



**CORONERS COURT
NEW SOUTH WALES**

Inquest:	Inquest into the death of Mr Jaland Small
Hearing dates:	27 November 2020
Date of findings:	20 January 2021
Place of findings:	NSW State Coroner's Court, Lidcombe
Findings of:	Magistrate C Forbes, Deputy State Coroner
Catchwords:	CORONIAL LAW-Death as a result of a police operation-role of involved police
File number:	2017/312005
Representation:	Mr J Harris, Counsel Assisting instructed by Mr W Kahler, Crown Solicitors Office Ms E O' Brien, instructed by Office of the General Counsel New South Wales, representing the Commissioner of Police
Findings:	I find that Jaland Small died on 14 October 2017 at Cedar Party Road, Taree NSW as a result of head injuries he received when he was a passenger in a motor vehicle that collided with a tree.
Non-Publication and Access Orders	The court made non-publication orders pursuant to ss 65 and 74 of the Coroners Act 2009 (NSW). The orders relate to sections of certain New South Wales Police Force policies. The orders are available through the Court Registry.

REASONS FOR DECISION

Introduction

1. This is an inquest into the tragic death of Jaland Small who died on 14 October 2017 when he was only 17 years old. Jaland died when the car in which he was a passenger collided with a tree at Cedar Party Road, near Taree. His death was caused by head injuries.
2. Section 81 of the *Coroners Act 2009* ("the Act") requires a Coroner to make findings as to:
 - (a) the identity of the deceased;
 - (b) the date and place of the person's death;
 - (c) the cause of death; and
 - (d) the manner of death.
3. The cause of death refers to the physical cause of death. The manner refers to the circumstances leading up to and surrounding the death. There is no issue in this inquest in relation to Jaland's identity, the time of his death, the place and date, or the medical cause of death. The real issue concerns the manner of his death, or in other words, the circumstances leading up to the collision that caused him to suffer the fatal injuries.
4. Just before the collision, the driver of the vehicle Jaland was in had evaded a police officer who had attempted to stop the vehicle because it was not displaying registration plates.
5. The Act requires a Senior Coroner to conduct an inquest where the death appears to have occurred "*as a result of police operations*" (s.23 and s.27 of the Act).

"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

6. The actions of the police officer who attempted to stop the vehicle, Chief Inspector Sullivan, have necessarily been the focus of this inquest
7. 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 police actions on the day of Jaland’s death and pursuant to s.37 of the Act a summary of the details of this case will be reported to Parliament.

Jaland Small

8. At the time of his death, Jaland lived with his father, Chris Small, and a friend called Dylan Clark, in Muldoon Street in Taree.
9. Jaland was much loved by all his family, many of whom were present at the inquest so that they could learn more about the circumstances of his death and to pay their respects.
10. He was his parents’ pride and joy, a bubbly boy with a huge personality. He was fit and loved basketball and boxing. I am told he took pride in his appearance and had a way beyond his years. He is dearly missed by his family who are devastated by their loss. His father explained in his moving statement to the court that not a day goes by that he doesn’t miss Jaland.
11. I extend my condolences to all of Jaland’s family.

13 October 2017

12. At about 6.00pm on 13 October 2017, Isaiah Pearson met a friend, Mitchell, at the Tarree Golf Club, where they had some drinks. They then walked to Dylan and Jaland’s home, at Muldoon Street, where they collected Dylan. At about 7.45pm, they bought a carton of VB and a bottle of Jim Beam at Liquorland at Manning Mall in Taree. They then went to a “tuck shop” near Bunnings and drank that alcohol.
13. Following this, they went to Jake Everett’s house, at Chatham Avenue, arriving there at about 11pm.

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

14. They then drove back to Dylan's home, where Dylan and Jake got out and went inside. When they re-emerged, Isaiah and Mitchell had driven off.
15. It is unclear when Jaland got into the car that evening. Given that the car was outside his home at this stage, it is possible that this was where he got in or he may have been picked him up as he was walking home. It is clear he had not been at the earlier gathering at Jake's house. Neither Jake nor Dylan recall seeing him that night. Mitchell does not remember anything from this point onwards, until he woke up in hospital.
16. It would appear that Isaiah continued to be the driver, Mitchell was in the front seat passenger, and Jaland was in the rear offside (right-hand) passenger seat.

14 October 2017

17. At about 2.14am on 14 October 2017, Chief Inspector Sullivan states that he was patrolling in Commerce Street, Taree, in a marked Mitsubishi Pajero. He saw the vehicle driven by Isaiah travelling in the opposite direction (north). He noted that the car was not bearing front plates, and when it passed him, he saw it didn't have rear plates either.
18. The road was divided at this point, and so he continued on, performed a U-Turn at a roundabout at Wynter Street, and then headed north. By the time he turned at Wynter Street, he could not see their vehicle.²
19. Ch Insp Sullivan broadcast the following message over police radio:

"I was just wondering if there is ████████ in Taree, I've passed a car heading in Commerce Street, doesn't look like there is any number plates on it. I am just hoping to catch up with it now."³
20. Police radio made a request for other units, acknowledged by Taree 16 and then Taree 14.⁴
21. Chief Inspector Sullivan stated that he continued along Commerce Street over the High Street intersection and caught up with the vehicle, which was now heading north on Wingham Road.⁵ He flashed his high beams, approaching to a distance of around 50 metres, but the vehicle did not stop.⁶

² Ex 1, Vol 1, Tab 7, p 9.

³ Ex 1, Vol 2, Tab 45 at 10:04-10:27.

⁴ Ex 1, Vol 2, Tab 45 at 11:02-11:12.

⁵ Ex 1, Vol 1, Tab 7, p 9.

⁶ Ex 1, Vol 1, Tab 7, p 9.

22. When the two cars approached Bushland Drive, Chief Inspector Sullivan says he turned on his revolving roof bar lights to attempt a traffic stop.⁷ The vehicle did not stop and continued along until it turned right (north) from Wingham Road onto Cedar Party Road.
23. Chief Inspector Sullivan stated that it was at that point that he came closest to the vehicle at the intersection of Cedar Party Road and Wingham Road, to a distance of no more than 30 to 40 metres.⁸
24. After a short distance, Chief Inspector Sullivan formed the opinion that the driver was not going to stop and turned off his revolving roof bar lights, on the basis of safety and operational concerns. He estimated it was about 250 metres.⁹
25. At about 2:16am, Chief Inspector Sullivan had the following exchange with the police radio:¹⁰
- “Sullivan: Yeah Manning 10, it’s a grey coloured, um, it looks like a Nissan. Nah it’s not stopping for me radio. It is heading out towards Wingham, Condolong.*
- Radio: Yeah Manning 10, are you making this a pursuit or are you just going to follow him?*
- Sullivan: Following it at this stage. It is turning into Cedar Party Road.*
- Radio: Copy that. Cars into Cedar Party Road. Any heads on board 10 that you can see?*
- Sullivan: Yeah there is 4 on board. I am not following it any more radio.”*
26. Cedar Party Road travels in a generally northerly direction from the Wingham Road intersection near Taree. The roadway consists of sealed bitumen for about 7.1 kilometres before becoming unsealed dirt for about 4.2 kilometres to the collision scene. There is no lighting.
27. The speed limit increases shortly after the Wingham Road intersection from 70km/h to 80km/h, and further increases to 100km/h from about 2.5 kilometres along Cedar Party Road. The speed advisory signs are clearly signposted.
28. Chief Inspector Sullivan stated that he continued along Cedar Party Road, and said that *“the car sped well away”* from him at speed of no less than 125km/h.¹¹ He says he *“lost sight of him fairly quickly”*.¹² He says he travelled along Cedar Party Road at between 80km/h and 100km/h.¹³

⁷ Ex 1, Vol 1, p 9.

⁸ Ex 1, Vol 1, Tab 7, p 9.

⁹ Ex 1, Vol 1, Tab 7, p 20-21, Q136-A137, see also p11, Q57-A65.

¹⁰ Ex 1, Vol 2, Tab 45.

¹¹ Ex 1, Vol 1, Tab 7, p 12-14.

¹² Ex 1, Vol 1, Tab 7, p 14 A85.

¹³ Ex 1, Vol 1, Tab 7, p 14.

29. He stated that he could not see the vehicle at the intersection with the Old Pacific Highway, which is the longest straight stretch of Cedar Party Road.¹⁴

30. This account is consistent with a broadcast he had made at about 2.21am, in which he said:

"I have lost sight of that car, it looks like it hasn't gone Youngs Road, I have kept going straight on Cedar Party and it looks like it has gone on the dirt road, which is still Cedar Party ...

*I am just following the dust on the road... "*¹⁵

31. I accept that from some point prior to the Old Pacific Highway, Chief Inspector Sullivan was not able to see the vehicle. He could see dust which appeared to have been disturbed by a vehicle ahead and he followed that dust.

32. At a point approximately 11.3km from the junction with Wingham Road, the boys' vehicle had passed over a culvert and left the roadway, striking fencing on the left, rotating and then colliding heavily with a tree.

33. Chief Inspector Sullivan states that he was not immediately aware of the collision. He drove by the collision scene. He continued driving along Cedar Party Road until he noticed the dust had stopped, at which point he turned around and within 50 metres came across the scene of the collision.

34. He approached the vehicle, observed the occupants and at around 2.25am made the following tragic broadcast over police radio:

*"Manning 10 urgent ... the car has hit a tree. I have one deceased in the car."*¹⁶

35. When a second police unit arrived at the scene, they noted that Chief Inspector Sullivan's vehicle was facing south.¹⁷ This is consistent with his account of turning around and driving back to the collision scene.

The Accident

36. Senior Constable Murphy, a Crash Scene Investigator, performed an examination of the vehicle and the damage observed at the location. In his opinion, the car passed over the culvert, ran off the road to the left and collided with a fence. It then rotated anti-clockwise about 270 degrees and collided with a

¹⁴ Ex 1, Vol 1, Tab 7, p 15 A90.

¹⁵ Ex 1, Vol 2, Tab 21, p 3.

¹⁶ Ex 1, Vol 2, Tab 30, p 4.

¹⁷ Ex 1, Vol 1, Tab 9, p 8.

large tree, impacting with the rear right passenger door. The distance from the commencement of the concrete apron to the tree was about 140 metres. The vehicle sustained very heavy damage.

37. Isaiah gave a confused description of what occurred. In his interview he stated:¹⁸

“A. See, I could be telling you this and, like, something totally different could’ve happened.”

38. He estimated he was travelling at 140kmph at the time of the collision. Whilst this may not be accurate it is clear from the Crash Scene Investigators report that he was travelling at an excessive speed. It is also clear he was heavily intoxicated. Blood was taken at the hospital which recorded an alcohol level of 0.150g/100ml. His headlights were not working and he described that he was basically *“basically driving off the moon”*.¹⁹

39. Isaiah stated that Chief Inspector Sullivan was a significant distance behind him prior to the collision. He stated that the lights on the police vehicle were not lighting up the roadway ahead.

40. The objective features surrounding the accident together with Isaiah’s unclear account do not provide a basis to not accept Chief Inspector Sullivan’s evidence in relation to the accident.

What was the cause of Jaland’s death?

41. A post mortem examination was performed by Dr Vuletic. The examination revealed that Jaland died of head injuries from severe blunt force trauma.

Investigation of police actions on the day

42. Acting Senior Sergeant Cooper, NSW Police Force Traffic Policy Section, prepared a report dated 17 January 2019, in which he reviewed Chief Inspector Sullivan’s compliance with the Safe Driving Policy (SDP). He reviewed Chief Inspector Sullivan’s record of interview, police radio transmissions and all of the witness statements in the preparation of his report.

43. Acting Senior Sergeant Cooper concluded that, although Chief Inspector Sullivan followed the vehicle for a distance of 11km, that Chief Inspector Sullivan did not engage in a “pursuit” as defined in the SDP, on the following bases:

¹⁸ Ex 1, Vol 1, Tab 21, p 30.

¹⁹ Ex 1, Vol 1, Tab 21, p 13 Q129-A133.

- a. Chief Inspector Sullivan actively enquired as to the availability of other police vehicles;²⁰
- b. He made a conscious decision to not pursue the vehicle, evidenced by the deactivation of emergency lights and broadcasts to police radio;²¹
- c. At the time he deactivated his emergency lights, he appeared to have regard to safety requirements under the SDP, which prohibited a pursuit;²²
- d. He appeared to have travelled at the speed limit or below; Acting Senior Sergeant formed this opinion by making a “*rudimentary calculation*” based on the times that police radio broadcasts were made and the distance travelled;²³ and
- e. He appeared to have lost sight of the vehicle prior to the collision and was at an unspecified distance behind the Nissan.²⁴

44. The SDP defines a pursuit as follows:

7-1 PURSUIT: It is an attempt by a police officer in a motor vehicle to stop and apprehend the occupant(s) of a moving vehicle, regardless of speed or distance, when the driver of the other vehicle is attempting to avoid apprehension or appears to be ignoring police attempts to stop them. A pursuit commences at the time you decide to pursue a vehicle that has ignored a direction to stop.²⁵

7-1-1 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.

45. In the event that a pursuit is commenced, the SDP requires certain action to be taken. The policy relevantly prescribes matters to be considered when commencing a pursuit, the need to activate warning devices, information that should be broadcast to police radio, and as to how a determination is made to either continue or terminate a pursuit.²⁶

²⁰ Ex 1, Vol 2, Tab 31A at [37].

²¹ Ex 1, Vol 2, Tab 31A at [35].

²² Ex 1, Vol 2, Tab 31A at [37].

²³ Ex 1, Vol 2, Tab 31A at [36].

²⁴ Ex 1, Vol 2, Tab31A at [41]-[42].

²⁵ See also the definition at SDP Part 10.

²⁶ SDP at 7-2, 7-5, 7-6, 7-1-2.

46. In *Mauceri v Deputy State Coroner MacMahon and ors* [2017] NSWSC 545, Bellew J considered a challenge brought pursuant to s. 85 of the *Coroners Act 2009* against findings made by the Deputy State Coroner, to the effect that action taken by police was not a “pursuit” as defined in the SDP.²⁷

47. His Honour Bellew J held that the SDP definition of a pursuit contemplates three steps, namely:²⁸

(i) A direction to stop is given to the driver of the vehicle;

(ii) The direction is ignored; and

(iii) A decision is made to pursue the vehicle.

48. The driver in that case, Constable Strzelecki, gave evidence that he had made a “conscious decision not to pursue the deceased”. His Honour noted that:²⁹

There are many reasons why, as a matter of sensible police practice, the decision as to whether or not to commence a pursuit in circumstances of the kind which prevailed in this case would be left to a person in the position of Constable Strzelecki. There also exist good reasons of public policy why there should be a clear definition as to the point at which a pursuit commences. It is clear from Constable Strzelecki’s evidence that at any given time, there may be a variety of prevailing factors to be considered in determining whether to institute a pursuit. That this is so is reflected in paragraph (1) of the Pursuit Guidelines (at [25] above). Constable Strzelecki was clearly in the best position to consider and weigh those factors. Far from producing the absurd result suggested by counsel for the plaintiff, the Coroner’s findings sensibly recognise, consistent with the terms of the Policy, that a determination of whether to commence a pursuit is a matter for the officer who is, as it were, “on the ground” at the time.

49. His Honour held that it was “clearly open to the Coroner to conclude, by reference to the terms of the Policy, that no pursuit had commenced”.³⁰ His Honour further held that a separate paragraph in the SDP (equivalent to what is now SDP 7-1-1) should not be read as identifying some other set of circumstances in which a pursuit could be said to have been commenced.³¹

50. I accept that Chief Inspector Sullivan had made a conscious decision not to commence a pursuit. When he made his initial broadcast, he was directly asked if he was “making this a pursuit” and said he was “following at this stage”.³²

²⁷ An earlier iteration of the SDP was at issue, although with the same practical effect – see [24].

²⁸ *Mauceri* at [59].

²⁹ *Ibid* at [61].

³⁰ *Ibid* at [62].

³¹ *Ibid* at [63].

³² See above at [11].

51. The question might be asked whether Chief Inspector Sullivan in fact decided to commence a pursuit at some later point, after his initial broadcast and prior to the collision, but that he did not inform police radio of his decision.
52. However, such findings are not available on the evidence. The following matters point against such conclusions.
- a. Chief Inspector Sullivan was clearly aware of the terms of the SDP,³³ and he did not inform police radio that he had changed his mind and had made a decision to pursue the vehicle.
 - b. Chief Inspector Sullivan turned his warning devices off shortly after turning onto Cedar Party Road and did not attempt to keep in contact with the Nissan. This action is again not consistent with an *“attempt ... to stop and apprehend”* the vehicle.
 - c. Chief Inspector Sullivan informed police radio that he was *“not following anymore”*. The meaning of this comment is somewhat obscure, given that he continued to travel in the same direction as the vehicle for 11km. However, it is consistent with the fact he had made a decision not to pursue the vehicle.
 - d. Chief Inspector Sullivan lost sight of the Nissan within a relatively short period, although precisely when is difficult to discern, and he was some distance behind the vehicle when the collision occurred. Once he had lost sight of the vehicle, it is reasonable to conclude that he was no longer attempting to stop and apprehend the occupants, as the definition of a pursuit requires, but was instead trying to locate the vehicle.
53. I am satisfied that Chief Inspector Sullivan did not commence a pursuit and that he complied with the SDP.
54. The evidence establishes that the major factors that contributed to the collision were the manner of Mr Pearson’s driving. He travelled at excessive speeds over an uneven dirt road with no lighting for several kilometres. His ability to navigate was made more difficult because he did not have functioning headlights. He was very significantly impaired by alcohol. When the vehicle passed over the culvert, he lost control and collided with a tree, causing the injuries that led to Jaland’s death.

³³ See e.g. Ex 1, Tab 7, p 7 Q43.

Findings: s 81 Coroners Act 2009

I find that Jaland Small died on 14 October 2017 at Cedar Party Road, Taree NSW as a result of head injuries he received when he was a passenger in a motor vehicle, that collided with a tree.

Magistrate C Forbes
Deputy State Coroner
20 January 2021