



**CORONERS COURT
NEW SOUTH WALES**

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| Inquest: | Inquest into the death of Christopher HILL |
| Hearing dates: | 13-15 March 2019 |
| Date of findings: | 15 March 2019 |
| Place of findings: | Coroner's Court, Armidale Local Court |
| Findings of: | Magistrate C Forbes, Deputy State Coroner |
| Catchwords: | CORONIAL LAW-Death in course of police operation-police pursuit-New South Wales Police Safe Driving Policy |
| File number: | 2017/266269 |
| Representation: | <p>Counsel Assisting T Hammond instructed by P Armstrong, Crown Solicitors Office</p> <p>Commissioner of Police B Haverfield instructed by S Robinson, Office of the General Counsel, representing Commissioner of Police and the NSW Police Force</p> |

REASONS FOR DECISION

Introduction

1. Christopher Hill died on 31 August 2017 as a result of injuries he suffered in a motor vehicle collision along the New England Highway at Bendemeer, NSW. He was driving in a utility vehicle that belonged to his employer in Victoria.
2. At around 8.30am an operator at the Caltex Service Station on the New England Highway, Armidale reported to police that the vehicle Christopher was driving had driven away without paying for fuel.
3. A broadcast was made by the NSW police. Senior Constable Gersback was travelling north on the New England Highway and heard the broadcast.
4. About 8 minutes later, Senior Constable Gersback passed Christopher's vehicle travelling in the opposite direction. He conducted a U-turn and about two minutes later observed Christopher's vehicle travelling at the speed limit, of about, 100kmh. Senior Constable Gersback activated his lights and sirens but Christopher continued driving at the speed limit as if he didn't notice Senior Constable Gersback behind him. Senior Constable Gersback made a radio call requesting any highway patrol vehicles head to his direction and stated, "I'll be in pursuit of this vehicle."
5. Within 20 seconds of this broadcast Christopher's vehicle travelled across the centre line and was involved in an off-set head-on fatal collision with a semi-trailer travelling in the opposite direction.

Inquest

6. The role of a Coroner as set out in s.81 of the *Coroner's Act 2009* ("the Act") is to make findings as to:
 - a. the identity of the deceased;
 - 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.
7. The Act also requires a Senior Coroner to conduct an inquest where the death appears to have occurred "as a result of police operations". (s.23, s.27).

"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.”¹

8. This inquest is not a criminal investigation, nor is it civil liability proceedings intended to determine fault or lay blame on persons involved in the incident. This Inquest has been a close examination of the circumstances surrounding Christopher’s death and of the police actions on the day of Christopher’s death and pursuant to s.37 of the Act a summary of the details of this case will be reported to Parliament.

Christopher Hill

9. Mr Hill was only 29 years old at the time of his death. He lived with both parents until their separation when he was about 2 years old. Both his parents and other family members have attended each day of this inquest which of itself demonstrates the depth of their loss.
10. After his parents separated Christopher lived with his mother and had regular fortnightly contact with his father until his father moved overseas when Christopher was 7 years old. He was then estranged from his father for about 14 years until he was reunited briefly with his father around his 21st birthday.
11. At the age of 15 years he started to clash with his mother and his stepfather. Mrs Hill and her partner attempted to refer her son for counselling but he refused to go.
12. Christopher lived at home with his mother until he was 18 years old. He left in 2006 and there was reduced contact between them. Intermittent contact with his mother was maintained but their relationship was strained. Contact ceased in early 2012 and unfortunately Mrs Hill did not see her son for several years before his death.
13. Christopher did not have other any known significant relationships. An investigator interviewed Christopher’s housemate Ryan Smith. Mr Smith told him that Christopher, with whom he had lived since 2012, was a good housemate and usually paid his rent on time. After the housemates moved to a new property in February 2017, however, things changed and Mr Smith stated that Christopher did not become involved in any social activities and mainly “lived to work”. Mr Smith told the investigator that he was unaware of Christopher having any intimate relationships.

¹ Waller’s Coronial Law & Practice in New South Wales 4th Edition, page 106

14. Other people who knew Christopher described him as a hard worker and friendly. They say he was not a heavy drinker or a drug taker, although he did dabble in cannabis and had tried methyl amphetamine.
15. In 2017, Christopher became evasive about paying bills and rent and when Christopher left on the morning of 18 July 2017, he left behind a total debt in rent and other bills of about \$8,800. Mr Smith was aware that Christopher had previously left other lodgings without paying rent and he said he knew Christopher would not be coming back this time. He concluded Christopher might have been doing a runner.
16. Subsequent investigations found that in the months before his death Christopher had losses amounting to \$27,000.00 with Crown Bet although these had been paid back. He also was in debt to his credit card in the sum of \$450.00. His total debt including owed rent and other bills was about \$9300.00.

Facts in outline

17. Christopher was employed at Dirty Diggers Earth Moving Company, Ferntree Gully, Victoria (Dirty Diggers) at the time of his death. He commenced employment at Dirty Diggers in March 2015.
18. In the week of 3 July 2017, Christopher called in sick for several days. He worked between 10 and 15 July 2017, although he did not submit job sheets recording his time on the last 3 days he worked – which was unusual.
19. On Monday 17 July 2017, about 6 weeks before his death, Christopher failed to report to work. He had been using the company vehicle, the blue Nissan Navara utility with distinctive Victorian plates “DIRTYD” and when he failed to show up to work, Dianne McCullough, part owner of Dirty Diggers, contacted the Victoria Police to report Christopher as missing.
20. Ms McCullough subsequently discovered that Christopher had been attempting to use the company credit card, so she reported both the vehicle and the credit card as stolen. Mrs McCullough and her husband began to receive phone calls from motels and service stations complaining that Christopher had not paid for accommodation and fuel.
21. Friends and workmates of Christopher tried contacting him in the days and weeks following his disappearance but despite call records indicating that he listened to numerous voicemail messages and readings texts, Christopher did not respond to any of them and made no calls after 24 July 2017.

22. The senior investigator, Detective Inspector Joy, has determined that after he failed to turn up to work on 17 July 2017, Christopher travelled in various directions through Victoria, NSW and Queensland. He stopped at numerous motels and service stations but failed to pay at many.
23. On 15 August 2017, Christopher visited his uncle, Michael Rennison in Moss Vale whom he had not seen for 8 years. Mr Rennison said Christopher discussed feeling unappreciated at work and they conversed about Christopher finding alternative work in Melbourne. During this short stay, Mr Rennison wrote a list of helpful matters for Christopher to consider. This list was found in the vehicle after the collision. Christopher stayed the night at his uncle's house and after he left on 16 August 2017, Mr Rennison did not see or hear from his nephew again.
24. Christopher stayed at the Kaputar Motel, Narrabri from 25 to 29 August 2017. He had booked two rooms (a single and a double) until 31 August 2017. He informed the manager, Mr Elliott, that his boss would be arriving on 28 August 2017. Mr Elliott saw that Christopher's room had been emptied out on the morning 29 August 2017 and Christopher had apparently left without paying.
25. It is not known where Christopher stayed on the night of 30 August 2017.
26. Christopher's utility was seen on CCTV travelling north at Uralla at about 7.58am on 31 August 2017. This is about 250km from Narrabri. At around 8.09am, Christopher put 70 litres of fuel into the vehicle at Armidale Airport Caltex Service station on New England Highway in Armidale. It is unclear why Christopher travelled an extra 20km further north to fill up with fuel when he could have refuelled in Uralla. Christopher left the Caltex without paying and the employee called the police to report the theft. He travelled south and was again seen on the Uralla CCTV at 8.22am.
27. A police CAD incident log was created soon after by Constable Matt Lee-Windsor and a broadcast was put on the police radio. Senior Constable Gersback of the Dog Unit, who was driving a police vehicle carrying two dogs, acknowledged the call at 8.33am.
28. At 8.41am, Senior Constable Gersback was travelling north on the New England Highway. He spotted Christopher's vehicle and did a U-turn in order to stop the vehicle. Senior Constable Gersback estimates that his own vehicle was travelling at speeds of up to 109kmh shortly before the collision.
29. A civilian truck driver witness, Richard Schaffer, observed the police vehicle when it overtook him northbound on the New England Highway, then again when it passed him in the opposite direction a short time later. At both times, he thought the police vehicle was travelling at normal speed and at neither time did it have its lights or sirens activated.

30. At 8.43am, Senior Constable Gersback stated that he was travelling about 100kmh, about to try and stop the vehicle of interest near the intersection with Muswell Hill Road. Less than a minute later, he declared that he was in pursuit of the vehicle and asked for the assistance of any highway patrol cars. He had already activated his sirens when he called the pursuit. His voice on the police VKG radio recorded broadcast is quite calm and measured when making this call.
31. Senior Constable Gersback reported seeing nothing to indicate a change to the way in which Christopher was driving after he activated his lights and sirens. He concluded that Christopher might not have heard or seen the police vehicle as he continued to travel at the speed limit in a normal fashion.
32. Another civilian truck driver witness, Nicholas Dunn, was traveling north and saw both cars pass him in the opposite direction. The police vehicle had its lights and sirens turned on. He observed the cars through his windscreen and his rear vision mirror (after they passed him) and at no time did he observe either car being driven erratically.
33. As he followed closely behind Christopher's vehicle, Senior Constable Gersbeck then saw it cross onto the opposite carriageway and hit head-on with a semi-trailer. There was no indication of braking. He had been pursuing the vehicle for only approximately 20 seconds.
34. Senior Constable Gersback braked and swerved to the right and his vehicle miraculously passed in between the semi-trailer and Christopher's vehicle, colliding with each on the way.
35. Christopher's vehicle ended up on the eastern side of the roadway facing in a westerly direction approximately 20 metres north of the police van. The force of the impact had been so severe that the whole cabin was buckled and twisted. Sadly, Christopher was entangled within the damage and he was confirmed dead at the scene. A post mortem report concluded that he died as a result of multiple injuries.
36. The semi-trailer, driven by Mr Dixon, had veered onto the southbound carriageway and stopped one hundred metres north of the police van facing in a northerly direction. It burst into flames and although attempts were made to put out this fire, it took hold of the cab and, eventually, the entire trailer. Both were destroyed. Thankfully Mr Dixon suffered no physical injuries.
37. Senior Constable Gersback was at the scene for about half an hour before assistance arrived. While his car was still in motion after the impact he picked up his radio and yelled "urgent, it's had a head on with the truck" he then jumped out of his car, taking his radio with him. He ran to Christopher's car and ran from side to side looking for a way of getting him out but the damage to the vehicle made it impossible. He then ensured Mr Dixon was moved to safety and attempted to stop the fire

in the semi- trailer. He attempted to assist Christopher again. He made arrangements for the traffic to be stopped.

38. I agree with Counsel Assisting's conclusion that Senior Constable Gersback showed enormous composure, courage and compassion in the horrific incident he himself had been involved in.

What was the cause of Christopher's collision with the semi-trailer?

39. There is nothing to suggest that Senior Constable Gersback changed the way in which he drove after he caught up to Christopher's vehicle. I accept Senior Constable Gersback's evidence that there appeared to be no change in Christopher's driving and there was no apparent reaction or other movement in the cab to indicate Christopher was aware of his presence or the lights and sirens.
40. I also accept that Senior Constable Gersback was travelling at 109kmh at the time of catching up and at one point he dropped back a little from Christopher's utility but was gaining on it slightly at the moment of the collision. Senior Constable Gersback thought he was about three seconds behind Christopher. Mr Dunn thought just a few car lengths when he made the observation. In any event I am satisfied there is certainly nothing to suggest he drove in a manner that may have directly contributed to the collision.
41. The driver of the semi-trailer had been driving vehicles for over forty years, and driving trucks became his main occupation in 2004. He had driven that stretch of road over 2000 times. He was well-rested, had a usual start to the day and was carrying a fairly light load of parcel freight.
42. He was travelling slightly uphill at the time of the incident at about 90kmh around a sweeping right-hand bend.
43. He described Christopher's vehicle as appearing out of nowhere before he had a chance to even react. I accept that there was nothing in the manner of Mr Dixon's driving that contributed to the collision.
44. On all accounts Christopher was driving in his lane at the beginning of the long sweeping bend in the road then at one point without any warning he continued straight ahead onto the wrong side of the road into the semi-trailer.
45. The question becomes why Christopher drifted onto the wrong side of the road?
46. It is evident from the post mortem report his driving was not affected by drugs or alcohol at the time of the collision.
47. The vehicle Christopher was driving was examined and showed no signs of mechanical failure that might have contributed to the collision. The brakes worked, the steering and suspension was fine

and the accelerator functioned normally. The tyres were in good condition and there was no evidence of tyre failure before the collision.

48. There is some evidence to suggest that Christopher intentionally drove his vehicle into the path of the semi-trailer with the desire to end his life. Specifically, the evidence to support this theory is as follows:

- a. Christopher had stopped recording his time sheets in the several days before he left work and he stopped going to work without warning. This was out of character for him. His friends described him as hard working.
- b. Christopher's use of the company car and company credit card to make illegal transactions in relation to the purchase of fuel and accommodation could indicate that he had no intention of coming back.
- c. When Christopher visited his uncle in the Southern Highlands of NSW, he seemed disgruntled and unappreciated at work. The fact that he paid this visit, completely out of the blue, was also unusual.
- d. By not answering his phone or returning calls for a month or so before he died, one might infer that Christopher wanted to disappear.
- e. It was discovered after his death that Christopher had some debts, both from gambling and also from failure to pay rent and other bills. The total amount was less than \$10,000.
- f. Christopher had been driving the company car without permission, stealing from the company credit card, not paying for fuel or accommodation, including on the morning of his death.
- g. When confronted with the presence of a police car with lights and sirens, assuming he was aware of this, it could be inferred that he did not want to face the consequences and decided to end his life.

49. However, there is also evidence to suggest other possible reasons for Christopher's death. For example, the following:

- a. Christopher's friend told police that he had left lodgings before without paying. It is possible he was doing the same.
- b. Christopher had never displayed any intentions to kill himself or displayed any actions consistent with suicidal ideation.

- c. Christopher had no diagnosed mental health problems or drug dependency issues that may have played a part.
 - d. Kevin Elliott, manager of the motel in Narrabri, who was the last person we know of to have dealings with Christopher, did not notice any odd or otherwise remarkable behaviour. He described him as a “polite, normal tradesman” who spoke about work.
 - e. We do not know much about the days (in particular, the 24 hours) immediately before the collision so we cannot know how much sleep Christopher had the night before the collision or how far he had driven on the morning of the crash. He could have been very tired.
 - f. We do not know if Christopher was aware of the police car behind him. Senior Constable Gersback commented that there was no change in Christopher’s driving or movement in the cab and he thought perhaps the driver was unaware of the presence of the police vehicle.
 - g. We don’t know if Christopher had the radio on and we are aware that the sound of the police sirens may have dissipated in the rural area in which this pursuit took place. Certainly, Mr Dixon did not hear any sirens before the collision.
 - h. There is no evidence of Christopher accelerating immediately before impact or of him abruptly turning the wheel of his car which one might expect if a person were intent on killing himself.
 - i. Christopher still had his seatbelt attached after the collision.
50. Sergeant Samuel, the crash investigator, said that the accident was not a true head-on. That the vehicles were off-set. The driver’s side of the front of Christopher’s vehicle hit the driver’s side of the front of the semi-trailer.
51. It is open to find on the evidence Christopher may have fallen asleep, had a moment of inattention for some unknown reason, or become aware of the police behind him and panicked causing him to drift into the north bound lane as he drove around the bend rather than that he consciously drove into the truck’s path.
52. A finding of suicide is often a difficult task for a coroner. Historically, there was a presumption against a finding of suicide because of the legal and religious consequences of such a finding and the stigma attached to it. In light of changing laws and social values, it is no longer presumed that a person did not intentionally kill themselves and if it is appropriate for such a finding to be made, it may assist in addressing what has become a large social problem in recent decades.

53. Even though the consequences of a suicide finding have been ameliorated and would have no legal effect in this case such a finding should not be presumed without proper regard of all the evidence and the alternatives.

54. All decisions made in inquests are made to the civil standard. In the decision of *Briginshaw v Briginshaw* (1938) 60 CLR 336 Dixon J stated;

"The truth is that, when the law requires the proof of any act, the tribunal must feel an actual persuasion of its occurrence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief of its reality..."

55. In this case there is no clear evidence to prove that Christopher caused his own death by a deliberate or intentional act and that at the time of the act he consciously intended to cause his death. The evidence leaves open the possibility that his death was accidental. In those circumstances I am unable to make a finding in relation to whether his death was intentional or accidental.

Was the relevant NSW Safe Driving Policy adhered to?

56. Policies have been designed to provide checks and balances to ensure police pursuits do not occur in situations that might put members of the public and police in undue danger.

57. The main safeguard is the relevant parts of the NSW Police Force Safe Driving Policy (SDP). Version 8.2 of this policy was in place on 31 August 2017. (It has been superseded by version 8.3.)

58. S. 8-6-1 SDP sets out the guidelines for police to perform traffic stops.

59. Senior Constable Gersback heard on the police radio that Christopher's vehicle had just failed to pay for petrol and that the vehicle had number plates that were cancelled in 2005. It was a clear sunny day and there was minimal traffic, no pedestrians and in a rural area. It was 8:30 in the morning, Senior Constable Gersback had the appropriate silver driving classification and the vehicle he was following was travelling at the posted speed limit of 100kmph. I am satisfied it was appropriate for Senior Constable Gersback to conduct a U-turn and endeavour to stop Christopher's vehicle. His actions complied with the SDP.

60. Senior Constable Gersback then informed radio operators of his location and activated his lights and sirens attempting to stop Christopher's vehicle. Christopher continued driving.

61. S. 8-6-3 SDP states that when a driver appears to be ignoring requests to stop and a decision to pursue has been made then the SDP pursuit guidelines must be adhered to.

62. Part 7 SDP sets out the pursuit guidelines. Senior Constable Gersback's vehicle was a [REDACTED]. I note that he appropriately requested the radio to try and raise a highway vehicle and then he began the pursuit. It was only seconds later that the accident occurred.
63. I am satisfied the SDP was adhered to.
64. On one reading of the SDP there is an anomaly. Part 5 of the SDP (SDP 5-1-7 p18) deals with vehicle categorisation. It states that [REDACTED]
[REDACTED]
[REDACTED]
65. It has been submitted by counsel assisting that it would be a perverse outcome that there are less restrictions on officers engaging in a pursuit than those responding to urgent duty.
66. It was also submitted that other ambiguities and uncertainties in the SDP are:
- a. The Traffic Stop provisions are contained within the Coded System of Driving (Part 8) yet they make reference to Urgent Duty in terms of the [REDACTED] (8-6-2);
 - b. The fact that the Coded System of Driving seems to define Code Red in similar terms to the actions of SC Gersback in this situation makes it difficult to determine if he was in fact driving Code Red;
 - c. Reference in SDP 6-1 to "driving police vehicles under urgent duty or pursuit conditions" seems to suggest all pursuits are urgent duty, but that may not be the case.
 - d. There is a lack of assistance in how Urgent Duty (Part 6) and Pursuit (Part 7) of the policy interrelate and overlap. For example, clearly an officer can be on Urgent Duty but not in pursuit, but can an officer be in pursuit but not engaged in Urgent Duty?

If the latter is correct, why is the threshold for such an inherently dangerous activity such as a pursuit, set so much lower than urgent duty?
67. I suggest that the NSW Commissioner of Police consider the submissions made by counsel assisting with a view to clarifying any confusion that may arise where these parts of the policy interact.

Findings: s 81 Coroners Act 2009

68. I find that Christopher Hill died on Thursday 31 August 2017, on the New England Highway, at Bendemeer in the State of NSW. The cause of his death was multiple injuries sustained in a motor vehicle collision that occurred when his vehicle drifted onto the wrong side of the road during a

police pursuit. The evidence is such that I am unable to make a finding in relation to whether his death was intentionally self-inflicted or accidental.

Magistrate C Forbes

Deputy State Coroner

15 March 2019