



CORONER'S COURT OF NEW SOUTH WALES

Inquest: Inquest into the death of Benjamin Jake Collier

Hearing dates: 28 and 29 July 2021

Date of findings: 23 August 2021

Place of findings: Newcastle Local Court

Findings of: Magistrate Robert Stone, Deputy State Coroner

Catchwords: CORONIAL LAW – mandatory inquest – critical incident – police pursuit – motor vehicle accident – motorcycle – alcohol – speed – inexperienced rider – NSW Police Force – Safe Driving Policy

File number: 2020/7307

Representation: Mr J Harris, Counsel Assisting, instructed by Mr G Martin, Crown Solicitor's Office

Mr R Hood for Commissioner of NSW Police, instructed by Mr S Robinson of the Office of the General Counsel

Mr B Haverfield for Sergeant Craig Hassett

Findings: I find that Benjamin Jake Collier died on 8 January 2020 at Scott Street, Newcastle, NSW 2300. The cause of Ben's death was head and chest injuries as a result of a collision while riding a motorcycle. The collision occurred shortly after the termination of a police pursuit and thereby as a result of a police operation. The primary contributing factors of the collision were alcohol and the speed at which Ben was riding.

Recommendations: Nil

Non-publication orders

I make a non-publication order pursuant to s 74(1)(b) of the Act prohibiting the publication of evidence that discloses the contents of certain information in the NSW Police Safe Driver Policy.

Note: The Court made specific non-publication and non-disclosure orders on 31 May 2021 and amended on 7 June 2021 pursuant to ss 65 and 74 of the Act. The orders relate to certain information in the NSW Police Safe Driving Policy, evidence that discloses the contents of that information, and a confidential affidavit provided in support of the application for those orders. The orders are available through the Court Registry.

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Inquest into the death of Benjamin Jake Collier

Section 81(1) of the Coroners Act 2009 (NSW) (the Act) requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of Benjamin Jake Collier.

Introduction

1. Ben Collier died on 8 January 2020, aged 35 years. He sustained injuries arising from driving his motorcycle at high speed and colliding with a steel light pole in efforts to avoid police who had briefly commenced a police pursuit that was terminated before the collision. As this occurred as part of a police operation, at the time of his death, an inquest is required to be held pursuant to sections 23(1)(c) and 27(1)(b) of the *Coroners Act 2009* (NSW) (the Act). The purpose of this type of inquest is to fully examine the circumstances of the death in which police have been involved in order that the public, the relatives and the relevant agency can become aware of those circumstances.¹
2. Section 81(1) of the Act requires a Coroner to make findings as to:
 - a. the identity of the person who has died;
 - b. the date and place of the person's death; and
 - c. the manner and cause of the death.
3. In addition, under s 82 of the Act, the Coroner may make recommendations in relation to matters connected with the death, including matters that may improve public health and safety in the future.

Background

4. Ben Collier died on 8 January 2020 in Scott Street, Newcastle, from injuries he sustained in a motorbike accident. He was 35 years old. Shortly before 3.00am, police observed him riding through a red light at Donald Street, Hamilton and followed him for a period before signalling for him to stop. He failed to stop and rode away at high speed. Police commenced a pursuit but ceased after 39 seconds. A short while later, the motorbike hit the kerb, collided with a steel light pole and slid a distance before coming to a rest. Ben sustained fatal head and chest injuries in the collision. He was pronounced dead at the scene at 3.14am. Toxicology revealed a blood alcohol content (BAC) of 0.203g per 100mL.

¹ *Waller's Coronial Law and Practice in New South Wales* at [23.7].

5. Ben Collier is survived by his parents, Rick and Joanne Collier, his sister Brodie Wilson, his wife Koelah and their three children. He was born in Sydney in 1984. He grew up in Newcastle and Scone.
6. He is described by his friends and family as a very outgoing and easy-going person. He loved fishing, camping and the outdoors. He was sentimental and emotional but was not known to suffer depression or have any other mental health issues.
7. Tragically, Ben's half-brother, Ashley, also died in a car accident in 1998. Ben had Ashley's name tattooed on his chest.
8. In 2009, Ben met Koelah and they formed a relationship. They married on 16 November 2013 and had 3 children. They separated on a number of occasions but were living together at the time of Ben's death.
9. In 2012, Ben commenced work with Hunter Valley Operations at a mine in Singleton. He worked there until the time of his death, although he only secured a permanent position about 6 months prior to his death.
10. Ben only had one significant matter on his criminal record. In 2017, he seriously assaulted a man at Newmarket Hotel, whom he accused of "*tuning*" his wife. He was charged with Reckless grievous bodily harm and given a 12-month suspended sentence.
11. Ben had a poor driving record. He obtained his learner car licence in October 2000 and an unrestricted car licence in August 2006. He had various infringements recorded, including 9 excess speed offences. His licence was suspended 6 times. He was also convicted of Drive under the influence in 2005.
12. On 29 November 2017, Ben obtained a learner Class R motorbike licence. He had ridden dirt bikes when he was younger. He undertook compulsory training and obtained a P1 provisional Class R licence on 19 March 2018. On 30 October 2018, while still a provisional rider, he incurred an excess speed offence.
13. In October 2019, Ben bought a high-performance motorbike, a Suzuki GSXR1000. He was able to ride that bike under the Graduated Licensing Scheme, despite being a relative novice, because of an exception in the scheme, as he was over 25, held an unrestricted driver's licence and had completed 12 months on his P1 rider's licence. His father, Rick, is an experienced motorcyclist, and he did not think Ben should be riding such a fast bike. He advised him to sell it.
14. For the purposes of the Inquest Transport for NSW was asked to provide some information in relation to the Graduated Licensing Scheme, which operates to restrict access of novice riders to high performance motorcycles, and also the question of advanced rider training courses. That material was within the brief,

although it will not be necessary to consider it in detail in the context of this inquest.

7 January 2020

15. The following provides a summary of the events which led to Ben's death. On the afternoon of 7 January 2020 Ben and Koelah had returned home with the ashes of their beloved family dog "Bronx" who had been put down. Both were upset and they decided to have some drinks. Ben drank about 10 or 11 stubbies and about a quarter bottle of Jack Daniels and Coke.
16. During the evening, Ben and Koelah had an argument. Koelah later told police that after about 20 minutes of arguing, she told him to leave. Although she does not recall what time Ben left, he made calls to two local taverns at about 11.15pm, suggesting he had left or was leaving at that time. Ben said he was going to stay with a friend, Adam Voller. He knocked some items onto the floor of the en suite, causing damage. He then put on his motorbike boots and helmet and left the home on the Suzuki.
17. At 11.24pm, Koelah left a message for Mr Voller, although he did not receive that until the following day. Koelah also tried to call her brother-in-law (Brodie's husband) Sam Wilson, but there was no answer.

8 January 2020

18. The police investigation has been able to piece together where Ben spent some of the next few hours, prior to him being detected by police at around 3am. There is CCTV footage which shows Ben riding his motorbike at different locations.
19. Examination of Ben's phone shows that he sent a text to Mr Voller around midnight, saying he had been given a "*fat lip*" and his relationship was over. He said he wanted to "*get blind*". Mr Voller did not receive this text until after Bens' death. Ben also sent a similar message to his brother-in-law, Mr Wilson, although he was not concerned and went to sleep. Ben also exchanged some unpleasant texts with his wife.
20. At 12.41am, Ben withdrew \$500 using his phone at an ATM in Hamilton. He then attended an Irish Bar nearby - only briefly as it was closing. At 12.54am he went to the Sydney Junction Hotel, Hamilton. He knew the night manager there, Kurt Polglase, who served him two schooners of Carlton Dry. There is CCTV which shows Ben arriving at the hotel, and the action inside the hotel. Ben told Mr Polglase about the end of his relationship and that he had been kicked out. Ben was offered a place to stay, which he declined, saying he was going for a ride. Mr Polglase did not think he was intoxicated.
21. While at the hotel, Ben had an altercation with a young man who tried to drink some of his beer, and then tried to punch Ben. There was a brief scuffle, and staff intervened and ejected the other man from the hotel. That action is captured on CCTV.

22. Also, while at the hotel, Ben received a call from his wife at 1.18am for 1 minute 8 seconds. The nature of that call is not known. She sent him a text a couple of minutes later, saying "*We are done. i hate you as a person ... Don't come back .. cops will be here.*" However, she had not called police.
23. Ben left the hotel at 1.28am. The investigation was not able to identify where Ben went after he left the hotel, until police sighted him at about 2.57am.
24. Of the money he withdrew from the ATM, \$207 was not accounted for, suggesting Ben could have bought more alcohol, gambled or otherwise spent or lost the money in that time. Police made enquiries to see if he visited adult entertainment, but it was inconclusive.
25. At 2.31am, Ben texted Mr Voller and Mr Wilson saying, "*All good went into town got blind I'm better off on the other side play by my rules.*" Neither man saw this text at the time. While that reference to "*the other side*" could be interpreted as meaning self-harm, Mr Wilson thinks Ben was simply referring to a life without Koelah.
26. Ben also texted his boss, Lincoln Mudd, saying he had "*some dramas goin on*" and would not be in work that day, although he would return the following day.
27. Koelah called Ben at 2.30am, and he replied by text "*stop ringing me.*" Over the next 20 minutes, they exchanged more texts. Ben said, among other things that he had "*never raised a hand to [her]*", and then said, "*goodbye it's over forever*". Again, in context, that seems to be referring to the relationship.
28. At 2.51am, he sent her a final text, which gives some insight into his state of mind immediately prior to his encounter with police. It stated:

"oh well I knew u were no good glad I seen it early go join the farm of deros u know very well men from ur family wouldn't of took it like I did they would fought back and belted a woman tip rats least I can hold my head high. Some cunt even went me at pub but I didn't throw shit and didn't get hit cos I've learnt from my mistakes u never will. I can duck and weave and wear punches it don't matter I won't ever put real pain on someone else and no punk can hurt me so who cares"

The police pursuit

29. At about 2.45am, Sgt Craig Hassett and Prob Cst Connor Harding were in a fully marked police vehicle, NCC37 (though they were using callsign NCC14). Sgt Hassett was the driver. They had been at the Mater Hospital, on an unrelated job, and were returning to Newcastle Police Station because Prob Cst Harding's shift was due to end at 3am. They were in Donald Street, Hamilton approaching the junction with Gordon Ave. The lights were green in their favour. They saw Ben turning right across their path from Gordon Avenue into Donald Street. To Sgt Hassett, it appeared that Ben had gone through a red light.

30. Sgt Hassett followed the motorbike along Donald Street into Parry Street, where the motorbike stopped at traffic lights. It then turned left into Tudor Street and right into Hunter Street, accelerating quickly, before coming to a stop again at the junction with Stewart Avenue.
31. The police investigation obtained CCTV footage depicting the two vehicles, commencing at this point at 2.57am, and finishing with the accident. A video of that footage was played during the Inquest.
32. While they were stopped at the lights, Ben appeared to turn and see the police vehicle. At 2.58am, Sgt Hassett contacted police radio and asked for checks to be performed. It was confirmed that Ben was the owner of the motorbike and it had not been reported stolen.
33. Ben moved off from the lights and turned left into Florence Street, a narrow lane with business and residential premises. He then turned right into Beresford Lane, and left on Bellevue Street. Sgt Hassett turned on his warning lights, indicating for Ben to stop. Ben did not stop. He bore left into Beresford Street, and left again into Stewart Avenue, and when doing so he again went through another red light. He then turned left back onto Hunter Street where he had started.
34. Sgt Hassett activated his siren about 5 to 7 seconds after his lights. At 2.59am, he informed police radio that he was in pursuit of the motorbike, as follows:

City 14, I'm in pursuit of that cycle on Hunter Street, east bound. Speed's about eighty over sixty.²
35. That broadcast was made about 45 seconds after the previous broadcast from the dispatcher, which had provided Ben's details.
36. In response, the radio operator, Cindy McAuley, made a "double-beep" priority broadcast, asking all cars to stand by with other broadcasts unless it was urgent. She asked Sgt Hassett to state his location.
37. Ben accelerated eastwards along Hunter Street. Sgt Hassett accelerated to catch up. Sgt Hassett lost sight of the motorcycle briefly as it passed the bend in the road at Union Street.
38. About 15 seconds after commencing the pursuit, Sgt Hassett made a second broadcast, as follows:

East bound through Auckland Street. No traffic whatsoever. Heading east bound Hunter Street, he's over Darby Street now. Estimated one-ten over fifty.
39. Within a short period, Sgt Hassett decided to terminate the pursuit. He made a third broadcast, as follows:

² Meaning the speed was 80 kmph in a 60 kmph zone

Radio, I'm going to terminate that, he's just going too fast.

40. The broadcast terminating the pursuit occurred about 40 seconds after its commencement. The police siren can still be heard in the broadcast.
41. In interview, Sgt Hassett explained his decision to terminate the pursuit was because the speed of the motorcycle was too fast, and he considered the rider to be at risk. While there was no traffic or pedestrians on the road, he thought there was some possibility that road workers or other members of the public might be present, who could also be placed at risk.
42. Some witnesses who were fishing at Queen's Wharf (Mr Thompson and Mr Qaseme) heard the police siren being switched off. CCTV footage recorded at Crown Street also shows the warning lights of the police car being deactivated.
43. The CCTV footage has been analysed by a crash scene investigator from Hunter Crash Investigation Unit, Sen Cst Kristen Rafter. She was able to calculate the motorbike was travelling at approximately 156 kmph when passing the Civic East light rail stop, and remained at about the same speed further along, at Crown Street and Queens Wharf stops. The speed of the police car was approximately 120 kmph at Civic East, but could not be calculated more precisely after that point, due to a video error. It was estimated to be travelling at about 81 kmph at Crown Street.
44. Although Sgt Hassett had terminated the pursuit, he also continued to drive in the direction of the motorbike. He reduced his speed and applied his brakes but did not brake heavily. In interview, he said he did not turn off the route because he had passed Darby Street, and so there was no available turning point. He was heading back to the police station in any event, in order to return Prob Cst Harding to the station for the end of his shift.
45. Ms McAuley, the police dispatcher, asked Sgt Hassett if he wanted a police unit to attend the motorcycle owner's address.
46. However, as Sgt Hassett continued along Scott Street, he observed smoke or mist ahead, and then came across debris and saw Ben lying on the road. He had not observed the rider of the bike colliding with the pole. He broadcast that the rider had come off the bike and asked for an ambulance. That broadcast commenced about 30 seconds after the pursuit was terminated.

The collision

47. It appears that Ben lost control of the motorcycle on a slight right-hand bend on Scott Street at the junction of Newcomen Street, in a section of road with a 40 kmph speed limit. The road when examined was dry and in good condition, with adequate street lighting.
48. There was a scuff mark on the road, consistent with tyre friction caused by rotating and slipping. The bike then made contact with the left-hand gutter,

mounted the kerb and collided with a low brick wall, and then struck a light pole, which was completely severed. The bike and rider continued onwards, coming to a rest some distance further along the road.

49. There is CCTV footage of the crash itself, showing fuel igniting and smoke along the path of the crash. Detective Abbott, the Senior Investigating Officer, also notes that a pigeon can be seen flying in front of Ben's bike immediately prior to the collision, which could possibly have distracted him (this can be seen on the relevant video footage at 03:27).
50. After coming to the scene, Sgt Hassett stopped his vehicle and he and Prob Cst Harding got out. They approached Ben, who was obviously deceased. Sgt Hassett checked for a pulse but found none. He made a broadcast at 3.02am to the effect that Ben was deceased.
51. Members of the public, the first to arrive being a Mr Nicholls, and other police officers (Sen Cst Shrubsole and Prob Cst Hooper) arrived within minutes.
52. At 3.10am, a NSW Ambulance paramedic (Insp Joel De'Zuna) attended. At 3.14am he applied a cardiac monitor and confirmed that Ben was deceased.
53. The motorcycle was later examined. No mechanical defects were identified.

Autopsy

54. An autopsy by way of external examination only was performed by Dr Du Toit-Prinsloo on 10 January 2020. She recorded the cause of death as head and chest injuries. Toxicology revealed a BAC of 0.203g/100mL in a femoral blood sample.

Pharmacology

55. Dr Judith Perl, a forensic pharmacologist, has provided a report in which she gives the following opinions:
 - a. The femoral blood reading gives a good indication of the BAC level at the time of death.
 - b. A BAC of 0.203g/100mL would require Ben to have drunk 225 to 290g of alcohol. His reported consumption is consistent with this reading, containing a total of 238.5g of alcohol.
 - c. A BAC of 0.203g/100mL would "very substantially" or "grossly" impair driving ability: this includes cognitive, motor and visual functions, reaction skills, tracking ability, motor co-ordination, perception, judgment and decision-making, visual scanning and peripheral vision.

- d. Research has established that a BAC of 0.05, increases the risk of an accident by 1.4 times; 0.100 by 4.8 times; 0.150 by 22.1 times; and 0.200 by 81 times.

Accident statistics

56. Det Sgt Abbott obtained a research paper about trends in motorcycle-related crashes in Australia.³ That shows that, generally, greater engine capacity, higher power-to-weight ratios, youth and inexperience, were found to increase the likelihood of serious injuries or fatalities. However, the relationship between engine capacity and crash risk was found to be complicated, and in fact crash risk *decreased* in the case of larger “sport” motorcycles (as the Suzuki was).⁴ The research was also not able to differentiate between the crash risk of inexperienced (young) and inexperienced (old) riders.⁵

Issues

57. An issues list had been circulated to the interested parties prior to the Inquest. There was no objection to its contents that stated:
 - (1) *The findings required by s. 81 of the Coroners Act 2009, namely the identity of the deceased, the date and place of death, and the manner and cause of death.*
 - (2) *Was Sgt Hassett's conduct appropriate in the circumstances and in accordance with NSW Police Force policy, in particular regarding the following matters:*
 - a. *The decision to commence a pursuit,*
 - b. *The conduct of the pursuit, including the speed and manner of driving,*
 - c. *The decision to terminate the pursuit, and*
 - d. *Action taken after the pursuit, including the speed and manner of driving?*
 - (3) *What factors contributed to the collision?*
 - (4) *Is it necessary or desirable to make any recommendations in relation to any matter connected with the death, pursuant to s. 82 of the Coroners Act 2009?*

³ Budd, Allen and Newstead, *Current trends in motorcycle-related crash and injury risk in Australia by motorcycle type and attributes*, Accident Research Centre, Monash University, 2018 Report no. 336

⁴ *Ibid.* p82

⁵ *Ibid.* p81

Witnesses

Detective Sergeant Nathan Abbott

58. Det Sgt Abbott was appointed officer in charge of the critical incident investigation. He was independent of the involved officers, having been appointed from a separate command.
59. In addition to his policing experience, Det Sgt Abbott is a motorsport enthusiast. He has competed in motorsport for many years, attaining success at the national level, and holds a Confederation of Motorsport licence.
60. He considered the collision to have been the result of the following four primary factors:
 - a. The speed of the motorcycle,
 - b. Ben's blood alcohol concentration,
 - c. Ben's lack of experience riding a high-performance motorbike, and
 - d. The pigeon that flew in front of Ben in the moments before the collision, which may have distracted him.
61. Det Sgt Abbott gave evidence that the speed the motorcycle was travelling was a major contributing factor to the collision. He noted that the posted speed limit was 40 kmph, and the road narrowed about the area the collision, where the road shared the carriageway with light rail tracks.

Sergeant Craig Hassett

62. Sgt Hassett stated in evidence that he was familiar with the model of police car he was driving that night, which was the same model he usually drives. He was also very familiar with the streets of Newcastle. Prob Cst Harding was effectively an observer only, and played no role in the pursuit, including in the operation of the police radio or the warning devices.
63. Sgt Hassett explained that, as he travelled along Donald Street and approached the traffic lights at the intersection of Gordon Avenue, he saw Ben's motorbike suddenly appear in front of him, crossing the intersection into Parry Street. While he did not see it emerge from Gordon Avenue, he formed the view that Ben must have entered the intersection from Gordon Avenue to the right, based on the angle of the motorcycle. As Sgt Hassett had a green light, he formed the view Ben must have run through a red light.
64. At that point, Sgt Hassett determined he would perform a traffic stop. However, he first wanted to check information about the rider via police radio, (a "transport" check), to ascertain whether anything adverse was known. To do so, he needed to catch up to the motorcycle to obtain its registration. He therefore followed the motorcycle along Parry Street, left onto Tudor Street,

right onto Hunter Street, and up to the intersection of Hunter Street and Stewart Avenue. At that point, the vehicles came to a stop and Sgt Hassett was able to obtain the registration. During that time, the motorcycle did not engage in anything that could be regarded as significant, save that it accelerated quite quickly from Tudor Street.

65. Sgt Hassett then contact police radio for a “transport” check. The dispatcher broadcast a response soon after, confirming the vehicle details and providing the owner’s details as Benjamin Collier of Cameron Park. Although Sgt Hassett did not know precisely where he was when that broadcast was made, he believes it was prior to him entering Florence Street.
66. While at the intersection of Hunter Street and Stewart Avenue, Sgt Hassett observed Ben to turn his body slightly to the left. Sgt Hassett formed the view that Ben would have realised that the police vehicle was behind him.
67. When the lights went green, Ben travelled east across the intersection at normal speed and, about 40 m past the intersection, turned left into Florence Street. Sgt Hassett followed Ben left into Florence Street, right onto Beresford Lane, left onto Bellevue Street and onto Beresford Street. Ben’s driving at this time was normal. This is confirmed by the CCTV. However, this route raised Sgt Hassett’s suspicion, as he considered the only reason a person would go through those lanes would be if that person lived there or was visiting someone. Given the owner’s address in Cameron Park and the time of day, neither were likely.
68. Sgt Hassett did not attempt to conduct a traffic stop on Florence Street or Beresford Lane, because the laneways were very narrow and he did not consider it appropriate or safe for him or the rider to stop. Once the vehicles reached Beresford Street, Sgt Hassett activated the red and blue lights of the roof bar to conduct a traffic stop. He marked the location of his vehicle and the motorbike where this occurred on a map (Exhibit 2, points “1” and “A”).
69. His intention was to speak to the rider about a possible infringement going through a red light at the intersection of Donald Street and Gordon Avenue, obtain the rider’s driver licence and identify him, and perform a random breath test. The rider’s acceleration from Tudor Street was also a minor issue to speak to the rider about.
70. Sgt Hassett did not activate the sirens at the same time as the lights because, in addition to assuming the rider had observed there was a police vehicle behind him, he had regard to the time of night and that they were in a residential area, where the siren would have echoed loudly. Sgt Hassett gave evidence that he adopts a “graduated” process when conducting a traffic stop: first, he activates the red and blue lights; second, he might hit the “yelp” to give a short squawk of the siren; and third, if the vehicle has indicated it was not going to stop, he would activate the siren. He acknowledged this was not

entirely consistent with the NSW Police Force's Safe Driving Policy, which requires the activation of both lights and sirens to effect a traffic stop.⁶

71. Sgt Hassett observed that Ben seemed to accelerate along Beresford Street following the illumination of the warning lights. He then observed Ben to run through a red light and turn left onto Stewart Avenue. Sgt Hassett followed him into Stewart Avenue and at that point activated the siren.
72. Sgt Hassett followed Ben left onto Hunter Street, and broadcast on the VKG radio that he was in pursuit. He marked the location of his vehicle and the motorbike where this occurred on a map (Exhibit 2, points "2" and "B").
73. Sgt Hassett stated that he wanted to apprehend the rider to find out the reason for not stopping. This action met the definition of a pursuit under the Safe Driving Policy, which includes an attempt to stop and apprehend a driver who has ignored police attempts to stop him.⁷ The policy also provides the following direction when making a decision to commence a pursuit:

*The decision to initiate and/or continue a pursuit requires weighing the need to immediately apprehend the offender, against the degree of risk to the community and police as a result of the pursuit.*⁸

74. Sgt Hassett was asked about his decision-making in evidence. He noted that, while he had the owner details, he did not know whether the rider was in fact the owner, or a person who had borrowed the motorbike, or whether it had been stolen. While there were two other units on duty in Newcastle that night, he did not know their location or whether they would be in a position to assist. He therefore believed that there was a need to immediately apprehend the rider. He also considered whether it was safe to commence the pursuit. It was early on a Wednesday morning, there was no traffic and he had not observed any pedestrians. He formed the view that the risk was somewhat low at that point in time.
75. As was required by the Safe Driving Policy,⁹ Sgt Hassett provided the motorcycle's location and direction of travel to police radio.¹⁰ However, he did not provide other information required by the policy, including the reason for the pursuit. When asked about this in evidence, he said he considered it important to provide information relevant to risk, including speed, direction of travel, the environment the pursuit is happening in, what else is in the environment such as traffic and pedestrians. He said he could not give all nine pieces of information required under the Safe Driving Policy, because there was not sufficient time to do so, and also because in his experience the giving of information over police radio was a staged process, where the dispatcher asked for information as required. He nonetheless agreed that the reason for

⁶ Safe Driving Policy at [6-5]

⁷ Safe Driving Policy at [7-1]

⁸ Safe Driving Policy at [7-2-1]

⁹ Safe Driving Policy at [7-5-1]

¹⁰ Sgt Hassett's evidence was that he made the second broadcast when he was at the location marked on Exhibit 2 at points "3" and "C"

the pursuit could be relevant to the supervisor's consideration of whether a pursuit should continue. He also acknowledged there might have been time, in practical terms, to broadcast the reason for the pursuit during the roughly 40 seconds that the pursuit lasted.

76. As the motorcycle accelerated east along Hunter Street, Sgt Hassett continued to accelerate in an attempt to catch up to the rider. He did not look at his speedometer, but estimated he was travelling at roughly 100 kmph. He accepted his vehicle may have reached 120 kmph, as Sen Cst Rafter's calculations suggest.
77. During this time, the motorcycle continued to pull away. His view of the motorcycle was temporarily obscured when it travelled through the intersection of Bellevue Street due to a slight bend in the road at that intersection, until the police vehicle reached a point in the road where he had a view all the way up Hunter Street to the next bend at Union Street. He again lost sight of the motorcycle for a few seconds when it travelled past the bend in the road at Union Street.
78. Sgt Hassett stated that he decided to terminate the pursuit when he was in the vicinity of Newcastle Civic Theatre, due to the speed the motorcycle was travelling. He considered that this presented a risk to the rider, and to other members of the public.
79. The Safe Driving Policy provides the following direction in relation to terminating a pursuit:

TERMINATION: "All vehicles cease to pursue, stop following and return to the legal speed limit. Turn off all warning devices as soon as possible and when safe".¹¹
80. After making a decision to terminate, Sgt Hassett engaged the brakes and broadcast that he was terminating the pursuit. He marked the location of his vehicle and the motorbike where this occurred on a map (Exhibit 2, points "4" and "D").
81. He continued travelling for some distance before he switched off the sirens and the lights. This was because of the time it took for him to return the radio handset to the cradle and move his hand down to the control device for the siren and red and blue lights. This is consistent with the CCTV footage, which shows the police vehicle's warning lights being switched off as the vehicle approached the Crown Street light rail stop.
82. When asked why he had not made a decision to terminate earlier, given the speed the motorcycle was travelling and the fact that it was not likely he would be able to catch up, Sgt Hassett said that he was observing, assessing, reacting, thinking and processing all the information about what was happening and what danger there was to other people and the rider. The motorbike had

¹¹ Safe Driving Policy at [7-1-2]

also been out of his view for periods of time, until he passed the bend at Union Street.

83. Sgt Hassett stated that he reduced the speed of the police vehicle to about 70 kmph, but then at about Darby Street, when Ben's motorcycle was out of sight, he increased his speed to 80 kmph. He marked the location of his vehicle where this occurred on a map (Exhibit 2, point "5"). He acknowledged this was in excess of the 40 kmph posted speed limit. He said he did so because he had concerns about Ben's speed, and the risk there may be bad consequences for him or somebody else; he was concerned that if something tragic happened, he should get there to assist. However, he did think it possible that Ben might have disappeared into the night and gone home safely, having evaded police.
84. Sgt Hassett acknowledged that he did not return to the posted speed limit, as was required by the policy.
85. Sgt Hassett did not accept that he was still following Ben. As already noted, he was intending to return Prob Cst Harding to the police station, and the route to get to the police station also required him to continue along Hunter Street. Also, there was no opportunity to turn off Hunter Street, once he had passed Darby Street, and until he reached Bolton Street, beyond the site of the crash.
86. Sgt Hassett could not think of anything he should or could have done differently during the incident, even with the benefit of hindsight.
87. Sgt Hassett concluded his evidence by making a heartfelt apology to the family. He was clearly emotionally affected when recalling the incident. I consider that his expression of remorse was sincere, and entirely appropriate.

Sergeant Nicholas Hrymak

88. Sgt Hrymak was formerly a senior policy advisor and Chair of the State Pursuit Management Committee. His role involved reviewing large numbers of cases for compliance with relevant guidelines including the Safe Driving Policy. In total, he estimates that he has reviewed over 15,000 pursuits. He has also trained Highway Patrol officers regarding the policy. His opinion about the operation of the policy carries significant weight.
89. Sgt Hrymak was present throughout the hearing via AVL and observed the evidence of Sgt Hassett.
90. Sgt Hrymak expressed the following views:
 - a. Sgt Hassett's decision to conduct a traffic stop was appropriate. The basis for doing so included the fact that the rider appeared to have committed an offence, and the fact that he had turned into a side alley.
 - b. While the Safe Driving Policy requires both lights and sirens to be activated for a traffic stop, operationally, police need to make a judgment about how this is done. In the circumstances of this case,

where Sgt Hassett was in a residential area, Sgt Hassett's actions in this respect were reasonable.

- c. When Ben ignored the warning lights and sirens, and rode away from police, Sgt Hassett had a sufficient basis to engage in a pursuit. Given the time of day and lack of other road users or pedestrians, Sgt Hrymak was not critical of this decision.
 - d. Sgt Hrymak confirmed that, while police officers are required by the policy to provide a range of information to police radio, how this is done depends on the circumstances of the case and the experience of the officer. In some cases, the dispatcher asks questions to identify relevant information. Sgt Hrymak considered that Sgt Hassett broadcast the most pertinent information, and was not critical of the fact that he had not provided all information required by the policy.
 - e. Sgt Hrymak noted that the decision to terminate a pursuit was a matter for the involved officer to determine. He was not critical of the decision to terminate. This is consistent with the terms of the Safe Driving Policy.¹²
 - f. Sgt Hrymak opined that the policy did not require an officer to turn around, or to turn off the road on which they are travelling, at the termination of a pursuit.
 - g. Sgt Hrymak was also not critical of the time it took for Sgt Hassett to turn off his lights and sirens, in light of his evidence about the time it took to attend to such things.
91. Sgt Hrymak identified that Sgt Hassett had failed to return to the legal speed limit after he terminated the pursuit, and in fact he had increased his speed. This was a breach of the requirements of the Safe Driving Policy.
92. However, Sgt Hrymak also noted that the police dispatcher had not made the usual broadcast after the end of the pursuit, which is in similar terms to the extract from the Safe Driving Policy at paragraph [80], above. The relevance of this is that Sgt Hassett was not thereby reminded of his obligations. Sgt Hrymak noted that police officers who are engaged in the pursuit and focussed on the need to control their vehicles may not be readily able to recall the terms of the policy. This is why such a broadcast is usually made. This lessens, to some degree, his criticism of Sgt Hassett's conduct.

Consideration

The decision to commence a pursuit

93. Ben had possibly committed two traffic infringements, and the manner of his riding raised a suspicion. He failed to comply with Sgt Hassett's lights and

¹² Safe Driving Policy at [7-2-7]

siren, and instead moved away at speed. Sgt Hassett formed the view that he needed to apprehend Ben. While any police pursuit brings with it a risk to public safety, the time of night and apparent lack of others on the road meant that the risk was low. I am satisfied that Sgt Hassett had a reasonable basis to conclude that the need to apprehend Ben outweighed the risk. The decision to commence a pursuit was appropriate.

The conduct of the pursuit

94. The pursuit lasted about 40 seconds and endured over a distance of about 1.2 km¹³ through the centre of Newcastle. The motorbike reached a speed of about 160 kmph, and the police car a speed of 120 kmph. Those speeds posed a potential risk to members of the public, although I acknowledge that there is no evidence that anyone was present on the road or footpath at that time.
95. Sgt Hassett made appropriate efforts to update police radio about pertinent information. While he did not provide all the information required by the policy, he made a reasonable effort to do so. I take into account the short duration of the pursuit, and the fact that he was endeavouring to control his vehicle as well as make the broadcasts.
96. I am satisfied that the conduct of the pursuit was appropriate in the circumstances.

The decision to terminate

97. It was clearly appropriate for Sgt Hassett to terminate the pursuit. As I have noted, the high speed of the pursuit presented a potential risk to the public. Sgt Hassett was not able to keep up with the motorbike, and his regard for the safety of the rider was well-placed.
98. I accept that his decision to terminate was also made at an appropriate time. While he might have made such a determination earlier, the evidence shows that he did so within a short time after passing the bend in the road at Union Street, when the motorcycle came back into view. It was only then that he was in a position to assess the situation. After providing a further update to police radio, he acknowledged that the speed of the motorbike was too fast, and was going to terminate. I am not critical of his failure to terminate at an earlier stage.

Action taken after the pursuit

99. After terminating the pursuit, Sgt Hassett did comply with the terms of the policy, except in one respect. He turned off all warning devices, and his evidence about the reason for the slight delay in doing this is plausible. While he continued in the same direction, there was no opportunity for him to deviate

¹³ See Exhibit 2, between markings "2" and "4"

from Hunter Street, and in any event, he was intending to return to the police station, which was in the same direction.

100. Sgt Hassett acknowledged that he failed to return to the legal speed limit, as he was required to do under the Safe Driving Policy. His reason for increasing his speed does not seem to me to alter the fact that he breached the policy.
101. However, while his conduct was not consistent with the policy, I am less critical than I might otherwise have been, for two reasons:
 - a. *First*, it is unlikely that Sgt Hassett continuing to drive above the speed limit or increasing his speed to 80 kmph, had any impact on the cause of the collision. The motorbike was out of sight, and therefore Ben would not have been aware of this action.
 - b. *Second*, in the circumstances of this case, the sergeant's conduct in travelling at up to 80 kmph along that part of Hunter Street did not place members of the public in immediate danger. While there was a potential risk to the public, there is no evidence of any other road user or pedestrian being present at that time.

What factors contributed to the collision?

102. In my view, the principal factors which contributed to the collision were the speed that Ben was travelling on his motorbike and his alcohol consumption.
103. Speed contributed to both the cause of the collision and the severity of its consequences. It would have been extremely difficult for anyone, even an experienced or well-trained rider, to have negotiated the road near the site of the collision at 160 kmph. The road is narrow and there are light rail tracks to one side of the carriageway. There is a bend in the road. It is clear that the road was not designed for such a high speed, and it has a posted speed of 40 kmph.
104. Alcohol was probably the most significant contributing factor. Dr Perl's evidence is that alcohol affects judgment, and it is likely that alcohol contributed to Ben's poor decision in getting on the motorbike in the first place. It also affected his motor coordination, visual function, tracking ability, reaction skills, and his ability to keep within the lane, all of which are critical when controlling a motorbike at high speed. The impact of alcohol on the risk of an accident is well known, and the statistics quoted by Dr Perl reflect what many people would understand instinctively. Drinking over four times the legal limit is highly likely to lead to an accident. In this case, it had tragic consequences.
105. I consider that Ben's inexperience is of lesser relevance than alcohol or speed. He had been riding his motorbike for a few months, and while there was no evidence as to how often he rode, it is likely that he was relatively familiar with its controls. He also had ridden other motorbikes in his youth.

106. I am unable to reach any conclusion as to whether he was distracted by a pigeon, although it is possible that he was.
107. Finally, I find that the police pursuit was a contributing factor to the collision, because it resulted in Ben riding away at speed in order to evade police. I do not say that as criticism of Sgt Hasset's decision to commence a pursuit. Rather, it is apparent that the commencement of a pursuit contributed to the creation of a risk. I acknowledge that the pursuit had terminated some period prior to the accident, although it was still relatively close in time.

Formal Findings

108. I record the following findings pursuant to s. 81 of the Act:

I find that Benjamin Jake Collier died on 8 January 2020 at Scott Street, Newcastle, NSW 2300. The cause of Ben's death was head and chest injuries as a result of a collision while riding a motorcycle. The collision occurred shortly after the termination of a police pursuit and thereby as a result of a police operation. The primary contributing factors of the collision were alcohol and the speed at which Ben was riding.

Recommendations

109. I do not consider it necessary or desirable to make any recommendations.

Conclusion

110. At the conclusion of the inquest, Ben's parents prepared a family statement. They acknowledge that Ben should not have been drinking, and that this was unfortunately his undoing. But they also told me that "this was not the Ben we knew".
111. This inquest has focussed on the final moments of Ben's life, but Ben was of course much more than those final moments. I am told that Ben's funeral was a testament to how many people loved him. It was attended not only by the family, but by his friends, by their families, by people from his school days and work colleagues. His is clearly greatly missed. I again offer my sincere condolences for their loss.
112. I thank Detective Sgt Abbott for the preparation of a well prepared brief of evidence that was of high standard. I would also like to acknowledge the great help and assistance of Counsel Assisting Mr J Harris and his instructing Solicitor Mr G Martin from the Crown Solicitors Office.
113. I close this Inquest.

Magistrate Robert Stone

Deputy State Coroner

Newcastle

23 August 2021