

CITATION: *Inquest into the deaths of Kumintji Abbott, Kumintji Oliver, and Kumintji McNamara* [2014] NTMC 0011

TITLE OF COURT: Coroner's Court

JURISDICTION: Alice Springs

FILE NO(s): A0071/2012
A0072/2012
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FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS: **Motor Vehicle Accident, Multiple Deaths, Police Involvement**

REPRESENTATION:

Counsel:

Assisting:	Jodi Truman
Commissioner for the Northern Territory Police	Michael Maurice QC

Solicitors:

Commissioner for the Northern Territory Police	Khami Aughterson
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Judgment category classification: B

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IN THE CORONERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A0071/2012
A0072/2012
A0073/2012

In the matter of an Inquest into the deaths of
**KUMINTJI ABBOTT, KUMINTJI OLIVER
AND KUMINTJI MCNAMARA
ON 22 DECEMBER 2012
AT LARAPINTA DRIVE
APPROXIMATELY 84.5 KMS WEST OF
ALICE SPRINGS**

FINDINGS

Introduction

1. This is an inquest into the death of three Aboriginal persons who died following a motor vehicle crash at approximately 8.25pm on Saturday 22 December 2012. The crash occurred on Larapinta Drive 40 kms east of Ntaria (Hermannsburg) Community, or approximately 85kms west of Alice Springs. The crash location was 3.8 kms west of the Hermannsburg/Wallace Rockhole Liquor Restricted Area boundary. Family members have requested that each of the deceased be referred to as “Kumintji” and I shall do so during these reasons.
2. On that evening members of the Northern Territory (NT) Police, namely Sergeant (“Sgt”) Melissa Sanderson and Constable (“Const”) Todd Lymbery, were conducting a mobile patrol from Hermannsburg towards Alice Springs. They were performing traffic duties and response to liquor offences as part of “Operation Crossroads”. They stopped several vehicles for the purpose of licence and registration checking, breath testing and searching for alcohol carried in breach of the designated dry communities.

3. One of the vehicles they came into contact with during the course of their duties was a vehicle owned by Kumintji Oliver. At that time however the vehicle was being driven by Garth Ngalkin. Also occupying the vehicle was Kumintji Oliver, Kumintji Abbott, Kumintji McNamara and Janelle Abbott. The officers noted the vehicle was travelling well below the sign posted speed limit for the area and they engaged their red and blue flashing beacons to indicate to the driver to stop. The vehicle began to slow and move towards the edge of the road, however when the vehicle was beside the police vehicle it suddenly accelerated, spinning gravel and Mr Ngalkin used one hand in an attempt to cover his face.
4. Due to the actions of the driver, the police performed a U-turn and began to follow however, very shortly thereafter made a decision not to “chase” and turned off their flashing beacons. Mr Oliver’s vehicle continued to pull away and both officers lost sight of it.
5. The next time either officer saw the vehicle was as they came around a sweeping right hand bend and they saw a haze of dust and the headlights of the crashed vehicle pointing towards them from the shoulder of the road. The vehicle was on its roof and had clearly been involved in a significant roll over, having rolled a number of times before coming to rest. Kumintji Abbott and Kumintji McNamara died during the course of the crash. Kumintji Oliver died at the scene. Only Janelle Abbott and Garth Ngalkin survived the crash.

Jurisdiction to hold an Inquest

6. As set out in the Introduction above, shortly before this crash occurred, police had noted the lights of Mr Oliver’s approaching vehicle and checked the vehicle’s speed. Upon noting its speed to be well below the sign posted speed limit for the area, police engaged their red and blue flashing beacons to indicate for the driver to stop. The vehicle slowed but then accelerated away quickly when it was beside the police car, with the driver attempting

to cover his face. When this occurred, police turned their vehicle and began to follow the vehicle, but shortly after made a decision not to “chase” due to safety concerns. They deactivated their flashing beacons and slowed but did not stop. They did however lose sight of the other vehicle.

7. The Coroners Act (“the Act”) provides under section 15 that a public inquest **must** be held where the death was “caused or contributed to by injuries sustained while the deceased was held in custody” (my emphasis added). Section 12 defines “person held in custody” to include a person in the custody or control of the police and extends that definition to include a person “in the process of being taken into” the custody of police. In this particular case the evidence establishes that the only person whom police sought to apprehend was Garth Ngalkin, the surviving driver of the vehicle which had failed to stop as directed. I find therefore that these deaths are not deaths of persons “in custody” for formal or statistical purposes even with the extended definition in mind.
8. However, it was entirely appropriate that the police investigation carried out on my behalf be conducted as if it were a death in custody investigation. Whether a particular death falls within the statutory definition in the Act may be a matter that is not finally decided until the hearing of evidence at an inquest. As a matter of principle all deaths, where there is police involvement, should be investigated rigorously and thoroughly for the same reasons as deaths in custody are so investigated (or should be). So much is reflected in NT Police General Order entitled “Deaths in Custody and Investigation of Serious and/or Fatal Incidents resulting from Police contact with the Public”. In this case, the deaths were investigated and the inquest was conducted in the same way as it would have been had the formal definition been satisfied.
9. Despite a public inquest not being mandatory, I decided to hold an inquest pursuant to the discretion available to me under section 15 of the Act in

order to examine the actions of the police and any other relevant facts or circumstances surrounding the death for the benefit of not just the families of the deceased, but also the wider community.

10. Pursuant to section 34 of the *Act*, I am required to make the following findings:

(1) A coroner investigating –

(a) a death shall, if possible, find –

(i) the identity of the deceased person;

(ii) the time and place of death;

(iii) the cause of death;

(iv) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act; and

(v) any relevant circumstances concerning the death

11. Section 34(2) of the *Act* operates to extend my function as follows:

A Coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death or disaster being investigated.

12. Additionally, I may make recommendations pursuant to section 35 as follows:

(1) A Coroner may report to the Attorney General on a death or disaster investigated by the Coroner.

(2) A Coroner may make recommendations to the Attorney General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the Coroner.

(3) A Coroner shall report to the Commissioner of Police and Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the Coroner believes that a crime

may have been committed in connection with a death or disaster investigated by the Coroner.

13. This inquest was held over three days commencing on 29 April 2014. Ms Jodi Truman appeared as Counsel Assisting. Mr Maurice QC appeared for the Commissioner for the Northern Territory Police. The deaths were investigated by Detective Sergeant Michael Schumacher. I received into evidence his extremely detailed and thorough investigation brief. I note there was reference in the brief to complaint being made by a Crown Prosecutor as to the manner in which questions were asked of witnesses during the recording of their statements. I find no basis whatsoever for such apparent criticism and I do not agree. Det Sgt Schumacher conducted a comprehensive investigation and complied with previous recommendations I have made over the years in relation to such investigations. I thank him for his hard work. I also heard oral evidence from nine witnesses.

Background of the Deceased

14. Kumintji Oliver was born at Areyonga in the Northern Territory of Australia on 15 June 1982. He was 30 years of age at the time of his death. His parents were Janice Raggett and Patrick Oliver. He was married to Kumintji Abbott. They met whilst they were both students at Yirara College in Alice Springs. They were widely known as childhood sweethearts and had been together for 12 years. Mr Oliver was an exceptional footballer as a youth and represented the NT in AFL in the Territory Thunder under 17's. He worked as a cleaner for the MacDonnell Shire Council at Wallace Rockhole and assisted his wife in caring for her elderly father. He had no children.
15. Kumintji Abbott was born in Alice Springs in the Northern Territory of Australia on 29 June 1980. She was 32 years of age at the time of her death and was married to Kumintji Oliver. Her parents were Ingrid Ruby Williams (deceased) and Richard Abbott. She was the principal carer for her ageing father. Although she had no children of her own, Ms Abbott also assisted her sister Janelle Abbott raise her two children Sarah Alum (seven

yrs), and Brendon Abbott (15yrs). She was unemployed at the time of her death.

16. Kumintji McNamara was born at Rose Park in South Australia on 24 November 1986. She was 26 years of age at the time of her death. Her parents were Lorretta McNamara and Charlie Malbunka. She was married to the driver of the vehicle, Garth Ngalkin, who she met at Hermannsburg Community. They were together for ten years and had one child together, a nine year old daughter. Ms McNamara was a stay at home mum at the time of her death.

The day of the crash

17. I received evidence that on Friday 21 December 2012 the three (3) deceased, together with Garth Ngalkin and Janelle Abbott, travelled with others to Alice Springs from Wallace Rockhole. They went to Alice Springs to purchase Christmas presents and to meet up with family to celebrate the festive season. The plan was to stay overnight on the Friday and return to Wallace Rockhole on the Saturday. The vehicle being driven was owned by Kumintji Oliver. It was a white 1999 VT Holden Commodore sedan, NT registration CA52SK.
18. On Saturday 22 December 2012, CCTV footage sourced from the Gap View bottle shop shows Mr Oliver's vehicle and some of its occupants purchasing take away alcohol at 4.30pm. They are then seen to return at 5.40pm and purchase more alcohol. The vehicle later left Alice Springs and headed west along Larapinta Drive in company of two other vehicles. As previously noted, the persons occupying Mr Oliver's vehicle were Mr Oliver himself, Kumintji Abbott, Kumintji McNamara, Garth Ngalkin and Janelle Abbott.
19. In terms of the other two vehicles that they departed Alice Springs with; the first of these was a white coloured Ford sedan owned by Leroy Mangaraka. It was occupied by Mr Mangaraka himself, Eva Armstrong, Floyd Armstrong and Voight Ratarara. The second vehicle was a dark green Commodore. It

later turned around and drove back to Alice Springs and did not continue the journey.

20. Mr Oliver's vehicle and Mr Mangaraka's vehicle stopped at a roadside rest area west of Alice Springs, which was approximately half way between Alice Springs and Hermannsburg. There they drank alcohol until just after sunset. Mr Mangaraka drove off first and Mr Oliver's car followed, with Mr Ngalkin at the wheel.
21. As Mr Mangaraka drove towards the Restricted Area Boundary to the Hermannsburg/Wallace Rockhole Liquor Restricted Area he saw vehicle headlights coming towards him in the distance and suspected it was police. He pulled over and all the occupants got out of the car. The vehicle seen by Mr Mangaraka was in fact the police vehicle occupied by Sgt Sanderson and Const Lymbery who were performing traffic duties. The officers saw Mr Mangaraka's vehicle parked and were aware that the location was a well frequented parking spot used by people to consume their remaining alcohol before they enter the liquor restricted area.
22. I received evidence from the officers that they decided to approach and speak to the occupants. At about the same time however they noted the lights of Mr Oliver's approaching vehicle. As a result they pulled over to the verge to wait for this vehicle instead. As they waited they used their forward facing radar which indicated the vehicle was travelling at about 85 kms per hour, which was well below the sign posted speed limit of 110 km per hour for the area. The police engaged their red and blue flashing beacons to indicate to the driver to stop. They noted that the vehicle began to slow and move towards the edge of the road, however when the vehicle was beside the police vehicle it suddenly accelerated, spinning gravel and Mr Ngalkin (who was driving) used one hand in an apparent attempt to cover his face.

23. Sgt Sanderson was the driver of the police vehicle on that. She performed a U-turn and began to follow Mr Oliver's vehicle. She agreed in evidence that this manoeuvre was with the intent of apprehending the driver if she could. At the same time, Const. Lymbery attempted to perform a registration check however was unsuccessful due to an inability to communicate in that particular location by radio. About 50 metres on the western side of the boundary grid, Sgt Sanderson stated words to the effect that she was "not chasing" the vehicle and turned off the flashing beacons. Mr Oliver's vehicle continued to pull away and both officers lost sight of it.
24. The next time either officer saw the vehicle was as they came around a sweeping right hand bend. They saw what they realised was a haze of dust and then the headlights of the crashed vehicle pointing towards them from the left, or southern, shoulder of the road. The vehicle was on its roof and had clearly been involved in a significant roll over, having rolled a number of times before coming to rest.
25. Garth Ngalkin was the driver of the vehicle at the relevant time and he soon exercised his right to silence in terms of discussing events in detail with police. Janelle Abbott was the only surviving occupant of Mr Oliver's vehicle and therefore the only person who gave an account of what occurred. Janelle Abbott recounted events to police in a number of statements, but particularly one given on 16 January 2013. This statement formed part of the facts to which Garth Ngalkin pleaded guilty to three counts of driving dangerously causing death and one count of recklessly engaging in conduct that gave rise to the danger of causing death before His Honour, Mildren AJ, in the Supreme Court on 14 August 2013:

"We were cruising along and came to the bend and as a soon as he seen the police with the lights on, he started travelling so fast and we all told him to stop. And he wouldn't listen to my brother-in-law who screamed at him saying, 'Look, it's Christmas, you take it easy.' And his wife screamed at him, was pulling him back, he's sitting up front. I had my seat belt on. My sister didn't have hers. We kept

going. The police turned around. They sort of chased us but they pulled back. I looked back. We said, 'Stop, they pulled back.' But he didn't listen. I tried to say, 'Slow down, it's Christmas.' But he didn't listen. He just kept his eyes on the road. He didn't even move. And I said, 'Look, I've got kids to grow up.' And my brother-in-law said, 'It's Christmas, I want to see my family.' And we all screamed at him. And his wife said, 'Look, we've got a daughter and I don't want to die.' but he didn't even move his neck. Didn't turn to one of us even. My brother-in-law swore at him, you know, to stop this. 'It's my car.' That was his car he was driving. He didn't listen. But to be honest the police never chased us, they pulled back. And the tyre blew. Something blew that night".

26. Upon arriving at the scene, Sgt Sanderson and Const. Lymbery parked their car and reactivated the beacons. They heard a female voice calling out for help and that was when they found Janelle Abbott trapped in the rear of the upturned vehicle with blood on her face and hands. They cut Ms Abbott from her seatbelt and she eventually freed herself from the vehicle. I find that if police had not arrived shortly after this crash that it is more likely than not that Janelle Abbott would also have passed away given she was trapped by her seatbelt and stated to police that she could not breathe.
27. Kumintji Oliver was wedged in the front passenger side of the vehicle restrained by his seat belt. At this time he moving his arm slightly and making groaning sounds, but Const Lymbery could not get a response from him. His breathing was laboured but the officers stated they simply could not reach him to remove him from the vehicle. He subsequently died at the scene.
28. There were no other persons in the vehicle. Police called for ambulances to attend and for further police assistance. Both officers then went searching for any other persons. The body of Kumintji Abbott was found 36 metres from the vehicle and the body of Kumintji McNamara was found 23 metres from the vehicle. Both bodies had extensive injuries obviously related to having been thrown from the vehicle during the crash.

29. A number of other vehicles stopped at the crash site before an ambulance arrived. Eventually, Garth Ngalkin walked out from wherever he was hiding and approached the police. He spoke to one of the people who had arrived at the scene in language and admitted that he was the driver. He was also identified as such by Janelle Abbott. Sgt Sanderson asked Mr Ngalkin why he had driven so fast and he stated “*To get away*”. Sgt Sanderson could smell alcohol on Mr Ngalkin’s breath and formed the opinion that he was intoxicated. Mr Ngalkin spoke further to others at the scene in language and in English. He stated:

“It was my fault. I didn’t stop. They told me to slow down but I didn’t slow down. It’s my fault”

and further:

“The people in the car were telling me to slow down and I kept on driving faster and faster and faster”.

Cause of the crash

Were police in pursuit of the vehicle at the time of the crash?

30. I note that Janelle Abbott, the only surviving occupant of the vehicle (besides the driver), was clear in her recollections that the police “pulled back” and that she and the three deceased told Mr Ngalkin this, and begged him to “slow down”. Mr Ngalkin also admitted at the scene that he had been told to slow down by the other occupants but he ignored them.
31. Despite this evidence from the only surviving passenger of the crash and the driver himself, and therefore the persons closest to events, there was an allegation in the media that things occurred differently. In particular there was a report following these events that alleged that police were still pursuing the vehicle when the crash occurred. This was obviously a matter of significant concern and as a result, that allegation was carefully considered by me during the course of this inquest.

32. Mr Baydon Williams was the individual who was recorded in an interview with media as saying that the “police car wasn’t far off the other car” and further that the police “just kept on chasing”. As a result of this statement in the media, I ensured that I physically visited the location where Mr Williams alleged that he could see these events take place.
33. The information allegedly provided by Mr Williams to the media however was in fact different to what he had told police in his statutory declaration. Importantly, it was also different to what he gave in **sworn** evidence before me. I prefer the sworn evidence given by Mr Williams in court to that recorded in the media. Mr Williams stated that at about 6.00pm he and Darryl Kantawarra, together with two youths went to a camp near the restricted area boundary fence. This is a site known as Ntjekurra. He stated that when they were doing a “cook up”, he saw “a lot” of cars at the boundary. He gave evidence that he saw the car (which ultimately was the car driven by Mr Ngalkin) speed past the police heading to Hermannsburg. He further stated that this particular vehicle “got faster” and that the police turned around and followed, but the police were “not speeding up” and they were “not that close to the car”. Mr Williams described the gap between the police car and the other car as getting “wider” as they drove and that the police car was “just following, not chasing”. Mr Williams did not hear any sirens and he did not see the blue and red flashing beacons of the police car.
34. Mr Kantawarra on the other hand specifically recalled seeing the blue and red flashing beacons of the police vehicle. He too stated that the car “flew past” the police and once in front of the police car it was “getting more speed”. It is clear from Mr Kantawarra’s evidence that he wasn’t paying a great deal of attention to what was occurring and was concentrating more on his food. He stated that he did not notice a great deal more other than hearing a loud “bang” or loud noise, and he thought something bad had happened.

35. Investigators conducted a re-enactment on 4 January 2013. GPS coordinates were used for the location of Mr Williams and Mr Kantawarra and the crash. The re-enactments were tendered in evidence before me (as part of exhibit 3). They confirm my assessment at the scene as to just how difficult it would have been at night to see the various things alleged to have been seen by Mr Williams and Mr Kantawarra from the distance of the camp at Ntjekurra. During the course of this inquest, I also attended at the location of the crash, the boundary area and the site of the camp at Ntjekurra. Even during the day time the distances involved, and the terrain, make it difficult to see with any deal of precision what was occurring. Whatever was seen by Mr Williams and Mr Kantawarra, I consider it was significantly impacted upon by the distance involved.
36. As set out in the facts surrounding the day of the crash, the vehicle owned by Mr Oliver had earlier been accompanied by a white Ford sedan occupied by Leroy Mangaraka, Eva Armstrong, Floyd Armstrong and Voight Rataru. Each of those persons, except Floyd Armstrong, gave evidence before me. They all confirmed that their vehicle stopped near the Restricted Area Boundary after they thought they saw the police and that they all got out of the car. They each confirmed that they saw the car driven by Mr Ngalkin continue towards the police and as it got closer they saw the police activate the flashing beacons of the police vehicle.
37. Mr Mangaraka admitted frankly that he had been drinking and that he drove that night. He stated that after he saw the red and blue flashing beacons come on for the police car, he saw the car driven by Mr Ngalkin “take off” and that it was “going really fast”. He stated that he saw the police follow the other car but the police “didn’t really chase that car”. He said the car was “long way away”. He saw the police “shut the blue light and went slowly”. Significantly, Mr Mangaraka said that when the car went passed him and his group they all yelled out for Mr Ngalkin to stop. He said

however that he could also hear “the people in that car yelling for him (Mr Ngalkin) to stop” as well.

38. Ms Armstrong was not drinking on this evening and was sober. She stated that after her group stopped, the police came and stopped their vehicle. She said that as the other car came near, the police “turned their blue lights on”. She said that after this, the car “sped off”. Ms Armstrong stated that she and the other occupants of her car “sung out” for the other car to stop, but it “just kept going”. She saw the police turn around and follow but then it “turned its blue lights off” and “it went at a slow pace behind”. Ms Armstrong was very clear that the police did “not give chase”.
39. Mr Ratara stated that very frankly that he was drunk on this night and he had been sleeping. He was in the back of the car. The first he noticed the police was when they were already pulled up “on the other side of the road”. Mr Ratara could recall that police had its red and blue flashing beacons on. He saw the other car slow down and then “it took off”. He described the police as just “starting slowly and then turn around and follow”. In his statement to the police he later saw the flashing beacons of the police car turn off.
40. Floyd Armstrong did not give evidence despite being summonsed. In his statement to police however he stated that as soon as he saw the police put their blue light on, he saw the other car go “really fast” and the police turned and followed but “not very fast, slow”. He described the police car as “going really, going slow” and then he saw the blue light turn off and come back on later.
41. Both police officers gave evidence before me. Sgt Sanderson confirmed that upon noticing the vehicle driven by Mr Ngalkin heading towards her, she pulled to the side of the road and activated the red and blue beacons. She stated she did this with the intention of stopping the vehicle to perform a random breath test on the driver and vehicle check. She recalled seeing the vehicle appear to slow down and move towards the edge of the road almost

opposite of where she was parked. Sgt Sanderson stated however that just as she was about to get out of her car she saw the driver accelerate away with the tyres spinning gravel and spraying debris across the road. She then noted the driver had his hand up near his face.

42. As a result Sgt Sanderson performed a U-turn. She stated that she did this “because some cars stop”. However the car had “already driven so far”. She crossed a grid and shortly after that point she stated to Const. Lymbery words to the effect of; “We’re not chasing this vehicle. It’s not worth it” and deactivated the beacons. Sgt Sanderson’s decision not to pursue was also in part to do with the amount of fuel she had in the tank. However it is clear that the more significant concern was that she considered the speed being travelled by the other car was dangerous and she was concerned for the safety of the occupants. Sgt Sanderson agreed with me in evidence that when she performed the U-turn she did so with the intent to apprehend the driver if possible and she hoped he would stop.
43. Sgt Sanderson lost sight of the vehicle quickly. She described the road as having a sweeping right bend and at that point she lost sight of the tail lights of the other vehicle. The road then sweeps back in a left bend and this was the last she saw of the other car. As she rounded the left bend she could see dust haze and then realised there had been a crash and reactivated her beacons. It was clear from Sgt Sanderson’s own evidence that she is still significantly distressed by the events of that evening.
44. Const. Lymbery also recalled the vehicle approaching. His statement records performing a speed check and that the car was travelling at about 85 kms/hr. He too thought the vehicle appeared to slow down and he thought it was going to stop. It then went passed and Sgt Sanderson conducted a U-turn. He recalled Sgt Sanderson saying something like “we’re not gonna chase them” and the beacons being deactivated. In his statement he recorded that the police vehicle travelled no more than 110km/hr and that he

lost sight of the other vehicle after it went over a rise about 30 seconds after they passed the boundary fence. The next time he saw the car it was on its roof.

Considering all of the evidence, I find that whilst there was a U-turn performed by police to commence pursuing the vehicle with a view to apprehending it if possible, this was for a matter of seconds. An assessment was then made that it was too dangerous to pursue and the police did not continue to pursue the vehicle driven by Mr Ngalkin. I will address this issue of “pursuit” later in these reasons

Conduct of the driver

45. At the time of the crash, Mr Ngalkin was disqualified from driving having been disqualified for five years on 5 September 2012. Prior to that disqualification, he had also previously been disqualified from driving for five years on 27 May 2011. He had what can only be described as an appalling criminal record for driving offences dating back to 2004 with a number of offences involving high range readings of 0.193, 0.199, 0.211 and 0.220 and three prior convictions for driving whilst disqualified. He had even been sent to prison for driving whilst disqualified. As I stated during the course of the evidence, it is clear that fines and prison were not stopping this man from driving when he should not have been.
46. In addition, following the crash, a sample of Mr Ngalkin’s blood was taken at 2.45am for analysis. This was in excess of six hours after the crash. The analysis revealed a blood alcohol content of 0.133% at the time of the taking of the sample. It is therefore estimated he had blood alcohol content at the time of the crash of between 0.196% and 0.259%. This estimate was admitted by Mr Ngalkin during his Supreme Court plea. He clearly should not have been driving.
47. As to the other occupants of the vehicle; Kumintji McNamara was the only person in the car that had a current driver’s licence and could lawfully drive.

However her autopsy report indicates she had a blood alcohol content of 0.221%. Kumintji Oliver had been disqualified from driving for eight years from March 2009 however his autopsy report indicates he had a blood alcohol content of 0.247%. Kumintji Abbott had been disqualified from driving for five years from September 2010 and her autopsy report indicates she had a blood alcohol content of 0.35%. Janelle Abbott had a sample of her blood taken at 1.50am for analysis. This was in excess of five hours after the crash. The analysis revealed a “nil” blood alcohol content, however she was unlicensed at the time and she also frankly admitted to police that she too had been drinking that day and that there was “no one sober” to drive.

48. As noted previously, despite the pleas of the occupants of the vehicle to slow down and that the police were no longer following, Mr Ngalkin did not slow. As was admitted by him in the criminal proceedings, it was Mr Ngalkin’s conduct in driving dangerously and in the manner that he did that caused the death of each of the deceased.

Another potential contributor?

49. Sergeant Mark Casey of the NT Police Major Crash Reconstruction Unit conducted a review of the at-scene evidence in relation to this crash and prepared a detailed Crash Analysis Report which formed part of the coronial brief. Sgt Casey found that the tread of the right rear tyre had delaminated however this:

“particular tyre failure would not have required any unusual input to control the vehicle and would have had no significant effect reducing the ability of the driver to control the vehicle”.

50. Sgt Casey concluded that:

“from the dynamics of the crash and skid marks left from the rear wheels it is indicative that the rear wheels locked prior to the vehicle losing control”

and that this commenced a yawing motion, which caused the vehicle to leave the road “out of control” and subsequently “tripped and rolled”. His analysis found that at the time that the rear wheels locked, the vehicle was travelling at a speed of “no less than 116 km/hr.”.

51. Sgt Casey’s report sets out his opinion as to what caused the rear wheels to lock. He noted that foot brake of the vehicle was a “master cylinder proportioning type system” which works by distributing brake pressure between the front and rear brakes to ensure the rear wheels do not lock before the front brake. The brake system of the vehicle driven by Mr Ngalkin was inspected and found to be “in good condition”. Sgt Casey noted that a brake test was unable to be conducted on the vehicle “due to crash damage, however the vehicle was inspected by the Alice Springs Transport Inspectors about three months prior to the crash and a brake test was conducted” which did not find any “brake force imbalance”.

52. It was the opinion of Sgt Casey that:

“In the absence of any mechanical failure from the vehicle it can be concluded that the cause of the rear wheels locking is a temporary/momentary application of the handbrake”.

Sgt Casey then considered the potential scenarios as to who may have applied the handbrake. After detailing extensive research into human responses to delamination events, Sgt Casey stated:

“When the ... research is taken into account, it would suggest that a hand brake application by the driver in these circumstances is unlikely”.

He went on:

“The physical evidence does not support excessive steering input as the cause of the crash.

“The hand brake would however be the most viable option for a passenger seeking to slow or stop the vehicle.

“The most likely person for the application of the hand brake ... would be a passenger. The probability of the particular occupant responsible cannot be determined from the physical evidence available”.

53. Sgt Schumacher gave evidence that he spoke to Ms Janelle Abbott (the surviving passenger) about this issue on 7 March 2013. The notes of this conversation were also tendered in evidence before me (as part of exhibit 3). Ms Abbott was recorded as still being very emotional in having to recall events; however she stated clearly that all the passengers were trying to get Mr Ngalkin to stop. Ms Abbott recalled Mr Ngalkin’s wife; Kumintji McNamara, as being the middle rear passenger and physically trying to stop Mr Ngalkin by having both her arms around his shoulders, as if a “hug” type position from the rear. Ms Abbott recalled Ms McNamara as partially leaning over her as she was doing this.
54. Sgt Schumacher specifically asked Ms Abbott about the handbrake and she stated she did not know if it had been applied or not. As Sgt Schumacher properly noted, this is logical given Ms Abbott’s position behind the driver, with her seatbelt on. With Ms McNamara leaning across attempting to physically stop Mr Ngalkin, Ms Abbott would not have been able to see the handbrake as Ms McNamara’s body would have blocked her view.
55. I note that it is apparent from the coronial brief that this opinion caused some disquiet, however the possibility of a passenger momentarily applying the hand brake was also the subject of consideration in the criminal proceedings against Mr Ngalkin. During the course of those proceedings, defence counsel simply noted that the “handbrake issue” was a “surprise in the report when it came through to us”. Defence counsel then noted however that Mr Ngalkin did not deny he was the driver, or that he was intoxicated or that he was trying to evade police.
56. I find, just as was found by the Learned Judge in sentencing Mr Ngalkin, that even if the handbrake had been applied by a passenger, it was the

driving of Mr Ngalkin which was clearly dangerous and substantially contributed and therefore caused the death of the three deceased. I do not consider anything further needs to be said on this issue.

The autopsies

57. Dr Terence Sinton performed autopsies on each of the deceased on 28 December 2012.

Kumintji Oliver

58. Dr Sinton described his significant injuries as:

58.1 Lacerations and abrasions to the left shoulder and arm;

58.2 A fracture to the left arm.

59. Mr Oliver's blood sample revealed an alcohol concentration of 0.247%. Almost five times the legal limit.

60. Dr Sinton opined that:

“given the history and autopsy findings, including the reported position of the body in the vehicle after the rollover and the absence of significant life endangering acute trauma, it remains a possibility that he died as a consequence of postural asphyxiation (the mechanical obstruction to his breathing), the effects of this exacerbated by longstanding coronary artery disease and acute alcohol toxicity”.

Kumintji Abbott

61. Dr Sinton described her significant injuries as:

61.1 Lacerations and abrasions variously to the head, trunk, both arms and the left leg with large laceration noted in particular across the upper face and scalp;

61.2 Haemorrhage over the surface of the brain (traumatic subarachnoid haemorrhage);

- 61.3 Partial rupture of the aorta in the chest;
 - 61.4 Rupture of the liver but with a small volume only of blood in the abdominal cavity;
 - 61.5 Extensive fracturing of the left arm;
 - 61.6 A severe fracture and dislocation of the left knee;
 - 61.7 A severe fracture and dislocation of the spinal column in the neck (a broken neck) with associated complete rupture of the spinal cord at this site;
 - 61.8 A severely dislocated fracture of the sternum (breast bone) in the chest;
 - 61.9 Fractured ribs on both sides of the chest.
62. Ms Abbott's blood sample revealed an alcohol concentration of 0.35%. Seven times the legal limit.
63. I accept Dr Sinton's opinion that Ms Abbott:
- “died from injuries received during the rollover, while she was concurrently suffering from acute alcohol toxicity”.

Kumintji McNamara

64. Dr Sinton described her significant injuries as:
- 64.1 Lacerations and abrasions variously to the face, posterior surface of the trunk, both arms and right leg;
 - 64.2 A severely broken neck;
 - 64.3 A broken lower back;
 - 64.4 Fractured ribs on the left side of the chest.

65. Ms McNamara's blood sample revealed an alcohol concentration of 0.221%. In excess of times the legal limit.

66. I accept Dr Sinton's opinion that Ms McNamara:

“died from injuries received in the rollover, while concurrently suffering from acute alcohol toxicity”.

Police General Order – Emergency Vehicle Driving (EVD) and Pursuit Driving

67. Despite my earlier findings that these were not deaths in custody, as with a number of previous inquests involving the death of a person, or persons, in a motor vehicle crash following (or very shortly after) involvement with police, I considered carefully the conduct of the officers involved and whether they had complied with the applicable General Order. I considered this was particularly relevant given these deaths bore striking similarities to another inquest I conducted into the death of 6 Hermannsburg residents in the *Inquest into the Deaths of Barbara Malthouse, Nigel Inkamala, Daryl Inkamala, Dian Ngalken, Gordon Murray and Antonio Meneri* [2009] NTMC 066.

68. On the question of whether this was a “pursuit”, as previously noted Sgt Sanderson agreed that her intent when performing the U-turn was to apprehend the vehicle if possible. It is also clear that the distance travelled from where Sgt Sanderson completed the U-turn to where she stated she was no longer going to “chase”, is very short. It is also clear that it would have taken only a few seconds to travel such a distance. I note that when performing the U-turn, and for the short distance that followed, the flashing beacons were activated on the vehicle. I accept the evidence of both officers that the beacons were then deactivated, but that the police vehicle continued to follow, although at some distance, behind the vehicle driven by Mr Ngalkin.

69. I received a copy of the General Orders for Emergency Vehicle Driving (“EVD”) and Pursuit Driving which were in place at the time of this crash and also the version promulgated subsequently on 21 November 2013 (part of exhibit 4). I note that an online training course for the Emergency Vehicle Driving (“EVD”) and Pursuit Driving General Order was finally launched on 22 December 2012 (notably the very day of this crash) with all sworn officers requested to complete the training by 18 January 2013. Of relevance to these deaths is that both Sgt Sanderson and Const. Lymbery completed the online course on 7 January 2013.

70. “Pursuit” is defined at paragraph 14.12 of the “General Order – Emergency Vehicle Driving (EVD) & Pursuit Driving”, which provides as follows:

“Pursuit is the attempt to intercept a moving vehicle that has:

1. failed to comply with a direction to stop, the vehicle fails to stop as soon as practicable, and it is believed on reasonable grounds the driver of the vehicle is attempting to evade police. The speed of the vehicle is immaterial as the determining factor is the failure to stop when called upon to do so; or
2. fled the presence of police at speed in an apparent attempt to avoid apprehension by the police;

but does not include searching for or seeking to identify a vehicle to which 1 or 2 apply where the vehicle is not within view and the speed limit is not exceeded.”

71. Commander Kate Vanderlaan gave evidence before me. She stated she did not consider that this was a “pursuit” pursuant to the definition. As I stated in court to Commander Vanderlaan, whilst I accept this is her opinion, I find that in terms of these circumstances; where a driver is directed to stop and then engages in deliberate and intentional conduct to deceive police that they are going to stop, then “guns” the vehicle and reaches speeds potentially in excess of 150kms/hr, and the police with their red and blue flashing beacons activated perform a U-turn, which is agreed by the officer

involved to be with a view to apprehension, that there **is** room in that action by the officer for there to be found to be the commencement of a pursuit.

72. On the issue of whether this was action within the definition of “pursuit”; after considering all of the evidence I find that this was a pursuit, but only a momentary one. I also find however that in accordance with the General Orders and her training received; Sgt Sanderson conducted a risk assessment and determined that it was too dangerous to continue the pursuit and it was terminated. As a result she deactivated the flashing beacons on the vehicle. It is also arguable that strict compliance with the General Orders required Sgt Sanderson to have pulled over and turned off her flashing beacons. However, I consider this to be only a technical breach and that in the circumstances in which she was faced, Sgt Sanderson’s conduct in continuing to follow the vehicle, at a considerable distance behind, was done with a desire to ensure the safety of the occupants given her concerns about the driving. In *these* circumstances, I consider her action appropriate and I do not criticise her conduct. She took a common sense approach and I consider she made the right decision.
73. Although these deaths are tragic and a huge loss to the community at large, but also particularly the small communities of Wallace Rock Hole and Hermannsburg, I find that it was **not** the conduct of the police that caused these deaths, but the conduct of Mr Ngalkin. I further consider the actions taken by Sgt Sanderson to have been appropriate in the circumstances in which she found herself at the time and in accordance with the relevant police General Order which call for continuous risk assessments to be conducted, both before the commencement of a pursuit and after. It is clear that both Sgt Sanderson and Const. Lymbery have done all they could in the circumstances and I do not criticise their conduct. Given the prevalence of wrongdoing on that road both in terms of grog running and traffic offences, police **must** patrol these roads and are entitled to do so.

Formal Findings

74. On the basis of the tendered material and oral evidence at this inquest I am able to make the following formal findings in relation to each of the deaths.

Kumintji Oliver

- i. The identity of the deceased was Kendrick Oliver who was born on 15 June 1982, at Areyonga in the Northern Territory. Mr Oliver resided at Ntaria (Hermannsburg) Community in the Northern Territory of Australia.
- ii. The time and place of death was at approximately 8.25pm on Saturday 22 December 2012 on Larapinta Drive, 42 kms east Ntaria (Hermannsburg) Community.
- iii. The cause of death was postural asphyxiation following the motor vehicle crash, exacerbated by longstanding coronary artery disease and acute alcohol toxicity.
- iv. Particulars required to register the death:
 - a. The deceased was male;
 - b. The deceased's name was Kendrick Oliver;
 - c. The deceased was of Aboriginal descent;
 - d. The cause of death was reported to the Coroner;
 - e. The cause of death was confirmed by post mortem examination carried out by Dr Terrence Sinton on 28 December 2012;
 - f. The deceased's parents are Janice Raggett and Patrick Oliver;
 - g. The deceased was unemployed at the time of his death.

Kumintji Abbott

- i. The identity of the deceased was Pauline Iris Abbott who was born on 29 June 1980, at Alice Springs in the Northern Territory.
- ii. The time and place of death was at approximately 8.25pm on Saturday 22 December 2012 on Larapinta Drive, 42 kms east Ntaria (Hermannsburg) Community.
- iii. The cause of death was injuries received during the rollover, while she was concurrently suffering from acute alcohol toxicity.
- iv. Particulars required to register the death:
 - a. The deceased was female;
 - b. The deceased's name was Pauline Iris Abbott;
 - c. The deceased was of Aboriginal descent;
 - d. The cause of death was reported to the Coroner;
 - e. The cause of death was confirmed by post mortem examination carried out by Dr Terrence Sinton on 28 December 2012;
 - f. The deceased's mother was Ingrid Williams (deceased) and her father is Richard Abbott;
 - g. The deceased was unemployed at the time of her death.

Kumintji McNamara

- i. The identity of the deceased was Joy McNamara who was born on 24 November 1986, at the Queen Victoria Hospital, Rose Park, Victoria.

- ii. The time and place of death was at approximately 8.25pm on Saturday 22 December 2012 on Larapinta Drive, 42 kms east Ntaria (Hermannsburg) Community.
- iii. The cause of death injuries received in the rollover, while concurrently suffering from acute alcohol toxicity.
- iv. Particulars required to register the death:
 - a. The deceased was female;
 - b. The deceased's name was Joy McNamara;
 - c. The deceased was of Aboriginal descent;
 - d. The cause of death was reported to the Coroner;
 - e. The cause of death was confirmed by post mortem examination carried out by Dr Terrence Sinton on 28 December 2012;
 - f. The deceased's mother is Lorretta McNamara. The deceased's father is Charlie Malbunka;
 - g. The deceased was a stay at home mother at the time of her death.

Recommendations and Comment

75. I have no formal recommendations to make in relation to these deaths, however I do make comment that it is clear to me that the profound soundness and community outrage at the continuing deaths of innocent passengers in motor vehicle accidents, which are caused by drunken drivers, is so great and so destructive of community harmony that measures that may at first seem draconian are now necessary in my view. I am especially of this view because as a sitting magistrate of many years' experience in the Northern Territory I have come to the view that criminal sanctions of

disqualification of drivers, fines and even imprisonment, are not working to deter drunks from driving.

76. It is to be noted that the driver in this case had six prior convictions for drink driving before this crash. He had several convictions for driving whilst disqualified. He had been fined and he had been sent to prison for precisely those offences and clearly this had not deterred him at all. Sadly this lack of deterrence is even the case despite the screams ringing in his ears of his friends and family inside that car, *begging* him to slow down and telling him they did not wish to die. Something needs to be done. I note that in previous inquests I have made a number of recommendations as to changes to be considered to discourage people from evading police, in particular in the *Inquest into the deaths of Clifford Norman and Jennifer Taylor* [2013] NTMC 001. I received evidence from Commander Vanderlaan as to measures that were “in train” but also underway. I therefore once again recommend their continued consideration and implementation as soon as possible.

Dated this 11th day of July 2014

GREG CAVANAGH
TERRITORY CORONER