

The killing of Elijah Doughty: oil patch at crime scene fades but stain remains

A man has been cleared of manslaughter over the 14-year-old's death as Indigenous children live on with the same burden of suspicion and racial tension



The patch of oil marking where the Nissan Navara came to rest, looking back across Gribble Creek Reserve toward Clancy Street and a tree that had been set up as a memorial to Elijah Doughty. Photograph: Calla Wahlquist for the Guardian

Calla Wahlquist in Perth
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Three days after Indigenous teenager Elijah Doughty was killed, another Aboriginal boy stands with his grandfather next to a pool of oil on a dirt track.

“You see that?” his grandfather asks. “Tell me what happened here.”

“A kid got killed,” replies the boy. He was about 12 years old and softly spoken, his eyes fixed on the red clay.

“That’s right,” his grandfather says. Sending his grandson away with a half-hug, the man looks up. “I don’t know whether Elijah stole the motorbike,” he says. “But in this town it’s an important lesson.”



Elijah Doughty, 14, who was found dead in bushland near Kalgoorlie, Western Australia, in August 2016.

The town is Kalgoorlie-Boulder, about 600km east of Perth; a town known for its historic facade, superpit gold mine, sex workers, and the racial tensions that have always existed between Indigenous and non-Indigenous residents.

The pool of oil is boxed in by white spray paint left by the crash scene investigators. It marks the wheel positions of a two-tonne white Nissan Navara 4WD ute, which came to rest there just before 9am on 29 August 2016.

The trail of oil runs in a straight line down, between two clear tyre tracks, across the muddy ditch of Gribble Creek and back up a slight rise to another dirt track, where a patch of darker clay marks the point where Elijah and the motorbike he was riding went tumbling underneath the 4WD.

That track curves sharply left, running parallel with the creek. The 4WD did not, instead striking out a 45-degree angle from the track with enough force to gouge out the creek bed.



An aerial map of the Gribble Creek reserve in Western Australia where Elijah Doughty died. Photograph: Supreme Court of Western Australia.

Three days earlier, when police and paramedics arrived at the scene, driving over crucial tyre tracks that may have showed what happened in the metres before the crash, they found evidence of its aftermath strung out in a neat line.

The first bit of motorcycle was found 4.5 metres from the point of impact. It was in three main pieces with smaller bits of wreckage covering the ground like discarded wrapping paper.

Elijah lay 9.5m from the motorcycle. . When Constable Djordje Kandic arrived just after 9am, a man was kneeling over the boy trying to administer CPR. It was no use. The impact had been no kinder to him than it had to the motorcycle. His spinal cord was severed at the base of his brain, killing him instantly. He was 14.

Thirty-four metres from where the man knelt with Elijah sat the Nissan Navara, the driver's door open from where the man had got out and run back toward the victim. The only sign of damage were two black tyre marks on the front bumper and the punctured oil pan.

The tracks showed no sign of heavy braking. It was "all over in five seconds," he told police. "I couldn't stop ... I have gone over the top of him."

The next day the man was charged with manslaughter, and the town blew up.

A protest outside the courthouse turned into a riot, with rocks thrown through windows and police cars damaged. The accused man was moved to a jail in Perth, his family fled interstate, and the house they had lived in burned down.

At the supreme court in Perth on Friday, the man was cleared of manslaughter but found guilty of dangerous driving causing death.

He was sentenced to three years' jail and will be eligible for parole, which, because he has already served 11 months, could be as early as January. His identity is still suppressed, a condition the court imposed for his own protection. He has spent the past 11 months in a protected area of an unnamed jail, separated from other prisoners.

The jury, which was not all-white but had no Indigenous members, reached the majority verdict after six-and-a-half hours.

Elijah was not the first Aboriginal boy in Kalgoorlie to be chased, motorcycle-versus-high-powered-4WD, by a white man who believed the bike to be stolen.

Elijah's own two bikes, bought off his grandfather, were taken away by police weeks before the crash because they too believed they were stolen. They were returned after his death.

"If they hadn't have taken them, would he have been riding a stolen bike?" grandfather Albert Doughty said.

Family and friends of the popular young footballer set up a memorial at the crash site and camped there for four weeks after his death, until his funeral.



Albert Doughty, the grandfather of Elijah Doughty outside the supreme court in Perth. Photograph: Richard Wainwright/AAP

"Kids been always getting chased here," a woman at the campsite told Guardian Australia, four days after Elijah's death.

Social media posts on the now-deleted "Kalgoorlie crimes whinge and whine" Facebook page recommended people resort to vigilante justice to get their property back, saying police were unable to stem the tide of thefts.

“We don’t encourage calling the police any more,” a post in January 2015 said. “We encourage our stronger members or members who have several males in the house to sort it out themselves.”

Asked if he had ever been chased, one of Elijah’s friends, who was visiting the memorial, shrugged. “We all have,” he said. “He been chased packs of times, the same way. But he had a slow motorbike [on the morning he died]. It wasn’t that fast and the gears stuffed up on him and that man was right behind him.”

The motorcycle was a red 70cc Zhejiang, referred to by the man who hit him as the little Chinese bike.

It was one of two bikes stolen from the man’s house in Boulder the night before. He told police in an interview recorded at the Kalgoorlie police station seven hours after the crash that he was concerned about getting back the red Honda 50 motorcycle that had been stolen at the same time and held sentimental value for his wife. His wife posted the theft on the Kalgoorlie crimes whinge and whine page that night asking for information.

The Honda 50 wasn’t running. One of the police officers who attended his house about 8.30pm on Sunday 28 August, recommended he look for it under the low-lying scrub at Gribble Creek reserve, saying it was a “dumping ground” for stolen bikes.

That’s what the man was looking for, he told police, when he rolled along a dirt track from North Terrace to Clancy Street, saw the little red Chinese bike entering the reserve from Clancy Street, and took off after it.

He had called in sick to deal with the forensics crew who were due at his house that morning to dust the shipping container where the motorcycles were stored for prints.

CCTV taken from security cameras on a house at the end of Clancy Street shows the moment the 4WD took off after the motorcycle. Another camera has footage of a few seconds later, showing the motorcycle travelling at an average speed of 46km/h while the 4WD was travelling at 67km/h, gaining on the bike at a rate of 5.6m a second.



Albert Doughty places a toy motorbike at the memorial for his grandson, Elijah Doughty. Photograph: Calla Wahlquist for the Guardian

“Why did you chase the bike Elijah was on if it was of no sentimental value?” detective Natalie Davis asked.

“The bikes went missing together,” the man said. “The person might know where the Honda 50 was.”

Davis told court the Honda 50 was located later that day. It had been under scrub at the Gribble Creek reserve, just as that police officer suggested. It is marked on a crash scene diagram drawn by Senior Constable Richard Buchanan as being found about 20m away from point of where Elijah and the little red bike tumbled under the car.

The man told police he never intended to hit the person on the motorcycle, that his adrenaline was pumping, and that his guiding thought was “that must be my bike”. He said he assumed the rider would continue on the track as it curved to the south, headed for the prison, and never allowed for it to change course. He acknowledged he was “really close” to him and that “in hindsight” his driving was unsafe.

“Normal circumstances I would not be driving like that but then again normal circumstances I would not be trying to catch up with a motorbike that I know, I think, is mine, and hoping that the rider would go into the bush and fall off,” he said.

“I was not fishtailing, I was not out of control, but I was close to the motorbike in the car and when he veered into me I could not stop. I would say at that stage that wasn’t safe.”

He said he never thought the turbo diesel Navara would overpower the motorbike, an argument state prosecutor David Davidson dismissed.

“This bike was no mystery bike,” Davidson said. “His boy or boys used it. He knew its capabilities.”

At the end of the police interview, his patience frayed, the man suggested detectives question the officer who told him to look at Gribble Creek reserve in the first place.

“Tell him: what was your intention in telling me to go down there and look for it?” he said.

“I’m not blaming anyone ... I just wanted my kids’ motorbike. It was in a locked container in our yard with two dogs with it.

“I didn’t steal the car I was in, I didn’t do a criminal act, except now I am being charged with a criminal act.

“I am a family man. I work for my family. This is the third time we have had motorbikes stolen ... I don’t think my kids will ever have a motorbike again if that’s what’s inviting people into our life to steal and take from my kids, it’s not worth it.”

He said the incident had harmed his family, too.

“If I am released from here tomorrow, on bail or whatever, I’ll go straight to the real estate agent, put the for-sale sign up, because our life here is finished,” he said. “We came here for a good future. We didn’t come here for this. We didn’t come here to have motorbikes stolen, padlocks broken.”

There is nothing unlawful about trying to get your gear back.

Seamus Rafferty, defence lawyer

The man’s lawyer, Seamus Rafferty, said he wasn’t doing anything unlawful by driving on the dirt track in the reserve or by chasing the motorcycle, saying: “There is nothing unlawful about trying to get your gear back.”

He said the prosecution “overstated” the parlous condition of the dirt track but conceded his client was too close, which is why he had pleaded guilty to dangerous driving occasioning death, the less serious alternative charge, at the earliest opportunity.

“If this had of been the flattest, most perfect piece of bitumen, the perfect driving surface, it would still have been too close, because it was too close to react,” he said. “Forget the track, forget the speed, which was not excessive, the issue here is the proximity.”

Davidson argued that in all the circumstances, given the speed they were travelling at, the surface of the track, the close proximity, and the difference in size and power between the 4WD and the motorcycle, the man’s driving was criminally negligent.

That would be the highest possible level of negligence, chief justice Wayne Martin explained to the jury; conduct that showed “such a disregard for the life and safety of others ... as to amount to a crime against the state.”

Sending out the jury to deliver its verdict at 12.37pm on Thursday, Martin said that in order to find the man guilty of manslaughter, they had to find he had been criminally negligent.

They did not.

In the hour between the jury being sent to deliberate over tea and sandwiches and the chief justice returning to court to answer their first question, glass safety barriers had been placed between the public gallery and the courtroom proper.

Asked why the extra security was necessary, a guard said: “The nature of the public gallery.”

The gallery erupted at the verdict, but not with violence. Elijah’s mother, Petrina James, cried in anguish before leaving the court. Others called the man in the dock a murderer, with one saying: “[You] are going to get raped in jail.”

Outside the Kalgoorlie courthouse, where the trial had been live-streamed for family and friends unable to make the 600km journey to Perth, a protest began marching along Hannan Street.

They had never really trusted that the colonial justice system – which locked up their children in Western Australia at a rate 53 times that of non-Indigenous children – would give them justice.

An Aboriginal man involved in the riot outside the Kalgoorlie courthouse last year was last month sentenced to 12 months' jail, with parole, for being involved in a "riotous assembly". If he does not get parole there is the possibility he could be released after the man who killed Elijah.

The decision to charge Elijah's killer with manslaughter not murder was viewed as a failure of police, despite there being no apparent evidence of murderous intent. Swarms of officers in high-vis jackets outside the Perth and Kalgoorlie courthouses did not shift the perception that the police were not on the extended family's side.

Handing down the dangerous-driving sentence on Friday, Martin said the man was of "previously good character", though he added that people of previously good character could do terrible things.

He said he would not be affected or influenced by protesting or riots, or as he put it, the "ill-informed lawlessness" of an "unidentified group".

Elijah's closest family members, who did not take part in the last year's riot, sat quietly as the judge laid out the technical reasons why the crime that killed Elijah was on the "medium to lower" end of the scale, and why the accused man was owed a 25% discount off the length of his sentence for pleading guilty to dangerous driving causing death, despite it not being the offence with which he was charged, at the earliest opportunity.

Afterward they walked away, arm in arm. Others could yell. Here there was only grief.