

Coroners Act, 1996

[Section 26(1)]



Western

Australia

RECORD OF INVESTIGATION OF DEATH

Ref No:22/14

*I, Evelyn Felicia Vicker, Deputy State Coroner, having investigated the death of **Benjamin Alfred WARE** with an inquest, held at the **Perth Coroners Court, Court 51, CLC Building, 501 Hay Street, Perth** on **4-5 June 2014** find the identity of the deceased child was **Benjamin Alfred WARE** and that death occurred on **14 April 2011** at **Royal Perth Hospital** as the result of **Head Injury** in the following circumstances:*

Counsel Appearing:

Ms C. Fitzgerald assisted the Deputy State Coroner

Mr P. Gazia (instructed by ALSWA) with Ms A. Barter appeared for the mother of the deceased child

Mr M. Holgate (instructed by WAPol) appeared on behalf of the Commissioner for Police and police officers Green and Rimmer

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SUPPRESSION ORDER

Any discussion about current or proposed police procedures and policies be suppressed from publication.

INTRODUCTION

At approximately 5am on 14 April 2011 the deceased child (Benjamin) was the driver of a Ford Falcon sedan registration number XAU050 (the Falcon) driving at speed along Alexander Drive in the vicinity of the proposed Reid Highway over-pass when he lost control of the Falcon on a portion of unsealed road surface. The Falcon left the road and crashed into the rear garden wall of a home on the corner of Widgee Road, Noranda.

At the time the Falcon was being pursued by police, although the pursuit vehicle was some distance from the crash site having stopped at a red traffic control light (TCL) at the Reid Highway intersection, when Benjamin contravened the same red TCL.

Police assisted Benjamin and his passenger at the scene until the arrival of other emergency services necessary to appropriately rescue Benjamin from the Falcon. He was taken to Royal Perth Hospital (RPH) where he died shortly thereafter.

Benjamin was 15 years of age.

Under the provisions of the *Coroners Act 1996* there is no doubt the death of Benjamin was a reportable death.

In addition, by the provisions of section 22 (1)(b) where it appears the death was caused or contributed to, by any action of a member of the police force, there must be an inquest into the circumstances of the death to enable an independent review of the actions of the police officers involved.

THE DECEASED

Benjamin was born on 14 September 1995 at King Edward Memorial Hospital in Perth. He was the middle child of five born to Bradley Bennell and Benita Ware¹ and there is little information about his early life other than the fact he spent periods of time in Port Hedland.

Bradley Bennell died in December 2009 in a motor vehicle accident in Rockingham and family members indicate this caused Benjamin a great deal of distress. His mother felt that from that time he rebelled against her and she had difficulty with him.²

Benjamin's juvenile criminal record commenced in June 2009 with a number of offences committed on the same date relating to stealing and driving a motor vehicle. He had no other convictions at the time of his death, although there were some matters pending.

¹ Ex 1, Tab 24

² Ex 2, Tab 24

While Benjamin was living with his mother in Port Hedland she reports that he went to school, however, she took him to Perth from time to time for holidays. More recently he had stayed in Perth with his Aunty Sharon in Ellenbrook. Benjamin's mother believed he was to return to Port Hedland, however, his Aunty Sharon advised police Benjamin did not wish to return to Port Hedland but wished to stay in Ellenbrook. His Aunty Sharon was receiving Centrelink payments for him.

Benjamin had an older sister in Brookton to whom he was very close, and he had a large extended family in and around Perth with aunties and cousins.

In December 2010 Benjamin's parental grandmother took family members to her son's crash site and tried to encourage Benjamin and his brother to return to Port Hedland.³

Benjamin's Aunty Sharon advised Benjamin did not like school and did not attend school while he was staying with her. He was due to start at a facility in Midland designed to help students bridge, and work towards, main stream schooling. He did not work while staying with his Aunty Sharon although his mother stated that when he had been in Port Hedland he worked at the local Chicken Treat.

³ Ex 1, Tab 24

Both Benjamin's mother and aunty were unaware of his use of methylamphetamines, although both thought he may have used cannabis.

Benjamin had visited one of his sisters in Midvale on the day preceding his death and his parental grandmother had given him money for food because she understood he was staying in different places.

On the night of Benjamin's death his Aunty Sharon thought he was at home, in bed, asleep. She did not know he and Dylan Eades (Eades) had left the household after everyone else had gone to bed. His aunty described him as a good quiet kid who spent time at home and only got into trouble when misled by others.

THE CRASHED VEHICLE

The Falcon Benjamin was driving at the time of his death was a 2001 model sedan, registration number XAU050, and was considered a high performance vehicle by the police. It was in good condition and there were no pre-existing defects which would have contributed to the crash.⁴

It had been stolen on 13 April 2011 between approximately 10am and 12:30pm from an address at Bullarra Road, Greenmount. It had been parked in a single, locked, garage

⁴ Ex 1, Tab 27

beside a residence. It was locked with the windows closed and the keys hanging on a board in the kitchen of the residence.⁵

A number of items had been stolen from the residence which was left in a state of disarray.

It is not known who stole the Falcon from Greenmount. However, it was recorded as speeding and doing “burnouts” at approximately 5:45pm on 13 April 2011 in Middle Swan.⁶

There is CCTV footage of the Falcon involved in a fuel stealing offence from the Caltex Service Station at Swan View on the morning of 14 April 2011 at 4:25am. The CCTV footage shows Eades, Benjamin’s cousin, refueling the Falcon and then entering the passenger’s side of the vehicle. In his interview with police Eades agreed he was a passenger in the vehicle at that time and that Benjamin was driving.⁷

THE EVENTS

Police officers, Senior Constable Craig Green (Green) and First Class Constable Peter Rimmer (Rimmer), were rostered on night shift, conducting patrols on the evening of 13 April 2011 through to 6am on 14 April 2011. They were in a fully

⁵ Ex 1, Tab 10

⁶ Ex 1, Tab 22-23

⁷ Ex 2, Tab 10 p10, Ex 1 Tab 33

marked police traffic vehicle, call sign TE202 (TE202) and both police officers were authorised pursuit drivers with the traffic enforcement group (TEG). At the time Green was driving TE202.

At approximately 5am on 14 April 2011 the two police officers were conducting patrols on Hepburn Avenue, Ballajura, driving in an easterly direction back to their office in Midvale. While on Hepburn Avenue they noticed a Ford Falcon sedan (the Falcon) travelling towards them in a westerly direction which was picked up on the mobile radar device as travelling at approximately 94 km/h. The posted speed limit was 70 km/h.

The police officers decided it would be appropriate to stop the Falcon to determine the reason for the speeding. After it had passed them Green performed a U turn and as he came up behind the Falcon activated the lights on TE202 in an attempt to stop the Falcon and speak with the driver.

It was Green's view⁸ that the driver of the Falcon had observed the police vehicle as it passed the Falcon on Hepburn Avenue, and seen it perform the U turn in his rear vision mirror, before approaching the Falcon and activating the lights.

By the time the police vehicle was behind the Falcon the

⁸ t 4.6.14 p9

driver had slowed to approximately the speed limit.

The Falcon was being driven by Benjamin with his cousin Eades as a passenger. Eades was 14 years old. The police officers at that time did not know the ages of the occupants of the Falcon or the fact that it was stolen. They did not know Benjamin had some outstanding court matters in the Children's Court and was intoxicated with methylamphetamine.

Other than having slowed the Falcon to approximately the speed limit, Benjamin did not acknowledge police attempts to stop the Falcon. He indicated and turned left and continued for some way through the back streets. Initially the police officers believed he was attempting to get home before stopping the vehicle and being confronted by the police officers. However, it soon became clear the driver of the Falcon had no intention of stopping although he continued driving while complying with usual road rules.

The police officers continued to follow the Falcon with their lights activated and the Falcon began to accelerate away from the police officers' vehicle quite hard. The police officers understood he had no intention of stopping and was now attempting to evade them.

At that point the two police officers considered it would be necessary for them to pursue the Falcon to apprehend the

driver for failing to stop and establish the reasons for his failure to stop.

TE202 is fitted with an Automated Vehicle Locator (AVL) which allows a location and speed recording to be transmitted back to the Police Operations Centre (POC) in appropriate circumstances.

The AVL data for TE202 indicates the police officers were travelling in a south easterly direction prior to their U turn, which put them travelling in a north westerly direction on Hepburn Avenue, before the Falcon turned left down Bellefin Drive. The Falcon then deviated right through the back streets via Pelican Parade until it passed the Ballajura Community College on Illawarra Crescent at approximately 0500 hours. The AVL data reflected a speed of 97 km/h (corrected).

Green activated the sirens and Rimmer called through to POC requesting authorisation for a pursuit. Green was a qualified priority pursuit driver and the vehicle was a suitable vehicle and authorisation was received.

The pursuit continued down Illawarra Crescent until turning left on Alexander Drive. Speeds recorded by TE202's AVL indicate the police vehicle travelled between 82 and 103 km/h (corrected) before the pursuit turned left on to Alexander Drive. Once on Alexander Drive the pursuit

continued in a southerly direction, initially at speeds of approximately 88-89 km/h (corrected) until the Beach Road intersection. On passing through the Beach Road intersection the Falcon accelerated away from the police, who maintained a consistent distance behind the Falcon, giving AVL recordings of 132 km/h up to 142 km/h (corrected), at which point Green pulled back on the speed to maintain a cap of 140 km/h.

During this time Rimmer was calling the road conditions back to POC which included the fact traffic was light on the roads at that time of the morning and the pursued vehicle, other than speeding to this point, had not driven unsafely.

At the point TE202 was pulled back to a cap of 140 km/h, the Falcon was moving away from TE202 and was presumably doing in excess of the police officers highest called speed of 144 km/h at the time they pulled back from the pursuit. This was as the Falcon approached the first set of lights at the intersection of Alexander Drive and Reid Highway.

The intersection comprises two sets of traffic lights accommodating both the west and east bound lanes of Reid Highway's intersection with Alexander Drive. Apparently there were road signs warning of road works at that intersection, however, neither police officer registered the road works signs, their concentration being on the direction

of travel of the Falcon and TE202. From the second set of lights on Alexander Drive at that intersection there was an unsealed portion of road due to road works for the proposed over pass.

The police officers observed the Falcon contravene a red traffic control light (TCL) at the first intersection and they pulled back from the pursuit and stopped at the red TCL. The conversation between the police officers in TE202 at that point in time was their belief the pursuit was likely to be terminated.⁹

Regardless of any information and direction from POC, the driver of an authorised pursuit vehicle always retains the discretion to abort a pursuit in circumstances he considers to be immediately dangerous. On this occasion Green had stopped at the red TCL on observing the Falcon speed through the same red lights. The police officers were unaware of the fact the road surface south on Alexander Drive was unsealed for a portion.

Other than the speeding Falcon, which was lost from view due to the inclination of the road, there was little other traffic on the road and the traffic there was, was also stopped at the intersection. The information relayed to POC by Rimmer was the fact they were stopped at a red TCL and the Falcon had sped through the intersection, there was

⁹ t 4.6.14 p12, 52

little other traffic on the road and the situation did not appear dangerous for other road users. TE202 still had its lights and sirens activated which warned other road users of the fact of a speeding vehicle on the road.

As the police vehicle approached the red TCL, so was a vehicle driven by Mr Jeffrey Holt stopped on the Reid Highway intersection travelling east, intending to turn right onto Alexander Drive, to drive south. Mr Holt intended to turn left into Widgee Road towards Bayswater.

Mr Holt advised the court it was dark and he had his vehicle head lights on. He was stopped at the TCL at the intersection in the right turn lane on Reid Highway. As the TCL facing him turned green, so he turned right into Alexander Drive and observed the Falcon, with its high beam headlights on, travelling south along Alexander Drive. At this point he did not see the police vehicle. After turning right into Alexander Drive he needed to stop at the red TCL, under the bridge, before the road works.

While Mr Holt was stationary at those TCL's he observed the Falcon go through the red TCL, at speed, which he estimated to have been in excess of 100 km/h. He considered a period of three or four seconds elapsed from when he first saw the vehicle as he turned right onto Alexander Drive. The Falcon was travelling south towards Widgee Road.

Mr Holt advised the court he lost sight of the Falcon after it went through the red TCL because Alexander Drive veers slightly to the left and goes down a decline. It was as he was stopped at the red TCL he observed the stationary police vehicle at the set of TCL's behind him, at the split intersection. Mr Holt noticed the police vehicle with its emergency lights on, although he could not remember sirens.

Mr Holt commented the police vehicle was facing red TCL's, as was he, and that those were the red TCL's the Falcon had sped through. Mr Holt stated that when the lights changed to green he moved into the left lane and the police vehicle, also in response to the light change, overtook him accelerating in the same direction as the Falcon.

Mr Holt advised the court that when the Falcon had sped passed him, he was concerned the driver had no concern for other road users, and had narrowly missed Mr Holt's vehicle as he was pulling up at the red lights.

“And he shot straight through the red lights and it's frightening when someone does that, you know what I mean, because if some poor bloke had been coming down that off-ramp, there's no way they would have stopped or anything.

Ok so it's fair to say that you feared for you safety? Yes. He only just missed me.”¹⁰

¹⁰ t 4.6.14 p40

Mr Holt was adamant he considered the driver of the Falcon to be “*flying*” and that he was doing a lot more than 70 or 80 km/h. Mr Holt considered there was quite a time lag between the police stopping at the red lights and then moving off, after the Falcon, once the lights changed.

The evidence of Detective Inspector George McIntosh, Duty Patrol Commander, POC, on that night shift, 13 April 2011, was that from his perspective the target vehicle had gone through a red light, at speed, although it had slowed down prior to the red lights. He understood the road environment appeared to be safe, which justified the driver of TE202 continuing with the pursuit if TE202 could re-engage once it had followed the target vehicle through the TCL.¹¹

Detective Inspector McIntosh advised the inquest he arrived at the consul operator’s screen showing the pursuit information, at the time the police officers in TE202 had pulled back to 140 km/h and stopped at the red light, before proceeding on the green TCL in the direction the Falcon had travelled. He authorised the re-engagement on his appreciation of the fact the Falcon was being driven dangerously and there was little other traffic on the road.

Once TE202 pulled away from the, now green, TCL and accelerated south in an attempt to relocate the Falcon, so Green noticed dust off to the left of the highway and realised

¹¹ t 5.6.14 p123-24

there had been a crash of some description. He performed a U turn back along Alexander Drive to the point he believed was a crash point. It was then he and Rimmer realised the Falcon had crashed into the rear wall and garden of a residential property on the corner of Widgee Road.

As Mr Holt approached Widgee Road, following the police vehicle, he observed it do a U turn and travelled back to that corner. Mr Holt noticed the Falcon on its roof and he stopped and used his headlights to illuminate the scene. Mr Holt estimated the time between the traffic lights turning green to his seeing the vehicle on its roof was between 15-20 seconds.¹²

Mr Holt did not get out of his vehicle but remained there until one of the police officers came over and thanked him for stopping and asked him to wait until others were there to assist. Mr Holt was most anxious the court understand that, from his perspective, the police acted entirely appropriately and that the vehicle which was speeding, went through two sets of red traffic lights and never attempted to slow down.

Green stated in court he thought it was likely the Falcon had already crashed by the time the police vehicle left the changed TCL. It was as he accelerated away from the lights the road surface became “*skatey*” and he understood he

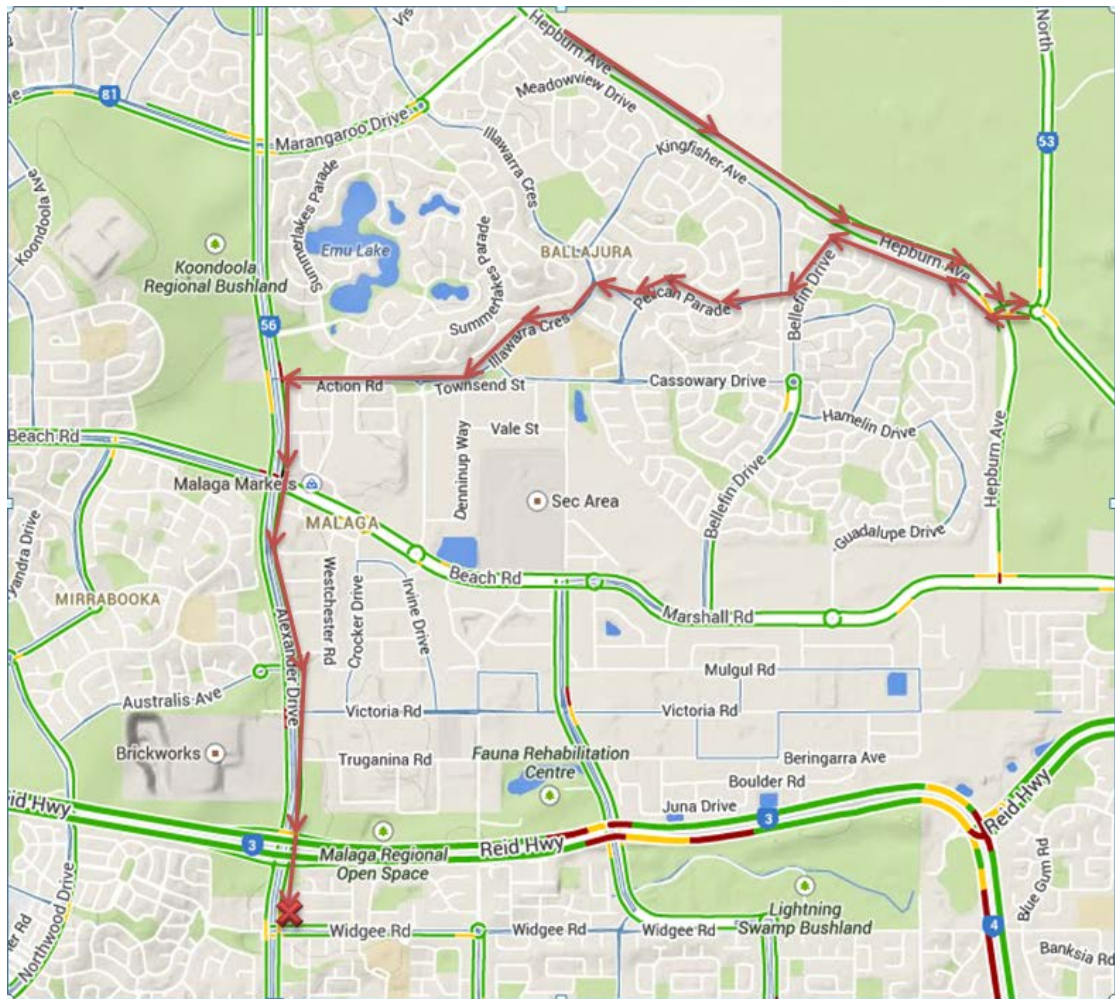
¹² Ex 1, Tab 13

was now on an unsealed portion of road. Green agreed he had significant experience and training to control his driving in different road conditions, but did not consider he had noticed anything in the driving of the Falcon beforehand which would indicate the driver was not competent in general road conditions.¹³

The police officers went to the assistance of Benjamin and Eades in the crashed Falcon and an urgent request for an ambulance was made. Ultimately Benjamin had to be cut from the wreckage by FESA and both of the boys were conveyed to RPH by ambulance where Benjamin died at 11:30pm that night.

The pursuit, from the time it was notified until the crash, was of just over three minutes duration.

¹³ t 4.6.14 p15



POST MORTEM REPORT

The post mortem examination of Benjamin was conducted by Dr Judith McCreath, Forensic Pathologist of the Pathwest Laboratory and she recorded Benjamin's cause of death as Head Injury.

In addition toxicology revealed an ante-mortem methylamphetamine blood level of approximately 0.08 mg/L with 0.02 mg/L of amphetamine. Other drugs located in his system post mortem are indicative of his medical treatment

before death.

The court was provided with a report from Dr David Joyce,¹⁴ a Professor of Clinical Pharmacology from the University of Western Australia.

Dr Joyce pointed out methylamphetamine and amphetamines are potent stimulants of the amphetamine group and there are no legal means to acquire it without special licence. Amphetamine is formed from methylamphetamine in the body and is a metabolite from people using methylamphetamine.

Amphetamines are abused because of their capacity to produce increased confidence, a sense of wellbeing, euphoria, a sense of invulnerability and a subjective sense of increased alertness. Risk taking behaviour, recklessness, aggression and violence, are common early consequences of amphetamine intoxication and, after the period of stimulation passes, a period of slowness, inattention, impaired reactions and lower mood can be experienced followed by tiredness and exhaustion.

Dr Joyce described a level of methylamphetamine of 0.08 mg/L and amphetamine concentration of 0.02 mg/L as indicative of the presence of amphetamine intoxication. Dr Joyce outlined the drugs may influence drivers, through a

¹⁴ Ex 2, Tab 23

number of physiological behavioural effects, to speeding, reckless driving, high speed pursuits, and behaviour that can carry extraordinary risks, with crashes a common manifestation of intoxication following amphetamine use.

Amphetamine intoxicated drivers have become relatively prevalent in the Australian experience, frequently exhibited by defects in vehicle control arising from inattention, impaired reactions and sudden sleep, which underlie the increased accident risk late after methylamphetamine use.

Complete failure to recognise a hazard in traffic and respond to it, is a well recognised cause for crashes in stimulant affected drivers. Dr Joyce commented that examples of driving and bad behaviour are regularly seen which defy all reason, including driving on the wrong side of the road, racing through red traffic signals, complete indifference to the outcome of a crash, and being focused on some completely incidental activity, rather than the driving of the vehicle. Drivers often continue in the face of overwhelming danger.

In Dr Joyce's experience the risk of death through accident, suicide or homicide is very high for those experiencing methylamphetamine intoxication. He pointed out only one third of methylamphetamine deaths are through direct poisoning, the rest are through accident and violence arising as a result of the effects of intoxication. As Dr Joyce

stated “*death in pursuits seems to be relatively common among drivers dying as a result of amphetamine/methylamphetamine-intoxicated driving*”. There have been many examples of driver death in pursuits in Western Australia whilst the drivers were methylamphetamine intoxicated.

Dr Joyce considered the methylamphetamine concentration of 0.08 mg/L to be slightly lower than the average concentration in impaired drivers, however stated that expert opinion holds that “*methylamphetamine at any concentration is likely to produce symptoms that are inconsistent with safe driving (Logan et al 1996)*”.

In Dr Joyce’s view Benjamin was in a state of methylamphetamine intoxication at the time he drove the Falcon and, as such, his driving behaviour was highly characteristic of intoxication with methylamphetamines. Risk taking behaviours such as stealing cars, stealing fuel, or deciding to drive without a licence are all behaviours that may be seen as part of the effects of methylamphetamine intoxication on a person’s ability to decision make.

Further, in evidence, Dr Joyce covered the issue that a person affected by a stimulant, such as methylamphetamine, is likely to be “*adventurous*” in any decision making. They are going to be physiologically prepared for the requirements of fighting or fleeing in that

their heart rate is accelerated, their respiratory rate accelerated and their degree of attention is increased and they are then open to making risk taking decisions.

Dr Joyce commented it is easier for a methylamphetamine intoxicated person to decide to undertake risk taking behaviours because their mind down plays the consequences of the risk taking. As a result of their intoxicated state they believe they are in sufficient control of things, and that things are happening at a speed they can comprehend. In reality those perceptions are wrong, however, because of their inappropriate confidence as to the outcome they will indulge in extreme risk taking behaviour.¹⁵

It was made clear that a person intoxicated with methylamphetamine still has the capacity to make decisions and their actions are still voluntary, however, they are more likely to make rash decisions than sensible decisions, but are still capable of distinguishing between different decisions.

CRASH INVESTIGATION

The court heard evidence from both Detective Sergeant Kevin Wisbey attached to the Major Crash Investigations section in April 2011, and Sergeant David Magorian, Senior

¹⁵ t 4.6.14 p45-6

Collision Analyst, the Crash Reconstruction Section of Major Crash Investigations.

Detective Sergeant Wisbey described the crash scene as a dual carriageway which in April 2011 was under reconstruction and surfaced with a top coat of stone chippings. There were two lanes of opposing traffic divided by a central median strip. The approach to the crash site was on a slightly downward gradient, southbound, and had a posted speed limit of 60 km/h due to the road works with street lighting provided by portable light towers.

Detective Sergeant Wisbey arrived at the crash site at approximately 6:45am on 14 April 2011 when the area was still cordoned off for investigation. At that time there were still tyre marks left by the Falcon on the sealed portion of the road which commenced in the right-hand southbound lane prior to the to the TCL intersection at Widgee Road. These marks curved left and continued to where the Falcon was at rest after crashing through a steel reinforced property wall. Prior to them becoming visible on the sealed surface, the tyre marks could not be identified on the unsealed surface.

Detective Sergeant Wisbey indicated the examination of tyre marks is relevant to an understanding of the possible speed of a vehicle prior to an impact. However, in this case the tyre marks, where they became visible on the sealed

surface, were already indicative of the Falcon being in an anticlockwise yaw which prevents an estimation of speed prior to the loss of control indicated by the yaw.¹⁶

There were advisory signs posted with respect to the road works from the intersection of Alexander Drive and Reid Highway notifying drivers of the lane modifications and lane resurfacing. There were also cones and bollards prior to and beyond that intersection identifying the lane modifications.

The damage to the Falcon was extensive and consistent with the vehicle impacting with the property boundary fence and landing on its roof.

Initially there was some difficulty in identifying Benjamin because Eades gave incorrect information to the police officers attempting to assist them at the scene of the crash. Initially Benjamin was admitted into hospital under the incorrect name.

Sergeant Magorian analysed the available information from the crash scene and concluded the Falcon had been travelling in a southerly direction on Alexander Drive, apparently in the right-hand median lane. He believed the driver of the Falcon had lost control of the vehicle when it moved from the original sealed surface, onto the temporary

¹⁶ t 4.6.14 p74 & Ex 1, Tab 28

surface at the Reid Highway intersection, at high speed.

On the Falcon reaching the sealed road surface again it had already entered a state of yaw, rotating anticlockwise around its vertical axis, suggesting that the loss of control occurred prior to that surface change.¹⁷ Once the driver had lost control of the vehicle it mounted the kerb, crossed the footpath and then crashed into the steel reinforced fence. At the time the Falcon left the eastern side of the carriage way it had rotated to the extent it was side slipping, drivers side first, at an angle of about 40° to its original direction of travel.

Sergeant Magorian was unable to state objectively the reason for the loss of control, nor could he provide an objective speed analysis. However, for the purposes of a coronial enquiry,¹⁸ Sergeant Magorian was prepared to estimate that at the time the vehicle hit the sealed surface, following the unsealed surface, it was still travelling at a speed of around 100 km/h. At that point it was already starting to rotate in an anticlockwise direction.

Sergeant Magorian does not believe there was any physical indication of braking and certainly none of the witnesses noticed brake lights. The following police initially believed the Falcon had disappeared from view. Sergeant Magorian was surprised there was no indication on the unsealed

¹⁷ t 5.6.14 p95

¹⁸ Lesser Standard of Proof than a Criminal Investigation

surface from which to pinpoint the point for the loss of control, however, there was nothing on the unsealed surface which he could identify as that point. The physical indicators were the Falcon was moving at speed, and there had already been a loss of control by the time it reached the sealed surface again, in the vicinity of the crash site.

Sergeant Magorian did clarify that where a driver had been driving on a sealed surface and then unexpectedly hit an unsealed surface, but had not modified his braking responses and steering responses, then it is more likely, because of the loose surface and the lower friction capability, a loss of control arises as a result of steering input.

There was no evidence any other vehicle travelling on the portion of unsealed road had reported a loss of control and it seems likely it was driver input, be it by speed or steering, which exacerbated the loss of control. The speed at which a vehicle approaches an unsealed surface affects the friction capability of the road surface. The speeds prescribed by the road topography take into account the lateral forces acting at specified speeds to ensure the posted speed limit ensures acceptable lateral forces for the capability of the majority of drivers.

CONCLUSION AS TO THE DEATH OF BENJAMIN

I am satisfied Benjamin was a 15 year old child staying in the metropolitan area after spending parts of his life in more regional settings.

Benjamin lost his father in a crash in December 2009 and was reported to be very distressed by that incident.

In January 2011 Benjamin was alleged to be involved in a burglary and the stealing of a motor vehicle. He had not faced court at the time of his death with respect to those matters.

Benjamin did not attend school while in the metropolitan area and would have had spare time with little to stimulate him. He was staying with family in Ellenbrook.

On 13 April 2011 Benjamin had been in the Midvale area visiting family.

In the late morning of 13 April 2011 a home had been broken into in Swan View. The keys to a Ford Falcon sedan were in the home and they were used to steal the locked Falcon from a locked garage on the property.

A vehicle fitting that vehicle's description was used later in

the afternoon in the area of Middle Swan to perform burnouts and donuts.

On the evening of 13 April 2011 Benjamin's Aunty Sharon with whom he was staying in Ellenbrook, believed Benjamin had gone to bed.

At some time during the night or early hours of 14 April 2011 Benjamin and his cousin, Eades, had possession of the Falcon. Benjamin drove the Falcon and at approximately 4:25am the Falcon was caught on CCTV footage at a service station in Swan View. Eades can be seen putting petrol in the Falcon before it was driven off without payment.

Approximately half an hour later the Falcon was seen being driven in a westerly direction on Hepburn Avenue in the vicinity of Malaga. The posted speed limit for the area was 70 km/h and the Falcon was travelling at 94 km/h as recorded by police officers in a fully marked traffic car travelling in the opposite direction. Senior Constable Green was driving with First Class Constable Rimmer as a passenger.

The police officers performed a U turn and came up behind the Falcon which had slowed to approximately the speed limit for the area. Eades advised police at a later stage he and Benjamin were aware of the police car behind them. He

could offer no explanation to the police as to why Benjamin had failed to stop once the police officers in TE202 activated the lights in an attempt to stop the Falcon.

At some time before that point Benjamin had consumed or used methylamphetamines.

Benjamin indicated to turn left and pulled into Bellefin Drive and drove through the suburb of Ballajura with the police vehicle following him. He eventually pulled into Illawarra Crescent and began to accelerate away from the police vehicle.

Green and Rimmer in TE202 realised Benjamin had no intention of stopping the Falcon and called into POC for authorisation for a pursuit. Both Green and Rimmer were fully qualified priority drivers and TE202 was an appropriate vehicle. The pursuit was authorised.

The police AVL data (corrected) indicates that TE202, once on Illawarra Crescent, ranged in speeds from 82 km/h through 97, 96, 78 to 123 km/h approaching the intersection with Alexander Drive.

The Falcon turned left onto Alexander Drive and continued towards the Reid Highway extension. TE202's AVL data recorded speeds of 89, 88, 81, 135, 142, and then back down to 132 km/h shortly before the Reid Highway

intersection where the road is fairly straight and open. On the recording of the pursuit from POC the police vehicle alarm can be heard as TE202 reached 140 km/h before Green eased off the accelerator and brought the vehicle back under the cap with the Falcon still in sight but pulling away.

The first set of TCLs at the Reid Highway intersection were red and Benjamin drove through those lights, at speed, while police dropped behind and stopped at the red TCL. The police then lost sight of the Falcon as it passed through the next set of red lights where it passed Mr Holt's vehicle, which had turned off Reid Highway right onto Alexander Drive.

Mr Holt did not initially see the police vehicle and was concerned at the speed with which the Falcon passed him straight through the red TCL. The lights turned green and Mr Holt and the police then continued south with Mr Holt losing sight of the Falcon.

After passing Mr Holt's vehicle Benjamin lost control of the Falcon on the portion of unsealed road at the road works on Alexander Drive immediately following the Reid Highway intersection.

The Falcon veered to the left and crashed through a concrete reinforced property boundary on the corner of

Widgee Road. The Falcon came to rest on its roof in the rear garden of the property.

The police, who had lost sight of the Falcon, performed a U turn to approach the site of an apparently crashed vehicle. Mr Holt also came upon the scene and directed his headlights onto the crashed vehicle. The police officers went to assist Benjamin and Eades.

The emergency services needed to be involved in extracting Benjamin from the vehicle and he was taken to RPH by ambulance where he died later that morning.

The post mortem examination revealed unsurvivable head injuries, and that Benjamin was intoxicated with methylamphetamines at the time of the crash.

I am satisfied Benjamin died as a result of injuries he incurred when he lost control of the Falcon he was driving, at speed, on an unsealed portion of road and crashed.

I find death arose by way of Accident.

THE ACTIONS OF POLICE WITH RESPECT TO THE PURSUIT IN WHICH BENJAMIN DIED

There is no dispute the actions of the police officers in TE202 and the supervision of the pursuit by Detective Inspector McIntosh, in the capacity of POC, were conducted

in accordance with all relevant, both then and current, Emergency Driving Policies and Guidelines. All the independent evidence supports the police reporting of the pursuit.

Originally it appeared there was some discrepancy between the TE202 AVL data and that reported during the course of the pursuit but investigation revealed the AVL data to be consistently erroneous.¹⁹ The corrected data revealed Green had pulled TE202's speed back once aware the alarm for the 140 km/h cap was breached, and he stopped TE202 at the red TCL until authorised to continue through those lights in an appropriate manner, by which time they had changed to green.

The Falcon disappeared from view due to its speed and the road configuration and had crashed by the time the police and Mr Holt proceeded through on a green TCL. There was nothing in Benjamin's driving to that point in time to make the police officers believe he was not able to control the Falcon appropriately. They were unaware of his age, history, the fact the motor vehicle was stolen or the fact Benjamin was intoxicated with methylamphetamines.

The police officers intent was law enforcement and community protection by the apprehension of the driver of the Falcon and the speed at which he was travelling as the

¹⁹ Ex 1, Tab 29

initiating trigger for a pursuit, and a failure to stop for its continuation.

Evidence given at the inquest indicated it is not uncommon for drivers intoxicated with methylamphetamines to engage with police in a pursuit situation, rather than stop. And, by the fact Benjamin did not show his lack of experience as a driver by his driving, he did engage with police in a pursuit by failing to stop, although he slowed down and drove appropriately for some distance. He was motivated to avoid apprehension for a number of reasons, probably including his drug intoxication. Benjamin had also been speeding before he became aware of a police presence.

From a law enforcement perspective there were road safety risks in permitting someone like Benjamin to continue driving. From a law enforcement perspective it was Benjamin's conduct which caused the pursuit and ultimately his loss of control of the Falcon resulting in the crash which resulted in injuries from which he died.

However, in recognition of the inherent dangers surrounding law enforcement by pursuit procedures, there is intense discussion and training around the issues of safety and risk assessment, over law enforcement, as the primary consideration. The tension is most significant when the very risk factors which make a pursuit undesirable, are frequently the very ones which may also signify a danger to

other road users if not curtailed, drug intoxication, driver inexperience and speed not appropriate to the road conditions.

Ultimately, it was the speed of the Falcon on an unsealed portion of road, with warning advisory speed signs, and Benjamin's lack of driving experience which resulted in his death.²⁰

No one else had crashed on that portion of unsealed road and Benjamin had been speeding when first noticed by the police and only slowed down initially in their presence. There is no evidence he would have maintained posted speed limits in the absence of police attempts to apprehend him for speeding.

This is the whole dilemma for police and the community when considering the issue of risk assessment and the initiation and continuation of pursuits. Some risk assessments are easy to make, obviously driving at speed in a pedestrian mall in the middle of the day is a situation to be avoided, but apprehending a speeding driver in the early morning when traffic is light is a much less obvious assessment.

The issue really distills into a consideration of, do the known risks, speed on a relatively empty road, justify the

²⁰ t 5.6.14 p103

unknown risks, which in this case turned out to be age and drug intoxication.

I am satisfied the Police Emergency Driving Policies and Guidelines adequately set out appropriate risk assessment and that trained pursuit drivers are very competent to make, and do make, appropriate decisions with respect to risk assessment when they have the relevant information. The problem is risk assessment without relevant information, and should a lack of information prohibit initiation of a pursuit without more information.

This was an exchange with the pursuit driver in the current case.

“And what about in this instance; did you get any indication that the driver wasn’t accustomed to travelling at speed? ..Well, through the back streets he was fine and then we got onto Alexander Drive. That’s when he really accelerated, and that’s just basically a straight line, so I don’t know how he went through that section of unsealed road because we couldn’t see him. Like I said, we had come to a stop and I was going through that decision-making process as to whether to continue. So when he had gone through there I couldn’t tell how he handled that area there.

Okay. And just to be clear, it was only at the point when he went through the red light that you determined that the risk had become too great to proceed? ..It was starting to become too great.

Starting to become too great; Okay. And again just to be clear, in the background of the recording I can hear what sounds like a chiming sound under the sirens. Is that the

speed alarm? ..That is the speed alarm, yes, on our traffic vehicles on our shift that we had put on.

All right? ..They are set for 140 kilometres.

Now, it is an exercise in hindsight, but if you had known at the time that the car was stolen, that the driver was 15 years and also drove affected with methylamphetamine, would you have commenced a pursuit in those circumstances? ..If the vehicle was stolen, most probably; 15 and methylamphetamine probably not.

And why not? ..The risk would have been too great.

And do you know that from just your general knowledge or personal experience? ..A 15 year old driver, I wouldn't have put his experience to drive a car at high speed

So even without methylamphetamine, just the fact that he was 15 years old? ..Yes. Not experienced to drive at high speed.”²¹

It is the policy issue from the law enforcement perspective which needs to be addressed. If the known risks do not explain the high motivation to evade police then should alternative strategies be put in place to apprehend drivers which do not involve a pursuit?

That is the fundamental issue facing law enforcement agencies currently.

During the course of this inquest evidence was called from senior police involved in policy and planning around the issue of the initiation and continuation of pursuits and the

²¹ t 4.6.14 p17

development of further policies and procedures confronting front line police with respect to the issues in discussion. As a result of that evidence I am satisfied police are attempting to address the issues raised above and are developing relevant strategies while maintaining their position with the need for on the spot law enforcement.

I have also recently completed a finding²² wherein I have attempted to summarise some of the relevant data with respect to police pursuits as outlined in a relatively recent publication by the Australian Institute of Criminology²³ but am still in the position of the data being relatively scant for Western Australia.

I am in receipt of submissions of behalf of Benjamin's family and note they cover recent publications and material referred to in the previous inquest from this court earlier in the year.²⁴ The references to the NSW material do not extend to the significant differences in road conditions and police Emergency Driving policies in that state at the time of that pursuit.

WAPol already requires a pursuit to be abandoned if there is a view it creates an unjustifiable risk of death or serious injury; and there are other considerations relating to other road users which may make police lights and sirens a

²² Inquest 13/14 SAMSON

²³ Trends and Issues in Crime and Criminal Justice No.452 June 2013

²⁴ Inquest 13/14 SAMSON

significant safety issue. Speed safety caps have also been addressed in previous inquests.²⁵

The conundrum remains the same, at what point should the bar be set for the initiation of a pursuit for an, in real terms, apparently minor traffic infringement, which may mask significant other offending and/or safety considerations.

Currently I am satisfied the pursuit drivers and pursuit supervisors from whom I have heard are, and do, make decisions entirely consistent with the current Emergency Driving Policies and Guidelines. At this point in time I consider there is not a useful recommendation I can make with respect to the subject of pursuits in Western Australia, pending the police revised policies currently being considered by the Emergency Driving Committee.

I acknowledge WAPol does attempt to apprehend offending drivers by the use of other strategies where the circumstances permit alternatives to active pursuit.

E F VICKER
Deputy State Coroner
September 2014

²⁵ Inquest 20/11 CRONIN
Inquest 21/11 TJOE
Inquest 25/10 JONES, MILLER, HIGGINS, HERBERT Recommendation 4