



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

I, Robert Webster, Coroner, having investigated the death of Hayden Kennedy

Find, pursuant to Section 28(1) of the Coroners Act 1995, that

- a) The identity of the deceased is Hayden Kennedy;
- b) Mr Kennedy died as a result of injuries received when he was a passenger in a Polaris Utility Terrain Vehicle (UTV) which collided with a tree stump;
- c) Mr Kennedy's cause of death was a head injury; and
- d) Mr Kennedy died on 31 October 2021 on Father of Marshes Road near Strickland, Tasmania.

In making the above findings I have had regard to the evidence gained in the investigation into Mr Kennedy's death. The evidence includes:

- The Police Report of Death for the Coroner;
- Affidavits confirming identity and life extinct;
- Affidavit of the forensic pathologist Dr Christopher Lawrence;
- Electronic patient care records obtained from Ambulance Tasmania (AT);
- Affidavit of the forensic scientist Juliette Tria of Forensic Science Service Tasmania;
- Affidavit of Paul Wells;
- Affidavit of Peta Kennedy;
- Affidavits of Joshua Clark;
- Affidavit of Ebonni Mann;
- Affidavit of Kyeden Booth;
- Affidavit of Angus Denholm;
- Affidavit of Katie Blackwell;
- Affidavit of Brent Vincent;

- Affidavit of David McKeon;
- Affidavit of Craig Keogh (rank not stated);
- Affidavit of Sergeant Andrea Richardson;
- Affidavit of Senior Constable Byron Howard;
- Affidavit of Senior Constable Richard Keygan;
- Affidavit of First Class Constable Timothy James;
- Affidavit of Senior Constable Lauren McMahan;
- Crash Analysis report of Senior Constable Adam Hall;
- Documentation in relation to the prosecution of Thomas Rowlands;
- Report of Craig Gardner, Approved Analyst, from Forensic Science Service Tasmania;
- Transcript of police record of interview with Thomas Rowlands;
- Comments on passing sentence of Justice Brett; and
- Photographs, plans and diagrams and forensic evidence.

Introduction

This investigation concerns a motor vehicle crash that occurred in the very early hours of Sunday, 31 October 2021, on Father of Marshes Road near Strickland in Tasmania. At approximately 1:10am on that day, members of Tasmania Police responded to reports of a serious single vehicle crash involving an unregistered Polaris UTV. The crash was originally reported to be on Catagunya Road at Wayatinah. Initially, communication difficulties with mobile phone coverage hampered an effective emergency response. On the arrival of police, it was determined the accident occurred approximately 9 km north-east of the junction of Father of Marshes Road with the Lyell Highway.

This road is constructed of gravel and measures 4.5 m from one edge to the other. It was constructed of hard packed gravel with loose gravel edges. The roadway connects the Catagunya Road at Ouse with Strickland Road at Strickland and it also leads to Dee Lagoon. It runs in a roughly east to west orientation and is predominantly a single lane road, however there is sufficient width for two vehicles to pass cautiously at most points on the roadway.

This roadway is a forestry managed and maintained road which is not under council control. It is generally open to all public traffic, however a boom gate can be closed at the intersection with the Lyell Highway for safety reasons during logging operations on the adjacent Forico and Sustainable Timbers Tasmania properties in the area.

There were no speed restrictions signs erected either on Father of Marshes Road or the nearby Catagunya Road at the Lyell Highway junction. The prevailing speed limit is however

80 km/h. At the time of the crash, the weather was fine and dry, and the road was also dry. There was no street lighting in the vicinity of the crash.

The vehicle involved in the crash was a red 2021 Polaris side-by-side UTV vehicle. A UTV is generally a larger type of all-terrain vehicle (ATV) which often features a roll cage. Unlike an ATV, which is controlled more like a motorcycle, UTV's operate like a car using a steering wheel and foot pedals. Most are equipped with seat belts which ATVs do not have. This vehicle was owned by Joshua Clark and it was not registered. He had ordered the vehicle at Agfest earlier in 2021 and picked it up from the dealer, Rural Solutions at Main Road Sorell, on 29 October 2021.

On Friday 29 October 2021 at 7:30pm, Mr Clark and his girlfriend Ms Blackwell travelled up to a shack on Father of Marshes Road to go camping on some land owned by a third party. They had camped on the property previously. They met Thomas Rowlands and his girlfriend, Ladie Parker, at Hamilton and drove up together arriving at approximately 9:30pm. They unloaded the trailers, unpacked the gear into the shack, had some dinner around the fire, and then consumed some alcohol.

The next day, they were joined by Ebonni Mann, Angus Denholm and later by Kyeden Booth and Hayden Kennedy. They chatted, consumed alcohol and played card games. They also played card drinking games.

At about midnight they all went out for some fresh air and subsequently Mr Rowlands got the keys to the UTV and drove over to where Mr Clark and Mr Kennedy were standing with Ms Blackwell. Mr Kennedy got into the seat next to Mr Rowlands and he drove off. The UTV travelled from the property approximately 500m east on Father of Marshes Road towards Strickland. As Mr Rowlands approached a left hand corner, he lost control of the UTV and the crash occurred.

Background

Mr Kennedy was 18 years of age (date of birth 24 January 2003) and he resided with his parents at the date of his death. He was the only child of Peta and Mark Kennedy. He went to St Bridget's Primary School in New Norfolk and later he attended Dominic College where he completed his schooling in November 2019. After completing high school, Mr Kennedy commenced a diesel mechanic apprenticeship with Total Ag Solutions (now known as Tasmac) based at Bridgewater. He was due to commence the third year of his apprenticeship in January 2022. Since Mr Kennedy's passing, his parents learnt he was nominated for apprentice of the year in 2021 and he, out of the 11 statewide nominees, won that award.

In addition, Mr Kennedy worked regularly in the family business cutting and bailing grass and hay as well as using earthmoving machinery. Mrs Kennedy says from about the age of 10, her son would operate machinery and drive the tractors and assist with cutting the grass on the family property which is 100 acres in size. As he got older, he assisted other farms with their hay cutting and would still work with his mother and father, after hours and on weekends, outside of his obligations to his employer. He had operated ATVs and side-by-side buggies like the one involved in this crash. He had his own Polaris Ranger UTV. Mrs Kennedy says her son was a sensible, mature young man who was never the sort of person that would take risks when operating such machinery.

Mr Kennedy's plans were to take over the family contracting business with the assistance of his parents. He was also going to continue with his apprenticeship.

Circumstances leading to death

On the morning of 30 October 2021, Mr Kennedy's father helped him put a rooftop camper onto his land cruiser and then Mr Kennedy spent the rest of the day at Mr Booth's house and assisted him by installing a new clutch into his ute. Mr Mark Kennedy and Mrs Kennedy travelled to Sorell to pick up a new set of cattle yards and they therefore did not see their son for the rest of the day.

Mrs Kennedy was aware it was Joshua Clark's 25th birthday which had been put off due to the COVID-19 pandemic. Once conditions eased, it was arranged that a group of Mr Clark's friends would meet at a shack in the Father of Marshes Road area to celebrate his birthday. Mr Kennedy left home at about 6:10pm on 30 October 2021 with Mr Booth. From her son's bank statement Mrs Kennedy knows that after leaving home her son visited the 9/11 bottle shop at New Norfolk where he spent \$47 and he also went to Woolworths prior to leaving for this shack.

Mr Booth says he and Mr Kennedy reached the shack at approximately 7:30pm. They joined the others who were present in consuming alcohol and playing cards. They were playing a drinking game. This game had commenced at around 6:00pm and according to Mr Clark, they played it for around six to seven hours.

At around midnight or sometime thereafter, Mr Clark and Ms Blackwell went outside when Mr Clark heard his UTV start. He then saw the UTV do a loop around the property and the vehicles, and he could see its lights were activated. He recognised that Thomas Rowlands was driving the UTV and he saw Hayden Kennedy get into the passenger seat. He last observed the UTV leave the property and turn left onto Father of Marshes Road. Mr Clark said because he was drinking, he had placed the keys to the UTV in the bedroom he was

using on a top shelf. He says he did not see anyone take the keys from the bedroom and he did not give anyone permission to take them. The keys to his ute were sitting on the table where they were playing cards.

Approximately 30 to 40 minutes elapsed and the UTV had not returned, and neither could the UTV be heard. Ms Parker then received a phone call from Mr Rowlands who indicated the UTV had crashed and he thought Mr Kennedy was dead. Emergency services were contacted.

Investigation

AT's electronic patient care record indicates a call was received to attend this crash at 1:26am on 31 October 2021. Unfortunately, because of the remote location of the crash the ambulance officers did not reach Mr Kennedy until 3:13am. On arrival, cardiopulmonary resuscitation (CPR) was being performed by a police officer. CPR had, before this, been administered by Mr Denholm and Mrs Kennedy. Mr Kennedy was examined by ambulance officers while police continued to provide CPR. The ambulance officers continued to provide treatment, however this and the continued CPR was to no avail. A second ambulance, in order to treat Mr Rowlands, was dispatched after the first ambulance and the ambulance officers were with him by 4:00am. He was taken to the Royal Hobart Hospital. Mr Kennedy was subsequently taken to the Hobart mortuary but prior to this he was formally identified by his mother to Senior Constable Hall.

The investigating officer has advised AT initially received a 000 telephone call from Mr Rowlands at approximately 1:20am, at which time he made attempts to report the crash. However, he was unsure where he was and he was unable to provide any topographical features which would enable the crash location to be identified. Further telephone calls with others and emergency service call centres resulted in the location being ascertained at approximately 1:49am. Members of Tasmania Police and AT were then dispatched. On arrival, attending police closed the road and preserved the scene until officers from crash investigation services and forensic services attended. The crash investigation was conducted by the experienced crash investigator Senior Constable Adam Hall.

From the crash investigation, I note the left-hand curve which the UTV approached had a downhill gradient. There were gravel drains formed on either side of the road which were bordered by pine tree plantations. On the right-hand side of the road, located in the drain area, was a cut-off tree stump, measuring approximately 1 m in height from the ground. The tree stump showed evidence of having been damaged by impact and a portion of it had been dislodged. Approximately 500 m west of the crash scene was a driveway which led to the

northern side of Father of Marshes Road and which leads to a lakeside shack at which Mr Kennedy and his friends were staying.

An inspection of the scene from west to east revealed tyre marks left by the UTV as it began to negotiate the left-hand turn. The first tyre mark, consistent with the front left tyre, commenced 1.4 m from the left-hand side of the road. A further 2.1 m east, a mark consistent with the right front tyre of the UTV was observed. Another 3.9 m east, the right rear tyre mark is observed and it is clearly tracking outside the front tyre mark. At a distance of 21.5 m east from the commencement of the front left tyre mark was the commencement of the rear left tyre mark. Senior Constable Hall has determined the UTV has failed to negotiate the left-hand curve and has begun to rotate anticlockwise on its axis as it crossed to the incorrect side of the road. As it travelled east, the rear tyre marks were observed to be tracking outside the front tyre marks, which is indicative of yaw. This is where a vehicle moves sideways in another direction than the direction in which it is headed. The sideways motion is produced when the inertia motion exceeds the traction force and it is often the result of either overreaction or exceeding the critical curve speed. As a result, the rear end of the vehicle breaks loose and rotates as it tries to pass the front end.

Senior Constable Hall explains a yaw commences at the time the rear tyre starts to sideslip and develops as the rear tyres depart from their normal tracking path and crossover the front tyres paths. At this scene, there was no obvious point throughout the tyre marks to identify the point at which the rear tyres crossed and began to track outside the front, but there were other identifying features that identify the tyre marks as yaw marks. Striations were observed within the tyre marks on the gravel surface which indicates the vehicle was rotating and sideslipping (yaw), and that the wheels were not locked or under any braking.

From the marks, it was evident the vehicle was rotating in an anticlockwise direction around its centre of mass while continuing east. The left rear tyre mark was 18.5 m in length, the right rear tyre mark was 24.3 m, the front right tyre mark 30.4 m and the front left tyre mark 30.7 m in length. As the UTV continued east, the front and rear tyre marks widened which indicated the vehicle continued to rotate anticlockwise as it crossed to the incorrect side of the road. The vehicle has then left the roadway with parts of the UTV coming into contact with the ground which caused gouging. The tyre marks observed indicate it was close to being broadside and has likely commenced to roll passenger-side first. At a distance of 40.7 m from the commencement of the first tyre mark, the UTV has collided with the tree stump on the southern side of the road. Due to the impact, a section of the stump dislodged and it was found on the left hand side of the roadway. Senior Constable Hall says impact with the tree stump was likely in the vicinity of the front passenger side of the UTV where the most severe damage was located. Between 1.5 m and 11.7 m east of the tree

stump on the southern side of the road, the UTV's right-hand rear-view mirror, bonnet and the plastic roof panel were located on the road. A number of gouge marks were present on the road surface to the north-east of the tree stump. Continuing further to the northeast, on the northern side of the road 18.3 m from the tree stump, the UTV was located at its final resting place on its left-hand side.

From evidence obtained at the scene, Senior Constable Hall was able to conduct a critical curve speed analysis and a yaw speed analysis. The critical curve speed is the maximum notional speed the eastbound UTV, under normal road conditions, could have negotiated the curve and travel wholly within its lane without the centrifugal force on the vehicle exceeding the frictional force generated by the tyres, leading to a loss of control. The calculations resulted in Senior Constable Hall concluding an eastbound vehicle travelling at a speed of less than 62 km/h should have been able to safely negotiate the left-hand curve in the road while staying wholly within its lane and without the UTV sideslipping or entering yaw. The yaw speed analysis resulted in the conclusion that the UTV, at the time it began to slip sideways, was travelling at a speed of approximately 96 km/h, which is approximately 34 km/h above the critical curve speed and 16 km/h above the speed limit. Investigations determined both Mr Kennedy and Mr Rowlands were wearing seat belts but they were not wearing helmets.

Subsequently, Senior Constable Hall attended the police compound where he met with Mr Vincent, an authorised Polaris dealer, who sold the UTV to the owner. Mr Vincent was able to download the stored data from the vehicle and although that data does not provide a speed at the time of the collision, it does provide a vehicle speed history which indicates the total engine running time was 1.9 hours and it had travelled 22 km. Mr Clark says the vehicle was brand-new and he was aware it had to be run in so as not to cause damage to the drive belt. He said over two days prior to the crash, his maximum speed would not have exceeded 60km/h to 70 km/h. Mr Rowlands had no memory of the accident and when interviewed was not able to say what speed he was driving at. The downloaded material from the UTV revealed the following speed history:

Speed Range	Time within this speed range	% of time within this range
0-15 km/h	1 hour 22 mins and 49 secs	72.76%
16-30 km/h	14 mins 13 seconds	12.49%
31-47 km/h	14 mins 18 seconds	12.56%
48-67 km/h	2 mins 12 seconds	1.93%

68-90 km/h	8 seconds	0.12%
91-120 km/h	9 seconds	0.13%

These results validate Senior Constable Hall's yaw analysis which essentially establishes speed was a major factor in Mr Rowlands' loss of control of the UTV. This evidence is also consistent with the catastrophic damage to the UTV and the evidence of Mr Clark of the speeds at which he drove the vehicle at.

Pursuant to the provisions of the *Road Safety (Alcohol and Drugs) Act 1970*, Mr Rowlands underwent a blood test which returned a reading of 0.076 g of alcohol in 100 mL of blood. The blood sample was obtained at 6:20am which is approximately five hours after the crash. Working backwards from the blood alcohol analysis result Craig Gardner has calculated that the estimated blood alcohol concentration at the time the crash was between 0.124 g of alcohol in 100 mL of blood and 0.231 g of alcohol in 100 mL of blood. People with an average rate of metabolism would have returned a reading of 0.156 g of alcohol in 100 mL of blood at or about the time of the crash. I accept Mr Gardner's opinion.

On 1 November 2021, the forensic pathologist Dr Christopher Lawrence conducted a post-mortem examination on Mr Kennedy. After conducting that examination and considering the results of microbiology, toxicology and histology, Dr Lawrence concluded Kennedy died as a result of that head injury sustained when he was a passenger in a UTV which collided with a tree stump. Dr Lawrence goes on to say that toxicological examinations revealed a blood alcohol level of 0.111 g/100 mL and a urinary alcohol level of 0.154 g/100 mL, which he noted was slightly higher than the blood level and which he says suggested Mr Kennedy was intoxicated. I accept the opinion of Dr Lawrence.

Mr Wells is a transport inspector employed by the Department of State Growth. He is a qualified diesel mechanic with 25 years' experience in the motor trade. In the course of his employment as a transport inspector he has inspected numerous vehicles involved in serious and fatal crashes. On 5 November 2021, he inspected the UTV involved in this crash. As a result of his inspection, he determined it to be in near new condition prior to the accident. His affidavit sets out the significant damage the UTV sustained in the crash. I accept his opinion. There was no fault or defect with the UTV which caused or contributed to this crash.

Mr Rowlands pleaded guilty to one count of causing death by dangerous driving, driving a motor vehicle exceeding the prescribed alcohol limit and using an unregistered motor vehicle in the Supreme Court. On 15 November 2022, Justice Brett convicted Mr Rowlands

of the crime and offences to which he pleaded guilty and sentenced him to a period of three years imprisonment on the first two charges and ordered that he not be eligible for parole until he had served one half of that sentence. In addition, he was disqualified from driving for a period of two years which was to commence on the date of his release from prison. Mr Rowlands was fined on the third charge.

Comments and Recommendations

I am satisfied this tragic crash was solely caused by Mr Rowlands driving at excessive speed while intoxicated. He lost control of the UTV when he attempted to negotiate a left-hand curve on Father of Marshes Road. As a result of that loss of control, the UTV crossed to the incorrect side of the road and into the roadside drain. It then began to broadside passenger-side first and roll prior to impacting with a large tree stump. Impact with the stump caused significant damage to the passenger side of the UTV and the fatal injury sustained by Mr Kennedy. Given that Mr Kennedy died of head injuries, the severity of these injuries would probably have been reduced if he had been wearing a helmet.

In 2017, Coroner Cooper conducted an inquest into the deaths involving 7 people who died while using ATVs. He made numerous findings and recommendations.¹ I commented on those recommendations in De-identified AB 2024 TASCDC 177 and indicated the two recommendations highlighted on page 14 of that decision were equally relevant to ATVs such as the vehicle driven by AB. They are also relevant to the UTV in this case. The relevant recommendation to this case made by Coroner Cooper was:

*“I **recommend** consideration be given by the Tasmanian Law Reform Institute and the Attorney-General to the introduction of legislation requiring mandatory training and licensing of all persons using quad bikes.”*

I then looked to see the extent to which Coroner Cooper’s recommendations had been implemented. In particular in late 2021, the Tasmanian *Work Health and Safety Regulations 2012* were amended, with the introduction of regulation 216A which appears to be designed to improve quadbike safety. Those regulations were replaced in 2022. The current regulation is as follows:

¹ See Heather Dawn Richardson, Jan Severin Jensen, Kendall Russell Bonney, Vicki Mavis Percy, Jay Randall Forsyth, Jacob Graham Greene and Roger Maxwell Larner [2017] TASCDC 329, 330, 331, 332, 333, 334 and 335.

“216A. Restrictions on use of quad bikes

(1) *The person with management or control of a quad bike at a workplace must ensure that –*

- (a) an approved helmet is available for use with the quad bike; and*
- (b) any person using the quad bike has been provided with appropriate training in the use of the quad bike; and*
- (c) the quad bike is not used to carry a passenger unless the quad bike is designed to carry a seated passenger.*

Penalty: In the case of –

- (a) an individual, a fine not exceeding \$6 000; or*
- (b) a body corporate, a fine not exceeding \$30 000.*

(2) *A person must not use a quad bike at a workplace unless the person –*

- (a) has undertaken appropriate training in the use of the quad bike; and*
- (b) is using the quad bike consistently with that training; and*
- (c) is wearing an approved helmet.*

Penalty: Fine not exceeding \$6 000.

(3) *A person must not use a quad bike to carry a passenger at a workplace unless the quad bike is designed to carry a seated passenger.*

Penalty: Fine not exceeding \$6 000.

(4) *In this regulation –*

approved helmet means a helmet that complies with AS 1698, AS/NZS 1698, UN ECE22.05 or any other relevant standard;

quad bike means a motor vehicle with 4 wheels that is ridden in the same way as a motor bike.”

While this regulation requires a person who uses a quad bike to have appropriate training and to wear an approved helmet, it is of course only limited to workplaces and not private properties or a public road where this crash occurred.

On 22 December 2021, the *Road Amendment (Quad Bike Rules) 2021* came into force. This statutory rule amended 10 of the in excess of 384 road rules which appear in the *Road Rules 2019*. Those rules are uniform throughout Australia but the quad bike amendments have resulted in Tasmania's road rules no longer being consistent with the model rules in Australia. Rule 270 requires riders of quad bikes to wear an approved motorbike helmet and Rule 271(5D) places an age restriction on passengers in the following terms:

“The rider of a quad bike must not ride with a passenger unless the passenger –

(a) is 6 years old or older; and

(b) keeps both feet on the footrests designed for use by a pillion passenger on the quad bike; and

(c) keeps at least one hand, while the passenger is seated, on the handrail of the bike, if any.

Penalty: Fine not exceeding 20 penalty units.”

There is no age restriction placed on the rider.

Quad bike is defined in the *Road Rules 2019* in the following terms:

*“**quad bike** means a motor vehicle with 4 wheels that is ridden in the same way as a motor bike;”*

The UTV in this case does not meet this definition principally because the driver and his or her passenger sit side by side in a cabin on a bench seat and the vehicle itself is not straddled like a motorcycle and is steered through the use of a steering wheel not handle bars. It would however meet the definition of motor vehicle which means *“a vehicle (other than a motorised scooter) that is built to be propelled by a motor that forms part of the vehicle”*. Rule 264 which requires a driver of a motor vehicle to wear a seatbelt would apply and Rule 265 with respect to the ages and the types of restraints to be worn by passengers of motor vehicles would also apply. The problem is however Rule 270, with respect to the use of helmets, would not apply. Although rule 271(5D) places an age restriction on passengers on quad bikes, that rule does not arguably apply to this vehicle and there is no age restriction placed on the driver or person in charge of the controls of such a vehicle.

I can find no reference on the website of the Tasmanian Law Reform Institute that the recommendations made by Coroner Cooper have been considered by that organisation.

It is clear from what I have set out above, there has been reform since Coroner Cooper handed down his decision in 2017 which has improved safety, but it is my view that further reforms should be made. There is still no requirement for people to be trained to ride a quad bike or ATV or UTV outside of the workplace or be licensed.

I repeat Coroner Cooper's recommendation set out on page 9 (and that that recommendation be applied to the vehicle used in this case) and that consideration also be given as to whether the type of vehicle used by Mr Rowlands and Mr Kennedy should be included in the provisions in the Road Rules that apply to quad bikes, given their similarity, or whether they should be separately provided for.

I extend my appreciation to investigating officer Senior Constable Adam Hall for his investigation and report.

The circumstances of Mr Kennedy's death are not such as to require me to make any further comments or recommendations pursuant to Section 28 of the *Coroners Act 1995*.

I convey my sincere condolences to the family and loved ones of Mr Kennedy.

Dated: 11 November 2024 at Hobart, in the State of Tasmania.

Magistrate Robert Webster
Coroner