



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest: Inquest into the death of Narayana Simpson

Hearing dates: 12 & 13 May 2016 at Tweed Heads

Date of findings: 23 May 2016

Place of findings: NSW State Coroner's Court, Glebe

Findings of: Magistrate Derek Lee, Deputy State Coroner

Catchwords: CORONIAL LAW – death in police operation, police pursuit, NSW Police Force Safe Driving Policy, Critical Incident Guidelines

File number: 2015/162071

Representation: Mr P Aitken, Counsel Assisting the Coroner instructed by Mr J Herrington, Crown Solicitor's Office

Mr M Spartalis for the NSW Commissioner of Police

Non-publication order: Pursuant to section 74(1)(b) of the *Coroners Act 2009* I direct that there be no publication of Exhibit 1, tab 7, question and answer 55; Exhibit 1, tab 10, questions and answers 50 and 51; Exhibit 2; and any aspect of the evidence of Detective Sergeant Dave Mackie relating to the NSW Police Force Safe Driving Policy.

Findings: I find that Narayana Simpson died on 1 June 2015 at Murwillumbah NSW as a result of multiple injuries that he sustained when a motor vehicle that he was driving collided with a telegraph pole on Tumbulgum Road during the course of a NSW police operation.

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Introduction

1. In the early hours of the morning on 1 June 2015 a car containing two young men crashed into a telegraph pole along Tumbulgun Road, a residential street in Murwillumbah NSW. Sadly the driver of the car, Mr Narayana Simpson¹, died from injuries that he sustained in the collision. A short time earlier police officers, who were responding to a triple 0 call, had driven to a location where Narayana had been and saw his car leaving.
2. Due to the involvement of the police the incident was declared a Critical Incident under NSW Police guidelines. As Narayana had driven away from the police car, there was a question whether there had actually been a police pursuit before the collision. This inquest has examined this question, and also the questions of whether the Critical Incident Guidelines were subsequently followed, as well as the general circumstances surrounding Narayana's death.

The role of a Coroner and purpose of this inquest

3. Section 81(1) of the *Coroners Act 2009* (the Act) requires that when an inquest is held the coroner must record his or her findings as to various aspects of the death. These are the findings of an inquest into Narayana's death².
4. The role of a Coroner, as set out in section 81 of the Act, is to make findings as to:
 - (a) the identity of the person who died;
 - (b) the date and place of the person's death;
 - (c) the physical or medical cause of death; and
 - (d) the manner of death; in other words, the circumstances surrounding the death.
5. Section 82 of the Act allows a Coroner to make recommendations concerning any public health or safety issues arising out of the death in question.
6. Narayan's death, when and where he died and the cause of his death are all matters which were not in dispute. The primary issue which the inquest has examined is whether the conduct of the police was compliant with any relevant policies including, if appropriate, the NSW Police Force Safe Driving Policy (to the extent that it had any application) and the Critical Incident Guidelines. Examination of this question has required consideration of a number of specific issues within this broader issue.

The life of Narayana Simpson

7. Before considering the questions that the inquest examined, it is fitting to briefly say something about the young man who tragically lost his life. Narayana was born on 31 January 1987. He was the eldest child of Simone Dewhirst and had five younger siblings. His father died when Narayana was only two years old.

¹ With his family's consent, I have referred to Mr Simpson as Narayana both during the inquest and in these findings. I note that his family have advised that before his death, Narayana had adopted the practice of spelling his name as "Narayan" and that he pronounced his name without the letter "a". However, as Narayana had not formally changed his name, the "Narayana" spelling of his name will need to be used in these findings. No disrespect to him or his family is, of course, intended.

² These findings have been prepared without the benefit of a transcript of the proceedings.

8. After obtaining his School Certificate from Murwillumbah High School in 2003, Narayana was continuously employed in a variety of different jobs. He attained many certificates of achievement, most of them in the building industry. He had a talent for, and interest in, music and the arts. His mother describes him as an extremely loyal and dependable person who was always there when someone was in need.
9. No doubt this was one of the many reasons why he was loved by all his family and friends. They all miss him greatly, especially his grandparents as Narayana was their first grandson. The death of a young man with his life ahead of him is always heartbreaking. It is distressing to know that Narayana's family have lost a grandson, son and brother in such tragic circumstances.

What happened before the collision?

10. On the evening of 31 May 2015 Narayana made arrangements to meet up with Mr Leigh Wilson, one of his best friends. The two men meet up in the Murwillumbah CBD at about 7:00pm and had some drinks. From about 7:00pm to about 9:00pm Narayana and Mr Wilson were drinking beers, from a carton that Narayana had brought, in a car park. After walking around town for a short while, they returned to the car park, behind the Commonwealth Bank and near the Murwillumbah Hotel, where Narayana had parked his car, a white Holden Commodore sedan.
11. At about 11:30pm Ms Jennifer Allfree, the manager of the Murwillumbah Hotel, went to bed in one of the hotel's rooms. A short time later she heard the sound of male voices but could not hear what was being said. About five to ten minutes later she got up and went to the back veranda that overlooks the neighbouring Commonwealth Bank car park and the alley between the bank and the hotel. She saw Narayana and Mr Wilson standing in the alley.
12. Mr Wilson was having an argument with, and shouting at, three hotel residents. Narayana was not taking part in the argument. Ms Allfree asked Mr Wilson to stop but he ignored her. She walked down to the alley and again repeatedly asked Mr Wilson to stop shouting, telling him to leave the hotel otherwise she would have to call the police. Mr Wilson ignored Ms Allfree's requests. Narayana intervened and also asked Mr Wilson to leave, but Mr Wilson also ignored him.
13. Ms Allfree told Mr Wilson again that she was going to police and used her mobile phone to ring triple 0 at 11:59pm.³ Ms Allfree asked for the police to attend and began walking back upstairs. By the time she reached the veranda, Narayana and Mr Wilson had moved to Narayana's car which was parked in the car park. Ms Allfree saw them get in the car, with Narayana in the driver's seat and Mr Wilson in the front passenger seat. Narayana drove out of the car park onto the lane way leading to Tumbulgum Road heading east towards Murwillumbah Civic Centre. As she saw the car leave the car park, Ms Allfree rang triple 0 back at 12:06am to tell the operator that the car had left and to cancel the request for police.⁴
14. By the time they left the car park Mr Wilson estimates that there were not even 6 beers left from the carton of 30 that Narayana had brought.⁵ Mr Wilson said that he and Narayana had been

³ Statement of Jennifer Allfree, para 10.

⁴ Ibid, para 12.

⁵ Leigh Wilson, record of interview, Q/A 265-267.

drinking in equal amounts. After leaving the car park Narayana was intending to go home to get something to eat.⁶

15. At around midnight Senior Constable Stuart Gordon and Senior Constable Dean Wilson were out on patrol in a police 4WD with the designation "Murwillumbah 18". They had just completed a patrol up to Lions Lookout and were returning to Murwillumbah police station. They received a call over police radio in relation to the disturbance at the Murwillumbah Hotel that Ms Allfree had reported.
16. After driving down the hill the police officers turned on to Murwillumbah Street heading towards the river. Murwillumbah Street becomes Wharf Street and at the left hand bend past the row of shops it becomes Tumbulgum Road. Shortly after the left hand bend there is an unnamed laneway on the left side of the road leading to the council car park, and the car park behind the hotel. This second car park is where Narayana had parked his car.
17. As the police vehicle turned into the laneway, the officers saw Narayana's car, which had left the car park and was near a public pool located at a bend in the laneway. Senior Constable Gordon estimated that Narayana's car was about 30 to 40 metres away. Upon seeing Narayana's car, Senior Constable Wilson asked Senior Constable Gordon if a white car was associated with the radio call that they were responding to. Senior Constable Gordon said that it was and Senior Constable Wilson formed the suspicion that Narayana's car was involved with the radio call.⁷
18. Both Narayana and Mr Wilson saw the police car. According to Mr Wilson, Narayana said words to the effect of, "Fuck. We're going to get into trouble. I'm on a bond".⁸ Apart from these words Mr Wilson said that there was not much of a conversation between himself and Narayana about the police.⁹ Mr Wilson explained in evidence that he was concerned they were going to be pulled over because he knew the tyres on Narayana's car were bald and possibly not roadworthy. Mr Wilson also explained that he had a personal concern about being pulled over because he was on bail at the time.
19. Narayana drove out of the laneway onto Tumbulgum Road heading east. The police vehicle followed. Mr Wilson said that he did not know whether the police had seen Narayana's car.¹⁰ However he said that Narayana drove "hastily"¹¹ from the car park, that "we kind of took off there pretty, you know, quick but it wasn't an excessive speed"¹², and that Narayana "probably would have been over the speed but I'm not too sure".¹³ Mr Wilson did not think that Narayana had his seatbelt on.¹⁴ Senior Constable Wilson estimates that both his car and Narayana's car were travelling at about 30 or 40 kilometres per hour at this time.¹⁵ Senior Constable Wilson turned on the high beams of the police vehicle in an attempt to illuminate the licence plate on Narayana's car. This also caused spotlights, which were mounted on the bull bar of the vehicle, to turn on as well. The high beam and spotlight remained on for a couple of seconds before being turned off.¹⁶

⁶ Ibid, Q/A 111.

⁷ Senior Constable Wilson, record of interview, Q/A 29-30.

⁸ Leigh Wilson, supra, Q/A 133-137.

⁹ Ibid, Q/A 199.

¹⁰ Ibid, Q/A 160.

¹¹ Ibid, Wilson.

¹² Ibid, Q/A 169.

¹³ Ibid, Q/A 181.

¹⁴ Ibid, Q/A 183, 283-284.

¹⁵ S/C Wilson, supra, Q/A 33-35.

¹⁶ S/C Gordon, record of interview, Q/A 71-73.

20. From the laneway exit point, Tumbulgum Road continues in a gentle right hand bend before leading to a sharper left-right chicane. As Narayana's car rounded the right-hand bend just past the library and council buildings, and in front of a youth hostel, it accelerated harshly, fishtailing as it did so. Senior Constable Gordon described the car as taking "off like a rocket" and "it just gunned it".¹⁷ Senior Constable Gordon only saw the car's tail lights on and never saw its brake lights come on.¹⁸ When he saw the manner of Narayana's driving Senior Constable Wilson said, "Nah". Senior Constable Gordon understood this to mean that he (that is, Senior Constable Wilson) was not going to pursue Narayana's car. Senior Constable Gordon asked if Senior Constable Wilson saw the licence plate number. Senior Constable Wilson said that he had not.
21. Senior Constable Wilson later explained in a recorded interview that he decided not to pursue the car because the radio call had mentioned an intoxicated person leading him to believe that the driver might be intoxicated, and that the driver was not showing good driving skills by his manner of driving.¹⁹ Senior Constable Gordon later explained in his recorded interview that he agreed with this decision based on the speed that Narayana's car was travelling and the fact that he knew it was headed towards a chicane further ahead on Tumbulgum Road. He said that "it wasn't worth chasing it or pursuing the car".²⁰
22. After leaving the police vehicle behind, Narayana drove through the chicane towards the intersection with Old Ferry Road. As the car travelled through the bend, Mr Wilson described the driving as "it was a little bit fast there" and "we were hitting the brakes a little harder, you know and taking the corner a little bit, you know, a bit more acceleration out of it, you know".²¹
23. The police officers continued driving along Tumbulgum Road. Senior Constable Gordon said that they continued to drive in the same manner as they had before they saw Narayana's car, although they may have accelerated "a little bit" but "nothing urgently".²² Both Senior Constables said in evidence that they were probably travelling slightly above the speed limit which was 40 kilometres per hour. By this point, they could no longer see Narayana's car as it had entered the chicane. Senior Constable Wilson estimates that Narayana's car was travelling between 60 to 70 kilometres per hour as it approached the chicane.
24. Senior Constable Gordon checked a data terminal within the police vehicle to see if there was any licence plate number associated with the radio call and found that there was none. The police officers continued driving along Tumbulgum Road and through the chicane. Just past a left-hand intersection with Old Ferry Road, Tumbulgum Road straightens as it leads towards Mayal Creek. The speed limit at this point changes from 40 to 50 kilometres per hour.
25. As the police officers left the chicane they saw that Narayana's car had collided with a telegraph pole and had come to rest on the grass verge on the left side of the road. At this point the police officers were about 150 to 200 metres away from Narayana's car.²³ Senior Constable Gordon said that he did not hear the collision.²⁴

¹⁷ Ibid, Q/A 38.

¹⁸ Ibid, Q/A 131.

¹⁹ S/C Wilson, supra, Q/A 49.

²⁰ Ibid, Q/A 52.

²¹ Leigh Wilson, supra, Q/A 189-191.

²² S/C Gordon, supra, Q/A 41.

²³ Ibid, Q/A 79.

²⁴ Ibid, Q/A 87.

What happened after the collision?

26. The police vehicle pulled up and stopped near Narayana's car. Senior Constable Wilson left the car but returned moments later to turn on the vehicle's warning lights. Senior Constable Wilson explained that he did this in order to warn other cars that may have been approaching from the chicane about the collision.²⁵ However, in evidence he was unable to recall whether he turned the lights on before or after checking on Narayana. Senior Constable Gordon said that he did not turn on the warning lights on the police vehicle but believes that Senior Constable Wilson may have done so when he returned to the car after checking on Narayana.²⁶
27. Senior Constable Gordon remained in the car and called an ambulance, advising that there were people trapped inside a car. A Computer Aided Despatch (CAD) log recorded that this call was made at 12:09am. After leaving the police car Senior Constable Wilson ran over to Narayana's car. He saw that Narayana was slumped forward in his seat, with his upper body partially out of the car and his head bleeding. Senior Constable Wilson felt for a pulse and found none.
28. At this point his attention was distracted by an altercation between Mr Wilson and a resident of Tumbulgun Road, Mr David Andrew, who had been woken by the sound of the collision and went outside to investigate. Mr Andrew, believing that his partner's car had been damaged in the collision, armed himself and engaged in a heated argument with Mr Wilson. Senior Constable Gordon intervened and attempted to calm both men down. When Senior Constable Wilson returned his attention back to Narayana, he tried to move Narayana out of the car in order to place him in the recovery position to ensure that his airway was clear. As he moved Narayana he did not believe that Narayana was wearing a seatbelt.²⁷ Senior Constable Wilson was only able to move Narayana partway out of the car; his legs remained in the driver's footwell. Both Senior Constable Wilson and Senior Constable Gordon checked on Narayana and found that he was already visibly deceased.
29. Mr Wilson was shouting and being verbally abusive towards the police officers. Senior Constable Gordon attempted to calm him down and move him away from the scene. At some point Senior Constable Gordon asked Mr Wilson who the driver of the car was. When Mr Wilson told him Narayana's name, Senior Constable Gordon recognised it from some previous dealing he had had with Narayana.²⁸
30. An ambulance and other police officers arrived at the scene a short time later. Paramedics examined Narayana and confirmed that he had died.
31. Sergeant Warwick Rhodes was one of the first police officers to arrive on the scene. He informed Senior Constables Gordon and Wilson that he needed to call his superior in order to determine whether the incident would be declared a critical incident. After several minutes Sergeant Rhodes advised the Senior Constables that the matter had indeed been declared a critical incident. Sergeant Rhodes instructed the two officers to write some notes in their notebook and then he subjected each officer to a breath test.²⁹

²⁵ S/C Wilson, supra, Q/A 71-72.

²⁶ S/C Gordon, supra, Q/A 93.

²⁷ S/C Wilson, supra, Q/A 94.

²⁸ S/C Gordon, supra, Q/A 112-113.

²⁹ Ibid, Q/A 123.

What caused Narayana's death?

32. Dr Rexson Tse, forensic pathologist, performed an autopsy on 2 June 2015 at Newcastle. In his subsequent report Dr Tse concluded that Narayana had died from multiple injuries, particularly to the head and chest, that were consistent with the high impact nature of the collision.

Did the actions of any police officer at the collision site contribute to Narayana's death?

33. This issue only arises because of what Mr Andrew, and his partner Ms Amanda Darby, said in their statements to police. Ms Darby said that when Senior Constable Wilson attempted to pull Narayana from the car Mr Wilson said words to the effect of, "You've broken his neck. You shouldn't have moved him like that. You've killed him."³⁰ Mr Andrew said that Mr Wilson yelled, "You've killed him. You've snapped his neck".³¹ In his recorded interview Senior Constable Wilson also said that Mr Wilson was saying words to the effect of, "You know, you, you're pulling [my] mate out. You fucking break his, you'll break his back".³² Senior Constable Wilson clarified in evidence that when he was referring to Mr Wilson using the word "back" it was possible that he instead meant to say "neck".
34. There is no dispute that Senior Constable Wilson attempted to move Narayana from the car. In evidence Senior Constable Wilson explained that he did so by grabbing hold of Narayana under the armpits and was attempting to move him from out of the car and on to the ground. In both his recorded interview and in evidence Senior Constable Wilson explained that his reason for doing this was because he saw that Narayana's neck was "at a kink"³³ and believed that his airway might therefore be compromised. Senior Constable Wilson went on to explain that he was trying to move Narayana out of the car so as to place him in the recovery position.
35. It should be noted that in his recorded interview Mr Wilson did not himself say that he said the words that Ms Darby, Mr Andrew and Senior Constable Wilson attribute to him. However in evidence he did not deny that he said them. I have no doubt that Mr Wilson was obviously concerned for Narayana's welfare. This fact, combined with Mr Wilson's intoxication and the immediate after effects of being involved in a sudden violent collision, adequately explains Mr Wilson's words and actions.
36. In his recorded interview two days after the incident Mr Wilson later explained that he was not accusing Senior Constable Wilson of having any involvement in Narayana's death and that he believed that Senior Constable Wilson's intention was to help Narayana.³⁴ In evidence during the inquest Mr Wilson went further and explained that he was not aware at the time that Senior Constable Wilson was attempting to ensure that Narayana's airway was not compromised and said that he did not blame either of the police officers for Narayana's death.
37. The autopsy examination revealed that Narayana did not suffer a neck fracture. Dr Tse's opinion was that Narayana's injuries were such that "death would have been rapid and inevitable".³⁵ There is no suggestion from the evidence of any of the neighbouring residents that Senior Constable Wilson acted inappropriately. Indeed, one of the witnesses who gave evidence at the

³⁰ Statement of Amanda Darby, para 13.

³¹ Statement of David Andrew, para 11.

³² S/C Wilson, supra, Q/A 103.

³³ Ibid, Q/A 93.

³⁴ Leigh Wilson, supra, Q/A 222-223.

³⁵ Autopsy report, page 3.

inquest, Mr Charlie Parratt, said that Narayana had not been moved much at all from the original position where Senior Constable Wilson found him. Given these factors, and the change in Mr Wilson's stance after the incident, both in his recorded interview and in evidence, I conclude that the actions of Senior Constable Wilson at the collision site did not contribute to the death of Narayana in any way. I also conclude that Senior Constable Wilson acted appropriately and with due care and concern for Narayana.

Why was the incident declared a Critical Incident?

38. The NSW Police Force Critical Incident Guidelines (the Guidelines) apply to the investigation of all deaths or serious injuries which have occurred as a result of an interaction with police. The Guidelines provide for how such incidents are to be investigated and managed. At the time of Narayana's death the August 2012 Critical Incident Guidelines were in force.³⁶
39. Page 9 of the Guidelines defines what a critical incident is. A critical incident can arise from a police vehicle pursuit or from a collision involving a NSW Police Force vehicle. A critical incident can also arise from a police operation. This of course raises the questions of whether there was a police pursuit, and whether there was a police operation.

Was there a police pursuit?

40. Part 6 of the NSW Police Force Safe Driving Policy³⁷ (SDP) deals primarily with police pursuits and sets out guidelines for pursuits, what vehicles can be used, what the responsibilities of police officers involved in pursuits are, and when pursuits will be terminated. Part 6 of the SDP also defines what a pursuit is.³⁸ That definition states:

PURSUIT: A pursuit commences at the time you decide to pursue a vehicle that has ignored a direction to stop.

An attempt by a police officer in a motor vehicle to stop and apprehend the occupant(s) of a moving vehicle when the driver of the other vehicle is attempting to avoid apprehension or appears to be ignoring police attempts to stop them.

A pursuit is deemed to continue if you FOLLOW the offending vehicle or continue to attempt to remain in contact with the offending vehicle, whether or not your police vehicle is displaying warning lights or sounding a siren.

41. Both Senior Constables Wilson and Gordon acknowledged that activating the warning lights and/or siren of a police vehicle amounted to a direction by police to another vehicle to stop. This of course raises the question: did the police officers activate the warning lights and/or siren of their vehicle at any time before the collision?
42. Both police officers maintain that they did not turn on the siren of the police vehicle. Statements were taken from people who lived in the vicinity of the collision site. Some of these people were awake when the collision happened; others were asleep. All of them recall hearing the loud sound of the collision but none remember hearing any police siren before the collision itself. Two of these witnesses, Augustus Firestone and Barbara Carroll, gave evidence at the inquest.

³⁶ Exhibit 1, Tab 60.

³⁷ Publication date: November 2009.

³⁸ NSW Police Force Safe Driving Policy, page 25.

Both said that ordinarily they can hear the sound of siren if a police vehicle is travelling with its siren on along Tumbulgum Road. However, both Mr Firestone and Ms Carroll confirmed that they did not hear any siren on this night.

43. The only person who claims that the police officers turned on the siren of their vehicle is Mr Wilson.³⁹ In his recorded interview with police on 2 June 2015, Mr Wilson said that he heard the siren and saw the warning lights of the vehicle come on at a point near the intersection of Old Ferry Road and Tumbulgum Road.⁴⁰ He repeated this in evidence during the inquest. Mr Wilson explained that when the siren and lights came on that Narayana “gunned it”. By this Mr Wilson explained that Narayana had the car in low gear and “gave it full throttle”. When Narayana changed gears Mr Wilson explained he recalled hearing the car “revving” and that it slid out and lost traction.
44. Senior Constable Wilson explained in evidence that he followed Narayana’s car with the intention to make some enquiries with the car’s occupants. He further explained that his usual procedure when stopping a vehicle is to obtain the licence plate number, check for any warnings associated with the vehicle, find a suitable location to stop the vehicle, activate the siren and warning lights of the police vehicle, and park the police vehicle in such a way as to provide a corridor of safety against approaching traffic.
45. In maintaining that he did not activate the siren or warning lights of the police vehicle at any time prior to the collision (and only the warning lights after the collision) Senior Constable Wilson relied on the fact that he did not consider the area around the intersection between Old Ferry and Tumbulgum Roads to be a suitable place to stop a vehicle. This is because, he explained, there is nowhere for a vehicle to pull over.
46. The relevant section of Tumbulgum Road is a single lane road in each direction. Double unbroken centre lines divide the road. Having seen a video drive through of the location, it is clear to me that up to the intersection with Old Ferry Road, there is no safe location, either within or just beyond the chicane, for a vehicle to pull over. To do so would be to completely block approaching traffic due to the narrowness of the road width and a bend in it.
47. But beyond the intersection with Old Ferry Road, Tumbulgum Road widens whilst remaining a single lane road in each direction. There would be ample space for a vehicle to pull over to the kerb without blocking approaching traffic. The possibility therefore remains open that the police siren and warning lights could have been activated at around the intersection of Old Ferry and Tumbulgum Road in anticipation of pulling Narayana’s car over further along Tumbulgum Road where it straightens out and widens.
48. However, I do not find that this occurred. This is because the only way in which I could find that this occurred would be to accept Mr Wilson’s evidence. But I find his evidence problematic for a number of reasons. Firstly, his evidence is contrary to the evidence of at least eight other witnesses who all say that they did not hear the sound of any siren before the collision. Secondly Mr Wilson said in his recorded interview that he did not look backwards in the direction of the police vehicle.⁴¹ However in evidence he said that he did look back and saw that the police vehicle was about 50 metres from Narayana’s car. This evidence itself was also inconsistent with

³⁹ Leigh Wilson, *supra*, Q/A 145, 245.

⁴⁰ *Ibid*, Q/A 177.

⁴¹ *Ibid*, Q/A 208.

Mr Wilson's later evidence when he said that he heard the siren for long enough without having to turn back to see the warning lights. Due to the absence of this reference in his recorded interview Mr Wilson agreed with Counsel Assisting that his memory of this issue could be a reconstruction. Thirdly, Mr Wilson said in both his recorded interview and in evidence that the warning lights were not turned on immediately after the collision. Later in evidence he said that the warning lights and sirens were turned on about 10 to 12 minutes after the collision. Again this is contrary to every other police and civilian witness including Ms Darby and Mr Andrew, who were the first witnesses on the scene. Ms Darby said that the warning lights were initially off as she came out of her house, but she saw them turn on moments later.⁴² Fourthly, Mr Wilson was intoxicated on the night, having consumed almost half a carton containing 30 full-strength beers. Fifthly, Mr Wilson agreed in evidence that there were gaps in his memory. When told about the fact that none of the neighbouring residents had heard any siren Mr Wilson agreed that he could be mistaken about hearing the siren. Finally, Mr Wilson said that he knew the warning lights had been turned on because he saw the inside of Narayana's car illuminated. However, the evidence established that the high beams and spot lights on the police vehicle could have done this.

49. Of course none of this is meant to denigrate Mr Wilson in any way. I must simply assess the reliability of his evidence in the same way as for any other witness when factual issues in dispute need to be resolved. I assessed Senior Constable Wilson's evidence in the same way. Although I found aspects of his evidence vague and somewhat confusing (such as how the warning devices on the police vehicle are operated, and exactly where the police vehicle was positioned when he lost sight of Narayana's car), I did not have any concerns about the reliability of his evidence as it was entirely consistent with the evidence of the independent witnesses.
50. I therefore conclude that the siren and warning lights of the police vehicle were not activated at any time before the collision. Therefore neither Senior Constable Gordon nor Senior Constable Wilson gave Narayana (or Mr Wilson) a direction to stop. As a result I also conclude that there was no pursuit. This is because the definition of pursuit is conditional upon there first having been a direction issued by a police officer to a person to stop their vehicle; and then that person then ignoring such a direction.
51. I have also considered whether the use of the high beam (and spotlights) on the police vehicle amounted to a direction to stop. Although Mr Wilson said that he did not see any high beam I do not find his recollection reliable for the reasons already referred to above. I therefore conclude that the high beam on the police vehicle was activated but I do not consider this to amount to a direction to stop.
52. As both Senior Constables explained, the purpose of activating the high beam was not to convey a signal to Narayana to stop his car. Instead it was done for the sole purpose of illuminating the licence plate so that it was visible. Mr Wilson says that he did not see the high beam come on so it is questionable whether Narayana was even aware that it was on. If this is the case I do not think it could be said that Narayana understood that the high beam meant that he should stop. It appears that from simply seeing the police car Narayana assumed that the police officers wanted him to stop. Given the evidence of Senior Constable Wilson this assumption was, of course, correct. However, this does not equate to an actual direction to stop.

⁴² Darby, *supra*, para 7.

53. I find that there no police action, other than the mere presence of the police vehicle and it following Narayan's car as it left the laneway, caused Narayana to drove off at speed in the manner that he did. It is clear that even without there having been an actual direction to be stop, Narayana believed that one would be given. This is because he had heard and seen Ms Allfree call the police. The evidence establishes that Narayana was concerned about being on a bond and having potentially breached it because of what happened in the car park. There is also evidence from Narayana's mother that he had not previously had a positive experience in past interactions with police.⁴³ Of course it is not necessary, nor is it the purpose of the inquest, for me to make any finding about these past interactions. It is sufficient to simply note that they probably contributed to Narayana's belief at the time, and why he acted in the way that he did.
54. Taking all of the above into account I reach the conclusion that there was no pursuit by the police vehicle. I therefore also reach the conclusion that the SDP did not apply to the actions of Senior Constables Gordon and Wilson

What type of Critical Incident was it?

55. Although I have found that there was no pursuit, an incident can also be declared a critical incident if it arises "from a collision involving a NSW police force vehicle".⁴⁴ It is arguable whether the collision "involved" a NSW Police Force vehicle. Although Narayana's car obviously did not collide with the vehicle that Senior Constables Wilson and Gordon were in, there is no doubt that Narayana drove from the car park at speed (and collided with the telegraph pole a short time later) because he saw or was aware of the police vehicle. In this sense, because the presence of the police vehicle prompted Narayana's actions, resulting in the collision, it could be argued that the police vehicle was therefore "involved".
56. Even though I think there is some ambiguity about the question of involvement in this sense I conclude that the incident was appropriately deemed to be a critical incident because it arises "from a NSW Police Force operation".⁴⁵ Pages 11 and 12 of the Guidelines set out a number of potential scenarios which could be classified as police operations. In the present case I think the fact that the police were called to the initial disturbance at the hotel involving Narayana, that they attended, that their presence caused Narayana to leave the scene at speed, and that the speed was a factor in the subsequent collision is sufficient for the incident to have arisen from a police operation.
57. Within the broad category of critical incidents, there are two sub-categories: Level 1 and Level 2 critical incidents. Page 11 of the Guidelines defines a death or serious injury to a person arising from a NSW Police Force operation to be a Level 2 critical incident. The incident involving Narayana was therefore a Level 2 critical incident.

Did the police comply with the Critical Incident Guidelines?

58. The Guidelines set out a number of procedures to follow when an incident has been declared a critical incident. Some of these procedures relate to police officers who are deemed to be "directly involved officers". The Guidelines define this term to mean "any officer who by words,

⁴³ Statement of Simone Dewhurst.

⁴⁴ Critical Incident Guidelines, page 9.

⁴⁵ Ibid.

actions or decisions in the opinion of the SCII [Senior Critical Incident Investigator], contributed to the critical incident under investigation". There was no dispute at the inquest that both Senior Constables Gordon and Wilson were directly involved officers. However, only some of the Guideline's procedures are applicable to Narayana's case and relevant to this inquest. I will examine each of the relevant procedures in turn below.

(a) Were Senior Constables Gordon and Wilson separated following the incident?

59. Page 24 of the Guidelines provides that one of the responsibilities of a Duty Officer who attends the scene of a critical incident is to "keep any officer [believed] to be [a] directly involved officer...separated and ensure the evidence of these people is not cross contaminated". Page 29 of the Guidelines provides that the Senior Critical Incident Investigator (SCII) should "keep directly involved officers...separated and ensure the evidence is not cross contaminated". Both of these responsibilities are repeated in checklists attached to the Guidelines.
60. There is no dispute that Senior Constables Gordon and Wilson were appropriately separated at the scene, shortly after the collision. There is also no dispute that once they had been taken to Murwillumbah police station that they were placed in separate rooms.⁴⁶ The only issue that arises is the how the Senior Constables were taken to the police station.
61. This appears to have occurred shortly after 1:46am when Inspector Brendon Cullen, the Crime Manager, arrived on the scene.⁴⁷ Inspector Cullen took both of the directly involved officers to the police station in the same vehicle. This was obviously contrary to the Guidelines in the sense that the directly involved officers were not separated for the duration of the journey.
62. It appears that the reason this occurred is because of the lack of available police vehicles. Detective Sergeant Dave Mackie, the officer-in-charge of the investigation, gave evidence that he did not know whether there was any other police vehicle available to take Senior Constables Wilson and Gordon to the police station. However, Detective Sergeant Mackie only arrived at the scene at about 4:25am. By this time, although no precise time is specified in the evidence, it appears that both of the Senior Constables had already left the scene. Inspector Cameron Lindsay, who was the SCII, said in evidence that there was only one police vehicle available to take the Senior Constables from the scene. Unfortunately Inspector Cullen did not make a statement nor did he give evidence at the inquest, despite a subpoena being issued for his attendance, due to medical reasons. Therefore the precise reasoning behind Inspector Cullen's decision to transport the two directly involved officers together is not known.
63. Both Detective Sergeant Mackie and Inspector Lindsay were asked in evidence whether they were concerned about the Guidelines not being followed with respect to the transportation of the two directly involved officers. Detective Sergeant Mackie said that it would have been "best practice" to keep the officers separated. However both he and Inspector Lindsay did not express any concern that this had not taken place. They both reasoned that there would be no opportunity for any cross contamination of evidence as both directly involved police officers were in the immediate presence of an Inspector of police whilst they were in the car.
64. It should be noted that there is no suggestion that Senior Constables Wilson and Gordon spoke about the incident in the car. They both gave evidence denying that this had occurred. There is

⁴⁶ Statement of Det Sgt Dave Mackie dated 2/34/16, para 5.

⁴⁷ Statement of Sgt Warwick Rhodes, para 11.

no basis to doubt their evidence. When asked if there was any conversation at all on the way to the police station, Senior Constable Gordon said that Inspector Cullen only asked if he and Senior Constable Wilson were OK.

65. The drive from the collision site to the police station took only 2 minutes on Senior Constable Gordon's evidence. This means that the opportunity for any potential cross contamination of evidence was very limited. However, it also means that arranging for a second police vehicle to attend the scene so that the directly involved officers could be transported separately would not presumably have been a difficult task. Although Inspector Lindsay, who only arrived at the scene at 4:30am, said that no other police vehicle was available, compliance with the Guidelines indicates that efforts should have been made to call for a second vehicle. If a second vehicle was not immediately available, the transportation of the directly involved officers should have been delayed until one was available. To do so would have eliminated any possibility for cross contamination of evidence, as well as any suggestion that it could have occurred.
66. With due respect to Detective Sergeant Mackie and Inspector Lindsay I do not consider the mere presence of Inspector Cullen to be a sufficient safeguard against the possibility of cross contamination of evidence. The Guidelines do not put this forth as a possible option and instead identify actual physical separation of directly involved officers as the only way to avoid potential cross contamination. If the presence of an Inspector (or other more senior police officer) would be sufficient, then there would be no need, in this case, for Senior Constables Wilson and Gordon to be separated at the scene or at the police station. They could have simply remained together, in the presence of Inspector Cullen, the entire time.

(b) Should both alcohol and drug testing have been performed?

67. At 1:30am Sergeant Warwick Rhodes submitted both Senior Constables Gordon and Wilson to an alcohol breath test. The test was negative. At no stage were either of the Senior Constables asked to take part in any drug testing. It should again be noted that there is no suggestion, based on the evidence, that this should have occurred or that either of the Senior Constables was under the effect of any drug.
68. Under the Guidelines, the NSW Police Drug and Alcohol Policy requiring mandatory testing of directly involved officers applies to critical incidents where the death or serious injury of a person arises from a police pursuit or from a collision involving a NSW Police vehicle. The Policy does not apply in circumstances where the death or serious injury of a person arises from a NSW Police Force Operation (unless the person who died was being detained by police).
69. Section 211A(2A) of the *Police Act 1990* stipulates that any police officer directly involved in a mandatory testing incident must undergo both alcohol and drug testing. Section 211A(7) defines a mandatory testing incident to be, relevantly for the purposes of this inquest, where a person is killed or seriously injured "in circumstances involving a police aircraft, motor vehicle or vessel".
70. I have already discussed above that it is arguable whether the police vehicle that Senior Constables Gordon and Wilson were in was involved in the collision. It seems to me that the same argument could apply to the requirement for mandatory drug and alcohol testing both under the Guidelines and pursuant to section 211A of the *Police Act*.

71. One question which the inquest examined was the timing of precisely when the incident was declared a critical incident. This seems to have occurred at about 1:00am.⁴⁸ As mentioned above, the alcohol testing occurred at about 1:30am. This implies that by this time a decision had been made that the incident was not a mandatory testing incident, and nor was it a police pursuit or a matter where a death had occurred arising from a collision involving a police vehicle.
72. Inspector Lindsay's initial evidence was that consideration was given at an early stage to the possibility that there had been a pursuit. This initially made it seem difficult to understand how the issue about whether there had been a pursuit or not could have been resolved in the brief 30 minute window from the time the incident was declared a critical incident to the time when the alcohol testing occurred. However, as Inspector Lindsay later explained, the possibility of whether there had been a pursuit or not was being continuously evaluated during the course of the night. Inspector Lindsay explained that evidence collected from the independent witnesses at the scene all pointed towards the fact that no pursuit had occurred and therefore mandatory drug testing was not required. Inspector Lindsay also explained that if the available evidence indicated that a pursuit had in fact occurred, then mandatory drug testing would be organised. He said that in this event there would be no need to refer the matter back to the Region Commander for re-classification of the type of critical incident it was.
73. Of course this does not address the issue of whether the collision involved the police vehicle or whether section 211A of the Police Act applied. Counsel Assisting submitted that the use of the word "involving" in both the Guidelines and the Police Act is sufficiently ambiguous so as to leave the matter open to interpretation without the need for any recommendation to be made. Counsel for the NSW Police Commissioner submitted that there is no ambiguity but also that no recommendation should be made.
74. The use of the word "involving" can cover a broad range of scenarios. If the drafters of the Guidelines had intended to limit "involving" to only those situations where a police vehicle had actually collided with another vehicle then it seems to me that the words "collision with a NSW Police Force vehicle" would have been used rather than "collision involving a NSW Police Force vehicle". Use of the word "involving" appears to cover an even broader range of scenarios because it relates to "circumstances" and is not limited to only collisions.
75. Whilst I am of the view that the use of the word "involving" is ambiguous and without precise definition, I do not think this is a matter where any recommendation is necessary, for several reasons. Firstly, there is no suggestion that drug testing should have occurred. Secondly, there is no evidence to suggest that there was a pursuit. Thirdly, Inspector Lindsay's evidence is that continuous consideration was given to the possible need for drug testing and that if it was deemed necessary at any stage then it would have occurred.

(c) Why was there a delay in interviewing Senior Constables Gordon and Wilson?

76. As the Senior Constables were deemed to be directly involved officers they were directed to take part in departmental interviews in accordance with clause 8(1) of the *Police Regulation 2008* (since repealed) and page 32 of the Guidelines. Senior Constable Gordon was interviewed on 3 June 2015 and Senior Constable Wilson was reviewed on 10 June 2015, two and nine days

⁴⁸ Ibid, para 8.

respectively from the day of the incident. Inspector Lindsay and Detective Sergeant Mackie conducted the interviews.

77. The timing of the interviews raises concern because it is commonly accepted that it is best to interview witnesses to an event as close as possible to when the event occurred due to the likelihood of human memory fading over time. The passage of time also allows for the possibility that witnesses may hear or see something, or speak about the incident with other witnesses (whether deliberately or accidentally) thereby contaminating their evidence.
78. Inspector Lindsay explained that the reason for the delay was that the interviews only took place when the Senior Constables were next on duty. In Senior Constable Wilson's case, he was permitted to take leave for a short period of time following the collision due to welfare considerations.
79. The Guidelines do not specify any precise timeframe in which departmental interviews with directly involved officers ought to take place. However, the Guidelines do provide for consideration to be given to such directly involved officers. Page 18 of the Guidelines states that "when a NSW police officer is exposed to a critical incident, the welfare and psychological care of the officer is crucial". On page 19 the Guidelines go on to state:
- "It is important that the investigation of the incident proceed as quickly as possible after the incident has occurred. However the emotional state and fatigue of the directly involved officer/s must be taken into consideration during the course of the investigation.
- If emotional or fatigue issues exist, it may be appropriate, in some instances, to stand the officer down (upon completion of mandatory tests), until the officer is in a healthy state to continue to assist with the investigation. In the event that an officer is stood down, they are to be directed not to discuss the incident with any other directly involved officer or witness."
80. On the one hand it is important to preserve the integrity of evidence and interview witnesses when events are fresh in their mind. On the other hand it is equally important to ensure that the welfare and emotional well-being of directly involved officers is managed appropriately. It is a difficult balancing act with obvious competing interests.
81. I conclude that the time taken to interview Senior Constable Gordon, and especially Senior Constable Wilson, did not adversely affect the investigation into Narayana's death in any way. There is nothing to suggest that the Senior Constables discussed their evidence with anyone or that their memories were compromised by the delay between incident and interview. Indeed, their evidence was entirely consistent with one another. In some situations this can suggest the possibility of collusion. However, in this case, because their evidence is also consistent with that of all the independent witnesses, there can be no such suggestion.

Does the collision raise any general public safety issues?

82. Ms Barbara Carroll, one of the residents of Tumbulgum Road, told police that to her knowledge there had been 5 or 6 collisions along Tumbulgum Road in the past 26 years.⁴⁹ She said that one of the collisions resulted in a car ending up only metres from her house. Ms Carroll also said that she frequently heard cars speeding along Tumbulgum Road and that it was her belief that cars

⁴⁹ Statement of Barbara Carroll, para 13.

were racing each other and using Tumbulgum Road as an alternate exit out of town in order to avoid police patrols. Another resident, Ms Donna Swift, said that she was also aware of past car accidents and expressed the view that cars had a tendency to speed after Tumbulgum Road straightens out from the chicane. Ms Carroll suggested that traffic guard rails ought to be erected along Tumbulgum Road. She explained in evidence that she had raised the matter with the local council and whilst they were “interested”, no action had been taken.

83. There is no doubt that excessive speed was a factor in the collision involving Narayana’s car. Alcohol intoxication⁵⁰ was also a contributing factor. However there is no suggestion that any particular feature of the road itself contributed to the collision. A police crash investigator who examined the scene and tyre marks left on the road concluded that because Narayana drove around the right hand bend, before the intersection with Old Ferry Road at excessive speed, this caused him to lose control of his car.⁵¹ The car rotated in a clockwise direction until Narayana over corrected the steering, causing the car to rotate in an anti-clockwise direction and collide with the telegraph pole. During each rotation the tyres of Narayana’s car left yaw marks on the road which indicated that the car was sliding sideways.
84. It is also clear that Narayana only took the route that he did and was only driving at speed because of the presence of the police vehicle. There is obviously no suggestion that he was racing another vehicle. For these reasons I do not consider the issues raised by Ms Carroll and Ms Swift to be sufficiently connected to Narayana’s death to allow any recommendation to be made.
85. In addition, the question of traffic safety along Tumbulgum was insufficiently canvassed at the inquest. The reference to past traffic incidents only arose from the anecdotal evidence of Ms Carroll and Ms Swift. Whilst there is no reason to doubt the accuracy of their statements, both being long-standing residents on Tumbulgum Road, appropriate consideration of the issues that they raise would require statistical analysis of past traffic incidents and identification of common contributing factors. Finally, the suggestion by Ms Carroll to erect guard rails seems problematic from a practical point of view given the number of residential driveways along Tumbulgum Road. Proper consideration of this issue would require an appropriate feasibility study. For all these reasons I do not consider it either desirable or necessary to make any recommendations about this issue.

Should any recommendations be made?

86. Section 82 of the Act allows a coroner to make any recommendations that a coroner considers is necessary or desirable in relation to any matter connected with the death that the inquest is concerned with. Issues of public health and safety can be, and often are, the subject of recommendations.
87. In this case, for the reasons already set out above, I do not consider it necessary or desirable to make any recommendation.

Findings

88. I now turn to the findings that I am required to make under section 81(1) of the Act.

⁵⁰ The post mortem toxicological analysis showed a blood alcohol level of 0.252g/100mL.

⁵¹ Report of D/S/C Phillip Priest, page 22-23.

Identity

The person who died was Narayana Simpson.

Date of death

Narayana died on 1 June 2015.

Place of death

Narayana died at Murwillumbah NSW 2484.

Cause of death

The cause of Narayana's death was multiple injuries that he sustained from a motor vehicle collision.

Manner of death

The collision occurred when Narayan's vehicle impacted with a telegraph pole on Tumbulgum Road during the course of a NSW police operation.

89. On behalf of the coronial team I would like to offer my sincere condolences to Narayana's family and friends, especially his mother and siblings. They all no doubt miss him greatly and remember him lovingly.
90. I close this inquest.

Magistrate Derek Lee
Deputy State Coroner
23 May 2016
NSW State Coroner's Court, Glebe