



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

I, Andrew McKee, Coroner, having investigated the death of Roy Waldren Trevor Ferguson

Find, pursuant to Section 28(1) of the Coroners Act 1995, that:

- a) The identity of the deceased is Roy Waldren Trevor Ferguson;
- b) Mr Ferguson died as a result of injuries sustained in a motor vehicle collision on Tasman Highway, Nunamara;
- c) The cause of death was multiple trauma; and
- d) Mr Ferguson died on 5 May 2019 at Nunamara in Tasmania.

In making the above findings I have had regard to the evidence gained in the comprehensive investigation into Mr Ferguson's death. That evidence is comprised of the following:

- The opinion of the pathologist who conducted the autopsy;
- Relevant police and witness statements and affidavits;
- A crash investigation report and an affidavit sworn by Senior Constable M Rybka, a crash scene investigator;
- An affidavit of Mr C Perkins, a transport inspector employed by the Department of State Growth;
- An affidavit of Mr W Rice, a safety and compliance officer, employed by the National Heavy Vehicle Regulator;
- Forensic evidence; and
- Toxicology reports prepared by Forensic Science Service Tasmania.

Mr Ferguson was born in Edmonton, Alberta, Canada on 19 March 1976. He was the eldest of three children. He attended a number of different schools as his family lived in a number of different locations. He attended college and studied to become a chef. He worked as a chef at various locations throughout Canada. He enjoyed moose hunting and was an avid fisherman.

He met his future wife, Heather Ferguson, in 2011, whilst she was residing in Canada on a working visa. They became engaged in 2012. When her visa expired Mrs Ferguson returned to Queensland. Mr Ferguson then travelled to Australia. They married in 2013. They did not have any children.

The couple resided in Queensland, before relocating to Tasmania in August 2016. The rationale for the move was to move to a climate similar to Canada.

They resided in their campervan for a period of time. Mr Ferguson obtained employment as a chef in Launceston. In Easter of 2019, they purchased a home in Mayfield, Tasmania. The couple had a number of plans in relation to improving their property.

Circumstances Surrounding the Death

A consideration of the sworn affidavits obtained from various witnesses during the coronial investigation enables me to make the following findings regarding the movements and activities of Mr Ferguson on the day of his death, and the manner of Mr Ferguson's and Mr Wylie's driving shortly prior to the collision.

On 5 May 2019, Mr and Mrs Ferguson awoke and spoke to her parents on Skype for about an hour. They decided to go grocery shopping, but before they left Mr Ferguson changed his mind and decided to go to a pub and watch a UFC fight on Foxtel. Mrs Ferguson left to do the shopping and when she returned at around 1pm, Mr Ferguson had left in their campervan. At 3.30pm, Mrs Ferguson was doing some online banking and noticed a payment to a campground situated at Myrtle Park. She telephoned her husband asking what he was doing at Myrtle Park. She told him to come home as he would be too cold overnight. Mrs Ferguson had no idea what Mr Ferguson was doing out at Myrtle Park. She described his decision to travel out there without telling her as "out of character". At 5.30pm, Mr Ferguson telephoned his wife to say he was on the way home and she asked him if he had been drinking and he stated that he had not. Between 3.30pm and 5.30pm Mr and Mrs Ferguson had communicated with each other by text message.

The Collision

At 6.00pm Mr Ferguson's campervan was sighted by Mr Christopher Westbrook driving on the Tasman Highway towards Launceston. Mr Westbrook was driving behind the campervan. He observed the campervan to be driving on the incorrect side of the road. Mr Westbrook described the van as "just driving normally but travelling west in the eastbound lane."

Mr Westbrook was concerned the campervan would be involved in a head-on collision and flashed his head lights to get the attention of Mr Ferguson. He flashed his headlights on two separate occasions in an attempt to attract Mr Ferguson's attention. Despite the efforts of Mr Westbrook he was unable to attract Mr Ferguson's attention and Mr Ferguson continued to drive on the incorrect side of the roadway. Mr Westbrook estimates the campervan was travelling at approximately 90km/h. Mr Westbrook allowed the distance between his vehicle

and the campervan to increase as he was concerned the campervan would be involved in a head-on collision. He was concerned that his vehicle could potentially become involved in a collision. Mr Westbrook continued to follow the campervan. He then observed what he described as “an explosion as the van rounded a bend.” He did not observe the campervan to apply its brakes prior to the collision.

Mr Westbrook stopped his vehicle at the site of the collision. He approached the campervan and formed the view that Mr Ferguson was deceased given the nature of the injuries Mr Westbrook observed. Mr Westbrook provided support to the driver of the prime mover until police arrived at the scene. Another member of the public contacted emergency services.

Mr Wylie was driving a Kenworth prime mover towing a drake dolly and low loader on the Tasman Highway. Approximately half a kilometre before the Mount Barrow turn off he was travelling along a straight section of road approaching a sweeping left hand curve. He estimates the truck was travelling at about 100 km an hour. As it was dark he had his headlights on high beam. Mr Wylie observed the headlights of an oncoming vehicle as it came over the crest of the hill. He dipped his headlights and reduced his speed as he approached the corner. At the commencement of the corner there are guard rails on both sides of the roadway.

At the commencement of the guard rail on the corner Mr Wylie realised that the approaching vehicle was entirely within his lane. He estimates the distance between the prime mover and the campervan was approximately 50 to 100 m when he realised it was in the incorrect lane.

Mr Wylie cannot recall if he immediately applied the brakes when he observed the campervan. Both vehicles collided head on. The campervan was pushed along the roadway before it came to rest on the driver side of the prime mover. Mr Wylie did not suffer any physical injuries in the collision.

Condition of the Vehicles Prior to the Collision

The campervan was examined after the collision by Mr Perkins, a transport inspector employed by the Department of State Growth. I am satisfied that Mr Perkins is qualified to provide an opinion as to the roadworthiness of the vehicle he inspected. Mr Perkins reached the conclusion that the campervan would have been classified as unroadworthy due to a right-hand rear tail light not being operational. Despite this defect his investigation revealed a well-maintained vehicle and in his opinion the defect did not cause or contribute to the collision. The prime mover, drake dolly and low loader were examined after the collision by Mr W Rice, a safety and compliance officer employed by the National Heavy Vehicle Regulator. I am satisfied that Mr Rice is qualified to provide an opinion as to the roadworthiness of the prime

mover, drake dolly and low loader. The prime mover, drake dolly and the low loader trailer were in the opinion of Mr Rice in an unroadworthy condition.

Mr Rice in his affidavit outlines the defects that he noted which led him to forming that opinion. He expressed the opinion that the defects noted by him did not cause or contribute to the collision. I accept Mr Rice's opinion.

Crash Investigation

A thorough investigation of the collision was conducted by Senior Constable Michal Rybka.

Mrs Ferguson swore an affidavit as part of the coronial investigation. In that affidavit she stated that she had travelled thousands of kilometres with Mr Ferguson. She described him as an extremely careful driver who did not speed. She has observed him "pull out of places and drive a very short distance on the right hand side of the road, like he forgets and reverts back to being in Canada. It was normally only for a very short time and he would realise what he was doing and cross back onto the left side of the road."

Senior Constable Rybka was satisfied that there was no evidence to suggest that either vehicle was speeding at the time of the collision. Neither the prevailing weather conditions nor the road surface were contributing factors in the collision.

Crash reconstruction indicates that the prime mover being driven by Mr Wylie was travelling north on a 1.67 km long straight section of roadway with an open view to a slight left hand curve at an estimated speed of 100 km an hour. The prime mover had its high beam headlights on with no other traffic on the roadway. There was no street lighting in the area and it was a dark night. The Toyota Hiace campervan was travelling south completely on the incorrect side of the roadway (in the northbound lane). The campervan has come to a crest on the road and begun a slight hill descent, still on the incorrect side of the roadway. The campervan had its headlights on, and, aside from being completely on the incorrect side of the roadway, was driving normally at an estimated speed of 90 km an hour.

Mr Wylie has seen the headlights of the campervan come over the crest in the distance ahead of him. He slowed the truck to an estimated speed of 90 km an hour and dipped his headlights. Mr Ferguson was in an extreme state of alcoholic intoxication. He has not reacted in any way, continuing to drive in the incorrect traffic lane towards the prime mover at a constant speed of approximately 90 km an hour. As the prime mover has entered the slight left hand curve guarded by armco railing on both sides of the roadway Mr Wylie has realised that the campervan was on his side of the roadway. Mr Wylie steered the truck as far left as he could, but he had nowhere to go due to the armco railing.

The campervan has then impacted head on with the front of the prime mover. Both vehicles were positioned in near-perfect centre alignment at the time of impact. Mr Ferguson's head and entire body has impacted heavily with the front of the prime mover. He was killed instantly. A distance of 56 m post impact, Mr Wylie has applied harsh emergency braking, causing the prime mover to skid for a distance of 33.9 m to a final rest. From the time of impact, the campervan was connected to the front of the prime mover and it was pushed rearwards for a total distance of 89.9 m to final rest. Prior to stopping, the campervan had rotated clockwise approximately 170°. Its final rest position was facing north, with its passenger-side resting parallel against the driver side of the prime mover.

Based on Senior Constable Rybka's crash investigation report I find that Mr Wylie did not cause or contribute in any way to the collision.

Post-Mortem Examination and Toxicology Report

A post-mortem examination was undertaken by Dr Terry Brain.

Dr Brain opined that Mr Ferguson died as a consequence of multiple trauma. I accept his opinion as to the cause of Mr Ferguson's death.

Toxicology testing of samples obtained at autopsy revealed the presence of alcohol in Mr Ferguson's cavity blood at a level of 0.348 g/100mL and his vitreous humour at a level of 0.399g/100mL.

The author of that report noted that a blood alcohol concentration of 0.348 g/100 mL would significantly impair driving performance to the point of being unable to properly control a motor vehicle. It has been estimated that the relative risk of a driver with a blood alcohol concentration of 0.18 g/100 mL being involved in a crash is approximately 50 times that of a driver with nil blood alcohol. It is therefore expected that a blood alcohol concentration higher than this would be associated with an even greater relative risk of crash involvement.

The author of the report further noted that when alcohol is used by drivers, there are delayed and impaired reactions to driving situations which are caused by the depression of psychomotor and cognitive function. There is also increased risk-taking and increased speed.

Based on the toxicology report I am satisfied that Mr Ferguson was affected by alcohol and that his ability to safely control a motor vehicle and respond in an emergency situation was significantly impaired.

A sample of Mr Wylie's blood was taken for analysis after the collision. The sample was analysed. No alcohol or drugs were detected in his blood.

In summary I am satisfied that Mr Ferguson, as a result of being significantly affected by alcohol has driven his campervan on the incorrect side of the roadway for a reasonable distance, despite the best efforts of Mr Westbrook to alert him to this fact, and has then collided head on with a prime mover being driven by Mr Wylie.

Findings, Comments and Recommendations

I have decided not to hold a public inquest into this death because my investigation has been sufficient to disclose the identity of the deceased, the date, place, and cause of death, relevant circumstances concerning how death occurred, and the particulars needed to register Mr Ferguson's death under the *Births, Deaths and Marriages Registration Act 1999*. I do not consider that the holding of a public inquest would elicit any significant information further to that disclosed by the investigation conducted by me. The circumstances of the death do not require me to make any recommendations.

I wish to comment that this collision would not have occurred had Mr Ferguson not made the decision to drive a motor vehicle whilst significantly affected by alcohol. His ability to safely control a motor vehicle and respond appropriately in an emergency situation was compromised. He posed a significant risk to himself and other persons lawfully using the roadway.

I note that members of the public were exposed to the aftermath of the collision when they stopped to render assistance.

I further note that this is yet another collision, which could have been avoided, that exposed first responders, namely police officers and paramedics, to another fatal collision.

This case should serve as a reminder of the consequences that flow from an individual's decision to drive a motor vehicle when significantly affected by alcohol.

I convey my sincere condolences to Mr Ferguson's family and loved ones.

Dated 29 April 2020 at Hobart in the State of Tasmania.

Andrew McKee
Coroner