



OFFICE OF THE STATE CORONER

FINDING OF INQUEST

CITATION: **Inquest into the death of
Matthew Raymond Cullen**

TITLE OF COURT: Coroner's Court

JURISDICTION: Bundaberg

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FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Police pursuits, extended intercepts

REPRESENTATION:

Counsel Assisting: Mr Peter Johns

Sergeant Paul Sullivan
Senior Constable Allan Sutton
Senior Constable Peter Cavanagh: Mr Adrian Braithwaite (Gilshenan &
Luton Legal Group)

QPS Commissioner: Mr Liam Burrow (QPS Solicitors Office)

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The *Coroners Act 2003* provides in s45 that when an inquest is held into a death in custody, the coroner's written findings must be given to the family of the person who died, each of these 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 Matthew Raymond Cullen. 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

Matthew Cullen died late on the evening of 26 July 2008 in Bundaberg shortly after the motorcycle he was riding collided with a traffic island when he unsuccessfully attempted to turn left at an intersection located just 700 metres from where he had ridden through a random breath testing (RBT) point moments before. Mr Cullen had ignored a police direction to stop at the RBT point. As he drove on an officer in a police vehicle gave chase.

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 his death;
- consider whether the pursuing officer acted in accordance with the Queensland Police Service (QPS) policies and procedures then in force.

As this is an inquest and not a criminal or civil trial, these findings will not seek to lay blame or suggest anyone has been guilty of a criminal offence or is civilly liable for the death. As the death followed interaction with 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 Inspector Raymond Rohweder of the Internal Investigations Branch.

Inspectors Rowheder and Smith from the ESC travelled to Bundaberg shortly after the incident and commenced interviewing relevant witnesses early on the morning of 27 July 2008.

Prior to their arrival a QPS Traffic Accident Investigator had commenced his investigations and made arrangements for photographs of the scene to be taken. A detailed examination of the accident scene, Mr Cullen's motorcycle

and the police vehicle involved was conducted. This examination located debris and markings from the motorcycle as well as a skid mark which was analysed against relevant mathematical formulae for the calculation of braking speed. A scale plan of the scene was prepared based on this examination.

Witness statements were taken from relevant eye-witnesses as well as witnesses to the movements of Mr Cullen earlier in the evening. Interviews were conducted under direction with the three police officers who observed the conduct of Mr Cullen in the lead up to his death. Urine samples were taken from those officers and a blood sample taken from the body of Mr Cullen at autopsy. All samples were analysed for the presence of alcohol or other drugs. The officer driving the vehicle which had followed Mr Cullen in the lead up to the accident underwent a breath test for the presence of alcohol on the evening of the incident.

QPS radio communications tapes were seized and later transcribed.

The motorcycle and the police vehicle were subjected to a mechanical inspection by a QPS Mechanical Inspection Officer.

I am satisfied this matter has been thoroughly and professionally investigated and all sources of relevant information have been accessed and analysed. I commend Inspector Rohweder for 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

At the time of his death, Matthew Cullen was 21 years of age, having been born on 19 October 1986. He was residing with his mother and youngest sister in Bundaberg. He is survived by his parents and his four sisters, Hannah, Deborah, Pamela and Bethany.

Mr Cullen had owned and ridden his 250cc Honda motorcycle for approximately two years. Although he had some minor traffic history I accept his mother's contention that a failure to stop on the direction of police was out of character for him.

It is clear from the evidence placed before me at the inquest that he had a wide circle of friends and was very much liked and respected. His death at such a young age has understandably had a profound effect on his family; his mother in particular, and I offer them my sincere condolences.

Background to the pursuit

On the afternoon of Saturday 26 July 2008 Matthew Cullen rode his 250cc Honda motorcycle to the house of his friend, Guy Cooper. After an hour or so of talking and drinking beer Mr Cooper offered to drop Mr Cullen at the house of another friend. This allowed his bike to be left at the house of Mr Cooper and an offer was extended for Mr Cullen to stay the night there – it being his intention to drink during the course of the evening.

It seems that Mr Cullen drank intermittently throughout the rest of the evening, initially at the house of his friend Nathan Atkinson and then with a group of friends at a bowling alley. At around 10.00pm Mr Cooper recalls Mr Cullen returning to his house and asking for the keys to his bike. Although having some concerns about Mr Cullen's state of sobriety, he was persuaded by Mr Cullen's denial of having been drinking since leaving for the bowling alley and his confidence that he was not over the limit.

Matthew set off on the Honda, apparently on his way home. Before setting off he turned on his MP3 player and inserted earphones before putting on his helmet.

Since the commencement of his shift at 4.00pm, Senior Constable Shane Cavanagh of the Bundaberg District Dog Squad had been conducting general purpose dog patrols. At 10:06pm he had finished dealing with a minor public order incident near licensed premises in a shopping centre adjacent to Heidke St when he noticed the Honda ridden by Mr Cullen. His attention was drawn to it by the manner in which Mr Cullen negotiated a roundabout on Heidke St: namely that he travelled through it at high speed and seemingly without checking for other traffic. Senior Constable Cavanagh set off after the Honda and followed it left into Takalvan Street without, at this time, engaging his warning lights or siren. In evidence the officer said that when he came onto Takalvan Street, the motorcycle was between 100 and 200 metres ahead of him.

Takalvan Street consists of two lanes in each direction with a median strip separating the inbound and outbound lanes. Senior Constable Cavanagh observed the motorcycle travelling at what he believed to be an excessive speed (the limit being 70km/h at this point) and attempted to catch up in order to obtain a 'follow speed'. He says that he travelled to within about 100 metres of the Honda after entering Takalvan Street and that he obtained a follow speed of 90km/h. He did not think that he had recorded the speed with accuracy sufficient to warrant a ticket being issued before events intervened.

The RBT site

About 700m north of the intersection of Takalvan and Heidke Street, Sergeant Paul Sullivan and Senior Constable Allan Sutton had set up a stationary random breath testing (RBT) site. It was an area that allowed vehicles to be pulled over safely to a spot where they would not interfere with oncoming traffic. A site safety plan had been prepared for the area and it was a point

familiar to the officers, both having conducted similar duties there on previous occasions.

They commenced stopping vehicles there shortly after 10.00pm and both had performed a number of breath tests when they heard a motorcycle approaching.

Senior Constable Sutton saw the motor cycle travelling in the right hand lane and stepped onto the roadway, into the right side of the right hand lane – *“the right wheel rut”* as he termed it. When the motorcycle was about 75 metres from him he signalled for the rider of the motorcycle to stop by shining his torch on his reflective police clothing and waving a fluorescent red wand pointing to the side of the road. He said the motorcycle was travelling at about the speed limit of 70 km/hr. It seemed to move to the left side of the right lane and so he followed it across *“to show that he meant business”* – that is that it had to stop.

As the motorcycle got closer to him it decelerated to about 55km/hr and then swerved into the left lane and passed by the officer, missing him by about 1.5 metres. Senior Constable Sutton recalls the Honda accelerated as it went around him so that it was soon travelling at 80 to 90km/h.

Sergeant Sullivan’s evidence supports this account in all material particulars.

After unsuccessfully attempting to note the registration details of the Honda, Senior Constable Sutton directed his attention to other on-coming vehicles. They passed either side of where he was standing on the line between the two lanes and he says he then realised the vehicle travelling in the right lane was the police dog squad vehicle of Senior Constable Cavanagh. He recalls this vehicle moving to its right to avoid him. The three officers agree that when the dog squad van was about 50 to 100 metres further along Takalvan Street, near the intersection with Hampson Street, officer Cavanagh activated its flashing bar lights and siren.

Sergeant Sullivan believes Mr Cullen’s motorcycle was about 50 metres in front of Senior Constable Cavanagh’s vehicle when he activated the bar lights but that officer and Ben McLeay, a civilian who had just been breath tested and was driving away from the RBT site estimated there was a gap of 100 metres between the vehicles. All agree it quickly increased as the motor cycle accelerated faster than the 4WD diesel dog squad van was capable of.

Mr McLeay had seen Mr Cullen manoeuvre the motorcycle around Senior Constable Sutton and accelerate away. He was travelling in the left hand lane and recalls being overtaken by the Honda which was travelling in the right lane. He was able to note the registration details of the Honda and followed the police van and the bike down Takalvan Street. Mr McLeay recalls the bike accelerating faster than the police 4WD to the extent that *‘it didn’t look like the four wheel drive was going to get anywhere near the bike, that’s how fast it was going’*.

The collision and aftermath

Senior Constable Cavanagh says that he saw no indication the motorcyclist was going to comply with his direction to stop or indeed that the bike rider was even aware that the police vehicle was behind him. As the bike accelerated away from him and before it reached the intersection with Walker Street, he formed an intention to abandon the attempted intercept. He says that he believed any continued attempt to catch the bike would be futile given the relative speed of the two vehicles. He also stated in interview and at the inquest that he has a personal aversion to pursuing motorcycles that also influenced his decision. He formed an intention to continue along Takalvan Street which would have taken him in the direction of another job with which he had been earlier tasked.

Senior Constable Cavanagh reached for his radio in order to call in the details of the attempted intercept. He left his lights and sirens on as the Honda approached the intersection with Walker Street, where the traffic lights had turned red. He hoped the Honda might stop at the red light. He also indicated when interviewed and in evidence that he considered whether to call in the details and then switch off the lights and siren or vice versa.

Senior Constable Cavanagh estimated that after passing the RBT point his speed did not increase above 80km/h. Sergeant Sullivan believed the police 4WD to be travelling around the speed limit and he stated that it did not increase in speed to any noticeable degree after it passed the RBT site.

It appears Mr Cullen formed an intention to turn left into Walker Street as he approached the intersection. His mother says that this would be consistent with an intention to travel to a nearby friend's house. Senior Constable Cavanagh observed the Honda weave between two other vehicles that were near the intersection. The eye-witness and forensic evidence shows that Mr Cullen, most likely due to the speed of his approach and his near locking of the rear wheel by excessive braking, failed to negotiate the turn. The Honda struck the traffic island which divides Takalvan St with the left hand turning lane. The bike and Mr Cullen were propelled into a traffic sign on the island; the bike continuing in a northerly direction, flipping through the air and coming to a stop on the opposite side of Walker Street while Mr Cullen's momentum was halted by the sign and he came to rest on the island.

Senior Constable Cavanagh estimates he was approximately 300 metres behind the motorcycle when it crashed.

A motorist travelling east on Walker Street saw the flying bike and its sliding rider. He stopped, shocked and not knowing what to do. He said a police van with its lights and siren activated arrived about 10 to 15 seconds after the crash. Two other civilians standing on the footpath in a nearby street also saw parts of the crash and confirm they had time to run to near to the crash scene before the police van arrived.

Senior Constable Cavanagh parked his vehicle on the slip lane and attended to Mr Cullen. With the assistance of two other drivers he attempted to render rudimentary first aid to Mr Cullen who was unconscious and having difficulty breathing. It was immediately clear that he was badly injured and Senior Constable Cavanagh communicated this to the police radio operator and requested an ambulance be summoned.

QAS received a call at 10.09pm and were on scene at 10.15pm.

The two officers manning the RBT point heard the transmission from Senior Constable Cavanagh and, after packing up their equipment attended the scene to assist with traffic direction.

Mr Cullen was transported to Bundaberg Hospital where, sadly, it became quickly apparent that he was unable to be revived. He was declared deceased at 10:50pm.

The autopsy

An autopsy examination was conducted on the body of Mr Cullen by Dr Rosemary Ashby on 29 July 2008.

Dr Ashby found Mr Cullen to have suffered significant chest and abdominal injuries in addition to a fracture of the left femoral neck. These appeared consistent with a motorcycle accident as had been described to her by police.

Dr Ashby issued an autopsy certificate recording the cause of death as:

- 1 (a) Internal haemorrhage, *due to or as a consequence of*
- 1 (b) Chest and abdominal injuries, *due to or as a consequence of*
- 1 (c) Motorcycle-rider accident

Toxicology results based on samples of blood and urine taken at autopsy showed a blood/alcohol concentration of 140mg/100ml or 0.14%. The concentration of alcohol in the urine sample was 154mg/100ml or 0.154%.

The investigation findings

Analysis of urine samples taken from Senior Constable Cavanagh and the two officers manning the RBT site showed that none were under the influence of alcohol.

Observation of the scene revealed the presence of a single skid mark that could be positively linked to the motorcycle of Mr Cullen. It started near the centre of the left lane of Takalvan Street and continued for 32.4 metres in a slight arc to the traffic island separating Takalvan Street from a lane turning left into Walker Street.

Scrape marks were identified at various points on Walker Street and a QPS traffic accident investigator found they evidenced the path of travel of the

motorcycle from the traffic island to its point of rest on the northern edge of Walker Street. The marks were accompanied by a parallel line of oil.

Analysis of the skid mark allowed the accident investigator to determine that over the course of the 32.4 metres, the rear wheel of the motorcycle has been in near, though not total, 'lock up'. Application of recognised mathematical formulae to the distance of the skid mark and final location of the motorcycle indicated a minimum speed range at the commencement of the skid mark of 66.63 to 74.94 km/h. As the momentum of the motorcycle appears to have been diminished by colliding with a fixed object on the traffic island (and the formula applied does not take this into account) it can be said that the minimum speed range would have in fact been higher.

Mechanical inspection of the motorcycle by a QPS vehicle inspection officer showed it to be in a satisfactory condition with the brakes working effectively and the tyres retaining sufficient tread to not have contributed to the cause of the accident.

Findings required by s45

I am required to find, as far as is possible, who the deceased was, how he died, when and where he died and what caused the 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 Matthew Raymond Cullen
How he died -	Mr Cullen died from injuries sustained when he lost control of his motorcycle at the intersection of Takalvan and Walker Streets, Bundaberg while attempting to evade police and affected by alcohol.
Place of death -	He died at the Bundaberg Base Hospital in Queensland.
Date of death -	Mr Cullen died on 26 July 2008.
Cause of death -	He died from internal haemorrhaging consequent to chest and abdominal injuries.

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.

Mr Cullen died as a result of his failure to safely negotiate a left hand turn while riding at excessive speed and under the influence of alcohol. However, it is most likely that at the time he did so he was attempting to evade being intercepted by police and there was indeed an officer in a marked van with flashing lights and a wailing siren following him. I need to consider whether the actions of the officers involved in the attempted interception of Mr Cullen were appropriate. In the first instance, that is gauged by assessing their compliance with the QPS policy regulating intercepts and pursuits.

It is also appropriate that I acknowledge the demonstrated commitment of the QPS to the pursuit of excellence in this very challenging area of public policy.

QPS pursuit policy

On 1 October 2006 the QPS initiated the trial of a new pursuit policy in the Redcliffe and Toowoomba police districts. On 1 January 2008 that policy was implemented state wide.

I am satisfied that the officer involved in this case had received timely training in the policy and had a sufficient working knowledge of it.

I shall now summarise those parts of the policy 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. When an officer on foot has attempted to intercept a vehicle, it has failed to stop and an officer in a vehicle is used to close on the subject vehicle in order to give its driver a further direction to stop, that is also part of an intercept. In that scenario a pursuit is not deemed to commence until it can reasonably be inferred the driver is aware of the mobile officer’s direction and ignores it.

The policy specifically excludes some matters from being sufficient to justify the commencement of a pursuit if a person fails to stop when directed to do so. These are termed “*non-pursuit matters*” and they include license and vehicle checks, random breath tests, traffic and simple offences. It also creates three categories of matters in which pursuits can be undertaken if the conditions make it sufficiently safe to do so. Those categories variously require knowledge that the pursued person has committed an indictable offence or a reasonable belief or suspicion that he or she has done so.

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 commenced 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. 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.

Did this pursuit comply with the policy?

I am not persuaded that there was any basis on which Senior Constable Cavanagh could have been authorised by the QPS policies to commence a pursuit of Mr Cullen because I do not accept that Mr Cullen’s driving could constitute the indictable offence referred to as dangerous operation of a motor vehicle. I am re-enforced in that view by the opinion of the two officers

undertaking the RBT interceptions, both of whom consider Mr Cullen could only be prosecuted for the offence of evade police.

As detailed earlier, generally the policy deems a pursuit to commence as soon as an attempted interception is unsuccessful and the driver can reasonably be believed to be attempting to evade police. However the extended definition of intercept contained in section 14.30.2 means that the attempted intercept was not completed when Mr Cullen ignored Senior Constable Sutton's direction to pull over. Rather, Senior Constable Cavanagh was entitled to give him a further direction by following in his motor vehicle and activating his flashing bar lights and siren.

However, because a pursuit could not be justified, as soon as the officer should have reasonably concluded that Mr Cullen was attempting to evade him, he was obliged to terminate the attempted interception.

I consider it more likely than not Mr Cullen was aware that Senior Constable Cavanagh was following him. He knew he had just failed to stop at the RBT site and he knew there was a marked police car there. It is almost certain he would have been checking his mirrors for signs of his being chased and the coloured flashing lights on the marked dog van would have been very visible. I consider it is more likely than not that he chose to ignore them in the hope of out running the police vehicle. That is the most obvious explanation for his manner of driving.

The question is at what point was Senior Constable Cavanaugh obliged to terminate the attempted interception? As I have said previously, that is not a question that can be determined precisely. Officers must be given some latitude to consider the circumstances and their options. They are required to genuinely attempt to apply the policy and to act reasonably.

The evidence indicates that Senior Constable Cavanagh followed Mr Cullen with the flashing bar lights and siren activated for about 300 to 350 metres before the motor cycle crashed. Travelling at 70km/hr that would have taken the officer about 15 - 18 seconds; if he was doing 80, only about 13 seconds would have elapsed. I do not consider that to be unreasonable in the circumstances of this case. It occurred on a straight section of a dual lane carriageway with light traffic and the manner of driving of the motorcycle was not inherently dangerous. I therefore conclude that Senior Constable Cavanagh did not breach the policy. Thereafter it was appropriate that he leave the flashing lights illuminated as he drove to the crash scene.

If Mr Cullen had not crashed but instead proceeded down Walker Street, it would have been incumbent on the officer to discontinue trying to intercept him. Senior Constable Cavanagh gave evidence that he had already come to the same conclusion and was in the process of giving effect to it when the crash occurred.

While nothing turns on it in this case, I note that consistently with what the court has heard in other similar cases, the officer involved appears not to be aware of the procedures the policy stipulates he follow when an attempted interception is abandoned. That is a matter that will be considered in the hearing to be held next month that will review the policy and its applications.

I close this inquest.

Michael Barnes
State Coroner
Bundaberg
5 November 2009