



OFFICE OF THE STATE CORONER

FINDING OF INQUEST

CITATION: **Inquest into the deaths of Peter Edward Ash and Nicole Florence Ash**

TITLE OF COURT: Coroner's Court

JURISDICTION: Hervey Bay

FILE NO(s): COR 3955/08(7) & COR 3956/08(3)

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FINDINGS OF: Mr Michael Barnes, State Coroner

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REPRESENTATION:

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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, the coroner's written findings must be given to the family of the people 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 deaths of Nicole Florence Ash and Peter Edward Ash. 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

Late on the evening of 18 July 2008 Peter Ash and his wife Nicole were driving east along the esplanade at Torquay in Hervey Bay. Without warning, their vehicle was struck from behind by a Mitsubishi Magna sedan travelling at high speed. This caused Mr Ash to lose control of his vehicle which collided with a power pole and tipped onto its roof. Mr and Mrs Ash were killed instantly.

Immediately prior to the crash, the Magna was being followed by a police vehicle. The officers in it had attempted to intercept the Magna by use of the lights and sirens on the police car, but the driver of the Magna had sped off, overtaking two other vehicles before crashing into the back of the Ashes' car.

These findings:-

- establish the circumstances in which the fatal injuries were sustained;
- confirm the identity of the deceased persons, the time, place and medical cause of their 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 deaths. 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 Inspector Brendan Smith, then of the Internal Investigations Branch.

After securing the scene and arresting Mr Bonner, the police officers involved in the attempted intercept played no further part in the investigation. Officers from the Ethical Standards Command attended the scene within hours and commenced their investigations. Scenes of Crime and Scientific officers, as well as Accident Investigation Officers attended the scene. Photographs were taken

and a detailed scale plan of the scene was compiled. The vehicles and surrounding area were forensically examined and mechanical inspection subsequently undertaken on the vehicles involved.

Witness statements were obtained from a significant number of eye witnesses and interviews conducted with the occupants of the vehicle driven by Mr Bonner. Statements were obtained from all police officers involved in the immediate aftermath of the incident. The two police officers involved in the attempted interception were interviewed under direction on the morning of 19 July 2008 before taking part in video-taped re-enactments of the relevant events. Urine samples were taken from both officers and a blood sample taken from Mr Bonner. CCTV footage was seized from local businesses.

Inspector Smith obtained training records and other documentation relevant to the then recent implementation of an amended QPS pursuit policy. The coronial investigation ran concurrently with a criminal investigation that resulted in Mr Bonner being charged with two counts of dangerous operation of a motor vehicle causing death.

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 Smith for his efforts.

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

Peter Edward Ash, born 20 June 1963, and Nicole Florence Ash, born 31 January 1965, had been together for 24 years. They had a son and a daughter who are now young adults. Mrs Ash was a nurse and Mr Ash was studying to become a driving instructor. They lived at Port Vernon, having moved from Toowoomba in early 2008. At the time of their death they were 45 and 43 years of age respectively. They are sadly missed by their family and friends. I offer the family my sincere condolences.

Background

On the afternoon of 18 July 2008 Samuel Bonner and Benjamin Tanna both of whom were then aged 22 and numerous others attended a birthday party at a house on Beach Road, Pialba. Both drank a quantity of full strength beer during the festivities - Mr Bonner estimates he drank 4 cans and Mr Tanna, ten. Mr Bonner also admits he smoked marihuana during the evening.

At around 11.00pm Mr Bonner decided to go for a drive and invited Mr Tanna to join him. They both took a beer with them to drink as they drove.

In the course of the drive, Mr Bonner recognised three women in the car park of a McDonalds fast food outlet and pulled up for a chat. The three women, Lisa

Green, 17, Jodie Bailey, 21, and Nicole Fleming, 21 asked Mr Bonner for a lift to Jodie's home in Urangan and he agreed.

They drove past the party in Beach road and onto the Esplanade, where they turned right and headed towards Urangan. The Esplanade between Pialba and Urangan runs in a west to east alignment.

Senior Constable Bradley Allen and Constable Kelly Miles of Hervey Bay police station commenced their shifts at 10.00pm on 18 July 2008. They were teamed together and performing mobile patrols around the town. They resolved to drive the length of the esplanade from Point Vernon to Urangan. Consequently, at about 11.25pm they were travelling west on the esplanade near its intersection with Main Street Pialba when Mr Bonner and his passengers passed them travelling in the Magna in the other direction.

Senior Constable Allen says he concluded that the vehicle was speeding and that it may have had an unlawful modification that accentuated its exhaust note. Constable Miles denied thinking the car was speeding but noted its unusual sound. In any event they decided they would intercept the vehicle and have the driver produce his license and undertake a random breath test, as they were entitled to do.

Constable Miles considered it wasn't safe to execute a u-turn where the cars passed and so she drove the 100 to 150 metres to the intersection of Main Street and the Esplanade and negotiated a round-about that allowed the police car to head back along the Esplanade in the direction the Magna had taken. This manoeuvre caused the officers to lose sight of Mr Bonner's car and so as they made their way east they checked side streets for any sign of it.

Quite soon they saw the tail lights of a car that might have been the one they were seeking, but it was a significant distance ahead of them. CCTV footage from the Beach House Hotel at Scarness, approximately 2 kilometres west of the roundabout, shows the police vehicle 46 seconds behind the Magna.

As the vehicles travelled towards Torquay the officers again sighted the Magna some 400-500 metres ahead and then quickly closed on it. CCTV footage from Morocco's Nightclub at Torquay, about 1.3 km west of the Beach House Hotel, shows the police vehicle travelling only 4 seconds behind the Magna, which, if the vehicles were moving at 60 km/hr, would have put them about 65 metres apart.

The CCTV footage confirms that at this point the police officers had not switched on their lights and is consistent with their contention that they did not attempt to intercept the Magna until after this point. It also shows both vehicles travelling considerably faster than other traffic captured on the camera.

The attempted intercept

At around this point the people in the Magna realised the police were behind them. One of the girls says that when this happened the driver immediately increased his speed. Soon after she saw the red and blue lights of the police vehicle in the rear view mirror of the Magna.

Jodie Bailey says that when they went past the Torquay Hotel she looked at the Magna's speedometer and saw it was 120km/hour. She and the other girls began to scream and to tell Mr Bonner to stop but he ignored them. Mr Tanna gave a similar version and said that between Scarness and Torquay the Magna was travelling at about 100km/hr. He also said that Mr Bonner accelerated as soon as he realised the police were behind him.

Mr Bonner said in evidence that as they were going along the esplanade in Scarness he was driving at about 60 km/hr and that he sped up when he saw the police behind him. He wasn't really thinking but that as soon as he saw the police coloured lights he just reacted in an attempt to get away, knowing that he had been drinking.

Ms Bailey said that a little further on, they rounded a left hand bend and came upon two cars and Mr Bonner, without hesitation, overtook them. These vehicles are also seen on the CCTV footage recorded at the Morocco night club. At that point they were 32 and 46 seconds respectively in front of the Magna.

The police officers say that the Magna was not speeding to any great degree when they caught up to it and that the police car was travelling at between 60 and 70 km/hr. In evidence Senior Constable Allen says that he observed the Magna preparing to overtake the two cars referred to by Ms Bailey and that this motivated him to activate the bar lights. He didn't mention this in any of the three earlier versions he gave much closer to the date of the incident and I conclude this evidence can not be relied upon. I am more persuaded by the original evidence of both officers that as they passed Fraser Street, they had caught up to the Magna and the road widened making it an appropriate intercept point.

The evidence of the various witnesses as to the position of the police car when the bar lights and siren were activated varies somewhat, as would be expected. I conclude this occurred in the vicinity of Macks Road, between 800 and 500 metres west of the crash scene.

The cars that were overtaken were a private vehicle and a courtesy bus. Witnesses in those vehicles say the Magna shot past at high speed and without hesitating. The bus driver estimates it was travelling at up to 120km/hr. Senior Constable Allen agrees. A passenger in the private car said the police car was "a couple of seconds" behind the Magna; the bus driver estimated the distance between the two vehicles as 50 metres.

Marie-Lou Balk was driving the private vehicle immediately in front of the Magna prior to the attempted interception. She says she was travelling at 50km per hour and that when the Magna overtook her it was travelling faster than 100km per hour. Nathan Roots was in the same vehicle and gave evidence at the inquest. He recalls only that the Magna was going very fast and that the engine was revving loudly. Both of these witnesses recall being overtaken by the police car within a couple of seconds.

Patrick McNamara was driving in front of Ms Balk in the Hervey Bay Boat Club Courtesy Bus. He estimates that he was travelling at 45 to 50km per hour and that the Magna was travelling at 120km per hour when it overtook him. He noticed the police vehicle behind him and pulled over to allow it to pass.

Both witnesses also say the police car was going considerably slower than the Magna: the bus driver said in his statement he thought it was moving at 100km/hr but he conceded in evidence that it could have been slower. I accept the submission that Mr McNamara's estimation of the speed can not be given great weight but I don't accept the evidence or submission that the police car did not increase its speed when the Magna failed to stop and sped off. Numerous witnesses said they thought the police car was chasing the Magna; although the bus driver said in evidence that when it came past him, he formed the view the police officers had "given up the chase." Nonetheless the police vehicle quickly drew away from him so there was soon some distance between them.

Constable Miles agreed she accelerated in order to overtake the vehicle driven by Ms Balk and the mini bus but by the time she had overtaken these vehicles she noticed the Magna had 'sped away' to be around 300 metres in front of her and so she took her foot off the accelerator. Senior Constable Allen recalls that by the time they passed the mini bus the Magna was 'pulling well away up the road'. He contacted police communications at this point with the intention of asking other vehicles to look out for the Magna.

Constable Miles states that when she had taken her foot off the accelerator, her intention to abandon the attempted intercept was manifested by her reaching to switch off the lights and sirens. She was not successful in this regard due to her unfamiliarity with the placement of the relevant switch in the vehicle she was driving that evening.

At the inquest Senior Constable Allen said for the first time that he made a conscious decision to leave the flashing lights on to warn other road users but told Constable Miles to turn off the siren. In view of the ever increasing distance between the police car and the Magna this is illogical and unconvincing.

At this moment the officers saw movement and sparks on the road in front of them. The radio transmission from Senior Constable Allen to police communications – following immediately on from his earlier brief communication - indicates it was immediately clear to him that a serious accident had occurred.

The witnesses in the Magna said they saw the other car but the Magna was travelling too fast to avoid it. Ms Bailey suggested the other vehicle, which we now know contained Mr and Mrs Ash may have been slowing to turn right.

The collision and aftermath

The Magna collided with the rear right hand side of the Ashes' Mazda propelling it forward and to the left. The Mazda side-swiped a parked vehicle, struck a power pole on the passenger side and then tipped over onto its roof. Mrs Ash was thrown from the vehicle while Mr Ash remained trapped upside down in the driver's seat when it came to rest.

Mr Bonner, unsurprisingly, lost control of the Magna which crossed onto the wrong side of the road, colliding with another parked vehicle and a concrete power pole.

Senior Constable Allen and Constable Miles were quickly on the scene and attended to Mr and Mrs Ash but neither had a pulse and it was immediately clear that they were deceased. The three women in the rear of the Magna were injured in the collision. Mr Bonner and Mr Tanna had only minor injuries and both were arrested at the scene, although Mr Tanna was subsequently released.

QAS and QFRS officers attended the scene and transported the injured to hospital.

The bodies of Mr and Mrs Ash were also taken to Hervey Bay Hospital where life extinct certification was formalised at 5am on 19 July 2008. The bodies were later identified by their daughter Sharray Ash.

The autopsy

Autopsy examinations were carried out on the bodies of Mr and Mrs Ash on 23 July 2008 and 22 July 2008 respectively.

Blood and urine samples taken during the autopsy examination were analysed and showed that neither was affected by alcohol at the time of death. The injuries suffered were consistent with a motor vehicle accident and autopsy reports were issued recording the cause of death as follows:

Nicole Ash 1(a) Multiple trauma, *due to or as a consequence from*
 1(b) Motor vehicle accident

Peter Ash 1(a) Cerebral haemorrhage, *due to or as a consequence from*
 1(b) Head injury

The investigation findings

Tests conducted on blood taken from Mr Bonner confirmed his blood alcohol reading at 0.078% and revealed the presence of active and inactive metabolites of cannabis. An analysis of Mr Bonner's toxicology results by Dr Adam Griffin led him to opine that at the time of the collision Mr Bonner's ability to control a motor vehicle would have been severely impaired. Dr Griffin noted the depressant effect of the two drugs on the central nervous system would have been additive.

Analysis of urine samples taken from the two police officers revealed neither was affected by alcohol or drugs.

Mechanical inspection of the Magna by a QPS Vehicle Inspections officer found the front and rear left hand tyres to be devoid of sufficient tread and in an unsatisfactory condition, but otherwise found no defects which may have contributed to the accident.

Criminal proceedings

On 10 November 2008 Samuel Bonner pleaded guilty to two counts of dangerous driving causing death and was sentenced to eight years imprisonment.

Findings required by s45

I am required to find, as far as is possible, who the deceased people were, how they died, when and where they died and what caused their 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 were Nicole Florence Ash and Peter Edward Ash
- How they died -** They died as a result of injuries sustained when their vehicle was struck by another vehicle which, at the time, was attempting to evade police officers who had tried to intercept it.
- Place of death -** They died at Hervey Bay in Queensland.
- Date of death -** Mr and Mrs Ash died on 18 July 2008.
- Cause of death -** Mrs Ash died as a result of multiple trauma and Mr Ash died from cerebral haemorrhage suffered in the moments after collision.

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 cause of the terribly sad deaths of Nicole and Peter Ash was the dangerous drunken driving of Samuel Bonner. I am unaware of anything I could suggest that might reduce the likelihood of young men engaging in such high risk behaviour – it is a problem that has confronted society for centuries that has been amplified more recently by the ready availability of powerful cars, drugs and alcohol.

More amenable to change are the policies and practices of the Queensland Police Service. Accordingly I shall summarise the relevant policies and consider whether they were adhered to by the officers involved in this case. I shall have regard to any lessons that may be learnt from this case when compiling a report into those policies that reviews similar assessments made in relation to seven other deaths that were associated with police pursuits and that have been the subject of inquests in recent months.

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. These reforms evidence the ongoing commitment of the QPS to the pursuit of excellence in this very challenging area of public policy.

I am satisfied that the officers involved in the 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.

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 license and vehicle checks, random breath tests and traffic offences.

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?

As the two officers involved acknowledged, there was no justification to commence a pursuit of the Magna driven by Mr Bonner if he failed to comply with their direction to stop: the attempted intercept was clearly for a ‘non-pursuit matter’. There was, therefore, an obligation to abandon the attempted intercept once the Magna failed to stop as soon as reasonably practicable and the officers believed on reasonable grounds that the driver was attempting to evade police.

It is obvious the officers made a concerted effort to locate the Magna with a view to intercepting it, as was appropriate. I do not accept the submission that they meandered along the Esplanade: the CCTV footage at the Beach House Hotel and the Morocco nightclub indicates they narrowed the gap from about 750 metres to about 65 metres over the 1.3 km interval between those points. While the possibility of the Magna slowing for pedestrians or traffic can not be excluded, the footage at the latter location shows that by then the police car was in hot pursuit. I also accept the evidence of those in the Magna that when the police car closed on it Mr Bonner accelerated. This is supported by the speed with which he caught up to the courtesy bus which at the nightclub was over 500 metres ahead of the Magna.

We now know that Mr Bonner was attempting to evade the police and in my view that was the most reasonable and obvious interpretation of his overtaking the other vehicles after the police officers activated the flashing lights and siren on their vehicle. On that basis, continuing to attempt to intercept him by also overtaking the same vehicles rather than stopping and extinguishing the bar lights would be in breach of the policy.

Even after overtaking the bus the police officers did not stop their vehicle and extinguish the lights and siren as required when an attempted intercept is abandoned.

I accept however, those views have been reached with the luxury of extended forensic analysis of the circumstances. Police officers must be given some latitude or lee-way when their conduct concerning such matters is being critiqued having regard to the dynamic and volatile setting in which they must make the relevant decisions. These are not scientific calculations which can be determined with precision: rather officers must weigh heterogeneous imponderables and balance competing interests. They can only be expected to act reasonably and to comply with policy to the best of their ability.

I accept that the officers, in effect, ceased their attempt to intercept the Magna very soon after Mr Bonner accelerated away from them conscious of the requirements of the policy. The fatal crash occurred within seconds of that happening. Any transgression of the policy was minor and transitory. I do not consider any unreasonable actions of the officers contributed to the crash occurring. I do not consider the officers should be criticised for their conduct.

I close the inquest.

Michael Barnes
State Coroner
Hervey Bay
3 November 2009