



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 Blake John McCarthy

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

- a) The identity of the deceased is Blake John McCarthy;
- b) Mr McCarthy died as a result of a traumatic closed head injury sustained in a collision between a motorcycle ridden by himself and a motor vehicle;
- c) Mr McCarthy's cause of death was a traumatic closed head injury; and
- d) Mr McCarthy died on 24 April 2018 at Hobart, Tasmania.

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

- a) An opinion of the forensic pathologist who conducted the post-mortem examination;
- b) The Police Report of Death for the Coroner;
- c) A crash investigation report and affidavit sworn by Senior Constable K Cordwell, a crash scene investigator;
- d) An affidavit of Senior Constable A Hall, a crash scene investigator;
- e) A toxicology report prepared by Forensic Science Services Tasmania;
- f) An affidavit of Mr P Wells, a transport inspector employed by the Department of State Growth;
- g) Relevant police, family and witness affidavits;
- h) Medical records and reports; and
- i) Forensic evidence.

Mr McCarthy was born at the Queen Alexandra hospital in Hobart on 22 September 1997. His parents separated when he was three years of age. He had five siblings from his mother's side of the family and a younger sister from his father's side of the family.

Mr McCarthy resided with his mother. He attended Sorell High School then went onto Montrose Bay High School. He did not complete his formal education.

Mr McCarthy had two children from a relationship with Ms R Jones.

Mr McCarthy was involved in the criminal justice system. He had a number of prior convictions for various offences. He had been sentenced to actual terms of imprisonment.

Relevant to this finding is the fact Mr McCarthy had prior convictions for the following offences:

- a) Exceeding the applicable speed limit x 10
- b) Using an unregistered vehicle x 5
- c) Novice Driver in learner stage driving without an accompanying person
- d) Drive whilst drivers licence suspended
- e) Drive a motor vehicle whilst a prescribed illicit drug is present in blood
- f) Reckless driving
- g) Overtake when unsafe to do so x 2
- h) Fail to have proper control of a vehicle
- i) Drive whilst not the holder of a driver's license x 4

It is clear from the above prior convictions that Mr McCarthy had little regard for traffic laws.

Mr McCarthy had also been charged with the following offences prior to his death:

- a) Selling a controlled drug
- b) Possessing a controlled drug
- c) Using a controlled drug
- d) Using a controlled plant or its product
- e) Driving whilst disqualified
- f) Dangerous driving
- g) Driver involved in a crash and failing to stop
- h) Evade police in aggravated circumstances

The above offences had not been heard and determined prior to his death and the prosecution section of Tasmania Police tendered no evidence in relations to those offences on 9 May 2018 and the complaints were dismissed.

At the date of his death Mr McCarthy was disqualified from holding or obtaining a drivers licence. He was unemployed and resided with his sister.

Circumstances Leading up to the Collision

I am unable to make any findings as to Mr McCarthy's activities on the day of his death as his sister (whom he resided with) stated to investigators that she was unaware of her brother's movements on the day of the collision.

Members of the public were interviewed after the collision. Mr McCarthy was not known to any of the persons interviewed. Those members of the public described the movements of a motorcycle rider, fitting the description of Mr McCarthy and described a motorcycle fitting the description of the motorcycle found at the scene of the collision. Having considered the sworn affidavits of those individuals and the comprehensive crash investigation report prepared by Senior Constable Cordwell I am satisfied on the balance of probabilities that the motorcycle rider described by the various witnesses in their sworn affidavits was Mr McCarthy. Based on the affidavits of the various witnesses I am able to make the following findings regarding Mr McCarthy's movement prior to the collision.

Mr McCarthy was first observed near the intersection of Derwent Park Road and Gormanston Road around 6.10pm by Mr E Bluhdorn. Mr Bluhdorn was travelling on Derwent Park Road when Mr McCarthy collided with his blue Skoda. Mr McCarthy did not stop after the collision and continued driving along Derwent Park Road.

Mr McCarthy was then sighted by Mr A Williams when Mr McCarthy nearly struck his vehicle near the Charles Street intersection. Mr Williams was unable to provide an estimate of the speed at which Mr McCarthy was driving other than to say he was "flying."

Mr McCarthy was next observed by Ms K Lowe when she was stationary at the intersection of Homer Avenue and Springfield Avenue. She was intending to turn right. The roadway was clear other than traffic at the Coleman Street Roundabout. Ms Lowe hesitated in commencing the right hand turn because she heard a loud revving noise close by. Mr McCarthy drove past her at high speed, which she estimated to be 80 km/h (the applicable speed limit on the roadway Mr McCarthy was travelling upon was 50 km/h). She noted that the motorcycle's headlight was not illuminated and that Mr McCarthy was wearing dark clothing.

Mr McCarthy was then observed by Mr S Goodwin as he drove along Clydesdale Avenue. Mr Goodwin states that he heard Mr McCarthy's bike before he saw it. He noted that the motorcycle's lights were not operating and that Mr McCarthy was wearing dark clothing. Mr Goodwin commented that Mr McCarthy was difficult to see. Mr Goodwin estimates that Mr McCarthy was travelling at a speed somewhere between 80 to 100km/h in a 50 km/h zone.

Mr McCarthy is then captured on CCTV footage. The CCTV footage depicts him in dark clothing and the lights on his motorcycle not operating. Mr McCarthy is observed riding north on Tolosa Street. He turns right onto Bowden Street. The time stamp on the CCTV footage records the time as 18.11.28. Mr McCarthy travels along Bowden Street before turning right into Elf Avenue. Mr McCarthy turns into Elf Avenue behind a vehicle turning left from Bowden Street. Mr McCarthy crosses to the incorrect side of Elf Avenue before he overtakes the vehicle as it travels along Elf Avenue.

The CCTV footage then depicts Mr McCarthy driving down the incorrect side of Elf Avenue before he stops outside of 52 Bowden Street. This residence is located on the corner of Elf Avenue and fronts onto Bowden Street. The CCTV footage then depicts four individuals on foot turning left from Bowden Street into Elf Avenue. There is an interaction between Mr McCarthy and the group. The CCTV footage does not enable me to make any finding as to the nature of the interaction between Mr McCarthy and the group of four men.

After the collision a substance believed to be methylamphetamine was located on Mr McCarthy's person. Based on the evidence before me I am unable to make any definitive finding as to whether Mr McCarthy was in possession of the substance believed to be methylamphetamine prior to speaking to the four males or obtained the substance believed to be methylamphetamine from one of the four males.

The Collision

Approximately one minute and 43 seconds later Mr McCarthy drives off from Elf Avenue, the CCTV footage depicts him executing a left-hand turn from Elf Avenue and failing to check his right before entering Bowden Street. Mr McCarthy then travels towards the roundabout located on Tolosa Street approximately 150 m from Elf Avenue. The timestamp on the CCTV footage at this stage is recorded as 18.13.27. Mr McCarthy approaches the intersection and turns left behind two white vehicles which had just travelled straight ahead through the roundabout on Tolosa Street (southbound). At 18.13.32 Mr McCarthy disappears from view as he travels up Tolosa Street towards Clydesdale Avenue.

Ms K Heron, who was driving one of the white vehicles mentioned above and depicted in the CCTV footage, first observed Mr McCarthy approaching her from the left-hand side as she went straight ahead through the first roundabout at the intersection of Bowden and Tolosa Streets. She believed for a moment that Mr McCarthy was going to strike the left-hand side of her car.

Mr McCarthy followed behind Ms Heron's vehicle on Tolosa Street. Ms Heron was driving behind a vehicle as she travelled up Tolosa Street. Mr McCarthy then overtook Ms Heron's vehicle and the vehicle in front of her, on the incorrect side of the roadway. She estimates that he was travelling at a speed between 70 and 80 km/h. After he completed the overtaking manoeuvre he continued to accelerate. Ms Heron noted that Mr McCarthy was wearing dark clothing and that the headlight of his motorcycle was not operating. Ms Heron lost sight of Mr McCarthy as his motorcycle disappeared around a bend.

The next person to observe Mr McCarthy was Mr F Bahnan. Mr Bahnan was travelling behind a number of vehicles on Tolosa Street heading towards the intersection with Clydesdale Avenue. Mr Bahnan observed Mr McCarthy overtake him on the driver's side of his vehicle.

Mr McCarthy crossed onto the incorrect side of the roadway. After overtaking Mr Bahnan's vehicle Mr McCarthy continued on the incorrect side of the roadway overtaking the vehicles in front of Mr Bahnan's vehicle.

As Mr McCarthy was in the process of returning to the correct side of the roadway he was involved in a collision with a Holden Astra being driven by Ms S Borsay. Mr Bahnan observed Mr McCarthy's motorcycle collide with the Astra driven by Ms Borsay. He witnessed Mr McCarthy travel over the Astra. During that process he observed Mr McCarthy's crash helmet dislodge from his head. When Mr McCarthy landed on the ground he was not wearing a helmet.

Ms Borsay had travelled along Clydesdale Avenue. She stopped at the intersection of Clydesdale Avenue and Tolosa Street. The intersection is controlled by a give way sign on Clydesdale Avenue. Ms Borsay gave way to a vehicle approaching from her left. She noted vehicles approaching on her left and right sides but formed the view that she had sufficient time to drive onto Tolosa Street. She commenced to turn onto Tolosa Street and collided with Mr McCarthy's motorcycle.

Ms Borsay's assertion that she had sufficient time to complete the manoeuvre onto Tolosa Street is supported by the observations of Mr Bahnan.

Ms C Mahon was driving down Tolosa Street and observed the collision between Ms Borsay's vehicle and what she initially thought was a wheelie bin. She then realised that the object travelling over Ms Borsay's bonnet was a person.

She immediately stopped to render assistance to Mr McCarthy. She noted that Mr McCarthy was not wearing a helmet. Mr Bahnan and Ms Heron also stopped to render assistance.

Emergency services were called and Mr McCarthy was transported to the Royal Hobart Hospital. He later died from injuries sustained in the collision.

Condition of Vehicles Prior to the Collision

Both vehicles were inspected after the collision by Mr P Wells, a transport inspector employed by the Department of State Growth. I am satisfied that he is properly qualified to express the opinions contained in the affidavits he swore in the coronial investigation. He expressed the opinion that the Holden Astra driven by Ms Borsay was in an un-roadworthy condition prior to the collision. The Holden Astra had non-compliant tyres fitted to the rear of the vehicle (the tyres fitted to the rear of the vehicle were below the minimum tread depth on both of their edges). Based on the evidence before me (namely the expert opinion of Senior Constable Cordwell) I am satisfied that the defect noted by Mr Wells did not cause or contribute to the collision.

As to the motorcycle being ridden by Mr McCarthy, Mr Wells formed the opinion that the motorcycle was in an un-roadworthy condition due to the following defects:

- a) Non-compliant rear braking system (not operating)
- b) Non-compliant rear indicators (after-market combination rear lighting fitted not compliant with vehicle standards)
- c) Non-compliant exhaust system (not compliant with vehicle standards)
- d) Non-compliant right side riders foot peg (after-market repair / modification)

Crash Investigation

A thorough investigation of the collision was conducted by Senior Constable Cordwell. Senior Constable Cordwell completed a comprehensive report for the coroner and swore an affidavit. Senior Constable Cordwell's investigation of the collision discloses the following facts:

- a) At the time of the collision Mr McCarthy was disqualified from holding or obtaining a driver's license as a result of committing a number of traffic offences.
- b) At the time of the collision the lights on Mr McCarthy's motorcycle were not operating.
- c) Mr McCarthy was wearing dark clothing and a combination of his dark clothing and his motorcycle lights not operating reduced his visibility to other road users.

- d) Prior to the collision Mr McCarthy was wearing a motorcycle helmet but the chin strap of the helmet was not secured and as a result the helmet dislodged from his head during the collision.
- e) Based on speed analysis from the crash scene, Senior Constable Cordwell formed the opinion that Ms Borsay had sufficient time to complete the manoeuvre of travelling from Clydesdale Avenue onto Tolosa Street had Mr McCarthy been travelling at 50 km/h in the correct lane.
- f) Toxicological testing of samples obtained from Mr McCarthy revealed the presence of methylamphetamine and THC in Mr McCarthy's blood.
- g) The motorcycle ridden by Mr McCarthy was unregistered.
- h) Road and weather conditions did not contribute to the collision.

A sample of Ms Borsay's blood was taken for analysis after the collision. No alcohol or significant drugs were detected in Ms Borsay's blood. Constable Cordwell formed the opinion that Ms Borsay did not cause or contribute to the collision and I accept her opinion.

Post-Mortem Examination and Toxicology Report

A post-mortem examination was undertaken by forensic pathologist Dr Donald Ritchey. Dr Ritchey opined that the cause of Mr McCarthy's death was traumatic closed head injury sustained in a motorcycle crash. I accept Dr Ritchey's opinion as to Mr McCarthy's cause of death.

Toxicology testing of samples obtained from Mr McCarthy at autopsy revealed the presence of cannabis and methylamphetamine. The author of that report noted that THC and methylamphetamine has a marked effect on driving ability. In particular the report noted that the presence of methylamphetamine may result in impairment of perception, cognitive function, memory and psychomotor function, subjective excitability, increased risk taking and poorer time estimation.

Given the observations of the various witnesses of Mr McCarthy's driving before the collision I am satisfied on the balance of probabilities that the presence of methylamphetamine in his blood affected his judgement when it came to risk taking and time estimation.

In summary Mr McCarthy had been driving at excessive speeds in dark coloured clothing on a motorcycle with the head and tail lights not operating, whilst an illicit drug was present in his blood. I accept Constable Cordwell's opinion that Mr McCarthy's driving behaviour had been the major contributing factor to the collision.

Comments and Recommendations

The circumstances of Mr McCarthy's death are not such as to require me to make recommendations pursuant to Section 28 of the *Coroners Act 1995*.

I wish to comment that this collision would not have occurred had Mr McCarthy not driven his motorcycle in the manner that he did on 24 April 2018.

It is yet another case where I note that members of the public who stopped to render assistance and first responders, namely police officers and paramedics were exposed to the aftermath of a fatal collision.

I convey my sincere condolences to the family and loved ones of Mr McCarthy.

Dated: 19 May 2020 at Hobart Coroners Court in the State of Tasmania.

Andrew McKee
Coroner