda. He spoke to Constable Sheriff by phone while the Hi-lux was stopped near Dooley Street. It was Constable Sheriff's view that the Falcon might travel out of town on the Southern Access Road before performing a 'loop' and returning to town some time later. Senior Sergeant Crouch said he would maintain a lookout for the Falcon.

Constable Sheriff decided to return to the house at 182 Carbine Street where he had seen the green Falcon parked earlier in the day. He thought this would allow him to better confirm his suspicions about the identity of the driver. At that address he spoke to Dianne Jacobs. She said she knew the car which Constable Sheriff was speaking of but said she had been inside while her husband spoke to the occupants. Her husband was not currently home and she had not discussed the occupants of the Falcon with him. She said she did not know who was driving.

As the officers drove off from speaking with Ms Jacobs they received an urgent radio message from the Rockhampton police communications centre advising of a rollover crash on the Southern Access Road. That broadcast was made at 7:04pm.

The crash and aftermath

The only two surviving eye witnesses to the crash, Errol Miller and Anastasia Oakley gave evidence at the inquest. This was the first account Mr Miller had given. I consider the memory of each of them is unreliable due to the effects of the crash itself and the fact both were extremely drunk. In the case of Mr Miller this was evidenced by a blood alcohol reading of 0.227% detected in blood extracted some time after the accident when he was in hospital.

It is clear from the forensic evidence that a sudden movement of the Falcon's steering wheel to the left while it was travelling over the speed limit and on the wrong side of the road caused it to enter a counter-clockwise yaw. This continued until the axis of the vehicle turned 90 degrees to the initial direction of travel at about the same time that it travelled off the roadway on the northern side. There it was 'tripped' by the change in terrain and rolled in the air. It is now known that the seat belt on the front passenger seat was defective and so was not being worn by Meleta Oakley. As the vehicle rolled in the air she was flung from it and, it seems, tragically, the car then fell and came to rest on top of where she lay. It is likely Anastasia Oakley was also flung from the vehicle as it rolled while Mr Miller remained in the driver's seat.

At the inquest Mr Miller accounted for his sudden loss of control of the Falcon by saying he was momentarily blinded by the high beam of the police vehicle which had remained behind him until that point. He speculated that the police vehicle may have rammed his vehicle from behind. He told the inquest he had driven drunk on many previous occasions without difficulty and considered these were the only explanations for his sudden loss of control. He specifically

denied suggestions the sudden movement of the Falcon to the left may have been in response to an animal crossing the road or some other obstacle.

At about 7:00pm Joseph Adams was in a car being driven along the Southern Access Road towards Woorabinda after having been hunting for echidna. Also in the car were his partner, Roxanne Oakley, his cousin, Thomas Gyemore and an 11 year old relative. Around 4km east of town he saw a green Falcon. It was upside down and about 10m to the north of the roadway. He approached the vehicle to find Mr Miller still in the driver's seat calling to be helped out. At about the same time he and Roxanne also saw Anastasia Oakley wandering around close to the vehicle. She was calling for Meleta.

He helped Mr Miller from the car. Mr Miller was asking where his brother Marcus was. Mr Adams walked around the vehicle and saw a person's lower legs emerging from under the front passenger side of the vehicle. Roxanne Oakley called '000' to report the crash. The young boy understandably became distressed and Mr Adams decided to take him home.

The '000' call was received by Rockhampton communications and the details of the single vehicle rollover relayed by radio in the 7:04pm message to Constables Sheriff and Harvey. They set off towards the scene of the crash putting the emergency lights on for the first time. After travelling a few hundred metres they saw the vehicle driven by Mr Adams coming towards them. He hailed them down and told the officers what he had seen. This was at a point 3.2km west of the accident scene.

The two police officers were around 75-100m short of the scene of the accident when they both saw Errol Miller staggering along the Southern Development Road. The police officers checked if he was alright. It seems they asked him what had happened but neither recalled Mr Miller saying anything cogent in response. He was clearly very drunk and probably in shock. They placed him in the back of the vehicle before driving to the scene of the accident.

The officers both saw Anastasia Oakley before they arrived at the vehicle. She was screaming out and obviously very distressed. The officers had been alerted to someone being under the vehicle and Constable Sheriff crouched down to see the lower limbs protruding from under the car. Dragging her clear from under the vehicle proved impossible. Constable Sheriff managed to reach her wrist and felt for a pulse but could not feel one. He told Constable Harvey she was deceased.

It seems that both officers gave some thought to attempting to move the vehicle off Meleta Oakley. Their decision not to was based, reasonably in my view, on their almost certainly correct assessment that Meleta was deceased and on the difficulty of safely moving the vehicle with the limited resources available. Although both officers cited fears that moving the vehicle might cause further injury to Meleta, I doubt this would have prevented an attempt to move it if it had been evident she was still alive but being crushed by the weight of the vehicle. Constable Harvey also cited fears for the safety of

Anastasia who was wandering around near the roadway at this point. Again, as problematic and dangerous as it was, it would have been a secondary consideration had there been signs of life from Meleta.

The ambulance had already been called by Rockhampton police communications. QAS records show they received a call for assistance at 7:07pm. The first paramedic to arrive at the scene did so at 7:15pm and confirmed that Ms Oakley was deceased.

Senior Sergeant Crouch arrived soon after the ambulance. He took over management of the scene. He took steps to separate the two officers at an early stage. They were physically separated when Constable Sheriff drove a QAS vehicle back to Woorabinda hospital while the paramedic treated Mr Miller. Anastasia Oakley was taken to hospital in another ambulance. Both had only suffered minor injuries in the crash.

The autopsy

A post-mortem examination was conducted on the body of Ms Oakley at the Cairns Base Hospital mortuary on the morning of 14 December 2009 by an experienced forensic pathologist, Dr Nigel Buxton. On the basis of the information available at the time I considered an internal autopsy would be unnecessarily invasive when weighed against the low probability it would reveal any forensic information relevant to my findings. I ordered the post-mortem examination be external only. Dr Buxton was assisted in his examination by x-rays taken of Ms Oakley's body.

Three samples of blood were taken for toxicology testing which revealed the presence of alcohol at a level of 127mg/100ml (0.127%). Also present were metabolites of cannabis.

In his autopsy report which was tendered at the inquest, Dr Buxton stated:

Death in this patient would appear to be a crush injury to chest with secondary closed head injuries. The linear blistering is curious: it may well reflect dripping of brake fluid or other cutaneous irritants from the vehicle.

After considered the x-rays, his own observations, the facts as set out by police on the Form 1 and the toxicology results, Dr Buxton issued an autopsy certificate listing the direct and antecedent cause of death as:

- (a) Crush injury to chest; *due to or as a consequence of*
- (b) Motor vehicle trauma.

The investigation findings

The forensic crash investigation conducted by then Senior Constable Crous allowed him, through the analysis of yaw marks left on the roadway by the sliding Falcon, to calculate that, at the time the vehicle began to yaw in a counter-clockwise direction it was travelling at between 108 and 120km/h.

The yaw marks were shown to commence on the incorrect side of the road for the direction in which the vehicle was travelling. Sergeant Crous told the inquest these marks are indicative of a sudden, emergent movement of the steering wheel to the left. It is this movement that has resulted in the yaw commencing and the ultimate loss of control. There was, though, no evidence on the road of any obstacle that Mr Miller might have needed to avoid and no debris or other evidence of a collision between his vehicle and another vehicle or any other object.

The front passenger seatbelt in the Falcon was found to be defective and unusable. Otherwise, mechanical inspections of the Falcon found no defect that would have contributed to the cause of the crash.

Photographs were tendered at the inquest of a routine audit of the police vehicle used in this incident on 17 May 2011. Also tendered were photographs taken on 12 June 2011. There is no discernable difference between the state of the vehicle on the two dates. There are no markings which could reasonably be attributed to the version of Mr Miller that there had been contact between his vehicle and the police vehicle.

The breath and urine samples taken from both police officers returned negative results for the presence of alcohol or drugs.

After the accident, Errol Miller was charged with a number of traffic offences including driving under the influence of liquor; driving without a driver licence; disobeying the speed limit and failing to comply with a direction to stop. He pleaded guilty and was sentenced to a term of imprisonment.

At the inquest, Dr Nigel Buxton gave further evidence in relation to the likely time of survival for Meleta after she had sustained injuries in the crash. He stated that, in the best case scenario, Meleta may have remained alive, though unconscious, for 5-10 minutes after the crash. In as little as two minutes the brain is likely to be receiving insufficient oxygen and damage will occur. He stressed that, in order for there to have been any chance of her being revived in a state where she still had meaningful brain function it would have been necessary to have removed her from under the vehicle and to have administered oxygen via an endotracheal tube. Even then the prospects of survival would be limited. He stated that in order for Meleta to have had even a chance of survival in this case it would have been necessary for her to be extracted from under the vehicle and been in the care of paramedics within 2-3 minutes of the crash.

Conclusion as to how the crash occurred

Errol Miller told the Court he can drive safely when drunk because he has done it many times. He can not: the sad, unnecessary death of Meleta Oakley is proof.

Responsible members of the community know that driving drunk around Woorabinda endangers the many people who use the streets, including very young children. That is why an older person approached a local police officer

on the day of Meleta Oakley's death and told the officer of his concerns that Mr Miller's vehicle was being driven by an intoxicated person. The officer took this complaint seriously. Appropriately, when he saw the vehicle later in the day he tried to conduct a breath test on the driver but Mr Miller sped off.

The officers involved said they only followed the green Falcon a short distance before concluding it would be too dangerous to continue to pursue it. They said they stopped the car in Rankin Street before the intersection with Munns Drive. This is supported by Ms Evans who saw the incident from her veranda.

The officers said they then continued slowly down Rankin Street and contacted the local officer in charge over the radio. He was returning to the town from Gladstone. They advised him of what had occurred. By this stage the police car had reached the outskirts of the town near Dooley Street. The officers saw the tail-lights of the Falcon disappearing up a hill in the distance.

The officers decided to go to the address where Constable Sheriff had seen the car earlier in the day to confirm the identity of the driver. Soon after speaking to Ms Jacobs at that address they received radio notification of the crash. She saw the police car illuminate its coloured rotating lights as it headed out of town along the Southern Access Road. The officers came across Mr Adams coming into town and he advised them of the location of the crash.

As they approached the site they came across Mr Miller walking dazed on the road. They took him into custody and went to the crashed car.

Both officers said it immediately became clear to them that the person trapped under the car was dead. They are almost certainly correct, having regard to the evidence of Dr Buxton. In any event they didn't consider they could have done anything to free the trapped person. Mr Adams agreed with that conclusion and I have no basis on which to dispute it.

It is clear from the forensic evidence that a sudden, severe swerve to the left while the Falcon was travelling at over the 100kms per hour limit on the wrong side of the road caused it to slide and then roll over.

The officers denied they had continued to pursue the vehicle out of town. There is considerable evidence to support them in that regard.

- Ms Evans agreed the police car stopped after the Falcon continued down Rankin Street. It is hard to accept that a diesel 4WD could have so soon made up the distance that would have quickly opened up between the two cars.
- No one saw the police chasing the Falcon through town even though it was early on a Friday evening and everyone agreed it was a highly populated area. In view of the understandable interest in the case, I am confident that had a chase occurred it would have been seen and it would have been reported.

- Ms Jacobs agreed the officers came to her house asking about the driver of the green Falcon and Mr Adams agreed he crossed paths with them on the outskirts of town soon after the crash occurred. It is highly improbable that had they been in close contact with the Falcon when it crashed, the officers would or could have made it back to town and gone to Ms Jacobs house at about the very time the crash was occurring. They would have no reason for doing so.
- Neither Mr Miller nor Anastasia Oakley told Mr Adams of any involvement by police when he came upon them very soon after the crash. It is also clear that Mr Miller did not tell Meleta's family of it in the days following the crash as it was indicated to the Court the officers were invited to her funeral.
- Photographs recorded in exchangeable image file format (EXIF) embed within the electronic file when the photograph is taken, the geographical location of the image and the time and date on which it is taken. Photographs showing the damage to the front left quarter panel of the car with EXIF data that showed they had been taken on the morning of 17 May 2011 were found on the Woorabinda Division computer server. This means Mr Williams must be mistaken about the date the damage occurred.

Accordingly, I conclude the sole cause of the crash was the reckless drunken driving of Mr Miller. Any impetus to drive too fast to evade the police had surely dissipated by the time the Falcon was over three kilometres out of town without there being any sign of the police pursuing.

I trust the responsible members of the Woorabinda community will accept that police had nothing to do with Ms Oakley's death and that Errol Miller's attempt to blame them was a vain attempt to shift responsibility from himself. I can understand why he would feel guilt and remorse for Meleta's death. I'm sure he intended her no harm, but that does not justify his wrongly accusing the police of causing the crash.

Findings required by s. 45

I am required to find, as far as is possible, who the deceased person was, how she died, when and where she died and what caused her death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses, the material parts of which I have summarised above, I am able to make the following findings.

Identity of the deceased - The deceased person was Meleta Eliza Oakley.

How she died - She died as a result of injuries sustained when the driver of the vehicle in which she was a passenger lost control of it causing it to leave the roadway, roll, eject her in the

process and then come to rest on top of her. The crash was caused by the dangerous driving of this vehicle which minutes earlier had failed to stop when the driver was directed to do so by police.

- Place of death -** She died at Woorabinda in Queensland.
- Date of death -** Ms Oakley died on 10 June 2011.
- Cause of death -** Ms Oakley died from a crush injury to the chest.

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.

The direct and proximate cause of the death of Meleta Oakley was the drunken dangerous driving of Errol Miller and to a much lesser extent, her failure to wear a seatbelt. It is likely the attempted interception of the car by police precipitated his driving at high speed out of town. It does not automatically follow that the police officers involved did anything wrong or were in any way responsible for the death of Ms Oakley. What needs to be considered is whether the actions of the officers involved in the incident were lawful and reasonable. The best way to do that in my view is to assess whether the officers complied with the relevant QPS policies.

QPS pursuit policy

On 1 January 2008, after an extensive trial period, the QPS implemented a new pursuit policy state wide. The policy has subsequently been refined and is again undergoing an extensive review to consider recommendations made in previous inquests. I acknowledge the reforms to date and the current process of review, evidence an ongoing commitment by the QPS to grapple with the very complex challenges thrown up by this aspect of policing.

I shall now summarise those parts of the policy in force in December 2009 and relevant to this case.

When can a pursuit be commenced and continued?

The principles underpinning the policy are outlined in the Operational Procedures Manual (OPM). Those of particular relevance to this case are:

- (i) *Pursuit driving is inherently dangerous. In most cases the risk of the pursuit will outweigh the benefits.*
- (ii) *Pursuits should only be commenced or continued where the benefit to the community of apprehending the offender outweighs the risks.*

(iii) *If in doubt about commencing or continuing a pursuit, don't.*

The policy assures officers that suspects who fail to stop when directed will still be the subject of law enforcement action, but less dangerous means than high speed pursuits will be utilised. It says:-

The revised pursuit policy seeks to shift the manner of apprehension of people who fail to be intercepted from pursuits into other strategies. The Service will continue to apprehend offenders who fail to be intercepted but pursuits will not be the principal means of effecting apprehension.

The policy requires 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 – the seriousness of the offences the person fleeing may have committed and the strength of the evidence indicating they have committed those offences. In this balancing exercise, issues of safety are to weigh more heavily than has been the case under earlier policies.

According to the policy, 'pursuit' means the continued attempt to intercept a vehicle that has failed to comply with a direction to stop where it is believed, on reasonable grounds, the driver of the other vehicle is attempting to evade police.

'Intercept' means the period from deciding to direct the driver of a vehicle to stop until either the driver stops or fails to stop. It includes the period when the police vehicle closes on the subject vehicle in order to give the driver a direction to stop. Relevantly to the circumstances of this case it also includes the following alternative definition for specific circumstances:

..actions taken where an officer on foot has unsuccessfully attempted to intercept a motor vehicle and a police vehicle is used to close with the subject vehicle in order to give the driver of the vehicle a direction to stop (e.g. a static RBT site where a hand signal is not obeyed and a police vehicle is then used to close with the subject vehicle to give the driver a further direction to stop).

The policy specifically excludes some matters from being sufficient on their own to justify the commencement of a pursuit. These are termed *non-pursuit matters* and they include licence and vehicle checks, random breath tests and traffic offences.

If the circumstances do justify a pursuit, the policy sets out to aid the process of risk analysis by dividing these situations into three categories:

- Pursuit category 1 –There are reasonable grounds to believe the driver or occupant of the vehicle will create an imminent threat to life; he/she

has or may commit a homicide or attempt to murder or has issued threats to kill any person.

- Pursuit category 2 – It is known the driver or occupant has committed an indictable offence, a summary offence involving the unlawful use of the vehicle or dangerous driving prior to the attempted interception.
- Pursuit category 3 – There is a reasonable suspicion the driver or occupant of the vehicle has committed an indictable offence or a summary offence involving the unlawful use of the vehicle.

The category of the pursuit becomes relevant to the process of risk analysis because the policy makes it clear to officers that, the less serious the category, the less tolerance there is for risk and, therefore, the more likely it will be that the risks of a pursuit will outweigh any potential benefits. The policy also sets out several factors that must form part of the ongoing process of risk assessment to be considered by an officer.

When an intercept becomes a pursuit

When an officer is attempting to intercept a vehicle, if the vehicle fails to stop as soon as reasonably practicable, and the officer reasonably believes the driver of the vehicle is attempting to evade police, a pursuit is said to commence if the officer continues to attempt the intercept.

The reference to 'reasonably believes' means the question is not determined by the subjective views of the pursuing officer, rather, as with most aspects of law enforcement, officers must align their conduct with what a reasonable officer would do or believe in the circumstances.

If a pursuit is not justified, an attempted intercept must be abandoned. Similarly, if a pursuit that had initially been justified becomes one where either the officer, the occupants of the pursued vehicle or members of the public are exposed to unjustifiable risk, then it must be abandoned. In such cases the officer must turn off the flashing lights and siren, pull over and stop the police vehicle at the first available safe position.

Was a pursuit permitted in this case?

When initially interviewed, neither of the officers involved asserted a pursuit could have been permitted under the QPS policy. It was common ground amongst the parties at the inquest that the circumstances in this case did not fall within any of the three pursuit categories. This is clearly so.

Was there a pursuit in this case?

It would have been clear to Constable Sheriff that the driver of the Falcon was attempting to evade police as soon as it accelerated away from them in Doolan Crescent. Indeed the officers admitted as much. The police vehicle then followed the car for a short distance. I accept that at no time did the police vehicle reach a speed above 30km/h and at no time were the emergency lights and siren activated.

The QPS policy calls for an officer in the position of Constable Sheriff to stop the police vehicle once there has been a failed attempt to intercept. Any continued attempt to intercept after it is clear the driver has ignored a direction to stop converts an attempted interception into a pursuit. There was no basis on which a pursuit was authorised in this case – something the officers also acknowledge.

The officers said they followed the car in anticipation the occupants might abandon it and flee. They could cite no real basis for this expectation.

I conclude the terms of the policy were not strictly adhered to. However, it was a minor breach not relevant to subsequent events and not unreasonable in the circumstances. The inconsequential nature of the breach is highlighted by the fact that had Constable Harvey given the direction to stop when he alighted from the police car the policy would have permitted a further attempted interception using the vehicle.

I offer no criticism of the conduct of the officers: they made reasonable attempts to comply with the policy, none of their actions were dangerous or reckless and nothing they did directly contributed to the death – the fatal crash happened far away and long after the attempted interception was abandoned.

Section 48 referral

Section 48(2) of the Coroners Act requires a coroner who, as a result of information obtained while investigating a death, *reasonably suspects a person has committed an offence* to give the information to the appropriate prosecuting authority.

I take *committed an offence* to mean there is admissible evidence that could prove the necessary elements to the criminal standard. That would include the evidence necessary to rebut any defence reasonably raised by the evidence. The use of the term *reasonable suspicion* is analogous to the test applied when a search warrant is sought. In that context it has been held that a suspicion is a state of mind less certain than a belief and to be reasonable it must be based on some evidence, but not necessarily well founded or factually correct and be a suspicion that a reasonable person acting without passion or prejudice might hold. As a result, a relatively low level of certainty is needed to satisfy the test.

In my view the provision requires me to consider whether Errol Miller has committed an offence against section 328A(4) of the Criminal Code - *Dangerous operation of a vehicle causing death*.

Mr Miller has admitted, through his pleas of guilty to the offences described earlier in these findings, that he was operating the vehicle in question. If the driving that led to the crash of that vehicle was to be considered dangerous then there is ample evidence to show that dangerous driving caused the death of Ms Oakley. The element of this offence which is central to my

decision is whether the operation of the vehicle by Mr Miller in the period prior to the crash was dangerous.

The test to be applied is an objective one.¹ Whether the driving is *dangerous* is a matter for the jury, who hear all the facts and then have to consider whether the accused person drove in a manner dangerous to the public having regard to all the circumstances of the case.² The *public* includes the passengers in the vehicle being driven by the accused.³

In *Jiminez v R* (1992) CLR 572 the High Court noted that a jury considering such an offence should always be told that the driving must show more than a lack of due care; it must be a real danger to the public. In that case the High Court also made it clear that fault on the part of the driver was not an element of the offence of driving in a dangerous manner. In *R v Wilson* [2009] 1 Qd R 476 McMurdo P stated:

It follows from Jiminez that in a trial for an offence against s 328A the jury need not be told that fault is an element of the charge. That is not to say that in establishing the offence any consideration of the offender's mental state must necessarily be disregarded. Section 24 and other provisions of Chapter 5 Criminal Code like s 23, s 25 and s 31 are sometimes raised in such cases. Whether such provisions are raised will always depend on the relevant evidence at trial.

In this case I am satisfied the evidence arising from the forensic analysis of the crash scene when coupled with the evidence of Mr Miller could persuade a jury that the driving of Mr Miller was dangerous.

I conclude the evidence requires me to give all information relating to the operation of the vehicle by Mr Miller to the Director of Public Prosecutions for his consideration of whether a prosecution should occur.

I close the inquest.

Michael Barnes
State Coroner
Rockhampton
15 November 2012

¹ *R v McBride* [1962] 2 QB 167

² *R v Parker* (1957) 41 Cr App R 134

³ *R v McBride* above