QUEENSLAND COURTS

CORONERS COURT OF QUEENSLAND

Reasons for Decision
(including Findings & Comments)

CITATION:	**Inquest into the death of Shandee Renee Blackburn**
TITLE OF COURT:	Coroner's Court
JURISDICTION:	Mackay
FILE NO(s):	COR 2013/519
DELIVERED ON:	21st August 2020
DELIVERED AT:	Mackay
HEARING DATE(s):	1 July 2019 - 16 July 2019
FINDINGS OF:	Magistrate D O'Connell, Central Coroner
CATCHWORDS:	Inquest – Young woman attacked while walking home after work at night-time – suffered fatal stab wounds - Recommendations as to increase in CCTV locations & quality
REPRESENTATION:	
Counsel Assisting	- Mr J M Aberdeen

Blackburn family	- Mr N Dore and Ms Kristy Bell, Fisher Dore Lawyers
Mr John Peros	- Mr C Eberhardt, instr by Robertson O'Gorman Solicitors

Reasons for Decision

Shandee Renee Blackburn.

[1]. On 9 February 2013 Shandee Blackburn died from multiple stab wounds[1] inflicted whilst she was walking home from her place of work. Despite an extensive police investigation no person was found responsible for her death[2].

[2]. This inquest examines the circumstances of her death to try and establish, if I can, the requirements of the *Coroners Act* s.45[3]. The most significant issue was how (*i.e.* by what means, and in what circumstances[4]) she came to die, and who or whom, were responsible for her fatal injuries.

Tasks to be performed

[3]. My primary task under the *Coroners Act 2003* is to make findings as to who the deceased person is, how, when, where, and what, caused them to die[5]. In Miss Blackburn's case there is no real contest as to who, when, where, or what caused her to die. The real issues are directed to "how" she died.

[4]. Accordingly the List of Issues for this Inquest are:-

1. The information required by section 45(2) of the *Coroners Act 2003*, namely:
    a. When the deceased person died;
    b. Where the deceased person died;
    c. How, and in what circumstances, the deceased person died;
    d. What was the cause of death.

2. Whether consideration should be given to increasing electronic surveillance of high risk areas by-
    a. Identifying areas of high risk;
    b. Installing additional CCTV facilities; or
    c. Upgrading existing facilities to improve image quality;
    d. Installation of additional street lighting, whether or not in conjunction with any of the above?

3. Whether employers operating late-night licensed venues should consider including within their Safety Management Systems facility for transporting employees performing late-night shifts, who do not otherwise have access to safe and secure transport to their homes, through an adaptation of their existing "courtesy bus" service?

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[1] Exhibit A.3 Autopsy Report Cause of Death.
[2] A person, Mr Peros, was tried but found not guilty of her murder.
[3] An inquest is never to be used as a 'defacto' criminal (or civil) trial of any person: *Atkinson v Morrow* [2005] QSC 92 at [26]. An inquest is only to be conducted to discharge the legal requirements under the *Coroners Act*, specifically s.45(2), and then s.46 & s.48 if relevant. In addition, no finding by a Coroner can include any statement that a person "*is, or may be, guilty of an offence, or civilly liable for something*" (see *Coroners Act* s.45(5)).
[4] *Atkinson v Morrow*, cited above, at [32]; *Re State Coroner; Ex parte Minister for Health* (2009) 38 WAR 553 at [31] to [42].
[5] *Coroners Act 2003* s. 45(2)(a) – (e) inclusive.

[5]. The second task in any inquest is for the coroner to make comments on anything connected with the death investigated at an inquest that relate to public health or safety, the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future[6].

[6]. The third task is that if I reasonably suspect a person has committed an offence[7], committed official misconduct[8], or contravened a person's professional or trade, standard or obligation[9], then I may refer that information to the appropriate disciplinary body for them to take any action they deem appropriate.

[7]. In these findings I address these three tasks in their usual order, s.45 Findings, s.46 Coroners Comments, and then s.48 Reporting Offences or Misconduct. I have used headings, for convenience only, for each of these in my findings.

The nature of an Inquest under the Coroners Act 2003

[8]. Whilst I have stated this before in inquest findings it is worth repeating for the next of kin so they may better understand the coronial process.

[9]. With the commencement of the *Coroners Act* 2003 there was a very significant change to the fundamental purpose, or objective, of an inquest. In Queensland an inquest is no longer directed to apportioning guilt, rather it is a fact-finding exercise. It is neither a prosecution, nor a trial. The present nature of an inquest has been conveniently stated as follows:-

> *"In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use"* [10]

[10]. Whilst this statement regarding the nature of an inquest was made in England in 1982, and made well prior to the present Queensland *Coroners Act 2003*, it is still very relevant to the nature of an inquest under the current Queensland law. It has been cited with approval in Australia, and indeed in Queensland[11]. It is said that a coroner's investigation is an independent, impartial, open and transparent inquisitorial process.

[11]. Since an inquest is a fact-finding exercise, or enquiry, I have approached the inquest in that way and heard evidence to deal with a number of possible explanations for Miss Blackburn's death, specifically those who may have caused her injuries. I must also, if appropriate, consider any person who may not have been the subject of specific police enquiry[12]. My approach to the inquest has been to initially consider the widest number of

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[6] ibid s.46(1)
[7] Ibid s.48(2)
[8] Ibid s.48(3)
[9] Ibid s.48(4)
[10] *R v South London Coroner, ex parte Thompson* (1982) 126 SJ 625; *The Times*, 9 July 1982; full text decision in P Knapman & M Powers, *Sources of Coroners Law* (1999) Vol 1, p 214 at 218.
[11] Quoted by Toohey J in *Annetts v McCann* (1990) 170 CLR 596, at 616, and cited with approval by McMeekin J in *Walter Mining Pty Ltd v Coroner Hennessey and Others* [2009] QSC 102 at para [18]; [2010] 1 Qd R 593, at 596-597.
[12] Essentially any other member of the community at large.

persons possibly involved in her death on that night, and then exclude, firstly, those clearly not responsible, and then progress to the person or persons requiring the most, or closest, scrutiny. I have also been cognisant that I need to carefully analyse and weigh up the evidence presented; and this is especially relevant for those who gave evidence at the inquest, where I could assess their evidence, and make relevant findings of fact, where possible. This has been a time-consuming process and I have always kept in mind the sometimes-conflicting evidence. I have endeavoured to determine the reliability and credibility of these witnesses before me on the basis of their evidence and how it was presented. I have also ensured I have remained removed from any 'adversarial'[13] aspect of the matter, particularly where it came to witnesses.

[12]. An inquest is an independent investigation by a coroner. It is the coroner who directs the nature of the investigation, and whilst police can receive tasks from the coroner to be completed, a coronial investigation is not simply a "re-hash" of a police investigation[14], and any suggestion that that may be so is misconceived, and fails to appreciate the true nature of a coronial investigation. The evidence to be called is determined by the coroner and whilst a large number of witnesses were called to give evidence, not every witness who provided a statement which was tendered at the inquest gave evidence, as quite often their evidence was either uncontroversial, or touched on a very minor aspect. There were more than 500 witness statements and it is impractical, indeed the public purse would not permit it, for every person who gave a statement to be called as a witness, particularly if their evidence would not appear controversial. An inquest has a recognised role, as a component of the public interest[15], in allaying rumour, innuendo, and suspicion, as it gathers before it the relevant evidence and subjects persons to questioning. Inquests, of their very nature, are merely a fact-finding court process, and that process is swayed neither by emotion, nor by the outcome of earlier proceedings in a different jurisdiction, conducted for a different purpose, and applying different rules.

[13]. Counsel for Mr Peros sought to have particular witnesses called, and whilst concessions were made to allow a number of these witnesses, others were not considered necessary to be called by me. Where Counsel for Mr Peros has raised what might be termed concerns or issues with the non-calling of those witnesses I have addressed these matters later in these findings. As was raised at the second pre-inquest conference, it is the coroner who determines what witnesses are called[16], and that fundamental principle of coronial inquests was acknowledged by Counsel for Mr Peros.

[14]. What I have endeavoured to do is to ensure I have remained objective and removed from all emotional investment in the matter. To me it is yet another coronial investigation that I undertake, and I have ensured that any terse or tense exchanges between counsel, and counsel with witnesses, has not affected my judgement, nor conclusions.

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[13] An inquest is not *adversarial* per se, as there are no parties, just interested persons; and there is no prosecution, nor defendant (as repeatedly confirmed in the case law).

[14] The position of the constable (originally of a village, or locality) has been subordinate to the orders and directions of the Coroner since medieval times; and this common law tradition continued through to the establishment of the Metropolitan Police in 1829, when the investigative role of the police, on behalf of the Coroners, was confirmed. Those arrangements were mirrored in this country, and modern examples in Queensland may be found in s.50 of the *Coroners Act 1958* (Repealed), and in the present s.794 of the *Police Powers and Responsibilities Act 2000.* Coronial investigations are overseen, and directed, by the Coroner alone.

[15] *Report of the Brodrick Committee on Coroners* (1971) Command 4810, pp 160-161*; R v HM Coroner for Western East Sussex, ex parte Homberg* (1994) 158 JP 357, at 372E; *R (Amin) v Secretary of State* [2004] 1 AC 653 at [31] *per* Lord Bingham of Cornhill.

[16] See *Neumann v Hutton and Anor* [2020] QSC 17 at para [14]; *Jervis on Coroners* (12th Ed, 2002) at [10-13].

Coroners Court Standard of Proof of Evidence

[15]. Section 37(1) of the *Coroners Act 2003* lays down the basic proposition with respect to the receipt of evidence at inquest:

> "The Coroners Court is not bound by the rules of evidence, but may inform itself in any way it considers appropriate."

[16]. The first thing to note about this subsection is that, by using the expression "not bound", it does not require that the Court have no regard whatsoever to the "rules of evidence":

> "The tribunal is not bound by the rules of evidence … and may inform itself in such a manner as it thinks appropriate. This does not mean that the rules of evidence are to be ignored. The more flexible procedure provided for does not justify decisions made without a basis in evidence having probative force."[17]

[17]. It must also be borne in mind that the rules of evidence are not lightly to be dispensed with in the tasks of both receiving and weighing evidence at inquest:

> "The exercise of the Tribunal's freedom from the rules of evidence should be subject to the cautionary observation of Evatt J in *R v War Pensions Entitlement Appeal Tribunal; ex parte Bott* that those rules 'represent the attempt made, through many generations, to evolve a method of inquiry best calculated to prevent error and elicit truth'. It is a method not to be set aside in favour of methods of inquiry which necessarily advantage one party and disadvantage another. On the other hand, that caution is not a mandate for allowing the rules of evidence, excluded by statute, to 'creep back through a domestic procedural rule' ".[18]

[18]. Secondly, the expression "rules of evidence" is not further explained within the *Coroners Act 2003*[19]. But it must be qualified, in the first place, by other sections of the Act which lay down specific procedures with respect to matters which usually fall within the expression "rules of evidence". An example is the specific procedure prescribed by section 39 of the Act which governs the issue of self-incrimination.

[19]. Further qualifications may arise, by implication, from the inherent nature of the inquest under the Act. The Coroners Court is a Court of Record[20]; it contemplates representation of interested parties by legal practitioners[21]; it assumes a process involving formal public

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[17] *Rodriguez v Telstra Corporation Pty Ltd* (2002) 66 ALD 579, *per* Kiefel J (as her Honour then was) at 585 [25], on section 33 of the *Administrative Appeals Tribunal Act 1975* (Cwth). See also *Hehir v Financial Advisers Australia Pty Ltd* [2002] QSC 092, *per* A Wilson J, at [18]: "While the Tribunal was not bound by the strict rules of admissibility, it would have erred in law had it acted on evidence that was not logically probative", in respect of s 208 of the *Anti-Discrimination Act 1991*.

[18] *Kostas v HIA Insurance Services Pty Ltd* (2010) 241 CLR 390, *per* French CJ at 396 [17]. See also the judgment of Muir JA (with whom McMurdo P and Chesterman J agreed) in *Lillywhite v Chief Executive, Liquor Licensing Division* [2008] QCA 88 at [34]; 100 ALD 586 at 594: "…it is not the case that the tribunal acting under s 47(4) of the *Commercial and Consumer Tribunal Act* should act on the premise that the rules of evidence apply unless, for sound reason, their application is dispensed with. Such an approach imposes a procedural limitation on the tribunal which is not to be found in the language of the evidentiary provision and, indeed, is inconsistent with it".

[19] "The few words by which the rules of evidence are typically dispensed with are deceptively simple": Mr Justice Giles, "Dispensing with the Rules of Evidence" (1991) 7 (3) *Aust Bar Review* 233-251, at p 247.

[20] Section 64(1) *Coroners Act 2003*.

[21] Section 36(4) *Coroners Act 2003.*

hearings[22], the taking of evidence upon oath[23], and the cross-examination of witnesses[24]; it is subject to a system of review by a superior Court[25]; it has the power to punish for contempt of Court[26]; and it is presided over by a Coroner who holds judicial office[27]. In addition, a Coroner is bound, in all of his or her duties, by the requirements of natural justice[28].

[20]. Taking into account all of these factors, there can be no room for doubt that, although the issue of a standard of proof commonly finds it place within the expression "rules of evidence", the Legislature, in passing the *Coroners Act 2003*, contemplated that the findings to be made by a Coroner would be made by reference to a legally-recognized standard of proof. It is also clear that the common law recognised only two standards of proof[29] – the criminal standard (beyond reasonable doubt) and the civil standard (usually described in terms of the balance of probabilities).

[21]. The *Coroners Act 2003* was passed with the specific intention of separating the coronial process from the criminal justice process[30]; and it follows that the applicable standard of proof at an inquest must be the civil standard *ie* upon the balance of probabilities[31].

[22]. Pursuant to section 14 of the Act, the State Coroner is empowered to make Guidelines for the assistance of Coroners in carrying out their duties. Chapter 9 of these Guidelines reflects the appropriate standard of proof in respect of coronial findings at inquest. Importantly, they also draw attention to the potential, with respect to issues which may carry adverse consequences for a particular person, for the Coroner to be satisfied of their existence to a higher level of satisfaction:

> "The particulars a Coroner must if possible find under s45 need only be made to the civil standard but on the sliding *Briginshaw* scale. That may well result in different standards being necessary for the various matters a coroner is required to find. For example, the exact time and place of death may have little

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[22] Sections 31 and 32 *Coroners Act 2003*.
[23] Section 37(4)(b) *Coroners Act 2003.*
[24] Section 36(5) *Coroners Act 2003.*
[25] Section 50 *Coroners Act 2003*, upon the grounds *inter alia* that there was no evidence to support a finding, or that a finding could not be reasonably supported by the evidence.
[26] Section 42 *Coroners Act 2003*, applying section 50 of the *Magistrates Courts Act 1921.*
[27] Taking into account the fact that the Court is a Court of Record, and noting sections 70, 78 and 82 *Coroners Act 2003*; and section 88(1) (granting Judicial Immunity).
[28] *Annetts v McCann* (1990) 170 CLR 596.
[29] *Briginshaw v Briginshaw* (1938) 60 CLR 336, *per* Dixon J at 360.
[30] "Effectively, we have converted the character of the coronial system from one that investigates criminal charges, in which case the privilege against self-incrimination would clearly still be justified to apply, to one that does not result in the coroner committing people for trial at all. That will be the subject of a separate police investigation in relation to the actions of any other person that might have given rise to the death. The coroner is concerned to establish the cause of the death, not necessarily who specifically was responsible……the philosophy of the new coronial system that we are establishing by this bill is to separate out investigations into criminal liability from the coronial system of inquiry, the coronial system of inquiry being to get to the truth that underpins the cause of death and prevent future similar deaths rather than to identify particular individuals for their criminal behaviour": *Queensland Parliamentary Debates*, 03/12/2002, *per* the Hon R Welford A-G, p 5222.
[31] This accords with the opinion expressed by the authors of Australia's leading treatise on coronial law, Mr Ian Freckelton QC and Dr David Ransom, *Death Investigation and the Coroners Inquest* (2006) at pp 554-555, where the authorities from other jurisdictions supporting the proposition are collected. See also *The Laws of Australia* (WestLaw) at [20.10.1340]: "The civil standard of proof is to be applied in Australian coronial inquests; that is to say matters should be established on the balance of probabilities, although strong evidence will be needed to displace this burden where serious allegations are involved".

> significance and could be made on the balance of probabilities. However, the gravity of a finding that the death was caused by the actions of a nominated person would mean that a standard approaching the criminal standard should be applied because even though no criminal charge or sanction necessarily flows from such a finding, the seriousness of it and the potential harm to the reputation of that person requires a greater degree of satisfaction before it can be safely made".

[23]. To take one particular example of what is called the "sliding" scale of proof – the commission of a crime - Justice Dixon, in *Helton v Allen*[32], endorsed a direction by the trial judge that:

> "When a crime is charged in a civil trial *it must be proved strictly* because the degree of proof required in a civil trial *depends upon the magnitude of the thing that is in issue*, and when a crime is in issue you will not lightly find that a crime has been committed, and *according as the crime is grave you shall require a greater strictness of proof*".
>
> [Emphasis added]

[24]. Perhaps the most helpful explanation of the nature of the "stricter proof" which may be required before a finding carrying serious consequences can be made was that provided by Justice Dixon himself in *Briginshaw v Briginshaw*[33]:

> "The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency".

[25]. In an inquest, as stated above, there can be no suggestion of any finding that a particular person has committed[34] a crime, or that a person may be civilly liable for something[35];

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[32] (1940) 63 CLR 691, at 711.
[33] (1938) 60 CLR 336, at 361-362.
[34] Legal practitioners will appreciate this distinction, I trust that members of the media do so as well in any coverage they may make of these Findings.
[35] Section 45(5) *Coroners Act 2003*. This prohibition also applies to the making of comments by a Coroner, under section 46: s 46(3).

but the strictness of proof referred to in *Helton v Allen* applies equally to any coronial findings of fact from which it could be inferred that a person might have committed an offence, or might have done something which would adversely reflect upon that person's character.

[26]. The State Coroner's Guideline was cited, without adverse comment, by the Court of Appeal in *Hurley v Clements*[36]. The Court did, however, draw attention to the difference between the civil and the criminal standards of proof insofar as they applied to findings based on circumstantial evidence, a distinction of crucial importance in the circumstances of *Hurley's* case[37]:

> "… the application of the sliding scale of satisfaction test explained in *Briginshaw v Briginshaw* does not require a tribunal of fact to treat hypotheses that are reasonably available on the evidence as precluding it from reaching the conclusion that a particular fact is more probable than not."

[27]. Whenever I have reached a conclusion, or drawn inferences, I have been mindful to weigh up and, if able, exclude any other reasonable possibility which may also explain the circumstances as I find them[38]. I have kept these aspects of the standard of proof uppermost in mind at all times as I considered the matter, and the tasks I am required to perform. I have approached the matter methodically, slowly, and in a considered way, so as to allow myself time to weigh up all submissions made[39], and considered all reasonable possibilities; and only then to reach a final conclusion to which I am persuaded to a standard which approaches "beyond any reasonable doubt"[40]. I am very mindful of the gravity of my task as the circumstances of Miss Blackburn's death are so serious that it has the very real potential to affect a person's reputation even though these are only coronial findings.

Inquest Evidence versus Trial Evidence

[28]. The inquest heard from 53 witnesses[41], had available the committal and trial transcript, numerous CCTV recordings, and also audio recording of particular conversations. The inquest brief itself was comprised of 24 lever arch folders, before audio recordings and

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[36] [2010] 1 Qd R 215, at 232.
[37] At p 233. See also *Bradshaw v McEwan's Pty Ltd* (1951) 217 ALR 1 (HCA), at 5 *per* the Court.
[38] And recently the Supreme Court has observed, in relation to a suspected death and forfeiture of bail surety, that 'The evidence must be enough to enable the court to feel an actual persuasion that a particular fact is so": *Director of Public Prosecutions (Cth) v Turner and Anor* [2016] QCS 107 at [51].
[39] Submissions made at the conclusion of the inquest were detailed and protracted from both interested parties. For example Mr Peros' counsel not only provided me with a 57 page written submission, he also took the time to read it to me virtually *verbatim*. It could not be said that the opportunity to raise any aspect of a submission for Mr Peros, nor Miss Blackburn's family, was overlooked.
[40] I adopt that standard in accordance with the *State Coroner's Guidelines*, while bearing in mind the observations of the Court of Appeal in *Hurley v Clements* (cited above) at [27] and [32] – [34]. I note that a reference to p 222 of *Hurley v Clements*, relied upon by Counsel at inquest (TT 10-44 L 40), was in fact to the arguments advanced in that case, and not to the judgment of the Court.
[41] Counsel for Mr Peros wished a further 32 witnesses to be called but the decision as to what witnesses are called is at the discretion of the Coroner and not an 'interested party'. I declined to list further witnesses at the adjourned Pre Inquest Conference, but allowed Counsel to address me on the necessity for further witnesses should that arise. No such request was made during the inquest and following my investigations and after hearing the evidence I consider, in fact I am convinced beyond doubt, that there was no utility to calling any further witnesses for the Findings I have to make and the Issues that were considered under the *Coroners Act* for this inquest. It must be borne in mind that the most important, and relevant, events are those leading up to and which occurred on the night and very shortly after it.

CCTV recordings are considered which themselves filled 70 electronic storage devices[42]. The inquest ran for eleven days[43]. It was very comprehensive. It was repeatedly said to me by Mr Peros' counsel that I had the same evidence before me as was heard by the jury who did not convict his client who had been charged with Miss Blackburn's murder and found not guilty. With respect, that assertion is plainly incorrect.

[29]. The inquest was more comprehensive than that Supreme Court trial as to the available evidence which it could receive, such is the nature of our modern coronial process. The trial also had restricted availability of the total CCTV footage as it was a criminal trial conducted under different evidentiary rules, and there was restricted evidence permitted from the persons who compiled and could explain the CCTV. Every inquest has the benefit of receiving additional evidence not permitted at a criminal trial, specifically hearsay evidence, but importantly in this case the complete CCTV footage including the 'timed compilation' and enhancement stills, but also quite significantly explanations from those persons who examined it and who could assist me in understanding it[44]. Significantly, Mr Peros himself gave evidence, which was the first time he had actually given evidence and been subject to questioning in a courtroom. I also had the opportunity to assess Mr Peros' credibility and reliability whilst he gave his evidence. No criminal trial, or committal, had that available to them.

[30]. In any examination of the evidence it is important to consider the totality of all the evidence and the credibility and reliability of each witness. An overly narrow view of just some of the evidence, or considering that evidence in isolation of all the other evidence, can lead to incorrect conclusions. Whenever I have come to a conclusion it is only after careful consideration of all of the evidence and particularly consideration of the credibility of the witnesses, especially in how they gave or presented their evidence at the inquest, where I had the chance to carefully observe them when giving their evidence before me.

Factual Background & Evidence

[31]. Certain background factual matters before Miss Blackburn's death are not in issue[45] and are readily apparent. These I can state broadly. Miss Blackburn was the younger of two children. She attended school in Mackay and at the High School she attended was another person who was a witness at the inquest; but there was no evidence of relevant contact between them at school, in that they had a different circle of friends, and there was not identified any particular issues between them. I merely raise this for completeness. Miss Blackburn worked in Mackay for a period of time, and that employment appears to have been quite uneventful except for a workplace legal issue unrelated to her death. Whilst in Mackay, she had a number of boyfriends[46], one of

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[42] TT1-2 at L 27.

[43] These hearing days generally ran from 9.00am to as late as 6.20pm, so they were long days, and covered much more than 11 days would ordinarily suggest.

[44] These explanations, through examination of the relevant witnesses, were opened up to exploration by Counsel, and by myself.

[45] Counsel in written submissions concurred: "*The circumstances of Shandee Blackburn's death are well established. The only fact that remains unresolved is the identity of her killer*". (Mr Peros' Submission, paragraph 4). From the coronial viewpoint, the public interest in this matter requires that the underlying causes of the incident should, if possible, be identified, *eg* whether this was a "robbery gone wrong" (as has been suggested), or whether it was a matter involving domestic violence (in respect of which, the coronial system has an important role to play), or whether it was a random attack, or one which has a real probability of recurrence. This type of consideration may only be addressed, in some cases, if the relevant party/s can be identified.

[46] Other former boyfriends also attended the inquest as witnesses, and I will deal with each later.

which included Mr Peros. The circumstances of that relationship I will deal with later, but I merely mention it at this time to note there was a degree of interaction with him.

[32]. At the date of her death her boyfriend was then Mr Arron Macklin who worked as a chef at Harrup Park Country Club, as did Miss Blackburn (she in the coffee shop).

[33]. Miss Blackburn was a citizen who had no criminal history and in fact, no behaviour which had brought her to the attention of the police at all.

[34]. Mr William Daniel had a very substantial criminal history[47] and his offences included burglary, stealing, illicit drugs, assaults involving violence, robbery and weapons (primarily a knife) style offences (including going armed so as to cause fear), and domestic violence offences[48]. Mr Norman Dorante also had a substantial criminal history[49] primarily for offences involving stealing, motor vehicles, wilful damage, illicit drugs, and possession of a knife in a public place. He also had a significant domestic violence history. Mr Daniel and Mr Dorante quite often committed violent offences together, where clearly Mr Daniel sought the assistance of Mr Dorante's size and physicality, something Mr Daniel did not have.

[35]. Mr Scott MacPherson was another person of particular interest as he was a person also with an extensive criminal history primarily for assaults and other offences of violence.

[36]. Mr John Peros had no criminal history convictions whatsoever, nor any reported domestic violence history. He was qualified and worked as a diesel fitter in full-time employment. He was clearly an accomplished amateur boxer competing in the Middleweight[50] division. He had demonstrated significant boxing prowess[51] achieving third place[52] at the National Boxing Titles in November 2012[53], when held in Mackay. He told the Court that he was at an even higher level of achievement previously, but that was six years prior[54].

[37]. I have stated the above very briefly as these persons became quite a focus of the inquest. I deal more substantially with each of these persons later.

[38]. What is readily apparent, and was established from a number of witnesses, and evidence including various CCTV recordings, was that on this particular night Miss Blackburn worked her shift at the Harrup Park Country Club, Milton Street, Mackay. Harrup Park Country Club is the home of the Mackay Cricket Association and has within it a number of bars, a coffee shop, and function rooms. She worked there as an employee doing coffee shop or waitressing style work. On this particular night she completed her work

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[47] Exh F.52

[48] Since about May 2016 he had been dealt with for DV and only minor drug and obstruction of police charges. Whilst there is generally a restriction of publishing domestic violence matters, I can make general comments on this for my coronial purposes. No-one suggested that I could not, or should not, do so.

[49] Exh F.51. Mr Dorante has no assault, nor robbery offences in his criminal record.

[50] 71-75kg. For those unfamiliar with boxing weight divisions, this is a division higher, or heavier, than more readily known Australian boxers such as Jeff Horn, Jeff Fenech, or Anthony Mundine (at their usual competitive weights). That is simply to allow persons some perspective as people may be more readily aware of these boxers.

[51] And that is quite an achievement, as levels in any such sport go Local, District, State, then National ie. Australian Titles.

[52] TT5-51 at L 7.

[53] TT5-51 at L 5, this being three months before Miss Blackburn's death.

[54] TT5-51 at LL 7-10.

which was relevantly entirely uneventful, in that there were no interactions, nor disputes, of any note with any patron or co-worker[55].

Events as Miss Blackburn walks home

[39]. She finished her shift at approximately midnight and walked from the Harrup Park Country Club along Juliet Street towards her mother's residence at Boddington Street. The approximate distance is about 1.2 kilometres. She is seen in various CCTV footage walking along the western side of the street along the footpath. Miss Blackburn is walking alone and again this all appears rather uneventful[56].

[40]. Whilst she walked along the street a number of vehicles also travelled through the area, but the traffic was very light as it is now just after midnight on a Friday night (essentially very early Saturday morning). She is not seen to encounter any person as she walked along Juliet Street (and I am leaving aside the very eventful last few hundred metres of her journey).

[41]. Of the traffic in the area there is a vehicle seen on CCTV footage which drives what a local person[57] may consider to be an alleged 'unusual' route in that it is seen to drive from Hamlet Street (travelling east), veering left onto Juliet Street, from where it follows Juliet Street around[58] into Sydney Street, before turning right onto Eighteenth Lane, then turning left onto Twelfth Lane[59]. I say 'unusual' as only one vehicle drove along Twelfth Lane in the period from 9.00pm to 1.00am, so it can clearly be determined that Twelfth Lane was a very quiet street in Mackay on that date and at that time. The vehicle then allegedly turned left onto Shakespeare Street, and then left onto Sydney Street[60], before the vehicle is seen to drive into the lower part of Sydney Street (which is not the main through-street for traffic heading south; that is Juliet Street). The suggested route the vehicle takes is determined through a compilation of a number of CCTV footage recordings which are time-adjusted to show the vehicle's movements. I will comment

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[55] There was a suggestion in the evidence that a co-worker had a dispute with her some months prior, but on considering that evidence, I readily dismiss it as being not remotely relevant to the matters which occurred on 9 February 2013. Accordingly, I reject a suggestion by Counsel at the inquest that the other party to this "dispute" should be seriously considered as a suspect in Shandee's death (TT 11-59 L 43 to 60 L 34, and see paragraphs [453] to [458] of written submissions for Mr Peros).

[56] There was a suggestion that she may have had an interaction with certain persons near to where she left Harrup Park Country Club, but if she did it was very minor and inconsequential, and certainly nothing is seen on the CCTV footage of her being involved with another person nor being followed (I leave aside from this the final 200 metres of her intended journey where a figure is seen moving towards where she walked). I can readily dismiss, and I do so, any interaction she had with someone or some people as she left Harrup Park as having any involvement in her death. There is simply no evidence to support that, particularly so in light of my entire Findings.

[57] Being a resident of Mackay put me at a distinct advantage in understanding the local street layout, traffic routes, and local businesses, also to understand what is the usual route taken by vehicles when passing through this area.

[58] That is a particularly unusual local anomaly where the naming of the streets in this area raises a small confusion over just where Juliet Street ends and becomes Sydney Street. It does not affect my understanding of the issues or the factual circumstances.

[59] This is part of its alleged full journey. The alleged full journey includes Shakespeare Street and Sydney Street and I deal with this separately later. This initial segment of the alleged full journey is readily confirmed by the evidence as the one vehicle and as captured on synchronised CCTV.

[60] Effectively completing a "loop". For a vehicle approaching from Hamlet Street to access the lower part of Sydney Street there is no Right Turn facility at all at the junction of Juliet & Sydney Streets, and it is necessary to complete a turn, at a suitable place (or drive a considerable loop), to access the southern end of Sydney Street, that is in the vicinity of the Guides Hut.

later on that compilation[61], because questions were raised as to whether it is in fact the same vehicle seen taking this compiled route[62].

[42]. It is worthwhile mentioning that the streets in the area including their irregular layout, for instance Sydney Street turning into Juliet Street, instead of the southern end of Sydney Street, means it is helpful to be a regionally based coroner. A number of times throughout the inquest I had to correct parties who made slight errors of description or comments simply due to their unfamiliarity with the street layout and naming. I appreciate it can be hard for someone not familiar with the area to make slight errors[63].

[43]. The significant question is not just whether it is the same vehicle driving this compiled route, but whether this particular vehicle, which is broadly described as a white, dual-cab, four-wheel drive utility, is the same vehicle as that owned by Mr Peros. Mr Peros, through his Counsel, indicated[64] that they could not say if it was or was not his vehicle in the CCTV footage (but conceded, and there is definitely no real issue that the vehicle seized by QPS from Mr Peros was his vehicle (Qld Registration Number 706 LHN)). Accordingly, the very live issue for me to determine is whether or not it is Mr Peros' vehicle in the videos.

Events at or around the time of 12.15am, the time of Miss Blackburn's death

[44]. At this time it is appropriate that I outline the circumstances of Miss Blackburn's assault. It occurred at about 12.15 a.m. on Saturday morning, 9 February 2013. It occurred at Boddington Street, near the intersection with Juliet Street, Mackay. She was merely metres from arriving home safely. Evidence from a resident who was watching television in a unit which overlooks the scene was that they heard no noise from that location which caught their attention and the first noise they heard was a "coughing-like" noise[65]. Evidence from the pathologist who conducted the autopsy was that one of the significant stab wounds was to Miss Blackburn's neck, which damaged her larynx so she would be impaired to call out[66]. It was also that the attack, despite the number of wounds she suffered, occurred quite quickly[67].

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[61] The compilation CCTV was not really questioned or disputed, and I received an adequate explanation of how it was compiled from the source CCTV footage, and how the time-stamping adjustments were made to compile or align it as being correct. I have no hesitation accepting that it is a correct compilation of the movements of a white 4WD dual cab vehicle (or vehicles) at that time, on those streets.

[62] I use the term 'compiled route' as the QPS put together an interactive presentation which shows a particular vehicle shown in various CCTV travelling this series of roads in that locality. That is, it is compiled from various different CCTV cameras which required their footage to be time calibrated. I explain this later in my Findings as to whether or not I find it is the same vehicle.

[63] An instance involved the Shakespeare Street/Sydney Street traffic light sequencing issue, which all locals have endured as a slow, anti-clockwise, one direction at a time sequence, for many years. One Counsel (not local) queried this, until it was highlighted to them from the evidence in a statement contained in the Inquest Brief (Exh C.223) of a Mackay Regional Council Officer that the sequence was indeed that as I had stated; anti-clockwise, and only one direction at a time. I am not being critical of anyone, rather there is simply a greater understanding or appreciation of the location and its' features by those more intimately familiar with it, whether gained by driving, cycling, running, or walking through the area for over 30 years. A person from Brisbane may simply lack that familiarity.

[64] TT2-116 at [24-28] and TT2-117 at [38] to TT2-118 at [1].

[65] Exh C.190, Davis "Ringo" TAPIM, pp 1-2.

[66] TT 1-68 at [44-45]

[67] I specifically deal with this later in my findings.

[45]. What is evident is that Miss Blackburn was taken by surprise by the attack because logically if her attacker confronted her, and they had any verbal interaction, or she had knowledge of the presence of this person, she would at least call out or speak some words. If the resident could hear coughing they would definitely hear a conversation, but nothing like this occurred, nor was there any cry-out as one would expect there may if the assailant had confronted her with a bladed instrument and she was threatened[68]. Clearly her larynx was injured in the incident, and that probably occurred very early in the encounter as she never called out.

[46]. The second aspect which is known is that a taxi driver, Mr Jaspreet Pandher, driving Cab No 73, drove along Boddington Street, from Sydney Street before turning right into Juliet Street (north) – the street behind the McDonald's Restaurant. There is a slightly unusual alignment of Boddington Street in this area such that his headlights only picked up Miss Blackburn and the assailant as he commenced to turn right from Boddington Street into Juliet Street, even though Miss Blackburn and the assailant were in Boddington Street (this is due to a slight "dog leg" in what is otherwise considered a straight road). Mr Pandher's evidence was very clear that he only saw a lady with a man and they appeared to be fighting over what he presumed to be a handbag[69]. What I can clearly draw from his evidence, and I conclude, is that Miss Blackburn was attacked by just one assailant. There were not two or more people assaulting her at this time. Mr Pandher's evidence was subject to much attack on his reliability. I do not think there was any question as to his credibility. At all times, I conclude that he was attempting to provide truthful answers as best he could but the reliability of his answers was called into question through the numerous cross-examinations he has undergone through providing his versions of events from his original statements to the police, his walk-through with the police which was videotaped, his evidence at the committal hearing, evidence at the Supreme Court murder trial, and now at this inquest.

[47]. As English is his second language it was very evident (especially as at February 2013) that he does not have a very good command of English. I am not being critical of Mr Pandher; rather I am simply making the observation that as English was only his second language, he was not as confident with it as of 2013 as others were, and at times he struggled in conveying information accurately. That is very evident from reviewing his earlier evidence in proceedings, and particularly the video evidence of his reconstruction with the police. I observed that his command of English had improved greatly by the time of the inquest evidence in 2019, as one would expect, as he has continued to reside in Australia.

[48]. Mr Pandher impressed me as a witness who was trying his best to recall what has become a very disturbing recollection for him in knowing that a young lady had lost her

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[68] Many witness statements describe her as feisty (my word for the various descriptions of her demeanour), and so clearly not a timid girl but one who could be quite strong willed to express herself.

[69] Miss Blackburn's white handbag was never located, leading to some to opine this demonstrates it was a robbery incident. I note her mobile telephone, which presumably she was holding as she walked, was located at the scene. The absence of her handbag is a factor to be approached with some caution. Quite a number of people went to, or had been at the scene, before it was secured by the police about 20 minutes after she was assaulted. The item may simply have been moved away by a bystander quite innocently, as persons were then directed at doing what they could to save her life (and that was their focus); or it may have been removed by someone at the scene intentionally but discreetly. The item and what happened to it, are matters which are to be considered against all of the evidence, in the course of my deliberations, and until that point is reached, the possibility of robbery as a motive for the attack is one of a number of potential scenarios to be examined. There was no suggestion, in any of the evidence, that any items which could have come from the handbag had been found since the incident, nor was there any evidence that any item which might have been in the handbag *e.g.* account cards, had been used since the event.

life. He says he really does not wish to have to recall the information as he is trying to put it out of his mind, but because a young lady had lost her life, he tried his best to recall as accurately and reliably as he could. There were times in the evidence of Mr Pandher that certain matters were put to him upon which I observed he had difficulty understanding as to what was put and also as to what was being asked[70]. This was merely due to English being his second language. Accordingly, over-analysis of his evidence is not helpful. What I can very comfortably draw from Mr Pandher's evidence is that he saw Miss Blackburn struggling with a male person and they were standing at or near the kerb of Boddington Street and the footpath, with Miss Blackburn on the kerb or at footpath height[71] and the assailant possibly on the road or in the kerbside gutter, such that to his brief sighting their heights appeared to be relatively close[72]. The assailant was also of fairly slim build, that is, not a large build or overweight, and was dark skinned.

[49]. It must be remembered that Mr Pandher merely saw these two people in the headlights of his maxi-taxi as he turned an arc from Boddington Street into Juliet Street. He was not observing for a very long time at all, rather his vehicle sweeps around the corner and the headlights pick up this incident happening as he is also concentrating on turning his taxi to the right. In effect he is getting a very fleeting view of the situation, but he considered it serious enough from his short observation of events. He continued to drive along Juliet Street where he received a fare and then commenced to do a 'three-point turn' in Juliet Street. As all of this was happening, he also radioed to his taxi -base that an incident was occurring on Boddington Street, and that the police should be called. As he completed his three-point turn[73] he saw a figure run from where the assault was occurring, across the vacant allotment he called "the paddock", and away from his view[74]. It was suggested on numerous occasions that all he saw was the person's back, so in fact they were running south rather than in an east–southeast or south-east direction from Boddington Street[75]. What Mr Pandher never said was that the figure ran due-south and near the fence line of the paddock towards Hamlet Street, rather the figure ran across the paddock towards Sydney Street[76] (and I don't attempt to state precisely the angle at which the person ran, only that they ran to the eastern side of his field of view[77]). Mr Pandher's observation was that the person ran very freely[78] and was possibly holding something.

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[70] Even now in 2019, and clearly it would have been even more difficult for him in 2013 or near to then.

[71] Which makes sense as she was walking home and did not have to cross a road at this point of her route home.

[72] The issue of respective heights of Miss Blackburn and her attacker received much attention at the inquest, and in previous proceedings: see *eg* TT 1-58 from LL 15, 45, and 1-102 to 1-104.

[73] He is then a little up the street but has an unobstructed and clear view along the fence line of the paddock.

[74] Running to the east: see Exh C.193C (plan with directional arrow marked by Mr Pandher).

[75] As this was described to Mr Pandher, Counsel for Mr Peros turned away from him to show him that all he could see was the person's back running away. I did note Counsel was turned at about a 45 degree angle to the Bench, and I would probably have described seeing his back, even though he was at a 45 degree angle to me. This was because his back was the most prominent feature that I could see, although some may consider that a more correct description would be describing him as being slightly 'side-on' to me.

[76] Mr Pandher had a clear and unobstructed view to the south (and along the fence line) as effectively he was looking straight down the street towards the south. His view from his vantage point in Juliet Street (after his 3-point turn) when looking to the east or west is obstructed by buildings, fences *etc* on each side of Juliet Street. With this in mind, I have no difficulty in eliminating any possibility that the person he saw running away was moving towards the south or along the fence line.

[77] This is all readily confirmed by the CCTV footage.

[78] And Mr Pandher suggests the figure possibly had something in their hands, see C.193A at paragraph 8 or was possibly 'holding something' such as 'a bag – handbag' see TT 1-63 at [30-45].

[50]. At this time, it is relevant to describe a figure seen in CCTV footage obtained from 18 Juliet Street, Mackay. That CCTV[79], as well as footage from a business premises known as Dieseltek[80], show a figure run across the four lanes of Sydney Street (and a traffic island) and run across the paddock towards Boddington Street. There was much conjecture about what I could deduce from the CCTV footage. The CCTV footage also shows a figure, a little later, running back across the paddock, in a roughly easterly (or slightly east-south-easterly) direction, towards Sydney Street. There were timings taken of how long the person was in view and what distance they ran. In doing the best I can from the evidence I conclude the following:-

(a) Time taken to cross the four lanes of Sydney Street, the traffic island, and part of the paddock and move out of view – 5 seconds;
(b) Remaining out of view, that is remains to the left of the field of view (the western end I will describe it) – 33 seconds;
(c) Figure returns to view running from the western side to the eastern side of the field of view, that is towards Sydney Street – 7 seconds; and
(d) Duration of relevant footage – 45 seconds[81].

[51]. The footage also shows Mr Pandher's maxi-taxi turn into Boddington Street[82] *after* the figure has run across the paddock (to the west), which aligns with his version of events.

[52]. There was a great deal of time taken to try and determine the exact direction the figure was running, and returning, including the distance covered etc. It should also be noted that there was a reverse camera angle[83] looking from north, (that is capturing a view in a southerly direction) which is a smaller field of view, but which captures a little bit more of the western side of the relevant area. That footage was not calibrated in the way that the 18 Juliet Street footage was, and so the 18 Juliet Street footage is the better footage to view and work out timings from[84].

[53]. If it is said that the footage of the person running across the paddock was running to Hamlet Street (which is in the foreground), rather than towards Boddington Street, I clearly reject that. Very likely they simply ran in a way to come up behind Miss Blackburn who was walking north at that time. That is the assailant comes from behind her, rather than from the side where she may have spotted them before they confronted her.

[54]. Whilst the image seen in the CCTV footage from 18 Juliet Street is of limited clarity what can be deduced from it are the following:

(a) it is an individual only that is seen,
(b) the person moves with surprising agility,
(c) the person moves at great pace or speed,
(d) I cannot determine if the person is male or female, tall or short, their age[85], nor their ethic background,

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[79] Exh D.7
[80] Exh F.33A. This footage had not been used in previous proceedings, and had not been time-synchronised as had been done with other footage.
[81] These are my timed estimates doing the best I can for viewing and timing these events. They may only vary by 1 second or less e.g. it may be that some think my 5 seconds is closer to 6 seconds, on some, but the total does not change.
[82] From approximately 14:19 (Real Time Clock) on Exhibit D.90.
[83] This is the "Dieseltek" footage (Exh F.33A) mentioned above.
[84] Counsel at one point used apparent timing calibrations from the Dieseltek footage. No person had done any such calibrations, so it is not the better footage to use for any 'timing' aspect.
[85] Other than I can readily exclude them being very young or very elderly.

(e) I can determine that they are not in any way incapacitated in the way they run or move, indeed, they move with speed; and
(f) they move with determination in a direction.

[55]. It was suggested to me that it may be that the figure seen crossing the paddock in the CCTV footage merely runs up to where Miss Blackburn was assaulted, perhaps witnesses the assault from a short distance, and then runs away from what they saw. That theory is rejected, and I can clearly rule it out. In viewing the CCTV footage, and in Mr Pandher's evidence, he made it clear that he only ever saw one female figure (Miss Blackburn) and one male figure, who was interacting with her and they were in immediate close company. He described it as what appeared to him to be two persons grappling with a handbag[86]. There was never a suggestion of a person standing some metres away - perhaps ten or twenty metres away - observing the interaction between the two directly involved in the assault. Accordingly, I can very comfortably reject any notion that the person seen running across the paddock is a 'third' person at the scene who had no involvement in Miss Blackburn's death; rather I conclude, without any doubt whatsoever, that the figure seen running is the person who assaulted Miss Blackburn[87].

[56]. I am convinced, and I find, that at about 12.15a.m. Miss Blackburn was assaulted by a single person who took her by surprise, delivering a number of stab wounds, one of which damaged her larynx with the result she could not call out[88]. It occurred very quickly, and with considerable force[89].

The injuries forensically reviewed

[57]. The injuries she received were repeatedly described as stab and slash wounds in the autopsy report[90] by the forensic pathologist. The fatal wounds are only concentrated in

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[86] He was not being definitive that it was a 'handbag snatch' as it is termed, rather that is just what it appeared it may possibly be in the fleeting moment he saw it. If her assailant was holding Miss Blackburn's right wrist, that may account for the marks referred to in the following section, on Miss Blackburn's injuries; such restraint that *could* convey an impression of a struggle "over" a handbag. Footage of Miss Blackburn leaving Harrup Park shows her handbag over her shoulder. Exactly where it was held, at the time of, and during, the attack is undetermined.

[87] And even though that conclusion is based on circumstantial evidence, it is the only reasonable and logical conclusion to which I am actually persuaded. It is not a 'quantum leap' to reach that conclusion, rather it is simply the elementary and logical conclusion based on the evidence presented and viewed objectively.

[88] The pathologist agreed this was very likely, that this ability to call was impaired, from what he observed. See footnote 66 above.

[89] A fragment of bone was chipped from her skull in one stab wound.

[90] Exhibit A.3. Professor Williams, during his appearance in the Supreme Court, referred to some 23-25 stab wounds. The Autopsy Report makes clear that this count is the combination, or total, of the stab and slash wounds combined, of which some did not penetrate the skin. This does not mean that there were 23-25 individual and separate stabbing actions (or blows) by the perpetrator. Most of the 23-25 wounds either didn't break the skin surface, or were 'fairly shallow' (see Exh C.78, page 2, paragraph 5) but would probably cause some loss of blood. Significantly, in the pathologist's professional opinion, there were just three main or significant stab injuries (see Exh E.10 5-29 at [46-47], and Exh C.78, page 2, paragraph 7) of the total number of injuries (see Exh E.10 5-29 at [40-43]). More than one of these injuries may occur in one thrusting motion where, during the stabbing motion, the knife touches or glances the victim's arm or skin, or even an area near the stab site (some were observed to be 'complicated' wounds, by which is meant not a "clean" stab, but potentially a tearing of the skin likely caused by the victim's movements in the struggle. Professor Williams made this quite clear, *ie* that one motion can cause multiple injuries, when he said "*For example, obviously if somebody is being attacked with a knife they may move to try and evade that knife, and they may have several cuts in that*

the forehead, neck and chest (just to the right of the midline) and there were just three main or significant stab wounds[91]. Each of the three fatal wounds were located central to the midline axis of the body and were not at an extremity. There were no significant stab wounds to the abdomen[92]. The incised wounds on the arms appeared to the pathologist to simply be slash wounds and consistent in his experience with being defensive wounds. This can occur if she is fighting back against her attacker. None of these slash wounds to the arms were fatal, nor deep.

[58]. The forehead, neck, and chest wounds were the fatal wounds. Some wounds were 'complicated' which simply means had a combination of stab and slash wounds. My experience[93] and common sense permits that I can conclude that a single stabbing motion in such a struggle can conceivably produce a stab wound and consequential slash wounds (indeed multiple ones) as the knife meets the skin in various locations[94] during the one stabbing or thrusting motion (both on the forward and retraction arm motions of the knife holder) as the victim is moving about struggling. Professor Williams commented that some of the wounds he called stab wounds were what he called "*abortives where somebody's been stabbed but where the skin hasn't been penetrated*"[95]. He counted those as a stab wound. There were no wounds to the abdomen[96], nor were there any to the legs.

[59]. Marks were also found on her right wrist, and a concentration of blade injuries to her left wrist, which the pathologist agreed[97] was consistent with someone gripping her right hand and her fighting back (putting up a struggle) only with her left. I can conclude that she was held by her right wrist and was being held in very close proximity of her attacker, perhaps to prevent her running away, perhaps to prevent her fighting back with her right hand or arm. This close proximity is consistent with what Mr Pandher saw.

[60]. In evidence at the inquest the pathologist described the wounds as "*being attacked very viciously and with some anger*"[98]. He also said the wounds "*had the appearance of frenzied stabbing, really. I am sure these wounds have been inflicted fairly quickly and with maximum force*"[99]. He also said the injuries were "*very aggressive*"[100]. One injury caused damage to the skull at the forehead chipping out a piece of bone, something the pathologist said requires '*severe force*'[101].

[61]. There was some time spent at the inquest attempting to dissect the specific detail and intimate dynamics of the injuries received by Miss Blackburn as to precisely how each occurred, their sequence, how blood flowed from the specific injuries, the characteristics of the perpetrator, and the nature of the implement used.

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evasion" (TT1-74 at L 44-46). Mr Pandher is clear that some degree of struggling was taking place (there were multiple defensive wounds). A careful review of the autopsy report, the pathologist's Declaration, and Professor Williams' evidence before the Supreme Court, and at inquest, clarifies the point that there were just three main or significant wounds.

[91] See Exh E.10, at 5-29 L 46-47.

[92] See Exh A.3, page 2, in the third last paragraph.

[93] After dealing with more than 5,000 coronial cases one does build-up a certain level of experience, and significantly the pathologist also said this in his evidence.

[94] For example, the bladed instrument in one motion may glance and cut the fingers, hand, forearm and body as the blade reaches its target on the chest, and similarly injuries may occur in reverse as the blade is then withdrawn.

[95] Exh E.10 see 5-29 at L 41-44.

[96] The pathologist specifically mentions this, although noting a small wound to the epigastrium.

[97] Exh E.10 see 5-39 at L 19-28.

[98] TT 1-83 at L 44-45.

[99] TT 1-68 at L 39-40.

[100] TT 1-83 at L 45.

[101] Exh E.10 5-31 at L 37.

[62]. The pathologist only examines the injuries to the body in this case without the weapon, or CCTV of the incident occurring. The pathologist who undertook the autopsy is very experienced[102] and has examined the body very closely. I accept his comment that the stab and slash wounds do give the appearance of having been inflicted very quickly, and done so with severe force. They occurred from the front and "happened very quickly"[103]. I also note that the three main or significant wounds were concentrated or targeted only on the chest, forehead and neck. Their placement was such as to cause serious and life-threatening injuries[104].

[63]. I can readily conclude that the altercation involved a number of stabs directed only at the head, neck, and chest areas[105], and done with significant force. The only other stab or slash wounds (some not piercing the skin) were defensive injuries, or consequential injuries occurring in the process of the perpetrator delivering the three main or significant stab wounds[106]. The nature of the wounds is highly suggestive of a person significantly affected by ICE, the concentrated form of the illicit drug methylamphetamine (which illicit drug can cause a person to have increased strength and actions), or a person with good upper body strength, power, and a swiftness and co-ordination of hand movements, such as a proficient martial artist or fighter.

Consideration of the Persons of Interest

[64]. I now turn to consider the categories of persons of interest.

[65]. Firstly, it was suggested to me that it could be any person in Mackay who is responsible for Miss Blackburn's death. Whilst that is a theoretical concept, and clearly it was a person in Mackay at that time, what is clear is that the assault was a very deliberate and targeted assault between a person she either had some interaction with previously, or a person who was robbing her. In no way did the evidence indicate that this was some random attack by some random member of the community.

[66]. The police conducted an extensive investigation and eventually identified some thirteen possible persons of interest. I agree with their process of identifying thirteen possible persons and these persons came under close scrutiny in the inquest, and do so in my deliberations. I can comfortably exclude any other random member of the Mackay community as being possibly involved and I now turn to these thirteen persons of interest. These thirteen persons of interest, in alphabetical exhibit order, are:-

(1) Levii Blackman;
(2) Jason Brown;

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[102] Professor Williams had been practising for 17 years at Townsville in this role, and had prior experience as a forensic pathologist elsewhere: see E.10 5-28 L 1-6. He has over 30 years' experience in forensic medicine (see Exh C.78, page 1)

[103] TT 1-70 at L 18. There was an initial suggestion that the incident perhaps took a "couple of minutes", but this was refined to be "less than a minute", to then be "happened very quickly". The pathologist opined that the speed at which the injuries were inflicted and the degree of anger of the assailant affects the time to lessen it. If both factors were present the incident 'happened very quickly" was the expert opinion. There was no alternate professional opinion given or presented to me, probably because these issues were not in doubt.

[104] Highly vascularised areas of the body, as was said at the inquest.

[105] See the pathologist's comment "*but obviously he seems to have concentrated on (the) head and chest*": TT 1-84 at L 21.

[106] Effectively there were 'aimed' stab wounds and 'collateral' stab wounds, if I can use those terms for the layman to better understand the injuries as the pathologist described them.

(3) Isaiah Corowa;
(4) William John Daniel;
(5) Norman Dorante;
(6) David Garang;
(7) Dean Leard;
(8) Scott Maloney;
(9) Craig McIntosh;
(10) Scott MacPherson;
(11) John Peros;
(12) Dylan Starr; and
(13) Ernest Tomarra.

[67]. I can readily exclude a number of these people from involvement in Miss Blackburn's death. Mr Garang, Mr Brown, and Mr Tomarra were all persons for which there was no significant nor probative evidence given at all linking them to Miss Blackburn's death on that night. In addition, each of them had what I consider a plausible, reasonable, and reliable explanation for their activities that evening. There was no submission by any of the interested parties at the inquest that any of these particular persons had any direct involvement with Miss Blackburn's death. In addition, some did not have any of the physical characteristics seen by Mr Pandher in his brief sighting of the person involved in Miss Blackburn's death. Accordingly, I am very comfortable in excluding these persons.

[68]. Mr Dylan Starr was also mentioned as a possible person of interest. Mr Starr passed away between the date of Miss Blackburn's death and the inquest so was not available to give evidence, but there was simply no evidence whatsoever to implicate him in her death. Neither Counsel Assisting, nor counsel for any interested party even suggested he may have had involvement in her death. I can readily exclude Mr Starr.

[69]. I will deal with Mr Scott MacPherson[107] and Mr Isiah Corowa together because they were good friends and their movements on the night were said to mirror each other. They were friends who spent a lot of time in each other's company and were often seen together. There was some time spent at the inquest attempting to establish the reliability of Mr MacPherson's and Mr Corowa's statement that they claimed they were in fact at the Lamberts Beach and Slade Point area, which is roughly 11 kilometres away from Boddington Street, Mackay, on the night in question[108]. They linked this activity that night to Mr MacPherson's birthday on the 9 February as the particular occasion, and why they could remember it, and they said they were simply drinking alcohol down at the beach that evening. Mr Corowa's evidence was similar to Mr MacPherson's except that Mr Corowa was noted as firstly telling the QPS in April 2013 that he could not remember what he had done[109] on the evening in question[110]. That is not an unusual statement to be made from a person who then had an aversion to volunteering

[107] Mr MacPherson's criminal history is quite extensive, beginning as a minor where he committed assaults and numerous Break & Enter offences, possession of a knife offences including going armed with a knife in public, wilful damage and assaults in company, wounding with intent, and illicit drug offences, and Domestic Violence offences, although the vast majority are committed before September 2013, with one offence occasion since September 2013: see Exh F.58.
[108] This claim appears to have been first made at about 7.30am on 22/04/13, when Mr MacPherson was spoken to at the watchhouse (see Exh F.36, entry for 22/04/13). He stated he had been picked up from the beach by his father the following morning. Robert MacPherson was also spoken to by police that day, but was unable to give a date on which he had picked up Mr MacPherson and Mr Corowa from Lamberts Beach. He stated he had picked his son up there on "many" occasions.
[109] See Exh F.36, entry of 16/04/13.
[110] He was spoken to by police, at the watchhouse, just after 11.00am on 18/06/13: see Exh F.36, entry for 18/06/13. He appeared at inquest on Day 6: see TT 6-101 and pages ff.

information to the police. I consider it most likely he was merely keeping his 'cards close to his chest' when he made that statement.

[70]. Mr MacPherson had some difficulty in answering questions at the inquest, but on my assessment, this was due to an acquired brain injury. I mean no disrespect to Mr MacPherson at all, but in giving his evidence it was very evident he did have a cognitive injury of some description. I suspect he is regularly asked about this, because he brought with him to court his medical records from the hospital, which shows a date in June 2013 when he was brought in by ambulance, following an assault where he had struck his head on a concrete surface[111]. His injury complications were clearly manifest to me in his manner of answering questions, and in his observed demeanour. He was sometimes a little abrupt or indignant with how questions were put to him. He was not being deliberately evasive in my view, rather he simply had a much lower threshold of tolerance to those asking questions of him, particularly if he thought the questions were repetitive, or that the questioner was being somewhat dismissive of his memory or recall. What I am able to readily find is that neither Mr Corowa nor Mr MacPherson were involved in Miss Blackburn's death, and any suggestion by other witnesses that they saw Mr MacPherson (or someone who they thought matched his description) in the area that evening is simply incorrect, and that witness is clearly mistaken. There was, upon my assessment, no reliable evidence at all that he was anywhere in the vicinity of the attack upon Miss Blackburn at the relevant time. Similarly, there was nothing placing Mr Corowa at the scene. Apart from the fact that he may have been in the vicinity of the Boddington Street precinct at some previous time – perhaps even the previous night - and that he was a known associate of Mr MacPherson, there was nothing to connect him to this incident.

[71]. Next I deal with Mr Levii Blackman. Mr Blackman's evidence was that on this particular night he went outside the residence where he was staying to have a cigarette, when he saw Mr Daniel and Mr Dorante approach him walking along the street. They had a conversation outside the residence or unit Mr Blackman was then attending. Mr Blackman's movements were quite well documented by others present at the residence that evening. I can very confidently and quickly find that Mr Blackman himself was not involved in Miss Blackburn's death. No interested party suggested Mr Blackman was involved in Miss Blackburn's death. I deal with the alleged conversation on the street between Mr Daniel and Mr Blackman later as it is particularly relevant to Mr Daniel.

[72]. This brings us to persons of interest who require more scrutiny. This involves Mr Daniel, Mr Dorante, Mr Leard, and Mr Peros.

[73]. Mr Dean Leard was certainly a person of interest. As at February 2013 he was in Mackay, and living out of his motor vehicle which was an AU model Ford Falcon, coloured gold[112]. Whilst he was living out of his vehicle at that time, he indicated he spent a few nights staying at a unit in Wellington Street. Although unsure of the address, he indicated it was that occupied by Mr Toby Fodera's sister[113]. Whilst in Mackay he was working as a carpet layer. In his work as a carpet layer he had access to carpet laying tools which include a carpet layer's knife. At that time in 2013 he was significantly lighter in body weight than when he presented at the inquest, and his hair was cut differently. He readily admitted that in 2013 he was a user of illicit drugs, particularly ICE.

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[111] This was also outlined in the hospital records.
[112] TT 6-3 at L 28-30. In the video footage relevant to when Miss Blackburn walks the street there is no silhouette of an AU Falcon seen, whether in a configuration of sedan, wagon or utility.
[113] TT 6-5 at L 10-30.

[74]. On the particular night in question he admitted to the police that he drove Mr Toby Fodera's mother's white RAV4 rental car[114], in company with Toby Fodera and Guy Thomas. Of significance that night was that Mr Leard has a period of time where he cannot account for his movements, that is not independently verified by others, where he had left the Wellington Street unit and then allegedly returned with blood on him, and then made an unusual request that he wished to have his hair cut short, such that his appearance would change. He also allegedly made a statement that evening of "I just want to kill someone."

[75]. What I can say about Mr Leard's evidence was that he gave his evidence quite directly, and at no stage did I get the impression he was withholding information, nor tailoring his evidence to place him in a better light. Indeed, he readily admitted that on that night they were driving the RAV4 motor vehicle to drop off illicit drugs, namely marijuana, to people around the area, but it is not suggested that that activity was at the time Miss Blackburn was assaulted. At that time, he was in the company of two other people. Mr Leard admitted that he drove past, or on the roads adjacent to, where Miss Blackburn was assaulted, but this was clearly after the assault had occurred as there were police in attendance, and a crime scene had been established.

[76]. Mr Leard was examined by counsel for the interested parties. There was no persuasive proposition put to me that he was the person responsible for Miss Blackburn's death. After considering his evidence and observing him in the witness box, I am comfortable in excluding him as a person of interest in Miss Blackburn's death. He readily gave explanations for his movements that night, including involvement in illicit drug dealing, and these activities were done in the company of others. He readily conceded he carried a knife although it was suggested by one person that the knife they saw him with was actually a knife with a particular shape where the cutting edge is recessed near the tip, which was explained as being a carpet layer's knife where the cutting edge is very recessed and the exterior surfaces are all fairly blunt or in a safety fashion such that it only cuts by drawing the knife back across carpet and then only to a minimal depth, the depth of carpet. Mr Leard indicated that the knife he carried could have been this, or perhaps a pocket knife or small flick knife which he usually carried. He also explained that he wanted to change his hair that evening because his mother was coming to visit him. That is not at all an unusual explanation of wanting to cut off his then "rat's tail" to look more suitable for his mother. I observed he was also very light-skinned in appearance[115].

[77]. Whilst there was some cross-examination of Mr Leard, he was never really pressed nor was it shown that he was trying in some way to hide his involvement in Miss Blackburn's death. I am very comfortable in excluding him as having any involvement in her death. Mr Leard had no link to Miss Blackburn and his comment that he wished to 'kill someone' seemed to be rather off-handedly said as that night he also wished to fight people. The suggestion that he had blood on his clothes was denied by others who were at the gathering. Only one person saw him allegedly with blood on his clothes, whilst quite a number did not see that at all, and had observed him all night. Perhaps the person who alleged this was simply mistaken as to the night or the incident. That person, Shanaya Murphy, also suggested that Mr Leard burnt his clothes in a fire pit. Many at

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[114] Whilst Mr Leard's evidence was it was a RAV4, other persons described it as a Nissan X-Trail. They are very similar sized vehicles and I can understand how a person not familiar with cars might confuse the two. Any confusion between the two does not affect my decision, or suggest that Mr Leard is not being deliberately untruthful in his evidence; he was merely mistaken on a particular vehicle make and model.

[115] This does not accord with Mr Pandher's admittedly-brief observation of the person with Miss Blackburn.

the gathering, indeed at the units, said there was no fire pit at all, and in view of the gathering occurring, essentially in the garage of the apartment within the unit block, it is unlikely there was a fire pit there that evening[116] and it simply does not accord with what the other witnesses stated. As to the short period of time that Mr Leard was not at the residence, no-one can pinpoint exactly when this was, but it is very significant that an independent witness, Mr Manaway, who was sober and waiting for a 12.30am show to start on television, says that Mr Leard was at the Wellington Street units at that time[117] (which is at the time of the incident occurring involving Miss Blackburn) which is quite some distance away. Well too far away for any person to be at the Wellington Street units and the incident occurring at that time in Boddington Street. Mr Leard is excluded by me.

[78]. Mr Craig McIntosh was called as a witness. He was a former boyfriend of Miss Blackburn. They were in a relationship from about mid-2005 until September 2008. Mr McIntosh was suggested in the course of the investigation as a person who may have committed the offence. Mr McIntosh was also a person who admitted to being prone to violence when he assaulted a boyfriend of a former girlfriend.

[79]. Mr McIntosh gave evidence. He gave evidence freely and his evidence was quite brief. When interested parties' counsel were to examine him they asked him very few, if any, questions. It was not suggested to me by any party that Mr McIntosh was in any way involved in Miss Blackburn's death. He was included for thoroughness, but he is a person I can easily exclude. He is a very tall man[118] and does not fit at all the description the taxi driver gave as the person who was involved in the assault. In addition, I can see no reason for Mr McIntosh to wish Miss Blackburn any ill-will. Whilst it was alleged by one witness, Mr Daniel Kay, that he was a person seen walking back and forth on Evans Street during the day looking for a particular house on 6th and/or possibly 7th February 2013 that was either Mr McIntosh in some unrelated incident or much more likely not Mr McIntosh at all.

[80]. There was a suspicion raised in relation to Mr Scott Maloney and Mr Jason Brown. I can deal with each of these very quickly. Mr Brown allegedly told a staff member of a hotel in Gladstone that 'he murdered a girl in Mackay'. There was no evidence that this was substantiated in any way. He was not a witness who attracted any particular interest or enquiry from any of the parties of interest, nor was there a submission from any of the parties nor counsel assisting that he was in any way involved with Miss Blackburn's death. I can very comfortably exclude him. Mr Scott Maloney lived in Hamlet Street near Juliet Street, very close to where Miss Blackburn died. He gave an account of his movements that evening which included being seen walking in the same location Miss Blackburn walked but a little over ten minutes earlier. His account of what his movements was that night were verified by others and again he did not attract any interest from any of the counsel for persons of interest, nor counsel assisting. He was also a person who was, if I may politely describe, a little overweight and did not fit the description given by the taxi driver as the person seen in a struggle with Miss Blackburn just before she was found fatally injured. I can very comfortably exclude Mr Maloney from being a person of interest.

[81]. Excluding the above people, that leaves me with persons of interest who were much more central to the investigation, and indeed occupied a great deal of the evidence in examination at the inquest. These people were Mr William Daniel, Mr Norman Dorante

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[116] It was also February, not a cold month in Mackay, it being the last month of summer.
[117] Exh C.379 at [29]. Mr Manaway, who was on the balcony upstairs in the Wellington Street units, saw Mr Leard and Mr Toby Fodera arguing below him. He was familiar with Mr Leard's appearance.
[118] Indeed possibly 6"6' tall, possibly taller.

and Mr John Peros, stated in alphabetical order. It is convenient that I deal with Mr Daniel and Mr Dorante together as their movements that evening were that they were together, and in the vicinity of Boddington Street. Their movements are worthy of very close examination.

[82]. Mr Levi Blackman said he was outside a residential unit in James Street having a cigarette when he saw Mr Dorante and Mr Daniel in the driveway. Both Mr Dorante and Mr Daniel then lived in James Street, although often visited[119] a "Keira" who then lived in the apartment next door to Mr Blackman's sister (the unit he was then at). They all knew each other, and had for a long time[120]. They considered each other extended family, effectively having grown up knowing each other.

[83]. On this night, Mr Dorante and Mr Daniel were said by Mr Blackman to have just arrived at the unit driveway. They were not rushing, and he did not observe from what direction they had come[121] because of some bushes[122]. What was evident was that they were in no rush nor, apparently, walking with some added purpose[123]. They were not carrying anything in their hands. A short conversation ensued. There was nothing peculiar about Mr Dorante or Mr Daniel's behaviour which caught the attention of Mr Blackman except for an alleged[124] statement made by Mr Daniel. This alleged statement became known at the inquest as the 'street confession'. The street confession is allegedly that Mr Daniel said[125], when Mr Blackman commented on the commotion of lights and sirens down the road, "*Someone got murdered up there*" and that he then told Mr Blackman that *he* was the person responsible for that murder. Mr Daniel denies he ever made such a statement.

[84]. The evidence of Mr Blackman on these events was:-

a. Statement 29.04.2013[126]:

The alleged street confession conversation:-
LB: *What happened up there?*
WD: *Someone got murdered up there.*
LB: *By who?*
WD: *I did it.*

His observations were that there was no blood on either of them, they were not holding anything, and he didn't enquire further on this conversation topic. He mentioned reading about the murder (which had occurred that morning at about 12.15am) in that Saturday's edition of the *Daily Mercury*[127] the local newspaper.

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[119] TT 2-3, L 24.
[120] TT 2-7 L .2-3 & L 13-23: 'since childhood' is how it is framed in his statement: Exh B.310 at [6] and [7].
[121] TT 2-122 L 20.
[122] Exh C.310 (first statement) [16]. He confirmed this in his evidence at the inquest (TT 2-7 L 20).
[123] See exhibit B-310 at paragraph 19.
[124] I say "alleged" because Mr Blackman gave numerous versions of the conversation through his statements to police and evidence in various court proceedings.
[125] In various minor versions, but conveying the same overall theme.
[126] Exh C.310 at [24] – [34].
[127] That is the local Mackay newspaper. At that time, and then widely known in Mackay, the local newspaper was printed in Townsville, and was road freighted daily to Mackay. In his later statement (dated 7 May 2013) Exh C.310A at paragraph 9 he says that perhaps he may have just heard people talking about the murder, or saw it on the news. In his statement Exh C.310B he says that he thought he 'had that day mixed up' with reading of the murder in that Saturday's *Daily Mercury* newspaper (see paragraph 9). It is plainly evident that he could not have read of the murder reported in that Saturday morning's newspaper, as the timeline and realities of a regional newspaper printed in Townsville does not allow for the story to be in that edition of the printed newspaper.

b. Statement 07.05.2013[128]:
    i. He is unsure if he read of the murder in that day's local newspaper, the *Daily Mercury*.

c. Statement 29.11.2013[129]:
    i. He was now unsure of who was at the unit that evening, meaning the persons inside the unit. He says he was 'home alone' that night[130].
    ii. He adds a further alleged confession by Mr Daniel allegedly made whilst Mr Daniel ate "Migeorang"[131] noodles on the end of a bed. A definite time was not given but presumably it was during the daytime the following day[132].
    iii. Further, he probably had heard that the person murdered was a girl by people in the street and on the news[133] (it appears the local newspaper is no longer the source of his information, as "I may have had that date mixed up[134]").

d. Statement 04.08.2014[135]:
    i. It is now time to tell the truth[136];
    ii. There were no others at a party at the unit, he was there alone[137];
    iii. He only got to the unit (and was outside having a smoke) at about 1.45am (utilising the earliest estimate of the timing of certain events as he recalls them[138]);
    iv. William Daniel made no statement about killing a girl (the 'street confession'), rather all Mr Daniel said was there were '*heaps of cops down the road and that it looked like someone had been murdered'*[139];
    v. The 'noodle confession' did occur but he did not really believe that Mr Daniel had killed the girl[140];
    vi. He told his mother briefly about the 'noodle confession' but did not discuss it with her[141].

e. Evidence at the Committal:
    i. He never saw Mr Daniel or Mr Dorante that night outside his sister's unit (the location of the alleged street confession)[142];
    ii. A police officer threatened to use 'black magic' against him, and so that was the reason he lied to police[143];
    iii. The noodle confession did occur[144];

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[128] Exh C.310A.
[129] Exh C.310B.
[130] Exh C.310B at [3].
[131] Presumably the police officer taking the statement means this as Mee Goreng or Mie Goreng noodles (the spelling depends on whether it is the Malaysian or Indonesian based dish).
[132] Exh C.310B at [7]-[8].
[133] Exh C.310B at paragraph [8]-[9].
[134] Exh C.310B at [9].
[135] Exh C.310C.
[136] Exh C.310C at [2], presumably admitting he has not been telling the truth previously.
[137] Exh C.310C at [3].
[138] Exh C.310C at [3] and [4]: (12.30am + 15 minutes + 45 minutes + 15 minutes = 1.45am).
[139] Exh C.310C at [6].
[140] Exh C.310C at [10].
[141] Exh C.310C at [12].
[142] Exh E.4 4-35 L 19 and ff.
[143] Exh E.4 4-35 L 24 and ff.

iv. The noodle confession occurred before he told his mother about what Mr Daniel allegedly said[145];

f. Evidence at the Supreme Court trial of Mr Peros:
   i. He was asked initial questions by Justice Henry[146], the trial judge, and then cross-examined by Counsel for Mr Peros[147], and then by the Crown Prosecutor[148]; essentially his evidence was that he made admissions that he had lied to police in their investigations and had done so under oath previously, he had lost count of the number of times he had lied[149], that he did not speak to Mr Daniel (that is the noodle confession)[150], and then clarifies that the noodle confession allegedly did occur[151].

[85]. It is abundantly plain that Mr Blackman's evidence[152] contains many retractions, reversals, and inconsistencies. He was to me very unimpressive as a witness of reliability or credibility. I have no hesitation at all, after carefully observing Mr Blackman give evidence, in finding Mr Blackman to be a completely unreliable witness. His statements, recollection, and evidence before me was contradictory on even the simplest of issues, as to whether something occurred, or was said or not said. I have no hesitation at all after so observing him, that such a statement - the alleged street confession - was simply not said by Mr Daniel[153]. In fact, their first encounter on the street only happened about 1.30am or thereabouts, and well after police had established a crime scene at Boddington Street.

[86]. I have very grave reservations as to whether even the noodle confession was said; but if it was, then it was said as "bravado" by Mr Daniel and was untrue. Mr Daniel is certainly the type of person, in my assessment, who would make such a claim merely to try and enhance his "*street cred*", and reputation amongst the local community as a "*tough guy*", and not one to cross. As I said, *if* it was said by Mr Daniel it was simply a false claim and made simply to promote his image[154].

[87]. If it is said that Mr Blackman's retractions, reversals, and inconsistencies in statements and evidence given were due to some alleged pressure or coercion, I find without any doubt at all that he was the sole source of any variations or recanting in his recollections and evidence, and there was not any coercion brought upon him by any other person,

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[144] Exh E.4 4-47 L 15 and ff.
[145] Exh E.4 4-47 L 11 and ff.
[146] Exh E.15 10-4.
[147] Exh E.15 10-5 to 10-57.
[148] Exh E.15 10-57 to 10-60.
[149] Exh E.15 10-57 L 38.
[150] Exh E.15 10-57 L 45.
[151] Exh E.15 10-58 L 12.
[152] Even leaving aside evidence he gave at the Crime & Misconduct Commission hearings (as it then was).
[153] Slavish adherence to saying the conversation must have occurred in the terms Mr Blackman alleged, by reliance on just his first statement (Exh C.310), neglects entirely to consider all of his statements, and the various versions given, evidence given at various court forums, and his demeanour at the inquest. The totality of his evidence must be considered, not simply that which may suit an interested party's position.
[154] There was evidence, from witnesses worthy of acceptance, concerning Mr Daniel's character in this respect: see *eg* Mr Harrington (Exh C.315 at [22] – "*like the Prince of Mackay. He thinks he is a real gangster and has a name and reputation to live up to*").

whether police or otherwise. He made clear in his own evidence[155] that really he was the source of any alleged 'pressure' upon himself.

[88]. It is worthwhile to provide some background and my observations of Mr Dorante and Mr Daniel. Firstly, Mr Dorante and Mr Daniel both have a very significant criminal history. Their criminal histories are long and involve many instances of violent assault, possession of a knife, burglary, drug offences, domestic violence and motor vehicle offences. Violence was involved in many of these. It was put to me that Mr Daniel would participate in violent robberies, usually for money, and do these in the company of Mr Dorante, as he was the "muscle". Mr Dorante may be described as a larger built person, and in evidence it was commented on that he is not agile whatsoever, and in fact, there was quite a deal of mirth when it was suggested if he could even run a short distance. He certainly gave the appearance to me that he is of very limited physical activity, certainly running even a short distance.

[89]. Mr Daniel, on the other hand, is a man of slim build, and from my observation of his time in court, is a person who is extremely image and reputation conscious. He was, in my assessment, without doubt the dominant personality as between Mr Dorante and himself. It was not only his clothing, haircut, and style which showed that he was image-conscious, but it was also evident in his demeanour, and in the manner in which he answered questions, and how he engaged with certain counsel. What will not be evident from the transcript is the "enthusiasm" in his exchanges when questions were asked of him by counsel for Mr Peros. His demeanour in the witness box showed he was clearly a person who conjures an image of being a 'tough guy'. His choice of language in the witness box including the terminology he used[156], together with his jewellery and body poise showed that he was particularly conscious of his image, indeed he wished to promote it. In fact as he left the witness box he made unnecessary comments, and I observed he had quite a swagger as he approached the Bar table, such that I commented on his swagger as he left the witness box as I wished that to be placed on the record. In saying this I am not saying that Mr Daniel did not provide his evidence in a straight-forward way, nor did he have difficulty in answering questions, it was merely the manner in which he answered questions or conducted himself which seemed at all times to promote his image within the community.

[90]. As I have found, from certain parts of the evidence of Mr Blackman which I accepted[157], Mr Daniel and Mr Dorante that evening were seen at James Street about ninety minutes after the time of the assault[158]. Mr Daniel stayed at the unit that night, and the next day arose at what was apparently quite late in the morning, in that he was having what must have been a late breakfast of noodles in a bedroom when he had a further conversation with Mr Blackman. By the time of this "noodle conversation" there were then rumours circulating throughout the Boddington Street area community, and indeed further

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[155] See Exh C.310C at paragraph 9 where he said "*I made that up because I felt overwhelmed and like I had to tell the police something. I felt like I was being interrogated when I gave my statement to police. I also had plans that day to go to a friend's house for drinks and I just wanted to get out of there*". Any suggestion that there was coercion by a threat of 'black magic' is simply entirely made up by Mr Blackman to try and extricate himself from the tangled web he had then created for himself, due to the lies he had told, by inventing the Street confession. He simply wanted to leave the police station and escape further questioning as he was, essentially, fed up with it and had other things he wished to do. After observing him giving evidence, I consider this statement is probably the one true explanation he gave.

[156] Such as his use of the word "Nigga" (the hipster spelling) or 'Nigger' towards examining Counsel: TT 4-87 at L 21.

[157] The aspect of his evidence as to when he saw the two men outside unit 5 whilst he had his cigarette.

[158] They were not, on Mr Blackman's evidence, seen approaching from any particular direction that he could recall. I accept that this meeting was at 1.45am, not at 12.15am or some time shortly after that.

through Mackay, that a young girl had been assaulted and had died. Mr Blackman asked Mr Daniel if he was involved and Mr Daniel said, "Yeah, I did it" (or words to this general effect)[159]. Mr Daniel would not provide a statement at this time[160], nor even speak with police before he left Mackay on Easter Sunday, 31 March 2013[161]. Mr Daniel said that he left Mackay due to wishing to be in Western Australia for the birth of his child with whose mother he had had very little contact for quite some time. The area he went to was northern Western Australia, some would say the most distant place within Australia he could have been from Mackay.

[91]. After this, he then went to NSW where he briefly worked as a concreter for a relative, and where the police tracked him down. Whilst he was out of Queensland, he was readily located, and remained at that town until after police had flown down and spoken with him in May 2013. He then returned to Mackay very much later providing a statement on 6 August 2014.

[92]. Mr Dorante remained in Mackay and was interviewed by police and assisted them with their enquiries. Whilst there was a great deal of conjecture about certain events that night, that which occurred to my mind as the most significant that evening involving these men, were their demeanour as they walked along the street towards where Mr Blackman was, away from Boddington Street, and their appearance. At no stage were either observed to be in a hurry which one may expect if they had just violently assaulted a person. There was not seen, nor observed, blood on their clothes or hands. They were not seen carrying a handbag, or any other object which one might expect if they had just committed a robbery. They did not, to Mr Blackman, seem to be in a hurry, nor concerned about their movements.

[93]. As to the "noodle" confession I note that Mr Blackman originally did not volunteer this, but later did. His explanation for why he did not initially volunteer it and but did so later was very unconvincing to me. In my mind the street confession did not occur and Mr Blackman is incorrect in his recollection of this. As to the "noodle" confession, I find that something along the lines of the words claimed to be heard by Mr Blackman was probably said by Mr Daniel. No doubt after rumour of his involvement had moved through the local James Street area community, and the police began asking questions of him, he became very uncomfortable - his boast to Mr Blackman had become larger than he had anticipated, and so he left Mackay, ostensibly to see his child in Western Australia. I have no doubt in my mind that such a trip also fulfilled a second purpose – namely to avoid further scrutiny by the Mackay community. I find it unlikely that he had left Mackay solely to be there for the birth of that child, because he had had very little contact with the child's mother previously; a partial motivation perhaps. It probably served his purpose to get away from Mackay simply due to the rumours that were then circulating, and which had got out of control. It is unfortunate that Mr Daniel made the statement, but I do not consider the statement was true at all. It was merely a baseless boast, made to try and enhance his reputation within the community within which he moved.

[94] It should be noted that Mr Dorante was also said to have made a statement somewhat similar to the "noodles" confession attributed to Mr Daniel. At the time, Mr Dorante was

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[159] TT 2-17 L 45 to 2-18 L 10 – "he said it was him…Oh yeah. It was me." Based upon my general impression of Mr Blackman, I am very cautious about placing too much weight on the precise words said to have been used – especially at this distance in time.

[160] His first recorded conversation is Exh C.422B (undated), then 23 May 2013 (Exh C.422), then 6 August 2013 (Exh C.422A) when he also provides a very brief statement.

[161] Exh F.23; Exh C.319 at [10]. This trip, it was submitted at inquest, was post-offence conduct (*ie* flight) evidencing a consciousness of guilt.

in a casual relationship with a young lady named Rachel Ratahi[162]. Miss Ratahi had heard about the attack on Miss Blackburn. She had seen a group text message "going around" that a gang of Africans were responsible. One night, about a week after the attack on Miss Blackburn, Miss Ratahi sent this group message to all of her contacts, which included Mr Dorante. He acknowledged her text, advising her that he was then walking home. She sent him another text, telling him that he shouldn't be walking around as it wasn't safe. He responded to that text, with something along the lines of "I'm all good as I'm the one who murdered her".

[95] Miss Ratahi's response was to tell Mr Dorante that "this wasn't funny [,] and not to joke about it." Mr Dorante replied that "it was just a joke [,] and he wouldn't do something like that." Understandably, Mr Dorante was pressed on this matter during his cross-examination at inquest. He claimed that he did not believe it was something that he would have said[163].

[96] Considerable attention was given to this exchange at inquest, and in submissions. If accepted, the text exchange indicates that, at the very best, Mr Dorante was a man who was totally devoid of empathy; at worst, it could constitute a confession to murder which, taken with the "noodles" confession by Mr Daniel, squarely marked both men as primary persons-of-interest in the subsequent investigations.

[97] I accept Miss Ratahi's evidence. I found her credible, and believe she tried to tell the Court, to the best of her ability, what had transpired in the text message exchange with Mr Dorante. She did not give her statement until May 2013, some time after the incident. But I accept that her recollection, as expressed in that statement, is the best available evidence of what was said. She berated Mr Dorante for his text; and Mr Dorante appears to have come back immediately with his text that he was only joking, and that "he wouldn't do something like that". Whether he would do so, or not, is a question for me to determine, if possible, after having heard, and considered, all of the evidence. It is, in fact, a much more specific question – was he involved in the attack on Miss Blackburn?

[98] I have no doubt in my mind that he was not the one who killed Miss Blackburn. He was clearly not the person seen by Mr Pandher. He was clearly not the running figure on Juliet Street. For these reasons, his statement that "I'm the one who murdered her" is obviously incorrect. Did he mean "we were the ones" who murdered Miss Blackburn? That seems to me to be an extremely dangerous assumption, or deduction, to make. He was not standing beside Miss Blackburn's attacker; nor was he anywhere to the east of Miss Blackburn had he been so positioned, I have no real doubt that he would be observed, either by Mr Pandher, or by a CCTV camera. Mr Pandher noted no-one in Juliet Street (north) as he drove up and executed his 3-point turn, and drove back. On his drive back, the "paddock" area, including the fence on its western side, which divided the paddock from the adjacent residences, would have been visible. I know that Mr Pandher was looking in that direction, because he saw the running figure. The only possibility, if Mr Dorante was "with" Miss Blackburn's attacker, is that he was positioned to the west of Miss Blackburn, perhaps hiding behind a fence, or somewhere else, in the shadows of Boddington Street. I must then consider that Mr Pandher, having seen the running figure in the paddock, then turned right, with his headlights on, and drove some distance down Boddington Street. He makes no mention of having seen anyone running, or hurrying, down that street. Of course, with the attacker (assuming for this purpose, that it was Mr Daniel) going east, and his "accomplice" going west, it means that the two must have united somewhere else. Yet there is nothing, in any of the CCTV footage in that area which evidences such a reunion.

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[162] Exh C.343 at [24].
[163] TT 4-10 L 40 to 4-11 L 18.

[99] Mr Dorante was said to have been present with Mr Daniel when the alleged street confession occurred. There was no suggestion that Mr Dorante had made any statement heard by Mr Blackman. Rather, according to Mr Blackman, he remained silent, bobbing his head in time with "Snoop Dogg[164]" in his headset. There was no other persuasive argument put to me that Mr Dorante was directly involved in the altercation with Miss Blackburn where she lost her life, and the highest it was placed was that he may have been nearby when the assault took place. I have dealt with that above. As I have said, there was no suggestion by the taxi driver that there was a third person involved in the altercation. The CCTV shows no third person in any frame of view. The person seen running towards and from where the altercation occurred runs quickly and with purpose. One witness said that Mr Dorante could not run in that manner – it was matter of some amusement to her[165]. I have no hesitation, especially after observing Mr Dorante and his build, in finding that he then had no capacity to run like the person seen in the CCTV.

[100] The conversation with Mr Blackman at the front of the unit was very cursory, and when Mr Blackman viewed Mr Dorante there was no blood observed on him. As I said he did not seem to be in any sort of hurry or rush. He was simply listening to music. Mr Dorante does have an extensive criminal history. There was not put to me any convincing evidence which linked him to the incident involving Miss Blackburn where she died. His actions and movements are more consistent with his non-involvement, and I am persuaded, indeed convinced beyond any doubt, that Mr Dorante played no part in Miss Blackburn's death.

[101] Why, then, would Mr Dorante make that claim in his text to Miss Ratahi? Mr Blackman told his mother, after the "noodles" confession, that Mr Daniel had attacked Miss Blackburn. Mr Blackman's mother, Urania Blackman, told Miss Mary Tomarra of this, when they were sitting outside the hostel[166]; from this point, I have no doubt that the whole of Mr Daniel's and Mr Dorante's community quickly became aware of Mr Blackman's statement. I suspect it spread like proverbial "wildfire". I am not at all surprised that, in these circumstances, Mr Dorante might well make a comment such as described by Miss Ratahi. I have already outlined my view as to the motive underpinning Mr Daniel's utterance of the "noodles" confession. I see Mr Dorante's comment, passed some days later, as being motivated by the same desire – a desire quickly quashed when his then-girlfriend, Miss Ratahi, called him out in her text, which led to his prompt retraction.

[102] The next person of interest is Mr John Peros. Mr Peros is a man with no criminal history and no domestic violence history. He then worked as a diesel fitter at Dalrymple Bay, a coal terminal south of Mackay. He lived alone in Evan Street, only about 700 metres or so from Boddington Street. He had been in a relationship with Miss Blackburn since mid-way through 2011 until a time in 2012 (with a period they were not together) before it ended and did not recommence. It appears that he had some difficulty in dealing with the ending of that relationship, even though he was the instigator of its termination. He sought psychological and psychiatric assistance for this and other issues in his life[167].

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[164] Snoop Dogg is an American Rap Artist and occasional film actor.
[165] TT 4-47 at L 15 to 22.
[166] Exh C.201A.
[167] See Exhibits C.83.1 –C.84.1. They show he was significantly troubled by the relationship break-up in March 2012 (Miss Blackburn). There were significant trust issues, suggested as possibly stemming from unrelated issues involving his family. He had had relationship trust issues for a long time. He 'hated' his mother. It records that in his moods with family or girlfriend he gets 'aggressive' and 'I am difficult to deal with'. He swore at his last girlfriend (the dates align with this being a reference to Miss

[103] In the events which occurred, there are certain matters worthy of close examination. That is, the ending of the relationship with Miss Blackburn, how he dealt with it, certain comments alleged to have been made by him on Australia Day 2013, and his movements on the night Miss Blackburn died, including whether or not it is his motor vehicle seen in certain CCTV footage which depicts a vehicle driving along streets near where the incident occurred, and through the Mackay city centre shortly after the incident.

[104] Mr Peros is a person with education to high school Year 10, and a trade qualification as a diesel fitter. Whilst he gave evidence his counsel asked that, due to his psychological demeanour[168], that the questions not be difficult, and that he not be examined harshly. Indeed, there was initially foreshadowed an Application for him to be treated as a Special Witness, but that was not pressed, and I made no ruling[169]. In any event, I simply asked counsel to ask questions in a conversational tone, and I observed that that certainly occurred.

[105] When Mr Peros gave evidence all questions were asked in a straight-forward manner, almost conversation-like, and I ensured this occurred. I observed he had no difficulty in understanding, nor answering any question put to him[170], nor in concentrating or responding[171].

[106] It is beneficial that I deal with certain aspects of Mr Peros' evidence or that which relates to his alleged involvement. Mr Peros claimed privilege from giving evidence. I directed that it was in the public interest that he answer questions, and directed that he do so.

Boyfriend/Girlfriend relationship

[107] Mr Peros and Miss Blackburn commenced a boyfriend/girlfriend relationship in mid-2011 until the end of 2011; they then broke up, and got together again for a short time in 2012 before their relationship ended for good. The relationship was 'up and down', as Mr Peros accepted in his evidence. There is really not a great deal in the duration of the relationship, or in minute facets of it, other than to observe that Mr Peros and Miss Blackburn had a number of arguments[172] during the relationship.[173] The most significant

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Blackburn) a lot. This is all in the handwritten notes taken contemporaneously. A letter dated 10 April 2012 notes "*He has issues with trust & his past personal issues seem to haunt him all the time affecting his relationships*". This seems to be the overriding and dominant issue recorded.

[168] ADHA, social phobia, anxiety, and paranoia I was advised.

[169] TT5-17, L 35 to TT5-22 L1

[170] Indeed if I felt a term may be unusual or unknown to him, such as 'proffered' I asked that another term be used, see for example TT5-26, L32. Similarly 'tumultuous relationship' was altered to be re-asked as 'Up and Down relationship'. I observed that any possible unfamiliar terminology did not prove an issue for the witness.

[171] There was no suggestion he could not give evidence, based on the medical opinion provided; rather, just the manner in which questions were asked of him was to be quite regulated. I observed throughout the 11 hearing days of the inquest that Mr Peros sat, focussed, in the public gallery, and was always attentive to the proceedings. He did not display any lack of engagement, nor concentration issues. Indeed, he appeared to maintain better focus than some at the Bar table, appreciating I ran very long days.

[172] Mr Peros readily accepted this was over 'trust' issues between them, most due to perceived or alleged infidelity (see TT 5-40 at L 35 to TT 5-41 at L 20). There was also an issue they had regarding pleasurable intimacy such that she saw a gynaecologist. These are of course very private matters and so any media reporting of this is best directed at other, more relevant, issues.

[173] That is not unusual in many relationships.

of these appeared to be because he wished to go Thailand for a holiday for New Years, and engage in activities there she disagreed with, such that they split-up. Nevertheless, after that trip they recommenced their relationship, but it ultimately ended in 2012. As I said earlier, he had some difficulty when it ended such that he saw two mental health professionals to assist him in dealing with issues that arose from the relationship.

[108] Whilst boyfriend/girlfriend relationships end every day throughout the community the seeking of professional counselling clearly suggests the person had, or has, some lingering issues arising from the relationship. On the evidence I have I find Mr Peros did have significant difficulty with the relationship ending (even though he was the instigator of that) and had troubles with simply 'moving on', as it is termed.

The alleged Australia Day 2013 conversation

[109] The first matter of importance is an alleged "Australia Day conversation" as it became known. Mr Peros' evidence was essentially that he attended a social gathering late that afternoon, and then late into that night, and was not affected by alcohol or illicit drugs. When asked about statements attributed to him during this gathering, he either did not recall, or did not believe, through to a more definite '*No*', that he had made[174] the statements allegedly attributed to him. These statements were alleged to involve his hating, and wanting to harm, Miss Blackburn. The alleged incident happened late into the night at a residential premises. Three persons, Sharlene Perry, Nicole Hutchinson, and Liam Aleman, stated they were present during these conversations[175]. Mr Peros joined them late that afternoon.

[110] What is clear is that that Mr Peros had likely consumed much less alcohol[176], and was not really affected by it[177], as compared to the other persons who had been consuming alcohol for quite some time longer[178]. There was also the suggestion that these other people had possibly consumed illicit drugs that evening. Just how affected by drugs or alcohol these witnesses may have been is something that no-one can measure by way of any quantitative test administered to them to determine their blood alcohol level. Their admissions were that they were significantly affected by alcohol[179]. Their recollections clearly suggest to me that they were still coherent in speech and behaviour. What I can glean from this is that whilst they were certainly intoxicated, they were not affected by illicit drugs[180], that they were in control of their faculties and, more importantly, were able to recall events that day and that evening.

[111] The importance of these witnesses demands considerable care in dealing with their evidence, not only in this inquest, but in other proceedings directly relating to the death of Miss Blackburn.

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[174] For an example see TT 5-63 at L 4-9.
[175] Miss Melissa Oliver was also with them that day and evening, but not in the immediate vicinity when the alleged relevant conversations or statements by Mr Peros occurred.
[176] Reportedly one pot of beer at the hotel, and then later three stubbies of *Tooheys Extra Dry*: see Exh C.140 at [18] and [21].
[177] Accordingly, I can conclude that any alleged statement made by Mr Peros was not a mere alcohol-induced statement, made only due to alcohol clouding his thoughts or affecting his clarity of judgment.
[178] They started consuming alcohol at about 11.00am, whilst Mr Peros only joined them late afternoon, but he certainly did consume alcohol (TT5-89 at L 1)
[179] Ms Perry said she would have been 7.5-8 out of 10 intoxicated; Mr Aleman just 4 out of 10 intoxicated; and Ms Hutchinson wasn't really asked to quantify her alcoholic sobriety other than '*she wasn't blotto or anything like that*'.
[180] See TT5-90 at [38-42] for example.

Miss Sharlene PERRY:

[112] At the outset, I state that I found Miss Perry to be a very impressive witness. I base this opinion (i) on her demeanour, as observed by me, when she gave evidence before me in the inquest, (ii) on her consistency in the course of all proceedings in which she has testified about this matter (iii) on the frankness of her concessions as to what she had heard, and (iv) on the grounds that, from all of the evidence before me, there is no suggestion that she had any animosity towards Mr Peros, nor that she had, or has, anything to gain from giving untrue evidence in this matter[181].

[113] It is clear that it was the police who approached Miss Perry, seeking information about the Australia Day gathering[182]. In the course of the police interaction with her, she voluntarily provided police with her phone, and allowed it to be "cellebrited"[183]. She had known Mr Peros, prior to Australia Day 2013, for about 2 years[184]. She had been to his home[185]. Following the Australia Day gathering, she had further contact with Mr Peros. A couple of weeks before she provided her first statement to the police (09/03/13), she had texted Mr Peros to ask if he wanted to go out[186]. He responded to her and, to the best of her recollection, advised her that he would have to "give it a miss due to work"[187]. After she gave her statement to police on 9th March, she went home and checked her phone, to find a message from Mr Peros, asking her to go to "The Lagoon"[188], near Canelands Shopping Centre. She advised, to her recollection, that she couldn't, as she had things to do.

[114] Miss Perry and Mr Peros again met, by chance, at "Sails" restaurant, a popular venue located within the Mackay Marina precinct, on Easter Sunday, 31 March 2013. She spoke to him there, where he came to the table where she was sitting with her friends[189], and again later in the evening[190]. After some time at Sails, the party of Miss Oliver, Miss Hutchinson, and Miss Perry were driven by Mr Peros into the Mackay CBD, where they visited the CBD entertainment precinct (ie bars, and nightclubs) together. At some point

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[181] I note that the subject of a $250,000 Reward, posted by the Government, related to Miss Blackburn's death, was (for the want of a better word) floated before her during her cross-examination in the Supreme Court (see Exh E.8 3-19 L 1); but this was not pursued after Miss Perry advised that she could not recall having seen it; similarly with Miss Hutchinson (Exh E.8 3-47 L 4); Mr Aleman does not appear to have been asked about this. In any event, a reward was not posted until 18 March 2014 (see Submissions for Mr Peros para [65]), well after each of these witnesses had provided their first statements.

[182] Exh C.137 L 15; Inquest TT 5-82 L 41. Miss Perry did go to the police, after Mr Peros arrived at her home on 3 April: TT 5-84 L 7.

[183] Exh C.137 [19]. There were previous communications with other persons in that phone (of which she was aware: Exh E.8 3-19 L 25), which indicated (quite reliably) that she had, prior to surrendering her phone, been a regular user of certain illicit drugs (these records underpinned a substantial portion of the cross-examination she underwent in the Supreme Court). They included an item from which an inference might have been drawn that she had provided such a drug to one of her friends (see Exh E.8 3-23 L 25).

[184] Exh E.8 3-76 L 15.

[185] Exh C.137B [8].

[186] Exh C.137 [17].

[187] Exh C.137A [11].

[188] A smallish waterpark in the CBD area of Mackay; frequently used by families, with children, especially during the summer months.

[189] Which included Melissa Oliver, Nicole Hutchinson, and somewhat later, Liam Aleman. These were the same people who had been at the "Australia Day gathering" at Miss Perry's home.

[190] Exh C.137A [12] and ff.

in time, Miss Oliver received a call from Mr Aleman (who had not gone into town with them), telling her that he had been pulled over by the police[191]. After that call, Mr Peros left the ladies, and said he was going to "Karma" nightclub[192]. Miss Perry did not see Mr Peros again that night.

[115] On the 3 April 2013, Miss Perry received a phone call from Miss Oliver, who advised her that she may get a visit from the police "about John"[193]. She arrived home from work at about 7:00pm, and not long after, heard a knock at the door. She thought, following her call from Miss Oliver, that it may have been the police. When she reached the door, she saw that her visitor was Mr Peros. She was somewhat surprised at this – Mr Peros had never before come to her house otherwise than after some earlier arrangement, or invitation[194].

[116] Miss Perry and Mr Peros sat down together at a small table and chair set that she had at the front of her house. After some initial chit-chat, Mr Peros asked her what had happened to Mr Aleman the previous Sunday night? She told them that Mr Aleman had not been in trouble, but had simply been stopped by the police. Mr Peros then spoke to her about the police. He told her, in effect, that he didn't like them. He asked her if she'd had a visit from the police[195]. He spoke about them doing warrants at people's houses, and that "we didn't have to … [let]…[196] them in or talk to them at all"[197]. Mr Peros then asked why Miss Oliver "was questioning him"[198] when he was with her at Sails the previous Sunday evening. Miss Perry, who had not been present during any such conversation, "tried to just brush over the subject".

[117] While they were speaking at the front of the house, Miss Perry noticed that Mr Peros' white dual-cab utility[199], was not out the front of her residence. She asked Mr Peros where his car was, and he told her that he had a new scooter he was getting around on. Mr Peros started to talk about a solicitor he had been seeing, told her he had been advised to "get off" social media, and that he had a new phone on which he didn't have anyone's numbers anymore. There was some further, more general conversation[200], after which Miss Perry indicated to Mr Peros that she should start to prepare dinner, and she walked Mr Peros down the driveway to the front of her property. She gave him a hug, and said she would see him later, and that he should not stress. She noticed that a motor scooter was parked about three houses down from her own, and asked Mr Peros if he had forgotten her address? He advised her that he had not forgotten, but that he was "just in stealth mode at the moment"[201]. Since this encounter, Miss Perry told police that although she had seen Mr Peros "around here and there", the two of them had no further interaction.

[118] I am left with a very clear picture of a relationship involving mutual friendship between Miss Perry and Mr Peros, which continued, at least, until 3 April 2013. They continued to have contact after the Australia Day get-together, and I can detect nothing

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[191] This event is relevant to a later event, below.
[192] Exh C.137A [19].
[193] Exh C.137A [20].
[194] *Ibid* [21].
[195] TT 5-84 L 20. This was not included in Miss Perry's police statements.
[196] Word possibly omitted in Exhibit statement.
[197] *Ibid* [25].
[198] "A lot of questions about his ex's", Mr Peros advised Miss Perry: *Ibid* [26].
[199] In which she had previously been a passenger: Exh C.137A [15]-[16].
[200] *Ibid* [29]-[30].
[201] *Ibid* [31].

in any of the evidence which would support, or suggest, any ill-will by either party towards the other.

[119] I have referred above to what I have described as Miss Perry's frankness. There are two relevant statements to which Miss Perry has referred –

(i) "I fucking hate that cunt"[202]; and
(ii) something like "She would be better off dead"[203].

With respect to the first-mentioned statement, the proposition was clearly put to Miss Perry, in the Supreme Court, that Mr Peros had not made that statement[204]. Miss Perry's evidence (based on the transcript) was in no way shaken with respect to this statement. With respect to the second-mentioned statement above, the impression conveyed to me by the terms of her initial statement, where she first explains what she heard, was that she was very much alive to the potential importance of a statement along these lines, but she simply could not remember the precise words, but could only speak of the impression which the words – whatever they may have been – made upon her mind, and thus her memory. She maintained that position throughout the entirety of her examinations in relation to Miss Blackburn's death. Prior to giving her third statement[205], she had spoken to her friend, Miss Hutchinson (Nicole), about the Australia Day conversation. Her final statement contains this reference –

> "We both then spoke about John and how weird events have been [,] especially about him saying how he wanted to stab Shandee…".

Quite understandably, she was cross-examined about this at inquest[206]. She explained that that description came from Nicole Hutchinson, and not from herself. At no time did she state, in her evidence before any Court, that Mr Peros, *to her recollection*, had used the word "stab". She was very clear, when pressed about this, the term was not one that she herself remembered[207].

[120] Miss Perry had a lot to drink on Australia Day 2013. Of that, there can be no doubt. It may be that her perception, and thus her memory of what occurred, is reduced because of that consumption of alcohol. She went out with her friends, and commenced drinking about 11:00am. She tried her best to give a clear idea of just how she felt at various times through the day, and evening, by reference to a scale of 1-10, with 10 representing a "falling over blind drunk"[208] level of intoxication –

When Mr Peros arrived	4 out of 10[209]
When left the Lucky Aussie	7.5 out of 10[210]
When she left McGuire's	9 out of 10[211]
When she got home	8 out of 10[212]

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[202] Exh C.137 [12]. There appears to have been no dispute that Mr Peros, when he made these statements, was talking about Miss Blackburn: see E.8 3-11 L 43 to 3-12 L 1.
[203] *Ibid.*
[204] Exh 8 3-33 L 15.
[205] Exh C.137B.
[206] See TT 5-92 L 41 and ff.
[207] TT 5-92 L 41.
[208] Exh E.3 3-33 L 19.
[209] Exh E.3 3-33 L 21.
[210] Exh E.3 3-35 L 2.
[211] Exh E.3 3-35 L 47.

She was never asked how she rated herself, by reference to this scale, at the time the statements said to have been made by Mr Peros, apart from the fact that she agreed that she had been "drunk". Consequently, any assessment of her state of sobriety or intoxication, is left to be determined on the basis of logical reasoning, and taking into account that she continued to drink after arriving home. I am satisfied that she was very intoxicated at the time of the "relationships" conversation[213]. I am also satisfied that she heard, and remembered, such words as she was later able to recall and put into her first statement. Such limitations of her recollection of which she is aware, have been carefully set out in her original statements, and explored at length.

[121] I am not, however, persuaded that she either consumed any illicit drug on Australia Day 2013, or that she was under the influence of any such drug at the time of the "relationships" conversation to the extent that she was – physically and mentally – unable to recall with some accuracy what had been said. She was asked about her drug use on that day on many occasions during her Court appearances[214]. As she approached the end of her time in the witness box at inquest, she was asked yet again, whether she had taken illicit drugs on Australia Day. Her response equivocated – she said, initially, that she didn't use any drugs that day[215]; when pressed again, as to whether she was certain, she said "I don't remember. It's that long ago"[216]. The proposition was then put to her –

> Q: "So I assume, then, that you can't be certain whether you did use drugs on that day. Do you agree with that?
>
> A: "Yes".

Miss Perry was in the witness box for an hour at inquest[217]. This exchange took place in the latter portion of her evidence, and followed one particular interaction between the witness and examining Counsel. It was obvious to me that Miss Perry was becoming distressed while giving her evidence. While such a situation does not assist me to determine the truth of the matter concerning her possible drug consumption that day, I am firmly of the view that the statements to which she attested did, in fact, take place[218].

[122] The statements were, to Miss Perry, particularly memorable. They were entirely un-anticipated, and quite out of character for the Mr Peros she had come to know over the preceding two years. She set out, in her first statement, exactly how, and why, the statements made an exceptional impression upon her[219] -

> "…He got fairly dark and said something like 'I fucking hate that cunt'. Over the minute or so he got really venomous about her and said things that made me sit up and take notice and raise my flag. I was very alerted by it. I knew that the relationship had not ended amicably but I thought he had moved on. It was apparent to me that he still had hate for her and I would have thought,

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[212] Exh E.8 3-11 L 4.
[213] I am also satisfied, beyond any doubt, that there *was* a conversation (at least in general terms) about "ex's"; it is the content which is really in issue. Indeed, I'm more inclined to the view that it is a subject which would *not* wish to be broached by most people *unless* they were substantially intoxicated.
[214] Exh E.3 3-33 L 6; Exh E.3 3-39 L 9; Exh E.8 3-29 L 24; TT 5-90 L 39-43; TT 5-105 L 47.
[215] TT 5-105 L 47.
[216] TT 5-106 L 1.
[217] 3:02pm to 4:08pm.
[218] I have also taken into account, in this determination, any correlation (and the absence of such) between the evidence of this witness, and the other two "conversation" witnesses.
[219] Exh C.137 [12].

> that far down the track from where it had ended, he would have been in a better place."

Her thoughts, of course, were only her own opinion. The passage, however, provides a readily-comprehensible reason as to why the statements in issue may well have stuck in her mind, notwithstanding her intoxication. I would add that, during her examination at inquest, she readily agreed, when asked, that until that "minute"[220], she had "never known John to say a bad word about anyone"[221].

Miss Nicole HUTCHINSON:

[123] Although they had been very close friends for many years, I found Miss Hutchinson's evidence to be very different to that of Miss Perry in informing me of the events of Australia Day 2013. Like Miss Perry, Miss Hutchinson provided three statements to investigating police. They contained substantially less detail, and explanation, than those of Miss Perry; and the distinct impression I gained from her statements, and her examination in other Courts, was that her recollection of events was not as clear, or as reliable, as that of Miss Perry.

[124] Miss Hutchinson stated that she began drinking – Bacardi and coke (pre-mix) – before the party progressed to the City centre for their main celebrations. She stated she had consumed "one or two" Bacardis with coke at Sharlene's before going to town[222]. Accepting, as I do, that this "pub crawl" commenced at about 11:00am, and continued to about 8:00pm, and that (as she stated[223]) Miss Hutchinson continued to drink Bacardi and coke over that 9 hour period, I have no hesitation in finding that she too was intoxicated[224] by the time the party adjourned to Miss Perry's residence[225]. Her own assessments of her degree of intoxication are also questionable – "about 2 (out of 10)" at when she left the Austral Hotel (she could not recall how many drinks she had there[226]), and "about 2 or 3 (out of 10)" when she left "O'Reilly's"[227]. During her cross-

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[220] The conversation, from Mr Peros, was obviously very short: see also Exh C.137A [7]; and when it had finished "things went back to normal": *Ibid* [8]; "After the topic had been changed, John was just his normal self". Miss Perry said that the conversation took place (a "guess": Exh E.8 3-11 L 4) about 12:30am to 1:00am. I also note, however, that she agreed with a suggestion put to her that it might have been close to when Mr Peros left (her estimate was 2:00am to 2:30am: Exh E.8 3-12 L 27); and that it was put to her that Mr Peros left at about 2:30am (Exh E.8 3-90 L 12). I don't accept, as definitive, her "guess" as to these times.

[221] TT 5-91 L 41.

[222] Exh E.3 3-45 L 1.

[223] "I don't mix my drinks": Exh E.3 3-46 L 40.

[224] I don't accept, at face value, her assertion that "I had had a few drinks over the day, but wasn't overly intoxicated", I do accept that she may have been happy, and that she was still (to some extent) in control: compare Exh C.138 [15].

[225] In fairness to Miss Hutchinson, she made the point that she had also been drinking water, a common practice of hers, when she was drinking alcohol. It would be entirely speculative, however, to try to assess any possible effect on her senses of perception and recall of her consumption of water – even on the basis that she was alternating water with rum (which, in itself, would be an unfounded assumption on my point).

[226] Exh E.3 3-45 L 30.

[227] It seems clear that she was saying that "O'Reilly's" was their last port-of-call in the City: "And then we went home and after that I stopped drinking": E.3 3-47 L 4. I am somewhat puzzled by the reference to "O'Reilly's", as Miss Perry had identified their last stop as being McGuire's Hotel. Miss Hutchinson has possibly confused the Irish-sounding names of "O'Reilly's" (an Irish Bar) with "McGuires"; but I can't entirely exclude the possibility that she just didn't know exactly *where* she had been during that period. This anomaly was not explored further.

examination in the Supreme Court, Miss Hutchinson assessed her sobriety, when she arrived back at Miss Perry's home, at "Maybe a four or five…I wasn't very drunk."[228]

[125] There is a substantial difference between the assessments of intoxication by Miss Perry, and by Miss Hutchinson. There is nothing in the material before me to suggest that, for some reason, there was a substantial difference between the amount of alcohol consumed by Miss Perry and by Miss Hutchinson over the same period[229]. I believe that there is a substantial probability that Miss Hutchinson's assessments are on the low side. She stated, at committal, that she did not continue to drink at Sharlene's house[230]; whereas in the Supreme Court, she stated that she may have had "one or two" drinks[231] when she returned to Miss Perry's house. I believe Miss Perry's evidence is a better guide to how the pace of the evening-out was proceeding, rather than Miss Hutchinson's estimates. Miss Hutchinson was of no assistance in trying to establish reasonably accurate times of various events through the day, and night, nor was she able to advise – even by a best guess (based on her usual rate of consumption) – as to how much she might have consumed[232]. These conclusions cannot but affect my conclusions as to her reliability as an historian of the evening's events.

[126] With respect to possible drug use by Miss Hutchinson on the day in question, there is little evidence upon which to reach a conclusion. During Miss Perry's cross-examination in the Supreme Court, she was asked whether or not, at about 10pm on the night of Australia Day 2013, she had received a text from Miss Hutchinson which stated –

> "Hey Bub, do we need to bring this other gear out?"

Miss Perry accepted that such a text was received by her[233]. She agreed that "gear" referred to drugs. She was not asked whether or not she had responded to that text, and no source material, containing records of text messages which may have been on Miss Perry's phone when "cellebrited" by the police, was tendered. Accordingly, there is no evidence of any response by Miss Perry. In the course of cross-examination in the Supreme Court, the proposition was put to Miss Hutchinson[234] –

> Q: "…I suggest to you that you were off your face on ecstasy on Australia Day?"
>
> A: "No, I wasn't".

In this proceeding, I am, of course, not concerned with drug-taking (even of an illicit drug) which does not relate to the issues in this inquest. There was certainly evidence of a number of text messages involving Miss Perry, Miss Hutchinson, and Mr Aleman, from which could readily be inferred some past association with such substances. The question for me, however, concerns Miss Hutchinson's state of sobriety (or absence of such) at the time of the "relationships" conversation in the early morning hours following Australia Day 2013. That is a very different question. In the absence of anything other than past history of involvement with drugs, and fully acknowledging the somewhat

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[228] Exh E.8 3-36 L 45.
[229] Of course, there is also nothing in the evidence which would indicate that they went head-for-head, drink-for-drink, over the relevant period.
[230] Exh E.3 3-47 L 19.
[231] Exh E.8 3-36 L 40.
[232] I am not prepared, in the absence of reliable evidence, to find that her consumption of water would have made any significant difference to her perception and recall of the night's events.
[233] Exh E.8 3-30 L 12.
[234] Exh E.8 3-57 L 15.

open-ended text sent at 10pm the preceding night, I am of the opinion that it would be a speculative inference to find, that between approximately 12:30am and 2:30am that morning, Miss Hutchinson was to any degree affected by any illicit drug.

[127] On the other hand, I can, and do, take into account the initial denials of such previous involvement in the relevant activities, by Miss Hutchinson, as disclosed by the extensive cross-examination to which she was subjected in the Supreme Court on this subject, in my overall assessment of her credibility. That does not mean that I find her totally without credit; that would be an erroneous approach, as is invariably explained to juries in all criminal trials – some of a witness's evidence may be rejected, and other parts may be accepted; and that is the situation which is presented to me by this witness. What parts (if any) of her evidence, can properly be accepted?

[128] In her first statement, Miss Hutchinson deposes to having heard Mr Peros, in the course of his brief involvement as a speaker in the "relationships" conversation, refer to Miss Blackburn in the following way[235] -

> "(*something like*) I hate that cunt".

The prefacing of her quotation with "something like" conveys to me the impression that even that statement should be approached with caution. I note that it is similar to the statement recalled by Miss Perry – subject to the absence in Miss Hutchinson's recollection of the "f…..g" expletive. In some ways, the explanation she provides for recalling this statement is similar to that provided by Miss Perry, in that she goes on to state –

> "…He was [more so] speaking to Sharlene about it. He was quite emotional when he spoke about her, I could hear that there was still hate inside him. Whatever she had done to him was still cutting him up. …I tried to change the subject… I thought that this was really out of character for him because I have never heard him speak like this before. I thought that he must have really liked this girl to be that upset…".

She made similar observations in her second statement[236] –

> "At sometime during this conversation I recall going into the kitchen with Sharlene to get a drink and we may have made a comment about what Jupes had said to us outside on the front patio. I don't recall the exact words that were said but I know that we both felt that it was strange for Jupes[237] to speak like that about anyone. I have never heard him speak ill of any person before this."

[129] It seems clear, on the evidence, that Miss Hutchinson had known Mr Peros for about 10 years, having been initially introduced to him by Miss Perry at Moranbah. While she had known him for that lengthy period, it also seems to be clear that she had not had as close a relationship with him as had Miss Perry[238]. She did confirm, in her evidence, that she had been out with Mr Peros on many occasions[239], presumably with other friends,

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[235] Exh C.138 [16].
[236] Exh C.138A [4].
[237] This is a nickname Mr Peros was known by, short for 'Johnny Jupiter', which he used for his Facebook profile.
[238] I certainly don't intend to suggest that either of these ladies had anything other than a friend, or good friend, relationship with Mr Peros.
[239] Exh E.8 3-43 L 13.

including Miss Perry. On the basis that she was not as close to Mr Peros as Miss Perry, I would expect that the impact of what was alleged to have been said by Mr Peros would have been somewhat *less* than was the case with Miss Perry. But even so, and from her own experience associating with Mr Peros, it may well have been the case that any statement, such as is alleged to have been made, was contrary to his nature, as *she* had observed it, during the course of their friendship[240].

[130] I accept that Miss Hutchinson heard *something* from Mr Peros which, to her perception of his usual personality, was out of character for him. Precisely what those words were she cannot say. She deposed in her first statement the words: "[*something like*] I hate that cunt"; In her second statement, she did not add to, or vary, that recollection; but in her third statement she included the following statement[241] -

> "John never spoke to me about his relationships and especially about the relationship with Shandee. The only time I heard him talking about his relationship with Shandee was at Sharlene's on Australia Day 26 January 2013, *where he said he hated her and wanted to stab her.* That's why it took me by surprise. To never speak about her and then to say I thought to myself, he is really hurt by her." [italics added]

[131] She reprises the reference to "hate", but then adds "wanted to stab her". I am not prepared to accept that that "memory" is her own. I have no doubt that, between her first and her third statements, there was discussion between some of these witnesses as to what had allegedly been said by Mr Peros. The absence of any reference to "stab" in the first and second statements indicates, to my mind at least, the real possibility that her own partial recollection, perhaps while she was straining to remember, has picked up and included something which had been mentioned by another witness.

[132] I accept she has some partial recall. That tends to be supported by the statement by Miss Oliver, who says[242] -

> "At sometime during the night I had gone inside, and they had all stayed outside. Nicole [Hutchinson] and Sharlene [Perry] came into the kitchen later and were having a conversation that I was present for but not really involved in. I remember Sharlene saying something like 'It's a weird thing for him to say'. I asked what she was talking about, and she told me not to worry about it."

Miss Oliver was not told what they were talking about, nor to whom they referring. Miss Oliver's recollection of this incident seems to me to dovetail quite convincingly into the statement by Miss Hutchinson (set out above) where she mentions a talk she had with Miss Perry in the kitchen. I am persuaded that this incident did occur, and while it is a minor issue in a consideration of the events of the day and evening, it does indicate that Miss Hutchinson had some recollection of events. However, for the reasons I have indicated above, I am not prepared to act upon her evidence as to the actual words alleged to have been spoken by Mr Peros.

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[240] Miss Hutchinson infers that Miss Perry was a closer friend to Mr Peros than she herself; I draw this inference from her first statement (Exh C.138 [18]), where she suggests that "it would have been good for" Mr Peros to speak with Miss Perry about a relationship issue - she nominates Miss Perry as perhaps providing a supportive shoulder to Mr Peros, rather than herself.
[241] Exh C.138B [10].
[242] Exh C.139 [11].

[133] I have not overlooked the unusual change in her evidence which emerged at the trial. She was asked[243] –

> Q: "What do you now say that you heard him say?";
>
> A: "He said I hate that cunt. I want to stab her."
>
> Q: "I want to stab her?"
>
> A: "She deserves to be stabbed".
>
> Q: "'She deserves to be stabbed'[?]. Which one was it? 'I want to stab her', or 'She deserves to be stabbed'?";
>
> A: "I want to stab her".

[134] Cross-examining Counsel then put to Miss Hutchinson, that on the 19 March 2017[244], in conference with the Crown Prosecutor who was to conduct the forthcoming trial, Miss Hutchinson had told the Prosecutor, in that conference, that the words allegedly used by Mr Peros were "she deserves to be stabbed". Miss Hutchinson agreed with the proposition that "she could have said that"[245].

[135] I have no hesitation in finding that Miss Hutchinson has very little recollection of *precisely* what was said – as opposed to the general gist - in the relevant part of the "relationships" conversation, and I approach her evidence accordingly.

Mr Liam ALEMAN:

[136] On Australia Day 2013, Mr Liam Aleman was 23 years of age[246]. At that time, he was going out with Miss Melissa Oliver. Miss Sharlene Perry, mentioned above, was his aunt. Mr Aleman first met Mr Peros at the Platinum Lounge, an entertainment venue in Mackay, some 4 years previously, when Mr Aleman was 19 years of age. After that meeting, the two saw each other around town on various occasions, and became friends. As far as Mr Aleman knew, Mr Peros was working in Moranbah at some period during this time. After not having seen Mr Peros for about 2 years, he "bumped into" Mr Peros in Mackay at Easter in 2012. At that time, he was with his aunt, Miss Perry, and her friend Miss Nicole Hutchinson. The group chatted for about a half-hour, and then went separate ways.

[137] Mr Aleman again encountered Mr Peros at Sails bar, at the Mackay Marina, where they had a short chat. Mr Aleman can also remember the date of 19 January 2013. On that date, Mr Aleman's then-girlfriend, Miss Oliver, had gone out drinking with some of her friends, and contact was lost between Miss Oliver and Mr Aleman later in the night. Among the people he called, trying to find her, was Mr Peros who, in fact, helped Mr Aleman to go and look for Miss Oliver[247].

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[243] Exh E.8 3-45 L 15 and ff.
[244] Three days before this cross-examination.
[245] The Crown Prosecutor's notes were not before me as part of the evidence in this inquest, but Miss Hutchinson's concession on this point was clear.
[246] Background information is from Exh C.140 [1] to [17], statement by Mr Aleman, dated 23 March 2013.
[247] Exh E.8 3-91 L 15.

[138] Mr Aleman's next contact with Mr Peros was a couple of weeks later, on Australia Day 2013. He was with Miss Perry, Miss Hutchinson, and Miss Oliver, his then-girlfriend, at the Austral Hotel. He states they arrived at about 3:00pm[248]. One of the girls texted Mr Peros at about 4:30 to 5:00pm, and invited him to come down and join them. Mr Peros duly arrived, and joined them. Mr Aleman could recall that he [Mr Peros] drank little – one pot of beer, to his recollection. At about 7:00pm, the group returned to Miss Perry's home, with the intention of getting ready, and going back out into town. A taxi was called, but did not arrive. At some point, the idea of returning to town seems to have been abandoned, and the group settled down at Miss Perry' home for the evening.

[139] Mr Aleman gave evidence that he was present for a conversation where Mr Peros was alleged to have said[249] –

> "I hate her and I would love to stab the cunt."

This conversation, he said, took place outside the front door of Miss Perry's home. There were some chairs in that area, and Miss Perry, Miss Hutchinson, and Mr Peros were sitting in those chairs talking. The subject of the conversation, at that time, was relationships.

Mr Aleman was a smoker[250]. As noted above, he was at that time in a relationship with Miss Oliver. Miss Oliver, it appears, spent most of the time at Miss Perry's home inside the house, and was not present for this conversation. Miss Hutchinson stated in the Supreme Court[251] -

> "Liam was inside and he come outside now and again, because he smokes as well and he sits with us, as well, and he was out there as well, at one stage where it was just the four of us."

This information is quite important. The recollections of Miss Perry and Miss Hutchinson, as to who was present when Mr Peros spoke the words alleged in the course of the "relationships" conversation, was explored in detail with those witnesses during their cross-examination, *eg* who was sitting there, where was each party seated, *ie* to the left, or the right. In her first statement, Miss Perry said that[252]:

> "it was basically me, Nicole and John Peros."

In Miss Hutchinson's first statement, she stated that[253]-

> "Sharlene, Jupes and I sat outside and talked while Liam, his partner Mel and Tui were inside."

I am satisfied, indeed I have no doubt at all, that Liam Aleman spent a good deal of the night with his girlfriend, inside Miss Perry's house. I also have no doubt that, from time to time, he would go outside for the purpose of having a cigarette. It was during one of these "smoke" breaks, when he was outside, that the conversation to which he has deposed took place.

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[248] Exh C.140 [18]. I note that at committal he gave an arrival time of about 10:00am. However, at trial, he reverted to 2:00 to 2:30pm: E.8 3-82 L 15. I don't attach a great deal of weight to his time estimates.
[249] Exh C.140 [21]; Exh E.8 3-83 L 29.
[250] Exh E.8 3-83 L 41.
[251] Exh E.8 3-47 L 44.
[252] Exh C.137 [11].
[253] Exh C.138 [15].

[140] Mr Aleman was not accurate as to times. There was substantial cross-examination of him concerning the possibility that he had at some time prior to Miss Blackburn's death, provided illicit drugs to Miss Perry, and to Miss Hutchinson. These were based upon the "cellebrited" downloads of Miss Perry's phone history. He may well have done so; Miss Perry was his aunt, and Miss Hutchinson was her best friend. He was quite a bit younger than the two ladies. He may well have moved in the circles where these substances were more easily accessed. He frankly conceded that, at about that time, he was a user of marijuana and ecstasy[254]. He was not cross-examined as to how frequently he did so, or as to how much he would use, or as to how it would affect things like recall and memory.

[141] His initial statement contained the following concession, concerning the time at which Mr Peros was said to have made the relevant statements[255] –

> "Everyone, except for John, was pretty drunk but I vividly remember him saying this."

Attempts were made to grade the degree of his intoxication. I found the proposed sequence of intoxication based upon "drunk > pretty drunk > blind drunk"[256] to be of no assistance whatsoever. Mr Aleman stated that when he got back to Miss Perry's house, he was about "4 out of 10"[257]. I believe he was affected by alcohol at the time of the conversation in question. I do not accept that he was so affected, as to be unable to remember what was said.

[142] Mr Aleman was also cross-examined at length as to his possible drug use on Australia Day. As I have indicated, there were concessions that he was a drug user at the time, but there is no further detail about that use. There is no direct evidence he was using any illicit substance on Australia Day. It is submitted that I should draw that inference[258]. Mr Aleman's evidence was that he could not remember whether he had, or had not, taken drugs on Australia Day. It was clear he did not believe that he had[259].

[143] Towards the end of his cross-examination in the Supreme Court, It was put to Mr Aleman that Mr Peros did not say either that he hated Miss Blackburn, or that he wanted to stab her. Mr Aleman responded[260] -

> "I heard what he said. I stand by that. I will not deny that. That's what he said. Whether it was out of anger, I-I reckon he was just letting off a bit of steam, to be honest, you know, just…".

[144] I accept the evidence from Mr Aleman. Like the other witnesses, there is no indication in any of his evidence, either at inquest or on previous appearances, that he bears any ill-will at all towards Mr Peros. He too was a friend. Simply because he was, at the relevant time, a user of illicit drugs, supplies no reason whatsoever to reject his evidence out of hand. It does require a careful analysis, to ascertain if it accords with other evidence, and whether it has (as it is not infrequently termed), the "ring of truth" about it. In all his appearances, he was direct, and to the point; and I find that his recollection of what was said by Mr Peros on this occasion to be reliable.

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[254] Committal, day 4, 1-34 L 15; Exh E.8 3-85 L 15.
[255] Exh C.140 [21].
[256] Exh E.9 4-10 L 21.
[257] Exh E.8 3-83 L 1.
[258] Written submissions [60].
[259] "I wouldn't say I definitely remember, but I knew I was drunk, and I wasn't taking drugs that night.": Exh E.9 4-12 L 14.
[260] Exh E.9 4-12 L 33.

[145] Accordingly the words or themes recalled by each of them were something like: '*I fucking hate that cunt*' and '*She would be better off dead*'[261]; or "*I hate that cunt* '[262]; and '*… hated her and wanted to stab her*'[263]; '*I hate her and would love to stab the cunt*'[264]. There are certainly slight variations to the words allegedly said, but the stated hatred of Miss Blackburn, the wish to subject her to harm, and the derogatory or coarse swear word used[265], is remarkably consistent, and was recalled by each of these witnesses with just minor variations in recall.

[146] An attack on their credibility, and reliability, in recalling this information, was made *inter alia* through getting them to recall the precise details of who was sitting exactly where, the arrangement of furniture in that part of the residence, and distances of furniture to people to doorways *et cetera*; and to test their recall of prior sworn testimony, whether at the Committal or Supreme Court trial. I fully appreciate that persons can have difficulty attempting to recall minute details of furniture arrangement or room layout, especially when they may simply be visitors to a house, but that does not prevent them being reliable in their recall of a statement made, particularly when the statement or words may be considered very unusual, especially viewed in the context of the then conversation[266]. Each of the witnesses said that Mr Peros made his statement quite 'out of the blue'[267]. They were discussing prior relationships, but Miss Blackburn's name had not previously been raised, rather Mr Peros simply volunteered this information. The manner, or tone, in which it was said, which they observed, was something that caught them all quite unawares.

[147] Such a statement made, particularly when said with observed emotion, can be captured by people as a significant memory or event from the night, even if they are affected by alcohol.

[148] Whilst Mr Peros denied he ever made such a statement there is no doubt that he was there that evening, into the early hours. I find that he did make the statements attributed to him. These statements were made on 26th, or 27th[268] of January 2013, well over six months after his relationship with Miss Blackburn has ended, and two weeks before the incident which resulted in her death.

[149] It is also necessary to place this evening in its context. It was Australia Day. It is common in our community for people to get together, and relax, often with friends, on this public holiday. The people present were friends. The witnesses sometimes refer to Mr Peros as "Jupes" – which I understand was short for "Johnny Jupiter", a name used by Mr Peros on "Facebook". Mr Peros was called, and invited to join them, because he,

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[261] Miss Perry, Exh C.137 at [12].
[262] Miss Hutchinson, Exh C.138A at [2].
[263] Miss Hutchinson, Exh C.138B at [10].
[264] Mr Aleman, Exh C.140 at paragraph [21].
[265] Compare the language used in Exh F.50 (the extract of text messages).
[266] Mr Aleman's statement C.140 at paragraph 20, provides an example. He stated that they were all sitting around talking. This refers to a quite extended period, of some hours and, to me at least, is referring broadly to the entire activity that evening, which involved a number of people. Whether a particular witness was on a particular chair, or on the couch inside the door is, with respect, of little assistance to me. More useful than the chair on which he was sitting, is whether the witness was clearly within earshot when the relevant comment was made by Mr Peros. Any suggestion he is simply inventing his recall of the conversation is clearly rejected by me.
[267] One witness said it made them '*sit up and think*' etc, indicating it certainly caught their attention. They also considered that clearly that he had lingering strong emotional issues regarding Miss Blackburn, '*he had hate for her'* were the words in Ms Perry's statement. Ms Hutchinson observed that Mr Peros '*was quite emotional after making the statement'*: Exh C.138 at [16].
[268] Into the next morning, say 1.00am or 2.00am

too, was a friend. There has been no suggestion made of any pre-existing animosity between the witnesses and Mr Peros. The very invitation extended to him points unmistakably to the contrary. There has been no suggestion that there was some "falling out" during the evening. Mr Peros regarded the witnesses as friends, as they regarded him.

[150] It was suggested that the evidence from this night, by the three witnesses, was "vague, inconsistent, and inherently unreliable"[269]. I don't agree. The "heart" of the statements was (i) that Mr Peros still had hatred for Miss Blackburn; and (ii) that he expressed a wish or desire, that she would be harmed, or stabbed. Seemingly in the alternative, it was submitted that "people often say harsh things about their…former partners that they do not mean or intend to act upon"[270]. I reject that as a probable explanation in this case. The evidence of Miss Perry and Miss Hutchinson is clear as to the mood expressed by Mr Peros, that is, indeed, why they were remembered. If it is said that these persons somehow colluded[271] to invent such statements to attribute them to Mr Peros, I reject that suggestion as well. There is no persuasive evidence, indeed no supportive evidence at all, that they colluded or invented the incident[272].

Mr Peros' movements on 8-9 February 2013

[151] Up to a point, Mr Peros' movements the day before Miss Blackburn died were not in question. He went boating with friends at Seaforth in the morning[273], attended a work function at the Mackay harbour through the day, then went home and possibly had an afternoon nap and did not go out that evening, preferring to stay home and watch television[274] although he '*might have gone for a drive*'[275].

[152] The precise terms of this statement warrant closer examination. The words of Mr Peros, as recorded, are (with italics added by me) –

> "*I think I might have* had a bit of a nap"; [25]
> "*I can't recall exactly what* I did for the rest of the night." [25]
> "*I might* have gone for a drive." [25]
> "*I think* I spent most of the night at home." [25]
> "*I probably* just stayed home." [26]

Mr Peros did comment, just after being asked about his movements at around midnight the previous Friday night, about his "…terrible memory"[276]. I note this, in particular,

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[269] Submissions for Mr Peros at [57].
[270] Submission for Mr Peros at [78]. I note that the Submissions with respect to the Australia Day witnesses occupy just two printed pages, out of 57 pages.
[271] The witness Nicole Hutchinson was asked this and denied it (TT5-123 at [14-17]) in that they 'discussed' what each other put in their statements. Simply recalling together and discussing that Mr Peros made his statement at the Australia Day evening gathering is not at all unusual; she said they only discussed 'the situation', as she termed it. I accept her evidence on this. There was certainly nothing to suggest they colluded, or spoke together to have a similar 'story' before speaking with police.
[272] Mr Peros' later contact with Miss Perry (3 April 2013), and speaking with her telling her that she did not have to speak with the police if they contacted her (TT5-84 at [9-24]), suggests very much to me that he did make the statement, and that he has subsequently realised its importance in light of the sequence of events that occurred.
[273] He met at his friend's house at 5.40am: Exh C.424 at [23].
[274] Exh C.424 at [23] – [26]. The statement-taking session was recorded: Exh D.60.
[275] Exh C.424 at [25].
[276] Exh D.60, at 4:26 into the recording.

because Mr Peros again stated that he had memory problems when he gave evidence at the inquest. On this earlier occasion, the question, as it seems to me, was fairly simple. It is clear from his statement that he could remember, with quite some detail, what he had done on Friday during the day:-

- At 5:40am[277] he met Steve CALICETTO at his (Steve's) place;
- He went out on a boat, in the Seaforth area, with Steve and "Kev";
- They went in the boat up the river;
- They (Steve and Mr Peros) had to attend a BBQ at midday;
- They came back in the boat early, so they could wash the boat;
- Mr Peros and Steve went to Mackay Harbour for a BBQ for Bec[h]tel;
- He was at the BBQ for an "hour or two";
- He was not drinking;
- After leaving the BBQ he dropped Steve off at the City Gates, so Steve could pick up his car;
- He then went home – about mid-afternoon;

Up until this point, Mr Peros' recollection of the events of Friday the 8th seems to be unremarkable. From that point on, it appears that his recollection is somewhat poorer. He could also remember the Saturday morning –

- He replied to a text message from Steve when he woke up, at 9:14am;
- He asked Steve if he wanted to have a look at his motor;
- Steve told him that it was "all sorted";
- "I don't really remember what I did for the rest of Saturday in the day but I ended up finding out that Shandee had been killed."

[153] As I have indicated, Mr Peros was not definite about his movements that evening, even though asked about them by police only two days later. He signed a statement at that time to that effect. Rather than being definitive as to actually going for a drive, or not going for a drive, that evening he adopted what I would describe as a rather non-committal '*might have*' position[278].

[154] Mr Peros gave evidence at inquest. In respect of many[279] of the questions asked by Counsel Assisting, Mr Peros stated that he could not remember, *eg* whether or not he was driving his car in specific streets near the place where Miss Blackburn was attacked[280]. When asked where he was at about 12:15am on Saturday 9 February 2013, he stated "I don't remember[281]. He was then asked about his police statement of 10 February 2013. He made it clear to the Court that he could not remember what he told police that day – he could answer only on the basis of his refreshed memory, after reading his police statement the previous day[282],[283]. He *did* remember that when he signed the statement on

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[277] This appears to be a very specific memory of time; but Mr Peros actually said "about 20 or quarter to 6".

[278] It could be said that Mr Peros was being rather cautious, especially as one would expect that a drive at that very late hour of night would have a specific purpose, *eg* such as perhaps ensuring a safe ride home for a friend who had been in town drinking alcohol, seeking a midnight snack (the proverbial late night 'Maccas Run', or *etc*). No obvious reason for driving at this late hour was offered to interviewing police, and the issue was not explored further with him at that time. At inquest, Mr Peros gave evidence that going for a drive was a common thing for him to do at the time (TT 5-65 L 16 ff) – "if I'm bored or I've got nothing to do or just want to do something".

[279] On 31 occasions, upon my count.

[280] From TT 5-25 L 3 to TT 5-26 L 8.

[281] TT 5-27 L 11.

[282] *eg* TT 5-27 LL 38-45.

10 February 2013, he was not satisfied that it was correct[284]. He went on to explain exactly what had happened when he was asked to sign the typed-up statement[285]. I have no difficulty whatsoever in accepting that some of the words used in the statement may not have been words that Mr Peros would usually use[286]. I do have some difficulty with his apparent recollection, in some detail, of representations that he made to the police, on his account on three occasions, about the correctness of the statement as typed; and that he actually made a fourth representation in that regard – in respect of which he appeared to be able to recall the police officer's actual words to him which, he says, resulted in him signing the statement.

[155] As I mentioned earlier Mr Peros was an accomplished amateur boxer achieving third place at a National level competition just three months before Miss Blackburn's death. A former coach, Mr Maltby, described him as a boxer who was predominantly left handed but could fight off both feet, that is punch with both hands[287]. He described him as "*one of the most awkward fighters you'll ever meet*"[288], as "*he came from weird angles as well*[289]" and catch you off guard, he also had fast hands, and was quick[290] when throwing punches. He spoke highly about Mr Peros' boxing skills. Mr Peros himself in evidence indicated his left hand was stronger but could use both such as when using a trade tool depending on access[291]. Mr Michael Coles, Mr Peros' former boxing coach, gave evidence in the Supreme Court. He was asked a number of questions about Mr Peros' ability as a boxer, including the following[292] -

> Q: "…John Peros was a very powerful boxer, wasn't he?";
> A: "Yes, Sir".
> Q: "His punches were very hard indeed. Correct?;
> A: "Explosive is what I'd call him."

The vehicle seen in CCTV footage

[156] The only vehicle Mr Peros then owned was a white Toyota Hilux dual-cab utility. It was alleged that a vehicle matching Mr Peros' vehicle was identified in certain CCTV footage driving near the scene of Miss Blackburn's death around the time she was fatally stabbed. Counsel for Mr Peros was asked directly by me if the vehicle seen in the CCTV footage was Mr Peros'. I was told, clearly on instructions, that he was not in a position to say whether it was or was not Mr Peros' car[293]. Mr Peros in evidence simply said "I can't

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[283] *eg* TT 5-28 L 8.
[284] TT 5-26 L 41.
[285] TT 5-26 L 43 and ff-

> Q: "You weren't?"
> A: "No. Some of the wording weren't the – a lot of the words in there aren't the words that I use. A lot of the wording was – in the police's words – he made some errors in there that he corrected for me and I think it was three times I got him to change the wording of it."
> …"And then I think I mentioned something the fourth time, but he said, 'Look, it's not that important at this point in time. So I said, 'Okay'. And I ended up signing it. But, yeah."

[286] In my experience, police ask questions, and the subject answers: what is usually typed is an amalgam of question and answer, framed as a bare factual statement.
[287] TT5-7 at [12-13] and TT5-17 at [2-3]
[288] TT5-17 at [5-6]
[289] TT5-17 at [9-10]
[290] TT5-17 at [8-9]
[291] TT5-58 at [28-39]. I prefer the independent witness Mr Maltby on this, especially as he was a coach, but importantly was independent. Mr Peros whilst preferably left-hand dominant he can readily use both hands, that is punch with both hands as Mr Maltby said in his evidence. He was an unusual boxer.
[292] Exh E.9 4-24 LL 38-40.
[293] TT2-116 at [24-28].

say whether it is, or it isn't" his vehicle, he simply 'can't tell"[294]. He never said it was not his vehicle, rather he adopted a neutral and non-committal stance as he appeared somewhat unsure if it was or was not his vehicle. I am very confident that if there were features of the vehicle to clearly distinguish it as not being his vehicle then I would have been told that, and advised of those particular features. None were ever raised with me in any persuasive way; indeed, really not at all.

[157] Mr Peros' vehicle was seized by the police[295], then released back to him, then again seized by them. It was extensively photographed and then held pending his Supreme Court trial. Following that trial where he was found not guilty on the charge of murder, it was held by me under a Coronial Warrant. I have had the advantage of physically inspecting the vehicle seized under my Coronial Warrant. Indeed, I have not just viewed it but have crawled under it, over it, and through it. I am very familiar with its physical attributes[296].

[158] Evidence at the inquest was that the vehicle seen in the CCTV footage has certain overt physical attributes or characteristics[297] to help distinguish it from other similar vehicles. It should be pointed out that due to the nature of the CCTV footage no number plate[298] can be deciphered on the vehicle. If it is said that simply because no registration plate nor registration sticker is distinguishable means a vehicle cannot be identified clearly that ignores the vehicle's other individual features or attributes which may make it distinguishable, or even unique, as against a similar model of vehicle.

[159] Evidence was, and there can really be no dispute about these overt characteristics of the vehicle, that the vehicle observed on the original CCTV footage had the following attributes:

a. It is white in colour[299];
b. It is a Toyota[300];
c. The model is a 1992-1997 production year[301];
d. It is a dual-cab utility configuration[302];
e. It is a four-wheel drive vehicle[303];
f. The utility's tray is a "styleside" configuration[304];

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[294] TT5-53 at [38-39].
[295] Initially on 22 February 2013.
[296] It places me in a very good position to comment on this motor vehicle compared to another person who may not be as familiar with this particular vehicle.
[297] It became evident at the inquest that my knowledge of motor vehicles was much more thorough than others, as is evident by a passage where a witness from TJM gave evidence and counsel examining him was clearly not familiar with what a vehicle's 'sill' was. I had the terminology explained to counsel by the witness. I had no difficulty understanding the terminology (it is a common item on every vehicle).
[298] It was also submitted to me that no Registration Label can be deciphered, but these are very small so that is not in any way unusual.
[299] The colour CCTV footage from the United Petroleum Service Station makes this abundantly clear.
[300] The shape makes it unmistakable to those who have knowledge of vehicles in that it is a Toyota and is a particular model. I had no difficulty seeing this.
[301] Former Toyota employee, Mr Neale was in no doubt about this, and there was no successful challenge to his identification of it being this model year range, nor some other manufacturer's vehicle such as Mitsubishi, Nissan, Isuzu, Holden or Ford each of which had a one-tonne utility style vehicle available in Australia in 2013. Incidentally Mr Neale has his name transcribed as 'Mr Neil' by Auscript. It is merely their transcription error.
[302] That is four doors of standard size. The vehicle could be configured as a single cab (two doors only), Extra Cab (two normal size doors and a small storage area behind the front seats but no additional rear seat passenger capacity), or a dual cab with four doors, as this vehicle has.
[303] The raised vehicle ride height makes this abundantly evident, and this was confirmed by the Toyota salesman called as a witness, Mr Troy Neale.

g. It has a bullbar and rearstep[305] with towbar[306];
h. It has aftermarket wheel arch flares[307];
i. The front, driver's side, wheel arch flare is absent[308];
j. It has aftermarket[309] off-road style wheels, commonly known as Sunraysia wheels[310];
k. There is particular striping or decals along its' side[311];
l. There is a distinct dark mark on the passenger-side, high up, on the dropdown tailgate (it was referred to as an area of rust in the metal bodywork);
m. The tailgate had no contrasting black 'TOYOTA' lettering across it[312];
n. There are three vertical bars on the rear window;
o. It has an aftermarket suspension[313] or sometimes called a 'lift-kit'[314].

[160] Whilst each of the above attributes can be seen in the footage by those with a well trained eye (or by a knowledgeable car follower), they were made clearly apparent or abundantly evident when the QPS photographic officer provided their evidence highlighting these features to me. I will deal more specifically with them below and as to whether they are also attributes also found on the vehicle owned by Mr Peros.

[161] The police photographic expert was Sergeant Schnitzelling, and the CCTV compilation[315] was prepared by Detective Sergeant Davis, both of whom gave evidence before me. I observe that their evidence was particularly helpful in assisting me in understanding the original CCTV footage, and comparing it to the re-enactment CCTV video which utilised Mr Peros' vehicle. I had the benefit of these police officers giving evidence and explaining how CCTV captures footage and processes it to an image[316]. They also highlighted in their evidence the similarities or attributes between images by

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[304] Which means it has body panels forming the tray, as opposed to a "trayback" which has an aluminium or steel sides forming the tray and a rather plain, rectangular, configuration.
[305] Even Mr Peros' own counsel said that this twin-pipe rear bumper bar was an "unusual configuration", with which Mr Peros agreed (see TT5-70 at L 13-14]).
[306] These are aftermarket or factory fitted extras to the Original Manufacturer Equipment or standard vehicle specification.
[307] This is a distinct moulding protruding over the standard factory wheel arch (which is the stamped or formed ordinary metal shape of the wheel guards, commonly called a front quarter panel). Flares are usually fitted to 'cover' the wider tread width of wider off-road style tyres.
[308] I will explain this in my reasons later.
[309] Mr Neale identified that the original stock wheels for this model were plain, steel grey and with tyres '*a lot skinnier*'. The wheels and tyres seen in the CCTV original and re-enactment differ in appearance from the original supplied wheels and tyres when the vehicle was sold (see TT 7-86 L 30-40), and this evidence was not successfully challenged, nor was there any evidence to contradict it.
[310] White painted four-wheel drive style steel wheel rims with larger style 4WD tyres, which may be termed "off-road tyres"
[311] On the side are ordinary body mouldings, and in addition distinctive stripes or decals which are in an upswept or 'swoosh' style, by which I mean a flowing, or organic style, as opposed to the regular shaped body moulding which simply runs parallel to the ground.
[312] Black 'TOYOTA' lettering was a common feature on this model. Its absence was a distinct difference from standard and may be due to the vehicle having sustained tailgate damage and the respraying not including reinstating the black TOYOTA lettering. It is another feature adding to this vehicle's 'uniqueness'.
[313]Mr Neale was most definite in his evidence, after inspecting Mr Peros' vehicle, that the seized vehicle had an aftermarket raised suspension, and not factory standard suspension (see TT 7-83 at [26-33]).
[314] Any suggestion that the level of tyre tread depth had any real impact on determining if a vehicle has a raised suspension or not, was squarely rejected by Mr Neale (see TT 7-92 at L 40 – TT 7-93 at L 2).
[315] Exh D.90.
[316] For example, why 'blurring' or crispness of an image is different in a photograph as compared to CCTV images, and how pixilation occurs and why it causes an image to lose clarity.

pointing out matters physically on the images to me. It greatly assisted me in coming to the conclusions that I have. Having had the benefit of their knowledge and observations, I gained an appreciably greater understanding than that which simply viewing images without their assistance would convey[317].

[162] Running through the attributes of the vehicle seen in the CCTV original footage it is without doubt white in colour. The CCTV footage taken at the United Service Station where there are contrasting blues, reds and greens makes this abundantly clear. I have absolutely no hesitation in concluding that the vehicle seen is a Toyota model vehicle and it is the model manufactured from 1992-1997. It is a dual-cab[318] utility body style with four-wheel drive configuration. The body is fitted with a styleside tray as opposed to a bare cab chassis (without a tray fitted) or an aluminium or steel tray (which have a distinctive wider design with a shorter side height profile). The bullbar and rear step are evident, and the rear step has a somewhat unusual[319] twin-pipe configuration running horizontally to comprise what some may call the rear bumper bar. I have no doubt concluding that the vehicle was fitted with wheel flares and a number of four on the vehicle would be usual[320]. There are also specific off-road style tyres with the Sunraysia style wheels. Along the sides of the vehicle, that is on the doors of the vehicle and adjacent rear quarter panel, there are distinctive striping or decals and the difference in clarity between that in the still photographs versus that seen in the CCTV footage was clearly explained by the photographics police officer as simply being the result of pixilation and compression of images such that the still photographs shows clarity of shape or outline whereas the CCTV footage is not as clear. For instance, on the rear-most side panel of the car, that behind the rear wheel arch, the photographs show a distinct lightning bolt decal whereas the CCTV footage shows an object there but without the distinct lightning bolt outline. What *is* clear is that the same image is seen in the original CCTV footage of the vehicle travelling behind the United Service Station and the re-enactment footage using Mr Peros' vehicle[321]. The original CCTV footage shows a distinct mark on the passenger side, high up, on the drop-down tailgate. This was identified as a rust spot on the tailgate, but does not appear in the re-enactment CCTV because that rust spot had been repaired, or filled and then painted white. The rust spot is very evident in the original photographs from when the police seized the vehicle[322]. This is a *very* unique attribute, and a rust spot on that particular location of the vehicle is most unusual.

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[317] I note that DS Chad Davis, who compiled the CCTV footage, and prepared the relevant evidence, gave evidence in the Supreme Court trial. The transcript of that evidence occupies 22 pages: see Exh E.12 7-5 to 7-26; at inquest, DS Davis' evidence occupies 76 pages: see TT 3-54 to 3-130.

[318] Model came with single cab, extra cab (but still only two passenger doors) or dual cab (four passenger doors)

[319] The Toyota witness Mr Neale (former wholesale car manager for 'Mackay Toyota', the local Mackay Toyota dealer and largest car dealer in Mackay), says it was not a standard feature, but an aftermarket feature (see TT 7-86 at L 42 to 7-87 at L 1).

[320] Hardly surprising when the vehicle has four wheels.

[321] See eg Exh F.48 Slide (image) 23.

[322] See particularly Exh D.61 image 7, which was taken when the vehicle was initially seized by police on 22 February 2013. The vehicle was in due course returned to Mr Peros, but later re-seized. By the time it was re-seized, this spot was no longer visible, and appeared to have been repaired. The re-enactment was carried out *after* the re-seizure. Detective Schnitzerling, in his evidence, referred to the difference, in tbis respect, which was detected by him, in comparing the CCTV footage from 9 February, with the re-enactment footage (see TT 3-23 LL 15-35). A review of the initial "seizure" photographs (see Exh D.61 Image 7) shows this "rust spot", and resolved this "anomaly". In his evidence at inquest, Mr Peros stated that he did not remember if his vehicle had had a rust spot on the tailgate when initially seized, nor if he had had an area of rust repaired on his vehicle after it was returned to him: TT 5-24 LL 9-20.

[163] The ride height of the vehicle was noted by the former Toyota Wholesale car manager who was familiar with this model Toyota vehicle. He identified the subject vehicle had a suspension which was lifted or raised from viewing the CCTV footage. The ride height was similar in the original and the re-enactment CCTV footage. He also inspected the vehicle and confirmed that Mr Peros' seized vehicle had an aftermarket or raised suspension. He was pressed on this at the inquest, but his evidence was resolute[323] that the vehicle displayed an increased ride-height in the CCTV, as did Mr Peros'[324].

[164] An analysis of Toyota Hilux utilities in the whole of Queensland as at 13 February 2013 was done[325]. For all body styles[326] of that Toyota Hilux utility model range[327] there were 45,494 vehicles. The figures were filtered to identify only those dual cab, white coloured, models (a distinction between four-wheel drive and two-wheel drive is not recorded by TMR). There were 4,079 vehicles (so just 9.0% of all such Toyota Hilux vehicles). For the Greater Mackay area[328] there were only 48 diesel and 13 petrol white dual-cab models, so 61[329] in total leaving aside Mr Peros' vehicle, as it was the subject of the enquiry to the Department of Transport & Main Roads. The total of 61 is inclusive of both two and four-wheel drive models. This evidence about these numbers of particular vehicles was not canvassed, nor contested, by anyone[330], hardly possible as the information is provided by the Department of Transport & Main Roads and includes both registered and unregistered vehicles.

[165] Whilst it may be thought that a white Toyota dual-cab utility, in a four-wheel drive configuration, is a common vehicle, and perhaps in a mining town like Mackay could perhaps be suggested to be more prevalent than elsewhere, any such assumption or broad assertion fails to appreciate the DTMR vehicle data which shows there are just 61 possible vehicles[331] (and that includes both two and four wheel drive configurations). Accordingly that particular model, perhaps due to its age, being then over 16 years old (at its 'youngest') was not a prevalent vehicle in Mackay at all.

[166] Having regard to the characteristics of the vehicle, as seen in the original CCTV footage, and combining those characteristics, to my mind makes this particular vehicle unique – I believe there are sufficient characteristics to distinguish it from any other

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[323] Identifying the precise number of millimetres or inches it was raised was of no real persuasive benefit, simply the fact it was a raised ride-height was of note.
[324] I am confident that if Mr Peros' vehicle had the unaltered or original factory suspension I would have been told this.
[325] Exhibit F.1.
[326] Whether cab-chassis or styleside utility, single/dual/or Extra cab versions, and whether two or four wheel drive.
[327] By that I mean a five year range of that model sold.
[328] That includes Mackay area extending to the Whitsunday region to the north, St Lawrence to the south, and Clermont to the west, so effectively about 150km north, 150 km south, and 290 km west. A sizeable geographical area.
[329] 00.13%, that is a ratio of just 13 in 1,000 vehicles or 1.3 vehicles per 100 vehicles as a ratio. I am merely representing how few are in Mackay. This covers Registered and Unregistered vehicles. It is also taken as at the specific date of 13 February 2013, the date of Miss Blackburn's death. In doing this I am including the petrol vehicles as well, as being most generous to Mr Peros. Mr Neale specifically said the vehicle was a diesel by reference to the engine bay snorkel, and where on the car it exited the engine bay (that determined it as diesel rather than petrol (see Mr Neale, TT 7-87 at L 23). Even allowing for this I have retained the petrol vehicles in the number of 61 (otherwise it would be less than 50) just in case the vehicle was originally a petrol but had the engine swapped to diesel; although it was never suggested that this vehicle engine had been changed at any time. .
[330] There were no questions regarding the figures, nor direct submissions relating to the figures. No witness was sought to be called to query the figures. No evidence was presented that the vehicle was from outside Qld (and this count is of Registered and Unregistered vehicles, so captures all in Qld).
[331] Excluding 706LHN from the search results as its' ownership was already established.

vehicle of the same make, model, and configuration because of the presence of all of these features. In this regard, in particular, I mention the upswept striping and lightning bolt style decals on the side; the difference in paint 'whiteness'[332] of the rear wheel arch flare on the passenger side; and very importantly that the vehicle seen in the original CCTV footage, and in the re-enactment, are both missing the driver's side front wheel flare.

[167] The missing front flare can be identified if one looks at the footage viewed from the Outlaw Motorcycle Gang camera. It is possible to see the driver's side of the vehicle, as viewed from behind, and from an elevated aspect, *i.e.* looking down and along the vehicle. By looking at the profile of the bodywork of the wheel arch and flare profile, one then looks at the bullbar *past* it to see what is revealed, or what is not revealed, as to the outline or shape of that bullbar (that is whether the flare is present covering more of the bullbar or not, and the amount of tyre exposed).

[168] With the assistance of the police officers explaining this[333] and showing a 'reverse image[334]', it can be seen that the driver's side profile shows that the vehicle seen in the CCTV image, driving along Twelfth Lane, has the driver's side front wheel flare missing. The square shape of the lower section of the bulbar is very evident, as is how much that is seen. When the wheel arch flare is present, it covers most of the bulbar when seen from this angle, particularly if the viewer is looking at the lower square edge of the bullbar. This particular attribute, a missing front driver's side wheel flare, would certainly be most uncommon amongst any possible similar vehicles, even if they did have all the other attributes[335]. Mr Peros' vehicle was missing the driver's side front wheel arch flare. This attribute is unique, together with its' other distinct features, in fact is so unique that I have absolutely no hesitation at all in finding that the vehicle seen driving behind the United Service Station at around midnight is Mr Peros' own vehicle[336]. Indeed this is the only logical and reasonable conclusion that I am actually persuaded to on the evidence. I have carefully considered, and then dismissed, any other possibility as being fanciful, and unsupported by the evidence when viewed objectively[337]. It was not some random vehicle, with similar features to Mr Peros' vehicle which was seen driving down Twelfth Lane - it was Mr Peros' vehicle.

[169] I appreciate the significance of such a finding. It is not a conclusion I make lightly, but only after very careful and painstaking consideration of all the evidence and, in my mind dismissing any other reasonable hypotheses that are supported by the evidence. The significance of this conclusion becomes of more importance when the evidence was (and

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[332] The consistency of the painted surface to produce a uniform colour across its surface: one can see how the front passenger side flare is very 'white' and uniform in whiteness, yet the rear passenger side flare has discolouration throughout its length just like Mr Peros' seized vehicle.

[333] This was of particular assistance to me: their explanations, instructions and directions as to what to look at, or for.

[334] That is 'flipping' of the image of the passenger side with the flare present, see Exh F.48C.

[335] For another vehicle to have the same tailgate rust spot, and individual decals or striping, is, in my opinion, very unlikely.

[336] At this point in these findings, I conclude that the vehicle seen is the vehicle owned by Mr Peros. I do not at this time conclude who the driver was.

[337] It was submitted to me (Submission for Mr Peros [84] and [86]) that it was significant that Mr Peros' vehicle was not seen in CCTV footage from Harrup Park, Mercy College, or Traks convenience store, as passing along Juliet Street or passing Miss Blackburn as she walks. The vehicle, in fact, approaches from Hamlet Street, travelling east (that is clearly seen in the CCTV footage), which might suggest it came from the direction of George Street or Milton Street, and simply never passed along Juliet Street before Traks convenience store (it is a parallel street to Milton Street in this area) where Harrup Park, Mercy College and Traks convenience store are all located. Again local knowledge is of assistance to avoid confusion, and as an aid to better understanding the locational issues.

it was uncontroverted) that in the four hours of CCTV footage of that lane from approximately 9.00p.m. until 1.00a.m., just one vehicle - this particular vehicle - travelled along it. It is certainly not a well-used lane, and a vehicle travelling along it at that time of night is most unusual.

[170] The compilation CCTV footage was suggestive that this vehicle then turned left into Shakespeare Street. I find without any hesitation that it did[338]. Next, the vehicle is said to stop at the traffic lights at the intersection of Shakespeare Street and Sydney Streets, and the vehicle is then facing west. A vehicle only identified by headlights is seen at the traffic lights, but then it turns left into Sydney Street and its' silhouette is captured heading south[339]. This CCTV footage taken from one of the McDonalds' cameras, was of very poor quality, but does show the distinct profile of a white dual cab four-wheel drive utility[340]. The evidence of the police officers at the inquest assisted me in concluding that it is the same vehicle that was seen at Twelfth Lane. The vehicle is then seen to go into Sydney Street, at the Struthers Furniture end of Sydney Street, where it disappears from the camera view but it is then picked up some six minutes or so later exiting the southern end of Sydney Street. That section of Sydney Street (where Struthers Furniture and other businesses are located[341]) is only approximately 150 metres long, and vehicles which were timed going through that obscured[342] part of the street took much less than half a minute[343] to do so. The suggestion was that this vehicle had stopped in that section of the street. This is a reasonable and logical conclusion, and it is one I am compelled to find. Accordingly I conclude that this vehicle stopped in that section of Sydney Street. I have considered all other reasonable possibilities, and this vehicle stopping for that period of time in that location is the only logical scenario I am persuaded to accept; indeed, I find beyond doubt in my mind that this is what occurred. When the vehicle later exits the southern end of Sydney Street, after the running figure has re-crossed the road, this vehicle is then seen turning left into Evans Street, and proceeds east out of any then camera view. Mr Peros then lived a short distance along Evans Street in a unit or townhouse.

[171] A vehicle, said to be the same vehicle, is then captured on the CCTV of a convenience store in Goldsmith Street about seven or eight minutes later[344]. A few minutes later a Toyota four-wheel drive utility with similar features is captured driving west on Gordon Street through the intersection with Sydney Street; a short while later passing a business known as 'Bullet Bikes' on Gordon Street; then continuing west where it is captured by CCTV cameras near the showgrounds, and then observed turning

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[338] CCTV evidence from another Outlaws MC camera excluded it turning right out of Twelfth Lane, into Shakespeare Street (a T-intersection).

[339] Evidence as to the normal operation of these lights is given by Mr Burt: see Exh C.223. No evidence was led at inquest to cast any doubt upon the normal operation sequence of these lights at the time in question, and I infer that they were operating in their usual manner: *Wells v Woodward* (1956) 54 Knight's LGR 142 (QBD); *Tingle Jacobs & Co v Kennedy* [1964] 1 WLR 638 (CA).

[340] That is about the limit of possible observation from that camera; against which it is necessary to consider the likelihood that another white dual-cab 4x4 utility appeared from some unknown approach, at the same time the one captured on the Outlaws camera disappeared from the Twelfth Lane/Shakespeare Street intersection.

[341] There are no residences, or any residential premises, in this section of Sydney Street; it is only businesses, none of which are of the type to be engaged in trading at midnight on a Friday night.

[342] By obscured I merely mean that it is an area not captured by CCTV, as that part of the street is behind the Guides Hut (mentioned below) and other structures.

[343] I recall it was timed at 16-19 seconds for a variety of vehicles to pass through the section not captured by CCTV.

[344] If it is suggested that this eight minute time period for that distance to be travelled means it could not be the same vehicle, it must be noted that Mr Peros lived on that route taken. Why it took eight minutes I need not conclude; but his residence on the route might provide an explanation.

onto the Bruce Highway[345] driving north, before leaving town. It is said to return approximately two hours later, retaking the reverse route along the Bruce Highway, proceeding east down Gordon Street where its image is captured on Main Roads cameras and the Bullet Bikes cameras. I have absolutely no hesitation in finding that it is the same vehicle, as there are plainly similar attributes seen in the CCTV footage, and as described to me by various witnesses. I have no hesitation at all in finding that the vehicle seen in the original CCTV is the same vehicle seen in the re-enactment video CCTV, that of Mr Peros'[346].

[172] Accordingly, I conclude that the dual-cab four-wheel drive utility seen driving around the streets near where Miss Blackburn died is the same vehicle seen leaving Mackay along the Bruce Highway heading north, then returning approximately two hours later, and that it is Mr Peros' vehicle[347]. I am very much alive to the implications this could have; it is not a decision I make lightly, nor quickly, but I have done so first considering all of the evidence and the weight of that evidence. I have also been careful to exclude any reasonable alternate possibility, no matter how slight but not merely theoretical or fanciful. It is not just a conclusion I have come to, but rather I consider it to be the *only* conclusion I am persuaded to accept, and it is a finding which, in my opinion, is compelled by the whole of the evidence[348].

[173] I note that in concluding that it is Mr Peros' vehicle there is no footage which clearly shows the driver, although footage does confirm that there appears to be just one person - a driver only - in the vehicle. In none of the footage is there at all any suggestion that there is a second person in the vehicle. The footage is not clear enough for any conclusion to be made as to whether the driver is male or female, or their identity, or height. I do note Mr Peros' evidence given in his statement[349] to the police just two days after the incident[350] that he "*might have gone for a drive but I think I spent most of the*

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[345] The original CCTV and re-enactment CCTV makes it very clear to me, that this is the same vehicle seen as they share the same attributes including the distinct striping along their side and with the front flare having the uniform whiteness where the rear flare shows discolouration, just as Mr Peros vehicle displayed.

[346] And again, the probability that two vehicles – very similar in appearance, with at least some of the same characteristics – were within very short distances from each other, in Mackay, during the relatively low-level traffic volume period, must be borne in mind.

[347] I have provided an Annexure 'B' showing the street layout and compiled route taken by the vehicle. That Annexure is *solely* for the benefit of a reader in understanding the Mackay street layout and capturing the vehicle's route. It is <u>not</u> an Exhibit (and is <u>not</u> relied on by me). It is merely an *Aid for the Reader* of these Findings who is unfamiliar with Mackay street names, layout, and their locations.

[348] I have noted the caution which should be exercised in approaching the identification of vehicles (they are an object mass-produced although this vehicle has certain particular features as expressed in my findings), as explained in *R v Clout* (1995) 41 NSWLR 312 (CCA), *per* Kirby A-CJ, from 320C. I am also able to view, review, and ponder, the video footage and extensive photos and had the assistance of a photographic expert and experienced Toyota salesman to aid me. One effect of this identification is that Mr Peros' vehicle is able to be placed about 93 metres from the location at which Miss Blackburn was attacked, some 6 minutes before that attack took place. No other person-of-interest shares such locational and temporal proximity.

[349] Exh C.424.

[350] There is no basis for finding that his recollection of events just two days later was poor or very poor; rather his statement shows a good recollection of events or activities undertaken by him over the past few days, except he clearly does not wish to be 'tied down' as to precisely where he was, or what he did that evening. See in particular [23]-[27] of exhibit C.424 (his statement), where he details with no difficulty his activities: where, what time, and with whom. His then recollection of his recent events was very good, with his recollection of dates *etc* over a year or so earlier not as good, as would be expected of any witness. This leads me to conclude that his lack of even broad details of recollection of events as at the time of Miss Blackburn's death, *i.e*. that evening, was intentionally evasive.

night at home[351]". At no stage did he say, nor was it ever suggested to me, that he lent his vehicle to any other person, that his vehicle was stolen or unlawfully used by another, nor taken without his knowledge. If it had been, I am very confident this would have been raised very clearly with me. It was not mentioned at all. Accordingly, and in view of Mr Peros admitting that he *might* have gone for a drive that evening, the logical and only reasonable conclusion to which I am persuaded, is that it was Mr Peros who was driving his own vehicle that evening, and that he is the person driving the vehicle when it is seen in the CCTV footage.

The person seen running

[174] The video footage from 18 Juliet Street[352] also captures a person seen loitering, or waiting, in the foliage of the yard of the Girl Guide hut, which is at the northern end of Juliet Street[353], where the road bends around to meet Sydney Street (for traffic, effectively the road is seamless and is the main corridor for vehicles travelling south, even though Sydney Street continues straight into a short area of about 200 metres where they are a number of businesses).

[175] The figure seen loitering in the foliage is clearly wanting to hide themselves from the passing traffic as they move out from the foliage and then back in as a vehicle drives by[354]. They are clearly trying to avoid being seen[355]. As to whence this person came, the CCTV shows no other vehicle stop when passing through this area except for Mr Peros' vehicle in Sydney Street. No one is seen to walk through and not exit the area. As a matter of common sense, and experience, it necessarily follows, that the person loitering near the Girl Guide hut has some connection with the vehicle which has stopped somewhere behind the Guides Hut; and, in the absence of any reliable indicator that there was more than one person was associated with that vehicle, is the person who drove the vehicle which stops in Sydney Street out of the CCTV field of view[356].

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[351] Exhibit C.424 at [25]. The expression '*might have gone for a drive'* seems to take no account of the facts that the vehicle is seen for about 10 minutes driving around the Juliet St/Sydney St area, and then having spent over 1.5 hours, after leaving Mackay driving north, then returns south on the same route. This constitutes more than a short few minutes in an otherwise busy night. It is a very significant activity during the course of that night, and should be readily remembered, even by a person with Mr Peros' alleged memory issues, especially given that he readily remembered other events of the 8th February 2013.

[352] I have included an Annexure 'B' to my Findings as an *Aid for the Reader* to better understand the location of this CCTV and its' field of view towards the grassed area or 'paddock' (as it was described). This is not an Exhibit, and is not relied upon by me. It is merely provided solely for a Reader of my Findings to better understand the location. Only the actual Exhibits tendered, one of which shows the field of view of this CCTV, have been relied upon by me.

[353] The CCTV footage from 18 Juliet Street shows, from movement of shrubbery in the camera's foreground, that there was some breeze that morning, which moves some of the foliage outside the Guides Hut. But the dark silhouette of a person, moving within that foliage, is clear on some occasions.

[354] This is extremely clear, for a brief instant, when a vehicle turns from Sydney-into-Juliet Street, and in its headlights, captures a silhouette of a figure, which has come out of the greenery, and then quickly moves back as the headlights strike them: see Real Time Clock at 00:13:53, on the compilation of CCTV footage: Exh D.90.

[355] There were found numerous cigarette butts in those trees, but their presence really does not assist me at all. It is clear the person then in the trees was not smoking as there is no 'glow 'from a lit cigarette, nor sharp flicker of light from one being lighted, and that there were numerous ones there. Their presence is most likely simply being left there by persons during the day, whether this day or in the days prior. They are of no assistance to me.

[356] If Mr Peros whilst driving his vehicle had simply stopped in the lower end of Sydney Street to 'window shop' those businesses at 12:15 am, or had broken down momentarily, I am sure I would have been told of this. No evidence was led, nor suggestion made, to this end.

[176] At the time that person is concealing themselves in the foliage, Miss Blackburn walks by on the other side of the street. At this location it is a four-lane wide thoroughfare, with centre traffic island, and an additional parking bay or road shoulder on each side of the street, so it is easy to understand why she does not notice this person. Miss Blackburn then continues walking across an open vacant allotment of land[357] near a fenceline beside residential buildings, as she walks towards Boddington Street[358]. As she approaches Boddington Street[359], the figure in the bushes is seen to run across Juliet Street, across part of the vacant lot, and goes out-of-view[360] on the left, or western side. Nothing is then seen for a short period, before the running person returns to view from the left, running east, before again exiting out of the field of view, this time off the right of frame. When the figure then runs back across the vacant allotment and Juliet Street, they are not returning to the bushes where they were loitering before, but in fact appear to be running towards the lower end of Sydney Street, near where Struthers Furniture and other commercial businesses are located. As I said earlier, the figure seen running cannot be identified as to gender, age, or height. What can be discerned is that the person is very agile, and is running with distinct purpose. They are running very quickly and deliberately. It is readily apparent that from where they left the bushes of the Girl Guides hut, they were running in a direction towards Boddington Street where Miss Blackburn would then have been; and when they re-enter the frame they are running from Boddington Street directly to the southern end of Sydney Street. As I said, in each of the shots they are running with focus generally towards Boddington Street, and then away from Boddington Street. They are clearly not walking, ambling *etc*, and they are definitively not a person walking home from a night out, nor does their gait does suggest they are affected by alcohol or drugs; that is, they are not stumbling. The person in the video is at a distance such that I cannot discern if they are holding or carrying any item. It is clear they are unaccompanied and it is also clear that they run very freely and without any physical impediment.

[177] The timings of this figure's movements is important. In the footage taken from 18 Juliet Street - Exhibit D.7 - the figure reaches the footpath; that is, having moved from the foliage, they take:-

a. 5 seconds - to cross the southern-side footpath, all four lanes of Juliet Street with its centre traffic island, and part of the paddock;
b. 33 seconds – out of the frame field of view; that is from when they then exit the left-hand side of the frame until they then re-appear on the left-hand side of the frame; and

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[357] Described as the "paddock" by Mr Pandher. This is the logical conclusion from when she is seen passing 18 Juliet Street, to where she is found injured. It is the direct route to her home in Boddington Street. No-one suggested otherwise.

[358] Miss Blackburn knew this area well as she resided there, and would have taken the shortest and most direct route home.

[359] Counsel for Mr Peros, in submissions, did a rough calculation based on her walking speed to place her about mid-way along the fenceline of the paddock (Written Submissions [89]) when the person commences to run from the foliage at the Girl Guides hut. They posed the question of why the figure then commences to run rather than intercept her as she entered the paddock (vacant land is their term), and the simplest answer is that the person running clearly wished to approach her from behind, so as to take her by surprise. That is the logical conclusion, because the figure moves out from the foliage and then back into it, as she walks on the other side of the road - they are intentionally and deliberately concealing their presence.

[360] Exh D.39 shows the various CCTV locations and, importantly, their field of view. The 18 Juliet Street CCTV field of view triangle, on the first page of that exhibit, shows how much of the paddock is covered, or captured, in that field of view. It is a significant amount of the distance the figure runs.

c. 6 seconds - to run back across part of the paddock, again the four-lanes of Juliet Street and its' traffic island, before getting back to the southern-side footpath[361].

[178] It was put to me that this running figure simply does not have the available time to continue running across the remaining part of the paddock to where it meets Boddington Street, attack Miss Blackburn, and then return to view in the frame due to the distance, uneven nature of the grass paddock, and the nature of the attack on Miss Blackburn. I have considered this at length, including the submissions made, and reviewed the aerial photograph of the scene with its distances marked[362]; and, importantly, have considered the field of view of this camera of the paddock - that is the area covered, as represented in exhibit D39. Whilst the paddock was a grass paddock, and a comment was made by one witness[363] that it is not the type of surface upon which you would play football, one can readily see the figure running very freely, without difficulty, and at a very quick pace across the grassed surface. They are not at all impeded by the nature of the surface, nor any inherent unevenness it may have. I was taken at length to various estimates of distance, time, and speed over ground estimates or calculations, at which a person would cover such distances.

[179] In considering all of the evidence it is abundantly clear to me, and I so find, that this person did have sufficient time to run, from out of the left-hand side field of view, the 50 or so metres to the scene, participate in the interaction with Miss Blackburn, and then run back the 50 or so metres to reappear in the frame, in the thirty-three seconds that they are off to the left-hand side of that CCTV field of view. This is more so when one considers the nature of the stab wounds that Miss Blackburn received as I have commented above[364]. Accordingly, I have neither difficulty, nor doubt; and I find, that the person seen running in the video across Juliet Street and the grass paddock is the person who interacted with Miss Blackburn, and that they did have sufficient time to do this. Any suggestion that this person simply ran towards, then merely observed the incident involving Miss Blackburn, and then ran back is wholly rejected by me, as is any suggestion that the figure seen is possibly two different persons rather than the same person[365].

[180] On consideration of all of the evidence available at this inquest, I have no doubt that the vehicle-of-interest, which drove in beside the United Service Station some six minutes before Miss Blackburn was attacked, was Mr Peros' vehicle. For the reasons I have set out, I have no doubt whatsoever that Mr Peros was the driver. I find the sequence of events, as captured by CCTV at 18 Juliet Street, points directly to the driver of that vehicle – Mr Peros – as being the person who concealed himself in the foliage

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[361] The timings (as shown on the clock of the CCTV, not calibrated to actual time of day, and I use them here simply for duration of this short episode of events) are 00:27:00 figure commences running, 00:27:05 figure out of frame left, 00:27:38 figure back into frame left, 00:27:44 figure out of frame right. So 5 seconds, 33 seconds, and then 6 seconds, 44 seconds in total.

[362] Exhibit D.54

[363] Sgt Dalton TT 7-61 at L30 to TT 7-62 at L5.

[364] If the person is affected by ICE, or is a proficient fighter, such as a boxer, they could certainly do this in the available time. A proficient boxer can also throw punches very quickly, and also directed at a target on the body, such as they do in their sport.

[365] If the "running person" was simply a casual passer-by (who preferred running to walking) the out-of-view period, of about 33 seconds, is not easy to account for – did they simply watch what was happening with Miss Blackburn, and do nothing; did they run up towards the McDonald's Restaurant, and then run back? If so, they have evaded, not only the CCTV cameras, but also Mr Pandher's view. This contention, if proposed, seems (to me at least) to stretch credulity.

outside the Guides Hut while Miss Blackburn passed; then ran towards her[366] as she was entering, or about to enter, Boddington Street; and is the person who attacked Miss Blackburn, and caused the injuries which resulted in her death. Mr Peros then ran back, across Juliet Street, re-entered and started his vehicle, and then drove to the end of Sydney Street, where he turned left into Evans Street, in the direction of his home.

Miscellaneous Additional Issues addressed

[181] There was a good deal of time at the inquest trying to ascertain the respective heights of Miss Blackburn, and the person she was seen struggling with when Mr Pandher saw her briefly[367] as his vehicle swept around the corner. Mr Pandher estimated that their heights were roughly similar. Miss Blackburn's height was 155 centimetres as measured at autopsy. Mr Peros' height was considered by Mr Maltby to be 5' 8" or 5' 9", and Mr Peros said that from his driver's license his height was 181 centimetres[368]. I will use that height of 181 centimetres to be fair to Mr Peros.

[182] The difference in height is twenty-six centimetres. Mr Pandher said he saw Miss Blackburn on the footpath and the person she was struggling with was in the gutter or on the road. A standard gutter is approximately fourteen centimetres high[369]. I think it likely, and reasonable to conclude, that Miss Blackburn was standing on the footpath with the assailant in the gutter or on the road. That leaves their height difference at just 12 centimetres apart. If her assailant is adopting a pugilistic stance[370] then they would not be at full height[371] and so the difference in height becomes immaterial, and certainly not discernible to a taxi driver who was busy steering his vehicle around a corner and only briefly capturing the incident before him in the headlights of a Toyota maxi-taxi.

[183] To my mind there is nothing at all determinative in Mr Pandher's estimate of height.

[184] There was also some discussion about the taxi driver's comment to police of his description of the attacker's skin as being dark-coloured. Of course the lighting was poor and it was just a cursory view as he turned the corner in his taxi. I readily observed in court that Mr Daniel's ethnicity means he has dark skin, but also Mr Peros being of Mediterranean heritage meant his appearance was also of distinctly 'tan skin[372]' colour, so this does not overly assist me in deciding between those two persons who were clearly

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[366] It is indisputable, from the footage, that no other vehicle entered Sydney Street, behind the Guides' Hut over this period of time.
[367] "maybe 2 seconds": TT 1-59 L 5.
[368] Mr Peros' was 181 cm, weight approximately 75 kg, as he fought in that weight division just three months prior, so in the normal range, not overweight. He appeared to my observation to be of fairly slim build. Mr Daniel was also of fairly slim build. Certain 'Persons of Interest' were definitely not.
[369] I am personally aware of this from dealing with councils and building construction, but persons can readily establish this themselves by just looking at this gutter in the photographs. The photos of the scene show it to be a regular square edged gutter, not the more modern lay-back style which is constructed at an angle but still achieves the same relative overall height. These lay-back gutters are much kinder to car wheel rims.
[370] Which one would expect if a person is assaulting another with a bladed instrument; perhaps more so if they are an experienced, and Australian National level competitive, boxer.
[371] It is unrealistic to suggest that the two of them would be standing straight and tall, side by side, as is the case with the persons depicted in the Dreamworld photograph: Exh F.54.
[372] This was also Mr Maltby's evidence: see TT 5-7 at L33. Miss Brown described Mr Peros' 2013 appearance as "fit, tall, dark hair, dark features' (TT5-75 at L10-11). Mr Peros having tanned, or dark features, or Mediterranean heritage is not in dispute.

considered by those at the inquest[373] as of most interest in the incident; but Mr Pandher's observation of skin colour does assist me to be confident that I can exclude certain persons of very light coloured skin[374], as I have done above.

[185] It was put to me that Mr Peros 'was a gentleman to ladies' and had no documented history of domestic violence; it followed that I should conclude that he could not have been involved in Miss Blackburn's death. It is certainly true that a number of witnesses spoke of Mr Peros being 'gentlemanly' when in the presence of female company socially. But to use that as the only 'yardstick' from which to draw a conclusion that he was a gentleman at all times overlooks a number of other aspects of his behaviour. That he was capable of perhaps "darker" moments is shown, beyond any doubt, by the evidence of the "Australia Day" witnesses. Both the purpose of his trip to Thailand in December 2011[375], and the nature and content of his text message[376] to Miss Blackburn titled "***things about shandee i dont like, …***" does not necessarily, in my opinion, point unerringly to gentlemanly behaviour. Persons can draw their own conclusion, but I do not consider those two undisputed aspects of his behaviour to be the conduct of a gentleman.

[186] DNA evidence was also raised. When a person's DNA evidence is found at the scene of an incident, it can require some explanation from that person as to why it was found there. It does not work uniformly in reverse - that if a person's DNA was not found, that that person was conclusively not at the scene. In this case there was no conclusive DNA evidence found from any of the interested persons at the scene where Miss Blackburn died. The highest it could be said is that some DNA found may have tended toward suggesting a person of a particular ethnicity had been at the scene or in close proximity recently at some time to Miss Blackburn[377]. In this case the DNA evidence was very speculative and of no persuasive value to me whatsoever.

[187] The absence of blood or DNA evidence found in Mr Peros' vehicle was said to exclude him as a person involved because the person who had stabbed Miss Blackburn 'clearly' would have had blood on them. That is certainly a theoretical possibility; but the absence of blood in the car may also be explained by the person involved simply having very little or no blood from her injuries transmitted to them. The highest the pathologist suggested of blood transfer was that he would be 'surprised' if the other person did not have any blood on them. There was no quantification of that amount

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[373] The reality is that Counsel Assisting, and both interested parties, only forcefully submitted or suggested that either Mr Daniel, or Mr Peros, was the person involved in the incident with Miss Blackburn.

[374] Such as Mr McIntosh, Mr MacPherson, and Mr Leard all of whom had very light coloured skin.

[375] He admitted he went there with the purpose of engaging in sexual activities with others. Indeed when he returned to Australia there was a concern he had acquired a sexually transmitted disease.

[376] Exh F.49, entry 193.1 at 2012 Mar 08 at 06.28, in the long extract of text messages downloaded in Exh F.50. It shows a very different side to Mr Peros' conduct than that which he wished to present at the inquest. His Counsel submitted it was merely a '*coarse and unpleasant'* text message (Mr Peros' Submissions paragraph 160), and nothing more. I disagree; it is far more than simply 'coarse and unpleasant' both as to the language used (misspelling and grammar aside) and topics canvassed. There is no dispute whatsoever that Mr Peros was the author and sent that text message to Miss Blackburn. Even a quick reading of his text messages shows the ready use of coarse language and rather ungentlemanly topics directed to Miss Blackburn.

[377] It was located on her trousers. She had just left her workplace, Harrup Park Country club, which is the Mackay Cricket Association headquarters, and which has numerous bars, dining areas, gaming areas, and function rooms, where a large cross-section of the Mackay community attends, visits or frequents. It is reasonable to conclude, especially as she worked that shift as a waitress, that she came into reasonably close contact with many members of the wider Mackay community, including those from the indigenous population.

which may be transferred, except that he said that only veins or vascularised areas were cut, but not arteries. Miss Blackburn's autopsy photos shows how much blood was on her body[378] or bled from her wounds[379]. It is not hard to conclude that she shed[380] little blood and in this case then simply no, or very little blood, transferred to the person who stabbed her and perhaps whatever may have simply went onto the front of their clothes and was not transferred to their car seat. Accordingly the absence of DNA or blood in Mr Peros' vehicle is also of no persuasive value to me.

[188] It was said that when Mr Peros was first seen by police on Sunday 10th February 2013 there were no observed injuries to his hands or his face. I accept this as I certainly would have been told if there was[381]. The absence of facial or hand injuries is not overly persuasive when one considers that Miss Blackburn was just 5" 1' tall[382], her attacker snuck up behind her and caught her unawares, and the attacker used a knife causing her injuries[383]. As an experienced, and successful, amateur boxer, I am readily able to conclude that Mr Peros armed with a knife, and holding one of her arms by the wrist, could easily evade any injuries she might be able to deliver with her remaining unrestrained hand, but one should recall she had many defensive injuries to this left hand and arm showing she was focussed on attempting to stop the knife from hitting herself - that is, she was acting defensively, not offensively.

[189] The autopsy report noted she had false nails of which just one was missing. There was not found any skin or hair samples under her nails[384] indicating she had not scratched nor caused any such injury to the assailant. The pathologist did not say that the missing nail had been removed with any violence[385], it was simply missing and so may have become detached sometime prior. Ladies are well aware that this can occur.

[190] It was put to me that there was no evidence of motive for Mr Peros to be engaged in this violent interaction with Miss Blackburn. With great respect, there was ample evidence. Mr Peros and Miss Blackburn had a rather tumultuous boyfriend-girlfriend relationship which was punctuated with a number of relationship issues. Even though Mr Peros ended the relationship he clearly had very significant difficulties after the relationship ended such that he consulted two mental health professionals to deal with the emotional issues that he had which still lingered from that relationship. He clearly was still in some way troubled by Miss Blackburn by the comments he made on Australia Day, which shows that he was 'not over' the relationship and still had emotional issues arising from it, despite what he may have indicated to others at various times. It was said that he did not know Miss Blackburn was back in Mackay but his evidence on this is not accepted and there are many ways he can know she had returned some months prior to Mackay. Mackay is a small community, and is particularly so for these two people when they were living in close proximity, just some 700 metres or so apart. He could have quite easily had a chance sighting of her as he drove around to or

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[378] She is not autopsy-washed at this time, which only occurs at the conclusion of the autopsy.
[379] These are confronting, and personal, photos. To preserve Miss Blackburn's personal dignity, it is not recommended that people view them. I have viewed them, as required, to assist with the drawing of conclusions.
[380] There was no suggestion an artery was severed. Pressure within a vein is much lower than arterial vessel pressure, as it is return blood to the heart. Venous pressure releases blood at a much slower flow rate than arterial pressure. That is well known and was acknowledged by Prof Williams, the pathologist, at TT1-77 at [39] where he said "*obviously, blood flows from veins isn't as fast as it is with cutting an artery*".
[381] Mr Peros' uncontroverted evidence was that police observed no injuries.
[382] 155cm as measured at autopsy.
[383] There was no suggestion she was struck with a closed fist
[384] Her hands had been 'bagged' before presentation for autopsy. See Exh A.3 at page 2.
[385] Such as a torn nail bed.

from, or near his residence, or as she simply walked by in the area one day. He simply does not wish to disclose that as such a concession would be very telling against his interests[386].

[191] There was a deal of time at the inquest looking at the behaviour which may be broadly called 'post-offence conduct'. In relation to this I am specifically talking about Mr Daniel and Mr Peros[387]. Firstly I note that neither person left Mackay immediately (that is within one or two days) after the incident. Mr Daniel left Mackay some seven weeks later and as I said travelled to Western Australia, indeed probably the furthest place from Mackay he could find. Is there anything in that? Not really, as his then partner said that he had made a commitment to be there at the birth of their child and this event was at that time. As I said earlier it is also quite possible he wished to leave Mackay to be away from the growing rumour and innuendo regarding his involvement in Miss Blackburn's death. Certainly he did not return straight to Mackay from Western Australia, but rather went to a town in New South Wales where he worked for a relative undertaking concreting work. It does not seem he was difficult to locate as police located him there, and had a telephone conversation with him, before he finally attended at a police station to be interviewed. Certainly he was reluctant to assist, but in view of his extensive criminal history he is hardly the type of person who willingly volunteers and assists police. This is more so when rumour had him as being involved in what they were specifically investigating.

[192] Mr Peros left Mackay on approximately 20 February 2013 and travelled to Brisbane to visit a solicitor. There is nothing particularly unusual in this[388]. In addition he later purchased a motor scooter[389] which he then rode all the way back to Mackay from Brisbane, a distance of nearly 1000 kilometres and includes highway zones which are 110 kilometres per hour. Riding of a motor scooter that distance and on that type of highway, with the heavy vehicle traffic it has, may seem to be very unusual behaviour, but again I do not draw anything particular from that. In addition there is also alleged conversations Mr Peros had with Miss Sharlene Perry where he asked her, or told her, that she did not have to speak with the police, and certain alleged conversations that he was riding his motor scooter as he was in "stealth mode".

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[386] As an example a friend of Mr Peros, Mr Jarrod Thomas Hau (see Exhibit C.108 specifically at paragraph 29, and C.108A) mentions that he knew Miss Blackburn was back in Mackay because of her Facebook Posts. Also Miss Sheeana Arms (exhibit C.136 at paragraphs 14 & 15 mentions 'liking' Miss Blackburn's then recent Facebook post and she is a 'friend' of Mr Peros on Facebook. I only mention this because there are many ways a person can become aware of Miss Blackburn having returned to Mackay to reside through common 'friends' on Facebook where what may be posted by one person will also appear on another person's 'Feed' due to commonality of Facebook friends. That is how the Facebook algorithm operates. In addition Miss Trina Brown (exhibit C.107A at paragraph 8 & 9) mentions how she observed Miss Blackburn walking the Juliet Street past Mercy college one day just as she drove past and she 'may' (but she was unsure) have mentioned that she saw Miss Blackburn to Mr Peros. This was simply a 'chance' encounter or passing within that particular local area of Mackay.

[387] I have dealt separately with Mr Leard and his wishing to have a haircut very shortly after Miss Blackburn's death. Conduct of others after the incident is really not relevant in terms of being persuasive in my decision-making.

[388] Although at the time he departed he was not charged, nor his vehicle even seized. His vehicle was seized whilst he was absent from Mackay during this trip.

[389] Not a motorcycle, but a motor scooter which generally have an engine cylinder capacity of 50-250cc, so are quite limited as to their highway speed and capacity. Generally they are popular for just short distance inner-city transport and are popular in areas where car parking is very limited such as cities like Rome, Paris, and Milan etc. They are most unusual in Mackay.

[193] There is behaviour by Mr Daniel and Mr Peros post-offence which is certainly unusual, but it is of no great persuasive value to me to assist or persuade me in reaching my conclusions.

[194] There was also evidence from Gildas Fodera about being pursued by an unidentified male whilst she was walking home. She was concerned for her safety and sought to hide before the person eventually left and she could then carefully move out from her hiding place and continue walking home. This occurred in Shakespeare Street, not far from Boddington Street. I consider this bears no relationship to the incident involving Miss Blackburn. It is merely an unrelated, but co-incidental, event.

Witnesses not called

[195] A number of possible inquest witnesses were said by counsel for Mr Peros as desirable but were not called[390]. Any ruling as to witnesses to be called, made at the pre-Inquest stage, is necessarily provisional. As the inquest proceeds it may be that some issues which were anticipated to be important may become less significant; on the other hand, new issues, or existing issues which may require further evidence, or even investigation, may arise. This is the nature of inquests.

[196] Importantly, as was conceded at a Pre-Inquest Conference by counsel for Mr Peros, it is the coroners' sole right to decide who is called, or not called, as a witness. The list of witnesses called was expanded after the first Pre-Inquest Conference, and I advised that anyone seeking other witnesses could re-new their request during the inquest if the circumstances deemed it necessary that further witnesses should be called. The only request was for certain police officers to be called, as I address below. There were really no other witnesses pressed for, from any Interested Party, during the inquest itself.

[197] Firstly, Police Officers DSC Hans Tuckerman, DS Scott Furlong and DSC Aaron Walker were involved with the taking of Mr Blackman's first statement. The suggestion was that they had 'pressured' Mr Blackman through threatening to use 'black magic' against him. The evidence I have found was, and it was abundantly clear from Mr Blackman himself who readily conceded in his statement that he himself was the source of any 'pressure'[391] he may have felt which was really a desire to leave the police station because he wished to be at another, apparently more pressing, commitment. Accordingly, there was no relevant nor reliable evidence that those officers pressured him, and in fact I find to the contrary. The evidence of what pressure Mr Blackman may have felt is of course in the mind of Mr Blackman. His own statement explained this point. The police officers cannot add to that when the explanation was so straight-forward, especially when accepted by me. Accordingly it was unnecessary to call those police officers. In view of what I have found as to Mr Blackman's unreliability on the alleged facts in the first statement he gave, this is more confirmation that those witnesses would not have further assisted me.

[198] Secondly, police officers DS Elkins and DS Bliss. I was told on numerous occasions that QPS DS Samantha Bliss was a close relative (aunt) of Mr Daniel. This was not in dispute at any time. DS Bliss' only involvement with the matter was one telephone call – initiated by Mr Daniel - between her in Mackay and Mr Daniel then in NSW. The call was recorded[392]. At the time of the call[393], police were seeking Mr Daniel. It was

[390] A list was provided with Counsel's final written submissions referring to 32 additional witnesses (14 of which were police officers) who were not called.
[391] Exh C.310C at paragraph 9
[392] Exh C.422B. I have listened to it.

submitted to me that this contact between Detective Bliss and Mr Daniel constituted a "glaring conflict of interest", and should be investigated by the Coroner. It was also submitted that it should be referred[394] to the Crime and Corruption Commission. I only make the following observations about these submissions:

(i) the threshold for referral under s.48 is "reasonable suspicion"; *ie* a suspicion (as opposed to a "belief" – a higher degree of persuasion) that a fact might exist. Having listened to the call, and considered the circumstances, I do not suspect that Detective Bliss has committed either an offence, or a breach of discipline; and

(ii) an investigation, such as suggested, falls well outside the proper parameters of "the means and the circumstances" of Miss Blackburn's death. It is not a coronial issue[395].

[199] The only really relevant aspect of Detective Elkin's involvement which may have been 'controversial', if one used that term, were certain discussions which were audio recorded. The recordings[396] are the best evidence for my inquest purposes, and it was available and played at the inquest. I saw no material benefit to me in also calling DS Elkins to give evidence. Each person she spoke with gave evidence, and was examined, so no prejudice could possibly be encountered. DS Elkins was an investigating officer. The reality is that her involvement is only as to conversations and investigations, well after the incident.

[200] These were the only possible additional witnesses which could have seriously been argued as beneficial. Any other witness were, to my perception, inconsequential, and their evidence of limited benefit, with some being third or fourth-hand information, especially when one considers the witnesses who were called, and the abundant evidence available to the inquest[397]. They were on the periphery of events on the night in question, and of limited persuasive benefit[398].

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[393] 14 May 2013.

[394] Presumably under s.48 of the *Coroners Act*.

[395] It is well accepted that the discretion of a Coroner to set the bounds of the inquest is a wide one. It appears to me that it could become relevant if the issue before the inquest was "why did police charge Mr Peros, rather than Mr Daniel?". Whether that may be an issue for a different authority is not a question for me to address. My focus in any inquest is to advance the investigation into the relevant issues, and to prevent the inquest becoming a platform upon which to prepare, or advance, some other agenda: see *eg Atkinson v Morrow* [2005] QSC 92 at [26], citing Sir Thomas Bingham MR, in *R v Coroner for North Humberside & Scunthorpe, ex parte Jamieson* [1995] QB 1, at 24. The only coronial relevance I could discern in this phone call to DS Bliss was whether it may have had some bearing upon the submission that Mr Daniel had fled Mackay, and gone to Western Australia, and then to New South Wales, out of a consciousness of guilt. While DS Bliss was Mr Daniel's aunt, she was also a Detective Sergeant of Police. Mr Daniel advised her he was in Wyong NSW, and provided to her his mobile number (thus facilitating tracking). DS Bliss clearly passed the information to her superior.

[396] Exhibit C.422B

[397] There already were extensive witness statements, with over 500 tendered as exhibits; and I note, perhaps tellingly, that in submissions no interested party referred me to any statement or information from any witness that was not called. These submissions from Counsel Assisting, and from the two party representatives, took one and one-half days. In the conduct of the matters before them, all courts (including the Coroners Court) have a limit on their financial resources, are required to consider the efficient use of courtroom facilities, and the appropriate management of their (including coronial) caseloads (at present some 5,500 cases are referred to just 7 coroners each year, which demands responsible and efficient use of limited resources): see *Davis v State Coroner Ryan* [2019] QCA 282 at [30].

[398] For example, any suggestion of Stephen Polley, Kourtney Hilton, or Tamerira Poid being of assistance, as being able to place Mr Scott MacPherson at the scene, or nearby at the relevant time, simply glosses over the fact that Mr MacPherson is fair-skinned. Even Mr Peros' counsel strongly

Inquest Recommendations Evidence

[201] Evidence was received from the QPS regarding night time street safety, overhead lighting, and CCTV. This evidence was uncontroversial but was of importance in respect of the issue of lessening the reoccurrence of a crime of the type which involved Miss Blackburn. Essentially the QPS evidence highlighted that inadequate overhead lighting and the screening of various locations from the view of passers-by greatly increases the opportunity for a crime to occur. Quite revealing was the *PowerPoint* presentation[399] by Sergeant Dalton that indicated that in the Mackay CBD, less than forty metres from a licensed venue there were areas where a person could be taken which were dark, and screened from view which were not covered by CCTV, and accordingly the risk of a crime occurring there was greatly increased. Essentially his report highlighted that an increase in CCTV recording equipment and lighting will likely lead to a lessening of crime occurring, or if crimes occur an increased likelihood of identification of the culprit with greater prospects of a successful prosecution. Of course all this comes at a cost, and it is that cost which is seen as the greatest impediment. There is also required education of privately owned business premises as to the benefits of CCTV and also for private residences. There are already programs in place for this but it is not widely known, indeed I did not know of it.

[202] The evidence was that the Mackay CBD has approximately 25 CCTV cameras, yet Airlie Beach, a much smaller community, boasts 125. It certainly appears that further work is required to obtain funds, or direct appropriate funding, to installing CCTV cameras.

[203] Those familiar with the Mackay CBD will be well acquainted with the cameras installed, but there are further areas within the CBD, and the approaches to it, which all require such monitoring; but again it really is a question of securing available funds.

[204] The QPS also identified that permanent Number Plate Recognition Cameras placed at strategic locations in Mackay, such as the Pioneer river bridge crossings, and in appropriate locations at the southern and northern highway approaches, will also be a significant benefit in capturing information of vehicle movements which can assist with investigations and prosecutions. These are all sensible suggestions to assist with public safety and in the administration of justice. Clearly the quality and strength of the cameras need to be such that they appropriately capture the required detail.

[205] Sergeant Dalton's presentation was well researched and considered, and it forms the basis of the Recommendations I later make in respect of this inquest issue.

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argued that the assailant was dark skinned, or black skinned, which submission finds support in Mr Pandher the taxi driver, and I do conclude that the assailant is of dark coloured skin or tanned complexion. Mr Corowa, whilst being indigenous or Torres Strait islander, and having dark skin, is a very heavy set build, and very clearly incapable of running as the person in the CCTV is seen to do. Of interest I note that my reference to the transcript of the trial in the Supreme Court indicates (on my count) that 27 witnesses were called at trial. In this inquest 53 witnesses were called and examined.

[399] Exh F.60.

List of Inquest Issues Answers

FINDINGS (s.45(2) Coroners Act 2003

[206] Dealing with the list of issues for this inquest the answers are as follows:-

[207] **Issue 1**. My primary task is the information required by section 45(2) of the *Coroners Act 2003*, namely:

a. Who the deceased person is – Shandee Renee Blackburn[400],
b. How the person died – Miss Blackburn died due to injuries sustained in an incident involving violence with Mr John Peros who used a bladed instrument[401],
c. When the person died – 9 February 2013[402],
d. Where the person died – Mackay Base Hospital[403], and
e. what caused the person to die – Multiple stab wounds[404]

[208] In stating the above I do not make any statement, nor can it be inferred, that Mr John Peros is guilty of any offence, nor civilly liable for something[405]. These are inquest findings that I make, and this is not a criminal trial, nor a civil action[406].

[209] I realise and appreciate the gravity and ramifications of my Findings. It is not a decision I make lightly nor quickly, rather it is one I have very carefully considered and weighed up[407], to ensure I feel an actual and definite[408] persuasion towards my

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[400] See Exh A.1 - QPS Form 1.
[401] I specifically make no comment, nor use words on any actions, which may be considered criminal actions, and in accordance with the *Coroners Act* no inference of criminality can be drawn. Persons may themselves view this situation to be more simply expressed as a death in a domestic violence setting due to their prior boyfriend-girlfriend relationship. I am unable to draw, and unable to express or comment as such, nor draw any such inference as the *Coroners Act* does not permit me too. I do not go so far as to make a finding per se that a particular person 'murdered' Miss Blackburn as counsel for Mr Peros says in submissions was effectively the natural conclusion (Submissions paragraph 5). To avoid disrupting continuity in these reasons I have reduced my ruling on Mr Eberhardt's submission on this point to writing, and have attached it to these reasons as Annexure 'A'.
[402] See Exh A.5 - Life Extinct Form.
[403] See Exh A.5 - Life Extinct Form.
[404] See Exh A.3 - Autopsy Report.
[405] Any media reporting of my findings needs to be respectful to Mr Peros of this aspect. Issues concerning criminal liability are not matters for this inquest. Mr Peros has been tried, and has been found "Not Guilty". That is the final word on the subject.
[406] Some who may consider that an inquest finding such as this is "contrary" to a 'not guilty' verdict of a criminal trial of the 'same' circumstances (and as I stated earlier an inquest is able to receive far greater evidence than is permitted to be received in a criminal trial) would be well advised to read the paper by Mr J.M. Aberdeen, Counsel Assisting at this inquest, and published in (2016) 23 (3) *Jnl Law & Medicine* 595. In that paper he succinctly states the law on this issue. To paraphrase from that paper he concluded that "… the current state of Queensland law contains no impediment to findings of fact at inquest which may be interpreted as contradictory of the result of earlier criminal proceedings resulting in acquittal". See also the decision *Helton v Allen* (1940) 63 CLR 691: the fact an individual has been acquitted of criminal charges does not preclude a subsequent finding by a court applying the civil standard of proof that the defendant did in fact kill the deceased, a proposition accepted by Applegarth J in *Hytch v O'Connell* [2018] QSC 75 at [91].
[407] And as I said earlier Counsel for Mr Peros made voluminous submissions, some 57 written pages handed up to me, and to ensure I knew each point raised it was also read to me, so it cannot be said that anything to be raised on behalf of Mr Peros was overlooked or not canvassed.
[408] Indeed I find it compelling.

conclusions; and that there is no other possible reasonable explanation I can reach on the evidence to persuade me to come to a different or an open conclusion[409].

[210] In my mind, this is the only rational conclusion that can be drawn from the whole of the circumstances and the evidence presented. I have taken the time to consider all other reasonable hypothesis of what may have occurred, but I reject any alternate as they are either based on simply a theoretical possibility or require viewing in a tortured way, or by way of excluding relevant evidence that I have received, because it does not 'fit', or is decidedly inconvenient to their theoretical possibility[410].

Issue 2.

[211] Clearly there should be upgrading of electronic surveillance with CCTV facilities and additional street lighting. Local councils, in conjunction with the Queensland Police Service, should identify areas of high risk, and prioritise improving street lighting and adding CCTV facilities. CCTV is a significant investigative tool, and this inquest has shown how CCTV can solve mysteries, which is important to give answers to families, and to dispel community rumour and innuendo.

Issue 3.

[212] It would be wise for late-night licensed venues which have facilities which transport patrons to their homes, or drop off locations near their homes, to make them available, with certain safeguards for protecting employees private details and addresses, to allow those employees to travel home on such a courtesy bus if they do not have their own safe arrangements to travel home[411]. Of course the simplest solution is that people should be able to walk the streets at night safely and without fear of assault from other persons. Elementary crime prevention tells us that prevention of crime in the first place is far better than having to take steps to investigate and solve it.

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[409] If any person suggests that the person responsible for Miss Blackburn's death was merely some other person not specifically identified in the inquest, I can clearly reject that, as throughout the coronial investigation no other persons other than those identified, investigated, and examined had any prospects, however remote, of involvement. Indeed no interested party who appeared at the inquest seriously suggested or provided any evidence whatsoever that some other unidentified or random member of the community was responsible. If it is suggested, I clearly and confidently reject that notion.

[410] As this is a circumstantial case, a certain approach to the evidence being persuasive should be adopted: see *R v McGeady* [2020] QDC 65 at [64] – [75] where the Court analysed *Weissensteiner v The Queen* (1993) 178 CLR 217, and *R v Doyle* [2018] QCA at [29], where Sofronoff P restates the degree of satisfaction needed to reach a conclusion on circumstantial evidence and the approach to adopt in considering a circumstantial case.

[411] I do not go so far as to make this a Recommendation, such that it may somehow become mandatory for licensed clubs and venues, rather it should simply be something which is encouraged to be implemented by them if they have the appropriate resources to do so.

COMMENTS (Recommendations) s.46 *Coroners ACT 2003*

1. I recommend that the Queensland Police Service and the Mackay Regional Council undertake steps to identify areas of high risk and look at upgrading existing street lighting, or adding additional street lighting, where required and installing additional CCTV facilities to capture people's movements. I am quite aware that there will be concerns raised from a very small minority that somehow this impinges upon their privacy, but CCTV proves its worth in capturing images to help solve crimes. There are already numerous CCTV cameras installed in the Mackay City Centre, but increasing it to include the well-used roads around Mackay, and on the highways leading into and out of Mackay would be beneficial. I do not wish to be unkind to the work that the Mackay Regional Council does, but it does surprise me that in the study undertaken, that the Whitsundays Regional Council at Airlie Beach have installed significantly more CCTV locations, and that is for a much smaller population.

Coroners Act s. 48: 'Reporting Offences or Misconduct'

[213] The Coroners Act section 48 imposes an obligation to report offences or misconduct.

[214] There were broad suggestions of a variety of possible offences, but that depends upon how I found the evidence. In view of my findings certain submissions for a Referral fall away[412]. What is apparent is that there was no new or fresh and compelling evidence available for use in a criminal court that is not already known to the police[413] from their investigation involving Miss Blackburn's death available to support any suggestion that Mr Peros should be re-charged.

[215] Accordingly I make no such referrals under section 48.

Magistrate O'Connell
Central Coroner
Mackay
21 August 2020

[412] In view of my Findings neither Mr Daniel, nor Mr Dorante, had any involvement whatsoever in Miss Blackburn's death.
[413] The CCTV footage has always been in their possession and knowledge. If an aspect of identification of the Toyota Hilux vehicle was overlooked by them that does not amount to 'fresh evidence' as it is all contained on the CCTV footage that they held.

ANNEXURE "A"

Shandee Renee BLACKBURN
Ruling

1. In the course of his closing address, Counsel for Mr Peros made submissions[1] which involve the effect of the prohibition contained in section 45(5) of the *Coroners Act 2003*. Those submissions were as follows –

   "...a finding that a particular person caused Shandee Blackburn's death would amount *per se* to a finding that the person murdered her ... that is, the person intended to kill her or at least cause grievous bodily harm."

2. Mr Eberhardt then referred, in order to illustrate his contention, to the findings in two earlier Australian inquests, one in Queensland, and one in Victoria –

   "...the two examples that immediately spring to mind are your Honour's findings in the inquest of the death of Rachel Antonio, and his Honour's findings in the inquest into the death of Jaidyn Raymond Leskie in Victoria. In each of those cases, the cause and circumstances of the death were and remain unknown. And in each of those cases, it was possible to find that a particular person killed the deceased without, by necessary implication, finding that he killed the deceased, intending to cause them death or grievous bodily harm. That is not the situation that you're confronted with in this inquest."

3. What would make such a statement unacceptable, it was contended, was the fact that the very nature of the injuries suffered by Miss Blackburn would, "by necessary implication", convey a finding that the person named had murdered Miss Blackburn because, as it was put by Mr Eberhardt –

   "One does not stab someone 20 to 25 times in the manner described by the pathologist without intending, at the very least, to cause her grievous bodily harm."

4. I note that in the case of the Rachel Antonio inquest, Rachel's body has never been located. In case of the Leskie inquest, Jaidyn's body was found, some months after his death, and after a lengthy immersion in water. As a result, in neither case was it possible, by *post mortem* examination, either to determine a cause of death, or to identify any evidence which could cast light upon the circumstances of the death.

5. I take the thrust of the submission to be this - that if I am of the opinion that the evidence adduced in this inquest is sufficient to make a finding as to the identity of the person/s who caused Miss Blackburn's injuries, and thus her death, I am not permitted to name that person, for the reason that *the nature and extent of the injuries themselves* lead to no other reasonable conclusion than that Miss Blackburn was murdered. This finding would, it is argued, by necessary implication, be a "finding"

[1] TT 10-66; written submissions p 1.

that the named person/s had murdered Miss Blackburn, and thus prohibited by section 45(5).

6. This submission deserves careful consideration.

Origins of Section 45(5):

7. Section 45(5) and section 46(3) (in identical terms) owe their origins to the recommendations contained in the *Report of the Departmental Committee on Coroners*, chaired by Lord Wright of Durley, in 1936[2]. With respect to criminal matters involving the Coroner, it was recommended –

> "The coroner should no longer have the power to commit any person for trial on the inquisition on a charge of murder, manslaughter, or infanticide; and the inquisition should not name any person as guilty of one of these offences."

8. With respect to issues touching upon civil liability, it was recommended –

> "Coroners' courts should be prohibited from dealing with questions of civil liability... Verdicts, or riders to verdicts, of censure or exoneration should be prohibited, but this prohibition should not extend to recommendations of a general character designed to prevent further fatalities."

9. These suggested reforms were not readily implemented[2]. It was not until the *Coroners Rules 1953* that a provision was enacted reflecting a part of the philosophy underlying the Committee's recommendations. Rule 33 provided –

> "No verdict shall be framed in such a way as to appear to determine any question of civil liability."

10. The Queensland Parliament, in the *Coroners Act 1958*, enacted a provision in similar terms to Rule 33, in section 43(6)[3] –

> "No finding of the coroner may be framed in such a way as to appear to determine any question of civil liability, or as to suggest that any particular person is found guilty of any indictable or simple offence."

11. Neither the *Coroners Rules 1953*, nor Queensland's *Coroners Act 1958*, interfered with the continuing power of the coroner to commit for trial for specified offences. The second limb of section 43(6) was clearly intended to operate concurrently with the continuing obligation of the coroner to commit for trial in an appropriate case.

12. By section 56 of the *Criminal Law Act 1977*, the committal power of coroners in the United Kingdom was abolished. As an adjunct to this enactment, the *Coroners*

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[2] Command 5070 (1936); see particularly Chapters V and VI (concerning criminal liability) and Chapter VII (on civil liability); and Recommendations (5), (8) and (9) (at p 65).

[3] In May 1937, the Council of the Coroners Society of England Wales prepared a set of Draft Rules for the suggested guidance of its members, which included as Rule 3: "**No verdict shall be framed or drawn up, in such form as to attempt to determine a question of civil liability**". It would appear to be clear that the Society had foremost in mind the recommendation of Lord Wright's committee in drafting this Rule.

[4] Marginal note to ss. (5) and (6): "Cf. Imp. Coroners Rules 1953". I am indebted to Mr Nicholas Rheinberg, Honorary Archivist for the Society, for providing me with a copy of these Draft Rules.

(Amendment) Rules 1977, by Rule 7, amended the *Coroners Rules 1953* to the following effect[4] –

"**33**. No verdict shall be framed in such a way as to appear to determine any question of –

(a) criminal liability on the part of a named person; or
(b) civil liability."

13. Since 1952, most Australian jurisdictions have adapted to their respective requirements provisions which refer to findings of civil and criminal liability. The formulae used for these purposes vary as between jurisdictions.

14. In the *Coroners Act 2003*, Queensland removed the coronial power to commit for trial. It also introduced the following form of proscription, which applies to both "findings" pursuant to section 45(5), and "comments" under section 46(3), and to statements as to both criminal and civil liability –

"The coroner must not include in the findings [comments] any statement that a person is, or may be—
(a) guilty of an offence; or
(b) civilly liable for something."

15. Although not expressly stated in any marginal or heading note, this provision would appear to owe at least part of its structure to section 19(3) of the Victorian *Coroners Act 1985*, which was in the following terms[5] –

"A coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence."

Discussion:

(i) "Findings":

16. It is clear that the original English counterparts to section 45(5) were concerned only with the "verdict", which was contained in the Coronial Inquisition. Findings of fact, and any committal for a form of homicide, were originally decided by a coronial jury; and, as is the case with all juries, no reasons for their decisions, either as to facts, or committal, were contained within their verdict – or, in the case of the coronial jury, the Inquisition. This was the situation which prevailed in Queensland until the repeal

[5] Rule 33 was superseded by Rule 42 of the *Coroners Rules 1984* (UK).The terms of these rules thus apply different limitations to civil and criminal liability, with the former being wider than the latter: see Sir Thomas Bingham MR in *R v HM Coroner for North Humberside & Scunthorpe, ex parte Jamieson* [1995] 1 QB 1, at 24D. The prohibition in our section 45(5) is accordingly drafted in broader terms than its UK counterpart in respect of criminal matters.

[5] See now s.69 *Coroners Act 2008* (VIC). The Victorian Act of 1985 was generally regarded as the leading example of innovation in the Australian coronial process. It is also worth noting that the *Coroners Act 1935* (SA), as amended by the *Coroners Act Amendment Act 1952*, contained the following provision as section **20b**: "A coroner shall not make any finding upon an inquest that any person is guilty of any offence in connection with the fire or death which is the subject of the inquest". The history of the South Australian Acts is outlined by Nyland J in *Perre v Chivell* (2000) 77 SASR 282.

of the *Coroners Act 1958*. The Inquisition was the formal findings of the inquest[6], and was the extent of the orders handed down, and published[7].

17. With the passage of the *Coroners Act 2003*, it became the practice to provide, in respect of every inquest, reasons for the decision of the Coroner. Further, where an inquest was held, the Act requires that the Findings, and any Comments by the Coroner, are to be published on the website of the Coroners Court[8].

18. The preparation of reasons for decision (i) facilitates the proper operation of the system of statutory review created by section 50 of the Act, which contains provisions for review upon the grounds *inter alia* that there was "no evidence" to support the finding, or that the finding was "not reasonably supported by the evidence"; and (ii) exposes the reasoning of the Coroner to review. It also assists with the operation of the modern system of judicial review, and of the common law powers of coronial review traditionally exercised by the Supreme Court[9].

19. The 1958 Act, in its section headed "Findings and Inquisitions", referred to "findings" in section 43. These were prescribed to be - (a)(i) who the deceased was; (a)(ii) when, where, and how the deceased came by his death; (b) and the name of any person/s committed for trial. In so far as content is concerned, they closely resemble the particulars of the "inquisition" under the English coronial system[10].

20. The decision of the Court of Appeal in *Hurley v Clements*[11] provides strong support for the proposition that the "findings" referred to in section 45(5) are those specified in section 45(2). The Court observed –

> "[20] There can, we think, be little doubt that the reference in s 45(4) and (5) to "findings" are to the matters required to be "found" in s 45(2) of the Act. It is clear from the text of the Act that these 'findings' are the ultimate findings which a coroner is required to make by s 45(2). In *Keown v Khan & Anor* [1999] 1 VR 69, at 74 [12], Callaway JA, with whom Ormiston and Batt JJA agreed, said of s 19(1) and s 59 of the Coroners Act 1985 (Vic) which are broadly analogous to the provisions of s 45 and s 50 of the Act respectively:

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[6] See Form 20 of the *Coroners Rules 1959*, titled "Coroner's Inquisition (Death Inquest)". It contained basic identification information for the Deceased (name, occupation, condition (marital) in life, age, gender, and places of residence, and of birth); the further information, as to when, where, and how the Deceased came by his or her death, and whether there was a committal for trial, completed the usual content of the Inquisition.

[7] A further standard form, the Form F, was provided, by the Coroner, in all cases where an inquest was held, under section 35 of the *Registration of Births, Deaths and Marriages Act 1962.* This contained personal information for the purposes of registration of the death. This information was also collected by police officers, on behalf of the Coroner.

[8] Section 46A. In practice, the reasons for decision, together with the Findings, and Comments, are published, in one document, on the website.

[9] In *Walter Mining v Coroner Hennessey* [2010] 1 Qd R 593, at [66] *et seq*, Justice McMeekin held that these ancient common law powers (*eg* insufficient inquiry) remained available in Queensland. A different view had been expressed, in relation to the position in Victoria after the passage of section 4 of its *Coroners Act 1985*, in *Harmsworth v State Coroner* [1989] VR 989, 994-995. However, this view was not followed by Gillard J in *Korp & Korp v Deputy State Coroner* [2006] VSC 282 (section 104 of Queensland's 2003 Act is in (almost) identical terms to its Victorian counterpart which underpinned the decision in *Harmsworth*).

[10] See *eg Jervis on Coroners* (5th Ed, 1888), Form 3, p 223; (9th Ed, 1957) Form 18, p 364.

[11] [2010] 1 Qd R 215 (CA). Similar conclusions were reached, on their respective (and similar) statutes, by the Victorian Court of Appeal (*Keown v Khan* [1999] 1 VR 69; SLR [1999] HCA Trans 20) and by the Western Australian Court of Appeal (*Re State Coroner* (2009) 38 WAR 553). The Full Court of South Australia has considered the subject of "findings" more recently in *Commissioner of Police v Coroners Court of SA* [2020] SASCFC 54, at [41] to [59].

> 'the 'findings' referred to in s 59 are the same as the findings referred to in s 19(1) … those findings are ultimate findings, that is to say decisions as to the identity of the deceased, how death occurred, the cause of death … That is why it is appropriate to treat them … as entities that are capable of being declared 'void' [under s 59(1) and (2)]. A coroner may make many findings in the sense that he or she takes a view of the evidence or particular aspects of it, but they are not the 'findings' referred to in ss 19(1) and 59. The latter are restricted to ultimate findings as to the identity of the deceased, how death occurred and so on."

[21] Of course, under the Act, a finding for the purposes of s 45(2) is not an entity 'capable of being declared 'void' ', but it is capable of being 'set aside' under s 50. While the analogy between the Victorian provisions discussed by Callaway JA in Keown v Khan and s 45 and s 50 of the Act is not perfect, the view taken by Callaway JA of the nature of the 'findings' referred to in the Victorian provisions accurately describes the nature of the findings contemplated by s 45(2) and s 50 of the Act."

21. This decision makes it clear that it is the formal "Findings" – as specified in section 45(2) - which are subject to the prohibition created by section 45(5). Although the term "Findings" may be used compendiously to encompass the reasons for decision, as well as the Findings, and, where relevant, any Comments, it is the formal Findings only which are subject to the s.45(5) limitation[12].

(ii) The Determination of Facts

22. In *R v South London Coroner, ex parte Thompson*, Lord Lane CJ, set out the basic function of a coronial inquest[13] -

> "The function of an inquest is to seek out and record as many of the facts concerning the death as public interest requires."

23. In discharging this function[14] –

> "It is the duty of the coroner as the public official responsible for the conduct of inquests ... to ensure that the relevant facts are *fully, fairly, and fearlessly investigated.* ... He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse, or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory."
>
> [italics added]

24. In the same case[15], Sir Thomas Bingham MR (as his Lordship then was) also noted, in the context of the English Rule 42 –

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[12] What may be called "reasons for decision", which discuss the evidence adduced, and identify determinations of fact, are not necessarily "Findings" for the purpose of review. There may, however, be merit in Callaway JA's suggestion, in *Keown v Khan* [1999] 1 VR 69, at 78, line 20, that "…any such statement in the course of discussing the evidence is [also] impliedly prohibited." Compare the approach taken in *Perre v Chivell* (2000) 77 SASR 282 at [13] to [17] (Nyland J) based upon the application of the relevant prohibition to both "finding" and the (disjunctive) "suggestion". The learned authors of *Waller's Coronial Law & Practice in NSW* (4th Ed, 2010) express a similar view, at [81.35].

[13] (1982) 126 SJ 625; *The Times*, 9 July 1982; full text decision in P Knapman & M Powers, *Sources of Coroners Law* (1999) Vol 1, p 214 at 218-219.

[14] *R v HM Coroner for North Humberside & Scunthorpe, ex parte Jamieson* [1995] 1 QB 1, at 26B point (14), *per* Sir Thomas Bingham MR in delivering the judgment of the Court of Appeal. His Lordship later restated this view in *Jordan v Lord Chancellor* [2007] 2 AC 226, at [23].

[15] *Ibid* at p 24 point (6).

> "There can be no objection to a verdict which incorporates a brief, neutral, factual statement: "the deceased was drowned when his sailing dinghy capsized in heavy seas," "the deceased was killed when his car was run down by an express train on a level crossing," "the deceased died from crush injuries sustained when gates were opened at Hillsborough Stadium." But such verdict must be factual, *expressing no judgment or opinion*, and it is not the jury's function to prepare detailed factual statements."
>
> [italics added]

25. There is no bar to a coroner investigating a death to explore facts which might, incidentally, be relevant to civil or criminal liability. Such was made clear in *Atkinson v Morrow*[16], where her Honour Justice Mullins stated –

> "The prohibition does not preclude the coroner from exploring facts for the purpose of making the findings required under s 43(2) of the Act which may also incidentally have a bearing on civil or criminal liability."

26. Her Honour referred with evident approval to the Court's judgment in *Jamieson*[17] –

> "Plainly the coroner and the jury may explore facts bearing on criminal and civil liability. But the verdict may not appear to determine any question of criminal liability on the part of a named person nor any question of civil liability."

27. If a fact is relevant to a section 45(2) issue, *eg* the cause of a death, or a circumstance ("how") in which the death occurred, then it is properly within the scope of the inquest.

(iii) Implications of Liability:

28. The result is that it may well be open, to an objective reader of an inquest decision, to draw such conclusions as that reader believes are open. This is well-recognised in coronial jurisprudence. Lord Lane CJ, in *Thompson*[18], set out the position as follows –

> "In many cases, perhaps the majority, the facts themselves will demonstrate quite clearly whether anyone bears any responsibility for the death; there is a difference between a form of proceedings which affords to others the opportunity to judge an issue and one which appears to judge the issue itself."

29. In *Keown v Khan*[19], Callaway JA (with whom the other members of the Court agreed) voiced a similar view –

> "It follows that a person who kills necessarily contributes to the cause of death and that that is nonetheless true where the killing is in lawful self-defence . A coroner is not concerned with the latter question but will ordinarily set out the relevant facts in the course of finding how

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[16] [2005] QSC 92, at [26].
[17] [1995] 1 QB 1, at 24E-F.
[18] Cited above, see fn 14, (full text decision) at 218. His Lordship was there citing, with approval, from the "Broderick Report", at [16.40]: *Report of the Committee on Death Certification and Coroners* (1971) Comd 4810.
[19] [1999] 1 VR 69, at [17]. The reference is to the "Norris Report" (Sir John Norris QC, *The Coroners Act 1958: A General Review* (1981) at [153]). This report preceded the introduction of the *Coroners Act 1985* (Vic).

death occurred and the cause of death. The facts will then speak for themselves, leaving readers of the record of investigation to make up their own minds about lawful self-defence or any similar issue. (That was the point made by Sir John Norris in para. 153 of his report.) It is of the first importance that, where a person's reputation is at stake, the relevant facts are clearly brought out."

30. The result is that where findings are made from which a person reading them may reach their own conclusions about what has occurred, such findings do not contravene the provisions of section 45(5).

31. It seems to me that Mr Eberhardt's submission to the contrary cannot be accepted; and indeed a comparable argument has already been rejected at appellate level in Australia. In *Perre v Chivell*[20], Nyland J was called upon to consider an analogous prohibition contained in section 26(3) of the *Coroners Act 1975* (SA). That provided –

"A coroner holding an inquest must not in the inquest make any finding, or suggestion, of criminal or civil liability."

32. The case concerned the death of a police officer, Sergeant Bowen, who died on 2 March 1994, when an explosion occurred at the office of the National Crime Authority, situated in the Commonwealth Public Service Credit Union building, in Waymouth Street, Adelaide. The coroner made findings, which included the following –

"... I find, pursuant to Section 25(1) of the *Coroners Act* (1975), that the circumstances of the death of Detective Sergeant Geoffrey Leigh Bowen were that he died when he opened a parcel bomb, sent to him by Domenic Perre, and the bomb exploded in his hands."

33. In the course of his decision, Nyland J undertook a careful and comprehensive review of the development of the relevant South Australian legislation, and referred to a number of Anglo-Australian decisions, and legislative provisions, which had bearing upon the question before the Court. With respect to the case before him his Honour squarely stated[21] –

"I think it is likely that an ordinary member of the public, reading comments in the report, such as "Perre was responsible for sending the bomb", "Perre was responsible in the sense that he constructed a bomb and either posted it or arranged for someone else to post it on his behalf", and "Sergeant Bowen died when he opened the parcel bomb sent to him by Perre", would conclude that Perre had committed the crime of murder."

34. This identified the precise question – could a statement of facts alone breach the prohibition?

35. His Honour then continued[22] -

"There are, however, a number of essential elements which the Crown is required to prove beyond reasonable doubt before a person can be found guilty of the crime of murder. These include proof of an intention to kill or cause grievous bodily harm. The coroner has not, however, found that Perre had any such intention. He has simply recorded his findings as to the sequence of events which culminated in Sergeant Bowen's death. For example, in an inquest concerned with the death of a pedestrian struck by a motor vehicle, such matters as the identity of the driver of the car, his/her level of intoxication by reason of alcohol or drugs, and

[20] (2000) 77 SASR 282 (SASC).
[21] *Ibid* at [54].
[22] Ibid at [55] – [56].

> the position of the car on the road, would all be relevant matters upon which the coroner could make findings of fact. A finding by the coroner that the driver of a car was affected by alcohol or drugs, or his/her motor vehicle was on the wrong side of the road, might lead to a subsequent determination of criminal or civil liability, but that consequence does not preclude the coroner from making the particular finding of fact.
> [56] In other words, the factual findings of themselves cannot be said to be findings of criminal or civil liability. A finding of criminal or civil liability requires the application of the relevant law to the facts in order to determine whether the essential elements of a given crime or civil obligation have been made out. It is not the coroner's role to undertake this process, it is the role of the courts, and this is what s 26(3) was enacted to ensure."

36. He concluded[23] –

> "The mere recital of relevant facts cannot truly be said, of itself, to hint at criminal or civil liability. Even though some acts may not seem to be legally justifiable, they may often tum out to be just that. For example, a shooting or stabbing will, in some circumstances, be justified as lawful self-defence. As I have stated, criminal or civil liability can only be determined through the application of the relevant law to the facts, and it is only the legal conclusions as to liability flowing from this process which are prohibited by s 26(3). Thus, the word "suggestion" in this section should properly be read as prohibiting the coroner from making statements such as "upon the evidence before me X *may* be guilty of murder" or "X *may* have an action in tort against Y" or statements such as "it appears that X shot Y without legal justification". In other words, the term "suggestion" in s 26(3) prohibits speculation by the coroner as to criminal or civil liability. In the present case, the coroner has neither found nor suggested that Perre is criminally or civilly liable for his acts."

37. The decision in *Perre v Chivell* remains, to this point in time, the most penetrating Australian analysis of coronial prohibitions such as those contained in section 45(5) of the Queensland statute. His Honour's opinion, as expressed in the last-quoted paragraph above, was specifically referred to, with apparent approval, by his Honour Justice Martin in the recent decision in *Neumann v Coroner Hutton*[24].

38. Although section 45(5) does not contain the expression "suggestion", in addition to "findings", it may be possible that the use of terms which import some form of value judgment may yet be found to infringe prohibitory provisions such as s. 45(5). In the recent decision of the Queen's Bench Division in *R (GS) v HM Snr Coroner for Wiltshire & Swindon*[25], the Court identified, as being correct, the following jury directions contained in the summing-up of the Right Honourable Sir John Golding, sitting as Assistant Coroner, in the Hillsborough Inquest –

> "(f) You should not say anything to the effect that a crime or a breach of civil law duty of any kind has been committed. … . Because of this rule, when writing any explanations, you should avoid using words and phrases such as "crime / criminal", "illegal / unlawful", "negligence / negligent", "breach of duty", "duty of care", "careless", "reckless", "liability", "guilt / guilty"[;]
> (g) However, you may use ordinary and non-technical words which express factual judgments. So, you may say that errors or mistakes were made and you may use words such as "failure", "inappropriate", "inadequate", "unsuitable", "unsatisfactory", "insufficient", "omit / omission", "unacceptable" or "lacking". Equally, you may indicate in your answer if you consider that particular errors or mistakes were not made. You may add adjectives, such as "serious" or "important", to indicate the strength of your findings."

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[23] *Ibid* at [57].
[24] [2020] QSC 17, at [37] and [38].
[25] [2020] EWHC 2007 (Admin) at [81] – reviewing rulings in the "Novichok" poisoning inquest.

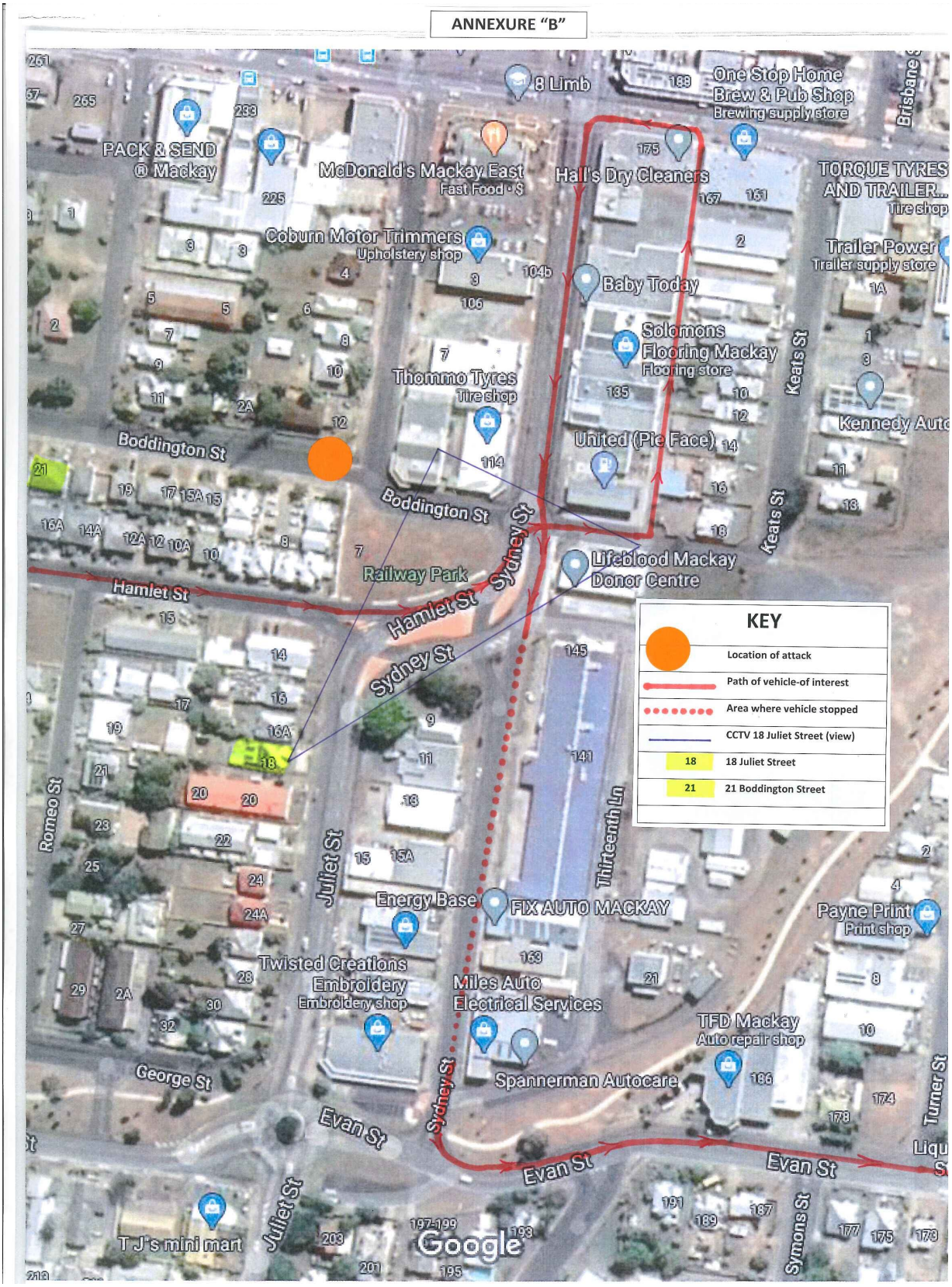
39. It may be that the use of expressions instanced in paragraph (f) of the learned Assistant Coroner's charge to the jury fall well short of a statement (as instanced by Nyland J in *Perre v Chivell*) that a person *may* have committed an offence, or *may* be liable for a tort; but there nevertheless exists the possibility that the use of such expressions could be argued as a breach of section 45(5).

40. Upon the state of the law as I perceive it to be, should it become necessary to consider the scope of any finding which might involve the identification of any person, I intend to make such finding in accordance with the principles identified and set out in this ruling.

D J O'Connell
Central Coroner
Coroners Court of Queensland

21 August 2020.

ANNEXURE "B"



This document is an Aid for the Reader only so they may better understand my Findings and the layout of the relevant Mackay Streets, the open grassed area referred to as 'the paddock', and 18 Juliet Street's CCTV field of view, and where Miss Blackburn was assaulted. It is not an exhibit, although copied from a tendered exhibit, and I have not relied upon this document rather as I have said it is simply a convenient Aid for the Reader of my Findings.