



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Jarrod Barton Emerson**

TITLE OF COURT: Coroner's Court

JURISDICTION: Ipswich

FILE NO(s): COR 3512/06(1)

DELIVERED ON: 19 June 2009

DELIVERED AT: Ipswich

HEARING DATE(s): 16 April 2009

FINDINGS OF: M McLaughlin, Coroner

CATCHWORDS: CORONERS: Inquest – Motor vehicle accident, pedestrian struck while walking on roadway at night, off duty police officer driving private vehicle, compellability of witness at inquest discussed, discussion of police investigating police

REPRESENTATION:

Counsel Assisting	Sgt Kevin Carmont, Police Prosecutions
Ianessa Hoffman	Mr Adrian Braithwaite (Gilshennan & Luton Solicitors)
The Emerson Family	Mr Kissick (David Grant & Assoc Solicitors)

The 22nd December 2006 was the 23rd birthday of Jarrod Barton Emerson. Mr Emerson had attended a party in Lowood during the evening, and he then set out to walk from the party to his mother's residence at 28 Kent Rd., Lowood. Shortly before midnight he was walking on Forest Hill Fernvale Road in a westerly direction towards Kent Rd. The night was fine and clear.

Forest Hill Fernvale Rd progresses west in a straight line until the intersection with Reinbotts Rd, where there is a moderate left hand curve, and then it continues again in a straight line. There is street lighting at the intersection and a further light about 60 metres west of there. Beyond that further light there is no lighting and the road is bordered on both sides by open grassed fields. There are grass verges on both sides of the road and on the southern side there is a bitumen footpath running parallel to, and several metres from, the road. The road is a two lane bitumen road with a marked centre line, but no edge/fog lines. The speed limit in the area west of Reinbotts Rd is 80 km/hr.

At about 11.52pm Mr Emerson was approximately 230 metres west of Reinbotts Rd when he was struck on the roadway by a motor vehicle which was also traveling west on Forest Hill Fernvale Rd. He died at the scene as a result of injuries sustained in the collision.

The vehicle was a 2000 Mitsubishi Verada sedan, Reg 416HFL being driven by lanessa Lorraine Hoffmann. Ms Hoffmann was a police officer who had just finished work in Lowood, and was driving her private vehicle home. She was traveling alone.

Ms Hoffmann

In a signed statement, Ms Hoffmann says she had worked a shift with Constable Lisa Dunne at Lowood. They both left the station about 11.40pm and as Constable Dunne was the on-call officer she drove a police vehicle home, and Hoffman drove her own vehicle. She says she was traveling at the speed limit of 80km/hr on Forest Hill Fernvale Rd, and about half way along the straight section before Reinbotts Rd she looked in the rear view mirror and saw a vehicle some distance behind. She rounded the gradual left curve in the road and as she traveled into the unlit section of the road she saw Mr Emerson "right in front of my car. He was facing my car and was right in front of the inside of my left headlight". She noticed his left arm was outstretched, and before she had time to react, the vehicle struck him and he was propelled into the windscreen. She initially braked heavily, but then became concerned this may cause Mr Emerson to fall from the vehicle and land in front of it, so she then eased off the brake and slowed the car gradually to a stop, with the result that Mr Emerson remained on the car.

Ms Hoffmann says a man and a woman, Julie and Errol Hayes, stopped in another vehicle, and came to give assistance. She then says she saw Constable

Dunne approaching in the police vehicle, and she waved the vehicle over and told Dunne what had happened.

Tragically, as well as Mr Emerson losing his life, this accident has had a devastating effect on Ms Hoffmann. She never returned to police duty after the accident, and later she resigned from the police service. She has since then had multiple admissions to a psychiatric hospital, undergoing a variety of treatments. She continues to be consumed by feelings of guilt over the death, and a report from her psychiatrist indicated that compelling her to give evidence at the inquest would have a "severe negative impact on her state of mind" and would risk her becoming "actively suicidal". On that basis, I declined a request from the family of Mr Emerson to compel Ms Hoffmann to attend the inquest. Formal reasons for that decision were given by me at the time of the decision.

Other Police Officers

Constable Lisa Dunne gave evidence. She said that she and Hoffman left the police station at the same time in separate cars, however she performed a short patrol of the town before proceeding home, and therefore estimated she would have been no more than 3 or 4 minutes behind Hoffman, who drove home directly from the station. Dunne was on call even though she was going home, and therefore she drove a police vehicle. She came upon the scene of the accident and saw Hoffman standing on the roadway, with the parked vehicle perhaps 30 metres further along the road. She spoke to Hoffman who said "She was on the road, I didn't see her" and Hoffman appeared to be in shock. She checked on Mr Emerson and noted there were signs of life, and that he was in fact a male person.

In a written statement Dunne indicated that when she arrived Mr and Mrs Hayes were already there, and Mrs Hayes had put a blanket over Mr Emerson. At the inquest she corrected this advice, and said she was positive she was the first person to arrive at the scene, and that Mr and Mrs Hayes must have arrived while she was seated in Hoffman's car attending to Mr Emerson. She refuted a suggestion that she had been following behind Hoffman's vehicle when the collision occurred, and also denied that Hoffman had made any comment to the effect that she had looked in her rear view mirror immediately prior to the impact with Mr Emerson.

Constable Freya Starr also gave evidence. She arrived on the scene a considerable time after the collision, and was one of the police who eventually drove to the residence of Mr Emerson's mother to inform her of the death of her son. She said that she spoke with a number of people at the scene including Constable Dunne, however she did not speak to Hoffmann. She refuted a suggestion that she was told by Dunne that Dunne was "hot on the heels" of Hoffmann's vehicle when the collision occurred. She recalled speaking with Mr Emerson's sister at the residence, and accepted she may have also spoken with the mother. While she did not recall details of her discussions with either the

mother or sister of Mr Emerson, she denied she had said anything to indicate that Constable Dunne was following closely behind Hoffmann.

A number of police attended the scene and set about controlling traffic, and attending to the usual formalities following a serious vehicle accident. Because a police officer was involved in a fatal accident, a commissioned officer was called to the scene by other police, and Inspector Cliff Dieckman attended as a result. The Ethical Standards Command Investigators also attended due to a police officer being involved. I must say that at the inquest it became apparent the chain of command with such a number of police present became confusing. Mention was made of District Duty Officer Senior Sergeant Mark Oliver; Sergeant Dale Gough, the Officer in Charge, Esk station; Sergeant Timothy Hoffmann (no relation to Ms Ianessa Hoffmann); Com Co Sergeant Smit; and Accident Investigation Squad Officer Senior Constable Craig Bellchambers. Exactly who was in command of who is not clear. Of interest is that apart from the Ethical Standards staff, all other police were from the general area where Ms Hoffmann worked as a police officer, and the potential conflicts of interest are obvious.

In any event, Inspector Dieckman provided a statement about a conversation he had with Ms Hoffmann on the night in question. He said that she told him that some 300-400 metres after the lit intersection she saw a vehicle's headlights come around the corner behind her, that she glanced quickly to see this in the rear view mirror, and then she saw Mr Emerson in the middle of the road, step in front of her. She steered to the right to miss him, but he collided with her vehicle. The conversation was not recorded.

Senior Constable Renee Hoile of Ipswich police was not on duty on the relevant day. She was at the time in a relationship with Lisa Dunne and was also a friend of Ms Hoffmann. As a result, Lisa Dunne phoned her from the accident site, and Ms Hoile also attended. She has provided a statement indicating she drove Ms Hoffmann from the scene back to the Lowood police station, and that during the trip Ms Hoffmann provided a version of events. She said Ms Hoffmann told her that after she came around the corner she saw a striped shirt in front of her, and that something then hit the car and windscreen, and remained on the car. The windscreen shattered. She slowed gradually so as to avoid causing whatever was on the car from falling in front of the car and then being run over.

Hoile also said she spoke to Lisa Dunne about the incident. Dunne told her that although she was traveling home by the same route as Ms Hoffmann, she did one more "lap of town" before leaving Lowood. She said that when she arrived at the accident scene Ms Hoffmann's vehicle was stopped on the side of the road and Ms Hoffmann was "moving around the vehicle screaming".

Civilian witnesses

A number of drivers of other vehicles have come forward to provide information about what they saw in the vicinity of the collision on the night in question. Although no person saw the collision take place, the information is useful to help reconstruct the events leading to the collision.

Julie Hayes, the person mentioned earlier who stopped to give assistance at the scene, had driven by the same area only 5 to 10 minutes before she came upon the accident scene. On the earlier occasion she was driving towards Lowood, and after dropping her daughter in Lowood she was on the return journey when she stopped to help.

On the way into Lowood, Ms Hayes said that her husband, who was a passenger in her car, noticed a man first, and then she saw him at a distance of about 50 metres, walking in the middle of the westbound lane of Forest Hill Fernvale Rd, near the Reinbotts Rd intersection. She described him as “staggering” and “not walking in a straight line”. Her husband said “Watch out for that bloke”. She lives in the area and said it is not unusual for people to walk on the road instead of the footpath because the path is darker due to no linemarking, and is also somewhat uneven in its surface. Even so, she felt it was “silly” for a person to be walking where she saw this person. While the lighting in the area was poor at the time, it is now considerably better due to recent development in the area, including new housing.

When she came upon the accident she saw there was already a police vehicle stopped, as well as the car which struck Mr Emerson. Obviously this was Lisa Dunne’s vehicle. Ms Hayes did not see a police car driving on the road prior to coming upon the accident scene. While speaking to Ms Hoffmann at the scene, she said Ms Hoffmann told her “I saw him on the side of the road and slowed down, then he just stepped out in front of me. I couldn’t do anything”.

Errol Hayes provided a statement in which he described seeing “a male person right out in the middle of the west bound lane of the Forest Hill Fernvale Road. The person was staggering around all over the road and I recall I warned Julie to be careful...”. He estimated it was only 5 or 6 minutes before they came upon the accident scene during their return journey.

Terrence Gibbons provided a statement to police. He said that on the night in question he was driving in a westerly direction on Forest Hill Fernvale Road between 11.20pm and 11.30pm on the night in question. He recalled seeing a male person walking in a westbound direction “up the centre of the eastbound lane. The male person turned and appeared to be waving in an attempt to stop the vehicle. I slowed my vehicle and was about to stop but then I saw a can or bottle in the male’s left hand and decided not to stop”.

Alexander Reid also provided a statement to police in which he said that on the night in question he was driving west on Forest Hill Fernvale Road when he saw a male pedestrian who “was on the right hand side of the road and was waving his hands and appeared to be trying to hitch a ride. He appeared to be in the middle of the right hand lane and was wearing dark clothing and seemed to be jumping around. The pedestrian certainly gave me quite a fright when I first saw him”.

Beryl Bichel also provided a statement to police. A little before 11.50pm on the night in question she was driving west on Forest Hill Fernvale Road “in the area near Reinbotts Road when I saw a male person standing in the middle of the road about twenty metres from the corner.....The male person gave me quite a fright as when I first saw him he was standing in the middle of the road with both arms outstretched. He was facing directly towards me and made no effort to get out of the way of my car. I was traveling about 60kmh but slowed even further and drove carefully around him.....I heard about the tragic incident the next day and contacted police as I felt it easily could have been me that hit him”.

Johnathon Hunt is a young man who knew Jarrod Emerson personally. He informed police that on the night in question he was driving on Forest Hill Fernvale Road and he saw “a male person walking on the road at a point about 200 metres on the Lowood side of the 80kmh sign. The male person was walking backwards on the centre line in the middle of the road. He looked to be stumbling and appeared drunk. The male had his thumb out and was wearing a striped shirt. As I got closer I recognized the male person as Jarrod Emerson. I drove around him on the road and when I got back to my mate’s place we had a discussion on how we both had nearly hit the guy on the road and that if he kept on doing that sort of thing he would get run over”.

Jhi Appelt was the mate Mr Hunt referred to, and Appelt also provided a statement to police. He said that “late that night” he was following Mr Hunt on Forest Hill Fernvale Road, and “I looked down at my mobile phone which had started to ring and when I looked back up I saw a person standing on the centre line in the middle of the road. The male was facing towards me and appeared to be staggering. As I got closer I recognized the person to be Jarrod Emerson. He had his arms outstretched and I think I saw a bottle in one of his hands but I am not absolutely sure. I was going to stop and pick him up but the front passenger’s seat of my vehicle was full of gear and I knew he wasn’t far from home anyway. When I got back to my place I had a discussion with my mate John on how dangerous it was to be staggering around on the road”.

Gary Lyell provided a statement to police in which he said he was driving west on Forest Hill Fernvale Road around 11.30pm on the night in question, and there was another vehicle about 40 metres in front of him. He said that about 200 metres “past the intersection with the Lutheran Church on the corner.....I saw a male person come from the right hand side of the road toward the vehicle in front.

The male person was staggering across the road in a drunken fashion and was waving a hand as if trying to hitch a ride. I am unsure as to whether the vehicle in front even saw the male person as they did not swerve and I did not see any brake lights illuminate. The male person continued to stagger across the white line as I approached. I braked and swerved my car to the left, pulling about a third of my vehicle off the road to avoid colliding with him. I recall that there was a driveway at that location with white painted tyres either side of the entrance and I was concerned there was not enough room to get through. As I drove past the male person he was close enough to touch the car if he had wished”.

Other than Hunt and Appelt there is no positive identification of the pedestrian as Jarrod Emerson by these civilian witnesses. There is however strong circumstantial evidence that it was Mr Emerson who was seen by all of the witnesses. With Julie and Errol Hayes, they had traveled in the opposite direction only minutes before coming upon the accident site during the return journey, and they had seen only one person on the road on the first occasion. Given the relatively remote location and the short time between the two journeys, it seems highly unlikely that the person they saw on the road was not Mr Emerson. With the other witnesses, while the circumstantial evidence is not as strong as with Mr and Mrs Hayes, there is a common theme of a lone male person walking unsteadily on the roadway, trying to hitch a ride, at around the time of the collision, and within perhaps 200 or 300 metres of the location of the accident. The clear inference is that it was Mr Emerson who was seen. The alternative, and in my view, unlikely explanation, is that there were at least two lone men behaving in this fashion at this time and location, but not one witness observed more than one man.

Expert evidence

Senior Constable Craig Bellchambers, a crash investigator with Queensland Police, carried out an investigation of the accident. He attended the scene on the night in question and had various photographs taken, measurements made, and physical evidence collected. He indicated there was insufficient evidence upon which he could conduct a speed analysis of the vehicle which struck Mr Emerson, particularly due to the absence of tyre marks on the roadway, however he also found that “the physical evidence at the scene of this incident does not indicate that speed is a contributing factor”. He commented that taking into account the statements from the various civilian witnesses together with the physical evidence this indicated “no aspect of dangerous or culpable driving by (*sic.* Ms Hoffman)”. S/C Bellchambers said he did not know Ms Hoffman prior to the accident.

Ms Hoffman was breath tested and the test was overseen by the Police Ethical Standards Unit. It returned a 0% blood alcohol result.

As Ms Hoffman was a police officer I considered it was desirable to have an independent crash investigator prepare a report on the accident, and John Ruler

was engaged for this purpose. Mr Ruler is a well known collision analyst with very extensive experience over a career of more than 22 years. He has undergone extensive training in Australia, The United States, and Canada. He is a published author of various collision research papers in Australia and the United States, and appears regularly in all Courts in Queensland as a collision expert.

Mr Ruler was not engaged until some time after the accident, and therefore he did not attend the scene on the night in question, although he did subsequently do so. He relied to a large extent on the photographs, measurements and evidence gathered by S/C Bellchambers to prepare his report.

Mr Ruler concluded his report by stating:

“There is little on which to base a speed analysis for either the sedan or the speed up to which the pedestrian has been accelerated to on impact.

No tyre marks were left to indicate heavy braking either prior to or after impact, no throw distance of the pedestrian has been left as the pedestrian has remained with the sedan.

From the available information it would be my opinion that there is nothing to suggest that the speed of the sedan pre-impact was anything other than at or near the speed limit. The physical evidence supports the statement given by the driver with respect to her speed and her actions post-impact”.

Mr Ruler also gave evidence at the inquest. In discussing visibility he said “At nighttime it is very difficult to see pedestrians in unlit areas”. He explained that darker clothes made it more difficult to see a pedestrian, and that he understood that Mr Emerson was wearing relatively dark clothing. Given the location, time of night, clothing of Mr Emerson, and the speed of the vehicle, Mr Ruler was of the opinion that the collision “would have been very hard to avoid”. He confirmed that he entirely agreed with the report of S/C Bellchambers.

Autopsy and toxicology

Autopsy revealed multiple limb fractures which were sufficient to cause extensive blood loss and shock. In addition, there were extensive, severe pulmonary contusions of sufficient extent to cause respiratory difficulty and death. Further, there were lacerations of the lungs which would have contributed to the development of shock. Splenic laceration was noted, however the blood loss associated with this was minimal, suggesting death occurred soon after impact.

Toxicology testing showed a moderate blood alcohol concentration of 0.098%.

The conspiracy theory

While no members of Mr Emerson's family have provided a statement, or sought to give evidence at the inquest, counsel for the family put his instructions to a number of police witnesses. It is apparent there is a suspicion that a number of police have conspired to give false testimony in an attempt to conceal inappropriate driving by either, or both, Ianessa Hoffmann and Lisa Dunne.

It seems that the mother and sister of Mr Emerson recall that when Officer Freya Starr called at their home to advise them of the death, she informed them that a police vehicle was traveling close behind the vehicle driven by Hoffmann. The exact language alleged is not known, given the two family members did not provide any evidence, and it is also unclear whether they allege one conversation heard by both of them, or two separate conversations.

Coupled with this, there is the evidence from Hoffmann, in her statement, that prior to the intersection with Rienbotts Rd she looked in her rear view mirror and saw another vehicle some distance behind. This is supported to some extent by the evidence of Inspector Dieckman who says the Ms Hoffmann told him that 300 or 400 metres after the lit intersection she looked in her rear view mirror and saw the lights of another car behind her, before then seeing Mr Emerson on the roadway. Obviously, these two versions differ as to where she was when she looked in the mirror, but there was never any suggestion by Hoffmann, in either version, that any vehicle was close behind her.

Based on these matters, in submissions from the bar table, counsel for the family suggested a conspiracy between officers Hoffmann, Dunne and Starr to conceal the fact that Dunne was traveling very close behind Hoffmann at the time of the collision, and that this distraction may have contributed to the collision occurring.

Apart from the observation that it is not clear exactly what officer Starr is alleged to have said to the family, it needs to be remembered that both family members were recalling parts of a conversation during which they were informed of the unexpected death of their son and brother. It hardly needs to be said that in such circumstances the reliability of the memory of the details of a conversation would be questionable. The devastating nature of the initial advice of the death would surely test the ability of any person to remain properly focused on any subsequent discussion.

It is also relevant that Officer Dunne says she was only minutes behind Hoffmann. Whether this information was misconstrued by the family as meaning Dunne was immediately behind Hoffmann seems to be a real possibility. The family has not indicated whether they were told Dunne was, for instance "not far behind" or arrived "very soon after" and so on. Officer Starr does not recall any conversation about this issue, however if the information was as innocent as advising that Dunne was following not far behind Hoffmann and arrived on the

scene very soon after the collision, this would hardly be something one would be expected to recall when giving evidence more than two years after the event.

If there was a conspiracy, it would mean that Hoffmann decided on the night in question to conceal the fact that Dunne was following close behind her, as she did not say this to anyone, including Inspector Dieckman. Logically, the only person who could have provided such information to Officer Starr was Officer Dunne, since only Hoffmann and Dunne could know the truth, and Hoffmann would hardly tell Starr this information if on the same night she was concealing it from Inspector Dieckman.

Clearly Hoffmann and Dunne had an opportunity to discuss the matter between themselves before other police arrived. Remembering that both are police officers who are therefore presumably well versed in evidence gathering techniques, it seems implausible that Hoffmann would deliberately mislead Inspector Dieckman without first making sure that she and Dunne would give similar accounts. That is, if she was composed enough to conceal from Inspector Dieckman the fact that Dunne was close behind her, surely she would have discussed that with Dunne before doing so, as she would be well aware Dunne would also be asked to give a statement, since she was the first person on the scene. If that is so, then it is very unlikely that Dunne would have told Starr that she was following close behind.

In all the circumstances I am not persuaded that the evidence supports the suspicion of a conspiracy between the police to conceal evidence, or the fact that Dunne was following close behind Hoffmann.

Even if Dunne had been following close behind Hoffmann, and Hoffmann had looked in her rear view mirror just prior to impact, I cannot see how this would shift any of the responsibility for the collision to either driver. There is nothing improper about following closely behind another car, unless it is so close as to not be maintaining a safe distance, and there is no suggestion of this. Indeed, if Starr was dangerously close behind Hoffmann one might expect she would have collided with the rear of Hoffmann's car when it unexpectedly struck Mr Emerson. The very fact that the two cars did not come together seems to me to be evidence in itself that there was at least an adequate distance between the vehicles so as not to be unsafe. There is also nothing improper about looking in the rear view mirror if a car is following close behind.

Overview

Apart from the matter just discussed, there is no suggestion that the police investigation of this collision was anything other than professional and thorough. The collision analysis report by S/C Bellchambers was supported by the independent opinion of Mr Ruler. The Ethical Standards Unit apparently oversaw the whole investigation, and the integrity of that unit has not been called into question.

Even so, it seems to be an obvious potential conflict of interest to have a police officer who is involved in a fatal accident, investigated by police from the same area. S/C Bellchambers was based at Ipswich, the nearest major police station to Lowood. Many other police deployed to the scene on the night in question were also stationed in the area. Even if the police involved in the investigation do not know the officer under investigation, as was apparently the case with S/C Bellchambers and Ms Hoffmann, it is important from a public confidence perspective that the investigation be seen as being as impartial as practicable. Ultimately it will be police investigating police, but drawing on police in the same area as the officer under investigation should be avoided. In remote areas this may sometimes be impractical, but at least in South East Queensland it should not be difficult to draw on police from elsewhere in the region

In addition, while the Ethical Standards Unit was involved, the chain of command was far from clear. The number and variety of police at the scene was extensive, but exactly what the Ethical Standards Unit supervised, and how they managed such a role, was not something which any of the police called at the inquest really seemed to be able to explain. Again, the system needs to be transparent as well as thorough.

Having made those general observations, in the present incident I am satisfied that the collision occurred as described by Ms Hoffmann, and supported by the various other drivers who saw Mr Emerson on the road. That is, Mr Emerson had walked on the roadway in darkness for a considerable time, trying to hitch a ride; numerous vehicles drove past him, causing alarm to the drivers by his sudden, unexpected and dangerous appearance on the roadway; common sense says that if enough cars come past, eventually one is going to collide with the pedestrian, and at least one car (driven by Gary Lylell) came perilously close before Ms Hoffmann arrived. Ms Hoffmann was the driver chosen as much by chance as any other factor, as the driver who ultimately collided with Mr Emerson. I can see no basis upon which Ms Hoffmann should be held at fault.

Findings

I make the following formal findings:

1. The person who died was Jarrod Barton Emerson;
2. Mr Emerson died on the 22nd December 2006 at Forest Hill Fernvale Rd, Lowood;
3. The cause of death was:
 - 1(a) Multiple injuries, due to or as a consequence of
 - 1(b) Motor vehicle accident (pedestrian);

4. Mr Emerson died at the scene after being struck by a car. Mr Emerson had been walking along an unlit road at night in an area where the speed limit was 80km/hr. He was apparently trying to hitch a ride. A number of cars had passed him and been alarmed by his unexpected presence on the roadway. At least one such car narrowly missed colliding with him. Eventually a vehicle traveling at about 80 km/hr came upon Mr Emerson and the driver was unable to avoid a collision. Mr Emerson was struck by the car and he then penetrated the windscreen. He died shortly after at the scene from multiple injuries sustained in the collision. Expert opinion from a collision analyst indicated the driver was not at fault and that the collision would have been difficult to avoid.

Comments

The Coroners Act permits me to make comments on anything connected with a death investigated at an inquest that relates to the administration of justice. In that regard I make the following comments:

1. Where a police officer is under investigation by police in connection with a death, the investigating police should, as far as practicable, be officers from a region not connected with the officer under investigation;
2. The chain of command in such matters should be clearly set out in a protocol document, including the role and authority of the Ethical Standards Unit of the Queensland Police.

I now declare this inquest closed and I offer my condolences to the family of Mr Emerson. I also hope that Ms Hoffmann can find some comfort in these findings.

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M McLaughlin, Coroner
19 June 2009