

TRANSCRIPT OF PROCEEDINGS

CORONERS COURT

McLAUGHLIN, Coroner

COR-00003531/06(6)

IN THE MATTER OF AN INQUEST INTO THE
CAUSE AND CIRCUMSTANCES SURROUNDING
THE DEATH OF ROBERT LEE BROWN

IPSWICH

..DATE 01/05/2008

..DAY 1

FINDINGS

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

CORONER: As I indicated I will deliver my findings this afternoon. Obviously they will not be terribly artistically framed given that I haven't committed much of it to writing. I will make some of my comments by quoting from some of the reports and so on. Perhaps I can start by quoting some material from the collision analysis carried out by Sergeant Morrison which I think contains matters that are not contentious and that is the general introduction which is as follows.

At about 12.44 p.m. on Monday the 25th of December, Robert Lee Brown was the rider of a Yamaha motor cycle travelling in a southerly direction on Collingwood Drive approaching the intersection of Paul Tully Avenue. At this time Deborah Jeanette Cumner was the driver of a Toyota Lexen. She was also travelling in a southerly direction on Collingwood Drive. Seated in the front passenger seat was her daughter Jessika Harrison.

Cumner intended to turn from Collingwood Drive into Paul Tully Avenue. However, was unable to do so due to the street being barricaded off for a local Christmas lights display. Cumner then commenced to do a U-turn in order to travel north on Collingwood Drive and travel back to another entrance to Paul Tully Avenue.

As she commenced the U-turn, the deceased who was approaching the intersection of Paul Tully Avenue brakes heavily but impacted the right side of her vehicle. Mr Brown had also

intended travelling to a house in Paul Tully Avenue.

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Collingwood Drive is a two lane road travelling in a north-south direction.

The speed limit is 60 kilometres per hour. The road surface is sealed bitumen, appeared to be in good order. At the time the incident was daylight, the weather was fine and warm. The road was dry. There were no potholes, oil or debris that contributed to the accident.

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At the time of the incident local traffic restrictions were in place due to the resident's Christmas lights display. The southbound vehicles on Collingwood Drive, that is, the direction that both Ms Cumner and Mr Brown were travelling. A no right turn sign was erected on the eastern shoulder of the road approximately 51 metres from the intersection.

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There was also a series of large plastic barriers placed across the entrance to the westbound lane of Paul Tully Avenue there was a regulatory no entry in road closed warning signs. These signs and barricade have been erected by the Ipswich City Council.

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As I say, those matters, I think, are really non-contentious. Mr Brown's parents both gave evidence that, on the day in question, which was, of course, Christmas Day, they along with other relatives were in a car and they'd all left from the same place that Mr Brown left intending to travel to his grandmother's residence - his maternal grandmother and whilst

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he originally started off behind the car load full of relatives including parents, he shortly thereafter overtook that car and without going through the details of it which I think are largely irrelevant, he at some stage disappeared out of view in front of the car.

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Contact was lost with him until the parents came upon the scene of the accident. So in other words whilst the parents and other family members were travelling along behind Mr Brown in a car, they didn't actually witness the collision and don't have any idea, of course, what speed he was travelling at or how the accident actually happened other than by a reconstruction which is the best any of us can do.

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The case relied on for analysis of the incident, two experts, one of Sergeant Morrison who's a collision analyst with the Queensland Police and also a Mr Ruler who was previous a senior collision analyst with the police but is now in private practice.

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I'm not going to go through his curriculum vitae, and certainly there was no suggestion made that it is not extensive, other than to say that Mr Ruler is a highly credentialed collision analyst who has given evidence for the best part of 20 years throughout various Courts in Queensland, as well as other places, and I regard him as highly qualified.

Sergeant Morrison has no real formal qualifications but has done some courses through Queensland Police and I think it's fair to say that Mr Ruler, in effect, oversaw Sergeant Morrison's report and, whilst he agreed with the general thrust of the findings of Sergeant Morrison, he did tinker at the edges, at least, with some of his measurements, findings and conclusions. The upshot of it was, however, that by today, both Sergeant Morrison and Mr Ruler agreed, largely I think because Sergeant Morrison had deferred to Mr Ruler.

Mr Ruler said this, in a letter to me some time ago, that he was of the opinion that: "(a) the speed of the motorcycle would have been between 69 kilometres per hour and a maximum of 99 kilometres per hour, based on the assumptions used within the analysis; (b) had the motorcycle been travelling at 60 kilometres per hour and commenced to brake at the same location as recorded by Sergeant Morrison, then he, the rider, should have, without difficulty, come to a stop or would slide sufficiently to go behind the sedan as it made its turn and there would have been no conflict between the two vehicles."

Mr O'Sullivan, who appears on behalf of the de facto partner of Mr Brown, has suggested that caution should be exercised in accepting those two opinions because of the fact that Mr Ruler, and indeed Morrison, conceded that there are no real absolutes in these things and there are certain assumptions that are made.

On the other hand, it was never suggested to Mr Ruler that his minimum of 69 kilometres per hour couldn't be relied upon; no other evidence has been called to contradict his opinion of that speed. It's simply been a matter to say that perhaps the skid marks that were used on the road to calculate the speed on a count back might not have been attributable to the motorbike. Perhaps the way that the experts thought the brakes were applied and so on might not have been exactly as it happened.

Again, I'm neither qualified nor inclined to go into the physics and details of the report by Mr Morrison or Mr Ruler. Suffice it to say that, in my view, there is nothing before me that persuades me that I should not adopt Mr Ruler's opinion as reasonably reliable, the most likely version of events that I have before me, and the one which I should make a finding as to facts as to what happened, and I intend to adopt both (a) and (b) that I've already quoted as being the best evidence that I have. I accept they're not absolute; I accept that it's not proved absolutely that that's how fast the vehicle was going, but it seems that it was and I have no reason to doubt it, especially give the qualifications of Mr Ruler.

I think the real issue that has come in this Inquest is that some criticism is levelled at both the driver of the car in her manoeuvre and also at the local council who'd erected the barricades that I've mentioned before.

Just on the barricades, firstly, that point wasn't really taken much by Mr O'Sullivan today, but I think it's fair to say that the signage that was put up was not the most helpful that one could imagine. It seems that there are two ways to get into Paul Tully Avenue: one is the entrance that was blocked off, as we've heard; the other was another entrance some 4 or 500 metres north on Collingwood Avenue, that is back the way that the vehicles had approached from. One had to first turn into a road, Gibbs Avenue, and then very shortly after that turn into Paul Tully Avenue. They seemed to be the only two ways to get an entrance into Paul Tully Avenue.

The signs that were erected, apparently, at the Gibbs Avenue entrance simply said "Christmas lights" and there was no suggestion there that this was, in fact, the one and only alternative route to get into Paul Tully Avenue because the other route was closed off. There really should have been, in courtesy to road users. Similarly, when one got to the Paul Tully Avenue that was closed off, it clearly said it was closed off and there was no entry and no right turn allowed, but it didn't tell anybody who got to that point, who were then confused, where they should go, and again, clearly, it should have told them about an alternate route.

That's really just a comment that I think as a matter of courtesy on the part of the council. I don't see that that's got anything to do with contributing to the accident happening, and I will go on to explain my reasons for that later.

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The more pressing issue which Mr O'Sullivan raised was that, whilst there may well be culpability on the part of Mr Brown; indeed, even the bulk of culpability on his part because he was perhaps speeding, but nevertheless Ms Cumner should not escape any culpability because of her manner of driving.

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Mr O'Sullivan pointed out that Ms Cumner had conceded that she didn't notice the no right turn sign 50 metres or so before the intersection and she should have. I agree she should have. There is conflicting evidence as to exactly what she did. Her evidence was that some distance back along Collingwood Avenue, before she got to the intersection with Paul Tully Road, she pulled over to the left-hand side of Collingwood Avenue and her daughter used a Refidex to find the intersection, and after finding the intersection, she then proceeded to the intersection, pulled to the centre of the road near the imaginary centre line, as there's none marked on the road, with her indicator on, intending to turn right, came to a standstill, checked her mirrors, saw nobody coming behind her or in front of her, and only then, as she was about to execute the right-hand turn, did she notice the barriers and the no entry signs and realised she couldn't. So it was at that point she decided to do a u-turn.

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There are two other versions that are somewhat different to that. The first is one that she herself gave in a written notification to her insurer of the accident that she filled out some four months or so after the incident, and in that, under the heading "Brief description of the accident", she said: "Turning into Paul Tully Avenue from Collingwood Drive, was hit on the driver's door by motorcycle", and a little later: "As I was turning into Paul Tully Avenue, I noticed there was a barricade up blocking entry into Paul Tully Avenue. I then proceeded to turn my car around to go back down Collingwood Avenue."

Mr O'Sullivan seizes upon that and says that that's evidence that, in fact, she didn't pull up and decide to do a u-turn before starting the right-hand turn, that the notification of insurers suggests that she was actually in the process of doing the right-hand turn when she changed her mind and that therefore she's doing something wrong because she's not allowed to do a right-hand turn.

As I understand his submission also, his fallback position is that even if he's not right on that point, to do a u-turn, one has to be doing a right-hand turn and therefore you can't do a u-turn in this location because you're not allowed to do a right-hand turn. As to that second point, I find that ludicrous, quite frankly, with due respect, and it seems to me that if I adopt the submission from counsel appearing for the Ipswich City Council, that there is an appropriate sign for no u-turn that could have been erected if that had been the

intention, and further, there doesn't seem to be any reason in
logic why a u-turn shouldn't be permitted in this location.
Clearly the purpose of the sign was to stop vehicles
travelling up Paul Tully Avenue because the council wanted all
the traffic to travel only in the other direction because of
increased traffic flows due to Christmas decorations, and to
suggest that a no right turn means you can't do a u-turn, I
simply find is unfounded and illogical.

As to the other point that, by her own admission in her
notification to insurers, she had begun to turn before she
changed her mind, in my view it's a little ambiguous what she
actually says in that notification: "As I was turning into
Paul Tully Avenue, I noticed there was a barricade." She was
much more precise today when asked about it in her evidence-
in-chief, which she gave through Sergeant Carmont, who was
assisting me, and in that she clearly gave evidence that she
came to a complete standstill with her indicator on near the
centre line and then, at that point, noticed the barricade and
then, at that point, decided to do a u-turn. She wasn't
challenged on that in cross-examination, although she was
shown her notification to insurer and asked if that was
correct and she said it was, which, obviously, both things
can't be literally correct and, at the end of the day, I think
that that doesn't assist me greatly to move away from her
direct evidence today.

I mentioned before there were two other versions. The other
version is from her daughter. Her daughter, who's 18 years

old, was somewhat of a typical teenager who was a bit mumbly and didn't remember a lot of things and got a bit teary about things. Her evidence, in her written statement originally, was that the vehicle that she was the passenger in had pulled over at the intersection to the left-hand side, and she had consulted the Refidex and then the vehicle had immediately begun to perform a u-turn at the intersection and that the collision then occurred.

Today she was very vague about that and she used the expression "I don't remember" at least a dozen times and, when specifically asked about whether the vehicle had kept driving on Collingwood Drive for any distance after consulting the Refidex before commencing the u-turn, she didn't remember.

As I commented during argument, it seems to me that there are two matters that I took note of that I thought made it more probably that Ms Cumner's version was correct, that is that the Refidex had been consulted back down the road and the car had come to a standstill in the centre of the road, not on the left-hand side. Those two things, firstly, were that there was evidence from the experts that if the car had pulled to the left-hand side of the road and started to do a u-turn, it would have had adequate room to perform the u-turn without difficulty; whereas Ms Cumner gave evidence that when she commenced to do the u-turn from the centre of the road, she didn't have adequate room to complete the u-turn, was going to run into the barricades erected by the council, and therefore decided she'd have to stop, reverse and go forward again in

what's known as a 3-point turn, which is consistent with her being in the centre of the road when she starts the u-turn. The other matter, as I mentioned, is that photographs clearly show that at the intersection of these two roads, there is a sign that says "Paul Tully Avenue". If the car had pulled over immediately opposite the intersection with the sign plainly in view, one would wonder why anybody would have had to consult the Refidex to find Paul Tully Avenue; it's there in front of them on the sign. So, again, that's consistent with them having stopped back down the road and it's consistent with Ms Cumner having commenced her turn from the centre of the road, and I'm satisfied that's by far the most likely version of events.

Mr O'Sullivan urges me that Cumner, by executing the right-hand turn, or u-turn, or either or both of those, has, in some way, contributed to the collision and that if she hadn't done the u-turn, the accident wouldn't have happened.

I start from the point that I find nothing to say that it would have been improper to do a u-turn at this intersection. You can't do a right-hand turn admittedly, but there's nothing to stop you doing a u-turn. People can do u-turns for any number of reasons: they might have left the iron on at home; they might have left their wallet behind. The fact that Ms Cumner decided to do a u-turn rather than a right-hand turn because the street was blocked off is, in my view, a red herring. What it comes down to is that she decided to do a u-

turn. The reason for the u-turn I see as quite irrelevant. She's entitled to do a u-turn at this intersection.

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The accident occurred, clearly in my view, because Mr Brown came over the rise approaching this intersection at such a speed that when he braked, he was unable to stop in time to avoid collision.

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Clearly, in hindsight, he would have been best to have veered to the left so that he could have gone behind Ms Cumner's vehicle, but he didn't, and we'll never know for sure why he didn't, although again Mr Ruler has suggested that a likely explanation for that, and again it wasn't challenged at all, is a phenomenon that he referred to as "target fixation", which he says is well known, and that, in effect, what it is is that when a person gets into a panic situation, when they're in a moving vehicle with an object in front of them posing an obstacle, that they tend to instinctively brake towards the obstruction and that specialist training is needed to teach people to look where they want to go rather than where the problem is, and that it is an inherent problem that people tend to fixate on the target and gravitate towards it when it's exactly not the way they should be going.

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He gave evidence he himself had experienced that when he was an experienced motorcycle police officer in New Zealand some time ago, and that may well explain why Mr Brown went to the right rather than left, then braked and collided with the vehicle. It may have also been for other reasons. He may

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have been hoping he could get around the vehicle. Who knows?
It seems to me, again, all of that is really irrelevant when
you get back to the starting point, that, as Mr Ruler said,
had the motorcycle been travelling at 60 kilometres per hour,
when it came upon a vehicle doing a u-turn, for any reason, it
should have been able to stop; it didn't stop simply because
it was going too fast. Fingers can be pointed at Mrs Cumner
for doing a u-turn when she thought she was going to do a
right turn, for doing a u-turn where there's a sign saying no
right turn, at the end of the day, it seems to me, she was
quite entitled to do the u-turn there and could have been
doing it for any one of a hundred reasons, and the sole reason
for the collision, in my view, is, on the evidence that I have
before me, the excessive speed of the motorcycle.

I intend to make the following formal findings, which I am
required to do pursuant to section 45(2) of the Coroners Act:

(a) The person who died was Robert Lee Brown.

(b) The way in which he dies was that he was travelling
on a motorcycle when he came upon a vehicle in front
of him performing a u-turn. He braked heavily but
collided with the right-hand side of the vehicle
when it was part way through the u-turn and he was
unable to stop in time to avoid a collision because
of the speed he was travelling at.

(c) He died on the 25th of December 2006.

(d) He died at the intersection of Collingwood Avenue and Paul Tully Drive at Collingwood.

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(e) The cause of his death was multiple injury or 1(a), multiple injuries due to or as a consequence of a motor vehicle accident.

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Pursuant to section 46 of the Coroners Act, I'm also entitled to make comments on things which relate to public health and safety, ways to prevent deaths from happening in similar circumstances in the future, and the administration of justice.

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Firstly, in relation to the administration of justice, it's evident today that the Operations Manual of Queensland Police requires that any collision analyst such as Sergeant Morrison have their analysis vetted by a senior collision analyst employed by Queensland Police. The sad state of affairs at the moment is that the Queensland Police does not have a single senior collision analyst employed by it.

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There was a pre-inquest conference held in this particular matter in October last year and, at that stage, it became quite apparent that doubt was cast on the accuracy and reliability of Morrison's report. That was one of the major reasons for this inquest being held and further evidence being gathered.

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It seems to me that if the police did have a senior collision analyst employed who had given a report similar to what Mr Ruler gave back in the early days, most, if not all, of this inquest may have become patently unnecessary due to the doubts about Morrison's report having been allayed, and I therefore made a comment that the Queensland Police needs to urgently address the situation of having a senior collision analyst employed, or at least available, to vet all of these reports to save Coroners having to call inquests to then get a private contractor to come in and vet the reports. It's a dreadful situation and keeps families of deceased persons such as the parents of Mr Brown waiting for an inordinate time.

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The second matter, I suppose I can make a general comment as suggested by Sergeant Carmont that local councils might want to think about giving more helpful information than the information given on this matter simply indicating that roads are closed. Alternative routes, detours and so on should be put up. Although I'm not sure that that goes to public safety or ways to prevent deaths. It's simply a matter of courtesy.

It's also been suggest that the council might give consideration to reducing speed limits and so on in areas such as this. I'm not sure that would make any difference. The evidence here is that this very intersection has been set up in this sort of matter for the last 7 years for about 4 weeks each year. So, that is about 28 weeks over the last 7 years. This is the one and only accident recorded as happening at that intersection during those 28 weeks of special signage. Therefore seems the evidence is that it's not a likely event to occur.

Further, the evidence is that Mr Brown was exceeding the speed limit. I don't see that lowering the speed limit's going to change that. The sad fact is, this collision happened because of excessive speed. Speed over the speed limit. So, I don't make any comment in that regard either.

I now declare this inquest closed. I express my sympathies to the family of Mr Brown.

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