



## **CORONERS COURT OF NEW SOUTH WALES**

<b>Inquest:</b>	<b>Inquest into the death of Jake Robert INNES</b>
<b>Hearing dates:</b>	18 and 19 February 2015
<b>Date of findings:</b>	27 February 2015
<b>Place of findings:</b>	State Coroner's Court, Glebe
<b>Findings of:</b>	Deputy State Coroner HCB Dillon
<b>Catchwords:</b>	<b>CORONERS – Death in the course of police operation –</b> Police attempt to intercept speeding vehicle – Vehicle fails to slow or stop when directed – Driver loses control of vehicle – Whether police engaged in high-speed pursuit under Safe Driving Policy -- Whether deceased was driver or passenger – Coroner's commendation of police for rescue effort after crash
<b>File numbers:</b>	2013/00200605

<b>Representation:</b>	<p>Mr J Harris (counsel assisting) instructed by Ms C Lee (Crown Solicitor's Office)</p> <p>Mr R Hood (counsel) instructed by Mr S Robinson (Commissioner of Police and involved officers)</p>
<b>Findings:</b>	<p>I find that Jake Robert Innes died on 1 July 2013 at the Liverpool Hospital as a result of blunt force injuries he suffered to his head and neck when the car he was driving on 30 June 2013 onto the exit ramp to Campbelltown Rd, Denham Court from the Hume Highway ran out of control and crashed into a guard rail at excessive speed in the course of a police operation intended to get his vehicle to stop.</p>

## REASONS FOR DECISION

### Introduction

1. This is an inquest into the death of Jake Robert Innes. Jake was a 21 year old man who died in a car crash following an attempt by police in a marked police vehicle to intercept the vehicle in which he was travelling at high speed.
2. Jake's death has devastated his family and friends, many of whom were present in court throughout the inquest. He was much loved and those who knew him described him as a young man who loved life, was affectionate, courteous, generous, thoughtful of others and great company. He was liked and respected and the large number of people who gathered in court demonstrated the high regard in which Jake's family is held in their community.
3. His father Robert, quite correctly and insightfully, described him as still being a "boy" who was growing up. That is correct. Neuroscientists tell us that the human brain does not fully mature until a person is about 25 years old. The last part of the brain to mature is the section which governs our ability to make judgments. At 21, young people, especially young men, are prone to overindulge in risky activity because they do not have the experience and maturity to fully assess the risks they are taking. Learning from experience is part of that process of maturing. Sadly, in Jake's case, not only has his family lost a much-loved son but our wider society has lost a young man of great potential. His sudden and unexpected death is indeed tragic.
4. Because Jake died in the course of a police operation – the attempt to intercept his vehicle – the Coroners Act requires that an inquest be held. In a society in which the rule of law prevails, a police force is not a law unto itself. In civil society, a police force is a guardian of the lives and welfare of the members of that society. Police officers are members of the society they serve to protect. The police force has a virtual monopoly on the use of deadly force and law enforcement powers. For all these reasons, a police force in a democracy is accountable to the society from which it springs.
5. An inquest is a public, independent judicial inquiry. It is one of the main ways in which our society holds its police force to account when lives are lost in the course of a police operation. It has been observed that:

*The purposes of a s.23 Inquest are to fully examine the circumstances of any death in which Police ..... have been involved, in order that the public, the relatives and the relevant agency can become aware of the circumstances. In the majority of cases there will be no grounds for criticism, but in all cases the conduct of involved officers*

*and/or the relevant department will be thoroughly reviewed, including the quality of the post-death investigation. If appropriate and warranted in a particular case, the State or Deputy State Coroner will make recommendations pursuant to s.82.”*

(Waller’s Coronial Law & Practice in New South Wales 4<sup>th</sup> Edition at para [23.7] (page 106))

6. That said, this inquest is not a quasi-criminal trial of Jake, his friend Luke Barrett or the police officers involved in the incident. But if NSW Police Force policies, procedures and training are designed to minimise the risk of harm during police operations, it is appropriate to examine the officers involved in the incident and the policies they were applying.

### **The issues**

7. A coroner is obliged to make findings, if possible, as to the identity of the person who has died, the date and place of death, the cause of death and the manner or circumstances of death. In this case, it is the manner and circumstances of Jake’s death that raises the difficult questions. They are:
  - Who was driving?
  - How did the crash occur?
  - Why did the crash occur?
  - Why was Jake killed and Luke Barrett severely injured?
  - Could Jake’s death have been prevented?
  - Did the police comply with relevant police procedures and policies?
  - Did the police cause or contribute to causing the death?
8. In summary, my answers to these questions are that:
  - Jake was driving the car.
  - The car hit a guard rail on an off-ramp from the Hume Highway near Denham Court.
  - Jake lost control of the car due to a combination of factors including excessive speed, worn tyres, wet road surface, road configuration and his own physical impairment, probably while attempting to evade police interception;
  - Jake’s death probably could have been prevented, and Luke Barrett’s injuries minimised, had they been wearing seatbelts at the time of the crash and, self-evidently, regardless of the seatbelts, had the car stopped when directed to do so by police.

- The involved police officers complied with relevant police policy and procedures;
- Although there is an obvious causal link between the police signalling a direction to the driver to stop and the accident, the police action itself did not cause or contribute in any significant way to Jake's death

9. I will now explain my conclusions.

### **The undisputed facts**

10. Because Luke Barrett's licence had been suspended but Jake had a full licence, whenever he and Jake were together, which was a frequent occurrence, Jake would almost always drive. This was a sensible arrangement. Luke Barrett owned the red Toyota Seca sedan in which Jake was later killed and Luke Barrett injured. At the time of the accident, they were working together and sharing a house. Although Jake owned a car himself, it was cleaner and in better condition than Luke Barrett's Seca. So this was the car in which they drove to work and used to run around together.
11. On the evening of Saturday 29 June 2013, Jake and Luke Barrett, who were close friends and workmates, visited the Bradbury Hotel where they socialised with friends, had a number of drinks and played gaming machines and pool.
12. At about 9.30pm, Jake, Luke Barrett and two other friends, Matthew White and Shane Gveric, travelled the short distance to Shane Gveric's house in the Seca. Shane Gveric was then on a break from his shift working at the hotel. The car was driven by Jake to Shane Gveric's house and later back to the hotel. Luke Barrett occupied the front passenger seat on both trips.
13. Some time about 11.30, Jake and Luke left the hotel and travelled north. There are no witnesses available to see who was driving when the pair left the hotel. Exactly where they went is also not clear, although there is some evidence to suggest they travelled via Campbelltown Road and onto the Hume Highway where they continued to travel north. At about midnight, a marked police vehicle in which four officers had been conducting "high-visibility" policing in south-west Sydney, was returning from duty to the Bass Hill police station, also heading north on the Hume Highway.
14. They observed the Toyota pass them in the outside lane at excessive speed. Each officer estimated the speed differently but all agreed that it was excessive and that an attempt should be made to stop the car.
15. The driver Constable Flores activated the warning lights, but not the siren. He and the officer in the front seat apparently had some difficulty finding the correct button to press to activate both lights and sirens. Within a very short period, the officers observed the Toyota cross to the left hand lane and then leave the highway at the Campbelltown Road or Denham Court exit. They followed the vehicle, although no contact was made with police radio.

16. Three of the four officers lost sight of the car once it crossed the lanes. It was quite some distance ahead of them and, due to rain on the road, was throwing up a large plume of water behind it. Visibility was further diminished by darkness and rain falling on the police vehicle's windscreen.
17. At about the same time as the police lights were activated, Jake was on a phone call to Ebony McPherson. That he noticed the police car is clear from his conversation with her. Just before he terminated the call, he said to her: "I'll call you back. The cops are coming." Very shortly afterwards the crash occurred.
18. What the police had seen was the Toyota cross four lanes from right to left (from lane 4 to lane 1 then onto an off-ramp. The exit at Denham Court comprises a relatively tight left hand bend, which is restricted to 60 kph, with an advisory 55 kph speed limit.
19. When the Toyota entered this bend it was almost certainly still travelling at high speed. At this point the conditions were dark, the road was wet and it may have been raining lightly. The Toyota collided with the guardrail on the right and suffered extensive damage, spinning 180 degrees and coming to a stop in a position facing back towards the highway.
20. One of the police officers had noticed the car take the exit. The police car which had been travelling in lane 2 when the Toyota passed it, then followed the path of the Toyota. As they approached they saw that it had crashed and that the guard rail was badly damaged. They did not know how many people had occupied the car but they rightly suspected that the occupant or occupants were injured. The police car stopped near the crashed vehicle. One of the officers contacted police radio at 12.09am to report the accident. All four officers approached the car to give assistance. Jake was found lying inside the car, with his head against the driver's door.
21. Initially, the police were unaware that Luke Barrett had been ejected from the car in the crash. As he had been thrown several metres away from the car, and the police were concentrating on helping Jake, he was only noticed several minutes later. A later physical examination of the car found that neither seatbelt had the characteristic damage generally found when a seatbelt has been strained under pressure in a high-speed collision. This evidence plus the pattern of injuries to both men and the positions in which they were found by police, indicates that neither Jake nor Luke Barrett was wearing a seatbelt.
22. A number of other police vehicles and ambulances attended, and the Fire service helped to remove Jake from the car. He and Luke Barrett were taken to Liverpool Hospital.
23. Jake suffered serious injuries, including a depressed skull fracture and an unstable fracture to the neck. Despite the efforts of treating staff, his injuries were assessed and believed to be non-survivable. On 1 July 2013 life support was withdrawn, and at 1.39am Jake died. Luke Barrett also received very serious injuries during the accident. He remained in hospital for about 10 weeks.

## Who was driving the Toyota?

24. Luke Barrett was unable to recall the accident afterwards. Given the severity of his injuries, including brain trauma, this is not surprising. In my view, he made a genuine effort to give honest evidence but he simply has no recollection of the details of the night. He was unable to say whether he or Jake had been driving.
25. The accident was thoroughly investigated by a Critical Incident team led by Det Sen Sgt David Tucker. A number of pieces of evidence were gathered that, taken together, prove that Jake was almost certainly the driver:
  - Jake had often, perhaps even usually, driven Luke Barrett's car if he and Luke were going somewhere in the car together.
  - He had been driving the car earlier in the evening.
  - Luke had lost his licence, whereas Jake had a full licence. It therefore made sense for Jake to drive rather than Luke if they were together.
  - Luke Barrett is shown on CCTV footage at the Bradbury Hotel wearing a white cap. Although evidence was given that he often wore a cap, in the CCTV footage from the hotel that night, Jake is seen to be hatless. An independent eyewitness who saw the Toyota shortly before the crash told police that the passenger was wearing a white cap.
  - The front offside area of the Toyota received the worst damage and Jake received worse injuries than Luke Barrett.
  - Jake was found with his head jammed between the driver's side door and the steering wheel.
  - The driver's side window was shattered. It is theoretically possible that a large man (about 192cm tall and reasonably strongly built) could be thrown through the window in a crash if he was driving but common sense suggests that this is an unlikely route for Luke Barrett to have taken as he was ejected from the car. If he was ejected from the passenger side door, as seems more likely, and he had been driving, he would have had to cross from the driver's seat to the passenger door past Jake who remained in the vehicle. This seems implausible.
  - Jake's blood was found on the steering wheel and driver's seat.
  - A driver is generally more likely to become aware of the presence of police behind the car because he or she can see to the rear using mirrors. Jake's conversation with Ebony McPherson shows that he had been alerted to the presence of a police car behind him.

## **How did the crash occur?**

26. Although the crash was not witnessed, it was relatively easy to reconstruct from the pattern of damage found by the crash investigators. In essence, rather than take the sharp left-hand bend, the car continued along a more or less straight line until hitting the right-hand guard rail with its offside front. It may have become airborne after doing so and was certainly spun 180 degrees before coming to a halt.

## **Why did the crash occur?**

27. The crash happened because a number of physical and human factors combined within a very short space of time:
- The car Jake was driving was travelling at excessive speed.
  - This brought it to the attention of the police in the police car it passed.
  - The police made a decision to attempt to stop the car.
  - The police alerted the driver to their presence by putting on their lights, indicating that they wanted him to pull over and stop.
  - Rather than doing so, Jake made a spur-of-the-moment decision not to stop but to leave the freeway via the Denham Court exit.
  - He was probably motivated to do so because he knew he was affected by alcohol and possibly drugs and did not wish to be caught and breath-tested by police with the consequences, including loss of licence, that would almost inevitably follow.
  - His judgment and driving ability were probably impaired to some extent by intoxication.
  - He entered the off-ramp at a speed too high for the car to handle given its condition and the condition and design of the road.
  - The car's front tyres, the main braking tyres, were worn and in poor condition, providing insufficient grip in the circumstances.
  - The surface of the road was wet and the sharp left-hand bend was difficult to manoeuvre through at excessive speed even in good weather.
28. In most cases, this minor error of judgment – which every driver has probably made at some time -- would result in no damage being done. Or if damage was done, it would only be to the cars. It is terribly tragic that such a small mistake has had such consequences.



## **Why was Jake killed and Luke Barrett severely injured? Was Jake's death preventable?**

29. Evidence was given by an expert crash investigator and biomechanics expert, Mr Michael Griffiths, that in his opinion this crash would have been survivable had Jake been wearing a seatbelt. He drew this conclusion from the fact that the cabin of the car had survived reasonably well, the principal damage being to the car in its crumple zones.
30. Leaving aside the circumstances leading up to the crash, Jake was killed and Luke Barrett badly injured because they suffered a catastrophic car crash without taking the elementary precaution of fastening their seatbelts.
31. To his great credit, Luke Barrett has participated in road safety education since the accident. Jake and Luke, and their families and friends, have, however, paid an enormous price for this simple, youthful indiscretion.

## **Did the police comply with relevant police procedures and policies?**

32. As I noted in the introduction to these remarks, an important part of an inquest into a death in a police operation is the inquiry into whether the involved officers had complied with their training and with the standard operating procedures of the NSW Police Force while conducting the operation. Such training and procedures are designed in part to ensure public safety insofar as that is reasonably compatible with carrying out their lawful operations. Police do not have a licence to use excessive force in maintaining peace and good order in our society.
33. The NSW Police Force has implemented a "Safe Driving Policy" that governs all police operations and duties conducted in police vehicles. Among other things, the SDP covers "urgent duty" driving and "pursuits".
34. The SDP declares that a pursuit commences when a police officer decides to pursue [i.e., follow or keep in contact with] a vehicle that has ignored a direction to stop.
35. The question was raised whether Constable Flores, the driver of the police vehicle, was engaged in a pursuit or was still in the "catch-up" phase of the operation. In my opinion, so short was the time available to Constable Flores in making the decision to pull the Toyota over, turning on the lights, then losing sight of the Toyota then coming across the crashed vehicle that the question is theoretical only.
36. Constable Flores gave evidence that appeared to me to be plausible and honest that, although he had seen no indication that Toyota was in fact complying with the direction to stop indicated by the flashing lights, he did not know where the Toyota had gone because he had lost sight of it in the cloud of spray. So he had not decided what to do about pursuing it. If that is correct, he had not commenced a pursuit. In any event, even if a pursuit had technically commenced there was no time available to follow the usual procedure of radioing VKG before they came across the crashed car.

37. It seems to me that Constable Flores and other officers in the vehicle followed their training and, whether they were conscious of it at the time or not, complied with the Safe Driving Policy in all material respects.
38. On their arrival at the scene, the police immediately rushed to Jake's aid. This was both commendable from a humanitarian point of view and brave because the engine bay of the crashed car was smoking and the officers had a reasonable fear that the car might catch fire or even explode while they were trying to help Jake. It was also obviously compliant with their duties as emergency service personnel.

### **Did the police cause or contribute to causing the death?**

39. Jake's father Robert, in a statement to the court, made the wise and honourable observation that it seems that Jake made a young man's immature mistake in the way he drove the car that night. It was the manner of driving that was the primary cause of the accident.
40. Although it could probably be said that, but for the police decision to attempt to stop the Toyota, the accident would not have occurred, for the reasons I have outlined above, the police officers involved in this incident do not bear responsibility for Jake's death. To their great credit, Jake's family did not claim that the police officers were responsible.

### **Conclusions**

41. This most unfortunate event teaches some very old lessons:
  - That dangers can arise very quickly on the roads
  - That these events can happen to anybody – good people can die on the roads due to mistakes they make or others make
  - That small mistakes can have catastrophically disproportionate consequences.
42. The Innes family have suffered terribly and their suffering continues. Sadly, there is no "closure". But all who have participated in this inquest will have noted their dignity and sadness, and their care for each other. I hope that their memories of the lively young man they loved so much will in time soften the blow they have suffered. I also hope that they will accept my sincere and respectful condolences and those of the staff of the Coroners Court.
43. I would also note that Constable Flores, himself only a young man, spoke kindly and compassionately to Mr and Mrs Innes after he had given his evidence. This was a fine gesture on his part and one I wish we saw more often in the Coroners Court.

## **Findings s 81 Coroners Act 2009**

44. I find that Jake Robert Innes died on 1 July 2013 at the Liverpool Hospital as a result of blunt force injuries he suffered to his head and neck when the car he was driving on 30 June 2013 onto the exit ramp to Campbelltown Rd, Denham Court from the Hume Highway ran out of control and crashed into a guard rail at excessive speed in the course of a police operation intended to get his vehicle to stop.

Magistrate Hugh Dillon  
Deputy State Coroner