



STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest:	Into the death of Housam Ismail
Hearing dates:	16 November 2015
Date of findings:	18 November 2015
Place of findings:	State Coroners Court, Glebe
Findings of:	Deputy State Coroner E.Truscott
Catchwords:	Coronial Law-Cause and manner of death-police operation
File number:	2012/58625
Representation:	Counsel Assisting: Jake Harris instructed by Carolyn Berry of Crown Solicitors Office Police Force of NSW: Mr R Hood instructed by S Robinson
Findings:	That Housam Ismail died on 22 February 2012 at Westmead Hospital of neck and head injuries suffered when he was a passenger in a motor vehicle during a police operation.
Recommendations:	Nil

IN THE STATE CORONER'S COURT

GLEBE

NSW

SECTION 81 CORONERS ACT 2009

REASONS FOR DECISION

1. This inquest concerns the death of a young man, Housam Ismail, who died of injuries sustained as a passenger in a vehicle, which failed to obey a stop sign, and collided with a vehicle at the intersection of Cumberland Road and Albert Street Auburn. The driver of the vehicle in which Housam was travelling was charged offences criminal offences in relation to his death. Those criminal proceedings have been concluded and this inquest is resumed pursuant to section 79 Coroners Act 2009.
2. Housam, who was known as "Sam", was born on 18 April 1990 and was 21 years old when he died on 22 February 2012. At the time of his death he lived with his parents on Rickard Road at Auburn. He was the youngest of six children. Sam's father Abdul Ismail describes him as a good son, honest, family-oriented and generous, with a wide circle of friends. Sam had been working with his father as a cabinetmaker since he left school.
3. On the evening of Wednesday 21 February 2012 Sam was at home with his family. In the late evening he went out telling his father that he was going out to buy cigarettes. He visited his friend Ayman Lakkis, and at about 11.30pm the pair left Mr Lakkis's house. They met up Adam Allam and Rabeh Dannawe. All four were travelling in a blue Mitsubishi 380 Magna (593-RVZ). The driver was Adam Allam; Rabeh Dannawe was in the front passenger seat; Ayman Lakkis was in the rear right hand side; and Sam was in the rear left hand seat.
4. At about 12.21am on 22 February 2012 Sergeant Blackburn was travelling in a marked police vehicle on Park Road, Auburn. He was driving in a northerly direction. He saw the Mitsubishi exit a roundabout at an intersection he thought was Park and Beatrice Streets. The Mitsubishi was travelling south towards him. Sgt Blackburn says the Mitsubishi was

travelling at excessive speed and it went over onto the incorrect side of the road, which caused him to move his vehicle to the left.

5. Sgt Blackburn turned his vehicle around in the driveway of a service station, which he thought was on Percival Street and commenced to follow the Mitsubishi, which had turned right. A couple of days before the inquest Sgt Blackburn had returned to the area and identified that street as Union Road. He said that when he made his statement, he had made a mistake about the name of the roundabout street - it was Helena Street.
6. As Allam's vehicle passed Sergeant Blackburn on Park Road, Sergeant Blackburn did not see who the occupants of the car were but glimpsed that the registration plate was interstate. When he entered Union Street he saw Allam's vehicle about 50 m at a roundabout still travelling at speed. Sergeant Blackburn activated his warning lights and siren in order to stop the vehicle. However, it did not stop and continued along Union Road until it turned left into Cumberland road.
7. At this point Sgt Blackburn decided to commence a pursuit. He notified police radio and provided some information regarding his location and speed. He said that he was in pursuit, the car had a Queensland Registration Plate and he was on Cumberland.
8. Cumberland Road is a main road that has a number of dips and rises. As a result there were periods when the Mitsubishi was briefly out of sight as it passed over a crest. After passing through the intersection of Wellington Street (which is controlled by traffic lights) the road rises and Sergeant Blackburn lost sight of it. He was aware that the next intersection went left and right and thought that if he couldn't see the Mitsubishi he would terminate the pursuit. His vehicle passed over the crest, he couldn't see the Mitsubishi and after about 50m he saw the collision debris and saw the very damaged vehicles in the intersection of Albert Road.
9. Vehicles travelling along Cumberland Road are required to stop at the Albert Road intersection. The tendered evidence demonstrates that Mr Allam entered the Albert Road intersection at speed and failing to stop at the stop sign collided with a Mazda driven by Mr Michael Patten who was travelling eastbound along Albert Road.

10. The Mitsubishi struck the near side front of the Mazda then collided with a power pole, a stop sign, a post box and a low brick wall before coming to a stop.
11. Sgt Blackburn stopped his vehicle, declared the accident and need for emergency services over the police radio. Numerous ambulances, the fire service and other police units arrived within minutes. Sam was the first to be conveyed to hospital but he died shortly after his arrival.
12. A police vehicle pursuit is timed from the moment the pursuing officer declares over VKG he is in pursuit until when it was terminated. The records indicate the accident occurred within about a minute of the pursuit being called. The distance between Union Road and Albert Street is a little over a kilometre. A kilometre a minute is 60kph; a distance of 1 ½ kilometres over that time is 90 kph. So the average speed must have been about 75 kph. It was a 50 kph speed zone. When Sergeant called the pursuit he told VKG he was travelling at 70 kmh. In his evidence he said after that point he could not say what he speed was but he did not gain on the Mitsubishi, he thought that there was about a 100 m difference between them which is consistent with his vision from the crest of the hill to the site of the accident.
13. Sgt Blackburn approached the scene and began to assess the injuries. Constables Napier and Silva arrived about 2 minutes after Sergeant Blackburn. Constable Napier gave evidence and he said that they had been under light and siren due to the pursuit being called. 12.25am .The first Ambulance arrived at 12.30am within 8 minutes of Sgt Blackburn radio call reporting the accident and calling for ambulances.
14. Almost immediately after the accident a large number of young men emerged from the houses in the area and some also began to arrive in cars. These men made efforts to free the occupants from the vehicles, including using a crow bar, but the cars were badly damaged and the doors of the Mitsubishi were jammed shut. These efforts made the car moved causing the injured passengers to be jolted in the car. He directed the crowd to desist and they became hostile thinking that the police were not helping.
15. In fact, Constable Napier was completely helpful, he arranged for one of the people to hold Sam's head so he didn't move and Constable Napier held the head of Ayam Lakkis, which

was covered in blood. Constable Napier was reaching through the broken glass of rear window to do this and maintained that position until Ayam could be removed from the vehicle.

16. The driver Adam Allam was not seriously injured in the accident. Sam was critically injured and Ayam was seriously injured, neither had been wearing seat belts. In the other vehicle, Mr Patten severely injured. He endured multiple operations and spent 10 months in hospital. He lost permanent use of his right arm.
17. Sam was taken from the vehicle after the fire service removed the car door and was taken to Westmead Hospital. The hospital notes show he was treated aggressively, with 8mg adrenaline and CPR was continued for 42 minutes. However, despite the efforts of treating staff he was declared deceased at 1.32am.
18. An external post mortem examination was performed with reference to the hospital records. The Post Mortem Report identifies the cause of death to be head and neck injuries; in particular a skull fracture and probable fractures to the upper cervical spine were noted.
19. Drug testing of the driver Allam, showed that he had taken cannabis and diazepam prior to driving. Dr Perl, a pharmacologist was of the opinion that the level of diazepam would have been a contributory factor to the manner of his driving, although she was unable to assess or determine what the degree of impairment actually could have been.
20. Mr Allam was charged with offences and he pleaded guilty to charges of Aggravated Dangerous Driving occasioning the death of Sam Ismail. He also pleaded guilty to other charges in relation to Mr Patten and other passengers in Mr Allam's vehicle. He was sentenced to 4 years imprisonment. He will be eligible for parole until 15 April 2016.
21. The Inquest is required to be held under s27 (1) (b) of the Act as Mr Ismail has died as a result of or in the course of a police operation (s23 (1)(c)).
22. I have received a brief of evidence and heard evidence from Detective Sergeant Wakeham, Sergeant Blackburn and Constable Napier. Detective Sergeant Wakeham was the Senior Critical Incident Investigator and he interviewed Sergeant Blackburn within 5 hours of the

incident. Detective Sergeant Wakeham said he was satisfied that Sergeant Blackburn complied with his obligations under the NW Police Service Safe Driver Policy in relation to conducting the police pursuit. He said that he was satisfied that Sergeant Blackburn had considered risk factors such “as traffic conditions and the manner of the driving displayed by the driver, there were low risk factors in that it was past midnight on a week night with limited traffic, they were travelling on back streets so the risk to oncoming traffic was limited, the road was a straight line so there was nothing which represented risk to the public, the weather was fine and dry. Detective Wakeham commented that Sergeant Blackburn had said in his interview that he had decided that if he would terminate the pursuit if he lost sight of the vehicle as he crested a rise. Detective Wakeham said that Sergeant Blackburn said was compliant with policy 6 (I think he meant 5).

23. Detective Sergeant Wakeham attempted to obtain statements from Dannawe and Lakkis but they each refused to tell him about the circumstances of their being in the vehicle and what had occurred that night. Some claimed to have no memory but Detective Sergeant Wakeham believed that they were uncooperative rather than failing to recall the events.
24. Detective Wakeham explained that police searched Allam’s vehicle. Behind the radio fascia they found a clear resealable bag contained 18 smaller bags each containing cannabis with a usual street price of about \$50 each. On the back seat was a bag, which contained 11 diazepam tablets and \$350 cash. He was of the view that the drugs and cash were consistent with drug supply activity. He suggested that Allam failed to stop when Sgt Blackburn directed him to do so in Union Street because he was evading police searching and locating the drugs in his motor vehicle. That is a reasonable opinion particularly taking into account the criminal of some of the occupants in the vehicle (Sam excluded).
25. Sergeant Blackburn participated in a directed interview and later signed a statement adopting that interview. In his interview he set out where he first saw Allam’s vehicle, which he has now corrected in his evidence as referred to above.
26. Detective Wakeham did not ask him in the interview why he decided to stop and then pursue Allam. He gave his reasons in his evidence. He said that Allam had committed a traffic offence by speeding at the Park Road and Helena Street roundabout and crossing his

2 wheels just over the double white lines before immediately correcting onto the left side of road. Sergeant Blackburn performed his turn to follow Allam because he decided that he would breath-test the driver.

27. Sergeant Blackburn said that when he entered Union Road, Allam's vehicle was at the roundabout of Gordon and Union Roads and he activated his alerts and Allam accelerated. Sgt Blackburn said he decided to call the pursuit within seconds because it was evident Allam was accelerating and evading police.
28. Sgt Blackburn estimating that by the time Allam's vehicle was turning left into Cumberland St, the police vehicle was at the Union and Gordon Rd roundabout. This was the point at which he commenced the pursuit. Using the scale on the street map tendered in evidence, this is a distance of about 1.5 km.
29. That evidence is consistent with the time of the VKG records and the speed of 70 kph, as reported by Sergeant Blackburn at the time was travelling on Cumberland Road. Sergeant Blackburn's evidence that he did not gain on the vehicle and would terminate the pursuit if he could not see the vehicle once he came over the crest after the Wellington Street intersection was a reasonable decision. It shows that he was aware of and assessing the risk factors required under the Safe Driver Policy.
30. Sergeant Blackburn told Detective Wakeham that he had only lost sight of the vehicle for a second, but I think it is a little longer - though the pursuit was only about a minute, Sergeant Blackburn said in his interview to him it felt like just seconds which indicates that the pursuit was indeed one which Sergeant Blackburn was prepared to abandon within a short period of time with reasonable regard to the Safe Driver Policy.
31. Sergeant Blackburn was honest and frank about his decision to pursue Allam's vehicle. He conceded that though the traffic offence was minor, the fact that the vehicle accelerated quickly turning right into Union Road was sufficient to be concerned about the manner of driving to stop the vehicle to subject the driver to a breath test. Sergeant Blackburn saw the vehicle's registration plates were interstate but had no opportunity to obtain sufficient details to call for an inquiry about the vehicle.

32. Sergeant Blackburn said that prior to seeing Allam's vehicle he had been conducting general patrol duties in relation to "traffic, crime, people misbehaving, and domestics". He said it was not his normal practice to pursue "fail-to-stops". He would usually require something more but there had been a spate of drive-by shooting in the area and which caused him to be concerned about the vehicle.
33. Sergeant Blackburn said that most people stop when a police officer activates the siren and lights but this vehicle accelerated away, which caused him to think that they were up to no good. During the extremely short pursuit Sergeant Blackburn did not attempt to gain on Allam's vehicle because he considered that it would be dangerous to do so.
34. The scene of the collision was extremely traumatic but Sergeant Blackburn appropriately positioned his vehicle, provided directions through VKG and dealt with the crowd and only went to his car to write notes when he was relieved by fellow officers and emergency services were taking control of the scene.
35. The issues in the inquest are few- to identify any contributing factors to the accident and to consider whether Sergeant Blackburn's conduct was appropriate. In regards to the latter, there are no criticisms about Sergeant Blackburn's conduct calling the pursuit, and the decision to stay a safe distance back from the vehicle and determining to terminate if he did not regain sight of it once he had a clear view from the crest of the rise. He dealt with the accident scene appropriately. In regards to the contributing factors, it is likely that Allam was attempting to evade Sergeant Blackburn, at a time that he was probably impaired by cannabis and diazepam and motivated by a fear that the drugs in his vehicle would be discovered.
36. It is difficult to assess with accuracy the speed at which Allam was travelling at the time he entered the Albert St intersection, it could have been as much as near double the posted zone speed of 50 kph. At that time Sergeant Blackburn's vehicle was probably still on the approaching side of the crest given that he did not see the collision occur as he came over the crest. This is consistent with his evidence that he kept a very generous distance behind Allam's vehicle so not to press him to drive faster.

37. There are no recommendations I need to make in relation to this Inquest but note that the Safe Driving Policy remains unchanged though there have been many coronial recommendations suggesting their improvement to minimise deaths in police operations.
38. The findings: Housam Ismail died on 22 February 2012 at Westmead Hospital of neck and head injuries suffered when he was a passenger in a motor vehicle in a police operation.

E Truscott

Deputy State Coroner

18 November 2015