



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 16th, 17th, 18th, 22nd, 23rd, 24th, 25th and 26th days of February 2010, the 2nd and 18th days of March 2010 and the 13th day of December 2010, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of June Alethea Clayton.

The said Court finds that June Alethea Clayton aged 20 years, late of 7/88 Sussex Street, North Adelaide, South Australia died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 11th day of March 2006 as a result of severe closed head injury with associated basal skull fractures . The said Court finds that the circumstances of his death were as follows:

1. Introduction

- 1.1. June Alethea Clayton, hereinafter referred to as June, aged 20 years, died on 11 March 2006. A post-mortem examination was carried out by Dr John Gilbert, forensic pathologist, who gave the cause of death as severe closed head injury with associated basal skull fractures¹, and I so find.
- 1.2. June had been a pedestrian on Goodwood Road at approximately 12:25am on 10 March 2006 when she was struck by a Holden Commodore, registration number (SA) UKT-756, that was being driven by Kym McGuinness².
- 1.3. June had been in a relationship with Kym McGuinness throughout most of the year 2005 and they had lived together for several months of that year, ending in November

¹ See Exhibit C112

² Exhibit C113 and Transcript, page 471

2005. After November 2005 June and Mr McGuinness continued to see each other socially.

- 1.4. On the evening of Thursday 9 March 2006 Mr McGuinness picked June up from her place of work at the Hyde Park Tavern in the Commodore sedan that was involved in the collision later that night. They drove to the Goodwood Park Hotel on Goodwood Road, Wayville. While at the hotel they were joined by some other friends including Georgina Murray, Spiro Kontis, Franko Cammisa and Samuel Cross, all of whom gave evidence at the Inquest. They participated in karaoke and consumed alcohol. The evidence of Mr Kostakis³, senior forensic scientist, was that June's blood alcohol level was 0.18%⁴ and a blood alcohol test taken from Mr McGuinness at 0130 hours on 10 March 2006 recorded a result of not less than 0.141% and a second blood test taken at 0530 hours on 10 March 2006 recorded a blood alcohol result of not less than 0.07%⁵. On the basis of those blood tests Robert Lokan, forensic scientist, determined that on the assumption that the collision occurred immediately after Mr McGuinness had finished drinking alcohol, his blood alcohol concentration was probably about 0.12% at the time of the collision at 0026 hours. If Mr McGuinness was in the post absorption phase at the time of the collision, that is if he had finished drinking between 1 and 2 hours prior to the collision, his blood alcohol concentration would have been about 0.17% at the time of the collision⁶.
- 1.5. During the Inquest I heard evidence from each of the persons mentioned above who were present with Mr McGuinness and June at the Goodwood Park Hotel. The evidence showed that they got on well together that evening and, in particular, there were no witnessed arguments between the couple. There was a considerable amount of evidence about when Mr McGuinness appeared to have left the group and whether June was concerned that he had done so abruptly. It appears that Mr McGuinness may have left without explicitly saying goodbye to members of the group. It will never be known whether he said goodbye to June before taking his leave, but the circumstantial evidence would indicate not. June asked another member of the group to look for him and, shortly thereafter when he could not be found, excused herself to go to the toilet. The next news that any member of the group remaining at the hotel had of June was when they discovered that she had been run over on Goodwood Road.

³ Exhibit C4a

⁴ Bloods taken on her admission to the Royal Adelaide Hospital

⁵ Exhibits C4c and C110

⁶ Exhibit C110

2. **The crash reconstruction evidence**

- 2.1. Evidence was gathered by police with a view to determining the physical dynamics of the collision itself and the behaviour of the Holden sedan immediately prior to the collision.
- 2.2. Mr McGuinness was interviewed by police but, other than acknowledging that he was the driver of the vehicle at the relevant time, he declined to answer questions. Initially Mr McGuinness was charged with murder. However, eventually all charges against him were dropped and he has not been prosecuted for any offence in relation to June's death, nor for any other driving offence related to his driving that night.
- 2.3. Mr McGuinness was summoned to give evidence at the Inquest. He was represented by counsel and declined to answer a number of questions on the ground of the privilege against self-incrimination. In particular, he declined to give evidence about the events leading up to the collision, including what transpired at the hotel and what contacts, by telephone or otherwise, he had with June immediately prior to the collision and what his movements were between leaving the hotel and the collision itself. However, he did specifically deny that he deliberately aimed his vehicle at, or took any deliberate action to cause his vehicle to collide with, June on the night⁷. The only available evidence as to the dynamics of the collision is therefore the evidence of the police who took measurements and documented the location of various items including debris from the vehicle and personal possessions of June herself, including her broken mobile phone, a black drinking straw and some black cloth from her clothing. The location of these items is depicted in a diagram which sets out the final resting position of the car, the skid marks made by the car tyres and the resting position of June's body. The diagram also records the location of pieces of debris referred to above and other items of physical evidence. The diagram is drawn to scale and shows the relevant portion of Goodwood Road and the position of street lighting poles in the vicinity of the collision site.
- 2.4. Other evidence relevant to the collision dynamics included a report of Elliot McDonald, qualified motor mechanic employed by SAPOL, documenting the condition of, and damage to, the Commodore sedan⁸. Mr McDonald also gave evidence at the Inquest. The evidence of Mr McDonald was that although the vehicle

⁷ Transcript, page 477

⁸ Exhibit C108

was in relatively poor condition, there was nothing about the vehicle's condition that would have in itself caused or contributed to the collision.

- 2.5. Senior Sergeant Graham England attended the crash scene in the early hours of the morning of 10 March 2006. Senior Sergeant England is, and was at the relevant time, an investigator with expertise in collision reconstruction. Since 2008 he has retired and now works privately in the field of collision reconstruction.
- 2.6. Senior Sergeant England gave evidence that his initial impression upon attending the collision scene was that the tyre marks left by the Commodore were 'highly unusual'⁹. He said that there was 'some suggestion that the car had deliberately steered towards the pedestrian'¹⁰ and elaborated:

'But I suppose, I was put under a bit of pressure as to try and explain how the curved skid marks could have occurred. Obviously I couldn't say that it was a deliberate act to aim for the pedestrian, but it was - that was the suspicion at the time.'¹¹

- 2.7. Senior Sergeant England said that the first thing he noted about the skid marks was that they were curved and not straight and he regarded that as 'so unusual'¹². He said that there is a difference between a 'yaw mark' and a 'skid mark'¹³. He said that one is always curved and one is always straight. He said:

'That's why this was so unusual because it was a skid mark that was curved. What was it about? 28 years prior to that I've never seen it. The only reason, and we were able to duplicate it when we went back and did tests with the vehicle, the only way that we could do it is to wrench the wheel to the right and immediately afterwards hit the brakes.'¹⁴

He said that a skid mark in which there is no prior steering input to change the direction of the car will invariably be a straight skid mark. He said that the vehicle had turned about 3½ or 4 degrees in the course of the skid¹⁵. He said that the vehicle had been steered to the right with the result that there was a weight shift to the front left, thus putting extra weight on the front left wheel and preventing it from locking so:

⁹ Transcript, page 373

¹⁰ Transcript, pages 373-374

¹¹ Transcript, page 374

¹² Transcript, page 374

¹³ Transcript, page 370

¹⁴ Transcript, page 370

¹⁵ Transcript, page 371

' .. that the front left wheel has continued to turn and that's pushed the vehicle around in that curved path.'¹⁶

Once a steering wheel loses traction it can no longer influence the direction of the vehicle even with steering input from the driver.

- 2.8. Senior Sergeant England said that it was possible to determine the approximate point of impact between the car and June by reference to objects that June was carrying immediately before the point of impact¹⁷. Senior Sergeant England said that it was his opinion that the point of impact was at the point at which the skid marks started¹⁸. However, Senior Sergeant England explained that the point at which the skid marks started would not have been the point at which Mr McGuinness took his foot off the accelerator and started braking. He said based on average values for average drivers, he applied a figure of 0.7 of a second between the first action to apply the brakes, namely removing the foot from the accelerator, and the locking up of the wheels. Applying that time estimate of 0.7 of a second to the approximate speed of the vehicle immediately prior to the point of impact, Senior Sergeant England considered that the decision to brake would have occurred about 13 metres before the skid marks started¹⁹. Senior Sergeant England said that at the start of the skid the speed of the vehicle was at least 66 kilometres per hour²⁰.
- 2.9. Senior Sergeant England conducted his own braking tests and attempted to replicate the behaviour of the vehicle as shown by the skid marks recorded on the night. He did this using the same vehicle. His evidence was that it was only possible to replicate the skid marks by suddenly steering to the right immediately before hard braking, resulting in a skid. These two actions combined produced the curved skid marks observed at the crash scene²¹. Senior Sergeant England also said that there were no defects in the braking system that might have accounted for the collision²². There was no difficulty with the lighting on the road²³ and there was nothing about the tyres that might have accounted for the collision dynamics²⁴.

¹⁶ Transcript, page 370

¹⁷ Transcript, page 377

¹⁸ Transcript, page 378

¹⁹ Transcript, page 380

²⁰ Transcript, page 403

²¹ Transcript, pages 407-408 where Senior Sergeant England says 'the only way that you could get it to do otherwise was to steer first and then ... braking'

²² Transcript, page 387

²³ Transcript, page 390

²⁴ Transcript, page 369

- 2.10. For completeness I mention that video footage was taken of the various experimental skids undertaken by Senior Sergeant England and tendered at the Inquest²⁵.
- 2.11. In short, it was Senior Sergeant England's opinion that the collision dynamics could only be explained by a sudden steer to the right followed immediately by severe braking²⁶.

3. The evidence of eyewitnesses

- 3.1. There were several people who were in a position to observe the crash, although none of them was in a position to make a truly comprehensive assessment. One such witness was Ms Kate Bloomfield who was driving south on Goodwood Road at the time of the collision. She was intending to turn right at the intersection of Goodwood Road and Leeder Street, having come from the direction of the city. She made a statement in the days immediately following the collision²⁷. In that statement she estimated her distance from June when she first observed her as 10 metres. That was clarified in the course of her evidence when she explained that she had a poor understanding of distance. She said that she had just passed the BP Service Station to the south of the scene of the collision when she first saw a person on the roadway²⁸. That would be a distance considerably in excess of 10 metres. She said that her attention was drawn to the pedestrian because she had very blonde hair which stood out. According to Ms Bloomfield when she saw the pedestrian, who was of course June, she was in the middle of the road and was dancing and moving. Ms Bloomfield could see June's lower back and her forearm. She said that if June had stepped out in front of her she was confident that she would have had time to brake²⁹. Ms Bloomfield said that she could see only one oncoming vehicle and that, having looked in her rear vision mirror immediately after the collision, could remember no vehicles being behind her vehicle³⁰. She said that when she first observed June she seemed to be happy and was standing in the one spot. She had something in her hand which Ms Bloomfield (correctly) assumed to be a glass and she had her handbag on her other arm³¹. She said that she then saw June step off the line in the middle of the road into the middle lane for traffic heading north along Goodwood Road. She was still waving

²⁵ Exhibit C109e

²⁶ Transcript, page 410

²⁷ Exhibit C103a

²⁸ Transcript, page 247

²⁹ Transcript, page 252

³⁰ Transcript, page 253

³¹ Transcript, page 254

her arms around when she was hit³². Ms Bloomfield said she first saw the oncoming vehicle in the inside lane and had a memory that it had done a U-turn³³. She said that she did not observe the car make any sudden movements immediately prior to the collision and that she did hear a screeching of brakes but not until after June had been hit by the front of the car³⁴.

- 3.2. Prior to the collision she said that the oncoming car made a lot of noise and it appeared to be accelerating³⁵. Ms Bloomfield said that when she first saw June, her back was facing towards Ms Bloomfield and June was therefore facing south in the direction of the oncoming vehicle. Ms Bloomfield saw the collision and saw June roll across the bonnet and hit the windscreen with her lower back area. Her head was towards the passenger side of the car and she was then flipped up in the air and over the car. Ms Bloomfield observed the remainder of the collision through her rear view mirror and saw June hit the back of the car and then the road. She immediately stopped her car and went over to the scene.
- 3.3. Ms Bloomfield said that at the point of the collision June was approximately a third of the way into the centre lane of the northbound side of Goodwood Road - closer to the centre line of Goodwood Road than the middle of the northbound carriageway³⁶.
- 3.4. Kendall Morrison and Nicholas Timmers were sitting on what has been described as a balcony at the front of the Goodwood Park Hotel at the time of the collision. I say balcony, but in fact it is a paved area on the ground floor level and slightly raised above the footpath adjacent to Goodwood Road between Goodwood Road and the hotel itself. It is bounded by clear glass fencing. Ms Morrison and Mr Timmers had just arrived at the hotel and had settled down to sit in the outdoor area I have described only shortly before the collision. Ms Morrison was facing south and Mr Timmers was facing north. Ms Morrison had a clear view of the intersection of Goodwood Road and Leeder Street and Mr Timmers had a clear view of Goodwood Road all the way to the scene of the eventual collision. Ms Morrison observed the Holden Commodore travelling south on Goodwood Road and noted it did a U-turn at the Leeder Street traffic lights in order to travel north on Goodwood Road. She said that the driver put his foot down and that the U-turn was conducted in what she

³² Transcript, page 255

³³ Transcript, pages 255-256

³⁴ Transcript, page 256

³⁵ Transcript, page 255

³⁶ Transcript, page 271

described as a ‘hectic’ manner³⁷, sufficient to cause she and Mr Timmers to look at each other and comment that the driver was ‘an idiot’³⁸. Shortly after this she heard a bang. She and Mr Timmers then went up to the scene of the collision. She had a conversation with Mr McGuinness who was very upset and was saying words to the effect ‘I’ve hit my girl, I’ve hit my girl’³⁹. Ms Morrison, who was at the time employed as a police officer but was off duty, told Mr McGuinness that she saw him driving like an idiot. He responded that he was not driving like an idiot and that his car would not achieve the 80 kilometres per hour that Ms Morrison had estimated it had achieved⁴⁰.

- 3.5. Mr Timmers gave a similar account to that of Ms Morrison about the observations of the U-turn. He said that the driver had moved over to the left-hand side of Goodwood Road to effect the U-turn and then ‘planted his foot and took off pretty quickly’⁴¹. He described it as a ‘pretty ridiculous sort of U-turn’⁴². He confirmed Ms Morrison’s recollection that they described the driver as ‘an idiot’ at that time⁴³. Mr Timmers estimated the speed of the vehicle to be 80 kilometres per hour by the time of the collision⁴⁴. Mr Timmers could not remember whether he heard a thump first or whether he heard brakes first, but he remembered hearing both of those noises. Mr Timmers also spoke with Mr McGuinness and told Mr McGuinness, in relation to the speed of his vehicle, that ‘you were flying’⁴⁵. Mr McGuinness denied that he was going quickly⁴⁶.
- 3.6. I heard from Michael St Clair who was a service station console operator at the BP Service Station, to which I have already referred, at the time of the collision. Mr St Clair was outside the service station office preparing to go home after finishing a shift when the collision occurred. He had his back to Goodwood Road and therefore only heard the collision. He attended the scene and made a Triple 0 call. Beyond that, he did not have very much to add.

³⁷ Transcript, page 278

³⁸ Transcript, page 276

³⁹ Transcript, page 289

⁴⁰ Transcript, page 289

⁴¹ Transcript, page 302

⁴² Transcript, page 302

⁴³ Transcript, page 302

⁴⁴ Transcript, page 303

⁴⁵ Transcript, page 305

⁴⁶ Transcript, page 305

- 3.7. After the close of the Inquest the Court became aware that two people presented to the police during, or shortly after, the close of the Inquest claiming to have been eyewitnesses to the collision. They were a brother and sister, Marianna Blenios and Panagiotis Blenios. Neither of them provided a statement to police at the time of the collision, although they claimed to have stopped at the scene. Their recollections of the collision and the behaviour of the Commodore immediately prior to the collision were very much at odds with the recollections of the witnesses Ms Morrison, Mr Timmers and Ms Bloomfield. For example, Marianna Blenios provided a version of the collision that placed the execution of the U-turn by Mr McGuinness at a point somewhere in the vicinity of the BP Service Station. On any view this version was physically not possible. Ms Blenios gave an account of the U-turn having occurred at a point north of the commencement of the skid marks. On her version it would have been physically impossible for the skid marks to have been made. Her brother's account put the U-turn closer to the traffic lights but still north of the traffic lights and ran counter to the evidence of Ms Morrison and Mr Timmers. The interesting aspect of Mr Blenios' evidence was that he claimed to have seen a 'lady' cross the road from the right-hand side⁴⁷. In referring to the right-hand side, it was quite clear that Mr Blenios was referring to the western side of Goodwood Road. No other witness provided an account placing June on the western side of Goodwood Road. Ms Bloomfield, who gave the clearest description of the collision, described June as having walked along the middle line of Goodwood Road and then moving from there into the northbound carriageway. At no point on Ms Bloomfield's account did June reach the western footpath of Goodwood Road.
- 3.8. Mr Blenios conceded that he was possibly confused⁴⁸ and that his recollection was flawed⁴⁹.
- 3.9. Mr Blenios' account of June having approached the collision from the western footpath appears, at first blush, to make sense when looked at in the light of the evidence of Senior Sergeant England that the vehicle appeared to be deliberately steered to the right immediately before the collision. That would be consistent with the driver observing a pedestrian leaving the westernmost footpath and swerving to the right in order to avoid her. However, in view of Mr Blenios' confusion and the

⁴⁷ Transcript, page 563

⁴⁸ Transcript, pages 585, 588

⁴⁹ Transcript, page 589

very clear evidence of Ms Bloomfield, I simply cannot accept that he was correct in his recollection in this respect. It is interesting to note that Senior Sergeant England, who until the Inquest was unaware that June had never reached the western side of Goodwood Road, speculated that a movement from that side of the road might have accounted for the manoeuvre of the vehicle to the right-hand side.

- 3.10. I am not prepared to rely on the evidence of Mr Blenios in this respect. The passage of 4 years between the night of the collision and the giving of his evidence is a likely explanation for his version being inconsistent with that of Ms Bloomfield. As to Ms Blenios' version of the collision, it simply does not sit with the physical evidence of the skid marks and I discount it. I do not believe that either of the Blenios' were attempting to mislead the Court; rather it is my belief that they attempted to give truthful evidence but that their recollections have been clouded with the passage of time to a point where they had nothing useful to add.

4. The telephone records

- 4.1. The telephone records were obtained by Brevet Sergeant Grollo⁵⁰. They show that June contacted Mr McGuinness twice by SMS at 12:12am and 12:13am. The first message read:

'Babe, I will call you in five mins, please answer.'

And the second

'Babe, don't leave, I'm coming right now, don't fuck me over, please.'

- 4.2. Her phone records also indicate that she made a telephone call to Mr McGuinness' mobile telephone number at 12:17am and that telephone call had a duration of 7 minutes and 45 seconds, suggesting that it was terminated at 12:25am.
- 4.3. The first recorded telephone call to Triple 0 reporting the collision occurred at approximately 12:26am. It is therefore open on the evidence to suggest that June and Mr McGuinness were in mobile telephone contact almost until the moment of the collision. This raises all manner of speculation about the nature of their conversation during that period and the connection between what was being said and the way in which Mr McGuinness drove his vehicle.

⁵⁰ Exhibit C53o

4.4. However, the content of that telephone conversation is not known. Mr McGuinness declined to answer questions about it during his oral evidence as was his legal right. In the result, it would be unwise for me to speculate upon the nature of the conversation, if any, that they were having during that period. In fact, it is possible that the line was open but that no conversation was being conducted at all, bearing in mind that Mr McGuinness was driving the vehicle for probably most of that period. It is entirely possible that either Mr McGuinness or June had thought the telephone call had been terminated when in fact the line remained open, and that this may account for the appearance of a telephone call occurring during the driving of the vehicle immediately prior to the collision.

5. Conclusion

5.1. As I have already noted, Mr McGuinness specifically denied that he deliberately manoeuvred his vehicle in a manner to collide with June. The evidence of Senior Sergeant England was quite compelling in that it provided an explanation for the curving nature of the skid mark and suggested it could only be accounted for by a deliberate, even abrupt, steering movement to the right immediately before the application of the brakes. This could imply that the vehicle was deliberately steered towards June's position at the time the manoeuvre was effected.

5.2. However, it was quite clear that at the relevant time Mr McGuinness was affected by alcohol. His blood alcohol level was at least 0.07% and may have been as high as 0.17% at the time of his driving. The steering manoeuvre by him may have been a result of confusion resulting from the influence of alcohol, or it may have been because he was distracted, or it may have been because he anticipated that June was going to attempt to cross in front of him to the western pathway of Goodwood Road and he was attempting to swerve around her rather than the much more sinister theory that he was deliberately steering towards her. Applying the reasoning processes stated in **Briginshaw v Briginshaw** (1938) 60 CLR 336 to the theory that Mr McGuinness deliberately steered or manoeuvred his vehicle in a manner to collide with June leads to the conclusion that I am clearly unable to make such a finding on the state of the evidence.

5.3. There is no question that Mr McGuinness was driving while affected by alcohol, although he was never charged with any alcohol-related driving offence. There is no

question that his vehicle collided with June, thus resulting in her death. However, the evidence of Senior Sergeant England shows that the decision to brake was made at least 13 metres prior to June's location on Goodwood Road. There is much force in the conclusion that Mr McGuinness was attempting to avoid her by braking, even if the braking was hopelessly late in the circumstances.

6. Recommendations

6.1. I have no recommendations to make in this matter.

Key Words: Motor Vehicle Accident; Police (investigation);

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 13th day of December, 2010.

State Coroner