



# MAGISTRATES COURT *of* TASMANIA

## CORONIAL DIVISION

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### **Record of Investigation into Death (Without Inquest)**

*Coroners Act 1995*

*Coroners Rules 2006*

*Rule 11*

I, Robert Webster, Coroner, having investigated the death of Phillip Leslie Gurr

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

- a) The identity of the deceased is Phillip Leslie Gurr (Mr Gurr)
- b) Mr Gurr died as a result of injuries sustained in a motor vehicle crash;
- c) The cause of Mr Gurr's death was acute severe trauma in keeping with a motor vehicle crash; and
- d) Mr Gurr died on 13 February 2020 on the Bass Highway at Sassafras in Tasmania.

#### **Introduction**

In making the above findings I have had regard to the evidence gained in the comprehensive investigation into Mr Gurr's death. That evidence includes:

- Tasmania Police Report of Death for the Coroner;
- Affidavits confirming identity and life extinct;
- Affidavit of the forensic pathologist Dr Terry Brain;
- Affidavit of Mr Neil McLachlan – Troup, forensic scientist, of Forensic Science Service Tasmania;
- Affidavit of Mr Alan Fitzpatrick;
- Ambulance Tasmania (AT) electronic patient care record;
- Affidavit of Ms Trudi Dixon;
- Affidavit of Ms Kim Slater;
- Affidavit of Ms Elizabeth Virieux;
- Affidavit of Mr Ryan Johnson-Davis;
- Affidavit of Mr James Newman;

- Affidavit of Ms Alison Broadby;
- Affidavit of Ms Christine Broadby;
- Affidavit of Mr Michael Kay;
- Affidavit of Mr Troy Layton;
- Affidavit of Constable Natasha Daniels;
- Affidavit of Senior Constable Sven Mason;
- Affidavit of Constable Lindsay Needham;
- Forensic and photographic evidence; and
- Survey of the scene of the crash.

This investigation concerns a 2 vehicle head on collision which occurred on the Bass Highway at Sassafras, approximately 340 m east of its intersection with Smith and Others Road. The crash occurred at approximately 5:25pm on 13 February 2020. The weather was fine and clear and the roadway was dry.

The Bass Highway at this point is governed by a 110 km/h speed limit. The highway generally runs in an east/west direction however this section is in a north/south direction. The bitumen surface was in good condition. Road markings consisted of painted audible edge lines and double continuous white audible centrelines. All lines were clear and visible.

The eastbound lane measured 3.3 m wide and to its left was a sealed shoulder of 1.2 m and then a gravel verge which was 0.9 m wide. The westbound lane measured 3.7 m wide and to its left was a sealed shoulder of 1.2 m and a gravel verge which was 1.1 m wide. Travelling east towards the scene of the crash the highway traverses a slight uphill gradient whereas the gradient is downhill in the opposite direction. The coefficient of friction in both lanes was high which showed very good grip between the road surface and a vehicle's tyres.

Mr Gurr was driving a white 2018 Nissan Navara flat tray utility registration number H98NB (Mr Gurr's vehicle) in a westerly direction whereas Mr Layton was driving a white 2012 Toyota Hilux flat tray utility registration number C05MW (Mr Layton's vehicle) in an easterly direction when those vehicles collided in the eastbound lane.

## **Background**

Mr Gurr was born in Launceston on 1 May 1965 and attended high school in Queenstown. At the time of his death Mr Gurr was 54 years old and he was in a significant relationship with Ms Dixon

which had lasted for in excess of 10 years. Mr Gurr had raised his one son and his partner had raised her 4 children and they were both residing in the Devonport area. Mr Gurr had a brother who died in December 2017 from leukaemia.

Mr Gurr was employed as a machine operator with Streetwise Developments since that company commenced operation on 1 May 2017. He would drive to various work places as required. He had previously been employed by Vernarchie Contracting and Fieldwicks which had been owned and operated by the same people that owned and operated Streetwise Developments. In all he had worked for those businesses for about 11 years. Prior to that Mr Gurr had worked for Hazel Bros and Shaw Contracting. He had reached the position of foreman.

Mr Gurr had generally been in good health however he had developed a cough during the previous 8 weeks that would usually awaken him at about 3:00 am most mornings. He would also cough severely during the day and for the last 3 to 4 weeks prior to the crash he had a stiff neck. In addition he used to suffer from chronic headaches. He smoked about 20 cigarettes per day. From the evidence which has been obtained it appears Mr Gurr had not recently sought any form of medical attention. He would not take any medicine for the cough and he never went to a doctor. As far as Ms Dixon is aware he had never been to hospital.

### **The Circumstances Leading to Mr Gurr's Death**

On the day of the crash Mr Gurr had been working at Exeter. His hours of work were 7:00 am to 4:30 pm at the jobsite. He would often work overtime. He averaged about 40.5 hours per week however on top of these hours he would travel from his home at Devonport to his employer's subdivision in Exeter, where he had been working since just prior to Christmas 2019, and home again. That morning he travelled to the work site via Deloraine where he picked up the partner of one of Ms Dixon's daughters; Mr Johnson-Davis. Mr Gurr picked Mr Johnson-Davis up at about 6:15 am so he would have left home at about 5:45 am.

Mr Johnson-Davis confirms he was picked up at about 6:15 am and he says there were no issues with Mr Gurr's driving that morning although he says Mr Gurr was coughing a lot "but that was normal as he smoked a lot of cigarettes." Mr Johnson-Davis says at Exeter they were working on a new subdivision digging trenches for services and digging out bases for homes using excavators. Ms Dixon says Mr Gurr rang her during the morning from the crib room and advised her they were having "a casual easy day."

Mr Johnson–Davis says they finished work at around 4:00 pm and stopped on the way home at the Exeter hotel which is next door to where they were working. He purchased a 4 pack of Jim Beam bourbon and cola stubbies whereas Mr Gurr purchased a long neck of Jim Beam which Mr Johnson–Davis thought was around 500 to 600 mL. He says he drank 2 of his 4 drinks on the way home while Mr Gurr drank his long neck. Mr Johnson–Davis says he left his remaining 2 drinks with Mr Gurr after he was dropped off at home and says they used to drink while driving home on Fridays only. However on this day, being a Thursday, Mr Gurr was celebrating as he had finally removed a large pine tree from the worksite which he had been talking about for a long time. It was Mr Gurr’s idea to stop at the bottle shop.

Mr Johnson–Davis says the drive home was uneventful with Mr Gurr obeying the speed limits and not driving “all over the road. The only difference was, was that Philip was drinking.... As usual Philip was smoking as he was driving. I think Philip had about 4 cigarettes on the drive home.” Mr Johnson–Davis says he arrived home at about 4:45 pm.

On this day Mr Layton had driven from his property on the Bass Highway, where he is a farmer and orchardist, into Devonport to do some shopping. He says on the way a business phoned him and informed him some parts he had ordered were ready to be collected. He drove to Devonport and did his shopping and then he drove to Quoiba to pick up the parts. He then stopped in Latrobe and purchased a few other things including flowers and champagne for his partner as it was Valentine’s Day the next day. He drove out onto the Bass Highway and headed east towards his home. He was travelling at the speed limit and says the trip was uneventful. Just past the Smith and Others Road junction he saw the vehicle in front of him swerve suddenly out to the left-hand side. All of a sudden a light-coloured vehicle veered across into his path. He managed to hit the brakes which he says is all he had time to do. He braced for impact and the crash occurred.

## **Investigation**

Alison Broadby was driving in an easterly direction on the Bass Highway immediately in front of Mr Layton’s vehicle. Her sister, Christine, and niece were passengers in that vehicle. Both Alison and Christine Broadby say the crash occurred at 5:25 pm. Christine Broadby phoned 000 on her mobile phone at 5:26 pm. By this time she says a truck driver and some other people had stopped to help.

Constable Daniels arrived at 5:38 pm. She was briefed by Constable Fitzsimons who was already in attendance and who outlined the condition of both drivers and the traffic management which was required. Constable Daniels spoke to a number of witnesses at the scene and provided traffic management. She also assisted in cleaning the scene and reopening the road.

AT received a call to attend this crash at 5:33 pm. Officers were dispatched at 5:35 pm and arrived at the scene 10 minutes later. It was determined Mr Gurr was deceased. Mr Layton was trapped in his vehicle because of the impact damage which caused him to be compressed between the dashboard and driver's seat and his legs were trapped against the pedals. Officers from Tasmania Fire Service attended and cut Mr Layton free. He was extricated from his vehicle using a spine board. On examination he had multiple lacerations and abrasions including a deep laceration to the right knee and leg and personnel were concerned he had fractured his femur and pelvis. Spinal precautions were taken. During his extraction an aeromedical team arrived and Mr Layton was transported by helicopter to the Royal Hobart Hospital. At a later date he was flown to the Royal Melbourne Hospital for further treatment. Mr Layton sustained very serious abdominal injuries.

Senior Constable Mason from Western Crash Investigation Services was tasked to attend and arrived at the scene at 6:12 pm. On his arrival the highway had been closed to all traffic with diversions in place. Ambulance and local fire brigades were in attendance along with police from the Devonport station and from Road and Public Order Services. He inspected the scene and recorded his observations, conducted various measurements and performed coefficient of friction testing. Senior Constable Mason tested the audible edge and centerlines and determined they were very loud and clear and appeared to be working correctly. He also inspected both vehicles. He found no evidence of either vehicle travelling off the road into the gravel shoulder and no evidence of any other loss of control. He found no evidence of any pre-impact braking or skid marks from either vehicle. There was also no evidence of any post impact scuffs or brake marks from either vehicle however he says Mr Layton may have braked immediately prior to impact causing the front of his vehicle to dip enough for the front to impact under the bonnet of Mr Gurr's vehicle as the bonnet of Mr Gurr's vehicle was still quite straight and flat and extended well out over the crushed engine bay.

Mr Gurr's vehicle came to rest in the eastbound lane. It was facing east with the front overhanging the sealed shoulder. Mr Layton's vehicle had come to rest on the eastern side of the highway on a grassed area with the front overhanging the gravel verge. It was facing west. It was fitted with a steel bull bar which was just touching the edge of the bonnet of Mr Gurr's vehicle. Between both vehicles and in the immediate area was a small debris field consisting of broken glass, plastic and engine fluid. Having found no pre-impact marks and only a small debris field Senior Constable Mason came to the conclusion the collision or impact point was at the point where the vehicles came to rest.

Both Mr Newman and Mr Kay were travelling behind Mr Gurr. Mr Newman recalls he had been travelling behind Mr Gurr since between Deloraine and Elizabeth Town. They both say Mr Gurr's

vehicle was travelling at or about the speed limit and Mr Newman says it was being driven in a proper manner and not erratically. Both say as they approached the point of collision Mr Gurr's vehicle appeared to slow down as they were both gaining on it. Mr Kay then says he saw Mr Gurr's vehicle drift completely into the oncoming lane. He saw no brake lights come on or Mr Gurr taking any evasive action.

The investigation determined that in an easterly direction past the Smith and Others Road intersection the highway curves left in a sweeping arc on a slight downhill gradient. Mr Gurr was travelling in the opposite direction up a slight gradient into the right curve but he continued to travel over the centre lines and into the oncoming lane. Alison Broadby told police Mr Gurr's vehicle was completely in her lane and she had to veer off to the left hand side of the highway and brake hard to avoid a collision. As the 2 vehicles passed each other she heard "a woosh" from Mr Gurr's vehicle and believed it was going to collide with the rear of her vehicle. She then heard the crash behind her. Her sister says she looked in the side mirror and saw the collision occur in the eastbound lane. The rear of Mr Gurr's vehicle was lifted up and the items he had in the tray of his utility were thrown out.

Senior Constable Mason says the right side of Mr Gurr's vehicle collided with the front right side of Mr Layton's vehicle. Mr Layton has braked and the front of his vehicle has dipped under the bonnet of Mr Gurr's vehicle. Senior Constable Mason says this collision is what is known as an offset head on collision and as a result of the impact both vehicles rotated clockwise about 90° and came to a complete stop at the point of impact in the eastbound lane.

Testing of a sample of blood taken from Mr Layton was negative for both alcohol and illicit drugs. Toxicological testing of an antemortem blood sample taken from Mr Gurr returned a result of 0.024 g of alcohol in 100 mL of blood. No illicit drugs were identified in that sample.

Mr Gurr was the holder of a heavy rigid Tasmanian driver licence which was current. He was wearing his seatbelt at the time of this accident. His vehicle had sustained extensive front end damage where the right quadrant was crushed and compacted rearwards into the cabin. The windscreen had shattered and only the front bonnet was slightly buckled and dented. A partially consumed 330 mL bottle of Jim Beam and cola was found jammed in the dashboard to the right of the steering wheel. It was one quarter full. There was also another empty 500 mL Jim Beam and cola bottle, and empty 4 pack of Jim Beam, an empty 330 mL bottle, a full 330 mL bottle and at least one smashed empty bottle. The climate controls of the vehicle were set to halfway between hot/cold and the fan was on three quarters. Due to the damage Senior Constable Mason was unable to determine

where the airflow was directed. The damage sustained by Mr Layton's vehicle was similar in that impact occurred on the front right side with that area being compacted into the cabin area. Mr Layton had also been wearing his seatbelt which had to be cut off him. The buckle was still clipped into the receiver.

Mr Fitzpatrick is a transport inspector with the Department of State Growth. He is a qualified diesel mechanic with 14 years' experience in the motor industry. He has been a transport inspector since 29 October 2012. He inspected both vehicles at the Burnie police compound on 20 February 2020. As a result of his inspection of both vehicles he came to the conclusion that prior to, and at the time of, impact both Mr Gurr's vehicle and Mr Layton's vehicle were mechanically sound and roadworthy. I accept Mr Fitzpatrick's opinion.

Dr Brain conducted a post-mortem on 17 February 2020. He concluded the cause of death was acute severe trauma which was consistent with having been caused in a motor vehicle accident. That trauma included a transected thoracic spine at T10, multiple bilateral rib fractures which were more severe on the right, separation of the symphysis pubis, possible bilateral femoral fractures, dislocation of both ankles, and dislocation of the right elbow and perforation of the aorta. I accept Dr Brain's opinion.

Senior Constable Mason says if Mr Gurr was having a coughing fit immediately prior to the accident then he believes Mr Gurr would still have been aware of his place on the highway and he could have steered back into his own lane in order to avoid this collision. He says Mr Gurr would also have been aware that he was crossing the audible centre lines on the roadway. Senior Constable Mason is of the view Mr Gurr was asleep at the time he crossed the centrelines. He says this because Mr Gurr woke at 3:00 am most mornings, he had the heater on in the vehicle with the fan on 3 and he was drinking alcohol. He gradually veered into the oncoming lane, failed to take any evasive action, failed to brake and failed to heed the audible centrelines. There was no alteration in path whatsoever after the near collision with Ms Broadby's vehicle. In addition he says the post-mortem revealed no life-threatening medical conditions other than 50% atheromatous narrowing of both left and right coronary arteries and minor cardiomegaly.

Ms Dixon does not believe Mr Gurr fell asleep. A belief of course is not proof of anything. However Ms Dixon's belief is based upon the fact Mr Gurr would normally get out of bed at 5:15 am each work day and return home by about 5:45 pm. She says he would go to bed between 9 and 9:30 pm each evening and would fall asleep straight away.

## Comments and Recommendations

While there is some support for Senior Constable Mason's theory as to the cause of this accident I am not satisfied to the requisite standard he is correct. There is simply not enough evidence to find Mr Gurr fell asleep. There are a number of competing theories. He could have had a coughing fit which prevented him from correcting the line of travel of his vehicle in time. The evidence is Ms Broadby was travelling at about 100kmph as was Mr Gurr and Mr Layton. Each vehicle was therefore travelling at about 27.7 m/s. As each second went by the distance between Mr Gurr's vehicle and Mr Layton's vehicle was reducing by in excess of 55.5 m. So on the assumption Mr Gurr did have a coughing fit, then depending on where Mr Gurr's vehicle was on the roadway relative to where Mr Layton's vehicle was, Mr Gurr may have had very little time in which to react to avoid a collision. Alternatively Mr Gurr may have simply lost concentration due to tiredness, the alcohol he had consumed, the fact he had the heater on or a combination of one or more of those factors. He may have dropped a cigarette and/or his drink and this may have distracted him from realising he had drifted into the oncoming lane. Another possibility is he suffered some medical event. I acknowledge there is no evidence of heart attack, heart failure or stroke however some studies have suggested people with less than a 50% blockage of an artery are at the same risk of death due to heart attack, stroke or congestive heart failure as people with blockages of in excess of 50%. Mr Gurr was overweight and he had plaque in 2 coronary arteries to the extent of 50% which may have caused symptoms of coronary artery disease such as shortness of breath, chest pain, weakness, fatigue and/or dizziness. These symptoms might explain the loss of control of his vehicle. Accordingly the state of the evidence is such that I cannot determine the cause of this accident.

I condemn the practice engaged in by both Mr Gurr and Mr Johnson–Davis that they usually drank alcohol while driving home on Fridays. I have already noted this accident occurred on a Thursday. Not only is this practice unlawful it is foolish in the extreme. Mr McLachlan–Troup says when alcohol is used by drivers there are delayed and impaired reactions to driving situations which are caused by the depression of psycho motor and cognitive function<sup>1</sup>. The depression of these functions increases as the blood alcohol concentration increases. There is also increased risk taking. The risk of serious accident and injury leading to death of not only the driver, and his or her passenger/s, but also innocent road users increases when people behave in this manner.

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

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<sup>1</sup> For example muscle incoordination, slowed reaction times and visual impairment.

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

**Dated** 30 November 2022 at Hobart in the State of Tasmania.

**Robert Webster**

**Coroner**