



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Albert William O'Keefe**

TITLE OF COURT: Coroner's Court

JURISDICTION: Cairns

FILE NO(s): COR

DELIVERED ON: 6 November 2009

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HEARING DATE(s): 3 June, 28 July and 2-5 November 2009

FINDINGS OF: Kevin Priestly, Northern Coroner

CATCHWORDS: CORONERS: Inquest – Motor vehicle accident, vehicles approaching from opposite directions, single lane bitumen road – rural setting, Duchess Road

REPRESENTATION:

Counsel Assisting the Coroner: Ms J Bentley

For Mr G Telford & family: Mr J Greggery I/B Anderson Telford Law

For Mr Tony Hutton: Mr E Bassett I/B Savage & Stout Lawyers

Introduction

At about 5.30 p.m. on 24 June 2003, Mr Albert William O'Keefe was the sole occupant and driver of a Honda Civic sedan headed south on Duchess Road. At about the same time, Mr Anthony Hutton was the sole occupant and driver of a Toyota LandCruiser headed north on Duchess Road, at a location about 25 kilometres south of the intersection of the Barkly Highway. The two vehicles came into collision. Mr O'Keefe died as a consequence of that collision.

Mr O'Keefe's death occurred on 24 June 2003. The *Coroners Act 1958* governs this coronial investigation including any inquest. The *Coroners Act 2003* came into operation and applied to all deaths that occurred on and from 1 December 2003.

The police conducted an investigation into the collision and the information gathered was reported to me for the purpose of a coronial investigation. On reviewing the evidence I formed the view that the death of Mr O'Keefe occurred in circumstances of suspicion and an inquest was warranted. Further, I came to the view that the circumstances of his death required further investigation by way of information-gathering from witnesses at the hearing, as well as the need to assess the reliability and veracity of their evidence for the purpose of making the necessary findings.

There are a number of formal findings about which there is sufficient reliable evidence, about which there is no dispute, and which findings can be made without detailed analysis, namely:

The identify of the deceased	Albert William O'Keefe
The date of death	24 June 2003
The place of death	Duchess Road, about 25 kilometres south of its intersection with the Barkly Highway, Cloncurry.

The Scene Investigation

Duchess Road is aligned in the north-south direction. The road comprised a single lane of bitumen about 3.8m wide with gravel shoulders on each side.

On approaching the scene from the south, there is a gradual left-hand bend, entering a relatively straight section of road with an incline towards the scene. The speed limit was sign posted at 100 kilometres per hour. On approaching the scene from the north, the road is relatively straight and level.

Sergeant Harms says that both drivers would have had ample time to slow and negotiate each other. With the benefit of photographs taken at the scene, I accept his opinion. The width of the sealed surfaces was not sufficient for vehicles travelling in opposite directions to pass each other, while both remaining on the sealed surface.

At least one vehicle would need to travel onto the gravel shoulder to ensure each vehicle can pass safely. It is a common expectation of regular travellers on roads of this nature when approaching an oncoming car to slow and pull to the left with each car passing with two wheels on the sealed section and two on the gravel. In the event of a truck, particularly a road train, the driver of the car will pull right off the sealed section and permit the truck to pass remaining wholly on the bitumen.

The Honda came to rest on the eastern side of the road facing north-west, and its nearest position was about 2.6 metres east of the edge of the bitumen. Its position is plotted on the scale plan prepared by Sergeant Brennan. The Toyota came to rest on the eastern side of the road facing north-east, at about 51 metres north of the Honda. It was about 13 metres from the edge of the bitumen.

There are two distinct curved tyre marks that commence on the eastern side of the sealed section of the roadway, and according to Sergeant Harms, led to the final resting position of the Toyota. One tyre mark was approximately 1.3 metres, and the other was approximately .8 of a metre from the eastern edge of the road. The latter was a darker tyre mark in comparison to the former.

The tyre marks varied in length. One tyre mark led to the left rear of the final resting position of the Toyota and was approximately 48 metres in length. The other tyre mark led to the front left of the Toyota and was approximately 55 metres in length. Sergeant Harms states that on the night of the incident the marks extended further south and were not visible to Sergeant Brennan when she later inspected the scene. The rear tyre mark had been a further 6.6 metres south, and the front tyre mark a further 3.6 metres south. Sergeant Brennan explained to the Court how some light tyre markings may deteriorate in a short space of time so as to be no longer visible.

A third tyre mark approximately 33 metres in length was located about 3 metres east of the road on the gravel shoulder and travelled north to the front right of the Toyota.

The Toyota's left-hand side tyre markings showed a degree of separation, that is, the rear left tyre mark did not follow the line of the front left tyre mark as you would expect in normal forward movement. This feature's suggested that the Toyota was yawing, that is, the rear left tyre was under lateral force, and pushing it beyond the turning circle taken by the front left tyre.

There was one short tyre mark approximately 3.7 metres in length located just east of the sealed road travelling in a south-east direction towards the right side of the final resting position of the Honda.

Sergeant Harms gave evidence that he walked the western side of the road from the scene in the direction from which the Toyota approached to check for any tyre marks that might be relevant to the cause of collision. He found none.

Sergeants Harms and Brennan came to the conclusion the right-hand side of the Honda was either completely off the sealed road or very close to the edge of the road at the time of impact, and the Toyota was on its incorrect side of the road at the time of impact. Sergeant Brennan is of the opinion that the directional force of impact is consistent with the impact down the side of the Honda and to some extent that reduces the likelihood of a sudden loss of control of the Toyota on the other side of the road and veering onto the incorrect side. The directional force would be expected to have more of a lateral component if that was the case.

Photographs were tendered into evidence showing the nature and extent of the damage to each of the vehicles. In summary, the Honda was extensively damaged over the whole of the driver's side, commencing adjacent to the front headlight. The driver's side A and B pillows were forced into the driver's compartment.

The Toyota was equipped with a bullbar and it sustained moderate damage to the driver's side front, causing distortion in the panel work about the front right-hand wheel guard and adjacent bonnet.

Motor Vehicle Inspections

Mr Augustus, a qualified and experienced motor mechanic, inspected each of the vehicles on 23 July 2003. He conducted a further inspection of the Toyota on 18 December 2003. Mr Augustus provided a statement in relation to each of his inspections which was tendered into evidence and he gave evidence at the hearing. His evidence was relevant to the nature and extent to which any mechanical defect of the vehicles might have contributed to its movement prior to the collision.

In relation to the braking system on the Toyota, Mr Augustus observed:

- The vehicle was extensively damaged to the right-hand front
- The vehicle was fitted with booster assisted hydraulic disc brakes at the front and drum brakes at the rear;
- The brake fluid reservoir level was very low;
- The front brake pads were unsatisfactory, the left rear brake drum was deeply scoured, the left rear brake shoe was worn down to the metal;
- Both of the rear wheel cylinders were leaking;
- The right rear brake shoes were contaminated;
- The right brake drum was glazed;
- The foot pedal had no pressure and the hand brake was ineffective.

Mr Augustus was unable to test the brake booster operation and the brake performance due to vehicle damage. However, from his inspection of the braking system, he expressed the following opinions: (1) That the Toyota had no capacity to brake; (2) The loss of that capacity was due to no maintenance and would have been gradual over a period of time and (3) The gradual loss of braking capacity would have been noticeable to the driver.

Mr Augustus examined the steering on the Toyota and found numerous defects, including the presence of movement in the right-hand tie rod and thread and the right hand tie rod arm thread, slight movement in the steering box, the power steering was leaking and the reservoir was low, and the steering wheel grip was loose on the top steering wheel metal rim.

Although the vehicle was technically unsafe and it didn't comply with requisite standards to be operated on the road, Mr Augustus considered the cumulative effect of the defects on the steering to be negligible and not sufficient to have contributed to the collision.

Mr Augustus inspected the tyres on the Toyota and found all were inflated. The front tyres had satisfactory tread depth. The rear tyres had unsatisfactory tread depth. This and other evidence from the photographs and witnesses to my mind excludes the possibility that any tyres on the Toyota suffered a sudden deflation, such as a blow out prior to impact.

Mr Augustus inspected the suspension and while he found a few defects, he concluded the stability of the Toyota would not have been affected except possibly on a corner.

Mr Augustus inspected the Honda and observed the vehicle was extensively damaged and a total write off. Mr Augustus inspected the brakes and found the vehicle to be fitted with a booster assisted hydraulic disc brakes at the front and drum brakes at the rear. The fluid reservoir level was low. The front brakes were satisfactory and the rear brakes were slightly scoured. Mr Augustus was unable to inspect the foot pedal, hand brake and brake booster operation and brake performance due to the vehicle damage. He was unable to inspect the electrics or steering rack due to vehicle damage. The vehicle tie rod ends and the steering rack ends were satisfactory. The left front and left rear tyres were inflated but the right front and right rear tyres were deflated due to impact. All tyres had satisfactory tread depth. The front and rear suspension were satisfactory. Mr Augustus concluded the Honda was in a safe condition prior to the collision.

Autopsy

On 26th June 2003, Dr Powers conducted a post mortem examination on the body Mr O'Keefe and her report was tendered into evidence. Dr Powers concluded that Mr O'Keefe died due to multiple crush injuries to the thorax and pelvis. Toxicology revealed nil blood alcohol reading.

It is clear from the evidence that Mr O'Keefe suffered the fatal injuries in the collision.

Versions of Mr Hutton

During the course of the conversations with witnesses, including police officers on the day of the incident, Mr Hutton reported no recollection of the circumstances of the collision.

On 7 December 2004, Mr Hutton participated in a record of interview with Detective Sergeant Chetham. The sections of that interview relevant to the circumstances of the collision are as summarised as follows:-

- He was familiar with the road having driven it many times before;
- He thought he left the top camp by about 5 p.m.;
- He drove along the dirt track from the top camp for about 20 minutes and then stopped and disengaged the hubs before driving onto the bitumen.
- He'd been driving on the bitumen road, Duchess Road, for a couple of minutes prior to the collision:
- He was driving at about 90 kilometres per hour;
- He was travelling north and Albert O'Keefe was travelling south;
- He first saw the other vehicle when it was about 100 metres away;
- When he saw it [the other vehicle] he pulled to the side of the road;
- He did not brake or reduce his speed in any way;
- He was the first one to pull over to the edge of the road and when Mr O'Keefe pulled over, he straightened up;
- He could not tell if the other vehicle had slowed down;
- He doesn't know what happened then. "It veered to the right and I'm not too sure what happened then but I think I'm going to nearly bloody straighten up again. I just can't remember the blooming impact. Next thing I know I'm out in the paddock".

Relevant to the question of any sudden incapacity on the part of Mr Hutton, he stated to Detective Sergeant Chetham his health was all right at the time of the collision although he was tired and had been working long hours. He was not using any medication except Aspros.

During the record of interview an issue arose as to whether Mr Hutton recognised the oncoming vehicle as that of Mr O'Keefe. Mr Hutton appears to be saying that he saw the oncoming vehicle was small and white, similar to that of Mr O'Keefe, but he didn't recognise it as Mr O'Keefe's vehicle. However, later in the interview he acknowledged he passed Mr O'Keefe lots of times.

As to the driving habits in dealing with approaching traffic on one lane of bitumen, Mr Hutton told Detective Sergeant Chetham it was his normal habit when a smaller car approaches to stay on the bitumen and the smaller one gets off. Mr Hutton stated he usually left all four wheels on the bitumen or very close to it. However, for a truck, normally he got right off the road.

As to the condition of his vehicle, Mr Hutton stated, "The car shook from about 60 or 70 kilometres an hour probably due to the steering. The brakes were 'stopping', the steering was a "little bit shaky, squealing and short on oil". He thought there was something wrong with the steering that might have caused the accident and he could not explain why the crash analysis concluded that his vehicle was on the far edge of the wrong side of the road.

Mr Hutton was also questioned about his relationship with Mr O'Keefe and their past dealings. He stated he wasn't "getting on real well" with Mr O'Keefe. There was a dispute about where the ore was being dumped during a business venture and that's when they split up. For a while after the partnership dissolved he was "a little bit sore" with Mr O'Keefe "but then you forget those sorts of things". He stated they had "a few words" about it but asserted that there were no other disputes between them. He conceded that he had explosives at Fairfield mine that he wasn't supposed to have but didn't think that Mr O'Keefe had anything to do with the department searching his property for explosives.

Relationship Evidence

There is a considerable amount of evidence before the Court about the nature of the relationship between Mr Hutton and Mr O'Keefe. From 1999 to Christmas 2002, Mr Hutton and Mr O'Keefe were involved in various ventures associated with mining initially on a lease owned by Mr Hutton at Fairfield and then on a lease owned by Mr O'Keefe known as Chinaman. The relationship soured and came to an acrimonious ending.

On dissolving their partnership there is considerable evidence to the effect that Mr O'Keefe feared for he and his family's safety. There is evidence of a number of events that caused concern for Mr O'Keefe. There was the finding of detonators of a type not used by him very near the magazine on his property. There was the unexplained loss of coolant water from critical plant. There was also the removal of bolts from the side of a shipping container. There was the unexpected appearance of tyre tracks on Mr O'Keefe's lease believed to be those of Mr Hutton's vehicle. There was also the occasion when Mr O'Keefe discovered that Mr Hutton had purchased explosive material using Mr O'Keefe's licence without his permission and contrary to regulations. This was reported to the relevant authority.

Notwithstanding initial denials, police raids on Mr Hutton's lease revealed the presence of the explosive material and there was the prospect of enforcement action arising from these events. Mr O'Keefe was so fearful of retribution from Mr Hutton that he arranged for statements of his concerns to be prepared and provided to the police. However, he did not want any action taken; he just wanted to have his concerns recorded. Similarly, Mr O'Keefe didn't want Mr Hutton to be told that he was the source of information that led to the police raid on his property and the finding of the explosives.

Of greater relevance, due to its proximity to the death of Mr O'Keefe, are the events in May 2003. On 11 May 2003, Mothers' Day, Mr Polly telephoned his mother, Mrs O'Keefe. Mr O'Keefe answered the telephone and they had a lengthy conversation. Mr O'Keefe told Mr Polly that Mr Hutton had threatened him. Mr O'Keefe said that a few weeks before Mr Hutton had told Mr O'Keefe he's going to kill Mr O'Keefe and Mr Telford. Mr O'Keefe said at the time of threats Hutton was shaking and wild with anger.

The Court also heard from two former employees of Mr Hutton, Mr Byrnes and Mr Jorgenson, who related occasions when Mr Hutton was heard to say the

only way to kill someone was to drive straight into them head-on and make it look like an accident. It appears that the context of the conversations were such that Mr Hutton may not have had a particular person in mind or, at least, not Mr O'Keefe. There are very clear limitations on the extent to which relationship evidence is relevant and probative.

Criminal Responsibility

In accordance with section 43 I must consider whether any person is to be charged with murder, manslaughter or the offence of dangerous driving of a motor vehicle causing death.

The possible charges cover the spectrum of criminal culpability dependent on the facts of this case on the degree of control that Mr Hutton had over the movements of the Toyota and his intentions.

A test to be applied in deciding whether to commit Mr Hutton on a charge is whether on the evidence available a properly instructed jury could find beyond reasonable doubt his guilt.

I'm also mindful that any potential charge is based upon circumstantial evidence and that for a jury to bring in a verdict of guilty based entirely on circumstantial, or substantially upon circumstantial evidence, it's necessary that guilt should not only be a rational inference, but also that it should be the only rational inference that could be drawn from the circumstances. If there is any reasonable hypothesis consistent with innocence, the jury's duty is to acquit.

I am satisfied that the evidence is capable of satisfying a jury as follows:

- (1) That Mr O'Keefe was conscious and wary about the prospect of seeing Mr Hutton's oncoming vehicle on Duchess Road;
- (2) Relationship evidence makes it more likely that Mr O'Keefe would have moved to the left, either substantially, but more likely totally onto the gravel shoulder, so as to avoid being in close proximity to Mr O'Keefe's vehicle;
- (3) Mr Hutton recognised Mr O'Keefe's vehicle and did not move to the left. A jury would be entitled to reject his suggestion to the contrary in a record of interview;
- (4) The directional force was front on and down the side of the Honda, making it more unlikely that the Toyota had veered from across the other side of the road;
- (5) There were no markings on the road from the direction of travel of the Toyota, again making it more unlikely there was any sudden loss of control;
- (6) The relationship evidence supports a history of hostility from Mr Hutton towards Mr O'Keefe including threats and intimidation, making it more likely that Mr O'Keefe behaved aggressively towards him on the road; and
- (7) There is a basis for excluding the potential involvement of all other possible contributing factors, such as steering defects, blown tyres, sun glare, straying animals and the impact of large stones.

In short, there is evidence capable of supporting a finding by a jury that Mr Hutton drove aggressively towards Mr O'Keefe. However, an issue arises as

to whether the evidence is capable of supporting as the only inference open, the inference that Mr Hutton intended to kill, or to do grievous bodily harm to Mr O'Keefe by his manner of driving. In my view, the admissible evidence falls short of this requirement. The threats to Mr O'Keefe as related to Mr Polly and then to this Court can, at best, be construed as a continuation of hostility and not an escalation. Further, the alternative limited inference of aggressive and threatening driving towards Mr O'Keefe without the requisite intention to kill cannot be excluded.

However, I find that the evidence is capable of satisfying a jury properly instructed of the guilt of Mr Hutton beyond reasonable doubt of dangerous operation of a motor vehicle, causing the death of Mr O'Keefe and I propose to charge and commit him for trial on that offence.

Those are my findings.

I close this inquest

Kevin Priestly
Northern Coroner
6 November 2009