



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Michael Patrick Molloy**

TITLE OF COURT: Coroner's Court

JURISDICTION: Cairns

FILE NO(s): 2010/3458

DELIVERED ON: 12 March 2014

DELIVERED AT: Cairns

HEARING DATE(s): 11 March 2014 to 12 March 2014

FINDINGS OF: Jane Bentley, Coroner

CATCHWORDS: Coroners: inquest, suicide, presumption against suicide, motor vehicle accident

REPRESENTATION:

Counsel Assisting: Ms Stephanie Williams

Ms Stephanie Campbell, the wife of Mr Molloy, appeared unrepresented

Ms Angela Warcon, the sister of Mr Molloy, appeared unrepresented.

Section 45 of the *Coroners Act 2003* provides that when an inquest is held the coroner's written findings must be given to the family of the person who died, each of the persons or organisations granted leave to appear at the inquest and to officials with responsibility over any areas the subject of recommendations. These are my findings in relation to the death of Michael Patrick Molloy. They will be distributed in accordance with the requirements of the Act and posted on the web site of the Office of the State Coroner.

Introduction

The scope of the Coroner's inquiry and findings

An inquest is not a trial between opposing parties but an inquiry into a death. The scope of an inquest goes beyond merely establishing the medical cause of death.

The focus is on discovering what happened - not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred and, in appropriate cases, with a view to reducing the likelihood of similar deaths.

As a result, a coroner can make preventive recommendations concerning public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in future.

A coroner must not include in the findings or any comments or recommendations, statements that a person is or maybe guilty of an offence or is or maybe civilly liable.

Proceedings in a coroner's court are not bound by the rules of evidence. That does not mean that any and every piece of information however unreliable will be admitted into evidence and acted upon. However, it does give a coroner greater scope to receive information that may not be admissible in other proceedings and to have regard to its origin or source when determining what weight should be given to the information.

A coroner should apply the civil standard of proof, namely the balance of probabilities. However the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, then the clearer and more persuasive the evidence needs to be for a coroner to be sufficiently satisfied it has been proven.

If, from information obtained at an inquest or during the investigation, a coroner reasonably suspects a person has committed an offence, the coroner must give the information to the Director of Public Prosecutions in the case of an indictable offence and, in the case of any other offence, the relevant department. A coroner may also refer a matter to the Criminal Misconduct Commission or a relevant disciplinary body.

These findings and comments:

- confirm the identity of the deceased person, the time, place and medical cause of his death;
- consider whether his death was due to suicide or accident.

Summary

At the time of his death Michael Patrick Molloy was 38 years of age and resided with his wife, Stephanie Campbell, at Cananga Close, Kamerunga.

At about 3.50pm on 8 October 2010 Mr Molloy was driving his blue Ford Falcon XR6 sedan inbound (towards Cairns City) on Ray Jones Drive at Portsmith.

George Priestley was driving his white Kenworth prime mover and towing a Shepherd semi-trailer on the same road. Mr Molloy was travelling behind the car that was travelling behind the prime mover.

Mr Molloy passed the car in front of him and then passed the prime mover.

At a location approximately 200 metres south west of Lyons Street, between the Peter Morris Bridge crossing Chinaman Creek and Lyons Street Mr Molloy pulled over to the left shoulder and got out of his vehicle, leaving it partly in the stopping lane and partly on the grass verge. Mr Molloy left the engine running, with the vehicle in 'Park' and the handbrake off.

Mr Molloy then moved out onto the road in front of the prime mover. Although Mr Priestley took evasive action by braking and moving to the right, he was unable to avoid hitting Mr Molloy and the truck ran over Mr Molloy causing extensive injuries to his head, neck, arms and upper body.

Queensland Ambulance officers attended and pronounced Mr Molloy deceased at the scene at 4.05pm. He died instantly upon being struck by the prime mover.

Cause of death

On 13 October 2012 a forensic pathologist conducted an autopsy which revealed that Mr Molloy died from multiple injuries he sustained in the motor vehicle collision. The pathologist noted that there were no features from the autopsy or toxicology to obviously explain Mr Molloy's observed actions immediately leading to the collision.

The Forensic Crash Unit Investigation

The Forensic Crash Unit of the Queensland Police Service carried out an extensive and thorough investigation into the accident and found:

- the weather was fine and did not contribute to the accident;
- the road was in good condition with no defects which contributed to the accident;
- the prime mover and semi-trailer had no mechanical defects which could have contributed to the accident;
- the Ford Falcon had no mechanical defects.

A medical certificate was located in Mr Molloy's car. It was written by Dr Thesinger and certified that Mr Molloy was unfit to work from 4 to 8 October 2010. Inquiries with Dr Thesinger revealed that Mr Molloy had visited him on 6 October 2010 and stated that he had the flu, that there was a lot of stress at work and that he was having trouble sleeping. Dr Thesinger wrote a prescription for a psoriasis cream and advised Mr Molloy that he could take 'Restavit' which is an over the counter sleeping preparation.

Police also ascertained that on 6 October 2010 Mr Molloy and his wife and business partner (Chris Cyglar) had sold their business, the restaurant 'Shindigs'. The receipt for the deposit of the sale of the business, an amount of \$154,665.40 was found in Mr Molloy's car.

Police interviewed a number of Mr Molloy's family members and friends. All said that they were not aware of any reason why Mr Molloy would commit suicide. They were not aware that he was depressed, that he was experiencing any marital or financial problems. A number of the witnesses stated that Mr Molloy had previously said that, due to his experience as a police officer, he did not agree with suicide and he would never do it.

All persons who had been in contact with Mr Molloy on the day of his death and the days leading up to his death were of the opinion that he was happy that the business had sold, that he was in good spirits and that there was no indication that he was depressed or that he would be thinking of committing suicide.

Ms Campbell provided information to police. She said that the period leading up to that week had been very stressful because of the sale of Shindigs but on completion of the sale on Wednesday, Mr Molloy was relieved and positive. They had plans in place to catch up with friends that night and the following days. The sale of the business removed any financial stressors.

Ms Campbell said that Mr Molloy had no mental health history and didn't suffer from depression. The possibility of suicide was raised with Ms Campbell and she responded by saying that he would never suicide and had often expressed strong views against suicide. Most recently he voiced those views after a friend committed suicide.

Police also interviewed a number of persons who saw the accident or were at the scene very shortly after the accident.

Shirley Colleen Croft was the driver of a car travelling immediately behind the truck and she saw a man 'jump out' of a blue car at the side of the road and he 'threw himself in front of the truck'. She said that he dove forward with his arms outstretched. She rejected any suggestion that Mr Molloy may have tripped, describing his action as 'intentional' and 'one movement'.

Christopher Michael Winn was headed north bound on Ray Jones Drive in the right hand lane. He saw a man get out of a blue Ford and stand facing the oncoming traffic. As he passed, he looked in his rear view mirror and saw the man, 'Walk straight out in front of the truck'.

Mr Winn saw the truck strike Mr Molloy. He said the truck driver had no time to react. Mr Winn rejected the possibility that Mr Molloy jumped, dove or threw himself in front of the truck.

He stated 'He just stepped out like he was walking on a pedestrian crossing – he just put his left foot forward and walked straight out in front of the truck'.

Mr Winn said that he saw a white car parked on the other side of the road as he passed Mr Molloy and his initial impression was that Mr Molloy was crossing the road to go to that vehicle.

No other witness recalls seeing a white car parked on the other side of the road immediately before the accident. Colin Jackson arrived at the scene shortly after the accident and he saw a white utility parked facing the wrong way, on the opposite side of the road about 25 to 30 metres up the road.

Grant Richmond Mills was driving 50 metres behind the truck and noticed the blue Ford to the side of the road. He saw the car door open and said that Mr Molloy 'Did a superman dive in front of the truck'.

Mr Mills rejected the possibility that Mr Molloy had tripped and stated, 'I am 100% certain he launched himself'.

Leslie John Laing was driving beside the prime mover. He saw the blue Ford pass the prime mover and another car in front of the prime mover and then suddenly pull off to the side of the road. Mr Laing then changed lanes into the same lane as the prime mover. He saw a man get out of the Ford and look towards the oncoming traffic. As he passed he continued to look at the man in his rear view mirror. He saw the man stand beside the car for 2 or 3 seconds and then saw the man, 'dive' under the truck and then he saw the truck swerve.

Robyn Margaret Gray was driving towards the city on Ray Jones Drive, in the left lane ahead of a truck, when she saw the blue Ford stopped on the side of the road. In one movement, the door opened and a man came out.

She stated, 'I remember looking at his face, he had a determined intense look on his face – he was in a crouched position. By that time I was then past him I looked in the rear vision mirror and I saw him throw himself, with his arms out above his head, onto the road in front of the truck.'

Kathryn Lenore Bishop was outbound on Ray Jones Drive (travelling in the opposite direction and on the other side of the median strip) when she saw a blue car pulled over on the side of the road. She saw man run from the side of the road – she thought perhaps he was trying to cross the road.

Michael Andrew Jonsson was in the travelling outbound in the right lane when he noticed the blue car and a man in its immediate vicinity who moved, 'Quite quickly towards the carriageway.'

Mr George Priestley was the driver of the Kenworth truck that struck Mr Molloy. He noticed a blue vehicle on the side of the road while travelling inbound on the

left side lane. When he was about 30 metres away from the vehicle a male person opened the door and got out of the car.

Mr Priestley told police, 'I could see the face focussed on me or the front of my truck. He sort of took a couple of very quick steps and done a belly flop in front of the truck. As soon as I could see that something not normal was going on I have pulled hard to my right, as hard as I possibly could with the time I had. I braked at the same time. I felt a bump, bump, looked in my rear vision mirror. I could see what happened. My trailer was forward of the person. I pulled back onto my side of the road and pulled up here where the truck was off the road.'

Mr Priestley said that Mr Molloy waited until he was very close to the truck before moving out in front of it. Mr Priestley was asked whether Mr Molloy could have tripped to which he replied, 'No, definitely not. No way in the world.'

Police noted that at the time of the accident Mr Molloy was wearing a pair of jeans and that the cuff of the right leg was frayed and considered the possibility that he had tripped and fallen onto the road.

Police concluded:

- Mr Molloy was probably very close to the road or laying down on it when he was struck by the truck;
- The reason Mr Molloy stopped his car on Ray Jones Drive, alighted from it and moved into the path of the prime mover could not be determined.

The coronial investigation

Diego De Leo, Professor of Psychiatry and Director of the Australian Institute for Suicide Research and Prevention, reviewed the investigation into the death of Mr Molloy.

Professor De Leo noted that there was no indication that Mr Molloy was suffering from any sign of depression or any psychopathology. However, he also noted that statistics reveal that in Queensland five persons per year commit suicide by jumping in front of moving vehicles; that such persons often act impulsively and do not leave suicide notes; and, that in nearly half of the suicide cases recorded in Queensland, men who took their own lives showed no signs of depression.

The Professor concluded that the life circumstances of Mr Molloy were not such as to render a suicide event probable.

The inquest

A pre-inquest directions hearing was held on 28 February 2014 and the inquest listed to commence on 11 March 2014. Ms Campbell and Ms Warcon were given leave to appear and it was advised that the issues to be explored at inquest were:

The circumstances surrounding the death of Michael Molloy; and
Whether Mr Molloy died as a result of suicide or accident.

Material gathered during the police investigation and the coronial investigation was tendered as evidence at the commencement of the inquest. A total of 42

exhibits were tendered at the commencement of the inquest including witness statements, documents, photographs and electronic discs and a further exhibit was tendered during the inquest.

Thirteen witnesses were called to give evidence:

CROFT Shirley Colleen
WINN Christopher Michael
MILLS Grant Richmond
LAING Leslie John
GRAY Robyn Margaret
BISHOP Kathryn Lanor
JONSSON Michael Andrew
PRIESTLEY George
CAMPBELL Stephanie
CYGLER Craig Michael
EYRE Justin Bernard
WARCON Angela Joan
WEBER Peter Wilhelm

The evidence

Stephanie Campbell

Stephanie Campbell gave evidence at the inquest and reiterated her belief that Mr Molloy was happy just prior to his death. Whilst he had experienced a stressful time during the sale of the business he was relieved that it had sold and was looking forward to plans they had made to socialise with friends and also to spend some time relaxing. Ms Campbell communicated with Mr Molloy numerous times the day of his death and spoke about their plans to meet at 5pm that evening, the birth of their neighbour's baby that day and a friend's new puppy. He gave no indication that he was other than in good spirits. Ms Campbell stated that there was no financial stress in their lives and they had not been arguing in the lead up to Mr Molloy's death.

Angela Warcon

Angela Warcon gave evidence that she and Mr Molloy had a very close relationship and discussed everything including very intimate details of their lives. She believed that she knew everything about him. She spoke to him regularly before his death, as usual, and he appeared to be in good spirits. She knew that he had been feeling a little unwell and joked with him about having the 'man flu'. She said that she could tell by the sound of his voice when she spoke with him on the day of his death that he was tired but he told her he was relieved to have sold the business and talked about his plans for the future including a 'White Christmas' in New York.

Ms Warcon was aware from conversations she had with Mr Molloy that he was very much against suicide because of the effect that it had on those who were left behind. She is strongly of the belief that he would not have committed suicide.

George Priestley

Mr Priestley gave evidence of the accident. His evidence was consistent with the information he gave to police. He said that Mr Molloy got out of his car and leant up against it for 2 to 3 seconds. He was facing the truck and Mr Priestly saw that his face was very pale. He took two quick steps toward the road, put his hands up in the air and did a 'belly flop' onto the road in front of the truck.

Mr Priestley stated that it was not possible that Mr Molloy had tripped as there was nothing to trip on.

Grant Mills

Grant Mills gave evidence that he pulled out of Kate Street onto Ray Jones Drive directly behind the prime mover. He was about 200 metres behind the truck when he pulled out but was moving closer to it as he accelerated along the road. When he was about 100 metres behind the truck he saw a blue vehicle on the side of the road (he thought it was a ute). He saw a man sitting in the driver's seat with his legs out of the car. When the truck got closer the man got out of the car, took two or three steps towards the road and 'supermanned' out in front of the truck. He said that it was a definite jump rather than a fall. Mr Mills said that he was certain that he was behind the truck and there were no cars in front of him.

Shirley Croft

Shirley Croft gave evidence that she was driving directly behind the truck in the left hand lane inbound. She saw a blue car stopped on the left hand side of the road. She saw a person get out of the car. She said that he was facing away from her at that time and then he turned his body towards the traffic, put his arms out in front of him and 'dove' in front of the truck.

Robyn Gray

Robyn Gray gave evidence that she was driving in the left hand lane heading inbound. She saw a blue ute pulled over on the side of the road. She saw the car door open and a man get out. She saw his face out of her passenger window as she drove past him. She stated that the look on his face was one of focus and concentration. He was looking backwards towards the oncoming traffic.

Ms Gray stated that she kept looking in her rear view mirror and saw the man, with his arms outstretched over his head, throw himself in front of the truck.

When shown a photograph of the car Ms Gray stated her recollection was that it was a utility but it must have been a sedan.

Ms Gray pulled over and went back to speak to the truck driver. They had a discussion in which they both agreed that Mr Molloy had deliberately stepped out in front of the truck.

Leslie Laing

Mr Laing gave evidence that he was travelling inbound. He passed the prime mover and then pulled in to the left lane in front of it. He saw a blue XR6 pass the truck and then it pulled into the left lane and straight over to the side of the road where it stopped. Mr Molloy got out of the car quickly, stood beside it and

looked across the road and then at the oncoming truck. He then 'dove' under the truck. Mr Laing said that he saw Mr Molloy put his arms out at chest height and lunge onto the road. He was about 20 to 30 metres away at that time.

Christopher Winn

Mr Winn said that he was travelling in the right hand lane inbound. He saw the car had pulled over. He saw a man get out and close the door and stand looking at the traffic. He had sunglasses on his head.

Mr Winn saw a white car or van parked on the median strip (on the other side of the road and facing outbound). He thought that Mr Molloy may have been looking at that vehicle.

He looked back to Mr Molloy and saw the truck approaching and saw Mr Molloy step out in front of the truck. Mr Winn said that Mr Molloy did not appear distressed. He had his hands down beside him and took a step out in front of the truck.

Michael Jonnson

Mr Jonnson gave evidence that he was driving outbound in the right hand lane. He saw a man standing beside a car parked off to the left. He saw the man move onto the carriageway. At that point his vision was obscured by foliage and when he looked back again he saw that Mr Molloy had been struck by the truck.

Mr Jonnson said that Mr Molloy moved very quickly onto the road – he was standing beside the road and then moved quickly out onto it.

Craig Cygler

Mr Cygler was a good friend of Mr Molloy's. He spoke to him on the days before and on the day of his death. He believed he was in good spirits.

Justin Eyre

Mr Eyre was good friends with Mr Molloy and lived next door to him. He spoke to him on the day of his death and saw him the previous evening. He said that, in his opinion, Mr Molloy was elated that he had sold the business. Mr Molloy looked a bit tired on 7 October 2010 but he had been working very hard.

Mr Eyre spoke to Mr Molloy at about 3.20pm on 8 October 2010. Mr Eyre told Mr Molloy that he was at the hospital as his wife had gone into labour and asked him if he could feed the dog. Mr Molloy said that if he went home he would feed it.

Peter Weber

Mr Weber was also good friends with Mr Molloy and spoke to him on the phone three times on 8 October 2010 about a printer that Mr Molloy wished to purchase. At about 11am they had a conversation and Mr Molloy told him that if he had time he would drop in that afternoon to look at the printer.

Mr Weber also saw Mr Molloy on 7 October 2010 and thought that although he looked a bit tired he was still upbeat.

The presumption against suicide

In *R v Cardiff City Coroner; Ex parte Thomas*¹ suicide was defined as ‘voluntarily doing an act for the purpose of destroying one’s own life, while one is conscious of what one is doing.’

A finding of suicide requires evidence that the deceased intended the consequences of the act. The person must have intended both to engage in the act and to terminate his or her life.

Such a finding requires that accident be ruled out. That requires definite proof of the elements of suicide.

In England, it has long been held that there is a presumption against suicide.² It has been said that the presumption is based on ‘the inference drawn from the experience of mankind that self-destruction, being contrary to human instincts is unlikely to have occurred.’³

In *R v London Coroner; Ex parte Barber*⁴ Lord Widgery CJ stated:

[P]erhaps one of the most important rules that coroners should bear in mind ... [is] that suicide must never be presumed. If a person dies a violent death, the possibility of suicide may be there for all to see, but it must not be presumed merely because it seems on the face of it to be a likely explanation. Suicide must be proved by evidence, and if it is not proved by evidence it is the duty of the coroner not to find suicide, but to find an open verdict ...’

In Australia the High Court has endorsed that approach in contexts other than coronial⁵ and that is also the case in Canada. In the Canadian case of *Greening v Commercial Union Assurance Co*⁶, the court stated that clear and cogent rebuttal evidence is required to tip the balance of probabilities sufficiently to justify a finding of suicide.

Conclusions

This inquest has heard evidence that, prior to his death, Mr Molloy was in good spirits. Although he had been busy and stressed, organising the sale of his business, he was relieved to have sold the business a couple of days prior to his death.

He had made plans for that afternoon, that evening, that weekend and the upcoming months. He was not under financial stress and he was happily married. He spoke to family and friends on the day of his death and gave no

¹ [1970] 1 WLR 1475 at 1478

² *R v Huntback; Ex parte Lockley* [1944] KB 606 at 610

³ *Dominion Trust Co v New York Life Insurance Co* [1919] AC 254 per Lord Dunedin at 259

⁴ [1975] 1 WLR 1310 at 1313

⁵ *Mutual Life Insurance Co of New York v Moss* (1906) 4 CLR 311; *Spiratos v Australasian United Steam Navigation Co Ltd* (1955) 93 CLR 317

⁶ (1987) NJ (QL) No 428

indication that he was unhappy or depressed. He had long-held and strong views against suicide.

The inquest also heard evidence from a number of persons who witnessed Mr Molloy's actions just prior to him being struck by the prime mover. Those persons were travelling at about 80 kilometres per hour on a busy road. Some of them saw the accident from their rear view mirrors. They had Mr Molloy in their vision for a number of seconds at the most. There were some inconsistencies, as one would expect, in their evidence.

Despite these limitations, all were adamant that Mr Molloy deliberately stepped out in the front of the truck. They disagreed that it was possible that Mr Molloy had tripped or walked out on the road by accident.

The witnesses, in coming to the conclusion that Mr Molloy's actions were deliberate and that he intended to take his own life, have inferred his mental state from the physical actions that they observed. However, the evidence before this inquest relating to Mr Molloy's mental state is that he was not depressed or suicidal.

Whilst the fact that he was not depressed or suicidal is not conclusive, I find that, taking into account all of the evidence and considering the presumption against suicide, I am unable to determine Mr Molloy's state of mind at the time of his death. I am also unable to determine whether his actions when he moved onto the roadway in front of the prime mover were intentional. I am unable to find whether Mr Molloy's death was due to accident or suicide.

It is clear that no other person is responsible for or contributed in any way to the death of Mr Molloy. Mr Priestly was driving safely, in accordance with the road rules and appropriately for the traffic and road conditions at the time. He made every reasonable attempt to avoid Mr Molloy but he was unable to do so.

Findings required by s. 45

Identity of the deceased –	Michael Patrick Molloy
How he died –	Mr Molloy died from multiple injuries he sustained when he was struck by a prime mover. I am unable to determine whether Mr Molloy's death was due to accident or suicide.
Place of death –	Ray Jones Drive, Portsmith, Queensland, 4075
Date of death–	8 October 2010
Cause of death –	Multiple injuries sustained in motor vehicle accident (pedestrian)

Comments and recommendations

Section 46 of the Coroners Act 2003 provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

In this matter there are no comments or recommendations that I could make relating to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

I close the inquest.

Jane Bentley
Coroner

CAIRNS

12 March 2014