



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Stewart Clint WATEGO**

TITLE OF COURT: Coroner's Court

JURISDICTION: Townsville

FILE NO(s): 152/2006

DELIVERED ON: 19th July 2010

DELIVERED AT: Ayr

HEARING DATE(s): 17 July 2009; 10th February 2010;
7th July 2010; 19th July 2010

FINDINGS OF: Ross Mack, Coroner

CATCHWORDS: CORONERS: Inquest – Death of a pedestrian – Motor Vehicle Accident - MacMillan Street, Ayr – 17th September 2006.

REPRESENTATION:

Counsel Assisting: Ms. C. Wainwright, Solicitor,
Queensland Police Service

For Next of Kin: Mr. H. Walters
Instructed by Purcell Taylor Lawyers, Townsville

For Andrew Bergin: Mr. T. Baxter, Solicitor,
Ruddy Tomlins and Baxter

- [1] On the 17th of September 2006 Stewart Clint Watego was struck by a vehicle being driven by Mr. Andrew Bergin. Mr. Watego died as a result of the injuries he sustained in that accident.
- [2] On the evening and night of the 16th September 2006 Mr. Watego had been to at least two hotels in Ayr. His sister Kathleen Watego had dropped him off at the bus stop behind the Queens Hotel at about 7:00 pm. He later met up with friends, including Mr. Garth Taiters at the Kalamia Hotel. Mr. Taiters indicates that together they went to the Commercial Tavern in Queen Street, Ayr where they watched a football match.
- [3] After the football match had finished, Mr. Watego left and walked along Queen Street, Ayr toward the Queens Hotel. When he got to the Queens Hotel he saw his uncle, Mr. Joseph Hennaway. Mr. Hennaway and Mr. Watego had a conversation at about 10:45pm and together with another friend Mr. Cole they walked along Queen Street in the direction of the town clock which is in Queen Street, west of the Queens Hotel.
- [4] While they were walking along Queen Street the group came across another group of people heading in the opposite direction. Mr. Watego decided to join that group and he and the new group headed back in the direction from which he had come. Mr. Hennaway says that they parted company at about 11:15pm and that was the last he saw of Mr. Watego. Mr. Hennaway was quite clear that when he left Mr. Watego he gained the impression that although he, Mr. Watego, had been drinking, he was not grossly affected by liquor.
- [5] Notwithstanding Mr. Hennaway's observations, it is clear that during the course of the evening Mr. Watego had had much to drink and the Toxicology report Exhibit 8 indicates a very high alcohol level in his blood.¹ The Toxicology Report also reveals that he had used cannabis².
- [6] Although Mr. Hennaway was aware of the identity of the members of the group with which Mr. Watego took up, no statements have been obtained from members of the group and I am unable to accurately determine Mr. Watego's movements after he left Mr. Hennaway's company. Nor am I able to determine what his activities with respect to the consumption of alcohol were subsequent to him leaving Mr. Hennaway's company. In any event at about midnight on the 16th September 2006 Mr. Watego was near MacMillan Street, Ayr.
- [7] At the time of his death Mr. Watego was living at Phillips Street, Ayr. It is the case that for any pedestrian to travel in a broadly direct route from Queen Street, Ayr to Phillips Street, Ayr, he or she must traverse

¹ Blood Alcohol reading of 263mg of Alcohol per 100 millilitres of blood.

² Tetrahydrocannabinol detected.

MacMillan Street, Ayr. That being said, and accepting that Mr. Watego was in Queen Street, Ayr during the course of the evening and night of the 16th September 2006, it is a logical conclusion that if Mr. Watego decided to walk home to Phillips Street from the town centre, that is to say Queen Street – he would need to cross Macmillan Street at some stage.

- [8] At about Midnight on the 16th September 2006 Mr. Andrew Bergin was driving his motor vehicle, a green Holden Commodore registration number ARB-86, in a North-easterly direction along MacMillan Street, Ayr. MacMillan Street runs approximately in a North-East to South-West direction. It terminates at the North East end at Chippendale Street, Ayr. Mr. Bergin was travelling from Home Hill to Ross Street, in Ayr and was heading towards Chippendale Street at the time of the incident.
- [9] Near the intersection of McMillan Street and Spiller Street, the vehicle Mr. Bergin was driving collided with Mr. Watego. As a result of that collision Mr. Watego sustained fatal injuries.
- [10] The fatality was investigated by Senior Constable Greg Langford of the Home Hill police. Senior Constable Langford has prepared two reports for the Coroner as well as a number of statements with respect to the matter. Senior Constable Langford comes to the conclusion³:
- (3) (a) *It is the opinion that the deceased in this incident was lying on the road surface prior to this incident*
- (b) *It is my opinion that the deceased was lying parallel to the broken centre line of the road prior to the incident*
- (c) *It is my opinion that alcohol and or drugs consumed by the deceased prior to this incident contributed to the deceased behaviour resulting in this incident*
- (d) *It is my opinion that the deceased's clothing and lack of lighting at the incident scene contributed to the incident*
- (e) *It is my opinion that speed was not a contributing factor in this incident*
- (f) *That alcohol was not consumed by the driver of Unit 2 in this incident*
- (g) *There were no witnesses to this occurrence of this incident(sic).*
- [11] Although it is true that Mr. Watego was wearing dark clothing and the street lighting at the intersection was poor and Mr. Watego had a high concentration of alcohol in his blood and had consumed cannabis it seems to me the conclusions in the report lack some balance inasmuch that notwithstanding the issues raised above, the effect of the darkness of the night, the intersection and Mr. Watego's clothing would be compensated in large part by a vehicle's headlights.

³ Report dated 5th March 2007 – pages 4 and 5

- [12] Mr. Bergin participated in an Electronic Interview recorded by Senior Constable Langford and Sergeant Greenhough of the Home Hill police on the 18th September 2006. During the course of the interview Mr. Bergin indicated that he was travelling at about 50 kilometres per hour and that he had his headlights on low beam. Mr. Bergin says that he saw a pedestrian either walking or running and before he could take any evasive action he collided with the pedestrian⁴. It is clear that the pedestrian he saw was Mr. Watego.
- [13] In his evidence at the Inquest on the 7th July 2010 Mr. Bergin sought to distance himself from the version given in the Interview. He says that he sensed a movement, that it may have been a shadow that he saw or the movement of a tree. He did not repeat the version from the Interview and resiled from the proposition that he saw the pedestrian walking onto the road.
- [14] Professor Williams gave evidence and his opinion was that the injuries that caused Mr. Watego's death were most likely caused by Mr. Watego's head being run over by the tyres of a car. He forms that view on the basis that had he been struck when he was upright or even partially upright, he would expect to see some significant injuries to the legs or torso. In this case he there were no such injuries.
- [15] Professor Williams also holds the view that the force to Mr. Watego's head was applied transversely, that is to say from one side of the head toward the other side of the head which would indicate that Mr. Watego was lying perpendicular to the direction of travel of the car.
- [16] Senior Constable Langford came to a similar conclusion. He says he formed the view that he was lying down when struck based on the lack of lower limb or abdominal injuries and the fact that there was no damage to the vehicle. If Mr. Watego had been upright or even partially upright Senior Constable Langford said he would expect to see some damage to the vehicle as a result of the impact.
- [17] Evidence was taken today from Ms. Sarah Capuano and Mrs. Kerry Capuano as to their recollections of the night of the 16th September 2006 and the morning of the 17th September 2006. Both witnesses gave evidence of hearing a vehicle travelling at speed along MacMillan Street heading in the direction of Chippendale Street. Both give evidence of hearing a loud thump which they both assumed to be the vehicle striking a stray dog or other animal. Both Mrs. And Ms. Capuano went outside to see what, if anything, had been struck but could see nothing. Mrs. Capuano confirmed that she had looked in the area that was later the scene of activity involving emergency vehicles and she did not see anything of interest.

⁴ Page 2 of Transcript of Record of Interview, 2 references; Page 3 of Transcript; Page 4 of Transcript; Page 5 of Transcript; Page 10 of Transcript

- [18] Both Mrs. Capuano and Ms. Capuano give evidence that after hearing the thump, the vehicle they had heard continued along MacMillan Street towards Chippendale Street. The evidence of Mr. Bergin is that he stopped his vehicle as soon as he became aware that he had struck Mr. Watego, that he performed a U turn, checked on the condition of Mr. Watego and then drove along MacMillan Street towards Edward Street, that is to say in the opposite direction to which Mrs. And Ms. Capuano say the vehicle they heard travelled.
- [19] There is nothing about the nature of his evidence that would lead me to conclude that Mr. Bergin did anything other than stop immediately, perform a U turn as he said he did.
- [20] There is nothing in the evidence from Professor Williams or Senior Constable Langford which would suggest that Mr. Watego was struck by any vehicle other than the vehicle being driven by Mr. Bergin.
- [21] The vehicle that Mrs. And Ms. Capuano heard and observed was not the vehicle driven by Mr. Bergin nor did it have any involvement in the death of Mr. Watego
- [22] I am persuaded by the opinions of Professor Williams and Senior Constable Langford to come to the same conclusion, that is to say that at the time he received his fatal injuries, Mr. Watego was lying on the road in the path of travel of Mr. Bergin's vehicle.
- [23] Having come to the conclusion that at the time he was struck by the vehicle driven by Mr. Bergin, Mr. Watego was lying on the ground, I think it would be helpful for the family to seek to determine how long he was lying on the ground prior to being struck.
- [24] It is clear that Mr. Watego was significantly affected by alcohol – this effect was exacerbated by the use by Mr. Watego of cannabis. Professor Williams indicated that the combination of the alcohol and cannabis would have an adverse effect on Mr. Watego's stability.
- [25] It seems clear enough that Mr. Watego was walking home from somewhere in Queen Street, Ayr. I am unable to determine on the evidence what Mr. Watego's route was. It would seem to me that he was either walking along Spiller Street and encroached onto the paved carriageway of MacMillan Street or he was walking along MacMillan Street either on the carriageway or on the footpath adjacent to the carriageway. There is nothing in the evidence that would encourage me to prefer one route over the other two.
- [26] Mr. Bergin's recollection during the recorded Interview indicates that he saw Mr. Watego on his front left at a distance of somewhere more than 20 feet. That distance was then confirmed or adjusted to about 9 metres during his evidence at the inquest.

[27] If I accept that Mr. Bergin did see him at that distance, and given that his indication was that Mr. Watego was not lying at the time he first saw him it would seem to me to be more likely that he was not lying down when he was first seen by Mr. Bergin. In making that observation, I am unable to make any definitive finding as to when he came to be lying in Mr. Bergin's path of travel. Any opinion expressed by me as to how Mr. Watego came to be lying on the ground immediately before being struck by the vehicle would be speculation on my part and as such I am unable to form a concluded view on that matter.

[28] I have received written submissions from Mr. Baxter with respect to whether I should give information to the Director of Public Prosecutions pursuant to Section 48(2)(a) of *The Coroners Act 2003*. It seems to me that if I give an indication to an individual that I intend to act under that section, that indication would offend the provisions of Section 45(5) of the Act and as such could not be included in the findings. That being said and given my indication at paragraph 27, It follows then that if I am unable to form a concluded view as to when Mr. Watego came to be lying in the path of Mr. Bergin's vehicle, there would be no basis upon which I could form a reasonable suspicion as to whether or not an indictable offence has been committed pursuant to Section 48 of *The Coroners Act 2003* and as such I indicate that it is not my intention to act under that Section.

[29] Pursuant to Section 45(2) of *The Coroners Act 2003*, I make the following formal findings:

Name of Deceased:	Stewart Clint Watego
Place of Death:	Ayr Hospital, Chippendale Street, Ayr
Date of Death:	17 th September 2006
Cause of Death:	1(a) Head Injury Due to or as a consequence of 1(b) Motor vehicle accident
How death occurred:	As a result of being run over by a motor vehicle near the intersection of Macmillan Street and Spiller Street, Ayr

[30] The Inquest is closed.

Ross Mack
Coroner
19th July 2010.