
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : MICHAEL ANDREW GLIDDON JENKIN
HEARD : 10 JULY 2020
DELIVERED : 31 JULY 2020
FILE NO/S : CORC 775 of 2018
DECEASED : KICKETT, DESMOND RICHARD

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Ms K Heslop and Ms R Collins assisted the Coroner.

Ms M Hemsley (State Solicitor's Office) appeared on behalf of the Western Australia Police Force.

Ms A Barter [Aboriginal Legal Service of Western Australia (Inc.)] appeared on behalf of Mr Kickett's family.

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the death of **Desmond Richard KICKETT** with an inquest held at Perth Coroners Court, Central Law Courts, Court 51, 501 Hay Street, Perth, on 10 July 2020, find that the identity of the deceased person was **Desmond Richard KICKETT** and that death occurred on 29 June 2018 at Royal Perth Hospital from multiple organ failure following cardiorespiratory arrest in a man with focal coronary arteriosclerosis and amphetamine effect in the following circumstances:*

Table of Contents

INTRODUCTION	3
MR KICKETT	4
Background	4
THE EVENTS OF 28 - 29 JUNE 2018	5
Mr Kickett’s visit - 28 June 2018	5
Breaking and entering - 29 June 2018	6
Police attendance	7
Placing Mr Kickett in the Pod	9
Mr Kickett collapses.....	12
Ambulance officers arrive	13
Comments of the arrival of the Ambulance.....	15
Concerns about POC operators and earlier request for an ambulance.....	19
Pod CCTV footage	21
Pod light	22
CAUSE AND MANNER OF DEATH	23
Post mortem examination	23
Cause and manner of death.....	24
Methylamphetamine effect.....	24
Excited delirium	25
CONDUCT OF POLICE	27
Investigation by Homicide Squad.....	27
Investigation by Internal Investigation Unit.....	27
Comments on police conduct	28
RECOMMENDATIONS	29
Recommendation No.1	29
Recommendation No.2	29
CONCLUSION	30

SUPPRESSION ORDER

On the basis that it would be contrary to the public interest, I make an order that there be no reporting or publication of the details of any of the versions of the WA Police Emergency Driving Policy and Guidelines, including, but not limited to, any cap on the speed at which police officers are authorised to drive.

INTRODUCTION

1. Desmond Richard Kickett (Mr Kickett) died at Royal Perth Hospital (RPH) on 29 June 2018, from multiple organ failure following cardiorespiratory arrest in a man with focal coronary arteriosclerosis and amphetamine effect. He was 34-years of age.
2. Immediately before his death Mr Kickett was involved in a violent incident at his former partner's house which police attended. He was placed in handcuffs and secured in a passenger pod on the back of the police vehicle. A short time later he became unresponsive and police removed him from the passenger pod and started CPR. Mr Kickett was taken to RPH by ambulance but could not be revived.
3. Pursuant to the *Coroners Act 1996* (WA) (the Coroners Act), Mr Kickett's death was a "*reportable death*".¹ Further, because a member of the Western Australia Police Force (the Police), may have contributed to or caused Mr Kickett's death, an inquest is mandatory.² I held an inquest into Mr Kickett's death on 10 July 2020. About 30 members of Mr Kickett's family attended the inquest, and in order to comply with COVID-19 social distancing guidelines some family members attended court 51, whilst the remainder watched proceedings remotely from court 85.
4. The following witnesses gave oral evidence:
 - i. Detective Senior Constable Kieran Kearns, Investigating officer;
 - ii. Ms Melanie Dickson, Mr Kickett's former partner;
 - iii. First Class Constable Karl Young (Officer Young), attending police officer;
 - iv. Constable David Moore (Officer Moore), attending police officer;
 - v. Sergeant Alan Becker (Officer Becker), Internal Investigation Unit;
 - vi. Dr Clive Cooke, forensic pathologist; and
 - vii. Mr Matthew Greenfield, St John Ambulance paramedic.
5. The documentary evidence at the inquest included reports prepared by the Police, witness statements and other documents and together, the Brief comprised one volume. The inquest focused on the circumstances surrounding Mr Kickett's death and his interactions with the Police.

¹ Section 3, *Coroners Act 1996* (WA)

² Section 22(1)(b), *Coroners Act 1996* (WA)

MR KICKETT

Background

6. I was greatly assisted by a letter written to me by Mr Kickett’s mother, in which she described her son and provided some information about his background. Mr Kickett was born on 12 September 1983 and had one brother, four sisters and numerous nieces and nephews. He had two daughters and was described by his mother as a loving father.³

7. Mr Kickett enjoyed fishing, collecting bush food and painting and he was a passionate supporter of AFL football. He had played for his local team in the amateur league and was a member of the 2013 Western Australian Amateur Football League premier team.⁴ Mr Kickett had a “*happy go lucky*” nature and was very popular with friends and family alike. His mother said approximately 800 people attended his funeral and that he is sorely missed by his loved ones.⁵

8. Mr Kickett was in a relationship with Ms Dickson for about six and a half years and they had two daughters together. The relationship between Mr Kickett and Ms Dickson was characterised by significant domestic violence perpetrated by him, and their relationship ended in about December 2007. In May 2018, Mr Kickett sent Ms Dickson a text message asking if they could get back together. She replied that she did not want this to happen and his subsequent messages to her became increasingly more threatening.^{6,7}

9. There is limited information about Mr Kickett’s medical history, but his mother described him as a “*sick baby always in and out of hospital*”.⁸ Although Mr Kickett does not appear to have been formally diagnosed with any mental illness, Ms Dickson said he suffered “*from lots of issues*”. Ms Dickson also said that Mr Kickett had “*a hole in his heart*” and used methylamphetamine and cannabis.⁹

³ Exhibit 1, Vol.1, Tab 28 - Letter from Mr Kickett’s mother

⁴ Exhibit 1, Vol.1, Tab 28 - Letter from Mr Kickett’s mother

⁵ Exhibit 1, Vol.1, Tab 28 - Letter from Mr Kickett’s mother

⁶ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 10-15 & 104 and ts 10.07.20 (Dickson), p21

⁷ Criminal record - Mr Kickett (printed 03.01.19), p3

⁸ Exhibit 1, Vol.1, Tab 28 - Letter from Mr Kickett’s mother

⁹ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 27 & 97

10. Dr Cooke, the forensic pathologist who conducted a post mortem examination of Mr Kickett's body, noted that Mr Kickett had a localised area of narrowing (focal coronary arteriosclerosis) in one of the arteries supplying blood to his heart (the circumflex coronary artery). However, there is no mention in Dr Cooke's post mortem report of any heart defect of the kind referred to by Mr Kickett's former partner.^{10,11}
11. For the sake of completeness, I note that by the time of his death, Mr Kickett had accumulated 29 adult convictions for offences including: stealing, aggravated burglary, possession of prohibited drugs and traffic offences.¹² On 4 December 2007, Mr Kickett was convicted of the offence of aggravated stalking with respect to his former partner, Ms Dickson, and as noted, their relationship ended at about that time.^{13,14}

THE EVENTS OF 28 - 29 JUNE 2018

Mr Kickett's visit - 28 June 2018

12. On the evening of Thursday, 28 June 2018, Ms Dickson was at home with three of her children, including her daughters, who I will refer to as "TK" and "CK". At about 8.00 pm, Mr Kickett unexpectedly arrived at the front door of Ms Dickson's home. Given the violent nature of their previous relationship and Mr Kickett's more recent threats, Ms Dickson spoke to him through the closed front door.¹⁵
13. Mr Kickett told Ms Dickson that he had come to collect a car he had loaned her. Ms Dickson told him the car wasn't there and that she would arrange to get it to him the following day. Mr Kickett then asked Ms Dickson if she had a smoking implement, which she understood to mean that he wanted something he could use to smoke methylamphetamine with. Ms Dickson said she didn't have an implement and Mr Kickett said he would use a light globe from the carport instead.¹⁶

¹⁰ Exhibit 1, Vol 1, Tab 4, Supplementary post mortem report, p1

¹¹ Exhibit 1, Vol 1, Tab 4, Histopathology report, p1 and see also: ts 10.07.20 (Cooke), p98

¹² Criminal record - Mr Kickett (printed 03.01.19)

¹³ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, para 14

¹⁴ Criminal record - Mr Kickett (printed 03.01.19)

¹⁵ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 16-18 & 38 and ts 10.07.20 (Dickson), pp21-22

¹⁶ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 19-26 and ts 10.07.20 (Dickson), pp22-23

14. Ms Dickson was aware that a neighbour's CCTV camera was pointed at her house and she wanted to make sure there was sufficient light to capture any prowlers. For that reason, instead of allowing Mr Kickett to take the carport light globe, she fetched one from her bedroom instead and handed it to Mr Kickett by quickly opening and then closing the front door. Mr Kickett said he had bought some tools to fix the car, but in order to get rid of him, Ms Dickson told him to come back the next day.¹⁷
15. At the time Ms Dickson spoke to him, Mr Kickett was alone and was wearing dark pants, a dark jumper and running shoes. He did not appear to be intoxicated or affected by drugs. After he left her home, Ms Dickson helped her children get ready for bed and then sent text messages to two friends to let them know that Mr Kickett had been to her house. Before she went to bed at about 2.00 am, Ms Dickson checked to make sure all the doors and windows were locked, as she always did.¹⁸
16. An investigation by the Homicide Squad concluded that sometime after leaving Ms Dickson's home on 28 June 2018, Mr Kickett went to the home of a relative in Ballajura. Nobody was home and it appears that Mr Kickett used methylamphetamine before removing his clothes. Ms Dickson's home is about 350 m from the Ballajura address.^{19,20}

Breaking and entering - 29 June 2018

17. Sometime after going to sleep, Ms Dickson was woken by a loud bang and someone screeching her name from the back garden of her house. She and TK (her eldest daughter) met in the hallway and saw the home's rear sliding door being smashed. Ms Dickson dragged her son and TK into the main bedroom and locked the door. Ms Dickson heard her name being called and could feel someone pushing against the other side of the door. She recognised Mr Kickett's voice, but thought he sounded different to normal.²¹

¹⁷ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 28-30 & 32 and ts 10.07.20 (Dickson), p22

¹⁸ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 31, 33-37 & 45 and ts 10.07.20 (Dickson), p23

¹⁹ Exhibit 1, Vol 1, Tab 9, Report - Homicide Squad, p15 and ts 10.07.20 (Kearns), p8

²⁰ Google Maps, see <https://goo.gl/maps/WnpW2gKyNvSaUzKk7>

²¹ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 46-54 and ts 10.07.20 (Dickson), pp24-25

18. At this stage, CK (Ms Dickson's younger daughter), was still in her own bedroom. Ms Dickson was obviously very concerned about CK, but could not go and check on her because Mr Kickett was still trying to force his way into the main bedroom. Ms Dickson and TK begged Mr Kickett to stop what he was doing and eventually he did so and lay on the floor in the hallway outside the main bedroom door. Ms Dickson said that Mr Kickett loved his children and she believed that this was the reason he listened to her and TK and stopped trying to enter the main bedroom. Ms Dickson told TK to call the police and while TK did so, Ms Dickson heard Mr Kickett calling out: "*I'm dying, I'm dying*".²²
19. Through the main bedroom door, Ms Dickson asked Mr Kickett if he was okay and heard him praying, so she prayed with him. Mr Kickett thanked her and called out to "*Jehovah*". Ms Dickson lay on her bedroom floor and looked under the door. She could see Mr Kickett was naked and lying on the hallway floor moving about. Ms Dickson was too afraid to open the door as she was uncertain what Mr Kickett would do, so she went to a window and called out to a neighbour to phone the police. Ms Dickson then waited inside the bedroom for police to arrive.²³

Police attendance

20. At about 6.00 am on 29 June 2018, Officers Young and Moore (the Officers), started day shift at the Mirrabooka Police station. The Officers were still at the station at 6.04 am, when they heard a radio call about a family violence incident at Ms Dickson's home that required urgent police attendance. Officer Moore accepted the task using his radio.^{24,25}
21. After collecting their equipment, the Officers set off for Ms Dickson's home at 6.10 am. Their allocated police vehicle was a Holden utility that was fitted with a passenger pod (the Pod). On the way to Ms Dickson's house, the Officers obtained further information about the incident from the Tasking and Data Information System fitted to the vehicle (TADIS).^{26,27}

²² Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 54-59 and ts 10.07.20 (Dickson), pp26-27

²³ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 60-69 and ts 10.07.20 (Dickson), p27

²⁴ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 4-7 and ts 10.07.20 (Young), p35-37

²⁵ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 5-9 and ts 10.07.20 (Moore), p56

²⁶ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 8-10

²⁷ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 9-12 and ts 10.07.20 (Moore), p56-57

22. The information on TADIS was to the effect that Mr Kickett had broken into Ms Dickson's house and was trying to breakdown her bedroom door. Screams from a woman and children had been heard from inside the house, and the caller requested urgent police attendance. Officer Young checked TADIS on the way to Ms Dickson's house and established that, although there were no current restraining orders relating to Mr Kickett, he was not listed as living at Ms Dickson's house.²⁸
23. The Officers arrived at Ms Dickson's house at 6.21 am and were met by her elderly neighbour who said words to the effect of "*he's inside the house*". The Officers approached the house and spoke to Ms Dickson through her bedroom window, which was at the front of the house. She told police she had barricaded herself inside her bedroom and that CK was in another bedroom. She said the best way into the house was through the rear sliding door.^{29,30,31,32}
24. The Officers went to the side of the house and scaled a head-high fence before entering the home through the smashed rear sliding window. The Officers could hear Ms Dickson screaming and while Officer Moore spoke briefly to Ms Dickson and told her to stay in her bedroom, Officer Young searched the house and found Mr Kickett lying on his back in the shower recess in the bathroom. The shower was not running but Mr Kickett was naked and covered with a slippery substance, which was assumed to be liquid soap.^{33,34,35}
25. Officer Young noticed a small amount of what he thought was blood residue mixed with water in the shower recess, but could see no obvious injuries on Mr Kickett, who was rambling incoherently and moving in an erratic manner. The Officers considered that Mr Kickett was under the influence of illicit drugs.^{36,37}

²⁸ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 10-15

²⁹ Exhibit 1, Vol 1, Tab 19, Statement - Mr R Bennet, paras 20-22

³⁰ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 70-74 and ts 10.07.20 (Dickson), pp27-28

³¹ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 16-21 and ts 10.07.20 (Young), p38

³² Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 13-35 and ts 10.07.20 (Moore), pp57-58

³³ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 75, 78 & 83 and ts 10.07.20 (Dickson), p29

³⁴ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 22-31 and ts 10.07.20 (Young), p38-40

³⁵ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 36-65 & 73 and ts 10.07.20 (Moore), pp58-59

³⁶ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 31 & 33-34 and ts 10.07.20 (Young), p40

³⁷ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 66-79 and ts 10.07.20 (Moore), pp59-61

Placing Mr Kickett in the Pod

26. The Officers put on rubber gloves and Officer Moore attempted to engage with Mr Kickett by saying, “*What’s going on mate?*” There was no reply and Mr Kickett continued to ramble and move about on the bathroom floor. Ms Dickson could hear the Officers speaking to Mr Kickett and although she couldn’t hear exactly what they were saying, she heard them use the word “*mate*” a lot.^{38,39,40}
27. In order to ensure the safety of Mr Kickett, the occupants of the house and themselves, the Officers decided to apply handcuffs to Mr Kickett. In view of Mr Kickett’s behaviour, the Officers intended to take him into custody for a mental health assessment before investigating any possible criminal offences he may have committed.^{41,42}
28. The Officers had difficulty getting a grip on Mr Kickett’s arms, because he was pulling them away and his arms were slippery. Eventually, the Officers managed to handcuff Mr Kickett with his wrists together and his hands in front of his body. After applying the handcuffs, Officer Young checked they were tight enough and Mr Kickett was removed from the shower recess.^{43,44}
29. The Officers grasped Mr Kickett by the arms and initially the legs, (until this proved too awkward) and removed him from the bathroom. They walked Mr Kickett up the hallway and managed to half carry and half drag him to the Pod.^{45,46}
30. As police carried Mr Kickett across the front yard, Ms Dickson called out: “*Don’t hurt him*” because she could see his feet were dragging on the ground and she was worried he would be injured.⁴⁷

³⁸ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 32 & 35-36 and ts 10.07.20 (Young), p40

³⁹ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 66-67 & 104 and ts 10.07.20 (Moore), p59-61

⁴⁰ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 76-77 and ts 10.07.20 (Dickson), p29

⁴¹ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 37-38 and ts 10.07.20 (Young), pp40-41

⁴² Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 80 & 104 and ts 10.07.20 (Moore), p59

⁴³ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 39-43 and ts 10.07.20 (Young), pp41-42

⁴⁴ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 80-82 and ts 10.07.20 (Moore), p60

⁴⁵ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 43-45 and ts 10.07.20 (Young), p42

⁴⁶ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 83-98 and ts 10.07.20 (Moore), pp60-61

⁴⁷ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 79-80 and ts 10.07.20 (Dickson), p29

31. When the Officers placed Mr Kickett into the Pod, they were initially unable to close the door because Mr Kickett was kicking out with his legs. Officer Moore managed to move Mr Kickett's legs to one side and Mr Kickett was lying on his left-side when the Pod door was closed. He was still rambling and making no sense.^{48,49}
32. Neither Officer used any force method other than empty hand tactics to place handcuffs on Mr Kickett and secure him in the Pod. Specifically, they did not use any empty hand strikes, neck restraints or other equipment. Although Mr Kickett was not assisting the Officers, he was not resisting them either. Ms Dickson heard nothing to suggest that police were doing anything other than arresting Mr Kickett and she saw no obvious injuries.^{50,51,52}
33. During her evidence at the inquest, Ms Dickson said CK had told her that the police had "*tackled*" Mr Kickett in CK's bedroom.⁵³ CK was interviewed by a specialist police interviewer and the relevant portion of a summary of that interview states:

She was scared and hid under her blanket. She could see a bit through some holes in the blanket. The police arrived and CK stated that Des (Mr Kickett) came into her room. She was still under the blanket, she could hear him and saw his chest (with no clothes on). She stated he was throwing toys around the room. He was throwing them so they would bounce off the walls and hit police. She heard police take him out the front.⁵⁴

34. In contrast to CK's version of events, Officer Young was adamant that he did not go into her room and did not tackle Mr Kickett. Instead, Officer Young said that he and Officer Moore first encountered Mr Kickett in the bathroom and took him straight outside to the Pod from there.⁵⁵

⁴⁸ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 46-47 & 54 and ts 10.07.20 (Young), pp42-43

⁴⁹ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 99-102 and ts 10.07.20 (Moore), p61-62

⁵⁰ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 48-49 and ts 10.07.20 (Young), p43

⁵¹ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras xx-xx and ts 10.07.20 (Moore), pp61-62

⁵² Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 82 and ts 10.07.20 (Dickson), p32

⁵³ ts 10.07.20 (Dickson), p29

⁵⁴ Exhibit 1, Vol 1, Tab 22, Interview summary - CK, p2

⁵⁵ ts 10.07.20 (Young), pp39-42 & 55

35. Officer Young's version of events is consistent with Ms Dickson's evidence that she didn't see any obvious injuries on Mr Kickett when he was being removed from her home by the Officers. Further, Ms Dickson said she did not witness the Officers use any violent methods or equipment when restraining and moving Mr Kickett and she heard nothing inside the home which suggested a struggle.⁵⁶
36. Once Mr Kickett had been secured in the Pod, Officer Young radioed the Police Operations Centre (POC) and requested an ambulance. Officer Young suspected that Mr Kickett may be experiencing a drug induced psychosis and he considered that Mr Kickett needed a mental health assessment.⁵⁷
37. Officer Moore went back into the house to speak to Ms Dickson and her children and obtain details of the incident. While he did so, Officer Young checked on Mr Kickett by looking through the Pod windows, and by watching a live closed circuit television (CCTV) feed that was displayed on a screen in the cabin of the police vehicle.⁵⁸ I note that CCTV footage from the Pod's camera was not recorded. I will return to this issue later in this Finding.
38. Officer Young said that when he checked on Mr Kickett, he was looking for signs of life including bodily movements and the rise and fall of his chest. As it was cold, Officer Young could also see condensation from Mr Kickett's breath and could see him moving his head and limbs, although he was relatively quiet.^{59,60}
39. Officer Young said that there was a light inside the Pod, and although he could not specifically recall, the light may have been on when Mr Kickett was placed into the Pod. Officer Moore said that when he looked through the Pod window to check on Mr Kickett, he used his torch.^{61,62} I will also return to the issue of the Pod light later in this Finding.

⁵⁶ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 82 and ts 10.07.20 (Dickson), p32

⁵⁷ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, para 50 and ts 10.07.20 (Young), pp 40 & 43-44

⁵⁸ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 51-54 and ts 10.07.20 (Young), p44

⁵⁹ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 54-56 and ts 10.07.20 (Young), pp44, 50 & 53

⁶⁰ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, para 106 and ts 10.07.20 (Moore), pxx

⁶¹ ts 10.07.20 (Young), pp53 & 55

⁶² ts 10.07.20 (Moore), pp63, 64 & 67

40. After checking on Mr Kickett, Officer Young went inside the house to check on Officer Moore and Ms Dickson. Officer Young says he then moved backwards and forwards between the police vehicle and the house as he checked on Mr Kickett, Officer Moore and Ms Dickson respectively. Officer Young says that Mr Kickett was left unsupervised for no more than a minute at a time. CCTV footage from a house opposite Ms Dickson's home and the evidence of Ms Dickson and Officer Moore, corroborates Officer Young's evidence about his checks on Mr Kickett.^{63,64,65,66}
41. After Mr Kickett had been secured in the Pod, Ms Dickson came out of her bedroom and checked on CK. Ms Dickson then saw what appeared to be dark vomit in the hallway near the bathroom and she got a mop to clean it up. Ms Dickson also used her phone to take some photos of the broken rear sliding door and the hallway floor.⁶⁷
42. At one point, Officer Young went inside Ms Dickson's home to tell Officer Moore that an ambulance was on its way. On another occasion, Ms Dickson came out of her home and spoke with Officer Young. She told him that she had previously obtained a violence restraining order against Mr Kickett and that because of Mr Kickett's behaviour, she feared for the safety of herself and her children. Ms Dickson told Officer Young that Mr Kickett had been detained for a mental health assessment the previous week and they discussed crisis accommodation options.^{68,69}

Mr Kickett collapses

43. The Officers continued their checks on Mr Kickett. They could see his chest was rising and falling and because it was a very cold morning, they could also see condensation from his breath. However, shortly before 6.40 am, Officer Moore noted that although Mr Kickett's chest was still rising and falling, his breathing appeared to be shallower.^{70,71}

⁶³ Exhibit 1, Vol 1, Tab 10, Report - Internal Affairs Unit, p14

⁶⁴ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 55-56, 62 & 82 and ts 10.07.20 (Young), p44

⁶⁵ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 107, 113, 128 & 134-136 and ts 10.07.20 (Moore), pp62-63

⁶⁶ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 84 and ts 10.07.20 (Dickson), p29

⁶⁷ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 86-91 and ts 10.07.20 (Dickson), p30

⁶⁸ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 57-60

⁶⁹ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 129-133

⁷⁰ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 62-63 and ts 10.07.20 (Young), p44

⁷¹ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 134-136 and ts 10.07.20 (Moore), pp63-64

44. Mr Kickett did not respond when Officer Moore called out his name and Officer Moore, who had significant first aid training from his previous service as a patrol medic in the Special Air Service Regiment, opened the Pod door to check on Mr Kickett. There was no response when he applied a “*sternum rub*” to Mr Kickett, a painful stimuli which usually elicits a response if the casualty is conscious. Officer Moore initially detected a weak pulse but was then unable to, so the Officers removed Mr Kickett from the Pod and placed him on the ground in the driveway.^{72,73}
45. The Officers removed Mr Kickett’s handcuffs and Officer Moore checked Mr Kickett’s airway. Officer Young was unable to detect a pulse and Officer Moore started chest compressions. Officer Young radioed the POC and asked for the ambulance priority to be upgraded and for police backup. He then obtained a mouth shield from the cab of the police vehicle and started expired air resuscitation.^{74,75}
46. The Officers continued CPR until ambulance officers arrived, apart from a brief pause when Officer Moore removed his jacket and used it to cover the lower part of Mr Kickett’s body. At some stage Ms Dickson looked outside and saw Mr Kickett lying on the driveway next to the police vehicle. The Officers were kneeling next to him and she assumed they were checking on him. A short time later, Ms Dickson saw an ambulance arrive.^{76,77,78}

Ambulance officers arrive

47. Ambulance officers arrived at Ms Dickson’s home at 6.47 am and two other police officers arrived shortly afterwards. One of the newly arrived police officers assisted with CPR while the ambulance officers were setting up their equipment, and Officer Moore told the ambulance officers that he thought Mr Kickett might be suffering from *excited delirium* (ED)⁷⁹ due to illicit drug use.^{80,81,82}

⁷² Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 62-69 and ts 10.07.20 (Young), pp44-45

⁷³ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 4 & 137-148 and ts 10.07.20 (Moore), pp64-65

⁷⁴ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 70-74 and ts 10.07.20 (Young), p45-46

⁷⁵ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 149-155 and ts 10.07.20 (Moore), pp64-65

⁷⁶ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 92-96 and ts 10.07.20 (Dickson), pp29-30

⁷⁷ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 75-77 and ts 10.07.20 (Young), pp46-47

⁷⁸ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 156-174 and ts 10.07.20 (Moore), pp64-65

⁷⁹ Refers to a person who is highly agitated as a result of illicit drugs, see further comments later in this Finding

⁸⁰ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 76-80 and ts 10.07.20 (Young), p47

48. Ambulance officers attached a defibrillator to Mr Kickett’s chest and found his heart was exhibiting “*pulseless electrical activity*”, a non-shockable rhythm, so they gave him adrenaline in an attempt to get his heart to start beating. They also tried to intubate him, but this was difficult because his airways were “soiled”, meaning the airways contained blood or vomit. Other ambulance officers arrived and fitted an automated resuscitation device (LUCAS machine) to Mr Kickett’s chest and the police officers were released. Ambulance officers confirmed that when they arrived, Mr Kickett was not wearing handcuffs and had no obvious injuries.⁸³
49. While Mr Kickett was being treated, Ms Dickson told Officer Moore that Mr Kickett had a hole in his heart from birth and she also believed he had a mental illness, although this had never been diagnosed. She also said that Mr Kickett used cannabis and methylamphetamine. Officer Moore went outside and passed this information on to the ambulance officers.^{84,85}
50. Mr Kickett was taken to RPH by ambulance. On his arrival, he was given adrenaline and a spontaneous return of circulation was achieved. He was also given naloxone to reverse the effects of any opiates he may have taken, and was intubated. Mr Kickett was deeply comatose and had profound metabolic acidosis, multi-organ failure and disseminated intravascular coagulation, which causes blood clots and leads to internal bleeding.^{86,87}
51. Mr Kickett was assessed by the cardiology team, who considered it likely that he had suffered a heart attack. He was taken for a CT scan before being admitted to the intensive care unit (ICU) but after the scan, he became difficult to ventilate. Despite further resuscitation efforts, Mr Kickett’s condition did not improve and he was declared deceased at 6.50 pm on 29 June 2018.^{88,89,90}

⁸¹ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, para 161 and ts 10.07.20 (Moore), pp65 & 70

⁸² Exhibit 1, Vol 1, Tab 22, Police incident report, p3

⁸³ Exhibit 1, Vol 1, Tab 16, Statement – Mr M Greenfield, paras 12-39 and ts 10.07.20 (Greenfield), p112-113

⁸⁴ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 183-186

⁸⁵ Exhibit 1, Vol 1, Tab 11, Statement - Ms Dickson, paras 97-98 and ts 10.07.20 (Dickson), p30

⁸⁶ Exhibit 1, Vol 1, Tab 27, RPH Discharge summary (29.06.20)

⁸⁷ ts 10.07.20 (Cooke), pp84-85

⁸⁸ Exhibit 1, Vol 1, Tab 8, Life extinct form (29.06.18)

⁸⁹ Exhibit 1, Vol 1, Tab 27, RPH Discharge summary (29.06.20)

⁹⁰ ts 10.07.20 (Cooke), pp85-86

Comments of the arrival of the Ambulance

52. St John Ambulance (SJA) records confirm that the first emergency call relating an ambulance for Mr Kickett was received at 6.19 am on 29 June 2018. That call came from Ms Dickson’s neighbour, who had heard the disturbance in her home. During that call, the neighbour advised SJA that police were arriving on the scene but no other useful information was provided.^{91,92}
53. At 6.21 am, SJA contacted the POC to clarify the circumstances of the emergency. The SJA operator told the POC operator that the initial caller had been “*very vague*” and was unsure what was happening at the scene. The POC operator confirmed that police were attending a domestic situation. He said he had spoken to a person inside the home who was calling for help for herself and others, but police did not have information that “*anything was happening*” to the people inside the home.^{93,94}
54. The POC operator also told the SJA operator that a male was heard “*moaning and wailing*” outside the door of the room where the people in the house were located and attempts were being made to clarify what was wrong with the male. The SJA operator confirmed that an ambulance was “*on the way*” and the call terminated. SJA records note that people on the scene advised they could hear a male making moaning-type noises, but that there was no information about his situation or condition.^{95,96}
55. SJA allocates priorities to requests for ambulance attendance on the basis of clinical need. In this case, SJA were advised that the job related to a person who was moaning, but who was conscious and breathing. Although at 6.21 am the SJA operator confirmed that an ambulance was on its way, SJA records indicate that an ambulance was allocated to the job at 6.23 am on a Priority 2 basis.^{97,98}

⁹¹ Exhibit 2: St John Ambulance Coronial request response (30.07.20)

⁹² Exhibit 1, Vol 1, Tab 19, Statement - Mr R Bennet, paras 4-19

⁹³ Exhibit 2: St John Ambulance Coronial request response (30.07.20)

⁹⁴ Exhibit 3, Recordings of 000 calls: (29.06.18: 6.04 am, 6.07 am & 6.21 am)

⁹⁵ Exhibit 3, Recordings of 000 calls: (29.06.18: 6.04 am, 6.07 am & 6.21 am)

⁹⁶ Exhibit 2: St John Ambulance Coronial request response (30.07.20)

⁹⁷ Exhibit 3, Recordings of 000 calls: (29.06.18: 6.04 am, 6.07 am & 6.21 am)

⁹⁸ Exhibit 2: St John Ambulance Coronial request response (30.07.20)

56. A Priority 2 task refers to a non-life threatening injury or illness where ambulance attendance can be expected within 25 minutes. In contrast, Priority 1 jobs are life-threatening situations and an ambulance attends as soon as possible with lights and sirens on.^{99,100}
57. At 6.25 am, SJA were contacted by police to confirm that an ambulance was on the way. SJA confirmed that an ambulance was attending and were advised by police that they had a male in custody with “*excited delirium*” (ED). SJA advised police that an ambulance “*shouldn’t be too far away*”. There is also evidence that Officer Young contacted POC to confirm that Mr Kickett was in custody. He was conscious and breathing at that time, and Officer Young was conducting checks by looking through the Pod window and by viewing CCTV footage from the Pod camera on a monitor.^{101,102}
58. At 6.33 am, the ambulance initially allocated to Mr Kickett’s job was reallocated to another job and another ambulance was allocated on a Priority 2 basis instead. Reallocation of ambulances can occur because a more urgent job comes in and takes priority, or because another ambulance crew is closer to the scene. In this case, Mr Kickett’s job was reallocated because the second ambulance crew had just started day shift and were closer to Ms Dickson’s home.¹⁰³
59. At 6.40 am, SJA received a call from the POC to advise that Mr Kickett’s condition had deteriorated and that he was being given CPR. At this point, Mr Kickett’s job was immediately upgraded to Priority 1, and in accordance with SJA’s standard practice when responding to a cardiac arrest, a second ambulance crew was allocated at 6.42 am. A clinical support paramedic was also sent to the scene at 6.44 am, because paramedics carry LUCAS machines. The first ambulance arrived at Ms Dickson’s home at 6.47 am and was joined by a second crew at 6.59 am.^{104,105,106,107}

⁹⁹ Exhibit 2: St John Ambulance Coronial request response (30.07.20)

¹⁰⁰ ts 10.07.20 (Greenfield), pp102-103

¹⁰¹ ts 10.07.20 (Young), pp43-44

¹⁰² Exhibit 2: St John Ambulance Coronial request response (30.07.20)

¹⁰³ Exhibit 2: St John Ambulance Coronial request response (30.07.20)

¹⁰⁴ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, para 63, 67-68 & 71 and ts 10.07.20 (Young), p45

¹⁰⁵ Exhibit 2: St John Ambulance Coronial request response (30.07.20)

60. The timeline that emerges from this evidence is as follows:

6.19 am	SJA first contacted
6.21 am	SJA calls police to clarify details of the situation
6.23 am	Ambulance allocated - Priority 2
6.33 am	Alternative SJA crew allocated
6.40 am	CPR started and job is upgraded to Priority 1
6.47 am	First ambulance at the scene

61. As the above timeline demonstrates, it took 24 minutes from the time an ambulance was first allocated to Mr Kickett's incident to the arrival of an ambulance at Ms Dickson's home. However, it must be remembered that the priority initially allocated to this job was Priority 2. Given the fact that the initial call at 6.19 am was so vague that the SJA operator was obliged to call the POC to seek clarification about the task SJA were responding to, it would not be reasonable to "*start the clock*" as it were, from that point.

62. In my view, it was appropriate for SJA to assign a Priority 2 rating to Mr Kickett's job, given that SJA were advised that they were being asked to attend a casualty who had been heard moaning and who was clearly conscious and breathing.

63. When SJA were advised that Mr Kickett's condition had deteriorated and that CPR was in progress, the job was appropriately upgraded to Priority 1, and an ambulance arrived on the scene seven minutes later. Clearly, speed is of the essence when responding to any life-threatening situation, including cardiac arrest. As Dr Cooke observed at the inquest:

The sooner that you can get effective resuscitation then it would certainly increase your chances. You know, if you and I were going to have a cardiac arrest then we would want to have that in an Intensive Care Unit, for example. If not then...maybe in an emergency department or outside the emergency department but the further you get away from there then the less perhaps your chances of success.¹⁰⁸

¹⁰⁶ Exhibit 1, Vol 1, Tab 24, SJA Patient care record (Crew LAN 41DD)

¹⁰⁷ Exhibit 1, Vol 1, Tab 23, SJA Patient care record (Crew CSN01D2)

¹⁰⁸ ts 10.07.20 (Cooke), p94

64. Dr Cooke said that when a person goes into cardiac arrest, they stop breathing and they have no detectable pulse. Dr Cooke confirmed that a person in cardiac arrest would not be able to resist force and instead, would very quickly lapse into unconsciousness.¹⁰⁹ Applying that evidence to this case, it is clear that Mr Kickett went into cardiac arrest at about 6.40 am.
65. The evidence before me is that as soon as police observed that Mr Kickett's breathing was becoming shallower, they opened the Pod door and assessed him. Initially, a weak pulse was detected, but shortly afterwards, there was no pulse and at that point, CPR was immediately commenced. When the first ambulance arrived on the scene at 6.47 am, ambulance officers noted "good CPR" was being performed by the Officers. Every effort was then made to resuscitate Mr Kickett and get him to hospital as quickly as possible.^{110,111}
66. In considering the evidence about the SJA response in this case, I am mindful of the phenomenon known as "*hindsight bias*". This is the common tendency to perceive events that have occurred as having been more predictable than they actually were before the events took place.¹¹² At 6.21 am when the need for an ambulance to attend was confirmed, Mr Kickett was conscious and breathing and he was being effectively monitored.¹¹³ In my view, considering the information available to SJA at that time, it would not have been reasonable to have expected Priority 1 attendance by an ambulance.
67. In this case, despite the efforts of police, ambulance officers and hospital staff, Mr Kickett could not be revived. However, it is important to remember that on the evidence before me, he did not suffer a cardiac arrest until about 6.40 am. Even if an ambulance had been allocated to Mr Kickett's job at 6.19 am, on the basis of the vague information SJA had at that time, it is not clear whether an ambulance would have arrived on the scene any earlier.

¹⁰⁹ ts 10.07.20 (Cooke), p86

¹¹⁰ Exhibit 1, Vol 1, Tab 24, SJA Patient care record (Crew LAN 41DD)

¹¹¹ Exhibit 1, Vol 1, Tab 23, SJA Patient care record (Crew CSN01D2)

¹¹² See for example: <https://www.britannica.com/topic/hindsight-bias>

¹¹³ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, para 82 and ts 10.07.20 (Young), pp43-44

68. Given the complexities of Mr Kickett's presentation, it is not possible to say what impact if any, the earlier arrival of an ambulance might have had on his condition. However, as the submission forwarded to the Court on behalf of Mr Kickett's family by Ms Barter (the Family's submission), eloquently points out:

We note the police officers had already commenced CPR in accordance with their training and we concede there is no direct evidence as to whether the ambulance arriving sooner may have changed the trajectory, but we submit that the delay in the attendance of the ambulance is a matter of concern and whether this would have changed Desi's prognosis is something the family will always wonder about.¹¹⁴

69. It is completely understandable for Mr Kickett's family and loved ones to wish that anything which might have improved his chances of survival, would have been done. However, bearing in mind the point that I have made about hindsight bias, as much as everyone affected by Mr Kickett's death would wish that the outcome had been otherwise, SJA and the police can only deal with a situation based on the information before them.

70. Police started CPR as soon as Mr Kickett became unresponsive and an ambulance arrived on the scene within seven minutes of Mr Kickett's suffering a cardiac arrest. In my view, those facts establish that Mr Kickett was provided with appropriate care in the circumstances.

Concerns about POC operators and earlier request for an ambulance

71. Following the inquest, I became aware of a suggestion that TK had a clear recollection that she had requested an ambulance when she called emergency services at 6.04 am.¹¹⁵ However, the Family's submission acknowledges that there was no specific request for an ambulance in that call.¹¹⁶ That acknowledgement is appropriate, given that the police incident report, SJA records and recordings of the emergency calls at 6.04 am (by TK) and at 6.07 am (by Ms Dickson) (the Calls) make it clear that on both occasions, police attendance was requested.^{117,118,119,120}

¹¹⁴ Family's submission contained in an email from Ms A Barter to Counsel Assisting (30.07.20)

¹¹⁵ Email from Counsel Assisting following a discussion with Ms A Barter (27.07.20)

¹¹⁶ Family's submission contained in an email from Ms A Barter to Counsel Assisting (30.07.20)

¹¹⁷ Exhibit 1, Vol 1, Tab 22, Police incident report, p1

72. I accept that during the 6.07 am call, TK can be heard saying “*Dad, the ambulance is on the way*”, but TK’s misunderstanding about the attendance of an ambulance at that time is completely understandable. TK and her mother were dealing with a very stressful and traumatic situation. Mr Kickett had just smashed his way into their home and was rambling incoherently just outside the door of the main bedroom.¹²¹ TK was understandably very distressed and is to be commended for the fact that she was able to call emergency services and thereby ensure police attendance.
73. The Family’s submission is critical of the way in which the POC operators handled the Calls and states that their overall tone: “...*seems rude, abrupt and unempathetic*”. The Family’s submission further states:
- We submit that it is imperative that POC staff can elicit the relevant information and speak with callers in a respectful and compassionate way whilst remaining calm. This would also mean that SJA have more of the relevant information available earlier. We submit that further training may assist in this respect.¹²²
74. Whilst I agree with the above statement in general terms, I respectfully disagree that the POC operators were “*rude, abrupt and unempathetic*”. When I listened to the Calls, it seemed to me that both POC operators were doing their best to elicit relevant information in very difficult circumstances.
75. There was a great deal of background noise and both Ms Dickson and TK were understandably very frightened about Mr Kickett’s presence in the home and his attempts to get into the main bedroom. Ms Dickson was also extremely concerned that CK was still in her own bedroom and very fearful that Mr Kickett would discover her there.

¹¹⁸ Exhibit 2: St John Ambulance Coronial request response (30.07.20)

¹¹⁹ See also: ts 10.07.20 (Dickson), p26

¹²⁰ Exhibit 3, Recordings of 000 calls: (29.06.18: 6.04 am, 6.07 am & 6.21 am)

¹²¹ Exhibit 3, Recordings of 000 calls: (29.06.18: 6.04 am, 6.07 am & 6.21 am)

¹²² Family’s submission contained in an email from Ms A Barter to Counsel Assisting (30.07.20)

76. In my view, during the Calls, both POC operators attempted to reassure both TK and Ms Dickson respectively that police were on the way. However, I accept that in traumatic and stressful situations, people's perceptions of their interactions with others may vary. For that reason, I agree that it would be helpful for POC operators to receive periodic refresher training to update them on the skills required to effectively deal with traumatised callers.

Pod CCTV footage

77. The Officers observed Mr Kickett when he was in the Pod by looking through the Pod window and by watching a monitor in the front of the police vehicle, which was connected to a CCTV camera in the Pod. CCTV footage from pod cameras in police vehicles is not currently recorded.^{123,124,125}

78. I respectfully agree with the position of Mr Kickett's family on this issue, namely, that the images captured by pod cameras should be recorded.¹²⁶ There are obvious benefits in doing so.

79. Apart from the fact that the safety of persons detained can be carefully monitored, in circumstances where there is any dispute about what occurred in a pod, being able to review the CCTV footage would be invaluable. In my view, the aphorism that "*a picture paints a thousand words*" is clearly applicable.

80. In his evidence, Officer Becker agreed from the perspective of an Internal Affairs Unit (IAU) investigator, there was merit in recording the footage from pod cameras.¹²⁷ I am aware that police are now issued with body-worn cameras, which record relevant interactions between police and others. However, even if body-worn cameras had been available to the Officers at the time of Mr Kickett's death, those cameras would not have been able to record what was going on inside the Pod.¹²⁸

¹²³ ts 10.07.20 (Young), p53-54 and See also: ts 10.07.20 (Becker), p77

¹²⁴ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 52-54 and ts 10.07.20 (Young), pp53 & 55

¹²⁵ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, paras 134-136 and ts 10.07.20 (Moore), pp63-64 & 70

¹²⁶ See: ts 10.07.20 (Barter), p54

¹²⁷ ts 10.07.20 (Becker), pp77 & 79

¹²⁸ ts 10.07.20 (Young), p53-54

81. Two makes of pods, the “*Varley*” and the “*Centaur*” are currently used by the Police. Both models are fitted with CCTV cameras, but only cameras in Centaur pods have the capability to record CCTV footage. Ms Hemsley advised the Court that a tender process is under way for the supply of a new version of passenger pod which will have the following capabilities:

- a. full colour recordable audio-visual detainee monitoring system with two-way communication;
- b. two cameras positioned so that there are no “blind spots” within the pod; and
- c. a push-to-talk system so that officers in the cabin of the police vehicle can communicate with the detainee in the pod.¹²⁹

82. In my view, it would be appropriate for passenger pods attached to police vehicles to be fitted with cameras capable of recording CCTV footage and that footage should be recorded whenever a person is placed into the pod.

Pod light

83. Both of the Officers said they were able to clearly see Mr Kickett inside the Pod.¹³⁰ Officer Young said he couldn’t recall if the Pod light was on, but he could definitely see inside the Pod.¹³¹ Officer Moore said he used his torch to look inside the Pod but couldn’t recall if the Pod light was on.¹³²

84. In relation to pod lighting, the Police tender for new pods includes the following requirements:

- a. LED internal lighting with a work light over the pod doors which activates when the doors are opened; and
- b. a work light on the rear of the pod, operated from a separate switch in the vehicle’s cabin.¹³³

85. In my view, all passenger pods attached to police vehicles should be equipped with lights that come on (and stay on) whenever a person is placed into the pod.

¹²⁹ Email from Ms M Hemsley to Counsel Assisting (15.07.20)

¹³⁰ ts 10.07.20 (Becker), p77

¹³¹ ts 10.07.20 (Young), p55

¹³² ts 10.07.20 (Moore), p67

¹³³ Email from Ms M Hemsley to Counsel Assisting (15.07.20)

CAUSE AND MANNER OF DEATH

Post mortem examination^{134,135}

- 86.** Dr Cooke conducted a post mortem examination of Mr Kickett's body on 3 July 2018 and noted evidence of recent medical treatment. There were numerous superficial abrasions with associated subcutaneous bruising to the skin on Mr Kickett's face, limbs, chest and back. Dr Cooke also noted injuries (including bruising) to Mr Kickett's wrists, consistent with handcuffs having been applied, but no other evident injuries.¹³⁶
- 87.** Dr Cooke found a 50% narrowing of Mr Kickett's circumflex coronary artery, one of the three main arteries on the surface of the heart (focal coronary arteriosclerosis). Dr Cooke observed that many people with this degree of narrowing would have no symptoms, but that coronary arteriosclerosis did increase a person's risk of heart attack and/or stroke.¹³⁷
- 88.** Microscopic examination of tissues showed bronchopneumonia in Mr Kickett's lungs, which may occur following a cardiac arrest, resuscitation and subsequent supportive care. Testing for significant respiratory and heart viral infections was negative.¹³⁸ Neuropathological examination showed a recent stroke in the left side of the base of Mr Kickett's brain, and patchy bleeding on the surface of his brain.
- 89.** Dr Cooke said that the nature of this stroke and its location in Mr Kickett's brain, strongly suggested that it was "*ischaemic*" in nature and had been caused by a lack of oxygen when Mr Kickett went into cardiorespiratory arrest. Although there was some evidence of swelling of the brain, again caused by a lack of oxygen, there was no evidence of any traumatic brain injury.^{139,140} Toxicology analysis found methylamphetamine and its metabolite,¹⁴¹ amphetamine in Mr Kickett's system, along with medications that were consistent with his recent medical care.¹⁴²

¹³⁴ Exhibit 1, Vol 1, Tab 4, Supplementary post mortem report, p1

¹³⁵ Exhibit 1, Vol 1, Tab 4, Histopathology report, p1

¹³⁶ ts 10.07.20 (Cooke), p86-88

¹³⁷ ts 10.07.20 (Cooke), p88-89

¹³⁸ ts 10.07.20 (Cooke), p83

¹³⁹ Exhibit 1, Vol 1, Tab 5, Neuropathology report

¹⁴⁰ ts 10.07.20 (Cooke), pp83 & 94

¹⁴¹ In this context "metabolite" means the substance that forms when another substance is broken down in the body

¹⁴² Exhibit 1, Vol 1, Tab 6, ChemCentre toxicology report and ts 10.07.20 (Cooke), p89

Cause and manner of death

90. At the conclusion of his post mortem examination, Dr Cooke expressed the opinion that the cause of Mr Kickett's death was multiple organ failure following a cardiorespiratory arrest in a man with focal coronary arteriosclerosis and amphetamine effect.^{143,144,145}
91. I accept and adopt Dr Cooke's opinion as to the cause of Mr Kickett's death. Given that Mr Kickett's death was related to his consumption of methylamphetamine and in the absence of any evidence that Mr Kickett intended to take his life, I find that death occurred by way of accident.

Methylamphetamine effect

92. Methylamphetamine is a drug with a stimulant effect that increases heart and breathing rates. It may also increase concentration, energy levels and give a feeling of confidence and euphoria. However, it can also cause aggressive and combative behaviour. Dr Cooke thought it was likely that Mr Kickett's rambling speech and unsteadiness were caused by the methylamphetamine he had ingested.¹⁴⁶
93. Dr Cooke explained that at the point at which Mr Kickett's breathing became shallower, his heart was likely to have been beating abnormally (arrhythmia) and this led to a cardiac arrest. As was observed by the Officers, Mr Kickett would have become progressively limp and have lapsed into unconsciousness, and of course no pulse would be detected.¹⁴⁷
94. Dr Cooke explained that the narrowing of Mr Kickett's arteries would have caused less blood to flow to his heart and the methylamphetamine he had taken would have had an irritant effect on his heart muscle. Mr Kickett's prior physical exertion (i.e.: climbing Ms Dickson's back fence and smashing through her rear glass sliding door) would also have played a role in his cardiac arrest, leading to his organs being starved of oxygen (hypoxia) and subsequently failing.¹⁴⁸

¹⁴³ Exhibit 1, Vol 1, Tab 4, Supplementary post mortem report, p1

¹⁴⁴ Exhibit 1, Vol 1, Tab 4, Histopathology report, p1

¹⁴⁵ ts 10.07.20 (Cooke), p82

¹⁴⁶ ts 10.07.20 (Cooke), pp89-91 & 100

¹⁴⁷ ts 10.07.20 (Cooke), p97

¹⁴⁸ ts 10.07.20 (Cooke), pp88-91 & 97

*Excited delirium*¹⁴⁹

95. When ambulance officers arrived on the scene, Officer Moore told them he thought Mr Kickett may be experiencing ED.¹⁵⁰ At the inquest, Dr Cooke explained that ED describes a state of extreme agitation which, it is said, can occur with stimulants such as cocaine and methylamphetamine.
96. People experiencing ED are said to often feel hot and may remove their clothing and ED can provoke a cardiac arrest, partly because of the extreme physical exertion often associated with the condition. Dr Cooke explained the phenomenon in these terms:
- [I]t's a condition where there is very, very much heightened physical activity, exertion (and) anxiety. Someone can become particularly aggressive and combative, seem to have superhuman strength, be very difficult to subdue (and) cannot be reasoned with, so very, very agitated and very excited to an...extreme degree.¹⁵¹
97. Dr Cooke noted that although ED is a term often used by forensic pathologists and emergency physicians in the United States of America, its use in Australia is somewhat controversial and that as a diagnosis, it has not been universally accepted.
98. Dr Cooke said that ED has been associated with sudden death from cardiac arrhythmia, especially when associated with “*the overuse of restraining force*” often in circumstances where a person is restrained in the “*hogtied*” position (i.e.: restraining the wrists behind the body and laying the person face down). However, even in these circumstances, there is debate about the exact mechanism of death.
99. When the circumstances of Mr Kickett’s presentation were explained to him, Dr Cooke thought it was unlikely that Mr Kickett was suffering from ED at the time of his death. This was because Mr Kickett’s behaviour when he was at Ms Dickson’s home was not sufficiently extreme or agitated.¹⁵²

¹⁴⁹ ts 10.07.20 (Cooke), pp91-93

¹⁵⁰ Exhibit 1, Vol 1, Tab 13, Statement - Const. G Moore, para 161 and ts 10.07.20 (Moore), pp65 & 70

¹⁵¹ ts 10.07.20 (Cooke), p91

¹⁵² ts 10.07.20 (Moore), pp65 & 71 and ts 10.07.20 (Cooke), pp99-100

- 100.** Officer Young said he was aware of the term ED, but that he would not have used it to describe Mr Kickett’s presentation, and had used the term “*drug induced psychosis*” instead.¹⁵³ In contrast, Officer Moore said that he had told ambulance officers that Mr Kickett may be experiencing ED and was aware that positional asphyxia¹⁵⁴ was a possibility when dealing with someone who may have ED. Officer Moore said in those circumstances, handcuffing a person’s wrists behind their back might restrict their breathing.¹⁵⁵
- 101.** Dr Cooke was asked to comment on the manner in which police had restrained Mr Kickett. Dr Cooke acknowledged the difficult task police face when securing a person affected by illicit drugs who is behaving in a manner that places themselves or others in danger. He said that because police cannot sedate the drug affected person, some form of restraint may often be necessary. Dr Cooke said that the method used by the Officers in Mr Kickett’s case (i.e.: restraining his wrists in front of his body) was “*an effective and safe*” method to restrain him.¹⁵⁶
- 102.** Officer Young said that when Mr Kickett was placed into the Pod on the back of the police vehicle, he was on his side in the recovery position and he remained in this position during the entire time he was being observed.¹⁵⁷ Dr Cooke confirmed that this was the optimal position for a person in Mr Kickett’s situation.¹⁵⁸

¹⁵³ Exhibit 1, Vol 1, Tab 12, Statement - Sen. Const. K Young, paras 38 & 50 and ts 10.07.20 (Young), pp40 & 47-48

¹⁵⁴ Where a person can’t breathe properly because of the position of parts of their body, including their neck.

¹⁵⁵ ts 10.07.20 (Moore), pp65 & 71

¹⁵⁶ ts 10.07.20 (Cooke), p100

¹⁵⁷ ts 10.07.20 (Young), pp45 & 53

¹⁵⁸ ts 10.07.20 (Cooke), p93

CONDUCT OF POLICE

Investigation by Homicide Squad

103. Officers from the Homicide Squad conducted an investigation into Mr Kickett's death and obtained statements from the Officers, paramedics and civilian witnesses. The investigation concluded that there was no criminality in relation to Mr Kickett's death. Having carefully considered all of the evidence in this matter, I agree with the conclusions reached by the Homicide Squad investigation.¹⁵⁹

Investigation by Internal Investigation Unit

104. As Mr Kickett's death fell within the category of a critical incident involving police, officers from the IAU conducted an investigation to identify if the Officers had complied with relevant police policies, procedures and training. A report on the IAU investigation (authored by Officer Becker and Detective Inspector Ranford) was provided to the Court.^{160,161}

105. In other inquests, I have been critical of the failure of the IAU to interview attending officers. However, in this case the interviews conducted by the Homicide Squad were comprehensive and canvassed all relevant issues and further, the Homicide Squad and the IAU appropriately collaborated during the investigation process. This made separate interviews by officers from the IAU unnecessary.¹⁶²

106. The IAU investigation concluded that the use of handcuffs to restrain Mr Kickett was in accordance with relevant police policies and was reasonable and appropriate in the circumstances. On the basis of Mr Kickett's behaviour and the potential risk he posed to himself and others (including the Officers), I am satisfied that the conclusion reached by the IAU investigation with respect to the use of handcuffs was justified and appropriate.¹⁶³

¹⁵⁹ Exhibit 1, Vol 1, Tab 9, Report - Homicide Squad, p35 and ts 10.07.20 (Kearns), p9

¹⁶⁰ ts 10.07.20 (Becker), p72

¹⁶¹ Exhibit 1, Vol 1, Tab 10, Report - Internal Affairs Unit

¹⁶² ts 10.07.20 (Becker), pp72-73

¹⁶³ Exhibit 1, Vol 1, Tab 10, Report - Internal Affairs Unit, pp17 & 20-21

- 107.** Although the Officers had no information relating to Mr Kickett's health status at the time they apprehended him, it is clear they suspected he was affected by illicit drugs and may have been having a mental health episode. The Officers appropriately requested an ambulance so that Mr Kickett could be taken to hospital for a mental health assessment.¹⁶⁴
- 108.** When Mr Kickett's condition deteriorated and his breathing became shallower, the Officers promptly removed his handcuffs and provided appropriate first aid until ambulance officers arrived and took over resuscitation efforts.¹⁶⁵ At the time of Mr Kickett's death, the Officers had current first aid qualifications, including training in life support. This training is provided to all police officers during their initial training at the Police Academy, and at annual refresher training sessions.¹⁶⁶
- 109.** Police are trained to recognise ED, although as Dr Cooke pointed out, this condition is not universally accepted in Australia. In any event, police are trained to treat ED as a medical emergency and its association with positional asphyxia is emphasised in their training.^{167,168}
- 110.** On the basis of Mr Kickett's relatively docile behaviour and taking account of Dr Cooke's evidence on this point, I have concluded that it is most unlikely that Mr Kickett was experiencing ED at the time of his death.¹⁶⁹

Comments on police conduct

- 111.** Unfortunately, it is an increasingly common occurrence for police to have to deal with people affected by illicit drugs. Having reviewed all of the available evidence in this matter, I am satisfied that neither Officer Young nor Officer Moore contributed to, or caused Mr Kickett's death.
- 112.** I am further satisfied that the conduct of both Officer Young and Officer Moore, when they interacted with Mr Kickett, was both appropriate in all of the circumstances and was in accordance with relevant police policies.

¹⁶⁴ Exhibit 1, Vol 1, Tab 10, Report - Internal Affairs Unit, pp16 & 19-20

¹⁶⁵ Exhibit 1, Tab 10, p. 17.

¹⁶⁶ See for example: ts 10.07.20 (Young), p46

¹⁶⁷ ts 10.07.20 (Cooke), pp91-93

¹⁶⁸ ts 10.07.20 (Young), p48 and ts 10.07.20 (Moore), p71

¹⁶⁹ ts 10.07.20 (Cooke), pp91-93

113. As Dr Cooke pointed out, in a hospital setting, people affected by illicit drugs can be kept safe by being sedated. Obviously in the field, police do not have that luxury and the affected person will often need to be physically restrained for their own safety, and the safety of others.¹⁷⁰

114. In this case, the evidence is that the Officers used minimal force when applying handcuffs to Mr Kickett and that they placed handcuffs on his wrists with his hands in front of his body. This position was described by Dr Cooke as creating the least risk of respiratory issues for persons affected by illicit drugs. Further, when the Officers placed Mr Kickett in the Pod, he was on his side in the recovery position, a position Dr Cooke described as optimal.¹⁷¹

RECOMMENDATIONS

115. In light of the observations I have made about passenger pods attached to police vehicles, I make the following recommendations:

Recommendation No.1

The Police should take all necessary steps to ensure that all passenger pods attached to police vehicles are fitted with cameras capable of recording CCTV footage and that footage should be recorded whenever a person is placed into the passenger pod.

Recommendation No.2

The Police should take all necessary steps to ensure that all passenger pods attached to police vehicles are fitted with lighting that switches on as soon as a person is placed into the pod, and stays on. The lighting should be designed so as not to drain the police vehicle's battery, so that the light can remain on even when the vehicle is stationary, in the event that there is any delay at the scene.

¹⁷⁰ ts 10.07.20 (Cooke), p98

¹⁷¹ ts 10.07.20 (Cooke), pp92-93

CONCLUSION

- 116.** Mr Kickett was 34-years of age when he died from multiple organ failure following a cardiorespiratory arrest at a time when his body was affected by methylamphetamine. His death, at such a young age, is keenly felt by his family and loved ones.
- 117.** Once again, this case highlights the dangers of using methylamphetamine, especially in circumstances where, as for Mr Kickett, the user has underlying heart issues.
- 118.** Having carefully considered the available evidence, I am satisfied that the Officers took Mr Kickett into custody so that he could undergo a mental health assessment. I am also satisfied that the Officers were well aware of the health risks that arise when a person is affected by illicit drugs, and that in Mr Kickett's case, the Officers addressed those risks by the minimal use of force, the appropriate use of physical restraints and by regular monitoring.

MAG Jenkin
Coroner
31 July 2020