



MAGISTRATES COURT *of* TASMANIA
CORONIAL DIVISION



Record of Investigation into Death (without inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

I, Olivia McTaggart, Coroner, having investigated a death of Joshua Bernard Clarke

Find That:

- (a) The identity of the deceased is Joshua Bernard Clarke;
- (b) Mr Clarke died in the circumstances described in this finding;
- (c) Mr Clarke died as a result of multiple blunt injuries following a motor vehicle crash;
- (d) Mr Clarke died on 15 September 2013 at York Plains Road, Lemont;
- (e) Mr Clarke was born in Hobart on 24 February 1986 and was aged 27 years; he was a single man whose occupation was a motor mechanic; and
- (f) No other person contributed to Mr Clarke's death.

Background:

Joshua Bernard Clarke was born in Hobart on 24 February 1986. He was the youngest of four children. Mr Clarke was educated at St Bridgett's School (New Norfolk), Brighton Primary School, New Town High School, and Claremont College. In 2003 he commenced an apprenticeship as a motor mechanic at Jan 'N' Albies, at Moonah. He was twice awarded Tasmanian Apprentice of the Year. He completed his apprenticeship and was employed with Brighton Tyre and Auto, Eldersleigh Road, Brighton, where he continued to work up until the time of his death. Mr Clarke was described by many witnesses in this investigation as being an extremely talented motor mechanic.

Mr Clarke had been in a long-term relationship with Ms Angela Burke. They became engaged in Christmas 2011 and had set a wedding date for late 2013. However, the relationship deteriorated from about early 2012, with the pair separating in March 2013. Soon thereafter, Mr Clarke formed a relationship with Danica Francis Higgins; a relationship maintained as at the time of his death.

At the time of his death, Mr Clarke was living in a self-contained unit at the address of his sister, at 505 Back River Road, Magra. Ms Higgins was living with Mr Clarke at that address at the time of his death.

Mr Clarke also held an interest in motor vehicles. At the time of his death, he was the owner of a red 2007 Toyota Hilux extra-cab utility four-wheel-drive, registered number RUM247. He had purchased this vehicle in December 2012, and soon after carried out a number of “after-market” enhancements, including fitting a suspension kit and off-road tyres.

According to witnesses, the cost of the parts was approximately \$10,000. The actual work was carried out by Mr Clarke himself. There is no evidence to suggest there were any modifications to the motor or drive-train to increase the power of the vehicle.

The evidence indicates Mr Clarke drank alcohol regularly and that his consumption increased in the year before his death.

At the time of his death, Mr Clarke was the holder of a current Tasmanian driver’s licence, having obtained his driver’s licence in 2003. Witnesses describe Mr Clarke’s driving behaviour as “capable”, but with a propensity to not wear a seat belt, exceed the speed limit, and drive whilst intoxicated.

Records held by Tasmania Police show that Mr Clarke had his driver’s licence suspended twice over a 10 year period, due to his offending behaviour; once for an exceed 0.05 matter in 2004 and soon after getting his licence back, for accumulation of demerit points. Mr Clarke is recorded with seven prior convictions for traffic offences, predominantly speeding, over the 10 years he held a driver’s licence.

The evidence revealed that there appears to be nothing in Mr Clarke’s physical medical history that is relevant to his death. Mr Clarke was not known to be currently prescribed or taking any medications. However, Mr Clarke displayed depressive symptoms at times, including “dark moods” and an inability to sleep properly. His excessive consumption of alcohol at times may have contributed to such symptoms.

Circumstances Surrounding the Death:

On Saturday 14 September 2013, Mr Clarke, Ms Higgins, and Ms How (Ms Higgins’ niece) travelled together from Mr Clarke’s home address to Oatlands in Mr Clarke’s utility. The purpose of the journey was to watch the Oatlands District Football Association grand final. On the way, they collected Ms Higgins’ half-sister (Estha Burbury) from Brighton. They arrived at Oatlands around 10.30am. There the group made preparations for watching the football, including purchasing a carton of Pure Blonde beer and a carton of Mercury Cider, as well as collecting an old steel framed couch which was placed on the back of the utility for use when watching the game. The group then travelled to the Oatlands Recreation Ground where they met other family and associates and watched the game.

During the game, Mr Clarke and Ms Higgins, among others, consumed a moderate amount of alcohol. There is some evidence of minor friction between Mr Clarke and Ms Higgins during the game, but again this does not appear to have escalated to any significant degree.

Following the game, the group travelled to the Midlands Hotel at Oatlands. Ms Higgins and Ms How travelled as passengers in Mr Clarke's utility, driven by Mrs Tammi How (sister of Ms Higgins and mother of Ms How). Mr Clarke travelled as a passenger in another vehicle. Both of these vehicles were among vehicles intercepted and checked by police upon leaving the Oatlands Recreation Ground. Police made no adverse observations in respect to either vehicle or the occupants at that time, although Ms Higgins was noted to be somewhat intoxicated.

The group then spent a period of approximately three hours at the Midlands Hotel, where they consumed an amount of alcohol. Ms Higgins stated that she was considerably intoxicated by this stage. As such, she has a sketchy recollection of events thereafter, although she is adamant that whilst at the hotel the situation between her and Mr Clarke was much improved, with no animosity between them. This is supported by Ms How.

Police officers attended the Midlands Hotel during the evening and noted that it was well patronised, with the crowd being well behaved although somewhat noisy. At that time, police observed Mr Clarke's utility parked at the hotel. The police officers then left to attend the Mt Pleasant football grounds, approximately 20km away. They were at that location at about 8.00pm when they were called to a report of a crash. Numerous police officers, ambulance and fire service personnel responded. However, no crash was discovered.

Upon police returning to Oatlands at approximately 9.30pm, the Midlands Hotel was observed to have less than 10 customers in the bar. Police officers drove to the Mt Pleasant football grounds at approximately 11.00pm, where a number of vehicles were observed parked, including Mr Clarke's utility. Ms Higgins and Ms How both stated that Mr Clarke had driven his vehicle from the Midlands Hotel to the football grounds, with this having occurred during the period police were absent from the area in search of the (non-existent) crash. Both Ms Higgins and Ms How stated that in their opinion, Mr Clarke was intoxicated and would have been "over the limit" when he drove his vehicle at this time. However, they both stated that the journey was uneventful and Mr Clarke displayed control over the vehicle.

Subsequent investigations have established that the call reporting the crash on the Midland Highway at about 8.00pm was from the mobile phone owned by Mr Clarke. Whilst a recording of that call shows that the call was made by a male person, witnesses to whom the call has been played state that the voice of the caller was not that of Mr Clarke. The identity of the caller has not been identified at this time. It is of course quite possible that Mr Clarke made this call, but I need to make no finding on this point.

At the football grounds, Ms How states that around midnight Mr Clarke and Ms Higgins began to argue again. Mr Clarke made a decision that he would leave the venue.

Ms How described Mr Clarke leaving the clubrooms and walking past her, saying of Ms Higgins, "God she's giving me the shits tonight" and soon afterwards, "I'm going home. I'm sick of her", before walking toward his vehicle. Ms Higgins then approached Ms How and the pair had a brief conversation, before approaching the vehicle together. There they observed Mr Clarke to be sitting in the driver's seat of his vehicle. Ms Higgins' recollection of these events is very vague due to her level of intoxication, but is not in significant contradiction to that of Ms How.

Ms How attempted to discourage Mr Clarke from driving by speaking to him and then removing the car keys from the ignition. She also described Ms Higgins removing various belongings from the vehicle, including her swag. At this stage, Ms How walked away still with the keys in her possession. According to Ms How, a moment later she heard Mr Clarke's vehicle start, and immediately returned to it. She then grabbed her swag from the rear and went to the driver's side of the car. She observed that Mr Clarke was in the driver's seat and there was a single key in the ignition. She states that she "...cracked it with him, opened the driver's door and said something to the effect of: 'If you're going to be an idiot then go for it. I hope you get caught'" and threw the keys back into the car at him. He responded with, "nice knowing you" as he shut the door and then began to reverse out. Ms How states that she and Ms Higgins then walked back to join the other partygoers.

Ms Higgins provides a version consistent with that of Ms How. I accept their account. It would appear that no other person saw or heard this argument or witnessed the departure of Mr Clarke from the venue. There is no precise time known for his departure from the venue, but the best estimate is that it was after midnight.

Neville Charles Barwick was the holder of the liquor licence applicable to the venue at the time relevant to this matter. The licence allowed for operation of the bar between 5.00pm and 12.00am on the night of this event. Mr Barwick worked behind the bar on the night and states that he operated the bar in accordance with those operating hours. He also states that he knew Mr Clarke by name and sight, and is adamant that he did not (himself) purchase liquor from the bar on 14 September 2013. Similarly, an employee of the hotel recalls Ms Higgins purchasing beer, but not Mr Clarke. I make no criticism of Mr Barwick or staff of the bar.

The Crash:

About 6.30am Sunday, Clinton Palmer was travelling east on York Plains Road, on his way to work at a property at Lemont. At that time, he discovered a red Toyota Hilux extra-cab utility, registered number RUM247, on the southern side of York Plains Rd, just after a significant right-hand bend. This section of the roadway is soon after York Plains Road changes from bitumen to gravel, being approximately 14km east of the Midland Highway junction with York Plains Road. The vehicle was on its roof, perpendicular to the roadway with its bonnet resting on a fence and the rear nearest the road. He noted that there was frost on the tyres of the upturned vehicle. He then found the body of a male person unknown to him lying on the grass verge of the roadway

roughly parallel to the roadway and half-way between the road and the rear of the utility. Mr Palmer checked the body for signs of life, but found none. He also searched the surrounding area, but found no other person. Mr Palmer contacted "000" to report the accident. He covered the body with a swag and awaited the arrival of emergency services.

Members of Tasmania Police, Ambulance Tasmania, and SES attended from Oatlands, and subsequently crash investigation officers attended. The scene was secured and it was also established that the vehicle was registered to "Joshua Bernard Clarke of 32 William Street, Brighton". There was also identification on the male in the name of Joshua Bernard Clarke.

Mr Clarke was examined by police and Dr Jennifer Jackson, who was among the crew of the ambulance. Dr Jackson pronounced life extinct at 7.35am.

Police contacted Mr Clarke's family and formal identification occurred. Mr Clarke was conveyed to Hobart for autopsy.

Following examination of the scene, the vehicle owned by Mr Clarke was taken by tow truck to the Hobart Police Garage.

Constable Paul Hyland from Forensic Services conducted an examination of the scene. This included the taking of a number of photographs, assisting in the taking of several measurements for the subsequent preparation of a sketch of the scene, and taking possession of items located at the scene deemed relevant. Constable Kelly Cordwell of Crash Investigation Services also attended.

The following are the key points from the scene examination and analysis conducted by Constable Hyland and Constable Cordwell:

- The scene was on a rural gravel road;
- Recent tyre tracks in the gravel, which travelled through the bend and led to the southern (incorrect) side of the roadway, where the edge had been disturbed;
- The four tyre marks varied in length between 25.3m and 54.6m in length;
- There were striation marks throughout the tyre marks, consistent with the vehicle being in "yaw" at the time;
- There were four areas of impact in the ground consistent with the vehicle having rolled several times before coming to rest;
- There were disturbed patches of grass and dirt, as well as vehicle debris in the area between the edge of the road and the vehicle;
- Mr Clarke was cold to the touch;
- The body of Mr Clarke was observed to have – among other injuries – minor bruising to both legs
- The weather was fine and dry at the time;

- The road was wide enough to accommodate passing vehicles travelling in opposite directions, though there was a build-up of loose gravel at the edges of the roadway;
- The scene was on the eastern side of a blind bend in the road;
- A red Toyota Hilux utility, registered number RUM247, was on its roof and upon an embankment on the southern side of the road;
- The body of a deceased adult male was present on the grass verge, behind the utility and closer to the road;
- An old three seater couch was in the area between the edge of the road and vehicle;
- Red paint marks were noted on the jeans of both thighs;
- Red paint transfer was noted on the rear right of Mr Clarke's hoodie;
- The "drag factor" for the road was within normal range for a loosely packed gravel surface;
- The vehicle suffered extensive damage to its body, with only the tailgate and right rear panel being undamaged;
- Neither the passenger or driver's air bag were deployed;
- There was no evidence to indicate that the passenger or driver's seat belt had been worn at the time of the crash (i.e. they were undamaged);
- The speed of the vehicle at the time of the crash was calculated to be 67km/h;
- The "critical curve speed" for the bend at the scene was calculated to be 76km/h;
- Mr Clarke was not travelling at a speed excessive for the corner at the time of the crash;
- A possible reason for the loss of control may have been being excessive steering input by Mr Clarke as he negotiated the corner; and
- The modified suspension of the vehicle would affect the vehicle's centre of gravity and ultimately the way the vehicle handled through corners.

I accept the above evidence and conclusions.

On Monday 16 September 2013, Constable Hyland attended the Hobart Police Garage, where he conducted a closer examination of the vehicle. This included a fingerprint examination and a closer visual examination around its doors, roof and tray. As a result of these investigations he concluded there was no reason to suspect another person was in the vehicle at the time of the crash. This accords with the evidence and I find that Mr Clarke was alone in the vehicle.

On 16 September 2013, a forensic examination was conducted on Mr Clarke's mobile telephone located at the scene of the crash. The results of that examination were subsequently provided to investigating police for further examination and analysis.

This examination showed that no calls were made or received after the call at 8.00pm to the police number. There were texts identified between Mr Clarke and Ms Higgins that were mostly loving in nature. There was no indication of suicidal intent from the content of Mr Clarke's text messages.

Samples of Mr Clarke's blood and urine were taken at autopsy for subsequent toxicological analysis at Forensic Science Services Tasmania ("FSST"). This test identified the presence of caffeine, nicotine/cotinine and alcohol.

The blood alcohol concentration was determined as being 0.243g/100mL. According to Miriam Connor of FSST, this concentration "...would significantly impair driving performance to the point of being unable to properly control a motor vehicle...[with]...the relative risk of a driver with a blood alcohol concentration...[at this level]...being involved in an accident is...[more than]...50 times that of a driver with nil alcohol".

Dr Donald Ritchey, the forensic pathologist conducting the autopsy, stated:

"The cause of death of this 27 year old man, Joshua Bernard Clarke, was multiple blunt traumatic injuries sustained in a motor vehicle crash.

Mr Clarke's body was found deceased between the roadway and his car that had apparently rolled several times. The autopsy revealed a well-developed, well-nourished adult Caucasian man with severe traumatic injuries including a basal skull fracture and copious haemo-aspiration into the lungs. There was marked mediastinal haematoma. It is my opinion that these injuries were rapidly if not near instantaneously fatal. Partly I believe that because there was a basal skull fracture but no significant bleeding or visible injury in the brain which typically evolve over several minutes after injury. That evidence, along with the absence of injuries to suggest the wearing of a seat belt, suggests to me that he was thrown from the vehicle rather than climbed from it after the crash."

I accept Dr Ritchey's conclusions as to cause of death.

Paul Wells, a Transport inspector, conducted an examination of Mr Clarke's vehicle. He determined the vehicle to have been in an unroadworthy condition due to non-compliant ride height due to a combination of wheel, tyre and suspension modifications; and he noted that each modification on its own would be compliant, but when combined, the vehicle became noncompliant. I accept his opinion.

Despite questioning of many witnesses, no evidence has been identified as to where Mr Clarke was travelling to at the time of the crash. Possible destinations include Andover, Ross and Little Swanport - being the residences of family and friends. Further, it is possible that he had no destination in mind at the time; rather he was driving as a means of getting away and clearing his head, as appears to have been a pattern of behaviour in the past.

Similarly, there is no evidence to suggest that Mr Clarke was inclined to take his own life. Rather, Ms Burke describes Mr Clarke as a person who did not abide by the notion of suicide.

Conclusion:

Upon considering the considerable evidence gathered during the course of the investigation, I am satisfied that the death of Mr Clarke involved no suspicious circumstances or any other person. I find that he lost control of his vehicle on the gravel road while at a relatively low speed. Not wearing a seatbelt, it appears that he was thrown from the vehicle as it rolled.

Mr Clarke left the football grounds following a dispute with his girlfriend, in an intoxicated state, and against the advice of others. Efforts were made by others to prevent or discourage him leaving at that time.

I find that the contributing factors in this crash, and thus Mr Clarke's death, are as follows:

- Driving with a blood alcohol level in the vicinity of five times the legal limit;
- Not wearing his seatbelt;
- Being in an emotional state having argued with his girlfriend, Ms Higgins;
- Driving a vehicle upon which he had personally carried out a number of modifications, which in combination rendered the vehicle unroadworthy.

Comments and Recommendations:

The death of Mr Clarke at such a young age, and in circumstances that were preventable, represents a tragic loss of life. In particular, Mr Clarke's death emphasises the high risk of loss of vehicle control when the driver is intoxicated, and the increased risk of injury and death when a seatbelt is not worn.

The circumstances of Mr Clarke's death do not require me to make any comments or recommendations pursuant to section 28 of the *Coroners Act 1995*.

I am most grateful to Sergeant Robert King for his thorough investigation and report.

In concluding, I convey my sincere condolences to Mr Clarke's family and loved ones.

DATED: 16 June 2015 at Hobart in the State of Tasmania

Olivia McTaggart
CORONER