

IN THE MATTER OF:

Section 182 of the Criminal Procedure Act 2009

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**- V -**

**JESSE CHRISTIAN REID**

**SUMMARY OF PROSECUTION OPENING**

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Filed on behalf of:  
Prepared by:  
JOHN CAIN  
Solicitor for Public Prosecutions  
565 Lonsdale Street  
Melbourne Vic 3000

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Director of Public  
Prosecutions  
Solicitors code: 7539  
Reference: HBW  
Telephone: [REDACTED]  
[REDACTED]  
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***Introduction:***

1. The accused is Jesse REID (11/10/1996). He is pleading guilty to three charges arising from his manner of driving and a fatal collision that occurred on 14 September 2018.
2. At the time offending the accused was 21 years of age and the holder of a P2 Victorian driver licence subject to 'Zero Blood Alcohol Limit'<sup>1</sup> and 'Alcohol Interlock'<sup>2</sup> conditions.

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<sup>1</sup> VicRoads Licence Extract, Exhibit 26, Page 667

<sup>2</sup> VicRoads Licence Extract, Exhibit 27, Page 668

3. The accused was driving a 2002 Holden Commodore station wagon (RYN042). At the time [REDACTED] ([REDACTED] (a 16-year-old) was the front seat passenger in the car. The vehicle was fitted with a 'Guardian WR3' Interlock device. Following the collision, the Commodore was inspected and found to be in a satisfactory mechanical condition (pre-accident).
4. The victim is Victor KOSTIUK (59 years). KOSTIUK was a Detective Senior Sergeant in the Victoria Police Force and had served for thirty-eight years. He was off duty and participating in the 'Wall to Wall Remembrance Ride' from Melbourne to Canberra with his son, Felix (also a member of the Victoria Police Force) and numerous other police officers and supporters. KOSTIUK and his wife, Pauline, were married for thirty-eight years and she is a retired member of Victoria Police having attained the rank of Superintendent.
5. KOSTIUK was an experienced motorcyclist and was riding a 2014 BMW K1300S (1O6ZQ).

**Overview:**

6. On Friday 14 September 2018 the accused drove his Commodore at extremely high speeds (up to 200 km/h) over a period of approximately one hour. He was driving in a Westerly direction along the Princes Freeway from Genoa to Cabbage Tree Creek (his intended journey was from Merrimbula to Melbourne). (**charge one**)
7. At about 2.15 pm, the accused lost control of his vehicle while travelling at a fast rate of speed and spun onto the wrong side of the road across double white lines onto the wrong side of the road before colliding with KOSTIUK who was coming the other way. KOSTIUK died at the scene. (**charges two and three**)
8. Investigations revealed that at the time of the collision the accused:
  - a. Had a had a significant blood alcohol concentration;
  - b. Had amphetamine present in his blood;

- c. Was sleep deprived; and
- d. Had bypassed the interlock device by using [REDACTED] to blow into it.

***Particulars:***

- 9. On Thursday 13 September 2018, the accused drove from Melbourne to Merrimbula, New South Wales and stayed at a friend's house.
- 10. At about 7.30 am on Friday 14 September 2018, KOSTIUK and his son (Felix) departed his Aspendale home to ride to Canberra as part of the Wall to Wall Remembrance Ride. Their route was to ride along the Princes Highway to Merrimbula, stopping overnight, before heading to Canberra to meet up with other police colleagues from across the country.
- 11. At around the same time, the accused received a phone call advising him his partner had gone into early labour.
- 12. At about 8:30 am, the accused called [REDACTED] and asked him for company on the trip back to Melbourne. The accused picked [REDACTED] up at 8:40 am and started driving back to Melbourne at 10:16 am. By this time, the accused was aware that his son had already been born and received messages from his mother-in-law saying, "*Ok drive safe*", "*Take your time and drive safely*" and "*Ok don't speed*".<sup>3</sup>
- 13. The accused drove from Merimbula to Eden (26 km) and stopped to see some friends. While in Eden, the accused smoked 'ice' (Methylamphetamine) and consumed alcohol. From there, 16-year-old [REDACTED] started the car and drove from Eden to Kiah (15 km) arriving at 12.37 pm.

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<sup>3</sup> Mobile Phone Download Report, Exhibit 21, Pages 656-657

***Evidence from the Alcohol Interlock device:***

14. The accused took over when they left Kiah. The alcohol interlock device required a 'zero alcohol' sample to be supplied to it before it would permit the vehicle to be started. [REDACTED] provided the sample of 'zero alcohol' breath at 12:44 pm<sup>4</sup> but it was the accused who started driving.
15. At 12:59 pm the Interlock device requested a random running retest and again, although the accused was driving, [REDACTED] provided the sample of breath.
16. At 1:31 pm, the Interlock device requested another random running retest. The accused provides a sample of breath at 1:31:12 pm with the result being '*Running retest Sanction High BAC 065*'. This caused the vehicle to shut down and enter a lockout state preventing the vehicle from being started for five minutes.
17. At 1:36:55 pm, [REDACTED] provided a sample of 'zero alcohol' to start the vehicle although it was the accused who drove off.
18. At 1:52:36 pm a further random running retest was required and [REDACTED] provided another sample of 'zero alcohol' breath to start the vehicle although it was the accused who drove off.
19. At 2:17:18 pm, the device recorded an event of '*Power Off*'. This accords with the time of collision.

***Evidence from other road users and cameras:***

20. Throughout the trip from Kiah to the collision scene, the accused was seen by a number of witnesses and captured on dash cameras travelling at high speeds, overtaking vehicles over double white lines and travelling around blind corners on

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<sup>4</sup> The Alcohol Interlock device records the times of the tests and pictures of the person who produces the sample of breath.

the incorrect side of the road. One witness was so concerned at the manner of his driving he called '000' to report it.

***The accused's mobile telephone videos:***

21. Investigators recovered videos (from the accused's mobile telephone) taken during the accused's drive from Genoa to Cabbage Tree Creek. These videos capture the accused driving the vehicle at extremely high speeds and in a very dangerous fashion. There are five such videos.

22. The first video is taken by the accused (while [REDACTED] was driving along the Princes highway between Eden and Kiah). In the video the accused states, *'When you're too fucked to drive and your baby's been born, your mate comes through.'*<sup>5</sup>

23. The second video is time stamped at 1:18:31 pm and shows the accused driving and [REDACTED] in the front passenger seat.<sup>6</sup> The speedometer shows speeds of between **190 and 200 km/h**.

24. The third video is time stamped 1:23:37 pm and shows the accused driving and [REDACTED] in the front passenger seat. The speedometer shows a speed of **180 km/h** as they approach the rear of semi-trailer at the end of an overtaking lane.<sup>7</sup>

25. The fourth video is time stamped 1:25:15 pm and shows the accused driving the vehicle and [REDACTED] in the front passenger seat. The speedometer shows speeds between **140 and 190 km/h** as they approach a left-hand bend in the road with a **70 km/h advisory sign**.<sup>8</sup>

26. As the vehicle enters that bend, the speedometer shows the vehicle travelling at about **160 km/h** as it **crosses the double white centre lines** into the opposing lane.

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<sup>5</sup> Exhibit – video disc

<sup>6</sup> Exhibit – video disc. This road is a section of the Princes Highway, Genoa at the 502 km post.

<sup>7</sup> Exhibit – video disc

<sup>8</sup> Exhibit – video disc

27. As the vehicle continues on the incorrect side of the road it approaches a right-hand bend. An oncoming VW camper van containing two occupants is forced to take evasive action to avoid a collision. The accused's vehicle also moves to the left and almost off the bitumen surface. [REDACTED] can be heard saying; 'Go, Go, Go, Go, Go' and shortly afterwards, 'Keep going, keep going.'<sup>9</sup> (***Charge one – Reckless conduct endangering life***)
28. The fifth video is time stamped 1:26:32 pm and shows the accused driving the vehicle and [REDACTED] in the front passenger seat. The speedometer shows speeds between **190 and 200 km/h**. [REDACTED] can be heard saying, 'Go, Go, Go, Go, Get better.'<sup>10</sup>
29. These locations have been mapped.<sup>11</sup>

***Other road users:***

30. A number of witnesses observed the accused travelling at excessively high speed and overtaking in an unsafe manner prior to the collision. The first of these witnesses observed the vehicle in the Genoa area, some 110 kilometres from the collision scene, with further witnesses observing similar driving behaviours at various locations along the Princes Highway through to the collision scene.
31. At about 1.15 pm on 14 September 2018:
- a. Patricia WHITFORD was travelling east on the Princes Highway, east of Genoa, and observed the accused travelling towards her at high speed, partially in her lane. She had to take action to avoid a collision;<sup>12</sup>
  - b. Michael VARE was travelling east on the Princes Highway, north of Genoa, and observed the accused travelling towards him at high speed which he estimated to be 'at least 160 kilometres an hour, he wasn't

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<sup>9</sup> Exhibit – video disc

<sup>10</sup> Exhibit – video disc. This road is a section of the Princes Highway at Wingan River.

<sup>11</sup> Exhibit 5 – map

<sup>12</sup> Pages 72-73

*backing off at all.*<sup>13</sup> He was travelling with Danielle BONNER who describes the accused travelling towards them along the Princes Highway *‘at high speed’*.<sup>14</sup>

32. Ragnhild REES was travelling west on the Princes Highway, west of Genoa, and was overtaken twice by the accused who was travelling at high speed. She estimates the speed of the Commodore to be 140 - 150 km/h on both occasions. *(The accused must have been stationary for some time – possibly with the interlock device shutting down the vehicle – to enable the accused to pass her twice).*<sup>15</sup> Stuart REES was a passenger in this car and describes the speed as, *‘at least 140 kph’* the first time and *‘... at huge speed’* the second time.<sup>16</sup>

33. At about 1.30 pm, Geoffrey MAYER was driving a semi-trailer west along the Princes Highway when he was overtaken by the accused. He states *‘... the Holden has crossed double lines and was going fast, I was going about 95 kilometres an hour and he would have been going at least 135 kilometres an hour and accelerating. The Holden was going so quick it was floating around on the road.’* (Coincides with the third video). MAYER was concerned enough about the driving of the vehicle he called ‘000’ to report it to police. A short time later he passed the accused, who was stationary on the side of the road, before again being passed by the accused at high speed.<sup>17</sup>

34. Peter DONOVAN was driving a concrete truck west on the Prince Highway when he was passed by the accused and states, *‘I think he was doing in excess of 140 kms as there was dust and soot flying up from the rear of the car and passed me like I was standing still and just flew out of sight.’* A short time later DONOVAN passed the accused who was stopped on the side of the road. As he was coming into Cann River, DONOVAN was again passed by the accused at high speed and

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<sup>13</sup> Page 75

<sup>14</sup> Page 78

<sup>15</sup> Pages 80-81

<sup>16</sup> Pages 83-84

<sup>17</sup> Pages 87-88

states, *'I've just hit the 60 kms zone going into Cann River, doing 60 kms an hour and this guy has passed me again, I reckon he was doing double my speed.'*<sup>18</sup>

35. Leonard and Jill KEEN were towing their caravan in west along the Princes Highway at Club Terrace, Victoria when they were overtaken by the accused vehicle at high speed and over double white centre lines as they approached a blind right-hand bend. This was captured on a dash camera.<sup>19</sup>

36. Leonard KEEN states: *'I then became aware of (the accused) travelling at speed as it performed an overtaking manoeuvre of my car... In my opinion, the (accused) was travelling in excess of the speed limit.'*

37. *When I came up over the ridge, I could not see the wagon at all on the next visible section of road, which confirmed my opinion the wagon was travelling at high speed. I thought to myself this driver was going to kill somebody on the road. Moments before this driver overtaking us, a group of motorbikes had gone past us travelling north. Jill and I then mentioned how lucky it was no motorbikes were oncoming when they overtook us.'*<sup>20</sup>

38. Jill KEEN states, *'I think that it must have been about twenty minutes out of Cann River I heard Len say 'you bloody moron' or words to that effect. At the same time I saw a station wagon fly past us ... (the accused) had overtaken us on double lines and a left hand blind sweeping bend. I thought that the driving was extremely dangerous to do what he did. I couldn't believe that someone could drive like that. It was really stupid.'*

39. *I made comment to Len that it was lucky that no motorcyclists were coming in the other direction when he over took ... I would say that the station wagon was driving at well over 100 kph. Len usually sits on around 90 kph. I lost sight of the vehicle very quickly so it must have been travelling very fast.'*

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<sup>18</sup> Pages 90-91

<sup>19</sup> Exhibit – video disc. This road is a section of the Princes Highway at Club Terrace.

<sup>20</sup> Pages 95-96



40. *I saw a P plate in the top rear left window, but I couldn't say if it was green or red. I remember that we said, 'bloody P plate driver' or something like that.*<sup>21</sup>

41. Shane DOUGLAS was travelling west along the Princes Highway at Bellbird Creek when he observed (the accused) coming up behind him with its hazard lights going and states, *'As we were going up the hill there was a blind corner to our left, I couldn't see if there were any cars coming in the opposite direction. As we were half way up the hill the (accused) crossed to the incorrect side of the road and overtook me, I couldn't believe someone would overtake where he did. It was extremely dangerous.'*<sup>22</sup>

42. Braeden ROSS was travelling west along the Princes Highway, near Sydenham Inlet Road, when he was overtaken by the accused and states, *'I was doing 90-100 at this stage and he pulled away from me really quickly, he had to be doing up near 140.'*<sup>23</sup>

43. Kyle DENNIS was the front seat passenger in the vehicle driven by ROSS. He states, *'It got back into our lane and I watched it pull away on the straight for about 5 seconds where it disappeared around a right-hand bend. To get away from us and take off at that speed, he must have been doing 140 – 150 km/h.'*<sup>24</sup>

44. Jeanette McNAMARA was travelling west along the Princes Highway, Cabbage Tree Creek, when she was overtaken by the accused. She states, *'This station wagon flew past us, when I say flew, I mean it was travelling very fast.'*<sup>25</sup> Geoffrey McNAMARA was the front seat passenger in the vehicle driven by Jeanette McNAMARA and states, *'As we passed the Cabbage Tree Creek General Store a car passed us. ... This station wagon was going really fast. From*

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<sup>21</sup> Pages 98-99

<sup>22</sup> Page 114

<sup>23</sup> Page 115

<sup>24</sup> Page 119

<sup>25</sup> Page 124

*my experience of driving and having cars pass us, I would estimate that this station wagon was going at least 50 kph faster than us.*<sup>26</sup>

45. Steven WARD was travelling west along the Princes Highway, Cabbage Tree Creek when he was overtaken by the accused and states, *'It was just the speed it was travelling at, it was not even like it was a controlled overtake that the driver was even thinking of taking a car at a time, it was more like just go for it. ... My estimated speed that it overtook us was around 110 to 120. I know I was doing the 80 and as this car went past it was gone.'*<sup>27</sup>

46. Lucie WARD was a front seat passenger in the vehicle driven by Steven WARD and states, *'It was a windy road so it was not safe to pass. Steven was doing the 80 speed limit and at that time I heard a noise coming from behind us like a loud engine acceleration noise like when you put your foot down too hard. I then looked over my right shoulder and I saw (the accused) ... was going much faster than our car, perhaps 120-130 km/h and it was blowing exhaust fumes into the air. I was blown away by what I was seeing and remember saying to Steven that this guy was an idiot and would kill someone else.'*<sup>28</sup>

47. Edith ACHESON was travelling west along the Princes Highway, Cabbage Tree Creek, when she was overtaken by the accused, and states, *'The car overtook us right near the area of the General Store in Cabbage Tree Creek. As the car came past us it shocked me and I had an instant consideration about where I would go if I had to get out of the way of an oncoming vehicle. The car was travelling a lot faster than us and I know we were travelling at the speed limit of 80km/h. The area in which the car passed us was a very dangerous place to overtake.'*<sup>29</sup>

48. Malcolm ACHESON was the front seat passenger and states, *'Not long after entering the 80 km/hr speed zone we were overtaken by (the accused) ... I believe we were doing about 80 km/hr and I estimate the Commodore was doing around 130 km/hr when it over took us. I said to Pru, 'That guy must be doing 130.' She*

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<sup>26</sup> Page 129

<sup>27</sup> Page 133

<sup>28</sup> Pages 139-140

<sup>29</sup> Page 143

*said something like I hope we don't see him further up the road smashed up. Once the Commodore overtook us it did not appear to slow down at all and it disappeared from sight pretty quickly.'*<sup>30</sup>

49. John GIBBS was travelling west along the Princes Highway, Cabbage Tree Creek when he was overtaken by the accused and states, *'As we neared the bottom of Mount Raymond on the eastern side I noticed (the accused)... coming up behind, he was obviously travelling at considerable speed as he was gaining on me. I was probably just over 100km/h coming up to the hill.*

50. *There was something about his driving that put me on edge. ... I could see him coming for the last kilometre, he caught up with me just at the start of the passing lane at the bottom of Mount Raymond. I was happy to get into the passing lane to let him go. I watched him all the way up the hill, he was doing about 130km/h. There was something aggressive about his driving he wasn't smooth. He seemed very eager to get past me.'*<sup>31</sup>

51. Scott and Kathryn FULTON were participating in the Wall to Wall Remembrance Ride, on Scott's Triumph motorcycle, and were travelling east along the Princes Highway at Club Terrace. Scott states, *'My attention was immediately drawn to (the accused) ... which was travelling in a westerly direction towards me at an extremely fast rate of speed. As the (accused) got closer to me I noticed that it had its hazard lights operating and the vehicle was fitted with green P plates. ... As the (accused) got closer to me it began to slowly veer toward the centre of the road, the (accused) almost clipped the centre white line before drifting back to the centre of it lane. For a split second I thought he was going to cross onto the incorrect side of the road.'*<sup>32</sup>

52. Kathryn states, *'As we were getting closer to Cann River on the Princes Highway we came around a left hand bend and there was old green station wagon with its*

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<sup>30</sup> Page 146

<sup>31</sup> Page 152

<sup>32</sup> Pages 102-103

*hazard lights on which appeared to be close to the centre of the road coming towards us and appeared to be travelling fast.*<sup>33</sup>

53. Leslie BROOK was also participating in the Wall to Wall Remembrance Ride and was travelling just behind the FULTONs and states, *'I recall seeing two oncoming vehicles, then a big gap to a third vehicle with possibly a fourth, larger vehicle, behind that. As the distance between me and the first of the oncoming vehicle closed up, I noticed that the third vehicle was closing on the first two like they were standing still. This concerned me enough that I moved over to the left side of my lane and concentrated on what that third vehicle was doing. I think it was about this time that I realised that the hazard lights were flashing on it as it got closer.*

54. *As the first two cars passed me they made the normal sort of sound that you hear as you pass a car on the highway, a bit of wind noise but nothing out of the ordinary. As the third car, a sort of faded green coloured, older model Commodore station wagon passed me, it made a really loud whooshing noise, a similar noise to the first two, but like on steroids - it was 'flying'. If I was to take a guess, I reckon he would have been doing somewhere between 130-160 based on how rapidly he was closing in on the other cars, and the sound as he went past.*<sup>34</sup>

55. Paul CARIDI was participating in the Wall to Wall Remembrance Ride and observed an oncoming Holden Commodore and states, *'The commodore heading westerly was turning right coming around a sweeping right bend and was tracking close to the left of its own lane. The section of road had 2 lanes, 1 x heading west and 1 x heading east. I noted that the commodore was hugging the left marked line throughout the turn and appeared to be travelling at a high speed. The commodore had considerable body sway to the left and when it straightened off the corner it moved to the right side of its own lane in a sudden*

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<sup>33</sup> Page 105

<sup>34</sup> Page 108

*movement. This caused me to conduct a head check and move to the left of my lane to create distance between us as he passed me.*<sup>35</sup>

56. Tony GIANOTTI was participating in the Wall to Wall Remembrance Ride and observed an oncoming vehicle attempting to overtake another vehicle and states, *'I don't know what sort of car this was, as what drew my attention was another car behind it, which was trying to overtake it. I saw it try to overtake it twice in a matter of seconds. It went out to overtake over the double lines, swerved back in, went out again and then swerved back in. Half of the car would have been across the double lines both times.*<sup>36</sup>

57. David CAIRNS was participating in the Wall to Wall Remembrance Ride and was riding east along the Princes Highway, Cabbage Tree Creek, and states, *'It was travelling at what appeared to be a faster speed than he was capable of taking the left-hand bend and he appeared to move out onto the incorrect side of the road. I immediately backed off my speed and saw him correct his line from the double lines and move back onto his side of the road across the broken lines.*<sup>37</sup>

58. Simon WOOD was driving from Melbourne to Mallacoota, with his partner and son, and stopped for a break at the Murrungowar Picnic Ground in Cabbage Tree Creek and states, *'While we were standing there, I heard the engine noise of a car coming up the hill from my left. As the car came into view, I could see it was a green VT or VX model Commodore station wagon and the engine was screaming. I would describe it as like being at a car race with just one car, it was just really loud. My uncle helped develop the engine used in that model Commodore and I drove a similar car for years, the engine is noticeably loud at high RPM. As it passed me, I got a glimpse of the driver but can't describe them. Based on the way it sounded, and on how fast it looked to be going, I would estimate that it was*

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<sup>35</sup> Page 149

<sup>36</sup> Page 158

<sup>37</sup> Pages 161-162

*travelling at least 160-170 Km/h around the left hand bend, in the middle of the road, over the white lines and ripple strips.*<sup>38</sup>

***The collision:***

59. Petra YAGER was travelling east along the Princes Highway, Cabbage Tree Creek when she was passed by an oncoming vehicle and states, *'As I was watching to my left to go into the left lane, Paul said, 'Look at this fucking idiot, he's going to cause an accident', or something along those lines. I saw a dark flash go past, I couldn't comment on the speed or what kind a car it was. I believe it was going a lot more than the speed limit though.*<sup>39</sup>

60. Paul BROWNING was a front seat passenger in the vehicle driven by Petra YAGER and states, *'I saw (the accused) ... heading in the opposite direction. It was travelling very fast towards the corner and my first thoughts were I don't think he is going to make it around the corner and I hope he stays in his lane. I am not an expert but I have been driving for 25 years and estimate his speed at 130 kilometres an hour. I was in the passenger seat and as the car went past I turned around and saw the car swerve and the rear move out. I saw a big cloud of dust and thought he would be in trouble, so I got Petra to turn around to see if the car had crashed as I was pretty much certain he had crashed due to his speed and spray of dust.*<sup>40</sup>

61. Wayne REYNOLDS is a Detective Leading Senior Constable of Police currently performing duties at the Major Collision Investigation Unit. REYNOLDS was off duty and participating in the Wall to Wall Remembrance Ride and was riding east along the Princes Highway, Cabbage Tree Creek, when he observed the accused travelling towards him and states, *'At approximately this time, whilst approximately mid-way through the sweeping left curve, I observed a green Holden Commodore station wagon travelling in the opposite direction at a very*

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<sup>38</sup> Page 169

<sup>39</sup> Page 173

<sup>40</sup> Page 177

*fast rate of speed. The Commodore was approximately 50-60 metres from me and I observed it to be straddling the double white lines which separated the east and westbound lanes with approximately half to three quarters of the Commodore within the oncoming right eastbound lane. I estimated the speed of this vehicle at this point to be 140-145 km/h. I moved slightly to my left, still within the right lane as the Commodore continued to approach me at a very fast rate of speed. I observed a green P plate displayed on the windscreen of the Commodore and observed it veer sharply and suddenly to the left, toward the correct side of the road for it. I continued to observe the Commodore as it approached and then pass me still travelling at a very fast rate of speed. I observed the Commodore in my right side mirror after it passed me and I observed that it had commenced loss of control. The rear of the Commodore began to rotate clockwise as the vehicle overcorrected from the sharp left movement whilst attempting to negotiate the sweeping right bend applicable for it. The rear of the Commodore continued to rotate in a clockwise direction, the left rear wheel travelled onto the southern gravel shoulder, the vehicle then slid sideways across the westbound lane still at speed, and toward the eastbound lanes.’<sup>41</sup>*

62. REYNOLDS turned around, as he believed a collision had occurred, and travelled west along the Princes Highway to the collision scene and in part states, ‘*I parked ... on the southern gravel shoulder approximately 30 metres east of Tower Road and ran down toward the collision scene to assist. There were other vehicles which had also stopped by this stage and as I approached Tower Road I observed the body of a male person lying face up in a small culvert on the southern side of Princes Highway. There were approximately three or four persons attending to this person.*

63. *I attended at the Commodore ... As I reached the rear of this vehicle I observed (the accused) alighting from the driver window of the Commodore ... he was bleeding from a laceration at the back of his head and his behaviour was quite aggressive and erratic.’<sup>42</sup>*

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<sup>41</sup> Page 187

<sup>42</sup> Pages 188-189

64. Tyler REYNOLDS is the son of Wayne REYNOLDS and was riding with him, slightly to his left and slightly behind him, and states (after the collision), *'I could see that dad was at the Commodore with the driver who was shirtless and was highly agitated. He was showing signs of aggression towards the vehicle and punching the rear passenger side of the car and windscreen. He was swearing but I couldn't really make out what he was saying.'*<sup>43</sup>

65. Glenda HOBDEN was participating in the Wall to Wall Remembrance Ride and states, *'All of a sudden I saw a dark green Commodore station-wagon approaching from the opposite direction. It was travelling at an excessive speed. The speed limit there was 100km/h and I would put the speed of the Commodore conservatively at 130km/h. When the Commodore approached it appeared under control but was just going real fast. When it got to about 40-50 metres in front of me, the Commodore was already in the bend also. The back of the Commodore then drifted off the road and into the gravel.'*<sup>44</sup>

66. Felix KOSTIUK is a Detective Senior Constable of Police. On the 14<sup>th</sup> of September 2018, he was off duty and participating in the Wall to Wall Remembrance Ride with his father (the deceased) and was riding east along the Princes Highway, Cabbage Tree Creek, when he observed a green Commodore station wagon travelling towards him and states, *'As we approached this bend, a car appeared all of a sudden in front of me. It was in the bend, travelling towards us. It appeared to be out of control, I had seen a puff of what looked like dust come from the rear left wheel of the car. The rear of the car appeared to have been off the road and on the gravel shoulder on the south side of the road. The rear of the car was skidding and had lost traction. I could hear the sound of tyres skidding and I could see tyre smoke, the rear left of the car was rotating towards us faster than the front. Within milliseconds, the front lost control as well, and the car was coming towards us, almost on a 45 degree angle. The car was a green Holden Commodore wagon with P plates displayed on the front.'*

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<sup>43</sup> Page 198

<sup>44</sup> Pages 202-203



67. *I took evasive action and swerved to my left, hugging the north shoulder of the road. I saw dad's brake lights come on and him swerve to the right ... it appeared as though the car was going to pass between us. He was in the eastbound overtaking lane, I was heading in the direction of the front left corner of the car in the left lane, dad was in the process of crossing to the westbound lane to avoid the car. Compared with the previous westbound traffic passing us, this car was coming towards us at a far greater speed than those other cars.*

68. *As the car was about 5-10 metres away from us, it suddenly spun and rotated approximately 180 degrees clockwise, heading back across to the westbound lane. As it did this, I heard dad say 'Fuck, fuck fuck', and I saw him impact the front right corner of the car. I heard a loud smash, saw glass and metal fly everywhere, and I saw dad get ejected from the bike, over the front of the car. He was cartwheeling vertically. I distinctly remember his arms flailing in the air.*

69. *After the car hit dad, the back of it kept rotating, and slid past me to a stop in the westbound lane, facing south west, partially off the road to the south side. Dad kept flying through the air and landed face down in a ditch on the southern side of the road, directly under the street sign for Tower Rd.<sup>45</sup> (**Charge two – Reckless conduct endangering life, Charge three – Culpable driving causing death (s.318(2)(a))**)*

70. Felix KOSTIUK stopped his motorcycle, tended to his father and called '000'. As he was preparing to start CPR on his father, the accused approached him. The accused was bleeding from his right temple and looked angry. Felix KOSTIUK said, 'What the fuck did you do?' The accused clenched his fists and walked towards Felix KOSTIUK and said, 'Excuse me cunt?' Felix KOSTIUK said, 'You killed my fucking dad'.<sup>46</sup>

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<sup>45</sup> Pages 213-214

<sup>46</sup> Page 215

***Aftermath:***

71. KOSTIUK's motorcycle sustained major impact damage, with the front suspension forks and head stem being partially detached from the chassis of the motorcycle. KOSTIUK was ejected from his motorcycle, over the vehicle, before coming to rest in a small table drain on the southern side of the road, near the intersection with Tower Road. KOSTIUK suffered life threatening injuries and was treated at the scene by witnesses and paramedics for about one hour before being declared deceased.<sup>47</sup>
72. A post mortem examination was conducted by Doctor Matthew Joseph LYNCH, from the Victorian Institute of Forensic Medicine, who determined KOSTIUK's cause of death as '*Injuries sustained in motor vehicle collision (motorcyclist)*'.<sup>48</sup>
73. The accused suffered relatively minor injuries. [REDACTED] was uninjured.

***Scene of collision:***

74. The Princes Highway, Cabbage Tree Creek, was a two-way, east-west single carriageway with a moderate downhill gradient for vehicles travelling west. The road was bitumen and in good condition. There was provision for one lane of traffic to travel west and for two lanes to travel generally east. The opposing lanes are separated by double white lines with tactile strips. The two eastbound lanes, one being an overtaking lane, were separated by a broken white line. Solid white tactile fog lines define the outer edges of the carriageway.
75. The maximum speed limit is 100 km/h (each way). At the time of the collision it was daylight, the road surface was dry, the weather was fine and visibility was good.

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<sup>47</sup> Exhibit – photographs of scene

<sup>48</sup> Page 655

**Reconstruction:**

76. Police experts attended the scene that day.

77. Detective Leading Senior Constable HARDIMAN provided a report in regards to his findings, stating:

*‘...it is my opinion that the Holden station wagon was travelling in a westerly direction on the Princes Highway, Cabbage Tree Creek, at approximately 2.18 pm on the 14<sup>th</sup> of September 2018. The driver has input a right steering manoeuvre, causing the vehicle to yaw to the right, rotating in a clockwise direction. The Holden has been out of control for a minimum of approximately 153 metres prior to impacting the BMW motorcycle (whilst essentially travelling backwards) with the driver’s side door and front driver’s side quarter panel. The area of impact between the Holden and the motorcycle was identified by gouge and fluid marks, located approximately 0.4 metres into the west bound lane of the Princes Highway, opposite the intersection with Tower Road. The rider has been thrown from the motorcycle onto the southern gravel area next to the intersection of Tower Road and the Princes Highway. The Holden came to rest approximately 43 metres to the west of the area of Impact. The motorcycle came to rest approximately 8 metres west of the area of impact.*

78. *At the commencement of the visible tyre mark, the Holden was in a yaw, caused by the right steering input by the driver, and was travelling at a minimum of 131 km/h. The vehicle has yawed whilst rotating in a clockwise direction, before transitioning into a spinning skid. Post impact, the Holden has rotated in an anticlockwise direction before coming to rest. At impact the motorcycle was travelling at approximately 91 km/h.’<sup>49</sup>*

79. KOSTIUK’s motorcycle was travelling at about 91 km/h before the collision.

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<sup>49</sup> Page 363

***Immediately before the collision:***

80. Immediately before the collision the accused was straddling double white lines. He was confronted by two motorcycles travelling in the right hand eastbound lane (Wayne and Tyler Reynolds) having just overtaken a slower moving car. The accused steered hard (to his) left to avoid a collision with these motorcyclists and travelled onto the southern shoulder where he input a hard right hand steering manoeuvre (Hardiman) causing him to lose traction and control and for the vehicle to commence to rotate in a clockwise direction. The vehicle continued to rotate as it travelled west and into the right hand eastbound lane.

81. KOSTIUK and his son Felix were travelling east and were forced to take evasive action, but KOSTIUK struck the driver side front door, guard and suspension of the vehicle driven by the accused. At the point of impact, the Commodore had rotated in excess of one hundred and eighty degrees and was effectively travelling backwards and still rotating.

***Arrest:***

82. The accused was arrested at the scene by an off duty police member and was conveyed to the Bairnsdale Hospital for treatment.

83. At 6:00 pm that day a blood sample was drawn from the accused. This blood sample was analysed and found to contain:<sup>50</sup>

*Not less than 0.015 grams of alcohol per 100 millilitres of blood.*

*Methylamphetamine* ~ 0.06 mg/L

*Diazepam* ~ 0.47 mg/L

*Nordiazepam* ~ 0.40 mg/L

*Temazepam* ~ 0.02 mg/L

*Oxazepam* ~ 0.03 mg/L

*Citalopram* ~ 0.08 mg/L

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<sup>50</sup> Pages 295-296, 649-650

***The Investigation:***

84. The accused was released from the Bairnsdale Hospital that night and conveyed to the Bairnsdale Police Station to be interviewed. A Forensic Medical Officer (FMO) examined the accused who was '*not fit for interview*' until the following day.
85. On Saturday 15 September 2018, an FMO deemed the accused '*fit for interview*' in the presence of an independent third person. The accused consulted a legal practitioner for advice and spoke to his father prior to the interview commencing. He made some admissions. During the interview he stated that he:<sup>51</sup>
- a. Drove to Merrimbula on Thursday, stayed at a mate's place and had one hour's sleep;
  - b. Received a phone call to advise him his partner had gone into early labour;
  - c. Stopped at Eden to try to borrow money for petrol;
  - d. Smoked ICE at Eden at about 10:00 am and it had no effect on him;
  - e. Consumed beer at around the same time to celebrate the birth of his son;
  - f. Allowed [REDACTED] to drive the vehicle and got him to blow into the Interlock Device;
  - g. Blew into the Interlock Device at Kiah and returned a zero result;
  - h. Stuck to the speed limit all the way;
  - i. Had overtaken multiple vehicles over double white lines;
  - j. Recalled seeing a number of motorcycles on his journey;
  - k. Had travelled at 140 Km/h;
  - l. Was travelling at about 140 Km/h when he lost control of the vehicle;
  - m. Was the driver of the vehicle at the time of the collision;
  - n. Advised police he had returned a positive result to a road side drug test in Carrum Downs (Victoria) about two weeks ago (Confirmed as being 4 September 2018); and
  - o. Took two or three "Valium" tablets on the morning of the collision.

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<sup>51</sup> Page 387

86. Doctor Sunjeev GAYA has provided an opinion which states;

*‘Mr Reid was driving after having used alcohol, methylamphetamine and benzodiazepines probably in the form of diazepam.*

*At the time of the collision, the accused had a total body alcohol content (absorbed and unabsorbed) equivalent to a BAC range of 0.052 % and 0.088 %. The actual BAC while driving may have been lower than this range if there was still an amount of alcohol unabsorbed in the stomach which had not yet contributed to the BAC. Any such difference cannot be calculated on the basis of the information available.*

*It is not possible to determine the dose or timing of methylamphetamine or diazepam use from the blood analysis results alone.*

*The methylamphetamine level that was found was in the range of levels found in large numbers of people driving under the influence of drugs. Furthermore, witnessed observations of Mr. Reid's driving before the crash strongly correlates with experiential findings of driving while stimulated by methylamphetamine. His observed demeanour after the crash is also in keeping with clinical observations of individuals under the influence of a stimulant drug like methylamphetamine.*

*The concentration of diazepam, and its respective metabolites were at therapeutic levels.*

*Finally, alcohol, methylamphetamine, diazepam and its metabolites were present at levels where in combination would have further degraded the skills required to drive and Mr. Reid's driving would have been impaired.*

*Based on my specialised knowledge and the above interpretation, I am of the opinion that Mr. Reid's driving ability was impaired by the detected*

*drugs at the time of the index collision. Mr. Reid would have been incapable of having proper control of a motor vehicle.*<sup>52</sup>

***Offences:***

87. Charge one is reckless conduct endangering life in relation to the unidentified passengers in the VW camper van visible in video four.

88. Charge two is reckless conduct endangering life in relation to Wayne REYNOLDS, Tyler REYNOLDS and Felix KOSTIUK.

89. The maximum penalty for charges one and two is 10 years' imprisonment.

90. Charge three is culpable driving causing death on the basis of s.318(2)(a) '*A person drives a motor vehicle culpably if he drives the motor vehicle (a) recklessly, that is to say, if he consciously and unjustifiably disregards a substantial risk that the death of another person or the infliction of grievous bodily harm upon another person may result from his driving*'.

91. The maximum penalty for charge three is 20 years' imprisonment.

***Ancillary matters:***

92. **Pre-sentence detention:** The accused has been in custody since 14 September 2018. Pursuant to s.18 of the Sentencing Act 1991, the court should declare pre-sentence detention which is calculated at 334 days up to but not including the date of the plea (14 August 2019).

93. **Sentencing Act 1991:** The Court is reminded of:

- a. Its obligations pursuant to s.6AAA of the Sentencing Act 1991;
- b. S.89 of the Sentencing Act 1991 mandates the cancellation of the prisoner's licence and disqualification from driving for a minimum of two years; and

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<sup>52</sup> Page 305

c. Charge three is a '*standard sentence offence*'.<sup>53</sup>

94. Further, the prosecution submits that the sentencing Court should also make a finding under S.89C that the offence of culpable driving causing death was committed under the influence of alcohol and drugs which contributed to the offence.

95. **Disposal/Forfeiture/Compensation:** TBA

96. **Victim impact statements:** TBA

97. **The guilty plea:** The accused offered to plead guilty pre-committal. Accordingly, the prosecution accepts that this was an early plea offer.

98. **Criminal history:** The accused has a relevant criminal history.

99. **464ZF sample:** An oral application will be made on the plea date.

Neill Hutton

Plea prosecutor

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<sup>53</sup> S.318(1A) Sentencing Act 1991. The standard sentence for this offence is 8 years. R v Brown [2018] VSC 742