



# CORONERS COURT OF QUEENSLAND

## Reasons for Decision (including Findings & Comments)

CITATION: **Inquest into the death of James Sidney MURPHY**

TITLE OF COURT: Coroners Court

JURISDICTION: Central

FILE NO(s): CCMS 2019/3780

DELIVERED ON: 21 April 2023

DELIVERED AT: Mackay (by email)

HEARING DATE(s): 20-21 March 2023

FINDINGS OF: Coroner D J O'Connell, Central Coroner

CATCHWORDS: Inquest – Road accident – Pedestrian struck by unidentified vehicle – “how” the accident occurred – Identity of the driver at the time of the incident – admission as to driving

REPRESENTATION:

Counsel Assisting - Mr J M Aberdeen (Counsel)

For the Family: - Mr Kelvin Burgoyne (Next-of-Kin)

For Mr Tony Leonard RICE – Nil

## Findings

### **James Sidney MURPHY**

- [1]. On 17 August 2019 Mr Murphy was located unresponsive on a road outside a hotel in Rockhampton. CCTV captured him leaving the hotel and walking onto the roadway where he appeared to have been struck by a sedan as it drove past the hotel. The vehicle failed to stop, but did slow down after he had been struck, before leaving the scene. At the scene the police found a broken passenger side car door mirror.
- [2]. Mr Murphy died in the Rockhampton Hospital at about 5:50 AM on 18 August 2019 from the injuries he suffered in the accident.
- [3]. The police conducted investigation into the circumstances of the accident and eventually charged a person, Mr Tony Leonard Rice, with Dangerous Operation of a Vehicle causing Death or Grievous Bodily Harm, but after a committal hearing the Director of Public Prosecutions considered there was insufficient evidence to proceed to trial<sup>1</sup>.
- [4]. The circumstances of how the death occurred was examined by the inquest as there was a great deal of conjecture as to who was driving at the time the vehicle struck Mr Murphy.

## Tasks to be performed

- [5]. My primary task under the *Coroners Act 2003* is to make findings as to who the deceased person is, and how, when, where, and what, caused them to die<sup>2</sup>. In Mr Murphy's case there is no real contest as to who, when, where or what caused him to die. The real issue was directed to the 'how' he died, that is, establishing *who* was driving the vehicle at the time it struck him.
- [6]. Accordingly the List of Issues for this Inquest were reasonably straight forward:-
  1. The information required by section 45(2) of the *Coroners Act 2003*, namely: who, how, when, where, and what, caused Mr Murphy's death;
  2. What was the make, model, and registered number of the vehicle which struck Mr Murphy outside the Brunswick Hotel, Archer Street, The Range, Rockhampton, at about 8:20 PM on 17 August 2019;
  3. Who was driving the vehicle referred to in Issue 2 above?
  4. Were there any other people in the vehicle at the relevant time?
  5. What caused the collision between the vehicle referred to in Issue 2 above, and Mr Murphy?
- [7]. 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<sup>3</sup>.

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<sup>1</sup> The DPP entered a No True Bill with respect to the Charge.

<sup>2</sup> *Coroners Act 2003* s. 45(2)(a) – (e) inclusive

<sup>3</sup> *Ibid* s.46(1)

- [8]. The third task is that if I reasonably suspect a person has committed an offence<sup>4</sup>, committed official misconduct<sup>5</sup>, or contravened a person's professional or trade, standard or obligation<sup>6</sup>, then I may refer that information to the appropriate disciplinary body for them to take any action they deem appropriate.
- [9]. In these findings I address these three tasks in their usual order, section 45 'Findings', section 46 'Coroners Comments', and then section 48 'Reporting Offences or Misconduct'. I have used headings, for convenience only, for each of these in my findings.

### **Factual Background & Evidence**

- [10]. The matter is quite straight forward. This was a single vehicle traffic accident where a vehicle which could only be identified through CCTV footage of the incident and scene damage, such as the broken passenger side door mirror, and perhaps accompanying vehicle damage could lead to any identification of the vehicle involved. Accordingly, it is the identity of that vehicle and its' driver that is at the heart of the inquest.
- [11]. There was located the following morning by police an abandoned vehicle which may have matched the description of the vehicle seen in the CCTV footage. This vehicle was found at a location a few suburbs away. That vehicle was missing the left front door mirror, was of the same body shape, and the registration plates, the VIN plate under the bonnet, and battery had all been removed. It appeared an 'oily' type substance had also been sprayed over the exterior and interior of the vehicle which police opined was possibly to mask any DNA or fingerprints on the vehicle.
- [12]. From an examination of the vehicle the police were able to establish that there was scuffing damage on the front bumper, headlight, A pillar and front passenger side door frame<sup>7</sup> that matched the injuries suffered by Mr Murphy.
- [13]. There was no suggestion of a second motor vehicle being involved in the accident, nor was there any suggestion of excessive speed or irresponsible driving of the sedan, what might be termed 'hooning', and there was no suggestion that the surface of the road or other external factors such as adverse weather event were a factor in the incident occurring. A later examination of the abandoned vehicle also found that there was no pre-accident defect with the vehicle which had caused or contributed to the accident.
- [14]. Rather, not that I stated it as any conclusion at this time, it appeared from the CCTV footage that as Mr Murphy left the hotel and moved onto the road near where some cars were parked outside the hotel he had been struck either in the dedicated bicycle lane beside the lane of traffic, or at the very edge of the lane of traffic, and this was because he either stepped onto the road, or the driver simply did not see him. Significantly the area where he was struck appeared quite dark at night-time and the only real lighting

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<sup>4</sup> Ibid s.48(2)

<sup>5</sup> Ibid s.48(3)

<sup>6</sup> Ibid s.48(4)

<sup>7</sup> I will not detail what each reference to the vehicle, or abbreviations used, are, rather I shall assume the reader is familiar with vehicle terminology and so will readily understand what VIN, A pillar, et cetera means

was that emanating from under the eaves of the adjacent hotel which shine onto the footpath and parking bays nearby. The lighting quickly fades towards the roadway.

- [15]. What I can also quickly dismisses is any suggestion that Mr Murphy was in some way intoxicated leaving the hotel (which one might presume at 8.20 pm on a Saturday night) as the toxicology screen of his hospital admission blood indicated he had a 0.00 BAC, so he was not affected by alcohol, nor in fact any illicit drug at the time of the incident.
- [16]. In very short compass, the crash scene investigation<sup>8</sup> was unable to conclusively identify who the driver was at the time the vehicle struck Mr Murphy. As a result, the matter had to be resolved by this Court, which is usually done through consideration of circumstantial evidence and evaluation of the credibility of witnesses who gave evidence; although this inquest took quite a dramatic turn on Day Two in relation to identifying who was driving the vehicle at the relevant time.
- [17]. I now deal with that critical evidence.
- [18]. The QPS identified two credible possibilities of who may have been driving the motor vehicle. Firstly Mr Rice, and secondly an ‘unidentified’ boyfriend of Miss Ivy Pearl Williams (I will simply call him the unidentified boyfriend as no name was given for him by Miss Kristy Lee Miller who provided this alleged version of events to police)<sup>9</sup>.
- [19]. Miss Miller gave a very detailed account of what occurred that night including where she had been, when and where she was collected and by whom, describes the particular purple sedan vehicle, and where they drove that night including attending a bottle shop. She claims she recognised Mr Murphy as she played poker with him on occasion, and she recalled that as they went along Archer Street the vehicle struck Mr Murphy describing that “he rolled all the way over the car and fell on the road behind us”. She said the car stopped, reversed back a little, and then drove off down a particular street. She said the unidentified boyfriend was the driver when the vehicle struck Mr Murphy.
- [20]. One witness who attended and gave evidence, Miss Williams, described Miss Miller as being unreliable to the extent of being untruthful<sup>10</sup> and that she had been unreliable for quite some time. It is worthwhile to examine some of the particular facts as Miss Miller recalled them. Firstly, she described the vehicle as leaving the bottle shop and ‘it felt like it was driving 180 km an hour<sup>11</sup>’. The vehicle then hit the gutter at the corner of West and Archer Streets, which was where she saw ‘Jimmy’ (Mr Murphy), and he was struck and rolled over the vehicle and then the vehicle stopped, then reversed a bit, before moving off<sup>12</sup>.
- [21]. The incident was captured on CCTV footage. The vehicle in question is seen to drive down Archer Street (and it has not just left the Brunswick Hotel bottleshop) at or below the posted speed limit, perhaps at about 50 km/h but it is certainly not travelling overly quickly, and nowhere near 180km/h. It is not observed to hit any gutter but rather stays

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<sup>8</sup> I deal later with this in more detail.

<sup>9</sup> Exhibit C7 statement of Kristy Lee Miller

<sup>10</sup> My kinder description, and not hers as she said that Miss Williams ‘simply makes up stuff’ and “is a troubled girl”.

<sup>11</sup> I appreciate she will be exaggerating the actual speed to some degree.

<sup>12</sup> I have paraphrased the words from her signed statement, exhibit C7.

in its' lane of traffic. When Mr Murphy is struck, he is struck by the front passenger side of the vehicle, where the headlight is, and he then moves up on the bonnet before hitting the windscreen as he is deflected off the passenger side of the vehicle. He does not 'roll all the way over the car'. The vehicle does not stop. The vehicle does not reverse back a little. When it continues (appreciating that it has not stopped) it continues along Archer Street before turning into Murray Street. Accordingly, the recorded CCTV footage of the incident does not accord at all with that described by Miss Miller. I feel very comfortable in discarding her view or recollection as being completely unreliable.

- [22]. Mr Clayton Gooda was the owner of the vehicle and he gave evidence. He described that he had been parking the vehicle in unusual locations and deliberately not using it because he knew that the police were looking for him as they wished to discuss certain matters with him. He said that he found out that his girlfriend had sold the vehicle to Mr Tony Rice 'for 1.5 g of methylamphetamine'. He was upset by this. Mr Gooda said that even though he was the registered owner he was not driving the vehicle at the time the incident occurred. Mr Gooda presented as a credible and reliable witness. I accept his evidence that he was not then driving the vehicle which was registered in his name.
- [23]. Mr Tony Rice was the other strong possibility as the person who was driving the vehicle at the time of the incident.
- [24]. Mr Rice readily admitted that he acquired the car through the friend of Mr Gooda prior to the incident. There was CCTV footage which showed him refuelling the car on the morning of the incident. He said that around lunchtime he then simply 'gave'<sup>13</sup> the car to an unidentified aboriginal man at the Dean Street IGA supermarket. The police obtained that CCTV footage and when six hours of it was viewed, that is three hours each side of 'around lunchtime', there is no vision showing the purple Ford Falcon XR6 sedan nor that Mr Rice was ever there. He never suggested that lunchtime was mid-morning, nor late afternoon<sup>14</sup>, and I am satisfied that the footage clearly shows that neither he, nor the vehicle, were ever at the Dean Street IGA around lunchtime that day. This footage is rather compelling as showing that Mr Rice's version of events may not be as accurate as he wished them to be<sup>15</sup>.
- [25]. In a statement to the police Mr Rice said that he was not in Rockhampton that evening but rather was in Yeppoon at the relevant time and confirmation of this could be obtained from an acquaintance of his Mr Jason Robert Beattie. At that time Mr Beattie lived at Yeppoon (or Cooee Bay to be more precise, which is simply a suburb of the Yeppoon locality).
- [26]. Exploring whether this version of events was accurate was of quite some interest to the inquest as telephone records and examination of telecommunication tower information

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<sup>13</sup> Apparently because the vehicle is some sort of vehicle simply shared or readily used amongst those in the illicit drug community. To me this seems quite unusual in that he would refuel the car at his own cost and then provided to another person, and there does not appear, nor was it suggested to me, that any consideration was paid when he provided this vehicle to the unnamed aboriginal person. No doubt to many persons this appears unusual and perhaps that is because it was later demonstrated at the inquest that it simply did not occur.

<sup>14</sup> Accordingly, a six hour footage window is quite adequate to account for any error of margin either side of 'lunchtime'.

<sup>15</sup> And that may also be a question for any prosecution to weigh up how credible he would be as a witness when his recollection of events is compared against electronic recorded evidence, whether that be CCTV footage or mobile telephone tower information.

obtained from experts placed Mr Rice's mobile telephone close to Archer Street, in fact at a location immediately adjacent to the Brunswick Hotel, at the time of the incident, as he was then on a telephone call to Mr Beattie. I note that Mr Rice never said his mobile telephone was stolen or then being used by another person, and if he was in Yeppoon with Mr Beattie it would seem unusual that they would be using their mobile telephones to make a number of calls when they were then in such close proximity to each other.

- [27]. Why Mr Rice's statement that he was in Yeppoon is unusual was because Mr Beattie was covertly recorded by a police officer in a telephone conversation (with that police officer) where Mr Beattie indicated that he was on a telephone call with Mr Rice when the incident occurred<sup>16</sup>, and that Mr Rice indicated that he thought he had struck someone with his vehicle. Mr Beattie was called to give evidence at the inquest and the audio of that recorded conversation with the police officer was played. Mr Beattie denied that it was his voice on the recording or that any such telephone conversation with the police officer had occurred. I find his evidence to be unreliable. It appeared plain from listening to the recording that it was Mr Beattie who was speaking, and likely that version of events being given was accurate. Precisely why Mr Beattie chose to be untruthful in his oral evidence at the inquest is unknown and his denials are not accepted by me. This is more so when the later evidence of Mr Rice to the inquest is considered.
- [28]. Mr Rice gave evidence on the first day of the inquest where he maintained he was in Yeppoon at the relevant time but towards the end of that first day he requested an adjournment, which I granted, and I asked him to reconsider his recollection of events and evidence overnight as he would be recalled the next day.
- [29]. On the second day of the inquest Mr Rice gave further evidence for just a few minutes before he made a quite startling admission. Firstly, he was asked where he was on that Saturday night at around 8:20 PM and he admitted he was on Archer Street, Rockhampton. He then advised that he was driving a purple Ford Falcon and that the vehicle had struck a person who he now knows to be Mr Murphy, and that he then drove off. After some further questions he confirmed he had been driving down Archer Street with his headlights 'off' and likely just the parking lights 'on' something he did not realise at the time, and that he had not been speeding but had simply not seen Mr Murphy as it was dark. He expressed that he was very sorry for what had occurred.
- [30]. I find Mr Rice's evidence on these points, and the admissions that he made, to be genuine, reliable, truthful, and credible. He gave this evidence under a direction by me to give evidence and so that evidence he gave admitting to being the driver involved is protected by immunity from being used in any other court, whether as direct or derivative evidence.
- [31]. I realise there is very little comfort to the family and friends of Mr Murphy that the admissions made by Mr Rice cannot be used in another court as it is given under compulsion in the Coroners Court, but one small consolation is that due to the ability of the Coroners Court to compel witnesses to give evidence under immunity it means that answers can be obtained.

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<sup>16</sup> And that is confirmed by the telephone records obtained for each person, they were calling or speaking with each other at that time. Mr Rice's telephone was placed near the hotel, Mr Beattie's at Yeppoon.

- [32]. Mr Rice's evidence was clear that he was the person driving the car, and that he was alone in the car at the time of a telephone call. This all accords with the electronic mobile telephone evidence gathered during the investigation which placed his mobile telephone in Archer Street, and then Murray Street very shortly after. This path the vehicle took is what is seen on the CCTV footage and as recorded by the mobile telephone towers in that CBD area. Each of the mobile telephone towers can give a direction and strength to where a mobile signal is being generated from, and based on Mr Rice's evidence, or I should say admissions, this accords with that electronic data and clearly demonstrates that any suggestion that Mr Rice was in Yeppoon at the time of the incident is clearly incorrect, putting that evidence mildly.
- [33]. Resolving the various versions alleged, and considering Mr Rice's admissions in evidence, I can now make certain Findings.

### **List of Inquest Issues Answers**

#### **Coroners Act s. 45(2): 'Findings'**

- [34]. Dealing with the list of issues for this inquest my Findings are as follows: -
- [35]. 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 – James Sidney Murphy<sup>17</sup>,
  - b. How the person died – Mr Murphy died from injuries received when as a pedestrian he was struck by a motor vehicle then being driven by Tony Leonard Rice. Mr Rice, as the driver, displayed inattention to the task of driving by using a mobile telephone whilst he drove,
  - c. When the person died – 18 August 2019<sup>18</sup>,
  - d. Where the person died – Rockhampton Base Hospital, 1 Canning Street, Rockhampton, Queensland<sup>19</sup>, and
  - e. what caused the person to die – Multiple injuries, due to, or as a consequence of, a Motor Vehicle Accident (pedestrian).<sup>20</sup>
- [36]. Issue 2. What was the make, model, and registered number of the vehicle which struck Mr Murphy outside the Brunswick hotel, Archer Street, The Range, Rockhampton, at about 8:20 PM on 17 August 2019?
- [37]. The vehicle was a 2005 BA model Ford Falcon XR6 sedan Qld registration number 374-XYC.
- [38]. Issue 3. Who was driving the vehicle referred to in Issue 2 above?
- [39]. The person who I find was driving at the time the vehicle struck Mr Murphy was Mr Tony Leonard Rice (and on his own admission when giving evidence under oath).

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<sup>17</sup> See Exhibit A1 QPS Form 1

<sup>18</sup> See Exhibit A1 QPS Form 1

<sup>19</sup> See Exhibit A1 QPS Form 1

<sup>20</sup> See Exhibit A3, Form 8 Autopsy Report

- [40]. Issue 4. Were there any other people in the vehicle at the relevant time?
- [41]. There were no other persons in the vehicle when the incident occurred.
- [42]. Issue 5. What caused the collision between the vehicle referred to in Issue 2 above, and Mr Murphy?
- [43]. Driver inattention to the task of driving, primarily due to the use of a mobile telephone whilst driving (the vehicle was not fitted with any ‘handsfree’ telephone facility<sup>21</sup>), poor overhead streetlighting, dark clothing of Mr Murphy, and the motor vehicle at night only having its ‘parking’ lights illuminated were the primary causes of the incident<sup>22</sup>. The greatest responsibility for the incident from these various factors lay with Mr Rice as he was the driver.

#### **Coroners Act s. 46: ‘Coroners Comments’ (Recommendations)**

- [44]. This matter does not give rise to any specific new Recommendations. I note that Qld has implemented specific cameras to detect drivers using their mobile telephones whilst driving. That program should of course be rolled out further and wider throughout the State, and detection and penalties must be appropriately enforced (as from my own observations<sup>23</sup> within the community is that the using of mobile telephones whilst driving is quite prevalent, and experts liken it to driving whilst affected by alcohol).

#### **Coroners Act s. 48: ‘Reporting Offences or Misconduct’**

- [45]. The *Coroners Act* section 48 imposes an obligation to report offences or misconduct.
- [46]. In view of my findings set out above that the admissions made were protected by immunity, and in the knowledge that the QPS charged Mr Rice with a driving offence but the DPP after committal determined not to proceed<sup>24</sup> with that Charge, then no referral is relevant.

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<sup>21</sup> Familiar systems are a Bluetooth device or Apple Carplay® etc (and Apple Carplay® was only available from March 2014).

<sup>22</sup> It is possible that Mr Murphy also suffered a slight degree of ‘night blindness’ when the car passing from his left (which he looked at) went past, meaning that when he looked right into the darkened street he could not then readily distinguish the Ford Falcon XR6 with just its’ parking lights on.

<sup>23</sup> I think many would have also made this general observation.

<sup>24</sup> And I am not privy to the detailed basis of the DPP decision, but it must appear perplexing to the Next of Kin when the electronic evidence all counters what Mr Rice alleged as to his whereabouts at lunchtime that day and then again at 8.20pm that night. The reason they did not proceed with the charge against Mr Rice is perhaps best only known to them but in view of the Inquest’s stated Issues is not interrogated further.