

**IN THE MATTER OF THE INQUEST INTO THE DEATH OF
COLIN JOHN VERNON**

Before: B Callaghan Coroner

At: Gympie

Dates of hearing : 29.11.2005; 28.2.2006; 18.7.2006

On the afternoon of 7th May 2005 the deceased, Colin John Vernon and his wife Jennifer Maree Vernon were travelling south on the Bruce Highway in a Magna Sedan Registration Number 081 HFB. Mr Vernon was driving. Travelling north at the same time in a Toyota land cruiser registration number 782 IBU towing a trailer registration number 073 QKX was David Edward Fitzgerald and his passenger Scott James MacLean.

Near Bells Bridge on the Bruce Highway, approximately 12 klms north of Gympie where the speed limit was 100 klm per hour there was a collision between the 2 vehicles and Mr Vernon was killed instantly. The cause of death at 3.44pm was multiple cardiac lacerations due to the motor vehicle accident. Mrs. Vernon, MacLean and Fitzgerald all suffered injuries.

Constable Van den Brenk investigated the accident and interviewed a number of witnesses. Statements were provided by Fitzgerald, MacLean, Mrs Vernon, Ian Leslie Pakleppa the driver of the second drill team vehicle directly following Fitzgerald's vehicle, Brae Danae Connolly driver of a vehicle following Vernon's vehicle, James Phillip Rimmer, passenger in Connolly's vehicle, Kevin Wayne Bailey travelling in a vehicle caught in a line of traffic following Paklepps's vehicle as well as a number of police officers who attended at the sight of the accident. Called to give evidence at the inquest were Van den Brenk, Connolly, Rimmer, Fitzgerald, MacLean and Frank William Griggs, principal of a forensic engineering consulting firm and the

author of a report commissioned by the next of kin of the deceased. Mrs Vernon was not called to give evidence as she has no recollection of the incident.

Connolly's evidence was that she and Rimmer were travelling behind the Magna when she saw the land cruiser cross the road in front of the Magna - she said that the land cruiser moved slightly to the left and then violently veered straight across to the right. She stated that the trailer behind the land cruiser was bouncing slightly, it was moving around a bit on the back of the car (transcript of 29.11.05 p11 line41). She estimated the speed of the land cruiser to be under the speed limit and that of the Magna to be also travelling under the speed limit.

The evidence of Rimmer was that he saw the land cruiser slightly deviate to the left or to the shoulder of the road and then just cut across the road. He stated that it didn't look like a controlled turn - it just shot across the road. He estimated the land cruiser to be doing normal speed and the Magna to be doing about 80 klm.

It was not raining at the time although there was some water on the road.

Van den Brenk's evidence was that the contact between the 2 vehicles was almost head on, the land cruiser was within all weight requirements and that travelling at the speed it was would be safe in the circumstances that existed on the day. The weather on the day was mild with scattered showers. Van den brenk arrived at the scene some 40 minutes after the accident. The roadway was one southbound lane and one northbound lane with narrow road shoulders dropping away sharply from the edge of the bitumen. The accident occurred on a straight section and visibility was extremely good. The land cruiser was upside down facing south within but to the eastern side of the south bound lane. Ten metres east of the road edge line was the yellow mobile lighting tower trailer that was being towed by the land cruiser. The magna was located immediately adjacent and to the north of the land cruiser. The land cruiser had massive impact damage to the front right side. The rear chassis and tow bar assembly were caved in and the cargo tray had separated from its supports. The front right wheel was driven back to a position in line with the firewall and was ruptured and the rim was deformed on both inner and outer surfaces and the outer surface contained bitumen that had been forced into the lip. The front left tyre had a puncture

mark on the inside wall. The condition of the trailer indicated that it had rolled at least once, the towing bar was damaged and the generator set inside the trailer had been torn from its mounts. The magna had sustained massive damage to the whole front section. There was damage to the roof and panels through to the rear of the vehicle.

Van den brenk evidence was that from the service records the land cruiser had been serviced regularly. There was a company mobile phone in the vehicle and these records were submitted. There was no evidence that Fitzgerald or MacLean were talking on a mobile phone at the time of the accident.

There was no physical damage to the road surface and it did not have a stone mastic surface layer (this is the surface which has an impermeable layer so that water remains on the surface). The surface was a standard spray chip seal and was generally in good repair. There was some channelling to the road surface but Van den brenk was of the view that this would not have had an effect until after some sort of manoeuvre occurring. Van den brenk believed that the land cruiser moved first to the left and then across to the right into the oncoming lane and he did not believe that the channelling on the road would have had any effect on the vehicle doing that. He believed that in the initial moving slightly to the left and possibly coming back towards the centre of the northbound lane that there could have been some influence by the channelling.

Two of the first police officers at the scene noticed a large white bird at the side of the road approximately 60 metres south of the accident site. The bird was alive but had fresh blood on it. The following day the remains of the bird were found at the base of a tree off the side of the road next to the accident scene.

Grigg inspected the land cruiser and found there was no vehicle defect that one could say gave rise to the collision. He also stated in evidence that he couldn't see that the nature of the roadway would have caused the land cruiser to deviate on to the incorrect side of the road. His conclusion was that as the evidence was strong that the land cruiser did deviate on to the incorrect side of the road it could only leave the possibility of driver error as the reason for the deviation occurring. (transcript of

28.2.06 p4 line 22) Grigg's view on the road channelling was that it would not have had an effect because if the channelling had caused significant disturbance to the stability of the land cruiser and its trailer then one would have expected other drivers to have experienced difficulty at the same location and he was relying on the lack of police comment to assume that this was not the case.

Fitzgerald gave evidence that he worked a standard 12 hour shift the day before the accident and he would have finished working sometime between 5.00pm and 6.30pm. He was working for Mitchell Drilling at the time and they were the owners of the land cruiser. His work the day before was loading and preparing for the trip. That evening he believed that he visited a friend's place where they watched a game of football and he travelled home at about 11.00pm. His mobile telephone records show that he made a 6 minute phone call at midnight. He did not think that he went to bed after midnight but rather that he had gone to bed earlier and may have woken up and made the call. He could not recall whether he went straight to sleep that night. Records show that this telephone call was made from the Runcorn area and as Fitzgerald lived at Taringa it was probable that he made the call whilst still at his friends place at Eight Miles Plains. Fitzgerald stated in evidence that it took about 20 minutes for him to drive from his friend's place to his own home. The telephone records also show that he made a phone call to his employer the following morning at 5.40am. He stated that he would have made this call as soon as he woke up. It seems from this evidence that the very most sleep that Fitzgerald got that night was 5 hours. Fitzgerald stated that when he was working he could operate safely on between 5 and 6 hours sleep at night.

On the day of the accident he was supposed to travel to Gladstone. He and Pakleppa, driving the truck left at the same time and he believed that they left at about midday after loading the truck and finishing the preparation for the move to Gladstone.

Fitzgerald believed that they had 2 or 3 stops prior to the accident. He believed that the first stop was at a Caltex petrol station whilst still in Brisbane where they stopped for 10 to 20 minutes. The purpose of this stop was to wait for Pakleppa to catch up. The next stop was at the Gold Nugget petrol station just south of Gympie where they stopped for 20 to 40 minutes. The next stop was just north of Gympie to once again wait for Pakella.

After the 3rd stop Fitzgerald recalls pulling out and after that he remembers a white flash and he could not say what that was – it was his last memory prior to the accident. After the accident he can recall speaking to MacLean. His memory as to what happened after he left the 3rd stop and up to the accident is hazy. He recalls his vehicle was on its roof, he recalls unbuckling his seat belt and removing himself from the vehicle. Hospital records indicate that following the accident he had good recall.

MacLean's statement to the police following the accident was that he was the passenger in a vehicle towing a small trailer that had a lighting plant on it travelling to Gladstone on 7th May 2005. He stated that they left Brisbane at about 11.00, 11.30 am and after about 2 hours they pulled into a BP Roadhouse south of Gympie. He states that they were there for 30 to 45 minutes and whilst there they had food, drink and a good rest. He stated that on the north side of Gympie they again pulled over to tighten up the dog chains on the truck that was following them. He stated that about 10 minutes following this stop he was reading his book when he looked forward and he saw another vehicle coming towards them and directly in front of their vehicle. He recalls Fitzgerald yelling out something but does not remember what he said. He stated that when he looked up he could not tell which side of the road they were on. He remembers the impact and them rolling over. He stated that he believed that Fitzgerald was doing the speed limit (100km) and they were travelling with the other work vehicle which was following them since leaving the BP service station on the south side of Gympie. He could not say whether Fitzgerald went to sleep just prior to the accident and he had not noticed him falling asleep at any time whilst he had been driving from Brisbane that day and he seemed to be all right. He stated that Fitzgerald had not consumed any alcohol that day prior to their leaving on the trip.

MacLean's evidence at the inquest added nothing to the information he gave to the police in his statement.

Pakleppa's statement to police was that he was driving the truck following the vehicle driven by Fitzgerald. He stated that he caught up to Fitzgerald and MacLean at a servo just outside the north side of Gympie. He stated that he believed that they had been there for about 15 minutes and all of them remained there for about a further 30

minutes. He stated they left the servo at about 3.25pm and they would have been travelling between 85 – 90 klm. He stated that they had previously decided to travel together. He stated that 10 minutes out of Gympie he looked down to check his gauges and when he looked up he saw that the utility (vehicle Fitzgerald was driving) had hit the other vehicle (magna) on the other side of the road and that the utility was going sideways towards the correct side of the road. He saw the lighting trailer snap off and the utility rolled onto its roof.

An analyst certificate (Exhibit 10) shows that Fitzgerald had no alcohol in his blood.

Sergeant Todman (officer assisting the Coroner) and Mr. McMillan (representative for the Vernon family) made oral submissions that a reasonable suspicion exists as to the driver's conduct causing the accident. They both raised that there was no mechanical fault with the vehicle and this would raise the suspicion and McMillan drew my attention to the lack of sleep of Fitzgerald and his heavy workload prior to his leaving the Brisbane location suggesting that tiredness may well have played a part in the accident. McMillan also provided written submissions in response to those of Shepherd. He drew my attention to how the High Court in *George v Rockett* (1990) CLR 104 and *Ruddock v Taylor* [2005] HCA 48 had dealt with the term "reasonable suspicion" and stated that the authorities indicated that I am not required to have a belief that an indictable offence had been committed, simply that I reasonably suspect that an offence has been committed so as to trigger a referral of the matter to the Director of Public Prosecutions.

I received written submissions from Mr. Shepherd, Barrister instructed by legal aid on behalf of Fitzgerald submitting that the submissions by Todman and McMillan were not sustainable. The conclusion that driver error was the cause of the accident is based on the proposition that no other cause exists and that was not the case. He stated that the evidence showed that no cause could be found and that it could not be said that all innocent explanations have been excluded.

On the evidence of Connolly and Rimmer Fitzgerald's vehicle veered first to the left and then sharply to the right crossing into the path of the Vernon's vehicle causing the accident. Neither vehicle was travelling above the speed limit – it appears that both

were travelling below it and there was no mechanical fault with Fitzgerald's vehicle. Fitzgerald had had 3 stops – one very lengthy one just some 10 minutes prior to the accident and this makes it unlikely that Fitzgerald fell asleep whilst driving and there is no other evidence suggesting momentary inattention by Fitzgerald. There is no evidence that Fitzgerald was talking on a phone at the time of the accident or that he was talking on the CB which was installed in the vehicle. There was no alcohol in Fitzgerald's blood. Police who arrived at the scene first noticed an injured large bird. Fitzgerald stated that he saw a large white flash but could not say what it was.

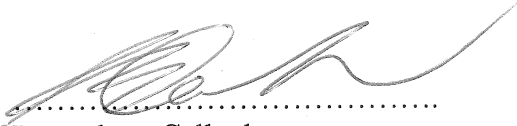
I do not find that any person who gave evidence at the inquest lacked credit. All parties had been through a trauma and it is understandable that memories of what occurred would be affected by this trauma.

In my view there is not enough evidence to establish that driver error was the cause of this accident. For me to refer this matter to the DPP I must have a reasonable suspicion that somebody has committed an offence and I do not. I disagree with Grigg's conclusion that there could only be driver error as the reason for the deviation of Fitzgerald's vehicle on to the wrong side of the road. There are two possible explanations for this accident – one being the momentary inattention by Fitzgerald which could be enough to constitute dangerous driving for the purposes of the application of S328A Criminal Code and two the intervention of a large white bird in to the path of Fitzgerald's vehicle causing his vehicle to swerve which would not. The evidence does not indicate which is the more likely scenario. This accident has been extensively examined first by the police and second during the inquest and I am of the view that a further examination of the evidence would not establish the cause of the accident.

Pursuant to S45(2) of the Coroner's Act my findings are as follows:

- (a) The deceased person is Colin John Vernon
- (b) Mr Vernon died as a result of internal injuries received as a result of a motor vehicle accident
- (c) Mr Vernon died on 7th May 2005
- (d) Mr Vernon died at the scene of the accident which was on the Bruce Highway approximately 650 metres north of the Bells Bridge turn off, north of Gympie

(e) Mr Vernon died because of cardiac lacerations.



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Bernadette Callaghan

Coroner

24.8.06