



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 the death of Robert John Payton

Find That:

- (a) The identity of the deceased is Robert John Payton;
- (b) Mr Payton died in the circumstances described in this finding;
- (c) Mr Payton died on 8 December 2012 on the Bass Highway, Wiltshire, in Tasmania;
- (d) Mr Payton's death was a result of multiple injuries from a two vehicle crash in which Mr Payton was driving a motor scooter;
- (e) Mr Payton was born in England on 24 December 1949 and was 62 years of age at the time of his death; Mr Payton was married and, at the date of death, was a retired police officer; and
- (f) Clinton Lee Chauvin contributed to the cause of Mr Payton's death.

Background:

Robert John Payton was born in England on 24 December 1949. Mr Payton lived at 109 Main Street, Ulverstone in Tasmania. Mr Payton had been a police officer in New South Wales for 35 years. In that time he spent 13 years as a police motorcyclist. Mr Payton has had a long history of riding motorcycles. He owned a red 150cc 2005 Kymco Espresso scooter. He was riding this scooter at the time of his death. He bought the scooter from North West Motorcycles at Ulverstone on 1 November 2012 for the sum of \$900.00. He had ridden the scooter numerous times, particularly to Shearwater to help his son-in-law at his butchery business.

Mr Payton had a full car and motorcycle licence. He had lived in Tasmania for about 10 years and had only one speeding infringement for which he received a conditional caution.

Mr Payton suffered diabetes mellitus type 2, hypertension, depression, and lumbar disc disease. He was prescribed medication for his conditions.

Circumstances Surrounding the Death:

Mr Payton left Ulverstone early on the day of the collision to travel to Forest in order to help his wife cut silage. They have a farm there as well as bed and breakfast accommodation in

Stanley. He rode his scooter towards Forest on the Bass Highway; a trip he had made once before on it. He was followed for a distance by Patrick Harris from Port Latta to the start of the "Wiltshire Straight", where Mr Harris overtook Mr Payton. Mr Harris states that Mr Payton was travelling at 80-85 kmh and was travelling about one metre from the edge line of the roadway.

Mr Payton was wearing a multi-coloured Kylin brand motorcycle helmet. His clothing consisted of slip-on Blundstone boots, Yarra Trail jacket, blue jeans, and nylon gloves; none of which offered any protection.

On the same morning Clinton Lee Chauvin left Devonport and travelled to Stanley where he dropped off a number of passengers at the Stanley Show. Mr Chauvin stayed only a short time in Stanley before commencing his return journey back to Devonport. He was driving a 1989 Mitsubishi wagon, registration FA0338. Mr Chauvin held a full basic car licence. He has held a driver's licence since the age of 25. He is a disability pensioner.

Also on that morning, Dean Harris arrived at Dennis Jurgensen's residence in South Forest. They intended to travel to Sisters Beach to move furniture for a client. Mr Jurgensen was driving his 1984 Isuzu truck. They left South Forest at about 7.30-7.40am and travelled to the Bass Highway via Backline Road.

At about 7.55am Mr Jurgensen arrived at the junction with Bass Highway. Both he and Mr Harris checked for any oncoming traffic. The road was clear in both directions with no vehicles approaching and so he pulled out to travel east. As Mr Jurgensen changed up through the gears on his truck he could see Mr Payton's scooter travelling towards him.

Mr Jurgensen reached a speed of about 80kmh. His truck is old and slow. He commented to Mr Harris that he had a similar scooter. The scooter was closer to the edge line than the centre line and did not appear to be going fast.

As the scooter and the truck passed each other, unbeknownst to Mr Jurgensen, Mr Chauvin had caught up to the truck, pulled out into the west bound lane and commenced overtaking the truck. Mr Chauvin's vehicle was completely in the west bound lane when he observed the on-coming scooter. Mr Chauvin braked which caused his tyres to skid and he subsequently collided head-on with the scooter.

The front of the scooter was crushed on impact. Mr Payton was thrown onto the bonnet of the Mitsubishi and into the windscreen. His lower right leg was severed. Mr Payton was thrown clear of the Mitsubishi and rolled to his position of final rest on the southern side of the highway.

The scooter was also thrown clear of the Mitsubishi and came to rest in bushes on the southern side of the highway in an upright position. The Mitsubishi stopped in the west bound lane facing east having slightly rotated probably due to the impact.

Mr Chauvin stated in his interview with police that the truck pulled out from a side street in front of him which it had plenty of room to do. He looked left and right around the truck to see if any traffic was coming to check to see if it was clear to overtake. He was approximately halfway along the truck on his incorrect side of the road when he saw the scooter coming in the opposite direction. He braked in an attempt to get back behind the truck in the left lane. This caused his wheels to lock and the car began to skid further into the lane. Mr Chauvin collided with the scooter.

Mr Chauvin stated that he followed the truck for 200-300 metres prior to overtaking it. He said he was approximately 30 metres behind the truck when following it, and had a good amount of clear view ahead around the truck, looking both left and right and could see the road ahead of him.

Mr Chauvin stated he was 15-20 meters behind the truck when he pulled out to overtake it. He stated he could see 500-600 meters ahead past the truck prior to overtaking it. He stated he was travelling at between 95-100kmh when overtaking the truck. He first observed the scooter after beginning to overtake the truck. The scooter was approximately 50 metres away when he first observed it. He did not see the scooter before that time. Mr Chauvin saw the scooter for 2-4 seconds. He stated he checked properly before overtaking. His evasive action was braking in an attempt to get back behind the truck and into the correct lane, turning the wheel left to do so. Mr Chauvin's position on the road leading to the crash was not observed in detail by other witnesses.

Mr Chauvin's account of following the truck for 200-300 metres before overtaking is plausible. Importantly, the other evidence (as discussed later) supports his account that he was following closely behind the truck before he commenced overtaking it. This explains his failure to see the scooter at an earlier time and his relatively slow speed. Based upon the crash investigation evidence discussed further it is unlikely that he was travelling as fast as 95-100kmh when he commenced to overtake. I also do not accept (as discussed later) that Mr Chauvin kept a proper lookout at any relevant time, or that it was safe to overtake at that point at which he did.

The crash occurred in the west bound lane at the beginning of a sweeping right curve for west bound traffic. A sign at the scene indicated that the Forest/Alcomie/Lileah junction was 300 metres ahead on the left.

The road is constructed of bitumen aggregate which was in good condition with no defects or fluid contaminants leading up to the impact area. The surface was dry. The speed limit is 100kmh. The road markings comprise edge lines and a single broken centre line. The highway through the scene was level with slight positive cross fall on each lane.

Weather conditions were fine, clear and sunny, although windy. The sun was located at about 45 degrees and to the left for east bound traffic. The temperature was 17 degrees.

Senior Constable Wylie photographed the vehicles and Mr Payton *in situ*. A crane attached to a SES truck was used to remove the scooter from the bush and this was again photographed. Both vehicles were transported to the Burnie police compound for later inspection. Mr Payton was removed from the scene by the Mortuary Ambulance Service.

The damage caused to both vehicles was significant. It was documented in detail by police crash investigators.

In summary, the Mitsubishi sustained damage to the front right corner and panel area, leading up over the bonnet and into the windscreen.

The scooter had sustained very heavy impact damage, particularly to the front. The front wheel was turned at about 90 degrees to the rest of the vehicle and had been pushed back into the foot well. The dash area and handlebars were twisted and smashed. A large portion of red plastic had been torn off the vehicle, particularly the right side. The seat had been torn off and the undercarriage bent downwards by impact forces.

The evidence of the transport inspector, which I accept, is that both vehicles were mechanically sound before the crash.

Police and ambulance were called to the scene, and arrived quickly. Ambulance officers determined that Mr Payton was deceased.

Dr Christopher Lawrence, State Forensic Pathologist, performed an autopsy on Mr Payton. He concluded that Mr Payton died as a result of the multiple injuries sustained in the crash. I accept his conclusion as to the cause of death. I also note that neither Mr Payton's nor Mr Chauvin's blood contained any alcohol or drugs.

Senior Constable Sven Mason from Crash Investigations Section in Burnie also attended and commenced an investigation into the crash. Witness statements were also obtained. A speed analysis was also prepared based upon the skid marks and gouge marks on the road surface. He also prepared a survey using evidence at the scene to assist in the crash reconstruction. Senior Constable Mason reported that, based on his formula, the Mitsubishi was travelling at 72kmh at the point of the commencement of the skid marks of the vehicle. I accept this analysis of speed.

This speed is only slightly faster than that of the truck he was attempting to overtake. On 24 February 2013, Senior Constable Mason undertook a reconstruction using the same truck and known scene markings. The film of the reconstruction clearly shows that before Mr Chauvin approached behind the truck closely, he had a clear line of sight through the curve in the road to the left side of the truck, and he should have seen the scooter and should not have overtaken the truck. The film shows that if Mr Chauvin was following the truck as closely as he stated in his police interview his view of the road ahead from both sides would have been obstructed. In this situation he should also not have overtaken.

The overtaking manoeuvre at that point was unnecessary. A long straight section of road was ahead which would have, if clear, been significantly more suitable for an overtaking manoeuvre.

Most unfortunately, Mr Chauvin did not see Mr Payton's scooter until he was in his incorrect lane and did not have any ability to avoid the crash. A prudent driver intending to overtake would have paid closer attention to the presence of oncoming vehicles. Additionally, Mr Chauvin placed himself in a position too close to the truck to have a proper view and overtook it despite such impaired view. The evidence also indicates that Mr Chauvin, when he was travelling further back from the truck had the opportunity to see the scooter on the road ahead but did not do so.

Mr Chauvin was charged with causing the death of another person by negligent driving and overtaking when unsafe to do so.

On 16 September 2013 Mr Chauvin pleaded guilty to the complaint in the Burnie Magistrates Court. Magistrate Don Jones sentenced him to three months in prison wholly suspended for two years on the condition that he not commit another offence punishable by imprisonment during the period the order was in force. He was also disqualified from driving for eight months.

I find that Mr Chauvin contributed to Mr Payton's cause of death by entering the incorrect lane in which Mr Payton was travelling on his scooter at a time when he had no clear view ahead, and in circumstances of failing to keep a proper lookout for oncoming vehicles.

The driving of Mr Payton was appropriate at all material times.

The circumstances of Mr Payton's death are a tragic reminder of the dangers of overtaking another vehicle by travelling in the oncoming lane.

Comments and Recommendations:

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

In concluding, I wish to convey my sincere condolences to the family of Mr Payton.

Dated: 9 February 2015 at Hobart in the state of Tasmania.

Olivia McTaggart
CORONER