



*Western*

*Australia*

## **RECORD OF INVESTIGATION INTO DEATH**

*Ref No: 5/2015*

*I, Rosalinda Vincenza Clorinda FOGLIANI, State Coroner, having investigated the death of **Luke Ross BEVEN**, with an Inquest held at Court 51, Central Law Courts, 501 Hay Street Perth on 10 February 2015 find that the identity of the deceased person was **Luke Ross BEVEN** and that death occurred on 13 January 2012 at Royal Perth Hospital as a result of multiple injuries in the following circumstances -*

**Counsel Appearing :**

Ms Kate Ellson assisting the State Coroner

Mr Matthew Holgate appeared on behalf of the Commissioner of Police, and police officers Williams and Watson

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## SUPPRESSION ORDER

**That there be no reporting or publication of the details of WA Police Emergency Driving Policy**

### INTRODUCTION

Luke Ross Beven (the deceased) was 18 years old when he died on 13 January 2012 after the vehicle he was travelling in as a passenger collided with several trees on the verge of Fremantle Road in Gosnells. Upon impact the vehicle was torn apart and the deceased was ejected onto the ground, sustaining multiple injuries that caused his death. He was the only passenger in the vehicle. The collision occurred shortly after 11.00pm on 12 January 2012. The deceased was alive for a short period after he was ejected from the vehicle. He was conveyed by ambulance to Royal Perth Hospital and pronounced dead in the early hours of 13 January 2012.

Before the collision, the vehicle was being pursued by the police who were in an unmarked police vehicle, with lights and sirens. Both vehicles were being driven at high speeds. On 23 January 2013 Craig James Norris, the driver of the vehicle in which the deceased was a passenger, was convicted on his plea of guilty and sentenced for the manslaughter, that is, the unlawful killing, of the deceased. On that date Mr Norris was also convicted on his plea of guilty and sentenced for driving under suspension and



failing to render assistance to the deceased following the accident.

The deceased's death was a reportable death within the meaning of section 3 of the *Coroners Act 1996* (the Act) and it was reported to the coroner as required by section 17 of the Act.

By reason of section 19(1) of the Act I have jurisdiction to investigate the deceased's death. The holding of an inquest, as part of this investigation, is mandated by reason of section 22(1)(b) of the Act because it appeared that the death was caused, or contributed to, by an action of a member of the police force.

Section 22(1)(b) is enlivened when the issue of causation or contribution in relation to a death arises as a question of fact, irrespective of whether there is fault or error on the part of the police. Section 25(5) of the Act prohibits me from framing a finding or comment in such a way as to appear to determine any question of civil liability or to suggest that any person is guilty of an offence.

This inquest takes place after criminal proceedings against Mr Norris have been concluded and section 53(2) of the Act prohibits me from making a finding inconsistent with the result of those proceedings.



On 10 February 2015 I held an inquest into the death of the deceased at Perth Coroners Court. The question explored at the inquest was whether the deceased's death was caused or contributed to by any action on the part of the police. Within this context, at the inquest I examined the actions of the police in endeavouring to intercept and then pursuing the vehicle in which the deceased was a passenger. My examination included the process by which the police sought authorisation for the pursuit, an assessment of whether the Western Australian Police Emergency Driving Policy and Guidelines had been breached and if so, whether that breach, or indeed any other police action, caused or contributed to the deceased's death.

A number of witnesses gave evidence at the inquest and they are, in order of their appearance, Ms Amanda-Lee Beven the deceased's mother, Detective Inspector George McIntosh currently attached to the Major Crime Division formerly of the Internal Affairs Unit, Mr Peter Morris and Mr Darren Ewen both eye witnesses to a portion of the material facts, Senior Constable Matthew Williams the driver of the unmarked police vehicle (holding the rank of Constable at the material time), Detective First Class Constable Simon Watson passenger on duty in the unmarked police vehicle (holding the rank of Constable at the material time), and Superintendent Lance Martin divisional officer in charge of the Police Communications Centre.



The documentary evidence adduced at the inquest comprised two lever arch files, volume 1 tabs 1 to 23 became Exhibit 1, volume 2 tabs 4 to 21 became Exhibit 2 and maps with markings by Mr Morris, Mr Ewen and Senior Constable Williams became exhibits 3, 4 and 5 respectively. After the inquest through Ms Ellson I sought further submissions from Mr Holgate concerning the suppression order he sought on behalf of the Commissioner of Police and I sought further information concerning the treatment and care rendered to the deceased at Royal Perth Hospital following his arrival there by ambulance.

I received the response from Mr Holgate on behalf of the Commissioner of Police. I received the information from Royal Perth Hospital, extracts of which are now incorporated as Exhibit 6 with a copy provided to Mr Holgate.

### **THE DECEASED**

The deceased was born on 23 January 1993, the eldest of three sons, to Mr and Ms Beven. As a child he had a keen interest in sport. That interest was matched by his ability and he went on to play baseball at interstate level during his upper primary school years.

His mother described him as a hyperactive child, who also excelled in mathematics. Whilst he initially appeared to



have a bright academic future ahead of him, over time he began to experience difficulty controlling his behaviour at school. The deceased's mother endeavoured to intervene and assist, but by year nine his high school teachers formed the view that he ought not continue his education there. They encouraged him to undertake vocational training. The deceased left school in year nine and undertook training in bricklaying and later forklift driving. He obtained certificates as to his competency and for a time he was employed in those trades. He particularly enjoyed the forklift driving. His employment prospects were positive, because he had found work that was satisfying for him.

The deceased had been a social child. He enjoyed the company of friends and girlfriends and as a teenager he was very close to his brothers. Sadly, as he grew older he began to use drugs and as a result he became dysfunctional. Inevitably, the deceased's drug use impacted adversely on his relationship with his family. In the two months prior to his death, the deceased's mother had not seen him. She had decided to maintain her distance from him due to his drug use. At the time she hoped that the separation would encourage the deceased to accept some responsibility for his behaviour.

Tragically the deceased's parents were unable to see their son grow up and their hopes that he might mature were dashed.



The driver of the vehicle and the deceased had both used methylamphetamine prior to the collision. The deceased has been identified by dental records.<sup>1</sup>

## **THE POLICE PURSUIT**

The deceased was the only passenger in a Ford Falcon sedan registration 1BPH566 (the Ford Falcon). That vehicle was being driven by Mr Norris and it was registered to his partner. He was driving it with her permission. At that time, Mr Norris' licence had been suspended and he had no authority to drive.<sup>2</sup>

Senior Constable Williams was driving an unmarked police vehicle, a Ford Falcon sedan styled JG103 (the police vehicle). With him was Detective First Class Constable Simon Watson. They were conducting patrols in the Huntingdale area.<sup>3</sup>

At the material time Senior Constable Williams possessed a current certificate of competency for Priority 1, Priority 2 and Pursuit Emergency Driving and he was driving a Class 1 police vehicle. He had been certified for approximately four years.<sup>4</sup> Detective First Class Constable Watson was not

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<sup>1</sup> Exhibit 1, Tab 2

<sup>2</sup> Exhibit 1, Tab 5 and Tab 21

<sup>3</sup> T53 and T81

<sup>4</sup> T 51 and T63 and Exhibit 2, Tab 15



qualified for Pursuit Emergency Driving, but as a passenger he had participated in authorised pursuits previously.<sup>5</sup>

The police first spotted the Ford Falcon on Warton Road in Huntingdale. They initially endeavoured to intercept it and when it became apparent that the Ford Falcon was not going to stop, the police initiated their pursuit.

The section of Fremantle Road where the pursuit occurred is a dual carriageway that provides two lanes in each direction for opposing traffic. The carriageways were flat and level. The road is of sealed bitumen construction. On that night it was dry and in good condition, the street lighting was operational and the road was well lit. Throughout the pursuit, both vehicles were on the correct side of the road and their headlights were on. The posted speed limit for that area was 60 kilometres per hour. The surrounding area was primarily residential.<sup>6</sup>

### **The initial police attempt to intercept the Ford Falcon**

As the Ford Falcon was being driven by Mr Norris along Warton Road heading towards the intersection with Corfield Street the police were travelling along Warton Road in the opposite direction.

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<sup>5</sup> T78

<sup>6</sup> Exhibit 1, Tab 8, Tab 18, Tab 19 and Tab 23, attachment 2





The police saw the Ford Falcon and after information provided by Detective First Class Constable Watson, Senior Constable Williams conducted a U-turn with the intention of intercepting the Ford Falcon in order to conduct a licence check and breath test of the driver, as part of his routine police duties.<sup>7</sup>

The police followed the Ford Falcon along Warton Road towards the intersection with Corfield Street. There the police waited until Mr Norris had turned right into Corfield Street and once he had driven through the intersection, the police were behind him and they activated their emergency lights with the aim of attracting his attention to cause him to pull over, that is, to intercept the Ford Falcon.

Senior Constable Williams was aware of a bus lane on the left hand side along Corfield Street and his aim had been to have the Ford Falcon pull over into that lane. Initially it appeared as though the Ford Falcon was about to pull over into the bus lane and Senior Constable Williams estimated that it had slowed down to approximately 15 to 20 kilometres per hour.<sup>8</sup> Then the Ford Falcon pulled out of the bus lane back onto the main carriageway and continued along Corfield Street at the speed limit, turning left into Fremantle Road at the roundabout. The police continued to

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<sup>7</sup> Exhibit 1, Tab 23, attachment 2

<sup>8</sup> T58 and Exhibit 5



follow it, at the speed limit and with the emergency lights activated.<sup>9</sup>

### **The commencement of the pursuit**

Shortly after the police turned left into Fremantle Road the Ford Falcon, which was then approximately 30 to 50 metres in front of the police vehicle, accelerated heavily away from them. It became readily apparent that the Ford Falcon was not going to heed and comply with the instruction to stop. At this point, the police activated the emergency sirens with the lights and commenced their pursuit of the Ford Falcon. Both vehicles commenced to travel at speeds well beyond the posted speed limit of 60 kilometres per hour.<sup>10</sup>

As Senior Constable Williams began his pursuit of the Ford Falcon along Fremantle Road, Detective First Class Constable Watson tried to contact the Police Operations Centre to communicate the commencement of the pursuit and to provide the requisite details with the aim of seeking permission to continue the pursuit.<sup>11</sup>

Detective First Class Constable Watson was not immediately successful in making contact with the Police Operations Centre and communicating his request. By a combination

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<sup>9</sup> T54 and Exhibit 1, Tab 23, attachment 2

<sup>10</sup> T16 – 17; T61 – 62; Exhibit 2, Tab 15 and Exhibit 5

<sup>11</sup> T83 -89 and Exhibit 2, Tab 15



of other usage of the police radio, and the possible “clipping”<sup>12</sup> of part of the conversation as a result of him speaking before depressing the “press-to-talk” function, some half a minute expired before he was able to clearly communicate the initial tranche of information concerning the pursuit. Contact was made just before the police vehicle reached the intersection of Fremantle Road with George Street. At this stage the Ford Falcon was approximately 200 metres in front of the police vehicle.<sup>13</sup>

### **The speed of the police vehicle**

Senior Constable Williams gave evidence at the inquest concerning the speed at which he was travelling. He said that he slowed down as he went through the George Street intersection (it was a green traffic light) and then he accelerated heavily along Fremantle Road, to continue his pursuit. It was at this stage, whilst he was making the requisite assessment of the surrounding conditions that he looked down and noticed that the speedometer indicated he was travelling at a speed of 152 kilometres per hour, which was greater than the maximum permissible under the Emergency Driving Policy and Guidelines under those particular circumstances.<sup>14</sup>

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<sup>12</sup> As explained by Superintendent Martin at T104

<sup>13</sup> T54 – 59; T83 – 89; T104 -105 and Exhibit 5

<sup>14</sup> T59 and Exhibit 1, Tab 23, attachment 2



Senior Constable Williams immediately decelerated so as to bring his speed back to no more than the maximum permissible speed. At this stage the Ford Falcon was approximately 400 metres in front of the police vehicle. As he decelerated, the distance between the police vehicle and the Ford Falcon grew and he believed that at this stage the Ford Falcon was travelling at about 170 kilometres per hour.<sup>15</sup>

At the point at which Detective First Class Constable Watson looked at the speedometer, it indicated to him that the police vehicle was being driven at the maximum permissible speed for those circumstances and that was what he told the operator from the Police Operations Centre when he made contact. He did not recall the police vehicle travelling at a greater speed than that.<sup>16</sup>

Fremantle Road curves slightly to the left and then slightly to the right after the King Street intersection, and Senior Constable Williams further decelerated to take account of the curve in the road. At around this time, he observed a Holden Utility travelling in the same direction and it was positioned between the police vehicle and the Ford Falcon.<sup>17</sup> Just before Senior Constable Williams lost sight of the Ford Falcon around the left hand curve on Fremantle Road, near the intersection of Homestead Road, he noticed the driver

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<sup>15</sup> T59; Exhibit 1, Tab 23, attachment 2, and Exhibit 5

<sup>16</sup> T90, Exhibit 2, Tab 12

<sup>17</sup> Exhibit 1, Tab 23, attachment 2



appeared to lose some control of his vehicle and that it slid. He did not recall seeing the Ford Falcon's brake lights illuminate at this point (though he had seen them illuminate earlier on when he thought the driver was going to stop at the bus lane).<sup>18</sup>

The Ford Falcon collided with the trees shortly after it went into an uncontrolled slide on the left hand bend. The police had not terminated their pursuit prior to the collision. Detective First Class Constable Watson was still in the initial stages of speaking with the operator from the Police Operations Centre to seek permission to continue the pursuit when the collision occurred. The voice recordings indicate that he made contact to seek permission at approximately 11.17pm and that he communicated the occurrence of the collision to the operator immediately he became aware of it at approximately 11.18pm.<sup>19</sup>

### **Observation of the pursuit**

Part of events surrounding the pursuit were observed by a resident, Mr Ewen, who gave evidence at the inquest. Late that night Mr Ewen first heard the police sirens and then he heard the Ford Falcon as it reached the area around the traffic lights at George Street. He described the Ford Falcon as a powerful car and he recalled hearing its tyres

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<sup>18</sup> T54 – 55; T60 – 61; T70; Exhibit 1, Tab 23, attachment 2 and Exhibit 5

<sup>19</sup> T65 – 66; T86 -89



screeching as it accelerated away. He was able to briefly observe it from within his house as it went past. He estimated that the Ford Falcon was travelling at speeds of between 100 and 120 kilometres per hour. He went outside and he smelt what appeared to him to be burning rubber. Shortly afterwards, he observed a police car travelling in the same direction of the Ford Falcon, at speed, with lights and sirens. Moments later he heard the sound of the collision. He went to the site of the collision.<sup>20</sup>

At the inquest Mr Ewen's evidence was consistent with other evidence before me to the effect that the Ford Falcon was travelling along Fremantle Road at speed, that it was on the correct side of the road, that the area was well lit and that the police car was pursuing it at speed. His evidence was also generally consistent with the other evidence before me regarding the timing and sequence of events. I am satisfied that the sounds of the police sirens and the screeching tyres that Mr Ewen heard reflect the commencement of the pursuit.

On all of the evidence before me I am satisfied that the police pursuit commenced at about 11.17pm on the night of 12 January 2012, that it lasted less than a minute over a short distance and during that whole time, the police were actively seeking permission to continue with their pursuit.

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<sup>20</sup> T45 – 49 and Exhibit 1, Tab 7



## **THE COLLISION**

The collision occurred at approximately 11.18pm on 12 January 2012 as a consequence of the Ford Falcon's driver losing control whilst travelling at speeds of between 117 and 144 kilometres per hour in an easterly direction along Fremantle Road. The impact occurred a short distance prior to the controlled rail crossing before the intersection with Albany Highway. The Ford Falcon came to rest off the northern side of the carriageway, on its wheels and facing back towards the direction it had come from.<sup>21</sup>

### **Observation of the collision**

Mr Morris was the driver of the Holden Utility that Senior Constable Williams had observed positioned in between the police vehicle and the Ford Falcon just prior to the collision, and he gave evidence at the inquest.

Mr Morris was driving to work that night and he made a right hand turn from King Street onto Fremantle Road heading towards Albany Highway. He was in the right hand carriageway of the left hand lane. He described a vehicle come "flying" past him in the left hand carriageway,

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<sup>21</sup> Exhibit 1, Tab 19



travelling in the same direction. I am satisfied that vehicle was the Ford Falcon being driven by Mr Norris.

Moments earlier, when Mr Morris had looked to the left along Fremantle Road, in preparation for his right hand turn, he had not seen the Ford Falcon. He estimated the Ford Falcon as travelling at about 140 or 150 kilometres per hour and he believes it narrowly missed colliding with the front of his Utility because he observed it going past on the left hand side about one foot away from the front of his vehicle. Then it pulled in front of his vehicle. The carriageways were flat and level, and there was a slight left hand bend followed by a slight right hand bend in the road.<sup>22</sup>

As soon as the Ford Falcon passed his car, Mr Morris observed it slide for a distance along Fremantle Road and then he observed it collide with a kerb and a tree. The Ford Falcon was torn into several pieces immediately upon impact and debris from the torn car parts was scattered over a large area. To Mr Morris it appeared to have exploded upon impact. Mr Morris did not observe the activation of brake lights at the rear of the Ford Falcon at any stage.<sup>23</sup>

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<sup>22</sup> Exhibit 1, Tab 18

<sup>23</sup> T39 – 42 and Exhibit 1, Tab 6





As Mr Morris approached the site of the collision, he slowed down and stopped. Then he saw the police arrive. He recalled that when he had first checked his rear vision mirror, the police car was not yet visible.<sup>24</sup> Mr Morris' evidence is consistent with the other evidence before me regarding the timing and sequence of events, including the fact that at the moment of collision, there was some distance between the police vehicle and the Ford Falcon.

### **Actions of the police after the collision**

The police did not witness the moment of impact, but as they came around the curve along Fremantle Road at around the King Street intersection they saw the Ford Falcon had crashed a short distance prior to the controlled rail crossing. There was debris strewn over a large area on the road and the northern verge. They saw that the Ford Falcon itself had turned around so that, as the police pulled up some 25 to 30 metres behind it, they were facing the driver who was observed to be moving around in his seat. During the pursuit, the police had not been able to establish whether or not there were any passengers in the Ford Falcon.<sup>25</sup>

Senior Constable Williams ran towards the Ford Falcon and as he checked it he became aware that the driver, whom he had seen moments before, had run away in the direction of

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<sup>24</sup> T42

<sup>25</sup> T55 and Exhibit 1, Tab 8



the railway line. Senior Constable Williams gave chase assisted by Mr Morris who lit up the area for him with his vehicle headlights on high beam. He did not immediately locate the driver, so he returned to the site of the collision. Senior Constable Williams did not initially notice any other person and he returned to the police vehicle to turn off the sirens.<sup>26</sup>

Both police officers continued to search the site of the collision for signs of any other person and shortly afterwards Detective First Class Constable Watson located the deceased and he informed Senior Constable Williams. An ambulance was called for and both police officers went to render assistance to the deceased pending the arrival of the ambulance.

Other police officers arrived to assist at the scene and to deal with the diversion of traffic.<sup>27</sup>

### **THE DECEASED'S INJURIES**

The deceased, who had been ejected from the Ford Falcon by the force of the collision, was found lying on the ground next to a brick fence on the road verge, close to the

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<sup>26</sup> T55

<sup>27</sup> Exhibit 1, Tabs 10 - 14



wreckage. He was located within a few minutes of the police arriving at the site.<sup>28</sup>

As Senior Constable Williams and Detective First Class Constable Watson endeavoured to render assistance to the deceased, they observed that he was unconscious, but he was making noises, he was breathing and he had a pulse.<sup>29</sup>

An ambulance had been called for at approximately 11.20pm. The paramedics departed immediately, arriving at the site of the collision within approximately 8 minutes of the initial call. Upon arrival the paramedics attempted to resuscitate the deceased with intravenous fluids and they inserted an endotracheal tube to assist with his breathing. With the assistance of the police, the deceased was transferred onto the ambulance. He was conveyed directly to Royal Perth Hospital, given the extent and severity of his injuries.

On the way to the hospital, the ambulance paramedics continued their attempts to resuscitate the deceased with intravenous fluids. The deceased arrived by ambulance at Royal Perth Hospital just prior to midnight on 12 January 2012. At that point he was still alive, but critically injured. The clinicians at the hospital took over the resuscitation attempts by assisting with the deceased's respiration. The

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<sup>28</sup> T81; Exhibit 1, Tab 8 and Tab 23, attachment 2

<sup>29</sup> T56



deceased's condition continued to rapidly deteriorate and tragically, he was unable to be saved. The deceased went into cardiac arrest and he was pronounced dead at Royal Perth Hospital at six minutes past midnight on 13 January 2012.<sup>30</sup>

### **CAUSE AND MANNER OF DEATH**

On 17 January 2012 Forensic Pathologist Dr J. White made a post mortem examination of the deceased at the State Mortuary. The examination showed multiple injuries, including injuries to the head, the cervical spine and internal organs. There were also multiple soft tissue injuries to the body.

Further examinations were undertaken as part of the post mortem examination. A neurological macroscopic assessment was conducted and concluded that the deceased suffered a traumatic brain injury.

Toxicology analysis for the deceased showed methylamphetamine lying within the normal recreational use range and tetrahydrocannabinol consistent with recent cannabis use.

On 18 June 2012 after receipt of the neurological macroscopic assessment, the forensic pathologist confirmed



the opinion that the cause of the deceased's death was multiple injuries.

The deceased was a passenger in a car being driven by Craig Norris, who was driving under the influence of drugs. After the collision, Mr Norris only had minor injuries and he fled the scene without checking on the deceased's welfare. He was located a short time later by the police using a police dog.<sup>31</sup> Professor Joyce, Physician, Clinical Pharmacology and Toxicology reported upon the likely effect of the drugs that Mr Norris had taken upon his behaviour and ability to drive:

*“Mr Norris had blood concentrations of methylamphetamine and amphetamine that indicated a state of intoxication at the time of driving. The circumstance of the accident and the driver's actions before the crash are fully consistent with intoxication with these drugs. Flight on foot after the crash and failure to attend an injured passenger are peculiarities of the amphetamine-intoxicated driver. It is therefore my opinion that Mr Norris was affected by drugs while driving and was incapable of safely driving a motor vehicle under normal driving conditions as a result”.*<sup>32</sup>

On 23 January 2013 Mr Norris was sentenced in the Supreme Court for the manslaughter of the deceased. He was also sentenced for driving under suspension and failing to render assistance to the deceased following the accident.

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<sup>31</sup> Exhibit 1, Tab 21 and Exhibit 2, Tab 19

<sup>32</sup> Exhibit 2, Tab 19



I find the cause of the deceased's death was multiple injuries.

I find the manner of death was unlawful homicide.

## **VEHICLE EXAMINATIONS AND CRASH RECONSTRUCTION**

Both vehicles were examined by investigators from the Vehicle Investigation Unit, State Traffic Operations, on 16 January 2012.<sup>33</sup>

The police pursuit vehicle had no defects and did not show evidence of recent damage. It was road tested and the steering and brakes responded in a normal manner and within standard parameters.

The Ford Falcon was shown to have sustained an impact to the front and to have separated. The damage was extensive, the vehicle was reduced to a total wreck and it was unable to be road tested. Its right rear tyre was unserviceable, which may have lessened the traction or grip to the road surface than that of a tyre with a serviceable tread depth surface.

The Major Crash Investigation Section undertook an initial forensic crash reconstruction assessment and followed that

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<sup>33</sup> Exhibit 1, Tab 4 and Exhibit 2, Tab 18



with a final forensic report into the fatal collision.<sup>34</sup> These are to the effect that the Ford Falcon lost control on the left hand bend. The principal evidence was a set of curved tyre marks, the outer one being approximately 65 metres long and the inner one being approximately 48 metres long.

The tyre marks reflected that the Ford Falcon continued towards the northern verge and that it slid in an anti-clockwise direction. The tyre marks led to the base of a tree that had fresh impact damage. The Ford Falcon collided with the tree at an angle through the right front forward and left front passenger side as the vehicle rotated around the tree. The front left section tore free and continued forward and the rear of the vehicle, having rotated, collided with another tree.<sup>35</sup>

The final Major Crash Investigation Vehicle Crash Report found that the Ford Falcon was attempting to negotiate a curved path with the radius of the curved path smaller than the speed of the vehicle would allow. When the Ford Falcon finally left the carriageway, it was experiencing an anti-clockwise rotation about its centre of mass and it was sliding, driver's side first, at an approximate angle of 45 degrees to the roadway.<sup>36</sup>

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<sup>34</sup> Exhibit 1, Tabs 18 and 19

<sup>35</sup> Exhibit 1, Tab 18

<sup>36</sup> Exhibit 1, Tab 19



Mr Morris had estimated the Ford Falcon was travelling at about 140 or 150 kilometres per hour, and the subsequent initial critical speed calculations of the Major Crash Investigation Section determined a speed of 135 kilometres per hour, plus or minus 10 per cent.<sup>37</sup> On further and final analysis, the Major Crash Investigation Section's Vehicle Crash Report determined that the calculated speed of the Ford Falcon was 131 kilometres per hour and that allowing a tolerance of plus or minus 10 per cent it was travelling at a calculated speed of between 117 and 144 kilometres per hour at the commencement of the tyre marks that indicate the point at which the driver lost control of the Ford Falcon.<sup>38</sup>

### **THE BREACH OF THE EMERGENCY DRIVING GUIDELINES**

The period of the police pursuit was less than one minute and the entire events from the time the police spotted the Ford Falcon up until the time of the collision unfolded over a period of less than two minutes.

Senior Constable William's evidence was that approximately one and a half minutes elapsed from the time he first followed the Ford Falcon along Warton Road until the time he lost sight of it immediately prior to the collision.<sup>39</sup>

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<sup>37</sup> Exhibit 1, Tab 18

<sup>38</sup> Exhibit 1, Tab 17 and 19

<sup>39</sup> T63; Exhibit 1, Tab 23 and Exhibit 5





Whilst Senior Constable Williams' evidence was to the effect that Detective First Class Constable Watson was seeking permission for the police to engage in the pursuit, it is clear that they had already begun that pursuit at that point. Given Senior Constable Williams' competency, the class of the police vehicle, the risk assessments he had made and the surrounding circumstances, his commencement of the pursuit was in accordance with the Western Australian Police Emergency Driving Policy and Guidelines (the Guidelines). The purpose of Detective First Class Constable Watson's call to the Police Operations Centre was to immediately communicate that the pursuit had in fact commenced (i.e. to "call" the pursuit), to provide the requisite information and to await the permission from the Police Operations Centre Communications Controller to continue the pursuit, or to terminate it, as the case may be.<sup>40</sup>

During this time, Detective First Class Constable Watson independently made his own risk assessments. As described above he made a number of attempts to get through to the Police Operations Centre and when he finally made contact, the collision occurred within a matter of seconds.<sup>41</sup>

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<sup>40</sup> T68 – 70 and T82 - 83

<sup>41</sup> T83 – 89 and T97



At the inquest Detective Inspector McIntosh confirmed that within the time frames of this particular incident, it would not have been possible for the Police Operations Communications Centre Controller to have had the time to consider the relevant factors and decide whether to provide authority for the pursuit to continue, irrespective of whether the timing was affected by other radio traffic.

Based on the facts of this incident Detective Inspector McIntosh's evidence was to the effect that he believed he would have granted authority to extend this particular pursuit. He confirmed that he has previously performed the role of authorising pursuits at the Police Operations Centre for a period of 12 months, he first qualified as a pursuit driver in 1983 (with his authority in that regard expiring approximately 12 months ago when he elected not to renew it) and he has previously been an instructor at the Driver Training Unit.<sup>42</sup>

I am satisfied that the commencement of the pursuit was not in breach of the Emergency Driving Policy and Guidelines. In the circumstances of this case, it was a pursuit that had properly commenced and the police were seeking permission for its continuation. However, when Senior Constable Williams exceeded the maximum permissible speed, the pursuit was in breach of those Guidelines. The pursuit did not ever receive the express

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<sup>42</sup> T19 – 21 and T34



permission (or response) of the Police Operations Centre Communication's Controller due to the time frames involved.

I take into account the evidence of both of the police officers to the effect that when contacting the Police Operations Centre, it had not been their intention to seek permission to exceed the maximum permissible speed cap. Their purpose was plainly to seek permission to continue with the pursuit and within the parameters of the speed limitations applicable to those circumstances.<sup>43</sup>

I am satisfied that Senior Constable Williams exceeded the maximum permissible speed cap momentarily, possibly for a matter of seconds, and by a relatively small margin, by reaching speeds of 152 kilometres per hour on Fremantle Road just after the George Street intersection. Further that he immediately acted to decelerate the police vehicle as soon as he became aware of his error. By this stage the Ford Falcon was some distance away from the police vehicle and it was shortly before the police lost sight of it. I take into account the fact that, in addition to looking at his speedometer, whilst he was engaged in the pursuit he also needed to look around at all of the other risk factors involved in emergency driving.<sup>44</sup>

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<sup>43</sup> T68 and T91

<sup>44</sup> T27 - T33



As a rule it is nonetheless important for the conditions and speed limitations under the Guidelines to be carefully adhered to in order to, as far as possible, minimise the inherent risks associated with high speed pursuits. In the balancing exercise undertaken by police when weighing up the law enforcement objective with the safety of all of the road users, including the occupants of the vehicle being pursued, pedestrians, other road users and the police officers themselves, the Guidelines represent one of the protective measures.

At the inquest Detective Inspector McIntosh confirmed that the Internal Affairs Unit of the Western Australia Police conducted an investigation into the conduct of the police pursuit and that it found Senior Constable Williams had breached the Guidelines by exceeding the maximum permissible speed because he reached a speed of 152 kilometres per hour. Detective Inspector McIntosh described it as a “minor” breach, and one based on the police officer’s own admission, as there was no other evidence to the effect that the police vehicle reached that excessive speed.<sup>45</sup>

There was no Automated Vehicle Locator fitted to this particular unmarked police vehicle. Accordingly, at the material time there was no data that could have been transmitted to the Police Operations Centre from which they

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<sup>45</sup> T11 and Exhibit 1, Tab 23



could have contemporaneously tracked the speed and location of the police vehicle, had the pursuit been authorised. In any event that data would have been unlikely to generate information from which a precise calculation could have been made.<sup>46</sup>

On 17 September 2012 Senior Constable Williams was issued with a letter of corrective advice by the Internal Affairs Unit of the Western Australia Police.<sup>47</sup>

The outcome of the Internal Affairs Investigation is a matter that occurs independently of the coronial process and relevantly informs me but does not bind me.

The question of fact before me is a separate one, namely whether or not Senior Constable Williams and/or Detective First Class Constable Watson in the conduct of any aspect of the intercept and/or the pursuit of the Ford Falcon, including but not limited to the breach of the maximum permissible speed, caused or contributed to the deceased's death. This arises irrespectively of whether or not a breach is considered minor. For example there may be circumstances where an apparently minor breach of the Guidelines has significant consequences for road users.

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<sup>46</sup> T12 – 13 and Exhibit 1, Tab 23, attachment 2

<sup>47</sup> Exhibit 2, Tab 21



In the circumstances of this pursuit I am satisfied that the police officers did not cause or contribute to the deceased's death because the vehicle intercept was initiated for a proper policing purpose, the pursuit was initiated in accordance with the relevant Guidelines and was awaiting authorisation, the breach of the maximum permissible speed cap was momentary and by a relatively small margin, at the time the breach occurred the police vehicle and the Ford Falcon were a reasonable distance apart,<sup>48</sup> and the driver of the Ford Falcon, affected by methylamphetamine, with no authority to drive and incapable of safely driving a motor vehicle under normal driving conditions chose to flee from the police who were acting in the course of their duties, by driving at an extraordinary speed and in a dangerous manner and putting lives at risk.

In the context of this investigation, it is unnecessary for me to make any comment or recommendation in connection with the Western Australian Police Emergency Driving Policy and Guidelines.

## CONCLUSION

The deceased was born into a loving and caring family and during his early childhood he excelled at sports and did well in school. He was a social child and had lots of friends. With the passage of time however, his behaviour became

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<sup>48</sup> Between 200 and 400 metres



problematic and despite attempts at intervention, he left school early. He commenced some apprenticeships. Unfortunately he began to take drugs, his behavioural difficulties escalated and his relationship with his family suffered. By the time of his death he was taking unacceptable risks with his health and safety.

Shortly after 11.00pm on 12 January 2012 the deceased had been a passenger in a Ford Falcon being driven along Warton Road in Huntingdale, heading towards the intersection with Corfield Street. That night the deceased and the driver were both affected by methylamphetamine. The amount of methylamphetamine used by the driver meant that he would have been incapable of driving safely under normal conditions.

The police saw the Ford Falcon on Warton Road and decided to conduct a vehicle check. They followed the Ford Falcon, activating their emergency lights once both vehicles had turned right into Corfield Street. They continued to follow the Ford Falcon at the posted speed limit as both vehicles turned left into Fremantle Road, heading towards Albany Highway.

After both vehicles had turned onto Fremantle Road, the Ford Falcon accelerated heavily away from the police vehicle. The police activated the emergency sirens with their lights and they pursued the Ford Falcon along



Fremantle Road. Both vehicles were travelling at high speeds, with the Ford Falcon's driver endeavouring to evade the police.

Whilst the police were still in the process of seeking authorisation for the continuation of the pursuit, the driver of the Ford Falcon lost control of his vehicle on the left hand bend in Fremantle Road near the King Street intersection and the vehicle went into an uncontrolled slide turning anti-clockwise and colliding with a number of trees along the verge on the northern side of the carriageway. The period of the police pursuit was less than one minute.

Given the extraordinary speed at which the Ford Falcon had been driven and the dangerous manner of that driving, the vehicle was torn apart on impact and the deceased was ejected onto the ground, critically injured.

The police rendered assistance, ambulance paramedics arrived and they endeavoured to resuscitate the deceased. He was conveyed to Royal Perth Hospital where clinicians there took over the resuscitation attempts. Due to the severity of his injuries the deceased's condition continued to rapidly deteriorate and he went into cardiac arrest. He was pronounced dead at Royal Perth Hospital shortly after midnight on 13 January 2012. The cause of his death was the multiple injuries he sustained as a result of the





collision. He was 18 years old and leaves behind a devastated family.

R V C FOGLIANI  
**STATE CORONER**

5 June 2015

