



**CORONERS COURT  
NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the death of Sophia BOLSHESOLSKY
<b>Hearing dates:</b>	4-8 July 2022
<b>Date of findings:</b>	7 September 2022
<b>Place of findings:</b>	NSW State Coroner's Court, Lidcombe
<b>Findings of:</b>	Magistrate C Forbes, Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW-Pedestrian death-should the NSW Police Crash Investigation Unit have been called to investigate the accident-safety for pedestrians in John Street, Lidcombe
<b>File number:</b>	2019/53767
<b>Representation:</b>	Mr A Wong, Counsel Assisting instructed by Ms A Doyle, Crown Solicitors Office Mr P Beazley, solicitor, representing the Bolshesolsky family Ms C Palmer instructed by Office of the General Counsel New South Wales, representing the Commissioner of Police and the New South Wales Police Force
<b>Findings:</b>	I find that Sophia Bolshesolsky died on 16 February 2019 on John Street Lidcombe as a result of blunt force injuries she received when she was struck by a motor vehicle while she was crossing the road.

**REASONS FOR DECISION**

1. This is an inquest into the tragic death of Sophia Bolshesolsky who was 74 years of age when she died on 16 February 2019, after being struck by a motor vehicle on John Street, Lidcombe, NSW.
2. 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:
  - i. the identity of the deceased;
  - ii. the date and place of the person's death;
  - iii. the physical or medical cause of death; and,
  - iv. the manner of death, in other words, the circumstances surrounding the death.
3. The focus of an inquest is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. If the evidence justifies it a Coroner may then go on to make recommendations about matters of public health and safety that arise out of the death in question.
4. In relation to Ms Bolshesolsky's death, there is no issue as to the identity, date, place or direct cause of her death. The issues to be determined by this inquest are in relation to how the motor vehicle collision occurred and whether the circumstances surrounding Ms Bolshesolsky's death can be sufficiently determined even though the NSW Police Force Crash Investigation Unit ("CIU") did not attend the accident.

## **Sophia Bolshesolsky**

5. Ms Bolshesolsky was very dear to her family and friends and her passing has had a profound impact on her loved ones. She was described as a beautiful grandmother who was generous, loving, very caring and a selfless woman with a heart of pure gold. She was a hard worker raising three children on her own while taking care of her elderly mother.
6. Her grandson tells this court that anyone who was fortunate enough to have known her would attest that she was an angel put here on earth. She tirelessly took care of a multitude of people over her 30-year career as a nurse.
7. She was also an avid animal lover. She enjoyed walking dogs, feeding the birds who visited her at home every morning and regularly made donations to the RSPCA.
8. At the time of the accident Ms Bolshesolsky was living in the Lidcombe area and had lived in the area for 45 years. It was the community in which she raised her sons and daughters and where she had developed close relationships with neighbours.

### **16 February 2019**

9. On the evening of 16 February 2019, Ms Bolshesolsky was walking her dog. She lived in Francis Street Lidcombe, and was walking in John Street, the next street over.
10. At approximately 8:30pm, Ms Bolshesolsky crossed from the eastern side to the western side of John Street. At the same time, Mr Justin Gerussi was driving in a northerly direction on John Street.
11. John Street runs on a north-south axis, with Parramatta Road at the northern end and Church Street located at the southern end.

12. Ms Bolshesolsky was hit by Mr Gerussi's vehicle in between Boorea Street and Calool Street.
13. The following witnesses were present when the collision occurred.

### **Min Jung Hong**

14. Min Jung Hong was the main eyewitness. She gave evidence that she and her partner (Jongmin Choi) left her partner's apartment (1/103 – 107 John Street, Lidcombe) at about 8:00pm on 16 February 2019 to buy some groceries. The grocery store was a ten-minute walk down John Street near Lidcombe train station. After buying groceries she and Mr Choi walked northwards on John Street back to Mr Choi's apartment.
15. Ms Hong saw a woman walking with her dog. When Ms Hong and Mr Choi reached 103 – 107 John Street, they stood and embraced in front of Ms Hong's car that was parked in front of the apartment block. CCTV footage shows they were standing in front of Ms Hong's car on the road. Ms Hong said she was facing the road and looking at it head on while Mr Choi faced the footpath and apartment.
16. At this point, Ms Hong saw the woman she saw earlier attempting to cross east to west on John Street. Ms Hong said the woman was 2 - 3 metres away and as she crossed, she "*tried to walk faster to cross the road as there is no crossing*".<sup>1</sup> Ms Hong indicated that she saw the woman look both ways before crossing but look towards Parramatta Road (north) as she crossed.<sup>2</sup>
17. Ms Hong saw the woman get hit by a vehicle in the middle of the road but towards the other side. The woman hit the front part of the vehicle and rolled over to the front window before rolling down. Ms Hong said it wasn't very bright but not too dark and you could see

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<sup>1</sup> Min Jung Hong, Tab 9: Statement dated 16.2.2019 at [5], she stated that "*the lady was walking quicker than what I had previously seen*".

<sup>2</sup> Min Jung Hong, Tab 9A: Statement dated 23.2.2021 at [4].

people walking and cars. When she was reminded, she had said in her statement, dated 23.2.2021, that the lighting was dark and it was hard to see people crossing the road, she said that when she was walking she could see, however when she is driving in that area she cannot see clearly and has to drive carefully as there are a lot of people jay-walking.

18. She recalled that, after the woman had been hit, the driver got out of his car and began to scream and cry and said that the pedestrian had come out of nowhere and he was also yelling for someone to call an ambulance.<sup>3</sup>

### **Jongmin Choi**

19. Mr Jongmin Choi lived at 1/103 – 107 John Street, Lidcombe. He was walking with Ms Min Jung Hong from Lidcombe train station. He recalled it was dark and remembers it was around 8:27pm.
20. He and Ms Hong reached his apartment and stood near Ms Hong's car that was parked in front of his apartment. They began to embrace and at that time Mr Choi was facing his apartment and had his back to the road.<sup>4</sup> He said he did not see the accident, but he heard it. When he heard a loud bang he looked behind and towards his right (south).
21. He said that he saw a vehicle driving towards Parramatta Road and saw a woman on the front of the bonnet and roll forwards.<sup>5</sup> When giving evidence he made a hand movement to indicate he saw the woman flying through the air in an arch-like direction.
22. Mr Choi saw the driver get out of the car in a panicked state. He said the driver said, "oh my god" and was screaming and crying.

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<sup>3</sup> Min Jung Hong, Tab 9: Statement dated 16.2.2019 at [6].

<sup>4</sup> *ibid* at [4].

<sup>5</sup> *Ibid* at [5].

23. He thought that the driver did not see the pedestrian at night and said it was very dark at the time. He agreed he saw two men after the collision. He said he did not speak to them but they were trying to speak with Ms Bolshesolsky.

### **Piroska Keleman**

24. Piroska Keleman did not witness the collision. At about 8:15pm – 8:20pm she was driving home. She drove east on Boorea Street and turned left onto John Street. As she was turning into John Street, she heard a huge bang. She did not hear a screeching noise like a car trying to stop she just heard a bang. She was not sure what happened; however, she thought a dog might have been hit as she heard a dog in pain.
25. Ms Keleman ended up behind a vehicle that had stopped on John Street. She saw the driver of that car get out and he was frantic and panicking.
26. As her phone had died, Ms Keleman decided to make a u-turn and drive back home. When she got home, she told her Mum what had happened and said they needed to return to the scene. Upon returning to the scene, she saw police and ambulance officers had arrived and Ms Bolshesolsky's body had been covered. Ms Keleman spoke to police and provided a notebook statement that was signed at 9:46pm.

### **Justin Gerussi**

27. Mr Justin Gerussi was the driver of the purple Mitsubishi Lancer that collided with Ms Bolshesolsky. He took part in a police interview and gave evidence in court without objection.

28. During his police interview he stated:

- a) He was driving on John Street and went past a “60 sign” so he increased his speed to 60 km/hr. As he was driving it was black and there were no cars on the road and as he got closer to the site of the collision, he said *“she’s appeared out of nowhere, and I’ve seen her too late and she’s come across almost like she’d stepped in front of the car...I’ve then planted my foot on the brake as soon as my brain had processed what had happened and stopped the car”* (Q/A 57).
- b) He said that after he knew he had hit Ms Bolshesolsky, he exited his vehicle to check what had happened and then ran back to the car and opened the door and told Ms Payton Knight (who was seated in the passenger seat) to call 000 (Q/A 58).
- c) He said there were no vehicles on the road as he approached the point where the collision occurred and said if there were vehicles in the opposite direction, *“they were over the hill possibly, but where it occurred I did not see any”* (Q/A 108, 109, 111, 453).
- d) He stated that it was night-time (Q/A 89) and the section of road was not well lit and was quite dark (Q/A 113). He also said the normal street lights do not do terribly much and cars blend in with the background (Q/A 388 – 389).
- e) He could not recall how far away his car was from Ms Bolshesolsky when he first saw her (Q/A 115) but said he saw her walking across the road, and she had a dog in her hands (Q/A 116). He later said he had one clear image of her holding a dog (Q/A 120).
- f) He said he realised Ms Bolshesolsky’s presence, and she stepped in front of his car as he has gone to put his foot on the brake (Q/A 119). In terms of braking, he said as soon as he processed the image in front of him his foot was on the brake (Q/A 128) and the vehicle stopped quite suddenly like he’d hit a speed bump but could not remember if there was any tyre screeching (Q/A 129).

- g) He said the front part of the vehicle closest to the driver's side is the area that hit Ms Bolshesolsky (Q/A 137).
- h) He drew a diagram of what he saw after the collision (Tab 13) where he referred to parked cars on both sides of John Street, that Ms Bolshesolsky was in front of his car and there was a scrunchie and a shoe behind his car.
- i) He said he did not require glasses to drive a car (Q/A 229) and his glasses help with reading and focusing on close-up things (Q/A 230) and they had just been prescribed so that he could wear them every day (Q/A 231). He was unsure if he was wearing glasses at the time of the collision but could recall wearing his glasses at some point during the night (Q/A 235).
- j) He said that the distance from his house to the point of the collision was less than a kilometre (Q/A 273) and he was familiar with that road as he travelled that street every day for work (Q/A 275).
- k) He said he spoke to Payton Knight at the roundabout but not just before the collision and Ms Knight was on her phone (Q/A 292).
- l) He said that he was paying attention just prior to the collision (Q/A 301) and there was nothing that distracted his attention away from his driving (Q/A 302) at that point. He denied operating controls in his car at the time of the collision (Q/A 287). He also said he was paying attention to the road and scanning generally and scanning for threats (Q/A 463).
- m) He said he had a specific recollection of looking at his speedometer and saw he was travelling at 60km/hr just prior to the collision (Q/A 303 – 309).
- n) He was asked how far before the collision did he see Ms Bolshesolsky. He told police, *"I wouldn't be able to judge how far away she, all, all I can remember was I was*

*driving, there was no one there, and then next minute she's right, like stepping out in front of the car" (Q/A 344).*

- o) He described Ms Bolshesolsky's clothes as darkish but not black (Q/A 346).
- p) He agreed there was nothing in his direct line of sight obstructing his ability to see ahead, "*just the lack of the light*" (Q/A 362).
- q) He agreed his headlights were on (Q/A 395) and set to the normal setting (Q/A 396). He did not put them on high-beam as he thought this was illegal in residential areas (Q/A 413).

29. In evidence in this inquest he said;

- a) That he could not recall the exact time, but was driving in the evening at night-time.
- b) The collision occurred about 1 kilometre from his apartment, and he was not tired at the time.
- c) He was driving north on John Street going up a hill and he went into a section where it goes quite dark and there were no cars passing and a lady just appeared in front of his car and he slammed his foot on the brakes.
- d) The block where it occurred was quite dark and he believed one of the streetlights was not working. He also said that the area was usually quite dark at other times.
- e) He could not recall if he slowed down when it became quite dark.
- f) The only clear memory he has of the incident was Ms Bolshesolsky carrying a dog.

- g) He said he wears glasses for reading but he does not have to take them off when doing ordinary things. He knew he was wearing his glasses at some point that evening but can't recall if he had them on at the time of the collision.
- h) He knows there were parked cars on either side of the road.
- i) He cannot recall if he had enough time to swerve, as the whole situation was a big blur as everything happened so quickly.
- j) He was listening to music in the car, but Ms Knight changes the music for him.
- k) After the collision he saw an Asian couple (male and female) and they said that the woman sort of came out of nowhere and it was dark.
- l) He agreed he saw two people giving Ms Bolshesolsky CPR before police arrived. He did not know if he spoke to them.
- m) He disagreed that he did not see Ms Bolshesolsky before impact because he was not looking at the road. He said he saw her, but it was right before the impact.

### **Payton Knight**

- 30. Ms Knight was Mr Gerussi's passenger. She said that while she was in the car, she was "snapchatting".
- 31. She said they were driving for about 5 minutes before the collision occurred. During the drive she could not recall Mr Gerussi chatting to her or playing with dials. She also knew he

was not on the phone as he gave his phone to her when they got into the car. She also said she did not show him any messages on her phone.

32. She described travelling north on John Street towards Parramatta Road when she heard a loud bang and felt an impact like the car had hit a speed bump, followed by a loud screeching sound. After the screeching sound she heard a dog barking. She looked up from her phone and saw someone lying on the road 5 metres in front of their car.<sup>6</sup>
33. She stated that Mr Gerussi got out of the car and went to look at Ms Bolshesolsky before he came back to the car and opened her door and told her to ring an ambulance.<sup>7</sup> She called 000 and saw Mr Gerussi pacing back and forth until he sat on the ground and put his hands on his head.
34. She stated that she saw two people standing around Ms Bolshesolsky telling her to keep breathing. After speaking to the 000 operator, she went over and comforted Mr Gerussi and while she was with him, the two people telling Ms Bolshesolsky to breathe came over to them and said, "She came out of nowhere".<sup>8</sup> Mr Gerussi was crying and had his hands over his head and was saying, "*It was dark. One minute I'm driving, next minute she's here*".<sup>9</sup>

### **Senior Constable Brown**

35. Senior Constable Brown was the first officer who arrived at the accident. She arrived with Probationary Constable Wilson. She was excused from giving evidence in the inquest due to medical reasons, however she provided two statements.

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<sup>6</sup> Payton Knight, Tab 8: Statement 16.2.2019 at [5].

<sup>7</sup> *ibid* at [5].

<sup>8</sup> *ibid* at [11].

<sup>9</sup> *ibid* at [11].

36. Her first statement dated 15 July 2019<sup>10</sup> included the following observations from the night of the collision:
- a) She responded to a radio broadcast about a pedestrian being hit outside 126 John Street Lidcombe.
  - b) She attended the scene with Constable Lachlan Wilson at 8:34pm.
  - c) She saw Ms Bolshesolsky on the road with her head centimetres from the centre line.
  - d) She observed the Mitsubishi Lancer (VE-63-TA) in the northbound lane of John Street, and it had front end damage to the front driver's headlight and the bonnet.
  - e) Senior Constable Brown assisted Ms Bolshesolsky by trying to locate a pulse. She was then assisted by Constable Wilson and moved Ms Bolshesolsky onto her back. At 8:39pm she commenced CPR.
  - f) Ambulance arrived on the scene around 8:46pm and continued with CPR.
  - g) She spoke with two independent witnesses who told her a female was crossing the road with a small dog when she was struck by a vehicle.
  - h) At 8:48pm she requested the Fire Brigade to attend the location for the purposes of lighting.
  - i) At 9:06pm ambulance declared Ms Bolshesolsky deceased.

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<sup>10</sup> Senior Constable Lauren Brown, Tab 6: Statement 15.7.2019.

j) Transport was arranged for Payton Knight, Min Jung Hong and Jongmin Choi to provide a statement at Auburn Police Station, while a statement was obtained from Pirooska Keleman at the scene.

37. In her first statement, Senior Constable Brown also concluded that:

*"I believe the collision was unavoidable, however I do not feel I can accurately indicate that one party is more at fault than (sic) the other I believe this is a case of where both the deceased and the driver have failed to adhere to their rights whilst utilising the roadway".<sup>11</sup>*

38. Her second statement was signed on 3 September 2020<sup>12</sup> and included the following information about CIU attendance:

a) She did not form a view as to fault at the scene.

b) She did not speak to Sergeant Lewis about which party was responsible for the accident prior to Sergeant Lewis speaking to Sergeant Dixon.

c) She stated that Sergeant Lewis advised her that CIU would not be in attendance, as it did not meet their criteria. She was not informed of the reasons why the criteria were not met.

### **Probationary Constable Wilson**

39. Constable Wilson attended the accident with Senior Constable Brown. When he arrived, he saw Ms Bolshesolsky lying in the middle of the road with her head towards the centre road markings.

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<sup>11</sup> Senior Constable Lauren Brown, Tab 6: Statement 15.7.2019 at [29].

<sup>12</sup> Senior Constable Lauren Brown, Tab 6A: Statement 3.9.2020.

40. While his statement and his evidence indicated that he saw a slipper on Ms Bolshesolsky, he appears to be mistaken as crime scene photos clearly depict both pieces of Ms Bolshesolsky's footwear some distance away from her body.<sup>13</sup>
41. Constable Wilson indicated the area around the collision had poor lighting and referred to big trees that impeded light as well as a parked van that blocked the light on the footpath and on the road.
42. He breath-tested Mr Gerussi and stated that there was a negative reading for alcohol.
43. Constable Wilson was asked about his statement where he stated that on the night it was unclear who was at fault.<sup>14</sup> He appeared to clarify this evidence by stating that there was insufficient evidence to charge Mr Gerussi and further investigation was required.
44. Constable Wilson said that on the evening of the incident he formed the view there was driver fault but stated that he was only a probationary constable. Later when preparing his statement in October 2020, he formed the view Ms Bolshesolsky was at fault. The factors he considered included the poor visibility due to poor lighting, cars obstructing the view and oncoming vehicles making it hard to see.

### **Sergeant Griffin**

45. Sergeant Griffin was the crime scene investigator tasked with carrying out crime scene duties on 16 February 2019. When he arrived, he spoke with Senior Constable Brown and obtained background information. He then commenced to undertake with Senior Constable Weldon a scene examination. This included making notes, taking photos and processing the scene.

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<sup>13</sup> Photos 58-63 and 66-67 at Tab 19 depict one slipper underneath the right hand side of Mr Gerussi's vehicle with the other slipper behind and to the left of the vehicle

<sup>14</sup> Constable Lachlan Wilson, Tab 7B: Statement 24.10.2020 at [8].

46. He was told that CIU was not attending the scene. He was not surprised, as he knew CIU did not attend every scene as they had specific call-out guidelines. He agreed that if he formed a view CIU should attend he could contact CIU again, for example if he saw something that general duties officers did not see.
47. He did not form the view that CIU should attend. He said he would look for road markings such as skid marks or damage to the road that may indicate speed, or the deployment of an airbag. Given these factors were not present, there was no need to call CIU.
48. He found that there were no streetlights in the immediate vicinity, although there were some in front and behind. There was a 60km/hr speed sign at the corner of John and Boorea Streets.<sup>15</sup>
49. He was informed there were a number of items on the road, including 2 thongs and a hairband / scrunchie. Measurements were made, and a site diagram was prepared.<sup>16</sup> The site diagram included the positioning of Ms Bolshesolsky's body (lying face-up at a 45 degree angle with her head near the centre lines and closest to the vehicle and her feet toward the western gutter) in comparison to the scrunchie and vehicle.
50. He noticed a thin film of dust on the bonnet and evidence that something had been wiped across it to remove the dust and formed the view that this was the point of impact. The blood staining on the bonnet and windscreen was in line with the dust removal.
51. He reached three conclusions:<sup>17</sup>

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<sup>15</sup> Sergeant Brett Griffin at Tab 19A: Statement 21.2.2021 at [19].

<sup>16</sup> See Tab 18.

<sup>17</sup> Sergeant Brett Griffin at Tab 19A: Statement 21.2.2021 at [27].

- a) The impact site was in the general proximity of the hairband and thongs, which were outside 126 John Street (western side) and 103 John Street (eastern side).
  - b) The deceased impacted with the front driver's side of vehicle VE-63-TA (*impact damage, disturbed dust, blood and body matter on vehicle*).
  - c) Speed did not appear to be a factor in this incident (*absence of skid marks and stopping distance from suspected impact site*).
52. He told the court that he thought that there was a thorough investigation. That he had experience with CIU as he had conducted joint operations and that he was aware of the steps CIU ordinarily undertake in an investigation. He was of the view that the only time CIU can value add is where skid marks are present, or an airbag is deployed. They can record the length of skid marks, account for the bitumen surface and estimate speed. They can also download data from a deployed airbag as it saves the last 30 seconds of data.

### **Sergeant Lewis**

53. Sergeant Lewis attended the scene at about 8:36pm.
54. When she arrived, there were two other crews and a lot of people on the road. Her first instinct was to ensure safety, so she parked her car at more of an angle to stop cars proceeding south on John Street. She was also involved in creating a bigger exclusion zone around parked cars on both sides and stopped traffic out of Calool Street. She did not allow anyone to move parked cars.
55. She saw a purple Mitsubishi Lancer in the middle of the road and observed damage to the front offside area. Mr Gerussi identified himself as the driver of the car. She could see he was in shock. She asked him if he had moved his car since the accident and he said he had not.

56. While at the scene she spoke to Inspector Karl Leis as well as Police Radio and the rescue Co-Ordinator.<sup>18</sup> At 9:10pm Sergeant Joshua Dixon from CIU contacted her. She said Sergeant Dixon asked her to be the eyes at the scene and she described what she saw as best she could. She said she discussed road conditions, lighting, the direction the vehicle travelled, observations of damage, witness accounts, the fact driver had been breath tested and returned negative.
57. She noticed a headband at the rear of the car and couldn't discount that Ms Bolshesolsky had worn it so she told Sergeant Dixon about it. Sergeant Dixon asked her to pace out the distance from the headband to the front of the car and Ms Bolshesolsky. She paced one metre steps and told Sergeant Dixon the distance from the headband to Ms Bolshesolsky was approximately 13 metres and the headband to the front of the vehicle was approximately eight metres.<sup>19</sup> She said she told Sergeant Dixon the area had street lighting functioning however the location where a witness said Ms Bolshesolsky stepped onto the road was between erected streetlights and the area was quite dark compared to the area directly under the streetlights.<sup>20</sup> She also told Sergeant Dixon a witness saw Ms Bolshesolsky pick up a small dog before walking into the south bound lane of John Street.<sup>21</sup>
58. Sergeant Lewis said after their conversation, Sergeant Dixon told her CIU would not be in attendance. She indicated that at the time she had not formed a view as to the party at fault<sup>22</sup> and did not express an opinion to Sergeant Dixon.

### **Sergeant Dixon**

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<sup>18</sup> *ibid* at [11].

<sup>19</sup> Sergeant Ingrid Lewis, Tab 7: Statement at 20.11.2019 at [14].

<sup>20</sup> *ibid* at [14].

<sup>21</sup> *ibid* at [14].

<sup>22</sup> Sergeant Ingrid Lewis, Tab 7A: Statement at 24.7.2020 at [7].

59. Sergeant Dixon worked as a police officer for over 25 years and in crash investigations for 10 years. His primary role was to investigate collisions involving fatalities or serious injury.
60. At the time he was the State Referral Officer (“SRO”), and he made the decision as to whether CIU would attend the scene of a collision, guided by the criteria set out for CIU attendance. The criteria included that CIU would attend collisions involving serious injury or fatalities where serious indictable charges were likely or where the responsible party could not be determined.
61. The decision for CIU attendance involves information gathering at the scene and if police think CIU attendance is required they contact the duty operations inspector or state coordinator who contacts the SRO. The SRO obtains information through interactions with the officer on the scene and considers whether the relevant criteria are met.
62. On 16 February 2019, when he spoke with Sergeant Lewis, he was told there was a collision between a motor vehicle and pedestrian. He was interested in the direction the pedestrian was walking, information about the driver of the vehicle and the surrounding environment.
63. When asked to detail his discussion with Sergeant Lewis he said they discussed the available lighting for the pedestrian and driver, area of impact and the roadway, evidence such as skid marks or debris, the clothing worn by the pedestrian, the surrounding environment, if there were cars or trees, and if there was any impairment of the driver or excessive speed.
64. He agreed he was told the area where Ms Bolshesolsky crossed was between light poles in a dark area of the road, that she was wearing dark clothing and didn’t look in the direction of the oncoming traffic during her crossing of the road. He recalled mention of a dog but could not recall if it was being held or was on the road. He was also told the speed limit was 60km/hr and that Mr Gerussi had a negative breath test for alcohol and there was no

suspicion he was affected by drugs. In addition, he was told the passenger had indicated there were no distractions in the car.

65. He asked Sergeant Lewis to provide measurements from a scrunchie that was believed to belong to Ms Bolshesolsky. The purpose was to provide an estimate of the area of impact relative to the position of rest of the vehicle and Ms Bolshesolsky. He stated that Sergeant Lewis told him the vehicle came to a stop 13 metres from the item of clothing, with Ms Bolshesolsky located a further 8 metres ahead.<sup>23</sup> He stated that the measurements indicated the vehicle was travelling at less than 60km/hr as if travelling at 60km/hr you might expect the vehicle to require 40 – 45 metres to stop when a 2.5 second reaction time is taken into account.
66. Sergeant Dixon made the decision that CIU was not going to attend the scene as he deemed the pedestrian at fault. The factors he considered in reaching this conclusion included:<sup>24</sup>
- a) Visibility: At the time of the collision, it was in darkness. Streetlights were operating however the specific location where the pedestrian crossed was in a darker section in between two streetlights. Large trees shaded the area, and the pedestrian was wearing dark clothing.
  - b) Witnesses: Two witnesses observed the pedestrian walking briskly or quickly and had commenced crossing in between two parked vehicles and was looking to her right the entire time and never looked to the left.
  - c) Vehicle: The pedestrian impacted with the driver side or offside front of the vehicle in the vicinity of the headlight.

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<sup>23</sup> Sergeant Joshua Dixon, Tab 19B: Statement at 2.8.2020 at [15].

<sup>24</sup> *ibid* at [20].

- d) Driver: The driver tested negative to alcohol and was told drugs were not considered a factor.
- e) Ultimately, rudimentary measurements indicated the vehicle had a possible stopping distance of 13 metres with the pedestrian coming to rest eight metres in front of the vehicle; this indicated there was no excessive speed. Further, upon taking into account the average walking speed of women over 60 years old, and accounting for the lighting and the clothes worn by the pedestrian as well as perception reaction time, Sergeant Dixon *“came to the opinion that the driver would not have had enough time to react and successfully avoid a collision with the pedestrian”*.
67. Sergeant Dixon was asked to take into account the actual factual circumstances where they differed from what Sergeant Lewis conveyed. He was asked if his decision about CIU attendance would change if told the pedestrian was wearing a black and white striped cardigan and black pants as opposed to dark clothing or if he was told the pedestrian did look both left and right before crossing the road, but only looked right when actually crossing. In both cases Sergeant Dixon said these factual changes would not have changed his ultimate decision that the pedestrian was at fault.
68. Sergeant Dixon indicated that crime scene investigators are “fitted out” in a similar way to the CIU. He also noted that CIU could attend a scene at a later time if required, for example to conduct a road analysis. He stated that in circumstances where there were no skid marks or no deployment of an airbag, he did not believe CIU could have done anything different compared to the crime scene investigators.
69. When asked if the driver should have been spoken to at the scene, Sergeant Dixon stated that it was a manner of training that police would not ask drivers for a version at the scene and that this practice depends on the circumstances.

70. Sergeant Dixon was informed during the course of giving evidence at this inquest that there were a substantial number of vehicles travelling through the scene after the collision and before police arrived. He responded that would not have altered his opinion as to fault.
71. He informed the court that headlights are made to face slightly to the left of a vehicle so as not to produce glare to oncoming vehicles. Mr Gerussi's headlights would have been angling away from Ms Bolshesolky.
72. Sergeant Dixon said it was not appropriate for CIU to attend all collisions involving fatalities as there are a large volume of these cases each year and there needs to be a strict criterion in relation to attendance in order to maintain an active thorough capability. He said there were not enough investigators around the state with a capacity statewide of under 50 investigators spread across the state.
73. Sergeant Dixon agreed general duties officers would benefit from more crash training than they currently have and thought any additional training and knowledge was a good thing for all first responding police. To this end he said the CIU attempted to provide advice and training and to assist constables with investigations. He was not critical of the officers who attended at this accident.
74. The following witnesses gave independent expert evidence.

**Senior Sergeant Fenton**

75. Senior Sergeant Fenton is the supervisor in charge of the Collision Reconstruction Section of the Forensic Imaging Section. He has investigated hundreds of collisions involving fatalities or serious injury, attended many hundreds more and acted as a collision reconstructionist in many more again.

76. He stated that he provided his expert opinion based on an analysis of the CCTV footage from the Metro Service Station.
77. He said the CCTV footage had a frame rate of 15 frames per second. This could be ascertained as footage contains embedded data and the file can be opened in a video-editing suite to check the frame rate, as well a manual frame count can be conducted relative to time and date signature. As such each frame represented a time value of 0.0667 seconds.
78. He was able to ascertain that each frame represents a certain time, and he reviewed the footage conservatively to determine how many progressions occurred from the point in time Ms Bolshesolsky stepped out from behind the parked Holden Combo Van to when she was struck by the vehicle. He found there were 47 progressions and calculated she could be seen for 3.1 seconds ( $47 \times 0.0667$ ).
79. He also conducted a calculation to see how many metres Mr Gerussi would require to stop his vehicle if the vehicle was travelling at 50km / hr.
80. To calculate the metres required to stop, Sergeant Fenton needed to account for perception response delay which is the amount of time required to identify a hazard, form an opinion in one's mind that it is a hazard, then determine an emergency response is required, then decide the response and implement it and also account for the mechanical latency of the vehicle.
81. Sergeant Fenton applied a three second perception response delay. He stated that the perception response delay could be 0.8 seconds in simpler cases or three seconds in the

most complicated situation. In the present case he applied the most conservative perception response delay time of three seconds.<sup>25</sup>

82. He said there are a number of factors that impact upon the perception response delay time including:

- a) If a driver is alert, sober and attentive.
- b) The weather.
- c) The typicalness or complexity of the response (having to stop versus having to swerve). Anything that makes the situation more difficult inflates the time needed to respond.
- d) Lighting. It is well noted that a backlit pedestrian is difficult to identify. This occurs when there is a lighting source behind the pedestrian. A strong source of light from behind can have an enveloping effect and reduce the conspicuousness of an object.<sup>26</sup>
- e) A slower moving person is harder to identify. The more obvious physical movements are easier to identify such as a person running compared to a person walking.

83. Applying the three second perception response delay would mean that a vehicle travelling at 50km/hr, would travel approximately 41.6 metres in the three seconds the driver required to react to the pedestrian.

84. A conservative calculation of **the total stopping distance Mr Gerussi would require when travelling 50km / hr was 52.5 metres (41.6 metres + 10.9 metres).**<sup>27</sup>

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<sup>25</sup> Sergeant Derek Fenton, Tab 17: Statement 14.6.2019 at [19].

<sup>26</sup> *ibid* at [22].

85. In court Sergeant Fenton was asked to calculate the total stopping distance if the vehicle was driven at 60km /hr. **He calculated the total stopping distance would be 65.57 metres if the vehicle travelled at 60km/hr** (50 metres to account for the perception response delay and 15.75 metres for the stopping distance).
86. Sergeant Fenton prepared a second statement on 27 September 2021. In that statement he applied the equation of speed equals distance over time in order to calculate the speed Mr Gerussi's vehicle was travelling at when it was depicted in the CCTV footage from 114 John Street Lidcombe.
87. Sergeant Fenton analysed the CCTV footage from 114 John Street and found that it also had 15 frames per second such that each frame was 0.0667 seconds. He accounted for the fact Mr Gerussi's Mitsubishi Lancer was 4.625 metres in length and noted that it took the vehicle not less than four frames (0.2667 seconds) but no more than five frames (0.3333 seconds) to travel its entire length.
88. Applying the equation, he was able to ascertain the minimum and maximum average speed of Mr Gerussi's vehicle as it was depicted in the CCTV footage: <sup>28</sup>
- **Minimum Speed = 4.625 metres / 0.3333 seconds = 49.9km/hr**
  - **Maximum Speed = 4.625 metres / 0.2667 seconds = 62.4km/hr**

### **Sergeant Burlin**

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<sup>27</sup> Sergeant Derek Fenton, Tab 17: Statement 14.6.2019 at [29].

<sup>28</sup> Sergeant Derek Fenton, Tab 17A: Statement 27.9.2021 at [31] and [33].

89. Sergeant Burlin stated that he had been a police officer for 30 years and worked as a supervisor in the CIU for the last nine years. He attended about 5 – 10 vehicle collisions that involve death or serious injury each year.
90. He stated that CIU cannot attend every collision that involves serious injury or a fatality and the criteria as set out in Chapter M of the NSW Police Force Handbook sets out the criteria for attendance. He stated CIU only attended the following cases:<sup>29</sup>
- a) Death or serious injury where serious indictable charges
  - b) Death or serious injury where the responsible party cannot be determined
  - c) Death or serious injury where a NSW police force vehicle or on duty member is involved.
  - d) Death or serious injury where there is a failure to stop.
  - e) A major incident of an unusual nature (tourist / school bus, trains etc)
91. Sergeant Burlin stated where the criteria for CIU attendance may not be met but crime scene investigators are not available then there is scope to take the matter to a higher level if an officer is not happy with the original decision. He also stated that Sergeant Griffin could have called CIU again if he felt CIU attendance was required as he investigated.
92. Sergeant Burlin stated that CIU's specific expertise in comparison to crime scene investigators was the existence of Bosch software to download information when an airbag has been deployed as well as Vericom software to assess skid marks in order to assess speed. CIU officers may also have additional expertise related to their experience.
93. Sergeant Burlin was provided with the entire brief of evidence, and he formed the opinion that Ms Bolshesolsky was at fault for the collision. He stated that the following factors supported this view:<sup>30</sup>

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<sup>29</sup> Sergeant Robert Burlin, Tab 33: Statement 30.5.2022 at [10].

<sup>30</sup> Sergeant Robert Burlin, Tab 28: Statement 7.7.2021 at [7].

- a) No road surface issues.
- b) No mechanical issues with Mr Gerussi's vehicle.
- c) Mr Gerussi was not under the influence of drugs or alcohol.
- d) No evidence that speed was a contributing factor.
- e) The point of impact was wholly within the northbound lane and between Ms Bolshesolsky and the front/driver's side of the vehicle.
- f) Ms Bolshesolsky did not cross at traffic lights or marked pedestrian crossing.
- g) The lighting was poor where Ms Bolshesolsky crossed the road.
- h) Ms Bolshesolsky was wearing dark clothing.
- i) Ms Bolshesolsky left the kerb behind a parked van and her positioning behind the van would have limited the ability for her to be seen.
- j) Min Jung Hong said Mrs Bolshesolsky looked both ways before crossing but only looked in a northerly direction as she crossed.
- k) Ms Bolshesolsky or her dog were not wearing high-visibility or reflective clothing or collars.
- l) Ms Bolshesolsky's blood alcohol toxicology level was 0.191 (preserved blood sample) and 0.185 (unpreserved blood sample).
- m) The damage was on the driver's side. If the damage was either to the centre or the passenger side, it would indicate Mr Gerussi should have seen Ms Bolshesolsky earlier and had more time to take evasive action.

- n) Mr Gerussi may have been scanning his surroundings and focused his attention on two vehicles travelling southbound before the collision; a vehicle in the driveway of the service station intending to turn right in a southerly direction on John Street or the vehicle travelling directly in front of his vehicle which comes into view on CCTV at 19:30:24, and the collision occurs seven seconds later at 19:30:31.
  - o) CCR / RCCR phone records show Mr Gerussi was not using his mobile phone at the time.
  - p) Sergeant Fenton stated that a stopping distance of 52.5 metres is required if Mr Gerussi was travelling at 50km/hr. He conducted the calculation if Mr Gerussi was travelling at 60km/hr and calculated that a stopping distance of 65.55 metres would be required.
94. Sergeant Burlin found that the decision of CIU not to attend the scene was in line with NSW Police Force policy for the following reasons:<sup>31</sup>
- a) In the event that an offence was committed it would be an offence of negligent driving causing death, which is a summary offence. The policy dictates CIU attendance only where serious indictable charges are likely.
  - b) Sergeant Dixon made appropriate enquiries with the attending supervisor to confirm CIU criteria was not met.
  - c) Sergeant Griffin attended and could have called CIU again if he thought it was required.

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<sup>31</sup> Sergeant Robert Burlin, Tab 28: Statement 7.7.2021 at [9].

- d) Sergeant Lewis also spoke to Acting Inspector Karl Leis about the circumstances of the collision and if he disagreed with the CIU referral process he could have escalated the issue to the next level.
  - e) There was sufficient evidence available at the scene to determine who was at fault.
  - f) In the first COPS Event Narrative E70723043, Senior Constable Brown identified the pedestrian at fault.
95. Sergeant Burlin was asked to comment on whether the criteria for CIU attendance should be extended to include attendance at every collision where there is a fatality or a collision that involves two or more people. In his statement dated 7 July 2021 he disagreed with this course noting:<sup>32</sup>
- a) Crime Scene and CIU process crash scenes in much the same way and having reviewed the brief of evidence in this case, he found there were only minor differences to how the scene was processed by Crime Scene compared to how CIU would have processed the scene. CIU would normally paint the vehicles and exhibits on the road and take more photos of the lead up to the point of impact, however in the present case it was possible to draw on other resources such as witness accounts and CCTV footage.
  - b) It would not be appropriate to amend the CIU criteria as it is in place to ensure CIU are able to cover as many serious incidents as possible. CIU have limited resources and cannot attend every type of collision or all fatal motor vehicle collisions.
96. Sergeant Burlin told the inquest that these days most officers use body worn cameras when attending a scene and a version can be obtained from a driver at the scene if they agree. However sometimes a driver is in shock or needs to go straight to the hospital so different options are used depending on the circumstances<sup>33</sup>

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<sup>32</sup> Sergeant Robert Burlin, Tab 28: Statement 7.7.2021 at [10].

<sup>33</sup> Sergeant Robert Burlin stated in his evidence that he was not aware of any NSW Police Force policy that requires police to not obtain a version from a driver at the collision scene.

## Conclusion

97. I am satisfied on the evidence of the eyewitnesses, the CCTV footage, the investigation, and the expert review that at about 8:30pm, Ms Bolshesolsky was walking in a northerly direction on John Street Lidcombe. When she reached 103 – 107 John Street she crossed from the eastern side to the western side of the road. She quickened her pace before she crossed and she looked both ways, however while she crossed, she only looked to her right, in a northerly direction.
98. Mr Gerussi was driving his vehicle, at the recommended speed limit, in a northerly direction on John Street and as he reached the vicinity of 103 – 107 John Street he collided with Ms Bolshesolsky.
99. The point of impact occurred in the northbound lane of John Street close to the centre lines. Ms Bolshesolsky impacted with the front driver's side of his Mitsubishi Lancer and as a result of the impact and subsequently making contact with the road, she sustained fatal blunt force injuries.
100. I do not accept the submission of Ms Bolshesolsky's family, that the only plausible explanation for Mr Gerussi's account of why his vehicle hit Ms Bolshesolsky was that he either had his glasses on to look at something, probably Ms Knight's snapchat, and that by the time he looked up, he had no time to stop the collision, or that he never looked up until after the collision. This is not the only plausible explanation. Sergeant Burlin gave evidence of a number of factors in support of alternative explanations.
101. The following investigatory steps were taken by police:
  - a) Obtaining witness statements from three witnesses at the scene (Ms Hong, Mr Choi and Ms Keleman), one that was an eyewitness to the collision.

- b) Obtaining all 000 emergency calls relating to the incident.
- c) Obtaining a version of events from three witnesses that called 000 (Hasna Tannous, Nursen Sevincek and Santosh Aryal).
- d) Obtaining witness statements from police witnesses at the scene.
- e) Obtaining CCTV footage from Metro Service Station in John Street and 114 John Street, Lidcombe and canvassing other locations in John Street to search for footage.
- f) Conducting a breath test for alcohol and blood test for drugs in relation to the driver.
- g) Conducting a mechanical examination of Mr Gerussi's vehicle.
- h) Obtaining Mr Gerussi's call charge phone records to ascertain if he was distracted at the time of the collision.
- i) Attendance of Crimes Scene Investigators in order to document the scene and make relevant measurements.
- j) An expert analysis of both sets of CCTV footage by Sergeant Derek Fenton in order to obtain a calculation as to "stopping distance" and "speed".
- k) Conducting an interview with Mr Gerussi to obtain his version of events.
- l) Searching for any body worn video footage capture on the night.

- m) Searching police records to motor vehicle collisions that have previously occurred on John Street Lidcombe.
  - n) Obtaining a statement from Sergeant Robert Burlin so as to review the actions taken by officers in deciding that CIU would not attend the scene.
102. There was no evidence of any further investigatory steps that could be taken.
103. Sergeant Dixon explained that crime scene investigators are “fitted out” in a similar way to the CIU. He stated that in circumstances where there were no skid marks or the deployment of an airbag, he did not believe CIU could do anything different compared to crime scene investigators.
104. Sergeant Burlin gave evidence consistent with Sergeant Dixon. He stated that CIU’s specific expertise in comparison to crime scene investigators was the existence of Bosch software to download information when an airbag has been deployed as well as Vericom software to assess skid marks in order to assess speed.
105. In the present case, there is no evidence to suggest that if CIU had attended, the investigation would have occurred in a significantly different manner. Further there is no evidence to suggest that evidence was lost due to the non-attendance of the CIU.
106. Sergeant Dixon said it was not appropriate for CIU to attend all collisions involving fatalities as there are a large volume of these cases each year and there needs to be a strict criteria in relation to attendance in order to maintain an active thorough capability. He said there were not enough crash investigators around the state and there needed to be strict criteria to respond to regional crashes and crashes where serious indictable charges are likely.

107. Sergeant Burlin agreed that it would not be appropriate to amend the CIU criteria as the current criteria ensures CIU are able to cover as many serious incidents as possible. He stated that CIU has limited resources and cannot attend every type of collision or all fatal motor vehicle collisions.
108. Sergeant Burlin stated that there is scope to take the matter to a higher level if an officer is not happy with an original decision of CIU not to attend. The fact that the original decision can be revisited, means that if there are cases where attending police feel strongly that CIU should attend, there is scope for this to occur.
109. Another factor that militates against the widening of the criteria relating to CIU attendance is the evidence that Sergeant Dixon gave where he stated that if at a later time it was deemed necessary that CIU should investigate further, there is scope for this to occur.
110. I make no criticism for the non-attendance of the CIU and am satisfied that the fact they did not attend has not hampered my task in making a finding as to the circumstances of Ms Bolshesolky's death. Accordingly, for the above reasons I decline to make the recommendation sought by Ms Bolshesolky's family that the Minister for Police and the Commissioner of NSWPF review their practices and procedures in relation to the CIU attendance at pedestrian deaths.
111. The family was curious why two men who were assisting Ms Bolshesolky prior to the arrival of the police were never identified. There is a real possibility that the two men left the scene after police arrived and took over the care of Ms Bolshesolky. It would be wrong to criticise Senior Constable Brown, Constable Wilson or Dog Unit Officer Sampson for not taking the names of the two witnesses at a time when they were required to perform CPR upon Ms Bolshesolky.
112. The family were also concerned that CCTV footage shows that 32 cars and a bus had travelled in a northerly direction on John Street and 40 cars travelled in a southerly

direction on John Street between the time of the accident and the police stopping traffic at the scene.

113. The first police officers arrived at the scene at 8:34pm. They were not in a position to stop traffic at that time as they immediately went to assist Ms Bolshesolsky. The next officer in attendance, Sergeant Lewis, took steps to control traffic by parking her vehicle in the southbound lane of John Street and then tasked officers with creating an exclusion zone.
114. It appears that police did what they could to protect the integrity of the scene. There is a risk that cars travelling in John Street prior to police attendance, may have moved the headband that was used to calculate distances, however it does not appear this occurred. In the crime scene photos, the headband is in close proximity to the part of John Street where Ms Bolshesolsky crossed the road and was hit.
115. Witnesses referred to possible safety problems on John Street, Lidcombe. Many witnesses referred to John Street being quite dark. Ms Hong specifically stated that it was quite hard to see pedestrians when driving due to the level of lighting.
116. The Officer-in-Charge of the investigation gave evidence that he has worked in Auburn Park for 12 years and knows John Street quite well. He thought that the installation of a pedestrian crossing in John Street was a good idea. In relation to a reduction in speed limit at the southern end of John Street, Detective Senior Constable Phillip said:

“John Street is - I don't want to use the word arterial but it is quite a busy road for like a local area to get from Parramatta Road down to Lidcombe, because then you obviously can get from Lidcombe over to Bankstown and also Lidcombe Railway Station is quite a busy railway station and there is a commuter car park there, so I know a lot of people do use John Street to get from say Parramatta Road over towards Bankstown as opposed to going down to Silverwater Road and turning left.

Silverwater Road again is even busier than that but would it benefit from going to 50?  
Probably yeah.”<sup>34</sup>

117. Detective Senior Constable Phillp also said that consideration could be given to further tree pruning, additional street-lighting, and the installation of an island for pedestrians.
118. It may be that this thoroughfare through a busy suburban area with many local pedestrians may need to be reviewed in terms of the pedestrian safety.
119. Cumberland City Council we're not a party at this inquest and it would be inappropriate for me to make recommendations to the council without giving them an opportunity to respond. I do however intend for a copy of these findings to be sent to the General Manager of the Council for him to consider safety issues in John St for pedestrians including the possibility of more streetlighting, tree pruning around the streetlights, the possibility of a reduction in the speed limit on John St and any other matters that may increase the safety for pedestrians in the area

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

I find that Sophia Bolshesolsky died on 16 February 2019 on John Street Lidcombe as a result of blunt force injuries she received when she was struck by a motor vehicle while she was crossing the road.

Magistrate C Forbes  
Deputy State Coroner  
7 September 2022

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<sup>34</sup> Transcript, 8 July 2022, p. 9, lines 39 – 46.